

GRASS ROOTS REPORT



MAY 2011

The Official Newsletter of the ND Township Officers Association

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2011 Legislative Session Wrap Up *by Ken Yantes*

The 62nd Legislative Session completed its work for 2011 at 5:37 p.m. on April 28th.

Your President, Larry Syverson, and Executive Secretary, Ken Yantes, served as your full time lobbyists on a daily basis throughout this session.

Bills were introduced to implement the resolutions passed at our annual meeting. The following is a report on how they fared.

The first resolution called for legislation that would limit township liability on unimproved section lines and improve the recreational immunity laws for landowners.

SB2161 would have addressed the unimproved section line liability. We asked Senator Gary Lee to introduce the bill which passed the Senate by a 43 to 4 margin. It went to the House of Representatives and was passed and amended by a 87-4 margin.

The Senate disagreed with the House amendments and the bill went to a conference committee where many more amendments were added and the bill ultimately was killed on a House vote of 44 yeas and 42 nays. (A 48 vote majority was required to pass).

The second part of this resolution on improving the recreational immunity laws required the introduction of **SB2295**. Senator Curtis Olafson introduced and defended this

bill and it passed the House by a 92 to 2 margin and the Senate by a 35 to 10 margin. The Governor signed the bill into law on April 26, 2011.

Resolution # 2 called for a simplification of the law that required filing of a form to report our transportation funds with the Tax Commissioner's office.

Senator Gerald Uglem introduced **SB2203** which allowed townships to send to the Tax Department the same financial forms that we are already sending to the county auditor.

We still have to send them a form but don't have to use the complicated form required of us the last two years. This bill passed the House of Representatives by a 93-0 margin and the Senate by a 45-0 margin and was signed by the Governor on April 27, 2011.

Resolution # 3 asked that agricultural land contained in a city annexation of what used to be township controlled area have the special assessments deferred until the land was actually changed to another use.

Representative Dwight Wrangham introduced **HB 1322** which allows the courts to review assessments before the assessments can be collected if there is a dispute on the action starting after July 31, 2011.

This bill passed the House of Representatives by a 74 to 19 margin and the Senate by a 33 to 14 margin.

The Governor signed the bill on April 19, 2011.

Resolution # 4 asked for clarification of who and how a township officer could contract to provide needed services with his township. Senator Curtis Olafson introduced **SB2219** to correct the problem.

Vice President Roger Olafson provided testimony on **SB2219** that proved the need to update this part of our Century Code. Senator Curtis Olafson provided extensive wording which did update much of that section of our law and it passed the Senate by a 43-3 margin and the House of Representatives by a 92-0 margin. The bill was signed into law by the Governor on April 26, 2011.

Resolution #5 asked for a pay raise for supervisors, clerks and treasurers if passed at the township annual meeting on the third Tuesday in March.

The resolution specifically asked for a raise from a cap of \$20 per day up to \$60 per day and for an annual cap of \$1000 per year of up to a annual maximum of \$2000 per year.

Representative Glen Froseth introduced **HB1259** which asked for the compensation rates to be exactly as our resolution called for.

HB1259 passed the House of Representatives by a 92 to 1 margin and the Senate by a 47 to 0 margin

Cont'd on page 5

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President's Comments



Hello Township Officers!

I hope this spring finds your township in good shape for both road conditions and financially. Unfortunately, I know for many, this is not the case. This was one of those winters that even its leaving brought great challenges. Roads and culverts have washed out and potholes have filled to the point of meeting the next one, forming lakes, and covering the roads that pass between them.

A few weeks ago we sent the Chairman of each township a notice about the snow disaster grants that were available from **SB2369**. Hopefully, this funding will help some of the townships that had much higher than normal snow expenses.

We were given very little notice that sending this information would fall on NDTOA because ND Disaster Emergency Services would not do the mailing this time as they had in the past.

By the time we got the information from NDDDES on April 28 and we could get it printed and mailed, the notice did not leave much time for the May 9th deadline for applications.

It was very frustrating watching this "emergency" funding bill go nowhere until the final hours of the legislative session. The bill laid on somebody's desk longer than the time the law would finally give to apply for the grant.

It was like an ambulance with its lights and sirens running waiting at a train crossing—some emergency. The only thing timely about this funding is that the State must make the payments by the 30th of June.

This type of emergency funding works better for the counties and cities that have the required information in their computer systems already. They got the emailed notification from NDDDES on April 28 and within a few hours could have the figures ready for the application.

Another problem with the grants is that townships apply through their county. Some counties apparently did not bother with applying since they would not meet

the 200% threshold for county snow expenses. Where does this leave the townships that were very hard hit with snow expenses?

You may have read that Darleen Yantes has relinquished the roll of maintaining our mailing list. She has worked very hard to provide NDTOA with a complete and accurate mailing list. It was a very difficult time for both of us when she informed me that she would no longer be able to continue that task.

We will miss her contribution to our organization but she needs to put all of her energy into dealing with her health challenges. She may not be working for NDTOA anymore but she is ever in our thoughts and prayers.

I was greatly relieved when Barb Knutson volunteered to take on the mailing list job in addition to her other duties and that Darleen would train her in the methods used to verify or correct the addresses for the list. This is a big job, as often the addresses we get from the counties are not always accurate.

Please be sure that the addresses on your form is the **correct mailing address, right down to the zip code and +4**. If the address is not just right, someone's *Grassroots Report* will be returned to us and that costs NDTOA postage both ways.

We are preparing the ND Township Officers Handbook for a complete reprinting to include the changes to the laws from the 62nd Legislative Assembly. We hope to have the new handbook available much earlier than it has been in the past, possibly as early as the annual meeting in December.

I wish you a good summer; let's keep it safe out there. Thank you for being township officers and thank you for doing your part for Grassroots Government.

Are your newly elected township officers receiving this newsletter?

Please let us know when to add and/or delete a name from our mailing list.

Send your information to: **BARB KNUTSON**

2600 236th St. NE McKenzie, ND 58572 ♦ 710-673-3198 ♦ barbk@ndtoa.com



Executive Secretary's Corner by Ken Yantes

Township Road Funding for 2011-2012

The township funding from the state during the next two years will be more than we have ever received.

NDTOA President, Larry Syver-son, and Executive Secretary, Ken Yantes, worked with legislative leadership and legislative assembly to secure desperately needed town-ship road repair dollars.

However, the excessive road damages far exceed the funding that will be provided.

The last bi-annual period, 2009-2010, township state funding through the Highway Users Fund amounted to \$104 per mile of township claimed road.

The calculations for the next two years indicate that funding for 2011 will be about \$257 per mile and about \$225 per mile for 2012.

While these figures don't make up for the disaster damage that Mother

Nature has bestowed upon township road systems, they do include one-time payments from the State Treasury in 2011 of \$124 per mile and in 2012 it will be \$88 per mile.

These payments were added to the township's 2.7% share of the Highway Users Fund in light of the unusual damage this years disaster has caused to the township road systems.

The first one-time payment of \$124 per mile should be in the townships hands by June of 2011.

The balance should be in quarterly pay-ments through-out the rest of the bi-annual

period. Four years ago our "One Cent Gas Tax Funding" brought in \$70 per mile. The 2011 funding should bring in \$257 per mile which should have been a healthy increase.

Between inflated costs of road repairs and back-to-back disaster declarations, the funding increase won't make ends meet. We'll have to endeavor to persevere and hope for less snow and rainfall in the future.

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Darleen Yantes Passes the Membership Torch

For the last four years Darleen has kept track of the just under 6,000 township officers that are members of the NDTOA.

A recent illness has necessitated her relinquishing this important organizational task. If you are getting this newsletter it means that she has accomplished this monumental task with success.

When Darleen took over the mailing list their were over 700 of our members not receiving our newsletter.

In the recent past that number has been cut to around 30. Our printer indicated that our list was one of the

best kept lists of all of her customers.

Darleen has turned the list over to our present Treasurer Barb Knutson. She will continue her duties as treasurer and take on the additional work of keeper of our mailing list. We wish her the best into the future.

To those who have future address changes and or office changes, please send the information to:

Barb Knutson
2600 236th St. NE
McKenzie, ND 58572
Phone: 710-673-3198
Email: barbk@ndtoa.com

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The Country Lawyer

by Thomas R. Moe, Attorney-at-Law



Greetings to all! Lots of rain and moisture these past few months, so our township roads have really taken a hit, plus, after all our snow removal expenses, there's not much funding available for extra graveling this year. Welcome to township government!

A sure sign of spring, however, is that the 2011 Legislature finally adjourned, and there's several new provisions relating to townships which are outlined elsewhere in this newsletter.

These new laws will be the subject of our bi-annual regional workshops in February of 2012, so it's not too early for township officers to begin planning for those educational meetings.

We've had several inquiries about new power lines being planned as well as other utilities. Townships should be aware of their traditional right of way widths of 33 feet either side of the center of section lines, as well as any additional set-back requirements which individual townships may have in place due to increased control via their zoning ordinances.

I had a question about "why the odd number of 33 feet" and I answered that 33 feet is the sum of two rods--a rod being 16.5 feet. Needless to say, I realized that what with increased use of GPS measuring devices, and more and more non-farming township officers out there, the history of the "rod" is perhaps getting lost!

So, from various points of research, here's the "scoop": The rod is a unit of length equal to 5.5 yards, 5.0292 meters, 16.5 feet, or 1/320 of a statute mile. A rod is the same length as a perch or a pole. In old English, the term lug or 'goad' is also used.

The goad is a traditional farming implement, used to spur or guide livestock, usually oxen, which are pulling a plough or a cart; used also to round up cattle. It is a type of a long stick with a pointed end, also known as the cattle prod. The length of the goad or rod (16.5 feet) is equal to the standardized length of the ox goad used for teams of eight oxen by medieval English ploughmen. Four rods equal one chain.

Fields were measured in acres, which were one chain (four rods) by one furlong. A furlong is a measure of distance equal to one-eighth of a mile, equivalent to 220 yards, 660 feet, 40 rods, or 10 chains. The furlong was "one plough's furrow long," and a furrow was the length a plough team was to be driven without resting. Therefore, a strip of land 1 rod wide and 1/2 mile long equals one acre; or, 2 rods wide by a quarter mile; or 4 rods wide (one chain) by an eighth of a mile (furlong).

The rod is still employed in certain specialized fields. In recreational canoeing, maps measure portages (overland paths where canoes must be carried) in rods; typical canoes are approximately one rod long. And of course, for our purposes, the rod was the pioneer's measuring method for roads and accompanying rights-of-way.

In Vermont, the default right-of-way width of state and town highways and trails is three rods; in those states west of the Mississippi, and especially those (i.e. North Dakota) that were the recipients of the benefits of the Homestead Act of 1863, 4 rods (66 feet) was used to describe and measure the section line right of way.

Enough history of surveying--suffice it to say that townships have a 66 foot wide strip per mile in which to carry on their statutory obligations regarding our 60,000+ miles of township roads in North Dakota!

I hope everyone has a safe summer and that we have no accidents on our township roads during this short, but busy season. Following are a few questions received in the office. TRM

Q: Who pays for the culverts under driveways or approaches which adjoin township roads?

Usually, the entity that constructed the approach or driveway is responsible for the culvert as well.

I do know of several townships that take care of driveway approaches in order to keep and maintain flows of water away from the road. Thus, the practice is probably on a case by case basis--there's nothing in the law which

would dictate which party is responsible.

Q. We had a non-resident who claimed he had a right to vote on the excess levy measure, because he is a landowner and a tax-payer. Are there different rules for excess levies votes?

A. No, only residents can vote on excess levy questions. But as an aside, if the township were to create a 'special assessment' district--say for example a paving project within a subdivision, then in that event all landowners can vote on that question, whether they are residents or not.

Q. What's the difference between closing a section line and closing a road? And who has the authority to do so--the township or the county?

A. Section lines are permanent easements given to the public for road purposes and are 66 feet wide (see discussion about 'rods' above). Those 'imaginary' lines are there, at each mile, whether there is a road constructed on it or not. Only the county commission can close this imaginary line and the easement ceases to exist and full land rights are returned to the adjacent landowners.

Townships have the sole authority to close the township roads which are constructed on these section lines, but after the road is closed, the imaginary line *still exists*. There is a process which must be followed in either case, with public notice, hearings, etc.

Q. Can a husband, wife, plus their son, all be on a township board at the same time?

A: Nothing in the law prohibits this, but obviously it is not a good practice, due to conflicts of interest and allegations of nepotism, etc. But, many of our townships have so few people left who are residents and actually living in the township, so my guess is that this situation is more prevalent than it used to be.

2011 Legislative Session Wrap Up cont'd from page 1

and was signed into law by the Governor on April 25, 2011.

Resolution # 6 asked for an increase from 4/10 of a cent to 6/10 of a cent of sales tax to go to the counties for road repairs. **HB1360** was introduced but failed on a 23 to 69 margin in the House of Representatives.

This bill would not have made much difference in township funding and when asked which bill we would like to see pass this one or one that would bring in \$12.4 million we decided for the \$12.4 million.

Resolution #7 was a resolution that asked for immediate assistance to go to the Devils Lake area affected by flooding. **SB2054** was introduced that would have helped the Devils Lake area but it failed in the Senate by a 9 to 37 margin when it was amended into **SB2020**, the water commission budget, which passed almost unanimously. This was a great victory for the citizens, residents and township officers of Ramsey and Benson Counties.

Resolution #8 asked for special help for the western oil producing counties. We helped lobby for the funding in **HB1012** which had \$142 million for them in addition to \$228.6 million in funding for the state highways in the western 17 counties.

This bill passed the House and Senate by huge margins and was signed into law by the Governor on April 18, 2011.

Resolution #9 asked for the authority to have mud and snow piles identified as obstructions in township rights of way and on township road surfaces.

Representative Dave Monson from Osnabrock introduced **HB1232** which was to include mud and snow piles as an obstruction in the NDCC but after researching this section of

code it was discovered that extensive rewriting was needed.

The first effort was rejected by the House Agricultural Committee by a 1 to 11 margin. Representative Monson and Senator Olafson worked diligently to update it further and were successful in securing a House of Representative passage by a 86 to 2 margin and a Senate vote of 29 to 18.

The Governor signed **HB1232** into law on April 25, 2011. This bill makes it illegal for anyone to place or cause to be placed any permanent obstruction within any section line or within any rights of way of a county or township highway unless permission is granted from the entity in control of the right of way. The law also includes any traffic safety hazard in the same area.

HB1232 also allows the township officers to send written notice to the person who caused the obstruction or traffic hazard instructing them to remove the obstruction if they know who did it. If it is not done as soon as practical the supervisors shall remove it and bill the person responsible for the placement of the obstruction and ultimately bill it to his taxes if not paid otherwise.

Township funding included in the Department of Transportation bill **HB1012** this session amounted to:

One-time funding found in Section 5 of the bill for non-oil producing counties was 20% of \$35 million or \$7 million to be sent to townships on a per mile of township road basis in June of 2011.

In addition section 6 of the same bill set aside 20% of \$25 million to be sent to townships on a per road mile basis but in quarterly distributions throughout the biennium from July of 2011 to June of 2013.

HB1012 received unanimous votes in the House of Representatives and Senate and was signed by the Gover-

nor on April 18, 2011.

SB2369 is a delayed bill that was put in by the leadership to address the use of disaster funding in our state. Section 2 of the bill sets aside \$9 million for emergency snow removal grants.

The formula for application for the funds call for reimbursement of 60% of the snow removal costs over 200% of your normal snow removal costs in the months of January 2011 through March of 2011.

Normal snow removal costs are calculated as an average of the expenses from January through March in the years of 2004 to 2008.

The original bill included the years of 2009 and 2010 in determining the average snowfall costs but we pointed out that they were declared disaster years due to excessive snowfalls and were then excluded.

The bill also states the grants must be distributed by June 30, 2011. **SB2369** passed the Senate by a 43-0 margin and the House of Representatives by a 94 to 0 margin and was signed by the Governor on April 27, 2011.

Section 3 of **SB2369** sets aside \$22 million for state disasters and flood mitigation efforts. ***This must be handled before June 30, 2011.***

Getting bills passed is important but getting bad ones killed is terribly important also.

In defensive efforts **HB1336** was introduced which called for the deleting of the century code that retained the Advisory Commission on Intergovernmental Relations.

Bill **HB1336** was introduced by the House of Representatives leadership and passed the House by a 58 to 36 margin. NDTOA has policy that calls for continuance of the existence of the ACIR.

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Legislative Session Wrap Up

cont'd from page 5

We lobbied for the defeat of this bill in the Senate and it was successful at a 5 to 41 margin. The bill was killed.

In other defensive action **HB 1449** was introduced that called for all political subdivisions to submit their annual budgets to the Director of the State Budget so they might be included in the states database.

This means another form for the township clerk to submit to a state agency. We lobbied against passage and were successful in gaining defeat of the bill by a 37 to 56 margin.

SB2294 is a bill that increased the authority of the State Board of Tax Equalization and increased the local assessor's recordkeeping responsibilities so the taxpayer can better understand why his tax bill is what it is.

It also gives the State Supervisor of Assessments increased authority if

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the laws are not being followed by tax assessors. This bill was monitored by the NDTOA but we could not take a stand due to lack of policy on this issue.

Local assessors should be aware these changes will affect them in

their responsibilities. This bill passed the Senate by a 47 to 0 margin and the House of Representatives by a 89 to 4 margin and was signed by the Governor on April 20, 2011.

Treasurer's Report by Barb Knutson, Dist. 5 Director and Treasurer

Is it ever going to be Spring? It seems the whole state is having a problem getting over winter in one form or another.

First of all, I want to thank all the townships and counties that have paid their dues on time and for the correct amount, as well as the lists of townships paying.

The dues are \$125 per township and if they are paid through the county association, PLEASE send me a list of townships you are paying for, the amount paid, and the year you are paying for.

I cannot stress this enough! If I get dues from a county association for less than the entire county and get no list of who paid, we will have no choice but to withhold voting

privileges from all townships in that county at the annual convention!

This is so unfair to the townships that did, in deed, pay! The fix is simple. Send me a list of the townships you are paying for.

I would also like to request any changes of officers be forwarded to me for the time being as I have taken over the mailing list upkeep.

The last mailing that we were required to send out for snow removal monies is a very good example of why we need an up to date list.

The time was very short, as you all know, and if we have names that are not correct, it could mean the difference of getting the information or not getting it at all. It could mean

the loss of a lot of funds in some cases.

I would also like to encourage you to include email addresses with the officer lists. That would allow us to get information out to you even quicker.

We realize that not everyone is using email, but if you would furnish us with at least one for each board, it would help greatly.

Thank you all for what you doing out there! It is important!

If you have any questions, please feel free to contact me. I will do my best to get your questions answered.



New Securities and Exchange Commission by ND State Treasurer Kelly Schmidt

A proposed rule change by the Securities Exchange Commission requiring more oversight of municipal advisers might have unintended consequences to the members of our state and municipal boards.

Under the Dodd Frank Wall Street Reform and Consumer Protection Act, the SEC proposes that any appointed member of a governing body of a municipal entity be defined as a "municipal advisor" because of the concern that appointed members "are not directly accountable for their performance to the citizens of the municipal entity."

The proposed rule change would require municipal advisers to register with the SEC and the Municipal Securities Rulemaking Board.

Elected officials and government employees are exempt from registering as municipal advisers; however, non-elected (appointed) members of a governing board would be considered

as municipal advisers.

In many cases throughout North Dakota, these municipal adviser positions are filled by qualified volunteers appointed to a board by the mayor, governor, city or county commission.

If the SEC mandates the registration of these "municipal advisers," volunteers will have to pay yearly fees, disclose personal financial information, take courses and be tested regularly.

I firmly believe the proposed rule will discourage qualified volunteers from serving on state and municipal boards.

The distinction between elected and non-elected board members is disrespectful to state and local governance. All board members are accountable and generally have equal legal responsibilities.

The SEC's concern that unelected board members are not directly

accountable to the citizens is misplaced and indicates a lack of understanding about how state and local government is structured.

Many organizations, including the National Association of State Treasurer's (NAST), believe the SEC's definition of a municipal financial advisor is improperly and unnecessarily broad, and its application to governmental body members will harm the ability for those to make appropriate and responsible basic governance and financial decisions for their communities.

A comment letter in opposition to the SEC's position was submitted by NAST in February. The SEC in the process of reviewing public comments and a final ruling has not been made. Be assured we are watching this closely and will provide any input possible to protect the quality of governance North Dakotan's value.

2010 ND Transportation Funding Report by ND Tax Commissioner Cory Fong

In 2009, **SB2012** was passed, requiring every county, township, and city to file the North Dakota Transportation Funding Report. This is the second year that the report has been required from counties, townships, and cities.

The information is used to help the state monitor the funding for building, replacing, and maintaining the state transportation system.

Each county, township, and city completes an annual report that provides their transportation funding and expenditures. The report is to be submitted within 90 days after the close of the calendar year.

The Federal Highway Administration also requires each county, township, and city to submit a Local Highway Finance Report to the North Dakota Department of Transportation each year containing this same information.

The Tax Department designed a report, North Dakota Transportation Funding Report, in order to facilitate the combined reporting for both requirements. The report collects the revenues by major source, expenditures by major category, the beginning balance, ending balance, and other information.

The information provided is based on actual revenues received and expenditures paid during the 2010 calendar year.

The North Dakota Transportation Funding Report is available on the Tax Commissioner's web site at www.nd.gov/tax, click on "Fuels" then "Transportation Funding," or go directly to www.nd.gov/tax/fuel/transportationfunding/index.html

The report is available in an Excel spreadsheet, which includes calculations, or as an Adobe Acrobat PDF in a fill-in format. Detailed instructions

are also available on our web site. We also have an online reporting application that may be used to electronically submit the report.

The 2011 Legislature passed **SB2203** which allows townships to submit a copy of the annual financial report that is provided to counties in place of the Transportation Funding Report. To submit copies of report send them to the address below.

Paper copies of the form contact:

ND Tax Commissioner's Office
600 E Blvd Ave, Dept. 127
Bismarck, ND 58505-0599
Phone (701) 328-3126
Email: fueltax@nd.gov
Web site: www.nd.gov/tax

For assistance in completing the form please contact:

Amanda Filipek
Phone: (701) 328-3382
Email: fueltax@nd.gov



Grass Roots Report

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A Special Thanks to President Syverson *By Ken Yantes*

NDTOA members, we all owe a big thank you to our President, Larry Syverson. His efforts in the 2011 Legislative Session were outstanding.

Just after crossover we found out that my wife of 46½ years was very sick. Darleen spent more than two weeks undergoing tests in St. Alexius hospital and she was diagnosed with Cancer. I spent a lot of time with her during this period while President Syverson carried the legislative effort. We would confer on the needed actions almost every night but Larry did the face to face lobbying in the capitol.

Thanks to his extra effort ND townships faired well in the passage of their legislative proposals.

Articles Due: July 29, 2011

PLEASE SEND NEWS ARTICLES TO:
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P.O. Box 104, Brocket, ND 58321-0104
ken@ndtoa.com

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