

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

ADMINISTRATIVE RULES COMMITTEE

Friday, January 7, 2005
Brynhild Haugland Room, State Capitol
Bismarck, North Dakota

Representative William R. Devlin, Chairman, called the meeting to order at 1:30 p.m.

Members present: Representatives William R. Devlin, LeRoy G. Bernstein, Jeff Delzer, Duane DeKrey, Rod Froelich, Matthew M. Klein, Kim Koppelman, Jon O. Nelson, Dan J. Ruby, Blair Thoreson, Alon C. Wieland, Dwight Wrangham; Senators John M. Andrist, Dennis Bercier, April Fairfield, Tom Fischer, Jerry Klein, Gary A. Lee, Rich Wardner

Members absent: Representative Sally M. Sandvig; Senator Layton Freborg

Others present: L. David Glatt, Dennis Fewless; State Department of Health, Bismarck

Wade Moser, North Dakota Stockmen's Association, Bismarck

It was moved by Representative DeKrey, seconded by Representative Thoreson, and carried on a voice vote that the minutes of the December 6, 2004, meeting be approved as distributed.

STATE DEPARTMENT OF HEALTH

Chairman Devlin called on Mr. Dennis Fewless, Water Quality Division Director, State Department of Health, for comments on the confined animal feeding operation rules of the department. A copy of Mr. Fewless' prepared testimony is attached as Appendix A. A copy of correspondence and proposed rules changes from Mr. L. David Glatt, Environmental Health Section Chief, State Department of Health, is attached as Appendix B.

Representative Froelich said North Dakota Administrative Code Section 33-16-03.1-13 uses the phrase "significant degree of public interest" in determining when public notice will be issued requesting comments on applications for animal feeding operation permits. He asked what is the meaning of the phrase. Mr. Fewless said the department has tried to use this phrase to identify an appropriate level of concern for conducting a public hearing. He said the experience of the department is that the department is able to weed out complaints generated by feuds or frivolous complaints. He said the objective of the phrase is to identify situations when a genuine issue of concern to the community exists.

Chairman Devlin called on Mr. Wade Moser, North Dakota Stockmen's Association, for comments on the proposed rules changes. Mr. Moser said the association has reviewed and agrees with the proposed changes.

Representative Delzer asked whether the North Dakota Stockmen's Association is concerned about anonymous complaints. Mr. Moser said the association has discussed that issue with the department. He said the State Department of Health has promised to develop procedures on handling of contacts and the association is satisfied with that promise.

Representative Koppelman asked Mr. Fewless why the rules will keep the language allowing anonymous complaints. Mr. Fewless said if the department is able to verify that this is a valid complaint, the department feels it is important to allow an option for neighbors who do not want to be subject to retribution to file an anonymous complaint. He said the department will be careful not to take action on those complaints unless the investigation of the matter shows that valid concerns exist.

It was moved by Representative Klein, seconded by Representative DeKrey, and carried on a roll call vote that the Administrative Rules Committee agree with the State Department of Health on the amendments suggested to North Dakota Administrative Code Chapter 33-16-03.1 as presented. Voting in favor of the motion were Representatives Devlin, Bernstein, Delzer, DeKrey, Klein, Koppelman, Nelson, Ruby, Thoreson, Wieland, and Wrangham and Senators Andrist, Bercier, Fairfield, Fischer, Klein, Lee, and Wardner. Representative Froelich voted "nay."

INFORMATION TECHNOLOGY DEPARTMENT

Chairman Devlin called on committee counsel for review of Senate Bill No. 2036 (2005). Committee counsel said the bill was introduced by the Legislative Council after recommendation by the Information Technology Committee. He said the Information Technology Committee requested that the Administrative Rules Committee be advised of the existence of this bill. He said the bill contains a provision relating to the definition of administrative rule to provide an exception for a policy, standard, and guideline

adopted by the Information Technology Department
under North Dakota Century Code Chapter 54-59.

Chairman Devlin adjourned the meeting at
2:00 p.m.

John Walstad
Code Revisor

ATTACH:2