

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

**TRANSPORTATION COMMITTEE**

Wednesday, January 30, 2008  
 Roughrider Room, State Capitol  
 Bismarck, North Dakota

Senator David O'Connell, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Senators David O'Connell, Robert S. Erbele, Gary A. Lee, Jim Pomeroy; Representatives Mark A. Dosch, Bob Hunskor, William E. Kretschmar, Mark S. Owens, Dan J. Ruby

**Members absent:** Representatives Edmund Gruchalla, Kathy Hawken, Keith Kempenich, Bob Martinson, Arlo Schmidt, Dorvan Solberg, Elwood Thorpe, Robin Weisz

**Others present:** See [Appendix A](#)

**It was moved by Senator Lee, seconded by Representative Owens, and carried on a voice vote that the minutes of the previous meeting be approved as distributed.**

**HIGHWAY FUNDING AND INFRASTRUCTURE NEEDS STUDY**

Mr. Jon Mielke, Upper Great Plains Transportation Institute, provided written testimony ([Appendix B](#)) on generating public involvement in the transportation policy and funding decisionmaking process. He said there are eight public informational sessions scheduled for the last week of March and the first week of April. He said the agenda for these workshops will be divided into two distinct parts. He said the initial presentations at each workshop will be largely informational and will focus on existing

transportation infrastructure and related service providers. He said the latter portions of the program will be designed to elicit attendee comment concerning the adequacy of existing facilities and services and suggestions for possible modifications. He said invitations have been sent to approximately 4,500 North Dakotans. A copy of the registration brochure is on file in the Legislative Council office.

Mr. Francis Ziegler, Director, Department of Transportation, presented written testimony ([Appendix C](#)) on transportation funding, driver's license and motor vehicle issues, the highway performance classification system, inflation, truck permits, the diesel fuel shortage, and transit programs.

Mr. Ziegler said North Dakota anticipates it will receive \$230 million in federal highway funding for fiscal year 2008. He said predicting federal funding beyond 2008 is a challenge. He said the highway trust fund shortfall may impact negatively North Dakota by up to \$100 million. He reviewed the National Surface Transportation and Revenue Study Commission report. He said the revenue package provided by the Legislative Assembly in 2007 is producing the intended revenue levels.

Mr. Ziegler reviewed the rules issued by the United States Department of Homeland Security on the REAL ID Act. He provided the following table:

Document Acceptance						
Action		Current Driver's License	REAL ID Compliant Driver's License	Enhanced Driver's License/ Enhanced Identification	Passport	Passport Card
		Fly within the United States	Yes, the REAL ID extensions until March 11, 2011*	Yes	No	Yes
	Return from the Western Hemisphere by land/sea	Yes, with birth certificate until June 1, 2009	No	Yes	Yes	Yes
	Flying internationally	No	No	No	Yes	No
	Use to drive a vehicle	Yes	Yes	Yes	No	No
	Enter into a federal building	Yes, with REAL ID extensions until March 11, 2011*	Yes	No	Yes	No
	Needs radio frequency ID (RFID) chip	No	No	Yes	No	Yes
	Approximate cost	\$10	\$25 to \$30	\$25 to \$30	\$85 to \$100	\$45/\$20

\*First extension goes through December 31, 2009, and second extension goes through March 11, 2011.

Mr. Ziegler said a more than average number of people did not receive the motor vehicle registration renewal notices sent in October and November. He said after checking the system, the department has determined the notices were printed and mailed;

however, the department has resent 74,000 notices at a cost of \$27,000 to ensure that all registered vehicle owners have been notified.

In response to a question from Representative Hunskor, Mr. Ziegler said something went wrong with

the renewal notice system. He said a possibility is that the problem could have been with the post office. He said some notices do not reach the intended recipients because the recipient thinks the notice is junk mail or the recipient moves without sending the department a forwarding address.

In response to a question from Senator O'Connell, Mr. Ziegler said the department is not required by law to send the notice, but the department sends the notice as a customer service.

In response to a question from Representative Hunskor, Mr. Ziegler said the department has not received any direct complaints from the people ticketed for driving without valid tabs that did not receive a registration renewal notice.

Representative Ruby said he did not receive some notices and the department quickly faxed the correct information to him. He said the department provided great customer service. He said the citizens have a responsibility to place the correct tabs on vehicles.

In response to a question from Representative Hunskor, Mr. Ziegler said the department cannot reimburse individuals who received a ticket for not having proper tabs on their vehicles. He said there are legal ramifications for that person not paying the fine. He said it is the citizen's responsibility to pay the registration and place the tab on the vehicle.

Mr. Ziegler provided analysis for the highway performance classification system. He said one area that has shown improvement is the number of miles with ride deficiencies. He said from 2005 to 2006 there was about a 20 percent reduction in the number of miles with ride deficiency. He said the number of miles with load restrictions below the system's guidelines decreased by about 13 percent from 2005 to 2006. He said the miles with distress scores below the system's standards have increased about 13 percent from 2005 to 2006. He said the department is in a preservation mode. He said inflation has increased the construction cost index by about 45 percent from 2001 to 2007. He said from 2005 to 2007 this increase was about 34 percent. He said the department has experienced diesel fuel shortages and has an agreement with the North Dakota National Guard to meet those shortages with the delivery of fuel to tankers at National Guard armories.

Mr. Ziegler said the North Dakota transit program is a regional program. He said the department is working toward consolidating the state's 35 public transit projects into eight regions, each with a regional administrator and centralized dispatch.

Mr. Ziegler said the department is having difficulty retaining and recruiting engineers and heavy equipment operators.

In response to a question from Representative Ruby, Mr. Ziegler said Oregon did a study and released a report and Minnesota is doing a pilot program on charging a tax based on miles driven, not the gallons of gas purchased. He said new vehicles are more efficient and use less gas, but drive the

same amount of miles. He said the federal report suggested that tax rates may have to be different in different states because of low traffic volumes in rural states.

In response to a question from Representative Ruby, Mr. Ziegler said he expects the federal government to change the tax by 2020. He said once the tax is changed at the federal level, states will change the tax as well. He said taxing based upon mileage will require a special odometer reading in vehicles that is read when a person fills with fuel.

In response to a question from Representative Ruby, Mr. Ziegler said individuals who purchase bulk fuel for agricultural purposes complicate the system.

Representative Owens said Oregon changed the gas tax from a flat rate per gallon to a per mile system. He says this results in high mileage cars paying more tax per gallon. He said gas companies will not adjust the price of gas lower if the gas tax is reduced.

In response to a question from Senator Lee, Mr. Ziegler said West Fargo was building a bridge across I-94 and the earth slipped causing damage. He said the department determined that if the consultant totally used the Department of Transportation design, the bridge could have slipped. He said the engineering is partly at fault and who pays for the repairs is being determined. He said the bridge may become an interchange and the department will pay for the interchange component. He said it will be 2009 before the department can fix the bridge or create the interchange.

In response to a question from Representative Owens, Mr. Ziegler said the department will work with the city and the consultant to come up with a solution to the bridge damage in West Fargo.

In response to a question from Senator Erbele, Mr. Ziegler said good road planning has been thrown to the wayside due to inflation. He said the department is looking more at fiscal management that supports overlays that provide a 7-year to 10-year fix. He said rebuilding would provide a 20-year fix.

In response to a question from Senator Erbele, Mr. Ziegler said the department uses federal aid to the largest extent possible. He said the receipt of more state funds would not result in the federal government cutting funding.

In response to a question from Representative Kretschmar, Mr. Ziegler said the department is doing the best preventative maintenance it can with the present funding.

In response to a question from Senator O'Connell, Mr. Ziegler said a needs study was done in 2001 which concluded the department needs an extra \$130 million to meet the transportation needs.

## **EXEMPTION FROM MOTOR CARRIER SAFETY REGULATIONS STUDY**

Colonel Mark A. Nelson, Superintendent, Highway Patrol, provided testimony on the petition the Highway

Patrol has submitted for an exemption from rear-end protection to the federal government. He said the Federal Motor Carrier Safety Administration is very close to a determination.

In response to a question from Senator Lee, Colonel Nelson said he does not expect the response to be positive.

In response to a question from Senator Lee, Colonel Nelson said he met with the director of the Federal Motor Carrier Safety Administration and local Federal Motor Carrier Safety Administration officials in an effort to receive approval of the petition.

In response to a question from Senator Lee, Colonel Nelson said the Upper Great Plains Transportation Institute published a report entitled *Underride: Do Impact Guards Help?*, which made assumptions as to fatalities as the result of vehicles striking other vehicles without rear impact guards.

Senator Lee said he was disappointed with the Upper Great Plains Transportation Institute report. He said the report is based on speculation. He said no one knows the actual fatalities and costs of not having rear impact guards. He said he hoped this information would not be used by the Federal Motor Carrier Safety Administration. He said the ideal goal would be to have a bumper that works for the agricultural community.

In response to a question from Senator O'Connell, Colonel Nelson said the Highway Patrol receives approximately \$1.3 million per year for safety and could lose that funding for failure to enforce rear impact guard requirements.

In response to a question from Representative Owens, Mr. Ziegler said there is a potential loss of \$43 million due to the nonenforcement of rear impact guard requirements.

At the request of Chairman O'Connell, committee counsel presented a memorandum entitled [Width, Height, Length, and Weight Restrictions on Motor Vehicles - North Dakota Law](#).

In response to a question from Representative Dosch, Mr. Grant Levi, Department of Transportation, answered questions for the committee. He said the weight limit on an interstate highway is 80,000 pounds, but a vehicle may weigh up to 105,500 pounds with a permit. He said the damage done to a highway increases exponentially as the weight increases.

In response to a question from Representative Dosch, Mr. Levi said the fee for an overweight permit on an interstate highway is for the administrative work because the highway is designed to handle loads of 105,500 pounds.

In response to a question from Senator O'Connell, Mr. Levi said the department has two concerns with annual overweight permits. He said the department needs to direct the vehicle to roads that should be traveled for each trip and there are issues when an overweight vehicle crosses a bridge.

In response to a question from Representative Kretschmar, Mr. Levi said there have been older

studies that have stated that the slower a vehicle moves, the less damage there is to the highway. He said recent studies say that speed does not impact the highway. He said one study stated the faster a vehicle moves, the better it is for the highway. He said the rules are different when traveling over a bridge.

In response to a question from Senator Lee, Mr. Levi said a bridge length permit relates to the distance between the axles of a truck.

## RAIL SAFETY AND SECURITY STUDY

Mr. Greg Wilz, Director, Division of Homeland Security, Department of Emergency Services, presented testimony based on materials identifying recent changes in federal law. A copy of the materials is on file in the Legislative Council office. He said the federal law addresses about everything that was addressed last legislative session. He said there are 9 or 10 more bills on the federal level; however, HR 1401 has the most likelihood of passage.

In response to a question from Senator O'Connell, Mr. Wilz said there will not be any grants until the risk assessments are completed. He suspects the grants will be targeted at high-risk railroads. He said North Dakota most likely will not be directly impacted by the grants.

In response to a question from Representative Ruby, Mr. Wilz said the Legislative Assembly enacted Senate Bill No. 2188 (2007), which requires all railroad carriers to notify the Department of Emergency Services of any accident. He said federal law does not require railroads to develop a relationship with local first responders. He said these relationships need to be built.

In response to a question from Representative Ruby, Mr. Wilz said in the last nine months this state has had as a high priority rewriting evacuation and shelter plans for 59 separate jurisdictions in this state. He said 34 or 35 plans have been approved and the others will be approved soon.

## MISCELLANEOUS MATTERS

Mr. Mielke presented the written testimony ([Appendix D](#)) of Mr. Steven D. Strege, Executive Vice President, North Dakota Grain Dealers Association, on railcar issues.

In response to a question from Representative Kretschmar, Mr. Mielke said approximately 80 percent of the grain in this state is shipped by rail.

In response to a question from Senator O'Connell, Mr. Mielke said the Surface Transportation Board said the method of assessing the fuel surcharge was unreasonable and has to be determined based on mileage, not a percentage of the rate. However, he said, the railroads do not have to provide the underlying numbers.

In response to a question from Senator O'Connell, Mr. Mielke said grain shippers recently have paid \$400 per car over the tariff rate for railcars. He said

the tariff rate is a profitable rate. He said these auctions are sometimes done for cars delivered months into the future. He said if a shipper purchases too many cars, the shipper has to sell the cars on the secondary market.

In response to a question from Representative Ruby, Mr. Mielke said 15 to 20 years ago railroads encouraged shippers to purchase railcars. He said the railroads determined this was an inefficient way to move grain because the railroad had to return the railcar to a certain area. He said the railroads purchased or leased the railcars previously owned by shippers. He said railroads no longer allow shippers to purchase railcars.

In response to a question from Representative Hunsdor, Mr. Mielke said a shipper can reject a railcar that is in need of repair; however, the shipper may have to wait for months to get a replacement railcar.

He said instead of waiting, most shippers fix the railcar.

In response to a question from Senator Pomeroy, Mr. Mielke said mergers are done usually to move goods east and west. He said the Canadian Pacific Railway is buying Dakota, Minnesota & Eastern Railroad because this will extend rail into grain-producing country and the Dakota, Minnesota & Eastern Railroad is becoming a coal-hauling railroad.

No further business appearing, Chairman O'Connell adjourned the meeting at 1:30 p.m.

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Timothy J. Dawson  
Committee Counsel

ATTACH:4