

FISCAL NOTE
Requested by Legislative Council
12/23/2016

Amendment to: HB 1110

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

| | 2015-2017 Biennium | | 2017-2019 Biennium | | 2019-2021 Biennium | |
|-----------------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
| | General Fund | Other Funds | General Fund | Other Funds | General Fund | Other Funds |
| Revenues | | | | | | |
| Expenditures | | | | | | |
| Appropriations | | | | | | |

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

| | 2015-2017 Biennium | 2017-2019 Biennium | 2019-2021 Biennium |
|-------------------------|--------------------|--------------------|--------------------|
| Counties | | | |
| Cities | | | |
| School Districts | | | |
| Townships | | | |

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill allows the NDDOT to enter into cooperative agreements whereby private entities could cover the cost of construction of items on the state highway system.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

This bill would have a fiscal impact. However, we have no way of quantifying the impact at this time as it would depend on the nature of the construction project. This bill could have a positive fiscal impact to the state ranging from tens of thousands of dollars for a small project to millions of dollars for a large project.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*
- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*
- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Name: Shannon L. Sauer

Agency: ND Dept of Transportation

Telephone: 328-4375

Date Prepared: 01/04/2017

FISCAL NOTE
Requested by Legislative Council
12/23/2016

Bill/Resolution No.: HB 1110

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

| | 2015-2017 Biennium | | 2017-2019 Biennium | | 2019-2021 Biennium | |
|----------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
| | General Fund | Other Funds | General Fund | Other Funds | General Fund | Other Funds |
| Revenues | | | | | | |
| Expenditures | | | | | | |
| Appropriations | | | | | | |

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

| | 2015-2017 Biennium | 2017-2019 Biennium | 2019-2021 Biennium |
|------------------|--------------------|--------------------|--------------------|
| Counties | | | |
| Cities | | | |
| School Districts | | | |
| Townships | | | |

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill allows the NDDOT to enter into cooperative agreements whereby private entities could cover the cost of construction of items on the state highway system.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

This bill would have a fiscal impact. However, we have no way of quantifying the impact at this time as it would depend on the nature of the construction project. This bill could have a positive fiscal impact to the state ranging from tens of thousands of dollars for a small project to millions of dollars for a large project.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*
- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*
- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Name: Shannon L. Sauer

Agency: ND Dept of Transportation

Telephone: 328-4375

Date Prepared: 01/04/2017

2017 HOUSE TRANSPORTATION

HB 1110

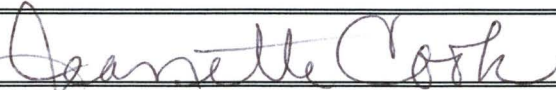
2017 HOUSE STANDING COMMITTEE MINUTES

Transportation Committee
Fort Totten Room, State Capitol

HB 1110
1/6/2017
26647

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A bill relating to cooperative agreements with private entities for the construction of certain items on the state highway system.

Minutes:

Attachment #1

Chairman Ruby brought HB 1110 before the committee.

Ron Henke, P.E., Deputy Director for Engineering, North Dakota Department of Transportation spoke to support HB 1102 and provided written testimony. See attachment #1. (2:18)

Chairman Ruby: Can you give us an example of how this works?

Ron Henke: Last year we had a request from a developer in the Gwinner area that was putting up an elevator. They asked for turning lanes. We didn't have a project in the area, so we didn't have a schedule to make improvements. They wanted the turning lanes that year because it helps the trucks get in and out. We went to the county and told them that we don't have the ability to do this and asked the county if they would be willing to do it. In that case the county said, "No, they did not want to take the risk." So, we were unable to get the turning lanes built when the land owner wanted.

In another case turning lanes were requested, the biggest request that we get, and the county was willing to enter into the agreement. Then what we do is give the county the right to enter into highway right-of-way. They then enter into an agreement with the developer, who then works through the county to get the project built. That way we don't have any money exchanges. We have done some where we actually gave a company the right to overlay the highway because they wanted to get rid of the load restriction that we had on that highway. That was when we were concerned if we had the right to enter into that agreement. We required them to hire one of our prequalified consultants, then they hired a contractor to build the road, and we reviewed the plans. We make them follow our specifications, and we inspect it to make sure they followed the plans that were agreed on. Then we sign off and take it back over. In no case does the state lose what is built.

It seems like we get more and more requests from the unit train elevators, they are always looking for the turn lanes right away. They are not willing to wait for years until we have a project. If we have a project in the area, it normally become part of the project cost. Part of our process is to look at operations, if the operations warrant it, then we build turn lanes or add signals at that time.

Chairman Ruby: You don't think you have the ability to enter into an agreement with private property owners?

Ron Henke: We are being advised that we don't have that ability.

Representative Weisz: Assuming this would pass, and you were going to put turning lanes in a project in five years, would you tell the owner that you were going to do it in five years but if they wanted it now they would have to pay for all of it? Would the owner have to cost share the project if they waited the five years?

Ron Henke: We have never done it that way. If we have a project planned, we incorporate it if they are willing to wait. We look at the operations, and if it is warranted we build it. If someone wants something, and we have it planned; we tell the business. They have the option to wait.

Representative Owens: You stated that you have been able to do a public/private partnership through the counties so far. The counties have been used to procure, and that way we maintained the quality of what was going on. If the bill passes, will you set up rules and regulations on how it will go through the state to process and to insure that the requirements and standards are met?

9:40

Ron Henke: Yes, we will still make sure that all of the environmental documents are filed, and the permits are obtained before we allow the business to come into the highway right-of-way and build something.

Representative Schobinger: Does this include signing or other things?

Ron Henke: Signing is a whole different topic. It is not the same as this. There are federal laws that prohibit private signs on public property. It has been mostly turning lanes, some acceleration lanes, signal lights, and some overlays.

Chairman Ruby: The fiscal note says that the bill could have a positive impact to the state ranging from tens of thousands of dollars for a small project to millions of dollars for a large project. In reality it should be a wash. You are charging them exactly what the cost would be. The maintenance would also be the state's after the project is finished. Is that correct?

Ron Henke: Yes, it is hard to come up with at fiscal note because some years we don't get any requests, other years we do. The range in project costs is very large.

Representative Nelson: I am surprised that the county can enter into a private agreement

to work on a state highway, but the state highway department can't enter into a private agreement. Are we dealing with dualing lawyers, or no one on the county level bothered to get an opinion? Do you have a specific reference where counties are actually being authorized to enter into these agreements or not? Are there just some nervous lawyers here? What is really happening?

Ron Henke: Probably a little of both. We give the counties a right to enter to do work on highway right-of-way. Some of them believe that they have the right to enter into an agreement with a private company. A few have said they don't know if they can do that. We don't believe we have the right, so we can't do the turning lane. Some might be reading the law a little closer, and think maybe they shouldn't have entered into the agreement. Others believe that they can and have done it for years.

Representative Paur: If a company requests a turn lane, but waits until you have a project in the area, will you be obligated to build the turn lane?

Ron Henke: Yes, if the traffic would warrant it. Turn lanes are a state thing, and if a business projects increased usage, we will build it when we are there.

Representative Paur: If it is warranted, and the company builds it themselves (a turning lane). Then it **does** save the state money because the state would have to build it when they have a project in the area.

Ron Henke: Yes, you are correct.

There was no further support of HB 1110.

There was no opposition to HB 1110.

The hearing was closed on HB 1110.

Representative Nelson: I would like to hold this and do some research on whether counties and cities are actually legal. If they aren't, I would like to amend that on to this bill.

2017 HOUSE STANDING COMMITTEE MINUTES

Transportation Committee
Fort Totten Room, State Capitol

HB 1110-2
1/12/2017
26846

- Subcommittee
 Conference Committee

Committee Clerk Signature

Jeanette Cook

Explanation or reason for introduction of bill/resolution: A bill relating to cooperative agreements with private entities for the construction of certain items on the state highway system.

Minutes:

Chairman Ruby brought HB 1110 back before the committee and briefly reviewed the bill. **Representative Nelson** checked about the cities having the ability to enter into contracts, and he said there is nothing prohibiting it.

Representative Owens: The private entity will pay for the project, but the Department of Transportation still goes through the normal process, getting bids and everything?

Chairman Ruby: No, they give the private entity a list of approved engineers, and they pick one of those. Bonnie Steiger, was in (She represents a few groups.) and they feel that this is okay the way that it is. They don't support it or oppose it, but they don't want to see it get expanded where there weren't some bid processes in place.

Representative Weisz: Ron also said that it wouldn't require a RFP or even use one of the contractors that the Department of Transportation currently uses.

Representative Owens: The entity is going to do the construction, but the Department of Transportation provides the specs, is that correct? I would be in agreement with a RFP not being required because then we shouldn't be telling an entity how to go about their procurement process.

Chairman Ruby: The way the bill is written, they get into the cooperative agreement, and they are willing to pay Department of Transportation to do the work. Department of Transportation must follow their normal bidding. But, they can get the initial engineering done with an approved engineer. I think that construction work is done by Department of Transportation.

Representative Owens: If the actual construction is done by the Department of Transportation, then it **would** require an RFP.

Chairman Ruby: Yes, it would. It was the bidding process that Bonnie and her groups were concerned about. I think, that everything that has to be done is through the department.

Representative Weisz: Ron Henke made it clear that they (Department of Transportation) would give them a list of qualified bidders. The Department of Transportation isn't doing it or bidding on it. He made that clear the Department of Transportation **wouldn't** require an RFP; they don't care what it costs. That is up to the private entity. They can use their own equipment and build it. The only thing that Ron said was that they would require the approval of the engineering firms that would engineer the project to ensure it met Department of Transportation's specifications. The testimony says that the private entity will make the improvements. It doesn't say that the private entity will write the check. We do this with the townships all the time. The entity will want a project. We approve it, and they do the work. The bill seems to conflict with Ron Henke's testimony. He specifically talked about qualified bidders, so what would be the point? The only way the Department of Transportation does things is with qualified bidders.

Chairman Ruby: What is the cooperative agreement then? What is the reason for that?

Representative Owens: To require that it meets the specs of the Department of Transportation and to approve the engineering firm that engineers the project.

Chairman Ruby: I don't think the bill is in conflict with that interpretation.

Representative Owens: The part that bothers me is, "Before the department can construct the project." That is not even hinting that the entity is constructing it. The entity is paying for it, but the department is constructing it. It is the second sentence that is confusing. I thought that we were allowing them to pay for it and to build it themselves.

Representative Jones: There is conflict here. I think it is written saying that the Department of Transportation is building the project. It is important to get it right.

Representative O'Brien: In my notes I have, "They (Department of Transportation) will review the plans from the construction of the private entity to make sure they are following all the procedures and protocols, but the entity would be covering the costs." It was set up so that they could not enter into agreements in the first place.

Representative Weisz: So, what is the point? If the Department of Transportation is doing the building, why would they need to enter into an agreement?

The committee agreed that the language is confusing. Maybe an amendment is needed.

Chairman Ruby will ask Ron Henke to come back to clarify and answer questions about the bill language.

The meeting was adjourned.
14:30

2017 HOUSE STANDING COMMITTEE MINUTES

Transportation Committee
Fort Totten Room, State Capitol

HB 1110
1/19/2017
#27159

- Subcommittee
 Conference Committee

Committee Clerk Signature

Janette Cook

Explanation or reason for introduction of bill/resolution:

A bill relating to cooperative agreements with private entities for the construction of certain items on the state highway system.

Minutes:

Chairman Ruby brought HB 1110 back before the committee. He asked Ron Henke to come to clarify the language of the bill. He stated that it was unclear if the department would construct the project or the private entity.

2:14

Ron Henke: We do this in two ways. If we have an individual or a company that wants to do something in highway right-of-way like add a turning lane, we have the ability to give them a right-t-enter. We ask that the entity use one of our prequalified consultants; they then go out and hire the consultant, and hire the contractor to build it. The contractor comes in and builds it; and then we go out and make sure that they built it the way we approved them to build it. That is the way we do this today.

The only other option that the Department of Transportation has right now is this: If we have a project in the area, and there is no intention of building a turning lane; then a company comes in that would like a turning lane built, they ask for us to do it, and say that they will pay for it. **At that point we have no way to accept that money.** This bill allows us to take that money, add it to our contract, and accept that money from the business to pay for the turn lane.

At this time, we have been able get some counties willing to take the risk to enter into an agreement with the company because they believe they can accept the money. The county takes the money, and we enter an agreement with the county (another political subdivision). They pay us after they get the money from the company. We would like to take the county out of this because some do not want to be in it. It is our highway; it is not their county road. With this bill we will be able to take the money from the company, if they offer to pay for it. We will make it part of our contract to get everything done that everyone wants done in the most cost effective way. If we are out there doing 20 miles already, adding a turning lane is

very cost effective for them. They don't have to do it after the fact, which would cost a lot more.

Chairman Ruby: That situation is only when you are already going to be doing a project on the road and didn't plan for that addition; then they pay you? Correct?

Ron Henke: Correct.

Chairman Ruby: If you are already there, and you see that it should be added to the road, wouldn't they be justified to argue that you should be putting it in because there will be need?

Ron Henke: Sometimes we don't have a study done that warrants that turn lane. We have criteria that we have to work through. We ask that company to show us their data that would show what they are going to get in (traffic). We don't have justification to show we should build a turn lane, but they could tell us that they anticipate 300 trucks a day. We would work together to get the project accomplished.

Chairman Ruby: The other situation when a highway has been improved recently, a new company moves in, and you don't have a project in the area anytime soon; then the other situation happens where it normally comes to your department. So, this language that talks about funds received by the department is not applicable at all to that?

Ron Henke: That is correct. If this bill passes, it would give us the opportunity, if we wanted to, to create a project, hire a design firm, bid it through our system, and that company just pays us for the work. We just facilitate the project.

Vice Chairman Rick C. Becker: If I am in charge of the Department of Transportation and the legislature is cutting my budget. I could probably not worry about putting in turn lanes because if businesses want turning lanes, they could ask for it and pay for it themselves correct?

Ron Henke: Our mission is safety; it is number one for us. If there is a turning lane warranted, and we believe it is a good move, we build the turning lane.

Vice Chairman Rick C. Becker: But, do you have the capability to pick and choose which lanes to put in, if there was a bad guy in charge that chose to do that?

Ron Henke: I suppose it could happen. We have never operated that way. I don't see us operating that way and would hope that the director that is in place is a safety conscious director like we have now. That we would never go down that path.

Chairman Ruby: It says that the items requested to be added to the state highway system must be paid for in advance. If this is a project where you are just giving the agreement and are not part of the project, other than authorizing it, what needs to be paid in advance?

Ron Henke: That is a reference to a situation in which we enter to an agreement with someone, and **we** add it to **our** project. They have to pay for it in advance. Sometimes

things get started and then fall through. We want to make sure we get paid for our investment.

Representative Dobervich: How will the department prioritized these projects with their long range plans, if this passes? If someone wants a project right away, and you will not be in the area for a number of years?

Ron Henke: If we have nothing in an area, we can leave the wanted project in the hands of the developer, give them the right to enter, and they can do the project.

Representative Weisz: This section only applies if the entity wants to pay you to construct something that is not part of the plan, correct?

Ron Henke: Yes. We can give them the right to enter today, but we just can't take the money, they have to do it all themselves.

Bonnie Staiger, American Council Engineering Company: If I understand this correctly the ACEC has an issue with the notion of it being a private entity. It doesn't clarify it that it is the land owner. By not clarifying that it is not the land owner, then it seems that the bill opens up the window for anyone to come in as a private entity and buy a job, like a design build firm or someone from out-of-state. I don't think the bill is clear on that.

Chairman Ruby: You want some assurance that there is a need for it? A legitimate need that didn't show up in the initial studies but is justified by that private entity that is requesting this?

Bonnie Staiger: I think so. I think the potential loopholes in this bill allow for it to be misinterpreted to someone's advantage. Not necessarily, the Department of Transportation, but private entities who might ask the Department of Transportation to let them build a road because they can provide the money. Then the public procurement is by-passed. I think that if we pass this bill, two year or four years from now we will come back and see things that we didn't think of now. I would be more comfortable with it if it was the landowner and not a private entity.

Chairman Ruby: The entity might not be right on the road.

Bonnie Staiger: If the Department of Transportation is entering into an agreement with a private entity it doesn't necessarily mean a land owner. I think the wording should be changed to land owner, then that eliminates the potential loophole that I see.

Chairman Ruby: I don't know.

Bonnie Staiger: This is a work in progress. Maybe we go with it like it is, watch it, and come back later if we see a loophole.

Chairman Ruby: I see the situation that you fear most in existing law. It has not been a problem, but maybe has the potential to be.

I think this now makes more sense.

Bonnie Staiger: We do remain neutral on the bill because it is not clear cut enough for us to take a position.

Representative Weisz moved a DO PASS on HB 1110.
Representative O'Brien seconded the motion.

Vice Chairman Rick C. Becker: I think I will resist. It is still unclear to me.

Chairman Ruby: It seems odd that we have given the Department of Transportation the ability to enter into an agreement when there is no work in the area, but when there is work that the Department of Transportation is doing, they don't. That is what they have determined, and that is why they are asking for it.

Representative Weisz: I think this **is very clear**. He reviewed the situation and summarized the information again.

Representative Paur: This bill will pass, but I am not going to vote for it. We have spent a lot of time trying to figure it out. I think it is ambiguous.

A roll call vote was taken on HB 1110. Aye 10 Nay 2 Absent 2
The motion carried.
Representative Weisz will carry HB 1110.

Date: 1-19-17
Roll Call Vote #: 1

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1110

House Transportation Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Weisz Seconded By O'Brien

| Representatives | Yes | No | Representatives | Yes | No |
|----------------------------|-----|----|-------------------------|-----|----|
| Chairman Dan Ruby | X | | Rep. Gretchen Dobervich | X | |
| Vice Chair. Rick C. Becker | | X | Rep. Marvin Nelson | A | |
| Rep. Bert Anderson | X | | | | |
| Rep. Jim Grueneich | X | | | | |
| Rep. Terry Jones | X | | | | |
| Rep. Emily O'Brien | X | | | | |
| Rep. Mark Owens | A | | | | |
| Rep. Gary Paur | | X | | | |
| Rep. Randy Schobinger | X | | | | |
| Rep. Gary Sukut | X | | | | |
| Rep. Robin Weisz | X | | | | |
| Rep. Greg Westlind | X | | | | |
| | | | | | |
| | | | | | |

Total (Yes) 10 No 2

Absent 2

Floor Assignment Weisz

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

REPORT OF STANDING COMMITTEE

HB 1110: Transportation Committee (Rep. D. Ruby, Chairman) recommends **DO PASS**
(10 YEAS, 2 NAYS, 2 ABSENT AND NOT VOTING). HB 1110 was placed on the
Eleventh order on the calendar.

2017 SENATE TRANSPORTATION

HB 1110

2017 SENATE STANDING COMMITTEE MINUTES

Transportation Committee
Lewis and Clark Room, State Capitol

HB 1110
2/9/2017
28085

- Subcommittee
 Conference Committee

Committee Clerk Signature

Mary Munder

Explanation or reason for introduction of bill/resolution:

Relating to cooperative agreements with private entities for the construction of certain items on the state highway system.

Minutes:

Attachment #1

Chairman Laffen: Called the hearing of HB 1110 to order. We welcome Ron Henke.

Ron Henke, Deputy Director for Engineering for the North Dakota Department of Transportation: See Attachment #1.

Senator Campbell: So what you are wanting is for the funds to go to the state rather than the local political sub. Is that correct or not?

Ron Henke: The funds would go to the state but it takes two steps instead of one.

Senator Campbell: So where are the funds at the end of the project?

Ron Henke: The funds will have been spent to make that improvement. It is just so we can accept the funds and pay the contractor. Right now we cannot.

Senator Campbell: Now what's the procedure?

Ron Henke: Now we try to get the county and enter into agreement with them.

Senator Campbell: Grand Forks project years ago and I think Walmart paid for it all. You are discussing that same issue on this bill right?

Ron Henke: Correct. The state cannot accept the funds but the city can.

Senator Campbell: Keep it local and less government involved.

Ron Henke: County is not interested in taking any risk at all. So it is a benefit for the state.

Chairman Laffen: Take the exits and turn lanes, they could be a county job then, and would you normally have some cost, in your oversight or the work you need to do, go unpaid?

Ron Henke: It would be county and we give the county and the developer the right to enter, but they procure everything.

Chairman Laffen: So in an example like that would you normally have some costs in your oversight that go unpaid?

Ron Henke: Our costs would be minimal.

Chairman Laffen: There is a bit of a worry out there that this might be a bill that's trying to do something much bigger. Could there be a big road project, that we don't have funding for, and some design build company wants to come in and do something sort of around the rules? Your testimony is clear that we would still follow all of our statutes in terms of hiring engineering and following procedure. Does the bill need to say that at all?

Ron Henke: We believe that the testimony we give is not to bypass any of those procedures. The bill merely allows us to take the money and do the work.

Chairman Laffen: You have some in house engineers and you do some engineering yourself, is that true?

Ron Henke: Correct.

Senator Nelson: Is there any chance this would get tolling roads that are run by private entities?

Ron Henke: That is not at all our intent. I don't believe we would let them do that, we do not have the P3.

Senator Rust: If you don't have any designs to do any work on a road are you going to do a turn lane for them, yes or no?

Ron Henke: If this bill passes we would have two ways to do that. We ask them to do a traffic-operations to show that their traffic that is going to be generated out of that Cenex, in this example, would warrant a turn lane through our guidelines. If that's there, we have two options; one is we can give Cenex the right to enter, they can go hire whatever and we would play more of an oversight role to make sure it meets the guidelines, if this one passes we would have the ability to enter into an agreement with them, hire ourselves an engineering firm if we can't do the work through our selection process and we would ask for them to pay for that upfront, and we would put it in one of our bid openings for the contractors to bid on to do the work.

Senator Rust: Even if you don't plan to do any work to that road?

Ron Henke: Correct.

Senator Rust: My other question is you have a plan to do something to that road, what happens then when they come to you?

Ron Henke: If we have a job going there and that type of a job meets our guidelines, we would include that in our project and build it.

Senator Rust: You would not ask for any money from them?

Ron Henke: Correct.

Chairman Laffen: Any more questions? None. Thank you. Further testimony in favor of HB1110? Opposition? Neutral? We will close the hearing.

2017 SENATE STANDING COMMITTEE MINUTES

Transportation Committee
Lewis and Clark Room, State Capitol

HB 1110
2/10/2017
28207

- Subcommittee
 Conference Committee

Committee Clerk Signature *Mary Munder*

Explanation or reason for introduction of bill/resolution:

Relating to cooperative agreements with private entities for the construction of certain items on the state highway system.

Minutes:

Attachment #1

Chairman Laffen: Members we are not going to act on this amendment yet. If you remember the DOT said they would like to be able to collect private money to do small projects that are related to the bigger ones. The engineering industry is a little nervous that there might be an ulterior motive to this, like they can't get a road project done but private industry will just give them a \$100 million to build a 100-mile road or a new bridge across the river. They would like to add to this bill an amendment that says; **See attachment #1**. All cooperative agreement projects must be procured through the department as prescribed by section 24-02-07.3. I want to run this by the DOT just to be sure they are ok. Anybody have anything else? Ok. We are adjourned for the day.

2017 SENATE STANDING COMMITTEE MINUTES

Transportation Committee
Lewis and Clark Room, State Capitol

HB 1110
2/16/2017
Job # 28440

- Subcommittee
 Conference Committee

Committee Clerk Signature

Mary Munder

Explanation or reason for introduction of bill/resolution:

Relating to cooperative agreements with private entities for the construction of certain items on the state highway system.

Minutes:

Attachments: 1-2

Chairman Laffen: Call to order hearing on HB 1110. This is the bill Ron brought in to allow the DOT to do projects if they are given private funds. The Engineering Department is concerned that the work should still follow the current statute and that the DOT would not go do something outside the normal law. We have amendments from both of them and we will let them walk us through them.

Michael Krumwiede, ACEC: Basically what we are looking at here is making sure things will be done in the same manner. When we came up with it we didn't know how to write it or how to make that clear. Attachment #1. Then DOT came out with their own amendment, almost the same, but when they talk about 'own forces' it leaves it a little unclear. So we just need new language in there. Attachment #2.

Chairman Laffen: The only difference that I see between the two is that the DOT can either do these projects with their own internal engineering, or hire private engineers all in accordance with section 24. Your amendment is different in what way from that?

Michael Krumwiede: Basically it just talks about how the private funds are used. We realized after we gave it to the DOT, that it kind of tied their hands and we just need to change some of the language.

Senator Nelson: So you are expanding it to include the planning and constructing and not just the engineering.

Michael Krumwiede: Yes. We wanted to make sure it covered everything.

Senator Clemens: Would there be a problem if we used both the amendments? Would that make it a little clearer?

Chairman Laffen: It would make it clearer but I want to make sure we are not tying the hands of the DOT with something they need to do. Questions?

Senator Nelson: So the funds are considered to be public funds once you see them, so if it is an off lane to Walmart, they have no say in it.

Michael Krumwiede: Yes. Once those private funds become public funds then they have to follow the laws, and that's why we want that language in there.

Chairman Laffen: I think what the fear is, correct me if I am wrong, let's say Microsoft builds a brand new complex on the wrong side of lake Sakakawea, and they give you a billion dollars to build a whole new bridge, the DOT could go and hire 50 people to do all the engineering, because now it is private and you don't have to follow the rules. That's what you are trying to protect.

Michael Krumwiede: Yes, it is an extreme case, but in the way the law is written now, they could go out and hire special engineering or a whole specialized work force for one project.

Senator Rust: Now that all of that has been said, tell me the difference between the two.

Michael Krumwiede: Basically, we want to do one thing which is to say that these funds were public funds and use the procurement laws. When we came up with the amendment it basically talked about engineering procurement. They didn't want to use just engineering procurement, so added their 'own forces' and other services. We understand that, and so we just want to make sure the public dollars were different.

Senator Rust: Looks like another part of this is different too. One says engineering services and the other says planning, designing and constructing.

Michael Krumwiede: Yes. That is another reason, by talking with not only ourselves but with others in the industry, they felt that everyone needed to be utilized out of these public funds.

Senator Rust: Wouldn't that create more costs to this project?

Michael Krumwiede: Actually not, all it is really stating is that they follow the current processes that they use on any other projects. Private funds will also follow the laws as well.

Chairman Laffen: Do you have an opinion if we did the DOT version? Could they avoid the bidding portion of law under that?

Michael Krumwiede: I am not sure about the bidding portion. What we are looking for is the "own forces" language to be changed.

Senator Rust: Suppose we took the amendment from DOT and added the sentence, "The funds deposited into the state highway fund in satisfaction of these cooperative agreements are deemed public funds." What do you think of that?

Michael Krumwiede: It would basically be saying the same thing, it's a tough one.

Bonnie Staiger, ACEC: We did fork that motion in that first amendment that we suggested and it was felt that that actually was not enough, it didn't protect the public procurement process just by deeming it public funds.

Senator Rust: Is it because of the planning, designing, and constructing versus just engineering?

Bonnie Staiger: My understanding is that through the amendment we are offering, it is designed to insure that not only the public funds, but that the procurement process for all of that work is through the public bidding, through the public procurement channels. That is the ultimate intent.

Senator Nelson: Their amendment includes all existing requirements of 24-02, and the DOT one only uses sub-section 7.3 and I don't know what 7.3 is.

Chairman Laffen: We will have Brady look that up for us. I think we will hear from Ron next and he will fill us in on what he knows.

Ron Henke, DOT: We submitted an amendment that we thought would take care of explaining how we would procure those engineering services. It does not deal with the construction. If we are going to bid a job, we are going to bid it like always, we have no intent to change things. Appropriations takes care of us hiring 50 people on the Microsoft job, our resources are limited.

Chairman Laffen: Are you limited if it is all private?

Ron Henke: We don't have the ability to accept that kind of money. The bill we submitted, the way I understand it, the not-withstanding doesn't mean you can forget about everything else that's in law. It just has to deal with the ability to take the funds that they offer to build something on the highway system. As far as concerns that we might use the money for something else, we have already entered into an agreement with somebody who gave us money that says we are going to build this for you. We would be breaking a contract, so that limits to where we can spend those dollars. Looking at both amendments, although their amendment might be a little more restrictive, I didn't see any real concerns with it when I read it. If it is too limiting, we just wouldn't take the funds someone is offering, and we would give them a right to enter, which we can do already, and they can go acquire their services the way a private individual would do it then.

Chairman Laffen: You have another option. Grant had a problem with the first amendment they brought forward, so you can go back and debate on this and we can act on this, this afternoon. I personally want to make sure that we do the engineering and construction according to our state laws, that's what we are looking for.

Committee, we will meet shortly after session this afternoon.

2017 SENATE STANDING COMMITTEE MINUTES

Transportation Committee
Lewis and Clark Room, State Capitol

HB 1110
2/16/2017
28469

- Subcommittee
 Conference Committee

Committee Clerk Signature

Marcy Munder

Explanation or reason for introduction of bill/resolution:

Relating to cooperative agreements with private entities for the construction of certain items on the state highway system

Minutes:

No attachments

Chairman Laffen: Opened hearing on HB 1110. We are wanting to get this done today but there is no rush, we can do it week after next too. That being said let's welcome Grant Levi.

Grant Levi, North Dakota Department of Transportation: As Ron Henke has shared with you, we felt our intent was pretty clear and simple. We understand that there are concerns being expressed. The committee had shared with him a possible amendment and as we read it. We had our legal team review it and it basically said that the funds deposited in the state highway fund shall be completed in full compliance with all existing requirements of chapter of 24-02. What our legal team had concerns with is when you add to the bill you are nullifying it. We talked to the consulting industry and somewhere along the line we are not connected. As you look at this amendment we also included the contracting services in it. If the department needs engineering or contracting services for a project under this section, it may provide them with its own forces or procure the services in accordance with the two particular sections. That is the way we have presented an amendment for your consideration. This bill is important to us because we think there are efficiencies in allowing us on occasion to work with a private industry in a cooperative manner as we have described. I will state that state law already allows us to enter into a private entity to come on our highway and do business. We do that all the time with farmers as we come in and build approaches all the time.

Chairman Laffen: Questions?

Senator Casper: On the amendment the words 'own forces' I have not seen used before. Is it a code you typically use? I am assuming it means employees in its own department.

Grant Levi: We could have worded it differently but it was our intent for it to mean our own resources that are at our disposal.

Chairman Laffen: If I understand this right you have some small crews, they do some work, you could use your own if they could accomplish it. You have some in house engineering and if it is a small enough project you could use your own engineering to do some work. That is what that piece is trying to say.

Grant Levi: Yes, well stated. We have maintenance team members that have equipment that can do some work similar to the contracting industry.

Chairman Laffen: So in your opinion the unity of these two sections would pretty much say that they are going to follow our construction procurement standards if we go out beyond our own forces and we are going to follow our standards for hiring engineering when we need them.

Grant Levi: Yes, that is our intent and our legal team says that satisfies those.

Chairman Laffen: ACEC did come and visit with me in between our meetings and said they would be comfortable with wherever we go. They thought the Legislative intent was enough but they would appreciate any of this.

Senator Rust: I move a Do Pass on the amendment #4 from DOT

Senator Campbell: Seconded.

Chairman Laffen: Discussion?

Senator Nelson: One of the amendments we had said, basically if someone wants something done they have to deposit some money ahead of time and it becomes public funds. Is that true but not written into your amendment?

Grant Levi: Any resources that come to the department of transportation and are deposited in our agency are public funds. That part of it is just the way business is. We are stewards of those public resources.

Senator Nelson: So if a new major player comes into the Fargo area and wants a new turn lane, do you estimate the price and charge them upfront before you even start working on that turn lane to make it accessible to their new business?

Grant Levi: Yes, we take into consideration if there is another engineering firm doing the project and we would ask them. Then we go back to the new business owner and say this is how much this will cost. If you want us to build it with the project, we will do that. Sometimes it has already been designed and then bring their plans to us. We still have our engineers or coordinating engineers check it out for specs.

Senator Nelson: So who is paying for it?

Grant Levi: the payment would be by the business and the way the present bill reads is that the payment would occur to us prior to us constructing it.

Senator Nelson: If it is an overrun they would pay the remainder afterwards?

Grant Levi: That is an agreement we could enter into.

Chairman Laffen: The engineering that you provide in house are all registered engineers and the consulting engineers, according to our state, would provide their own registrations stamps and all of that?

Grant Levi: Yes, that is correct. Let me give an example. When the oil boom hit we had an oil company come to us on a state highway and wanted us to upgrade the highway and add low carrying capacity to it for about an 8-mile stretch. We didn't have the resources to do that and using existing authority we allowed them to enter the highway right of way to do the work, but what we told them is, you will use an engineer who is registered to do business in the state of ND. We gave them a list of engineers that we use that they needed to obtain, so they did the engineering according to our standards, and then we provided oversight.

Senator Clemens: The things about being paid in advance is included in the main body of this bill, so it is pretty clear.

Chairman Laffen: Any other questions? Discussion

Roll Call taken on adopting amendment #4 from the DOT. Yeas-6, Nays-0, Absent-0. Motion carried.

Senator Casper moved for Do Pass as amended on HB 1110

Senator Campbell: Seconded

Roll Call taken: yeas-6, Nays-0, Absent-0. Motion carried

Senator Clemens will carry the bill.

Chairman Laffen: This is the end of our work before Crossover. No meeting next week.

OK
2/16/17

February 16, 2017

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1110

Page 1, line 15, after the underscored period insert "If the department requires engineering or contracting services for a project under this section, it may provide the services or procure the services in accordance with section 24-02-07.3 and 24-02-17."

Renumber accordingly

**2017 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. "Enter Bill/Resolution No." HB1110**

Senate Transportation Committee

Subcommittee

Amendment LC# or Description: Amendment #4 from DOT See Below.

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rust Seconded By Campbell

| Senators | Yes | No | Senators | Yes | No |
|-------------------------------|-----|----|------------------------|-----|----|
| Chairman Lonnie J. Laffen | ✓ | | Senator Carolyn Nelson | ✓ | |
| Senator Tom Campbell | ✓ | | | | |
| Senator David Rust | ✓ | | | | |
| Senator David Clemens | ✓ | | | | |
| Vice Chairman Jonathan Casper | ✓ | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

If the department requires engineering or contracting services for a project under this section, it may provide the services or procure the services in accordance with section 24-02-7.3 and 24-02-17

Date: 2/14/17
 Roll Call Vote #: 2

**2017 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. "Enter Bill/Resolution No." HB1110**

Senate Transportation Committee

Subcommittee

Amendment LC# or Description: Amendment 17.8050.01001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Casper Seconded By Campbell

| Senators | Yes | No | Senators | Yes | No |
|-------------------------------|-----|----|------------------------|-----|----|
| Chairman Lonnie J. Laffen | ✓ | | Senator Carolyn Nelson | ✓ | |
| Senator Tom Campbell | ✓ | | | | |
| Senator David Rust | ✓ | | | | |
| Senator David Clemens | ✓ | | | | |
| Vice Chairman Jonathan Casper | ✓ | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

Total (Yes) 6 No 0

Absent 0

Floor Assignment Clemens

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

REPORT OF STANDING COMMITTEE

HB 1110: Transportation Committee (Sen. Laffen, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1110 was placed on the Sixth order on the calendar.

Page 1, line 15, after the underscored period insert "If the department requires engineering or contracting services for a project under this section, it may provide the services or procure the services in accordance with section 24-02-07.3 and 24-02-17."

Renumber accordingly

2017 TESTIMONY

HB 1110

HOUSE TRANSPORTATION COMMITTEE
January 6, 2017 – 10:00 a.m. - Fort Totten Room

North Dakota Department of Transportation
Ron Henke, P.E., Deputy Director for Engineering

HB 1110

HB 1110
#1
1-6-17

Good morning Mr. Chairman and members of the committee. I'm Ron Henke, Deputy Director for Engineering for the North Dakota Department of Transportation (DOT). HB 1110 is being introduced by the Department.

The state highway system is one component of the transportation system that serves to support economic development. Private development often occurs adjacent to the state highway system or in close proximity to the state highway system. When this development occurs there is an associated traffic impact to the system. These impacts often require the need for added improvements to the system. An example is the need for turn lanes into a new manufacturing facility.

There have been instances where the developer or business owner have approached the Department and offered to pay for the needed improvements, prior to the Department having a planned improvement for that segment of roadway. Unfortunately, we don't have the ability to enter into an agreement with a developer or private business owner. Our work around has been to work with the County to see if they have the ability to enter into an agreement with the developer and if so we then would enter into an agreement with the County. Recently, some counties have not been willing to do this because they didn't want to assume any risk since the County didn't have any part of the project.

This bill will give the Department of Transportation the ability to enter into cooperative agreements with private entities. Through these agreements the Department will be able to allow the private sector to make improvements as part of their development and leverage funds to benefit the transportation system, the traveling public, and economic development. It allows for greater private sector participation in the delivery and financing of transportation projects that enhance their economic viability.

This bill also allows the Department to make improvements to the state highway system and requires those improvements to be paid for by the private entity in advance of construction. The funds received will be deposited into the state highway fund.

This concludes my testimony and I am available to answer questions the committee may have.
Thank You.

Attachment #, Pgs
2-9-17

SENATE TRANSPORTATION COMMITTEE
February 9, 2017– 9:00 a.m. - Harvest Room

North Dakota Department of Transportation
Ron Henke, P.E., Deputy Director for Engineering

HB 1110

Mr. Chairman and members of the committee. I'm Ron Henke, Deputy Director for Engineering for the North Dakota Department of Transportation (Department). The Department is introducing HB 1110.

The state highway system is one component of the transportation system that serves to support economic development. Private development often occurs adjacent to the state highway system or in close proximity to the state highway system. When this development occurs, there is an associated traffic impact to the system. These impacts often require the need for added improvements to the system. An example is the need for turn lanes into a new manufacturing facility.

There have been instances where the developer or business owner have approached the Department and offered to pay for the needed improvements, prior to the Department having a planned improvement for that segment of roadway. Unfortunately, we do not have the ability to enter into an agreement with a developer or private business owner and accept the payment for the improvement. Our work around has been to work with the County to see if they have the ability to enter into an agreement and accept the payment from the developer and if so, the Department would then enter into an agreement with the County. Recently, some counties have not been willing to do this because they did not want to assume any risk since the County did not have any part of the project.

This bill will give the Department the ability to enter into cooperative agreements with private entities and accept the payment for the improvement. It requires that the improvements be paid for by the private entity in advance of construction and that the funds received be deposited into the state highway fund. This will benefit the transportation system, traveling public, and economic development. It allows for greater private sector participation in the delivery and financing of transportation projects that enhance their economic viability.

It is not the intent of the bill to change the way consultants are selected for projects or the bid process used by the Department to obtain contractors for highway work.

This concludes my testimony and I am available to answer questions the committee may have.
Thank You.

2/10/17 HB 110
Attachment #1 pg.1

Amendment to HB1110

Insert at the end of the bill (line 15)

All cooperative agreement projects must be procured through the department as prescribed by section 24-02-07.3.

HB1110 2-16-17
Attachment # 1 pgl
Engineering

Amendment to HB1110

Insert at the end of the bill (line 15)

The funds deposited to the state highway fund in satisfaction of these cooperative agreements are deemed public funds and are to be used for the sole purpose of planning, designing and constructing the item on the state highway system requested in the cooperative agreement which shall be completed in full compliance with all existing requirements of chapter 24-02.

HB 1110 2-16-17
Attachment # 2 pg 1
DOT

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1110

Page 1, line 15, after the period insert “If the department needs engineering or contracting services for a project under this section, it may provide them with its own forces or procure the services in accordance with section 24-02-07.3 and 24-02-17.”

Renumber Accordingly.