

2013 HOUSE TRANSPORTATION

HB 1231

2013 HOUSE STANDING COMMITTEE MINUTES

House Transportation Committee Fort Totten Room, State Capitol

HB 1231
01-24-13
Job # 17721

Conference Committee

Committee Clerk Signature

Janette Cook

Explanation or reason for introduction of bill/resolution:

A bill relating to federal motor carrier safety regulations; and relating to hours of service.

Minutes:

Attachment 1-3

Chairman Ruby opened the Hearing on HB 1231.

Representative Streyle introduced HB 1231. The bill proposes that we allow the 10 hours of driving time for truck drivers to be broken up into segments. Current allows for 12 hours of drive time, two hours of duty, not drive time. There is no change of that in this bill. It does propose that the ten hours in a 24 hour day to be split up into two segments not less than two hours each. Currently, if you sleep for 7 ½ hours, as opposed to eight hours, you have to count the 7 ½ hours as if you were actually driving. Much of the time hauling frack sand, a driver might sit for hours not moving. This bill proposes that we decouple from the federal government and allow for actual hours to be counted in the log books. If some companies weren't fudging a little bit, they wouldn't be able to be in business. The federal safety money will be lost with this bill, and probably some Department of Transportation money. This law is similar to what Texas has on the books. They had foresight decades ago to put this in the books. This is needed for the oil industry in our state. Policy should trump the money issue. The fiscal note was not provided.

Margo Knorr, Business person from Minot, ND: I am not an expert. I got into this about nine months ago when we decided to buy a pneumatic trailer and haul sand. I want to run my business with honesty and integrity. I had an Enter and Audit. I showed them all my books and wanted it to be a learning experience. It was done very well, and I learned a lot. Our drivers often have to sit for hours waiting in their trucks. During that time they may have to move the truck. That has to be recorded. So, if they have 10 hours off duty, and a driver have been sleeping for 7 ½ hours, and then he refueled; he would be required to log those hours as if he had been on duty awake. She compared this to waking up and feeding a baby for ½ hour during the night. That would not mean that she had gotten no sleep at all. The purpose of a log book should be to reflect what the drivers are doing. I don't think the way that is required by law now, reflects that. For me, as a small business owner, I take this very seriously. I want my drivers to keep accurate records and keep the log books legally. I also am very concerned about safety. I made a call to Texas and asked about the oil field exemption. He said that their law allows the sleeper berth time to be split into two

sections. Then the 10 hours off duty can be split into 6 hours and 4 hours, and the log books will properly reflect what the driver is doing. Right now only 2 hours of that 4 and 6 can count as off duty, because we don't have the 8 hours. Texas forwarded me the statute that they have in place. That is what we modeled HB 1231 after. In June, an explanation came through that explained the oil field exemption, it is a federal issue. It said that oil and sand haulers do not qualify for the oil field exemption. I have a letter written by John Esparza. The letter was read and a written copy was provided. See attachment # 1. (16:20)

The letter explains what we are dealing with on site. Truck drivers are often dealing with long wait periods, but they are often asked to re-park. So, if they have the change of duty status, by law, my drivers are required to log it. If they don't make it to the 8 hour time period, all of the time they slept or rested are crossed out and counted as on duty. Then I have a driver out in the middle of nowhere, completely out of hours, stuck with a load of sand and nowhere to unload it. I am responsible for my drivers. I want them to log what they are doing. I would like to change the law so that they can accurately record what they do. I am asking you to look at this bill to see if it helps to properly reflect what the drivers are doing. If the current law doesn't do this, it needs to be fixed. I would ask you to look at what is right and what is wrong, not let federal dollars rule what we do. (21:30)

Representative Delmore: I am wondering if there has been anything done to see about the safety of their driving. Has there been a study in Texas?

Margo Knorr: I asked the Superintendent in Texas, and he was unable to give me any information. I looked on the internet and couldn't find any data that showed that the accident rate was lower or higher after this was put in place.

There was no further support for HB 1231.

James Prochniak, North Dakota Highway Patrol, spoke in opposition to HB 1231. (23:30) He provided written testimony and a letter from Jeffery P. Jensen, Division Administrator, Federal Motor Carrier Safety Administration. See attachment #2-3.

James Prochniak, North Dakota Highway Patrol: Our officers use much of the data from the MCSAP program. We need to maintain the partnership with MCSAP, so we don't lose our access to all of the information it provides. It gives us information on drivers, companies, violations, etc. It is important to us.

Chairman Ruby: Does it seem like the motor carrier laws are a one size fits all, and are geared more for over-the-road carriers?

James Prochniak: I don't disagree. I think we have some circumstances that seem like we are not comparing apples to apples. But, there is more to this than the dollars, it is the safety component that is tied to it. There may be some things within the Federal Motor Carrier Safety Administration that don't take in individual state situations.

Chairman Ruby: Is there no flexibility at all in their guidelines?

James Prochniak: If you made application several years ago, when this was started, at the federal level for some exemptions, then you were grandfathered in. We may have had some of those in place, but we didn't have what is going on in the west right now.

Chairman Ruby: So, Texas probably doesn't have to turn back any funds or not have the data available to them because they are probably grandfathered in?

James Prochniak: I don't know for certain, but I suspect that is the case.

Chairman Ruby: How much in federal funds would we potentially lose if we pass this bill?

James Prochniak: \$1.4 million.

Vice Chairman Owens: Is the \$1.4 million a year strictly based on salaries, not based on truck traffic in the state?

James Prochniak: It is purely based on our positions, certain equipment that is tied to the positions, and the duties of those folks. Some of them are sworn and some are civilians as well.

Tom Balzer, North Dakota Motor Carriers Association, spoke in opposition to HB 1231.

Tom Balzer: The main reason that we oppose this bill is the federal dollars. The loss of funding and the loss of access to the database is concerning to us. I agree with Miss Knorr's comments, but this is one of those situations where the feds hold the strings. We have adamantly opposed the split sleeper berth. If a driver is driving and is tired, they should sleep. If they sleep for five hours, get behind the wheel again, get down the road a ways and realized they are tired again, they should be able to take a nap. Nobody really knows the intent of that particular section of law, other than the fact that they want someone to get 8 hours of sleep. We would like to get some leeway in that, and let the driver use some common sense when he is on the road.

I spoke in Denver on the oil field exemption at a public hearing. It has been in since the sixties. The FMCSA interprets it one way, and states enforce it differently. This is an issue that we brought on ourselves. The industry asked the FMCSA to fix it. It was being fixed differently in each state. They are in the midst of trying to figure it out. We feel that they made a mistake in their interpretation. It is something that North Dakota does not have control over.

Our other concern is that in this particular writing (HB 1231), it says that if intrastate can take precedence, then it should. The issue there is that we don't have an intrastate oil field exemption. An oil field exemption works by enforcement allowing the option to go on the federal rules and use the exemption. By passing this law, it is our understanding that everyone who is an intrastate operation has to follow the intrastate rules. So, this law would take away the oil field exemption from a number of drivers and companies already in the state.

Chairman Ruby: Why is there an exemption for hauling the oil, but not the products that help us extract it?

Tom Balzer: The oil field exemption was put into place because of an issue in an oil field. When a driver takes a load to a terminal somewhere there are bay doors everywhere. So, if one bay door is inoperable, the driver can move down to the next one. In the fracking, or oil field extraction, there is only one hole in the ground. If something shuts down that operation for some reason, that work site is inoperable until that is fixed. They put it in place to allow for the wait time for drivers in the event that there is some catastrophic event that shuts down that site.

Chairman Ruby: But can the ones hauling oil, get back on the road right away?

Tom Balzer: In North Dakota's previous interpretation, before the oil is extracted from the ground you could use the exemption. (sand, water, and pipe) The ones hauling straight crude could not use the exemption because there was no hold up there. The oil had already been removed from the ground and was in holding tanks. The explanation gets pretty in depth. The factor that kicked it over was that you had to have specially constructed equipment, which was not defined in law. No one here knows, nor does anyone on the current FMASC staff or former FMASC staff know where that language came from. There was a lot of variance in interpretation. It gets pretty deep into who can use and who can't use. We were interpreting it out way. Montana was not letting anyone use it **unless** you had some goofy thing welded onto the side of the truck.

Chairman Ruby: Is there any flexibility in them having to start their clock over again, as far as just moving a truck in the same yard?

Tom Balzer: There is not.

Representative Becker: If we were to pass this and lose our \$1.4 million, would that open you up to say that now we can get rid of all the other silly regulations and not have further financial consequences?

Tom Balzer: Losing the money is not the worst consequence. Losing the database is a serious consequence. There is also a kicker in federal law that says if you are out of compliance for a certain term; the highway funding is also in jeopardy. That ends up being real money.

Another option for you to consider is changing this into a resolution to the FMCSA stating the concerns from the state of North Dakota. They are still in the process of looking at both the hours of service rule and the hours of exemption at this time.

Representative Gruchella: Can you walk me through how this change would help a company? Is the only thing that would change that the company would have to get another driver out there to fill the void? Is that basically it?

Tom Balzer: That is pretty much what the hindrance would be if we did not have it.

Representative Gruchella: Are all the companies that are hauling sand operation under the same rules?

Tom Balzer: Yes, if they are not fudging the numbers.

Representative Gruchella: Would there be any competitive advantage with this bill?

Tom Balzer: No, but larger companies do have an advantage just because of the extra resources they have.

There was no further testimony in opposition to HB 1231.
There was no neutral testimony on HB 1231.
The hearing was closed on HB 1231.

The bill will be held until a later time.

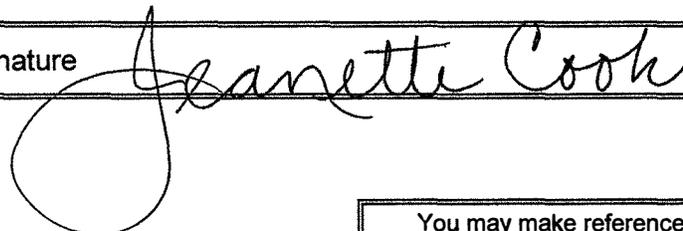
2013 HOUSE STANDING COMMITTEE MINUTES

House Transportation Committee
Fort Totten Room, State Capitol

HB 1231
02-08-13
Job # 18621

Conference Committee

Committee Clerk Signature



Minutes:

You may make reference to "attached testimony."

Chairman Ruby brought HB 1231 back before the committee. The bill has to do with exemptions for frack sand and water haulers. There are a lot of problems with doing that. He provided an amendment and explained it. The amendment speaks to a study for exempting drivers from some of the Federal Motor Carrier Regulations. It also studies what the cost would be and has a cost benefit analysis done. In some cases, a project can be done at a lesser cost without all the federal regulations that are put on a project. See attachment #1.

Representative Delmore: Does this hog house the bill and replace it with a study? Is the intent to completely remove the existing bill?

Chairman Ruby: Yes, we will have to make a motion to do that. The language of the study is the new bill.

Representative Drovdal moved a DO PASS on the amendments.

Representative Delmore seconded the motion.

A voice vote was taken. All aye. The motion carried.

Representative Drovdal moved a DO PASS as amended for HB 1231.

Representative Weisz seconded the motion.

Representative Becker: What is the approximate magnitude of the federal dollars that we get?

Representative Weisz: We receive roughly \$270,000 per year for highway funds. This would not affect those. It would affect the MCSAP funds that are about \$1.4 million. The issue is not just losing the funds, the interstate carriers all depend on that MCSAP information. North Dakota wouldn't be eligible to be part of MCSAP.

A roll call vote was taken.

Aye 13 Nay 0 Absent 1

The motion carried. Representative Gruchella will carry HB 1231

February 8, 2013

2/8/13
CSMC

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1231

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study of federal motor carrier safety regulations."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - FEDERAL MOTOR CARRIER SAFETY REGULATIONS. During the 2013-14 interim, the legislative management shall consider studying federal motor carrier safety regulations and the feasibility and desirability of adopting state regulations that are not in compliance with federal regulations, especially relating to an intrastate exemption from hours of service for oilfield drivers. The study must include a cost benefit analysis of the cost to the state in funding and the benefit to the industry. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly."

Renumber accordingly

Date: 2-8-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1231

House Transportation Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.0483.01002

Action Taken: Do Pass Do Not Pass Amended Adopt
Amendment

Rerefer to Appropriations Reconsider

Motion Made By Drovdal Seconded By Delmore
Amendment

Representatives	Yes	No	Representatives	Yes	No
Chairman Dan Ruby			Rep. Lois Delmore		
Vice Chairman Mark Owens			Rep. Edmund Gruchalla		
Rep. Rick Becker			Rep. Kylie Oversen		
Rep. David Drovdal					
Rep. Robert Frantsvog					
Rep. Brenda Heller					
Rep. Curtiss Kreun					
Rep. Mike Schatz					
Rep. Gary Sukut					
Rep. Don Vigesaa					
Rep. Robin Weisz					

Roll call all day.

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

*Amend. - remove existing bill.
add new*

Date: 2-8-13
 Roll Call Vote #: 2

**2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1231**

House Transportation Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.0483.01002

Action Taken: Do Pass Do Not Pass Amended Adopt
 Amendment

Rerefer to Appropriations Reconsider

Motion Made By Drovdal Seconded By Weisz

Representatives	Yes	No	Representatives	Yes	No
Chairman Dan Ruby	✓		Rep. Lois Delmore	✓	
Vice Chairman Mark Owens	✓		Rep. Edmund Gruchalla	✓	
Rep. Rick Becker	✓		Rep. Kylie Oversen	✓	
Rep. David Drovdal	✓				
Rep. Robert Frantsvog	✓				
Rep. Brenda Heller	✓				
Rep. Curtiss Kreun	✓				
Rep. Mike Schatz	A				
Rep. Gary Sukut	✓				
Rep. Don Vigessa	✓				
Rep. Robin Weisz	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Vigessa

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

REPORT OF STANDING COMMITTEE

HB 1231: Transportation Committee (Rep. Ruby, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1231 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study of federal motor carrier safety regulations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - FEDERAL MOTOR CARRIER SAFETY REGULATIONS. During the 2013-14 interim, the legislative management shall consider studying federal motor carrier safety regulations and the feasibility and desirability of adopting state regulations that are not in compliance with federal regulations, especially relating to an intrastate exemption from hours of service for oilfield drivers. The study must include a cost benefit analysis of the cost to the state in funding and the benefit to the industry. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly."

Renumber accordingly

2013 SENATE TRANSPORTATION

HB 1231

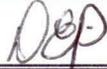
2013 SENATE STANDING COMMITTEE MINUTES

Senate Transportation Committee
Lewis and Clark Room, State Capitol

HB 1231
3/15/2013
Recording job number 19993

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

To provide for a legislative management study of federal motor carrier safety regulations

Minutes:

Attached testimony: 2

Chairman Oehlke opened the hearing on HB 1231

Representative Streyle (District 3) (sponsor) This bill asks legislative management to consider studying the feasibility of adopting state regulations that are not in compliance with federal regulations, specifically the interstate exemptions from hours of service for the oil field. Currently there is the exemption in place for some oil field operators. In 2012 the administration specified that frac sand and water haulers could not use the exemption. If you are not getting eight consecutive hours of sleep it doesn't count. So in a twelve hour shift you can drive for five hours, sleep for seven and you have to count that as all driving. This was brought to me by a constituent who owns a small frac hauling company (sand). The large companies have the staff to rotate them for twelve hours. The smaller ones would be constantly moving drivers and it is not feasible. Texas put this into their code decades ago so they don't have this issue; all the other states have to abide by the federal motor carrier hours of sleep. The intent is to try to give our state the authority to set these as opposed to a blanket federal law. The big concern from those against it is the loss of federal money, up to two million dollars a year. It could put transportation funding at risk if we are not complying with federal motor carriers. This study would get real numbers, real consequences should we decide to do this in the future. I hope the committee gives it a favorable recommendation. Attachment #1; letter asking the motor carriers to relook at the rule that specifically says that frac sand and water cannot use the oil field exemption.

Chairman Oehlke in Texas how do they know they are sleeping, do they have monitors in their vehicles, cameras?

Rep Streyle: They were grandfathered (exempt from the new regulations) I am not sure how they chart that. The eight hour gap must show in the log book.

James Prochniak, Superintendent, North Dakota Highway Patrol, in opposition of this bill The ND Highway Patrol participates in the Motor Carrier Safety Assistance Program which provides funding for the state to partner with the Federal Motor Carrier Safety Administration in programs that will help reduce commercial motor vehicle related crashes. These programs support roadside safety inspections, new-entrant safety audits, data

improvement efforts and educational outreach. A staffing level of 22 positions would be affected. This bill will jeopardize the federal funding our state receives. See written testimony #2 with: a letter from the Federal Motor Carrier Safety Administration about the impact if this bill became law: it would be incompatible with federal regulations which would make the state ineligible for Basic Program Funds or Incentive Funds (\$1,426,108 for North Dakota in FY 2012). Losing funding creates safety concerns. We risk losing a national database of trucking companies, driver information, and out of state companies. We will not have information on driver credentials or vehicles. We will be an island.

No additional testimony, hearing closed.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Transportation Committee
Lewis and Clark Room, State Capitol

HB 1231
4/04/2013
Recording job number 20867

Conference Committee

Committee Clerk Signature *DEP*

Explanation or reason for introduction of bill/resolution:

To provide for a legislative management study of federal motor carrier safety regulations

Minutes:

Attached testimony

Chairman Oehlke opened the discussion on HB 1231.

Senator Axness With the passing of this bill there is the potential loss of federal money which would be \$4million which is a very big deal, so I MOVE DO NOT PASS

Senator Sinner seconded

No further discussion

Roll call vote: Yes 5 No 2 Absent not voting 0

Carrier Senator Axness

REPORT OF STANDING COMMITTEE

HB 1231, as engrossed: Transportation Committee (Sen. Oehlke, Chairman)
recommends **DO NOT PASS** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed HB 1231 was placed on the Fourteenth order on the calendar.

2013 TESTIMONY

HB 1231

October 3, 2012

Mr. Thomas Yager
Chief, Driver and Carrier Operations Division
Federal Motor Carrier Safety Administration
U.S. Department of Transportation
1200 New Jersey Ave., SE
Washington, DC 20590

RE: Docket No. FMCSA-2012-0183: Hours of Service of Commercial Motor Vehicles;
Regulatory Guidance for Oilfield Exception

Texas Motor Transportation Association (TMTA) is a trade association which represents approximately 900 motor carriers. Many of these motor carriers, located throughout our state, transport materials to and from oilfield locations.

I will start by mentioning a statement FMCSA made in the new guidance that we feel is incorrect in that it says, "it is recognized that these operators may encounter delays caused by logistical or operational situations, just as other motor carriers experience delays at shipping and receiving facilities".

Regrettably FMCSA's vision on this issue appears to be clouded by that perception and it's really not true.

For example, if a shipping facility has a problem with their equipment or site it doesn't normally shut down the whole facility. And, if for some reason it does, which is very rare, it only does so for a very short period of time.

At a frack job, where there are many moving parts and extremely high pressures are being used, all attention is given to a single hole and if anything is going on in that hole or if there is a problem with any of the massive numbers of equipment being used to perform the fracking process, it shuts down the entire jobsite until the hole is ready and all the equipment is working properly. This shut down is not rare because safety at the well site is top priority.

It is not uncommon to have lengthy delays caused by equipment issues. Some drivers must wait several hours if not days. Drivers actually take extra food with them on frack jobs because of the unknown amount of hours or days they may be required to wait.

In our opinion, a frack job at a well site in the middle of nowhere which is frequently delayed can in no way be compared to a warehouse sitting next to a highway.

Additionally, much of the wait time can be contributed to the lack of storage capacity at the well site for the sand. Most of the frac sand trucks are literally waiting to unload in

the comforts of cabs equipped conveniences such as microwave ovens, refrigerators, televisions, beds, etc.

As far as specially trained drivers and specially constructed equipment - most of the equipment at a well site is specially designed to handle multiple job functions and the drivers are specially trained to handle any one of those tasks.

Water trucks for an example don't just haul water - many are equipped with both centrifugal and vacuum pumps and are capable of handling numerous other tasks at the well site – killing wells with drilling mud or brine water – circulating wells – hydro testing wells - providing back pressure on fracking jobs. Again, the equipment is specifically designed to handle these tasks and the driver's are specially trained to perform whatever job is needed at the site.

FMCSA should be looking at the oil and gas field operations as a whole and both exceptions should apply uniformly to all truck drivers being used in direct support at oil and gas sites.

We request guidance FMCSA-2012-0183 be rescinded to its pre-June 2012 interpretation until the agency can conduct a study of all the activities and nuances occurring at oil & gas well locations. And, if any changes are needed as a result of the study, then those changes should be developed through a formal rulemaking proceeding.

If you have any questions relating to these issues, please contact me at 512-478-2541 or john@tmta.com

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. D. Esparza', written over a horizontal line.

John D. Esparza
President and CEO

#12

**Testimony – House Bill 1231
House Transportation Committee
Submitted by
James Prochniak, NDHP**

January 24, 2013

Good afternoon, Mr. Chairman, and members of the House Transportation Committee. My name is James Prochniak, Superintendent of the North Dakota Highway Patrol. I am here today to testify in opposition of House Bill 1231.

The North Dakota Highway Patrol participates in the Motor Carrier Safety Assistance Program (MCSAP). The MCSAP program provides funding to our state to partner with the Federal Motor Carrier Safety Administration (FMCSA) in programs that will help reduce commercial motor vehicle related crashes. These safety programs focus on consistent and effective enforcement of the FMCSA and Federal Hazardous Material Regulations. MCSAP supports roadside safety inspections, new-entrant safety audits, data improvement efforts, and educational outreach.

The passing of House Bill 1231 will have an adverse impact on our MCSAP program and will jeopardize the federal funding our state receives. The NDHP is not only concerned with the possibility of losing funding, but also the safety concerns presented with the bill.

Mr. Chairman, members of the committee, this concludes my testimony. I would be happy to answer any questions you may have.



U.S. Department
of Transportation

1471 Interstate Loop
Bismarck, ND 58501

Federal Motor Carrier
Safety Administration

January 24, 2013

Colonel James J. Prochniak, Superintendent
North Dakota Highway Patrol
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Colonel Prochniak:

The North Dakota Highway Patrol made a request for FMCSA's position regarding House Bill No. 1231. If this bill became law in North Dakota, it would create several incompatibilities with the Federal Motor Carrier Safety Regulations (FMCSRs), as outlined below:

Sections 1 and 2, Conflicts of law, state: "A law under this chapter or a rule adopted by the director under this chapter applicable to a commercial vehicle operated in intrastate commerce prevails over a conflicting provision of a federal motor carrier safety regulation." These sections propose to add this language to the North Dakota Century Code (NDCC) Chapter 39-21, Equipment of Vehicles, and Chapter 39-32, Intrastate Commercial Driver Hours of Service. This language creates potential conflicts with Federal law. The Federal government has the authority to regulate not only interstate commerce, but anything that "affects" interstate commerce. Congress has used this authority many times to preempt intrastate laws. For example, the hazardous materials laws specifically preempt State and local laws that conflict with Federal laws and regulations [49 U.S.C. 5125(a)].

Currently, the FMCSRs governing vehicle equipment (see 49 CFR 393) and driver hours of service (see 49 CFR 395) do not have a preemptive effect. However, if Congress ever did apply these regulations directly to intrastate commerce, as it did with hazardous materials, Sections 1 and 2 would immediately contradict Federal law.

Beyond the concerns outlined above, North Dakota has adopted the FMCSRs as a condition of the Motor Carrier Safety Assistance Program (MCSAP) Grant. The MCSAP regulations allow only limited variances from the FMCSRs for State laws and regulations applicable to intrastate commerce (see 49 CFR 350.341; see also 49 CFR 350.333 and 350.339). North Dakota has already incorporated these allowed variances, to one degree or another, in the NDCC and/or the North Dakota Administrative Code (NDAC). Any additional variances created under the auspices of Section 1 or Section 2 would be incompatible with the FMCSRs.

In addition to the issues created by Sections 1 and 2, Section 3 is specifically incompatible with the FMCSRs. Please note that the State has *already adopted* the FMCSRs that govern hours of service and sleeper berth use for intrastate drivers. Furthermore, the MCSAP regulations do not allow *any variances* for intrastate drivers from the sleeper berth provisions in the FMCSRs (see

49 CFR 350.341; see also 49 CFR 350.333 and 350.339). Section 3 adds language to 39-32-02.3 that sets new and different sleeper berth requirements for drivers in intrastate commerce. This is not allowed by the MCSAP regulations.

Therefore, if House Bill No. 1231 became law in North Dakota, the State would have a new law that is incompatible with Federal regulations. Under these circumstances, the Federal regulations are very clear: "A State that currently has compatible CMV safety laws and regulations pertaining to interstate commerce (i.e., rules identical to the FMCSRs and HMRs) and intrastate commerce (i.e., rules identical to or within the tolerance guidelines for the FMCSRs and identical to the HMRs) but enacts a law or regulations which results in an incompatible rule will not be eligible for Basic Program Funds or Incentive Funds" (see 49 CFR 350.335). During FY 2012, FMCSA obligated \$1,426,108 in MCSAP Grant Funds to North Dakota.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey P. Jensen", with a long horizontal line extending to the right.

Jeffrey P. Jensen
Division Administrator

cc: Mr. William R. Paden, Regional Field Administrator, FMCSA Western Service Center
Ms. Lorraine Ehret, Service Center Director, FMCSA Western Service Center
Mr. Brandon Poarch, Division Chief, FMCSA State Programs Division
Ms. Wendy Cunningham, State Program Manager, FMCSA Western Service Center
Mr. Mickael Gouweloos, State Program Manager, FMCSA Western Service Center
Mr. Paul J. Haugland, State Program Specialist, FMCSA North Dakota Division
Ms. LeeAnn Jangula, Federal Program Specialist, FMCSA North Dakota Division
Major Michael T. Gerhart, Commander, Field Operations, North Dakota Highway Patrol
Captain Eldon P. Mehrer, Commander, Motor Carrier Operations, North Dakota Highway Patrol

13.0483.01001
Title.

Prepared by the Legislative Council staff for
Representative Streyle
February 5, 2013

4/1

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1231

Page 1, line 3, remove "and"

Page 1, line 4, after "service" insert "; and to provide for a legislative management study"

Page 3, after line 17, insert:

"SECTION 4. LEGISLATIVE MANAGEMENT STUDY - FEDERAL MOTOR CARRIER SAFETY REGULATIONS. During the 2013-15 interim, the legislative management shall consider studying federal motor carrier safety regulations and the feasibility and desirability of adopting state regulations that are not in compliance with federal regulations, especially relating to an intrastate exemptions from hours of service for oil field drivers. The study must include a cost and benefit analysis of the cost to the state in funding and the benefit to the industry. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly"

Renumber accordingly

October 3, 2012

Mr. Thomas Yager
Chief, Driver and Carrier Operations Division
Federal Motor Carrier Safety Administration
U.S. Department of Transportation
1200 New Jersey Ave., SE
Washington, DC 20590

RE: Docket No. FMCSA-2012-0183: Hours of Service of Commercial Motor Vehicles;
Regulatory Guidance for Oilfield Exception

Texas Motor Transportation Association (TMTA) is a trade association which represents approximately 900 motor carriers. Many of these motor carriers, located throughout our state, transport materials to and from oilfield locations.

I will start by mentioning a statement FMCSA made in the new guidance that we feel is incorrect in that it says, "it is recognized that these operators may encounter delays caused by logistical or operational situations, just as other motor carriers experience delays at shipping and receiving facilities".

Regrettably FMCSA's vision on this issue appears to be clouded by that perception and it's really not true.

For example, if a shipping facility has a problem with their equipment or site it doesn't normally shut down the whole facility. And, if for some reason it does, which is very rare, it only does so for a very short period of time.

At a frack job, where there are many moving parts and extremely high pressures are being used, all attention is given to a single hole and if anything is going on in that hole or if there is a problem with any of the massive numbers of equipment being used to perform the fracking process, it shuts down the entire jobsite until the hole is ready and all the equipment is working properly. This shut down is not rare because safety at the well site is top priority.

It is not uncommon to have lengthy delays caused by equipment issues. Some drivers must wait several hours if not days. Drivers actually take extra food with them on frack jobs because of the unknown amount of hours or days they may be required to wait.

In our opinion, a frack job at a well site in the middle of nowhere which is frequently delayed can in no way be compared to a warehouse sitting next to a highway.

Additionally, much of the wait time can be contributed to the lack of storage capacity at the well site for the sand. Most of the frac sand trucks are literally waiting to unload in

the comforts of cabs equipped conveniences such as microwave ovens, refrigerators, televisions, beds, etc.

As far as specially trained drivers and specially constructed equipment - most of the equipment at a well site is specially designed to handle multiple job functions and the drivers are specially trained to handle any one of those tasks.

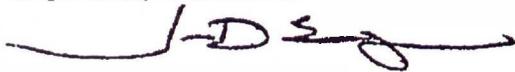
Water trucks for an example don't just haul water - many are equipped with both centrifugal and vacuum pumps and are capable of handling numerous other tasks at the well site - killing wells with drilling mud or brine water - circulating wells - hydro testing wells - providing back pressure on fracking jobs. Again, the equipment is specifically designed to handle these tasks and the driver's are specially trained to perform whatever job is needed at the site.

FMCSA should be looking at the oil and gas field operations as a whole and both exceptions should apply uniformly to all truck drivers being used in direct support at oil and gas sites.

We request guidance FMCSA-2012-0183 be rescinded to its pre-June 2012 interpretation until the agency can conduct a study of all the activities and nuances occurring at oil & gas well locations. And, if any changes are needed as a result of the study, then those changes should be developed through a formal rulemaking proceeding.

If you have any questions relating to these issues, please contact me at 512-478-2541 or john@tmta.com

Respectfully submitted,



John D. Esparza
President and CEO

**Testimony – House Bill 1231
Senate Transportation Committee
Submitted by
James Prochniak, NDHP**

March 15, 2013

Good morning, Mr. Chairman, and members of the Senate Transportation Committee. My name is James Prochniak, Superintendent of the North Dakota Highway Patrol. I am here today to testify in opposition of House Bill 1231.

The North Dakota Highway Patrol participates in the Motor Carrier Safety Assistance Program (MCSAP). The MCSAP program provides funding for our state to partner with the Federal Motor Carrier Safety Administration (FMCSA) in programs that will help reduce commercial motor vehicle related crashes. These safety programs focus on consistent and effective enforcement of the FMCSA and Federal Hazardous Material Regulations. MCSAP supports roadside safety inspections, new-entrant safety audits, data improvement efforts, and educational outreach. A staffing level of 22 positions would be affected under this bill. Most of those positions are uniformed troopers. The federal funding share for 2011-13 biennium is \$4,069,216.

The passing of House Bill 1231 will have an adverse impact on our MCSAP program and will jeopardize the federal funding our state receives. The NDHP is not only concerned with the possibility of losing funding, but also the safety concerns presented with the bill.

Mr. Chairman, members of the committee, this concludes my testimony. I would be happy to answer any questions you may have.



U.S. Department
of Transportation

Federal Motor Carrier
Safety Administration

1471 Interstate Loop
Bismarck, ND 58501

January 24, 2013

Colonel James J. Prochniak, Superintendent
North Dakota Highway Patrol
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Colonel Prochniak:

The North Dakota Highway Patrol made a request for FMCSA's position regarding House Bill No. 1231. If this bill became law in North Dakota, it would create several incompatibilities with the Federal Motor Carrier Safety Regulations (FMCSRs), as outlined below:

Sections 1 and 2, Conflicts of law, state: "A law under this chapter or a rule adopted by the director under this chapter applicable to a commercial vehicle operated in intrastate commerce prevails over a conflicting provision of a federal motor carrier safety regulation." These sections propose to add this language to the North Dakota Century Code (NDCC) Chapter 39-21, Equipment of Vehicles, and Chapter 39-32, Intrastate Commercial Driver Hours of Service. This language creates potential conflicts with Federal law. The Federal government has the authority to regulate not only interstate commerce, but anything that "affects" interstate commerce. Congress has used this authority many times to preempt intrastate laws. For example, the hazardous materials laws specifically preempt State and local laws that conflict with Federal laws and regulations [49 U.S.C. 5125(a)].

Currently, the FMCSRs governing vehicle equipment (see 49 CFR 393) and driver hours of service (see 49 CFR 395) do not have a preemptive effect. However, if Congress ever did apply these regulations directly to intrastate commerce, as it did with hazardous materials, Sections 1 and 2 would immediately contradict Federal law.

Beyond the concerns outlined above, North Dakota has adopted the FMCSRs as a condition of the Motor Carrier Safety Assistance Program (MCSAP) Grant. The MCSAP regulations allow only limited variances from the FMCSRs for State laws and regulations applicable to intrastate commerce (see 49 CFR 350.341; see also 49 CFR 350.333 and 350.339). North Dakota has already incorporated these allowed variances, to one degree or another, in the NDCC and/or the North Dakota Administrative Code (NDAC). Any additional variances created under the auspices of Section 1 or Section 2 would be incompatible with the FMCSRs.

In addition to the issues created by Sections 1 and 2, Section 3 is specifically incompatible with the FMCSRs. Please note that the State has *already adopted* the FMCSRs that govern hours of service and sleeper berth use for intrastate drivers. Furthermore, the MCSAP regulations do not allow *any variances* for intrastate drivers from the sleeper berth provisions in the FMCSRs (see

49 CFR 350.341; see also 49 CFR 350.333 and 350.339). Section 3 adds language to 39-32-02.3 that sets new and different sleeper berth requirements for drivers in intrastate commerce. This is not allowed by the MCSAP regulations.

Therefore, if House Bill No. 1231 became law in North Dakota, the State would have a new law that is incompatible with Federal regulations. Under these circumstances, the Federal regulations are very clear: "A State that currently has compatible CMV safety laws and regulations pertaining to interstate commerce (i.e., rules identical to the FMCSRs and HMRs) and intrastate commerce (i.e., rules identical to or within the tolerance guidelines for the FMCSRs and identical to the HMRs) but enacts a law or regulations which results in an incompatible rule will not be eligible for Basic Program Funds or Incentive Funds" (see 49 CFR 350.335). During FY 2012, FMCSA obligated \$1,426,108 in MCSAP Grant Funds to North Dakota.

Sincerely,



Jeffrey P. Jensen
Division Administrator

cc: Mr. William R. Paden, Regional Field Administrator, FMCSA Western Service Center
Ms. Lorraine Ehret, Service Center Director, FMCSA Western Service Center
Mr. Brandon Poarch, Division Chief, FMCSA State Programs Division
Ms. Wendy Cunningham, State Program Manager, FMCSA Western Service Center
Mr. Mickael Gouweloos, State Program Manager, FMCSA Western Service Center
Mr. Paul J. Haugland, State Program Specialist, FMCSA North Dakota Division
Ms. LeeAnn Jangula, Federal Program Specialist, FMCSA North Dakota Division
Major Michael T. Gerhart, Commander, Field Operations, North Dakota Highway Patrol
Captain Eldon P. Mehrer, Commander, Motor Carrier Operations, North Dakota Highway Patrol