



AGRICULTURE AND NATURAL RESOURCES COMMITTEE

Tuesday, February 15, 2022
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Randy D. Lemm, Chairman, called the meeting to order at 10:00 a.m.

Members present: Senators Randy D. Lemm, Michael Dwyer*, Jay R. Elkin, Robert O. Fors, Oley Larsen, Larry Luick, Janne Myrdal*, Merrill Piepkorn, Terry M. Wanzek*; Representatives Mike Beltz, Mike Brandenburg, Chuck Damschen, Dori Hauck, Dwight Kiefert, Dave Nehring, Kathy Skroch, Paul J. Thomas, Bill Tveit

Members absent: Representatives Wayne A. Trottier, Dennis Johnson

Others present: See [Appendix A](#)

**Attended remotely*

It was moved by Senator Wanzek, seconded by Senator Larsen, and carried on a voice vote that the minutes of the October 7, 2021, meeting be approved as distributed.

NORTH DAKOTA BEEF COMMISSION STUDY

Mr. Dustin Assel, Counsel, Legislative Council, presented a memorandum entitled [Agriculture Commodity Group Membership Determination - Election Process](#).

In response to a question from the committee, Mr. Assel noted the highest reported average annual cost associated with commodity elections was \$4,500 for the North Dakota Oilseed Council to publish election notices in county newspapers.

Comments by Interested Persons

Mr. Larry Kinev, board member, Independent Beef Association of North Dakota, presented information and proposed changes ([Appendix B](#)) pertaining to the process of determining the membership of the North Dakota Beef Commission (NDBC).

In response to questions from the committee, Mr. Kinev recommended:

- Creating eight beef districts in the state determined by the number of cattle in each district;
- Creating an election-based process in which one individual is elected to serve on NDBC from each of the eight beef districts; and
- Removing the prohibition against serving on NDBC if an individual has received an assessment refund in the preceding 3 years;

Mr. Kinev noted the recommended changes would help alleviate concerns from Independent Beef Association of North Dakota members and other beef producers who feel the beef checkoff assessment, membership of NDBC, and appointment process of NDBC do not adequately represent their interests.

Ms. Julie Ellingson, Executive Vice President, North Dakota Stockmen's Association, provided testimony regarding the NDBC study. She noted federal law allows for a referendum to terminate or suspend the beef checkoff upon a petition signed by 10 percent, or approximately 88,000, of the eligible producers in the country. She noted the most recent petition to terminate the beef checkoff did not receive the requisite signatures.

Mr. Allen Lund, cattle producer, provided testimony supporting the changes to the process of determining membership for NDBC proposed by Mr. Kinev.

Mr. Jason Schmidt, cattle producer, provided testimony supporting the current process of determining membership for NDBC and the beef checkoff. He noted approximately 500 of the 9,000 beef producers in the state request beef checkoff assessment refunds.

Mr. Travis Maddock, Director and Vice President, North Dakota Beef Commission, provided testimony supporting the current process of determining membership for NDBC and the beef checkoff. He noted the purpose of the beef checkoff is to create demand for beef and beef products through the funding of research and promotion programs, and demand for beef is at an all-time high.

Committee Discussion

The committee discussed the merits of changing the process of determining membership for NDBC to an election-based process.

BILL DRAFT

Senator Myrdal presented a bill draft [\[23.0015.01000\]](#) to repeal of North Dakota Century Code Section 4.1-01-11, regarding the Advisory Committee on Sustainable Agriculture. She noted the Advisory Committee on Sustainable Agriculture has not met since 2010 and is no longer necessary.

Senator Piepkorn noted there is no expense or harm associated with of the Agriculture Commissioner retaining the ability to appoint the Advisory Committee on Sustainable Agriculture.

It was moved by Senator Myrdal, seconded by Senator Larsen, and carried on a roll call vote that the bill draft [\[23.0015.01000\]](#) relating to the repeal of the Advisory Committee on Sustainable Agriculture be approved and recommended to the Legislative Management. Senators Lemm, Dwyer, Elkin, Fors, Larsen, Luick, Myrdal, and Wanzek and Representatives Beltz, Brandenburg, Damschen, Hauck, Kiefert, Nehring, Skroch, Thomas, and Tveit voted "aye." Senator Piepkorn voted "nay."

REPORTS

Ms. Sarah Lovas, Chair, State Board of Agricultural Research and Education, and Mr. Greg Lardy, Vice President for Agricultural Affairs, North Dakota State University, presented a report (Appendices [C](#) and [D](#)) required under Section 15-12.1-17(8) regarding an annual evaluation of research activities and expenditures.

In response to questions from the committee, Ms. Lovas noted:

- The State Board of Agricultural Research and Education has discussed a capital improvement project to replace Waldron Hall on the North Dakota State University (NDSU) campus;
- Waldron Hall is an agronomics building where research regarding crop production is conducted; and
- Waldron Hall was built to house approximately 19 scientists but has outgrown its capacity.

In response to a question from the committee, Mr. Lardy noted the NDSU Foundation recently completed a 6-year fundraising campaign and raised several hundred million dollars for NDSU, including several million dollars for agricultural products projects.

Mr. William T. Panos, Director, Department of Transportation, presented a required report and information (Appendices [E](#) and [F](#)) regarding long combination vehicle operations and the road train pilot program in the state.

In response to questions from the committee, Mr. Panos noted:

- State and county highways have been approved for use in the pilot program;
- Congress has not been willing to allow long combination vehicles on the federal interstate highway system;
- Stakeholders indicated they are not interested in participating in a long combination vehicle pilot program unless they have access to the federal interstate highway system; and
- North Dakota is ranked 42nd out of 50 states for bridge quality.

Senator Luick presented testimony (Appendices [G](#), [H](#), and [I](#)) regarding the viability and safety of long combination vehicles in the state.

Mr. Assel distributed a report ([Appendix J](#)) prepared by the Department of Transportation regarding information collected from transportation network companies pursuant to Section 39-34-05.

UNITED STATES FISH AND WILDLIFE SERVICE EASEMENTS STUDY

Mr. Dana Larsen, County Engineer, Ward County Highway Department, presented testimony ([Appendix K](#)) regarding background information, data, and the process of completing road construction projects in relation to impacted United States Fish and Wildlife Service (USFWS) easements.

In response to a question from the committee, Mr. Larsen noted costs range from \$7,000 to \$15,000 per acre to restore the wetlands at issue and mitigate the USFWS wetland easement interests impacted by the road construction projects.

Ms. Jayne Esch, Attorney, Rinke Noonan Law Firm, presented testimony ([Appendix L](#)) regarding litigation, suggestions on how best to protect landowners and the state, and other issues relating to USFWS easements.

Ms. Esch noted:

- Her office has been involved in over 200 easement map appeals relating to new maps issued by USFWS delineating wetland easement interests conveyed before 1976.
- USFWS creates an easement summary sheet at the time an easement is conveyed to record payments made to landowners.
- Many landowners were unaware of the easement summary sheets and did not agree to the acreage recorded on the sheets by USFWS.
- Courts have limited easements to the maximum number of wetland acres listed on the USFWS easement summary sheets.
- Landowners are concerned USFWS is claiming smaller areas of acreage as wetland areas protected by the easements on the new maps, while not claiming larger more established bodies of water, which are clearly visible on the maps as being protected.

In response to questions from the committee, Ms. Esch noted:

- The United States can prosecute an individual for misdemeanor offenses or gross misdemeanor offenses if the government believes the individual has violated the terms of an easement agreement;
- There is not a duty to maintain a protected easement area, but a landowner may not impact the easement by draining, filling, or burning the area without permission from USFWS;
- An easement applies to areas existing at the time the easement was conveyed by the landowner and may not fluctuate due to increased rainfall;
- If an easement area increases due to rainfall after the easement was conveyed, the landowner is allowed to drain and reduce the area to the original wetland boundary area;
- A landowner has the right to drain larger bodies of water if the water area is not protected by USFWS;
- USFWS likely excludes larger bodies of water from protection under the new wetland area easement maps because larger areas are very difficult to drain;
- Excluding larger bodies of water allows USFWS to claim smaller areas as being protected while allowing the larger bodies of water to exist on the property unprotected, which does not count toward the maximum number of protected acres;
- If a landowner does not object to the new maps delineating the wetland areas covered by the perpetual easements within 40 days of receiving the map, the map is considered final for USFWS enforcement purposes; and
- The USFWS likely is ignoring case law holding photos taken and maps created by USFWS after the easement is conveyed are inadmissible to prove the actual protected wetland easement areas.

Comments by Interested Persons

Mr. Ryan Taylor, Director of Public Policy, Ducks Unlimited, provided testimony regarding the USFWS easement study. He noted Ducks Unlimited supports clear mapping of easement areas. He noted landowners should have the right to an appeals process they can use when they disagree with USFWS.

Mr. Dave Azure, Wildlife Refuge Manager, Arrowwood Wetland Management District, United States Fish and Wildlife Service, provided testimony regarding the USFWS easement study. He noted he supports the use of wetland banks to help mitigate the impacts to USFWS easement interests by road construction projects.

Committee Discussion and Staff Directives

The committee expressed interest in considering at the next committee meeting either a resolution to Congress or a bill draft to protect landowners in the state and provide relief from USFWS easement overreach.

No further business appearing, Chairman Lemm adjourned the meeting at 4:00 p.m.

Dustin Assel
Counsel

ATTACH:12