

**FISCAL NOTE**  
**Requested by Legislative Council**  
**02/12/2015**

Amendment to: SB 2293

- 1 A. **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.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

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

Engrossed SB 2293 authorizes rail safety reports to legislative management.

- 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.*

Engrossed SB 2293 has no fiscal impact.

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 or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

**Name:** Kathryn L. Strombeck

**Agency:** Office of Tax Commissioner

**Telephone:** 328-3402

**Date Prepared:** 02/13/2015

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**Name:** Kathryn L. Strombeck

**Agency:** Office of Tax Commissioner

**Telephone:** 328-3402

**Date Prepared:** 02/13/2015

**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/19/2015**

Bill/Resolution No.: SB 2293

- 1 A. **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.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
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	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
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- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

SB 2293 creates a rail safety committee.

- 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.*

Section 2 of SB 2293 directs all special fuels tax from the sale of diesel fuel to a railroad to be transferred to the rail safety fund. If enacted, this provision of SB 2293 will result in a transfer of an estimated \$6 million to the rail safety fund in the 2015-17 biennium. This is an increase of \$5.5 million over the current law transfer to the highway rail grade crossing safety project fund. Compared to current law, Section 2 will reduce revenue in the highway tax distribution fund by an estimated \$5.5 million. All of these funds are 'other funds' for the purpose of 1A above, and therefore are not shown as the funds' combined net change is expected to be zero.

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**Name:** Kathryn L. Strombeck

**Agency:** Office of Tax Commissioner

**Telephone:** 328-3402

**Date Prepared:** 02/04/2015

**2015 SENATE TRANSPORTATION**

**SB 2293**

# 2015 SENATE STANDING COMMITTEE MINUTES

Transportation Committee  
Lewis and Clark Room, State Capitol

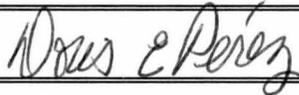
**SB 2293**

2/5/2015

Recording job number 23302

Subcommittee     Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

To create and enact a new section to chapter 49-11 of the North Dakota Century Code, relating to the rail safety committee; to amend and reenact 57-43.2-19 of the North Dakota Century Code, relating to special fuels excise taxes collected on sales of diesel fuel to a railroad; to provide a continuing appropriation; and to provide an effective date.

## Minutes:

Attachment: 8

**Chairman Oehlke** opened the hearing on SB 2293, all committee members were present.

**Senator George Sinner**, District 46, Casselton, co-sponsor of this bill, it will establish a rail safety committee to identify potential problem spots before they become accidents, the committee would be funded by the diesel excise taxes collected on sales of diesel fuel to a railroad. See attachment 1, page 1-1 explains how the committee will be staffed, funded and its functions. (00:00-6:19) Explained the intent to fellow committee members. (6:20-12:54)

**Jim Chase**, Transportation Division, International Association of Sheet Metal, Air, Rail and Transportation Employees, the largest rail labor union in North America The current process for determining if a crossing needs safety improvements, is based on reviews of statistical data from accidents and incidents that have already occurred. This legislation would create a proactive approach urges do pass. See attachment #2 (13:54-16:30)

**Mr. Chase** answered questions from **Senators Axness, Rust** and **Vice Chairman Casper** regarding the incident report process, the meaning of "railway safety" and the use of the excise taxes. (16:34-22:40)

**Mike Muscha**, railroad employee for 42 yrs., retired (locomotive engineer, Operation Lifesaver Presenter, assisted in accident investigations). Believes this bill is needed to help the state cope with the railroad safety issues. Supports the creation of this committee, the public needs an easier open process in the reporting and recommendations to the Public Service Commission and the Department of Transportation. Believes the rail road excise fuel tax should be used for railroad safety. Urges do pass. See attachment #3 (23:40-28:26)

**Sean Forschen** locomotive engineer, Burlington Northern Santa Fe Railway, supporting this bill, speaking for himself. He is aware the Public Service Commission's plan to hire more railroad inspectors. This bill would supplement the safety intent of these inspectors. See attachment #4. (30:13-33:16)

**Mr. Forschen** answered questions from **Senator Rust**, **Chairman Oehlke** and **Vice Chairman Casper** regarding incident reports and the increase in incidents that have resulted from the increase in train traffic. (33:27-41:30)

**Ron Huff**, on behalf of the Brotherhood of Locomotive Engineers, safety has become more of an issue, with more train traffic, more incidents are reported, now is the time to act, supports this bill. One of the biggest problems in some areas is people crossing where they shouldn't. He thinks a real source of vital information should be the people involved day to day in the railroad traffic and not people doing analysis of reported incidents. See attachment #5 (42:09-54:54)

**Julie Fedorchak**, Chairman, Public Service Commission, neutral testimony, believes the same goal this bill seeks can be achieved with what is already underway: The collaborative effort of the Public Service Commission with the Department of Transportation on updating the State Rail Safety Plan, with the Upper Great Plains Transportation Institute. The comprehensive Crude Oil Incident Preparedness and Response Review led by the Department of Energy Services. Three new full time employees have been requested to supplement the rail safety program. See attachment #6 (56:11-1:00:23)

**Ms. Fedorchak** addressed **Chairman Oehlke's**, Senator **Sinner** and **Senator Axness** concerns about multi-agency collaborative actions. The mechanisms are already there, deference should be towards agencies that have the experience, expertise and plans underway. (1:00:35 - 1:14:07)

**Steve Salwei**, Transportation Programs Director, North Dakota Department of Transportation, neither for or against, just to provide information (attachment #7): the state's rail planning activities; crossing improvements funded thru the Federal Highway's Railroad-Highway Grade Crossing Safety Program (7-1 to 7-2). If this bill passes DOT will lose approximately \$6M. Provided breakdown of Public Crossings & Warning Devices (7-3) and a list of Railroad Programs DOT participates in (7-4) (1:14:37-1:25:30)

**Mr. Salwei** discussed with **Chairman Oehlke** liability issues. **Senator Sinner** asked about the excise taxes and DOT expenditures in rail safety programs. Gave **Senator Axness** information regarding rail crossing projects underway and completed with state funding obtained in the previous legislative session (attachment #8). (1:26:00 -1:44:35)

**Chairman Oehlke** closed the hearing.

# 2015 SENATE STANDING COMMITTEE MINUTES

Transportation Committee  
Lewis and Clark Room, State Capitol

SB 2293

2/6/2015

Recording job number 23405

Subcommittee

Conference Committee

Committee Clerk Signature

*Drew E. Papp*

## Explanation or reason for introduction of bill/resolution:

To create and enact a new section to chapter 49-11 of the North Dakota Century Code, relating to the rail safety committee; to amend and reenact 57-43.2-19 of the North Dakota Century Code, relating to special fuels excise taxes collected on sales of diesel fuel to a railroad; to provide a continuing appropriation; and to provide an effective date.

## Minutes:

Attachment 1

**Chairman Oehlke** opened the discussion on SB 2293, all committee members were present. In light of yesterday's testimony I get the impression that the Department of Transportation, the Public Service Commission and Great Plains Transportation Institute already have a three-pronged effort to improve railway safety. I don't see this bill making it, unless; maybe offer an amendment that would change it into a resolution. I penciled an amendment this morning, see attachment #1.

**Senator Sinner** when I met with the Department of Transportation and the Public Safety Commission they had no formal plan or ideas other than requesting a study from Upper Great Plains Transportation Institute. The day before the hearing on this bill they put out a press release to the Dickinson Press. It came out at the last minute, they put the rail fuel excise tax in a general fund bucket, and the money is not being used for rail safety. There is no process for the rail people to find out what the potential hazards are, neither the DOT nor PSC, nobody knows about the incident reports. I have a problem with that I would like this committee to get some more discussion going. I think this tax should be designated for rail safety.

**Chairman Oehlke** committee will take a 15 minute break. Committee reconvened.

**Senator Sinner** I agree a resolution, as long as it comes from me, I'd like to incorporate some ideas in the bill. I would like some time to draft the resolution.

**Senator Axness** supports giving him time, since 2006 there have been 948 rail incidents were reported, we need some accountability from these agencies. **Vice Chairman Casper** agreed.

**Chairman Oehlke** agreed, meeting adjourned until next week.

# 2015 SENATE STANDING COMMITTEE MINUTES

**Transportation Committee**  
Lewis and Clark Room, State Capitol

SB 2293  
2/12/2015  
Recording job number 23707

Subcommittee  Conference Committee

Committee Clerk Signature

*Doris E. Perez*

## **Explanation or reason for introduction of bill/resolution:**

To create and enact a new section to chapter 49-11 of the North Dakota Century Code, relating to the rail safety committee; to amend and reenact 57-43.2-19 of the North Dakota Century Code, relating to special fuels excise taxes collected on sales of diesel fuel to a railroad; to provide a continuing appropriation; and to provide an effective date.

## **Minutes:**

Attachment: 1

**Chairman Oehlke** opened the discussion on SB 2293, all committee members were present.

**Senator Sinner** introduced amendment 15.0671.02001; it will solve the concerns out there and make it simple. It doesn't force them to set up a committee, to do anything except to report to Legislative Council on a quarterly basis. This is a start, this is the only bill addressing rail safety in this legislature; it gives us a chance to do something and show the public that we are trying to address this issue. (L)

**Chairman Oehlke:** would semiannual reporting be ok with you?

**Senator Sinner** if semiannual, when do you start, one on 7/31 another on 1/31, then 7/31 and so on? If that is the case then I am all for that. I want to make sure there is enough reporting so that we know they are doing something and what is going on

**Senator Axness** suggested if semiannual, at the start of the budget year seems to make sense.

**Senator Sinner** thought of at least one at the end of august, before the election or legislature comes in, it gives the committee a meeting or two, in case you want to draft legislation. I have no problem with setting it up from quarterly to semiannual.

**Chairman Oehlke** semiannual would more workable, I don't know if it is necessary to put in a specific month; it will be in front of the economic impact interim committee, they determine when they are going to hear the reports. Consider the Legislative Council meetings agenda, leaving it wide open would make it workable

**Senator Rust** another option "shall report at least semiannually"

**Chairman Oehlke** and **Senator Sinner** liked this language.

**Chairman Oehlke** cross out "quarterly" and replace with: "at least semiannually to a committee"

No additional discussion

**Vice Chairman Casper** moved to adopt amendment 15.0671.02001 as amended

**Senator Sinner** seconded to adopt amendment 15.0671.02002

No further discussion. **Voice vote: all in favor.**

**Vice Chairman Casper** looks forward to see : this reports.

**Senator Sinner** moved do pass as amended

**Vice Chairman Casper** seconded

**Roll call vote was taken: Yes 6 No 0 Absent 0**

**Carrier: Chairman Oehlke**

February 11, 2015

**PROPOSED AMENDMENTS TO SENATE BILL NO. 2293**

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for reports to the legislative management regarding rail safety."

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. RAIL SAFETY REPORTS.** During the 2015-16 and 2017-18 interim, the chairman of the public service commission and the director of the department of transportation shall report quarterly to a committee designated by the legislative management regarding rail safety. The reports shall include:

1. Current railroad conditions, including crossings and rail lines;
2. A review of train speeds;
3. Existing railroad freight and passenger demands and future needs;
4. A review of emergency response procedures in the state;
5. A review of tank car specifications; and
6. A review of economic, safety, and environmental impacts on the state, including correlation with other modes of transportation, such as highways, pipelines, and air."

Renumber accordingly

February 12, 2015

*Handwritten:* 2/12/15

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Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for reports to the legislative management regarding rail safety."

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. RAIL SAFETY REPORTS TO LEGISLATIVE MANAGEMENT.** At least semiannually during the 2015-16 and 2017-18 interims, the chairman of the public service commission and the director of the department of transportation shall report to a committee designated by the legislative management regarding rail safety. The reports must include:

1. Current railroad conditions, including crossings and rail lines;
2. A review of train speeds;
3. Existing railroad freight and passenger demands and future needs;
4. A review of emergency response procedures in the state;
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6. A review of economic, safety, and environmental impacts on the state, including correlation with other modes of transportation, such as highways, pipelines, and air."

Renumber accordingly





**REPORT OF STANDING COMMITTEE**

**SB 2293: Transportation Committee (Sen. Oehlke, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2293 was placed on the Sixth order on the calendar.

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Renumber accordingly

**2015 HOUSE POLITICAL SUBDIVISIONS**

**SB 2293**

# 2015 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee  
Prairie Room, State Capitol

SB 2293  
3/12/2015  
24737

- Subcommittee  
 Conference Committee

*Amanda Muscha*

## Explanation or reason for introduction of bill/resolution:

To provide for reports to the legislative management regarding rail safety.

## Minutes:

Testimony 1, 2, 3

Chairman Klemin: Opened hearing on SB 2293

Senator Sinner: Testimony 1

Representative Anderson: Every time I hear about rails issues I hope it's not ND crude. Could they eventually say we don't want ND rail in our state?

Senator Sinner: I don't think so but the pressure mounting on the federal government to take action- rail safety administration. We hear things all the time about some states asking the federal railway administration to take action on this issue. If we show we want to do something, I think it will go a long way. We have increased rail traffic. We have many crossings that are not protected. My original bill asked the DOT and PSC to set up a committee to investigate where the accidents happen and where school buses cross. I hope they come through with the report to the interim committee about what they are doing so we can follow up if the bill passes.

Representative Anderson: So can we tell the railroad what to do?

Senator Sinner: We can do certain things in state law. I would have been in favor of the two man crew bill. Many cases show two men can make a difference in safety.

Representative Koppelman: Is there any reason for you to believe that the PSC and the DOT are not doing their job?

Senator: Ever since the Casselton accident there haven't been any public meetings to talk about rail safety by either of the PSC or DOT. We have a state wide rail plan that hasn't been updated since 2008. We have increased rail traffic by 5000% some say in the last few years. I didn't know if they aren't doing their job but we are still having accidents. The crossing in Larimore wasn't put up until after a death. Many towns people begged for it

before it even happened. My original bill was to be preemptive. There is more traffic and we need to be more proactive.

Representative Kelsh: How do the federal regulations and the federal railroad safety people of ND work together? Are they doing the same thing?

Senator Sinner: The DOT and the PSC are trying to work with the feds. A problem with the federal level is the budgets are being cut. They are being cut on every level. We try to get more people in the state to do these jobs like inspect the rail and when you look at the budget situation it is not enough. The Service Transportation Board and the federal railway administration are trying to address the issue but rail traffic is everywhere.

Representative Kelsh: You said that in Larimore within days they talked about crossings after the death. All the money comes from the federal DOT to do that. It is in the safety part of the highway bill. Do we have the money to do it?

Senator Sinner: Not all the money comes from the federal government. The railroad companies that own the crossings would like some federal money to be involved in those improvements because it gives them some liability immunity. In the Larimore case all the money is state money going into that project I think. North Dakota taxes the fuels that the railroads use and the excise taxes are put into the highway distribution fund. They aren't put into railway even though it was originally meant for the railway. The DOT came out and didn't like my bill because I took money for the railway instead of the highways.

Ron Huff: I am here in support and represent the local locomotive engineers and trainmen. We support because this bill asks the two agencies to report to the legislative management so that you have a better idea of how to address safety issues. By doing that we are taking a proactive approach. Every session we have these types of bill come forward and we have now hodge podged them together so we have an idea about how to address the issue.

Representative Koppelman: This bill asks them to report. Do you need a law telling them to do that?

Ron Huff: If you read the bill it addresses specific issues you want a report on instead of them coming in with whatever.

Representative Koppelman: If an agency of government puts out a press release saying we will do A, B, and C. Do we have to pass a law to make it happen?

Ron Huff: By bringing it into a law you are making an emphasis on this. I haven't heard much on safety and this will make them aware of reporting on safety.

Chairman Klemin: The reports are to be made semi-annually. Other interims only ask for one each year. Is there a need for that many reports? Would a less frequent number of reports be appropriate?

Ron Huff: The amount of reports was settled with people that were not involved in the conversation so I don't feel qualified to answer that.

Steve Salwei: Testimony 2

Representative Hatlestad: Can you define a private crossing?

Steve: It could be a crossing that is going into a private residence or business. It is not a public road-way.

Representative Becker: I think by reading through this we approve of the intent. Whether we slowed the trains down, put more people in the cabs, the points you put in are relevant. You mentioned rail lines. It seems there is little attention to the conditions of rail lines. I don't know if there is enough attention given to the condition of the rail lines.

Steve: The condition of the rail lines is a new item on our plan. We want to bring on rail inspectors to help in the process. We have partnered with PSC to get help on receiving information.

Chairman Klemin: On your updated plan this bill requires semi-annual reports. Is that too frequent or not enough?

Steve: The information that you referenced. I have the information also in my testimony. The frequency of the reporting initially we will be able to show you how much change is happening. Initially I think it is adequate but for the long-term it will level out probably and you may want to consider something different.

Chairman Klemin: What will we do with these reports?

Steve: We will do what is required and report back with them.

Chairman Klemin: I understand you will but I don't know what we, the legislators, will do with them and why need them so often?

Steve: That may depend on what the findings are.

Chairman Klemin: This isn't a study assigned to an interim committee. This is a report. I don't think we need this many. Many interim committees don't meet that many times.

Representative Koppelman: I don't know if I have seen a press release become a bill before. If this did not exist would DOT come and report or do you need a law mandating you too?

Steve: We would come forward.

Representative Kelsh: You said you got all this funding but the state funds, where to they come from?

Steve: The funds that we use to match the federal dollars come from through the highway tax distribution fund. The railroads pay their excise tax on the fuel they use and they go into the highway tax distribution fund where they get split between the DOT, townships, transits, and the counties. Some of the matching components we use are also coming from those funds. In addition to matching components we also have 155 railroad grade separations

that we maintain and currently we have two railroad separations that we are in the process of putting in and replacing. The cost of the projects is great. ND DOT share on a yearly basis from the rail excise tax is about 1.8 million dollars. The two projects alone would take us 27 to bust. (They are rail safety projects)

Chairman Klemin: Based on your press release the reports the bill requires based on your press release you would have to have your committee prepare one regardless correct?

Steve: We would be reporting the findings to the governor's office. We would be making the rail plan that would become a public document. We will be out there and having public meetings across the state addressing concerns.

Chairman Klemin: This also says the legislature is considering a development of a rail safety inspection program. Is there a bill on that?

Steve: The PFC's they are looking into that.

Chairman Klemin: Is there a bill out there with that in it?

Steve: I don't think so at the time.

Tom Ricker: President of FCIO and we support. It would bring to the table everything that is going on so things aren't duplicated or missed. It would bring the right people to get the best outcome. There would be a broad diverse group to look at it and prevent accidents. I hope you give a do pass.

Chairman Klemin: The testimony relates to the regular bill.

Tom: It doesn't establish a committee anymore?

Chairman Klemin: No I don't think it is.

Tom: I stand corrected but I think we still need to look at rail safety.

Neutral--

Darrel Nitschke: Testimony 3

Representative Kelsh: It sounds like there is little authority regulation here. Most of it is federal?

Darrel: Most of it is federal. Since the staggered act of making 90 we have lost a lot of the regulatory responsibility as in any state.

Representative Kelsh: I think the legislature should be kept updated on progress you make so I agree with the number of reports. You can come up with a lot in 6 months.

Darrel: When we start to be responsive to safety I do think that there is a lot of work out there needed. The federal government may not bow down and we may not have all the answers but we have to look at a forward effort to make things happen. Rail transportation has increased. I have been with the PSC 8 years and in just the last year many things have

been brought to our attention. They see the public service commission has more jurisdiction than what we really have.

Chairman Klemin: This bill requires both the DOT and the PSC to report. There are 6 items they have to report and you mentioned that you may not have jurisdiction on 5 of those. You can only report on 1 then. Do you have the information for that?

Darrel: We do have that information. We can make an attempt to get the information we don't have access to. Other have had a challenge on getting that information from the federal system.

Chairman Klemin: What would be the point of having PFC report on only one item?

Darrel: I can't answer that.

Representative Anderson: What are other states doing with regard to rail safety? The citizens of ND don't like the fact that we say we can't do anything and say it is a federal problem.

Darrel: I can't answer that. I talked to Minnesota and Montana and they both have rail safety programs but I don't have the details about them.

Representative Koppelman: PFC has oversight response over emergency response. How does the PFC interface with that or is it something different?

Darrel: Legislatively we do have some emergency responsibilities regarding private crossings particularly. We do work closely with the DOT on safety matters.

Representative Koppelman: Do you work with our homeland security director?

Darrel: I don't.

Representative Koppelman: The DOT said they would work with the PSC. If the legislature asked you to report on that would you come? Do you need a law?

Darrel: We would come before anyone.

Chairman Klemin: The state rail plan, that is within the purview of the DOT and not the PSC?

Darrel: Correct

Chairman Klemin: You are working with them.

Darrel: Yes

Representative Oversen: Saying the PSC doesn't have jurisdiction over certain parts and they want to start a rail safety inspection program, I am curious what it would be able to do if we don't have jurisdiction over those parts. Could you talk about the hope and intention for the program?

Darrel: A lot of the rail safety is trained by the federal people, so even if we look at hiring 3 people in the federal rail administration and their safety requirements would be start of the training. I believe there is only one FRA inspector and this would add to that. We have been collaborating with them more directly in terms of safety issues. State input is important and for us to be a part of that is essential.

Representative Oversen: Looking at updating state wide rail plan, is that available online? The current plan? That would be with the DOT. We don't know what the updates will look like yet but it may include some legislation so I see why it may be beneficial to have updates to the legislation more than right before we meet. Any comments?

Darrel: My opinion is that there needs to be some legislative change.

Representative Kelsh: If you look at the bill it says shall report, to a committee designated by the legislative management regarding rail safety -period- and it must include the other things. I think it is after the areas that need to be fixed and pointing out the problems. If the rail lines need repairing, we need to know that. The feds won't come and tell us what's wrong but people out there can tell us the problems.

Darrel: I agree. There are some things the legislature needs to be aware of.

Chairman Klemin: It seems the PSC and the DOT are each supposed to report to an interim committee twice a year during the next two interims. I don't know what the PSC will report on because they have no jurisdiction over 5 of the 6 items and the one item they can report on is covered by the division of homeland security and department of emergency services.

Representative Klein: I don't understand what we are trying to do with this bill. We are only going to generate reports.

Representative Maragos: I am not sure if this is a good piece of legislation because it is only requiring reports to be received by Legislative Management. I don't think anyone can deny the amount of concern about what is happening with rail traffic. If events happen that are negative people want to know why we don't do anything or why we don't have information. I will support the bill.

Chairman Klemin: I am wondering about the frequency and whether this is something that should be limited to the next interim then the legislation can look at it next time.

Representative Koppelman: Sponsor indicated that there was another bill in the senate that they got pushed back on and were told it was unnecessary and that they were already doing this and so-on. Then he said the DOT issued a press release indicating the DOT and the PSC are going to do all these things. He then mirrored the bill to the press release and the bill only puts into law the requirement that the entities issue reports.

Chairman Klemin: There will be a report to the governor anyway.

Representative Koppelman: Correct. We can pass this and feel good but it may not really do anything. Both said they would come with information if Legislative Management asked them too. I could possibly pass this as a study but like this I probably wouldn't.

Representative Kelsh: Have you ever seen a report that was forwarded to the governor? This is about rail safety and the reports have to include these items. They may not have regulation about certain things but they can still inform us about what is happening out there. We don't know the condition things and they both said we need to be aware. I would support this bill.

Representative Hatlestad: I would like to see some amendments to make it an annual report, we make it for one biennium, we take out the PSC, and then make it to a specific committee.

Chairman Klemin: Committees haven't been all established

Representative Hatlestad: I think they have a good idea.

Chairman Klemin: Or we could leave it up to legislative management

Representative Hatlestad: Or we could do that.

Chairman Klemin: You're saying we should amend this by deleting words 'at least semi-annually' and the words 'and 2017 and 18', change the words 'interims' to interim, delete 'the chairman of the public service commission and'- then the rest would be the same?

Representative Hatlestad: Yes

Representative Koppelman: I think they way to amend it would be to make it into a study resolution because then you would have an interim committee tasked with this and they may want to do more. There is nothing wrong with look at these, but the interim committee has to really look into it not just file a report that comes from an agency.

Chairman Klemin: We do have this in a governmental committee that the DOT is working with that is going to be holding public meetings and doing a lot of things that is duplicative of an interim study.

Representative Koppelman: Should we amend it at all? Do we need it at all?

Chairman Klemin: If we do this at all we don't need to duplicate what is being done by an agency.

Representative Koppelman: I move a do not pass

Representative Klein: Second

Representative Oversen: I will oppose the motion for many reasons that have already been stated. We have been going through this many times with other bills and we change them or kill them. People keep saying something needs to be done but they all say it is someone else's responsibility. No one is doing anything right now. If this is the least we can do as a legislature to say we will accept information and we want it to hold agencies accountable- it seems to be the best we have come up with.

A Roll Call Vote Was Taken: Yes 6, No 6, Absent 2 (Anderson, Strinden)

Motion fails

Representative Beadle: I move the Hatlestad amendment

Representative Maragos: Second

A Voice Vote Was Taken: Motion carries

Representative Maragos: I move a do pass as amended on engrossed senate bill 2293

Representative Kelsh: Second

Representative Koppelman: I respect the attempt but we are not helping anything with the amendment. It is maybe worse than when it started. The sponsor was trying to get the DOT and the PSC together and he created the amendment based on the press release. The purpose was to get them involved and now we only have on. I will resist the motion again.

Representative Maragos: I didn't see the original bill and I don't believe the sponsor amended it this way. I think the committee in the senate amended it this way to express their desire to have something be done and it seems the senate agreed. I don't see a problem and will support this.

Representative Hatlestad: You don't discount the PSC. They can still work with the DOT. You only need one report and DOT has more jurisdiction than PSC does.

Representative Maragos: I agree.

Representative Koppelman: I ran into Senator Sinner in the hall and he told me exactly what happened with this bill and I think he testified to the same thing today. He said it was setting up a committee that would do all kinds of things but that they said it wasn't necessary. He then mentioned how he saw the press release from the DOT and he fashioned an amendment to mirror that. I don't think this was something the senate put together.

Representative Kelsh: We are trying to make a difference and the bill better. At least now we will be somewhat informed.

Representative Beadle: The main reason I wanted to amend it in a way the DOT provided this was not necessarily because it was the stuff they regulate but because they came in support versus PSC coming in neutral. Also, during the economic impacts interim committee we had DOT report to us on a couple items regarding rail transportation dealing with amount of loads and activity in addition to going through all the high way infrastructure and the road work and loads being done. They seem to be easy to communicate with.

Representative Koppelman: Just to clarify- my point is, I am not adamantly opposed to this I just think it is odd because it isn't necessary (the agencies said they would come if asked), putting it in law and forcing them to is needless, and this has happened in previous interims and it will happen again. I said I could support it as a study resolution. I think it is foolish to pass a law telling an agency they have to report when the agencies said they would report.

Representative Beadle: Would this be going into session laws?

Chairman Klemin: Yes

Representative Hatlestad: I see that we have now put DOT's feet to the fire.

Chairman Klemin: They could simply give an interim committee the same report they give to the governor.

A Roll Call Vote Was Taken: Yes 10, No 2, Absent 2 (Strinden, Anderson)

**Motion carries**

Representative Hatlestad will carry the bill

15.0671.03001  
Title.04000

Adopted by the Political Subdivisions  
Committee

March 12, 2015

*AA*  
*3-12-15*

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2293

Page 1, line 1, replace "reports" with "a report"

Page 1, line 3, replace "REPORTS" with "REPORT"

Page 1, line 3, remove "At least"

Page 1, remove line 4

Page 1, line 5, replace "commission and" with "During the 2015-16 interim,"

Page 1, line 6, replace "reports" with "report"

Renumber accordingly

**2015 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2293**

House Political Subdivisions Committee

- Subcommittee  Conference Committee

Amendment LC# or Description: \_\_\_\_\_

- Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Koppelman Seconded By Klein

Representative	Yes	No	Representative	Yes	No
Chairman Lawrence R. Klemin	X		Rep. Pamela Anderson	/	
Vice Chair Patrick R. Hatlestad	X		Rep. Jerry Kelsh		X
Rep. Thomas Beadle		X	Rep. Kylie Oversen		X
Rep. Rich S. Becker	X		Rep. Marie Strinden	/	
Rep. Matthew M. Klein	X				
Rep. Kim Koppelman	X				
Rep. William E. Kretschmar		X			
Rep. Andrew G. Maragos		X			
Rep. Nathan Toman	X				
Rep. Denton Zubke		X			

Total (Yes) 6 No 6

Absent 2 (Anderson, Strinden)

Floor Assignment \_\_\_\_\_

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

motion fails

Date: 3/12/2015  
Roll Call Vote #: 2

2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2293

House Political Subdivisions Committee

Subcommittee  Conference Committee

Amendment LC# or Description: Hatlestad Amendment

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
Other Actions:  Reconsider

Motion Made By Beadle Seconded By Maragos

Representative	Yes	No	Representative	Yes	No
Chairman Lawrence R. Klemin			Rep. Pamela Anderson		
Vice Chair Patrick R. Hatlestad			Rep. Jerry Kelsh		
Rep. Thomas Beadle			Rep. Kylie Oversen		
Rep. Rich S. Becker			Rep. Marie Strinden		
Rep. Matthew M. Klein					
Rep. Kim Koppelman					
Rep. William E. Kretschmar					
Rep. Andrew G. Maragos					
Rep. Nathan Toman					
Rep. Denton Zubke					

voice vote  
motion carries

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

Date: 3/12/2015  
Roll Call Vote #: 3

2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2293

House Political Subdivisions Committee

Subcommittee  Conference Committee

Amendment LC# or Description: 15.0671.03001

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
Other Actions:  Reconsider

Motion Made By maragos Seconded By kelsh

Representative	Yes	No	Representative	Yes	No
Chairman Lawrence R. Klemin	X		Rep. Pamela Anderson	/	
Vice Chair Patrick R. Hatlestad	X		Rep. Jerry Kelsh	X	
Rep. Thomas Beadle	X		Rep. Kylie Oversen	X	
Rep. Rich S. Becker	X		Rep. Marie Strinden	/	
Rep. Matthew M. Klein		X			
Rep. Kim Koppelman		X			
Rep. William E. Kretschmar	X				
Rep. Andrew G. Maragos	X				
Rep. Nathan Toman	X				
Rep. Denton Zubke	X				

Total (Yes) 10 No 2

Absent 2 (Anderson, Strinden)

Floor Assignment Hatlestad

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

motion carried

**REPORT OF STANDING COMMITTEE**

**SB 2293, as engrossed: Political Subdivisions Committee (Rep. Klemin, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 2 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2293 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "reports" with "a report"

Page 1, line 3, replace "**REPORTS**" with "**REPORT**"

Page 1, line 3, remove "At least"

Page 1, remove line 4

Page 1, line 5, replace "commission and" with "During the 2015-16 interim,"

Page 1, line 6, replace "reports" with "report"

Re-number accordingly

**2015 TESTIMONY**

**SB 2293**

## **SB 2293 – Rail Safety**

Chairman Oehlke and fellow members of the Transportation Committee. Thank you for allowing me to appear before you today and offer Senate Bill 2293 for your consideration.

I am George Sinner, native of Casselton, the home of five of our state's governors and one of the most significant rail accidents in our state's history. I am also the State Senator from District 46 in Fargo.

Over the past several months and years the safety of our rail systems has been on the minds of many of our citizens. From the fatal 2002 accident in Minot to the tragic train-bus accident near Larimore last month, there has been continuous public concern about the safety of our rail systems. **These rail systems is our state's lifeline to the global marketplace.** For without these rail systems, our landlocked state is truly an island without a primary delivery system for the many products that provide our quality of life and economic security. Today, nearly 90 percent of North Dakota's interstate commerce is transported by rail.

That is why it is so very important that we, as leaders in this state, make the safety of our rail systems an absolute priority to ensure that we will not scrimp when it comes to making our rail systems safe.

According to the Federal Railway Administration website, since 2006 there have been 948 rail incidents including over 200 accidents involving 39 fatalities in North Dakota.

Over the past several days I have spoken with the PSC & DOT about the ideas in this bill. They believe that they have the processes in place and that this bill will just create more bureaucracy. My only response to them is that when it comes to rail safety, the North Dakotans want it to be priority #1. And while today there are lots of folks talking about rail safety, there seems to be very little being done with no coordination between the various stakeholders. It is like an army without a general with no one taking charge to make sure that the orders get carried out and that objectives are accomplished in a timely fashion.

That's why today I am introducing Senate Bill 2293 which brings a plan that will establish a "RAIL SAFETY" committee that will be PROACTIVE in identifying potential problem spots before they become accidents and this bill funds "RAIL SAFETY" with the very taxes that were imposed for this purpose.

My bill does two things:

- I. It creates a rail safety committee:
  - a. Shall be made up of 5 members.
    - i. 3 members appointed by the Public Service Commission
    - ii. 2 members appointed by the Governor.
  - b. Shall hold 4 public meetings/year around the state.
  - c. Shall review all rail accidents & incidents that have occurred in North Dakota since 2004.
  - d. Shall inventory all unprotected rail crossings in North Dakota that are on school bus routes.
  - e. Shall prioritize those crossings based on the reviews of the information in "C" & "D" above and make recommendations to the PSC for upgrade.
  - f. Shall recommend expenditures for these rail safety improvements, training for emergency responders and school bus drivers, or otherwise enhance or maintain rail safety & accident response in the state.
- II. Provide funding mechanism that utilizes the fuel excise taxes paid by the railroads for rail transportation. This would provide approximately \$5.7 million per biennium for rail safety. These are taxes that were originally levied for rail safety.
  - a. These funds can be combined with available federal funds & other funds and put toward ensuring that our state is doing everything possible toward safety on our rails.
- III. The Public Service Commission shall then be required to act on the recommendations of the Rail Safety Committee.

State leaders will again say this program is not necessary and that they have plans to address these concerns. All I can say is that someone needs to get the concerned public's input, something that has not happened to this day. So, to those who state this committee isn't needed, I say why have there been no public

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meetings, no public discussions and no public proclamation that this state is putting rail safety to the top of the list?

Mr. Chairman and members of the committee, we all know that over the next several years in North Dakota the amount of cargo that will be carried on the rail systems of North Dakota is only going to increase. If we don't put a process in place today to proactively work to address the safety concerns and give the public an outlet to bring their concerns to the table, then we miss the opportunity to prevent another disaster.

My bill today will make sure that North Dakota makes rail safety priority #1. I request that the members of this committee do the same and give SB 2293 a Do-Pass recommendation. Thank you.



*Transportation Division*  
*North Dakota Legislative Board*

**Testimony of Jim Chase**  
**Before the Senate Transportation Committee**  
**In Support of SB 2293**  
**February 5, 2015**

Mr. Chairman and members of the committee, my name is Jim Chase. I represent SMART-Transportation Division of the International Association of Sheet Metal, Air, Rail, and Transportation employees. SMART is the largest rail labor union in North America. Our membership includes conductors, engineers, switchmen, trainmen and yardmasters; I am a locomotive engineer for BNSF Railway. I am here to testify in favor of Senate Bill 2293, a bill to create a rail safety committee and a rail safety fund.

The creation of the Rail Safety Committee would give the public, rail workers, and law enforcement a seat at the table in the discussion of rail and crossing safety issues and concerns. Committee meetings would be held quarterly at locations state-wide, giving the public a timely venue to present comments and concerns on rail safety throughout the state.

As I understand the current process for determining whether a crossing needs improvements such as crossing warning devices, a review is performed on the statistical data from accidents and incidents that have already occurred. Passing this legislation would create a proactive approach to determining whether crossings need additional safeguards, rather than the current reactive process.

Instead of waiting for tragic incidents and accidents to occur, input from the Rail Safety Committee could be used to identify potentially hazardous areas needing more attention. Input from people who are out in the field should be one of the primary sources of information for determining if improvements are needed to safeguard the public from incidents, as they are on the front lines of day-to-day rail operations.

Section two of this bill takes the tax money paid by railroads on diesel fuel and transfers it from the highway tax distribution fund to a newly-created rail safety fund. The rail safety fund will be controlled by the Public Service Commission for the purpose of funding rail safety projects.

The use of the rail tax money for rail safety projects is an appropriate use of these funds. Rail money should be used for rail safety projects, including training of emergency responders and school bus drivers. The North Dakota taxpayer should not be required to fund such projects when a dedicated funding source, already paid by the rail industry, is available. I urge you to support a "Do Pass" recommendation on SB 2293.

#3-1

Testimony of Mike Muscha  
Before the Senate Transportation Committee  
In support of SB 2293  
February 5, 2015

Chairman Oehlke, Members of the Transportation Committee, my name is Mike Muscha and I'm here today to speak in favor of SB 2293. As a few of you in the room know, I worked in the railroad industry for about 42 years and lived my whole life in the Enderlin area. I worked in many levels of the industry, not only as the locomotive engineer on the train but also as a trained speaker by the railroad as an Operation Lifesaver Presenter for many years. I also attended many grade crossing seminars across the United States for the railroad, assisted in accident investigation, grade crossing sight triangle issues and also vehicle/train crash reenactments. I cooperated with BNSF, North Dakota DOT and a BNSF locomotive engineer from Glasgow, Montana, on identifying non-signalized dangerous railroad crossings on the heavy BNSF oil corridor between Glasgow and Minot. This work resulted in identifying sight triangle problems and expedited gated crossings being installed on routes with heavy oil truck traffic. Because of my background I get calls from all over the state on railroad issues. I believe the state needs the mechanics in this bill to cope with all the railroad safety issues that arise across the state.

Chairman Oehlke, members of the committee, I support the appointment of the members in this bill because the public needs an easier and more open process in the reporting and recommendations to the DOT and PSC. The most pressing issues at this time seem to be dangerous railroad grade crossings, pedestrian

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traffic routes, vegetation growth resulting in sight triangle problems and blocked railroad crossings. Due to the huge growth in RR traffic, these problems have frustrated the public and there seems to be no formal complaint process. Does the PSC have the authority to address the public concerns? I know the cities and the public can't seem to get their problems solved with these big corporations. Example, Enderlin, North Dakota, trains blocking crossings up to 4 hours(not an emergency situation defined in the state law), resulting in kids crawling under the train to get to the baseball field. Another example is a young mother with a stroller trapped between crossings in a RR switching operation. When I had extra work on my train in the Enderlin yard, we cut the crossings or stopped back to ensure crossings were not blocked. There are safe switching practices in order to do this in a safe manner and comply with the grade crossing law. I will close on this subject with this thought, "If a railroad is going to operate longer trains, they should build the infrastructure first, then build the trains accordingly."

Now for the issue of Rail Road Fuel tax, I believe it all should be used towards railroad safety. I also think the railroads would like this money to be used towards building a safer railroad corridor both in vehicular traffic and the pedestrian issues. I don't have a position on how it's dispersed, just so it goes for safety.

I would like to tell the committee of the foresight that Soo Line, now Canadian Pacific, had in Harvey, North Dakota. Harvey has a railroad crosswalk over the switching yard and main line. School kids can get from one side of the city to the other on this viaduct. It was also rebuilt just before I retired. I felt it would be an excellent project to fix the pedestrian problem at Enderlin. I took pictures of the

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new rebuilt one, found a builder that was interested, proposed it to the city of Enderlin and the railroad. How far do you think that project went?

We know what happens in the grade crossing accidents like Larimore, Rogers, and Fingal, all resulted in tragedy. I hope that an incident with kids and Enderlin's ball players crawling under the train doesn't end with the same results, because like the ones listed above that was what it took to get the safety devices installed. I hate to say it, but in many cases it seems like it takes fatalities to get safety devices installed. With successful implementation of this bill, we will be able to identify these areas and become pro-active instead of re-active.

Chairman Oehlke, members of the transportation committee, for these reasons I recommend a due pass on SB 2293.

Thank you. I will happy to answer any questions the committee may have.

#4-1

**TESTIMONY OF SEAN FORSCHEN**  
**BEFORE THE SENATE TRANSPORTATION COMMITTEE**  
**IN SUPPORT OF SENATE BILL 2293**  
**FEBRUARY 5, 2015**

Good Morning, Mr. Chairman and members of the Senate Transportation Committee. For the record, my name is Sean Forschen. I am here representing myself. I am a locomotive engineer for the Burlington Northern Santa Fe Railway. I am here today to provide a statement of support of the Senate Bill 2293.

The Senate Bill 2293 will enable a rail safety committee to be formed. It will consist of five members. Three will be appointed by the public service commission and two will be appointed by the governor. The rail safety committee's purpose will be to keep statistics which inventory all railroad based accidents and incidents involving rail lines in the state as well as keeping inventory of all rail road crossings where a class I or other railroad crosses a school bus route. It will also be responsible for identifying those railroad crossings that do not possess electronic safety devices or have unsatisfactory conditions that safety is a concern. This committee shall set forth recommendations to state and local government entities regarding enhancements that would improve the safety of these areas as well as improve the emergency response to unforeseen accidents on the railroad that threaten public safety.

We are aware of the public service commission's plans to hire two to three railroad inspectors. We strongly support this intention. There are approximately 3500 miles of railroad tracks throughout the state of North Dakota. Close to 100 trains consisting of approximately 10,000 cars and 300 locomotives traverse these tracks daily making this a priority, given its busy traffic. This bill would aide in supplementing the safety intent of these inspectors. There are 150 towns throughout the state of North Dakota whom have rail road tracks running through them. With the increase in railroad traffic, safety

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concerns are increasing among these communities. These concerns are important to address in a timely manner. By appointing the aforementioned committee, it would provide a point of contact to the public whom would be responsible in addressing their concerns.

In 2013, the rail roads of North Dakota paid \$2, 525,553 in fuel excise tax. Another \$3, 156, 221 was paid in 2014, thus equaling a total of \$5,682, 221 for the 2013-2014 bienniums. The railroad is the only entity that pays this fuel excise tax and this money paid does not go back into their industry safety program. This bill will help keep the public safe, assist in rail road safety of the workers in this industry and continue to offer support in a busy and growing industry.

**Personal statement**

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Mr. Chairman and members of the Senate Transportation Committee:

For the record my name is Ron Huff, I am here on behalf of the Brotherhood of Locomotive Engineers and Trainman (B.L.E.T.). We support SB 2293.

Train fatalities have gone from 1 in 2011 to 10 in 2012, according to numbers kept by the Federal Railroad Administration. Five of the 10 train deaths and 37 of 84 non-fatal accidents involving a train, or 44%, took place in what the DOT labels as oil producing country.

According to the DOT the state had more than one million registered vehicles in 2012, up from 889,213 in 2011. There were more than 508,000 licensed drivers statewide in 2012, up from 496,543 from 2011. Foot traffic is also up.

Railroad Companies say they have noticed an increase in statewide incidents. Peter French the assistant Vice-President of safety and performance analysis at the American Association of Railroads said, if North Dakota's population continues to boom, he expects railway accidents to also rise proportionally.

This morning you have heard about railroad crossing accidents, people crossing through trains, citizens that have no place to take their safety issues. Now the question we should ask ourselves, is now the time to resolve this issue?

I think by putting this committee in place is a step in the right direction.

Thank You,

Ron Huff

Mr. Chairman and members of the Senate Transportation Committee:

**Senate Bill 2293**

**Presented by:** Julie Fedorchak, Chairman  
Public Service Commission

**Before:** Senate Transportation Committee  
The Honorable Dave Oehlke, Chairman

**Date:** February 5, 2015

**TESTIMONY**

Mister Chairman and committee members, I'm Julie Fedorchak, chairman of the Public Service Commission. I'm here today to offer neutral testimony on SB 2293. This proposed measure has two parts: a funding component and the creation of a rail safety committee. My opinions differ on each of these two components therefore I'm standing as neutral. However, I do want to offer some perspective I believe is important for your deliberations.

I'll start with the proposal to create a committee. I appreciate one of the primary goals of this measure, which is to facilitate public input on rail safety issues and concerns. I believe we can facilitate that same goal with a stronger, more efficient process that is already underway using the agencies that have experience and jurisdiction on these issues. The PSC is working collaboratively with DOT on updating the State Rail Plan, and an important component of that is a State Rail Safety Plan. This effort involves the Upper Great Plains Transportation Institute, which has proven expertise and a strong knowledge base on transportation issues in our state as well as strong connections to other states and national transportation organizations.

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This effort will, among other things, identify hazardous routes, review rail/highway crossings, examine traffic projects for the next 20 years and link that data to crossing information and bus routes, it will include risk analysis and identify areas for low-cost improvements. Most importantly, this effort will involve input from the industry, affected communities and provide opportunities for public meetings and input as well.

At the same time, a comprehensive Crude Oil Incident Preparedness and Response review is also underway led by the Department of Emergency Services and all the relevant state agencies including the PSC. This effort will identify ways to improve the emergency response planning, coordination and training between stakeholders. Most importantly, it will set goals and specific action steps to enhance the skills and resources that exist at the state and local level for responding to crude oil incidents involving rail or any other method of transport.

And finally, the PSC has included in our budget a request for three new FTEs to spearhead a supplemental rail safety inspection program. This effort will put more rail inspectors on the ground looking for safety defects and working to hold the railroads accountable for high safety standards.

We do need to step up on our efforts to protect public safety on Rail System. A number of comprehensive initiatives are underway to do this involving the agencies that have expertise and jurisdiction oversee these issues and providing opportunities for public outreach and input. I urge policy makers to

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support the efforts already underway to leverage this expertise and authority and not create a new one through a separate committee.

The second part of this bill enhances a funding mechanism for rail safety improvements, most specifically crossings and emergency responders. This too is an important component of improving the safety of our rail system. I support strong funding for these efforts but because that funding is currently invested in a few different agencies, primarily DOT and Emergency Services, I defer to those agency heads and you as policy makers to determine the adequacy of those funds.

Mister Chairman, this concludes my testimony. I will be happy to answer any questions.

**SENATE TRANSPORTATION COMMITTEE**

February 5, 2015 - 10:15 a.m. – Lewis &amp; Clark Room

**North Dakota Department of Transportation  
Steve Salwei, P.E., Transportation Programs Director****SB 2293**

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Good morning Mr. Chairman and members of the committee. I'm Steve Salwei, Transportation Programs Director for the North Dakota Department of Transportation (DOT). I'm here to provide information related to SB 2293.

The DOT does administer the state's rail planning activities. The current statewide rail plan was completed in 2007 and with all of the changes that have occurred in our state in recent years; the Department started its internal process last fall to update the plan. The decision has been made to update the rail plan in partnership with the Public Service Commission and Upper Great Plains Transportation Institute while working closely with the railroad providers in North Dakota.

By listening to the public and our rail partners we will evaluate current trends influencing the rail system within the state and look at ways to enhance rail safety across the state. The updated comprehensive plan is evaluating the overall rail system by reviewing:

- Railroad condition including railroad crossings and rail lines
- Train speeds
- Existing railroad freight and passenger demands and future needs
- Emergency response procedures in the state
- Tank car specifications
- Economic, safety, and environmental impacts on the State, including "tradeoffs" with other modes such as highways, pipeline, and air.

In addition to the rail plan, DOT has resources available thru the Federal Highway's Railroad-Highway Grade Crossing Safety Program to fund crossing improvements. This program began in 1973, when Congress authorized expenditure of funds from the Highway Trust Fund for crossing improvements on the Federal Aid Highway System (FAS). In 1976, Congress extended funding to crossing improvements on all public roadways, not just roads on the FAS, and has renewed the program in all subsequent surface transportation acts.

While the funding we receive for this program is relatively modest, we have made great strides in making rail crossings safer. Back in the 1970's we had over 100 train/vehicle crashes. In 2013 this number has decreased to 27 and thru November 2014 preliminary numbers show there are 24 crashes. (Note: Federal Railroad Administration (FRA) had not reported the December crashes as of this writing.)

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The DOT received an apportionment of just over \$7 million in federal aid in the 2013-15 biennium. We have a program in place in which we have committed \$8.4 million, which includes, federal, state and local match funding in projects.

We administer the program using a federal prioritization process to rank crossings in North Dakota. The crossings are ranked by using a FRA's Web Accident Prediction System. Many factors are considered in the prioritization process:

- FRA predictor list ranking
- Observations of public, railroad, and local officials
- Number of school buses
- Proximity to schools
- Hazardous-material trucks present or designated route
- Amtrak route
- Population density near the crossing
- Highway speed limit
- Sight obstructions
- Proximity to roadway intersection
- Available budget and project cost estimates.

Once the crossings are ranked it may be necessary to conduct a field diagnostics. When federal funds are used a team consisting of NDDOT, railroad officials, local road authority and others conduct the review. At times local law enforcement, the local school superintendent may join the diagnostics team. The field diagnostics is done to review the site for any potential hazards and to make a determination on any improvements that may be needed.

As stated above, we have utilized Federal Highway's Railroad-Highway Grade Crossing Safety Program since the early 70s with good results. State and local government authorities could use their own funds on crossing improvements; however, the current federal approval process for warning devices that is in place was developed to establish uniformity at railroad crossings across the United States. The federal funding and crossing reviews process was established to provide safety and consistency. In addition, a number of courts have ruled that following this federal process provides certain liability protections. While it may be possible to use only local or state funds for crossing warning devices, it may not be in the best interest for all parties involved.

The DOT uses the federal process and combines federal funding with other funding for the rail safety program. We are concerned that the federal process may not be followed by the committee selecting crossing devices nor is there any federal funding available to the Public Service Commission.

If SB 2293 passes, it will result in a loss of approximately \$6 million of revenue to the state highway tax distribution fund over the next biennium. This revenue is shared by DOT, counties, cities, townships and transit. The loss of \$6 million may result in these entities being unable to proceed with other safety related projects such as intersection improvements, lighting, etc.

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The table below shows a breakdown of the Public Crossings and Warning Devices in the state. In addition to the Public Crossings shown in the table, there are an additional 1,241 private crossings in the state that are not eligible for Federal Funding.

Breakdown of Public Crossings & Warning Devices										
RAILROAD	GATES & FLASHERS	FOUR QUAD	FLASHERS ONLY	STOP SIGNS	CROSSBUCKS (YIELD)	TOTAL AT-GRADE CROSSINGS	RR UNDER	RR OVER	TOTAL PUBLIC CROSSINGS	PEDESTRIAN CROSSING (separations & at-grade)
BNSF	358	4	10	27	1,159	1558	54	71	1683	15
CP RAIL	105	0	0	20	411	536	12	7	555	3
DMVW	29	0	2	8	356	395	4	0	399	0
DN	14	0	1	1	95	111	0	0	111	0
NPR/MHC	26	0	0	0	328	354	2	0	356	0
RRVW	51	0	2	3	438	494	4	1	499	3
	<b>583</b>	<b>4</b>	<b>15</b>	<b>59</b>	<b>2787</b>	<b>3448</b>	<b>76</b>	<b>79</b>	<b>3603</b>	<b>21</b>
Active Warning Devices										
602										
<u>% of Public Crossings in the State</u>			<u>Active Warning Devices in the State</u>				<u>PRIVATE CROSSINGS (SEPARATIONS &amp; AT-GRADE)</u>			
BNSF	45.1856%			BNSF	372		BNSF	531		
CP RAIL	15.5452%			CP RAIL	105		CP RAIL	220		
RRVW	14.3271%			RRVW	53		RRVW	157		
DMVW	11.4559%			DMVW	31		DMVW	147		
NPR	10.2668%			NPR	26		NPR	148		
DN	3.2193%			DN	15		DN	38		
							TOTAL	1241		
<b>Legend:</b>										
BNSF = BNSF Railway (Burlington Northern Santa Fe)				DMVW = Dakota, Missouri Valley & Western Railroad						
CP RAIL = Canadian Pacific Rail				NPR = Northern Plains Railroad						
RRVW = Red River Valley & Western Railroad Company				DN = Dakota Northern Railroad, Inc						

Attached is a list of Railroad Programs DOT participates in.

Mr. Chairman, this concludes my testimony. I would be happy to answer any questions that you may have. Thank You.

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## NDDOT RAILROAD SAFETY PROGRAMS January 20, 2015

The following is a summary of the Rail-Highway Crossing Safety Programs.

There are four dedicated funds or programs for these activities:

Program or Fund	Funding Source	Purpose	Dollars per year	No. of Projects*	Comments
Hazard Elimination	FHWA – Safety (HSIP subcategory)	Elimination of identified physical hazards at highway-rail grade crossings. Typically, these are surface repairs & replacements; both traffic control & surfaces are eligible.	\$1.6M	10-15 per year	State or local 10% match, not included in numbers to the left
Protective Devices	FHWA – Safety (HSIP subcategory)	Installation of new and/or replacement of existing signals and signing at highway-rail grade crossings.	\$1.6M	6-10 per year	State or local 10% match, not included in numbers to the left
Quiet Zone	State (HTDF – Locomotive fuels excise tax)	The main purpose of this program is to aid local jurisdictions in developing rail quiet zones, which typically entails installation of Supplemental Safety Measures. SSMs are physical infrastructure above and beyond what is required or recommended, <u>allowing</u> (not requiring) locomotive engineers to avoid blowing their horns at crossings. A secondary purpose of the program is to first bring highway-rail grade crossings up to recommended standards within or adjacent to proposed quiet zones.	One-time program of \$1.6M	10 Total	The program could have included \$900K of federal funds, too. However, no eligible projects were identified over and above the regular federal programs.  All funds are obligated to specific projects with less than \$250K still to be reimbursed on two (2) open projects.  All funds must be spent by June 30, 2015.  Minimum local 10% match (most provide significantly more, not shown).
Locomotive Fuel Excise tax	State (HTDF)  10% local match	Upgrade existing signals, install new signals, or install new surfaces at highway-rail grade crossings.	\$250K One-time funding, each year of the 2013-15 biennium	Up to 8 Total	Initially, we had some difficulty identifying highway-rail grade crossing projects on which the railroads were willing to accept 100% state funds. However, they have since determined a way to use these funds to upgrade existing signals to assist with implementing positive-train control, a new federal mandate.  Minimum local 10% match, not shown.

\* Many of these projects are on the local system. Therefore, the NDDOT works cooperatively with local entities throughout the state to affect these projects. However, without the local road authority's approval of the projects, no funding is spent on the local system.

At inception of NDDOT's rail-safety programs in the mid 1970's there were approximately 100 train-vehicle crashes per year; the number of such crashes has decreased markedly to 27 in 2013 (the latest final data).

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2/05/15

**Oehlke, H. Dave**

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**From:** Salwei, Steve S.  
**Sent:** Wednesday, February 04, 2015 4:18 PM  
**To:** Sinner, George B.  
**Cc:** Oehlke, H. Dave; Schneider, Mac J.; Levi, Grant N.; Henke, Ron J.  
**Subject:** Rail Safety Questions

Senator Sinner

Director Levi asked that I send you the below information you were looking for.

1. Did the \$500,000 appropriated in the 2013 get utilized for rail safety projects? If not, why not? The NDDOT has dedicated the funds for rail road safety projects. The NDDOT combined the funds with Federal funds to complete projects throughout state.
2. How much federal rail safety money did the DOT receive for the biennium 2013-2015? And how many total dollars have been spent on rail safety during the current biennium? The NDDOT received an apportionment of just over \$7 million dollars in federal aid for the 2013-2015 Biennium. The NDDOT has a program in place which committed approximately \$8.4 million in projects which includes state and local match.
3. What is the average cost to install gates and warning devices at a typical crossing? On average the cost is \$250 - \$500 thousand. The range is a result of a number of factors, including the operating railroad, crossing location, proximity of switches, and others.
4. What is the criteria that needs to be met for determining need for installing active warning systems and who determines whether a crossing needs gates? The NDDOT follows federal guidance for the placing of safety devices. Various items are used to determine potential need for safety enhancement at a crossing, including but not limited to: crash history, train and vehicle traffic speeds, trains per day, average daily vehicle traffic, exposure rate, school bus traffic, number of tracks and roadway lanes, etc. If railroad safety enhancements are being placed on a state highway the DOT working with the railroad makes the determination following federal guidance. If the device is being placed on a local roadway the local jurisdiction takes the lead on making the decision working with railroad. If federal funds are used on the local roads the NDDOT and railroad are part of the decision making process following federal guidelines. Typically federal funds are used for railroad safety improvements. We are not aware of any railroad crossing enhancements occurring with local funds only.
5. What other options for warning systems are available? For example, just lights and no gates, is that even allowed? There are other warning systems that are allowed such as stop signs. All devices per state law are required to meet the current Manual on Uniform Traffic Control Devices, that is adopted by the NDDOT.
6. How many public and private rail crossings are in ND? 3,448 public crossings and 1,241 private crossings that are at the same grade elevation.
7. Has the department ever held public meetings on rail safety? As part of the current 2007 rail plan the DOT did hold public input meetings. As part of the process to update the current plan in 2015 the DOT in cooperation with the PSC will seek public input.

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# 8-2  
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8. When was the last update to the North Dakota Rail Safety plan? I see that the DOT website indicates that it was 2007. The 2007 plan is the most recent plan. The NDDOT process to update the plan started internally in 2014.

Thanks and have a great day.

Steve Salwei  
Transportation Programs Director  
North Dakota Department of Transportation

# 1-1

DRAFT - RESOLUTION

SB 2293

Page 1 of 1

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2/26/2015

Whereas it is commonly know that the increased rail traffic all across the Midwest and particularly North Dakota has created a more hazardous travel environment for road vehicle and pedestrian traffic and;

Whereas the state of North Dakota legislature recognizes the increased hazards and;

Whereas the North Dakota Department of Transportation and the North Dakota Public Service Commission are actively working to address safety issues and are working closely with the Upper Great Plains Travel Institute to address and assess needs and solutions related to rail safety and;

We therefore wish it be known that we support and encourage all efforts of the North Dakota Department of Transportation, the North Dakota Public Service Commission, and the Upper Great Plains Travel Institute and ask that this group work closely with all counties and cities in the state of North Dakota to develop a more safe environment for our state's citizens and visitors.

February 11, 2015

#1-1  
2/12/15

PROPOSED AMENDMENTS TO SENATE BILL NO. 2293

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for reports to the legislative management regarding rail safety."

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. RAIL SAFETY REPORTS.** During the 2015-16 and 2017-18 interim, the chairman of the public service commission and the director of the department of transportation shall report quarterly to a committee designated by the legislative management regarding rail safety. The reports shall include:

1. Current railroad conditions, including crossings and rail lines;
2. A review of train speeds;
3. Existing railroad freight and passenger demands and future needs;
4. A review of emergency response procedures in the state;
5. A review of tank car specifications; and
6. A review of economic, safety, and environmental impacts on the state, including correlation with other modes of transportation, such as highways, pipelines, and air."

Renumber accordingly

SB 2293

3/12/2015

1.1

## **SB 2293**

Mr. Chairman and members of the House Political Sub Committee,

This is the only bill specifically addressing rail safety that is still remaining in the 64<sup>th</sup> North Dakota Legislative Assembly. All of us might agree that the railways are North Dakota's lifeline to the global marketplace. I know how important our rail systems are to every citizen of this state. Anecdotally, I have heard that the railroads carry up to 90% of our state's imports and exports. That is why the security of our rail systems is one of the paramount issues for North Dakota's future.

My original bill would have established a "Rail Safety Committee" to be overseen by the Public Service Commission. Further, it provided that committee a means of funding safety improvements and grants to first responders that would be approved and administered by the PSC. At the hearing for the original bill both the PSC and the DOT testified that they believed that the committee was unnecessary. However, the day before the hearing the DOT released a press release touting their own plan to address rail safety which included several of the provisions of this bill as well as some additional ideas that I thought warranted consideration. I think everyone recognizes the importance of this issue.

And, if we do not address this issue, someone else will. And, if we don't take control of our own future, someone else will. I have included several articles from different sources showing that other states are beginning to take action.

The bill before you was taken from the information released to in the press release by the DOT on Feb. 22<sup>nd</sup> and requires that both the DOT and the PSC report semi-annually to a committee designated by the Legislative Council on what the Commission and the DOT are doing to investigate and enhance rail safety in North Dakota.

Because there is a method to follow up on rail safety in North Dakota, I wholeheartedly support this bill and I ask for a Do-Pass recommendation from this committee. Thank you. I would be happy to answer any questions.

# NDDOT News Release

North Dakota  
Department of Transportation

February 4, 2015

## **NDDOT partners with PSC and other stakeholders on statewide rail plan**

The North Dakota Department of Transportation (NDDOT) announced today a partnership with the North Dakota Public Service Commission (PSC) and the Upper Great Plains Transportation Institute (UGPTI) in updating the current rail plan to include a component enhancing statewide rail safety to meet growing transportation needs in the state.

“The current rail plan was completed in 2007 and with all the changes that have occurred in our state over the last few years, it is important to seek public input and work closely with railroad providers to update the plan,” said Grant Levi, NDDOT Director. “By listening to the public and our rail partners, we will evaluate current trends influencing the rail system within the state and look at ways to enhance rail safety efforts across the state.”

The updated comprehensive plan is evaluating the overall rail system by reviewing:

- Railroad condition including railroad crossings and rail lines
- Train speeds
- Existing railroad freight and passenger demands and future needs
- Emergency response procedures in the state
- Tank car specifications
- Economic, safety, and environmental impacts on the State, include “tradeoffs” with other modes such as highways, pipeline, and air.

“The railroads travel through the heart of more than 150 North Dakota communities and are a major engine for our two largest industries, agriculture and energy,” PSC Chairman Julie Fedorchak said. “This comprehensive state rail plan will examine the system that exists today and identify ways to make it safer and more efficient. I look forward to working with industry, federal regulators and communities on this effort.”

Development of the rail plan includes a project steering committee which will survey stakeholders and conduct public meetings to gather input. The plan will work in tandem with rail related plans already underway including; Crude Oil Response Preparedness Report, Regional Railroad Infrastructure of North Dakota, BNSF’s Great Northern Corridor optimization study, NDDOT State Freight Plan, TransAction III and the Rail Safety Program.

The NDDOT also has a rail program in place which receives federal funding for rail crossing improvements. The program has been administered by the Department since the mid-1970s. Rail crossings have been greatly improved since that time.

The Legislature is considering the development of a rail safety inspection program to be administered by the PSC, as recommended in Gov. Jack Dalrymple’s budget. The state rail plan will help inform and direct the PSC’s work if the commission’s proposed rail safety program is approved.

The outcome of the updated rail plan will result in recommendations for enhanced investments in roadway infrastructure and rail safety programs.

1.3

Publication: Forum; Date: Apr 12, 2014; Section: Metro/State; Page: A7



## Railroad, fraternity face suit for student's death

By Brandi Jewett

Forum News Service

GRAND FORKS – The parents of a University of North Dakota student killed in a train accident two years ago are now suing the railroad company and fraternity they allege contributed to their son's death.

Minneapolis residents Corey and Robin Ayling filed the personal injury lawsuit last month in state district court in Grand Forks and seek at least \$50,000 in damages.

Their son, 20-year-old business student Blake Ayling, died while taking a shortcut during the early morning of March 24, 2012, through a rail yard owned by BNSF Railway just south of the UND campus.

At the time, police said he may have tried to climb over or through train cars while he walked through the yard. At some point, his right arm was severed and caused him to bleed to death.

Ayling's body was found around 7:30 a.m. by BNSF crew members.

His family has filed suit against BNSF and UND's Pi Kappa Alpha chapter – the fraternity where Ayling had attended a party earlier in the night. The fraternity's international governing body, headquartered in Tennessee, also is included in the suit.

"We will review the filing and respond through the legal process," said BNSF spokeswoman Amy McBeth in an email.

The international Pi Kappa Alpha organization did not respond to a request for comment by late Friday.

The case has been assigned to Judge Karen Klein. Documents filed with the court indicate the Aylings and BSNF have requested a jury trial.

A court date had not been set as of Friday, but BNSF filed a notice of removal earlier this week. If granted, the motion would move the case to federal court.

The lawsuit was filed March 24 by Corey Ayling, an attorney with the Minneapolis law firm McGrann, Shea, Carnival, Straughn & Lamb.

In their complaint, the Aylings allege BNSF knew pedestrians frequently crossed through the rail yard, but made little attempt to alert those pedestrians of the yard's unseen danger.

The danger, the complaint says, comes from the remote operation of railcars by BNSF crews. The

1.4

railcars in the yard are moved by means of remote control by crews who may or may not be in sight of the moving cars.

The railcars' sudden and silent movement creates an "ultrahazardous" area, according to the complaint.

The document also says there was no warning sign near the point Ayling is thought to have entered the yard. No fences, berms, ditches, gates or other measures were present to deter pedestrians, either.

"While entirely foreseeable, BNSF failed to acknowledge, consider, appreciate or act on the fact that its rail yard is in effect a silent lethal killing field in the middle of a concentrated population," the complaint reads.

"

We will review the filing and respond through the legal process.

AMY MCBETH, BNSF spokeswoman

Print

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Publication: Forum; Date: Jan 1, 2014; Section: Front page; Page: A1



## Cass County leads ND in train derailments

By Mike Nowatzki

Forum News Service

CASSELTON, N.D. – While they've never experienced a train disaster of the magnitude seen in Monday's fiery crash near here, Cass County residents are no strangers to train derailments.

The county led North Dakota with 30 train derailments from January 2000 through October 2013, and nearly half of the county's 37 overall train accidents were caused by track defects, according to Federal Railroad Administration data.

In Ward County, where a Canadian Pacific Railway train derailed and spewed a toxic cloud of anhydrous ammonia on Jan. 18, 2002, killing one person and injuring hundreds in Minot, there were three more train accidents overall but fewer derailments, with 27 recorded by the railroad administration.

Of the 37 train accidents in Cass County, 17 were blamed on track defects, 11 on equipment defects and nine on human factors.

Across the Red River in Clay County, Minn., 41 train accidents happened during the same time period, including 27 derailments. Only Hennepin, Ramsey and St. Louis counties had more train accidents.

The Fargo-Moorhead metro area is a transportation hub with a lot of railroad miles and North Dakota's most populous county, so it's not surprising that Cass County would lead the state in derailments, county Emergency Manager Dave Rogness said.

Still, County Commissioner Darrell Vanyo said an incident the magnitude of Monday's derailment and collision of two BNSF Railway trains near Casselton "warrants maybe someone digging deeper" into the causes of the accidents.

"If it's simply the result of more miles, heavier concentration of trains, then that's understandable," he said. "But if it's something else, then we really need to try to resolve that."

Vanyo called the 17 derailments blamed on track defects "a startling number."

"It certainly would cause me to want to hear from people from the railroads as to what are you doing in that regard," he said.

Casselton Mayor Ed McConnell said Monday's accident was the fourth – and worst – derailment on that stretch of track in the past decade or so. He said the ground might be great for farming, but he speculated that it's too soft to support heavy freight traffic, leading to frequent problems.

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"They fix it up, they do their maintenance," McConnell said of BNSF. "There's just so much traffic on it."

"With that kind of traffic, there are going to be accidents. Evidently, they're pretty bad accidents," he said.

BNSF officials did not respond to messages left by phone and email Tuesday seeking comment for this article. A Federal Railroad Administration spokesman said the agency did not have anyone available for interviews Tuesday.

On its website, BNSF reported that a westbound grain train with 112 cars derailed at about 2:10 p.m. Monday about one mile west of Casselton, hitting an eastbound 106-car train carrying crude oil on an adjacent track and causing it to derail, as well. An estimated 21 cars caught fire, some exploding and sending huge fireballs into the blue sky.

While derailments aren't rare, releases of hazardous materials from derailed train cars happen infrequently in North Dakota, statistics show.

From January 2000 to October 2013, the Federal Railroad Administration recorded 71 derailments involving hazardous materials in North Dakota, six of them in Cass County.

Only three of the 71 derailments involved releases of hazardous materials, including a Dec. 7, 2008, incident in which a westbound BNSF train derailed while rounding a curve near the Cass County city of Page. Thirty-seven cars and two locomotives derailed. One nearby resident who had to evacuate reported seeing a large fireball as a car full of methane gas exploded.

Rogness said most derailments in Cass County involve grain cars, and the county has been "pretty fortunate" to avoid major train accidents.

"The most recent years, we haven't had a lot of them. Certainly in the metro area we've been free of them. And I think that's probably as a result of a pretty good maintenance track record from (BNSF) and others within the metro area here," he said.

Forum reporter Kyle Potter contributed

to this article.

## CONSEQUENCES OF THE BOOM

### ROAD, RAIL DEATHS ON RISE

#### Oil-driven jump in traffic increases highway, train accidents in ND

By Erik Burgess

eburgess@forumcomm.com

South Heart, N.D.

The accident was so gruesome, Mary Hodel thought she had died.

She broke her knees, a tibia, a clavicle, a wrist, a shoulder and nine ribs. The heel of the foot she used to slam on the brake was shattered into 18 pieces.

"It was literally like hitting a brick wall," Hodel remembers, thinking back on that late April afternoon when she, along with her five children, smashed into the back of an idle oil truck at 40 mph on a two-lane gravel road just north of here on their way home from church.

But she just couldn't see it coming. Minutes before, several other big rigs passed her, each time kicking up a shroud of dust, eliminating visibility.

"I was two feet away from him when the haze started to lower and I could see that there was an outline of a vehicle," Hodel said.

It's an all too common occurrence on country roads near the Bakken nowadays, she says. And as more oil traffic funnels into the state, road and railway fatalities and accidents such as Hodel's are spiking.

In 2012, 169 people died on a North Dakota road. The last time the state had more than 150 deaths on the road was in 1981, with 167 fatalities, according to the North Dakota Department of Transportation. The last time there was at least 169 road deaths was when 185 died on the road in 1978.

Train-related fatalities also spiked statewide. Numbers kept by the Federal Railroad Administration show that, through October, 10 people died on a railway in North Dakota in 2012. That's up from only one railway death in 2011 and five in 2010. The last time the state had ten railway deaths was in 1980, according to FRA data that dates back to 1975.

But Hodel said she doesn't need stats to tell her it's more dangerous out her back door. The constant blizzards of debris stirred up by the truck traffic are a reminder enough.

"You feel like this isn't safe. This isn't how living out in the country is supposed to be," she said.

'We're getting crushed'

Of the 169 deaths on the road in 2012, 72 occurred in the northwest region, which includes the towns of Minot and Williston, the highest of any other region, according to the North Dakota Highway Patrol. The next highest region was the northeast, with 34 fatalities last year.

Five of the 10 train deaths and 37 of 84 nonfatal accidents involving a train, or 44 percent, took place in what the DOT labels an oil-producing county.

Jim Hall, a transportation consultant in Washington and former chairman of the National Transportation Safety Board, called it "common sense" that the increases in accidents and the huge jump in traffic in the state are connected.

"If I was a public official or a citizen of the area, I would be concerned," he said.

According to the DOT, the state had more than one million registered vehicles last year, up from 889,213 in 2011. There were more than 509,000 licensed drivers statewide in 2012, up from 496,543 the year before.

Foot traffic is also up as the population continues to grow, especially in the west. In April, the Census Bureau called Williston the fastest-growing micro-area in the country. According to a recent North Dakota State University study, Williston could hit 44,000 people by 2017, while Williams County could see 70,000 people. Both numbers are triple the population figures from the 2010 census.

Sgt. Tom Iverson of the Highway Patrol said the Bakken area is seeing "an increase in all law enforcement activities," meaning more service calls, car crashes and railroad crossing incidents.

"Our troopers out there are very, very taxed," Iverson said. "They've been working a lot of overtime, and we're just kind of getting crushed out there actually."

The area has seen rapid growth in the trains used to haul oil. BNSF has been hauling crude oil from the Bakken for five years, and in that time, they've seen the annual amount of oil hauled increase from 1.3 million barrels then to 88.9 million barrels in 2012, BNSF spokeswoman Amy McBeth said.

To accommodate, McBeth said BNSF has made a "significant investment" of \$86 million in the state for maintenance and capacity improvements.

Canadian Pacific Railway, which has a main line running through the Bakken, invested more than \$90 million in the state in 2011 for infrastructure upgrades, said spokesman Ed Greenberg. Nationwide, CP's crude oil moved by rail has gone from 13,000 carloads in 2011 to a forecasted 70,000 carloads in 2013, and the Bakken is an important part of that, Greenberg said.

And it's not just commodity trains that are expanding. Amtrak noted in the October 2012 edition of their company newsletter that their Williston depot saw more riders by June in 2012 than it had the entire previous fiscal year. That station is now expanding, doubling the depot's waiting area to better accommodate what they call a "tsunami of passengers."

Iverson said while the population is spiking, other factors go into road fatalities. In North Dakota last year, 50 percent of deaths on the road involved alcohol, higher than the national average.

"I hate to always go back to our increase in population and always blame everything on that, but a lot of things stem from that," he said. "If more people are coming here and working, we're just naturally going to see an increase in these things."

Train 'safety blitz'

Railroad companies say they have noticed an increase in statewide incidents and are working to educate the public on railway safety, in part through the state chapter of Operation Lifesaver, a national rail safety nonprofit.

Both BNSF and CP took part in what they deemed a "safety blitz" in the western part of the state in the summer of 2012, holding safety presentations, using a targeted ad campaign and placing law enforcement officers on trains to monitor how drivers act at crossings.

Increased federal oversight is also coming. Representatives from groups such as the FRA, NDDOT, Montana DOT, BNSF, CP, tribal police and sheriff's offices from Montana and North Dakota oil counties have formed an effort called the Rail Accident Mitigation Project.

"In those counties, they sat down almost like a diagnostic team and said 'Well, what do we need to do here?'" said FRA spokesman Warren Flatau.

Since Operation Lifesaver began in 1972, vehicle-train collisions have gone down 80 percent nationwide, said Serena Schmit, a state coordinator for the group. Still, she admitted that North Dakota is seeing a recent rise in train-related accidents.

Iverson said the 15 new full-time troopers called for in by Gov. Jack Dalrymple's 2013 budget would help alleviate the issues that come with more traffic.

Not everyone sees the correlation between more accidents and more traffic as crystal clear. Peter French, assistant vice president of safety and performance analysis at the American Association of Railroads, says because North Dakota's rail fatalities in general are so low, a one-year increase is difficult to explain precisely.

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"There are other states that have a lot more traffic and a lot more of a problem with highway-rail (accidents)," he said. "My guess is some of it can be explained by expanding population and some of it perhaps not."

Still, French said if North Dakota's population continues to boom, he would expect road and railway accidents to also rise proportionally.

Schmit says the increases should be shocking.

"We might not think that these numbers are high. The scary thing is that they're rising," she said. "We shouldn't be seeing incidents like this on the rise."

An evolving state

Increased traffic into the state is more than a danger to humans. Wayde Schafer, a spokesman for the Sierra Club, says the population boom out west has had a negative effect on local flora and fauna as well.

Only four percent of land in the state is public, Schafer said, and with more roads, trucks, and trains, that little bit of public land is becoming all the more valuable.

"People are not going to recreate in an oil field," he said. "(The Badlands have) become very industrialized, and you have way more people, and with people comes noise and traffic and trash."

Hodell says she still enjoys living here. If you stop into town, you can find her at her café, The Farmer's Daughter. She still attends physical therapy twice a week, reconditioning her legs, but doctors say she'll never be able to run again.

"We chose South Heart," Hodell said. "It's a small town. We like that. We like the fact that everybody knows each other."

Her children, all under the age of 12, escaped with relatively minor injuries, some cuts and bruises. One son suffered a broken jaw. Hodell says they're closer now, after the accident.

Still, the mother admits she's worried about the way the state is changing and she fears for her eldest son who will soon be out on the same streets where she had her accident.

Roadside sunflowers are caked in orange debris from the constant truck traffic, she says, and huge 18-wheelers pass her by regularly on the skinny gravel roads.

"It's not like when I was kid and I learned to drive on those country roads. It's a lot more dangerous now," Hodell said. "You do say your prayers a lot when you're driving."

Readers can reach Forum reporter

Erik Burgess at (701) 241-5518

Our troopers out there are very, very taxed. They've been working a lot of overtime, and we're just kind of getting crushed out there actually.

SGT. TOM IVERSON,

North Dakota Highway Patrol

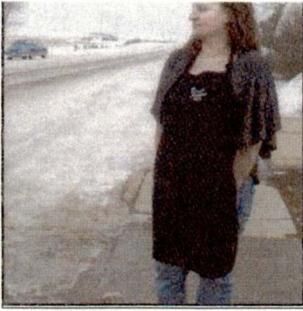


Michael Vosburg / Forum Photo Editor

A BNSF Railway train approaches a pedestrian crossing recently near Broadway in Fargo. Train-related fatalities increased in North Dakota last year, along with fatal traffic accidents.



1.9



Bryan Horwath / Forum News Service

Mary Hodell looks out into the street in South Heart, where last April she was severely injured in an accident with an oil truck while she was driving with her five children in the vehicle. "We were very lucky. It could've been so much worse," she said.



Special to The Forum

After the April 2012 accident that totaled her vehicle, Mary Hodell has to go to physical therapy twice a week. Her five children, who were also in the vehicle at the time of the accident, didn't suffer major injuries.



# Federal Railroad Administration Office of Safety Analysis

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## 1.12 - Ten Year Accident/Incident Overview

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### 1.12 - TEN YEAR ACCIDENT / INCIDENT OVERVIEW BY CALENDAR YEAR (January-December)

You Chose Months January Through December

Run Date: Mon, Jan 19, 2015

Reporting Level:... ALL - - - - Railroad Group:... ALL RAILROADS

NORTH DAKOTA

ALL RAILROADS SELECTED

Category	CY 2006	CY 2007	CY 2008	CY 2009	CY 2010	CY 2011	CY 2012	CY 2013	CY 2014	CY 2015	% Change From CY 2013 to CY 2014	% Change From CY 2006 to CY 2014	Total For CY 2006 to CY 2014
Number of railroads included	3	3	3	3	3	3	4	4	4	.	0.000	33.333	.
<b>TOTAL ACCIDENTS/INCIDENTS 1/</b>	<b>81</b>	<b>92</b>	<b>109</b>	<b>88</b>	<b>110</b>	<b>133</b>	<b>131</b>	<b>110</b>	<b>94</b>	.	<b>-14.545</b>	<b>16.049</b>	<b>948</b>
--- Total fatalities	2	4	3	3	5	1	10	5	6	.	20.000	200.000	39
--- Total nonfatal conditions	51	56	74	60	78	87	99	83	58	.	-30.120	13.725	646
--- Employee on duty deaths	.	.	.	.	1	.	1	.	.	.	.	.	2
--- Nonfatal EOD injuries	34	40	50	43	63	66	67	47	43	.	-8.511	26.471	453
--- Nonfatal EOD illnesses	2	3	3	3	.	2	1	2	.	.	.	.	16
--- Total employee on duty cases	36	43	53	46	64	68	69	49	43	.	-12.245	19.444	471
--- Cases with days absent from work	21	30	33	25	45	45	37	32	22	.	-31.250	4.762	290
--- Trespasser deaths, not at HRC	2	.	2	.	2	1	4	2	2	.	0.000	0.000	15
--- Trespasser injuries, not at HRC	1	1	3	.	1	3	3	2	4	.	100.000	300.000	18
--- Passengers kld in train accs or crossing incidents	.	.	.	.	.	.	.	.	.	.	.	.	.
--- Passengers inj in train accs or crossing incidents	.	.	.	.	.	.	.	2	.	.	.	.	2
--- Passengers kld in other incidents	.	.	.	.	.	.	1	.	.	.	.	.	1
--- Passengers inj in other incidents	3	6	8	4	2	3	4	7	6	.	-14.286	100.000	43
<b>TRAIN ACCIDENTS</b>	<b>21</b>	<b>28</b>	<b>25</b>	<b>19</b>	<b>20</b>	<b>36</b>	<b>18</b>	<b>18</b>	<b>15</b>	.	<b>-16.667</b>	<b>-28.571</b>	<b>200</b>
--- Train accident deaths	.	.	.	.	1	.	.	.	.	.	.	.	1
--- Train accident injuries	1	1	.	1	1	2	.	2	.	.	.	.	8
--- Human factor caused	11	9	7	3	8	7	5	8	4	.	-50.000	-63.636	62
--- Track caused	6	15	12	9	7	22	8	5	7	.	40.000	16.667	91
--- Motive power/equipment caused	2	3	4	5	5	5	3	3	1	.	-66.667	-50.000	31
--- Signal caused, all track types	.	.	.	.	.	.	.	.	.	.	.	.	.
--- Signal caused, main line track	.	.	.	.	.	.	.	.	.	.	.	.	.
--- Miscellaneous caused	2	1	2	2	.	2	2	2	3	.	50.000	50.000	16
--- Collisions	.	1	1	.	.	.	1	2	1	.	-50.000	.	6
----- Collisions on main line track	.	.	.	.	.	.	1	.	.	.	.	.	1
--- Derailments	15	24	21	19	16	34	14	13	14	.	7.692	-6.667	170
--- Other types, e.g., obstructions	6	3	3	.	4	2	3	3	.	.	.	.	24
--- Train accidents on main line 5/	10	18	12	11	15	18	13	11	7	.	-36.364	-30.000	115

1.10

--- Accidents on yard track	8	7	8	5	3	8	2	4	4	.	0.000	-50.000	
--- HAZMAT RELEASES	.	.	.	1	.	.	.	1	.	.	.	.	.
--- Cars carrying hazmat	36	45	94	103	133	12	132	136	.	.	3.030	277.778	
--- Hazmat cars damaged/derailed	3	9	1	8	15	21	1	29	1	.	-96.552	-66.667	105
--- Cars releasing	.	.	6	1	.	.	.	18	.	.	.	.	25
--- Accidents with reportable damage over \$100K	9	9	11	6	9	11	4	6	6	.	0.000	-33.333	71
.... PERCENT of all train accidents	42.857	32.143	44.000	31.579	45.000	30.556	22.222	33.333	40.000	.	20.000	-6.667	.
--- Accidents with reportable damage over \$500K	3	4	5	4	6	5	.	4	2	.	-50.000	-33.333	33
.... PERCENT of all train accidents	14.286	14.286	20.000	21.053	30.000	13.889	.	22.222	13.333	.	-40.000	-6.667	.
--- Accidents with reportable damage over \$1M	3	2	4	2	2	3	.	1	1	.	0.000	-66.667	18
.... PERCENT of all train accidents	14.286	7.143	16.000	10.526	10.000	8.333	.	5.556	6.667	.	20.000	-53.333	.
HIGHWAY-RAIL INCIDENTS	12	13	14	16	21	20	27	27	24	.	-11.111	100.000	174
--- Highway-rail incidents deaths	.	4	1	3	2	.	4	3	3	.	0.000	.	20
--- Highway-rail incidents injuries	4	4	5	6	8	9	16	18	5	.	-72.222	25.000	75
--- Incidents at public xings	12	11	13	15	19	19	25	24	23	.	-4.167	91.667	161
.... PERCENT of total Highway-rail incidents	100.000	84.615	92.857	93.750	90.476	95.000	92.593	88.889	95.833	.	7.813	-4.167	.
OTHER ACCIDENTS/INCIDENTS 3/	48	51	70	53	69	77	86	65	55	.	-15.385	14.583	574
--- Other incidents deaths	2	.	2	.	2	1	6	2	3	.	50.000	50.000	18
--- Other incidents injuries	46	51	69	53	69	76	83	63	53	.	-15.873	15.217	563

**FOOTNOTE 1. Total Accidents is the sum of Train Accidents, Crossing Incidents, and Other Accidents/Incidents**

**FOOTNOTE 2. Class I Railroad Group selections are reported based on the System Reporting Level to ensure all subsidiary railroads are included**

**FOOTNOTE 3. Other Accidents/Incidents are events other than Train Accidents or Crossing Incidents that cause physical harm to persons**

**FOOTNOTE 4. Data does not support rates being calculated when either or both Region and/or State are selected.**

**1.12 - TEN YEAR ACCIDENT / INCIDENT OVERVIEW BY RAILROAD / REGION / STATE / COUNTY  
BY CALENDAR (January-December)**

Run Date: Mon, Jan 19, 2015

**NORTH DAKOTA**

\*\*\*\*\* ONLY THOSE RAILROADS REPORTING ACCIDENTS/INCIDENTS ARE INCLUDED IN THIS REPORT. \*\*\*\*\*

\*\*\*\*\* MULTIPLE REPORTS ARE OFTEN REQUIRED TO REPORT A SINGLE ACCIDENT/INCIDENT. \*\*\*\*\*

Obs	Railroad	Total Accident/Incident Records	Percent Of Total	Form 57	Percent Of RR Total	Form 54	Percent Of RR Total	Form 55a	Percent Of RR Total	System Railroad	Consolidated Railroad
1	BNSF Rwy Co. [BNSF]	568	53.636	105	18.486	140	24.648	323	56.866	BNSF	
2	SOO Line RR Co. [SOO]	166	15.675	25	15.060	22	13.253	119	71.687		
3	Amtrak [ATK]	108	10.198	14	12.963	.	.	94	87.037	ATK	
4	Dakota, Missouri Valley & Western RR, Inc. [DMVW]	82	7.743	8	9.756	13	15.854	61	74.390		
5	Red River Valley & Western RR [RRVW]	53	5.005	6	11.321	16	30.189	31	58.491		
6	Northern Plains RR, Inc. [NPR]	45	4.249	6	13.333	6	13.333	33	73.333		
7	Canadian Pacific Rwy Co. [CP]	35	3.305	10	28.571	2	5.714	23	65.714		
8	Dakota Northern RR, Inc. [DN]	2	0.189	.	.	1	50.000	1	50.000		
		<b>1,059</b>	<b>100.000</b>	<b>174</b>		<b>200</b>		<b>685</b>			

*FOOTNOTE 1. Form 55a used for reporting deaths and injuries. Form 54 for train accidents, and Form 57 for highway-rail crossing incidents*

1.12

## Forum editorial: Marquart advances rail debate

ed Today at 4:28 a.m.

The initial reaction to Rep. Paul Marquart's, DFL-Dilworth, oil train safety proposal is Republican anti-tax boilerplate. While giving lip service to the need to improve rail safety as it applies to oil trains rumbling through Minnesota communities, Republican leaders in the House apparently are not willing to pay for a core function of government: public safety.

Assistant House Minority Leader Marquart comes from a city steeped in railroad history. A railroad town from its beginnings, Dilworth celebrates its heritage with annual Loco Daze. Marquart is a former mayor of Dilworth. He is not anti-railroad. Rather, he is emerging as a champion of improving oil train rail safety.

Marquart's bill is co-sponsored by Rep. Frank Hornstein, DFL-Minneapolis, and several other Democrats. It seeks \$100 million in revenue from new taxes on railroads. The money would be used to improve rail crossings, and given to cities to use for safety programs, such as first responder training, emergency services, and specialized rail safety equipment.

Republican House Transportation Chairman Tim Kelly of Red Wing said his majority caucus is developing its own transportation plan, but that a railroad safety provision probably won't be ready for at least a year. Not good enough, said Hornstein. He said his Minneapolis district can't wait to address oil train safety concerns.

And always the good neighbor, the BNSF Railway, the major carrier of volatile Bakken oil through Minnesota, said the railroad would "absolutely" take the state to court if Marquart's legislation passes. The railroad says the state tax would violate federal law.

Additionally, the broader transportation funding debate likely will center on DFL proposals to increase the gasoline tax, a proposition that will go nowhere in the Republican House. Republicans want to shift a portion of the state's surplus to transportation, a prospect Gov. Mark Dayton and state Senate Democrats say is the wrong way to ensure sustainable financing. It's unsure how much attention rail safety will get when the transportation funding melee heats up.

Marquart is right to call attention to escalating risks oil trains visit on Minnesota communities along the tracks. New statistics confirm the risk is real. Oil train wrecks, fires and explosions are up 28 percent since the North Dakota oil boom took off. Oil train derailments are making headlines more frequently. The more attention on oil train safety – whether state, federal or local – the faster railroads and industries associated with oil transport will act to improve safety records.

Marquart's legislation likely won't make much headway in the Republican-controlled House. But the debate will be useful to better define the state's role in protecting its residents from danger on the rails. Moreover, he's forcing his colleagues on both sides of the aisle to reveal where their commitments lie: to an anti-tax ideology, to fealty to the railroads, or to real-world public safety. That's a debate worth watching.

*Forum editorials represent the opinion of Forum management and the newspaper's Editorial Board.*

## Minn. state leaders disagree on rail oil safety approach

By [Don Davis, Forum News Service](#) on Mar 10, 2015 at 4:50 p.m.

### [Email News Alerts](#)

ST. PAUL -- There is no overall agreement on how to prevent Minnesota oil train explosions.

Democrats want to raise railroad taxes \$100 million to improve oil train safety. Republicans balk at higher taxes and say more information is needed before drawing up a solution.

Assistant House Minority Leader Paul Marquart of Dilworth and Rep. Frank Hornstein of Minneapolis, along with Democratic colleagues, on Tuesday released their plans to expand the property tax to railroad cars and to increase assessments on railroads. It is a plan similar to that of Democratic Gov. Mark Dayton.

Republicans, who control the House, are expected to release their transportation plan soon, but House Transportation Chairman Tim Kelly, R-Red Wing, said more information is needed before a comprehensive rail safety plan is written.

"This is a huge, huge issue," said Marquart, who lives a half mile from tracks carrying five to seven oil trains a day and whose high school classroom where he teaches is two blocks from the tracks.

The entire Dilworth community, where Marquart once was mayor, is within the half-mile danger zone of the tracks, Marquart said. "We have to make intersections and crossings safer."

The Democrats propose increasing assessments on the four largest Minnesota railroads -- including BNSF and Canadian Pacific railway companies, which carry most of the oil -- to provide \$32 million that would be used to improve railroad crossings. Changing the law to charge property tax on rail cars would provide the state \$20 million a year for crossing improvements and give local governments \$45 million to use however they want.

Marquart and Hornstein emphasized the need to improve crossings, although none of the past five weeks' oil train derailments and fires they mentioned in Iowa, West Virginia, Illinois and Canada occurred near crossings.

Kelly noticed that crossings were not blamed for the fiery derailments.

"I believe we need to understand the problem more," Kelly said, although he agreed that many crossings are dangerous or cause traffic congestion and should be improved. "I don't think we fully understand the extent of the problem and how to solve it."

Crossing improvements could be funded under the transportation bill he plans to announce soon, Kelly said. However, he added, a solution to oil train safety may not come until next year.

"It is our responsibility to deal with it," Kelly said, adding that the answer is not just taxing railroads more when a solution is not known.

Railroad lobbyist John Apitz said that not only is the Democratic plan a \$100 million tax increase on railroads, at least some of it may violate federal law dealing with taxing railroads. He said if the legislation were to pass, railroads "absolutely" would take the state to federal court.

Also, he said, the new taxes come at a time when railroads are spending money to improve their Minnesota tracks to reduce congestion.

BNSF alone plans to spend about \$500 million this year on its Minnesota property, much of it along the line from Moorhead to the Twin Cities that carries much of the oil.

Hornstein said Minnesota cannot wait to deal with crude oil being shipped from North Dakota's Bakken oil region and from southern Canada.

"We are at the crossroads of oil transportation by rail," Hornstein said.

He mentioned a federal report predicting more than 200 crude oil and ethanol-carrying trains will derail in the next two decades, with 10 in urban areas. Total cost to recover from the derailments would be more than \$18 billion, the U.S. Department of Transportation predicted.

With railroads earning ever-increasing profits, Hornstein and Marquart said, they should pay for safety improvements.

The Democratic plans, Hornstein said, are "asking the railroad to pay their fair share. ... This should not be a cost to taxpayers."

What started a year ago as just an oil safety debate quickly expanded to include traffic problems when Dayton began a series of rail safety summits and local officials complained about rail crossings being blocked for long periods.

Marquart said Moorhead officials are concerned that trains can block crossings in that city four to eight hours a day, making it difficult for police, firefighters and ambulance workers to respond to emergencies.

**Explore related topics:** [NEWS](#)

## Wisconsin Democrats want oil train rules on fast track



Derailed oil tanker train cars burn near Mount Carbon, W.Va., Monday, Feb. 16, 2015. A CSX train carrying more than 100 tankers of crude oil derailed in a snowstorm, sending a fireball into the sky and threatening the water supply of nearby residents, authorities and residents said Tuesday. (AP Photo/The Daily Mail, Marcus Constantino)

WASHINGTON — The Obama administration should take “immediate action” to boost the safety of moving crude by rail following a string of oil train explosions, argue a pair of Wisconsin lawmakers.

Wisconsin Democratic Sen. Tammy Baldwin and Rep. Ron Kind insist that the accidents — including two in Ontario, one in Illinois and another in West Virginia in the past four weeks — illustrate the need for a rapid phase out of “antiquated” tank cars that are prone to rupture as well as stepped-up standards for new models.

The Department of Transportation proposed requiring more resilient tank cars, speed limits and better braking systems for trains heaving highly hazardous material last July, but those mandates have not been finalized despite a Jan. 15 deadline imposed by Congress.

The administration should “issue final rules without further delay,” Baldwin and Kind say in a March 9 letter to President Barack Obama that also makes the case for strengthening the proposal.

“Recent accidents make clear the need for rules stronger than those originally proposed,” they wrote. “These catastrophes have illuminated the many areas ripe for improvement.”

In particular, Baldwin and Kind want the Transportation Department to accelerate the planned phaseout of legacy DOT-111 tank cars — and go faster than the proposed two-year time frame. They also want the government to boost the proposed safety requirements for tank cars going forward, since the recent accidents involved newer CPC-1232 tank cars that were designed to be more resilient in crashes.

**Read more:** [West Virginia train derailment puts focus on rail safety](#)

“Standards in the final rule should require enhanced safety features beyond those installed in the cars recently deployed by the industry,” Baldwin and Kind say.

They also add their voices to a growing clamor for the crude shipped on U.S. railroads to first be stabilized, a process that removes volatile gases such as methane and propane. North Dakota regulations, adopted in December and set to go into effect on April 1, would require oil producers to stabilize their crude with the goal of lowering its vapor pressure to 13.7 pounds per square inch.

But there is no national standard and some lawmakers have questioned whether the North Dakota threshold is sufficient.

**Read more:** [Senator wants tougher rules for volatile oil](#)

Baldwin and Kind also argue that local communities should have more information about oil trains that rumble by — going beyond the Transportation Department’s proposal for state emergency response commissions to be notified about trains containing 1 million gallons of Bakken crude.

And they suggest that proposed speed limits are insufficient; those requirements should factor in both braking technology and tank car durability. “If the tank car cannot reasonably withstand impact above a certain speed, then the train should not travel at that speed,” Baldwin and Kind say.

Big rewrites to the July 2014 proposal could further delay the rule making, and it is not clear how far regulators could stray beyond the original draft.

Oil industry representatives, including the American Petroleum Institute, have argued for a holistic approach to crude-by-rail safety — going beyond thickening tank car shells to ensuring the integrity of the tracks on which they travel.

The Federal Railroad Administration is responsible for inspecting some 160,000 miles of track in the United States.

Baldwin and Kind acknowledged that infrastructural deficiencies may also be at play.

“Preliminary reports from the scene of the recent oil train accidents have suggested that a failure of rail infrastructure has been to blame for the derailments,” the lawmakers write. “We have also seen evidence of deteriorating bridges in our state on rail lines that carry crude oil and have called on railroads to repair them swiftly.”

High-profile oil train accidents may make it more difficult for regulators to justify relatively permissive tank car changes and phaseout schedules, noted ClearView Energy Partners in a research note to clients.

In its July 2014 proposal, regulators at the Transportation Department invited stakeholders to weigh in on three different designs for tank cars constructed after Oct. 1, 2015 that transport flammable crude:

- One of the options largely mirrors the CPC-1232 design voluntarily adopted by the industry in 2011, with requirements for 7/16 inch thick steel hulls and steel jackets but no rollover protection or electronically controlled pneumatic brakes.

1.18

- A second option would step up the steel thickness to 9/16 inch, but without imposing requirements for electronically controlled pneumatic brakes or rollover protection.
- A third option would have all three changes: 9/16 inch steel, electronically controlled pneumatic brakes and rollover protection.

Some 52,000 legacy DOT-111 tank cars were still being used to haul crude and ethanol last year, according to Transportation Department estimates.

1.19

## OUR OPINION: Bus accident must prompt safer crossings statewide

By Korrie Wenzel Today at 5:00 a.m.

The January collision between a school bus and freight train near Larimore, N.D., was due to an error on the part of the bus driver, the state Highway Patrol has concluded. In the weeks since the Jan. 5 accident, many wondered if the crash came after some sort of medical condition that rendered the driver unable to stop the bus, but the Highway Patrol's investigation shows otherwise.

It's a sad chapter in this tragic drama, but we hope it's not the conclusion. There's still work to be done, and the Highway Patrol's investigation should serve as a catalyst to push forward a plan to make the state's railroad crossings safer and more secure.

We first called for this in the days following the Larimore incident, which resulted in the death of the bus driver and a student, and also the hospitalization of 10 others. The crash came after the bus nosed across the tracks and was hit by a 47-car train traveling at more than 40 mph.

The Herald editorialized after the crash that as the oil boom creates more train traffic and more trains running at higher speeds, the people of North Dakota and northwest Minnesota are entitled to safer, more secure crossings.

Stop signs just aren't enough, and we said the new era of railroads -- again, more trains and higher speeds -- has developed faster than many people's ability to adapt. It means more flashing lights and crossing gates are needed.

Stop signs and road markings are inadequate, and others will die if widespread safety upgrades aren't made.

That the driver in the Larimore incident did not have a medical incident only strengthens our belief, since it further shows that humans make mistakes. Larimore also showed that trains traveling 40, 50 or 60 mph are in no way forgiving.

In the weeks following the Larimore incident, North Dakota Democrats proposed Senate Bill 2293, which would create a five-member Rail Safety Committee and reallocate certain railroad fuels taxes into a rail safety fund controlled by the Public Service Commission.

When introduced, Democrats noted that since 2006, there have been more than 900 accidents/incidents involving rails or rail cars in North Dakota. They quoted a report that said North Dakota train-related accidents increased by 16 percent between 2006 and 2014.

As introduced by state Sen. George Sinner, D-Fargo, the newly formed committee could recommend to state and local governments enhancements to improve rail safety and emergency response to accidents. It also could recommend to the PSC expenditures from the rail safety fund to implement prioritized crossing recommendations. It could allocate money for training emergency responders and school bus drivers.

1.20

SB 2293 easily passed the Senate and is scheduled to be discussed in a House committee today. We're hoping it breezes through the House.

The Bakken's great growth has revitalized train traffic in North Dakota, and we know those busy rails are an indicator of a booming and vibrant economy. Meanwhile, we likewise know North Dakota can afford to make renovations that will create safer intersections where those rails cross roads and highways.

The state needs this rail traffic, yet the people who cross those tracks deserve peace of mind that they aren't risking their lives each time they do so.

Let's mourn the loss of life in Larimore for what it is: tragic and sad. Let's also be grateful more lives were not lost that day.

And finally, let us not hold in contempt the driver of the bus, whose unfortunate mistake could have happened to so many of us.

But at the same time, we hope the accident at Larimore -- and other incidents like it -- will light the fire of conviction in state lawmakers, who have the power to do something to prevent the next great North Dakota tragedy.

-- Korrie Wenzel for the Herald

**Explore related topics:**

SB 2293  
3/12/2015 2.1

## HOUSE POLITICAL SUBDIVISIONS COMMITTEE

March 12, 2015 – 9:30 a.m. – Prairie Room

North Dakota Department of Transportation  
Steve Salwei, P.E., Transportation Programs Director

### SB 2293

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Good morning Mr. Chairman and members of the committee. I'm Steve Salwei, Transportation Programs Director for the North Dakota Department of Transportation (DOT). I'm here to support SB 2293.

This morning I would like to share with the committee what the DOT does relating to rail planning and crossing improvements and what we don't have jurisdiction over, so there is no misunderstanding of what will be reported on to Legislative Management.

The DOT does administer the state's rail planning activities. The current statewide rail plan was completed in 2007 and with all of the changes that have occurred in our state in recent years; the Department started its internal process last fall to update the plan. The decision has been made to update the rail plan in partnership with the Public Service Commission and Upper Great Plains Transportation Institute while working closely with the railroad providers in North Dakota.

By listening to the public and our rail partners we will evaluate current trends influencing the rail system within the state and look at ways to enhance rail safety across the state. The updated comprehensive plan is evaluating the overall rail system by reviewing:

- Railroad condition including railroad crossings and rail lines
- Train speeds
- Existing railroad freight and passenger demands and future needs
- Emergency response procedures in the state
- Tank car specifications
- Economic, safety, and environmental impacts on the State, including "tradeoffs" with other modes such as highways, pipeline, and air.

While the plan will cover the items I just mentioned, and we will report our findings to Legislative Management, I need to point out that we do not have regulatory authority over rail lines, train speeds, tank car specifications or emergency response procedures in the state.

In addition to the rail plan, DOT has resources available thru the Federal Highway's Railroad-Highway Grade Crossing Safety Program to fund crossing improvements. This program began in 1973, when Congress authorized expenditure of funds from the Highway Trust Fund for crossing improvements on the Federal Aid Highway System (FAS). In 1976, Congress extended funding to crossing improvements on all public roadways, not just roads on the FAS, and has renewed the program in all subsequent surface transportation acts.

While the funding we receive for this program is relatively modest, we have made great strides in helping to make rail crossings safer. Back in the 1970's North Dakota had over 100 train/vehicle crashes. In 2014 there were 28 train/vehicle crashes.

During the 2013-2015 biennium the DOT received an apportionment of just over \$7 million in federal aid. We have a program in place in which we have committed \$8.4 million for projects. Note: this includes, federal, state and local matching funds.

We administer the program using a federal prioritization process to rank crossings in North Dakota. The crossings are ranked by using a FRA's Web Accident Prediction System. Many factors are considered in the prioritization process:

- FRA predictor list ranking
- Observations of public, railroad, and local officials
- Number of school buses
- Proximity to schools
- Hazardous-material trucks present or designated route
- Amtrak route
- Population density near the crossing
- Highway speed limit
- Sight obstructions
- Proximity to roadway intersection
- Available budget and project cost estimates.

Once the crossings are ranked it may be necessary to conduct a field diagnostics. When federal funds are used a team consisting of NDDOT, railroad officials, local road authority and others conduct the review. At times local law enforcement, and the local school superintendent may join the diagnostics team. The field diagnostics is done to review the site for any potential hazards and to make a determination on any improvements that may be needed.

The table below shows a breakdown of the Public Crossings and Warning Devices in the state. In addition to the Public Crossings shown in the table, there are an additional 1,241 private crossings in the state that are not eligible for Federal Funding.

Breakdown of Public Crossings & Warning Devices														
RAILROAD	GATES & FLASHERS	FOUR QUAD	FLASHERS ONLY	STOP SIGNS	CROSSBUCKS (YIELD)	TOTAL AT-GRADE CROSSINGS	RR UNDER	RR OVER	TOTAL PUBLIC CROSSINGS	PEDESTRIAN CROSSING (separations & at-grade)				
BNSF	358	4	10	27	1,159	1558	54	71	1683	15				
CP RAIL	105	0	0	20	411	536	12	7	555	3				
DMVW	29	0	2	8	356	395	4	0	399	0				
DN	14	0	1	1	95	111	0	0	111	0				
NPR/MHC	26	0	0	0	328	354	2	0	356	0				
RRVW	51	0	2	3	438	494	4	1	499	3				
	<b>583</b>	<b>4</b>	<b>15</b>	<b>59</b>	<b>2787</b>	<b>3448</b>	<b>76</b>	<b>79</b>	<b>3603</b>	<b>21</b>				
	Active Warning Devices		602											
	<u>% of Public Crossings in the State</u>				<u>Active Warning Devices in the State</u>				<u>PRIVATE CROSSINGS (SEPARATIONS &amp; AT-GRADE)</u>					
BNSF	45.1856%				BNSF	372				BNSF	531			
CP RAIL	15.5452%				CP RAIL	105				CP RAIL	220			
RRVW	14.3271%				RRVW	53				RRVW	157			
DMVW	11.4559%				DMVW	31				DMVW	147			
NPR	10.2668%				NPR	26				NPR	148			
DN	3.2193%				DN	15				DN	38			
										TOTAL	1241			
<b>Legend:</b> BNSF = BNSF Railway (Burlington Northern Santa Fe)      DMVW = Dakota, Missouri Valley & Western Railroad CP RAIL = Canadian Pacific Rail      NPR = Northern Plains Railroad RRVW = Red River Valley & Western Railroad Company      DN = Dakota Northern Railroad, Inc.														

Attached is a list of Railroad Programs DOT participates in.

Mr. Chairman, this concludes my testimony. I would be happy to answer any questions that you may have. Thank You.

## NDDOT RAILROAD SAFETY PROGRAMS

### January 20, 2015

The following is a summary of the Rail-Highway Crossing Safety Programs.

There are four dedicated funds or programs for these activities:

Program or Fund	Funding Source	Purpose	Dollars per year	No. of Projects*	Comments
Hazard Elimination	FHWA – Safety (HSIP subcategory)	Elimination of identified physical hazards at highway-rail grade crossings. Typically, these are surface repairs & replacements; both traffic control & surfaces are eligible.	\$1.6M	10-15 per year	State or local 10% match, not included in numbers to the left
Protective Devices	FHWA – Safety (HSIP subcategory)	Installation of new and/or replacement of existing signals and signing at highway-rail grade crossings.	\$1.6M	6-10 per year	State or local 10% match, not included in numbers to the left
Quiet Zone	State (HTDF – Locomotive fuels excise tax)	The main purpose of this program is to aid local jurisdictions in developing rail quiet zones, which typically entails installation of Supplemental Safety Measures. SSMs are physical infrastructure above and beyond what is required or recommended, <u>allowing</u> (not requiring) locomotive engineers to avoid blowing their horns at crossings. A secondary purpose of the program is to first bring highway-rail grade crossings up to recommended standards within or adjacent to proposed quiet zones.	One-time program of \$1.6M	10 Total	The program could have included \$900K of federal funds, too. However, no eligible projects were identified over and above the regular federal programs.  All funds are obligated to specific projects with less than \$250K still to be reimbursed on two (2) open projects.  All funds must be spent by June 30, 2015.  Minimum local 10% match (most provide significantly more, not shown).
Locomotive Fuel Excise tax	State (HTDF) 10% local match	Upgrade existing signals, install new signals, or install new surfaces at highway-rail grade crossings.	\$250K One-time funding, each year of the 2013-15 biennium	Up to 8 Total	Initially, we had some difficulty identifying highway-rail grade crossing projects on which the railroads were willing to accept 100% state funds. However, they have since determined a way to use these funds to upgrade existing signals to assist with implementing positive-train control, a new federal mandate.  Minimum local 10% match, not shown.

\* Many of these projects are on the local system. Therefore, the NDDOT works cooperatively with local entities throughout the state to affect these projects. However, without the local road authority's approval of the projects, no funding is spent on the local system.

SB 2293

3/12/2015

3.1

## **Senate Bill 2293**

**Presented by:** Darrell Nitschke  
Director of Administration and Executive Secretary  
Public Service Commission

**Before:** House Political Subdivisions Committee  
The Honorable Lawrence R. Klemin, Chairman

**Date:** March 12, 2015

### **TESTIMONY**

Mister Chairman and committee members, I am Darrell Nitschke, Executive Secretary and Director of Administration with the Public Service Commission. The Commission asked me to appear today to offering neutral testimony on Engrossed Senate Bill 2293. I want to point out a number of initiatives that are underway that will provide periodic information on rail safety with which to update the legislature. These include the following;

The State Rail Plan on which the Commission is working collaboratively with DOT to update. The efforts in updating the State Rail Plan involves the Upper Great Plains Transportation Institute, which has proven expertise and a strong knowledge base on transportation issues in our state as well as strong connections to other states and national transportation organizations. This effort will, among other things, identify hazardous routes, review rail/highway crossings, examine traffic projects for the next 20 years and link that data to crossing information and bus routes. It will also include risk analysis and identify areas for low-cost improvements. Most importantly, this effort will involve input from the industry and affected communities, and provide opportunities for public

meetings and input, as well. The State Rail Plan will take 18 months to fully complete.

Commission has included in our budget a request for three new FTEs to spearhead a supplemental rail safety inspection program. This effort will put more rail inspectors on the ground looking for safety defects and working to hold the railroads accountable for high safety standards. The Senate has approved in our budget the three rail inspector FTEs and if approved by the House we plan to move forward with hiring and training as soon as the funding is available. This program will put us on the front lines with the railroads to get first-hand information on safety challenges and priorities in North Dakota.

At the same time, a comprehensive Crude Oil Incident Preparedness and Response review is also underway led by the Department of Emergency Services and all the relevant state agencies including the Commission. This effort will identify ways to improve the emergency response planning, coordination and training between stakeholders. Most importantly, it will set goals and specific action steps to enhance the skills and resources that exist at the state and local level for responding to crude oil incidents involving rail or any other method of transport.

In regard to the specific information you're requesting for the designated report in the current version of SB-2293, we want to point out that the Commission does not have jurisdiction over much of the subject areas, nor direct access to the information requested;

3.3

1. Current railroad conditions, including crossings and rail lines is under the Department of Transportation (DOT);
2. Train speeds is under the jurisdiction of the Federal Railroad Administration;
3. Existing railroad freight and passenger demands and future needs is with the railroads themselves;
4. Tank car specifications is under the Federal Department of Transportation:, and finally
5. Economic, safety and environmental impacts on the state will be part of the State Rail Plan.

Mister Chairman, this concludes my testimony. I will be happy to answer any questions.