

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

COMMERCE COMMITTEE

Wednesday, October 9, 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, Thomas Beadle, Terry B. Jones, Jeffery J. Magrum, Corey Mock, Mike Nathe, Emily O'Brien, Shannon Roers Jones, Denton Zubke; Senators Jim Dotzenrod, Shawn Vedaa

Members absent: Representatives Pamela Anderson, Jim Kasper, Randy A. Schobinger; Senators Randy Burckhard, Scott Meyer, Ronald Sorvaag

Others present: Representative Karla Rose Hanson, Fargo, member of the Legislative Management
Vonette J. Richter, Legislative Council, Bismarck
See [Appendix A](#) for additional persons present.

It was moved by Representative Mock, seconded by Representative Nathe, and carried on a voice vote that the minutes of the August 12, 2019, meeting be approved as distributed.

DISTRIBUTION OF FOOD IN RURAL COMMUNITIES STUDY

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

Senator Vedaa called on Mr. Kevin Iverson, Census Office Manager, Department of Commerce, for a presentation ([Appendix B](#)) on the state's demographics and shifts and trends in rural areas.

In response to a question from Representative Nathe, Mr. Iverson said some of the increase in Fargo's population could be attributed to the loss of population in the northeast region of the state.

In response to a question from Senator Dotzenrod, Mr. Iverson said there is a direct relationship between out-migration and food insecurity. He said when out-migration occurs, an older population often is left. He said those older populations typically do not have a strong household income.

Ms. Linda Grotberg, Board President and Volunteer Manager, Wimbledon Community Grocery and Cafe, provided written testimony ([Appendix C](#)) regarding the nonprofit organization that was formed to operate her community's rural grocery store.

In response to questions from Senator Vedaa, Ms. Grotberg said 12 years ago the grocery store in Wimbledon was sold by a local family to a for-profit community group. She said the store was operated by that group for approximately 6 years, but the store struggled. She said about 5 years ago, the for-profit group decided to change its status to a nonprofit organization.

In response to questions from Representative Nathe, Ms. Grotberg said the North Dakota Association of Rural Electric Cooperatives and the North Dakota Rural Grocery Initiative have provided assistance to the store. She said the city of Wimbledon has a 1 percent sales tax, and the store receives a quarter of that revenue. She said it would be helpful to have more competitive purchasing power for buying inventory.

In response to a question from Representative Jones, Ms. Grotberg said the store received a grant of almost \$60,000 from the North Dakota Association of Rural Electric Cooperatives to purchase a new cooler and freezer. She said the store also has received grants from the North Dakota Community Foundation to help replace inefficient heating and cooling units. She said the store was eligible to receive those grants due to the store's nonprofit status.

In response to questions from Representative Mock, Ms. Grotberg said the store is a member of the North Dakota Grocers Association. She said the store provided representatives of another rural community with information on the process of forming a nonprofit organization.

Representative Nathe said the North Dakota Grocers Association should have a presence at committee meetings when the food distribution study is being addressed, and the association should provide support and assistance to struggling rural grocery stores.

Senator Vedaa said he is a board member of the North Dakota Grocers Association. He said the association recognizes the struggles rural grocers face.

Ms. Lori Capouch, Rural Development Director, North Dakota Association of Rural Electric Cooperatives, provided testimony noting the North Dakota Grocers Association has been actively involved in the North Dakota Rural Grocery Initiative. She said the initiative has been testing a cooperative purchasing model in four different communities.

Chairman Louser said he and Senator Vedaa have been in contact with Minot State University representatives regarding university students conducting a study on food distribution.

Senator Dotzenrod distributed materials to committee members on food insecurity and health care utilization ([Appendix D](#)) and food insecurity in the state ([Appendix E](#)).

SEWAGE TREATMENT SYSTEM REGULATION STUDY

Chairman Louser called on Mr. Tom Schimelfenig, President, North Dakota Onsite Wastewater Recycling Association, for a presentation ([Appendix F](#)) on recommendations for the future regulation of sewage treatment systems. Mr. Schimelfenig said a statewide, centralized code should be implemented, and a state agency should regulate the industry.

In response to questions from Representative Magrum, Mr. Schimelfenig said a statewide code is needed because the rules and regulations vary between the public health districts. He said he serves on a technical board put together by the public health units, and the board supports consistent statewide regulation. He said the board includes a voting member from each public health unit, three contractors, and a representative from the Department of Environmental Quality.

Chairman Louser called on Mr. Brent Beechie, Secretary and Chief Inspector, State Board of Plumbing, for a presentation ([Appendix G](#)) on the regulation of sewage treatment systems. Mr. Beechie said plumbing and the installation of private sewage disposal systems are different disciplines, and the State Board of Plumbing is not the appropriate agency to regulate onsite sewage treatment systems.

In response to a question from Representative Magum, Mr. Beechie said the regulation of sewage treatment systems has been an issue for 10 years. He said the appropriate state agency to regulate sewage treatment systems is the Department of Environmental Quality due to the department's familiarity with the industry. He said funding has been the primary issue. He said the department has indicated additional full-time employees and resources would be required if the department assumed this duty.

In response to questions from Chairman Louser, Mr. Beechie said the State Board of Plumbing does not license installers of sewage treatment systems, rather public health units license those individuals. He said if a consumer has a question regarding the condition of a septic tank or sewer system or for inspections, the consumer should contact the local public health unit rather than the State Board of Plumbing.

Ms. Mary Korsmo, Executive Director, North Dakota State Association of City and County Health Officials, provided written testimony ([Appendix H](#)). She said association members passed a position statement noting the association supports the statewide adoption of a uniform code that allows for local modifications.

In response to a question from Representative Magrum, the Legislative Council staff said a fiscal note is not created until a bill is introduced, and the state agency impacted by the bill would produce the required financial information. She said the committee could request a cost estimate from the impacted agency.

Representative Nathe said an alternative to a bill would be to have the desired state agency include the requested additional staffing and funding in the agency's budget proposal.

Ms. Erin Ourada, Administrator, Custer Health, provided written testimony ([Appendix I](#)). Ms. Ourada said public health units are supportive of the statewide adoption of a uniform code that allows for local modifications.

UNMANNED AIRCRAFT SYSTEMS STUDY

Chairman Louser called on Mr. James Leiman, Director, Economic Development and Finance Division, Department of Commerce, to provide testimony ([Appendix J](#)) on the beyond visual line of sight (BVLOS) network. Mr. Leiman said the target date for the next stage of the BVLOS network in the Bakken is January 2021. He said 12 commercial companies are considering relocating to the state for business development opportunities related to unmanned aircraft systems (UAS). He said job growth projections are continuing, and it is anticipated the industry as a whole will triple within 10 years of the investment in the BVLOS network. He said the department is pursuing investors across the country to do side-by-side investing.

In response to a question from Chairman Louser, Mr. Leiman said the state is primarily competing against Kentucky, Virginia, Kansas, Oklahoma, and New York.

Chairman Louser called on Mr. Nicholas Flom, Executive Director, Northern Plains Unmanned Aircraft Systems Test Site, to provide testimony ([Appendix K](#)) on the test site, the development of the BVLOS network, and a report from the 13th Annual UAS Summit and Expo held in Grand Forks on August 27-28, 2019. Mr. Flom said Xcel Energy was given approval to fly BVLOS over the company's transmission lines in eight states and in Grand Forks over the company's distribution lines. He said an industry day for the statewide BVLOS network will be held in Fargo on October 15. He said Senator John Hoeven kicked off the UAS Summit and Expo, and two significant announcements were made, namely Xcel Energy's approvals for BVLOS flights and General Atomic Aeronautical Systems' approval to fly without a chase airplane at the Grand Sky Business Park for testing and training purposes.

In response to a question from Chairman Louser, Mr. Flom said the state's UAS industry needs the Legislative Assembly's continued support so projects, technology, and innovations continue. He said for the state to continue to appeal to users, the Legislative Assembly should be cautious in enacting legislation that prohibits projects at the test site. He said regulations already are in place at the federal level.

Representative Nathe said the UAS Test Site and Grand Sky should continue to broadcast their successes to the public.

Chairman Louser called on Mr. Thomas Swoyer Jr., President, Grand Sky Development Company, for a presentation ([Appendix L](#)) on progress at Grand Sky. Mr. Swoyer said Grand Sky is a UAS airport in Grand Forks County which has been operating since 2015. He said 170 individuals work at Grand Sky with an average salary of approximately \$70,000, and there are more than 50 open positions. He said Grand Sky has been operating a BVLOS system that has allowed two significant UAS events to occur, namely General Atomics obtained FAA approval to routinely fly without a chase plane in support of their business objectives and General Atomics successfully flew two large UAS simultaneously with only one pilot. He said the British Royal Air Force is training at Grand Sky, and the Italian, Spanish, and Dutch Air Forces are planning on training at Grand Sky from 6 weeks to 6 months depending on mission objectives. He said the United States Air Force is advocating for contract work for three of its projects to be conducted in Grand Forks.

In response to questions from Representative Mock, Mr. Swoyer said Grand Sky has two primary tenants, General Atomics and Northrop Grumman, and most of the 170 individuals who work at Grand Sky are tenants. He said approximately 12 to 15 companies use Grand Sky on a daily basis. He said the anticipated opening for the 18,000 square foot, multitenant facility is March 2020. He said the state has invested over \$15 million to fund and support infrastructure at Grand Sky which all the tenants and Grand Sky users use. He said \$3 million was appropriated in 2019, but Grand Sky has yet to spend that funding. He said between the two primary tenants, nearly \$60 million was invested by private companies at Grand Sky. He said Grand Sky handles the ground operations, including snow plowing and security, and coordinates flight schedules with the Grand Forks Air Force base.

In response to questions from Representative Nathe, Mr. Swoyer said the open positions at Grand Sky include a variety of jobs, but the fewest number of openings is for pilots. He said the state's universities are doing an excellent job of training people to fill the need. He said senior and entry level positions are easier to fill, and individuals are willing to come to North Dakota for those jobs.

In response to a question from Representative Mock, Mr. Swoyer said the state should defer to the FAA to regulate UAS operations.

In response to a question from Representative Magrum, Mr. Swoyer said Grand Sky charges individuals to use the BVLOS system, and tenants are charged a lower rate compared to daily rate users.

Representative Mock requested the Department of Commerce provide the committee with a list of incentives available to or may be of interest to UAS-related businesses.

DISCLOSURE OF CONSUMERS' PERSONAL DATA STUDY

Chairman Louser called on Ms. Lindi Michlitsch, Director, Motor Vehicle Division, and Mr. Brad Schaffer, Director, Drivers License Division, Department of Transportation, to provide a presentation ([Appendix M](#)) on federal and state laws on driver and motor vehicle record privacy.

In response to a question from Representative Nathe, Mr. Schaffer said the department charges a \$3 fee per request for a copy of an individual's driver record. He said personal information, such as birth date and Social Security number, is not released, and the customer is notified if the customer's information is requested. He said the department receives over \$1 million from driver abstract requests, and he will provide the exact revenue to the committee.

In response to a question from Representative Jones, Mr. Schaffer said the department stores information obtained when an individual applies for a Real ID; however, that information is not an open record.

In response to a question from Chairman Louser, Mr. Schaffer said driver abstracts typically are requested by insurance companies and employers.

Chairman Louser called on Mr. Parrell D. Grossman, Director, Consumer Protection and Antitrust Division, Attorney General's office, to provide a presentation ([Appendix N](#)) on proposed changes to an amendment offered to House Bill No. 1485 (2019).

In response to a question from Representative Nathe, Mr. Grossman said there was a significant fiscal note attached to House Bill No. 1485, as introduced. He said the fiscal note included additional resources and staffing of one full-time attorney and one paralegal. He said he has talked to other states' attorney general staff regarding enforcement concerns associated with data privacy legislation, including the Washington Attorney General's office, which had similar concerns regarding enforcement.

Congressman Kelly Armstrong said he recently met with representatives from Microsoft, Amazon, and Facebook to discuss data privacy, election security, and facial recognition. He said the federal government should enact data privacy legislation so the country does not end up with a patchwork of state laws. He said the Legislative Assembly should be cautious in enacting data privacy legislation.

In response to a question from Representative Jones, Congressman Armstrong said election security is being discussed at the federal level. He said the banking industry is pushing for uniform regulation of data privacy.

In response to questions from Representative Mock, Congressman Armstrong said a global data privacy bill has not been introduced in Congress. He said if the federal government does not pass comprehensive data privacy legislation in a timely manner, states may wish to consider a uniform law. He said if the state passes a strict data privacy law, there is a risk of a negative impact on North Dakota businesses. He said more stringent regulations tend to hurt smaller entities.

Mr. Gerard Keegan, Vice President, State Legislative Affairs, CTIA, provided written testimony ([Appendix O](#)). He said a new state data privacy law would contribute to a patchwork of regulations that will confuse consumers and burden businesses that operate in more than one state.

In response to a question from Chairman Louser, Mr. Keegan said any website directed toward the European Union is required to have popups. He said consumers become immune to the popups and simply click "okay." He said that kind of "white noise" is not a benefit to consumers.

In response to questions from Representative Jones, Mr. Keegan said CTIA supports a comprehensive federal framework to address data privacy concerns. He said CTIA has been working with various stakeholders to draft legislation.

In response to a question from Chairman Louser, Mr. Keegan said some consumers might appreciate online targeted advertising.

Ms. Sarah Ohs, Director of Government Relations, Consumer Data Industry Association, provided written testimony ([Appendix P](#)). She said it is important to take existing federal privacy legislation into consideration when contemplating a data privacy bill, and House Bill No. 1485 was not able to take those factors into account successfully. She said the facial recognition component in Washington's bill was not the main reason the legislation failed. She said there is not a comprehensive data privacy model that has been passed or tested in any state.

In response to a question from Chairman Louser, Ms. Ohs said Washington's next legislative session will begin on January 13, 2020.

Ms. Lacey Anderson introduced Mr. Justin Forde, Senior Director of Government Relations, Midco, who provided written testimony ([Appendix Q](#)). Mr. Forde said Midco is the largest Internet service provider in the state with over 500 employees. He said House Bill No. 1485 had a lot of issues. He said Midco likely would be the only Internet service provider in the state affected by the bill. He said complying with the bill would be highly problematic and may result in fewer consumers having access to affordable broadband if the company needs to invest capital in compliance measures.

In response to a question from Representative Nathe, Mr. Forde said Midco does not sell, collect, or inspect individuals' personal data.

Ms. Anna Powell, Director, State Government Affairs - Western Region, CompTIA, provided written testimony ([Appendix R](#)). She said CompTIA believes the best consumer privacy framework for businesses and consumers is a framework created at the federal level.

Mr. Levi Andrist, GA Group, introduced Mr. J. Bruce Ferguson, Senior Vice President, State Relations, American Council of Life Insurers. Mr. Ferguson said American Council of Life Insurers submitted testimony on House Bill No. 1485 during the legislative session. He said what was relevant 6 months ago regarding data privacy has changed, and the landscape in another 6 months might be very different. He said Washington is starting over with new legislation, and California already has amended its legislation. He said data privacy is an unsettled area, and the Legislative Assembly has the benefit of time in seeing what will emerge in the next 6 months. He said his organization does not think using House Bill No. 1485 is the right starting point.

In response to a question from Representative Magrum, Mr. Ferguson said almost one-half of the states introduced data privacy legislation this year, most of which were based on California's data privacy law, and none of those bills passed due to the complexity of the issues and stakeholders' concerns.

Ms. Kim Kary, Chief, Administrative Services Division, Game and Fish Department, said if the Game and Fish Department receives an open records request, the department divulges customers' names and mailing addresses. She said the open records law protects individuals' email addresses and phone numbers from being released.

In response to questions from Representative Mock, Ms. Kary said the department may not charge a fee for fulfilling an open records request unless the requested information takes more than 1 hour to compile, and nearly all the requests take less than an hour. She said most requests are from conservation groups, private investigators, boat dealers, and telemarketers. She said some of those requesters might be selling the data. She said individuals may not opt out because the department is following the open records law. She said there is not a federal requirement that the information must be an open record.

In response to a question from Chairman Louser, Ms. Kary said an individual does not need to provide the individual's name or the reason for wanting the information when submitting an open records request.

Representative Nathe said the committee should consider changing the open records law.

In response to a question from Representative Magrum, Ms. Kary said the department does not sell individuals' information.

Representative Mock requested the Legislative Council staff provide more information on the open records law, the law's applicability, the type of personal data state agencies are required to disclose, and the types of records or information specifically exempted.

Chairman Louser said Representative Kasper may choose to incorporate the proposed amendments ([Appendix S](#)) to House Bill No. 1485 into a bill draft for consideration by the committee. He said if Representative Kasper chooses to do so, the bill draft would be discussed and debated at the next meeting.

Chairman Louser said the committee's next meeting is tentatively set for Wednesday, January 15, 2020, at 10:00 a.m.

No further business appearing, Chairman Louser adjourned the meeting at 4:02 p.m.

Jill Grossman
Counsel

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