

**1999 SENATE TRANSPORTATION**

**SB 2159**

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2159

Senate Transportation Committee

Conference Committee

Hearing Date January 8, 1999

Tape Number	Side A	Side B	Meter #
1	x		3,833-End
1		x	774-1529
2-January 14, 1999	x		3010-3335
1-January 22, 1999	x		1,116-end
2-January 28, 1999	x		1647-
Committee Clerk Signature	<i>Ani A. Schaeffner</i>		

Minutes:

SB 2159 relates to rest area vending machine permits from the Department of Transportation.

SEN. B. STENEHJEM opened the hearing on SB 2159 at 9:50 a.m. Committee members present: Sens. B. Stenehjem-Chairman; R. Schobinger; D. Mutch; D. Cook; D. O'Connell; and V. Thompson. Senator Bercier was absent.

BRUCE MURRY, STAFF ATTORNEY FOR DEPARTMENT OF TRANSPORTATION

testified in favor of SB 2159 (See attached testimony).

SEN. MUTCH Is there any charge for permits for vending machines?

BRUCE MURRY We would treat the vending machines in two categories. One would be the dispense of written publication which has the first amendment right to sell these publications.

We could only charge for the cost and base the permit on that. For other vending machines, we might charge slightly higher than our cost. There is no charge for pop machines.

SEN. B. STENEHJEM Why not?

BRUCE MURRY Administration to that permitting process is left to Vocational Rehabilitation Services through federal and state statutes. The Randolph Sheppard Act creates business opportunities for the blind by allowing vendors associated with the blind access to vending machines at rest areas.

SEN. MUTCH What is the policy now for pop machines?

BRUCE MURRY Pop machines cannot be at a rest area unless they have a permit.

JERRY HORNER, MAINTENANCE DIRECTOR FOR THE DEPARTMENT OF

TRANSPORTATION I'd like to address a few questions. The placing of vending machines has been primarily beverages except for the placement of the written publications at the rest areas.

Tape 1, Side B

There was discussion of the committee.

SEN. SCHOBINGER So someone put a newspaper on a rest area and they were thrown off so they sued.

SEN. THOMPSON There is no opposition so I don't see any problem with it, but we will want to check with the first amendment in state stature.

SEN. O'CONNELL I'm sure the written publications are some sort of propaganda magazines.

SEN. THOMPSON They probably want more regulation on the rest areas. I don't see any harm in giving them the tools to re-enforce.

SEN. SCHOBINGER The only way to regulate would be to have security out there. There is usually more trouble once you heighten the awareness such as having security.

SEN. THOMPSON I vote for a DO PASS.

SEN. O'CONNELL I second.

Roll Call Vote was taken. 3 Yeas, 3 Nays, 1 Absent and Not Voting. Vote was tied.

SEN. B. STENEHJEM The motion failed. We'll hold the bill.

January 22, 1999 Tape 1, Side 1 #1117

SENATOR B. STENEHJEM opened the second hearing on SB 2159.

JACK MCDONALD, ND NEWSPAPER ASSOCIATION AND MIDWEST COCA-COLA, testified and proposed some amendments to SB 2159 (see testimony). We feel the permit fee should be \$25.00.

BRUCE MURRY, STAFF ATTORNEY FOR NORTH DAKOTA DEPARTMENT OF TRANSPORTATION We have no objections to these amendments.

JERRY HORNER, MAINTENANCE ENGINEER FOR DEPARTMENT OF TRANSPORTATION answered questions relating to SB 2159.

SENATOR B. STENEHJEM What is the process for vending machines?

JERRY HORNER We only allow vending machines for beverages. Vending companies have certain territories. For someone who would want to place a vending machine on a rest area, they would have to go to our licensing agent and make an application there.

SENATOR B. STENEHJEM Do pop machines get money compensation because they go to vocational public sources?

JERRY HORNER They will take a certain percentage of proceeds but the program is to provide a service to the blind of the state.

SENATOR THOMPSON Is the licensing process separate from this \$25.00 fee?

JERRY HORNER That has not been addressed.

SENATOR B. STENEHJEM You've seen the proposed amendments.

JERRY HORNER Yes and we have accepted them.

SENATOR COOK Can a group such as Kiwanis put candy vending machines at rest areas? Who says yes or no?

JERRY HORNER They would go to Vocational Rehabilitation and ask for a permit. We don't want to get into competition with other local consumer venders. We try to limit the vending machines to beverage machines.

SENATOR COOK If you exclude candy can you not exclude newspapers?

SENATOR BERCIER Do you have a cap on how many vending machines?

JERRY HORNER We accept one vending machine for Coke and one for Pepsi.

SENATOR BERCIER It seems like this is being done for two permits.

SENATOR B. STENEHJEM If there is a profit to be made on vending machines then the Vocational Rehabilitation Services gets it for the blind.

BRUCE MURRY The division of Vocational Rehabilitation Services has said no because the Department of Transportation has said no. The actual cost would be 0 if someone else took care of the permit costs such as the Department of Vocational Rehabilitation. Any vending machine that does not fall under the Randolph Sheppard Act would be \$25.00.

SENATOR B. STENEHJEM What vending machines fall under the Randolph Sheppard Act?

BRUCE MURRY Beverages and candy machines would. Newspaper vending machines would not. The Randolph Sheppard Act deals with those rest areas that are on the federal highways.

SENATOR COOK The intent of this legislation is because your authority to say “no” has been challenged, right?

BRUCE MURRY That is correct. We don’t have the authority to say “no” to written publications, but we want to make sure the safety and functionality of the rest area is preserved.

SENATOR COOK The original testimony dealt with the problem of newspapers. Are we even going to solve that problem now?

BRUCE MURRY The problem hasn’t happened yet in North Dakota because the newspapers requesting to be on the rest areas is new to us. But we introduced the provisions in the bill to ensure the safety of the rest areas when it does start to become a problem.

BONNIE LARSON STAIGER testified in a neutral position but stated that the bill does not address public access to tobacco for minors.

JEANNIE PROM, NORTH DAKOTA DEPARTMENT OF HEALTH testified in a neutral position. There is no state law addressing placement of vending machines but there are several local ordinances addressing the placement of tobacco vending machines.

SENATOR SCHOBINGER Is it addressed in Federal Law?

SENATOR B. STENEHJEM Are there any other questions? Is there anymore testimony? The hearing on SB 2159 was closed.

January 28, 1999-Tape 2 Meter #1647 Committee Discussion

SENATOR COOK I would move we adopt the amendments proposed by Jack McDonald dated January 22, 1999 be adopted and insert the fee of \$25.00.

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Senate Transportation Committee

Bill/Resolution Number SB2159

Hearing Date ~~January 8, 1999~~

1-28-99

SENATOR THOMPSON I second that motion.

The amendment passed unanimously.

SENATOR COOK It offers through statutes a lot of control on vending machines. They want some means of order and maybe they need it. I move for a Do Pass.

SENATOR THOMPSON I second that motion.

SENATOR MUTCH Are we in conflict with the Randolph Sheppard Act?

SENATOR COOK There is nothing that guarantees them to generate a profit.

SENATOR THOMPSON By controlling who gets the permit, they can get a handle of free propaganda.

SENATOR O'CONNELL I don't think we need this in the code; it can be done by policy or rule.

Roll call was taken (5 Yeas, 2 Nays, and 0 Absent and Not Voting). The motion passed.

Senator Cook will carry SB 2159.

# FISCAL NOTE

(Return original and 10 copies)

Bill/Resolution No.: \_\_\_\_\_ Amendment to: Eng. SB 2159

Requested by Legislative Council \_\_\_\_\_ Date of Request: 3-9-99

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

**Narrative:**

- State fiscal effect in dollar amounts:

	1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>	-0-	-0-	-0-	\$4,000	-0-	\$4,000
<b>Expenditures</b>	-0-	-0-	-0-	-0-	-0-	

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

a. For rest of 1997-99 biennium: NONE

b. For the 1999-2001 biennium: NONE

c. For the 2001-03 biennium: NONE

- County, city, and school district fiscal effect in dollar amounts: NONE

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

Signed: *Jerome L. Horner*

Typed Name: JEROME L. HORNER, MAINTENANCE ENGINEER

Department: DEPT. OF TRANSPORTATION - MTCE. & ENGINEERING

Phone Number: 701-328-4443

Date Prepared: 3-09-99



# FISCAL NOTE

REVISED

(Return original and 10 copies)

Resolution No.: SB 2159 Amendment to: \_\_\_\_\_

Requested by Legislative Council Date of Request: Revised 3/05/99

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

**Narrative:**

- State** fiscal effect in dollar amounts:

	1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>	-0-	-0-	-0-	-0-	-0-	\$4,000
<b>Expenditures</b>	-0-	-0-	-0-	-0-	-0-	

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

a. For rest of 1997-99 biennium: NONE

b. For the 1999-2001 biennium: NONE

c. For the 2001-03 biennium: NONE

- County, city, and school district** fiscal effect in dollar amounts: NONE

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

Signed: *Jerome L. Horner*  
 Typed Name: JEROME L. HORNER, MAINTENANCE ENGINEER  
 Department: DEPT. OF TRANSPORTATION - MTCE. & ENGINEERING  
 Phone Number: 701-328-4443  
 Date Prepared: 3-5-99

# FISCAL NOTE

(Return original and 10 copies)

Resolution No.: SB 2159 Amendment to: \_\_\_\_\_  
 Requested by Legislative Council Date of Request: 12-30-98

- Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts. Please provide breakdowns, if appropriate, showing salaries and wages, operating expenses, equipment, or other details to assist in the budget process. In a word processing format, add lines or space as needed or attach a supplemental sheet to adequately address the fiscal impact of the measure.

**Narrative:**

Proposed legislation will have no significant impact relative to administrative effort.

- State fiscal effect in dollar amounts:

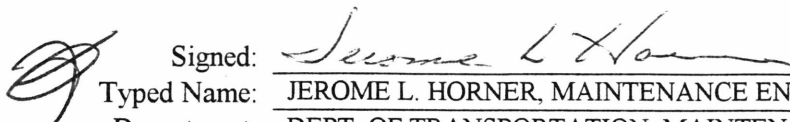
	1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>Expenditures</b>	-0-	-0-	-0-	-0-	-0-	-0-

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

- For rest of 1997-99 biennium: None
- For the 1999-2001 biennium: None
- For the 2001-03 biennium: None

- 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

Signed:   
 Typed Name: JEROME L. HORNER, MAINTENANCE ENGINEER  
 Department: DEPT. OF TRANSPORTATION, MAINTENANCE & ENG.  
 Phone Number: 701-328-4443  
 Date Prepared: 1-05-99

Date: 1-8-99

Roll Call Vote #: [Click here to type Roll Call Vote #](#) 1

2159  
1999 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO: <sup>SB</sup> 2159

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
Senator Bob Stenehjem	X				
Senator Randy Schobinger		X			
Senator Dwight C. Cook		X			
Senator Duane Mutch		X			
Senator David O'Connell	X				
Senator Vern Thompson	X				
Senator Dennis Bercier					

Total (Yes) 3 No 3

Absent Senator Bercier

Floor Assignment Hold Bill

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

Date: February 4, 1999  
Roll Call Vote #: 2

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

Senate Transportation Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken No Pass as Amended

Motion Made By Sen. Cook Seconded By Sen. Thompson

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

Total (Yes) 5 No 2

Absent 0

Floor Assignment Senator Cook

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

**REPORT OF STANDING COMMITTEE**

**SB 2159: Transportation Committee (Sen. B. Stenehjem, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2159 was placed on the Sixth order on the calendar.

Page 1, line 7, remove "charged by the director for the placement of a vending machine"

Page 1, line 8, remove "dispensing a newspaper, magazine, or other publication"

Page 1, line 9, after the first "process" insert ", but may not exceed twenty-five dollars"

Page 1, line 10, remove "except when the publication contains obscene"

Page 1, remove line 11

Page 1, line 12, remove "court, the federal courts, and the courts of this state"

Page 2, line 3, remove "The director may specify the primary colors of vending machines to"

Page 2, line 4, remove "complement the decor or theme of the involved property."

Renumber accordingly

**1999 HOUSE TRANSPORTATION**

**SB 2159**

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2159

House Transportation Committee

Conference Committee

Hearing Date March 4, 1999

Tape Number	Side A	Side B	Meter #
1	x		15.8-37.0
Committee Clerk Signature <i>Janchen</i>			

Minutes:

CHAIRMAN KEISER OPENED THE HEARING ON SB 2159; A BILL RELATING TO REST AREA VENDING MACHINE PERMITS FROMT HE DEPARTMENT OF TRANSPORTATION.

BRUCE MURRY, Staff Attorney for the Department of Transportation introduced SB 2159.

(See written testimony). He noted that this does not address tobacco vending machines.

REP. KEMPENICH asked what the problem is that this bill is meant to address.

BRUCE said that the problem that just started is the number of newspaper vending machines and pop machines and whatnot are beginning to clutter the sidewalks. This in part is violating the ADA requirements of space for wheelchairs to get through and is creating crime and unsafe rest area situations.

Page 2

House Transportation Committee

Bill/Resolution Number Sb 2159

Hearing Date March 4, 1999

REP. MAHONEY noted that the fee is up to \$25. Are you limiting yourself or are you considering a commercial agreement on the cuts?

BRUCE said that it is a possibility. A rest area is a quasi public forum meaning that speech can only be regulated in time, place, or manner restrictions. It might be unconstitutional.

REP. MAHONEY asked if it applied to pop machines.

BRUCE said yes.

REP. SCHMIDT questioned the cameras already in place at many rest stops.

BRUCE said that they do help, but unfortunately they may not deter until it is already too late.

REP. KEISER asked if this is a one time fee or if it is annual?

BRUCE said that it is a one time fee but the bill is not specific to that.

REP. KEISER noted the second part of the bill. Should there be a reasonable policy to limit to 50 vendors?

BRUCE said that the language allows the director to set the number of machines at each rest stop.

LINDA KOHLS, American Cancer Society, testified in support of SB 2159. She noted that the ACS has no problems with the bill as stated, but asked for it to be amended to restrict tobacco machines. Allowing them to be placed at rest areas gives young people access to them. North Dakota already has the third highest rate in youth smoking and it is not going down.

JACK MCDONALD, North Dakota Newspaper Association and Coca Cola Bottling Company testified in support of SB 2159. He simply gave support from both in favor of a Do Pass vote.

REP. MAHONEY asked if the money goes to certain locations?

JACK said that a portion of the money already goes to the disabled.



REP. LEMIEUX noted that the agreement is that a portion of the money goes to vocational rehab. Is that equal to what a private vendor gives to a private business?

JACK said that 15-20% of the money earned goes from the vocational rehab division to the blind vendors in the federal court buildings. It is more of a break even deal with this bill.

CHAIRMAN KEISER mentioned that this is a permissive bill. The DOT may charge a fee.

Why is may the wording. Are we going to charge a fee or not?

BRUCE said that they had no problem changing the may to a shall or must.

CHAIRMAN KEISER asked why no fiscal note was made if there is a transfer of funds.

JEROME HORNER, Department of Transportation, answered that at the time the fiscal note was requested there was not fund transfer anticipated.

CHAIRMAN KEISER asked if they plan to charge.

JEROME said that previously they had not, but do now.

REP. LEMIEUX asked who pays the electricity as far as refrigeration and lights?

JEROME said that in the past it has been paid with the rest area upkeep.

CHAIRMAN KEISER CLOSED THE HEARING ON SB 2159.

March 5, 1999

#### COMMITTEE ACTION

REP. JENSEN moved to ADOPT THE AMENDMENTS. REP. BELTER seconded the motion.

The motion carried. A unanimous voice vote was taken in support of adopting the amendments as presented by Rep. Mickelson.

REP. JENSEN moved a DO PASS AS AMENDED OF SB 2159. REP. PRICE seconded the motion. The motion carried.

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House Transportation Committee

Bill/Resolution Number Sb 2159

Hearing Date ~~March 4, 1999~~

3-5-99

ROLL CALL - 11 YEA, 1 NAE, 3 ABSENT AND NOT VOTING.

FLOOR ASSIGNMENT - REP. MICKELSON

VK  
3/5/99

**HOUSE**

AMENDMENTS TO ENGROSSED SENATE BILL NO. 2159

**HTRN 3/8/99**

Page 1, line 4, after "A" insert "vending machine that allows access to a tobacco product may not be placed or remain upon a rest area, and any other"

Page 1, line 6, replace "may" with "shall"

Page 1, line 7, after the comma insert "annual"

Page 1, line 8, after "dollars" insert "annually"

Renumber accordingly

Date: 3/8  
 Roll Call Vote #: 1

**1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2159**

House Transportation Committee

Subcommittee on \_\_\_\_\_  
 or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken More (Adopt) Amendments

Motion Made By Rep Jensen Seconded By Rep Belter

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) 11 No 0

Absent 4

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

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

Date: 3/5  
 Roll Call Vote #: 2

**1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2159**

House Transportation Committee

Subcommittee on \_\_\_\_\_  
 or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO PASS AS AMENDED

Motion Made By REP JENSEN Seconded By REP PRICE

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

Total (Yes) 11 No 1

Absent 3

Floor Assignment Rep Mickelson

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

**REPORT OF STANDING COMMITTEE**

**SB 2159, as engrossed: Transportation Committee (Rep. Keiser, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 1 NAY, 3 ABSENT AND NOT VOTING). Engrossed SB 2159 was placed on the Sixth order on the calendar.

Page 1, line 4, after "A" insert "vending machine that allows access to a tobacco product may not be placed or remain upon a rest area, and any other"

Page 1, line 6, replace "may" with "shall"

Page 1, line 7, after the comma insert "annual"

Page 1, line 8, after "dollars" insert "annually"

Renumber accordingly

**1999 SENATE TRANSPORTATION**

**SB 2159**

**CONFERENCE COMMITTEE**

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2159

Senate Transportation Committee

Conference Committee

Hearing Date 3/26/99

Tape Number	Side A	Side B	Meter #
1	X		1
Committee Clerk Signature <i>Ari A. Schaeffer</i>			

Minutes:

Senator Stenehjem called the conference committee on SB 2159 to order. Present were Senator Stenehjem, Senator Cook, Senator Thompson, Representative Mickelson, Representative Mahoney.

Senator Cook: I have a question regarding tobacco vending machines, do we not have state law that allows establishments to hold tobacco vending machines to people over 21.

Representative Mickelson: Those laws are city ordinances. The department does have some discretion so we thought it would be better to say no.

Senator Stenehjem: Did information come through where money goes to?

Representative Mickelson: Yes, blind.

Senator Cook: Move the Senate accede to House.

Representative Mickelson: Second.



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Senate Transportation Committee

Bill/Resolution Number trans. SB 2159

Hearing Date 3/26/99

ROLL CALL:

Senator Stenejem- Yes

Senator Cook- Yes

Senator Thompson- Yes

Representative Mickelson- Yes

Representative Mahoney- Yes

(Bill Number) SB 2159 (, as (re)engrossed):

Your Conference Committee

For the Senate:

Senator B. Stenehjem  
Senator Cook  
Senator Thompson

For the House:

Representative Mickelson  
Representative P. Kelsch  
Representative Mahoney

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)  
723/724      725/726      S724/H726      S723/H725  
the (Senate/House) amendments on (SJ/HJ) page(s) 684 - \_\_\_\_\_

and place SB 2159 on the Seventh order.  
727

, adopt (further) amendments as follows, and place  
\_\_\_\_\_ on the Seventh order:

having been unable to agree, recommends that the committee be discharged  
and a new committee be appointed. 690/515

((Re)Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the  
calendar.

=====  
DATE: 13/25/99

CARRIER: Senator Cook

LC NO. \_\_\_\_\_ of amendment

LC NO. 98245 . 0200 of engrossment

Emergency clause added or deleted \_\_\_\_\_

Statement of purpose of amendment \_\_\_\_\_  
=====

(1) LC (2) LC (3) DESK (4) COMM.

Insert LC: .

**REPORT OF CONFERENCE COMMITTEE**

**SB 2159, as engrossed:** Your conference committee (Sens. B. Stenehjem, Cook, Thompson and Reps. Mickelson, R. Kelsch, Mahoney) recommends that the **SENATE ACCEDE** to the House amendments on SJ page 684 and place SB 2159 on the Seventh order.

Engrossed SB 2159 was placed on the Seventh order of business on the calendar.

1999 TESTIMONY

SB 2159

North Dakota  
Local Tobacco Ordinances (27)

Ordinance Provisions	1990 (1)	1991 (1)	1992 (6)	1993 (8)	1994 (10)	1995 (13)	1996 (23)	1997 (27)
<b>Vending Machine Restrictions</b>	1 Grand Forks	1 Grand Forks	6 Grand Forks Bismarck Mandan Jamestown Valley City Fargo	7 Grand Forks Bismarck Mandan Jamestown Valley City Fargo Devils Lake	8 Grand Forks Bismarck Mandan Jamestown Valley City Fargo Devils Lake Minot	9 Grand Forks Bismarck Mandan Jamestown Valley City Fargo Devils Lake Minot Williston	12 Grand Forks Bismarck Mandan Jamestown Valley City Fargo Devils Lake Minot Williston Langdon West Fargo Wahpeton	13 Grand Forks Bismarck Mandan Jamestown Valley City Fargo Devils Lake Minot Williston Langdon West Fargo Wahpeton Turtle Mt.
<b>Licensing</b>	0	0	0	1 Jamestown	2 Jamestown Valley City	4 Jamestown Valley City Grand Forks Williston*	8 Jamestown Valley City Grand Forks Williston* Fargo* West Fargo* Minot Wahpeton	9 Jamestown Valley City Grand Forks Williston* Fargo* West Fargo* Minot Wahpeton Turtle Mt.
<b>Self-Service Restrictions</b>	0	0	0	0	0	0	3 Bismarck Langdon Wahpeton	5 Bismarck Langdon Wahpeton Devils Lake Turtle Mt.
<b>Clean Indoor Air</b>	0	0	0	0	0	0	0	0

Source: North Dakota Department of Health, Tobacco Prevention & Control Program

\* Authority to sell, not a tangible license

January 22, 1999

**SENATE TRANSPORTATION COMMITTEE**  
**SB 2159**

**CHAIRMAN STENEHJEM AND COMMITTEE MEMBERS:**

My name is Jack McDonald. I'm **appearing today** on behalf of The North Dakota Newspaper Association and Midwest Coca-Cola Bottling Co. We oppose portions of **SB 2159** and ask that you consider our proposed amendments.

We don't think the permit fee should be open-ended, but should have some guidelines. And, we don't think its practicable to dictate the color of the vending machines.

Additionally, there have been a number of federal court decisions indicating that the government can't regulate newsracks except for safety purposes. If there are problems with obscenity, they can be handled by the courts.

We respectfully request your **FAVORABLE CONSIDERATION** of these amendments. If you have any questions, I'll be happy to answer them.  
THANK YOU FOR YOUR TIME AND CONSIDERATION.

**PROPOSED AMENDMENTS TO SB 2159**

On page 1, line 7, delete "charged by the director for the placement of a vending machine"

On page 1, line 8, delete "dispensing a newspaper, magazine or other publication"

On page 1, line 9, after the word "process" insert ", but in no event shall exceed \_\_\_\_\_"

Page 1, lines 10, delete "except when the publication contains obscene"

Page 1, delete line 11

Page 1, line 12, delete "court, the federal courts, and the courts of this state."

Page 2, line 3, delete "The director may specify the primary colors of vending machines to"

On page 2, line 4, delete "complement the decor or theme of the involved property."

Renumber accordingly

# SENATE TRANSPORTATION COMMITTEE

January 8, 1999

**North Dakota Department of Transportation**  
**Jerome Horner, Maintenance and Engineering Services Engineer**  
**Bruce Murry, Staff Attorney**

## SB 2159

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Mr. Chairman and members of the committee: The North Dakota Department of Transportation requested the introduction of Senate Bill 2159 and recommends its passage.

The Department of Transportation has been confronted with the issue of vending machines being placed at its rest areas without its permission. Actions to remove such machines have led to litigation against the department. The department has thus far prevailed on procedural grounds in such litigation, although the merits have not been argued. However, vending machines continue to be placed on department rest areas. The department's authority to regulate vending machines is unclear. This bill is an attempt to clarify the authority of the department while remaining fair and avoiding encroachment upon the First Amendment.

The department has since the early 1980's allowed beverage vending machines to be placed at rest areas along the Interstate Highways pursuant to the federal Randolph Sheppard Act [Pub. L. 74-732; 49 Stat. 1559; 20 U.S.C. 107]. The Randolph Sheppard Act mandates that the state agency administering programs for the blind, in our case the Division of Vocational Rehabilitation Services of the Department of Human Services, to permit vendors to place beverage vending machines on Interstate rest areas. This bill is intended to work within the requirements of the Randolph Sheppard Act.

The bill seeks to protect the public, the department, and the vendors by addressing the following issues:

- Preserving the Function of the Rest Area;
- Safety;
- Fees;
- Content of Publications, Within the Confines of Such Regulation under of the First Amendment;
- Risk Management;
- Access by the Disabled;
- Aesthetic Concerns;
- Maintenance;
- Reconstruction or Major Renovation;
- Customer Service;
- Restoration after Removal.

The promulgation of administrative rules was considered and pursued to the point of public hearings. However, as the authority of the department was unclear, the department elected instead to submit the matter to the Legislative Assembly. No unfavorable comments were received regarding the proposed administrative rules, which were substantially similar, although more detailed.

We would welcome any questions the committee would care to pose.

# HOUSE TRANSPORTATION COMMITTEE

March 4, 1999

**North Dakota Department of Transportation**  
**Jerome Horner, Maintenance and Engineering Services Engineer**  
**Bruce Murry, Staff Attorney**

## SB 2159

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Mr. Chairman and members of the committee: NDDOT requested the introduction of SB 2159 and recommends its passage.

NDDOT has been confronted with the issue of vending machines being placed at its rest areas without its permission. Actions to remove such machines have led to litigation against the department. The department has thus far prevailed on procedural grounds in such litigation, although the merits have not been argued. However, vending machines continue to be placed in department rest areas. The department's authority to regulate vending machines is unclear. This bill is an attempt to clarify the authority of the department while remaining fair and avoiding encroachment upon the First Amendment.

The department has, since the early 1980s, allowed beverage vending machines to be placed at rest areas along Interstate highways, pursuant to the federal Randolph Sheppard Act [Pub. L. 74-732; 49 Stat. 1559; 20 U.S.C. 107]. The Randolph Sheppard Act mandates that the state agency administering programs for the blind (in our case, the Division of Vocational Rehabilitation Services of the Department of Human Services) permit vendors to place beverage vending machines in Interstate rest areas. SB 2159 is intended to work within the requirements of the Randolph Sheppard Act, and seeks to protect the public, the department, and the vendors by addressing the following issues:

- ▶ Preserving the function of the rest area
- ▶ Safety
- ▶ Fees
- ▶ Risk management
- ▶ Access by people with disabilities
- ▶ Maintenance
- ▶ Reconstruction or major renovation
- ▶ Customer service
- ▶ Restoration after removal

The promulgation of administrative rules was considered and pursued to the point of public hearings. However, because the authority of the department was unclear, the department chose instead to submit the matter to the Legislature. We received no unfavorable comments regarding the proposed administrative rules, which were substantially similar to SB 2159, although more detailed.