

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

ADMINISTRATIVE RULES COMMITTEE

Tuesday, September 15, 2015
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Bill Devlin, Chairman, called the meeting to order at 9:30 a.m.

Members present: Representatives Bill Devlin, Randy Boehning, Joshua A. Boschee, Robert Frantsvog, Kim Koppelman, Scott Louser, Gail Mooney, Mike Schatz, Mary Schneider, Peter F. Silbernagel, Gary R. Sukut, Nathan Toman; Senators Kyle R. Davison, Jerry Klein, Connie Triplett

Members absent: Representatives Blair Thoreson, Robin Weisz; Senator Kelly M. Armstrong

Others present: John Walstad, Legislative Council
See [Appendix A](#) for additional persons present.

It was moved by Senator Klein, seconded by Representative Silbernagel, and carried on a voice vote that the minutes of the June 10, 2015, meeting be approved.

At the request of Chairman Devlin, Legislative Council staff reviewed the [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Management](#).

At the request of Chairman Devlin, Legislative Council staff presented a background memorandum entitled [Administrative Rules Review - Background Memorandum](#).

STATE DEPARTMENT OF HEALTH

Chairman Devlin called on Dr. Darleen Bartz, Health Resources, State Department of Health, for testimony ([Appendix B](#)) regarding a rule of the department carried over for consideration from the June 2015 meeting. Dr. Bartz said to address the committee's concern about the release of the name of a resident in basic care who elects to receive hospice care, she worked with the Legislative Council staff and Representative Koppelman. She said the proposed new language only would require the basic care facility to notify the State Department of Health that a resident has elected hospice.

In response to a question from Chairman Devlin, Dr. Bartz said the rule was originally developed to ensure the safety of the patient. She said when a resident elects to receive hospice care, skilled care must be provided in a social setting.

In response to a question from Senator Triplett, Dr. Bartz said she is not sure if the proposed change to the language is necessary but the department is willing to make the change. She said when a resident elects to receive hospice care, staffing needs change and other safeguards must be put into place.

In response to a question from Senator Klein, Dr. Bartz said the department is willing to accept the amendment to the language in North Dakota Administrative Code (NDAC) Section 33-03-24.1-23(6).

It was moved by Representative Koppelman, seconded by Representative Silbernagel, and carried on a roll call vote that the language in NDAC Section 33-03-24.1-23(6) be changed from "The facility shall notify the department within forty-eight hours of the election the name of the resident that has elected hospice" to "The facility shall notify the department within forty-eight hours of the election that a resident has elected hospice . . ." Representatives Boehning, Boschee, Koppelman, Louser, Mooney, Schatz, Schneider, Silbernagel, Sukut, and Toman; and Senator Triplett voted "aye." Representatives Devlin and Frantsvog and Senators Davison and Klein voted "nay."

INSURANCE COMMISSIONER

Chairman Devlin called on Mr. Johannes N. Palsgraaf, Legal Counsel, Insurance Department, for testimony ([Appendix C](#)) regarding rules adopted by the Insurance Commissioner.

In response to a question from Representative Schneider, Mr. Palsgraaf said the last update to the annuity tables was in 1999. He said it can take several years before states and companies decide to use the update. He said it will likely be 5 to 10 years before the tables are updated again.

In response to a question from Senator Triplett, Mr. Palsgraaf said how long people live has an effect on state policy.

In response to a question from Representative Silbernagel, Mr. Palsgraaf said the changes included in the rule impact companies of all sizes equally. He said the change will require companies to hold more money in reserve. He said this does not disadvantage the smaller companies.

In response to a question from Senator Klein, Mr. Palsgraaf said the department did not receive any comments on the rule changes. He said the changes are just an adjustment of mortality tables because people are living longer. He said the change requires insurance companies to appropriately adjust their reserves.

REAL ESTATE COMMISSION

Chairman Devlin called on Ms. Patricia M. Jergenson, Executive Director, Real Estate Commission, for testimony ([Appendix D](#)) regarding rules adopted by the Real Estate Commission.

In response to a question from Representative Louser, Ms. Jergenson said the state's unclaimed property law allows for money left in trust accounts for more than three years to be turned over to unclaimed property. She said the three-year period the money can remain in a trust account begins on the date of the purchase agreement. She said following an audit of a broker's accounts, the Real Estate Commission reviews the audit with the broker. She said the commission sends a letter to the broker which tells the broker there is money in a trust account that must be addressed. She said after two years the broker's account is reviewed again after which time the broker is again reminded to transfer the money to the unclaimed property division. She said if the broker is reminded a third time, the matter goes before the Real Estate Commission and a complaint is filed.

In response to a question from Senator Triplett, Ms. Jergenson said according to the commission's auditors, if money has been in a trust account for more than three years, the money must be turned over to the unclaimed property division.

In response to a question from Chairman Devlin, Ms. Jergenson said the Real Estate Commission believed existing law requires money in the trust account, which is usually earnest money, to be turned over to the unclaimed property division if held for more than three years. She said the purpose of the new rule was to clarify that practice.

In response to a question from Representative Koppelman, Ms. Jergenson said the practice is not an existing rule but rather is an interpretation of the rules. She said the new rule clarifies the practice. She said the rule was adopted at the commission's attorney's suggestion. She said she does not oppose holding the rule over for the next meeting.

Representative Louser said as a broker he does not want to indefinitely keep the money in the trust account. He said one option for the broker is to transfer the funds to the courts for disposition but a court action must be initiated before the money can be turned over to the district court. He said he also thinks clarification is needed on when the three-year period begins.

In response to a question from Chairman Devlin, Representative Louser said the issue with the money in a trust account arises when the real estate transaction fails and the closing does not occur. He said unless the parties agree as to which party is the rightful owner of the money in the trust account or the issue is decided by a court after one of the parties initiates a court action, the money must remain in the trust account. He said the broker does not have the authority to make the decision as to the money's rightful owner.

In response to a question from Representative Boehning, Ms. Jergenson said an education campaign is underway to inform the affected parties about legislative changes to licensing provisions. She said with the reciprocal license, the applicant does not have to take a full licensing examination. She said the state only has reciprocity agreements with three states. She said in those instances, the applicant only needs to take the state portion of the examination.

Mr. John Walstad, Legal Division Director, Legislative Council, said it appears the statutory provision on abandoned property in North Dakota Century Code (NDCC) Chapter 47-30.1 provides the three-year clock does not begin to run until the money becomes "payable or distributable." He said the language in the proposed new rule is inconsistent with the statute.

It was moved by Representative Koppelman, seconded by Senator Triplett, and carried on a voice vote that the rule relating to abandoned trust account money in NDAC Section 70-02-01-15(2)(d) be held over to the next meeting.

Chairman Devlin asked Ms. Jergenson to work with Representative Louser and the Legislative Council staff to address the concerns of the committee.

SUPERINTENDENT OF PUBLIC INSTRUCTION

Chairman Devlin called on Mr. Bob Marthaller, Assistant Superintendent, Department of Public Instruction, for testimony ([Appendix E](#)) regarding a request for the repeal of NDAC Chapter 67-19-01 with the exception of NDAC Section 67-19-01-06. Mr. Marthaller said the department, based on authority provided in NDCC Section 15.1-02-11, has established all schools seeking accreditation must do so through the AdvancEd regional accreditation process and all schools must participate in a school improvement cycle. He said the adoption of the AdvancEd model of accreditation has rendered current accreditation rules obsolete and recommended the repeal of those rules. He said all interested parties were notified by email of the proposed repeal of the existing accreditation rules.

In response to a question from Representative Schneider, Mr. Marthaller said there are no unaccredited schools in the state. He said there is not a need to adopt AdvancEd by administrative rule. He said he will provide to the committee information on AdvancEd and the process being followed.

In response to a question from Senator Triplett, Ms. Gwyn Marback, Assistant Director, Teacher and School Effectiveness, said AdvancEd is a worldwide accreditation agency. She said the North Dakota region is made up of North Dakota, South Dakota, Minnesota, Wyoming, and Montana. She said the regional director is Russ Ziegler of Bismarck.

In response to a question from Representative Frantzvog, Ms. Marback said when the AdvancEd team visits a school, all things the school must do for accreditation are reviewed, including plans, goals, and needs. She said there is an AdvancEd benchmark schools are required to meet.

In response to a question from Representative Koppelman, Ms. Marback said all schools in the state seek accreditation through AdvancEd.

Mr. Marthaller said under NDCC Section 15.1-02-11, the Superintendent of Public Instruction has the authority to establish the accreditation procedure.

Representative Koppelman said he is concerned the department is bypassing the administrative rules process and that the policy does not carry force and effect of law.

Mr. Marthaller said the Legislative Assembly has been involved in the funding of the AdvancEd accreditation for the past two legislative sessions. He said the legislation requires school districts to participate in a school improvement process.

In response to a question from Representative Koppelman, Mr. Marthaller said he believes the Superintendent has the authority to select AdvancEd as the accrediting entity.

Senator Triplett said perhaps the AdvancEd process could have been adopted by reference.

In response to a question from Senator Schneider, Mr. Marthaller said school districts may seek AdvancEd accreditation either by school or by building.

In response to a question from Senator Klein, Mr. Marthaller said during the five-year accreditation cycles, schools are asked to enter a continuous school improvement process and to meet standards. He said there are very few schools that would not meet accreditation through AdvancEd.

In response to a question from Senator Triplett, Ms. Marback said if a school is not making progress, accreditation may be delayed or the school may be placed in a lower class of accreditation. She said if no improvement is made over a number of years, the school cannot be accredited. She said the benchmarks that must be met are very rigorous.

It was moved by Representative Schatz, seconded by Representative Silbernagel, and carried on a voice vote that the decision to repeal the accreditation rules will be held over to the next meeting.

Chairman Devlin said the Department of Public Instruction is requested to provide information on the authority to repeal the existing rules without implementing new rules.

INDUSTRIAL COMMISSION

Chairman Devlin called on Mr. Bruce Hicks, Assistant Director, Oil and Gas Division, Department of Mineral Resources, Industrial Commission, for testimony ([Appendix F](#)) regarding a request for an extension of time for adopting and filing rules relating to water and crude oil pipeline safety and integrity.

In response to a question from Representative Boehning, Mr. Hicks said the Industrial Commission expects to receive a report from the Energy and Environmental Research Center by December 1, 2015. He said the report will include recommendations on rulemaking. He said although he is asking for an extension to January 1, 2017, he is hopeful the rules will be ready for the October 1, 2016, administrative rules cycle. He said in six months he would provide to the committee via email an update on the status of the rules.

It was moved by Senator Klein, seconded by Representative Koppelman, and carried on a voice vote to grant the extension of time requested by the Industrial Commission for adopting and filing rules relating to water and crude oil pipeline safety and integrity.

DEPARTMENT OF HUMAN SERVICES

Chairman Devlin called on Ms. Julie Leer, Legal Advisory Unit, Department of Human Services, for testimony ([Appendix G](#)) regarding two requests for extensions of time for adopting and filing rules. Ms. Leer said the extensions relate to rules governing the enrollment of licensed marriage and family therapists and to payments to licensed community paramedics, advanced emergency medical technicians, and emergency medical technicians for health-related services.

It was moved by Representative Boehning, seconded by Representative Boschee, and carried on a voice vote to grant the extension of time to the Department of Human Services for adopting and filing rules relating to enrollment of licensed marriage and family therapists and to payments to licensed community paramedics, advanced emergency medical technicians, and emergency medical technicians for health-related services.

No further business appearing, Chairman Devlin adjourned the meeting at 12:05 p.m.

Vonette J. Richter
Assistant Code Revisor

ATTACH:7