

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

ECONOMIC IMPACT COMMITTEE

Tuesday, May 24, 2016
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Connie Triplett, Chairman, called the meeting to order at 10:00 a.m.

Members present: Senators Connie Triplett, Randall A. Burckhard, Tom Campbell, Jonathan Casper, Mac Schneider; Representatives Joshua A. Boschee, Matthew M. Klein, Cynthia Schreiber Beck, Gary R. Sukut

Members absent: Senators Lonnie J. Laffen, Terry M. Wanzek; Representatives Thomas Beadle, Rich S. Becker, Ron Guggisberg, Ben Koppelman

Others present: See [Appendix A](#)

It was moved by Representative Klein, seconded by Representative Boschee, and carried on a voice vote that the minutes of the April 26, 2016, meeting be approved as distributed.

UNMANNED FLIGHT APPLICATIONS AND RELATED TECHNOLOGY

Chairman Triplett called on Mr. Luke Geiver, Managing Editor, UAS Magazine, for testimony ([Appendix B](#)) regarding recent developments in unmanned aerial systems (UAS) applications, technology, and regulation and how North Dakota is situated for the future of the industry. Mr. Geiver said UAS Magazine is a print and online magazine focused on developments in the UAS industry. He said 2016 and 2017 will be transformational years for the UAS industry. He said rules for small UAS operation will be coming out soon. He said these rules will govern small UAS with flight time of 30 to 45 minutes. He said once the rules for small UAS are released the next milestone will be rules governing operation of beyond visual line of sight UAS. He said news media are looking for ways to conduct flights over people for use in providing news coverage. He said these operations will be subject to various regulations and the media operators have narrowed down to certain platforms the systems they hope to use. He said operators wishing to conduct beyond visual line of sight flights are seeking certification of safety for platforms intended to be used.

Mr. Geiver said another major industry topic is privacy. He said it appears very likely federal regulation will supersede state regulations in most areas of UAS operations and privacy issues. He said during this year there are major standards, major regulations, and major testing ongoing.

Mr. Geiver said North Dakota is a leading state in UAS development, but several states are making substantial efforts to attract and develop the UAS industry. He said North Dakota could be an industry destination state for the UAS industry. He said not a lot of other states, if any, could make that claim. He said North Dakota has small, medium, and large UAS development and agricultural research, beyond visual line of sight research, pipeline research, and a great amount of end use opportunity.

Senator Burckhard said it appears technology has far outpaced regulation and legislation.

Mr. Geiver said that is correct and it appears the Federal Aviation Administration (FAA) is working hard to develop a regulatory framework before a large amount of state legislation is enacted which might impede efforts at the federal level. He said in 2015 there were 41 bills introduced in state legislatures relating to regulation of UAS. He said these state regulatory efforts may impede finalizing any federal regulation.

Representative Schreiber Beck said there is a distinction between commercial users of small UAS and recreational or hobbyist users. She asked if hobbyist users are being considered in development of regulations.

Mr. Geiver said the FAA put a significant effort into a program called Know Before You Fly, aimed at educating recreational users. He said the FAA has worked with manufacturers to include information in packaging to inform recreational users of regulations they should observe.

Chairman Triplett called on Mr. Robert J. Becklund, Executive Director, Northern Plains UAS Test Site, for testimony ([Appendix C](#)) and a report on the status of the UAS program established by the FAA under the Department of Commerce. Mr. Becklund said in military service he holds a rank of Brigadier General, but he serves as Executive Director in a civilian capacity.

Mr. Becklund said a technical interchange meeting was held at the Northern Plains UAS Test Site in Grand Forks, which was attended by senior representatives from each of the test sites and representatives from FAA headquarters. He said attendees left North Dakota quite impressed with the Grand Forks test site's programs, operations, and capabilities.

Mr. Becklund said the FAA recently released a fact sheet related to state and local regulation of UAS. He said the Northern Plains UAS Test Site recommends that North Dakota follow the guidance in the FAA fact sheet and allow the FAA and the courts to develop any new rules regarding operations of UAS. He said this would allow the test site to continue to offer industry a cooperative environment for operations of UAS in North Dakota while avoiding issues of jurisdiction with the FAA.

Mr. Becklund said the Northern Plains UAS Test Site receives no funding from the FAA for its program and North Dakota's prospects to build a UAS industry in the state would be dramatically diminished without continued state support. He reviewed the budget status of the test site and the development of business operations and the potential for future growth in North Dakota.

Senator Burckhard asked if there is potential conflict between UAS and telecommunications for access to communication frequencies.

Mr. Becklund said there is potential for problems. He said with small aircraft the operational signals are generally global positioning system and Wi-Fi communication, which is easily hacked and subject to potential interference from outside sources. He said with commercial aircraft this would be unacceptable. He said this is a potential quagmire that must be resolved by the Federal Communications Commission.

Representative Boschee said other states have taken legislative action regarding UAS industry development. He asked if Mr. Becklund has observed state legislation that North Dakota should examine and consider.

Mr. Becklund said the Northern Plains UAS Test Site has not reached a point of financial independence so it will be necessary to seek state funding assistance. He said the support the Legislative Assembly has shown has been greatly appreciated and effective.

Representative Boschee asked specifically about privacy issues as a potential legislative topic.

Mr. Becklund said North Dakota has the benefit of University of North Dakota (UND) resources for privacy issues and policies.

Chairman Triplett said the policies in Grand Forks County are attached as an appendix to the minutes of a previous committee meeting and could form the basis for committee discussion of privacy legislation on a statewide level. She requested a copy of the FAA state and local regulation fact sheet.

Mr. Becklund distributed a copy ([Appendix D](#)) of the policy from the FAA Office of the Chief Counsel.

In response to a question from Representative Schreiber Beck, Mr. Becklund said North Dakota open records laws and FAA information under the federal Freedom of Information Act are a major concern. Mr. Becklund said there are companies that will not work with the test site because they do not want to jeopardize their intellectual property. He said issues of who owns data, how it is protected, and concerns of disclosure are major issues for all of the test sites.

Chairman Triplett called on Mr. Paul Lucy, Director, Economic Development and Finance Division, Department of Commerce, for testimony ([Appendix E](#)) of the department's suggestions for the committee study outcome.

Mr. Lucy said North Dakota is well positioned with infrastructure and support capabilities to have a center to support emergency management situations. He said there is a great deal more infrastructure required and demand for services to be determined for operation of a civilian ground center. He said one of the most important questions that should be considered is whether there is an opportunity to develop a public-private partnership for this function.

Mr. Lucy said North Dakota has been a leader in development of unmanned systems. He said he believes this is an opportunity to be a leader in collection, analysis, and storage of public and private data in a safe and secure manner. He said this can give North Dakota a leading position relative to other states in creating new high-paying jobs in the industry.

Mr. Lucy said private enterprise will have a huge demand for data storage and retrieval. He said it also is important to recognize needs of first responders and emergency management and that state agencies are seeking UAS options for their data needs.

Mr. Lucy said recommendations of the Department of Commerce include developing a core group of individuals and organizations with a thorough understanding of the various components and complexities of development of a civilian ground center. He said such a group should be organized in the very near future. He said the Department of Commerce's vision of the outcome of the committee's study would be to establish a framework to bring the common needs and service offerings of public and private sector together to provide for collection, analysis, and storage of electronic data and imagery.

Chairman Triplett said it appears the suggestion is that this committee establish a task force for this purpose.

Mr. Lucy said there are several entities considering issues related to this objective and it would be useful to establish communication among them for common consideration of issues that arise. He said the Department of Commerce could take on this mission or it could be done cooperatively. He said the significant point is to develop a common goal on recommendations for the next Legislative Assembly.

Chairman Triplett said the purpose of an interim committee is to review topics and recommend legislation. She said the committee's authority is limited and ordering establishment of a task force is beyond the authority of the committee, and that the committee lacks the authority to divide itself into a subcommittee. She asked if the suggestion is for legislation to authorize the Department of Commerce to convene a task force or take some other kind of action.

Mr. Lucy said the Department of Commerce has the capacity to bring together the appropriate parties to consider the most advantageous steps for the state to pursue and develop recommendations for the upcoming legislative session.

Chairman Triplett called on Mr. Thomas Swoyer, President, Grand Sky Development Company, for testimony on the study. Mr. Swoyer said he appears at this meeting to request two things. He said one request is that the committee encourage state agencies to use UAS to collect information they require in performing their functions and that they send data collected to a centralized processing center. He said he also would request state funding assistance of up to \$10 million to support creation of that center. He said the funding would not be for a brick and mortar facility. He said the private sector could accomplish that portion of the project. He said he would advocate for a public-private partnership model on the project. He said the collection center would not collect data but would receive, process, and send the data back to users. He said users would include private entities, state government entities, and federal government entities.

Mr. Swoyer said the unmanned aerial systems industry is projected to be about a \$90 billion per year industry by 2025. He said in his opinion that estimate does not include data management, data processing, and data use. He distributed a copy of a slide ([Appendix F](#)) illustrating the business of UAS. He said the portion of the pyramid labeled "platforms" is the area where Grand Sky Development Company, the Northern Plains UAS Test Site, the UND UAS Center of Excellence, and North Dakota State University (NDSU) have been doing work on establishing procedures, getting pilot certification, and other steps needed to get aircraft in the air. He said those aircraft can do a variety of functions including providing Wi-Fi signals for people to access the Internet, carry packages, or carry sensors or cameras to accumulate information to be used for a wide range of purposes.

Mr. Swoyer said enormous amounts of data are gathered by UAS. He said the data piece of the pyramid is the area we need to move forward with. He provided examples of an NDSU sugar beet study and a military flight. He said these projects accumulate more data in 1 week than is contained in the entire Netflix online catalog. He said that data needs to be sent somewhere, processed, and be accessible for use by the owner.

Mr. Swoyer said the North Dakota team can compete with anybody in the world in the UAS industry. He said the development of a centralized center offers the state the opportunity to create policy around how to manage data. He said the center could help develop how to adopt smart regulation and smart legislation.

Representative Boschee asked if users would be required to use the center established in North Dakota.

Mr. Swoyer said users could use any center they choose. He said we could make it more cost effective to use the North Dakota center with the combined capabilities of the Northern Plains UAS Test Site, the universities, and private enterprises.

Chairman Triplett said there is confusion about what the center should be called. She said initially civilian ground center was used and then data center was used, but it appears neither is an accurate term. She asked what reference would be appropriate.

Mr. Swoyer said ground station or data ground station may be the best terms, because the concept is modeled on a military term for gathering intelligence, sorting information, and delivering it to the soldier on the ground. He said this would serve the same kind of function for civilian users.

Senator Burckhard said there appears to be tremendous potential for this industry. He said the early development of the telephone industry lead to a mess, with wires strung everywhere, which leads him to ponder how all of the UAS vehicles would avoid bumping into one another. He said the Northern Plains UAS Test Site and FAA are working to develop a method for UAS avoidance of other aircraft.

Chairman Triplett asked if there is any sense of what the military is spending on its data collection and processing for possible comparison.

Mr. Swoyer said he can investigate, but has no estimate at this time. He said the military is expending large amounts on these efforts and provided some anecdotal information.

Chairman Triplett expressed concern that the cost to the state of maintaining a facility may outweigh the benefit the state might realize.

Mr. Swoyer said the public-private partnership proposal would allow the private sector to drive the project based on commercial need. He said finding potential users and figuring out what service they need is the correct approach and would allow the private sector a greater level of investment.

NATURAL GAS SERVICE STUDY

Chairman Triplett called on Mr. Kelvin Hullet, Economic Development and Government Program Manager, Bank of North Dakota, for testimony ([Appendix G](#)) regarding the Bank's programs that may assist a community seeking natural gas service.

Representative Sukut asked if the Bank has been asked to provide funding assistance for gas pipeline projects.

Mr. Hullet said the Bank has not been requested to consider assistance for a project, but is responding to the question raised about the possibility of use of a Bank program for gas service extension. He said it is important to point out the loan program would not be available to private businesses but only to political subdivisions for critical infrastructure projects.

ONE-CALL EXCAVATION NOTICE SYSTEM STUDY

Chairman Triplett called on the Legislative Council staff for presentation of a revised bill draft [[17.0115.04000](#)] regarding the one-call excavation notice system provisions. The Legislative Council staff said the reference to midnight on page 3 has been changed to read 12:01 a.m. of the day after the location request is made, to avoid any confusion about whether midnight is the beginning or end of a day. He said on page 4 there was a reference to being licensed under this chapter which is removed because no one is licensed under this chapter. He said language was inserted in Section 49-23-03 about a person "doing business as" an excavator sharing in the cost of the system, to make clear a homeowner requesting locates would not be charged for those costs. He said page 6 has the list of members of North Dakota One-Call, Incorporated, which is changed to increase the board from eight to nine members with the addition of a member representing oil or gas transmission or gathering line operators. He said the size of the area subject to a locate request is addressed on page 8, which has been altered to include an area not exceeding three city blocks in diameter in an urban area or 160 contiguous acres in a rural area. He said page 9 includes language covering a situation in which an excavator cannot locate a facility within 2 feet of where it was marked. The excavator would be able to request assistance from the operator and, if that assistance is not provided within a reasonable time, the operator is responsible for the reasonable cost of the excavator to locate the facility. He said this was intended to allow the operator an opportunity to help with the locate before becoming responsible for the costs. He said a new Section 49-23-04.1 is added for a survey. He said this occurs when an individual is not ready to excavate, but wants to identify facilities.

The Legislative Council staff said there was an extended discussion at the previous meeting about culpability standards to apply to excavators who damage underground facilities and do not report the damage. He said the provision near the bottom of page 14 addresses that situation. He said the revised language does not focus on the excavator's state of mind when the damage was caused. He said the penalty would attach if the excavator knew or should have known damage occurred and failed to report it to the operator or backfilled the area. He said the emphasis of operators is to require reporting of damage so repairs can be made rather than punishing the excavator for simply causing damage.

Representative Schreiber Beck said page 11 of the draft has language giving the Public Service Commission authority to decide if costs of location should be the responsibility of the excavator when an excavator has made repeated location requests and has failed to maintain markings or to safely dig. She asked if the Public Service Commission was made aware of this provision.

Mr. Victor Schock, Public Utility Analyst, Public Service Commission, said he has tracked this draft and made the commissioners aware of that provision.

Chairman Triplett said page 9, line 23 allows a "reasonable time" for an operator to assist an excavator to locate a facility. She said in several instances, there is a time certain for taking action under this chapter. She asked if there should be a deadline for providing this assistance.

The Legislative Council staff said the language was suggested.

Ms. Carlee McLeod, Board of Directors, Utility Shareholders of North Dakota, said the stakeholder group decided a reasonable time is appropriate at this time and, if it proves to still be a problem, a hard deadline could be considered. She said one issue she would like to point out is regarding the size of a location area request in a rural area. She said the acreage limit is provided, but there also is intended to be a linear limit of 5 miles.

In response to a question from Chairman Triplett, Ms. McLeod said with the change she suggested the stakeholder group is comfortable the draft makes the changes to which the group agreed.

It was moved by Representative Schreiber Beck, seconded by Senator Burckhard, and carried on a roll call vote that the bill draft 17.0115.04000 be amended to insert "or five linear miles" after "acres" on page 8, line 18, and that the bill draft, as amended, be approved and recommended to the Legislative Management. Senators Triplett, Burckhard, Campbell, and Casper and Representatives Boschee, Klein, Schreiber Beck, and Sukut voted "aye." No negative votes were cast.

NATURAL GAS SERVICE STUDY

Chairman Triplett called on Ms. Julie Fedorchak, Commissioner, Public Service Commission, for presentation of information ([Appendix H](#)) on the commission's authority governing rates of natural gas service providers.

Chairman Triplett asked if the commission has in the past approved rates for natural gas service extension on economic development grounds for benefit to a community.

Ms. Fedorchak said she does not know of specific reliance on those grounds for rate determinations. However, she said, there are a broad range of factors the commission could consider in rate decisions.

The Legislative Council staff asked if a community seeking new natural gas service would be the only customers who might be subject to rates built to account for cost of the extension or if the cost could be spread through the whole system of the operator.

Ms. Fedorchak said that could depend on the facts of the case presented.

Chairman Triplett asked if Ms. Fedorchak has collected any information on cost of extensions and whether that could be covered within the rate base of customers.

Ms. Fedorchak said it would not be feasible to cover cost of service to the entire state. She said there are communities that could be feasible for extension of service.

Ms. Fedorchak introduced Mr. Kyle Rogers, Vice President, Government Relations, American Gas Association, for a presentation ([Appendix I](#)) regarding the experience of other states with consideration of state assistance in extending natural gas service to unserved communities. Mr. Rogers said 38 states have taken up issues of natural gas infrastructure expansion and highlighted recent action in Alaska, Maine, Mississippi, and North Carolina. He offered several considerations for fostering natural gas infrastructure expansion.

Senator Burckhard said we seem to have an abundance of natural gas at present, but if we increase the customer base substantially, there may be a reversal of the current low price structure.

Mr. Rogers said the analysts' best forecast is for a price band of \$3.50 to \$5.00 over the next 20 to 30 years. He said that price may come down with technological advancements in the production industry.

In response to another question from Senator Burkchard, Mr. Rogers described efforts in several states in which economic growth has been the driving force behind state efforts to encourage expansion of natural gas service.

In response to a question from Representative Klein regarding how expanded service was financed for service in Spiritwood and Richardton, Mr. Dennis L. Haider, Executive Vice President of Business Development, MDU Resources, said the Spiritwood expansion was intended for a CHS, Inc., fertilizer plant project that has been abandoned. Mr. Haider said he is not familiar with details of the Richardton project, but there was a transmission line within a mile of the ethanol facility so the connection was relatively inexpensive.

Chairman Triplett called on Mr. Keith Lund, Past President, Economic Development Association of North Dakota, and Vice President, Grand Forks Region Economic Development Corporation, who introduced the speakers to follow who would address the committee on the issue of expanding service.

Chairman Triplett called on Mr. Justin Dever, Co-Deputy Commissioner, Department of Commerce, for testimony ([Appendix J](#)) on any economic development programs that may assist in expanding natural gas service.

Representative Sukut asked if any of the programs pointed out by Mr. Dever have been used to assist in expanding natural gas service.

Mr. Dever said he is not aware of projects that have used these programs to pay for natural gas service expansion, but these programs have helped enterprises that acquired natural gas service.

Chairman Triplett asked if the North Dakota Pipeline Authority has provided financial assistance to facilities seeking natural gas service.

Mr. Dever said the North Dakota Pipeline Authority does not have resources to assist in financing, but plays a role to bring the right parties together for a project.

Chairman Triplett called on Ms. Jane Priebe, Economic Development Director, City of Wahpeton, who provided testimony ([Appendix K](#)) on the need to coordinate resources to close the funding gap for expanding natural gas service.

Senator Burckhard asked what tools the Wahpeton community has which might assist in closing the funding gap.

Ms. Priebe said Wahpeton has a 2 percent sales tax that is dedicated to economic development, infrastructure within the city, and flood protection.

Representative Sukut asked if Wahpeton has an economic development fund.

Ms. Priebe said the sales tax provides for economic development funds that are subject to city commission approval for use. She said the city tries to cooperate with Richland County Economic Development on projects to leverage funds available.

Chairman Triplett asked if the region would support spreading gas rates over a wider area to support economic development.

Ms. Priebe said the city has looked at options for pipelines which might be a source and the distance and costs are substantial. She said she does not know if there would be support for rates spread over a larger area to help with costs.

Chairman Triplett called on Mr. Mark Nisbet, North Dakota Principal Manager, Xcel Energy, for testimony ([Appendix L](#)) regarding an approach to addressing the financing gap for a community seeking natural gas service. Mr. Nisbet said Xcel Energy has analyzed options to expand natural gas service in eastern North Dakota. He reviewed the information in the attached appendix. He said consideration was given to bringing a pipeline from the Bakken Formation, but the cost is prohibitive. He said bringing gas from the Viking Pipeline in Minnesota appears

more viable. He reviewed possible strategies that might be considered to close the revenue gap to make the expansion feasible. He said he is not advocating at this time for tax concessions. He said these strategies were provided to help the committee understand what options exist which might make this project a feasible business decision. He said creative solutions will be needed and probably would involve a combination of tools.

Senator Burckhard asked what fuel is used by American Crystal Sugar.

Mr. Nisbet said the facility uses coal, and coal currently enjoys an economic advantage over natural gas.

Representative Klein asked if the Viking Pipeline proposed to be tapped for the service in the example has sufficient capacity to supply the gas proposed.

Mr. Nisbet said that pipeline has adequate capacity and it is the main pipeline coming from the TransCanada Pipeline.

Chairman Triplett asked how the estimates provided would be changed if UND, NDSU, and American Crystal Sugar agreed to switch to natural gas service within the next 5 years.

Mr. Nisbet said that would cut the shortfall in half. He said that also could make other options more feasible. He said any one of those three customers alone would not make the project feasible.

Chairman Triplett called on Mr. Lund for testimony ([Appendix M](#)) on the expansion of natural gas service study. Mr. Lund said it is not the right time to ask for tax incentives given the current budget environment. In the future, he said, additional tools may be needed to help communities meet the financing gap. He said this committee has helped identify some tools already in place to assist communities seeking natural gas service.

Chairman Triplett said, just to be clear, she understands the presentation to mean the Economic Development Association of North Dakota is withdrawing the request for the committee to take any particular action on this study.

Mr. Lund said that is correct. He said if budgetary circumstances change, the group may seek legislation, but recognizing the reality of the state's budgetary circumstances makes it advisable to wait to develop recommendations.

Chairman Triplett called on Mr. Blake Crosby, Executive Director, North Dakota League of Cities. Mr. Crosby said discussion touched on the North Dakota Pipeline Authority. He said that agency was described as a facilitator and on that basis should keep this topic under consideration. He said cities need economic diversification and natural gas service is an important part of the factors that can make that possible. He said there are funding gaps in expanding service that might be reduced and the state would be one of the beneficiaries of succeeding in this effort.

Chairman Triplett asked what Mr. Crosby would recommend this committee do at this point.

Mr. Crosby said he would suggest that the North Dakota Pipeline Authority be asked to sit down with the interested parties and seek means of filling or reducing the financing gap that appears to be the obstacle to expansion.

Chairman Triplett said the Legislative Council staff could contact the North Dakota Pipeline Authority to let the pipeline authority staff know it was suggested the authority was mentioned as having a potential role in this issue.

The Legislative Council staff said information was requested from Ms. Linda Leadbetter, State Supervisor of Assessments, Tax Department, to provide the committee background on the property tax component for pipeline costs. He said the letter ([Appendix N](#)) distributed to the committee provides statewide statistics as available, and using this data provides an average true and full value of \$234,823 per mile and average tax of \$3,293 per mile.

No further business appearing, Chairman Triplett adjourned the meeting at 3:30 p.m.

John Walstad
Legal Division Director

ATTACH:14