

## NORTH DAKOTA LEGISLATIVE MANAGEMENT

## Minutes of the

**COMMERCE COMMITTEE**

Monday, August 12, 2019  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Representative Scott Louser, Chairman, called the meeting to order at 10:00 a.m.

**Members present:** Representatives Scott Louser, Pamela Anderson, Thomas Beadle, Terry B. Jones, Jim Kasper, Jeffery J. Magrum, Corey Mock, Mike Nathe, Emily O'Brien, Shannon Roers Jones, Randy A. Schobinger, Denton Zubke; Senators Jim Dotzenrod, Scott Meyer, Ronald Sorvaag, Shawn Vedaa

**Member absent:** Senator Randy Burckhard

**Others present:** Senators Ray Holmberg, Grand Forks, and Jerry Klein, Fessenden; and Representatives Jim Grueneich, Jamestown, and Karla Rose Hanson, Fargo, members of the Legislative Management  
Vonette J. Richter, Legislative Council, Bismarck  
See [Appendix A](#) for additional persons present.

Chairman Louser said he intends to have four meetings throughout the interim with the next meeting tentatively set for Wednesday, October 9, 2019. He said the committee likely will meet again in spring 2020, with the final meeting in July or August. He said he prefers to not have the interim committee recommend legislation; instead, he would prefer a committee member sponsor a bill.

Chairman Louser called on the Legislative Council staff to review the [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Management](#).

**DISTRIBUTION OF FOOD IN RURAL COMMUNITIES STUDY**

In light of Senator Vedaa's background and knowledge, Chairman Louser deferred to Senator Vedaa to lead the discussion on the distribution of food in rural communities study.

Senator Vedaa said he personally has experienced living in a rural food desert. He said in his 43 years of grocery store experience, he has noticed a change in the landscape of rural grocery stores. He called on the Legislative Council staff to present a memorandum entitled [Distribution of Food in Rural Communities - Background Memorandum](#).

In response to a question from Representative Nathe, Senator Vedaa said the Milk Marketing Board and the distribution of milk in particular areas does not affect the distribution of food in the state.

Senator Vedaa called on Ms. Lori Capouch, Rural Development Director, North Dakota Association of Rural Electric Cooperatives, to provide an overview ([Appendix B](#)) of the North Dakota Rural Grocery Initiative, the work the group has done to study food distribution in rural communities, and the unique issues rural grocers face. Ms. Capouch said rural retail businesses do not have the population base to generate the volume needed to be competitive with urban areas, and rural grocery stores in the state are decreasing in number.

In response to a question from Representative Magrum, Ms. Capouch said her group has been exploring the possibility of a redistribution hub where grocery stores could order collectively to obtain a lower price due to the higher volume of products ordered. She said the products could be cross-stocked at the redistribution hub and the last leg of distribution could be delivered by existing distributors. She said the United States Postal Service has expressed interest in becoming involved in the process. She said her group's goal is to increase efficiency by having trucks full of products stop at a redistribution center so only one truck has to stop at a grocery store.

In response to a question from Representative Karla Rose Hanson, Ms. Capouch said Kansas conducted a feasibility study on redistribution hubs 4 years ago, but that information is not available publicly.

In response to a question from Representative Nathe, Ms. Capouch said the State Department of Health operates a distribution system to distribute pharmaceuticals in case of an emergency, the equipment for which needs to be operated to keep it running. She said the department also operates an online ordering system that could be utilized for collective ordering by rural grocers. She said she was not aware of any state policies that make food distribution in rural communities more difficult.

In response to a question from Chairman Louser, Ms. Capouch said the North Dakota Rural Grocery Initiative has not approached any of the state universities to research the food distribution issue. Chairman Louser said Ms. Capouch may want to contact the universities regarding the possibility of a study.

Senator Sorvaag requested the Legislative Council staff research whether the United States Department of Agriculture has conducted any studies on food deserts.

In response to a question from Representative Jones, Ms. Capouch said the North Dakota Association of Rural Electric Cooperatives got involved in the rural food distribution issue because the association provides rural development services to communities across the state and had received numerous phone calls from rural grocers asking for help.

Ms. Karen Ehrens, Coordinator, Creating a Hunger Free North Dakota Coalition, provided written testimony ([Appendix C](#)). She said food insecurity and incidences of hunger have been increasing in the state the last 10 years.

In response to a question from Representative Beadle, Ms. Ehrens said other states such as Kansas and Iowa have tackled this issue. However, she said, other states' models would need to be adapted to fit North Dakota's needs.

In response to a question from Senator Dotzenrod, Ms. Ehrens said a study was published this month which estimated the impact of food insecurity on health care costs in each state. She said health care costs resulting from food insecurity in North Dakota are estimated to be \$78 per person and over \$57 million annually.

Representative Jones said he wondered if this was a generational issue and whether the issue is caused by the lack of access to grocery stores or the change in the generational perception of food preparation.

Ms. Ehrens said on average, individuals spend almost as much money on food purchased outside the home as they do on food purchased and prepared inside the home.

Ms. Melissa Sobolik, President, Great Plains Food Bank, provided written testimony ([Appendix D](#)). She said the Great Plains Food Bank, the only food bank in the state, delivers food to 200 food pantries, soup kitchens, and shelters, and serves one in nine North Dakotans. She said one reason rural residents who are eligible for the supplemental nutrition assistance program (SNAP) do not participate in the program is because there is not a place to use SNAP benefits locally, such as a local grocery store. She said having a local grocery store that accepts SNAP benefits can improve certain rural residents' nutrition, and it can provide a guaranteed customer base for rural grocers.

In response to a question from Senator Jerry Klein, Ms. Sobolik said SNAP benefits may be used only at authorized grocery stores, farmers markets, and some convenience stores.

### **SEWAGE TREATMENT SYSTEM REGULATION STUDY**

Chairman Louser called on the Legislative Council staff to present a memorandum entitled [Sewage Treatment System Regulation - Background Memorandum](#).

Chairman Louser called on Mr. David Glatt, Director, Department of Environmental Quality, for a presentation ([Appendix E](#)) on the current state regulatory structure of onsite sewage treatment systems.

Representative Jim Grueneich distributed a map ([Appendix F](#)) of the state depicting the public health units that have adopted a unified code.

In response to a question from Senator Klein, Mr. Glatt said the Department of Environmental Quality should have a role in regulation, such as training or licensing, but it is difficult to know what the "sweet spot" is between local control and state control. He said it would be difficult to adopt one large set of rules to regulate these systems.

Representative Grueneich said he recognizes the challenge in having varying regulations from region to region, but is not sure a "one-size-fits-all" regulatory scheme will work in this scenario.

In response to a question from Representative Grueneich, Mr. Glatt said a statewide code may need to be considered at some point, particularly because counties have limited money and resources.

Representative Zubke said some type of consistent licensure may be necessary.

Chairman Louser called on Mr. Jim Heckman, Director of Environmental Health, First District Health Unit, for information ([Appendix G](#)) on the public health units' regulation of onsite sewage treatment systems.

In response to a question from Senator Klein, Mr. Heckman said he is knowledgeable regarding these systems because he has attended a significant amount of training. He said if the state would assist North Dakota State University in providing more education components, there could be educational courses and trainings for both installers and regulators.

In response to questions from Representative Magrum, Mr. Heckman said regulators are employed by the individual public health unit in which the regulator works. He said the state may get involved in regulating larger onsite sewage treatment systems. He said he is not aware of a cost analysis regarding the administrative costs or cost of employing regulators in the various public health units.

In response to a question from Representative Zubke, Mr. Heckman said the unified code that some public health units have adopted allows for some of the variations between regions, such as soil conditions. He said the code provides good guidelines for installation.

In response to a question from Representative Jones, Mr. Heckman said the public health units are in contact with the State Board of Plumbing, but the board has noted it does not have sufficient staffing to provide regulatory oversight for onsite sewage treatment systems.

Mr. Tom Schimelfenig, President, North Dakota Onsite Wastewater Recycling Association, provided written testimony ([Appendix H](#)). He said the state should have a centralized agency that regulates all aspects of the onsite wastewater treatment industry.

In response to a question from Senator Meyer, Mr. Schimelfenig said when he attended a national meeting with the North Dakota Onsite Wastewater Recycling Association and the federal Environmental Protection Agency, the general consensus was that anyone who goes into this profession, whether as a regulator or an installer, should complete an apprenticeship.

Ms. Javayne Oyloe, Executive Director, Upper Missouri District Health Unit, provided written testimony ([Appendix I](#)) on behalf of Ms. Daphne Clark, Protection Team Leader, Upper Missouri District Health Unit. Ms. Oyloe said while a model code and uniformity would be simpler, there are regional differences that require room for variations to meet local needs.

In response to a question from Representative Grueneich, Ms. Oyloe said if the health unit becomes aware of a consistent problem with installers, the issue is brought to the local board of health for review.

In response to a question from Representative Zubke, Ms. Oyloe said her local code is more restrictive than the state's guidelines and rules.

Mr. Allen McKay, Administrator, Lake Region District Health Unit, said the Lake Region District has had the toughest code in the state since 1983 and was the first public health unit to provide training for contractors. He said contention has existed between contractors and the health unit for as long as he has worked for the health unit. He said things went much smoother after the health unit provided training for contractors and the communication improved between the contractors and the health unit. He said the individuals who have been working on a unified state code have done a good job. He said it is a fair starting point.

Mr. Jason Hovdenes, Owner, J&R Dirt Works, LLC, said he is conflicted with some of the regulations, particularly regarding the education, training, and licensing for installers. He said local health units have to create regulations to prevent installation errors caused by unqualified individuals.

Mr. Chad Kjelland, Owner, Kjelland Excavation, said he has faced some of the same issues Mr. Hovdenes mentioned.

Senator Klein said he was willing to provide the committee with his bill draft regarding the regulation of onsite sewage treatment systems.

Representative Magrum said he introduced a bill in a previous legislative session but the bill failed due to the fiscal note. He said the fiscal note was inaccurate because the cost of the regulators being employed by the public health units was not taken into account. He said the regulation for these systems should be under the State Board of Plumbing because he is concerned about the qualifications of inspectors and regulators across the state.

### **DISCLOSURE OF CONSUMERS' PERSONAL DATA STUDY**

Chairman Louser called on the Legislative Council staff to present a memorandum entitled [Disclosure of Consumers' Personal Data - Background Memorandum](#).

Chairman Louser called on Mr. Parrell D. Grossman, Director, Consumer Protection and Antitrust Division, Attorney General's office, to present on an update ([Appendix J](#)) on the Uniform Law Commission's study committee on online data privacy.

In response to a question from Chairman Louser, Mr. Grossman said stakeholders are invited to participate and provide feedback during the uniform law drafting process.

Chairman Louser called on Representative Kasper for a presentation regarding consumer data privacy. Representative Kasper, who sponsored House Bill No. 1485 (2019), said he worked extensively with people outside the state, including a senator from the Washington State Legislature who introduced a similar data privacy bill. He said companies use and sell consumers' data for profit, and consumers have a right to know what is being done with their information. He said consumers should have the right to prohibit companies from using or selling the consumer's information without the consumer's consent. He said he welcomes technology companies' engagement and participation in the study. He distributed a National Conference of State Legislatures' article ([Appendix K](#)) on data privacy legislation introduced in other states in 2019.

In response to a question from Representative Anderson, Representative Kasper said the longer the state waits to enact legislation, the longer the state's citizens are vulnerable.

Chairman Louser called on Mr. Ethan Hellier, Manager, Congressional and Public Affairs, United States Chamber of Commerce, for a presentation ([Appendix L](#)) on privacy regulation at national and state levels. Mr. Hellier said it is the chamber's position that it is the federal government and Congress' role to pass a national privacy law to provide the same consumer protections across state lines and to eliminate concerns of a patchwork of state laws.

In response to a question from Representative Kasper, Mr. Hellier said the chamber is willing to be a resource for the committee.

In response to a question from Chairman Louser, Mr. Hellier said other than North Dakota, he was not aware of other states in the Midwest studying data privacy.

In response to a question from Representative Jones, Mr. Hellier said a few members of Congress have been championing data privacy legislation, but the legislation has not gotten the attention of leadership. He said he encourages working with the North Dakota Congressional Delegation to press the issue at the federal level.

In response to a question from Representative Beadle, Mr. Hellier said the chamber likely would be in favor of North Dakota passing the model legislation, but the organization would want the other 49 states to follow suit.

Representative Beadle said if North Dakota passes data privacy legislation, it would be a drop in the bucket for technology companies' revenue and likely would not spur companies to change their practices. He said there should be action taken at the federal level, but there is validity in each state having its own privacy laws on the books, and to have a separate state venue to file a grievance.

In response to questions from Representative Nathe, Mr. Hellier said he is not sure if any of the sectors involved in the working group drafting model legislation are from North Dakota, but he can find out and let the committee know. He said his group's lobbyists have been in contact with the North Dakota Congressional Delegation. He said the Trump Administration has not weighed in on the issue.

Representative Nathe said the state cannot wait for Congress to take action.

In response to questions from Chairman Louser, Mr. Hellier said data privacy is moving up the ladder on the chamber's priority list, which is based largely on political appetite. He said trade currently is the number one issue, but the chamber has an entire division that focuses on technology and legislation and is working solely on this issue. He said he will provide the working group's model legislation to the Legislative Council staff.

Chairman Louser called on Mr. Aaron J. Burstein, Partner, Wilkinson Barker Knauer, LLP, for a presentation ([Appendix M](#)) regarding the practical challenges and consumer impacts of state privacy legislation.

In response to a question from Representative Kasper, Mr. Burstein said his general concern with House Bill No. 1485 was the implementation of data privacy legislation at the state level can create conflicts with other states' laws and compliance issues.

Chairman Louser called on Mr. Michael Mattmiller, Director of State Government Affairs, Microsoft Corporation, for a presentation ([Appendix N](#)) on privacy regulation. Mr. Mattmiller said Microsoft has been a supporter of strong privacy laws, advocated for a federal privacy law since 2005, and supported efforts to pass House Bill No. 1485.

In response to a question from Representative Kasper, Mr. Mattmiller said there is not a Microsoft product or service that would be advantaged from advancing privacy legislation. He said Microsoft supports data privacy legislation because the company has to earn the public's trust in the marketplace.

In response to a question from Senator Klein, Mr. Mattmiller said the Washington state data privacy legislation passed overwhelmingly in the Senate, but there were differing opinions in the House on the roles companies should play and differing views of advocates. He said facial recognition technology was addressed in the Washington bill, but was not discussed in House Bill No. 1485.

In response to a question from Chairman Louser, Mr. Mattmiller said Congress faces numerous issues, and it can be difficult for data privacy to get the attention the issue deserves.

In response to a question from Representative Mock, Mr. Mattmiller said he is not aware of a multistate compact regarding data privacy.

Ms. Gabby Reed, Government Affairs Manager, RELX Group PLC, said her organization supports a federal privacy law as the best pathway for consumers and businesses.

Representative Kasper said everyone should read House Bill No. 1485, amend the bill as though they are the drafter, and provide suggestions for the ideal North Dakota privacy legislation.

Ms. Sarah M. Ohs, Director of Government Relations, Consumer Data Industry Association, said her organization prefers a federal privacy law. She said federal laws that govern different areas of privacy should be taken into account as state policy is created. She said House Bill No. 1485 lacked fraud prevention and federal Fair Credit Reporting Act exemptions.

In response to a question from Representative Mock, Ms. Ohs said she would provide the committee with the federal regulations regarding privacy.

Mr. Jon Godfreed, Insurance Commissioner, said privacy concerns affect the insurance industry as well as other businesses, and this is a top priority for the National Association of Insurance Commissioners.

Mr. Mike Chaussee, Advocacy Director, AARP North Dakota, said data privacy is a top issue for AARP members.

Ms. Lacey Anderson, representing Midcontinent Communications, said Midcontinent Communications feels data privacy should be addressed at the federal level.

Mr. Mason Sisk, Assistant Executive Director, Technology Council of North Dakota, provided written testimony ([Appendix O](#)). He said the council believes a uniform federal privacy framework is best.

Chairman Louser said audience members and stakeholders should read House Bill No. 1485. He said if they are in favor of the bill, amend it to make it workable. He said for those who do not support the bill, provide feedback to the committee and provide contact information to the Legislative Council staff.

Representative Nathe requested the Legislative Council staff to research the impact, if any, of data privacy on the Information Technology Department, higher education, and K-12 education.

The Legislative Council staff distributed materials to committee members from Ms. Alexi Madon, Vice President, State Government Affairs, CompTIA ([Appendix P](#)), and Mr. Brent Smoyer, State Government Relations and Grassroots Director, National Association of Professional Background Screeners ([Appendix Q](#)).

The State Privacy and Security Coalition ([Appendix R](#)) and the American Property Casualty Insurance Association ([Appendix S](#)) distributed materials to the committee.

### UNMANNED AIRCRAFT SYSTEMS STUDY

Chairman Louser called on the Legislative Council staff to present a memorandum entitled [Unmanned Aircraft Systems - Background Memorandum](#).

Chairman Louser called on Mr. Kyle C. Wanner, Executive Director, North Dakota Aeronautics Commission, for a presentation ([Appendix T](#)) regarding the role of the commission, aircraft registration, and the unmanned aircraft system (UAS) industry in the state.

In response to questions from Representative Mock, Mr. Wanner said many UAS products contain fliers or notice of the federal registration requirement. He said if an individual is flying a UAS outside, the UAS is in the federal government's airspace, and the UAS needs to be registered with the federal government and marked with a licensing number so the UAS can be tracked.

In response to questions from Representative Kasper, Mr. Wanner said approximately \$2.5 million is generated biennially from the 5 percent excise tax on aircraft. He said excise tax revenue is one of the hardest revenues to predict. He said there was an increase in aircraft sales last biennium. He said the excise tax is based on the price of the aircraft, and there is no cap on the tax. He said there have not been legislative discussions regarding implementing a cap on the excise tax since he has been director. He said the aircraft registration cannot be granted until the excise tax is paid in full.

In response to a question from Representative Nathe, Mr. Wanner said the commission wants to ensure UAS operations are integrated safely into the current system.

In response to a question from Chairman Louser, Mr. Wanner said the commission is not notified of unmanned aircraft registered with the federal government.

Chairman Louser called on Mr. James Leiman, Director, Economic Development and Finance Division, Department of Commerce, and Mr. Nicholas Flom, Executive Director, Northern Plains Unmanned Aircraft Systems Test Site, to provide semiannual reports ([Appendix U](#)) on the status of the UAS test site, pursuant to North Dakota Century Code Section 54-60-28, and the development of the beyond visual line of sight UAS program.

In response to a question from Representative Nathe, Mr. Leiman said the Department of Commerce is looking at existing infrastructure and what can be leveraged without purchasing anything new. He said he hopes the beyond visual line of sight UAS program will be built up by January 2021.

Representative Nathe said legislators should travel to Grand Forks to see the investment the state is making in the UAS industry.

In response to a question from Representative Anderson, Mr. Flom said the test site needs the continued support of the Legislative Assembly.

No further business appearing, Chairman Louser adjourned the meeting at 4:30 p.m.

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Jill Grossman  
Counsel

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