TRANSPORTATION COMMITTEE

The Transportation Committee was assigned three studies. Section 6 of House Bill No. 1012 (2007) directed a study of highway funding and transportation infrastructure needs, including those needs resulting from energy and economic development in the state. Section 2 of House Bill No. 1359 (2007) directed a study of Federal Motor Carrier Safety Regulations and exemptions for interstate and intrastate transportation in relation to this state's law and exemptions, including a review of any industry-specific applications of regulations and possible exemptions to current transportation activities within this state. Section 2 of Senate Bill No. 2188 (2007) directed a study of risk assessments for railroad facilities, the handling of hazardous cargo by railroads, and the ability of railroads to respond to potential accidents and emergencies, including sabotage, terrorism, and other crimes, and including an evaluation of whether whistleblower protection would provide a desirable response in employees to report dangerous conditions or violations of law relating to hazards, emergencies, and accidents.

In addition, the Legislative Council assigned to the committee the responsibility under Section 4 of House Bill No. 1012 to receive a report from the Department of Transportation regarding any additional full-time equivalent positions hired for highway construction and maintenance in lieu of entering contracts for those purposes.

The committee members were Senators David O'Connell (Chairman), Robert S. Erbele, Gary A. Lee, and Jim Pomeroy and Representatives Mark A. Dosch, Edmund Gruchalla, Kathy Hawken, Bob Hunskor, Keith Kempenich, William E. Kretschmar, Bob Martinson, Mark S. Owens, Dan J. Ruby, Arlo Schmidt, Dorvan Solberg, Elwood Thorpe, and Robin Weisz.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2008. The Council accepted the report for submission to the 61st Legislative Assembly.

HIGHWAY FUNDING AND TRANSPORTATION INFRASTRUCTURE NEEDS STUDY

2005-06 Interim Committee Study and Activities

During the 2005-06 interim, the Legislative Council chairman directed a study of federal highway appropriations and state matching requirements. This study was assigned to the interim Transportation Committee. The committee reviewed federal highway appropriations that were greatly affected by the passage of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), which the President signed into law on August 10, 2005. The Act provided funding through federal fiscal year 2009. That Act was a continuation of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and the Transportation Equity Act for the 21st Century (TEA-21). The federal highway trust fund is the source of funding for most of the programs in the Act. Federal motor fuels taxes are the major source of income to the highway trust fund. The major issue of the 2005-06 interim study was a projected shortfall of $10.6 million in state matching funds. As a result of changes in the federal formula funding and the lack of state highways that were roads acting as dam projects, the projected shortfall was reduced to $3.1 million. The Department of Transportation was able to meet the shortfall without additional funding.

Under the REAL ID Act of 2005, a state driver's license will become a national identification that is computer-accessible by all states. It would cost approximately $14 million to implement the REAL ID Act in this state. Although noncompliance with the Act will not result in the loss of federal funding, citizens of the noncompliant state will not be able to use their driver's licenses for federal purposes, e.g., boarding an airplane.

A review of state funding sources and alternatives reviewed taxation of coal, oil, and gas as a potential source of highway funding. A portion of the oil and gas gross production tax proceeds is transferred to the oil and gas impact grant fund and used for road repair and maintenance. Motor vehicle fuels taxes, a major source of highway funding, may be impacted by price increases. The motor vehicle fuels tax is applied on a gallon basis, and people have the tendency to consume less by driving less as the cost of fuel increases.

The increase in prices for raw materials and labor affects bid amounts for projects. As a result of increased costs, $24 million in construction projects originally scheduled for 2006 were delayed and the Department of Transportation anticipated that over $91 million in projects for 2007 and 2008 would be scheduled at a later date. Delays in construction projects have secondary and downstream impacts. Every $1 million spent on road construction creates 47.5 jobs and for every $1 spent on preventative maintenance, $4 to $5 is saved in construction costs in the near future. In addition, national studies have demonstrated that every $1 invested in transportation yields approximately $5.40 in reduced delays, improved safety, and reduced vehicle operating costs.

In addition to studying highway funding, the 2005-06 interim Transportation Committee monitored certain infrastructure projects, including the Liberty Memorial Bridge. Bridges are monitored on a monthly basis and are inspected every two years. At that time, the department had 59 certified bridge inspectors to inspect approximately 5,300 bridges.

The Upper Great Plains Transportation Institute reported on the outcome of the institute's study of how improvements to the transportation infrastructure of this state might enhance the business climate and the state's competitive position in economic development. The study made the following highway recommendations:

- A preservation program that keeps pavement in good condition generates substantial economic benefits.

- Highway access to key industrial and agricultural facilities should be analyzed on a case-by-case basis.
- The benefits and costs of eliminating or mitigating spring load limits on key highway segments should be analyzed on a case-by-case basis; however, load limit elimination on highway segments serving key agricultural and manufacturing locations may be cost-effective.
- New mechanistic pavement analysis techniques offer potential for improved forecasting of pavement lives and may make it possible to shorten the durations of spring load restrictions in some cases and identify more cost-effective designs. As such, it is important to develop data and input to fully utilize these advanced procedures.
- Selective case studies should be undertaken of highway load limits in counties so that a cost-effective analysis plan can be developed. A great deal of information must be developed in order to assess the benefits and costs of uniform county load limits.

2007 Legislation

House Bill No. 1012 was the appropriation bill for the Department of Transportation. Section 4 of House Bill No. 1012 authorized the Department of Transportation to hire additional full-time equivalent positions for highway construction, in addition to those authorized by the Legislative Assembly, if it would be cost-effective as compared to entering contracts for construction and maintenance.

Section 14 of House Bill No. 1012 appropriated $1 million from the highway fund to the public transportation fund and Section 10 of the bill changed the formula for payments to transportation providers of public transportation funds from a fixed amount to an amount that adjusts depending on the amount of the appropriation. Section 13 of the bill reduces the motor vehicle excise tax revenue deposited in the state general fund from 100 percent to 90 percent and requires the balance of 10 percent into the highway fund.

At least four bills were enacted which related to highway funding and infrastructure needs--House Bill Nos. 1044, 1049, and 1166 and Senate Bill No. 2178.

House Bill No. 1044 increased allocations to counties from oil and gas gross production taxes by up to $75,000 per year.

House Bill No. 1049 reduced the special fuels tax for diesel fuel used for heating fuel from four cents to two cents per gallon from January 1, 2008, through June 30, 2009, and after that date exempts such diesel fuel from the special fuels tax. The bill reduced the rate of tax for propane sold for use as heating fuel from 2 percent to 1 percent effective January 1, 2008, and exempts such propane from the special fuels tax as of July 1, 2009. The fiscal effect on the highway tax distribution fund was $1,987,000 for the 2007-09 biennium.

House Bill No. 1166 required the director of the Department of Transportation to include a four-lane alternate for the next major reconstruction project for United States Highway 52.

Senate Bill No. 2178 allowed a county that reaches the annual cap on the oil and gas gross production tax revenue to receive an additional $1 million in revenues if the county levies a total of at least 10 mills for county road and bridge, farm-to-market and federal aid road, and county road purposes. Any additional amount received by the county is not for allocation to political subdivisions within the county but must be credited entirely to the county general fund.

Section 3 of Senate Bill No. 2178 provided for an interim study that was assigned to the interim Taxation Committee. The study is of the allocation of oil and gas tax revenues to or for the benefit of political subdivisions with emphasis on determining whether allocations sufficiently address oil and gas development infrastructure impact to political subdivisions.

In addition to the Transportation Committee's studies, the Advisory Commission on Intergovernmental Relations studied funding for rural township and county roads and bridges, funding for public transportation, and increasing from four-tenths to five-tenths of one cent the amount of sales tax that is deposited in the state aid distribution fund. The state aid distribution fund is distributed to counties and cities and is used in part for roads. Because of these studies by the Taxation Committee and the Advisory Commission on Intergovernmental Relations, the Transportation Committee focused its study on the funding and infrastructure needs of state highways.

State Matching Sources

In general, fuels taxes and registration fees are deposited in the highway tax distribution fund. However, $13 of each registration fee for a passenger motor vehicle, bus, and truck weighing over 20,000 pounds goes directly into the state highway fund. The highway tax distribution fund is distributed 63 percent to the state, 23 percent to the counties, and 14 percent to the cities. Money distributed to the state is deposited in the state highway fund.

Certain income sources recently have been increased or implemented to match federal funds. Senate Bill No. 2012 (2005) increased registration fees $10, classified pickups as passenger motor vehicles but limited the increase due to this reclassification to one-half for the 2005-07 biennium, and deposited $13 of each registration fee in the state highway fund. The bill increased motor vehicle fuel and special fuels tax rates from 21 cents to 23 cents per gallon. The bill allowed for grant or revenue anticipation financing for the Liberty Memorial Bridge improvement project and the United States Highway 2 project improvements. Although the bill would have redirected money collected as motor vehicle excise taxes from the general fund to the state highway fund, this transfer was vetoed by the Governor because the "diversion of funds increases the risk of an allotment, or could force the calling of a special session of the legislature to deal with future revenue requirements." Section 13 of House Bill No. 1012 (2007) transferred 10 percent of motor vehicle excise taxes to the state highway fund for the 2007-09 biennium so as to increase matching funds.

TESTIMONY AND DISCUSSION

Upper Great Plains Transportation Institute Project

The committee received testimony from the Upper Great Plains Transportation Institute on a project to generate public involvement in the transportation policy and funding decisionmaking process. The committee was informed that although there are many stakeholders in the transportation system, when it comes to people participating in the funding decisionmaking process at the legislative level, few stakeholders are involved. The purpose of the project was to educate North Dakotans, solicit input, and encourage future involvement. As part of the project, the institute held eight workshops around the state and invited approximately 4,500 stakeholders to attend. Approximately 490 people attended these workshops. The workshops had two parts--an informational part in which stakeholders were given information about the transportation system and funding and a part in which stakeholders could provide comments.

The workshop findings included:

1. Transportation infrastructure and personal mobility are critical for economic development and quality of life.
2. Demands on state and local transportation infrastructure have increased significantly.
3. Inflation has had a significant impact on the purchasing power of transportation-related appropriations.
4. The federal highway trust fund is projected to fall into deficit which would result in a revenue loss of approximately $70 million.
5. The federal per gallon tax on gasoline and diesel fuel has not increased since 1993.
6. North Dakota's transportation infrastructure is in a preservation mode and in some cases is declining in quality.
7. Funding the Department of Transportation at a level that is sufficient only to match federal funds does not provide adequate funding.
8. The life expectancy of many county bridges is 50 years and many will not be replaced for well over 100 years.
9. Approximately 6.5 percent of the state's residents live in households without vehicles and may need transit services.
10. Many local transit systems find it difficult to provide the 50 percent local operating match that is required by federal assistance programs.
11. North Dakota has an aging population and increased transit services are anticipated in the future.
12. Customers' expectations as to roadway infrastructure and transit systems are increasing.

Although there were a number of suggestions, these suggestions reoccurred throughout the workshops:

1. Eliminate diversions from the state highway tax distribution fund.
2. Make permanent the 2007-09 transfer of 10 percent of motor vehicle excise tax collections to the highway fund and dedicate additional motor vehicle excise tax revenues to the highway tax distribution fund.
3. Increase dedication of oil tax money to impacted political subdivisions.
4. Increase funding of the Department of Transportation, at a minimum, by an amount equal to the rate of construction and maintenance inflation.
5. Distribute any increases in the state highway tax distribution fund to all governmental entities with roads.
6. Finance budget increases with diversion and dedication measures and, if necessary, a fuel tax increase of up to five cents per gallon.
7. Increase funding for transit to maintain existing services and routes, to extend services to additional areas, and to expand hours of operation.
8. Require all state-supported transit services be coordinated with other services within the area.

After the workshops, approximately 80 people attended a state conference to summarize the local workshops. At the state conference, the Department of Transportation estimated that the current system, including transit, would need $553 million annually while $314 million is available. At an existing inflation rate of 15 percent, annual revenue shortfalls are projected at nearly $257 million. It was suggested that a starting point for addressing existing revenue shortfalls is the dedication of all state motor vehicle excise tax revenues for transportation purposes. It was proposed that these funds be deposited in the state highway tax distribution fund to benefit all governmental entities with roads.

The committee received testimony from the Associated General Contractors of North Dakota in support of placing motor vehicle excise tax revenues in the state highway tax distribution fund.

Department of Transportation Updates

The committee received testimony from the Department of Transportation. The major issues affecting the department included revenue, conditions of highways and bridges, transit funding and programs, and the REAL ID Act. The department also testified on other issues, including renewal notices for vehicle registration, inflation, staffing, truck permits, diesel fuel shortages, and requests for system improvements.

Revenue

The committee was informed that the state is very dependent on federal highway revenue. Historically, North Dakota has received more than $2 in federal funding for each dollar that has been contributed to the federal highway trust fund. North Dakota received a combined total of about $454 million in federal funding for the highway program in 2007. Ninety percent of the revenue supporting the federal highway trust fund comes from motor fuel taxes. During the 2007-09 biennium, about 53 percent of the department's total budget was from federal revenue and over 80 percent of the construction program is federally funded. The committee was informed the department uses federal aid to the largest extent possible; however, many needs are unmet, especially due to inflation. The committee was informed that the 2009 federal highway trust fund will have a $4.3 billion shortfall by 2009.

The National Surface Transportation Policy and Revenue Study Commission was created to examine the existing condition and operation of the system and ensure that the transportation system serves the needs of a nation now and in the future. On January 15, 2008, the commission released a report entitled *Transportation for Tomorrow*. Some of the key recommendations in the report included:

- Significantly increasing investment in surface transportation.
- Accelerating the time between conception and delivery of major transportation projects to reduce costs.
- Retaining a strong federal role in transportation.
- Replacing over 100 current transportation programs with 10 programs that are outcome-based and focused on national interests.
- Creating a new independent National Surface Transportation Commission to act as an overseer to develop a national strategic plan for each of the program areas and to establish the costs to finance the plan.

In 2007 the Legislative Assembly provided $266.7 million to the Department of Transportation, $74.4 million to counties, and $44.3 million to cities for transportation. Unique funding provisions included:

- A one-time 10 percent motor vehicle excise tax transfer to the state highway fund.
- A $1 million transfer to the state public transportation fund.
- A reduction in the transfer to the Highway Patrol from the highway tax distribution fund.
- Changes to the 2 percent excise tax in heating fuel components which resulted in $2.4 million less to the highway tax distribution fund.

The committee was informed that the revenue package provided by the 2007 Legislative Assembly is producing the intended revenue levels. However, the state cannot depend on federal funds in the future and states will have to be more responsible for funding highway projects. An Oregon study and a Minnesota pilot project concern imposing a tax based on miles driven, rather than on gallons of fuel purchased. One problem with this system of taxation is that new vehicles are more efficient and use less fuel over the same number of miles. In addition, fuel purchases for agricultural purposes complicate the system. The North Dakota Motor Carriers Association informed the committee that an increase in the state's gas tax would have a large impact on motor carriers because the federal government may increase the federal gas tax by up to five cents per gallon.

Conditions of Highways and Bridges

The committee was informed about the highway performance classification system. The classification system focuses on the performance of the highway system and identifies desired service levels and performance standards for each of the five highway categories:

- Interstate.
- Interregional.
- State corridor.
- District corridor.
- District collector.

There has been improvement in the number of miles with ride deficiencies. In 2003 there were 5,131 roadway miles that met accepted guidelines identified in the highway performance classification system. In 2005 there were 5,621 miles that met accepted guidelines, a 9.5 percent increase in three years.

The committee was informed that a smooth pavement has less distress, lasts longer, and reduces maintenance costs. For every dollar not spent on preventive maintenance, $4 to $5 will be needed for complete reconstruction a few years later. In 2000, 57 percent of the interstate highways were rated at good or excellent compared to almost 90 percent with a good or excellent rating in 2006.

The committee received testimony on the comprehensive bridge inspection program. North Dakota has 5,026 bridges. There are 1,712 bridges on the state system, 96 bridges in cities on the urban system, and 3,218 under county or township jurisdiction. The only bridges in North Dakota which were similar to the I-35W Bridge that collapsed in Minnesota were the Four Bears Bridge and the Fairview Bridge on Highway 58, both of which have been replaced.

The committee was informed a bridge that is designated structurally deficient does not mean that the bridge is unsafe but means that the deck, superstructure, or substructure has a condition that warrants attention. There are 751 bridges in the state which are rated structurally deficient. Of these bridges, 714 are located on the county and township system.

The committee was informed that a bridge designated functionally obsolete means that a part of the bridge does not meet a design standard. The designation does not relate to the structural integrity of the bridge. There are 280 functionally obsolete bridges in the state. Of these bridges, 237 are located on the county and township system.

The committee was informed that a little over 20 percent of the bridges in the state are classified as deficient. This includes 3.9 percent of the bridges on the state system, 14.6 percent of the bridges in the urban areas, and 29.6 percent of the bridges in the county and township system.

The committee received testimony on factors affecting road and bridge quality. Oil development has a negative impact on the highway system. It is estimated that up to 400 truckloads of equipment and material are required to setup and service a vertical well site and 600 truckloads are required for a horizontal well. The increased heavy truck traffic associated with the oil industry was unknown when roads and bridges were designed and as a result these roads and bridges were not designed with the structural capacity to handle the impact.

The committee was informed of the negative impact on the highway system of ethanol and biodiesel production. It is estimated that a 100-million-gallon ethanol plant could generate as many as 71,000 truckloads per year. The potential impact on the local road network is a major concern because the roads were not built to handle these truck volumes.

The committee was informed of the negative impact railroad abandonments have on the highway system. The loss of rail service has lead to the development of subterminal elevators which can load 100-car unit trains. These subterminal elevators change the traffic patterns and increase traffic in certain areas.

Transit Funding and Programs

The Department of Transportation oversees the public transportation program in the state. There are currently 35 public transit projects in the state. Collectively these systems operate approximately 235 buses, vans, and cars that provide more than 1.7 million rides per year.

The committee was informed that the department is consolidating the public transit programs to efficiently and effectively use limited resources to serve the rural areas and the special needs in these areas. The department is consolidating the state's 35 public transit projects into eight regions, each with a regional administrator and centralized dispatching.

The committee received testimony on the change in the formula for payments from the public transportation fund. As a result of 2007 legislative action, the base amount of $18,300 per year was changed to a formula of 4 percent of the appropriation for the program. The reason for the change from a fixed amount to a percentage was so that the statute would not need to be amended whenever the appropriation provided for an increase in the base amount. The Department of Transportation interpreted the change from a fixed base amount per year to a percentage amount as intending the base amount to be determined on a biennial basis and as a result distributed one-half of the amount--$11,400--the first year of the biennium. Committee members contended that the base amount for county public transportation funding should be determined on an annual basis--$22,800 per year.

The Attorney General issued an opinion that the base amount for the annual distribution from the public transportation fund is to be calculated on the total biennial appropriation, with the result that the base amount should be $22,800 per year. The change in the formula as a result of the Attorney General's opinion resulted in a larger amount for small transit providers.

The committee was informed that the Department of Transportation would correct the distribution in the second year of the biennium. Correcting the distribution for both years would have a negative impact on four major carriers that serve Fargo, Grand Forks, Minot, and Bismarck. For example, a fix in both years in Cass County would result in a drop from $441,000 to $242,000, whereas a one-year fix would result in a drop from $441,000 to $346,000.

Committee discussion indicated correcting the distribution in the second year of the biennium appeared to be the best solution and that approach was supported by most transit groups.

REAL ID Act

The committee received testimony on the implementation of the REAL ID Act. In January 2008 the United States Department of Homeland Security announced a final rule establishing minimum security standards for state driver's licenses and identification cards. The following table summarizes those rules:

Document Acceptance						
Action		**Current Driver's License**	**REAL ID Compliant Driver's License**	**Enhanced Driver's License/ Enhanced Identification**	**Passport**	**Passport Card**
	Fly within the United States	Yes, with the REAL ID extensions until March 11, 2011*	Yes	No	Yes	No
	Return from the Western Hemisphere by land/sea	Yes, with birth certificate until June 1, 2009	No	Yes	Yes	Yes
	Flying internationally	No	No	No	Yes	No
	Use to drive a vehicle	Yes	Yes	Yes	No	No
	Enter into a federal building	Yes, with REAL ID extensions until March 11, 2011*	Yes	No	Yes	No
	Needs radio frequency ID (RFID) chip	No	No	Yes	No	Yes
	Approximate cost	$10	$25 to $30	$25 to $30	$85 to $100	$45/$20

*First extension goes through December 31, 2009, and second extension goes through March 11, 2011.

Other Issues

The committee received testimony on other issues including issues with renewal notices for vehicle registration, inflation, staffing, truck permits, diesel fuel shortages, and requests for system improvements.

More than the average number of people did not receive motor vehicle registration renewal notices sent in October and November 2007. Although the Department of Transportation acknowledged that something went wrong with the renewal system, the department was unable to find the cause of the problem. The department resent 74,000 notices at a cost of $27,000 to ensure that all registered vehicle owners were notified. Of the 74,000 vehicles that were not renewed and to which second notices were sent, 17,515 were motorcycles; 41,955 were recreational vehicles, farm trucks, or farm trailers; and approximately 14,500 were other vehicles. It was noted that motorcycles, recreational vehicles, and farm trucks and trailers may have had a delay in renewal because drivers sometimes wait to renew the registration until they drive the vehicle.

The committee was informed that the greatest challenge facing the transportation industry in the past few years is the significant increases in the cost of road and bridge construction and maintenance. North Dakota's overall construction cost index increased about 45 percent from 2001 to 2007. For example, a product with a cost of $100 in 2001 would cost $145 in 2007. Even more dramatic was the increase from 2005 to 2007 of 34 percent. Federal and state revenue sources have remained relatively stable and have not increased with the rising costs, so adjustments to the construction and maintenance program, with resultant delays of some projects, have taken place.

The Department of Transportation had 28 vacant positions. The largest need is for engineers, engineering technicians, and equipment operators. Equipment operator recruitment and retention is a concern especially in western North Dakota where there is a strong demand for truckdrivers in the oil industry. In addition, some counties offer salary ranges that exceed the department's salary range by $200 to $600 a month. The department lost two skilled engineers that received salary increases from $6,000 to $12,000 for their new positions.

The committee was informed of the fiscal effect of Senate Bill No. 2406 (2007), which allowed truckers to purchase an annual overwidth permit for $500 and House Bill No. 1295 (2007), which allowed an annual permit for $300 for trucks to travel on the Interstate highways with a 105,500-pound load with appropriate axle weights. Only two permits were issued for an annual overwidth permit for 2007. The total purchases may have been limited, however, because the permits were valid for only half of the year. In addition, truckers inquiring about the permit had loads that were overheight or overlength, in addition to being overwidth. In these instances, the overwidth permit did not serve the needs of the truckers. In 2007 there were 339 annual permits issued allowing 105,500-pound loads on the Interstate system.

To deal with potential diesel fuel shortages, the Department of Transportation entered an agreement with the National Guard in which the department is allowed to use four fuel storage tankers. The fuel storage tankers will be located at the armories in Dickinson, Minot, Grand Forks, and Valley City. If there is a diesel fuel shortage, the department will meet the fuel suppliers and truck diesel fuel in the tankers to the site experiencing the shortage. The National Guard will provide the personnel to move the tankers and pump the fuel.

Requests for system improvements include improving the Theodore Roosevelt Expressway, which is United States Highway 85 south of Williston; making United States Highway 52 a four-lane highway from Minot to Jamestown; and widening and making improvements to United States Highway 12 in the southwestern part of the state. The committee was informed that no funding is available to meet these requests.

EXEMPTION FROM FEDERAL MOTOR CARRIER SAFETY REGULATIONS STUDY

Legislative History

The study of Federal Motor Carrier Safety Regulations and exemptions for interstate and intrastate transportation in relation to this state's laws and exemptions included a review of any industry-specific applications of regulations and possible exemptions to current transportation activities within this state. Section 1 of House Bill No. 1359 prohibited the superintendent of the Highway Patrol from enforcing any requirement for rear-end protection on a rear-end dump truck or other rear unloading truck or trailer while being used for hauling agricultural and other farm products from a place of production or on a farm storage site to a place of processing or storage. Section 3 of the bill provided the prohibition was to become effective on the earlier of October 1, 2008, or on approval of this state's application for exemption from rear-end protection requirements unless the superintendent of the Highway Patrol did not complete and submit an application for exemption, then the Act was to become effective on August 1, 2007. The superintendent of the Highway Patrol completed and submitted an application for exemption on June 6, 2007. Because the application was not approved by the Federal Motor Carrier Safety Administration, the prohibition became effective on October 1, 2008.

The impetus for the exemption from rear-end protection on certain trucks and trailers in this state appears to have arisen from a similar exemption in Minnesota. Generally, a state must adopt Federal Motor Carrier Safety Regulations or lose federal funding. A state may receive a specific variance from Federal Motor Carrier Safety Regulations for intrastate commerce. Under 49 CFR 350.341(c), a state may retain those exemptions from its motor carrier safety laws and regulations that were in effect before April 1988, are still in effect, and apply to specific industries operating in intrastate commerce. It appears Minnesota has this exemption because the state had the exemption in effect before April 1, 1988.

As to rear impact guards and rear-end protection, 49 CFR 393.86 provides the provision for trailers and semitrailers and for vehicles. Trailers and semitrailers with a gross vehicle weight rating of 10,000 pounds or more which are manufactured after January 25, 1998, must be equipped with a rear impact guard in compliance with federal regulations. This requirement does not apply to pole trailers, pulpwood trailers, low-chassis vehicles, special purpose vehicles, wheels back vehicles, and trailers towed in drive-away/tow-away operations. The rule defines the requirements for width, height, rear surface, cross-section vertical height, and certification and labeling. Each motor vehicle manufactured after December 31, 1952, with a vertical distance between the bottom edge of the body and the ground of greater than 30 inches must be equipped with a rear impact guard. This requirement does not apply to truck tractors, pole trailers, pulpwood trailers, or vehicles in drive-away/tow-away operations. The rule provides for minimum requirements for vertical distance, maximum lateral distance, width, and forward placement. The rule provides particularly that "[t]he rear impact guard(s) must be substantially constructed and attached by means of bolts, welding, or other comparable means."

State Law

North Dakota Century Code (NDCC) Chapter 39-06.2, Commercial Driver's Licenses, is intended to implement federal law. Chapter 39-06.2 implements the Federal Motor Vehicle Safety Act of 1986 and the Motor Carrier Safety Improvement Act of 1999. The purposes of these Acts are to prevent commercial motor vehicle accidents, fatalities, and injuries by, among other things, strengthening commercial driver's licenses and testing standards.

Under NDCC Section 39-21-46, the superintendent of the Highway Patrol must adopt rules duplicate to or consistent with current Federal Motor Carrier Safety Regulations of the Department of Transportation relating to the safe operation of motor vehicles and motor carrier audits or inspections.

Under North Dakota Administrative Code Section 38-04-01-02, the superintendent of the Highway Patrol has adopted the following parts of the Federal Motor Carrier Safety Regulations by reference:

1. Part 382 - Controlled Substances and Alcohol Use and Testing.
2. Part 387 - Minimum Levels of Financial Responsibility for Motor Carriers.
3. Part 390 - General.
4. Part 391 - Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors.
5. Part 392 - Driving of Motor Vehicles.
6. Part 393 - Parts and Accessories Necessary for Safe Operation.
7. Part 395 - Hours of Service of Drivers.
8. Part 396 - Inspection, Repair, and Maintenance.
9. Part 397 - Transportation of Hazardous Materials; Driving and Parking Rules.

2007 Legislation

In 2007 the Legislative Assembly adopted three bills directly relating to exemptions from Federal Motor Carrier Safety Regulations--House Bill Nos. 1068, 1359, and 1400.

House Bill No. 1068 exempted vehicles driven for military purposes from commercial driver's license requirements subject to federal regulations. In addition, the bill limited the waiver for a person driving a commercial vehicle for a political subdivision during an emergency to a political subdivision with a population of fewer than 3,000 and when necessary licensed drivers are not available.

House Bill No. 1359 provided for this study and the exception from enforcement for trucks and trailers without rear-end protection.

House Bill No. 1400 included trees within the waiver from a commercial driver's license for farm-to-market operations by farmers to transport agricultural products to or from a farm and allows a waiver of knowledge and skills test for a commercial driver's license for retailers and suppliers of trees.

Federal Exemptions in General

This state receives approximately $2.5 million per biennium for the Commercial Motor Carrier Safety Assistance Program. This money is used to fund the Highway Patrol. Under 49 CFR 350.331 and 350.335, the state must review its laws and regulations for compatibility with the Federal Motor Carrier Safety Regulations. Incompatibility results in loss of eligibility for the basic program funds or incentive funds under the Commercial Motor Carrier Safety Assistance Program. Under 49 CFR 350.333, the guidelines for review of state law and regulation compatibility require that if the law is not exactly the same and is less stringent than the federal regulation, then the law or regulation is not compatible. However, under 49 CFR 350.341, specific variances are allowed for intrastate commerce for vehicles less than 26,001 pounds unless the vehicle is used to transport hazardous materials or 16 or more people. Exemptions may not be based on the type of transportation being performed or the distance the driver operates from a work-reporting location unless specific exemptions are otherwise provided. However, a state may retain those exemptions from its motor carrier safety laws and regulations which were in effect before April 1988, are still in effect, and apply to specific industries operating in intrastate commerce.

Under 49 CFR 350.343, the Federal Motor Carrier Safety Administration strongly discourages exemptions for specific industries but will consider state requests with supporting information for the following 10 factors:

1. Type and scope of the industry exemption requested.
2. Type and scope of the requirement to which the exemption would apply.
3. Safety performance of that specific industry.
4. Inspection information.
5. Other commercial motor vehicle safety regulations enforced by other state agencies.
6. Commodity transported.
7. Similar variations granted in circumstances under which they were granted.
8. Justification for the exemption.
9. Effects on safety.
10. State economic environment and its ability to compete in other markets.

Under 49 CFR 350.345, a state may apply for variances from Federal Motor Carrier Safety Regulations for intrastate commerce and those variances will be granted only if the state satisfactorily demonstrates the state law, regulation, or enforcement practice achieves substantially the same purpose as the federal regulation, does not apply to interstate commerce, and is not likely to have an adverse effect on safety.

Under 49 CFR 381, waivers of up to three months and exemptions of up to two years may be obtained for regulatory relief from one or more Federal Motor Carrier Safety Regulations. When applying for the waiver or exemption, an explanation of the safety impact and how safety would be maintained is required.

Specific Exemptions

There are four specific types of exemptions from Federal Motor Carrier Safety Regulations:

1. Medical qualifications.
2. Hours of service.
3. Knowledge and skills testing.
4. Commercial licensure.

Medical Qualifications

North Dakota Century Code Section 39-08-21 grandfathered otherwise medically unqualified drivers through a state medical waiver program so as to allow them to drive intrastate. This is allowed under 49 CFR 391.61 through 391.69. Under these sections, certain drivers are exempt from medical qualifications if they were driving before the federal regulations took effect. Generally, all commercial drivers must meet federal commercial medical requirements to be physically qualified to drive commercial vehicles. For continued medical qualification, a driver must be medically examined by a licensed health care provider every 24 months. This includes drivers of vehicles with a gross vehicle weight rating greater than 10,000 pounds that are used in interstate commerce and vehicles with a gross vehicle weight rating greater than 10,000 pounds used in intrastate commerce if used to transport hazardous materials requiring a plaque guard or designed to transport 16 or more passengers. Some of the medical conditions that may disqualify an individual from obtaining a commercial license are:

1. Heart ailment.
2. Hearing impairment.
3. Less than 20/40 acuity in either eye.
4. Insulin-dependent diabetes.
5. Epilepsy.
6. Loss or impairment of a limb.

Hours of Service

Under NDCC Section 39-32-02, certain intrastate drivers are not subject to hours-of-service limitations. These include drivers of authorized emergency vehicles, of vehicles with a gross vehicle weight rating equal to or less than 26,000 pounds, and of tow trucks operating at the request of a law enforcement officer. In addition, hours-of-service limitations do not apply to intrastate drivers during a declared emergency. This section also contains an exemption from maintaining a logbook for an intrastate driver within 150 area miles from the driver's normal work area if the driver returns to the work area and is released within 12 consecutive hours and if the driver has at least 8 consecutive hours off separating each 12 hours of duty.

Under this section, on June 29, 2007, the Governor issued an executive order declaring an emergency for drivers of commercial motor vehicles while transporting fuels to customers. This executive order has been extended a number of times, at least through September 9, 2007.

Under 49 CFR 395, specific exemptions for hours of service of drivers are provided by federal regulation. These exemptions relate to emergency conditions, salespersons, oilfield operations, short-haul operations, and retail store deliveries.

Knowledge and Skills Testing

Under NDCC Section 39-06.2-06(5), the knowledge and skills test for a commercial driver's license may be waived and a restricted license issued to employees of agrichemical businesses, custom harvesters, farm retail outlet and suppliers (including retailers and suppliers of trees), and livestock feeders.

Under 49 CFR 383.3, a state may waive the required knowledge and skills test for a commercial driver's license for employees of these designated farm-related service industries:

1. Agrichemical business;
2. Custom harvesters;
3. Farm retail outlets and suppliers; and
4. Livestock feeders.

Commercial Licensure

If one begins with the axiom that anyone driving a vehicle for a commercial purpose must have a commercial driver's license, this state has a number of exemptions to having a commercial driver's license. These exemptions manifest themselves as vehicles that may be operated by a person with a Class D license. Under NDCC Section 39-06-14, a driver with a Class D license may operate any single vehicle with a gross vehicle weight rating of 26,000 pounds or less or any such vehicle towing a trailer with a gross vehicle weight rating not in excess of 10,000 pounds; a farm tractor towing another vehicle having a gross weight in excess of 10,000 pounds; and a truck towing a trailer when the gross weight of the trailer not including the weight of the towing vehicle does not exceed 16,000 pounds. In addition, under Section 39-06-14, a Class A, B, or C license may not be issued to a person under 18 years of age except if specifically restricted to use for custom harvest purposes and the person is at least 16 years of age and satisfactorily completes appropriate examinations.

Under NDCC Section 39-06.2-06(1), a person does not need a commercial driver's license and may use a Class D license if:

1. The vehicle being driven is a house car or a vehicle towing a travel trailer used for personal purposes;
2. The vehicle is emergency or firefighting equipment necessary for the preservation of life or property; or
3. The vehicle is being used for military purposes.

North Dakota Century Code Section 39-06.2-06(3) provides for a waiver from a commercial driver's license for farm-to-market operations by farmers. The waiver is limited to operators of a farm vehicle that is:

1. Controlled and operated by a farmer;
2. Used to transport agricultural products (including trees), farm machines, and farm supplies to and from a farm;
3. Not used in the operations of a common or contract carrier; and
4. Used within 150 miles of the farmer's farm.

Under NDCC Section 39-06.2-06(4), commercial driver's license requirements are waived for an individual operating a vehicle for a political subdivision with a population of less than 3,000 people during an emergency for the removal of snow and ice if regularly employed drivers are not available.

Under 49 CFR 383.3, a state must exempt from commercial driver's license standards individuals who operate commercial motor vehicles for military purposes. In addition, a state may exempt operators of a farm vehicle, firefighters, or a driver employed by a local government removing snow or ice if there is an emergency.

The waiver in NDCC Section 39-06.2-06, combined with Section 39-06-14, results in the following exemptions:

- A driver who is 14 or 15 years of age may operate a farm motor vehicle within 150 miles of the driver's farm, having a gross vehicle weight of not more than 50,000 pounds, when transporting agricultural products or farm supplies.
- A farmer may operate any two-axle, tandem-axle, or truck tractor farm vehicle transporting agricultural products, farm machines, or farm supplies to a farm within 150 miles of that farmer's farm. A farm vehicle may tow a trailer, semitrailer, or farm trailer, except double or triple trailers, and if the operator is under 18 years of age, a truck tractor.
- A farmer may operate a farm vehicle transporting hazardous material within 150 miles of the farm without a hazardous material endorsement.

Testimony and Discussion

The committee received testimony on the study of Federal Motor Carrier Safety Regulations and exemptions for interstate and intrastate transportation. In particular, the committee focused on the application submitted by the superintendent of the Highway Patrol for exemption from rear-end protection requirements for rear-end dump trucks or other rear unloading trucks or trailers being used to haul agricultural and other farm products. The committee was informed that the superintendent met with the director of the Federal Motor Carrier Safety Administration and the local Federal Motor Carrier Safety Administration officials in an effort to receive approval on the petition.

In March 2008 the superintendent received a letter from the Federal Motor Carrier Safety Administration not granting this state's request for an exemption. The letter stated "granting the exemption could be inconsistent with the safety goals enacted by Congress when the commercial Motor Carrier Safety Assistance Program (MCSAP) was established. Additionally, an October 2007 study by the North Dakota State University Upper Great Plains Transportation Institute found, 'the analysis here shows that the rear-guard safety equipment has injury severity benefits that far outweigh equipment costs.' Therefore, I cannot grant your request."

The committee received information on the Upper Great Plains Transportation Institute report entitled *Underride: Do Rear Impact Guards Help?*. The study was requested by the Highway Patrol. The study concluded given a 10 percent reduction in injury severity attributed to the rear guard devices on agricultural trucks, in the relevant crash population, the benefit is estimated to be $14.4 million over the seven-year depreciable life of a truck. The total equipment and maintenance cost for the North Dakota agricultural truck fleet is estimated to be $8.1 million. An estimated safety benefit of $1.76 is generated from each dollar spent on rear guards for North Dakota's agricultural truck fleet.

The study looked at national data and North Dakota crash data. The North Dakota crash data, however, could not separate instances when a car hit a truck or a truck hit a car. At first the study assumed the breakdown of 50/50 but national statistics indicate it is less likely that a car will hit a truck. Committee members expressed disappointment with the study because of the extent the study assumptions were based on speculation; the questionable use of national statistics due to this state's mainly rural highways; and the fact that the study did not consider miles on the road when commercial trucks have many more times the miles on road than farm trucks that are driven a few times a year. The finding of .2 fatalities per year under the study, however, is consistent with anecdotal evidence from the Highway Patrol. The committee was informed that regardless of the study the Federal Motor Carrier Safety Administration was influenced greatly in not granting the exemption due to a death near Devils Lake.

The committee was informed that a farmer may build whatever bumper the farmer wants on a straight truck because straight farm trucks do not need a certified bumper. A bumper is only needed if the back tires are more than two feet from the rear of the vehicle. For other trucks, the retrofit will cost between $800 and $1,200 based on testimony received during the 2007 legislative session. In addition, the Highway Patrol has begun an education effort to inform farmers of the rear-end protection requirement.

The committee was informed that because the exemption was not granted, this state is ineligible to receive any MCSAP basic and incentive grant funds as of October 1, 2008. In addition, if the Legislative Assembly repeals NDCC Section 39-21-55 and federal funding is not retroactive, the Highway Patrol will need a deficiency appropriation of $488,000. The committee was informed that if Section 39-21-55 is not repealed, this state will not have access to a national database and will have to have its own safety program, which would create problems for interstate truckers. In addition, every truck from North Dakota going into another state would receive the "white glove" treatment.

RAILROAD RISK ASSESSMENTS, HAZARDOUS CARGO, AND RESPONSES TO EMERGENCIES

Legislative History

Senate Bill No. 2188, as introduced, was based upon a California law known as the Local Community Rail Security Act of 2006. The legislative history for Senate Bill No. 2188 revealed concern about getting information from railroads after cargo spills.

Opponents of the bill informed the committee that California is involved in litigation over the law because, among other things, the California law is preempted by federal law. There was testimony that the railroads have been cooperating with federal agencies in addressing the issues contained in Senate Bill No. 2188, and the proposal would be counterproductive to those efforts and conflict with them in some key areas. One of the main concerns was secrecy of information--the greater the number of people with information, the greater risks to security. As such, it was argued that there is a need for a nationwide, uniform approach, and this approach should be from rules adopted by the Transportation Security Administration, which is part of the Department of Homeland Security, and the Pipeline and Hazardous Safety Administration and Federal Railroad Administration, which are part of the United States Department of Transportation.

Proponents of the bill informed the committee that there is no specific requirement for railroads to report derailments to any state or local official. There was testimony that railroads do not cooperate with state and local emergency responders and the information relating to spilled materials during a derailment has been provided only after too much time has passed and with too much resistance. There was testimony that employees want more training.

Related Federal Regulation

Under 49 U.S.C. 5107, the United States Secretary of Transportation is required to make rules requiring training hazmat employers are to give hazmat employees on the safe loading, unloading, handling, storing, and transportation of hazardous materials and emergency preparedness for responding to an accident or incident involving the transportation of hazardous materials. Under 49 U.S.C. 5110, if there is an incident involving hazardous material being transported in commerce, the person transporting the material must disclose to appropriate emergency response authorities, immediately on request, information about the material.

Under 49 U.S.C. 5125, if it is not possible to comply with a state or local government requirement and a federal requirement, or the state or local requirement is an obstacle to accomplishing the federal requirement, the state or local requirement is preempted. In addition, the state or local regulation would be preempted if the regulation were not substantially the same as the federal regulation in any of the following areas:

1. The designation, description, and classification of hazardous materials.
2. The packing, repacking, handling, labeling, marking, and placarding of hazardous materials.
3. The preparation, execution, and use of shipping documents.
4. The written notification, recording, and reporting of unintentional release in transportation of hazardous material.
5. The design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of packaging for a container sold as qualified for use in transporting hazardous material.

As a result of these statutes, under 49 CFR 172 et seq., emergency response information regarding hazardous material must be on the train and must be made available immediately to federal, state, or local responders. That information must include an emergency response telephone number that must be answered at any time. In addition, railroads are required to have a security plan dealing with personal security, unauthorized access, and enroute security of shipments. The plan must be in writing and updated as circumstances change.

In addition to rules on hazardous materials, the Federal Railroad Administration has adopted rules relating to all railroads. Under 49 CFR 22.13, employees of a railroad are required to report immediately, by the quickest means available, derailments, collisions, storms, washouts, fires, obstructions to tracks, and hazardous conditions. Under 49 CFR 225.9, each railroad must report immediately to the National Response Center any accident or incident arising from the operation of a railroad. The railroad must have an internal control plan to ensure complete and accurate reporting of all accidents, incidents, injuries, and occupational illnesses arising from the operation of a railroad. The railroad must disseminate the plan to the employees and must provide whistleblower protection to any person subject to the plan.

Under 49 CFR 840.3, the operator of a railroad must notify the National Transportation Safety Board at the earliest practical time after the occurrence of certain railroad accidents. The notification must be within two hours, if among other things, the accident resulted in damage to a tank car or container resulting in the release of hazardous materials or involving evacuation of the general public or if there was a fatality at a grade crossing. The notification must occur within four hours after the accident if there was damage of $150,000 or more and the accident did not involve a passenger train.

Recent Changes in Federal Law

On August 3, 2007, President George W. Bush signed the "Implementing Recommendations of the 9/11 Commission Act of 2007." The legislation includes significant rail security measures that originally had been introduced in "The Rail and Public Transportation Security Act of 2007."

Some sections of the Act that closely relate to railroads are listed below, and the sections that relate closely to the study of the committee are in bold:

- **Section 1511. Railroad transportation security risk assessment and national strategy.**
- **Section 1512. Railroad carrier assessments and plans.**
- Section 1513. Railroad security assistance.
- Section 1514. Systemwide Amtrak security upgrades.
- Section 1515. Fire and life safety improvements.
- **Section 1516. Railroad carrier exercises.**
- **Section 1517. Railroad security training program.**
- Section 1518. Railroad security research and development.
- Section 1519. Railroad tank car security testing.
- Section 1520. Railroad threat assessments.
- **Section 1521. Railroad employee protections.**
- Section 1522. Security background checks of covered individuals.
- Section 1523. Northern border railroad passenger report.
- Section 1524. International Railroad Security Program.
- Section 1525. Transmission line report.
- Section 1526. Railroad security enhancements.
- Section 1528. Railroad preemption clarification.

Under Section 1511, the Secretary of Homeland Security is required to establish a task force to complete a nationwide risk assessment of a terrorist attack on railroad carriers by February 2008. The assessment must include a methodology, identification and evaluation of critical assets and infrastructure, identification of risks to those assets and infrastructure, identification of risks to passengers and cargo, an assessment of employee training, and an assessment of private and public actions and integration of those actions. By May 2008 the Secretary of Homeland Security must develop and implement the "National Strategy for Railroad Transportation Security." The plan must prioritize actions to:

1. Improve the security of railroad infrastructure.
2. Deploy equipment and personnel to detect security threats.
3. Train railroad employees in terrorism prevention, preparedness, and response activities.
4. Conduct public outreach campaigns for railroads.
5. Provide additional security.
6. Ensure the continued movement of freight and passengers in the event of an attack.
7. Coordinate existing and planned railroad security initiatives undertaken by the public and private sectors.
8. Assess the usefulness of covert testing of railroad security systems.
9. Assess the ability to integrate security into infrastructure design.
10. Assess the implementation of random searches.

The plan must include the roles of all levels of government and stakeholders. The United States Secretary of Homeland Security must consult with all stakeholders in making the plan.

Under Section 1512, by August 2008 the United States Secretary of Homeland Security must make rules requiring railroads assigned to a high-risk tier to conduct vulnerability assessments and submit a security plan. The vulnerability assessments require the identification and evaluation of critical railroad carrier assets and infrastructure, the identification of the vulnerabilities to those assets and infrastructure, the identification of strengths and weaknesses, and the identification of redundant and backup systems. The security plan must include the identification of a security coordinator; a list of capital and operational improvements; procedures to be implemented or used by the railroad in response to a terrorist attack; identification of steps taken with state and local law enforcement agencies, emergency responders, and federal officials to coordinate in response to a terrorist attack; a strategy and timeline for training; enhanced security measures for heightened security risks; plans for redundant and backup systems; and a strategy for implementing enhanced security for security-sensitive materials.

Under Section 1516, the Secretary of Homeland Security is required to establish a program for conducting security exercises for railroad carriers and entities to be assessed under the program, including state and local agencies.

Under Section 1517, by February 2008 the Secretary of Homeland Security must develop and issue rules for a training program to prepare railroad employees for potential security threats and conditions. The training must include best practices and must include understanding security incident procedures, including procedures for communication with governmental and nongovernmental emergency response providers and for onsite interaction with these providers.

Under Section 1521, there is whistleblower protection for employees and contractors that:

1. Provide information to assist in any investigation regarding any conduct which the employee reasonably believes to constitute a violation of federal law.
2. Refuse to violate any law.
3. File a complaint applicable to railroad safety or security.
4. Notify the railroad carrier or Secretary of Homeland Security of a work-related injury or illness.
5. Cooperate with a safety or security investigation.
6. Furnish information to any government agency as to the facts relating to any accident or incident resulting in injury or death or damage to property occurring in connection with railroad transportation.

Testimony and Discussion

The committee received testimony on the study of railroad risk assessments, hazardous cargo, and responses to emergencies. The committee was informed that after Senate Bill No. 2188, which required the study, was enacted, the President signed the "Implementing Recommendations of the 9/11 Commission Act of 2007." As described under

Recent Changes in Federal Law, the federal Act provided for railroad risk assessment, training of railroad personnel, and whistleblower protection. Because the federal Act addressed the same issues of the study, the committee was informed the only issue that remained for the committee was to monitor the development of federal rules under the law.

The committee was informed that state law requires all railroad carriers to notify the Department of Emergency Services of any accident. In addition, 59 separate jurisdictions in the state have been rewriting evacuation and shelter plans for approval by the Department of Emergency Services.

HIGHWAY CONSTRUCTION POSITIONS REPORT

The report required by Section 4 of House Bill No. 1012 informed the committee that there were no additional full-time equivalent positions hired for highway construction and maintenance in lieu of entering into contracts for those purposes.