

AGRICULTURE AND TRANSPORTATION COMMITTEE

The Agriculture and Transportation Committee was assigned four studies.

- Section 1 of House Bill No. 1220 (2019) directed a study, in coordination with the Secretary of State, of how the state's central indexing system can be used to provide notification to a secured lender when a super priority lien is filed on the collateral of a secured lender.
- Section 1 of House Bill No. 1467 (2019) directed a study of agricultural issues in the state, including studying grain buyers, roving grain buyers, grain brokers, and grain handling facilities under North Dakota Century Code Title 60; and issues related to prepayment for fertilizer, soil amendments, seed, and fuel in situations of insolvency. The study directive included a review of the current law; industry practices; background checks relating to grain buyers, roving grain buyers, grain brokers, and handling facilities; a review of any potential efficiencies that may exist; methods of maintaining financial security during the grain buying process, including consideration of facility operating capital to ensure adequate solvency during licensing; and the process of confidential financial and physical audits. The study directive also included a review of the law pertaining to grain handling facility asset lists to determine if changes are required to ensure producers are protected from facility insolvency if an end product is refined and no longer reflects the original product, the indemnity fund under Title 60, and grain handling facility bonding requirements.
- Section 2 of Senate Bill No. 2061 (2019) directed a study of current methods using the electric vehicle infrastructure coalition led by the Department of Transportation (DOT) to collaborate with the North Dakota utility industry and North Dakota electric vehicle stakeholder groups to design a jointly owned public and private network of electric vehicle infrastructure to support both commercial and noncommercial vehicles, and to make recommendations regarding electric vehicle charging infrastructure. The study directive included an evaluation of the relative costs and benefits associated with various options for electric vehicle infrastructure support and an estimate of the future annual economic impact.
- Section 2 of Senate Bill No. 2176 (2019) directed a study of the feasibility and desirability of creating a road train pilot program. The study directive required consultation with DOT, the Highway Patrol, the Agriculture Commissioner, the Industrial Commission, the Department of Commerce, the Upper Great Plains Transportation Institute (UGPTI), and the Governor. The study directive also included an assessment of the federal regulations impacting road train operations, the economic impact of permitting road train operations in the state, and the costs associated with implementing a road train pilot program. The study directive permitted the Legislative Council to contract for consulting services to assist the Legislative Management in conducting the study.

The committee was directed to receive the following reports:

- A report from the Advisory Committee on Sustainable Agriculture on the status of the committee's activities.
- A report from the State Board of Agricultural Research and Education on its annual evaluation of research activities and expenditures.
- A report from DOT regarding information collected from transportation network companies during each biennium.
- A report from DOT regarding its study of public transportation services within the state.
- A biennial report from the Federal Environmental Law Impact Review Committee.
- Reports from DOT, as requested, on the road train pilot program.
- A report from the Department of Environmental Quality (DEQ) on or before October 1, 2020, on all animal feeding operation permit applications approved or denied by the department, including the relevant county and township zoning and setback determinations, and related issues during the 1st full year of the 2019-21 biennium.

Committee members were Representatives Dennis Johnson (Chairman), Tracy Boe, Mike Brandenburg, Jay Fisher, Craig Johnson, Dwight Kiefert, Dan Ruby, Kathy Skroch, Wayne A. Trottier, and Greg Westlind and Senators Jim Dotzenrod, Kathy Hogan, Oley Larsen, Randy D. Lemm, Larry Luick, Janne Myrdal, Terry M. Wanzek

CENTRAL INDEXING SYSTEM

Section 1 of House Bill No. 1220 directed, in coordination with the Secretary of State, a study of how the state's central indexing system can be used to provide notification to a secured lender when a super priority lien is filed on the collateral of a secured lender.

Background

House Bill No. 1220, as introduced, would have amended Section 35-31-03, which gives priority to an agricultural supplier's lien obtained under Chapter 35-31 over all other liens and encumbrances, except agricultural processor's liens, relating to crops and agricultural products covered by the supplier's lien. The bill also would have amended Section 35-31-03 to provide an exception whereby an agricultural supplier's lien of more than \$50,000 would have had to meet certain conditions to have priority over other liens and encumbrances, including an authenticated notification, sent by the supplier to the holder of a conflicting security interest of record within 20 days after the date the supplies were furnished or services performed, stating the supplier may acquire a lien over the crops, agricultural products, or livestock of the debtor in an amount exceeding \$50,000. The legislative history indicated support for a study of the issue because of concerns a supplier may lose priority if the supplier did not comply with the conditions as described in the bill. Testimony indicated a notification requirement to a lender when a supplier's lien is placed on a producer's crop would be beneficial so the lender is made aware of an additional loan being secured by the single crop and collateral of the producer, which has priority over the lender's original loan.

Lien Process

Banks and other lenders often extend producers a line of credit as an operating loan for farming operations secured by the producer's crop. Issues arise if the line of credit is not used to pay for the current year's operating costs and the producer instead purchases operating needs on credit from an agricultural supplier, resulting in double financing of the crop. A supplier may place a lien on the producer's crop to secure the value of the supplies. After harvest, the producer sells the crop and the buyer writes checks to the bank and the agricultural supplier as payees. The originating lender may be placed in a position in which the originating lender assumed it supplied the majority of the capital for the producer to create the crop, only to learn an agricultural supplier also has a priority lien on the crop.

Agricultural Liens

Three main areas of the Century Code govern agricultural liens and the central indexing system. Title 35 addresses liens, Title 41 addresses the Uniform Commercial Code (UCC), and Chapter 54-09 addresses the Secretary of State and the central indexing system. General statutory provisions applicable to all liens are located in Chapter 35-01, and provisions specific to agricultural supplier's liens are located in Chapter 35-31.

A lien is defined as a charge imposed upon specific property by which the property is made security for the performance of an act. Section 35-01-14 provides different liens upon the same property have priority based upon the time of creation. Under Section 35-31-03, an agricultural supplier's lien obtained under Chapter 35-31 takes priority over all other liens and encumbrances, except agricultural processor's liens authorized under Chapter 35-30, which relates to crops and agricultural products covered by the supplier's lien. A supplier has 120 days from the date of delivery of supplies to file a lien. A supplier's lien ensures a supplier is able to recoup costs, but only for the amount of the supplies furnished and only in the crop grown with the supplies. Section 35-31-02 codifies the procedure to obtain an agricultural supplier's lien and requires certain information to be filed in the central notice system. The Secretary of State is required to provide an electronic means to obtain a lien or gain protection under the central notice system.

Uniform Commercial Code

In addition to Chapters 35-01 and 35-31, agricultural supplier's liens also must comply with certain UCC provisions located in Chapters 41-01 and 41-09. Section 41-09-40(7) requires a crop buyer, when issuing a check to a crop producer, to issue the check or draft for payment jointly to the person engaged in farming operations and those secured parties or lienholders who have a security interest or lien in the crops or livestock sold. The subsection also codifies the information that must be included in the notice from a lienholder to a crop buyer.

Central Indexing System and Statutory Provisions

The central indexing system is a computer system containing liens filed online with the Secretary of State's office. A statewide perfection of a loan may be obtained by completing the filing in the online central indexing system. Senate Bill No. 2450 (1985) established a central notice system for filing interests and liens on crops and livestock by secured parties and lienholders under Section 41-09-46. The bill required the Secretary of State to develop and implement a central notice system containing the information filed with the Secretary of State's office pursuant to requirements regarding the protection of the buyer of goods. The statutory provisions regarding agricultural supplier's liens, agricultural processor's liens, and the process to obtain a lien under Chapters 35-30 and 35-31 were enacted in 1987 to reflect the newly created central notice system. In 1991, Section 41-09-46 was amended to require the Secretary of State to develop and implement a computerized central notice system and required the system to contain the information filed with the Secretary of State regarding liens. House Bill No. 1105 (2001) repealed Chapter 41-09 and enacted a new Chapter 41-09. The contents of the repealed chapter were recreated as Sections 54-09-09, 54-09-10, and 54-09-11, relating to

the duties of the Secretary of State and the central indexing system. Section 54-09-09 requires the Secretary of State to maintain a computerized central indexing system containing the information filed pursuant to Title 35 regarding liens. Section 54-09-10 requires the Secretary of State to produce an electronic list for crops and livestock that contain the information filed pursuant to Chapter 41-09 and chapters in Title 35 regarding liens. Section 54-09-11 establishes the fees pursuant to the central indexing system.

Testimony and Committee Considerations

Secretary of State

The committee received testimony from a representative of the Secretary of State's office regarding an enhanced central indexing system in which email notification could be sent to lenders when a priority lien is filed in the system. According to the testimony, the current online central indexing system was implemented in 2016. Before 2016 the system was electronic, but the filings were submitted on paper and entered in the electronic database. Filings now entered in the central indexing system are recorded down to the millisecond to determine priority, and liens filed first receive priority over subsequent filings using the same collateral, except in situations under the law where a subsequent lien may take priority over a prior filed lien. The testimony indicated the Secretary of State is willing to make changes to the central indexing system if requested to do so by the Legislative Assembly and stakeholders. The testimony indicated for approximately \$70,000, the system can be enhanced to include a notification system for lenders when a debtor is using the same collateral for multiple loans.

North Dakota Bankers Association

The committee received testimony from a representative of the North Dakota Bankers Association which indicated banking institutions are supportive of receiving notice through the central indexing system when another lienholder steps in front of the bank's interest.

North Dakota Grain Dealers Association

The committee received testimony from a representative of the North Dakota Grain Dealers Association which indicated grain dealers would support an enhancement to the central indexing system to provide notice to originating lenders when a priority lien is filed in the system.

Conclusion

The committee recommends the Secretary of State enhance the central indexing system to provide notice to an originating lender when a priority lien is filed in the system on the same collateral.

ELECTRIC VEHICLE INFRASTRUCTURE

Section 2 of Senate Bill No. 2061 directed a study of electric vehicle infrastructure.

Legislative History

Senate Bill No. 2061, as introduced, would have created an annual road use fee for electric and hybrid vehicles of \$248 per electric vehicle registered and \$71 per hybrid vehicle registered, in addition to all other fees required for annual motor vehicle registration. The Senate amended the bill to change the fee amounts collected, and to provide for a Legislative Management study. The House amended the bill to change the fee amounts collected and change definitions.

According to the testimony on the bill, 200,000 electric vehicles were sold in the United States in 2017, and more than 1.4 million plug-in cars were sold in the United States in 2018. Road repairs, snow plowing, law enforcement, and improvements are funded through state and federal gas taxes. Electric vehicle sales make up approximately 1 percent of light-duty car sales in the United States. However, expanding development and production raises concerns of declining gas tax revenues. Electric vehicles pay the same registration fees as traditional vehicles, but because the vehicles use no or less gasoline, the electric vehicles do not contribute as much to maintain the roadways through the gas tax. As of 2019, 26 states had enacted legislation to implement a special registration fee on alternatively fueled or electric vehicles in addition to the standard registration fees. The special registration fees vary from \$50 to \$200 per year. North Dakota joined other states that have a special registration fee on electric vehicles with the passage of Senate Bill No. 2061. The testimony indicated implementing an additional fee would help create equality among drivers regarding payment for the building and maintenance of roads. Testimony in opposition to the bill suggested the proposed fees for hybrid and electric vehicles was too high and proposed additional fees levied by the state should be used for electric vehicle infrastructure and charging stations rather than road use maintenance.

Background

Types of Vehicles

A vehicle powered by an internal combustion engine runs on gasoline, diesel, or renewable and alternative fuels such as biodiesel and ethanol. An electric vehicle or plug-in electric vehicle derives all or part of its power from electricity supplied by the electric grid. The two basic types of electric vehicles are all-electric and plug-in hybrid electric vehicles. A major feature of electric vehicles is the vehicles can be plugged in to charge from an off-board electric power source.

A plug-in hybrid electric vehicle is distinguished from a hybrid electric vehicle (non-plug-in) in that a hybrid electric vehicle supplements its internal combustion engine with battery power, but cannot be plugged in to an external power source. An all-electric vehicle runs only on electricity and is powered by one or more electric motors receiving electricity from an electric grid and stores the electricity in onboard batteries. Most all-electric vehicles have ranges of 80 to 100 miles, and some can travel up to 250 miles on a single charge. Plug-in hybrid electric vehicles run on electricity for 6 to 40 miles, then switch to an internal combustion engine and run on gasoline when the battery power is depleted, allowing drivers to use electricity when possible and gasoline when needed.

Types and Costs of Electric Vehicle Charging Stations

The three levels of plug-in electric vehicle chargers are classified based on the speed by which the charger recharges a battery. A Level 1 charger uses a standard household 120-volt wall outlet to charge an electric vehicle, has the ability to charge most electric vehicles on the market, and takes over 8 hours to charge an electric vehicle for approximately 75 to 80 miles. A Level 2 charger requires a specialized station that provides power at 240 volts, has the ability to charge most vehicles on the market, and takes approximately 4 hours to charge a battery to 75 to 80 miles. Level 3 chargers (DC fast charger) are located at dedicated electric vehicle charging stations and charge a battery, using specialized equipment through a 480-volt input, up to 80 percent capacity or 90 miles in approximately 30 minutes. A Level 3 charger is compatible only with certain models of electric vehicles.

The average cost of electric vehicle charging supply equipment and installation for charging stations is \$300 to \$1,500 for equipment, and up to \$3,000 for installation of a single-port Level 1 charging unit; \$400 to \$6,500 for equipment, and \$600 to \$12,700 for installation of a single-port Level 2 charging unit; and \$10,000 to \$40,000 for equipment, and \$4,000 to \$51,000 for installation of a single-port Level 3 (DC fast charging) unit.

Fees and Relevant Information

In 2017 North Dakota had 562,341 licensed drivers, and approximately 1.1 million vehicle registration renewals were issued. The Department of Transportation's main source of state funding for road maintenance comes from state and federal fuel taxes, and a smaller amount comes from vehicle registration fees. As of 2017, it cost \$1 million per mile for asphalt surfacing reconstruction. The state fuel tax is 23 cents per gallon. The federal fuel tax is 18 cents per gallon for gasoline and 24 cents per gallon for diesel fuel. From 2015 to 2017, the state generated \$198.5 million in gasoline/gasohol taxes, \$184.6 million in vehicle registration fees, and \$146.3 million in diesel fuel taxes. The funding is used for road repair and construction plus other transportation services. Approximately 93 percent of the money received by DOT for transportation is spent for maintaining and constructing the state's system of roads and bridges and providing assistance for public transit providers. Approximately 4 percent is spent on driver's license, motor vehicle, and public safety services. Approximately 3 percent is spent on administrative activities. The majority of federal revenue is dedicated to pay for a share of eligible highway improvement costs. The federal share is typically 80 percent, with the state or local government providing a 20 percent match.

Relevant North Dakota Legislation Regarding Electric Vehicles

House Bill No. 1405 (2019), codified as Section 39-10-50.1, mandates parking spaces designated for plug-in electric vehicles must be indicated by signage approved by DOT indicating the space is for plug-in electric vehicle charging only. An individual is prohibited from stopping, standing, or parking a motor vehicle within any parking space specifically designated for parking and charging a plug-in electric vehicle unless the motor vehicle is connected to the charger.

Testimony and Committee Considerations

Department of Transportation

The committee received testimony from a representative of DOT regarding an update on the electric vehicle infrastructure coalition, parties involved, and plans moving forward. The number of registered electric vehicles in the state, which is rising, includes 166 electric vehicles and 193 plug-in hybrid vehicles. The number of charging stations in the state also is rising. The Department of Transportation collected approximately \$24,030 in electric vehicle and hybrid fees from July 1, 2019 to July 1, 2020. The goal of the electric vehicle infrastructure coalition is to work on connectivity of the transportation system and to prepare for the future of electric vehicles by working with key energy, automotive industry, and government stakeholders. The purpose of the coalition is to identify a variety of issues related to electric vehicles including charging stations established within the state, advantages of electric vehicles and cost-savings, battery life, range, and legislation that may need to be changed. According to the testimony, DOT intends to install electric vehicle charging stations at key areas at district offices, expand the state fleet to include electric vehicles, and research electric snowplows. The testimony indicated none of the charging stations located in the state require electric vehicle owners to pay to charge cars. However, the testimony indicated privately owned and publicly available charging stations, much like gas stations, are likely to be established.

Department of Environmental Quality

A representative of DEQ provided an overview of the Volkswagen settlement and fund. According to the testimony, Volkswagen installed emission testing defeat devices in approximately 500,000 of its diesel-powered vehicles beginning

in 2009, which could detect when the vehicle was being tested, in violation of the federal Clean Air Act. Volkswagen entered consent decrees with the United States Department of Justice and agreed to spend \$10 billion to buy back or fix customer vehicles, \$2 billion on zero-emission vehicle infrastructure projects, and \$2.7 billion in an environmental mitigation trust. North Dakota received \$8.1 million from the trust, and in 2017 the governor appointed the State Department of Health's Division of Air Quality, as the beneficiary. The Department of Environmental Quality developed a mitigation plan for use of the funds over a 10-year period and the plan included charging station infrastructure. Under the plan, DEQ could spend up to \$1.2 million on zero-emission vehicle equipment, including charging stations in the 1st year of the project. The Department of Environmental Quality received 19 applications for electric vehicle fast-charging station equipment totaling \$2 million, which was \$800,000 over the available allocated amount. The scoring of applications for charging stations took into consideration the long-term cost of maintenance and repair of the potential stations and how the entity planned on charging for the use of the charging station to help maintain the station. Seventeen Level 3 fast-charging stations were awarded, placing stations in 10 communities across the state, at a cost of roughly \$50,000 each.

DriveElectricND

The committee received testimony from a representative of DriveElectricND, a statewide stakeholder group working to advocate and educate the values of electric vehicles. The testimony indicated support for growing electric vehicle infrastructure in the state because electric vehicles are a positive step for improving tourism, workforce transportation, and the quality of life in the state. According to the testimony, three main obstacles for consumers to owning and operating an electric vehicle in the state are range anxiety related to the distance required to travel, lack of electric vehicle charging infrastructure, and the retail price of purchasing an electric vehicle. It was noted there are a lack of fast chargers in the state. The testimony indicated electric vehicle owners are supportive of paying their fair share for road use, but the proper amount is being debated.

Conclusion

The committee voiced concern with the state's involvement in setting up electric vehicle charging stations. Some committee members indicated private industry should be taking the lead on the development of electric vehicle infrastructure and taxpayers should not be responsible for electric vehicle charging stations. The committee indicated as electric vehicles become more mainstream and commonplace, the free market eventually will fill the gaps and address the demand for infrastructure and other services. The committee voiced concerns if more electric vehicles are on the road and there is a decline in available funds from the gas tax, a discussion will be needed regarding how to maintain the state's road infrastructure.

The committee makes no recommendation regarding its study of electric vehicle infrastructure.

ROAD TRAINS

Section 2 of Senate Bill No. 2176 (2019) directed a study of the feasibility and desirability of creating a road train pilot program. A road train is a trucking vehicle consisting of two or more connected trailers or semitrailers linked and hauled by a single operating prime mover or tractor unit in the front.

Legislative History

Senate Bill No. 2176, as introduced, would have required DOT to establish a statewide road train pilot program in collaboration with South Dakota and Minnesota transportation officials and agencies. The bill also would have required DOT to consult with a committee designated by the Legislative Management in establishing the pilot program and to establish the parameters and policies regarding the use of road trains on state highways, including routes, hours of operation, and length and width restrictions. The bill would have required a Legislative Management study of the feasibility and desirability of creating a road train pilot program. The Senate amended the bill to remove a \$200,000 appropriation to conduct the study. The House further amended the bill to make the pilot program by DOT contingent on the favorable recommendation of the Legislative Management and completion of the study.

The testimony indicated there is a shortage of 900,000 truck drivers with a commercial driver's license (CDL) in the United States. Australia and several countries in Europe are using road trains and platooning as a way to move large amounts of freight with a shortage of CDL-licensed truck drivers. The testimony also indicated a concern that a road train may be very hard on the roads in the state and could create safety issues, and while shipping costs may be reduced, additional road maintenance costs may offset the reduced shipping costs. Support for the bill noted road trains could help fill the gap between the shortage of CDL drivers in the state and the capacity of railroads to move freight. The testimony also indicated North Dakota is an ideal location for a road train pilot program due to the low population and relatively flat terrain.

Background

Federal Law

The United States Department of Transportation's Federal Highway Administration is responsible for certifying state compliance with federal standards regarding commercial motor vehicle (CMV) size and weight to preserve the nation's infrastructure and keep vehicles moving efficiently on the highways.

The federal government first enacted size regulations for CMVs with the passage of the Federal Aid Highway Act of 1956. The Act provided a maximum vehicle width of 96 inches on the interstate highway system. The Federal Aid Highway Act of 1976 increased the allowable width for buses to 102 inches, and the Surface Transportation Assistance Act of 1982 extended the width requirement of 102 inches to commercial trucks. The Surface Transportation Assistance Act of 1982 also expanded the highway network on which the federal width provision applied from the interstate to the National Network of highways.

In 1982 Congress established minimum length standards for most commercial truck tractor-semitrailers and for twin trailers pulled behind a truck tractor to standardize the enforcement of length along the National Network. The minimum allowable length limit for the semitrailer in a truck tractor-semitrailer combination is 48 feet or the grandfathered limit for a state. The grandfathered length in North Dakota is 53 feet. A truck tractor is defined as a non-cargo-carrying power unit used in combination with a semitrailer. A truck that carries cargo on the same chassis as the power unit and cab, commonly known as a straight truck, is subject only to state provisions. A straight truck towing a trailer or semitrailer is subject only to state vehicle length regulations, except the total length of its two cargo-carrying units may not exceed a federally established limit of 65 feet. The minimum allowable length states must allow for truck tractor-semitrailer-trailer combinations on the National Network is 28 feet. States also must allow the continued use of 28.5-foot semitrailers that were in use on December 1, 1982, provided the overall length of the combination does not exceed 65 feet. Semitrailers up to the maximum length which were lawfully operating in a truck tractor-semitrailer combination in a state on December 1, 1982, may continue to operate after that date.

There is no federal vehicle height requirement for CMVs. States may set their own height restrictions. Most height limits range from 13.5 feet to 14 feet, with exceptions granted for lower clearance on particular roads.

State Law

Under Chapter 39-12, motor vehicles are limited as to width, height, length, and weight but are allowed special permits under certain circumstances and are exempt if of a certain type. The width limitation is 8.5 feet, with exceptions. The height limitation for vehicles operated on highways in the state is 14 feet, with exceptions. The length limitation is 50 feet for a single unit vehicle with two or more axles; 75 feet for a combination of two, three, or four units; 110 feet for a combination of two, three, or four units operated on four-lane divided highways and designated highways; 53 feet for a trailer or semitrailer; and 60 feet for towed vehicles. Weight limitations on the interstate highway system include wheel load limitations of 10,000 pounds or one-half of axle load, tire load limitations of 550 pounds per inch of width, single axle limitations of 20,000 pounds, and multiple axle limitations of 17,000 pounds per axle for axles over 40 inches and under 8 feet apart. The gross weight limitation is 80,000 pounds. A person may operate a vehicle on the interstate highway system at the highest weight allowed by congressional action, regardless of state law. Under federal law there are limits on the size and weight of vehicles on the interstate system and other qualifying federal-aid primary system highways. The length and weight limitations grandfathered in North Dakota for longer combination vehicles are 103 feet and 105,500 pounds. State law provides for general weight limitations on highways other than the interstate system. The weight limitations are by tire, wheel, and axle loads.

The governmental entity with authority over a highway may issue harvest permits that allow a motor vehicle to exceed weight limitations by 10 percent up to 105,500 pounds. The permits are for agricultural products moving from the field of harvest to the point of initial storage or for the collection and transport of solid waste during the period of July 15 to December 1. A wintertime permit also is allowed for the general movement of products from December 1 to March 7. The governmental entity may issue a permit for vehicles carrying potatoes or sugar beets from July 15 to December 1 to exceed the weight limitations by 10 percent, not to exceed 105,500 pounds. The director of DOT may issue a permit for a truck with a gross weight that exceeds 105,500 pounds, but does not exceed 129,000 pounds for \$100 per month or \$700 per year. The Highway Patrol and, when appropriate, local authorities may charge for and issue special written permits to operate a vehicle exceeding the size or weight maximums specified in Chapter 39-12.

2015-16 Interim Study of Truck Size and Weight Provisions

Section 10 of House Bill No. 1012 (2015) directed a study of the truck size and weight provisions under Chapter 39-12 relating to size, width, and height restrictions. The findings of the study were to be used in collaboration with an UGPTI and DOT study of the impacts to the state of harmonizing truck size and weight regulations with states in the Western States Transportation Alliance. The final report by UGPTI in 2016 indicated several key findings--truck harmonization would reduce shipper costs for shipments that can take advantage of increased loading, for both intrastate and interstate long-combination vehicles; the increased size and weight of trucks would reduce the number of trucks on

the roadways; and local road connectivity issues including inadequate roadway intersection geometry to accommodate longer trucks that require larger turning radii, and increased traffic delay in urban areas and signalized intersections. The transportation committee did not make any recommendations as a result of its truck size and weight harmonization study. However, the Legislative Assembly passed House Bill No. 1255 (2017), which authorized the director of DOT to issue a permit for a truck with a gross weight that exceeds 105,500 pounds, not to exceed 129,000 pounds. The bill provided the permit fee is \$100 per month or \$700 annually.

2019 Legislation

The Legislative Assembly adopted House Bill No. 1199 (2019), which exempted a nonlead vehicle from the prohibition on following another vehicle too closely and required DOT to develop an operational plan that provides guidelines for operating a platoon.

Testimony

Testimony from a sponsor of Senate Bill No. 2176 indicated implementing a road train pilot program is needed because of increased freight demand, a lack of qualified CDL drivers, decreased rail availability, growth in specialized container shipping, and more efficient freight movement. It was noted the United States is experiencing shipping inefficiencies and delays during a time of increasing demand, and road trains could be a viable solution to the issue.

Upper Great Plains Transportation Institute

A representative of UGPTI testified following the 2016 harmonization study, UGPTI conducted another study to develop an implementation process for truck harmonization and for adding routes allowing truck weights up to 129,000 pounds. The study reviewed various truck configurations, and DOT conducted an engineering analysis on bridges and pavement that may be impacted along the routes. The analysis and report from the 2016 truck harmonization study indicated some bridges in the state would deteriorate faster under increased load weights at 129,000 pounds. Since the development of the 129,000-pound roadway network, the state uses an external bridge formula, which considers the axles from the front axle of the truck configuration under the hauling unit to the rear axle of the truck configuration. The formula determines how much weight a truck can haul depending on the number of axles on the truck configuration and the distance between the axles. Load weights on the interstate highways must comply with the federal bridge formula.

According to the testimony, a road train pilot program would consider new truck configurations. The program would need to determine the axle configurations, the gross vehicle weight, the number of trailers, and the length to determine and evaluate adequately the potential impacts of a road train on existing bridge and pavement infrastructure. When considering an increase in gross vehicle weight to 200,000 pounds, which is proportionally divided among the axles of the truck, the primary issue is individual bridge analysis based on the truck configuration. Once the necessary information is determined, a bridge impact can be determined and applied to all bridges along a proposed pilot program corridor. According to the testimony, longer trucks and clusters of axles are preferable when considering impacts to bridges and pavement.

Department of Transportation and Highway Patrol

Testimony from a representative of DOT noted divisible loads consist of agricultural products, water, and oil that easily can be broken down and separated when necessary to meet weight restrictions on roadways. Nondivisible loads, which include items such as transformers and substation generators, may exceed the weight and length restrictions of 400,000 pounds and 110 feet in length, but need to be able to be moved on state roadways. According to the testimony, nondivisible loads exceeding the weight limits for the specific road must get approval from the district engineer before being moved in the state.

In 2019, the Legislative Assembly established a 129,000-pound limited transportation network and a mechanism for commercial entities and individuals to make requests to add additional state roadways to the 129,000-pound network. Federal approval was required for interstate roads in the state to be included in the network. Businesses may apply to add roadways to the 129,000-pound network. Upon receipt of an application, DOT does an analysis of the roadway, holds public input meetings, and receives a recommendation from an advisory committee. The director of DOT makes the final determination regarding whether the roadway will be added to the 129,000-pound network. In 2019, North Dakota issued 113 annual permits, 608 monthly permits, and 161 single-day permits related to the 129,000-pound network.

The testimony expressed the following issues with a road train pilot program--a state or federal government agency may not waive statutes or federal regulations related to truck length or weight without an act of Congress, there is not a mechanism in place to test or license for truck combinations longer than the national standard, and the impact of heavier truck loads to the pavement and the bridges must be evaluated to determine the necessary vehicle configurations. It was noted allowing longer and heavier trucks on state highways not connected to the National Network is a possibility, but most of those roadways are two-lane highways with no shoulders, which could create safety concerns. Testimony

from a representative of the Highway Patrol was in agreement with the issues raised by DOT concerning the National Network and the lack of a mechanism for training, testing, and licensing for vehicles longer than the national standard.

Other Testimony

Testimony from a representative of the Department of Agriculture was supportive of the study and a road train pilot program. Testimony from a representative of the Industrial Commission indicated commission members are interested in further research on the topics of road trains and a pilot program.

The committee received testimony in opposition to allowing road trains in North Dakota from representatives of the North Dakota Association of Counties, AAA-The Auto Club Group, the Morton County Highway Department, the Richland County Sheriff's Office, the McKenzie County Sheriff's Office, the Pierce County Commissioners, the Pembina County Board of Commissioners, Wahpeton City Councilmen, Slope County Road Foremen, and the Owner-Operator Independent Drivers Association. The testimony reflected concerns that allowing road trains in the state would cause damage to road and bridge infrastructure that was not designed to accommodate heavier trucks, longer and heavier trucks would create safety issues on state roadways, and there is a lack of state and federal rules in place to properly oversee road train use in the state.

Committee Considerations

The committee indicated there are issues that need to be addressed regarding the logistics of moving freight to a loading point if road trains are allowed only on certain highways or roads in the state, and a pilot program, if implemented, may need to include certain exceptions or waivers to make the program feasible. The committee concluded a pilot program on the National Network is not feasible because without changes at the federal level, a pilot program only could be operated on state and local roadways. The committee also concluded more research is needed regarding the economic impact of permitting road train operations in the state, impacts to existing infrastructure, and the cost associated with implementing a program. Until research and data are available, there is no mathematical or theoretical basis on which to model a pilot program or to determine the impact a pilot program would have on road infrastructure. Funding is needed to conduct thorough research. The committee indicated DOT must be involved in obtaining required approvals if a pilot program is pursued in the state.

The committee considered a resolution draft urging congress to amend cargo carrying truck length and weight restrictions on state highways and interstate highways that are a part of the National Network to allow North Dakota to conduct a road train pilot program, and to permanently amend the restrictions to allow road trains on the National Network highways and interstate highways if the pilot program is successful. The resolution received general support from the committee. The committee did not receive any testimony in opposition to the resolution draft.

The committee also considered a bill draft relating to the governor's authority to exceed size and weight limitations on motor vehicles for the operation of road trains. The bill draft would allow the governor to make certain changes and allow road trains meeting certain criteria to be operated in the state. The committee members indicated the bill does not mandate road trains be operated in the state, but allows for the possibility of road trains in the future. Several committee members indicated support for the bill draft but are seeking more information before supporting the enactment of the bill into law. Several committee members opposed the bill draft because it delegated authority over road trains to the governor.

Recommendations

The committee recommends a concurrent resolution draft [21.3005.02000] urging Congress to temporarily amend cargo carrying truck length and weight restrictions on state highways and interstates that are a part of the National Network to allow North Dakota and surrounding states to conduct a road train pilot program and to permanently amend the restrictions to allow road trains on the National Network highways and interstates if the pilot program is successful.

The committee recommends a bill draft [21.0175.01000] granting the governor the authority to exceed size and weight limitations on motor vehicles for the operation of road trains.

AGRICULTURAL ISSUES

Section 1 of House Bill No. 1467 (2019) directed a study of agricultural issues in the state, including grain buyers, roving grain buyers, grain brokers, and grain handling facilities under Title 60.

Legislative History

House Bill No. 1467, as introduced, would have removed warehouse companies engaged in the marketing, storage, or handling of agricultural products from the general jurisdiction of the Public Service Commission (PSC). The bill also would have transferred the authority over grain buyers, warehousing, deposits, and warehousemen from the PSC to the Agriculture Commissioner. The Senate amended the bill to provide for the study. Testimony on House Bill No. 1467 indicated concerns about the number of grain inspectors in the state being reduced from 10 to 1.75 full-time equivalent

positions. As a result of the reduction, regulation and oversight of grain was reduced and quality control issues and other detrimental effects arose. Testimony indicated although self-insured indemnity funds paid by farmers provide protection for producers in the state, better protection and oversight by the state for farmers is needed. Of the 373 grain warehouses licensed in North Dakota, 264 are licensed by the state and 109 warehouses are licensed by the United States Department of Agriculture. There also are 99 licensed roving grain buyers in the state. Testimony indicated interest in limiting a roving grain buyer's annual grain purchases and requiring a roving grain buyer to provide proof of adequate bonding, a verified line of credit from a financial institution, and adequate assets. Testimony also indicated a need to study grain brokers because of the lack of state oversight, regulation, and bonding of grain brokers.

State Warehousing and Deposits Law

Until the transfer of authority in Senate Bill No. 2009 (2019), grain licensing and inspection had been a part of the PSC's jurisdiction for over 127 years. Public warehousemen and grain buyers are required to file a bond conditioned for the faithful performance of duties and compliance with the law and which is in a sum not less than \$5,000. A grain warehouse may elect to be licensed by federal or state authorities. The federal government regulates grain warehouses under the United States Warehouse Act, which is administered by the United States Department of Agriculture. Licensing under the Act is voluntary. A grain warehouse licensed under the Act must meet certain requirements for sound warehouse operations including being bonded. The bond for a state-licensed facility is based on the physical capacity of the facility. A federally licensed entity must have a grain buyer's license and a bond based on volume. A grain buyer's bond is determined by the 3-year rolling average of grain purchased annually in the state. The bond of a grain buyer may not exceed \$2 million.

Senate Bill No. 2009 transferred all regulatory authority over Title 60, including grain and seed warehouses, grain buyers, insolvent grain warehousemen, uniform accounting for public elevators and warehouses, public warehouses on railroad rights of way, and credit-sale contract indemnity, from the PSC to the Agriculture Commissioner. The bill required applicants for a public warehouse or grain buyer license to provide financial records to the Agriculture Commissioner, upon request, as a condition of licensure and to require the Agriculture Commissioner to maintain the confidentiality of the records. The bill also changed the amounts of an annual or biennial license fee for a public warehouse and the bond amount required by an applicant for a grain buyer license.

North Dakota Century Code Title 60

Chapter 60-01 provides the general provisions regarding deposits which apply to Title 60, including definitions. Chapter 60-02 regulates grain and seed warehouses. Senate Bill No. 2009 added a provision to require any public warehouse that desires to obtain a license to conduct business in the state, to provide financial records to the Agriculture Commissioner upon request, authorize the commissioner to obtain financial records regarding the applicant from outside sources, and information obtained by the commissioner is confidential.

Chapter 60-02.1 provides for provisions regarding grain buyers. Senate Bill No. 2009 required any grain buyer that desires to obtain a license to conduct business in the state to provide financial records to the Agriculture Commissioner upon request and authorize the commissioner to obtain financial records regarding the applicant from outside sources. Chapter 60-04 addresses insolvent grain warehousemen, Chapter 60-05 addresses uniform accounting for public elevators and warehouses, Chapter 60-06 addresses public warehouses on railroad rights of way, and Chapter 60-10 provides for credit-sale contract indemnity.

Testimony

North Dakota Department of Agriculture

According to testimony from a representative of the Department of Agriculture, some of the most frequent infractions of the requirements under Title 60 are the failure of producers to convert scale tickets in the time frame required by law. Upon the lapse of the time frame, the elevator gets punished if the producer threatens to take business elsewhere unless the elevator agrees to convert the ticket to a contract. The testimony indicated producers need to be held responsible for their actions or inaction. Another noted common infraction is the failure to get signatures on contracts. The law requires accountability of all parties involved in grain transactions. The testimony further indicated a need to create a custodial account for the money to be placed in after a grain sale so the money would not be accessible for use by the elevator or buyer. In a bankruptcy proceeding, a financial institution would be able to capture the funds held in a custodial account. According to the testimony, the state also needs to ensure there are proper tools and oversight in place for roving grain buyers and brokers to conduct business in a sound and responsible manner. The department does not have the ability to force buyers to go through the licensing process or issue fines for violations of the law. Adding the ability to issue fines would provide the commissioner some authority in demanding buyers obtain a license to conduct business in the state and comply with the law.

The testimony included the following recommended statutory changes to Title 60:

- Simplify the number of grain buyer license types;

- Remove facility-based grain buyers;
- Add additional oversight over roving grain buyers and brokers;
- Return all licenses under the law to annual license periods;
- Simplify fees to be consistent across all license types;
- Base fees for each license on the value of grain rather than volume;
- Require license applicants to meet financial criteria and net worth standards to be eligible to obtain a license;
- Change required bonding amounts;
- Reduce the time frame allowed for scale ticket conversion to 30 days;
- Require producers that fail to convert scale tickets within the allowable time to lose trust fund and indemnity fund protection;
- Require money to be held in custodial accounts;
- Add the ability of the Agriculture Commissioner to fine for violations of the chapter; and
- Allow e-signatures to meet contract signing requirements.

The testimony indicated it also may be helpful to work with the insurance industry to develop a product that would allow farmers and producers to self-insure and receive coverage above and beyond bonds and the indemnity fund currently in place.

North Dakota Grain Dealers Association

Testimony from a representative of the North Dakota Grain Dealers Association was generally supportive of statutory changes to Title 60 suggested by the Department of Agriculture. The testimony was not supportive of the recommendation to require custodial accounts because it would not be feasible for many grain dealers. According to the testimony, requiring warehouses and elevators to have funds in a custodial account would be difficult. Because some businesses conduct \$100 million of grain transactions in a year, requiring a warehouse or elevator to hold millions of dollars in a custodial account may not be feasible.

The testimony indicated increasing the bonding levels for roving grain buyers would help reduce the number of problematic roving grain buyers. According to the testimony, the issue with some roving grain buyers is the producer makes a deal with the roving grain buyer and another individual is picking up the grain and delivering it to the elevator on behalf of the producer. The producer trusts the roving grain buyer to deliver a check to the producer once the grain has been delivered to the elevator, which may not occur. According to the testimony, allowing electronic signatures to satisfy signing requirements on credit-sale contracts would alleviate some issues regarding grain conversion. The testimony also recommended adding if a grain broker knew or should have known the transactions the broker is brokering are risky or questionable, the broker's bond may be captured if there is an insolvency, as brokers should have some accountability under the law for the transactions they broker.

Other Testimony

A representative of a law firm provided an overview of how financial institutions address bankruptcy and insolvency issues related to the grain industry and grain elevators. According to the information, once a sale of grain takes place, title of the grain passes to the buyer. When elevators receive grain by sale at a price to be determined at a later date, the grain belongs to the elevator. Current law is unclear as to who owns the grain when it is in an elevator. If the grain is the property of the elevator, the bank is allowed to finance the operations of the elevator based on the grain as collateral. It was suggested the law may need to be clarified regarding when grain belongs to an elevator and can be used as collateral for operating budgets, and when the grain remains the property of the producer.

Agricultural loans from banks include a real estate component, equipment financing and other capital expenditures, and annual operating and living expenses. Repayment of the loans depends on cashflow of a farming operation and cashflow comes from the sale of farm products. The loans are collateralized by the crops the producer grows as well as the equipment of the producer, and if necessary, the land of the producer. The bank relies on the proceeds of that year's crop to repay the operating loan. If crop proceeds are not realized by a producer because of an elevator insolvency, the producer does not have the cashflow to repay the operating loan and the producer may be forced to sell equipment or land to generate income to repay the operating loan. A bank may take legal action to force a liquidation and repayment of the operating loan in some circumstances.

Cashflow-based lending allows producers to borrow money based on their projected future cashflows. In cashflow lending, a bank grants a loan based on the producer's past and future cashflows. The producer does not have cashflow

and ability to repay the operating loan until receiving proceeds from the crop. If the cashflow is not sufficient, banks use collateral-based lending. Collateral-based lending is used when a borrower cannot show enough cashflow or cash assets to cover the debt but receives lending by putting up collateral in case of a default. A collateral-based loan or line of credit can be secured by inventory, accounts receivable, equipment, or other property owned by the borrower. A bank in an action to recover the possession of personal property may claim the immediate delivery of the property. A bank also may force a liquidation of assets through a real estate foreclosure.

North Dakota banks also provide operating capital to grain elevators. Elevator insolvencies can have a significant effect on a community if the community's producers already are struggling. According to the testimony, the credit-sale contract indemnity fund was created to protect grain producers that sell grain via credit-sale contracts to a grain warehouse. The fund ensures producers are able to recover on a contract if the warehouse becomes insolvent. Most banks finance elevators based on the collateral position of the elevator and the value of the collateral. Banks try to determine the exact collateral of an elevator at a single moment in time to calculate operating loan amounts. Grain is the only collateral of the elevator available to cover the operating loan from the bank. During an insolvency, grain sold in an elevator's receivables is not covered under the credit-sale contract indemnity fund. When the grain is sold, the proceeds are kept by the elevator and the bank.

The committee received testimony from a roving grain buyer which generally supported the changes to Title 60 recommended by the Department of Agriculture and the North Dakota Grain Dealers Association.

Committee Considerations

Committee members voiced concern that the time to convert a scale ticket under the current law is too long. The committee members also voiced concern that grain delivered to an elevator under a warehouse receipt that has not been converted to a credit-sale contract should be available to pay the producers that sold the grain to the elevator in the event of an insolvency. Several committee members voiced support for increasing bonding levels in Title 60 but raised questions regarding the proper amounts and raising minimum bonding levels to a point that may restrict access to the market to a person looking to start a business in the grain industry.

The committee considered several versions of a bill draft relating to changes to Title 60 as recommended by the Department of Agriculture and the North Dakota Grain Dealers Association. The bill draft was a collaborative effort among the stakeholders and incorporated the suggested stakeholder changes. The bill draft would:

- Add a definition of "deferred-payment contract" to Chapter 60-02 regarding grain and seed warehouses and add "grain processors" under Chapter 60-02.1;
- Return all public warehouse licenses to annual licenses, change the licensing fee amounts, and alter the licensing criteria so the licenses and fees are based on the value of the grain held instead of the volume;
- Require warehouses to meet certain financial criteria and to submit financial documentation of net worth to be eligible to receive a license in the state;
- Require public warehouses to meet certain conditions related to criminal background checks, credit scores, and business knowledge to be licensed to do business in the state;
- Raise minimum bonding amounts for grain warehouses;
- Reduced the number of days a producer has to convert a scale ticket and require the producer to lose trust fund and credit-sale contract indemnity fund protection under the law for failure to convert a ticket within the designated time;
- Allow e-signatures to satisfy credit-sale contract signing requirements and required unsigned contracts to be considered unconverted scale tickets;
- Require warehousemen using deferred-payment contracts to offer producers bond protection;
- Amend provisions in Chapter 60-02.1 regarding grain buyers;
- Add definitions of "deferred-payment contracts," "grain broker," and "grain processor," remove "facility-based grain buyers," and amend the definition of "grain buyer" to include roving grain buyers, grain brokers, and grain processors;
- Impose licensing and bonding requirements for grain buyers, roving grain buyers, and grain brokers;
- Ensure all grain buyer licenses are annual licenses, change the licensing fee amounts, and alter the licensing criteria so the licensing and fees are based on the value of the grain held;

- Require grain buyers to meet certain financial criteria and net worth and submit financial documentation to be eligible to receive a license in the state;
- Raise minimum bonding amounts for grain buyers;
- Allow e-signatures to satisfy credit-sale contract signing requirements and require holders of unsigned contracts be ineligible for the protection provided by the indemnity fund;
- Make grain brokers liable if they take part in questionable grain transactions resulting in insolvency; and
- Repeal several sections dealing with facility-based grain buyers.

Representatives of the Department of Agriculture and the North Dakota Grain Dealers Association testified in support of the bill draft. The committee received no testimony in opposition of the bill draft.

Recommendation

The committee recommends a bill draft [21.0032.03000] relating to changes to Title 60 regarding grain buyer, grain broker, grain processor, and warehousemen licensing and bonds.

REPORTS

Transportation Network Companies

The committee received reports from DOT regarding information collected from transportation network companies during each biennium. The reports list all political subdivisions in the state where transportation network companies, such as Uber and Lyft, operate, the number of accidents reported, and the number of traffic violations that were reported. The Department of Transportation is required to report this information to the Legislative Management each biennium. The committee was informed the reports are of little value. The committee considered a bill draft to eliminate the reporting requirements. The committee received no testimony in opposition to the bill draft.

Recommendation

The committee recommends a bill draft [21.0177.01000] to repeal transportation network company reporting requirements.

Advisory Committee on Sustainable Agriculture

The committee received a report from the Advisory Committee on Sustainable Agriculture on the status of the committee's activities. The committee was established to accomplish a number of tasks, including examine the concept of sustainability with respect to conventional farming practices and modern technology-based production practices, and explore metric evaluations to measure the attainment, maintenance, and certification of sustainability. The committee last met in 2010.

Federal Environmental Law Impact Review Committee

The committee received a biennial report from the Federal Environmental Law Impact Review Committee. The committee's funding is being used on legal issues surrounding the Waters of the United States and for studies on threatened and endangered species and habitat.

State Board of Agricultural Research and Education

The committee received a report from the State Board of Agricultural Research and Education on its annual evaluation of research activities and expenditures. Final ranking of programmatic initiatives, capital improvement projects, and one-time expenditures was completed in June 2020. The State Board of Agricultural Research and Education is undertaking initiatives in big data and livestock. The big data initiative is a top-ranked priority to develop the capability to collect, manage, and analyze large data sets. The livestock initiative is focusing on the need for livestock production expansion in the state.

Department of Environmental Quality

The committee received a report from DEQ on all animal feeding operation permit applications approved or denied by the department, including the relevant county and township zoning and setback determinations, and related issues during the 1st full year of the 2019-21 biennium. Permit applications were received for 13 existing operations and 3 new operations. Of the 16 applications, 6 were issued, 9 are pending, and 1 application was withdrawn.

Public Transportation Services

The committee received a report from DOT regarding its study of public transportation services within the state. In 2018, there were 2,695,712 riders of public transportation services within the state. Approximately 76 percent of the ridership occurred in urban areas of the state, and 24 percent occurred in rural areas. The report showed 39 percent of the ridership population come from urban areas and 61 percent come from rural areas.