

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1419

2007 HOUSE FINANCE AND TAXATION

HB 1419

# 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1419A

## House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: January 29, 2007

Recorder Job Number: 2139

Committee Clerk Signature

*Micki Schmidt*

Minutes:

Chairman Belter opened the hearing on HB 1419.

**Representative Owens:** I need to talk to you a little about Railroad's today. **(See Attachment**

**#1)** The fact being a classic symbol of American Industrialism, Railroads in rural areas provide

a critical means of transporting freight, particularly Agricultural commodities to larger Cities.

With the passage of the Stagger Act in 1980 and it's implementation, many regulatory restraints on the RR industry for removing has provided the industries with increased flexibility to adjust their rights and teller their services. As a result of more than 20 years after the deregulation the RR industry has been in a much healthier financial state, however the deregulation as a result of the Stagger Act paved a way for them to more easily close spurs in rail lines across the Country. The result; are longer travel times from producer to the deportation point for the produce with these heavier trucks increasing a greater stress on the roads across our State. So essentially what has been happening over this period of time is the taxpayers of North Dakota have been subsidizing the RR industry in the transporter of goods to get to the RR. This shows you 1980, the Rail system in ND, (refers to his graph), and what's most interesting is since 1980 till now, all of this red is gone, it doesn't exist. So for all of those producers in that area, they have to travel further to reach the rail lines. They do that with

motor carriers and their trucks and what not. That's putting a greater stress on the infrastructure of the State on the highway system. But the RR's were allowed to get rid of these non profitable lines without having to support the new transportation mechanism, these road ways. So all this Bill does is ask for a little assistance from the Railway Industry in maintaining this infrastructure that not only helps get the products from the producers to the rail to the market, but provides the Rail lines with income as well. This Bill would actually seek a franchise tax for the right of doing business in this State. It's no different than tax currently being used in Maine. However Stagger and 4-R's did greatly restrict the State's rights in taxing RR's. But it was mainly at the point of ad valorem tax. As such, a number of States have created personal property tax against Rail cars, franchise, the right to do business where there is so much per tonnage along a mile, the number of miles in this State or it's just based on the number of miles of track in the State, or they charge you annually based on the number of highway and rail crossings. So this Bill seeks to create a partnership between North Dakota taxpayers who've been maintaining these roads and the RR's who benefit from these roads being used and has the RR's contribute a little to that along with a portion of that tax is to maintain some of the spurs in the State and to help us from losing anymore.

**Representative Froelich:** I agree with you wholeheartedly, we lost 2 spurs. The point being, I looked at the fiscal note and I think I know what's going to happen. You're just going to turn around and then put the burden back on people that are using the this, the farmers, the shippers, do you think that will be a fair assumption?

**Representative Owens:** Yes, more than likely that's what will happen. We did get some good news however, on Friday, STP did rule against the percentage of fuel surcharges. They have to be done based on mileage and you can't double dip anymore. So that's going to be a major

improvement in the fuel surcharge that our producers have to pay, and that was just released Friday the 26<sup>th</sup>.

**Representative Headland:** On the fiscal note it talks about an inconsistency with section 1, subsection B; have you figured out how that problem can be addressed and fixed?

**Representative Owens:** Yes, what happened was when I first got the Bill drafted back from Legislative Counsel, it was written as 1-B is written now. I took it back to them to write it as 1-A, 1-C, and 1-D and they skipped 1-B in changing it back, so yes, 1-B does need to be amended to read as C & D does.

**Representative Vig:** Does this affect Amtrak up north or not?

**Representative Owens:** I'm not sure.

**Rep. Robin Weisz:** I'm just here to lend my support to 1419. I really do believe that we have an issue where we have a business that is critical to our State but this has affected fiscal cause that have affected the public policy of our State of North Dakota. And that policy is the fact that they have abandoned, as you can see by the charts, it's a tremendous amount of line because it was more cost affective to them to consolidate the mainline because there are captive players in the game that's going to come to them anyway but , it's not like they had to provide service out there, we're going to get us ??? Well, who picked up the tab? The State of North Dakota obviously picked up the tab for that and has caused a dramatic increase in the use of our highways, County & Township roads, where the commodities move 5-10 miles 30 years ago, now they're traveling 30-100 miles. So the State has picked up a tremendous amount of the cost. And what this Bill is doing is saying, Ok, we're going to set some tax on you to help pay for the road but also to help trying to keep the what little bit we have left.

**Representative Brandenburg:** I'd like to stand in support of this Bill. These are important issues that we need to talk about. The Service Transportation Board ruled that fuel surcharges

have to be based on mileage and BNSF which did change because I think that a lot of the work that we did last session and there were lots of people involved with that made those changes that also affects all of the other RR's.

**Terry Traynor, Assistant Director of NDAC:** We want to stand up and support this Bill.

**(See Attachment #2)**

**Russ Hanson, Associated General Contractors of ND:** We would just like to echo the comments of Mr. Traynor and particularly his comment in paragraph 4 of his testimony about the purchasing power and the 25% he refers to. That true statement of the construction industry and it's reflected in the number of projects that the DOT is delaying this year and future years that are becoming increasingly high dollar amounts for the reasons that have been explained previously, I will echo those.

**Chairman Belter:** Any other testimony in support of 1419? Is there any opposition?

**John Olson, representing BNSF Railway: (See Attachment #3)** testified in opposition.

**Representative Schmidt:** How many acres of land do RR's own today compared to what they owned 50 years ago in ND?

**John Olson:** I can't answer that question. All I can tell you is that we have, the RR's, about 3,500 miles of track in this State at the current time.

**Tom Kelsh, on behalf of the Canadian Pacific Railroad:** We of course oppose this Bill and for the reasons I think that John stated. As far the one question that Rep. Schmidt had; Northern Pacific had the southern route and that was a land grant by the Great Northern. What they've done with it I can't tell you.

**Representative Froelich:** We used to have the RR's way down in the southwestern part of the State. From my recollection, I don't have a RR map, but they were in Milwaukee, NP. Is that still managed by them?

**Tom Kelsh:** Milwaukee went bankrupt, and part of that property was taken over by BN. I'm not that familiar with BN, I represent the CP RR.

**Representative Froelich:** When they pulled those RR's out from down there, they then turned around and sold the land back, which they had gotten basically for free and sold it back to the farmers around them.

**Vice Chairman Drovdal:** We've heard testimony that this is against the putting tax on would be in violation of federal law and yet we've got some testimony that others takes and puts a tax on the RR's specifically, is it the because of the type of tax that's against federal law or these other States in violation of federal law?

**Tom Kelsh:** I can try to find out for you.

**John Risch, represents the UTU:** testimony in opposition. First of all I would like to say that RR's in general don't pay enough taxes just like other large corporations. This Bill is an incredibly bad idea because they're not only on taxes, the RR's uniquely and not like the competitors that actually take the money and puts it in the Highway Trust Fund then in fact subsidizes there competition. We at the RR Industry being of worker involved in my job, depending on the RR's success, it's just not equitable at all to take money from the RR's and subsidize their competition. I just want to comment briefly about how taxes between the two modes of pay. Trucker's of course pay a great deal to fuel taxes and then they pay property taxes on their buildings and terminals and such. RR's on the other hand pay property taxes on their buildings and such but, is then required to build their own infrastructure. They build their own tracks and then don't pay a fuel tax because certainly they're not operating on the highways. The great discouragement between these two weigh their taxes are is that RR's have to pay property taxes on their rail lines whereas no one pays property taxes on roads and highways. So the RR's just by virtue of the current tax policy are a competitive disadvantage

against the Trucking Industry. And this Bill would make things much, much worse. In addition to that when the interstate highway system was built in the 60's and 70's, much of the money used for the highways system was not fuel tax dollars, it was general tax dollars and that had a tremendous impact on the RR Industry and caused many RR's across the country including the Rock Island Mine and Milwaukee RR to go out of business, they just couldn't compete with Truckers and this new publicly financed interstate highway system.

**Chairman Belter:** Any questions? Any more testimony in opposition? Any neutral testimony?

**Marcy Dickerson, State Supervisor of Assessments for the Tax Dept. (See Attachment #4)** I won't read the first part of my testimony because it refers to the problem that's item B, which has already been addressed and explained.

**Chairman Belter:** Any questions? If not we'll close the hearing on 1419.

# 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1419 *B*

## House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: January 31, 2007

Recorder Job Number: 2369

Committee Clerk Signature *Mickie Schmidt*

### Minutes:

Chairman Belter opened the hearing on HB 1419. He asked Rep. Owens if he was ready with this Bill. Rep. Owens stated that he is working on an amendment right now. Chairman Belter closed the hearing on HB1419.

# 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1419 C

## House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: January 31, 2007

Recorder Job Number: 2466

Committee Clerk Signature

*Mickie Schmidt*

Minutes:

Chairman Belter opened the hearing on HB 1419 asking Rep. Owens if he was ready with his HB 1419?

**Representative Owens:** This is the hog house Bill. After a discussion with the General Counsel and the Tax Commissioner's office, he is convinced no matter what we do there will be a challenge. He's been dealing with the Railroads for a very long time and has a lot of corporate knowledge. (Read the amendment) **(See attachment #1)**

**Representative Weiler:** Did you run this by the RR folks?

**Representative Owens:** No, I did not.

**Representative Weiler:** I understand some Hog House amendments are ok. I have a problem because this particular amendment is not going to have a hearing, and I'm very uncomfortable with that.

**Representative Owens:** The way the bill is currently written, it actually would stand the test of four R's and everything if we had, it's just ironic because here in this State we don't have personal property tax. If we did have it, they wouldn't be able to challenge it. Since we don't have it, it's an easy push.

**Representative Froseth:** A dollar a ton would be a dollar for every 33 bushels of wheat that goes down the track.

**Chairman Belter:** I think they're 100 ton.

**Representative Froseth:** So, \$33.00 per ton times 100 would be \$3300.00 per car?

**Representative Weiler:** Yes.

**Representative Owens:** I apologize, one thing I did want to do is get up to the PFC for the committee because I know that part is concerned particularly, yours and everyone else's, we have now heard from the committees, is the cost associated the belief that will raise some rates. But there is some information with PFC, quite frankly me and several others believe that the way they do their rates is totally different as we've seen in the past. It has nothing to do with that. They don't believe this will affect their rates per say. Are we right or wrong? I'm not going to sit here and tell you I know that for a fact, but that's what we believe.

**Vice Chairman Drovdal:** What's the effective date on this?

**Representative Owens:** Yes, that was the part that I left off. It would December 31, 2006.

**Representative Headland:** The way I figure it, if a RR car holds 3500 bushels and it takes 33 bushels to make a ton, then you'll only have \$106.00 of tax on every car.

**Representative Owens:** An estimate that came from our Tax Dept. during the 2005 session, the dollar tax for all RR's is \$31 million per biennium.

**Representative Pinkerton:** I'm not sure what the RR revitalization fund is?

**Representative Owens:** It is designed to establish grants to maintain matching fund grants to help the RR's maintain the Railways so that we quit losing some of these spurs, so they'll be getting some of it back in reality.

**Chairman Belter:** Is there currently a revitalization fund or are you creating that?

**Representative Owens:** I believe it says to the creation of, yes.

**Chairman Belter:** What are your wishes on the amendments?

**Representative Schmidt:** Did you talk to the RR's on these amendments?

**Representative Owens:** No.

**Representative Schmidt:** We had them in our committee in Transportation and they said if you pass this Bill, we are immediately going to go out and raise all fees for our receipts, all grain elevators in ND.

**Chairman Belter:** If there's no motion on the amendments, I would entertain a motion on the Bill.

**Vice Chairman Drovdal:** I move a Do Not Pass.

**Representative Vig:** Second it.

**Chairman Belter:** Any discussion? If not will the clerk read the roll; 12-y; 1-n; 1-absent;

Representative Vig will carry the Bill.

**FISCAL NOTE**  
 Requested by Legislative Council  
 01/16/2007

Bill/Resolution No.: HB 1419

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB 1419 imposes a railroad excise tax, the revenue from which is distributed to the highway fund and the railroad improvement fund.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

There appears to be an inconsistency in Section 1, item 1b, which makes it impossible to calculate the fiscal impact of the bill. The two railroads that can be discussed both fall into the item 1b calculation. We cannot provide any information on any other railroad that operates in the state due to confidentiality provisions.

If item 1b is amended to correspond to items 1a,c, and d, the annual tax - based on 2005 statistics - would be approx. \$9.61 million for BNSF and \$1.18 million for Soo Line.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

<b>Name:</b>	Kathryn L. Strombeck	<b>Agency:</b>	Office of Tax Commissioner
<b>Phone Number:</b>	328-3402	<b>Date Prepared:</b>	01/26/2007

HB 1419

#1

1-31-07 pm

1419

Section 1. A new chapter to title 57 of the North Dakota Century Code is created and enacted as follows:

Safety inspection fee. Railroad corporations transporting commodities by rail originating, terminating or transported through the state are subject to a railroad and market road safety inspection fee to provide for the repair of farm to market roadways transporting to and from railway loading and unloading points, the establishment of a railroad revitalization fund, and to establish an effective date.

1. The Tax Commissioner shall levy an annual assessment on railroads in the amount of \$1.00 per ton of cargo transported by the railroad originating, terminating or transported through the state during the immediately preceding calendar year.
2. Payment is due each April 15 for the pervious year. Payments will be provided to the Tax Commissioner's office for distribution. The Tax Commissioner will distribute the proceeds from this Safety Inspection Fee at a rate equal to 50 percent into a railroad revitalization fund and 50 percent into the Highway Distribution Fund.

Date: 1-31-07 pm  
Roll Call Vote #: 1419

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.

House \_\_\_\_\_ Finance & Tax \_\_\_\_\_ Committee

Check here for Conference Committee

Legislative Council Amendment  
Number \_\_\_\_\_

Action Taken Do Not Pass

Motion Made By Rep. Drovdal Seconded By Rep. Vig

Representatives	Yes	No	Representatives	Yes	No
Chairman Belter	✓		Rep. Froelich	✓	
Vice Chairman Drovdal	✓		Rep. Kelsh	✓	
Rep. Brandenburg	✓		Rep. Pinkerton	✓	
Rep. Froseth	✓		Rep. Schmidt	✓	
Rep. Grande			Rep. Vig	✓	
Rep. Headland	✓				
Rep. Owens		✓			
Rep. Weiler	✓				
Rep. Wrangham	✓				

Total (Yes) 12 No 1

Absent 1

Floor Assignment Rep. Vig

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE (410)**  
January 31, 2007 5:23 p.m.

**Module No: HR-21-1721**  
**Carrier: Vig**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1419: Finance and Taxation Committee (Rep. Belter, Chairman) recommends DO NOT PASS (12 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). HB 1419 was placed on the Eleventh order on the calendar.**

2007 TESTIMONY

HB 1419

57-40.7 Railroad Excise Tax:

To enact 57-40.7 to provide for an excise tax for commodities transported by railway in, out and through the state, and to establish an effect date.

57-40.7-01 Railroad Excise Tax. Railroad corporations with operation in the state or subject to an excise tax.

1. The excise tax on railroads is computed by comparing the amount of the gross receipts for commodities within, out or through North Dakota for the prior year with the net railway operating income for that year.

2. Rates: Are determined by comparing the amount of the gross transportation receipts for the prior calendar year with the net railway operating income for that year:

-When the net railway operating income does not exceed 10% of the gross transportation receipts, the tax is 1.00% of the gross transportation receipts.

-When the net railway operating income exceeds 10% of the gross transportation receipts but does not exceed 15%, the tax is 1.25% of the gross transportation receipts.

-When the net railway operating income exceeds 15% of the gross transportation receipts but does not exceed 20%, the tax is 1.75% of the gross transportation receipts.

-When the net railway operating income exceeds 20% of the gross transportation receipts but does not exceed 25%, the tax is 2.50% of the gross transportation receipts.

-When the net railway operating income exceeds 25% of the gross transportation receipts, the tax is 3.00% of the gross transportation receipts.

3. When a railroad lies partly within and partly outside the state, or is operated as a part of a line or system extending beyond the state, the tax is equal to the same proportion of the gross transportation receipts in the state. Railroad companies must file a return with the State Tax Commissioners Office each year on or before April 15. The tax must be paid in equal installments on the next June 15, September 15 and December 15.

57-40.7-02. Allocation of Revenue. All moneys collected and received under this chapter must be transmitted quarterly by State Tax Commissioners Office to the General Highway Fund.

Establish a Railway Improvement fund

Funds to be divided equally between Railway Improvement Fund and Transportation Highway Fund

Excise Tax – Railroads – This one is under the 57 section.

To enact and amend an excise tax for commodities transported by railway in, out and through the state, and to establish an effect date.

The excise tax is levied at the rate of 5.5 cents for each train mile operated in the state and \$100 for each public grade crossing on the line in the state. Reports for the preceding calendar year are due to the Tax Commissioner Office each April 15. Taxes are due on the date of reporting and are delinquent if paid on a quarterly basis.

The fiscal note provided for this tax is questionable. The two major rail lines in the state consist of only 2450 miles @ 5.5 cents this generates only 134.75 per year plus 4186 public crossings @ \$100 each equaling \$418,600 annually.

This represents a total of \$418,734.75 annually.

I believe that the tax department figured 5.5 percent tax, which we could do would have to rewrite the suggested language providing their total minus public crossings (Tax office didn't have this information available at the time) equal to \$35,069,201.

Supervision Fee – Railroads – PSC again.

To enact and establish a supervision fee for commodities transported by railway in, out and through the state, and to establish an effect date.

Railroads doing business in North Dakota and subject to the control and jurisdiction of the Department of Transportation must, on or before July 1, pay an inspection or supervision fee equal to 2 cent per 1000 ton miles operated in North Dakota with a minimum fee of \$100.

Only 4 railroads provide this information, so the tax department could not provide an estimate. It was suggested by the PSC this information was available from the Upper Great Plains Transportation Institute.

49-13-01 Railroad and Market Road Safety Inspection Fee.

To enact a new section of 49-13 and establish a Railroad and Market Road Safety Inspection Fee for commodities transported by railway in, out and through the state, to provide for the repair of farm to market roadways transporting commodities to and from railway loading and unloading points, the establishment of a railroad revitalization fund, and to establish an effect date.

The Public Service Commission may levy an annual assessment on railroads in the amount of not more than \_\_\_\_ cent per ton of cargo transported by the railroad into, out of, or through the state during the immediately preceding calendar year.

Payment is due each April 15 for the previous year. Payments will be provided to the Tax Commissioner Office for distribution. The Tax Commissioner will distribute the proceeds from this Safety Inspection Fee at a rate equal to 25 percent into a railroad revitalization fund and 75 percent into the Highway Distribution Fund.

For every .01 equals \$315,912.47

.05 = \$1,579,562.35

.10 = \$3,159,194.70

.20 = \$6,318,249.40

1.00 = \$31,591,247.00

Franchise Tax – Railroads PSC section 49 again.

To enact and establish a Railroad Franchise Tax for commodities transported by railway in, out and through the state, and to establish an effect date.

A franchise tax is levied on railroads operating in North Dakota at the rate of 5% of the net railway operating income of the preceding year. Net railway operating income is the total railway operating revenues from all sources, less cost of maintenance, operation, depreciation and amortization, tax accruals, uncollectible revenues and rentals for equipment and joint facility rents. Amounts paid by the state or any subdivision, pursuant to contract for passenger service, are not included as operating revenue. To determine the measure of the tax, net railway operating income shall be allocated to North Dakota in the proportion that the number of miles of track in North Dakota bears to the total miles of track.

Every railroad company is required, on or before April 15 of each year, to file a statement with the State Tax Commissioner's Office showing its operating revenues and its net operating income for the preceding year. Franchise tax is due on June 15 of each year to the State Tax Commissioner's Office.

The Tax Commissioner's office fiscal note suggests this will generate \$6,917,899 annually.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 11203 of the Revenue and Taxation Code is amended to read:

11203. (a) "Private **railroad** car" includes any **railroad** rolling stock intended for the transportation of any persons, commodity, or material, operated on the railroads of this state, which car is owned by a person other than a **railroad** or the National **Railroad** Passenger Corporation. The car's Association of American **Railroad**'s, or successor organization's, reporting mark shall be rebuttably presumed to be the mark of the car owner.

(b) "Private **railroad** car" does not include:

(1) Freight train or passenger train cars owned by **railroad** companies which are used or subject to use under the ordinary per diem agreement common to all railroads.

(2) Freight train or passenger cars handled under mileage or through line contract arrangements between **railroad** companies.

(3) Cars owned by or leased to any **railroad** company operating in this state, or by any **railroad** company operated as a part of the same **railroad** system as the company operating in this state, and used by the **railroad** company in the operation, maintenance, construction, or reconstruction of its property and assessed and taxed in this state as a part of the property of a **railroad** company operating in this state.

(4) Passenger train cars that are privately owned and for which the owner pays the **railroad** a fee, regardless of how calculated, for transporting the cars.

(5) Any **railroad** rolling stock for which a **railroad** or the National **Railroad** Passenger Corporation is the lessee. For a leased car, the car's Association of American **Railroad**'s, or successor organization's reporting mark is rebuttably presumed to be the mark of the lessee.

SEC. 2. Section 11206 is added to the Revenue and Taxation Code, to read:

11206. "Class of private **railroad** cars" means the Association of American **Railroad**'s, or successor organization's, one letter alpha component of its car type codes as contained in that organization's Exhibit D of the UMLER specification manual or successor exhibit.

SEC. 3. Section 11251 of the Revenue and Taxation Code is amended to read:

11251. Private **railroad** cars operated upon railroads into, out of, or through this state shall be assessed and taxed by the board as prescribed in this part.

SEC. 4. Section 11252 of the Revenue and Taxation Code is amended to read:

11252. The tax imposed in this part is in lieu of all other state, county, municipal, or district taxes, according to value, upon private **railroad** cars and their appurtenances.

SEC. 5. Section 11291 of the Revenue and Taxation Code is amended to read:

11291. The value of private **railroad** cars shall not include the car owner's tools, shop equipment, materials, supplies, or other like items of personal property customarily kept or maintained at fixed locations for use in repairing, improving, servicing, or operating

the cars.

SEC. 6. Section 11292 is added to the Revenue and Taxation Code, to read:

11292. In making the assessment, the board shall value the cars by class based on the owner's acquisition cost, less depreciation. The depreciation shall be computed for these enumerated Association of American **Railroad's**, or successor organization's, car type groups on a straight-line basis with the indicated depreciable life schedules with a maximum of 80 percent depreciation allowed.

(a) Stack cars (alpha S): 22 years minus the age at acquisition.

(b) Lightweight, low profile intermodal cars (alpha Q): 22 years minus the age at acquisition.

(c) Flat cars (alpha F): 22 years minus the age at acquisition.

(d) Conventional intermodal cars (alpha P): 22 years minus the age at acquisition.

(e) Vehicular flat cars (alpha V): 22 years minus the age at acquisition.

(f) All other cars (all other alphas): 25 years minus the age at acquisition.

(g) Betterments: the remaining depreciable life of the car to which the betterment is applied.

Acquisition cost is defined as the expenditures required to be capitalized by generally accepted accounting principles.

SEC. 7. Section 11293 of the Revenue and Taxation Code is amended to read:

11293. In making an assessment, the board shall determine the average number of each class of private **railroad** cars physically present in the state in the calendar year immediately preceding the fiscal year in which the tax is imposed upon the basis of car days. The board shall multiply the average number so determined by the value of a car of that class as determined under Section 11292 and use the product for the assessment of the cars.

SEC. 8. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

## New York

§ 183. Franchise tax on transportation and transmission corporations and associations.--1. (a) The term "corporation" as used in this section shall include an association, within the meaning of paragraph three of subsection (a) of section seventy-seven hundred one of the internal revenue code (including a limited liability company), a publicly traded partnership treated as a corporation for purposes of the internal revenue code pursuant to section seventy-seven hundred four thereof and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by certificates or other written instruments.

(b) For the privilege of exercising its corporate franchise, or of doing business, or of employing capital, or of owning or leasing property in this state in a corporate or organized capacity, or of maintaining an office in this state, every domestic corporation, joint-stock company or association formed for or principally engaged in the conduct of canal, steamboat, ferry (except a ferry company operating between any of the boroughs of

the city of New York under a lease granted by the city), express, navigation, pipe line, transfer, baggage express, omnibus, taxicab, telegraph, or telephone business, or formed for or principally engaged in the conduct of two or more of such businesses, and every domestic corporation, joint-stock company or association formed for or principally engaged in the conduct of a railroad, palace car, sleeping car or trucking business or formed for or principally engaged in the conduct of two or more of such businesses and which has made an election pursuant to subdivision ten of this section, and every other domestic corporation, joint-stock company or association principally engaged in the conduct of a transportation or transmission business, except a corporation, joint-stock company or association formed for or principally engaged in the conduct of a railroad, palace

car, sleeping car or trucking business or formed for or principally engaged in the conduct of two or more of such businesses and which has not made the election provided for in subdivision ten of this section, and except a corporation, joint-stock company or association principally engaged in the conduct of aviation (including air freight forwarders acting as principal and like indirect air carriers) and except a corporation principally engaged in providing telecommunication services between aircraft and dispatcher, aircraft and air traffic control or ground station and ground station (or any combination of the foregoing), at least ninety percent of the voting stock of which corporation is owned, directly or indirectly, by air carriers and which corporation's principal function is to fulfill the requirements of (i) the federal aviation administration (or the successor thereto) or (ii) the international civil aviation organization (or the successor thereto), relating to the existence of a communication system between aircraft and dispatcher, aircraft and air traffic control or ground station and ground station (or any combination of the foregoing) for the purposes of air safety and navigation and except a corporation, joint-stock company or association subject to taxation under article thirty-two of this chapter, shall pay, in advance, an annual tax to be computed upon the basis of the amount of its capital stock within this state during the preceding year, and upon each dollar of such amount. Provided, however, a corporation, joint-stock company or association formed for or principally engaged in the transportation, transmission or distribution of gas, electricity or steam shall not be subject to tax under this section or section one hundred eighty-four of this article.

(c) Notwithstanding the provisions of paragraph (b) of this subdivision, during the period that the state tax on motor fuel, computed without regard to any reimbursement allowable under paragraph

(d) of subdivision three of section two hundred eighty-nine-c of this chapter, exceeds two cents per gallon, the corporations, herein classed as "taxicab" and "omnibus," other than corporations described in subdivision nine of this section, shall be taxed under the provisions of article nine-a of this chapter and not under this section. 2. The measure of the amount of capital stock in this state, except as hereinafter provided, shall be such a portion of the issued capital stock as the gross assets, exclusive of obligations issued by the United States and cash on hand and on deposit, employed in any business within this state, bear to the gross assets,

exclusive of obligations issued by the United States and cash on hand and on deposit, wherever employed in business. Provided, however, that in the case of a corporation taxable hereunder only for the privilege of holding property, the measure shall be such a portion of the issued capital stock as the gross assets, exclusive of obligations issued by the United States and cash on hand and on deposit, located within the state, bear to the gross assets, exclusive of obligations issued by the United States and cash on hand and on deposit, wherever located. The capital of a corporation invested in the stock of another corporation shall be deemed to be assets located where the assets of the issuing corporation, other than patents, copyrights, trademarks, contracts and good will, are located.

3. Every corporation, joint-stock company or association, subject to taxation under this section shall, in any event, pay annually a minimum tax of not less than seventy-five dollars nor less than one and five-tenths mills on each dollar of such a portion of the net value of its issued capital stock, which net value for the purposes of this section shall be deemed to be not less than five dollars per share, as may be determined upon such of the bases herein provided for the measurement thereof as is applicable. The term "net value" as used in this section shall be construed to mean not less than the difference between a corporation's assets and liabilities, and not less than the average price at which such stock sold during the year covered by the report which forms the basis for the tax. But if the dividends paid on the par value of any kind of capital stock during any year ending with the thirty-first day of December amount to six per centum or more, the tax upon such kind of capital stock shall be at the rate of three-eighths of a mill for each one per centum of dividends paid and shall be computed upon the par value of such capital stock, unless such a tax be less than the minimum tax hereinbefore provided in this section, and the tax commission shall, for such purpose, make a fair and equitable apportionment of the assets of the corporation, joint-stock company or association, between or among the different kinds of stock, provided, however, that the provisions of this sentence shall not apply to any corporation, joint stock company or association formed for or principally engaged in the conduct of a telephone business which is subject to the provisions of section one hundred eighty-four of this article and which has a total number of access lines in the state of one million or less.

4. If such corporation, joint stock company or association shall have more than one kind of capital stock, and upon one of such kinds of stock a dividend or dividends amounting to six or more than six per centum upon the par value thereof, has been paid, and upon the other no dividend has been paid, or the dividend or dividends paid thereon amount to less than six per centum upon the par value thereof, then the tax shall be fixed upon each kind as hereinbefore provided.

5. The dividend rate for a corporation having stock without nominal or par value shall be determined by dividing the amount paid as a dividend or dividends during the year by the amount paid in on such stock and, if the rate is six per centum or more, the rate of three-eighths of a mill for each one per centum of dividends shall be applied to the amount paid in on such stock, unless such tax be less than the minimum tax hereinbefore in this section provided for. The amount of earned surplus at the time of change of classification of a corporation formerly taxed under article nine-a of this chapter shall be excluded in determining the amount of

dividends paid. Any consideration given by a corporation for the purchase of its own stock in excess of the consideration received by it for the issuance of such stock, shall, for the purposes of this section, be considered as a dividend. 6. Every like corporation, joint-stock company or association organized, incorporated or formed under the laws of any other state, country or sovereignty shall pay a like tax for the privilege of exercising its corporate franchise, or of doing business, or of employing capital, or of owning or leasing property in this state in a corporate or organized capacity, or of maintaining an office in this state, to be computed upon the basis of the measurement herein provided for the taxation of domestic corporations. 7. The owning or holding in this state by a foreign corporation, or by a trustee or trustees included under this section within the meaning of the term corporation as herein before defined, of property shall constitute doing business within this state within the intent of this section; provided, however, that the owning or holding in this state by a railroad, palace car or sleeping car corporation, business, navigation, canal, ferry, (except a ferry company operating between any of the boroughs of the city of New York under a lease granted by the city), or steamboat or any other corporation formed for or principally engaged in the operation of vessels included under this section within the meaning of the term corporation as herein before defined, of property used exclusively in interstate or foreign commerce shall not constitute doing business in this state within the intent of this section. However, a foreign corporation or such a trustee or trustees shall not be deemed to be doing business, employing capital, owning or leasing property, or maintaining an office in this state, for the purposes of this article, by reason of (a) the maintenance of cash balances with banks or trust companies in this state, or (b) the ownership of shares of stock or securities kept in this state, if kept in a safe deposit box, safe, vault or other receptacle rented for the purpose, or if pledged as collateral security, or if deposited with one or more banks or trust companies, or brokers who are members of a recognized security exchange, in safekeeping or custody accounts, or (c) the taking of any action by any such bank or trust company or broker, which is incidental to the rendering of safekeeping or custodian service to such corporation, or (d) the maintenance of an office in this state by one or more officers or directors of the corporation who are not employees of the corporation if the corporation otherwise is not doing business in this state, and does not employ capital or own or lease property in this state, or (e) the keeping of books or records of a corporation in this state if such books or records are not kept by employees of such corporation and such corporation does not otherwise do business, employ capital, own or lease property or maintain an office in this state, or (f) any combination of the foregoing activities. 8. The measure of the capital stock in this state of a corporation engaged in the operation of vessels in foreign commerce shall be such portion of the issued capital stock as the aggregate number of working days in New York territorial waters of all such vessels bears to the aggregate number of working days of all such vessels. The dividend rate for such a corporation shall be determined by dividing the amount paid as a dividend or dividends on all classes of stock during the year by the amount of paid-in capital and, if the rate is six per centum or more, the rate

of three-eighths of a mill for each one per centum of dividends shall be applied to the amount of such paid-in capital.

9. (a) A corporation, classed as a "taxicab" or "omnibus", (1) which is organized, incorporated or formed under the laws of any other state, country or sovereignty, and (2) which neither owns nor leases property in this state in a corporate or organized capacity, nor (3) maintains an office in this state in a corporate or organized capacity, but (4) which is doing business or employing capital in this state by conducting at least one but fewer than twelve trips into this state during the calendar year, shall be exempt from the tax imposed under this section. If the only property a corporation owns or leases in this state is a vehicle or vehicles used to conduct trips, it shall not be considered, for purposes of subparagraph two of this paragraph, to be owning or leasing property in this state. (b) For purposes of this subdivision, a corporation classed as a "taxicab" or "omnibus" shall be considered to be conducting a trip into New York state when one of its vehicles enters New York state and transports passengers to, from, or to and from a location in New York state. A corporation shall not be considered to be conducting a trip into New York state if its vehicle only makes incidental stops at locations in the state while in transit from a location outside New York state to another location outside New York state. The number of trips a corporation conducts into New York state shall be calculated by determining the number of trips each vehicle owned, leased or operated by the corporation conducts into New York state and adding those numbers together.

10. Election. With respect to taxable years beginning after nineteen hundred ninety-seven, every corporation, joint-stock company or association formed for or principally engaged in the conduct of a railroad (including surface railroad, whether or not operated by steam, subway railroad or elevated railroad), palace car, sleeping car or trucking business or formed for or principally engaged in the conduct two or more of such businesses, which would be subject to article nine-A or thirty-two of this chapter if the election provided for under this subdivision were not made, may elect to be subject to the provisions of this section and, as applicable, section one hundred eighty-four of this article, rather than the provisions of such article nine-A or thirty-two. In the case of such a corporation, joint-stock company or association subject to the tax imposed under this section and, as applicable, section one hundred eighty-four of this article, for the taxable year ending December thirty-first, nineteen hundred ninety-seven, such corporation, joint-stock company or association must make such election on or before March fifteenth, nineteen hundred ninety-eight, and such election shall apply to the taxable year ending on December thirty-first, nineteen hundred ninety-eight and to succeeding taxable years, until revoked. In the case of such a corporation, joint-stock company or association which is not subject to the tax imposed under this section and, as applicable, section one hundred eighty-four of this article for the taxable year ending December thirty-first, nineteen hundred ninety-seven, but thereafter would be subject to article nine-A or thirty-two of this chapter if the election provided for under this subdivision were not made, such corporation, joint-stock company or association must make such election by the first day on which such corporation, joint-stock company or association would be required to file a return or report (without regard to extensions)

under this section or section one hundred eighty-four of this article, or section one hundred eighty-three-a or one hundred-eighty-four-a of this article, or article nine-A or thirty-two of this chapter. An election made pursuant to this subdivision shall continue to be in effect until revoked by the taxpayer. A revocation of the election to be subject to this section and, as applicable, section one hundred eighty-four of this article, shall be irrevocable. Such election, and a revocation thereof, shall be made in the manner prescribed by the commissioner, whether by regulation or otherwise. Such revocation shall apply as of the first day of January next following the end of a taxable year with respect to which the taxpayer had been subject to this section and, as applicable, section one hundred eighty-four of this article, by reason of an election made pursuant to this subdivision.

## **79-908**

### **Chapter 79.—TAXATION**

#### **Article 9.—CAR COMPANIES AND OWNERS**

**79-908. Railroad companies to withhold tax, file statements annually and remit to state; receipts; investigations; ad valorem tax basis.** Every railroad company using or leasing the cars of any organization, upon making payment to such organization for the use or lease of such cars, shall withhold from such payment two and one-half percent of as much thereof as shall constitute gross earnings of such organization within this state as defined in K.S.A. 79-907.

On or before March 1 of each year such railroad company shall make and file with the director, a consolidated statement, in quadruplicate, in a form to be prescribed by the director, showing the amount of such payments for the next preceding twelve-months period ending December 31, and the amounts so withheld. Such railroad company at the time of filing such statement shall remit the amounts so withheld and due the state of Kansas. Upon receipt of such payment, the director shall issue its receipt, in quadruplicate, one copy of which shall be mailed to such railroad company, one to the organization for which such tax is paid, one to the director of accounts and reports and one to the state treasurer which shall be accompanied by the remittance so made, together with a copy of the consolidated statement filed by such railroad company. The mailing of such receipt to such organization shall constitute notice of the filing of said statement and payment of said tax.

If any railroad company shall fail to make or file such report, or if the director be dissatisfied with any report filed, the director shall have the power to conduct a hearing and investigation for the purpose of ascertaining, from whatever sources to which it has access, the gross earnings of such organization from the use or operation of such cars within the borders of this state, and in conducting such hearing and investigation, the director may issue subpoenas *duces tecum*, directed to the officials of such railroad company, or the officials of the organization whose cars were used or leased by such railroad company. The director shall assess against such railroad company the actual expenses attended upon such hearing and investigation if such railroad company has failed to make or file such report or has filed a fraudulent report.

Every organization as hereinbefore defined shall be liable for the payment of the difference, if any, between two and one-half percent of all gross earnings in

this state and the amounts withheld and remitted to the state of Kansas by railroads, and shall be liable for the payment of any additional taxes which the director may find due under its authority to raise or lower the rate to conform to the taxes which would be payable if the cars were taxed on the ad valorem basis.

**History:** L. 1937, ch. 356, § 3; L. 1943, ch. 289, § 2; Feb. 23.

## Montana Code Annotated 2005

**15-23-205. Assessment -- how made.** (1) The department shall assess the railroad transportation property of all railroads operated in more than one county or more than one state as provided in this section. Assessment must be made to the person owning or leasing or using the property and must be made upon the entire railroad within the state.

(2) The department shall determine the value of the railroad system for the current year by multiplying the base value of the railroad by the value change factor determined under subsection (3).

(3) (a) The value change factor is the sum of the income change factor, weighted by 50%, the gross profit margin change factor, weighted by 25%, and the property change factor, weighted by 25%.

(b) The income change factor is determined by dividing the change in earnings by the change in the capitalization rate.

(c) The gross profit margin change factor is determined by dividing the average gross profit margin for the 2 years immediately preceding the current tax year by the average gross profit margin for the 2 years immediately preceding the previous tax year.

(d) The property change factor is determined by dividing the system cost reported by the railroad for the tax year immediately preceding the current tax year by the system cost reported by the railroad for the tax year immediately preceding the previous tax year.

(4) The department shall apportion the system value of the railroad to Montana by multiplying the system value of the railroad determined under subsection (2) by the average of the allocation factor for the 2 years immediately preceding the current tax year. The allocation factor is determined under subsection (5).

(5) The allocation factor used to apportion the system value of the railroad to Montana is the average of the sum of:

(a) the ratio of track miles in the state to total system track miles;

(b) the ratio of revenue ton miles in the state to total system revenue ton miles;

(c) the ratio of gross investment in road and equipment in the state to total system gross investment in road and equipment;

(d) the ratio of operating revenue reported in the state to total system operating revenue; and

(e) the ratio of railroad car and locomotive miles in the state to total system railroad car and locomotive miles.

(6) The department shall take into account extenuating circumstances to adjust the assessed value of railroad property in the state. Occurrences that may result in an adjustment to the assessed value of railroad property include but are not limited to:

(a) extraordinary, unusual, or infrequent events that are material in nature and of a

character different from the typical or customary business operations, that are not expected to recur frequently, and that are not normally considered in the evaluation of the operating results of a business; and

(b) material increases or decreases in income and property as a result of events such as writeoffs, writedowns, and changes in accounting methods or practices.

(7) In determining the taxable value of railroad property, the department shall determine the percentage rate "R" provided for in 15-6-145 in order to achieve compliance with the requirements of the federal Railroad Revitalization and Regulatory Reform Act of 1976, as amended.

**History:** En. Sec. 1675, 5th Div. Comp. Stat. 1887; amd. Sec. 44, p. 89, L. 1891; re-en. Sec. 3738, Pol. C. 1895; re-en. Sec. 2557, Rev. C. 1907; re-en. Sec. 2132, R.C.M. 1921; Cal. Pol. C. Sec. 3665; re-en. Sec. 2132, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1939; amd. Sec. 62(a), Ch. 405, L. 1973; amd. Sec. 11, Ch. 98, L. 1977; R.C.M. 1947, 84-802; amd. Sec. 6, Ch. 686, L. 1979; amd. Sec. 2, Ch. 367, L. 1981; amd. Sec. 8, Ch. 743, L. 1985; amd. Sec. 4, Ch. 531, L. 1999; Sec. , MCA 1997; redes. by Sec. 5(2)(b), Ch. 531, L. 1999; amd. Sec. 9, Ch. 583, L. 1999.

**15-6-145. Class twelve property -- description -- taxable percentage.** (1) Class twelve property includes all property of a railroad car company as defined in 15-23-211, all railroad transportation property as described in the Railroad Revitalization and Regulatory Reform Act of 1976 as it read on January 1, 1986, and all airline transportation property as described in the Tax Equity and Fiscal Responsibility Act of 1982 as it read on January 1, 1986.

(2) For the tax year beginning January 1, 1991, and for each tax year thereafter, class twelve property is taxed at the percentage rate "R", to be determined by the department as provided in subsection (3), or 12%, whichever is less.

(3)  $R = A/B$  where:

(a) A is the total statewide taxable value of all commercial property, except class twelve property, as commercial property is described in 15-1-101(1)(d); and

(b) B is the total statewide market value of all commercial property, except class twelve property, as commercial property is described in 15-1-101(1)(d).

(4) (a) For the taxable year beginning January 1, 1986, and for every taxable year thereafter, the department shall conduct a sales assessment ratio study of all commercial and industrial real property and improvements. The study must be based on:

(i) assessments of such property as of January 1 of the year for which the study is being conducted; and

(ii) a statistically valid sample of sales using data from realty transfer certificates filed during the same taxable year or from the immediately preceding taxable year, but only if a sufficient number of certificates is unavailable from the current taxable year to provide a statistically valid sample.

(b) The department shall determine the value-weighted mean sales assessment ratio "M" for all such property and reduce the taxable value of property described in subsection (4) only, by multiplying the total statewide taxable value of property described in subsection (4)(a) by "M" prior to calculating "A" in subsection (3)(a).

(c) The adjustment referred to in subsection (4)(b) will be made beginning January 1, 1986, and in each subsequent tax year to equalize the railroad taxable values.

(5) For the purpose of complying with the Railroad Revitalization and Regulatory Reform Act of 1976, as it read on January 1, 1986, the rate "R" referred to in this section is the equalized average tax rate generally applicable to commercial and industrial property, except class twelve property, as commercial property is defined in 15-1-101(1)(d).

**History:** En. Sec. 5, Ch. 743, L. 1985; amd. Sec. 1, Ch. 7, Sp. L. March 1986; amd. Sec. 1, Ch. 24, Sp. L. June 1986; amd. Sec. 8, Ch. 773, L. 1991; amd. Sec. 1, Ch. 10, Sp. L. July 1992.

HB 1419-A

#2 1-29-07 am

**Testimony To The  
THE HOUSE FINANCE & TAXATION COMMITTEE  
Prepared January 29, 2007 by  
Terry Traynor, Assistant Director  
North Dakota Association of Counties**

**REGARDING HOUSE BILL 1419**

Chairman Belter and committee members, county government is supportive of the concept that this bill suggests. The cost of highway maintenance in North Dakota is clearly outstripping its mostly stagnant funding sources, and this bill takes an important first step in creating a new method of long-term funding for something so critical to the economic health of our State.

If this concept is to be implemented and becomes an effective tool for road funding, counties sincerely believe that it should be crafted from the start to include the entire State, county and city road network. By putting the revenue that this bill would generate into the State Highway Distribution Fund, a more comprehensive protection of our road infrastructure can be initiated.

For this reason, we have proposed amendments to the bill, to broaden the effectiveness of the proposal and utilize this historically successful means of allocating funds for road construction and maintenance.

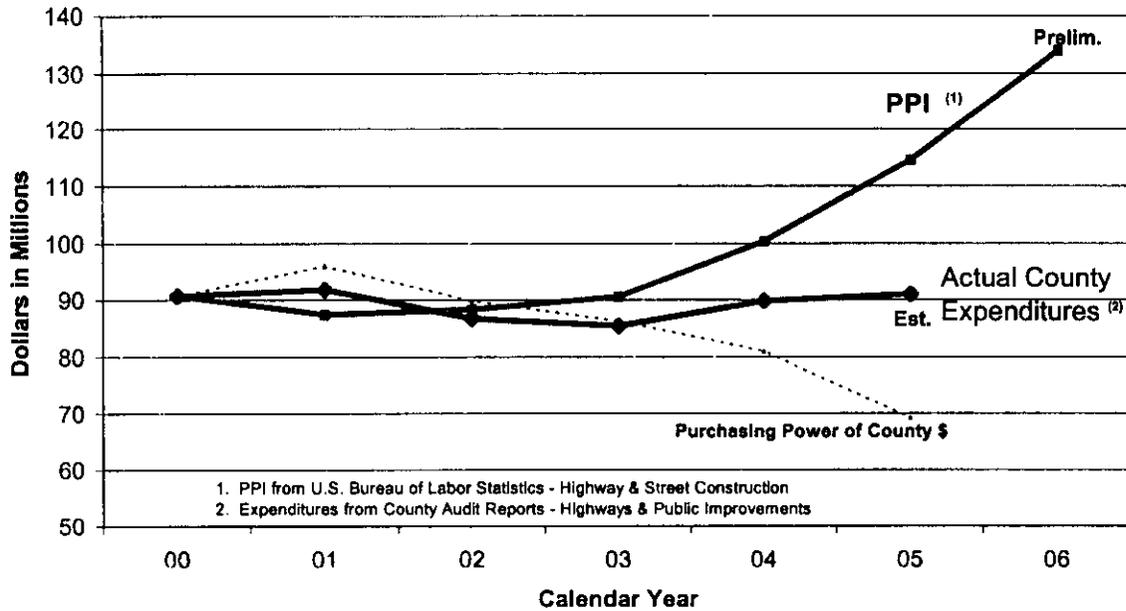
While county government is not alone in its struggle to maintain roads with relatively stagnant revenue and dramatically increasing costs, the chart on the next page suggests how serious the issue has become for North Dakota counties. The annual county audit data clearly indicates that counties have seen little increase in their road construction and maintenance resources for close to a decade. However, costs have jumped dramatically – particularly in the last three years.

This disparity has eroded the counties' purchasing power by well over 25% - or in other words, it has significantly reduced the miles of road and number of bridges they can adequately maintain.

NDDOT data indicates that counties have 10,321 miles of major collector highways and 65,330 miles of local roads. In addition, they are responsible for 3,229 major bridge structures (> 20') of which 647 (20%) are now at a sufficiency rating of less than 50 – or at the point of replacement.

Another 617 bridges (19%) have a sufficiently rating between 50 and 80, indicating a need for repair.

### County Highway Expenditures vs. Production Price Increase (PPI)



Mr. Chairman and committee members, for these reasons, we urge you to give the proposed amendments favorable consideration, and recommend passage of HB1419 to keep this option in the discussion about preserving North Dakota's road infrastructure.

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#### PROPOSED AMENDMENTS TO HOUSE BILL NO. 1419

Page 2, line 19, after "highway" insert "distribution"

Re-number accordingly

1-29-07 AM

#3

HB 1419 A

**Testimony of BNSF Railway Company Opposing HB 1419**

**January 29, 2007**

Good morning Chairman and members of the Committee. My name is John Olson; I am here representing BNSF Railway in opposition to HB 1419.

HB 1419 singles out the railroad industry to impose a punitive tax on transportation movements within North Dakota. BNSF opposes this measure because it violates the basic principles that similarly situated taxpayers should be taxed similarly, creates a disincentive for economic development and job growth, and is illegal because it is a blatant violation of the 4 R Act. There may even be a violation of the Commerce Clause of the U.S. Constitution, as well.

I want to first note that raising the cost of grain transportation, as this bill would do, would not benefit the grain shippers of North Dakota. In the past year or so BNSF has reduced rates in North Dakota. Export wheat moving to the Pacific Northwest has had rate reductions of about 15 percent. Rates to Minneapolis for shipment beyond to domestic and export markets went down about 10 percent. Imposing a tax related to the transportation of grain commodities will certainly not help agricultural shippers.

As for tax policy, this bill violates the following fundamental principles of good tax policy:

*Equity and Fairness* – *Similarly situated taxpayers should be taxed similarly.* The proposed punitive tax scheme is imposed only upon the rail industry and on no other providers of transportation services in North Dakota. In addition, revenue from providing a service to the

agricultural community are targeted for railroads but the proposed tax is not imposed on the ag-related revenues earned by non-rail business taxpayers

*Neutrality – The effect of a tax law on taxpayer decisions as to how to carry out a particular transaction should be minimized.* Like any other business taxpayer, the railroad's decisions regarding the location of facilities and employment development will be affected by any type of punitive tax scheme. Increasing the cost of grain transportation will encourage BNSF to invest its capital dollars in other lines of business. Rather than continuing to acquire grain cars, the railroad will look at what is needed for other commodities.

*Economic Growth and Efficiency – The tax system should not impede or reduce the productive capacity of the economy.* Since the proposed bill would significantly increase the cost to provide freight transportation service it reduce the funds available to invest in new and existing railroad infrastructure and operations. That will only become a drain on the freight rail transportation system integral to the North Dakota economy as a whole.

#### Violates Federal Law

HB 1419, if enacted, will violate the Railroad Revitalization and Regulatory Reform Act of 1976, otherwise known as the 4R Act.

In Section 306 of the 4R Act, Congress expressly prohibited the discriminatory taxation of railroads. Nearly 30 years of subsequent case law have further defined discrimination to include any tax imposed solely upon railroads or imposed on railroads as part of an isolated and targeted group. As some of you may recall, much of that case law was developed in

favor of the railroad industry during years of expensive, time consuming and disruptive litigation here in North Dakota.

The tax might also be found to be an improper burden on and attempt to regulate interstate commerce, and a violation of the Commerce Clause of the U.S. Constitution. Because it attempts to impose economic burdens on a particular class of railroad traffic, it may also be a violation of the ICC Termination Act, which gives the Surface Transportation Board exclusive jurisdiction over the economic regulation of rail transportation.

Given the unlawful and punitive nature of HB 1419, we would have little choice but to file suit if this bill were to be enacted.

We also object to the idea of allocating the funds raised by this tax to the highway fund so that it can be used by another mode of transportation. The trucking industry is already heavily subsidized. A study just a few years ago by the U.S. Department of Transportation showed that a loaded 80,000 pound truck pays for only about half of the damage it does to the roadway. A loaded 100,000 pound truck pays even less. Meanwhile, we bear the full cost of maintaining our own right of way and pay property taxes on it. Now we are being told that we and our customers should pay a new tax to further subsidize the trucks.

If the people who use the state's road system for profit are not paying their fair share for the damage they do to the roads, logic and fairness say that their taxes should be increased, not ours.

I respectfully request that you vote a DO NOT PASS on this bill. Thankyou for your consideration.

1-29-07 AM

#4 HB 1419 A

HOUSE FINANCE AND TAXATION COMMITTEE

Testimony of Marcy Dickerson, State Supervisor of Assessments  
House Bill 1419 – January 29, 2007

Mr. Chairman, Members of the Committee, for the record my name is Marcy Dickerson and I am employed by the State Tax Commissioner as State Supervisor of Assessments and Director of the Property Tax Division.

There appears to be an error in House Bill 1419 on page 1, lines 15 through 18. The way calculation b is worded, neither Burlington Northern Santa Fe Railway nor Soo Line Railroad falls into that category. They do not fall into any of the other categories either. Neither railroad is subject to any tax under this bill. It appears that the language in calculation b should be similar to that in calculations a, c, d, and e, with the only difference being the tax percentage. In the Maine statute, which contains similar language, all five provisions are consistent.

If calculation b is rewritten to coincide with the other calculations, it produces an annual tax of \$9,607,193 for Burlington Northern Santa Fe Railway, based on 2005 data. If rewritten, it produces an annual tax of \$1,179,208 for Soo Line Railroad, based on 2005 data. Both railroads fall into the 10 percent to 15 percent category and are taxable at 1.25 percent of gross transportation receipts.

We are unable to provide any information about the other railroads that serve North Dakota because of the confidentiality provisions of N.D.C.C. § 57-05-11.

Maine Title 36, Part 4: Business Taxes, Chapter 361: Railroad Companies, § 2624 contains provisions similar to those of House Bill 1419. It also provides for a tax credit defined in section 2621-A, subsection 3. If the tax and credit, and any other taxes placed on railroads by the State of Maine, result in railroad taxation that does not discriminate against railroads

compared to other commercial property, those taxes would not be deemed in violation of the Railroad Revitalization and Regulatory Reform Act (4-R Act).

The tax imposed by HB 1419 appears to place on railroads an additional tax that does not apply to other commercial property. It is my opinion that a federal judge could find House Bill 1419 in violation of the 4-R Act.

This concludes my prepared testimony. I will try to answer any questions.

HB 1419

#1

1-31-07 pm

1419

Section 1. A new chapter to title 57 of the North Dakota Century Code is created and enacted as follows:

Safety inspection fee. Railroad corporations transporting commodities by rail originating, terminating or transported through the state are subject to a railroad and market road safety inspection fee to provide for the repair of farm to market roadways transporting to and from railway loading and unloading points, the establishment of a railroad revitalization fund, and to establish an effective date.

1. The Tax Commissioner shall levy an annual assessment on railroads in the amount of \$1.00 per ton of cargo transported by the railroad originating, terminating or transported through the state during the immediately preceding calendar year.
2. Payment is due each April 15 for the pervious year. Payments will be provided to the Tax Commissioner's office for distribution. The Tax Commissioner will distribute the proceeds from this Safety Inspection Fee at a rate equal to 50 percent into a railroad revitalization fund and 50 percent into the Highway Distribution Fund.