

2013 SENATE TRANSPORTATION

SB 2153

2013 SENATE STANDING COMMITTEE MINUTES

Senate Transportation Committee Lewis and Clark Room, State Capitol

Senate Bill 2153
January 24, 2013
Recording job number 17655

☐ Conference Committee

Don E. Perez

Explanation or reason for introduction of bill/resolution:

Relating to highway-rail grade crossing safety grants and to the highway-rail grade crossing safety projects fund and to provide a continuing appropriation

Minutes:

Attached testimony: 1

Chairman Oehlke

Opened hearing on bill 2153. Some information has come to light and various concerns from some folks. The prime sponsor of the bill has asked me to please hold off until he gathers more information. He may be interested in pulling this bill. If there is a hearing on it, it will probably happen next Friday. If anybody wants to leave written testimony they can. If they want to talk to any of the Senators they are free to. I will close the hearing on SB 2153

Mark Dougherty Membership Services Director for the Associated General Contractors of North Dakota submitted written testimony in opposition of this bill (*Testimony 1*)

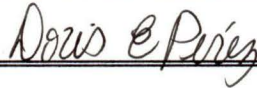
2013 SENATE STANDING COMMITTEE MINUTES

Senate Transportation Committee Lewis and Clark Room, State Capitol

Senate Bill 2153
January 25, 2013
Job number 17741

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to highway-rail grade crossing safety grants and to the highway-rail grade crossing safety projects fund and to provide a continuing appropriation

Minutes:

Written testimony : none

Chairman Oehlke Opened the discussion on SB 2153

This bill is running into some head butting between what the bill is intended to do and what North Dakota Department of Transportation (DOT) already does. There was a meeting with Senator Lyson, sponsor of this bill, he did not know whether he needed to pull this bill or what. We met briefly with the railroad people and a couple of people from North Dakota Department of Transportation (North Dakota Department of Transportation (DOT) and they don't always agree with each other. They will try to come to some kind of agreement but the problem is this bill. As the North Dakota Department of Transportation (DOT) sees it, it takes a lot of money out of the gas tax that railroad pays and has to use on quiet rails and safe crossings; which sounds like a good idea. But North Dakota Department of Transportation (DOT) says we already do stuff with quiet crossings and safety issues and we have two and a half million a year federal money and that is going to go up per year and they put that into their budget and use it for that effort . Plus there is money that was in a previous bill just like this, from previous session that hasn't all been used yet, because a lot of the problem is that when someone wants to do a quiet rail for instance or change a crossing or put some safety things up; the application process that goes thru the railroad and everything takes a really long time that is why the money doesn't always get used up and so North Dakota Department of Transportation (DOT) says if you take money out of that which we are already planning on using some of it, and we already are putting it to good use, and you are telling us how to use it where are we going to get the money to put up the stop signs and other things in downtown Williston that are needed. They are supposed to come back to us with a better idea of an agreement. We are going to not hear anything on that next week but that bill will be put on the docket for the first week of February. We will come up with an agreement for them or we will recommend not passing the bill. We will see what happens

Senator Flakoll

Can they carry on those funds?

Vice Chairman Armstrong

They have to continue to ask for extensions

Senator Sitte

Some people had travelled from out of state for that hearing and I am very disappointed that it wasn't held. We have put in bills that later on, before the hearing we find out that we should have done something different. I think that open process would have been good to hear both sides and then come to a conclusion rather than having quiet meetings about it. Once a bill is in the hopper I don't think we should ever postponed it.

Chairman Oehlke

Really that was the prime sponsor who sounded like he might pull out the bill I am sorry about that I did offer they could leave written testimony.

Senator Flakoll

I think once the bill is scheduled it cannot be withdrawn

Chairman Oehlke We will work with that. Discussion closed.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Transportation Committee Lewis and Clark Room, State Capitol

Senate Bill 2153
February 7, 2013
Recording Job Number 18514
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to highway-rail grade crossing safety grants and to the highway-rail grade crossing safety projects fund and to provide a continuing appropriation.

Minutes:

Attached testimony: 6

Chairman Oehlke Opened the discussion on SB 2153. Testimony was taken since the previous two times the hearing had been postponed.

Senator Lyson District 1 Handed out amendment 13.0529.02002 (written testimony # 1)

Max Laird representing the United Transportation Union (UTU) Handed out written testimony (# 2) in support of this bill. This bill is intended to continue legislation (SB 2338) passed in 2009 and that expired in 2011. The Governor's Budget (2013-15, see SB 2012, written testimony # 3) has not proposed any future funding. The bill had established a grant program managed by the Dept. of Transportation to offer assistance to political subdivisions in improving public safety at rail crossings. He proceeded to explain the amendment handed out by Senator Lyson. Handouts: Funding proposal for SB 2153 (# 4); Funding proposal SB 2153(# 5); motor fuel taxes gallons-received 07/01/08 thru 11/30/12 (# 6)

Discussion followed on correcting some language in the amendment.

Senator Axness Motion to amend on page 3 subsection 5 after the period: not to exceed four million per biennium.

Senator Sitte Second

Voice vote Yes 7 No 0 Absent 0

Vice Chairman Armstrong Moves to accept amendment as amended

Senator Axness Second

Vice Chairman Armstrong explained overage goes back to North Dakota Department of Transportation (DOT) "per biennium" I don't want it to be in a place where it is sitting and growing in nature.

Voice vote: Yes 7 No 0 absent 0

Vice Chairman Armstrong moves do pass as amended and re-refer to appropriations

Senator Sitte Second

Roll call vote: Yes 7 No 0 Absent 0

Carrier: Senator Axness

FISCAL NOTE
Requested by Legislative Council
02/08/2013

Amendment to: SB 2153

- 1 A. **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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
School Districts			
Townships			

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

This bill as amended reduces Highway Tax Distribution funding to NDDOT and places that funding into the highway-rail grade crossing safety projects fund and provides a continuing appropriation.

- 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.*

Section 2 of the bill reduces the portion of the Highway Tax Distribution Fund (HTDF) that is deposited in the State Highway Fund from 61.3% to 60.3%. It also directs the State Treasurer to deposit 1% of the Highway Tax Distribution Fund into the Highway-Rail Grade Crossing Safety Projects Fund and provides a continuing appropriation to NDDOT to expend this fund.

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.*

This bill reduces the portion of the Highway Tax Distribution Fund (HTDF) that is deposited in the State Highway Fund from 61.3% to 60.3%. It also directs the State Treasurer to deposit 1% of the Highway Tax Distribution Fund into the Highway-Rail Grade Crossing Safety Projects Fund and provides a continuing appropriation to NDDOT to expend this fund. 1% of the HTDF is approximately \$6 million per biennium; however, the legislation caps the amount that can be deposited into the Highway-Rail Grade Crossing Safety Projects Fund at \$4 million per biennium. Since both the State Highway Fund and the Highway-Rail Grade Crossing Safety Projects Fund are special funds that will be administered by NDDOT, and the respective increase and decrease to the funds revenues are offsetting, there is no net impact to revenues identified in part 1A of this fiscal note.

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

This bill provides for NDDOT to fund highway-rail grade crossing safety projects from the Highway-Rail Grade Crossing Safety Projects Fund. Since the funding for this fund was provided by a corresponding decrease to the funding for the State Highway Fund, the expenditures to the Highway-Rail Grade Crossing Safety Projects Fund will be offset by a corresponding decrease in expenditures from the State Highway Fund; consequently there is no net impact to expenditures identified in part 1A of this fiscal note.

- 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.*

Section 2 of this bill provides a continuing appropriation to the Highway-Rail Grade Crossing Safety Projects Fund, not to exceed \$4 million per biennium.

Name: Shannon L. Sauer

Agency: NDDOT

Telephone: 328-1933

Date Prepared: 02/08/2013

FISCAL NOTE
Requested by Legislative Council
01/15/2013

Bill/Resolution No.: SB 2153

- 1 A. **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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$2,500,000		\$2,500,000
Expenditures				\$6,800,000		\$6,800,000
Appropriations				\$2,500,000		\$2,500,000

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

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties		\$(1,500,000)	\$(1,500,000)
Cities		\$(800,000)	\$(800,000)
School Districts			
Townships		\$(200,000)	\$(200,000)

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

This bill allows taxes collected on sales of dyed diesel fuel to railroads to be placed in the highway-rail grade crossing safety projects fund for qualifying projects. The taxes are currently placed in the highway tax distribution 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.*

Taxes on the sale of dyed diesel fuel to railroads are estimated to be \$6.8 million for the 2013-2015 biennium. This money would be placed in the highway-rail grade crossing safety projects fund and administered by the NDDOT. A loss in distributions from the highway tax distribution fund would occur as follows: NDDOT 61.3% - \$4,200,000; Counties 22% - \$1,500,000; Cities 12.5% - \$800,000; Townships 2.7% - \$200,000; Transit 1.5% - \$100,000. Grants approved by this bill for a single crossing may not exceed \$75,000 and all grants within a city may not exceed a cumulative amount of \$250,000. This bill provides for a continuing appropriation.

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.*

Under this bill, an estimated \$6.8 million that was previously placed in the highway tax distribution fund would now be placed in the highway-rail grade crossing safety projects fund. A loss in revenues to the highway tax distribution would occur and affect the following entities as follows: NDDOT 61.3% - \$4,200,000; Counties 22% - \$1,500,000; Cities 12.5% - \$800,000; Townships 2.7% - \$200,000; Transit 1.5% - \$100,000.

- 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.*

NDDOT would incur expenditures for grants under this program in an estimated amount of \$6.8 million.

- 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.*

NDDOT would require an addition to its appropriation of \$2.5 million (\$6.8 million revenue to the highway-rail grade crossing safety projects fund less the \$4.2 million ($\$6.8 \times 61.3\%$) already included in the NDDOT budget related to the NDDOT's share of the Highway Tax Distribution Fund and \$100,000 ($\$6.8 \times 1.5\%$) already included in the NDDOT budget related to the State Public Transportation Fund (the Public Transportation Fund's share of the Highway Tax Distribution Fund)).

Name: Patty Schock

Agency: NDDOT

Telephone: 328-1933

Date Prepared: 01/21/2013

February 7, 2013

2/7/13
TD

PROPOSED AMENDMENTS TO SENATE BILL NO. 2153

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 24-02 of the North Dakota Century Code, relating to highway-rail grade crossing safety projects; to amend and reenact section 54-27-19 of the North Dakota Century Code, relating to the highway tax distribution fund; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 24-02 of the North Dakota Century Code is created and enacted as follows:

Highway-rail grade crossing safety projects fund.

The director shall administer the highway-rail grade crossing safety projects fund as follows:

1. The director shall prioritize qualified projects funded under this section on an annual basis. Program funds may be allocated for development of railroad quiet zones, installing or upgrading active or passive warning devices, constructing or upgrading crossing surfaces, relocating crossings, building grade separations, eliminating sight-distance obstructions, any other project eligible for the rail safety portions of the federal highway safety improvement program, and other costs associated with these improvements.
2. The department shall solicit highway-rail grade crossing safety projects from various public and private sector entities. The department may prioritize projects under this subsection concurrently with the applicable highway-rail grade crossing portions of the federally funded highway safety improvement program. The department shall administer projects under this subsection and may require reimbursement of the local match from any public or private sector applicant. An applicant under this subsection shall provide matching funds according to department requirements regarding federal aid highway projects in force at the time of the application.
3. For development of a railroad quiet zone, a political subdivision shall initiate a project and file an application with the department. Political subdivisions shall provide the department a copy of the notice of intent filed with the federal railroad administration regarding establishment of a proposed quiet zone and copies of any subsequent filings with or orders from the federal railroad administration relating to the notice of intent. Grants for a single crossing may not exceed seventy-five thousand dollars, and grants for all crossings within a city may not exceed a cumulative amount of two hundred twenty-five thousand dollars. Political subdivision applicants shall administer projects funded under this subsection. The director may reimburse political subdivisions for state funds expended

under this subsection. A political subdivision is not eligible for more than one quiet zone project funded under this subsection after January 1, 2009. The director shall prioritize projects under this subsection based on the date of receipt of the applicant's filed notice of intent to the federal railroad administration, unless the filing is rejected by the federal railroad administration. A political subdivision applicant shall provide matching funds according to department requirements regarding federal aid highway projects in force at the time of the application.

SECTION 2. AMENDMENT. Section 54-27-19 of the North Dakota Century Code is amended and reenacted as follows:

54-27-19. Highway tax distribution fund - State treasurer to make allocation to state, counties, and cities - Continuing appropriation.

A highway tax distribution fund is created as a special fund in the state treasury into which must be deposited the moneys available by law from collections of motor vehicle registration and related fees, fuels taxes, special fuels taxes, use taxes, and special fuels excise taxes. The state treasurer shall transfer the first five million five hundred thousand dollars per biennium from the highway tax distribution fund to the state highway fund for the purpose of providing administrative assistance to other transferees. After the transfer of the first five million five hundred thousand dollars, any moneys in the highway tax distribution fund must be allocated and transferred monthly by the state treasurer, as follows:

1. ~~Sixty-one~~Sixty and three-tenths percent must be transferred monthly to the state department of transportation and placed in a state highway fund.
2. Two and seven-tenths percent must be transferred monthly to the township highway fund.
3. One and five-tenths percent must be transferred monthly to the public transportation fund.
4. Thirty-four and five-tenths percent must be allocated to the counties of this state in proportion to the number of vehicle registrations credited to each county. Each county must be credited with the certificates of title of vehicles registered by residents of the county. The state treasurer shall compute and distribute the counties' share monthly after deducting the incorporated cities' share. All the moneys received by the counties from the highway tax distribution fund must be set aside in a separate fund called the "highway tax distribution fund" and must be appropriated and applied solely for highway purposes in accordance with section 11 of article X of the Constitution of North Dakota. The state treasurer shall compute and distribute monthly the sums allocated to the incorporated cities within each county according to the formula in this subsection on the basis of the per capita population of all of the incorporated cities situated within each county as determined by the last official regular or special federal census or the census taken in accordance with the provisions of chapter 40-02 in case of a city incorporated subsequent to the census.
 - a. For counties having no cities with a population of ten thousand or more, a statewide per capita average must be used, as determined by calculating twenty-seven percent of the amount allocated to all of the

counties under this subsection divided by the total population of all of the incorporated cities in the state. Each city must be paid an amount equal to the product of the statewide per capita and that city's population.

- b. For each county having a city with a population of ten thousand or more, the amount transferred each month into the county highway tax distribution fund must be the difference between the amount allocated to that county pursuant to this subsection and the total amount allocated and distributed to the incorporated cities in that county as computed according to the following formula:
 - (1) A statewide per capita average as determined by calculating twenty-seven percent of the amount allocated to all of the counties under this subsection divided by the total population of all of the incorporated cities in the state.
 - (2) The share distributed to each city in the county having a population of less than one thousand must be determined by multiplying the population of that city by the product of 1.50 times the statewide per capita average computed under paragraph 1.
 - (3) The share distributed to each city in the county having a population of one thousand to four thousand nine hundred ninety-nine, inclusive, must be determined by multiplying the population of that city by the product of 1.25 times the statewide per capita average computed under paragraph 1.
 - (4) The share distributed to each city in the county having a population of five thousand or more must be determined by multiplying the population of that city by the statewide per capita average for all such cities, which per capita average must be computed as follows: the total of the shares computed under paragraphs 2 and 3 for all cities in the state having a population of less than five thousand must be subtracted from the total incorporated cities' share in the state as computed under subdivision a and the balance remaining must then be divided by the total population of all cities of five thousand or more in the state.
5. One percent must be transferred monthly to the highway-rail grade crossing safety projects fund and is appropriated on a continuing basis to the department of transportation not to exceed four million dollars per biennium.
6. The moneys allocated to the incorporated cities must be distributed to them monthly by the state treasurer and must be deposited by the cities in a separate fund and may only be used in accordance with section 11 of article X of the Constitution of North Dakota and an incorporated city may use the fund for the construction, reconstruction, repair, and maintenance of public highways within or outside the city pursuant to an agreement entered into between the city and any other political subdivision as authorized by section 54-40-08."

Renumber accordingly

Date: 2/7/13
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2153

Senate **TRANSPORTATION** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number amend amendment

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Cress Seconded By Senator Sutte

[illegible]

Total (Yes) 7 No 0

Absent ()

Floor Assignment

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

Date: 2/7/13
Roll Call Vote #: 2

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2153

Senate TRANSPORTATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

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

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Armstrong Seconded By Senator Axxess

[illegible]

Total (Yes) 7 No 0

Absent 0

Floor Assignment

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

Date: 2/7/13
Roll Call Vote #: 3

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2153

Senate TRANSPORTATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment
☒ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Armstrong Seconded By Senator Sitte

Senators	Yes	No	Senator	Yes	No
Chairman Dave Oehlke	✓		Senator Tyler Axness	✓	
Vice Chairman Kelly Armstrong	✓		Senator George Sinner	✓	
Senator Margaret Sitte	✓				
Senator Tim Flakoll	✓				
Senator Tom Campbell	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Axness

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

REPORT OF STANDING COMMITTEE

SB 2153: Transportation Committee (Sen. Oehlke, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2153 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 24-02 of the North Dakota Century Code, relating to highway-rail grade crossing safety projects; to amend and reenact section 54-27-19 of the North Dakota Century Code, relating to the highway tax distribution fund; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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2. The department shall solicit highway-rail grade crossing safety projects from various public and private sector entities. The department may prioritize projects under this subsection concurrently with the applicable highway-rail grade crossing portions of the federally funded highway safety improvement program. The department shall administer projects under this subsection and may require reimbursement of the local match from any public or private sector applicant. An applicant under this subsection shall provide matching funds according to department requirements regarding federal aid highway projects in force at the time of the application.
3. For development of a railroad quiet zone, a political subdivision shall initiate a project and file an application with the department. Political subdivisions shall provide the department a copy of the notice of intent filed with the federal railroad administration regarding establishment of a proposed quiet zone and copies of any subsequent filings with or orders from the federal railroad administration relating to the notice of intent. Grants for a single crossing may not exceed seventy-five thousand dollars, and grants for all crossings within a city may not exceed a cumulative amount of two hundred twenty-five thousand dollars. Political subdivision applicants shall administer projects funded under this subsection. The director may reimburse political subdivisions for state funds expended under this subsection. A political subdivision is not eligible for more than one quiet zone project funded under this subsection after January 1, 2009. The director shall prioritize projects under this subsection based on the date of receipt of the applicant's filed notice of intent to the federal railroad administration, unless the filing is rejected by the federal railroad administration. A political subdivision applicant shall provide matching funds according to department

requirements regarding federal aid highway projects in force at the time of the application.

SECTION 2. AMENDMENT. Section 54-27-19 of the North Dakota Century Code is amended and reenacted as follows:

54-27-19. Highway tax distribution fund - State treasurer to make allocation to state, counties, and cities - Continuing appropriation.

A highway tax distribution fund is created as a special fund in the state treasury into which must be deposited the moneys available by law from collections of motor vehicle registration and related fees, fuels taxes, special fuels taxes, use taxes, and special fuels excise taxes. The state treasurer shall transfer the first five million five hundred thousand dollars per biennium from the highway tax distribution fund to the state highway fund for the purpose of providing administrative assistance to other transferees. After the transfer of the first five million five hundred thousand dollars, any moneys in the highway tax distribution fund must be allocated and transferred monthly by the state treasurer, as follows:

1. ~~Sixty-one~~^{Sixty} and three-tenths percent must be transferred monthly to the state department of transportation and placed in a state highway fund.
2. Two and seven-tenths percent must be transferred monthly to the township highway fund.
3. One and five-tenths percent must be transferred monthly to the public transportation fund.
4. Thirty-four and five-tenths percent must be allocated to the counties of this state in proportion to the number of vehicle registrations credited to each county. Each county must be credited with the certificates of title of vehicles registered by residents of the county. The state treasurer shall compute and distribute the counties' share monthly after deducting the incorporated cities' share. All the moneys received by the counties from the highway tax distribution fund must be set aside in a separate fund called the "highway tax distribution fund" and must be appropriated and applied solely for highway purposes in accordance with section 11 of article X of the Constitution of North Dakota. The state treasurer shall compute and distribute monthly the sums allocated to the incorporated cities within each county according to the formula in this subsection on the basis of the per capita population of all of the incorporated cities situated within each county as determined by the last official regular or special federal census or the census taken in accordance with the provisions of chapter 40-02 in case of a city incorporated subsequent to the census.
 - a. For counties having no cities with a population of ten thousand or more, a statewide per capita average must be used, as determined by calculating twenty-seven percent of the amount allocated to all of the counties under this subsection divided by the total population of all of the incorporated cities in the state. Each city must be paid an amount equal to the product of the statewide per capita and that city's population.
 - b. For each county having a city with a population of ten thousand or more, the amount transferred each month into the county highway tax distribution fund must be the difference between the amount allocated to that county pursuant to this subsection and the total amount allocated and distributed to the incorporated cities in that county as computed according to the following formula:

- (1) A statewide per capita average as determined by calculating twenty-seven percent of the amount allocated to all of the counties under this subsection divided by the total population of all of the incorporated cities in the state.
 - (2) The share distributed to each city in the county having a population of less than one thousand must be determined by multiplying the population of that city by the product of 1.50 times the statewide per capita average computed under paragraph 1.
 - (3) The share distributed to each city in the county having a population of one thousand to four thousand nine hundred ninety-nine, inclusive, must be determined by multiplying the population of that city by the product of 1.25 times the statewide per capita average computed under paragraph 1.
 - (4) The share distributed to each city in the county having a population of five thousand or more must be determined by multiplying the population of that city by the statewide per capita average for all such cities, which per capita average must be computed as follows: the total of the shares computed under paragraphs 2 and 3 for all cities in the state having a population of less than five thousand must be subtracted from the total incorporated cities' share in the state as computed under subdivision a and the balance remaining must then be divided by the total population of all cities of five thousand or more in the state.
5. One percent must be transferred monthly to the highway-rail grade crossing safety projects fund and is appropriated on a continuing basis to the department of transportation not to exceed four million dollars per biennium.
6. The moneys allocated to the incorporated cities must be distributed to them monthly by the state treasurer and must be deposited by the cities in a separate fund and may only be used in accordance with section 11 of article X of the Constitution of North Dakota and an incorporated city may use the fund for the construction, reconstruction, repair, and maintenance of public highways within or outside the city pursuant to an agreement entered into between the city and any other political subdivision as authorized by section 54-40-08."

Renumber accordingly

2013 SENATE APPROPRIATIONS

SB 2153

2013 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

SB 2153
02-14-2013
Job # 18965

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL relating to highway-rail grade crossing safety projects; and highway tax distribution fund

Minutes:

See attached testimony

Chairman Holmberg called the committee to order on Thursday, February 14, 2013 In reference to SB 2153. All committee members were present.

Senator Lyson, District 1, introduced SB 2153 and testified in support of it. He said there are others that can explain it and are waiting to speak on it.

Senator Holmberg said that this bill will go to the Department of Transportation subcommittee of Senators Lee, Holmberg, Wanzek, and O'Connell.

Max Laird, United Transportation Union, spoke In favor of SB 2153 as amended. What they are asking for today is to create a continuing fund to support future safety projects at rail crossing. The amendment you have before you divides the language of this process into two sets: One specifically design for silent rail; and one designed for safety projects at all other railroad crossings in North Dakota. **Written testimony #1**

Senator Gary Lee: The maximum is \$250,000 per silent rail; does this money go to the political sub-divisions?

Max Laird: That is correct.

Senator Gary Lee: Does this have any benefit to the short line?

Max Laird: Yes, this would benefit any political subdivision in the state of ND that need to apply for rail crossings improvements state wide. He gave an example.

Senator Gary Lee asked if that was specific to rail crossings.

Max Laird replied that it was specifically designed for crossings.

Senator Gary Lee asked if this was an ongoing appropriation and the answer was yes.

Vice Chairman Bowman asked what obligation the rail has in safety. He said that in Rhame they had a problem and the county had to fix it.

Max Laird explained that the responsibility statutorily is the political subdivision.

Ron Huff, Brotherhood of Local Engineers, (10.58) said what this bill is designed to take the emphases from quiet rail, to the country and county crossings. If the counties decide that they need that rail fixed up, they can apply for a grant from DOT.

Senator Gary Lee: It is taking money from the state highways and transferring it to rail.

Ron Huff replied, yes, no and maybe. He explained.

Senator Gary Lee said that it is coming out of state highway portion because the state highways would be funded 1% less than currently.

Ron Huff said that whole 1% would not be going just for the railroad but also for the political subdivisions that would make applications. (16.14)

Vice Chairman Bowman asked to clarify what they are asking for. His understanding is that they want all the money back that they gave in. What is the obligation of the rail?

Ron Huff explained that the railroad pays 4 cents per gallon fuel excise tax. That goes into DOT general fund. What the rail obligation is that they have a financial obligation and it would probably be a joint effort.

Senator Gary Lee asked what the excise tax dollars were going into the fund.

Ron Huff: replied that this year they were putting in \$4.5M from excise tax into the general fund per biennium. In the next biennium it is forecasted to be \$6.8M. He explained the cap of \$4 M.

Senator Gary Lee asked if he would be opposed to putting a 4 year sunset on it.

Ron Huff replied that if that was the decision they would live with that but will be back in four years.

Senator Robinson commented that maybe the committee should consider a reduced cap.

Ron Huff explained the needs. If you are going to fund it, fund it well enough that the political subdivision can get what they need.

(23.17) **Steve Salwei**, Transportation Programs Director for NDDOT, testified in opposition to SB 2153. **Written testimony #2**

Chairman Holmberg asked if DOT doesn't like policy legislative mandates.

Steve Salwei: Correct. We would rather have the flexibility to prioritize where the money needs to go.

Senator Robinson: Isn't it true that we are hauling more and more hazardous materials on the rail. Although statistics are low, there is that potential for major problems.

Steve Salwei said that may be a true statement but there are also more hazardous materials on the roadway. Traffic has increased and much of that traffic is trucks.

Charles Wike, Brotherhood of locomotive, testified in support of SB 2153 for safety reasons.

Chairman Holmberg turned it over to the subcommittee and adjourned.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee

Harvest Room, State Capitol

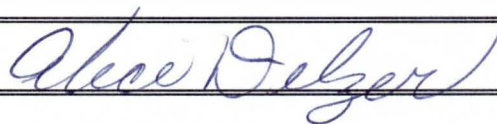
SB 2153 Subcommittee

02-19-2013

Job # 19170

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A Subcommittee hearing for the DOT establishing rail repair and funding

Minutes:

Chairman G. Lee called the subcommittee hearing to order at 10:30 am on Tuesday, February 19, 2013 in regards to SB 2153. Members present are **Senator Holmberg**, **Senator Wanzek**, **Senator Erbele**, and **Senator O'Connell**. Brady Larson from Legislative Council and Laney Herauf from OMB were also present.

Chairman Lee 2153 relates to establishing rail repair. The funding source is a 1% continuing appropriation from the state portion of the highway tax distribution fund. Cap at \$4M a biennium. He recalled from the testimony that the governor's budget did not provide additional funding for these safety crossing grants. It had been coming out of the money for the quiet zone. They cited a lot of safety concerns in the need to do the work and there wasn't sufficient funding. There was opposing testimony. The DOT has programs to upgrade railroad crossings with about \$1m a year. There's also a program to install and replace railroad crossing signals funded at about \$1.5M a year. Both are federal dollars and, based on input from political subdivisions in where they see the need, the DOT works with them. It doesn't include any quiet zone money. If the funding authorized in 2012 passes that is for the remaining quiet zones. It takes away the \$4M of flexible funding the DOT might need, and puts the railroad crossing issue at the highest priority.

Senator Wanzek Taking into account those things just stated and the loss of the \$4M of flexible revenue to the DOT and the fact that the bill has highlighted the issues and the need and there are fed dollars to address the issue, **Sen. Wanzek moved a Do Not Pass.**

Second by Senator Holmberg.

There was no further discussion.

Roll call vote - motion carried.

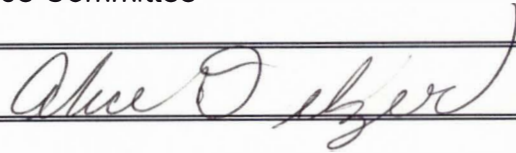
2013 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

SB 2153
02-20-2013
No Audio available

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL relating to highway-rail grade crossing safety projects & highway tax distribution (Do Not Pass).

Minutes:

You may make reference to "attached testimony."

Chairman Holmberg called the committee to order on Wednesday, February 20, 2013. All committee members were present.

Brady Larson - Legislative Council
Joe Morrisette-OMB

Senator Gary Lee stated the recommendations from the subcommittee was a Do Not Pass. There is federal money in the DOT budget for rail crossings and repairs, it doesn't cover quiet zones.

Senator Gary Lee moved a DO NOT PASS. 2nd by Senator Wanzek.

Chairman Holmberg: Call the roll on a DO NOT PASS on SB 2153.

A Roll Call vote was taken. Yea: 10; Nay: 3; Absent: 0.

Senator Gary Lee will carry the bill.

The hearing was closed on SB 2153.

FISCAL NOTE
Requested by Legislative Council
02/08/2013

Amendment to: SB 2153

- 1 A. **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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
School Districts			
Townships			

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

This bill as amended reduces Highway Tax Distribution funding to NDDOT and places that funding into the highway-rail grade crossing safety projects fund and provides a continuing appropriation.

- 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.*

Section 2 of the bill reduces the portion of the Highway Tax Distribution Fund (HTDF) that is deposited in the State Highway Fund from 61.3% to 60.3%. It also directs the State Treasurer to deposit 1% of the Highway Tax Distribution Fund into the Highway-Rail Grade Crossing Safety Projects Fund and provides a continuing appropriation to NDDOT to expend this fund.

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.*

This bill reduces the portion of the Highway Tax Distribution Fund (HTDF) that is deposited in the State Highway Fund from 61.3% to 60.3%. It also directs the State Treasurer to deposit 1% of the Highway Tax Distribution Fund into the Highway-Rail Grade Crossing Safety Projects Fund and provides a continuing appropriation to NDDOT to expend this fund. 1% of the HTDF is approximately \$6 million per biennium; however, the legislation caps the amount that can be deposited into the Highway-Rail Grade Crossing Safety Projects Fund at \$4 million per biennium. Since both the State Highway Fund and the Highway-Rail Grade Crossing Safety Projects Fund are special funds that will be administered by NDDOT, and the respective increase and decrease to the funds revenues are offsetting, there is no net impact to revenues identified in part 1A of this fiscal note.

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

This bill provides for NDDOT to fund highway-rail grade crossing safety projects from the Highway-Rail Grade Crossing Safety Projects Fund. Since the funding for this fund was provided by a corresponding decrease to the funding for the State Highway Fund, the expenditures to the Highway-Rail Grade Crossing Safety Projects Fund will be offset by a corresponding decrease in expenditures from the State Highway Fund; consequently there is no net impact to expenditures identified in part 1A of this fiscal note.

- 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.*

Section 2 of this bill provides a continuing appropriation to the Highway-Rail Grade Crossing Safety Projects Fund, not to exceed \$4 million per biennium.

Name: Shannon L. Sauer

Agency: NDDOT

Telephone: 328-1933

Date Prepared: 02/08/2013

FISCAL NOTE
Requested by Legislative Council
01/15/2013

Bill/Resolution No.: SB 2153

- 1 A. **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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$2,500,000		\$2,500,000
Expenditures				\$6,800,000		\$6,800,000
Appropriations				\$2,500,000		\$2,500,000

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

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties		\$(1,500,000)	\$(1,500,000)
Cities		\$(800,000)	\$(800,000)
School Districts			
Townships		\$(200,000)	\$(200,000)

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

This bill allows taxes collected on sales of dyed diesel fuel to railroads to be placed in the highway-rail grade crossing safety projects fund for qualifying projects. The taxes are currently placed in the highway tax distribution 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.*

Taxes on the sale of dyed diesel fuel to railroads are estimated to be \$6.8 million for the 2013-2015 biennium. This money would be placed in the highway-rail grade crossing safety projects fund and administered by the NDDOT. A loss in distributions from the highway tax distribution fund would occur as follows: NDDOT 61.3% - \$4,200,000; Counties 22% - \$1,500,000; Cities 12.5% - \$800,000; Townships 2.7% - \$200,000; Transit 1.5% - \$100,000. Grants approved by this bill for a single crossing may not exceed \$75,000 and all grants within a city may not exceed a cumulative amount of \$250,000. This bill provides for a continuing appropriation.

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.*

Under this bill, an estimated \$6.8 million that was previously placed in the highway tax distribution fund would now be placed in the highway-rail grade crossing safety projects fund. A loss in revenues to the highway tax distribution would occur and affect the following entities as follows: NDDOT 61.3% - \$4,200,000; Counties 22% - \$1,500,000; Cities 12.5% - \$800,000; Townships 2.7% - \$200,000; Transit 1.5% - \$100,000.

- 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.*

NDDOT would incur expenditures for grants under this program in an estimated amount of \$6.8 million.

- 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.*

NDDOT would require an addition to its appropriation of \$2.5 million (\$6.8 million revenue to the highway-rail grade crossing safety projects fund less the \$4.2 million ($\$6.8 * 61.3\%$) already included in the NDDOT budget related to the NDDOT's share of the Highway Tax Distribution Fund and \$100,000 ($\$6.8 * 1.5\%$) already included in the NDDOT budget related to the State Public Transportation Fund (the Public Transportation Fund's share of the Highway Tax Distribution Fund)).

Name: Patty Schock

Agency: NDDOT

Telephone: 328-1933

Date Prepared: 01/21/2013

Date: 2-19-13Roll Call Vote # 1**2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES**BILL/RESOLUTION NO. 2153Senate AppropriationsSub

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Do Not Pass

Action Taken _____

Motion Made By _____

Seconded By _____

Senators	Yes	No	Senator	Yes	No
Chairman Ray Holmberg	<input checked="" type="checkbox"/>		Senator Tim Mathern	<input checked="" type="checkbox"/>	
Co-Vice Chairman Bill Bowman			Senator David O'Connell		
Co-Vice Chair Tony Grindberg			Senator Larry Robinson		
Senator Ralph Kilzer			Senator John Warner		
Senator Karen Krebsbach					
Senator Robert Erbele					
Senator Terry Wanzek	<input checked="" type="checkbox"/>				
Senator Ron Carlisle	<input checked="" type="checkbox"/>				
Senator Gary Lee	<input checked="" type="checkbox"/>				

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Date: 2-20-13Roll Call Vote # 1

**2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES**

BILL/RESOLUTION NO. 2153Senate Appropriations Committee☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DNPMotion Made By Lee Seconded By Wanzek

Senators	Yes	No	Senator	Yes	No
Chairman Ray Holmberg	✓		Senator Tim Mathern		✓
Co-Vice Chairman Bill Bowman	✓		Senator David O'Connell		✓
Co-Vice Chair Tony Grindberg	✓		Senator Larry Robinson	✓	✓
Senator Ralph Kilzer	✓		Senator John Warner	✓	
Senator Karen Krebsbach	✓				
Senator Robert Erbele	✓				
Senator Terry Wanzek	✓				
Senator Ron Carlisle	✓				
Senator Gary Lee	✓				

Total (Yes) 10 No 3

Absent _____

Floor Assignment Lee

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

REPORT OF STANDING COMMITTEE

SB 2153, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman)
recommends **DO NOT PASS** (10 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed SB 2153 was placed on the Eleventh order on the calendar.

2013 TESTIMONY

SB 2153

Testimony SB 2153
Senate Transportation Committee
January 24, 2013

Mr. Chairman and members of the Senate Transportation Committee, my name is Mark Dougherty. I am the Membership Services Director for the Associated General Contractors of North Dakota. I'm here in opposition to SB 2153. This legislature has, over the past several legislative sessions, crafted the Highway Tax Distribution Fund to meet the needs of all political subdivisions by providing an equitable split of the special fuels and other fuel taxes collect in North Dakota. We applaud the legislature for the past work on the Highway Tax Distribution Fund and want you to know we are always willing to help make improvements to that process when needed.

However, making the changes proposed in SB 2153 seems to be duplicative and unnecessary. These types of projects can be done now with dollars political subdivision receive from the Highway Tax Distribution Fund without requiring the NDDOT to create and manage a new grant program for a very narrowly focused piece of the overall transportation needs in the State at this time. Placing funds from the Highway Tax Distribution Fund and putting it into a special fund seems to reduce flexibility of all political subdivisions in their decision making process to best serve their particular community's needs.

I appreciate the opportunity to testify today in opposition to SB 2153 and request the committee's consideration of a "Do Not Pass" recommendation. If there are any questions, I will attempt to answer them if I'm able.

13.0529.02002
Title.

Prepared by the Legislative Council staff for
Senator Lyson

February 4, 2013

PROPOSED AMENDMENTS TO SENATE BILL NO. 2153

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 24-02 of the North Dakota Century Code, relating to highway-rail grade crossing safety projects; to amend and reenact section 54-27-19 of the North Dakota Century Code, relating to the highway tax distribution fund; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 24-02 of the North Dakota Century Code is created and enacted as follows:

Highway-rail grade crossing safety projects fund.

The director shall administer the highway-rail grade crossing safety projects fund as follows:

1. The director shall prioritize qualified projects funded under this section on an annual basis. Program funds may be allocated for development of railroad quiet zones, installing or upgrading of active or passive warning devices, constructing or upgrading crossing surfaces, relocating crossings, building of grade separations, eliminating of sight-distance obstructions, any other project eligible for the rail safety portions of the federal highway safety improvement program, and other costs associated with these improvements.
2. The department shall solicit highway-rail grade crossing safety projects from various public and private sector entities. The department may prioritize projects under this subsection concurrently with the applicable highway-rail grade crossing portions of the federally funded highway safety improvement program. The department shall administer projects under this subsection and may require reimbursement of the local match from any public or private sector applicant. An applicant under this subsection shall provide matching funds according to department requirements regarding federal aid highway projects in force at the time of the application.
3. For development of a railroad quiet zone, a political subdivision must initiate a project and file an application with the department. Political subdivisions shall provide the department a copy of the notice of intent filed with the federal railroad administration regarding establishment of a proposed quiet zone and copies of any subsequent filings with or orders from the federal railroad administration relating to the notice of intent. Grants for a single crossing may not exceed seventy-five thousand dollars, and grants for all crossings within a city may not exceed a cumulative amount of two hundred twenty-five thousand dollars. Political subdivision applicants shall administer projects funded under this subsection. The director may reimburse political subdivisions for state funds expended

under this subsection. A political subdivision is not eligible for more than one quiet zone project funded under this subsection after January 1, 2009. The director shall prioritize projects under this subsection based on the date of receipt of the applicant's filed notice of intent to the federal railroad administration, unless the filing is rejected by the federal railroad administration. A political subdivision applicant must provide matching funds according to department requirements regarding federal aid highway projects in force at the time of the application.

SECTION 2. AMENDMENT. Section 54-27-19 of the North Dakota Century Code is amended and reenacted as follows:

54-27-19. Highway tax distribution fund - State treasurer to make allocation to state, counties, and cities - Continuing appropriation.

A highway tax distribution fund is created as a special fund in the state treasury into which must be deposited the moneys available by law from collections of motor vehicle registration and related fees, fuels taxes, special fuels taxes, use taxes, and special fuels excise taxes. The state treasurer shall transfer the first five million five hundred thousand dollars per biennium from the highway tax distribution fund to the state highway fund for the purpose of providing administrative assistance to other transferees. After the transfer of the first five million five hundred thousand dollars, any moneys in the highway tax distribution fund must be allocated and transferred monthly by the state treasurer, as follows:

1. ~~Sixty-one~~~~Sixty~~ and three-tenths percent must be transferred monthly to the state department of transportation and placed in a state highway fund.
2. Two and seven-tenths percent must be transferred monthly to the township highway fund.
3. One and five-tenths percent must be transferred monthly to the public transportation fund.
4. Thirty-four and five-tenths percent must be allocated to the counties of this state in proportion to the number of vehicle registrations credited to each county. Each county must be credited with the certificates of title of vehicles registered by residents of the county. The state treasurer shall compute and distribute the counties' share monthly after deducting the incorporated cities' share. All the moneys received by the counties from the highway tax distribution fund must be set aside in a separate fund called the "highway tax distribution fund" and must be appropriated and applied solely for highway purposes in accordance with section 11 of article X of the Constitution of North Dakota. The state treasurer shall compute and distribute monthly the sums allocated to the incorporated cities within each county according to the formula in this subsection on the basis of the per capita population of all of the incorporated cities situated within each county as determined by the last official regular or special federal census or the census taken in accordance with the provisions of chapter 40-02 in case of a city incorporated subsequent to the census.
 - a. For counties having no cities with a population of ten thousand or more, a statewide per capita average must be used, as determined by calculating twenty-seven percent of the amount allocated to all of the

counties under this subsection divided by the total population of all of the incorporated cities in the state. Each city must be paid an amount equal to the product of the statewide per capita and that city's population.

- b. For each county having a city with a population of ten thousand or more, the amount transferred each month into the county highway tax distribution fund must be the difference between the amount allocated to that county pursuant to this subsection and the total amount allocated and distributed to the incorporated cities in that county as computed according to the following formula:
 - (1) A statewide per capita average as determined by calculating twenty-seven percent of the amount allocated to all of the counties under this subsection divided by the total population of all of the incorporated cities in the state.
 - (2) The share distributed to each city in the county having a population of less than one thousand must be determined by multiplying the population of that city by the product of 1.50 times the statewide per capita average computed under paragraph 1.
 - (3) The share distributed to each city in the county having a population of one thousand to four thousand nine hundred ninety-nine, inclusive, must be determined by multiplying the population of that city by the product of 1.25 times the statewide per capita average computed under paragraph 1.
 - (4) The share distributed to each city in the county having a population of five thousand or more must be determined by multiplying the population of that city by the statewide per capita average for all such cities, which per capita average must be computed as follows: the total of the shares computed under paragraphs 2 and 3 for all cities in the state having a population of less than five thousand must be subtracted from the total incorporated cities' share in the state as computed under subdivision a and the balance remaining must then be divided by the total population of all cities of five thousand or more in the state.
5. One percent must be transferred monthly to the highway-rail grade crossing safety projects fund and is appropriated on a continuing basis to the department of transportation.
6. The moneys allocated to the incorporated cities must be distributed to them monthly by the state treasurer and must be deposited by the cities in a separate fund and may only be used in accordance with section 11 of article X of the Constitution of North Dakota and an incorporated city may use the fund for the construction, reconstruction, repair, and maintenance of public highways within or outside the city pursuant to an agreement entered into between the city and any other political subdivision as authorized by section 54-40-08."

Renumber accordingly

JIM CHASE
State Legislative Director

1910 N. 11TH ST., STE. 17
BISMARCK, ND 58501
(701) 223-0061
utu4nd@gmail.com



Transportation Division
North Dakota State Legislative Board

**Testimony of Max Laird
Before the Senate Transportation Committee
In Support of SB 2153**

Mr. Chairman and members of the committee, my name is Max Laird. I represent the United Transportation Union. The UTU is the largest rail labor union in North America. Membership includes conductors, engineers, switchmen, trainmen, and yardmasters.

Senate Bill 2153 is intended to continue legislation (SB 2338) that was passed in 2009 establishing a grant program managed by the Dept. of Transportation to offer assistance to political subdivisions in improving public safety at rail crossings. The previous legislation expired in 2011. The Governor's Budget (2013-15, see SB 2012) has not proposed any future funding for "Highway-rail grade crossing safety grants".

As a result of input from the NDDOT on Section 1 we are in support of an amendment that has been presented to you by the prime sponsor Sen. Lyson.

Section 1:

We have drafted language that divides the grant application process into two distinct parts. One is directed to grants for silent rail projects. The other section is to define the application process available to all political subdivisions for the improved safety at crossings other than for silent rail. Additional flexibility is written into the second part to insure that added safety is accomplished based on local needs.

Section 2: (Our proposal...not reflecting the NDDOT position)

We are proposing to shift 1% of the NDDOT portion of the Highway Tax Distribution Fund to this grant program up to \$4 million per biennium (see attached). There may need to be an additional line added to reflect the \$4 million cap that we are proposing. The language reflecting the cap was omitted in the Legislative Council draft of the amendment.

We are asking that the equivalent value of the special rail fuel excise tax be made available for this grant program and remain in statute as a continuing appropriation. Our proposal is based on a concept of railroad taxes in, public safety projects out. It is important to note that this excise tax generates in excess of the \$4 million cap that we are proposing.

Presently, the dollars collected from these all excise taxes are deposited in the Highway Tax Distribution Fund. This fund presently dedicates dollars from this fund to many projects that do not include direct rail safety funding.

The need for this grant program is emphasized in that the Dept. of Transportation presently has more requests for safety projects than there is money available. In addition, the interest in quiet rail has increased in the past 4 years. The \$2.5 million that is available from federal funding will only complete approximately 7 projects per year.

The number of incidents at rail crossings in ND is increasing, that is likely concurrent with the increased traffic (both rail and vehicular) in the entire state. From a safety perspective it has been clearly indicated that in the past both silent rail (including in Fargo) and additional safety measures have successfully reduced the number of rail crossing incidents across North Dakota.

It is only appropriate we all consider improved public safety as our economy booms in ND and that this, albeit small contribution, will return substantial positive results.

Once again let me emphasize that we are simply asking that the excise taxes railroads pay be the basis of your consideration for this proposal to improve public safety....rail money in....rail money out....for public safety!

We would appreciate your support of this legislation with a "do pass" recommendation.

13.8162.01000

Sixty-third
Legislative Assembly
of North Dakota

SENATE BILL NO. 2012

Introduced by

Appropriations Committee

(At the request of the Governor)

1 A BILL for an Act to provide an appropriation for defraying the expenses of the department of
2 transportation; to provide appropriations to the state treasurer for transportation funding
3 distributions; to provide for transfers; to provide exemptions; and to declare an emergency.

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

5 **SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds
6 as may be necessary, are appropriated out of any moneys in the general fund in the state
7 treasury, not otherwise appropriated, and from special funds derived from federal funds and
8 other income, to the department of transportation for the purpose of defraying the expenses of
9 the department of transportation, for the biennium beginning July 1, 2013, and ending June 30,
10 2015, as follows:

		Adjustments or	
	<u>Base Level</u>	<u>Enhancements</u>	<u>Appropriation</u>
12 Salaries and wages	\$165,966,396	\$32,856,230	\$198,822,626
14 Operating expenses	204,090,250	252,731,465	456,821,715
15 Capital assets	709,079,831	1,101,431,376	1,810,511,207
16 County and township road	0	142,000,000	142,000,000
17 reconstruction program			
18 Grants	<u>67,767,407</u>	<u>29,780,623</u>	<u>97,548,030</u>
19 Total all funds	\$1,146,903,884	\$1,558,799,694	\$2,705,703,578
20 Less estimated income	<u>1,146,903,884</u>	<u>1,548,799,694</u>	<u>2,695,703,578</u>
21 Total general fund	\$0	\$10,000,000	\$10,000,000
22 Full-time equivalent positions	1,063.50	16.00	1,079.50

23 **SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO**
24 **SIXTY-FOURTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time

Sixty-third
Legislative Assembly

1 funding items approved by the sixty-second legislative assembly for the 2011-13 biennium and
2 the 2013-15 one-time funding items included in the appropriation in section 1 of this Act:

3	<u>One-Time Funding Description</u>	<u>2011-13</u>	<u>2013-15</u>
4	Federal stimulus funds	\$24,119,575	\$0
5	Devils Lake area highway project	5,850,000	0
6	Extraordinary state highway maintenance	228,600,000	0
7	County and township road reconstruction	142,000,000	142,000,000
8	Emergency relief program borrowing authority	200,000,000	0
9	Road grade raising grants	6,000,000	0
10	Highway-rail grade crossing safety grants	1,431,000	0
11	Enhanced state highway investments	0	1,161,600,000
12	Federal TIGER III grant match	<u>0</u>	<u>10,000,000</u>
13	Total all funds	\$608,000,575	\$1,313,600,000
14	Total special funds	<u>602,150,575</u>	<u>1,303,600,000</u>
15	Total general fund	\$5,850,000	\$10,000,000

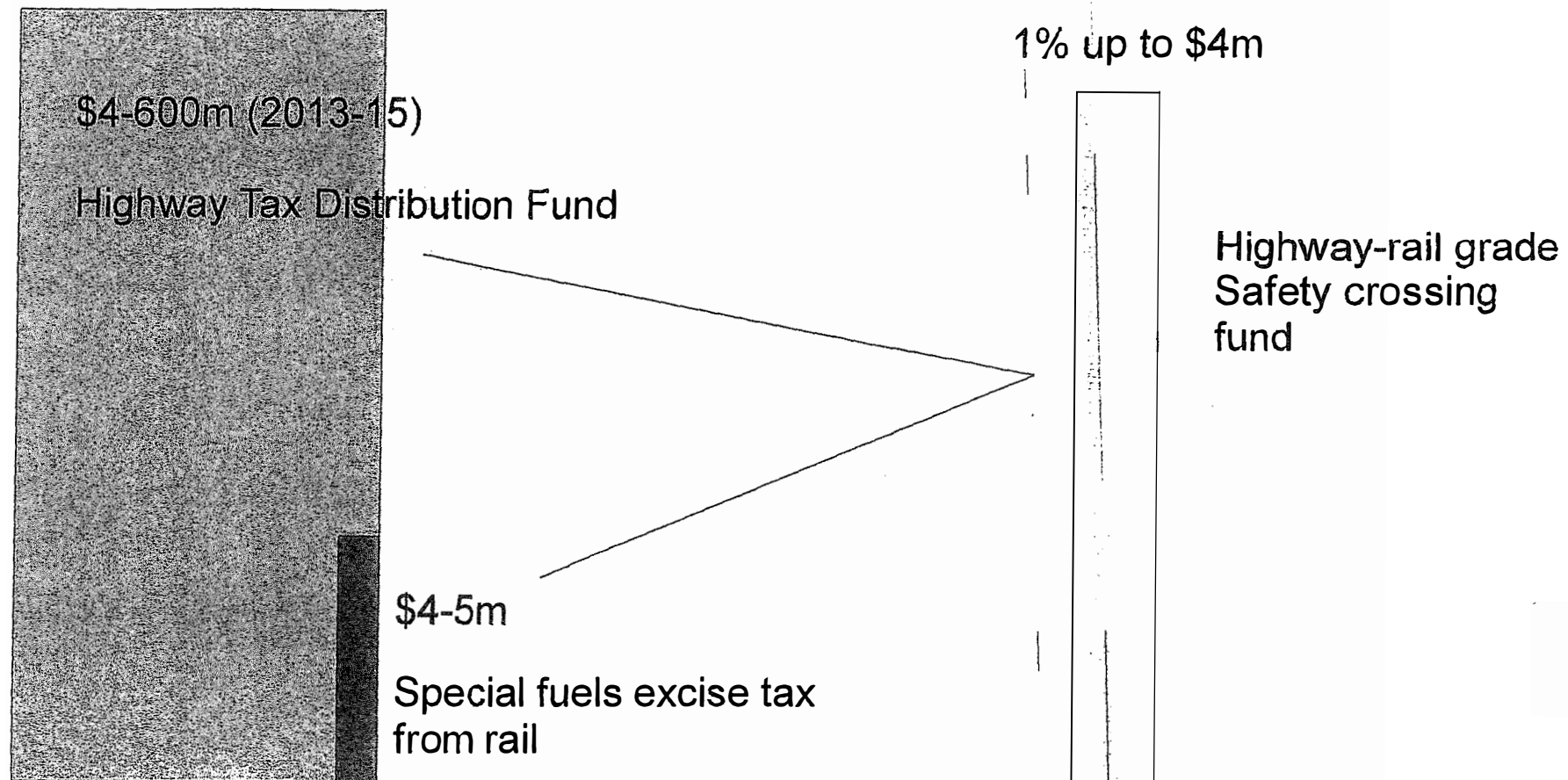
16 The 2013-15 one-time funding amounts are not part of the entity's base budget for the 2015-17
17 biennium. The department of transportation shall report to the appropriations committees of the
18 sixty-fourth legislative assembly on the use of the one-time funding for the biennium beginning
19 July 1, 2013, and ending June 30, 2015.

20 **SECTION 3. LINE ITEM TRANSFERS.** The director of the department of transportation
21 may transfer between the salaries and wages, operating, capital assets, and grants line items in
22 section 1 of this Act when it is cost-effective for construction and maintenance of highways. The
23 department of transportation shall notify the office of management and budget of any transfers
24 made pursuant to this section.

25 **SECTION 4. COUNTY AND TOWNSHIP ROAD RECONSTRUCTION PROGRAM -**
26 **CARRYOVER AUTHORITY.**

27 1. The sum of \$142,000,000, or so much of the sum as may be necessary, included in
28 the county and township road reconstruction program line item in section 1 of this Act,
29 must be used to rehabilitate or reconstruct county and township paved and unpaved
30 roads needed to support oil and gas production and distribution in North Dakota.

SB 2153 Funding Request



Funding Proposal for SB 2153

The Highway Tax Distribution Fund will accumulate approximately \$600m in the Biennium 2013-15

The present Distribution formula is:

We Propose for 2013-15:

61.3 % NDDOT

60.3% NDDOT

21.5% Counties

21.5% Counties

13.0% Cities

13.0% Cities

2.7% Townships

2.7% Townships

1.5% Public transportation

1.5% Public Transportation

**1% Highway-rail grade crossing
Safety Projects Fund up to
\$4million.**



STATE OF NORTH DAKOTA
OFFICE OF STATE TAX COMMISSIONER
Cory Fong, Commissioner

10-Jan-2013

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Motor Fuel Taxes Gallons - Received
7/1/2008 through 6/30/2009

Gallons Reported Sold & Used - Gallons Assessed		Gallons Refunded	
	Gallons		Gallons
Motor Vehicle Fuel		Motor Vehicle Fuel	
<i>Taxable Gallons</i>		Agricultural	5,896,872
Gasoline	151,595,367	Industrial	246,594
Gasohol (w/ E-85)	212,160,809	Government (State and Local)	338,645
Total Taxable Gallons	363,756,176	US Government	547,990
<i>NonTaxable Gallons</i>		Native American Individual	84,281
Retail Shrinkage Allowed (w/ E-85)	968,445	Native American Tribal	127,314
Tax Exempt Sales US Gov - Native, (w/ E-85)	1,141,273	Non-Licensed Reseller	162,967
Total NonTaxable Gallons	2,109,718	Emergency Medical Services	3,436
Total Motor Vehicle Fuel	365,865,894	Motor Fuel Gallons Refunded	7,408,099
Special Fuels (Other than LP)		Special Fuels (including LP)	
<i>Taxable Gallons</i>		US Government	1,154,444
Per Gallon Special Fuel	211,410,769	Native American Individual	7,863
Excise Taxable Gallons \$.04/gal	191,976,066	Native American Tribal	17,692
Excise Taxable Gallons \$.04/gal - Railroad	62,238,977	Non-Licensed Reseller	0
Heating Fuel Gallons	14,915,764	Emergency Medical Services	116,489
Total Taxable Gallons Special Fuels	480,541,576	Refrigeration	0
Liquefied Petroleum		Special Fuel Gallons Refunded	1,296,488
<i>Taxable Gallons</i>		Aviation Fuel	
Per Gallon Liquefied Petroleum	835,704	Aviation Gasoline	0
Excise Taxable Gallons @ 2%	44,846,030	Jet Fuel	519,542
Heating Fuel Gallons	74,678,706	Non-Licensed Reseller	178,186
Total Taxable Gallons Liquefied Petroleum	120,360,440	Aviation Gasoline - EMS	0
Special Fuels & Liquefied Petroleum		Jet Fuel - EMS	0
<i>Tax Exempt Gallons - US Gov. Native American</i>		Aviation Fuel Gallons Refunded	697,728
Tax Exempt Off Road Fuel	1,849,154	Total Refunded Gallons	9,402,315
Tax Exempt Road Fuel	852,241	Tribal Gallons (Sold / Used)	
Tax Exempt Liquefied Petroleum	6,308,477	Standing Rock Sioux Tribe	
Total Tax Exempt Gallons	9,009,872	Gasoline / Gasohol	1,317,198
Total Special Fuels & Liquefied Petroleum	609,911,888	Diesel Fuel	140,822
Aviation Fuel		Total Standing Rock Gallons	1,458,020
<i>Taxable Gallons</i>		Spirit Lake Sioux Tribe	
Aviation Gasoline	2,058,733	Gasoline / Gasohol	1,251,679
Jet Fuel	13,837,250	Diesel Fuel	66,657
Total Taxable Gallons	15,895,983	Total Spirit Lake Gallons	1,318,336
<i>NonTaxable Gallons</i>		Three Affiliated Tribes	
Sales to US Government	8,058,233	Gasoline / Gasohol	2,516,347
Total NonTaxable Gallons	8,058,233	Diesel Fuel	1,455,101
Total Aviation Fuel	23,954,216	Total Three Aff Tribes Gallons	3,971,448
Total State Gallons (Sold or Used)	999,731,998	Turtle Mountain Tribes	
Grand Total Gallons	1,006,479,802	Gasoline / Gasohol	0
		Diesel Fuel	0
		Total Turtle Mtn Tribes Gallons	0
		Total Tribal Gallons	6,747,804



STATE OF NORTH DAKOTA
OFFICE OF STATE TAX COMMISSIONER
Cory Fong, Commissioner

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Testimony 6/28/2

Motor Fuel Taxes Gallons - Received
7/1/2009 through 6/30/2010

Gallons Reported Sold & Used - Gallons Assessed		Gallons Refunded	
	Gallons		Gallons
Motor Vehicle Fuel		Motor Vehicle Fuel	
<i>Taxable Gallons</i>		Agricultural	5,383,317
Gasoline	160,328,008	Industrial	107,471
Gasohol (w/ E-85)	215,816,462	Government (State and Local)	430,266
Total Taxable Gallons	376,144,470	US Government	823,783
<i>NonTaxable Gallons</i>		Native American Individual	87,303
Retail Shrinkage Allowed (w/ E-85)	988,190	Native American Tribal	172,419
Tax Exempt Sales US Gov - Native, (w/ E-85)	1,127,245	Non-Licensed Reseller	18,998
Total NonTaxable Gallons	2,115,435	Emergency Medical Services	7,749
Total Motor Vehicle Fuel	378,259,905	Motor Fuel Gallons Refunded	7,031,306
Special Fuels (Other than LP)		Special Fuels (including LP)	
<i>Taxable Gallons</i>		US Government	652,506
Per Gallon Special Fuel	225,635,952	Native American Individual	5,995
Excise Taxable Gallons \$.04/gal	208,194,073	Native American Tribal	37,211
Excise Taxable Gallons \$.04/gal - Railroad	52,215,820	Non-Licensed Reseller	0
Heating Fuel Gallons	9,489,759	Emergency Medical Services	111,701
Total Taxable Gallons Special Fuels	495,535,604	Refrigeration	33,221
Liquefied Petroleum		Special Fuel Gallons Refunded	840,634
<i>Taxable Gallons</i>		Aviation Fuel	
Per Gallon Liquefied Petroleum	777,985	Aviation Gasoline	0
Excise Taxable Gallons @ 2%	49,914,821	Jet Fuel	0
Heating Fuel Gallons	58,501,262	Non-Licensed Reseller	168,274
Total Taxable Gallons Liquefied Petroleum	109,194,068	Aviation Gasoline - EMS	0
Special Fuels & Liquefied Petroleum		Jet Fuel - EMS	0
<i>Tax Exempt Gallons - US Gov. Native American</i>		Aviation Fuel Gallons Refunded	168,274
Tax Exempt Off Road Fuel	1,704,867	Total Refunded Gallons	
Tax Exempt Road Fuel	809,624	8,040,214	
Tax Exempt Liquefied Petroleum	5,365,670	Tribal Gallons (Sold / Used)	
Total Tax Exempt Gallons	7,880,161	Standing Rock Sioux Tribe	
Total Special Fuels & Liquefied Petroleum	612,609,833	Gasoline / Gasohol	1,451,104
Aviation Fuel		Diesel Fuel	155,608
<i>Taxable Gallons</i>		Total Standing Rock Gallons	1,606,712
Aviation Gasoline	1,867,720	Spirit Lake Sioux Tribe	
Jet Fuel	14,958,464	Gasoline / Gasohol	1,274,468
Total Taxable Gallons	16,826,184	Diesel Fuel	85,590
<i>NonTaxable Gallons</i>		Total Spirit Lake Gallons	1,360,058
Sales to US Government	21,167,039	Three Affiliated Tribes	
Total NonTaxable Gallons	21,167,039	Gasoline / Gasohol	2,722,741
Total Aviation Fuel	37,993,223	Diesel Fuel	1,985,141
Total State Gallons (Sold or Used)		Total Three Aff Tribes Gallons	4,707,882
1,028,862,961		Turtle Mountain Tribes	
Grand Total Gallons		Gasoline / Gasohol	0
1,036,537,612		Diesel Fuel	0
		Total Turtle Mtn Tribes Gallons	0
		Total Tribal Gallons	7,674,651



STATE OF NORTH DAKOTA
OFFICE OF STATE TAX COMMISSIONER
Cory Fong, Commissioner

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Motor Fuel Taxes Gallons - Received
7/1/2010 through 6/30/2011

Gallons Reported Sold & Used - Gallons Assessed	
	Gallons
Motor Vehicle Fuel	
<i>Taxable Gallons</i>	
Gasoline	169,802,228
Gasohol (w/ E-85)	223,979,671
Total Taxable Gallons	393,781,899
<i>NonTaxable Gallons</i>	
Retail Shrinkage Allowed (w/ E-85)	969,029
Tax Exempt Sales US Gov - Native, (w/ E-85)	1,080,072
Total NonTaxable Gallons	2,049,101
Total Motor Vehicle Fuel	395,831,000
Special Fuels (Other than LP)	
<i>Taxable Gallons</i>	
Per Gallon Special Fuel	279,804,024
Excise Taxable Gallons \$.04/gal	286,000,085
Excise Taxable Gallons \$.04/gal - Railroad	61,711,129
Heating Fuel Gallons	9,050,212
Total Taxable Gallons Special Fuels	636,565,450
Liquefied Petroleum	
<i>Taxable Gallons</i>	
Per Gallon Liquefied Petroleum	664,127
Excise Taxable Gallons @ 2%	36,344,712
Heating Fuel Gallons	63,361,787
Total Taxable Gallons Liquefied Petroleum	100,370,626
Special Fuels & Liquefied Petroleum	
<i>Tax Exempt Gallons - US Gov. Native American</i>	
Tax Exempt Off Road Fuel	1,898,824
Tax Exempt Road Fuel	987,708
Tax Exempt Liquefied Petroleum	5,446,791
Total Tax Exempt Gallons	8,333,323
Total Special Fuels & Liquefied Petroleum	745,269,399
Aviation Fuel	
<i>Taxable Gallons</i>	
Aviation Gasoline	1,879,534
Jet Fuel	17,801,453
Total Taxable Gallons	19,680,987
<i>NonTaxable Gallons</i>	
Sales to US Government	15,467,750
Total NonTaxable Gallons	15,467,750
Total Aviation Fuel	35,148,737
Total State Gallons (Sold or Used)	1,176,249,136
Grand Total Gallons	1,187,283,094

Gallons Refunded	
	Gallons
Motor Vehicle Fuel	
Agricultural	4,340,184
Industrial	150,788
Government (State and Local)	96,169
US Government	549,745
Native American Individual	58,338
Native American Tribal	200,233
Non-Licensed Reseller	18,459
Emergency Medical Services	7,544
Motor Fuel Gallons Refunded	5,421,460
Special Fuels (including LP)	
US Government	559,653
Native American Individual	4,408
Native American Tribal	33,839
Non-Licensed Reseller	1,843
Emergency Medical Services	142,215
Refrigeration	68,862
Special Fuel Gallons Refunded	810,820
Aviation Fuel	
Aviation Gasoline	0
Jet Fuel	0
Non-Licensed Reseller	243,100
Aviation Gasoline - EMS	0
Jet Fuel - EMS	552
Aviation Fuel Gallons Refunded	243,652
Total Refunded Gallons	6,475,932
Tribal Gallons (Sold / Used)	
Standing Rock Sioux Tribe	
Gasoline / Gasohol	1,459,691
Diesel Fuel	166,505
Total Standing Rock Gallons	1,626,196
Spirit Lake Sioux Tribe	
Gasoline / Gasohol	1,035,285
Diesel Fuel	106,147
Total Spirit Lake Gallons	1,141,432
Three Affiliated Tribes	
Gasoline / Gasohol	3,116,636
Diesel Fuel	2,971,105
Total Three Aff Tribes Gallons	6,087,741
Turtle Mountain Tribes	
Gasoline / Gasohol	2,068,840
Diesel Fuel	109,749
Total Turtle Mtn Tribes Gallons	2,178,589
Total Tribal Gallons	11,033,958



STATE OF NORTH DAKOTA
OFFICE OF STATE TAX COMMISSIONER
 Cory Fong, Commissioner

Motor Fuel Taxes Gallons - Received
7/1/2011 through 6/30/2012

Gallons Reported Sold & Used - Gallons Assessed		Gallons Refunded	
	Gallons		Gallons
Motor Vehicle Fuel		Motor Vehicle Fuel	
<i>Taxable Gallons</i>		<i>Agricultural</i>	
Gasoline	188,667,217		2,697,785
Gasohol (w/ E-85)	237,809,713	Industrial	232,533
Total Taxable Gallons	426,476,930	Government (State and Local)	113,038
<i>NonTaxable Gallons</i>		US Government	644,892
Retail Shrinkage Allowed (w/ E-85)	1,014,579	Native American Individual	7,302
Tax Exempt Sales US Gov - Native, (w/ E-85)	1,018,370	Native American Tribal	418
Total NonTaxable Gallons	2,032,949	Non-Licensed Reseller	25,159
Total Motor Vehicle Fuel	428,509,879	Emergency Medical Services	21,462
Special Fuels (Other than LP)		Motor Fuel Gallons Refunded	3,742,589
<i>Taxable Gallons</i>		Special Fuels (including LP)	
Per Gallon Special Fuel	376,274,613	US Government	422,390
Excise Taxable Gallons \$.04/gal	365,629,498	Native American Individual	542
Excise Taxable Gallons \$.04/gal - Railroad	55,896,851	Native American Tribal	0
Heating Fuel Gallons	6,372,417	Non-Licensed Reseller	7,673
Total Taxable Gallons Special Fuels	804,173,379	Emergency Medical Services	132,844
Liquefied Petroleum		Refrigeration	84,706
<i>Taxable Gallons</i>		Special Fuel Gallons Refunded	648,155
Per Gallon Liquefied Petroleum	757,771	Aviation Fuel	
Excise Taxable Gallons @ 2%	42,744,529	Aviation Gasoline	0
Heating Fuel Gallons	54,352,817	Jet Fuel	1,134,741
Total Taxable Gallons Liquefied Petroleum	97,855,117	Non-Licensed Reseller	163,965
Special Fuels & Liquefied Petroleum		Aviation Gasoline - EMS	0
<i>Tax Exempt Gallons - US Gov. Native American</i>		Jet Fuel - EMS	0
Tax Exempt Off Road Fuel	1,726,885	Aviation Fuel Gallons Refunded	1,298,706
Tax Exempt Road Fuel	1,451,782	Total Refunded Gallons	
Tax Exempt Liquefied Petroleum	4,309,079		5,689,450
Total Tax Exempt Gallons	7,487,746	Tribal Gallons (Sold / Used)	
Total Special Fuels & Liquefied Petroleum	909,516,242	Standing Rock Sioux Tribe	
Aviation Fuel		Gasoline / Gasohol	1,428,680
<i>Taxable Gallons</i>		Diesel Fuel	164,866
Aviation Gasoline	2,065,741	Total Standing Rock Gallons	1,593,545
Jet Fuel	21,548,780	Spirit Lake Sioux Tribe	
Total Taxable Gallons	23,614,521	Gasoline / Gasohol	1,100,418
<i>NonTaxable Gallons</i>		Diesel Fuel	121,427
Sales to US Government	15,306,880	Total Spirit Lake Gallons	1,221,845
Total NonTaxable Gallons	15,306,880	Three Affiliated Tribes	
Total Aviation Fuel	38,921,401	Gasoline / Gasohol	3,746,036
Total State Gallons (Sold or Used)		Diesel Fuel	5,284,126
	1,376,947,522	Total Three Aff Tribes Gallons	9,030,162
Grand Total Gallons		Turtle Mountain Tribes	
	1,391,929,142	Gasoline / Gasohol	2,972,450
		Diesel Fuel	163,618
		Total Turtle Mtn Tribes Gallons	3,136,068
		Total Tribal Gallons	14,981,620



STATE OF NORTH DAKOTA
OFFICE OF STATE TAX COMMISSIONER
Cory Fong, Commissioner

10-Jan-2013

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Motor Fuel Taxes Gallons - Received
7/1/2012 through 11/30/2012

Gallons Reported Sold & Used - Gallons Assessed		Gallons Refunded	
	Gallons		Gallons
Motor Vehicle Fuel		Motor Vehicle Fuel	
<i>Taxable Gallons</i>		Agricultural	374,819
Gasoline	86,322,745	Industrial	1,373
Gasohol (w/ E-85)	109,302,267	Government (State and Local)	127,671
Total Taxable Gallons	195,625,011	US Government	371,173
<i>NonTaxable Gallons</i>		Native American Individual	0
Retail Shrinkage Allowed (w/ E-85)	459,859	Native American Tribal	0
Tax Exempt Sales US Gov - Native, (w/ E-85)	415,037	Non-Licensed Reseller	2,222
Total NonTaxable Gallons	874,896	Emergency Medical Services	13,163
Total Motor Vehicle Fuel	196,499,908	Motor Fuel Gallons Refunded	890,421
Special Fuels (Other than LP)		Special Fuels (including LP)	
<i>Taxable Gallons</i>		US Government	51,997
Per Gallon Special Fuel	173,476,141	Native American Individual	0
Excise Taxable Gallons \$.04/gal	163,161,293	Native American Tribal	0
Excise Taxable Gallons \$.04/gal - Railroad	26,407,463	Non-Licensed Reseller	0
Heating Fuel Gallons	1,015,307	Emergency Medical Services	40,185
Total Taxable Gallons Special Fuels	364,060,204	Refrigeration	27,292
Liquefied Petroleum		Special Fuel Gallons Refunded	119,474
<i>Taxable Gallons</i>		Aviation Fuel	
Per Gallon Liquefied Petroleum	277,638	Aviation Gasoline	0
Excise Taxable Gallons @ 2%	16,866,947	Jet Fuel	0
Heating Fuel Gallons	17,386,981	Non-Licensed Reseller	64,958
Total Taxable Gallons Liquefied Petroleum	34,531,566	Aviation Gasoline - EMS	0
Special Fuels & Liquefied Petroleum		Jet Fuel - EMS	0
<i>Tax Exempt Gallons - US Gov. Native American</i>		Aviation Fuel Gallons Refunded	64,958
Tax Exempt Off Road Fuel	664,516	Total Refunded Gallons	1,074,853
Tax Exempt Road Fuel	284,991		
Tax Exempt Liquefied Petroleum	895,792	Tribal Gallons (Sold / Used)	
Total Tax Exempt Gallons	1,845,299	Standing Rock Sioux Tribe	
Total Special Fuels & Liquefied Petroleum	400,437,069	Gasoline / Gasohol	635,786
Aviation Fuel		Diesel Fuel	106,293
<i>Taxable Gallons</i>		Total Standing Rock Gallons	742,079
Aviation Gasoline	1,047,188	Spirit Lake Sioux Tribe	
Jet Fuel	9,500,725	Gasoline / Gasohol	474,400
Total Taxable Gallons	10,547,913	Diesel Fuel	55,341
<i>NonTaxable Gallons</i>		Total Spirit Lake Gallons	529,741
Sales to US Government	5,119,797	Three Affiliated Tribes	
Total NonTaxable Gallons	5,119,797	Gasoline / Gasohol	1,732,756
Total Aviation Fuel	15,667,710	Diesel Fuel	2,494,922
Total State Gallons (Sold or Used)	612,604,687	Total Three Aff Tribes Gallons	4,227,678
Grand Total Gallons	619,380,127	Turtle Mountain Tribes	
		Gasoline / Gasohol	1,217,913
		Diesel Fuel	58,029
		Total Turtle Mtn Tribes Gallons	1,275,942
		Total Tribal Gallons	6,775,440



Transportation Division
North Dakota State Legislative Board

**Testimony of Max Laird
Before the Senate Appropriations Committee
In Support of SB 2153**

Mr. Chairman and members of the committee, my name is Max Laird. I represent the United Transportation Union. The UTU is the largest rail labor union in North America. Membership includes conductors, engineers, switchmen, trainmen, and yardmasters.

Senate Bill 2153 is intended to continue legislation (SB 2338) that was passed in 2009 establishing a grant program managed by the Dept. of Transportation to offer assistance to political subdivisions in improving public safety at rail crossings. The previous legislation expired in 2011. The Governor's Budget (2013-15, see SB 2012) has not proposed any future funding for "Highway-rail grade crossing safety grants".

As a result of input from the NDDOT on Section 1 we are in support of an amendment that has been presented to you by the prime sponsor Sen. Lyson.

Section 1:

We have drafted language that divides the grant application process into two distinct parts. One is directed to grants for silent rail projects. The other section is to define the application process available to all political subdivisions for the improved safety at crossings other than for silent rail. Additional flexibility is written into the second part to insure that added safety is accomplished based on local needs.

2-14-13

HL

Section 2: (Our proposal...not reflecting the NDDOT position)

We are proposing to shift 1% of the NDDOT portion of the Highway Tax Distribution Fund to this grant program up to \$4 million per biennium (see attached).

We are asking that the equivalent value of the special rail fuel excise tax be made available for this grant program and remain in statute as a continuing appropriation. Our proposal is based on a concept of railroad taxes in, public safety projects out. It is important to note that this excise tax generates in excess of the \$4 million cap that we are proposing.

Presently, the dollars collected from these all excise taxes are deposited in the Highway Tax Distribution Fund. This fund presently dedicates dollars from this fund to many projects that do not include direct rail safety funding.

The need for this grant program is emphasized in that the Dept. of Transportation presently has more requests for safety projects than there is money available. In addition, the interest in quiet rail has increased in the past 4 years. The \$2.5 million that is available from federal funding will only complete approximately 7 projects per year.

The number of incidents at rail crossings in ND is increasing, that is likely concurrent with the increased traffic (both rail and vehicular) in the entire state. From a safety perspective it has been clearly indicated that in the past both silent rail (including in Fargo) and additional safety measures have successfully reduced the number of rail crossing incidents across North Dakota.

It is only appropriate we all consider improved public safety as our economy booms in ND and that this, albeit small contribution, will return substantial positive results.

Once again let me emphasize that we are simply asking that the excise taxes railroads pay be the basis of your consideration for this proposal to improve public safety....rail money in....rail money out....for public safety!

We would appreciate your support of this legislation with a “do pass” recommendation.

Funding Proposal for SB 2153

The Highway Tax Distribution Fund will accumulate approximately \$600m in the Biennium 2013-15

The present Distribution formula is:

We Propose for 2013-15:

61.3 % NDDOT

60.3% NDDOT

21.5% Counties

21.5% Counties

13.0% Cities

13.0% Cities

2.7% Townships

2.7% Townships

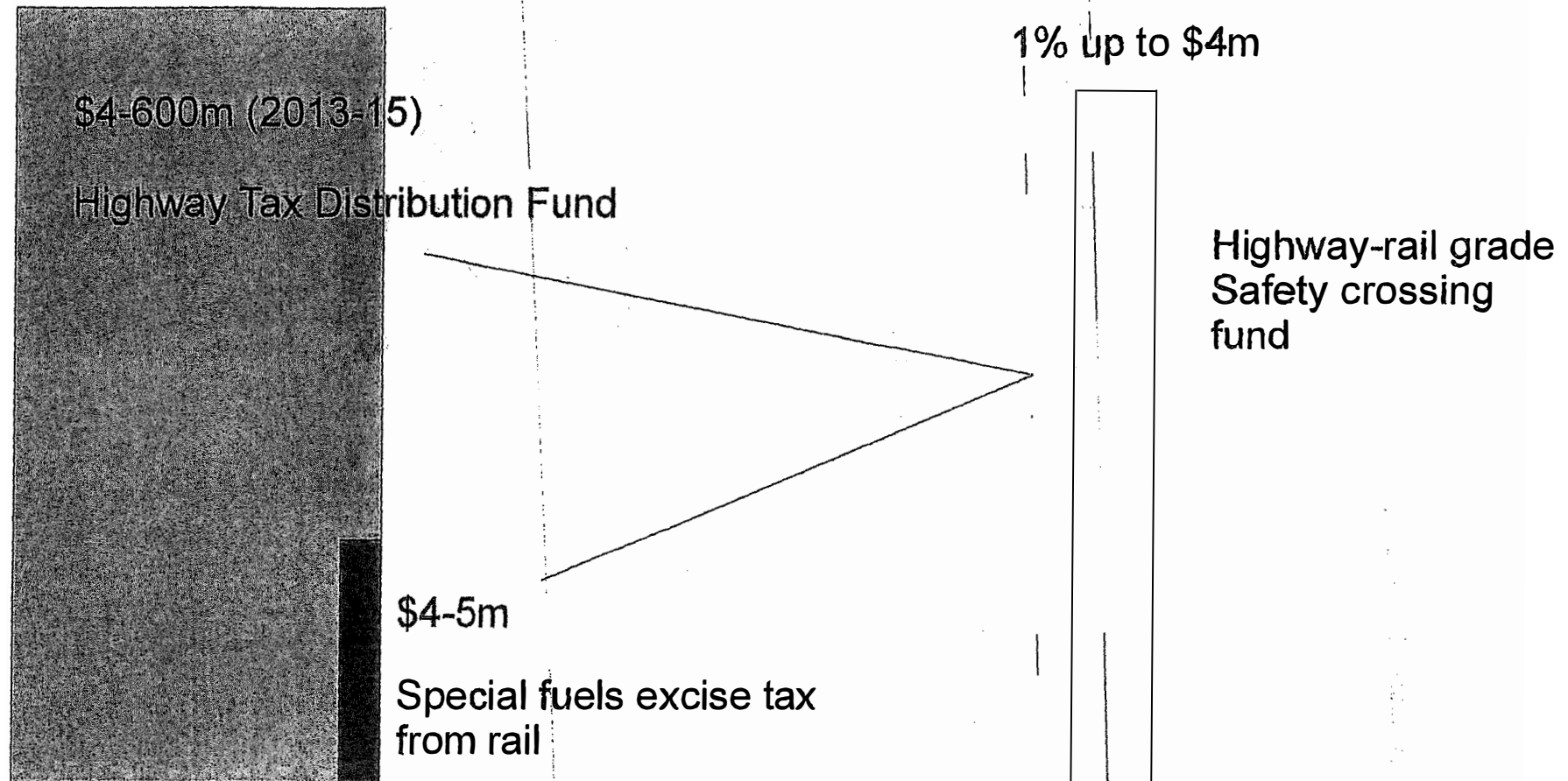
1.5% Public transportation

1.5% Public Transportation

**1% Highway-rail grade crossing
Safety Projects Fund up to
\$4million.**

1

SB 2153 Funding Request



SENATE APPROPRIATIONS COMMITTEE

February 14, 2013

9:00 a.m. Harvest Room

**North Dakota Department of Transportation
Steve Salwei, Transportation Programs Director**

SB2153

Mr. Chairman and members of the committee, I'm Steve Salwei and I serve as the Transportation Programs Director for the North Dakota Department of Transportation (DOT). I'm here today to oppose SB2153.

The Department fully understands the need for safe railroad crossings across the state. The DOT currently has a program in place to upgrade railroad crossings to concrete crossings for a smoother and safer crossing. We fund this program at approximately \$1 million per year. The DOT also has a program in place to install and/or replace railroad crossing signals. We fund this program at approximately \$1.5 million per year. Both of these programs are funded with federal dollars through the Federal Highway Administration at a 90 percent federal – 10 percent local match. The projects for these two programs are selected based on many factors including input from our local partners which include: cities, counties, townships, school districts, transit, tribal authorities, and railroads. These two programs, however, do not fund quiet zone projects.

If SB2153 passes, it will result in a loss of \$4 million of flexible revenue to the DOT over the next biennium. What this bill essentially does is tell the DOT that railroad crossings are the highest priority -- higher than any other improvement in the state because the funds will be dedicated solely for that purpose.

Over the last three years, there were 423 traffic fatalities in the state. Of those, only four involved railroad crossings on roadways. This is less than one percent. Over the last three years, there were 54,255 fatality, injury, and property damage crashes in the state. Of those, only 169 involved railroad crossings on roadways. This equates to 3/10 of a percent.

We believe that rather than mandating an expenditure of funds for railroad safety and taking funds from other priorities, the Department should be allowed to establish the priorities using crash data.

Mr. Chairman, I would be happy to answer any questions at this time. Thank you.

J