

## NORTH DAKOTA LEGISLATIVE MANAGEMENT

## Minutes of the

**JUDICIARY COMMITTEE**

Tuesday, March 22, 2016  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Senator David Hogue, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Senators David Hogue, Kelly M. Armstrong, John Grabinger, Carolyn C. Nelson, Erin Oban, Mac Schneider; Representatives Pamela Anderson, Roger Brabandt, Lois Delmore, Richard G. Holman, Mary C. Johnson, Karen Karls, Lawrence R. Klemin, Kim Koppelman, William E. Kretschmar, Diane Larson, Andrew G. Maragos, Christopher D. Olson, Mary Schneider

**Members absent:** Representatives Kathy Hawken and Gary Paur

**Others present:** See [Appendix A](#)

**It was moved by Representative Nelson, seconded by Representative Maragos, and carried on a voice vote that the minutes of the January 5, 2016, meeting be approved as distributed.**

**OBERGEFELL V. HODGES STUDY**

At the request of Chairman Hogue, the Legislative Council staff reviewed a memorandum entitled [Marriage Definition - Impacted Sections](#).

In response to a question from Representative Delmore, Chairman Hogue said there are a couple ways to proceed. He said the committee can leave the statutes as they are and resist the ruling of the United States Supreme Court, or the statutes could be amended to reflect the law as it is today.

Representative Klemin said having a general definition of marriage will not work in every case as some references are biological in nature.

**VOTER VERIFICATION AND VERIFICATION OF CITIZENSHIP  
Department of Transportation**

Chairman Hogue called on Mr. Glenn Jackson, Director, Driver's License Division, Department of Transportation, for testimony ([Appendix B](#)) on verification of citizenship and the REAL ID Act of 2005 (REAL ID).

In response to a question from Representative Maragos, Mr. Jackson said the Department of Transportation (DOT) and the executive branch are in discussions as to when North Dakota will become compliant with REAL ID.

In response to a question from Representative Klemin, Mr. Jackson said the costs associated with the implementation of REAL ID would be minimal as DOT has made some changes to move toward REAL ID. He said minimal budgeting and statutory changes would be required in the next session.

In response to a question from Representative Kretschmar, Mr. Jackson said there is a lot of work that goes into applying for a waiver. He said DOT has to show that some steps have been taken to become compliant; however, DOT is considering whether to apply for a new waiver when the current waiver expires in October 2016.

In response to a question from Chairman Hogue, Mr. Jackson said REAL ID was presented as an overreach of federal authority with identification cards being issued by the federal government. He said the idea is a misunderstanding as the data currently being collected will not change. He said the point of REAL ID is to issue a credential that meets the standard of fraud protection.

In response to a question from Representative Koppelman, Mr. Jackson said the implementation of REAL ID would not verify the citizenship of an individual. He said to attempt to verify the citizenship of each resident would be a very large and costly process. However, he said, DOT verifies the lawful status of an individual applying for a driver's license or identification card.

In response to a question from Representative Klemin, Mr. Jackson said scanning documents, such as a social security card, birth certificate, or marriage license, would be used in the case of an act of terrorism to provide authorities with additional background information of a suspect. He said those documents would be protected from data theft.

In response to a question from Chairman Hogue, Mr. Jackson said the implementation of REAL ID would impact the way the Secretary of State uses the Internet to update residential addresses, as changes in address would require an individual to physically visit DOT to update the information.

### **Ward County Auditor**

Chairman Hogue called on Ms. Devra Smestad, Ward County Auditor/Treasurer, for testimony ([Appendix C](#)) regarding voter registration. Ms. Smestad said there are many questions being debated at the national level depending on the type of voter registration. She said the question that comes up repeatedly is what the cost would be to implement voter registration. She said although most states that have voter registration have full-time election administrators, county auditors have many duties. She said getting and retaining poll workers is a difficult task and increasing their responsibility would make it more difficult.

In response to a question from Representative Koppelman, Ms. Smestad said Ward County is very lax in ensuring a voter has lived in a precinct for 30 days.

In response to a question from Senator Schneider, Ms. Smestad said when an individual applies for a ballot, whether at the polling place or for an absentee ballot, the individual should be required to show a valid form of identification.

In response to a question from Chairman Hogue, Ms. Smestad said she has trained her election workers to call her when an individual shows up to vote with an identification card that does not reflect an updated address, but that individual has updated his or her address online. She said the information provided online does not show whether the individual has lived at the new residential address for 30 days.

In response to a question from Representative Schneider, Ms. Smestad said she does not see any advantages to the training provided to election staff. She said counties have a difficult time administering an election without the added component of voter registration.

In response to a question from Representative Delmore, Ms. Smestad said North Dakota does not have an issue with voter fraud.

In response to a question from Representative Anderson, Ms. Smestad said she received three phone calls to verify an individual's updated residential address online during the last election.

Representative Holman said he was at the same national conference with Ms. Smestad and there were over 35 states that were very interested in the process used in North Dakota.

Senator Oban said the requirement is that an individual live in a precinct for 30 days, not that the individual updated his or her address 30 days before the election. She said it does not matter whether DOT can show the day an individual updated an address.

### **Secretary of State**

Chairman Hogue called on Mr. Jim Silrum, Deputy Secretary of State, to introduce individuals to present information regarding election procedures in Colorado and Minnesota. Mr. Silrum introduced Mr. Judd Choate, Director of Elections, Colorado, for testimony regarding the election procedure in Colorado. Mr. Choate said Colorado is a true vote-by-mail state. He said Colorado is a member of the Electronic Registration Information Center to update information such as where individuals are moving and to compare voter registration lists to Colorado's department of motor vehicle lists. He said Colorado also uses the National Change of Address list to update an individual's residential address without requiring the individual to do anything. He said although the voter registration system in Colorado is elaborate, it helps to maintain and update files. He said about 75 percent of county resources and 50 percent of state election-related resources are spent on the maintenance of voter files. He said it is a significant drain on resources to continuously update and process data. He said Colorado has same-day registration, which allows an individual to register to vote at the polling location if that individual can legally demonstrate his or her right to do so. He said Colorado was one of the first states to implement online voter registration. However, he said, maintaining technology can be troublesome and very costly.

In response to a question from Representative Anderson, Mr. Choate said Colorado has one of the highest percentages of registration of eligible voters at 89 percent. He said Colorado had 72 percent voter turnout in the last presidential election.

In response to a question from Chairman Hogue, Mr. Choate said there is a cost associated with being involved with the Electronic Registration Information Center. He said some view the Electronic Registration Information Center as a way to purge voters from voter registration lists, while others view it as a way to implement universal registration.

In response to a question from Representative Klemin, Mr. Choate said Colorado is compliant with REAL ID. He said to get the initial REAL ID an individual must physically be at DOT; however, updating the information can be done online.

In response to a question from Senator Schneider, Mr. Choate said supporters view the mail ballot process as a convenience whereas the detractors see it as an example of moving away from community and toward individual isolation. He said there is strong evidence to suggest there is a reduced election-administration cost associated with vote by mail.

Mr. Silrum introduced Mr. Gary Poser, Director of Elections, Minnesota, for testimony regarding the election procedure in Minnesota. Mr. Poser said Minnesota is exempt from the National Voter Registration Rights Act of 1993 so Minnesota does not have to worry about the purging of registrations. He said Minnesota joined the Electronic Registration Information Center in 2014 and uses postcard verification to confirm the residential addresses of registered voters. In addition, he said, Minnesota compares the list of registered voters to the databases of the department of motor vehicles and the Social Security Administration. He said if voters cannot be verified, an individual is required to provide further documentation at the polling location. He said Minnesota also has same-day voter registration.

In response to a question from Chairman Hogue, Mr. Poser said Minnesota has a 20-day residency requirement for voters. He said the voter has to have lived in Minnesota for 20 days, and is not required to reside in a specific precinct. He said a voter is permitted to use a utility bill to show proof of residency.

In response to a question from Representative Schneider, Mr. Poser said he is not aware of any voter fraud issues in Minnesota. Mr. Choate said he is not familiar with fraud issues in Colorado.

In response to a question from Representative Klemin, Mr. Poser said Minnesota does not require proof of citizenship to vote.

In response to a question from Representative Schneider, Mr. Poser said college students are required to show a student identification card in addition to being listed on a college housing list. Mr. Choate said Colorado does not require anything additional for college students. He said a student may use any form of approved identification, including a utility bill, to show residency.

In response to a question from Chairman Hogue, Mr. Silrum said the Secretary of State does not interpret North Dakota Century Code Section 16.1-05-07 to place a specific date by which an individual must update his or her address. He said the information may be updated by phone or online right up to the time the individual casts a ballot. He said the Secretary of State is working to ensure county auditors understand the process.

In response to a question from Senator Schneider, Mr. Silrum said if a college student attempts to vote after changing an address online, either the poll worker would need to call the auditor to confirm the change or someone at the polling place would need access to the Internet to confirm the updated address.

In response to a question from Representative Klemin, Mr. Silrum said electronic pollbooks do not have the necessary interface to exchange information with the DOT website automatically.

In response to a question from Representative Olson, Mr. Kevin Glatt, Burleigh County Auditor/Treasurer, said generating both electronic and paper poll books requires several staff.

Senator Oban said if a voter updates an address online with DOT, the change is not automatically updated in the electronic poll book.

In response to a question from Representative Schneider, Mr. Silrum said North Dakota is not a member of the Electronic Registration Information Center. He said the membership fee was included in a bill last session, but the bill did not pass. He said membership would cost about \$30,000 a year.

## REPORTS

Chairman Hogue called on Mr. Gunner LaCour, Director, North Dakota Racing Commission, for presentation of the statutorily required biennial report ([Appendix D](#)) of the North Dakota Racing Commission.

In response to a question from Senator Nelson, Mr. LaCour said the weekends the tracks are open for racing generally result in the tracks breaking even or resulting in a financial deficit. He said part of the ongoing plan for the North Dakota Horse Park in Fargo is to add additional activities such as barrel racing and concerts to increase outside revenue.

In response to a question from Representative Klemin, Mr. LaCour said the new agreement involving the North Dakota Horse Park allows for the overdue tax increment financing payments to be made as the new partners make current payments. He said further revenue may include offsite wagering locations.

In response to a question from Representative Schneider, Mr. LaCour said the commission is interested in studying the impact racing proceeds have on the equine industry.

In response to a question from Representative Karls, Mr. LaCour said a charity must pay a small fee, which is generally under \$1,000, to become licensed with the commission. After a charity is licensed, he said, wagering generates revenue on a percentage basis. He said wagering occurs online and at off-track betting locations.

Chairman Hogue called on Mr. Randy Miller, Director, North Dakota Lottery, for presentation of the statutorily required report ([Appendix E](#)) of the North Dakota Lottery. He said the increase in sales this year is attributed to the extremely large jackpot of over \$1 billion.

In response to a question from Representative Maragos, Mr. Miller said the discrepancy in ticket sales for the 2014-15 year was caused by an increased vendor fee. He said prior to 2014-15, the lottery had negotiated a reduced rate.

In response to a question from Chairman Hogue, Mr. Miller said unclaimed prizes reduce the lottery's overall prize expense and are eventually turned back to the general fund.

In response to a question from Representative Klemin, Mr. Miller said only North Dakota residents are eligible to register for subscription services. He said the lottery has a third-party vendor to confirm eligibility.

In response to a question from Representative Kretschmar, Mr. Miller said taxes are withheld once a prize award reaches \$5,000 or more.

In response to a question from Representative Schneider, Mr. Miller said the Tax Department, Department of Human Services, and the Bank of North Dakota tend to benefit the most from the debt-offset provisions of the lottery.

In response to a question from Representative Olson, Mr. Miller said the lottery has been a member of the Multi-State Lottery Association since 2004. He said the interest is accumulated and split among the participating states.

In response to a question from Representative Brabandt, Mr. Miller said the projected sales for fiscal year 2016 are \$33 million.

Representative Delmore said as a member of the board, she is continually impressed with the level of transparency and amount of work the lottery does with very few staff.

Chairman Hogue called on Dr. Rosalie Etherington, Superintendent, State Hospital, for presentation of the statutorily required biennial report ([Appendix F](#)) relating to the services provided at the State Hospital to individuals who have been committed to the care and custody of the Executive Director of the Department of Human Services.

In response to a question from Representative Larson, Dr. Etherington said the State Hospital has increased addiction treatment services by 16 beds. She said the State Hospital no longer provides addiction services for adolescents. She said on average the State Hospital operates at 86 percent capacity; however, it varies from 72 to

110 percent. She said the average length of stay for inpatient services is between 18 to 24 days and the State Hospital services about 1,000 people each year. She said the addiction treatment program operated through a contract with the Department of Corrections and Rehabilitation is a 105-bed unit and is generally at capacity. She said the sex offender treatment program currently has 64 residents with an average stay of 7 years. She said the rehospitalization rate for addiction treatment is 23 to 34 percent, which is slightly less than the general recidivism rate. She said incarcerating individuals with severe addiction, whose crimes only may be a product of their addiction, is an ineffective method of treatment. She said there is a shortage of community services for those addictions and the Department of Corrections and Rehabilitation is overcrowded.

In response to a question from Chairman Hogue, Dr. Etherington said the purpose of the reporting statute was in response to an escape and the hospital's sex offender treatment program. She said the Legislative Assembly determined it would be appropriate to partner the State Hospital with the Department of Corrections and Rehabilitation to establish security procedures.

In response to a question from Senator Grabinger, Dr. Etherington said there has not been a discussion about increasing patient beds in response to the increased use of heroin in the region. She said although there could be a further discussion regarding expansion, 16 beds were added to the budget last session. She said there is discussion about how to use the funds to catch patients more quickly before they need a higher level of care. She said addiction care is best provided with recovery management, rather than in a hospital setting. She said starting and staying at the lowest level of care in which an individual remains in the community with those that support the individual is the most effective.

In response to a question from Representative Koppelman, Dr. Etherington said treatment is effective; however, not all treatment and not all levels of treatment are effective at any given time. She said practitioners know that if an individual in need is provided treatment as quickly as possible, that individual is more likely to recover. She said the concept is the same for individuals with mental illness. She said the question should be where is the greatest shortage of treatment and what is the best way to manage that shortage.

### **COMMITTEE DISCUSSION**

Chairman Hogue said the next meeting will be scheduled for June. He said the intention is to have the Council of State Government's Justice Center present an update on the Justice Reinvestment Initiative.

No further business appearing, Chairman Hogue adjourned the meeting at 2:15 p.m.

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Samantha E. Kramer  
Counsel

ATTACH:6