

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

AGRICULTURE AND TRANSPORTATION COMMITTEE

Thursday, October 3, 2019
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Dennis Johnson, Chairman, called the meeting to order at 9:30 a.m.

Members present: Representatives Dennis Johnson, Tracy Boe, Mike Brandenburg, Jay Fisher, Craig Johnson, Dan Ruby, Kathy Skroch, Wayne A. Trottier, Greg Westlind; Senators Jim Dotzenrod, Kathy Hogan, Oley Larsen, Randy D. Lemm, Larry Luick, Janne Myrdal

Members absent: Representative Dwight Kiefert; Senator Terry M. Wanzek

Others present: Representative Cynthia Schreiber-Beck, Wahpeton, and Senator David S. Rust, Tioga
Vonette J. Richter, Legislative Council, Bismarck
See [Appendix A](#) for additional persons present.

**SUPPLEMENTARY RULES OF OPERATION AND PROCEDURE
OF THE NORTH DAKOTA LEGISLATIVE MANAGEMENT**

At the request of Chairman Johnson, the Legislative Council staff reviewed the [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Management](#).

COMMENTS BY THE CHAIRMAN

Chairman Johnson said the committee is a combination of the interim agriculture and transportation committees, which traditionally have been separate committees.

BACKGROUND MEMORANDUMS

At the request of Chairman Johnson, the Legislative Council staff presented a background memorandum entitled [Agriculture and Transportation Committee - Central Indexing System - Background Memorandum](#).

Senator Dotzenrod said it would be useful for the committee to receive a document listing the priority of all liens under the law to make it easier to understand the priority of liens.

At the request of Chairman Johnson, the Legislative Council staff presented a background memorandum entitled [Agriculture and Transportation Committee - Electric Vehicle Infrastructure - Background Memorandum](#).

At the request of Chairman Johnson, the Legislative Council staff presented a background memorandum entitled [Road Train Pilot Program Study - Background Memorandum](#).

In response to a question from Representative Ruby, the Legislative Council staff said he would provide information on the implementation of legislation regarding a network of heavy load vehicles up to 129,000 pounds, including whether implementation on interstates require federal approval and if the vehicles are permitted on noninterstate roads in the state.

At the request of Chairman Johnson, the Legislative Council staff presented a background memorandum entitled [Agricultural Issues Study - Background Memorandum](#).

Senator Hogan said it may be useful for the committee to receive a document containing all the regulations governing grain warehouses and grain buyers under North Dakota Century Code Title 60.

CENTRAL INDEXING SYSTEM STUDY

Chairman Johnson called on Mr. Jim Silrum, Deputy Secretary of State, for a presentation relating to the central indexing system. Mr. Silrum said the Secretary of State is a filing officer for the central indexing system. He said the online central indexing system was implemented in 2016. Before 2016, he said, the system was electronic, but the

filings were submitted on paper and entered in the electronic database. He said the use of systems like North Dakota's is one of the reasons interest rates are as low as they are across the country. He said online filing systems allow lenders to know their rights and priority on a lien.

In response to a question from Senator Dotzenrod, Mr. Silrum said the priority on any type of lien is determined by the time at which the lien was filed. He said filings entered in the central indexing system are recorded down to the millisecond to determine priority. He said liens filed first receive priority over subsequent filings using the same collateral. He said in situations such as agriculture supplier's liens, a lien may take priority over a prior filed lien.

Mr. Silrum said the Secretary of State's office is willing to make changes and do what is requested by the Legislative Assembly regarding the central indexing system. He said the system can be enhanced to include a notification system for lenders when a debtor is using the same collateral for multiple loans. He said enhancing the system would cost \$60,000 to \$70,000.

Mr. Silrum said unless the exact same language is being used to describe the collateral in the system each time, even an enhanced computer system, could not determine with complete accuracy when the exact same collateral is being used to secure multiple loans. He said Chapter 41-09 describes how debtors must be listed on a filing entered in the central indexing system. He said the Secretary of State's office would recommend an enhanced notification system be based on who the debtor is rather than on the collateral used to secure loans. He said the committee may wish to receive additional recommendations from lenders that use the system.

In response to a question from Representative Brandenburg, Mr. Silrum said the courts are expected to follow the law with respect to the priority of liens.

Mr. Rick Clayburgh, President and CEO, North Dakota Bankers Association, said the study is a result of discussions during session regarding notice of super priority liens that step in front of an originating lender. He said banking institutions are looking for notice through the central indexing system when another lienholder steps in front of its interest. He said it is important for the institution to have notice so the institution can work with the customer and make sure the customer is not overextended.

In response to questions from Senator Luick, Mr. Clayburgh said in most situations, when the crop is harvested and sold, the proceeds check will list the bank as a lienholder along with other lienholders that may have priority under the law. He said all lienholders listed on the check must sign the check for the proceeds to be released. He said the lienholders may enter an agreement for the handling of the proceeds to ensure all parties sign the proceeds check. He said in situations in which the court gets involved typically involve a bankruptcy. He said in those cases the court usually looks first to the order of lien filings, and then to whether priority is given to certain parties under the law. He said it is possible for the entire proceeds to be awarded to priority lienholders, leaving nothing for the originating lender.

Mr. Clayburgh said he represents banks, which are a part of the community. He said banks support producers as well as the suppliers. He said the bank is trying to ensure all parties stay economically healthy through the course of the transaction.

In response to a question from Representative Brandenburg, Mr. Clayburgh said his association is older than statehood. He said banks have been working with agricultural suppliers, producers, and lenders for over 100 years. He said the idea of requiring notice is meant to prevent any surprises that may result from difficult and unforeseen economic circumstances.

In response to a question from Representative Trottier, Mr. Clayburgh said there is some concern from banking institutions and regulators regarding the agriculture industry. He said the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency have some concern over the state of agricultural loan concentration and a potential agricultural real property bubble that may exist. He said regulators have voiced concerns to lending institutions that the institutions have too many agricultural loans and need more portfolio diversification.

ELECTRIC VEHICLE INFRASTRUCTURE STUDY

Chairman Johnson called on Ms. Linda Sitz, Strategic Innovation Manager, Department of Transportation, for a presentation ([Appendix B](#)) regarding an update on the electric vehicle infrastructure coalition, parties involved, and plans moving forward.

Mr. Scott Meske, Director of Client Strategy, DriveElectricND, provided written testimony ([Appendix C](#)).

In response to questions from Chairman Johnson, Mr. Meske said an electric vehicle has a gauge, similar to a gas gauge, which shows how many miles of range are remaining on the battery charge. He said like an internal combustion engine vehicle, electric vehicles get better range when there is a tailwind. He said he is unaware of any public charging station in the state which requires payment to use. He said charging stations in other states typically use a pay-by-the-hour system. He said the amount of time required to charge depends on the type of charger. He said in other states the charging stations typically are installed by private companies that partner with utility companies and the private companies pay the utility companies for the electricity. He said the private companies then charge a user a rate per hour to park at the station and charge the vehicle.

In response to questions from Representative Ruby, Mr. Meske said other states have various policies regarding charging electric vehicle users for road use. He said some states charge a per-mile fee to the electric vehicle owner, while other states impose an additional electric vehicle registration fee. He said electric vehicle owners are supportive of paying their fair share, but it is a matter of determining the proper amount. He said miles traveled likely is the preferred option of electric vehicle owners. He said there is an ongoing debate regarding what level of governmental involvement there should be in developing electric vehicle infrastructure in the state. He said United States Department of Energy grant money is available to states to build fast charging stations across the Midwest. He said the Department of Transportation (DOT) is focusing on the main corridors in the state for building electric vehicle charging stations. He said the state potentially may have a role by providing seed money for building electric vehicle infrastructure and charging stations with private industry responsible for maintaining the stations.

Mr. Shawn Nelson said there is an expanded set of definitions regarding electric vehicles and charging stations on his blog, [greatplainsev](#), the committee may find useful. He said level 3 charging stations do not exist in any standards document. He said direct current fast chargers only serve Tesla model vehicles. He said there are other standards for fast charging of other electric vehicles. He said charging an electric vehicle can be set up for the customer to pay per hour, per minute, or by a monthly subscription allowing unlimited access to certain charging stations. He said when charging stations first came into being, state laws did not allow station owners to charge for the actual energy being provided to the user due to regulatory issues through the public utilities. He said 30 states have adopted laws reclassifying the selling of electricity for the purpose of charging electric vehicles as not a public utility. He said owners in those states can charge for the use of the stations without approval from a public utilities commission or equivalent agency, but North Dakota is not one of those states.

In response to questions from Senator Luick, Mr. Nelson said level 1 and 2 chargers are relatively small and could sit on a small table. He said his level 1 charger weighs approximately eight pounds. He said charging boxes have additional circuitry to control the flow of electricity from the wall to the vehicle and are more complicated than using an extension cord. He said there are limits for safety because every time an electric vehicle is charging, heat is being generated and there must be an adequate cooling process.

In response to a question from Representative Ruby, Mr. Nelson said Consumer Reports published a report on electric vehicle fees and determined electric vehicle owners were paying approximately 40 percent more than their internal combustion engine owner counterparts. He said he would forward the report to the Legislative Council staff.

ROAD TRAIN STUDY

Chairman Johnson called on Senator Luick for a presentation ([Appendix D](#)) regarding road trains. Senator Luick said it is becoming increasingly difficult to move freight in a timely manner as freight demands increase, qualified drivers are harder to locate, and railroad availability is decreasing. He said road trains and a pilot program are a potential solution to help mitigate those issues. He said North Dakota had three main railroad lines running through the state to the west coast. Now, he said, there is only one main line and portions of a second railroad line. He said it also is difficult to locate available railroad cars as needed. He said road trains may be a way to move freight and grain from short line railroads to mainline railroads and to the coasts and ports in a timely and efficient manner. He said his two main concerns regarding road trains requiring discussion before potentially implementing a pilot program are safety and infrastructure issues.

In response to a question from Representative Westlind, Senator Luick said it should be up to state agencies to decide whether a potential pilot program would be restricted to four-lane roads, or if road trains also would be allowed on other roads in the state. He said it likely would depend on what the infrastructure and traffic in the state can handle.

In response to a question from Senator Myrdal, Senator Luick said he does not have any statistics on accidents or safety issues from Australia or other places that allow road trains. He said similar to other vehicles on the road, accidents involving road trains would be inevitable to some extent.

In response to a question from Representative Ruby, Senator Luick said there is a potential need for road train use both intrastate and interstate.

In response to a question from Representative Skroch, Senator Luick said there are potential issues that need to be addressed regarding the logistics of moving freight to a loading point if road trains are allowed only on certain highways or roads in the state. He said the pilot program may need to include certain exceptions or waivers to make the program feasible.

In response to questions from Chairman Johnson, Senator Luick said about 4 years ago he spoke with a United States Department of Transportation individual about road trains, as well as Senator John Hoeven and Senator Kevin Cramer about potentially coordinating road trains across state lines. He said both North Dakota Senators were willing to work with him at the federal level on a pilot program to cross state lines.

Senator Larsen said a road train pilot program would need to take into consideration whether to allow certain freight to be moved, such as oil, water, or livestock.

In response to questions from Senator Larsen, Senator Luick said a potential road train pilot program likely would prohibit transporting hazardous materials. He said two road trains pulling three full-length trailers is the equivalent of six separate drivers each pulling a trailer. He said a road train could reduce the need for many drivers, reduce the potential for accidents on the road, reduce driver costs, and increase efficiency.

In response to a question from Representative Skroch, Senator Luick said a specialty docking station for road trains in the state probably would not be viable. He said trailers that hook and unhook easily at a docking station likely would need to be custom made and could increase the operating costs for producers significantly. He said producers would want to be able to use the trucks and trailers already in use in their farming operations.

In response to a question from Senator Myrdal, Senator Luick said he has had minimal contact with the private trucking industry, the individuals who would be investing drivers, trucks, and trailers in a potential pilot program.

Senator Larsen said truck drivers receive endorsements to be able to drive various truck configurations and haul certain types of freight. He said drivers usually work their way up from smaller to larger configurations as they gain more experience. He said finding drivers who have the experience to drive a configuration used in a road train would not be difficult. He said waiving some of the fees associated with receiving additional endorsements to drive a road train configuration may be useful.

Chairman Johnson called on Mr. Tim Horner, Program Director, Transportation Learning Network, North Dakota State University Upper Great Plains Transportation Institute, for testimony regarding road trains and infrastructure. Mr. Horner said the 2016 harmonization study was a collaboration with DOT as directed by the Legislative Assembly. He said the study was designed to determine impacts, regulatory overviews, and environmental considerations. He said following the study, the Upper Great Plains Transportation Institute (UGPTI) conducted another study to develop an implementation process for truck harmonization. He said the study laid out a process of submitting truck routes and evaluating the information. He said the study followed the Idaho methodology for adding routes allowing truck weights up to 129,000 pounds. He said the study looked at various truck configurations, and DOT conducted an engineering analysis on bridges and pavement that may be impacted along the routes.

Mr. Horner said the 2016 study looked at known truck configurations carrying 129,000 pounds; however, a road train pilot program would consider new truck configurations. He said the study would need to determine the axle configurations, the gross vehicle weight, the number of trailers, and the length to determine and evaluate adequately the potential impacts of a road train on existing bridge and pavement infrastructure. He said the committee may wish to determine the configuration, length limitations, and regulatory process of road trains in use in Australia and Europe as a starting point.

Mr. Horner said in advancing the road train study, the committee also may wish to consider collaborating with UGPTI, the Federal Motor Carriers Safety Administration, and the Federal Highway Administration. He said the Federal Motor Carriers Safety Administration has indicated there may be barriers to a Commercial Driver's License being applicable to vehicle configurations with more than three trailers. He said a collaborative group might help determine the definitions for the vehicle configurations of a road train in a pilot program. He said determining the vehicle configurations to be used is necessary if DOT is to study the impacts to pavement and bridges existing in the state.

COMMITTEE DISCUSSION AND STAFF DIRECTIVES - STUDIES OF THE CENTRAL INDEXING SYSTEM, ELECTRIC VEHICLES, AND ROAD TRAINS

Senator Myrdal said she would like to know if the Secretary of State's office has the ability or authorization to upgrade the central indexing system before the next legislative session with a notification system to lenders if a priority lien is filed, or if enhancing the system would require a bill or other legislative action to prompt the Secretary of State's office to make the change to the system.

Representative Ruby said the committee should be kept apprised of the work of the electric vehicle infrastructure coalition throughout the interim. He said he would like the coalition to inform the committee if the state's involvement is requested and of any discussion on the use of the Volkswagen settlement funds available in the state, how the state receives the funds, and how the state will use the funds. He said the recommendations may lead to legislation.

Representative Brandenburg said he is not sure the state should be involved in setting up electric vehicle charging stations. He said private industry should be taking the lead on electric vehicle infrastructure.

In response to a question from Representative Trottier, Representative Ruby said the Volkswagen settlement was the result of the company misrepresenting the miles per gallon in vehicles. He said the state received approximately \$8 million in the settlement. He said up to 15 percent of the funds may be used to build electric vehicle infrastructure.

In response to a question from Representative Boe, Representative Ruby said owners of public electric vehicle charging stations are charging for parking at the station for a certain amount of time or session, not for the electricity being used from the station.

Representative Ruby said he would request DOT make a presentation to the committee on the possibility of developing a road train pilot project. He said the information should include how the department would envision an intrastate program, as well as potentially working with other states and Canada on an interstate program. He said if an interstate program were to be implemented, the program would require some federal approval. He said a road train pilot program and the heavy road network that was passed during the 2017 legislative session potentially could be implemented together. He said DOT needs to be involved in developing a pilot program and obtaining required approval.

AGRICULTURAL ISSUES STUDY

Chairman Johnson called on Mr. Doug Goehring, Agriculture Commissioner, for a presentation ([Appendix E](#)) regarding the transition of authority over grain buyers and warehouses under Title 60 from the Public Service Commission to the Department of Agriculture, recommendations, and other agriculture-related issues. Mr. Goehring said in response to the authority over Title 60 being transferred to the Department of Agriculture, the department has created the grain and livestock licensing division.

In response to a question from Senator Luick, Mr. Goehring said the public warehouse license fees are per facility unless the facilities are in the same town or political subdivision and are owned by the same person. He said if multiple facilities are in the same town and under a single owner, there is one licensing fee for those facilities.

Representative Brandenburg said the oversight process needs to involve financial institutions and consider the balance sheets of grain buyers and warehouses. He said it is necessary to ensure the financial health and solvency of the grain buyers and warehouses in the state.

Mr. Goehring said it may be helpful to work with the insurance industry to develop a product that would allow farmers and producers to self-insure and receive coverage above and beyond bonds and the indemnity fund currently in place.

In response to a question from Senator Hogan, Mr. Goehring said he is unsure if other states have a system to allow farmers to self-insure in addition to other protections legally available.

In response to a question from Senator Luick, Mr. Goehring said the law regarding credit sales of grain does not provide for a custodial account. He said the money in current grain sales is held by the elevator or buyer. He said the suggested change would create a custodial account for the money to be placed after a sale. The money would not be accessible for use by the elevator or buyer.

In response to a question from Representative Trottier, Mr. Goehring said in a bankruptcy proceeding, a financial institution likely would be able to capture the funds held in a custodial account.

In response to questions from Senator Dotzenrod, Mr. Goehring said there are elevators in the state using roving grain buyers and brokers in conducting business transactions. He said there are legitimate roving grain buyers and brokers operating in the state. He said the state needs to ensure there are proper tools and oversight in place for the roving grain buyers and brokers to conduct business in a sound and responsible manner.

In response to a question from Representative Trottier, Mr. Goehring said a grain broker can receive up to five cents for every bushel of grain moved between a producer and an elevator. He said a broker also can receive money if the broker helps set up the transportation of the grain. He said his goal is to ensure brokers are held responsible for their role in poor business practices if there is an insolvency. He said a broker needs to be bonded and have the ability to have the broker's bond captured if the broker conducts poor business practices.

In response to questions from Representative Skroch, Mr. Goehring said there are roving buyers and brokers in the livestock industry. He said those individuals are required to be licensed and bonded. He said the department has access to financial statements of buyers and brokers in the livestock industry. He said the major difference between the livestock and grain industries is a livestock producer must collect their check at the end of a day in which a transaction is conducted. He said it is known within 24 hours if a buyer did not pay or if a payment check bounced and there is a potential insolvency. He said the case is not the same with the system in place in the grain industry where there is up to 45 days available before a scale ticket must be converted.

Chairman Johnson called on Mr. Stu Letcher, Executive Vice President, North Dakota Grain Dealers Association, for a presentation ([Appendix F](#)) regarding industry practices, indemnity, and bonding requirements of grain dealers, buyers, and warehouses. Mr. Letcher said regarding scale ticket conversions, an elevator does not have 45 days to pay a producer for grain. He said the elevator must pay on the demand of the producer, but the producer has up to 45 days to decide what the producer would like to do with the grain.

In response to a question from Senator Luick, Mr. Letcher said many of the grain dealers agree with Mr. Goehring's suggestion of basing bond amounts on the value of the grain moved by the dealers rather than the volume, and it would solve many of the issues regarding insolvencies. He said a bond of up to 15 percent of the value of the annual purchases may be too high for many in the industry to handle. He said the amount may need further discussion, but he would support increasing the bonding levels.

In response to a question from Representative Brandenburg, Mr. Letcher said roving grain buyers are needed in the industry, but increasing the bonding levels for entering the market as a roving grain buyer potentially would help weed out some of the bad actors. He said the minimum bond level of \$50,000 is readily attainable by most people.

In response to a question from Representative Ruby, Mr. Letcher said a producer has the right to demand payment from an elevator as soon as the grain is delivered. He said the issue with some bad acting roving grain buyers is the producer is making a deal with the roving grain buyer and another individual is picking up the grain and delivering it to the elevator. The producer is trusting the roving grain buyer to deliver a check to the producer once the grain has been delivered to the elevator, which may not occur.

In response to a question from Senator Hogan, Mr. Letcher said producers can deliver directly to the Mill and Elevator, and the mill must comply with the laws under Title 60.

Representative Westlind said 45 days to convert a scale ticket is too long.

David Spickler, President, Lighthouse Commodities, said he represents a roving grain buyer operating in the state. He said he works with farmers in the state on all aspects of grain marketing and risk management. He said part of his job is making sure the farmer's grain gets to the best available market, including helping in the grain shipment process. He said insolvencies are an issue, but restricting competition in the market can be equally damaging to producers. He said he agrees with the comments and suggestions made by Mr. Goehring and Mr. Letcher. He said he agrees with stronger bonding requirements and minimum bonding requirements.

Representative Ruby said raising bonding levels may be a good idea, but there needs to be discussion regarding the proper amounts. He said he would be hesitant to raise minimum bonding levels to a point that may restrict access to the market to a person looking to start a business.

In response to a question from Senator Luick, Mr. Spickler said he would support changing the law to subject every sale of grain in the state to the indemnity fund regardless of whether the sale was in cash or by a credit-sale contract. He said he also would support removing the option of opting out of assessments.

Mr. Ed Kessel, Vice President, North Dakota Grain Growers Association, said he would support the changes recommended by Mr. Goehring and to move the authority over Title 60 to the Department of Agriculture. He said he would not support subjecting all grain sales in the state to the indemnity fund.

COMMITTEE DISCUSSION AND STAFF DIRECTIVES

Representative Brandenburg requested a presentation by a representative of the Bank of North Dakota at the next committee meeting to explain how bankruptcies are handled in comparison to insolvencies in the grain industry.

Senator Hogan requested the Legislative Council staff work with the Department of Agriculture on a bill draft to implement the changes to Title 60 suggested by Mr. Goehring.

Representative Brandenburg said he would like to discuss the possibility of amending the law to reduce the amount of time to convert a scale ticket from 45 days to a lower amount of time.

Senator Hogan said she would like Mr. Goehring to meet with the Insurance Department, discuss the possibility of private insurance products for farmers, and report to the committee at the next meeting.

REQUIRED REPORT

The Legislative Council staff distributed a required report ([Appendix G](#)) by DOT.

No further business appearing, Chairman Johnson adjourned the meeting at 3:50 p.m.

Dustin Assel
Counsel

ATTACH:7