

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

ECONOMIC IMPACT COMMITTEE

Wednesday, June 25, 2014
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Dave Oehlke, Chairman, called the meeting to order at 8:30 a.m.

Members present: Senators Dave Oehlke, Tom Campbell, George B. Sinner, Terry M. Wanzek; Representatives Thomas Beadle, Rick Becker, Joshua A. Boschee, Mike D. Brandenburg, Ed Gruchalla, Bob Hunskor, Matthew M. Klein, Vernon R. Laning, Gary R. Sukut

Members absent: Senators Ron Carlisle, Mac Schneider; Representative Nancy Johnson

Others present: See [Appendix A](#)

It was moved by Representative Laning, seconded by Senator Sinner, and carried on a voice vote that the minutes of the April 30, 2014, meeting be approved as distributed.

TRANSPORTATION INFRASTRUCTURE STUDY

Mr. Grant Levi, Director, Department of Transportation, presented a report ([Appendix B](#)) relating to highway funding, road and bridge projects, and the North Dakota freight plan. He said the transportation spending amounts summarized in his presentation do not include county projects that have been bid separately. He said \$1.5 billion of the available \$2.3 billion has been used in the transportation districts in the western portion of the state. However, he said, there are more projects in the central and eastern portions of the state which are mostly preventative maintenance in nature. Although much of the county funding has not been distributed, he said, projects are underway and the funds will be distributed. He said there is a reason to be concerned with the federal funding situation, and there could be delays in payments from the federal government in August or September. He said he also is concerned with changes in federal funding philosophy which would shift from a formula approach to a greater investment in metropolitan areas.

In response to a question from Chairman Oehlke, Mr. Levi said although there likely will be delays in receiving federal funding this year, the state will eventually receive payments for obligations made for this year. He said the payments generally are received upon completion of the work. With no additional allocation in 2015, he said, the state would lose approximately \$240 million in federal funding during that year. However, he said, the department is continuing to plan as if the state will receive the federal funds. He said he believes the federal funding situation will be resolved.

In response to a question from Representative Hunskor, Mr. Levi said the state will honor obligations to contractors that are working on projects. He said the delay in federal reimbursement likely will not be too long, and the state will attempt to leverage available funds to pay contractors.

In response to a question from Senator Sinner, Mr. Levi said the source of the funds in the federal highway trust fund is fuel and gas taxes. He said the tax rate has been the same since approximately 1993. Since 2001, he said, the cost of building a highway has increased about 12 percent per year in this state. He said tax collections have been affected by the use of more fuel efficient vehicles and the use of nontraditional fuels. As a result, he said, despite the increase in vehicle miles traveled, there has been a decline in the amount of revenue collected over the last decade. He said officials in Oregon have been examining alternative means of collecting fees to address miles driven by vehicles using nontraditional fuels.

In response to a question from Representative Brandenburg, Mr. Levi said there are options under state law to use the Bank of North Dakota to help the department meet obligations to contractors if there are assurances of federal reimbursement.

In response to a question from Chairman Oehlke, Mr. Levi said he was not certain if that type of payment flexibility exists to address projects with reimbursement from the Federal Emergency Management Agency.

In response to a question from Representative Gruchalla, Mr. Levi said the Oregon Legislature provided for a study to examine 5,000 drivers using different types of vehicles with the purpose of identifying alternative methods for transportation funding. He said this study will involve having a private sector vendor examine travel patterns rather than have the government track travel patterns by drivers. He said the department was approached with respect to participating in a similar study, and the department is considering options.

In response to a question from Representative Hunsakor, Mr. Levi said 2013 House Bill No. 1358 provided \$280 million in funding for county road projects. He said the funding allocation provisions in the bill were based upon the needs study conducted during the previous interim by the Upper Great Plains Transportation Institute. He said the department works with counties to identify and help prioritize projects.

CHILD CARE AVAILABILITY STUDY

Chairman Oehlke called on Ms. Linda Reinicke, Child Care Aware of North Dakota, for a presentation ([Appendix C](#)) relating to activity resulting from 2013 child care legislation, the early childhood care system, and employer-supported child care. Ms. Reinicke said although the state has experienced increased child care capacity during the last 12 months, there is no easy method of capturing data regarding employer-provided child care. She said the adoption of an ordinance in Fargo which requires outside playtime for children in child care centers is an example of local government regulatory actions that affect the child care industry. She said the change in eligibility for child care assistance has not resulted in higher day care fees to support higher salaries in day care centers. She said center directors have been reluctant to increase fees for paying parents.

In response to a question from Representative Laning, Ms. Reinicke said the outside playtime ordinance in Fargo likely includes a requirement for minimal playtime even in extreme weather conditions. She said when she ran a day care center, she always tried to get the children fresh air on a regular basis even if it was for a short time. She said the ordinance in Fargo was promoted by the Cass County Public Health Department in part as a method to provide more physical activity for children and reduce obesity.

In response to a question from Representative Becker, Ms. Reinicke said although most of the child care assistance funding comes from the federal government, the state appropriated \$2.5 million in 2013 for this biennium to increase access to the assistance.

In response to a question from Senator Campbell, Ms. Reinicke said it would benefit the state if child care operators, Head Start programs, and prekindergarten programs could work together more closely.

In response to a question from Chairman Oehlke, Ms. Reinicke said she is unaware of any employer-operated child care programs outside the program operated in Tioga. She said many businesses and business owners lack the time and the capacity to provide onsite child care programs. However, she said, Child Care Aware of North Dakota is willing to help share information that would assist business owners in determining whether an onsite day care is feasible.

In response to a question from Representative Gruchalla, Ms. Reinicke said she is unaware of any cost analysis that has been done with respect to the cost of private school attendance beginning at the day care level.

Chairman Oehlke called on Ms. Shari Doe, Director, Children and Family Services Division, Department of Human Services, for testimony ([Appendix D](#)) regarding local ordinances affecting child care providers.

In response to a question from Representative Hunsakor, Ms. Doe said she does not know what the \$525 special use permit required by Watford City covers. She said several cities have fees that cover inspections.

In response to a question from Representative Becker, Mr. Paul Kramer, Assistant Director, Fiscal Administration, Department of Human Services, said based upon current projections, the entire \$2.5 million appropriation provided by the 2013 Legislative Assembly for the child care assistance program will be spent during the biennium. He said the projections indicate that the funding for child care assistance may be approximately \$700,000 short at the end of the biennium.

Mr. Kramer reviewed a summary ([Appendix E](#)) of funding in 2013 legislation which relates to child care.

In response to a question from Senator Sinner, Ms. Maggie D. Anderson, Executive Director, Department of Human Services, said the change in the eligibility threshold for the child care assistance program was intended to bring more children into child care and also may have been intended to have the additional benefit of increasing salaries for child care employees.

In response to a question from Representative Sukut, Ms. Anderson said if a home day care is not licensed, the day care may not be eligible for participation in certain programs. In addition, she said, the operation of the day care is not monitored and background checks of caregivers are not required. She said there are many good home providers that are not licensed. She said if the department or a social service agency receives a complaint regarding a home day care operator, the complaint would typically come from a parent who has a child in the day care.

In response to a question from Representative Hunskor, Ms. Doe said the nonlicensed home child cares will always serve a need. However, she said, the department has a concern with situations in which parents are so desperate for child care that they know nothing about a caregiver.

Representative Laning said it was his recollection during the 2013 legislative session the biggest emphasis for the change in the threshold for child care assistance was to retain day care staff with higher wages. He said he is disappointed that the change does not appear to have resulted in an increase in wages.

TRANSPORTATION INFRASTRUCTURE STUDY

Chairman Oehlke called on Dr. Denver Tolliver, Director, Upper Great Plains Transportation Institute, for a presentation ([Appendix F](#)) relating to county, township, and tribal roads and bridges infrastructure needs. Dr. Tolliver said the study has shown that there is an 18 percent increase in the estimated cost of needs for work on paved roads since the last study. He said the increase was partly due to the increase in construction costs. He said bridge investment costs also have increased slightly since the last study. He said the full report of the study will be complete by Tuesday, July 8, 2014. He said the institute will continue to study infrastructure needs and has received a request to look at the four major oil-producing counties more closely.

In response to a question from Senator Campbell, Dr. Tolliver said the study did not include an examination of the potential effect on roads and bridges of a proposal by commodity groups to allow an additional axle on trucks.

Mr. Tim Horner, Program Director, Transportation Learning Network, Upper Great Plains Transportation Institute, said he is not aware of any research on the potential effect of an additional axle. He said the effect on bridges would likely depend on the age of the bridge and the configuration of the axles.

In response to a question from Senator Sinner, Dr. Tolliver said the financial estimates in the report are based on 2014 dollars. He said there likely would be an increase in the costs for future years due to inflation, but inflation was not built into the cost estimates because of the unpredictability of costs.

In response to a question from Representative Brandenburg, Dr. Tolliver said the report suggests an option for reducing the backlog on bridge maintenance over a 10-year period.

Mr. Horner said it is difficult for county officials to prioritize bridge needs. However, he said, if the repairs are done incrementally, prioritization may be less difficult.

Dr. Tolliver said the institute can continue to look at bridge maintenance needs and provide information on prioritization.

In response to a question from Representative Becker, Dr. Tolliver said the needed expenditures during the first biennium are higher due to the backlog in repairs.

In response to a question from Senator Campbell, Dr. Tolliver said when determining whether to resurface or reconstruct a road, it is important to look at the soil conditions and the soil base. He said the cost of concrete construction is much higher than that of high-quality asphalt.

Mr. Horner said it is sometimes cheaper to reconstruct a road if the subgrade is poor.

In response to a question from Representative Sukut, Mr. Alan Dybing, Associate Research Fellow, Upper Great Plains Transportation Institute, said the estimates relating to oil-producing county roads changed significantly due to the increase in the number of oil wells. He said the study looks at the number of new oil wells being drilled each year, which is in the area of about 2,000. However, he said, the numbers are continually changing as technology changes.

Dr. Tolliver said the projections indicate that more oil will be moved by pipeline in the future.

In response to a question from Representative Brandenburg, Dr. Tolliver said the institute is working on a report relating to rail transportation in the state. He said a draft of the report should be available in August.

Chairman Oehlke called on Mr. Brian J. Sweeney, Regional AVP, State Government Affairs, Burlington Northern Santa Fe Railway, for comments regarding railroad infrastructure in the state and railroad safety. Mr. Sweeney said the issue of safely transporting crude oil by rail became a concern during the last year after the train accident in Quebec, Canada, and the derailment near Casselton. He said the rail industry has a strong safety record in this country and places an emphasis on safety. He said there has been an 80 percent reduction in the accident and incident rate. He said the Burlington Northern Santa Fe Railway Company (BNSF) is investing \$5 billion in capital improvements this year.

Mr. Sweeney said railroads generally do not own the tank cars. He said federal rules dictate what can be placed in tank cars, and it is the responsibility of the shipper loading the tank car to properly label the contents. He said BNSF adopted stronger standards than the federal standards with respect to tank cars and is examining proposals for building stronger tank cars. He said 60 percent of the tank cars in service carrying Bakken crude are newer tank cars that are built to higher standards. He said BNSF regularly inspects tank cars before departure and during use.

Mr. Sweeney said railroad tracks are built to federal standards, which determine the top speed. He said BNSF keeps the speed of oil cars lower than the federal standards. In addition, he said, BNSF inspects the track at a level above federal thresholds. After the crude oil rail accident in Canada, he said, BNSF adopted higher standards, including reduction of speeds and setting guidelines with respect to when a locomotive may be left unattended.

Mr. Sweeney said BNSF is continuing to increase community outreach with respect to local emergency response training. He said the company is working to accelerate the process for the adoption of federal mandates that help collision prevention. He said the company has placed trained emergency responders and emergency response equipment around the system, which are available to respond to accidents and hazardous materials releases. In addition, he said, the company provides a significant amount of training to local responders, including a scholarship program for emergency responders to go to a special training course in Colorado.

In response to a question from Representative Laning, Mr. Sweeney said along with regular digital inspections, routine visual inspections are done of the rails. Although reductions in speed affect productivity, he said, reductions are necessary in some circumstances to address track issues.

In response to a question from Representative Gruchalla, Mr. Sweeney said the United States Department of Transportation is working with the oil industry to determine the difference in volatility of Bakken crude and to determine appropriate placarding of the tank cars. He said BNSF concurs with the need to address those issues. He said the shipper is responsible for the proper labeling and loading of the product. He said the size of the tank cars is not a significant contributing factor in rail fatigue, and grain cars generally are heavier than the newer tank cars. He said the number of ton miles traveled affects the life of the rail.

In response to a question from Senator Sinner, Mr. Sweeney said about 20 percent of the \$5 billion investment being made by BNSF in 2014 is in the northern corridor, and about 10 percent of that is in North Dakota. He said it costs approximately \$2 million per mile to construct rail lines.

In response to a question from Senator Campbell, Mr. Sweeney said BNSF will own the new tank cars being developed.

In response to a question from Senator Sinner, Mr. Sweeney said BNSF is adding capacity to address the backlog of railcars for agricultural products. He said the surge in oil traffic last October, along with a late and compressed harvest, are factors in the backlog. In addition, he said, there has been growth in all commodity lines which also has contributed to the backlog. He said much of that growth has originated in North Dakota. In addition to those issues, he said, the harsh winter had a significant effect on the rail industry because the trains were required to go slower and have reduced length. He said the bottom of the backlog was hit in February, and it will take the rest of the summer to catch up. He said heavy rains in Minnesota and Iowa recently have affected traffic flow. Although the agricultural backlog has been a major concern, he said, the service problem has affected other traffic in the northern corridor. He said BNSF has added resources and capacity to address the problem. He said the federal Surface Transportation Board has been involved in the issue and has held hearings and is requiring the railroad to file regular reports regarding the backlog.

In response to a question from Representative Brandenburg, Mr. Sweeney said BNSF is bringing more locomotives into the state on a regular basis and is hiring people to address the service shortage. Although past-due orders are down by one-third, he said, the backlog on shuttle trains is still too high. He said the company is making progress, but the progress has not been fast enough.

Mr. Scott Rising, Legislative Director, North Dakota Soybean Growers Association, said he appreciates the investment the Legislative Assembly has made in the studies undertaken by the Upper Great Plains Transportation Institute. He said the studies are critical for the state, and he is thankful for the efforts of the Legislative Assembly and the Department of Transportation. He said there is a strong need for information to assist local decisionmakers and agricultural producers regarding the impact on roads due to increased use and the configuration of equipment. Although there is approximately a \$1 billion per biennium need for investment in roads and bridges, he said, the state is at approximately half that amount, and there may soon be the need to abandon some local roads without additional funding for repairs and maintenance.

Representative Brandenburg distributed a bill draft [[15.0155.01000](#)] that he had prepared which relates to the approval of local road remediation plans. He said townships are getting hammered with damage to roads due to development. Although he would like the committee to consider his bill draft, he said, he intends to introduce it regardless of whether the committee recommends it.

In response to a question from Representative Gruchalla, Representative Brandenburg said although the truck operators that were responsible for the road damage in his township were fined a few times for violating load restrictions, it is impossible to catch all the violators. He said his bill draft is similar to a bill draft introduced during a previous legislative session. He said the contractor in his township vowed to fix the damage done to the township roads. However, he said, because of the lack of a written agreement, the township had no ability to enforce that vow. He said the bill draft would require a written agreement.

Representative Gruchalla said it may be necessary to increase the fees for violating road restrictions to further discourage violators.

In response to a question from Representative Brandenburg, Chairman Oehlke said the committee does not necessarily need to recommend any bills relating to transportation infrastructure. He said the committee could forward a recommendation to the Governor to indicate its support for the findings and recommendations in the report of the Upper Great Plains Transportation Institute.

It was moved by Representative Brandenburg, seconded by Senator Sinner, and carried on a roll call vote that the committee agrees with the findings and recommendations in the Upper Great Plains Transportation Institute report and that the Governor be requested to consider the recommendations for funding in the report in the budget of the Department of Transportation for the next biennium. Senators Oehlke, Campbell, and Sinner and Representatives Beadle, Brandenburg, Gruchalla, Hunskor, Klein, Laning, and Sukut voted "aye." Representative Becker voted "nay."

No further business appearing, Chairman Oehlke adjourned the meeting at 12:45 p.m.

John Bjornson
Assistant Code Revisor

ATTACH:6