

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

TRANSPORTATION COMMITTEE

Thursday, May 10, 2012
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Gary A. Lee, Chairman, called the meeting to order at 9:00 a.m.

Members present: Senators Gary A. Lee, Ron Carlisle, Karen K. Krebsbach, Richard Marcellais, Dave Nething, George L. Nodland, David O'Connell; Representatives Robert Frantsvog, Ed Gruchalla, Brenda Heller, Bob Hunsakor, Karen Karls, Matthew M. Klein, William E. Kretschmar, Dan Ruby, Don Vigesaa

Members absent: Senator Terry M. Wanzek; Representatives Jerry Kelsh, Mark S. Owens

Others present: Dwight Cook, State Senator, Mandan

Senator Rich Wardner, member of the Legislative Management, was also in attendance.

See [Appendix A](#) for additional persons present.

It was moved by Senator O'Connell, seconded by Representative Karls, and carried on a voice vote that the minutes of the previous meeting be approved as distributed.

DESIGN-BUILD

Mr. Ed Ryen, Mr. Mel Placilla, and Mr. Doug Jackson, HDR Engineering, gave a presentation ([Appendix B](#)) on the alternative delivery method of design-build. Mr. Placilla said design-bid-build system is the traditional project delivery system wherein an owner provides design and construction management. He said the contractor is hired under a separate contract. He said the design-build method is an alternative project delivery system wherein an owner hires the engineer and contractor under one contract. He said through the design-build method, a single organization offers both design and construction services through one contract to an owner. He said the strengths of the design-build method include:

- A single point of responsibility;
- A shorter time to develop the project;
- Total costs can be determined very early;
- Design innovation more readily achieved;
- A high level of accountability can result in higher quality; and
- Reduced conflict.

Mr. Placilla said the weaknesses in the design-build method include:

- The time and costs of implementing the competitive process;
- An overly involved owner may impact the design-builder;

- The price is provided before design documents are completed; and
- The designer does not work directly for the owner.

Mr. Jackson said design-build is best used if the project meets one of the following five criteria:

1. There is a tight schedule;
2. The need to maintain a set budget;
3. Desire for one contract and a single point of responsibility;
4. A want for the risk of delivery to be with the design-builder; or
5. Complex situations with multiple solutions.

Mr. Jackson said design-build requires careful planning and execution. He said design-build requires a good package that is comprehensive enough to ensure the owner gets what is wanted, but is not overly restrictive. He said design-build is not the solution to every problem.

In response to a question from Senator Carlisle, Mr. Placilla said design-build is a different process from the design-bid-build process used by the Department of Transportation (DOT). He said the design-build process has a short list of contractors that are asked for proposals. He said DOT cannot use design-build without legislation. He said the bonding requirements under the design-bid-build and design-build methods are generally the same.

In response to a question from Representative Vigesaa, Mr. Placilla said savings depend upon the circumstances. He said if the project has environmental approval and the system is in place for design-build, six months to a year may be saved on a large project. He said a Pennsylvania State study found a cost-savings of 5 to 15 percent. Mr. Jackson said there is less cost growth from the beginning to the end of project, about 6 percent less.

In response to a question from Senator Nodland, Mr. Placilla said about 40 states have design-build authority. He said North Carolina and Florida use the design-build method most of the time. He said a Pennsylvania State and University of Colorado study shows better quality with the design-build method. He said quality needs to be enforced through the agreements.

In response to a question from Representative Heller, Mr. Jackson said there needs to be outreach and education to contractors if the state is to adopt the

design-build method. He said there needs to be more of a comfort level with the design-build method.

In response to a question from Senator Lee, Mr. Jackson said the initial cost for design-build is higher than the design-bid-build method, but there is a 12 to 13 percent increase in the price over the time of the project for the design-bid-build method. He said this price increase is controlled in the design-build method.

In response to a question from Representative Ruby, Mr. Placilla said in the design-build method contract documents are tighter on the ability to get changes. He said it is much harder to get a change order in a design-build contract. He said the amount paid is a lump sum.

In response to a question from Representative Hunsaker, Mr. Placilla said the typical cost for a construction project is one-third people, one-third materials, and one-third equipment. He said the savings due to time is only on the people side. He said design-build requires more equipment.

In response to a question from Senator Lee, Mr. Placilla said a project from \$10 million to \$20 million is a good-sized project for design-build. He said bundling of projects in a geographic area can be used to reach this size.

In response to a question from Senator Lee, Mr. Placilla said although large contractors generally submit proposals for design-build projects, large contractors generally use subcontractors on most jobs. He said subcontractors are used in excess of 25 percent for the work done on most jobs.

Representative Heller said design-build is not for every project, but is a great tool, especially for large projects.

Senator Cook said only four states do not allow design-build. He said there is a need to quickly build roads in the oil patch and design-build may be able to be used to build roads more quickly.

GENERAL TRANSPORTATION ISSUES

Mr. Francis Ziegler, Director, Department of Transportation, presented written testimony ([Appendix C](#)) on DOT projects, design-build projects, and special road funding. He said approximately \$700 million will be invested this year in transportation projects. He said in the past, people did not want to have a bypass. People wanted traffic to come through town. He said presently people are overwhelmed with traffic in the western part of the state and want a bypass. He said DOT executed a contract for construction of a temporary bypass in Williston. He said the large part of a permanent bypass in Williston is the environmental document. He said there are four options in Williston and each needs an environmental document. He said DOT is currently working on two design-build projects--a box culvert project and a signal installation project. He provided information on the \$330,213 in special road funds allocated to four projects for 2012-13.

In response to a question from Representative Ruby, Mr. Ziegler said for design-build to be used by DOT, counties, or cities, legislation would need to be enacted.

In response to a question from Representative Klein, Mr. Ziegler said DOT has quality assurance teams and hires consultants when a team is not available. He said in the Williston district the team monitors consultants that are monitoring contractors.

In response to a question from Representative Klein, Mr. Ziegler said DOT is losing a lot of people to the private sector and is trying to hold on to a core group. He said equipment operators may make \$60,000 to \$90,000 in the oil industry and make \$2,500 a month for DOT. He said engineers may make much more in the private sector as well.

In response to a question from Senator Nodland, Mr. Ziegler said some bids are under estimate but DOT engineers have increased estimates. He said a project that is \$3.5 million per mile was \$2.5 million per mile last year. He said contractors include handling traffic and housing for workers in bids. He said a consultant in New Town has included \$1 million for the cost of housing. He said aggregate in western North Dakota is being depleted. He said the cost has increased four times in the last two years. He said diesel and labor prices are up and there was 23 percent inflation last year. He said the oil industry is using aggregate instead of scoria. He said this creates more demand for aggregate.

In response to a question from Senator Nodland, Mr. Ziegler said weather is an important factor in completing projects, and 88 percent of last year's work was done. He said there has been a good start to the construction season this year because of good weather.

In response to a question from Senator Nodland, Mr. Ziegler said there is one contract with incentives and that is for the bypass for New Town. He said the incentive is \$20,000 a day up to \$600,000.

In response to a question from Senator Nething, Mr. Ziegler said because there needs to be work done within the city of Williston, there needs to be a bypass. He said there was not enough time to wait for a permanent bypass. He said the temporary bypass uses existing county roads that will be widened and paved. He said a permanent bypass will use four miles to five miles of the temporary bypass. He said the rest of the permanent bypass will be a shorter route.

In response to a question from Representative Gruchalla, Mr. Ziegler said 13 Highway Patrol officers have been added and most are for weight enforcement. He said there has been over \$1 million in overload fees collected. He said one in four vehicles stopped is overloaded. He said some truckers stay within the reservation so they do not have to deal with Highway Patrol enforcement for weight.

In response to a question from Senator Wardner, Mr. Ziegler said it costs \$2.5 million to \$3 million per mile to grade and pave a two-laned highway.

In response to a question from Senator Carlisle, Mr. Ziegler said the highway funding bill is in conference committee and Senator Hoeven is on the committee. He said funding for the bill is difficult because vehicles have become more efficient and less fuel is used so there is less tax collected. He said the reduction in funding is approximately 25 percent.

In response to a question from Senator Carlisle, Mr. Ziegler said DOT is prioritizing roads for construction to include in the 2013 budget. He said DOT is working with the Upper Great Plains Transportation Institute to create traffic models. He said it is difficult to find housing for staff in the Williston area. He said DOT has rented eight rooms at the Kennsington in Williston for \$2,700 per month per room for operators. He said the operators are then charged the normal rate of \$600 to \$800 for the room.

In response to a question from Representative Heller, Mr. Ziegler said in an emergency situation DOT can declare an emergency and get three quotes, choose the best, and go to work. In these situations, the project is designed by DOT or a consultant. He said DOT may not use design-build in emergencies.

In response to a question from Senator Lee, Mr. Ziegler said there has been a 10 percent increase statewide in traffic counts and a 25 percent increase in oil country.

BILL DRAFT TO DEFINE CLASS III OFF-HIGHWAY VEHICLE

Committee Counsel presented a bill draft [[13.0071.01000](#)] that defines a Class III off-highway vehicle to include Argos and Snow Bears.

Ms. Linda Butts, Deputy Director, Driver and Vehicle Services, Department of Transportation, provided testimony on the bill draft. She said DOT supports the changes, and the changes will allow DOT to title and register some unconventional vehicles.

It was moved by Senator O'Connell, seconded by Representative Ruby, and carried on a roll call vote that the bill draft to change the definition of Class III off-highway vehicles be approved and recommended to the Legislative Management. Senators Lee, Carlisle, Krebsbach, Marcellais, Nething, Nodland, and O'Connell and Representatives Frantsvog, Gruchalla, Heller, Hunskor, Karls, Klein, Kretschmar, Ruby, and Vigesaa voted "aye." No negative votes were cast.

BILL DRAFT TO REFUSE TO ISSUE A CERTIFICATE OF TITLE TO UNSAFE OUT-OF-STATE VEHICLES

Committee Counsel presented a bill draft [[13.0069.01000](#)] that prohibits DOT from issuing a

certificate of title or transferring a certificate of title to an out-of-state vehicle with a marked title. He said a marked title includes a certificate of destruction or a notation on the title that the vehicle is scrapped, parts-only, junk, unrepairable, not rebuildable, a dismantler, or any other similar notation. He said the bill draft was based on 2011 Senate Bill No. 2076.

In response to a question from Representative Ruby, Ms. Butts said last session DOT introduced a similar bill because a national database was being built, and each state is required to check the database to see if a vehicle is not road worthy in another state. She said last session a legislator wanted a system in place so a party could fix and inspect a vehicle brought in from another state and have the vehicle placed back on the road. She said there is liability on the state with an inspection, and the inspection cannot insure that there has not been flood damage or the airbags have not been deployed. She said these are difficult items to inspect.

Representative Gruchalla said an exception for out-of-state vehicles would be dangerous. He said it is too difficult to determine if a vehicle that has been flooded is safe. He said some states require flooded vehicles to be crushed.

In response to a question from Senator Lee, Ms. Butts said North Dakota could become a harbor for flooded vehicles if there were an exception.

In response to a question from Senator Lee, Ms. Butts said the bill does not change anything for salvage dealers in this state.

It was moved by Senator O'Connell, seconded by Representative Klein, and carried on a roll call vote that the bill draft to prohibit the issuance of a certificate of title to an unsafe out-of-state vehicle be approved and recommended to the Legislative Management. Senators Lee, Carlisle, Krebsbach, Marcellais, Nething, Nodland, and O'Connell and Representatives Frantsvog, Gruchalla, Heller, Hunskor, Karls, Klein, Kretschmar, and Vigesaa voted "aye." Representative Ruby voted "nay."

BILL DRAFT ON THE DESTRUCTION OF NUMBER PLATES FOR CERTAIN OFFENSES

Committee Counsel presented a bill draft [[13.0065.01000](#)] to provide for the destruction of license plates for driving while under the influence and driving under suspension or revocation, instead of impoundment. He said there is also a provision of law for the impoundment of a number plate for driving without liability insurance. He said impoundment was changed to destruction because impoundment creates a storage issue with DOT and impounded plates are rarely requested to be returned. He said impoundment was kept for driving with no liability insurance because the impoundment could be for a very short duration.

In response to a question from Senator Lee, Committee Counsel said he did not know why a court

may order destruction for driving under the suspension or revocation but must order destruction for driving while under the influence.

In response to a question from Senator Lee, Ms. Butts said it is possible to be driving under suspension other than for driving while under the influence and allowing the court, instead of requiring the court, to destroy the plates gives the court some latitude.

In response to a question from Representative Vigesaa, Ms. Butts said usually a person who has a plate impounded gives the vehicle to a family member and the credit for registration goes to that family member.

In response to a question from Senator Nodland, Ms. Linda Sitz, Director, Motor Vehicle Division, said the impoundment issue is an administrative issue for DOT because of having to store plates that no one wants.

In response to a question from Senator Lee, Ms. Sitz said if a license plate is destroyed and not used for three years and one month, the plate number may be used by another citizen.

Ms. Butts recommended a change in the language of the bill draft so that the court would communicate back to DOT that a plate has been destroyed.

Senator Lee requested Committee Counsel to add the language change recommended by DOT to have communication back to DOT of the destruction of the plate.

BILL DRAFT WITH TECHNICAL CORRECTIONS TO INTERNATIONAL REGISTRATION PLAN, UNIFIED CARRIER REGISTRATIONS SYSTEM, AND THE SINGLE STATE INSURANCE REGISTRATION SYSTEM

Committee Counsel presented a bill draft [[13.0070.01000](#)] to provide technical corrections to the International Registration Plan, the Unified Carrier Registration System, and the Single State Insurance Registration System. He said the language added last session to North Dakota Century Code Section 39-05-02.2(4) was added to Section 39-05-03. He said this language should have been added with the changes last session. He said changes to Sections 39-19-06 and 39-19-06.1 are because the Single State Insurance Registration System has been replaced by the Unified Carrier Registration Plan. In addition, he said, the registration system for motor carriers authorized under federal law no longer exists and has been replaced by the Unified Carrier Registration Plan.

Ms. Butts said the language in the bill draft was missed on prior attempts to clean up the statute and DOT supported changes regarding titling requirements and the Unified Carrier Registration System.

It was moved by Representative Klein, seconded by Senator O'Connell, and carried on a

roll call vote that the bill draft to provide technical corrections to the International Registration Plan, the Unified Carrier Registration System, and the Single State Insurance Registration System be approved and recommended to the Legislative Management. Senators Lee, Carlisle, Krebsbach, Marcellais, Nething, Nodland, and O'Connell and Representatives Frantsvog, Gruchalla, Heller, Hunskor, Karls, Klein, Kretschmar, Ruby, and Vigesaa voted "aye." No negative votes were cast.

BILL DRAFT TO CONSOLIDATE COMMERCIAL DRIVER'S LICENSE FEES

Committee Counsel presented a bill draft [[13.0064.01000](#)] to consolidate the fees for commercial driver's licenses. He said the bill draft consolidated the fees and cleaned up the language in sections that provide for fees.

Mr. Glenn Jackson, Director, Driver's License Division, said after 30 days of being in this state and becoming a North Dakota resident, a person with a commercial driver's license needs a North Dakota license.

In response to a question from Senator Nodland, Mr. Jackson said unless a person is stopped and law enforcement has reason to believe that person is living in this state, it is difficult to enforce the North Dakota commercial driver's license requirement. He said the increase in the number of commercial driver's licenses in this state shows a good level of compliance.

In response to a question from Representative Ruby, Ms. Butts said it is the philosophy of DOT that DOT will not push for increased fees when there is a budget surplus unless directed to increase fees by the legislature.

In response to a question from Senator Krebsbach, Mr. Jackson said the nonresident license is for immigrants during combine harvesting. He said North Dakota commercial driver's licenses are not for temporary residents.

In response to a question from Representative Gruchalla, Ms. Butts said DOT will take advice and direction from the legislature for increasing fees.

In response to a question from Senator O'Connell, Mr. Jackson said there has been no change in who does or does not need a medical card. He said there have been changes in how medical cards are documented and processed. He said a medical card is needed before a license to operate interstate may be obtained. He said previously DOT did not ask for the medical card before issuing the license. He said this requirement is being enforced as of January 1, 2012.

In response to a question from Representative Kretschmar, Mr. Jackson said DOT loses \$3 on average for the issuance of each license.

In response to a question from Senator Lee, Mr. Jackson said \$5 does not cover the cost of issuing

a commercial driver's license but \$7.50 comes close to covering the cost.

In response to a question from Senator Lee, Mr. Jackson said it is difficult to fix the cost of staff time in reviewing an application.

In response to a question from Representative Ruby, Mr. Jackson said cost of data lines, information technology, travel, and waiting time are difficult to determine, but as a whole DOT is losing about \$3 per license systemwide.

Senator Carlisle said the fees for licenses are low.

Senator Nodland said each license fee should be raised \$5.

Representative Gruchalla said based on inflation the fees should be increased at least 3.5 times.

Senator O'Connell said the increased fees would go for roads.

In response to a question from Senator Carlisle, Mr. Jackson said the road tests for commercial driver's licenses are up 35 percent. He said the wait time in Williston is 15 days and is 55 days in Minot. He said last year the average was 49 days statewide and that is down to 22 days. He said last session the legislature provided four full-time equivalent positions for driver's license examiners. He said DOT has been moving staff around to meet the needs.

Ms. Butts said on page 7, line 8, the words "employer or" should be removed because federal law already allows DOT to give the driving record to the employer without written permission.

Senator Lee requested Committee Counsel revise the bill draft to remove "employer or."

Mr. Thomas A. Balzer, Executive Vice President, North Dakota Motor Carriers Association, provided testimony to the committee. He said the Federal Motor Carrier Safety Administration has a rule to require doctors to be certified to do medical examinations. He said training will be required of doctors and doctors will be audited.

In response to a question from Senator Nodland, Mr. Balzer said some agricultural drivers are exempt from having a medical card. He said the Federal Motor Carrier Safety Administration looked at the agriculture exemptions and stopped its fact finding mission after receiving negative feedback from farmers.

Mr. Balzer said fees should be looked at across the board and not just in relation to commercial driver's licenses.

BILL DRAFT ON CHAPTER 39-06.1 AND TRAFFIC OFFENSE ADMINISTRATION

Committee Counsel presented a bill draft [[13.0078.01000](#)] to improve the consistency and clarity in Chapter 39-06.1, which relates to the disposition of traffic offenses, fees, and points offenses.

In response to a question from Representative Gruchalla, Committee Counsel said he did not think

the term fair added anything to the term fair preponderance of the evidence on page 6, line 11.

It was moved by Representative Gruchalla, seconded by Representative Vigesaa, and carried on voice vote that the word fair on page 6, line 11, be overstruck.

Mr. Michael D. Reitan, Assistant Chief of Police, West Fargo, provided testimony to the committee. He said the term halting officer should be changed to peace officer instead of police officer, and peace officer should be defined as in Section 12-63-02.

Committee Counsel said police officer is defined in Title 39 and as a defined term is being used in rewriting Title 39 chapters for consistency and clarity.

In response to a question from Representative Ruby, Committee Counsel said peace officer may not include out-of-state officers, federal officers, emergency situations, and martial law situations. He said it is a big project to make the terms peace officer, police officer, and law enforcement officer consistent throughout the code.

Representative Gruchalla said the committee should investigate the cost of issuing a citation and base fees on costs.

Representative Ruby said the fees should be based on deterrence. He said if fees are changed and placed in the bill draft it would place at risk the good changes already made in the bill draft. He said a stand-alone discussion on fees would be a better tactic.

Representative Kretschmar agreed with Representative Ruby and said speeding offenses should be reasonably increased. He said the fees in South Dakota are much higher.

EMERGENCY SERVICES COMMUNICATIONS COORDINATING COMMITTEE REPORT

Mr. Terry Traynor, Secretary, Emergency Services Communications Coordinating Committee, presented written testimony ([Appendix D](#)) on the activities of the Emergency Services Communications Coordinating Committee. He said 53 counties and two cities have been asked for financial surveys and each of the 22 public safety answering points have been given operational surveys with over 200 data elements. He said 13 operational surveys of the 22 operational surveys have been completed. He said dedicated revenue from wireless is increasing and landline revenue is decreasing. He said fee revenue is fairly stable and costs are increasing.

BILL DRAFT ON CHAPTER 39-06

Committee Counsel presented a bill draft [[13.0028.02000](#)] to improve the consistency and clarity of Chapter 39-06. He said the bill draft provides for fee consolidation. He said changes were made from the previous draft after meeting with DOT. He said none of the changes were intended to be substantive.

Representative Kretschmar requested a bill draft increasing fees for speeding.

Senator Nething said the committee should look at the points at the same time as looking at the fees. He said the deterrence created by points is at least that of the deterrence created by fees.

Representative Gruchalla said out-of-state drivers do not receive points and North Dakota drivers receive points when out of the state. He said most states do not have a points system.

No further business appearing, Chairman Lee adjourned the meeting at 1:25 p.m.

Timothy J. Dawson
Committee Counsel

ATTACH:4