

1999 HOUSE TRANSPORTATION
HB 1441

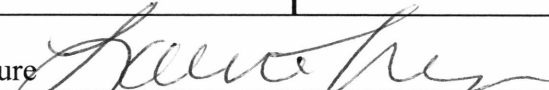
1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1441

House Transportation Committee

Conference Committee

Hearing Date February 11, 1999

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Committee Clerk Signature 			

Minutes:

CHAIRMAN KEISER OPENED THE HEARING ON HB 1441; A BILL THAT PROVIDES FOR MINIMUM SAFETY STANDARDS FOR PASSENGER CONTRACT CARRIERS.

REP. STACEY MICKELSON, Dist. 38, introduced HB 1441. (See written testimony).

JOHN RISCH, ND Legislative Director of the United Transportation Union, testified in support of HB 1441.

GARY SCHUMACHER, Express Shuttle Inc., testified in support of HB 1441. He offered an amendment to the committee. (See attached amendment).

CHAIRMAN KEISER asked Gary who was exempted.

GARY said that rail crew is.

MIKE MUSCHA, ND Legislative Chairman of the Brotherhood of Locomotive Engineers, testified in support of HB 1441.

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House Transportation Committee

Bill/Resolution Number Hb 1441

Hearing Date February 4, 1999

RON HUFF, Burlington Northern Santa Fe Railroad, testified in support of HB 1441. (See written testimony).

BOB GRAVELINE, North Dakota Safety Council, testified in support of HB 1441.

CHAIRMAN KEISER CLOSED THE HEARING ON HB 1441.

February 11, 1999

COMMITTEE ACTION

REP. MICKELSON offered amendments to the committee. (See attached amendments).

REP. MICKELSON moved to ADOPT the AMENDMENTS. REP. LEMIEUX seconded the motion. The motion carried. A unanimous voice vote was taken in support of the amendment.

REP. MICKELSON moved a DO PASS AS AMENDED. REP. SCHMIDT seconded the motion. The motion carried.

ROLL CALL - 12 YEA, 1 NAE, 2 ABSENT AND NOT VOTING

FLOOR ASSIGNMENT - REP. MICKELSON

FISCAL NOTE

(Return original and 10 copies)

Bill/Resolution No.: _____ Amendment to: HB 1441

Requested by Legislative Council _____ Date of Request: 2-12-99

- 1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts.

Narrative:

See attached

- 2. State fiscal effect in dollar amounts:

1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
General Fund	Special Funds	General Fund	Special Funds	General Fund	Special Funds

Revenues:

Expenditures: -0- -0- -0- -0- -0- -0-

- 3. What, if any, is the effect of this measure on the appropriation for your agency or department:

- a. For rest of 1997-99 biennium: -0-
- b. For the 1999-2001 biennium: -0-
- c. For the 2001-03 biennium: -0-

- 4. County, City, and School District fiscal effect in dollar amounts:

1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

N/A

If additional space is needed, attach a supplemental sheet.

Signed 

Typed Name James M. Hughes

Department Highway Patrol

Phone Number 328-2455

Date Prepared: 2-12-99

FISCAL NOTE

Amendment to House Bill 1441

If the attached proposed amendments are made to H.B. 1441, the number of contract carriers are reduced significantly, which in turn reduces the fiscal impact. It is my understanding, after listening to testimony in committee, with the attached amendments, the only carriers the Highway Patrol would be required to regulate would be vans carrying 15 or less passengers involving operations hauling railroad crews to work sites and persons to and from gaming casinos.

Keeping the same 6 safety standards as the original Bill contained and having these requirements and records submitted to the Highway Patrol for compliance reviews, rather than the Patrol having to do these inspections at their place of business, the fiscal impact on our agency would be minimal and could be done with little to no impact on the Patrol's proposed 1999 – 2001 budget. The original standards are:

1. Driver qualifications
2. Motor vehicle inspections
3. Maintenance and repair
4. Hours of service
5. Drug and alcohol testing
6. Insurance

FISCAL NOTE

(Return original and 10 copies)

Bill/Resolution No.: HB 1441 Amendment to: _____

Requested by Legislative Council Date of Request: 1-20-99

- 1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts.

Narrative:

A preliminary estimate of the number of North Dakota business entities requiring a compliance review under HB 1441 is about 50. It is also estimated that the average time for a compliance review is 32 hours and the average cost for one sworn officer FTE to conduct the reviews will be \$30.65 per hour. Support staff is estimated to be 5 percent of 1 FTE or about 8 hours per month. The estimated total cost of the procedures for a biennium is approximately \$101,000.

- 2. State fiscal effect in dollar amounts:

Table with 6 columns: 1997-99 Biennium (General Fund, Special Funds), 1999-2001 Biennium (General Fund, Special Funds), 2001-03 Biennium (General Fund, Special Funds)

Revenues:

Expenditures: -0- -0- -0- \$101,000 -0- \$101,000

- 3. What, if any, is the effect of this measure on the appropriation for your agency or department:

a. For rest of 1997-99 biennium: -0-
b. For the 1999-2001 biennium: \$101,000
c. For the 2001-03 biennium: \$101,000

- 4. County, City, and School District fiscal effect in dollar amounts:

Table with 9 columns: 1997-99 Biennium (Counties, Cities, School Districts), 1999-2001 Biennium (Counties, Cities, School Districts), 2001-03 Biennium (Counties, Cities, School Districts)

N/A

If additional space is needed, attach a supplemental sheet.

Signed [Signature]

Typed Name John Grasl

Department Highway Patrol

Phone Number 328-2455

Date Prepared: 1/26/99

(See Attachment A)

FISCAL NOTE

(Return original and 10 copies)

Bill/Resolution No.: HB 1441 Amendment to: _____

Requested by Legislative Council Date of Request: 1-20-99

- 1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts.

Narrative:

The estimated 50 carriers perform the compliance reviews and submit the paperwork to the NDHP. On an annual basis the NDHP performs random reviews of 20 percent or 10 of the carriers. Financial data is the same as Procedure #1 except that support staff time under this procedure is estimated to be 25 percent of 1 FTE or 40 hours per month. The total cost of this procedure is estimated to be approximately \$35,000 per biennium.

- 2. State fiscal effect in dollar amounts:

1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
General Fund	Special Funds	General Fund	Special Funds	General Fund	Special Funds

Revenues:

Expenditures:	-0-	-0-	-0-	\$35,000	-0-	\$35,000
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- 3. What, if any, is the effect of this measure on the appropriation for your agency or department:

- a. For rest of 1997-99 biennium: -0-
- b. For the 1999-2001 biennium: \$35,000
- c. For the 2001-03 biennium: \$35,000

- 4. County, City, and School District fiscal effect in dollar amounts:

1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

N/A

If additional space is needed, attach a supplemental sheet.

Signed 

Typed Name John Grasl

Department Highway Patrol

Phone Number 328-2455

Date Prepared: 1/26/99

(See Attachment A)

House Bill 1441

Requirements – The safety standards **must** include A) Driver Qualifications, B) Motor Vehicle Inspection, Maintenance, and Repair Program, C) Hours of Service, D) Drug and Alcohol Testing, E) Proof of Insurance.

Rule 1: All passenger and contract carriers transporting fewer than 15 passengers, subject to House Bill 1441, must register with the North Dakota Highway Patrol before (effective date) or upon engaging in the passenger contract carrier business. Said carriers shall comply with the following minimum safety standards established by the Highway Patrol.

A. Driver Qualifications

1. Each contract carrier shall maintain a driver qualification file for each driver it employs. A driver's qualification packet may be combined with the driver's personnel file.
2. The qualification file for a driver must include
 - a. A medical examiner's certificate of his physical qualification to drive a commercial motor vehicle; (every three years?)
 - b. Documentation relating to an annual review of his driving record;
 - c. Lists or certificates relating to violations of motor vehicle laws and ordinances;
 - d. Any other matters which relates to the driver's qualification or ability to drive a commercial vehicle;
 - e. Driver's application for employment;
 - f. Any responses from past employers (if required by the employer); and
 - g. Certificate of driver's road test, or a copy of the valid drivers license.

B. Motor Vehicle Inspection (annual)

1. Each contract carrier shall inspect or cause to be inspected all motor vehicles subject to its control.
2. A contract carrier shall not use a commercial motor vehicle unless each component identified on the inspection form (DOT annual or derivative thereof) (49 CFR 396.21a) has passed an inspection at least once during the preceding twelve months.
3. It shall be the carrier's responsibility to ensure that individuals performing the annual inspection are qualified as prescribed in Part 396.19 of 49 CFR.
4. Driver vehicle inspection report(s)
 - a. Report required. Every motor carrier shall require its drivers to report, and every driver shall prepare a report in writing at the completion of each day's work on each vehicle operated and the report shall cover at least the following parts and accessories:
 - Service brakes
 - Parking (hand) brake
 - Steering mechanism
 - Lighting devices and reflectors
 - Tires
 - Horn

- Windshield wipers
 - Rear vision mirrors
 - Wheels and rims
 - Emergency equipment
- b. Report content. The report shall identify the motor vehicle and list any defect or deficiency discovered by or reported to the driver which would affect safety of operation of the motor vehicle or result in its mechanical breakdown. If no defect or deficiency is discovered by or reported to the driver, the report(s) shall so indicate. In all instances, the driver shall sign the vehicle inspection report. On two-driver operations, only one driver needs to sign the report, provided both drivers agree as to the defects or deficiencies. If a driver operates more than one vehicle during the day, a report shall be prepared for each vehicle operated.
- c. Corrective action. Prior to operating a motor vehicle, carriers or their agent(s) shall effect repair of any items listed on the vehicle inspection report(s) that would be likely to affect the safety of operation of the vehicle.
- 1) Contract carriers or their agent(s) shall certify on the report(s) which lists any defect(s) or deficiency(s) that the defect(s) or deficiency(s) has been corrected or that correction is unnecessary before the vehicle is again dispatched.
 - 2) Contract carriers shall retain the original copy of each vehicle inspection report and the certification of repairs for at least six months from the date the report was prepared.

C. Maintenance and Repair Program.

- 1. General. Every contract carrier, its officers, drivers, agents, and employees directly concerned with the inspection or maintenance of motor vehicles shall comply with and be knowledgeable of the carrier's maintenance program.
- 2. Every contract carrier shall systematically inspect (daily or weekly), repair, and maintain or cause to be inspected, repaired, or maintained all motor vehicles under its control.
 - a. Parts and accessories shall be in safe and proper operating condition at all times.
 - b. Required records. The contract carriers shall maintain or cause to be maintained the following records for each vehicle:
 - 1) An identification number of each vehicle including the company number if so marked, serial number, make, and year. If the vehicle is not owned by said carrier, the record shall identify the name of the person furnishing the vehicle.
 - 2) A means or schedule to indicate the nature and due date of various inspections and maintenance operations (tires, brakes, lubrication, etc.) to be performed.
 - 3) A record of inspection, repairs, and maintenance indicating the date and nature.
 - c. Record retention. The records required by this section shall be retained by the carrier at his place of business for a period of one year and for six months after the vehicle leaves the carrier's control.

- d. A motor vehicle shall not be operated in such a condition as likely to cause an accident or a breakdown of the vehicle.

D. Hours of Service

1. A contract carrier may not permit or require any driver to drive and a driver may not drive:
 - a. More than twelve hours following eight consecutive hours off duty.
 - b. After having been on duty for seventy hours in any period of seven consecutive days.
2. The person who employs the driver maintains and retains for a period of six months accurate time records showing the time the driver reports for duty each day, the total number of hours the driver is on duty each day, and the time the driver is released from duty each day.
3. Following twenty-four consecutive hours off, a driver begins a new seven-consecutive-day period and on-duty time is reset to zero.

E. Tests Required

1. Pre-employment testing. Prior to the first time a driver performs any duty for an employer, the driver shall undergo testing for alcohol and controlled substances as a condition prior to being used, unless the employer uses the exception in paragraphs (c) and (d) of this section. No employer shall allow a driver, who the employer intends to hire or use, to perform a duty function unless the driver has been administered an alcohol test with a result indicating an alcohol concentration less than 0.04, and has received a controlled substances test result from the MRO indicating a verified negative test result.
2. Exception for pre-employment alcohol testing. An employer is not required to administer an alcohol test required by paragraph 1 of this section if the driver has undergone an alcohol test required by this section within the previous six months, with a result indicating an alcohol concentration less than 0.04.
3. Exception for pre-employment controlled substances testing. An employer is not required to administer a controlled substances test required by paragraph 1 of this section if:
 - a. The driver has participated in a controlled substances testing program that meets the requirements of this part with the previous 30 days; and
 - b. While participating in that program, either
 - 1) Was tested for controlled substances within the past six months (from the date of application with the employer) or
 - 2) Participated in the random controlled substances testing program for the previous twelve months (from the date of application with the employer); and
 - c. The employer ensures that no prior employer of the driver of whom the employer has knowledge has records of a violation of this part or the controlled substances use rule of another agency within the previous six months.
4. An employer who exercises the exception in either paragraph 2 or 3 of this section shall contact the alcohol and/or controlled substances testing program(s) in which the driver participates or participated and shall obtain and retain from the testing program(s) the following information:

- a. Name(s) and address(es) of the program(s).
 - b. Verification that the driver participates or participated in the program(s).
 - c. Verification that the program(s) conforms to part 40 of this title.
 - d. Verification that the driver is qualified under the rules of this part, including that the driver has not refused to be tested for controlled substances.
 - e. The date the driver was last tested for alcohol or controlled substances.
 - f. The results of any tests taken within the previous six months and any other violations of subpart B of this part.
5. An employer who uses, but does not employ, a driver more than once a year to operate contract carrier's vehicles must obtain the information in paragraph 4 of this section at least once every six months. The records prepared under this paragraph shall be maintained in accordance with 382.401. If the employer cannot verify that the driver is participating in a controlled substances testing program in accordance with this part and part 40, the employer shall conduct a pre-employment alcohol and/or controlled substances test.
6. Post-accident testing. As soon as practicable following an occurrence involving a contract carrier vehicle operating on a public road in commerce, each employer shall test for alcohol and controlled substances each surviving driver:
- a. Who was performing a duty function with respect to the vehicle, if the accident involved the loss of human life; or
 - b. Who receives a citation under state or local law for a moving traffic violation arising from the accident, if the accident involved
 - 1) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
 - 2) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.
 - c. This table notes when a post-accident test is required to be conducted by paragraphs a and b of this section.

Type of Accident Involved	Citation Issued to the Contract Driver	Test Must be Performed by Employer
Human Fatality	Yes	Yes
	No	Yes
Bodily Injury with Immediate Medical Treatment Away From the Scene	Yes	Yes
	No	No
Disabling Damage to Any Motor Vehicle Requiring Tow Away	Yes	Yes
	No	No

- d. Alcohol tests. If a test required by this section is not administered within two hours following the accident, the employer shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test

required by this section is not administered within eight hours following the accident, the employer shall cease attempts to administer an alcohol test and shall prepare and maintain the same record. Records shall be submitted to the Highway Patrol upon request of the superintendent.

- 1) Type of test (reasonable suspicion/post-accident);
 - 2) Triggering event (including date, time, and location);
 - 3) Reason(s) test could not be completed within eight hours;
 - 4) If blood alcohol testing could have been completed within eight hours, the name, address, and telephone number of the testing site where blood testing could have occurred; and
 - 5) Records of alcohol tests that could not be completed in eight hours shall be submitted to the North Dakota Highway Patrol, 600 East Boulevard Avenue Dept. 504, Bismarck, ND 58505-0240.
- e. Controlled substance tests. If a test required by this section is not administered within 32 hours following the accident, the employer shall cease attempts to administer a controlled substances test, and prepare and maintain on file a record stating the reasons the test was not promptly administered. Records shall be submitted to the Highway Patrol upon request of the superintendent.
- f. A driver who is subject to post-accident testing shall remain readily available for such testing or may be deemed by the employer to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.
- g. An employer shall provide drivers with necessary post-accident information, procedures and instructions, prior to the driver operating a motor vehicle, so that drivers will be able to comply with the requirements of this section.
- h. The results of a breath or blood test for the use of alcohol, conducted by federal, state, or local officials having independent authority for the test, shall be considered to meet the requirements of this section, provided such tests conform to the applicable federal, state, or local alcohol testing requirements, and that the results of the tests are obtained by the employer.
- i. The results of a urine test for the use of controlled substances, conducted by federal, state, or local officials having independent authority for the test, shall be considered to meet the requirements of this section, provided such tests conform to the applicable federal, state, or local controlled substances testing requirements, and that the results of the tests are obtained by the employer.
- j. Exception. This section does not apply to:
- 1) An occurrence involving only boarding or alighting from a stationary motor vehicle; or
 - 2) An occurrence involving only the loading or unloading of passengers; or
 - 3) An occurrence in the course of the operation of a passenger car or a multipurpose passenger vehicle (as defined in 571.3 of this title) by an employer unless the motor vehicle is transporting passengers for hire.

7. Random testing. Every employer shall comply with the requirements of this section. Every driver shall submit to random alcohol and controlled substance testing as required in this section.
 - a. Except as provided in paragraph c of this section, the minimum annual percentage rate for random alcohol testing shall be 25 percent of the average number of driver positions.
 - b. Except as provided in paragraphs (f) through (h) of this section, the minimum annual percentage rate of random controlled substances testing shall be 50 percent of the average number of driver positions.
 - c. The superintendent's decision to increase or decrease the minimum annual percentage rate for alcohol testing is based on the reported violation rate for the entire industry. All information used for this determination is drawn from the alcohol management information system reports required by 382.403 of this part. In order to ensure reliability of the data, the Highway Patrol superintendent considers the quality and completeness of the reported data, may obtain additional information or reports from employers, and may make appropriate modifications in calculating the industry violation rate.
 - d. The employer shall randomly select a sufficient number of drivers for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate for random alcohol and controlled substances testing determined by the Highway Patrol superintendent. If the employer conducts random testing for alcohol and/or controlled substances through a consortium, the number of drivers to be tested may be calculated for each individual employer or may be based on the total number of drivers covered by the consortium who are subject to random alcohol and/or controlled substances testing at the same minimum annual percentage rate under this part or any DOT alcohol or controlled substances random testing rule.
 - e. Each employer shall ensure that random alcohol and controlled substances tests conducted under this part are unannounced and that the dates for administering random alcohol and controlled substances tests are spread reasonably throughout the calendar year.
 - f. Each employer shall require that each driver who is notified of selection for random alcohol and/or controlled substances testing proceeds to the test site immediately; provided, however, that if the driver is driving a contract carrier vehicle at the time of notification, the employer shall ensure that the driver proceeds to the testing site as soon as possible.
 - g. A driver shall only be tested for alcohol while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions.
8. Reasonable suspicion testing.
 - a. An employer shall require a driver to submit to an alcohol test when the employer has reasonable suspicion to believe that the driver has violated the prohibitions concerning alcohol. The employer's determination that reasonable suspicion exists to require the driver to undergo an alcohol test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the driver.

- b. An employer shall require a driver to submit to a controlled substances test when the employer has reasonable suspicion to believe that the driver has violated the prohibitions concerning controlled substances. The employer's determination that reasonable suspicion exists to require the driver to undergo a controlled substances test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the driver. The observations may include indications of the chronic and withdrawal effects of controlled substances.
- c. Alcohol testing is authorized by this section only if the observations required by paragraph a of this section are made during, just preceding, or just after the period of the work day that the driver is required to be in compliance. A driver may be directed by the employer to only undergo reasonable suspicion testing while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions.

F. Retention of Records

- 1. General requirement. Each employer shall maintain records of its alcohol misuse and controlled substances use prevention programs as provided in this section. The records shall be maintained in a secure location with controlled access.
- 2. Period of retention. Each employer shall maintain the records in accordance with the following schedule:
 - a. Five years. The following records shall be maintained for a minimum of five years:
 - 1) Records of driver alcohol test results indicating an alcohol concentration of 0.02 or greater,
 - 2) Records of driver verified positive controlled substances test results,
 - 3) Documentation of refusals to take required alcohol and/or controlled substances tests,
 - 4) Driver evaluation and referrals,
 - 5) Calibration documentation,
 - 6) Records related to the administration of the alcohol and controlled substances testing programs, and
 - 7) A copy of each annual calendar year summary required by 382.403.
 - b. Two years. Records related to the alcohol and controlled substances collection process (except calibration of evidential breath testing devices).
 - c. One year. Records of negative and canceled controlled substances test results (as defined in part 40 of this title) and alcohol test results with a concentration of less than 0.02 shall be maintained for a minimum of one year.
 - d. Indefinite period. Records related to the education and training of breath alcohol technicians, screening test technicians, supervisors, and drivers shall be maintained by the employer while the individual performs the functions which require the training and for two years after ceasing to perform those functions.
- 3. Types of records. The following specific types of records shall be maintained. "Documents generated" are documents that may have to be prepared under a

requirement of this part. If the record is required to be prepared, it must be maintained.

- a. Records related to the collection process:
 - 1) Collection logbooks, if used;
 - 2) Documents relating to the random selection process;
 - 3) Calibration documentation for evidential breath testing devices;
 - 4) Documentation of breath alcohol technician training;
 - 5) Documents generated in connection with decisions to administer reasonable suspicion alcohol or controlled substances tests;
 - 6) Documents generated in connection with decisions on post-accident tests;
 - 7) Documents verifying existence of a medical explanation of the inability of a driver to provide adequate breath or to provide a urine specimen for testing; and
 - 8) Consolidated annual calendar year summaries as required by 382.403.
 - b. Records related to a driver's test results:
 - 1) The employer's copy of the alcohol test form, including the results of the test;
 - 2) The employer's copy of the controlled substances test chain of custody and control form;
 - 3) Documents sent by the MRO to the employer;
 - 4) Documents related to the refusal of any driver to submit to an alcohol or controlled substances test required by this part; and
 - 5) Documents presented by a driver to dispute the result of an alcohol or controlled substances test administered under this part.
 - 6) Documents generated in connection with verifications of prior employers' alcohol or controlled substances test results.
 - c. Records concerning a driver's compliance with recommendations of the substance abuse professional.
 - d. Records related to education and training:
 - 1) Materials on alcohol misuse and controlled substance use awareness, including a copy of the employer's policy on alcohol misuse and controlled substance use;
 - 2) Documentation of compliance with the requirements of 382.601, including the driver's signed receipt of education materials; and
 - 3) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol and/or controlled substance testing based on reasonable suspicion.
 - e. Administrative records related to alcohol and controlled substances testing:
 - 1) Agreements with collection site facilities, laboratories, breath alcohol technicians, screening test technicians, medical review officers, consortia, and third party service providers; and
 - 2) Names and positions of officials and their role in the employer's alcohol and controlled substances testing program(s).
4. Location of records. All records required by this part shall be maintained as required and shall be made available for inspection at the employer's principal place of

business within two business days after a request has been made by an authorized representative of the Highway Patrol.

5. Reporting of results in a management information system.
 - a. An employer shall prepare and maintain a summary of the results of its alcohol and controlled substances testing programs performed under this part during the previous calendar year, when requested by the superintendent.
 - b. If an employer is notified, during the month of January, of a request by the superintendent to report the employer's annual calendar year summary information, the employer shall prepare and submit the report to the Highway Patrol by March 15 of that year. The employer shall ensure that the annual summary report is accurate and received by March 15 at the location that the Highway Patrol specifies in its request. The report shall be in the form and manner prescribed by the Highway Patrol in its request. When the report is submitted to the Highway Patrol by mail or electronic transmission, the information requested shall be typed, except for the signature of the certifying official. Each employer shall ensure the accuracy and timeliness of each report submitted by the employer or a consortium.
 - c. Detailed summary. Each annual calendar year summary that contains information on a verified positive controlled substances test result, an alcohol screening test result of 0.02 or greater, or any other violation of the alcohol misuse provisions of this part shall include the following informational elements:
 - 1) Number of drivers subject to testing;
 - 2) Number of urine specimens collected by type of test (e.g., pre-employment, random, reasonable suspicion, post-accident);
 - 3) Number of positives verified by a MRO by type of test, and type of controlled substance;
 - 4) Number of negative controlled substance tests verified by a MRO by type of test;
 - 5) Number of persons denied a position as a driver following a pre-employment verified positive controlled substances test and/or a pre-employment alcohol test that indicates an alcohol concentration of 0.04 or greater;
 - 6) Number of drivers with tests verified positive by a medical review officer for multiple controlled substances;
 - 7) Number of driver who refused to submit to an alcohol or controlled substances test required under this subpart;
 - 8) Number of supervisors who have received required alcohol training during the reporting period;
 - 9) Number of supervisors who have received required controlled substances training during the reporting period;
 - 10) Number of screening alcohol tests by type of test;
 - 11) Number of confirmation alcohol tests, by type of test;
 - 12) Number of confirmation alcohol tests indicating an alcohol concentration of 0.02 or greater but less than 0.04, by type of test;
 - 13) Number of confirmation alcohol tests indicating an alcohol concentration of 0.04 or greater, by type of test;

- 14) Number of drivers who were returned to duty having complied with the recommendations of a substance abuse professional, in this reporting period, who previously had a verified positive controlled substance test result, or engaged in prohibited alcohol misuse under the provision of this part;
 - 15) Number of drivers who were administered alcohol and drug tests at the same time, with both a verified positive drug test result and an alcohol test result indicating an alcohol concentration of 0.04 or greater; and
 - 16) Number of drivers who were found to have violated any non-testing prohibitions of this part, and any action taken in response to the violation.
- d. A consortium may prepare annual calendar year summaries and reports on behalf of individual employers for purposes of compliance with this section. However, each employer shall sign and submit such a report and shall remain responsible for ensuring the accuracy and timeliness of each report prepared on its behalf by a consortium.
6. Access to facilities and records.
 - a. Except as required by law or expressly authorized or required in this section, no employer shall release driver information that is contained in records required to be maintained.
 - b. A driver is entitled, upon written request, to obtain copies of any records pertaining to the driver's use of alcohol or controlled substances, including any records pertaining to his or her alcohol or controlled substances tests. The employer shall promptly provide the records requested by the driver. Access to a driver's records shall not be contingent upon payment for records other than those specifically requested.
 - c. Each employer shall permit access to all facilities utilized in complying with the requirements of this part to any state or local officials with regulatory authority over the employer or any of its drivers.
 - d. Each employer shall make available copies of all results for employer alcohol and/or controlled substances testing conducted under this part and any other information pertaining to the employer's alcohol misuse and/or controlled substances use prevention program, when requested by any state or local officials with regulatory authority over the employer or any of its drivers.
 - e. When requested by the Highway Patrol superintendent as part of an accident investigation, employers shall disclose information related to the employer's administration of a post-accident alcohol and/or controlled substance test administered following the accident under investigation.
 - f. Records shall be made available to a subsequent employer upon receipt of a written request from a driver. Disclosure by the subsequent employer is permitted only as expressly authorized by the terms of the driver's request.
 - g. An employer may disclose information required to be maintained under this part pertaining to a driver, the decisionmaker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of an alcohol and/or controlled substance test administered under this part, or from the employer's determination that the driver engaged in conduct prohibited by this part (including, but not limited to, a worker's compensation,

unemployment compensation, or other proceeding relating to a benefit sought by the driver).

- h. An employer shall release information regarding a driver's records as directed by the specific, written consent of the driver authorizing release of the information to an identified person. Release of such information by the person receiving the information is permitted only in accordance with the terms of the employee's consent.

G. Insurance

1. All contract carriers shall have on file a copy of their insurance policy for required insurance for their type of operation(s).

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1441

Page 1, line 7, after the period insert "In this section, "contract carrier" means a person engaged in the business of carrying passengers for hire and in that business does not operate on a fixed route. The term does not include a person who makes a single daily round trip to commute to and from work, a person transporting only schoolchildren and teachers, a person operating ambulance or funeral services, a person who on occasion and not as a regular business enterprise transports one or more passengers for pay, a person operating stretched sedan-type limousines, nor a person operating a taxicab service using vehicles with a seating capacity of fewer than seven passengers."

Renumber accordingly

Date: 2/11
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1441

House Transportation Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Adopt Amendments

Motion Made By Rep Mickelson Seconded By Rep Lemieux

Representatives	Yes	No	Representatives	Yes	No
Representative Keiser, Chair			Representative Thorpe		
Representative Mickelson, V. Ch.					
Representative Belter					
Representative Jensen					
Representative Kelsch					
Representative Kempenich					
Representative Price					
Representative Sveen					
Representative Weisz					
Representative Grumbo					
Representative Lemieux					
Representative Mahoney					
Representative Meyer					
Representative Schmidt					

Total (Yes) 14 No 0

Absent _____

Floor Assignment _____

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

Date: 2/11
Roll Call Vote #: 2

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1441

House Transportation Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken DP as

Motion Made By Rep Mickelson Seconded By Rep Schmidt

Representatives	Yes	No	Representatives	Yes	No
Representative Keiser, Chair	✓		Representative Thorpe	✓	
Representative Mickelson, V. Ch.	✓				
Representative Belter	✓				
Representative Jensen	✓				
Representative Kelsch	✓				
Representative Kempenich	✓				
Representative Price	✓				
Representative Sveen	✓				
Representative Weisz		✓			
Representative Grumbo	✓				
Representative Lemieux					
Representative Mahoney	✓				
Representative Meyer					
Representative Schmidt	✓				

Total (Yes) 12 No 1

Absent 2 D

Floor Assignment Rep. Mickelson

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

REPORT OF STANDING COMMITTEE

HB 1441: Transportation Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 1 NAY, 2 ABSENT AND NOT VOTING). HB 1441 was placed on the Sixth order on the calendar.

Page 1, line 7, after the period insert "In this section, "contract carrier" means a person engaged in the business of carrying passengers for hire and in that business does not operate on a fixed route. The term does not include a person who makes a single daily round trip to commute to and from work, a person transporting only schoolchildren and teachers, a person operating ambulance or funeral services, a person who on occasion and not as a regular business enterprise transports one or more passengers for pay, a person operating stretched sedan-type limousines, nor a person operating a taxicab service using vehicles with a seating capacity of fewer than seven passengers."

Renumber accordingly

1999 SENATE TRANSPORTATION

HB 1441

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1441

Senate Transportation Committee

Conference Committee

Hearing Date March 11, 1999

Tape Number	Side A	Side B	Meter #
1	x		1-1980
March 18, 1999	x		1-523
Committee Clerk Signature <i>Roni A. Schaeffer</i>			

Minutes:

SENATOR B. STENEHJEM opened the hearing on HB 1441. Committee members present included: Sens. Bob Stenehjem, R. Schobinger, D. Mutch, D. Cook, D. O'Connell, V. Thompson, and D. Bercier.

REPRESENTATIVE STACEY MICKELSON, DISTRICT 38 testified in support of HB 1441 (see testimony).

SENATOR O'CONNELL Would this take into account if you were hiring someone yourself?

REPRESENTATIVE MICKELSON It would work with contract carriers, we did add amendments in the House for people who would be disqualified.

RON HUFF, BROTHERHOOD OF LOCOMOTIVE ENGINEERS testified in support of HB 1441 (see testimony).

SENATOR MUTCH Were you riding in this vehicle where the tires were worn?

RON HUFF Yes, it was a private vehicle contracted out.

SEBASTIAN SCHUMACHER, VICE PRESIDENT OF EXPRESS SHUTTLE, INC. testified in support of HB 1441. We transport railroad crews and we are in support of HB 1441. We do have an active safety program in place. There aren't any uniform standards right now. Some of our competition have no safety standards at all. One accident can reflect on an entire industry. We just don't hire anybody to do this type of work; we are extremely careful.

SENATOR THOMPSON Will this legislation take care of concerns from Montana coming in and doing business in ND?

SEBASTIAN SCHUMACHER I don't know if those from out of state will be regulated.

SENATOR THOMPSON Shouldn't that be addressed also?

BOB GRAVELINE, ND SAFETY COUNCIL testified in support of HB 1441. This is a good approach to add standards to these smaller contract carriers as well.

SENATOR COOK Can you speak towards the amendments?

BOB GRAVELINE The amendments exempt out a certain batch of buses.

MIKE MUSCHA, ND LEGISLATIVE CHAIRMAN FOR BROTHERHOOD OF LOCOMOTIVE ENGINEERS testified in support of HB 1441. In January of 1999 we had 150 "dead ends". A "dead end" is when we get called to get a taxi or van from a contract carrier to either go Harvey or Minnesota. It has a big impact on our life if the vans aren't safe. (See testimony).

JOHN RISCH, UNITED TRANSPORTATION UNION testified in support of HB 1441 (see testimony). We'd like to suggest an additional amendment. We'd like to exempt the par a-transit from the bill. I don't know if they have any safety problems.

JOHN GRASL, ND HIGHWAY PATROL testified in a neutral position. Vehicles wouldn't be regulated coming into ND. That becomes interstate transportation which is regulated by the Federal Government.

SENATOR MUTCH Is there any interstate regulation on these smaller than 17 passenger vehicles?

JOHN GRASL Colorado regulates these less than 16 passengers vehicles. It is the only other state that I am aware of in the area.

SENATOR MUTCH Are there any federal regulations or laws pertaining to the contract carriers?

JOHN GRASL No, they stop with 16 passengers or more. Anything below that is a workable issue. The federal laws do not cover that.

SENATOR COOK Are local taxi services regulated as far as the safety issue?

JOHN GRASL No, they are not. There are some regulations with contracts within the cities.

SENATOR THOMPSON On a federal level, shouldn't we be looking at this for safety reasons?

JOHN GRASL That is correct.

SENATOR COOK There is no guarantee the person driving a taxi could even read English.

JOHN GRASL No, there is not.

SENATOR MUTCH You'd have to set up inspectors in the Highway Patrol for these vehicles to be inspected.

JOHN GRASL We are charged with promegating rules in six areas: driver qualifications and safety standards-these would more than likely be modeled after the federal code for the larger vehicles; pre-alcohol testing; pre-drug testing; medical qualifications for the drivers-those would be promegated through administration.

Page 4
Senate Transportation Committee
Bill/Resolution Number Hb 1441
Hearing Date March 11, 1999

SENATOR BERCIER The amendments target train operating crews and gaming shuttles. Who amended out some of these other areas?

SENATOR COOK The House.

JOHN RISCH One of the concerns was the fiscal impact on the Highway Patrol. We would like to include everyone.

SENATOR B. STENEHJEM We will close HB 1441.

March 18, 1999 - Tape 1

SENATOR THOMPSON I motion for a Do Pass.

SENATOR O'CONNELL I second.

SENATOR SCHOBINGER There were some suggestions made for amendments to exempt the par a-transit.

JOHN RISCH Par a-transit came up after the bill passed the House. It was not our original intent to include those folks.

SENATOR COOK Is par a-transit the same type of business as Bismarck-Mandan transit?

JOHN RISCH Par a-transit is the van that hauls around those with wheelchairs and other physical needs.

SENATOR COOK I think they deserve the same safety standards as anyone else.

SENATOR THOMPSON What would the exact terminology need to be to add this?

A roll call vote was taken (7 Yeas, 0 Nays, and 0 Absent and Not Voting).

Senator Thompson will carry HB 1441.

Date: March 18, 1999

Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1441

Senate Transportation Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken No Pass

Motion Made By Sen. Thompson Seconded By Sen. O'Connell

Senators	Yes	No	Senators	Yes	No
Sen. B. Stenehjem-Chairman	✓				
Sen. R. Schobinger-V. Chair	✓				
Sen. Duane Mutch	✓				
Sen. Dwight Cook	✓				
Sen. David O'Connell	✓				
Sen. Vern Thompson	✓				
Sen. Dennis Bercier	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Thompson

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

REPORT OF STANDING COMMITTEE (410)
March 19, 1999 2:40 p.m.

Module No: SR-50-5230
Carrier: Thompson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1441, as engrossed: Transportation Committee (Sen. B. Stenehjem, Chairman)
recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed HB 1441 was placed on the Fourteenth order on the calendar.

1999 TESTIMONY
HB 1441

Testimony of Representative Stacey L. Mickelson
In Support of House Bill 1441

Mr. Chairman and members of the committee, for the record my name is Stacey Mickelson. I represent District # in Minot, North Dakota.

38

House Bill 1441 would give the Highway Patrol the ability to enact important safety standards relating to for hire passenger vans.

I introduced this bill to address a gap in safety standards here in North Dakota.

Currently North Dakota has adopted federal standards for contract carriers who haul more than 15 passengers in vans and buses. HB 1441 would provide for the adoption of safety standards for contract carriers below that 15-passenger threshold.

The reason I am proposing that these standards be adopted by administrative rule instead of direct legislation is because it's important that the safety standards be carefully drafted so that they don't conflict with regulations that apply to larger passenger vehicles. So if someone is licensed to drive a 17 passenger van he would also qualify to drive a smaller van.

The reason we did not simply draft the bill to put into law the larger passenger vehicle standards is because those standards may change from time to time.

This process would allow the Highway Patrol to adjust smaller passenger van standards as needed so they will work with the larger van standards. Another reason for this flexibility is drivers of larger vans are required to hold a Commercial Driver's License, which might be a bit of overkill for someone driving a regular passenger van.

If you are a truck driver hauling grain in North Dakota, you are required to have a commercial driver's license, comply with drug and alcohol testing, hours of service, and other safety standards.

If you work as a railroad engineer who hauls coal, there are standards and licensing requirements that include drug-and-alcohol testing, hours of service requirements and other things.

But if you drive a van for hire with as many as 14 passengers at all hours of the day and night across the state of North Dakota, there are no standards, other than those of a regular passenger car.

That is why I feel it is important that we pass House Bill 1441 and provide the Highway Patrol with the authority to set some minimal standards for those who haul people for hire in our state.

For these reasons I urge this committee to recommend a "DO PASS" on House Bill 1441.

Brotherhood of Locomotive Engineers North Dakota State Legislative Board

MICHAEL R. MUSCHA — CHAIRMAN - DIV. 671-500

R.R. 1, BOX 57
ENDERLIN, ND 58027
PHONE: 701-437-3338



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Testimony of Mike Muscha
Before the House Committee on
Transportation
In Support of
House Bill 1441
Feb 4 . 1999

Mr. Chairman and members of the committee, my name is Mike Muscha. I am the North Dakota Legislative Chairman of the Brotherhood of Locomotive Engineers. I work full time as a locomotive engineer for Canadian Pacific Railway out of Enderlin, North Dakota.

The reason I'm here today is explain how the railroad industry has changed and how it has effected my job. Do you know that we had 115 deadheads (a taxi ride to or from another terminal) in the month of January at the Enderlin terminal. The mileage is 175 cab miles west and 157 cab miles east. These deadheads in contract vans are caused by lopsided rail traffic. The railroad terminals of Minot, Harvey, Grand Forks, Fargo, Wahpeton, and Mandan have similar numbers of these deadheads.

I believe we need to set safety standards on the drivers of these vans and the vans. If we don't take action now, I'm afraid I will get a call one night and they will tell me that one of my railroad friends has been killed in a contract van. This has happened in Texas. In the Texas crash the van had over 300,000 miles on it and the driver was fatigued. Texas has passed a contract carriers bill to protect their railroad workers. I believe we need to do it in North Dakota also.

I urge the committee members to recommend a "DO PASS" on house bill 1441.

Thank you,

Mike Muscha

Mike Muscha, Chairman
North Dakota Legislative Board

RULES REGULATING THE OPERATION OF CONTRACT CARRIERS

The Texas Department of Public Safety has amended its administrative rules (B3.62 of Chapter 37 of the Texas Administrative Code) governing the operation of commercial vehicles to incorporate the changes necessary to implement the requirements of HB 3252. These rules went into effect April 22, 1998.

1. **Part 391** (Qualification of Drivers) would:
 - A. Require the driver to meet certain qualification standards;
 - B. Provide disqualification standards for certain violations committed while operation a vehicle
 - C. Require the driver to submit an application for employment and require the carrier to conduct a background investigation and inquiry of the information shown on the application;
 - D. Require an annual review of the driving record by the motor carrier; and,
 - E. Require the motor carrier to maintain a file on each driver employed.
2. **Part 393** (Parts and Accessories Necessary for Safe Operation) would:
 - A. Require the vehicle to meet all the equipment standards applicable to the vehicle.
3. **Part 395** (Hours of Service for Drivers) would:
 - A. Limit the number of hours the driver could operate the vehicle to no more than 12 hours per day;
 - B. Limit the number of hours the driver could be on duty each day to no more than 15 hours;
 - C. Require the driver to have at least eight (8) consecutive hours off duty before operating the vehicle again;
 - D. Limit the driver to no more than 70 hours of on-duty time in any seven (7) consecutive day period;
 - E. Require the driver to maintain a daily record of duty status reporting the total duty time of the driver. This record of duty status must comply with the provision of B395.8 of the Federal Motor Carrier Safety Regulations; and
 - F. Require the motor carrier to maintain the record of duty status for six months.
4. **Part 396** (Inspection, Repair, and Maintenance) would:
 - A. Require the motor carrier to systematically inspect, repair, and maintain, or cause to be systematically inspected, repaired, and maintained, all motor vehicles subject to its control;
 - B. Maintain all parts and accessories on the vehicle in a safe and proper operating condition at all times;
 - C. Maintain a record on each vehicle that the motor carrier controls for more than 30 consecutive days that will identify the vehicle, indicate the nature and due day of scheduled inspection and maintenance operations to be performed, and record the inspection, repairs, and maintenance performed;
 - D. Require the motor carrier to retain the records for a period of one year and six months after the vehicle leaves the motor carrier's control;
 - E. Require the driver to prepare a written report at the completion of each day's work on each vehicle operated covering specific parts and accessories listed in B396.11;
 - F. Require the motor carrier to repair any defects noted by the driver before the vehicle is allowed to be operated on the highways again; and
 - G. Require the driver to conduct a pre-trip inspection of the vehicle to ensure that the vehicle is in safe operating condition and that any defects noted on the post-trip inspection report have been repaired.

united transportation union



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 JOHN RISCH
Legislative Director
NORTH DAKOTA LEGISLATIVE BOARD

Testimony of John Risch
Before the House Committee on
Transportation
In Support of
House Bill 1441
February 4, 1999

Mr. Chairman and members of the committee, my name is John Risch. I am the North Dakota Legislative Director of the United Transportation Union. The UTU is the largest rail labor union in North America. Our membership includes conductors, engineers, switchmen, trainmen and yardmasters.

The railroad industry has undergone a number of changes in recent years, resulting in railroad workers spending much more time traveling across our state in contract vans.

Where there used to be a railroad crew terminal every 100 miles, now those terminals are 200 and even 300 miles apart. With terminals spaced farther apart, we more frequently leave trains parked on line, increasing the need for transporting crews by van.

Erratic traffic flows also means that crews need to be transported from terminal to terminal on a frequent basis. Outside contractors provide almost all railroad crew transportation, a job once done by the railroad's own employees.

Given the large increase in the number of hours railroad crews must now spend riding in vans we believe there should be some safety standards established for van companies and their drivers.

In my work as a railroad engineer, I have to meet a number of high standards set by the railroad and the Federal Railroad Administration. I must qualify for a special license, I am subjected to drug and alcohol testing, and I am limited to working only 12 hours in one shift. These standards serve to protect the public safety.

At present, drivers of contract vans are not required to meet any safety standards, other than having a regular driver's license. In addition, these vans are not required to meet any safety inspections other than those for regular automobiles.

While we don't suggest drivers of passenger vans be subjected to excessive standards, we do believe that the vans who transport people should be required to meet some workable safety standards.

For these reasons we urge a "DO PASS" on House Bill 1441.

Testimony of Ron Huff
113 Coyote St. West
Mandan, ND 58554

At the House Transportation Committee
In support of HB 1441
February 4, 1999

Mr. Chairman and committee members, my name is Ron Huff. I work for the Burlington Northern Santa Fe Railroad as a locomotive engineer and am a member of the Brotherhood of Locomotive Engineers.

One evening my crew was called to be transported from Hettinger, North Dakota to Forsyth, Montana by a private contractor hired by the railroad. While on our trip west, we were involved in a wreck in which I was injured.

The Montana Highway Patrol was called and investigated the wreck. They found:

- 1) The roads had some snow on their surface.
- 2) The tires on the van were worn out, with no tread left.
- 3) Most importantly, the driver was fatigued.

This driver had worked some 16 hours, had 8 hours off, and was then back at work on this long run. Apparently, this type of scheduling had been going on for some time. After the wreck the driver had to drive back to Dickinson before he got rest.

My injury required me to have an operation on my neck. I had the fifth and sixth vertebra fused together, which left me with some limitations on the use of my right arm and limited range of movement of my neck.

After being a victim of people neglecting their equipment and personnel, I firmly believe that some safety standards should be enacted.

So, I ask you to vote DO PASS on HB 1441.

united transportation union



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JOHN RISCH
State Legislative Director
NORTH DAKOTA LEGISLATIVE BOARD

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Before the Senate Committee on
Transportation
In Support of
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March 11, 1999

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House Bill 1441 would give the Highway Patrol the ability to enact important safety standards relating to for-hire passenger vans.

I introduced this bill to address a gap in safety standards here in North Dakota.

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