



ADMINISTRATIVE RULES COMMITTEE

Tuesday, September 15, 2020
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Bill Devlin, Chairman, called the meeting to order at 9:30 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: Senator Ray Holmberg, Grand Forks, member of the Legislative Management
See [Appendix A](#) for additional persons present.

It was moved by Senator Klein, seconded by Representative Steiner, and carried on a voice vote that the minutes of the June 9, 2020, meeting be approved as distributed.

PUBLIC SERVICE COMMISSION

Chairman Devlin called on Mr. John Schuh, Public Service Commission, for testimony ([Appendix B](#)) regarding a request for the repeal of North Dakota Administrative Code (NDAC) Article 69-07 and the amendment of NDAC Chapter 69-01-01 to remove references to grain elevators and warehouses. Mr. Schuh said Senate Bill No. 2009 (2019) transferred the regulation of grain warehousemen, grain buyers, and hay buyers from the Public Service Commission to the Agriculture Commissioner. He said as a result of this legislation, these portions of the NDAC are obsolete and no longer in compliance with law.

It was moved by Senator Klein, seconded by Representative Toman, and carried on a roll call vote that NDAC Article 69-07 be repealed and that NDAC Chapter 69-01-01 be amended to remove references to grain elevators and warehouses. 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.

ATTORNEY GENERAL (LOTTERY)

Chairman Devlin called on Mr. Randy Miller, Director, North Dakota Lottery, for testimony ([Appendix C](#)) regarding the October 2020 rules of the Attorney General.

In response to a question from Representative Koppelman, Mr. Miller said in the Attorney General's opinion regarding the legality of the lottery rules, it was noted one newspaper did not publish the hearing notice in time to allow 20 days between the date of publication and the hearing date. He said the opinion indicated the rules, however, were in substantial compliance with North Dakota Century Code (NDCC) Chapter 28-32.

Representative Koppelman requested the committee receive a copy of the Attorney General's opinion for each set of rules in advance of Administrative Rules Committee meetings.

GAME AND FISH DEPARTMENT

Chairman Devlin called on Ms. Kim Kary, Chief, Administrative Services Division, Game and Fish Department, for testimony ([Appendix D](#)) regarding the October 2020 rules of the Game and Fish Department.

In response to a question from Representative Koppelman, Ms. Kary said when hunting, the licensee is required to be in possession of the required hunting license. She said game wardens are authorized to use electronic means

to verify a hunter has the proper license. She said an image of the license on the licensee's phone is the same as being in physical possession of a paper license.

In response to a question from Representative Ruby, Mr. Scott Peterson, Deputy Director, Game and Fish Department, said fishing contest fees are paid to the department and forwarded to a conservation project in the area of the fishing contest. He said if there is not a cash payout associated with the contest, such as when all prizes are donated merchandise, a fishing contest fee is not collected.

INDUSTRIAL COMMISSION

Chairman Devlin called on Mr. Ed Murphy, State Geologist, Department of Mineral Resources, for testimony ([Appendix E](#)) regarding the October 2020 rules of the Industrial Commission.

Chairman Devlin said Ms. Rebecca Leier, High-Level Radioactive Waste Advisory Council, provided written testimony ([Appendix F](#)) regarding the rules of the Industrial Commission.

In response to a question from Senator Klein, Mr. Murphy said Ms. Leier is a member of a community alliance group that formed in Pierce County in 2015 as a result of the proposed Department of Energy test well. He said Ms. Leier's proposed language to NDAC Sections 43-02-13-12 and 43-02-13-13 may add clarification and will not change the meaning. He said any changes that would require the Industrial Commission to consult with county commissioners regarding signage, timing, and other controls would be more appropriately handled legislatively in the upcoming session.

It was moved by Senator Klein, seconded by Representative Koppelman, and carried on a roll call vote that the second sentence of the second paragraph of NDAC Section 43-02-13-12 be amended to read: "The permit application must be accompanied by a notice of opportunity for a position paper, from the commissioners of the county where the proposed exploration drilling will take place." and that the fourth sentence of the first paragraph of NDAC Section 43-02-13-13 be amended to read: "The permit application must be accompanied by a notice of opportunity for a position paper, from the commissioners of the county where the proposed facility will be located." 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.

BOARD OF PODIATRIC MEDICINE

Chairman Devlin called Ms. JoDee Wiedmeier, Executive Director, Board of Podiatric Medicine, for testimony ([Appendix G](#)) regarding the October 2020 rules of the board addressing licensure and the prescription drug monitoring program.

EDUCATION STANDARDS AND PRACTICES BOARD

Chairman Devlin called on Dr. Rebecca Pitkin, Executive Director, Education Standards and Practices Board, for testimony ([Appendix H](#)) regarding the October 2020 rules of the board.

In response to a question from Representative Pyle, Dr. Pitkin said of the 27 individuals who have applied for licensure under the special provisions for members of the military and military spouses, most have been military spouses.

In response to a question from Senator Rust, Dr. Pitkin said she was advised by the board's attorney not to include in administrative rules any language contained in Century Code. She said for that reason, much of the language regarding the organization and terms of the Education Standards and Practices Board is being removed in NDAC Section 67.1-01-01-01.

In response to a question from Senator Heckaman, Dr. Pitkin said emergency rules are being written to respond to the Governor's executive order regarding substitute teacher limitations. She said many student teachers have substitute teacher credentials.

SECRETARY OF STATE

Chairman Devlin called on Mr. Al Jaeger, Secretary of State, for testimony ([Appendix I](#)) regarding the October 2020 rules of the Secretary of State addressing combative sports.

DEPARTMENT OF HUMAN SERVICES

Chairman Devlin called on Mr. Jonathan Alm, Department of Human Services, for testimony ([Appendix J](#)) regarding the October 2020 rules of the department dealing with the definition of gross income for purposes of aid to vulnerable aged, blind, and disabled persons and with approved locations for abandoned infants.

REAL ESTATE APPRAISER QUALIFICATION AND ETHICS BOARD

Chairman Devlin called on Mr. Corey Kost, Vice Chairman, Real Estate Appraiser Qualification and Ethics Board ([Appendix K](#)) regarding the October 2020 rules of the board regarding appraiser supervisor responsibilities.

STATE ELECTRICAL BOARD

Chairman Devlin said the rules of the State Electrical Board were held over from the June 9, 2020, meeting due to concerns about the rules from the telecommunications and home builder industries. He said the State Electrical Board and the telecommunications industry worked out their differences and are in agreement that changes to the rules are not needed. He said the appropriate time for the home builder industry to express its concerns about the rules was at the public hearing conducted by the State Electrical Board in November 2019, or during the available comment period immediately following that hearing. He said, however, since the June 9, 2020, Administrative Rules Committee meeting, the State Electrical Board agreed to work with representatives of the home builder industry to develop amendments to address the home builders' concerns. He said testimony in support of the State Electrical Board's rules was received from Mr. Tim McClintock, National Electrical Manufacturers Association ([Appendix L](#)) and Mr. Raymond B. Bizal, National Fire Protection Association ([Appendix M](#)).

Chairman Devlin called on Mr. Scott Porsborg, Special Assistant Attorney General, State Electrical Board, for testimony ([Appendix N](#)) regarding the proposed amendments to the July 2020 rules of the State Electrical Board. Mr. Porsborg said the State Electrical Board reached an agreement with the telecommunications industry regarding the interpretation of statute so all issues with that group have been resolved. He said the State Electrical Board also has worked with the representatives of the home builder industry to address concerns relating to the adoption of the 2020 National Electrical Code (NEC) and to the requirements for placement carbon monoxide protectors. He said it has been the practice of the State Electrical Board to adopt the newest version of the NEC every 3 years. He said the following amendments were agreed upon with the home builders:

1. The adoption of the 2020 NEC will become effective on January 1, 2021;
2. The installation of a surge suppression unit in new residential construction will not be required; and
3. The changes to NDAC Section 24.1-06-01-40(3) relating to carbon monoxide detectors and their locations, which was perceived as expanding the required locations in new residential construction beyond what the building code requires, will be withdrawn.

Mr. Porsborg said the amendments were made voluntarily by the board. He said the home builders were encouraged to participate in the hearing and comment process in the future so concerns with rules can be dealt with at the appropriate time in the administrative rules process.

Chairman Devlin said he appreciates the board and the home builder industry working together to address the disputed issues. He said any other issues of the home builder industry should be addressed legislatively in the next session.

In response to a question from Representative Ruby, Mr. Porsborg said implementation of the 2020 NEC is being delayed until January 1, 2021, because that is the date when the City of Fargo recognizes new codes for purposes of bidding. He said the 3-month delay will not affect reciprocity or safety issues.

In response to a question from Representative Koppelman, Mr. Porsborg provided a copy ([Appendix O](#)) of the proposed amendments.

It was moved by Senator Klein, seconded by Representative Koppelman, and carried on a roll call vote to delay implementation of the 2020 NEC until January 1, 2021, amend the adoption of the 2020 NEC to exclude the requirement to install whole-house surge protection, clarify smoke detectors only are required in places currently required by the building codes, and withdraw changes to NDAC Section 24.1-06-01-40(3) dealing with additional carbon monoxide detectors. 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.

In response to a question from Representative Koppelman, Mr. Porsborg said NDAC Section 24.1-06-01-40 changed the term "bedroom" to "sleeping room" to be consistent with the International Building Code. He said the board confirmed with the home builders the change in terminology will not change the number of smoke detectors required.

OTHER BUSINESS

Chairman Devlin called on Ms. Vonette Richter, Legal Division Director, Legislative Council, for the presentation of a memorandum entitled [Administrative Rulemaking Statistics 2019-20](#).

It was moved by Senator Rust, seconded by Senator Heckaman, and carried on a voice vote that the chairman and the Legislative Council staff be requested to prepare a report and to present the report to the Legislative Management.

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

Vonette J. Richter
Legal Division Director

ATTACH:15