

# NORTH DAKOTA LEGISLATIVE COUNCIL

## Minutes of the

### ADMINISTRATIVE RULES COMMITTEE

Tuesday, December 13, 2005  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Representative William R. Devlin, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Representatives William R. Devlin, LeRoy G. Bernstein, Randy Boehning, Duane DeKrey, Mary Ekstrom, Pat Galvin, Ronald A. Iverson, Kim Koppelman, Jon O. Nelson, Margaret Sitte, Blair Thoreson; Senators John M. Andrist, April Fairfield, Tom Fischer, Layton W. Freborg, Jerry Klein, Gary A. Lee, Constance Triplett

**Members absent:** Representatives Rod Froelich, Sally M. Sandvig, Dwight Wrangham; Senators Dennis Bercier, Richard L. Brown

**Others present:** See Appendix A

Representative Koppelman said at the September 27, 2005, committee meeting he made a motion for adopting the amendments suggested by the Board of Massage. He said the minutes do not reflect that he stated he had serious reservations about the procedure that was followed but the law was not violated and approval would not set a precedent because of 2005 legislative changes that are now in place for the rulemaking process. He said these facts should be reflected in the minutes as background for the motion he made. **It was moved by Representative Koppelman, seconded by Representative DeKrey, and carried on a voice vote that the minutes of the September 27, 2005, committee meeting be amended to reflect the remarks of Representative Koppelman. It was moved by Representative DeKrey, seconded by Senator Klein, and carried on a voice vote that the minutes of the September 27, 2005, committee meeting be approved as amended.**

#### BOARD OF DIETETIC PRACTICE

Chairman Devlin called on Ms. Cindy Anderst, Board of Dietetic Practice, for testimony relating to January 2006 rules of the board. A copy of Ms. Anderst's prepared testimony is attached as Appendix B.

In response to a question from Senator Andrist, Ms. Anderst said continuing education is available online for licensed nutritionists and licensed registered dietitians.

In response to a question from Senator Klein, Ms. Anderst said there are more than 250 licensees of the Board of Dietetic Practice and she would furnish exact numbers of licensees to committee members.

#### SECRETARY OF STATE

Chairman Devlin called on Mr. Alvin A. Jaeger, Secretary of State, for a presentation of a request for an extension of time to adopt administrative rules. A copy of a letter from Mr. Jaeger requesting the extension is attached as Appendix C.

**It was moved by Representative Koppelman, seconded by Representative DeKrey, and carried on a roll call vote that the committee approve an extension of time for adoption of rules by the Secretary of State to regulate mixed fighting style competition.** Voting in favor of the motion were Representatives Devlin, Bernstein, Boehning, DeKrey, Ekstrom, Galvin, Iverson, Koppelman, Nelson, Sitte, and Thoreson and Senators Andrist, Fairfield, Fischer, Klein, Lee, and Triplett. No negative votes were cast.

#### STATE BOARD OF COSMETOLOGY

Chairman Devlin called on Mr. Gary Andes, President, State Board of Cosmetology, for presentation of testimony relating to December 2005 rules of the board. A copy of Mr. Andes' prepared testimony is attached as Appendix D.

#### STATE DEPARTMENT OF HEALTH

Chairman Devlin called on Mr. Kenan Bullinger, State Department of Health, for testimony relating to January 2006 food and lodging establishment rules of the department. A copy of Mr. Bullinger's prepared testimony is attached as Appendix E. Mr. Bullinger said the rules establish annual license fees for food and lodging establishments inspected by the department. He said the fees were previously established by statute but those laws were repealed in 2005 and authority was given to the department to set those fees through the administrative rules process. He said the 2005 legislation also provided for depositing of fee revenue in the State Department of Health operating fund instead of the state general fund and the revenue would be used to support the inspection activities of the Division of Food and Lodging.

Chairman Devlin called on Mr. Tim Meyer, Director, Division of Emergency Medical Services, State Department of Health, for testimony relating to January 2006 rules for emergency medical services, licensing, training, testing, and certification. A copy of Mr. Meyer's prepared testimony is attached as Appendix F.

Chairman Devlin called on Ms. Barb Schweitzer, Director, Newborn Screening Program, State Department of Health, for testimony relating to January 2006 newborn screening rules. A copy of Ms. Schweitzer's prepared testimony is attached as Appendix G.

### **WORKFORCE SAFETY AND INSURANCE**

Chairman Devlin called on Ms. Jodi Bjornson, General Counsel, Workforce Safety and Insurance, for presentation of a request for an extension of time to adopt rules. A copy of Ms. Bjornson's written request for an extension is attached as Appendix H.

In response to a question from Representative Devlin, Ms. Bjornson said the rules should be completed in time to become effective July 1, 2006.

**It was moved by Representative DeKrey, seconded by Senator Andrist, and carried on a roll call vote that the committee approve an extension of time for Workforce Safety and Insurance to finalize administrative rules revisions to become effective July 1, 2006.** Voting in favor of the motion were Representatives Devlin, Bernstein, Boehning, DeKrey, Ekstrom, Galvin, Iverson, Koppelman, Sitte, and Thoreson and Senators Andrist, Fairfield, Fischer, Klein, Lee, and Triplett. No negative votes were cast.

### **DEPARTMENT OF TRANSPORTATION**

Chairman Devlin called on Mr. Keith Magnusson, Director, Driver and Vehicle Services, Department of Transportation, for testimony relating to January 2006 rules of the department. A copy of Mr. Magnusson's prepared testimony is attached as Appendix I. Mr. Magnusson said the rules amendments were initiated by a 2003 performance audit report recommendation for review and update of all administrative rules relating to driver's licenses. He said some rules are being eliminated because they have become statutory provisions, some rules required change to conform to statutory changes, and some rules required changes to comply with federal law changes.

### **INDUSTRIAL COMMISSION OIL AND GAS DIVISION**

Chairman Devlin called on Mr. Bruce E. Hicks, Assistant Director, Industrial Commission Oil and Gas Division, for testimony relating to January 2006 rules of the Oil and Gas Division. A copy of Mr. Hicks' prepared testimony is attached as Appendix J.

### **INSURANCE COMMISSIONER**

Chairman Devlin called on Mr. Charles E. Johnson, General Counsel, Insurance Department, for presentation of testimony relating to January 2006 rules of the Insurance Commissioner. A copy of Mr. Johnson's prepared testimony is attached as Appendix K.

In response to questions from Representative Koppelman, Mr. Vance Magnuson, Insurance Department, reviewed the changes in coordination of benefits rules. He said the rules changes adopt the new model regulation as proposed by the National Association of Insurance Commissioners.

### **STATE BOARD OF EXAMINERS FOR NURSING HOME ADMINISTRATORS**

Chairman Devlin called on Mr. Randy Albrecht, State Board of Examiners for Nursing Home Administrators, for testimony relating to November 2005 rules of the board. A copy of Mr. Albrecht's prepared testimony is attached as Appendix L.

Representative Koppelman inquired about the increase in legal fees for investigations and disciplinary actions. Mr. Albrecht said the board has experienced an increase in disciplinary actions and investigation costs. He said five complaints were fully investigated in the past two years.

Senator Fischer asked how many nursing homes share an administrator and a medical director with another nursing home. Mr. Albrecht said the board can provide exact information to the committee on the number of nursing homes sharing administrators or medical directors. He said state law allows sharing of an administrator or medical director but requires each nursing home to have someone in each of those positions.

Senator Fischer asked whether there is a shortage of nursing home administrators in the state. Mr. Albrecht said there is a shortage and the board is working on the issue. He said the board is trying to keep its administrative rules flexible regarding issues of reciprocity for licenseholders from other states and entry to the profession for new licensees.

Senator Triplett asked for more detailed information on investigation costs relating to disciplinary complaints. Ms. Bev Herman, Executive Director, State Board of Examiners for Nursing Home Administrators, said the cost to the board is approximately \$75 per hour for the services from the Attorney General's office and the total cost averages about \$300 per investigation.

Ms. Herman said nursing home administrator numbers are in decline nationwide. She said a significant reason is that assisted living facilities are becoming more attractive to professionals because they are subject to substantially less regulation. She said North Dakota had approximately 175 licensed nursing home administrators a few years ago and now has approximately 150.

### **STATE BOARD OF PHARMACY**

Chairman Devlin called on Mr. Howard C. Anderson, Jr., Executive Director, State Board of Pharmacy, for testimony relating to January 2006 rules of the board. A copy of

Mr. Anderson's prepared testimony is attached as Appendix M.

In response to a question from Senator Klein, Mr. Anderson said in North Dakota there are approximately 700 licensed practicing pharmacists. He said that is the number of in-state licensed practitioners and there are many more pharmacists licensed who are practicing outside the state. He said those individuals practicing outside the state only pay a \$35 annual fee.

### **REAL ESTATE COMMISSION**

Chairman Devlin called on Ms. Pat Jergenson, Secretary-Treasurer, Real Estate Commission, for testimony relating to January 2006 rules of the commission. A copy of Ms. Jergenson's prepared testimony is attached as Appendix N.

Representative Koppelman inquired about the rules provision that license fees may be set at not more than \$200. Ms. Jergenson said that language in the rules mirrors the statutory provision.

Mr. Claus Lembke, North Dakota Association of Realtors, said the association participated throughout the process of the Real Estate Commission rulemaking and the association supports the rules as adopted.

### **DEPARTMENT OF HUMAN SERVICES**

Chairman Devlin called on Ms. Krista Andrews, Legal Advisory Unit, Department of Human Services, for testimony relating to December 2005 rules of the department. A copy of Ms. Andrews' prepared testimony is attached as Appendix O.

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

Chairman Devlin called on Ms. Pam Fitzgerald, Board of Clinical Laboratory Practice, for testimony relating to January 2006 rules of the board. A copy of Ms. Fitzgerald's prepared testimony is attached as Appendix P.

### **FUTURE MEETINGS SCHEDULE**

Chairman Devlin said the next committee meeting would be scheduled for March 14, 2006. After describing the options for meeting dates and requesting preferences of committee members, Chairman Devlin said the remaining committee meetings for the interim would be scheduled for June 13, September 14, and December 13, 2006.

### **STATE BOARD OF RESPIRATORY CARE**

Chairman Devlin called on Ms. Lana Curl, State Board of Respiratory Care, for testimony relating to January 2006 rules of the board. A copy of Ms. Curl's prepared testimony is attached as Appendix Q. Ms. Curl said 2005 legislation required the board to license polysomnographic technologists and the rules were adopted to implement that new responsibility. In response to a question from Representative Ekstrom, Ms. Curl said the board presently has 32 licensed polysomnographic technologists.

### **DEPARTMENT OF COMMERCE**

Chairman Devlin called on Mr. Jim Boyd, Department of Commerce, for testimony relating to January 2006 manufactured home installation program rules of the department. Mr. Boyd said he is filling in for Mr. Richard Gray who is unable to attend the meeting. He distributed testimony prepared by Mr. Gray, a copy of which is attached as Appendix R.

Mr. Boyd said state legislation requires adopting of rules to implement a manufactured home installation program and federal law requires each state to have a manufactured home installation program in place by the end of 2005 or a federal program would be imposed. He said these rules were adopted after a lengthy deliberation process involving participation of affected entities.

The meeting was adjourned at 2:00 p.m.

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John Walstad  
Code Revisor

[ATTACH:18](#)