

## DISCOVERY OF CULTURAL RESOURCES WITHIN LOCAL ROAD PROJECTS - FUNDING MECHANISMS - BACKGROUND MEMORANDUM

House Concurrent Resolution No. 3037 (attached as an appendix), which was referred to the Advisory Commission on Intergovernmental Relations by the Legislative Council, directs a study of the feasibility and desirability of creating cost-sharing or funding mechanisms for the unexpected discovery of cultural or paleontological resources within local road projects.

### BACKGROUND

The 1999 Legislative Assembly considered, but did not pass, House Bill No. 1236, which would have established a cost-sharing method to assist counties, cities, and townships in paying the additional costs associated with the discovery of cultural resources during highway construction or maintenance. The bill provided that the additional cost for any additional action, including an archaeological excavation or study, must be shared in the proportion of 25 percent to the county, city, or township; 25 percent to the State Historical Society; and 50 percent to the Department of Transportation.

Proponents of House Concurrent Resolution No. 3037 testified that local road projects are often delayed, redesigned, or terminated as the result of the unexpected discovery of cultural resources. They contended that the high cost of an archeological study or dig can be such a financial burden on a local government that local road projects are often abandoned when cultural resources are unexpectedly discovered.

### PRIOR STUDIES

There have been no prior studies addressing cost-sharing or funding mechanisms for the unexpected discovery of cultural or paleontological resources within local road projects.

### NORTH DAKOTA LAW

Although there are no North Dakota laws regarding cost-sharing or funding mechanisms for the unexpected discovery of cultural or paleontological resources, the Legislative Assembly has enacted legislation protecting paleontological resources. North Dakota Century Code Chapter 54-17.3 authorizes the State Geologist to issue permits to investigate, excavate, collect, or record paleontological resources. Section 54-17.3-01 defines a "paleontological resource" as "any significant remains, trace, or imprint of a plant or animal that has been

preserved by natural causes in earth materials and the localities in which they are found."

Section 54-17.3-05 requires the State Geologist to notify the director of the State Historical Society of all quaternary paleontological finds reported to the State Geologist which potentially or actually contain cultural resources.

Section 54-17.3-06 provides that any paleontological resource found or located upon any land owned by the state or a political subdivision may not be destroyed, defaced, altered, removed, or disposed without the approval of the State Geologist. That section also provides that the state and political subdivisions must cooperate with the State Geologist in identifying and implementing any reasonable alternative to destruction or alteration of any paleontological resource.

Section 54-17.4-09.1 provides for a fossil excavation and restoration fund. That section provides that funds received by the Geological Survey for the excavation and restoration of fossils must be deposited in the fund. The balance in the fund as of April 25, 2002, is \$127,000.

Section 55-02-07 provides that any "historical or archaeological artifact or site that is found or located upon any land owned by the state or its political subdivisions or otherwise comes into its custody or possession and which is, in the opinion of the director of the state historical society, significant in understanding and interpreting the history and prehistory of the state, may not be destroyed, defaced, altered, removed, or otherwise disposed of in any manner without the approval of the state historical board." That section also requires the director of the State Historical Board to provide the governing official of the state or political subdivision written direction for the care, protection, excavation, storage, destruction, or other disposition of the significant artifact or site within 60 days of written notification by the appropriate governing official's desire, need, or intent to destroy, alter, remove, or otherwise dispose of a significant artifact or site. The state and its political subdivisions are required to cooperate with the director in identifying and implementing any reasonable alternative to destruction or alteration of any historical or archaeological artifact or site significant in understanding and interpreting the history and prehistory of the state before the State Historical Board may approve the demolition or alteration.

A "cultural resource" is defined in Section 55-03-00.1 as "prehistoric or historic archeological sites, burial mounds, and unregistered graves."

Section 55-10-09 requires the state and its political subdivisions to cooperate with the director of the State Historical Society in the preservation of historic and archaeological sites.

### **NEIGHBORING STATES' LAWS**

No neighboring state has a cost-sharing program to assist local governments with additional costs associated with the unexpected discovery of cultural or paleontological resources. Minnesota Statutes Section 138.40 provides that when archaeological or historic sites are known or based on investigations or are suspected to exist on public lands or waters, the agency or department controlling the lands or waters shall use the professional services of archaeologists from the University of Minnesota, Minnesota Historical Society, or other qualified archaeologists to preserve the sites. The statute provides that if an archaeological excavation is required to protect or preserve the sites, state or other governmental agencies may use their funds for the excavation.

### **POSSIBLE STUDY APPROACH**

1. Receive testimony from representatives of the State Historical Board, the State Geologist, the Department of Transportation, and local governments regarding problems associated with the unexpected discovery of cultural or paleontological resources and methods to mitigate those problems.
2. Identify potential funding sources for cost-sharing programs to assist local governments when there is an unexpected discovery of cultural or paleontological resources during a road project.
3. If a funding source is identified, determine whether it is feasible to implement a cost-sharing program and, if feasible, determine what types of projects would be eligible for cost-sharing.

ATTACH:1

**Fifty-seventh Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 9, 2001**

HOUSE CONCURRENT RESOLUTION NO. 3037  
(Representatives Mahoney, Onstad, Wikenheiser)  
(Senators Tomac, Urlacher, Wardner)

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of creating cost-sharing or funding mechanisms for the unexpected discovery of cultural or paleontological resources within local road projects.

**WHEREAS**, the unexpected discovery of cultural or paleontological resources after a local road project has begun can create an enormous fiscal burden on the local road authority; and

**WHEREAS**, the local road authority has almost no control over the extent of investigation that results and has few options except termination or redesign of the project upon discovery of unexpected cultural or paleontological resources; and

**WHEREAS**, a cost-sharing or funding mechanism including appropriate state agencies and the local road authority would diffuse the risk of unexpectedly discovering cultural or paleontological resources;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council study the feasibility and desirability of creating cost-sharing or funding mechanisms for the unexpected discovery of cultural or paleontological resources within local road projects; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-eighth Legislative Assembly.