

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

TRANSPORTATION COMMITTEE

Wednesday, September 21, 2011

Roughrider Room, State Capitol

Bismarck, North Dakota

Senator Gary A. Lee, Chairman, called the meeting to order at 10:00 a.m.

Members present: Senators Gary A. Lee, Ron Carlisle, Richard Marcellais, George L. Nodland, David O'Connell, Terry M. Wanzek; Representatives Robert Frantsvog, Ed Gruchalla, Brenda Heller, Bob Hunskor, Karen Karls, Jerry Kelsh, Matthew M. Klein, William E. Kretschmar, Dan Ruby, Don Vigesaa

Members absent: Senators Karen K. Krebsbach, David Nething; Representative Mark S. Owens

Others present: See [Appendix A](#)

At the request of Chairman Lee, committee counsel reviewed the [Supplementary Rules of Operation and Procedure of the Legislative Management](#).

SPECIAL ROAD FUND STUDY

At the request of Chairman Lee, committee counsel presented a background memorandum entitled [Special Road Fund Study - Background Memorandum](#).

In response to a question from Senator Lee, committee counsel said privately developed recreation areas to which access roads attach may include marinas, but most marinas are part of a private and public relationship.

Mr. Francis Ziegler, Director, Department of Transportation, provided written testimony ([Appendix B](#)) on the special road fund. He said the anticipated amount of interest from the highway fund is expected to go down because of lower interest rates. He said there may be a temporary increase in the amount of funds in the special road fund due to the deposit of oilfield project money by the State Treasurer in the highway fund.

In response to a question from Representative Ruby, Mr. Ziegler said the carryover from last year is not obligated but could have been obligated in the past.

In response to a question from Representative Hunskor, Mr. Ziegler said project estimates are not always correct because prices increase.

In response to a question from Representative Kretschmar, Mr. Ziegler said the current interest rate is about 1.7 percent.

In response to a question from Senator Lee, Mr. Ziegler said the special road fund has not been used for private recreational areas in the past.

Mr. Michael Gunsch, Vice Chairman, Friends of Lake Sakakawea, presented written testimony ([Appendix C](#)) on the proposed area of study. He said the study should be utilized to document the value of a need for investment in access roadways. He said roadways need to be inventoried and prioritized to document the necessary improvements, as well as the respective costs and values. He said this could be accomplished through information sources, including county engineers, county park boards, county commissioners, local sportsmen's groups, state agencies, and others. He said all improvements would be based on existing and projected uses, individual site needs, and applicable design standards. He said the final recommendations will most likely be what should be done, by whom, and how much will it cost. He provided two handouts of the proposed final product for the study and a list of recreational access roadways around Lake Sakakawea as part of his testimony.

Ms. Kelly Sorge, Indian Hills Resort, Garrison, presented written testimony ([Appendix D](#)) on the need for improved access roads to tourist and recreational areas, in particular, the Indian Hills Resort.

In response to a question from Representative Frantsvog, Ms. Sorge said McLean County blades the access road on a weekly basis.

In response to a question from Senator Nodland, Ms. Sorge said the county is overwhelmed with road repair because of many bad roads. She said she has been working with the county, and the county knows the roads need repair.

In response to a question from Representative Karls, Ms. Sorge said the Indian Hills Resort operates with public and private cooperation between the Parks and Recreation Department, the Army Corps of Engineers, and the resort. She said the access and parking lot are 100 percent public.

In response to a question from Senator Lee, Ms. Sorge said the road services one other small business and 15 homes.

Ms. Nina Sneider, Buffalo City Tourism, Jamestown, gave a presentation ([Appendix E](#)) on issues with the access road to the Frontier Village and the world's largest buffalo monument, the entrance to Fort Seward, and a scenic road near the world's largest buffalo monument.

In response to a question from Senator Lee, Ms. Sneider said these roads have not been included in applications to the special road fund in the past.

GENERAL TRANSPORTATION ISSUES

Mr. Ziegler presented written testimony ([Appendix F](#)) on transportation issues. He provided information on the construction program status, including information on \$142 million in oil impact funding, and information on the emergency relief program.

In response to a question from Representative Kelsh, Mr. Ziegler said the Department of Transportation borrowed \$120 million for the emergency relief program in anticipation of federal funding of 80 percent. He said the department will need to ask for the match during the next legislative session.

In response to a question from Senator O'Connell, Mr. Ziegler said a microseal is a combination of stone, stiff oils, and cement. He said it can last up to 15 years, but the extraordinary use in the oil patch quickly causes damage to any road, including any with the seal.

In response to a question from Senator O'Connell, Mr. Ziegler said the State Treasurer's office is conducting compliance checks for the use of dyed fuel in on-road vehicles. He said the revenue from diesel fuel tax is up.

In response to a question from Senator O'Connell, Mr. Ziegler said the farm community was grandfathered in with an exception to the requirement for a commercial driver's license. He said the department has improved the wait time for a commercial driver's license test from six months to 20 to 30 days. He said the department is working on a pilot program with Williston State College. He said Williston State College trains truckdrivers, and the department is working to provide testing at the end of the education.

In response to a question from Senator Carlisle, Mr. Ziegler said the first 13 miles of Highway 22 will be done in gravel by this winter. He said the department's game plan is to have the north and south corridors of Highway 22 and Highway 85 in good shape for oil traffic.

Ms. Linda Butts, Deputy Director, Driver and Vehicle Services, Department of Transportation, answered questions for the committee.

In response to a question from Representative Ruby, Ms. Butts said the federal government has requirements for commercial driver's license testing that are very specific. She said the military driver's license does not have the same requirements as the commercial driver's license; therefore, the military driver's license may not be used as a commercial driver's license. She said for the military driver's license to be used as a commercial driver's license, the military may have to change its process.

In response to a question from Representative Ruby, Mr. Ziegler said a majority of money in the federal highway trust fund is from gas tax, and a delay in payment from other sources would not have a major effect.

In response to a question from Representative Ruby, Mr. Ziegler said the emergency relief program funding was not taken out of regular program funding. He said the money was borrowed.

In response to a question from Representative Vigesaa, Mr. Ziegler said there is a remote chance of the state receiving the entire \$375 million that was projected from the federal government. He said there is a high chance that the state will receive a great majority of that funding.

In response to a question from Representative Vigesaa, Mr. Ziegler said the construction industry is taxed to the maximum as to its ability to construct roads. He said at times the department does not receive bids, and local governments have the same issues. He said Northern Improvement Company--the largest contractor in the state--is filled with work to do. He said bids are not as competitive as in the past. He said some bids are coming in 40 percent to 200 percent over the estimate. He said 10 jobs were recently rejected because of high bids. He said there is no housing in the western part of the state for contractors to house workers to work on projects.

In response to a question from Senator Nodland, Mr. Ziegler said there is an incentive clause on the Highway 22 project of \$50,000 a day up to \$1 million for every day the project is completed before December 1.

In response to a question from Senator Wanzek, Mr. Ziegler said North Dakota is a bridge state in that 59 percent of the trucks in the state are merely crossing through the state.

In response to a question from Representative Gruchalla, Mr. Ziegler said the Highway Patrol is finding it difficult to find officers to live in the western part of the state. He said the Highway Patrol has purchased two scales that may be pulled behind a truck. He said in an enforcement program in Dickinson, 57 problems were found with 200 trucks. He said the Highway Patrol received \$40,000 in fines in one day. He said six trucks had to be taken out of service.

In response to a question from Representative Gruchalla, Mr. Ziegler said overloaded trucks deteriorate the roads exponentially.

In response to a question from Representative Kelsh, Mr. Ziegler said the department likes flexibility with funding and does not want Congress to provide funds for the national highway system only. He said the state needs to move money where it is needed.

In response to a question from Representative Kelsh, Mr. Ziegler said state law requires the governmental entity to take the lowest and best bid. He said the lowest bid is not always the best, but the department prequalifies bidders so the lowest bid is always the best with prequalified bidders.

In response to a question from Representative Kelsh, Mr. Ziegler said a major issue with slowing down construction work is the sale of wetlands easements to the federal government. He said when

the road must go through a wetlands easement, it creates a major delay.

STUDY OF DRIVERS AND MOTOR VEHICLES

At the request of Chairman Lee, committee counsel presented a background memorandum entitled [Regulation of Drivers and Motor Vehicles - Background Memorandum](#).

Mr. Ziegler presented written testimony ([Appendix G](#)) on the drivers and motor vehicle regulations study. His testimony included specific examples of changes that may be made in North Dakota Century Code Title 39. He said the department would like the study to cover:

- Title and registration issues.
- General language cleanup.
- Operator's license fees.
- Driver record privacy.
- Issues related to size and weight of heavy vehicles.

Colonel James J. Prochniak, Superintendent, Highway Patrol, presented written testimony ([Appendix H](#)) on the study of drivers and motor vehicles. He said the Highway Patrol wants to streamline the permit issuance process. He said flat fees may help. He said ton-mile fees are complicated and confusing. He said the committee may wish to consider annual fees over numerous permits. He said Colorado has a model for a flat fee for a whole company. He said there would still need to be a routing component.

In response to a question from Senator Carlisle, Colonel Prochniak said people start to show physical challenges as a result of age between 65 years and 75 years.

In response to a question from Senator Nodland, Colonel Prochniak said the Highway Patrol supports flat fees, and he does not know if political subdivisions support flat fees. He said it would make it easier for the industry if the political subdivisions and the state could coordinate with permits.

In response to a question from Senator Lee, Colonel Prochniak said there are flat fees at present for some permits, and a flat fee would remove the pressure on the permit section of the Highway Patrol.

In response to a question from Senator Wanzek, Colonel Prochniak said an example of special mobile equipment is an earthmoving scraper or crane.

In response to a question from Senator Nodland, Colonel Prochniak said counties have had to add staff to the sheriff's departments to help the Highway Patrol with calls for assistance. He said the Highway Patrol is in response mode and is tasked to the maximum in oil country.

In response to a question from Representative Gruchalla, Colonel Prochniak said he did not make a recommendation on the point system because of a broader focus on North Dakota Century Code chapters as part of the study.

In response to a question from Senator Wanzek, Senator Lee said the committee may consider substantive provisions of the law. He said a complete rewrite of the entire title would be too much for the committee to do in one interim. He said the committee needs to focus on certain areas. He said the committee should improve the law and not just clarify and make it consistent.

In response to a question from Senator Lee, Colonel Prochniak said much of the permitting is for 10 percent overweight permits. He said the 10 percent overweight permit could be removed by adding a fee to registration. He said fees are needed to keep roads maintained. He said the 10 percent permits are allowed for so many months out of the year that permits may not make administrative sense.

In response to a question from Senator Nodland, Colonel Prochniak said if oil haulers were paid by the hour rather than the barrel, there would be less violations.

Mr. Mike Reitan, Assistant Chief of Police, West Fargo, presented written testimony ([Appendix I](#)) on areas of Title 39 that need to be studied. He said statutory fees should be increased. He said the definitions of ambulance and Class A emergency vehicles need to be reviewed. He said drivers do not understand the point system very well, and the committee may consider alternative methods of suspending licenses for multiple offenses.

In response to a question from Senator Nodland, Mr. Reitan said the issuance of a ticket takes approximately 15 minutes and costs the department approximately \$85 in salary and overhead.

Mr. Ziegler said the Advisory Commission on Intergovernmental Relations is studying motor vehicle permit fees, including overweight and overwidth permit fees charged by cities and counties. He said the committee may wish to coordinate with that commission. He said Minnesota has a law that allows the Highway Patrol to look at scale tickets and issue fines based upon scale tickets.

Representative Ruby said the committee should review the North Dakota Administrative Code with the North Dakota Century Code for consistency. He said the special road fund study could look for other sources of funding. He said if the committee looked at prioritizing projects, it would take most of the committee's time.

Senator Lee said the process for the special road fund works well. He said the \$250,000 limit per project is a factor. He said the committee may wish to look at other funding sources, i.e., fees for recreational vehicles or increasing the percentage of interest from the highway fund. He said there are many needs for many different kinds of roads in this state.

Representative Gruchalla said the changes should not be piecemeal, and the committee should hire a consultant to look at the entire Title 39.

Senator Carlisle said the committee should do the work and not hire a consultant.

In response to a question from Senator Nodland, Colonel Prochniak said usually the Highway Patrol gives six months for educational leeway for a new law. He said this was not given for the temporary vehicle registration law, and the officers are issuing the citations and providing the education through a pamphlet given with the citation.

In response to a question from Senator Nodland, Ms. Butts said there is online purchasing of temporary vehicle registrations. She said there have been advertisements, radio talk shows, road signs, and press releases relating to temporary vehicle registration. She said there has been a delay with 3M as to the yellow sticker that is evidence of a temporary vehicle registration. She said these yellow stickers will be available in October.

In response to a question from Senator Nodland, Ms. Butts said the department is working with the oil industry to improve compliance. She said a special mailing was sent to members of the oil industry.

In response to a question from Senator Lee, Ms. Butts said the Driver's License Division was given four new employees--one in Dickinson, one in Minot, and two in Bismarck. She said the department tried to place one in Williston, but there was no housing. She said two new employees were hired for the Motor Vehicle Division and are located in Bismarck. She

said the branch offices are outsourced to private contractors.

Representative Ruby said the Highway Patrol and the Department of Transportation should create a working group with local law enforcement to bring recommendations to the committee relating to the study of drivers and motor vehicles.

Representative Vigesaa said the Highway Patrol and the Department of Transportation have already provided suggestions, and the committee should focus on the suggestions and the original topic of the bill--modified motor vehicles.

Senator Wanzek said the Department of Transportation and the Highway Patrol should look at the title and provide suggested cleanup language.

Senator Carlisle said both sheriffs and chiefs of police should be given notice and opportunity to respond to any changes.

No further business appearing, Chairman Lee adjourned the meeting at 2:25 p.m.

Timothy J. Dawson
Committee Counsel

ATTACH:9