

# NORTH DAKOTA LEGISLATIVE MANAGEMENT

## Minutes of the

### ADMINISTRATIVE RULES COMMITTEE

Wednesday, December 12, 2012  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Representative Kim Koppelman, Chairman, called the meeting to order at 10:00 a.m.

**Members present:** Representatives Kim Koppelman, Randy Boehning, Bill Devlin, Robert Frantsvog, Mike Schatz; Senators John M. Andrist, Joan Heckaman, Jerry Klein

**Members absent:** Representatives Bill Amerman, Tracy Boe, David Monson, Blair Thoreson; Senator Margaret Sitte

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

**It was moved by Representative Devlin, seconded by Representative Boehning, and carried on a voice vote that the minutes of the September 13, 2012, meeting be approved as distributed.**

#### STATE PROCUREMENT OFFICE

Chairman Koppelman called on Ms. Sherry Neas, Director, Central Services Division, Office of Management and Budget (OMB), for testimony ([Appendix B](#)) relating to rules of the State Procurement Office carried over for consideration from the September meeting. With her testimony, she included a suggested rewording of North Dakota Administrative Code Section 4-12-09-01(3)(o) to make clear that for purchase of heating fuels, ready-mix cement, sand, gravel, road oil, and bituminous mix competition may be waived or limited without a written determination if competition is limited to bidders or offerers within a specific geographic area. Included with her testimony were three options for consideration of language to clarify Section 4-12-09-01(3)(p), relating to competitive processes to select an insurance broker. She reviewed the optional language proposed as Version 1, Version 2, and Version 3.

Representative Frantsvog asked if a "reasonable" geographic area changes depending on the product being acquired. Ms. Neas said the circumstances in the geographic region are to be considered by the procurement officer in determining what is a reasonable area.

Senator Heckaman asked how procurement officers are determined and who reviews bids on these projects. Ms. Neas said OMB has established a procurement training program. She said under the program, there are three levels of training based on the amount of a contract being bid. She said state

laws and rules are very clear on bidding and awards of contracts.

Representative Schatz said the proposed language change uses the phrase "ready-mix cement" and suggested that concrete would be a more appropriate term than cement. Ms. Neas said the rule is intended to cover all ready-mix products. She said the term is intended to exclude dry mix for concrete.

Ms. Neas introduced Mr. Tag Anderson, Director, Risk Management Division, Office of Management and Budget, for discussion of the rules on insurance procurement. Mr. Anderson said insurance underwriters and carriers do not deal directly with insureds. He said insurance brokers must be involved in insurance coverage procurement. He said selection of insurance brokers has not been through the competitive process. He said the competitive process to select insurance also should apply to the selection of an insurance broker.

Senator Andrist asked how an insurance broker is monitored. Mr. Anderson said an insurance broker is monitored as you would for obtaining personal insurance coverage. He said the procurement officer looks at the number of bids and information transmitted by brokers. He said the broker selected would examine insurance coverage options from underwriters and carriers in the industry and make a recommendation on the best insurance coverage at the best price. He said the competitive process would be structured in this manner because that is how the insurance industry works.

Representative Frantsvog said under this approach, the broker would make a recommendation and not a purchase of insurance. Mr. Anderson said that is correct and the broker recommendation would not be binding on the procurement officer.

Representative Koppelman asked if the insurance broker selected could be changed. Mr. Anderson said normally the broker contract would be an annual contract and probably could not be changed during the term of the contract.

Ms. Neas said Version 1 of the options for language for the insurance procurement rule is intended to convey that there is a two-fold process. She said the first part of the process is the selection of a broker, and the second part of the process is the broker helps to evaluate options available for insurance coverage.

Ms. Neas said Versions 2 and 3 are worded differently to provide options for the committee's consideration. Senator Klein asked if Version 1 would be the preference of the State Procurement Office. Ms. Neas said the State Procurement Office and Risk Management Division were comfortable with the language of Version 1. She said Version 1 clearly states how limited competitive processes would apply for selection of an insurance broker.

**It was moved by Senator Andrist, seconded by Representative Devlin, and carried on a roll call vote that the committee agree with OMB on the proposed revision to Section 4-12-09-01(3)(o) and Version 1 of the proposed revision of Section 4-12-09-01(3)(p).** Voting in favor of the motion were Representatives Koppelman, Boehning, Devlin, Frantsvog, and Schatz and Senators Andrist, Heckaman, and Klein. No negative votes were cast.

### **RULEMAKING NOTICE BILL DRAFT**

Chairman Koppelman called on Committee Counsel for presentation of a bill draft [\[13.0221.02000\]](#) relating to notice of administrative rulemaking implementing recent legislation. Committee Counsel said at the previous committee meeting there was committee discussion that agencies should be required to notify members of the Administrative Rules Committee when administrative rules are being considered to implement legislation from the most recent legislative session. He said he discussed this issue with the Chairman since the last meeting, and the Chairman suggested that rather than requiring the agency to be responsible for notifying every member of the committee, it would be simpler to require the agency full notice of rulemaking to include a statement identifying any such legislation being implemented by rules. He said when that notice is filed with the Legislative Council office, it is provided to each member of the Administrative Rules Committee and the Legislative Council office could flag those notices for the attention of committee members that recent legislation is being implemented. He said the bill draft provides additional language in the statutory provision making that requirement.

Committee Counsel said the time has passed for the Administrative Rules Committee to introduce legislation or recommend legislation for the 2013 Legislative Assembly. He said the options for introduction of a bill at this point would be for an individual or individuals on the committee to sponsor the legislation or the committee could consider amending a bill draft already introduced. He said House Bill No. 1024 has been introduced at the recommendation of the Administrative Rules Committee and relates to the length of a newspaper notice on administrative rulemaking. He said the bill draft under consideration relates to administrative rulemaking notice and it would be appropriate to offer an amendment to House Bill No. 1024 to

incorporate the notice regarding implementation of recent legislation. He said he believes it would be appropriate for the committee to consider a motion for preparation of an amendment to House Bill No. 1024 to incorporate the proposed changes of bill draft 13.0221.02000 and the committee Chairman could be directed to introduce the proposed amendment to the committee considering House Bill No. 1024.

**It was moved by Representative Boehning, seconded by Representative Frantsvog, and carried on a roll call vote that the committee request preparation of bill draft 13.0221.02000 as a proposed amendment to House Bill No. 1024 and that the Chairman be requested to offer the amendment to the committee considering House Bill No. 1024.** Voting in favor of the motion were Representatives Koppelman, Boehning, Devlin, Frantsvog, and Schatz and Senators Andrist, Heckaman, and Klein. No negative votes were cast.

### **BOARD AND COMMISSION MEMBER COMPENSATION**

Chairman Koppelman called on Committee Counsel for presentation of a bill draft [\[13.0386.01000\]](#) relating to a board and commission member compensation limit. Committee Counsel said at the previous meeting, the committee discussed the broad range of compensation for per diem for members of boards and commissions. He said it was suggested that a bill draft be prepared to limit the allowable compensation for members of boards and commissions. He said no specific suggestion on a limit was provided. He said he discussed the issue with Chairman Koppelman since the previous meeting, and the Chairman suggested it appears appropriate to restrict board and commission member compensation to not more than members of a Legislative Management committee receive for attending an interim committee meeting. He said the bill draft was prepared to impose that limit effective January 1, 2014.

Committee Counsel said this bill draft does not relate to administrative rulemaking notices and would not be an appropriate amendment for the bill that has been introduced as recommended by the committee (House Bill No. 1024). He said the committee also requested information on whether there is a blanket policy in state law that governmental employees do not receive salary plus per diem for board and commission membership. He said there does not appear to be a blanket policy in statute although there are several boards and commissions that have specific statutory restrictions to prohibit per diem compensation for a member who also receives compensation as a regular employee of the state or a political subdivision.

Senator Andrist said he believes if serving as a member of a board or commission is a part of your

job, you should receive salary but no per diem for that service.

### APPRAISER LICENSING

Chairman Koppelman called on Mr. Joe Ibach, President, Real Estate Appraiser Qualifications and Ethics Board, for comments ([Appendix C](#)) on options for consideration which would encourage an increase in the number of licensed appraisers in the state.

Mr. Ibach said reciprocity processes have been streamlined and applicants can receive approval almost immediately if they are in good standing in the state where they have been licensed and meet training requirements. He said for temporary practice licenses approval is almost immediate. He said an example would be an appraiser wanting to come from Minnesota for an appraisal project for one day or two days in North Dakota, the individual could receive a temporary practice permit by filing an application.

Mr. Ibach said the Real Estate Appraiser Qualifications and Ethics Board held a seminar on December 11, 2012, attended by bankers, realtors, and appraisers. He said those in attendance had discussions of several issues, including how to encourage faster completion of appraisals. He said the discussions were beneficial and well received by participants.

Senator Andrist said banking rules require an appraisal to be completed for completion of loan approval. He said projects are being held up for a substantial time waiting for appraisal completion. He said he would encourage the board to reconsider all of the requirements for licensing to streamline training and entry of new licensed appraisers.

Mr. Ibach said the board is required to license under federal guidelines if there is any degree of federal participation in a loan. He said failure to meet federal guidelines could lead to the federal government decertifying the entire state for federal loan programs.

Senator Andrist asked if a lower standard could be developed for loans not involving federal guarantees. Mr. Ibach said any loan with federal participation is subject to federal requirements and that covers a huge part of the loan market. He said the board could look into a lower standard for some loans.

Representative Koppelman said it appears federal requirements are pervasive for appraisers and asked if all states have a similar problem. Mr. Ibach said all states are experiencing difficulty with adequate numbers of qualified appraisers. He said the appraisal industry is an aging profession, and the average age of licensed appraisers is 61 nationwide. He said efforts to improve are being made nationally, but improving the training and licensing requirements is a slow process.

Representative Boehning asked if there is any benefit from states urging the federal government to

improve guidelines. Mr. Ibach said it is unlikely that would help. He said mortgages cannot be sold on the secondary market without the participation of a qualified appraiser on the loan origination.

Representative Boehning asked if college programs could be developed that would provide improved training. Mr. Ibach said there may be a half-dozen colleges in the country where you can obtain a college degree in property appraisal. He said he hopes we see continued growth in that field.

Mr. Claus Lembke, Government Affairs Director, North Dakota Association of Realtors, said since the last session the association has had more cooperation from appraisers. He said he would like to see North Dakota colleges develop programs for training appraisers. He said several realtors who attended the appraisers' workshop on December 11 reported a great value to the workshop and the discussions held.

### AGRICULTURE COMMISSIONER

Chairman Koppelman called on Mr. Blake Schaan, Enforcement Supervisor, Department of Agriculture, for testimony ([Appendix D](#)) relating to rules adopted by the Agriculture Commissioner regarding pesticide regulation.

Senator Klein asked if aerial applicators were made aware of these rules changes. Mr. Schaan said aerial applicators were informed and no complaints were received. He said the Aerial Applicators Association has passed information regarding the rules along to its members. In response to another question from Senator Klein, Mr. Schaan said several meetings regarding these rules were held at locations around the state. He said attendance was not high, but since 2009 federal rewriting of pesticide regulations, people were aware of the pending changes.

Representative Schatz asked what happens if a complaint is filed against a pesticide applicator. Mr. Schaan said a complainant will contact the Department of Agriculture. He said the department takes information on the complaint and assigns an inspector to visit the site and gather evidence. He said a complaint file is put together and evidence is reviewed. He said if it appears from a preponderance of the evidence that a violation has occurred, the department will impose penalties based on the penalty matrix.

### STATE LOTTERY

Chairman Koppelman called on Ms. Julie Thompson, Security Officer, North Dakota Lottery, for testimony regarding rules amendments. Ms. Thompson presented testimony ([Appendix E](#)) and explained that the rules changes result from Multistate Lottery Association changes to the Wild Card 2 game to become effective January 13, 2013.

Senator Klein said he believes that participation in the Multistate Lottery Association requires North

Dakota to keep up with changes made by the association. Ms. Thompson said that is correct and that is why the changes are being made.

## DEPARTMENT OF FINANCIAL INSTITUTIONS

Chairman Koppelman called on Mr. Robert J. Entringer, Commissioner, Department of Financial Institutions, for testimony ([Appendix F](#)) on rules adopted by the department. Representative Koppelman asked if Mr. Entringer has heard complaints about a shortage of appraisers in the state. Mr. Entringer said a common complaint heard by representatives of banks and credit unions is the shortage of appraisers in the state.

Senator Andrist asked if the Department of Financial Institutions has any suggestions on how to increase the number of licensed appraisers. Mr. Entringer said he wishes he had a solution, but he has no suggestions to improve the situation.

Mr. Greg Tschider, Credit Union Association of the Dakotas, said the rules changes made by the Department of Financial Institutions are necessary changes, mostly required because of pervasive federal regulations. He said his association requests committee approval of these rules.

## GAME AND FISH DEPARTMENT

Chairman Koppelman called on Mr. Greg Link, Communications Division Chief, Game and Fish Department, for testimony ([Appendix G](#)) on falconry rules adopted by the department.

## STATE DEPARTMENT OF HEALTH

Chairman Koppelman called on Mr. Tom Bachman, Director, Air Quality Division, State Department of Health, for testimony ([Appendix H](#)) on rules adopted by the department. Mr. Bachman said the rules are changed to comply with rules adopted by the Environmental Protection Agency (EPA) under the Clean Air Act.

In response to a question from Representative Boehning, Mr. Bachman said the department workload has greatly increased, with levels of up to 2,000 well permits per year.

Representative Koppelman asked what Mr. Bachman sees as EPA action that may be of concern in North Dakota. Mr. Bachman believes greenhouse issues and regulations will become a big issue. He said ambient air quality standards will be coming from the EPA and will increase the workload of the department and the control on the industry.

Representative Koppelman asked what legislators could do to alleviate possible federal regulation changes. Mr. Bachman said all he could suggest is to contact members of the North Dakota Congressional Delegation with concerns.

Senator Andrist asked if there is anything in these rules that could concern issues of truck traffic

and dust in western North Dakota. Mr. Bachman said these rules do not affect trucking and dust, but ambient air standards may become a concern in that regard when they are released.

## DEPARTMENT OF HUMAN SERVICES

Chairman Koppelman called on Ms. Julie Leer, Legal Counsel, Department of Human Services, who presented department testimony relating to early childhood services rules ([Appendix I](#)), additional early childhood services rules ([Appendix J](#)), and rules governing reimbursement for providers of services to individuals with developmental disabilities ([Appendix K](#)).

Senator Klein asked if the department received a high degree of input from providers of early childhood services. Ms. Leer said there was a substantial amount of input. She said Ms. Jennifer Barry, Department of Human Services, has maintained ongoing contact with providers and many of the rules changes result from suggestions by providers and interaction between providers and Ms. Barry and the department.

Chairman Koppelman called on Ms. Kim Mertz, Director, Division of Family Health, State Department of Health, for testimony ([Appendix L](#)) relating to safe sleep practices for infants.

Chairman Koppelman called on Ms. Tammy Czapiewski who said she suggests more frequent visual observation of infants during nap time. She said she proposes adoption of Addison's Law which would require these visual screenings. A copy of information provided by Ms. Czapiewski is attached as [Appendix M](#).

Committee Counsel said a letter ([Appendix N](#)) was received from Ms. Earleen Friez expressing support for the rules changes for early childhood services providers.

Senator Heckaman asked Ms. Leer if the Department of Human Services considered the suggested 15-minute rule. Ms. Leer said department staff visited with Ms. Czapiewski about the issue. Ms. Leer said the department chose to go with an approach to reasonable visual observation because the last time the department tried to use a 20-minute visual check requirement there were many objections. She said the department will resume discussion of that issue.

## STATE PROCUREMENT OFFICE RULES

Chairman Koppelman said a note was left by Ms. Neas during the meeting that it would be appropriate to change the phrase "ready-mix cement" to "ready-mix concrete" in the procurement rule approved earlier by the committee. **It was moved by Representative Schatz, seconded by Representative Frantsvog, and carried on a roll call vote that the phrase "ready-mix cement" be changed to "ready-mix concrete" in Section 4-12-09-01(3)(o).** Voting in favor of the motion were

Representatives Koppelman, Devlin, Frantsvog, and Schatz and Senators Andrist, Heckaman, and Klein. No negative votes were cast.

**It was moved by Senator Klein, seconded by Representative Frantsvog, and carried on a voice vote that the meeting be adjourned.** No further business appearing, Chairman Koppelman adjourned the meeting at 2:40 p.m.

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John Walstad  
Code Revisor

ATTACH:14