

# NORTH DAKOTA LEGISLATIVE COUNCIL

## Minutes of the

### ADMINISTRATIVE RULES COMMITTEE

Wednesday, March 12, 2008  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Senator Tom Fischer, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Senators Tom Fischer, John M. Andrist, Jerry Klein, Tracy Potter; Representatives Randy Boehning, Chuck Damschen, Duane L. DeKrey, David Drovdal, Mary Ekstrom, Rodney J. Froelich, Chris Griffin, Jon Nelson, Blair Thoreson, Dwight Wrangham

**Members absent:** Senator Layton W. Freborg; Representatives Kim Koppelman, Louise Potter

**Others present:** Jeff Delzer, State Representative, Underwood

Shirley Meyer, State Representative, member of the Legislative Council, Dickinson

David O'Connell, State Senator, member of the Legislative Council, Lansford

See [Appendix A](#) for additional persons present.

**It was moved by Senator Klein, seconded by Representative DeKrey, and carried on a voice vote to approve the minutes of the December 12, 2007, meeting of the committee.**

#### STATE BOARD OF ACCOUNTANCY

Chairman Fischer called on Mr. Jim Abbott, Executive Director, State Board of Accountancy, for testimony ([Appendix B](#)) relating to rules of the board.

Senator Klein asked if he is correct in his reading that the rules will no longer require accounting students to take principles of accounting. Mr. Abbott said principles of accounting courses would not count toward required accounting or business courses but students probably still will take those courses.

Senator Klein asked whether these rules changes will make it more difficult for accounting students to satisfy the educational requirements. Mr. Abbott said the rules changes will not require more semester credits of courses. He said the changes are somewhat of a restructuring of educational requirements.

Senator Andrist said the rules changes increase compensation for members of the State Board of Accountancy to \$500 per day. He asked why such a substantial increase was necessary. Mr. Abbott said the rule also includes an annual limit of \$2,000 compensation for board members. For a full day, he said, \$500 compensation is approximately equivalent to \$60 per hour, which is commensurate with fees of certified public accountants.

Mr. Gordy Smith, State Auditor's office, said when the State Auditor's office bids out contracts for accounting services requiring services of individuals at the partner level in accounting firms, fees range from \$150 to \$200 per hour. He said board members are generally individuals at the partner level in firms so the compensation of board members under the rule change should not be deemed excessive.

Senator Potter said a letter submitted to the State Board of Accountancy by Mr. Monte Rogneby, attorney for the North Dakota Society of Accountants, expressed opposition to rules requiring peer review of compilation services. He asked whether those concerns were addressed in rulemaking discussions. Mr. Abbott said only an LPA or a CPA can do compilations so the peer review requirement only will apply to an LPA or a CPA. He said individuals performing accounting services who are not licensed by the State Board of Accountancy will not be affected by the rule change.

Senator Klein said he is concerned the educational requirements changes will require current students to scramble to achieve more qualifying hours of accounting credits.

Senator Klein said there must be increased costs to accountants from the peer review requirements. He asked what additional costs will be required. Mr. Abbott said there is a national peer review program which some North Dakota accountants use and some North Dakota accountants opt-out of that program. He said the rule change will require everyone to meet the same program standards. He said there will be a minimal net increase in costs to accountants from the change. He said firm permit fees have been almost eliminated and those fees were used for board expenses of review. He said it is estimated that the cost increase for the simplest reviews for smaller firms will be about \$210 per year and deducting the amount of the permit fee reduction would result in a net increase of about \$160 per year.

Senator Klein asked how the peer review requirements relate to reciprocity with other states. Mr. Abbott said the peer review process does not factor into reciprocity issues. He said North Dakota is considered to be a substantially equivalent state, which means North Dakota's standards are substantially equivalent to national standards. He said peer review is not part of national standards.

## NORTH DAKOTA LOTTERY

Chairman Fischer called on Mr. Chuck Keller, Director, North Dakota Lottery, for testimony ([Appendix C](#)) relating to lottery rules.

Representative Froelich and Senator Potter questioned the rule change adding raffles to the games that may be conducted by the North Dakota Lottery and inquired where the statutory authority is found for conducting raffles. Mr. Keller said an assistant attorney general has researched the issue and advised the North Dakota Lottery that for legal purposes a raffle is not different from a lottery.

Representative Wrangham asked why the definition has been added to lottery rules for the phrase game group. Mr. Keller said the multistate lottery terminology has been changed and the phrase game group has the definition previously given for the phrase product group. Representative Wrangham asked why promotion prizes are listed in the rules. Mr. Keller said the listing was added to be clear. Representative Wrangham said raffle is defined in the charitable gaming laws but he does not see it used in the lottery laws. Mr. Keller said he has been advised that lottery includes raffles. Representative Wrangham said the Legislative Assembly will have to revisit the definition of lottery.

## GAME AND FISH DEPARTMENT

Chairman Fischer called on Mr. Paul Schadewald, Game and Fish Department, for testimony ([Appendix D](#)) relating to rules of the department.

In response to a question from Senator Fischer, Mr. Greg Power, Game and Fish Department, said aquatic nuisance species rules will apply to all boats coming from water bodies within and without the state.

Representative Drovdal asked what an angler will have to do to properly clean watercraft to comply with the aquatic nuisance species rules. Mr. Power said the effort required to properly clean watercraft will vary among places and times of year. He said in the worst-case scenario he has encountered, it took him about 12 minutes to clean weeds from his boat and trailer.

## HIGHWAY PATROL

Chairman Fischer called on Lieutenant Michael Gerhart, Safety and Education Officer, Highway Patrol, for testimony ([Appendix E](#)) relating to Highway Patrol rules. Lieutenant Gerhart covered the first portion of the testimony. Lieutenant Kyle Kirchmeier and Ms. Leanna Emmer covered the following portions of the testimony.

## PUBLIC SERVICE COMMISSION

Chairman Fischer called on Mr. Alan Moch, Director, Testing and Safety Division, Public Service Commission, for testimony ([Appendix F](#)) relating to commission rules.

## REAL ESTATE COMMISSION

Chairman Fischer called on Ms. Pat Jergenson, Executive Director, Real Estate Commission, for testimony ([Appendix G](#)) relating to rules of the commission.

## PUBLIC EMPLOYEES RETIREMENT SYSTEM

Chairman Fischer called on Mr. Sparb Collins, Executive Director, Public Employees Retirement System, for testimony ([Appendix H](#)) relating to retirement system rules.

Senator Potter said the rules add Medicare Part D as an item to be bid out but the rules remove several other items from the list. He asked why these changes were made. Mr. Collins said it was concluded that the items being removed were already covered in the statement of general authority so they are not needed to be specifically contained in the list.

## SECRETARY OF STATE

Chairman Fischer called on Mr. Alvin A. Jaeger, Secretary of State, for testimony ([Appendix I](#)) relating to elections rules.

## DEPARTMENT OF HUMAN SERVICES

Chairman Fischer called on Ms. Julie Leer, Legal Counsel, Department of Human Services, for a presentation of testimony ([Appendices J, K, L, M, and N](#)) relating to five sets of rules adopted by the department.

Representative Meyer asked whether federal or state law required imposition of the \$25 fee for child support services. Mr. Mike Schwindt, Department of Human Services, said federal law imposed the fee as part of the Deficit Reduction Act.

Ms. Leer presented a request ([Appendix O](#)) from the Department of Human Services for an extension of time to adopt administrative rules required by 2007 legislation relating to child support enforcement.

Mr. Schwindt presented testimony ([Appendix P](#)) in response to a committee request for information on implementing 2005 legislation regarding withholding under the child support program.

**It was moved by Representative DeKrey, seconded by Senator Klein, and carried on a roll call vote that the committee approve an extension of time for adoption of child support enforcement rules until the next committee meeting.** Voting in favor of the motion were Senators Fischer, Andrist, Klein, and Potter and Representatives DeKrey, Boehning, Damschen, Drovdal, Ekstrom, Griffin, Nelson, Thoreson, and Wrangham. No negative votes were cast.

Chairman Fischer called on Mr. John Ford, North Dakota Coalition for Child Protective Services and Foster Care Reform, for comments ([Appendix Q](#)) on rules adopted by the Department of Human Services regarding psychiatric residential treatment facilities. Mr. Ford said he discovered that it is common practice

for the Department of Human Services and Division of Juvenile Services to house at-risk emotionally disturbed foster children in group home settings with juvenile registered sexual offenders. Mr. Ford requested the committee to table consideration of the rule increasing from age 18 to age 21 for purposes of the definition of child under the psychiatric residential treatment facility's rules. He said this age increase would have the potential of adding another 186 sexual offenders to be housed with at-risk children. He also requested the committee to carry over consideration of the portion of North Dakota Administrative Code (NDAC) Section 75-03-17-09 relating to spirituality in psychiatric residential treatment facilities.

In response to a question from Senator Fischer, Ms. Leer said the Dakota Boys Ranch has separate housing to segregate registered sexual offenders from the general population. She said sexual offenders are segregated until after completion of a sufficient level of treatment. She said upon attaining a sufficient treatment level, assimilation with the population begins in increments but registered sexual offenders remain housed separately and are otherwise separately supervised. Ms. Leer distributed copies ([Appendix R](#)) of an e-mail she sent to Mr. Ford on December 19, 2007, and a memorandum relating to juveniles on the sexual offender registry.

In response to a question from Representative Nelson, Ms. Leer said she would provide information on treatment of individuals under and over age 18 under these rules changes.

Representative Wrangham asked if there is anything in these rules that would increase the number of sexual offenders in psychiatric residential treatment facilities. Ms. Leer said the only relevant change in the rules is in the definition of child, which increases the age to 21 but that change is required by federal Medicare law.

Representative Ekstrom said with regard to Mr. Ford's concern about spiritual advisors, she is not certain the rule he suggested holding over would address that concern.

In response to a question from Representative Nelson, Mr. Paul Ronningen, Department of Human Services, said the spirituality provision of the rule does not relate to treatment but is more related to life choices of individual residents. He said it is up to the facility to decide on an individual basis if religious groups will be able to appear on campus. He said facilities allow residents to attend the church of their choice off campus.

### **DEPARTMENT OF VETERANS AFFAIRS**

Chairman Fischer called on Mr. Mark B. Johnson, Administrator, Veterans Home, for testimony ([Appendix S](#)) relating to Veterans Home rules.

### **STATE WATER COMMISSION**

Chairman Fischer called on Mr. John Paczkowski, State Water Commission, for a presentation of

testimony relating to State Water Commission rules. Mr. Paczkowski distributed copies of prepared testimony ([Appendix T](#)) of the State Water Commission. He said he would present the first portion of the report and Mr. Lee Klapprodt would present the testimony relating to the drought disaster livestock water supply project rules.

Representative Froelich questioned the declaration regarding sovereign lands of the state as it affects property below the ordinary high water mark on tribal lands. Representative Froelich said he believes tribes also claim ownership interests in that property. Mr. Paczkowski said the issue of sovereign lands and tribal ownership has been an unresolved issue of debate but that issue was not created by these rules. He said sovereign lands versus tribal lands has been an issue for many years.

Senator Potter said several comments described issues with the sovereign lands rules. He asked whether the State Water Commission has resolved all of those issues. Mr. Paczkowski said commission representatives have met with Game and Fish Department representatives and continue to work on some of those issues and the commission will continue to consider some of the other issues that were not resolved. He said many of the issues raised were resolved and several of them resulted in changes to the rules. He said the prepared testimony describes the agency response to comments.

Mr. Klapprodt reviewed the commission testimony regarding drought disaster livestock water supply project rules. There were no committee questions regarding those rules.

### **NORTH DAKOTA RACING COMMISSION**

Chairman Fischer called on Mr. Randy Blaseg, Director of Racing, North Dakota Racing Commission, for testimony ([Appendix U](#)) relating to rules carried over for consideration from the previous committee meeting relating to the breeders' fund.

Mr. Blaseg said the Thoroughbred and Harness Racing Associations both support the rules as adopted by the Racing Commission. Mr. Blaseg said the Racing Commission approved a motion on March 11 to propose amendment of NDAC Section 69.5-01-09-10(1) to read "In races restricted to certified North Dakota bred horses, where the purse for such race is supplemented by the breeders' fund, no awards will be paid to the owners of runners in such races. The awards which otherwise would be paid to the owner of the runners will be paid to the breeder."

Mr. Blaseg reviewed the consequences of failure to approve the breeders' fund rules changes. He said legal counsel for the Racing Commission provided the opinion that there is statutory authority for the proposed rules changes. He said the proposed amendments comply with legislative intent expressed in law and do not conflict with any statutory provisions.

Mr. Blaseg said attached to his testimony are copies of letters of support for the rules as adopted by

the Racing Commission from the North Dakota Thoroughbred Association, North Dakota Harness Horsemen's Association, and individual breeders. He said information was also included relating to rules in other states relating to use of the term broodmare. He said a copy of the Racing Commission minutes from October 2007 are also included with his testimony. He said the minutes reflect the issues discussed by the commission before adoption of the rules as submitted.

In response to a question from committee counsel, Mr. Blaseg said the proposed amendment to NDAC Section 69.5-01-09-10 adopted by the Racing Commission on March 11 is language intended to replace the last sentence of subsection 1 of that section.

Chairman Fischer called on Dr. James Clement, Chairman, North Dakota Racing Commission, for comments ([Appendix V](#)) regarding the rules adopted by the Racing Commission.

Dr. Clement said the Administrative Rules Committee directed the Racing Commission after the December 12, 2007, committee meeting to reconsider the proposed breeders' fund amendments and discuss them with concerned parties. Dr. Clement said he was not informed by the director about the expectations of the Administrative Rules Committee. He said he became aware of the directive of the Administrative Rules Committee after reading the Administrative Rules Committee minutes. He said no legitimate attempt has been made by the Racing Commission to reconsider the proposed breeders' fund amendments and discuss the amendments with concerned parties.

Dr. Clement said the proposed amendments to the breeders' fund rules should not be approved. He said reregistering fillies as broodmares adds unnecessary complexity and bureaucracy. He said there is no legitimate reason to rewrite NDAC Section 69.5-01-09-10.

In response to a question from Representative Meyer, Dr. Clement said an administrative law judge has ruled that the Racing Commission rule regarding a broodmare is a bad rule and should be thrown out.

Representative Froelich said a group was to have been established to advise the Racing Commission. He asked whether the advisory group has ever met with the Racing Commission. Dr. Clement said on January 14, 2008, the Horseman's Advisory Council met with the Racing Commission. He said at that meeting a motion failed on a 3-2 vote which would have concluded that breeders' fund money not be used to enhance purses.

Representative Froelich said it appears that the Racing Commission has not followed the suggestion of the Administrative Rules Committee to discuss issues regarding breeders' fund uses with interested groups. He said he believes the Administrative Rules Committee should not accept the breeders' fund rules as adopted by the Racing Commission.

In response to a question from Senator Potter, Dr. Clement said he did not know about the rules being carried over by the Administrative Rules Committee until he read the Administrative Rules Committee minutes in preparation for a February meeting of the Racing Commission. Senator Potter asked what was the vote of the Racing Commission on March 11 to stand by the breeders' fund rules as submitted with one amendment. Dr. Clement said the vote was 3 to 2. He said Racing Commission votes are usually 3 to 2 and he is usually in the minority on Racing Commission votes.

Chairman Fischer called on Mr. John Bubel, quarter horse breeder, for comments on the Racing Commission rules. Mr. Bubel said he is frustrated with the refusal of the Racing Commission to consider comments and interests of quarter horse breeders. He suggested that the Administrative Rules Committee eliminate the Racing Commission rules regarding the breeders' fund. Representative Froelich asked why the broodmare registration rule adopted by the Racing Commission could not operate only prospectively. He said this would avoid reregistration of broodmares. Mr. Bubel said he does not know why the Racing Commission would not apply the broodmare registration rule only prospectively.

Dr. Clement said that the motive behind Racing Commission adoption of the broodmare rule change is to support previous board policy that an administrative law judge ruled was not correct.

Chairman Fischer called on Mr. Leon Glasser, North Dakota Quarter Horse Racing Association, for comments on the rules adopted by the Racing Commission. Mr. Glasser said a ruling by an administrative law judge that registration requirements as a broodmare were improper was ignored by the Racing Commission. Mr. Glasser said the Quarter Horse Racing Association is offended by use of breeders' fund money to supplement purses. He said in the past racing season, a breed win was worth about \$600. He said the breeder gets nothing from that award unless the breeder is also the owner of the horse. He said the Racing Commission always votes 3 to 2 against horsemen. He said horsemen are so frustrated with the Racing Commission that he would suggest that the Racing Commission be dissolved and gambling functions be administered by the Attorney General and remaining functions regarding racing be administered by the Agriculture Commissioner.

Mr. Blaseg said he did discuss the action of the Administrative Rules Committee with Dr. Clement. He said he discussed the options for Racing Commission consideration with the Racing Commission chairman after the previous Administrative Rules Committee meeting.

Representative Meyer said passage of 2007 House Bill No. 1324 prohibited transfer of money among funds administered by the Racing Commission. She said despite semantic arguments, she believes transfers from the breeders' fund to

racing purses are prohibited by 2007 House Bill No. 1324.

**It was moved by Representative Froelich, seconded by Senator Andrist, and carried on a roll call vote that the Administrative Rules Committee void the amendments adopted by the Racing Commission to North Dakota Administrative Code Chapter 69.5-01-09, relating to the breeders' fund, on the grounds that the rules failed to comply with express legislative intent, the rules conflict with state law, and the rules are arbitrary and capricious.** Voting in favor of the motion were Senators Fischer, Andrist, Klein, and Potter and Representatives DeKrey, Boehning, Damschen, Drovdal, Ekstrom, Froelich, Griffin, Nelson, Thoreson, and Wrangham. No negative votes were cast.

Representative Nelson said the Racing Commission continues to be unable to fairly represent the interests of all groups in the racing industry. He asked whether it is within the authority of the Administrative Rules Committee to recommend a bill draft to eliminate the Racing Commission. Committee counsel said North Dakota Century Code Section 54-35-02.6 states that the Administrative Rules Committee may make recommendations to the Legislative Council for the amendment or repeal of statutes relating to administrative rules. Representative Nelson said it appears elimination of the Racing Commission relates to administrative rules. **It was moved by Representative Nelson, seconded by Representative DeKrey, and carried on a roll call vote that the Legislative Council staff be requested to prepare a bill draft for committee consideration to eliminate the Racing Commission and transfer gambling administration to the Attorney General and other functions to the Agriculture Commissioner.** Voting in favor of the motion were Senators Fischer, Andrist, Klein, and Potter and Representatives DeKrey, Boehning, Damschen, Drovdal, Ekstrom, Froelich, Griffin, Nelson, Thoreson, and Wrangham. No negative votes were cast.

**It was moved by Representative Nelson, seconded by Representative Froelich, and carried on a roll call vote that the Legislative Council staff be requested to prepare a bill draft to require return to the breeders' fund from the purse fund all money used since August 1, 2007, from the breeders' fund to supplement purses.** Voting in favor of the motion were Senators Fischer, Andrist, Klein, and Potter and Representatives DeKrey, Boehning, Damschen, Drovdal, Ekstrom, Froelich, Griffin, Nelson, Thoreson, and Wrangham.

## STATE DEPARTMENT OF HEALTH

Chairman Fischer called on Mr. Kenan Bullinger, State Department of Health, for testimony ([Appendix W](#)) relating to Food and Lodging Division rules adopted by the State Department of Health and carried over for consideration from the previous meeting.

Mr. Bullinger said license fee increases in the proposed rules were required by staffing and resources needed to enforce new statutory provisions from the 2007 legislative session relating to tattoo and tanning facilities. He said increased workload from tattoo and tanning facility inspection requirements was estimated to require approximately one-half of the time of a new staff position. He said the other one-half of the time for the staff person could be devoted to food and lodging licensure. He said the rules adopted by the department increased food and lodging fees and imposed tattoo and tanning facility fees to fund the new position. He said at the previous committee meeting, his testimony left the impression that the food and lodging fee increases would be used to subsidize a new employee who would devote full time to tattoo and tanning facility inspections.

Mr. Bullinger said the extra food and lodging license revenue will allow the new employee position to be used for more frequent inspection of higher-risk food and lodging establishments.

Senator Andrist asked whether there are variations in fees for small and large food and lodging facilities. Mr. Bullinger said there are variations for small and large operations because risk and seating capacity are included in considerations for establishing fees.

In response to a question from Senator Potter, Mr. Bullinger said the fee changes adopted by the department would generate approximately \$125,000 additional revenue, with approximately \$103,000 from food and lodging facility fee increases and \$22,000 from new fees for tattoo and tanning facilities.

In response to a question from Representative Wrangham, Mr. Bullinger said some cities will do tattoo and tanning facility inspections and they will charge and keep fees for those inspections.

Committee counsel said he understands that food and lodging facility fees for 2008 have already been imposed and asked whether the delay in the effective date of the proposed rules would cause a loss of revenue. Mr. Bullinger said fees have been assessed for 2008. He said the fee increases would become effective April 1 if approved by the committee and would be assessed only for new food and lodging facility licenses issued after that date. He said the fees would be assessed for 2009 and would result in additional revenue being available to add an inspector for these facilities.

## LAND DEPARTMENT

Chairman Fischer called on Mr. Gary Preszler, Secretary, Board of University and School Lands, for a presentation of testimony ([Appendix X](#)) relating to the exemption from the Administrative Agencies Practice Act for the Board of University and School Lands. Mr. Preszler reviewed the exemption of the board and requested that the board remain exempt from Administrative Agencies Practice Act requirements, with the exception of rules relating to the Uniform Unclaimed Property Act.

## STATE FAIR ASSOCIATION

Chairman Fischer called on committee counsel to review a letter ([Appendix Y](#)) from the general manager of the North Dakota State Fair. Committee counsel reviewed the letter and said the State Fair Association recommends continuation of its exemption from the Administrative Agencies Practice Act.

Committee counsel said the committee has now received responses from all agencies that are exempt from the Administrative Agencies Practice Act and none of the agencies have recommended any change in exemptions under the Act. He said unless the committee requests further action or information, it appears the study directive regarding the review of these exemptions has been completed.

## OCCUPATIONAL AND PROFESSIONAL PENALTY LAWS STUDY

Chairman Fischer called on committee counsel to review responses received from occupational and professional licensing boards in response to the committee request for agencies to review laws and rules they administer to determine whether changes should be made. Committee counsel reviewed copies of correspondence received from several agencies and said it appears agencies have reviewed laws and rules they administer and some have concluded no changes in laws or rules are required but suggestions were received from several agencies that statutory changes should be made, particularly in relation to more specific statutory designation of what constitutes a criminal offense. He said further responses may be received from agencies but it would be appropriate to compile the agencies' suggestions into a bill draft for committee consideration. **It was moved by Representative DeKrey, seconded by Representative Ekstrom, and carried on a roll call vote that the Legislative Council staff be requested to prepare a bill draft relating to occupational and professional penalties in accordance with agencies' suggestions.** Voting in favor of the motion were Senators Fischer, Andrist, Klein, and Potter and Representatives DeKrey, Boehning, Damschen, Drovdal, Ekstrom, Froelich, Griffin, Nelson, Thoreson, and Wrangham. No negative votes were cast.

## FILING DATE FOR ADMINISTRATIVE RULES

Chairman Fischer called on committee counsel to review a bill draft considered at the previous meeting to advance the filing deadline for administrative rules. Committee counsel said the bill draft would require agency rules to be filed on the 1<sup>st</sup> of the month rather than the 15<sup>th</sup> of the month prior to the meeting of the Administrative Rules Committee at which the rules would be considered. He said rules are generally filed at the deadline and when a substantial volume of rules is filed during a calendar quarter, it is very difficult to process those rules, have them printed, and

distribute them to committee members with sufficient time for consideration before the Administrative Rules Committee meeting. **It was moved by Representative DeKrey, seconded by Representative Thoreson, and carried on a roll call vote that the committee bill draft, relating to an earlier filing date for administrative rules publication, be approved and recommended to the Legislative Council.** Voting in favor of the motion were Senators Fischer, Andrist, Klein, and Potter and Representatives DeKrey, Boehning, Damschen, Drovdal, Ekstrom, Froelich, Griffin, Nelson, Thoreson, and Wrangham. No negative votes were cast.

## STATE DEPARTMENT OF HEALTH

In response to a question from Senator Fischer, committee counsel said if the Administrative Rules Committee takes no further action regarding the State Department of Health rules carried over from the previous meeting, the rules amendments as submitted will become effective April 1, 2008. He said the food and lodging facility fee increases in the rules would not be applied retroactively to the beginning of the calendar year but would be applied prospectively for new license applications, according to the comments received from Mr. Bullinger.

## STATE LOTTERY

Representative Wrangham said there are aspects of the state lottery rules that he would like to have the committee consider further. He said it was explained that the definition of multistate lottery in NDAC Section 10-16-01-01 was amended to add the word jurisdiction to cover the District of Columbia and United States territories. He said it appears the definition already includes reference to district or territory and the amendment would be unnecessary. He said the word raffle was added to games authorized to be conducted by the lottery under Section 10-16-03-01. He said he does not agree with the conclusion that a lottery includes a raffle and would like further consideration of that issue. He said the phrase or for a lottery promotion was added to Section 10-16-03-05(1) and it is not clear what that amendment is intended to cover. **It was moved by Representative Wrangham, seconded by Senator Potter, and carried on a roll call vote that the Administrative Rules Committee carry over consideration of the lottery amendments to Sections 10-16-01-01(7), 10-16-03-01, and 10-16-03-05(1).** Voting in favor of the motion were Senators Fischer, Andrist, and Potter and Representatives DeKrey, Boehning, Damschen, Drovdal, Froelich, Griffin, Nelson, Thoreson, and Wrangham. Voting in opposition to the motion were Senator Klein and Representative Ekstrom.

## STATE BOARD OF ACCOUNTANCY

Senator Andrist said he is still uncomfortable with the rules adopted by the State Board of Accountancy.

He said he would like the opportunity to talk to some of his constituents in the accounting profession to determine how they will be impacted by the rules changes. He said he believes the committee should carry over consideration of those rules. **It was moved by Senator Andrist, seconded by Representative Thoreson, and carried on a roll call vote that the Administrative Rules Committee carry over consideration of the rules adopted by the State Board of Accountancy.** Voting in favor of the motion were Senators Fischer, Andrist, and Klein and Representatives DeKrey, Boehning, Damschen, Drovdal, Froelich, Nelson, Thoreson, and Wrangham. Voting in opposition to the motion were Senator Potter and Representatives Ekstrom and Griffin.

### **STATE WATER COMMISSION**

Representative Froelich said the rules adopted by the State Water Commission make him very uncomfortable. He said designation by the State

Water Commission of sovereign lands is an unsettled issue in areas in which tribal ownership rights may exist. He said there are many legal issues still to be resolved regarding state and tribal ownership and adoption of these rules should not be viewed as an attempt to extinguish tribal ownership rights.

**It was moved by Senator Klein, seconded by Senator DeKrey, and carried on a voice vote that the meeting be adjourned subject to the call of the chairman.**

Chairman Fischer adjourned the meeting at 4:00 p.m.

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John Walstad  
Code Revisor

ATTACH:25