



ADMINISTRATIVE RULES COMMITTEE

Wednesday, September 6, 2023
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Brandy Pyle, Chairman, called the meeting to order at 10:00 a.m.

Members present: Representatives Brandy Pyle, Donna Henderson, Scott Louser, Andrew Marschall, Carrie McLeod, Dan Ruby, Matthew Ruby, Mike Schatz, Vicky Steiner, Nathan Toman, Bill Tveit, Steve Vetter, Robin Weisz; Senators Sean Cleary, Jerry Klein, Janne Myrdal, Bob Paulson

Members absent: Representative Brandon Prichard; Senator Diane Larson

Others present: See [Appendix A](#) for additional persons present.

It was moved by Representative Toman, seconded by Senator Myrdal, and carried on a voice vote that the minutes of the June 6, 2023, meeting be approved as distributed.

Ms. Liz Fordahl, Counsel, Legislative Council, reviewed the [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Management, Administrative Rules Committee - Background Memorandum](#), and [Voiding and Carrying Over Administrative Rules](#).

In response to a question from a committee member, Ms. Fordahl noted the statutory duty of the committee to determine whether administrative agencies are properly implementing legislative purpose and intent under North Dakota Century Code (NDCC) Section 54-35-02.6 only requires an analysis of the statute being implemented or the authority for the administrative rules under review.

The committee took notice that North Dakota Administrative Code (NDAC) Chapter 67-04-01 has been determined repealed by Legislative Council under NDCC Section 28-32-06 as a result of the repeal of NDCC Chapter 15-27.5 in 1999.

SUPERINTENDENT OF PUBLIC INSTRUCTION

Mr. Jim Upgren, Assistant Director, Office of School Approval and Opportunity, Department of Public Instruction, presented testimony ([Appendix B](#)) regarding the October 2023 rules of the Superintendent of Public Instruction. Mr. Upgren noted most of the text of NDAC 67-04-02-01, which appears to be new, is text from repealed NDAC 67-04-01-01, which recently was determined repealed as a result of the creation of NDCC Title 15.1 which occurred in 1999. The purpose of the changes is to comply with the passage of Senate Bill No. 2333 (2023).

In response to committee members' concerns about specific language found in the proposed rule found in NDAC Section 67-04-02-01, Ms. Fordahl noted an amendment can be made if the agency and committee agree the amendment is necessary to address any of the considerations for which the committee may find a rule to be void.

It was moved by Representative M. Ruby, seconded by Representative Marschall, and carried on a roll call vote that NDAC Section 67-04-02-01 be held over for further consideration at the December 2023 meeting due to concern regarding whether the use of the word "installation" is appropriate. Representatives Pyle, Henderson, Louser, Marschall, McLeod, D. Ruby, M. Ruby, Schatz, Steiner, Toman, Tveit, Vetter, and Weisz and Senators Cleary, Klein, Myrdal, and Paulson voted "aye." No negative votes were cast.

In response to questions from committee members, Mr. Stan Schauer, Director of Assessment, Department of Public Instruction, noted interim assessment vendors are approved by the Department of Public Instruction using a one-page form requiring five assurances from vendors, including that each vendor shares data with the statewide longitudinal data system and no large student data breaches have occurred. He also noted 56 out of approximately 170 schools registered for use of the interim assessments provided by the state and he expects participation to increase due to the service being provided at no cost to schools and current contracts between school districts and vendors expiring over the next 1 to 2 years.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Mr. Jason Wahl, Director, Division of Medical Marijuana, Department of Health and Human Services, presented testimony ([Appendix C](#)) regarding the October 2023 rules of the department.

In response to questions from a committee member, Mr. Wahl noted:

- The department amended the cost of a certification fee for any dispensary to \$60,000, regardless of the population of the city where the dispensary is located, to reflect the wishes of the Legislative Assembly.
- The terms "production only" in subsection 3 and "product processor only" in subsection 4 describe two types of manufacturers.
- The department permits a maximum of 2 manufacturers and 8 dispensaries.

OFFICE OF MANAGEMENT AND BUDGET

Ms. Hannah Wolf, Human Resources Operations and Digital Manger, Human Resources Management Services Division, Office of Management and Budget, presented testimony ([Appendix D](#)) regarding the October 2023 rules of the department.

In response to questions from a committee member, Ms. Wolf noted the job evaluation committee did not have access to the necessary resources to respond to a pay grade review request and the total rewards manager in the Human Resources Management System has access to the appropriate resources to make those decisions and will do so going forward as is reflected in the rule change. She noted the intent of the rule change to NDAC 4-07-20.1-08 is to streamline the procedure for appeals of employer actions but the office will continue to assist any party to the appeal in person as necessary.

It was moved by Senator Klein, seconded by Senator Myrdal, and carried on a roll call vote that NDAC Section 4-07-20.1-08 be held over for consideration at the December 2023 meeting due to concern regarding whether the rule change will prohibit a party to an appeal from receiving assistance in person. Representatives Pyle, Henderson, Louser, Marschall, McLeod, D. Ruby, M. Ruby, Schatz, Steiner, Toman, Tveit, Vetter, and Weisz and Senators Cleary, Klein, Myrdal, and Paulson voted "aye." No negative votes were cast.

No further business appearing, Chairman Pyle adjourned the meeting at 11:20 a.m.

Liz Fordahl
Counsel

ATTACH:4