

TESTIMONY OF

Colonel Brandon Solberg, Superintendent

Highway Patrol PERS Plan

The highway patrol plan is not unique in the PERS system. Currently, PERS oversees the following plans:

- Main
- Judicial
- Job Service
- Public Safety (Peace Officers, Firefighters, National Guard Security Officers)
- State Law Enforcement (Bureau of Criminal Investigation)
- Highway Patrol

PERS service credits may also be earned in the North Dakota Teacher's Fund for Retirement and the Teachers Insurance and Annuity Association.

Multiplier

There are other multipliers in place such as the judicial retirement plan which is 3.5% for the first 10 years, 2.8% for the second years, then 1.25% for any years over 20.

During this legislative session, BCI is requesting a multiplier increase for their plan from 1.75% to 3% for the first 25 years then 1.75% thereafter (HB 1309) while remaining in the social security system.

Social Security Credit

Of all the plans under PERS, the highway patrol is the only plan in which members do not participate in social security. NDCC 39-03.1-27 covers the legislative intent of the highway patrol plan and states, "...because of the increase in state contributions... the members of such system shall not obligate the state to additional payments for federal social security benefits..."

Not participating in social security results in a combined 12.4% contribution savings (6.2% for the employer and 6.2% for the employee). The downside is that highway patrol members do not earn any social security credit and will not get the benefits of social security's annual cost of living adjustments. For example, social security benefits increased 8.7% in 2023 and 5.9% in 2022.

The highway patrol plan has no cost-of-living adjustment, and that's the number one issue expressed by retirees who are drawing from the system. Past and present employees acknowledge that the highway patrol retirement plan is excellent, but it doesn't take long for benefit levels in retirement to be impacted by inflation.

PERS Plan Comparison

The chart below compares contribution rates and other information for state employees participating in various PERS plans.

PERS Plans - As of January 2025	Main	Public Safety	Highway Patrol	Judicial
Employee PERS Contribution*	3	1.5	11.3	4
Employee Social Security Cont.	6.2	6.2	0	6.2
Total Employee Contribution	9.2	7.7	11.3	10.2
Employer PERS Contribution*	12.26	11.93	25.7	21.52
Employer Social Security Cont.	6.2	6.2	0	6.2
Medicare	1.45	1.45	1.45	1.45
Health Insurance Credit	0	1.14	1.14	1.14
Total Employer Contribution	19.91	20.72	28.29	30.31
Total Combined Contribution	29.11	28.42	39.59	40.51
Vesting	3 yrs, age 65	3 years	10 years	5 years
Early Retirement Age	60	50	50	55
Normal Retirement Age	Rule of 90, age 65	Rule of 85, age 55	Rule of 80, age 55	Rule of 85 - age 65
Benefit Formula	1.75%	1.75%	3.6% 1-25 then 1.75%	3.5% 1-10, 2.8% 11-20, then 1.25%
Early Retirement Reduction	8%/year	6%/year	6%/year	6%/year

**Factoring 4% of employee contribution is covered by the employer.*

If a political subdivision participating in social security was in the main plan and wanted to join the highway patrol plan, there would be substantial employee and employer contribution increases in addition to any one-time transfer expenses.

PERS Plans - As of January 2025	Main	Highway Patrol	Difference
Employee PERS Contribution	7	11.3	4.30%
Employee Social Security Contribution	6.2	6.2	
Total Employee Contribution	13.2	17.5	4.30%
Employer PERS Contribution	8.26	25.7	17.44%
Employer Social Security Contribution	6.2	6.2	
Medicare	1.45	1.45	
Health Insurance Credit	1.14	1.14	
Total Employer Contribution	17.05	34.49	17.44%
Total Combined Contribution	30.25	51.99	21.74%
Vesting	3 years	10 years	7 years

Highway Patrol Fund Status

The highway patrol's PERS fund is projected to become insolvent based on the most recent actuarial report from October of 2022. The funded ratio is currently around 70% and is projected to be around 40% in 40 years.

The highway patrol fund experienced a contribution rate increase during the 2021 legislative session which was 0.5% employee and employer increases on January 1 of 2022 through 2025 for a total of 4%. The highway patrol is requesting \$390,142 in ongoing funds to cover the employer increases which means that employees have "skin in the game" with a similar increase.

Even after factoring those increases, the most recent actuarial report indicated the fund is 16% below the "actuarially required rate" for monthly contributions.

Proposed Recommendations

There are several options to consider to get the highway patrol plan back on a path to solvency.

- A cash infusion which would match a strategy for the main plan.
 - A potential source to explore is the motor carrier electronic permit fund with a projected ending balance of \$7.6 million this biennium.
- Authorization to transfer appropriated employer contributions for all sworn officers including vacant positions.
 - Historical vacancy rate: 5-6 troopers/month
- An employer contribution increase which would match a strategy for the public safety plan as authorized by the PERS Board.

By January of 2025, sworn officers working for the highway patrol will be contributing over 11% of their monthly pay into the PERS plan.

Motor Carrier Electronic Permit Transaction Fund

Electronic Motor Carrier Permit Fund (276)	
2021-23 Starting Cash Balance	\$ 8,261,657.26
Total 2021-23 Projected Revenues	\$ 2,544,460.00
Total 2021-23 projected appropriated expenses (position costs)	\$ (1,218,244.00)
Total 2021-23 projected ongoing appropriated expenses (system costs)	\$ (451,321.00)
Total 2021-23 one-time expenses	\$ (1,508,931.05)
2021-23 Projected ending cash balance	\$ 7,627,621.21
2019-21 Starting Cash Balance	\$ 9,246,807.08
Total 2019-21 Projected Revenues	\$ 2,517,402.60
Total 2019-21 projected appropriated expenses (position costs)	\$ (1,357,039.33)
Total 2019-21 projected ongoing appropriated expenses (system costs)	\$ (463,577.80)
Total 2019-21 one-time expenses	\$ (1,681,935.29)
2019-21 ending cash balance	\$ 8,261,657.26
2017-19 Starting Cash Balance	\$ 7,779,015.01
Total 2017-19 Projected Revenues	\$ 3,106,406.80
Total 2017-19 projected appropriated expenses (position costs)	\$ (1,221,788.95)
Total 2017-19 projected ongoing appropriated expenses (system costs)	\$ (416,825.78)
Total 2017-19 one-time expenses	\$ -
2017-19 ending cash balance	\$ 9,246,807.08

Ongoing Appropriation Expenses:

- In the 2017-19 biennium, the NDHP was given ongoing appropriation to utilize the fund for permit staff salaries and administrative assistant salaries.
- In the 2019-21 biennium, the NDHP was given ongoing appropriation to utilize the fund for the purchase of body armor, taser cartridges, and AED pad replacements (\$163,066).
- In the 2021-23 biennium, the NDHP was given ongoing appropriation to convert two administrative assistant and one permit technician positions to one records management and two crash assistant program positions.
- In the 2021-23 biennium, the NDHP was given ongoing appropriation of \$19,550 for the state share of CVIEW maintenance costs.

One-Time Expenses:

- In the 2019-21 biennium, the NDHP was given one-time appropriation for the construction of a classroom addition onto the indoor range facility (\$1,729,100).
- In the 2019-21 biennium, the NDHP was given one time appropriation for the purchase of UAV's (\$96,000).

- In the 2021-23 biennium, the NDHP was given one time appropriation for the purchase of new hard body armor which is on a 5-year replacement cycle (\$265,000).
- In the 2021-23 biennium, the NDHP was given one time funding for body and in-car video cameras (\$1,158,000).

Sworn Officer Priority List

Twenty-seven sworn officers were requested by the highway patrol. These were all specialized positions rather than traffic enforcement positions, but some of the specialized roles would free up time for traffic troopers.

The sworn officers were requested based on the following priorities:

1. Backfill the five-member criminal interdiction team created in 2021
2. Two officers to enhance security/protection duties and investigate threats
3. Five officers for the criminal interdiction team to cover the NW/NE regions
4. Two officers to enhance high-risk training for all peace officers statewide
5. One officer to conduct criminal investigations on state property
6. Two size and weight enforcement officers to increase from six to eight total
7. One planning officer for strategic planning, tech research, and visioning
8. One dedicated recruiter to build relationships and locate quality candidates
9. Two safety and education officers for community outreach statewide
10. One additional officer dedicated to crash analysis and reconstruction
11. One statewide coordinator for DRE and field sobriety testing programs
12. Four additional Motor Carrier Safety Assistance Program (MCSAP) officers

Fifteen (15) officers were approved in the executive budget recommendation:

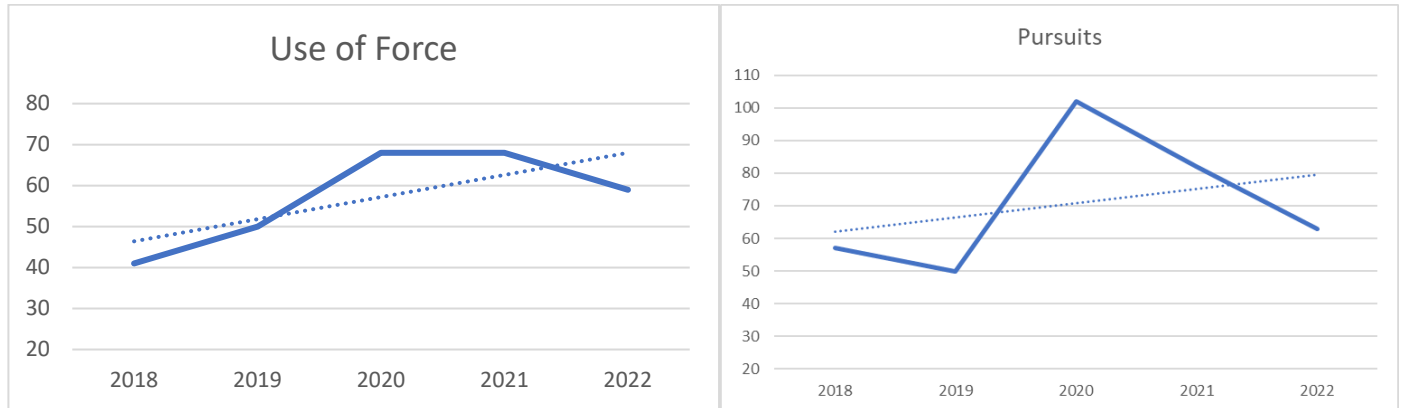
- Ten (10) officers for the criminal interdiction team (5 backfill, 5 new)
- Two (2) officers for security and protection
- One (1) statewide DRE/SFST coordinator (100% NHTSA funded)
- Two (2) MCSAP officers (95% federal and 5% state for eligible expenses)

If two additional MCSAP officers were approved, they would likely be stationed in Williston and Bismarck.

Use of Force and Pursuit Incidents

The highway patrol noticed an increase in use of force and pursuit incidents in 2020 and numbers have gradually started to come back down.

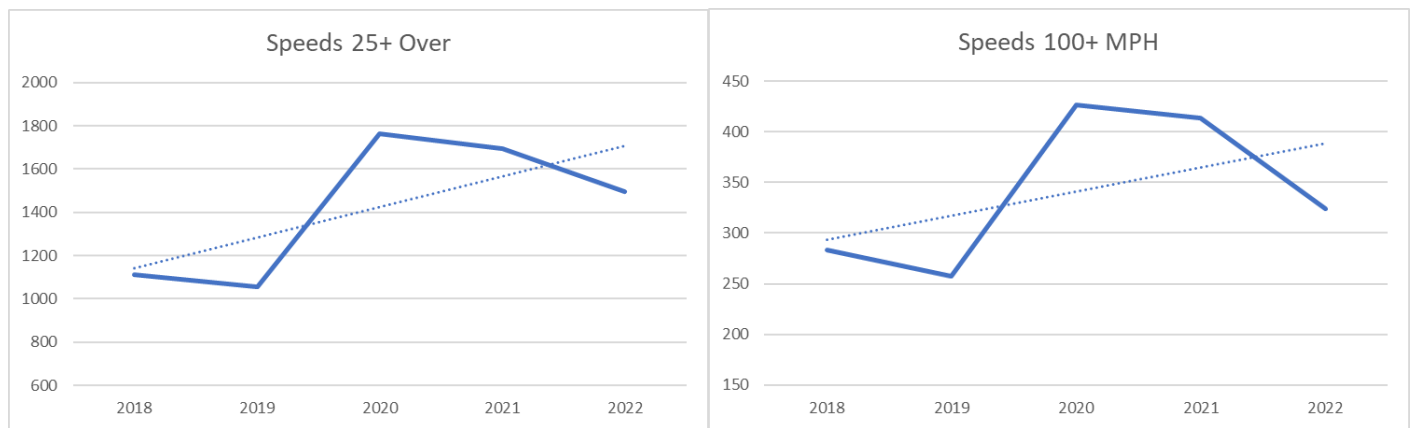
If a trooper codes an incident as a use of force, it indicates that the officer had to use a higher level of force such as a takedown, a knee strike, or a Taser to take a violent or resistive subject into custody.



High-Speed Violations

The highway patrol noticed an increase in high-speed violations in 2020 as well. High speeds and fleeing vehicles were common issues among many states.

The highest speed cited by the highway patrol in 2022 was 150 mph on Highway 46.



Highway Patrol Vehicle Types

The highway patrol owns 14 vehicles that are used for pursuit intervention technique training at the driving pad.

The highway patrol leases 175 vehicles from DOT fleet services:

- 85 Ford Police Interceptor Utility
- 54 Chevrolet Tahoe
- 26 Ford F-250
- 10 Dodge Charger

State Fleet Insurance

All state fleet services vehicles (including NDHP vehicles) are covered for liability under the North Dakota Risk Management fund. Previous commentary discussed the North Dakota Insurance Reserve Fund (NDIRF) which is similar coverage as the risk management fund but is for cities and counties. North Dakota Risk Management operates pursuant to NDCC 32-12.2.

When a highway patrol vehicle is damaged and there is a responsible 3rd party, NDDOT will pursue a claim for damages. In the event a highway patrol vehicle is damaged and there is no 3rd party involvement, the repair and/or replacement costs are realized in the state fleet rate. The majority of NDHP vehicles are in group 7. A select few vehicles that are not used in a law enforcement capacity are assigned to the NDHP from other groups.

Highway Patrol Asset Forfeiture Fund

The highway patrol's asset forfeiture fund is explained in NDCC 39-03-18:

- Deposits may not exceed \$300,000 within a biennium.
- Any deposits in excess of \$300,000 must be deposited in the general fund.
- The fund is a continuing appropriation for the following:
 - Expenses related to securing/selling seized property
 - Drug-related overtime compensation
 - Equipment for criminal interdiction
 - Drug-related matching grant funds
- The superintendent and director of OMB must personally approve all requests for use of the fund.

	Asset Forfeiture Revenues Received	Asset Forfeiture Amounts Expended	Revenue Over(Under) Expenses (Cash Bal)	Asset Forfeiture Fund Balance
2009-2011 Biennium	18,751.29	0.00	18,751.29	18,751.29
2011-2013 Biennium	58,955.94	0.00	58,955.94	58,955.94
2013-2015 Biennium	211,957.44	(278,600.00)	(66,642.56)	11,064.67
2015-2017 Biennium	154,166.40	(18,000.00)	136,166.40	147,231.07
2017-2019 Biennium	23,709.60	(136,915.81)	(113,206.21)	34,024.86
2019-2021 Biennium	19,079.55	(6,039.34)	13,040.21	47,065.07
2021-2023 Biennium	18,689.40	0.00	18,689.40	65,754.47
Totals	505,309.62	(439,555.15)	65,754.47	

Total Revenues	\$505,309.62
Total Expenditures	(439,555.15)
Current Fund (Cash) Balance	<u>\$65,754.47</u>

NDCC 19-03.1-36 governs forfeitures, and NDCC 19-03.1-36.8 requires that law enforcement agencies notify the attorney general’s office about every civil asset forfeiture that is \$50 or greater in value. The attorney general then submits an annual summary to legislative management and the governor.

Previous purchases out of the asset forfeiture fund include rifles, canines, and training uniforms.

Fargo Regional Office Garage Addition

In preparation for budget reductions during the 2021-23 biennium, the highway patrol moved out of regional office space in Bismarck and Fargo and into office space owned by DOT.

This resulted in substantial cost-savings because DOT agreed to charge the highway patrol no rent for office space in Dickinson, Bismarck, and Fargo. The total savings was \$454,000 for the biennium which included the following:

- Fargo office - \$137,000
- Bismarck office - \$287,000

Unfortunately, the available space in Fargo turned out to be less than originally projected, and our agency does not have sufficient storage or garage space.

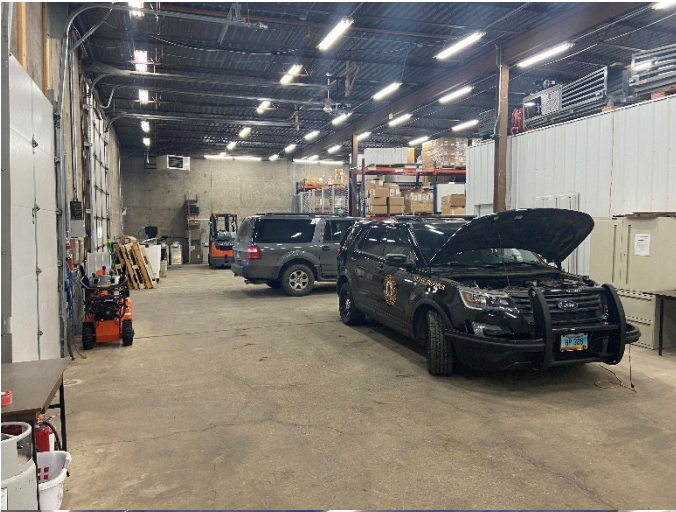
A preliminary estimate received in March of 2022 showed the cost to construct a 1,323 square foot garage addition onto the Fargo NDDOT building at \$722,700 or \$546.25/sq ft.



Bismarck Warehouse

The current leased space that the NDHP has is 7,462 square feet and the current rate is \$7.32 per square foot. We are requesting funding to lease the other half of the building which approximately the same square footage and is currently available for rent. Additional space is needed for the following reasons:

- Ability to pre-purchase equipment based on availability due to supply chain issues
- Ability to store critical emergency response equipment and vehicles in a controlled setting
- Ability to store equipment in a manner allowing easier access





Evidence Destruction Guidelines

Late in 2018 the Highway Patrol, Department of Environmental Quality, and Bureau of Criminal Investigation began discussions to come up with a solution and guidance for law enforcement agencies to use for the destruction of evidence in the safest manner with the least environmental impact.

Prior to the discussions, evidence disposal in North Dakota was inconsistent across law enforcement agencies around the state. The process brought together individuals from the solid waste program, air quality, law enforcement, and landfills. One of the driving factors of seeking a standardized method of destruction was the fact that an incinerator available in the eastern part of ND became unavailable.

Through the process, it was learned that incineration is not the desired method to destroy evidence and there are no incinerators in the state permitted to safely destroy evidence.

A memo dated January 28, 2022, was sent by the Division of Waste Management to all law enforcement agencies and municipal solid waste landfills that provided methods of destruction which are approved by North Dakota's Department of Environmental Quality for evidence including alcohol, animal carcasses, various drugs, infectious waste, vehicle parts, and weapons.

Handheld Narcotic Tester

Correction to prior testimony: The one-time cost of \$60,000 would be for **two** narcotic handheld testing devices rather than one.

The international drug problem is increasing, with trafficking of methamphetamines, heroin, and emerging threats like fentanyl and carfentanil impacting communities worldwide, to include communities across North Dakota. Our officers need to quickly identify suspected narcotics in the field to help keep drugs and suppliers off the streets. Being able to identify an unknown substance is crucial evidence to help develop probable cause and make an arrest.

The TruNarc Handheld Narcotics Analyzer enables officers to scan more than 498 suspected controlled substances in a single, definitive test. With these machines, officers can scan suspected narcotics in the packaging, without having to directly handle them. This significantly lowers officer risk of exposure.

Body Armor Donations

The highway patrol and several other North Dakota law enforcement agencies donated expired body armor to support Ukraine. A letter from the President of Ukraine Rises dated September 9, 2022, thanked our agency for our “incredibly generous donation of much-needed personal protective equipment for Ukraine.”

The letter stated, “We have received your most recent shipment of life-saving gear in our Houston warehouse and will forward it to Ukraine immediately upon receipt of the necessary export license.”

The highway patrol donated 483 ballistic helmets, plates, and panels and coordinated the gathering and packaging of all law enforcement donations.

Ammunition Cost Savings

An e-mail from June of 2016 indicated that transitioning from .357 to 9mm ammunition would save an estimated \$18,000 per biennium. Shortly after, the highway patrol completed a procurement process and purchased 9mm firearms.

Currently, ammunition of any type is difficult to obtain, but 9mm is more available than .357. The ammunition vendors on state contract don't specify an exact price but rather list “20% over cost.” This is likely due to ongoing price fluctuations and availability.