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## NATURAL RESOURCES COMMITTEE

Wednesday, January 22, 2020  
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; Representative Chuck Damschen; Citizen Members Dorman Bazzell, David DeWald, Doug Goehring, Terry Traynor (North Dakota Association of Counties), Brian Schanilec, Joe Schettler, Terry Steinwand, John Weinand, Ryan Younggren

**Member absent:** Representative Gretchen Dobervich

**Others present:** Senator Donald Schaible, Mott; Representative Karen M. Rohr, Mandan, members of the Legislative Management

See [appendix](#) for additional persons present.

**It was moved by Mr. Goehring, seconded by Senator Dotzenrod, and carried on a voice vote that the minutes of the October 22, 2019, meeting be approved as distributed.**

### COMMITTEE DISCUSSION REGARDING PILOT PROJECT

Chairman Erbele said committee members should refer to the memo titled [Specifications for Land Access Pilot Project](#) prepared by the Legislative Council staff to identify issues that need to be addressed for the land access pilot project.

#### Counties to Participate in the Land Access Pilot Project

Chairman Erbele said Richland County, Ramsey County, and Slope County volunteered to participate in the land access pilot project.

Mr. Traynor said representatives of the North Dakota Association of Counties (NDAC) and the Game and Fish Department met to discuss which areas of the state would be important to include in the pilot project. He said NDAC hosted a conference call to discuss the pilot project with counties. He said representatives of all counties were invited to participate on the conference call and representatives of six counties participated. He said three counties agreed to participate in the pilot project after the call. He said the three counties represent the east, central, and west regions of the state. He said Ramsey County and Richland County have robust geographic information systems (GIS) capabilities and staff to assist with the implementation and operation of the pilot project. He said Slope County is similar to other smaller counties and outsources its GIS operations to a third-party vendor. He said the three counties are representative of the other counties in the state. He said McKenzie County, which has good GIS capabilities, also volunteered to participate. He said Slope County's participation is important because it would provide information about counties that have lower GIS capabilities. He said providing data for the pilot project would not require county commissions' approval because the data are public.

Mr. Steinwand said McKenzie County, Ramsey County, and Slope County have a lot of hunting activity. He said Richland County has the second highest number of trespass violations in the state.

**It was moved by Mr. Goehring, seconded by Mr. Younggren, and carried on a voice vote that Richland County, Ramsey County, and Slope County be selected to participate in the pilot project.**

#### Pilot Project Website and Mobile Application

Mr. Steinwand and Mr. Goehring said the website through which landowners can designate land as closed should be available on the websites of both the the Agriculture Commissioner and the Game and Fish Department.

Mr. Bazzell said the Information Technology Department (ITD) will create, own, and operate the pilot project website and application, but counties will own the data they provide and be responsible for updating the data. He said ITD's parcel GIS project will begin in March 2020, and ITD will prioritize inputting data from the three counties selected for the pilot project. He said the GIS project data will be used for the pilot project. He said ITD has developed a data collection form for the pilot project.

Mr. Traynor said some large counties update their GIS data every night, but other counties update their data only weekly, monthly, or annually. He said the pilot project will provide information on how often the updates need to occur and what it will cost to update data more frequently or at different times.

In response to a question from Senator Patten, Mr. Traynor said counties that do not update their GIS data frequently generally do not need updated data until it is time to collect property taxes. He said small counties send the relevant land documents to their third-party contractors to update the GIS data.

In response to a question from Representative Rohr, Mr. Traynor said about 22 of North Dakota's 53 counties contract with a vendor for land data updates.

In response to questions from Mr. Goehring, Mr. Traynor said counties with a lot of mineral activity generally have GIS staff.

In response to a question from Mr. Schanilec, Mr. Traynor said allowing individuals to make changes to land ownership data in the land access application would raise questions about the security of the application and the accuracy of the land designations. He said a landowner may not be the land operator, but counties have only ownership data. He said the application must be developed to ensure the correct person can designate land as closed.

Senator Patten said ITD or the Game and Fish Department could send each landowner a code to use when designating the landowner's land to ensure only authorized individuals are designating each parcel as open or closed. He said the landowner could give the code to an operator or other individual.

Mr. Bazzell said the process Senator Patten suggested is the model ITD used in its prototype form for landowners.

Senator Patten said if a landowner does not forward the code to a tenant or land operator who has a legal right to post the land, the tenant or land operator could post the land physically.

In response to a question from Senator Dotzenrod, Mr. Traynor said all parcels in the three selected counties will be included in the database for the pilot project.

Mr. Bazzell said parcels within a city will be closed by default.

Senator Dotzenrod said railroad rights of way and other centrally assessed property open to hunting would need to be designated as open by an authorized person.

Mr. Bazzell said those parcels would be open by default, so a responsible party is needed only if the parcels are going to be designated as closed.

Mr. Goehring said gun hunting is not allowed near towns although bow hunting may be.

Mr. Steinwand said the application will allow the perimeter areas to be designated appropriately.

### **Education and Public Awareness**

Mr. Steinwand said information regarding the pilot project would not be included in the Governor's hunting proclamations, but the information would be provided in press releases and newsletters and on websites for NDAC, the Game and Fish Department, and the Agriculture Commissioner.

Chairman Erbele said communications about the pilot project should make participation in the pilot project attractive to sportsmen and landowners. He said the North Dakota Stockmen's Association, North Dakota Farm Bureau, North Dakota Farmers Union, and other organizations representing sportsmen and landowners should include information about the pilot project in member communications and encourage their members to participate. He said the communications will need to inform landowners they still need to post land physically, even if the landowners close their land in the database for the pilot project, because there are no penalties for hunters who do

not comply with electronic posting during the interim. He said the availability of electronic posting with penalties for noncompliant hunters in the future will give landowners an opportunity to close land to hunters without the labor required to physically post land. He said the Legislative Assembly will need to review statutory penalties for trespassing, especially penalties for repeat offenders, to minimize trespassing.

Mr. Schettler said achieving high participation rates in the pilot project will require many conversations with landowners and a simple process for designating land as closed.

Ms. Julie Ellingson, Executive Vice President, North Dakota Stockmen's Association, said the association will send communications to its members regarding the pilot project, provide information about the pilot project at the association's summer meetings across the state, and have its representatives across the state discuss the pilot project with members. She said the association can provide training to educate people how to use the application.

Mr. Weinand said the North Dakota Grain Growers Association will disseminate information about the pilot project and encourage participation. He said it is important to have a process for lessees to post land in the application. He said not having to post land physically would be a significant benefit to land operators and landowners, and participating in the application will be less onerous than physically posting land.

In response to a question from Mr. Schanilec, Mr. Younggren said it would be fairly easy to amend North Dakota Century Code Chapter 20.1-01 to redefine posting so electronic posting would be equivalent to physically posting. He said it would be harder to address criminal trespass under Chapter 12.1-22 in a way that would permit criminal prosecution of individuals who enter land that is electronically posted but not physically posted. He said prosecuting criminal trespass requires proving an individual's intent, while hunting on posted land is a strict liability offense for which intent is irrelevant. He said to prosecute an individual for criminal trespass on electronically posted land under Chapter 12.1-22, a prosecutor would have to prove electronic posting is sufficient notice reasonably likely to come to the attention of the trespasser. He said proving that would be difficult.

Chairman Erbele said the scope of the study for the committee is limited to sportsmen's access to land, but criminal trespass could be addressed during the legislative session.

Mr. Goehring said to resolve landowners' concerns about criminal trespass, land would need to be closed by default and open only if specifically designated as open.

Mr. John Bradley, Executive Director, North Dakota Wildlife Federation, said sportsmen organizations will communicate information about the pilot project to their members. He said the state should provide standard language about the application so sportsmen will know the information is from a trusted source. He said communicating to sportsmen will take legwork and communication from many organizations.

### **ITD Prototype Application**

Chairman Erbele called on Mr. Bazzell to demonstrate the prototype application for the pilot project.

In response to questions from Mr. Goehring, Mr. Bazzell said the prototype application form prepared by ITD would give landowners the opportunity to designate land as closed and provide their contact information for sportsmen to request permission to hunt on their land. He said landowners would not have to provide their contact information if they do not want to be contacted.

In response to a question from Mr. Younggren, Mr. Bazzell said land could be designated as either open or closed on the prototype, and the prototype would not provide the option to designate land as open only for some species. He said a landowner can identify a "land manager" for each parcel designated in the pilot project. He said the landowner could provide the land manager's contact information for hunters to request permission to hunt on the land, and the land manager could be responsible for designating land as open or closed.

In response to questions from Mr. Goehring, Mr. Bazzell said ITD can add options to designate land differently for different seasons or species.

Mr. Brian Hosek, Information Technology Coordinator, Game and Fish Department, said adding the options would create logistical problems and may confuse users.

Senator Patten said it would be better to keep the pilot project simple to test the concept and consider adding other options later.

Mr. Schettler said keeping the pilot project simple would increase landowner participation. He said providing a limited text box for landowners to indicate when hunters should contact them for permission to access the land, how they prefer to be contacted, and similar logistical issues would be acceptable.

Mr. Younggren said legislation would need to address what constitutes proper electronic posting and the legal significance of information provided in a text box.

Mr. Steinwand said any comments in a text box would need to be clear about whether the land is open or closed if legislation is passed to provide penalties for noncompliance with the application.

Senator Patten said the text box could function similarly to giving permission verbally to hunt on land.

Chairman Erbele said based on committee members' comments, ITD should include the text box in the pilot project.

Mr. Younggren said if a hunter follows the directions in the application, a prosecutor would have a hard time proving a criminal case against the hunter, regardless of the physical signs on the land.

In response to a question from Mr. Traynor, Mr. Bazzell said parcels will be preloaded into the application, and a landowner or land operator would be able to access the landowner's or land operator's parcels. He said the landowner or land operator would be authenticated, and there would be a process to audit the authenticity of the individuals who designate land in the application.

Mr. Steinwand said it is illegal to post someone else's property. He said it will be easier to prove a violation if the illegal posting is done electronically.

Mr. Hosek said the mobile applications, such as OnX, presented at the last meeting can tie into ITD's website application to display the information on a mobile device. He said sportsmen also will be able to print a map with the open and closed designations.

In response to a question from Mr. Weinand, Mr. Hosek said the applications will identify where the sportsmen is so the relevant parcel will be pulled up on a hunter's mobile device automatically.

Mr. Steinwand said the Game and Fish Department will choose the mobile application, and it will be free to use.

Mr. Bazzell said the ITD application will be for landowners and land operators to designate land only, not for hunters to see the designations. He said the Game and Fish Department application will upload the land designations and be used by hunters to see the designations.

### **Deadline for Landowners to Designate Land as Closed**

Chairman Erbele said the committee should set a deadline by which landowners and land operators must designate land as closed in the pilot application.

Mr. Steinwand said June 1, 2020, would be a logical deadline.

Chairman Erbele said June 1, 2020, would be a difficult deadline for landowners to meet.

Mr. Steinwand said July 1, 2020, would be an acceptable deadline. He said having a later deadline would make it difficult for hunters to access reliable information because some hunting seasons start in August.

Mr. Goehring said a later deadline will increase landowners' participation in the pilot project.

Mr. Bazzell said the deadline will depend in part on how soon ITD can upload the data for the parcels in the three counties in the pilot project into the application. He said ITD will prioritize the three counties in its GIS parcel project.

Mr. Hosek said the Game and Fish Department would like to provide printed information from the application to hunters and will need to print the information in early August to make sure it is available for hunting seasons.

Chairman Erbele said based on the committee members' comments, July 15, 2020, will be the deadline for designating land as closed in the pilot project.

Mr. Bazzell said he will advise the committee if ITD's GIS parcel project will not have the necessary county information available in time for that deadline.

### **Evaluation of the Pilot Project**

Chairman Erbele said the committee should determine how it will evaluate the pilot project.

Mr. Goehring said the Agriculture Department generally uses surveys, although the surveys do not have high response rates. He said there should be a way to provide feedback on ITD's application.

Mr. Bazzell said there could be an instant survey in the application, and traffic to the application could be measured. He said the instant survey could ask whether the application was easy to use.

Mr. Steinwand said the Game and Fish Department's survey coordinator, who is a statistician, can work with ITD and the Agriculture Department to develop a way to evaluate and gather feedback on the pilot project.

### **Distinguishing Criminal Trespass From Hunting on Posted Land**

Chairman Erbele called on the Legislative Council staff to present the memorandum titled [Distinguishing Trespass and Hunting on Posted Land](#).

## **FUTURE LEGISLATION**

### **Electronic Posting**

Chairman Erbele said the committee should consider whether to recommend legislation to the Legislative Management to continue electronic posting after the pilot project.

Mr. DeWald said he would like electronic posting to continue after the pilot project and for there to be penalties for noncompliance with electronic posting.

In response to questions from Chairman Erbele, Mr. Bazzell said the state lacks a consistent way to update GIS land parcel data and processes to verify the data. He said ITD's GIS parcel project is intended to address both issues.

Mr. Traynor said increasing the electronic posting application from three counties in the pilot project to all counties across the state can occur rapidly because the GIS parcel data are available in almost all counties. He said counties will not need legislation requiring them to participate or allowing them to share GIS parcel data. He said legislation will need to mandate how often the data must be updated, and updating data will have an incremental cost for counties. He said legislation should permit a new landowner to designate the landowner's parcel as closed even if the land transfer is not yet reflected in the electronic posting application.

Chairman Erbele said if new owners can designate land regardless of GIS parcel information updates, then no statutory changes would be required to mandate the frequency of data updates by the counties. He said he wants legislation to continue the electronic posting project but also include penalties for violations.

Senator Patten said landowners would expect there to be enforcement mechanisms in any future land access application.

Mr. Schanilec said there should be enforcement after the initial interim period and examples of enforcement should be communicated publicly to deter violations.

Chairman Erbele said Section 20.1-01-17 should be amended to include electronic posting, and penalties for violating the electronic posting should be the same as the current penalties for hunting on physically posted land. He said there should be a continuing study in the committee's bill drafts. He said the number of counties participating in the pilot project after the interim should be left open ended in the bill drafts.

### **Criminal Trespass**

Chairman Erbele said the committee may want to discuss criminal trespass statutes and suggest changes.

Mr. Goehring said the Legislative Assembly should eliminate the statutory requirement to have a landowner or land operator's name on "no trespass" signs.

Chairman Erbele said any bill draft the committee recommends to the Legislative Management should make the requirements for physical and electronic posting consistent and provide the same penalty for violations of physical and electronic posting.

Senator Patten said he agrees with the need for consistency. He said the committee may want to address criminal trespass by individuals other than hunters.

Mr. Schettler said the committee may want to provide penalties for individuals who trespass for recreational activities and define "recreational activities" so that neighbors, salesmen, and delivery persons would not be considered trespassers.

Chairman Erbele said the Legislative Council staff will prepare a bill draft reflecting Mr. Schettler's proposal.

Senator Patten said the Legislative Council staff should include penalties in the bill draft.

In response to questions from Representative Rohr, Mr. Goehring said if a landowner has allowed a roadway to be open for years, the landowner cannot close the roadway to the public.

Senator Patten said this is known as a prescriptive right through adverse possession.

Mr. Goehring said he does not know any landowner who restricts access to a burial place accessible only through the landowner's property.

Chairman Erbele said based on suggestions from the committee members, the Legislative Council staff will prepare a bill draft making trespass a strict liability offense and a bill draft providing the land access mobile application constitutes sufficient notice for a charge of criminal trespass.

Senator Dotzenrod said there could be confusion if the electronic posting and physical posting for one parcel are inconsistent.

Chairman Erbele said the bill drafts will clarify physical posting supersedes a lack of electronic posting.

In response to a question from Mr. Weinand, the Legislative Council staff said she would send the committee members the statute with the penalties for Class A and Class B misdemeanors.

### **ISSUES RAISED BY MR. DEWALD**

Chairman Erbele said Mr. DeWald has several issues he would like to discuss during the committee meeting. He said the first issue is having the Game and Fish Department obtain winter fishing access and parking areas at lakes the department manages.

Mr. Steinwand said it would cost tens of millions of dollars each year to keep the roads to ice fishing locations open. He said directions to every lake the Game and Fish Department manages are available on the Game and Fish Department website.

Chairman Erbele said the Game and Fish Department generally does not pay landowners for easements through their land to fishing areas. He said most access to fishing lakes is provided for free.

Mr. DeWald said his concern is not about clearing snow off access roads but about obtaining permission from landowners for anglers to park on private land near lakes.

Mr. Goehring said if the state obtained easements for parking on private land near lakes, individuals who are not accountable or responsible will feel entitled to use the private land. He said landowners prefer to have anglers ask permission for parking on a case-by-case basis.

Mr. Steinwand said the Game and Fish Department has easements or adjoining public land for the vast majority of lakes the department manages. He said the department has three employees who focus on access issues, and the department will continue to work on this issue. He said the department does not want long-term easements because the state will go into a drought sometime again, making some of the easements unnecessary.

Mr. DeWald said he is satisfied the issue is being addressed.

Chairman Erbele said the second of Mr. DeWald's issues to discuss is how to ensure access to public hunting areas surrounded by privately owned land.

Mr. Schettler said he leases land from the United States Bureau of Land Management. He said his private roads provide access to the public lands, but he often denies access to public lands. He said the grass on his land is his

crop, and loss of it due to carelessness would be a very significant problem. He said the section line laws in North Dakota allow individuals to access some of the public areas surrounded by his land.

Mr. Steinwand said the Game and Fish Department currently is not working to identify the public land that is not accessible.

Mr. DeWald, Mr. Schettler, and Mr. Steinwand said Mr. DeWald's estimate that 107,000 acres of publicly owned land in North Dakota is inaccessible is probably higher than the actual number of public acres surrounded by private land.

Mr. Steinwand said the Game and Fish Department does not use money for the private land open to sportsmen (PLOTS) program for roadway easements to access public lands. He said the section line laws provide for legal access to public lands.

Mr. DeWald said he agreed to table his other issues until a later meeting.

### **PUBLIC COMMENTS**

Mr. Joe Keller said he would prefer not having a deadline for landowners to designate their land as closed in the online application. He said he would like electronic posting to supersede any paper copies the Game and Fish Department prints if a landowner designates the landowner's land as closed after the paper copies are printed. He said adding counties to the application should depend on the success of the original three counties in the pilot project. He said he would like landowners who electronically post their land to be required to post every year instead of having land designations be permanent. He said having all land default to a closed status is not consistent with the committee's original duties. He said the Game and Fish Department could encourage hunters to ask owners whether they can hunt on the land.

Ms. Mary Graner, said she would prefer to have the default position for land be closed.

Mr. Darrell Belisle said education on the pilot project is necessary for sportsmen and landowners.

Ms. Ellingson said the purpose of the study is to fortify property rights. She said it is important to consider more issues than just hunters' access to land. She said the continuation of the pilot project should include making criminal penalties available for violating electronic posting, so continuing to refer to it as a pilot project after the interim may not be appropriate.

No further business appearing, Chairman Erbele adjourned the meeting at 3:30 p.m.

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Claire Ness  
Counsel

ATTACH:1