

2023 SENATE STATE AND LOCAL GOVERNMENT

SB 2352

2023 SENATE STANDING COMMITTEE MINUTES

State and Local Government Committee
Room JW216, State Capitol

SB 2352
2/2/2023

Relating to liability of officers and executive committee members of a political organization.
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2:30 PM Chair Roers opened the hearing. Present: Chair Roers, Vice Chair Barta, Sen Cleary, Sen Estenson, Sen J Lee, and Sen Braunberger.

Discussion Topics:

- Political parties
- Limited immunity
- Non-profit board
- Accountability

Sen Hogue, Dist 38, bill sponsor and testified in support #18838

Perry Schafer, ND Republican Party Chair, testified in support #19120, #19118.

Michael Coachman, Dist 18, testified in opposition with no written testimony.

Perry Schafer answered a question.

2:55 PM Chair Roers closed the hearing.

Pam Dever, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

State and Local Government Committee
Room JW216, State Capitol

SB 2352
2/9/2023

Relating to liability of officers and executive committee members of a political organization.
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9:23 AM Chair Roers opened committee work. Present: Chair Roers, Vice Chair Barta, Sen Cleary, Sen Estenson, Sen J Lee, and Sen Braunberger.

Discussion Topics:

- Committee action

Sen Cleary moved a DO PASS.

Sen Barta seconded.

Senators	Vote
Senator Kristin Roers	Y
Senator Jeff Barta	Y
Senator Ryan Braunberger	Y
Senator Sean Cleary	Y
Senator Judy Estenson	Y
Senator Judy Lee	Y

VOTE: YES – 6 NO – 0 Absent – 0 Motion PASSED

Sen Barta will carry the bill.

9:26 AM Chair Roers adjourned the meeting.

Pam Dever, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2352: State and Local Government Committee (Sen. K. Roers, Chairman)
recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB
2352 was placed on the Eleventh order on the calendar. This bill does not affect
workforce development.

2023 HOUSE JUDICIARY

SB 2352

2023 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

SB 2352
3/13/2023

Relating to liability of officers and executive committee members of a political organization.
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9:30 AM Chairman Klemin opened the hearing. Members present: Chairman Klemin, Vice Chairman Karls, Rep. Bahl, Rep. Christensen, Rep. Cory, Rep. Henderson, Rep. S. Olson, Rep. Rios, Rep. S. Roers Jones, Rep. Satrom, Rep. Schneider, Rep. VanWinkle, and Rep. Vetter.

Discussion Topics:

- Political organizations liability.
- Tort and contractual liabilities.

Senator Hogue: Introduced the bill. Testimony #24126

Perrie Schaffer, NDOGP: Referenced testimony #19120, #19118

Additional written testimony: Mitchell Sanderson #23699

The hearing closed at 9:50 AM

Delores Shimek, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

SB 2352
3/13/2023

Relating to liability of officers and executive committee members of a political organization.
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2:42 PM Chairman Klemin opened the hearing. Members present: Chairman Klemin, Vice Chairman Karls, Rep. Bahl, Rep. Christensen, Rep. Henderson, Rep. S. Olson, Rep. Rios, Rep. S. Roers Jones, Rep. Satrom, Rep. Schneider, Rep. VanWinkle, and Rep. Vetter. Absent: Rep. Cory

Discussion Topics:

- Committee Action

Rep. Karls moved a Do Pass;

Seconded by Rep. Cory

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Landon Bahl	A
Representative Cole Christensen	Y
Representative Claire Cory	Y
Representative Donna Henderson	N
Representative SuAnn Olson	Y
Representative Nico Rios	Y
Representative Shannon Roers Jones	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	Y
Representative Lori VanWinkle	N
Representative Steve Vetter	Y

Roll call vote: 10 Yes 2 No 1 Absent Motion carried.

Carrier: Rep. Cory

The meeting closed at 2:43 PM.

Delores Shimek, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2352: Judiciary Committee (Rep. Klemin, Chairman) recommends **DO PASS** (10 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). SB 2352 was placed on the Fourteenth order on the calendar.

TESTIMONY

SB 2352

1 **TESTIMONY OF DAVID HOGUE IN SUPPORT OF SB 2352**
2 **SENATE STATE AND LOCAL GOVERNMENT COMMITTEE**
3 **FEBRUARY 2, 2023**

4

5 Good morning Madam Chair Roers and members of the Senate State and Local
6 Government Committee. My name is David Hogue. I am a North Dakota state senator
7 representing District 38, which includes northwest Minot and the city of Burlington. I
8 appear before your committee to seek support for Senate Bill 2352.

9 SB 2352 is a bill intended to extend civil immunity protection to individuals who
10 work for unincorporated political organizations. I introduced the bill at the request of the
11 leader of one of the state’s major political parties. I am pleased to say that this is a
12 bipartisan bill. It protects employees and officers of both political parties.

13 We all are members of local political parties. Most of those local political parties
14 are not entities. But those local political parties often function as an entity. These
15 political parties and organizations: hold meetings, nominate candidates for public office,
16 host fundraisers, spend money, among other activities that many incorporated not-for-
17 profit entities do.

18 Substantially all of the natural persons who act on behalf of the political
19 organizations enter into commercial transactions and buy goods and services from
20 outside third parties. It is understood that these transactions are on behalf of the
21 political party, and not the person requesting the service or goods. SB 2352 limits any
22 tort liability for a person who is acting in a capacity as a party official.

1 This is civil immunity is not revolutionary. We provide similar immunity to board
2 members in a cooperative or in a not for profit entity. With some vary narrow
3 exceptions, we do not permit volunteer board members who are serving on a not for
4 profit board to be civilly liable for the acts or omissions when such act or omission is in
5 the service of the organization. I thing that same general true should hold true for
6 volunteers in political organizations and therefore urge your support of Senate Bill 2352.

7 Madam Chair Roers and members of the Senate State and Local Government
8 Committee, I urge your support of SB 2352.

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Uniform Law Commission
NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

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Uniform Unincorporated Nonprofit Association Act (2008) (Last Amended 2011)

- A Summary -

There are thousands of unincorporated nonprofit associations in the United States. They range from local neighborhood associations to national associations with large memberships. Their members may be individuals, corporations, other legal entities or a combination thereof. They are all associations that for one reason or another cannot or have not chosen to become a nonprofit corporation.

Under the traditional common law aggregate theory, these associations are not viewed as legal entities but merely as an aggregate of individuals. In the United States, unincorporated nonprofit associations are governed by a hodgepodge of common law principles and statutes governing some of their legal aspects. The Uniform Unincorporated Nonprofit Association Act (UUNAA) addresses the most significant legal problems that arose under the common law's treatment of such associations.

UUNAA governs all unincorporated nonprofit associations that are formed and operate in a state that adopts the Act. An unincorporated nonprofit association is a nonprofit organization that is not a charitable trust or a nonprofit corporation or any other type of association organized under statutory law that is authorized to engage in nonprofit activities. The Act provides examples of other laws that apply to unincorporated nonprofit associations, such as general principles of contracts, agency, fraud, estoppel, the priority of written provisions of an agreement over prior inconsistent oral provisions or subsequent oral amendments (and any exceptions), civil and criminal procedural rules, and rules for enforcing judgments. UUNAA supplements the applicable state laws and if a conflict exists, the other state law applies.

Furthermore, UUNAA recognizes an unincorporated nonprofit association as a legal entity distinct from its members and managers. It has the same powers as an individual to do all things necessary or convenient to carry on its purposes including ownership and transfer of property. It may sue or be sued in its own name. An unincorporated nonprofit association may also engage in profit-making activities with restrictions on how those profits are used and how it may exist in perpetuity.

The Act clarifies the contract and tort liability of an unincorporated nonprofit association and its members and managers. A debt, obligation, or other liability of an unincorporated nonprofit association whether arising from a contract or tort is solely that of the association and does not become that of its members solely by virtue of their status as members. Members have the same vicarious liability protection as shareholders of a corporation whereas under traditional common law principles, the members have joint and several liability for the debts, liabilities and obligations of an unincorporated nonprofit association.

UUNAA makes it clear that a person's status as a member does not by itself make that person an agent of the unincorporated nonprofit association. The Act establishes default rules, which govern the relation of the members and managers to each other and to the unincorporated nonprofit

association. Members of an unincorporated nonprofit association do not have fiduciary duties to the unincorporated nonprofit association or other members by virtue of their status as members. They do however have an obligation of good faith and fair dealing. Only individuals exercising managerial duties in an unincorporated nonprofit association have fiduciary duties.

The Act also provides default rules for dissolution of the unincorporated nonprofit association either by a majority vote of the members or the managers. The Act further sets out rules for distribution of assets after its affairs have been wound up. UUNAA authorizes an unincorporated nonprofit association to merge into another organization, assuming the law governing the other organization authorizes a merger with an unincorporated nonprofit association.

Moreover, UUNAA contains an optional section pertaining to the transfer of property. The initial common law rule was that a purported transfer of property to an unincorporated nonprofit association totally failed as the association was not a legal entity. If a state has that rule, it should adopt this optional section in whole or in part.

The basic framework of the Act is not intended to be a substitute for organizing as a nonprofit corporation under state law. UUNAA will supplement existing legislation to the extent an enacting jurisdiction decides to retain statutes dealing with specific kinds of nonprofit associations.

This Act will principally benefit the many millions of people who aggregate into thousands of unincorporated nonprofit associations. UUNAA creates a harmonized legal framework that overcomes the inadequacies of the common law and inconsistent and incomplete legal structure for unincorporated nonprofit associations. UUNAA also comports with the reasonable expectations of creditors and other persons engaged in transactions with these associations.

For more information on the UUNAA, please contact Libby Snyder at (312) 450-6619 or by email at lsnyder@uniformlaws.org.

We have determined (NDGOP attorneys) that these organizational requirements (NDGOP as an organization under 16.1-03) are only required to obtain ballot access and do not make the NDGOP an organization formed under state statute under the Uniform Act (which is what we are requesting). In other words, the NDGOP is not a creature of North Dakota statute, as it applies to a corporation, LLC, partnership, etc., it merely complies with the organizational scheme provided in NDCC ch. 16.1-03 so that its candidates can be placed on the election ballot. Thus, even though the NDGOP organizes itself consistent with NDCC ch. 16.1-03, it would still qualify as an unincorporated nonprofit association under the Uniform Act. The Uniform Act can be amended to make clear that political parties are not organizations formed under North Dakota statute and qualify as unincorporated nonprofit associations under the Uniform Act.

The NDGOP is asking to create and enact a new section of Chapter 16.1-03 of the NDCC relating to liability of officers and executive committee members of a political organization. This is the same protection that is afforded "C" Corporations in the incorporation process. Incorporating or accepting the Uniform Law Commission into law in the state of ND will afford non-incorporated entities this same protection.

Thank you.

Perrie Schafer
NDGOP State Chair



SB 2352**(Committee Immunity)**

There should be **NO** government immunity while working in the scope of any government position.

There is federal case law stating that you can be held liable for acts even if you have government immunity.

I can assure you ALL executive meetings and government immunity will be challenged legally if such an anti-American bill is passed.

It is time for a people's legal revolution against corruption in government and corrupt courts that protect that corruption.

We the people run this government not the government running the people!

Anyone who votes for such immunity has something to hide and we will eventually get the evidence and you will be charge in the court of law!

We need more transparency and accountability in the government not more secrecy.

NO to any more government immunity!

1 **TESTIMONY OF DAVID HOGUE IN SUPPORT OF SB 2352**

2 **HOUSE JUDICIARY COMMITTEE**

3 **MARCH 13, 2023**

4

5 Good morning Chairman Klemin and members of the House Judiciary
6 Committee. My name is David Hogue. I am a North Dakota state senator representing
7 District 38, which includes northwest Minot and the city of Burlington. I appear before
8 your committee to seek support for Senate Bill 2352.

9 SB 2352 is a bill intended to extend limited civil immunity protection to individuals
10 who work for unincorporated political organizations. I introduced the bill at the request
11 of the leader of one of the state’s major political parties. I am pleased to say that this is
12 a bipartisan bill. It protects certain officials and officers of both political parties.

13 We all are members of local political parties. Most of those local political parties
14 are not entities. But those local political parties often function as an entity. These
15 political parties and organizations participate in several activities like an organization.
16 They hold meetings, nominate candidates for public office, host fundraisers, and spend
17 money, among other

18 Many natural persons who act on behalf of the political organizations enter into
19 commercial transactions and buy goods and services from outside third parties. It is
20 understood that these transactions are on behalf of the political party, and not the
21 person requesting the service or goods. SB 2352 seeks to limit contractual and tort

1 liability for a person who is acting in a capacity as a party official for one of these
2 political parties.

3 This limited civil immunity is not revolutionary. We provide similar immunity to
4 board members in a cooperative or in a not for profit entity. With some very narrow
5 exceptions, we do not permit volunteer board members who are serving on a not for
6 profit board to be civilly liable for the acts or omissions when such act or omission is in
7 the service of the organization. I think that same general rule should hold true for
8 volunteers in political organizations and therefore urge your support of Senate Bill 2352.

9 I should like to provide an example of the type of activity SB 2352 seeks to
10 immunize. Let's assume hypothetically that Bismarck receives a large snowfall event.
11 Assume further the executive director tries to shovel the steps of the headquarters
12 building to remove the snow and ice from the steps but, despite his best effort, someone
13 slips and falls and injures themselves on those steps. If the injured party brings a civil
14 claim, the injured party under SB 2352 would do well to make a claim against the state
15 political party because SB 2352 would provide immunity for the executive director who
16 was shoveling the snow and clearing the steps on behalf of the political organization at
17 the political organization's place of business. SB 2352 provides that limited tort
18 immunity to the executive director because he was clearly acting on behalf of the
19 political organization in furtherance of the political organization's business and affairs.

20 Now let us assume that the executive director of the political party hired a snow
21 removal company to remove the snow at the headquarters location of the political party
22 and assume further the executive director and the snow removal company got into a

1 dispute about the snow removal services at the headquarters. If the snow removal
2 company thought the political party was not honoring the terms the snow removal
3 contract, SB 2352 would require the snow removal company to look to the political
4 party, and not the individual party official who hired the snow removal company for
5 satisfaction of the contractual claim related to snow removal.

6 Chairman Klemin and members of the House Judiciary Committee, I urge your
7 support of SB 2352.

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