

# NORTH DAKOTA LEGISLATIVE MANAGEMENT

## Minutes of the

### **PUBLIC SAFETY AND TRANSPORTATION COMMITTEE**

Wednesday, March 17, 2010  
Harvest 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, Dwight Cook, Gary A. Lee, George Nodland; Representatives Bob Hunskor, Jerry Kelsh, Matthew M. Klein, William E. Kretschmar, Bob Martinson, Michael R. Nathe, Todd Porter, Arlo Schmidt, Gerry Uglem, Don Vigesaa, Robin Weisz

**Members absent:** Senators Elroy N. Lindaas, Richard Marcellais; Representatives James Kerzman, Edmund Gruchalla, Elwood Thorpe

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

**It was moved by Representative Weisz, seconded by Representative Porter, and carried on a voice vote that the minutes of the January 14, 2010, meeting be approved as distributed.**

Chairman O'Connell said the committee will be meeting in Dickinson on April 20-21, 2010, and will be meeting in Bottineau on June 1, 2010.

#### **STUDY OF HIGHWAY CONSTRUCTION FUNDING**

The Legislative Council staff presented a memorandum entitled [Vehicle Registration Requirements for Nonresidents Temporarily Employed in the State](#). He said North Dakota Century Code (NDCC) Section 39-04-18 provides that nonresidents generally do not need to license motor vehicles in the state except if the owner or operator is gainfully employed in the state. Section 39-04-21 provides that temporary motor vehicle registrations are to be issued in a manner as prescribed by the director of the Department of Transportation. Current fees charged for a North Dakota temporary license permit are \$10 per month plus a \$3 fee for passenger vehicles and trucks under 22,000 pounds.

The Legislative Council staff said temporary motor vehicle registration requirements vary in other states. Most states require a vehicle to be registered in the state if the owner or operator is employed in the state. Fees for a temporary registration in Wyoming are \$50 per month and the registration may not exceed 120 days. Fees for a temporary registration in Montana are prorated based on current resident registration fees.

In response to a question from Representative Vigesaa, Mr. Francis Ziegler, Director, Department of Transportation, said temporary registration fees for commercial motor vehicles are prorated from resident rates based on the permit time length.

Senator O'Connell said the committee should review statutes, rules, and regulations relating to registering temporary workers' motor vehicles and out-of-state commercial vehicles at a future meeting.

Senator Nodland said the enforcement of motor vehicle registration requirements may need to be enhanced due to the increasing number of nonresident workers employed in the oilfield industry.

In response to a question from Representative Weisz, Mr. Ziegler said he would provide information at a future meeting regarding the number of temporary vehicle license permits issued.

The Legislative Council staff presented a memorandum entitled [Sources and Distributions of Highway Funding](#) which provides information regarding historical revenues and distributions of highway funding. He said the following changes have been made since 1999 to major funding sources for highway purposes:

- Motor vehicle fuel tax rates increased from 20 cents to 21 cents per gallon in 1999 and increased from 21 cents to 23 cents per gallon in 2005.
- Special fuels excise tax rates for all special fuels, except liquid petroleum gas, were changed from 2 percent of the value of the fuel to four cents per gallon. The special fuels excise tax rate for heating fuel was reduced to 1 percent of the value for liquid petroleum gas and two cents per gallon for all other special fuels through June 30, 2009. Beginning July 1, 2009, heating fuels were exempt from special fuels excise taxes.
- Motor vehicle registration fees were increased by the Legislative Assembly in 1999, 2001, 2003, and 2005.
- A portion of motor vehicle excise tax collections were deposited in the state highway fund during the 2007-09 and 2009-11 bienniums.
- A transfer of \$4.6 million from the general fund to the state highway fund was provided by the 2009 Legislative Assembly to match federal funding for Devils Lake area road projects.

The following schedule details highway funding revenues since 1999:

Total Highway Funding Revenues (Amounts Shown in Millions)						
	1999-2001	2001-03	2003-05	2005-07	2007-09	2009-11 Estimate
Gasoline/gasohol tax <sup>1</sup>	\$141.7	\$142.6	\$145.9	\$155.2	\$158.6	\$161.6
Special fuels tax <sup>1</sup>	65.7	67.6	75.0	87.1	95.5	96.6
Special fuels excise taxes	11.2	11.1	15.5	25.9	26.9	15.0 <sup>1</sup>
Motor vehicle registration fees	77.1 <sup>2</sup>	82.5 <sup>2</sup>	80.7 <sup>2</sup>	108.9 <sup>2</sup>	132.7 <sup>2</sup>	122.6
Motor vehicle excise tax					14.1 <sup>3</sup>	30.5 <sup>3</sup>
General fund						4.6 <sup>3</sup>
Total	\$295.7	\$303.8	\$317.1	\$377.1	\$427.8	\$430.9

<sup>1</sup>Does not include \$1.6 million of funding allocated to the highway-rail grade safety projects fund.

<sup>2</sup>Includes motor vehicle registration fees deposited directly into the state highway fund and public transportation fund.

<sup>3</sup>Funding deposited directly into the state highway fund.

The Legislative Council staff said the majority of funds received from motor fuels taxes and motor vehicle registration fees are deposited in the highway tax distribution fund for allocation to the state highway fund and political subdivisions. Prior to the 2009-11 biennium, one cent per gallon of motor fuels taxes was deposited in the township highway aid fund and \$3 of each motor vehicle registration fee was deposited in the public transportation fund. The 2009 Legislative Assembly approved changes that provide for the funds to be deposited in the highway tax distribution fund and that the township highway aid fund and public transportation fund receive a distribution from the highway tax distribution fund. The current highway tax distribution fund distribution rates are:

Highway Tax Distribution Fund - Distribution Rates		
	2007-09 Biennium	2009-11 Biennium
State highway fund	63.0%	61.3%
Counties	23.0%	21.5%
Cities	14.0%	13.0%
Township highway aid fund	0.0%	2.7%
Public transportation fund	0.0%	1.5%
Total	100.0%	100.0%

The table below details funding provided to the state highway fund and political subdivisions from the highway tax distribution fund, township highway aid fund, and public transportation fund:

Distributions From the Highway Tax Distribution Fund, Township Highway Aid Fund, and Public Transportation Fund (Amounts Shown in Millions)						
	1999-2001	2001-03	2003-05	2005-07	2007-09	2009-11 Estimate
State highway fund	\$176.9	\$180.4	\$185.7	\$208.2	\$240.3	\$239.7 <sup>1</sup>
Counties	66.2	67.0	69.0	77.0	89.9	82.1
Cities	37.7	38.9	40.0	44.6	51.3	49.7
Township highway aid fund <sup>2</sup>	10.3	10.3	10.8	10.8	11.3	10.3

Public transportation fund <sup>3</sup>	2.9	3.0	3.1	4.6	4.6	5.7
Total	\$294.0	\$299.6	\$308.6	\$345.2	\$397.4	\$387.5

<sup>1</sup>Includes \$5.5 million allocated from the highway tax distribution fund to the state highway fund for administrative costs.

<sup>2</sup>Prior to the 2009-11 biennium, the township highway aid fund received one cent per gallon from motor fuels taxes. For the 2009-11 biennium, the township highway aid fund receives an allocation from the highway tax distribution fund.

<sup>3</sup>Prior to the 2009-11 biennium, the public transportation fund received an additional fee from motor vehicle registration fees. For the 2009-11 biennium, the public transportation fund receives an allocation from the highway tax distribution fund.

The Legislative Council staff said additional funding was also provided to the state highway fund and political subdivisions in 2009 Senate Bill No. 2012. A 2007-09 appropriation of \$59.9 million was made from the general fund to the State Treasurer for weather-related cost-sharing distributions. A transfer of \$43 million was also made from the general fund to the state disaster relief fund, and the funding was appropriated to the Adjutant General for emergency snow removal grants and emergency disaster relief grants. The table below details total state funding provided for highway purposes:

Summary of State Highway Funding Provided to State and Political Subdivisions (Amounts Shown in Millions)			
	2007-09 Statutory Funding	Weather-Related Cost-Sharing and Disaster Funding	2009-11 Statutory Funding (Estimated)
State highway fund	\$274.3 <sup>1,2</sup>	\$7.5 <sup>3</sup>	\$274.8 <sup>1,4</sup>
Counties	89.9 <sup>1</sup>	26.4 <sup>3</sup>	82.1 <sup>1</sup>
Cities	51.3 <sup>1</sup>	15.0 <sup>3</sup>	49.7 <sup>1</sup>
Townships	11.3	10.0 <sup>3</sup>	10.3 <sup>1</sup>
Public transportation fund	4.6	1.0 <sup>3</sup>	5.7 <sup>1</sup>
Disaster relief funding		43.0 <sup>5</sup>	
Total	\$431.4	\$102.9	\$422.6

<sup>1</sup>Funding provided from the highway tax distribution fund.

<sup>2</sup>Includes \$19.9 million of motor vehicle registration fees deposited in the state highway fund and \$14.1 million of motor vehicle excise taxes deposited in the state highway fund.

<sup>3</sup>Funding of \$59.9 million from the general fund was appropriated by the 2009 Legislative Assembly to the State Treasurer for distribution to the state highway fund and political subdivisions for weather-related cost-sharing before June 30, 2009.

<sup>4</sup>Includes a \$4.6 million transfer from the general fund to the state highway fund for Devils Lake area highway projects, \$30.5 million of motor vehicle excise taxes deposited in the state highway fund, and \$5.5 million from the highway tax distribution fund for administrative costs.

<sup>5</sup>Senate Bill No. 2012 (2009) provided a \$43 million transfer from the general fund to the state disaster relief fund before June 30, 2009, and appropriated the funds to the Adjutant General for disaster relief funding during the 2007-09 and 2009-11 bienniums.

Chairman O'Connell said future meetings may include discussions regarding the continuation of certain highway funding sources. He said the provision to deposit motor vehicle excise taxes in the state highway fund is for the 2009-11 biennium only.

Mr. Ziegler presented information regarding transportation issues in the state. He said the department will be holding meetings in April 2010 to

gather input from the public on the department's strategic transportation plan.

Mr. Ziegler said North Dakota is a member of the International Fuel Tax Agreement which relates to the collection and distribution of motor fuels taxes received from commercial motor vehicle carriers. He said fuel taxes are distributed to the member jurisdictions based on the mileage driven in a jurisdiction and the tax rate of the jurisdiction.

Mr. Ziegler said total federal funding available for 2010 highway construction projects is uncertain at this time. He said the funding uncertainty has delayed the bidding of several projects, and the state has only been apportioned \$139 million of federal funding.

Mr. Ziegler said the state received \$170.1 million of federal fiscal stimulus funding for roadway projects during the current biennium. He presented the following table detailing the projects that will be completed in 2010 using federal fiscal stimulus funds:

2010 Highway Projects - Funding Through the American Recovery and Reinvestment Act of 2009		
Project Type	Number of Projects	Funding (in Millions)
State	23	\$63.9
Urban	20	6.9
County	7	4.75
Transportation enhancement	20	5.1
Total	70	\$80.65

Highway Tax Distribution Fund					
	2005-07 Estimated Distributions	2005-07 Actual Distributions	2007-09 Estimated Distributions	2007-09 Actual Distributions	2009-11 Estimated Distributions
State highway fund	\$203.0	\$208.2	\$203.9	\$240.3	\$234.2
Counties	74.1	77.0	74.4	89.9	82.1
Cities	45.1	44.6	45.3	51.3	49.7
Total	\$322.2	\$329.8	\$323.6	\$381.5	\$366.0

Mr. Ziegler said 2009-11 revenues collected to date from motor fuels taxes and motor vehicle registration fees are approximately \$6 million more than estimated. He said 2007-09 revenues were also more than anticipated due primarily to increased diesel fuel sales and increased motor vehicle registration fee collections relating to the Legislative Assembly increasing registration fees for pickups during that biennium.

Mr. Ziegler said highway projects that are to be paid for with federal funds must be included in the department's statewide transportation improvement program. He said the program is used to plan future highway construction projects. He said 35 amendments have been made to the program in 2010 with the majority of amendments relating to local government projects.

In response to a question from Representative Vigesaa, Mr. Ziegler said highway construction projects paid for with federal fiscal stimulus funds were included in the statewide transportation improvement program. He said the federal fiscal stimulus funding allowed the projects to be completed sooner than planned.

Mr. Ziegler said the Department of Transportation is currently working on two public transportation pilot

In response to a question from Representative Vigesaa, Mr. Ziegler said the department has requested \$154 million of federal emergency relief funding for roadway projects in the Devils Lake area. He said some of the projects may be delayed if the federal funding is not received in a timely manner.

Mr. Ziegler said potential options to increase highway funding include:

- Increasing motor fuels taxes by a lump sum or increasing motor fuels taxes based on inflation.
- Providing funding from the general fund.
- Implementing a sales tax on motor fuels.
- Implementing a vehicle miles traveled user fee.
- Increasing motor vehicle registration fees or charging registration fees based on vehicle value.
- Implementing a sales tax on vehicles or implementing local option taxes for highway funding.

In response to a question from Representative Kelsh, Mr. Ziegler said a program to monitor vehicle miles traveled would require a device to be placed in vehicles. He said there may be privacy concerns with allowing a government entity to monitor the location of a vehicle.

Mr. Ziegler presented the following schedule detailing estimated and actual distributions from the highway tax distribution fund:

projects pursuant to 2009 Senate Bill No. 2223. He said the pilot projects will be with South Central Transit in Valley City and West River Transit in Bismarck. He said public input meetings on the projects will be held in July 2010 with projects completed in early 2011.

Mr. Ziegler said a lack of heated storage facilities at the Fargo district office is resulting in maintenance vehicles being stored outside. He said snow and ice accumulation on maintenance vehicles results in damage to the vehicles' hydraulic and electrical systems. He presented a video detailing the need for a heated storage facility at the Fargo district office.

A copy of the information presented by Mr. Ziegler is on file in the Legislative Council office.

In response to a question from Senator Cook, Mr. Ziegler said commercial motor vehicle carriers use transportation routes that are in good condition and close to their destination points. He said an economic benefit is received from commercial motor vehicles that pass through the state and pay sales tax on items purchased at truckstops and other retail locations.

In response to a question from Senator Cook, Mr. Ziegler said ethanol sales account for approximately 5 percent of total gasoline and ethanol sales in the state. He said he would provide more

information to the committee regarding how increased ethanol use affects collections of motor fuels taxes.

In response to a question from Senator Nodland, Mr. Ziegler said \$660,000 for a heated storage facility at the Fargo district office was included in the 2009-11 executive budget recommendation. He said the funding was removed by the Legislative Assembly, and current estimates for a heated storage facility are approximately \$1 million.

The Legislative Council staff presented a memorandum entitled [Overweight Vehicles - Permitting by Local Jurisdictions](#). He said a county may enact a weight restriction ordinance and issue permits under an ordinance. A county may also retain fees for a permit issued under a weight restriction ordinance. However, the ability of a county to collect fines for violating a local ordinance was the subject of a recent Attorney General's Letter Opinion. A county that is not under home rule jurisdiction may not retain fines for a violation of a weight restriction ordinance while it is unclear if a home rule county may keep the fines for a violation of a weight restriction ordinance. Violation fines that are not retained by a county are to be deposited in the common schools trust fund pursuant to NDCC Section 29-27-02.1.

Representative Porter suggested the committee receive information regarding the permitting process for overweight vehicles that use multiple roadways under the control of different jurisdictions.

Representative Schmidt suggested the Legislative Council staff prepare a bill draft to clarify that home rule counties may not retain fines generated from the violation of local weight restriction ordinances. Chairman O'Connell asked the Legislative Council staff to prepare a bill draft for the next meeting.

Senator O'Connell suggested the committee receive information regarding forfeitures and fees received by the state from district courts.

Colonel James Prochniak, Superintendent, Highway Patrol, presented information regarding Federal Motor Carrier Safety Administration requirements for truck rear-end protection. He said motor vehicles manufactured after December 1952 are required to have rear-end protection if the bottom edge of the vehicle body is greater than 30 inches from the ground. He said 2009 Senate Bill No. 2092 repealed NDCC Section 39-21-55 which related to exemptions for rear-end protection of motor vehicles. He said the repeal of the section brought the state into compliance with federal requirements, but the state still lost \$488,990 of federal funding for the portion of time in which the state was not in compliance.

A copy of the information presented by Colonel Prochniak is on file in the Legislative Council office.

In response to a question from Senator O'Connell, Colonel Prochniak said certain trailers and semitrailers manufactured after January 25, 1998, are required to meet federal rear-end protection requirements. He said trailers that are manufactured after this date and have a gross vehicle weight rating of 10,000 pounds or more must meet the rear-end protection requirements.

Ms. Linda Svihovec, McKenzie County Treasurer, Watford City, presented information regarding deposits in county infrastructure funds pursuant to 2009 House Bill No. 1304. She said distributions of oil and gas gross production taxes are made to counties based on the state's fiscal year with the first distribution of each year paid to counties in September. She said the oil and gas gross production tax collections are provided to counties for use by counties, townships, and schools. She said the tax collections received by counties are allocated for county, township, and school uses similarly among counties except for a provision that affects the allocation of funds to schools based on county population. She said cities may receive a maximum allocation of \$750 per capita, and funds are retained by a county once the maximum is met. Cities receive their portion of tax directly from the state, and the remaining tax is paid to counties for further distribution to schools and the infrastructure fund. She presented various schedules detailing oil and gas gross production tax allocations to counties, cities, schools, and the county infrastructure fund in McKenzie County.

A copy of the information presented by Ms. Svihovec is on file in the Legislative Council office.

In response to a question from Senator O'Connell, Ms. Svihovec said oil and gas gross production tax allocations to schools are taken into consideration as part of state school aid funding distributions.

Senator Cook said the current method of allocating oil and gas gross production taxes is complicated. He suggested consideration be given to a simpler method that would achieve the same results.

Ms. Frances M. Olson, McKenzie County Auditor, Watford City, presented information regarding the process used by counties to distribute funding from county oil and gas gross production tax infrastructure funds. She said a survey was conducted of oil and gas-producing counties to determine how each county allocates funds from its infrastructure fund to townships and schools. She said of the 14 counties that responded to the survey, 7 counties reported deposits in their infrastructure fund. Of the seven counties reporting deposits, five counties allocated funding from their infrastructure fund to townships and schools, one county is waiting until December 2010 to allocate funding, and one county did not have any organized townships or have schools that provide bus services. She said four counties have adopted a policy for the allocation of funding from their infrastructure fund.

A copy of the information presented by Ms. Olson is on file in the Legislative Council office.

Mr. Thomas A. Balzer, Director, North Dakota Motor Carriers Association, distributed a schedule detailing state and federal taxes paid by commercial motor carriers. He said in 2007, 39 percent of state fuel taxes and 49 percent of state registration fees collected in North Dakota were from commercial motor carriers. He said of the 7.8 billion miles traveled by all

vehicles in North Dakota annually, only 1.1 billion miles are traveled by trucks. He suggested standardizing overweight vehicle permitting systems across jurisdictions.

A copy of the schedule distributed by Mr. Balzer is on file in the Legislative Council office.

In response to a question from Senator O'Connell, Ms. Svihovec said the North Dakota Association of Oil and Gas Producing Counties has developed a program for overweight vehicles that provides uniform rules among most oil and gas-producing counties. She said some counties may also charge an additional fee for special situations such as transporting an oil drilling rig.

## STUDY OF 911 SERVICES AND INFRASTRUCTURE

Major General David Sprynczynatyk, Adjutant General, provided comments regarding services provided by State Radio. He said the Department of Emergency Services has improved service to the 22 small population counties in the state that use State Radio as a public safety answering point. He said counties currently pay a fee of 38 cents per telephone line to State Radio for providing the services. He said statutes provide that charges for services are to be based on the actual costs of the services provided. He said counties are notified by July 1 of even-numbered years of any changes to the fees for State Radio services with the fee changes occurring on July 1 of the following year.

Mr. Mike Lynk, Director, Division of State Radio, Department of Emergency Services, presented information regarding services provided by State Radio, including 911 services, law enforcement teletype system services, and mobile data terminal services. He said fees for the services are based upon costs associated with the services, including salaries and operating expenses. He presented the following schedule detailing the calculation of fees for the services:

	911 Services - Line Fee Per Month	Mobile Data Terminal System	Law Enforcement Teletype System
Annual direct salaries	\$1,925,845	\$61,921	\$96,821
Annual indirect salaries	89,993	28,331	28,331
Annual direct operating expenses	426,280	31,576	331,551
Annual indirect operating expenses	21,822	1,617	48,330
Total annual costs	\$2,463,940	\$123,445	\$505,033
Annual costs after adjustment	\$561,039 <sup>1</sup>	\$123,445	\$505,033
Total lines or users	74,276 telephone lines	835 users	141 users
Fee per month	62.9 cents	\$12.32	\$298.48
Discounted fee	37.7 cents <sup>2</sup>		\$149.24 <sup>3</sup>
Current fee per line or user	38 cents	\$12.32	\$149.24

<sup>1</sup>The adjusted cost is based upon the calculation that 22.77 percent of time spent by communications specialists is for incoming 911 calls and mitigation for the 22 counties that use State Radio as a public safety answering point.

<sup>2</sup>The discounted fee reflects a 40 percent reduction in cost based on the estimated percentage of incoming nonemergency or duplicate 911 calls.

<sup>3</sup>North Dakota Century Code Section 37-17.3-08(2) provides that fees to access the law enforcement teletype system shall be 50 percent of actual costs incurred.

Mr. Lynk said the State Radio computer-aided dispatch system went into use on March 9, 2010. He said the system has worked well so far.

A copy of the information presented by Mr. Lynk is on file in the Legislative Council office.

In response to a question from Senator O'Connell, Mr. Lynk said some counties have expressed concern regarding the technology being used for the mobile data terminal system. He said some counties would like State Radio to use more updated technology for the system.

In response to a question from Senator Cook, Mr. Lynk said 911 service fee revenue is only generated from telephone lines. He said no revenue is provided from the sale of prepaid calling cards.

In response to a question from Senator Cook, Mr. Lynk said State Radio has a minimum of five dispatchers working at a time. He said most shifts include seven or eight dispatchers.

Mr. Terry Traynor, Assistant Director of Policy and Programs, North Dakota Association of Counties, provided information regarding the use of 911 fees by counties. He said the Emergency Services Communications Coordinating Committee is required to collect and compile information regarding the use of 911 fee revenue by counties. He said the emergency communications system in the state costs just over \$16 million per year to operate. He said about half of the funding to operate the system is from 911 fees, while the other half is mostly funded from property taxes. He presented the following schedule detailing emergency communications revenues and expenditures:

	Counties Using State Radio as a Public Safety Answering Point (22 Counties)	Counties Using Other Public Safety Answering Points (31 Counties)	Total
Fund balance - January 1, 2009	\$1,418,962	\$7,582,604	\$9,001,566
Landline/Voice over Internet Protocol revenue	417,936	2,988,039	3,405,975
Wireless telephone revenue	442,657	4,520,734	4,963,391
Funding from property tax and other sources	69,857	6,814,394	6,884,251
Total	\$2,349,412	\$21,905,771	\$24,255,183
Less 2009 expenditures	944,480	15,281,113	16,225,593
Fund balance - December 31, 2009	\$1,404,932	\$6,624,658	\$8,029,590

Mr. Traynor said the Emergency Services Communications Coordinating Committee is continuing to develop plans to implement Next Generation 911 in the state. He said the committee is currently reviewing the most cost-effective ways to implement the system. He said the committee may issue a request for information in an effort to determine the best implementation method.

A copy of the information presented by Mr. Traynor is on file in the Legislative Council office.

In response to a question from Senator Cook, Mr. Greg Wilz, Director, Division of Homeland

Security, Department of Emergency Services, said the total costs to operate State Radio are approximately \$11.5 million per biennium.

In response to a question from Senator O'Connell, Mr. Traynor said there is no statutory provision to limit the amount of funding a county may keep in a 911 reserve fund.

In response to a question from Representative Vigesaa, Mr. Traynor said 911 fees received by some counties do not cover the entire cost of providing 911 services. He said counties use funding from other sources such as property taxes to provide the balance of funding.

In response to a question from Representative Uglem, Mr. Traynor said cellular phones generally require a principal place of use identified that allows for 911 fees to go to the jurisdiction in which the phone is used the most.

In response to a question from Senator Cook, Mr. Traynor said that counties that use State Radio as a public safety answering point utilize approximately 2 percent of 911 fees for road signage.

Senator Cook expressed concern with the current structure and usage of 911 fees.

Representative Kelsh said road signs are important in rural areas to help direct emergency responders to the correct location. He said emergency services providers may not be familiar with an area due to increasing distances traveled by the providers.

Mr. Mike Dannenfelzer, Communications Manager, Bismarck/Burleigh Emergency Management and Combined Communications Center, provided comments regarding fees charged by State Radio for access to the state mobile data terminal system. He said the Combined Communications Center is implementing a mobile data system that uses cellular carriers to connect to the Information Technology Department through a virtual private network. He said the only state resource that will be needed is access to the switch that provides national driver's license and criminal information.

Representative Porter suggested the committee receive information from the Department of Emergency Services regarding the costs to the state and what the updated user fees would be for allowing law enforcement agencies to use alternative methods to connect to the State Radio switch that provides access to national driver's license and criminal information.

The committee recessed for lunch at 12:05 p.m. and reconvened at 1:00 p.m.

## EMERGENCY MEDICAL SERVICES FUNDING

Ms. Sara E. Chamberlin, Fiscal Analyst, Legislative Council, presented a memorandum entitled [Funding for Rural Fire Districts](#). She said there are 373 fire protection agencies in the state, and each agency may receive funding from various sources, including insurance tax premium payments, property tax levies, and reimbursement for services provided. She said NDCC Section 26.1-03-17 requires the Insurance

Commissioner to collect a premium tax on the gross amount of insurance premiums sold within the state at a rate of 2 percent for life insurance policies and 1.75 percent for other types of insurance. Chapter 18-04 provides for the disbursement of insurance premium tax collections to qualifying fire protection agencies. The 2009 Legislative Assembly appropriated \$6.2 million from the insurance tax distribution fund for payments to fire protection agencies for the 2009-11 biennium.

Ms. Chamberlin said NDCC Chapter 18-10 and Section 57-15-26.3 authorize a county auditor to levy a tax of up to five mills for the maintenance of a fire protection district. She said the fire protection district's board of directors may increase the tax levy to 13 mills if 20 percent of the qualified electors in the district petition for it. She said during 2009, \$4.6 million was collected under the rural fire protection district property tax levy.

Ms. Chamberlin said rural fire departments may enter contracts with state and local government agencies to provide fire protection service. She said the reimbursement for fire protection must be based on a reasonable annual fee, and the fee may not be greater in amount than if the property protected had been subject to a rural fire district tax levy.

Ms. Chamberlin presented a memorandum entitled [Emergency Medical Services Funding](#) which provides information regarding funding provided to ambulance services from property tax levies and from legislative appropriations. She said North Dakota Century Code references relating to property tax rates for emergency medical services (EMS) operations include:

- County - Section 57-15-06.7(23) provides that a county may levy a tax of up to 10 mills for county EMS. If the county contains a rural ambulance service district or rural fire protection district that levies for and provides EMS, the property within that district is exempt from the county tax levy.
- Township - Section 57-15-20.2(7) provides that a township may levy a tax of up to 10 mills for EMS.
- City - Pursuant to Section 57-15-51, a city may impose a levy of up to 10 mills upon its taxable valuation for the purpose of subsidizing city EMS. Whenever a tax for county EMS is levied, any city levying a tax for EMS may be exempted from the county tax levy.
- Rural ambulance service district - Pursuant to Section 57-15-26.5, a rural ambulance service district may levy a tax not exceeding 10 mills on the taxable value of property within the district.

Ms. Chamberlin presented the following schedule detailing total collections by each tax levy based on 2008 property tax assessments:

Property Tax Levies for Ambulance Services - Based on 2008 Assessments				
County	Township	City	Rural Ambulance District	Total
\$2,607,907	\$250	\$19,665	\$584,278	\$3,212,100

Ms. Chamberlin said the 2009 Legislative Assembly appropriated \$2.25 million from the insurance tax distribution fund for grants to EMS operations. Eligibility requirements for these grants under NDCC Chapter 23-40 include the following:

- Emergency medical services operations must be licensed with the State Department of Health for a period of at least 12 months before the filing of the application.
- Emergency medical services operations must bill for services at a level at least equivalent to Medicare billing levels.
- Applications must be filed before November 1 of each year with the State Department of Health. Applications must include affirmation of the operations billing levels and document the availability of local matching funds.
- Emergency medical services operations must be in conformance with any additional requirements established by the Health Council.

Ms. Chamberlin said the Health Council has established the following administrative rules regarding eligibility requirements for these grants under North Dakota Administrative Code Chapter 33-11-08:

- Applications for the grant must be made in the manner and timeframe prescribed by the department.
- The ambulance service must be based in North Dakota.
- The ambulance service must be licensed as a basic life support ground ambulance as described in Chapter 33-11-02 or licensed as an advanced life support ground ambulance as described in Chapter 33-11-03 for at least 12 months prior to the filing of the application.
- Criteria for grant approval includes consideration of the transportation distance to hospitals, size of the ambulance service area, the number of ambulance runs, and contributing factors that may affect the number of patient care providers on the ambulance service. Contributing factors considered may include age, population, service's location, size of the service area, and other personal commitments.

Mr. Thomas R. Nehring, Director, Division of Emergency Medical Services and Trauma, State Department of Health, presented information regarding the use of funding designated for EMS. He provided the following updates on various programs:

- No law enforcement agencies have applied for a grant to provide EMS training to rural law enforcement officers as provided in 2009 Senate Bill No. 2047. He said the requirements for rural law enforcement agencies to maintain training may be a deterrent for agencies to apply for a grant.
- The State Department of Health is in the process of reviewing four proposals received to hire a consultant to study EMS in the state pursuant to 2009 Senate Bill No. 2004.

- The State Department of Health is reviewing its budget in response to reduced funding of \$93,400 from the National Highway Traffic Safety Administration.

Mr. Nehring said the state has two levels of ground ambulance licensure which include basic life support and advanced life support. He said basic life support ambulances must have a minimum training level of emergency medical technician, while advanced life support ambulances must have a minimum training level of paramedic. He said the state currently has 122 basic life support ambulance services and 19 advanced life support ambulance services. He said the state also has 69 licensed quick response units.

Mr. Nehring provided an overview of the process used by ambulance services to bill patients or third-party providers. He said ambulance services directly bill patients who are not covered by a third-party provider. He said the process to bill a third-party provider varies due to the differences in processing methods and reimbursement rates.

A copy of the information presented by Mr. Nehring is on file in the Legislative Council office.

In response to a question from Senator O'Connell, Mr. Nehring said the quality of care is a factor in developing rules for ambulance services. He said patients expect a trained individual to be providing care on an ambulance.

Representative Porter expressed concern that no rural law enforcement agency applied for a grant to provide EMS training to rural law enforcement officers.

Mr. Mark Weber, President, North Dakota EMS Association, presented information regarding options for funding EMS in the state. He said 88 primary service areas could be created in the state to provide service that meets the definition of reasonable EMS. He said that at least one transporting ambulance service would serve each area, but local communities could determine if more ambulance services are needed in a service area.

Mr. Weber suggested a statewide funding formula be used that is based on service costs versus revenue and all ambulance services would be eligible for funding if they demonstrate need. Estimated state funding to sustain all 88 service areas would be \$6 million per year, which is approximately \$9.86 per citizen. Each service area would also provide funding of approximately \$10 per person, which could be from sources as determined by the local area.

Mr. Weber said the average cost of providing ambulance services in North Dakota is \$805.15 per call. He said the cost to an ambulance service is \$830.32 per call in rural areas and \$551.58 in urban areas. He said the average reimbursement rate for ambulance services is \$534 per call.

Mr. Weber distributed various schedules and maps detailing current state and local funding provided for EMS as well as potential future funding amounts.

A copy of the information presented by Mr. Weber is on file in the Legislative Council office.

In response to a question from Representative Nathe, Mr. Weber said Medicare reimbursements for ambulance services prior to 2010 included a bonus of 1 percent for urban response areas, 2 percent for rural response areas, and 22.6 percent for frontier response areas. He said the Medicare bonuses had provided approximately \$2 million of additional funding to ambulance services in the state.

In response to a question from Representative Uglem, Mr. Weber said the transition to a service area funding method could begin immediately.

In response to a question from Representative Porter, Mr. Weber said additional state funding for EMS may not be needed if third-party providers, including Medicare and Medicaid, reimbursed ambulance services for the actual cost of services provided.

Representative Porter said ambulance services would benefit if the state increased Medicaid reimbursement rates for ambulance services. However, he said, the level of Medicare reimbursement rates are of greatest concern for ambulance services.

Ms. Maggie Anderson, Director, Medical Services Division, Department of Human Services, provided information regarding the Medicaid reimbursement process for ambulance services. She said ambulance service providers must be enrolled as a North Dakota Medicaid provider in order to submit claims on behalf of North Dakota Medicaid clients. She said ambulance providers are responsible for submitting and classifying claims to Medicaid. She provided the following schedule detailing Medicaid reimbursement rates in effect on July 1, 2009:

Basic life support ambulance - Emergency transport	\$304.79
Advanced life support ambulance - Emergency transport	\$361.93
Ambulance response and treatment - No transport	\$97.57
Ground mileage (per mile)	\$6.87
Fixed wing ambulance service - One way	\$2,623.22
Rotary wing ambulance service - One way	\$3,049.87
Fixed wing ambulance service mileage (per mile)	\$8.07
Rotary wing ambulance service mileage (per mile)	\$21.53

A copy of the information presented by Ms. Anderson is on file in the Legislative Council office.

### COMMITTEE DISCUSSION

Representative Porter suggested the committee receive information from the Department of Human Services regarding the amount of funding needed to fully reimburse ambulance services for the costs of providing services to Medicaid patients.

Representative Klein suggested the committee receive information regarding fire incident reporting requirements for fire departments and reasons why fire departments do not file required incident reports.

Representative Porter suggested the committee receive a response from the State Department of Health regarding the proposed funding plan developed by the North Dakota EMS Association.

No further business appearing, the meeting was adjourned subject to the call of the chair at 2:45 p.m.

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Brady A. Larson  
Fiscal Analyst

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Allen H. Knudson  
Legislative Budget Analyst and Auditor

ATTACH:1