

# NORTH DAKOTA LEGISLATIVE COUNCIL

## Minutes of the

### TRANSPORTATION COMMITTEE

Friday, September 14, 2007  
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, Edmund Gruchalla, Bob Hunskor, William E. Kretschmar, Bob Martinson, Mark S. Owens, Dan J. Ruby, Arlo Schmidt, Dorvan Solberg, Elwood Thorpe, Robin Weisz

**Members absent:** Representatives Kathy Hawken, Keith Kempenich

**Others present:** See attached [appendix](#)

At the request of Chairman O'Connell, committee counsel reviewed the [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Council](#).

#### HIGHWAY FUNDING AND INFRASTRUCTURE NEEDS STUDY

At the request of Chairman O'Connell, committee counsel presented a memorandum entitled [Highway Funding and Transportation Infrastructure Needs - Background Memorandum](#). Committee counsel provided a handout entitled *Surface Transportation Funding: Options for States* by the National Conference of State Legislatures, May 2006.

Mr. Neal Fisher, Advisory Council, Chairman, Upper Great Plains Transportation Institute, introduced staff member Mr. Jon Mielke to provide information on generating public involvement in the transportation policy and funding decisionmaking process. Mr. Fisher provided testimony on the steering committee for this project. A copy of his testimony is on file in the Legislative Council office.

Mr. Mielke provided testimony on the project. He said the project will include the hosting of 8 to 12 local workshops around the state involving 50 to 100 participants representing all stakeholders in the transportation system. He said the goals of these workshops are to disseminate information on the existing transportation system, receive input concerning future transportation needs, and encourage future involvement in subsequent decisionmaking processes. A copy of his testimony is on file in the Legislative Council office.

In response to a question from Senator O'Connell, Mr. Mielke said the project resulted from frustration of members of the advisory council resulting from lack of people participating in funding decisions.

In response to a question from Representative Weisz, Mr. Mielke said the intent of the project is to have workshops with stakeholders, inform stakeholders, and encourage the stakeholders to get involved in the legislative process.

In response to a question from Representative Ruby, Mr. Mielke said the final report will be on what is received as feedback from the workshops.

Representative Weisz said the Department of Transportation and counties are the stakeholders that appear on transportation funding bills during the legislative session. He said different chambers of commerce, transit interests, and economic development interests are not as involved and need to have a unified voice. He said these stakeholders are not in front of the Legislative Assembly as much as they need to be.

Senator Lee said he hopes the study can bring a solution for meeting transportation needs, especially those needs that have resulted from the growth in commerce and commuter traffic.

In response to a question from Representative Hunskor, Mr. Mielke said legislators could be major players in this process by stressing the importance of these meetings to the stakeholders. He said he will provide future reports to the committee and ask for input from the committee.

Mr. Francis G. Ziegler, Director, Department of Transportation, provided testimony on the study. In particular, he provided testimony on federal highway funding, state revenue, transit funding, the condition of state highways and bridges, and challenges facing the department, including inflation, staffing, impact of oil development, ethanol and biodiesel production, railroad abandonment, and requests for system improvements. A copy of his testimony is on file in the Legislative Council office.

In response to a question from Representative Weisz, Mr. Ziegler said the change in North Dakota Century Code (NDCC) Section 39-04.2-04, from a base amount of \$18,300 to a formula for the base of .4 percent of the appropriation for the program, resulted in a reduction in the base amount for public transportation funds to transportation providers in each county. He said the \$18,300 was provided on a yearly basis and the formula amount is provided on a biennial basis.

Representative Weisz said the reason for changing from an amount to a formula was so that the statute did not need to be changed every time funding

increased. The intent was to provide more rather than less funding on a yearly basis. He said the base level for county public transportation funding should be \$22,800 per year not \$11,400 per year as recently indicated by the Department of Transportation.

In response to a question from Senator O'Connell, Mr. Ziegler said the limit for miles in the state highway system is within approximately 80 miles of the actual miles allowed in the system.

In response to a question from Representative Kretschmar, Mr. Ziegler said the only bridges in North Dakota which were similar to the bridge in Minnesota that collapsed were the Four Bears Bridge and the Fairview Bridge on Highway 58. He said both of these bridges have been replaced.

In response to a question from Representative Kretschmar, Mr. Ziegler said due to economic development, there are more large loads moving down the highway. For each overload, he said, the bridge division calculates if a bridge can take the load. He said if a bridge cannot take the load, the route is moved.

In response to a question from Senator O'Connell, Mr. Ziegler said during the 2007 legislative session, a bill passed providing for a statewide, one-time permit for overwidth vehicles.

Representative Weisz said the bill that provided an annual permit to haul corn for a longer period of time at the 105,500-pound level did not pass.

In response to a question from Senator O'Connell, Mr. Ziegler said the department should have more information on federal funding in February 2008.

In response to a question from Representative Ruby, Mr. Ziegler said funding for bike trails comes from the federal government and is typically matched by local governments. He said this state does not have any diversion of funds from highway funding except for some artwork done on the Four Bears Bridge and the Liberty Memorial Bridge. He said bike path money has to be used for bike paths.

Mr. Grant Levi, Department of Transportation, answered questions for the committee. In response to a question from Representative Thorpe, he said the department does not have any authority to proceed with the design-build concept. He said the department is working with the design-build industry to develop legislative options at the request of Representative Weisz.

## **RAILROAD SAFETY AND SECURITY STUDY**

At the request of Chairman O'Connell, committee counsel presented a memorandum entitled [\*Railroad Risk Assessments, Hazardous Cargo, and Responses to Emergencies - Background Memorandum\*](#).

Mr. Ron Huff, Brotherhood of Locomotive Engineers and Trainmen, provided testimony on the study of railroad security and safety. He said after the mandatory study was passed, the federal government passed a comprehensive plan to address railroad

safety and security. He said because of the new federal law, there will be rules promulgated by August 2008. He recommends the committee wait for the adoption of the rules to ensure the federal law is adequately implemented.

In response to a question from Representative Ruby, Mr. Huff said the state has some jurisdiction relating to railroad safety.

In response to a question from Representative Ruby, Mr. Huff said adequate communication of a spill to local first responders will be developed as part of training through the federal Department of Homeland Security.

In response to a question from Representative Dosch, committee counsel said Section 1517 of the Implementing Recommendations of the 9/11 Commission Act of 2000 provides for rules for training programs to prepare railroad employees for potential security threats and conditions. He said the training must include best practices and must include understanding security incident procedures, including procedures for communication with governmental and nongovernmental emergency response providers and for on-scene interaction with these providers.

Mr. Mike Muscha, Brotherhood of Locomotive Engineers and Trainmen, said Congress passed the law that was contemplated in 2007 Senate Bill No. 2188, as introduced. He said the federal Act provides for railroad risk assessments, training of railroad personnel, and whistleblower protection. He said within a year there will be rules to implement the Act. He said the areas in the study given to this committee were addressed under the federal Act. He said the committee should wait to see how the rules are implemented. He said everything his organization asked for was implemented in the federal Act.

In response to a question from Senator O'Connell, Mr. Huff said the rules will be available, at the earliest, after August 1, 2008.

Mr. Doug Erhart, North Dakota Legislative Director, Brotherhood of Maintenance of Way Employees Division of the International Brotherhood of Teamsters, provided testimony on the study. He said the committee may wish to look at the sources of hazardous materials in this state.

In response to a question from Senator O'Connell, Mr. Huff said he spoke with the state Department of Homeland Security and the department agreed the federal law addresses the area of the study assigned to the committee.

In response to a question from Representative Ruby, Mr. Muscha said the Canadian Pacific Railway does not have any railroad police in this state and the Burlington Northern Santa Fe Railway does not appear to have any police in this state. In case of an emergency, he said, the engineer contacts the dispatcher.

In response to a question from Senator O'Connell, Mr. Muscha said the engineer knows what the train is hauling and has good monitoring equipment on the cars for safety.

Mr. John Olson, representing Burlington Northern Santa Fe Railway, and Mr. Tom Kelsch, representing Canadian Pacific Railway, provided an offer of assistance to the committee for information on railroad safety and security.

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

At the request of Chairman O'Connell, committee counsel presented a background memorandum entitled [Exemption From Federal Motor Carrier Safety Regulations Study - Background Memorandum](#).

Mr. Doyle Schulz, Motor Carrier Division, Highway Patrol, provided testimony on the study. He said the Highway Patrol has submitted a petition for an exemption from rear-end protection to the federal government and has been tracking the progress. He said the federal officials making the decision on the exemption for rear-end protection are also making the decision on hours of service for Mexican truckers. He said the latter appears to be more important to them, so it may be awhile before this state receives any report on the rear-end protection exemption.

In response to a question from Representative Ruby, Mr. Schulz said Minnesota is requiring rear-end protection for North Dakota vehicles because the Minnesota exemption is for intrastate commerce.

In response to a question from Senator O'Connell, Mr. Schulz said he has called for updates on numerous occasions and has received the status report that the federal officials are still deciding on the exemption from rear-end protection.

In response to a question from Representative Gruchalla, Mr. Doyle said straight trucks are not exempt from rear-end protection requirements. He said some wheels back trucks are exempt. He said trailers and motor vehicles have different requirements.

No further business appearing, Chairman O'Connell adjourned the meeting at 1:35 p.m.

---

Timothy J. Dawson  
Committee Counsel

ATTACH:1