

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

COMMERCE COMMITTEE

Wednesday, January 15, 2020
Harvest 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, Claire Cory, Terry B. Jones, Jim Kasper, Jeffery J. Magrum, Corey Mock, Emily O'Brien, Shannon Roers Jones, Randy A. Schobinger; Senators Randy Burckhard, Jim Dotzenrod, Scott Meyer, Ronald Sorvaag, Shawn Vedaa

Members absent: Representatives Mike Nathe and Denton Zubke

Others present: Representative Karen M. Rohr, Mandan, member of the Legislative Management
Representative Marvin E. Nelson, Rolla
See [Appendix A](#) for others present.

It was moved by Representative Mock, seconded by Senator Burckhard, and carried on a voice vote that the minutes of the October 9, 2019, meeting be approved as distributed.

DISTRIBUTION OF FOOD IN RURAL COMMUNITIES STUDY

Chairman Louser said Senator Vedaa will chair the meeting for the presentations and discussion regarding distribution of food in rural communities.

Senator Vedaa called on Mr. John Dyste, President, North Dakota Grocers Association, for a presentation ([Appendix B](#)) regarding the study on distribution and transportation of food in rural communities.

In response to a question from Senator Vedaa, Mr. Dyste said dollar stores in small towns carry small quantities of some food products. He said the dollar stores can purchase the products at lower prices than grocery stores and receive supplies from distributors more easily than grocery stores because the dollar store chains have national contracts with distributors.

In response to questions from Representative Rohr, Ms. Lori Capouch, Rural Development Director, North Dakota Rural Electric and Telecommunications Development Center, said in response to a survey, consumers listed price and variety as two of the most important issues regarding access to food and consumers said they would prefer to shop locally if possible. She said the association shared the survey information with grocers and held two summits with grocers to discuss food access in rural areas.

Mr. Dyste said rural grocery stores cannot compete on price with national stores that either deliver groceries by mail or provide groceries as a small part of their businesses. He said rural grocery stores compete based on customer service and quality of meat and produce.

In response to questions from Senator Burckhard, Mr. Dyste said Minnesota and Wisconsin are addressing rural grocers' problems. He said grocers face many pressures, including difficulty retaining employees when there is a workforce shortage.

In response to a question from Representative Kasper, Mr. Dyste said building or sustaining a unified buying organization for rural grocery stores is unlikely. He said developing a unified insurance plan for grocers would be more promising. He said even if all grocery stores in the state combine their buying power, they still could not compete with the buying power of national chain stores that sell groceries.

In response to questions from Representative Mock, Mr. Dyste said rural school districts purchase food from institutional distributors rather than rural grocers. He said rural grocers used to provide food for local daycare centers, but the centers now often buy food from other providers. He said hospitals and nursing homes could be good customers for rural grocers.

Representative Jones said he is concerned about how people would access food in an emergency if rural grocery stores do not stay in business and maintain large supplies of food.

In response to a question from Representative Jones, Mr. Dyste said the private sector is not willing to resolve the problems with distribution and pricing that rural grocery stores face, so a government program makes sense.

In response to a question from Representative Anderson, Mr. Dyste said the price difference between a cart of groceries at a national store versus a rural grocery store may be 10 to 15 percent.

In response to a question from Representative Magrum, Mr. Dyste said his grocery store tries to buy as much local produce as possible, and grocery stores want to sell local foods. He also said there are legal restrictions applicable to foods sold by grocery stores that may not apply to cottage foods, so a grocery store may face legal liability if the store sells cottage foods.

Public Comments

Ms. Capouch presented comments ([Appendix C](#)) to the committee.

In response to a question from Senator Sorvaag, Ms. Capouch said the grocery locker model described in her presentation is used throughout Australia.

In response to a question from Senator Meyer, Ms. Capouch said a locker with 15 spots for refrigerated and frozen food costs about \$33,000, and an ambient temperature locker costs about \$10,000.

In response to a question from Chairman Louser, Ms. Capouch said the government could help rural grocers by providing grants for equipment purchases.

In response to a question from Representative Mock, Ms. Capouch said the computer system to operate a food locker system costs approximately \$30,000.

Ms. Karen Erber said the committee could tell state agencies rural grocery stores are a priority and provide funding to the agencies to bring people together to explore solutions.

SEWAGE TREATMENT SYSTEM REGULATION STUDY

Chairman Louser called on Mr. David Glatt, Director, Department of Environmental Quality, for a presentation ([Appendix D](#)) regarding regulation of onsite sewage treatment systems.

In response to a question from Representative Rohr, Mr. Glatt said septic system contractors have expressed concern about inconsistencies in rules across the state, and local entities would like to have a database of licensed contractors. He said local health units do a good job regulating contractors, but in parts of the state there is little oversight of septic tank systems. He said areas of rural development need oversight of septic systems for consumer protection, health, and safety. He said it is important to identify jurisdictional boundaries between local agencies and the state.

In response to questions from Representative Kasper, Mr. Glatt said a resident who is unable to obtain approval for a septic system from a local agency does not have an appeal process. He said the Department of Environmental Quality (DEQ) has become involved in situations when a septic system normally subject to local regulation negatively impacts water quality.

In response to a question from Senator Meyer, Mr. Glatt said other states tend to have more comprehensive rules governing septic systems. He said he likes the idea of local control with a state baseline. He said DEQ may need two full-time equivalent employees to address licensing, education, and complaints. He said counties with limited oversight reach out to other counties with which they contract for help regulating septic systems, but the counties may start relying on DEQ if DEQ takes on the regulatory responsibilities.

Representative Magrum said he would like the state to establish rules but give local regulators the authority to set lower standards for contractors working on septic systems in the local regulators' jurisdictions.

In response to a question from Representative Magrum, Mr. Glatt said the state usually sets a minimum standard and allows local regulators to set higher standards. He said the state usually provides for exceptions from regulatory requirements for extraordinary circumstances.

In response to a question from Representative Rohr, Mr. Glatt said an individual may install a septic system on the individual's land without a license.

In response to a question from Chairman Louser, Mr. Glatt said exempting contractors who have been working for a certain period of time from education or training requirements may be possible, but periodic training or education should be required. He said annual or biannual training could be provided by the state, and contractors would be required to attend it.

Chairman Louser called on Mr. Tom Schimelfenig to provide comments on a bill draft [[21.0039.01000](#)], which was distributed to committee members and members of the public.

In response to a question from Chairman Louser, Mr. Schimelfenig said he prefers to have a technical board of contractors and private individuals which supersedes DEQ so the technical board could resolve complaints or allegations of violations through mediation. He said the technical board should have seven members including three contractors.

In response to a question from Representative Kasper, Mr. Schimelfenig said individuals should hire licensed contractors to install their septic systems.

In response to questions from Representative Rohr, Mr. Schimelfenig said the current regulatory system is working only in some areas of the state. He said local health units often provide residents databases of septic system contractors, but some contractors are not included in the databases.

In response to a question from Representative Jones, Mr. Schimelfenig said some areas of the state have too little regulation while other areas have too much regulation.

Chairman Louser called on Mr. Aaron Birst, Legal Counsel and Assistant Director - Policy, North Dakota Association of Counties, to present a bill draft ([Appendix E](#)). Mr. Birst prepared regarding septic system regulation. Mr. Birst said the bill draft would provide unified, statewide standards with local flexibility.

In response to a question from Representative Rohr, Mr. Birst said a licensing fee would cover some administrative costs incurred by the state under his bill draft. He said contractors currently must pay a fee to local governments.

In response to questions from Representative Kasper, Mr. Birst said he has not shared the bill draft with all the counties but has communicated with counties about the concepts in the bill draft. He said most counties agree with the general concepts, but some counties may disagree over some specifics.

In response to questions from Chairman Louser, Mr. Birst said the conversation about septic system regulation is being driven by public health units. He said under his bill draft, public health units still would be the regulators, but the standards would be uniform across the state.

Public Comments

Representative Marvin E. Nelson, Rolla, said this is a significant issue in his district, and he receives many complaints about overregulation of septic systems. He said if a system is installed and approved by the regulating body, the approval should last for a set period unless there are problems with the system.

Ms. Lisa Clute, First District Health Unit, said First District Health Unit supports Mr. Birst's bill draft. She said the bill draft provides a good balance of local and state involvement, and a lot of work went into it. She said First District Health Unit provides education for contractors but would like the state to provide the education and maintain the database of licensed contractors.

In response to questions from Representative Jones, Ms. Clute said there is a license fee for contractors and a permit fee for septic system installations. She said First District Health Unit would like to continue to be the permitting agency and assess the permit fee. She said she would like the state to be the licensing entity and collect the licensing fee. She said the training currently is in-person only. She said some training could be online, but other training needs to be done in person. She said she would like the state to provide the training.

In response to a question from Senator Burckhard, Ms. Clute said it would not take long to compile the list of contractors for the First District Health Unit.

In response to a question from Representative Rohr, Ms. Clute said there needs to be a change in the regulation of the industry and statewide standards. She said she does not know who would be resistant to the Association of Counties' proposal.

Mr. Jason Hordenes, On-site Wastewater Recycling Organization, said he provided input on Mr. Birst's bill draft. He said allowing individuals to install their own septic systems creates much more work for local public health units due to the individuals' lack of education and training. He said North Dakota should regulate this industry so it works for North Dakota, rather than copying another state's regulations. He said he supports statewide, uniform regulation. He said because regulatory codes address different types of soil, different regulations for different parts of the state are not needed.

Mr. Allen McKay, Administrator, Lake Region District Health Unit, presented testimony ([Appendix F](#)) regarding Mr. Birst's bill draft. He said if a system is not failing, the system does not need to be replaced. He said problems arise due to differing interpretations of the rules. He said unless an existing system is failing, the existing system should be grandfathered in under the new rules.

Mr. Schimelfenig said 8 hours of education are required for contractors every other year. He said the National On-site Wastewater Recycling Organization provides online training.

Mr. Glatt said he wants to continue to benefit from local expertise and local units should continue to collect permit fees. He said he does not want the state to assume liability for installation of septic systems.

UNMANNED AIRCRAFT SYSTEMS STUDY

Chairman Louser called on Mr. James Leiman, Director, Economic Development and Finance Division, Department of Commerce, for a presentation ([Appendix G](#)) regarding development of the "beyond visual line of sight" unmanned aircraft system (UAS) program.

In response to questions from Chairman Louser, Mr. Leiman said there are security protocols to access the Grand Sky grounds. He said you have to be a United States citizen to access the grounds. He said 55 pounds is the threshold weight for a UAS being classified as a large asset. He said the federal regulatory environment is under development.

In response to a question from Representative Rohr, Mr. Leiman said one UAS company decided to relocate its manufacturing and production facility to North Dakota from Louisville, Kentucky, and another company is establishing a physical location in North Dakota.

In response to a question from Senator Burckhard, Mr. Leiman said beyond visual line of sight operations are those that allow the operator to be more than 2 miles away from the UAS and do not require the operator to be able to see the UAS. He said companies from all over the world are looking to test their products and concepts here.

Chairman Louser called on Mr. Russ Buchholz, Strategy and Innovation Director, Department of Transportation, for a presentation ([Appendix H](#)) regarding an update on the UAS Integration Pilot Program and the department's use of UAS. He said the Federal Aviation Authority (FAA) gave the department "operations over people" waivers to study emergency response and infrastructure inspection.

In response to questions from Representative Mock, Mr. Buchholz said the Department of Transportation is considering the need to secure information about UAS studies, but no information in the current project is sensitive. He said the federal government will not use DJI equipment due to security concerns. He said the department is working with Acelon to develop equipment for future projects.

In response to a question from Senator Burckhard, Mr. Buchholz said the Department of Transportation is working on "detect and avoid" technology so drones will not collide. He said the FAA is very strict on drone safety.

In response to questions from Representative Louser, Mr. Buchholz said some types of light detection and ranging systems (LiDAR) provide level 1 or 2 detail even with beyond visual line of sight operations. He said there is a state cabinet-level UAS committee looking at data sharing from UAS projects.

DISCLOSURE OF CONSUMERS' PERSONAL DATA STUDY

Chairman Louser called on Ms. Sandra DePountis, Assistant Attorney General, Attorney General's office, for a presentation regarding data privacy and open records. She said a consumer data privacy statute would apply to private entities that receive consumers' data, while open records laws apply to public entities. She said a record in the possession of a public entity regarding public business is an open record unless an exception in federal or state

law applies. She said there are multiple exceptions to open records statutes for individuals' data, including exceptions protecting social security numbers, financial account numbers, email addresses, and phone numbers.

In response to a question from Chairman Louser, Ms. DePountis said open records requests may be made anonymously.

In response to a question from Senator Sorvaag, Ms. DePountis said records are open if they fit the definition of an open record, even if the record is on a person's private email system. She said public entities may charge for responding to requests.

In response to a question from Representative Jones, Ms. DePountis said confidential information is protected from disclosure unless there is a specific statute that allows someone to obtain it. She said public entities cannot ask requesters the purpose for their request. She said there is a statute that allows public entities to deny requests from a requestor whose requests disrupt the entities' operations.

In response to a question from Representative Mock, Ms. DePountis said an entity can decide whether to release "exempt" records. She said open records laws do not require a public entity to obtain an individual's authorization to release the individual's exempt information. She said public entities do not have to notify individuals the individuals' data may be released publicly.

Chairman Louser called on Ms. Sarah Ohs, Director of Government Relations, Consumer Data Industry Association, regarding data privacy legislation. She said the association prefers federal legislation rather than a patchwork of state-by-state legislation. She said if a state data privacy law is enacted, she would like the legislation to include exemptions to accommodate federal law. She said there are three data privacy bills pending in Congress.

In response to questions from Representative Kasper, Ms. Ohs said international companies comply with European Union's general data protection regulation (GDPR), although GDPR took 5 years to implement. She said other companies, such as American companies that do not do business in the European Union, generally do not have to comply with the GDPR, and the GDPR would not translate well to the United States. She said the California law remains in play because the California Attorney General is developing rules and an initiative regarding data privacy is on the ballot. She said the law went into effect in January 2020, and there will be changes to it. She said she has drafted statutory language she can share with the committee.

In response to a question from Representative Mock, Ms. Ohs said the California law differs from the GDPR. She said some states are reviewing bills that are carbon copies of the California law, and some states are reviewing modified versions of the California law. She said two legislators in Washington introduced different bills, and both bills differ from the one introduced last year. She said she would send a synopsis of the "fiduciary model" bill in New York to the committee.

In response to a question from Representative Anderson, Ms. Ohs said a 50-state patchwork of data privacy laws is not conducive to business. She said businesses likely would not favor locating in a state with its own data privacy laws.

Chairman Louser said United States Congressman Kelly Armstrong said at the committee's last meeting the state should allow the federal government to legislate in this area.

In response to a question from Chairman Louser, Ms. Ohs said there is a will and a need to pass federal legislation. She said the industry supports federal legislation and is working with federal legislators to pass it.

Chairman Louser called on Ms. Anna Powell, Director, State Government Affairs - Western Region, CompTIA, for a presentation ([Appendix I](#)) regarding data privacy legislation.

In response to questions from Representative Kasper, Ms. Powell said she would work with the Legislative Assembly on any draft legislation prepared.

In response to questions from Chairman Louser, Ms. Powell said federal legislation on data privacy may be enacted by March 2020.

Representative Mock said large states will set the standard for compliance because companies will want to do business in those states. He said federal legislation would be the best way to proceed, but there is a question regarding how long federal legislation will take.

Chairman Louser called on Ms. Jennifer Huddleston, Research Fellow, George Mason University, for a presentation ([Appendix J](#)) regarding data privacy laws.

In response to a question from Representative Kasper, Ms. Huddleston said current laws address almost all areas of data privacy in which harm to a consumer may occur. She said there is a difference between collection of data and harm from the collection of data. She said states should identify which harm they want to redress, determine whether the harm is not redressable already, and if not, how to narrowly tailor a statute to provide redress for that harm. She said there is a huge role for consumer education in this area. She said data privacy involves many different and evolving scenarios, industries, and individuals.

In response to a question from Representative Anderson, Ms. Huddleston said consumers generally say they value privacy, but data shows consumers' actions and choices indicate they value the benefits from sharing data over data privacy.

In response to a question from Chairman Louser, Ms. Huddleston said a data privacy bill was introduced in Virginia.

Chairman Louser called on Mr. Gerard Keegan, CTIA, for a presentation ([Appendix K](#)) on protections, enforcement, and remedies regarding the disclosure of consumers' personal data. Mr. Keegan said data privacy legislation negatively impacts both large and small businesses. He said data from the European Union show small businesses are impacted disproportionately by data privacy legislation.

In response to a question from Representative Jones, Mr. Keegan said the California initiated measure is being drafted. He said significant changes to the data privacy law are being discussed.

In response to questions from Representative Mock, Mr. Keegan said some companies have nationalized their compliance with the California law, but most companies that have to comply with the California law apply the law only to California residents. He said the complexity of the California law needs more attention. He said he does not expect states will nationalize the application of the strictest state law, but it is difficult to predict. He said the industry wants a federal law on this issue.

In response to a question from Representative Kasper, Mr. Keegan said there are four federal bills, and bipartisan discussions are occurring between committees and leaders to develop a bipartisan bill. He said businesses and federal policymakers are concerned by the California law and feel a need to move at the federal level. He said CTIA has not developed model bill language for states. He said this is a complex area that will have drastic implications for industry, and CTIA has not found language that would work on a state level.

In response to a question from Representative Jones, Mr. Keegan said surveys and studies show younger generations are more willing to share personal data than older generations. He said he would provide the studies to the committee. He said the industry believes data should be protected, but the difficulty is in deciding how to protect data.

Chairman Louser called on Representative Kasper to provide an update to the committee on the state courts' disclosure of personal information. Representative Kasper said he met with Chief Justice Jon J. Jensen of the North Dakota Supreme Court, and he is interested in hearing legislators' input on this issue.

Representative Kasper said the committee should not develop a committee bill draft on data privacy.

Chairman Louser said the next meeting is scheduled tentatively for Wednesday, April 22, 2020.

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

Claire Ness
Counsel

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