

ONE HUNDRED SECOND LEGISLATURE - FIRST SESSION - 2011

COMMITTEE STATEMENT (CORRECTED)

LB409

---

**Hearing Date:** Monday February 14, 2011  
**Committee On:** Banking, Commerce and Insurance  
**Introducer:** Utter  
**One Liner:** Provide for the retention of insurance proceeds by a county or municipality to repair or demolish damaged property

---

**Roll Call Vote - Final Committee Action:**  
Advanced to General File with amendment(s)

---

**Vote Results:**

<b>Aye:</b>	5	Senators Pahls, McCoy, Gloor, Pankonin, Utter
<b>Nay:</b>	2	Senators Langemeier, Pirsch
<b>Absent:</b>	1	Senator Christensen
<b>Present Not Voting:</b>		

---

**Proponents:**  
Senator Dennis Utter  
Robert Sullivan  
Jim Dobler  
Gary Krumland  
Jack Cheloha

**Representing:**  
Introducer  
City of Hastings  
NE Insurance Information Service  
League of NE Municipalities  
City of Omaha

**Opponents:**  
James Cavanaugh  
John Lindsay  
Matt Schaefer

**Representing:**  
Independent Insurance Agents of NE  
NE Assn. of Trial Attorneys  
NE Assn. of Commercial Property Owners

**Neutral:**  
Jerry Stilmock  
Korby Gilbertson

**Representing:**  
NE Bankers Assn.  
Property Casualty Insurers Assn.

---

**Summary of purpose and/or changes:**

LB409 (Utter) would provide for the withholding and deposit of insurance proceeds into a trust or escrow account maintained by a county, city, or village for the repair or demolition of materially damaged real property.

The bill would provide that if insured real property is materially damaged by flood, fire, explosion, or otherwise, and a claim is made by the insured to the insurer, the insurer shall withhold from payment of the claim the greater of twenty-five percent of the actual cash value of the property; twenty-five percent of the final settlement; or fifteen thousand dollars.

Upon the withholding of the funds, the insurer shall give notice to: the insured; the treasurer of the county, city, or village; any mortgagee named on the policy; and any court in which a proceeding involving the property is filed.

The county, city, or village may request that the withheld funds be remitted to a trust or escrow account maintained by the treasurer of the county, city, or village. A copy of the request shall be sent to the insured who may object to the

---

county, city, or village. The governing body of the county, city, or village shall make the final determination. After receipt of the request, the insurer shall remit the withheld funds to the treasurer.

The funds deposited in the trust or escrow account shall be used for the repair or demolition and clearing of the damaged real property. If the repair or demolition and clearing is performed by the insured or a contractor of the insured, the insured shall receive the proper permit issued by the county, city, or village. The county, city, or village shall not make payment until it has inspected and approved the performance. Any funds remaining upon completion shall be paid to the insured.

---

**Explanation of amendments:**

The committee amendments (AM577) would strike the original provisions of the bill and would insert a new section with the following subsections:

1. Subsection (1) would provide that after an insurer makes payment to all mortgagees on a fire and casualty insurance policy covering damaged real property, the insurer shall reserve ten thousand dollars or ten percent of the coverage limit, whichever is greater, to be held as a demolition cost reserve if (a) the property is located within the limits and any zoning jurisdiction of a city or village, (b) the property is uninhabitable or unfit for use, and (c) proof of loss has been submitted by the policyholder to the insurer for a sum in excess of seventy-five percent of the face value of the policy.
2. Subsection (2) would provide that if the insurer receives proof of loss, it shall notify the clerk of the city or village of the existence of the demolition cost reserve.
3. Subsection (3) would provide that the city or village shall release all interest in the demolition cost reserve within ninety days of notice unless the city or village has instituted legal proceedings or issued a demolition order.
4. Subsection (4) would provide that a demolition cost reserve shall not be required if (a) the insurer has received notice from the insured and the city or village that the property has been replaced or rebuilt, repairs have been completed, or demolition has been completed, or (b) the city or village has failed to notify the insurer that it has instituted legal proceedings or issued a demolition order.
5. Subsection (5) would provide that the city or village shall present to the insurer a report of demolition costs.
6. Subsection (6) would provide that the insurer is not liable for any demolition costs (a) not covered under the policy, (b) in excess of policy liability limits, or (c) to the extent the reserve is needed to pay any interest of a mortgagee on the policy.
7. Subsection (7) would provide that an insurer and its agent that complies with this section shall be immune from any civil liability.

---

Rich Pahls, Chairperson