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Banking, Commerce and Insurance Committee  
April 01, 2014

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[LR440]

The Committee on Banking, Commerce and Insurance met at 1:00 p.m. on Tuesday, April 1, 2014, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR440. Senators present: Mike Gloor, Chairperson; Kathy Campbell; Tom Carlson; Sara Howard; and Paul Schumacher. Senators absent: Mark Christensen, Vice Chairperson; Tommy Garrett; Pete Pirsch.

SENATOR GLOOR: In the interest of time, I'll be brief. We have with us Senator Schumacher, Senator Campbell, Senator Carlson, Senator Howard, myself, counsel, Bill Marienau, Jan Foster as committee clerk. We're convening the public hearing on LR440 introduced by Senator Karpisek. Turn off your phones, tighten your seat belts. Senator Karpisek, you're recognized to introduce. [LR440]

SENATOR KARPISEK: Thank you, Senator Gloor and committee members. LR440 would allow us to call upon Congress to pass the Terrorism Risk Insurance Program Reauthorization Act or TRIA to maintain stability in the insurance and reinsurance markets to continue to deliver substantive direct benefits to businesses, workers, consumers, and the economy overall in the aftermath of a terrorist attack on the United States. To give you some background, prior to the terrorist attacks on September 11, 2001, insurance coverage for losses from such attacks was normally included in general insurance policies without specific cost to the policyholders. Following the attacks, such coverage became very expensive, if insurers offered it at all. Because insurance is required for a variety of economic transactions, it was feared that the absence of insurance against terrorism loss would have a wider economic impact. Private terrorism insurance was largely unavailable for the most part...for the most of 2002. And some have argued that this adversely affects parts of the economy. Congress responded to the disruption in the terrorism insurance market by passing the Terrorism Risk Insurance Act of 2002. The original intent of TRIA was to create a temporary, three-year terrorism insurance program in which the government would share some of the losses with private insurers should a foreign terrorist attack occur. This program was extended in 2005 and again in 2007 when they expanded the act to cover domestic acts of terrorism. The TRIA program is currently slated to expire at the end of 2014. The reauthorization of TRIA has a direct impact on a number of areas that can impact Nebraskans directly. Perhaps the most important concern for workers and businesses is workers' compensation. Workers' compensation differs from other lines in this respect: Insurers are not permitted to limit or exclude losses related to terrorism. Because employers are required by law to provide workers' compensation coverage, employers who are unable to secure coverage in the voluntary market obtain that coverage in a residual market. If the residual market were to take a catastrophic loss in a terroristic attack, all workers' compensation insurers would have to make up those losses even if they had tried to limit their exposure by writing less business. This kind of potential exposure makes it very difficult for workers' compensation insurers to secure

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April 01, 2014

---

reinsurance coverage that is essential to a well-functioning workers' compensation system. The second most visible impact of a failed reauthorization would be to commercial lenders. Lenders will not make loans without terrorism risk coverage on the collateral. The commercial real estate debt market exceeds \$3 trillion, mostly held by commercial banks and investors such as pension funds who own commercial mortgage-backed securities. To finance a commercial property, lenders require all risk insurance coverage to cover the risk of loss to the collateral. Property owners depend on their ability to obtain adequate, all-risk insurance coverage for financing. A lack of terrorism risk coverage may lead to severe economic disruption. The commercial real estate and other sectors that are just getting off on the fragile road to risk recovery following the financial crisis, would likely suffer. In a January newsletter published by the National Association of Insurance Commissioners, Adam Hamm, NAIC president and North Dakota insurance commissioner, stated that one of the key issues for property and casualty insurance industry is the possibility the Terrorism Risk Insurance Act or TRIA, again, will not be renewed when its sunset provisions occur on December 31, 2014. In the absence of private market innovations and solutions, sustaining a viable market for terrorism insurance depends on federal backstop. He further stated that NAIC members are committed to working with Congress, the administration, state officials, and the industry to develop a long-term plan to make terrorism insurance available and affordable. For these reasons, I would ask the committee to advance this resolution to the floor for further discussion and adoption. I'd be glad to try to answer any questions but I think if we ask someone following me, we'd save some time. [LR440]

SENATOR GLOOR: Are there any questions, nonetheless, for Senator Karpisek? Seeing none... [LR440]

SENATOR KARPISEK: Thank you. [LR440]

SENATOR GLOOR: ...thank you, Senator Karpisek. We'll move to proponents. Good afternoon. [LR440]

KORBY GILBERTSON: (Exhibit 1) Good afternoon, Chairman Gloor... [LR440]

SENATOR GLOOR: Good afternoon. [LR440]

KORBY GILBERTSON: ...members of the committee. For the record, my name is Korby Gilbertson, it's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n, appearing today as a registered lobbyist on behalf of the Property Casualty Insurers Association of America in support of LR440. First of all, I'd like to thank Senator Karpisek for introducing this resolution. I know all of you thought we were done with hearings for the year. This is the first time I've ever done this in all my years of lobbying, so I'm sorry to bring you all back. And I'd also...I'd like to thank the committee for taking the time today to do this. Senator

Transcript Prepared By the Clerk of the Legislature  
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April 01, 2014

---

Karpisek talked a little bit about the two major areas that are impacted by TRIA and what would happen if it's not reinstated this year or at the end of this year for the next ten years, is what they would like to see happen. The National Association of Insurance Commissioners actually is meeting right now. And I found...I was doing some reading this weekend and found their agenda and all of their materials that they're going through this week that were published on Sunday. And so I spent a little time Sunday night reading through those. And I found it really interesting in a few areas. They talked about the importance of what's going on with TRIA right now and how Congress needs to act. And the biggest issue, they talk about the potential opponents to it that say, you know, if you want to buy insurance, you can buy insurance for anything. You just have to, you know, figure out what the risk is. And one of the major problems, obviously, with terrorism is, it's extremely difficult to guess when it's going to happen or what's going to happen. And so that's the importance. The second thing is that opponents have come forth and said that this is just another bailout of big insurance companies or banks, things like that. And what I wanted to make sure that you understand is that TRIA requires the private insurance industry to cover the first \$100 million. And then only after that point does TRIA kick in. And even then, when it kicks in, there is then a recoupment mechanism that, then, has the insurance companies pay back those funds through a surcharge on P&C insurance that would take care of the money that's sitting there in the TRIA. And ever since it's been instituted in 2002, it has not been used. But if it goes away, the likelihood of workers' compensation writers and commercial lending insurers will be very difficult and become expensive including in Nebraska. And I believe...and I gave you a letter of support from PCI. I also gave you a letter that went out in 2005 that Governor Heineman was one of the signers of it from the Governors' Association. So I wanted to share both of those things with you and let you know that this isn't the first time this issue has come forward. And then I also believe you received a letter of support from the Nebraska Bankers Association that talks a little bit more about the commercial lending issues. [LR440]

SENATOR GLOOR: (Exhibit 2) I have it here and we'll have staff, Nate, pass it out. [LR440]

KORBY GILBERTSON: What their letter talks about is that larger projects are, right now, having a hard time finding financing or they can only receive short-term financing through the end of the year because they're not able to find reinsurance for terrorism because of the unknown status of TRIA. I'd be happy to answer any questions. [LR440]

SENATOR GLOOR: So, Ms. Gilbertson, what this resolution does, in effect, is let it be known to Congress that we want this to move forward. It doesn't have a force of law in it. It's strictly a letter of support... [LR440]

KORBY GILBERTSON: Right. [LR440]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
April 01, 2014

---

SENATOR GLOOR: ...for reauthorization. [LR440]

KORBY GILBERTSON: Right. And the National Association of Insurance Commissioners has already passed a resolution in support of it. Other states have done resolutions...passed...encouraging Congress to get a move on. [LR440]

SENATOR GLOOR: So the hope is that all 50 states introduce a resolution? [LR440]

KORBY GILBERTSON: Right. And there is a bill...there are three bills pending in the House right now. And the hope is that those will get moving and then there will be legislation in the Senate, too, to take care of it as well. [LR440]

SENATOR GLOOR: Any other questions? Senator Carlson. [LR440]

SENATOR CARLSON: Yeah, thank you, Senator Gloor. Korby, is...this started out in 2002, I think. [LR440]

KORBY GILBERTSON: Uh-huh. [LR440]

SENATOR CARLSON: Is there money that goes into a pool every year from the federal government? [LR440]

KORBY GILBERTSON: Yes. There's money that sits there. It hasn't been accessed yet. And it can only be...I'm trying to think. I can't remember what the total amount is right there. I know the number that's sticking in my head, I know, is that 9/11 was like \$32 million in damages. It might have been \$30 million. It was like \$32.8 million. It was the second largest insurance loss in the history of the United States. And so that's the fear is, if we have something else like that happen. [LR440]

SENATOR CARLSON: Well, there's been nothing else that's happened. [LR440]

KORBY GILBERTSON: Right. [LR440]

SENATOR CARLSON: So if money has been going into something every year, it's got to be a big amount in order to even make a difference. [LR440]

KORBY GILBERTSON: I think it was a one-time...I can get you the exact number. Let me get it to you when we're not sitting here. But there's...I don't think they continue to make appropriations to it. I think the money is just sitting there right now. It's a certain allocation. [LR440]

SENATOR CARLSON: Now that's used for certain kind of claims. Do you know what kind of claims? [LR440]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
April 01, 2014

---

KORBY GILBERTSON: Yes. Right now, there's two types of claims. They have to be...both have to be acts of terrorism. In 2007, they...and there's a list of qualifications they have to go through to be able to be classified as terrorism. But then in 2007, Congress expanded it to also include acts of domestic terrorism. It doesn't include nuclear war. It doesn't include pollution and some other...a couple other things. But there's a list of things you have to (inaudible). [LR440]

SENATOR CARLSON: Okay. That really wasn't my question. [LR440]

KORBY GILBERTSON: Okay. I'm sorry. [LR440]

SENATOR CARLSON: It's what kind of things does it cover? It's not going to cover life, surely. It must be bricks and mortar and it must...is it injuries? [LR440]

KORBY GILBERTSON: Oh, no. Yes, it can. Yeah, because... [LR440]

SENATOR GLOOR: Workers' comp. [LR440]

KORBY GILBERTSON: Yeah, workers' compensation. [LR440]

SENATOR CARLSON: Okay, that...yeah, I heard you say that. [LR440]

KORBY GILBERTSON: Probably the biggest impact this will have will be on workers' compensation. [LR440]

SENATOR CARLSON: Okay. Thank you. [LR440]

SENATOR GLOOR: Senator Campbell. [LR440]

SENATOR CAMPBELL: Korby, is it...been reissued every three years? [LR440]

KORBY GILBERTSON: They did it in 2002. They reauthorized it in 2005 and then, again, in 2007. And so then they did a longer reauthorization... [LR440]

SENATOR CAMPBELL: Got it. [LR440]

KORBY GILBERTSON: ...in 2007. This year, what the industry and NAIC is pushing for is to do a ten-year reauthorization and then actually, during that time, work to have a permanent system in place so that we don't have to keep coming back. [LR440]

SENATOR CAMPBELL: Thank you. [LR440]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
April 01, 2014

---

SENATOR GLOOR: Other questions? Seeing none, thank you for your testimony. [LR440]

KORBY GILBERTSON: Thank you, again, for your time. [LR440]

SENATOR GLOOR: Any other proponents? [LR440]

TAD FRAIZER: Good afternoon, Chairman Gloor, members of the committee. My name is Tad Fraizer, that's T-a-d F-r-a-i-z-e-r, local counsel and lobbyist for the American Insurance Association, a national trade association of property and casualty insurers. I'll just be very brief. I'll echo what Ms. Gilbertson brought forward to you. We also would support LR440 and the renewal of the terrorism risk insurance at the national level. And I'd be happy to try to answer any questions you might have. [LR440]

SENATOR GLOOR: Thank you, Tad. Any questions for Mr. Fraizer? Senator Schumacher. [LR440]

SENATOR SCHUMACHER: And thank you, Senator Gloor. Thank you for your testimony. If the federal government...the federal government is actually acting kind of as an insurer here or a backup insurer. [LR440]

TAD FRAIZER: Sort of a reinsurer, yeah. [LR440]

SENATOR SCHUMACHER: And if they ever were called upon and paid out, how much would they be reimbursed by the insurance agents or the insurance industry? Or would that come out of general tax revenue? [LR440]

TAD FRAIZER: I believe there...I don't claim as much expertise in it as Ms. Gilbertson, but there is a recoupment mechanism where a surcharge gets billed back to the companies that would eventually show up on your...it would either be bundled into your premium or show on the premiums. But it would gradually pay back a substantial portion of that. I can try to see if I can get the exact amount. [LR440]

SENATOR SCHUMACHER: Anyway, basically, the federal government is acting as an insurer, a reinsurer. [LR440]

TAD FRAIZER: As a backstop insurer that they can, then, recover that back from the industry. [LR440]

SENATOR SCHUMACHER: And it's \$100 million, is what the insurance industry has to come up with up front? [LR440]

TAD FRAIZER: That's the up front before... [LR440]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
April 01, 2014

---

SENATOR SCHUMACHER: That's not very much, is it, in the context with what could be done? [LR440]

TAD FRAIZER: I think that's on a per-insurer basis. [LR440]

SENATOR SCHUMACHER: Thank you. [LR440]

TAD FRAIZER: I'm sorry. I guess I'm hearing from the background that I may have my information wrong. But I'll try to get you more accurate info on it. [LR440]

SENATOR SCHUMACHER: Okay. [LR440]

SENATOR GLOOR: Other questions? Thank you, Mr. Fraizer. Other proponents? Any opponents? Anyone in a neutral capacity? Senator Karpisek for closing. [LR440]

SENATOR KARPISEK: (Exhibit 3) Real quick, I would hand the committee the...that shows the hard cap. And with that, I would be willing to take any other questions. [LR440]

SENATOR GLOOR: Senator Karpisek, tell me again, you're circulating that and handing it in as...so we'll get copies for everybody. But that shows what the hard cap is, which is \$100 million per insurer. Okay. [LR440]

SENATOR SCHUMACHER: One quick, ornery question. [LR440]

SENATOR KARPISEK: Well, good. [LR440]

SENATOR SCHUMACHER: What if we're opposed to the federal government providing insurance and we don't want to take that benefit? [LR440]

SENATOR KARPISEK: That is an ornery question. We don't always want to take money from the federal government, Senator Schumacher. So I guess that we could not vote for this LR. [LR440]

SENATOR SCHUMACHER: Thank you, Senator Karpisek. [LR440]

SENATOR GLOOR: Other questions, ornery or otherwise? Seeing none, thank you, Senator Karpisek. [LR440]

SENATOR KARPISEK: Thank you, committee. [LR440]

SENATOR GLOOR: And that closes the hearing on LR440. And the committee is going

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
April 01, 2014

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to go into Executive Session so would ask members...the audience... [LR440]