

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

NATURAL RESOURCES COMMITTEE

Tuesday, October 22, 2019
Harvest Room, State Capitol
Bismarck, North Dakota

Senator Robert Erbele, Chairman, called the meeting to order at 10:00 a.m.

Members present: Senators Robert Erbele, Jim Dotzenrod, Dale Patten; Representatives Chuck Damschen, Gretchen Dobervich; Citizen Members Dorman Bazzell (Chief Information Officer's designee), David DeWald, Doug Goehring, Jason Horning, Brian Schanilec, Joe Schettler, Terry Steinwand, John Weinand, Ryan Younggren

Members absent: None

Others present: See [Appendix A](#)

It was moved by Senator Patten, seconded by Senator Dotzenrod, and carried on a voice vote that the minutes of the August 26, 2019, meeting be approved as distributed.

PUBLIC ACCESS TO TRUST LANDS

Chairman Erbele called on Ms. Jodi A. Smith, Commissioner, Department of Trust Lands, for a presentation ([Appendix B](#)) regarding public access to trust lands and signage regarding access to trust lands.

Ms. Smith said the Department of Trust Lands prepared draft administrative rules regarding public access to trust lands based on the department's policy that has been in effect since 1983. She said the Attorney General's office is reviewing the draft rules.

In response to questions from Mr. DeWald, Ms. Smith said field inspectors look for unapproved signs on trust lands and members of the public sometimes report unapproved signs. She said the department has limited resources and does not inspect school land tracts every year. She said the department has an obligation to inspect each tract at least once every 5 years unless the tract is deemed a problem tract. She said the department also has deployed a drone to view trust lands.

In response to questions from Chairman Erbele, Ms. Smith said the public can call the department to verify whether trust land is properly closed if a sign on the land is not one of the department's signs. She said the department's website also identifies which land in the state is trust land. She said if the Attorney General's office does not recommend changes to the department's draft administrative rules, the rules could go into effect by January 2020. She provided a copy of current department policy regarding public access to trust lands ([Appendix C](#)), a copy of the draft rules with any changes from current practice highlighted ([Appendix D](#)), and a summary of public comments on the draft rules ([Appendix E](#)).

In response to a question from Mr. Steinwand, Ms. Smith said trust land closed to hunters also is closed to the lessee for hunting purposes.

Mr. Mike Humann, Director, Surface Management, Department of Trust Lands, said before 1983, trust land lessees could post trust lands like private land.

GAME AND FISH DEPARTMENT INFORMATION

Chairman Erbele called on Mr. Terry Steinwand, Director, Game and Fish Department, for a presentation (Appendices [F](#) and [G](#)) regarding the percentage of land in the state represented in gratis hunting licenses, locations where trespassing violations are most common, and locations where the department has obtained access for anglers.

In response to questions from Chairman Erbele, Mr. Steinwand said the Game and Fish Department may stock a lake if the department receives a request to do so and the lake is at least 10 to 12 feet deep. He said the department maintains information about the shoreline available for public fishing. He said the department verified each applicant for a gratis hunting license in 2012 but does not verify all applicants every year.

In response to questions from Mr. Goehring, Mr. Steinwand said he does not know why there are more trespass violations in Morton County than other counties. He said if ice fishing access points for the public become blocked by snow, landowners sometimes will allow members of the public to access the ice through other parts of their land.

In response to questions from Mr. DeWald, Mr. Steinwand said the department tries to obtain 50-foot easements for public access to lakes and the easements allow for shore fishing. He said the locations of the easements are not available on the department's website but could be made available online.

Chairman Erbele called on Mr. Brian Hosek, Information Technology Supervisor/GIS Coordinator, Game and Fish Department, for a presentation ([Appendix H](#)) regarding demonstration of a mobile application for land access.

In response to questions from Mr. Goehring, Mr. Hosek said land for which a gratis license was issued is not necessarily closed to other hunters. He said online licensing has made it easier to process and verify applications for gratis licenses. He said if an applicant submitted an application in the past and the applicant's information has not changed, the application review is streamlined. He said the different map applications in his presentation can be configured and tailored however the committee wishes. He said some applications will show street addresses or street names.

In response to questions from Chairman Erbele, Mr. Hosek said the ArcGIS application can show the owner of a parcel and the owner's contact information. He said the onX application has a \$30 annual cost and can share location information with other parties. He said the onX application can be used in other states. He said the statewide geographic information system (GIS) parcel project is underway and will make parcel identification information available to state government entities. He said the department can pull information from some counties into an application for the land access pilot program. He said several counties have relevant data already. He said the process of developing a pilot program and updating the information would take time. He said it may be difficult to keep the information in a land access application updated. He said the hunting units for different species do not overlap and some hunting licenses are statewide. He said the interactive maps could denote the unit boundaries. He said the department could select some counties that comprise a deer hunting unit for inclusion in the pilot program. He said the department could provide information to licensees to let them know certain counties are included in a pilot program requiring use of the application or website. He said the department could use press releases, news, webcasts, and other means for informing hunters of the pilot program.

In response to a question from Senator Patten, Mr. Hosek said at least one of the free products in his presentation includes advertisements.

In response to a question from Mr. DeWald, Mr. Hosek said the department has some usage data on how many people have downloaded the department's Avenza map and other information. He said the Avenza map is among the most used parts of the department's website. He said the Avenza map does not provide data beyond whether the land is open or closed for the private land open to sportsmen (PLOTS) program.

In response to questions from Mr. Horning, Mr. Hosek said the pilot program should impose a deadline by which landowners in the relevant counties have to designate land as closed. He said the deadline would ameliorate the difficulty posed by different counties having different time frames for updating tax parcel information. He said the department concludes agreements for the PLOTS program by May of each year. He said the PLOTS program uses an annual book, online map, and signs to designate land included in the program. If the designations for the land are not consistent, he said, the department would expect a sportsman to follow physical signs on a parcel of land.

In response to a question from Mr. Schanilec, Mr. Hosek said one issue for the pilot program is that tax data, which is the data counties usually have, identify owners but not operators or lessees, who may be the persons who want to post the land. He said there are multiple ways to address this issue and to prevent fraudulent posting by persons who do not have a right to post land. He said there are laws regarding illegal posting, and the laws could be tailored to ensure the appropriate persons post land in an electronic system.

In response to questions from Representative Damschen, Mr. Hosek said having the default designation of land be "closed" would be challenging. He said hunters and others would not have access to contact information for land not posted so they would not be able to request permission to hunt that land.

Mr. Goehring said having "closed" as the default designation would encourage landowners to be involved with the pilot program.

FORM PROTOTYPE APPLICATION FOR PILOT PROGRAM

Chairman Erbele called on Mr. Dorman Bazzell, Chief Data Officer, Information Technology Department, for a presentation ([Appendix I](#)) regarding a form prototype application and issues to be addressed for development of a pilot program.

In response to questions from Chairman Erbele, Mr. Bazzell said the information on the proposed landowner form could be expanded beyond designating land as open or closed for hunting in phases after Phase 1. He said there would have to be education and marketing about the database. He said there are four counties that do not have any digital landowner information.

In response to questions from Senator Patten, Mr. Bazzell said there would be ongoing costs for a land access application including costs for individuals to maintain and monitor the application. He said the application likely would reside in the state's cloud. He said the default position for land could be "open" or "closed," and landowners could change the designation. He said lockout dates could be used to enforce a deadline by which landowners would have to designate land as open or closed.

In response to a question from Chairman Erbele, Mr. Younggren said there may be a criminal defense for an individual who trespasses on land after relying on faulty data in the database. He said hunting on posted land is a strict liability offense, while a trespass offense requires intent.

In response to questions from Mr. Schanilec, Mr. Bazzell said a deadline for landowners to designate land in the application and a grace period for hunters would be helpful. He said the prototype depicted in his slides could be tailored to the committee's directions.

Chairman Erbele said the committee is bound by current law for the pilot program and penalties for violating electronic posting could not be imposed under current law.

COMMENTS FROM INTERESTED PERSONS

Mr. John Bradley, Executive Director, North Dakota Wildlife Federation, said sportsmen would have many concerns if the default designation for land is closed.

Mr. Joe Keller said he hopes the default designation for land continues to be open, and electronic posting would reduce the time and effort for landowners to post land.

Ms. Julie Ellingson, Executive Vice President, North Dakota Stockmen's Association, said the association would like changes to land access laws to protect property rights, and a grace period for hunters to comply with the pilot program or new legislation would be contrary to that goal. She said any new method for posting land should address changes in land ownership, protect new landowners, and protect landowners' data. She said the information landowners would have to provide for electronic posting should not exceed the information landowners have to place on physical signs under current law.

COMMITTEE DISCUSSION

Chairman Erbele said the committee may wish to discuss how the digital application for the pilot program should operate, and the Legislative Council staff will draft a summary of the operational framework for the committee to consider at the next meeting.

Enforcement

In response to questions from Representative Damschen, the Legislative Council staff said there are no state statutes that provide criminal or civil penalties for noncompliance with the pilot program or digital posting. She said individuals would have to comply with physical signage regardless of whether land is posted digitally as part of the pilot program.

County Participation and County Data

Mr. Horning said he would prefer to have more information about the pilot program before asking counties to participate. He said the North Dakota Association of Counties would work with the Game and Fish Department to develop a list of potential counties to approach for participation in the pilot program. He said some counties update parcel data frequently, and some update parcel data once or twice a year. He said counties want to know what information they would need to provide for the pilot program, how often the pilot program would need them to update parcel information, and how the pilot program would impact them during hunting season. He said frequent updates of parcel data would be a challenge for some counties, and there could be delays in reflecting changes in ownership.

Mr. Hosek said the counties in the pilot program would not need to be contiguous. He said it would be helpful to have counties with different kinds of lease arrangements in the program and to have one county from the east, one from the central region, and one from the west.

Mr. Bazzell said counties will need to provide parcel identification information and landowners' names.

Authentication of Persons Who Designate Land as Open or Closed

Mr. Horning said someone could use a digital posting database fraudulently by posing as a landowner. He said there should be authentication procedures for persons entering information in the database.

Mr. Hosek said the Game and Fish Department has addressed authentication issues, and parcel information from counties do not provide a way to authenticate parcel data without human involvement. He said a digital posting database could allow an individual to log in and be linked to the individual's county landownership information. He said the application also could allow renters to access the application. He said the issue of fraudulently posting land exists with physical posting. He said audits can identify fraudulent posting. He said landowners and sportsmen can report violations and errors. He said if a landowner or renter wants to designate land as closed when the land is linked to another person's account, the landowner or renter can report the update and then physically would have to post the land until the update is made to the application.

Senator Patten said each time land is designated as open or closed in a digital posting database, a letter to the landowner on record could be generated. He said this would give the landowner notice of changes that may have been made by someone else.

Mr. Schettler said he supports Senator Patten's idea of sending a letter via mail to landowners when there is activity on their accounts.

Data Security

Mr. Bazzell said electronic posting data could be encrypted to protect it from disclosure.

Mr. Schanilec said a landowner's name and parcel identification could be available publicly, but other landowner contact information should be available only to state agencies.

Mr. Schettler said he agrees with the fields on the Information Technology Department's (ITD) proposed landowner form, but not all fields should be mandatory.

Mr. Hosek said the "LOGIN" info on ITD's proposed landowner form would not have to be made public. He said the landowner should have the option to make the landowner's mobile number and alternate point of contact publicly available.

Senator Patten said sportsmen indicated during the legislative session they want to have contact information for landowners so the sportsmen can request access to posted land. He said that may be an issue regarding passage of legislation next session but not necessarily something to address for the pilot program.

Deadlines

Senator Patten said he favors a time window or deadline for designating land as open or closed in the application.

Mr. Hosek said for the pilot program, landowners should designate land by a deadline and recommended June 1 as the deadline.

Mr. DeWald said physical posting can be changed so a deadline for electronic posting which does not permit changes raises concerns.

Mr. Schettler said he has to keep his land posted year round because of criminal trespass.

Role of Physical Posting

Mr. Hosek said the Game and Fish Department would like to require compliance with physical signs on land, regardless of the digital designation for the land.

Criminal Trespass

Chairman Erbele said electronic posting should function like physical posting for both hunting and trespass violations.

Mr. Younggren said for criminal trespass, prosecutors need to show the trespasser had notice the land is closed or the trespasser should not be on the land. He said there is an issue regarding whether a digital database could provide notice. He said under current law, a digital database would not constitute notice.

Mr. Hosek said there should be consideration of rural versus urban parcels in a digital database. He said the committee should not create a system allowing neighbors or stores to have someone criminally prosecuted for standing on their property.

Mr. Bazzell said the committee needs to decide whether digital posting for a pilot program will be for trespassing, hunting, or both. He said if the program will cover both, there would need to be separate boxes for landowners to select to determine whether they want to post land for hunting, criminal trespass, or both.

Representative Damschen said there may be situations in which a landowner would want the choice whether to press charges against a trespasser.

Mr. DeWald said because the pilot program is supposed to be limited to hunting, addressing criminal trespass would be beyond the scope of the committee.

Evaluation of the Land Access Pilot Program

Representative Dobervitch said she would like the committee to identify how the pilot program will be evaluated before it is developed so the Legislative Assembly can receive quantitative and qualitative information about how well the pilot program worked. She said the committee may want an independent evaluation of the pilot program.

Chairman Erbele said the committee may want to get feedback regarding the pilot program from hunters, fishermen, and landowners in the three counties in the pilot program.

Public Education Efforts

Representative Dobervitch said she supports having information about the pilot project and any future electronic posting database printed on hunting licenses and made available on the Game and Fish Department website. She said she would like a place for hunting license applicants to click on the website to obtain additional information about the pilot program. She said she would also like information made available in locations that sell fishing licenses.

Chairman Erbele said there must be plans for educating the public, game wardens, and law enforcement about the pilot program.

Mr. Bazzell said ITD can provide a frequently asked questions document, terms and conditions, and a description of the application on a field-by-field basis. He said the application and information can be on the Game and Fish Department website and other state government websites. He said ITD may be able to create a mock application for the next meeting.

Chairman Erbele said the committee may meet again the first part of January 2020. No conflicts were identified.

No further business appearing, Chairman Erbele adjourned the meeting at 3:05 p.m.

Claire Ness
Counsel

ATTACH:9