

Testimony on HB 1158
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Senate Appropriations Committee

BNSF Railway is opposed to the property tax provisions included in HB 1158 that would result in a tax increase on centrally assessed taxpayers in the state.

In its current form, HB 1158 would provide a higher tax rate for centrally assessed property than for residential, agricultural and commercial property.

There are a number of reasons to be opposed to separating centrally assessed taxpayers from others, but BNSF's opposition focuses on the legal issues: Federal law prohibits inequitable tax treatment for railroads and there's a court decision specific to North Dakota's past attempts to unfairly tax railroads that should guide the committee's decision.

Given the impact on interstate commerce that individual city and state regulations of railroads could have, Congress has enacted laws to ensure national uniformity for regulation of rail transportation.

The Railroad Revitalization and Regulatory Reform Act of 1976 (known as the 4-R Act) is one such law and it prohibits states from enacting taxes that discriminate against railroads. Similarly, under the 4-R Act, states cannot collect taxes on railroads at a tax rate that exceeds the rate for other commercial and industrial property.

A 1981 decision by the U.S. Court of Appeals for the Eight Circuit Court confirmed that North Dakota cannot treat railroads differently than other commercial and industrial property taxpayers. In the 1981 case, railroads and other centrally assessed taxpayers were subject to North Dakota personal property tax, but other commercial and industrial taxpayers were not. The Court held that this discriminatory treatment of railroads by North Dakota violated the 4-R Act.

Thank you for your consideration.