

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

TRANSPORTATION COMMITTEE

Thursday, June 19, 2008
Kelfstad Room, NDSU Alumni Center
Fargo, North Dakota

Senator David O'Connell, Chairman, called the meeting to order at 10:00 a.m.

Members present: Senators David O'Connell, Gary A. Lee, Jim Pomeroy; Representatives Edmund Gruchalla, Kathy Hawken, William E. Kretschmar, Bob Martinson, Mark S. Owens, Arlo Schmidt, Dorvan Solberg, Elwood Thorpe, Robin Weisz

Members absent: Senator Robert S. Erbele; Representatives Mark A. Dosch, Bob Hunsakor, Keith Kempenich, Dan J. Ruby

Others present: Donald L. Clark, State Representative, Fargo

See [Appendix A](#) for additional persons present.

It was moved by Representative Solberg, seconded by Representative Schmidt, 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 the results of generating public involvement in transportation policy and funding decisionmaking processes. He said participants suggested eliminating diversions from the state highway tax distribution fund for the purposes of the Highway Patrol and ethanol; making permanent the existing one-time dedication of motor vehicle excise tax payments to the highway fund; dedicating additional motor vehicle excise tax revenues to the highway tax distribution fund; increasing oil tax money to impacted counties, cities, and townships; increasing funding to the Department of Transportation by an amount equal to the rate of construction and maintenance inflation; distributing any increases in the state highway tax distribution fund to all related road authorities; financing budget increases with diversions and dedication measures; providing increased funding for transit to maintain existing service and routes; extending transit service to additional areas; extending transit hours of operation for existing services; and requiring all state-supported transit services to be coordinated with other services within corresponding cities, counties, and regions.

In response to a question from Senator O'Connell, Mr. Mielke said participants at workshops in Williston, Dickinson, and Minot had concerns about oil impact funds. He said the concern for roads due to the

impact of oil development is increasing in the Minot area.

In response to a question from Senator O'Connell, Mr. Mielke said at a workshop a representative from Marathon Oil informed him that it takes 750 truckloads to drill a well.

In response to a question from Representative Hawken, Senator O'Connell said 16 counties receive oil impact funds.

In response to a question from Representative Schmidt, Mr. Mielke said program participants wanted an increase in oil impact funds for road purposes and for expanding the counties to which oil impact funds may be sent due to the increased area of exploration.

In response to a question from Representative Solberg, Mr. Mielke said the Upper Great Plains Transportation Institute does not have any plans to research the impact of oil production on local roads. He said the institute conducts studies on a contract basis and would need to find funding to do that study.

Mr. Francis Ziegler, Director, Department of Transportation, answered questions for the committee. In response to a question from Senator O'Connell, Mr. Ziegler said \$8.8 million is diverted from the state highway tax distribution fund for nonhighway purposes.

In response to a question from Senator O'Connell, Mr. Mielke said the first and last miles are as important as the miles in between. He said township and county roads are many of the first and last miles within this state.

In response to a question from Senator O'Connell, Mr. Ziegler said for every dollar North Dakota sends to the federal government for highway purposes, the state receives \$2.06. He said the cost-share is generally 80 percent federal and 20 percent state, unless the project is on the interstate system, in which case, the share is 90 percent federal and 10 percent state. He said generally every dollar the state has to match results in \$5 worth of work.

In response to a question from Senator O'Connell, Mr. Ziegler said the Department of Transportation has an 83.6 percent approval rating. He said the only reduction in approval rating related to road carrying capacity, ride comfort, and notifying the public. He said there are flat or dropping revenues, major inflation, and increased customer expectations due to the oil boom.

In response to a question from Senator O'Connell, Mr. Mielke said there has not been any federal money left on the table, so an increase of \$8.8 million in the

highway tax distribution fund would not result in an increase in federal funding.

Mr. Russ Hanson, Association of General Contractors and member of the Advisory Council to the Upper Great Plains Transportation Institute, presented testimony to the committee on legislative proposals as a result of the workshops to generate public involvement in the transportation policy and funding decisionmaking process. He provided a handout ([Appendix C](#)) entitled *State Federal Highway Funds in Jeopardy: Support Baucus-Grassley Trust Fund Fixed to Prevent 34 Percent Cut*. He said the state cannot depend on federal dollars in the future and states will have to be more responsible for funding highway projects. He said with increased state income, raising user fees will not be popular. He said one viable proposal would be to place motor vehicle excise tax revenues in the state highway tax distribution fund.

In response to a question from Senator O'Connell, Mr. Hanson said he has spoken with the Governor and he is aware of the proposal.

In response to a question from Representative Schmidt, Mr. Hanson said 10 percent of the excise tax is \$11 million or \$12 million.

In response to a question from Representative Schmidt, Mr. Hanson said there is a potential \$70 million shortfall due to decreased federal funding.

Mr. Tom Balzer, North Dakota Motor Carriers Association, presented testimony to the committee. He said an increase in the gas tax has a large effect on motor carriers. He said the motor vehicle excise tax increases as the price of cars increase and is self-adjusting, unlike the gas tax. He said the federal government may need to increase the federal gas tax by five cents per gallon. He said motor carriers do not support raising the state gas tax.

EXEMPTION FROM MOTOR CARRIER SAFETY REGULATION STUDY

Committee counsel presented a letter ([Appendix D](#)) from the Federal Motor Carrier Safety Administration to Colonel Mark A. Nelson not granting this state's request for an exemption from the rear-end protection requirements for farm trucks in North Dakota. The letter states "granting the exemption could be inconsistent with the safety goals enacted by Congress when the Motor Carrier Safety Assistant Program (MCSAP) was established. Additionally, an October 2007 study by the Upper Great Plains Transportation Institute, North Dakota State University, found, 'The analysis here shows that the rear-guard safety equipment has injury severity benefits that far outweigh equipment costs.' Therefore, I cannot grant your request." He said because an exemption was not granted, this state will be ineligible to receive any MCSAP basic and incentive grant funds on October 1, 2008.

In addition, committee counsel reviewed a document ([Appendix E](#)) prepared by Colonel Mark A. Nelson on March 17, 2008, entitled *Reauthorization of Federal MCSAP Funding*. He said the document

states that the total one-year cost to replace existing federal share funding levels is \$1,755,068. He said the document lists two options if federal funding is not reauthorized--leave North Dakota Century Code (NDCC) Section 39-21-55 in place or repeal the section. The document states if federal funding is not retroactive, a deficiency appropriation of \$488,000 would be needed. He said the document states that if federal funding is not maintained for the border inspection program and the new entrance safety audit program, there would be a shortfall of \$312,000 for a total of \$800,000 through June 30, 2009.

In response to a question from Senator O'Connell, Mr. Ziegler said up to 10 percent of federal highway funding could be lost if the Highway Patrol did not carry out weight enforcement.

Ms. Kimberly Vachal, Upper Great Plains Transportation Institute, provided information on an October 2007 study summarized in an issue brief ([Appendix F](#)) entitled *Underride: Do Rear Impact Guards Help?*

In response to a question from Senator O'Connell, Ms. Vachal said the study was requested by the previous colonel of the Highway Patrol. She said there was no good information on truck life so the study assumed a seven-year truck life--the depreciable life.

Representative Weisz said there were problems with the study because the study did not consider miles on the road. He said commercial trucks have many more times the miles on the road than farm trucks that are driven once or twice a year. He said it is difficult to have a rear-end collision when the truck is parked in a shed. He said the study used national statistics that do not apply to North Dakota because of this state's mainly rural highways.

In response to a question from Representative Weisz, Ms. Vachal said the study looked at national data and North Dakota crash data. She said North Dakota crash data could not separate instances when a car hit a truck or a truck hit a car. She said at first she assumed the breakdown would be 50/50, but based on national statistics she found that it is less likely that a car will hit a truck. She said vehicle miles traveled are not readily available for trucks used in agricultural service or commercial service. She said the .2 fatalities per year the study found are consistent with anecdotal evidence of the Highway Patrol.

In response to a question from Senator O'Connell, Ms. Vachal said the study looked primarily at public safety and not at the cost to the truck owners.

In response to a question from Representative Solberg, the Highway Patrol has an education effort in progress to inform farmers of the rear-end protection requirement.

In response to a question from Representative Solberg, Senator O'Connell said the Highway Patrol has not been issuing tickets for violations.

In response to a question from Representative Solberg, Representative Weisz said there is no penalty or fine for the issuance of a ticket by the Highway Patrol for not having rear-end protection.

Representative Gruchalla said a retrofit will cost between \$800 and \$1,200 based on testimony received last session.

Representative Weisz said during the session the Legislative Assembly did not have all the facts as to cost and enforcement. He said the Legislative Assembly will need to change the law and this is understood by the agricultural community and the executive branch. He said the Legislative Assembly will have to return the law as it was before 2007. He said if this committee does not recommend the bill draft, an individual legislator will introduce a bill.

Senator Lee agreed that legislation will be introduced and this issue will be addressed next session.

Representative Weisz said if the law is not changed, not only will this state lose funding but the Highway Patrol will not have access to a national database. He said this state would have to have its own safety program and that would create problems for interstate truckers.

In response to a question from Representative Schmidt, Representative Weisz said a farmer can build whatever bumper the farmer wants for straight farm trucks. He said straight farm trucks do not need a certified bumper. He said if the farmer does not have a bumper, the farmer is breaking the law. He said the farmer can either weld on a bumper or break the law.

Mr. Balzer presented testimony to the committee. He said if the law does not return to as it was before 2007, this state will be the only state not in compliance and every North Dakota truck going into another state will receive the white glove treatment. He said a bumper is only needed if the back tires are more than two feet from the rear of the vehicle. He said the Federal Motor Carrier Safety Administration was influenced greatly in not granting the exemption due to the death near Devils Lake.

PUBLIC TRANSPORTATION FUNDING

Committee counsel presented information on an Attorney General's opinion ([Appendix G](#))--Letter Opinion 2008-L-10--that opined the base amount for the annual distribution from the public transportation fund under NDCC Section 39-04.1-04 is to be calculated on the total biennial appropriation. He said in the last session the Legislative Assembly changed the base amount from \$18,300 to a percentage. He said the Department of Transportation interpreted this change to result in the base amount being reduced from \$18,300 to \$11,400 each year. He said the Attorney General's opinion stated the base amount should be \$22,800 per year.

In response to a question from Senator O'Connell, Mr. Ziegler said the Department of Transportation staff recommends that the change to the correct distribution be made in the second year of this biennium. He said a fix for both years would have a major negative effect on the four major carriers. He

said the four major carriers are in Fargo, Grand Forks, Minot, and Bismarck. He said to fix both years in Cass County would result in a drop from \$441,000 to \$242,000. He said a one-year fix will affect Cass County with a drop from \$441,000 to \$346,000.

Mr. Ziegler provided a handout ([Appendix H](#)) on 2008 North Dakota state aid distribution for public transportation funding with columns for the cost of corrections in both years and only the second year of funding.

In response to a question from Senator Lee, Mr. Ziegler said changing the formula as a result of the Attorney General's opinion will result in a larger amount for small transit providers.

Representative Weisz said fixing the formula in the second year appears to be the best solution and appears to be supported by most transit groups.

In response to a question from Representative Weisz, Mr. Ziegler said providers are generally supportive of the second-year correction.

MISCELLANEOUS MATTERS

Mr. Steven D. Strege, Executive Vice President, North Dakota Grain Dealers Association, presented written testimony ([Appendix I](#)) on railroad service rates, fuel surcharges, the Surface Transportation Board rate case rules, the cost of capital, the Canadian Pacific acquisition of a smaller railroad, and the common carrier obligation. He said there is no way to know if the fuel surcharge is reflective of the actual cost. He said the fuel surcharge for coal is 53 cents per car mile and for agricultural goods it is 80 cents per car mile.

In response to a question from Representative Solberg, Mr. Strege said there are two bills in Congress relating to rate regulation.

Mr. Gene Griffin, Director, Upper Great Plains Transportation Institute, provided testimony based on a handout ([Appendix J](#)) on the Upper Great Plains Transportation Institute. He said the institute focuses on rural and small urban transportation.

In response to a question from Representative Weisz, Mr. Griffin said there is decreasing money from the Wheat Commission because of the rate case and from the United States Department of Agriculture due to the deregulation of the transportation industry.

The committee toured the audio conference room, the Advanced Traffic Analysis Center, and the DOT Support Center with information provided by Ms. Julie Rodriguez, Shawn Birst, and Kurt Johnson.

No further business appearing, Chairman O'Connell adjourned the meeting at 2:40 p.m.

Timothy J. Dawson
Committee Counsel

ATTACH:10