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## ADMINISTRATIVE RULES COMMITTEE

Tuesday, June 9, 2020

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

**Members present:** Representatives Bill Devlin, Rick Becker, Josh Boschee, Kim Koppelman, Andrew Marschall, Brandy Pyle, Dan Ruby, Bernie Satrom, Vicky Steiner, Nathan Toman, Robin Weisz; Senators Joan Heckaman, Jerry Klein, Randy D. Lemm, Nicole Poolman, David S. Rust

**Members absent:** None

**Others present:** Representative Karen M. Rohr, Mandan, member of the Legislative Management  
Representative Ben Koppelman, West Fargo  
See [Appendix A](#) for additional persons present.

**It was moved by Representative Poolman, seconded by Representative Klein, and carried on a voice vote that the minutes of the March 4, 2020, meeting be approved as distributed.**

### STATE SEED DEPARTMENT

Chairman Devlin called on Mr. Ken Bertsch, Seed Commissioner, State Seed Department, for testimony ([Appendix B](#)) regarding the July 2020 rules of the department relating to field and laboratory standards for crops certified by the department.

### AGRICULTURE COMMISSIONER

Chairman Devlin called on Mr. Doug Goehring, Agriculture Commissioner, for testimony ([Appendix C](#)) regarding the July 2020 rules of the Agriculture Commissioner relating to the emerald ash borer, Pride of Dakota, anhydrous ammonia, and the regulation of pet food.

In response to a question from Senator Klein, Mr. Goehring said the anhydrous ammonia mobile storage container program is working well.

### ATTORNEY GENERAL (FIRE MARSHAL)

Chairman Devlin called on Mr. Douglas D. Nelson, State Fire Marshal, Attorney General's office, for testimony ([Appendix D](#)) regarding the July 2020 rules of the Fire Marshal.

In response to a question from Representative K. Koppelman, Mr. Nelson said the rules provide for the adoption of the International Fire Code with exceptions and modifications, as contained on pages 72 and 73 of the supplement. For example, he said, because the maximum number of children permitted by state law in a residential child care facility is different than what is provided for in the International Fire Code, the rules included an exception to the International Fire Code. He said the 2018 International Fire Code changes relating to the installation of sprinklers and carbon monoxide alarms in buildings used for sleeping purposes apply retroactively.

In response to a question from Representative K. Koppelman, Mr. Nelson said the state has a residential fire code. He said the rule changes only apply to a residence if the residence is used as a child care facility. He said the International Fire Code applies to commercial buildings, not residential.

In response to a question from Senator Rust, Mr. Nelson said the International Fire Code does not require centralized systems.

In response to a question from Representative Satrom, Mr. Nelson said some of the International Fire Code changes resulted from the 2003 nightclub fire in Warwick, Rhode Island, in which about 100 people lost their lives in a fire due to inadequate exits and the lack of fire protection. He said the sprinkler requirements will apply to businesses that serve alcohol and have an occupancy capacity of 300 or more.

In response to a question from Representative Ruby, Mr. Nelson said some rural areas may not have an adequate water system to install sprinkler systems. He said rural areas often rely on volunteer fire departments, which have longer response times, making the sprinkler system that much more important. He said education will be provided as well as time for businesses to come into compliance with the rules.

In response to a question from Representative Becker, Mr. Nelson said the 2018 International Fire Code contains the retroactive requirement. He said the 2018 code is being adopted in other states.

In response to a question from Representative Satrom, Mr. Nelson said the sprinkler system requirement does not take into account the type of structure.

In response to a question from Representative K. Koppelman, Mr. Nelson said in the absence of a local fire code, the state law applies.

### **BOARD OF BARBER EXAMINERS**

Chairman Devlin called on Ms. Tona Stevenson, Secretary/Treasurer, Board of Barber Examiners, for testimony ([Appendix E](#)) regarding the July 2020 rules of the Board of Barber Examiners relating to barber school requirements.

### **STATE ELECTRICAL BOARD**

Chairman Devlin called Mr. James Schmidt, Executive Director, State Electrical Board, for testimony ([Appendix F](#)) regarding the July 2020 rules of the board.

In response to a question from Senator Klein, Mr. Schmidt said the rules clearly provide telecommunications companies are exempt from regulation. He said the excess ending fund balance issue discussed at the Legislative Audit and Fiscal Review Committee will be addressed by adjusting the fees, which will reduce the balance by \$1.244 million per year for the next 3 years. He said at that time, the new fee structure will take effect. He said the time frame may have to be adjusted due to the reduction in activity as a result of Coronavirus (COVID-19). He said the board also is working with the North Dakota State College of Science to use excess funding to provide financial assistance to students.

Chairman Devlin said while Mr. Schmidt has indicated telecommunications companies are exempt from regulation under law and rules, several people have contacted him with concerns that the board has indicated it has jurisdiction to regulate those companies when those companies perform power limited technician work.

Chairman Devlin said Mr. David Crothers, Executive Vice President, Broadband Association of North Dakota, submitted written testimony ([Appendix G](#)) regarding the rules.

In response to a question from Chairman Devlin, Mr. Schmidt said he has been made aware of instances of telecommunications companies performing functions that do not fit within the definition of telecommunication work. He said it would be easy for those individuals doing the work that falls outside the scope of telecommunications to become licensed as a power limited technician. He said the board has not received any applications for licensure for that position.

In response to a question from Representative K. Koppelman, Mr. Schmidt said if telecommunications companies are exempt from regulation, the board would not be able to prohibit telecommunications companies from performing electrical work.

In response to a question from Senator Klein, Mr. Schmidt said the board based the rules on the statutory scope of authority of a telecommunications company. He said the limits only apply if a telecommunications company is doing work in classified locations, which is a very narrow market. He said this does not affect the authority of a telecommunications company to do work in malls, schools, churches, and other public buildings, such as the Capitol. He said examples of classified locations are projects within 20 feet of a gas pump or on a skid at oil field sites. He said issue arose when out-of-state companies were using residential materials in classified locations on oil field sites. He said it is a matter of educating the industry.

In response to a question from Representative Pyle, Mr. Schmidt said the change to North Dakota Administrative Code (NDAC) Section 24.1-06-01-40 was made to clarify certain work must be done under the supervision of a master or Class B electrician. He said the change was necessary to clarify the scope of authority of the new power limited technician licensees.

In response to a question from Representative Toman, Mr. Schmidt said there is a need to educate people on what the various code areas cover. He said it is important to use the correct electrical parts in a classified area. He said the purpose of the power limited technician licensure is to ensure those individuals are using the correct electrical parts. He said he does not view these rules as overreaching or creeping into other areas. He said the rules changes only affect work done in classified locations. He said he would be willing to sit down with any group to discuss the rules and how the rules do not infringe on other areas. He said the intent was to cover work done in dangerous areas and ensure those people are trained properly.

Chairman Devlin called on Representative Ben Koppelman for testimony ([Appendix H](#)) regarding the rules. Representative B. Koppelman said North Dakota Century Code Section 57-34-01 defines "telecommunications carrier" as "a company that is engaged in the business of furnishing telecommunications service within this state" and "telecommunication services" as "transmitting for consideration of two-way communication by wire, cable, fiber optics, radio, lightwave, microwave, satellite, or other means." He said the 2019 legislation clarified the State Electrical Board has no authority to regulate telecommunications services. He said he also has concerns relating to the issue raised by Representative Pyle regarding the board's change to NDAC Section 24.1-06-01-40 regarding the requirement that certain alarm systems must be done under the supervision of a master or Class B electrician. He said his interpretation of House Bill No. 1157 (2019) allows this type of work to be done by power limited technicians. He said he would recommend holding over the rules or amending the rules to work out some of the issues he raised and to ensure the board did not exceed its authority.

Mr. Schmidt said if the rules are held over and the revised electrical code is not adopted, the board could lose its reciprocity agreement with other states, especially the bordering states. He said the changes were not adopted to increase costs for contractors like Representative B. Koppelman.

Chairman Devlin said the primary concern is the regulation of telecommunications companies by the State Electrical Board.

Representative Ruby said he has concerns about adopting national rules, the additional fees, and the telecommunications companies.

**It was moved by Senator Klein, seconded by Senator Poolman, and carried on a roll call vote that all rules of the State Electrical Board be held over to the September 2020 meeting.** Representatives Devlin, Becker, Boschee, Koppelman, Marschall, Pyle, Ruby, Satrom, Steiner, Toman, and Weisz and Senators Heckaman, Klein, Lemm, Poolman, and Rust voted "aye." No negative votes were cast.

Senator Klein said Mr. Schmidt and Representative B. Koppelman worked hard on the 2019 legislation, the intent of which was to create another category of electrician. He said Mr. Schmidt and the board should work with Representative B. Koppelman to work out some of the issues raised today.

### STATE DEPARTMENT OF HEALTH

Chairman Devlin called on Ms. Kathy Laxdal, Program Manager, Division of Health Resources and Response, State Department of Health, for testimony ([Appendix I](#)) regarding the April 2020 rules of the department relating to basic care and end of life care service.

Chairman Devlin called on Ms. Bridget Weidner, Clinical Laboratory Improvements Amendments Manager, Division of Health Facilities, State Department of Health, for testimony ([Appendix J](#)) regarding the April 2020 rules of the department relating to requirements for surgically removed tissues.

### DEPARTMENT OF ENVIRONMENTAL QUALITY

Chairman Devlin called on Mr. David Glatt, Director, Department of Environmental Quality, for testimony ([Appendix K](#)) regarding the July 2020 rules of the department relating to NDAC Article 33.1-14, Boiler Rules.

Chairman Devlin called on Mr. Tom Bachman, Division of Air Quality, Department of Environmental Quality, for testimony ([Appendix L](#)) regarding the July 2020 rules of the department relating to NDAC Article 33.1-15, Air Pollution Control.

In response to a question from Chairman Devlin, Mr. Bachman said the removal of the newspaper publication requirement on pages 238 and 246 of the supplement was made to save time and money. He said the department allows people to sign up for email notifications of any action of the department. He said no comments were received on this issue during the public comment period.

Senator Heckaman, Senator Rust, and Representative Pyle said although it is beneficial to post notices and information about departmental projects on the department's website and to offer notification, it is important to continue the newspaper publication requirement.

Mr. Bachman said if the committee would like to retain the newspaper publication requirements, the department would support removing that rule change.

**It was moved by Senator Poolman, seconded by Senator Rust, and carried on a roll call vote that the language on pages 238 and 246 of Supplement 377 (NDAC Sections 33.1-15-14-06 and 33.1-15-15-01.2), which removed the newspaper publication requirement, be retained.** Representatives Devlin, Becker, Boschee, Koppelman, Marschall, Pyle, Ruby, Satrom, Steiner, Toman, and Weisz and Senators Heckaman, Klein, Lemm, Poolman, and Rust voted "aye." No negative votes were cast.

Chairman Devlin called on Ms. Diana Trussell, Solid Waste Program Manager, Department of Environmental Quality, for testimony ([Appendix M](#)) regarding the July 2020 rules of the department relating to NDAC Article 33.1-20, Solid Waste Management and Land Protection.

In response to a question from Representative Ruby, Ms. Trussell said she does not anticipate any increases in costs for municipal landfills. She said the rules primarily provide clarification for facilities. She said recycling centers will be covered under a general permit to ensure the centers are using environmentally sound practices. She said there will not be a cost for permits. She said the reporting requirement can be completed and submitted online.

Chairman Devlin called on Ms. Cindy Auen, Quality Assurance/Quality Control, Laboratory Services, Department of Environmental Quality, for testimony ([Appendix N](#)) regarding the July 2020 rules of the department regarding NDAC Article 33.1-23, Environmental Laboratory Certification Program.

Chairman Devlin called on Mr. Derek Kannenberg, Hazardous Waste Program Manager, Department of Environmental Quality, for testimony ([Appendix O](#)) regarding the July 2020 rules of the department regarding NDAC Article 33.1-24, Hazardous Waste Management.

## STATE BOARD OF NURSING

Chairman Devlin called on Ms. Stacey Pfenning, Executive Director, State Board of Nursing, for testimony ([Appendix P](#)) regarding the July 2020 rules of the State Board of Nursing relating to licensure and registration fees.

## PUBLIC SERVICE COMMISSION

Chairman Devlin called on Mr. John Schuh, General Counsel, Public Service Commission, for testimony ([Appendix Q](#)) regarding the July 2020 rules of the Public Service Commission relating to wind and solar facility decommissioning.

## SECRETARY OF STATE

Chairman Devlin called on Ms. Barbara Siegel, Executive Staff Director, Secretary of State's office, for testimony ([Appendix R](#)) regarding the July 2020 rules of the Secretary of State relating to child series and parent limited liability company series.

In response to a question from Representative K. Koppelman, Ms. Siegel said the child series and parent limited liability company series are forms of limited liability companies which provide limited protection across numerous series. She said these series allows for the protection of one series from the other series.

Chairman Devlin called on Mr. Jim Silrum, Deputy Secretary of State, Secretary of State's office, for testimony ([Appendix S](#)) regarding the July 2020 rules of the Secretary of State regarding valid tribal identification for voting.

In response to a question from Senator Heckaman, Mr. Silrum said the information used by the Secretary of State to update the central voter file is provided primarily by the Department of Transportation. In the case of tribal information, he said, the information for updating the central voter file will be provided to the Secretary of State by the tribal government. He said the Secretary of State does not track the race of any voter and does not know if a particular voter is a tribal member.

## DEPARTMENT OF HUMAN SERVICES

Chairman Devlin called on Mr. Jonathan Alm, Legal Advisory, Department of Human Services, for testimony ([Appendix T](#)) regarding the July 2020 rules of the department. Mr. Alm said the changes to NDAC Section 75-03-43-02 erroneously used the term "traumatic" when referring to brain injury. He said to make the section consistent with the statute, "traumatic" should be removed.

Chairman Devlin said the term would be removed in both places in that section to be consistent with the statute.

In response to a question from Representative Steiner, Mr. Alm said with respect to the fees for peer support certification, the department is authorized by statute to charge up to \$300. He said the fee of \$50 was set based on comparable fees in other programs. He said the department would consider a rule to waive the fee for hardship.

## DEPARTMENT OF COMMERCE

Chairman Devlin called on Mr. Bruce Hagen, Weatherization Program Manager, Department of Commerce, for testimony ([Appendix U](#)) regarding the July 2020 rules of the Department of Commerce regarding the manufactured home installation program.

## COMMITTEE DISCUSSION

Representative K. Koppelman said with respect to the rules of the State Electrical Board, he would like Mr. Schmidt to provide to the committee at the next meeting some amendments to address the concern raised in the testimony. He said the three items the committee should consider when it reconsiders these rules at the September 2020 meeting are:

1. Ensure the State Electrical Board is complying with the law;
2. Ensure the State Electrical Board is not overregulating the industry; and
3. Ensure the State Electrical Board is not increasing costs after being instructed by the Legislative Audit and Fiscal Review Committee to reduce costs.

Chairman Devlin said he would like Senator Klein and Representative B. Koppelman and other interested parties to work with Mr. Schmidt and the State Electrical Board to resolve the concerns and to bring forward the necessary amendments.

No further business appearing, Chairman Devlin adjourned the meeting at 2:35 p.m.

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Vonette J. Richter  
Legal Division Director

ATTACH:21