

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

INSURANCE AND HEALTH CARE COMMITTEE

Thursday, October 22, 1998
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Karen K. Krebsbach, Chairman, called the meeting to order at 1:30 p.m.

Members present: Senators Karen K. Krebsbach, Judy L. DeMers, Jerry Klein; Representatives Thomas T. Brusegaard, Ron Carlisle, Al Carlson, Kenneth Kroepflin, Clara Sue Price, Wanda Rose, John M. Warner (Senator DeMers and Representatives Kroepflin and Brusegaard attended the meeting via teleconference.)

Members absent: Representatives Michael Brandenburg, Mike Callahan, David Drovdal, Pam Gulle-son, Alice Olson

Others present: Murray G. Sagsveen, Mike J. Mullen; Department of Health, Bismarck

Lisa Clute, First District Health Unit, Minot

Terry Traynor, North Dakota Association of Counties, Bismarck

Dan Ulmer, Blue Cross Blue Shield of North Dakota, Bismarck

Nancy Kopp, North Dakota Optometric Association, Bismarck

Sharon Moos, North Dakota Nurses Association, Bismarck

David Peske, North Dakota Medical Association, Bismarck

Keith Johnson, Custer Public Health District, Mandan

Committee counsel said there is an error in the Insurance and Health Care Committee minutes for the September 14, 1998, meeting. She said the roll call vote on the motion to approve and recommend, as amended, to the Legislative Council, the bill draft relating to the hail suppression pilot program for the entire state, incorrectly listed Representative Rose in support of the motion and Senator Krebsbach in opposition to the motion.

Senator Krebsbach said she voted in favor of the motion, and Representative Rose said she voted in opposition of the motion.

It was moved by Representative Warner, seconded by Senator Klein, and carried on a voice vote that the minutes of the September 14, 1998, meeting be approved as corrected.

PUBLIC HEALTH STRATEGIC PLANNING STUDY

Chairman Krebsbach called on committee counsel to present the first draft of a bill draft relating to consolidation and unification of the public health law; the first draft of a bill draft identical to the bill draft relating to consolidation and unification of the public health law, except the bill draft provides a local health officer may be a nonphysician medical provider; and the first draft of a bill draft identical to the bill draft relating to consolidation and unification of the public health law, except the bill draft provides if a local health officer is not a physician, a three-member physician advisory committee must be formed.

Committee counsel said the bill draft relating to consolidation and unification of the public health law is a response to a committee directive to adopt as a committee bill draft Representative Rose's bill draft from the last meeting. She said a substantive change in the bill draft is the provision for statewide participation in a public health unit requirement not to go in effect until January 1, 2001.

Committee counsel said some possible drawbacks of the existing public health law and of the public health law bill drafts the committee is considering include: there is no enforcement mechanism to require a county in a public health district to levy the amount of tax proposed by the district board of health; six single county health districts currently exist, but existing law and the bill drafts do not appear to authorize single county health districts; and the governing body of a city-county health district is not defined.

Chairman Krebsbach called on Mr. Murray G. Sagsveen, State Health Officer, State Department of Health, for comments regarding the public health bill drafts. Mr. Sagsveen said the provision under the bill drafts that all land in the state must be in the public health unit is a substantive change from existing law, and the department strongly supports this statewide participation requirement. He said another substantive change under the bill drafts is that the Department of Health is charged with advising local boards of health instead of supervising the local boards of health. The department, he said, is not structured to supervise local boards of health. He said the bill drafts eliminate the detailed specifications for the

membership of local boards of health. He said some local health administrators strongly support requirements specifying that a board of health be composed of specific categories of individuals; however, other administrators support the general language. He provided written testimony, a copy of which is on file in the Legislative Council office.

Chairman Krebsbach called on Mr. Mike J. Mullen, Policy Analyst, State Department of Health, for comments regarding proposed changes to the public health bill drafts. Mr. Mullen provided the committee with a copy of the bill draft relating to consolidation and unification of the public health law, with proposed changes, a copy of which is on file in the Legislative Council office. The proposed changes include removing Section 1 of the bill draft, which amends North Dakota Century Code Section 23-01-04.2; replacing several "shall" provisions with "may"; exempting employees of governing bodies from the board of health member term provisions; removing the requirement that counties in a public health district be contiguous; changing the effective date of health district dissolution or withdrawal; changing the amount of time allowed for abatement and removal of a nuisance, source of filth, and cause of sickness; and removing references to township public health departments.

In response to a question by Representative Warner, Mr. Sagsveen said the proposed change on page 2, line 20, of the bill draft is not intended to conflict with the statewide participation in a public health unit requirement.

In response to a question from Senator DeMers, Mr. Mullen said the primary reason for changing "shall" to "may" is that the public health law is very old and the older laws used "shall" indiscriminately. He said the term "shall" is most appropriate when applied to administrative or mandatory provisions; whereas, the term "may" is most appropriate when authorizing an entity. Even with the use of the term "shall" on page 7, line 17, in reference to abating or removing any nuisance, source of filth, or cause of sickness when necessary to protect the public health and safety, he said, boards of health maintain significant discretion. He said a board of health has discretion in determining what constitutes abating or removing, and has discretion in constituting what actually qualifies as a nuisance, source of filth, or cause of sickness. He said one problem with the use of "shall" is that it may make local governments vulnerable to liability for failing to take a particular action.

Senator DeMers said she is concerned that under the proposed changes, local officials are being provided more protection than the public. Mr. Mullen said this was not the intent of the proposed changes.

In response to a question from Representative Brusegaard, Mr. Sagsveen said the reason for extending the amount of time it takes for withdrawal from or dissolution of a health district is that the order of events is such that a new county budget would be

required to accommodate a withdrawal or dissolution, and creating and approving the new budget might take an entire year.

In response to a question from Representative Rose, Mr. Sagsveen said he does not object to changing the requirements on page 5, lines 12 through 13, and lines 23 through 24 to remove any reference to the votes cast in the county for Governor, and instead, just refer to the number of votes cast in the last general election.

In response to a question from Representative Rose, regarding the use of the term "promptly" on page 11, lines 1 and 3, Mr. Sagsveen said the proposed change would require a local board of health to "promptly" appoint a health officer in the case of a vacancy. He said the problem with providing a set period of time is that sometimes local public health units have difficulty finding replacements for local health officers, and this proposed change allows some flexibility while still indicating urgency.

Chairman Krebsbach called on Mr. Dan Ulmer, Blue Cross Blue Shield, for comments regarding the public health bill drafts. Mr. Ulmer said he is concerned about changing "shall" provisions to "may" as they relate to the powers and duties of local health officers. He said he wants to require, rather than authorize, certain actions of local health officers.

Chairman Krebsbach called on Mr. Terry Traynor, Assistant Director, North Dakota Association of Counties, for comments regarding the public health bill drafts. Mr. Traynor said he objects to mandating participation in public health units. He said the four counties in the state not in public health units oppose mandating participation in a public health unit. Mandating participation in public health units seems premature, he said, given that the State Department of Health has not made an effort to encourage voluntary participation in public health units.

Mr. Traynor said the local board of health member compensation rate of up to \$62.50 per day concerns him because it has the effect of standardizing compensation for a variety of local positions. Additionally, he said, the health district fund carryover provision on page 6, line 20, is not clear regarding how to treat carryover funds in the new year.

In response to a question from Representative Price, Mr. Traynor said he is not certain who provides public health services in the four counties without public health units. However, he said, LaMoure County provides some nursing services through human services, and Rolette County is concerned about the possible overlap between Indian health services and a public health unit.

Chairman Krebsbach called on Mr. Keith Johnson, Administrator, Custer Public Health District, for comments regarding the public health bill drafts. Mr. Johnson said the statewide participation requirement is not unreasonable. He said it is possible that mandatory participation would lessen the burden of counties that neighbor nonparticipating counties.

Additionally, he said, sometimes it is better to have a "shall" provision instead of "may" because it is more direct and requires less discretion. Mr. Johnson said the Custer Health District works with the Standing Rock Indian Reservation by contracting with the reservation for some services and not others.

Chairman Krebsbach called on Mr. David Peske, Director, Governmental Relations, North Dakota Medical Association, for comments regarding the bill drafts. Mr. Peske said he supports requiring local health officers to be licensed physicians, in part, because of the credibility that goes with the position and the importance of acting as a liaison between the community and the medical community. He said he anticipates the North Dakota Medical Association would support the consolidation and unification bill draft that maintains the position of local health officer as a licensed physician.

Senator DeMers suggested that any amendments the committee proposes be applied to all three bill drafts.

Representative Price said she is concerned about the Department of Health's proposed changes on page 8, line 18, regarding the time limit for removing nuisances, sources of filth, and causes of sickness because of the possible impact it might have on the rights of property owners. Mr. Sagsveen said the intent of the proposed amendment is to allow local public health units discretion in responding to unique circumstances that surround removal or abatement proceedings.

It was moved by Representative Price, seconded by Senator Carlson, and carried on a voice vote that the three bill drafts relating to consolidation and unification of the public health law be amended to adopt the Department of Health's amendments, except for the amendments on page 11, lines 5 through 25.

Mr. Mullen said the proposed amendments on page 11 would make North Dakota Century Code Section 23-35-12(2) consistent with Section 23-35-08, on pages 6 and 7 of the bill draft. He suggested that the department's proposed changes to page 11, might be more appealing to the committee if page 11, line 7, provided the local health officer "shall" enforce every law and rule relating to preservation of life and health of individuals.

Mr. Ulmer said Mr. Mullen's suggestion regarding page 11, line 7, might be a good compromise, and is a step in the right direction.

It was moved by Representative Warner, and seconded by Representative Carlisle, that the three bill drafts be further amended on page 5 to refer to general elections instead of general

elections for the last vote of the Governor, and to adopt the Health Department's proposed changes on page 11, except line 7 would provide the health officer shall enforce every law and rule relating to preservation of life and health of individuals.

Senator DeMers said she supports the general election amendment, but does not support the amendments on page 11.

Chairman Krebsbach divided the amendment. The amendment regarding reference to general election carried on a voice vote and the amendments on page 11, carried on a roll call vote. Senators Krebsbach and Klein and Representatives Brusegaard, Carlisle, Carlson, and Warner voted "aye." Senator DeMers and Representatives Kroeplin, Price, and Rose voted "nay."

Mr. Sagsveen said it was recently brought to his attention that the State Health Officer does not have authority to adopt rules; therefore, Section 23-35-02 of the bill drafts should refer to the Health Council.

It was moved by Representative Carlisle, seconded by Representative Price, and carried on a voice vote that the three bill drafts be amended to provide rules would be adopted by the Health Council instead of the State Health Officer.

It was moved by Representative Price, seconded by Representative Rose, and carried on a roll call vote that the bill draft, as amended, relating to the consolidation and unification of the Public Health Law, be approved and recommended to the Legislative Council. Senators Krebsbach, DeMers, and Klein and Representatives Brusegaard, Carlisle, Carlson, Kroeplin, Price, Rose, and Warner voted "aye." No negative votes were cast.

It was moved by Senator DeMers, seconded by Senator Klein, and carried on a voice vote that the chairman and the staff of the Legislative Council be requested to prepare a report and the bill drafts recommended by the committee and to present the report and recommended bill drafts to the Legislative Council.

It was moved by Senator Klein, seconded by Representative Warner, and carried on a voice vote that the meeting be adjourned sine die. Chairman Krebsbach adjourned the meeting sine die at 3:00 p.m.