

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

TRANSPORTATION COMMITTEE

Thursday, July 15, 2004
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator David P. O'Connell, Chairman, called the meeting to order at 9:00 a.m.

Members present: Senators David P. O'Connell, Duane Mutch, Dave Nething, Tom Seymour; Representatives Craig Headland, Joyce Kingsbury, Dan J. Ruby, Dorvan Solberg, Robin Weisz

Members absent: Representatives William E. Kretschmar, Elwood Thorpe, Ray H. Wikenheiser

Others present: See attached appendix

It was moved by Representative Weisz, seconded by Representative Solberg, and carried on a voice vote that the minutes of the previous meeting be approved as distributed.

RAILROAD RIGHT OF WAY STUDY

Indemnity Provisions and Insurance

At the request of Chairman O'Connell, committee counsel reviewed previous testimony on the railroad right of way study. He reviewed Senate Bill No. 2358 and the testimony received from the railroads, lessees, and insurance providers.

Mr. Steven D. Strege, Executive Vice President, North Dakota Grain Dealers Association, provided testimony on the railroad right of way study. He said Senate Bill No. 2358 applies solely to new leases and renewals of leases so the bill has had a very limited effect. He said elevators are unable to find a Federal Employers' Liability Act (FELA) endorsement in the insurance market. He said he very recently received a list from a representative from Burlington Northern Santa Fe Railway of insurance companies that provide FELA endorsements. He said he will review the list to determine the veracity of the list. He said the North Dakota Grain Dealers Association is not proposing any legislative change at this time. He said he is working at the federal level for relief so that elevators do not bear the cost of the railroads as to damages caused by the railroads.

Switches

Mr. Strege said the most pressing issue facing elevators is the Canadian Pacific Railway requiring elevators to pay for the switches going to and from an elevator. He said the Canadian Pacific Railway recently has offered to charge \$6,000 per year per switch instead of forcing the elevators to purchase the switches all at one time. He said the Canadian

Pacific Railway is shifting the cost for switches to elevators. He said this shift is unfair because the railroad controls the switch as to when it is replaced or maintained and creates the most wear and tear on the switch.

In response to a question from Representative Weisz, Mr. Strege said the Canadian Pacific Railway has not offered to charge for the switches based upon the number of cars that use the switch.

Mr. John Huber, Director of Government Affairs, Canadian Pacific Railway, Minneapolis, Minnesota, provided testimony on the railroad right of way study. He said the Canadian Pacific Railway is continuing dialogue with elevators on the matter of switches.

RAILROAD RAILCAR SUPPLY

Mr. Tony Clark, Commissioner, Public Service Commission, provided written testimony on railcar supply issues. A copy of his testimony is on file in the Legislative Council office.

In response to a question from Senator O'Connell, Mr. Clark said it would be difficult for a shipper to bring a complaint about service, i.e., a shortage of railcars, before the Surface Transportation Board because the problems are seasonal and would be resolved before there would be action by the board. However, he said, a complaint about rates can be taken to the Surface Transportation Board with a better chance for a long-term solution.

In response to a question from Representative Weisz, Mr. Huber said the only way for the Canadian Pacific Railway to increase capacity is to remove certain pinchpoints. He said this would require a major investment of capital. He said the decision to invest in capital is a business decision based on a cost-benefit analysis. He said the present system is at capacity in certain places.

In response to a question from Senator O'Connell, Mr. Huber said the Canadian Pacific Railway is a single-track railroad. He said the Canadian Pacific Railway is working with the Union Pacific and other railroads to transfer cars at pinchpoints. In addition, he said, the Canadian Pacific Railway needs more and better sidings.

In response to a question from Senator O'Connell, Mr. Huber said one reason for the delay in providing cars to elevators is that most of the freight goes to the

Pacific Northwest instead of toward the east. He said there has been a dramatic shift from freight going toward the east to the Pacific Northwest. He said this creates a longer distance and hence a longer cycle to return cars to this state.

In response to a question from Representative Weisz, Mr. Brian Sweeney, Legal Counsel and Executive Director of Government Affairs, Burlington Northern Santa Fe Railway, said the Burlington Northern Santa Fe Railway spends between 15 and 20 percent of the money made on capital expenditures. He said this amount exceeds \$2.5 billion per year. He said this money is spent on maintaining what the railroad already has, not building new track. He said there is a growing demand for the services provided by the railroad and there is no apparent solution to the problem of funding capital expenditures. He said the Burlington Northern Santa Fe Railway is over capacity on some lines.

In response to a question from Representative Weisz, Mr. Sweeney said as the railroad reaches capacity in certain corridors, the railroad addresses the capacity problem as it arises.

In response to a question from Representative Solberg, Mr. Sweeney said the Burlington Northern Santa Fe Railway owns, pays for, and maintains switches owned by the railroad.

DEALER LICENSING STUDY

At the request of Chairman O'Connell, committee counsel presented the third draft of a bill draft [50042.0300] to provide for more stringent licensing of motorcycle dealers. He said the bill draft was based on the regulation of automobile dealers with changes recommended by the Department of Transportation. He said the changes in this draft related to the removal of the requirement to repair, maintain, and service motorcycles; sign requirements; the name used for the franchise contract; the removal of the requirement of providing fees, taxes, and applications to the department within 15 days; and the repeal of North Dakota Century Code Section 39-22.3-07, relating to the prohibition of a dealer using a license to benefit another dealer.

Mr. Keith Magnusson, Director, Driver and Vehicle Services, Department of Transportation, provided testimony on the bill draft. He said this draft was the result of interested parties meeting with a representative from the department and agreeing on the provisions of the bill draft. He said the last audit of the department stated that the surety bond for motorcycle dealers was too low. He said the department may introduce legislation in the next legislative session to increase the amount of the bond.

Mr. Dwayne Wahl, D & S Auto & Trailer Sales, Mandan, provided testimony in opposition to the bill draft. He said he had changed his opinion since the meeting with the department and other dealers and is not in support of the bill draft. He said the bill draft

hurts small businesses. He said there are more independent motorcycle dealers than franchised dealers. He said independent dealers have to be creative to make a living. He said an independent dealer needs to sell new cycles as well as old cycles. He said he would not have been legal under the rules in the bill draft if the rules would have been in effect when he started his business. He said the changes in the bill draft benefit the franchised dealer and not the independent dealer. He said some dealers use motorcycles to supplement income and not as a main source of income. He said they may do this at odd hours. He said these dealers should not be placed out of business by the new rules. He said the sign requirements in the bill draft exempt franchised dealers. He said an independent dealer would have to follow the law without an exemption. He said the fines in the bill draft are mandatory and there should be an exemption for an honest mistake. He said there needs to be some discretion. He provided a handout of letters from certain motorcycle dealers written in opposition to the bill draft. A copy of the handout is on file in the Legislative Council office.

Mr. Craig Ohlhauser, Vallely Sport and Marine, Bismarck, testified in favor of the bill draft. He said the bill draft is not saying that a dealer cannot sell motorcycles after normal business hours, only that the dealer must have normal business hours. He said only franchised dealers should be able to sell new motorcycles. He said it is unfair for a franchised dealer to invest in a dealership while other dealers can sell new motorcycles without the investment. He said if an independent dealer wants a franchise there are still a number of franchises available. He said the point of the bill draft is not to put independent dealers out of business.

Mr. Keith Simonieg, Honda West, Dickinson, testified in support of the bill draft. He said the franchised dealers invest a lot of money in their dealerships and other dealers should not be able to sell new motorcycles without a new motorcycle dealer's license.

In response to a question from Representative Weisz, Mr. Simonieg said new Canadian motorcycles are sold in the United States when the exchange rate drops under 60 cents per dollar because the sale becomes profitable at this point.

Ms. Annette Behm-Caldwell, Open Road Honda, Bismarck, presented testimony in support of the bill draft. She said all franchises in this state are family-owned. She said after the meeting with the Department of Transportation, all the parties agreed to all aspects of the bill draft except whether there should be a separate new and used dealership license. She said the bill draft would prevent the abuses of dealers riding a motorcycle for free, of independent dealers selling new Canadian motorcycles, and of dealers bootlegging new motorcycles from another state. She said Honda has more requirements in the franchise agreement than this state would have under the bill

draft. She said the insurance requirement is a useful tool in removing illegitimate independent dealers. She said the cost of insurance would be about \$500 per year.

Mr. Justin Bohn, Cycle Hutt, Bismarck, presented testimony in favor of the bill draft. He said a person may become a franchised dealer for the investment of \$25,000 to \$30,000.

Mr. Wahl said dealers in this state sell into other states and this state should not restrict others from doing the same. He said he was against changing the rules in midstream. He said the bill draft curtails competition. He said new Canadian units are sold as used to customers in this state.

Representative Weisz said the free market system should determine whether the public buys Canadian motorcycles, not the Legislative Assembly.

At the request of Chairman O'Connell, committee counsel presented a bill draft [50086.0100] on the licensing of all-terrain vehicle dealers, a bill draft [50085.0100] on the licensing of all snowmobile dealers, and a bill draft [50041.0200] on the licensing of low-speed vehicle dealers. He said all of the bill drafts were very similar except for the fees charged for the license application and for additional decals or plates. He said these fees match what a person would pay when registering a snowmobile, all-terrain vehicle, or low-speed vehicle.

Mr. Magnusson provided testimony in favor of the bill drafts. He said the bill drafts provide basic minimum regulation required for consumer protection. He said an audit of the department found the department did not have any authority for the licensing of these dealers. He said the department discontinued the practice of licensing these dealers. After discontinuing the practice, he said, an Attorney General's opinion supported this position. He said it is in the best interest of the state to protect consumers by basic licensing.

In response to a question from Representative Weisz, Mr. Lyle Paulson, Administrator for Dealer Licensing, Department of Transportation, said once an automobile is taxed, the vehicle is a used automobile. He said a new automobile dealer can title a vehicle or the dealer can title and register a vehicle and still have the vehicle be new. He said the title would be marked that no tax had been paid.

In response to a question from Senator Mutch, Mr. Paulson said if a used automobile dealer buys a new automobile, the automobile dealer would have to pay a civil penalty of a fee of \$100 and pay the tax, title fee, and registration fee, as would the purchasing customer.

In response to a question from Senator O'Connell, Mr. Paulson said a motorcycle dealer under the bill draft would be treated the same as an automobile dealer is treated presently.

In response to a question from Senator Mutch, Mr. Paulson said the end result is the same for used

automobile dealers whether buying a new automobile from Canada or an automobile from another state.

Mr. Wahl said a used motorcycle dealer may go to Canada or out of state and purchase a new motorcycle without paying the state tax, title fee, or registration fee and sell the motorcycle to a customer who then pays the tax, title fee, and registration fee.

Ms. Behm-Caldwell said the committee should remove the 15-day requirement to get fees to the Department of Transportation.

Mr. Magnusson said the department needs some leverage over dealers to encourage the dealers to deposit fees with the department. He said without this encouragement, dealers will hold the money for as long as possible to make money on the float. He said the bill draft also requires paperwork to be sent to the department within 15 days. He said the customers come to the department, not the dealers, if the customer has not received the proper paperwork. He said the department needs the paperwork as soon as possible.

In response to a question from Senator O'Connell, Mr. Magnusson said the department would work with a dealer and provide a time extension under certain circumstances.

Ms. Behm-Caldwell said the penalties in the bill drafts are mandatory and there should be extensions or exceptions allowed under certain circumstances.

In response to a question from Senator Nething, Mr. Paulson said a 30-day requirement with discretion to waive for good cause may be an acceptable solution.

Representative Weisz said it appears there will be a bill in the session relating to motorcycle dealers regardless of what the committee decides.

UNINSURED AND UNDERINSURED MOTORIST COVERAGE

At the request of Chairman O'Connell, committee counsel presented a bill draft [50083.0100] to exclude a motorcycle from uninsured and underinsured motorist coverage for an automobile.

In response to a question from Representative Weisz, committee counsel said the bill draft creates parity in that an automobile policy would cover a person in any automobile and a motorcycle policy would cover a person on any motorcycle.

Mr. Pat Ward, North Dakota Domestic Insurers Association, provided testimony in favor of the bill draft. He said the intent of the bill draft is to provide that if an insurance company provides coverage on a motor vehicle, there is no coverage for motorcycles, and if the insurance company covers a motorcycle, then the policy provides coverage for a motorcycle accident. He said if an insurer knows a person has a motorcycle, then the insurer can underwrite the risk of that person being in a motorcycle accident.

In response to a question from Representative Ruby, Mr. Ward said parents can eliminate a child

from a policy. He said motorcycle accidents are not underwritten into automobile policies.

In response to a question from Representative Ruby, Mr. Ward said customers want coverage for any situation in which they may be injured, but do not want to pay premiums for something on which they do not expect coverage. He said the best solution is for everyone to be insured.

Mr. Rod St. Aubyn, Blue Cross Blue Shield of North Dakota, provided testimony in opposition to the bill draft. He said the bill draft would shift costs to health insurance. He said Blue Cross Blue Shield has the right of subrogation to go after underinsured motorist coverage. He said the bill draft inhibits Blue Cross Blue Shield's right to recover.

Mr. Ward said Blue Cross Blue Shield will still have the right of subrogation and would still be able to go after the assets of the insured, just not after the automobile insurance.

NO-FAULT AUTO INSURANCE

At the request of Chairman O'Connell, committee counsel presented a bill draft [50092.0100] to repeal no-fault auto insurance and a bill draft [50102.0100] to modify no-fault auto insurance. The bill to modify no-fault auto insurance would create a deductible of \$250 and place limitations on medical expenses, including the exclusion of charges for drugs sold without a prescription, charges for experimental treatments, and charges for medically unproven treatments. He provided as handouts a copy of a letter, previously provided, from a representative from American Family Insurance on suggested modifications to no-fault auto insurance and a copy of a letter to Representative Dan J. Ruby from the North Dakota Professional Insurance Agents Association. A copy of each handout is on file in the Legislative Council office.

Representative Ruby said after the last meeting he was not sure the repeal of no-fault auto insurance would be a workable solution and he investigated changes that may have more support from the committee. He said he asked for the bill draft with modifications to no-fault auto insurance to address unintended uses of no-fault auto insurance. He said the changes in the bill draft came after reviewing changes suggested by a representative from American Family Insurance and from the North Dakota Professional Insurance Agents Association.

Mr. Kent Olson, North Dakota Professional Insurance Agents Association, provided testimony on the bill drafts. He said after the last meeting, he thought the total repeal of no-fault auto insurance did not seem to be viable so he sent a letter to Representative Ruby and Senator Nething. He said he supports

the \$250 deductible and the removal of work loss and replacement services.

Mr. Rob Hovland, North Dakota Domestic Insurers Association, provided testimony on the bill drafts. He said the committee should focus on the financial impact of any changes made in the law. He said the law requires people to buy no-fault auto insurance and they do not get back more than 60 cents on the dollar. He said the committee should focus on changes that bring down the cost of administering no-fault auto insurance. He said if no-fault coverage required a vehicle to be moving or if no-fault coverage were replaced with cost-containment measures, there would be sizable savings. He said a \$250 deductible would not have a major impact. He said a large part of expenses for insurance companies under no-fault auto insurance is chiropractic care. He said any limitation on chiropractic care would provide a sizable savings.

In response to a question from Representative Ruby, Mr. Hovland said chiropractic care could be removed and massage therapy should be removed from no-fault auto insurance. He said there is no magic number of visits to which treatment should be limited.

Senator Nething said the committee should incorporate the changes requested by the North Dakota Professional Insurance Agents Association into the bill draft.

Representative Weisz said he does not think that the repeal of no-fault auto insurance is palatable to the Legislative Assembly. He said he does not like mandating insurance and thinks more should be left to insurance companies so there can be cost-containment.

Representative Solberg said he is against the repeal of no-fault auto insurance.

Representative Ruby said the removal of work loss and replacement services would not shift costs to health care insurance. He said the committee could make these changes quite easily.

Senator Seymour said he does not see the repeal of no-fault auto insurance being accepted by the Legislative Assembly.

No further business appearing, Chairman O'Connell adjourned the meeting at 12:40 p.m.

Timothy J. Dawson
Committee Counsel

ATTACH:1