

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

ADMINISTRATIVE RULES COMMITTEE

Tuesday and Wednesday, July 29-30, 1997

Roughrider Room, State Capitol

Bismarck, North Dakota

Representative LeRoy G. Bernstein, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives LeRoy G. Bernstein, Charles Axtman, Chris Christopherson, William R. Devlin, Tom D. Freier, Scot Kelsh, Keith Kempenich, Kim Koppelman, Stacey L. Mickelson, Jon O. Nelson, Darrell D. Nottestad, Bill Oban, Bob Skarphol, Rich Wardner; Senators John M. Andrist, Bob Stenehjem, Steven W. Tomac

Others present: See Appendix "A"

It was moved by Representative Freier, seconded by Representative Skarphol, and carried on a voice vote that the minutes of the previous meeting be approved as mailed.

Chairman Bernstein called on Mr. Jay E. Buringrud, Legislative Council Assistant Director, who reviewed the Legislative Council rules of operation and procedure.

Chairman Bernstein welcomed committee members and said the role of the Administrative Rules Committee in the rules process has become more important. He said he expects the committee will have a substantial workload during the interim. He called on committee counsel for presentation of a background memorandum on administrative rules review.

Committee counsel said the statutory provisions governing administrative rulemaking procedures are contained in North Dakota Century Code (NDCC) Chapter 28-32, the Administrative Agencies Practice Act. He reviewed the provisions determining which agencies are administrative agencies for rulemaking purposes and the definition of a rule. He said the volume of rulemaking was down during the 1994-96 rulemaking cycle. He said it was believed that the decrease in North Dakota Administrative Code (NDAC) sections affected by rulemaking was indicative of decreased rulemaking activity but the number may have been reduced only because a set of rules from the State Department of Health on hazardous waste was not filed until May of this year, rather than during the previous cycle. He said this set of rules is of such a large volume that it will affect comparisons of rulemaking volume.

Committee counsel said the Administrative Rules Committee has statutory authority to study administrative rules and related statutes and make recommendations to the Legislative Council if legislation is deemed necessary. He said 1997 House Bill No. 1385 requires Administrative Rules Committee membership to include at least one member from each standing committee of the House of Representatives or the Senate in the most recently completed regular legislative session. He said the objective of the change is to provide the committee with the benefit of the experience of members of standing committees with regard to any topics considered in the rulemaking process.

Committee counsel described the authority of the Administrative Rules Committee to register formal objections to agency rules and to void agency rules and the grounds for making objections or finding rules to be void. He said 1997 House Bill No. 1030 allows the committee to carry consideration of a rule to one subsequent committee meeting for purposes of the decision on whether to void a rule. He said this bill was introduced at the recommendation of the Administrative Rules Committee because prior law required the committee to make a finding of whether a rule is void at only one meeting. He said committee members believed this was unduly restrictive and required the committee to take action in instances in which more information was needed before making a decision.

Committee counsel reviewed the rulemaking procedure that must be followed by rulemaking agencies.

Committee counsel said a list of eight questions is sent to each agency that will appear before the Administrative Rules Committee and agencies are requested to provide written responses to these questions for the presentation. He reviewed the questions that are asked of agencies.

Representative Koppelman said the question regarding whether any person has filed a complaint with the agency concerning the rules may need to be revised. He said his concern is that agencies may interpret this question to mean the committee is only

interested in written complaints formally filed with the agency. He said it should be changed to ask for information about objections, concerns, or considerations raised in written materials or in discussions at public hearings, because those kinds of comments may affect the content of rules that are finally adopted. Representative Skarphol agreed and said this question should be expanded to cover a broader range. After committee discussion on the topic, Chairman Bernstein asked committee counsel to consider language to expand this question and recommend wording for committee consideration.

Senator Stenehjem said Administrative Rules Committee members receive notices of proposed rulemaking that are filed with the Legislative Council office. He said in his review of these notices he has observed that agency descriptions of the subject matter of rules are often deficient because they do not inform the reader of the actual topics being considered in the rulemaking proceeding. He said agencies should try, and the law should require agency rulemaking notices, to provide the public with an adequate description of what is to be considered in a rulemaking proceeding.

OFFICE OF MANAGEMENT AND BUDGET CENTRAL PERSONNEL DIVISION

Chairman Bernstein called on Mr. Dan LeRoy, Director, Central Personnel Division, Office of Management and Budget, for presentation of testimony relating to November 1996 rules of the division. A copy of Mr. LeRoy's testimony is attached as Appendix "B".

COMMITTEE DISCUSSION

Chairman Bernstein asked committee counsel for suggested wording for a question to agencies about concerns of individuals during administrative proceedings. Committee counsel said perhaps the question should be phrased in terms of whether any person has presented oral or written concerns, objections, or complaints for agency consideration with regard to the rule. If so, the agency should describe the concern, objection, or complaint and the response of the agency, including any changes to rules to address any concern, objection, or complaint. After informal discussion, Chairman Bernstein said the suggested language should be incorporated in future mailings to agencies.

LABOR COMMISSIONER

Chairman Bernstein called on Mr. Ron Ness, Deputy Commissioner of Labor, for testimony relating to February 1997 rules of the Commissioner of Labor. A copy of Mr. Ness' testimony is attached as Appendix "C".

INDUSTRIAL COMMISSION OIL AND GAS DIVISION

Chairman Bernstein called on Mr. Wesley Norton, Director, Oil and Gas Division, Industrial Commission, for testimony regarding December 1996 and January 1997 rules of the commission. A copy of Mr. Norton's testimony is attached as Appendix "D".

COMMISSIONER OF INSURANCE

Chairman Bernstein called on Mr. Chris Edison, Commissioner of Insurance legal counsel, for testimony regarding May 1997 rules of the commissioner. A copy of Mr. Edison's testimony is attached as Appendix "E".

STATE DEPARTMENT OF HEALTH

Chairman Bernstein called on Mr. Bill Delmore, State Department of Health, for presentation of testimony relating to department rules on water well and water monitoring well construction requirements. Copies of Mr. Delmore's testimony are attached as Appendices "F" and "G".

Chairman Bernstein called on Ms. Karen Oby, State Department of Health, for presentation of testimony on department rules on neonatal testing for metabolic disorders. A copy of Ms. Oby's testimony is attached as Appendix "H".

Chairman Bernstein called on Mr. Larry Weber, State Department of Health, for presentation of testimony relating to department rules on epinephrine administration and state trauma system regulation. Copies of Mr. Weber's testimony are attached as Appendices "I" and "J". To respond to questions regarding state trauma system rules, Mr. Weber introduced Ms. Shelly Arnold, State Trauma Coordinator.

In response to a question from Representative Kempenich, Ms. Arnold said the rules will prohibit the use of the name "trauma center" by hospitals that have not been approved or verified by the department and that there are some hospitals using the designation "trauma center" that will not be qualified to use that name under these rules. Representative Kempenich asked whether those hospitals are on notice that they must comply or change the name usage. Ms. Arnold said no notice has been sent to hospitals yet but the department plans to do so and give them adequate time to qualify for use of the trauma center name.

Representative Skarphol asked whether the trauma system rules will affect training or qualifications for emergency medical technicians in small communities. Ms. Arnold said the department will make training available but the training will not be required for emergency medical technicians. Senator Andrist asked what effect the trauma system rules will have on paperwork requirements for small

hospitals. Ms. Arnold said the American College of Surgeons will have approval over levels I through III trauma centers and she is not certain what paperwork requirements will be imposed and the department will have approval over level IV trauma centers, which she said will involve a moderate filing requirement.

Senator Andrist said the rules establish a very large State Trauma Committee and asked whether the cost of meetings will be a large expense. Ms. Arnold said the committee was established with a large membership to allow comment from all affected associations. She said she anticipates the cost of meetings will not be too high. She said she anticipates that meetings will usually be held by teleconference and when a meeting requires attendance of members, she anticipates the cost will not be too high because many members will not submit vouchers.

Representative Devlin said the rules established for trauma regions allow a facility within 15 miles of a regional boundary to function in another region. He asked why the 15-mile limitation is imposed. Ms. Arnold said she is not certain how the distance limitation was determined.

Senator Andrist said the trauma system provisions should have been the subject of legislation rather than rules and asked why this was not submitted for consideration in the recent legislative session. Ms. Arnold said she is not certain why it was decided to establish the trauma system through rules rather than legislation.

In response to a question from Representative Nottestad, Ms. Arnold said choice of hospitals for trauma patients is designated in ambulance service trauma plans. Representative Nottestad asked whether these plans overrule a patient's request for treatment at a specific care center. Ms. Arnold said the ambulance service trauma plan is followed when the patient does not or cannot request a specific facility, but if the patient asks to be transported to a specific care center, the patient's wishes are followed.

In response to a question from Representative Mickelson, Ms. Arnold said there is no cost for training provided through the department and all workshops are free of charge.

Representative Devlin said the committee should carry over consideration of these rules to obtain more information on the operation of the trauma system. Senator Andrist agreed and asked the department to seek a simpler system and a smaller governing body. Representative Koppelman said the committee needs to give the department some directions on what information the committee requires if the committee carries over a consideration of the rules.

It was moved by Senator Andrist and seconded by Representative Nottestad that the committee carry over consideration of the state trauma system rules adopted by the State Department of Health.

Representative Oban said he does not see the need for the motion. Representative Freier said the committee needs to be specific in questions to the State Department of Health so the department can provide the information committee members want. Representative Wardner said he does not believe that any of the statutory reasons for voiding a rule would apply in this instance. The question was called and **the motion carried on a roll call vote.** Voting in favor of the motion were Representatives Bernstein, Axtman, Devlin, Freier, Kempenich, Koppelman, Nelson, Nottestad, Skarphol, and Wardner and Senators Andrist, Stenehjem, and Tomac. Voting "nay" were Representatives Christopherson, Kelsh, Mickelson, and Oban. Chairman Bernstein said committee members who have concerns about the trauma system rules should discuss their concerns with the staff of the State Department of Health.

Chairman Bernstein called on Mr. Kenan Bullinger, State Department of Health, for testimony relating to food code rules adopted by the department. A copy of Mr. Bullinger's testimony is attached as Appendix "K".

In response to a question from Representative Oban, Mr. Bullinger said the department is preparing a booklet for vendors that will present a simple summary of changes to food handling rules. In response to another question from Representative Oban, Mr. Bullinger said the booklet is not ready for distribution but he could provide a draft copy for committee members.

In response to a question from Representative Freier, Mr. Bullinger said the Food and Drug Administration does not inspect food preparation areas except those involved in interstate commerce. He said states have authority over other food establishments and having uniform rules among states will help franchise operations to operate in approximately equal regulatory environments in different states.

Representative Nottestad asked how the food handling rules will impact small cafes and other food service operations where one person prepares and serves the food and runs the till. Mr. Bullinger said the same situation exists in some franchise food operations, where only one person operates the location. He said the department believes adequate hygiene practices must be followed by all food servers, regardless of size.

Senator Andrist asked whether these rules will impact churches and other groups doing potluck dinners or food service for funerals and similar events. Mr. Bullinger said these activities would not be affected by these rules.

In response to questions from Representative Koppelman, Mr. Bullinger said the department has followed most of the Food and Drug Administration model rules but has not adopted every standard

suggested by the Food and Drug Administration. He said the department did not accept a double hand washing requirement and the department chose to adopt the rules in detail rather than adopting all of the rules by reference because the department did not want to follow every aspect of the federal rules.

OFFICE OF MANAGEMENT AND BUDGET CENTRAL PERSONNEL DIVISION

Chairman Bernstein called on Mr. Dan LeRoy, Central Personnel Division, to again appear before the committee to respond to questions from Representative Skarphol. Representative Skarphol said the amendment to NDAC Section 4-07-21-01 adds a reference to local government and asked about the jurisdiction of the state personnel system over local governments. Mr. Ken Purdy, Central Personnel Division, said county social service boards are included within the system. He said this is not a new requirement and is just a rewording of rules. Mr. Purdy said the definitions that appear to be new for the Central Personnel Division are being moved from the State Personnel Board rules to the Central Personnel Division rules because grievance and appeals provisions are now administered by the Central Personnel Division.

COMMITTEE DISCUSSION

Representative Mickelson said there appears to be a substantial difference between estimates of various agencies on the costs of a rulemaking proceeding. He asked how the cost calculations are made by agencies. Committee counsel said publication costs for agencies seem to be fairly uniform and the greatest discrepancy appears to occur in estimated costs of staff time. He said agencies estimate the number of hours of staff time devoted to rulemaking and multiply the hours times hourly rates of affected employees to determine these costs. He said he is not certain how these computations are made and there is no statutory format that must be followed in making these estimates. Representative Mickelson said a uniform method of computing these costs should be used for the sake of better comparisons.

MILK MARKETING BOARD

Chairman Bernstein called on Mr. John Weisgerber, Director, Milk Marketing Board, for testimony on December 1996 rules of the board. A copy of Mr. Weisgerber's testimony is attached as Appendix "L".

GAME AND FISH DEPARTMENT

Chairman Bernstein called on Mr. Paul Schade-
wald, Game and Fish Department, for presentation of

testimony on January 1997 rules of the department. A copy of Mr. Schade-
wald's testimony is attached as
Appendix "M".

Representative Freier asked what complaints were heard from interested parties during the public hearings on the guides and outfitters rules. Mr. Schade-
wald said there were some individuals who were dissatisfied with being required to obtain insurance coverage and some who said they would not perform cardiopulmonary resuscitation.

Senator Stenehjem said he recalls recent legisla-
tion that was defeated which would have imposed these requirements for guides and outfitters. He asked why rules were adopted which were the subject of legislation that was defeated. Mr. Schade-
wald said he does not recall legislation that was defeated which was the same as these rules.

Senator Andrist asked what is the state's interest in requiring liability insurance for guides and outfit-
ters. Mr. Schade-
wald said the state's interest is the same as in requiring automobile insurance for drivers, so that any losses are compensable.

Representative Nelson asked what the cost per year would be for insurance coverage for guides and outfitters. Mr. Schade-
wald said he expects the cost could be very reasonable and may run to as much as \$2,000 per year, but the cost would depend upon the activities of the insured person.

Senator Stenehjem asked if he could obtain copies of letters of support for these rules received from members of the Guides Association. Mr. Schade-
wald said he would provide copies of those letters to Senator Stenehjem.

Senator Tomac asked how many complaints are received per year by the department about guides and outfitters. Mr. Schade-
wald said about three complaints per year involve serious disputes and perhaps another six complaints of a minor nature are received.

Representative Skarphol asked whether these rules establish new policy that is not covered by statute. Mr. Schade-
wald said that is correct.

Senator Stenehjem said he is certain that the subject of these rules was contained in recent legisla-
tion that was defeated. Chairman Bernstein requested committee counsel to determine whether recent legislation dealing with licensing of guides and outfitters has been considered and defeated.

Senator Andrist said he believes these rules clearly exceed statutory authority and contravene legislative intent. **It was moved by Senator Andrist, seconded by Representative Nelson, and failed on a roll call vote that the Administrative Rules Committee void the guides and outfitters rules of the Game and Fish Department on the grounds that there is an absence of statutory authority and the decision to adopt the rules is arbitrary and capricious.** Voting in favor of

the motion were Representatives Axtman, Devlin, Nelson, Skarphol, and Wardner and Senators Andrist and Stenehjelm. Voting in opposition to the motion were Representatives Bernstein, Christopherson, Freier, Kelsh, Kempenich, Koppelman, Mickelson, Nottestad, and Oban and Senator Tomac. Chairman Bernstein said the Game and Fish Department should be aware that this vote by the committee signifies that the committee will consider this issue again at its next meeting.

WORKERS COMPENSATION BUREAU

Chairman Bernstein called on Ms. Julie Leer, Workers Compensation Bureau legal counsel, for presentation of testimony regarding April 1997 rules of the bureau. A copy of Ms. Leer's testimony is attached as Appendix "N".

Committee counsel distributed copies of correspondence from Mr. Daniel E. Phillips, Attorney at Law, who is unable to attend the meeting. A copy of Mr. Phillips' letter is attached as Appendix "O".

In response to questions from Senator Tomac, Ms. Leer said the bureau is under the impression that Mr. Phillips' law firm had decided not to pursue invalidating the rule regarding attorney billing reports. She said the purpose of the rule is to require monthly statements of hours of billable time on each case to give the bureau something to compare against when final bills are submitted. She said the bureau has had concerns in the past about shifting billable hours from losing cases to winning cases and the bureau has nothing against which to substantiate final billing records.

Chairman Bernstein called on Mr. Ray Jilek, president of a Dickinson consulting company, for testimony relating to risk management plan rules and administration. A copy of Mr. Jilek's testimony is attached as Appendix "P".

In response to questions from Representative Koppelman, Ms. Leer said the bureau is not writing risk management plans but will provide employers with assistance and advice in establishing a risk management plan. She said it appears much of Mr. Jilek's concern relates to an issue of administration by bureau personnel rather than a problem with the administrative rules.

Chairman Bernstein said it appears there are questions and it will be necessary to consider these issues at the next committee meeting. He asked what information committee members would like to have. Representative Skarphol suggested that the bureau provide information on the success of reducing injuries under the risk management program.

COMMITTEE DISCUSSION

Chairman Bernstein said he has reviewed with the vice chairman and committee counsel the effective date of 1997 House Bill No. 1030, allowing the Administrative Rules Committee to carry consideration of voiding rules to a subsequent meeting. He said the 1997 legislation making this change is effective for rules having effective dates after July 31, 1997. He said the rules being considered at this meeting are not subject to the new law and the committee would not be able to carry over consideration of voiding of rules considered at this meeting.

DEPARTMENT OF HUMAN SERVICES

Chairman Bernstein called on Mr. Blaine Nordwall, Department of Human Services legal counsel, for presentation of testimony on 24 sets of rules adopted by the Department of Human Services effective from December 1996 through July 1997. A copy of Mr. Nordwall's testimony for each of the sets of amendments is attached as Appendix "Q".

PESTICIDE CONTROL BOARD

Chairman Bernstein called on Mr. Barry Coleman, Director, Pesticide Division, Department of Agriculture, for testimony relating to January 1997 Pesticide Control Board rules. A copy of Mr. Coleman's testimony is attached as Appendix "R".

BOARD OF PHARMACY

Chairman Bernstein called on Mr. Howard Anderson, Executive Director, Board of Pharmacy, for testimony relating to November 1996 rules of the board. A copy of Mr. Anderson's testimony is attached as Appendix "S".

BOARD OF NURSING

Chairman Bernstein called on Mr. Cal Rolfson, Board of Nursing legal counsel, for testimony regarding November 1996 rules of the board. A copy of testimony presented by Mr. Rolfson, which was prepared by Ms. Ida Rigley, Executive Director, Board of Nursing, is attached as Appendix "T".

WORKERS COMPENSATION BUREAU

Chairman Bernstein said there are unresolved questions regarding Workers Compensation Bureau rules from the previous day's discussion. He called on Ms. Leer for presentation of information relating to the earlier discussion. A copy of her remarks is attached as Appendix "U".

Representative Wardner said Mr. Jilek said the bureau representative in the Fargo district was efficient and perhaps too helpful in establishing risk management plans. He asked why other areas of the

state have not had the same problems Mr. Jilek described in the south Fargo district. Ms. Leer said the requirements are the same everywhere and perhaps the person in the south Fargo district is more attentive to seeing that employers are knowledgeable on risk management program issues.

Representative Koppelman asked whether the bureau has a representative telling people that the bureau will prepare a risk management plan for them. Ms. Leer said that would be contrary to bureau policy because the bureau's purpose is not to write plans but the bureau views its role as providing assistance and advice. She said if people ask, the bureau will offer help, advice, and answers to questions but will not offer to write a risk management plan.

Representative Freier said it might be appropriate for the Workers Compensation Bureau to report on this issue to an interim committee conducting a study involving the bureau.

In response to a question from Representative Nelson, Ms. Leer said the bureau does not charge fees for assistance on risk management plan issues.

Representative Kelsh asked whether attorney billing records rules would affect confidential matters. Ms. Leer said the content of billings is confidential but the amount paid attorneys is a public record.

It was moved by Representative Wardner that the Administrative Rules Committee void the repeal of NDAC Section 92-05-01-09. Chairman Bernstein ruled that the motion died for lack of a second.

PUBLIC SERVICE COMMISSION

Chairman Bernstein called on Mr. Charles Johnson, Public Service Commission legal counsel, for presentation of testimony relating to June and July 1997 rules of the commission. A copy of Mr. Johnson's testimony is attached as Appendices "V" and "W".

Representative Koppelman said he is concerned about the rule giving local providers authority to deny access to long-distance service and asked whether the local telephone service provider is required to handle billings for long-distance service providers. Mr. Johnson said he does not believe local service providers are required to collect bills for long-distance service providers. He said billing and collection by local service providers is generally provided as a service for a fee paid by the long-distance provider.

Senator Stenehjem said he can envision many instances in which a customer may have a legitimate reason for nonpayment of long-distance charges, such as if the customer has a cellular phone that has been stolen. He said state law and rules do not provide this kind of authority in other business situations such as retail sales and credit card transactions, where nonpayment to one business would cut off the

right of the person to purchase services elsewhere. He said loss of long-distance access might also cut off a person from emergency services in isolated areas of the state. He asked whether all telephone subscribers in the state have local access to emergency phone numbers. Mr. Johnson said he is uncertain whether there would be subscribers for whom a call to an emergency number would be a long-distance toll call. He said the situation with extending credit by credit card companies and banks and similar transactions is accompanied by a credit check of the individual by the potential lender. He said telephone companies do not do these kinds of checks to determine if a customer has unpaid long-distance charges. He said the telecommunications industry came to the Public Service Commission seeking the authority provided by the rule on denying access to long-distance service. He said the commission deliberations on the matter did not indicate unanimous agreement that companies should have this authority but the rule was adopted by the commission on a trial basis to see how it works.

Representative Axtman said the rule seems to be contrary to free enterprise principles. He said if a long-distance provider wants to take a chance on a customer who might be delinquent in billings to another provider, that should be the decision of the long-distance provider just as that decision is left to lenders and retailers in other areas of business. Mr. Johnson said one of the issues the commission had difficulty with is whether the commission should be placed in the position of a bill collector for long-distance companies. He said the effect of the rule is to pressure payment of long-distance bills to avoid having long-distance service cut off.

Senator Tomac said he agrees with other committee members' comments that the state should not be in the position of serving as a bill collector for long-distance service providers. He said industry deregulation and this kind of rule may have contrary purposes.

It was moved by Senator Tomac, seconded by Representative Axtman, and carried on a roll call vote that the Administrative Rules Committee void the amendment to NDAC Section 69-09-05-02(2)(b) on the grounds that with regard to this rule there is an absence of statutory authority; there is an emergency relating to public health, safety, or welfare; and the decision to adopt the rules is arbitrary and capricious. Voting in favor of the motion were Representatives Bernstein, Axtman, Christopherson, Devlin, Freier, Kelsh, Koppelman, Mickelson, Nelson, Nottestad, Skarphol, and Wardner and Senators Andrist, Stenehjem, and Tomac. There were no "nay" votes.

SECRETARY OF STATE

Chairman Bernstein called on Ms. Mary Feist, Secretary of State's office, for presentation of testimony relating to February and July 1997 rules of the Secretary of State. Ms. Feist said Secretary of State Alvin Jaeger is out of state and presented testimony on his behalf relating to administrative rules for boxing. A copy of the testimony is attached as Appendix "X".

GAME AND FISH DEPARTMENT

Chairman Bernstein asked whether committee members have issues for discussion regarding any rules previously considered by the committee, in light of the requirement that the committee must act at this meeting with regard to its authority to void rules adopted before August 1.

It was moved by Representative Koppelman, seconded by Representative Mickelson, and carried on a voice vote that the committee reconsider its motion to void the guides and outfitters rules of the Game and Fish Department on the grounds that there is an absence of statutory authority and the decision to adopt the rules is arbitrary and capricious.

Representative Koppelman said he is offended that an agency has introduced rules to accomplish the purposes of failed legislation. He said 1995 House Bill No. 1421 dealt with these issues and was defeated in the House of Representatives by a substantial margin. He said administrative rules should not be used to circumvent obvious legislative intent. He said it appears that a group that was unsuccessful in getting legislation approved has turned to pressure on an agency to accomplish its goal.

Representative Mickelson said the committee should seek information from the Attorney General on why these rules were approved as to legality when they are the subject of failed legislation. Representative Oban said the Game and Fish Department has very broad rulemaking authority that would encompass the adoption of these rules. Representative Mickelson said the committee should obtain the Attorney General's view on whether this is a situation where legislative intent is obviously contrary to administrative rules. Representative Freier said the issue of contravention of legislative intent is within the purview of the Administrative Rules Committee by statute and not within the purview of the Attorney General.

Senator Stenehjem said the Game and Fish Department was pressured to adopt these rules by a group of people seeking this result who failed in their attempt to get legislation on the subject. He said regardless of the good intention of those seeking

these rules or of the department, this should be a matter for consideration through legislation.

Representative Nottestad said the history on 1995 House Bill No. 1421 indicates that much of the reason to kill the bill related to landowner fee hunting provisions and that guides and outfitters licensing was only part of the 1995 bill. He said it is not apparent to him that the failed legislation is the same as these rules because other issues were part of the legislation.

It was moved by Representative Koppelman, seconded by Representative Mickelson, and carried on a voice vote that the motion being reconsidered be amended by adding an additional reason for voiding the rules that the rules fail to comply with express legislative intent.

Representative Oban said he believes the Game and Fish Department was trying to address an issue brought to them for consideration and does not think they intended to circumvent the Legislative Assembly. He said the 1995 legislation is not identical to these rules.

Representative Skarphol said agencies that are approached with issues for rulemaking should recognize when they need to bring a matter for consideration by the Legislative Assembly rather than in a rulemaking proceeding.

Chairman Bernstein called the question on final passage of the motion as amended and **the motion carried on a roll call vote**. Voting in favor of the motion were Representatives Bernstein, Axtman, Christopherson, Devlin, Freier, Koppelman, Mickelson, Nelson, Skarphol, and Wardner and Senators Andrist, Stenehjem, and Tomac. Voting "nay" were Representatives Kelsh, Nottestad, and Oban.

Representative Oban said the committee should seek the attendance of Mr. Larry Brooks, Guides and Outfitters Association, at its next meeting when this matter is considered.

WATER COMMISSION

Chairman Bernstein called on Ms. Julie Krenz, Assistant Attorney General, State Water Commission, for testimony relating to February 1997 rules of the commission. Ms. Krenz distributed testimony on behalf of Mr. David Sprynczynatyk, State Engineer. A copy of the testimony is attached as Appendix "Y".

BOARD OF MEDICAL EXAMINERS

Chairman Bernstein called on Mr. Rolf Sletten, Executive Secretary and Treasurer, State Board of Medical Examiners, for testimony relating to December 1996 rules of the board. A copy of Mr. Sletten's testimony is attached as Appendix "Z".

STATE DEPARTMENT OF HEALTH

Chairman Bernstein called on Mr. Bill Delmore, State Department of Health legal counsel, for presentation of testimony relating to July 1997 hazardous waste management rules of the department. A copy of Mr. Delmore's testimony is attached as Appendix "AA".

Representative Skarphol asked what would happen if the state did not adopt rules required by federal law. Mr. Delmore said there would be a loss of funding from the federal government probably equal to hundreds of thousands of dollars. Representative Skarphol asked whether the federal government would come in to run hazardous waste management programs. Mr. Delmore said the federal government probably would do so.

Chairman Bernstein asked whether committee members have any further business.

Senator Andrist said he is concerned with the state trauma system rules adopted by the State Department of Health. He said the rules create a 20-member board and he foresees the department coming to the Legislative Assembly in the future for increasingly large appropriations of funds to run the system.

It was moved by Senator Andrist and seconded by Representative Nelson that the Administrative Rules Committee void the state trauma system rules adopted by the State Department of Health on the grounds that with regard to these rules there is an absence of statutory authority and arbitrariness and capriciousness.

Representative Freier said appropriations were provided to fund the state trauma system through the Department of Health during the 1997-99 biennium.

Representative Nelson said he called a hospital in his district with regard to these rules and the administrator knew nothing about the state trauma system rules. He said the problem he perceives is that smaller hospitals have been left out of the administrative rules process.

Senator Andrist said he would like to communicate to the State Department of Health that this program is too costly, too cumbersome, too large, and that a smaller scope of program might be acceptable.

Representative Axtman said he also is concerned about the size of the committee under the state trauma system. He asked whether the State Department of Health could amend these rules if the Administrative Rules Committee meets again. Committee counsel said the statutory provision allows for amendment of rules to address any concerns for which rules may be found void if the committee and the agency agree on the amendment and public comments are allowed on the amendments at a subsequent committee meeting.

The question was called and **the motion carried on a roll call vote**. Voting in favor of the motion were Representatives Bernstein, Axtman, Devlin, Freier, Koppelman, Nelson, Nottestad, Skarphol, and Wardner and Senators Andrist and Stenehjem. Voting "nay" were Representatives Christopherson, Kelsh, Mickelson, and Oban.

The meeting was adjourned at 3:40 p.m.

John Walstad
Committee Counsel

ATTACH:27