

**2017 SENATE TRANSPORTATION**

**SB 2109**

# 2017 SENATE STANDING COMMITTEE MINUTES

**Transportation Committee**  
Lewis and Clark Room, State Capitol

SB 2109

1/5/2017

26600

Subcommittee

Conference Committee

Committee Clerk Signature

*Mary Munder*

## Explanation or reason for introduction of bill/resolution:

Agreements with tribal governments.

**Minutes:**

#1

**Chairman Laffen:** Opened the hearing on SB 2109.

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

**Chairman Laffen:** You need this change to work on state highways on the reservation.

**Ron Henke:** No, we can work on the state highways but we have to add Federal dollars to the State dollars in order to do so.

**Chairman Laffen:** We have to use TERO on state highways if they are Federal Aid Routes as it is the federal law but if this is changed we wouldn't have to use federal dollars. If you bring federal dollars into the project, then it also brings additional requirements for the job.

**Ron Henke:** That is correct Chairman.

**Senator Clemens:** Would this affect disadvantaged businesses at all?

**Ron Henke:** No, there is just not a certain percentage that has to be given. They have to show that a good effort was made to include DV's in their projects.

**Chairman Laffen:** So to understand this, you have to work on these roads and you have to use TERO requirements on those roads and our law doesn't allow you to do that so you have to make it a federal project which brings in all other requirements that you don't need.

**Ron Henke:** That's correct Mr. Chairman.

**Senator Campbell:** If we didn't pass this could you say you couldn't finish a project because of this law, not saying that you will.

**Ron Henke:** We have a priority list of the roads that need to get done and an order in which they get done so we can't pick and choose.

**Chairman Laffen:** Do you have the discretion to use the money where you want or is it tied directly to a certain project?

**Ron Henke:** No it is not. As long as it is a Federal Aid Highway we can use it wherever needed on any of those routes.

**Chairman Laffen:** So this would give you a little more latitude then on spending the money.

**Ron Henke:** Correct Mr. Chairman.

**Senator Rust:** Define for me one more time what Federal Aid Route means.

**Ron Henke:** Through a process many years ago there are certain roads that we cannot use federal dollars on, not just state highways but county roads and city roads also.

**Senator Rust:** So if a road has been approved that it is a Federal Aid Road you can use the funds and if not approved then you can't use these funds for that road.

**Ron Henke:** That is correct.

**Senator Clemens:** So what we are doing is a form of deregulation and opening it up more for the state to work with.

**Ron Henke:** That is correct.

**Chairman Laffen:** Any opposition? Closed the hearing on SB 2109.

**Senator Casper:** Moved a Do Pass.

**Senator Campbell:** Seconded.

**A Roll Call Vote was taken: 6 yeas, 0 nays, 0 absent**

**Motion carried.**

**Chairman Laffen will carry the bill.**

2017 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2109

Senate 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 Casper Seconded By Campbell

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

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Laffen

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

**REPORT OF STANDING COMMITTEE**

**SB 2109: Transportation Committee (Sen. Laffen, Chairman) recommends DO PASS**  
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2109 was placed on the  
Eleventh order on the calendar.

**2017 HOUSE TRANSPORTATION**

**SB 2109**

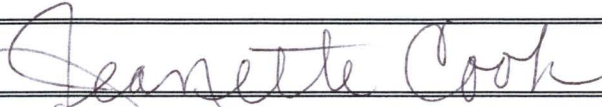
# 2017 HOUSE STANDING COMMITTEE MINUTES

Transportation Committee  
Fort Totten Room, State Capitol

SB 2109  
2/16/2017  
# 28475

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

A bill relating to agreements with tribal governments.

## Minutes:

Attachment #1

**Chairman Ruby** opened the hearing on SB 2109.

**Ron Henke, Deputy Director for Engineering, for the North Dakota Department of Transportation**, spoke to introduce SB 2109 and provided written testimony. See attachment #1.

**Chairman Ruby:** Can you simplify this? Because of this language, do you have to put more money into the project than you normally would have to?

**Ron Henke:** Because of the requirements of having a federal-aid highway system, we put federal dollars into that. With the federal highway system that we have, we have to have the TERO program. In order for us to do work on the reservation, we have to add federal dollars to that project. It might have been 90% state funded, and we had to add 10% federal dollars to enter into the TERO agreement with the tribe. We couldn't 100% fund a state funded project on the reservation because of this limitation in law. By taking that out, we can enter into a TERO agreement with the tribe with only state funds. By adding those few federal dollars, now you bring in Davis Bacon Wages and DBE goal setting onto the projects and other things. It takes the federal restriction and sets it off to the side. Then we don't have to add Davis Bacon Wages and DBE goals if it is 100% state funds.

**Chairman Ruby:** In some cases when you have to bring in federal dollars and other programs it adds costs to a project that would not have been necessary?

**Ron Henke:** That is possible because the wage rates are all set by the federal government.

**Representative Jones:** When you are working on a reservation, is this wording limiting you to where you can't get your TERO components met?



**Ron Henke:** When we work on a federal aid highway route on the reservations, we have to have the TERO agreement. Current law restricts us from funding that project with 100% state dollars. We can't enter into the TERO agreement with the tribe, because it is not necessary for us to spend federal dollars. Then we would add a few federal dollars, so we **could** enter into the TERO agreement. If we don't enter into the TERO agreement, the contractor is subject to whatever the reservation would apply to them. We enter into the agreement before we bid the job, so the contractors know what to expect.

**Representative Sukut:** So, the New Town project was not built with 100% state funds? Or was it?

**Ron Henke:** It was not. We added a small federal portion to it.

**Representative Sukut:** Then you had to put some federal funding into it in order to make an agreement with the tribe?

**Ron Henke:** That is what we believe. If we have **no** federal dollars in a project, we can't enter into an agreement.

**Chairman Ruby:** Is the TERO agreement only on the reservation?

**Ron Henke:** Yes, it is only when it is on the reservation.

**Representative Paur:** If you have a project that cost \$1,000,000, and 90% is paid by the state and 10% by the federal, or you have one that 100% is paid by the state, meeting those other federal requirements when you have the 10% share, how much does that add to a project?

**Ron Henke:** As far as dollars it depends on what they are spending for wages to all of the employees. If they are paying a laborer \$10 an hour, but the federal Davis Bacon wages are \$15 and hour plus \$4.00 fringe benefits, you would add \$9.00 to all of the hours that the laborers worked.

There was no further support for SB 2109.

The hearing was closed on SB 2109.

**Representative Owens moved a DO PASS on SB 2109.  
Representative Paur seconded the motion.**

**A roll call vote was taken on SB 2109: Aye 12 Nay 1 Absent 1  
The motion carried.**

**Representative Sukut will carry SB 2109.**

Date: 2-16-17  
 Roll Call Vote #: 1

**2017 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. SB 2109**

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 Owens Seconded By Paur

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

Total (Yes) 12 No 1

Absent 1

Floor Assignment Sukut

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

**REPORT OF STANDING COMMITTEE**

**SB 2109: Transportation Committee (Rep. D. Ruby, Chairman)** recommends **DO PASS**  
(12 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING). SB 2109 was placed on the  
Fourteenth order on the calendar.

**2017 TESTIMONY**

**SB 2109**

**SENATE TRANSPORTATION COMMITTEE**  
**January 5, 2017 – 11:00 a.m. – Lewis and Clark Room**

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

**SB 2109**

---

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). SB 2109 is being introduced by the Department.

The Department is required by federal regulations to have a Tribal Employment Rights Ordinance (TERO) program for highway construction projects. The program establishes employment goals for a contractor's core crew and workforce which promote employment and training opportunities on reservations. Additionally, 2.5% fees are applied to the portion of a construction project located on reservation boundaries. These fees provide funding to the reservation TERO office to support the program by providing services for recruitment, employee referrals, skill banks, counseling and other services related to employment and training of Native Americans.

The TERO requirements are necessary on all construction projects for highways on the federal-aid highway system (to maintain federal-aid eligibility), regardless of how a construction project is funded. The present language restricts the Department's ability to develop agreements because of the stated limitation: "necessary to meet federal highway spending requirements".

These proposed revisions will allow the Department to develop the necessary agreements for federal-aid and state-aid construction and maintenance projects. The agreements benefit Department contractors by identifying the contractor's requirements when working on construction and maintenance projects on the reservations. Without the agreements the contractors may be subject to additional costs which ultimately are passed on to the Department as part of the construction project.

If the changes are not made the Department will continue to add Federal Funds to the project that fall within the reservation boundaries which will bring other federal requirements like Davis Bacon Wage Rates and Disadvantage Business Enterprise goals to the projects.

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

SB 2109  
2-16-17  
#1

**HOUSE TRANSPORTATION COMMITTEE**  
**February 16, 2017 – 3:00 PM Fort Totten Room**

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

**SB 2109**

---

Mr. Chairman and members of the committee. I'm Ron Henke, Deputy Director for Engineering for the North Dakota Department of Transportation (DOT). SB 2109 is being introduced by the Department.

The Department is required by federal regulations to have a Tribal Employment Rights Ordinance (TERO) program for highway construction projects. The program establishes employment goals for a contractor's core crew and workforce which promote employment and training opportunities on reservations. Additionally, 2.5% fees are applied to the portion of a construction project located on reservation boundaries. These fees provide funding to the reservation TERO office to support the program by providing services for recruitment, employee referrals, skill banks, counseling and other services related to employment and training of Native Americans.

The TERO requirements are necessary on all construction projects for highways on the federal-aid highway system (to maintain federal-aid eligibility), regardless of how a construction project is funded. The present language restricts the Department's ability to develop agreements because of the stated limitation: "necessary to meet federal highway spending requirements".

The proposed revision will allow the Department to develop the necessary agreements for federal-aid and state-aid construction and maintenance projects. The agreements benefit Department contractors by identifying the contractor's requirements when working on construction and maintenance projects on the reservations. Without the agreements the contractors may be subject to additional costs which ultimately are passed on to the Department as part of the construction project.

If the changes are not made the Department will continue to add Federal Funds to the project that fall within the reservation boundaries which will bring other federal requirements like Davis Bacon Wage Rates and Disadvantage Business Enterprise goals to the projects.

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