

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

ADMINISTRATIVE RULES COMMITTEE

Monday, September 15, 2014
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Bill Devlin, Chairman, called the meeting to order at 8:30 a.m.

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

Members absent: Representatives Blair Thoreson and Robin Weisz

Others present: See [Appendix A](#)

It was moved by Senator Armstrong, seconded by Senator Klein, and carried on a voice vote that the minutes of the June 11, 2014, meeting be approved as distributed.

STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS

Chairman Devlin called on Mr. Kevin G. Nelson, Chairman, State Board of Registration for Professional Engineers and Land Surveyors, for testimony ([Appendix B](#)) regarding the rules of the board carried over for consideration from the June 2014 meeting. Mr. Nelson said the rules address the changing examination environment. He said the rules give individuals greater access to the examinations and allow the examinations to be taken at a time of the individuals' choosing.

In response to a question from Senator Triplett, Mr. Walstad said the procedures contained in the board's rules for electronic seals and digital signatures are consistent with procedures in the North Dakota Century Code. He said the language looks very similar to the statutory language.

In response to a question from Representative Silbernagel, Mr. Nelson said a professional engineer is an individual licensed in the state who practices in the field of engineering and who has special knowledge of mathematical, physical, and engineering sciences and the principles and methods of engineering analysis and design. He said there are some industrial exemptions for people who work in industry and do not have to be licensed.

AGRICULTURE COMMISSIONER

Chairman Devlin called on Mr. Eric Delzer, Agriculture Commissioner's office, for testimony ([Appendix C](#)) regarding rules adopted by the Agriculture Commissioner. Mr. Delzer said the rules pertain to standards for fertilizer.

In response to a question from Chairman Devlin, Mr. Delzer said due to an overwhelming degree of objections to a proposed rule that would have established standards for liquid fertilizer containment, a decision was made not to adopt proposed North Dakota Administrative Code Chapter 7-15-03. He said the comments indicated the regulation would be financially burdensome and would regulate some small entities out of business. He said a best management practices approach will be used to curb any problems.

In response to a question from Senator Triplett, Mr. Delzer said State Department of Health data collected over 10 years found 100,000 gallons of spilled fertilizer. He said because there are no industry standards, the industry asked for this regulation. He said the intent of the proposed rules was to provide consistency. He said the commissioner's office has not defined the best management practices but is working with North Dakota State University to create those practices. He said the best management practices will be distributed once available.

STATE BOARD OF PHARMACY

Chairman Devlin called on Mr. Mark Hardy, Executive Director, State Board of Pharmacy, for testimony ([Appendix D](#)) regarding the rules adopted by the State Board of Pharmacy.

In response to a question from Representative K. Koppelman, Mr. Hardy said the concern of CVS Caremark in an April 16, 2014, letter, related to out-of-state pharmacies rather than in-state pharmacies. He said border pharmacies are required to have an inspection. He said nonresident pharmacies that do not ship sterile and nonsterile compounded products into the state must be inspected at least once every two years.

In response to a question from Representative Silbernagel, Mr. Hardy said pharmacies with drug enforcement agency certification can allow the public to return unneeded prescription drugs to the pharmacy for disposal. He said the Attorney General's prescription drug advisory commission would like as many pharmacies to participate as possible. He said the returned drugs are sent to Health Environmental Services, Inc., of Fargo for disposal by incinerator.

In response to a question from Senator Heckaman, Mr. Hardy said Indian Health Service pharmacies do not participate in the pharmacy drug take-back program. He said some tribal pharmacies, such as those on the Fort Berthold Indian Reservation, are state licensed, while others, such as those on the Turtle Mountain Band of Chippewa Indians Reservation, are federally licensed.

In response to a question from Senator Triplett, Mr. Hardy said about 76 percent of pharmacists are participating in the prescription drug monitoring program. He said the program allows for the monitoring of controlled substances to determine if a patient is receiving drugs from multiple prescribers. He said patients who travel may need to have prescriptions filled at multiple pharmacies. He said, however, he is aware of one case in which a patient used 22 prescribers and 30 pharmacists. He said it is the responsibility of the pharmacists to use professional judgment in deciding whether the frequency of prescriptions for a particular patient is of concern.

In response to a question from Representative K. Koppelman, Mr. Hardy said a drug pedigree program that would enable the tracking of where a drug was purchased is a work in action. He said there is a federal law on drug pedigree. He said states will not have track and trace until 2020. He said without the electronic element, it is possible to do drug pedigree tracking, however, not to the level it should be to prevent counterfeit drugs.

Mr. Walstad said the fee schedule included in North Dakota Administrative Code Chapter 61-11-01 replicates the fee schedule in North Dakota Century Code Chapter 23-43. He said the Attorney General is not supposed to approve a rule that replicates a statute. Mr. Hardy said the intention was to have all the necessary information in one place.

In response to a question from Mr. Walstad, Mr. Hardy said the adoption of emergency rules on synthetic drugs resulted in a dramatic reduction in the use of those products. He said the restrictions have saved many lives.

EDUCATION STANDARDS AND PRACTICES BOARD

Chairman Devlin called on Ms. Janet Welk, Executive Director, Education Standards and Practices Board, for testimony ([Appendix E](#)) regarding the rules of the Education Standards and Practices Board. Ms. Welk said the rules resulted from the need for changes in licensure requirements to help facilitate schools and districts secure qualified teachers.

In response to a question from Chairman Devlin, Ms. Welk said the rules add a fee of \$100 for late renewal applications. She said the rules added language regarding the enforcement of a teacher's license from another state. She said the rules also address the situation that allows a teacher who has held a license for two years and who graduated from an approved school to take the Praxis exam to qualify to teach in another content area. She said a social studies teacher from Rugby, who had grown up on the family farm and had participated in Future Farmers of America, passed the agriculture examination. She said in another instance, a paraeducator with experience in special education passed the special education examination. She said at least 35 teachers have passed examinations in other content areas than the areas in which they trained.

In response to a question from Senator Heckaman, Ms. Welk said the federal No Child Left Behind law does not allow for minor equivalencies in core areas. She said a loophole in the federal law allows a teacher to work toward being highly qualified if it can be done in three years. She said with that option, the teacher could test for certification in core areas.

In response to a question from Senator Andrist regarding the requirement of a second major in paragraph (6) on page 46 of the rules, Ms. Welk said the requirement is intended to allow those teachers graduating from programs in the state to be more marketable. She said this change will still allow for a stand-alone major in special education. She said in the future she will provide copies of the rules to school administrators.

PUBLIC SERVICE COMMISSION

Chairman Devlin called on Mr. Jim Deutsch, Director, Reclamation Division, Public Service Commission, for testimony ([Appendix F](#)) regarding the October 2014 rules of the commission. Mr. Deutsch said the rule changes pertain to letters of credit which are pledged as the collateral if that form of a collateral bond is used by a mining company to meet its performance bond requirements.

In response to a question from Senator Triplett, Mr. Deutsch said the proposed rule changes were sent to the federal Office of Surface Mining on February 2, 2012, for approval as a formal amendment to the Public Service Commission's federally approved program. He said the approval notice was not published in the federal register until June 6, 2014. He said he was told the reasons for the delay in approval from the Office of Surface Mining were staffing issues and lawsuits.

DEPARTMENT OF HUMAN SERVICES

Chairman Devlin called on Ms. Julie Leer, Legal Advisory Unit, Department of Human Services, for testimony ([Appendix G](#)) regarding adopted rules of the Department of Human Services. Ms. Leer said the rules apply to a number of areas under North Dakota Administrative Code Chapter 75-03-23, including the services covered under the Medicaid waiver program, extended personal care services under the service payments for elderly and disabled (SPED) program, and application requirements under the chapter.

In response to a question from Senator Heckaman, Ms. Leer said the rules will expand current services under SPED. She said Senator Heckaman's example of a client whose services were reduced is likely the result of a review by the county rather than as a result of the rule changes.

OTHER BUSINESS

At the request of Chairman Devlin, Mr. Walstad presented a memorandum entitled [Administrative Rulemaking Statistics 2013-14](#). He said the memorandum summarizes the number of sections and pages reviewed by the committee during the 2013-14 biennium. He said the memorandum also includes a statistical summary of rulemaking by agency. He said the number of sections affected in a biennium is not necessarily reflective of the number of pages of rules. He said a statutory change in the mid-1990s, which allowed the Administrative Rules Committee to reject or carry over rules, has resulted in more carefully drafted rules.

COMMITTEE DISCUSSION

Representative K. Koppelman said he is also concerned about the issues raised by Senator Andrist regarding the Education Standards and Practices Board's rules on additional requirements for special education majors. He said the testimony appeared to indicate that in light of the federal No Child Left Behind law, special education majors wanted the highly qualified status applied to them. He said adding another layer of requirements is counter intuitive.

It was moved by Representative K. Koppelman and seconded by Senator Andrist that the committee carry over consideration of paragraph (6) of North Dakota Administrative Code Section 67.1-02-02-02(1)(b) until the December 2014 meeting in order to obtain information from the Education Standards and Practices Board on the effect of the rule on special education majors.

Senator Andrist said the purpose of this section was to deal with the special education teacher shortage. He said it appears that this change creates another obstacle.

Senator Heckaman said she has special education and secondary education credentials. She said her interpretation of the rule is that as a teacher with a secondary math degree, she could work with special education students in math and assign a grade; however, she could not do the same for an elementary student because she does not have elementary education credentials.

Senator Triplett said Ms. Welk indicated there is another section in the rules allowing licensure and certification in another way.

Representative K. Koppelman said to get clarification from the Education Standards and Practices Board, the rule should be held over to the next meeting.

The question was called and the motion carried on a roll call vote. Representatives Devlin, Boehning, Boschee, Frantsvog, Heller, B. Koppelman, K. Koppelman, Owens, Schatz, Silbernagel, and Toman and Senators Armstrong, Andrist, and Klein voted "aye." Senators Heckaman and Triplett voted "nay."

It was moved by Senator Triplett, seconded by Representative Silbernagel, and carried on a roll call vote that the Chairman and the Legislative Council staff 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 Management.

Chairman Devlin said a letter will be sent to the Education Standards and Practices Board regarding the concerns over the language in paragraph (6) of North Dakota Administrative Code Section 67.1-02-02-02(1)(b). He said the committee's options will be to retain, change, or withdraw the language.

Mr. Walstad said because of staffing changes in the Legislative Council, Ms. Vonette J. Richter, Assistant Code Revisor, will be staffing the Administrative Rules Committee. Chairman Devlin and Representative K. Koppelman commended Mr. Walstad for his efforts and expert guidance to the committee over the last 20 years.

No further business appearing, Chairman Devlin adjourned the meeting at 10:30 a.m.

John Walstad
Legal Division Director

Vonette J. Richter
Assistant Code Revisor

ATTACH:7