

House Appropriations – Government Operations Division
Senate Bill 2011 – Highway Patrol
Representative Don Vigesaa, Chair
March 24, 2021

The highway patrol's final budget hearing was held in front of House Appropriation's Government Operations Division on March 17, 2021. Several questions were asked during the hearing, and responses to those questions are below along with additional information related to excessive speeds, the law enforcement training academy, and equity funding.

HEARING TOPICS

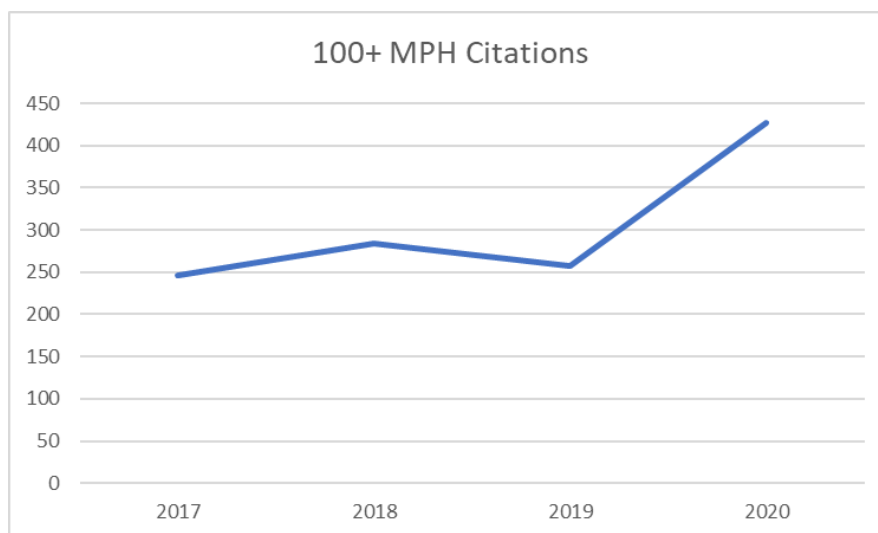
Speed Enforcement

During the last hearing, the North Dakota Highway Patrol (NDHP) discussed a noticeable increase in high speeds. Several examples are below:

- On July 19, 2020, troopers stopped the same vehicle and driver four times within seven hours. The four speeds were 110 mph in a 75 zone, 104 mph in a 65 zone, 75 mph in a 65 zone, and 88 mph in a 65 zone.
- On September 22, 2020, a trooper stopped a vehicle with four occupants for going 113 mph in a 75 zone on I94. One of the occupants was an infant.
- On September 24, 2020, a trooper stopped a 17-year-old female for going 103 mph in a 65 zone on her way to school in Jamestown.
- On October 17, 2020, a trooper stopped a delivery van for going 107 mph in a 70 zone on US 2 west of Emerado. The driver said he was speeding because he was almost out of gas.
- On November 30, 2020, a trooper stopped a vehicle for going 110 mph in a 50 zone on Expressway in Bismarck. The driver was on his way home to get ready for work.
- On December 30, 2020, a trooper stopped a vehicle for going 99 mph in a 65 zone. It was the driver's ninth speeding citation since February of 2018, and the driver's license was suspended due to the accumulation of points.
- On March 16, 2021, a trooper stopped a vehicle for going 134 mph in a 75 zone on I94 through Dickinson.
- On March 21, 2021, a trooper stopped a vehicle for going 146 mph in a 70 zone on US Highway 2 east of Williston. The individual said he was on his way home and was "just screwing around." He was going over twice the legal speed limit, and the fine was \$380.

From 2017 through 2020, the number of speeding citations issued by the NDHP increased by 46% (from 26,758 to 39,077 citations), and the number of citations for 100+ mph increased by 74% (from 246 to 427 violations). Approximately 1 out of every 90 speeding citations is for 100+ mph.

Of the 427 citations issued in 2020, 45 of them were for driving 111-120 mph, and 15 were for driving over 120 mph. Nearly ¼ of all fatality crashes are related to excessive speed or driving too fast for conditions.



North Dakota Law Enforcement Training Academy

The response below is from Todd Mitzel, principal architect at ICON, related to the cost savings to build half of the planned dorm room space for a new training academy.

Our approach on this would be to eliminate a wing of the building, and not an upper floor. More cost savings would be realized doing this, and less wasteful construction would be needed when adding these rooms in the future (i.e, tear off the entire roof, just to reroof it again when the 2nd floor is added). The breakdown is as follows:

Eliminate 12,146 SF west wing of the proposed addition @ \$260/sf = \$3,157,960

Eliminate the bond/insurance at 1.75% = \$55,264

Eliminate 5% contingency = \$157,898

Eliminate Fixtures, Furniture and Equipment, and Telephone/IT = \$250,000

Eliminate Design Fees (including FFE design) = \$289,690

Eliminate Reimbursable expenses = \$21,575

Eliminate Owner Contingency @ 10% = \$337,112

Total savings for elimination of 12,146 SF West wing = \$4,269,499

The cost estimate of option 1 (a new building) was \$27,100,000 so constructing only one of two planned dorm room wings would result in an updated cost of \$22,830,501.

- Under this plan, the number of beds would be 54 instead of 102.
- As a comparison, the current training facility has 44 beds.

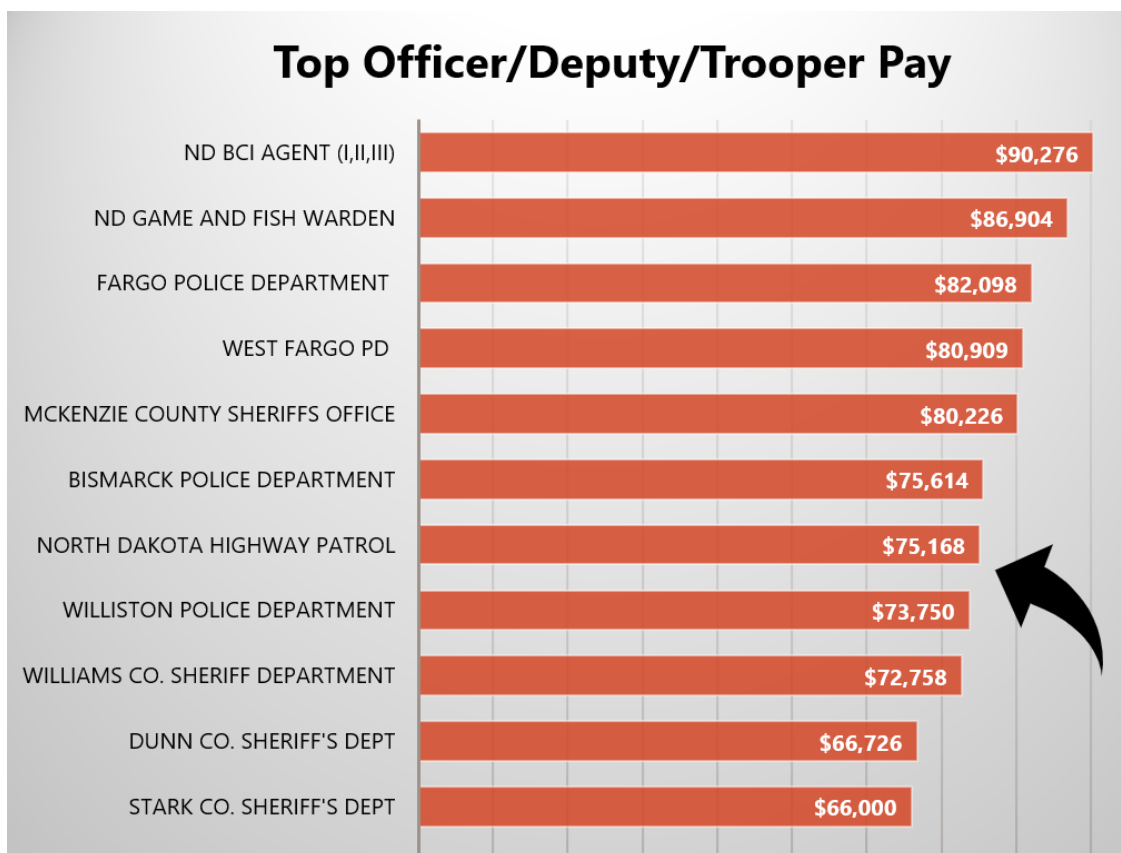
Equity Pay

The NDHP prioritized equity pay as third on the list of optional requests right after costs to continue and restoring 22 sworn officer positions. Equity is such a high priority because the NDHP is trying to recruit qualified officers to fill vacancies during a challenging time when interest in the law enforcement profession appears to be waning.

As the second largest law enforcement agency in North Dakota (159 authorized sworn officer positions compared to the Fargo Police Department's 186), the NDHP must fill an average of seven vacancies each year. This continual hiring cycle puts our agency in competition with other law enforcement agencies for the highest quality candidates to fill roles with extremely high standards and expectations.

Several factors impact recruitment for the NDHP including post locations all over the state, but pay is a primary factor. A trooper working for the NDHP will not reach top pay until the officer has completed 10 years of service.

If the requested equity amount of \$1.53 million was authorized, it would move the NDHP's top pay from 7th place to around 5th place among law enforcement agencies in North Dakota (including state and local agencies and those in the east and west). Half of that amount (\$766,000) would move the NDHP up one slot to 6th place.



COMMITTEE MEMBER QUESTIONS

Representative Mock

What percentage of permits issued that are related to the oil industry?

- According to the states in the Western Association of State Highway Transportation Officials, oilfield permit numbers were down approximately 30% excluding Wyoming. These states include Alaska, Montana, Texas, Oklahoma, and New Mexico.

Does rail and pipeline impact the number of permits being issued?

- Undoubtedly, pipelines do have an impact on the number of trucks operating on our roadways. However, these trucks would only need a permit in North Dakota if they were to travel on the interstate system over 80,000 pounds with more than five axles.

Have we visited with the motor carrier industry to get their insight on what is impacting the lower number of permits being purchased?

- According to the North Dakota Motor Carriers Association, several of their western members (oilfield-related) have discontinued membership and moved out of state. The NDHP Permit Office observed this reduction as well.
- According to one trucking company in North Dakota, they feel that the industry is moving slowly because they are anticipating potential changes with President Biden's administration.
- North Dakota put in three wind power farms in 2020 which generated the issuance of several permits. Absent those wind power farms, the overall routable permit numbers would have been even less.
- In 2019, the NDHP adjusted the process of obtaining an annual trip permit. Annual trip permits are now valid for 365 days instead of expiring in December of each year. This new process results in fewer single trip permits being purchased each year, decreasing the overall service fees.

How much funding do we need to keep in the permit fund reserves for ongoing system maintenance?

- The permit fund would need to generate \$71,300 per month (\$855,600/year) to cover known expenses if the 5% reprioritization of special funds is authorized. These expenses include software maintenance in addition to salaries for permit staff and field administrative assistants.
- Based on historical averages, the permit fund generates approximately \$108,000 per month (\$1,296,000/year) in revenue, and the projected ending balance of the fund this biennium is \$7.9 million.

What is the minimum number of permits that need to be issued each year to sustain the debt service level on the LETA loan?

- If a construction loan required \$32,000 payments each month from the permit fund, then 38,400 routable permits would have to be processed annually.
- The number of routable permits needed to cover expenses of \$855,600 per year is 85,560. This amount in addition to the loan amount of 38,400 would require a total of 123,960 routable permits each year.
- Currently, 10 out of 42 permit types charge an additional \$10 fee for routing the load (i.e., the routing software identifies the best route to avoid any width, height, or weight issues). The most common permit types are oversize, over dimensional, special mobile equipment, and workover rigs.
- 158,950 permits were issued in 2019 with the additional \$10 fee. In 2020, that quantity dropped to 118,681 permits. Therefore, revenues decreased from \$1.59 million to \$1.18 million, and the 2020 quantity would not cover additional loan payments of \$32,000/month.

How much money could the state get by surplusizing the old camera systems?

- Currently, our replaced mobile video systems are sent to ND surplus property and are being sold to county/municipal law enforcement agencies for \$50 - \$100 per complete system. This is a low return to the state, but mobile cameras are a beneficial addition to local law enforcement agencies who serve our citizens.

How many agencies use the CAD system, and how does DES determine the CAD user fees for each agency?

- Currently 25 sheriff's offices, the NDHP, North Dakota Game and Fish, and approximately 13 police departments and other miscellaneous law enforcement agencies use the mobile CAD (computer-aided dispatch) product - 40 agencies total. Also, a few non-law enforcement agencies are using CAD. This quantity is expected to expand when the updated CAD is put into use this summer.
- The NDHP wouldn't pay a "user fee" to DES/State Radio to use the mobile (in-vehicle) portion of CAD, but rather would pay a "licensing fee." The new version of CAD uses a concurrent licensing structure. DES/State Radio would charge the NDHP for a portion of the total number of licenses needed based on the NDHP's average number of users each day.
- The \$59,000 budget request was determined by the projected percentage of NDHP mobile usage compared to the total mobile usage of the CAD system. Both the total number of concurrent licenses and the percentage attributed to the NDHP can be adjusted as needed based on actual usage rates after the system is implemented.

Representative Kempenich

What are the specifics of the hard body armor 5-year warranty?

- The National Institute of Justice (NIJ) develops minimum standards for law enforcement body armor in the United States. Compliance with these standards is required before a manufacturer can sell a specific product.
- The NDHP's current hard armor is from Protech® Tactical with a manufacturing date of December 2016, an issue date of January 2017, and a 5-year warranty period. The warranty states, "For a period of sixty (60) months from the date of purchase, Hard Armor Plate shall be warranted for ballistic performance in accordance with the P-BFS protocol as specified in NIJ STD-0101.06..."
 - Reference: protechtactical.com/t-warranty_info.aspx

How long does body armor last?

- Soft and hard body armor is issued to all state troopers. Officers are required to wear their soft body armor while on field patrol, and officers may wear their hard body armor at their discretion.
- Even if body armor is not worn every day, it will eventually degrade. Body armor is manufactured with an expiration date. While expired vests may still offer considerable protection, they aren't nearly as reliable or consistent as a vest that is not expired.
- The bonding that holds the ballistic resistant material is only guaranteed and warranted by the manufacturer for five years. After that time the manufacturer makes no claim that the panels maintain the required ballistic protection. The panels are constructed by bonding various materials together (i.e., metal, ceramic, Kevlar and similar fibers, and various other composites), and the bonding agent/process is the limiting factor for lifespan.

Does hard body armor actually expire?

- Body armor and other similar safety products have a shelf life similar to food and medicine. This is because the chemical compounds that make up a vest, such as industrial fiber or Kevlar, degrade over time. A number of other factors can speed up the degradation process.

What is the risk of using an expired vest?

- Using an old, worn-out vest could lead to serious bodily injury by a bullet. At worst, such bodily harm could result in death.

- Because of this potential risk to officers, we believe it's essential to abide by the manufacturer's recommendations and warranty period. State troopers have been involved in high risk incidents involving firearms even here in North Dakota.

Is there a process in which armor can be inspected to help extend the five years?

- Based on information from the manufacturers that we contacted, to include our current vendor, there is no inspection process that could extend the life of armor.

Are there companies out there that have a life cycle more than five years?

- Recently there have been hard armor companies offering NIJ-approved armor with a 15-year ballistic warranty. The purchase price would be higher, but we don't have an exact cost estimate from a vendor at this time. However, we would research this as an option if our replacement request is approved.

(From Rep. Mock) What are the financial implications if we don't replace the hard body armor?

- The response below is from Tag Anderson, Director of Risk Management:

"From a third-party liability perspective, I do not think using the body armor beyond the manufacturer's warranty period creates much risk of liability standing alone. Of course, using the body armor indefinitely, when degradation may be obvious and clear, may present an issue at some point.

An employee's ability to get around the exclusivity provisions of workers compensation is quite limited. See NDCC 65-01-01.1. In addition, the provision of law enforcement services or the failure to provide such services are barred by the public duty doctrine. See NDCC 32-12.2-02(3)(f). So, the mere fact that the product is no longer under warranty, is not enough to give rise to much risk of third-party liability.

But I think it is very important to acknowledge that workers compensation exposures are liability risks faced by the State as we are a monopolistic state, and the State administers a large deductible program with WSI. Serious bodily injury or death to a state employee resulting from a defective or outdated product is a substantial risk to the Risk Management Workers Compensation Fund. Using a product beyond a warranty period for a short period of time is fine, but ignoring evidence of potential degradation is, of course, not acceptable. Risk Management's position is that you have an obligation to replace equipment when continued use poses a reasonable possibility of harm, which a warranty period is ordinarily a clear indication."

(From Rep. Meier) What happens to our body armor after it's replaced?

- Our current body armor is sent to a private company for destruction. We used to send expired body armor to a vendor for recycling, but the shipping cost became so high that it is cheaper to dispose of it rather than recycle.

Representative Meier

How many law enforcement agencies in North Dakota are using in-car and body worn cameras?

- We surveyed most of the larger agencies around the state with the results below:
 - Agencies researching or purchasing cameras:
 - Burleigh County Sheriff's Office (researching for possible purchase)
 - Mandan Police Department (researching for possible purchase)
 - Fargo Police Department (purchasing with summer 2021 rollout)
 - Agencies with cameras:
 - Valley City Police Department
 - Barnes County Sheriff's Office
 - Cass County Sheriff's Office
 - Grand Forks Police Department
 - Grand Forks County Sheriff's Office
 - University of North Dakota Police Department
 - Devils Lake Police Department
 - Williston Police Department (partially equipped)
 - Williams County Sheriff's Office (partially equipped)
 - Watford City Police Department
 - McKenzie County Sheriff's Office
 - Minot Police Department
 - Ward County Sheriff's Office

Representative Bellew

What is the number of traffic enforcement troopers in the state who are not assigned to any special programs?

- There are currently 91 troopers statewide with a primary assignment of traffic enforcement. This number does not include supervisors who dedicate time to traffic enforcement.