

# COMMERCE COMMITTEE

The Commerce Committee was assigned four studies:

- Section 14 of House Bill No. 1018 (2019) directed a study of the future administration and regulation of the unmanned aircraft systems (UAS) industry in North Dakota, including beyond visual line of sight (BVLOS) UAS. The study directive required a determination of the appropriate state agency or private entity to be assigned the responsibility of regulating UAS programs, including licensing, registration, appropriate fees, and other responsibilities.
- Section 1 of House Bill No. 1485 (2019) directed a study of protections, enforcement, and remedies regarding the disclosure of consumers' personal data. The study directive required a review of other states' privacy laws and applicable federal law.
- Section 1 of Senate Bill No. 2241 (2019) directed a study of the regulation of sewage treatment system installation, maintenance, testing, and repair. The study directive required consideration of a uniform set of rules; uniform occupational licensing requirements; testing and education requirements for occupations that install, maintain, test, and repair sewage treatment systems; the regulatory agency best able to regulate sewage treatment systems; options for maintaining local government control over sewage treatment system regulation; and issues relevant to these considerations.
- Senate Concurrent Resolution No. 4013 (2019) directed a study of the distribution and transportation of food in the state necessary to the lives of individuals in rural communities, and the roles of state entities in facilitating the movement of food to rural areas of the state.

The Legislative Management delegated to the committee the responsibility to receive the following reports:

- A semiannual report from the Department of Commerce regarding the status of the program to establish and administer a UAS test site in cooperation with the University of North Dakota, Aeronautics Commission, Adjutant General, and private parties appointed by the Governor (Section 54-60-28).
- A semiannual report from the Department of Commerce regarding the development of the BVLOS UAS program and the total amount deposited by the State Treasurer in the general fund (2019 House Bill No. 1018, § 13).
- A report from the State Board of Higher Education on the skilled workforce student loan repayment program (2019 House Bill No. 1171, § 1).
- A report from the State Board of Higher Education on the skilled workforce scholarship program (2019 House Bill No. 1171, § 2).

Committee members were Representatives Scott Louser (Chairman), Pamela Anderson, Thomas Beadle, Claire Cory, Terry B. Jones, Jim Kasper, Jeffery J. Magrum, Corey Mock, Mike Nathe, Emily O'Brien, Shannon Roers Jones, Randy A. Schobinger, and Denton Zubke and Senators Randy Burckhard, Jim Dotzenrod, Scott Meyer, Ronald Sorvaag, and Shawn Vedaa.

## UNMANNED AIRCRAFT SYSTEMS STUDY

### Background

The Federal Aviation Administration (FAA) has adopted the term unmanned aircraft to describe aircraft systems without a flight crew on board. Other common names include unmanned aerial vehicles (UAV) or drones. While UAS originated mostly in military applications, the operation of UAS is quickly expanding to commercial, scientific, recreational, and other uses.

House Bill No. 1018, the agency appropriation bill for the Department of Commerce, was amended to include a Legislative Management study of the future administration and regulation of the state's UAS industry, including BVLOS UAS. Section 12 of the bill provided a supplemental appropriation of \$28 million to the Department of Commerce for a BVLOS UAS program. Section 13 created a new section to North Dakota Century Code Chapter 54-60 to establish a BVLOS UAS program for the design, purchase, implementation, and operating costs of BVLOS UAS. The department must require any entity receiving funding for this program which is operating the BVLOS UAS to provide quarterly payments to the State Treasurer equal to 3 percent of the entity's gross income associated with the operation of the BVLOS UAS as reported in the entity's prior year financial statements. Any funds received under this section must be deposited in the state general fund.

## **North Dakota's UAS Industry**

Since 2013, North Dakota has invested more than \$40 million to advance UAS research and development. The 2013 Legislative Assembly established the UAS program, provided a one-time \$5 million appropriation, and provided a continuing appropriation to defray the expenses of the UAS program. The legislation required the Department of Commerce to establish the UAS program in collaboration with the University of North Dakota, Aeronautics Commission, Adjutant General, and private parties; to administer the UAS test site upon receiving FAA approval; and to provide semiannual reports to the Legislative Management. Funding is provided to the Northern Plains UAS Test Site located in Grand Forks.

The Northern Plains UAS Test Site is one of seven FAA UAS test sites in the United States and was the first site to conduct flights, launching its first research flight in May 2014. The Northern Plains Unmanned Systems Authority, chaired by the lieutenant governor, oversees the Northern Plains UAS Test Site and includes representatives from the University of North Dakota, North Dakota State University, the Aeronautics Commission, the Department of Commerce, the Adjutant General, and the North Dakota Aviation Council.

Over \$2.7 million was appropriated for the UAS program for the 2015-17 biennium, with \$1.2 million designated for a business incentive match fund to incentivize private sector business development related to the test site. The 2017 Legislative Assembly appropriated \$30 million for the UAS program. The 2019 Legislative Assembly provided a supplemental appropriation of \$28 million to the Department of Commerce for a BVLOS UAS program for the 2017-19 biennium. As opposed to visual line of sight flights which are performed within the UAS pilot's line of sight, BVLOS flights are performed out of visual range. The 2019 Legislative Assembly also appropriated \$4.25 million to the department for the UAS program for the 2019-21 biennium.

Senate Bill No. 2018 (2013) established the enhanced use lease grant program and provided a one-time appropriation of \$2.5 million to the Department of Commerce to develop the program and award grants. The department was directed to award grants for constructing infrastructure required for an enhanced use lease private sector business development project located on or adjacent to the Grand Forks Air Force Base. In February 2015, Grand Sky Development Company entered an agreement on behalf of Grand Forks County with the Grand Forks Air Force Base to form the Grand Sky UAS Business and Aviation Park. Grand Sky provides Grand Forks Air Force Base lease tenants the ability to test UAS and BVLOS UAS flights in partnership with the Northern Plains UAS Test Site. During the 2015-17 biennium, \$7.5 million was appropriated for the enhanced use lease grant program. During each of the 2017-19 and 2019-21 bienniums, \$3 million was appropriated for the program.

## **Federal and State UAS Regulations**

The FAA is authorized by federal law to regulate the use of navigable airspace to ensure the safety of aircraft and the efficient use of airspace; however, states and local governments have begun promulgating drone regulations that may lead to issues of preemption. Since 2013, over 40 states have enacted drone-related laws or regulations. States have addressed privacy issues, commercial and government drone operations, recreational drone use, and criminal penalties for drone misuse.

In North Dakota, House Bill No. 1328 (2015) created Chapter 29-29.4, which outlines limitations on the use of UAV for surveillance purposes and prohibits arming a UAV with lethal weapons.

North Dakota does not require a person to register a UAS with the state. Section 2-05-11 requires aircraft operating within the state to be registered annually with the Aeronautics Commission along with a fee based on the aircraft's weight. However, the Aeronautics Commission has not interpreted the statute to require UAS to be registered with the commission. Although North Dakota does not require a person to register a UAS with the state, the federal government, through the FAA, requires registration of certain unmanned aircraft.

The FAA previously issued a statement noting, "[b]ecause Federal registration is the exclusive means for registering UAS for purposes of operating an aircraft in navigable airspace, no state or local government may impose an additional registration requirement on the operation of UAS in navigable airspace without first obtaining FAA approval." Despite the FAA's stance, some states require commercial or governmental UAS operators to register with their respective state, while other states have chosen to specifically exempt UAS from state aircraft registration requirements.

## **Testimony and Committee Considerations**

The committee received testimony from representatives of the Aeronautics Commission, Department of Commerce, Department of Transportation, Northern Plains UAS Test Site, and a commercial UAS business and aviation park.

The representative of the Aeronautics Commission provided information regarding the commission's role in the state's aviation industry and the commission's regulatory functions. According to the testimony, the commission's core agency duties include airport infrastructure grant funding, airport planning support, aviation education promotion, and certain

regulatory functions, including aircraft registration, aerial applicator licensing, and aircraft dealer licensing. Because the commission does not interpret the state's aircraft registration statutes to apply to UAS, UAS users are not required to register with the commission. Testimony indicated the commission has been proactive with UAS education outreach to ensure UAS operations are integrated safely into the national airspace system, including providing information on the commission's website directing individuals to information on how to legally and safely operate UAS as well as working with the North Dakota Aviation Council and the aerial applicator community to increase awareness and safety regarding UAS operations.

In response to committee concerns regarding whether UAS should be required to be registered with the state, stakeholders recommended the Legislative Assembly be cautious in enacting legislation that overly restricts or regulates UAS operations. According to the testimony, other states are overregulating UAS operations at the state level unnecessarily because regulations are present at the federal level. Testimony emphasized the importance of North Dakota continuing to be a desirable state to conduct UAS operations and to appeal to end users and commercial operators.

The committee received testimony outlining the numerous advances the state has made to become a leader in UAS operations. According to the testimony, North Dakota was selected as one of seven congressionally approved test sites in the nation in 2013. The Northern Plains UAS Test Site is based in Grand Forks, and the test site can assist and work with companies throughout the country. According to the testimony, there has been an increased demand for the Northern Plains Test Site's testing capabilities, with both private sector and government contracts, to test, operate, and commercialize UAS operations in the state. The test site, along with its private industry partner, Xcel Energy, received approval from the FAA to fly BVLOS over transmission lines in eight states and to fly BVLOS over distribution lines in Grand Forks.

The committee received testimony noting the Grand Sky UAS Business and Aviation Park, located on the Grand Forks Air Force Base, is the country's first commercial UAS park with the sole purpose of testing UAS. Grand Sky has been operational since 2015, and the state has invested over \$15 million to fund and support infrastructure at the park. Grand Sky has two primary tenants, General Atomics and Northrop Grumman Corporation, and most of the individuals who work at the park are tenants. According to the testimony, private companies have invested nearly \$60 million at Grand Sky, and over 170 individuals work at the location with an average salary of \$70,000. Since 2018, Grand Sky has been operating a BVLOS system that permitted two significant UAS events to occur, namely General Atomics obtained FAA approval to routinely fly without a chase plane in support of the company's business objectives and General Atomics successfully flew two large UAS simultaneously with only one pilot. Other countries' air forces have conducted, or are planning on conducting, training at Grand Sky.

North Dakota, through the state's Department of Transportation, was selected as 1 of 10 nationally approved drone integration pilot programs in 2017. According to the testimony, the goal of the pilot programs is for state, local, and tribal governments to partner with private sector entities to accelerate the safe integration of UAS into the national airspace system. Testimony indicated each pilot program has different goals, and North Dakota's program will help to allow routine BVLOS operations and flight over people in urban environments. North Dakota's Department of Transportation was the first state agency to receive an operations-over-people waiver from the FAA to fly UAS over people through the pilot program. Testimony indicated the Department of Transportation intends to use the waiver to conduct construction and survey work, stockpile and quarry pit analytics, and conduct infrastructure inspections.

The Northern Plains UAS Test Site, on behalf of the Department of Commerce, is responsible for establishing and administering a BVLOS UAS program. According to the testimony, an initial inventory of state assets and infrastructure was conducted, and the FAA and potential users of the network have been educated and briefed on the program. The target date for the next stage of the BVLOS network in the Bakken is January 2021. Testimony indicated companies are considering relocating to the state for business development opportunities utilizing UAS, and the industry is anticipated to triple within 10 years of the investment in the BVLOS network.

According to the testimony, the Coronavirus (COVID-19) pandemic has not slowed the growth of the UAS industry. It was noted the FAA contacted the Northern Plains UAS Test Site regarding how drone operations could assist during the pandemic, and package delivery was identified as an area for which drones could provide support. Flytrex, a UAS package delivery company, has been conducting routine operations to supply groceries and other on-demand food options to a launch neighborhood in south Grand Forks.

In response to committee concerns regarding what the Legislative Assembly can do to support the state's UAS industry's growth, testimony indicated the industry needs the Legislative Assembly's continued investment and support so projects, technology, and innovations can continue. Committee members encouraged the Northern Plains UAS Test Site and Grand Sky to continue to broadcast their successes and advances to the public and the Legislative Assembly.

## **Conclusion**

The committee makes no recommendation regarding its UAS study.

## **DISCLOSURE OF CONSUMERS' PERSONAL DATA STUDY**

### **Bill History**

As introduced, House Bill No. 1485 would have prohibited covered entities from disclosing any part of a record containing an individual's personal information to any person other than the individual who is the subject of the record, without the individual's express written consent. The bill would have authorized the Attorney General to enforce the law by using various powers. The bill also would have permitted an individual to bring a civil action to recover damages, costs, and fees if a covered entity purchased, received, sold, or shared the individual's personal information in violation of the chapter.

The House Industry, Business and Labor Committee considered an amendment to the bill which essentially mirrored a data privacy bill that had been introduced in the Washington State Legislature in January 2019. Ultimately, House Bill No. 1485 was amended to provide for a mandatory Legislative Management study on protections, enforcements, and remedies regarding the disclosure of consumers' personal data, and both chambers passed the bill as a mandatory study.

### **Background**

The security and privacy of personal data is a growing concern as the Internet and new technology have made individuals' personal data more accessible and easier to collect, access, and repurpose or manipulate. Personal data includes information, such as an individual's email address, phone number, birthdate, Social Security number, or credit card information.

Generally, data privacy involves controlling who has access to individuals' personal information. Data privacy laws include laws requiring organizations to keep individuals' personal information confidential and allowing consumers to opt-out of data collection. Data security involves protecting individuals' personal information from unauthorized access. Data security laws include security breach laws and other cybersecurity legislation.

Privacy regulation in the United States has focused primarily on protecting certain types of personal information, such as financial or health information. However, there has been a push to regulate privacy more broadly as it relates to individuals' personal information.

The first major advance to regulate the privacy of consumers' personal data occurred in Europe when the European Union's General Data Protection Regulation (GDPR) took effect in May 2018. Any global business that sells to or has European Union customers is subject to the GDPR, regardless of where the business is based. The General Data Protection Regulation sets forth rules about how companies treat European Union citizens' personal data, even those purchasing United States products or services or living in the United States.

### **Federal Privacy Laws**

The United States lacks a comprehensive federal law that regulates the collection and use of personal information. Since the European Union's GDPR became effective and as some states have introduced data privacy legislation, interest has been developing for a comprehensive federal privacy law. Federal lawmakers have introduced several privacy bills, varying in scope, but no formal action has been taken. Instead, the federal government has primarily addressed data privacy by regulating only certain sectors and types of sensitive information, such as health and financial information, through Acts such as the Health Insurance Portability and Accountability Act of 1996; the Financial Services Modernization Act of 1999, also known as the Gramm-Leach-Bliley Act; and the Fair Credit Reporting Act.

### **North Dakota Data Privacy and Security Laws**

In 2005 legislation was enacted to create Chapter 51-30, regarding security breach notification. Chapter 51-30 requires a person that owns or licenses computerized data that includes personal information to disclose or notify consumers of breaches involving the consumers' personal information. The Attorney General is authorized to enforce the chapter.

### **Other States' Laws**

In 2018 California enacted one of the broadest online privacy laws in the country. As the European Union's GDPR began taking effect, advocates in California were gathering signatures for a data privacy measure for the November 2018 ballot. The backers of the initiative agreed to not place the measure on the ballot after the state legislature introduced a similar proposal, namely the California Consumer Privacy Act of 2018 (CCPA), which regulates the collection, use, sale, and disclosure of California residents' personal information by qualifying businesses. The bill was signed into law on June 28, 2018, but did not go into effect until January 1, 2020.

Numerous bills addressing data privacy were introduced in states during 2019 legislative sessions, including the Washington State Legislature bill after which one amendment to North Dakota House Bill No. 1485 (2019) was mirrored. The Washington Privacy Act (WPA) was introduced in January 2019, and unlike other states that modeled bills largely on the CCPA, the WPA would have established requirements similar to the European Union's GDPR. In addition to notice requirements and consumer rights, such as access, correction, and deletion, the WPA would have imposed restrictions on the use of automatic profiling and facial recognition. The Washington Privacy Act passed the Senate, but the House of Representatives failed to vote on the bill before the legislative deadline.

### **Uniform Law Commission**

The Uniform Law Commission (ULC) has recognized data security and privacy as a topic for consideration as a uniform law. In 2019 a study committee on online data privacy met to determine whether the topic should be addressed by a drafting committee, and after submitting a final report on the committee's recommendation to proceed with a drafting committee, the ULC's Executive Committee authorized the appointment of a drafting committee on collection and use of personally identifiable data.

### **Testimony and Committee Considerations**

The committee received testimony from numerous stakeholders, including representatives of the Attorney General's office. The committee's deliberations primarily focused on whether data privacy should be addressed legislatively at the state level.

The committee received testimony from the sponsor of House Bill No. 1485 (2019). Testimony indicated numerous companies collect and sell consumers' personal data for profit, and consumers have a right to know what is being done with the information. As introduced, House Bill No. 1485 would have prohibited companies from disclosing consumers' personal information to others, unless the consumer provided written consent. The bill would have authorized the Attorney General to enforce the law and would have permitted an individual to bring a civil action to recover damages if a company sold or shared the individual's personal information in violation of the law. The committee received testimony from a representative of the Attorney General's office noting there was a significant fiscal note attached to House Bill No. 1485, as introduced, because the additional enforcement duties would require additional resources and full-time employees, including an attorney and paralegal.

The committee received testimony noting the sponsor of House Bill No. 1485 proposed amendments to the bill during the legislative session, and the proposed amendments essentially mirrored a Washington state data privacy bill. According to the testimony, the sponsor worked extensively with individuals outside the state, including a senator from Washington who introduced the data privacy bill in the Washington State Legislature in January 2019.

The committee received testimony indicating the Washington data privacy bill did not pass due to stakeholders' concerns. According to the testimony, the Washington State Legislature is no longer pursuing the data privacy bill that failed to pass, and legislators are tackling the data privacy issue by drafting new legislation.

The committee considered incorporating the proposed amendments to House Bill No. 1485 into a bill draft. The committee received testimony from a representative of the Attorney General's office outlining enforcement concerns identified in the proposed amendments and proposed changes.

The committee received testimony from a representative of Midco indicating complying with data privacy legislation would be highly problematic for the company. According to the testimony, Midco is the largest Internet service provider in the state with over 500 employees, and the company likely would be the only Internet service provider in the state affected by the bill. Testimony indicated if the bill were enacted, the company may need to invest capital in compliance measures that could result in fewer consumers having access to affordable broadband.

The committee received testimony from a representative of the Attorney General's office regarding the difference between consumer data privacy legislation and open records laws. Testimony indicated consumer data privacy legislation likely would apply to private entities that receive or possess consumers' data, while open records laws apply to public entities.

The committee received considerable testimony from several stakeholders indicating implementing a data privacy law at the state level could contribute to a patchwork of state laws leading to state law conflicts, confusion for consumers, and compliance issues for businesses that operate in multiple states. Testimony indicated the interactions generating consumer data often involve many states, and narrowing data privacy legislation to a single state's borders is difficult. According to the testimony, almost one-half of the states in 2019 introduced data privacy legislation, largely based on California's data privacy law, but none of the bills passed. Testimony indicated a comprehensive data privacy model has not been passed or tested in any state due to the complexity of the issues and stakeholders' concerns.

The stakeholder's testimony noted a patchwork of state laws on data privacy is not conducive to business and economic development. Businesses likely would not favor operating in a state that has its own data privacy laws. Some committee members expressed concern that passing data privacy legislation at the state level likely would not spur companies to change practices because North Dakota is a state with a low population, and it may cause North Dakota citizens to lose access to certain services and businesses. Some committee members acknowledged larger states may set the standard for compliance on data privacy because companies will be incentivized to conduct business in those more populated states.

The committee received testimony from several stakeholders emphasizing it is the federal government and Congress' role to pass a comprehensive federal privacy law to provide uniform consumer protections across state lines and to eliminate concerns of a patchwork of state laws. Some committee members expressed concerns that Congress has not prioritized federal data privacy legislation, and the state cannot wait for Congress to act on such a sensitive issue.

According to testimony from North Dakota's Congressional representative, the Legislative Assembly should be cautious in enacting data privacy legislation, and the federal government, via Congress, should enact data privacy legislation to avoid a patchwork of state laws. Testimony indicated if the state passes a strict data privacy law, there is a risk it will negatively impact North Dakota businesses as more stringent regulations tend to hurt smaller entities. In response to concerns from committee members regarding how long the state should wait for Congress to act on data privacy, the testimony indicated states could consider a uniform law to address the issue if the federal government does not pass comprehensive data privacy legislation in a timely manner.

The committee received testimony from a representative of the Attorney General's office indicating the ULC's executive committee authorized a drafting committee to be appointed regarding the collection and use of personally identifiable data. Testimony indicated a drafting committee would not have been recommended if the ULC believed federal legislation addressing the issue was likely and imminent. According to the testimony, the drafting and adopting of uniform laws is a thoughtful and deliberative process, and it can take between 2 to 3 years to adopt a law to recommend to state legislatures for consideration. Testimony indicated stakeholders are invited to participate and provide feedback during the uniform law drafting process.

### **Conclusion**

The committee makes no recommendation regarding its data privacy study.

## **SEWAGE TREATMENT SYSTEM REGULATION STUDY**

### **Background**

Senate Bill No. 2241 directed a Legislative Management study of the best regulatory scheme for sewage treatment system installation, maintenance, testing, and repair. The proper design, installation, maintenance, testing, and repair of onsite sewage systems is important for environmental health concerns and to protect the public. Historically, local public health units in the state have been the primary regulators of single residence onsite sewage treatment systems.

North Dakota's public health system has 28 independent local public health units working in partnership with the State Department of Health. The 28 local public health units are organized into single or multicounty health districts, city/county health departments, or city/county health districts. The public health units may exercise their own powers, and the units have administrative authority to make decisions to meet local needs. However, the public health units are required to meet state standards and follow state laws and regulations.

The oversight of single residence onsite sewage treatment systems by local public health units encompasses licensing of contractors, inspecting installed systems, and factoring in regional soil conditions. However, some challenges of this local control include varying onsite sewage system design, installation, and licensing requirements from region to region; lack of oversight in areas in which the local public health unit is unable to establish a program; and a lack of needed training opportunities for installers.

Some individuals in the industry have supported the creation of a unified code for septic system design, installation, and maintenance for potential adoption across the state. Interested parties, including contractors and local environmental health practitioners, drafted requirements for onsite sewage treatment systems, and a number of public health units have adopted those uniform requirements. However, because not all of the public health units have adopted these requirements, the design, installation, and licensing requirements continue to vary region to region.

Supporters of uniform, statewide regulations have identified certain issues that remain regarding how to carry out the proposed statewide regulations in a uniform manner. These issues include providing statewide education for installers and regulators, providing an accessible database of licensed installers, ensuring competency of regulators, and designating a host state agency to administer the statewide components of the regulations.

## **North Dakota Administrative Rules**

North Dakota Administrative Code Chapter 62-03.1-03, regarding private sewage disposal systems, outlines requirements for the installation of onsite sewage treatment systems. Although this chapter is housed in the State Board of Plumbing's administrative rules, the State Board of Plumbing is not defined as an administrative authority; rather, the term "administrative authority" is defined as the State Department of Health, district health units, or county or city health departments that have expertise in onsite sewage treatment systems. The State Board of Plumbing does not license individuals to install onsite sewage treatment systems; instead, the public health units license those individuals. Although the rules outline some requirements for the installation of onsite sewage treatment systems, most of the rules have not been updated since 2000, and many public health units have varying licensing and continuing education requirements.

## **Testimony and Committee Considerations**

The committee received testimony from representatives of the Department of Environmental Quality, the State Board of Plumbing, the North Dakota Association of Counties, local public health units, and from licensed installers. The committee's deliberations primarily focused on whether a statewide, uniform code should be implemented and the appropriate degree of local control versus state involvement in onsite sewage treatment regulation.

Testimony from a representative of a local public health unit indicated approximately one-fourth of homes in North Dakota rely on onsite wastewater systems to dispose of human waste. The average residential home processes 50,000 to 80,000 gallons through the home's wastewater system per year. Onsite wastewater systems that are sited, designed, constructed, or maintained improperly can contaminate ground or surface water.

A representative of the Department of Environmental Quality provided testimony regarding the current regulatory framework for onsite sewage treatment systems. Local public health units oversee the regulation of onsite sewage treatment systems, including licensing contractors and inspecting installed systems. According to the testimony, the regulatory structure creates some challenges, including a lack of a statewide unified code; no statewide licensing, training, or database of qualified installers; and perceived inconsistencies when comparing local public health units' enforcement decisions from jurisdiction to jurisdiction.

Some committee members acknowledged the challenges that can occur when regulations vary from region to region, but expressed concerns in implementing a "one-size-fits-all" regulatory scheme.

Testimony from several stakeholders expressed support for a statewide adoption of a uniform code that allows for local modifications. Testimony indicated a desire by some stakeholders for a state agency to oversee the licensing and education for installers and to provide a statewide database of licensed contractors.

A committee member proposed the State Board of Plumbing should be the state regulatory body to oversee the licensing and education of installers.

Testimony from a representative of the State Board of Plumbing indicated the board is not the appropriate state agency to regulate onsite sewage treatment systems because plumbing and the installation of private sewage disposal systems are different disciplines. According to the testimony, the State Board of Plumbing does not license installers of sewage treatment systems or inspect private sewage disposal systems, and the board does not have the appropriate training or expertise to oversee the installation or inspection of such systems. It was noted plumbers install and maintain plumbing inside a home, while the septic and drain field outside the home are installed by individuals licensed by local public health units. Testimony emphasized the Department of Environmental Quality is the appropriate state agency to regulate sewage treatment systems due to the department's familiarity with the industry. According to the testimony, the regulation of sewage treatment systems has been an issue for 10 years and has been debated in previous legislative sessions. The primary issue identified in the previous legislative sessions was funding, as the Department of Environmental Quality previously indicated additional full-time employees and resources would be required if the department assumed the additional duties and responsibilities of regulating onsite sewage treatment systems.

Testimony from a representative of the Department of Environmental Quality indicated if the department was tasked with licensing or training onsite sewage treatment system installers, the department would need at least 2 additional full-time employees to address licensing, education, and complaints. According to the testimony, the department's budget would need approximately \$400,000 to \$500,000 for the additional employees' salary, benefits, and travel expenses.

The committee considered a bill draft proposed by a committee member which would have required the Department of Environmental Quality to license onsite sewage treatment system installers. The bill draft would have authorized the department to establish standards and procedures for issuing and renewing a license.

The committee considered a proposal prepared by a representative of the North Dakota Association of Counties which would have required the Department of Environmental Quality to license onsite sewage treatment system installers

and would have created an onsite sewage technical advisory board. The association's proposal also would have given the advisory board the authority to create a statewide, mandatory technical guide for onsite sewage treatment technologies and to create mandatory licensing standards and continuing education requirements. The proposal also would have given the technical advisory board the authority to act as the final arbitrator for interpretation of the onsite sewage rules.

The committee also considered a revised proposal prepared by a representative of the North Dakota Association of Counties. The difference between the revised proposal and the earlier version was the earlier version would have required the Department of Environmental Quality to operate as the state agency overseeing the licensing and training of onsite sewage treatment system installers, while the revised proposal did not include such department oversight. The revised proposal would have created an onsite wastewater recycling technical advisory board to create uniform, statewide standards and would have required local public health units to adopt those standards. The revised proposal also would have allowed the advisory board to help with dispute resolution if a dispute arose between a licensed installer and the local regulatory body.

A committee member proposed as an alternative to a bill draft for the desired state agency to include the requested additional staffing and funding in the agency's budget proposal. The committee received testimony from a representative of the Department of Environmental Quality indicating the department cannot support the significant expansion of onsite regulatory responsibilities by the department due to upcoming budget concerns. According to the testimony, the department, along with other state agencies, have been directed to provide a budget that accounts for a significant reduction due to the current economic climate.

### **Conclusion**

The committee makes no recommendation regarding the sewage treatment system regulation study.

## **DISTRIBUTION OF FOOD IN RURAL COMMUNITIES STUDY**

### **Resolution History**

Senate Concurrent Resolution No. 4013 directed a Legislative Management study of food distribution in rural communities in the state and how the system can be improved.

### **Background**

Adequate access to healthy and affordable food can be a challenge for individuals, particularly rural residents. Many rural areas lack food retailers and are considered food deserts, or areas with limited supplies of fresh, affordable foods. In North Dakota, rural grocery stores have declined by 15 percent in the past 5 years. Access to food in rural areas may be limited by financial constraints or other factors, such as transportation challenges. Rural shoppers may rely on more expensive and less nutritious options, such as those available at convenience stores, or face a long drive to a town with a grocery store that stocks fresh produce, dairy products, and other staples.

### **United States Department of Agriculture**

According to the United States Department of Agriculture (USDA), a rural food desert is an area where at least 500 people, or at least 33 percent of the population, live 10 or more miles from a full-service grocery store. The United States Department of Agriculture has documented a higher incidence of obesity and diabetes in food deserts. Both the Institute of Medicine and the Centers for Disease Control and Prevention independently have recommended increasing the number of supermarkets in underserved areas would help reduce the childhood obesity rate.

Some rural residents and households are also food insecure, meaning those individuals cannot rely on having access to sufficient affordable and nutritious food at all times. According to a 2017 USDA Economic Research Service publication, food insecurity is strongly associated with chronic disease and poor health. Long-term food insecurity also can affect learning, development, productivity, physical and mental health, and family life.

### **North Dakota Rural Grocery Initiative**

The North Dakota Association of Rural Electric Cooperatives formed the North Dakota Rural Grocery Initiative to study the issue of distribution of food in rural communities and conduct statewide surveys to investigate the unique issues facing rural grocers. Many small rural grocery stores struggle with competition from larger chain stores, a shrinking customer base, and changing customer demands for a greater variety of products. Additionally, the food distribution system generally is designed for large volume purchases with short distances between stores, but this model does not adapt well when applied to rural areas.

The major suppliers of food to North Dakota grocers are grocery wholesalers and direct store delivery operators; however, according to a 2017 study of North Dakota rural grocers, nearly one-fourth of respondents purchase food at big box retailers. While most of the surveyed grocers indicated they do not collaborate by purchasing food with other grocers, a significant number of respondents noted they would be interested in doing so. Many of the surveyed grocers



participate in either the supplemental nutrition assistance program (SNAP), the Special Supplemental Nutrition Program for Women, Infants, and Children, or other anti-hunger programs; however, the grocers who stated they did not participate in the programs indicated they did not participate because the cost of engaging in the program is prohibitive or there were not enough customers that participated in the programs to qualify.

### **Testimony**

In its rural food distribution study, the committee received testimony from representatives of the Department of Commerce, the North Dakota Rural Grocery Initiative, the North Dakota Grocers Association, the Great Plains Food Bank, and the Creating a Hunger Free North Dakota Coalition. The committee's deliberations focused on what role, if any, the state should play in assisting rural grocers.

According to testimony from a representative of the Creating a Hunger Free North Dakota Coalition, food insecurity has increased in North Dakota over the last 10 years. At the end of 2019, approximately one in nine North Dakotans were unsure if they would have enough food to eat every day. Estimated health care costs resulting from food insecurity in the state are \$78 per person and over \$57 million annually.

A representative of the Department of Commerce testified regarding the state's demographics and shifts and trends in rural areas. According to the testimony, there is a direct relationship between out-migration and food insecurity. When out-migration occurs, an older population often is left, and those older populations typically do not have a strong household income.

The committee received testimony from a representative of the North Dakota Rural Grocery Initiative regarding the group's study on food distribution in rural communities and the unique issues rural grocers face. In 2014, 137 full-service grocery stores were operating in towns with 2,100 people or less in the state, and in 2019, only 98 of those stores remain in operation. Grocery store operators who can purchase a higher volume of products from suppliers receive a better price, but rural grocery stores often do not have a large enough customer base to generate the volume needed to be competitive with urban areas. Testimony indicated high operating costs and narrow profit margins make it difficult for rural grocers to keep up with building and infrastructure needs. According to the testimony, rural communities have gone to great lengths to keep their local grocery stores open, including forming nonprofits, cooperatives, or converting to community-owned stores, but those options often are a temporary fix and are difficult to sustain.

Committee members suggested the North Dakota Rural Grocery Initiative should approach the state universities to help conduct a study of the food distribution issue.

The committee received testimony from a representative of the Great Plains Food Bank, the only food bank in the state, indicating over \$74 million in SNAP benefits were distributed in 2018 to over 53,000 residents. It was noted the nutrition of low-income residents can improve if a local grocery store accepts SNAP benefits, and accepting SNAP benefits also can provide a guaranteed customer base for rural grocers.

Testimony from a representative of the North Dakota Rural Grocery Initiative noting the national SNAP program has begun implementing online shopping options on a state-by-state basis. According to the testimony, the only retailers in North Dakota set up to manage online SNAP transactions are Amazon and Walmart. It is financially feasible for national retailers to implement online SNAP transactions because those retailers conduct enough transactions to offset the costs, but other retailers are struggling to accommodate the extra cost. According to the testimony, smaller stores are concerned regarding the potential loss of online SNAP sales to national retailers.

A representative of the Wimbledon Community Grocery and Cafe testified the grocery store began operating as a nonprofit corporation 4 years ago as a last-ditch effort to keep the store open in a community with a population of just over 200. The store is the only full-service grocery store in a 25-mile radius around Wimbledon. Donations, fundraisers, grants, and volunteer management were used to replace existing infrastructure, hire additional labor, and research new products. Due to its nonprofit status, the store received several grants through the North Dakota Community Foundation to replace inefficient heating and cooling units. Testimony indicated another rural grocery store contacted the Wimbledon store regarding how to form a nonprofit corporation.

In response to concerns from committee members regarding how the state could assist rural grocery stores, testimony indicated the government could assist by providing grants for equipment purchases. According to the testimony, the state operates at least one transportation system through the Emergency Preparedness and Response Section of the State Department of Health, which is maintained to distribute pharmaceuticals in the case of emergencies, and the equipment needs to be operated occasionally to keep it in working order. Testimony indicated a partnership could be formed using existing state resources and assets.

The committee received testimony regarding a pilot project of the North Dakota Rural Grocery Initiative involving participating grocery stores ordering collectively to obtain a lower price on products due to the higher volume of products ordered, cross-stocking products at a redistribution hub, and the delivering of products by existing distributors. According to the testimony, three communities were interested in combining purchasing power to help reduce costs, and a financial assessment was conducted. Testimony indicated the financial assessment needs to be redone because more communities have indicated a desire to join.

The committee also received testimony regarding a climate-controlled grocery locker system involving lockers capable of holding ambient, frozen, and refrigerated products, an online grocery ordering software system, and a climate-controlled delivery truck. According to the testimony, the model is used throughout Australia, and the cost of a locker with 15 spots for refrigerated and frozen food is approximately \$33,000. According to the testimony, a store in the northwest region of the state is considering implementing a grocery locker system.

The committee received testimony indicating the COVID-19 pandemic has had some positive effects on rural grocers. According to testimony from a representative of the North Dakota Rural Grocery Initiative, data collected in April 2020 from a sampling of 20 percent of rural grocers indicated most stores experienced a sales surge, with some experiencing a surge of more than 100 percent. Rural stores adapted to the pandemic by providing curbside pickup, home delivery, designated shopping times for senior citizens and individuals with underlying health conditions, as well as offering store credit for those in need. According to the testimony, 38 percent of the sampled stores needed to hire additional employees.

In response to concerns from committee members regarding if state laws or regulations hinder rural grocers, testimony from stakeholders did not identify any specific state laws or regulations that pose a barrier for rural grocers. Committee members acknowledged the declining number of rural grocery stores in the state is an issue that has a real impact on North Dakota communities and residents, but expressed reluctance in interfering with free enterprise.

**Conclusion**

The committee makes no recommendation regarding its rural food distribution study.

**SKILLED WORKFORCE STUDENT LOAN REPAYMENT AND SCHOLARSHIP PROGRAMS REPORTS**

The committee received reports from the State Board of Higher Education regarding the skilled workforce student loan repayment and scholarship programs as required by Sections 1 and 2 of House Bill No. 1171. The programs were created by the 2019 Legislative Assembly to assist businesses in attracting and retaining talent in high-demand and emerging occupations. Known collectively as ND Career Builders, the workforce development programs have two components--scholarships for students enrolled in qualifying programs at state institutions and student loan repayment for employees in the state who graduated from qualifying programs.

In July 2019 the North Dakota Workforce Development Council and Job Service North Dakota created the first high-need and emerging occupations list, consisting of 75 occupations. The list, generated by objective data, is used to establish eligibility for both programs and is valid for a 2-year period.

The following summarizes the scholarship application status and private-sector funding for the ND Career Builders Scholarship as of June 2020:

<b>ND Career Builders Scholarship Program Statistics</b>	
Number of applications approved	35
Number of applications denied	11
Number of approved applications funded	35
Private-sector funds committed for approved applicants	\$100,473
State funds committed for approved applicants	\$100,468
Total funds disbursed to date (including private and state)	\$158,863
Average scholarship per approved applicant	\$5,741
Private-sector funds committed but no student applications received	\$108,650
Current enrolling institutions	Bismarck State College Dakota College at Bottineau Lake Region State College Lynnes Welding Training North Dakota State College of Science Rasmussen College - Fargo

Programs enrolled	Agriculture (3) Auto Body Repair & Refinishing Technology Automotive Technology (3) Building Construction Technology Construction Management Technology Cybersecurity & Computer Networks Diesel Technology (3) Electrical Technology (2) Energy Services & Renewable Technician Health Information Technician Heating, Ventilation & Air Conditioning Human Resources & Organizational Leadership HVAC/R Technology (3) Information & Communications Technology Instrumentation & Control Technology John Deere Ag Tech Land Surveying & Civil Engineering Technology (3) Lineworker (Electrical) Medical Assistant Pharmacy Technician Power Plant Technology Welding (3)
Graduated recipients (May 2020)	11
Number of unique donors committing funds	32
Repayment: Number	5
Repayment: Amount	\$27,000
Repayment: Recovered amount	\$5,450

The following summarizes the loan repayment application status and private-sector funding for the ND Career Builders Loan Repayment program as of June 2020:

<b>ND Career Builders Loan Repayment Program</b>	
Number of applications approved	5
Number of applications denied	2
Number of approved applications funded	5
Private-sector funds committed for approved applicants	\$33,302.58
State funds committed for approved applicants	\$33,302.58
Total funds disbursed to date (including private and state)	\$13,222.68
Average loan repayment per approved applicant	\$13,321
Private-sector funds committed but no student applications received	None
Number of unique donors committing funds	5
High-need or emerging occupation	Bus and Truck Mechanic Carpenter Mechanical Engineer Mobile Heavy Equipment Mechanic Transportation Engineer