

BACKGROUND MEMORANDUM - LAND ACCESS STUDY

STUDY BACKGROUND

Section 6 of House Bill No. 1021 (2019) ([Appendix A](#)) directed the Legislative Management to study land access during the 2019-20 interim. Specifically, the study must examine "access to public and private lands for hunting, trapping, fishing, and related issues, including trespass violations and penalties," and the Legislative Management must "provide recommendations regarding a land access database with the capability of electronic posting." For purposes of the study, the voting members of the committee assigned this study, the interim Natural Resources Committee, are five members of the Legislative Assembly representing both chambers and both political parties, two individuals representing agricultural landowners, and two individuals representing sportsmen organizations. The nonvoting members of the committee are the Agriculture Commissioner, the director of the Game and Fish Department, the state's chief information officer, and representatives of the North Dakota Association of Counties and North Dakota State's Attorneys' Association. The five nonvoting members may identify designees to serve on the committee in their places.

LAND ACCESS AND TRESPASS STATUTES

North Dakota Century Code Sections 20.1-01-18 and 20.1-01-19 indicate private land is "open" to hunters to hunt, pursue game, and recover game, unless the land is posted in accordance with Section 20.1-01-17. To post land under that section, an owner or tenant of the land must place signs along the public highway or land giving notice that hunting is not permitted on the land. If the land is entirely enclosed by a fence, the owner or tenant must place signs at each gate to post the land. If an owner or tenant's posting does not comply with the requirements of Section 20.1-01-17 but notice against hunting or trespassing "is clear from the circumstances," the land is deemed posted. Additionally, Section 20.1-01-22 makes it unlawful to hunt or pursue game in unharvested cereal or oilseed crops without the owner's or tenant's permission, regardless whether the land is posted.

Access to posted land for hunting or trapping is available if proper permission is granted under Section 20.1-01-18. If a hunter wishes to hunt on posted land, the hunter may request permission from a person legally entitled to give permission to hunt on the land. The permission does not need to be in writing. However, if a trapper wants to trap protected fur-bearing animals on posted land, the trapper must obtain written permission from the owner or operator of the land. Additionally, under Section 20.1-01-19, a person may enter posted land to recover game shot or killed lawfully on other land.

Unlawfully hunting or pursuing game on posted land without permission is a Class B misdemeanor for a first offense and a Class A misdemeanor for a subsequent offense within a 2-year period. In addition, under Section 20.1-01-26, a court is required to suspend a defendant's hunting, trapping, or fishing privileges for at least 1 year for a first conviction, 2 years for a second conviction, and 3 years for a third or subsequent violation. The court also may require the defendant to complete a hunter education course before obtaining a new license.

There is a legal presumption that an individual on legally posted land who is carrying a firearm or other weapon declared legal by a Governor's proclamation entered the posted land to hunt or pursue game. Specifically, under Section 20.1-01-20, carrying the weapon on posted land is prima facie evidence the individual entered the land for one or both of those purposes. This provision makes it easier to prosecute an individual with a weapon for trespassing on posted land under Section 20.1-01-18 because a prosecutor does not need to prove the individual's purpose for being on the posted land.

The requirements for hunting guides and outfitters differ from the requirements for hunters. Under Section 20.1-03-42, a hunting guide or outfitter is not permitted to operate on posted private land, certain land owned by the state or on which the Game and Fish Department pays "in lieu of" taxes, and certain federal land without informing the landowner and obtaining permission to provide outfitting or guiding services on the land. The permission may be provided orally. However, if a disagreement arises over whether permission was granted, there is a presumption that permission was not granted unless the permission is in writing.

In addition to statutes that are specific to hunters' access to land, there are general trespass statutes in Century Code. Section 12.1-22-03 makes it a crime for an individual to enter or remain in a location where the individual knows the individual is not licensed or privileged to be. The penalty for criminal trespass varies depending on the type of location involved. Consistent with Section 20.1-01-18, Section 12.1-22-03(3) makes trespassing on land that is enclosed or posted "in a manner reasonably likely to come to the attention of intruders" a Class B misdemeanor for a first offense and a Class A misdemeanor for a subsequent offense within 2 years. Regardless whether the premises are posted, if an individual in charge of the premises or another authorized individual gives actual notice against trespass, the penalty for trespass is the same as if the premises were posted.

House Bill No. 1293 (2017) created a new subsection to Section 12.1-22-03 to provide a noncriminal penalty for trespass. According to the legislative history of the bill, the new Section 12.1-22-03(4) was intended to reduce the burden on courts by allowing peace officers to cite some trespassers and fine the trespassers \$250 for a violation. Specifically, the subsection applies to an individual who knows the individual is not licensed or privileged to be in a location where notice is posted "in a manner reasonably likely to come to the attention of intruders." This language mirrors part of Section 12.1-22-03(3). As a result, an individual engaging in that activity is subject to a criminal penalty under subsection 3 and a noncriminal fine under subsection 4. Additionally, if the individual also is hunting, the individual is subject to a criminal penalty under Chapter 20.1-01.

2019 LEGISLATIVE HISTORY

During the 2019 legislative session, the House and Senate Agriculture Committees discussed many versions of Senate Bill No. 2315 ([Appendix B](#)) in an attempt to amend access to private lands for hunting, trapping, and other purposes. Some of the versions changed the default status of unposted land to "closed" to hunters and others without permission to be on the property. Under these versions, land could not be entered without the landowner's permission. Some versions of the bill included provisions for one or more state agencies to develop and operate a database online or on another electronic platform which would indicate which parcels of land are "open" or "closed" to hunters and others. In some versions, the database would have been developed based on geographic information system (GIS) data from counties. The database would have served as an electronic posting system, and, if one of these versions had become law, individuals would have had to check the database before entering another person's land. These versions of the bill also would have preserved landowners' option to physically post their land instead of using the online database. Many versions of the bill changed the penalties for trespassing as well.

The 714-page legislative history of Senate Bill No. 2315 includes testimony from many members of the public both in support of and opposition to different versions of the bill. There were 13 Senate and House committee hearings on the bill. The Senate passed an amended version ([Appendix C](#)) of the bill early in the legislative session. The House further amended the bill ([Appendix D](#)), passed it, and sent it back to the Senate. When the Senate did not concur with the House version, a Conference Committee was formed, and the Conference Committee recommended further amendments. The Senate passed the amended version ([Appendix E](#)), but the bill failed to pass the House.

SUGGESTED STUDY APPROACH

The Natural Resources Committee may wish to begin its study under House Bill No. 1021 by obtaining historical data from the Game and Fish Department and the North Dakota State's Attorneys' Association regarding the number and types of trespass violations that have occurred in North Dakota to help identify the extent to which land access is a problem. The committee also may want to obtain information from the Information Technology Department and the North Dakota Association of Counties regarding the availability and usefulness of GIS and other data that may be used to develop an electronic posting database. Additionally, the committee may want to obtain testimony from landowners, hunters, and other members of the public regarding their land access concerns and potential solutions. The committee may wish to address the language in Section 12.1-22-03 and consider a bill draft that would clarify how these provisions should operate. The committee also may want to compare land access statutes in neighboring states.

ATTACH:5