

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

ADMINISTRATIVE RULES COMMITTEE

Monday, March 14, 2016
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Bill Devlin, Chairman, called the meeting to order at 8:30 a.m.

Members present: Representatives Bill Devlin, Randy Boehning, Joshua A. Boschee, Robert Frantsvog, Kim Koppelman, Scott Louser, Mike Schatz, Mary Schneider, Peter F. Silbernagel, Gary R. Sukut, Blair Thoreson, Nathan Toman, Robin Weisz; Senators Kelly M. Armstrong, Jerry Klein, Connie Triplett

Members absent: Representative Gail Mooney and Senator Kyle R. Davison

Others present: See [Appendix A](#)

It was moved by Representative Koppelman, seconded by Representative Frantsvog, and carried on a voice vote that the minutes of the December 7, 2015, meeting be approved as distributed.

NORTH DAKOTA AERONAUTICS COMMISSION

Chairman Devlin called on Mr. Kyle C. Wanner, Director, North Dakota Aeronautics Commission, for testimony ([Appendix B](#)) regarding the rules adopted by the commission.

In response to a question from Representative Weisz, Mr. Wanner said for consistency, the term "airplane" in North Dakota Administrative Code Section 6-02-02-03 could be changed to "aircraft."

In response to a question from Representative Thoreson, Mr. Wanner said an increase in the hours required for aerial applicators equates to better efficiency and better safety for the public. Mr. Wanner said each state sets its own standards for aerial applicators.

In response to a question from Senator Triplett, Mr. Wanner said new laws will be needed for the regulation of unmanned aircraft.

In response to a question from Representative Schatz, Mr. Wanner said aerial applicators did not have an issue with the increase in the number of hours of flight time required for licensure. Mr. Wanner said the review of airports in the state is done to assure compliance with state standards. He said a safe approach plan for airports is done to provide consistency and is not increasing costs for airports.

In response to a question from Representative Koppelman, Mr. Wanner said removing the amount of the license fee was done to give the Aeronautics Commission the flexibility to address licensing fees. Mr. Wanner said the increase in the hours requirement for aerial applicators was done for safety reasons. He said most of the accidents in the aeronautics industry happen to aerial applicators. He said aerial application is a dangerous occupation. He said aerial applicators are flying larger aircraft than in the past and those larger aircraft are capable of holding more chemical than ever before. He said it is a very different industry than it was 40 years ago.

In response to a question from Representative Weisz, Mr. Wanner said the increase of an additional 250 hours is of pilot-in-command time and not time training as an applicator.

In response to a question from Senator Triplett, Mr. Wanner said there is a database for pilots to use to determine where it is safe to apply chemicals.

In response to a question from Representative Frantsvog, Mr. Wanner said no waivers are available for the additional 250-hour requirement.

In response to a question from Senator Klein, Mr. Wanner said no airports will be closed because of these rules. Mr. Wanner said the new rules provide consistency to rules that already exist. He said the commission will work with airports to grow and keep them operational.

It was moved by Representative Weisz, seconded by Representative Koppelman, and carried on a voice vote that the committee agree with the Aeronautics Commission on an amendment that the term "airplane" be changed to "aircraft" in Section 6-02-02-03.

BOARD OF EXAMINERS ON AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

Chairman Devlin called on Mr. Doug Schauer, Board Member, Board of Examiners on Audiology and Speech-Language Pathology, for testimony ([Appendix C](#)) regarding rules adopted by the board.

In response to a question from Representative Weisz, Mr. Schauer said the reference in the rules to continuing education clock-hours means the same as continuing education credit-hours.

In response to a question from Representative Silbernagel, Mr. Schauer said the state's educational requirements are in alignment with the requirements in Minnesota and South Dakota. Mr. Schauer said North Dakota requires a doctorate degree for licensure while other states require a master's degree. He said the rules clarify the licensing reciprocity with those states. He said a new applicant who applies after January 1 would not be required to pay the late fee.

In response to a question from Senator Triplett, Mr. Schauer said the board will make an effort to update its administrative rules more often. Mr. Schauer said the board has been operating under 1986 rules.

In response to a question from Representative Schatz, Mr. Schauer said speech pathology has never been a bachelor's degree program. Mr. Schauer said because it was too difficult to train audiologists in all nine specialties in a 2-year master's degree program, the licensure requirement was increased to a doctorate degree.

GAME AND FISH DEPARTMENT

Chairman Devlin called on Ms. Kim Kary, Chief, Administrative Services Division, Game and Fish Department, for testimony ([Appendix D](#)) regarding the rules adopted by the department.

In response to a question from Representative Boehning, Mr. Greg Power, Chief, Fisheries Division, Game and Fish Department, said although there are no regulations regarding the removal of docks and boat lifts, the general rule prohibiting moving zebra mussels would apply.

In response to a question from Representative Koppelman, Mr. Power said the spread of the zebra mussels is a concern. Mr. Power said the department has hired a new aquatic nuisance species coordinator. He said prevention and reasonable precautions are the key. He said Minnesota is spending \$10 million per year on its aquatic nuisance species efforts. He said the zebra mussels found in the Red River came from the Pelican Lake chain in Minnesota. He said although the University of Minnesota is conducting research on the problem, a way to treat zebra mussels has not been found.

In response to a question from Senator Triplett, Mr. Power said the boat industry is reacting to the problem by making it easier to remove drain plugs. Mr. Power said about 220,000 people in the state are licensed to fish and about 80,000 boats are registered. He said high visibility and reliance on public education to get the word out are key to enforcement.

STATE DEPARTMENT OF HEALTH

Chairman Devlin called on Ms. Tamara Lelm, Director, Division of Children's Special Health Services, State Department of Health, for testimony ([Appendix E](#)) regarding rules adopted by the department regarding the newborn screening program.

Chairman Devlin called on Mr. Greg Wavra, Administrator, Drinking Water Program, State Department of Health, for testimony ([Appendix F](#)) regarding rules adopted by the department regarding safe drinking water.

In response to a question from Representative Koppelman, Mr. Wavra said the rule changes are an update of current process for the monitoring of water systems. Mr. Wavra said it makes for good public health to require monthly monitoring.

In response to a question from Representative Boehning, Mr. Wavra said most cities currently conduct monthly water sampling. Mr. Wavra said the larger cities conduct their own testing while the smaller cities use state facilities for testing. He said the state labs are aware of the additional testing demand.

DEPARTMENT OF TRANSPORTATION

Chairman Devlin called on Mr. Glenn Jackson, Director, Driver's License Division, Department of Transportation, for testimony ([Appendix G](#)) regarding rules adopted by the department.

In response to a question from Senator Klein, Mr. Jackson said there are 13 driving schools in the state. Mr. Jackson said the requirement that the training vehicle be less than 10 years old was done to ensure the driving equipment is in good working order and has updated technology.

In response to a question from Representative Boehning, Mr. Jackson said he did not receive any new full-time equivalent positions to implement the changes and the Highway Patrol did not lose any. Mr. Jackson said one employee in the department works with the drivers' school programs. He said the rule changes give the department a better framework regulating driving schools.

STATE BOARD OF PHARMACY

Chairman Devlin called on Mr. Mark J. Hardy, Executive Director, State Board of Pharmacy, for testimony ([Appendix H](#)) regarding rules adopted by the board.

In response to a question from Representative Boehning, Mr. Hardy said 2015 Senate Bill No. 2104 gave the board the authority to adopt a process for a pharmacist to obtain prescriptive authority to prescribe and dispense naloxone rescue kits to prevent overdose death. Mr. Hardy said ambulances and other first responders will have their own supply of naloxone. He said the board has asked pharmacists to be available for first responders and others who may need naloxone after hours.

In response to a question from Representative Boschee, Mr. Hardy said North Dakota has the option to allow a nurse practitioner to prescribe naloxone.

In response to a question from Representative Koppelman, Mr. Hardy said pharmacists must have appropriate training to prescribe naloxone. Mr. Hardy said naloxone immediately puts a person into withdrawal so a person would be unlikely to take it when it was not necessary. He said if the patient has a primary physician, the pharmacist should let the physician know naloxone was prescribed to the patient.

In response to a question from Senator Triplett, Mr. Hardy said developing the protocol for prescribing naloxone was a cooperative process between the State Board of Pharmacy, the North Dakota Board of Medicine, and the State Board of Nursing.

In response to a question from Senator Triplett, Mr. Hardy said pharmacists will need to educate patients on expiration dates and the need to renew their naloxone prescriptions.

NORTH DAKOTA BOARD OF PODIATRIC MEDICINE

Chairman Devlin called on Ms. JoDee S. Wiedmeier, Executive Secretary, North Dakota Board of Podiatric Medicine, for testimony ([Appendix I](#)) regarding rules adopted by the board.

In response to a question from Representative Koppelman, Ms. Wiedmeier said the statutory fee increase was adopted verbatim in the rule. Ms. Wiedmeier said an increase in fees was needed to help the board operate more efficiently and to have financial reserves. She said the board has hired an administrator. She said there are 33 active podiatric licenses and five temporary licenses in the state.

In response to a question from Senator Klein, Ms. Wiedmeier said the board had requested the annual licensing fee be increased to \$1,000 but settled on \$750.

STATE BOARD OF PSYCHOLOGIST EXAMINERS

Chairman Devlin called Dr. Margo Adams Larsen, Board President, State Board of Psychologist Examiners, for testimony ([Appendix J](#)) regarding rules adopted by the board.

In response to a question from Representative Boehning, Dr. Adams Larsen said the board received two proposals for an answering service, neither of which was from North Dakota. Dr. Adams Larsen said the service allows for a dedicated person to answer calls from 8:00 a.m. to 5:00 p.m., Monday through Friday.

In response to a question from Representative Koppelman, Dr. Adams Larsen said Representative Alan Fehr, the previous president of the board, initiated the legislation calling for changes. Dr. Adams Larsen said not all board members were supportive of the board initiating the changes. She said it was already difficult to find members to

serve on the board. She said having a public member was a good thing in light of *North Carolina State Board of Dental Examiners v. Federal Trade Commission*, 135 S. Ct. 1101 (2015).

In response to a question from Representative Schneider, Dr. Adams Larsen said another committee is researching the unmet need for psychologist services in some parts of the state. Dr. Adams Larsen said the timeliness of issuing licenses can be an impediment to practitioners. She said it would be helpful if the board had access to the state's information technology services.

NORTH DAKOTA RACING COMMISSION

Chairman Devlin called on Mr. Gunner laCour, Director, North Dakota Racing Commission, for testimony ([Appendix K](#)) regarding rules adopted by the commission.

In response to a question from Representative Silbernagel, Mr. laCour said the adoption, by reference, of the model rules of the Association of Racing Commissioners International (ARCI), results in making five additional wagers available which previously were not permitted in the state. Mr. laCour said, however, he does not expect those additional wagers to be used very often.

In response to questions from Representative Koppelman, Mr. laCour said most racing organizations look to either North Dakota or Oregon for licensure. Mr. laCour said the commission's next newsletter will address live racing in the state.

In response to questions from Representative Boehning, Mr. laCour said future wagering is a win bet placed in advance. Mr. laCour said the bet can be placed online via an online account. He said the account holder must provide eligibility information. He said problem gambling information is displayed at the Belcourt and Fargo tracks.

In response to a question from Chairman Devlin, Mr. laCour said the commission would prefer the ARCI rules remain uniform across the nation but would not object to removing the language that allows for five additional wagers.

RETIREMENT BOARD

Chairman Devlin called on Mr. Sparb Collins, Executive Director, Public Employees Retirement System, for testimony ([Appendix L](#)) regarding the rules adopted by the Retirement Board.

In response to a question from Representative Weisz, Mr. Collins said the exception created in Section 71-02-04-07 only applies to National Guard security officers, not all National Guard members.

Mr. Collins also provided testimony ([Appendix M](#)) in which he requested the approval of the repeal of Sections 71-06-01-01, 71-06-01-06, and 71-06-01-06.1. He said the rules are obsolete as the result of 2013 House Bill No. 1058, which allowed the retiree health insurance credit to become portable.

It was moved by Senator Triplett, seconded by Representative Thoreson, and carried on a roll call vote that the committee agree with the Retirement Board suggestion that Sections 71-06-01-01, 71-06-01-06, and 71-06-01-06.1 be repealed because they have become obsolete. Representatives Devlin, Boehning, Boschee, Frantsvog, Koppelman, Louser, Schatz, Schneider, Silbernagel, Sukut, Thoreson, Toman, and Weisz and Senators Armstrong, Klein, and Triplett voted "aye." No negative votes were cast.

DEPARTMENT OF HUMAN SERVICES

Chairman Devlin called on Mr. Jonathan Alm, Legal Advisory Unit, Department of Human Services, for testimony ([Appendix N](#)) requesting an extension of time to adopt administrative rules governing substance use disorder treatment voucher system, as required by Section 4 of 2015 Senate Bill No. 2048; and an extension of time to adopt administrative rules governing ratesetting for nursing home care and ratesetting for basic care facilities, as required by 2015 House Bill Nos. 1234, 1277, 1353, and 1359.

It was moved by Senator Klein, seconded by Representative Boschee, and carried on a roll call vote that the extensions of time to adopt administrative rules, as requested by the Department of Human Services, be approved. Representatives Devlin, Boehning, Boschee, Frantsvog, Koppelman, Louser, Schatz, Schneider, Silbernagel, Sukut, Thoreson, Toman, and Weisz and Senators Armstrong, Klein, and Triplett voted "aye." No negative votes were cast.

Mr. Alm also presented testimony ([Appendix O](#)) regarding rules adopted by the department.

In response to a question from Representative Boschee, Mr. Erik Elkins, Assistant Director, Medical Services Division, Department of Human Services, said osteopaths are not a primary care provider. Mr. Elkins said osteopathic providers are enrolled in Medicaid but not under that name.

In response to a question from Representative Schneider, Mr. Elkins said within the Medical Services Division, a physician on staff determines whether a service is medically necessary. Mr. Elkins said all recipients have appeal rights either in the form of an internal review or before an administrative judge. He said the recipient who appeals does not have appointed counsel but can apply for legal aid assistance.

Chairman Devlin called on Dr. Adams Larsen for comments. Dr. Adams Larsen said psychological services is redefined in the department's rules. She said these changes have expanded a psychologist's scope of practice without the board's knowledge.

Chairman Devlin called on Ms. Maggie D. Anderson, Executive Director, Department of Human Services. Ms. Anderson said it was not the department's intent to change scope of practice. She said the intent only was to apply appropriate cost sharing. She said the limit on psychologist visits has been in place for a number of years.

In response to a question from Representative Schneider, Ms. Anderson said there are not any changes to rules restricting services beyond what is currently in place. Ms. Anderson said the reason for the rules was to add physician's assistants as primary care providers. She said the Medicaid state plan amendment was done for private duty nursing coverage. She said the spousal impoverishment level was increased from \$2,267 to \$2,550.

In response to a question from Representative Schneider, Ms. Rebecca Eberhardt, Administrator, Early Childhood Services, Department of Human Services, said rules regarding aquatic activities provided by child care providers were proposed before the drowning incident in Parshall. Ms. Eberhardt said the child to adult ratio is not affected by the rules. She said the child care provider must take into account the age and swimming ability of the child when determining the amount of supervision necessary. She said the adult to child ratio in a child care center is 1 to 20 and a mixed age group is 1 to 17. She said the department is reviewing early childhood services policies and procedures as part of a block grant project. She said that review includes licensing.

In response to a question from Senator Triplett, Mr. Alm said a deferred imposition of sentence does not mean a criminal record is expunged. Mr. Alm said the information could be obtained with a criminal history background check.

In response to a question from Representative Schneider, Mr. Alm said the majority of the ombudsman program changes were not intended to create an impediment but rather an enhanced ability to perform the job. Mr. Alm said there is one full-time ombudsman in the department and a number of volunteers.

TEACHERS' FUND FOR RETIREMENT BOARD OF TRUSTEES

Chairman Devlin called on Ms. Fay Kopp, Chief Retirement Officer - Deputy Executive Director, Teachers' Fund for Retirement, for testimony ([Appendix P](#)) regarding rules adopted by the Teachers' Fund for Retirement Board of Trustees.

In response to a question from Representative Silbernagel, Ms. Kopp said the overpayment of benefits, which is rare, last occurred in 2009. Ms. Kopp said overpayment typically happens when someone has passed away.

In response to a question from Representative Boehning, Ms. Kopp said if a teacher is called to active duty, the retirement plan allows for the inclusion of the active duty time served in the years of service for benefits purposes. Ms. Kopp said if that individual exercises the option to purchase years of service credit, the individual may purchase up to 3 years for each year of active duty service. She said 95 percent of retirees have direct deposit. She said overpayment usually involves out-of-state retirees.

WORKFORCE SAFETY AND INSURANCE

Chairman Devlin called on Ms. Jodi Bjornson, General Counsel, Workforce Safety and Insurance, for testimony ([Appendix Q](#)) regarding the rules adopted by Workforce Safety and Insurance.

In response to a question from Representative Boehning, Ms. Bjornson said the minimum premium payment for Roughrider Industries is \$250 for each person in that program per year.

In response to a question from Senator Triplett, Ms. Bjornson said she did not object to clarifying the language in subsection 4 of Section 92-01-02-50 on page 437 to read "If the other state has an appeal process that differs from the organization, the organization may pay fees consistent"

Chairman Devlin said the language would be changed to reflect the agreed upon language.

STATE GAMING COMMISSION

Chairman Devlin called on Ms. Deb McDaniel, Director of Gaming, Attorney General's office, for testimony ([Appendix R](#)) regarding rules adopted by the State Gaming Commission.

In response to a question from Chairman Devlin, Ms. McDaniel said most of the rule changes were due to a change of the Director of the Gaming Division. Ms. McDaniel said other rule changes were the result of 2015 legislative increases in wagers, legislative changes in the 50-50 raffle game, and legislative approval of the new game called electronic quick shot bingo.

In response to a question from Representative Boehning, Ms. McDaniel said the in-state sale of online raffle tickets by out-of-state companies is illegal.

In response to a question from Representative Weisz, Ms. McDaniel said there is a \$5 per play card on quick shot bingo. Ms. McDaniel said the commission agreed upon that limit after consulting the gaming advisory committee.

OTHER BUSINESS

It was moved by Representative Silbernagel and seconded by Representative Schatz that Section 69.5-01-08-04 be amended to remove the reference to the provisions of the ARCI model rules which would allow for five additional wagers to be legal in the state.

Representative Silbernagel said in light of legislative intent to limit the expansion of gaming in the state, the provision in the North Dakota Racing Commission's rules which allows for five additional wagers not currently permitted should be removed.

Senator Klein and Representative Boehning said they opposed the motion. Senator Klein said the testimony of Mr. laCour indicated those provisions rarely would be used. Senator Klein said for uniformity with other states, the provisions should be not be removed.

The motion failed on a roll call vote. Representatives Devlin, Koppelman, Schatz, Schneider, Silbernagel, and Sukut and Senator Armstrong voted "aye." Representatives Boehning, Boschee, Louser, Thoreson, Toman, and Weisz and Senators Klein and Triplett voted "nay."

Mr. Alm provided to the committee a proposed amendment ([Appendix S](#)) to address the concerns raised by Dr. Adams Larsen in subsection 3 of Section 75-03-17-05 and subsections 3 and 4 of Section 75-03-17-06. He said the amendments removed the word "clinical" from the term "clinical psychologist."

It was moved by Senator Triplett, seconded by Senator Armstrong, and carried on a voice vote that the committee agree to the amendments proposed by the Department of Human Services regarding Sections 75-03-17-05 and 75-03-17-06.

No further business appearing, Chairman Devlin adjourned the meeting at 3:30 p.m.

Vonette J. Richter
Assistant Code Revisor

ATTACH:19