

**Advisory Commission on Intergovernmental Relations
Thursday, August 16, 2012
Roughrider Room**

**Grant Levi, Deputy Director of Engineering
North Dakota Department of Transportation**

Mr. Chairman and members of the commission, thank you for giving me the opportunity to present information today.

In reviewing a draft of the Bill to create a new section to Chapter 39-12 of the North Dakota Century Code, relating to extraordinary road use fee charges collected by counties; the North Dakota Department of Transportation (DOT) would like to address a few items:

- **SECTION 1. AMENDMENT. Section 39-12-14.1 Voluntary settlement of extraordinary road use fee charges.**

Line 20: We agree with changes being made and would recommend expanding the bill language so that it includes all local jurisdictions to receive fees for roadways in their jurisdiction, not just counties.

- **SECTION 2. AMENDMENT. Section 39-12-20 Proceeds of sale- Continuing appropriation.**

Line 10 - 11: We agree with changes being made and would recommend expanding the bill language so that it includes all local jurisdictions to receive fees receive fees for roadways in their jurisdiction, not just counties.

- **SECTION 3. AMENDMENT. Section 39-12 – Review of excessive size and weight regulation enforcement – withholding highway tax distribution funds.**

Line 20-28: The proposed bill places the oversight of enforcement with the DOT. The DOT does not believe it is appropriately placed with our agency. The Highway Patrol (HP) needs to certify the state's enforcement activities with the Federal Highway Administration for the Governor; therefore, we suggest the local jurisdiction's enforcement work oversight be provided by HP. We also question the need to include a section in the bill that would withhold monthly distributions of funds from the highway tax distribution fund to the county.

Line 29-Section 4: In reviewing the bill, we are unclear of the intent of what the agency is to provide as the language appears subjective. An option would be to require the local jurisdictions to certify their enforcement activities similar to what is required of the

Highway Patrol to certify with the Federal Highway Administration. Please see Attachment A which lists State Enforcement Certification as required by Federal Highway Administration.

If the bill were to pass as drafted, it would require oversight of 53 counties twice a year. DOT currently does not have staff available to fulfill the bill requirements.

- **SECTION 4. AMENDMENT. Section 54-27-19 Highway tax distribution fund- State treasurer to make allocation to state, counties and cities.**

Line 18-19: We question the need for this provision.

- **SECTION 5. EXPIRATION DATE.**

Line 19: We have no concern with an expiration date.

This concludes my testimony.

VEHICLE SIZE AND WEIGHT ENFORCEMENT**State Enforcement Certification****North Dakota 2011****Statement:**

All State laws and regulations governing vehicle size and weight are being enforced on those highways which, prior to October 1, 1991, were designated as part of the Federal-aid Primary, Federal-aid secondary, or Federal-aid urban systems. The State is enforcing the freeze provisions of the Intermodal Surface Transportation Efficiency Act of 1991 (23 U.S.C. 127(d) and 49 U.S.C. (31112; and all state laws governing vehicle weight on the interstate system are consistent with 23 U.S.C. 127 (a) and (b).

NDHP does not have report for tracking off-loading at this time.

To enhance the enforcement of size and weight in North Dakota the NDHP purchased two(2) semi-portable scale systems in 2011. They are currently being used out in the field.

NDHP data from 10/1/2010 - 09/30/2011

Copy of any State law or regulation pertaining to vehicle size and weight adopted since the State's last certification:

39-12-02. (Effective through December 31, 2013) Special permits for vehicles of excessive size and weight issued - Contents - Fees.

1. The highway patrol and local authorities in their respective jurisdictions, upon application and payment of the appropriate charges and for good cause shown, may issue a special written permit authorizing the applicant to operate or move a vehicle, mobile home, or modular unit of a size or weight exceeding the maximum specified by this chapter, upon a highway under the jurisdiction of the body granting the permit. Every permit may designate the route to be traversed and may contain any other restrictions or conditions deemed necessary by the body granting the permit. Every permit must be carried in the vehicle to which it refers and must be opened to inspection by any peace officer or agent of the superintendent of the highway patrol unless prior approval is obtained from the highway patrol. It is a violation of this chapter for any person to violate any of the terms or conditions of the permit. The highway patrol and local authorities may adopt rules governing the movement of oversize and overweight vehicles.

2. Upon any application for a permit to move a new manufactured building or modular unit from outside this state to be located anywhere within this state, the manufacturer is deemed to have certified that the new manufactured building or modular unit meets all applicable building codes and all applicable electrical wiring and equipment, plumbing, and fire standards. The state is not liable to any person for issuing a permit in violation of this subsection.

3. An appropriate charge must be made for each permit and all funds collected hereunder by the highway patrol must be deposited in the state highway fund for use in the construction and maintenance of highways and operating expenses of the department. Permit fees generated by a political subdivision must be deposited in the local authority's general fund for support of the local road system. Publicly owned vehicles that provide service beyond the agency's jurisdiction, official, publicly owned, emergency, or military vehicles are not subject to charges for permits. The minimum fee for selected charges is as follows:

- a. The fee for the ten percent weight exemption, harvest and wintertime, is fifty dollars per month for fees paid on a monthly basis or two hundred fifty dollars per year for fees paid on a yearly basis. Unused fees paid on a monthly basis are refundable. Unused fees paid on a yearly basis are not refundable.
- b. The fee for a non-self-issuing interstate permit is ten dollars per trip or three hundred dollars per calendar year for unlimited trips.
- c. The fee for special mobile equipment is twenty-five dollars per trip.

- d. The fee for engineering is twenty-five dollars per trip.
- e. The fee for faxing a permit is five dollars.
- f. The fee for a single trip permit is twenty dollars per trip.
- g. The fee for a bridge length permit is thirty dollars per trip or one hundred fifty dollars per calendar year.
- h. The fee for a longer combination vehicle permit is one hundred dollars per month for fees paid on a monthly basis.
- i. The fee for an overwidth vehicle or load that is fourteen feet six inches [4.42 meters] or less is twenty dollars per trip or one hundred dollars per calendar year unless the vehicle is a noncommercial fishhouse trailer being moved by the owner, then the fee is twenty dollars per calendar year.

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j. The highway patrol may establish an online electronic permit system. If the highway patrol establishes an online electronic permit system, the highway patrol shall assess an additional fifteen dollar fee for every permit issued under this section to be deposited into the motor carrier electronic permit transaction fund.

4. The director of tax equalization of the county of destination must be furnished a copy of the permit for the movement of an overdimensional mobile home.

5. Permits issued for overdimensional movements of vehicles that do not exceed ten feet [3.05 meters] in total width, including load, are valid for travel during the day and night.

6. There is created in the state treasury a fund known as the motor carrier electronic permit transaction fund. All money in the fund is appropriated on a continuing basis to the highway patrol to defray the costs of establishing and maintaining an online electronic permit system for permitting and routing oversize and overweight vehicles in this state. The highway patrol may contract with a private entity to establish, operate, and maintain an online electronic permit system. The online electronic permit system includes the issuance of permits under this section and an automated routing system. The automated routing system must include integration of department of transportation traveler information system information, all other data required for the automated routing system, and integration of the highway patrol computer-aided dispatch system.

7. A multitrip permit for nondivisible loads may be issued for specific routes identified in the permit application. The fee for this permit is the single trip permit fee multiplied by the number of days the permit is valid. This subsection does not apply to special mobile equipment or loads over one hundred fifty thousand pounds [68038.86 kilograms].

39-12-05. Weight limitations for vehicles on interstate system.

A person may not operate on a highway which is part of the interstate system any vehicle:

1. With a single axle that carries a gross weight in excess of twenty thousand pounds [9071.85 kilograms] or a wheel load over ten thousand pounds [4535.92 kilograms]. A wheel may not carry a gross weight over five hundred fifty pounds [249.48 kilograms] for each inch [2.54 centimeters] of tire width except that such limits may not be applied to tires on the steering axle. Steering axle weights are limited to twenty thousand pounds [9071.85 kilograms] or the axle rating established by the manufacturer, whichever is lower. Axles spaced forty inches [101.60 centimeters] apart or less are considered as one axle and, on axles spaced over forty inches [101.60 centimeters] and under eight feet [2.44 meters] apart, the axle load may not exceed seventeen thousand pounds [7711.07 kilograms] per axle. The wheel load, in any instance, may not exceed one-half the allowable axle load. Spacing between axles is measured from axle center to axle center.
2. Subject to the limitations imposed by subsection 1 on tires, wheel, and axle loads, the gross weight of which exceeds that determined by the formula of:

$$W = 500 (LN/N-1 + 12N + 36)$$
 where W equals maximum weight in pounds carried on any group of more than one axle; L equals distance in feet between the extremes of any group of consecutive axles; and N equals number of axles in the group under consideration, except that two consecutive sets of tandem axles may carry a gross load of thirty-four thousand pounds [15422.14 kilograms] each, providing the overall distance between the first and

last axles of the consecutive sets of tandem axles is at least thirty-six feet [10.97 meters]. The gross weight may not exceed eighty thousand pounds [36287.39

Analysis of the changes made:

1.
Section 5 of 39-12-02 allows for permitting of over dimensional loads up to 10 feet in width to operate at night. This is a change from the prior law that did not allow for night time travel for loads in excess of 8 feet six inches in width.
2.
Section 7 of 39-12-02 was a new section created to allow for purchase of a multi-trip permit for non divisible loads that are over dimensional and over weight. The limitations are for 14 feet 6 inches in width, 15 feet 6 inches in height and 120 feet in length. Weight cannot exceed 150,000 pounds. The permit may be purchased for no less than 3 days and no more than 120 days. The multi-trip permit is route specific and can only be used for the route specified on the permit application.
3.
39-12-05 was amended to bring state statute in compliance with Title 23 of the federal code to allow vehicles on the Interstate system for the steering axle on a vehicle to carry a weight of 20,000 pounds or the manufacturer's axle weight rating not to exceed 20,000 pounds.

Actual operations as compared with those forecasted by the plan:

Scale Types	Forecasted Number	Actual Number
Fixed platform scales	0	11,319
WIM scales	150	376
Portable scales	1,000	2,619
Semi-portable scales	0	365

Impacts of the process as actually applied:

Violation Type	Current Year	Last Year
Oversize	32	41
Overweight	1,390	1,042

Measures of activity:

(1) Vehicles weighed

Scale Type	Number of Vehicles Weighed
Fixed platform scales	11,319
WIM scales	376
Portable scales	2,619
Semi-portable scales	365

(2) Penalties

Violation Type	Number of Citations or Civil Assessments
Axle	1,003
Gross	367
Bridge formula	114

Number of vehicles whose loads are either shifted or offloaded

Load shifting	464
Offloading	0

(3) Number of permits issued for overweight loads

Permit Type	Number Issued
Non-divisible trip permits	63,269
Non-divisible annual permits	0
Divisible trip permits	38,795
Divisible annual permits	2,094

FHWA

13.0036.01000

Sixty-third
Legislative Assembly
of North Dakota

FIRST DRAFT:
Prepared by the Legislative Council staff for the
Advisory Commission on Intergovernmental Relations
February 2012

Introduced by

1 A BILL for an Act to create and enact a new section to chapter 39-12 of the North Dakota
2 Century Code, relating to extraordinary road use fee charges collected by counties; to amend
3 and reenact sections 39-12-14.1, 39-12-20, and 54-27-19 of the North Dakota Century Code,
4 relating to extraordinary road use fees and the highway tax distribution fund; to provide a
5 continuing appropriation; and to provide an expiration date.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1. AMENDMENT.** Section 39-12-14.1 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **39-12-14.1. Voluntary settlement of extraordinary road use fee charges.**

10 Before the complaint is issued ~~pursuant to~~under section 39-12-14, the owner, or the owner's
11 driver or agent, may voluntarily pay the amount of the extraordinary road use fee, or may
12 provide proof of surety coverage to ensure payment of the extraordinary road use fee, provided
13 under section 39-12-17, plus any towing or storage costs. Any settlement, whether made by the
14 owner, or the owner's driver or agent, ~~must be~~is presumed to be ~~of a voluntary nature.~~ A peace
15 officer or a peace officer's designee is authorized to receive the settlement payment on behalf
16 of the authority having jurisdiction ~~of~~over the road ~~whereon which~~whereon the violation occurred. The
17 extraordinary road use fees for a violation on an interstate or on a state highway must be
18 deposited with the state treasurer to be credited to the state highway fund. Extraordinary road
19 use fees for a violation that did not occur on an interstate or a state highway must be deposited
20 in the county general fund in the county of the violation and used for the support of the county
21 road system.

22 **SECTION 2. AMENDMENT.** Section 39-12-20 of the North Dakota Century Code is
23 amended and reenacted as follows:

1 **39-12-20. Proceeds of sale - Continuing appropriation.**

2 The proceeds of sale must be deposited with the state treasurer. ~~The~~For a violation on an
3 interstate or a state highway, the state treasurer shall deposit in the state highway fund an
4 amount equal to the amount of the charges assessed pursuant to~~under~~ section 39-12-17 after
5 paying the costs to the county. ~~An~~For any violation, an amount equal to the costs of the
6 proceedings, including attorney's and witness fees and costs, is appropriated on a continuing
7 basis out of the funds collected to the county in which the of prosecution took place for the
8 purpose of defraying the costs of prosecution. From the proceeds of sale for a violation that did
9 not occur on an interstate or a state highway, the amount of charges assessed under section
10 39-12-17 is appropriated on a continuing basis and must be deposited in the county general
11 fund in the county of prosecution and may be used only for county road purposes. The balance
12 of the proceeds of any sale after the payment of costs and charges is appropriated on a
13 continuing basis out of the funds collected to be paid to the person entitled ~~thereto~~to the
14 proceeds as determined by the court or must be deposited with the clerk of court for such
15 payment to that person.

16 **SECTION 3.** A new section to chapter 39-12 of the North Dakota Century Code is created
17 and enacted as follows:

18 **Review of excessive size and weight regulation enforcement - Withholding of**
19 **highway tax distribution funds.**

- 20 1. The director shall conduct semiannual reviews of the performance of each county in
21 enforcement of oversize and overweight vehicle regulations. If the director finds that a
22 county's enforcement is unsatisfactory, the director shall notify the board of county
23 commissioners of the county of any deficiency in enforcement. If a county is found to
24 be deficient in the following semiannual review, the director shall notify the county of
25 the deficiency and request the state treasurer to withhold monthly distributions of
26 funds from the highway tax distribution fund to the county until the county has
27 submitted to the director a written plan for correcting any deficiency identified by the
28 director.
- 29 2. In conducting a review of county enforcement of oversize and overweight vehicle
30 regulations, the director shall consider the following factors:

- a. Whether the county has requested that the highway patrol assist in the enforcement of that county's size and load limits;
- b. The diligence of the county in enforcing size and load limits, particularly with respect to habitual offenders;
- c. Whether the county is enforcing size and load limits appropriately and fairly; and
- d. Any other factors the director deems appropriate after consultation with representatives of sheriffs, county commissioners, state's attorneys, county highway superintendents, and the highway patrol.

SECTION 4. AMENDMENT. Section 54-27-19 of the North Dakota Century Code is amended and reenacted as follows:

54-27-19. Highway tax distribution fund - State treasurer to make allocation to state, counties, and cities.

A highway tax distribution fund is created as a special fund in the state treasury into which must be deposited 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. The state treasurer shall transfer the first five million five hundred thousand dollars per biennium from the highway tax distribution fund to the state highway fund for the purpose of providing administrative assistance to other transferees. ~~After~~Except as otherwise provided by section 3 of this Act, after the transfer of the first five million five hundred thousand dollars, any moneys in the highway tax distribution fund must be allocated and transferred monthly 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

1 after deducting the incorporated cities' share. All the moneys received by the counties
2 from the highway tax distribution fund must be set aside in a separate fund called the
3 "highway tax distribution fund" and must be appropriated and applied solely for
4 highway purposes in accordance with section 11 of article X of the Constitution of
5 North Dakota. The state treasurer shall compute and distribute monthly the sums
6 allocated to the incorporated cities within each county according to the formula in this
7 subsection on the basis of the per capita population of all of the incorporated cities
8 situated within each county as determined by the last official regular or special federal
9 census or the census taken in accordance with the provisions of chapter 40-02 in case
10 of a city incorporated subsequent to the census.

11 a. For counties having no cities with a population of ten thousand or more, a
12 statewide per capita average must be used, as determined by calculating
13 twenty-seven percent of the amount allocated to all of the counties under this
14 subsection divided by the total population of all of the incorporated cities in the
15 state. Each city must be paid an amount equal to the product of the statewide per
16 capita and that city's population.

17 b. For each county having a city with a population of ten thousand or more, the
18 amount transferred each month into the county highway tax distribution fund
19 must be the difference between the amount allocated to that county pursuant to
20 this subsection and the total amount allocated and distributed to the incorporated
21 cities in that county as computed according to the following formula:

- 22 (1) A statewide per capita average as determined by calculating twenty-seven
23 percent of the amount allocated to all of the counties under this subsection
24 divided by the total population of all of the incorporated cities in the state.
25 (2) The share distributed to each city in the county having a population of less
26 than one thousand must be determined by multiplying the population of that
27 city by the product of 1.50 times the statewide per capita average computed
28 under paragraph 1.
29 (3) The share distributed to each city in the county having a population of one
30 thousand to four thousand nine hundred ninety-nine, inclusive, must be

1 determined by multiplying the population of that city by the product of 1.25
2 times the statewide per capita average computed under paragraph 1.

3 (4) The share distributed to each city in the county having a population of five
4 thousand or more must be determined by multiplying the population of that
5 city by the statewide per capita average for all such cities, which per capita
6 average must be computed as follows: the total of the shares computed
7 under paragraphs 2 and 3 for all cities in the state having a population of
8 less than five thousand must be subtracted from the total incorporated cities'
9 share in the state as computed under subdivision a and the balance
10 remaining must then be divided by the total population of all cities of five
11 thousand or more in the state.

12 5. The moneys allocated to the incorporated cities must be distributed to them monthly
13 by the state treasurer and must be deposited by the cities in a separate fund and may
14 only be used in accordance with section 11 of article X of the Constitution of North
15 Dakota and an incorporated city may use the fund for the construction, reconstruction,
16 repair, and maintenance of public highways within or outside the city pursuant to an
17 agreement entered into between the city and any other political subdivision as
18 authorized by section 54-40-08.

19 **SECTION 5. EXPIRATION DATE.** This Act is effective through June 30, 2017, and after that
20 date is ineffective.



North Dakota Department of Transportation

Francis G. Ziegler, P.E.
Director

Jack Dalrymple
Governor

August 2, 2012

Mr. John D. Bjornson
Legislative Council
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Mr. Bjornson:

In reviewing a draft of the Bill to create a new section to Chapter 39-12 of the North Dakota Century Code, relating to extraordinary road use fee charges collected by counties; to amend and reenact section 39-12-14.1, 39-12-20 and 54-27-19 of the North Dakota Century Code, relating to extraordinary road use fees and the highway tax distribution fund, we'd like to address (or discuss a few items):

- **SECTION 1. AMENDMENT.** Section 39-12-14.1 Voluntary settlement of extraordinary road use fee charges.

We agree with changes being made and would recommend expanding the bill language so that it includes all local jurisdictions to receive fees for roadways in their jurisdiction, not just counties.

- **SECTION 2. AMENDMENT.** Section 39-12-20 Proceeds of sale- Continuing appropriation.

We agree with changes being made and would recommend expanding the bill language so that it includes all local jurisdictions to receive fees for roadways in their jurisdiction, not just counties.

- **SECTION 3. AMENDMENT.** Section 39-12 – Review of excessive size and weight regulation enforcement – withholding highway tax distribution funds.

We recognize the legislative intent but DOT does not believe it is appropriately placed with our agency. The Highway Patrol (HP) needs to certify the states enforcement activities with the Federal Highway Administration for the Governor; therefore, the local jurisdiction's enforcement work needs HP oversight. We are not sure of the intent of this portion of the legislation as it appears subjective. An option would be to require the local jurisdictions to certify their enforcement activities similar to what is required of the HP.

Mr. John D. Bjornson
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If the decision is made that DOT is to administer or oversee this program additional staffing (FTE's) would be needed.

- **SECTION 4. AMENDMENT.** Section 54-27-19 Highway tax distribution fund- State treasurer to make allocation to state, counties and cities.

We agree with changes being made.

- **SECTION 5. EXPIRATION DATE**

We have no concern with an expiration date.

Please feel free to contact me with any further questions or concerns.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ron Henke", with a stylized flourish at the end.

Ron Henke, P.E., Director
Office of Operations

70/bwd

Enclosure

c: Francis G. Ziegler

Grant Levi

Colonel James Prochniak