

# NORTH DAKOTA LEGISLATIVE COUNCIL

## Minutes of the

### ADMINISTRATIVE RULES COMMITTEE

Wednesday, December 12, 2007  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Senator Tom Fischer, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Senators Tom Fischer, John M. Andrist, Layton W. Freborg, Jerry Klein, Tracy Potter; Representatives Randy Boehning, Chuck Damschen, Duane L. DeKrey, Rodney J. Froelich, Chris Griffin, Jon Nelson, Louise Potter, Blair Thoreson

**Members absent:** Representatives David Drovdal, Mary Ekstrom, Kim Koppelman, Dwight Wrangham

**Others present:** Merle Boucher, State Representative, Rolette

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

Chairman Fischer welcomed Representative Merle Boucher, sitting in on the meeting as a member of the Legislative Council.

**It was moved by Representative DeKrey, seconded by Senator Andrist, and carried on a voice vote to approve the minutes of the October 18, 2007, meeting of the committee.**

#### FILING DATE FOR RULES

Committee counsel said the Administrative Code supplement prepared for review by Administrative Rules Committee members was delayed in this publication cycle. He said the filing deadline for rules to be considered at this meeting was November 15, 2007. He said the rules in the supplement were all filed at or near the filing deadline and, because over 600 pages of rules had to be prepared, completion of the Administrative Code supplement was delayed and could not be provided to committee members until less than one week before this meeting. He said the statutory timeframe for preparation of the Administrative Code supplement was established in the expectation that it would take approximately two weeks for the Legislative Council staff to prepare the supplement before each regular meeting of the committee. He said the volume of rules in this supplement made it impossible to complete preparation of the supplement in the expected timeframe and it is likely that even larger amounts of rules could be contained in an Administrative Code supplement, which might make it impossible to complete preparation in time to allow committee members to review the rules. He said consideration should be given to moving the deadline for filing rules to one or two weeks earlier. He said this should allow

time for preparation of the Administrative Code supplement and provide committee members adequate time to review the supplement before a meeting. He said such a change should not cause a substantial burden for agencies.

**It was moved by Representative DeKrey, seconded by Representative Thoreson, and carried on a voice vote that the Legislative Council staff be requested to prepare a bill draft for committee consideration which would change the filing deadline for rules to be included in the Administrative Code supplement from the 15<sup>th</sup> day to the first day of the month before the committee meeting for review of those rules.**

#### INDUSTRIAL COMMISSION

Chairman Fischer called on Mr. Ed Murphy, State Geologist, North Dakota Geological Survey, for testimony relating to January 2008 rules adopted by the Industrial Commission relating to the Geological Survey. A copy of Mr. Murphy's prepared testimony is attached as [Appendix B](#).

In response to a question from Representative Potter, Mr. Murphy said the installer, i.e., the well driller, is responsible to obtain a residential geothermal permit.

Representative Boehning asked if the Geological Survey will inspect all geothermal systems after installation. Mr. Murphy said the Geological Survey will inspect geothermal systems once during installation and once after installation is complete. Representative Boehning asked whether a \$20 fee will cover the cost of inspection. Mr. Murphy said he hopes the fee will cover the costs of inspection and the Geological Survey will monitor whether inspections cost more than fees.

Chairman Fischer called on Mr. Bruce Hicks, Assistant Director, Oil and Gas Division, Department of Mineral Resources, for testimony relating to oil and gas rules adopted by the Industrial Commission effective January 1, 2008. A copy of Mr. Hicks' prepared testimony is attached as [Appendix C](#).

Mr. Hicks said the rules as originally prepared contained a chapter on storage of carbon dioxide. He said the Oil and Gas Division withdrew the carbon dioxide storage rules before submitting the final rules for publication. He said the Industrial Commission determined that the commission did not have

sufficient statutory authority to regulate storage of carbon dioxide.

Representative Griffin said the rules require oil drilling activities to be at least 500 feet from a permanently occupied dwelling. He said the rules define a permanently occupied dwelling as one occupied for at least six months during the year. He asked how an oil company would know how long a dwelling is occupied during the year. Mr. Hicks said the Oil and Gas Division has established a notice system. He said oil and gas operators must notify the division of the intent to drill. He said the division will look at the area, including examination of satellite photos, and if the dwelling is not listed on the application as one for which the oil company has contacted the owner, the division will ask the company to contact the owner. He said the division wants to err on the side of providing notice to an occupant of a dwelling.

In response to a question from Representative Froelich, Mr. Hicks said 90 percent to 95 percent of current drilling operations are horizontal wells. He said exploration of the Bakken Formation has really taken off. Representative Froelich said with horizontal drilling, it could be possible for oil companies to move outside the 500-foot range from a dwelling. Mr. Hicks said that is true in most cases but there are technical reasons why the drilling point for some wells is not very flexible.

Representative Nelson asked why the definition of a dwelling used in surface coal mining and reclamation laws cannot be applied for oil and gas rules. Mr. Hicks said the rule for coal mining uses the phrase "regular or temporary basis for human habitation" which the Oil and Gas Division takes to be incompatible with the statutory provision adopted by the Legislative Assembly which provides that a "permanently" occupied dwelling is subject to the setback for drilling operations.

Representative Nelson asked whether the owner of a dwelling may waive the 500-foot drilling setback under the rules. Mr. Hicks said the owner may waive the distance requirement.

Representative Nelson asked whether a hearing is provided for every dwelling occupant under the rules. Mr. Hicks said it would be onerous to require a hearing on every drilling operation and it would be very expensive. He said under the rules, a hearing is only required if the oil company wants to drill inside the 500-foot setback from a dwelling and the owner has not waived the distance requirement.

In response to a question from Representative Nelson, Mr. Hicks said the Oil and Gas Division tries to find every affected dwelling near a proposed drilling site and make sure the operator is contacting owners. He said owners should be contacted, if only to find out whether a dwelling is occupied for six months or more during the year. Mr. Hicks said there is another regulation limiting drilling activity to no closer than 330 feet from any building.

Senator Potter asked how the Oil and Gas Division determined legislative intent on how to define permanently occupied dwellings. Mr. Hicks said division staff participated in legislative hearings on the 2007 legislation, discussed the proposed rules with legislators during the rulemaking proceeding, and notified all sponsors of the 2007 legislation of the rulemaking activity. He said the division examined the statutory language and considered suggestions made during the hearing process.

Representative Boucher said some abandoned farmsteads are still used for watering livestock or other purposes and asked whether those uses are considered. Mr. Hicks said there are special rules to protect ground water and there is a setback limit of 330 feet for drilling activity near any building.

Chairman Fischer called on Ms. Cindy Klein, Dakota Resource Council, for testimony relating to Oil and Gas Division rules. A copy of Ms. Klein's prepared testimony is attached as [Appendix D](#).

Ms. Klein said the Dakota Resource Council believes the setback for oil drilling from an occupied dwelling should apply the same standard used in rules for coal mining activities, which apply to any building that is being used on a regular or temporary basis for human habitation.

Senator Andrist said there are dwellings in rural North Dakota owned by hunters who use the dwelling for only one or two weeks during the year. He asked whether it would be an onerous requirement to notify these owners of drilling activities. Ms. Klein said the Dakota Resource Council would favor notice to any dwelling owner. Senator Andrist said it may be very difficult for an oil company to tell whether a dwelling is occupied.

Representative DeKrey said he was on the conference committee of the 2007 legislation and he believes the rule adopted by the Oil and Gas Division follows from the discussions of the conference committee. He said conference committee members discussed the setback issues and recognized that a reasonable compromise would be appropriate on the question of occupancy.

Representative Damschen said he also was on the committee considering the 2007 legislation and believes the rule adopted is appropriate. He said a concern of committee members was that a person who occupies a dwelling for 12 months is entitled to greater protection from having to look at a drilling rig than a person who occupies a dwelling for 2 months during a year.

## STATE DEPARTMENT OF HEALTH

Chairman Fischer called on Mr. Kirby Kruger, State Epidemiologist and Director of the Division of Disease Control, State Department of Health, for testimony relating to January 2008 rules of the department. A copy of Mr. Kruger's prepared testimony is attached as [Appendix E](#).

Mr. Kruger said the State Department of Health is requesting removal of the last sentence of the rule

change proposed to North Dakota Administrative Code Section 33-06-04-11. He said the proposed rule change has become obsolete. He said the department planned to purchase vaccines at the federal contract rate to reduce the cost of vaccines for providers. He said in September it was determined that the department was not able to purchase vaccines at any lower cost than private and public health care providers.

Chairman Fischer called on Mr. Bruce Pritschet, Director, Division of Health Facilities, State Department of Health, for testimony relating to basic care health program surveys. A copy of Mr. Pritschet's prepared testimony is attached as [Appendix F](#). Mr. Pritschet said the rules change eliminates a provision that the department would conduct unannounced basic care surveys. He said the language conflicted with statutory language enacted in 2007 requiring all basic care Life Safety Code surveys to be announced and half of basic care Healthy program surveys to be announced.

Chairman Fischer called on Mr. Darin Meschke, State Registrar and Director, Division of Vital Records, State Department of Health, for testimony relating to vital records rules. A copy of Mr. Meschke's prepared testimony is attached as [Appendix G](#).

Chairman Fischer called on Mr. Tim Meyer, Director, Division of Emergency Medical Services, State Department of Health, for testimony on January 2008 rules regarding emergency medical services. A copy of Mr. Meyer's prepared testimony is attached as [Appendix H](#).

In response to a question from Senator Fischer, Mr. Meyer said comments on the proposed rules were received from three individuals. He said comments in support of the rules were received from the North Dakota Emergency Medical Services Association. He said one commenter requested a change in requirements for substation ambulance operation and one commenter requested addition of language to identify physical standards for emergency medical services personnel during license renewal. He said the department added language to require emergency medical services personnel to meet physical standards under the National Highway Traffic Safety Administration. He said the standards are minimal physical standards for activities, such as seeing, hearing, walking, and lifting.

Representative Froelich said he understands that quick response units are not required to be licensed. Mr. Meyer said that is correct and the reason they are treated differently is that quick response units do not transport patients.

Chairman Fischer called on Mr. Kenan Bullinger, Director, Division of Food and Lodging, State Department of Health, for testimony relating to January 2008 rules of the department. A copy of Mr. Bullinger's testimony is attached as [Appendix I](#).

Mr. Bullinger said the rules of the Division of Food and Lodging involve consideration of five sets of rules. He said annual license fees were increased for food

and lodging facilities to generate funds required for an additional staff person. He said the new staff position was approved by the Legislative Assembly to assist in handling the increased workload from enforcement of the new tattoo and body art and tanning facility laws and regulations. He said food code rules were updated to remain consistent with the federal Model Food Code. He said the rules provide guidance on smoke alarm and detector placement and testing in assisted living facilities. He said the rules also implement tattoo and body art legislation and tanning facility legislation enacted in 2007.

Senator Klein asked how many tattoo and tanning facilities exist in the state. Mr. Bullinger said tattoo facilities are generally subject to city health department coverage if they are located within a city. He said there are probably six tattoo facilities outside cities and these are the facilities that will be subject to inspection by the department. He said tanning facilities are more prominent than tattoo facilities and local health organizations have not taken on regulation of tanning facilities. He said there will probably be from 200 to 250 tanning facilities in the state for the department to inspect.

Senator Klein said it appears the rules increase fees for food vendors and lodging facilities as a funding method to cover the cost of an additional employee required for inspection of tattoo and tanning facilities because the Legislative Assembly did not fund the additional staff person required. Mr. Bullinger said that is essentially how the department understood the legislative intent on funding the additional staff needs.

Senator Andrist asked why food retailers should be required to pay an increased fee to pay for an inspector for tattoo and tanning facilities. Mr. Bullinger said the change is a result of a legislative decision. He said it probably would have been necessary to impose approximately four times the inspection fees for tattoo facilities if the cost was not spread to other licensees of the department.

Representative Boehning asked whether tattoo facilities in Fargo would be required to pay a local and state inspection fee. Mr. Bullinger said the department waives fees if a facility is subject to local inspection.

## **BOARD OF ADDICTION COUNSELING EXAMINERS**

Chairman Fischer called on Mr. Tom Tupa, Board of Addiction Counseling Examiners, for testimony relating to January 2008 rules of the board. A copy of Mr. Tupa's prepared testimony is attached as [Appendix J](#).

Mr. Tupa said the rules changes were necessary to conform rules provisions to 2007 House Bill No. 1053. He said the most significant change is a shift from one-year to two-year licensing.

## STATE ELECTRICAL BOARD

Chairman Fischer called on Mr. Don Offerdahl, Executive Director, State Electrical Board, for testimony relating to January 2008 rules of the board. A copy of Mr. Offerdahl's prepared testimony is attached as [Appendix K](#). Mr. Offerdahl said the rules do not precisely match statutory language in 2007 House Bill No. 1218. He said the term "recognized" was substituted for the term "approved" in regard to training programs and the role of the Bureau of Apprenticeship and Training (BAT). He said after the legislative session, it was determined that BAT does not approve training. He said special assistant attorney general Mr. Scott Porsborg would provide further information on the training standards.

Mr. Porsborg presented a copy of his prepared testimony, a copy of which is attached as [Appendix L](#).

Mr. Timothy A. Penno, Dakotas Chapter, National Electrical Contractors Association, said there was extensive discussion of the training issue during the 2007 legislative session. He said House Bill No. 1218 may not have passed without the specific language in the final version of the bill. He said Mr. Barry Dutton, North Dakota State Director of the United States Department of Labor Office of Apprenticeship, presented testimony during the summer of 2007 that BAT does not approve training but does approve training programs. Mr. Penno said the National Electrical Contractors Association believes the words "approved training" in House Bill No. 1218 are equivalent to approved programs of BAT. He said the language of the rule as adopted by the State Electrical Board does not carry out that intent.

In response to a question from Representative Griffin, Mr. Penno said BAT approves apprentice training programs but does not approve individual classes.

Senator Klein asked for an explanation of what difference it makes what kind of training is required for electrician apprentices. Mr. Penno said BAT standards are uniform for all states. He said what could occur under the rule as adopted by the State Electrical Board is that it could be interpreted as recognition by BAT of an individual class within an approved program. He said this would be a very different result from what the association believed was intended by 2007 House Bill No. 1218.

Senator Andrist said in rural districts it would be important for apprentice electricians to have availability of online courses for training purposes. He asked whether BAT allows online training. Mr. Penno said online training for apprentices can be approved under BAT standards.

Representative Froelich asked whether each state has its own standards on training for apprentice electricians. Mr. Penno said that is correct. Representative Froelich asked whether there is no national program of apprenticeship training. Mr. Penno said that is correct and BAT training programs were used as a standard because it is a known commodity, understood by the industry.

Representative Boucher asked whether BAT training approval of a training program would be somewhat similar to school accreditation for higher education. Mr. Penno said that would be an appropriate comparison.

Mr. Eugene Cross, President, State Electrical Board, said during his eight years on the board, the board has been struggling with the issue of apprenticeship training standards. He said board members represent everyone under the board's jurisdiction. He said the National Electrical Contractors Association has an excellent program for electrician apprentice training. He said the concern of the board in adoption of the rule in the present form is small-town contractors and apprentice electricians. He said the board asked for opinions from licensees and the response was 4 to 1 that journeymen want appropriate training for apprentices.

Senator Klein asked whether an apprentice receives credit for training at the North Dakota State School of Science but still must work many hours with a master or journeyman electrician. Mr. Cross said that is correct. Senator Klein asked whether Mr. Cross believes safety would not be sacrificed under the rule as adopted by the board. Mr. Cross said he believes that is correct and appropriate training will be provided to apprentices. He said it is important to remember that contractors are still free to decide their own training standards for apprentices they employ.

## INSURANCE COMMISSIONER

Chairman Fischer called on Ms. Melissa Hauer, Insurance Department, for testimony relating to January 2008 rules of the Insurance Commissioner. A copy of Ms. Hauer's prepared testimony is attached as [Appendix M](#).

## SUPERINTENDENT OF PUBLIC INSTRUCTION

Chairman Fischer called on Dr. Gary Gronberg, Assistant Superintendent, Department of Public Instruction, for testimony relating to January 2008 rules of the department. A copy of Dr. Gronberg's prepared testimony is attached as [Appendix N](#).

Representative Froelich asked how the change to North Dakota Administrative Code Section 67-11-09-03 meshes with standards of the Education Standards and Practices Board. Dr. Gronberg said the Education Standards and Practices Board will come forward with rules to eliminate credentialing and consolidate licensing functions for teachers under the Education Standards and Practices Board.

## REAL ESTATE APPRAISER QUALIFICATIONS AND ETHICS BOARD

Chairman Fischer called on Mr. Joe Ibach, President, Real Estate Appraiser Qualifications and Ethics Board, for testimony relating to January 2008

rules of the board. A copy of Mr. Ibach's prepared testimony is attached as [Appendix O](#).

Representative Potter asked why licensees are limited to 40 hours of continuing education from distance education. Ms. Jody Campbell, Estate Appraiser Qualifications and Ethics Board, said the board did not believe all training should be possible through distance education. She said the board believed some level of education must be in a classroom format.

## RACING COMMISSION

Chairman Fischer called on Mr. Randy Blaseg, Director of Racing, North Dakota Racing Commission, for testimony relating to January 2008 rules of the commission. A copy of Mr. Blaseg's prepared testimony is attached as [Appendix P](#).

Representative Froelich said he attended the hearing on the rules and asked several questions during the hearing. He said he asked whether funds may be transferred among the three funds under the jurisdiction of the Racing Commission. He said Mr. Blaseg said there are no transfers among the breeders' fund, purse fund, or promotion fund. Representative Froelich said it appears from the summary of comments that there were no comments received in support of the rules as adopted by the Racing Commission. Mr. Blaseg said he has received letters in support of the rules since the rules were adopted.

Representative Boucher said his recollection is that the Legislative Assembly set up three funds for breeders, purses, and promotion. He said he thought the breeders' fund was specifically set up to allocate money among North Dakota breeders through a point system. Mr. Blaseg said with regard to the breeders' fund, the crux of the issue in his view is that owners have been receiving breeders' fund allocations when purse money is won in a race and again after the season. He said breeders only receive funds at the end of the season. He said the unfairness he sees in this is that the owner is being paid twice from the breeders' fund and the breeder is being paid only once. He said the rule adopted provides that the owner does not receive an award at the end of the season and the breeder will continue to receive an award at the end of the season.

In response to a question from Representative Boucher, Mr. Blaseg said the change in allocations from the breeders' fund is significant only if the owner is not the breeder.

Mr. Blaseg said another issue that has created controversy is the definition of broodmare in the rules. He said a broodmare is defined by the dictionary as a mare used to raise foals. He said the term broodmare was used because female thoroughbred horses are issued a certificate as a filly and female quarter horses are issued a certificate of registration as a mare. He said the term broodmare was used to avoid using one of the registration terms used for racehorses by licensing associations. He said use of

the term broodmare follows New Mexico, Colorado, and Iowa rules.

Representative Froelich distributed copies of a certificate of registration from the American Quarter Horse Association for a quarter horse stating that the registered horse is a mare. He asked whether quarter horses will have to be reregistered in North Dakota. Mr. Blaseg said registration in North Dakota is required to race a horse in North Dakota. He said this was the case before these rules changes and the rules changes will not require additional registrations in North Dakota.

Senator Fischer asked Representative Froelich if he is suggesting that the rules adopted by the Racing Commission go outside the statutory authority of the commission. Representative Froelich said he believes the rules are outside the legislative intent of the statutory provisions. Mr. Blaseg said the rules as adopted were reviewed by the Attorney General and the Attorney General determined the rules are approved as to legality.

Chairman Fischer called on Mr. Lance Hagen, North Dakota Quarter Horse Racing Association, for comments on the Racing Commission rules. Mr. Hagen said when the statutory provisions were established governing racing in North Dakota, it was intended that the breeders' fund should be protected and if something happens to eliminate horse racing in North Dakota, only the breeders' fund would continue to function. He said horsemen are very protective of the breeders' fund.

Mr. Hagen said the Quarter Horse Racing Association is concerned about registering horses for a second time under North Dakota rules, which could create the possibility of ineligibility of a horse by mistake. He said the only testimony relating to the breeders' fund during the public hearings on the rules was in opposition to the changes. He said no one expressed support for the changes. He requested the committee to send the rules back to the Racing Commission for further consideration. He said if breeders' fund money is not allowed to be used for racing purses, there will not be the problem of the owner of a horse being paid twice from the breeders' fund.

Representative DeKrey asked if Mr. Hagen can identify the specific rules to which the Quarter Horse Racing Association object. Representative DeKrey said it appears that money is not being transferred among the three funds under Racing Commission jurisdiction. Mr. Hagen said it is true that money is not being transferred among funds but adding breeders' fund money to purses has the same effect as a direct transfer from the breeders' fund to the purse fund.

Chairman Fischer called on Mr. Randal E. Schwartz, quarter horse breeder, for testimony relating to the Racing Commission rules. Mr. Schwartz said he opposes use of breeders' fund money for racing purses. He said this goes against the original intent in establishing the breeders' fund.

Chairman Fischer called on Mr. John Bubel, quarter horse breeder, for testimony relating to the Racing Commission rules. Mr. Bubel said he has lost sales of quarter horses and has been told by potential buyers that they will not buy quarter horses unless they stand to get breeders' fund money.

Chairman Fischer called on Mr. Leon A. Glasser, President, North Dakota Quarter Horse Racing Association, for testimony relating to the Racing Commission rules. Mr. Glasser said he is also a member of the North Dakota Thoroughbred Association and opposes use of breeders' fund money to supplement racing purses.

Representative Boucher said he has clear recollection of a strong legislative intent that breeders' fund money was to be allocated among breeders. Mr. Blaseg said only races having a field of certified North Dakota-bred horses are eligible for added purse funds from the breeders' fund.

Representative Boehning asked whether quarter horse breeders in North Dakota would be put out of business by the rules changes. Mr. Blaseg said he does not have the answer to that question. He said selling horses is a tough business and many factors are involved in determining whether a venture is successful.

### **WORKFORCE SAFETY AND INSURANCE**

Chairman Fischer called on Ms. Anne Green, Workforce Safety and Insurance, for testimony relating to January 2008 rules of Workforce Safety and Insurance. A copy of Ms. Green's prepared testimony is attached as [Appendix Q](#).

### **BOARD OF CLINICAL LABORATORY PRACTICE**

Chairman Fischer called on Mr. Tom Tupa, Board of Clinical Laboratory Practice, for testimony relating to rules adopted by the board. A copy of Mr. Tupa's prepared testimony is attached as [Appendix R](#).

### **OFFICE OF ADMINISTRATIVE HEARINGS**

Chairman Fischer called on Mr. Allen C. Hoberg, Director, Office of Administrative Hearings, for a presentation of a request for elimination of an obsolete rules provision. A copy of Mr. Hoberg's prepared testimony is attached as [Appendix S](#).

**It was moved by Representative DeKrey, seconded by Representative Damschen, and carried on a roll call vote that the committee approve elimination of obsolete language from North Dakota Administrative Code Section 98-02-02-06 as requested by the Office of Administrative Hearings.** Voting in favor of the motion were Senators Fischer, Klein, and Potter and Representatives DeKrey, Boehning, Damschen, Froelich, Griffin, Potter, and Thoreson. No negative votes were cast.

## **DEPARTMENT OF CORRECTIONS AND REHABILITATION**

Chairman Fischer called on Ms. Leann K. Bertsch, Director, Department of Corrections and Rehabilitation, for testimony relating to the exemption from the Administrative Agencies Practice Act (AAPA) for the department. A copy of Ms. Bertsch's prepared testimony is attached as [Appendix T](#).

### **ADMINISTRATIVE COMMITTEE ON VETERANS AFFAIRS**

Chairman Fischer called on Mr. Tom Summers, Department of Veterans Affairs, for testimony relating to the exemption from the AAPA for the Administrative Committee on Veterans Affairs. Mr. Summers reviewed a letter prepared by Mr. Rudy Jenson, Chairman, Administrative Committee on Veterans Affairs, relating to the exemption for the committee. A copy of the letter is attached as [Appendix U](#).

### **ATTORNEY GENERAL**

Chairman Fischer called on Mr. Tom Trenbeath, Chief Deputy Attorney General, for presentation of testimony relating to the exemption from the AAPA for the Attorney General. Mr. Trenbeath reviewed a letter he prepared to respond to committee questions relating to the exemption for the Attorney General. A copy of the letter is attached as [Appendix V](#).

### **PAROLE BOARD AND PARDON ADVISORY BOARD**

Chairman Fischer called on Mr. Pat Bohn, Parole Board and Pardon Advisory Board, for presentation of testimony relating to the exemptions for the two boards under the AAPA. Mr. Bohn reviewed letters responding to committee questions from Mr. John Olson, Chairman, Parole Board, and Representative Duane L. DeKrey, Chairman, Pardon Advisory Board. Copies of the letters are attached as [Appendices W and X](#).

### **COMMISSION ON LEGAL COUNSEL FOR INDIGENTS**

Chairman Fischer called on Ms. Jean Delaney, Deputy Director, Commission on Legal Counsel for Indigents, for testimony regarding the AAPA exemption for the commission. A copy of Ms. Delaney's responses to committee questions regarding the exemption for the commission is attached as [Appendix Y](#).

### **RACING COMMISSION - COMMITTEE DISCUSSION**

Senator Klein said it appears concerns with Racing Commission rules focus on use of the breeders' fund. He asked whether other committee members believe the breeders' fund rules should be carried over for further consideration. Representative Froelich said he believes the committee should carry over

consideration of the chapter relating to breeders' fund rules. **It was moved by Senator Klein and seconded by Representative DeKrey that the committee carry over consideration of the Racing Commission rules changes to North Dakota Administrative Code Chapter 69.5-01-09.**

Representative Froelich said he believes it would be appropriate to carry over consideration of the rules and allow concerned parties a chance to further discuss their concerns with the Racing Commission to determine if changes are appropriate.

Senator Andrist said he would have preferred to just void the amendments regarding the breeders' fund but he would go along with carrying over consideration of the rules. He said he is not satisfied that the Racing Commission gave sufficient consideration to concerns of interested parties regarding the breeders' fund.

Representative Nelson said he believes delay on the breeders' fund rules is possibly a good thing. He said this would allow reconsideration of the proposed changes and further consideration of views of interested parties.

The question was called and **the motion carried on a roll call vote.** Voting in favor of the motion were Senators Fischer, Andrist, Klein, and Potter and Representatives DeKrey, Boehning, Damschen, Froelich, Nelson, Potter, and Thoreson. No negative votes were cast.

## PARKS AND RECREATION DEPARTMENT

Chairman Fischer called on Mr. Doug Prchal, Director, Parks and Recreation Department, for presentation of testimony regarding the AAPA exemption for the department. A copy of responses prepared by Mr. Prchal to committee questions regarding the exemption is attached as [Appendix Z](#).

## COMMITTEE DISCUSSION

In response to a question from Chairman Fischer, committee counsel said the notice of the meeting and a request for responses regarding exemptions from the AAPA were sent to the Board of University and School Lands and the State Fair Association. He said there appears to have been a communication problem because representatives of those agencies did not appear at the meeting. Chairman Fischer said those agencies could be scheduled to appear at the next committee meeting.

Senator Potter said he is concerned that the State Department of Health rules imposing fee increases for food and lodging facilities to fund inspection of tattoo and tanning facilities are inappropriate. He said it appears the department would receive approximately \$84,000 for regulation of tattoo and tanning facilities from food and lodging licensees. He said he believes the rules should be sent back for reconsideration by the State Department of Health. **It was moved by Senator Potter, seconded by Senator Andrist, and carried on a roll call vote that the committee carry**

**over consideration of the food and lodging facility fee increases under the rules proposed by the State Department of Health.** Voting in favor of the motion were Senators Fischer, Andrist, Klein, and Potter and Representatives DeKrey, Boehning, Damschen, Froelich, Nelson, Potter, and Thoreson. No negative votes were cast.

Senator Klein said Mr. Kruger requested elimination of some language in North Dakota Administrative Code Section 33-06-04-11. Representative Nelson said he thinks it is pharmaceutical companies rather than the federal government that are the problem and he does not think it would hurt to leave the rule as it is. **It was moved by Senator Klein, seconded by Representative DeKrey, and carried on a roll call vote that the committee carry over consideration of the amendment to North Dakota Administrative Code Section 33-06-04-11.** Voting in favor of the motion were Senators Fischer, Andrist, Klein, and Potter and Representatives DeKrey, Boehning, Damschen, Froelich, Nelson, Potter, and Thoreson. No negative votes were cast.

**It was moved by Senator Potter and seconded by Representative Froelich that the committee carry over consideration of the Oil and Gas Division rule provisions defining permanently occupied dwelling and requiring wells to be at least 500 feet from an occupied dwelling.**

Senator Potter said a six-month occupancy limit seems questionable. He asked how this would apply to lake dwellings and other recreational occupancies. He said further consideration of the limits would be appropriate.

Senator Andrist said he would not support carrying over the rules regarding occupied dwellings and proximity of drilling activity. He said western North Dakota has lots of rural buildings selling for practically nothing and which may appear unoccupied. He said he thinks the Oil and Gas Division gave this limitation a lot of thought and arrived at a reasonable compromise.

Representative DeKrey said he agrees with Senator Andrist. He said during the testimony relating to the legislation, he heard discussion of various viewpoints on these issues and he is convinced the Oil and Gas Division followed the legislative intent in establishing the rule.

Representative Damschen said he also participated in legislative hearings on the issue and he agrees the Oil and Gas Division followed the legislative intent in establishing the rules.

The question was called and **the motion failed on a roll call vote.** Voting in favor of the motion were Senator Potter and Representative Froelich. Voting in opposition to the motion were Senators Fischer, Andrist, and Klein and Representatives DeKrey, Boehning, Damschen, Nelson, Potter, and Thoreson.

Chairman Fischer called on Mr. Kirby Kruger, State Department of Health, for comments on the committee motion to carry over consideration of North Dakota

Administrative Code Section 33-06-04-11. Mr. Kruger said the State Department of Health intended to purchase vaccines at a federal contract rate and sell those vaccines to health care providers in the state at a reduced cost. He said it has been determined that the department is not able to purchase vaccines at any lower cost than health care providers are able to obtain. He said the final sentence of Section 33-06-04-11 is obsolete. **It was moved by Representative DeKrey, seconded by Representative Damschen, and carried on a roll call vote that the committee reconsider its action to carry over Section 33-06-04-11, that the motion to carry over consideration of Section 33-06-04-11 be deemed withdrawn, and that the committee agree with the State Department of Health on an amendment to eliminate the final sentence of that section.** Voting in favor of the motion were Senators Fischer, Andrist, Klein, and Potter and Representatives DeKrey, Boehning, Damschen, Froelich, Griffin, Nelson, and Thoreson. No negative votes were cast.

Chairman Fischer called on Mr. Wade Moser who said 2005 legislation was enacted relating to child

support income withholding which should have been implemented through rules adopted by the Department of Human Services. He said the department has not adopted rules to implement the child support income withholding legislation and suggested that the committee request an explanation from the department of the reasons rules have not been adopted. Chairman Fischer requested committee counsel to invite a representative of the Department of Human Services to the next committee meeting to address the issue raised by Mr. Moser.

**It was moved by Representative DeKrey, seconded by Senator Klein, and carried on a voice vote that the meeting be adjourned subject to the call of the chairman.** Chairman Fischer adjourned the meeting at 4:00 p.m.

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John Walstad  
Code Revisor

ATTACH:26