

# AGRICULTURE AND NATURAL RESOURCES COMMITTEE

The Agriculture and Natural Resources Committee was assigned three studies:

- Senate Bill No. 2365 (2023) directed a study of the roles of the Insurance Commissioner, Department of Emergency Services, and Department of Water Resources (DWR) in tracking and updating the relevant primary land use authority on lands outside a municipality's jurisdiction. The study required consideration of a method for tracking all organized townships within the state and maintaining updated contact information, certified annually by December 31<sup>st</sup>; consideration of a formal process for organized townships to request, establish, and track the yielding of land use authority to an adjacent jurisdiction; consideration of how insurance producers access the necessary information, including updated contact information of the authority, to appropriately associate potential insurance policyholders with the relevant land use authority for the purposes of the Federal Emergency Management Agency's (FEMA) National Flood Insurance Program (NFIP); and consideration of how a member of the public may access the relevant land use authority associated with a specific parcel of land.
- Section 4 of Senate Bill No. 2371 (2023) directed a study of the number of persons that own or control any real estate or commercial assets or operate a business within the state which is owned by, controlled by, or subject to the jurisdiction or direction of foreign adversaries or individuals acting on behalf of or in conjunction with foreign adversaries or persons listed on the Office of Foreign Assets Control (OFAC) sanctions list. The study required a review of the definition of "foreign adversary," a review of which federal list accurately encompasses the foreign nations posing threats to the state, a discussion about whether a mechanism exists allowing state agencies and national intelligence agencies to share classified intelligence; which state agencies are best equipped to implement a program to monitor foreign adversaries seeking to operate a business or a charitable enterprise or a beneficial interest in real estate; and the circumstances under which foreign adversaries may own real property in the state.
- Section 22 of Senate Bill No. 2009 (2023) directed a study of the plans for mitigation of adverse wildlife and environmental impacts and monetary payments made to state agencies, contractors, nongovernmental organizations, and others by applicants or other persons for mitigation during the siting and operation of energy conversion or transmission facilities. The study required consideration of the provisions of law affecting the ability of developers to effectively mitigate adverse wildlife habitat and environmental impacts, applicant payments used for the purchase of perpetual or nonperpetual conservation easements, the distinction between an adverse direct environmental effect or an adverse indirect environmental effect, methods to monetarily quantify adverse direct or adverse indirect environmental effects, and alternative programs that may be used or developed for the mitigation of adverse wildlife and environmental effects.

The Legislative Management assigned the committee the responsibility to receive the following three reports:

- A report from the Model Zoning Review Task Force on the development of a new or updated model zoning ordinance related to animal feeding operations, pursuant to North Dakota Century Code Section 4.1-01-28.
- A biennial report from the Agriculture Commissioner regarding environmental impact mitigation fund disbursements, pursuant to Section 4.1-01-21.1(6).
- A report from the State Board of Agricultural Research and Education (SBARE) on its annual evaluation of research activities and expenditures, pursuant to Section 15-12.1-17(8).

Committee members were Representatives Paul J. Thomas (Chairman), Mike Beltz, Mike Brandenburg, Hamida Dakane, Dori Hauck, Jeff A. Hoverson, Dwight Kiefert, David Monson, Dennis Nehring, SuAnn Olson, Mitch Ostlie, JoAnne Rademacher, and Bill Tveit and Senators Cole Conley, Greg Kessel, Randy D. Lemm, Larry Luick, Janne Myrdal, Terry M. Wanzek, Mark F. Weber, and Kent Weston.

Representative Scott Dyk served on the committee until his resignation from the Legislative Assembly on April 7, 2024.

## TRACKING PARTICIPATION IN THE NATIONAL FLOOD INSURANCE PROGRAM STUDY

Senate Bill No. 2365 (2023) directed a study of the roles of the Insurance Commissioner, Department of Emergency Services, and DWR in tracking and updating the relevant primary land use authority on lands outside a municipality's jurisdiction. The study required consideration of a method for tracking all organized townships within the state and maintaining updated contact information, certified annually by December 31<sup>st</sup>; consideration of a formal process for organized townships to request, establish, and track the yielding of land use authority to an adjacent jurisdiction; consideration of how insurance producers access the necessary information, including updated contact information of

the authority, to appropriately associate potential insurance policyholders with the relevant land use authority for the purposes of the NFIP; and consideration of how a member of the public may access the relevant land use authority associated with a specific parcel of land.

## **Background**

Testimony provided by a representative of the Insurance Department during the 2023 legislative session in support of the study indicated some North Dakota residents had their NFIP policies canceled because the township in which the property was situated did not have a participation agreement in place to allow eligibility for NFIP coverage. The inability of insurance agents to access accurate information regarding which townships have a valid participation agreement in place further exacerbates the issue. Testimony indicated up to 100 NFIP policies sold in the state may be ineligible for coverage due to the township lacking the necessary participation agreement.

## **National Flood Insurance Program**

The National Flood Insurance Program was established by the National Flood Insurance Act of 1968. The goal of the NFIP is to offer primary flood insurance to properties subject to significant flood risk and to reduce flood risk through effective floodplain management standards. Communities volunteer to participate in the NFIP to access federal flood insurance. To participate in the NFIP, the community must adopt minimum land use standards.

## **State Agency Authority**

Chapter 26.1-01 defines the duties and powers of the Insurance Commissioner. Section 26.1-01-03, in part, requires the Insurance Commissioner to "see that all the laws of this state respecting insurance companies and benevolent societies are executed faithfully" and "report in detail to the attorney general any violation of law relative to insurance companies and their officers or agents." Additionally, Section 26.1-01-07 allows the Insurance Commissioner to issue licenses to an insurance professional and collect fees in connection with the issuance of a license. The Insurance Commissioner and the Insurance Department regulate North Dakota insurance professionals, including those selling flood insurance.

Chapter 61-16.2 provides DWR authority to administer floodplain management practices in North Dakota. Under this chapter, DWR must collect and distribute information relating to floodplain management and coordinate local, state, and federal floodplain management activities. The department also is tasked with encouraging appropriate federal agencies to make their flood control planning data available to communities and districts for planning purposes and to allow adequate local participation in the planning process. The department must assist communities and districts in their floodplain management activities in cooperation with the federal and state entities. Section 61-16.2-05 requires DWR to review a community's floodplain management ordinances. During the ordinance review, DWR must verify whether a community's floodplain management ordinances comply with Chapter 61-16.2 and the minimum standards set forth under the NFIP. Section 61-16.2-13 requires communities with residential and nonresidential structures in areas subject to excessive flooding, as determined by DWR, to participate in the NFIP. However, a community is not required to participate in the NFIP if all land under the jurisdiction of the community is enrolled due to another community's participation in the program. Section 61-16.2-02(1)(b) defines "community" as any political subdivision that has the authority to zone.

Chapter 37-17.1, known as the North Dakota Disaster Act of 1985, governs the Department of Emergency Services. As it relates to disasters, Section 37-17.1-02 requires the Department of Emergency Services to provide for "a statewide emergency management system embodying all aspects of prevention, mitigation, preparedness, response, and recovery and incorporating the principles of the national incident management system and its incident command system, as well as other applicable federal mandates." Under Section 37-17.1-04(3), the term "disaster" includes, among other events, flooding.

## **Local Zoning**

In most states, zoning, especially zoning relating to floodplain management, is delegated to municipalities or counties, not townships. Section 58-03-11 permits a board of township supervisors to establish one or more zoning districts within an organized township for zoning and land use. Section 58-03-12 permits a township to exercise zoning to "facilitate traffic movement, encourage orderly growth and development of the municipality and adjacent areas, promote health, safety, and general welfare, and provide for emergency management." Under Section 58-03-12, "emergency management" is defined as "a comprehensive, integrated system at all levels of government and in the private sector which provides for the development and maintenance of an effective capability to mitigate, prepare for, respond to, and recover from known and unforeseen hazards or situations, caused by an act of nature or man, which may threaten, injure, damage, or destroy lives, property, or our environment. The comprehensive plan must be a statement in documented text setting forth explicit goals, objectives, policies, and standards of the jurisdiction to guide public and private development within its control." Flooding and floodplain management falls under the definition of "emergency management."

Counties have the authority to zone under Chapter 11-33. Section 11-33-01 permits the board of county commissioners of any county to "regulate and restrict within the county the location and the use of buildings and structures and the use, condition of use, or occupancy of lands for residence, recreation, and other purposes." Section 11-33-03 allows zoning ordinances to provide for emergency management, which includes flooding and floodplain management.

Cities have the authority to zone under Chapter 40-47. Section 40-47-01 permits the governing body of a city to "regulate and restrict the height, number of stories, and the size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes." Like the authority granted to townships and counties, Section 40-47-03 allows city zoning ordinances to provide for emergency management, which also includes flooding and floodplain management.

## **Testimony**

### **City of Grand Forks**

The committee received testimony from representatives of the City of Grand Forks regarding the administration of the NFIP within a city. According to the testimony, the community rating system is a criteria-based incentive program recognizing safe floodplain management practices that exceed the minimum requirements of the NFIP. The NFIP policyholders residing in the city of Grand Forks receive up to a 25 percent annual discount on insurance premiums because of FEMA's community rating system and the city's responsible floodplain management practices. The testimony indicated if federal law or regulations relating to the NFIP change, state laws and local ordinances also must change to comply with federal law. The committee was informed updating a FEMA floodplain map is a time-consuming and expensive process, and joining the NFIP may be a significant undertaking for a prospective community, depending on the resources available to the community.

### **Department of Water Resources**

The committee received testimony from representatives of DWR regarding DWR's role in administering the NFIP and local zoning authorities. According to the testimony, a community with an established zoning authority may adopt a floodplain ordinance for residents of that community to receive access to federally subsidized NFIP insurance. Participating communities must have the legal authority to enact and enforce floodplain management ordinances to comply with the NFIP. The state joined the NFIP in 1978. Upon joining, FEMA was made aware that a township, city, and county may enact floodplain management ordinances. The committee was informed that despite being aware of the three-tiered floodplain management system, the national mapping standards do not account for the unique distinction. The testimony indicated after spring flooding in 2022, three NFIP claims were flagged by FEMA due to the potentially incorrect zoning or land use authority identified in the policy. In all three cases, FEMA determined the policies were incorrectly written to the county when the township was the appropriate jurisdiction with zoning authority. The Department of Water Resources employs one NFIP coordinator who helps communities join and comply with the NFIP. The committee was informed if a database to track communities participating in the NFIP is created, it must be consistently updated to maintain accuracy.

### **North Dakota Insurance Department**

The committee received testimony from representatives of the Insurance Department regarding the lack of information available to insurance agents about communities participating in the NFIP. According to the testimony, the state lacks a central repository to identify which townships participate in the NFIP. Currently, an organized township may enter an agreement with the county to have the county accept floodplain management. The committee was informed information gaps exist because participating communities are not tracked in one centralized area. The testimony contended to more effectively track participating communities in the NFIP, the Legislative Assembly could create a tracking database, statutorily transfer township floodplain management authority to counties, or both.

### **Department of Emergency Services**

The committee received testimony from representatives of the Division of Homeland Security within the Department of Emergency Services regarding the department's role in coordinating emergency management in the state. The testimony contended the administration of the NFIP by a county rather than a township may be the most efficient method to ensure all NFIP policies are legally effective.

### **North Dakota Township Officers Association**

The committee received testimony from representatives of the North Dakota Township Officers Association regarding floodplain management authority in organized townships. Testimony contended township officers need further education, resources, and expertise relating to the administration of the NFIP. The testimony indicated organized townships are not necessarily requesting to relinquish floodplain management authority to the counties. The committee was informed if floodplain management is transferred to the counties and counties use outdated floodplain maps, the townships are concerned about losing zoning and permitting authority within the entire township, not just the floodplain.

## **North Dakota Association of Counties**

The committee received testimony from representatives of the North Dakota Association of Counties regarding floodplain management authority in counties. According to the testimony, counties support reasonable zoning ordinances because zoning ordinances promote health and safety within the community. Testimony contended reasonable zoning practices promote economic development, which helps to limit burdens on county taxpayers. Counties are empowered with broad zoning authority outside city limits. The committee was informed the counties are not attempting to take zoning authority from the townships. However, if a township chooses not to exercise floodplain management, the counties are willing to provide floodplain management on behalf of the nonparticipating township. Testimony indicates if counties receive the authority to enact and implement floodplain management ordinances, counties also must receive the authority to enforce the adopted ordinances.

## **Committee Considerations**

The committee considered a bill draft relating to floodplain management powers and ordinances for counties, cities, and townships. The bill draft would have required DWR to create and manage a central repository listing the communities participating in the NFIP, make counties the default zoning authority for floodplain management in counties and townships, and allow townships to unilaterally acquire floodplain management authority from the county if a board of township supervisors adopts a resolution to exercise that power. Although committee members generally viewed this bill draft positively, committee members also indicated a clear enforcement provision should be expressly granted to cities, townships, and counties exercising floodplain management.

The committee considered a revised version of the bill draft. In the revised version, a city, county, or township is not required to exercise floodplain management. However, if a city, county, or township undertakes floodplain management, the appropriate governing authority must enact a floodplain management ordinance. The revised version also includes an explicit enforcement provision for a city, county, and township exercising floodplain management. At the request of DWR, the revised bill draft includes updated definitions of "floodplain management" and "floodplain management ordinance" to comply with NFIP definitions. Some committee members expressed concern the proposal could infringe on local governance within townships. However, most committee members viewed this bill draft as a mechanism to solve the issue raised by the Insurance Department.

## **Recommendation**

The committee recommends a bill draft [\[25.0338.02000\]](#) relating to floodplain management powers and ordinances for counties, cities, and townships.

## **OWNERSHIP OF PROPERTY AND ASSETS BY FOREIGN ADVERSARIES IN NORTH DAKOTA STUDY**

### **Background**

Section 4 of Senate Bill No. 2371 (2023) directed a study of the number of persons that own or control any real estate or commercial assets or operate a business within the state which is owned by, controlled by, or subject to the jurisdiction or direction of foreign adversaries or individuals acting on behalf of or in conjunction with foreign adversaries or persons listed on the OFAC sanctions list. The study required a review of the definition of "foreign adversary," a review of which federal list accurately encompasses the foreign nations posing threats to the state, a discussion about whether a mechanism exists allowing state agencies and national intelligence agencies to share classified intelligence; which state agencies are best equipped to implement a program to monitor foreign adversaries seeking to operate a business or a charitable enterprise or a beneficial interest in real estate; and the circumstances under which foreign adversaries may own real property in the state.

### **North Dakota Statutory Provisions**

Senate Bill No. 2371 created Sections 11-11-70 and 40-05-26, relating to the powers of counties and municipalities regarding foreign adversaries. Section 11-11-70 applies to a board of county commissioners, including the board in a home rule county, and Section 40-05-26 applies to a board of city commissioners or city council, including a board or council in a home rule city. These sections prohibit the respective county and city entities from approving a development agreement or building plan with an individual or government identified as a foreign adversary under 15 CFR 7.4(a) or a person identified on the OFAC sanctions list. This prohibition does not apply to a foreign adversary that possesses an interest in real property if the foreign adversary is a duly registered business that has been in good standing with the Secretary of State for at least 7 years, has been approved by the Committee on Foreign Investment in the United States (CFIUS), and maintains an active national security agreement with the federal government.

Senate Bill No. 2371 also amended Section 47-01-09 to prohibit a foreign adversary government, a foreign business entity with its principal office located in a country identified as a foreign adversary, or a foreign business entity in which a foreign adversary owns at least 51 percent of the business or directs the operations and affairs of the business, from purchasing or acquiring title to real property in this state. This section exempts from the prohibition a duly registered

business that has maintained a status of good standing with the Secretary of State for at least 7 years, has been approved by the CFIUS, and maintains an active security agreement with the federal government. A business or entity violating the law must divest its interests in real property within 36 months of August 1, 2023. The state's attorney in the county where the majority of the real property is situated has the authority to commence a civil action if the entity fails to divest itself of all real property within the required period.

### **Code of Federal Regulations**

Sections 11-11-70 and 40-05-26 both incorporate 15 CFR 7.4(a) as the controlling list identifying foreign adversaries in North Dakota. The federal regulation characterizes the People's Republic of China, the Republic of Cuba, the Islamic Republic of Iran, the Democratic People's Republic of North Korea, the Russian Federation, and the Nicolas Maduro Regime in Venezuela as foreign adversaries that have engaged in a long-term pattern or severe instances of conduct significantly adverse to the national security of the United States or security and safety of United States persons. On July 18, 2024, the United States Department of Commerce redesignated 15 CFR 7.4 as 15 CFR 791.4 by adopting an administrative rule as found in Federal Regulation Document No. 2024-15258.

### **Office of Foreign Assets Control**

Sections 11-11-70 and 40-05-26 both reference the OFAC sanctions list. The OFAC is a tool used by the United States Department of the Treasury to review commercial transactions. Using the OFAC, the United States Department of the Treasury administers various individual, country-based, and issue-specific sanctions programs. Congress has granted the President the power to enforce sanctions under the OFAC through legislation, including the International Emergency Economic Powers Act [Pub. L. 95-223; 91 Stat. 1626; 50 U.S.C. 1701, et seq.] and the National Emergencies Act [Pub. L. 94-412; 90 Stat. 1255; 50 U.S.C. 1601, et seq.]. The federal regulations governing the OFAC are in 31 CFR Chapter V.

### **Committee on Foreign Investment in the United States**

Sections 11-11-70, 40-05-26, and 47-01-09 incorporate by reference the CFIUS, which is an interagency committee chaired by the Secretary of the Treasury. The members of the committee include the heads of the Department of Justice, Department of Homeland Security, Department of Commerce, Department of Defense, Department of State, Department of Energy; Office of the United States Trade Representative; and Office of Science and Technology Policy. The Office of Management and Budget, Council of Economic Advisors, National Security Council, National Economic Council, and Homeland Security Council also observe and, as appropriate, participate in the committee's activities. The Director of National Intelligence and the Secretary of Labor are nonvoting, ex officio committee members with roles defined by statute and regulation.

The committee advises the President to survey the national security risks of foreign direct investment in the United States economy. The committee has the authority to review mergers and acquisitions that could result in foreign control of a United States business. The committee also reviews certain nonpassive, noncontrolling investments in United States businesses involved in critical technologies, critical infrastructure, sensitive personal data, and certain real estate transactions. Ultimately, the President decides to prohibit or suspend a covered transaction if the President finds sufficient evidence that the transaction would purport to hinder national security. The President only may make this determination if the President does not believe other statutes would provide adequate authority to protect the United States.

## **Testimony**

### **Secretary of State's Office**

The committee received testimony from representatives of the Secretary of State's office regarding the Secretary of State's role in monitoring foreign adversaries in the state. The committee was informed the Secretary of State's office is an administrative agency without investigative and enforcement powers. Businesses are authorized to conduct business in the state after the Secretary of State's office reviews and approves the required application packet. Dissolved companies in the state of origin cannot legally conduct business in North Dakota. Testimony contended a blanket moratorium on registering all businesses to preclude foreign adversaries from conducting business in North Dakota would cause extreme harm to the business climate in the state. The committee was informed the Secretary of State's office assumes the information provided in business applications is accurate, truthful, and lawful.

### **Attorney General's Office**

The committee received testimony from representatives of the Bureau of Criminal Investigation (BCI) regarding BCI's role in detecting, identifying, and monitoring foreign adversaries. According to the testimony, BCI has access to the federally administered Financial Crimes Enforcement Network. Testimony contended partnerships between the state of North Dakota, the Department of Homeland Security, the Central Intelligence Agency, and the Federal Bureau of Investigation are critical in monitoring foreign threats. However, the federal government is not obligated to share intelligence with the states. Thus, the state is reliant on the willingness and authority of a federal agency to share

intelligence with the state. Testimony contended a state version of CFIUS may provide an effective conduit to receive intelligence resources from the federal government.

The committee also received testimony from representatives of the Attorney General's stating when a law treats categories of people differently, it may be challenged under the Equal Protection Clause of the 14<sup>th</sup> Amendment of the United States Constitution. Testimony indicated laws treating people differently on the basis of race, religion, national origin, and alienage almost always are subject to strict scrutiny. Additionally, even if the distinction does not involve a suspect class, laws that treat people differently due to a discriminatory animus also may be subject to strict scrutiny. A law subject to strict scrutiny will be found unconstitutional unless the provision furthers a compelling government interest and the law is narrowly tailored to that interest. The testimony also indicated in the 1920s, the United States Supreme Court applied the rational basis test in a series of cases addressing state laws restricting property ownership based on alienage. However, since the 1970s, the United States Supreme Court generally has applied strict scrutiny to alienage classifications, reasoning classifications based on alienage, like those based on nationality or race, are inherently suspect and subject to scrutiny. The committee was informed a Florida provision restricting land purchases by anyone domiciled in a foreign country of concern who is not a citizen or lawful permanent resident of the United States is subject to ongoing litigation in federal court. Laws restricting foreign adversaries from purchasing land also may face vagueness, pre-emption, and due process challenges.

### **Greater North Dakota Chamber**

The committee received testimony from a representative of the Greater North Dakota Chamber indicating the chamber does not have a mechanism or the resources to monitor foreign adversaries conducting business in North Dakota. Testimony contended, while the Greater North Dakota Chamber understands the importance of national security, laws regulating foreign adversaries could negatively impact many aspects of the business community, including future investment, existing business operations, and job creation.

### **North Dakota Land Title Association**

The committee received testimony from a representative of the North Dakota Land Title Association indicating only buyers and their legal representatives have sufficient information to determine property ownership eligibility. Testimony contended if legislation is introduced requiring reporting of a transaction to the state or other agency, the obligation should be the responsibility of the buyer. Any law regulating foreign adversaries must outline a process for a forced divestment or forfeiture by a court of competent jurisdiction after a state agency brings an enforcement action. Testimony indicated, to avoid harmful complications from invalidating property transfers, future legislation should give a state agency enforcement authority to investigate and provide due process to a person subject to divestment. Testimony contended the divestment procedure should mirror the existing forfeiture or foreclosure procedure. Testimony also indicated orders requiring divestment should be recorded by authorized state agencies within local land records. The committee was informed recordation would provide notice of enforcement actions and create a continuous chain of title, which is necessary to protect future transactions. Testimony contended any future legislation should not impose obligations threatening the role of the title industry as a neutral third party in real estate transactions. Testimony indicated, as part of a standard real estate transaction, a title company uses several state and federal databases to ensure the parties comply with applicable state and federal laws.

### **National Guard**

The committee received testimony from a representative of the National Guard indicating the Guard does not have a role in monitoring foreign adversaries in the state. While units of the Guard support defense operations worldwide, the Guard does not have a mission to monitor foreign adversaries in the state. Testimony indicated federal laws and regulations have been implemented to prevent the Guard from conducting information-gathering and monitoring activities. These laws and regulations ensure national security interests remain in balance with the individual liberties of citizens. Testimony contended the regulation of foreign adversaries would be addressed best by a federal and state partnership led by federal agencies monitoring foreign threats. Any changes in authority afforded to the Guard under state law must comply with federal law.

### **Department of Emergency Services**

The committee received testimony from a representative of the Department of Emergency Services indicating the department faces challenges in monitoring foreign adversaries, including limited access to classified information and current and comprehensive databases. The North Dakota State and Local Intelligence Center (NDSLIC), which consists of staff members from the Department of Emergency Services, BCI, Highway Patrol, the National Guard, the Information Technology Department, and United States Department of Homeland Security, serves as the state's fusion center. The primary focus of NDSLIC is to prevent terrorist acts, maintain a repository of suspicious activity reporting, and analyze threat analysis. Testimony indicated the legal authority of NDSLIC is derived from North Dakota Executive Order No. 2014-06. The committee was informed the department engages with local law enforcement officials to spread awareness of NDSLIC and its mission. Complaints reported to the NDSLIC are investigated locally, and investigation results are shared with state and federal partners. Testimony indicated the state has a limited capacity to monitor foreign

adversaries without the proper federal partnerships. Testimony contended a practical solution for monitoring foreign adversaries could include a transaction flagging mechanism that would share information with an appropriate federal agency.

### **North Dakota's Congressional Delegation**

The committee received testimony from a member of North Dakota's Congressional Delegation suggesting the CFIUS State's Right to Know Act of 2024 would allow a Governor to ask CFIUS whether a specific transaction falls under the jurisdiction of CFIUS. The Committee on Foreign Investment in the United States lacks a mechanism to share sensitive information with states. Testimony also contended the federal government and defense entities tend to overclassify information. Testimony also contended intelligence secrets should be protected; however, state governments should have access to information required to monitor and prohibit bad actors. Testimony contended state lawmakers should proactively find solutions to address foreign adversaries rather than relying on the federal government.

### **National Agricultural Law Center**

The committee received testimony from a representative of the National Agricultural Law Center regarding approaches by other states in regulating foreign adversaries. According to the testimony, some states have restrictions on foreign investment in water and mineral rights in addition to restrictions on foreign investment in agricultural land. Some states are seeking to restrict the acquisition of agricultural land by domestic entities owned wholly or in part by foreign nationals or entities. The Attorney General has enforcement and investigative powers under most foreign ownership laws. However, the Department of Agriculture and Secretary of State often have the authority to collect and forward information to the appropriate enforcement agency.

### **North Dakota Farm Bureau**

The committee received testimony from a representative of the North Dakota Farm Bureau indicating the Farm Bureau promotes an individual's freedom to sell property to whomever the landowner chooses, except to entities or agents of nations on the federal government's foreign adversary list. Testimony contended prohibiting a foreign-owned business from conducting agricultural research on North Dakota farmland may hinder agricultural growth and production in this state. The committee was informed less than 1 percent of North Dakota's agricultural land is foreign owned. Testimony indicated China-based investors only own three-one hundredths of 1 percent of private agricultural land in the United States. Testimony also indicated the Agricultural Foreign Investment Disclosure Act [Pub. L. 95-460; 92 Stat. 1263; 7 U.S.C. 3501, et seq.] can be an effective tool when enforced. Although, between 1998 and 2021, the United States Department of Agriculture (USDA) assessed penalties 494 times on 395 different investors, all fees assessed were for late filing rather than avoiding filing. No penalties were assessed between 2015 and 2018, or in 2020, due to USDA staffing shortages. The committee was informed the lack of resources at USDA to enforce the Agricultural Foreign Investment Disclosure Act has resulted in practical limits to policing the high volume of annual real estate transactions, with nearly half of all transactions not disclosing a price.

### **North Dakota Farmers Union**

The committee received testimony from a representative of the North Dakota Farmers Union which informed the committee the Agricultural Foreign Investment Disclosure Act is a federal act that publishes foreign ownership of agricultural land in the United States. A person violating the Agricultural Foreign Investment Disclosure Act is subject to federal fines and penalties.

### **Other Testimony**

The committee received comments from members of the public regarding the committee's study of the ownership of assets and property by foreign adversaries. According to the testimony, the Belt and Road Initiative is China's most visible tool for projecting global influence. This initiative aims to control large-scale infrastructure, including ports, highways, energy pipelines, and digital networks. Testimony contended China's adversarial efforts extend beyond infrastructure and seek control of political, economic, and social systems. Testimony argued North Dakota must proactively identify and address vulnerabilities in land ownership, infrastructure investments, and local partnerships. Testimony contended state initiatives are necessary for long-term security and resilience against foreign influence. Testimony also indicated to monitor foreign adversaries effectively, lawmakers need to craft a definition of "foreign adversary" and determine which foreign transactions should be restricted.

### **Committee Considerations**

The committee discussed the reasons for and against restricting foreign adversaries from owning assets and property in the state. Some committee members expressed concerns enacting further restrictions would hinder the business community and job growth. Other committee members expressed concerns regarding the need to enact additional restrictions to protect the citizens and resources of the state. Committee members expressed frustration with the inability of state agencies to access classified and sensitive intelligence collected by the federal government. Committee members attempted to find a balance between protecting the state from foreign influence and respecting individual liberties and the state's long-term economic outlook.

The committee considered bill drafts relating to required disclosures for foreign owners of agricultural land; foreign ownership of real property near military installations; statements listing beneficial ownership interests, establishing a beneficial owner database by BCI, and filing beneficial ownership information statements with the Secretary of State; the certification of a grantee's right to own property; and an appropriation to the Attorney General to conduct a foreign adversary threat assessment. The committee also considered a bill draft relating to the filing of beneficial ownership information statements with the Secretary of State and the duties of the Secretary of State, as well as a subsequent revision to that bill draft.

The committee elected to combine the bill draft relating to required disclosures for foreign owners of agricultural land, the bill draft relating to filing ownership information statements with the Secretary of State, and portions of the bill draft related to certification of a grantee's right to own property into a single bill draft. The bill draft amends existing definitions, repeals an expiration date, prohibits a foreign organization of concern in which a foreign country of concern owns any interest in a foreign organization of concern from owning property in the state, requires a statement of compliance to be filed with the county recorder, requires a person to file a copy of the report required under the Agricultural Foreign Investment Disclosure Act of 1978 [Pub. L. 95-460; 92 Stat, 1263; 7 U.S.C. 3501 et seq.] with the Agriculture Commissioner, and requires a statement of ownership to be filed with the Secretary of State.

### **Recommendation**

The committee recommends a bill draft [\[25.0414.01000\]](#) relating to the certification of a foreign grantee's right to own property and the filing of foreign ownership information statements with the Secretary of State, the powers of a board of county commissioners, a board of city commissioners, and a city council regarding development by a foreign country of concern or foreign organization of concern, the prohibition on ownership of real property by a foreign country of concern or a foreign organization of concern, and required filings for foreign persons investing in agricultural lands.

## **MITIGATION PLANS RELATING TO THE OPERATION OF ENERGY CONVERSION OR TRANSMISSION FACILITIES STUDY**

Section 22 of Senate Bill No. 2009 (2023) directed a study of the plans for mitigation of adverse wildlife and environmental impacts and monetary payments made to state agencies, contractors, nongovernmental organizations, and others by applicants or other persons for mitigation during the siting and operation of energy conversion or transmission facilities. The study required consideration of the provisions of law affecting the ability of developers to effectively mitigate adverse wildlife habitat and environmental impacts, applicant payments used for the purchase of perpetual or nonperpetual conservation easements, the distinction between an adverse direct environmental effect or an adverse indirect environmental effect, methods to monetarily quantify adverse direct or adverse indirect environmental effects, and alternative programs that may be used or developed for the mitigation of adverse wildlife and environmental effects.

### **Background**

Chapter 49-22 governs the siting of electric energy conversion facilities and electric transmission facilities. Under Chapter 49-22, the Public Service Commission (PSC) is authorized to review, reject, and accept applications for placement of an electric transmission facility or an electric energy conversion facility in the state. The commission also may promulgate rules relating to the siting of these facilities. Section 49-22-04 requires each utility that owns or operates, or plans within the next 10 years to own, operate, or start construction on a facility, to submit a 10-year plan to the PSC for review. The 10-year plan must contain a description, including the nature and location, of the facilities to be owned or operated, or removed from service by the utility during the applicable period; the preferred site on which facilities may be constructed in the ensuing 5 years; any coordinated regional plans with other utilities in the preferred service area; a plan to minimize and mitigate any environmental impacts during the construction and operation of facilities; and a statement of the projected demand for the service area. The commission must assess the impact of the development proposed in the plan to ensure energy conversion facilities and transmission facilities will be sited in an orderly manner compatible with environmental preservation and efficient use of resources.

Section 49-22-07 requires a utility to obtain a certificate of site compatibility or a route permit from the PSC before constructing an electric energy conversion facility or an electric transmission facility. Under Section 49-22-08, an application for a certificate must contain, among other things, a description of the size and type of facility, a summary of any studies undertaken regarding the environmental impact of the facility, and a description of the efforts that will be taken to mitigate any foreseen adverse impacts of the facility. Once an application is received, the PSC must hold a public hearing relating to the application. The commission is prohibited from conditioning the issuance of a certificate or permit on the applicant's payment of an assessed mitigation payment or a payment requested by another state agency or entity to mitigate negative impacts on wildlife habitat. In addition to a certificate of site compatibility, a utility installing an electric transmission facility within a designated corridor also must receive a route permit under Section 49-22-08.1. An application for a route permit must be filed within 2 years of an applicant receiving a certificate of site compatibility



and contain, among other items, a plan to mitigate adverse impacts associated with the prospective electric transmission facility.

Under Section 49-22-09, the PSC must consider several factors to aid in its evaluation and designation of sites, corridors, and routes. Factors considered relating to environmental impacts include:

- The available research and investigations relating to the effects of the location, construction, and operation of the proposed facility on public health and welfare, natural resources, and the environment.
- The effects of new electric energy conversion and electric transmission technologies and systems designed to minimize adverse environmental effects.
- The adverse direct and indirect environmental effects that cannot be avoided if the proposed site or route is designated.
- The alternatives to the proposed site, corridor, or route which are developed during the hearing process and which minimize adverse effects.
- Any problems raised by federal agencies, other state agencies, and local entities.

The Public Service Commission is required to provide notice to designated state and federal agencies when considering a siting application under Chapter 49-22. When siting these projects, the PSC must provide notice to the: Aeronautics Commission; Attorney General; Department of Agriculture; Department of Health and Human Services; Department of Labor and Human Rights; Department of Career and Technical Education; Department of Commerce; Energy Infrastructure and Impact Office; Game and Fish Department; Industrial Commission; Governor's office; Department of Transportation; State Historical Society of North Dakota; Indian Affairs Commission; Job Service North Dakota; Department of Trust Lands; Parks and Recreation Department; Natural Resources Conservation Service; State Water Commission; United States Department of Defense; United States Fish and Wildlife Service; United States Army Corps of Engineers; Federal Aviation Administration; county commission of the county or counties where the project is located; North Dakota Transmission Authority; North Dakota Pipeline Authority; Department of Environmental Quality; North Dakota Geological Survey; North Dakota Forest Service; Federal Bureau of Land Management; Military Aviation and Installation Assurance Siting Clearinghouse; Twentieth Airforce 91<sup>st</sup> Missile Wing; and Minot and Grand Forks Air Force Bases.

Section 49-22-09(2) prohibits the PSC from conditioning the issuance of a certificate or permit on the applicant providing a mitigation payment assessed or requested by another state agency or entity to offset a negative impact on wildlife habitat. Although environmental impact mitigation payments are not required under Chapter 49-22, if an applicant elects to provide a payment to mitigate the environmental impact of the construction or operation of an energy conversion or transmission facility, the applicant must do so in accordance with Section 49-22-09.2. Section 49-22-09.2 requires any payment for environmental mitigation be made to the Agriculture Commissioner for deposit in the environmental impact mitigation fund under Section 4.1-01-21.1.

The environmental impact mitigation fund consists of all money deposited in the fund under Section 49-22-09.2. Section 4.1-01-21.1(2) provides money in the fund only may be used for consultation with environmental scientists or engineers, or industry specialists, for services to analyze and implement mitigation required as a result of the impact of development, and for the creation or restoration of habitats affected by development. Easements or leaseholds purchased by a person to mitigate adverse environmental effects under Chapter 49-22 are limited to the facility's operational life pursuant to Section 4.1-01-21.1. The Agriculture Commissioner must notify the PSC of any mitigation efforts on an energy conversion or transmission facility before the PSC issues a permit under Chapter 49-22.

## **Testimony**

### **Public Service Commission**

The committee received testimony from a representative of the PSC relating to the PSC's role in implementing mitigation plans for the siting and operation of energy conversion or transmission facilities. According to the testimony, effective communication with landowners during the siting process is sometimes difficult due to the number of parties and the complexity of most transactions. The committee was informed the PSC does not determine the spacing between wind towers, and the economic impacts of these projects are discussed primarily by local authorities during the local permitting process. Testimony indicated the PSC primarily focuses on the environmental impacts during the state permitting process. The mitigation factors under Section 49-22-09 merely guide the PSC when issuing permits. Avoidance areas, which include woodlands and wetlands, may not be impacted by a siting project unless another reasonable alternative is available.

## **Game and Fish Department**

The committee received testimony from a representative of the Game and Fish Department relating to the department's role regarding mitigation plans for the siting and operation of energy conversion or transmission facilities. According to the testimony, direct impacts account for actual acres of habitat destroyed by siting projects, while indirect impacts account for disturbed or reduced acres due to siting projects. Certain geographical areas, known as exclusion areas, must be excluded from consideration of a site for an energy conversion facility. These areas include wilderness and wildlife areas; wild, scenic, or recreational rivers; game refuges; game management areas; management areas; nature preserves; hardwood draws; and enrolled woodlands. Other exclusion areas include areas critical to the life stages of threatened or endangered animal or plant species and areas where animal or plant species that are unique or rare to the state would be irreversibly damaged. Testimony indicated the department conducts an impact analysis to provide a project developer with an estimate of a wind project's impact on surrounding wildlife and habitats. The analysis helps to determine whether voluntary mitigation offsets are necessary. Testimony indicated voluntary mitigation offsets are recommended only when impacts cannot be avoided through strategic siting. Offsets are recommended through the allocation of habitat acres, not monetary payments.

## **Department of Agriculture**

The committee received testimony from a representative of the Department of Agriculture regarding the Department of Agriculture's role in implementing mitigation plans for the siting and operation of energy conservation or transmission facilities. Testimony indicated a conservation easement, in relation to an energy facility mitigation project, must be limited in time to no longer than the operational life of the facility. Testimony indicated the department has worked with the PSC to formulate administrative rules to implement the environmental mitigation program under Section 4.1-01-21.1. According to the testimony, the administrative rules aim to foster and implement a collaborative pragmatic approach that provides transparency and regulatory certainty to landowners, producers, and energy companies. The administrative rules also regulate both direct and indirect impacts. Testimony indicated the department is notified of every siting project in the state; however, the department is not required to provide feedback to the PSC for every siting project. The committee was informed the department is not legally required to track the number of acres of farmland lost annually to siting projects.

## **Apex Clean Energy**

The committee received testimony from a representative of Apex Clean Energy regarding the wind energy industry's role in implementing mitigation plans for the siting and operation of energy conversion or transmission facilities. According to the testimony, Apex Clean Energy provides utility-scale wind and solar power, battery storage, distributed energy resources, and green fuels. Testimony indicated Apex Clean Energy is working with the Agriculture Commissioner and landowners to determine the feasibility of certain projects. Testimony contended a project's success depends on the transparency of the discussion and information provided.

## **NextEra Energy Resources**

The committee received testimony from a representative of NextEra Energy Resources regarding the wind energy industry's role in implementing mitigation plans for the siting and operation of energy conversion or transmission facilities. The committee was informed generating affordable, homegrown energy compatible with agriculture is becoming an essential component of farm viability in many areas across the state. Testimony indicated balancing responsible wind energy development and conservation of wildlife and native habitats is attainable. The committee was informed NextEra plans to collaborate with the Agriculture Commissioner to help develop a sensible and practical mitigation program to balance landowner, wildlife, and industry interests. Generally, NextEra does not purchase the land on which the project infrastructure is located. Rather, NextEra will pay a landowner under a written lease for the life of a project. The typical lifespan of a project is 30 years, which can be extended if the project's infrastructure is upgraded during the project's operating period.

## **Minnkota Power Cooperative**

The committee received testimony from a representative of the Minnkota Power Cooperative regarding an electric power cooperative's role in mitigation plans for the siting and operation of energy conversion or transmission facilities. According to the testimony, project managers receive opinions from industry experts to study the environment of a proposed project route or site at the beginning of each project. Testimony contended project managers strive to balance industry needs and landowner rights. According to the testimony, the practice of compensatory mitigation is used to offset mitigation costs but often fails to solve all underlying mitigation issues. The testimony indicated each siting project is unique to the various energy industries in North Dakota. The committee was informed energy providers need latitude to direct their own mitigation programs. Testimony contended a program requiring all mitigation payments to be submitted to the Department of Agriculture would delay project implementation. Testimony contended any future government mitigation programs should remain voluntary, have specific guidelines and rules, and be transparent to industry participants.

## Committee Considerations

Committee members generally were encouraged by the implementation of the environmental mitigation program under Section 4.1-01-21.1. Committee members also stressed the importance of bolstering communication with affected landowners regarding future siting projects. Committee members agreed landowner rights, productive agricultural lands, and native habitats and species are important factors that must be considered during siting projects.

## Conclusion

The committee makes no recommendation regarding its study relating to the plans for mitigating adverse wildlife and environmental impacts and monetary payments made to state agencies, contractors, nongovernmental organizations, and others by applicants or other persons for mitigation during the siting and operation of energy conversion or transmission facilities.

## REQUIRED REPORTS

### Model Zoning Review Task Force Report

The committee received a report from the Model Zoning Review Task Force on developing a new or updated model zoning ordinance related to animal feeding operations under Section 4.1-01-28. According to the report, throughout the 2023-24 interim, the task force received input on model setbacks, manure management plans, and livestock odor modeling used in South Dakota and Minnesota. The task force discussed whether setback distances for animal feeding operations should be adjusted under Section 23.1-06-15(7), the feasibility of incorporating livestock odor modeling to determine appropriate setbacks, and whether setbacks should be based upon the type of animal within an animal feeding operation. The report indicates the Model Zoning Review Task Force recommends adjusting the setbacks under Section 23.1-06-15(7), regardless of animal species, to be:

Number of Animal Units	Proposed Setback Distance
0-300	None
301-999	One-quarter of 1 mile
1000-3500	One-half of 1 mile
3501-7500	Three-fourths of 1 mile
7501-10,000	1 mile
10,001-17,500	1 and one-quarter mile
17,501-25,000	1 and one-half mile
25,001-50,000	1 and three-fourths miles
50,001-100,000	2 miles

### Environmental Impact Mitigation Fund Disbursement Report

The committee received a report from the Agriculture Commissioner regarding Environmental Impact Mitigation Fund (EIMF) disbursements under Section 4.1-01-28. According to the report, during the 2023 legislative session, the Legislative Assembly appropriated \$250,000 to the EIMF for the 2023-25 biennium. Since the beginning of the 2023-25 biennium, the Agriculture Commissioner has expended \$114,454 from the EIMF for professional consultation fees. The EIMF has received \$750,000 in revenues from NextEra in conjunction with the construction of its Oliver Wind IV Energy Center project wind energy conversion facility in Oliver County. As of September 23, 2024, the balance of the EIMF is \$885,546.

### State Board of Agricultural Research and Education Report

The committee received a report, pursuant to Section 15-12.1-17(8), from SBARE regarding its annual evaluation of research and extension activities and expenditures. The report indicated the State Board of Agricultural Research was established by the Legislative Assembly in 1997. The board was responsible for budgeting and policymaking associated with supervising the North Dakota Agricultural Experiment Station. The law was amended in 1999 to include responsibility for the North Dakota State University Extension Service, and the board's name was changed to SBARE. The duties and functions of SBARE are outlined in Section 15-12.1-17. As required by Section 15-12.1-17, SBARE develops a biennial budget request by receiving information from stakeholders. Beginning in September 2023, and concluding on January 3, 2024, SBARE received input from various stakeholder groups, citizens, organizations, and other interested parties who shared their needs, ideas, and thoughts about agricultural research and extension efforts in the state. Input sessions were held in person and virtually in Minot, Dickinson, and Fargo, and the input consisted of oral and written testimony. The prioritization process included evaluating, ranking, and prioritizing stakeholder input. After reviewing the stakeholder input, SBARE's top needs for the upcoming biennium are related to the North Dakota Agricultural Experiment Station, North Dakota State University Extension Service programmatic needs, and capital improvement projects. Specific initiatives relate to biofuels, carbon offset programs, soil conservation practices, overall health of livestock herds, microbial biological markets, global trade patterns, precision farming and ranching, and agricultural research.