

**Testimony on SB 2066**  
**House Finance and Taxation Committee**  
**March 27, 2023**  
**Alan Annis, Director Taxes, BNSF Railway**

Chairman Headland, my name is Alan Annis and I'm Director of Taxes for BNSF Railway. Thank you for the opportunity to provide comments today. SB 2066 proposes a higher tax rate for centrally assessed property than for residential, agricultural and commercial property. There are a number of reasons to be opposed to separating centrally assessed taxpayers from others, but BNSF's opposition focuses on the legal issues. The Railroad Revitalization and Regulatory Reform Act of 1976 (the "4-R Act") prohibits inequitable tax treatment of railroads and there's a court decision specific to North Dakota's past attempts to unfairly tax railroads that should guide the committee's decision. Further, the Ninth Circuit Court of Appeals recently ruled that the attempt by California counties to impose a higher property tax rate on railroads, as compared to other commercial and industrial taxpayers, violated the 4-R Act.

To be clear, the 4-R Act essentially provides that all railroad property must be treated the same as all other commercial property. This result is not changed by the fact that SB 2066 imposes the same tax rate on railroads as other centrally assessed taxpayers. Federal courts have ruled that the fact that railroads are treated the same as other centrally assessed taxpayers does not mean that railroads are not being discriminated against. In *Ogilvie v. State Bd. of Equalization*, 492 F. Supp. 446 (D. N. Dakota 1980), the court clearly explained the invalidity of this type of taxation on railroads as follows:

“The imposition of such a tax is discriminatory when railroad property is compared to all other property as a whole, excluding traditionally exempt property of churches, charitable institutions, homesteads and the like. The imposition of a personal property tax on other centrally assessed businesses does not render defendants' actions toward plaintiffs nondiscriminatory. As stated supra, the emphasis of Congress was on discrimination among all forms of property, not just among carriers or public utilities. Furthermore, discrimination against one business or person cannot be justified merely because others are also the victims of discrimination.”

The question as to what tax rate to impose on property is a policy question to be answered by the State of North Dakota. However, the 4-R Act simply requires that railroad property be subject to the same treatment as other commercial property— no more; no less. It is worthy of note that the United State Supreme Court’s recent decision in *Alabama Department of Revenue v. CSX*, a case regarding the 4R Act’s application to Alabama’s sales tax on diesel fuel, does not change this result.

For further reading on the applicability of the 4-R Act to SB 2066, the following cases are applicable:

- *Ogilvie v. State Bd. of Equalization*, 492 F. Supp. 446 (D. N. Dakota 1980), judgment affirmed, 657 F.2d 204 (8<sup>th</sup> Cir. 1981).
- *Ogilvie v. State Bd. of Equalization*, Civil No. A3-80-134 (D. N. Dakota 1995).
- *BNSF Railway Company v. County of Alameda*, No. 20-15896, (9<sup>th</sup> Circuit 2021).

We respectfully request the committee to vote no on SB 2066 and I’ll answer any questions you all may have. Thank you.