17.0323.01000

FISCAL NOTE

Requested by Legislative Council
01/06/2017

Bill/Resolution No.: HB 1176

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.*

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 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.*

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 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 establishes a requirement for covering loads and a related penalty.

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 provides an exemption for the state and political subdivisions; therefore this bill should have no material fiscal impact.

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

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

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

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

Name: Shannon L. Sauer
Agency: ND Dept of Transportation
Telephone: 328-4375
Date Prepared: 01/10/2017

2017 HOUSE TRANSPORTATION

HB 1176

2017 HOUSE STANDING COMMITTEE MINUTES

Transportation Committee
Fort Totten Room, State Capitol

HB 1176
1/19/2017
#27133

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature Jeanette Cook

Explanation or reason for introduction of bill/resolution:

A bill relating to covering a load in a vehicle and a fee for violation.

Minutes: Attachments # 1 - 6

Chairman Ruby brought HB 1176 before the committee.
3:10

Representative Jay Seibel, District 33, spoke to introduce and support HB 1176 and provided written testimony. See attachment #1.
5:20

Representative Jones: Have there been any studies done that establishes if the majority of the damage being done comes off of the top of the load, out of the tires, or off of the frame of the machinery?

Representative Jay Seibel: I am not aware of any. Many of the rock chips do come from tires, but asphalt doesn't grow rocks. There are quite a few that do come off of the top of trucks. I bring this law on behalf of a constituent.

Chairman Ruby: Have you considered that if a truck were tarped, would the owner be relieved of the liability of the rock breaking? We don't haul aggregate, but every year we have people that call and say that a rock came from our trucks and broke their window. I tell them that we don't haul rock, so you can call the county or the state because the rock was on their road. So, if someone did tarp their load, would they be exempt from liability if a rock chipped someone's windshield?

Representative Jay Seibel: I have considered that, but do not know how the courts would look at it.

Representative Weisz: There is an exemption in the bill for political subdivisions. Why is there a difference between the state and a private contractor who is hired by the state? Why should the state get a free pass?

Representative Jay Seibel: I'm not sure on that. There was no way we could require the state and subs to tarp in the fiscal position that we are in right now. It wouldn't have paid to bring the bill forward in this session.

Representative Grueneich: Out of the sixteen states that currently have this law, are there any of those states that have excluded the state from participating?

Representative Jay Seibel: I don't know.
9:48

Janet Frost, Marketing Director for ABATE of North Dakota, spoke to support HB 1176. Written testimony was provided. See attachment #2.
12:59

There was no further testimony in support of HB 1176.

Russ Hanson, Associated General Contractors of North Dakota, spoke to oppose HB 1176 and provided written testimony. See attachment #3. He stated that his association opposes the bill, but if it should pass, he recommends that the exemption for the state be left out.

Russ Hanson also provided testimony from **Molly Barnes, an association member**. It gives information on the costs of tarping a fleet of trucks and the other costs that would be associated with tarping. See attachment #4.
16:20

Russ Hanson: Every year I survey our neighboring states to see where we are in relation to them. It is the same as it was in 2015: Minnesota has the requirement, Montana and South Dakota do not. We respectfully request a DO NOT PASS on HB 1176.

Representative Dobervich: Do you know how well the current law about containing a load is enforced? Are you hearing from your members that they are getting cited often?

Russ Hanson: It is not something I hear a lot of.

Chairman Ruby: You pointed out that there is current law already. What is the fine for not containing a load right now?

Russ Hanson: I checked with the Highway Patrol, and the fine is $20.

Chairman Ruby: If we put on this tarp requirement, the fine is $100. What would your members think of moving the fine up to $100 in current law for not containing a load?

Russ Hanson: That is a policy decision that the legislature would make, but certainly increasing the fine for the existing law would be much more palatable than a $740,000 investment for a business with 250 trucks. We prefer neither.
20:40

Arik Spencer, Executive Vice President of the North Dakota Motor Carriers' Association, spoke to oppose HB 1176 and provided written testimony. See attachment #5.

Arik Spencer provided written testimony from **Paul Gibree, Corporate Fleet Manager, Strata Corporation**, that gives information on costs to update a fleet of trucks. See attachment #`6.

Arik Spencer: We agree with Russ Hanson, that our members would prefer a higher fine on the current law, than this legislation. We urge a DO NOT PASS on HB 1176.

There was no further opposition to HB 1176.
There was no neutral testimony on HB 1176.

The hearing on HB 1176 was closed.

2017 HOUSE STANDING COMMITTEE MINUTES

Transportation Committee
Fort Totten Room, State Capitol

HB 1176
1/19/2017
#27137

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature Jeanette Cook

Explanation or reason for introduction of bill/resolution:

A bill relating to covering a load in a vehicle and a fee for violation.

Minutes:

Chairman Ruby brought HB 1176 back before the committee.

Chairman Ruby: What do you think about raising the penalty for not having a load secured, since that is already in law? The cost of requiring a business to add all new tarps is substantial. It is a huge burden on the private sector. Unless we do something different with it, I won't support the bill.

Vice Chairman Rick C. Becker: Does this bill have the same requirement for state vehicles as it does for private? Does it exempt state vehicles once again?

Chairman Ruby: It exempts state vehicles.

Representative Grueneich moved a DO NOT PASS on HB 1176.
Representative Owens seconded the motion.

Chairman Ruby reviewed the issue of raising the fine.
Representative Weisz: I think it would be hard to nail someone for uncovered load. I don't know that raising the fine would help.

There was no further discussion.

A roll call vote was taken on HB 1176.
Yay 11 Nay 2 Absent 1
The motion carried.
Representative Grueneich will carry HB 1176.

Date: 1-19-17
Roll Call Vote #: 1

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1176

House Transportation Committee

☐ Subcommittee

Amendment LC# or Description:

Recommendation: ☐ Adopt Amendment
☐ Do Pass ☒ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐

Motion Made By Grueneich Seconded By Owens

Representatives	Yes	No	Representatives	Yes	No
Chairman Dan Ruby	X		Rep. Gretchen Dobervich	X	
Vice Chair. Rick C. Becker	X		Rep. Marvin Nelson	A	
Rep. Bert Anderson		X			
Rep. Jim Grueneich	X				
Rep. Terry Jones	X				
Rep. Emily O'Brien	X				
Rep. Mark Owens	X				
Rep. Gary Paur	X				
Rep. Randy Schobinger	X				
Rep. Gary Sukut		X			
Rep. Robin Weisz	X				
Rep. Greg Westlind	X				

Total (Yes) 11 No 2

Absent 1

Floor Assignment Grueneich

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

REPORT OF STANDING COMMITTEE

HB 1176: Transportation Committee (Rep. D. Ruby, Chairman) recommends **DO NOT PASS** (11 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). HB 1176 was placed on the Eleventh order on the calendar.

2017 TESTIMONY

HB 1176

HB1176
1-19-17
#1

HB 1176

Chairman Ruby and members of the House Transportation Committee. My name is Jay Seibel from Beulah, and I represent District 33 which includes all of Mercer County, all of Oliver County and a portion of Morton County.

I stand before you today on behalf of a constituent to introduce HB 1176. HB 1176 comes about because of the number of rock chips and windshield replacements necessitated because of debris falling from untarped trucks. This is also a severe hazard for motorcyclists, as you will hear.

Section 1, subsection 2 m. establishes the fee for a violation at $100.

Section 2, Subsection 3 mandates that aggregate trucks use a secure cover to keep the load within or on the vehicle and exempts the state and political subs. This exemption is in place because of the dire fiscal position we find ourselves in this session.

Having been a motorcyclist in the past I can attest to the fact that being struck by a rock can be very painful, as well as dangerous. Currently, 19 states require aggregate trucks to tarp or cover their load in some way. I believe, North Dakota should as well. 16 states have laws similar to ours now that require that trucks be constructed or loaded as to prevent its contents from dropping, sifting, leaking or otherwise escaping therefrom...

I humbly request a Do Pass recommendation from your committee and thank you for your time! I would stand for any questions.

#2 HB 1176
1-19-17

ABATE of NORTH DAKOTA
AMERICAN BIKERS
AIMING TOWARD EDUCATION
Let's Ride Together

AMERICAN BIKERS AIMING TOWARD EDUCATION
1001 South 22nd St Bismarck, ND 58504
701-223-5609
1-800-726-4094
www.abatend.com
info@abatend.com

January 19, 2017

Transportation Committee

House Bill No. 1176

Mr. Chairman and Committee Members,

My name is Janet Frost, Marketing Director for ABATE of ND (American Bikers Aiming Toward Education).

I encourage the Transportation Committee Members to vote in favor of HB No.1176 because I am a concerned motorcyclist that has had plenty of personal experience traveling behind a truck with an unsecured load.

There have been times that I was boxed in behind a gravel truck which resulted in damage to my motorcycle as well as my vehicle. This also causes a safety concern because as a driver I am now dealing with dodging debris instead of focusing on traffic safety.

"I'm sure we have all felt that sudden fear when we hear a rock hit our windshield. When that happens, we take our eyes off of the road and scan the windshield looking for damage. We spend the next five miles calculating how much that chip, which will soon turn into a crack, is going to cost us.

We as motorcyclists, have that same fear while traveling our state roads. We know what it feels like to be hit by a rock that just fell from a truck traveling 65mph and the distraction that pain can cause."

As an employee of ABATE of ND, I have received several calls from concerned members, regarding the safety hazards of gravel/sand trucks and other vehicles operating on our highways with unsecured loads. ALL modes of transportation should be able to travel safely on our state roads.

Thank you for your time and consideration.

Janet Frost
ABATE of ND

701-471-2231

HB1176
1-19-17
#3
Page 1

Testimony HB 1176
House Transportation Committee
January 19, 2017

Mr. Chairman and members of the House Transportation committee, my name is Russ Hanson of the Associated General Contractors of North Dakota. AGC of ND is a 400 member association which has been in existence since 1951. Our membership consists of all aspects of commercial construction - highway contractors, vertical contractors, specialty contractors, subcontractors as well as material and equipment suppliers.

The AGC of ND is opposed to HB 1176 which is the same position we've had on similar bills introduced the past several legislative sessions. While damage to vehicles, particularly windshields is frustrating, we don't believe a tarping mandate will solve the problem. Current law (NDCC 39-21-44.1) states "no vehicle may be driven on any highway unless it is so constructed or loaded as to prevent its contents from dropping, sifting, leaking, or otherwise escaping therefrom". If a vehicle violates this, they can be cited.

If HB 1176 is enacted it will have a cost to business which will be passed on as an overall cost of doing business. In inquiring with some of our members, $3,000 is a common number given as an approximation for tarp cost. Depending upon the size of the business's fleet, would determine the overall cost. One of our members indicated they'd need to cover 248 trucks which would equate to over $740,000.

I previously stated HB 1176 would be a cost to business purposefully as this bill exempts government from this mandate. If the Legislature believes this bill will solve a problem (again, we do not), it ought to enact the policy uniformly to anyone hauling the material stated in this bill.

I inquired with my AGC colleagues from our neighboring states regarding their respective policies regarding this issue. Their policies are the same now as I reported in 2015. Minnesota has a tarping requirement while Montana and South Dakota do not.

For these reasons, we respectfully request a Do Not Pass recommendation on HB 1176. Thanks for the opportunity to testify. I will be happy to attempt to address any questions

HB1176
1-19-17
#4

From: Molly Barnes <mbarnes@nicnd.com>
Date: January 13, 2017 at 8:40:02 AM CST **To:**
'Russ Hanson' <RHanson@agcnd.org>,
<james.thorson@stratacorporation.com>
Cc: <arik@ndmca.org>
Subject: RE: Emailing - 17-0323-01000.pdf

Russ,
Here is where I am at:

We have 248 trucks with boxes and/or trailers

248 trucks/trailers @ $3000 per tarp is $744,000.00 to get and install the tarp.

If we figure 4 minutes to get out of the truck, untarp and then 4 minutes to re-tarp after loading (this might be light). We have 1984 minutes per load for all of our trucks.

1984 minutes divided by 60 minutes per hour time the davis bacon tandem wage of $38.39 = $1269.43 per round for our trucks to tarp and untarp.

If we figure an average of 10 loads per day that is $12,694.30 per day for our trucks to tarp and untarp. The DOT can expect that on all their jobs if this goes through.

This does not include the incalculable potential for worker's comp claims. Not only do we open up for slips, trips, and falls getting in and out of the truck, but also the potential for sandblasting of the employee if it is windy. Sand in the eyes, etc.

We also need to look at maintenance. I am guessing you will have $200 per year in maintenance, whether it is fixing a tear or just general upkeep. $200 @ 248 is $49,600 in maintenance.

Also, you know will have to replace a minimum of 5% of the fleet per year for various reasons. In our fleet this is 12.4 trucks so, call it 13. 13 @ $3000 is an additional $39,000 in replacements per year.

I hope that helps!

Molly B

HB1176
1-19-17
#5

TESTIMONY HB 1176
HOUSE TRANSPORTATION COMMITTEE
JANUARY 19, 2017

Mr. Chairman and members of the House Transportation Committee my name is Arik Spencer, executive vice president of the North Dakota Motor Carriers Association. NDMCA represents the trucking and transportation industry in North Dakota and has been in existence since 1937. I am here this morning to testify in opposition of House Bill 1176.

We have several concerns with HB 1176. First, this bill will do little to prevent damage to vehicles from rocks and gravel as gravel is part of the sub-base of a road, road shoulders and is obviously on gravel roads which are included in the definition of a highway. Vehicles moving from gravel roads onto paved roads will also pull gravel, rocks and sand on to paved roads at intersections. When gravel falls from a vehicle, it often is a result of loading, when gravel or other material falls on surfaces outside the vehicles box such as the bumper. Gravel can also come loose from the belly dump or from a trucks tires.

Our second and primary concern is cost. During the 2013 Legislative Session HB 1144 was introduced, which was similar to HB 1176 with the exception that it would have required government vehicles cover their loads in addition privately owned vehicles. The North Dakota Department of Transportation expressed concern over provision as their cost to comply would have been over $1.3 million. Compliance with this new regulation will cost the private sector many times that amount as each commercial truck tarp cost approximately $3,000.

Finally, this bill is unnecessary as NDCC 39-21-44.1 already requires loads to be securely fastened to prevent load from becoming loose, detached, or in any manner a hazard to other users of the highway.

Because this bill excludes the state and political subdivisions from this requirement and is essentially saying tarping isn't good for government but is good for businesses, North Dakota companies will pay millions to comply with this new and unneeded regulation.

We ask that you give HB 1176 a DO NOT PASS recommendation.

Mr. Chairman, this concludes my testimony. I would be happy to answer any questions.

HB 1176
1-19-17
#6

STRATA CORPORATION SINCE 1910

PO Box 13500
Grand Forks, ND 58208-3500
701.746.7491

To Whom It May Concern:

We here at Strata Corporation have 190 trucks/trailers that would need to be outfitted with a tarp system, if this tarping bills passes.
This would cost us roughly $3000 per unit which is $570,000 to update the fleet.
The other thing to take into consideration is the maintenance at a cost of $200-$250 for normal wear and/or replacement, and/or additional equipment added to the fleet or updated older units.
Another issue that arises on this is the driver getting in and out to tarp/untarp his/her loads which has the potential for a workers comp claim due to slips, trips, and falls. Plus the production time lost due to tarping and untarping at 5mins to tarp and 5 mins to untarp.
With costs like that this would be passed onto the consumer/state as we do state and federal work. We also train our loaders and drivers to load the loads properly to prevent blowing material from the boxes of trucks where most of our hauling is short hauls and in rural settings.
So I ask you to please take into consideration of a no vote on this tarping bill as the impact it would have on our bottom line if this passes.

.Sincerely,

Paul Gibree
Corporate Fleet Manager