

Senate Transportation Committee

Kat Bourque 271-3093

SB 34, relative to recovery of costs for damage done to highways.

Hearing Date: January 17, 2017

Time Opened: 2:14 p.m.

Time Closed: 2:47 p.m.

Members of the Committee Present: Senators Birdsell, Gannon, Ward, Watters and McGilvray

Members of the Committee Absent: None

Bill Analysis: This bill makes any person who damages a highway or highway protection equipment strictly liable for certain indirect costs and for labor and benefits costs. This bill is a request of the department of transportation.

Sponsors:
Sen. D'Allesandro

Who supports the bill: Philip Bradley (Department of Justice), Kathleen Hampson (Department of Transportation)

Who opposes the bill: Mike McLaughlin (Property Casualty Insurers Association of America)

Who is neutral on the bill: No one

Summary of testimony presented in support:

Senator D'Allesandro

Prime Sponsor

- This bill makes any person who damages a highway or highway protection equipment strictly liable for certain indirect costs for labor and benefits cost.
- This legislation deals specifically with civil liability.
- Senator D'Allesandro walked through the line-by-line changes in the statute.
- The Department has had difficulty collecting in a number of situations. The most common is the barriers that are dented and out of place on the highways.
- Senator D'Allesandro added that a representative is present from the Attorney General's Office to discuss why this issue is so important.
- Senator Watters asked about the strike-out in current statute on line 4. Senator D'Allesandro stated that the representative from the Attorney General's Office would be better suited to answer this question.
- Senator Ward asked if these specific incidents would include intentional incidents only or those that are accidental. Senator D'Allesandro explained that it could include

both, including those who cause damage when driving under the influence.

Philip Bradley

Assistant Attorney General, Department of Justice

- Attorney Bradley has been charged with enforcing this statute for many years.
- DOT has had issues with insurance companies not wanting to pay costs for guardrails that are damaged. He believes that guardrails are part of the highway and that this seems to be an obvious inclusion.
- Highway standards do change at different times depending on federal funding and grants. There are current specifications in place for guardrails.
- A 2007 amendment addresses replacement costs of guardrails. Attorney Bradley submitted a copy of this legislative history as testimony. In doubting whether or not something is clear in law, the court will look to legislative history.
- Attorney Bradley believes that this bill would help to address many weaknesses in current law which he has witnessed over the years.
- Strict liability is one such issue that this legislation will help to fix. The only way that an individual may not be found liable under strict liability is if they have authority, such as a construction crew in this particular circumstance. Since negligence and intent must be proved, they are not issues here due to court costs and efforts. This is why the statute is one of strict liability. In other words, an individual will be held liable regardless of fault.
- Should a driver not have insurance, they can sue the person who they may believe is responsible for pushing them into a guardrail.
- State v. Smith (NH) enumerates strict liability for those without authority.
- The problem with this statute is that it currently does not use the words “strict liability.” This legislation will amend that.
- Guardrails are likely the most common form of highway protection equipment, but there are others including walls alongside the highways and signs.
- The language eliminated on line 4 is another issue that would land individuals in court time and time again. Deciding what is unsuitable for public travel is arguable. Because the state wants to have strict liability regarding this issue, they do not want to have to go to court anyway to decide whether or not the highway was suitable for public travel.
- Finally, overhead costs, including labor, have continued to be a problem regarding this issue. This legislation seeks to fix that in lines 7-9. Currently, the state has to pay labor costs and benefits costs. Indirect cost estimates are given by all agencies.
- This legislation will help to clarify hundreds of court issues annually.
- Senator McGilvray asked if indirect costs could be litigated. Attorney Bradley stated that if the agency has a plan that specifies a certain number, there would be no litigation allowed on this matter.
- Senator Gannon asked about the barriers on either side of the high-speed EZ Pass lanes. He asked if one would be strictly liable if the state places these barriers too close. Attorney Bradley stated that one would have to file a counter claim. He mentioned a recent similar case.

Kathy Hampson

Department of Transportation

- Ms. Hampson was simply going to introduce Attorney Bradley and believes that her

testimony has already been covered.

Summary of testimony presented in opposition :

Mike McLaughlin
PCIAA

- Mr. McLaughlin explained that strict liability is a very specific type of liability for crimes.
- The issue with strict liability is that if an individual blames another for causing an accident, the person who hit the actual object should be liable regardless.
- Insurance costs will go to underwriters who will take into account the rates that they charge relative to this new standard of liability.
- Mr. McLaughlin also mentioned the legislative history of the 2007 amendment that has influenced cases.
- Strict liability can be unfair to those who had little or nothing to do with the damage.
- Senator Birdsell asked if the one who is strictly liable has more difficulty in getting reimbursed by the person who may actually be liable. Mr. McLaughlin stated that he believes that it would be far more difficult.
- Senator Gannon asked about the state's requirements in particular situations, like snow or ice storms. Mr. McLaughlin stated that this adds another issue of state's responsibilities and given states' immunities, this is a difficult hypothetical to discuss.

Neutral Information Presented: N/A

Future Action: Pending

KAB
Date Hearing Report completed: January 17, 2017