

TRANSPORTATION INFRASTRUCTURE - BACKGROUND MEMORANDUM

Section 18 of 2013 Senate Bill No. 2012 provides for a study of the long-term costs of transportation infrastructure maintenance and improvement projects and methods for funding these projects.

BACKGROUND

According to the North Dakota Department of Transportation, North Dakota has 166 miles of road for every 1,000 people in the state, which ranks the state first in the nation in road miles per capita. The United States Department of Transportation publication *State Transportation Statistics 2010* reports the state as having approximately 87,000 miles in public road length in 2010. Of the total amount, almost 7,400 miles are part of the state highway system. Included in the state highway system are 571 miles of interstate roads. About 68,000 of the miles are under the jurisdiction of county, city, and township governments. The United States Department of Transportation *National Bridge Inventory* lists the state as having 4,435 bridges in August 2009, 933 of which were classified as either structurally deficient or functionally obsolete. The state ranks fifth per capita in the number of bridges with approximately 7 bridges per 1,000 people. In addition to the ground transportation, the state has 98 public-use airports.

2009-10 Interim Study

During the 2009-10 interim, the Public Safety and Transportation Committee studied potential options for highway construction funding. In conducting the study, the committee reviewed the various sources and amounts of highway funding. With respect to funding options, the committee made the following recommendations:

- The committee recommended 2011 House Bill No. 1042 to allocate extraordinary road use fee collections to be deposited in the general fund of the county where the overweight vehicle violation occurred if the violation did not occur on a state or federal highway. The bill provided extraordinary road use fee collections for a violation occurring on a state or federal highway would continue to be deposited in the state highway fund.
- The committee recommended 2011 House Bill No. 1043 to provide that after June 30, 2011, motor vehicle excise tax collections, after distributions to the state aid distribution fund, would be deposited in the highway tax distribution fund rather than the general fund.
- The committee recommended 2011 Senate Bill No. 2045 to create an infrastructure grant program for taxing districts affected by oil and gas development. The bill would have appropriated for the grant program \$100 million from the permanent oil tax trust fund and would have required the grants to be distributed in the 2011-13, 2013-15, and 2015-17 bienniums.

Each of those bills failed to pass during the 2011 legislative session.

Highway Funding

In addition to the substantial amounts of federal funding for the construction and maintenance of highways, the major state sources of highway funding are derived from the collection of motor fuels taxes and motor vehicle registrations.

Section 11, Article X, of the Constitution of North Dakota, provides:

Revenue from gasoline and other motor fuel excise and license taxation, motor vehicle registration and license taxes, except revenue from aviation gasoline and unclaimed aviation motor fuel refunds and other aviation motor fuel excise and license taxation used by aircraft, after deduction of cost of administration and collection authorized by legislative appropriation only, and statutory refunds, shall be appropriated and used solely for construction, reconstruction, repair and maintenance of public highways, and the payment of obligations incurred in the construction, reconstruction, repair and maintenance of public highways.

The majority of funds received from motor fuels taxes and motor vehicle registration fees are deposited in the highway tax distribution fund. North Dakota Century Code Section 54-27-19 provides the highway tax distribution fund consists of the "moneys available by law from collections of motor vehicle registration and related fees, fuels taxes, special fuels taxes, use taxes, and special fuels excise taxes." This section provides after the first \$5.5 million per biennium is transferred to the state highway fund for the purpose of providing administrative assistance to other transferees, the money in the fund must be distributed by the State Treasurer as follows:

1. Sixty-one and three-tenths percent must be transferred monthly to the state department of transportation and placed in a state highway fund.

2. Two and seven-tenths percent must be transferred monthly to the township highway fund.
3. One and five-tenths percent must be transferred monthly to the public transportation fund.
4. Thirty-four and five-tenths percent must be allocated to the counties of this state in proportion to the number of vehicle registrations credited to each county. Each county must be credited with the certificates of title of vehicles registered by residents of the county. The state treasurer shall compute and distribute the counties' share monthly after deducting the incorporated cities' share. All the moneys received by the counties from the highway tax distribution fund must be set aside in a separate fund called the "highway tax distribution fund" and must be appropriated and applied solely for highway purposes in accordance with section 11 of article X of the Constitution of North Dakota. The state treasurer shall compute and distribute monthly the sums allocated to the incorporated cities within each county according to the formula in this subsection on the basis of the per capita population of all of the incorporated cities situated within each county as determined by the last official regular or special federal census or the census taken in accordance with the provisions of chapter 40-02 in case of a city incorporated subsequent to the census.
 - a. For counties having no cities with a population of ten thousand or more, a statewide per capita average must be used, as determined by calculating twenty-seven percent of the amount allocated to all of the counties under this subsection divided by the total population of all of the incorporated cities in the state. Each city must be paid an amount equal to the product of the statewide per capita and that city's population.
 - b. For each county having a city with a population of ten thousand or more, the amount transferred each month into the county highway tax distribution fund must be the difference between the amount allocated to that county pursuant to this subsection and the total amount allocated and distributed to the incorporated cities in that county as computed according to the following formula:
 - (1) A statewide per capita average as determined by calculating twenty-seven percent of the amount allocated to all of the counties under this subsection divided by the total population of all of the incorporated cities in the state.
 - (2) The share distributed to each city in the county having a population of less than one thousand must be determined by multiplying the population of that city by the product of 1.50 times the statewide per capita average computed under paragraph 1.
 - (3) The share distributed to each city in the county having a population of one thousand to four thousand nine hundred ninety-nine, inclusive, must be determined by multiplying the population of that city by the product of 1.25 times the statewide per capita average computed under paragraph 1.
 - (4) The share distributed to each city in the county having a population of five thousand or more must be determined by multiplying the population of that city by the statewide per capita average for all such cities, which per capita average must be computed as follows: the total of the shares computed under paragraphs 2 and 3 for all cities in the state having a population of less than five thousand must be subtracted from the total incorporated cities' share in the state as computed under subdivision a and the balance remaining must then be divided by the total population of all cities of five thousand or more in the state.
5. The moneys allocated to the incorporated cities must be distributed to them monthly by the state treasurer and must be deposited by the cities in a separate fund and may only be used in accordance with section 11 of article X of the Constitution of North Dakota and an incorporated city may use the fund for the construction, reconstruction, repair, and maintenance of public highways within or outside the city pursuant to an agreement entered into between the city and any other political subdivision as authorized by section 54-40-08.

Section 54-27-19(1) provides the majority of the funds from the highway tax distribution fund (61.3 percent) must be transferred to the Department of Transportation for deposit in the state highway fund. Section 24-02-37 provides, except for investment income, the money of the state highway fund must be applied in the following priority:

- a. The cost of maintaining the state highway system.

- b. The cost of construction and reconstruction of highways in the amount necessary to match, in whatever proportion may be required, federal aid granted to this state by the United States government for road purposes in North Dakota.
- c. Any portion of the highway fund not allocated as provided in subdivisions a and b may be expended for the construction of state highways without federal aid or may be expended in the construction, improvement, or maintenance of such state highways.

Section 54-27-19(2) requires 2.7 percent of the funds from the highway tax distribution fund to be deposited in the township highway fund. Section 54-27-19.1 directs the State Treasurer to distribute the money to the counties of the state based on the length of township roads in each county compared to the length of all township roads in the state. To receive any funds, organized townships must provide 50 percent matching funds. Each county treasurer is required to allocate the funds received to the organized townships in the county which provide 50 percent matching funds based on the length of township roads in each of those organized townships compared to the length of all township roads in the county. The funds received must be deposited in the township road and bridge fund and used for highway and bridge purposes. If a county does not have organized townships, or has some organized and some unorganized townships, the county is required to retain a pro rata portion of the funds received based on the length of roads in unorganized townships compared to the length of township roads in organized townships in the county.

Section 54-27-19(3) allocates 1.5 percent of the funds from the highway tax distribution fund to the public transportation fund. Section 39-04.2-04 provides money in the public transportation fund must be disbursed under guidelines issued by the Director of the Department of Transportation and must be used by transportation providers to establish and maintain public transportation, especially for the elderly and handicapped. In addition, the money may be used to contract to provide public transportation, as matching funds to procure money from other sources for public transportation and for other expenditures authorized by the Director.

2013 Transportation Funding Legislation

Highways

The 2013 Legislative Assembly used money from a number of sources to fund highway construction and maintenance in the state. The funding for highway infrastructure was largely provided through three bills--Senate Bill No. 2012, Senate Bill No. 2176, and House Bill No. 1358.

Senate Bill No. 2012--the Department of Transportation general appropriation bill--included:

- A \$541.6 million transfer from the general fund to the highway fund.
- A \$1.1 million contingent transfer from the general fund to the public transportation fund. The transfers are contingent upon deposits from the highway tax distribution fund into the public transportation fund being \$5 million or less during the preceding state fiscal year.
- An appropriation of \$640,000 from the highway-rail grade crossing safety projects fund for the estimated costs to continue previously approved highway-rail grade crossing safety projects into the 2013-15 biennium.
- An appropriation of \$500,000 from the highway-rail grade crossing safety projects fund for a highway-rail grade crossing safety pilot program.
- A statement authorizing the Department of Transportation to transfer funds between the salaries and wages, operating expenses, capital assets, and grants line items when it is cost-effective for the construction and maintenance of highways.
- An appropriation of \$720,000 from the general fund to the State Treasurer to distribute funding to any political subdivision eligible to receive a distribution under subsection 3 of Section 27 of Chapter 579 of the 2011 Session Laws which has not already received a distribution under that subsection.
- An appropriation of \$385,000 to the State Treasurer as an emergency to correct an error in distributions made to townships under Senate Bill No. 2176.

Senate Bill No. 2176 provided emergency appropriations to the Department of Transportation for the construction and maintenance of state highways and to the State Treasurer for providing transportation funding distributions. The bill, which became effective on March 18, 2013, provided:

- An appropriation of one-time funding of \$620 million from the general fund to the Department of Transportation for the construction and maintenance of state highways.

- An appropriation of one-time funding of \$100 million from the general fund to the State Treasurer for distribution as follows:

\$64 million to non-oil-producing counties and cities pursuant to Section 54-27-19(4).

\$16 million to counties and townships in non-oil-producing counties pursuant to Section 54-27-19.1. Organized townships are not required to provide matching funds to receive distributions.

\$20 million to counties and townships in non-oil-producing counties through a distribution of \$15,000 to each organized township and a distribution of \$15,000 for each unorganized township to the county in which the unorganized township is located. If any funds remain after these distributions, the State Treasurer is required to distribute 80 percent of the remaining funds to counties and cities in the same manner as the \$64 million distribution and to distribute 20 percent of the remaining funds to counties and townships in the same manner as the \$16 million distribution.

House Bill No. 1358 restructured the allocation of oil and gas gross production tax collections and provided money for transportation funding to be used by the Department of Transportation and to be distributed by the State Treasurer. The bill provided:

- An appropriation of \$120 million from the general fund to the Department of Transportation for county road and bridge projects in counties that received less than \$5 million of oil and gas tax allocations under Section 57-51-15(2) during state fiscal year 2013. The funding is to be distributed based on the number of miles of roadway located in each county defined by the Department of Transportation as a county major collector roadway.
- An appropriation of \$160 million from the general fund to the Department of Transportation for county road and bridge projects in counties that received \$5 million or more of oil and gas tax allocations under Section 57-51-15(2) during state fiscal year 2013. The funding is to be distributed based on data supplied by the Upper Great Plains Transportation Institute.
- An appropriation of \$8,760,000 from the general fund to the State Treasurer for grants to townships located in counties that received between \$500,000 and \$5,000,000 of oil and gas tax allocations under Section 57-51-15(2) during state fiscal year 2013. Each eligible township is to receive a grant of \$15,000 during each year of the biennium.

In addition to the bills appropriating funds for transportation infrastructure, one other bill of note relating to highway funding was Senate Bill No. 2025. The bill provided extraordinary road use fees for a violation that did not occur on an interstate or a state highway must be deposited in the general fund of the jurisdiction having authority over the road on which the violation occurred and must be used for the support of the road system of that jurisdiction. Previously, all extraordinary road use fees were deposited in the state highway fund.

Aeronautics

The 2013 Legislative Assembly provided airport grant funding through House Bill No. 1358, which was in addition to the funding provided through the North Dakota Aeronautics Commission's general appropriation in Senate Bill No. 2006. Senate Bill No. 2006 provided appropriations for grants in a sum of \$15.5 million, including:

- An appropriation of one-time funding of \$6 million from the general fund for grants to airports.
- An appropriation of \$3,450,000 from special funds and \$550,000 from the general fund for the air service airport grant program.
- An appropriation of \$4 million from special funds for the general aviation grant program.
- An appropriation of \$400,000 from special funds for educational grants.
- An appropriation of \$1.1 million from special funds for airport planning grants.

House Bill No. 1358 appropriated \$60 million from the oil and gas impact grant fund to the Commissioner of the Board of University and School Lands for grants to airports impacted by oil and gas development. The grants include cost-share requirements and give priority to airports that are eligible to receive federal funding.

Upper Great Plains Transportation Institute

During the 2011-12 interim, the Upper Great Plains Transportation Institute conducted studies of county and township road infrastructure needs. The report of the studies identified \$521 million of road infrastructure needs in oil and gas-producing counties and an overall total of \$834 million of road infrastructure needs in all counties of the state for the 2013-15 biennium.

The 2013 Legislative Assembly included within the budget for the Upper Great Plains Transportation Institute an additional \$1.25 million in one-time funding to match federal grants to assist in transportation studies.

POSSIBLE STUDY APPROACH

In conducting this study, the committee may consider the following approach:

1. Receive testimony and information regarding the current state of highway infrastructure from the following:
 - a. The Department of Transportation;
 - b. Representatives of cities, counties, and townships; and
 - c. The Upper Great Plains Transportation Institute.
2. Receive testimony and information from representatives of the North Dakota Aeronautics Commission and local airport authorities.
3. Review various funding sources currently utilized in funding transportation infrastructure and potential future funding sources.
4. Seek information regarding analysis of future infrastructure needs and priorities.