

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Tuesday, February 21, 2012
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Lawrence R. Klemin, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Lawrence R. Klemin, Thomas R. Beadle, Ron Guggisberg, Brenda Heller; Citizen Members Ron Bieri, Don Frye, Jon Martinson, Scott Ouradnik, Richard Riha, Kenneth Yantes; Governor's Designee Brandi Pelham

Member absent: Citizen Member Shawn Kessel

Others present: Senator Larry Robinson, member of the Legislative Management, was also in attendance.

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

It was moved by Mr. Yantes, seconded by Mr. Frye, and carried on a voice vote that the minutes of the December 8, 2011, meeting be approved as distributed.

OVERSIZE VEHICLE PERMIT FEES AND PENALTIES

At the request of Chairman Klemin, Major David Kleppe, North Dakota Highway Patrol, distributed information ([Appendices B](#) and [C](#)) regarding extraordinary road use fees collected by counties and collected by the Highway Patrol.

In response to a question from Representative Klemin, Major Kleppe said the amount of extraordinary road use fees collected by the Highway Patrol during the first month of 2012 is following the trend of 2011. He said the fees collected by the Highway Patrol are deposited in the state highway fund. He said the Highway Patrol has six weight and inspection stations around the state and has additional fixed-scale locations in Minot, near Devils Lake, and in Grand Forks. He said there are plans to establish another fixed-scale location in Jamestown. In addition, he said, over 200 portable scales are carried by the Highway Patrol mainly in sport utility vehicles. He said the Highway Patrol has eight nonsworn inspectors and 25 troopers who are dedicated to enforcing load restrictions. He said two trailer scale systems are being used mostly in oil country on drive-outs to weigh truck loads.

In response to a question from Chairman Klemin, commission counsel said he contacted the State Treasurer's office to inquire as to whether the State Treasurer received any extraordinary road use fees directly from political subdivisions. He said the representative of the State Treasurer's office indicated that office receives no fees directly.

In response to a question from Representative Klemin, Major Kleppe said the Highway Patrol takes a neutral position on the appropriateness of the penalties imposed for violations of load restrictions. He said the \$20 penalty imposed under law is a moving violation, and the \$100 penalty for operating an overweight vehicle without a permit or in violation of permit conditions is a noncriminal violation. He said the Highway Patrol has an overload enforcement guideline ([Appendix D](#)) to provide direction for Highway Patrol officers in enforcing load restrictions.

In response to a question from Representative Klemin, Mr. Aaron Birst, North Dakota Association of Counties, said only a few counties submit extraordinary road use fees to the Highway Patrol because most counties do not have a functioning system or program to enforce load restrictions. He said the counties generally do not have scales and need to rely on the Highway Patrol for enforcement. He said he would contact representatives in the counties to see if any fees in addition to those listed in the document provided by Major Kleppe are collected by the counties. However, he said, he believes the general practice is that counties submit fees that are collected by the counties to the Highway Patrol and also rely on the Highway Patrol to conduct enforcement for overloaded vehicles.

Mr. Ouradnik said Slope County does not have scales. Therefore, he said, the county relies on the uniform permitting system to make the process user-friendly. He said other counties likely are similarly situated with respect to the ability to conduct enforcement.

At the request of Chairman Klemin, commission counsel reviewed a bill draft [[13.0036.01000](#)] that would allow counties to retain extraordinary road use fees collected in that county for the support of the county road system. He said the bill draft also establishes a process for a review of regulation by counties of excessive size and weight regulation enforcement. He said the director of the Department of Transportation would be required to conduct semiannual reviews of the performance of each county's enforcement of oversize and overweight vehicle regulations and after multiple notifications of deficiencies may order the State Treasurer to withhold monthly distributions of funds from the highway tax distribution fund to a county until the county has submitted a plan for remedying any deficiencies identified by the director.

In response to a question from Representative Klemin, commission counsel said the review portion of the bill draft is similar to South Dakota law and is somewhat subjective.

Chairman Klemin said because there were concerns expressed during the 2011 legislative session with respect to overzealous enforcement of load restrictions, the bill draft may need to be revised to address overenforcement by counties.

Mr. Birst said the Association of Counties supports the concept of extraordinary road use fees being returned to the counties for use for county road purposes. He said the bill draft would clarify that the funds returned to the counties must be used for road purposes. He said the review process provided for in Section 3 of the bill draft appears to be a concept that counties would support.

Ms. Sandy Clark, North Dakota Farm Bureau, said the bureau has concerns with overzealous enforcement of road weight and size regulations. She said the limited amount of enforcement by counties indicates that there is not a problem. If there was a significant problem, she said, counties would be collecting more fees. She said counties would be enforcing regulations more strictly if there was truly a concern with the destruction of roads. She said Section 3 of the bill draft appears to be in opposition to the concerns of the bureau in that it would require reviews of the diligence in counties enforcing overweight and oversize limitations.

In response to a question from Representative Klemin, Ms. Clark said she would consider other approaches to the provisions of Section 3 of the bill draft if more objective standards were provided.

In response to a question from Mr. Riha, Ms. Clark said an example of overzealous enforcement is related to beet trucks in the eastern part of the state which were determined to be of a legal weight when loaded but when stopped by law enforcement were found to be overweight. She said overzealous enforcement is due to the fact that fees for violations can be a revenue source for a county and not related to protection of county roads.

Mr. Riha said if someone is in violation of a law that person should be held accountable.

Representative Klemin said the bill draft requires the fees collected by counties to be used for county road purposes and not be a source of revenue for other purposes. He said approximately 25 percent of the total collections statewide in 2011 were in Williams County. Considering the large volume of overweight vehicle traffic in that county, he said, there would seem to be significant potential for serious damage to county roads.

In response to a question from Representative Klemin, Ms. Clark said if county officials simply were concerned about road damage, counties would enforce load limitations without remuneration. Although most of the enforcement near the beet facilities was performed by the Highway Patrol, she

said, local enforcement would likely increase if local governments could retain the fees.

Chairman Klemin said the commission will review the bill draft again at its next meeting. He requested the Legislative Council staff to work with representatives of the Department of Transportation and other interested parties to examine alternatives to the provisions of Section 3 of the bill draft.

Mr. Wade Enget, Mountrail County State's Attorney, said under the existing law, a county official or law enforcement officer likely will call the Highway Patrol to handle potential oversize or overweight violations. If there is a violation, he said, the Highway Patrol will turn the matter over to the county state's attorney for the civil collection process, and the proceeds of the collection process are sent to the state. He said the condition of county roads has deteriorated greatly in the last two years due to the increased traffic associated with energy development. In addition, he said, township roads have been severely affected. He said he would like to see counties have the ability to negotiate with the Highway Patrol to split the fees collected because he does not foresee the counties gaining the ability to have a significant level of enforcement. He said county deputies generally receive a list of permitted vehicles and will stop a vehicle that does not appear to be on that list and which appears to be overweight or oversize. However, he said, law enforcement has too much to do to be overzealous in its enforcement of load restrictions.

Representative Beadle said the reference in Section 3 of the bill draft to a written plan being required to prevent the withholding of distributions should probably refer to a satisfactory written plan, and the section should have objective standards.

It was moved by Representative Beadle, seconded by Representative Guggisberg, and carried on a voice vote that the Legislative Council staff be requested to work with the Department of Transportation in developing objective standards and to revise the bill draft to incorporate any proposed objective standards as well as adding the word "satisfactory" with respect to the written plan.

Representative Heller said Section 3 of the bill draft could be a problem due in part to the fact that a similar bill failed to pass during the last legislative session.

Representative Klemin said the point of Section 3 of the bill draft is to provide some oversight over local enforcement to see that the enforcement is diligent but not overzealous.

Representative Beadle said he would like to have representatives of the Department of Transportation provide any information regarding the potential added full-time equivalent positions as a result of the oversight function contained in the bill draft.

In response to a question from Representative Klemin, Mr. Birst said the \$100 fine for operating a motor vehicle that is oversize or overweight without a

permit is too low. However, he said, most traffic violations in this state are low compared with most other states. He said the real concern of counties is the ability to retain extraordinary road use fees.

DISASTER RESPONSE AND MITIGATION

At the request of Chairman Klemin, commission counsel reviewed a bill draft [\[13.0037.01000\]](#) relating to liability and immunity during disaster responses.

Representative Klemin said there has never been a situation in which compensation has been provided under North Dakota Century Code Section 37-17.1-12(3) when the use or destruction was ordered by the Governor. He said the provision for allowing for compensation has failed its purpose, and under the law no one would ever be compensated unless the Governor directly ordered the use or destruction of the property.

Mr. Riha said the word "negligently" on line 19, page 2, of the bill draft is duplicative and should be removed.

It was moved by Mr. Riha, seconded by Mr. Frye, and carried on a voice vote that the Legislative Council staff be requested to revise the bill draft to remove "negligently" on line 19, page 2, of the bill draft.

Chairman Klemin requested commission counsel to invite representatives of the Department of Emergency Services to review the bill draft and comment on the bill draft at the next meeting of the commission.

GROUP HOUSING REGULATION

Chairman Klemin called on Mr. Gene Buresh, Roosevelt Custer Regional Council, for comments regarding group housing regulation. Mr. Buresh said he has been working with planning and zoning commissions in cities and counties in the southwestern part of the state over the last four years to assist in the development of zoning regulations. He said the cities and counties are examining the issue of group housing and have had the benefit of the experience of the counties in the northwestern part of the state in developing enforceable ordinances. Although city and county officials recognize the need for group housing, he said, there is a need to regulate the housing. He said group housing relieves pressure on rental and housing markets and helps avoid the "crowding-out" effect which tends to force longtime residents to move because they are no longer able to afford housing. He said a 1,000-bed man camp can have a significant impact on the infrastructure and resources of a city or county, and most small communities lack the infrastructure to support large temporary housing settlements.

Mr. Buresh said a significant issue to address is the definition of group housing. He said Chapter 57-02.4 provides a definition with respect to the state tax laws. However, he said, that definition is not directly applicable to planning and zoning

ordinances. He said there are generally two types of group housing. He said closed housing is group housing leased to employees of a company at which the company likely provides lodging, food service, laundry facilities, and other amenities. He said closed housing is generally well-run. He said the second type of housing is open housing in which two or three recreational vehicles or mobile units may be located together and which generally is not well-regulated. He said planning and zoning ordinances generally try to discourage the open housing type of lodging due to health and safety issues. Although most jurisdictions do not want to prevent a farmer or rancher from making some extra money, he said, health and safety issues along with emergency management concerns make this type of arrangement less desirable. He said a restrictive definition of group housing would reduce or eliminate the small open camps that tend to pose more problems.

Mr. Buresh said the enforcement of planning and zoning ordinances poses a problem for cities and counties that do not have the personnel or the expertise necessary for enforcement. He said most cities and counties in the southwest portion of the state have no building inspectors or code enforcement officials. He said the regional council is working to obtain grants to help provide inspectors to work on a regional basis but has been unsuccessful in that pursuit. He said there are also issues with respect to cities and counties having the legal staff to pursue enforcement actions.

Mr. Buresh said Williams and Mountrail Counties have established moratoriums on the siting of group housing. He said Dunn County has received an application for a 2,000-bed camp, and the city of Dickinson is negotiating on a 3,000-bed facility.

In response to a question from Representative Klemin, Mr. Buresh said a strict definition of group housing is important in the development of an enforceable ordinance. In addition, he said, assistance is needed to provide enforcement. He said he has no problem with not being allowed to tax the facilities because local jurisdictions have the ability to impose permit fees.

In response to a question from Representative Heller, Mr. Buresh said some of the closed camps have onsite management to handle security and other issues. However, he said, not all camps are run in that manner.

In response to a question from Representative Klemin, Mr. Buresh said local jurisdictions may attach requirements and conditions in the plan for a group housing facility to require the operator of the facility to identify the location of each unit and who is residing in the unit for security and emergency management purposes. He said the permit can require the operator to update names and locations weekly and may provide for background checks of residents.

In response to a question from Mr. Bieri, Mr. Buresh said the State Department of Health

handles health inspections but does not have enough staff to frequently monitor group housing facilities.

In response to a question from Representative Klemin, Mr. Buresh said McKenzie County has been the only county to not have a comprehensive plan and a zoning ordinance. However, he said, the county has begun the process to adopt a plan and a zoning ordinance. He said Watford City has a zoning ordinance to try to control growth in and near that city. He said the existing camps in McKenzie County will likely be grandfathered in as nonconforming uses but may lose that status after a period of nonuse or if the property is improved significantly. He said he is unsure whether the nonconforming use can be amortized.

Chairman Klemin called on Mr. Don Longmuir, Mountrail County zoning administrator and planner, for comments regarding group housing regulation. Mr. Longmuir said there has been an explosion of group housing facilities in Mountrail County. He said the 2011 census for the county indicated there were approximately 8,000 people living in the county. He said that number has likely risen by 3,000 to 4,000 with the number of temporary housing beds in the county. He said the board of county commissioners imposed an 18-month moratorium on the siting of group housing facilities to allow for the buildup of infrastructure in the county. He said there are problems with water supply and sewage disposal as well as demands on ambulance services and fire departments. He said the number of calls at emergency rooms doubled between 2008 and 2009 and doubled again between 2009 and 2010. He said the amount of unpaid bills at hospitals has increased significantly. Because of the establishment of multilevel buildings in rural areas, he said, fire departments need ladder trucks to reach the upper floors. Because of the increase in housing, he said, septic services are taxed and will require upgrading. He said ambulance services and law enforcement have trouble finding locations to respond to emergency calls. Because of problems with law enforcement officials and emergency responders locating housing when responding to calls, he said, permit conditions for group housing will include the requirement that maps with numbered units be provided to the county and the requirement that all residents have criminal background checks to help keep track of the significant increase in the number of sexual offenders moving into the area.

Mr. Enget said the amount of growth in Mountrail County during the last five years has been amazing. He said he often tells people to be careful for what they wish for because the pace of development is difficult to manage. He said the definition of crew housing in Section 57-02.4-01 likely should be changed to include recreational vehicle parks that have been turning into long-term housing facilities. He said there are a significant number of people living in campers over the winter months. He said county and city officials need to reassess the regulation of

group housing. Because of the moratoriums in place, he said, there are attempts to bend the rules. Therefore, he said, county officials are working to monitor the situation closely. Although there are many good things associated with energy development in the western portion of the state, he said, it is important to consider the problems that need to be addressed. Doing so, he said, takes time and resources. He said there have been requests to waive building code regulations and inspections which the county will not do. Although the closed camps are generally well-run, he said, it remains important to emphasize the need to maintain good records to the operators of the camps.

In response to a question from Representative Klemin, Mr. Enget said he is not concerned with the definition of crew housing with respect to taxation of the facilities. However, he said, he is concerned with the regulation of the facilities and including recreational vehicles within the definition of crew housing or group housing. He said the 18-month moratorium on the permitting of group housing was imposed in September 2010. Because many of the conditional use permits for group housing were issued on a five-year basis, he said, a number of permits will be up for review during the next year. He said the largest camp in the county is located outside Stanley and houses about 500 people.

At the request of Chairman Klemin, commission counsel reviewed [zoning regulations](#) from a number of cities and counties which were submitted by representatives of the cities and counties.

Chairman Klemin said the commission should continue to encourage cities and counties to submit group housing regulations and ordinances and updates to those regulations and ordinances to the Legislative Council so that other political subdivisions may review the work that has already been done. He requested the Legislative Council staff to try to provide a repository and a link on the legislative branch web page for the ordinances that are submitted.

In response to a question from Mr. Ouradnik, Chairman Klemin said the commission should focus on the definition of crew housing for health and safety purposes rather than taxation issues.

FIRE SERVICE CONCERNS

Chairman Klemin called on Ms. Renee Loh, North Dakota Firefighters Association, for comments regarding issues related to fire service agencies in the state. Ms. Loh submitted written information ([Appendix E](#)).

Chairman Klemin called on Mr. C. J. Craven, North Dakota Fire Chiefs Association, for comments regarding fire service agencies. Mr. Craven said fire departments in the state are struggling to do more because of changes in the state. He said there has been a significant increase in the amount of crude oil being transported by trucks and trains throughout the state, and the volume of traffic on highways in the state has increased significantly which has resulted in

a substantial increase in the number of automobile accidents. He said fire services are primarily responsible for extraction in automobile accidents. He said the cost of a new ladder truck is approximately \$900,000, and fuel costs for fire services have increased significantly. In addition, he said, other costs for fire services are significant, including approximately \$2,500 for gear for a firefighter, \$500 for a self-contained breathing apparatus, \$350,000 to \$450,000 for a pumper truck, \$25,000 for an extraction device, and up to \$10,000 for thermal imaging cameras. He said the distribution to fire service agencies from the insurance tax distribution fund has been at the same level since 2005. Of the \$6 million in collections going into the insurance tax distribution fund, he said, approximately \$3.1 million went to fire departments. He said \$335,000 was provided to the North Dakota Firefighters Association for firefighter training. Although the amount of premiums going into the insurance tax distribution fund has increased significantly since 2005, he said, funding for fire services has remained stable. He said there have been major changes in the state and in the need for fire services since 2005. He said fire services are generally the first to respond to accidents, such as truck and train accidents, which are increasing significantly.

In response to a question from Representative Heller, Mr. Craven said the funds that are not distributed to fire departments from the insurance tax distribution fund go to the general fund.

Representative Guggisberg said insurance premium tax allocations have decreased over the years. He said 1.75 percent of the premium for five different lines of insurance is distributed into the insurance tax distribution fund.

In response to a question from Representative Klemin, Mr. Craven said fire service officials have been working to pursue different funding sources to support training and other services. He said the funding provided by political subdivisions varies by the type of fire service offered. He said fire services are not looking for state assistance for normal services to communities but need help dealing with other added activities.

In response to a question from Representative Klemin, Ms. Loh said the firefighters association provides regional training and is looking at providing training for big rig accidents out of energy impact grant funds that have now become available.

Mr. Yantes said funding of fire services is an important issue, and local fire services need additional help to address additional burdens upon the services.

MISCELLANEOUS DISCUSSION

Chairman Klemin said the commission will review second drafts of the two bill drafts considered at this meeting and will continue to serve as a repository for group housing information. He requested the Legislative Council staff to prepare a draft of a study resolution to examine infrastructure demands and health and safety requirements as well as enforcement and handling of violations related to group housing.

No further business appearing, Chairman Klemin adjourned the meeting at 12:05 p.m.

John Bjornson
Commission Counsel

ATTACH:5