AGRICULTURE AND WATER MANAGEMENT COMMITTEE

The Agriculture and Water Management Committee was assigned three studies:

- Section 3 of House Bill 1218 (2025) directed a study of the formula for conducting an economic analysis for assessment drain projects and the projected cost threshold for conducting economic analyses.
- Section 1 of Senate Bill 2157 (2025) directed a study of the feasibility and desirability of creating a program that would allow a farmer or rancher to complete a safety course to receive a discount on insurance relating to the individual's farming or ranching operation. The study required a review of the development of a proposed safety course, the feasible amount of an insurance premium discount, and eligibility requirements for applicants seeking to participate in the discount program. The committee was required to receive input from the Insurance Commissioner, Agriculture Commissioner, the North Dakota State University (NDSU) Extension Service, and farm, livestock, and agricultural insurance agencies operating in the state.
- House Concurrent Resolution 3018 (2025) directed a study of applicable water and wetlands regulations and the taxation of inundated lands in the state. The study required a review of the different methods to assess and document boundaries for wetlands; an examination of the regulation of water, wetlands, and inundated lands laws of other states; an inventory of all federal, state, and local laws, regulations, and policies relating to the jurisdiction of water and wetlands; an analysis of the environmental protection and public health jurisdictional framework, including an identification of potential conflicts, overlaps, and gaps in authority; recommendations for improving the clarity, consistency, and efficiency of the jurisdictional framework in water management; viable legal options to fill and drain nuisance areas; impacts of seasonal wet areas on agriculture productivity and soil health; and the value of these areas to resident wildlife.

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

- At least one report from the Agriculture Commissioner regarding autonomous technology grants to individuals or entities in the agriculture industry, including a list of grant recipients, the amounts awarded, and a description of the use of the grant funding, pursuant to Section 12 of House Bill 1009 (2025).
- A report from the Agriculture Commissioner regarding the findings and recommendations of the study to review the potential benefits of expanding irrigation throughout the state, pursuant to Section 1 of House Bill 1531 (2025).
- A biennial report from the Agriculture Commissioner regarding Environmental Impact Mitigation Fund disbursements, pursuant to North Dakota Century Code Section 4.1-01-21.1(6).
- A report from the Agriculture Commissioner regarding the status of the Low-Carbon Fuels Fund, including the revenues deposited in the fund, the low-carbon fuel incentives distributed from the fund, and the balance of the fund, pursuant to Section 4.1-01-21.2.
- 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 Section 4.1-01-28.
- 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 Dori Hauck (Chairman), Karen A. Anderson, Mike Beltz, Mike Brandenburg, Lisa Finley-DeVille, Kathy Frelich, Jeff Hoverson, Keith Kempenich, Dwight Kiefert, David Monson, Dennis Nehring, and Kathy Skroch and Senators Cole Conley, Michael Dwyer, Robert Erbele, Randy D. Lemm, Larry Luick, Michelle Powers, Terry M. Wanzek, and Mark F. Weber.

ECONOMIC ANALYSIS STUDY

Section 3 of House Bill 1218 (2025) directed a study of the formula for conducting an economic analysis for assessment drain projects and the projected cost threshold for conducting economic analyses.

Background

Introduced during the 2025 legislative session, House Bill 1218 sought to raise the estimated cost threshold for conducting an economic analysis for an assessment drain or flood control project from $1 million to $5 million. Both the House and the Senate amended the bill. The Senate amendments required the State Water Commission (SWC) to study its formula for conducting an economic analysis for assessment drain projects. The House failed to concur with the Senate amendments, and a Conference Committee was formed. The Conference Committee approved an amendment requiring the Legislative Management, not SWC, to study the formula for conducting an economic analysis for assessment drain projects and the projected cost threshold for conducting economic analyses. Testimony indicated the economic analysis formula should be studied to determine the appropriate threshold for conducting an economic analysis for an assessment drain project.

The 2017 Legislative Assembly enacted House Bill 1374, which created new requirements for conducting economic analyses for specific water projects. Section 1 of the bill clarified that, as part of SWC's comprehensive water development plan, a flood control or water conveyance project expected to cost more than $1 million is subject to an economic analysis. Section 3 of the bill defined economic analysis as "an estimate of economic benefits and direct costs that result from the development of a project." Section 12 of the bill required the State Engineer to develop an economic analysis process for water conveyance and flood-related projects expected to cost more than $750,000. House Bill 1020 (2017), the SWC budget, amended Section 12 of House Bill 1374 by increasing the economic threshold from $750,000 to $1 million. On December 6, 2019, SWC adopted a policy requiring economic analysis on all flood control and water conveyance projects requesting cost-share with a total project cost of $200,000 or more.

During the 2021 legislative session, House Bill 1353 established the Department of Water Resources (DWR). Under Chapter 61-03, DWR serves as the primary state water agency and, upon request, shall cooperate with a board of county commissioners regarding the engineering work needed to plan, establish, and construct drain projects. In addition to DWR, SWC has the responsibility and the obligation to influence water policies and projects in the state.

During the 2025 legislative session, House Bill 1218 changed the economic analysis policy for assessment drains in the state. The bill prohibited SWC from conducting an economic analysis for an assessment drain project if the project is expected to cost $1 million or less. The bill also placed a moratorium on SWC and DWR from conducting an economic analysis for an assessment drain project within the state between August 1, 2025, and July 31, 2027.

Testimony indicated the moratorium's purpose is to allow the Legislative Management to study, as required by Section 3 of the bill, and determine the appropriate formula and projected cost threshold for conducting economic analyses for assessment drain projects.

State Law

Section 61-02-01.4 requires SWC to establish, maintain, and revise cost-share and project prioritization policies and review and consider cost-share requests from project sponsors seeking financial assistance from DWR. Under Section 61-02-04, SWC is comprised of the Governor, the Agriculture Commissioner, and eight gubernatorial appointees from each of the major drainage basins in the state. Section 61-02-05 designates the Governor as the SWC Chairman, authorizes the Governor to appoint the Vice Chairman, and requires the Director of DWR to serve as the Secretary of SWC. Section 61-02-01.3 requires SWC to create and implement a comprehensive water development plan based on a river basin perspective. When developing the plan, SWC must implement an economic analysis mechanism for flood control and water conveyance projects expected to cost more than $1 million. Under Section 61-02-02(10), an assessment drain is considered a water conveyance project. Under Section 61-02-02(4), "economic analysis" is an estimate of economic benefits and direct costs resulting from project development. Section 61-03-21.4 discusses which projects are subject to an economic analysis. This section requires DWR to create an economic analysis process for water conveyance projects and flood-related projects expected to cost more than $1 million. Additionally, under Section 61-03-21.4, if an economic analysis is prepared for a water conveyance or flood-related project and SWC is considering funding the project, DWR is required to review the analysis and share with SWC its findings from the review. Despite several provisions in the Century Code requiring economic analyses for certain water projects, Section 61-02-01.6 implements a moratorium that prohibits SWC or DWR from conducting an economic analysis for an assessment drain project from August 1, 2025, through July 31, 2027. Section 61-16.1-02(2) defines an assessment drain as "a drain financed in whole or in part by special assessment."

Executive Branch Policy

Under state law, DWR and SWC are required to implement an economic analysis process for water conveyance projects, which includes assessment drain projects. To meet the statutory requirements of Section 61-03-21.4, in 2019, SWC created a guidance document titled *Guidance for Economic Analysis of Flood Control and Water Conveyance Projects*. The guidance document explained the concept of economic analysis, outlined the basic elements of the economic analysis process, provided an overview of the reasons for and methods of conducting economic analysis, and offered a state perspective on conducting economic analysis. However, because of the study required under House Bill 1218, on July 15, 2026, SWC and DWR published an updated policy titled *Economic Analysis for Flood Control and Water Conveyance*. The new policy incorporates the feedback received from committee members and industry leaders in response to the economic analysis study.

Testimony

Department of Water Resources

The committee received testimony from representatives of DWR regarding the economic analysis study. The testimony indicated, when conducting an economic analysis for a flood control or water conveyance project, SWC and DWR use an objective economic analysis tool rooted in actuarial science to determine a project's present-day economic efficiencies from a statewide perspective. The economic analysis tool analyzes only direct costs because it is too difficult to capture all relevant indirect costs. The economic analysis tool examines whether a project will enhance an agricultural

operation, especially if nonfarmland acres are converted into productive farmland acres. The committee was informed adding flexibility to the economic analysis tool, including a mechanism to recapture benefits following project redesign or maintenance after a project reaches the end of its useful life, could better capture the nuances of individual projects. Changes to the economic analysis tool also could include a mechanism to re-evaluate original hydrology, climate, and drain design data to reflect current data and practices. After receiving extensive background information on the existing economic analysis tool, the committee received proposed changes to the tool. The committee was informed the tool should include a capacity modifier when infrastructure no longer functions as originally intended because it is beyond its useful life or industry-accepted design data has changed. Testimony contended when the capacity modifier is triggered, the analysis will account for reduced capacity due to infrastructure deterioration; new benefits will be realized under the assumption that a project is beyond its useful life; and new user inputs will be available, including the designed useful life of the drain, current age of the infrastructure, and current operational capacity of the infrastructure. The testimony indicated, with the addition of the capacity modifier, the economic analysis tool will capture real-world depreciation of infrastructure capacity over time; capture direct hydrologic or drainage performance improvements; adjust useful life when unpredictable conditions reduce functionality; allow regional variation; and provide flexibility when design assumptions no longer match observed conditions. Various stakeholders agreed to the changes to the economic analysis formula presented to the committee at its June 2026, meeting, and DWR implemented the changes internally without legislation. The DWR published the new economic analysis policy documents in July 2026.

North Dakota Water Users Association and North Dakota Water Resource Districts Association

The committee received testimony from representatives of the North Dakota Water Users Association (NDWUA) and the North Dakota Water Resource Districts Association regarding the economic analysis study. The testimony indicated most projects requiring an economic analysis are rural flood control projects. With regular maintenance, an assessment drain and related components have a useful life of about 50 years. An assessment drain constructed under current industry standards should withstand a 10-year moisture event, conveying about 3.25 inches of water in 24 hours without sustaining damage. The committee was informed the amount of cropland a project protects is a major factor in determining whether the project will receive a favorable score under the economic analysis formula. Testimony contended the economic analysis process for certain projects delays the disbursement of state aid under DWR's cost-share program, increases the cost of constructing drain projects in the state, and reduces the amount awarded to a project sponsor under DWR's cost-share program. Testimony indicated the current economic analysis tool accurately reflects the value of building new infrastructure but not the value of improving existing infrastructure that is likely to fail or has failed. The committee was informed possible changes to the economic analysis process could include using the economic analysis tool for new projects but not reconstructions; using the economic analysis tool for project prioritization but not to determine amounts awarded under SWC's cost-share policy; and eliminating the economic analysis tool. At a subsequent meeting, a representative from NDWUA testified DWR's proposed changes to the economic analysis policy documents fully account for all benefits of a drain reconstruction project, which the state's water resource districts generally support.

Industry Stakeholders

The committee received testimony from a representative of Ellingson Companies regarding the economic analysis study. The testimony indicated proper water conveyance management can create numerous benefits, including reasonable surface water levels, outlets for subsurface drainage systems, effective flood mitigation, improved soil health, and increased and more consistent crop yields. The testimony contended the economic analysis process is a barrier to completing conveyance projects and the power to approve and build water conveyance infrastructure should be returned to local water resource districts, rather than DWR.

Committee Considerations

The committee discussed possible changes to the economic analysis tool, including eliminating the tool. Committee members encouraged DWR and relevant stakeholders to identify and implement agreed-upon changes to the economic analysis formula and threshold. At a subsequent meeting, DWR and interested stakeholders informed the committee DWR's proposed changes were acceptable changes to the economic analysis process. Committee members discussed whether the economic analysis policy should be codified as state law, rather than an agency policy. Committee members also considered whether the threshold of $1 million or less was an appropriate threshold for conducting an economic analysis for an assessment drain project. Committee members ultimately supported DWR's proposed changes to the economic analysis formula, the current threshold for conducting an economic analysis for an assessment drain project, and the decision to have DWR policy, rather than state law, govern the economic analysis process.

Conclusion

The committee makes no recommendation regarding its study on the formula for conducting an economic analysis for assessment drain projects and the projected cost threshold for conducting economic analyses.

AGRICULTURAL INSURANCE PREMIUM DISCOUNT PROGRAM STUDY

Section 1 of Senate Bill 2157 directed a study of the feasibility and desirability of creating a program that would allow a farmer or rancher to complete a safety course to receive a discount on insurance relating to the individual's farming or ranching operation, including the development of a proposed safety course, the feasible amount of an insurance premium discount, and eligibility requirements for applicants seeking to participate in the discount program.

Background

During the 2025 legislative session, elected officials, state employees, and insurance industry representatives testified in support of the study. Testimony supporting the study emphasized the hazards and dangers of the agriculture industry and indicated a program of this type likely would reduce fatalities and support the state's agricultural communities. Supporting testimony also indicated a premium discount program would incentivize farmers and ranchers to complete a safety course because of the significant expenses associated with obtaining insurance for a farming or ranching operation. No testimony in opposition to the study was received.

Federal Law and Programs

In 1990, through the enactment of Public Law 101-517, Congress directed the National Institute for Occupational Safety and Health to establish a program to improve the health and safety of agricultural workers and their families. As a result, the National Institute for Occupational Safety and Health created a network of regional centers called the Centers for Agricultural Safety and Health. These centers promote health and safety practices in the agriculture, forestry, and fishing sectors. The centers conduct research to prevent work-related disease, illness, and injury; provide consultation and training services to promote the health and safety of agricultural workers; and build relationships and networks with governmental and nongovernmental entities to enhance health and safety for agricultural workers.

Analogous North Dakota Insurance Premium Discount Programs

The existence of insurance premium discount programs is not a unique concept under North Dakota law. Section 26.1-25-04.1 authorizes a motorist to complete a motor vehicle accident prevention course to reduce motor vehicle insurance premiums. To qualify for the premium reduction, the Superintendent of the Highway Patrol must approve the course. An approved safety course under this program must provide information about the concept of crash preventability, contributing factors in motor vehicle crashes, traffic laws and regulations, vehicle capabilities, and highway environmental factors. Additionally, Section 65-03-04 requires Workforce Safety and Insurance (WSI) to create and administer work safety and loss prevention programs for employers subject to WSI. Under these programs, WSI may promote workplace safety through training, education, consultation, grants, or incentives. Section 65-04-19.1 offers a premium reduction to an employer that achieves benchmarks established by WSI's risk management program. The premium reduction is effective in the calendar year following the employer's achievement of WSI's benchmarks.

Testimony

Insurance and Securities Department

The committee received testimony from a representative of the Insurance Department regarding the agricultural insurance premium discount program study. The testimony indicated before an insurance carrier can raise insurance premiums, the carrier must provide credible data to the Insurance Department to justify the increase. The committee was informed farming and ranching remain among the state's most hazardous occupations because of the risks posed by heavy machinery, livestock, chemicals, and unpredictable weather conditions. Despite advances in technology and safety protocols, accidents and injuries remain common. Testimony contended implementing a farm safety insurance discount would encourage farmers to adopt and adhere to stringent safety measures, ultimately reducing the incidence of farm-related accidents and promoting economic stability on the farm and within the industry.

Workforce Safety and Insurance

The committee received testimony from a representative of WSI which indicated while safety measures are preventive in nature and lower long-term costs despite upfront expenses, most farm operations in the state do not partner with WSI for insurance coverage. The committee was informed WSI administers two safety incentive programs: the Safety Management Program (SMP) and the Safety Action Menu (SAM). The SMP is designed to assist employers in developing or improving safety management systems. Employers successfully participating in WSI's SMP can receive a 10 percent premium discount per year. The SMP focuses on bolstering management, safety training, hazard recognition, and accident investigation practices. The committee was informed SAM is designed to give employers options to choose and implement safety improvement programs that meet business needs. Employers successfully participating in SAM programs can receive up to a 15 percent premium discount per year. Some SAM programs relate to establishing drug-free workplaces, safe driver programs, safe lifting practices, and methods to prevent slips, trips, and falls in the workplace.

North Dakota State University Extension Service

The committee received testimony from a representative of the NDSU Extension Service which indicated the fatality rate in the farming industry is five times higher than the average fatality rate in other industries across the United States, resulting in an $11.3 billion annual negative economic impact. The committee was informed that while the Extension Service offers safety programs in each county of the state through the 4-H Program, North Dakota's annual farm injury rate of 8.47 injuries per person remains the highest injury rate among six other Midwestern states, including Iowa, Kansas, Minnesota, Missouri, Nebraska, and South Dakota. Testimony contended creating a state farm safety program would help formalize farm safety statewide, which could reduce the most common causes of farm injuries and fatalities, which are caused by vehicle crashes and accidents, issues with farm machinery, and contact with livestock or other humans. Testimony suggested a statewide insurance reduction safety program could involve the Extension Service developing the program and contracting with private insurers to administer the premium reduction program. The objectives of a new program would include reducing injuries and fatalities through proactive education, reducing premiums for certified farms, and reducing injuries to reduce claims and increase savings.

North Dakota Safety Council

The committee received testimony from representatives of the North Dakota Safety Council (NDSC) which indicated the council is a private, nonprofit organization that has promoted safety across North Dakota for over 70 years and received a Susan Harwood Grant for its farm safety curriculum. A grant is awarded to an organization by the Occupational Safety and Health Administration to develop a national safety training curriculum. When a project created by the grant is completed, the Occupational Safety and Health Administration takes possession of the curriculum and includes it in a publicly accessible database. The committee was informed NDSC's safety curriculum includes several modules covering various farm safety topics, including grain bin entrapments, machinery rollovers, and chemical exposures. Testimony indicated developing a farm safety program, similar to the defensive driving program authorized under Section 26.1-25-04.1, would be a sound approach to creating a farm safety insurance premium discount program. The committee was informed NDSC supported the study and expressed willingness to work with the Agriculture Commissioner, Insurance Commissioner, NDSU Extension Service, and other stakeholders to develop a framework and pilot programs, and to provide training and administrative infrastructure.

Farmers Union Insurance Company

The committee received testimony from a representative of the Farmers Union Insurance Company which indicated the company offers a farm safety program to prevent injuries and fatalities. The committee was informed the program consists of 10 topic modules, including grain bin safety, power take-off shaft safety, all-terrain vehicle safety, and livestock safety. The testimony indicated, after completing an approved farm safety course, policyholders are eligible for a 10 percent premium discount or a $250 discount, whichever is less. All farm safety discounts awarded under the program are filed with and approved by the Insurance Commissioner, but the department does not approve the content of the safety program. Only policyholders are eligible for a premium discount, but farm safety program presentations are open to policyholders and nonpolicyholders. Testimony contented the company would prefer that safety meetings and discounts remain at the carrier's discretion, rather than being administered through a state program because carriers are sensitive to a customer's risks, obligations, and the nature, frequency, and severity of previous losses and incidents.

Nodak Insurance Company

The committee received testimony from representatives of Nodak Insurance Company which indicated the company offers an individual risk premium modification that can result in a 25 percent premium discount or a 25 percent premium surcharge. The committee was informed the modification is calculated based on management structure, building features, location of a farm operation, the equipment used for the farm operation, and whether the farm operation has employees. The testimony indicated 14 states require a farm operation with employees to provide workers' compensation; 15 states, including North Dakota, do not require a farm operation with employees to provide workers' compensation protections; and the remaining 21 states, including Minnesota and South Dakota, limit workers' compensation coverage for a farm operation with employees. Testimony contended safety training and advances in technology for farmers likely would reduce property costs by mitigating unsafe practices.

Committee Considerations

Because committee members generally were encouraged by the farm safety programs available to farmers and ranchers, committee members questioned whether creating a state-administered farm safety insurance premium discount program is necessary, given the successful operation of several industry-led farm safety programs in the state. Committee members agreed leaving farm safety insurance premium discount programs to private-sector participants is more effective than creating a state-administered program.

Conclusion

The committee makes no recommendation regarding its study on the feasibility and desirability of creating a program that would allow a farmer or rancher to complete a safety course to receive a discount on insurance related to the individual's farming or ranching operation.

WETLANDS AND INUNDATED LANDS STUDY

House Concurrent Resolution 3018 (2025) directed a study of water and wetlands regulations and the taxation of inundated lands in the state. The study required a review of the different methods to assess and document boundaries for wetlands; an examination of the regulation of water, wetlands, and inundated lands laws of other states; an inventory of federal, state, and local laws, regulations, and policies relating to the jurisdiction of water and wetlands; an analysis of the environmental protection and public health jurisdictional framework, including an identification of potential conflicts, overlaps, and gaps in authority; and recommendations for improving the clarity, consistency, and efficiency of the jurisdictional framework in water management. The study also required consideration of viable legal options to fill and drain nuisance areas, examination of the impacts of seasonal wet areas on agricultural productivity and soil health, and identification of the value of these areas to resident wildlife.

Background

Testimony provided in support of House Concurrent Resolution 3018 (2025) indicated the need to study the tax treatment of inundated agricultural land in the state and the state's authority to regulate wetlands, especially wetlands that are part of federal conservation programs. Testimony indicated the study may clarify the inconsistent tax treatment of inundated land and provide a more efficient regulatory framework for water management. No testimony in opposition to the study was received.

Tax Treatment of Inundated Agricultural Land

Section 57-02-27.2 outlines the procedure for valuing and assessing agricultural lands. The Agribusiness and Applied Economics Department at NDSU is required to compute the average agricultural value per acre for inundated agricultural land for each county in the state.

An applicant seeking to classify land as inundated agricultural land must complete a form provided by the Tax Department and submit the form to the township assessor or county director of tax equalization by March 31 of each year. The board of county commissioners must approve the inundated classification for the property for the taxable year. The agricultural value of inundated agricultural lands is 10 percent of the average agricultural value of noncropland for the county, as determined by the Agribusiness and Applied Economics Department. The probability that the property will be suitable for agricultural production as cropland or for grazing farm animals in the future is a factor when determining the value of inundated property. A landowner aggrieved by a determination regarding inundated agricultural land may appeal the decision through the informal equalization process and formal abatement process as provided under Title 57.

Section 57-02-10 requires the board of county commissioners to remove from the tax rolls and exempts from taxation all inundated lands upon which the landowner has granted or grants in the future a permanent easement to the United States or its agencies, for the purpose of constructing, maintaining, and operating water or wildlife conservation projects, and all lands upon which the landowner has granted or grants in the future an easement for a highway or road right of way to the United States or its agencies, or to the state or a political subdivision of the state. Land removed from the tax rolls must remain exempt until the time the water or wildlife conservation projects or highway has been abandoned. Additionally, the land may not be removed from the tax rolls and declared exempt from taxation until the construction of the water or wildlife conservation projects, or the highway on the land, is completed.

Sovereign Lands

Determining ownership of land under waterways of this state depends on several factors, including whether the waterway was navigable at statehood. If the waterway was navigable at statehood, it is considered sovereign land and is governed by Chapter 61-33. Section 61-33-01(5) defines sovereign lands as "those areas, including beds and islands, lying within the ordinary high water mark of navigable lakes and streams. Lands established to be riparian accretion or reliction lands pursuant to section 47-06-05 are considered to be above the ordinary high water mark and are not sovereign lands."

In *State ex rel. N. Dakota State Eng'r v. Leland*, 2026 ND 99, 36 N.W.3d 522, the North Dakota Supreme Court provided a comprehensive background of how sovereign lands are determined and indicated the state is on equal footing with other states; the state took absolute title to the beds of navigable water at statehood; navigable waters are held in trust by the state for use by the public; the state's interests extend to the ordinary high water mark, which may change; water lines delineated by a lot line are fixed; and riparian landowners are subject to losses and gains caused by water and do not have a remedy for losses nor are accountable for gains.

Whether a waterway is navigable or non-navigable is a critical consideration in determining ownership of the bed of the waterway. The principles stated in *Leland* and Chapter 61-33 and any specific facts regarding a specific waterway must be considered when determining whether a waterway is navigable or non-navigable.

Background of the United States Fish and Wildlife Service Easement Program

Federal, state, local, and private actors exercise authority over wetlands in the state. Authority over wetlands is derived primarily from state and federal laws, which continue to be tested through state action and litigation. A major point of contention between landowners and the federal government involves United States Fish and Wildlife Service (FWS) easements. Congress established the original precursor to FWS in 1871, and FWS was established in 1956. The FWS primarily is responsible for the conservation and management of fish, wildlife, and plants, and their habitats through the implementation of federal environmental laws relating to migratory birds and endangered species. An easement exercised by FWS is a right created by an express voluntary legal agreement to allow a person to make lawful and beneficial use of the land of another without possessing the land and can include conservation easements and wetland easements. Conservation easements are agreements that protect wetlands, floodplains, riparian corridors, and habitats of endangered species. Wetland easements enable FWS to acquire the right to maintain wetlands on described tracts of land and restrict the landowner from draining, burning, filling, or leveling the wetlands. Easements are recorded on an abstract of title to keep a record of the history of the property. An easement is specific to the acreage purchased. As held by the United States District Court of North Dakota in *United States v. Albrecht,* 364 F.Supp. 1349 (1973), an agreement granting an easement or right of way to FWS to maintain land as a waterfowl production area is a permanent interest that continues despite a change in the ownership of the land.

Federal Laws Governing the United States Fish and Wildlife Service Easement Program

The wetland easement program is authorized by the Migratory Bird Conservation Act of 1929 and the Migratory Bird Hunting Stamp Act of 1934. Under the Migratory Bird Conservation Act, the Secretary of the Interior may buy, rent, or acquire by gift or devise areas deemed suitable as sanctuaries for migratory birds if the state in which the area lies agrees to the acquisition. Land may be acquired with money from the Migratory Bird Conservation Fund if approved by the governor of the state or the appropriate state agency. The North Dakota Legislative Assembly consented to federal acquisition of land in this state to establish migratory bird reservations under Section 20.1-02-18.

Under the Migratory Bird Hunting Stamp Act, the Secretary of the Interior may sell stamps and use the revenue generated and placed in the Migratory Bird Conservation Fund to locate and acquire by gift, devise, lease, purchase, or exchange small wetland and pothole areas suitable for migratory bird refuges and right-of-way access to those areas. In 1958, a subsequent amendment to the Act, known as the Small Wetlands Acquisition Program, gave the Secretary of the Interior flexibility to acquire lands or interests in land, including easements, for waterfowl production areas.

After the state enacted and consented to the federal acts, issues arose over the duration of easements and the areas covered by FWS easements, leading to several statutory provisions in 1977 and subsequent litigation. The terms of pre-1976 easements prohibited the draining, filling, leveling, or burning of all wetlands located on the easement acres. The FWS estimated pre-1976 easements protected 758,645 wetland acres. However, wetland acres in pre-1976 easements were not delineated, and the actual number of wetland acres protected by the pre-1976 easements is unclear, as the tracts of land considered by the easements totaled approximately 4.8 million acres. The easements described the entire parcel of land as subject to an easement instead of the wetland area itself. Pre-1976 easements did not include an agreed-upon easement map showing areas protected by the easement, but the easement summaries described the wetland acres restricted under the easement conveyance, which led to disagreements over the location and boundaries of the covered easement areas.

State Laws Governing the United States Fish and Wildlife Service Easement Program

Chapter 47-05 provides statutory provisions relating to easements in the title of property. Section 47-05-02.1, enacted in 1977, aimed to limit the duration of wetland easements by establishing conditions governing easements, servitudes, and other restrictions on the use of real property, and limited easements to 99 years. The section was amended in 1985 to limit easement durations for waterfowl production areas acquired by the federal government, and consented to by the Governor after July 1, 1985, to 50 years. The section was amended again in 1991 to limit the duration of wetland reserve program easements acquired by the federal government under the Food, Agriculture, Conservation, and Trade Act of 1990, after July 1, 1991, to 30 years. However, in *North Dakota v. United States*, 460 U.S. 300 (1983), the United States Supreme Court found the provisions of Section 47-05-02.1, which purport to limit wetland easements to a term of 99 years, may not be applied to wetland easements acquired by the United States under gubernatorial consents previously given. Since FWS still was acquiring wetland easements under the consents given in 1983, the state was not allowed to limit the duration of the pre-1976 easements. After the finding in *North Dakota v. United States*, it appears the duration of wetland easements under consents given before 1976 are perpetual, the duration of easements for waterfowl production areas consented to by the Governor or an appropriate state agency after July 1, 1985, is 50 years, and the duration of wetlands reserve program easements acquired pursuant to the Food, Agriculture, Conservation, and Trade Act of 1990 after July 1, 1991, is 30 years.

Section 47-05-02.1 was amended by House Bill 1399 (2013) to provide waterfowl production area easements exceeding 50 years or which purport to be perpetual may be extended by negotiation between the owner of the easement and the owner of the servient tenement. The amendment also provided waterfowl production easements exceeding

50 years or purporting to be perpetual, which are not extended by negotiation, are void. The bill's legislative history indicates it was intended to push back against the federal government's policy of perpetual waterfowl easements.

Chapter 20.1-02 provides the statutory provisions for the North Dakota Game and Fish Department. Section 20.1-02-17 was enacted in 1973 to provide state assent to the federal Wildlife Restoration Act, subject to the conditions of Section 20.1-02-17.1. Section 20.1-02-17.1 provides the procedures and conditions for land acquisitions for wildlife and fish restoration under the Act. The North Dakota Game and Fish Department receives federal funds for wildlife purposes under the Act, which permits the Secretary of the Interior to cooperate with state game and fish departments on wildlife-restoration projects. Section 20.1-02-18 gives the state's conditional consent to federal acquisition of land or interests in land for migratory bird reservations, subject to the consent of the Governor. Section 20.1-02-18.1 requires the submission of proposed federal wildlife area acquisitions to the board of county commissioners of the county or counties where the land is located, requires an opportunity for public comment, and requires an impact analysis before the acquisition may be approved.

Section 20.1-02-18.2, enacted in 1977, allowed landowners to negotiate the terms of leases, easements, and servitudes for wildlife production purposes. Under the section, as originally enacted, easements terminated upon the death of the landowner or the transfer of ownership. However, the section was amended in 1985 to remove the requirement that an easement terminate upon the death of a landowner or upon change of ownership. The section also was amended in 1985 to require the duration of an easement for a waterfowl production area acquired by the federal government, and consented to by the Governor or appropriate state agency after July 1, 1985, to be limited to 50 years. Section 20.1-02-18.3, enacted in 1981, prohibited the United States from acquiring land or interests in the state for migratory bird reservations, and prohibited the Governor from approving acquisitions with money from the Migratory Bird Conservation Fund until December 31, 1985, or until the date a management plan, jointly prepared by the Secretary of the Interior and the Governor, for the land was approved by the Legislative Assembly and the Governor.

Swampbuster Program

Another prominent act relating to the regulation of wetlands is the federal Food Security Act of 1985. Under this Act, Congress enacted a provision aimed at conserving wetlands on agricultural land by restricting production on highly erodible land. This program is commonly referred to as the "Swampbuster" program. The program aims to preserve wetlands by reducing the incentive to convert wetlands into areas for farming or ranching. Under Section 3821 of Title 16 of the United States Code, a producer who converts a designated wetland into an agricultural production area is not eligible for certain benefits offered by the United States Department of Agriculture.

Testimony

Agriculture Commissioner

The committee received testimony from the Agriculture Commissioner which indicated county commissioners determine the classification of affected land in their respective counties. The committee was informed classifying land as inundated may lower property taxes on the affected parcel, shifting the tax burden for public services like county road maintenance, schools, and emergency services to surrounding landowners. Testimony contended, in some cases, a considerable number of acres in a county may be below the average production value per acre, which could incentivize some landowners to temporarily or permanently take land out of production by pursuing alternative tax classifications. The committee was informed since 1993, the number of inundated acres in the state has drastically increased and caused agricultural land and roads to be covered by several feet of water, creating transportation and production issues.

The Agriculture Commissioner provided testimony which indicated, under FWS wetland easements, federal law generally supersedes state law, creating complexities for easements, including setback requirements, agreed-upon legal descriptions, and, in some cases, duress during negotiation. Testimony contended Congress is considering legislation, the Landowner Easement Rights Act, which would require FWS to delineate wetland acres subject to an FWS easement, renegotiate easement terms, or allow a landowner to reacquire easement acres from FWS.

North Dakota State University Agribusiness and Applied Economics Department

A representative of the Agribusiness and Applied Economics Department at NDSU provided testimony which indicated, under Section 57-02-27.2, the department annually computes an estimate of the average agricultural value per acre of agricultural lands on a statewide and countywide basis and the average agricultural value per acre for cropland, noncropland, and inundated agricultural land for each county, and provides the Tax Commissioner with this information by December 1 of each year. The committee was informed the agricultural value of inundated agricultural lands is 10 percent of the average agricultural value of noncropland for the county, as determined by the department. Agricultural value is the capitalized average annual gross return of the land and varies based on the crops or animals raised on the property. Testimony contended, to carry out the requirements of Section 57-02-27.2, the department sends correspondence to counties requesting the number of inundated acres in the county, but if a county does not respond, the department does not conduct further outreach. The committee was informed Ramsey, Kidder, and Benson Counties have the highest total number of inundated acres, at 8.2 percent, 5.8 percent, and 5.4 percent, respectively. Testimony

contended, when previously inundated land is once again suitable for farming, the land should be reclassified as productive cropland under state law.

North Dakota Association of Counties

Testimony from a representative of the North Dakota Association of Counties indicated more acres in North Dakota are inundated by navigable and non-navigable water than at any other point in state history. The committee was informed if property owners do not pay taxes on inundated land for 3 years, the county generally will foreclose on the land. However, foreclosure actions on agricultural land rarely proceed because a bank or family member usually intervenes to prevent foreclosure. The testimony indicated Section 57-02-27.2(6) provides a process in which a landowner may receive a reduction in property values. That said, the statute requires the landowner to apply every year to receive the benefit, which can burden the landowner. Testimony contended a solution to remove that burden would be to create two classes of inundated agricultural land under Section 57-02-27.2(6). The current process could apply to temporary inundation, and another process could allow counties to confront longer-term inundation. The testimony indicated the change to the law could value the property at a higher rate but could exempt a landowner from filing an inundation request each year.

A representative of the North Dakota Association of Counties provided testimony regarding the complexities of sovereign lands which indicated inundation of lands caused by navigable waters receives different legal treatment than inundation caused by non-navigable waters because of the sovereign lands, equal footing, and public trust doctrines, which are rooted in the federal and state constitutions and statutes.

A representative of the North Dakota Association of Counties also testified regarding the FWS Easement Program. The testimony indicated legislation enacted by the Legislative Assembly attempting to govern the rules of the FWS Easement Program likely would not pass muster under the Supremacy Clause of the United States Constitution.

Dickey County Tax Equalization Office

The committee received testimony from a representative of the Dickey County Tax Equalization Office which indicated the inundated lands reporting process burdens taxpayers because it must be completed and renewed annually. The inundated lands application process provides short-term relief for short-term water issues, but does not address why the inundation is occurring. The committee was informed Dickey County has 40,000 acres of inundated land, but the county may report only 4,900 acres because landowners do not complete the paperwork to classify the land as inundated. A landowner in Dickey County who completes an application for inundated status is subject to a tax rate of 10 percent of the noncropland value of the inundated parcels; however, a landowner who fails to complete an application is subject to a tax rate of 25 percent of the noncropland value of the inundated parcel.

Cavalier County Board of County Commissioners

A representative of the Cavalier County Board of County Commissioners testified regarding the tax treatment of inundated lands and the FWS Easement Program. The testimony indicated when agricultural land is removed from production because of inundation, the property tax burden for the nonproducing parcel shifts to other landowners in the county. The committee was informed approximately 66,000 acres in Cavalier County are inundated, with the majority of the inundation affecting agricultural land. Approximately 24,000 acres in Cavalier County are subject to FWS easements, which generate less revenue for the county than agricultural land. Testimony contended if all wetland acres in Cavalier County were converted to productive agricultural land, the county's taxable land would increase in value by approximately $65 million.

Department of Water Resources

The committee received testimony from representatives of DWR regarding inundated land issues caused by navigable waterways. The committee was informed, under the equal footing and public trust doctrines, the state holds in trust for the public all sovereign lands of the state, including the beds of navigable waters up to the ordinary high water mark. Because under the doctrines of reliction and submergence, the ordinary high water mark is ambulatory, ownership interests of lands adjacent to sovereign lands shift as the ordinary high water mark rises and falls. All lands, including mineral interests, currently submerged under Devils Lake are considered sovereign lands. Testimony indicated since glaciation, Devils Lake water levels have constantly fluctuated. The committee was informed Devils Lake reached its lowest level in recorded history in 1940 at an elevation of 1,401 feet above mean sea level and had an elevation of 1,454.3 feet above mean sea level in 2011. The committee was informed when the lake reaches an elevation of 1,458 feet above mean sea level, which is higher than its current elevation, the lake naturally overflows through Tolna Coulee, and the last overflow occurred approximately 2,000 years ago. Testimony indicated since 1993, the Devils Lake Basin has experienced a wet cycle, primarily caused by increased surface water rather than underground movement, which has flooded communities and tens of thousands of acres of agricultural land. The committee was informed DWR operates the two discharge outlets on Devils Lake, which usually begin operating in May of each year. However, if sulfate levels in the lake become too high, the discharge pumps may cease pumping operations earlier than anticipated. The committee was informed following the construction of the Devils Lake outlets, the state established a Devils Lake Outlet

Mitigation Program to compensate downstream landowners for flooding caused by the outlets. Under the program, the state has paid downstream landowners $2.3 million in compensation. The committee was informed landowners around Devils Lake typically are not compensated for rising lake levels because, according to the North Dakota Supreme Court, damages around Devils Lake have been caused by an unprecedented wet cycle, also referred to as an "Act of God," not the state's operation of the discharge outlets.

Testimony indicated in 1995, the State Engineer declared all drainage in the Devils Lake Basin to be of statewide significance. Because of that declaration, SWC has final approval authority over drainage activities in the basin.

Department of Environmental Quality

The committee received testimony from a representative of the Department of Environmental Quality (DEQ) regarding water quality issues in Devils Lake, which indicated discharge outlets in Devils Lake remove water through the Sheyenne River. The committee was informed to protect aquatic organisms, DEQ adheres to an aquatic water quality standard of 750 milligrams of pollutant per liter when monitoring and managing water quality. If the pollutant level exceeds 750 milligrams of pollutant per liter at the water quality compliance station near Cooperstown, the discharge outlets removing water from Devils Lake are shut down. The committee was informed DEQ adheres to a 30-day aquatic water standard of 450 milligrams of sulfate per liter when monitoring and managing water quality. If sulfate levels exceed 450 milligrams per liter at the water quality compliance station north of Valley City, DEQ will work with other agencies to conduct daily trend analyses and assess hydrologic changes in the area. According to the testimony, in July 2025, the sulfate levels at the water quality compliance station north of Valley City were 446 milligrams per liter. Following the July reading, the amount of water removed through the Devils Lake discharge outlets was reduced. On August 31, 2025, the state shut down the Devils Lake discharge outlets for the season after detecting 528 milligrams per liter of sulfate in the Sheyenne River.

Devils Lake Basin Joint Water Resource Board

A representative of the Devils Lake Basin Joint Water Resource Board stated Ramsey County generally does not require landowners to complete an inundation form if the inundated land is contiguous to Devils Lake. When parcels are deemed inundated, the county will lower the tax rate to the inundated lands rate under state law. Testimony contended while inundation has increased tourism and recreation and improved Devils Lake's regional economy, the economic benefits may not outweigh the agricultural losses farmers have incurred. The committee was informed the elevation where most private property began before the most recent cycle of inundation is 1,428 feet above mean sea level. For context, in 1870, Devils Lake's elevation was 1,437 feet above mean sea level. In 1880, Devils Lake's elevation fell to 1,433 feet above mean sea level. In 1910, Devils Lake's elevation fell once again to 1,421 feet above mean sea level. In 1993, Devils Lake's elevation rose slightly to 1,422.6 feet above mean sea level, which covered approximately 44,231 acres. As of September 1, 2025, Devils Lake's elevation is 1,448.5 feet above mean sea level, which covers approximately 150,190 acres.

Public Testimony

The committee received testimony from residents of the Devils Lake Basin whose properties have been affected by the flooding in the basin. The testimony indicated, because of the lake's rising levels and the complexities of the sovereign lands management program administered by the state, landowners have lost their homes, income, communities, and property ownership and have had no recourse to remedy the losses. The committee was informed many properties lost to flooding are multigenerational family farms settled before statehood. Testimony also contended water resource districts are conducting drainage operations to protect roads and infrastructure, rather than agricultural land. Certain water management practices, including snagging and clearing, have increased the amount of water flowing to downstream residents, causing additional damage.

Game and Fish Department

A representative of the Game and Fish Department provided testimony which indicated the various wetlands, ranging from seasonal or temporary wetlands to more permanent wetlands, play a role in the life cycles of the variety of ducks migrating and breeding in the state. The committee was informed reducing wetland density in an area reduces the landscape's carrying capacity for wildlife and forces terrestrial animals to travel farther for water, which can concentrate wildlife near available water sources. Testimony indicated wetlands play a critical role supporting both the ecological health and the social well-being of our state.

North Dakota's Congressional Delegation

A member of North Dakota's Congressional Delegation stated the federal Landowner Easement Rights Act would prohibit any new conservation easements the United States Department of the Interior obtains from exceeding 30 years. If enacted, the Act would allow a landowner to renegotiate or buy back an easement that lacks an official map or is more than 30 years old. Testimony contended these easements inhibit farm operations in the state, and the program should be modified to ensure the state's agricultural economy can thrive.

North Dakota Water Users Association

Representatives of NDWUA provided testimony indicating the organization supports coordinated wetland policies that balance agriculture, water, and wildlife concerns; voluntary, flexible practices surrounding wetlands under which landowners are justly compensated; the enactment of the federal Landowner Easement Rights Act; and deregulation of wetlands consisting of one acre or less. Testimony contended that navigating federal wetland management programs often requires specialized knowledge, but recent court decisions have clarified the rules for farmers participating in these programs.

Pacific Legal Foundation

A representative of the Pacific Legal Foundation provided testimony which indicated the setback rules for lands adjacent to a wetland under the Swampbuster Program administered by the United States Department of Agriculture are less burdensome for farmers than the setback rules for lands adjacent to a wetland subject to a conservation easement owned by FWS. The committee was informed the Swampbuster Program allows drain tile to have a minimal effect on wetlands. Under FWS wetland easement agreements, drain tile cannot have any effect on the wetland, which effectively allows drain tile to be installed on a wetland easement tract only if the drain tile does not drain a protected wetland area. Because of this discrepancy, the Pacific Legal Foundation has represented local governments, small businesses, and farmers in challenges to the FWS' interpretations of the scope of the agency's waterfowl production easements. Testimony indicated collaborating with North Dakota's Congressional Delegation and providing input during comment periods of a formal federal rulemaking process are effective ways for members of the Legislative Assembly to influence and effectuate change to the federal laws and rules governing FWS easements.

North Dakota Agricultural Mitigation

Testimony from representatives of the North Dakota Agricultural Mitigation (NDAM) indicated NDAM was established in 2021 to help landowners navigate mitigation issues under the Natural Resources Conservation Service (NRCS), not FWS. The committee was informed NDAM works with willing landowners with potential to host wetland bank sites, which are subject to NRCS approval, in exchange for mitigation credits. After identifying potentially suitable sites, NDAM and its partners coordinate wetland bank development and determine a fair-market estimate of credits awarded from the property and project costs. The committee was informed, in exchange for granting a wetland easement on a tract of property, the landowner receives 80 percent of the revenue from the sale of the mitigation credits, and NDAM receives the remaining 20 percent to cover wetland bank site management, maintenance, and other associated program expenses. Under these mitigation programs, the landowner reserves the right to access, hay, and graze the land but may not farm or alter the land's hydrology, subject to the easement, which cannot exceed 99 years.

Natural Resources Conservation Service

A representative of NRCS provided testimony indicating, to be classified as a wetland under the federal Food Security Act, which created the Swampbuster Program, hydrophytic vegetation, hydric soils, and wetland hydrology must be present in the area being analyzed as a wetland. The committee was informed NRCS considers offsite information, including past and current aerial imagery, climatic data, and soil and ecological information, to determine whether to classify an area as a wetland. If NRCS cannot make the determination using offsite information, an NRCS agent will conduct an onsite visit to determine classification.

Committee Considerations

Tax Treatment of Inundated Agricultural Land

Committee members weighed proposals by industry members to change the tax treatment of inundated agricultural land subject to Section 57-02-27.2. While most committee members acknowledged the burden placed on landowners to obtain inundated land status through an annual application, the committee members indicated the current process is working. Thus, committee members opted not to propose a change to the formula, process, or tax treatment of inundated agricultural lands subject to Section 57-02-27.2.

United States Fish and Wildlife Service Easement Program

The committee expressed opposition to how FWS easements operate in North Dakota. However, because FWS easements are governed by federal law, the committee acknowledged the state's options for reform are limited. Several committee members supported the proposed federal Landowner Rights Easement Act and contended the Act would address several of the issues raised in committee deliberation. Committee members advocated for continued participation by providing input during comment periods of a formal federal rulemaking process. Committee members advocated for continued collaboration with North Dakota's Congressional Delegation and considered a concurrent resolution draft urging FWS to modify applicable regulations governing drain tile setback distances adjacent to FWS easements.

Sovereign Lands

Committee members expressed support for exploring and identifying additional methods to remove excess water from inundated agricultural land across the state. Although the committee discussed options for removing water from areas other than the Devils Lake Basin, the committee focused primarily on methods to remove water from agricultural land within the basin. Some committee members advocated for compensating landowners affected by rising Devils Lake water levels, while others advocated for exempting certain parcels of property from the definition of sovereign lands under Section 61-33-01(5). In response, some committee members questioned the legality of exempting certain parcels from the definition of sovereign lands and whether the Legislative Assembly had ever attempted a similar proposal. Committee members considered a bill draft to exempt certain properties in the Devils Lake Basin from the definition of sovereign lands. The bill draft also creates a rebuttable presumption in favor of landowners that certain parcels within the basin have become inundated because of artificial, state-authorized water management practices. The bill draft provides the state may overcome the presumption if the state establishes by a preponderance of the evidence that the inundation was not caused by artificial, state-authorized water management practices.

Recommendations

The committee recommends the following resolution draft and bill draft relating to the committee's study of water and wetlands regulations and the taxation of inundated lands in the state:

- A concurrent resolution draft [27.3006.01000] urging FWS to modify applicable regulations relating to drain tile setback distances adjacent to FWS easements.
- A bill draft [27.0174.03000] relating to the definition of sovereign lands and the artificial causes of sovereign lands inundation.

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 pursuant to Section 4.1-01-28. The report indicated Senate Bill 2174 (2025) became effective August 1, 2026. The bill amended Sections 11-33-02 and 58-03-11.1 and allows counties and townships to voluntarily reduce setback distances for animal feeding operations based on data received from the odor footprint tool developed by the Agriculture Commissioner. The committee was informed the odor detection tool will allow the public to view potential odor effects associated with an animal feeding operation in a particular area and will use prevailing wind patterns from the North Dakota Agricultural Weather Network to determine appropriate setbacks for an animal feeding operation. Testimony contended the tool will provide a measured approach to determining the likely odor impacts to landowners near an anticipated animal feeding operation. The tool will consider possible odor intensity and how relevant terrain features, including trees, structures, and general topography, will disperse odor.

Environmental Impact Mitigation Fund Disbursement Report

The committee received a report from the Agriculture Commissioner regarding Environmental Impact Mitigation Fund disbursements pursuant to Section 4.1-01-21.1(6). The report indicated the law addresses environmental impacts resulting from constructing and operating energy conversion facilities. The program prohibits the use of perpetual conservation easements seeking to permanently limit agricultural enhancements, agricultural activity, or infrastructure improvements on land near the project site. The committee was informed the term of a conservation easement under the program cannot exceed the construction and operational life of the related wind energy facility, and mitigation projects must be as close to the applicable facility as feasible. The committee was informed after an energy company undertakes reasonable efforts to avoid or minimize environmental impacts, the company must mitigate adverse environmental residual impacts related to its projects. Efforts under the program may include protecting, enhancing, or restoring habitats affected by the wind energy development project. The committee was informed since 2023, the Department of Agriculture has executed five agreements with five separate wind energy companies to conduct environmental mitigation under the program. As of March 31, 2026, the department is seeking to identify private landowners near the five projects who may be interested in entering conservation easements under the program. As of September 8, 2026, the Environmental Impact Mitigation Fund had approximately $3.3 million in available funds for four different projects. The report indicated the Oliver Wind IV Wind Farm in central North Dakota requires approximately 665 acres of offsets to mitigate effects on the surrounding grasslands. A wind farm operated by Badger Wind, LLC in south central North Dakota requires approximately 380 acres of offsets to mitigate effects on the surrounding grasslands and 75 acres of offsets to mitigate effects on the surrounding wetlands. The committee was informed approximately $2.5 million will be allocated for these mitigation efforts due to the operation of the Oliver Wind IV and Badger Wind farms. A wind farm in Bowman County will require approximately $350,000 for mitigation efforts associated with its operation.

Low-Carbon Fuels Fund Transaction Report

The committee received a report from the Agriculture Commissioner regarding the status of the Low-Carbon Fuels Fund, including the revenues deposited in the fund, the low-carbon fuel incentives distributed from the fund, and the balance of the fund pursuant to Section 4.1-01-21.2. The report indicated the fund is designed to bolster the state's ethanol production facilities by supporting beneficial capital projects, including facilities to produce sustainable aviation fuel. The committee was informed that under the program, three ethanol plants have been awarded reimbursable grants for eligible costs to install new process equipment for capturing carbon dioxide and lowering the carbon intensity scores within the produced ethanol. As of September 8, 2026, the Low-Carbon Fuels Fund has approximately $1.2 million of unobligated funds and $9 million in obligated funds. The obligated funds have been split equally and awarded to projects near Richardton, Hankinson, and Spiritwood. The project near Richardton has an estimated total project cost of $16 million, which will be used to install additional carbon capture equipment and increase energy efficiency. The project near Hankinson has an estimated total project cost of $9.7 million, which will be used to install thermal efficiency equipment. The project near Spiritwood has an estimated total project cost of $92 million, which will be used to install carbon capture equipment. All funds awarded under the program will be disbursed to project sponsors upon completion of each project.

Autonomous Technology Grant Report

The committee received a report from the Agriculture Commissioner regarding autonomous technology grants to individuals or entities in the agriculture industry, including a list of grant recipients, the amounts awarded, and a description of the use of the grant funding pursuant to Section 12 of House Bill 1009 (2025). During the 2025 legislative session, the Legislative Assembly appropriated $300,000 to the Agriculture Commissioner to award autonomous technology grants to individuals or entities in the agriculture industry. The grants were awarded to establish uncrewed aerial system test sites in several counties to develop a database for palmar amaranth, water hemp, and other amaranth species. A research organization near Casselton, known as Grand Farm, leads the project and collaborates with NDSU, Thales Airspace Mobility Solutions, and iSight Drone Service. The project is designed to assist local weed control officials in responding quickly to new and emerging noxious weed infestations. The program aims to expand an image database and validate seed detection models using drones, with a specific focus on identifying palmar amaranth at different growth stages. The project is operating primarily in Traill, Steele, Cass, and Barnes Counties, and landowners must provide consent before a drone flyover. If optical imagery detects a suspect plant, an investigation will occur, and fields found to have weeds will remain confidential and identified only at the county level.

State Board of Agricultural Research and Education Report

The committee received a report from SBARE regarding its annual evaluation of research and extension activities and expenditures, pursuant to Section 15-12.1-17(8). The Legislative Assembly established the State Board of Agricultural Research in 1997, and the board was responsible for budgeting and policymaking associated with supervising the North Dakota Agricultural Experiment Station (NDAES). The law was amended in 1999 to include responsibility for the NDSU 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. Because of various appropriations from the Legislative Assembly over the past several biennia, SBARE has constructed storage facilities at several research extension centers across the state. The various research extension centers make up NDAES, which conducts research across the state's different climates, soil types, and production systems. Research is conducted at facilities located in Casselton, Carrington, Dickinson, Fargo, Hettinger, Langdon, Minot, Streeter, and Williston. The Extension Service aims to empower residents to improve their lives and communities through science-based education that meets the changing needs of state residents. The report indicated the Extension Service is present in each county of the state and partners with county commissions to secure additional financial resources to support the county extension model. According to the report, the primary priorities of SBARE during the 2027 legislative session are to secure approximately $1.4 million for operational support of the Extension Service, $5.7 million for operational support for NDAES, and approximately $6.2 million for deferred maintenance for SBARE capital projects. Of the $6.2 million requested for deferred maintenance, approximately $5 million will be requested as a one-time funding item, while the remaining $1.2 million will be requested as ongoing support.

Irrigation Expansion Report

The committee received a report from a representative of the Department of Agriculture and testimony from a representative of the Missouri River Joint Water Board regarding the findings and recommendations of the study to review the potential benefits of expanding irrigation throughout the state. The report indicated, as of June 17, 2026, approximately 300,000 acres of North Dakota are irrigated annually. By comparison, Minnesota irrigates approximately 800,000 acres per year, South Dakota irrigates approximately 850,000 acres per year, Montana irrigates approximately 1,600,000 acres per year, and Nebraska irrigates approximately 8,000,000 acres per year. The report indicated the state has 1,260,000 to 1,520,000 acres of cropland available for potential irrigation development. Of these lands, about 500,000 acres are within the 12 counties bordering the Missouri River corridor for irrigation development, and an additional 800,000 to 1,100,000 acres may be developed for irrigation using water from aquifers across the state. The

federal Pick-Sloan Plan in the 1940s included irrigation development in the state, but the full extent of irrigation potential under the plan was never realized. The report suggested had the irrigation infrastructure been fully developed in the state, both the crop mix and yields would have been vastly different and much more diverse. The anticipated economic loss to the state from 1970 through 2024 due to diminished irrigation capacity is $9.7 billion. In recent years, lost economic opportunity from a lack of irrigation infrastructure has exceeded $400 million per year. Increased irrigation could expand value-added processing, providing $500 million in positive economic impacts to the state's agriculture industry.

MISCELLANEOUS REPORTS

Fertilizer Plant Report

The committee received a report from the Agriculture Commissioner regarding capacity requirements for constructing a fertilizer plant in the state. The report indicated the state's average fertilizer consumption is about 2,500,000 tons annually, with about 1,500,000 tons being nitrogen fertilizers. About 20 percent of the nitrogen used in the state is produced locally. The United States uses approximately 10 to 15 percent of the total global fertilizer production annually. Fertilizer needs are met through a mix of domestic production and imports. The global market for nitrogen, phosphorus, and potassium fertilizers has grown steadily in the last 25 years, with an annual growth rate of approximately 1.8 percent. Natural gas and water are critical components of nitrogen fertilizer production and generally are used and consumed in large quantities during fertilizer production. The Great Plains Synfuels Plant near Beulah has a capacity to produce approximately 100,000 tons per year of ammonium sulfate, 400,000 tons per year of anhydrous ammonia, and 400,000 tons per year of urea. While fertilizer storage has greatly increased in the past decade, fertilizer facilities in the state are not required to report the amount of fertilizer stored but are required to report the amount of fertilizer distributed in the state. The estimated capital construction costs for a small fertilizer facility producing approximately 100,000 tons of fertilizer per year typically range from $150 million to $350 million. Capital construction costs for a large fertilizer facility producing approximately 1,000,000 tons of fertilizer per year range from $2.5 billion to $3 billion.

Potential Union Pacific Railroad and Norfolk Southern Railway Merger Report

Background

The committee received a report from a representative of Burlington Northern Santa Fe Railway regarding a proposed merger between Union Pacific Railroad and Norfolk Southern Railway and its potential effects on the agriculture industry. The report indicated the proposed merger would control approximately 45 percent of the commercial rail market. The report suggested the merger likely would reduce competition and reshape the railroad industry, potentially causing supply chain issues. To begin the merger process, companies must file an application with the federal Surface Transportation Board. If the board accepts the merger application, interested parties have a limited time to file a notice of intent to comment on the formal merger proceedings. The board ultimately will decide whether to approve the proposed merger between Union Pacific Railroad and Norfolk Southern Railway. The federal government intentionally regulates railroads to promote continuity and efficiency within the national railway network.

Committee Considerations

Committee members discussed the proposition of submitting a statement of opposition to the potential Union Pacific Railroad and Norfolk Southern Railway Merger Report on behalf of the committee. After further discussion, the committee members agreed to submit the statement of opposition as individual members of the Legislative Assembly rather than on behalf of the committee.