

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

PUBLIC SAFETY AND TRANSPORTATION COMMITTEE

Wednesday, August 4, 2010
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator David O'Connell, Chairman, called the meeting to order at 8:30 a.m.

Members present: Senators David O'Connell, Dwight Cook, Gary A. Lee, George Nodland; Representatives Edmund Gruchalla, Bob Hunskor, Jerry Kelsh, James Kerzman, Matthew M. Klein, William E. Kretschmar, Todd Porter, Arlo Schmidt, Elwood Thorpe, Gerry Uglen, Don Vigesaa, Robin Weisz

Members absent: Senators Elroy N. Lindaas, Richard Marcellais; Representatives Bob Martinson, Michael R. Nathe

Others present: Vonette J. Richter, Sara E. Chamberlin; Legislative Council, Bismarck

Representative Lisa Wolf, member of the Legislative Management, was also in attendance.

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

It was moved by Representative Vigesaa, seconded by Representative Klein, and carried on a voice vote that the minutes of the June 2, 2010, meeting be approved as distributed.

STUDY OF HIGHWAY FUNDING

Mr. Tom Clemons, Vice President, Roads and Bridges Solution, Bentley Systems, and Mr. Dan Vogen, Director, Software Development, Bentley Systems, Exton, Pennsylvania, presented information regarding automated overweight vehicle permitting systems ([Appendix B](#)). Mr. Vogen said an automated overweight vehicle permitting system allows users to obtain permits online and choose an allowable route to transport the overweight load. He said an automated permitting system may also allow for improved overweight vehicle routing among states.

In response to a question from Representative Gruchalla, Mr. Vogen said the automated permitting program does not provide for communication between the permitting system and a motor carrier's onboard computer.

In response to a question from Representative Weisz, Mr. Vogen said national standards are being developed for electronic permitting systems. He said establishing standards will allow for information to be transferred among states regarding routes for overweight vehicles.

In response to a question from Representative Kerzman, Mr. Vogen said an automated permitting system does not determine if a vehicle violates an overweight permit.

Colonel James J. Prochniak, Superintendent, Highway Patrol, provided an update regarding the development of a commercial vehicle information system and network pursuant to 2009 Senate Bill No. 2011 ([Appendix C](#)). He said the Highway Patrol has been in the process of planning for the system and has developed a program plan. He said the program plan needs to be approved by the Federal Motor Carrier Safety Administration.

In response to a question from Representative Kerzman, Colonel Prochniak said the implementation of a commercial vehicle information system and network would not change the current annual inspection requirement for commercial vehicles.

In response to a question from Representative Wolf, Colonel Prochniak said a commercial vehicle that is found to have safety deficiencies may be placed out of service.

In response to a question from Senator O'Connell, Colonel Prochniak said all Highway Patrol troopers receive motor carrier training. He said troopers that focus specifically on motor carrier regulations receive additional training.

In response to a question from Senator Nodland, Colonel Prochniak said the number of overweight and oversize vehicle permits issued has increased in the past three years. He said the number of permits issued is expected to continue to increase.

Mr. Francis Ziegler, Director, Department of Transportation, presented information regarding various transportation topics ([Appendix D](#)). He said the most recent federal transportation funding bill expired in September 2009 and federal highway funding is being provided through short-term extensions. He said the amount of future federal highway funding to be received by the state is unknown at this time.

Mr. Ziegler provided information regarding driver's license requirements for nonresidents employed in the state. He said a nonresident employed in the state is allowed to use a noncommercial driver's license for a total of 150 days each year. He said a nonresident employed in the state may use a commercial driver's license for commercial purposes for a total of 120 days each year.

In response to a question, from Senator O'Connell, Mr. Ziegler said some driver's license testing sites in remote locations have been temporarily closed due to a lack of staff. He said the locations are expected to be reopened in the fall of 2010.

In response to a question from Representative Kelsh, Mr. Ziegler said there has been a recent increase in the amount of state special fuels taxes collected. He said collections of state gasoline and gasohol taxes have not been increasing at the same rate as specials fuels taxes.

In response to a question from Representative Gruchalla, Mr. Ziegler said he would provide information to the committee regarding overweight vehicle permit fees, including whether the fee collections provide adequate funding for the cost issuing the permit and for the estimated damage caused to roadways as a result of the overweight load.

Ms. Cindy Schwehr, Commissioner, Barnes County Commission, Rogers, presented information regarding truck regulatory issues on county roads ([Appendix E](#)). She said several counties have been discussing the feasibility of forming an alliance for truck regulatory purposes. She suggested the committee review options for allocating overweight vehicle fines between the state and counties.

Mr. Cal Klewin, Executive Director, Theodore Roosevelt Expressway Association, Bowman, and Mr. Joe Kiely, Vice President of Operations, Ports-to-Plains Alliance, Limon, Colorado, presented information regarding the Ports-to-Plains Alliance ([Appendix F](#)). Mr. Kiely said the Ports-to-Plains Alliance is a proposed transportation corridor from Texas to Canada. He said a portion of the transportation corridor is located in western North Dakota.

Mr. Klewin said truck traffic in western North Dakota has been increasing due to oil and gas development. He said certain bridges in western North Dakota do not accommodate oversized vehicles causing additional expense to travel an alternate route to avoid these bridges.

Ms. Vonette J. Richter, Counsel, Legislative Council, presented a memorandum entitled [Disposition of Fines, Fees, and Forfeitures](#). She said North Dakota Century Code Section 39-12-08 provides that a fee be assessed to a person who violates an overweight vehicle permit. She said fees collected under the section may not need to be deposited in the common schools trust fund if the Legislative Assembly enacted a specific statutory exemption for the deposit of the fees.

In response to a question from Representative Wolf, Ms. Richter said the Legislative Assembly could provide that overweight vehicle fees assessed in Section 39-12-08 be returned to the jurisdiction having control over the roadway where the violation occurred.

The Legislative Council staff presented a memorandum entitled [State Revenue From District Court Activities](#). The Legislative Council staff said several types of fees are remitted from district courts to the State Treasurer for deposit in the state general fund. The following schedule details the remittance of district court fees to the State Treasurer for deposit in the state general fund:

| Fiscal Year 2008 | Fiscal Year 2009 | Fiscal Year 2010 (Through May 2010) |
|------------------|------------------|-------------------------------------|
| \$4,707,044 | \$4,575,964 | \$4,038,324 |

The Legislative Council staff said Section 29-27-02.1 provides that all statutory fees, fines, forfeitures, and pecuniary penalties for a violation of state law must be added to the state school fund. The table below details the collections of fees, fines, forfeitures, and pecuniary penalties for a violation of state law by the State Treasurer for deposit in the state tuition fund:

| Fiscal Year 2008 | Fiscal Year 2009 | Fiscal Year 2010 (Through May 2010) |
|------------------|------------------|-------------------------------------|
| \$4,691,548 | \$4,452,073 | \$4,135,302 |

Mr. Kevin Schatz, Supervisor of Motor Fuel, Oil, and Special Taxes, Tax Department, presented a report of local government transportation revenues and expenditures ([Appendix G](#)). He said Section 54-27-26 requires counties, cities, and townships to provide an annual report to the Tax Commissioner regarding funding and expenditures related to transportation projects and programs.

Mr. Schatz presented the following information regarding calendar year 2009 transportation funding and expenditures by political subdivisions:

| | Cities | Townships | Counties |
|---|---------------|--------------|---------------|
| Transportation fund balance - January 1, 2009 | \$14,779,812 | \$26,148,945 | \$64,401,096 |
| Add transportation funding received | | | |
| Local funding | \$133,032,269 | \$18,432,522 | \$60,419,288 |
| State funding | 38,344,206 | 13,270,661 | 85,839,393 |
| Federal funding | 9,943,848 | 7,020,799 | 46,386,959 |
| Total transportation funding received | \$181,320,323 | \$38,723,382 | \$192,645,640 |
| Total funding available for transportation | \$196,100,135 | \$64,872,927 | \$257,046,736 |
| Less total transportation expenditures | 186,116,803 | 34,781,275 | 147,349,651 |
| Transportation fund balance - December 31, 2009 | \$9,983,332 | \$30,091,652 | \$109,697,085 |

Representative Porter expressed concern that some counties have large amounts of transportation funding remaining at the end of the reporting period.

Representative Kelsh said some counties save funds for several years to pay for large transportation construction projects.

The Legislative Council staff presented a bill draft [\[10104.0100\]](#) regarding motor vehicle excise taxes. The Legislative Council staff said the bill draft reduces the motor vehicle excise tax rate from 5 percent to 3 percent. The bill draft also allocates motor vehicle excise tax collections, after deposits in the state aid distribution fund, to the highway tax distribution fund.

Senator Cook said he does not support the provision in the bill draft to reduce the motor vehicle excise tax rate from 5 percent to 3 percent.

Representative Thorpe said he supports allocating motor vehicle excise tax collections for transportation purposes. He said the current tax rate of 5 percent is burdensome to purchasers of expensive vehicles.

It was moved by Representative Kelsh, seconded by Representative Kerzman, and carried on a voice vote to amend the bill draft to remove Section 1 that reduces the motor vehicle excise tax rate from 5 percent to 3 percent.

The Legislative Council staff presented a bill draft [[10105.0100](#)] to transfer funding from the permanent oil tax trust fund for transportation purposes. The Legislative Council staff said the bill draft transfers \$50 million from the permanent oil tax trust fund to the highway tax distribution fund and transfers an additional \$50 million from the permanent oil tax trust fund to the state highway fund. The bill draft also appropriates the \$50 million transfer to the state highway fund to the Department of Transportation for the construction and maintenance of state highways in counties affected by oil and gas development.

Representative Kelsh expressed concern that the bill draft specifically appropriates \$50 million to the Department of Transportation for projects in counties affected by oil and gas development. He said all areas of the state have transportation concerns and the funding should be available for projects statewide.

Representative Schmidt said it may be better to provide additional funding to the oil and gas impact grant fund rather than appropriating funding to the Department of Transportation specifically for road projects in areas affected by oil and gas development.

Senator Nodland said the funding appropriated to the Department of Transportation for roadway projects in areas affected by oil and gas development may only be used on state highways. He said the funding would not be available for projects on county, township, or city roadways.

The committee recessed for lunch at 11:50 a.m. and reconvened at 12:50 p.m.

STUDY OF EMERGENCY MEDICAL SERVICES FUNDING

Ms. Sara E. Chamberlin, Fiscal Analyst, Legislative Council, presented a memorandum entitled [Homeland Security Grants - Distribution History](#). She said the federal homeland security grant process requires the state to develop state investment strategies in alignment with national priorities established by the federal Department of Homeland Security. She said the Department of Emergency Services, with assistance from the Department of Emergency Services Advisory Committee, developed a state homeland security strategic plan to use in the homeland security grant submission process and the homeland security grant allocation process. She said the Department of Emergency Services has received

approximately \$81 million in federal homeland security funding from 1999 through 2009.

Representative Vigesaa said it is important to have rural representation on the homeland security advisory committees.

Mr. Thomas R. Nehring, Director, Division of Emergency Medical Services and Trauma, State Department of Health, presented information regarding emergency medical services (EMS) in Rolette County ([Appendix H](#)). He said the State Department of Health has held meetings with representatives of various entities that are involved with emergency medical services in Rolette County. He said discussions have focused on creating a mutual response agreement between ambulance services in the area.

Ms. Maggie Anderson, Director, Medical Services Division, Department of Human Services, presented information regarding the amount of funding needed to fully reimburse ambulance services for the cost of providing services to Medicaid recipients ([Appendix I](#)). She said additional funding of approximately \$2.8 million would be needed for the 2011-13 biennium to fully reimburse ambulance services for the cost of providing services to Medicaid recipients. She said of the \$2.8 million, \$1.2 million would be from the general fund.

The legislative budget analyst and auditor presented a bill draft [[10081.0200](#)] that creates a statewide EMS funding plan and a related memorandum entitled [State Financial Assistance for Emergency Medical Services - Summary of Bill Draft](#). He said the bill draft creates an oversight board for each primary EMS funding area in the state and includes an appropriation of \$12 million from the insurance tax distribution fund to the State Department of Health for distribution to ambulance services based on 88 primary EMS funding areas.

In response to a question from Representative Porter, the legislative budget analyst and auditor said the bill draft provides for the distribution of funding to ambulance services based on the number of acres of coverage provided by an ambulance service in a county.

Mr. Mark Weber, North Dakota EMS Association, Rugby, provided comments regarding the bill draft ([Appendix J](#)). He suggested the following changes to the bill draft:

- Designate the primary ambulance service in primary service areas that have only one ambulance service.
- Develop a process to analyze an ambulance service budget when funding is requested.
- Make the definition of reasonable EMS consistent throughout the state.
- Clarify that local oversight boards would not set EMS standards.
- Set minimum funding levels for an ambulance service.
- Provide for a maximum local match of \$10 per capita.

- Review and potentially revise the method used to distribute funds to ambulance services.

In response to a question from Senator Nodland, Mr. Weber said county mill levies would still be used under the proposed funding plan. He said oversight boards would be used to ensure that funding is distributed fairly within a primary service area.

In response to a question from Representative Weisz, Mr. Weber said the funding plan does not provide for the elimination of any ambulance service. He said local oversight boards would determine the number of ambulance services that would receive state financial assistance in each primary service area.

In response to a question from Representative Gruchalla, Mr. Weber said a local oversight board may choose not to provide funding to a new ambulance service under the proposed plan. He said the plan ensures that funding is used in the most efficient way possible.

In response to a question from Representative Porter, Mr. Weber said the membership of local oversight boards would need to be approved by the State Health Officer.

Mr. Nehring provided comments regarding the bill draft ([Appendix K](#)). He said the State Department of Health has contracted with an organization to study EMS in the state and any major changes to ambulance service funding methods should consider the study findings. He said the study will be completed in June 2011. He expressed concern regarding provisions in the bill draft that require a fixed number of primary service areas and the amount of funding that may be needed for the local oversight boards.

In response to a question from Representative Kelsh, Mr. Nehring said many local ambulance services are supportive of the current EMS staffing grant program.

In response to a question from Representative Kerzman, Mr. Nehring said funding of \$2.25 million from the insurance tax distribution fund was provided for the EMS staffing grant program for the 2009-11 biennium.

Representative Kerzman said it may be more cost-effective to maintain existing ambulance services than to start new ambulance services in the place of closed services.

Representative Kelsh said a consistent approach is needed for local funding methods of ambulance services.

Representative Uglem said he supports the bill draft but suggested removing the requirement to have 88 primary service areas.

Senator Lee expressed concern regarding the effect of the bill draft on successful ambulance services.

It was moved by Representative Porter and seconded by Senator Lee to amend the bill draft to remove the language in Section 2 regarding the designation of primary service areas, the

establishment of primary service area oversight boards, and the method of distributing funding to counties and primary service areas.

Representative Kerzman expressed concern regarding the removal of local oversight boards.

Representative Porter said the current EMS staffing grant program has worked well. However, he said, additional funding for the program is needed.

In response to a question from Representative Hunskor, Mr. Weber said the funding formula for the EMS staffing grant program may need to be improved if the program is continued.

Senators Cook, Lee, and Nodland and Representatives Klein, Kretschmar, Porter, Uglem, and Weisz voted "aye." Senator O'Connell and Representatives Kerzman, Gruchalla, Hunskor, Kelsh, Thorpe, and Vigesaa voted "nay." **The motion carried on a roll call vote.**

STUDY OF 911 SERVICES AND INFRASTRUCTURE

Mr. Jerry Bergquist, Chairman, Emergency Services Communications Coordinating Committee, and Mr. Terry Traynor, Secretary, Emergency Services Communications Coordinating Committee, presented a report on the activities of the committee pursuant to Section 57-40.6-12 ([Appendix L](#)). The report included the following recommendations for emergency services communications in the state:

1. Support the efforts of the governing body of the wireless 911 project to ensure there is no loss of services from cellular companies as a result of changes made to local jurisdiction funding responsibilities for routing and transport charges.
2. Work with other states and organizations to ensure compliance of telecommunications companies of remitting 911 fees on prepaid cellular phones.
3. Continue current efforts to identify and contact Voice over Internet Protocol providers operating in the state.
4. Continue to monitor the ongoing development of national standards and evaluate available information to provide for the development of Next Generation 911 services.
5. Implement the statutory changes recommended by the committee for emergency services communications.
6. Discuss standards for the charging of fees by telecommunications providers to update 911 databases for telephone service changes.
7. Continue to encourage local cooperation and equipment sharing between public safety answering points.
8. Remove the sunset clause on the statute that provides that up to \$1.50 per device may be charged for emergency communications and allow all jurisdictions to charge this amount subject to certain public voting requirements.

In response to a question from Representative Porter, Mr. Bergquist said that some public safety answering point employees have duties not related to emergency communications. He said the Emergency Services Communications Coordinating Committee is recommending that by July 1, 2013, each public safety answering point have at least one staff member on duty at all times that is dedicated to emergency communications duties. He said the delayed effective date of July 2013 is to allow for budget planning and to allow for implementation of potential changes resulting from Next Generation 911.

Senator Cook said the current 911 fee structure may need to be modified. He said having the state provide emergency communications funding would simplify the funding aspect of emergency communications.

The Legislative Council staff presented a bill draft [\[10106.0100\]](#) regarding fees charged by the Department of Emergency Services for mobile data terminal services. The Legislative Council staff said the bill draft provides that mobile data terminal services fees not be charged to law enforcement agencies that access the state message switch using private commercial access.

Mr. Greg Wilz, Deputy Director, Department of Emergency Services, provided comments regarding the bill draft ([Appendix M](#)). He said the department has no concerns with providing mobile data terminal services to law enforcement agencies that access the state message switch using private commercial access. However, he said, additional funding will be needed for the department to replace the amount of fee revenue that would have been received from the law enforcement agencies affected by the bill draft.

Mr. Wilz suggested the bill draft be amended to adjust the fees charged for the use of the law enforcement teletype system. He said the change is needed in order for the Department of Emergency Services to be in compliance with Section 37-17.3-08 which provides that 50 percent of the cost of providing the service must be from user fees.

It was moved by Representative Porter, seconded by Representative Klein, and carried on a voice vote to amend the bill draft to include the statutory changes requested by the Department of Emergency Services and to provide the estimated funding needed from the state general fund for the cost of providing services to agencies that access the state message switch through a private commercial method.

COMMITTEE DISCUSSION

Representative Porter suggested the Legislative Council staff prepare a bill draft to implement the statutory changes requested by the Emergency Services Communications Coordinating Committee. Chairman O'Connell asked the Legislative Council staff to prepare the bill draft for consideration at the next meeting.

Representative Kelsh suggested the Legislative Council staff prepare a bill draft to provide that fees assessed to operators of overweight vehicles be distributed to the jurisdiction that has control over the roadway where the violation occurred. Chairman O'Connell asked the Legislative Council staff to prepare the bill draft for consideration at the next meeting.

Chairman O'Connell announced that the next committee meeting will be September 23, 2010. He said the September meeting will be the final meeting of the committee.

The meeting was adjourned at 3:20 p.m. subject to the call of the chair.

Brady A. Larson
Fiscal Analyst

Allen H. Knudson
Legislative Budget Analyst and Auditor

ATTACH:13