

# NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

## ADMINISTRATIVE RULES COMMITTEE

Thursday, September 12, 2013  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Representative Bill Devlin, Chairman, called the meeting to order at 10:00 a.m.

**Members present:** Representatives Bill Devlin, Randy Boehning, Robert Frantsvog, Brenda Heller, Ben Koppelman, Kim Koppelman, Mark S. Owens, Mike Schatz, Peter F. Silbernagel, Blair Thoreson, Nathan Toman; Senators John Andrist, Kelly M. Armstrong, Joan Heckaman, Jerry Klein

**Members absent:** Representatives Joshua A. Boschee, Robin Weisz; Senator Connie Triplett

**Others present:** Jay E. Buringrud, Samantha E. Kramer; Legislative Council, Bismarck  
Senator Rich Wardner, member of the Legislative Management, was also in attendance.

See [Appendix A](#) for additional persons present.

Chairman Devlin called on Mr. Jay E. Buringrud, Legal Services Division Director, Legislative Council, who introduced a new attorney on the Legislative Council staff--Ms. Samantha E. Kramer.

**It was moved by Representative Frantsvog, seconded by Representative Boehning, and carried on a voice vote that the minutes of the June 6, 2013, meeting be approved as distributed.**

Committee Counsel reviewed the [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Management](#).

Chairman Devlin called on Committee Counsel for presentation of a memorandum entitled [Administrative Rules Review - Background Memorandum](#).

### RACING COMMISSION

Chairman Devlin called on Mr. Winston Satran, former Director, Racing Commission, who introduced Mr. Gunner laCour, Director, who provided prepared testimony ([Appendix B](#)) relating to rules adopted by the Racing Commission.

Representative K. Koppelman said in the rules on page 36 of the booklet distributed to the committee, subdivision m of subsection 18 provides questions not addressed by the rules must be resolved in accordance with general parimutuel practice. He said this appears to raise a question of delegation of rulemaking authority to another entity. Mr. laCour said situations may arise in horse racing that are impossible to anticipate in advance. He said the provision is intended to provide, if the rules do not directly address a circumstance, guidance on deciding the matter may be obtained from industry standards, such as the model rules of the Association of Racing Commissioners International.

Senator Klein asked for a rundown on the state of horse racing in North Dakota. Mr. laCour said four racing events were held at Belcourt this summer, and the result was a track attendance record and the track was able to make a profit. He said one race was held in Fargo and produced record attendance and a record betting handle. He said the activity this summer was encouraging, and the Racing Commission is hoping to develop more frequent racing meets.

Mr. laCour said the Racing Commission is involved in working through updating rules and adoption by reference of Association of Racing Commissioners International model rules. He showed a thick binder of the model rules to the committee. He said the commission hopes to adopt most of the rules by reference. He said the model rules are very detailed, very clear, and the most up-to-date with industry practice.

Representative K. Koppelman said adoption by reference of rules requires adoption by a date certain to avoid delegating authority for future rules changes. Mr. laCour said he is aware of that and will take it into consideration.

### **PRIVATE INVESTIGATIVE AND SECURITY BOARD**

Chairman Devlin called on Mr. Edward E. Erickson, Assistant Attorney General and representative of the Private Investigative Security Board, for information on rules submitted by the board. Mr. Erickson said the response to committee questions to serve as a basis of testimony was not received by the board. He provided a copy ([Appendix C](#)) later in the meeting providing answers from the board to questions concerning the rules as adopted.

Representative K. Koppelman said the Legislative Assembly is concerned about boards building fences to protect their own businesses. He said he hopes these rules are not intended for use in that way. Mr. Erickson said that is not the intention of the board or its members.

Mr. Erickson said he is also appearing on behalf of the board regarding a request for agreement between the board and the committee for a rules amendment to comply with a statutory provision. A copy of a letter concerning the request is attached as [Appendix D](#).

**It was moved by Senator Klein, seconded by Representative Boehning, and carried on a roll call vote that the Administrative Rules Committee agree with the Private Investigative and Security Board for an amendment to North Dakota Administrative Code Section 93-02-03-02 replacing the word "may" with the word "must" in the first sentence of the section.** Voting in favor of the motion were Representatives Devlin, Boehning, Frantsvog, Heller, B. Koppelman, K. Koppelman, Owens, Schatz, Silbernagel, Thoreson, and Toman and Senators Andrist, Armstrong, Heckaman, and Klein. No negative votes were cast.

### **STATE DEPARTMENT OF HEALTH**

Chairman Devlin called on Committee Counsel for introductory remarks regarding rules ([Appendix E](#)) submitted by the State Department of Health. He said the rules of the department relate to various fee changes. He said the rules were not submitted by the August 1 deadline for consideration in the October supplement. He said the rules as submitted would become effective January 1, 2014. He said Mr. Kenan Bullinger, Director, Division of Food and Lodging, State Department of Health, requested committee consideration at this meeting because the fee increases would generally become effective on January 1, 2014, and Mr. Bullinger hoped the committee would have ample time to consider the rules before January. Chairman Devlin called on Mr. Bullinger for testimony ([Appendix F](#)) relating to the rules of the department.

Representative Devlin asked if the estimated cost and revenue is \$170,000 or \$150,000. Mr. Bullinger said the updated analysis is the estimated cost to replace the current licensing information data management system is approximately \$110,000, and maintenance costs are estimated to be approximately \$45,000 per year.

In response to a question from Senator Klein, Mr. Bullinger said there were no interested parties in attendance at the public hearing on these rules changes.

Representative Heller asked if there are expected to be savings from the updated licensing information data management system. Mr. Bullinger said estimated savings have not been calculated, but the upgrade will allow enhanced service to the public, such as emailing to licenseholders and posting of public notices in a more convenient format.

Representative Heller asked how the department arrived at the fee increase amounts to support the enhanced cost to the department. Mr. Bullinger said the department was directed to obtain funding through fee increases and was looking for approximately 15 to 20 percent more revenue from these fee sources, but the increase was held at a lesser amount for smaller day cares and other entities.

Representative B. Koppelman asked if there was no other way for the department to pay the costs of the data management system upgrade. Mr. Bullinger said the department requested, and the Governor approved, general fund money for the upgrade. He said the funding was removed in the conference committee report on the department budget, and the House Appropriations Committee action instructed the department staff to obtain funding through fee increases.

Representative B. Koppelman said it appears the proposed upgrade requires \$110,000 of initial cost and then an ongoing maintenance cost. He said the fee increase appears to exceed the ongoing cost of the upgrade and suggested the fee increase could be scaled back after the initial cost of the upgrade is covered.

Representative Devlin asked if the House Appropriations Committee has in its recorded minutes its suggestion to raise fees in lieu of the appropriation funding for the information data management system upgrade. Mr. Bullinger said the minutes do reflect the discussion and show approval of a motion to eliminate the appropriated funds.

Representative Devlin said the funds appropriated from the general fund to the department were increased approximately 34 percent in 2013. He said there was an increase of more than \$7 million and suggested the department might find funds within its budget to cover the expenses for the information data management system.

In response to a question from Representative Devlin, Mr. Bullinger said he will provide the committee a copy of the minutes documenting the suggestion of the House Appropriations Committee to increase fees for the cost of the new system in place of the appropriated funds that were eliminated by the House Appropriations Committee.

Senator Klein said he questions if licensees subject to the fee increases were made aware of the proposed increase. He said he also questions whether licensees should bear the entire cost of the new system.

Representative Boehning said he believes the cost of the new system should be able to be funded within the department's budget. Mr. Bullinger said postage is a big part of the cost of the upgrade. He said mailing of information reports from inspectors to the department is costly. He said the department has been dinged in audit reports for not providing information to the public through the website. He said that criticism is the reason this upgrade is being pursued. He said the upgrade will allow posting of notices and information for the public.

Representative Silbernagel questioned the reason for graduated fees for mobile home park inspections. Mr. Bullinger said the department believes graduated fees by the size of a mobile home park are appropriate. He said some facilities are much larger and require more time to complete inspections.

In response to a question from Representative Heller, Mr. Bullinger said the appropriation to fund the information data management system upgrade was contained in the Governor's budget, and the expenditure was recommended by the Governor in the appropriation for the department as introduced.

Representative Heller said it appears after the initial cost of the system upgrade is covered, the ongoing maintenance fees would be substantially less, but the fee increases would continue. She said she questions what the department would do with approximately \$100,000 of excess fee revenue after the initial cost of the system is covered.

In response to a question from Representative Thoreson, Mr. Bullinger said the motion to eliminate appropriated funds and suggest fee increases was made by a subcommittee of the House Appropriations Committee and then approved by the full committee and by the conference committee.

Representative B. Koppelman said it appears the fee increases exceed the funds necessary for the ongoing costs of the system upgrade. He said it does not appear the department needs a permanent fee increase in this amount.

In response to a question from Senator Heckaman, Mr. Bullinger said department fee revenue has increased since 2007. He said the number of licensees in the inspection groups changes very often.

Representative Boehning asked how many local governments do inspections in some of these areas. Mr. Bullinger said the department has a memorandum of understanding with nine cities, and those cities perform inspections in their jurisdictions.

Senator Heckaman said she would like to see a comparison of 2011 versus 2013 total fee collections of the department.

Chairman Devlin said he senses the committee hesitates to allow these rules to move forward without additional information. He said perhaps the wish of the committee is to carry the rules over for consideration to allow the department to provide further information.

Chairman Devlin called on Mr. Mike Rud, North Dakota Petroleum Marketers Association and North Dakota Retailers Association, for information on the rules. He said most of the time his office receives direct notice of rulemaking on rules affecting members of the associations he represents. He said in this instance his office did not receive notice of the rules being proposed. He said he could understand imposition of a temporary fee increase, but he does not see the need for an ongoing fee increase.

Chairman Devlin called on Mr. Rudie Martinson, North Dakota Hospitality Association, who said the association was not aware these changes were proposed. Mr. Martinson said he has the same concern expressed by Mr. Rud regarding the fee increase being left in place after the initial cost of the system upgrade is covered.

Chairman Devlin suggested Mr. Rud and Mr. Martinson discuss their concerns with the department before the next committee meeting if the rules are carried over for consideration.

**It was moved by Senator Klein, seconded by Representative Boehning, and carried on a roll call vote that the committee carry over consideration of the rules submitted by the State Department of Health regarding license fee increases for various food, lodging, body art, and tanning facilities and mobile homes.** Voting in favor of the motion were Representatives Devlin, Boehning, Frantsvog, Heller, B. Koppelman, K. Koppelman, Owens, Schatz, Silbernagel, Thoreson, and Toman and Senators Andrist, Armstrong, Heckaman, and Klein. No negative votes were cast.

Representative Boehning asked that information provided by the department at the next committee meeting should include information on current maintenance costs of the existing system.

### **PUBLIC SERVICE COMMISSION**

Chairman Devlin called on Ms. Ilona Jeffcoat-Sacco, General Counsel, Public Service Commission, for presentation of a request ([Appendix G](#)) by the Public Service Commission to approve repeal of North Dakota Administrative Code Chapter 69-06-03. Ms. Jeffcoat-Sacco said the statutory authority for the rules has been repealed, and the rules are now obsolete and should be removed from the Administrative Code.

**It was moved by Representative K. Koppelman, seconded by Senator Andrist, and carried on a roll call vote that the committee approve repeal of North Dakota Administrative Code Chapter 69-06-03 on the grounds that the rules are obsolete.** Voting in favor of the motion were Representatives Devlin, Boehning, Frantsvog, Heller, B. Koppelman, K. Koppelman, Owens, Schatz, Silbernagel, Thoreson, and Toman and Senators Andrist, Armstrong, Heckaman, and Klein. No negative votes were cast.

No further business appearing, Chairman Devlin adjourned the meeting at 12:00 noon.

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John Walstad  
Code Revisor

ATTACH:7