

# NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

## ADMINISTRATIVE RULES COMMITTEE

Wednesday, March 13, 2013  
Prairie Room, State Capitol  
Bismarck, North Dakota

Representative Kim Koppelman, Chairman, called the meeting to order at 2:00 p.m.

**Members present:** Representatives Kim Koppelman, Bill Amerman, Randy Boehning, Bill Devlin, Robert Frantsvog, David Monson, Mark S. Owens, Mike Schatz, Blair Thoreson; Senators John M. Andrist, Joan Heckaman, David Hogue, Jerry Klein, Margaret Sitte

**Member absent:** Representative Tracy Boe

**Others present:** See [Appendix A](#)

**It was moved by Senator Andrist, seconded by Senator Heckaman, and carried on a voice vote that the minutes of the December 12, 2012, meeting be approved as distributed.**

### AGRICULTURE COMMISSIONER

Chairman Koppelman called on Mr. Jim Gray, Director, Pesticide and Fertilizer Division, Department of Agriculture, for testimony ([Appendix B](#)) relating to April 2013 rules of the Agriculture Commissioner.

Representative Frantsvog asked why the rules changed the required temperature for transporting dairy products from 41 degrees to 45 degrees. Mr. Wayne Carlson, Department of Agriculture, said the transporting temperature was reduced from 45 degrees to 41 degrees a few years ago to match the temperature storage requirements of the State Department of Health. Mr. Carlson said it was later discovered that milk haulers in interstate shipment are required to maintain transportation temperature of 45 degrees. He said this made it necessary to return the temperature to a 45-degree requirement to avoid interfering with interstate transportation.

Representative Amerman asked why the rules are being eliminated regarding anhydrous ammonia nurse tank locks in two counties. Mr. Gray said the Attorney General's office suggested elimination of these requirements for two counties because pseudoephedrine restrictions have reduced methamphetamine production and the two-county pilot program that was instituted is no longer necessary.

### ATTORNEY GENERAL - STATE LOTTERY

Chairman Koppelman called on Mr. Randy Miller, Director, North Dakota Lottery, Attorney General's office, for testimony ([Appendix C](#)) relating to rules of the North Dakota Lottery.

### DEPARTMENT OF FINANCIAL INSTITUTIONS

Chairman Koppelman called on Mr. Bob Entringer, Commissioner, Department of Financial Institutions, for testimony ([Appendix D](#)) relating to rules of the department.

In response to a question from Representative Koppelman, Mr. Entringer said the amendment relating to debt collection is intended to clarify the rule on threatening legal action and to provide that a collector may not threaten action unless the action is lawful, the collector is entitled the action, and the collector intends to bring the action. He said the department sometimes receives complaints from citizens that a debt collector has told the individual the sheriff is on the way to arrest them for nonpayment of the debt. He said the objective of the rule change is to eliminate such threats and implications.

### STATE ELECTRICAL BOARD

Committee Counsel said no representative is available to appear on behalf of the State Electrical Board with regard to the rules adopted by the board. He said under the statutory provision that applies, the rules of the State Electrical Board are required to be automatically carried over for consideration at the next committee meeting because a representative of the board is unavailable to provide information. He said the rules will not become effective on April 1, 2013. He said the State Electrical Board will be contacted and scheduled for an appearance at the next committee meeting, which will be scheduled for June 2013.

### OIL AND GAS DIVISION

Chairman Koppelman called on Mr. Bruce Hicks, Assistant Director, Oil and Gas Division, Department of Mineral Resources, Industrial Commission, for presentation of testimony ([Appendix E](#)) relating to rules for geologic storage of carbon dioxide. Mr. Hicks introduced Mr. Kevin Connors, who reviewed the process through which the Oil and Gas Division has gone to seek state primacy through the United States Environmental Protection Agency to supervise the carbon dioxide storage program in North Dakota.

## STATE BOARD OF PHARMACY

Chairman Koppelman called on Dr. Mark Hardy, Assistant Executive Director, State Board of Pharmacy, for presentation of testimony ([Appendix F](#)) relating to rules of the State Board of Pharmacy to provide controlled substances status for certain spice cannabinoids and bath salts. Dr. Hardy said the rules were adopted as emergency rules to protect the public from certain dangerous chemical combinations not previously scheduled as controlled substances. He said House Bill No. 1070 (2013) was also introduced to add substances to the controlled substances schedule, including prohibition of isomers or other manipulation of chemical combinations to avoid controlled substances scheduling for dangerous drugs offered for public consumption. He said these rules were adopted as emergency rules to protect the public pending enactment of House Bill No. 1070.

## COMMITTEE DISCUSSION

Chairman Koppelman called on Committee Counsel to address a question raised at the time the committee discussed carryover of rules of the State Electrical Board. Committee Counsel said it is provided by North Dakota Century Code (NDCC) Section 28-32-18 that if no representative of an agency appears when rules are scheduled for committee consideration the rules are automatically carried over for consideration. He said if no representative of the agency appears at the meeting to which those rules are held over for consideration, the rules are void if they were adopted as emergency rules, and for rules not adopted as emergency rules, the Administrative Rules Committee may void the rules, allow the rules to become effective, or hold over consideration of the rules to the next subsequent committee meeting.

## BOARD OF PODIATRIC MEDICINE

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

Representative Monson asked if the Legislative Assembly sets the fees for licensing by the board. Ms. Wiedmeier said the statutory provision enacted by the Legislative Assembly allows the board to set fees up to a statutory maximum amount.

## EDUCATION STANDARDS AND PRACTICES BOARD

Chairman Koppelman called on Ms. Janet Welk, Executive Director, Education Standards and Practices Board, for testimony ([Appendix H](#)) relating to rules adopted by the board. Representative Monson asked if there is any age requirement for substitute teachers and said it looks under the rules as if a substitute teacher could be 19 years old. Ms. Welk said the lack of age restriction is why the

rules require the county superintendent or principal to request the services of a substitute.

Representative Owens said there is a badly constructed sentence in North Dakota Administrative Code Section 67.1-02-04-01. He said the sentence states that an applicant for an alternative access license may "have no less than two years of documented by the other state education license teaching in the content area to be assigned . . .". He said after reading the sentence repeatedly he is unable to get the sense of it. Ms. Welk attempted to explain the intended meaning of the provision. Committee members still expressed confusion. Chairman Koppelman asked Ms. Welk to consider potential language to clarify the phrasing and discuss a suggested repair with the committee later in the meeting.

## PUBLIC SERVICE COMMISSION

Chairman Koppelman called on Ms. Illona Jeffcoat Sacco, General Counsel, Public Service Commission, for presentation of testimony ([Appendix I](#)) relating to rule provisions adopted by the Public Service Commission.

## NORTH DAKOTA BOARD OF CLINICAL LABORATORY PRACTICE

Chairman Koppelman called on Mr. Bruce Pritschet, North Dakota Board of Clinical Laboratory Practice, for presentation of testimony ([Appendix J](#)) relating to rules adopted by the board.

Representative Koppelman said the rule amended by the board provides a list of exemptions from NDCC Chapter 43-48. He said it seems unusual that a rule provision can exempt activity from a statutory provision. He asked Mr. Pritschet to look into the issue of how an exemption can be provided by rule from a statutory requirement.

## BOARD OF INTEGRATIVE HEALTH CARE

Chairman Koppelman called on Ms. Lezlie Link, Board of Integrative Health Care, for testimony ([Appendix K](#)) relating to rules adopted by the Board of Integrative Health Care.

Representative Koppelman said the Board of Integrative Health Care is a new licensing agency and he believes committee members would like to thoroughly review the effect of the rules before they become effective. He said during the legislative session, committee members have not had as much time as would be desirable and asked if Ms. Link would have any objection to the rules being carried over for consideration to the next committee meeting. Ms. Link said she has no personal objection to holding the rules over for consideration.

**It was moved by Senator Andrist and seconded by Representative Owens that the rules of the Board of Integrative Health Care be carried over for consideration to the next committee meeting.**

Representative Devlin said he would resist the motion to carry over the rules of the Board of Integrative Health Care. He said he believes the board did what they were expected to do and submitted the rules to begin initial licensing. He said no problems have been pointed out with the contents of the rules. Senator Sitte said she agrees with Representative Devlin and would resist the motion to carry over the rules.

**The question was called and the motion failed on a roll call vote.** Voting in favor were Representatives Koppelman and Owens and Senator Andrist. Voting in opposition to the motion were Representatives Amerman, Devlin, Frantsvog, and Monson and Senators Heckaman and Sitte.

### **EDUCATION STANDARDS AND PRACTICES BOARD**

Chairman Koppelman asked Ms. Welk if she has suggested language revisions to clarify the meaning of the phrase discussed earlier. She suggested a revision of the language. Committee members

suggested other possible changes to the language. After discussion of options for revision, no consensus revision was determined. **It was moved by Senator Sitte, seconded by Representative Owens, and carried on a roll call vote that the Administrative Rules Committee carry over consideration of the rules changes proposed by the Education Standards and Practices Board until the next committee meeting.** Voting in favor of the motion were Representatives Koppelman, Amerman, Devlin, Frantsvog, Monson, and Owens and Senators Andrist, Heckaman, and Sitte. No negative votes were cast.

No further business appearing, Chairman Koppelman adjourned the meeting at 4:57 p.m.

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John Walstad  
Code Revisor

ATTACH:11