

2009 SENATE FINANCE AND TAXATION

SB 2338

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2338

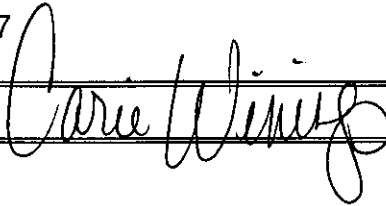
Senate Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: 01/28/2009

Recorder Job Number: 7997

Committee Clerk Signature



Minutes:

(Recording was turned on a couple of minutes into Senator Nething's testimony.)

**Chairman Cook:** Opened hearing on SB 2338

**Senator Dave Nething, District 12:** Introduced bill. See Attachment #1 for testimony.

3.15 **Chairman Cook:** You made the point of the fairness issue about the 4 cents they pay for highways that they don't pay for use; I thought you were being a little gentle. You could have also made the point that their competitors use that highway system, it's a public highway system, in the meantime Railroads have to build their own transportation system and then we tax it and call it property.

**Senator Hogue:** Can you give us an idea of how many crossings that could be improved with 6.4 million dollars.

**Senator Nething:** I can't. The cost to every community varies. There is a difference in each community as to what the cost would be because of depending upon when the structures are built the cost varies. It is too hard to pin down.

**Senator Triplett:** Do you think there is any fairness issue in terms of doing this prospectively without reimbursing the communities who have already undertaken the job to silence in their own town.

**Senator Nething:** I think in this case, there is always that question, and you just have to go ahead with it from where we are.

5.55 **Chairman Cook:** Are you concerned that the 6.5 million dollar could become a cap?

**Senator Nething:** It could because we are talking about the dollars that are transferred from the diesel tax program. I did not want to get into the quarrel of taking more money out of the distribution fund because it might be harder to justify that. To me this is a more realistic approach of taking the RR diesel dollars to help solve a RR caused concern.

7.00 **Dan Buchanan, Resident of Jamestown:** See Attachments #2 and #3 from the city of Jamestown.

14.07 **Senator Anderson:** Comment. I appreciate this bill, but where you state the special fuels tax is already available so no new taxes will be collected, that is true but yet it does remove some of those taxes from the amount that would go to counties.

**Doug Ellison, Mayor, Resident, and Business Owner in Medora:** See Attachments #4 and #5 in support of bill.

**Wayne Kranzler, Co-Owner of Kranzler Kingsley Advertising, Marketing and Public Relations:** See attachment #6 for testimony in support of bill.

20.31 **Vice Chairman Miller:** What was the cost of the Bismarck quiet rail zone?

**Wayne Kranzler:** As I remember there were 7 different crossings in Bismarck and it was between 3-4 million dollars.

21.05 **Bruce Schwartz, Resident of Bismarck:** See attachment #7a #7b in support of bill.

24.30 **Senator Triplett:** Why are you all in support of this when it provides so little money in comparison to what is in need? This bill is for one biennium only, and it sunsets itself.

**Bruce Schwartz:** I am not in a position to answer that, but it seems to me that once it is corrected there will be no further problem for years to come.

25.50 **Sharelle Zittleman, Resident of Mandan:** Testified in support of bill. Everyone's life that lives along the RR route has become impossible to live as far as sleeping, phone conversations, watching TV and generally being outside. Sometimes the whistles are so loud that you have to put your hands over your ears and walk in the house. In Mandan there are three crossings that will need to be taken care of for a better quality of life for all of us. See Attachment #8 for list of residents in support of bill.

28.03 **Melissa Rosales, Resident of Bismarck:** See Attachment #9 in support of bill.

31.20 **John Risch, United Transportation Union:** See Attachments # 10 and #11 for testimony in support of bill.

35.28 **Chairman Cook:** Do both the fancy, and the basic plan both have the same result on the amount of time a whistle is blown?

**John Risch:** They both have the same effect on blowing the whistle.

36.04 **Mike Muscha, Brotherhood of Locomotive Engineers and Trainmen of North Dakota:** See Attachment #12 in support of bill.

37.35 **Duane Heinrich, Resident of Jamestown:** See Attachment #13 for testimony collected and brought in support of the bill. I can answer some of the questions. There is no one size fits all plan as was previously indicated. The cost per crossing can vary from \$80,000 to \$500,000. The most expensive enhancement at a crossing is what is known as a four quadrant gate system, and that is the one that gets into \$450,000 to \$500,000 per intersection. There have been some comments as to how spread out the funds available. I think that it would be appropriate when you pass this bill that maybe some language could be included in there that the expensive four quadrant gate system would not be funded out of this grant unless the department of transportation or the federal railway administration would indicate that other safety enhancements would not be feasible.

40.40 **Mr. Howard, Resident of Jamestown:** See Attachment #14 for testimony by the Main Street Downtown Association in support of the bill.

**Deloris Rath, Resident of Jamestown:** See Attachment #15 for testimony in support of the bill.

**Dan Howell, Chief Executive Officer of the Anne Carlsen Center, Jamestown:** See Attachment #16 in support of the bill.

**Chairman Cook:** Closed hearing on SB 2338.

(See additional testimony #17 given to the clerk)

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2338

Senate Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: 01/28/2009

Recorder Job Number: 8038

Committee Clerk Signature

Minutes:

**Chairman Cook:** Reopened hearing on SB 2338.

**Senator Oehlke:** Noted that we did not have any opposition on this bill, points out a problem with the bill.

**Senator Triplett:** I was looking – I think you are right; it would be an ongoing appropriation the way it is written. Maybe it needs to be changed....

**Chairman Cook:** If we just deleted section 2 and took the appropriations out, ....Either way it has to go to appropriations.

**Vice Chairman Miller:** I have an uneasy feeling about leaving the language in the bill to section of those excess taxes from the railroad without legislating where it should go

**Chairman Cook:** The other option is to sunset both sections.

**Vice Chairman Miller:** The railroad has the opinion that they don't drive their locomotives down the road.

**Senator Hogue:** I think this is good legislation, but it only provides for a 10% match by the local cities. I think they should be responsible for more than 10%.

**Chairman Cook:** What do you think would be fair?

**Senator Hogue:** Maybe 60/40. 60 state-40 local, locally cities could do more to facilitate this.

7.19 **Senator Anderson:** In regards to sunset, and I equate this to county-city relationship, and I can see when this gets going, there won't be enough \$\$\$ to go around.

**Chairman Cook:** I'm waiting for Senator Triplett to suggest a study for the next year

**Senator Triplett:** After the testimony, I am convinced there is a need I think there should be 60 local-40 state

**Chairman Cook:** I agree that there needs to be a larger local share.

**Senator Triplett:**

**Chairman Cook:** I can't believe

**Senator Triplett:** Would you like me to come up with an amendment for this bill?

**Chairman Cook:**

10.45 **Senator Hogue:** I don't know off the top of my head, can you have a special assessment

**Senator Triplett:** I think that if we authorize it, it would be legal.

**Senator Anderson:** The person who has possession should check ownership

**Chairman Cook:** Property taxes would be the first, everybody benefits in some manner.

**Senator Dotzenrod:** Special assessment idea would be the same as putting a special assessment around the Fargodome.

**Chairman Cook:** That would be a decision the city would have to make.

**Senator Hogue:** It would be an arbitrary line; there is a standing local committee which makes those decisions.

13.18 **Senator Triplett:** Made reference to Medora would have a different allotment than another because of the size of town and population affected.

**Chairman Cook:** Regarding the local/state split remember that there are some differences on the model that each city chooses.

**Senator Dotzenrod:** If you get that local share up to 40% that would put some pressure to watch the fiscal responsibility at the local level.

**Chairman Cook:** Senator Triplett will get some amendments together on this and look at a study.

Closed hearing on SB 2338.



## 2009 SENATE STANDING COMMITTEE MINUTES

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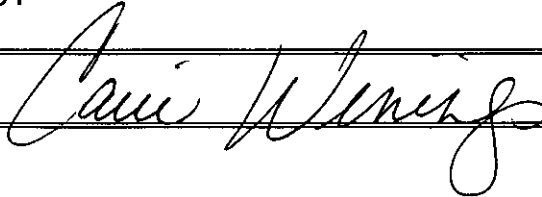
Senate Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: 02/02/2009

Recorder Job Number: 8301

Committee Clerk Signature



Minutes:

**Chairman Cook:** Reopened discussion on SB 2338.

**Senator Triplett:** Senator Nething and I had two meetings with Department of Transportation.

See Attachments #1 and #2 for additional information to bill. We talked in this committee

about having a local match and we were suggesting a 60/40 split as a possibility. A different

idea was given by the Department of Transportation which we thought was a good idea and

that would limit the state grants for a single crossing to \$100,000 and limit the number of

crossings a single city could access to not more than 5. The basic crossing can be done for

around \$80,000, and if they want the more expensive version than they would be paying the

rest. The limit of 5 would take care of the majority of the problem. We did also sunset the

entire bill. We did not want it to be ongoing and have it reconsidered next session.

**Chairman Cook:** I would say that you and Senator Nething did good work. Do all these dates now line up?

**Senator Triplett:** Yes I believe so.

**Chairman Cook:** There was some discussion on whether there had to be some oversight of this program for the first biennium to go through a learning curve, do we need that now?

**Senator Triplett:** I wouldn't think we need that now because it has a sunset. The estimated money allowed the state to do grants for about 23 crossings in this biennium. It may take care of most of the problem.

**Senator Hogue:** Are you clear that the \$500,000 is for the biennium or is that a per annual cap.

**Senator Triplett:** No, it is for the biennium.

**Chairman Cook:** Is that clear in the law, or can someone question that as it is written?

**Senator Hogue:** It talks about the grants and it really doesn't.

**Senator Triplett:** I suppose it couldn't hurt to add the phrase, within the biennium.

**Chairman Cook:** Are you as a committee with the direction we are taking on this?

**Senator Hogue:** I am comfortable. We are still back to the ten percent. Can one of these crossings be done for under \$100,000?

**Senator Triplett:** Yes, we heard in the testimony that it can be done for as little as \$80,000 and that has been confirmed. It leaves a lot of local control.

**Chairman Cook:** Does the bill have to speak to the 10%?

**Senator Hogue:** Yes it is

**Chairman Cook:** So, you want to leave it in there?

**Senator Hogue:** I think so.

**Chairman Cook:** Suspends hearing on bill.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2338

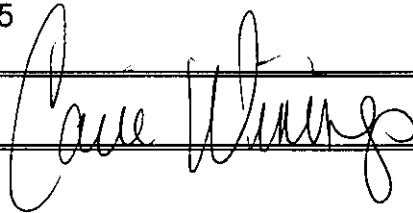
Senate Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: 02/03/2009

Recorder Job Number: 8515

Committee Clerk Signature



Minutes:

**Chairman Cook:** Reopened discussion on SB 2338. Discusses amendments presented by Senator Triplett in earlier discussions.

**Senator Triplett:** It limits the cumulative amount a city may get to \$500,000 and limits the grant for a crossing to \$100,000, but still leaves in the 90/10 requirement for local participation.

**Senator Dotzenrod:** Did we settle the question whether or not it was for the biennium?

**Senator Triplett:** I was supposed to make sure.

**Chairman Cook:** Checks and finds out that it is.

**Senator Triplett:** **Motioned to move the amendments.**

**Senator Oehlke:** **Seconded.**

**A voice vote was taken: 7 yeas, 0 nays.**

**Senator Triplett:** **Motioned a Do Pass As Amended and Re-Referred to Appropriations.**

**Senator Hogue:** **Seconded.**

**Senator Anderson:** Notes that he cannot support the bill as amended because it does take away money from another subdivision.

**A Roll Call vote was taken: Yea 6, Nay 1, Absent 0.**

**Senator Triplett will carry the bill.**

**FISCAL NOTE**  
**Requested by Legislative Council**  
04/14/2009

Amendment to: Engrossed  
SB 2338

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.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$0		
Expenditures						
Appropriations				\$2,500,000		

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

SB 2338 First Engrossment with House Amendments requires the depositing of a portion of the special fuels taxes paid by railroads into a 'highway-rail grade crossing safety projects fund'.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

If enacted, SB 2338 First Engrossment with House Amendments is expected to reduce highway distribution fund revenues by \$1.6 million in the 2009-11 biennium. This revenue will be deposited into the 'highway-rail grade crossing safety projects fund'. (Since these are both "other funds" and cancel out, they are not shown above.)

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.*

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.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

There is an appropriation of \$2.5 million to DOT, from the highway-rail grade crossing safety projects fund and from federal highway traffic safety funds.

<b>Name:</b>	Kathryn L. Strombeck	<b>Agency:</b>	Office of Tax Commissioner
<b>Phone Number:</b>	328-3402	<b>Date Prepared:</b>	04/14/2009

**FISCAL NOTE**  
**Requested by Legislative Council**  
01/21/2009

Bill/Resolution No.: SB 2338

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.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations				\$6,400,000		

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

SB 2338 requires the depositing of special fuels taxes paid by railroads into a 'highway-rail grade crossing safety projects fund'.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

If enacted, SB 2338 is expected to reduce highway distribution fund revenues by an estimated \$6.464 million in the 2009-11 biennium. This revenue will be deposited into the 'highway-rail grade crossing safety projects fund'. (Since these are both "other funds" and cancel out, they are not shown above.)

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.*

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.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

There is an appropriation of \$6.4 million to DOT.

<b>Name:</b>	Kathryn L. Strombeck	<b>Agency:</b>	Office of Tax Commissioner
<b>Phone Number:</b>	328-3402	<b>Date Prepared:</b>	01/27/2009

PROPOSED AMENDMENTS TO SENATE BILL NO. 2338

Page 1, line 3, remove "and" and after "date" insert "; and to provide an expiration date"

Page 1, line 19, after the period insert "By August 1, 2011, the state treasurer shall transfer any unexpended and unobligated balance in the highway-rail grade safety projects fund to the highway tax distribution fund."

Page 2, after line 11, insert:

- "5. Grants for a single crossing may not exceed \$100,000 and grants for all crossings within a city may not exceed a cumulative amount of \$500,000."

Page 2, line 12, after "**DATE**" insert "**- EXPIRATION DATE**"

Page 2, line 13, after "2009" insert ", and before July 1, 2011, and is thereafter ineffective"

Renumber accordingly

Date: 02/03/09

Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. : 2338

Senate Finance and Taxation Committee

Check here for Conference Committee

Amendments  
90747.0301

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

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Senator Triplett Seconded By Senator Oehlke

Senators	Yes	No	Senators	Yes	No
Sen. Dwight Cook - Chairman			Sen. Arden Anderson		
Sen. Joe Miller - Vice Chairman			Sen. Jim Dotzenrod		
Sen. David Hogue			Sen. Constance Triplett		
Sen. Dave Oehlke					

*all in favor*

Total: Yes 7 No 0

Absent \_\_\_\_\_

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

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

Date: 02/03/09

Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.: 2338

Senate Finance and Taxation Committee

Check here for Conference Committee

Re-Referred  
to Appropriations

Legislative Council Amendment Number

Action Taken

Do Pass

Do Not Pass

Amended <sup>AS</sup>

Motion Made By

Triplet

Seconded By

Hogue

Senators	Yes	No	Senators	Yes	No
Sen. Dwight Cook - Chairman	✓		Sen. Arden Anderson		✓
Sen. Joe Miller - Vice Chairman	✓		Sen. Jim Dotzenrod	✓	
Sen. David Hogue	✓		Sen. Constance Triplet	✓	
Sen. Dave Oehlke	✓				

Total: Yes 6

No 1

Absent 0

Floor Assignment

Senator Triplet

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



**REPORT OF STANDING COMMITTEE**

**SB 2338: Finance and Taxation Committee (Sen. Cook, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS and BE REREFERRED to the Appropriations Committee (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2338 was placed on the Sixth order on the calendar.**

Page 1, line 3, remove "and" and after "date" insert "; and to provide an expiration date"

Page 1, line 19, after the period insert "By August 1, 2011, the state treasurer shall transfer any unexpended and unobligated balance in the highway-rail grade safety projects fund to the highway tax distribution fund."

Page 2, after line 11, insert:

- "5. Grants for a single crossing may not exceed \$100,000 and grants for all crossings within a city may not exceed a cumulative amount of \$500,000."

Page 2, line 12, after "**DATE**" insert "**- EXPIRATION DATE**"

Page 2, line 13, after "2009" insert ", and before July 1, 2011, and is thereafter ineffective"

Renumber accordingly

2009 SENATE APPROPRIATIONS

SB 2338

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2338

Senate Appropriations Committee

Check here for Conference Committee

Hearing Date: 02-10-09

Recorder Job Number: 9092

Committee Clerk Signature

*Alice P. Nelson*

Minutes

**V. Chair Grindberg** called the committee hearing to order at 9:30 am in reference to SB 2338 in regards to deposit of special fuels excise taxes paid by railroad in a special fund.

**Senator Nething** testified in favor of SB 2338 and gave an overview of the bill. The proposal before you today would use railroad fuel tax revenues to help mitigate the problems of excessive train whistle noise ( noise pollution). The railroad paid the fuel tax to highway distribution fund and never used the highways distribution fund for railroad crossing safety. There will be an impact on the cities and the counties. Written testimony attachment #1 and copy of trains per day, attachment #2.

**Senator Krebsbach** I wasn't aware that Minot had so many crossings. I wonder if the amount that has been allocated as the maximum would exceed that in Minot.

**Senator Nething** I don't know what activity is going on in Minot.

**Senator Krebsbach** In Minot some of the crossings do have the arms.

**V. Chair Bowman** Do you have a list of proposed projects? Is there already people saying they need this project for project A, B, C, etc.

**Senator Nething** There is in Jamestown. Bismarck voters rejected. Jamestown was rejected but they are trying again. Fargo has completed theirs. I think Medora has an interest. It varies.

**Dan Howell** Chief Executive Officer of the Anne Carlsen Center (ACC) testified in support of SB 2338 and provided written testimony # 3.

**V. Chair Bowman** You said this is a onetime request. Yes, you had a onetime request, it opens the gate for everyone to come and request, when you look at the general fund all the money that is going in there will go to various towns for various railroad projects. Do you see where I am coming from? It is a onetime for Jamestown if it gets funded but what about all the other towns? Valley City has a major problem. Where do we go with this?

**Dan Howell** Someone else here may be better to answer that question. I believe moneys appropriated to Jamestown would be available to other communities throughout the state of ND during this biennium.

**Bruce Schwartz** testified in favor of SB 2338 written testimony # 4. (11.62)

**Jerald Zittleman** testified in support of SB 2338. I want to give a personal view. My family and I moved to Bismarck 34 years ago and have lived in the same house. The train traffic was less than now and in the last 5 years, the volume has increased drastically. The federal mandate increased horn noise. I have a beautiful house with a big deck but I can no longer go out in the morning and have coffee or invite people over because of the horn noise. It is deafening. I urge a do pass.

**John Risch** elected North Dakota legislative director of the United Transportation Union testified in support of SB 2338. Written testimony #5.

**Senator Christmann** I presume these rules come from WDC, shouldn't our efforts be on our congressmen in Washington DC to relax some of the rules that sound excessive?

**John Risch** I agree. You are right. We have operating rules, we have state law that is adequate. It did not prevail.

**V. Chair Bowman** What can you do to stop this noise?

**John Risch** Pass this bill and we will only blow the whistle when it is necessary. The other thing we can do is there is a bill on the house side that would reduce the amount of blowing the whistle and we are working on that.

**V. Chair Bowman** What does it cost to not push the button? Where is the expense at that you want this money for? What do you do with it?

**John Risch** In order to adopt a quiet zone, (21.53) the quiet zone has different requirements. The money goes for increased safety for the crossing.

**Senator Mathern** I have concerns about resources going to Fargo, Fargo has already done this in many areas. Do you know what Fargo has done to create the quiet zone?

**John Risch** See list in the testimony #5

#### **Opposition**

**Dave Lockwitch** Local Government Engineer for the ND Department of Transportation testified in opposition to SB 2338 and provided written testimony # 6.

**Terry Traynor**, Association of Counties, on record in opposition to diversion of the funds.

**Keith Magnesun**, ND League of Cities said we are not testifying in objection of quiet zones.

Like the others we are objecting to source of funds. We are in opposition to SB 2338.

Chairman Holmberg closed the hearing on this bill.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2338

Senate Appropriations Committee

Check here for Conference Committee

Hearing Date: February 12, 2009

Recorder Job Number: **9368 (Starting at 7:59)**

Committee Clerk Signature



Minutes:

**Chairman Holmberg** called the committee hearing back to order on SB 2338.

**Senator Warner** said he would normally oppose this but because this is a onetime request and with the stimulus, he feels this is an appropriate use of funds.

**Senator Warner moved Do Pass on SB 2338.**

**Senator Krauter seconded.**

**A Roll Call vote was taken. Yea: 11 Nay: 3 Absent: 0**

**Sen. Triplett will carry it on the floor.**

Date: Feb 12, 2009  
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2338

Senate \_\_\_\_\_ Committee \_\_\_\_\_

Check here for Conference Committee

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

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By \_\_\_\_\_ Seconded By \_\_\_\_\_

Representatives	Yes	No	Representatives	Yes	No
Senator Krebsbach	✓		Senator Seymour	✓	
Senator Fischer	✓		Senator Lindaas	✓	
Senator Wardner	✓		Senator Robinson	✓	
Senator Kilzer	✓		Senator Warner	✓	
V. Chair Bowman		✓	Senator Krauter	✓	
Senator Christmann			Senator Mathern	✓	
V. Chair Grindberg	✓				
Chairman Holmberg		✓			

Total Yes 11 No 3

Absent 0

Floor Assignment Temple

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

REPORT OF STANDING COMMITTEE (410)  
February 12, 2009 11:34 a.m.

Module No: SR-28-2501  
Carrier: Triplett  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

SB 2338, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman) recommends **DO PASS** (11 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2338 was placed on the Eleventh order on the calendar.



2009 HOUSE FINANCE AND TAXATION

SB 2338

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2338**

House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: February 25, 2009

Recorder Job Number: 9713

Committee Clerk Signature

Minutes:

**Chairman Belter:** We will open the hearing on SB 2338.

**Senator Nething: (Testimony 1)** On the second page of my testimony, you can see the number of trains per day. You can see that in my community of Jamestown, we have five crossings and there are at least 27 trains that go through each day. You can see that across the southern part of ND that we go anywhere from 30 to 25 trains. (5:39) As you go north to Grand Forks and cross over to Minot, the number of trains are fewer. The line between West Fargo and Minot does have considerable traffic and there is considerable traffic after you get to Minot and start going west. The bill itself calls for limitation or a cap of \$100,000 in a given crossing. It is capped at \$500,000 per community and the community would also pay 10% with 90% of the funds coming from the state fund. There are some federal funds available, but they are a little bit more demanding to meet the requirements. As I understand it, you have to be doing some kind of rebuilding of the entire crossing, putting lights in, cross arms, all of this for rather extensive changes. Of course, many of these crossings already have some cross arms. A cost estimated for our community of Jamestown was in the \$80-90,000 area. The costs estimated in Bismarck were considerably higher than that because they would use a little different kind of system. There are different ranges pricewise on the crossings. Mr. Chairman,

that is pretty much what I have to offer you on this bill. It was well received in the Senate and I hope that you folks will see it in the same light. I would be happy to answer questions.

**Representative Froseth:** This bill directs all the money to quiet zones apparently, but quiet zones aren't necessarily the most dangerous crossings in the state. There are a lot of crossings in the rural areas of the state that are probably more dangerous and have more fatalities than crossings through a city. This directs money just to cities to quiet zones.

**Senator Nething:** That's what the bill is about. The bill is about funding for quiet zones; the bill is about improving the safety when you establish a quiet zone. It is not an all-encompassing bill to build crossing arms at every railroad crossing that doesn't have them. That's not what it is about.

**Representative Froseth:** Maybe it is more important to put some safety measures at crossings where there are more fatalities than in the larger cities.

**Senator Nething:** I don't know of any research that is available to support or not support what you said. Like I said, this bill is focused the other way.

**Representative Grande:** When we passed the abilities for cities to put in quiet zones, Fargo went ahead and did it themselves. Is there a reason that other communities cannot do it themselves? Are we going to make this retroactive so we can get reimbursed for the tax dollars we put out for our own quiet zone?

**Senator Nething:** The bill does not provide for retroactivity. Fargo received money from different sources than this bill engages. They were in a different situation. A lot of their money was federal money.

**Representative Grande:** I happen to know about property tax increases people received on the businesses of everybody located around the quiet zone. Property taxes went up quite a bit from the quiet zone.

**Senator Nething:** I don't mean to imply that they didn't pay anything; not at all. Theirs was a fairly substantial effort. Because they took the lead, other cities have decided it can work. That is the important thing; it can work.

**Representative Drovdal:** Can you explain what a quiet zone is. I know a train goes through town and the crossing is there already. What do they change to make it a quiet zone besides stopping blowing the whistle because the whistle is a safety issue? Is it just cross arms that go down?

**Senator Nething:** No, and there will be people here who can explain it better than I can. My understanding of it is that it is part of the safety features to qualify to have the whistles not blow; there are certain things you have to change. One of them between the lanes of traffic, you can build a berm; on the sides you have to have ways to prohibit the pedestrians from going around. That is a quick description. When you qualify with safety features, then they don't have to blow the whistles any more.

**Representative Drovdal:** This isn't just for the towns you listed, is it? Medora has two crossings. Can they qualify for it? You just happened to use these towns. It doesn't exclude others?

**Senator Nething:** We just put the list together quickly and you don't get all of them. I guess Medina maybe has one. It depends upon how they want to do it, how much local cost.

**Representative Weiler:** The bill on page 2, line 14 says that grants for a single crossing may not exceed \$100,000. Does that \$100,000 cover the cost?

**Senator Nething:** It depends upon how extensive they want to do the safety features. If you do minimum safety features, which are what is planned in my community, I think they are in that \$80-85,000 range. Of that amount, if this bill becomes law, 90% of it would be covered by funds from this source, 10% would be paid by the local government. Bismarck, for example,

had a different kind of proposal. Each community has a different lay of the land. That is what drives your proposal with the safety features and, of course, that is where the money comes in.

**Representative Weiler:** The ones in Fargo, were those voted on?

**Representative Grande:** I don't believe so. I think the city just spent the money.

**Chairman Belter:** We can have that clarified. Any other questions of Senator Nething?

**Dwaine Heinrich: (Testimony 2).** I have a number of testimonies from people who were going to be here today but the road reports this morning convinced them that they should stay home. (He handed out the following **(Testimony 3) Phyllis Thompson, (Testimony 4) Jeff Fuchs, Jamestown City Administrator, and (Testimony 5) Kimberly Saxberg, Main Street Downtown Association and (Testimony 6) Dan Buchanan, Attorney at Law.** A former resident of Jamestown invested over \$3 million in a building which includes four condominiums on the second floor. Unfortunately they are next to the railroad track and none of them have been sold, largely because of the proximity to the railroad crossings, of which we have four in the center of Jamestown. In the Senate, Dan Howe of the Ann Carlson Center testified. He is unable to be here today. The Ann Carlson Center is close to the railroad tracks and they are adversely impacted. I was involved with the planning of the Renaissance Zone. I am not an engineer but I had some discussions with engineers and others while that plan was put into place. Our plan does include closing one intersection because of the cost. That intersection happens to be next to a grain elevator where the trucks go in and out. To put in the required safety devices to make that qualify would be cost-prohibitive. That one intersection was going to cost roughly \$480,000, which would have doubled the cost of our entire quiet zone project. Fortunately we have four intersections downtown so closing one of those is not something we want to do, but it is not as painful as if we only had two. I would like to think of this as seed money. The people that are investing in these properties do not individually have the ability to

enact the quiet zone. It either has to be done by a vote of the people or by the city. We do have some very significant investments in downtown Jamestown that are at risk because of the proximity of the train horns. Also, I don't think Jamestown is too much different than a lot of towns our size. There is a lot of undeveloped property next to the railroad tracks. A lot of the infrastructure is already in place there for that property to be developed. However, because of the train horns, people do shy away from that property. We have undervalued property. I would like to think that when we do get the quiet zone in place that we will see an increase in property values, which will then also result in increased tax revenues for both the cities and the counties. Another area I want to touch on briefly is that occasionally it has been questioned as to whether this does create safer crossings at railroads. It is sometimes looked upon as a novel idea that is untested. I personally have had the opportunity to travel by train from Bergen, Norway to Rome, Italy. I may have heard a train horn sound, but I don't remember hearing one. Those trains go through large cities and small villages and what you find in many of those cases is that they have enacted the same type of safety devices we are talking about with the quiet zone legislation. You see kids going to school on the trains without the horns so I do think the safety experts are right and this does create safer railroad crossings. With that I will cease unless anyone has any questions for me. (21:49).

**Bruce Schwartz, Representing Highland Acres of Bismarck: (Testimony 7) (25:40)**

**Representative Weiler:** I know where you live and I understand that you hear the horn. Do you hear the train? If the horn didn't sound, would you still hear the train?

**Bruce Schwartz:** When the train goes by, the engines create the most noise. The trains themselves, the actual cars that follow, are not nearly as much of a problem and they never have been. I guess if that would have been a problem, we would never have stayed in that area of town. We would have moved.

**Representative Weiler:** Which is louder, the horn or the engine?

**Bruce Schwartz:** The air horn is by far and away the loudest. When you hear it coming from any distance, the first thing you hear is the air horn which is much, much, much louder than the engine itself.

**Gerald Zittelman:** I live in Mandan and this is my third time testifying before the committee on SB 2338. I, like a lot of other residents, who have homes or businesses near the crossings are affected by the constant blare of the horns. In the last five years, we have had to endure this increased horn noise mandated by the federal government for train engineers. The engineers are required to sound horns at all crossings regardless if controlled or uncontrolled unless designated a quiet zone. With the increased decibel levels and the threat of the engineers losing their jobs if they don't sound their horns or don't sound them long enough, this has compounded the noise problem. I have lived next to the first crossing west of Mandan for 38 years and it has just been the last five years that have been a quality of life issue for most of the residents that live out there. I can't be outside on my deck; I can't enjoy a morning coffee or read a newspaper outside; I can't have friends over in the evening for dinner because of the noise level. The horn noise is so bad; sometimes they are blown far beyond the crossing because it is no longer a pull type; it is a switch. They tend to just put it on and let it blare. I have neighbors; one of them is here; they have hearing aids as do a lot of residents near us. It makes life almost impossible to put up with. I like a lot of other taxpayers want something done about this awful noise. Mr. Buchanan from Jamestown talked about it; Mr. Ellison, Mayor of Medora, has talked about the problem with the crossings. I have gone to the musical at Medora. The trains have gone through town and they never lay off until they are all the way through—one constant blare. If you are in the campground, you can hardly stand it. It wakes everybody up. Anybody in a hotel by the railroad tracks has to put up with it and is woken up.

You have testimony from Wayne Kranzler who is a businessman from Bismarck who has soundproofed his building several times and is moving his business away from the downtown area because he cannot continue to do business there. We had very emotional testimony by Missy Rosales who lives up by Fraine Barracks in the same area by Mr. Schwartz. She has a deck and can no longer go outside to enjoy the morning, sit out on the deck, and have a dinner outside. She has the same problem as the 3000 residents of Highland Acres. I represent the people west of Mandan, which is the first crossing out of town, which used to go into the SIS, State Industrial School, now called the Youth Correctional Center. Because of past problems with that crossing and shift changes, the state built a new road coming into the State Industrial School from across the tracks on the other side of the river by the experimental station. They built a brand new road and wanted all of their employees to use that road. Traffic is reduced by 95%; very few people cross that crossing anymore but it is one of the most annoying crossings because it is the first one out of town or the first one into town. Where we sit is in a valley and Lohstreter Addition is on quite a high bluff with a lot of nice homes on it. I went out and walked that area several evenings getting signatures on a petition from angry residents who live over a mile away and have to listen. It goes through the valley and echoes up to the area; it has become an annoyance to them. Our property taxes go up; yet our property values have gone down because of the noise. I will probably never be able to sell my property when I can't take care of it. I have an acre and a half of land; I have spent 38 years restoring a 100 year old house. I don't know how much longer I can take it. I received an email from my brother-in-law in California last night whose neighbor asked how the ND budget stayed in the black and how California should be following the example of ND. I wrote him an email back saying that citizens of ND and our legislative body tackle problems head on. As I was writing things down this morning for my statement, I heard on the TV Congressman Pomeroy's



comments about President Obama's speech last night on the economy and talking about he is going to tackle the problems head one. Pomeroy commented that this was the way ND tackles its problems--head on. I am asking this committee to tackle the problem head on. I know there is some opposition to our bill, but I think the taxpaying citizens of ND and taxpaying businessmen should finally have a say in the matter. This is a quality of life issue. We North Dakotans enjoy many great qualities of life, but this noise problem has taken away from our quality of life. The opposition to this bill is the League of Cities, the Association of Counties and the DOT. I can't understand their opposition. It may be a money matter shared by them all, but I believe the money spent to remedy this noise problem is a good use for the benefit of all ND. Most crossings close to these adjacent areas area already controlled crossings comprised of cross gates, crossing gate arms, flashing lights and bells. Most will only need minor improvements to make them quiet crossings like installation of concrete barriers in the center of these four road crossings so offenders that tend to run the crossings can't get through. This is the problem. There are very few accidents. In the 38 years I have lived at that crossing, there has only been one accident. It was a priest who tried to run the crossing with just an engine and a caboose. He wound up losing. He didn't lose his life, but it picked the car up, turned a 360, set it on the track and the whole end was chopped at the firewall. The engine stopped a mile and a half down the road with the front end and the motor on it. We need to make the noise go away and have quiet crossings. I don't think it is an issue so much for downtown Bismarck; but in Mandan, where we have three crossings, one already quiet by Welk Steel and the other one west of Mandan, won't take much to bring them up to the standards. Fargo taxpayers got a quiet zone enacted before this entire noise problem started. I think they got some federal money. They have had a great success and have reduced the danger to the drivers at such crossings. I understand Governor Hoeven is asking for \$120

million from the legislature for infrastructure improvements and North Dakota's share of the stimulus package from the feds would be approximately \$170 million. \$6.4 million isn't a lot in comparison to the benefits it will have to the affected people with the noise problem. I ask all of you for a "do pass" of SB 2338. I thank you for listening.

**Representative Drovda:** We a lot of times hear about local control and local issues. Have the city councils of Bismarck/Mandan been approached about this? Have the people of the communities voted for quiet zones or not? Exactly what is happening at the local control level?

**Gerald Littleman:** I talked to a few people about it in Mandan. The problem is if we wanted to have this intersection where I am at, to get it closed, because of the reduced rate of traffic, you have to go to the city, to the county, the state and then the feds. I am not going to live long enough to see it closed. That's the problem. The railroads were established first and then we all moved in. New Salem has the same problem. I don't know if there is any answer from the locals. Maybe New Salem and Glen Ullin don't have enough taxpayers to pay for it so that is why this is before you now.

**Ed McConnell, Mayor of Casselton:** We have already started the study process of getting our quiet zone going so we have an idea of what some of the costs are. Highway 18 crossing at the center of town has been estimated at \$350-450,000 because of the way the town is designed just to give you an idea of how expensive they can be. I am sure the people from Fargo are well aware of how high priced they can be. Our other three crossings we can probably do those very reasonably because it will just take medians; the cross arms are in place. We have one crossing we may have to close. That is Casselton's deal. We have 52 trains a day according to railroad statistics coming through town. They have effectively shut down any interaction we have among our citizens in our downtown area. Our forefathers built our town along the railroad, like every other town in ND. Rather than putting everything a

block away, they put it a half block away so there are businesses on both sides and they are very close and intimate with the railroad. I really don't have much else to say, but the City of Casselton, the development authority and the business association would highly recommend that this bill be passed. We would enjoy your support. Thank you.

**John Risch, United Transportation Union Representing Railroad Workers: (Testimony 8)**  
(40:32-45:50) (He also submitted (Testimony 9) from Wayne Kranzler, Kranzler Kingsley Advertising.)

**Representative Weiler:** Thanks for bringing this bill forward. I have a question on section 2, the grant money. Do the grants need to be applied for by August 1, 2011 because as I read this, I see that any unused money goes back to the highway trust fund. I am just wondering if indeed \$6.4 million gets put into this highway safety project fund, do they have to apply for it by August 1, 2011 or otherwise whatever money is left over goes back or does the money stay in the fund until it is gone?

**John Risch:** No, any excess money will go back into the highway trust fund.

**Representative Weiler:** So they have to apply for it by August 1, 2011?

**John Risch:** The way I understand it, it is not an actual expiration date. The way that I understood it was that anything left over would go back into the highway trust fund.

**Representative Weiler:** How about if it is applied for but not yet granted? Is the deadline August 1, 2011?

**John Risch:** I don't know.

**Representative Weiler:** Why was the amount of \$100,000 used? Was that based on your 50 crossings you have on your list?

**John Risch:** The Senate Finance and Tax Committee struggled with the bill. Originally the bill did not include any cap per community or amount per crossing. It was just a 90-10% match

and the 90-10% match was modeled after the C130 funds from the federal level. They came up with that number because they thought there would be a great deal of demand for this and they didn't want one or two communities getting all the money. They wanted to have broader impact.

**Representative Weiler:** But they understand that Fargo has already done this so that will leave more money for the rest of us.

**John Risch:** There are three more crossings in Fargo that could and one is right by some apartment buildings too.

**Representative Weiler:** As far as Representative Drovdal's question, we had it on the ballot in Bismarck and it went down. But the reason it went down was because it was so costly. We are not necessarily saying we have to have the Cadillac like Fargo does.

**Representative Grande:** The Cadillac's in Fargo are due to the fact that it is from Main and First and the traffic level was so high that it was required that that type of crossing be blocked at that level because of the number of accidents that have taken place in those areas. It is mostly pedestrian traffic that is the problem and not cars. In speaking with a business owner, as technology has allowed while this hearing has been going on, business owners around Fargo were all taxed into the thousands of dollars and paid for themselves with no vote of the people and all protested the tax increase. No it was not the choice of Fargo to do so.

**Representative Winrich:** You said the train whistle is in excess of 100 decibels. I seem to remember that 100 decibels is the threshold where there is serious risk of permanent damage to hearing. Are the engineers required to wear hearing protection?

**John Risch:** Yes, we are required to wear hearing protection. That is a recent thing. I have been an engineer for 30 years. I think if I had started wearing protection 30 years ago, I would

have been okay. Yes 100 decibels is very loud. There is a maximum, but I don't recall. I think it is a maximum of 110 or minimum of 95, something to that effect for whistles.

**Mike Muscha, Brotherhood of Locomotive Engineers and Trainmen across ND:**

**(Testimony 10).**(53:18)

**Representative Froseth:** What kind of signal do they when you come to a quiet zone crossing?

**Mike Muscha:** We have a rule book that would notify us of the quiet zones we have in our working district and it will tell us we don't have to blow there. Otherwise every crossing has a whistle post one quarter mile away that signals us to start blowing and we will continue through the crossing. It is in our rule book.

**Representative Schmidt:** I see that folks in Minnesota have really been aggressive and that state has a lot of people. Do you drive a lot of trains through Minnesota? Minnesota must spend a lot of money on quiet zones.

**Mike Muscha:** Yes, they do. I think it is on page 6 or 7, but Wisconsin is very aggressive also. I was wondering how many were "pre" the new rule making, but it will say that. Fargo is designated as "pre" rule. Fargo is new but it was before the rule I believe. If you look at Minnesota, there is new and partial and "pre" rule. In answer to Representative Grande's question, Fargo was kind of the poster child. It was before the rule; that is why they got federal funds. It was probably some tracking to see about putting in the Cadillac or the Volkswagen like Senator Nething said. They probably put on some of the crossings that go (inaudible).  
(55:53).

**Representative Schmidt:** I notice Minnesota is in bad shape. Maybe they overdid it. We are in good shape.

**Chairman Belter:** Any other testimony in support of 2338? If not, any opposition to SB 2338?

**Bob Fode, North Dakota Department of Transportation: (Testimony 10).**

**Keith Magnusson, ND League of Cities:** We are not opposed to quiet zones because if you have been to the League of Cities office, it is right next to the tracks in downtown Bismarck but we are objecting to the method of funding. This is another deferral of money now going into the highway tax distribution fund and that is shared by the counties, cities and state. Under the new formula that has gone through both houses and different bills, it is also shared with the townships and transit. It may not seem like it is that much; but there are many other bills that are also aimed at deferring revenue from cities like the sales tax bills you have been hearing. Cities and counties that have home rule have sales tax and if you do a sales tax exemption, it takes some of that money away. This defers it. I know I have heard that with the \$120 million general fund money coming in, this is just a drop in the bucket. From my previous life with the DOT, I remember just before I retired, there were \$138 million of projects that weren't done that were planned on because of increased costs. This \$120 million that is put in is shared by DOT, cities, counties, transit and townships and it doesn't even bring you back to what they had to defer in projects before. It does set a precedent if you start deferring funds that go into the highway tax distribution fund now. Again we are not against quiet zones, but we are against the method of funding.

**Mark Johnson, ND Association of Counties:** Somebody had indicated that we were opposed so I guess I had better stand up here. We are not opposed to quiet zones. We are all for safety. You understand that. The local elected officials want that. What they really want are livable communities. What the quiet zone in Fargo has done is make it more livable. I applaud Fargo for doing that. What we are doing here though, which is why I am asking you to be careful and thoughtful about this, is starting another diversion for the highway trust fund. We have worked diligently, you the legislature, the cities, the counties and the state highway

department over the last 20 years to try to reduce the number of diversions. It started way back when they decided to fund the highway patrol out of the highway distribution fund. Then it got larger and larger. I think we got up to \$24 million of highway distribution funds that went to the highway patrol. I think we are going down a slippery slope here. I would urge you not to consider the highway distribution fund. It has a formula that is based on supporting cities, counties, and state highway programs. For that reason only, if you want to fund these quiet zones or help local communities with quiet zones, then I think we need to find another source. That is all I am saying.

**Bruce Chambers, ND Farm Bureau:** We do not have any objection to quiet zones, but we do have objections to the funding source. We have a policy that says gas tax money, fuel tax money should go for maintenance and construction of roads. That is our position and I will stand for any questions.

**Chairman Belter:** Further testimony in opposition of SB 2338?

Any neutral testimony? If not, we will close the hearing on SB 2338.

# 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2338

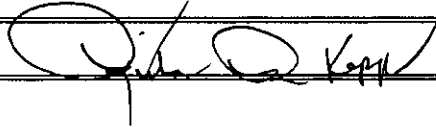
House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: March 3, 2009

Recorder Job Number: 10077

Committee Clerk Signature



Minutes:

**Chairman Belter:** Committee to order. 2338. The quiet zone. What are your wishes on the quiet zone?

**Representative Grande:** If I may offer amendments, Mr. Chairman.

**Chairman Belter:** Representative Grande, would you like to explain your amendments.

**Representative Grande:** What this does is it just adds onto the end of the bill that this fund would also accept grant applications for political subdivisions that have already completed their rail grade crossing safety projects as a part of the quiet zone. Of those projects, if money is granted back to that political subdivision, the money would be returned back to the persons who paid for it, not to be just kept in the coffers of the political subdivision. It goes back to the people who paid for it. Everything else in the bill stays the same.

**Representative Weiler:** Have you run this by the bill sponsor?

**Representative Grande:** No, I have not. The bill is in our jurisdiction so we have the ability to amend.

**Representative Wrangham:** Is there a process that would make this possible to get this money back to the people who paid them? I am not sure how that could work.



**Representative Grande:** The process would be the same way that they took the money from those businesses and that was in a special assessment of property taxes so they would know exactly what they charged each of those businesses so then they would be able to pay that back to them.

**Representative Froseth:** Each quiet zone, how many do you have in Fargo?

**Representative Grande:** I think we have five.

**Dave Anderson:** Technically there are two zone areas, one assessment district.

**Representative Froseth:** So how do you determine how large the zone should be and what benefits those specific property owners in that zone got over and above the ones... Do you differentiate between those closest to the tracks and those further out have to pay less or how do they do that? How do they specify who pays what taxes in that zone?

**Representative Grande:** I don't recall exactly how they did it. I know there were public hearings on it and it was mapped out exactly who was going to be special assessed exactly what, but I don't know how far they went out. I did not attend the public hearings on it, but I know there were a number of hearings that took place for the press/meetings that public input was given to as the assessments were being assessed. Each of those businesses knows exactly how much they have paid in this.

**Representative Froseth:** You have two zones; those amount to \$200,000 a unit. (05:19)

**Representative Grande:** I would guess either that or per gate; I don't know how that works. I would have to go back into the bill itself as to how they have to apply for the grants because that is how the process works, each person did it now so the grant under this section so each single quiet zone; it might just be that there would be the two or they did it per gate, but there is a limit on how many you can get per area anyway per project. There is a limit in the bill already.

**Chairman Belter:** One of the questions I have is in trying to read the bill here , the way your language, it says "the department shall make grants available to the political subdivisions that have completed" and I am not sure that I am reading that they necessarily shall make grants for those who have not.

**Representative Grande:** It is only that they have to make the grants available; they have to make it available to them to apply; they have to apply or it is just like everybody else; the date of this act; (inaudible) that is the way that they would do it.

**Chairman Belter:** Any other questions?

**Representative Headland:** In an earlier conversation with the bill sponsor in a discussion about Fargo, he pointed out to me that Fargo has already received state money somehow through DUI and he wanted to make sure that if we amend this bill that this grant would not be any larger than the local jurisdiction's outlay. I don't know that this amendment; does this amendment state that?

**Representative Grande:** With the amount of money that is coming back versus the cost, it doesn't begin to cover it so I don't think there is a double dip if that is what you are referring to. I don't think there is the amount that could be double dipped, especially if they only get two zones.

**Representative Weiler:** You refer to GUI which is?

**Representative Grande:** DUI - Driving under the influence. I don't recall that we received any of that money. I know that we received \$1,000 in federal dollars is all. (08:20)

**Representative Headland:** I am not sure but he indicated state money was part of the process.

**Chairman Belter:** If you want to come up and address the group.

**Dave Anderson, Downtown Community Partnership:** There were probably four or five levels of funding including some federal funding, some state funding, some local resources as well as special assessments at varying levels for the overall cost of the zone, which was in excess of \$3 million I believe for the construction of all of the crossings within the downtown area. There is one zone in downtown Fargo and one assessment district. My recollection is that the special assessment that went to the business properties and so forth was a "per parcel" so it was a uniform assessment that went across the board. With a little bit of time, I could get you the details on how that worked. It may be possible that we would hit a threshold if you do have a threshold per community. It may be that if we are just going after a reimbursement of what that special assessment was, we may reach that threshold because through the special assessment effort and these other funds, we were able to cut the special assessment in half. But I would have to get those numbers to be sure. Yes, within five minutes, I probably could. I would be glad to make a couple of phone calls.

**Representative Froseth:** It would be interesting to know how much state funding you got because under this bill, apparently all these new quiet zones, all they will get is \$100,000 in state funding. If you have gotten \$100,000 in that amount, you basically got as much money as any city will get under this new legislation.

**Dave Anderson:** You may be right there. We did get safety funds that may have been derived from the DUI funds. With a phone call, I could probably get the accounting that is available from the city auditor for those five (I believe it is five) line items for the revenues that would support the project.

**Representative Grande:** Can you check then the funding is that grants for a single crossing may not exceed \$100,000 per and for the city not to exceed \$500,000 so those are the dollar amounts we are looking for.

**Chairman Belter:** Does anybody else have questions? In other words, we are done for the day.

**Representative Weiler:** In five minutes he said he would have the information.

**Chairman Belter:** Well I have to go testify on a bill at 2:30.

**Representative Weiler:** Mr. Chairman, I wouldn't mind speaking with the people who brought this idea before us. I understand Representative Grande's concerns and there is some validity to it.

**Representative Weiler:** I went and bought hamburger at the grocery store last week and two days later it went on sale. I didn't get mad at the grocery store.

**Representative Grande:** Did you bring your receipt in because they will reimburse you.

**Representative Brandenburg:** We should find out though if it was equal what was done because it is a matter of fairness.

**Chairman Belter:** We will do that and we shall return to that. Thank you for all coming down here and we shall get back here tomorrow.

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2338

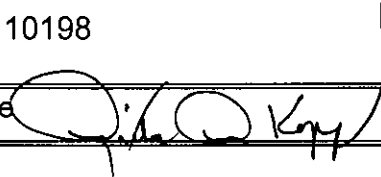
House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: March 4, 2009

Recorder Job Number: 10198

Committee Clerk Signature



Minutes:

**Chairman Belter:** SB 2338. Where were we at on that?

**Representative Drovdal:** We had an amendment presented.... We were waiting for some information from Fargo.

**Representative Grande:** Federal dollars were in at \$751,000. Fargo General Fund \$475,000, Fargo Special Revenue Fund \$100,000, City Share Special Fund \$724,750, Special assessments on businesses \$250,000. You were asking about state and there were no state funds.

**Chairman Belter:** Yes, there was.

**Representative Grande:** It was a federal DUI program; that is what Mr. Bittner said.

(General discussion on whether the DUI program is federal or state.)

**Representative Froseth:** Is that part of the money that goes into that Highway Rail Grade Crossing Safety Project Fund?

**Chairman Belter:** We don't have to act on it today.

**Representative Grande:** There were over a million dollars in funds paid for by the city. I don't know how you want to do; that is fine if you want to take the Fargo ones off. I would just

further amend the bill then to state that anyone who accepts funds from here doesn't get any other state funds in any form either.

**Representative Weiler:** I have some amendments that I would like to explain before I pass them out. The information that I received was that there was \$750,000 of state funds given towards this project. The amendments that I have, because the City of Fargo would have gotten \$500,000 from the state maximum under the current bill, the amendment that I will pass out in a minute calls for the City of Fargo to return \$250,000 to the state.

**Representative Grande:** Go for it.

**Chairman Belter:** To keep peace in the family, I think we will delay action on this bill and everybody can recheck their figures. Quite frankly, I don't care if it is \$750,000 state or federal; the fact of the matter is that Fargo got a pretty good plan, but we could clarify that.

**Representative Grande:** I don't think Casselton is going to pay for their whole thing themselves. Obviously they are going to apply for grants of other forms too and that is all that Fargo did. If you look at the numbers that were handed out by the United Transportation Union; if every single crossing guard goes up across the state, there is still money left over in the fund even if we did reimburse Fargo—with money left over.

**Chairman Belter:** We will give everybody the opportunity to get their figures together and we can talk about this week. We will adjourn and we will see you next week. I have never done this before but we are going to schedule a bill for Monday afternoon—the property tax. The Lt. Governor has got 1400 all morning in Senate Education and he wants to be here for 2199 so I said we would schedule it for the afternoon. We are still meeting in the morning at 9:00. Don't forget to change your clocks. (Recorder left on.)

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2338

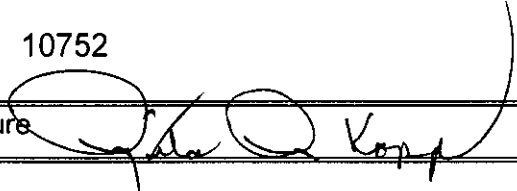
House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: March 11, 2009

Recorder Job Number: 10752

Committee Clerk Signature



Minutes:

**Vice Chairman Drovdal:** I have some amendments; you are going to replace lines 1-21.

What it does is leaves the money that goes into the highway trust fund as is and it just states that this is a priority. We are telling the highway department, DOT, that funding this is a priority. The reason behind this is that if there are any stimulus dollars out there, the state could use instead of the general fund dollars, we wouldn't have to mess with that formula and it makes it a priority. The other thing it does is it will put it in a conference committee and by then we will know whether we will see any money or not. If there isn't any stimulus money, we may end up going back to what they recommend here. But this would take the formula out of it and just say we set up the program, no city can get more than \$500,000, no project can cost more than \$100,000; we are not putting in more than \$100,000 per project. But it sets this as a priority instead of putting money aside right now. It will have that effect of putting it into a conference committee and by then, a month from now, we may know if there are stimulus dollars available. If there is not, I would guess that they would put it back into the original form and we will get a chance to vote on it on the floor, whether we want this or not (inaudible).

**Chairman Belter:** This bill doesn't give us an alternative, does it? You are looking for stimulus money; if you can't find stimulus money, its.

**Representative Drovdal:** It just says it is a priority. It doesn't say stimulus money.

**Chairman Belter:** But it does say it is a priority.

**Representative Drovdal:** It just says we think this is a worthwhile project and this is how we think it gets set up, but in effect what it will do is get it to conference committee.

**Representative Winrich:** But that is the stimulus money, isn't it? American recovery and ...

**Representative Drovdal:** Does it say that? Okay, then it does say that so it tries to make it a priority with stimulus money.

**Chairman Belter:** But you don't want to make it either or. If it is stimulus money, fine we will use it, but if we can't, we will take it out of the railroad funds.

**Representative Drovdal:** Yes, I didn't make it either or; I guess you could make that amendment but I made it basically to get it into conference committee and then we will know if there is stimulus money available, if we can use it or not.

**Representative Winrich:** So this is just a move to get it into a conference committee?

**Representative Drovdal:** Basically to get it into conference committee and see if we can make better use of stimulus money and have our money for other projects, but when it comes out of conference committee, we will know whether we can use it by then. The rules and regulations hopefully will be drawn on the stimulus money and we will have a better idea of how we can make use of it. This is basically to get it into a conference committee and look at it again.

**Representative Grande:** Just a question on procedure only. Conference committee—if we did a different amendment than this and that sent it to conference committee and then we used the stimulus. Could you still change the formula in conference committee or does it have to be either or of the amendments that are in front of you in conference committee? Can you further amend in a conference committee?



**Chairman Belter:** You are not supposed to but you can. (People talking over each other.)

Representative Drovdal, I guess I am going to resist your amendment unless you want to redo it and leave it as either or.

**Representative Drovdal:** Either or. It won't get into conference committee then.

**Chairman Belter:** Mr. Chairman, I guess what I am thinking is that listening to the stimulus package, once we start clearing something and make money available, we can't go backwards so if there is money available, we can go back anyway and use stimulus. We have to use what we appropriated so it would be off the table. I am not sure that is exactly correct, but then nobody really knows what is exactly correct.

**Representative Froseth:** If we are going to make this a priority, what if requests come in to put cross arms at every railroad crossing across the state? You would use up that \$180 million earmarked for transportation and road improvements for cross arms.

**Representative Drovdal:** I don't think we would have any cross arms.

**Representative Froseth:** For safety status, there could be just about every railroad crossing in the state needing cross arms across the road.

**Chairman Belter:** Well, we have your amendments here.

**Representative Drovdal:** I guess if you want to make a motion (inaudible).

**Representative Schmidt:** I hope we get it to conference committee because I do know that the highway department gets federal funds from the federal government for safety. They have used it before. We should find out before how much federal funds they have to use. They should use safety funds; this is safety. Why aren't they using safety funds here instead of taking it out of the highway distribution funds? If we get to conference committee, we can make them....

**Chairman Belter:** I think the problem with using safety money, as I understand it, is there is a problem with just the state going and saying we want \$6.4 million or whatever it is of safety money to use for highway crossings. As I understand it, it almost has to be done on an individual city by city project and that becomes very cumbersome. That is one of the reasons why they went to this. I think Senator Nething did explore a lot of avenues in trying to get this thing put together. This is what he finally came up with.

**Representative Pinkerton:** I applaud Representative Drovdal's efforts to use stimulus money on this, but my understanding is there are plenty of places for the Department of Transportation stimulus money to go. This is a pretty good deal for some of those communities built on railroad tracks. I think we should just not muddy the water with it at this point and move it on through.

**Chairman Belter:** Do you wish to move the amendment?

**Representative Drovdal:** I will move it just for the sake of it and they can do what they want on it.

**Chairman Belter:** **Representative Drovdal made a motion to move the .0404 amendments. Is there a second? Motion fails for lack of a second.**

**Representative Grande:** Mine were the .0402 amendments and they state that the Department of Transportation shall make grants available to a political subdivision that has completed a highway rail grade crossing project as a part of a quiet zone. The grant money has to go to the political subdivision that received the grant under this section and shall provide a refund with the proceeds to the person whose special assessments and then property taxes were the source of the funds for the quiet zone. What that says is it just makes it available that Fargo would be able to apply for the grant. If the department happened to grant them the grant, then the money goes back and has to be redistributed the way it was collected; first

came special assessments back to the businesses that paid for it. If there was money left over, it would go into their property tax relief that went into paying for those. You don't have to worry about it going out that far because the money going back doesn't cover how much they paid so that is all the farther it needs to go is actually the special assessments. They will run out of money.

**Chairman Belter:** Do you know how much money we are talking about?

**Representative Grande:** It is maxed out in the bill; the bill says that it can only be \$100,000 per crossing arm and it is maxed at \$500,000. I am half guessing; the specials were \$725,000 and other assessments were \$250,000 so it doesn't cover the expenses of the businesses, but it least it covers a portion of it back to the business owners.

**Representative Winrich:** Did we ever get a clarification on the dispute over whether the \$700,000 in aid was federal money or state money that was given to Fargo for this project? I thought either Representative Grande or Representative Weiler was going to find out.

**Representative Grande:** ND DOT noted that there were no state funds in the quiet zone funding in Fargo. The safety funds that were provided were entirely federal funds. That comes from the Department of Transportation; that also matched up with Mr. Sprague from the City of Fargo's notes, stating that same thing; that it was federal funds. I think you received that same information—that there were no state funds to apply for.

**Representative Winrich:** Is that federal program still available to municipalities that want to do this? Are those federal grants still available?

**Chairman Belter:** I don't know.

**Representative Grande:** I don't know which ones were applied for.

**Chairman Belter:** Well Representative Grande, will this?

**Representative Grande:** Will it affect the other ones? No, it won't and because, I can only go off of Mr. Risch's notes here, but he goes into an explanation in his testimony and I refer (?) to his testimony. As far as the potential number of crossings goes, that will depend on the communities applying for the grant money. The rough estimates are as follows and he lists out 51 crossings. The issue with that if you go back and look at the list is that Bismarck is listed as eight crossings, but you are maxed out at payment for five because you can only have \$100,000 up to \$500,000 so you take three off of the 53 there; Minot is listed as having eight crossings; they again would max out at five so you take off another three there so you are at 48 crossings. Fargo is already listed in there for two; but if you add back three, you go to 48 crossings. The funding mechanism here will cover 64 crossings so currently there would be money left for more crossings if some are not listed here but they have Tioga, Steele, New Salem, Medora, and Casselton has three.

**Chairman Belter:** Does this amendment give Fargo equal access for the funds?

**Representative Grande:** They have to apply just like anybody else would. It would be up to the Department of Transportation to determine if our goal is to get it though. DOT has to decide if they are going to give it to us. I always thought that I was at a train stop when I was driving truck at Leonard; I don't see Leonard on here, but they do have Casselton for three of them. I only remember going over the one track when I was driving truck.

**Chairman Belter:** There are two.

**Representative Grande:** But I just don't see that we are going to run out of money covering this. That is accounting for everything they are coming up with and you would still have money for 16 more. I move the amendments.

**Chairman Belter:** **Representative Grande has moved here amendments .0402.** Is there a second? We have a second from Representative Brandenburg. Is there any discussion?

**Representative Headland:** I don't know if I am for or against the amendments, but do we have the possibility of losing the bill if we send it back to the Senate?

**Chairman Belter:** Well you always have that possibility.

**Representative Headland:** I think this is pretty important. I think rather than running the risk of maybe losing it, we ought to send it out the way it is.

**Representative Grande:** I don't know if you have the opportunity of losing it; you have the opportunity of them taking it to a conference committee and the amendment coming off or taking it to conference committee to get the stimulus put on. If you send it out as it is, you don't have that opportunity.

**Representative Drovdal:** You don't use much argument when you wouldn't even second it.

**Representative Grande:** That is why I asked the question early about the (?)

**Representative Drovdal:** I don't know what to think of the thing either. They got \$3 out of every \$4; they got \$750,000 out of a million help from the safety program if that is correct. It was a \$750,000 grant that came through from the federal and they were assessed at \$250,000 to pay for their share of it plus a million dollars so they got \$3 for every \$4 and those are dollars that I lose when I qualify for it because they are no longer there. I would like to know if that program goes through DOT and was administrated out so they did get assistance on it. They built better crossings than what we were shooting for so the additional costs would be met. If this bill would have been available; they may not have qualified for the \$750,000 and it would have cost them a half million dollars to do it.

**Representative Grande:** I don't know what the total cost of the project was to be honest. It dealt with five or seven crossings. How many crossings did you put in? Do you remember,

Dave? How many crossings did we put in?

**Dave Anderson, Downtown Community Partnership:** I believe it was seven.

**Chairman Belter:** So you got your \$100,000 per crossing.

**Representative Grande:** Well you can apply for federal dollars too if you want it. It is just an effort on the side of the city. I would hope that the cities that apply for this do everything they can to find every form of grant because \$100,000 is not going to put them up safety arms. As far as the expense, we had to put up that expense because of the traffic levels because we had to put in the pedestrian arms too. I don't know if a lot of these are going to require pedestrian arms. I think the Jamestown ones will, but that is about it but ours required the extra and more expensive ones because of the location and where they are. The big danger that we had in the safety zone was more on pedestrians getting in the way of the trains than cars. This isn't just a noise issue; this is a safety issue and that is what prompted Fargo's was more on the safety side.

**Chairman Belter:** Any more discussion? All those in favor of the **Grande amendments** signify by saying aye. **Motion defeated.**

**Representative Grande:** I am really disappointed and I find it very self serving that people wouldn't allow that to go on. That's my comment.

**Chairman Belter:** What are your wishes on SB 2338? We have a motion for a "**do pass**" from Representative Headland and a second from Representative Drovdal. Any discussion?

**DO PASS/REREFER TO APPROPRIATIONS 10AYES, 1 NAY, 2 ABSENT/NOT VOTING  
REPRESENTATIVE DROVDAL WILL CARRY THE BILL.**

**Representative Grande:** Mr. Chairman, I just reserve to you that I will change my vote on the floor.

**Chairman Belter:** We will rerefer to appropriations.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2338

Page 1, replace lines 1 through 21 with "A BILL for an Act to provide for priority funding status for highway-rail grade crossing safety projects from federal stimulus allocations to the state for transportation projects.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. PRIORITY FUNDING STATUS FOR HIGHWAY-RAIL GRADE CROSSING SAFETY PROJECTS.** For funds allocated to this state under the American Recovery and Reinvestment Act of 2009 and designated for transportation projects, priority status must be given to funding highway-rail grade crossing safety projects, including development of railroad quiet zones, installation or upgrading of active warning devices, resurfacing crossings, building of grade separations, and other costs associated with these improvements. Funding of projects given priority status under this section must be provided by grants or participation by the department of transportation."

Page 2, remove lines 16 through 18

Renumber accordingly

Date: March 11, 2009

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2338

House FINANCE AND TAXATION Committee

Check here for Conference Committee

Legislative Council Amendment Number Drovdal .0404 amendment

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Drovdal Seconded By \_\_\_\_\_

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter			Representative Froelich		
Vice Chairman David Drovdal			Representative Kelsh		
Representative Brandenburg			Representative Pinkerton		
Representative Froseth			Representative Schmidt		
Representative Grande			Representative Winrich		
Representative Headland					
Representative Weiler					
Representative Wrangham					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

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

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

*Motion Fails*



PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2338

Page 1, line 3, remove "and" and after the second "date" insert "; and to provide for application"

Page 2, after line 18, insert:

**"SECTION 4. APPLICATION.** The department of transportation shall make grants available to a political subdivision that has completed a highway-rail grade crossing safety project that is part of a quiet zone in the same manner as grants for projects developed after the effective date of this Act. A political subdivision that receives a grant under this section shall first provide a refund with the proceeds to the persons whose special assessments, and then property taxes, were the source of funds for the quiet zone."

Renumber accordingly

Date: March 11, 2009

Roll Call Vote #: 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2338

House FINANCE AND TAXATION Committee

Check here for Conference Committee

Legislative Council Amendment Number Grande 10402

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Grande Seconded By Brandenburg

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter			Representative Froelich		
Vice Chairman David Drovdal			Representative Kelsh		
Representative Brandenburg			Representative Pinkerton		
Representative Froseth			Representative Schmidt		
Representative Grande			Representative Winrich		
Representative Headland					
Representative Weiler					
Representative Wrangham					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

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

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

Motion Defeated

Date: March 11, 2009

Roll Call Vote #: 3

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2338

House FINANCE AND TAXATION Committee

Check here for Conference Committee

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

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Headland Seconded By Drovdal

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter	/		Representative Froelich		
Vice Chairman David Drovdal	/		Representative Kelsh	/	
Representative Brandenburg	/		Representative Pinkerton	/	
Representative Froseth	/		Representative Schmidt	/	
Representative Grande	/		Representative Winrich	/	
Representative Headland	/				
Representative Weiler					
Representative Wrangham		/			

Total (Yes) 10 No 1

Absent 2 (Froelich + Weiler)

Floor Assignment Rep Drovdal

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

Refer to Approp.

**REPORT OF STANDING COMMITTEE**

**SB 2338, as engrossed: Finance and Taxation Committee (Rep. Belter, Chairman) recommends DO PASS and BE REREFERRED to the Appropriations Committee (10 YEAS, 1 NAY, 2 ABSENT AND NOT VOTING). Engrossed SB 2338 was rereferred to the Appropriations Committee.**

2009 HOUSE APPROPRIATIONS

SB 2338

# 2009 HOUSE STANDING COMMITTEE MINUTES

SB 2338

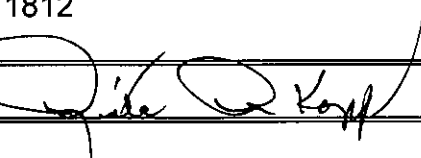
House Appropriations Committee

Check here for Conference Committee

Hearing Date: April 9, 2009

Recorder Job Number: 11812

Committee Clerk Signature



Minutes:

Rep. Dave Drovdal: The House Finance and Tax Committee listened to testimony on SB 2338 which relates to quiet zones for railroad crossings. What we heard from across the state of North Dakota is that a couple of years ago the federal government changed the decibel volume of the train whistles as they approach crossings. They also put a mandated time on it. When they blow that whistle, they can't make a choice during the evening to blow it at half volume. It has to be at full volume. We found out that the federal government and the requirement of the decibels made it loud enough that they could wake a dead drunk out of his grave so he would move off the tracks. Unfortunately it rattles the windows within three blocks of anybody who lives close to a rail crossing. It has deteriorated the quality of life for the people in that area. We also heard that in many communities they have gone to a vote of the people to fund a quiet zone railroad crossing. Not only does it stop cars from being able to go across; it stops pedestrians. It costs from \$90,000 to \$500,000 per crossing depending on the style. What they found out on the vote was that the people close to the tracks wanted this, but the people living five, six, seven blocks away didn't want to make the investment so they were having a struggle in passing this. Fargo did manage to get it done, but they did it because there was about \$500,000 in federal money and a couple hundred thousand in other money to help them out. That money is not available to other communities across the state of ND. After listening

to testimony and realizing the effect it is having on a residency. This includes large and small towns. Medora hosts 250,000 people – the #1 tourist attraction. Those people all stay within about a block of these railroad crossings so it has caused a lot of problems there and in a bunch of other areas. We also learned that the railroad trains are coming in as often as every 20 minutes and having to blow these horns. It is something that is going all night long, all day long. The way the bill came to us was \$6.4 million is taken out of the tax paid by the railroad companies for diesel. That equivalent to \$4 million from the highway distribution fund and \$1.5 million out of counties and about \$900,000 out of the city distribution fund. We discussed this issue. There was an amendment to take the money out in order to make sure that this bill gets into conference committee. Maybe it could use the stimulus package. They rejected that idea. Basically we decided we are there for the policy. It is up to appropriations to see how to fit it in, if they can and how they can. We did not change the formula as it came to us. One of the reasons we talked about taking it out of general funds, but it was pointed out to us at that time that \$120 million was going into the Highway Funding Program so we decided we would leave this up to appropriations. We did not consider a match or a smaller bucket of funds for them to apply for. What it does is allow a subdivision to apply for up to \$100,000 per crossing (no more than the cost of course) and up to \$500,000 total from any one political subdivision. It does sunset it at two years and any money that is in the fund that is not spent or committed to a crossing would then go back into the highway distribution fund. That pretty well summarizes the vote. It was 10 to 1 with 2 people absent so it did have a good strong vote and we did recognize the need. The time was right, we thought, to do it. That is the recommendation of the Finance and Tax Committee. If I can answer any questions or if I missed anything, I would be glad to do so.

Chm. Svedjan: Could you give us any idea on how many crossings could this fund based on the ranges you have given us?

Rep. Drovdal: The maximum they get per crossing is \$100,000 so that would be 64. It may be higher if some of the work has been done already. Maybe they have the arms and some of it done so it may be higher than that. That would be the maximum amount of crossings and there are definitely more crossings than that across the state of ND. Medora has four. How many does Bismarck have? Quite a few. 64 would be max.

Rep. Hawken: (6:02) I'm wondering if we shouldn't be looking at the transportation bill first. If in fact we do end up putting a good chunk of our general fund money into the DOT budget, then I would be much more inclined to vote for this bill. But if I don't know that and it is coming out of the highway distribution fund, that makes it a little bit more difficult to approve it. It says in the bill that it's the safety fund, but it is my understanding that that is incorrect, that it is actually the highway distribution fund. Is that correct?

Rep. Drovdal: That is what was told to us—that it was the highway distribution fund and that is what the fiscal note said. I should add that the only opposition we had from anybody was where the funds were coming from.

Rep. Kaldor: (6:58) What kinds of apparatus suffice to ensure safety and meet the safety requirements? Are there lights and cross arm combination of things that are required?

Rep. Drovdal: There are federal regulations and they include, I think, all those plus some levers that come up to stop traffic from going around. There is some stuff for pedestrians.

Rep. Ekstrom: To clarify that, they narrow lanes and put in median strips to prevent people from going around the arms. There is roadwork involved in this as well.

Rep. Nelson: The source of funds, is that 2 percent of each gallon of diesel fuel?

Rep. Drovdal: That's correct.



Rep. Nelson: That source of funds is just what the RR uses because there are a number of other non-road uses for diesel like home heating fuel and things like that. That's a different special fund I'm assuming.

Rep. Drovdal: That's what we were told; it's just the money paid by the railroads for use of diesel.

Chm. Svedjan: I want to go back to Rep. Hawken's question. Rep. Delzer, can you give some insight on that.

Rep. Delzer: There's been a proposed amendment handed out that deals with 2338 and that has to do with what happens with the Transportation budget. I too think this is a pretty valid issue to be dealt with. I had concerns with how many you would get done. I can't imagine that everyone is jumping at the bit to do this. I talked to some members at the Tax Department and the Highway Department about it so they are aware of it. The amendment would take the \$6.4 million down to \$1.6 million, which is a fourth of this tax revenue for two years. It would supplement it with \$900,000 of safety money, which there are some concerns about. My understanding is it can be used for crosswalks if they are not there so we think we can make that work. It would make available \$2.5 million for the next two years. There were recommendations that we go from \$100,000 to \$75,000 per crossing (nothing about a match; whatever works works) and that we limit each community to \$225,000, which would be three crossings. That is what these proposals would do.

Rep. Glassheim: What is the cost to do one crossing?

Rep. Drovdal: \$90,000 to \$500,000. Fargo's were \$342,000 but they did some other fancy stuff to mix and match it in, but the range was \$90,000 to ?

Rep. Glassheim: You couldn't get anything done with these limitations. Certainly if the amendment passes, you are going to get up to \$225,000 so you might get one done. If there

is a series of things in the city, you can't do one. You have to do two or three or four in order to get the feds to let you not blow the whistle. I am not sure it will work at any lesser amount.

Rep. Delzer: This is the first time in my discussions I've heard the \$90,000 to whatever. I've heard they can be expensive. I have also heard they may not be expensive, depending on where they are at and what the level is you are going from. The issue is what this would do to the DOT budget if you take the \$6.4 million out of the highway distribution fund. This is an effort to move this forward and I can't speak for anybody else, but I can't support it if we leave the \$6.4 coming out of the highway distribution fund. I think I could support it at this level. Is it perfect? Certainly not. Will it work? I would hope so. Can I guarantee it? Certainly not.

Rep. Kreidt: (12:47) How will the decision be made as to who receives the funds?

Rep. Drovdal: The first ones to come in will get first priority until the funds are gone, until the \$6.4 million is gone, whichever way it is approved. A general comment on the concept, the Finance and Tax Committee really would like to see this move forward as just a beginning program to see how it is received. A lot of times we like to see the locals put in some money and, of course, they do have some responsibility. So if the \$75 million (meant thousand) would get them started and complete them, that would probably put them over the level where they would do the project.

Chm. Svedjan: That would be \$75,000.

Rep. Kaldor: (13:49) One of the concerns is how they would be distributed and also the criteria. I live within about 5 blocks of a railroad crossing and my wife reminds me many times a year about how angry she gets when the whistle wakes us at 5 am. I've got friends who live miles and miles away from crossings who will be affected by the distribution dollars coming out of transportation so I am really torn about this. I like the idea, but it seems like there should be some kind of development of a process so that crossings that are near residential areas, for

example, or maybe in industrial areas—there should be criteria so we don't put money into an area that really isn't affecting that many people or isn't affecting people in their homes. Did your committee discuss that all?

Rep. Drovdal: We have faith in the political subdivisions, that they are not going to be out there throwing money away on projects even if they get some good funding for it. We felt that that would not be a problem.

Rep. Klein: Haven't some of the communities already voted against this?

Drovdal: I think I mentioned in my testimony that that was a factor. They were having a hard time getting voters away from the train to realize how serious the problem was. Jamestown has voted once on it. Fargo voted and passed it. Bismarck voted and it failed. I can't speak for any others. I know those two did vote and it did fail; I can't tell you what percentage of the vote was.

Rep. Onstad: (16:11) \$6.4 million is a one-time draw down. It must be based on how many crossings anticipated it would do for the \$6.4 million. How many was that?

Rep. Drovdal: I think it was based more on how much would come in off the tax on the diesel fuel that the railroad gets. It would do a maximum of 64 if everyone applied for \$100,000; but if they were half through and the cross arms they currently have are good enough and the lights are good enough to qualify, they just have to do the other work. They may not have a \$90,000 bill.

Rep. Onstad: Was there any discussion on if construction would take place, how many could be constructed in say a two-year period?

Rep. Drovdal: We did not discuss that. We did discuss that after the end of the two years, any funds left over that were either not spent or committed if somebody had come in with a project and got approved (they wouldn't necessarily have to have it completed), any funds above that

would go back into the highway distribution fund. (17:20) So there is an end in this bill to that fund. It sunsets.

Rep. Kempenich: I don't think this amendment has been moved and I am going to move this amendment .0405.

Chm. Svedjan: Seconded by Rep. Kreidt.

Rep. Kempenich: I hope if we can pass this amendment, I hope that maybe a lot of these already have arms and stuff in place, which is part of the issue, because when they are talking these larger numbers is they are taking a bare crossing and have to start from scratch. The other thing I hope too is that if the subdivisions are going to put these in that they didn't just put in new cement across the crossings and spent a bunch of money and then tear them up to put these in. I am hoping that as they go forward with this that they do have a plan if they need to replace the cement and stuff. I think that this would cover three per town. It would cover the heart of the town. I would hope the political subdivisions would use some common sense on it and not put it when they come in two miles out of town and a mile on the other side of town and then leave them through the middle. I think this would start something anyway and we could go that route.

Rep. Wald: I'm hearing mixed signals. One is a noise nuisance and the other is a safety issue. If it is noise, putting these crossings up isn't going to lower the decibel level.

Rep. Drovdal: If the crossing does meets federal criteria for a quiet zone, they don't have to blow the whistle. But the crossing zone has to meet safety requirements for the whistle .....

Rep. Wald: I think we have a greater need in the DOT with the snow removal costs and all of the culverts and bridges and all of the things that were impacted with the storms. I think this money would be better spent there. I know it's a nuisance. I used to live close to the railroad

tracks, but you kind of get used to it. I think it makes more sense to leave this in the highway department.

Rep. Hawken: If we're going to do this, the \$6 million is not enough. It would be really dumb in this town to do two or three because then they still have to blow the whistle so you haven't accomplished much. You would have to do the whole community. I lived real far away from downtown and I still could hear the whistles before we had the quiet zones. I would still like to vote on this after we see the DOT budget.

Rep. Delzer: If you want to hold this and do the DOT and come back to take the final vote, that is fine with me. We can do that. As far as people asking about how this will be set up. It goes to the DOT to decide whether the grants are valid. It also gives five criteria of what goes on a grant to be valid. One is a 10 percent match if it's not on a state highway on page 2 of the bill under number 2.

Rep. Nelson: The issue is simple. I can vote on this now. The source of the funds is from the highway distribution funds, whether there is a match included or not. It's disruptive to live in an area where you have a train every 20 minutes and the horn blows, but it is an inconvenience. There are critical issues out there with our roads right now because of the all the issues that have taken place and are continuing to take place. I don't think we can divert one dollar of highway distribution money from the state, counties or cities for any other uses. That has got to be our top priority. I'm going to vote no on this unless the money comes from a different source.

Chm. Svedjan: Any more discussion? We have the amendment .0405. I will take this on a voice vote. Those amendments are adopted.

Rep. Delzer: Do you want to finish this bill up or would you rather do transportation?

Chm. Svedjan: I want to finish the bill up. If we need to, we can always come back and reconsider it.

Rep. Delzer: Then I would move a "do pass as amended". Okay, you have heard the motion.

Seconded by Rep. Kempenich. Any further discussion? Hearing none, we will take a roll call vote on a "do pass as amended" to SB 2338. That motion carries. The vote was 15 ayes, 9 nays, 1 absent. Representative Delzer will carry the bill.

VR  
4/13/09

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2338

Page 1, line 10, after "57-43.2-03" insert "of up to one million six hundred thousand dollars per biennium"

Page 1, line 16, replace "\$6,400,000" with "\$1,600,000" and after the third comma insert "and from federal highway traffic safety funds, the sum of \$900,000, or so much of the sum as may be necessary,"

Page 2, line 14, replace "\$100,000" with "\$75,000"

Page 2, line 15, replace "\$500,000" with "\$225,000"

Renumber accordingly

Date: 4/9/09  
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2338

Full House Appropriations Committee

Check here for Conference Committee

Legislative Council Amendment Number 0405

Action Taken Adopt amendment 0405

Motion Made By Kemperich Seconded By Kreidt

Representatives	Yes	No	Representatives	Yes	No
Chairman Svedjan					
Vice Chairman Kemperich					
Rep. Skarphol			Rep. Kroeber		
Rep. Wald			Rep. Onstad		
Rep. Hawken			Rep. Williams		
Rep. Klein					
Rep. Martinson					
Rep. Delzer			Rep. Glassheim		
Rep. Thoreson			Rep. Kaldor		
Rep. Berg			Rep. Meyer		
Rep. Dosch					
Rep. Pollert			Rep. Ekstrom		
Rep. Bellew			Rep. Kerzman		
Rep. Kreidt			Rep. Metcalf		
Rep. Nelson					
Rep. Wieland					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment Vice Vote - carries

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



Date: 4/9/09  
 Roll Call Vote #: 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2338

**Full House Appropriations Committee**

Check here for Conference Committee

Legislative Council Amendment Number 0405

Action Taken No Pass as Amended

Motion Made By Delzer Seconded By Kemperich

Representatives	Yes	No	Representatives	Yes	No
Chairman Svedjan		✓			
Vice Chairman Kempenich	✓				
Rep. Skarphol	✓		Rep. Kroeber	✓	
Rep. Wald	✓		Rep. Onstad	✓	
Rep. Hawken		✓	Rep. Williams		✓
Rep. Klein		✓			
Rep. Martinson	✓				
Rep. Delzer	✓		Rep. Glassheim	✓	
Rep. Thoreson		✓	Rep. Kaldor	✓	
Rep. Berg	✓		Rep. Meyer	✓	
Rep. Dosch	✓				
Rep. Pollert	✓		Rep. Ekstrom	✓	
Rep. Bellew		✓	Rep. Kerzman		✓
Rep. Kreidt	✓		Rep. Metcalf		✓
Rep. Nelson		✓			
Rep. Wieland		✓			

Total (Yes) 15 No 9

Absent 1

Floor Assignment Delzer

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

**REPORT OF STANDING COMMITTEE**

SB 2338, as engrossed: Appropriations Committee (Rep. Svedjan, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (15 YEAS, 9 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2338 was placed on the Sixth order on the calendar.

Page 1, line 10, after "57-43.2-03" insert "of up to one million six hundred thousand dollars per biennium"

Page 1, line 16, replace "\$6,400,000" with "\$1,600,000" and after the third comma insert "and from federal highway traffic safety funds, the sum of \$900,000, or so much of the sum as may be necessary,"

Page 2, line 14, replace "\$100,000" with "\$75,000"

Page 2, line 15, replace "\$500,000" with "\$225,000"

Renumber accordingly

2009 TESTIMONY

SB 2338

# SB 2338

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Mr. Chairman and members of the Committee,

For the record, my name is Dave Nething, Senator from District 12. I'm here to introduce this legislation. There are many people here who want to testify so I will just give an overview.

I introduced Senate Bill 2338 because, in recent years, train whistles have become more of a problem than they have been in the past. Loud and excessive train whistles are creating an enormous noise pollution problem in communities across our state, hampering business development and our overall quality of life.

The proposal before you today would use railroad fuel tax revenues to help mitigate the problems of excessive train whistle noise. North Dakota's railroads pay a fuel tax of 4 cents per gallon that generates more than \$3.2 million per year, and that's how the \$6.4 million appropriation was established in this bill.

Keep in mind that railroads pay this fuel tax into the highway distribution fund yet never use the roads in our state. It seems appropriate that, at least for one biennium, we use that money, or a portion of that money, to make some improvements to rail crossing safety and try to help eliminate excessive train whistle noise. There will be an impact to the counties since they receive 14 percent of this amount. Thus, their total loss

## SB 2338

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for the biennium is \$896,000 and annually \$498,000. Of this amount, \_\_\_\_\_ would be Stutsman county's annual share. In addition, my city of Jamestown residents pay 8.69 mills to the county for rural roads and bridges, which is about \$227,000 annually. Of this amount, about \$15,000 is returned to the city.

I would like to remind the Committee that the Governor's budget includes \$120 million of general fund money for the highway distribution fund for this biennium, an increase of 34 percent or more, making this an appropriate time to address the issue of train whistles and rail crossing safety.

This bill will not raise taxes in any way and it will not cost any more money; it simply directs the Department of Transportation to use the rail fuel fund tax monies this biennium to make some enhancements to rail safety and to help pay for quiet zones proposed by communities that so request it.

I would be happy to answer any questions.

#2

January 28, 2009

Senate Finance and Taxation Committee  
Sixty-first Legislative Assembly

Re: Senate Bill No. 2338

Chairman Cook and members of the committee, my name is Dan Buchanan. I reside at 216 15<sup>th</sup> Ave NE, Jamestown, ND and I also own commercial real estate where I practice law in downtown Jamestown adjacent to the railway lines. I appear on my own behalf in support of the passage of SB 2338, and as one of the petitioners in a recent campaign for an initiated ordinance to establish a Quiet Zone in Jamestown.

Prior to this hearing I have reviewed the statement of Jamestown City Administrator Fuchs, the letter of support from the 100 plus member Main Street Downtown Association, and of other individuals including Dwaine Heinrich with whom I worked extensively for a Quiet Zone in Jamestown. The record should reflect that I agree with those statements and I will focus my statement on material not already presented to you.

My family has deep roots in North Dakota and especially Jamestown, going back to territorial days. We lived and worked close to the railroad tracks and many of our friends and neighbors were employed by the old Northern Pacific, both in the yards and roundhouse and over the road.

All that has changed in recent years. Today, some 26 unit trains, many more than a mile long and usually hauling coal out of the state, pass through downtown Jamestown every day. It is not unusual to have 2 trains passing at the same time in opposite directions. This train traffic, expected to increase, has placed major impacts on our city and others located on the railway lines. In most cases, our cities and the state have no effective control over the railway operations conducted in and through our cities. Blocked crossings and backed up highway traffic on US highways 52 and 281 and ND highway 20 are bad enough. In addition, the noise level of the train horns is so bad at times that I can't talk on the phone or interview clients. Many of my clients are older persons, some visibly fragile. Taking clients or others to downtown restaurants or other businesses is often a trying experience when trains are present.

The noise level is something we can control. The mechanism proposed in this bill to assist cities and other political subdivisions makes eminent sense. The special fuels tax is already available so no new taxes will be needed or collected. Since the railway industry is causing substantial impacts on our cities and state it is only fitting and proper that fees they pay to operate locomotives should be used to fund safety measures for highway-rail grade crossings. In that way, there is some measure of payback to the citizens of North Dakota and its cities.

Finally, there is the matter of economic development, something this and past legislatures have been actively supporting. Many of us in recent years have invested heavily in restoring and rehabilitating buildings in our city's downtown core. Those investments, both in business properties and for residential use, have brought new life to the downtown area, adding jobs and generating property and sales taxes which would otherwise be lost. That said, until downtown Jamestown may be seen as user friendly, new investments may be directed elsewhere. Existing investments may also be at substantial risk.

Just over 2 years ago a major building in downtown Jamestown was destroyed by fire. A large hole surrounded by chain link fence for what seemed a very long time was the result. Last summer, through the generosity of many individuals and businesses, the hole was filled and a community floral garden was created. In the near future an Arts Park, featuring a permanent garden and space for relaxation and performances will be a reality. The question remains, however. How successful will the performances part of the Arts Park be if potential attendees are dissuaded from coming downtown because of the noise of multiple trains passing by?

Thank you for your consideration in passing SB 2338. If you have any questions, I will attempt to answer them. I may also be reached at (701) 252-6604 or by e-mail at [bulaw@daktel.com](mailto:bulaw@daktel.com).

Yours sincerely,

  
Dan Buchanan  
Attorney at Law

#3  
CITY OF JAMESTOWN



NORTH DAKOTA

"THE BUFFALO CITY"

OFFICE OF CITY ADMINISTRATOR  
102 THIRD AVENUE SOUTHEAST  
JAMESTOWN, ND 58401

PHONE 701/252-5900  
FAX 701/252-5903  
E-MAIL: JFUCHS@DAKTEL.COM  
CELL: 701/320-8006

*Same given  
to House.*

Date: January 28, 2009

To: Senate Finance and Taxation Committee

Re: SB 2338

Chairman Cook and members of the committee, my name is Jeff Fuchs, City Administrator, and on behalf of the City of Jamestown, I wish to provide the following comments in support of the passage of Senate Bill No. 2338.

Appropriating monies paid by the railroads in special fuels excise taxes collected on sales of diesel fuels to be used for providing funding to promote highway-rail crossing safety projects, to include Quiet Zones, is increasingly important in that as rail traffic increases across our state the more likely that train/vehicle and train/pedestrian collisions or near collisions will take place.

The City of Jamestown supports the passage of Senate Bill 2338 for a number of reasons:

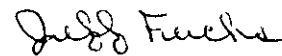
1. **SAFETY** – The Federal Railroad Administration (FRA) has a calculator to determine the risk index for railroad crossings based on existing warning devices with and without the sounding of train horns approaching at grade crossings. The lower the risk factor numbers the safer the crossings. In a study prepared by SRF Consulting Group, Inc. with input from the Federal Railroad Administration, BNSF railroad and the North Dakota Department of Transportation it was determined that Jamestown currently has a Risk Index with Horns (RIWH) of 21,249. The nationwide risk factor for crossings is 19,047. An option being considered for a Jamestown Quiet Zone would provide for the construction of medians, between lanes, approaching the grade crossings to prevent vehicles from circumventing the gates, and the installation of pedestrian mazes which would require a pedestrian to look up and down the tracks prior to crossing. According to the FRA calculator these improvements would lower our risk factor to 6,299 even without the sounding of horns by approaching trains at each grade crossing.
2. **ECONOMIC DEVELOPMENT** - A number of years ago the Legislature used its insight to provide the communities of the state with the option of creating Renaissance Zones to spur the revitalization of their downtown cores. Jamestown took advantage of this insight and created a Renaissance Zone which to date has seen the development of twenty- two (22) projects. We believe that passage of this bill which could assist in providing a Quiet Zone and additional safety at grade crossings, most of which are in the downtown area, would be an additional key to downtown revitalization. The current sounding of train horns at each grade crossing discourages businesses from wanting to locate or remain in the downtown area, nor do many individuals want to move to, or reside, in the downtown area.



3. **COST** – Generally, the majority of rail traffic in the State of North Dakota is interstate commerce traffic, rather than intrastate traffic, as is quite obvious by the vast numbers of coal trains passing through the cities in route to some out of state location. Up to this time, a large portion of local property tax dollars have been needed as the primary source to mitigate costs of rail crossing safety and approach costs, with very little if any economic benefit to the local community. The use of excise tax dollars generated from sales of diesel fuels to railroads to mitigate at least a portion of the local property tax dollars used in the past to fund rail crossing safety projects is a fair treatment alternative for the local taxpayer who has needed to fund the impacts of increased interstate commerce due to railroad traffic increases.
  
4. **QUALITY OF LIFE** – With the newer regulations in place which require train horns to be sounded louder, longer, and more frequently, and with the increased train movement activity which has been evident, the extreme noise level of train horns results in the disruption of activities, conversations and business activities until such time as the train traffic has passed. This not only affects outdoor activities, but also affects many business meetings, school and church activities, phone conversations, and for many individuals may prevent a good night's sleep, particularly in areas closest to the railway.

For the above reasons, the City of Jamestown supports the intent of Senate Bill No 2338, and urges your committee to give this bill a do pass recommendation. Should the Chairman or any member of the committee have any questions, feel free to let me know. I can be reached at 701-252-5900, or e-mailed at [jfuchs@daktel.com](mailto:jfuchs@daktel.com).

Sincerely,



Jeff Fuchs

City Administrator

#4

1-28-09

Senators:

Thank you for allowing me to speak. My name is Douglas Ellison. I am a 20 year resident of Medora, where my wife and I own and operate a retail business, and I am presently serving as Mayor of Medora.

I strongly support this proposed bill.

Medora is a small town in area and we have two crossings little more than half a mile apart. We are surrounded by high buttes, which basically makes the town an echo chamber.

As you may know, Medora is our state's # 1 tourist destination. We host some 200,000 people a year, and, by far, the most common complaint I hear from visitors is the deafening noise of the train horns, at all hours of the day and night. Some people visit town but refuse to spend the night because of the horns.

On a personal note, in two decades I still have not reconciled myself to the horns. We live one block from a crossing, and with doors and windows open it is literally impossible to carry on a conversation while the horns are blaring.

Medora has less than 100 permanent residents. To modify the crossings to meet safety regulations for a Quiet Zone would be a great financial burden for such a small population base. This bill would enable Medora to become an even better place to live, and it would enhance the Medora experience for the many tens of thousands of people who visit every year.

Thank you.

Douglas Ellison  
PO Box 466  
Medora, ND 58645  
701-623-4345

# 5

January 27, 2009

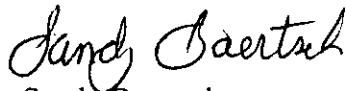
Sandy Baertsch  
14702 River Drive  
Medora, ND 58645

2009 North Dakota Legislature,  
Copy to Medora City Council

I would like to voice my support for the Quiet Zone Bill, Senate Bill #2338.

I work in Medora and live within 1/12 miles of Medora. I have always felt blessed to be able to live and work in this area, but one of the few things I would change would be the noise of the trains going right through the middle of town. Trains do have their place in commerce we all understand. However, if we could eliminate the heart stopping, mind numbing whistles that disrupt our parades, any and all conversation or transactions, and any hope of a good nights sleep, we could improve everyone's enjoyment of our scenic and historic town.

Sincerely,



Sandy Baertsch  
cc. Medora City Council

xl

TESTIMONY BEFORE THE NORTH DAKOTA SENATE  
COMMITTEE ON FINANCE AND TAXATION  
IN SUPPORT OF SENATE BILL (SB) 2338 • QUIET RAIL ZONE LEGISLATION  
WAYNE KRANZLER, OWNER,  
KRANZLER KINGSLEY & K2 INTERACTIVE, BISMARCK, ND • JANUARY 28, 2009

Chairman Cook, members of the committee...

For the record, my name is Wayne Kranzler and I am the co-owner of Kranzler Kingsley Advertising, Marketing and Public Relations and K2 Interactive here in Bismarck. Our offices are located at 5<sup>th</sup> and Main in downtown Bismarck, right along the railroad tracks, and it is for that very reason that I'm testifying today in support of SB 2338.

This June, our firm will have been at our current location for fifteen years and I can tell you that it will be our last year at that location. Once our lease expires, we plan to move our firm and our 25 employees out of downtown Bismarck and away from the train.

As long as we have been located in downtown Bismarck, the train has been a daily part of life. And for years, the train was merely a nuisance. However, in recent years, as rail traffic has significantly increased and the decibel level of train horns have risen, the train has become a loud, persistent disruption that interrupts our meetings with clients and greatly interferes with our work. And, it was out of concern for our employees' hearing that we had our back offices – those closest to the railroad tracks – re-insulated last year to try to muffle the noise of the passing trains. This helped to a degree, but definitely has not alleviated the problem.

This past summer, our firm worked with the supporters of the Bismarck Quiet Rail Zone Initiative in developing radio ads and a public relations campaign urging voters to vote "yes." As someone who has been in the advertising business for over thirty years, I knew from the beginning that the project's price tag would scare Bismarck voters. Voters did experience "sticker shock" and, as expected, rejected the measure and consequently the problem remains.

Senate Bill 2338 is exactly what is needed to assist communities across North Dakota to establish quiet rail zones, improve quality of life and help revitalize their downtown.

This legislation will provide the necessary support our communities need to create quiet rail zones and improve railroad crossing safety. The opportunity for cities to apply for state grants in order to help offset the extensive costs of building quiet rail zones will make it easier for cities, like Bismarck, to go to their citizens and ask for approval to create these zones.

With the passage of SB 2338, citizens will not have to choose between their wallets and their hearing. Voters will be able to see the issue for what it truly is: a matter of public safety and public health. Businesses will be able to work free of disruption. And residents living in proximity to railroad tracks will be able open their windows on summer evenings without being disturbed by the un-welcomed and ear-piercing train horn.

As a business owner and as a citizen of Bismarck, I applaud the sponsors of this legislation and I respectfully ask this committee to recommend a "do pass" on Senate Bill 2338.

Thank you Mr. Chairman.

#7a  
SENATE FINANCE AND TAXATION COMMITTEE

Wednesday, January 28, 2009

10:30 AM

Lewis and Clark Room---State Capitol Building---Bismarck, ND

Senate Bill: 2338---Railroad Crossing Quite Zones

**Purpose:** To provide funding for railroad crossing quite zones and stop the routine sounding of train air horns when it isn't necessary.

**Presenter:** Bruce Schwartz  
1237 S. Highland Acres Rd.  
Bismarck, ND 58501  
701-258-1189  
[nmbruce@bis.midco.net](mailto:nmbruce@bis.midco.net)

**Testimony:**

I come before this committee today in support of SB 2338.

This bill would provide funding to create railroad crossing quite zones without jeopardizing or reducing rail crossing safety. This bill does not call for tax increases, but instead, would be funded from railroad fuel taxes.

Let me relate my personal experience with railroad noise. My family and I moved to Bismarck 34 years ago and have lived in the same house ever since. We live across the railroad tracks from Fraine Barracks in close proximity to the so-called Fraine Barracks crossing. Thirty four years ago train traffic was much lighter and the whistle noise was not nearly as offensive as it is today. Also, train traffic has increased substantially over the years.

A few years ago train air horn noise suddenly became much, much louder and actually unbearable if you outside. I have learned that the reason for this sudden increase in volume was prompted by improved automobile construction which made it difficult to hear air horns. Cars now are mostly air conditioned (windows are closed). Cars now have radios and sophisticated sound equipment. People are using cell phones. All these distractions are probably responsible for increased train noise.

**We now have the technology to improve this outdated, nineteenth/twentieth century train air horn method of rail crossing safety. Train air horns are no longer as effective as they once were. Senate Bill 2338 would be an excellent means to clean up a fast growing pollution problem, that of sound pollution. And it can be done without raising taxes.**

**There is a lingering notion that comes from yesteryear about the nostalgic, mournful sound of the train whistle off in the distance. It sounded comforting and nice. That was then, this is now. Train air horns are no longer comforting or nice.**

**Let me say also that I know that I speak for thousands of people who live adjacent to railroad tracks.**

**I urge a do pass from this committee on SB 2338.**

#76

1/28/09

Senate Finance And Taxation Committee

Re: SB 2338

Sirs:

I am writing in support of Senate Bill 2338. My name is Randy Salzer. I live at 1211 S Highland Acres Rd., Bismarck, ND.

I understand Senate Bill 2338, if passed, would provide a 90% state -10% local match for crossing safety and for communities to construct 'quiet zones'. The goal is to stop the routine sounding of train whistles when it's not necessary.

I live in Highland Acres, a development in Bismarck that is situated along the tracks. I have lived there more than 20 years. When I bought my house, my small children ran to greet the trains. Some even sounded their whistles especially for my children, which was a delight to our family. At that time, trains sounded their whistles quite near the Fraine Barracks crossing. I live 1/4 mile east of there. Now the trains whistle hundreds of yards east of my house - many hundreds of yards east of the crossing, and the whistles are sounded many times longer and louder. I understand Federal law has required longer and louder whistles.

These whistles are so loud and persistent that any conversation is impossible. As a matter of fact, it is physically uncomfortable to be in my yard when a train approaches and whistles. Numerous trains pass my house hourly. As you can imagine, it has become increasingly difficult living there. I'm certain that a study done on the raised decibel levels and their effect on human health would provide some startling facts. I am a band director by trade and I would much prefer to rehearse my six bands per day than to listen to the overpowering sound of the multiple trains' whistles per hour - every hour - every day.

I am also concerned that when I decide to sell my home some day, I will not be able to do so due to the overpowering sound of the train whistles.

What is required is a 'Quiet Rail' crossing, as many other property owners are also negatively impacted.

Please give your consideration and support to Senate Bill 2338. I believe this would be for the health and welfare of all citizens of North Dakota.

Sincerely,



Randy Salzer  
1211 S Highland Acres Rd  
Bismarck, ND 58501  
701-258-5405  
salzer@bis.midco.net

RAIL CROSSING SAFETY BILL #8

PRINTED NAME	SIGNATURE	ADDRESS
1 GERALD ZITTLEMAN	Gerald Zittleman	1610 HEART RIVER DR SW MANDAN N.D. 58554
2 Sharelle Zittleman	Sharelle Zittleman	1610 Heart River Dr. SW Mandan, N.D. 58554
3 Rus Dittus	Rus Dittus	1620 Heart River Dr. SW Mandan, N.D.
4 ELEANOR AMAN	Eleanor Aman	1612 Heart River Dr. SW Mandan, N.D.
5 JOHN AMAN	John Aman	1612 Heart River Dr SW Mandan, ND 58554
6 JOYCE MASSETH	Joyce Masseth	1600 Heart River Dr. SW Mandan, ND 58554
7 MYRON MASSETH	Myron Masseth	1600 Heart River Dr. SW Mandan ND 58554
8 Gladys ZERR	Gladys Zerr	105-14th Ave NW Mandan, N.D. 58554
9 Paul Feller	Paul Feller	103 14th Ave NW Mandan, ND 58554
10 Stacy Feller	Stacy Feller	103 14th Ave NW Mandan ND 58554
11 Will Higbee	WILL HIGBEE	102 17th AVE NW MANDAN
12 Kristina Higbee	Kristina Higbee	102 14th Ave NW Mandan ND 58554
13 THOMAS FROHLICH	Thomas Frohlich	104-14th av. NW Mandan ND 58554
14 Jeannette Frohlich	Jeannette Frohlich	104-14th ave NW - Mandan, ND 58554
15 Steven Dittus	SE 2 DIT	1412 1st NW Mandan ND 58554
16 Tim Kilen	Tim Kilen	1408 1st St NW Mandan ND 58554
17 Shawn Tomarek	Shawn Tomarek	1411 1st St NW Mandan.
18 Linda Brucker	Linda Brucker	1407 1st St. NW Mandan
19 Tony Brucker	Tony Brucker	1407 1st St. NW Mandan
20 Art Huber	Art Huber	1402 1st St NW Mandan
21 Jason Huber	Jason Huber	1410 1st St. NW Mandan.
22 REGINA WANNER	Regina Wanner	109 13th ave NW mandan



# RAIL CROSSING SAFETY BILL

PRINTED NAME	SIGNATURE	ADDRESS
2 Ron Avey	Ron Avey	106 13 <sup>th</sup> Ave Mandan
24 Lynn WESSELS	Lynn Wessels	108 13 <sup>th</sup> AVE mandan
25 CLIFF BERGER	Cliff Berger	105-13 <sup>th</sup> ave NW Mandan
26 SUSAN BERGER	Susan Berger	105 13 <sup>th</sup> ave NW Mandan, N.D.
27 BEN EHRETH	Ben Ehreth	104-13 <sup>th</sup> Av. N.W. Mandan
28 EILEEN EHRETH	Eileen Ehreth	104 13 <sup>th</sup> Ave NW - Mandan N.D.
29 MIKE-KNOLL	Mike Knoll	103-13 <sup>th</sup> ave Mandan N.D.
30 Helen Knoll	Helen Knoll	103-13 Ave N.W.
31 CHARLOTTE JOB	Charlotte Job	102-13-Ave. NW
32 JOAN STERNA	Joan Sterna	204-14 <sup>th</sup> Ave. NW.
33 JOHN STERNA	John Sterna	204-14 <sup>th</sup> ave. N.W.
34 Linda Fleischer	Linda Fleischer	1413 2nd St NW Mandan <sup>ND</sup>
35 ANN ELLIS	Ann Ellis	1418-3RD ST NW Mandan
36 CHAD GUDDAGE	Chad Gulli	1416 3 <sup>rd</sup> ST NW Mandan
37 Joyce Gustafson	Joyce Gustafson	1414-3 <sup>rd</sup> St. NW Mandan <sup>ND</sup>
38 Dorothy V. Dahl	Dorothy V. Dahl	1410-3 st. N.W. Mandan
39 Richard Schaeff	Richard Schaeff	1509 4 <sup>th</sup> St. NW, Mandan
40 Amy L.S. McNailey	Amy L.S. McNailey	531 Marilyn Dr. Mandan ND
41 William Russell	William Russell, JR	535 MARILYN DR, MANDAN ND
42 GERALDINE HEINSE	Geraldine Heinse	537 Marilyn Dr Mandan <sup>ND</sup>

RAIL CROSSING SAFETY BILL

43	Ben Stumpf	Ben Stumpf	541 Marilyn Dr
44	LAINÉ POPE	Laine Pope	615 CRAIG DR. MANDAN
45	Val Otheiser	Valerie Otheiser	629 Craig Dr Mandan
46	Ben Ulmer	Ben Ulmer	707 Paulsen Dr Mandan
47	Harley Schwind	Harley Schwind	715 Paulsen Drive Mandan, ND
48	Sheila Gust	Sheila Gust	1400 3rd St NW Mandan ND
49	Randy GILL	Roy Gill	1622 Heart River Dr S
50	Amber Gull	Amber Gull	1622 Heart River Dr S Mandan
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SB 2338 Quiet Zone Testimony  
testimony of Melissa Rosales

Research shows that sound reaching 85 dB or stronger can cause permanent damage to a person's hearing. The amount of time a person listens to that sound affects how much damage it will cause. A quiet sound such as rustling leaves at 0 dB will not cause damage even listening to it for a very long time. Extended exposure to noises that reach a decibel level of 85 or greater can cause permanent damage to the hair cells in the inner ear, leading to hearing loss. A train whistle at 500' is 90 dB and considered an extremely loud noise level. I live 150' from the railroad tracks and 800' from the Fraine Barracks crossing. Much of the time the train whistle begins blowing behind my house and does not stop until after the crossing of a westbound train.

Dr. K.D. Kryter, a noise expert, defined noise as "acoustic signals which can negatively affect the physiological or psychological well-being of an individual." It affects our physical health, has psychological and social implications and affects our quality of life as well. Basically, noise is unwanted sound and a pollutant and hazard to human health and hearing. Noise has also been described as the most pervasive pollutant in America and my neighbors and I are part of the 30 million Americans that are exposed to hazardous sound levels on a regular basis.

I am here today to tell you about my family's quality of life living in Highland Acres. I want you to know how difficult it is to have company outside and talk over the train whistle. I want you to understand how sad it is that we grill outside but eat supper inside in order to enjoy a quiet meal. To enjoy a book in the hammock in our beautiful backyard is impossible as the whistle blows and the silence is broken frequently. We have a large garden and flowers all around our yard. This labor of love and passion of ours is interrupted each time the train whistle blows. We jump out of our skin not expecting the whistle while we were intent on our work in the garden and flowers. To have the windows open on a glorious spring or fall day is not worth the frustrations of noise. All of these activities that many of you take for granted cannot be enjoyed by neighbors and my family in the Highland Acres area.

It seems awareness of the hazardous affects of noise that is not related to work environments is minimal. We are here to give testimony of noise that affects us in our home environments. We have a noise ordinance sign posted coming into north Bismarck. We also have vehicle muffler related laws in Bismarck. Why are the trains exempt from noise related restrictions? Why aren't we protected as citizens in the case of train whistle noise? The fourth Wednesday in April has actually been declared International Noise Awareness Day to observe 60 seconds of no noise. In Highland Acres we would like a more permanent solution to the noise problem of the train whistle blowing at Fraine Barracks crossing for our health and well being.

Thank you for your time.

References:

[www.dangerousdecibels.org/hearingloss.cfm](http://www.dangerousdecibels.org/hearingloss.cfm)

[www.asha.org/public/hearing/disorders/noise.htm](http://www.asha.org/public/hearing/disorders/noise.htm)



JOHN RISCH  
North Dakota Legislative Director

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*transportation*  
**union**

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**Testimony of John Risch**  
**Before the Senate Finance and Tax Committee**  
**In Support of SB 2338**  
**January 28, 2009**

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

We railroad workers wholeheartedly support this bill. We like blowing the whistle even less than people like hearing them. I have hearing aids in today as a testament to how loud they are, not just outside the cab, but inside as well.

Times have changed. Our whistles are louder than they have ever been and we have new federal rules that require us to blow the whistle, without exception, between 15 and 20 seconds prior to reaching any railroad crossing. The new locomotives have electric switches to control the whistle. In the past, I was able to partially open the manual valve a quarter or half the way, instead of fully open. With the new whistles, as soon as you touch the button you get the full 100 decibels plus, per horn, blaring off the top of the locomotive.

We railroad workers know that we're creating tremendous noise pollution and eroding the quality of life in the communities that we pass through. We also know that this constant blaring of the whistle is not the answer to safety at railroad crossings.

Fargo and Moorhead have demonstrated that when you put in a quiet zone and enhance safety at the crossings, lives are actually saved without blowing the whistle. We have not had any incidents in Fargo/Moorhead since they installed their quiet zones last February.

In closing, I would add that taxes collected from railroads based on locomotive fuel are ill-gotten gains. The fuel tax is supposed to be a user fee--you pay a tax into the highway trust fund because you use the highways.

I've been a railroad engineer for 30 years and I've yet to drive a locomotive down a highway. The railroad industry is being unfairly taxed, and this unfair assessment is being used to subsidize our competition.

I want to commend Senator Nething for introducing this legislation and respectfully ask that the committee give it a "do pass" recommendation.

*Same handover to house.*

# Stop the whistles

After a week of work one finally gets a chance to sleep in — not quite! At 5:45 a.m. one is aroused from slumber by a locomotive traveling its tracks from the north end of town to the south, announcing its daily trek to the sleeping citizens of our fair city with a series of blows of its horns.

Daily one is awakened by an hour of horn blasts which seem to be a system of morris code designed as a form of communication between the engineer and the conductor during a conversation.

intervene and stop the daily bar passed out by the local rail service. I am sure those who work night shifts would enjoy a break from the whistles to get a couple of hours rest. Today's technology there must be a better system to incorporate rather than waking an entire city from a well-deserved rest.

I would hope that someone would agree and do something for our peace and quiet now.

# Petitions circulating

## Residents want quiet zone reconsidered

**By Tom Peral**  
THE JAMESTOWN SUN  
Despite its defeat in the June election with 1,557 against and 1,293 for, quiet zone supporters haven't yet begun collecting signatures to initiate reconsideration of the ordinance.

them. "The experts tell us that by doing this, we will have much safer railroad crossings," Heinrich said. "It's also a quality of life issue. The whistles are a problem throughout the valley, not just here."

Casselton, Cass  
Co. Reporter

# Silencing the whistle

## Mapleton exploring quiet zone

**By Amanda Gades**  
Mapleton has become much quieter since the city council adopted a quiet zone ordinance.

Shirley Wagner contacted Berndt, letting him know that she was still interested in the project. Then, after Shirley received interest from a Mapleton resident regarding the quiet zone for the crossing, Shirley contacted Berndt again to let him know it would be on the city council agenda. That is when Berndt stated that Wagner would be in town and they would all go to the crossing to discuss the possibility of a quiet zone.

Fargo, The Forum

# West Fargo man asks city to start train quiet zone

**By Benny Polacca**  
bpolacca@forum.com  
West Fargo resident Mark Akers says the blares of passing train horns frequently wake him up as early as 4:30 a.m., about two hours before he usually gets up.

"We have been getting excessive whistle blowings quite a few times" in recent months, he said Friday.

Akers, who lives south of Main Avenue and the tracks that run parallel to its north side, also hears train horns at 5 and 5:15 a.m.

He believes the horns' frequency has increased since February, when Fargo and Moorhead started their quiet zones, which ban trains from sounding their horns and

### If you go

- ▶ **What:** West Fargo City Commission meeting
- ▶ **When:** 5:30 p.m. Monday
- ▶ **Where:** City Hall, 800 4th Ave. E.

whistles while traveling through both cities' downtown corridors.

On Monday, Akers, a 10-year city resident, will ask the City Commission to consider investigating and implementing a quiet zone.

"For all the years I've lived here, it hasn't bothered me until recently," he said.

Mayor Rich Mattern said Friday he understands Akers' concerns, but noted a

**QUIET ZONE:** Back Page

Jamestown Sun

# The city needs a quiet zone

**JUN 14 2008**  
Bismarck Tribune  
**LETTERS TO THE EDITOR**  
A quiet rail zone is essential

**By VINOD SETHI**  
Bismarck

A quiet rail zone is essential for a healthy Bismarck. One-third of Bismarck wants the Federal Railroad Administration issued a Final Use of Locomotive Horns at Highway-Rail Crossings that took effect on June 24, 2005. It abolishes the then-existing horn rules established by the Federal Railroad Administration all over our country.

Many European nations have had quiet zone rules for years had quiet zone rules especially at night. The FRA rule disregards the real health consequences of loud noise on millions of urban people. Quiet is worth it. Let us look at the \$4 million cost of having quiet rails in Bismarck another way. A rough, back of the envelope calculation using a 40-year lifespan for the new crossings and a population of 20,000, comes to \$5 per crossing.

long-term noise exposure can lead to high blood pressure, impaired sleep, weight gain, anxiety and irritability. The effect of long-term noise has been proven in good scientific population based studies. The World Health Organization recommends a limit of 55 decibels for nighttime noise. Unlike the eyes that we close in sleep, the ear always stays open. And when damaged by noise, it does not hurt. It just hurts.



# Brotherhood of Locomotive Engineers and Trainmen

*A Division of the Rail Conference-International Brotherhood of Teamsters*

January 29, 2008

Re: SB 2338

Mr. Chairman, Members of the Committee,

*Same testimony & handouts given to House.*

My name is Mike Muscha and I represent the Brotherhood of Locomotive Engineers and Trainmen here in North Dakota. I'm here today to speak in favor on SB 2338.

In the Industry today Safety is priority one. I believe the money generated by the 4 cents fuel tax from the Rail Roads should be used for grade crossing safety. Quite zones and upgrading grade crossing projects would help the public and the cities that we operate through and help protect my membership that operate the trains.

Mr. Chairman, I have researched the Quite Zone Locations that cities across the United States have made application for to the Federal Railroad Administration. I have attached this list to my testimony. Please note the aggressive approach Minnesota and Wisconsin have taken. I believe we need to be more pro-active in our approach to Quite Zones and this bill would help.

I recommend a due pass on SB 2338.

Thank you, Mike Muscha  
Chairman, NDSL B

e-mail [loceng671e@mlgc.com](mailto:loceng671e@mlgc.com)  
Phone 701-793-0325

# Quiet Zone Locations

Report Date: 12/16/2008

State	City	QZType			
AK	Anchorage	Pre-Rule		ARR	
AK	Sou Anchorage	New		ARR	
				Total Number of Records for State	AK 2
AL	Mobile	New		CSX	
AL	Decatur	New		NS	
AL	Madison	New		NS	
				Total Number of Records for State	AL 3
CA	Elk Grove	New		UP Railroad	
CA	Bakersfield	Pre-Rule		BNSF	
CA	Richmond (N)	New		UP	
CA	Richmond W1	New		BNSF	
CA	Richmond W2	New		BNSF	
CA	Campbell 1	New		UP	
CA	Campbell 2	New		UP	
CA	San Jose	New		Vasona	
CA	West Sacramento	New		UP	
CA	Richmond (S1)	New		BNSF	
CA	Pomona	New		UP, Metrolink,	
CA	Placentia	New		BNSF	
CA	Sacramento	New		UP	
CA	Elk Grove	New		UP	
				Total Number of Records for State	CA 14
CO	Commerce City	New		BNSF	
CO	Arvada	New		UP	
CO	El Paso County	New		BNSF	
				Total Number of Records for State	CO 3
CT	Groton	New		ATK	
CT	Stonington	New		ATK	
				Total Number of Records for State	CT 2

## Federal Railroad Administration

Disclaimer: This list, which is provided for informational purposes only, merely reflects FRA receipt of quiet zone notification packages. This list does not, however, constitute FRA approval of the contents of any notification package. Notwithstanding this public authorities are required to provide complete quiet zone notification packages to all parties listed in 49 CFR 222.43.

State	City	QZType			
FL	Broward County	New	CSX		
FL	Pembroke Park	New	CSX		
FL	Hollywood	New	CSX		
FL	Broward County 2	New	CSX		
FL	Palm Beach Count	New	CSX		
FL	Boca Raton	New	CSX		
FL	West Palm Beach	New	Amtrak, CSX		
FL	Broward County	New	CSX		
			<b>Total Number of Records for State</b>	FL	8
GA	Marietta	New	CSX		
GA	Marietta	New	CSX		
GA	Atlanta	New	CSX		
			<b>Total Number of Records for State</b>	GA	3
IA	Denison	New	UP		
IA	Nevada	New	UP		
IA	Le Claire	New	ICE		
IA	Bellevue	Pre-Rule	CPRS		
IA	Boone	New	UP		
IA	Nevada	New	UP		
			<b>Total Number of Records for State</b>	IA	6
IL	Antioch	New	CN		
IL	Plainfield East	New	EJE		
IL	Elmwood Park	New Partial	CN		
IL	Warrenville	New	EJE		
IL	Franklin Park	New	WC		
IL	Lake Zurich	New	EJE		
IL	Barrington	New	EJE		
IL	Chicago	New	CSX		
IL	Cortland	New	UP		
IL	Elwood	New	UP		
IL	Morrison	New	UP		
IL	Glenwood	New	UP		
IL	Evergreen Park	New	GTW		
IL	DeKalb	New	UP		
IL	Sugar Grove	New	BNSF		
IL	Chicago	New	Iowa, Chicago &		
IL	Vernon Hills	New	EJE		
IL	Elmhurst	New	CC		
			<b>Total Number of Records for State</b>	IL	18
IN	Mishawaka	Pre-Rule	NS/CN		
IN	South Bend	Pre-Rule	CN/NS		
IN	New Albany	New	NS		
IN	Munster	New	CN		
			<b>Total Number of Records for State</b>	IN	4

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State	City	QZType			
KS	Overland Park	New		UP	
KS	Lenexa	New		BNSF	
				Total Number of Records for State	KS 2
KY	Covington	Pre-Rule		CSX	
KY	Anchorage	Pre-Rule		CSX	
KY	Louisville (1)	New		CSX	
KY	Louisville (3)	Pre-Rule		CSX	
KY	LaGrange	Pre-Rule		CSX	
				Total Number of Records for State	KY 5
LA	Harahan	Pre-Rule		NS	
				Total Number of Records for State	LA 1
MA	Wenham	Pre-Rule		MBTA	
MA	Hamilton	Pre-Rule		MBTA	
MA	Manchester	Pre-Rule		MBCR	
MA	Chelsea	Pre-Rule		MBTA	
MA	Gloucester	Pre-Rule		MBTA	
MA	Belmont	Pre-Rule		MBTA	
MA	Melrose	Pre-Rule		MBTA	
MA	Medford	Pre-Rule		MTA	
MA	Beverly NLSouth	Pre-Rule		MBTA	
MA	Beverly NLNorth	Pre-Rule		MBTA	
MA	Beverly RLWest	Pre-Rule		MBTA	
MA	Beverly RLCent.	Pre-Rule		MBTA	
MA	Beverly RLEast	Pre-Rule		MBTA	
MA	Weston	Pre-Rule		MBTA	
MA	Lincoln	Pre-Rule		MBTA	
MA	Wakefield	Pre-Rule		MBTA	
MA	Norfolk	Pre-Rule		MBTA	
MA	Concord	New		MBTA	
MA	Ipswich	Pre-Rule		MBTA	
MA	Reading	Pre-Rule		MBTA	
MA	Andover	Pre-Rule		BM	
MA	Wilmington	Pre-Rule		GRS	
MA	Ayer	Pre-Rule		ATK	
MA	Acton	Pre-Rule		MBTA	
MA	Somerville	Pre-Rule		MBTA	
MA	Waltham	Pre-Rule		MBTA	
MA	Rowley	New		MBTA	
MA	Hingham	New		MBTA	
MA	Revere	Pre-Rule		GRS	
				Total Number of Records for State	MA 29
MD	Hagerstown	Pre-Rule		CSX	
MD	Cumberland	Pre-Rule		CSX	
MD	Cumberland	Pre-Rule		CSX	
				Total Number of Records for State	MD 3

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State	City	QZType			
ME	Pittsfield	Pre-Rule	ST		
ME	Rockland	Pre-Rule	MC		
ME	Yarmouth	Pre-Rule	SLR		
ME	Falmouth	Pre-Rule	ST		
ME	Portland (2)	Pre-Rule	ST		
ME	Portland (3)	Pre-Rule	ST		
ME	Livermore Falls	Pre-Rule	ST		
ME	Presque Isle	Pre-Rule	BAR		
ME	Westbrook	Pre-Rule	ST		
ME	Westbrook	Pre-Rule	ST		
ME	Portland (1)	Pre-Rule	ST		
ME	Brunswick	New	Main Coast RR		
ME	Millinocket	Pre-Rule	BAR		
ME	Waterville	Pre-Rule	GRS		
ME	Rockland (New)	New	Maine Eastern RR		
ME	Fairfield	Pre-Rule	Guilford		
			Total Number of Records for State ME 16		
MI	Iron Mountain	Pre-Rule	Escanaba & Lake		
MI	Durand	Pre-Rule	GTW		
MI	Durand	Pre-Rule	GTW		
MI	Durand	Pre-Rule	GTW		
MI	Durand	Pre-Rule	GTW		
			Total Number of Records for State MI 5		

Federal Railroad Administration

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State	City	QZType	
MN	Wayzata	New Partial	BNSF
MN	St. Cloud	New	BNSF
MN	Minnetonka	New	CP
MN	St. Paul Park	New	BNSF
MN	Hastings	New	CP
MN	Medina	New	UP
MN	Little Falls	New	BNSF
MN	Coon Rapids 2	New	BNSF
MN	Andover	New	BNSF RR
MN	Moorhead	New	BNSF Railroad
MN	Proctor	Pre-Rule	CN
MN	Dilworth	New	BNSF
MN	Greenfield	New	CP
MN	Duluth (BNSF)	Pre-Rule	BNSF
MN	Minnetonka	New	CPR
MN	Brooklyn Center	New	SOO
MN	Dellwood	New Partial	SOO
MN	Bayport	Pre-Rule	UP
MN	Duluth (UP)	Pre-Rule	UP
MN	Duluth (Soo)	Pre-Rule	SOO
MN	Northfield	Pre-Rule	SOO
MN	Duluth (SLLX)	Pre-Rule	SLLX
MN	Duluth CN	Pre-Rule	DMIR
MN	Minneapolis Bron	Pre-Rule	MNNR
MN	Minneapolis Henn	Pre-Rule	MNNR
MN	Minneapolis Hiaw	Pre-Rule	SOO
MN	Minneapolis Prog	Pre-Rule	SOO
MN	Minneapolis TCWR	Pre-Rule	TCW
MN	Saint Paul	Pre-Rule	SOO
MN	Saint Paul	Pre-Rule	MNNR
MN	Minneapolis MN&S	Pre-Rule	SOO
MN	Winona	Pre-Rule	SOO
MN	Minneapolis Wayz	Pre-Rule	BNSF
MN	Minneapolis Grov	Pre-Rule	BNSF
MN	Minneapolis Talm	Pre-Rule	BNSF
MN	Minneapolis CPRR	Pre-Rule	SOO
MN	Coon Rapids	New	BNSF
MN	Plymouth	Pre-Rule	CP
MN	Saint Paul	Pre-Rule	BNSF

Total Number of Records for State MN 39

Federal Railroad Administration

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State	City	QZType			
MO	Webster Groves	Pre-Rule	BNSF		
MO	St. Louis	Pre-Rule	UP		
MO	Oakland	Pre-Rule	BNSF		
MO	Oakland	Pre-Rule	UP		
MO	St. Louis	Pre-Rule	NS		
MO	St. Louis	Pre-Rule	BNSF		
MO	St. Louis	Pre-Rule	MRS		
MO	St. Louis	Pre-Rule	UP/TRRA		
MO	Maplewood	Pre-Rule	UP		
MO	Kirkwood	Pre-Rule	UP		
MO	Webster Groves	Pre-Rule	UP		
MO	Shrewsbury	Pre-Rule	BNSF		
MO	Kirkwood	Pre-Rule	BNSF		
MO	Webster Groves	Pre-Rule	UP		
MO	Osage County	New Partial	UP		
MO	Webster Groves	New	UP		
MO	Seymour	New	BNSF		
MO	Springfield	New	BNSF		
MO	Washington	New	UP		
MO	St. Louis	Pre-Rule	BSDA		
			<b>Total Number of Records for State</b>	MO	20
MS	Vicksburg	New	KCS		
			<b>Total Number of Records for State</b>	MS	1
NC	Rocky Mount	Pre-Rule	CSX		
NC	Rocky Mount	Pre-Rule	CSX		
NC	New Bern	Pre-Rule	NS		
			<b>Total Number of Records for State</b>	NC	3
ND	Fargo	New	BNSF Railroad		
			<b>Total Number of Records for State</b>	ND	1
NJ	Westfield	New	NS		
NJ	Montclair	Pre-Rule	NJTR		
			<b>Total Number of Records for State</b>	NJ	2
NM	Milan	New	BNSF		
NM	Alamogordo	New	UP		
NM	Deming	New	Union Pacific		
NM	Albuquerque	New	BNSF		
NM	Albuquerque	New	BNSF		
NM	Santa Fe	New	SFS		
NM	Sandia	New	BNSF		
NM	Belen	New	BNSF		
NM	Albuquerque P1	New	NNRX		
			<b>Total Number of Records for State</b>	NM	9

Federal Railroad Administration

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State	City	QZType			
NY	Dunkirk	Pre-Rule	NS		
NY	Cohoes	Pre-Rule	DH		
NY	Watervliet	Pre-Rule	DH		
			<b>Total Number of Records for State</b>	NY	3
OH	Moraine	New	CSX		
			<b>Total Number of Records for State</b>	OH	1
OR	Westfir	New	UP		
OR	The Dalles	Pre-Rule	UP		
OR	Pendleton	Pre-Rule	UP		
			<b>Total Number of Records for State</b>	OR	3
PA	York	Pre-Rule	NS		
PA	Lower Makefield	New Partial	CSX Railroad		
PA	Hanover	Pre-Rule	CSX		
			<b>Total Number of Records for State</b>	PA	3
SC	North Charleston	New	CXS Railroad		
SC	Spartanburg	New	Norfolk Southern		
			<b>Total Number of Records for State</b>	SC	2
TX	Midland	New	Union Pacific		
TX	Murphy	New	UP		
TX	Piano	New	KCS		
TX	Piano	New	BNSF RR		
TX	Marathon	New	UP		
TX	Fort Worth 1	New	BNSF, Amtrak,		
TX	Watauga	New	UP		
TX	Richardson	New	KCS		
TX	Houston	New	UP		
TX	Fort Worth 3	New	TRE		
TX	Texarkana	New	KCS		
TX	Fort Worth 2	New	FWWR		
TX	Irving	New	TRE		
TX	Austin	New	AUAR		
TX	Austin	New	AUAR		
TX	Richardson	New	DART		
TX	Fort Worth	New	UP		
TX	Lewisville	New	KCS		
TX	Angleton	New	UP		
TX	Richmond	New	BNSF		
TX	Irving	New	DART		
TX	Austin	New	UP		
TX	Austin	New	AUAR		
			<b>Total Number of Records for State</b>	TX	23

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State	City	QZType			
UT	Woods Cross City	New	UP		
UT	Salt Lake City	New	UP		
			<b>Total Number of Records for State</b>	<b>UT</b>	<b>2</b>
VA	Williamsburg	Pre-Rule	CSX		
VA	Christiansburg	Pre-Rule	NS		
VA	Buchanan	Pre-Rule	NS		
VA	Ashland	Pre-Rule	CSX		
VA	Abingdon	Pre-Rule	NS		
VA	Salem- Chrstusbg	Pre-Rule	NS		
VA	Salem-White Thorn	Pre-Rule	NS		
VA	Roanoke Belt Lin	Pre-Rule	NS		
VA	Roanoke Blue Rid	Pre-Rule	NS		
VA	Roanoke Coke	Pre-Rule	NS		
VA	Roanoke Industri	Pre-Rule	NS		
VA	RoanokeTerm	Pre-Rule	NS		
VA	Roanoke VGN	Pre-Rule	NS		
VA	Rocky Mount	Pre-Rule	NS		
VA	Bluefield	Pre-Rule	NS		
VA	Suffolk	Pre-Rule	NS		
VA	Charlottesville	Pre-Rule	CSX		
VA	Culpeper	Pre-Rule	NS		
VA	Appalachia	Pre-Rule	NS		
VA	Manassas	Pre-Rule	NS		
VA	Vinton	Pre-Rule	NS		
VA	Manassas	Pre-Rule	NS		
VA	Chesterfield Cou	New Partial	CSX		
VA	Vinton	Pre-Rule	NS		
			<b>Total Number of Records for State</b>	<b>VA</b>	<b>24</b>
VT	Burlington	New	Vermont RWY		
			<b>Total Number of Records for State</b>	<b>VT</b>	<b>1</b>
WA	Spokane Valley	New	BNSF		
WA	Spokane	Pre-Rule	UP		
WA	Wenatchee	Pre-Rule	BNSF		
WA	Seattle	Pre-Rule	BNSF		
WA	Washougal	New	BNSF		
			<b>Total Number of Records for State</b>	<b>WA</b>	<b>5</b>

Federal Railroad Administration

Disclaimer: This list, which is provided for informational purposes only, merely reflects FRA receipt of quiet zone notification packages. This list does not, however, constitute FRA approval of the contents of any notification package. Notwithstanding this public authorities are required to provide complete quiet zone notification packages to all parties listed in 49 CFR 222.43.

State	City	QZ Type	
WI	Superior	Pre-Rule	BNSF
WI	Superior	Pre-Rule	BNSF
WI	Superior	Pre-Rule	BNSF
WI	Madison 4	New	WSOR
WI	Madison QZ 3	New	WSOR
WI	La Crosse TK76	Pre-Rule	BNSF
WI	La Crosse CP 2	Pre-Rule	SOO
WI	Oshkosh	Pre-Rule	WC
WI	Green Bay	Pre-Rule	WC
WI	Green Bay	Pre-Rule	WC
WI	Green Bay	Pre-Rule	WC
WI	Green Bay	Pre-Rule	WC
WI	Green Bay	Pre-Rule	WC
WI	La Crosse	Pre-Rule	BNSF
WI	Wauwatosa	Pre-Rule	SOO
WI	Green Bay	Pre-Rule	WC
WI	Green Bay	Pre-Rule	WC
WI	Green Bay	Pre-Rule	WC
WI	Burlington	Pre-Rule	WC
WI	Superior	Pre-Rule	WC
WI	Prairie du Chien	Pre-Rule	BNSF
WI	Fond Du Lac	Pre-Rule	WC
WI	Watertown	Pre-Rule	SOO
WI	Watertown	Pre-Rule	UP
WI	Watertown	Pre-Rule	WSOR
WI	Richfield	New	CN
WI	Fond du Lac	Pre-Rule	WC
WI	Mukwonago	Pre-Rule	WC
WI	Marshfield	Pre-Rule	WC
WI	Neenab	Pre-Rule	WC
WI	Ashwaubenon	New	CN
WI	Milwaukee	New	SOO
WI	North Fond du La	Pre-Rule	WC
WI	Elm Grove	Pre-Rule	SOO
WI	Waukesha	Pre-Rule	WC
WI	Pleasant Prairie	Pre-Rule	UP
WI	Fox Point	Pre-Rule	UP
WI	Spencer	Pre-Rule	WC
WI	Menasha	Pre-Rule	WC
WI	Menasha	Pre-Rule	WC
WI	Menasha	Pre-Rule	WC
WI	Menasha	Pre-Rule	WC
WI	Menasha	Pre-Rule	WC
WI	Junction City	Pre-Rule	WC
WI	West Allis	Pre-Rule	UP
WI	West Allis	Pre-Rule	UP
WI	Superior	Pre-Rule	SOO
WI	Superior	Pre-Rule	UP
WI	Superior	Pre-Rule	UP
WI	Superior	Pre-Rule	BNSF
WI	Superior	Pre-Rule	BNSF

Federal Railroad Administration

Disclaimer: This list, which is provided for informational purposes only, merely reflects FRA receipt of quiet zone notification packages. This list does not, however, constitute FRA approval of the contents of any notification package. Notwithstanding this public authorities are required to provide complete quiet zone notification packages to all parties listed in 49 CFR 222.43.

State	City	QZType				
WI	Superior	Pre-Rule		BNSF		
WI	Superior	Pre-Rule		BNSF		
WI	Superior	Pre-Rule		BNSF		
WI	Wauwatosa City	Pre-Rule		SOO		
WI	Oconomowoc Lake	New		CP		
WI	Wausau Throu Lon	Pre-Rule		WSOR		
WI	Wausau West Ind	Pre-Rule		WSOR		
WI	Wausau 3M Spur	Pre-Rule		WSOR		
WI	Wausau James Riv	Pre-Rule		WSOR		
				<b>Total Number of Records for State</b>	WI	60
WV	Chesapeake	New		Amtrak, CSX		
				<b>Total Number of Records for State</b>	WV	1
					<b>Total Number of records:</b>	<b>327</b>

**Federal Railroad Administration**

*Disclaimer: This list, which is provided for informational purposes only, merely reflects FRA receipt of quiet zone notification packages. This list does not, however, constitute FRA approval of the contents of any notification package. Notwithstanding this public authorities are required to provide complete quiet zone notification packages to all parties listed in 49 CFR 222.43.*



#13



January 28, 2009

North Dakota Senate Finance & Taxation Committee

Mr. Chairman and Members of the Committee,

*Same given  
to House.*

We at the Gladstone Inn and Suites support the Senate Bill 2338 for several reasons.

We have lost substantial business because of the train whistles. It is not uncommon for a guest to check out a day early due to the lack of sleep from the trains. At eight rooms a month at an \$80.00 average rate, that equals an approximate \$7,680.00 a year that we lose in revenue. This number does not reflect the business lost by local stores and restaurants. The reputation that we gain through word of mouth is also affected by disgruntled guests.

The Federal Regulation governing whistle use was changed in June of 2005 and now requires trains to blow their horn 15 to 20 seconds for each and every public crossing. Also in 2005, the Federal Regulation Administration began to require that train horns be sounded at a range of 96 to 110 decibels. The proscribed sequence is two long sounding whistles, followed by a short one and then another long. The results end in what seems as one long and loud whistle that lasts for close to 70 seconds or more, especially since the four crossings that affect us are very close in distance.

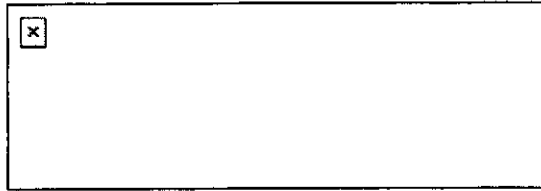
On average, there are 2 trains per hour, 1 going each way, both day in and day out. This adds up to at least 48 trains per day.

Our goal should be to create an environment that facilitates the railroad, while maintaining local safety and quality of life. I praise the efforts of all involved in making Quite Zone project funds available.

Thank you for your time and consideration on the above matter.

A handwritten signature in black ink that reads 'Phyllis Thompson'. The signature is written in a cursive, flowing style.

Phyllis Thompson  
Gladstone Inn and Suites Manager  
111 2<sup>nd</sup> St. NE  
Jamestown, ND 58401  
701-252-0700



January 27, 2009

RE: SB 2338

Senate Finance and Taxation Committee  
Dwight Cook, Chairman

Dear Chairman Cook and Committee Members:

My name is JoDee Rasmusson and I am the Executive Director of the Jamestown Chamber of Commerce. I am writing today to express my support for Senate Bill 2338.

Although there was not sufficient time available for the Jamestown Chamber of Commerce to take a formal position regarding SB 2338, the Chamber's Local and Regional Issues Committee did meet late last week to discuss this legislation. The committee has approximately 20 active members that represent various businesses in the Jamestown community. The committee feels that this bill will be critical to helping the city of Jamestown fund a Quiet Zone construction project. The committee passed a resolution to recommend that the Jamestown Chamber's full board of directors also support the legislation.

While increased safety at Jamestown's railroad crossings is the most important aspect of establishing a Quiet Zone, the quality of life in Jamestown's downtown district would also be improved, creating a more pleasant atmosphere for both residents and visitors. Jamestown's downtown revitalization efforts have resulted in several new businesses over the past few years—businesses that have greatly enhanced the economic vitality of the downtown area. A Quiet Zone ordinance will significantly impact the future growth and success of these and other new businesses. Again, the Jamestown Chamber's Local and Regional Issues committee supports SB 2338 which will assist the community of Jamestown in making the Quiet Zone project a reality.

Sincerely,

JoDee Rasmusson  
Executive Director

#129



# Main Street Downtown Association

www.jamestownUSA.com -- email [mainstreet@jamestownUSA.com](mailto:mainstreet@jamestownUSA.com)

206 1st Ave. S. • PO Box 1026, Jamestown, ND 58401 701-320-3015

N.D. Senate Taxation and Finance Committee  
Dwight Cook, Chairman  
State Senate  
600 East Boulevard  
Bismarck, North Dakota 58501

RE: Senate Bill regarding special fuels excess tax

Dear Senator Cook and Committee Members:

I am writing this letter in support of a Senate Bill introduced by Senator Nething to amend and re-enact section 57-43.2-19 of the North Dakota Century Code, relating to deposit of special fuels excise taxes paid by railroads in a special fund, to provide an appropriation and to provide an effective date.

It is our understanding that all special fuels excise taxes collected on sales of diesel fuel to a railroad under section 57-43.03 must be transferred to the state treasurer who shall deposit the moneys in the highway-rail grade crossing safety projects fund.

The Main Street Downtown Association of Jamestown is particularly interest in a grant for a quiet zone which is one of the eligible projects. Our quiet zone would also include building of grade separations and other cost associated with these improvements. Preliminary estimates for our quiet zone came in at about \$460,000.

The City of Jamestown is planning on improving the downtown parking lots this summer and we feel that putting in the quiet zone would not only improve the quality of life for downtown residents but residents for blocks away from the railroad tracks. Another factor is the safety element which the quiet zone will greatly improve, as pedestrian mazes will be installed, forcing the walker or biker to look both directions when approaching a railroad crossing in Jamestown.

Downtown Jamestown has seen many improvements the last five years and quite a few new downtown apartments have been developed because of the Renaissance Zone. A quiet zone would be a very beneficial addition to our revitalization.

Please give this Senate Bill your careful attention.

CURT WALDIE, President  
Main Street Downtown Association  
P.O. Box 1026  
Jamestown, ND 58402-1026



The Main Street Downtown Association is a non-profit organization whose purpose is to revitalize downtown physically, economically and socially.



#15

January 28, 2009

Senate Finance and Taxation Committee  
ND State Legislature

RE: Senate Bill 2338

Mr. Chairman, Members of the Committee:

Thank you for your allowing me time to speak to you today on this important bill.

My name is Delores Rath and I reside at 1322 4<sup>th</sup> Avenue NE, Jamestown, ND 58401. I am a retired State employee having served as a registered nurse at the ND State Hospital in Jamestown for 40 years.


Following my retirement I decided to spend my retirement years in North Dakota. Although Jamestown is a vibrant community with a growing and expanding business and manufacturing base we are also proud that many have chosen Jamestown as a good place to retire.

To me, developing proper safety measures so that the new and incredibly loud train horns are no longer needed is both a common sense and quality of life issue for all of our residents.

This is an important bill for our businesses, the people who work in those businesses as well as a quality of life issue for our retired population.

Your support of this bill will be much appreciated.

If you have any questions I will be happy to try to answer them.

Sincerely,  
  
Delores Rath

#16  
**TESTIMONY  
SENATE BILL 2338**

**Finance and Taxation Committee  
Senator Dwight Cook, Chairman**

**January 28, 2009**

**Chairman Cook, members of the Committee, my name is Dan Howell and for the past 9 years, I have had the privilege and honor to be the Chief Executive Officer of the Anne Carlsen Center (ACC) located in Jamestown, North Dakota. I serve in the shadows of our namesake, Dr. Anne Carlsen. Dr. Anne Carlsen is one of only 36 individuals who have received the prestigious Teddy Roosevelt Roughrider Award. She has been the driving force and inspiration for the Center over the past 67 years and the ACC has taken on the challenge of caring for the State of North Dakota's most challenging children and now adults which special needs.**

**I am here today to testify in support of SB 2338. Loud noises, at any point and time, for a child or an adult with autism elicit significant and sometime exacerbate an already volatile behavioral situation.**

**For 67 years, the ACC has been located adjacent to railroad tracks in Jamestown. As train traffic has increased, the number of**

**times per day train whistles are sounded has increased. The ACC staff monitors behavioral issues in the children we serve and there appears to be a correlation between train whistles and increased significant behaviors within a 5-10 minute window after these whistles are blown.**

**The passing of SB 2338 would give communities like Jamestown a better opportunity to develop railroad quiet zone, thus assisting in minimizing behaviors in the complex children that the ACC serves.**

**Mr. Chairman and members of the Committee, I would be more than happy to answer any questions that you may have at this time.**

---

**Dan Howell, ACC Chief Executive Officer**

#17  
January 28, 2009

TO: Members of the ND Senate Finance & Taxation Committee

RE: SB 2338

Can you hear me now? It's no secret that the train horns we are subjected to approximately 22 times every day (and night) at each of Bismarck's 7 at-grade railroad crossings are blowing louder and longer than ever, as the freight trains move through town at higher speeds. Thanks to the federal "Swift Rail Act," the air horns on today's trains are allowed to produce sound levels of 110 to 115 decibels (dB), similar to the noise of a jet airplane taking off.

By approving Senate Bill 2338, you will enable communities to allow the train horns to go silent and to improve the safety of our urban railroad crossings at the same time. Under Quiet Rail, the old single-arm crossing barriers that cars can drive around are replaced with new quad gates and other modern safety measures that reduce the chances of vehicle or pedestrian and train interaction.

Fargo implemented Quiet Rail last year, with great success. As a result, investment in their downtown area continues to grow. More people are choosing to locate housing and businesses in the area because the environment has become much more inviting, quieter and less stressful. There is no concerted effort in Fargo to "bring back the train horns."

According to the American Speech-Language Hearing Association (ASHA), hearing damage starts at 80 dB. In Bismarck and most other cities and towns across the state, the train horns continue to blow, night and day, at sound levels approaching 115 dB. If you live, work or play anywhere near the railroad tracks, you quickly learn how obnoxious and stressful the train horns have become.

As a developer, owner and occupant of downtown real estate, I experience the negative effects of the train horns every day. Your support of SB 2338 is an important step in providing local communities a tool to deal with the noise problem and to make the crossings safer for cars, trains and pedestrians alike. Thank you for your consideration.



Jim Christianson  
1009 East Highland Acres Rd.  
Bismarck ND 58501

258-4800 Work  
220-4888 Cell  
[gojc@qwestoffice.net](mailto:gojc@qwestoffice.net)

Mr. Chairman and members of the Committee,

For the record, my name is Dave Nething, Senator from District 12. I'm here to introduce this legislation. There are many people here who want to testify so I will just give an overview.

The proposal before you today would use railroad fuel tax revenues to help mitigate the problems of excessive train whistle noise. North Dakota's railroads pay a fuel tax of 4 cents per gallon that generates more than \$3.2 million per year.

Keep in mind that railroads pay this fuel tax into the highway distribution fund yet never use the roads in our state. It seems appropriate that, at least for one biennium, we use that money, or a portion of that money, to make some improvements to rail crossing safety and try to help eliminate excessive train whistle noise. There will be an impact to the counties since they receive 14 percent of this amount. Thus, their total loss is \$896,000. Of this amount, \$32,000 would be my county's share. In addition, the city residents pay 8.69 mills to the county for rural roads, which is about \$227,000 annually. Of this amount, about \$15,000 is returned to the city.

I would like to remind the Committee that the Governor's budget includes \$120 million of general fund



## SB 2338

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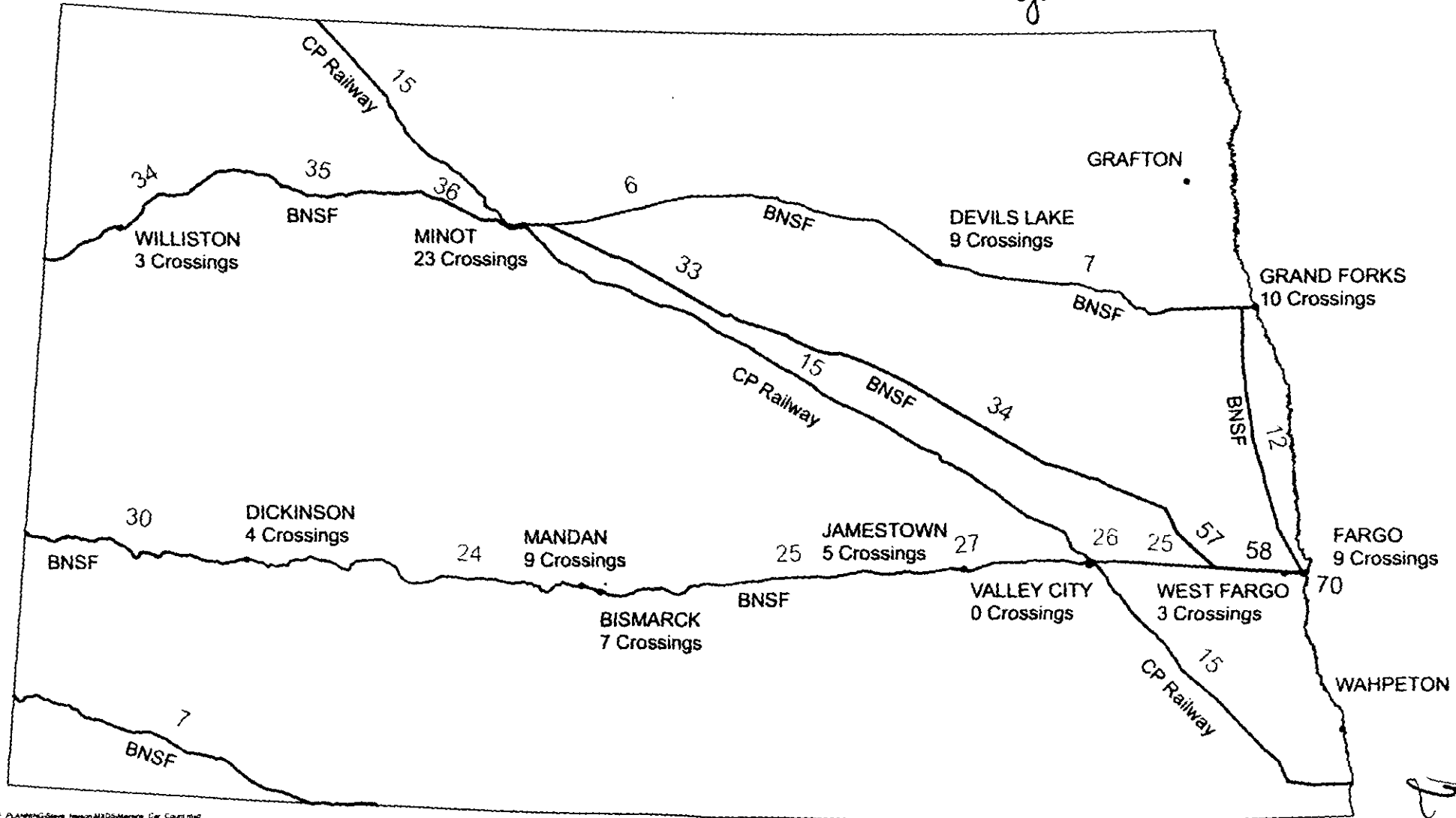
money for the highway distribution fund for this biennium, an increase of 34 percent or more, making this an appropriate time to address the issue of train whistles and rail crossing safety.

This bill will not raise taxes in any way and it will not cost any more money; it simply directs the Department of Transportation to use the rail fuel fund tax monies this biennium to make some enhancements to rail safety and to help pay for quiet zones proposed by communities that so request it.

I would be happy to answer any questions.

# TRAINS PER DAY

*Same handover given to House.*



*Handwritten mark*

**TESTIMONY  
SENATE BILL 2338**

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

**February 10, 2009**

Chairman Holmberg, members of the Committee, my name is Dan Howell and for the past 9 years, I have had the privilege and honor to be the Chief Executive Officer of the Anne Carlsen Center (ACC) located in Jamestown, North Dakota.

I am here on behalf of the Community of Jamestown to lend support to SB 2338. This is an important bill for the entire Community of Jamestown, as we continue moving forward with revitalizing our downtown area. The money for this bill comes from taxes paid by the railroad. This is a one-time solution for many communities around the State.

A large portion of local property tax dollars have been needed as the primary source of funds to mitigate costs of railroad safety and approach costs, with very little if any economic benefit to the local community. The use of excise tax dollars generated from sales of diesel fuel to railroads to mitigate at least a portion of the local tax dollars used in the past to fund railroad crossing safety projects, we believe is a fair alternative for the local

taxpayer who has needed to fund the impacts of increased interstate commerce due to railroad traffic increases.

Increased safety for citizens, assisting Renaissance Zone projects, and quality of life issues are just a few factors that the Finance and Taxation Committee of the Senate heard on January 28, of this year.

Senator Holmberg and members of the Committee, I would respectfully request your support on SB 2338.

Two other individuals, Dan Buchanan and Dwaine Heinrich, organizers of the Jamestown Quiet Zone Petition Drive, regrettably could not be here this morning. But, I would be more than happy to try to answer any questions you might have with regards to specifically the Jamestown Quiet Zone.

Thank you for this consideration.

---

Dan Howell, ACC CEO

2/

SENATE APPROPRIATIONS COMMITTEE

Tuesday, February 10, 2009

9:30 AM

State Capitol Building---Bismarck, ND

Senate Bill 2338---Funding for Railroad Crossing Quite Zones

Presenter: Bruce Schwartz  
1237 S. Highland Acres Rd.  
Bismarck, ND 58501  
701-258-1189  
[nmbruce@bis.midco.net](mailto:nmbruce@bis.midco.net)

*Same given  
to House.*

Testimony:

I come before this committee today in support of SB 2338.

Let me relate my personal experience with railroad noise. My family and I moved to Bismarck 34 years ago and have lived in the same house ever since. We live across the railroad tracks from Fraine Barracks in close proximity to the so-called Fraine Barracks crossing. Thirty four years ago train traffic was much lighter and the whistle noise was not nearly as offensive as it is today. Also, train traffic has increased substantially over the years.

A few years ago train air horn noise suddenly became much, much louder and actually unbearable if you are outside. I have learned that the reason for this sudden increase in volume was prompted by improved automobile construction which make it difficult to hear air horns. Cars now are mostly air conditioned (windows are closed). Cars now have radios and sophisticated sound equipment. People are using cell phones. All these distractions are probably responsible for increased train noise. We now have the technology to improve this outdated, nineteenth/twentieth century train air horn method of rail crossing safety. Train air horns are no longer as effective as they once were. Senate Bill 2338 would be an excellent means to clean up a fast growing pollution problem, that of sound pollution. And it can be done without raising taxes.

There is a lingering notion that comes from yesteryear about the nostalgic, mournful sound of the train whistle off in the distance. It sounded comforting and nice. That was then, this is now. Train air horns are no longer comforting or nice.

Let me say also that I know that I speak for thousands of people who live adjacent to railroad tracks.

I urge a do pass from this committee on SB 2338.



**JOHN RISCH**  
North Dakota Legislative Director

**united**  
*transportation*  
**union**

5

750 Augsburg Avenue  
Bismarck, ND 58504-7009  
Office: 701-223-0061  
Fax: 701-223-0061  
E-mail: utu@bis.midco.net

**Testimony of John Risch**  
**Before the Senate Finance and Tax Committee**  
**In Support of SB 2338**  
**January 28, 2009**

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

We railroad workers wholeheartedly support this bill. We like blowing the whistle even less than people like hearing them. I have hearing aids in today as a testament to how loud they are, not just outside the cab, but inside as well.

Times have changed. Our whistles are louder than they have ever been and we have new federal rules that require us to blow the whistle, without exception, between 15 and 20 seconds prior to reaching any railroad crossing. The new locomotives have electric switches to control the whistle. In the past, I was able to partially open the manual valve a quarter or half the way, instead of fully open. With the new whistles, as soon as you touch the button you get the full 100 decibels plus, per horn, blaring off the top of the locomotive.

We railroad workers know that we're creating tremendous noise pollution and eroding the quality of life in the communities that we pass through. We also know that this constant blaring of the whistle is not the answer to safety at railroad crossings.

Fargo and Moorhead have demonstrated that when you put in a quiet zone and enhance safety at the crossings, lives are actually saved without blowing the whistle. We have not had any incidents in Fargo/Moorhead since they installed their quiet zones last February.

Taxes collected for the Highway trust fund should be from those who use the highways ... a user fee. I've been a railroad engineer for 30 years and I've yet to drive a locomotive down a highway. The railroad industry's taxes should not be used to subsidize our competition. Making this a worthwhile place to spend it.

The following are some numbers I've gleaned from news clips and internet searches concerning quiet zone estimated costs:

Fargo, North Dakota's only quiet zone, was completed in February 2008  
Cost for 7 crossings: \$2.5 million or \$357,142 per crossing.

Casselton: 3 crossings: \$1 million or \$333,333 per crossing.

Jamestown: 5 crossings: \$460,548 or \$92,108 per crossing.

Bismarck: 8 crossings: \$4,057,496 or \$507,187 per crossing.

Jamestown's plan is far less expensive than the others. It was reported in the December 23, 2008, Jamestown Sun that their plan only entailed installing concrete medians separating driving lanes and pedestrian mazes on sidewalks.

As far as the potential number of crossings goes, that depends on which communities apply for the grant money. Rough estimates on potential requests are:

1. Fargo 2
2. Grand Forks 4 downtown crossings
3. Casselton 3
4. Bismarck 8
5. Mandan 2
6. Dickinson 3
7. Medora 2
8. Minot 8
9. Tioga 2
10. Beulah 3

**Total: 37 crossings**

Devils Lake and other cities might also be interested, but they have very few trains.

It is unlikely that every city will apply for the matching grant money this biennium. If we take the \$6.4M and divide it by 37 crossings, it averages out to \$172,972 per crossing--far more than Jamestown needs and far less than the others need.

This all being said the cap per crossing could total \$175,000 or more.

I want to commend Senator Nething for introducing this legislation and respectfully ask that the committee give it a "do pass" recommendation.



6

**SENATE APPROPRIATIONS COMMITTEE**

**February 10, 2009**

**9:30 a.m. - Harvest Room**

**North Dakota Department of Transportation  
Dave Leftwich, Local Government Engineer**

**Senate Bill 2338**

---

Good morning, Mr. Chairman and members of the committee. I'm Dave Leftwich, Local Government Engineer, for the North Dakota Department of Transportation (NDDOT).

The Department has for many years provided federal funding for at grade railroad track surface crossings, bridges over or under railroad tracks, and signal and signal gates at railroad crossings. In the past three years, the Department has built or rehabilitated four bridges, at a cost of \$15.4 million, installed 31 track surface crossings and 36 new signals or signal upgrades, at a cost of \$8.5 million.

The work on railroad crossings is developed in consultation with the local governments who placed these projects on their priority list, which became a part of the Statewide Transportation Improvement Program (STIP). The STIP process has been used for many years and provides opportunity for the public to comment on the projects. Local leaders are involved in, and approve, the project list on their respective systems.

The \$6.4 million in state funds dedicated to railroad crossings by SB 2338 would reduce the state funding distributed through the Highway Tax Distribution Fund. This would reduce the counties' funding by \$1.5 million, the cities funding by \$0.9 million, and Department funding by \$4 million.

Quiet zone crossings are eligible for federal aid and can be included in the city and county programs. As a result, the cities and counties already have federal funding available that can be used for quiet zone projects. These projects are eligible if the local governments rank quiet zone projects as a high priority.

In summary, since federal funds are already distributed to the cities and counties and they select the projects to be funded, we believe the decision to do quiet zone projects should be left up to the locals. As a result, we oppose dedicating \$6.4 million from the Highway Tax Distribution Fund for quiet zone projects.

Mr. Chairman, that concludes my testimony, and I will be happy to answer any questions the committee may have.

Mr. Chairman and members of the Committee,

For the record, my name is Dave Nething, Senator from District 12. I'm here to introduce this legislation. There are many people here who want to testify so I will just give an overview.

I introduced Senate Bill 2338 because, in recent years, train whistles have become more of a problem than they have been in the past. Loud and excessive train whistles are creating an enormous noise pollution problem in communities across our state, hampering business development and our overall quality of life.

The proposal before you today would use railroad fuel tax revenues to help mitigate the problems of excessive train whistle noise. North Dakota's railroads pay a fuel tax of 4 cents per gallon that generates more than \$3.2 million per year, and that's how the \$6.4 million appropriation was established in this bill.

Keep in mind that railroads pay this fuel tax into the highway distribution fund yet never use the roads in our state. It seems appropriate that, at least for one biennium, we use that money, or a portion of that money, to make some improvements to rail crossing safety and try to help eliminate excessive train whistle noise

I would like to remind the Committee that the Governor's budget includes \$120 million of general fund money for the highway distribution fund for this biennium, an increase of 34 percent or more, making this an appropriate time to address the issue of train whistles and rail crossing safety.

This bill will not raise taxes in any way and it will not cost any more money; it simply directs the Department of Transportation to use the rail fuel fund tax monies this biennium to make some enhancements to rail safety and to help pay for quiet zones proposed by communities that so request it.

I would be happy to answer any questions.

Testimony 2

February 25, 2009

House Finance and Taxation Committee  
ND State Legislature  
Rep. Wesley Belter, Chairman

RE: Senate Bill 2338

Mr. Chairman and Members of the Committee:

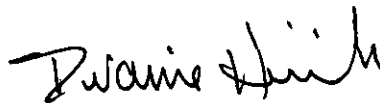
Thank you for allowing me to speak to you today in support of this proposed legislation. My name is Dwaine Heinrich and I reside at 114 1<sup>st</sup> Avenue South, Jamestown, ND. I am also one of the petitioners for the initiated ordinance now before the Jamestown City Council to establish a Quiet Zone in Jamestown.

Before a Quiet Zone can be established plans must be drawn up by an engineer and those plans must be approved by the Federal Railway Administration.

Some years ago The Legislature passed the Renaissance Zone Legislation which has resulted in significant investments in individual properties in various cities across the state. Some of those investments are at risk as the increased noise level of train horns has a negative impact on the willingness of individuals to live or do business near railroad crossings. This in turn has a negative impact on the entire city and county as it depresses property values in the cities and counties which are dependant on property values to generate taxes.

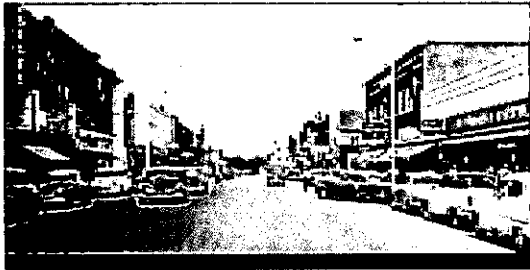
Members of the committee, this is a good bill. It is good for the quality of life and the revitalization of our communities. Certainly we can all find examples of where development has shied away from our downtown areas or other areas along the railroads simply because of the noise pollution issue.

Thank you very much for your consideration. If you have any questions I will do my best to answer them.



Dwaine Heinrich

Testimony 5



# Main Street Downtown Association

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206 1st Ave. S. • PO Box 1026, Jamestown, ND 58401 701-320-3015

Wednesday, February 25, 2009

House Finance and Taxation Committee  
Wesley R. Belter, Chairman  
State House of Representatives  
600 East Boulevard  
Bismarck, North Dakota 58501

RE: Senate Bill 2338 regarding special fuels excess tax

To Whom It May Concern:

I am writing this letter in support of a Senate Bill introduced by Senator Nething to amend and re-enact section 57-43.2-19 of the North Dakota Century Code, relating to deposit of special fuels excise taxes paid by railroads in a special fund, to provide an appropriation and to provide an effective date.

It is our understanding that all special fuels excise taxes collected on sales of diesel fuel to a railroad under section 57-43.03 must be transferred to the state treasurer who shall deposit the moneys in the highway-rail grade crossing safety projects fund.

The Main Street Downtown Association of Jamestown is particularly interest in a grant for a quiet zone which is one of the eligible projects under this bill. Our quiet zone would also include building of grade separations and other costs associated with these improvements. Preliminary estimates for our quiet zone came in at about \$460,000.

The City of Jamestown is planning on improving the downtown parking lots this summer and we feel that putting in the quiet zone would not only improve the quality of life for downtown residents but residents for blocks away from the railroad tracks. Another factor is the safety element which the quiet zone will greatly improve, as pedestrian mazes will be installed, forcing the walker or biker to look both directions when approaching a railroad crossing in Jamestown.

Downtown Jamestown has seen many improvements the last five years and quite a few new downtown apartments have been developed because of the Renaissance Zone. A quiet zone would be a very beneficial addition to our revitalization.

Please give this bill your careful attention.

KIMBERLY SAXBERG, Vice President  
Main Street Downtown Association  
P.O. Box 1026  
Jamestown, ND 58402-1026

February 25, 2009

House Finance and Taxation Committee  
Sixty-first Legislative Assembly

Re: Senate Bill No. 2338

Chairman Belter and members of the committee, my name is Dan Buchanan. I reside at 216 15<sup>th</sup> Ave NE, Jamestown, ND and I also own commercial real estate where I practice law in downtown Jamestown adjacent to the railway lines. I appear on my own behalf in support of the passage of SB 2338, and as a representative of the Coalition for a Safe and Sound Jamestown, an umbrella organization working for the passage of an initiated ordinance to establish a Quiet Zone in Jamestown.

Prior to this hearing I have reviewed the statements of Jamestown City Administrator Fuchs, the letter of support from the 100 plus member Main Street Downtown Association, and of other individuals. The record should reflect that I agree with those statements. I would, however, ask you to examine and consider carefully the first section [SAFETY] of Mr. Fuch's testimony that addresses what is called the risk index for railroad crossings based on existing warning devices with and without the sounding of train horns. He writes, in part, "In a study prepared by SRF Consulting Group, Inc., with input from the Federal Railroad Administration, BNSF railroad and the North Dakota Department of Transportation it was determined that Jamestown currently has a Risk Index With Horns (RIWH) of 21,249. The nationwide risk factor for crossings is 19,047." With the improvements being considered by Jamestown [described in that section] Fuchs concludes, "...these improvements would lower our risk factor to 6,299 even without the sounding of horns by approaching trains at each grade crossing."

Today, some 26 unit trains, many more than a mile long and usually hauling coal out of the state, pass through downtown Jamestown every day. It is not unusual to have 2 trains passing at the same time in opposite directions. This train traffic, expected to increase, has placed major impacts on our city and others located on the railway lines. In most cases, our cities and the state have no effective control over the railway operations conducted in and through our cities. Blocked crossings and backed up highway traffic on US highways 52 and 281 and ND highway 20 are bad enough. In addition, the noise level of the train horns is so bad at times that I can't talk on the phone or interview clients. Many of my clients are older persons, some visibly fragile. Taking clients or others to downtown restaurants or other businesses is often a trying experience when trains are present.

The noise level is something we can control. The mechanism proposed in this bill to assist cities and other political subdivisions makes eminent sense. At this time, as Fuchs points out, a large portion of local property tax dollars have been needed as the primary source of funds to mitigate

costs of rail crossings and approaches with very little if any economic benefit to the local community. The special fuels tax is already available so no new taxes will be needed or collected. Since the railway industry is causing substantial impacts on our cities and state it is only fitting and proper that fees they pay to operate locomotives should be used to fund safety measures for highway-rail grade crossings. In that way, there is some measure of payback to the citizens of North Dakota and to its cities and other political subdivisions.


While all political subdivisions will be eligible to receive grant funds under this legislation, some folks will tell you that the diversion of these funds for even one biennium should not be allowed because of perceived negative impacts to as yet unnamed political subdivisions. In the first place, making crossings safer benefits everyone, regardless of where they live. Moreover, we find it difficult to understand and agree that funds received by the North Dakota Department of Transportation collected from taxes on fuel used for locomotives should never be used to improve grade crossings where highways and streets intersect with railway lines. The crossings intended to be improved and made safer by this bill are not over streams—they are over streets and highways! Finally, I learned yesterday from the office of one of North Dakota's U. S. Senators that the recently-enacted Stimulus legislation will provide the State of North Dakota, for the use of the North Dakota Department of Transportation for highway infrastructure projects more than **ONE HUNDRED SEVENTY MILLION DOLLARS (\$170,000,000)**. Surely, the State of North Dakota will be in a good position to do what is right for all of our political subdivisions without hardship if this legislation is enacted.

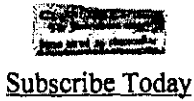
There is also the matter of economic development, something this and past legislatures have been actively supporting. Many of us in recent years have invested heavily in restoring and rehabilitating buildings in our city's downtown core. Those investments, both in business properties and for residential use, have brought new life to the downtown area, adding jobs and generating property and sales taxes which would otherwise be lost. That said, until downtown Jamestown may be seen as user friendly, new investments may be directed elsewhere. Existing investments may also be at substantial risk.

Finally, I invite your consideration of the editorial which recently appeared in the Jamestown Sun, attached to this statement.

Thank you for your consideration in passing SB 2338. If you have any questions, I will attempt to answer them. I may also be reached at (701) 252-6604 or by e-mail at [bulaw@daktel.com](mailto:bulaw@daktel.com).

Yours sincerely,

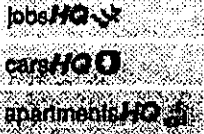
  
Dan Buchanan  
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## Pass bill to redirect railroad tax funds

### The Jamestown Sun Published Tuesday, February 17, 2009

Senate Bill 2338, known as the quiet zone or quiet rail bill, has passed the North Dakota Senate and is now headed for the House. We ask House members to follow the Senate's lead and approve this legislation, which will make railroad crossings safer and communities quieter.

The bill appropriates up to \$6 million of fuel taxes paid by railroads in the state. The money presently goes into the North Dakota Department of Transportation budget for highways. What more appropriate use could there be for railroad taxes than upgrading railroad crossings over streets, roads and highways — making them safer for everyone?

Although the emphasis has been on silencing train horns in quiet zones, more emphasis should be placed on making crossings safer. It may seem strange, but constructing a quiet zone in Jamestown, for example, would make crossings more than three times safer than they are now with horns, according to the Federal Railroad Administration.

The bill allows \$100,000 per crossing, which is capped at \$500,000 per community, for construction of a quiet zone. The estimated \$460,000 price tag for Jamestown's quiet zone would be 90 percent covered by these state funds.

Jamestown has a special election slated for April 7 to ask voters whether they want to establish a quiet zone. This legislation could dramatically affect the outcome of that election.

Locally, a quiet zone would also reduce noise pollution, particularly in the downtown area, where the emphasis for several years has been on revitalization. With 22 Renaissance Zone projects already developed downtown, revitalization has obviously been working.

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However, it's not just about downtown development but making residential neighborhoods quieter too.

Jamestown is not the only community that could benefit; others are seeking noise relief and additional safety too.

Lawmakers in the North Dakota Legislature should approve this bill.

(Editorials are the opinion of Jamestown Sun management and the newspaper's editorial board)

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The Jamestown Sun  
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Jamestown, ND 58401-1760





JOHN RISCH  
North Dakota Legislative Director

**united**  
*transportation*  
**union**

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**Testimony of John Risch  
Before the House Finance and Tax Committee  
In Support of SB 2338  
February 25, 2009**

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

We railroad workers wholeheartedly support this bill. We like blowing the whistle even less than people like hearing it. I have hearing aids in today as a testament to how loud train whistles are, not just outside the cab, but inside as well.

Times have changed. Our whistles are louder than they have ever been and we have new federal rules that require us to blow the whistle, without exception, between 15 and 20 seconds prior to reaching any railroad crossing. The new locomotives have electric switches to control the whistle. In the past, I was able to partially open the manual valve a quarter or half the way, instead of fully open. With the new whistles, as soon as you touch the button you get the full 100 decibels plus, per horn, blaring off the top of the locomotive.

We railroad workers know that we're creating tremendous noise pollution and eroding the quality of life in the communities that we pass through. We also know that constant blaring of the whistle is not the answer to safety at railroad crossings.

The communities of Fargo and Moorhead have demonstrated that when you put in a quiet zone and enhance safety at the crossings, lives are actually saved without blowing the whistle. We have not had any incidents in Fargo/Moorhead since they installed their quiet zones last February.

Taxes for the Highway Trust Fund should be collected as a user fee from those who use the highways. I've been a railroad engineer for 30 years and I've yet to drive a locomotive down a highway. The railroad industry's taxes should not be used to subsidize our competition, which makes rail safety a worthwhile area to spend the fuel tax dollars collected from railroads.

Fargo's quiet zone, the only one in North Dakota, was completed in February of 2008. The cost for seven crossings was \$2.5 million at \$357,142 per crossing. The following are some numbers I've gleaned from news clips and internet searches concerning estimated costs for a quiet zone in various communities:

Testimony of John Risch-Page 2  
House Tax & Finance Committee  
February 25, 2009

Casselton:	3 crossings	\$1,000,000 total	\$333,333 per crossing
Jamestown:	5 crossings	\$460,548 total	\$92,108 per crossing
Bismarck:	8 crossings	\$4,057,496 total	\$507,187 per crossing

Jamestown's plan is far less expensive than the others. It was reported in the December 23, 2008, Jamestown Sun that their plan only entailed installing concrete medians to separate driving lanes and adding pedestrian mazes to sidewalks.

As far as the potential number of crossings goes, that will depend on which communities apply for the grant money. Rough estimates on potential requests are:

Beulah	3	Jamestown	5
Bismarck	8	Mandan	2
Casselton	3	Medora	2
Dickinson	3	Minot	8
Fargo	2	New Salem	2
Glen Ullin	2	Steele	2
Grand Forks	4	Tioga	2
Hebron	3		

**Total: 51 crossings**

Other cities may also be interested, but it's likely that not all of the estimated \$6.4 million will be used.

The governor's budget calls for the addition of \$120 million of general fund money to the Highway Trust Fund, an increase of 34 percent. Add in the federal stimulus package, more than \$170 million, and it becomes clear that now is the time to act.

We have a unique opportunity to help our communities improve their quality of life while at the same time increasing rail crossing safety for drivers and pedestrians alike. Improved rail crossings are one-time expenditures with long-term benefits.

I want to commend Senator Nething for introducing this legislation and respectfully ask that the committee give it a "do pass" recommendation.

Testimony 7

TESTIMONY BEFORE THE NORTH DAKOTA SENATE COMMITTEE ON FINANCE AND TAXATION  
IN SUPPORT OF SENATE BILL (SB) 2338 – QUIET RAIL ZONE LEGISLATION  
WAYNE KRANZLER – BISMARCK, ND  
JANUARY 28, 2009

Chairman Belter, members of the committee...

For the record, my name is Wayne Kranzler and I am the co-owner of Kranzler Kingsley Advertising, Marketing and Public Relations and K2 Interactive here in Bismarck. Our offices are located at 5<sup>th</sup> and Main in downtown Bismarck, right along the railroad tracks, and it is for that very reason that I'm testifying today in support of SB 2338.

This June, our firm will have been at our current location for fifteen years and I can tell you that it will be our last year at that location. Once our lease expires, we plan to move our firm and our 25 employees out of downtown Bismarck and away from the train.

As long as we have been located in downtown Bismarck, the train has been a daily part of life. And for years, the train was merely a nuisance. However, in recent years, as rail traffic has significantly increased and the decibel level of train horns have risen, the train has become a loud, persistent disruption that interrupts our meetings with clients and greatly interferes with our work. And, it was out of concern for our employees' hearing that we had our back offices – those closest to the railroad tracks – re-insulated last year to try to muffle the noise of the passing trains. This helped to a degree, but definitely has not alleviated the problem.

This past summer, our firm worked with the supporters of the Bismarck Quiet Rail Zone Initiative in developing radio ads and a public relations

campaign urging voters to vote "yes." As someone who has been in the advertising business for over thirty years, I knew from the beginning that the project's price tag would scare Bismarck voters. Voters did experience "sticker shock" and, as expected, rejected the measure and consequently the problem remains.

Senate Bill 2338 is exactly what is needed to assist communities across North Dakota to establish quiet rail zones, improve quality of life and help revitalize their downtown.

This legislation will provide the necessary support our communities need to create quiet rail zones and improve railroad crossing safety. The opportunity for cities to apply for state grants in order to help offset the extensive costs of building quiet rail zones will make it easier for cities, like Bismarck, to go to their citizens and ask for approval to create these zones.

With the passage of SB 2338, citizens will not have to choose between their wallets and their hearing. Voters will be able to see the issue for what it truly is: a matter of public safety and public health. Businesses will be able to work free of disruption. And residents living in proximity to railroad tracks will be able open their windows on summer evenings without being disturbed by the un-welcomed and ear-piercing train horn.

As a business owner and as a citizen of Bismarck, I applaud the sponsors of this legislation and I respectfully ask this committee to recommend a "do pass" on Senate Bill 2338.

Thank you Mr. Chairman.

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**HOUSE FINANCE AND TAXATION COMMITTEE**  
**February 25, 2009**  
**11:00 a.m. – Fort Totten Room**

**North Dakota Department of Transportation**  
**Bob Fode, Transportation Programs Director**

**Senate Bill 2338**

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Good morning, Mr. Chairman and members of the committee. I'm Bob Fode, Transportation Programs Director, for the North Dakota Department of Transportation (NDDOT). I'm here today to oppose SB 2338.

The Department has for many years provided federal funding for at grade railroad track surface crossings, bridges over or under railroad tracks, and signal and signal gates at railroad crossings. In the past three years, the Department has built or rehabilitated four bridges, at a cost of \$15.4 million, installed 31 track surface crossings and 36 new signals or signal upgrades, at a cost of \$8.5 million.

The work on railroad crossings is developed in consultation with the local governments who placed these projects on their priority list, which became a part of the Statewide Transportation Improvement Program (STIP). The STIP process has been used for many years and provides opportunity for the public to comment on the projects. Local leaders are involved in, and approve, the project list on their respective systems.

The \$6.4 million in state funds dedicated to railroad crossings by SB 2338 would reduce the state funding distributed through the Highway Tax Distribution Fund. This would reduce the counties' funding by \$1.5 million, the cities funding by \$0.9 million, and Department funding by \$4 million.

Quiet zone crossings are eligible for federal aid and can be included in the city and county programs. As a result, the cities and counties already have federal funding available that can be used for quiet zone projects. These projects are eligible if the local governments rank quiet zone projects as a high priority.

In summary, since federal funds are already distributed to the cities and counties and they select the projects to be funded, we believe the decision to do quiet zone projects should be left up to the locals. As a result, we oppose dedicating \$6.4 million from the Highway Tax Distribution Fund for quiet zone projects.

Mr. Chairman, that concludes my testimony, and I will be happy to answer any questions the committee may have.