

2013 SENATE APPROPRIATIONS

SB 2176

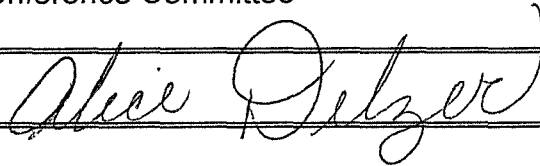
2013 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

SB 2176
01-22-2013
Job # 17524

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Department of Transportation (Joint hearing with the House) Construction and maintenance of state highways and to declare an emergency.

Minutes:

See attached testimony

Chairman Holmberg called the committee to order on Tuesday, January 22, 2013 at 8:30 am In reference to SB 2176. Let the record show that all members of the Senate are present.

Representative Blair Thoreson, Chairman of the Government Operations announced that all members of the House Appropriations are present. They are as follows: Representatives: Delzer, Thoreson, Brandenburg, Hawken, Kempenich, Sanford, Glassheim and Guggisberg. Brady Larson, Legislative Council and Sheila Peterson and Laney Herauf, Omb were also present.

Vice Chairman Bowman chaired this hearing at this time.

Senator Holmberg presented Bill #2176 and submitted written Testimony attached # 1, which is an explanation for the bill. There are two faces of 2176. One face represents good public policy. The other face reflects our own inside the beltway kind of discussions that we always have and that's our role. 2176 will provide a shot in the arm, a boost, to infrastructure needs in ND by capturing an additional construction season for our Department of Transportation. SB 2176 simply takes \$720M found in the governor's budget and distributes it immediately. The Bill appropriates a total of \$620M to the DOT for construction and maintenance of state highways and an additional one-time-spending amount of \$100M is distributed to counties, cities and townships in non-oil producing areas of the state. The \$100M is distributed in accordance with the legislative mandated formula found in 54-27-19. Let's look at the face of good public policy. 2176 allows the DOT to accomplish three things much faster than waiting for the legislature to complete its work on all budgets, sometime around the first of May. It allows them, as soon as this Bill is signed by the Governor to purchase Right of way for this upcoming season. It allows them to begin and work on engineering of new projects that can start as soon as the Bill is signed, and # three and most important, bids can be let. Many times early bids can be lesser bids than bids done in July and August. In addition, 2176 gives a needed boost for

cities/counties/townships for extraordinary roadway maintenance purposes. (2.57). These faces are good for DOT, the construction industry, infrastructure needs, and for our tax payers. We as legislator have to look into the inside of the beltway kind of discussions we always have. 1st the money in 2176 is in the governor's budget. It's accounted for differently in this bill than the executive budget. if you believe in transparency, you should support this bill because it more clearly tracks the appropriation. Some will say we are increasing general fund spending in the next biennium by passing 2176. Yes we are. We are not increasing the amount of money taxpayers are going to spend on roads. We are just calling a spade a spade. The governor funds these activities, and he did it originally in the budget bill of DOT, 2012, by transferring money from the 2011 -13 ending fund balance which was unanticipated income. Page 1-A of the Legislative Council "Analysis of the Executive Budget, It's the yellow color book that we all received, documents this fact. You can see 2176 increases the ending fund balance for 2011-13 by the \$720M. If you look at that 1-A it will say that the ending fund balance will be \$68M but then when you read the other discussions underneath it says bu out of that has already been taken, \$620M for road construction and \$100M for payments to counties and cities. We should be aware of that, we should know that, and at the same time we increased the ending fund balance we have increased general fund spending in the next biennium by \$720M. Some will criticize us but keep in mind the money was going to be spent anyway. It's just now in 2176. We are accounting for it in our Budget Status Reports. It also falls under the requirements of the rainy day fund of the 9.5% of our general fund appropriation must be in the rainy day fund. This bill will add some money next biennium to the rainy day fund. Another inside the beltway question that will come up is we aren't doing enough for infrastructure. Of course not, not in 2176. This is a bill to take advantage of additional construction season. The total package will be debated and resolved in the usual manner in 2012. Let us save that discussion for another day. These are unique times that we have in ND. I don't think any of us have been in a legislation session that's been this rosy a picture for our economy in the state of ND and also the number of challenges we face, not only in oil country but also in other parts of the state too. I have Allen Knudson here who will say a few words about the bill. There also a memo prepared by the Legislative Council that talks about the differences in 2012 versus 2176. I would answer any questions at this time. (7.43)

Senator Mathern: What is the consequence to the spending picture of the present biennium and the next biennium as you compare the two if this bill were to be passed versus the spending that happened in the other Bill 2012.

Chairman Holmberg: If this bill passes the sheets that we have that describe our status would increase the ending fund balance for 2011-2013 by \$720M. It would increase that. That money which was not directly on our books, that money, and it was not general fund spending it was unanticipated ending fund balance, we're spending it in the next biennium and we are calling it general fund spending which this legislature has, the last few sessions, tried to move as much as possible towards more and more transparency and less smoke and mirrors in a budget, we don't always do that completely but we try to move in that direction, so that the ending fund balance goes up \$720M and the money is spent in the next biennium but it is available and that's the key in 2176, it's available immediately so that DOT can do their planning their bidding, etc. They have to have the money there before they can let bids. It can't be promised by the legislature, it has to be appropriated. (9.50)

Senator Mathern: Wouldn't it also reduce the expenditure on our balance sheet for the next biennium in terms of it being authorized now? I understand we would actually spend it next time, because we have some time to expend it within the next few months so it would be expended during the biennium but our balance sheet would not demonstrate the authorization in our new budget but it would be in this budget.

Chairman Holmberg: No. I will let Allen explain how our balance sheet works, but I do know that passing this bill will increase general fund spending in the biennium by \$720M but as I said it's money that the taxpayers already were on the hook for in the governor's budget. It just is how we inside the beltway are going to be counting it and I think you will hear Allen say that this is, if we pass this bill the way it is, it is very transparent as far as where the money is coming from. (11.17)

Allen H. Knudson, Legislative Council: I am appearing neither for or against the bill but simply to explain the provisions of it and be available to answer any questions you might have. I have a handout here that I'll pass around. Testimony attached # 2. This is a copy of the last two pages of SB 2012. Since basically what SB 2176 does is readily distribute provisions that the governor included in SB 2012, move them into a separate bill and then change them slightly. First of all I'll talk about what the governor's proposal was for the spending that's included in SB 2176. Turn to page 5 of the sheet I passed out you can see section 6 provides for \$620M transfer from the general fund to the Highway fund that was to occur prior to June 30, 2013 as it says on line 9. Then in section 7 it's also transferring additional about \$684M during the 2013-15 biennium from the general fund to the highway fund. Then the governor is appropriating that money to the DOT in SB 2012 as special funds appropriations because the money is gone from the general fund to highway fund, the governor then appropriates it from the highway fund to the Department of Transportation for their projects. And if you look at the bottom of section 9, the emergency clause, it indicates that \$1.2B in the capital assets line item and for the enhanced state highway investments and then the \$142M for county and township roads are an emergency measure. So even in the governor's budget he was anticipating that a portion of these were going to be spent prior to June 30. It's just that the governor is appropriating it through special funds by transferring the money from the general fund so that SB 2176 does is really the same thing, except it's not doing the transfer through the highway fund, it's simply appropriating the money directly out of the general fund to the DOT on in section 1 of the bill, \$620M from the general fund to the highway department to spend through 2015 but does have an emergency clause as well so it can start spending the money prior to June 30, 2013. So that is an explanation of how the governor's budget compares to what's being proposed in SB 2176. (14.24)

In regard on Senator Mathern's question about the balance sheet and how it's going to be reflected, we have a number of bills that appropriate funding on through 2015 but they include emergency clause to be spent prior to June 30th if the need so arises. In budget status we reflect those as appropriations for the 2013-15 biennium. When the expenditures actually occur on the financial statements of the state, when OMB does the comprehensive on the financial report in the expenditures that occur prior to June 30 will be shown as 2011-13 expenditures on the balance sheet and then the 2013-15 amounts will be adjusted by that, by those early expenditures and that gets reported to the budget section like in

September of 2013 so you will know how much of the \$620 or how much of the \$1.2B was spent early on the balance sheet. (15.25)

Senator Mathern: It would be correct then to say if DOT in fact was able to let bids and get this money spent by July 1st, if that happened, the balance sheet would show this amount of money was spent in 2011-13 biennium and this amount of money would not be spent in the 2013-15 biennium. So the intent is to do the same thing project but it would show it on one fiscal biennium versus another fiscal biennium. (16.19)

Allen H. Knudson: If they actually spent the money prior to June 30, it would be shown as fiscal year 2013 expenditures.

Representative Glassheim: (16:47) I have two questions. In both the governor's methodology and this methodology this is one time spending, that's correct? He was told yes. And then secondly, in SB 2176 where we increase the amount of money we have to put into the rainy day fund by 9.5% of \$720M.

Allen H. Knudson: The potential for that to occur it would depend on, if you recall the governor had a number of other items that he was spending prior to June 30, 2013, and depending on how much spending is done early there would need to be an adequate ending balance to be able to transfer to the rainy day fund. But the potential would be for additional about \$68M to go into the stabilization fund by moving this funding into 2013.

Chairman Holmberg: Then you see that in that memo that you got from the Legislative Council - Testimony attached # 3 - Comparison of 2013 Senate Bill numbers 2012 and 2176 - Appropriations to the Department of Transportation.

Senator Wanzek: The way I'm understanding it, essentially under SB 2012, we are spending the money in the 2013-15 biennium but it's special funds. Where under SB 2176 we're now going to be spending it through general funds. He was told that's correct. (18.45)

Chairman Holmberg: As this legislature has moved in the past to try to reflect it's money that comes from taxpayers, this is not special fund money from the standpoint of gas tax and things like that. This is money from the general fund. (19.04)

Senator O'Connell: On federal money, without knowing the projects, I would assume there is federal money we match. How is that going to play the role?

Chairman Holmberg: That's probably better for Mr. Levi. Also, committee members, keep in mind, the House members, the Senate members have heard SB 2012. You are slightly at a disadvantage because you haven't had the testimony on 2012 but you have copies of it at your station. (20.22)

Grant Levi, Interim Director of the Department of Transportation (DOT). Testimony attached # 4 I want to thank you for agreeing to meet together both the Senate and House Appropriation Committees. We support SB 2176 and I think there's been an awful lot of explanation already that has occurred by Senator Holmberg and Mr. Allen Knudson on how the bill works. I am going to spend my time just basically talking to you about what this bill

does for DOT and the industry and the public in our ability to deliver the projects quicker and earlier. With the passage of the legislation, the Department will be able to accelerate the design, which includes engineering and all those aspects of it, purchasing of right-of-way, bidding, and awarding of roadway projects. What we intend to do is start bidding projects as early as February if the bill is passed and signed by the end of January. The reason, there's that time period in between we advertise for 21 days and that's in state statute but it's also very appropriate because it takes the contracting industry a period of time just to get their bidding documents ready. By this occurring it will allow projects to be built quicker and would enhance the safety for the traveling public. You can see in my testimony I've tried to outline just very briefly what the bill does, but that's been covered already. I am just going to make a couple of key points, section 1 makes \$620M of general fund money from the 2013-2015 biennium available to the Department upon signing the bill. Just to make it clear, it's not new money, and that's been stated, that's given to DOT, it's only a portion of what was contained in SB 2012. I think you've all heard comments about the governor proposed a \$1.16B state funded program, this is a portion of that funding that would be made available to the DOT.

Section 2 of the bill has already been covered. I would like to point that we would like to make as an organization is that the \$100M never came through in SB 2012, the DOT appropriations. It always went to the Treasurers Department for the treasurer to make that money available to the cities and counties and townships. SB 2176 does the same thing and Section 3 declares an emergency. If the bill passes the Department plans to start the bidding projects in February, continuing through May, and you can see in your testimony and I'll cover it very quickly what we intend to do with the \$620M. (see Section 3 in testimony) (23.26) It's essential if we want to do construction and get things started this season that this bill passes and it goes forward so we can bid and proceed with projects I have a list as part of testimony of some of the projects that we intend to proceed with. (23.52) This point's been made that the bidding projects earlier allows the contractors to do their planning earlier and get things into place and to obtain the necessary resources. Now under many of our contracts the contracting industry has to go out and obtain the aggregate supplies, obviously they make the connections with the suppliers for aggregates, steel, all of those things and by doing it early they're allowed to go forward and start those conversations in the very near future. (24.57)

Chairman Holmberg: And is it not true that you must have the money appropriated before you can let bids? You cannot let bids on the basis of the governor's budget, for example, that has not been appropriated and signed into law? (25.13)

Mr. Levi: We need to have the money available to us before we can go forward and we can sign the contracts with the contracting industry. We know the earlier we are able to bid work in the season if we can bid it in November, our bid prices are better than if we end up bidding it later in the season because of the fact they have that opportunity to plan and do the work they need to do. (25:40) Just in summary we would appreciate receive the authority to proceed with the \$620M worth of work so we can start those work activities earlier that I outlined. I do need to make the comment that there was a lot of discussion of what will occur in the 2011-13 biennium. Right now we are anticipating about a \$225M expenditure occurring in the 2011-13 biennium and I do need to state that a lot of that depends on how soon the contracting industry can proceed with it's work. Sometimes we've

had construction projects start as early as the end of March and they were making progress in April, sometimes it's been as late as May. I'll open it up for any questions. (26:33)

Representative Kempenich: What do you have left yet from the 11-13 that's started that isn't done yet for this construction cycle. How much do you have left on top of this? He also asked later if they were on schedule.

Mr. Levi: We went through one of the larger construction bidding seasons this past construction season that totaled about \$550M worth of work. We bid a lot of that work late because of the way the federal money came to us and how long it took us to develop projects. Even under those conditions the contracted industry completed 83% of the work that we had put out so there's about 17% of the construction projects that will carry over, some of that we have planned to carry over. (27:33)

Vice Chairman Bowman: I support this 100% even at the county level the early bids are the better bids. This is a fantastic way to go, get this money up front. Do you have any idea how much this can save us by doing this early, would it be maybe 10%?

Mr. Levi: We're confident that we'll save but I'm not in a position to speculate as to how much it would be. Back to the last conversation with respect to how much work is carrying over and where we're at, I would like to comment that one of things we are seeing which is refreshing is we're seeing an awful lot of competition for contracts that we have in place. And this last construction season we saw on the average more contractors bidding than we ever have. There is an awful lot of contractors coming into this state because they see what's occurring in the state of North Dakota. (29:06)

Senator O'Connell: Back to the federal, how is that going to work out? Are these projects have federal money I would assume in them too?

Mr. Levi: The projects that we are talking about do not have any federal funds as part of these projects. The intent was to take the federal money that's made available to the state and use the federal money for the most part in the eastern part of the state, outside of the oil producing counties. The reason for that is because with federal process, there's more rules and regulations that we need to go through as a organization. With the type of work that we need to do in western North Dakota it makes more sense to do it with state funds because we can do it quicker.

Representative Kempenich: asked if we have to match federal funds and if we have to account for certain roads or projects.

Mr. Levi: The work that we are doing in western ND with these funds would not count towards the match of any work that we're doing. The match for the federal program is contained in SB 2012 in its entirety as was discussed earlier we'll work that through the normal legislative process. (31:44)

Chairman Holmberg: We've spent now the first few minutes going through the technical aspects of the bill and the inside the beltway discussion which we have to have. Let's hear

from the public policy aspect. Let's hear from some of the folks that want to talk about the impact on their industry, the folks that are in the construction business.

Donn Diederich, Executive Vice President of Industrial Builders (32.27) general contractor from Fargo presented testimony attached # 5 and testified in favor of SB 2176. Projects that are ready to go now can be bid early. The 2014 construction season will have sufficient time to develop carefully. 3. The construction portion of the 2015 season will be secure with the elimination of section 54-044.1.11, the carryover clause. Here in North Dakota, many of us have a relationship to the land, through family or friends or our own experiences. This means you know that in farming, things take as long as they take. A farmer can't decide to plant a crop in July and hope to get a harvest. He has to decide what he's going to plant, acquire the seed, prepare the equipment, prepare the land, and get the seed into the ground. It's the same way with building infrastructure. The DOT needs time to plan, design and bid projects. Contractors need time to bid those projects, collect crews, allocate equipment, and get into the ground during our short construction season. I appreciate the opportunity to testify in support of SB 2176 and would ask the same of you.
(37.09)

Representative Brandenburg: Sir now you used the analogy of the farm that really makes sense, get the crop and seed and everything. Your good contractors bid early, then you have the later contractors that may come, by May they're gone. I appreciate the use of that concept. (38.00)

Harley Neshem, President of Gratech Company, Ltd. Of Berthold provided Testimony attached # 6 and testified in support of SB 2176. We are a grading and aggregate contractor. Our company was founded in 1949 and I personally have been involved in construction since 1970. We presently employ about 200 workers seasonally, and have a construction volume approaching \$50M which is up considerably the last couple of years. I also served as President of the Associated General Contractors of ND. Our association members support the governor's proposed increase in infrastructure investment. He stated there is much competition for the contractors. (40.20) A little disheartening is the fact that of the 286 bids, only 94 were placed by ND contractors, leaving 192 by out of state firms. I have likened the being a grading contractor to the military version of the last man's club, and I am determined to be the last one standing. It is critical that the funds get to the DOT as quickly as possible so projects can be let for bids as early as possible. This bill accomplishes that. Spring time load restrictions on the highways makes the movement of heavy equipment prohibitive between approximate mid-March and mid-May. If we can move our most productive, yet heaviest equipment before load restrictions are imposed we can reduce our costs and begin and complete projects sooner and more efficiently. I have complained for years to the DOT, through our association, get the projects let earlier so that we can plan. There have been many times that I have bid a project in March where load restrictions were placed, not be able to move equipment until after the middle of May, then it rains until the end of June, and then the 1st of July I get a letter from the Department saying I'd better pick up the pace. Our industry competes for labor with many others. Putting projects out for bid earlier would allow us to put our crews together while the labor pool is larger than it will be later. Another point, and this one's closer to home for me and I acknowledge that the Department is addressing it. I also ask for early funding of additional

staff positions to speed up the process of issuing "Certificates of Authority" (COA's) The COA is confirmation that our proposed source of borrow dirt, gravel and even rock piles in a cultivated field is free of cultural artifacts and various government easements. We are waiting as long as 30 days for these COA's to be issued because of staff shortages. 30 days in January or February doesn't mean much, but 30 days in July means quite a bit. I appreciate the opportunity to present these comments. (43.59)

I'd like to step back to Senator Warner's question in the committee hearing last week. He asked for my take on Design Build contracting and I gave an answer. As the spenders of the public money, you should investigate Design Build contracting, you should study it, you should understand it and then you should dismiss it. That's the answer I should have given.

Representative Hawken: (44.43) made comments about growing up in the construction industry and appreciates the wonderful firms we have in North Dakota. They are wonderful people.

Scott Rising with the Soybean Growers of ND: We are excited about SB 2176 and Dot's renewed effort to focus on building. We sense that energy across the entire state. Please give this beauty a green road.

Mark Johnson, CAE, NDACo Executive Director presented written Testimony attached # 7 stating they wish to support SB 2176. He did not testify.

Lance Gaebe, Director of Energy Impact Infrastructure Office. I am not testifying for against. I just feel compelled to pass along the concern of township officers in the western part of the state. As you know I administer the \$130M Energy Impact Grant Program and there's a sentiment in the western 177 townships apply for the money made available, the concern I have, only conveying on their behalf, not lobbying for or against is the provision where the \$15,000 goes to non-oil producing townships leaves many of the townships in the oil producing counties out in the cold. You'll hear that more directly from the townships but certainly in the heavier producing townships in Mountrail and Williams counties, they do get a large share of the infrastructure funds that part of the gross production tax. The challenge comes in the fringe counties, Renville, Bottineau, McHenry counties that don't have very much oil production. For example Burke County, as part of the infrastructure money, those townships got somewhere in the neighborhood of \$1,800 the first year of the current biennium and \$6,500 in the current biennium from that township fund so by virtue of being a township in a non-oil producing county they haven't got as much as some of the townships in the rest of the state. (48.44)

Chairman Holmberg: And you recognize that this SB 2176 is just two sections from the governor's budget.

Senator Wanzek: Some of us have looked at amendments to address that but I'm hearing that we would address that in the DOT budget versus this bill. The emphasis is to get this money out there and get it available before the season.

Vice Chairman Bowman: I couldn't agree with you more on the townships that are in oil producing counties that have no oil in the townships. When we had the special session we

divvy out the \$10,000 to all the townships except those that were in oil producing counties that had no oil. They were a little bit irate with me, wondering why they were left out, I can feel for those townships. Even across the line if you are right next to another township why did they get it but you didn't, it's something that needs to be talked about and maybe we can figure this out before we're done here. (50.10)

Lance Gaebe: The same sentiment was expressed to me. We meet with all the applicants in the areas so I as a representative of the state, I got to hear about the special sessions

Chairman Holmberg: The Senate appropriations, as we look at 2012 will certainly be looking at that issue. There are a number of strong advocates for that direction.

Lance Gaebe: I am not lobbying for them just passing on a message.

Senator Mathern: One of the concerns I have, I support the bill, it doesn't address the other needs. You would probably hear those needs. Why don't we put the bill through for day care, help the hospitals, there's all kinds of needs and I'm wondering is that part of your offices discussion at all. Is there any attempt to move ahead faster in other areas or some advocacy on your part to do that versus just roads and bridges?

Lance Gaebe: How we've tried to accommodate that in the current biennium is by having a land board do pledges of some grants and pledges of anticipated awards. We had the same circumstance as the DOT as described where they aren't able to spend the money until the biennium starts and so to address that for some of the public safety concerns. The daycare, we did provide \$650,000 for day care grants. In order to advance the construction season for particular public safety concerns the land board did was pre-approved, or committed the way we used grants that we'll be able to award once the biennium started. Other areas that you referenced are all the ones we hear about whether it's emergency rooms, clinics, school construction, child care, I think a lot of those have been addressed in the governor's budget but anytime we can make those funds available sooner projects can get underway sooner.

Larry Syverson, President of NDTOA: I wish to support SB 2176. The fast track method of funding will be a huge benefit. I would like to support the proposal to get the funds to all the townships in the state, not just the non- oil producing counties. .

Vice Chairman Bowman: We talked about general fund expenditures being higher now because of this bill but if we would have the permanent oil trust fund, wouldn't that been transfer out of there to do the same thing? So it wouldn't have been an increase in general fund spending?

Brady Larson: It could have been accomplished that way, or else funding from the permanent oil trust fund could have been transferred to the general fund and then appropriated out of there, either mechanism would have worked.

Representative Glassheim: I am concerned about taking \$68M out of circulation by this accounting change and it seems to me we ought to consider either in this bill or someplace else down the line, at least have a discussion about what needs to go into the budget

stabilization fund. We're not to do the one-time funds. I understand the need to have the 9.5% but for on-going expenditures but one-time expenditures the point is, you don't have to repeat them if you don't have the money so I don't know why we have to take \$68M out of circulation just because we're moving from one biennium to another.

Chairman Holmberg: Back to my comments earlier about the belt way discussions which is what we as a legislature are good, that's discussion better be handled during the regular session on regular bills. As you know, the rainy day fund used to be a 10% requirement and look back as to why it was adjusted to 9.5% and you probably would find it was because we spent some money and we reduced it to 9.5%. That is not constitutional, that is legislative, I'm not suggesting we're going to lower it, some may want to raise it, I don't know. You make a good point but it's something the legislature will be addressing as the session goes on.

Representative Delzer: We've got to remember the budget stabilization fund is not to set money aside, it's to have money if the revenues go south. And if we're spending \$6.2B in general fund equivalent we need to have an ?(57.28) that revenues go south during the current biennium that we're spending it in to cover that. That's the whole purpose of that.

Chairman Holmberg: And it's a discussion that will go on until the first of May. We will close the joint hearing on SB 2176.

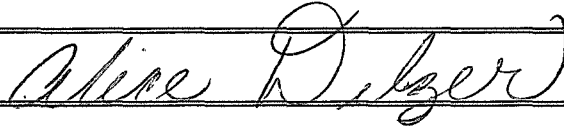
2013 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

SB 2176
01-22-2013
Job # 17525

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

DOT Emergency (Discussion within the Appropriations Committee)

Minutes:

No testimony submitted at this time

Chairman Holmberg: Committee members thank you for this morning. It was a little crowded. We will not do a subcommittee on 2176. We will discuss it tomorrow and take action on the bill tomorrow. Are there any comments from the Senate members on 2176 before we move on to the next bill?

Vice Chairman Grindberg: Those that are on the subcommittee for DOT and working on this, are the thoughts to leave the bill as it was introduced and not amended and deal with any other non-oil county related requests in 2012?

Chairman Holmberg: That would be mine but there's one of sponsors of the bill wants to make amendments and that would be a House person. But I got the sense talking to some of the other House people that they're not that interested on doing it on this bill, passing this bill out clean and talking about those other issues when we discuss SB 2012. You're talking specifically about the other township issue and certainly there is one very vocal proponent of doing some more in that area is on the subcommittee. I'm sure we will hear from Senator Wanzek. He's well aware of it. I think, Terry, you're comfortable working with the SB 2012.

Senator Wanzek: Yes, I'm not sure how that works, I need to talk to council. I did have amendments prepared for either bill if the opportunity presented itself to address that issue with the townships in the oil counties that aren't getting any of those funds and also adding some additional funds.

Chairman Holmberg: We have not removed that part from 2012 if you think about enhancing that area all you would do, instead of removing that section from the bill Brady would amend it to for the next phase of the session.

Vice Chairman Grindberg: I am not inclined to support any amendment that wasn't introduced. If we have efforts to try and add more money for townships in non-oil producing areas of the state it kind of defeats the purpose of the bill to fast track large

projects to get into the construction season. We start sprinkling small dollars around at this point to townships in Cass or Grand Forks County doesn't make any sense to me until we have that fully vetted through 2012 through the entire process.

Chairman Holmberg: People can make a good point is just how we as a legislature. There are a number of other issues that yes would be better served if we could spend the money early as I had discussed with one of them. One of the issues was construction on college campuses, but I don't know if I would dare say there was a consensus yet as far as what the legislature is going to do on that issue. Where as here we are spending money that was already in the budget was probably already going to be spent.

Vice Chairman Bowman Basically, are you saying you'd like to pass out the bill we just heard with no amendments on it and deal with townships that didn't receive any money in the last biennium in oil producing counties, that would be handled in SB 2012?

Chairman Holmberg: That would be my preference. Let's vent that all out in the full budget SB 2012.

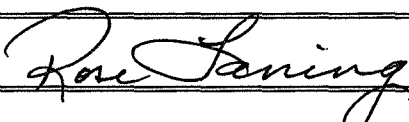
The discussion on SB 2176 was closed. (8.51)

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Senate Appropriations Committee Harvest Room, State Capitol

SB 2176
January 23, 2013
Job # 17605

☐ Conference Committee

Committee Clerk Signature	
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Explanation or reason for introduction of bill/resolution:

A vote on an emergency department of transportation bill.

Minutes:

Testimony attached # 1

Chairman Holmberg called the committee back to order on SB 2176. This is the bill having to do with the speed up of the payments in two categories, \$620 M and the \$100 M.

Senator Gary Lee moved do pass for SB 2176.

Senator O'Connell seconded the motion.

Discussion:

V.Chairman Bowman: I support the concept of getting the money out early and I made that statement during the testimony. If we can't get some money out to those townships in these oil-producing counties that have no oil, then we're not treating everybody equally. That has got to be addressed because there is a huge concern out there. You have to remember that they're still impacted by oil. The trucks that go out to the oil field drive down those township roads, so they get the impact but they don't have any money to pay for it. I just hope that we'll consider that in the other bill to do some justification to those townships. I will support the bill.

Senator Wanzek: Brady tells me that my amendments are at my desk upstairs which I haven't looked at yet, but essentially that's what they do. They provide a commensurate amount to those townships that I understand, even though they're in oil counties, they're not receiving any money. I'm trying to help you out there.

Senator Mathern: I support the concept of the bill. I'm disappointed that we're only moving ahead on roads and bridges, in terms of emergency measures, at this point, but there are still opportunities. I think it's a good idea, but I wish we would have addressed all of the concerns that are out there, but let's start here.

Chairman Holmberg: I don't think anyone will disagree with what you said that there are a lot of immediate concerns. This is a start on trying to do something that is a serious problem throughout all of North Dakota, in oil country and other parts of the state. If you

recall, when you look at the \$100M which was one of the items of discussion, 64% of that money goes to cities and counties. It's the other portion - and those are cities, counties and townships in non-oil producing. I still think that at some point, the policy discussion has to be around how those counties and how that area is defined because that can create these problems on the edge, like we have clearly in McLean County. You have counties that have a lot of oil activity but not oil production or much oil production.

Will you call the roll on SB 2176?

I will be signing the papers and it should be on the calendar tomorrow.

A roll call vote was taken. Yea: 13 Nay: 0 Absent: 0.

Motion carried.

Senator Gary Lee will carry the bill.

Date: 1-23-13Roll Call Vote # 1

**2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES**

BILL/RESOLUTION NO. 2176Senate Appropriations Committee☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do passMotion Made By Lee Seconded By D. O'Connell

Senators	Yes	No	Senator	Yes	No
Chairman Ray Holmberg	✓		Senator Tim Mathern	✓	
Co-Vice Chairman Bill Bowman	✓		Senator David O'Connell	✓	
Co-Vice Chair Tony Grindberg	✓		Senator Larry Robinson	✓	
Senator Ralph Kilzer	✓		Senator John Warner	✓	
Senator Karen Krebsbach	✓				
Senator Robert Erbele	✓				
Senator Terry Wanzek	✓				
Senator Ron Carlisle	✓				
Senator Gary Lee	✓				

Total (Yes) 13 No 0Absent ~~1~~ 0Floor Assignment Lee Holmberg

If the vote is on an amendment, briefly indicate intent.

REPORT OF STANDING COMMITTEE

SB 2176: Appropriations Committee (Sen. Holmberg, Chairman) recommends **DO PASS**
(13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2176 was placed on the
Eleventh order on the calendar.

2013 HOUSE APPROPRIATIONS

SB 2176

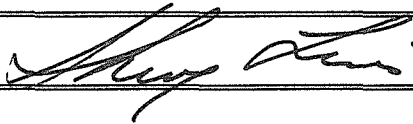
2013 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Government Operations Division
Medora Room, State Capitol

SB2176
January 28, 2013
Recording Job# 17796

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation to the department of transportation for the construction and maintenance of state highways; to provide an appropriation to the state treasurer for transportation funding distributions; and to declare an emergency.

Minutes:

Chairman Thoreson: Opened the hearing on SB2176.

Representative Hawken: Made a motion for a "do pass" on SB2176.

Representative Guggisberg: Seconded the motion.

Representative Glassheim: I was concerned that this money which is \$700 million which becomes part of our fiscal 2011-2013 expenditures. I believe that the 9 ½% of expenditures that goes into the budget stabilization fund would now include this \$700 million; and therefore require an additional \$60 million or \$70 million to be put into the budget stabilization fund. If I had the opportunity, I would amend this bill and say that this money should not be counted in the budget stabilization fund. Because the purpose of the budget stabilization fund is if in the future you run short, there would be money to make up what you run short of.

Brady Larson, Fiscal Analyst, ND Legislative Council: Representative Glassheim is correct; SB2176 places \$720 million in the 2013-2015 legislative appropriations amounts. That amount is used to calculate the maximum balance in the budget stabilization fund. So roughly 9 ½% of \$720 million would be about \$68 million additional that could be deposited in the budget stabilization fund if sufficient funds remain at the end of the 2011-2013 biennium for transfer.

Representative Glassheim: That would be in the 2011-2013 budget; not the 2013-2015; this bill.

Brady Larson: This bill places the \$720 million as 2013-2015 legislative appropriations. However, there is an emergency clause included in the bill that would allow the department to spend a portion or all of the funds early. It could technically be considered an 2011-2013 expenditure; but, for legislative appropriation purposes, it's considered 2013-2015.

Representative Glassheim: It wouldn't add?

Chairman Thoreson: It's in the next biennium budget; but, the spending could theoretically take place during the current biennium.

Representative Glassheim: When would the \$68 million have to be put in; assuming other things went correct?

Chairman Thoreson: Would it go in at the beginning of 2013-2015 or at the end of 2011-2013?

Brady Larson: It's a combination of both. At the end of the 2011-2013 biennium, any amount in the general fund in excess of \$65 million is to be transferred to the budget stabilization fund. However, the transfer can only be made up to the extent that the budget stabilization fund does not exceed a balance that is equal to 9.5% of the legislative appropriations for the upcoming biennium which would be 2013-2015. So in the event that there's not \$65 million in the general fund at the 2011-2013 biennium, no transfer would be made.

Representative Glassheim: At what point would the money be transferred? As part of the 2013-2015 would that amount be transferred August 1?

Jeff Larshus, Fiscal Analyst, ND Office of Management and Budget: With the emergency clause, if they are going to spend money in the 2011-2013 biennium, we will increase the current biennium to allow them to spend that.

Representative Glassheim: Then that would require us to put up to the 9 ½%?

Representative Sanford: What's the impact with the emergency clause versus without the emergency clause? In other words if this was just part of the 2013-2015 appropriation, what's the impact on the stabilization fund? What's the impact on the stabilization fund with emergency clause and part of the expenditure coming in 2011-2013 biennium?

Brady Larson: The emergency clause has no effect on the transfer to the budget stabilization fund. The budget stabilization fund transfer is calculated strictly on the 2013-2015 legislative general fund budget; and if any monies out of that 2013-2015 appropriation budget are allowed to be spent early, it has no effect on the transfer to the budget stabilization fund.

Representative Kempenich: What is the timing of the transfers?

Jeff Larshus: We usually do that in August. We wait until after July closes.

Representative Glassheim: That's based on the 2011-2013.

Jeff Larshus: It will be calculated on the 2013-2015 budget. This bill is part of your original beginning 2013-2015 appropriation. If they spend some in the current biennium,

after we close and moving forward, we reduce their authority because they've already spent it prior to July 1.

Representative Glassheim: So it won't affect current things and it won't even affect spending in 2013-2015.

Brady Larson: Anything at the end of the 2011-2013 biennium; anything in excess of \$65 million is to be transferred to the budget stabilization fund. However, the budget stabilization fund can only have a maximum balance equal to 9.5% of the general fund budget as approved by the most recently adjourned regular or special session of the legislative assembly. So when the legislative assembly adjourns, the most recently passed budget will be the 2013-2015 budget; so the maximum balance of the budget stabilization fund starting on July 1, 2013, is 9.5% of the 2013-2015 appropriations.

Representative Glassheim: So it will affect what's available for us to budget for the next session.

Brady Larson: You're correct. When the senate passed this bill, it reduced the amount of funding available for the 2013-2015 biennium by roughly \$68 million.

Representative Glassheim: Made a motion to amend the bill to not count the \$720 million in the formula for the budget stabilization fund.

Representative Guggisberg: Seconded the amendment.

Representative Hawken: Can we do that? If there aren't any other amendments and we keep it clean it can just go.

Chairman Thoreson: If this bill is not amended in this section or in the full committee, it would then go directly to the 11th order for final passage.

Representative Hawken: So perhaps it might be better to wait to see about an amendment; and see if there are any others in full committee?

Representative Glassheim: Withdrew his amendment.

Representative Guggisberg: Withdrew his second.

Chairman Thoreson: Called for a roll call vote for a "Do Pass" motion. 6 Yeas 0 Nays 1 Absent. Representative Hawken carried the bill.

Chairman Thoreson: Closed the hearing.

2013 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Committee Roughrider Room, State Capitol

SB 2176

1/29/13

Job 17911

☐ Conference Committee

Committee Clerk Signature

Meredith Trachsel

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation to the department of transportation for the construction and maintenance of state highways; to provide an appropriation to the state treasurer for transportation funding distributions; and to declare an emergency.

Minutes:

You may make reference to "attached testimony."

Chairman Delzer: Called the committee to order. We had a joint hearing with the Senate on 2176.

Rep. Hawken moved Do Pass on SB 2176, seconded by **Rep. Thoreson**.

Rep. Hawken: Explained the bill and recommendation by Government Operations division.

04:25

Chairman Delzer: Something we have to remember if we kick this out and it passes the floor with the emergency clause it will go directly to the Governor, be signed, and be gone. When we get SB 2012 in the second half, we need to make sure that this is taken out. This also puts it into the 2013 budget cycle, but allows portions of it in 2011, through general fund money. There were some issues with certain townships in oil producing counties that have not received much, and that issue will be dealt with in SB 2012, the Senate has assured us of this. If they don't, we'll have discussion on it. Further discussion on 2176?

Rep. Glassheim: I have been concerned about the treatment of this in terms of the budget stabilization fund, which I understand protects against future shortfalls, based on appropriations in a biennium. This money is already in the bank, so it's not likely to be a shortfall; now there's \$68M potentially taken out of circulation and put in budget stabilization because of this. I'm okay with going ahead with it, but I would like to discuss it at some point.

Chairman Delzer: I'm assured you will bring it forward, and if you don't, I will. These issues are very important.

Rep. Skarphol: So the total going to the non-oil townships is \$36M? I was unclear why it was in two different subsections.

Chairman Delzer: Somewhere in that neighborhood, \$35-\$36M. It's two different formulas: one is \$15,000 for each of those townships; the other is how much they get out of the normal distribution formula. Everything else goes through the normal distribution formula.

Brady Larson, Legislative Council: That is correct.

Chairman Delzer asked if there was further discussion. Seeing none, a roll call vote was done. The motion carried 20 Yes, 0 No, 2 Absent. **Chairman Delzer** will be the carrier.

Date: January 28, 2013
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB2176

House Appropriations - Government Operations Division Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Representative Hawken Seconded By Representative Guggisberg

Representatives	Yes	No	Representatives	Yes	No
Chairman Thoreson	x		Representative Glassheim	x	
Vice Chairman Brandenburg			Representative Guggisberg	x	
Representative Kempenich	x				
Representative Hawken	x				
Representative Sanford	x				

Total (Yes) 6 No 0

Absent 1

Floor Assignment Representative Hawken

If the vote is on an amendment, briefly indicate intent:

Date: 1/29/13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2176

House Appropriations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep. Hawken Seconded By Rep. Thoreson

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer	X		Rep. Streyle	X	
Vice Chairman Kempenich	X		Rep. Thoreson	X	
Rep. Bellew	X		Rep. Wieland	X	
Rep. Brandenburg	X				
Rep. Dosch	X				
Rep. Grande			Rep. Boe		
Rep. Hawken	X		Rep. Glassheim	X	
Rep. Kreidt	X		Rep. Guggisberg	X	
Rep. Martinson	X		Rep. Holman	X	
Rep. Monson	X		Rep. Williams	X	
Rep. Nelson	X				
Rep. Pollert	X				
Rep. Sanford	X				
Rep. Skarpol	X				

Total Yes 20 No 0

Absent 2

Floor Assignment Rep. Delzer

If the vote is on an amendment, briefly indicate intent:

Motion carries

REPORT OF STANDING COMMITTEE

SB 2176: Appropriations Committee (Rep. Delzer, Chairman) recommends **DO PASS** (20 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2176 was placed on the Fourteenth order on the calendar.

2013 TESTIMONY

SB 2176

The two faces of SB 2176.

One face reflects good public policy.

The other face reflects our own inside the beltway discussions.

2176 will provide a shot in the arm, a boost, to infrastructure needs in ND by capturing an additional construction season for our department of transportation. SB 2176 simply takes \$720 M found in the governors budget, and distributes it immediately.

The bill appropriates a total of \$620 million to the DOT for construction and maintenance of state highways and an additional one-time-spending amount of \$100 million is distributed to counties, cities and townships in non-oil producing areas of the state. The \$100 M is distributed in accordance with the legislative mandated formula found in 54-27-19.

The face of good public policy.

2176 allows the DOT to accomplish three things much faster than waiting for the legislature to complete its work on all budgets.

1. Purchase of right-of-way
2. Engineering of new projects can be initiated
3. Bids can be let. (Early bids can be lesser bids)

In addition, 2176 gives a needed boost for cities/counties/townships for extraordinary roadway maintenance purposes.

These faces of 2176 are good for DOT, the construction industry, infrastructure needs, and our taxpayers.

The inside the beltway face

As legislators we need to be cognizant of the big picture, the budget, and priorities.

First: The money in 2176 is in the governors budget, but it is accounted for differently in this bill than in 2012 the budget for DOT. If you believe in transparency, you should support this bill because it more clearly tracks this appropriation.

Some will say... we're increasing general fund spending in the next biennium. Yes... but.... We are not increasing the amount of money our taxpayers are going to spend on roads. We are just calling a spade a spade.

The governor funds these activities by transferring the money from the 2011-13 ending fund balance which was unanticipated.

Page A-1 of the Legislative council "Analysis of the Executive Budget" documents this fact.

As you can see, 2176 increases the ending fund balance for 2011-13 by \$720 M, and accounts for it in the 2013-15 budget as general fund spending of \$720. Something we need to be aware of as an inside the beltway fact.

As we are now spending this money as general funds, it will be subject to the 9.5% requirement of the rainy day fund.

Second: we aren't doing enough for infrastructure. OF COURSE NOT. This is just a bill to take advantage of an additional construction season. The total package will be debated and resolved in the budget of DOT SB 2012. Let us save that discussion for another day.

I ask myself, why haven't we done this before? Probably because we haven't done it before.

It is a major change

1 8. The funding included in the county and township road reconstruction line item in
2 section 1 of this Act may be applied to engineering and design costs incurred on
3 related projects as of January 1, 2013.

4 9. Section 54-44.1-11 does not apply to funding included in the county and township road
5 reconstruction program line item in section 1 of this Act. Any funds not spent by
6 June 30, 2015, must be continued into the biennium beginning July 1, 2015, and
7 ending June 30, 2017, and may be expended only for county and township paved and
8 unpaved road rehabilitation and reconstruction projects.

9 **SECTION 5. APPROPRIATION - STATE TREASURER - 2011-13 BIENNIUM**

10 **TRANSPORTATION FUNDING DISTRIBUTIONS.** There is appropriated out of any moneys in
11 the general fund in the state treasury, not otherwise appropriated, the sum of \$100,000,000, or
12 so much of the sum as may be necessary, to the state treasurer for the purpose of providing
13 transportation funding distributions, for the period beginning with the effective date of this Act
14 and ending June 30, 2013. The funding provided in this section is considered a one-time
15 funding item. The state treasurer shall distribute the funds provided under this section as soon
16 as possible after the effective date of this Act and prior to June 30, 2013, as follows:

- 17 1. Sixty-four million dollars to non-oil-producing counties and cities pursuant to
18 subsection 4 of section 54-27-19.
- 19 2. Sixteen million dollars to counties and townships in non-oil-producing counties
20 pursuant to section 54-27-19.1. Organized townships are not required to provide
21 matching funds to receive distributions under this section.
- 22 3. Twenty million dollars to counties and townships in non-oil-producing counties through
23 a distribution of \$15,000 to each organized township and a distribution of \$15,000 for
24 each unorganized township to the county in which the unorganized township is
25 located. If any funds remain after the distributions provided under this subsection, the
26 state treasurer shall distribute eighty percent of the remaining funds to counties and
27 cities pursuant to the method provided in subsection 1 and shall distribute twenty
28 percent of the remaining funds to counties and townships pursuant to the method
29 provided in subsection 2.

30 For purposes of this section, a "non-oil-producing county" means a county that received no
31 allocation of funding or a total allocation under section 57-51-15 of less than \$500,000 for state

1 fiscal year 2012. Any funds received by a county under this section for an unorganized township
2 distribution must be used for roadway purposes in those unorganized townships located in the
3 county. All funds distributed under this section must be used for extraordinary roadway
4 maintenance purposes.

5 **SECTION 6. APPROPRIATION - TRANSFER - GENERAL FUND TO HIGHWAY FUND -**
6 **2011-13 BIENNIUM.** There is appropriated out of any moneys in the general fund in the state
7 treasury, not otherwise appropriated, the sum of \$620,000,000, or so much of the sum as may
8 be necessary, which the office of management and budget shall transfer to the highway fund
9 for the period beginning with the effective date of this Act and ending June 30, 2013. The
10 funding provided in this section is considered a one-time funding item. The office of
11 management and budget shall transfer the funds provided under this section as soon as
12 possible after the effective date of this Act and prior to June 30, 2013.

13 **SECTION 7. APPROPRIATION - TRANSFER - GENERAL FUND TO HIGHWAY FUND.**
14 There is appropriated out of any moneys in the general fund in the state treasury, not otherwise
15 appropriated, the sum of \$683,600,000, or so much of the sum as may be necessary, which the
16 office of management and budget shall transfer to the highway fund during the biennium
17 beginning July 1, 2013, and ending June 30, 2015. The funding provided in this section is
18 considered a one-time funding item.

19 **SECTION 8. ENHANCED STATE HIGHWAY INVESTMENTS - CARRYOVER**
20 **AUTHORITY.** Section 54-44.1-11 does not apply to funding of \$1,161,600,000 in the capital
21 assets line item relating to enhanced state highway investments in section 1 of this Act. Any
22 funds not spent by June 30, 2015, must be continued into the biennium beginning July 1, 2015,
23 and ending June 30, 2017, and may be expended only for enhanced state highway
24 investments.

25 **SECTION 9. EMERGENCY.** Sections 5 and 6 of this Act and funding of \$1,161,600,000 in
26 the capital assets line item relating to enhanced state highway investments and \$142,000,000
27 in the county and township road reconstruction program line item in section 1 of this Act are
28 declared to be an emergency measure.

3

**COMPARISON OF 2013 SENATE BILL NUMBERS 2012 AND 2176 -
APPROPRIATIONS TO THE DEPARTMENT OF TRANSPORTATION****FUNDING FROM THE GENERAL FUND
INCLUDED IN SENATE BILL NO. 2012
AND SENATE BILL NO. 2176****Senate Bill No. 2012**

Senate Bill No. 2012, which is the executive budget recommendation for the Department of Transportation, provides for two transfers from the general fund to the highway fund totaling \$1,303,600,000. The first transfer, which is \$620 million, would be made during the 2011-13 biennium, and the second transfer, which is \$683.6 million, would be made during the 2013-15 biennium. Senate Bill No. 2012 then appropriates \$1,303,600,000 of special funds from the highway fund to the Department of Transportation for the 2013-15 biennium. Senate Bill No. 2012 also includes a 2011-13 biennium general fund appropriation of \$100 million to the State Treasurer for transportation funding distributions to non-oil-producing counties, cities, and townships.

Senate Bill No. 2012 includes an emergency clause for the 2011-13 biennium general fund transfer to the highway fund, for the \$1,303,600,000 special funds appropriation to the Department of Transportation, and for the \$100 million general fund appropriation to the State Treasurer. The emergency clause would allow for the transfer to be made and the appropriations to become available upon the effective date of the bill.

Senate Bill No. 2176

Senate Bill No. 2176 provides a 2013-15 biennium general fund appropriation of \$620 million to the Department of Transportation for the construction and maintenance of state highways. The bill also provides a 2013-15 biennium general fund appropriation of \$100 million to the State Treasurer for transportation funding distributions to non-oil-producing counties, cities, and townships. An emergency clause is included in the bill to allow for the appropriations to become available upon the effective date of the bill.

Comparison

The purpose and use of the \$620 million general fund appropriation to the Department of Transportation is the same under both Senate Bill No. 2012 and Senate Bill No. 2176. The only difference is the method of appropriating the funds to the Department of Transportation. Senate Bill No. 2012 provides for a \$620 million 2011-13 biennium transfer from the general fund to the highway fund and then provides a \$1.3 billion special funds appropriation from the highway fund to the Department of Transportation for the 2013-15 biennium with an emergency clause. Senate Bill No.

2176 provides for a direct \$620 million general fund appropriation to the department for the 2013-15 biennium with an emergency clause.

The distribution method of the \$100 million of funds appropriated from the general fund to the State Treasurer for transportation funding distributions is the same under both Senate Bill No. 2012 and Senate Bill No. 2176. The only difference for the appropriation is that Senate Bill No. 2176 appropriates the funding for the 2013-15 biennium with an emergency clause rather than the 2011-13 biennium as provided in Senate Bill No. 2012.

**EFFECT ON 2011-13 BIENNIUM GENERAL
FUND CASH BALANCES**

Senate Bill No. 2012 includes a \$620 million transfer from the general fund to the highway fund during the 2011-13 biennium. Assuming the associated emergency clause is approved, the entire \$620 million transfer could be made as soon as the bill becomes effective.

Senate Bill No. 2176 appropriates \$620 million from the general fund to the Department of Transportation. Assuming the emergency clause in the bill is approved, the department would be able to expend the funds immediately. However, the department would only expend funds as expenses are incurred. Therefore, the effect to the general fund during the 2011-13 biennium would be limited to the actual amount of expenses incurred and paid by the Department of Transportation prior to July 1, 2013.

Under both Senate Bill No. 2012 and Senate Bill No. 2176, the \$100 million general fund appropriation to the State Treasurer would be available upon the effective date of the respective bill.

**EFFECT ON BUDGET
STABILIZATION FUND**

North Dakota Century Code Chapter 54-27.2 creates the budget stabilization fund. The chapter provides that any amount in the general fund in excess of \$65 million at the end of a biennium must be transferred from the general fund to the budget stabilization fund. However, the maximum balance in the budget stabilization fund is limited to 9.5 percent of the current biennial state general fund budget as approved by the most recently adjourned regular or special session of the Legislative Assembly.

Assuming no special sessions of the Legislative Assembly would be called prior to June 30, 2013, a transfer from the general fund to the budget stabilization fund on June 30, 2013, would be based on the 2013-15 biennium general fund appropriations approved by the Legislative Assembly in the 2013 regular session. The amount of the transfer would be

3

limited to an amount that would not bring the balance of the budget stabilization fund to a level greater than 9.5 percent of 2013-15 biennium general fund appropriations.

Senate Bill No. 2012 provides for a 2011-13 biennium transfer from the general fund to the highway fund of \$620 million and a 2013-15 biennium transfer from the general fund to the highway fund of \$683.6 million. Because the \$620 million transfer would be made during the 2011-13 biennium, the amount would not be included in 2013-15 biennium general fund appropriations and would not be used in the calculation of a transfer from the general fund to the budget stabilization fund on June 30, 2013. Likewise, the 2011-13 biennium \$100 million general fund appropriation to the State Treasurer for transportation funding distributions non-oil-producing counties would not be included in the calculation for a transfer to the budget stabilization fund.

Senate Bill No. 2176 provides for 2013-15 biennium general fund appropriations of \$620 million to the Department of Transportation and \$100 million to the State Treasurer. Because the appropriations are for the 2013-15 biennium, the \$720 million of combined appropriations would be included in the calculation of a transfer from the general fund to the budget stabilization fund on June 30, 2013. Assuming sufficient funds remain in the general fund at the end of the 2011-13 biennium, the transfer from the general fund to the budget stabilization fund on June 30, 2013, would potentially be increased by up to \$68.4 million under Senate Bill No. 2176 as compared to Senate Bill No. 2012. If the entire \$68.4 million transfer was made, the estimated balance in the budget stabilization fund would be increased from \$454.7 million as provided in the executive budget to \$523.1 million.

Senate/House Appropriations Committees
January 22, 2013 – 8:30 a.m. – Harvest Room

North Dakota Department of Transportation
Grant Levi, Interim Director, NDDOT
Senate Bill 2176

Mr. Chairman and members of the committee, I'm Grant Levi, Interim Director for the North Dakota Department of Transportation (NDDOT). The Department supports SB2176.

With the passage of this legislation, the Department will be able to accelerate the design, purchasing of right-of-way, bidding, and awarding of roadway projects. We intend to start bidding projects as early as February if the bill is passed and signed by the end of January. This allows quicker delivery of roadway projects that will enhance the safety for the traveling public.

Section 1 – makes up to \$620 million of General Fund money from the 2013-2015 biennium available to the Department upon signing of the bill. This section allows us to accelerate the necessary work using a portion of the proposed funding contained in SB2012.

Section 2 - appropriates \$100 million in General Fund money to the treasurer to be used by the cities, counties, and townships in the non-oil producing counties following the formula outlined in the bill. This would remove the \$100 million appropriation from SB2012.

Section 3 – declares an emergency.

If this bill passes, the Department plans to bid roadway projects beginning in February continuing through May. The following is the Department's planned commitments for the use of the \$620 million as outlined in Section 1 of SB2176:

- Construction contracts: \$454.4 million
- Right of way agreements: \$86 million
- Engineering commitments: \$79.6 million

It is necessary to have this funding available to allow the Department and its partners to complete the work for the construction contracts to be bid and allow future projects to be bid in the 2013-2015 biennium.

Some projects included in the bid openings from February through May include:

ND Hwy 22 - continue corridor improvement

US Hwy 85 - purchase right-of-way with the intention to let contracts on portions of the 4-laning between Watford City and Williston

US Hwy 2 – roadway improvements

4

ND Hwy 8 – roadway reconstruction work
ND Hwy 23 – reconstruction on portions of highway
US Hwy 52 – surface work
ND Hwy 1804 – roadway improvements
ND Hwy 1806 – roadway improvements

Bidding projects early allows contractors to do staff planning and obtain necessary resources needed for construction. This will result in more competitive bid prices.

The Department would appreciate receiving the authority to proceed with the \$620 million of work early so we can accelerate the design, purchase right-of-way, bid and award projects earlier. We anticipate our actual expenditures through the 2011-2013 biennium will be approximately \$225 million.

Mr. Chairman, I would be happy to answer any questions at this time. Thank you.

Testimony SB 2176

House and Senate Appropriations Committee

January 22, 2013

Mr. Chairman and committee members, Thank you for your commitment to the state of North Dakota by serving as a citizen legislator. My name is Donn Diederich I am the Executive Vice President of Industrial Builders a contracting firm from Fargo. Industrial Builders is a highway heavy contractor who builds bridges, dams, water systems, flood control structures and agricultural processing facilities. I appreciate the opportunity to testify today in support of Senate Bill 2176

The Associated General Contractors of North Dakota has asked me, as a past President of the association, to talk with you about our views regarding transportation funding in SB 2176 and why this bill is crucial to the success of the 2013 and 2014 construction seasons.

North Dakota has relied heavily on federal funding during most of the last 50 years for funding transportation projects in our state. The Federal Surface Transportation program called MAP-21 is one of a few funding bills that passed the 112th Congress. Last July, 2012, after more than 3 years of extensions since the last federal transportation law expired, the

President signed the highway and transit reauthorization bill. This authorizes the program through September of 2014.

While federal funding for North Dakota is relatively stable thru this reauthorization period, the national highway trust fund is heading for a significant drop off in 2015, the first year of the next federal reauthorization period. If Congress doesn't act to increase Highway Trust Fund revenues, it is estimated the program will drop 57% from 40 billion dollars in 2014 to less than 20 billion dollars in 2015, the last year of this biennium. If that decline occurs, the projects that bill SB 2176 fund, will become the backbone of the upgrades done in 2015 construction season.

Given the condition of our infrastructure, particularly in western North Dakota, the appropriations contained in SB 2176 will connect the current legislative cycle and our industry's construction cycle so that the two time periods work together.

By passing this bill with the emergency clause, this legislature will accomplish important goals:

1. Projects that are ready to go now can be bid early enough to plan and construct during the 2013 construction season.

2. The 2014 construction season will have sufficient time to develop carefully.
3. The construction portion of the 2015 season will be secure with the elimination of section 54-044.1-11, the carryover clause.

As you know, infrastructure projects envisioned by this appropriation bill take years to plan and build. North Dakota needs multi-year spending authority to give the DOT the time needed to plan as well as provide contractors the time to bid and construct those projects. In return the State of North Dakota will receive the greatest value on the moneys you invest on these projects.

Here in North Dakota, many of us have a relationship to the land, through family or friends or our own experiences. This means you know that in farming, things take as long as they take. A farmer can't decide to plant a crop in July and hope to get a harvest. He has to decide what he's going to plant, acquire the seed, prepare the equipment, prepare the land, and get the seed in the ground.

It's the same with building infrastructure. The DOT needs time to plan, design, and bid projects. Contractors need time to bid those projects,

collect crews, allocate equipment, and get into the ground during our short construction season.

By passing SB 2176 with the emergency clause, you will make it possible to harvest a crop of great infrastructure projects for our state.

I thank you for your willingness to serve the citizens of North Dakota. I appreciate the opportunity to testify in support of SB 2176 and would ask the same of you.

Mr. Chairman that concludes my remarks. I would address any questions you may have.

Testimony SB 2176
Joint Meeting, Senate and House Appropriations Committees
January 22, 2013 (Harley E. Neshem)

Good morning Mr. Chairman and members of the committee.

My name is Harley Neshem and I am president of Gratech Company, Ltd. of Berthold. We are a grading and aggregate contractor. Our company was founded in 1949 and I have personally been involved with highway construction in North Dakota since 1970. We presently employ about 200 workers seasonally and have construction volume approaching \$50 million. I have also served as president of the Associated General Contractors of North Dakota.

As you might imagine, our association members support Governor Dalrymple's proposed increase in infrastructure investment. As one living in western North Dakota, I experience the need for this investment every day. The deteriorating road system, in not only oil country but statewide, is well documented. I especially wish to state my support for Senate Bill 2176 which puts a portion of that money into position for early bid calls and start of work.

I know the question has been asked whether the construction industry will be able to carry out the work that is contemplated under such a major increase in funding. Another question is will the state get good value for its dollar? The answer is yes and the most recent bid letting, November 16th, is illustrative. Bids were called for 43 projects. The engineer's estimate of cost for these 43 projects was \$110,000,000. The low bids totaled \$97,000,000, some 12.1% less than the DOT expected. A total of 286 bids were submitted, which is an average of 6.7 bidders for each project. There is much competition for the work.

A little disheartening is the fact that of the 286 bids, only 94 were placed by North Dakota contractors, leaving 192 by out of state firms. For a variety of reasons, mostly related to funding, highway construction in North Dakota has been in decline until just recently and many contractors, especially grading contractors, have left the industry.

Testimony SB 2176 - Page 2
Joint Meeting, Senate and House Appropriations Committees
January 22, 2013 (Harley E. Neshem)

Along with increased funding, it is critical that those funds get to the DOT as quickly as possible so projects can be let for bids as early in the cycle as possible. This bill accomplishes that, at least for state funded projects.

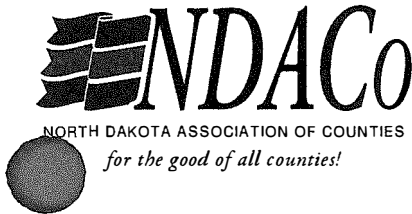
Springtime load restrictions on the highways makes the movement of heavy equipment prohibitive between approximately mid-March and mid-May. If we can move our most productive, yet heaviest, equipment before load restrictions are imposed we can reduce our costs and begin and complete projects sooner and more efficiently.

Our industry competes for labor with many others. Putting projects out for bid earlier would allow us to put our crews together while the labor pool is larger than it will be later.

I also ask for early funding of additional staff positions to speed up the process of issuing "Certificates of Authority" (COA's). A COA is confirmation that our proposed source of borrow dirt, gravel and even rock piles in a cultivated field is free of cultural artifacts and various government easements. We are waiting as long as 30 days for these COA's to be issued because of staff shortages. My company and others have had to idle crews, at great expense, while waiting for issuance only to run out of time to complete a project within the time allowed.

In his testimony last week, acting DOT Commissioner Grant Levi reported on the difference in highway construction costs in western North Dakota compared to the rest of the state. It is significantly higher but construction costs are rising everywhere. As a contractor, though, if you can help me with my costs, I can help you with your price. This legislation, if passed, will help tremendously and I urge you to vote in support of it.

Thanks very much for the opportunity to present these comments today. I will try to answer any questions you may have.



Testimony to the

Senate Appropriations Committee

Prepared January 17, 2013 by

Mark A. Johnson, Executive Director of the
North Dakota Association of Counties

Regarding: SB2176 – NDDOT Budget Fast-Track

Chairman Holmberg and Chairman Delzer and members of the Appropriations Committees, the North Dakota Association of Counties would like to document the enthusiastic support of the counties for Senate Bill 2176. Clearly the State's highway, road, and street infrastructure is in great need of the level of funding proposed in the Department of Transportation's Budget, and the concept of "fast-tracking" a major portion of that to ensure its availability for the 2013 construction season is outstanding.

We understand that the Legislature, and particularly your Appropriations Committees, have a large challenge ahead in balancing the revenue available with the numerous needs of our vast state. In meeting that challenge with respect to transportation funding, we thank you for keeping the interests of local government in mind.

The appropriation for the continued examination of rural road needs by the Upper Great Plains Transportation Institute is an important element of the NDDOT budget. The past studies have been an excellent guide for policy makers as well as those implementing engineers and road superintendents. Clearly, SB2176 responds directly to the immediate needs of rural roadways as identified by UGPTI.

Thank you again for your consideration of county interests, and be assured our staff stands ready to assist your subcommittee in any way possible.

Mark A. Johnson CAE, NDACo Executive Director

COMPARISON OF 2013 SENATE BILL NUMBERS 2012 AND 2176 - APPROPRIATIONS TO THE DEPARTMENT OF TRANSPORTATION

FUNDING FROM THE GENERAL FUND INCLUDED IN SENATE BILL NO. 2012 AND SENATE BILL NO. 2176

Senate Bill No. 2012

Senate Bill No. 2012, which is the executive budget recommendation for the Department of Transportation, provides for two transfers from the general fund to the highway fund totaling \$1,303,600,000. The first transfer, which is \$620 million, would be made during the 2011-13 biennium, and the second transfer, which is \$683.6 million, would be made during the 2013-15 biennium. Senate Bill No. 2012 then appropriates \$1,303,600,000 of special funds from the highway fund to the Department of Transportation for the 2013-15 biennium. Senate Bill No. 2012 also includes a 2011-13 biennium general fund appropriation of \$100 million to the State Treasurer for transportation funding distributions to non-oil-producing counties, cities, and townships.

Senate Bill No. 2012 includes an emergency clause for the 2011-13 biennium general fund transfer to the highway fund, for the \$1,303,600,000 special funds appropriation to the Department of Transportation, and for the \$100 million general fund appropriation to the State Treasurer. The emergency clause would allow for the transfer to be made and the appropriations to become available upon the effective date of the bill.

Senate Bill No. 2176

Senate Bill No. 2176 provides a 2013-15 biennium general fund appropriation of \$620 million to the Department of Transportation for the construction and maintenance of state highways. The bill also provides a 2013-15 biennium general fund appropriation of \$100 million to the State Treasurer for transportation funding distributions to non-oil-producing counties, cities, and townships. An emergency clause is included in the bill to allow for the appropriations to become available upon the effective date of the bill.

Comparison

The purpose and use of the \$620 million general fund appropriation to the Department of Transportation is the same under both Senate Bill No. 2012 and Senate Bill No. 2176. The only difference is the method of appropriating the funds to the Department of Transportation. Senate Bill No. 2012 provides for a \$620 million 2011-13 biennium transfer from the general fund to the highway fund and then provides a \$1.3 billion special funds appropriation from the highway fund to the Department of Transportation for the 2013-15 biennium with an emergency clause. Senate Bill No.

2176 provides for a direct \$620 million general fund appropriation to the department for the 2013-15 biennium with an emergency clause.

The distribution method of the \$100 million of funds appropriated from the general fund to the State Treasurer for transportation funding distributions is the same under both Senate Bill No. 2012 and Senate Bill No. 2176. The only difference for the appropriation is that Senate Bill No. 2176 appropriates the funding for the 2013-15 biennium with an emergency clause rather than the 2011-13 biennium as provided in Senate Bill No. 2012.

EFFECT ON 2011-13 BIENNIUM GENERAL FUND CASH BALANCES

Senate Bill No. 2012 includes a \$620 million transfer from the general fund to the highway fund during the 2011-13 biennium. Assuming the associated emergency clause is approved, the entire \$620 million transfer could be made as soon as the bill becomes effective.

Senate Bill No. 2176 appropriates \$620 million from the general fund to the Department of Transportation. Assuming the emergency clause in the bill is approved, the department would be able to expend the funds immediately. However, the department would only expend funds as expenses are incurred. Therefore, the effect to the general fund during the 2011-13 biennium would be limited to the actual amount of expenses incurred and paid by the Department of Transportation prior to July 1, 2013.

Under both Senate Bill No. 2012 and Senate Bill No. 2176, the \$100 million general fund appropriation to the State Treasurer would be available upon the effective date of the respective bill.

EFFECT ON BUDGET STABILIZATION FUND

North Dakota Century Code Chapter 54-27.2 creates the budget stabilization fund. The chapter provides that any amount in the general fund in excess of \$65 million at the end of a biennium must be transferred from the general fund to the budget stabilization fund. However, the maximum balance in the budget stabilization fund is limited to 9.5 percent of the current biennial state general fund budget as approved by the most recently adjourned regular or special session of the Legislative Assembly.

Assuming no special sessions of the Legislative Assembly would be called prior to June 30, 2013, a transfer from the general fund to the budget stabilization fund on June 30, 2013, would be based on the 2013-15 biennium general fund appropriations approved by the Legislative Assembly in the 2013 regular session. The amount of the transfer would be

limited to an amount that would not bring the balance of the budget stabilization fund to a level greater than 9.5 percent of 2013-15 biennium general fund appropriations.

Senate Bill No. 2012 provides for a 2011-13 biennium transfer from the general fund to the highway fund of \$620 million and a 2013-15 biennium transfer from the general fund to the highway fund of \$683.6 million. Because the \$620 million transfer would be made during the 2011-13 biennium, the amount would not be included in 2013-15 biennium general fund appropriations and would not be used in the calculation of a transfer from the general fund to the budget stabilization fund on June 30, 2013. Likewise, the 2011-13 biennium \$100 million general fund appropriation to the State Treasurer for transportation funding distributions non-oil-producing counties would not be included in the calculation for a transfer to the budget stabilization fund.

Senate Bill No. 2176 provides for 2013-15 biennium general fund appropriations of \$620 million to the Department of Transportation and \$100 million to the State Treasurer. Because the appropriations are for the 2013-15 biennium, the \$720 million of combined appropriations would be included in the calculation of a transfer from the general fund to the budget stabilization fund on June 30, 2013. Assuming sufficient funds remain in the general fund at the end of the 2011-13 biennium, the transfer from the general fund to the budget stabilization fund on June 30, 2013, would potentially be increased by up to \$68.4 million under Senate Bill No. 2176 as compared to Senate Bill No. 2012. If the entire \$68.4 million transfer was made, the estimated balance in the budget stabilization fund would be increased from \$454.7 million as provided in the executive budget to \$523.1 million.