

2023 HOUSE TRANSPORTATION

HB 1253

2023 HOUSE STANDING COMMITTEE MINUTES

Transportation Committee
Room JW327E, State Capitol

HB 1253
1/27/2023

A bill relating to the amount of statutory fees for traffic offenses and relating to transportation of aggregate material.
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Chairman D. Ruby opened the hearing at 11:04 AM.

Members present: Chairman Ruby, Vice Chairman Grueneich, Representatives Anderson, Christensen, Dyk, Frelich, Hauck, Koppelman, Murphy, Timmons, Wagner, Weisz, Dakane. **Members absent:** Representative Dobervich.

Discussion Topics:

- Aggregate materials on highways and roads
- Truck tarping

Representative Klemin introduced the bill in support (#17292).

Cheryl Christenson, Bismarck resident, verbally testified in support.

Savannah Schmidt, Associated General Contractors of North Dakota, testified in opposition (#17440)

Steve Farden, Farden Construction, testified in opposition (#17441)

Genny Dienstmann, North Dakota Association of Counties, verbally testified in opposition. Distributed written testimony from Nick West, Grand Forks County Engineer in opposition (#17444)

Amanda Remyse, North Dakota Motor Carriers Association, testified in opposition (#17446)

Molly Barnes, Executive Vice President and Equipment Manager with Northern Improvement Company, testified in opposition (#17452)

Wade Kadrmas, Sergeant and Safety and Education Officer with North Dakota Highway Patrol, testified in a neutral capacity (#16938).

Wade Swenson, Director of Operations with North Dakota Department of Transportation, testified in a neutral capacity with a proposed amendment (#17211).

Chairman D. Ruby closed the hearing at 12:08 PM.

Mary Brucker, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Transportation Committee
Room JW327E, State Capitol

HB 1253
2/3/2023

A bill relating to the amount of statutory fees for traffic offenses and relating to transportation of aggregate material.
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Chairman D. Ruby opened the meeting at 9:45 AM.

Members present: Chairman Ruby, Vice Chairman Grueneich, Representatives Anderson, Christensen, Dyk, Frelich, Hauck, Koppelman, Murphy, Timmons, Wagner, Weisz, Dakane, Dobervich. No members absent.

Discussion Topics:

- Proposed amendment
- Tarping loads
- Committee vote

Chairman D. Ruby discussed a proposed amendment from Representative Klemin (# 20374)

Representative Koppelman proposed amendment (#19074) on page 1, line 8 strike “of subsection 3”, delete lines 23-24 on page 1, and the remainder of the bill on page two.

Representative Koppelman moved the amendment.

Representative Timmons seconded the motion.

Roll call vote:

Representatives	Vote
Representative Dan Ruby	Y
Representative Jim Grueneich	Y
Representative Karen A. Anderson	Y
Representative Cole Christensen	Y
Representative Hamida Dakane	Y
Representative Gretchen Dobervich	N
Representative Scott Dyk	Y
Representative Kathy Frelich	N
Representative Dori Hauck	Y
Representative Ben Koppelman	Y
Representative Eric James Murphy	Y
Representative Kelby Timmons	Y
Representative Scott Wagner	Y
Representative Robin Weisz	N

Motion carried 11-3-0

Representative Weisz moved a Do Not Pass as Amended.

Representative Grueneich seconded the motion.

Roll call vote:

Representatives	Vote
Representative Dan Ruby	N
Representative Jim Grueneich	Y
Representative Karen A. Anderson	N
Representative Cole Christensen	Y
Representative Hamida Dakane	Y
Representative Gretchen Dobervich	N
Representative Scott Dyk	Y
Representative Kathy Frelich	Y
Representative Dori Hauck	Y
Representative Ben Koppelman	Y
Representative Eric James Murphy	N
Representative Kelby Timmons	Y
Representative Scott Wagner	N
Representative Robin Weisz	Y

Motion carried 9-5-0

Representative Christensen is the bill carrier.

Chairman D. Ruby adjourned at 10:08 AM.

Mary Brucker, Committee Clerk

February 3, 2023

JK
2-3-23

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1253

Page 1, line 8, remove "of subsection 3"

Page 1, line 11, remove "₌"

Page 1, line 12, remove "**Transportation of aggregate material**"

Page 1, remove lines 23 and 24

Page 2, remove lines 1 through 14

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1253: Transportation Committee (Rep. D. Ruby, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (9 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). HB 1253 was placed on the Sixth order on the calendar.

Page 1, line 8, remove "of subsection 3"

Page 1, line 11, remove ":-"

Page 1, line 12, remove "**Transportation of aggregate material**"

Page 1, remove lines 23 and 24

Page 2, remove lines 1 through 14

Renumber accordingly

TESTIMONY

HB 1253



68th Legislative Assembly
Testimony in **Neutral** of
House Bill No. 1253
House Transportation Committee
January 26, 2023

TESTIMONY OF
Sergeant Wade Kadrmas

Good morning, Chairman Ruby and members of the House Transportation Committee, my name is Wade Kadrmas, and I am the Safety and Education Officer for the North Dakota Highway Patrol. I am here today on behalf of my agency to provide neutral testimony on House Bill 1253. Representative Klemin reached out to the patrol regarding our current laws relating to load securement for "aggregate" loads identified in the bill.

Under our current law, officers can only issue a citation for a violation of North Dakota Century Code (NDCC) 39-21-44.1 if the officer observed the contents of the load dropping, sifting, leaking, or otherwise escaping from the load. This is considered a moving violation and the assigned fee is twenty dollars.

The NDHP receives reports from across the state each year about "aggregate" loads flying off the load and damaging vehicle windows of other motorists. These reports usually start when construction season begins and continue through the end of the season. Many times, it is hard to track down the vehicles responsible unless someone can get a license plate or even the name of a company. If we can track them down, then the usual process is to provide the owner and driver information to the complainant, if we are able to determine it was the vehicle with the unsecured load that caused the damage.

On occasion, troopers may be in the right place at the right time and observe material flying off the load and are able to enforce the violation. Over the past five years (2017-2021), the NDHP has issued 358 citations and 283 warnings for this violation.

This concludes my testimony, and I would be happy to answer any questions.

**House Bill No. 1253****House Transportation Committee**

Room 327E | January 27, 2023, 9 a.m.
Wayde Swenson, Office of Operations

Mr. Chairman and members of the committee - I'm Wayde Swenson, Director of the Office of Operations for the North Dakota Department of Transportation (NDDOT). I'm here to provide testimony on House Bill 1253.

I would like to suggest a word change in the bill.

Page 2

Line 8

b. Involved in the maintenance of public roads during snow or ice ~~removal~~ control operations:

We haul material when we are maintaining public roads for snow and ice control operations, not just when we are removing snow and ice.

The department also hauls aggregate for purposes other than snow or ice control operations. If this bill were passed, we would need to purchase truck tarps for those other aggregate hauling operations.

This concludes my testimony. Thank you.

TESTIMONY OF REP. LAWRENCE R. KLEMN
HOUSE BILL NO. 1253
HOUSE TRANSPORTATION COMMITTEE
JANUARY 27, 2023

Mr. Chairman and Members of the House Transportation Committee. I am Lawrence R. Klemin, Representative from District 47 in Bismarck. I am here to testify in support of HB 1253.

HB 1253 relates to the transportation of aggregate material on roads and highways by dump trucks. Aggregate material includes rock, sand, silts, gravel, stone and shale. It does not include hot asphalt, asphalt patching material, wet concrete, or other material not subject to blowing. The bill requires dump trucks to use a tarp or other cover in a manner that prevents the aggregate material from blowing, sifting, leaking, or otherwise escaping from the truck. The truck can also use any method other than a tarp to prevent the aggregate material from escaping.

The bill provides exceptions for dump trucks operating entirely within a marked construction zone, involved in maintenance of public roads during snow or ice removal operations, or involved in emergency operations if requested by law enforcement or an emergency response agency.

Current North Dakota law set out in Section 2 of the bill provides that a truck must be constructed or loaded so as to prevent the contents from escaping from the truck. A truck may not be operated on a road or highway unless the load **and any covering** on the truck is securely fastened so as to prevent it from becoming a hazard to other users of the highway. **However, the current law does not require a tarp or other similar cover on a truck to prevent aggregate materials from escaping.**

The fine for violation of the current law is \$20. And that's only if a truck gets caught with a load that's escaping from the truck at the precise moment that it is seen by law enforcement on the highway. When law enforcement goes down the road and is out of sight of the dump truck, the truck could hit a bump, or the load could shift causing the aggregate material to fly out of the truck and hit another vehicle on the highway. The fine under HB 1253 is \$100 for a violation for carrying a load of gravel on the highway without a tarp, regardless of whether the load is escaping at the particular time that law enforcement is near the truck. \$100 is a fine that the driver of a dump truck might pay more attention to than \$20.

Why is it important for dump trucks to be tarped? While other trucks may not need to cover their loads as long as they secure them, dump trucks carry materials such as stones, rocks, sand, and gravel that can easily escape. Dump trucks have more of a need to carefully tarp their loads.

Tarping regulations were created to ensure:

Road safety. Loose materials can fall from a dump truck with no tarp, which can pose a hazard to other motorists. Small pieces of gravel and stones hurled from a dump truck have enough force to break a windshield and damage the finish on other vehicles. The dust from dump trucks can block the vision of other motorists, leading to accidents.

Road surface protection. Materials such as rock and stones can significantly damage highways. They can also later be picked up off the road by the tires of other vehicles and then hurled into passing vehicles.

The tarp law in HB 1253 is derived from the tarp law in the State of Colorado. Many other States also require tarps on dump trucks to prevent spills.

I have personally experienced damage as a result of a rock thrown from a dump truck that I met on a two lane highway. I was going one way driving a motorhome and a dump truck loaded with gravel was going the other way. As the truck went by, a rock came flying off the truck and smashed directly into my windshield in front of my face. I was in no position to turn around to try to catch up with the dump truck to get its license number, so I continued on my way with a broken windshield. I had to pay out of pocket to have the windshield replaced because the cost was less than my \$1,000 deductible. I have also had rock damage to the windshields of my cars on several occasions that were not covered by insurance.

I don't know how many other people on the road have had similar experiences, but I can guess that there are many. Why should we have to absorb the cost of replacing our windshields when a tarp law can prevent the damage from occurring?

The other day this House passed HB 1061, relating to windows impairing the vision of drivers. Section 3 of that bill provides that glass on the front or side windows cannot be broken, shattered, or distorted to the extent it impairs the vision of the driver. There is a \$20 fine for violation of this law. Should I be subject to a fine if I need to drive around with a broken window for a time until I can get it repaired at my own expense? That's just not fair.

I encourage you to recommend "do pass" on HB 1253. Let's do something to help other drivers on the roads.

Testimony HB 1253
House Transportation Committee
January 27, 2023

Mr. Chairman and members of the House Transportation committee, my name is Savannah Schmidt 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 1253, which is the same position we've had on similar bills introduced during most of the past 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 1253 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, \$4,000 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. I will defer to one of our members who will be testifying after me to further expound on the cost and the effect such a mandate would have on our members' businesses.

I inquired with my AGC colleagues from our neighboring states regarding their respective policies regarding this issue. Their policies are the same now as previously reported. 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 1253. Thanks for the opportunity to testify. I will be happy to attempt to address any questions.

Testimony HB 1253
House Transportation Committee
January 27, 2023

Mr. Chairman and members of the House Transportation committee, my name is Steve Farden of Farden Construction in Maxbass, North Dakota. Our Family has been hauling gravel in North Dakota since 1935, with the first documented load being hauled to US Highway 83 north of Maxbass. We oppose HB 1253 as written.

Over the past three years, we have hauled 75,000 loads of gravel in North Dakota which equates to over 2,000,000 miles driven by our truck drivers. We have replaced two windshields during this time.

Most of our gravel goes to the close to 100 townships we deliver to in our area. These loads are primarily on secondary roadways but require our drivers to be on State Highways for a limited period of time. The additional cost to tarp every load would be a cost to our customers and a burden for our drivers. It is not me but the people who work with me who show this can be done safely with the proper equipment and work ethic.

Mr. Chairman and members of the committee, thank you for the opportunity to testify today. I request you to give HB 1253 a Do NOT Pass Recommendation and I will attempt to address any questions the committee may have.

Thanks again.

Testimony Prepared for the
House Transportation Committee

January 27, 2023

By: Nick West, Grand Forks County Engineer



RE: Opposition for HB 1253 – Relating to Transportation of Aggregate Material

Chairman Ruby and members of the House Transportation Committee, thank you for the opportunity to provide testimony on HB 1246. I am Nick West, the Grand Forks County Engineer, and I also serve as the past president and a member of the legislative committee for the ND Association of County Engineers (NDACE).

The NDACE is opposed to HB 1253. Damage to vehicles from a passing loaded truck, particularly windshields is an issue, however our experience is that it is infrequent, minor in comparison and the magnitude of the issue doesn't justify a change in law. 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 truck violates this, they can be cited.

If HB 1253 is enacted, it will have a cost to the taxpayer, in this case would take funds away from a county project. In the 9-years I've been at Grand Forks County I can't think of a time where tarping could have prevented a claim.

Approximate initial estimates are in the \$4000 range per truck to add a tarping system, plus ongoing maintenance. Grand Forks County alone has 15 trucks that this law would apply to, equating to an upfront cost of \$60,000.

Chairman Ruby and committee members, the NDACE and Grand Forks County Highway Dept would ask for a Do Not Pass committee recommendation.

Thank you for your time and service to ND.



HB 1253
House Transportation Committee
Chairman Dan Ruby
January 27, 2023

Mr. Chairman and members of the Committee, my name is Amanda Remyse, and I am speaking to you on behalf of the North Dakota Motor Carriers Association (NDMCA), **in opposition** of HB 1253.

HB 1253 creates several concerns for our organization. This bill does little to prevent damage to vehicles from rocks and gravel. It does not take into consideration that aggregate is a subbase of road, road shoulders, and even the main component of gravel roads – which is included in the definition of a highway. Loose aggregate can arrive from many locations as a result of loading – material fallen outside of the box, the belly dump, or from tires.

Additionally, the bill does not consider the cost to comply. Tarps are expensive and create additional costs in labor – no matter who the operator is. I am happy to introduce Molly Barnes, Executive Vice President of Northern Improvement. She can detail this out further from an industry perspective.

NDMCA thanks the Committee for your time and urges a **do not pass** recommendation.

Tarp Testimony January 2023

Testimony HB 1253
House Transportation Committee
January 27, 2023

Mr Chairman and members of the House Transportation Committee, my name is Molly Barnes and I am Executive Vice President & Equipment Manager at Northern Improvement Company. Northern Improvement is a highway, heavy & municipal construction company with North Dakota offices in Fargo, Bismarck, and Dickinson. We have been in business since 1935 and are one of the founding members of the AGC of ND when it formed in 1951. We have also been members of the ND Motor Carriers for many years.

I appreciate the opportunity to testify today and in opposition to HB 1253.

Northern Improvement Company hauls aggregates, asphalt and concrete in our trucks. Our drivers are trained to tarp our aggregate loads on our state highway system. We never tarp wet concrete but we tarp our hot asphalt loads in cooler weather. On occasion, our tarps need repair. When that occurs, it is usually a 2 day repair, provided the tarp itself is not ripped, if it is, it could 4-5 days. That is 4-5 days of a trailer being out of work if the tarp has a tear, even if it is just a small tear.

Because we are a road construction company that hauls thousands of tons of material in a season, we get blamed by the traveling public for more than our fair share of rock chips. A couple of years ago, we put GPS tracking systems on our trucks. About 80 % of the calls we were receiving for windshield claims were for a truck in a location where we had no vehicles. We even receive phone calls for trucks that are empty. While I will admit that we aren't perfect, we do our

23.0705.01003
Title.02000

Adopted by the House Transportation
Committee
February 3, 2023

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1253

Page 1, line 8, remove "of subsection 3"

Page 1, remove lines 23 and 24

Page 2, remove lines 1 through 14

Renumber accordingly

23.0705.01002

Sixty-eighth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1253

Introduced by

Representatives Klemin, Cory, D. Ruby

Senator Rummel

1 A BILL for an Act to create and enact a new subdivision to subsection 2 of section 39-06.1-06 of
2 the North Dakota Century Code, relating to the amount of statutory fees for traffic offenses; to
3 amend and reenact section 39-21-44.1 of the North Dakota Century Code, relating to
4 transportation of aggregate material; and to provide a penalty.

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

6 **SECTION 1.** A new subdivision to subsection 2 of section 39-06.1-06 of the North Dakota
7 Century Code is created and enacted as follows:

8 A violation of subsection 3 of section 39-21-44.1, a fee of one hundred dollars.

9 **SECTION 2. AMENDMENT.** Section 39-21-44.1 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **39-21-44.1. Vehicle to be constructed to prevent sifting or leaking loads -**
12 **Transportation of aggregate material.**

13 ~~No vehicle~~

14 ~~1. An individual may be driven or moved~~not operate a vehicle on any highway unless
15 ~~the vehicle~~ is so constructed or loaded as to ~~prevent its~~keep the contents from
16 dropping, sifting, leaking, or otherwise escaping therefrom, except ~~that~~ sand may be
17 dropped for the purpose of securing traction, or water or other substance may be
18 sprinkled on a roadway in cleaning or maintaining the roadway. ~~No person~~

19 ~~2. An individual may not operate on any~~ highway ~~any~~ vehicle with ~~any~~ load unless the
20 load and any covering ~~thereon~~on the vehicle is securely fastened so as to prevent
21 ~~said~~the covering or load from becoming loose, detached, or in any manner a hazard to
22 other users of the highway.

- 1 3. An individual may not operate a vehicle on ~~a highway~~the interstate highway system or
2 the United States or state highway system if the vehicle is transporting aggregate
3 material with a diameter of two inches [5.08 centimeters] or less unless:
- 4 a. The load is covered by a tarp or other cover in a manner that prevents the
5 aggregate material from blowing, dropping, sifting, leaking, or otherwise escaping
6 from the vehicle; or
- 7 b. The vehicle uses another method that prevents the aggregate material from
8 escaping from the vehicle.
- 9 4. Subsection 3 does not apply to a vehicle:
- 10 a. Operating entirely within a marked construction zone;
- 11 b. Involved in maintenance of public roads during snow or ice removal operations;
- 12 ~~or~~
- 13 c. Involved in emergency operations requested by a law enforcement agency or an
14 emergency response agency;
- 15 d. That is a farm grain truck; or
- 16 e. Owned and operated by the state or a political subdivision.
- 17 5. As used in this section, "aggregate material" means any rock, sand, silts, gravel,
18 stone, and shale. The term does not include hot asphalt including asphalt patching
19 material, wet concrete, or other materials not susceptible to blowing.

23.0705.01002
Title.

Prepared by the Legislative Council staff for
Representative Klemin
February 1, 2023

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1253

Page 1, line 23, replace "a highway" with "the interstate highway system or the United States or state highway system"

Page 2, remove line 9

Page 2, line 11, after "agency" insert ":

- d. That is a farm grain truck; or
- e. Owned and operated by the state or a political subdivision"

Renumber accordingly