NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

ECONOMIC IMPACT COMMITTEE

Monday, November 18, 2013
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Dave Oehlke, Chairman, called the meeting to order at 9:00 a.m.

Members present: Senators Dave Oehlke, Tom Campbell, Ron Carlisle, Mac Schneider, Terry M. Wanzek; Representatives Thomas Beadle, Rick Becker, Joshua A. Boschee, Mike D. Brandenburg, Ed Gruchalla, Nancy Johnson, Matthew M. Klein, Vernon R. Laning, Gary R. Sukut

Members absent: Senator George B. Sinner; Representative Bob Hunskor

Others present: See Appendix A

It was moved by Representative Sukut, seconded by Senator Wanzek, and carried on a voice vote that the minutes of the October 8, 2013, meeting be approved as distributed.

TRANSPORTATION INFRASTRUCTURE STUDY

Chairman Oehlke called on Mr. Grant Levi, Director, Department of Transportation, for a presentation (Appendix B) regarding the committee study of transportation infrastructure.

In response to a question from Representative Klein, Mr. Levi said the 2.5 percent rate in the Tribal Employment Rights Ordinance agreement is negotiated with tribal governments and is done on a project-by-project basis. He said some states, including South Dakota, use a blanket rate for all projects. He said the Tribal Employment Rights Ordinance agreement provides training programs to help develop workforce for construction projects in tribal areas.

In response to a question from Senator Oehlke, Mr. Levi said 16 tribes are part of the department's tribal consultation process. He said the tribal safety programs are effective, and the department is working with tribal governments to get data to provide crash histories.

In response to a question from Representative Gruchalla, Mr. Levi said the law enforcement crash reports include a section that allows a law enforcement officer to include comments. He said it is not uncommon for law enforcement officers to contact the department with safety and engineering concerns on highways.

In response to a question from Senator Oehlke, Mr. Levi said Bureau of Indian Affairs funding for roads was based on tribal mileage. However, he said, some changes were made in Moving Ahead for Progress in the 21st Century (MAP-21), so population is also considered a factor now.

In response to a question from Representative Klein, Mr. Levi said it is difficult to make planning decisions for highways when there is uncertainty regarding whether federal funds will be available. He said the state received the last of the 2013 federal funding in August.

In response to a question from Senator Carlisle, Mr. Levi said representatives of the department will have to engage in discussions with members of the Legislative Assembly about how to address the potential drastic decrease in federal transportation funding in 2015. He said some states are funding transportation projects at the projected 2015 federal budget levels. However, he said, he is optimistic there will be a fix with respect to the federal funding.

Senator Carlisle said the state will need to be prepared to consider budgeting additional state funds to replace the reduced federal funding.

In response to a question from Senator Oehlke, Mr. Levi said the design-build bidding tool used in many other states has not been used here. He said the 2013 Legislative Assembly decided not to adopt legislation authorizing the use of that process. Although the department has pushed for the authorization of that process in the past, he

said, changes in MAP-21 have allowed for quicker movement on projects. He said the state also has been able to move more quickly on state-funded projects, and the department is working through design stages at the same time as environmental reviews are being done to reduce the time it takes to prepare for the commencement of a project. Therefore, he said, design-build is not as urgent of a need as it may have been in the past.

In response to a question from Representative Brandenburg, Mr. Levi said if there are no changes in federal funding for 2015, the state would likely have to increase its funding. He said the state received $680 million in federal funds for this biennium.

In response to a question from Senator Oehlke, Mr. Levi said representatives of the department participate in various national and regional groups that address highway design and standards issues.

Chairman Oehlke called on Mr. Richard McCloud, Chairman, Turtle Mountain Band of Chippewa Indians, for comments (Appendix C) regarding tribal transportation concerns.

In response to a question from Senator Carlisle, Mr. McCloud said he has not considered seeking a loan or entering an agreement with the Three Affiliated Tribes to obtain funding for Jack Rabbit Road. He said it is something he will discuss with the Chairman of the Three Affiliated Tribes. He said the Turtle Mountain Band of Chippewa Indians has a no-fracking law in place due to concerns with water resources. He said there appears to be potential for expansion of fracking into Rolette County.

In response to a question from Representative Brandenburg, Mr. McCloud said Jack Rabbit Road is classified as a Bureau of Indian Affairs road. He said the tribe has received no money for work on that road from the state.

In response to a question from Senator Oehlke, Mr. Ronald Trottier, Transportation Director, Turtle Mountain Band of Chippewa Indians, said the Bureau of Indian Affairs has not provided funding for Jack Rabbit Road. He said road funding for Bureau of Indian Affairs' roads, such as Jack Rabbit Road, comes from the tribal transportation program. He said funding for that program was based upon a formula with certain contingencies. He said the tribe receives approximately $1.8 million annually for road funding under that program. He said the annual funding amounts are generally used for the tribal supplementary road maintenance program, and not much is available for reconstruction or construction. During the 1970s, he said, the Bureau of Indian Affairs narrowed road tops in an effort to save money.

In response to a question from Representative Brandenburg, Mr. Trottier said Jack Rabbit Road connects Dunseith and Belcourt. He said the construction of the road would cost about $20 million.

In response to a question from Senator Wanzek, Mr. Trottier said county and township road funds are not used on Bureau of Indian Affairs' roads. He said upgrades have been made by the state to State Highway 5, which crosses tribal lands.

Mr. McCloud said federal sequestration hits the tribes significantly. He said tribes are likely to be impacted significantly again after January 15 when funding may be cut again. Once funding is cut, he said, it is never replaced. He said he has developed a plan to implement over the next five years, which would provide a percentage of gaming revenue to help create jobs to maintain roads in the future. However, he said, gaming revenue for tribes in sparsely populated areas is not significant. He said it is important to find funding to reconstruct Jack Rabbit Road due to safety concerns, and he will continue to search for solutions and funds that may become available.

Chairman Oehlke said he invited Mr. McCloud to give a presentation at this meeting to highlight the problem and to examine solutions to the problem.

In response to a question from Representative Beadle, Mr. McCloud said sequestration will likely result in reduced funding for the tribal transportation program.

Mr. Trottier said Bureau of Indian Affairs road maintenance funding has been cut significantly.

In response to a question from Representative Klein, Mr. McCloud said the money generated from registration of vehicles by the tribe is minimal and is likely not sufficient to fund a bike path.

Chairman Oehlke called on Mr. Brady Pelton, North Dakota Association of Oil and Gas Producing Counties, for a presentation (Appendix D) regarding oil tax distributions in North Dakota and in other states.

Mr. Pelton said the state is seeing an epic opportunity and will likely see oil production increase to over one million barrels per day. He said the oil production collections for the 2011-13 biennium were $3.8 billion. He said the 5 percent gross production tax was established in lieu of property taxes.

In response to a question from Senator Oehlke, Mr. Pelton said Burke County will likely exceed $5 million in gross production tax receipts during this next biennium.

In response to a question from Senator Carlisle, Mr. Pelton said the North Dakota Association of Oil and Gas Producing Counties will continue to advocate on behalf of its membership on the energy impact fund and the use of the gross production tax revenue. He said the funding formula is vital in establishing local budgets. He said an ongoing revenue source is needed, and it is important to know revenue projections for planning and bonding purposes.

In response to a question from Representative Brandenburg, Mr. Pelton said nine of the oil and gas-producing counties are over the $5 million gross production tax receipt threshold. He said it is difficult to establish a cutoff line for funding purposes. He said school districts are seeing a significant impact and would like to see some relief of the strain, particularly for districts near the threshold.

Senator Wanzek said counties that are not oil and gas-producing counties are also feeling the impact of the energy boom. He said the Jamestown area has had two recent bank robberies, and the number of sheriff calls has more than doubled over a two-year period. He said much of the increase in crime can be attributed to the traffic through the area as a result of the oil development.

In response to a question from Senator Oehlke, Mr. Pelton said Alaska was not included in the comparison done in the Headwaters study because the oil extraction in Alaska is through conventional drilling.

In response to a question from Representative Becker, Mr. Pelton said the study addresses typical unconventional wells. He said the significant change in the Oklahoma revenue collection after four years may be due to incentives ending.

In response to a question from Representative Gruchalla, Mr. Pelton said there may have been a change in the tax rate in Montana after 2012. He said he will attempt to find additional information regarding the Montana tax rate.

In response to a question from Senator Oehlke, Mr. Pelton said the revenue allocations in this state are regressive with respect to the distribution to the local political subdivisions. He said the money is collected by the state and then allocated to the local governments. He said four of the seven states surveyed return a greater share of oil production tax revenues to local entities.

In response to a question from Senator Schneider, Mr. Pelton said it appears that Wyoming provides four times as much of the oil production tax revenues to local entities. He said the total amount of the tax returned to local entities in this state is about 11 percent, not including energy impact grants. He said the impact funds are not considered state funds. Including those funds, he said, approximately 15.7 percent of the total share of the gross production tax is allocated to local governments.

In response to a question from Senator Oehlke, Mr. Pelton said a statement of legislative intent regarding future funding would help provide some certainty to local governments with respect to future planning.

CHILD CARE AVAILABILITY STUDY

After a recess to tour the Missouri Valley YMCA child care facility, Chairman Oehlke reconvened the meeting.

Chairman Oehlke called on Mr. Kelvin Hullet, Bismarck-Mandan Chamber of Commerce, for a presentation (Appendix E) regarding child care availability in the Bismarck and Mandan area.

In response to a question from Representative Becker, Mr. Hullet said he will try to provide additional information regarding the survey results with respect to being able to attract and retain qualified employees.

In response to a question from Senator Oehlke, Mr. Hullet said there have been a couple of businesses that have examined the potential to open large day care centers in Bismarck. However, he said, the cost of construction and remodeling is very high in the community, and in one case there was opposition from the neighborhood the proposed center was to be located. He said no incentives have been offered to establish a large-scale day care center.

In response to a question from Representative Boschee, Mr. Hullet said some day care centers have closed due to the challenge of attracting employees and providing competitive wages.

Chairman Oehlke called on Ms. Carol Cartledge, Department of Human Services, for comments (Appendix F) regarding the committee study of availability of child care.

In response to a question from Representative Becker, Ms. Cartledge said the subsidy available for child care assistance for children attending child care centers is higher due to the higher cost of care. In addition, she said, the federal government encourages incentives for quality of care, which the day care centers generally provide.

In response to a question from Senator Carlisle, Ms. Cartledge said the computer system used by the Department of Human Services for child care assistance is approximately 30 years old. She said a new computer system will allow for online applications and administration. She said although there is funding in the Governor's budget for this biennium for an upgrade to the system, the system may not be ready for the next biennium. She said the data needed to generate child care assistance payments is entered at the county level.

In response to a question from Representative Boschee, Ms. Cartledge said paying a provider in advance is not prohibited by the federal government. She said the procedure is likely based upon past experience and the difficulty in having to collect overpayments. She said the child care assistance program is state-supervised and administered at the county level. She said the department can try to work with counties to look at methods to improve the payment process.

In response to a question from Representative Boschee, Ms. Jennifer Barry, Department of Human Services, said the department has ordered the closure of three day care centers in the last four years. She said the most recent closure in Mandan was due to a number of violations that were reported, including the ratio of staff to children, health and safety violations, substandard condition of the facility, and incomplete background checks. She said the department issued a notice to revoke the license of the facility and referred the facility to a child care consultant to attempt to help bring the facility into compliance. However, she said, the facility did not comply.

In response to a question from Senator Carlisle, Ms. Barry said 60 children were displaced when that center closed. She said the county child care office and Child Care Aware of North Dakota referred parents to openings in the community. Although it appears that most parents found spots for their children, she said, some of the solutions were likely temporary or informal providers, such as family or friends.

Chairman Oehlke called on Ms. Linda Reinicke, Child Care Aware of North Dakota, for a presentation (Appendix G) regarding the committee's study of availability of child care.

In response to a question from Senator Campbell, Ms. Reinicke said the economic impact study did not address the issue of the quality of care with respect to a child being placed in day care versus staying at home with a parent. She said studies have shown that child care centers provide a high quality of care. However, she said, a child care center generally is not a substitute for a parent. Nonetheless, she said, child care is needed when a parent must go to work or go to school. She said many European countries provide incentives for parents to stay home to care for children.

In response to a question from Senator Wanzek, Ms. Reinicke said although providing incentives to parents to stay home is an option, determining the goal to be achieved must take into consideration the reality in our country that women and men both work outside the home. She said no other state is facing the challenges faced in this state at this time with respect to the availability of child care. She said all options must be examined, but it is important to look at the problem that is existing now.

In response to a question from Senator Oehlke, Ms. Reinicke said although the brain is incredible in the way it can develop and can recover from injury or other events, it is important to lay a good foundation for children when the brain is in its developmental stage. She said through child care assistance programs, efforts are made to try to teach providers how to properly care for children.

In response to a question from Representative Becker, Ms. Reinicke said she will attempt to find additional information regarding child care capacity before 2009.

Representative Becker said 50 percent may not be the appropriate baseline when determining child care needs with respect to capacity. He said employee turnover is high throughout the area and throughout the spectrum of employment. He said $10 per hour is the de facto minimum wage in Bismarck. Through the expansion of the child care assistance subsidies, he said, child care providers should be able to increase the wages paid to employees.

He said the child care availability crisis is similar to the problems being faced by most business models in the area and will likely work itself out in a few years. With the increase in personal income in the state, he said, parents and providers will likely be able to pay more.

Ms. Reinicke said capacity has been a problem for at least a decade and has worsened, particularly in energy-impacted areas. She said child care providers are not able to generate enough income and have a very narrow 2 to 3 percent profit margin. Because the only place a provider can go for additional money is the parents, she said, it is difficult to increase employee wages. Although there is additional money available through child care assistance, she said, parents and providers have been slow to access that funding. She said one barrier to the child care assistance program is the reluctance by parents to accept assistance. She said child care center directors fear increasing costs because those who do not receive child care assistance will also be affected by those increased costs. An additional problem with the child care assistance program, she said, is that the message going to parents is that the parents will have more money in their pockets, rather than fees will be increased.

In response to a question from Representative Boschee, Ms. Reinicke said representatives of Child Care Aware of North Dakota met with day care center directors and told them how important it is to raise fees. However, she said, the center directors are nervous about increasing fees.

Chairman Oehlke called on Mr. Wayde Sick, Department of Commerce, for comments (Appendix H) regarding child care grants.

In response to a question from Representative Laning, Mr. Sick said most grants awarded were for increasing child care center space. However, he said, some grants were provided for equipment.

STAFF DIRECTIVES AND MISCELLANEOUS MATTERS

Chairman Oehlke said the committee will likely meet again in January.

Senator Carlisle requested the Department of Transportation to provide a status report on highway projects at the next meeting.

Senator Wanzek requested the Legislative Council staff to provide information regarding tax credits available for parents and for providers which relate to child care.

No further business appearing, Chairman Oehlke adjourned the meeting at 3:20 p.m.

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John Bjornson
Assistant Code Revisor

ATTACH:8