



ADMINISTRATIVE RULES COMMITTEE

Monday, December 6, 2021
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Nicole Poolman, Chairman, called the meeting to order at 9:00 a.m.

Members present: Senators Nicole Poolman, Joan Heckaman*, Jerry Klein, Randy D. Lemm*; Representatives Bill Devlin, Karen Karls, Kim Koppelman*, Andrew Marschall*, Brandy Pyle*, Bernie Satrom*, Robin Weisz

**Attended remotely*

Members absent: Senator Shawn Vedaa; Representatives Tom Kading and Nathan Toman

It was moved by Representative Devlin, seconded by Senator Klein, and carried on a voice vote that the minutes of the September 9, 2021, meeting be approved as distributed.

AGRICULTURE COMMISSIONER AND PESTICIDE CONTROL BOARD

Mr. Dutch Bialke, General Counsel, Department of Agriculture, presented testimony ([Appendix A](#)) regarding the January 2022 rules of the Agriculture Commissioner and the Pesticide Control Board.

Mr. Bialke reported the state administrative rules regulating industrial hemp are being repealed because the federal rules preempt the state administrative rules. He indicated the federal rules will allow industrial hemp farmers to expand operations.

Mr. Bialke reported the administrative rules regarding the out-of-state quarantining of moss balls infested with zebra mussels do not have the effect of regulating outside the state of North Dakota, but restrict the movement of infested moss balls into or through North Dakota.

Mr. Bialke reported the administrative rules regarding the grain warehouse inspection program are modeled on South Dakota and the livestock bonding rules.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Mr. David Glatt, Director, Department of Environmental Quality, presented testimony ([Appendix B](#)) regarding the January 2022 rules of the department relating to North Dakota Administrative Code (NDAC) Article 33.1-14, North Dakota Boiler Rules.

Mr. Shawn Heinle, Manager of Operator Training and Certification Program, Division of Municipal Facilities, Department of Environmental Quality, presented testimony ([Appendix C](#)) regarding the January 2022 rules of the department relating to NDAC Article 33.1-19, Certification of Water and Wastewater Systems Operators.

Mr. Heinle reported the fee increase is projected to result in an annual increase from \$12,530 to approximately \$62,650. He reported the funds will be deposited in the operator certification fund.

Ms. Cindy Auen, Manager, Division of Chemistry, Department of Environmental Quality, presented testimony ([Appendix D](#)) regarding the January 2022 rules of the department relating to NDAC Article 33.1-23, Division of Chemistry Laboratories.

HIGHWAY PATROL

Sergeant Wade Kadrmas, Safety and Education Officer, Highway Patrol, presented testimony ([Appendix E](#)) regarding the January 2022 rules of the Highway Patrol.

Sergeant Kadrmas reported the change in language regarding inclement weather is intended to be less subjective than the current language.

STATE BOARD OF PHARMACY

Mr. Mark J. Hardy, Executive Director, State Board of Pharmacy, presented testimony ([Appendix F](#)) regarding the January 2022 rules of the board.

SUPERINTENDENT OF PUBLIC INSTRUCTION

Mr. Jim Upgren, Assistant Director, Office of School Approval and Opportunity, Department of Public Instruction, presented testimony ([Appendix G](#)) regarding the January 2022 rules of the Superintendent of Public Instruction.

Mr. Upgren reported the administrative rules regarding virtual learning are intended to address the situation in which a school is not available for student use, not to address when an individual student is unable to attend school due to illness.

Mr. Josef Kolosky, Director, Office of School Approval and Opportunity, Department of Public Instruction, noted if an absent child attends school remotely due to an illness, that child is counted as absent, due in part to liability issues.

Committee discussion indicated it may be possible to address legislatively the issue of school liability for absent children attending school remotely. Committee members raised the concern of the virtual learning application process being based on the department's receipt of approved school board minutes, when the action taken by the school board is effective at the time of the school board action, not at the time the minutes are approved.

PUBLIC SERVICE COMMISSION

Mr. Brian Johnson, Special Assistant Attorney General, Public Service Commission, presented testimony regarding the January 2022 rules of the Public Service Commission relating to NDAC Section 69-09-02-06, Standards of Service - Electric; Chapter 69-09-11, Common Pipeline Carriers; and Article 69-06, Energy Conversion Facility Siting Criteria ([Appendix H](#)).

Pursuant to North Dakota Century Code (NDCC) Section 28-32-07, Mr. Johnson requested an extension to April 1, 2022, to adopt rules to implement Senate Bill No. 2317 (2021) and House Bill No. 1061 (2021), relating to the Public Service Commission's administration of the United States Department of the Interior's Office of Surface Mining's regulatory program.

It was moved by Representative Karls, seconded by Representative Devlin, and carried on a roll call vote that the Public Service Commission be granted an extension to April 1, 2022, to adopt rules to implement Senate Bill No. 2317 and House Bill No. 1061, relating to administration of the United States Department of the Interior's Office of Surface Mining's regulatory program. Senators Poolman, Heckaman, Klein, and Lemm and Representatives Devlin, Karls, Koppelman, Marschall, Pyle, Satrom, and Weisz voted "aye." No negative votes were cast.

SECRETARY OF STATE

Mr. Brian D. Newby, Director, State Elections, Secretary of State, presented testimony ([Appendix I](#)) regarding the January 2022 rules of the Secretary of State.

DEPARTMENT OF HUMAN SERVICES

Mr. Jonathan Alm, Director, Legal Advisory Unit, Department of Human Services, presented testimony regarding the January 2022 rules of the department relating to NDAC Chapter 75-02-02, Medical Services ([Appendix J](#)); Chapter 75-02-02.1, Eligibility for Medicaid ([Appendix K](#)); Chapter 75-02-05, Provider Integrity ([Appendix L](#)); Chapter 75-02-06, Ratesetting for Nursing Home Care ([Appendix M](#)); Chapters 75-03-07, 75-03-07.1, 75-03-08, 75-03-09, 75-03-10, 75-03-11, and 75-03-11.1, regarding Early Childhood Services ([Appendix N](#)); Chapter 75-03-14.1, Shelter Care Program Certification ([Appendix O](#)); Chapters 75-03-23 and 75-03-24, regarding Service Payments for Elderly and Disabled ([Appendix P](#)); Chapters 75-03-38 and 75-03-39, Autism Spectrum Disorder Voucher Program and Autism Services Waiver ([Appendix Q](#)); and Chapter 75-04-01, Licensing of Programs and Services for Individuals with Intellectual Disabilities - Developmental Disabilities ([Appendix R](#)).

Mr. Alm reported the department will base its future consideration of what qualifies as a parental responsibility under NDAC Chapter 75-03-39 on the administrative law judge decision that will be issued under current litigation.

Pursuant to NDCC Section 28-32-07, Mr. Alm, requested ([Appendix S](#)) an extension to October 1, 2022, to adopt rules to implement Section 4 of House Bill No. 1090 (2021) relating to nursing home rates.

It was moved by Representative Devlin, seconded by Senator Heckaman, and carried on a roll call vote that the Department of Human Services be granted an extension to October 1, 2022, to adopt rules to implement Section 4 of House Bill No. 1090 relating to nursing home rates. Senators Poolman, Heckaman, and Lemm and Representatives Devlin, Karls, Koppelman, Marschall, Pyle, and Satrom voted "aye." No negative votes were cast.

WORKFORCE SAFETY AND INSURANCE

Mr. Tim Wahlin, Chief of Injury Services, Workforce Safety and Insurance, presented testimony ([Appendix T](#)) regarding the January 2022 rules of Workforce Safety and Insurance.

STATE DEPARTMENT OF HEALTH

Pursuant to NDCC Section 28-32-07, Mr. Jason Wahl, State Department of Health, requested ([Appendix U](#)) an extension to July 1, 2020, to adopt rules to implement House Bill No. 1213 (2021), relating to the definitions of tetrahydrocannabinol (THC) and total THC.

It was moved by Representative Koppelman, seconded by Representative Satrom, and carried on a roll call vote that the State Department of Health be granted an extension to July 1, 2022, to adopt rules to implement House Bill No. 1213, relating to the definitions of THC and total THC. Senators Poolman, Heckaman, and Lemm and Representatives Devlin, Karls, Koppelman, Marschall, Pyle, and Satrom voted "aye." No negative votes were cast.

No further business appearing, Chairman Poolman adjourned the meeting at 11:50 a.m.

Jennifer S. N. Clark
Senior Counsel and Assistant Code Revisor

ATTACH:21