

2009 SENATE TRANSPORTATION

SB 2054

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2054

Senate Transportation Committee

Check here for Conference Committee

Hearing Date: January 8, 2009

Recorder Job Number: 6679

Committee Clerk Signature

Jody Hauge

Minutes:

Senator Gary Lee called the Transportation Committee to order. The clerk called the roll call all members were present. Senator Lee opened the hearing on SB 2054, a bill relating to department of transportation agreements with tribal governments.

Jeff Nelson, Staff Attorney for the Legislative Council for the Tribal and State Relations Committee, reviewed SB 2054. The Tribal and State Relations committee this past interim had a number of meetings and visited four of the five state reservations. From these visits the committee received some concerns. At Fort Berthold and Standing Rock they mentioned concern over 24-02-02.3. Tribal Councils felt that the limitations on Tribal Transportation agreements were somewhat restricted. The committee asked the Legislative Council to research this and they found that when it was introduced it did not have the \$25,000 limitation, but it was added. There was no testimony on where that number came from. Based upon that and the testimony that the Tribal and State Relations committee received, the interim committee recommended that the twenty-five thousand dollars limitation be eliminated. This is what SB 2054 does.

Senator Nething asked how many projects or agreements are involved between Department of Transportation and Tribes.

Nelson had no numbers but stated there were some agreements. He said that they received testimony that there were a number of native contractors that were ready and willing to do some work. Other places, like Standing Rock, the tribe had a number of roads that they felt they were not able to maintain and were interested in an agreement to have Department of Transportation perform some of that maintenance for them.

Senator Nething asked what the nature of the agreement were and if they were primarily maintenance or construction of streets or highways?

Nelson said that they didn't do a comprehensive view of that type. They just based it on testimony.

Senator Nething stated that \$25,000 didn't seem like they could do much with that limitation.

Representative Boucher spoke in support of SB 2054. He chaired the Tribal and State Relation committee. He said one of the real issues was the \$25,000 limitation.

Opposition – none

Neutral

Gary Levi, Department of Transportation presented testimony. Written testimony enclosed. He emphasized that according to ND Century Code 24-02-37, which lists maintenance of the state highway system as the Department's top priority for spending funds.

Senator Nething asked if the mou (Memoranda of Understanding) that he referred to overrode the provision of law the way it exists?

Levi said that has been their position. What they are doing is entering into an understanding with the tribal government that the contractor that we bring onto the project will comply with the TERO requirements. The contractor will have to pay a TERO cost.

Senator Potter, clarified that the 2.5 percent comes from the contractor to the tribe.

Levi, said that is correct.

Senator Potter, asked if they also must hire a certain number of native's workers.

Levi, said that is correct.

Senator Potter, asked if it was true that in some cases the tribal government wouldn't sign the TERO unless you enter into another agreement on BIA roads or other kinds of roads.

Levi, said what we are experiencing is that a tribal government is requesting that we enter into what they call a material tax agreement. The Department does not feel that is appropriate. So because of this they haven't gotten the TERO agreement signed and are not completing the projects.

Senator Nodland, asked what type of roads or other projects could this include.

Levi, said if this were to pass, speculating...the state would be able to step in and take care of some of the transportation concerns that the tribal government may have with the system they are required to maintain along with the BIA.

Senator Nodland, asked about the county roads in those areas.

Levi, said this section of law appears to apply solely to the Department of Transportation and would not impact the counties.

There was more discussion on the material tax. And what was in the intent of the bill.

Levi, stated that at this time we can use Federal dollars and we can successfully work with the state statues as is to carry through with the work we are doing.

Senator Nething asked if the problem was using the revenue that we have in our highway fund.

Levi, said that is one of the concerns. The Department of Transportation feels that the state statue is very clear that the intent that the funds that we receive through the highway fund are intended to be used on the State system to construct and maintain the state system.

Senator Nething, Did you appear before the interim committee.

Levi, said yes, and will supply testimony to the committee. As part of the testimony they did lay out their concerns. Testimony enclosed.

Senator Lee closed the hearing on SB 2054

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2054

Senate Transportation Committee

Check here for Conference Committee

Hearing Date: January 15, 2009

Recorder Job Number: 7039

Committee Clerk Signature

Jody Hauge

Minutes: #2

Senator Gary Lee called the Transportation Committee to order to discuss SB 2054, a bill relating to Department of Transportation agreements with tribal government. The intern has a draft amendment for the committee. Attachment #1. The concern of the Department of Transportation was that there was no guidance of what they could do and so this was a

suggested amendment that Department of Transportation authored to try to put some definitive guidelines for themselves when the director goes to work with the Tribes on these construction maintenance projects. It gives the director of the Department of Transportation direction on what he would be able to do.

Senator Nething moved the amendment.

Senator Nodland seconded.

Discussion followed.

Senator Potter believes that there would be some value in leaving it flexible for the director of Department of Transportation to work with the tribe.

Senator Fiebiger questioned the purpose behind limiting it. There doesn't appear to be much flexibility.

Senator Potter brought up the issues with the Spirit Lake Nation and the refusal of the Tribal Chairwomen to sign the TERO agreement unless the state pays the material tax. It would seem that if there was flexibility there might be another answer.

Senator Lee said that in the testimony at the hearing of SB 2054 by Levi he emphasized that according to the ND Century Code 24-02-37 it lists maintenance of the state highway system as the department's top priority for spending funds.

Senator Nodland agreed with Senator Lee.

Senator Fiebiger said that the amendment does add the language to the original bill after bridges, it does include "on the state highway system." It does limit it to state highway systems.

Senator Lee said that in chapter 54-40 that there are other opportunities in terms of agreements on the approval of the Governor. The amendment only limits the Director's authorities.

Senator Potter said the amendment gives up the possibility of meaningful "government to government" negotiations. Every one suffers.

Senator Lee says we will fix the state highways.

Senator Potter said that his point was that we can't fix the highway without the TERO agreement and if the tribe refuses to sign the TERO agreement we all suffer. The Tribe suffers and so does the state motorist.

Senator Nething said that we can't force the tribes into accepting those agreements. How should our dollars be spent?

Senator Marcellais said when he looked at this bill whether it is going through reservation or Washburn it is for the safety of the citizens. Why do we have 5 agreements for 5 reservations? Why not just put it into the Century Code. Why not put it into law.

Senator Nething asked, "What would you put into law."

Senator Marcellais said that he had brought up the discussion of signal lights on State Highway 5. The tribe does not have the expertise to take care of those signal lights. Who is responsible? Senator Marcellais did say he would run the amendment past the tribal transportation director.

Closed discussion.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2054

Senate Transportation Committee

Check here for Conference Committee

Hearing Date: January 29, 2009

Recorder Job Number: 8162

Committee Clerk Signature

Jody Hauze

Minutes:

Committee Work on SB 2054 to discuss the previous amendment on the table that was brought to the committee by the Department of Transportation.

The committee voted on the amendment that was previously moved as a Do Pass by Senator Nething and seconded by Senator Nodland. 5-1-0.

Senator Nething moved a Do Pass as Amended.

Senator Nodland seconded.

Senator Nething asked if we had improved the bill with the amendment.

Senator Marcellais replied yes, because they remove the \$25,000 limit.

Clerk called the roll for a Do Pass on SB 2054 as amended. 6-0-0.

Senator Marcellais volunteered to carry the bill.

Senate Amendments to SB 2054 (90203.0201) - Transportation Committee 01/29/2009

Page 1, line 9, after "bridges" insert "on the state highway system. The agreements must be limited to those necessary to meet federal highway program spending requirements"

Renumber accordingly

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. 2054

Senate Transportation Committee

Check here for Conference Committee

Legislative Council Amendment Number 90203,0201

Action Taken Do Pass Do Not Pass Other
as amended

Motion Made By Senator Nething Seconded By Senator Nodland

Senator	Yes	No	Senator	Yes	No
Chairman Senator Gary Lee	✓		Senator Tom Fiebiger	✓	
Senator George Nodland	✓		Senator Richard Marcellais	✓	
Senator Dave Nething	✓		Senator Tracy Potter	✓	

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Marcellais

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2054: Transportation Committee (Sen. G. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2054 was placed on the Sixth order on the calendar.

Page 1, line 9, after "bridges" insert "on the state highway system. The agreements must be limited to those necessary to meet federal highway program spending requirements"

Renumber accordingly

2009 HOUSE TRANSPORTATION

SB 2054

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2054

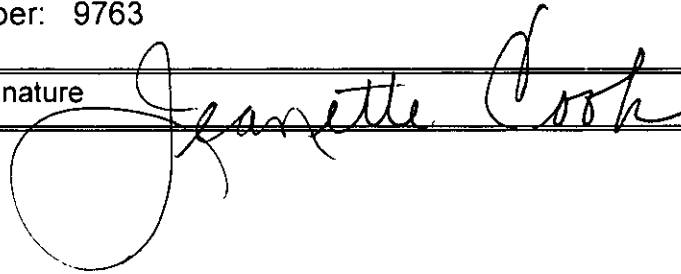
House Transportation Committee

Check here for Conference Committee

Hearing Date: 02/26/09

Recorder Job Number: 9763

Committee Clerk Signature

A handwritten signature in cursive script, reading "Jeanette Cook", is written over a horizontal line. The signature is written in black ink and is positioned to the right of the "Committee Clerk Signature" label.

Minutes:

Representative Merle Boucher introduced SB 2054. This bill came to our attention during the meetings that we held around North Dakota at the four reservations with the tribal-state committee. It involves a situation that actually exists today, and the ability to develop certain types of transportation and road maintenance, and road construction agreements, and other types of agreements between the DOT and tribal government. The real gist of the bill is at the bottom on lines nine, ten, and eleven. (Speaker read the lines in the bill.) This would be an arrangement that allows the DOT to enter into these types of agreements with Tribal Government and tribal road maintenance and road construction departments. You will notice that in the past, it was limited that each agreement may not exceed \$25,000. I think this was put into law several years ago, but in today's world \$25,000 is just not a realistic number. What the bill does is firm up an agreement arrangement that already exists and tries to arrive at something that has more current dollar amounts that are more flexible.

Representative Weisz: What types of agreements are they currently entering into?

Representative Merle Boucher: I will defer that to DOT.

Representative Weiler: Are they currently entering into these agreements, and we just want add this code to bring them into compliance?

Representative Merle Boucher: To what extent that they are doing it, I couldn't tell you. I know they have the ability to do it or have done it. But, you will probably see with the \$25,000 cap on things made it a difficult situation. DOT may be able to answer that question in greater detail.

Chairman Ruby: When they enter into agreements with individual tribes is there there are some instances where some tribes have their own registration cards... is there ... as far as how the match goes, or how they fund it, or is there a contribution of whether it is gas tax or registration, or if the state is sort of using basically back to the tribes....and really if they are paying into the fund, they should be able to access those funds for their roads as well. But, in some cases they retain a lot of that. What is the status of that? Is that on a case by case basis? I am trying to understand how the process works.

Representative Merle Boucher: There are two tribes that I know right now that have an issue license, Turtle Mountains and Spirit Lake. In terms of how they work out the gas tax arrangements, they are done individually, tribe by tribe. Each tribe has the ability to enter into their own particular arrangement with their own sort of guidelines. I know from my observation and knowledge, that they are not the same. The ones that exist presently operate differently. So, to answer your question, I would have to say there would have to be an agreement between the tribes and DOT, depending upon their circumstances. I would remind you that these dollars that we are talking about, the tax refund dollars, pertain to gas that is sold on the reservations. Native American citizens travel just like all other North Dakota citizens and buy gas in many other places in the state, and those types of agreements don't affect those purchases. They are as citizens paying gas tax. The gas tax exemption that we are talking about is exclusive to reservations. They have to be stations that are privately owned on

reservations. If the tribe owns the service station, then that creates a whole different set of guidelines for the tax situation.

Representative Schmidt: Did Standing Rock pay a portion of their sales tax to the state?

Representative Merle Boucher: I think that you are talking about the first agreement. They looked at the total figure that was due to them, and what was collected in gas taxes on Standing Rock Reservation. Then they got 75% of that collection, and the state retained 25% as an administrative type of arrangement. Since that time, Spirit Lake and the Three Affiliated have reached an agreement on the gas tax. Theirs is different. I can't speak to those, because I don't know the exact details.

Grant Levi, Deputy Director for Engineering for the North Dakota DOT, spoke in support of SB 2054. See attachment #1.

Grant Levi pointed out that the DOT does not enter into these types of agreement for snow removal.

Representative Delmore: When you enter into these agreements, are there requirements for workers to be Native Americans? And is there additional money paid to the tribes on some of these?

Grant Levi: Both of those conditions occur as part of these agreements. There are hiring requirements that are set into place that the contractor must adhere to. In addition to that, about two and one half percent of the total project cost is paid to the tribal government for their administrative oversight and for training for the TARO program. The two and one half percent is an average figure. As the project costs get higher, we negotiate that down.

Representative Delmore: In light of the federal stimulus money that is coming, would there be any benefit in putting an emergency clause on this bill?

Grant Levi: Not for the purpose of the _____ ?? (inaudible)

Representative Weisz: What will this bill allow you to do that you aren't doing today?

Grant Levi: One of the things that we are unable to do today, for example, is the need for right-of-way from the tribal government. The DOT cannot on its own enter into that agreement to purchase right-of-way. In the past it was over \$25,000. What we had to do was go back to the provisions that are outlined in Chapter 54-40.2. Under those provisions what is required is that a public hearing sells, you go through an extensive process, and then ultimately the governor has to sign it. This allows us to enter into right-of-way negotiations and carry through with them as we would with any other business any other place. This **does not allow** us to enter into agreements to pay materials tax. We have been requested to do that in some instances. Materials tax is not a requirement to federal funding. Philosophically, the department has taken the position that we don't feel that we should be paying materials tax.

When we come into reservation boundaries and work with tribal governments, the roadway work that we are doing is work that benefits the tribal government as well as the department and the state of North Dakota. We have looked at them and told them that we consider that to be a portion of their match. In addition to that, it was shared earlier that they are receiving a portion of the gas tax revenues and some registration fees. As I stated earlier, we feel that this is one of the issues that this agreement does not resolve, nor do we think it should.

Representative Gruchalla: When you negotiate one of these agreements do you have to have the BIA involved in that tribal agreement?

Grant Levi: When we've gotten into and worked with them on maintenance agreements, for the most part the BIA does carry through with a lot of the maintenance for the tribal government. So, yes, the BIA was involved. The way present state statute existed, if there was a value and you could place a value assessment greater than \$25,000 on that activity, then it became a gray area for the DOT, if we had to enter into an agreement with the tribal

government alone to take care of an aspect. We do have some of them that exist. For example, where we have a tribal government maintaining a flashing beacon, and the BIA is maintaining the sidewalk and the other aspects around it. So, it did get to become a bit complicated. The BIA would have to approve it for the most part, since they are a party to most of the maintenance.

Representative Weisz: In the new language in the bill, it makes it clear that it is only on state highways. Has there been a problem in the past trying to get agreements on tribal or BIA roads? Was there a specific reason that you made sure that it was inclusive only of state highways?

Grant Levi: There are other portions of state statute that require us to extend our state funding on state highways. As we worked with legislative council and the senate transportation committee, we felt that it would be good to have this bill consistent with other portions of state statute, rather than leading someone to believe that we could go off of the state system and expend state funds, which we are not allowed to by other portions of state statute.

There was no further testimony.

The hearing on SB 2054 was closed.

Representative Delmore moved a Do Pass on SB 2054.

Representative Thorpe seconded the motion.

Representative Weisz voiced a concern that possibly for larger projects it might not be such a bad idea to have the governor sign for them. This does open it up for any projects no matter how big. Maybe we would want a public hearing in some cases.

Representative Gruchalla: What is the threshold now for public hearings on a state project?

Grant Levi: As it relates to a public hearing for a federally funded project, if the DOT is purchasing a significant portion of right-of-way, we will hold a public hearing on the project. Then go through an extensive process that allows public input on the project. The agreement itself under Chapter 54 requires the opportunity for a public hearing, specifically on the agreement. To repeat myself, if we are doing a project with federal funds where we are taking a significant right-of-way, we do hold a public hearing.

Representative Weisz: Aside from the right-of-way issues, should some of the major projects have public hearings? What is the perspective of the DOT?

Grant Levi: Presently with the TARO agreement the department plays the role of insuring that the contractor knows what is required when they get on to a tribal government's piece of property. Since we ultimately pay the contractor, we attempt to insure that the state's interests are met as well, being fair and give careful consideration to the tribal needs. From my perspective, I'm not really sure that that aspect really needs a public hearing. Our organization is open and will share openly at public meetings.

A roll call vote was taken. **Aye 13 Nay 0 Absent 1**

The motion passed.

Representative Vigesaa will carry SB 2054.

Date: 2/26/09

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2054

House TRANSPORTATION Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do pass Don't Pass Amended

Motion Made By Delmore Seconded By Thorpe

Representatives	Yes	No	Representatives	Yes	No
Representative Ruby - Chairman	✓		Representative Delmore	✓	
Rep. Weiler - Vice Chairman	✓		Representative Griffin	✓	
Representative Frantsvog	✓		Representative Gruchalla	✓	
Representative Heller	✓		Representative Potter	✓	
Representative R. Kelsch	✓		Representative Schmidt	✓	
Representative Sukut	✓		Representative Thorpe	✓	
Representative Vigesaa	✓				
Representative Weisz	✓				

Total Yes 13 No 0

Absent 1

Bill Carrier Vigesaa

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
February 26, 2009 1:06 p.m.

Module No: HR-36-3665
Carrier: Vigesaa
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2054, as engrossed: Transportation Committee (Rep. Ruby, Chairman) recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2054 was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

SB 2054

SENATE TRANSPORTATION COMMITTEE

January 8, 2009

North Dakota Department of Transportation
Grant Levi, P.E., Deputy Director for Engineering

SB 2054

Good morning, Mr. Chairman and members of the committee. I'm Grant Levi, Deputy Director for Engineering for the North Dakota Department of Transportation (NDDOT). I'm here today to provide some background information to the committee as you discuss SB 2054, which was introduced at the request of the Tribal and State Relations Committee.

During the Tribal and State Relations committee meetings, the Tribal Governments expressed a concern with their ability to maintain the transportation system on the reservations. As part of the discussion, the Department was asked if we could provide assistance to Tribal Governments with their transportation concerns. In our testimony, the Department stated that while we understand the Tribal Governments' concerns, the Department is not in a position to enter into agreements with Tribal Government to help with their transportation system as our main priority is to maintain the state highway system. Our priorities are outlined in North Dakota Century Code 24-02-37, which lists maintenance of the state highway system as the Department's top priority for spending funds. In addition, state law, ND Century Code, Section 24-02-02.3 only allows the director to enter into agreements with the tribal government which are less than \$25,000 unless the director complies with the requirements of ND Century Code 54-40.2.

We believe that as a result of the discussions, the Tribal and State Relations committee decided to introduce SB 2054 which removes the twenty five thousand dollar agreement limitation. While removing this limitation eliminates one of the issues we shared with the Tribal and State Relations Committee, it does not provide any resources to the Department to assist Tribal Governments, nor does it provide any clarification on what type of agreements the legislative body would be comfortable having the Department enter into. As stated previously, our main priority is to maintain the state highway system.

To maintain the state highway system, the Department currently enters into Memoranda of Understandings (MOU) with tribal governments. These MOU's are used to assure Tribal Governments that the contractors we hire are aware of their responsibility for paying Tribal Employment Rights Ordinance (TERO) Fees. TERO is a tribal program administered by a Tribal Government that is designed to target American Indian Employment when work is being done on the reservation. To use federal funding, the Department must enter into a TERO MOU with the Tribal Government.

Over the years, we have had a very good working relationship with the Tribal Governments and we have been able to enter into MOU's needed to construct and maintain the state highway systems within reservation boundaries. However, recently we have been asked to enter into additional agreements as a condition to the Tribal Government signing the TERO MOU. Because we were unable to enter into those agreements we have delayed a number of federal funded projects on a reservation.

In summary, the Department does enter into MOU's with the Tribal Governments to construct and maintain our transportation system. The MOU's we enter into are necessary in order for us to utilize federal funding for the project. While SB 2054 removes the agreement dollar amount limitation, it does not address many questions that will occur if it is passed. The department looks forward to working with the committee as they consider this important piece of legislation.

Mr. Chairman, I would be happy to answer any questions at this time. Thank you.

Agreement from Turtle Mountain

ORIGINAL

North Dakota Department of Transportation
MAINTENANCE AGREEMENT

Project Number ND-3-281(045)237 To road A. J. K

This agreement is between the state of North Dakota, acting by and through its Director of Transportation, hereinafter referred to as the NDDOT, whose address is 608 East Boulevard Avenue, Bismarck, North Dakota 58505-0700; and the United States of America, acting by and through the Bureau of Indian Affairs, hereinafter referred to as the BIA; and the Turtle Mountain Band of Chippewa Indians, hereinafter referred to as the Tribe, whose address is P.O. Box 80, Belcourt, North Dakota 58316.

WHEREAS, the BIA and the Tribe have requested the NDDOT to proceed with the rehabilitation of US Highway 281/ND Highway B between the intersection of BIA #5 and US Highway 281 to the intersection of BIA #9 and US Highway 281. These limits are shown on the attached drawing.

NOW, THEREFORE, in consideration of the mutual benefits to be derived therefrom, NDDOT will:

1. Be responsible for all maintenance except for that described for the BIA and the Tribe below. NDDOT's maintenance responsibilities include maintenance seals to a width of 40 feet, crack sealing, snowplowing (not including snow removal) on roadway surfaces, furnishing route-marker signs, and maintaining center line striping, within the limits of the four-lane urban section.
2. Review and approve curb cut addition, curb cut length changes, curb cut location changes, speed limit changes, parking changes, and utility requests.
3. Determine and set traffic signal timings and make any timing adjustments.

The BIA will:

1. Assume responsibility for maintenance of the sidewalk and bike path within the limits of the project.
2. Assume responsibility within the limits of the project for snow removal, mowing, and general litter clean-up.
3. Restore to original condition any cuts in the roadway surface initiated for emergency utility repair.
4. Comply with NDDOT policy and procedures for any desired changes to the roadway.

The Tribe will:

1. Assume responsibility within the limits of the project for maintenance and operation of the overhead lighting and traffic signals, except for those responsibilities described for the NDDOT above.
2. Restore to original condition any cuts in the roadway surface initiated for emergency utility repair.
3. Comply with NDDOT policy and procedures for any desired changes to the roadway.

Form #	Fax Note	7671	Date	7/10/03
To	S. J. K.		From	Brad Dyer
Co. Dept.			Co.	
Phone #			Phone #	
Fax #	477-0065		Fax #	

TESTIMONY BEFORE THE
TRIBAL AND STATE RELATIONS COMMITTEE
OF THE NORTH DAKOTA LEGISLATIVE COUNCIL

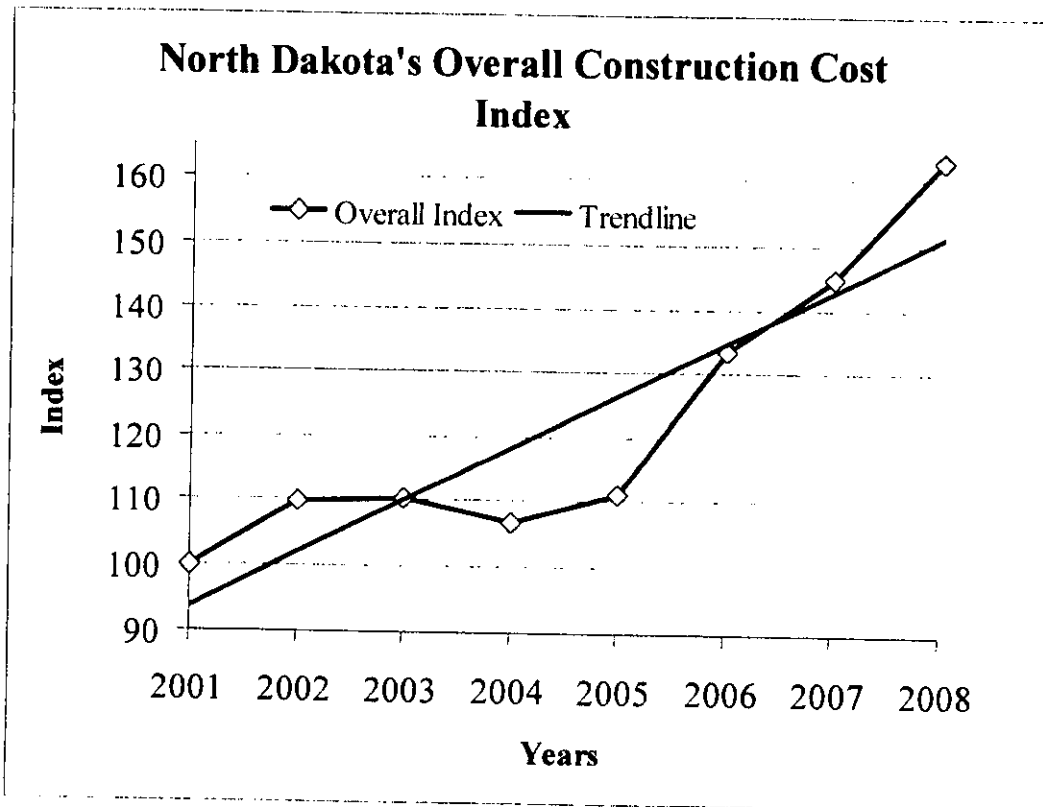
June 30, 2008

Room 801, Prairie Knights Casino and Resort, Fort Yates, ND
Darcy Rosendahl, NDDOT

Good morning Mr. Chairman and Members of the Tribal and State Relations Committee. I am Darcy Rosendahl of the North Dakota Department of Transportation and am here today to present you information about the feasibility of the department entering into agreements between the state and Indian tribes for state maintenance of roads.

First of all I'd like to report the North Dakota Department of Transportation's (NDDOT) main responsibility is to maintain the state highway system.

- I. As we maintain our present system we face many challenges.
 - **Inflation continues to be one of the greatest challenges facing the transportation industry.** During the past three years the NDDOT continued to experience major price increases in oil-based materials, steel, concrete, equipment and building materials. The chart shows that North Dakota's overall construction cost index increased about 63 percent from 2001 to May of 2008. Even more dramatic was the increase from 2005 to May of 2008 which was about 47 percent. This compares to the Consumer Price Index (CPI) which increased about 23 percent from 2001 to 2008.



- Federal and state revenue sources have been relatively flat and have not kept pace with these rising costs.
- Therefore, adjustments to the construction and maintenance program delaying some projects must take place. These project delays will impact the long-term performance of the highway network. We will continue to monitor inflation trends and adjust our program accordingly.
- **Staffing**
 - The good news is the job market is strong in North Dakota. The bad news is that over the past few months, NDDOT has experienced a significant loss of employees in the western part of the state. The Belfield Section is down to one employee, as the Dickinson and Williston Districts have lost a total of 12 employees due to staff members taking jobs in the oil fields, other businesses and retirement. The department is working on developing some creative recruitment and retention efforts to attract and maintain employees.

In response to your question about the feasibility of entering into agreements between the state and tribal governments for state maintenance of roads. We do have authority to enter into agreements on projects with tribal governments, in accordance with ND Century Code Section 24-02-02.3, in which each agreement may not exceed \$25,000. However given inflation and staffing challenges, we presently are not in a position to enter any additional agreements at this time.

has had a motor vehicle fuels tax agreement with the state in place for approximately one year. She said the agreement has benefited the tribe enormously. She said the tribe does not have a tobacco tax agreement with the state, but an agreement is under consideration. She agreed the committee should consider a bill draft to extend the sales tax exemption to purchases made by tribal governments.

TRANSPORTATION IN INDIAN COUNTRY

Chairman Boucher recognized Mr. Darcy Rosendahl, Department of Transportation. Mr. Rosendahl discussed the feasibility of the department entering an agreement between the state and Indian tribes for state maintenance of roads (Appendix G). He said the department's primary responsibility is to maintain the state highway system and the department is facing several challenges. He said inflation continues to be one of the greatest challenges facing the transportation industry, and the department is facing serious staffing shortages as a result of losing employees in western North Dakota to the oil and gas industry.

In response to a question from Ms. Kulas, Mr. Rosendahl said North Dakota Century Code (NDCC) Section 24-02-02.3 provides that the director may enter agreements with tribal governments. He said this section provides that "[n]otwithstanding the provisions of chapter 54-40.2, the director may enter into agreements with any one or more tribal governments for the purpose of construction and maintenance of highways, streets, roads, and bridges. Each agreement may not exceed twenty-five thousand dollars."

Senator Mather said the \$25,000 limitation may be too low and the committee may wish to consider removing this limitation.

In response to a question from Senator Oehlke, Mr. Rosendahl agreed that one of the considerations for the \$25,000 limitation may be to prevent the state from competing with private construction companies that are willing and able to provide this service.

Chairman Boucher recognized Ms. Pearson. Ms. Pearson requested that the Legislative Council staff contact the Department of Transportation regarding the location of a boundary sign that was removed for bridge construction near the Spirit Lake Nation and upon completion of the bridge was located in a different location.

CHILD SUPPORT ENFORCEMENT IN INDIAN COUNTRY

Chairman Boucher recognized Mr. Mike Schwindt, Director, Child Support Enforcement, Department of Human Services. Mr. Schwindt provided an update (Appendix H) of the interactions between the tribes and the state on child support enforcement services.

INDIAN AFFAIRS COMMISSION

At the request of Chairman Boucher, committee counsel reviewed a bill draft [90139.0200] relating to the members and the powers and duties of the Indian Affairs Commission.

In response to a question from Ms. Kulas, Ms. Pearson said the term Spirit Lake Nation as used in the bill draft is the correct name of that tribe.

It was moved by Representative DeKrey, seconded by Senator Lyson, and carried on a roll call vote that the bill draft relating to the members and the powers and duties of the Indian Affairs Commission be approved and recommended to the Legislative Council. Representatives Boucher, DeKrey, and Lies and Senators Lyson, Mathern, and Oehlke voted "aye." No negative votes were cast.

INDIAN EDUCATION ISSUES

At the request of Chairman Boucher, committee counsel distributed a packet (Appendix I) of material concerning licensure of American Indian language instructors. The packet includes qualifications for a Montana American Indian language and culture specialist; South Dakota Lakota, Dakota, or Nakota proficiency language authorization application; and the North Dakota American Indian instructors' licensure statute.

Chairman Boucher recognized Dr. Kathryn Froelich, Division of Education Chair, Sitting Bull College, Fort Yates. Dr. Froelich discussed the licensure of North Dakota American Indian language instructors. Dr. Froelich said there are nine schools, most of which are kindergarten through grade 12, on the Standing Rock Indian Reservation. She said the mission of Sitting Bull College is to promote Native American language and culture, specifically Lakota language and culture. Since the Standing Rock Indian Reservation is located in two states, Sitting Bull College has to meet South Dakota and North Dakota proficiency tests for licensing Native American language instructors. She said the South Dakota and North Dakota standards are different and Sitting Bull College would like a uniform process to train and eventually license Native American language instructors.

Chairman Boucher recognized Ms. Sacheen Whitetail Cross, Tribal Education Manager, Standing Rock Sioux Tribe, Fort Yates. Ms. Whitetail Cross discussed a position paper (Appendix J) concerning updated native language instructor credentials.

In response to a question from Representative DeKrey, Ms. Whitetail Cross said the Standing Rock Sioux Tribe and Sitting Bull College are not asking that the state "mirror" South Dakota's Native American language instructor licensure provisions as South Dakota is in the process of reviewing its statutes. However, she said, North Dakota and South Dakota should work together to enact uniform or complementary statutes that the tribe could comply with.

Richard Marcellais

From: "Jeremy Laducer" <jeremy@tribalresources.com>
To: <rjm@utma.com>
Sent: Thursday, January 22, 2009 2:02 PM
Subject: FW: Senate Bill No. 2054

Mr. Chairman:

Please read our D.C. legal counsel's remarks regarding this Bill. In summary, the NDDOT Director will have **unlimited authority** to enter in to contracts **with surrounding state's and province's**.

In addition, **it limits** the DOT Director to discretionary spending with tribes and which tribe is most deserving. My interpretation of this is that the state thinks that since the tribe's receive federal funding they should be limited on the amount of state funds they receive (simply put). However, I'm not sure what the intent is.

-----Original Message-----

From: Matthew S. Jaffe [mailto:MJAFFE@SONOSKY.COM]
Sent: Friday, January 16, 2009 10:54 AM
To: rjm@utma.com
Cc: Jeremy Laducer; Joshua A. Arnold
Subject: RE: Senate Bill No. 2054

Chairman Marcellais:

Jeremy Laducer forwarded me a copy of the proposed amendment to ND Senate Bill No. 2054:

24-02-02.3. Director may enter into agreements with tribal governments.

Notwithstanding the provisions of chapter 54-40.2, the director may enter into agreements with any one or more tribal governments for the purpose of construction and maintenance of highways, streets, roads, and bridges on the state highway system. The agreements are limited to those that are necessary to meet federal highway program spending requirements. ~~Each agreement may not exceed twenty five thousand dollars.~~

This amendment, while lifting the dollar cap amount of \$25,000 per agreement, would otherwise restrict the authority of the State DOT Director as concerns his discretion to enter into agreements with Tribes for the purpose of construction and maintenance of highways, streets, roads, and bridges "on the state highway system." I received only the attached Proposed Amendment and do not have any other information about its need. With this caveat in mind, I offer the following quick analysis for your consideration.

The primary effect that the proposed amendment to Senate Bill No. 2054 would have on the DOT Director is that it would limit the agreements he may choose to enter into with Tribes to those necessary to meet federal highway program spending requirements for state highway system projects. At present, the statute grants the DOT Director broad authority to enter into agreements with Tribes for the construction and maintenance of highways, streets, roads and bridges, with no such limitation. There is, however, a \$25,000 cap on such agreements under the present law (24-02-02.3). The lifting of the dollar cap now present in 24-02-02.3 makes sense.

It is not clear, however, why proponents of the amendment seek to restrict the ND DOT Director's discretion when exercising his authority to contract with Indian tribes. I note that in the preceding ND code provision (24-02-02.2 entitled "Authority to Contract with Adjoining States and Provinces"), the DOT Director is granted the discretion to "contract with adjoining states and provinces to provide for the construction, reconstruction, repair, or maintenance of highways located on or near the border of each jurisdiction." ND statutory provision 24-02-02.2 places no such restrictions on the ND DOT Director when dealing with adjoining States and provinces concerning his discretion to collaborate with such jurisdictions to improve road safety, expand road capacity and pursue other transportation related activities.

It is not clear why is it necessary to amend the ND code section 24-02-02.3 to include the phrase "*limited to those [agreements] that are necessary to meet federal highway program spending requirements*" when dealing with Indian tribes. One would hope that the State DOT Director would act in the best interest of the State. If Tribes are the recipients of federal funds, or have their own revenues, and wish to work collaboratively with the State of North Dakota DOT on road and bridge projects that serve reservation and non-reservation motorists, the State DOT Director should not be constrained in his discretion. Furthermore, the amendment, if enacted, would appear to prevent the DOT Director from entering into agreements with Tribes if the project was not required to meet federal highway program spending requirements.

I can see the merit of supporting the lifting of the dollar cap of \$25,000 now contained in the code section (thereby granting the DOT Director greater discretion when contracting with Tribes on costly road or bridge projects). I cannot see why it benefits either the State of North Dakota or the Indian tribes in the State to amend the State law to constrain the parties ability to jointly work on State road projects important to both jurisdictions.

Please let us know how we may be of further assistance on this matter.

Sincerely,

Matt Jaffe

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Attachment #1

HOUSE TRANSPORTATION COMMITTEE

February 26, 2009

9 a.m. – Fort Totten Room

North Dakota Department of Transportation
Grant Levi, P.E., Deputy Director for Engineering

Engrossed SB 2054

Good morning, Mr. Chairman and members of the committee. I'm Grant Levi, Deputy Director for Engineering for the North Dakota Department of Transportation (NDDOT).

The Department's main priority as identified in North Dakota Century Code 24-02-37 is to maintain the state highway system. Engrossed SB 2054 gives us additional flexibility to accomplish our priorities and as a result we are here in support of this bill.

If Engrossed SB 2054 passes it would make the following changes to state statute:

- Removes the \$25,000 agreement cap
- Clarifies that the agreements are limited for the purpose of construction and maintenance of highways, streets, roads, and bridges "on the state highway system."
- Limits the agreements to those that are necessary to meet federal highway program spending requirements.

By making these changes we would have the flexibility to enter into agreements with tribal governments for the purpose of constructing federally funded projects within the reservation boundaries, as long as those agreements are necessary to meet federal highway spending requirements. We understand this to mean that we could proceed as follows:

- Continue to enter into Memoranda of Understandings (MOU) with tribal governments for the purpose of spending federal funds on state highways within reservation boundaries. Presently, we enter into MOU's to assure tribal governments that the contractors we hire are aware of their responsibility for paying Tribal Employment Rights Ordinance (TERO) Fees. TERO is a tribal program administered by a tribal government that is designed to target American Indian employment when work is being done on the reservation. To use federal funding, the Department must enter into a TERO MOU with the tribal government.
- Continue to enter into agreements with tribal governments for the maintenance of traffic control, lighting, sidewalks, bike paths and other features requested by the tribal government as part of a constructed federal project. The federal government requires all aspects of the project to be maintained. We historically require the local governments and tribes to maintain portions of or all of the project constructed with federal funds.

Recently we have been asked to enter into additional agreements that are not required to expend federal dollars, but are a condition one of the tribal governments has requested before signing the TERO MOU. Engrossed SB 2054 would not resolve that issue, nor do we feel it should resolve that issue.

In summary, the Department has had a very good working relationship with the tribal governments. We have been able, in most situations, to enter into agreements needed to construct and maintain the state highway system within reservation boundaries. Engrossed SB 2054 expands our ability to enter into agreements with tribal governments, as long as the agreements are necessary to meet federal spending requirements. As a result, we support Engrossed SB 2054.

Mr. Chairman, I would be happy to answer any questions at this time. Thank you.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2054

Page1, line 9, after "bridges" insert "on the state highway system. The agreements are limited to those that are necessary to meet federal highway program spending requirements"

Renumber accordingly

24-02-02.3. Director may enter into agreements with tribal governments.

Notwithstanding the provisions of chapter 54-40.2, the director may enter into agreements with any one or more tribal governments for the purpose of construction and maintenance of highways, streets, roads, and bridges on the state highway system. The agreements are limited to those that are necessary to meet federal highway program spending requirements. ~~Each agreement may not exceed twenty-five thousand dollars.~~