

# NATURAL RESOURCES COMMITTEE

The Natural Resources Committee was assigned one study during the 2021-22 interim. Senate Bill No. 2036 (2021) directed a continuation of the 2019-20 interim study of access to public and private lands for hunting, trapping, fishing, and related issues authorized by Section 6 of House Bill No. 1021 (2019). The study required the evaluation of the state's electronic land access database and online application developed during the 2019-20 interim and expansion of the database and application to all counties in the state. The database and application were developed under the direction of the 2019-20 interim Natural Resources Committee and were available for use in Richland, Ramsay, and Slope Counties as a pilot project. The database and application allowed landowners to post their land electronically and allowed hunters and others to identify which land is posted electronically.

The committee was comprised of nine voting members and five nonvoting members. The voting members included two citizen members representing agriculture landowners, two citizen members representing sportsmen organizations, and five members of the Legislative Assembly including one member of the majority party in the House of Representatives, one member of the minority party in the House of Representatives, one member of the majority party in the Senate, one member of the minority party in the Senate, and one member from either party in either chamber to serve as the Committee Chairman. The nonvoting members included a representative of the North Dakota Association of Counties, the Agriculture Commissioner (or the Commissioner's designee), the Director of the Game and Fish Department (or the Director's designee), the Chief Information Officer (or the Chief Information Officer's designee), and a representative of the North Dakota State's Attorneys' Association.

The members of the committee were Senators Robert Erbele (Chairman), Dale Patten, and Merrill Piepkorn; Representatives Gretchen Dobervich and Bill Tveit; citizen members Mr. David DeWald, Mr. Brian Schanilec, Mr. Joe Schettler, and Mr. John Weinand; and nonvoting members Mr. Doug Goehring, Agriculture Commissioner; Mr. Jason Horning, Next General 9-1-1 Program Manager, North Dakota Association of Counties; Mr. Shawn Riley, Chief Data Officer, Information Technology Department; Mr. Jeb Williams, Director, Game and Fish Department; and Mr. Ryan Younggren, Assistant State's Attorney, Cass County.

## BACKGROUND

### North Dakota Law Regarding Land Access for Hunters

North Dakota Century Code Chapter 20.1-01 governs access to land by hunters. 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. Under Section 20.1-01-18, individuals are prohibited from hunting or pursuing game on legally posted land unless they first obtain permission from the person legally entitled to grant permission. However, under Section 20.1-01-19, an individual may enter legally posted land to recover game shot or killed on land where the individual had a legal right to hunt.

To post land under Section 20.1-01-17, an owner of the land, or an individual authorized by the owner, must place signs along the public highway or land giving notice that hunting is not permitted on the land. The signs must be readable from the outside of the land and be at least 880 yards apart. If the land is entirely enclosed by a fence, the owner must place signs at each gate to post the land. Senate Bill No. 2144 (2021) established an alternative method for posting land. The bill amended Section 20.1-01-17 to allow an owner to post the land by designating the land as posted or closed to hunting in an online database or other electronic application maintained or authorized by the state and available to the public which identifies whether land is available to hunters. Even if an owner'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 under Section 20.1-01-17 and an intruder is guilty of hunting on posted land.

Hunting on posted land without permission is a strict liability offense under Section 20.1-01-18. An individual who hunts on posted land is guilty of the offense even if the individual does not know the individual is on posted land. An individual's mistaken belief about the facts or law are not relevant to the individual's culpability under the statute. 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.

### Criminal Trespass on Fenced Property

An individual is not allowed to enter or remain on fenced property if the individual knows the individual is not licensed or privileged to be there. Under Section 12.1-22-03, "[a]n individual is guilty of a Class A misdemeanor if, knowing that that individual is not licensed or privileged to do so, the individual ... [e]nters or remains in any place so enclosed by a fence or otherwise enclosed as manifestly to exclude intruders, unless the individual is a licensed hunter or angler who

is lawfully hunting or fishing." In 2019, the Supreme Court held culpability for trespass on fenced property depends, in part, on the fence at issue. To address this issue, in 2021, the Legislative Assembly defined the word "fence" in the statute as "a permanent structure on nonurban, private property which is maintained and capable of containing livestock."

### **Criminal Trespass After Receiving Actual Communications**

Under Section 12.1-22-03, if an individual in charge of the premises or another authorized individual tells an intruder not to enter the premises or to leave the premises, the intruder is on notice and must leave. If the intruder does not leave, the intruder is guilty of criminal trespass. To satisfy the elements of criminal trespass under this provision, a landowner must provide "actual communication" to the intruder either verbally or in writing. Even if a landowner or other authorized individual only "substantially complies" with this provision, if notice against trespass is clear from the circumstances, an intruder is guilty of criminal trespass. However, it is unclear what actions would constitute substantial compliance with the notice requirement.

### **Criminal Trespass on Posted Land Section**

Section 12.1-22-03 prohibits an individual from entering or remaining on land posted in a manner reasonably likely to come to the attention of intruders. The statute also provides the name of the person posting the premises must appear on each sign in legible characters. As with the requirement to provide actual communication, a landowner or other authorized individual only has to "substantially comply" with the posting requirements, provided notice against trespass is clear from the circumstances. The North Dakota Supreme Court has held "no trespassing" signs without the poster's name do not substantially comply with posting requirements. However, the court did not provide guidance regarding what would constitute substantial compliance.

House Bill No. 1293 (2017) created Section 12.1-22-03(4) to provide a noncriminal penalty for trespass on posted land. According to the legislative history on the bill, Section 12.1-22-03(4) was intended to reduce the burden on courts by allowing peace officers to cite some trespassers and fine them \$250 for a violation. Senate Bill No. 2144 (2021) expanded this provision to apply also to an individual who knows the individual is not licensed or privileged to be in "a place enclosed by a fence." As a result, an individual engaging in that activity is subject to a criminal penalty under Section 12.1-22-03(3) or a noncriminal fine under Section 12.1-22-03(4). Additionally, if the individual also is hunting, the individual is subject to a criminal penalty under Chapter 20.1-01.

## **LAND ACCESS DATABASE AND APPLICATION**

In addition to requiring the study of access to public and private lands for hunting, trapping, fishing, and related issues, Section 6 of House Bill No. 1021 (2019) required the Information Technology Department (ITD) and the Game and Fish Department to establish a trial electronic posting and hunter access information system pilot project in three counties in the state. The information system included a database and a mobile application developed under the direction of the 2019-20 interim Natural Resources Committee and made available for use in Richland, Ramsey, and Slope Counties, which volunteered to participate in the project. The database and application allow landowners to post land electronically and allow hunters and others to identify which land is posted electronically. The pilot project included housing the database on the Game and Fish Department website; obtaining land parcel information from counties selected for the pilot project; developing an interactive map to denote hunting unit boundaries; educating county officials, landowners, hunters, and game wardens regarding the pilot project; and requiring participating landowners to designate land as open or closed to hunters in the pilot project.

The land access website and application for the pilot project were developed, owned, and operated by ITD, with assistance from the Game and Fish Department. The participating counties provided the necessary land parcel data to ITD and are responsible for updating the data. The land parcels were preloaded in the database and application. Landowners participating in the pilot project were required to create a profile, search county tax land parcels in the database, complete an application form prepared by ITD to claim their land parcels, and designate their land as open or closed for hunting in the application. The Information Technology Department authenticated the ownership of land parcels in the application. Landowners also have the ability to provide contact information in the application if they wish to allow hunters the ability to contact them to request permission to hunt on their land, but landowners are not required to provide the contact information. The database allows landowners to designate land only as open or closed.

Landowners and hunters access the electronic posting application created by ITD through the Game and Fish Department's online licensing system. Hunters may download and use the mobile application on a personal mobile device to determine where they are located relative to a parcel of land that is of hunting interest, determine whether the parcel is open or closed for hunting, and print a map of the surrounding area. The pilot project received participation by 79 landowners in the three participating counties. The landowners designated approximately 38,000 acres as open or closed for hunting on 260 tracts of land through the pilot project application.

## TESTIMONY AND COMMITTEE CONSIDERATIONS

### Land Access Database Project - 2021

The committee received testimony from a representative of the Game and Fish Department regarding the status and performance of the land access database pilot project after the 1<sup>st</sup> year of statewide expansion. Testimony indicated the project relied on tax roll parcel information provided by counties through the sitewide land parcel project. Parcel information was aggregated and added to the state's centralized database. Testimony indicated the land access database and mobile application performed well. Over 2,000 landowners participated in posting nearly 4 million acres to the system. Ownership of parcels posted to the system was validated using North Dakota driver's licenses; however, an alternative validation method may be needed for nonresidents who own land in the state and would like to use the posting system. The Game and Fish Department has been in contact with the Department of Transportation and expects an alternative method for national validation will be developed soon. The committee discussed establishing administrative rules to clarify and provide guidelines for the electronic posting system.

The committee discussed general concerns of hunter awareness regarding the statewide project. The Game and Fish Department used targeted messaging through email, direct text messaging, and news alerts to notify sportsmen of the pilot project. Additionally, the department required confirmation of the new laws on their website when applying for and purchasing hunting licenses within the state.

The committee received positive feedback from landowners regarding the lower costs and ease of posting electronically. Some landowners elected to post their land entirely online while others have combined electronic posting with physical posting in high-traffic areas. The electronic database has eased landowner concerns relating to destroyed, missing, or weathered posting signs. Additionally, the project has provided landowners and sportsmen requesting public access for hunting an easier way to communicate.

The committee received testimony from representatives of the North Dakota Stockmen's Association and North Dakota Grain Growers Association regarding the performance of the land access database pilot project. Landowners are impressed with the operation and function of the system and participation has increased since the 1<sup>st</sup> year.

The committee received testimony from a representative from North Dakota Wildlife Federation, who reported overall positive feedback from both landowners and sportsmen. Several landowners and sportsmen have indicated some frustration, however, with the time required to download the mobile application.

The committee discussed amending the requirements for landowners to annually renew their land. A representative from the Game and Fish Department identified possible conflicts and concerns that might arise from not updating the system with proper ownership and land descriptions.

The committee discussed implementing several enhancements to the land access database program. The committee discussed utilizing a drop-down box for landowners to list their land as "no hunting," "hunting with permission," or "hunting allowed." The committee agreed these designations could lead to confusion because landowners post their land differently depending on the species and hunting season.

The committee received testimony from a representative of the North Dakota Association of Counties regarding the participation of the counties relating to Geographic Information Systems data through the statewide parcel program. The project received a one hundred percent participation rate in support of the project. The representative did not receive any negative feedback from the counties regarding the program. From the counties' perspective, the program is passive because the information requested already has been produced.

The committee received information from a representative of the Board of University and School Lands relating to state trust lands and their inclusion in the land access database project. The representative noted trust lands closed to public access are listed on the Department of Trust Land's website and are not listed with the Game and Fish Department. Ranchers who elect to post these lands are unable to meet the current deadlines for the land access database program. The committee discussed the possibility of combining this information for sportsmen. The committee received testimony from a representative of the Game and Fish Department noting the two departments have been in contact regarding incorporating this information. Testimony indicated one of the primary concerns is timing because the information requested from landowners may not be available until just before or shortly after the fall hunting season. Additional considerations include the duration for which trust lands are posted. Most trust lands are not posted for the entire year which may cause conflicts with the printed material produced by the Game and Fish Department. Typically, trust lands only are posted during the hunting season if cattle are present on the property. Mobile applications also are limited in the amount of information that can be utilized at one time.

The committee discussed limiting the authority to post land within the land access database to only landowners or lessees. Current law provides any landowner or individual authorized by the landowner may post property either physically or electronically. Current law also provides a penalty for individuals who improperly post land. The committee agreed the issue is properly addressed in the Century Code.

### **Land Access Database Project - 2022 Statewide Update**

The committee received an update from a representative of the Game and Fish Department regarding the status and performance of the land access database project, including the functions of the database and related issues after opening the program to the entire state.

The electronic posting enrollment period opened on February 1, 2022, and closed on July 1, 2022. Data was collected from the counties through the statewide land parcel project. The department saw participation in the program increase from 2,000 to 4,500 individual landowners with the total acres of posted land doubling from 3.7 million to 7.3 million acres. Only 15 percent of landowners from the previous year did not re-enroll in the program. The Game and Fish Department provided notice to landowners of the renewal process and implemented a one-click renewal process for convenient enrollment. The department received positive feedback from landowners, hunters, and users of the program.

The department faced several challenges regarding customer service requests for assistance on outdated data, data quality concerns regarding the posting of incorrect lands, and stewardship concerns regarding data review. The committee discussed the current challenges faced by the department and concluded these challenges were anticipated with the expansion of the program. The committee discussed a legislative appropriation to aid the department with the continued expansion of the program, if necessary. A representative from the Game and Fish Department indicated the department has attempted to simplify the system to address issues regarding department workload. The department indicated additional department staff were educated in the program to assist with customer service requests.

The committee received testimony regarding possible areas for enhancement, including hosting solutions, communication tools, and nonresident landowner validation. Data and information relating to the program is hosted by ITD. The committee was informed cloud storage could be a valid alternative if issues arise from hosting additional information.

The committee was informed the department has considered adding an application communication system that could be used by the department to simplify customer service requests. Additionally, the committee received testimony relating to the department's inability to validate nonresident driver's licenses. The committee received information regarding paid services that could be used by the department to validate nonresident landowners.

The committee discussed the implementation of administrative rules regarding the governing of the program. The committee agreed this area should be explored by the Game and Fish Department. The committee thought it prudent to not implement anything that would cause confusion with the program or conflict with enforcing current posting laws for hunters.

The committee expressed approval with respect to the progress, results, and positive feedback regarding the project. The committee agreed the application is early in development and will continue to be updated and modified to better process landowner applications and hunter usage in the field. The committee was pleased with the public support the project received from both hunters and landowners.

### **CONCLUSION**

The committee makes no recommendation regarding its study of the expansion of the land access database and its application to all counties in the state.