



600 East Boulevard Avenue, Bismarck, ND 58505

ADMINISTRATIVE RULES COMMITTEE

Monday, September 12, 2022
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Nicole Poolman, Chairman, called the meeting to order at 10:00 a.m.

Members present: Senators Nicole Poolman, Joan Heckaman, Randy D. Lemm, Shawn Vedaa; Representatives Bill Devlin, Karen Karls, Kim Koppelman, Andrew Marschall, Brandy Pyle, Bernie Satrom*, Nathan Toman

Members absent: Senator Jerry Klein; Representatives Tom Kading and Robin Weisz

Others present: See [Appendix A](#)

*Attended remotely

It was moved by Representative Toman, seconded by Representative Karls, and carried on a voice vote that the minutes of the June 1, 2022, meeting be approved as distributed.

STATE BOARD OF DENTAL EXAMINERS

The State Board of Dental Examiners submitted a letter ([Appendix B](#)) to the committee, noting the board voted to withdraw the three rule provisions carried over for consideration at the June 1, 2022, meeting, namely North Dakota Administrative Code (NDAC) Sections 20-03-01-01(2)(c), 20-03-01-01(5)(r), and 20-04-01-01(6)(aa).

SmileDirectClub submitted a letter ([Appendix C](#)) to the committee expressing support of the State Board of Dental Examiner's withdrawal of the three rule provisions.

It was moved by Representative Koppelman, seconded by Representative Karls, and carried on a roll call vote to approve the board's request to withdraw NDAC Sections 20-03-01-01(2)(c), 20-03-01-01(5)(r), and 20-04-01-01(6)(aa) from consideration. Senators Poolman, Heckaman, Lemm, and Vedaa and Representatives Devlin, Karls, Koppelman, Marschall, Pyle, Satrom, and Toman voted "aye." No negative votes were cast.

ATTORNEY GENERAL

Mr. Mark Nickel, Supervisory Special Agent, Bureau of Criminal Investigation, presented testimony ([Appendix D](#)) regarding the October 2022 rules of the Attorney General.

STATE DEPARTMENT OF HEALTH

Mr. Jason Wahl, Director, Division of Medical Marijuana, Department of Health and Human Services, presented testimony ([Appendix E](#)) regarding the October 2022 rules of the department.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Mr. Duane Sandwick, Program Manager, Petroleum Tank Release Compensation Fund, Department of Environmental Quality, presented testimony ([Appendix F](#)) regarding the October 2022 rules of the department.

NORTH DAKOTA BOARD OF MEDICINE

Ms. Sandra DePountis, Executive Director, North Dakota Board of Medicine, presented testimony ([Appendix G](#)) regarding the October 2022 rules of the board.

In response to a question from a committee member, Ms. DePountis noted graduates of medical schools in the United Kingdom, Australia, Canada, and New Zealand are treated differently than other foreign medical school graduates because those countries' schools are similar to our nation's and are accredited by the same accrediting bodies.

EDUCATION STANDARDS AND PRACTICES BOARD

Dr. Rebecca Pitkin, Executive Director, Education Standards and Practices Board, presented testimony ([Appendix H](#)) regarding the October 2022 rules of the board.

A committee member expressed concern with a proposed rule that allows individuals who hold only a high school diploma or equivalent to apply for an interim substitute teacher license if a shortage of regularly licensed substitutes exists. The committee member acknowledged the teacher shortage facing the state, but noted a concern with lowering the qualification standards.

In response to the committee member's concern, Dr. Pitkin noted:

- Currently, an individual seeking an interim license to be a substitute teacher must have completed at least 48 semester hours of postsecondary education, but those hours are not required to be related to education.
- Under the proposed rule, if an individual seeking an interim license to be a substitute teacher holds only a high school diploma or equivalent, the individual also must complete a state-approved, 20-hour substitute training program that includes training on classroom management, high-risk students, appropriate parent-teacher relationships, and boundary violations.
- The state-approved substitute training program was vetted by the board and is used in other states.
- An individual enrolled in the training program must pay \$180 and complete a test on the required training modules.

PUBLIC SERVICE COMMISSION

Mr. John Schuh, General Counsel, Public Service Commission, presented testimony ([Appendix I](#)) regarding the October 2022 rules of the Public Service Commission.

NORTH DAKOTA RACING COMMISSION

Mr. Jack Schulz, Executive Director, North Dakota Racing Commission, presented testimony ([Appendix J](#)) regarding the October 2022 rules of the North Dakota Racing Commission.

DEPARTMENT OF HUMAN SERVICES

Mr. Jonathan Alm, Director, Legal Advisory Unit, Department of Health and Human Services, presented testimony regarding the October 2022 rules of the department relating to NDAC Chapters 75-02-06, Ratesetting for Nursing Home Care ([Appendix K](#)); 75-02-07.1, Ratesetting for Basic Care Facilities ([Appendix L](#)); and 75-03-23, Provision of Home and Community-Based Services under the Service Payments for Elderly and Disabled Program and the Medicaid Waiver for the Aged and Disabled Program ([Appendix M](#)) and Section 75-03-34-02, Licensing ([Appendix N](#)).

PRIVATE INVESTIGATIVE AND SECURITY BOARD

Mr. Chris Redmann, Special Assistant Attorney General, Private Investigative and Security Board, presented testimony ([Appendix O](#)) regarding the October 2022 rules of the board.

In response to a question from a committee member, Mr. Redmann noted some individuals may be interested in the armed first responder training program, but the board does not anticipate a large demand.

Mr. John J. Shorey III, Executive Director, Private Investigative and Security Board, noted the board's proposed rules establish a framework to license and certify course instructors for armed first responder training, but the board is not involved with the end users of the armed first responder training program.

OTHER BUSINESS

Ms. Mary Kae Kelsch, Director, State and Local Division, Attorney General's office, provided testimony regarding the Attorney General's review of proposed administrative rules. She noted:

- The Attorney General is statutorily required to review each proposed rule and issue an opinion as to the rule's legality. The review is not a rubber stamp. The review includes an evaluation by a paralegal of whether the procedural requirements of the rulemaking process were substantially met, as well as a review

by an attorney in the Attorney General's office of the rule's legality, including confirming the agency has legal authority to promulgate the rules.

- In some instances, an agency may submit proposed rules for review that contain fatal flaws, such as a lack of adequate legal authority or insufficient notice to the regulated community, and the agency will withdraw the proposed rules. In those instances, the agency would withdraw the rules before the Administrative Rules Committee reviews the rules.
- If the Attorney General determines an agency substantially complied with the procedural requirements of the rulemaking process but there were some minor errors, the Attorney General's letter will note the errors in a footnote so the Administrative Rules Committee is aware not every procedural requirement was met.

In response to a question from a committee member, Ms. Kelsch noted approximately two or three times a year an agency will withdraw proposed rules for fatal flaws detected by the Attorney General's office.

Ms. Kelsch also provided testimony regarding the differences between an Assistant Attorney General and a Special Assistant Attorney General (SAAG). She noted:

- An Assistant Attorney General is a state employee who is a licensed attorney hired by the Attorney General and who works for the Attorney General's office.
- The Attorney General also has the authority to appoint a SAAG. A SAAG may be a state employee who is a licensed attorney who can provide legal advice to a state entity, but the individual does not work directly for the Attorney General. A private licensed attorney also may be appointed as a SAAG to represent a state entity. This type of SAAG appointment usually is the result of the private attorney having a particular area of expertise, such as immigration law or banking regulations. The Attorney General has the authority to revoke the SAAG status.

In response to questions from committee members, Ms. Kelsch noted because a SAAG may not be as experienced regarding the state's unique status or open meetings or records laws, the Attorney General's office tries to be a resource for those individuals and provide assistance as much as possible.

It was moved by Representative Devlin, seconded by Senator Lemm, 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 Poolman adjourned the meeting at 1:30 p.m.

Jill Grossman
Counsel

ATTACH:15