

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

ADMINISTRATIVE RULES COMMITTEE

Thursday, October 17, 2002
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative LeRoy G. Bernstein, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives LeRoy G. Bernstein, Duane DeKrey, William R. Devlin, Mary Ekstrom, Bette Grande, Nancy Johnson, Kim Koppelman, Jon O. Nelson, Darrell D. Nottestad, Sally M. Sandvig, Blair Thoreson, Dwight Wrangham; Senators John M. Andrist, Thomas Fischer, Layton Freborg, Jerry Klein, David O'Connell, Bob Stenehjem

Member absent: Senator Deb Mathern

Others present: See Appendix A

It was moved by Senator Fischer, seconded by Senator Freborg, and carried on a voice vote that the minutes of the July 17, 2002, meeting be approved as distributed.

HIGHWAY PATROL

Chairman Bernstein called on Major Neil Johnson, Highway Patrol, for comments on June 2002 rules of the Highway Patrol carried over for consideration from the previous committee meeting. Major Johnson said the rules were carried over from the previous committee meeting because confusion existed about the point at which license or permit privileges are canceled for minors, which would make them eligible for the Internet drivers training program. He said the law provides for cancellation of license or permit privileges upon accumulation of in excess of five points. Senator O'Connell said the information provided by Major Johnson answers the questions he and Senator Stenehjem had discussed at the previous committee meeting.

DEPARTMENT OF PUBLIC INSTRUCTION

Chairman Bernstein called on Mr. David Larson, Department of Public Instruction, for testimony relating to implementation and administration of enhanced teacher compensation as provided by 2001 legislation. A copy of printed materials provided by Mr. Larson is on file in the Legislative Council office.

Mr. Larson reviewed the provisions of 2001 House Bill No. 1344, providing for teacher compensation and school district compensation reporting. He said this legislation directed the Superintendent of Public Instruction to develop and implement a school district employee compensation reporting system. He said

for this purpose a team consisting of school district representatives was assembled to advise the Department of Public Instruction.

Mr. Larson reviewed examples of the computerized on-line reporting system developed by the Department of Public Instruction. He said the system was designed to capture a substantial amount of information on school districts, including information on each district, buildings owned by the district, and school district employees. He said MIS03 is the designation of employee information reporting forms. He said employee compensation reports have been set up to pull in the previous year's MIS03 information on employees so a school district will not have to enter the information. He reviewed the data collected on teacher compensation claim school district reimbursements and major cost areas.

In response to a question from Representative Devlin, Mr. Larson said there is at least one school district that does not contribute to the Teachers' Fund for Retirement.

RULEMAKING STATISTICS

Chairman Bernstein called on committee counsel to present a memorandum entitled *Rulemaking Statistics 2000-02*. Committee counsel said statistical information has been compiled at the end of each interim to allow comparison of rulemaking activity. He said North Dakota Administrative Code (NDAC) sections affected by agency rulemaking activity totaled 1,417 for the period December 2000 through November 2002 as compared to 2,074 sections affected from November 1998 through November 2000. He said the number of sections affected has decreased by 56 percent since 1994. He said another basis for comparison of rulemaking is the number of pages contained in the administrative rules supplement prepared for Administrative Rules Committee review. He said the total number of supplement pages increased for the current interim and totaled 2,016 pages for the period December 2000 through November 2002 as compared to 1,947 pages from November 1998 through November 2000.

RULEMAKING NOTICE PUBLICATION COSTS

Chairman Bernstein called on committee counsel for presentation of a memorandum entitled *Administrative Rules Newspaper Publication Costs Comparison - Current Costs Versus 1997-98 Costs*. Committee counsel said the memorandum was requested at the previous committee meeting to compare notice publication costs before and after the 1999 legislative change in publication requirements.

Committee counsel said before the 1999 legislation the publication requirement in North Dakota Century Code (NDCC) Section 28-32-02 required that the agency's notice of rulemaking was to be published in full once each week for two consecutive weeks in each daily newspaper of general circulation published in the state. He said the 1999 legislation changed the requirement, which is now contained in NDCC Section 28-32-10, to require an agency to prepare a full notice and an abbreviated notice of rulemaking. He said the agency is now required to publish the abbreviated notice at least once in each official county newspaper published in this state. He said the abbreviated notice must be published with a column depth of from three to four inches. He said a comparison of rules reviewed by the Administrative Rules Committee in 1997-98 and 2001-02 shows an increase in the average cost per rulemaking action from an average of \$765 to an average of \$1,164. He said information provided on hearing costs may include costs for expenses other than publication. He said the North Dakota Newspaper Association was contacted to obtain information on current costs for one publication in each county newspaper, which would be \$828 for a three-inch publication and \$1,104 for a four-inch publication. He said rates provided for two weekly publications in the 10 daily newspapers were \$296 for a three-inch publication and \$528 for a four-inch publication.

SECRETARY OF STATE

Chairman Bernstein called on Mr. Alvin A. Jaeger, Secretary of State, for presentation of testimony relating to a request by the Secretary of State for committee approval of the repeal of NDAC Chapter 72-01-01 on the grounds these provisions are obsolete. A copy of the Secretary of State's written request is attached as Appendix B.

It was moved by Representative Koppelman, seconded by Representative Nottestad, and carried on a roll call vote that the committee agrees with the Secretary of State that repeal of NDAC Chapter 72-01-01 is approved under NDCC Section 28-32-18.1. Representatives Bernstein, Devlin, Ekstrom, Grande, Koppelman, Nelson, Sandvig, Thoreson, and Wrangham and Senators Andrist, Fischer, Freborg, Klein, and O'Connell voted "aye." No negative votes were cast.

AGENCY FEE INCREASE LIMITATION

Chairman Bernstein called on committee counsel to review a bill draft [30211.0100] to limit fee increase authority for occupational and professional licensing boards and commissions. Committee counsel said the bill draft was requested at the previous committee meeting and was requested to be a redraft of 2001 Senate Bill No. 2258. He said the bill draft provides that occupational and professional licensing boards and commissions may not increase licensing fees by rule by more than 10 percent during any two-year period. He said this limitation would apply to 41 boards and commissions that have authority to set fees by rule. Committee counsel said it was also requested that the legislative history of 2001 Senate Bill No. 2258 be distributed to committee members and that committee members have received the information. He said the bill status report for 2001 Senate Bill No. 2258 shows the bill failed to pass in the Senate by a vote of 4 ayes and 45 nays.

Senator Andrist said the bill draft is intended to limit substantial fee increases of licensing boards and commissions. He said if an increase of more than 10 percent in license fees is desired, the board or commission would have to seek legislative approval. He said the bill draft would only limit license fee increases pursuant to rulemaking authority.

Representative Devlin said he would be reluctant to support the bill draft. He said the committee has not had sufficient time to evaluate this approach and the Senate overwhelmingly rejected it during the 2001 legislative session.

Representative Nottestad said testimony from the 2001 legislation indicates that smaller professional groups may have greater needs for substantial fee increases. He said the bill draft attempts to cover all licensing boards and commissions with one rule, which may have a harsh result for smaller professional groups.

Representative Nelson said establishing a 10 percent limit on fee increases may serve as an incentive for boards and commissions to take greater fee increases than might otherwise apply. He said the existence of a limit might encourage boards and commissions to take the maximum fee increase to establish a surplus of funds that could be used in the future.

Representative Wrangham said he also thinks the limit on fees would encourage maximum fee increases to prepare for future contingencies.

Senator Andrist said he believes licensing boards and commissions should be required to obtain legislative approval for larger fee increases.

It was moved by Senator Andrist, seconded by Representative Grande, and failed on a roll call vote that the committee approve and recommend to the Legislative Council the bill draft to limit agency fee increases by rule to not more than 10 percent in any two-year period. Representatives

Bernstein, Grande, and Thoreson and Senators Andrist and Klein voted "aye." Representatives DeKrey, Devlin, Ekstrom, Johnson, Koppelman, Nelson, Nottestad, Sandvig, and Wrangham and Senators Fischer, Freborg, and O'Connell voted "nay."

BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS

Chairman Bernstein called on Mr. Clifford Keller, Executive Director, North Dakota Board of Registration for Professional Engineers and Land Surveyors, for testimony relating to November 2002 rules of the board. A copy of Mr. Keller's prepared testimony is attached as Appendix C.

Representative Koppelman said legislation was enacted in 2001 on emergency and remote practice of professional services. He said the Board of Registration for Professional Engineers and Land Surveyors had concerns with the legislation and obtained an exception in the bill draft. He said the language at the beginning of NDAC Section 28-02.1-11-02 sounds as though the rule is intended to supersede the statutory provision. He said he is not comfortable with this language. Mr. Keller said this issue was of concern to the Attorney General's office in reviewing the rules and was discussed extensively with the board's legal counsel. He said the Attorney General's office approved the rules and so he believes the concerns were satisfied.

Representative Nelson asked whether Minnesota, South Dakota, and Montana have substantially the same licensing examinations and qualifications for engineers and surveyors. Mr. Keller said with some exceptions regarding licensing of Canadian practitioners and other minor differences, North Dakota has essentially the same licensing examinations and qualifications as surrounding states.

Senator Fischer asked how the public would become aware of nonlicensed persons practicing engineering or surveying in this state. Mr. Keller said an unregistered person cannot do work in North Dakota that requires a signature and a seal. A seal must be obtained from the board.

Representative Devlin said he would like to have a representative from the Attorney General's office appear and address why the rules were approved as written. Mr. Keller said legal counsel for the Board of Registration for Professional Engineers and Land Surveyors is present and he introduced Mr. Lyle Kirmis, counsel for the board.

Mr. Kirmis said that during review of these rules by the Attorney General's office, questions were raised on the issues of whether the rules were within the authority of the board. He said NDCC Section 43-51-10 permits a licensing board or commission to impose conditions on foreign practitioners by administrative rule which are more restrictive than those

imposed by the 2001 creation of NDCC Chapter 43-51. He said the Attorney General's office agreed that NDCC Section 43-51-10 permits adoption of these rules without violation of that chapter.

Representative Koppelman asked whether the board will bring legislation in 2003 to resolve any remaining issues. Mr. Kirmis said that would be an option for consideration, but he believes the rules process has accomplished what was necessary for regulation of engineers and surveyors. He said despite the language that was questioned by Representative Koppelman, there is nothing in the rules that supersedes any statutory provision.

Chairman Bernstein said the committee would carry consideration of this issue to later in the meeting to obtain comments from the Attorney General's office.

DEPARTMENT OF AGRICULTURE

Chairman Bernstein called on Mr. Jeff Olson, Department of Agriculture, for comments on September 2002 rules of the department.

Mr. Olson said the rules change was made to add dalmatian toadflax and saltcedar to the list of noxious weeds. He said these changes were made at the request of the North Dakota State University Extension Service.

STATE DEPARTMENT OF HEALTH

Chairman Bernstein called on representatives of the State Department of Health to provide testimony relating to three sets of rules adopted by the department.

Mr. Larry A. Shireley, State Immunologist, State Department of Health, presented written testimony relating to changes in mandated reportable health conditions. A copy is attached as Appendix D.

Mr. Ken Wangler, Air Quality Division, State Department of Health, presented written testimony on rules changes to the North Dakota air pollution control rules. A copy is attached as Appendix E.

Representative Grande questioned the fee increases caused by the rules. Mr. Wangler said it is estimated that cumulative additional costs for asbestos abatement workers and contractors are estimated at \$15,000 per year and for lead-based paint abatement workers and contractors cumulative additional costs are estimated at \$5,000 per year. He said these fee increases were necessary to allow the state sufficient revenue to match federal funds available for these programs.

Representative Ekstrom asked whether there is an onsite labeling requirement for asbestos that is left in place. Mr. Wangler said there is no requirement for onsite labeling except in schools and that requirement is provided under a different federal law.

Mr. Dennis Fewless, State Department of Health, provided written testimony relating to amendments to

the pollutant discharge elimination system rules. A copy is attached as Appendix F.

DEPARTMENT OF COMMERCE

Chairman Bernstein called on Mr. Rich Gray, Department of Commerce, for testimony relating to September 2002 rules of the Department of Commerce Division of Community Services regarding the state building code. A copy of Mr. Gray's prepared testimony is attached as Appendix G.

INSURANCE DEPARTMENT

Chairman Bernstein called on Mr. Charles Johnson, General Counsel, Insurance Department, for testimony relating to October 2002 rules of the Insurance Commissioner. A copy of Mr. Johnson's prepared testimony is attached as Appendix H.

In response to a question from Senator O'Connell, Mr. Robert Reetz, Chief Boiler Inspector, said the boiler inspection rules contain provisions relating to who is qualified to conduct inspections of boilers in antique farm machinery.

In response to a question from Representative DeKrey, Mr. Reetz said boiler inspectors of the Insurance Department also conduct inspections of anhydrous ammonia plants. He said departmental inspectors look at the entire plant for anhydrous ammonia facilities and inspections of boilers are limited to inspection of the boiler vessel.

Representative Koppelman said the rules require review of securities by the National Association of Insurance Commissioners Securities Valuation office. He said he questions whether it is appropriate policy to give a state's review authority to a national association.

Mr. Johnson said securities valuation is under control of the National Association of Insurance Commissioners, which is comprised of insurance commissioners from each state. He said securities valuation is complex and the object of a central valuation office is to avoid each state being forced to establish and operate its own securities rating system.

Ms. Carole Kessel, Department of Insurance, said the rules provision is in compliance with a statutory provision requiring securities of insurance companies to be valued by the National Association of Insurance Commissioners Securities Valuation office.

STATE BOARD OF MEDICAL EXAMINERS

Chairman Bernstein called on Mr. Rolf Sletten, Executive Secretary and Treasurer, State Board of Medical Examiners, for testimony relating to August and November 2002 rules of the board. A copy of Mr. Sletten's prepared testimony is attached as Appendix I.

Mr. Sletten said the board has been careful in rules not to describe the duties of a physician assistant as practice of medicine. He said the phrase "practice of medicine" was inadvertently included in

NDAC Section 50-03-01-10.1(4) and this phrase should be changed to "duties of a physician assistant."

It was moved by Representative Koppelman, seconded by Representative DeKrey, and carried on a roll call vote that the committee agree with the State Board of Medical Examiners to amend NDAC Section 50-03-01-10.1 by substituting the phrase "duties of a physician assistant" for the phrase "practice of medicine" in subsection 4. Representatives Bernstein, DeKrey, Devlin, Ekstrom, Grande, Johnson, Koppelman, Nelson, Nottestad, Sandvig, Thoreson, and Wrangham and Senators Andrist, Freborg, Klein, O'Connell, and Stenehjem voted "aye." No negative votes were cast.

BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS

Chairman Bernstein called on Mr. Tom Mayer, Attorney General's office, to address questions raised earlier regarding the rules of the Board of Registration for Professional Engineers and Land Surveyors. Mr. Mayer said he was involved in review of the rules and has discussed the issues raised with Mr. Kirmis as legal counsel for the board. Mr. Mayer said the rules are not intended to supersede NDCC Section 43-51-03 and it would not be appropriate for the rules to attempt to adopt provisions of any successor statute, as referred to in the rules. He said the operation of the rules is within statutory authority, but some of the language in question might be misleading.

In response to a question from Representative Koppelman, Mr. Mayer said no change in meaning would occur if the rules are amended by removing the phrase "notwithstanding the provisions of subsection 2 of North Dakota Century Code section 43-51-03, or any successor statute" and by removing other references in that section and NDAC Sections 28-02.1-11-03 and 28-02.1-11-04 using the phrase "or its successor statute."

Representative Bernstein asked whether these changes would be acceptable to the board. Mr. Mayer said he has discussed these changes with Mr. Kirmis as legal counsel for the board and Mr. Kirmis would agree to these changes on behalf of the board.

It was moved by Representative Koppelman, seconded by Representative DeKrey, and carried on a roll call vote that the committee agree with the Board of Registration for Professional Engineers and Land Surveyors for amendment of NDAC Section 28-02.1-11-02 by deleting the words "notwithstanding the provisions of subsection 2 of North Dakota Century Code section 43-51-03, or any successor statute" and the words "or the successor statute thereto," and by amending NDAC Sections 28-02.1-11-03 and 28-01.1-11-04 by eliminating the phrase "or its successor statute"

in three instances. Representatives Bernstein, DeKrey, Ekstrom, Grande, Johnson, Koppelman, Nelson, Nottestad, Sandvig, Thoreson, and Wrangham and Senators Andrist, Fischer, Freborg, Klein, O'Connell, and Stenehjem voted "aye." No negative votes were cast.

SUPERINTENDENT OF PUBLIC INSTRUCTION

Chairman Bernstein called on Dr. Gary Gronberg, Department of Public Instruction, for testimony relating to November 2002 rules of the Superintendent of Public Instruction. Dr. Gronberg presented written testimony from Superintendent of Public Instruction Wayne Sanstead. A copy is attached as Appendix J.

Representative Nelson asked several questions regarding the compatibility of the rules and statutory provisions governing school construction approval.

Mr. Tom Decker, Department of Public Instruction, said the rules provisions define construction to include new construction and repair, improvement, renovation, or modernization. He said the rules require approval by the Superintendent of Public Instruction of school district construction or repair costs estimated at more than \$25,000. He said this is consistent with the statutory requirement. He said the rules requirements for approval of construction projects are virtually identical to the statutory requirements and require that to gain approval a school district must demonstrate need for the project, educational utility of the project, stable or increasing student enrollment for the anticipated usable life of the project or potential use by a future reorganized school district, and capacity to pay for the project. He said the threshold cost for approval by the Superintendent of Public Instruction is increased to \$75,000 for repairs to correct fire code violations. He said this is also consistent with the statutory requirement.

EDUCATION STANDARDS AND PRACTICES BOARD

Chairman Bernstein called on Ms. Janet Placek Welk, Executive Director, Education Standards and Practices Board, for testimony relating to August 2002 rules of the board. A copy of Ms. Welk's prepared testimony is attached as Appendix K.

Representative Koppelman said NDAC Section 67.1-02-03-01 has been amended to change approval authority for elementary teacher education programs of colleges from college approval to state approval. He asked whether this means the Education Standards and Practices Board dictates content of college programs. Ms. Welk said that is correct and the standards established by the Education Standards and Practices Board must be met by college programs for students to receive licenses and endorsements.

STATE SEED DEPARTMENT

Chairman Bernstein called on Mr. Ken Bertsch, State Seed Commissioner, for testimony relating to September 2002 rules of the State Seed Department. A copy of Mr. Bertsch's prepared testimony is attached as Appendix L.

SUPERINTENDENT OF PUBLIC INSTRUCTION

Chairman Bernstein called on Mr. Mike Forsberg, North Dakota Association of Elementary School Principals, for comments on the rules of the Superintendent of Public Instruction. Mr. Forsberg said his association opposes the rules adopted by the Superintendent of Public Instruction governing credentials for elementary school principals. He said his association would recommend that elementary school principals continue to obtain teaching licenses from the Education Standards and Practices Board and would continue to obtain credentialing as elementary school administrators from the Department of Public Instruction.

In response to a question from Representative Bernstein, Ms. Welk said the Education Standards and Practices Board lacks authority to administer credentialing for school principals. She said this change has been discussed, but school administrators did not support the change so the rules adopted by the board do not provide for that authority.

Chairman Bernstein called on Mr. Doug Johnson, Simle Middle School Principal, who said the Council of Educational Leaders has recommended that the Education Standards and Practices Board not do credentialing for administrators.

Dr. Gronberg said the rule adopted by the Superintendent of Public Instruction does not change anything regarding credentialing except to bring the timing of issuance of credentials in line with the timing of teaching licenses.

In response to a question from Representative Nottestad, Dr. Gronberg said credentialing for administrators will be issued by the Department of Public Instruction to the extent it does not duplicate issuance by the Education Standards and Practices Board. He said the Education Standards and Practices Board has authority to do credentialing for school administrators but does not want to assume that role.

Chairman Bernstein called on Mr. Kent Hjelmstad, President, North Dakota Council of School Administrators, for comments on the rules of the Superintendent of Public Instruction. Mr. Hjelmstad said the North Dakota Council of School Administrators also opposes the rules of the Superintendent of Public Instruction regarding credentials for school administrators.

In response to a question from Representative Nelson, Mr. Hjelmstad said he did not attend the public hearings on the rulemaking action of the Superintendent of Public Instruction.

Representative Koppelman said it appears further information is necessary on where the credentialing authority for school administrators should rest. He said if the committee could meet for a short time during the week of the Legislative Council meeting, perhaps progress could be made on this issue.

Chairman Bernstein said it appears possible the committee could meet for a brief time on Monday, November 18, if the meeting is concluded by noon.

It was moved by Representative Nelson, seconded by Representative DeKrey, and carried on a voice vote that the committee carry over consideration of the rules of the Superintendent of Public Instruction.

Representative Devlin said it is the apparent hope of the committee that the two agencies and concerned parties will have reached a consensus by the next committee meeting on credentialing for school administrators and what is necessary to accomplish any recommended changes.

DEPARTMENT OF HUMAN SERVICES

Chairman Bernstein called on Ms. Melissa Hauer, Department of Human Services legal counsel, for testimony relating to November 2002 rules of the department. A copy of Ms. Hauer's prepared testimony is attached as Appendix M.

Ms. Hauer said the committee has received copies of a letter from Ms. Brenda Rakoczy suggesting that the phrase "subject to appropriations" in NDAC Section 75-03-35-02 be removed. A copy of Ms. Rakoczy's letter is attached as Appendix N. She said the department would have no objection to removing this language. She said all expenditures by the Department of Human Services are subject to the availability of appropriated funds so she believes the language in question is in compliance with law. She said the suggested removal of the language would not create any legal problem for the department and removal of the language would make the rule virtually identical to the language of NDCC Section 25-17-03.

It was moved by Representative Ekstrom, seconded by Senator Fischer, and carried on a roll call vote that the committee agree with the Department of Human Services pursuant to NDCC Section 28-32-18 to amend NDAC Section 75-03-35-02 by removing the phrase "subject to appropriations." Representatives Bernstein, DeKrey, Devlin, Ekstrom, Grande, Johnson, Nelson, Koppelman, Nottestad, Sandvig, Thoreson, and Wrangham and Senators Andrist, Fischer, Freborg, and Klein voted "aye." No negative votes were cast.

Chairman Bernstein called on Ms. Krista Andrews, Department of Human Services legal counsel, for presentation of testimony relating to November 2002 rules of the department relating to vocational rehabilitation. A copy of Ms. Andrews' prepared testimony is attached as Appendix O.

Chairman Bernstein called on Ms. Andrews for presentation of testimony relating to a request of the Department of Human Services under NDCC Section 28-32-18.1 for repeal of NDAC Chapter 75-03-05 on the grounds that these rules are obsolete. A copy of Ms. Andrews' prepared testimony is attached as Appendix P.

It was moved by Representative Ekstrom, seconded by Representative Nelson, and carried on a roll call vote that the committee agree with the Department of Human Services under NDCC Section 28-32-18.1 for repeal of NDAC Chapter 75-03-05 on the grounds that these rules are obsolete. Representatives Bernstein, DeKrey, Devlin, Ekstrom, Johnson, Nelson, Nottestad, Sandvig, Thoreson, and Wrangham and Senators Andrist, Fischer, Freborg, Klein, O'Connell, and Stenehjem voted "aye." No negative votes were cast.

EDUCATION STANDARDS AND PRACTICES BOARD

Representative Koppelman said he remains concerned that the rules of the Education Standards and Practices Board allow the board to dictate college course content for education professionals. He said he would like to carry the rules over for consideration to obtain further information and opinions on this issue. He said the University System should be consulted or advised of this change.

It was moved by Representative Koppelman, seconded by Representative Nelson, and carried on a voice vote that the committee carry over consideration of the August 2002 rules of the Education Standards and Practices Board.

CROP PROTECTION PRODUCT HARMONIZATION AND REGISTRATION BOARD

Chairman Bernstein called on Mr. Jeff Olson, Crop Protection Product Harmonization and Registration Board, for testimony relating to August 2002 rules of the board. Mr. Olson said these rules were developed after 2001 legislation created the Crop Protection Product Harmonization and Registration Board and transferred some of the duties of the Pesticide Control Board. He said the rules formerly in place for the Pesticide Control Board have been transferred to the new Title 107 of the North Dakota Administrative Code designated for rules of the Crop Protection Product Harmonization and Registration Board.

COMMITTEE DISCUSSION

Committee counsel said at the previous meeting Representative Devlin expressed concern with permissive and mandatory statutory rulemaking directives and when the deadline for adoption for rules would apply. Committee counsel said he and Representative Devlin have discussed this issue and it

appears there is no easy way to establish when rule-making authority should be permissive and when it should be mandatory. Representative Devlin said it does not appear possible to create a statute that would fit all rulemaking situations to determine when an agency must make rules and when it would be discretionary. He said it appears the best way to address the issue is for legislators on standing committees to consider for each bill being addressed whether mandatory rulemaking requirements should be included.

It was moved by Senator Klein, seconded by Representative Johnson, and carried on a voice vote that the chairman and the staff of the

Legislative Council prepare a final report and present the report to the Legislative Council.

It was moved by Representative Johnson, seconded by Senator Fischer, and carried that the meeting be adjourned. The meeting was adjourned at 3:15 p.m.

John Walstad
Code Revisor

ATTACH:16