

2013 HOUSE TRANSPORTATION

HB 1295

2013 HOUSE STANDING COMMITTEE MINUTES

House Transportation Committee Fort Totten Room, State Capitol

HB 1295
01-31-13
Job # 18074

☐ Conference Committee

Committee Clerk Signature

Janette Cook

Explanation or reason for introduction of bill/resolution:

A bill relating to motor carrier exemption.

Minutes:

Attachment 1-3

Chairman Ruby opened the hearing on HB 1295.

Tom Balzer, Executive Vice President of the North Dakota Motor Carriers Association, spoke to support HB 1295. He provided written testimony and an amendment. See attachments 1-2.

Representative Gruchella: Is the 55,000 pound limit an arbitrary figure or a national trend?

Tom Balzer: That is the line in which the heavy vehicle use tax comes into play. That is where that number comes from. I made sure that we got the BIG trucks and not the sometimes questionable ones.

Representative Kreun: Would this affect the interstate wages if the drivers go across the state lines?

Tom Balzer: No, it would not; and with the amendment all "interstate and intrastate" wording will be completely washed out of the bill.

Representative Kreun: Isn't there a federal law that says if you continuously go across the border, like between Grand Forks and East Grand Forks, that you are exempt from some of the overtime wages?

Tom Balzer: Yes, there is. This does not change that.

Chairman Ruby: The whole idea is to get the "intrastate" consistent with the "interstate". This is very basic language. Does this accomplish everything that you need? Are there no types of drivers or someone that might be exempt when they normally wouldn't be?

Tom Balzer: As far as the drivers being exempt, we don't believe so. The department feels that this is the best language to use. It does shorten it up considerably and adds simplicity.

Chairman Ruby: I am questioning this because I do have garbage trucks that are over 55,000 pounds.

Tom Balzer: That was the only marker that we had. If we went up to the 80,000 pounds there are a lot of large trucks that are registered for less than 80,000. We wanted to make sure that those were included.

Representative Drovdal: How do I respond to my constituents when I go home and tell the small truckers that they don't have to be paid for the overtime they put in?

Tom Balzer: In your area, most drivers aren't being paid by the hour. In the normal over-the-road trucking scenario, those individuals are paid by the load or by the mile. In an oil field operation they are paid by the hour or by the load. In the case where they are paid by the hour, the competitive nature out there would prevent them from not paying overtime. That is the standard. If a company only pays drivers for 40 hours a week, they won't have drivers for very long. That is how I would respond to them. (8:35)

Tony J. Weiler, Commissioner of Labor, spoke in support of HB 1295. He provided written testimony. See attachment #3. (13:45)

Chairman Ruby: Under this proposed amendment would there be some guidelines set up by the federal Department of Labor, that if it were sent to be investigated that they would verify a certain type of motor carrier status, or would it not involve that at all anymore?

Tony J. Weiler: Any time a claim is filed with the federal Department of Labor; they will take a look at whether that person is subject to their law and apply the law the same way that we do. I don't know that this would change what they do.

Chairman Ruby: You alluded to several different instances where overtime isn't required now. Salaried or farm might be one of those, correct?

Tony J. Weiler: That is not correct. That is one of those misnomers that is out there. Simply putting someone on a salary doesn't mean that they are exempt. They would still have to fit one of the exemptions. In most instances for a person on a salary, we would look at that professional, administrative, or executive, and really look at the duties that the employee is performing. You still have to pay a non-exempt employee overtime even if they are on a salary. There is just a different formula to calculate it.

Representative Sukut: If an employer is exempt from paying overtime under this bill, would they have to change their pay structure to make sure that their employees are getting compensated?

Tony J. Weiler: You can always pay employee overtime if you want to. There is nothing that says that you can't go above and beyond the law.

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The hearing was closed on HB 1295.

The bill will be held for further discussion.

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02-14-13
Job # 18935

☐ Conference Committee

Committee Clerk Signature

Jeannette Cook

Minutes:

Chairman Ruby brought HB 1295 back before the committee. He explained that this was a bill dealing with exemption for the motor carriers. The Commissioner came in with some amendment language that the Motor Carriers just could not justify. They couldn't come up with their language that accomplished what they wanted, so Tom Balzer asked us to recommend a DO NOT PASS on the bill.

Representative Weisz moved a DO NOT PASS on HB 1295.

Representative Delmore seconded the motion.

A roll call vote was taken. Aye 12 Nay 1 Absent 1

The motion carried.

Representative Oversen will carry HB 1295.

Date: 2-14-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1245

House Transportation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 1

Action Taken: ☐ Do Pass ☒ Do Not Pass ☐ Amended ☐ Adopt
Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Weisz Seconded By Delmore

Representatives	Yes	No	Representatives	Yes	No
Chairman Dan Ruby	✓		Rep. Lois Delmore	✓	
Vice Chairman Mark Owens	✓		Rep. Edmund Gruchalla	✓	
Rep. Rick Becker	✓		Rep. Kylie Oversen	✓	
Rep. David Drovdal	✓				
Rep. Robert Frantsvog	✓				
Rep. Brenda Heller	✓				
Rep. Curtiss Kreun	A				
Rep. Mike Schatz	✓				
Rep. Gary Sukut	✓				
Rep. Don Vigasaa	✓				
Rep. Robin Weisz		✓			

Total (Yes) 12 No 1

Absent 1

Floor Assignment Oversen

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

REPORT OF STANDING COMMITTEE

HB 1295: Transportation Committee (Rep. Ruby, Chairman) recommends **DO NOT PASS** (12 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING). HB 1295 was placed on the Eleventh order on the calendar.

2013 TESTIMONY

HB 1295

#1

**TESTIMONY
HOUSE BILL 1295
TRANSPORTATION COMMITTEE
JANUARY 30, 2011**

Mr. Chairman and members of the House Transportation committee my name is Tom Balzer, executive vice president of the North Dakota Motor Carriers Association. I am here this morning to testify in support of House Bill 1295.

House Bill 1295 will simplify the process of administering the motor carrier exemption for the department of labor. Currently when the department receives a wage claim they issue a letter to the employer. If the employer selects they are governed by the Motor Carrier Exemption under Section 13(b)(1) of the Fair Labor Standards Act (FLSA). If they do the department forward the claim onto the federal DOL. If the employer does not select then the claim is investigate in North Dakota, which does not have a motor carrier exemption.

This bill, as amended, will establish a standard whereby all operators of vehicles with a gross vehicle weight rating of 55,000 pounds or more are exempt from the overtime pay requirement.

By doing this it will significantly reduce the administrative burden on the department, especially in those cases when the employer fails to select they are exempt under the Motor Carrier Exemption under Section 13(b)(1) of the Fair Labor Standards Act (FLSA). It will also provide a uniform understanding of who is exempt and who isn't.

We would ask that you amend and give HB 1295 a DO PASS recommendation.

Mr. Chairman, this concludes my testimony, I would be happy to answer any questions the committee members may have.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1295

Page 1, line 7 after "employee" replace the remainder of the bill with "who operates a vehicle with a gross vehicle weight rating of more than 55,000 pounds [24947.56 kilograms] is exempt from overtime compensation."

Jack Dalrymple
Governor

Tony J. Weiler
Commissioner



#3
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**Testimony on HB 1295
Prepared for the House Transportation Committee**

January 31, 2013

Good afternoon Chairman Ruby and members of the House Transportation Committee, my name is Tony J. Weiler, and I am the Commissioner of Labor.

I appear before you today in support of HB 1295, and I do not have any concerns with the bill. Mr. Balzer and I have discussed this issue, and worked on the language (including the amendments) you now have before you.

The North Dakota Department of Labor (NDDOL) has two primary areas of responsibility. The first, and what I'll focus on today, is establishing and enforcing rules relating to the wages and the working conditions of employees in North Dakota. This is our wage and hour division. This division of the NDDOL has seen a significant increase in the number of claims over the last biennium. A number of these involve claims for overtime that include the motor carrier industry. While the NDDOL has jurisdiction over motor carriers in the state, there is a specific provision in the North Dakota Administrative Code regarding employees subject to the Federal Motor Carrier Act.

Under North Dakota Administrative Code Section 46-02-07-02(4)(I), certain types of employees are exempt from the overtime provisions of North Dakota law. Those specifically include:

Motor carrier: Any employee exempted by Section 13(b)(1), (2), and (3) of the Fair Labor Standards Act [29 U.S.C. 213(b)(1), (2), and (3)] from Section 7 of the Fair Labor Standards Act [29 U.S.C. 207], as applied to covered employees of motor common, contract, and private carriers specified by the Motor Carriers Act [49 U.S.C. 3102].

This means that any employee who is exempt from overtime under the motor carrier provisions of the Fair Labor Standards Act (FLSA) would be exempt from overtime in North Dakota as well.

Interpretation of this exemption, which is predicated on federal law and federal exemptions, has been difficult for the NDDOL. Further complicating the matter, the Federal Motor Carriers Act has been amended during the last few years

creating even more uncertainty regarding the applicability of the exemption under the FLSA. Some of this confusion resulted from transportation legislation in the mid 2000's that in some ways limited the exemption under Section 13(b)(1) of the FLSA, but there is a wide variety of opinion expressed on the impact of this change, and as of today there is still confusion.

The prior Commissioner of Labor had several conversations with the lead investigator for the Federal DOL in Bismarck, regarding the application of this section of law, how we could handle claims in North Dakota that may or may not be subject to it, and what her opinion was regarding the status of the Motor Carrier Exemption in North Dakota. The investigator made it clear to then Commissioner McEvers that the laws regarding the exemption were in flux, and that many of those claims were difficult to investigate and were often reviewed by her supervisors in Denver.

As a result, the NDDOL implemented a policy regarding these types of claims. Because the state administrative rule granting the exemption from overtime was based on a federal law that has since been amended, and can be difficult for even the Federal DOL to interrupt and apply, it was deemed prudent for the department to transfer all of the claims based on the Federal Motor Carriers Act to the Federal DOL.

Therefore, as a matter of policy, where an employer raises the motor carrier exemption in his defense to an overtime claim, the NDDOL immediately dismisses that claim without determination and the claimant is referred to the Federal DOL. If there are other issues involved in the wage claim, however, that are "state only" such as vacation or an unauthorized deduction, the department would dismiss only the portion of the claim regarding overtime.

This legislation would still require us to accept claims filed by a claimant, but if the employee operates a vehicle with the gross vehicle weight of more than 55,000 pounds, that employee would then be exempt from overtime compensation in this state. The claimant may still pursue an action through the Federal DOL.

I would be happy to answer any questions Mr. Chairman and I appreciate your time today.