



Second Meeting
2008 Interim
September 24 and 25, 2008

LCR 1 & 2
State Capitol Building
Pierre, South Dakota

Wednesday, September 24, 2008

The second meeting of the South Dakota Highway Needs and Financing Committee was called to order by the Chair, Senator Cooper Garnos, at 10:00 a.m. (CDT) in Legislative Conference Rooms 1 and 2 of the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Senators Jerry Apa, Cooper Garnos (Chair), Alan Hoerth, and Jim Peterson; and Representatives Dan Ahlers, Jamie Boomgarden, Jim Bradford, Tom Hackl, Shantel Krebs, Kristi Noem, Ryan Olson Gordon Pederson (Vice Chair), J.E. "Jim" Putnam, Val Rausch, Mike Vehle and Hal Wick. Representative Garry Moore was excused.

Staff members present included: Dave Ortbahn, Principal Research Analyst; Aaron Olson, Senior Fiscal Analyst; and Lisa Shafer, Legislative Secretary.

(NOTE: For purpose of continuity, the following minutes are not necessarily in chronological order. Also, all referenced documents distributed at the meeting are attached to the original minutes on file in the Legislative Research Council (LRC)).

Approval of Minutes

REPRESENTATIVE KREBS MOVED, SECONDED BY REPRESENTATIVE RAUSCH, THAT THE MINUTES OF THE FIRST MEETING OF THE SOUTH DAKOTA HIGHWAY NEEDS AND FINANCING COMMITTEE ON JUNE 19, 2008 BE APPROVED. The motion prevailed on a voice vote.

Comments from the Chair

Senator Cooper Garnos hopes the committee is active in the discussion and questions. He commented that Legislative Research Council, Department of Transportation, and Department of Revenue and Regulation have done a great job in providing the necessary tools for the committee.

Comments from the Vice Chair

Representative Gordon Pederson told the committee that NCSL and ALEC have been addressing transportation funding issues for the last three to four years. Most of the problems include the high cost of products and trying to build and repair highways with a money shortage. There are some interesting ideas that the departments will present, but the committee needs to determine what the people of South Dakota want.

State Highway Needs

Darin Bergquist, Secretary for the Department of Transportation, introduced the department's staff members that were present at the meeting: Kevin Tveidt, Deputy Secretary; Tim Bjerneberg, Greg Fuller, Kellie Beck, Chris Ott, Tracy Schangreaux, Ben Orsbon, Michael Behm, and Dave Huft.

Secretary Bergquist agreed with the comments made by the chairs in that tremendous ground needs to be covered in the two-day meeting. He distributed to the committee the Department of Transportation's (DOT) PowerPoint presentation entitled "South Dakota Highway Needs and Financing" (**Document #1**).

Some of the challenges facing DOT include the state highway funds declining in recent years, federal funding is uncertain both short-term and long-term, costs are inflating at an unprecedented rate, and highway needs greatly exceed existing funding availability, resulting in the continued deterioration of highways and bridges. On September 5, 2008, the U.S. Department of Transportation announced that states will not receive anticipated reimbursement for project costs. The announcement got Congress' attention, and a short-term solution that will carry the funding through March 6, 2009 was created. It is anticipated that funding for FY09 will be the same as in FY08. DOT is not certain of the amount of federal funds that South Dakota will receive in the future.

As of the end of August 2008, motor fuel tax deposits made into the State Motor Vehicle Fund were 6% lower for the same time period in any of than the previous eight years; and the excise tax was 5% lower than last year. DOT expects a 25% drop in September in collections for the State Highway Fund. South Dakota is seeing a decline due to eight straight months of decline in motor vehicle travel this year.

Although only 7,848 miles (9%) in the state are state owned miles, they account for 68.7% of all the vehicle miles of travel annually. About 76% of all heavy truck traffic occurs on the state highways.

Secretary Bergquist said that DOT needs to operate as efficiently as possible, but efficiency is hard to prove. For FY08, DOT spent 83% of the State Highway Fund on state highway maintenance and state highway construction, 7% on administration, and 10% on buildings, equipment, and assets. DOT also spent 85% of all state and federal highway funds on state highway maintenance and highway construction. About 8% of the trust fund money was not spent on state highways.

Representative Shantel Krebs asked about the percentage spent on labor. In response, Secretary Bergquist stated that he does not have that information with him, but will provide it to the committee.

In response to **Representative Tom Hackl's** question pertaining to the breakdown of highway construction and maintenance, Secretary Bergquist said that it is difficult to separate, but would be fairly even. Federal funds cannot be used for maintenance.

Representative Mike Vehle asked how South Dakota compares to other states for state and federal highway funds. In response, Secretary Bergquist stated that DOT will provide that information to the committee.

Preliminary and Construction Engineering (PCE) is the process and staff time for the engineering development, preparation, and guidance on road projects. The percentage of total project costs spent on PCE by the DOT is at 5.7%; about two-thirds lower than the national average. Secretary Bergquist said that if this area is cut too low, the projects will suffer from a quality standpoint.

The department monitors the economic value of using its own staff or contracting out for engineering services. Due to cost and efficiency, typically the department uses its own staff, however, if there is an overflow or a complicated bridge project, a contract with an expert will be made.

In response to **Representative Val Rausch's** question, Secretary Bergquist said that there are two ways to monitor the PCE. The first is subjective; DOT monitoring the quality of the project. The second is objective and is based on the construction change order (CCO). The CCO is the changes that occur to the contract once the project has started. South Dakota has one of the lowest CCO ratings in the country. He indicated this is a good sign that there has been good engineering on projects.

Secretary Bergquist said that the condition of the pavements in the state are as good as they have ever been. Compared to 1999, DOT has cut the poor condition roads from 9% to 3%. DOT has also increased the percentage of roads in excellent condition from 10% in 1999 to 45% in 2008.

Representative Jim Bradford requested the actual breakdown in growth for excellent condition roads for interstate highway compared to other classes of state highways.

Secretary Bergquist said that the number of roads that are less than 28 feet in width is decreasing. There was a steady decline over the past nine years. Due to the limited available funds, DOT will most likely not be able to replace miles of highways beyond the preservation of the current system.

The department conducts a customer satisfaction survey to help determine the most important areas of concern for the people using the state highways. Secretary Bergquist stated that customer satisfaction could decrease with the limited available funding. The last survey indicated four customer's areas of importance:

- Maintaining existing highways;
- Wider roadways and shoulders;
- Snow removal; and
- Highway striping.

Representative J.E. "Jim" Putnam asked if road striping will be reduced due to department cutbacks. In response, Secretary Bergquist said that paving and striping impacts safety. There are minimums for striping on the roads. Historically, DOT has done far more striping than the minimum requirements, but due to inflation in the cost of materials there will be a decrease in the quality and amount of striping.

Secretary Bergquist informed the committee that South Dakota ranks higher than the neighboring states in 21 of 25 transportation areas. The four areas where the department

scored lower than neighboring states were debris and animal removal, shoulder maintenance, posting of speed limits, and lighting of rural intersections and interchanges.

Secretary Bergquist commented that compared to five years ago, 47% of those surveyed thought South Dakota's highways were safer.

Field Operations

Secretary Bergquist stated that DOT defines needs as what it would take to maintain the existing level of service while going forward in the future in all areas, to maintain the existing condition of the highway system, and to be in a position to construct those improvements, addition enhancements, or expansions necessary for the system. The four areas of need for the field operation are:

- Winter maintenance;
- Roadway maintenance;
- General maintenance; and
- Capital outlay.

Secretary Bergquist said that the department reviewed the expenditure for the last three years to determine the funding needed to maintain that same level of service. South Dakota spent less than \$2,000 per mile to maintain the roads in the winter; which is less than many other states. From the customer satisfaction survey, about 74% of the customers said that existing level of winter maintenance was satisfactory.

Representative Rausch asked if there is a way to correlate auto accidents on the state highways with the practice of applying less salt and gravel. Secretary Bergquist stated that DOT has an internal task force working on those issues. Representative Rausch said that accident reports from the Highway Patrol could be reviewed to help determine if the state has safe roads.

In response to Senator Garnos' questions as to why Minnesota spends more than double the amount per mile on winter maintenance, Secretary Bergquist said that the department will speak to other state DOT's.

Winter maintenance is purely state funded and is not eligible for federal funding. The cost varies annually and can be impacted by winter severity, cost of supplies, and maintenance of equipment. In 2005, DOT spent over \$10 million in winter maintenance and over \$16 million in 2007. Secretary Bergquist noted that both winters were fairly mild. It is anticipated that DOT will spend over \$16.9 million this winter.

In response to Representative Putnam's question about maximizing federal trust fund dollars, Secretary Bergquist said that federal trust fund dollars do not go to any of the winter expenses. The funds used are all state funds. DOT starts with all the available state funds and determines how much can be used to match federal funds. The remainder is used for winter maintenance and other expenses.

Secretary Bergquist said that roadway maintenance is also not eligible for federal funding. The projects are performed through a combination of DOT staff and contracts with private companies depending on the work project. It is anticipated that DOT will spend \$9 million for patching, \$10.7 million for surface treatment, \$1.5 million for shoulder maintenance, and \$1.7 million for bridge maintenance.

Secretary Bergquist stated, in response to Representative Putnam's question, that that state has leveraged all available federal funds. Even if DOT reduced the expenditures, there are no additional federal funds that can be obtained.

Representative Ryan Olson asked about the formula to determine each state's portion of the federal funding. In response, Secretary Bergquist said that a federal legislation has a formula that says how each state will be distributed a portion of the federal funds. Some of the factors include need, miles, and population. South Dakota receives 0.71% of total federal funds.

Representative Hal Wick asked if there will be a reduction in funds for states that are privatizing the roads. In response, Secretary Bergquist said that it is hard to predict. However, there is a concern that there will not be a cut because the federal government is in support of the states using toll roads to ease federal spending.

In response to Representative Pederson's comment about South Dakota receiving more federal funding than the citizens of the state contribute to the federal Highway Trust Fund. Secretary Bergquist said that the state receives more than \$2 for every \$1 sent to the federal government. Every state is pushing for consistency, because the federal government is restricting the state's use of the federal money. Part of the issue is for states to have more flexibility to use the money for individual state needs. If the U.S. Department of Transportation determines that the states are able to keep all the money that they would send in and not receive a percentage back, South Dakota will suffer immensely.

Ben Orsbon, Office of the Secretary of the Department of Transportation, said that federal land and tribal trust land are taken into consideration when determining the rate of federal highway funds South Dakota receives. There is a separate federal land program, that is part of the 102 federal highway programs, which is mainly reflected by the total road miles on the federal land in the state

Secretary Bergquist said that general highway maintenance is not eligible for federal funding. The department has created estimates for winter highway maintenance for FY2009. The estimate includes:

- Machine mowing -- \$2.6 million;
- Roadside maintenance -- \$6.1 million;
- Signing and delineators -- \$4.9 million;
- Striping and pavement markings -- \$4.5 million;
- Facilities and grounds -- \$5.1 million;
- Other maintenance operations -- \$9.4 million

Since 2004, the cost of gas has doubled and the cost of diesel has about tripled. Secretary Bergquist stated that DOT is not trying to do more for the public, but rather maintain the current level of service. With the high rate of inflation, it is difficult to continue to operate and provide services to the public at the same level.

Secretary Bergquist noted that the total field operation need is \$72.6 million annually consisting of \$17.0 million for winter maintenance, \$22.9 million for roadway maintenance, and \$32.7 million for general maintenance. Secretary Bergquist said that the department anticipates having \$68 million this year if revenues would come in at the current level. This is a

shortfall of \$4.6 million. If there is a severe winter, the department will need to borrow from other areas to compensate.

Representative Vehle asked about the percentage of the total budget that is dependent on the cost of energy. Secretary Bergquist said that there are both direct and indirect impacts from increasing gas, diesel, and other energy costs, and he will provide that information to the committee.

Representative Dan Ahlers asked the DOT process for obtaining prices on materials. In response, Secretary Bergquist said that as a public agency, DOT is not able to negotiate costs. Rather, the department receives bids and goes with the lowest bid. However, they are able to review the bids to determine if there is a need to reevaluate the purchase to get a cheaper bid.

The committee recessed at 12:01 p.m. and reconvened at 1:17 p.m.

Senator Cooper Garnos passed the gavel to Representative Gordon Peterson to preside as chair.

Secretary Bergquist said that because of the winter in 1996-1997, the department got behind in highway maintenance. A study in 2004 determined that there was a backlog of \$48.0 million in field equipment. DOT has enacted a new system that evaluates each piece of equipment based on cost, age, amount of use, amount of repairs, salvage value, and the cost to replace with new equipment. This system helps determine the optimum time to replace and update the equipment. DOT has seen a decrease in backlog needs since the implementation of the new system. The current backlog is \$40.3 million in equipment. According to the equipment management system, DOT will need to invest \$12 million annually to maintain the current level of backlog and \$15 million annually to eliminate the backlog by 2018.

In response to **Senator Jerry Apa's** question, Secretary Bergquist said that DOT takes the lowest responsive bid; when purchasing equipment, it is not the lowest bid. Senator Apa asked if they still do bids with guaranteed buy-back. Secretary Bergquist responded he didn't believe so.

Secretary Bergquist said that the department spent \$11 million on equipment in 2007 and \$7 million in 2008, although they had budgeted more. DOT has a budget of \$9 million for FY2009 for equipment. He does not anticipate that all \$9 million will be spent.

In response to Representative Putnam's question about DOT sharing vehicles with other state agencies, Secretary Bergquist said the department has to go through the Bureau of Administration to purchase vehicles, but DOT has a separate fleet of vehicles.

Secretary Bergquist said, in response to committee questions, that the expense for vehicles and equipment is funded entirely with state funds, but not general fund money.

A management system called Audit Mate checks the buildings for efficiency. An organizational review completed in 1984 resulted in some highway maintenance shops closing. An internal review of the DOT organization to identify additional efficiencies was conducted in 2005. That survey determined that there were no facilities that could be eliminated without affecting the productive work of the department.

The department is trying to eliminate current building problems. There are many facilities that are old and need improvements to meet ADA compliance. Some of the older buildings need updating or complete replacement of the heating system. The automation system has identified almost \$10 million in building needs. With a building budget of \$6.7 million for FY08 and \$6.6 million budgeted for FY2009, the DOT needs approximately \$8 million more annually to meet ongoing building needs.

Slide 31 of document #1 summarizes the needs versus available funds for field operations.

In response to Representative Bradford's questions, Secretary Bergquist said that DOT does contract with local entities to mow the shoulders and some farmers bail the grass. There is a concern that bails get left and they become hazardous.

Preservation

In the previous years, DOT has done many tremendous projects above what is needed to maintain the current system. However, with the limited available funds, DOT is preserving the current system rather than expanding. Rather than allowing highways to completely deteriorate and then rebuild, DOT applies periodic treatment that will help extend the life of the road. Even with regular maintenance, at some point the road condition will be so poor that it will need to be completely reconstructed. Secretary Bergquist informed the committee that there will always be a certain percentage of roads that will be in the poor condition if the maximum lifespan of the roads are utilized.

In response to **Representative Kristi Noem's** question, Secretary Bergquist informed the committee that the excellent to poor road conditions are based on a Surface Condition Index (SCI). The SCI is based on the measurements of the actual condition of the road and is an objective method to determine the condition of the pavement.

Representative Hackl asked about the price difference between asphalt and concrete. In response, **Tim Bjorneberg**, DOT Project Development Engineer, said that DOT is able to work on more miles of highway with asphalt than with concrete. He stated that the life expectancy is different and DOT does not want to place lots of potential maintenance work where there is high volume traffic.

Slide 37 of document #1 illustrates the relationship between DOT expenditures and road conditions. The smallest level of investment translates into the most deterioration of the roads and highways. Secretary Bergquist said that \$240 million per year is the estimated expenditure needed to maintain the state highway system at the current level.

Representative Hackl asked what the total cost would be to bring the roads back to good condition if the State allowed the pavement conditions to deteriorate to fair condition. In response, Secretary Bergquist stated that DOT does not have that cost at the meeting, but it will cost substantially more to reconstruct the roads than to maintain them.

In response to Representative Wick's question about where the additional \$70 million will be spent, Secretary Bergquist told the committee that the citizens would see the impacts of an inadequate pavement management system over time. The department could allow the system to deteriorate for a couple years without seeing immediate effects, but in the long term there will be a significant difference, especially in the cost to reconstruct the roads.

Senator Apa asked about the decrease in vehicle miles traveled having a positive effect on the aging of highways. In response, Secretary Bergquist said that the 3% decrease in statewide travel will have a minimal impact on the deterioration of the state highway system. The pavement management system takes into account the amount of miles traveled.

Representative Rausch asked the difference in savings if the state allowed the roads to deteriorate. He would like to know the cost difference in replacing the roads versus maintaining the roads. Secretary Bergquist responded that it is usually cheaper to maintain the system at current level than to let it deteriorate and to reconstruct later.

In response to Representative Bradford's question, Secretary Bergquist said that there are a variety of factors that affects the road's condition. Some include soil conditions, weather, and traffic volume.

Secretary Bergquist told the committee that DOT has a bridge management system to help monitor the bridges in the state. The system operates in a similar fashion to the road and building management system. Data is collected every two years and recommendations are made as to the most cost effective treatment.

There are many bridges that are 34 – 55 years old. It has been determined that many of those bridges need or will soon need to be replaced. The department has added \$5 million in state and federal funds to help replace these bridges in the near future. However, the number of bridges that need to be replaced is a concern.

Currently, \$15.6 million per year, which includes the additional \$5 million, is budgeted to fix the bridges. It is estimated that \$33 million per year is needed to repair the bridges and maintain the current condition level of the bridges into the future.

System Improvements

Secretary Bergquist said that system improvements can be divided into three categories: planned improvements and additions, requested additions, and economic development. Planned improvements are projects DOT intends to complete. It is estimated that \$500 million is needed to complete all the planned improvement projects. Requested additions are projects that are not needed for the system at the current time, but there is a strong public interest in the projects. DOT estimates at least \$1 billion in requested addition projects. Economic development is projects that are generally new transportation infrastructures to interchanges to support the growth in a community. Based on current prices, it is estimated that over \$500 million would be needed to complete all the projects. However, DOT does not have funds set aside to complete these projects. These needs are relatively quick and DOT responds to them, but each project takes money away from the other areas in the preservation budget since they are projects not on the state highway system.

Senator Jim Peterson requested that a copy of the DOT's five year plan be distributed to the committee. (**Document #2**)

Representative Olson asked about the bridge that crosses the Missouri River at Chamberlain. Secretary Bergquist said that the bids the department received were grossly out-of-proportion of what was anticipated. DOT tried to redesign the structure and eliminated a walking area, to

save significant money. The figure that was previously announced (\$26 million) was the lowest bid, and that was rejected by the department.

Representative Olson asked about swaps of highways with local governments. In response, Secretary Bergquist said that DOT still works on those, but have not engaged in any agreement in the last couple years.

Representative Bradford asked if there are any built-in safety factors for areas with high volume traffic. Secretary Bergquist told the committee that some specific federal funds are available that can be used to identify safety problems and needs.

Secretary Bergquist said that one of the main reasons DOT is here is due to the high rate of inflation. Historically when funding for South Dakota roads are reviewed, there are periods with high inflation with increasing costs and also periods with flat revenues. Since 2003, the producer price has increased 44% and the consumer price has increased 19%.

It is estimated that the inflation for the cost of construction over a five year period increased 9.7% annually. The cost of inflation over a ten year period has increased 4.2% annually. The rate of inflation makes a tremendous difference and plays a serious role in the cost of highway needs in the future. Without knowing what will occur in the future, it is difficult to determine accurate budget numbers for the future.

It is DOT best anticipation that the federal funds available to South Dakota for 2009 will be very comparable to 2008. About \$151 million in federal funds would be available for the preservation of the state highway system.

Secretary Bergquist informed the committee that there is a significant amount of federal funding that goes from the state to the local governments; about \$28.7 million goes to local entities. Swap agreements between the state and local have governments allowed local government to trade the federal funds they were receiving with the state. This allowed the local entities to avoid compliance with federal standards and for them to utilize the funds for needs that were not eligible for federal funds.

In response to committee questions, Secretary Bergquist said that the state recently stopped engaging in swap agreements with local entities. Due to a lack of state funds, DOT has not entered into any new agreements. A swap is not an exact exchange of cash for cash, but rather the state receives the federal authority and gives the local entities 90% of the funds in cash. The federal money is used and then matched with state funds and used on the state system. This is a great program that allows for better flexibility. It became a popular program and it was costing the state about \$18 million a year. Most of the commitments will be fulfilled in 2010. Stopping the program was a difficult change for some counties, and DOT would like to reinstate the program on some level at a later date.

Representative Hackl stated he would like to see how highway revenues received compare to the Gross Domestic Product (GDP). He asked DOT about a percentage of GDP that may have been spent in the past and how much DOT is spending today. Secretary Bergquist said the he agrees with this assumption and will provide the committee further information. (Information was provided to the committee the next day in slide 15 of Document #5 entitled "Transportation Funding Alternative for South Dakota".

Representative Vehle asked if there have been any projects that have fallen through because of dropping the swap program. In response, Secretary Bergquist said that some projects may have been dropped at the city and county level because they were anticipating doing a project with federal funds utilizing a swap with the state, but they are unable to afford the project on their own.

Slide 59 of document #1 is a summary of all the state highway needs information presented at today's meeting. The biggest need for the department is for pavement preservation. It would take an additional 72.3 million annually for pavement preservation to maintain the current level of the state highway system.

Secretary Bergquist informed the committee that if there is the possibility to obtain more federal funds, there will be a need for DOT to have more state funds to match the federal funds and receive the maximum amount of federal funds available.

Representative Noem asked about how the customer survey was conducted. In response, **Dave Huft**, Office of Research with the Department of Transportation, said that surveys are conducted about every 2 years and five surveys have been completed since 1997. The survey is performed over the telephone and people are selected randomly from across the state. It takes about 20 minutes to complete the survey and the results are published.

Representative Krebs reminded the committee that the goal of the legislation was to identify the need and to look at long term solutions. The issue is two-fold; there will be the worst case scenario and the best case scenario depending on the federal authorization for 2009.

Representative Vehle said that there are two conflicting policies occurring in the country; the country is trying to reduce the reliance on fossil fuel at the same time relying on gas tax to rebuild the roads. In addition to that conflict, the cost to rebuild roads is increasing. Electric cars will not support the fuel tax nor help the highway system. The committee needs to take a long range look at the issue, even without knowing what will come from the federal government.

Committee recessed at 3:16 p.m. and reconvened at 3:33 p.m.

Public Testimony

Mr. Al Mathern, farmer west of Aberdeen, South Dakota, stated his concern about raising taxes for the DOT. He thinks the department should watch the expenses and look internally for savings. He provided an example of a bridge near his farm that has been worked on. He said that the area around the bridge is in worse condition after the attempt to repair it and eventually there will need to be more money spent repairing it later.

Representative Pederson informed Mr. Mathern that his concern is a county issue and he would need to speak to his county commissioners or local state representatives. Senator Alan Hoerth informed Mr. Mathern that he is from that area and would look at the bridge, talk to the county commissioners, and report back to him.

Ms. Debra Jensen, Mount Rushmore Road Group, and **Mr. Gary Brown**, Mount Rushmore Road Group, told the committee that Highway 16 is a vital corridor for local and tourist traffic.

About 30,000 people travel on that road daily. Many people continue to use Highway 16 versus taking the new Exit 61 on Interstate 90 when traveling to Mount Rushmore.

With the increase in traffic, many businesses have opened along that road and dilapidated buildings are being torn down. Ms. Jensen said that a study began about a year ago to analyze the safety and traffic statistics for that stretch of highway. This corridor that links Rapid City to Mount Rushmore has not received much attention in the past. She showed the committee pictures of the area from four years ago and today. There has not been much done to improve the area and she asked that the project be placed on the improvement list.

Mr. Brown said that their purpose is to get the renovations to Mount Rushmore Road locked into a 5 – 10 year plan. Any business or public input and data collected will be provided to the committee.

In response to committee questions, Ms. Jensen said that renovation to the Mount Rushmore Road is to move more traffic efficiently and to improve its aesthetics. Safety is an issue and there has been discussion about widening the road to make it safer for both vehicles and pedestrians.

Senator Apa asked how much Rapid City is contributing to the project. In response, Mr. Brown said that he will provide that information to the committee.

Representative Pederson asked that once the study has been completed, a copy be provided to DOT. In response, Ms. Jensen said that her intention is not to introduce legislation but to bring awareness to the issue. She will provide the report of the study for the committee and DOT.

Mr. Bob Wilcox, South Dakota County Commissioners, informed the committee that he was in meetings with the county commissioners for the last three days. During those meetings, there were lengthy discussions about the local roads and highways. Mr. Wilcox said that two conclusions were reached regarding this issue: (1) South Dakota license plate fees have not been adjusted for a twenty years and these fees should be looked at, and (2) reducing or eliminating the 30% reduction for vehicles that are 5 years or older should be considered.

In response to Representative Putnam's question about the potential revenue that will be gained from an increase in license plate fees, Mr. Wilcox said that he is not certain at this time, but will work with the committee to determine a number.

Senator Apa said that raising the excise tax would not help the counties, but it would help the state. Right now, the state has a forgiveness exemption for vehicles that are 5 years old or older, but those vehicles are just as damaging to the roads as new vehicles. That change would generate about \$12 million. He stated that the state should not increase the gas tax and that there are other mechanisms to use that will generate revenue and not create a hardship.

Ms. Gail Brock, South Dakota Association of Towns and Townships, told the committee that a number of townships roads are deteriorating. A big issue is to get money to help maintain and improve township roads from economic development in that area that puts increased traffic on the township roads.

In response to Representative Vehle's question, Ms. Brock said that there are some townships vacating some roads that provide minimal access. Access can not be prevented from any publicly owned road. Even if there are not that many people utilizing the roads, the people still need access to those township roads.

Representative Krebs asked about the percentage townships receive from the license plate fees. In response, Ms. Brock said that it is about 14%.

In response to Senator Apa's question regarding the elimination of ag exemptions for certain vehicle registration, Ms. Brock said that people will need to make a choice of paying more fees or having poor roads, it is a difficult issue. It is hard to find people that are willing to run maintenance machines on the roads, and that is a safety issue.

In response to Representative Putnam's question, Ms. Brock stated that there are some counties that do not have townships.

The committee recessed at 4:02 p.m.

Thursday, September 25, 2008

The committee reconvened at 9:00 a.m. on Thursday, September 25, 2008 in Rooms LRC 1 and 2 of the State Capitol Building.

A quorum was determined with the following members answering the roll call: Senators Jerry Apa, Cooper Garnos (Chair), Alan Hoerth, and Jim Peterson; and Representatives Dan Ahlers, Jim Bradford, Shantel Krebs, Kristi Noem, Ryan Olson Gordon Pederson (Vice Chair), J.E. "Jim" Putnam, Val Rausch, Mike Vehle and Hal Wick. Representatives Jamie Boomgarden, Tom Hackl, and Garry Moore were excused.

Comments from the Chair

Senator Garnos said that a lot of information has been presented to the committee thus far. He hopes that the Governor's Office will be able to attend a meeting a share their view on the issue.

Local Needs

Secretary Bergquist informed the committee that there is a research technical panel assisting cities, townships, and counties with gathering transportation and highway needs data. Currently, there is no available data on the system. There will be a rush to compile data before the next meeting, but the panel will provide a preliminary report on the findings.

Mr. Dave Huft said that this is the second time this type of research panel has been formed. In 1998, the panel was created to determine transportation needs, and part of the effort included an assessment of local road needs. The findings were part of the background information to the vehicle fee increase in the 1999 session. They are attempting to reapply the methodology used in 1998, and the panel will be able to compare the results to determine if South Dakota has made progress.

There is still work that needs to be completed for the project, but early incomplete results have been provided for the committee. Mr. Huft distributed to the committee a PowerPoint presentation entitled "South Dakota 2008 Local Roads Needs Study Interim Report" (**Document #3**). He said that the project objects are:

- Assess current condition of local roads and bridges;
- Identify major cost elements affecting changing needs;
- Identify objectives and appropriate standards for the design, construction, and maintenance of local roads and bridges for use in estimating life-cycle costs;
- Estimate current and future funding needs for local roads and bridges; and
- Identify opportunities and strategies for reducing funding needs and achieving greater efficiency.

There are four distinct systems for local roads in South Dakota; (1) county, (2) townships, (3) county secondary – those roads which would be townships roads if there was an organized township, and (4) city.

A survey was sent to get obtain an assessment of the local roads conditions. As of September 23, 2008, the responses received do not create an adequate survey at this time, especially west river. Some responses have discrepancies in the number of miles reported in the county. The panel will need to work with each county individually to resolve the discrepancies. On slide number 5 of Document #3, crosses are the Class 1 cities that have responded, the dots are the Class 2 cities that have responded, and the circles are the Class 3 cities that have responded.

In response to committee questions, Mr. Huft said that a Class 1 city is any city with a population over 5,000.

The first question of the survey referred to the distribution of expenditures. It is difficult to state exactly where all the money was spent, due to overlaps. However, the results show that there is a small number of items that consume a vast amount of the budget. Road resurfacing is the biggest expense for all local entities.

In response to Representative Putnam's question, Mr. Huft said that there was a small amount of expense for machinery road graders placed in the other expense category. Otherwise, the machinery expense is placed under the category that it is used.

Another question on the survey was how each local entity's perceived the adequacy of revenues. The results showed a great perception that the funding is inadequate. At the city level, the two biggest concerns were the funding for administration and for system upgrades. Overall, 50% of the counties feel the funding is adequate. The largest concerns on the county level are for funding for administration and for system upgrades. More responses from the townships show that they think funding is inadequate. The panel will look back to determine why the reports are that way.

For cities, townships, and counties, the most critical items were consistently road surface maintenance, ROW maintenance, and system upgrades.

Mr. Huft said that there were not many different answers for perceived opportunities for funding. The most common was opt out of property tax frees because non-highway needs

compete for limited funds. Another opportunity was to increase existing mechanisms, such as vehicle registration fees, wheel tax, and property tax.

Representative Putnam asked if the list of perceived opportunities of funding was a priority list. In response, Secretary Bergquist said that the list is not a priority list, but they will provide one to the committee later.

Slides 13 through 16 outline the local entities responses to the different opportunities for efficiency. The best opportunities for efficiency include joint operations, shared facilities, innovative materials, and improved purchasing and contracting methods. Relaxed standards are not seen as an effective means towards efficiency.

In response to Representative Krebs question, Mr. Huft said that road/weather information was included in the survey because of the increasing use of weather information at the state level. With improved technology, there will be better winter maintenance of roads and more safety with better weather announcements.

Representative Putnam suggested that a specific question about equipment being a major expense factor be included in the survey.

Representative Wick said that the panel should find out the number of entities that are going together to purchase equipment to obtain better deals. This may help save tax payer dollars.

In response to Representative Noem's question, Mr. Huft said that townships will contract with counties to maintain township roads.

Senator Garnos asked about a cap or method for townships and counties to determine they need to work together. Mr. Huft said that there is not one thing, but with the increase cost, the pressure to cooperate and share is increasing. Also, at the township level, there are not many resources. Both counties and townships see joint operations as a better method for savings.

Representative Noem asked is there is a question in the survey that asks if there are areas that they are be more cooperative and share, or do the entities think they are doing all they can to share. In response, Mr. Huft said that was a good question, but he is not certain of an answer.

Representative Krebs said that some Minnehaha townships own their own equipment and the maintenance work is done themselves. However, that area does very well with property taxes. She said that there is a resistance or lack of communication between the township and the county. Representative Putnam responded that there is a difference between rural counties and townships compared to urban counties and townships with lack of funding options.

Mr. Huft said that a question of the survey asked the entities to provide anticipated upgrades for development. This information was divided into three categories; 0-2 years, 2-5 years, and 5-10 years. The responses varied according to the governmental level, but people are seeing an accelerating demand for system upgrades as time passes. Most entities are not able to do long-term planning for maintenance and repair. More than 50% responded that they have less than half a year notice. This lack of advanced knowledge limits efficiency.

An example of a rural road in Deuel County that deteriorated quickly after a large dairy farm was constructed in that area was presented to the committee. Approximately \$40,000 of local funds have been spent for roads improvements thus far for one mile of road.

Senator Apa asked if the township or county placed stipulations that the dairy farm to fix and replace the road prior to approval of the construction of the farm. In response, Mr. Huft said that is an alternative and will need to be discussed. However, there is a common theme that heavy traffic levels are not anticipated and the roads are not made to accommodate the level of increased traffic.

Mr. Huft said that local bridges are the responsibility of the county to maintain. The DOT keeps a detailed record of all bridge structures in the state. Not only are there structural issues with the local bridges, there are functional issues such as width, number of lanes, and inadequate clearance. Many bridges are in the 30-50 year old range and will need attention in the coming years. Currently, eight county bridges are recommended for closing.

Slide 24 of document #3 shows the county bridge conditions today compared to 1998. There were more bridges in 1998 that needed to be worked on, but this information shows the aging of the bridges. In response to committee questions, Mr. Huft said that there are fewer bridges because many structures were replaced with culverts.

Mr. Huft told the committee that bridge rehabilitation costs have increased significantly since 1998. The increases are consistent with the cost increases with the state system. Senator Apa asked why there was consistency for cities and counties for bridge rehabilitation costs in 1998, but not in 2008. In response, Mr. Huft said that he will need to get that information to the committee at a later date.

Mr. Huft said that the cost to treat rural roads has also increased substantially since the survey conducted in 1998.

Although there is work remaining to be finished, observations have been made from the submitted surveys. One main response from the local agency survey indicated a serious financial challenge to the local entities; similar to the state system.

In response to Representative Putnam's question, Mr. Huft said that the list of members on the technical panel is complete and is not a fluid group. As the project is completed, the members of the technical panel will review the information and provide the results to the committee.

In response to Representative Putnam's question pertaining to the responsibility for the cost of replacing bridges, Mr. Tim Bjorneberg said that the counties and the state match the federal government bridge replacement funds. The allocated bridge replacement fund money is split 50/50 with the local government.

In response to Senator Peterson's question, Mr. Huft said that the counties are responsible for all the local bridges, not the townships.

Ms. Gail Brock told the committee, in response to Senator Peterson's question, that there is a provision in law that if the bridge is over 16 square feet, then the townships pays the first \$500, and the counties the remainder. In about 90% of the counties, there is a good working relationship with that provision.

Ms. Huft said, in response to Representative Olson's question, that all bridges are inspected on a regular basis. Most are checked every two years, and some smaller bridges are checked every four years. The records show that more bridges need to be posted for weight.

The committee recessed at 10:25 a.m. and reconvened at 10:40 a.m.

Secretary Bergquist distributed to the committee a handout outlining the different types of diversions and exemptions from the state highway fund (**Document #4**).

Highway Funding Options

Mr. Dave Huft, Office of Research with the Department of Transportation, and **Ms. Deb Hillmer**, Division of Motor Vehicles with the Department of Revenue and Regulation, distributed to the committee a PowerPoint presentation entitled "Transportation Funding Alternatives for South Dakota" (**Document #5**).

Mr. Huft said that the intent of the presentation is to describe the current federal, state, and local revenue streams for roads and highways. Then, they will discuss a vast number of conceivable funding mechanism, which the value and practicality will be examined.

Federal Funding

Mr. Huft gave an overview of the history for the Highway Trust Fund. He said that the federal gas tax rates have been stationary since 1993. There are two separate accounts – highways and mass transit – that are maintained separately.

Factors that affect the Highway Trust Fund balance include improved fuel efficiency, use of alternative fuels, deficit reduction, increased expenditures, and gasohol subsidy. The amount of incoming revenue peaked in 2000 and been declining since.

Since 2000, there has been more expenditures from the Highway Trust Fund account than revenues coming in. The balance was approaching zero earlier this month.

The highway use tax is an annual federal tax that is collected by the Internal Revenue Service (IRS). This tax is assessed on heavy vehicles and the fee is tied to the gross weight. This tax is only authorized on a federal level. About \$6.7 million is generated from South Dakota to this fund annually. There are some exemptions to the highway use tax for low mileage vehicles. Since the rates are reported to the IRS, there is some concern that the IRS is not aggressively auditing the reported weight and not collecting as much revenue as it should.

Mr. Huft said that there are factors that affect the allocation of Highway Trust Fund money to the states. The factors identified relate to the number of road miles, miles traveled, contributions made to the trust fund, population, etc. The only need based factor is the cost to repair or replace deficient bridges.

South Dakota depends heavily on federal funds to fund the state highway system. The state receives 1.2% of the Highway Trust Fund. However, South Dakota receives 2.3 times its contribution. About 55% of South Dakota's total highway revenue is derived from federal sources.

South Dakota Highway Financing

Ms. Hillmer said that the state motor fuel tax revenue has been consistent but dropped slightly in 2007. For FY07, the total amount of motor vehicle license fees collected was \$60,574,489; which were collected by both the county and the state. She explained how the fees were distributed.

Representative Krebs asked about truck drivers purchasing out-of-state permits. Ms. Hillmer said that there are two different types: IRP for vehicle registration and IFTA for motor fuel taxes. The Department of Revenue and Regulation (DRR) collects the fees and distributes the money to the other jurisdictions based on miles traveled in each jurisdiction. South Dakota requires South Dakota truckers to be licensed with the state and report the miles traveled in all jurisdictions.

Slide 19 of document #5 illustrates the FY07 state highway user fee collection and distribution to the state highway fund. The actual gross collections for motor fuel tax was \$134,090,950. After funds are distributed for refunds, administration, conservation commission, allowance for suppliers, tribal motor fuel, IFTA refunds, snowmobile trail and parks and recreation, the net to the state highway fund was \$116,177,453.

The vehicle excise tax is comprised of the motor vehicle excise tax (\$55,058,680), rental 4.5% gross receipts (\$1,276,509), and the prorated excise tax (\$1,245,671). The prorated excise tax is only paid a portion of the motor vehicle excise tax based on the miles traveled in this state.

Ms. Hillmer said that the other fees collected by the department amounted to \$3,205,824 for FY07 going back to the State Highway Fund. The total highway fund is comprised of \$116,177,453 from the motor fuel tax, \$57,580,860 from the vehicle excise tax, and \$3,205,824 from other fees, totaling \$176,964,137 for FY07.

Representative Pederson asked if the allowance for suppliers is still needed. Ms. Hillmer responded that evaluating the allowances is an option. South Dakota receives about 90% of the revenues from about 40 suppliers and they are required to pay the allowance to their marketers.

In response to Representative Vehle's question pertaining to fines for dyed fuel in a vehicle, Ms. Hillmer stated that she would be able to provide that information to the committee.

Funding Alternatives

Mr. Huft said that for each funding alternative concept presented, four focus areas will be presented: concept, current practice, revenue potential, and implementation issues. These four areas will help measure the quality for implementing the concept in South Dakota.

Fuel-Based Mechanisms

There are three different types of concepts that are fuel-based. They include a motor fuel excise tax, an indexed fuel tax, and a fuel sales tax.

- **Motor Fuel Excise Tax**

The motor fuel excise tax is a tax to motor fuels on a per-gallon basis that is assessed at the rack in South Dakota. The person who pulls the fuel out of the pipeline is responsible for the tax. About 47 suppliers pay about 90% of the tax. The current use of the SD motor fuel tax is dedicated to the State Highway Fund.

Senator Garnos asked if there was any tax on the pipeline that runs through the state. In response, Ms. Hillmer said that the tax is applied when the fuel is removed from the pipeline. There are a few states that do tax the fuel that is held in the pipeline, but usually on a federal level and not on a state level because of border issues.

In response to Representative Vehle's question about the price of gas at the pump being relatively the same across the nation regardless of the different gas taxes, Representative Ahlers and Ms. Hillmer said that the fuel price at the pump is dependent upon many variables including supplier cost and market. There are other revenues in other states to help keep the gas tax lower.

Ms. Hillmer said that each penny raised would add about \$5.7 million in revenue with the current consumption level.

- Indexed Fuel Tax

An indexed fuel tax is an excise or sales tax on fuel that is indexed to the consumer price index (CPI) or the highway cost index. The tax would be linked to fuel consumption as surrogate for highway use and wear. The rates would adjust to track the cost of providing a state highway infrastructure. The tax method could be used at both the state and local level, but placing an index fuel tax at the rack makes identification of local tax difficult.

Ms. Hillmer said, in response to Representative Vehle's question, that a portion of the tax rate will be based on what is occurring with the fuel purchase price. Mr. Huft told the members that there is a fixed portion and a portion of the rate that can fluctuate depending on costs of highways.

- Fuel Sales Tax

A fuel sales tax is a tax on fuel bases on the purchase cost rather than on quantity. The tax is linked to fuel consumption as surrogate for highway use and wear, and would be in addition to conventional fuel taxes. This tax can not be applied at the rack, and must occur at the time of sale. This method is not currently used on South Dakota, but in other states both in state and local jurisdictions.

In response to Representative Vehle's question, Mr. Hillmer said that the fuel sales tax would be allowed under the Streamlined Sales and Use Tax Agreement as long as there is a consistent rate. Indexing at the rack is easy to implement, but it would not be easy to apply to sales tax because retailers sell the product at different prices.

Ms. Hillmer said that with the current level of consumption at a pump price of \$3.60, each 1% of sales tax would generate \$22 million in South Dakota. In the long run, the revenue would track the pump price of fuel and possibly offset inflation.

The committee recessed at 12:02 p.m. and reconvened at 1:15 p.m.

Vehicle-Based Mechanisms

- Vehicle Excise Tax

The vehicle excise tax is a tax based on a percentage of the purchase price of new and used vehicles that is collected upon with the title transfer. The tax is linked to vehicle ownership and

not road use. By statute, the revenue from the vehicle excise tax in South Dakota goes to the State Highway Fund.

Ms. Hillmer informed the committee that there are over 45 different types of exemptions to the vehicle excise tax. Currently, about 154,000 of the 300,000 title transfers in South Dakota are not taxed.

With the implementation of the vehicle excise tax, there would provide a relatively steady growth if income that will increase with the rising average value of new and used vehicles.

- **Vehicle Registration Fees**

Vehicle owners are assessed annual registration fees depending on vehicle class, weight, age, and use. The fee is linked to vehicle ownership rather than road use and the rates are determined by vehicle type and weight which reflect the impact to the road. Currently, 96.5% of vehicle registration fees are dedicated to local governments in South Dakota.

There is a 30% reduction in fees for non-commercial vehicles that are older than five years. Over 76% of the population of vehicles is over 5 years old with a median age of 10.6 years. Therefore, the majority of the people only pay 70% of the fees. However, it has been determined that there is no difference in the wear and tear on the highway between new and old vehicles.

Effective July 1, 2008, there was a new distribution of funds from non-commercial license fees. Based on the new distribution, 54% would go to the Local Government Highway and Bridge Fund, 22.5% to the County and Highway Bridge Fund, 14% to the County Special Highway Fund, 5% to the municipalities, 2.5% to the License Plate Revolving Fund, 1.75% to the Motor Vehicle Administrative Fund, and 0.25% to the County Treasurer Fund.

In response to Senator Peterson's question pertaining to commercial vehicles driving more miles, Ms Hillmer said that commercial vehicles also pay a highway use tax. Age may should not have anything to do with the formula, but the research has shown that weight does damage the roads.

Ms. Hillmer told the committee that there is a potential for \$11 million a year in additional revenue if the non-commercial age discount was eliminated. An additional \$2 million a year in revenue would be generated if the commercial vehicle age discount was eliminated.

- **Wheel Tax**

The wheel tax is tax that is assessed per wheel at the time of the vehicle is registered. There is a cap of four wheels per vehicle to which the tax can be applied. There will be some exemptions to the tax, but most would have to pay wheel tax on four wheels. The tax is tied to vehicle ownership and not usually to road impact. Currently, this concept is only used at the local level, it could be applied on the state level with a change in the laws.

A tax of \$2 - \$4 per wheel is allowed with a maximum of four wheels. This creates a concern that cars and small trucks would be taxed the same as larger trucks. Therefore, there is a weak relationship the impact on the highways.

Property and Sales Based Mechanisms

- **Front-Foot Assessments**

Mr. Huft advised the committee that concept of a front-foot assessment is an annual assessment based on the front footage adjacent to public roadways. This tax is linked to road access and not the use of roads. This tax is only suit able on the local level.

There are some equity concerns with this assessment. They include a weak tie to road use, the “through traffic” is not assessed, non-adjacent landowners are not assessed, and there is little tie to road impacts concerning vehicle weight and traffic volume.

If a front-foot assessment was implemented, there would be a significant amount of money that would be raised. Assuming 50% of roadway has taxable frontage on both sides, this could generate annually \$17 million for cities, and \$19 million for townships and secondary counties.

- **Special Assessments**

Under this mechanism a city publishes a special assessment role and establishes a fee to recover the private special benefits created. This can be for both new and replacement infrastructure. The assessment must be only for the private benefits received, not for benefits for the public at large. This assessment is currently used in South Dakota to recover the unique private benefits to each property from all types of infrastructure investment.

Currently, there is a case in court that is challenging the principles of this assessment. Depending on the financial status of the landowner, the person may not want this assessment. There are exemptions in statute, but they may raise constitutional issues because of equal protection. However, this assessment may be more equitable than taxes if only those receiving benefits pay.

- **County Road Districts**

The county road districts is a concept that property owners may organize a road district to finance, build, and maintain roads. The roads are therefore financed by adjacent landowners. This method is typically used for new developments and is only applicable on a local level.

Mr. Huft said that the concept does not address the issue of “through traffic.” In the short term, about \$1.6 million per year is collected in about 180 road districts. The long-term financial sustainability can be difficult as roads age.

Representative Bradford asked what entity will be responsible for collecting the tax. In response, Mr. Huft said that the tax would be collected through the property tax system and then allocated out.

- **Developer Fees**

The concept of developer fees is where a jurisdiction sets or negotiates fees from developers to offset costs of road improvements. Under this concept, fees are based on the appreciation of the land due to road improvements in the area. However, it is not practical to try and claim an appreciation value of more than what was invested in the facility.

This mechanism is not currently used in South Dakota. However, other areas across the United States have implemented the method and encourage its use.

- **Municipal Retail Sales and Use Tax**

Any municipality may impose a *non ad valorem* tax. Counties cannot impose a retail sales and use tax, but municipalities have the authority to implement a 2 cent sale and use tax. There is a direct tie to retail and use services, and an indirect tie to transportation improvements.

Cities can impose up to a 2 cent tax on each \$1.00 sale. Some cities restrict the use of the second penny to capital improvements and debt retirement. This method would be a revenue source that would grow over time with increased sales.

Use-Based Mechanisms

- Vehicle Miles Traveled Fees

The vehicle miles traveled fee is a mechanism where the gas tax is waived and charges are based on miles a vehicles is driven. An on-board unit in the vehicle accumulates miles driven, but no trip details and the gas pump interrogates the vehicle for reports.

Mr. Huft said that there is a direct link to miles driven. Rates can vary by vehicle type for pavement wear and by zone or time of day for capacity demand. This concept is most suitable on a state level because it is more difficult to associate miles with the local jurisdictions.

This concept has been already test implemented in Oregon. As the car is drove, the global positioning device that is installed in the car accumulates miles driven. The information does not record where the vehicle is at, only whether the vehicle was drove inside or outside of city limits. There is a rate change for different times of based on rush hour. The rational is that the capacity in rush hour is heavy and the state is trying to encourage people to travel at other times. One concern is that it may dilute efforts to promote higher fuel efficient vehicles.

Mr. Huft told the committee that this concept is a replacement for the fuel tax. The turnover would take a long time to ensure that the vehicles would have the technology needed. This concept represents a substantial investment and a drastic change to how taxes are assessed.

- Weight-Distance Fees

The concept of weight-distance fees charges heavy vehicles fees based on weight and distance to compensate for pavement wear. Typically, the information is reported quarterly. This would be a tax in addition to the fuel tax that would be most suitably applied at the state level.

There are some equity concerns. The state will need to develop an auditing process to ensure that people are not underreporting the number of miles traveled. Also, it is not justifiable in terms of road wear to have different rates for raw and processed commodities, as some states do.

Mr. Huft noted that the trucking industry has vigorously opposed to this concept on a national level.

- Overweight Penalties

Another concept is to assess fines and civil penalties for violation of oversize/overweight vehicle laws. In South Dakota, the fines go to school districts. Under this concept, additional fines would go to help offset damages to highway infrastructure.

Currently, there is a concern by some that there is not a tie to the damage done to the roads since the fines go to the schools. The fines are currently not used for compensation for road

damage. Most of the weight enforcement costs are borne by state highway to the South Dakota Highway Patrol.

Senator Apa asked about the fines and civil penalties. In response, Mr. Huft said that if a vehicle is found to be overweight, there is a Class 2 misdemeanor fine. The civil penalty is an attempt to impose on the driver an additional penalty for the damage that is caused. Currently, the additional fines go to the school districts.

- Tolls

Tolling is a concept that directly charges for use of highway segments through the use of manual toll booths or electronic collection. This method has a direct relationship with road wear and capacity demand. The toll rates can vary by vehicle class, time of day, and use type.

The U.S. Department of Transportation encourages states to use this option. Tolling is primarily utilized in metropolitan freeways or turnpikes.

The revenue potential in South Dakota is limited due to the lower traffic levels. Currently, South Dakota has between 2,000 – 21,000 vehicles per day traveling on I-29 and 3,000 – 13,000 per day traveling on I-90. For comparison, the Pennsylvania Turnpike has about 30,000 to 65,000 vehicles per day.

There is a public concern with this concept that citizens would be paying twice for roads. Also, if one road has a toll, then more traffic will divert to another road without a toll and then there will be a higher volume of traffic placed on a road that is not capable of holding that volume.

Financing Mechanisms

- Bonds

Bonds can provide funds for immediate, advantageous use, but is not a true revenue source. The potential use is limited by the prevailing financial conditions. Some bonding concepts used by other states include:

- Revenue Bonds;
- General Obligation Bonds;
- Grant Anticipation Revenue Vehicles Bonds (GARVEE); and
- Transportation Infrastructure Finance & Innovation Act of 1998 (TIFIA).

Mr. Huft informed the committee that local governments are able to use this method as a funding source, but South Dakota state government is not allowed to use bonding for highways. There is a Supreme Court case that interprets the State Constitution as prohibiting the use of state highway funds to repay interest on bonds.

- Public/Private Partnerships

The concept of public/private partnerships is where the government leases or sells a highway facility to a private builder or operator. A long-term lease is established and the state receives an immediate large sum payment. The private builder or operator then would rely on toll revenues which would be dedicated to the highway operation and maintenance. This concept is applicable on both a state and local level.

The revenues projected in South Dakota are very low because of the low traffic volume and revenue streams. This concept is also becoming less attractive nationally because of failed financial institutions in 2008.

Mr. Huft said the non-compete clauses can limit DOT's flexibility in maintaining and improving parallel routes. The state maintained road would compete with the toll road. Also, the condition of the road at the end of the lease is uncertain.

The committee recessed at 2:38 p.m. and reconvened at 2:51 p.m.

Committee Discussion

Secretary Bergquist informed the committee that he met with a company involved with private/public partnerships. After the discussion, it was agreed that there was not an opportunity for that method in South Dakota based on traffic volume. He also reminded the members that making payments on GARVEE bonds can be very nervous because sometimes federal highway fund payments could be late.

Senator Garnos said that the committee needs direction for determining the best method. He requested that DOT compile a couple best and worst case scenarios and present them to the committee at the next meeting.

Senator Garnos asked the DOT to expound on the effects to South Dakota if the state does not invest the proper amount in economic development projects. In response, Secretary Bergquist told the members that DOT has addressed those needs. The impact will be felt more in the condition of the remaining highway system. DOT will support the current infrastructure of the state, but the department is currently pulling funds away from preservation to accomplish current economic development tasks.

Representative Vehle asked if there was a way to have an index on the motor fuel tax that changes with the price of oil that could be based on an average of the whole sale price. He said that the state needs to index part of the revenue based on the increase or decrease of oil. Part of the tax could be based per gallon and part on the value of the fuel; in essence a sales tax. The committee could reduce the per gallon tax and make up the tax on the sales tax. He asked DOT what will cause the least problems for the department.

Representative Ryan Olson recognizes that South Dakota is not able to do bonding right now. However, he would like more information as to the benefits and consequences of the issue.

Representative Krebs said that a short-term solution is critical, but the committee also needs to look at the long-term. The taxpayers want the Legislature to spend fiscally and responsibly. The state highway fund money and diversions from the fund should be reviewed and the executive people should explain to the committee the reason the money is diverted from the fund.

Representative Wick requested that DOT provide a list of all the land available that DOT has that can be sold.

Representative Ahlers requested a complete list of diversions and exemptions with the contact people for each.

Representative Rausch asked if the Governor's Office could present the DOT budget at the next meeting to ensure all parties are consistent and in agreement. In response, Secretary

Bergquist said that DOT is different than other state agencies in that it is not funded with general funds. He indicated that there will not be any big surprises in the budget request.

Representative Pederson reminded the committee that the concept needs to be sold to the citizens. Short-term funds need to start in the next six to eight months. At the same time, the committee needs to be looking at long-term solutions.

Senator Apa said that the committee should increase license plate fees and user fees. The members also need to look at efficiencies in the department. He distributed a facsimile he received from Mr. Lee Schoenbeck. **(Document #6)** The letter addresses the "north bypass" in Watertown, South Dakota and the concerns the constituent has about the bypass. Senator Apa said that the committee should have an overall view of all the roads in the state and what will occur in the future; not just a five year plan.

Secretary Bergquist responded that the letter didn't have anything to do with the north bypass or any bypass, but has to do with the intersection of US 212 and US 81 in Watertown. He explained how the department's policy of obtaining right of way in advance of a highway project has changed. He indicated the department currently doesn't have the money to buy right of way well in advance of a project.

Representative Bradford said that the committee needs to look at several different avenues for funding; especially if the Federal Government eliminates the two dollars for one dollar funding to the state.

Additional Slides to Document #1

The Department of Transportation distributed to the committee two additional slides for Document #1 that was presented to the committee on the first day of the meeting. The slides are in response to committee questions regarding mileage difference and setting of category goals and minimum standards for highways. **(Documents #7 and #8)**

Next Meeting

The next meeting of the South Dakota Highway Needs and Financing Committee is scheduled for November 12 and 13, 2008 in Pierre, South Dakota.

Adjourn

REPRESENTATIVE PEDERSON MOVED, SECONDED BY REPRESENTATIVE BRADFORD, THAT THE COMMITTEE ADJOURN. The motion passed on a voice vote.

The committee adjourned at 4:24 p.m.



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