

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

NATURAL RESOURCES COMMITTEE

Monday, August 26, 2019
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Robert Erbele, Chairman, called the meeting to order at 10:00 a.m.

Members present: Senators Robert Erbele, Jim Dotzenrod, Dale Patten; Representatives Chuck Damschen, Gretchen Dobervich; Citizen Members Dorman Bazzell (Chief Information Officer's designee), David DeWald, Doug Goehring, Jason Horning, Brian Schanilec, Joe Schettler, Terry Steinwand, John Weinand, Ryan Younggren

Others present: See [Appendix A](#)

Chairman Erbele opened the meeting with comments regarding the history of the Legislative Assembly's attempts to revise land access laws. He said there was a great amount of interest in the issue during the 2019 legislative session and several well-attended committee hearings on Senate Bill No. 2315 (2019), which would have revised land access laws.

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

LAND ACCESS STUDY

Chairman Erbele called on the Legislative Council staff to review a memorandum entitled [Background Memorandum - Land Access Study](#) regarding the study directed by Section 6 of House Bill No. 1021 (2019), and a memorandum entitled [Neighboring States' Land Access Statutes](#).

Game and Fish Department Information

Chairman Erbele called on Mr. Terry Steinwand, Director, Game and Fish Department, for a presentation ([Appendix B](#)) regarding the number, type, and results of trespass violations over the past 5 years.

In response to questions from Mr. Goehring, Mr. Steinwand said there are data regarding where violations occur most frequently. He said the central part of the state may have more frequent violations. He said he does not think there are landowners who complain chronically.

In response to questions from Chairman Erbele, Mr. Steinwand said the vast majority of North Dakota hunters are ethical. He said the vast majority of hunters charged with hunting on posted land do not repeat the offense. He said the only lakes to which the Game and Fish Department actively obtains access for anglers are the lakes the department manages.

In response to a question from Mr. Schettler, Mr. Steinwand said his data include only information about the department's officers. He said arrests or citations from other law enforcement officers are not reflected in his data.

In response to a question from Senator Dotzenrod, Mr. Steinwand said suspension of all hunting, fishing, and trapping privileges means suspension for 1 year unless the individual committed a second or subsequent offense within 2 years.

In response to a question from Mr. Horning, Mr. Steinwand said the department typically obtains an easement to access fishing locations so anglers can access the locations. He said there still may be difficulty in accessing those locations during winter.

In response to a question from Mr. DeWald, Mr. Steinwand said the department's fishing guide identifies the access points the department obtains to fishing locations. He said the department does not identify the access points by posting or other physical markers.

Chairman Erbele called on Mr. Brian Hosek, Information Technology Supervisor/GIS Coordinator, Game and Fish Department, for a presentation ([Appendix C](#)) regarding the geographic information system (GIS) data available to the department and uses of the data.

In response to a question from Mr. Goehring, Mr. Hosek said electronic applications can include all kinds of information about parcels of land. He said the difficulty is establishing and verifying the individual who owns or leases the land and who has authority to designate information about the parcel.

In response to a question from Chairman Erbele, Mr. Hosek said if created, the public would be responsible for checking an electronic posting database.

In response to a question from Senator Patten, Mr. Hosek said the database could work whether the default position of land is "open" or "closed" to the public.

In response to a question from Representative Dobervich, Mr. Hosek said he does not have information about the staff and funds needed to build and operate an electronic posting database. He said he does not know which agency is the appropriate steward for the database. He said some of the work required would be duplicative of what counties are doing with United States Department of Agriculture's Farm Service Agency staff.

In response to a question from Mr. Horning, Mr. Hosek said it may be a challenge to put the burden of operating the database on counties.

In response to a question from Mr. Younggren, Mr. Hosek said the database could be operated offline. He said it would be feasible to provide the information through telephone calls if there were staff available to take the calls.

State's Attorneys' Information

Chairman Erbele called on Mr. Ryan Younggren, Cass County Assistant State's Attorney, for a presentation regarding prosecutions of trespass cases. Mr. Younggren said he solicited information from other counties' state's attorneys, but there is no central database regarding trespass prosecutions or prosecutions for hunting on posted land. He said courts generally set fines for hunting on posted land at around \$600 and do not send offenders to jail. He said charges for hunting on posted land sometimes are changed to charges for criminal trespass so the offenders' licenses are not suspended. He said telling an individual the individual cannot enter or remain on certain property ("individual trespass") is an option for landowners and lessees. He said once an individual has been told not to enter or remain on property, the individual can be prosecuted for trespass if the individual returns. He said individual trespass works in both rural settings and urban settings, such as stores. He said some law enforcement officers have told him they do not want the statutes regarding individual trespass to be repealed.

In response to questions from Chairman Erbele, Mr. Younggren said prosecutors in cities consider whether there was notice against trespass when considering whether to prosecute a trespass case. He said prosecutors ask whether the circumstances give the individual notice the individual should not be there. He said because there has to be criminal intent, standing on someone's lawn when there is no notice against trespassing probably is not trespass. He said prosecutors may decline to prosecute a case for multiple reasons, including when there is no criminal intent and when a witness or recording cannot identify the trespasser. He said, based on the Game and Fish Department's data, very few cases are declined by prosecutors.

In response to a question from Mr. Schanilec, Mr. Younggren said knocking down a no trespassing sign probably would be punished by a fine and a court order. He said he would treat it as property destruction.

In response to a question from Mr. DeWald, Mr. Younggren said it is a lot easier to prosecute a trespassing individual who has been given actual notice against trespassing, even if the relevant land is not posted.

North Dakota Association of Counties Information

Chairman Erbele called on Mr. Jason Horning, Next Generation 9-1-1 Program Manager, North Dakota Association of Counties, for a presentation ([Appendix D](#)) regarding counties' GIS data.

In response to questions from Chairman Erbele, Mr. Horning said counties are not required to have GIS data, but GIS data help counties fulfill their responsibilities. He said only about three counties have no GIS data. He said vendors that operate GIS for counties may charge \$200 to \$300 to pull data upon request. He said the GIS data counties maintain for tax purposes would have the information regarding parcel ownership which a land access database would need. He said it would be difficult for a county to maintain GIS data related to needs other than those of the county, but counties could share parcel numbers and ownership data with the state. He said the committee will need to explore how data from the counties would be updated and shared with the state. He said to

maintain and share the appropriate information, counties will need to know the use of, requirements for, and proposed scope of any land access database. He said it would be reasonable to develop a test database for three counties in the oil patch or for three large counties with lots of resources and GIS data, as anticipated under House Bill No. 1021 (2019). He said it would be helpful for the state to provide resources to counties to maintain data.

In response to a question from Mr. Schanilec, Mr. Horning said he does not know how to identify renters or others who have authority to grant or deny access to a parcel. He said counties have information regarding owners, not renters, because the data is obtained for tax purposes.

In response to a question from Mr. Steinwand, Mr. Horning said counties have data for parcel identification, owners' names, owners' addresses, and numbers of acres in parcels, but counties may not know whether the parcel is residential, commercial, or agricultural. He said counties do not have information regarding leased hunting rights.

Information Technology Department Information

Chairman Erbele called on Mr. Dorman Bazzell, Chief Data Officer, and Mr. Bob Nutsch, GIS Hub Program Administrator, Information Technology Department, for a presentation ([Appendix E](#)) regarding the Information Technology Department's capabilities for developing a land access system, data necessary to develop the system, and potential issues with the system.

In response to questions from Chairman Erbele, Mr. Nutsch said the cost of adding the necessary data to the GIS hub for a land access database would vary depending on the extra storage required. He said servers are in place to store and send the data, but the cost increases as more data needs to be stored. He said there may be a learning curve for counties at the initiation of the database project, but the database will lead to less work for counties over time because the counties will not have to field as many requests for data from outside entities and individuals.

In response to a question from Chairman Erbele, Mr. Bazzell said the Information Technology Department, which is waiting for cost estimates in response to the request for proposals for work on the GIS hub, will have a better idea of the cost to develop a trial database after the proposals are submitted.

In response to a question from Senator Dotzenrod, Mr. Bazzell said the department would "buy" rather than "build" capabilities for a land access database.

COMMENTS FROM INTERESTED PERSONS

Mr. Joe Keller said he is concerned about individuals with limited means losing the opportunity to hunt or fish if land access laws are changed. He said the systems, such as OnX, can be expensive, especially if hardware must be updated periodically.

Mr. Darrell Belisle, North Dakota Bowhunters Association, said an electronic land access database will be costly and may cause problems. He said he would like landowners to be required to post land physically or electronically post land rather than having the option to do either.

Mr. Drew Courtney said access codes may be used to give renters access to post land electronically in a land access database.

COMMITTEE DISCUSSION

Mr. DeWald said the committee needs to discuss other issues before diving into a discussion about an electronic land access database. He said the committee should discuss access to landlocked lands, land access for fishing, access to school lands, and other topics.

Mr. Schettler said there may be value in having the three counties in the pilot database be contiguous.

Mr. Weinand said, as a landowner, he would be happy to post his land electronically if he did not have to post it physically. He said any land access database would need to be clear.

Mr. Schanilec said roughly one-half of the land in the state is not posted, so the committee should consider how to address nonparticipants in an electronic posting database.

Mr. Horning said data in an electronic posting database would need to be updated frequently because there would be criminal penalties for trespassers. He said it would be useful to include a county with good, frequently updated GIS data and a county that lacks such data for the pilot database. He said doing so would help identify workflows available and workflows that could work better.

Mr. Younggren said the committee should address criminal trespass laws generally rather than just hunting on posted land.

Mr. Bazzell said the committee needs to identify the data, features, and functionality of the pilot database quickly to meet the deadline.

Committee members discussed the possibility of inviting a vendor to testify regarding how an application for an electronic posting database would function.

No further business appearing, Chairman Erbele adjourned the meeting at 2:40 p.m.

Claire Ness
Counsel

ATTACH:5