

# NORTH DAKOTA LEGISLATIVE MANAGEMENT

## Minutes of the

### TRANSPORTATION COMMITTEE

Tuesday, January 31, 2012  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Senator Gary A. Lee, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Senators Gary A. Lee, Ron Carlisle, Karen K. Krebsbach, David Nething, George L. Nodland, David O'Connell, Terry M. Wanzek; Representatives Robert Frantsvog, Ed Gruchalla, Brenda Heller, Karen Karls, Matthew M. Klein, William E. Kretschmar, Mark S. Owens, Dan Ruby

**Members absent:** Senator Richard Marcellais; Representatives Bob Hunsdor, Jerry Kelsh, Don Vigesaa

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

**It was moved by Senator O'Connell, seconded by Representative Ruby, and carried on a voice vote that the minutes of the September 21, 2011, meeting be approved as distributed.**

#### DESIGN-BUILD

Mr. Cal Klewin, Executive Director, Theodore Roosevelt Expressway, Williston, introduced the presentation by Kiewit Infrastructure Group and Fisher Industries on design-build and public/private partnerships.

Mr. Will White, Project Manager, Kiewit Infrastructure Group, and Mr. Tommy Fisher, President, Fisher Industries, made a presentation ([Appendix B](#)) on innovative infrastructure programs for North Dakota. As part of the presentation, Mr. Tim Priebe, General Counsel, Fisher Industries, presented information on the Federal Highway Administration expectations. Mr. Scott Drobny, sponsor, Kiewit Infrastructure Group, presented the portion of the presentation on the typical design-build selection process.

In response to a question from Senator Nodland, Mr. Drobny said in the typical design-build selection process the request for proposals is made to a short list of recommended firms--generally three.

In response to a question from Senator Nething, Mr. John Donatelli, Senior Design Manager, Kiewit Infrastructure Group, said the time it takes to create and answer a request for proposals depends upon the sophistication of the parties. He said the Washington State Department of Transportation took a long time to develop the first request for proposals. He said after there was a template, the department took three months to put out a request for proposals and took an additional three months to six months to receive

proposals. He said the total process takes between six months and nine months.

In response to a question from Senator Nodland, Mr. Donatelli said the design-bid-build process takes one year to two years from the time the Department of Transportation designs to the time bids are received by the department. He said the time is reduced by approximately one-half.

In response to a question from Senator Nething, Mr. Drobny said the benefit of design-build is to get the project completed sooner. He said the process allows the contractor, who is the designer as well, to include efficiencies and technologies that are known to the contractor. He said this results in the owner saving time and money. He said the contractor can do more projects because of the saved time.

In response to a question from Representative Owens, Mr. Donatelli said design-build needs to be used for a certain minority of projects. He said there can be problems if it is not used on the right project or the parties do not cooperate. He said there are more successes than failures, and the design-build process is becoming more popular; however, the traditional design-bid-build method is and will be the predominant method.

In response to a question from Representative Klein, Mr. Drobny said the request for proposals may require that the contractor build to a certain design.

Mr. Fisher presented the portion of the presentation on potential uses for alternative program delivery in North Dakota. He said generally there are not cost overruns in design-build; however, there could be an additional cost if the request for proposals allowed a floating price. He said the Legislative Assembly can shift the risk from owner to contractor as part of the process; however, the contractor will price the increased risk as part of the proposal.

Mr. Fisher said design-build allows more innovation and the use of experience. He said it would work well in the Bakken and in emergency situations, for example, flooded roads.

Mr. Fisher said Kiewit Infrastructure Group and Fisher Industries urge a bill draft to authorize design-build and public/private partnerships for the Department of Transportation and political subdivisions.

In response to a question from Senator Wanzek, Mr. Fisher said if there is a present need and there is not money available, but money will become available, with design-build the process could

encompass bridge financing by a bank. He said the design-build process can involve extended warranties so there is better quality. He said the design-build process would move engineering from the Department of Transportation to the contractor and those savings may not be readily apparent, but are actual savings.

In response to a question from Representative Gruchalla, Mr. White said there was a 6.1 percent cost-savings for the design-build method in a Pennsylvania state study. He said the savings encompassed both design and construction. He said the cost-savings should be looked at together because poor design will increase construction costs.

In response to a question from Representative Owens, Mr. Fisher said the public/private partnership process may work when making a reliever road. He said if the project is big, a private company could finance and take other risks. He said this may result in faster construction times.

In response to a question from Representative Owens, Mr. Fisher said the revenue stream to use the public/private partnership could be designed by the Legislative Assembly. He said this may allow the state to pay over a longer time. He said there may be possibilities for revenue streams from oil companies.

In response to a question from Senator Nething, Mr. Klewin said the Theodore Roosevelt Expressway project has members in Montana. He said the design-build method may allow for a quicker creation of a four-lane highway for the Theodore Roosevelt Expressway.

In response to a question from Senator Nething, Mr. Priebe said most counties hire consulting engineers in the design-bid-build process. He said counties should have the option to have the contractor work in the design process.

In response to a question from Senator Nodland, Mr. Russ Hanson, Executive Vice President, Associated General Contractors, said some members of the association like design-build. He said some of the smaller members are not as quick to embrace design-build. He said design-build would be used as an exception to the general rule of design-bid-build.

In response to a question from Senator Nodland, Mr. Hanson said subcontractors are smaller contractors in design-build and any other delivery method. He said small contractors are not familiar with design-build and that creates apprehension. He said small contractors do not have the expertise in design to use design-build.

## GENERAL TRANSPORTATION ISSUES

Mr. Francis Ziegler, Director, Department of Transportation, presented written testimony ([Appendix C](#)) on:

- Load limits for bridges.
- Progress for construction projects.
- Construction inflation costs.
- Emergency relief funding.

- Infrastructure development meetings in western North Dakota.
- Motor vehicle renewal and temporary registration information.
- Upper Great Plains Transportation Institute studies.
- Updating TransAction strategic plans.
- Special road funding.

Mr. Ziegler said the department recommends that funding for the special road fund not be increased by taking funds from the highway tax distribution fund or highway fund.

Mr. Ziegler said the department is working with the Upper Great Plains Transportation Institute on three studies:

- Western North Dakota traffic model study.
- Need study for state highways.
- Traffic safety study to assess public perception of traffic safety issues and priorities in this state's oil-producing region.

Mr. Ziegler said motor vehicle renewal and temporary registrations are increasing. He said motor vehicle registrations have increased from approximately 900,000 in 2007 to 1,050,000 in 2011. He said the online process for temporary motor vehicle registrations has increased the number of temporary registrations.

Mr. Ziegler said the total federal allocation received for emergency relief for 2011 was \$316.74 million. He said it was nearly one quarter of the federal emergency relief funds available for the entire United States. He said the cost for a thin lift overlay increased 94 percent from 2006 to 2011. He said in 2011 the department worked on projects totaling approximately \$595.6 million compared to \$442 million in 2010, including emergency relief projects.

In response to a question from Senator Lee, Mr. Ziegler said the department recently updated load factor designs for bridges. He said these national standards protect the department from liability. He said the load limits for bridges are determined by computer software.

In response to a question from Representative Kretschmar, Mr. Ziegler said most bridges are designed for a 50-year life. He said the Memorial Bridge in Bismarck was designed for 75 years. He said every vehicle that goes over a bridge takes a little life off the bridge. He said bridge inspections allow the bridge to stay in operation if still in good shape. He said bridges can last longer if they are well maintained and moisture is kept off the steel components.

In response to a question from Senator Nodland, Mr. Ziegler said the department received approximately \$317 million in federal aid for emergency relief to which the department added matching funds. He said there was \$517 million in damage.

In response to a question from Senator Nodland, Mr. Ziegler said the temporary registration law is a secondary law, and there are difficulties with profiling out-of-state motor vehicle operators. He said the law is difficult to enforce.

In response to a question from Senator Carlisle, Mr. Ziegler said the federal government will be operating on a continuing resolution for highway funding until March 30, 2012. He said the state may only receive half of the money allotted under the resolution.

In response to a question from Representative Kretschmar, Mr. Ziegler said if initiated measure No. 2 was to pass, there would be difficulty for political subdivisions to raise matching funds. He said motor vehicle registrations and gas and diesel fuel taxes are the primary source of income to the department, and they are up \$36 million from last year.

In response to a question from Senator Nodland, Mr. Ziegler said there has been legislation in the past on design-build. He said the department supports design-build as a tool for the department to build certain projects. He said it would be used 10 percent to 15 percent of the time and would be used on large projects. He said large projects may be staggered with the design of the latter parts being done while the work is being completed on the first part.

In response to a question from Senator Nodland, Mr. Ziegler said the problem with the Williston Bypass is the location not the design. He said wherever it is located there is a different group that resists the location.

In response to a question from Senator Nething, Mr. Ziegler said paying a bonus to a contractor is compatible under the design-build method. He said neither is necessary for the other.

In response to a question from Representative Ruby, Mr. Ziegler said nothing in the law prohibits the department from working with the private sector to fund roads. He said the department has had Wal-Mart pay for signaling and turn signal lanes in Bismarck as well as similar payments for work done by Menards. He said the public/private partnership works well if the infrastructure is sold to the contractor who tolls the infrastructure. He said this is the most common model. He said there needs to be a revenue source for the public/private partnership.

### **BILL DRAFT ON NORTH DAKOTA CENTURY CODE CHAPTER 39-06**

Committee counsel presented a bill draft [[13.0028.01000](#)] to improve the consistency in clarity of Chapter 39-06. He said the intent is improvement without substantive changes.

In response to a question from Senator Nodland, Mr. Glen Jackson, Director, Drivers License Division, Department of Transportation, said that the new subsection 3 to Section 39-06-13 was for an applicant who did not pass the eye examination by the department but had a statement of examination by a

licensed physician or optometrist stating the corrected and uncorrected vision of the applicant. He said the statements require the department to read the handwriting of a doctor or optometrist and do not speed up the process.

### **OVERSIZED PERMITS**

Colonel James J. Prochniak, Superintendent, Highway Patrol, presented written testimony ([Appendix D](#)) on oversized permits. He provided information on 2011 Senate Bill No. 2371 which created multiple trip permits. He said the multitrip permits have been available since January 12, and the Highway Patrol has sold 40 multiple trip permits for \$3,220.

In response to a question from Senator Lee, Colonel Prochniak said the electronic permitting and routing system will be in operation in a pilot program by early 2013.

In response to a question from Senator O'Connell, Colonel Prochniak said the electronic permitting and routing system would be outsourced to a vendor. He said the vendor would provide 24 hours a day 7 days a week permitting in a timely manner.

In response to a question from Senator O'Connell, Colonel Prochniak said the law addresses flashing lights on vehicles, and oil company vehicles that have flashing lights on trucks for safety reasons will be cited for a violation. He said the lights create a concern with people telling a moving light from parked lights and emergency vehicles from regular vehicles. He said those trucks that want to be seen may use different kinds of trailer lighting.

In response to a question from Senator Wanzek, Colonel Prochniak said farm vehicles have exemptions relating to lighting requirements.

Representative Kretschmar said this state should increase the fines for speeding. He said the fees for speeding are much higher in surrounding states.

In response to a question from Senator O'Connell, Colonel Prochniak said law enforcement in the western part of the state is having difficulty keeping up with calls.

In response to a question from Senator Carlisle, Colonel Prochniak said housing is a big concern for new government employees in the oil-producing areas. He said the Stanley Highway Patrol officer is in New Town, and the Killdeer Highway Patrol officer is in Hazen. He said the officer should be located in the town in which the officer is stationed, but that is not possible.

In response to a question from Senator Lee, Colonel Prochniak said the routed permits were 111,000 in 2009, 143,000 in 2010, 199,000 in 2011, and 259,000 are expected in 2012. He said this places a tremendous demand on staff.

### **SPECIAL ROADS STUDY**

Mr. Michael Gunsch, Vice Chairman, Friends of Lake Sakakawea, presented written testimony

([Appendix E](#)) on the study of special roads. He said the first option was to do nothing, but that option was not reasonable. He said another option was to agree that additional funding is necessary and warranted and to provide the funds. He said the third option is recognize the need for funding and evaluate the projects and to distribute funds to selected priority sites.

In response to a question from Senator Carlisle, Mr. Gunsch said the general fund is an option for funding. He said the Special Road Fund Committee has been a good vehicle for any funds that may be used for special roads.

Senator Nething said the fourth option was to go to the Governor and ask for money in the tourism budget. He said this state spends a lot of money on tourism, and the last mile to get to a tourist destination is important.

Senator Nodland suggested increasing the fees for boats, campers, and trailers and dedicating the money to the special roads fund.

In response to a question from Senator Lee, Mr. Gunsch said the Special Road Fund Committee process is adequate. He said the largest issues are not having enough money, the 60/40 split, and the \$250,000 limit per project.

## COMMITTEE DISCUSSION

Senator Wanzek said the increased value for farmland may result in higher property taxes. He said the additional taxes should be directed to local township and county roads.

Senator Nething suggested a dollar per acre tax on agricultural land to create a bonding fund. The fund would be available to counties for roads. He said funding for rural roads is a major problem in this state. He said there is more traffic and larger loads. He said the bonding fund could grow to \$500 million and could provide 90 percent of the funding with 10 percent from the state. He said the problem with funding of rural roads is that there needs to be a source of money over a long period of time.

No further business appearing, Chairman Lee adjourned the meeting at 2:00 p.m.

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Timothy J. Dawson  
Committee Counsel

ATTACH:5