

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

ECONOMIC IMPACT COMMITTEE

Thursday, September 17, 2015
Harvest Room, State Capitol
Bismarck, North Dakota

Senator Connie Triplett, Chairman, called the meeting to order at 9:00 a.m.

Members present: Senators Connie Triplett, Randall A. Burckhard, Tom Campbell, Jonathan Casper, Mac Schneider, Terry M. Wanzek; Representatives Thomas Beadle, Rich S. Becker, Joshua A. Boschee, Ron Guggisberg, Matthew M. Klein, Cynthia Schreiber Beck, Gary R. Sukut

Members absent: Senator Lonnie J. Laffen; Representative Ben Koppelman

Others present: Senator Jerry Klein, Legislative Management
See [Appendix A](#) for additional persons present.

Chairman Triplett said she hopes to have one meeting in Grand Forks, one meeting in Fargo, and one meeting in a location with one-call and natural gas service issues. She said most of the meetings will be in the winter.

At the request of Chairman Triplett, Legislative Council staff reviewed the [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Management](#).

ONE-CALL STUDY

At the request of Chairman Triplett, Legislative Council staff presented a background memorandum entitled [One-Call Excavation Notice System - Background Memorandum](#). He said the notification center does not know the location of underground facilities, but knows the underground facility operators in the area and notifies these operators of a locate request by an excavator. All the information provided by the excavator is sent to each of the operators that have facilities in the dig area as a "ticket." It is then the operator's responsibility to locate the lines through staff or through contract locators. For the first two locates in a location, the location cost is the responsibility of the operator.

The Legislative Council staff said if an excavator knowingly damages an underground facility and does not immediately notify the operator or backfills without authorization, the excavator is guilty of a Class A misdemeanor. The North Dakota One Call Board may work with the appropriate state's attorney to prosecute these violations. The excavator is liable to the operator for all of the damages if the excavator did not properly use the one-call excavation notice system. The operator may bring a civil action to recover these damages. The Public Service Commission can impose a civil penalty of up to \$25,000. The board may bring a civil action to enjoin violations.

Mr. Mark Dougherty, Member Services Director, Association of General Contractors, and Member, North Dakota One Call Board, provided information to the committee on the activities of the board. He said the duty of the board is to operate a notification system. He said the board contracts with One-Call Concepts, a leader in the industry which has a call center for North Dakota in Davenport, Iowa. He said One-Call Concepts has multiple centers that can back up each other. He said this state leads in the increase in call volume among the other states. He said the board promotes the one-call excavation notice system so there is awareness. He said the board is made up of eight members--seven utility representatives and one excavator representative. He said the contract for one-call services is reviewed every three years and was reviewed last year, at which time the board agreed to recontract with One Call Concepts. He said the board has agreed to not be involved with politics and will not propose or take a position on any legislation. He said the group that was formed before the 2013 legislative session to address one-call legislation will get back together. He said it is a consensus group.

Mr. Ryan Schmaltz, Director of Education and Public Relations, North Dakota One Call, gave a presentation ([Appendix B](#)) on the North Dakota one-call excavation notice system including the ticket types and format for tickets, flag color coding, and statistics relating to the increase in incoming calls by county from 2010 through 2015. He said each excavation and each excavator must have a one-call ticket which may be obtained by 811, a 1-800 number, or online.

In response to a question from Senator Burckhard, Mr. Schmaltz said the law that requires underground facilities to be locatable includes water lines.

In response to a question from Representative Becker, Mr. Schmaltz said upon the third locate under certain circumstances the excavator is responsible for the reasonable costs of locating the underground facilities. He said reasonable costs include time and mileage. He said he was not sure how many actually charge the excavator. He said if the excavator is doing excavation, the excavator can call as many times as the excavator wants to refresh the lines without cost.

In response to a question from Senator Wanzek, Mr. Schmaltz said there is an exclusion from using the one-call excavation notice system for normal farming practices to the depth of 18 inches. He said drain tiling or deep tilling would need a ticket. He said a ticket is free for a homeowner or a landowner.

In response to a question from Chairman Triplett, Mr. Schmaltz said there is outreach to farmers through shows, radio and television interviews, and advertisements.

In response to a question from Chairman Triplett, Mr. Schmaltz said an underground facility is made locatable by using tracer wire, using a tracer ball, or by global positioning system and geographic information system mapping.

In response to a question from Chairman Triplett, Mr. Schmaltz said from personal experience, the underground facilities are locatable within one or two feet.

In response to a question from Senator Campbell, Mr. Schmaltz said soil samplers are not excluded from the law but the locate can be done for a quarter section instead for each soil sample.

In response to a question from Chairman Triplett, Mr. Dougherty said the agricultural exemption is for a farmer or landowner, not a commercial agricultural business like a soil sampler.

Ms. Danette Welsh, Board Member, Common Ground Alliance, provided written testimony ([Appendix C](#)) to the committee on the work of the North Dakota Common Ground Alliance and a handout from the North Dakota Common Ground Alliance on best practices, which is on file with the Legislative Council. In addition, she provided written testimony ([Appendix D](#)) in her position as Manager, Governmental Affairs, ONEOK, Bismarck, on that company's experience with the one-call system. She said the North Dakota Common Ground Alliance is not a lobbying group. She said ONEOK has identified three key items that may require change regarding the one-call excavation notice system. She said survey tickets should be created to allow for compliance via electronic data sharing rather than physical marking where no excavation will take place. She said if physical marking for a survey ticket is necessary, there should be an expanded window as these are often large tickets and can be very difficult to complete within 48 hours. She said often flags for survey projects are never removed because the requesting excavator never physically works at the site.

Ms. Welsh said law should require white lining on projects. She said excavation should be more clearly defined. She said enforcement mechanisms should be added for immediate intervention when there are violations of law or imminent safety issues. She said the North Dakota One Call Board should have seats designated specially for representatives of oil and gas gathering and transmission pipelines. She said there should be more power given to the board for standardized documentation when there are meetings between the operator and excavator. She said there is a "he said, she said" problem when there are agreements in exception to the general rules.

In response to a question from Senator Wanzek, Ms. Welsh said that white lining is required of excavators in other states and is a best practice, but is not required in this state.

In response to a question from Chairman Triplett, Ms. Welsh said she will work with the North Dakota One Call Board to review the suggestions of ONEOK.

Mr. Brian Kalk, Commissioner, Public Service Commission, provided information to the committee. He said the \$25,000 maximum for civil penalties is sufficient. He said training and education is the best way to approach excavators. He said the motto used to be "Call Before You Dig," but now has the added "Dig Safe, Remove Flags."

Mr. Kalk said there is an issue with collection of fines. He said it is difficult to collect a penalty. He said the imposition and collection of penalties takes valuable staff time. He said the time after which a relocate request needs to be made, could be extended to 30 days.

In response to a question from Senator Burckhard, Mr. Kalk said the commission does not prejudice and the amount of the civil penalty is based on the circumstances. He said the \$25,000 penalty is for when someone has died as a result of a violation.

Chairman Triplett said although the issue of one-call may not be on the agenda for the next meeting, it will be on the following meeting agenda and she asked the interested groups in attendance to build a consensus.

Mr. Tom Rafferty, Community Relations Manager, Verendrye Electric Cooperative, Minot and Velva, provided written testimony ([Appendix E](#)) to the committee on three improvements to the one-call excavation notice system. First, he suggested establishing a minimum fine for damage to an underground facility that is high enough to deter violations and establishing a clear method and schedule of how to progressively assess higher fines for repeated violations. Secondly, he suggested clarifying the penalties for violating provisions of one-call laws, such as failing to maintain markings. Thirdly, he suggested changing the law to cut down on unreasonably large locate requests and an unreasonable amount of relocate requests.

In response to a question from Representative Sukut, Mr. Rafferty said excavators may destroy markings after a locate and the excavator should have a definite duty to maintain markings.

In response to a question from Representative Sukut, Mr. Rafferty said a line was hit in Minot because an excavator called in September and dug in November after the lines were gone.

In response to a question from Senator Burckhard, Mr. Rafferty said locates made by the cooperative are good locates and the cooperative doesn't want unreasonable burdens.

In response to a question from Representative Becker, Mr. Rafferty said there isn't a law to prohibit excessive 811 calls and it is difficult to prove whether the excavator is maintaining the markings.

In response to a question from Senator J. Klein, Mr. Rafferty said the problems affecting his cooperative are affecting other operators, but his cooperative is in the forefront because it files complaints more than other operators. He said the goal is to prevent deaths.

Mr. Tim Burckhard, Director of Field Operations, SRT Communications, Inc., Minot, provided written testimony ([Appendix F](#)) to the committee on the one-call excavation notice system. He said there should be a response for abusive locate requests by a contractor.

Mr. David Crothers, North Dakota Association of Telecommunications Cooperatives, provided written testimony ([Appendix G](#)) to the committee on the study of the one-call excavation notice system. He said he supports the four elements of the study. He said the problems related to one-call are of a higher magnitude in the northwest portion of the state. He said reservation telephone cooperative has 5,000 customers and used to have less than 10,000 locate requests a year. He said because of oil development, the cooperative has over 40,000 locate requests a year at the cost of \$1.4 million annually. He said \$400,000 of this is for relocates. He said this places an unfair cost on the customers. He said last year Senate Bill No. 2147 would have required the excavator to pay for relocates. He said if a bill is sent for a third or subsequent locate, the bill is not paid. He said there was a 47-mile request last week. He said all locates after two should be paid by the excavator. He said cooperatives are asked to remark up to 20 times. He said it is poor public policy to require remarking that many times. He said there needs to be quicker speed of adjudication for penalties. He said the penalty process by the Public Service Commission can take over 14 months. He said there needs to be a revocation of the contractor's license as a penalty, but this would require action by the Secretary of State.

Ms. Carlee McLeod, Utility Shareholders of North Dakota, provided information on the study of the one-call excavation notice system. She said some in her group would oppose charging for relocates when work has been done.

NATURAL GAS

Ms. Connie Ova, Vice President, Economic Development Association of North Dakota, and CEO, Jamestown/Stutsman County Development Association, presented written testimony ([Appendix H](#)) in favor of providing natural gas to unserved and underserved communities as a means of providing economic development. She said natural gas is needed for significant manufacturing. She said other states have programs to expand natural gas to unserved and underserved communities. She said Jamestown is underserved.

In response to a question from Senator J. Klein, Ms. Ova said she did not know of any expansion of natural gas around this state in recent times. She said there have been projects with farmers and elevators, but not with additional lines. She said the present lines are at full capacity in the Jamestown area.

Chairman Triplett requested that Ms. Ova provide the details on expansions in other states to the committee in the future.

Ms. Jane Priebe, Economic Development Director, City of Wahpeton, presented written testimony ([Appendix I](#)), on the provision of natural gas to underserved communities. She said Wahpeton has an insufficient supply. She said the city has lost nine economic development projects because of insufficient natural gas service. She said Wahpeton cannot compete with neighboring states for manufacturing because of the lack of natural gas. She said the lack of natural gas is a deal breaker.

Mr. Paul Geray, Chairman, Hillsboro Economic Development Corporation, presented written testimony ([Appendix J](#)) on the necessity of natural gas expansion for business development in Hillsboro and across the state. He said Hillsboro is at a disadvantage with companies considering location in Hillsboro or cities in Minnesota because of the lack of natural gas service. He said there need to be options to offset the infrastructure costs.

In response to a question from Representative M. Klein, Mr. Geray said the natural gas line from Fargo to Grand Forks runs on the Minnesota side of the Red River.

Mr. Dennis Haider, Executive Vice President of Business Development, Montana-Dakota Utilities Co., presented information ([Appendix K](#)) based on a map on pipelines providing natural gas to communities in this state. He said there are three natural gas pipeline companies in North Dakota. First is the Northern Border Pipeline, which includes the Bison Pipeline. He said the Northern Border Pipeline is a 40-inch pipeline that runs diagonally from the northwest to southeast portion of the state. He said the majority of gas produced in North Dakota goes into the Northern Border Pipeline. Second is the Alliance Pipeline that is a liquids rich gas pipeline that has quality issues, but meets the specifications for end users at this time. He said the pipe has a 36-inch diameter. Third is the Williston Basin Interstate Pipeline that is an old pipeline that used to be part of the Montana Dakota Utilities Co. (MDU) distribution system. He said the pipeline was turned into a common carrier and interstate pipeline. He said the pipeline varies in size from a 16-inch diameter at the largest to 8 inches from Bismarck to Jamestown, 6 inches from Jamestown to Valley City, and north by Cavalier from 4 to 6 inches. He said with the small diameter there isn't any ability to add customers because of the lack of capacity. He said the capacity is first used for residential purposes.

Mr. Haider provided historical information on gas in North Dakota. He said today the United States produces 73 billion cubic feet (BCF) of natural gas and burns approximately 70 BCF. He said there is more supply than demand. He said a few years ago the United States was importing 15 percent of the gas in the United States from Canada and 18 percent came from the Gulf Coast. He said presently very little comes from the Gulf Coast because of shale gas, especially the Marcellus shale which provides 18 BCF. He said North Dakota provides 1.6 BCF at the wellhead and once it is converted and adding the gas from the coal gasification plant, this state provides 1.2 to 1.25 BCF. He said this is in excess of what can be used in North Dakota. He said North Dakota provides 1.5 percent of the 73 BCF.

Mr. Haider said the reason for the lack of provision of natural gas in certain communities is economics. He said there is no market and it is costly to provide. He said it costs approximately \$3 million to tap the Alliance Pipeline. He said the Williston Basin Interstate Pipeline would cost as low as \$300,000 to \$400,000. He said the cost of pipe is \$1 million per mile for steel and \$400,000 per mile for plastic. He said the pipe would need to be downsized for a city connection and that is expensive as well. He said the main market would be an anchor customer. He said converting a town on propane to natural gas would have conversion costs. He said it would cost \$4,000 to make a propane furnace a natural gas furnace. He said it would cost \$1,000 to convert appliances in a home. He said there is lots of gas that is reasonably priced at one-half the price of oil at \$40 per barrel.

In response to a question from Senator J. Klein, Mr. Haider said there was Minnesota legislation that required the Public Utilities Commission to look at cost allocations for growth. He said an axiom in ratemaking is that all growth pays for itself. The Minnesota law provided that existing customers do benefit from growth and allowed a different allocation. He said there is similar Washington legislation. He said the motivation for the change in the law because of economic development needs and the low cost of natural gas.

In response to a question from Chairman Triplett, Mr. Haider said it is difficult to change ratemaking. He said the Minnesota law became effective July 1, 2015. He said laws relating to changes in other states are new as well.

In response to a question from Representative Becker, Mr. Haider said there are some areas where the economics come close for the provision of natural gas. He said the economics are not far off in Mayville and Hillsboro, but there needs to be a low-cost debt. He said most utilities need 50 percent equity and 50 percent debt. He said it would be difficult to provide natural gas to Bottineau because it is 40 miles from an existing pipeline.

Mr. Mike Rud, North Dakota Petroleum Marketers Association, provided written testimony ([Appendix L](#)) to the committee on the provision on natural gas in unserved and underserved communities. He said the North Dakota Petroleum Marketers Association has 130 members who provide 200 million gallons of propane to customers and to 40,000 homes in this state. He said propane provides heating in 15 percent of the homes in North Dakota. He said he is concerned with state assistance in providing natural gas to unserved communities because of the millions of dollars in infrastructure already in these communities to provide propane that would be displaced. He said propane is provided without state incentives. He said he was concerned that providing natural gas as economic development to an anchor in a community would change over time to compete with propane for other customers. He said MDU decided to build a refinery instead of 600 miles of pipeline. He said the decision was made on the economics and it can be assumed that there was not a reasonable return on investment for the pipeline. He said the decision to provide natural gas should be done without government involvement.

Mr. Rud also represents the North Dakota Retail Association and he said there are 20,000 job openings in this state. He said this state does not need more economic development, but needs more housing and daycare.

Chairman Triplett said Mr. Rud's testimony during the 2015 legislative session turned this bill into a study. She said the original bill provided incentives.

Senator J. Klein said if there is natural gas provided to a major industry that will provide more people in the community, there will be more customers using propane to heat homes. He said this would be good for propane and natural gas.

In response to a question from Senator J. Klein, Mr. Rud said if the natural gas was provided with an incentive, he fears that the extra money provided by the incentive would be used to compete with propane.

In response to a question from Senator Wanzek, Mr. Rud said state incentives would distort operation of free market competition.

Mr. Eric Spilde, Comptroller, Bobcat Company and Doosan Infracore Co., Ltd., provided information to the committee. He said the provision of natural gas in Gwinner is important because Bobcat competes globally and the cost of production in North Dakota is important to stay competitive. He offered the company's assistance to the committee.

In response to a question from Senator Casper, Mr. Spilde said his company is a vertically integrated facility and input costs are used in deciding where to grow.

In response to a question from Chairman Triplett, Mr. Spilde said his company is not in the gas business, but this is an infrastructure issue that needs a solution.

Chairman Triplett said testimony from the bill last legislative session suggested that if a pipeline was constructed to Gwinner there may need to be a mini refinery because of quality issues on the Alliance Pipeline.

UNMANNED AERIAL VEHICLES

Mr. Paul Lucy, Director, Economic Development and Finance, Department of Commerce, provided information to the committee. He said the North Dakota Department of Commerce is the officially designated test site for unmanned aircraft with the Federal Aviation Administration (FAA). He said the unmanned aircraft system test site provides economic diversification. He said this state will always need a diverse economy. He said the unmanned aerial system industry was a public sector industry and in the last few years has evolved to a commercial industry. He said North Dakota is at the cutting edge of commercializing drones.

Mr. Robert Becklund, Executive Director, Northern Plains Unmanned Aircraft Systems Test Site, provided written testimony ([Appendix M](#)) as a report on the Northern Plains Unmanned Aircraft Systems Test Site.

In response to a question from Senator J. Klein, Mr. Becklund said Grand Sky Business Park and the test site are separate but integrated.

In response to a question from Senator J. Klein, Mr. Becklund said there have not been a lot of flights. He said if there were any more flights, the test site would need more pilots.

In response to a question from Representative Schreiber Beck, Mr. Becklund said the Department of Commerce is the lead contracting element with companies. He said the unmanned aerial systems program fund takes in revenue and pays it out. He said the request for funding this biennium did not consider any revenue, but there is revenue. He said in addition to income, there are indirect benefits to other companies that do not have contracts.

In response to a question from Representative Schreiber Beck, Mr. Becklund said a vehicle is legal to fly if it has a certified pilot, aircraft, and airspace. He said there is an aircraft exemption from air worthiness for hobbyists and public entities. He said a public entity may self-certify under federal law. He said this is why the unmanned aerial vehicles need to be leased to the test site. He said the test site certifies and operates. He said there is an FAA Section 333 exemption for flying under 1,500 feet. He said there are four or five companies that use this exemption to operate commercial services in this state.

In response to a question from Representative Schreiber Beck, Mr. Becklund said favorable regulation is needed for economic development.

In response to a question from Representative Schreiber Beck, Mr. Becklund said the test site lost Burlington Northern Santa Fe Railway as a partner. He said the Burlington Northern Santa Fe Railway is using an FAA Section 333 exemption and working with the FAA. He said the FAA is providing direct competition to the test site.

In response to a question from Senator Burckhard, Mr. Becklund said the differences between the test site in North Dakota and other test sites are the involvements in the universities, supportive Legislative Assembly and community, the Grand Forks airspace, and the relationship with the FAA.

In response to a question from Senator Campbell, Mr. Becklund said he had not heard of complaints as to how the test site was spending money and/or with frustrations with companies trying to work with the test site. He said the test site is very responsive to companies but companies are frustrated with requirements to fly at the test site. He said new FAA requirements include preflight reports and a mission commander which are costs that are passed onto the customer. He said some companies are shocked at the requirements, especially if the company had previously been flying illegally. He said aircraft are not toys and need a pilot with a medical certificate. He said he would gladly work with companies to change the perception.

CIVILIAN GROUND CENTER

Mr. Shane Goettle, Representing Grand Sky Development Company, provided information to the committee. He said the study came as part of a discussion of the appropriation to Grand Sky Development Company. He said this concept is different from the role of Grand Sky Development Company. He said this concept relates to data management or images produced by unmanned aerial vehicles. He said this is the next step of what to do after the development park.

Mr. Edward Nierode, Consultant, Grand Sky Development Company, presented written testimony ([Appendix N](#)) to the committee on the study of a civilian ground center.

In response to a question from Chairman Triplett, Mr. Nierode said a civilian ground center is the same thing as a distributed ground station (DGS). He said a DGS receives data and houses entities that use the information. He said the DGS requires access to fiber optic and lots of it. He said the data needs to be online and in real time for quick response and in a form that can be understood. He said a DGS is expensive but if the cost is spread among the Air Force; state entities including law enforcement, transportation, and emergency responders; and private entities including agriculture, energy, and insurance, the costs may be absorbed.

In response to a question from Representative Becker, Mr. Nierode said the universities will play a role in the development of the DGS.

Chairman Triplett said she plans for the next meeting to be in Grand Forks and focus on the civilian ground center. She said there may be a ground breaking on October 15, 2015, at Grand Sky Development Company. She said other areas of study will be addressed if people in the area want to speak on the study and contact the Legislative Council office.

No further business appearing, Chairman Triplett adjourned the meeting at 1:35 p.m.

Timothy J. Dawson
Committee Counsel

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