

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2008

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2003 SENATE APPROPRIATIONS

SB 2008

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2008

Senate Appropriations Committee

Conference Committee

Hearing Date January 20, 2003

Tape Number	Side A	Side B	Meter #
#1	x		50-6218 -50
1		X	1-2179
Committee Clerk Signature <i>Jan Mendruck sm</i>			

Minutes:

Meeting was called to order by Senator Holmberg, chairman. (#50) All members were present.

Senator Holmberg reminded committee members that there would be time this week and next to set up subcommittee meetings. They are to alert the clerks when their subcommittee are going to meet, so that OMB and Legislative Council can be aware of it and agencies can also be notified.

Hearing for SB 2008 Public Service Commission (#180).

Jon Mielke, Executive Secretary of Public Service Commission, and director of the Commission's Licensing Division and as the primary staff person on railroad matters. He was the primary presenter on the budget for this bill. (Exhibit #1) Commissioner Susan Wefald and Leo Reinbold were also present, Commissioner Tony Clark was unable to attend. Illona Jeffcoat-Sacco, director of the Commission's Public Utilities Division and Mike Diller, the Commission's accountant were also present.

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Mr. Mielke stated that this budget is a status quo. The Commission was not proposing any new programs or asking for any additional FTEs.

The Commission's area of responsibility has not changed in several years, these area include:  
Regulation of telephone, electric and natural gas utilities; pipeline safety inspections; Licensing grain elevators and auctioneers; Testing and certifying weighing and measuring devices;  
Overseeing coal mining; Eliminating hazards at abandoned mine sites; Siting power plants, power lines, and pipelines; and Representing state rail interests in federal proceedings.

While few changes in jurisdiction, the Commission has actually been immersed in a rapidly changing regulatory environment, some of which is mandated by federal and state statutory changes and some of which is related to structural changes within the industries that the Commission deals with, these changes are:

1. Federal telecommunication mandates, including the application by Qwest to enter the long distance market and the ongoing oversight of the related wholesale telecommunications market.
2. State involvement with handling "slamming" complaints related to long distance telephone service.
3. Restructuring within the nation's electrical transmission grid.
4. Performance Based Ratemaking (PBR) to provide efficiency incentives for regulated utilities.
5. US Department of Agriculture moves to preempt state-provided farmer protections at federally licensed grain warehouses.
6. Post 9/11 issuance and bond rate increases and related impacts on mining companies and grain warehouses.

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7. Wind and coal power generation and grain warehouses.

All of these activities plus the Commission's normal workload have made for some very busy times. The Commission has taken part in several multi-state collaborative efforts to process industry applications and to participate in federal proceedings. To process Qwest's recent application to the Federal Communications Commission to enter the long distance market, the Commission joined forces with several other states. This approach made it possible for the Commission to take advantage of expertise in other states and to process the massive proceeding much faster and cheaper than would have been the case had the matter been handled alone. North Dakota was in the first group of nine Qwest states to receive this federal approval.

In the area of electric rate regulation, the Commission has received recognition for its approach to provide utilities with incentive based options to traditional rate of return regulation. Both Otter Tail Power and Northern States Power have taken advantage of this "Performance Based Ratemaking" option-to the benefit of both their stockholders and their customers.

Traditional rate making procedures are still used for utilities that are not part of incentive-based plans. The Commission processed two natural gas rate increase applications during the past biennium and its staff also initiated a rate reduction complaint proceeding on behalf of utility's electric consumers. Work is also underway to investigate costs associated with wholesale services that Qwest provides to other telecommunication companies.

The generation and transmission of electricity has been and will continue to be a topic of major concern in North Dakota . The nation's need for electricity and North Dakota's ability to produce this power put the Commission squarely in the middle of several ongoing proceedings. This involvement is based on the fact that the Commission is responsible for setting both major

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generating and transmission facilities plus it must approve and oversee mining activities at coal mines in North Dakota. Another major concern is the transmission of electricity. The existing wholesale transmission grid is being restructured and is running at near capacity. The Commission has been heavily involved in regional and national discussions concerning this structuring. It is vitally important that this restructuring be done in a manner that does not negatively impact North Dakota-based utilities, North Dakota rate payers or the state's power generating facilities. The Commission has 4.5 FTEs and one attorney who have been undertaking these public utility efforts.

Restructuring has been a big part of the grain elevator industry in North Dakota for the past several years and the Commission's Licensing Division plays a major roll in this process. This Division oversees the licensing and bonding of all the grain elevators and grain buyers in North Dakota and processes all grain elevator insolvency cases. North Dakota's grain industry has seen declining numbers and increasing capacities for nearly 100 years. At the present time, there are about 425 grain elevators in North Dakota. They have a combined storage capacity of over 250 million bushels. The Wimbledon Grain Company insolvency was a major case for the Commission last year. This case was especially complex because the company was licensed by both the federal government and the commission. It was also difficult because the company had purchased over \$1 million worth of grain on an unsecured, credit-sale basis from farmers. In the end, over \$3 million was paid out to patrons of the elevator.

Among other things, the Commission's Testing and Safety Division is responsible for ensuring the accuracy of commercial weighting and measuring devices that are used in North Dakota.

Division personnel ran over 28,000 tests on scales and pumps during the last biennium. The

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Testing and Safety Division has also been working closely with the fertilizer industry to develop cheaper and more accurate flow meters to dispense anhydrous ammonia. The utilization of this equipment should be a great benefit to farmers and fertilizer dealers. The Commissioner's Reclamation Division is responsible for permitting coal mine applications and for overseeing mining and reclamation activities at North Dakota mines. There are four large and two small coal mines in operating in North Dakota; they produce about 31 million tons of coal annually. There are approximately 78,500 acres of land under permit in the state. These acres are all monitored by the Commission to ensure compliance with state reclamation laws. Another accomplishment of the Commission was the development of a system that allows the PSC to accept and process a fully electronic coal mine permit application on a single disc, instead of 18 3 inch binders as in the past. The Commission has started a rulemaking case to purpose new provisions that will allow mining companies to post letters of credit as the security for a collateral bond. These rules are being proposed due to the high cost and limited availability of surety bonds for mining and reclamation operations. The will give mining companies another option for performance bonding. The Commission's Reclamation and Abandoned Mine Lands (AML) Divisions have a combined staff of 13 FTEs, primarily environmental scientists and engineers with specialized backgrounds in disciplines such as hydrology, soils, agronomy and range management. About 65% of the Reclamation Division's budget comes from federal sources while the AML Division is 100% federally funded. The vast majority of AML funding is used to hire private contractors to eliminate safety hazards at the worst of over 600 abandoned surface and underground mine sites in western North Dakota.

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About 56% comes from federal sources, 40% is general fund money and 4% is special funds. The Commission generates about \$1.2 million per biennium in income from statutory license and inspection fees. Indirectly, this income covers about 30% of the general fund money that is appropriated to the agency. The Commission's Public Utilities Division is the only regulatory function within the agency that does not produce significant income to offset a major portion of its cost of operations. The Commission has offered legislative proposals to increase fees related to weights and measures inspection services (SB 212) and auctioneer and auction clerk licenses (SB 2114). The Commission has also proposed the initiation of an annual registration fee for public utilities (HB 1133). If these measures are passed they will generate approximately \$256,000 in new income for the general fund. These are an attempt on the Commission's part to make itself self-supporting. North Dakota is one of only a few states in the nation that supports its public utility commission largely with general fund money, most are financed with some form of direct assessment against either utilities or their customers. This may or may not be a matter that the Legislature would like to study during the upcoming interim. The Commission recorded nearly 2200 complaints and inquiries during the last biennium, most concerned traditional public utility services but some involved matters such as grain elevator operations, mining and weights and measures. The Commission maintains a web site for the public and industry to use to keep them updated and informed. The site is being expanded and redesigned to make it more user friendly.

Over 98% of the 1380 cases that were reported to the Commission, were processed without the need for a formal hearing and nearly 2/3 were processed and closed in less than 30 days. Only 34 of these cases required formal hearings, several of which were mandated by state law.

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The Commission's staff has been reduced in size from 60 FTEs twenty years ago to 41 today, despite very few changes in jurisdiction. The Commission's ability to function effectively with less staff is a direct function of increased efficiency and staff experience, however staffing could become a challenge in the future, mainly because many will be moving into retirement. The Commission feels it must begin to position itself to meet this challenge.

The last item the Commission wanted to discuss was a new item in the Governor's executive budget recommendation which relates to funding for the initial stages of a rail rate complaint case. The Commission understand that the Governor is proposing that funding for this effort came from the rail program created by Section 49-17.1-02.1 of the North Dakota Century Code. North Dakota is among the highest rail rates on grain in the country. It costs more to ship corn and wheat from North Dakota to Portland, Oregon than it does Iowa, Kansas or Nebraska even though the trip from North Dakota is several hundred miles shorter. It is estimated that North Dakota's annual transportation bill would be \$50 to \$100 million lower if they had effective competition for grain shipments. This is money that should be staying in the pockets of farmers and grain elevators. This would be a great economic boost for rural communities.

Because of changes in the federal rules on rate complaint matters, it is now believed that winning a case now is a possibility. The federal Surface Transportation Board (STB) promulgated these rules over 2 years ago. The rail industry challenged these new rules in federal court but the court upheld the STB. (There is an article attached to the testimony). The new chairman has questioned where there have not been more filing of rate complaint cases with the Board. Rate complaint cases are more favorable now than it has been since the federal Staggers Rail Act was passed in 1980. The Governor's budget recommendation contains \$250,000 in non-general fund

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money to take the initial steps towards a possible rate complaint case before the STB. This would be a collaborative effort involving the Commission, the Attorney General's office, The Upper Great Plains Transportation Institute, the grain elevator industry, and state farm and commodity groups. It would also require the services of highly specialized legal counsel and technical costing experts. This money would **NOT** fund an actual complaint proceeding. The estimate would be in excess of \$1 million dollars for the actual proceeding. Any decisions on such an action would be made after this initial investigation and assessment is complete. This "investment" would be huge to North Dakotans who would save \$2.5 million for every one-cent reduction in rail rates on wheat and durum. A 10-cent reduction would save North Dakotans \$25 million per year. A 20-cent reduction would pump an additional \$50 million into the state's economy each year. (attached to the testimony is a related fact sheet)

Questions: (1780)

Senator Mathern: Are the incomes projected with these other Senate bills and House bills on page 8, are they considered in this budget proposal before us? Or is that additional income?

Jon: Would have to let OMB answer this. All income we generate goes to the General Fund, it is not a direct offset within our budget.

Sandy Paulson (OMB) responded that the Governor's recommended budget is based on their current rates and that income goes directly into the General Fund.

Senator Mathern continued: If we passed SB 2112, for example, that would be income beyond the Governor's budget? Ms. Paulson responded: yes that is correct.

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Senator Schobinger (#1888): What is the commission current role in regulating the railroad industry and why shouldn't this rail rate case not be run directly through the Attorney General's office?

Jon: Most of the Commission's regulation control over the railroad was eliminated with the passage of the Staggers Rail Act of 1980. Most of the regulations are now federal, the states still have control over railroad crossings, to build a structure closer than is within safe limits, a clearance zone around a rail line. But everything that has to do with interstate commerce and rates rests with the Federal Surface Transportation Board. The reason for the Commission brought it before the Governor and now the Legislature is that fact that the statues name the Commissions specifically responsible for representing state shipping interests in Federal proceedings.

Senator Schobinger: So you are saying that even if the Legislature wanted to run this through the Attorney General office, we couldn't?

Jon: You could certainly change the law naming the PSC is responsible as the entity as responsible for this matter. When the Commission started working on this, they involved the AG office and both worked together to bring the amount before you to have the AG staff involved.

Senator Schobinger: What is the estimate of the total cost of the rail case might be to the conclusion?

Jon: We think it will be over a \$1 million dollars, but the money we are talking is for an initial assessment. This will tell us whether we should be moving ahead or not. If there was a strong case, we would try to negotiate a settlement first and try to avoid as many of those costs as possible. If that was not possible, it could well exceed a \$1 million.

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Senator Thane: (#2228) Is the Commission keeping up on the technology regarding the power grid and the tremendous increases of power on existing lines?

Jon: The Commission has quarterly meetings with the major utilities we regulate including MDU, Otter Power Tail and NSP. The Commission is monitoring this very closely.

Senator Christmann (#2349): 1. The \$250,000 is that just information? Jon: This is correct, it would be a very in depth investigation to see if the Commission had a case. Several aspects have to be looked at before a decision could be made. Senator Christmann: The abandoned mine site work, is that beginning to be a bigger process each biennium, because the underground mines are getting older and caving in more often? Jon: The problem has been a little more evident, the mines are getting older, but the weather has been wetter and as that water makes it's way down the surface, down into these underground mine workings, then the problems appear. Over 600 mine sites in western North Dakota have been found. Federal funds have not been released for the program and these funds are an assessment paid on every ton of coal that is mines. Not as much is coming back to us annually as we could use. Senator Christmann: the \$6.1 million income (page 1 of Budget)...what is that for? Jon: Federal funds going to mine program.

Senator Tallackson (#2804) Money was appropriated last biennium for the rail rate issue, what progress has been made? Jon: Commission did request funds, but it was not funded. There has been no appropriation in the past for this. Some questions during the last session regarding federal rules. New surface transport ion board rules will allow us to move forward, and the Federal courts have acted so it is no longer a hurdle. Because of the new rulings by the federal courts we felt it was appropriate to come back and ask for the funds. Senator Kilzer (#2925), The other alternative to moving grain is by trucking, is trucking regulated by the PCS the same

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way that rail services are? Is there involvement of the Interstate Commerce Commission in trucking? Jon: Trucking of intrastate was deregulated about 25 years ago, so there is no intrastate regulation of trucking. Not aware of any regulation except weight & size and safety requirements concerning the trucking of grain on a interstate basis. That is not regulated by what used to be the Interstate Commerce Commission, now the Surface Transportation Board. Trucking is not very competitive once you get beyond the range of 200-250 miles. They just can't compete with the economics of rail transportation. Chart shown indicated that the 250 million bushels of grain moved out of the state, 83% moves by rail. Senator Thane (#3143) Major concern of a lot of us in rural North Dakota is shuttle train concept and also negative impact it not only have on country elevators but also the negative impact it's going to have on the roads system that will feed those shuttle trains. A lot more trucks traveling greater distance, heavier trucks. Where is the PSC right now on that issue? Jon: A huge concentration going on in the country elevator industry, the number of elevators has shrunk from 575 in 1990 to about 425 today. The top 25-50 elevators are probably handling 80% of the grain, so it is being concentrated more and more at fewer and fewer shipping stations and the latest and biggest of those are the shuttle facilities which are capable of handling 100-110 cars at a time. The traffic patterns are changing and the grain moving off the farms, rather than moving directly to the nearest country elevator, are now moving 100 miles in any direction, rather than moving in single axle and other trucks, it is moving in semi's, some are owned by farmers and some are owned by commercial hauler's who are hauling directly off the farm. PSC has participated in some studies with the Transportation Institute. The DOT is taking the lead in those. There are some bills or interim study being presented that address the entire issue of grain moving off the farm.

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Senator Krauter (#3361). Details of the Rail Rehabilitation Loan Program. What does it entail, it is just a catch phrase? Does it mean the producers are going to pay for this? Jon: The PSC did not indicate where the funds should come from when it asked for money for the rail rate study. That decision was made through the Governor's office to take those funds out of the Local Rail Assistance Program (Rail Rehabilitation Loan Program). That program goes back a number of years, when the federal government was making money available to states for rail rehabilitation projects. A lot of states made that money to make grants to rehab rail lines, North Dakota took a different approach and make that money available to some elevators and some railroads on a loan basis. And as those loans were repaid, that money became again to recycle through the program. As the money was repaid, as Jon understood it, it went into 2 different pools of funds. The principal went back into a program that continues to be federal, the interest went into a program that was strictly a state program. Now DOT and the state has two different funds to make funds available. The Governor's plan is to use the state interest money to fund the rail rate project. So this is money primarily be repaid by railroads who have taken out loans to do rehabilitation. A lot of those projects are being done by the short lines in North Dakota. They have been the primary participates of the program. Senator Krauter: Then it is not correct to say that it is being paid by producers, it is being paid by that particular fund that is has the interest from those federal grant dollars. Jon: That is correct. Senator Krauter: Do you have an accounting of that, like an ending balance. Jon: I do not, that is a DOT program. DOT or OMB would have the details on that. Question by Senator Bowman regarding the higher fees for auctioneers. Jon responded that it was typical for the Commission to look at those fees set by statue when going into a Legislative session. Especially look at those fees that have not been adjusted in a considerable period of

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time. Question was raised last session asking why the PSC didn't raise more fees to cover their costs. An assessment has been done to see what the costs are to run different functions and the auctioneers was one that came up again. The last change in fees was 1987, when it went from \$25.00 to \$35.00, an increase of about 3%. Question from Senator Schobinger ((#3835) Just for clarification, did you say, Jon, that if this were to pass, it would be the railroad funding a compliant against it's self? Jon: The state would be using interest money that have been paid by the railroad on loans that they took out. Senator Mathern (?) (The Vice chair did not call on any Senator) (#3931) Because of the benefit on North Dakota producers, would there be any objection if we moved ahead on this \$250,000 as an emergency measure? Jon: I am not aware of any opposition in the farming community. I think the sooner the better, the sooner we have the answers to our questions, the sooner we can make some decisions. Senator Tallackson (#3997) This "Call before you Dig" program, has that been successful? Jon: It has worked very well, there was some federal funding to support that, and the Commission does not run that program directly but we get together with the utilities and the contractors in the state and they put together some ideas for an advertising. It seems to be working very well Senator Robinson (#4090): Some of the commodities groups expressed support of some moneys for the rail rate issue, is that support still there? Jon: 2 years ago the main support came from the North Dakota Grain Dealers Association and the North Dakota Wheat Commission. The Wheat Commission is here to speak on this, they found they spent way more money then they anticipated on the rail rate case with the Canadian Wheat board. The Grain Dealers are still very much in support, they also have people here to speak on this today.

Jon: Copies of the Biennial report on here if any of the members want one. (Exhibit #6).

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Other Testimonies:

Harlan Klein (Exhibit #2) (#4338): Vice chairman for the North Dakota Wheat Commission, and the commissioner responsible for transportation issues. The North Dakota Wheat Commission supports the appropriation, which includes \$250,000 for the analysis of a rail rate complaint. He states the same facts and figures previously stated on how much would be saved by the farmers/producers/etc.

Lance Hagen, (No written testimony) (#4802) NDGGA and USDGA, in support of SB 2008 and appropriation of the \$250,000 for the rail

Richard Schlessor(#4942) in behalf the North Dakota Farmers Union (no written testimony). They are in support of SB 2208 and line item for the \$250,000 for the rail rate relief. He wanted to also state that this is a cooperative effort among farm organizations, commodities groups, elevator industry, and several state agencies with the support of the Governor. There is a united front to lead this and secondly the economic impact that will happen for our state.

Brian Kramer (#5199) (No written testimony) ND Farm Bureau. In support of SB 2008 line 16 Section 2 of this bill, particularly rail rate issue. Would encourage the committee to pass this bill.

Steve Strege, Executive Vice President of North Dakota Grain Dealers Association (#5200) Exhibit #3. Stated his association's support of Section 2 of SB 2008. He also expressed concern regarding the opposition of where the funds to finance the study were coming from. He stated that the opponents of this transfer state that it will do great damage to branch line rehabilitation or construction projects at new or existing industries. He wanted to remind everyone that we should not have our attention diverted away from the multi million dollar problem of excess rates and a chance to do something about them, by concerns of a few with an interest in leaving those

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funds where they are. He stated that \$250,000 will rehabilitate only one or two miles of track, depending on how much work is being done. Contract that with the tens of millions of dollars in potential savings for thousands of farmers by reducing rates. That money then re-circulates in our state's economy. A one-cent reduction in the rate for wheat grown in North Dakota is \$2.5 million, ten times the amount of money we are talking about in this bill for this purpose.

Senator Schobinger (#5388): Are the rates the same from Dickinson to the Northwest as they are from Fargo to the Northwest? Or are those rates different? Answer: Don't know what the rates are today. A couple of examples in my testimony: top of second page (he refers to Berthold, ND in his speaking, but it is not in his testimony). From a station in Western North Dakota the per car wheat rate is \$4250, as compared to \$2850 for soybeans and corn to the Pacific Northwest in 54 car trains. At a BNSF station south of Grand Forks the rate difference is in the \$800 per car range. Revenue to various cost ratios are a measure of railroad profitability. On most rail most rail movements of North Dakota wheat, these ratios far exceed the threshold of a potential finding of unreasonableness. The bottom line is that we are being gouged on wheat rates, our largest crop. Senator Robinson: (#5557): 2 years ago, the North Dakota Grain Dealers Association was behind this issue, where do they stand now? Steve: The request 2 years ago was for \$100,000 and we said that we would put in \$10,000 if the \$100,000 was appropriated, and I think we raised that to \$20,000 and the Wheat commission talked about putting in some money then too. Believe it or not, our Board of Directors decided that if that was necessary we would make a contribution, but we don't want to see funds reduced from the state and made up by us, we would like to add to it if necessary, maybe this \$250,000 won't even be necessary, that is only a figure that is going to be made available. Senator Robinson: There is a lot on the line here,

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and I think we need a united front to get the job done. We are using millions and millions of dollars, according to the testimony, so that it is extremely aggressive with all organizations.

Steve: We will throw that figure out to you, \$10,000 or \$20,000 and if there are others who want to put money into this, that is there business. We would certainly encourage that.

Senator Thane: (#5806) 20 years ago they promised us great rate reductions if we went 52 car unit trains, rate reductions disappeared, now they say we have to have 100 car . Is anybody holding them accountable for those promises that they made and then essentially have broken?

Steve: The railroad are pretty much free to set their rates were they want to and as Mr. Mielke stated the process of challenging them through the Transportation Board has been difficult but now it has been made easier and I guess you have to get to the point where you have to say enough is enough. They just keep upping the ante for the required cars to get discounts and is just shifts the costs over to the farmers/grain elevators and public sector because as you increase the size of these trains you have to have bigger elevators, so the smaller ones disappear and then grain has to be hauled greater distance by trucks over the road system. Senator Krauter (#6031) Something that has not been talked about this morning is the wear and tear on the highway system in North Dakota. (End of Side A tape #1)

Side B tape #1

Answer to Senator Krauter's questions regarding wear and tear on highway system (#1)

The impact on the highways is great, because you have more traffic going to one place and the number of elevators is going down all the time and the BN is encouraging people to build the 110 car shuttle trains on main line railroads and giving them incentives to do it. Now it looks like we are getting too many of them in the eastern part of the state, where the train territories are over

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lapping and people are asking where is all the grain is coming from. People feel compelled to along with the new concept because that is what the railroad wants. Senator Krauter: What is my competition out there? Is there any competition? Answer: Not really, truck was mentioned earlier, but how many trucks do you want to put on the road? For every railroad car, you have to have 4 trucks. 110 car train you are going to put 440 more truck loads on the road. So the rail is needed and we want the rail to be profitable but we don't want them to be taking advantage of us excessively in ND.

Dan Zink (? No sure of spelling) (#135) (Exhibit #4) No name on testimony. He is with the Red River Valley & Western Railroad Company. It is a short line railroad, headquartered in Wahpeton, ND. A short line railroad is a small railroad usually serves a small territory or even just a few railroad customers on light density branch lines. North Dakota is currently served by 3 short line railroads, and these small companies serve mostly rural communities and primarily agricultural customers in North Dakota's rural areas. Short line railroads are a success story in North Dakota. Many of the communities would have lost rail service without the short line service. Short line have invested millions of dollars back in the tracks that they have taken over and the main source of funding for these track rehabilitation programs is from the loan programs that were described here today. The 3 short line companies use these funds heavily since the beginning of the program. Many miles of track on the State's short lines have been rehabilitated under this program. This rehabilitation is critical in keeping our rural communities and farmers competitive by retaining this transportation outlet by rail. Without these rail lines, many communities will lose economic opportunities when rail service is lost. We are not testifying today as to whether or not the State should pursue a rate study or a rate case. The Governor of

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ND has the obligation to protect the economic interests of the State if he sees fit. The rate case would not directly affect the short lines in North Dakota, since these short line do not establish the rates that are in question. The short lines only make rates for local shipments, those that originate and terminate on our system. The Red River Valley & Western Railroad is opposed to the source of the funds that are proposed in the ND PSC's budget, and respectfully requests that the proposal to conduct a study of a potential rate case be funded from another source, rather than from the FRIP program. We are also very concerned that if these funds are used to pay for the study, then the funds for any actual rate case will also come from the FRIP account. This could severely impair the short line's ability to rehabilitate their track as these funds are expended on a rail rate case. It does not seem fair that the short line railroads, who have funded the FRIP program by paying interest into the fund on loans for track rehabilitation, should be penalized by using these funds to study a rate case, when the short lines do not even establish the rates that are in question.

Questions: (#410) Senator Krauter: What are the interest rates? Answer: North Dakota established an interest rate about 5 years ago that would be 1/2 of prime or minimum of 3%, so currently the rate is 3%. Because of the kind of work we do, it is difficult to get bank loans, etc, North Dakota has been very generous in giving these loans to the short line railroads at such a good interest rate.. Senator Thane (#480): Very proud of the short line service in SE North Dakota, and I understand the opposition, but the Governor's budget is very tight and is looking anywhere and everywhere to try to find ways to come up with a balanced budget. Would you want to make any suggestions as to where that money would be found? Answer: If a rate case is so compelling, the beneficiaries should be willing and able to fund it. And the short line railroads

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are not the beneficiaries of the rate case, and with all due respect to the commodities groups, the Grain Dealers Associations, and the Public Service Commission and the Legislature, we just feel it is the wrong source of the funds.

Dan Kuntz (#612) (Exhibit #5) represents the Burlington Northern and Santa Fe Railway Company. He wanted to make a point that serves as a short response to many of the accusations made against the railroad in recent months. The rates charged to move North Dakota wheat today are generally the same as they were at the end of 1981, the same year the federal government partially deregulated rail rates. Not only have rates not kept pace with inflation, they are right about where they started. A chart (which is attached to Exhibit #5) showing the history of rates charged to move wheat from Devils Lake to the Pacific Northwest, which we believe is representative of BNSF's westbound rates in North Dakota. As the bottom line on the chart shows, there has been some fluctuation over the past two decades, with rates dropping to their lowest point in 1986 and 1987, gradually rising back up until 1995, and then going back down to where they began. The top line shows where that rate would be had it risen in accordance with the consumer price index: almost double what it is today. The same is true of the rates from Devils Lake to Minneapolis. At other locations, the story is almost exactly the same. Another chart (also attached to the testimony Exhibit #5) shows you the rate history from Devils Lake, Minot and Gladstone to the Pacific Northwest. In each case, the current rate is within a few dollars of what it was in 1981. In fact, the biggest variance is at Gladstone, where the per-car rate is \$144 lower. (All rates are based on the same size cars moving in 52-car units.) What's more, during that time the railroad has spent enormous amounts of money to provide better service to North Dakota grain shippers. For example, in the five-year period from 1997 to 2001,

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BNSF spent about \$200 million in capital on track improvements in North Dakota. In addition, the company spent \$577 million to acquire new grain cars between 1990 and 2001, and more than \$3 billion to acquire more than 1800 new locomotives since 1996. So the full story shows that deregulation has resulted in generally stable rates that lag far behind inflation and increased capital spending by BNSF. Both benefit North Dakota's grain shippers. As for the budget request for the proposed study, BNSF is taking no position. In the past, the railroad opposed requests to provide funding to pursue a complaint with the Surface Transportation Board. This year, however, the request is to fund only a study. For that reason BNSF will remain neutral on the subject.

Questions: Senator Robinson (#943): The rates out of Western Minnesota are less than the rates from Western North Dakota, how do you explain that? Answer: Those are rates that were discontinued last July, they were temporary rates to address a particular market situation which was the short wheat crop in Eastern Montana and Western North Dakota. Those rates are not in existence today. They may come back again because I'm not sure the market conditions won't exist again. But those were temporary rates based on the market conditions that existed at that time. Senator Robinson continued: We have other discrepancies, shipping out of Iowa, and North Dakota, cheaper from Iowa than North Dakota going to the Northwest. Answer: Again, there all sorts of considerations that go into establishing rates between origins and destinations. He felt that the committee needed to know that the Surface Transportation Board and it's predecessor the Interstate Highway Commission does not object to differential pricing and rates, that in itself will not win you a rate case. The railroads are given considerable latitudes in meeting market rates and that is one of the things that an investigation will tell you. The railroad

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Bill/Resolution Number SB 2008  
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would probably do one of their own studies to present to the Surface Transportation Board if this were to move into a rate case. Senator Robinson: It seems that day in and day out, year in and year out, we are consistently high on rates, Our people are paying a premium for those rates, and they are saying that something has got to give. All the arguments in the world don't make any sense when they are trying to make a living out on that farm and it getting more difficult to do it.

Answer: I have been hearing these arguments, and I grew up on a farm. All I can do is point to you the information I gave to you today, that the rates we charge you are essentially the same as 20 years ago. Maybe the State views them as high and that justifies the study. My point is that the rates have not kept up with inflation and that they have been very stable over the past 20 years. Senator Andrist (#1225) What people what to know is what is fair? If you need more money, what is fair and why do western producers always have to pay for the eastern producers? When you compute the cost of shipment, I don't think you computed the investments you require the shippers to send millions and millions of dollars to make it more convenient for you to pick up and deliver that grain. Answer: I understand your position, but I am here to point to you the information that this not a situation where the railroad can not just charge what it wants as evidence by the fact that these rates have stayed stable with respect with the investments that have been made by the shippers by the larger loading facilities. Each of rates come with a discount, the shippers make the choice as to whether they want to invest in facilities that receive those discounts. Senator Andrist: (#1404) So what you are saying is that the single car rate is the same as in 1981? Answer: I didn't look at the single car rate because not much grain moves to the West coast on that, but I think that is essentially the case. Senator Bowman: (#1454) The example that you gave us was for 52 car rate, but by moving more volume on the 110 rates, it is

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probably more profitable for the railroad. Do they readjust that profitability in rates?

Answer: There is a discount between the 52 car rate and the 110 car rate. Senator Krauter (#1601); When facilities are encouraged to go from 52 to 110 and they go through the loan, and get the money, etc and then 5 years down the road, they aren't seeing those better rates, how do we go back and how do we get some justification on this? When I look at the study, the Upper Great Plains did, our cost to revenue ratio, far exceed the 180%, how do you back yourself up?

Answer: We are not opposing the study, those are the questions that you will get from a study.

Sonia Meehl (#1807), Crete Grain Co., owner and manager, Crete North Dakota. Representing the very smallest company that is standing up in opposition of this. I do not oppose the rail rate study, I am long time member of the ND Grain Dealers Association. I am a shipper on a short line railroad, mainly the Red River Valley and Western, I am a small family owned company. The rail freight improvement funds have been very important to our short line to maintain viable service into the out lying areas of their service territories. I am a shipper and have been approved for a loan from that fund, we are in the process of building a shuttle train facility, again one of the smaller companies in the country that will ever attempt to do that. Those funds are very critical to our total financing package. We do experience competition in our area. I am not opposed to the rail rate study, but I am opposed to the funding source. I believe that the funds have been put in place for improvement of rails. She didn't see where there was any provision for the funds to be replaced. She felt that these funds should stay in place for the purpose they were intended.  
(Malfunction on Tape ended at #2179 with this testimony)

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Senator Krauter asked a question to OMB (Sandi) regarding where the funds were coming from?

Sandi replied that the funds were from the interest only. (This was not on the tape, but in my notes).

With no other testimony, Hearing was closed on SB 2008.

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2008 - Votes

Senate Appropriations Committee

Conference Committee

Hearing Date Feb. 17, 2003

Tape Number	Side A	Side B	Meter #
#2		x	1,400 - 2510

Committee Clerk Signature *Jan Hendrickson*

Minutes:

**Senator Schobinger** explained the amendments to SB 2008 which is the Public Service Commission budget. Amendments are attached.

Discussion on various line items by the Senators.

Questions regarding the rail rate case. Legislative council cleared up the wording and what would happen to any money that was won, if and when the case was heard.. PSC would not be the beneficiary of the case. Money would be awarded out the grain elevator. Wording is okay.

**Senator Schobinger** moved to accept amendments to the bill, seconded by **Senator**

**Christmann. Voice vote was taken. Motion carried.**

Questions regarding how these cuts will affect the agency, it was the PSC that came with these cuts and they can still do the job they are required to do.

Motion by **Senator Christmann**, seconded by **Senator Kringstad** for a **DO PASS** as

**AMENDED.**

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*10-14-03*  
Date

Page 2

Senate Appropriations Committee

Bill/Resolution Number SB 2008 Votes

Hearing Date Feb. 17, 2003

Roll call vote was taken, which is attached. Total: 12 yes, 0 no, 2 absent and not voting.

Motion carried. Senator Mathern will carry the bill to the Senate floor

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10-14-03  
Date

**FISCAL NOTE**  
 Requested by Legislative Council  
 02/19/2003

Amendment to: SB 2008

1A. **State fiscal effect:** Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. **Narrative:** Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.

This bill, as amended, does not provide for any statutory salary adjustments for the agency's three commissioners during the 2003-05 biennium. The Fiscal Note that was prepared for the original version of this bill pertained strictly to the impacts of statutory salary increases that were proposed for PSC Commissioners during the 2003-05 biennium (1% on 1/1/04 and 2% on 1/1/05). With these increases being eliminated, the fiscal impact is reduced to zero.

3. **State fiscal effect detail:** For information shown under state fiscal effect in 1A, please:

A. **Revenues:** Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

No impact.

B. **Expenditures:** Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

This bill, as amended, eliminates statutory salary increases for the agency's three commissioners during the 2003-05 biennium. Projected expenditures related to these increases are, therefore, reduced to zero.

C. **Appropriations:** Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

Since this bill, as amended, eliminates statutory salary increases for the agency's three commissioners, no appropriation is required to cover increased expenditures (which equal zero).

<b>Name:</b>	Jon Mielke	<b>Agency:</b>	Public Service Commission
<b>Phone Number:</b>	328-4082	<b>Date Prepared:</b>	02/19/2003

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10-14-03  
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**FISCAL NOTE**  
 Requested by Legislative Council  
 12/24/2002

Bill/Resolution No.: SB 2008

1A. **State fiscal effect:** Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$5,261	\$0	\$12,661	\$0
Appropriations	\$0	\$0	\$5,261	\$0	\$12,661	\$0

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

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. **Narrative:** Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.

The information presented in this Fiscal Note pertains strictly to statutory salary increases proposed for PSC Commissioners during the 2003-05 biennium (1% on 1/1/04 and 2% on 1/1/05).

3. **State fiscal effect detail:** For information shown under state fiscal effect in 1A, please:

A. **Revenues:** Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

No impact.

B. **Expenditures:** Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

Salary line item expenditures will increase by an amount equal to 1% of Commissioners' salaries on 1/1/04 and by another 2% on 1/1/05. The impact of these increases carry forward to the 2005-07 biennium.

C. **Appropriations:** Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

Appropriation amounts are increased by an amount necessary to cover the expenditures mandated by the statutory salary increases provided for by this bill.

<b>Name:</b> Jon Mielke	<b>Agency:</b> Public Service Commission
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Phone Number:

328-4082

Date Prepared: 12/30/2002

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10-14-03  
Date

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Prepared by the Legislative Council staff for  
Senator Schobinger  
February 17, 2003

*JOB*  
2-18-03  
10 f 2

PROPOSED AMENDMENTS TO SENATE BILL NO. 2008

Page 1, line 2, replace "and to amend and reenact section 49-01-05 of the North Dakota Century Code," with "to provide for repayment of funding; and to declare an emergency."

Page 1, remove line 3

Page 1, line 11, replace "4,830,580" with "4,775,728"

Page 1, line 12, replace "1,232,261" with "1,212,261"

Page 1, line 13, replace "45,011" with "35,011"

Page 1, line 17, replace "10,088,344" with "10,003,492"

Page 1, line 18, replace "6,084,744" with "6,074,179"

Page 1, line 19, replace "4,003,600" with "3,929,313"

Page 2, replace lines 1 through 10 with:

**"SECTION 3. REPAYMENT OF FUNDING.** The public service commission shall reimburse the state rail fund for any amounts transferred from proceeds that may result from a successful outcome of the rail rate study and rail rate complaint case.

**SECTION 4. EMERGENCY.** The rail rate complaint case line item in section 1 and section 2 of this Act are declared to be an emergency measure."

Renumber accordingly

**STATEMENT OF PURPOSE OF AMENDMENT:**

**Senate Bill No. 2008 - Public Service Commission - Senate Action**

	EXECUTIVE BUDGET	SENATE CHANGES	SENATE VERSION
Salaries and wages	\$4,830,580	(\$64,852)	\$4,775,728
Operating expenses	1,232,261	(20,000)	1,212,261
Capital assets	45,011	(10,000)	35,011
Grants	82,000		82,000
Abandoned mined lands contractual services	3,668,492		3,668,492
Rail rate complaint case	<u>250,000</u>		<u>250,000</u>
Total all funds	\$10,088,344	(\$64,852)	\$10,003,492
Less estimated income	<u>0,084,744</u>	<u>(10,565)</u>	<u>6,074,179</u>
General fund	\$4,003,600	(\$74,287)	\$3,929,313
FTE	41.00	0.00	41.00

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*10-14-03*  
Date

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Dept. 408 - Public Service Commission - Detail of Senate Changes

	REMOVES RECOMMENDED SALARY INCREASE 1	CHANGES FUNDING SOURCE 2	DECREASES FUNDING FOR EQUIPMENT OVER \$5,000 3	DECREASES FUNDING FOR EQUIPMENT UNDER \$5,000 4	DECREASES FUNDING FOR LEGAL REFERENCE MATERIALS 5	DECREASES FUNDING FOR PROFESSIONAL DEVELOPMENT 6
Salaries and wages	(\$52,852)					
Operating expenses				(\$200)	(\$5,000)	(\$2,000)
Capital assets			(\$10,000)			
Grants						
Abandoned mined lands contractual services						
Rail rate complaint case						
<b>Total all funds</b>	<b>(\$52,852)</b>	<b>\$0</b>	<b>(\$10,000)</b>	<b>(\$200)</b>	<b>(\$5,000)</b>	<b>(\$2,000)</b>
Less estimated income	(18,565)	8,000				
<b>General fund</b>	<b>(\$34,287)</b>	<b>(\$8,000)</b>	<b>(\$10,000)</b>	<b>(\$200)</b>	<b>(\$5,000)</b>	<b>(\$2,000)</b>
FTE	0.00	0.00	0.00	0.00	0.00	0.00

	DECREASES FUNDING FOR INFORMATION TECHNOLOGY COSTS 7	DECREASES THE SALARY LINE ITEM 8	TOTAL SENATE CHANGES
Salaries and wages		(\$2,000)	(\$54,852)
Operating expenses	(\$12,800)		(20,000)
Capital assets			(10,000)
Grants			
Abandoned mined lands contractual services			
Rail rate complaint case			
<b>Total all funds</b>	<b>(\$12,800)</b>	<b>(\$2,000)</b>	<b>(\$84,852)</b>
Less estimated income			(10,565)
<b>General fund</b>	<b>(\$12,800)</b>	<b>(\$2,000)</b>	<b>(\$74,287)</b>
FTE	0.00	0.00	0.00

- 1 This amendment removes the Governor's recommendation for state employee salary increases and retains the recommended state payment for health insurance premiums, including the funding for the commissioner's salary increase.
- 2 This amendment changes the funding source from general fund to special funds from a projected increase in indirect cost recoveries from the federal government.
- 3 This amendment decreases funding for information technology equipment over \$5,000.
- 4 This amendment decreases the funding for information technology equipment under \$5,000.
- 5 This amendment decreases funding for legal division reference materials.
- 6 This amendment decreases the funding for information technology professional development costs.
- 7 This amendment decreases funding for information technology programming and support costs for web data base development.
- 8 This amendment underfunds the salary and wages line item by \$2,000.

A section is added making the \$250,000 transfer and related appropriation from the state rail fund to the Public Service Commission for costs associated with the initial stage of a rail rate complaint case an emergency measure. It also requires the Public Service Commission to repay the state rail fund from any proceeds of a successful outcome of the rail rate complaint case.

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*Yvonne A. Bee*  
Operator's Signature

10-14-03  
Date

*Vote  
on  
amendment  
motion carried.*

Date: 2/17/03  
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2008

Senate Appropriations Committee

Check here for Conference Committee

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

Action Taken do pass as amended.

Motion Made By Christmann Seconded By Kringstad

Senators	Yes	No	Senators	Yes	No
Senator Holmberg, Chairman	✓				
Senator Bowman, Vice Chair	✓				
Senator Grindberg, Vice Chair					
Senator Andrist	✓				
Senator Christmann	✓				
Senator Kilzer	✓				
Senator Krauter	✓				
Senator Kringstad	✓				
Senator Lindaas	✓				
Senator Mathern	✓				
Senator Robinson	✓				
Senator Schobinger	✓				
Senator Tallackson	✓				
Senator Thane					

Total (Yes) 12 No 0

Absent 2

Floor Assignment A. Mathern

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

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Cheresea D. Bee  
Operator's Signature

10-14-03  
Date

REPORT OF STANDING COMMITTEE

SB 2008: Appropriations Committee (Sen. Holmberg, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2008 was placed on the Sixth order on the calendar.

Page 1, line 2, replace "and to amend and reenact section 49-01-05 of the North Dakota Century Code," with "to provide for repayment of funding; and to declare an emergency."

Page 1, remove line 3

Page 1, line 11, replace "4,830,580" with "4,775,728"

Page 1, line 12, replace "1,232,261" with "1,212,261"

Page 1, line 13, replace "45,011" with "35,011"

Page 1, line 17, replace "10,088,344" with "10,003,492"

Page 1, line 18, replace "6,084,744" with "6,074,179"

Page 1, line 19, replace "4,003,600" with "3,929,313"

Page 2, replace lines 1 through 10 with:

**"SECTION 3. REPAYMENT OF FUNDING.** The public service commission shall reimburse the state rail fund for any amounts transferred from proceeds that may result from a successful outcome of the rail rate study and rail rate complaint case.

**SECTION 4. EMERGENCY.** The rail rate complaint case line item in section 1 and section 2 of this Act are declared to be an emergency measure."

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

Senate Bill No. 2008 - Public Service Commission - Senate Action

	EXECUTIVE BUDGET	SENATE CHANGES	SENATE VERSION
Salaries and wages	\$4,830,580	(\$54,852)	\$4,775,728
Operating expenses	1,232,261	(20,000)	1,212,261
Capital assets	45,011	(10,000)	35,011
Grants	62,000		62,000
Abandoned mined lands	3,668,492		3,668,492
contractual services			
Rail rate complaint case	250,000		250,000
Total all funds	\$10,088,344	(\$84,852)	\$10,003,492
Less estimated income	6,084,744	(10,565)	6,074,179
General fund	\$4,003,600	(\$74,287)	\$3,929,313
FTE	41.00	0.00	41.00

Dept. 408 - Public Service Commission - Detail of Senate Changes

REMOVES	CHANGES	DECREASES FUNDING FOR	DECREASES FUNDING FOR	DECREASES FUNDING FOR	DECREASES FUNDING FOR
(2) DESK, (3) COMM					

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*Cheresea J. Bee*  
Operator's Signature

10-14-03  
Date

**REPORT OF STANDING COMMITTEE (410)**  
**February 18, 2003 12:42 p.m.**

**Module No: SR-31-3076**  
**Carrier: Mathern**  
**Insert LC: 38031.0102 Title: .0200**

	RECOMMENDED SALARY INCREASE <sup>1</sup>	FUNDING SOURCE <sup>2</sup>	EQUIPMENT OVER \$5,000 <sup>3</sup>	EQUIPMENT UNDER \$5,000 <sup>4</sup>	LEGAL REFERENCE MATERIALS <sup>5</sup>	PROFESSIONAL DEVELOPMENT <sup>6</sup>
Salaries and wages	(\$52,852)					
Operating expenses				(\$200)	(\$5,000)	(\$2,000)
Capital assets			(\$10,000)			
Grants						
Abandoned mined lands contractual services						
Rail rate complaint case						
<b>Total all funds</b>	<b>(\$52,852)</b>	<b>\$0</b>	<b>(\$10,000)</b>	<b>(\$200)</b>	<b>(\$5,000)</b>	<b>(\$2,000)</b>
Less estimated income	<u>(18,565)</u>	<u>8,000</u>				
<b>General fund</b>	<b>(\$34,287)</b>	<b>(\$8,000)</b>	<b>(\$10,000)</b>	<b>(\$200)</b>	<b>(\$5,000)</b>	<b>(\$2,000)</b>
FTE	0.00	0.00	0.00	0.00	0.00	0.00

	DECREASES FUNDING FOR INFORMATION TECHNOLOGY COSTS <sup>7</sup>	DECREASES THE SALARY LINE ITEM <sup>8</sup>	TOTAL SENATE CHANGES
Salaries and wages		(\$2,000)	(\$54,852)
Operating expenses	(\$12,800)		(20,000)
Capital assets			(10,000)
Grants			
Abandoned mined lands contractual services			
Rail rate complaint case			
<b>Total all funds</b>	<b>(\$12,800)</b>	<b>(\$2,000)</b>	<b>(\$84,852)</b>
Less estimated income			<u>(10,565)</u>
<b>General fund</b>	<b>(\$12,800)</b>	<b>(\$2,000)</b>	<b>(\$74,287)</b>
FTE	0.00	0.00	0.00

- <sup>1</sup> This amendment removes the Governor's recommendation for state employee salary increases and retains the recommended state payment for health insurance premiums, including the funding for the commissioner's salary increase.
- <sup>2</sup> This amendment changes the funding source from general fund to special funds from a projected increase in indirect cost recoveries from the federal government.
- <sup>3</sup> This amendment decreases funding for information technology equipment over \$5,000.
- <sup>4</sup> This amendment decreases the funding for information technology equipment under \$5,000.
- <sup>5</sup> This amendment decreases funding for legal division reference materials.
- <sup>6</sup> This amendment decreases the funding for information technology professional development costs.
- <sup>7</sup> This amendment decreases funding for information technology programming and support costs for web data base development.
- <sup>8</sup> This amendment underfunds the salary and wages line item by \$2,000.

A section is added making the \$250,000 transfer and related appropriation from the state rail fund to the Public Service Commission for costs associated with the initial stage of a rail rate complaint case an emergency measure. It also requires the Public Service Commission to repay the state rail fund from any proceeds of a successful outcome of the rail rate complaint case.

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*Y. M. ...*  
 Operator's Signature

10-14-03  
 Date

2003 HOUSE APPROPRIATIONS

SB 2008

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Cherona White  
Operator's Signature

10/11/03  
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2008

House Appropriations Committee  
Government Operations Division

Conference Committee

Hearing Date March 4, 2003

Tape Number	Side A	Side B	Meter #
1		XX	
2	XX	XX	
Committee Clerk Signature <i>Kelly Schmidt</i>			

Minutes:

**J. Mielke, Executive Secretary of the Public Service Commission** shared written testimony in support of SB 2008. In response to a question from **Rep. Carlson** he advised the committee they no longer have the authority to move money within a revolving fund. \$125,000 is available to use on a utility rate case.. The Evaluation Fund is no longer a revolving and is a capped fund. In reference to the dues and professional development line item he shared the National Association of Regulatory Utility Commission meets regularly to discuss national trends. The annual dues for this organization is \$54,650.

**Rep. Koppelman** asked about the 8% increase and 1 less FTE.

**Mike Deller, Director of Accounting**, advised the committee the retired position was a federal position and the salary increase of 2 & 3 % was from the last biennium. He will follow up to this in writing.

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*Yoshinori A. Lee*  
Operator's Signature

*10-14-03*  
Date

Page 2  
Government Operations Division  
Bill/Resolution Number SB 2008  
Hearing Date March 4, 2003

**Public Service Commissioner, Susan Wefald** added the dues and professional fee's also include registration fee's to attend conferences.

**Rep. Warner** requested a business and fiscal plan on the Rail Rate Complaint. Mr. Mielke will provide a written response. He also advised the committee the ND Grain Dealers are willing to include some funding in this effort.

**Rep. Kroeber** asked where the \$250,000 is coming from for this effort.

**Sandy, OMB** advised the committee the Railway Rehabilitation fund is located in the DOT budget. 1.6M balance is currently in the fund which is federal dollars. The interest becomes state money. The current interest revenue \$984,000. She will provide additional written information.

**Steve Kahl, ITD director** advised the committee ITD purchases will be made in the next couple of months. Servers are being replaced along with the upgrading hard drives and memory. His department will be explained to Windows XP to address time and function issues. They will also be addressing load problems from Engineering and Scientific areas. They reserve some computers for training instead of surplus.

**Mike Deller**, they anticipate a 30,000 turn back. They are hoping it maybe twice that, his department tries to be very conservative.

**Ilona Jeffcoat-Sacco** in response to a question from Rep. Timm stated the cost of natural gas is determined by supply and demand. The commodity portion is not monitored by Federal or State entities. No one is monitoring the profit levels of natural gas, we monitor the distribution.

**Steve Strege, ND Grain Dealers Association** shared written testimony in support of SB 2008 and the rail rate complaint. We feel there is a monopoly. There isn't competition that's why we

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Cherise J. Lee  
Operator's Signature

10-14-03  
Date

Page 3  
Government Operations Division  
Bill/Resolution Number SB 2008  
Hearing Date March 4, 2003

need better regulation. This has been a problem since statehood but with consolidation of the railroads the problem has increased.

**Neil Fischer, ND Wheat Commission** shared written testimony in support of SB 2008 and the Rail Rate Complaint Case.

**Rep. Warner** asked if Montana, being they are also effected by this, would be interested in a Joint venture.

**Neil Fischer** They are taking an active approach, I think they would be interested in a joint effort.

**Rep. Glassheim** asked what has help up this endeavor?

**Neil Fischer** the change in environment, we didn't have a place to go, the timing is better now.

**Rep. Kroeber** would the wheat commission be willing to get involved?

**Neil Fischer** we have always been very active with these issues. Last session we offered some Seed money, we are currently involved in the Canadian trade issue, which is tying up many of our Resources.

**Paul Thomas, ND Ag Coalition** provided written testimony in support of the Rail Rate Case and SB 2008

**Brian Cramer, ND Farmer Bureau** shared written testimony in support of SB 2008.

Hearing no further testimony the Chairman closed the hearing.

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Cherona White  
Operator's Signature

10-11-03  
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2008

House Appropriations Committee  
Government Operations Division

Conference Committee

Hearing Date March 17, 2003

Tape Number	Side A	Side B	Meter #
1	xx		

Committee Clerk Signature *Kelly Schmidt*

Minutes: Committee Work

**Rep. Warner** explained Proposed Amendment 38031.0201 to the committee. This amendment deals with efficiencies and inspections.

**Jon Melke, PSC** his department welcomes the amendment this study would pull agencies together and educate us all to see where the efficiencies lie.

**Gloria Gelger, PSC** shared the amount available under the "Call before you Dig" is \$50,000, on the average we receive \$30,000.

**Rep. Kroeber** currently this is approximately 50/50 general and special funds. Is possible to turn this to a special fund agency.

**Jon Melke, PSC** Fee's and services would generate money to offset, interim revenue to offset approximately 3M, there could be a possible tax assessment on utilities, comparative with other states.

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*Cherona White*  
Operator's Signature

*10-11-03*  
Date

Page 2

Government Operations Division

Bill/Resolution Number SB2008

Hearing Date March 17, 2003

**Rep. Timm** \$250,000 appropriation for a study to determine if there would be a need for a lawsuit, then IM to sue.

**Jon Meilke, PSC**, That's correct, we may have to focus on a particular shipper. This determination is needed to decide which direction is needed. The prep work would be completed with the \$250,000, the source of the IM is yet to be determined, other entities may join our effort.

**Rep. Skarphol** asked receives the \$250,000

**Jon Meilke, PSC** the PSC budget, we would sent out bids/proposals to Attorney General and the private sector. The Attorney Generals office does not have the specialty to do the work, we may have to go out of state. This cost includes Phase I negotiations. In response to a question from **Rep. Koppelman** The Grain Dealers Association would benefit, but the biggest benefactor will be the farming industry. Reduced rates equal higher prices for the farmer. No one in the farm median has stepped forward to financially contribute. Should we win judgment costs maybe recovered to reimburse the fund.

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Cherisea White  
Operator's Signature

10-14-03  
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2008

House Appropriations Committee  
Government Operations Division

Conference Committee

Hearing Date March 24, 2003

Tape Number	Side A	Side B	Meter #
3	xx	xx	
Committee Clerk Signature <i>Heidi Schmidt</i>			

Minutes: **Committee Work**

**Rep. Koppelman** reviewed the PSC response dated 3-24-03, discussed the private sector contribution to the Rail Rate complaint.

**Rep. Carlisle** asked if there maybe a private sector contribution.

**Rep. Warner** I think especially in the 2nd phase.

**Rep. Koppelman** offer discussion regarding the recommendation to include the private sector into the funding, finding \$50,000.

**Rep. Carlisle** we could add intent language.

**Rep. Skarphol and Timm** concurred.

**Rep. Warner** noted the PSC was concerned with numerous small donors and the issue they may bring.

**Rep. Skarphol** Language could address that too, leave the contributor and end open.

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*Y. Hosawa et al.*  
Operator's Signature

*10-14-03*  
Date

Page 2

Government Operations Division  
Bill/Resolution Number SB 2008  
Hearing Date March 24, 2003

**Rep. Glassheim** commented, Someone is going to have to see this, PSC doesn't seem to be the one to spearhead the project.

**Rep. Koppelman** I don't think we'll have to see this but make it clear the PSC is driving the force.

**Rep. Carlson** in reference to the Rail Rate issue. Small railroads use this money to keep those abandoned line running and maintained, there's 2 - 3 companies involved. I think we're raiding a fund again and I won't support it.

**Rep. Koppelman** These are the proceeds from the loans taken from those entities.

**Rep. Kroeber** This is a revolving loan fund, the interest is the fund, (see loan history handout)  
This might be appropriate use of interest.

**Rep. Carlson** One fund is available to access money, we are using it to sue. They paid back their loans, it a healthy fund.

**OMB** requests are larger than 250,000 balance, the current fund balance is 2.4M instead of granting it out, we use it for loans.

**Rep. Carlson** shared his e-mail from Red River Valley Western Railroad, (see letter) Montana spent 14 years fighting a rate case, they finally dropped the case. Small communities are going to lose their railway lines.

**Rep. Koppelman** was this fund for small railroads only?

**OMB** This is a DOT fund. I will get more information . (see written response form DOT)

**Rep. Warner** moved on amendment .0201, second by Rep. Kroeber

**Rep. Timm** This focuses the inspections to PSC

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Yvonne A. Bee  
Operator's Signature

10-11-03  
Date

Page 3

Government Operations Division

Bill/Resolution Number SB 2008

Hearing Date March 24, 2003

**Rep. Warner** I want to do this without prejudice and place the inspection with the best agency fit.

**Rep. Koppelman** Do you want rewording to note best agency vs. PSC.

**Rep. Warner** it's open ended enough to be adjusted.

**ROLL CALL VOTE 9 YES 0 NO 0 ABSENT MOTION CARRIES**

**Legislative Council** reviewed 38031.0202 amendment

**Rep. Koppelman** moved a DO PASS on Amendment .0202, second by **Rep. Skarphol**

**ROLL CALL VOTE 8 YES 1 NO 0 ABSENT MOTION CARRIES**

**Rep. Koppelman** moved a DO PASS AS AMENDED ON SB 2008, second by **Rep.**

**Thoreson.**

**ROLL CALL VOTE 8 YES 1 NO 0 ABSENT MOTION CARRIES**

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*Yvonne A. Lee*  
Operator's Signature

10-14-03  
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2008

House Appropriations Committee

Conference Committee

Hearing Date 04-02-03

Tape Number	Side A	Side B	Meter #
1		X	4.7 - 23.0

Committee Clerk Signature *Chris S. Nylund*

Minutes:

**Chairman Svedjan** Opened SB 2008 for discussion. A quorum was present.

**Rep. Koppleman** I move amendment .0204 to SB 2008. 2nd by Rep. Carlisle.

**Rep. Koppleman** On the rail rate complaint case we authorized \$250,000 in spending, but required \$50,000 to come from the private sector.

**Rep. Aarsvold** Who'll bring this case?

**Rep. Kerzman** Who contributes to the state rail fund? Is it the private sector?

**Rep. Koppleman** It was federal dollars.

**Rep. Wald** Are all inspections revenue generating?

**Rep. Warner** The fixed costs are covered, but the administrative costs aren't and that's where the expenses come in.

**Rep. Carlson** I objected to the lawsuit for a couple of reasons. Montana gave up their suit of 14 years. We are taking the money from the wrong place.

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*Yehorova et al.*  
Operator's Signature

*10-11-03*  
Date

Page 2  
House Appropriations Committee  
Bill/Resolution Number SB 2008  
Hearing Date 04-02-03

**Rep. Glassheim** There will be money for short-line loans even if we do this.

**Motion Carries**

**Rep. Koppleman** I move a Do Pass As Amended. 2nd by Rep. Carlisle. Motion Carries

**18-2-2. Rep. Koppleman will carry this bill to the floor.**

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Cheresea W. Fee  
Operator's Signature

10-14-03  
Date

38031.0201  
Title.

Prepared by the Legislative Council staff for  
Representative Warner  
March 14, 2003

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2008

Page 1, line 2, after "funding" Insert "; to provide for a legislative council study"

Page 2, after line 3, insert:

**"SECTION 4. LEGISLATIVE COUNCIL STUDY - PUBLIC SERVICE COMMISSION DUTIES AND FUNDING.** The legislative council shall consider studying during the 2003-04 interim the feasibility and desirability of transferring inspection and standards functions conducted by various state agencies to the public service commission, including the potential cost-savings and efficiencies that may be realized by training and certifying employees to conduct multiple inspection duties. In addition, the study, if conducted, shall examine the feasibility and desirability of funding the public service commission entirely from special fund revenue sources."

Renumber accordingly

**STATEMENT OF PURPOSE OF AMENDMENT:**

**Dept. 408 - Public Service Commission**

This amendment provides for a Legislative Council study to examine the possibility of consolidating various inspection duties within one agency, the Public Service Commission, and to determine the feasibility and desirability of making the Public Service Commission a special funded agency.

Cheresea J. Bee  
Operator's Signature

10-14-03  
Date

Date:03-24-03  
Roll Call Vote Number #1

**2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. SB 2008**

House Appropriations: Government Operations Division Committee

Check here for Conference Committee

Legislative Council Amendment Number 38031.0201

Action Taken Do Pass on Amendment

Motion Made By Rep. Warner Seconded By Rep. Kroeber

Representatives	Yes	No	Representatives	Yes	No
Chairman Carlisle	x				
Vice Chairman Carlson	x				
Rep. Koppelman	x				
Rep. Skarphol	x				
Rep. Thoreson	x				
Rep. Timm	x				
Rep. Glasheim	x				
Rep. Kroeber	x				
Rep. Warner	x				

Total (Yes) 9 No 0

Absent \_\_\_\_\_

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

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

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Cheresea J. Lee  
Operator's Signature

10-14-03  
Date

38031.0202  
Title.  
Fiscal No. 1

Prepared by the Legislative Council staff for  
House Appropriations - Government  
Operations  
March 25, 2003

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2008

Page 1, line 2, after "funding" insert "; to provide for a legislative council study"

Page 1, line 11, replace "1,212,261" with "1,197,261"

Page 1, line 16, replace "10,003,492" with "9,988,492"

Page 1, line 18, replace "3,929,313" with "3,914,313"

Page 1, line 20, replace "\$250,000" with "\$200,000"

Page 1, line 22, after the comma insert "and \$50,000 from other sources,"

Page 1, line 23, after the period insert "The \$50,000 is to be collected by the commission prior to proceeding with the initial stage of the rail rate complaint case."

Page 2, after line 3, insert:

**"SECTION 4. LEGISLATIVE COUNCIL STUDY - PUBLIC SERVICE COMMISSION DUTIES AND FUNDING.** The legislative council shall consider studying during the 2003-04 Interim the feasibility and desirability of transferring inspection and standards functions conducted by various state agencies to the public service commission, including the potential cost-savings and efficiencies that may be realized by training and certifying employees to conduct multiple inspection duties. In addition, the study, if conducted, shall examine the feasibility and desirability of funding the public service commission entirely from special fund revenue sources."

Renumber accordingly

**STATEMENT OF PURPOSE OF AMENDMENT:**

**Senate Bill No. 2008 - Public Service Commission - House Action**

	EXECUTIVE BUDGET	SENATE VERSION	HOUSE CHANGES	HOUSE VERSION
Salaries and wages	\$4,830,580	\$4,775,728		\$4,775,728
Operating expenses	1,292,281	1,212,261	(\$15,000)	1,197,261
Capital assets	45,011	35,011		35,011
Grants	62,000	62,000		62,000
Abandoned mined lands contractual services	3,668,492	3,668,492		3,668,492
Rail rate complaint case	<u>250,000</u>	<u>250,000</u>		<u>250,000</u>
Total all funds	\$10,088,344	\$10,003,492	(\$15,000)	\$9,988,492
Less estimated income	<u>6,084,744</u>	<u>6,074,179</u>		<u>6,074,179</u>
General fund	\$4,003,600	\$3,929,313	(\$15,000)	\$3,914,313
FTE	41.00	41.00	0.00	41.00

**Dept. 408 - Public Service Commission - Detail of House Changes**

DECREASES FUNDING FOR INFORMATION TECHNOLOGY TRAINING AND TRAVEL 1	DECREASES FUNDING FOR COPIER-RELATED PRINTING COSTS 2	TOTAL HOUSE CHANGES
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Page No. 1

38031.0202

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Cheresea J. Bee  
Operator's Signature

10-14-03  
Date

Salaries and wages			
Operating expenses	(\$6,000)	(\$9,000)	(\$15,000)
Capital assets			
Grants			
Abandoned mined lands contractual services			
Rail rate complaint case			
Total all funds	(\$6,000)	(\$9,000)	(\$15,000)
Less estimated income			
General fund	(\$6,000)	(\$9,000)	(\$15,000)
FTE	0.00	0.00	0.00

<sup>1</sup> This amendment decreases the funding for information technology training and related travel.

<sup>2</sup> This amendment decreases the funding for copier-related printing costs.

The House amendment provides for a Legislative Council study to examine the possibility of consolidating various inspection duties within one agency, the Public Service Commission, and to determine the feasibility and desirability of making the Public Service Commission a special-funded agency.

The House amendment provides for \$250,000 for the initial stage of a rail rate complaint case, \$200,000 of which is from the state rail fund and \$50,000 from other interest parties and other sources. The Public Service Commission is not to proceed with the initial stage of the rail rate complaint case until the \$50,000 is collected. The Senate amendment provided the entire \$250,000 from the state rail fund.

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Date:03-24-03  
Roll Call Vote Number #3

**2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. SB 2008**

House Appropriations: Government Operations Division Committee

Check here for Conference Committee

Legislative Council Amendment Number 38031.0201 38031.0202

Action Taken Do Pass as Amended

Motion Made By Rep. Koppelman Seconded By Rep. Thoreson

Representatives	Yes	No	Representatives	Yes	No
Chairman Carlisle	x				
Vice Chairman Carlson		x			
Rep. Koppelman	x				
Rep. Skarphol	x				
Rep. Thoreson	x				
Rep. Timm	x				
Rep. Glassheim	x				
Rep. Kroeber	x				
Rep. Warner	x				

Total (Yes) 8 No 1

Absent \_\_\_\_\_

Floor Assignment Rep. Koppelman

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

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Yvonne A. Bee Operator's Signature 10-14-03 Date

REPORT OF STANDING COMMITTEE (410)  
April 3, 2003 2:38 p.m.

Module No: HR-60-6685  
Carrier: Koppelman  
Insert LC: 38031.0205 Title: .0300

REPORT OF STANDING COMMITTEE

SB 2008, as engrossed: Appropriations Committee (Rep. Svedjan, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (18 YEAS, 2 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2008 was placed on the Sixth order on the calendar.

Page 1, line 2, after "funding" insert "; to provide for a legislative council study"

Page 1, line 10, replace "4,775,728" with "4,771,497"

Page 1, line 11, replace "1,212,261" with "1,137,006"

Page 1, line 16, replace "10,003,492" with "9,924,006"

Page 1, line 17, replace "6,074,179" with "6,072,767"

Page 1, line 18, replace "3,929,313" with "3,851,239"

Page 1, line 20, replace "\$250,000" with "\$200,000"

Page 1, line 22, after the comma insert "and \$50,000 from other sources,"

Page 1, line 23, after the period insert "The commission shall collect the \$50,000 before proceeding with the initial stage of the rail rate complaint case."

Page 2, after line 3, insert:

**"SECTION 4. LEGISLATIVE COUNCIL STUDY - PUBLIC SERVICE COMMISSION DUTIES AND FUNDING.** The legislative council shall consider studying, during the 2003-04 Interim, the feasibility and desirability of transferring inspection and standards functions conducted by various state agencies to the public service commission, including the potential cost-savings and efficiencies that may be realized by training and certifying employees to conduct multiple inspection duties. In addition, the study, if conducted, must include an examination of the feasibility and desirability of funding the public service commission entirely from special fund revenue sources. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly."

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

Senate Bill No. 2008 - Public Service Commission - House Action

	EXECUTIVE BUDGET	SENATE VERSION	HOUSE CHANGES	HOUSE VERSION
Salaries and wages	\$4,830,680	\$4,775,728	(\$4,231)	\$4,771,497
Operating expenses	1,232,261	1,212,261	(76,255)	1,137,006
Capital assets	45,011	35,011		35,011
Grants	62,000	62,000		62,000
Abandoned mined lands contractual services	3,668,402	3,668,492		3,668,492
Rail rate complaint case	<u>250,000</u>	<u>250,000</u>		<u>250,000</u>
Total all funds	\$10,088,344	\$10,003,492	(\$79,468)	\$9,924,006
Less estimated income	<u>6,084,744</u>	<u>6,074,179</u>	(1,412)	<u>6,072,767</u>
General fund	\$4,003,600	\$3,929,313	(\$76,074)	\$3,851,239

(2) DESK, (3) COMM

Page No. 1

HR-60-6685

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Operator's Signature

10-14-03  
Date

FTE 41.00 41.00 0.00 41.00

Dept. 408 - Public Service Commission - Detail of House Changes

	DECREASES FUNDING FOR INFORMATION TECHNOLOGY TRAINING TRAVEL <sup>1</sup>	DECREASES FUNDING FOR COPIER-RELATED PRINTING COSTS <sup>2</sup>	REDUCES RECOMMENDED FUNDING FOR HEALTH INSURANCE <sup>3</sup>	REDUCES FUNDING FOR INFORMATION TECHNOLOGY COSTS <sup>4</sup>	TOTAL HOUSE CHANGES
Salaries and wages			(\$4,231)		(\$4,231)
Operating expenses	(\$6,000)	(\$9,000)		(\$60,255)	(75,255)
Capital assets					
Grants					
Abandoned mined lands					
contractual services					
Rail rate complaint case					
Total all funds	(\$6,000)	(\$9,000)	(\$4,231)	(\$60,255)	(\$79,486)
Less estimated income			(1,412)		(1,412)
General fund	(\$6,000)	(\$9,000)	(\$2,819)	(\$60,255)	(\$78,074)
FTE	0.00	0.00	0.00	0.00	0.00

<sup>1</sup> This amendment decreases the funding for information technology training and related travel.

<sup>2</sup> This amendment decreases the funding for copier-related printing costs.

<sup>3</sup> This amendment reduces funding for state employee health insurance premiums from \$493 per month to \$488.70 per month.

<sup>4</sup> This amendment reduces funding for information technology by an additional \$60,255 from the general fund, for a total reduction of \$75,255 in information technology funding from the general fund, which represents a total reduction of approximately 20 percent.

The House amendment provides for a Legislative Council study to examine the possibility of consolidating various inspection duties within one agency, the Public Service Commission, and to determine the feasibility and desirability of making the Public Service Commission a special funded agency.

The House amendment provides for \$250,000 for the initial stage of a rail rate complaint case, \$200,000 of which is from the state rail fund and \$50,000 from other interest parties and other sources. The Public Service Commission is not to proceed with the initial stage of the rail rate complaint case until the \$50,000 is collected. The Senate amendment provided that the entire \$250,000 was from the state rail fund.

2003 SENATE APPROPRIATIONS

CONFERENCE COMMITTEE

SB 2008

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Christopher Lee  
Operator's Signature

10/1/03  
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2008

Senate Appropriations Committee

XXX Conference Committee

Hearing Date April 15, 2003

Tape Number	Side A	Side B	Meter #
#2	x		1139 - end
Committee Clerk Signature <i>Jan Hendricks</i>			

Minutes:

**Senator Schobinger**, chair called the conference committee on SB 2008 to order. Roll was taken with all members present: **Senators Schobinger, Christmann, Mathern, Representatives Koppelman, Carlson and Glassheim.**

**Senator Schobinger** asked **Representative Koppelman** to explain the changes the House made to SB 2008.

**Representative Koppelman** (#1200) explained the changes, the adjustments to the health care premiums which is footnote #3 on page 2 of exhibit #1 which is attached. The other difference is the IT which is a question that will be decided upon later. The other changes, the House had asked the PSC to come up with some savings in a couple of different areas, there were 3 areas discussed, one with IT which will be discussed later when leadership has decided on this. PSC found some travel that is related to IT and that is \$6,000 (footnote #1 page 2 exhibit #1) and the other one was in copier related printing costs of \$9,000 which is a total of \$15,000. Other

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Operator's Signature

*10-14-03*  
Date

changes include a study that has to do with whether one agency should carry on the various inspection duties around the state. For example the anhydrous ammonia tanks inspections are done by the Insurance Commission office and some of the duties are scattered around state government and this bill does not change that but the House is proposing to take a look at during the biennium, originally proposed by Rep. Warner. The thinking was that if an inspector was out at a facility, if that inspector could be cross-trained to do several kinds of inspections, it might be an efficiency for state government and they felt that function fit the public service commission is there to do. The other part of the study would be to discuss whether the public service commission ought to be a special funded agency rather than a general fund agency. Most other states the PSC charges a fee for those kinds of services and those fees are the way they fund their agency. Those are the two items for the study. The final change was the \$250,000 set aside for the initial stage of a rail rate complaint case. Two years ago there was a discussion on this subject and some interest on moving forward with a case like this, but because of some things that were pending on the federal level at that time and the lateness of the session it was decided not to take any action. However there have been some now federal rule changes that might make such a suit possible at this time. There is interest in this and the House thought it should be done. The source of the funds were to come out of the revolving loan fund in the DOT relating to the rail, and that comes from some federal dollars originally that were granted to the state, which the state turned into a loan pool and it has been used by some of the short line railroads in the past and that was the targeted source of the funds. Two years ago the private sector had come forward and indicated an interest in this issue, financially. The House has asked that \$50,000 should come from the private sector and the other \$200,000 come from the rail fund. This is just to see if

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P2 2004

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Operator's Signature

10-14-03  
Date

there is enough for a lawsuit, and this \$250,000 if just for the study, the actual lawsuit may be over a \$1 million dollars, but that would not be dealt within until the next blennium. These are the changes made in the House.

**Senator Christmann** (#1642) He wanted to know where the \$50,000 was to come from.

**Rep. Koppelman** (#1675) replied that it should come from elsewhere, if the private sector is going to benefit from this, then they should contribute some of the money. The North Dakota Grain Dealers Association were interested 2 years ago and they offered either \$10,000 or \$20,000 (he couldn't remember the exact amount) and there are other interested organization that would benefit from this and should maybe contribute also. The House would give them the \$250,000 spending authority but the \$50,000 would have to come from other sources (private) and the \$200,000 would come from the rail loan funds. **Senator Christmann** (#1753) continued: The other interested parties are the grain dealers, and businesses like that or are you talking about farmers who are actually losing money? **Rep. Koppelman** replied that yes individual farmers are losing the money but the House was thinking more of the organizations that represent the farmers, he wasn't sure he should name any particular group, could be the Wheat commission or the Grain Growers or who ever those folks might be that represent the farm interest. **Senator Christmann** continued and wanted to know if any of those organizations have offered any funds? **Rep. Koppelman** replied that there is willingness there, but he doesn't know there is resources just lying around waiting to be used but he felt that the private sector is willing to be a participant.

**Senator Mathern** (#1933) He felt that the Senate's view of this was if they could eventually get to the point of even a change of a cent a bushel, they would be talking about \$2.5 million would

F3  
4-15-03  
2008

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10-14-03  
Date

benefit the state in a year and that benefits goes through the economy not just the private sector. That was the reason that he felt it should be to just take out the \$250,000 out of one area and to get going on as soon as possible. If this is true that the state is being overcharged, it is in all of our interest to get at that immediately, he would like to see the state even fund the rate case. \$250,000 should come from the state, so that this can be started right away.

**Rep. Carlson (#2051)** He wondered if there was any success in the Montana case they have had for the last 14 years against the same railroads? Senator Christmann replied that he didn't recall any, but there has been some federal case that has happened in the last couple of years that has resulted in some rule marking or something, that has made people more optimistic about the potential for this case, than was previously felt. **Rep. Carlson (#2144)** stated that he was one that didn't like taking the money from the short line money. He didn't know if they would be able to win this battle in the first place, and second of all, if there is a fund out there, the legislature goes after that money and take it and then forget about what benefit that money has been used for a lot of communities. This pool has been valuable to the short line companies. He was afraid that \$250,000 was taken this time, then next time we (the legislators) will take \$1 million if the thinking is that the state is winning the case. He continued with his reasons for being against the funding, etc. He also stated that he thinks that the private sector should be involved in the money also. He is also thought that if this so important maybe a transfer of \$100,000 out of marketing department of the Dept of Agriculture, and make a combination of players. **Senator Christmann** stated that he had a problem with the private sector paying into the study, it almost make it like they are buying into the result they want. He gave an example regarding the electric companies, which would make the electric company just causing trouble, and he was afraid it would look

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2008

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10-14-03  
Date

like the private sector in this case would be looked at just making trouble. He felt if this was worth doing, either a lawsuit or just a study to see if there was enough for a lawsuit, the money should be funded by the state government. He is also concerned about where the funds come from, but he doesn't like the idea of running around to the elevators asking for money. **Rep. Koppelman** (#2503) He stated again that the private sector should be involved in this and that the small amount they would be contributing would be much of a problem regarding undue influence by anyone.

**Senator Schobinger** (#2727) He was interest in the wording, regarding the public service being put into a fund raising when they are a regulatory agency. Was there any discussion on that?

**Rep. Koppelman** replied that he didn't recall any discussion on this, he remembered it as the private sector urging the commission to go ahead with this study. He didn't think the PSC would have to go out knocking on doors asking for money for this, it will come from the private sector who has interests in this. Discussion continued between **Senator Christmann** and **Rep.**

**Koppelman** regarding who should help pay for this study, all from the rail loan fund or part from the private sector and rest from the rail loan fund, etc. Other concerns were heard from **Senator Mathern** regarding that the short line companies would also benefit from this study, and how the actual lawsuit would be paid for. **Rep. Glassheim** wanted to know how much was in the Rail fund and what the repayment schedule is. His impression is that there is \$1.5 million sitting there and there is a repayment schedule of several hundred thousand biennium, his conclusion is that there is plenty of money for the short lines if they had projects, and money for the study for the rail rate complaint case, and the short line would not be hurt. The question of where the money is to come from for the lawsuit is for some other legislature. **Senator Schobinger** asked

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2008  
9/15/08

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the PSC how long will the study take and when will it start, will it go over into the next biennium, will it be done by the next biennium? **Tony Clark** from PSC gave a brief overview of the time line stating that he thought he had provided the members with a copy of the time line. He would make sure that the information was given to the members. **Rep. Carlson** wanted to know if they knew what the cost of the lawsuit would be. Tony replied that it could cost over a \$1 million and maybe up to \$2 million. **Rep. Koppelman** wanted to know if there was any chance of other states joining in? **Tony** replied that it was too early to answer that. **Rep. Koppelman** wanted to know if the commission could be able to provide a clear picture of what will happen. **Tony** replied that they would make that available. He would also provide the breakdown.

**Senator Mathern** wondered how the lawsuit would be funded, and Tony replied that the commission would be working with the Governor and the Legislature.

**Senator Schobinger** (#4532) stated that the focus of this committee would be the rail rate funding, etc and some of the other changes.

**Rep. Glassheim** (#4613) questioned the IT budget and what should be done, restore, or subtract or what, since there was changes in the Senate on this and the House took out the travel related costs in the IT budget. **Senator Christmann** stated that nothing can be done until the IT issue is settled. He explained the idea again of the pool and the need for flexibility on all of the budgets.

Discussion continued on the IT cuts in the House and in the Senate and during the crossover.

**Senator Schobinger** suggested that everyone think about these things and meet again and continue the discussion then.

Meeting was recessed, by the chair, **Senator Schobinger**.. (End of the tape.)

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2003  
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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2008

Senate Appropriations Committee

XXXXConference Committee

Hearing Date April 16, 2003

Tape Number	Side A	Side B	Meter #
#1	X		3670 - end
		X	0 - 641
Committee Clerk Signature <i>Jan Hendrickson</i>			

Minutes:

**Senator Schobinger**, chair called the conference committee meeting to order on SB 2008 the PSC budget.. Roll was taken, Members present; **Senators Schobinger, Christmann, and Mathern, Representatives Koppleman, Carlson and Glasheim.**

(The microphone main switch had been switched off, so roll call etc was not picked up on the tape actual tape recording did not start until meter #3685)

**Senator Schobinger** talked about the issues that were different between the House and the Senate which is the Rail Rate Complaint and how that is to be funded and the House had added the idea of having a study done on the PSC , looking into marketing them a self funding agency and the centralization of the inspectors, also at issue is the IT budget **Senator Schobinger** stated that the IT issue will have to wait until the leadership makes the decision on that.

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Date

Page 2  
Senate Appropriations Committee  
Bill/Resolution Number SB 2008  
Hearing Date April 16, 2003

**Rep. Koppelman** (#3705) just wanted to make a clarification on that study, there are two issues one would be the self funding and the other would be the centralization of the inspection in one agency rather than having several do it.

**Senator Mathern** (#3749) He was not supportive of the study. Although he liked the idea of the study looking at the inspectors being under one agency and being able to do a number of inspections all at one time. **Senator Koppelman** stated that it is just a study proposal, streamlining state government is a good thing and the self funding was brought up because most other states have PSC as a self funded agency, yet North Dakota continues to be out of the general fund. Jon Mielke from PSC did not have a problem with the any of the study. **Senator Christmann** (#3923) Did not have a strong objection to the inspections being centralized, but the special fund agency idea is something he would not like to see happen. He felt that if the state wants to regulate someone then the state should pay for it. **Senator Koppelman** stated that was a thought that the study committee would look into. He also felt that we all pay user fees at one time or another whether it is a government service. It is to spread across the populace as a general tax, so the people pay one way or another. It would be for the committee (study committee) to look at it and decide which way to fund it. **Senator Christmann** (#4095) stated that it needs to be defined as to a user fee where you pay for a service that you *want* and a licensing where you pay for regulation, where in most cases you would prefer not to have. **Senator Koppelman** (#4120) replied that it is true but if you are a trucker in North Dakota you pay fees all the time for weights on roads, which you would probably prefer not to, but most people think it is far. Debate continued between **Senator Christmann** and **Rep. Koppelman** on the merits of the study regarding regulation and user fees.

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Page 3  
Senate Appropriations Committee  
Bill/Resolution Number SB 2008  
Hearing Date April 16, 2003

**Senator Mathern** (#4296) He wondered if the House would consider retaining the study but take out that one sentence of the study resolution starting on the 6th line starting with the word "In" up to the word "source". So the one sentence that states "In addition, the study if conducted must include an examination of the feasibility and desirability of funding the Public Service Commission entirely from special funds sources." It still would give the option of the Legislative Council to study self funding just remove that sentence. **Rep. Koppelman** stated they were spending too much time on this when it is a study resolution when **Rep. Warner** brought this up and **Mr. Mielk** from PSC said he would welcome this when it was brought up to him. He thought it was not an appropriate idea to strike it from the original, if the study was done and it was found not to be good for ND then so be it. **Rep. Glassheim** stated that several agencies are funded by special funds and he explained that he felt that the companies who would pay for the service of the PSC are the ones that would welcome the agency to keep them up to standards. This was something that was talked about in their committee along with the Insurance Dept. and others that are self funded. **Senator Christmann** (#4763) stated that he wants to be real clear here and his worry here is not with the PSC it is with future legislators. He then gave an example. In his area land , pasture, is probably worth \$175 - \$200 an acre, the very best around to be \$400 an acre. The coal mines spend about \$10,000 an acre or more reclaiming that land so that you can have the valuable farm lands so that it is not destroyed and then Washington sends us money to take the land out of production because they are producing and have such poor prices. That is the level of reclamation where we buy that land dozens maybe hundreds of times in the reclamation process, that is what we are requiring when the Legislature finds the money to put the demands on the reclamation, can you imagine the level of reclamation we will require

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Page 4  
Senate Appropriations Committee  
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(plus others, telecommunications, electric, etc) when the legislature is coming up with new ideas for regulation when they don't have to provide any of the money, they will just raise the fees to pay for it. He stated that he was very reluctant to go along with these types of funding. **Senator Mathern (#5029)** He thought that **Rep. Glassheim's** comments support the possibility of taking out that section of the study resolution that he was talking about. If the study is going to be studying the Insurance Commissioner office regulates and the potential of moving those things into the PSC, the study will have to look at the issue of funding. He continued with if those things were self funded now from the Insurance commission then they would have to talk about them if they were going to move them. He didn't feel that by striking that sentence it eliminates the any discussion about special revenue sources to pay for it. **Rep. Koppelman (#5186)** He thought he was confused about what **Rep. Glassheim** was talking about because the Insurance Dept. has been used before as an example of an agency that does inspections, how they are self funded so it actually supports that line being in there because what he is saying is when an insurance company pays a policy fee to the state in exchange for being licensed or given the right to sell insurance products here that in turn ends up paying for the insurance dept.. So if it is good for a dept. like that maybe it should be studied for a dept.. like the PSC. **Senator Mathern (#5314)** stated that he understood it that way also. When you do that study that department already charges a fee to get that regulation done and then you talk about moving that function to PSC that committee will be talking about special revenue sources, so you can eliminate that line in the study and the study will still be looking at that issue.

**Rep. Carlson (#5408)** He suggested that the rail case be talked about.

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10-14-03  
Date

Page 5  
Senate Appropriations Committee  
Bill/Resolution Number SB 2008  
Hearing Date April 16, 2003

**Senator Schobinger** wanted to know where they could find agreement in the rail case. **Rep.**

**Carlson** (#5494) has a suggestion that can be discussed. He has had trouble with this issue since it came up in the House. Talking it out of the short line has been a bone of contention for him since the whole debate started on this subject. He has come to the conclusion that it is going to go forward so he proposes a different method of funding this: \$100,000 from the Rail Fund; \$100,000 from the Marketing of the Ag. Department. This Department has a large interest in this case, plus they have 3 full time marketing people in their department; and the remaining \$50,000 or \$25,000 (if the committee decides to only fund \$225,000) from the interested parties. He didn't know if interested parties should be noted. He also stated that the total amount of the study could be \$200,000, \$225,000 or \$250,000, that it would probably be the same no matter what you spent. He thought that this should be a participation among various groups that have something at stake in the issue, the Ag department, Special interest commodity groups who stand to benefit if a penny a bushel could be saved on shipping, as well there would be some benefit in the end for the small rail lines. Then everyone becomes involved.

**Senator Christmann** (#5888) He commented that he thought the price of the rail rate complaint case was \$250,000 to \$265,000. His question is how much is the marketing fund in the Ag.

Dept.? **Rep. Carlson** looked for the budget since he is on the conference committee also.

**Senator Christmann** asked also is that specified or as they go along? **Senator Carlson** thought he read the budget that they can spend it as needed.

**Senator Schobinger** (#6070) He wondered if anyone was there from the PSC that could address the phase 1 couldn't be handled in the Attorney General contracted costs and things, couldn't that be done there instead of hiring someone to do the negotiations?

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Senate Appropriations Committee  
Bill/Resolution Number SB 2008  
Hearing Date April 16, 2003

**Mike Diller** from the PSC started to speak, the tape ended here. Side B starts here.

Mike didn't think that the Attorney General staff could do this, they would need experts in this.

He has talked with **Mr. Mielke** about his. Senator Schobinger stated that that would be down the road. **Mike** replied that it would be a ways off. **Senator Mathern** referred to the handout Exhibit #1 from the PSC labeled Rail Rate Complaint Case SB 2008.

Discussion regarding negotiations regarding this case and **Mike** stated that he would get the information and have it sent to the members.

**Rep. Carlson** stated that he couldn't find the information on the budget for the Ag. Dept. but he would find out the numbers. They have 3 full time marketing people. The number on the Ag. Bill is SB 2009.

**Rep. Koppelman**(#344) Rep. Carlson could coordinate something with the Ag. Dept. if this committee wanted to go farther with the idea. With regards to the \$250,000, PSC has concerns that if the money is required from the special interest groups before they can go ahead with this, they are afraid that this would be detailed indefinitely or too long, they also stated that if it could only be funded at \$225,000 then do that and the PSC would make it work. One of his thoughts was maybe it should be funded at \$225,000 and ask them to make it work. The difference between the House and Senate regarding this special interest participation matter, the House asks for \$50,000 and wants it upfront and the Senate version didn't have that at all, so his thought was that since \$25,000 is half way between 0 and 50,000, maybe have the \$25,000 from special interests have letters of intent put forth instead of cash so that the study could get going. And that would include the Ag Dept. money and the money from the Rail fund.

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Senate Appropriations Committee

Bill/Resolution Number SB 2008

Hearing Date April 16, 2003

**Senator Mathern** had concerns regarding the Ag. budget which would be using general fund money for it's marketing budget.

**Senator Christmann:** He would like to just wait for the information.

**Senator Schobinger (#628)** stated that he would schedule another meeting soon. Meeting ended.

((#629))

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2008

~~Senate Appropriations Committee~~

Conference Committee

Hearing Date April 17, 2003

Tape Number	Side A	Side B	Meter #
1	X		744-end
Committee Clerk Signature <i>Jan Hendrickson</i>			

Minutes:

Senator Schobinger called the conference committee to order. Committee members are; Senator Schobinger, Senator Christmann, Senator Mathern, Representative Koppelman, Representative Carlson, Representative Glassheim. All committee members are present.

Senator Schobinger (mtr #811) - Had a proposal on the table. Discussion has been on the rail rate study.

Representative Carlson (mtr #988) - If the first time he has the seen the numbers, asked who generated the numbers. Verified that the numbers were generated by the Department of Ag.

Looking the budget.

Senator Christmann (mtr #1135) - Questioned the reason for the \$40,000 in federal funds that has to be sent by August 1st.

Sandy, Dept of Ag (mtr #1160) - Specialty crop grants to the Governor's office and the grant ends at that time period. The funds are for marketing of specialty grants.

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Senate ~~Finance and Taxation Committee~~

Bill/Resolution Number SB2008

Hearing Date April 17, 2003

*copy*

Representative Glassheim (mtr #1268) - Wants to make sure that the proposal of the full amount from the rail trust fund is not cutting into the trust fund but is interest payback on the loans.

Secondly the House did put on, if there is any recovery, that the rail fund would be reimbursed.

Does not make sense to diminish agriculture in order to try to help. Talked about amount that may come back to the general fund from taxes, if not taking all out of rail fund, should take some from the general fund as a cost of doing business.

Senator Schobinger (mtr #1470) - What if we did \$225, 000, and the PSC can accept another \$25, 000.

Representative Koppelman (mtr #1506) - One way we could find common ground, rather than requiring \$50,000 from the private sector or interested parties, which PSC has concerns about.

Logical compromise put the number of 25 rather than 50 and request private sector to have a letter of intent rather than cash on the table. Yesterday issue raised of the 25,000 from the breakdown that was received from PSC and looking at the negotiation phase. Wants to go on record that it is not his intent by suggesting a total of 225,000 rather than 250,000, that we exclude specifically the negotiation phase but rather the PSC attempt to get it all done within that 225,000.

Senator Schobinger (mtr #1690) - Agrees.

Senator Mathern (mtr #1700) - Saw the request from the PSC. Did come to us with a good budget. Felt the PSC really needs that additional amount. Hope we don't sell that short. Feels there is merit to changing how the money is received from the private sector and the suggestion from Representative Koppelman. Issue of repayment was discussed in the Senate.

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Senate Finance and Taxation Committee  
Bill/Resolution Number SB2008  
Hearing Date April 17, 2003

WPT/15

Representative Koppelman (mtr #1900) - Feels we are pretty close on this item. Can we make a motion on each piece?

Senator Schobinger - Feels we can make a motion on each piece and Legislative Council will put together.

Representative Koppelman (mtr #1970) - Agrees with Senator Mathern. When looking at this are breaking new ground. Our estimate could be high or low. No uncommon for agencies not to get every dollar they request. Feels \$225,000 would not be short changing them. Moves to set the amount for the rail complaint case investigation at \$225,000, revise the private participation from \$50,000 down to \$25,000 and change the requirement from cash to a requirement of a letter of intent in advance.

Senator Schobinger (mtr #2279) - Motion dies for lack of a second.

Senator Christmann (mtr #2306) - Comment, it is a shame for an agency to spend over \$400,000 on salaries and operating expense. Back to bill, continues to feel requiring the private sector to have to kick in to get regulatory relief. Feels the railroads are breaking the law, are violating federal standards. Why then charge people to give the railroads relief. Feels it is fundamentally wrong. Would be willing to involve the Commerce Dept.

Representative Koppelman (mtr #2538) - The issue about the private sector involvement, the House is determined on that issue. Is suggesting a compromise.

Senator Christmann (mtr #2582) - What position would the elevator or ad commodity groups that don't have the money to kick in be in? In the case of an Elevator, they are regulated by the PSC. We are forcing the PSC into a position of kicking on money to do their job.

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Senate ~~Finance and Taxation Committee~~ *6-11-03*  
Bill/Resolution Number SB2008  
Hearing Date April 17, 2003

Senator Schobinger (mtr #2700) - When dealing with two years ago, there were committed dollars, what was the PSC's position.

Representative Koppelman (mtr #2725) - Feels it is important to clarify, there is nothing in the proposal that requires assessment of a certain amount to any individual elevators. Bill hasn't made a statement as to where the dollars would come from. "Interested parties" is about as general as you can get. To answer Senator Schobinger, yes, two years ago the ND Grain Dealers Association came to the legislature and offered an amount. And put that money on the table as an incentive to get this process going.

Senator Schobinger (mtr #2882) - What was the PSC's position on that two years ago?

Susan Wefald (mtr #2920) - At that time, commitment was made to the legislature. Was different situation.

Representative Koppelman (mtr #2990) - Intent of the House was, if the legislature was making a statement about how this would be funded. Part of that statement was, we expect interested parties to come forward with the dollars. If it needs to be rephrased, would consider that.

Representative Carlson (mtr #3054) - Talked very little about other changes that have been made to the bill. Are we in agreement on all changes except the railroad and IT?

Senator Christmann (mtr #3159) - There is fair amount of discussion about if we want to study the feasibility of making the PSC a special funded agency. Is astounded at the direction we are going.

Representative Koppelman (mtr #3225) - Understanding, the only two bones of contention here, is the study just mentioned and the rate rail case.

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Senate Finance and Taxation Committee  
Bill/Resolution Number SB2008  
Hearing Date April 17, 2003

UPP/03

Senator Schobinger (mtr #3360) - Believes that is the plan, to review issues and make sure we are not double hitting some of the agencies.

Senator Mathern (mtr #3388) - The House came in with a study request. So, would have the study the House wanted, would be looking at the issues of cost savings by combining activities, would not do the second sentence in the study. Move that we delete sentence two of the study resolution.

Senator Christmann (mtr #3524) - Second to the motion by Senator Mathern.

Representative Koppelman (mtr #3539) - Will respectfully oppose the motion. Feels if we do a study, can identify what we want to study. Not advocating the PSC as a specially funded agency but if your going to study it, do so.

Senator Christmann (mtr #3633) - Does not agree with the study. Is OK with a cost study of regulatory features.

Representative Koppelman (mtr #3710) - Talked about how the study would work that Senator Christmann just talked about.

Senator Mathern (mtr #3790) - Recapped his motion. Feels this is a compromise.

Senator Schobinger (mtr #3980) - Clarified how the motion would read and what would be added back in from the House amendment.

Roll call vote on motion. Motion fails for lack of support from both sides.

Representative Carlson (mtr #4292) - Clarified what he is attempting to do. Feels there is some duplication.

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~~Senate Finance and Taxation Committee~~ *CTP/RS*

Bill/Resolution Number SB2008

Hearing Date April 17, 2003

Senator Schobinger (mtr #4422) - Still has questions about the proposal.

Senator Christmann (mtr #4456) - IT cuts that the Senate made, doesn't the House concur with those in passing the bill? So we don't have a difference on the Senate cuts. The only differences we have would be the House cuts.

Representative Koppelman (mtr #4506) - Feels that is correct, we have general agreement on budget changes within the bill with the exception that the final IT amendment may adjust some of them.

Senator Schobinger (mtr #4588) - Adjourned the meeting.

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2008

Senate Appropriations Committee

xxxxxxConference Committee

Hearing Date April 21, 2003

Tape Number	Side A	Side B	Meter #
3	X		1945-3966

Committee Clerk Signature *Sandra Davison*

Minutes:

Senator Schobinger opened the conference committee on SB2008. All committee members are present.

Senator Schobinger (mtr #1970) - Issues, funding for the rate rail study and the wording within the study.

Representative Carlson (mtr #2018) - Another issue to clean up. Is this budget subject to the 5% IT adjustment?

Representative Glassheim (mtr #2105) - Have \$23, 000 worth of decreases. Question, is that in addition to the 5% or incorporated in the 5%? If used for budget cutting only, feels it should be restored.

Representative Koppelman (mtr #2222) - Question, referring to Senate or House adjustments to IT? Believes that the Senate changes were an attempt at dealing with IT. The House, considered a greater reduction specifically related to IT.

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Page 2  
Senate Appropriations Committee  
Bill/Resolution Number SB2008  
Hearing Date April 21, 2003

Senator Mathern (mtr #2311) - Understands that as explained the amendment removes \$7,000.00 from the budget, which gives a total reduction of 22,014.00. Which is about 5%.

General discussion on the 5% reduction.

Senator Christmann (mtr #2571) - If going with 5% from initial IT plan, what is the dollar amount?

Don Wolf (mtr #2601) - Would be 22,014.00.

Senator Christmann (mtr #2613) - Why wasn't 20% \$88,000.00?

Mike Hiller (mtr #2664) - Explained how the dollars amounts were arrived at. There was a change in methodology.

Mr. Wolf (mtr #2815) - The 20% reflected the reductions made in the first amendment. Where as the 5% is a flat reduction from the IT plan submitted without using previous adjustments.

Representative Koppelman (mtr #2850) - Requested clarification. What were the Senate adjustments for IT?

Mr. Hiller (mtr #2865) - Reviewed the reductions for IT data processing and equipment.

Mr. Wolf (mtr #2930) - Clarified how the formula was calculated related to IT.

Representative Koppelman (mtr #2975) - Restated the amount of the IT reduction listed in the Senate amendment.

Senator Christmann (mtr #3017) - If we leave the Senate reduction and the House reduction in we are in excess of 5%

Representative Koppelman (mtr #3056) - Further clarification of the amendment and the reduction in funding.

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Senate Appropriations Committee  
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Senator Schobinger (mtr #3276) - Restated that the 5% would be put back in, except the funds for IT.

Representative Koppelman (mtr #3316) - Further discussion about the funding and clarifying of the amount.

Mr. Diller (mtr #3450) - Went over the total IT general funds costs and the impact of the reduction.

Senator Mathern (mtr #3616) - Need to consider other budgets not just this budget. Need to be consistent.

Representative Koppelman (mtr #3690) - The policy related question is, do we want to consider the Senate reductions that were made to the original bill as part of the 5% or not.

Senator Schobinger (mtr #3943) - Need to schedule more time. Adjourned the meeting.

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2008

Senate Human Services Committee

Conference Committee

Hearing Date April 22, 2003

Tape Number	Side A	Side B	Meter #
2	X		2380 - 5400
Committee Clerk Signature <i>Sandra Davison</i>			

Minutes:

**SENATOR SCHOBINGER** opened the conference committee on SB 2008 on the Public Service Commission budget. Down to talking about the study, IT, and the rail rate case study.

**Members present were: Senator Schobinger, Senator Christmann, Senator Mathern, Representative Koppelman, Representative Carlson, and Representative Glassheim.**

**SENATOR CHRISTMANN:** Move to separate two issues in the study recommendation prefaced by the Legislative Council ... two separate sections in bill.

**REPRESENTATIVE KOPPELMAN:** Seconded the motion.

**SENATOR SCHOBINGER:** Where would the second study begin?

**REPRESENTATIVE CARLSON:** After duties - starts "In addition". Confirmed with Don Wolf.

**SENATOR CHRISTMANN:** Vote on both divisions.

**Roll call was read on Division of Studies in Amendment 0205. 6 yeas 0 nays.**

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Senate Appropriations Committee  
Bill/Resolution Number SB 2008  
Hearing Date April 22, 2003

**REPRESENTATIVE KOPPELMAN:** Passed out sheet from ND Grain Dealers Association on Rail Rates. .... Proposed change the total amount approved from \$250,000 to \$225,000 ..... rather than \$50,000 from private section - cut to \$25,000 ..... letter of intent .... (Meter # 2715 - 2840)

**SENATOR CHRISTMANN:** For clarification ... Continued discussion on amounts.

**REPRESENTATIVE GLASSHEIM:** Seems ought not to do it .....

**REPRESENTATIVE KOPPELMAN:** \$25,000 amount discussed for negotiations ..... not eliminate ..... complete process .....

**REPRESENTATIVE GLASSHEIM:** Move we appropriate \$225,000 for study and if result seems promising, encourage PFC to go to budget section and/or private sources for the additional \$25,000 needed for negotiating processes.

**REPRESENTATIVE CARLSON:** .... The number is that we supporting the concept that we want to study it. .... There is ability to add different bids ..... reality is only pool of money .... (Meter # 3235 - 3345)

**REPRESENTATIVE KOPPELMAN:** Restated motion to authorize \$225,000 for the investigation into a rail rate complaint - \$25,000 would come from interested parties .... need to be committed up front ..... \$200,000 come from railroad loan pool at NDDOT .....

**REPRESENTATIVE CARLSON:** Seconded the motion.

Roll call was read. 4 yeas 2 nays. Motion carried.

**SENATOR MATHERN:** Moved authorization ..... .0206 language on bottom of back page (Meter #3515 - 3582)

**REPRESENTATIVE GLASSHEIM:** Seconded the motion.

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**Roll call was read. 5 yeas 1 nay. Motion carried.**

**SENATOR MATHERN:** Matter of IT issue ..... 3rd column .... taking what the department had brought in and taking 5% off and netting out the other differences ..... additional amount of \$7,014 ..... on sheet of paper called "footnote #4" ..... Moved that amendment be the IT cut ...  
(Meter # 3852 - 4000)

**REPRESENTATIVE GLASSHEIM:** Seconded the motion.

**SENATOR CHRISTMANN:** Resist this - maybe ending up coming back to it. .... may make motion just maintaining cuts ..... (Meter # 4015 - 4236)

**SENATOR MATHERN:** Is the questions how much money has been cut during the session or how much more .....

**SENATOR CHRISTMANN:** Nothing ..... should be rewarded .....

**REPRESENTATIVE GLASSHEIM:** Questions agreement on IT budget at \$440,000 ..... just 5% cut would be \$22,014 ..... Senate has already cut \$23,000 ..... leaving the 9 and 6 additional ..... (Meter #4340 - 4455)

**SENATOR CHRISTMANN:** The maker of the motion and the "seconded" of the motion might want to withdraw them.

**SENATOR MATHERN:** I withdraw.

**REPRESENTATIVE GLASSHEIM:** I withdraw.

**REPRESENTATIVE CARLSON:** Something wrong with this picture .....

**SENATOR CHRISTMANN:** .... Amendment in front of us? .... if we leave them with the cuts that have been made ..... no motion is necessary .... or is the \$7,014 in front of us? .....

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Senate Appropriations Committee  
Bill/Resolution Number SB 2008  
Hearing Date April 22, 2003

**REPRESENTATIVE KOPPELMAN:** .... In order to adopt motion, House would have to recede from its amendment which brings it back to the Senate version .....

**SENATOR CHRISTMANN:** In light of previous votes were basically on statistic issues .... I move that the House recede from their amendments and the changes we voted on previously regarding the studies and rail case study be adopted, and no further IT cuts be made, and reinstate the House \$9,000 and \$6,000 .....

**DON WOLF:** 1 - 2 - 3 Footnote ...

**REPRESENTATIVE GLASSHEIM:** .... Want to have showing up the 5% cut as in every budget. That would require the Senate receding from its former \$23,000 and then just making the across-the-board 5% ..... have this budget the same .....

**REPRESENTATIVE KOPPELMAN:** Don't object .... wonder if it will amount to the same dollars .....

**DON WOLF:** Can put section in there explaining ..... Discussion. (Meter # 5000 - 5121)

**SENATOR MATHERN:** Seconded the motion.

**SENATOR SCHOBINGER** clarified the motion. .... House recede from House amendment.

.... Discussion .... (Meter # 5185 - 5360)

**Roll call was read. 6 yeas 0 nays. Motion carried.**

**Conference Committee Meeting on SB 2008 closed. (Meter # 5400)**

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Fiscal No. 4

Prepared by the Legislative Council staff for  
Conference Committee  
April 23, 2003

*JB*  
4-23-03  
1 of 2

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2008

That the House recede from its amendments as printed on pages 1130 and 1131 of the Senate Journal and pages 1238-1240 of the House Journal and that Engrossed Senate Bill No. 2008 be amended as follows:

Page 1, line 2, after "funding" insert "; to provide for legislative council studies"

Page 1, line 10, replace "4,775,728" with "4,771,497"

Page 1, line 11, replace "1,212,261" with "1,197,261"

Page 1, line 16, replace "10,003,492" with "9,984,261"

Page 1, line 17, replace "6,074,179" with "6,072,767"

Page 1, line 18, replace "3,929,313" with "3,911,494"

Page 1, line 20, replace "\$250,000" with "\$225,000"

Page 1, line 22, after the comma insert "and \$25,000 from other sources,"

Page 1, line 23, after the period insert "The commission must have written commitments for the \$25,000 from other sources before spending any moneys from the state rail fund."

Page 2, after line 3, insert:

**"SECTION 4. LEGISLATIVE COUNCIL STUDY - PUBLIC SERVICE COMMISSION DUTIES.** The legislative council shall consider studying, during the 2003-04 interim, the feasibility and desirability of transferring inspection and standards functions performed by various state agencies to the public service commission, including the potential cost-savings and efficiencies that may be realized by training and certifying employees to conduct multiple inspection duties. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly.

**SECTION 5. LEGISLATIVE COUNCIL STUDY - PUBLIC SERVICE COMMISSION FUNDING.** The legislative council shall consider studying, during the 2003-04 interim, the feasibility and desirability of funding the public service commission entirely from special fund revenue sources. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly."

Renumber accordingly

**STATEMENT OF PURPOSE OF AMENDMENT:**

**Senate Bill No. 2008 - Public Service Commission - Conference Committee Action**

	EXECUTIVE BUDGET	SENATE VERSION	CONFERENCE COMMITTEE CHANGES	CONFERENCE COMMITTEE VERSION	HOUSE VERSION	COMPARISON TO HOUSE
Salaries and wages	\$4,830,580	\$4,775,728	(\$4,231)	\$4,771,497	\$4,771,497	
Operating expenses	1,232,261	1,212,261	(15,000)	1,197,261	1,197,008	\$80,255

Page No. 1

38031.0209

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*Cheresea J. Bee*  
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*10-14-03*  
Date

2 of 2

Capital assets	45,011	35,011		35,011	35,011	
Grants	82,000	82,000		82,000	82,000	
Abandoned mined lands contractual services	3,868,492	3,868,492		3,868,492	3,868,492	
Rail rate complaint case	250,000	250,000		250,000	250,000	
Total all funds	\$10,088,344	\$10,003,492	(\$19,231)	\$9,984,261	\$9,924,006	\$80,255
Less estimated income	8,084,744	8,074,179	(1,412)	8,072,767	8,072,767	
General fund	\$4,003,800	\$3,929,313	(\$17,819)	\$3,911,494	\$3,851,239	\$80,255
FTE	41.00	41.00	0.00	41.00	41.00	0.00

**Dept. 408 - Public Service Commission - Detail of Conference Committee Changes**

	DECREASES FUNDING FOR INFORMATION TECHNOLOGY TRAINING TRAVEL <sup>1</sup>	DECREASES FUNDING FOR COPIER-RELATED PRINTING COSTS <sup>2</sup>	REDUCES RECOMMENDED FUNDING FOR HEALTH INSURANCE <sup>3</sup>	TOTAL CONFERENCE COMMITTEE CHANGES
Salaries and wages			(\$4,231)	(\$4,231)
Operating expenses	(\$8,000)	(\$9,000)		(15,000)
Capital assets				
Grants				
Abandoned mined lands contractual services				
Rail rate complaint case				
Total all funds	(\$8,000)	(\$9,000)	(\$4,231)	(\$19,231)
Less estimated income			(1,412)	(1,412)
General fund	(\$8,000)	(\$9,000)	(\$2,819)	(\$17,819)
FTE	0.00	0.00	0.00	0.00

<sup>1</sup> This amendment decreases the funding for information technology training and related travel, the same as the House version.

<sup>2</sup> This amendment decreases the funding for copier-related printing costs, the same as the House version.

<sup>3</sup> This amendment reduces funding for state employee health insurance premiums from \$493 to \$488.70 per month.

The Conference Committee amendment provides for a Legislative Council study to examine the possibility of consolidating various inspection duties within one agency, the Public Service Commission. The Conference Committee created a separate section for the study of the feasibility and desirability of making the Public Service Commission a special funded agency. The House amendment included both studies within the same section.

The Conference Committee amendment provides for \$250,000 for the initial stage of a rail rate complaint case, \$225,000 of which is from the state rail fund and \$25,000 from other interested parties and other sources. The Public Service Commission may not spend any of the \$225,000 from the state rail fund until it has received commitment for the \$25,000 of other funds. The House amendment provided for \$200,000 from the state rail fund and \$50,000 from other funds.

The Conference Committee made no further information technology reductions to the Public Service Commission. The Conference Committee maintained existing information technology reductions of \$23,000 made by the Senate and \$15,000 of reductions made by the House, which amounted to an overall greater reduction than the proposed 5 percent reduction of \$22,014.

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Operator's Signature

10-14-03  
Date

**REPORT OF CONFERENCE COMMITTEE**

**SB 2008, as engrossed:** Your conference committee (Sens. Schoblinger, Christmann, Mathern and Reps. Koppelman, Carlson, Glasshelm) recommends that the **HOUSE RECEDE** from the House amendments on SJ pages 1130-1131, adopt amendments as follows, and place SB 2008 on the Seventh order:

That the House recede from its amendments as printed on pages 1130 and 1131 of the Senate Journal and pages 1238-1240 of the House Journal and that Engrossed Senate Bill No. 2008 be amended as follows:

Page 1, line 2, after "funding" insert "; to provide for legislative council studies"

Page 1, line 10, replace "4,775,728" with "4,771,497"

Page 1, line 11, replace "1,212,261" with "1,197,261"

Page 1, line 16, replace "10,003,492" with "9,984,261"

Page 1, line 17, replace "6,074,179" with "6,072,767"

Page 1, line 18, replace "3,929,313" with "3,911,494"

Page 1, line 20, replace "\$250,000" with "\$225,000"

Page 1, line 22, after the comma insert "and \$25,000 from other sources,"

Page 1, line 23, after the period insert "The commission must have written commitments for the \$25,000 from other sources before spending any moneys from the state rail fund."

Page 2, after line 3, insert:

**"SECTION 4. LEGISLATIVE COUNCIL STUDY - PUBLIC SERVICE COMMISSION DUTIES.** The legislative council shall consider studying, during the 2003-04 Interim, the feasibility and desirability of transferring inspection and standards functions performed by various state agencies to the public service commission, including the potential cost-savings and efficiencies that may be realized by training and certifying employees to conduct multiple inspection duties. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly.

**SECTION 5. LEGISLATIVE COUNCIL STUDY - PUBLIC SERVICE COMMISSION FUNDING.** The legislative council shall consider studying, during the 2003-04 Interim, the feasibility and desirability of funding the public service commission entirely from special fund revenue sources. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly."

Renumber accordingly

**STATEMENT OF PURPOSE OF AMENDMENT:**

**Senate Bill No. 2008 - Public Service Commission - Conference Committee Action**

EXECUTIVE BUDGET	SENATE VERSION	CONFERENCE COMMITTEE CHANGES	CONFERENCE COMMITTEE VERSION	HOUSE VERSION	COMPARISON TO HOUSE
(2) DESK, (2) COMM		Page No. 1			SR-74-8211

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Date

**REPORT OF CONFERENCE COMMITTEE (420)**  
**April 23, 2003 1:13 p.m.**

**Module No: SR-74-8211**

**Insert LC: 38031.0209**

Salaries and wages	\$4,830,680	\$4,775,728	(\$4,231)	\$4,771,497	\$4,771,497	
Operating expenses	1,232,281	1,212,281	(15,000)	1,197,281	1,137,008	\$80,255
Capital assets	45,011	35,011		35,011	35,011	
Grants	62,000	62,000		62,000	62,000	
Abandoned mined lands contractual services	3,868,492	3,868,492		3,868,492	3,868,492	
Rail rate complaint case	<u>250,000</u>	<u>250,000</u>		<u>250,000</u>	<u>250,000</u>	
Total all funds	\$10,088,344	\$10,003,492	(\$19,231)	\$9,884,281	\$9,924,008	\$80,255
Less estimated income	<u>8,084,744</u>	<u>8,074,179</u>	<u>(1,412)</u>	<u>8,072,767</u>	<u>8,072,767</u>	
General fund	\$4,003,600	\$3,929,313	(\$17,819)	\$3,911,494	\$3,851,239	\$80,255
FTE	41.00	41.00	0.00	41.00	41.00	0.00

**Dept. 408 - Public Service Commission - Detail of Conference Committee Changes**

	DECREASES FUNDING FOR INFORMATION TECHNOLOGY TRAINING TRAVEL <sup>1</sup>	DECREASES FUNDING FOR COPIER-RELATED PRINTING COSTS <sup>2</sup>	REDUCES RECOMMENDED FUNDING FOR HEALTH INSURANCE <sup>3</sup>	TOTAL CONFERENCE COMMITTEE CHANGES
Salaries and wages			(\$4,231)	(\$4,231)
Operating expenses	(\$8,000)	(\$9,000)		(15,000)
Capital assets				
Grants				
Abandoned mined lands contractual services				
Rail rate complaint case				
Total all funds	(\$8,000)	(\$9,000)	(\$4,231)	(\$19,231)
Less estimated income			(1,412)	(1,412)
General fund	(\$8,000)	(\$9,000)	(\$2,819)	(\$17,819)
FTE	0.00	0.00	0.00	0.00

<sup>1</sup> This amendment decreases the funding for information technology training and related travel, the same as the House version.

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The Conference Committee amendment provides for \$250,000 for the initial stage of a rail rate complaint case, \$225,000 of which is from the state rail fund and \$25,000 from other interested parties and other sources. The Public Service Commission may not spend any of the \$225,000 from the state rail fund until it has received commitment for the \$25,000 of other funds. The House amendment provided for \$200,000 from the state rail fund and \$50,000 from other funds.

The Conference Committee made no further information technology reductions to the Public Service Commission. The Conference Committee maintained existing information technology reductions of \$23,000 made by the Senate and \$15,000 of reductions made by the House, which amounted to an overall greater reduction than the proposed 5 percent reduction of \$22,014.

Engrossed SB 2008 was placed on the Seventh order of business on the calendar.

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10-14-03  
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2003 TESTIMONY

SB 2008

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10-14-03

Date

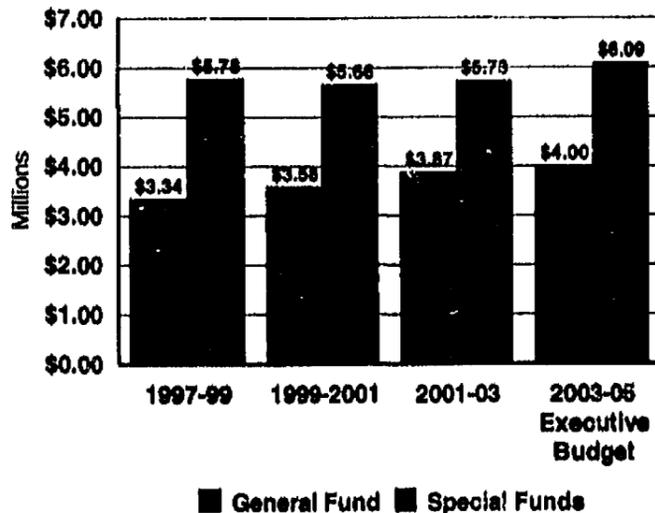
Department 408 - Public Service Commission  
 Senate Bill No. 2008

	FTE Positions	General Fund	Other Funds	Total
2003-05 Executive Budget	41.00	\$4,003,600	\$6,084,744	\$10,088,344
2001-03 Legislative Appropriations	41.00	3,866,379 <sup>1</sup>	5,729,485	9,595,864 <sup>2</sup>
Increase (Decrease)	0.00	\$137,221	\$355,259	\$492,480

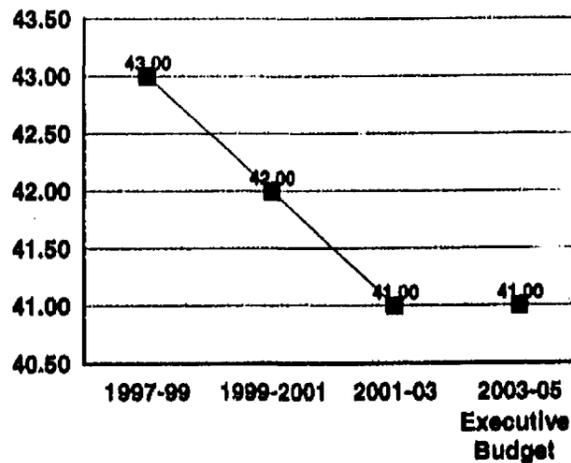
<sup>1</sup> The 2001-03 general fund appropriation is the amount appropriated by the 2001 Legislative Assembly and does not include a reduction of \$40,597 relating to the 1.05 percent budget allotment ordered by Governor Hoeven in July 2002.

<sup>2</sup> The 2001-03 appropriation amounts include \$14,426, \$9,374 of which is from the general fund, for the agency's share of the \$5 million funding pool appropriated to the Office of Management and Budget for special market equity adjustments for classified employees. The 2001-03 appropriation amounts do not include \$69,000 of additional special funds authority resulting from Emergency Commission action during the 2001-03 biennium.

Agency Funding



FTE Positions



Executive Budget Highlights

	General Fund	Other Funds	Total
<b>Administration</b>			
1. Provides funding from the North Dakota rail rehabilitation loan program to begin the initial stages of a possible rail rate complaint case		\$250,000	\$250,000
<b>Reclamation</b>			
2. Maintains federal funds spending authority for abandoned mine land reclamation projects at \$3,668,492			
3. Provides a funding source change to reflect increased federal funding for abandoned mine land reclamation activity	(\$22,087)	\$22,087	
<b>Testing, Licensing, and Certification</b>			
4. Increases funding for operating expenses primarily for Fleet Services costs	\$34,962		\$34,962
5. Increases funding for the call-before-you-dig program		\$21,850	\$21,850
<b>Public Utilities</b>			
6. No significant changes for public utilities			

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### Major Related Legislation

Section 3 of Senate Bill No. 2008 increases the statutory changes as necessary to increase the salary of the Public Service Commissioners as follows:

Annual salary authorized by the 2001 Legislative Assembly:

July 1, 2001	\$66,509
January 1, 2002	\$68,504
July 1, 2002	\$69,874

Proposed annual salary recommendation in the 2003-05 executive budget:

July 1, 2003	\$69,874
January 1, 2004	\$70,575
January 1, 2005	\$71,986

**House Bill No. 1052** - This bill creates a performance assurance fund, which is a component of Qwest's performance assurance plan to provide long-distance telephone service. The performance assurance plan provides that Qwest must meet predetermined service quality goals and benchmarks or be subject to damages. A continuing appropriation is provided for these damage awards to be used by the Public Service Commission to monitor the operation and effect of the performance assurance plan.

**House Bill No. 1132** - This bill changes the process for authorizing telecommunications resellers from a one-time registration certificate process to an annual licensing process.

**House Bill No. 1133** - This bill provides for a \$100 annual fee to the Public Service Commission for each public utility authorized to do business in North Dakota. The annual fee is to be deposited in the general fund.

**House Bill No. 1157** - This bill provides that a grain warehouse and grain buyer initial license application that becomes effective on or after June 1 does not expire until July 31 of the following calendar year.

**Senate Bill No. 2112** - This bill increases the statutory fees charged to test and certify weights and measures equipment used in commercial service.

**Senate Bill No. 2113** - This bill will eventually make it mandatory for anhydrous ammonia dealers to sell fertilizer via certified scales or pumps rather than via percent gauges. Compliance will become mandatory in 10 years.

**Senate Bill No. 2114** - This bill increases the annual license fee for auctioneers or clerks from \$35 to \$60.

**Senate Bill No. 2116** - This bill requires that telecommunications companies provide customers with written notice of price increases for certain services.

**Senate Bill No. 2117** - This bill authorizes the use of the valuation fund by the Public Service Commission for additional types of gas and electric cases.

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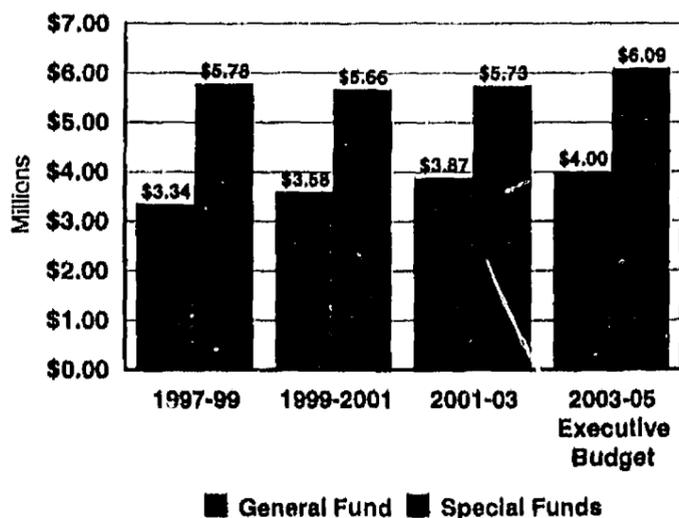
**Department 408 - Public Service Commission  
 Senate Bill No. 2008**

	FTE Positions	General Fund	Other Funds	Total
2003-05 Executive Budget	41.00	\$4,003,600	\$6,084,744	\$10,088,344
2001-03 Legislative Appropriations	41.00	3,866,379 <sup>1</sup>	5,729,485	9,595,864 <sup>2</sup>
Increase (Decrease)	0.00	\$137,221	\$355,259	\$492,480

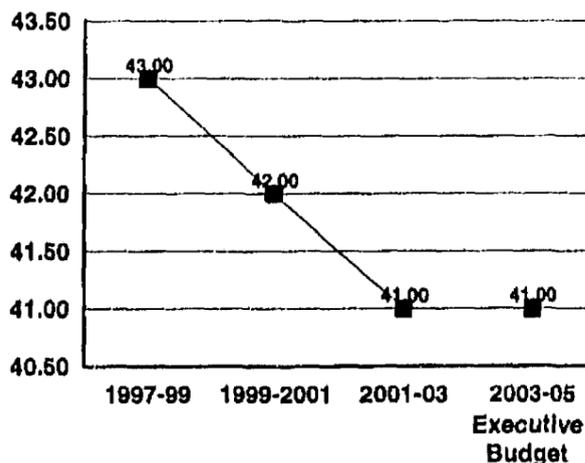
<sup>1</sup> The 2001-03 general fund appropriation is the amount appropriated by the 2001 Legislative Assembly and does not include a reduction of \$40,597 relating to the 1.05 percent budget allotment ordered by Governor Hoeven in July 2002.

<sup>2</sup> The 2001-03 appropriation amounts include \$14,426, \$9,374 of which is from the general fund, for the agency's share of the \$5 million funding pool appropriated to the Office of Management and Budget for special market equity adjustments for classified employees. The 2001-03 appropriation amounts do not include \$69,000 of additional special funds authority resulting from Emergency Commission action during the 2001-03 biennium.

**Agency Funding**



**FTE Positions**



**First House Action**

Attached is a summary of the first house changes.

**Executive Budget Highlights  
 (With First House Changes Noted)**

	General Fund	Other Funds	Total
<b>Administration</b>			
1. Provides funding from the North Dakota rail rehabilitation loan program to begin the initial stages of a possible rail rate complaint case. The Senate made this funding an emergency measure.		\$250,000	\$250,000
<b>Reclamation</b>			
2. Maintains federal funds spending authority for abandoned mine land reclamation projects at \$3,668,492			
3. Provides a funding source change to reflect increased federal funding for abandoned mine land reclamation activity	(\$22,087)	\$22,087	
<b>Testing, Licensing, and Certification</b>			
4. Increases funding for operating expenses primarily for Fleet Services costs	\$34,962		\$34,962

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10-14-03  
 Date

5. Increases funding for the call-before-you-dig program

\$21,860

\$21,860

**Public Utilities**

6. No significant changes for public utilities

**Major Related Legislation**

Section 3 of Senate Bill No. 2008 increases the statutory changes as necessary to increase the salary of the Public Service Commissioners as follows:

Annual salary authorized by the 2001 Legislative Assembly:

July 1, 2001	\$66,609
January 1, 2002	\$68,504
July 1, 2002	\$69,874

Proposed annual salary recommendation in the 2003-05 executive budget:

July 1, 2003	\$69,874
January 1, 2004	\$70,575
January 1, 2005	\$71,986

The Senate removed the 2003-05 biennium salary increases for the Public Service Commissioners.

Section 3 of Engrossed Senate Bill No. 2008 provides for the Public Service Commission to repay the state rail fund up to \$250,000 from any proceeds of a successful outcome of a rail rate complaint case.

**House Bill No. 1052** - This bill creates a performance assurance fund, which is a component of Qwest's performance assurance plan to provide long-distance telephone service. The performance assurance plan provides that Qwest must meet predetermined service quality goals and benchmarks or be subject to damages. A continuing appropriation is provided for these damage awards to be used by the Public Service Commission to monitor the operation and effect of the performance assurance plan.

**House Bill No. 1132** - This bill changes the process for authorizing telecommunications resellers from a one-time registration certificate process to an annual licensing process.

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**Senate Bill No. 2112** - This bill increases the statutory fees charged to test and certify weights and measures equipment used in commercial service.

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Operator's Signature

10-14-03  
Date

02/21/03

**STATEMENT OF PURPOSE OF AMENDMENT:****Senate Bill No. 2008 - Funding Summary**

	Executive Budget	Senate Changes	Senate Version
Public Service Commission			
Salaries and wages	\$4,830,580	(\$54,852)	\$4,775,728
Operating expenses	1,232,261	(20,000)	1,212,261
Capital assets	45,011	(10,000)	35,011
Grants	62,000		62,000
Abandoned mined lands contractual serv	3,668,492		3,668,492
Rail rate complaint case	250,000		250,000
Total all funds	\$10,088,344	(\$84,852)	\$10,003,492
Less estimated income	6,084,744	(10,565)	6,074,179
General fund	\$4,003,600	(\$74,287)	\$3,929,313
FTE	41.00	0.00	41.00
Bill Total			
Total all funds	\$10,088,344	(\$84,852)	\$10,003,492
Less estimated income	6,084,744	(10,565)	6,074,179
General fund	\$4,003,600	(\$74,287)	\$3,929,313
FTE	41.00	0.00	41.00

**Senate Bill No. 2008 - Public Service Commission - Senate Action**

	Executive Budget	Senate Changes	Senate Version
Salaries and wages	\$4,830,580	(\$54,852)	\$4,775,728
Operating expenses	1,232,261	(20,000)	1,212,261
Capital assets	45,011	(10,000)	35,011
Grants	62,000		62,000
Abandoned mined lands contractual serv	3,668,492		3,668,492
Rail rate complaint case	250,000		250,000
Total all funds	\$10,088,344	(\$84,852)	\$10,003,492
Less estimated income	6,084,744	(10,565)	6,074,179
General fund	\$4,003,600	(\$74,287)	\$3,929,313
FTE	41.00	0.00	41.00

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SB2008

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Operator's Signature

10-14-03  
Date

02/21/03

Department No. 408 - Public Service Commission - Detail of Senate Changes

	Removes Recommended Salary Increase <sup>1</sup>	Changes Funding Source <sup>2</sup>	Decreases Funding for Equipment Over \$5,000 <sup>3</sup>	Decreases Funding for Equipment Under \$5,000 <sup>4</sup>	Decreases Funding for Legal Reference Materials <sup>5</sup>	Decreases Funding for Professional Development <sup>6</sup>
Salaries and wages	(\$52,852)					
Operating expenses				(200)	(5,000)	(2,000)
Capital assets			(10,000)			
Grants						
Abandoned mined lands contractual serv						
Rail rate complaint case						
<b>Total all funds</b>	<b>(\$52,852)</b>	<b>\$0</b>	<b>(\$10,000)</b>	<b>(\$200)</b>	<b>(\$5,000)</b>	<b>(\$2,000)</b>
Less estimated income	(18,565)	8,000	0	0	0	0
<b>General fund</b>	<b>(\$34,287)</b>	<b>(\$8,000)</b>	<b>(\$10,000)</b>	<b>(\$200)</b>	<b>(\$5,000)</b>	<b>(\$2,000)</b>
FTE	0.00	0.00	0.00	0.00	0.00	0.00

	Decreases Funding for Information Technology Costs <sup>7</sup>	Decreases the Salary Line Item <sup>8</sup>	Total Senate Changes
Salaries and wages		(\$2,000)	(\$4,852)
Operating expenses	(12,800)		(20,000)
Capital assets			(10,000)
Grants			
Abandoned mined lands contractual serv			
Rail rate complaint case			
<b>Total all funds</b>	<b>(\$12,800)</b>	<b>(\$2,000)</b>	<b>(\$84,852)</b>
Less estimated income	0	0	(10,565)
<b>General fund</b>	<b>(\$12,800)</b>	<b>(\$2,000)</b>	<b>(\$74,287)</b>
FTE	0.00	0.00	0.00

<sup>1</sup> This amendment removes the Governor's recommendation for state employee salary increases and retains the recommended state payment for health insurance premiums, including the funding for the commissioner's salary increase.

<sup>2</sup> This amendment changes the funding source from general fund to special funds from a projected increase in indirect cost recoveries from the federal government.

<sup>3</sup> This amendment decreases funding for information technology equipment over \$5,000.

<sup>4</sup> This amendment decreases the funding for information technology equipment under \$5,000.

<sup>5</sup> This amendment decreases funding for legal division reference materials.

<sup>6</sup> This amendment decreases the funding for information technology professional development costs.

<sup>7</sup> This amendment decreases funding for information technology programming and support costs for web data base development.

<sup>8</sup> This amendment underfunds the salary and wages line item by \$2,000.

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Operator's Signature

10-14-03  
Date

02/21/03

A section is added making the \$250,000 transfer and related appropriation from the state rail fund to the Public Service Commission for costs associated with the initial stage of a rail rate complaint case an emergency measure. It also requires the Public Service Commission to repay the state rail fund from any proceeds of a successful outcome of the rail rate complaint case.

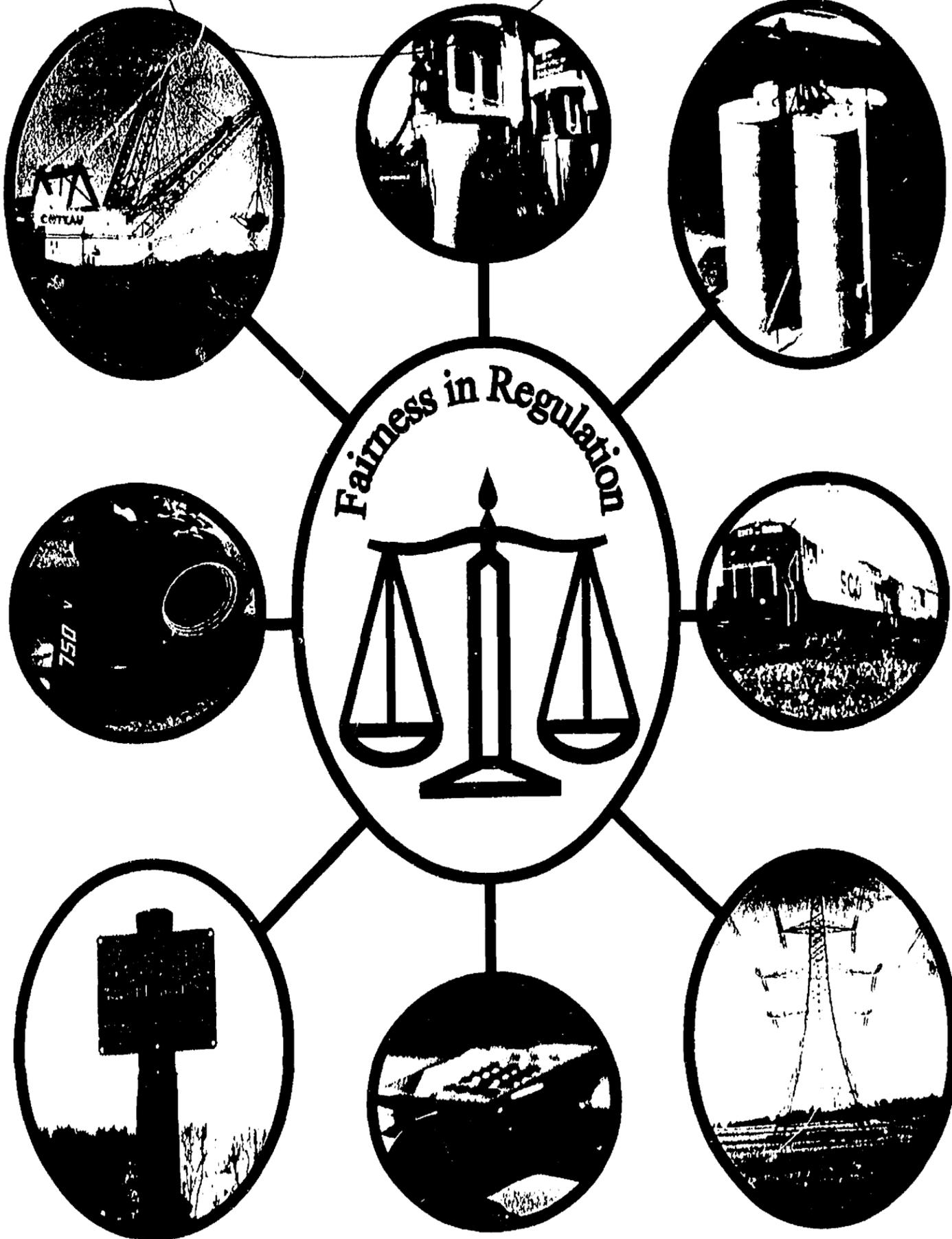
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Operator's Signature

10-14-03  
Date

# North Dakota Public Service Commission 1999-2001 Biennial Report

CONTACT PSC FOR COPY



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*Yubereva O. Jee*  
Operator's Signature

10-14-03  
Date



# House of Representatives

State of North Dakota  
600 East Boulevard  
Bismarck 58505-0360



January 8, 2003

Honorable Tony Clark  
Honorable Susan Wefald  
Honorable Leo Reinbold  
Public Service Commission  
State Capitol  
Bismarck, ND 58505

*Agency Response*  
attached  
1/14/03

Dear Commissioners:

Thank you for the hard work you have dedicated to your agency budget. With the legislative session underway, we enter the most important stage of the budget process. Legislators must determine how to spend state funds in order to effectively address the priorities of North Dakota citizens.

In order to help legislators most effectively allocate taxpayers dollars to address our state's priorities we need your help. This process has fundamental goals. First, it will outline, in simple terms, each agency's purpose by answering the question; What purpose do you serve for North Dakota citizens? Second, this process will identify specific measurements to determine how each agency is fulfilling its purpose and obligation to our citizens.

This initiative is not intended to be an onerous new tool or a passing management fad. Rather, it is designed to become a permanent fixture in state government that helps agencies clarify purpose, focus personnel and resources, eliminate unnecessary or outdated programs, and have confidence you are fulfilling your purpose. This will give North Dakota citizens a way to evaluate the effectiveness of state government. We hope you welcome this initiative as a way to better serve North Dakota citizens.

To launch this process, we request that you provide a two-page (or less) response to the following questions when you are scheduled for your initial appropriations hearing:

- 1) What is the main purpose of your agency?
- 2) How do you measure the achievement of your purpose?
- 3) What can the legislature do, financially and otherwise, to help you achieve your purpose?
- 4) How can you report (measure) your results so the public can easily understand your purpose and evaluate your effectiveness?

If possible, each of us would appreciate a copy prior to the hearing. Thank you in advance for your commitment to this project and the citizens of North Dakota. If you have any questions, please feel free to talk to Jim Smith of the Legislative Council.

Sincerely,

*Bob*

Senator Bob Stenehjem  
Senate Majority Leader

Rep. Rick Berg  
House Majority Leader

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## PSC RESPONSE TO LEGISLATIVE REQUEST FOR BUDGET INPUT

### Main Purpose of Agency

The Public Service Commission exists to carry out the duties prescribed by the Constitution and the laws as enacted by the Legislature.

The Commission fulfills these mandates by regulating utilities, mining companies, and licensees in a fair, efficient, responsive, and cooperative manner while protecting the public interest. Regulatory initiatives assure that:

- Utility customers receive reliable and safe service at reasonable and just rates.
- Mined coal lands are reclaimed to provide a safe and productive environment now and in the future.
- License and permit holders and operators of commercial weighing and measuring devices operate in a safe and fair manner.

Related mandates are set forth in Article V (Sections 12 & 13) and Article XII (Section 13) of the Constitution and Chapters 19-01, 24-01, 24-09, 36-05, 36-21, 38-14.1, 38-14.2, 38-18, 40-05, 40-33, 40-34, 51-05, 54-06, 54-44.8, and 57-61 and Titles 49 (except chapter 49-16), 60 (except chapter 60-01), and 64 of the North Dakota Century Code.

### Achievement of Purpose

The Commission, the public, industry, auditors, and Legislators must look at a number of statistics, factors, and accomplishments to determine whether or not the agency is achieving its prescribed purposes. A number of examples include:

- Are public utilities earning an adequate rate of return on their investments? All are and two have agreed to participate in a "performance based ratemaking" process which allows them and their ratepayers to share in excess profits if the companies achieve certain pre-established goals; customers received benefits totaling \$600,000. In some cases, the Commission has initiated rate investigations if it appears that utilities are earning excess profits. A recent case resulted in reductions of \$800,000.
- Are utility customers receiving reliable, safe, and reasonably priced services? Yes. The Commission meets with major utilities several times per year to monitor performance and ongoing activities and to discuss concerns that have been raised by ratepayers.
- Is the Commission encouraging a pro-competitive environment in North Dakota's telecommunications industry? Yes, congressional and legislative mandates are being implemented. Several companies have entered local markets and Qwest has been granted entry into the long distance market.
- Are coal mine permits processed in a timely manner, are mining practices fair to adjoining landowners, and are mined lands reclaimed to a level of productivity that

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exceeds premining levels? Yes. North Dakota is a leader in the acceptance of all-electronic mining permits. Mining activities on nearly 80,000 permitted acres are conducted in a cooperative manner and North Dakota's reclamation work is often cited as exemplary by the federal Office of Surface Mining.

- Is the grain elevator industry regulated in a fair manner and are farmers adequately protected when elevator insolvencies occur. Yes. The Commission maintains a close working relationship with the grain industry – elevators, farm and commodity groups, etc. Insolvencies are processed in an expedited manner and payments to farmers are as high as the law will possibly allow.
- Are commercial measuring and weighing devices operated in a manner that is fair to both sellers and consumers? Yes. The Commission conducts over 28,000 tests annually to promote fairness to both buyers and sellers.
- Are safety hazards being eliminated at the 600+ abandoned mine sites in western North Dakota? Yes. The Commission makes maximum use of available federal funds and private contractors to eliminate the most significant hazards at existing abandoned surface and underground mine sites.
- Is the agency operated in an efficient and responsive manner. Yes. 98% of the 1,380 cases that came before the Commission during the past biennium were processed without the need of a formal hearing. 66% were handled in less than 30 days and 75% were closed in less than 60 days. Nearly 2,200 public and industry complaints and inquiries were recorded and responded to. The agency's web-site is highly visited and has been cited by the State Auditor for its excellent contents. Agency meetings are broadcast via Internet.

### What Can the Legislature Do?

Provide the agency with the resources that it needs to carry out its constitutional and statutory mandates.

Various branches of government and other agencies should not be allowed to impose unfunded mandates that require the expenditure of unbudgeted resources and manpower.

### Reporting Results

Agency achievements are reported on an ongoing basis by the media as individual cases are processed. Additional reports come from sources such as auditors and federal agencies that interact with the Commission. Agency reports are presented via budget submittals, biennial reports, and quarterly reports that are prepared by each of the agency's divisions. The Commission uses its Internet web-site to disseminate information that is useful to the public and industry and to report achievements such as those outlined above.

**Contact Person:** Jon Mielke, Executive Secretary at 328-4082

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Exhibit 1

S.B.  
H.B. 2008

**Presented by:** Jon Mielke, Executive Secretary  
Public Service Commission

**Before:** Senate Appropriations Committee  
Senator Ray Holmberg, Chairman

**Date:** January 20, 2003

### TESTIMONY

Mr. Chairman and committee members, my name is Jon Mielke. I am the Public Service Commission's executive secretary. I also serve as the director of the Commission's Licensing Division and as the primary staff person on railroad matters.

I will be the primary presenter of the testimony on this budget bill but I would also like to note that Commissioners Susan Wefald and Leo Reinbold are also present. Commissioner Tony Clark is unable to attend today's hearing.

Also with us are Ilona Jeffcoat-Sacco, the director of the Commission's Public Utilities Division, and Mike Diller, the Commission's accountant. We welcome the opportunity to meet with you to discuss our operations, statutory mandates, and resource needs.

At the outset, we want to emphasize that the Commission needs resources to do the work that the Legislature has assigned to it. We believe that the Governor's executive budget recommendation

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provides us with these resources and we urge your favorable support of the budget that is before you.

Mr. Chairman and committee members, except for one item, which I will discuss later, this is a status quo budget proposal. The Commission is not proposing any new programs or asking for any additional FTEs. We do not, however, want to leave you with the impression that the Commission is a status quo agency – it definitely is not.

The Commission's areas of responsibility have not changed in several years. These areas include:

- Regulation of telephone, electric, and natural gas utilities;
- Pipeline safety inspections;
- Licensing grain elevators and auctioneers;
- Testing and certifying weighing and measuring devices;
- Overseeing coal mining;
- Eliminating hazards at abandoned mine sites;
- Siting power plants, power lines, and pipelines; and
- Representing state rail interests in federal proceedings.

Despite few changes in jurisdiction, the Commission has actually been immersed in a rapidly changing regulatory environment, some of which is mandated by federal and state statutory changes and some of which is related to structural changes within the industries that the Commission deals with. Some of these major changes include:

- Federal telecommunication mandates, including the application by Qwest to enter the long distance market and the ongoing oversight of the related wholesale telecommunications market.
- State involvement with handling "slamming" complaints related to long distance telephone service.
- Restructuring within the nation's electrical transmission grid.
- Performance Based Ratemaking (PBR) to provide efficiency incentives for regulated utilities.
- Restructuring within the grain elevator industry and related insolvency proceedings.
- US Department of Agriculture moves to preempt state-provided farmer protections at federally licensed grain warehouses.
- Post 9/11 insurance and bond rate increases and related impacts on mining companies and grain warehouses.
- Wind and coal power generation and related siting activities.

All these activities plus the Commission's normal workload have made for some very busy times.

The Commission has met these challenges in a variety of ways and with a very small staff. For example, the Commission has taken part in several multi-state collaborative efforts to process industry applications and to participate in federal proceedings.

To process Qwest's recent application to the Federal Communications Commission to enter the long distance market, the Commission joined forces with several other states. This approach made it possible for the Commission to take advantage of expertise in other states and to process the massive proceeding much faster and

cheaper than would have been the case had the matter been handled alone. This approach also benefited industry since all the involved states were proceeding on a similar basis. North Dakota was in the first group of nine Qwest states to receive this federal approval.

In the area of electric rate regulation, the Commission has received recognition for its approach to provide utilities with incentive-based options to traditional rate of return regulation. Both Otter Tail Power and Northern States Power have taken advantage of this "Performance Based Ratemaking" option – to the benefit of both their stockholders and their customers.

Traditional ratemaking procedures are still used for utilities that are not part of incentive-based plans. The Commission processed two natural gas rate increase applications during the past biennium and its staff also initiated a rate reduction complaint proceeding on behalf of a utility's electric consumers. Work is also underway to investigate costs associated with wholesale services that Qwest provides to other telecommunication companies.

The generation and transmission of electricity has been and will continue to be a topic of major concern in North Dakota. The nation's need for electricity and North Dakota's ability to produce this power put the Commission squarely in the middle of several ongoing proceedings. This involvement is based on the fact that the Commission is responsible for siting both major generating and transmission facilities plus it must approve and oversee mining activities at coal mines in North Dakota.

The transmission of electricity is an area of major concern to North Dakota and the nation. The existing wholesale transmission

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grid is being restructured and is running at near capacity. The Commission has been heavily involved in regional and national discussions concerning this structuring. It is vitally important that this restructuring be done in a manner that does not negatively impact North Dakota-based utilities, North Dakota ratepayers, or the state's power generating facilities.

All these public utility efforts have been undertaken with a staff of 4.5 FTEs and one attorney – by far the smallest staff of any regulatory commission in the country.

Restructuring has also been a big part of the grain elevator industry in North Dakota for the past several years and the Commission's Licensing Division plays a major role in this process. The Licensing Division is comprised of a half time director, a licensing specialist, and two inspectors. This division oversees the licensing and bonding of all the grain elevators and grain buyers in North Dakota and processes all grain elevator insolvency cases.

*Wimbledon  
Specialist*

North Dakota's grain industry has seen declining numbers and increasing capacities for nearly 100 years. At the present time, there are about 425 grain elevators in North Dakota. They have a combined storage capacity of over 250 million bushels.

The Wimbledon Grain Company insolvency was a major case for the Commission last year. This case was especially complex because the company was licensed by both the federal government and the Commission. It was also difficult because the company had purchased over \$1 million worth of grain on an unsecured, credit-sale basis from farmers.

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In the end, over \$3 million was paid out to patrons of the elevator. In his November 29, 2002, order in the case, Federal Judge Rodney Webb commended the Commission for its work. The matter of trust fund coverage for credit-sale patrons is pending before the state Supreme Court.

Among other things, the Commission's Testing & Safety Division is responsible for ensuring the accuracy of commercial weighing and measuring devices that are used in North Dakota. Division personnel ran over 28,000 tests on scales and pumps during the last biennium.

The Testing & Safety Division has also been working closely with the fertilizer industry to develop cheaper and more accurate flow meters to dispense anhydrous ammonia. The utilization of this equipment should be a great benefit to farmers and fertilizer dealers.

The Commission's Reclamation Division is responsible for permitting coal mine applications and for overseeing mining and reclamation activities at North Dakota mines. There are four large and two small coal mines in operation in North Dakota; they produce about 31 million tons of coal annually. There are approximately 78,500 acres of land under permit in the state. These acres are all monitored by the Commission to ensure compliance with state reclamation laws.

The Commission recently received national recognition from the Council of State Governments for working with industry to create a system which allowed the PSC to accept and process a fully electronic coal mine permit application. This joint effort by the Commission and industry resulted in the submission of a permit on a

single computer disc. In the past, such a filing would have required approximately 18 3-inch binders.

Also, the Commission has started a rulemaking case to propose new provisions that will allow mining companies to post letters of credit as the security for a collateral bond. These rules are being proposed due to the high cost and limited availability of surety bonds for mining and reclamation operations. They will give mining companies another option for performance bonding.

The Commission's Reclamation and Abandoned Mine Lands (AML) Divisions have a combined staff of 13 FTEs – primarily environmental scientists and engineers with specialized backgrounds in disciplines such as hydrology, soils, agronomy, and range management.

About 66 percent of the Reclamation Division's budget comes from federal sources while the AML Division is 100 percent federally funded. The vast majority of AML funding is used to hire private contractors to eliminate safety hazards at the worst of over 600 abandoned surface and underground mine sites in western North Dakota.

Of the Commission's overall budget, about 56 percent comes from federal sources, 40 percent is general fund money, and 4% is special funds. The Commission generates about \$1.2 million per biennium in income from statutory license and inspection fees. Indirectly, this income covers about 30 percent of the general fund money that is appropriated to the agency. The Commission's Public Utilities Division is the only regulatory function within the agency that

does not produce significant income to offset a major portion of its cost of operations.

Concerning fee income, the Commission would like to point out that it has offered legislative proposals to increase fees related to weights and measures inspection services (SB 2112) and auctioneer and auction clerk licenses (SB 2114). It has also proposed the initiation of an annual registration fee for public utilities (HB 1133). These measures, if passed, will generate approximately \$256,000 in new income for the general fund. They are an attempt on the part of the Commission to make itself more self-supporting.

North Dakota is one of only a few states in the nation that supports its public utility commission largely with general fund money. Most commissions are financed with some form of direct assessment against either utilities or their customers. This may be a matter that the Legislature would like to study during the upcoming interim.

The Commission recorded nearly 2,200 complaints and inquiries during the last biennium. The vast majority of these calls concerned traditional public utility services but many involve matters such as grain elevator operations, mining, and weights and measures.

The Commission also attempts to assist and inform industry and the public by maintaining a current and comprehensive Internet web-site. This site is currently being expanded and redesigned to make it even more useful and ADA compliant.

In a somewhat related area, the Commission has appointed an internal staff team that is working to enhance existing computer applications and databases and to develop an integrated workflow

system. It is hoped that this effort will result in even greater computer-related efficiencies and increased public access to information.

During the last biennium, the Commission processed 1,380 cases. The Commission attempts to process these cases as quickly and at as low a level of formality as possible. As a result, over 98 percent of these cases were processed without the need for a formal hearing and nearly two-thirds were processed and closed in less than thirty days. Only 34 of these cases required formal hearings, several of which were mandated by state law.

In the area of staffing, the Commission's staff has been reduced in size from 60 FTEs twenty years ago to 41 today. This has been done despite very few changes in jurisdiction.

The Commission's ability to function effectively with less staff is a direct function of increased efficiency and staff experience. Staffing will, however, be a challenge in the future.

At the present time, for example, the Commission's division directors have an average of 20 years of experience in state government. Remaining technical support staff has an average of over 16 years of state service. Administrative support personnel have an average of nearly 19 years of service. The Commission and the state will lose a great deal of efficiency and institutional memory as these staff members move into retirement. The Commission must begin to position itself to meet this upcoming challenge.

Finally, Mr. Chairman, we want to discuss the one new item in the Governor's executive budget recommendation. This item relates to funding for the initial stages of a rail rate complaint case. As we

understand it, the Governor is proposing that funding for this effort come from the rail program created by Section 49-17.1-02.1 of the North Dakota Century Code.

North Dakota's rail rates on grain are among the highest in the country. It costs more to ship corn from North Dakota to Seattle than it does to ship exactly the same amount of corn several hundred miles further from Iowa to the same destination. Similarly, the rates on shipments of North Dakota wheat to Portland, Oregon, are higher than the rates on wheat shipped from Kansas and Nebraska, even though the trip from North Dakota is several hundred miles shorter.

The Commission estimates that North Dakota's annual transportation bill would be \$50 to \$100 million lower if we had effective competition for grain shipments. This is money that should stay in the pockets of our farmers and grain elevators. Keeping this money in the state would be a great boost to our rural economy.

Federal rules on rate complaint matters have undergone several changes in the past few years. While it may have been virtually impossible to successfully challenge unreasonable rail rates a few years ago, winning such a case is now a possibility. The federal Surface Transportation Board (STB) promulgated these rules over two years ago. The rail industry challenged these new rules in federal court but the courts upheld the STB (article attached).

There has also been a change in the chairmanship position at the STB. As the article attached to our testimony indicates, the new chairman is seriously questioning why there have not been more rate complaint cases filed with the Board. The environment for filing a rate complaint case is more favorable now than it has been since the

federal Staggers Rail Act was passed back in 1980.

Governor Hoeven's budget recommendation contains \$250,000 in non-general fund money to take the initial steps towards a possible rate complaint before the STB. This undertaking would be a collaborative effort involving the Commission, the Attorney General's Office, the Upper Great Plains Transportation Institute, the grain elevator industry, and state farm and commodity groups. It would also require the services of highly specialized legal counsel and technical costing experts.

We want to emphasize that this money would not fund an actual complaint proceeding. In fact, we estimate that such an undertaking could require in excess of \$1 million. Any decisions on such an action would be made after this initial investigation and assessment is complete.

It is important to note that the returns on this "investment" would be huge if rail rates were lowered as a result of such an action. North Dakotans would save \$2.5 million for every one-cent reduction in rail rates on wheat. A 10-cent reduction would save North Dakotans \$25 million per year. A 20-cent reduction would pump an additional \$50 million into the state's economy each year. This matter surely appears to be worth investigating. A related fact sheet is attached to our testimony.

In conclusion, the Commission's functions have changed over the years but there continues to be a vital need for the services that the agency provides. Some of these services have been revised to reflect changes in industry and many of our delivery methods have been revised to reflect changes in technology. The Commission

continues to be an agency in transition. The Legislature and the Commission have made these changes in response to changes that are taking place around us.

As we said during our introductory remarks, the Commission needs resources to do the work that the Legislature has assigned to it. We believe that the Governor's executive budget recommendation provides us with these resources and we urge your favorable support of the budget that is before you.

Mr. Chairman, that concludes our testimony. We would be happy to respond to questions.

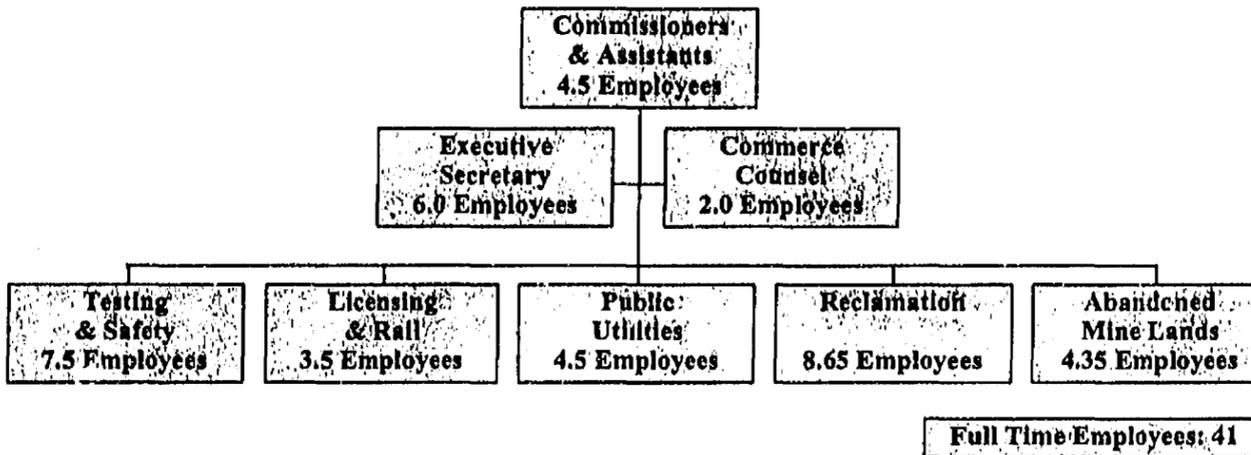
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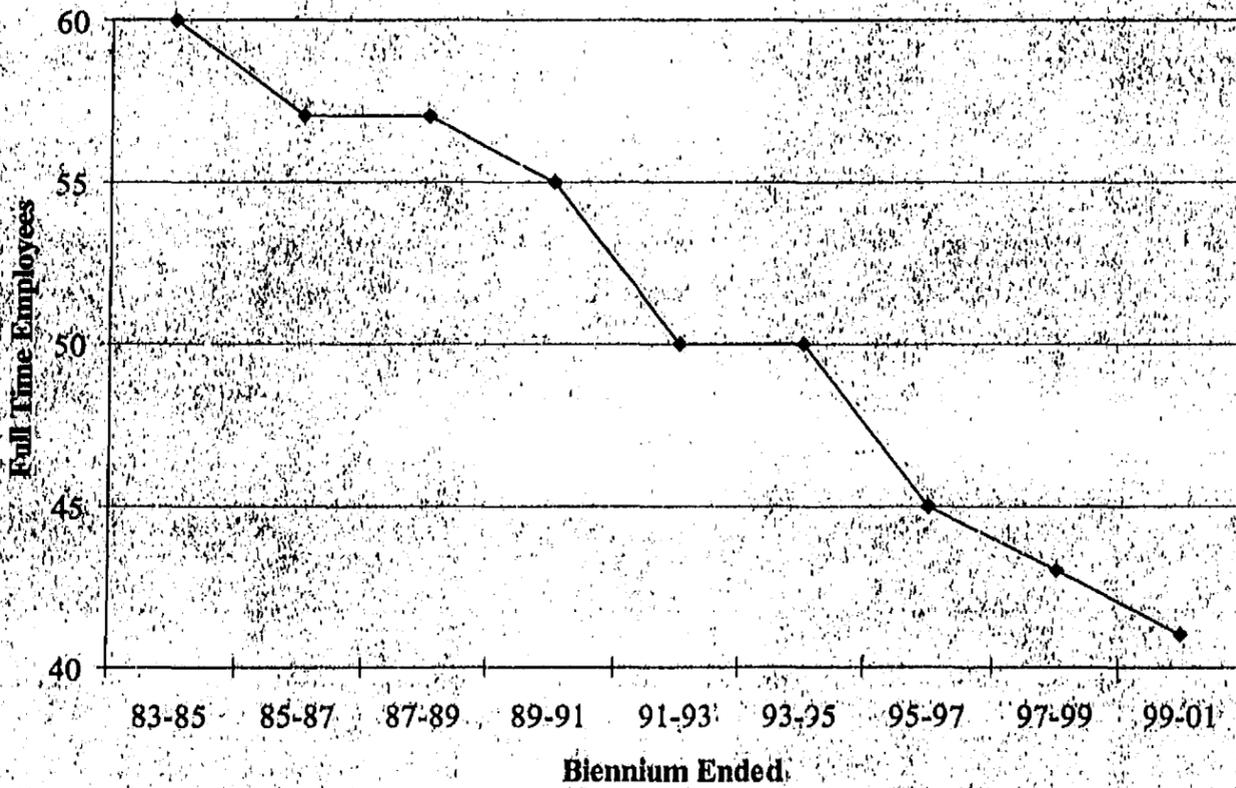
# AGENCY OVERVIEW/EXECUTIVE SECRETARY

The following charts present the Commission's June 30, 2001, organizational chart and depict historical staffing levels.

## Organizational Chart



## Staff Reductions



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## Initial Stages of a Rail Rate Complaint Case

**Rail Market Share** - North Dakota is extremely dependent on railroads to move grain to market. During crop year, 83% of all the wheat shipped by North Dakota grain elevators went by rail. Major destinations include Minneapolis, Duluth, the Gulf of Mexico, and the Pacific Northwest. Historically, shippers have been considered "captive" to a railroad if they ship more than 70% of their products by rail.

**Why Use Rail?** - Railroads are the only way to move North Dakota grain to market since we have no direct access to water transportation and extreme distances make trucks impractical.

**Rail Rates** - The railroads take advantage of this captivity by charging extremely high rates.

### Typical Wheat Rates

Minot, ND to PNW	1,313 miles	\$4,027 / Car	\$3.07 / mile
Alliance, NB to PNW	1,467 miles	\$3,879 / Car	\$2.64 / mile

**Rate Ratios** - The reasonableness of rail rates is often tied to the relationship between the rate and the variable costs associated with providing the service. A "revenue-to-variable cost ratio" of 180 is often considered adequate to cover the railroad's costs and to provide it with a reasonable profit. Shipments of North Dakota wheat often produce revenue-to-variable cost ratios of 250 to 400. North Dakota is an extremely lucrative market for railroads.

**Farmers Pay** - Grain elevators typically base their price quotes on destination price less the cost of transportation and a "margin" to cover the elevator's operating costs. Farmers pay the price when rates go up and they benefit when they go down.

**Huge Numbers** - North Dakotans would save \$2.5 million for every one-cent reduction in rail rates on wheat. A 10-cent reduction would save North Dakotans \$25 million per year. A 20-cent reduction would pump an additional \$50 million per year into the state's economy.

**Why Now?** - Starting in 1998, the PSC was involved in a Surface Transportation Board case that looked at the factors defined "market dominance" in rail complaint proceedings. The Commission helped convince the Board that changes were necessary in order to make the process fairer for shippers. The railroad industry appealed the Board's decision in federal court but the courts recently upheld the Board's new rules. These new changes make it more possible to successfully challenge unreasonably high rates.

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**Initial Stages** - The money being sought from the Legislature is only for the initial stages of a possible rate complaint case. Specialized transportation counsel will be used to help investigate the possibility of successfully bringing a complaint before the federal Surface Transportation Board. In addition to the PSC, it is expected that state involvement may include the Attorney General's Office, the Upper Great Plains Transportation Institute, the grain industry, and farm and commodity organizations.

**Moving Forward** - If it is determined that there is a strong likelihood of success, state interests will need to decide how to proceed and how to finance the case. It is not unusual for rate complaint cases to cost in excess of \$1 million. Despite this high cost, the rate of return can be significant. Those decisions would have to be made after the initial assessment is complete. This assessment process would be completed during the next biennium, only after the Legislature approves the appropriation recommended by Governor Hoeven.

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## S.B. 2008

**Presented by:** Jon Mielke, Executive Secretary  
Public Service Commission

**Before:** House Appropriations Committee  
Government Operations Division  
Representative Ron Carlisle, Chairman

**Date:** March 4, 2003

### TESTIMONY

Mr. Chairman and committee members, my name is Jon Mielke. I am the Public Service Commission's executive secretary. I also serve as the director of the Commission's Licensing Division and as the primary staff person on railroad matters. I will be the primary presenter of the testimony on this budget bill.

Also with me are Commissioners Tony Clark, Leo Reinbold, and Susan Wefald; Ilona Jeffcoat-Sacco, the director of the Commission's Public Utilities Division; and Mike Diller, the Commission's accountant. We welcome the opportunity to meet with you to discuss our operations, statutory mandates, and resource needs.

We worked with the Senate Appropriations Committee to make some modifications to Governor Hoeven's executive budget recommendation for the PSC. We believe that the bill before you will allow the Commission to fulfill its statutory mandates during the 2003-05 biennium and urge your favorable support.

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Except for one item, which I will discuss later, this is a status quo budget proposal - no new programs and no additional FTEs. The Commission also wants to emphasize, however, that it is definitely not a status quo agency.

The Commission's areas of responsibility have not changed in several years. These areas include:

- Regulation of telephone, electric, and natural gas utilities;
- Pipeline safety inspections;
- Licensing grain elevators and auctioneers;
- Testing and certifying weighing and measuring devices;
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- Eliminating hazards at abandoned mine sites;
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Despite few changes in jurisdiction, the Commission has been immersed in a rapidly changing regulatory environment, some of which is mandated by federal and state statutory changes and some of which is related to structural changes within the industries that the Commission deals with. Some of these changes include:

- Federal telecommunication mandates, including the application by Qwest to enter the long distance market and the ongoing oversight of the related wholesale telecommunications market.
- State involvement with handling "slamming" complaints related to long distance telephone service.
- Restructuring within the nation's electrical transmission grid.

- Performance Based Ratemaking (PBR) to provide efficiency incentives for regulated utilities.
- Restructuring within the grain elevator industry and related insolvency proceedings.
- US Department of Agriculture moves to preempt state-provided farmer protections at federally licensed grain warehouses.
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- Wind and coal power generation and related siting activities.

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The Commission has met these challenges in a variety of ways with a very small staff. For example, to process Qwest's recent application to the Federal Communications Commission to enter the long distance market, the Commission joined forces with several other states. This approach made it possible for the Commission to take advantage of expertise in other states and to process the massive proceeding much faster and cheaper than would have been the case had the matter been handled alone. This approach also benefited industry since all the involved states were proceeding on a similar basis. North Dakota was in the first group of nine Qwest states to receive this federal approval.

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Ratemaking" option, to the benefit of both stockholders and customers.

Traditional ratemaking procedures are still used for utilities that are not part of incentive-based plans. The Commission processed two natural gas rate increase applications during the past biennium and its staff also initiated a rate reduction complaint proceeding on behalf of a utility's electric consumers. Work is also underway to investigate costs associated with wholesale services that Qwest provides to other telecommunication companies.

The generation and transmission of electricity continues to be topics of major concern in our country. The Commission's responsibilities for siting major generating and transmission facilities and its regulatory oversight of mining activities in North Dakota put it squarely in the middle of several related proceedings.

For example, the nation's existing wholesale transmission grid is being restructured and is running at near capacity. The Commission has been heavily involved in regional and national discussions concerning this structuring. This restructuring must be done in a manner that does not negatively impact North Dakota-based utilities, North Dakota ratepayers, or the state's power generating facilities.

All these public utility efforts have been undertaken with a staff of 4.5 FTEs and one attorney – by far the smallest staff of any regulatory commission in the country.

Restructuring is also ongoing in North Dakota's grain elevator industry and the Commission's Licensing Division plays a major role in this process. This division is comprised of a half time director, a

licensing specialist, and two inspectors. It oversees the licensing and bonding of all the grain elevators and grain buyers in North Dakota and processes all grain elevator insolvency cases.

The Wimbledon Grain Company insolvency was a major case for the Commission last year. This case was especially complex because it involved both federal and state licenses and \$1 million worth of grain that had been purchased on an unsecured, credit-sale basis from farmers. In the end, over \$3 million was paid out to elevator patrons. The matter of trust fund coverage for credit-sale patrons is pending before the state Supreme Court.

Ensuring the accuracy of commercial weighing and measuring devices is the responsibility of the Commission's Testing & Safety Division. Division personnel ran over 28,000 tests on scales and pumps during the last biennium. They are also working closely with the fertilizer industry to develop cheaper and more accurate flow meters to dispense anhydrous ammonia. The utilization of this equipment should be a great benefit to farmers and fertilizer dealers.

The Commission's Reclamation Division is responsible for permitting coal mine applications and for overseeing mining and reclamation activities at North Dakota mines. These mines have about 78,500 acres of land under permit and produce about 31 million tons of coal annually. These activities are all monitored by the Commission to ensure compliance with state reclamation laws.

The Commission recently received national recognition from the Council of State Governments for working with industry to create a system which allowed the PSC to accept and process a fully electronic coal mine permit application. This joint effort by the

Cheresea W. Bee  
Operator's Signature

10-14-03  
Date

Commission and Industry resulted in the submission of a permit on a single computer disc. In the past, such a filing would have required approximately eighteen 3-inch binders.

The Commission recently opened a rulemaking case to propose new provisions that will allow mining companies to post letters of credit as security for collateral bonds. These rules are being proposed due to the high cost and limited availability of surety bonds for mining and reclamation operations. They will give mining companies another option for performance bonding.

About 66 percent of the Reclamation Division's budget comes from federal sources while the Abandoned Mine Lands Division is 100 percent federally funded. The vast majority of AML funding is used to hire private contractors to eliminate safety hazards at the worst of over 600 abandoned surface and underground mine sites in western North Dakota.

Of the Commission's overall budget, about (56) percent comes from federal sources, (40) percent is general fund money, and (4%) is special funds. The Commission generates about \$1.2 million per biennium for the general fund from statutory license and inspection fees. Indirectly, this income covers about 30 percent of the general fund money that is appropriated to the agency. The Commission's Public Utilities Division is the only regulatory function within the agency that does not produce significant income.

Concerning fee income, the Commission offered legislative proposals to increase fees related to weights and measures inspection services (SB 2112 - \$127,000) and auctioneer and auction clerk licenses (SB 2114 - \$29,000). It also proposed the initiation of

an annual registration fee for public utilities (HB 1133 - \$100,000). These measures, if passed, would have generated approximately \$256,000 in new income for the general fund. They were an attempt on the part of the Commission to make itself more self-supporting.

The weights and measures fee proposal (SB 2112) passed the Senate and is pending before the House. The fee increase provisions of SB 2114 and HB 1133 were defeated.

North Dakota is one of only a few states in the nation that supports its public utility commission largely with general fund money. Most commissions are financed with some form of direct assessment against either utilities or their customers. This may be a matter that the Legislature would like to study during the upcoming interim.

The Commission recorded nearly 2,200 complaints and inquiries during the last biennium. Most of these calls concerned traditional public utility services but many involve matters such as grain elevator operations, mining, and weights and measures.

The Commission also attempts to assist and inform industry and the public by maintaining a current and comprehensive Internet web-site. This site is currently being expanded and redesigned to make it even more useful and ADA compliant.

During the last biennium, the Commission processed 1,380 cases. We attempt to process these cases as quickly and at as low a level of formality as possible. As a result, over 98 percent of these cases were processed without the need for a formal hearing and nearly two-thirds were processed and closed in less than thirty days. Only 34 of these cases required formal hearings, several of which were mandated by state law.

In the area of staffing, the Commission's staff has been reduced in size from 60 FTEs twenty years ago to 41 today. This has been done despite few changes in jurisdiction. The Commission's ability to function effectively with less staff is a direct function of increased efficiency and staff experience.

Staffing will, however, be a challenge in the future. At the present time, the Commission's division directors have an average of 20 years of experience in state government. Technical support staff has an average of over 16 years of state service and administrative support personnel have an average of nearly 19 years of service. The Commission and the state will lose a great deal of efficiency and institutional memory as these employees move into retirement. This transition represents a major future challenge.

Finally, Mr. Chairman, we want to discuss the new budget initiative that we mentioned earlier. This item involves funding for the initial stages of a rail rate complaint case. Governor Hoeven proposes to fund this effort through the rail program provided for in Section 49-17.1-02.1 of the North Dakota Century Code.

North Dakota's rail rates on grain are among the highest in the country. It costs more to ship corn from North Dakota to Seattle than it does to ship the same amount of corn several hundred miles further from Iowa to the same destination. Similarly, the rates on shipments of North Dakota wheat to Portland, Oregon, are higher than the rates on wheat shipped from Kansas and Nebraska, even though the trip from North Dakota is several hundred miles shorter.

The Commission estimates that North Dakota's annual transportation bill would be \$50 to \$100 million lower if we had

effective competition for grain shipments. This is money that should stay in the pockets of our farmers and grain elevators. Keeping this money in the state would be a great boost to our rural economy.

Federal rules on rate complaint matters have undergone several changes in recent years. While it was virtually impossible to successfully challenge unreasonable rail rates a few years ago, winning such a case is now a possibility. The federal Surface Transportation Board (STB) promulgated these rules over two years ago. The rail industry challenged these new rules in federal court but the courts upheld the STB (article attached).

There has also been a change in the chairmanship position at the STB. The new chairman is seriously questioning why there have not been more rate complaint cases filed with the Board (article attached). The environment for filing a rate complaint case is more favorable now than it has been since the federal Staggers Rail Act was passed back in 1980.

Governor Hoeven's budget recommendation contains \$250,000 in non-general fund money to take the initial steps towards a possible rate complaint before the STB. This undertaking would be a coordinated effort involving the Commission, the Attorney General's Office, the Upper Great Plains Transportation Institute, the grain elevator industry, and state farm and commodity groups. It would also require the services of highly specialized legal counsel and technical costing experts.

We want to emphasize that this money would not fund an actual complaint proceeding. In fact, we estimate that such an undertaking could require in excess of \$1 million. Any decisions on

Y. Berona W. Bee  
Operator's Signature

10-14-03  
Date

such an action would be made after this initial investigation and assessment is complete.

It is important to note that the returns on this "investment" would be huge if rail rates decline. North Dakotans would save \$2.5 million for every one-cent drop in rail rates on wheat and durum. A 10-cent reduction would save North Dakotans \$25 million per year. A 20-cent reduction would pump an additional \$50 million into the state's economy each year. This matter surely appears to be worth investigating. A related fact sheet is attached to our testimony.

As we indicated in our opening remarks, the Commission worked with the Senate Appropriations Committee to reduce the executive budget recommendation for the Commission by \$40,000. Many of the underlying adjustments involved deferred implementation of our information technology plan. It is important to note that computer-related efficiencies have made many past and current budget reductions possible. Long-term under spending in this area will jeopardize these efficiencies and make us less responsive to the needs of industry and the public.

As we said during our introductory remarks, the Commission and the industries that it regulates are in transition. The agency needs resources to do the work that the Legislature has assigned to it. We believe that the engrossed budget before you provides us with these resources and we urge your favorable support.

Mr. Chairman, that concludes our testimony. We would be happy to respond to questions.



**Public Service Commission**  
State of North Dakota

**COMMISSIONERS**

Susan B. Wefald, President  
Leo M. Reinbold  
Anthony T. Clark

Executive Secretary  
Jon H. Mielke

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Phone 701-328-2400

To: House Committee on Appropriations  
Government Operations Subcommittee

From: Jon Mielke *jm*  
Public Service Commission

Date: March 4, 2003

RE: SB 2008 – Supplemental Information

At this morning's hearing on SB 2008, the PSC's appropriation bill, the Commission was asked to provide additional information on:

1. Details concerning the "Dues & Professional Development" line item and dues payments to the National Association of Regulatory Utilities Commissioners; and
2. A business plan approach to work that would be done if funding is provided for the initial stages of a rail rate complaint case.

These items are attached. Please feel free to contact me at 328-4082 if you have further questions.

Attachments (2)

cc: Commissioners Clark, Reinbold, & Wefald

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Operator's Signature

*10-14-03*  
Date

**Mielke, Jon H.**

---

**Subject: FW: Dues and Professional Development**

-----Original Message-----

**From:** Diller, Michael R.

**Sent:** Tuesday, March 04, 2003 1:42 PM

**To:** Mielke, Jon H.

**Subject:** Dues and Professional Development

We pay NARUC dues in July and our last bill was for \$6,677. They typically go up about \$300 a year so anticipated (budgeted) costs for the 03-05 biennium are \$14,400. We requested dues and professional development appropriation of \$54,650. This account includes expenses for registration and conference fees, professional dues and membership fees and tuition costs. Of the total, \$23,000 is designated for commissioners which includes the \$14.4 referenced above.

3/4/2003

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## Rail Rate Complaint Case

### SB 2008

#### Possible Time Line

The following timeline was developed by the PSC when it decided to include a funding request for the initial stages of a rail rate complaint case in its supplemental budget request to Governor Hoeven:

1. Summer of 2002: PSC includes item in budget request – discuss issue with Governor.
2. December 2002: Governor releases executive budget w/ rate case included.
3. Jan.-April 2003: Legislature considers proposal.
4. May-June 2003: PSC prepares Request for Proposals to qualified legal counsel and costing experts.
5. July-Sept. 2003: RFP is released and expert team is selected.
6. Fall 2003 – Summer 2004: PSC and experts build rate case.
7. Summer – Fall 2004: PSC finalizes paper portion of case and enters possible negotiations with railroad.
8. Winter 2004-2005: PSC, Governor, Legislature make decision based on information available at that time - drop case, settle case following negotiations, or pursue full STB rate case.

The timeframe on this case may be shortened based on the fact that the Senate amended SB 2008 to place an emergency clause on this portion of the bill, thereby allowing work to begin immediately, if and when funding is approved by the full Legislature and when the bill is signed by the Governor.

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### Conceptual Approach to Completing the Project

If funding is approved, the initial stages of this effort will involve selecting counsel and working with them to develop the strongest case possible. Specific components would include:

- Cursory review of shipping characteristics, rates, and ratios.
- Discussions on appropriate approach to complaint – stand alone vs. simplified cost methodology before the federal Surface Transportation Board.
- Identification of ideal complainant: considerations may include rail rates, location, shipment sizes, destination markets, competitive options, mainline vs. branchline, ability and willingness to participate, etc.
- Initial assessment of selected shipper's market dominance situation.
- Costing of rates for selected shipper.
- Negotiate with the carrier in an attempt to achieve a voluntary reduction in the governing tariff rate.
- If negotiations are unsuccessful, work with North Dakota parties to develop an appropriate course of action and anticipated costs.

As the preceding outline suggests, counsel would need to work closely with the North Dakota parties to develop strategy and to "flesh out" a case for market dominance and rate reasonableness proceedings before the Surface Transportation Board.

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## Cost Estimates

To develop cost estimates for this project, the Commission solicited related estimates from other state entities that would be involved in the undertaking plus private sector experts with the kind of knowledge and experience that would be required to successfully pursue a rate complaint case before the federal Surface Transportation Board.

The following is a breakdown of costs that would be incurred to progress this effort through the initial investigation phase plus pre-complaint negotiations with the defendant railroad.

Commission Operating Expenses	\$ 20,000
Attorney General Contracted Costs	\$ 11,550
UGPTI Contracted Services	\$ 58,715
Specialized Transportation Counsel	\$ 70,000
Technical Rail Costing Expert	\$ 50,000
Maintenance of Grain Shipping Data	\$ 17,000
Phase I Negotiations with Railroad	<u>\$ 25,000</u>
Total	<u>\$252,265</u>

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**Public Service Commission**  
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March 24, 2003

Representative Ron Carlisle, Chairman  
Government Operations Division  
House Committee on Appropriations  
State Capitol  
Bismarck, ND 58505

RE: PSC Budget – S.B. 2008

Dear Chairman Carlisle:

Thank you for meeting with us last Friday to discuss the Public Service Commission's 2003-05 budget. As per your request, we are providing you with information on the following topics:

- Suggestions on where additional budget cuts might be made, along with related information concerning the impacts associated with these reductions.
- Background information on the use of "Freight Railroad Improvement Program" monies to fund preparatory work on a rail rate complaint case.
- Response to requests for outside funding for a portion of the rail rate complaint effort.

Thank you again for the opportunity to work with you on our budget. Please feel free to call on us if you have further questions or suggestions.

Sincerely,

Jon H. Mielke  
Executive Secretary

Attachments (3)

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Public Service Commission  
2003-05 Biennial Budget  
General Fund Reductions

	<u>Possible Reductions</u>
Reduce IT Equipment Budget under 5K	\$10,000
Reduce IT Training-Related Travel	\$ 6,000
Reduce Copier-Related Printing Costs	<u>\$ 9,000</u>
Total Identified Budget Reductions	\$25,000

The Commission was asked to identify reductions totaling \$50,000. The Commission already helped the Senate Appropriations Committee identify over \$40,000 in cuts. Those reductions plus those identified above total \$65,000 in cuts that can hopefully be made without any significant reductions in programs and services.

If additional cuts are mandated, the Commission expects that they may force actual programmatic changes such as reduced inspections related to weights and measures service or grain warehouses operations. In many instances, these reductions will precipitate reduced fee collections for the general fund. The "net effect" of these changes would depend on exactly which programs were curtailed. If the committee has an interest in exploring these options further, we are available to discuss specific options and related fiscal impacts.

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Public Service Commission  
2003-05 Biennial Budget  
Rail Rate Complaint

### Freight Railroad Improvement Program

49-17.1-02.1. Department may authorize local rail projects. For the purpose of promoting the public interest and local economic development, the department may utilize revenue generated under this chapter for the construction or improvement of railway freight transportation projects not otherwise eligible for assistance under the Railroad Revitalization and Regulatory Reform Act of 1976 [Pub. L. 94-210; 90 Stat. 149; 49 U.S.C. 1651 et seq.] and which meet standards and specifications developed by the department.

The Governor decided to recommend that these non-general fund state monies be used for preparatory work on a possible rail rate complaint case. The PSC specifically asked OMB about the appropriateness of using these funds for this purpose. Both Pam Sharp and Sheila Peterson responded that the proposed use is in "the public interest" and that it will promote "economic development" and that it is, therefore, within the scope of the governing statute.

Perhaps more importantly, just as no legislative assembly can bind the actions of a future one, the actions of a past assembly cannot bind the actions of the 2003 Legislature. The Legislature can appropriate money out of this fund; such an action would be within its constitutional prerogative.

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Public Service Commission  
2003-05 Biennial Budget

### Rail Rate Complaint – Other Funding Sources

The North Dakota Grain Dealers Association has committed \$10,000 to support this project. They have indicated that this money is in addition to the \$250,000 recommended by Governor Hoeven.

During discussions on this matter during the 2001 Legislative Session, the North Dakota Wheat Commission committed \$10,000 to this effort. The Wheat Commission has, however, been unwilling to commit a like amount at this time, primarily because of its greater than expected expenditures to pursue its unfair trade complaint against the Canadian Wheat Board. The Commission has indicated that once that matter is settled, it may be in a position to once again commit financial support to a rail rate complaint proceeding.

The North Dakota Farm Bureau and the North Dakota Farmers Union testified in support of funding for this undertaking. However, neither entity has committed financial support. Doing so would require action by their respective board of director, such actions would not come before the end of the legislative session.

Bringing in outside funding for this effort may, in fact, complicate the project and delay progress. With the provision of funding, parties rightfully expect a direct role in administering the process. "Management by committee" makes decision making more time consuming and difficult. Collecting contributions and prorating expenses also become issues.

S.B. 2008 provides that the Freight Railroad Improvement Program Fund is to be reimbursed if the state is successful in collecting damages for freight overcharges. If other parties help finance the proceeding, would they also be eligible for reimbursement?

The Senate added an emergency clause to the related section of S.B. 2008. The Senate was obviously anxious for work to commence on this matter. Requiring the PSC to become a fundraiser and to work through the administrative details associated with bringing more stakeholders into the process will complicate matters and delay the process.

Given that a successful complaint proceeding may benefit the vast majority of North Dakota grain farmers and that attempting to generate a relatively small amount of financial support to offset related costs will complicate and delay the process, the Commission respectfully recommends that the state fund this effort and use outside funding sources to finance work that is above and beyond that outlined in the original proposal.

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Rail Rate Case - PSC

North Dakota Department of Transportation  
State Rail Fund Activity  
Inception thru 12/31/02

\$2,818,014.84

Beginning Balance 7/1/96

REVENUE

Interest Revenue

7/1/96-6/30/97	115,483.44
7/1/97-6/30/98	127,133.00
7/1/98-6/30/99	114,217.29
7/1/99-6/30/00	177,788.80
7/1/00-6/30/01	71,552.66
7/1/01-6/30/02	289,987.46
7/1/02-12/31/02	87,941.55

\$984,114.20

Total Interest Revenue

Loan Repayments

7/1/01-6/30/02	82,249.25
7/1/02-12/31/02	82,249.25

\$164,498.50

Total Loan Repayments

\$1,148,612.70

Total Revenue

EXPENDITURES

Loans Advanced

7/1/98-6/30/99	731,801.62
7/1/99-6/30/00	758,574.52
7/1/00-6/30/01	88,557.32
7/1/01-6/30/02	727,381.49
7/1/02-12/31/02	85,865.63

\$2,392,180.58

Total Loans Advanced

\$1,574,448.96

BALANCE AVAILABLE FOR LOANS 12/31/02

Prepared by NDDOT Office of Business Support; Financial Management Division; 1/23/03; State Rail Fund Activity.xls Activity

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Date

## North Dakota



## Ag Coalition

Chairman Carlisle, members of the House Appropriations Committee. I am Paul Thomas, administrator of the North Dakota Ag Coalition. I am here today to testify in support of SB 2008, specifically the \$250,000 appropriation for a rail rate case. The thirty-nine members of the North Dakota Ag Coalition are supportive of the \$250,000 appropriation, potentially returning millions of dollars to North Dakota's economy.

North Dakota agricultural commodities are principally shipped by rail. In comparing the rates charged by railroads shipping similar distances it is evident that North Dakota shippers are charged more than other locations. When comparing a typical wheat shipment from Minot, ND to the PNW to a shipment from Alliance, NE to the PNW the PSC has found the difference to be twelve cents per bushel. This is a significant amount of money leaving North Dakota agriculture and North Dakota's economy.

Grain elevators (shippers) base their price quotes on destination price less transportation costs and a margin. Thus, it is the producers of the raw commodity who are losing as well as the general economy of North Dakota. For every one-cent reduction, producers save \$2.5 million. A ten-cent reduction in the cost of shipping wheat would mean North Dakotans would have \$25 million more revenue each year. These financial returns are only looking at wheat. There are a whole host of other commodities that may also benefit, barley, sunflower, canola, soybean, corn, peas, etc.

It is extremely important that the state provide the necessary funds to do the initial groundwork to determine the likely success of North Dakota's further pursuing a rail rate case. The potential benefit of the \$250,000 appropriation can reap long-term financial awards for producers and the state of North Dakota.

Members of the House Appropriations Committee I urge your support for the \$250,000 appropriation contained in SB 2008.

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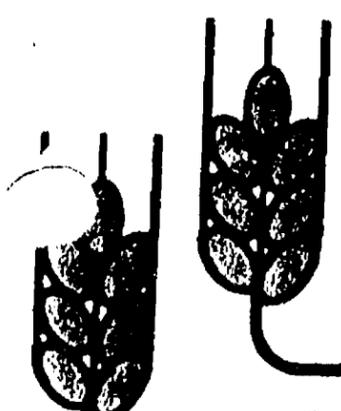
4007 State Street • Bismarck, North Dakota 58503 • Phone (701) 355-4330 • Fax (701) 223-4130

*A nonpartisan group of organizations involved in all aspects of agriculture. Organized in April 1982, the Coalition has been successful in providing a unified "voice" on behalf of North Dakota agricultural interests.*

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10-14-03  
Date



# NORTH DAKOTA GRAIN DEALERS ASSOCIATION

*4 bushels*  
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CHERYL WELLE, Executive Assistant  
CONNIE LEIER, Administrative Assistant  
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ND GRAIN DEALERS ASSOCIATION TESTIMONY ON **SB 2008**  
SENATE APPROPRIATIONS COMMITTEE - RAY HOLMBERG, CHMN  
presented by Steve Strege, Executive Vice President -- January 20, 2003

Good morning Mr. Chairman and members of the Committee. I am Steve Strege with the North Dakota Grain Dealers Association. We are a 92 year-old voluntary membership trade association in which about 90% of our state's grain elevators hold membership. Our convention and industry show is taking place right now at the Ramkota Hotel here in Bismarck. Over 1000 people are registered to attend. This Committee is invited down for lunch today at noon.

PSC works well with our industry and responds assertively to protect farmers when necessary. An example of both is in Section 2 of SB 2008, rail rate complaint. Three of us Grain Dealers Association officers are here today especially to tell you of our support for the \$250,000 transfer in that Section to begin a rail rate complaint case.

North Dakota has been taken advantage of by railroad grain rates for a long time. I think the triggering event for proposing this rate case action was that nonsensical inverse rate the BNSF had on wheat to the west coast in much of 2001 and through July 2002. It plainly showed how excessively profitable their wheat rates are. Imagine this, they were hauling wheat out of western Minnesota to the west coast for 79 cents a bushel, while farmers and grain elevators in western North Dakota paid nearly 40% more than that, \$1.09, to haul wheat to the west coast, 300 miles LESS distance. If BNSF can make money hauling 1800 miles for 79 cents, then how much more are they raking into their coffers by hauling it 1500 miles for \$1.09? This is the kind of exploitation they have been getting away with, and it's time to do something about it.

-OVER-

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Operator's Signature

*10-14-03*  
Date

Another indicator of excessive rates on wheat is a comparison with corn and soybean rates. Why does it cost up to 50% more to pull 100 tons of wheat to the west coast than 100 tons of corn or soybeans, with the same locomotives, in the same cars, and over the same track? From a station in western North Dakota, the per car wheat rate is \$4250, as compared to \$2850 for soybeans and corn to the PNW in 54 car trains. At a BNSF station south of Grand Forks the rate difference is in the \$800 per car range. I should mention that we aren't asking for an increase in corn and soybean rates.

Revenue to variable cost ratios are a measure of railroad profitability. On most rail movements of North Dakota wheat, these ratios far exceed the threshold of a potential finding of unreasonableness.

The bottom line is that we are being gouged on wheat rates, our largest crop.

We've heard a concern expressed about the source of this \$250,000, the rail assistance fund. Opponents of this transfer say it will do great damage to branchline rehabilitation or construction projects at new or existing industries. Let's not have our attention diverted away from the multimillion dollar problem of excess rates and a chance to do something about them, by concerns of a few with an interest in leaving those funds where they are at. \$250,000 will rehabilitate only one to two miles of track, depending on how much work is being done. Contrast that with the tens of millions of dollars in potential savings for thousands of farmers by reducing rates. That money then re-circulates in our state's economy. A one-cent reduction in the rate for wheat grown in North Dakota is \$2.5 million, ten times the amount of money we are talking about in this bill for this purpose. This is a matter of doing the greatest good for the greatest number. At a time of scarce state resources we need to invest where the most have the most to gain.

We ask the Legislature to approve the expenditure of these funds to start the rate complaint process. It has a great potential payoff for North Dakota in terms of saving freight cost and making our wheat more competitive in world markets. I'll try to respond to any questions.

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Yvonne A. Bee  
Operator's Signature

10-14-03  
Date

Exhibit 2

**Testimony of Harlan Klein  
North Dakota Wheat Commission  
Senate Bill 2008 - Senate Appropriations Committee  
January 20, 2003, 8:30 a.m., Harvest Room**

Chairman Holmberg and members of the Senate Appropriations Committee, I am Harlan Klein, a farmer and rancher from Elgin, North Dakota. I have been elected by wheat producers in the southwestern portion of the state to represent them on the North Dakota Wheat Commission, which works to expand worldwide markets for North Dakota wheat. I am currently vice chairman and the commissioner responsible for transportation issues. Additionally, I serve as a director and chairman of the Southwest Grain Cooperative. I am here today to provide testimony on Senate Bill 2008, which relates to the Public Service Commission's budget. The North Dakota Wheat Commission supports the appropriation, which includes \$250,000 for analysis of a rail rate complaint.

Approximately 85% of all spring wheat and durum grown in North Dakota is annually shipped by railroads, making rate reform a top priority for the state's producers. Meaningful rail rate reform will result in freight savings to North Dakota farmers that will benefit our state's entire economy. Here's how:

1. For every penny saved in freight cost, \$2.5 million dollars in revenue would be returned to North Dakota producers.
2. The average freight rate for North Dakota grain is 73 cents per bushel to all locations and estimated potential savings of just 20% would generate approximately \$50 million in revenue to North Dakota producers.
3. Lower freight rates will make our wheat more competitive on the world market and help us increase sales and expand market share because the delivered cost will be less, allowing us to attract customers away from alternative wheat suppliers.

The \$250,000 being asked for is not so much to conduct a feasibility study for a rail rate complaint. Data compiled by the Upper Great Plains Transportation Institute already confirms that this state's grain rail rates are higher by comparison to almost anywhere. Instead, the appropriation will help to identify the most extreme examples of excessiveness. A measurement used by the Surface Transportation Board to assess whether rail rates are reasonable is the revenue-to-variable cost ratio. A ratio of 160% covers variable and fixed costs plus a reasonable profit. Rates exceeding 180% of variable cost can be examined for market dominance. The average North Dakota wheat rate to Pacific Northwest ports is 271% for 52-car trains and 311% for 110-car trains. Going east into Minneapolis, the average ratios are 404% for 52-car trains and 315% for 26-car trains. Rates at these levels invite a formal rate complaint.

A rate complaint may cost hundreds of thousands of dollars, or even millions. But the potential payoff for North Dakota is in the tens of millions of dollars per year, should rates be forced back down to the 180% threshold for what is reasonable. The North Dakota Wheat Commission urges you to look favorably upon SB 2008 and the inclusion of \$250,000 for the prelude to a formal rail rate complaint. I would be happy to answer any questions any of you may have. Thank you for your consideration.

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10-14-03  
Date

Testimony of The Red River Valley & Western Railroad Company before the Senate Appropriations Committee on Senate Bill 2008

January 20, 2003

ND PSC Appropriations and Proposal to Use Railroad Track Rehabilitation Funds to Fund a Study of a Rail Rate Case in North Dakota

The Red River Valley & Western Railroad is a short line railroad, our headquarters is located in Wahpeton, North Dakota. A short line railroad is a small railroad like RRV&W which usually serves a small territory or even just a few railroad customers on light density branch lines.

North Dakota currently is served by three short line railroads, and these three small companies serve mostly rural communities and primarily agricultural customers in North Dakota's rural areas.

Short line railroads currently operate about one-third of the trackage in North Dakota, and all of this trackage was formerly operated by one of the larger railroads in the State, the Canadian Pacific or the Burlington Northern Santa Fe Railway. All three of these short line railroads were formed in the past 15 years in North Dakota, and have helped to salvage rail service to many hundreds of miles of rail lines which would not have had rail service if the short lines had not been formed.

More than 20 years ago the federal government created a program to provide financial assistance to states to assist in the rehabilitation of light density branch lines. The federal assistance program (LRFA) took a different form in each state. North Dakota chose to use the funds to develop a revolving loan program to help finance railroad track rehabilitation. Because of this prudent decision to create a loan program rather than simply grant the funds to project sponsors, North Dakota has a program in place today that continues to provide loan funds for good projects throughout the State. Nearly all of the projects funded throughout the history of the program have been funded via a loans rather than grants.

In the mid - 1990s it was feared that the federal government was going to cancel this program, and possibly make claim to the funds in the program. The fund had grown because of the interest that had been paid on loans to primarily railroads in North Dakota, especially short line railroads. In response to this possible program cancellation and in order to protect the funds, North Dakota very wisely separated the interest from the program and created the FRIP program as a State-administered program. The feds therefore have no rights to the FRIP program.

This FRIP program is the fund that is being proposed as the source for the funds to finance the investigation of a possible rate case in North Dakota. The three short line

Wahpeton  
4

Dan  
~~Zink~~  
Zink

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railroads in North Dakota and their shippers have used these funds since the program's beginning. Many miles of track on the State's short lines have been rehabilitated under this program. This rehabilitation is critical in keeping our rural communities and farmers competitive by retaining this transportation outlet by rail. Without these rail lines, many communities will lose economic opportunities when rail service is lost.

The Red River Valley & Western Railroad is not testifying today as to whether or not the State should pursue a rate study or a rate case. The Governor of ND has the obligation to protect the economic interests of the State if he sees fit. The rate case would not directly affect the short lines in North Dakota, since these short lines do not establish the rates that are in question. The short lines only make rates for local shipments, those that originate and terminate on our system.

The Red River Valley & Western Railroad is opposed to the source of the funds that are proposed in the ND PSC's budget, and respectfully requests that the proposal to conduct a study of a potential rate case be funded from another source, rather than from the FRIP program. The Red River Valley & Western is also very concerned that if these funds are used to pay for the study, then the funds for any actual rate case will also come from the FRIP account. This could severely impair the short lines' ability to rehabilitate their track as these funds are expended on a rail rate case.

It does not seem fair that the short line railroads, who have funded the FRIP program by paying interest into the fund on loans for track rehabilitation, should be penalized by using these funds to study a rate case, when the short lines do not even establish the rates that are in question.

Thank you.

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Operator's Signature

10-14-03  
Date



*"Quality Hard Red Spring and Durum"*

**Testimony of the  
North Dakota Wheat Commission  
Senate Bill 2008  
March 4, 2003  
10:00 a.m.  
House Appropriations Committee  
Government Operations Division  
House Conference Room**

Chairman Carlisle and members of the House Appropriations Government Operations Sub Committee, I am Neal Fisher, Administrator of the North Dakota Wheat Commission. I am here today to provide testimony on Senate Bill 2008, which relates to the Public Service Commission's budget. In particular, I am here to support the appropriation which includes \$250,000 to start the process of a rail rate complaint.

Annually, approximately 85% of all spring wheat and durum grown in North Dakota is shipped by railroads making rail rate reform a top priority for the state's wheat producers. Meaningful rail rate reform will result in freight savings to North Dakota wheat producers that will benefit our state's economy. The North Dakota Wheat Commission supports funding for the rail rate complaint case in the amount of \$250,000 for the following reasons:

1. For every penny that is saved in freight cost, \$2.5 million dollars in revenue are returned to North Dakota producers.
2. The average freight rate for ND grain is .73 cents per bushel to all locations and estimated potential savings of just 20% would generate approximately \$50,000,000 dollars in revenue to North Dakota producers.
3. Lower freight rates will make our wheat more competitive on the world market because the delivered cost will be less allowing us to better compete with cheaper non-traditional wheat suppliers.
4. On a per ton basis, North Dakota wheat producers pay more than do corn and soybean producers from other locations. The rates charged by the railroads to North Dakota wheat producers are 250 to 300 percent of their variable costs compared to 180 to 200 percent in other locations.

In conclusion, the North Dakota Wheat Commission supports SB 2008 with the inclusion of the \$250,000 for the rail rate complaint case. I would be happy to answer any questions any of you may have. Thank you for your consideration.

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*Cheresea W. Bee*  
Operator's Signature

*10-14-03*  
Date



# NORTH DAKOTA GRAIN DEALERS ASSOCIATION

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CHERYL WELLE, Executive Assistant  
CONNIE LEIER, Administrative Assistant  
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ND GRAIN DEALERS ASSOCIATION TESTIMONY ON **SB 2008**  
HOUSE APPROPRIATIONS COMMITTEE - GOV'T OPERATIONS DIVISION  
presented by Steve Strege, Executive Vice President -- March 4, 2003

Good morning Mr. Chairman and members of the Committee. I am Steve Strege with the North Dakota Grain Dealers Association. We are a 92 year-old voluntary membership trade association in which about 90% of our state's grain elevators hold membership.

PSC works well with our industry and responds assertively to protect farmers when necessary. An example of both is in Section 2 of SB 2008, rail rate complaint. I am here today especially to tell you of our support for the \$250,000 transfer in that Section to investigate a rail rate complaint case.

North Dakota has been taken advantage of by railroad grain rates for a long time. I think the triggering event for proposing this rate case action was that nonsensical inverse rate the BNSF had on wheat to the west coast in much of 2001 and through July 2002. It plainly showed how excessively profitable their wheat rates are. Imagine this, they were hauling wheat out of western Minnesota to the west coast for 79 cents a bushel, while farmers and grain elevators in western North Dakota paid nearly 40% more than that, \$1.09, to haul wheat to the west coast, 300 miles LESS distance. If BNSF can make money hauling 1800 miles for 79 cents, then how much more are they raking into their coffers by hauling it 1500 miles for \$1.09? This is the kind of exploitation they have been getting away with, and it's time to do something about it.

Another indicator of excessive rates on wheat is a comparison with corn and soybean rates. Why does it cost up to 50% more to pull 100 tons of wheat to the west

-OVER-

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*Cherisea J. Bee*  
Operator's Signature

10-14-03  
Date

coast than 100 tons of corn or soybeans, with the same locomotives, in the same cars, and over the same track? From a station in western North Dakota, the per car wheat rate is \$4250, as compared to \$2850 for soybeans and corn to the PNW in 54 car trains. At a BNSF station south of Grand Forks the rate difference is in the \$800 per car range. I should mention that we aren't asking for an increase in corn and soybean rates.

Revenue to variable cost ratios are a measure of railroad profitability. On most rail movements of North Dakota wheat, these ratios far exceed the threshold of a potential finding of unreasonableness.

The bottom line is that we are being gouged on wheat rates, our largest crop.

We've heard a concern expressed about the source of this \$250,000, the rail assistance fund. Opponents of this transfer have said it will deny funds for branchline rehabilitation or construction projects at new or existing industries. Let's not have our attention diverted away from the multimillion dollar problem of excess rates and a chance to do something about them, by concerns of a few with an interest in leaving those funds where they are at. \$250,000 will rehabilitate only one to two miles of track, depending on how much work is being done. Contrast that with the tens of millions of dollars in potential savings for thousands of farmers by reducing rates. That money then re-circulates in our state's economy. A one-cent reduction in the rate for wheat grown in North Dakota is \$2.5 million, ten times the amount of money we are talking about in this bill for this purpose. This is a matter of doing the greatest good for the greatest number. At a time of scarce state resources we need to invest where the most have the most to gain. An amendment wisely added in the Senate provides for repayment of this fund if a successful rate case is prosecuted.

We ask the Legislature to approve the expenditure of these funds to start the rate complaint process. It has a great potential payoff for North Dakota in terms of saving freight cost and making our wheat more competitive in world markets. I'll try to respond to any questions.

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10-14-03  
Date



"Dan Zink"  
 <dan.zink@rrvw.net>  
 03/14/2003 03:40 PM

To: "Kim Koppelman" <kkoppelm@state.nd.us>, "Elliot Glassheim"  
 <eglasse@state.nd.us>, "Al Carlson" <acarlson@state.nd.us>  
 oo:  
 Subject: SB 2008 - Source of Funds for Rail Rate Case

Reps. Carlson, Glassheim, and Koppelman,

I understand you are considering the PSC's budget request which includes \$250,000 for study of a rail rate case in North Dakota. I was unable to attend your full committee hearing last week, and would like to voice concerns of the Red River Valley & Western Railroad and other short lines in ND.

The PSC's budget proposes to fund the rail rate case study with \$250,000 from a revolving loan fund administered by the ND DOT. This DOT fund is used almost exclusively by North Dakota's short line railroads to upgrade branch line tracks in the state. These 3 short line railroads are all headquartered in ND, and now operate one-third of the rail miles in ND. These short lines have salvaged rail service to many ND communities which would have likely lost their rail transportation option due to abandonment if these locally focused companies had not been created.

The DOT funds which are to be the source for the PSC's rate case study have been the primary source of capital to bring these branch lines back up to a level that ND communities will continue to have rail service.

Taking funds from this pool of capital in the DOT fund will forever remove the funds from the revolving account and reduce our long-term ability to rehabilitate rail branch lines in ND.

I also believe it is wrong to penalize the short line railroads in ND by taking away these loan funds to initiate a suit against the larger railroads, when the short lines do not even establish the rates that are the subject of the suit.

It is also disturbing that using these loan funds for the rate case study sets a precedent for the future source of funds when the full blown rate case is undertaken. If the millions of dollars required for such a case were to also come from the DOT loan fund, it would wipe out this fund and further injure North Dakota's smaller local railroads.

The Red River Valley & Western Railroad is not opposed to the rate case itself. Since we do not establish the rates being questioned, this is not our issue. However we are strongly opposed to the source of the funds for the rate case and respectfully ask that you consider other sources for the funds. We have previously testified that the proponents and potential beneficiaries of the rate case should fund the effort, including the Grain Dealers and commodity organizations.

If there is other information about short line railroads in ND that would be helpful in your deliberations, or how we have used these loan funds to rehabilitate branch lines in ND, we would be happy to provide it.

Thank you for your consideration.

Dan Zink  
 Red River Valley & Western Railroad  
 Wahpeton, ND

~~Wahpeton, ND~~  
~~314-7812~~  
~~RR 514 866-682~~  
 Dan Zink

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10-14-03  
 Date

Exhibit  
5

**STATEMENT OF BURLINGTON NORHTERN SANTA  
FE RAILWAY COMPANY ON SENATE BILL 2008  
REGARDING PROPOSED RAIL RATE STUDY**

Good morning. I am Dan Kuntz, and I represent The Burlington Northern and Santa Fe Railway Company. Before I address the subject of the proposed rate study, there is a point that needs to be emphasized about BNSF's rates. It is a point that serves as a short response to many of the accusations made against the railroad in recent months. That is, the rates charged to move North Dakota wheat today are generally the same as they were at the end of 1981, the same year the federal government partially deregulated rail rates. Not only have rates not kept pace with inflation, they are right about where they started.

I have distributed to you a chart showing the history of rates charged to move wheat from Devils Lake to the Pacific Northwest, which we believe is representative of BNSF's westbound rates in North Dakota. As the bottom line on the chart shows, there has been some fluctuation over the past two decades, with rates dropping to their lowest point in 1986 and 1987, gradually rising back up until 1995, and then going back down to where they began. The top line shows where that rate would be had it risen in accordance with the consumer price index: almost double what it is today. The same is true of the rates from Devils Lake to Minneapolis.

At other locations, the story is almost exactly the same. Another chart shows you the rate history from Devils Lake, Minot and Gladstone to the Pacific Northwest. In each case, the current rate is within a few dollars of what it was in 1981. In fact, the biggest variance is at Gladstone, where the per-car rate is \$144 lower. (All rates are based on the same size cars moving in 52-car units).

What's more, during that time the railroad has spent enormous amounts of money to provide better service to North Dakota grain shippers. For example, in the five-year period from 1997 through 2001, BNSF spent about \$200 million in capital on track improvements in North Dakota. In addition, the company spent \$577 million to acquire new grain cars between 1990 and 2001, and more than \$3 billion to acquire more than 1,800 new locomotives since 1996.

So the full story shows that deregulation has resulted in generally stable rates that lag far behind inflation and increased capital spending by BNSF. Both benefit North Dakota's grain shippers.

As for the budget request for the proposed study, BNSF is taking no position. In the past, the railroad opposed requests to provide funding to pursue a complaint with the Surface Transportation Board. This year, however, the request is to fund only a study. For that reason, BNSF will remain neutral on the subject.

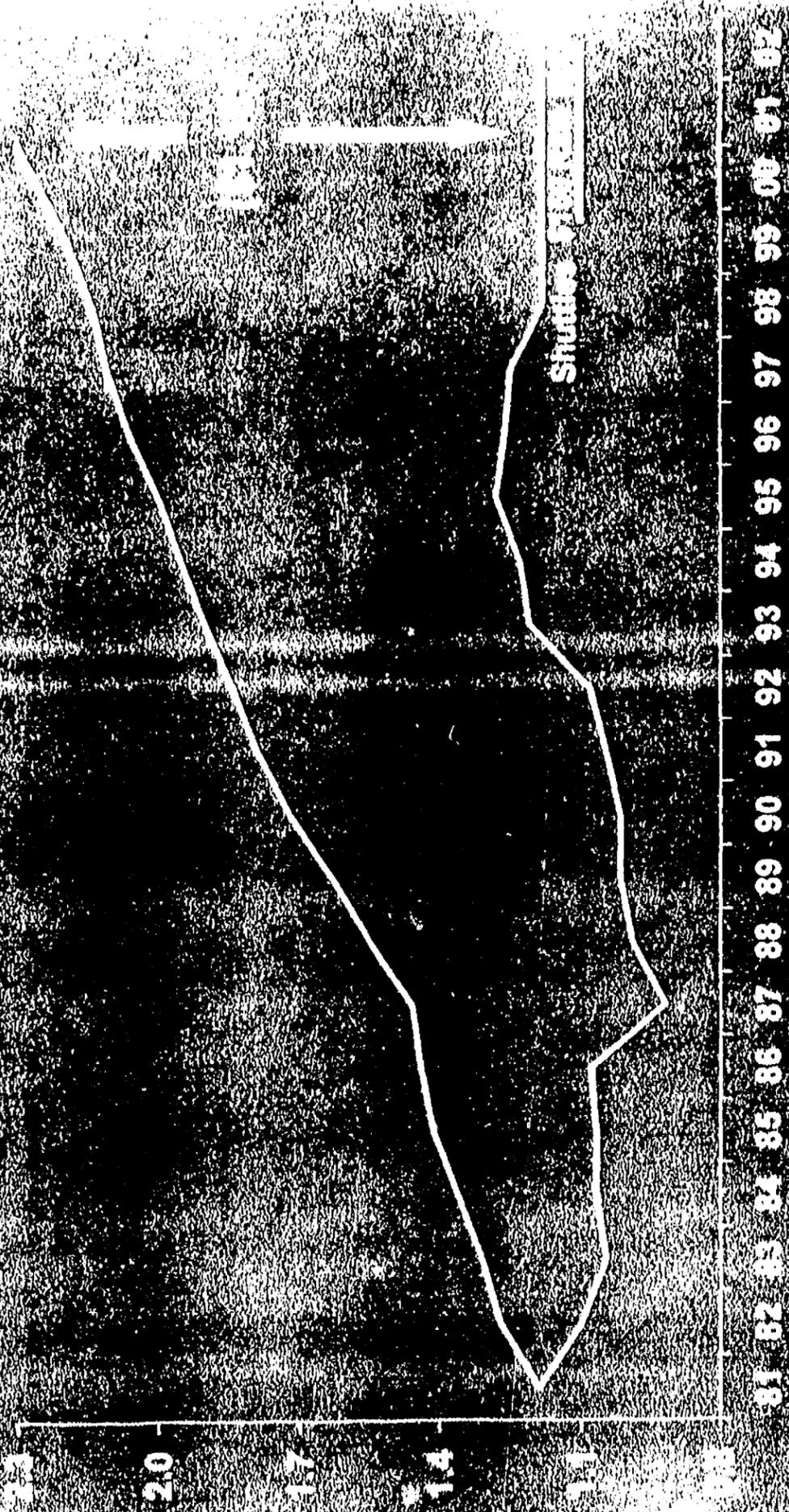
Thank you for the opportunity to appear before the committee.

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10-14-03  
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# North Dakota to PNW 52-Car Wheat Rates (\$ per bushel)

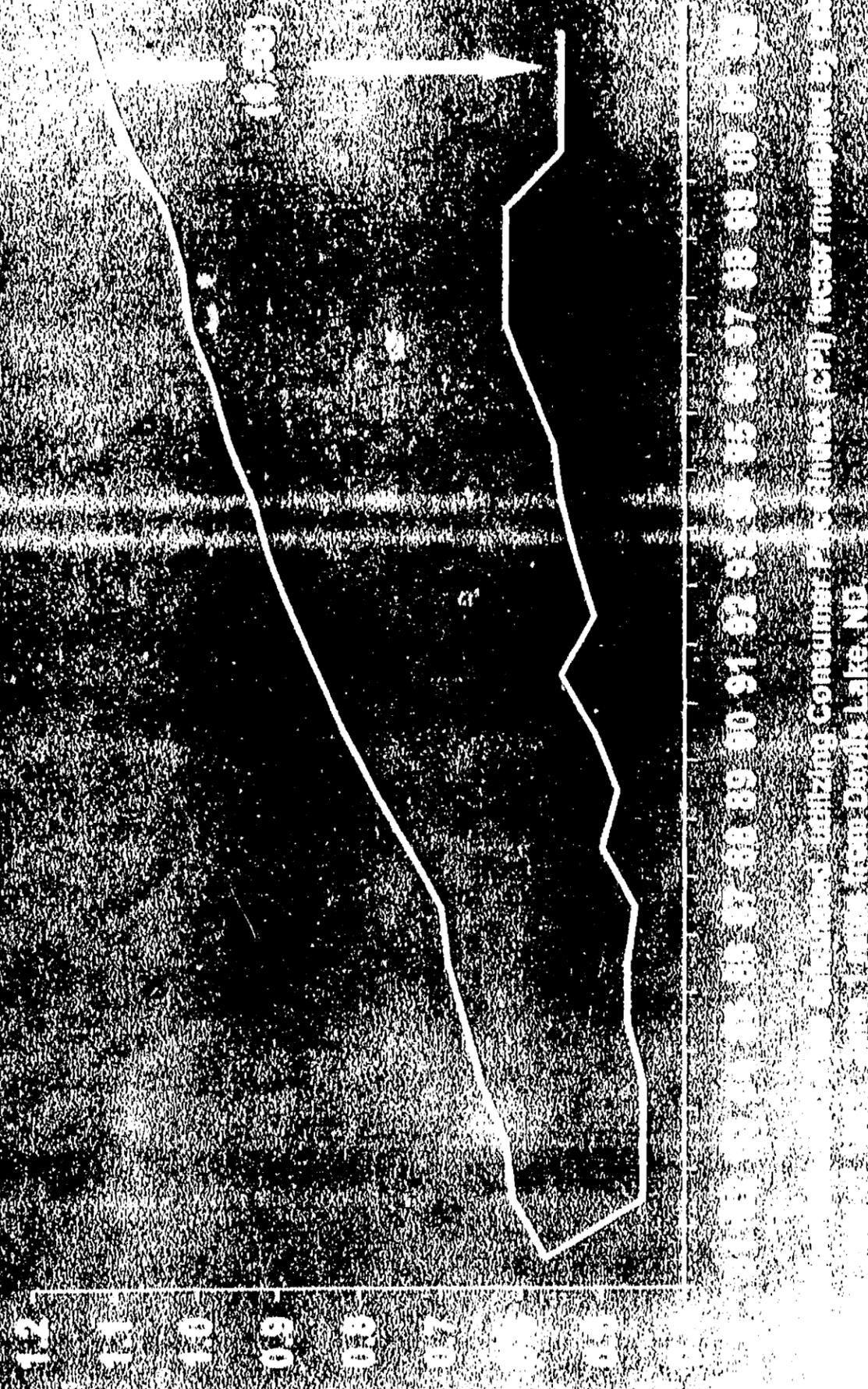


Information Adjusted Rate calculated utilizing Consumer Price Index (CPI) factor multiplied by rates with base year of 1981. June 1 rates from Devils Lake, ND.

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# North Dakota to Minneapolis 52 Car Wheat Rates (\$ per bushel)



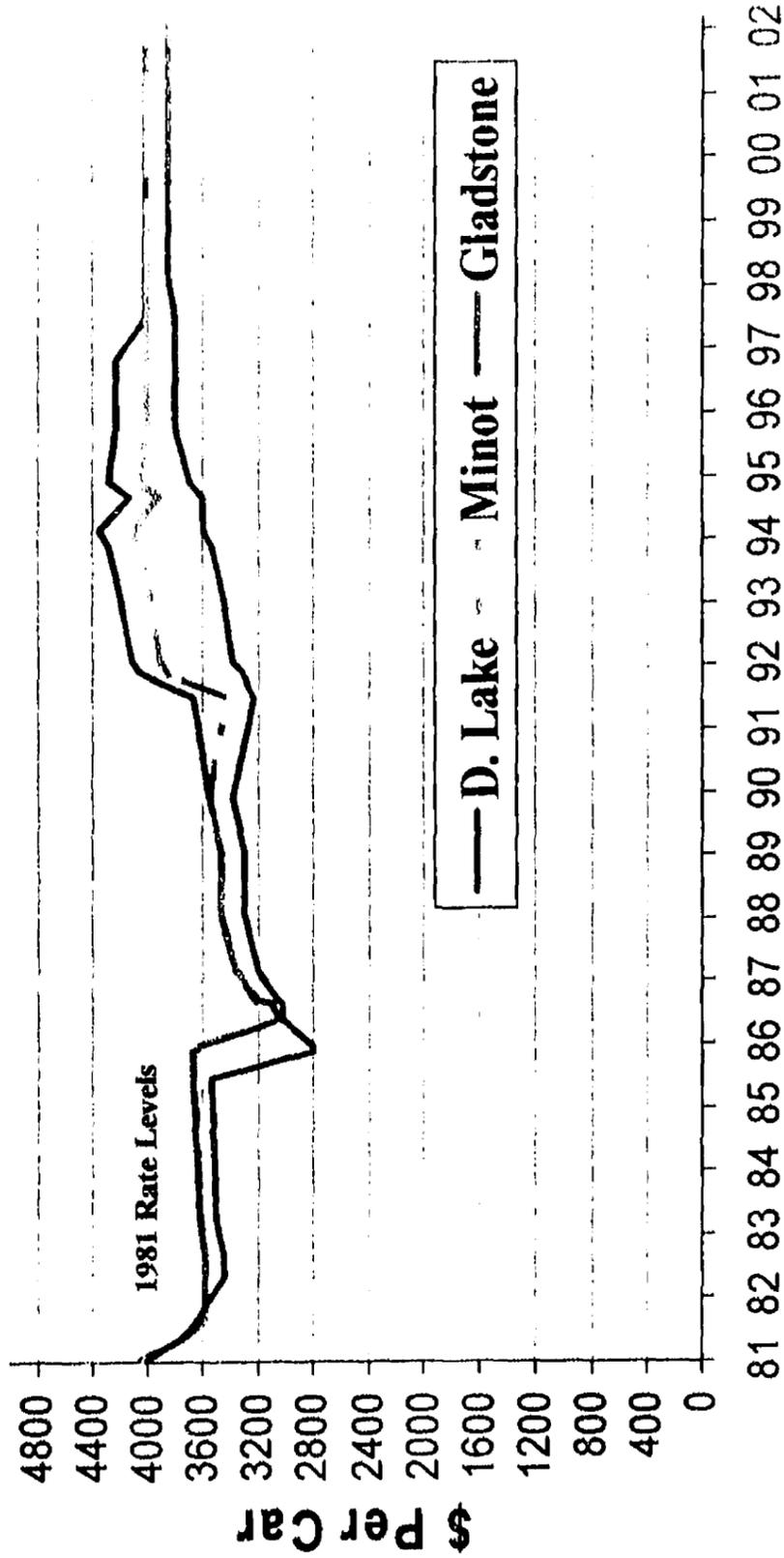
Source: North Dakota Agricultural Experiment Station, Fargo, ND  
 Prepared by: Modern Information Systems, Inc., Minneapolis, MN

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# North Dakota to the PNW

## 52 Car Wheat Rates



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## Court Upholds Shipper-Friendly STB Decision

**I**t's finally over. And rail shippers won one.

On October 8 a three-judge panel of the U.S. Court of Appeals for the D.C. Circuit unanimously upheld the Surface Transportation Board's most recent decision concluding that product and geographic competition no longer are appropriate considera-

tions in market dominance determinations. This reaffirmed the Board's earlier decision that had been remanded back to the agency by the Court.

This proceeding started in April 1998. The North Dakota Grain Dealers Association and North Dakota Public Service Commission became involved. Expert testimony was provided by the

Upper Great Plains Transportation Institute.

The STB first decided in our favor in December 1998. The Association of American Railroads(AAR) appealed. NDGDA and the National Grain and Feed Association jointly filed a brief with the Court on the side of the STB. The Court ruled for the STB and shippers, against the AAR, but remanded the decision back to the STB for one issue. When the STB made its decision on that the AAR appealed again. NDGDA and NGFA stayed in for a second round. Now that second appeal has been denied.

What this means is that in a rail rate case the complaining shipper will no longer have to deflect claims by the railroad that its rates are held in check by product or geographic competition. The previous theory was that, for example, the BNSF's spring wheat rates to the west coast would be held in check because the buyer could use winter wheat instead (product competition); and/or that spring wheat could be obtained from a different region (geographic competition). The STB concluded, after many years of experience with product and geographic competition, that railroad defendants in maximum rate cases often abused discovery to pursue these arguments and that, on balance, retention of product and geographic competition standards did more harm than good. Railroad market dominance must be proven to the STB before a rate case can proceed.

The fact that the AAR continued to appeal this matter is once again a classic example of how big railroads and/or their organizations use their lawyers and deep pockets to continually frustrate shipper relief. After more than four years the frustration in this case has ended. ■

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*Yvonne A. Bee*  
Operator's Signature

10-14-03  
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# Open-Door Policy

BY JOHN GALLAGHER

**New STB Chairman Roger Nober vows to make agency more accessible to shippers**

**O**ne of the complaints against the Surface Transportation Board under former chairman Linda Morgan was the impression that it had become a secretive, unwelcoming place for many shippers. Newly confirmed STB Chairman Roger Nober wants to change that.

"During my confirmation process I was informed that small shippers in particular feel like they have a difficult time penetrating the board and having their concerns heard," Nober said during an interview in his Washington, D.C., office. He noted that not a single case has been filed under the STB's procedures for looking at small-shipper rate complaints.

"There's something to that. It could be because there are no disputes out there or it could be because there's something about the way those rate-case guidelines were drafted," Nober said. "We need to look at that and figure out which it is. If there are small shippers that really don't have any market power, let's find them and figure out what their problems are. That's a goal in 2003."

Part and parcel of that goal, said the 38-year-old Nober, is changing the perception that the STB carries out its functions in secret, which some industry insiders say was best exemplified by Morgan's penchant for holding closed voting conferences. "I received a lot of feedback from groups all across the spectrum that the agency was very closed in its decision-making," Nober said. "I've thought a lot about that and I think that's an area where I'd like to work with the other board members to try to find some middle ground between having a process that's completely unstructured and one that's done behind closed doors. More openness is a procedural goal and how to get there is one that I need to first figure out on my own and then seek input from the other board members. But it's a priority of mine to hold more public meetings. It's good for the board and the community. I think if we're proud of what we do

and do a good job, we should be able to do that in public."

It could begin with Ex parte 638, which seeks to streamline the rate complaint filing procedures. "Senators asked me on the day of my hearing what I thought about that rulemaking," Nober said. "I told them that I support expedited procedures to help cases move faster." But in comments on 638, shippers have raised questions on the proposed changes involving discovery, whether they would



actually make filing a rate complaint even more burdensome. "I don't think our goal was to make it harder for shippers," he said. "But we need to review the comments and come up with a fair and balanced way of expediting these cases, and making them cheaper and move faster — if that's possible."

One way to do that, Nober said, would be to solicit testimony and hold public hearings "to listen to people and hear what they have to say on the rulemaking. I'll be talking to my other board members about it. I'd want to work with them."

Making himself accessible both within and outside of the agency is a reflection of Nober's management style. He has fielded

scores of requests to meet with constituents in just the few weeks since becoming chairman. "I have an open-door policy. I don't turn meetings down," he claimed. "If I can't do them — if it's a pending case or if there's a scheduling conflict — that's one thing. But from a philosophical standpoint, I won't say no to people. I know this sounds corny but I'm a public servant and I'm aware that I'm paid by the taxpayers and that I'm asked by the president to run the agency. And that means if there are people who care about what this agency does and want to meet with me, I should try to do that."

That philosophy is part of Nober's overall vision to prove that there needs to be an STB in the first place. "Should the STB be around at all? It's a good question," said the former Department of Transportation attorney. It's a question about which he's particularly sensitive because part of the reason he wound up at the STB was his experience as the lead minority staffer for the House of Representatives subcommittee that voted to zero-out the budget for the Interstate Commerce Commission in 1994. The Democrat-controlled Congress ultimately cut the commission's budget by one third, and Nober's committee was tasked with calibrating the ICC's mission to meet its reduced payroll, which came down to eliminating a host of motor carrier provisions. When the Republicans won the House in 1994, "it was just accepted that we were going to eliminate the ICC altogether. It wasn't even debated," Nober said. The ICC Termination Act of 1995 pared the agency down to its core mission: rail mergers and rate and service cases.

"So when people say the ICC has lost its relevance, that means something to me because I know why Congress eliminated it the last time. I worked with the members on both sides to come up with what should be kept and why. We still perform a very valuable service," Nober said.

Reviewing rail mergers is one of those services, Nober asserted, and one that cannot be handled as effectively by the Department of Justice. "Congress looked

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*Roger Nober*  
Operator's Signature

10-14-03  
Date

## WASHINGTON

at this a few years ago and said that because the rail network is fixed, you can't really exit and enter this industry the same way you can another industry," he said. And reviewing rail rate cases takes highly specialized transportation analysis, he said.

Finding the time to decide on the nine cases currently pending at the board is the challenge, Nober pointed out. He was referring to a recent General Accounting Office survey in which the STB stated it only had enough personnel resources in the board's economic analysis division to handle two rate cases at a time.

"While all nine rate cases aren't going to come due at the same time, that does present a management challenge," Nober said. "We've had several meetings on this issue and my general philosophy is the agency needs to put its resources in and focus on its core mission, and resolving rate cases is one of those. Our job is to resolve them and meet the nine-month statutory deadline. Part of that involves reallocating resources within the building and changing our management structure a little bit to let us do that to meet the bulge of cases that are currently out there."

Nober claimed that the current structure does not prevent cases from getting the attention they deserve. "Absolutely not — we analyze every case brought before us and within the time frame we have," he said. If nine or 10 pending rate cases become the normal caseload, Nober pointed out that "then in the long term we'll have to look at either getting more resources or restructuring how we do this."

Nober hopes to have his own staff in place by the middle of January. "I haven't felt that I've been without one so far because everyone's gone out of their way to make my starting here as smooth as possible," he said. Two people reporting to Nober directly will fill an attorney-advisor role and an administrative position. He also may call on others within the agency, as has been the custom among past chairmen, to help with specialized projects as needed.

Nober is well aware that some shippers are pushing for legislative change, but he said the question of whether as chairman he should be more proactive in shaping the board's legislative mission is a difficult one. "On one hand, we're an adjudicatory body and our ultimate function is to resolve the disputes that are brought to us under our statutes. On the other hand, the agency

does have the ability to look into things on its own. Where the right balance is, we'll just have to find our own way," he said.

During his time on the Hill, Nober had a chance to work separately with railroads and shippers on issues that affect each group. This could put him in a position, industry insiders say, to "broker the peace" on the bickering that has ebbed and flowed

between the two for the 23 years since the Staggers Act was passed. "I'd never presume to be in a unique position to do anything," Nober said. "But I've had a good relationship with both railroads and shippers. I appreciate that both groups were supportive of my nomination. These are very difficult issues that are not easy to resolve. Obviously, being trusted by both sides is a start." ●