



AGRICULTURE AND NATURAL RESOURCES COMMITTEE

Thursday, October 7, 2021
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; Representatives Mike Beltz, Chuck Damschen, Dori Hauck, Dennis Johnson, Dwight Kiefert, Dave Nehring, Kathy Skroch, Paul J. Thomas, Wayne A. Trottier, Bill Tveit

Members absent: Senator Terry M. Wanzek; Representative Mike Brandenburg

Others present: See [Appendix A](#)

COMMITTEE RESPONSIBILITIES

Mr. Dustin Assel, Counsel, Legislative Council, presented the committee's statutory responsibilities and a memorandum entitled [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Management](#). He noted the memorandum was updated to require prior approval by committee chairmen for remote attendance by committee members and to prohibit payments to Legislative Management members for remote attendance at meetings of committees of which they are not members.

REQUIRED REPORTS

Mr. Doug Goehring, Agriculture Commissioner, presented reports ([Appendix B](#)) required under:

- North Dakota Century Code Section 4.1-01-11 regarding the status of activities of the Advisory Committee on Sustainable Agriculture; and
- Section 4.1-01-21.1(8) regarding the biennial status of the Federal Environmental Law Impact Review Committee.

In response to a question from the committee, Mr. Goehring noted:

- The Advisory Committee on Sustainable Agriculture last met in 2009-10.
- The 67th Legislative Assembly amended the statutory language to change the committee from a mandatory committee appointed by the Agriculture Commissioner, to a permissive committee the commissioner may appoint.
- The flexibility to continue to appoint the advisory committee still may be beneficial in the future, but the committee no longer may be determined to be necessary due to a current lack of participation.

NORTH DAKOTA BEEF COMMISSION STUDY

Mr. Assel presented a memorandum entitled [Background Memorandum - North Dakota Beef Commission Study](#). He noted the North Dakota Beef Commission (NDBC) is the only statutorily based agricultural commodity group whose membership is comprised entirely of gubernatorial appointments from nominations submitted by stakeholder groups.

Mr. Goehring presented testimony ([Appendix B](#)) regarding the committee's study of NDBC.

Ms. Nancy Jo Bateman, Executive Director; Mr. Mark Voll, Chairman; and Mr. Travis Maddock, Director and Vice President, North Dakota Beef Commission, presented testimony and information (Appendices [C](#) and [D](#)) regarding

the operations and membership of NDBC, the amount of revenue generated by the beef checkoff, and the use of beef checkoff revenue.

Mr. Voll noted NDBC represents all beef producers in the state and the beef checkoff exists to enhance demand for beef and beef products through promotion, research, and educational efforts. He also noted approximately 1.1 million head of cattle are marketed annually in the state, which generates \$2.2 million in checkoff assessment revenue, of which approximately \$550,000 is remitted to the national board as required by law.

Ms. Bateman noted historically refunds have been requested on approximately 12 percent of checkoff assessments. She noted for the 2019-20 fiscal year the state checkoff generated \$1.1 million, of which there were 913 requests for refunds totaling \$136,000.

Mr. Maddock noted beef checkoff dollars remitted to the national board are invested with contractors to promote beef and beef products to consumers domestically and internationally, educate regarding the benefits of beef and beef products, and conduct research on beef and beef products at the national level. He also noted state beef checkoff dollars are invested with contractors for beef promotion, education, and research, including investing with contractors to manage the state's beef research portfolio because contractors have expertise and staff able to conduct the research more efficiently than NDBC staff.

In response to questions from the committee, Mr. Voll noted the state and federal checkoffs are assessed each time a head of cattle is sold, and may be collected multiple times on a single animal. He also noted there is no opportunity for a refund of the federal checkoff assessment, and producers that request a state checkoff assessment refund do not qualify for membership on NDBC under state law.

Mr. Kerry Dockter, President, Independent Beef Association of North Dakota, presented information ([Appendix E](#)) regarding concerns with the membership of NDBC, the operations of the beef commission, and the beef checkoff system. He noted the Independent Beef Association of North Dakota (IBAND) is not opposed to a beef checkoff but wants to ensure state checkoff dollars are invested in the promotion, education, and research of beef through in-state programs and the expansion of existing in-state projects.

In response to questions from the committee, Mr. Dockter noted IBAND regularly submits nominations to the Governor for consideration for appointment to the at-large member seats on NDBC but an IBAND-nominated individual has never been appointed to the commission. He also noted IBAND would be open to amendments to statutory provisions either to give the board member appointment authority to the Agriculture Commissioner, or to replace the appointment process entirely with an election process to ensure the commission has more accurate representation of all producers in the state.

Comments by Interested Persons

Ms. Shelly Ziesch, cattle producer, North Dakota Farmers Union, provided testimony ([Appendix F](#)) regarding her experience as a cattle rancher and her support for an election process to determine membership on NDBC.

Ms. Joy Patten, President, North Dakota CattleWomen, provided testimony ([Appendix G](#)) regarding the funding and function of the North Dakota CattleWomen as an auxiliary organization to the North Dakota Stockmen's Association, and to provide support for the current NDBC.

Mr. Jeff Schafer, President, North Dakota Stockmen's Association, noted changing the appointment process for NDBC from the Governor to the Agriculture Commissioner may not result in change to the structure or board makeup of the commission. He also noted changing to an election process for board members will require decisions regarding the funding and the organization of elections, as well as who is a qualified candidate.

Ms. Julie Ellingson, Executive Vice President, North Dakota Stockmen's Association, provided testimony regarding the NDBC study and noted the North Dakota Stockmen's Association's responsibility to submit names to the Governor for consideration for appointment to NDBC.

Mr. Scott Shively, cattle producer, Independent Beef Association of North Dakota, provided testimony indicating the National Cattlemen's Beef Association is a political group that employs lobbyists to influence policy and which controls 80 percent of national checkoff revenues.

Mr. Jason Schmidt, cattle producer, provided testimony supporting the current NDBC board selection process and the beef checkoff. He noted changing the selection of NDBC members to an election-based process may not result in better representation on the board.

Ms. Gloria Payne, North Dakota Beef Commission member, noted NDBC would support a state-owned meat packing plant, but the commission does not have the resources to administer a plant if one were created.

IMPACTS OF UNITED STATES FISH AND WILDLIFE SERVICE EASEMENTS STUDY

Mr. Assel presented a memorandum entitled [Wildlife Easements Study - Background Memorandum](#). He noted:

- United States Fish and Wildlife Service (USFWS) perpetual easements prohibit the draining, filling, leveling, or burning of wetlands located on the easement acres.
- In 1977, the Legislative Assembly attempted to limit the duration of wetland easements acquired by USFWS, but the United States Supreme Court found the statutory provisions purporting to limit wetland easement durations could not be applied to wetland easements acquired by the United States under gubernatorial consents previously given.
- As a result of the decision by the United States Supreme Court, USFWS easements acquired before 1976 remain perpetual in nature.

Mr. Goehring presented testimony ([Appendix B](#)) regarding the study on the impacts of USFWS easements.

Mr. Dave Azure, Wildlife Refuge Manager, Arrowwood Wetland Management District, United States Fish and Wildlife Service, presented information and testimony ([Appendix H](#)) regarding general information and data on the USFWS easement process, rules, and regulations. He noted:

- Landowners have the right to graze, hay, plow, plant, and farm on USFWS easement areas without restriction when the areas are naturally dry.
- All easements acquired by USFWS are subject to valid existing rights of way, and if a political subdivision is conducting a road construction project in an area covered by a right of way, the USFWS easement is subject to the project even if the project results in the draining or filling of a protected wetland in the right-of-way area.
- USFWS only has jurisdiction when a road construction project is outside a right-of-way area, the project is within the boundaries of an easement tract, and a protected wetland will be impacted by the project.

In response to a question from the committee, Mr. Azure noted road construction projects often are subject to federal requirements under Section 404 of the Clean Water Act and Executive Order 11990 regarding the protection of wetlands. He noted even if a USFWS easement is not impacted by a project, the other federal requirements are often applicable if the project involves federal highways and federal funding.

Mr. Mark Gaydos, Engineer, Environmental and Transportation Services Division, Department of Transportation, presented information and testimony ([Appendix I](#)) regarding general information, data, and the process of completing state road construction projects in relation to impacted USFWS easements.

In response to a question from the committee, Mr. Gaydos noted the Department of Transportation works with USFWS to mitigate impacts to protected wetland easements when undertaking state highway road projects, but other projects involving county or township road projects are typically addressed by the county or township.

Mr. Dan Wogsland, Executive Director, North Dakota Grain Growers Association, presented information and testimony ([Appendix J](#)) regarding concerns with the impacts of USFWS easements on North Dakota taxpayers and infrastructure. He noted:

- Almost every county in the state is subject to and impacted by USFWS wetland easements.
- The Legislative Assembly may wish to enact a moratorium on the acquisition of wetland easements by USFWS until the full impact of existing easements on landowners, road projects, and infrastructure can be determined and resolved.

Comments by Interested Persons

Mr. Pete Hanebutt, Director of Public Policy, North Dakota Farm Bureau, noted the North Dakota Farm Bureau would support the elimination of perpetual wetland easements when the land is sold and the property title is transferred, and the North Dakota Farm Bureau would support a buyout program for USFWS easements.

COMMITTEE DISCUSSION AND STAFF DIRECTIVES

The committee noted the Legislative Assembly may wish to study the possibility of creating a state-owned cattle processing plant to support the beef producers of the state.

In response to a question from a committee member, Mr. Assel noted:

- The directive assigned to the interim committee is to study the issue regarding USFWS easements and report back with recommendations to the 68th Legislative Assembly.
- A special session is not a part of the 68th Legislative Assembly and it may be improper for the interim committee to recommend legislation regarding a moratorium on USFWS wetland easements to the Delayed Bills Committee for consideration during special session, but individual legislators may choose to submit legislation for consideration during special session.

The committee requested Mr. Assel present information at the next committee meeting summarizing and comparing the election process for board members and associated costs of the various agriculture commodity groups in the state which determine board membership through an election process.

No further business appearing, Chairman Lemm adjourned the meeting at 4:15 p.m.

Dustin Assel
Counsel

ATTACH:10