

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1421

2005 HOUSE POLITICAL SUBDIVISIONS

HB 1421


2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1421

House Political Subdivisions Committee

☐ Conference Committee

Hearing Date February 10, 2005

Tape Number	Side A	Side B	Meter #
1		x	23.0 to 47.1
Committee Clerk Signature 			

Minutes: **Rep.Devlin, Chairman** opened the hearing on HB 1421, A Bill for an Act to amend and reenact subsection 2 of section 28-32-15 of the North Dakota Century Code, relating to the effective date of administrative rules; and to provide an effective date.

**Rep Bernstein** representing District 45 and prime sponsor of HB 1421 spoke for the bill which addresses effective date of the new rules -- now the rules go into effect the first of the month after the rules are published. This creates problem in that --- if the administrative rules committee find something that would negate the rule or something that needs to be fixed -- The people who are to be regulated don't know for sure whether the rule to be fixed applies and when. This bill makes the rules effective the first of the month after it has been heard in the administrative rules committee rather than the publication date of the agency.

**John Walstad**, ( 26.1 ) legislative council attorney appeared before the committee and explained the time frame for rule making. Involved were a number of notice and publication dates -- plus thirty day elapse before the first public hearing; more time is required throughout the

process to allow for comments, etc. -- many other time frames were detailed by Mr. Walstad comments and amendments may arise from the hearings; many agencies such as the Health Department with sub agencies have different time requirements imposed on them; and law enforcement agencies in some instances have different time frames when local agencies and others are involved. The presentation was well done but complex. There are provisions for an agency to promulgate emergency rules with approval of the Governor.

**Illona Jeffcoat Saco** ( 34.2 ) , Executive Secretary to the Public Utilities Director appeared in opposition to the bill. Her premise was that a good system is working well. There is no reason to cause a delay or slow down in the process. A copy of her prepared remarks is attached.

**Bruce Hicks** representing the Industrial Commission oil and gas division appeared in a neutral stance on this bill. His concerns with the bill in that now finality has come out of the Administrative rules committee in the past in those instances where the committee had no contest of new rules. Under this it would seem that the Administrative Rules committee would have to give notice and set up a schedule for them to address the rules in question and then publish a definitive action.

There being no further testimony for nor against HB 1421, **Rep.Devlin, Chairman** closed the hearing.( 47.1 )


2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1421 b

House Political Subdivisions Committee

☐ Conference Committee

Hearing Date February 11, 2005

Tape Number	Side A	Side B	Meter #
2		x	3.2 to 9.1
Committee Clerk Signature 			

Minutes: **Rep. Devlin, Chairman** in work session opened up the discussion on HB 1421 for action.

**Rep. Kaldor** expressed his concerns about the time frames proposed and listening to the testimony there appeared to be some real and goods reasons for the time delays. His was concern for shortening the time frames too much. The overall direction in which the three billls regarding the administrative rules were going the direction of a full time professional legislature.

**Rep. Kaldor** had moved 'Do Not Pass' motion for HB 1421. **Rep. N. Johnson** had seconded the motion. **Rep. Herbal, Vice Chairman** called for the question ( 8.4 ). On a roll call vote the motion carried **8 ayes 4 nays 0 absent**. **Rep. Kretschmar** was designated to carry HB 1421 on the floor. **End of record ( 9.1 )**

Date: February 11, 2005  
Roll Call Vote:

**2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. SB 1421b**

House POLITICAL SUBDIVISIONS

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken

Do Not Pass

Motion Made By

Rep. Kaldor

Seconded By

Rep. Johnson

Representatives	Yes	No	Representatives	Yes	No
Rep. Devlin, Chairman		✓	Rep. Ekstrom	✓	
Rep. Herbel, Vice Chairman	✓		Rep. Kaldor	✓	
Rep. Dietrich	✓		Rep. Zaiser	✓	
Rep. Johnson	✓				
Rep. Koppelman		✓			
Rep. Kretschmar	✓				
Rep. Maragos	✓				
Rep. Pietsch		✓			
Rep. Wrangham		✓			

Total (Yes)

8

No

4

Absent

Floor Assignment

Rep. Kretschmar

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE (410)**  
February 11, 2005 2:50 p.m.

**Module No: HR-28-2617**  
**Carrier: Kretschmar**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1421: Political Subdivisions Committee (Rep. Devlin, Chairman) recommends DO NOT PASS** (8 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). HB 1421 was placed on the Eleventh order on the calendar.

2005 SENATE POLITICAL SUBDIVISIONS

HB 1421



2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1421

Senate Political Subdivisions Committee

☐ Conference Committee

Hearing Date March 11, 2005

Tape Number	Side A	Side B	Meter #
1		X	773 - 4635
Committee Clerk Signature <i>Shirley Long</i>			

Minutes:

**Chairman Cook** opened the hearing on HB 1421 relating to the effective date of administrative rules. All members (6) present.

**Representative Bernstein**, District 45, Fargo, ND introduced HB 1421. All the bill changes is when the administrative rules go into effect. It used to be they would go into effect after they recorded the legality of it and the publication would go in the first of the month after that but that left the rule going into effect without administrative rules committee seeing it. We do once in a while when a rule comes in with a agreement from the people, tweak the rule a little bit. Believe it or not we have seen some rules come in that mirrored legislation that was defeated during the legislative session. So this changes it so that it will come into effect after the administrative rules committee hears the rule on this and they have no recourse on it any more. This helps the community or the people that the rule addresses and avoids confusion.

**Representative Koppelman**, District 13, West Fargo, ND, testified in support of HB 1421. This bill before you will simply change the time table when a bill goes in to effect. The only reason that might be worth looking at is this, the Administrative Rules Committee does have statutory authority to either void a rule if it fails to meet certain guide lines in the statute or to amend the rule when agreed by the agency. The problem is this, when a rule goes into effect after the process of making that rule then the Administrative Rules Committee meets and it is after that rule is already in effect. So if the rule is voided or if it is changed the people who were at the public hearing to testify on the rule in the first place don't necessarily no that that change is happening and they should because the Administrative Rules hearing is also a public proceeding. Often times it is those folks that come to us and say when this rule went into effect we found a problem. Wouldn't it make more sense to go through the whole process including the Administrative Rules Committee review before that rule becomes effective. I have two suggestions on how those concerns could be over come. One is, right now we have a process in law called emergency rule making. If somebody has a need to make that rule immediately, the governor can sign off and say this goes into effect as an emergency rule. The other option might be that we could tighten up the time table a little bit by which rules are made.

**Chairman Cook:** Every two years there is this eighty day window of opportunity to change Century Code. Administrative Rules have no eighty day window so they could do it any day of the week, any day of the year. Is that correct?

**Rep. Koppelman:** That is exactly correct. That is why I think it is important for us, as a biannual legislature, to have some over sight between sessions and that is exactly the role that committee fills.

**Chairman Cook:** Under what guide lines does the Administrative Rules Committee meet?

**Rep. Koppelman:** They can meet at the call of the Chair. Usually a quarterly meeting.

No further testimony in support of HB 1421.

Testimony Opposed to HB 1421.

**Illona A. Jeffcoat-Sacco**, Executive Secretary and Director of the Public Utilities Division of the Public Service Commission, testified in opposition of HB 1421. (See attachment #1)

**Chairman Cook:** Could you shed some light on how you would think it would be an additional six months.

**Illona A Jeffcoat-Sacco:** There is a certain window before the committee has to meet and then they can lay it over until the next meeting and if you add those two up I think it comes to six month or close to it.

**Senator Gary Lee:** I served on the Administrative Rules Committee last interim and it seems doubtful that this could be carried on for that length of time. The only reason that would occur is if there was some issue with a particular rule that there was disagreement in whether or not it was a good rule. Then it would be carried forward until that disagreement was resolved. This is a good thing. If there is no disagreement it would already be in place.

**Illona A Jeffcoat-Sacco:** I understand the scenario that you are painting but I think there is probably a list of times for what ever reason that had nothing to do with disagreement of the rule, maybe the committee was running out of time that something was laid over.

**Melissa Hauer**, Attorney for the Department of Human Services, testified in opposition of HB 1421. ( See attachment #2)

**Senator Fairfield:** Are you aware that the Administrative Rules Committee meets during the session?

**Melissa Hauer** I am aware that the committee could chose to meet but it is my experience that the committee does not.

**Gary Gronberg**, Department of Public Instruction, testified in opposition of HB 1421. (See attachment # 3)

**Senator Hacker:** Addressing when you spoke of a rule that would affect millions of dollars at the federal level. When you are talking on the scale of millions of dollars, wouldn't you want to follow the emergency type rule amendment and bring this forth to the governor.

**Gary Gronberg:** There are ways that are working that is why we can not see why an amendment to something that is already working can be a benefit to anyone at this point.

**Mark Bohrer**, Manager for the North Dakota Oil and Gas Industrial Commission, testified not in opposition to HB 1421 but the commission is concerned about the establishment of an effective date for rules that are promulgated or amended. Currently the Administrative Rules Committee does not give the administrative agency any official indication of their decision and in order for my agency to publish and enforce new rules we need to have a definite effective date.

**Chairman Cook:** Mark, you would like to see this amended some how to give you a knowledge that it is in effect.

**Mark Bohrer:** Yes, as I understand it right now the Administrative Rules Committee review our rules and we get no formal indication that they have approved them or any indication of what their decision was.

No further testimony on HB 1421. Chairman Cook closed the hearing on HB 1421.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1421

Senate Political Subdivisions Committee

☐ Conference Committee

Hearing Date March 24, 2005 (Second Hearing)

Tape Number	Side A	Side B	Meter #
1	X		6059 - End
1		X	0 - 4882
2	X		2817 - 3919
Committee Clerk Signature <i>Shirley Borg</i>			

Minutes:

**Chairman Cook** called the committee to order for a second hearing on HB 1421. All members (6) present.

**John Walstad** explained the amendments on HB 1421. The amendments are 50761.0103 (see attachment #1)

**Chairman Cook:** How about Legislators?

**John Walstad:** They provided notices without charge to legislators. We will be sending notices out twenty four times a year instead of twelve.

**Senator Fairfield:** Looking at the letter we got with all the signatures on it, I see the attorney generals signature is not on the letter. Has this been discussed with the attorney generals office.

**Senator Cook:** I talked to the attorney general this morning. He feels it is not his position to try and influence any decisions that we are making here.

**Julie Krenz**, Director of State and Local Government, Attorney Generals Office spoke to say the attorney generals office is not taking a position on the bill but they have reviewed it to make sure the procedures have been complied with.. The attorney generals office did not see any problems with the bill.

**John Walstad**: Back in 1995 when the legislature enacted this voiding of rules, there was a fall back provision called a shadow law which does not appear in law until the supreme court says voiding rules is unconstitutional. If that happens there are shadow laws that would allow the committee to suspend the operation of the rules until the next legislative assembly. But I did not amend the shadow law to match up with these changes. I will check on that to see if we need to amend that. It might be workable the way it is.

**Senator Triplett**: I think it is appropriate to do that.

**Illona A Jeffcoat-Sacco**, Executive Secretary, Public Utilities Director, Public Service

Commission appeared to provide supplemental testimony on HB 1421. (See attachment #2)

**Bruce Hix**, Assistant Director of ND Oil and Gas, addressed the comment period. We get most of our comments prior to the hearing and also at the hearing and usually the written comments that follow the thirty days after the hearing is a reiteration of what they said orally at the hearing. I don't see any need to go beyond that ten day comment period. We have the same thoughts that Illona has with void. We would like to see void go away.

**Mary Hoberg**, Department of Instruction, appeared to say the department could live with the amendments.

**Melissa Hauer**, Attorney for Human Services appeared to say they could live with the amendments and would be happy to work with legislative council if they need any help.

**Chairman Cook:** The meeting dates of the "No Child Left Behind" committee ties into the administrative rules process and I want to make sure that everything will work. Mr Walstad could you look into that?

**Chairman Cook** closed the second hearing on HB 1421.

Afternoon, March 24, 2005

**Chairman Cook** called the committee back to order for discussion and action on HB 1421.

**Chairman Cook** passed out amendments number 50761.0104 from legislative council.

**John Walstad** explained the new amendments 50761.0104 After the earlier discussion, I looked at the statutory provision on the No Child Left Behind committee. The provision there is that when an agency files its notice of rule making it has to provide notice to the chairman of the No Child Left Behind committee and the chairman is to convene the committee within sixty days after getting that notice So that would not be affected by this bill. I also looked at that shadow law and I talked this over with the agency people concerned. Our conclusion is, we can leave it alone, it will work. If this bill passes and the voiding authority is declared unconstitutional and the shadow law becomes effective, the shadow law says the committee has to consider rules ninety days after their effective date and that can still be done even on a quarterly schedule. Two things are being changed in the amendments. On page 2 of the amendments, we dropped back the filing dates. The filing dates will fall on the first day of the calendar quarters. On page 3 in Section 4 of the bill, the other change that is being made in Subsection 1, rule is initially considered by the committee not later than the fifteenth day of the month before the date of the administrative code supplement. That date goes January 1, April 1, July 1 and October 1. So

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Senate Political Subdivisions Committee

Bill/Resolution Number HB 1421

Hearing Date March 24, 2005

the committee still has to meet by the fifteenth of the month but now there is still two weeks for me to publish the rules and get them sent out to the public so they will get them by the first when they will be effective.

**Chairman Cook:** Could you give the carrier of the bill just a brief outline and how they work out for the carrier of the bill.

**John Walstad:** Sure I will.

**Chairman Cook** asked for any concerns.

**Senator Triplett** moved a Do Pass on the Amendments # 50761.0104.

**Senator Hacker** seconded the motion.

Roll call vote: Yes 6 No 0 Absent 0

**Senator Gary Lee** moved a Do Pass as amended on HB 1421.

**Senator Fairfield** seconded the motion.

Roll call vote: Yes 6 No 0 Absent 0

Carrier: **Senator Fairfield**



PROPOSED AMENDMENTS TO HOUSE BILL NO. 1421

Page 1, line 1, after "reenact" insert "sections 28-32-10 and 28-32-12," and after "28-32-15" insert ", and sections 28-32-18 and 28-32-19"

Page 1, line 2, after "date" insert ", rulemaking notice, period for comments, review, and publication"

Page 1, after line 4, insert:

**"SECTION 1. AMENDMENT.** Section 28-32-10 of the North Dakota Century Code is amended and reenacted as follows:

**28-32-10. Notice of rulemaking - Hearing date.**

1. An agency shall prepare a full notice and an abbreviated notice of rulemaking.
  - a. The agency's full notice of the proposed adoption, amendment, or repeal of a rule must include a short, specific explanation of the proposed rule and the purpose of the proposed rule, a determination of whether the proposed rulemaking is expected to have an impact on the regulated community in excess of fifty thousand dollars, identify at least one location where interested persons may review the text of the proposed rule, provide the address to which written comments concerning the proposed rule may be sent, provide the deadline for submission of written comments, provide a telephone number at which a copy of the rules and regulatory analysis may be requested, and, in the case of a substantive rule, provide the time and place set for each oral hearing. The agency's full notice must be filed with the office of the legislative council, and the agency shall request publication of an abbreviated newspaper publication notice at least once in each official county newspaper published in this state. The notice filed with the office of the legislative council must be accompanied by a copy of the proposed rules.
  - b. The abbreviated newspaper publication of notice must be in a display-type format with a minimum width of one column of approximately two inches [5.08 centimeters] and a depth of from three inches [7.62 centimeters] to four inches [10.16 centimeters] with a headline describing the general topic of the proposed rules. The notice must also include the telephone number or address to use to obtain a copy of the proposed rules, the address to use and the deadline to submit written comments, and the location, date, and time of the public hearing on the rules.
2. The agency shall mail a copy of the agency's full notice to each person who has made a timely request to the agency for a mailed copy of the notice. The agency may mail or otherwise provide a copy of the agency's full notice to any person who is likely to be an interested person. The agency shall mail or deliver a copy of the rules to any person requesting a copy. The agency may charge for the actual cost of providing copies of the proposed rule.

3. In addition to the other notice requirements of this subsection, the superintendent of public instruction shall provide notice of any proposed rulemaking by the superintendent of public instruction to each association with statewide membership whose primary focus is elementary and secondary education issues which has requested to receive notice from the superintendent under this subsection and to the superintendent of each public school district in this state, or the president of the school board for school districts that have no superintendent, at least ~~thirty~~ twenty days before the date of the hearing described in the notice. Notice provided by the superintendent of public instruction under this section must be by first-class mail. However, upon request of a group or person entitled to notice under this section, the superintendent of public instruction shall provide the group or person notice by electronic mail.
4. The legislative council shall establish standard procedures for all agencies to follow in complying with the provisions of this section and a procedure to allow any person to request and receive mailed copies of all filings made by agencies pursuant to this section. The legislative council may charge an annual fee as established by the administrative rules committee for providing copies of the filings.
5. At least ~~thirty~~ twenty days must elapse between the ~~later of the date of the publication of the notice or the date the legislative council mails copies of an agency's notice~~ and the date of the hearing. ~~The thirty-day period begins on the first business day of the month in which the notices must be mailed or on the date of the publication, whichever is later. Subject to subsection 4, notices filed on or before the last calendar day of the preceding month. Within fifteen business days after receipt of a notice under this section, a copy of the notice must be mailed by the legislative council on the first business day of the following month to any person making a request who has paid the annual fee established under subsection 4.~~

**SECTION 2. AMENDMENT.** Section 28-32-12 of the North Dakota Century Code is amended and reenacted as follows:

**28-32-12. Comment period.** The agency shall allow, after the conclusion of any rulemaking hearing, a comment period of at least ~~thirty~~ ten days during which data, views, or arguments concerning the proposed rulemaking will be received by the agency and made a part of the rulemaking record to be considered by the agency."

Page 1, replace lines 7 through 17 with:

- "2. a. Nonemergency rules approved by the attorney general as to legality, adopted by an administrative agency, and filed with the office of the legislative council and not voided or held for consideration by the administrative rules committee become effective ~~the first day of the month after the month of publication as provided for in section 28-32-10, except that if a later date is required by statute, specified in the rule, or provided under section 28-32-18, the later date is the effective date. A rule found to be void by the administrative rules committee is void from the time provided under section 28-32-18 according to the following schedule:~~
- (1) Rules filed with the legislative council from September sixteenth through December fifteenth become effective on the immediately succeeding January fifteenth.

- (2) Rules filed with the legislative council from December sixteenth through March fifteenth become effective on the immediately succeeding April fifteenth.
- (3) Rules filed with the legislative council from March sixteenth through June fifteenth become effective on the immediately succeeding July fifteenth.
- (4) Rules filed with the legislative council from June sixteenth through September fifteenth become effective on the immediately succeeding October fifteenth.
- b. If publication is delayed due to technological problems or lack of funds for any reason other than action of the administrative rules committee, nonemergency rules, unless otherwise provided, become effective on the first day of the month after the month when publication would have occurred but for the delay.
- c. A rule held for consideration by the administrative rules committee becomes effective on the first effective date of rules under the schedule in subdivision a following the meeting at which that rule is reconsidered by the committee."

Page 1, after line 17, insert:

**"SECTION 4. AMENDMENT.** Section 28-32-18 of the North Dakota Century Code is amended and reenacted as follows:

**28-32-18. Administrative rules committee may void <sup>- insert off</sup> disapprove rule -**  
**Grounds - Amendment by agreement of agency and committee.**

1. The legislative council's administrative rules committee may find that all or any portion of a rule is void if that rule is initially considered by the committee ~~within ninety days after~~ before the date of the administrative code supplement in which the rule change appears, or, for rule changes appearing in the administrative code supplement from November first immediately preceding a regular session of the legislative assembly through the following May first, if that rule is initially considered by the committee at the first meeting of the administrative rules committee following the regular session of the legislative assembly is scheduled to appear. The administrative rules committee may find a rule or portion of a rule void if the committee makes the specific finding that, with regard to that rule or portion of a rule, there is:
  - a. An absence of statutory authority.
  - b. An emergency relating to public health, safety, or welfare.
  - c. A failure to comply with express legislative intent or to substantially meet the procedural requirements of this chapter for adoption of the rule.
  - d. A conflict with state law.
  - e. Arbitrariness and capriciousness.
  - f. A failure to make a written record of its consideration of written and oral submissions respecting the rule under section 28-32-11.

2. The administrative rules committee may find a rule void at the meeting at which the rule is initially considered by the committee or may hold consideration of that rule for one subsequent meeting. Within three business days after the administrative rules committee finds that a rule is void, the office of the legislative council shall provide written notice of that finding and the committee's specific finding under subdivisions a through f of subsection 1 to the adopting agency and to the chairman of the legislative council. Within fourteen days after receipt of the notice, the adopting agency may file a petition with the chairman of the legislative council for review by the legislative council of the decision of the administrative rules committee. If the adopting agency does not file a petition for review, the rule becomes void on the fifteenth day after the notice from the office of the legislative council to the adopting agency. If within sixty days after receipt of the petition from the adopting agency the legislative council has not disapproved by motion the finding of the administrative rules committee, the rule is void.
3. An agency may amend or repeal a rule or create a related rule if, after consideration of rules by the administrative rules committee, the agency and committee agree that the rule amendment, repeal, or creation is necessary to address any of the considerations under subsection 1. A rule amended, repealed, or created under this subsection is not subject to the other requirements of this chapter relating to adoption of administrative rules and may be ~~resubmitted~~ published by the ~~agency to the legislative council for publication as amended, repealed, or created and. If requested by the agency or any interested party, a rule amended, repealed, or created under this subsection must be~~ reconsidered by the administrative rules committee at a subsequent meeting at which public comment on the agreed rule change must be allowed.

**SECTION 5. AMENDMENT.** Section 28-32-19 of the North Dakota Century Code is amended and reenacted as follows:

**28-32-19. Publication of administrative code and code supplement.**

1. The office of the legislative council shall compile, index, and publish all rules filed pursuant to this chapter in a publication which must be known as the North Dakota Administrative Code, in this chapter referred to as the code. The code must also contain all objections filed with the office of the legislative council by the administrative rules committee pursuant to section 28-32-17. The code must be printed or otherwise duplicated in looseleaf form. The office of the legislative council shall revise all or part of the code as often as the legislative council deems necessary.
2. The office of the legislative council may prescribe a format, style, and arrangement for rules which are to be published in the code, and may refuse to accept the filing of any rule that is not in substantial compliance therewith. In arranging rules for publication, the office of the legislative council may make such corrections in spelling, grammatical construction, format, and punctuation of the rules as deemed proper. The office of the legislative council shall keep and maintain a permanent code of all rules filed, including superseded and repealed rules, which must be open to public inspection during office hours.
3. The office of the legislative council shall compile and publish the North Dakota Administrative Code supplement, ~~in this chapter referred to as the code supplement, the month after the month that rules are submitted to the office of the legislative council for publication unless technological problems or lack of funds prevent the publication at that time. Any delayed supplements must be published as soon as the technological problems are~~

~~resolved or the necessary funds are available~~ according to the schedule of effective dates of rules in section 28-32-15.

- a. The code supplement must contain all rules that have been filed with the office of the legislative council or which have become effective since the compilation and publication of the preceding issue of the code supplement. ~~The office of the legislative council may establish a due date by which rules must be submitted by an agency for publication during any month.~~
  - b. The code supplement must contain all objections filed with the office of the legislative council by the administrative rules committee pursuant to section 28-32-17.
  - c. The code supplement must be printed or duplicated in the same style as the code so as to permit changes to be inserted as pages in the code in lieu of the pages containing superseded material and to permit additions to the code.
4. The office of the legislative council, with the consent of the adopting agency, may omit from the code or code supplement any rule the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if the rule in printed or duplicated form is made available on application to the agency, and if the code or code supplement contains a notice stating the general subject matter of the omitted rule and stating how a copy may be obtained.
  5. The code must be arranged, indexed, and printed or duplicated in a manner to permit separate publication of portions thereof relating to individual agencies. An agency may print as many copies of such separate portions of the code as it may require. If the office of the legislative council does not publish the code supplement due to technological problems or lack of funds, the agency whose rules would have been published in the code supplement shall provide a copy of the rules to any person upon request. The agency may charge for the actual cost of providing copies of the rules."

Page 1, line 18, after "rules" insert "for which notice of hearing is" and remove the second "for"

Page 1, line 19, remove "publication"

Renumber accordingly

*2nd Hearing*

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1421

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  - a. The agency's full notice of the proposed adoption, amendment, or repeal of a rule must include a short, specific explanation of the proposed rule and the purpose of the proposed rule, a determination of whether the proposed rulemaking is expected to have an impact on the regulated community in excess of fifty thousand dollars, identify at least one location where interested persons may review the text of the proposed rule, provide the address to which written comments concerning the proposed rule may be sent, provide the deadline for submission of written comments, provide a telephone number at which a copy of the rules and regulatory analysis may be requested, and, in the case of a substantive rule, provide the time and place set for each oral hearing. The agency's full notice must be filed with the office of the legislative council, and the agency shall request publication of an abbreviated newspaper publication notice at least once in each official county newspaper published in this state. The notice filed with the office of the legislative council must be accompanied by a copy of the proposed rules.
  - b. The abbreviated newspaper publication of notice must be in a display-type format with a minimum width of one column of approximately two inches [5.08 centimeters] and a depth of from three inches [7.62 centimeters] to four inches [10.16 centimeters] with a headline describing the general topic of the proposed rules. The notice must also include the telephone number or address to use to obtain a copy of the proposed rules, the address to use and the deadline to submit written comments, and the location, date, and time of the public hearing on the rules.
2. The agency shall mail a copy of the agency's full notice to each person who has made a timely request to the agency for a mailed copy of the notice. The agency may mail or otherwise provide a copy of the agency's full notice to any person who is likely to be an interested person. The agency shall mail or deliver a copy of the rules to any person requesting a copy. The agency may charge for the actual cost of providing copies of the proposed rule.

3. In addition to the other notice requirements of this subsection, the superintendent of public instruction shall provide notice of any proposed rulemaking by the superintendent of public instruction to each association with statewide membership whose primary focus is elementary and secondary education issues which has requested to receive notice from the superintendent under this subsection and to the superintendent of each public school district in this state, or the president of the school board for school districts that have no superintendent, at least ~~thirty~~ twenty days before the date of the hearing described in the notice. Notice provided by the superintendent of public instruction under this section must be by first-class mail. However, upon request of a group or person entitled to notice under this section, the superintendent of public instruction shall provide the group or person notice by electronic mail.
4. The legislative council shall establish standard procedures for all agencies to follow in complying with the provisions of this section and a procedure to allow any person to request and receive mailed copies of all filings made by agencies pursuant to this section. The legislative council may charge an annual fee as established by the administrative rules committee for providing copies of the filings.
5. At least ~~thirty~~ twenty days must elapse between the ~~later of the date of the publication of the notice or the date the legislative council mails copies of an agency's notice~~ and the date of the hearing. ~~The thirty-day period begins on the first business day of the month in which the notices must be mailed or on the date of the publication, whichever is later. Subject to subsection 4, notices filed on or before the last calendar day of the preceding month. Within fifteen business days after receipt of a notice under this section, a copy of the notice must be mailed by the legislative council on the first business day of the following month to any person making a request who has paid the annual fee established under subsection 4.~~

**SECTION 2. AMENDMENT.** Section 28-32-12 of the North Dakota Century Code is amended and reenacted as follows:

**28-32-12. Comment period.** The agency shall allow, after the conclusion of any rulemaking hearing, a comment period of at least ~~thirty~~ ten days during which data, views, or arguments concerning the proposed rulemaking will be received by the agency and made a part of the rulemaking record to be considered by the agency."

Page 1, replace lines 7 through 17 with:

- "2. a. Nonemergency rules approved by the attorney general as to legality, adopted by an administrative agency, and filed with the office of the legislative council and not voided or held for consideration by the administrative rules committee become effective the first day of the month after the month of publication as provided for in section 28-32-19, except that if a later date is required by statute, specified in the rule, or provided under section 28-32-18, the later date is the effective date. A rule found to be void by the administrative rules committee is void from the time provided under section 28-32-18 according to the following schedule:
  - (1) Rules filed with the legislative council from August sixteenth through November fifteenth become effective on the immediately succeeding January first.

- (2) Rules filed with the legislative council from November sixteenth through February fifteenth become effective on the immediately succeeding April first.
- (3) Rules filed with the legislative council from February sixteenth through May fifteenth become effective on the immediately succeeding July first.
- (4) Rules filed with the legislative council from May sixteenth through August fifteenth become effective on the immediately succeeding October first.
- b. If publication is delayed due to technological problems or lack of funds for any reason other than action of the administrative rules committee, nonemergency rules, unless otherwise provided, become effective on the first day of the month after the month when publication would have occurred but for the delay.
- c. A rule held for consideration by the administrative rules committee becomes effective on the first effective date of rules under the schedule in subdivision a following the meeting at which that rule is reconsidered by the committee."

Page 1, after line 17, insert:

**"SECTION 4. AMENDMENT.** Section 28-32-18 of the North Dakota Century Code is amended and reenacted as follows:

**28-32-18. Administrative rules committee may void rule - Grounds - Amendment by agreement of agency and committee.**

- 1. The legislative council's administrative rules committee may find that all or any portion of a rule is void if that rule is initially considered by the committee ~~within ninety days after~~ not later than the fifteenth day of the month before the date of the administrative code supplement in which the rule change appears, or, for rule changes appearing in the administrative code supplement from November first immediately preceding a regular session of the legislative assembly through the following May first, if that rule is initially considered by the committee at the first meeting of the administrative rules committee following the regular session of the legislative assembly is scheduled to appear. The administrative rules committee may find a rule or portion of a rule void if the committee makes the specific finding that, with regard to that rule or portion of a rule, there is:
  - a. An absence of statutory authority.
  - b. An emergency relating to public health, safety, or welfare.
  - c. A failure to comply with express legislative intent or to substantially meet the procedural requirements of this chapter for adoption of the rule.
  - d. A conflict with state law.
  - e. Arbitrariness and capriciousness.
  - f. A failure to make a written record of its consideration of written and oral submissions respecting the rule under section 28-32-11.



2. The administrative rules committee may find a rule void at the meeting at which the rule is initially considered by the committee or may hold consideration of that rule for one subsequent meeting. Within three business days after the administrative rules committee finds that a rule is void, the office of the legislative council shall provide written notice of that finding and the committee's specific finding under subdivisions a through f of subsection 1 to the adopting agency and to the chairman of the legislative council. Within fourteen days after receipt of the notice, the adopting agency may file a petition with the chairman of the legislative council for review by the legislative council of the decision of the administrative rules committee. If the adopting agency does not file a petition for review, the rule becomes void on the fifteenth day after the notice from the office of the legislative council to the adopting agency. If within sixty days after receipt of the petition from the adopting agency the legislative council has not disapproved by motion the finding of the administrative rules committee, the rule is void.
3. An agency may amend or repeal a rule or create a related rule if, after consideration of rules by the administrative rules committee, the agency and committee agree that the rule amendment, repeal, or creation is necessary to address any of the considerations under subsection 1. A rule amended, repealed, or created under this subsection is not subject to the other requirements of this chapter relating to adoption of administrative rules and may be ~~resubmitted~~ published by the agency to the legislative council for publication as amended, repealed, or created ~~and~~. If requested by the agency or any interested party, a rule amended, repealed, or created under this subsection must be reconsidered by the administrative rules committee at a subsequent meeting at which public comment on the agreed rule change must be allowed.

**SECTION 5. AMENDMENT.** Section 28-32-19 of the North Dakota Century Code is amended and reenacted as follows:

**28-32-19. Publication of administrative code and code supplement.**

1. The office of the legislative council shall compile, index, and publish all rules filed pursuant to this chapter in a publication which must be known as the North Dakota Administrative Code, in this chapter referred to as the code. The code must also contain all objections filed with the office of the legislative council by the administrative rules committee pursuant to section 28-32-17. The code must be printed or otherwise duplicated in looseleaf form. The office of the legislative council shall revise all or part of the code as often as the legislative council deems necessary.
2. The office of the legislative council may prescribe a format, style, and arrangement for rules which are to be published in the code, and may refuse to accept the filing of any rule that is not in substantial compliance therewith. In arranging rules for publication, the office of the legislative council may make such corrections in spelling, grammatical construction, format, and punctuation of the rules as deemed proper. The office of the legislative council shall keep and maintain a permanent code of all rules filed, including superseded and repealed rules, which must be open to public inspection during office hours.
3. The office of the legislative council shall compile and publish the North Dakota Administrative Code supplement, ~~in this chapter referred to as the code supplement, the month after the month that rules are submitted to the office of the legislative council for publication unless technological problems or lack of funds prevent the publication at that time. Any delayed supplements must be published as soon as the technological problems are~~

~~resolved or the necessary funds are available~~ according to the schedule of effective dates of rules in section 28-32-15.

- a. The code supplement must contain all rules that have been filed with the office of the legislative council or which have become effective since the compilation and publication of the preceding issue of the code supplement. ~~The office of the legislative council may establish a due date by which rules must be submitted by an agency for publication during any month.~~
  - b. The code supplement must contain all objections filed with the office of the legislative council by the administrative rules committee pursuant to section 28-32-17.
  - c. The code supplement must be printed or duplicated in the same style as the code so as to permit changes to be inserted as pages in the code in lieu of the pages containing superseded material and to permit additions to the code.
4. The office of the legislative council, with the consent of the adopting agency, may omit from the code or code supplement any rule the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if the rule in printed or duplicated form is made available on application to the agency, and if the code or code supplement contains a notice stating the general subject matter of the omitted rule and stating how a copy may be obtained.
  5. The code must be arranged, indexed, and printed or duplicated in a manner to permit separate publication of portions thereof relating to individual agencies. An agency may print as many copies of such separate portions of the code as it may require. If the office of the legislative council does not publish the code supplement due to technological problems or lack of funds, the agency whose rules would have been published in the code supplement shall provide a copy of the rules to any person upon request. The agency may charge for the actual cost of providing copies of the rules."

Page 1, line 18, after "rules" insert "for which notice of hearing is" and remove the second "for"

Page 1, line 19, remove "publication"

Renumber accordingly

Date: 3-24-05  
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB1421

Senate Political Subdivisions Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Moved Amendments Amendments

Motion Made By Senator Triplett Seconded By Senator Hacker

Senators	Yes	No	Senators	Yes	No
Senator Dwight Cook, Chairman	X				
Senator Nicholas P. Hacker, VC	X				
Senator Dick Dever	X				
Senator Gary A. Lee	X				
Senator April Fairfield	X				
Senator Constance Triplett	X				

Total Yes 6 No 0

Absent 0

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent: Amd. passed

Date: 3-24-05  
Roll Call Vote #: 2

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. <sup>HB</sup>1421

Senate Political Subdivisions

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number Amendment Number 50761.0104

Action Taken Do Pass as Amended

Motion Made By Senator Gary Lee Seconded By Senator Fair Field

Senators	Yes	No	Senators	Yes	No
Senator Dwight Cook, Chairman	X				
Senator Nicholas P. Hacker, VC	X				
Senator Dick Dever	X				
Senator Gary A. Lee	X				
Senator April Fairfield	X				
Senator Constance Triplett	X				

Total Yes 6 No 0

Absent \_\_\_\_\_

Floor Assignment Senator Fairfield

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

HB 1421: Political Subdivisions Committee (Sen. Cook, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1421 was placed on the Sixth order on the calendar.

Page 1, line 1, after "reenact" insert "sections 28-32-10 and 28-32-12," and after "28-32-15" insert ", and sections 28-32-18 and 28-32-19"

Page 1, line 2, after "date" insert ", rulemaking notice, period for comments, review, and publication"

Page 1, after line 4, insert:

**"SECTION 1. AMENDMENT.** Section 28-32-10 of the North Dakota Century Code is amended and reenacted as follows:

**28-32-10. Notice of rulemaking - Hearing date.**

1. An agency shall prepare a full notice and an abbreviated notice of rulemaking.
  - a. The agency's full notice of the proposed adoption, amendment, or repeal of a rule must include a short, specific explanation of the proposed rule and the purpose of the proposed rule, a determination of whether the proposed rulemaking is expected to have an impact on the regulated community in excess of fifty thousand dollars, identify at least one location where interested persons may review the text of the proposed rule, provide the address to which written comments concerning the proposed rule may be sent, provide the deadline for submission of written comments, provide a telephone number at which a copy of the rules and regulatory analysis may be requested, and, in the case of a substantive rule, provide the time and place set for each oral hearing. The agency's full notice must be filed with the office of the legislative council, and the agency shall request publication of an abbreviated newspaper publication notice at least once in each official county newspaper published in this state. The notice filed with the office of the legislative council must be accompanied by a copy of the proposed rules.
  - b. The abbreviated newspaper publication of notice must be in a display-type format with a minimum width of one column of approximately two inches [5.08 centimeters] and a depth of from three inches [7.62 centimeters] to four inches [10.16 centimeters] with a headline describing the general topic of the proposed rules. The notice must also include the telephone number or address to use to obtain a copy of the proposed rules, the address to use and the deadline to submit written comments, and the location, date, and time of the public hearing on the rules.
2. The agency shall mail a copy of the agency's full notice to each person who has made a timely request to the agency for a mailed copy of the notice. The agency may mail or otherwise provide a copy of the agency's full notice to any person who is likely to be an interested person. The agency shall mail or deliver a copy of the rules to any person requesting a copy. The agency may charge for the actual cost of providing copies of the proposed rule.

3. In addition to the other notice requirements of this subsection, the superintendent of public instruction shall provide notice of any proposed rulemaking by the superintendent of public instruction to each association with statewide membership whose primary focus is elementary and secondary education issues which has requested to receive notice from the superintendent under this subsection and to the superintendent of each public school district in this state, or the president of the school board for school districts that have no superintendent, at least ~~thirty~~ twenty days before the date of the hearing described in the notice. Notice provided by the superintendent of public instruction under this section must be by first-class mail. However, upon request of a group or person entitled to notice under this section, the superintendent of public instruction shall provide the group or person notice by electronic mail.
4. The legislative council shall establish standard procedures for all agencies to follow in complying with the provisions of this section and a procedure to allow any person to request and receive mailed copies of all filings made by agencies pursuant to this section. The legislative council may charge an annual fee as established by the administrative rules committee for providing copies of the filings.
5. At least ~~thirty~~ twenty days must elapse between the ~~later of the date of the publication of the notice or the date the legislative council mails copies of an agency's notice~~ and the date of the hearing. ~~The thirty day period begins on the first business day of the month in which the notices must be mailed or on the date of the publication, whichever is later. Subject to subsection 4, notices filed on or before the last calendar day of the preceding month. Within fifteen business days after receipt of a notice under this section, a copy of the notice must be mailed by the legislative council on the first business day of the following month to any person making a request who has paid the annual fee established under subsection 4.~~

**SECTION 2. AMENDMENT.** Section 28-32-12 of the North Dakota Century Code is amended and reenacted as follows:

**28-32-12. Comment period.** The agency shall allow, after the conclusion of any rulemaking hearing, a comment period of at least ~~thirty~~ ten days during which data, views, or arguments concerning the proposed rulemaking will be received by the agency and made a part of the rulemaking record to be considered by the agency."

Page 1, replace lines 7 through 17 with:

- "2. a. Nonemergency rules approved by the attorney general as to legality, adopted by an administrative agency, and filed with the office of the legislative council and not voided or held for consideration by the administrative rules committee become effective the first day of the month after the month of publication as provided for in section 28-32-19, except that if a later date is required by statute, specified in the rule, or provided under section 28-32-18, the later date is the effective date. A rule found to be void by the administrative rules committee is void from the time provided under section 28-32-18 according to the following schedule:

- (1) Rules filed with the legislative council from August sixteenth through November fifteenth become effective on the immediately succeeding January first.
- (2) Rules filed with the legislative council from November sixteenth through February fifteenth become effective on the immediately succeeding April first.
- (3) Rules filed with the legislative council from February sixteenth through May fifteenth become effective on the immediately succeeding July first.
- (4) Rules filed with the legislative council from May sixteenth through August fifteenth become effective on the immediately succeeding October first.

- b. If publication is delayed ~~due to technological problems or lack of funds~~ for any reason other than action of the administrative rules committee, nonemergency rules, unless otherwise provided, become effective ~~on the first day of the month after the month when~~ publication would have occurred but for the delay.
- c. A rule held for consideration by the administrative rules committee becomes effective on the first effective date of rules under the schedule in subdivision a following the meeting at which that rule is reconsidered by the committee."

Page 1, after line 17, insert:

**"SECTION 4. AMENDMENT.** Section 28-32-18 of the North Dakota Century Code is amended and reenacted as follows:

**28-32-18. Administrative rules committee may void rule - Grounds - Amendment by agreement of agency and committee.**

1. The legislative council's administrative rules committee may find that all or any portion of a rule is void if that rule is initially considered by the committee ~~within ninety days after~~ not later than the fifteenth day of the month before the date of the administrative code supplement in which the rule change ~~appears, or, for rule changes appearing in the administrative code supplement from November first immediately preceding a regular session of the legislative assembly through the following May first, if that rule is initially considered by the committee at the first meeting of the administrative rules committee following the regular session of the legislative assembly is scheduled to appear.~~ The administrative rules committee may find a rule or portion of a rule void if the committee makes the specific finding that, with regard to that rule or portion of a rule, there is:
  - a. An absence of statutory authority.
  - b. An emergency relating to public health, safety, or welfare.
  - c. A failure to comply with express legislative intent or to substantially meet the procedural requirements of this chapter for adoption of the rule.

- d. A conflict with state law.
  - e. Arbitrariness and capriciousness.
  - f. A failure to make a written record of its consideration of written and oral submissions respecting the rule under section 28-32-11.
2. The administrative rules committee may find a rule void at the meeting at which the rule is initially considered by the committee or may hold consideration of that rule for one subsequent meeting. Within three business days after the administrative rules committee finds that a rule is void, the office of the legislative council shall provide written notice of that finding and the committee's specific finding under subdivisions a through f of subsection 1 to the adopting agency and to the chairman of the legislative council. Within fourteen days after receipt of the notice, the adopting agency may file a petition with the chairman of the legislative council for review by the legislative council of the decision of the administrative rules committee. If the adopting agency does not file a petition for review, the rule becomes void on the fifteenth day after the notice from the office of the legislative council to the adopting agency. If within sixty days after receipt of the petition from the adopting agency the legislative council has not disapproved by motion the finding of the administrative rules committee, the rule is void.
  3. An agency may amend or repeal a rule or create a related rule if, after consideration of rules by the administrative rules committee, the agency and committee agree that the rule amendment, repeal, or creation is necessary to address any of the considerations under subsection 1. A rule amended, repealed, or created under this subsection is not subject to the other requirements of this chapter relating to adoption of administrative rules and may be resubmitted published by the agency to the legislative council for publication as amended, repealed, or created and, if requested by the agency or any interested party, a rule amended, repealed, or created under this subsection must be reconsidered by the administrative rules committee at a subsequent meeting at which public comment on the agreed rule change must be allowed.

**SECTION 5. AMENDMENT.** Section 28-32-19 of the North Dakota Century Code is amended and reenacted as follows:

**28-32-19. Publication of administrative code and code supplement.**

1. The office of the legislative council shall compile, index, and publish all rules filed pursuant to this chapter in a publication which must be known as the North Dakota Administrative Code, in this chapter referred to as the code. The code must also contain all objections filed with the office of the legislative council by the administrative rules committee pursuant to section 28-32-17. The code must be printed or otherwise duplicated in looseleaf form. The office of the legislative council shall revise all or part of the code as often as the legislative council deems necessary.
2. The office of the legislative council may prescribe a format, style, and arrangement for rules which are to be published in the code, and may refuse to accept the filing of any rule that is not in substantial compliance therewith. In arranging rules for publication, the office of the legislative council may make such corrections in spelling, grammatical construction, format, and punctuation of the rules as deemed proper. The office of the



legislative council shall keep and maintain a permanent code of all rules filed, including superseded and repealed rules, which must be open to public inspection during office hours.

3. The office of the legislative council shall compile and publish the North Dakota Administrative Code supplement, ~~in this chapter referred to as the code supplement, the month after the month that rules are submitted to the office of the legislative council for publication unless technological problems or lack of funds prevent the publication at that time. Any delayed supplements must be published as soon as the technological problems are resolved or the necessary funds are available according to the schedule of effective dates of rules in section 28-32-15.~~
  - a. The code supplement must contain all rules that have been filed with the office of the legislative council or which have become effective since the compilation and publication of the preceding issue of the code supplement. ~~The office of the legislative council may establish a due date by which rules must be submitted by an agency for publication during any month.~~
  - b. The code supplement must contain all objections filed with the office of the legislative council by the administrative rules committee pursuant to section 28-32-17.
  - c. The code supplement must be printed or duplicated in the same style as the code so as to permit changes to be inserted as pages in the code in lieu of the pages containing superseded material and to permit additions to the code.
4. The office of the legislative council, with the consent of the adopting agency, may omit from the code or code supplement any rule the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if the rule in printed or duplicated form is made available on application to the agency, and if the code or code supplement contains a notice stating the general subject matter of the omitted rule and stating how a copy may be obtained.
5. The code must be arranged, indexed, and printed or duplicated in a manner to permit separate publication of portions thereof relating to individual agencies. An agency may print as many copies of such separate portions of the code as it may require. If the office of the legislative council does not publish the code supplement due to technological problems or lack of funds, the agency whose rules would have been published in the code supplement shall provide a copy of the rules to any person upon request. The agency may charge for the actual cost of providing copies of the rules."

Page 1, line 18, after "rules" insert "for which notice of hearing is" and remove the second "for"

Page 1, line 19, remove "publication"

Renumber accordingly

2005 HOUSE POLITICAL SUBDIVISIONS

CONFERENCE COMMITTEE

HB 1421


2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1421 conf

House Political Subdivisions Committee

☒ Conference Committee

Hearing Date April 5, 2005

Tape Number	Side A	Side B	Meter #
1	x		23.6 to 54.9
Committee Clerk Signature 			

Minutes: Conference Committee on HB 1421 was Chaired by Representative Devlin.

Conferees:

Sen. Cook

Rep. Devlin

Sen. Lee

Rep. Koppelman

Sen. Fairfield

Rep. Ekstrom

All members were present.

**Rep. Devlin** conference with asking Sen Cook to explain the Senate actions.

**Sen. Cook** -- Mr. Chairman what we did was change a simple one page bill into a seven page bill. It would be best if John Walstad from the Legislative Council would just explain the Senate amendments. We started with a simple idea instead of State agency implementing a rule at anytime throughout the year that we just create four days of the year in which a rule would go into effect and then worked backwards with that to develop the schedule. The sponsors, the agencies, and just about everybody has been in agreement with it.

**John Walstad** -- we haven't heard a discouraging word either-- I prepared a summary when the Senate was considering the amendments -- I will just walk through the bill with the changes -- The copy I am looking at is the House bill with the Senate amendments in it -- The first page -- no changes; second page -- under 2 -- The notice period prior to a public hearing the bill now would reduce the notice for published notice from thirty days before a hearing to 20 days; and on line 21 there is a change -- the Superintendent of Public Instruction has a special provision that applies only to the superintendent; as you will note the thirty days is changed to twenty days and goes out to superintendent, school boards, school district and I believe any association with statewide membership primarily focused on elementary and secondary education; on the top of page three -- this the notice period that applies to agencies in general and the change is from thirty days to twenty days between the publishing of the notice and the date of the hearing-- current law -- look at the overstrikes -- also limits the thirty days after the legislative council mails notice -- that limitation is taken out here -- now the legislative council will continue to mail notices but it will not be a key factor in determining a hearing date. Right now the law requires that we mail; hearing notices on the first business day of each month and that gives agencies something they can count from to set up their hearing -- what is required now is that the legislative council will send out a notice twice a month within fifteen days after the council receives within fifteen days after receiving the notice the council will send it out that have subscription lists and because it is not specific what day that is going to be it would be hard for the agencies to count down twenty days -- so it is only from the final newspaper publication that the twenty days count. The other change at the bottom of that section is just something that -- in the current law it says that the council mails notices to anyone who made a request -- that is not

what the council does -- they mail notices to people on a paid subscription list and the fee is set by the by the administrative rule committee -- the language was changed so that mailing goes to those who have paid that and pays to keep the subscription to cover the costs for mailing. The next section of the bill -- section 2 comments period -- there is another change - - reduction from twenty days to ten days - this the comment period an agency has to hold open to receive comment after the public hearing -- the reduction here is twenty days -- agencies seem to feel that ten days is plenty of time for that -- most people who submit comments do so fairly soon after the hearing and don't wait until nearly thirty days is here and the twenty days earlier is to take a total of thirty days off the period of time that it takes for an agency it takes from the beginning to the end of the administrative rulemaking process. The third section of the bill is probably the most significant change and it is what Senator Cook described rather than agencies rule making becoming effective on the first day of each month during the year -- the bill sets up a calendar quarter basis for the effective dates of a rule and there is also a filing schedule set up depending when those rules are file with the legislative council for publication -- that will determine the effective date of those rules --- and the fifteenth of the month is the cut off for filing -- at the bottom of page three -- that quarterly period is from August 16th to November 15th --- and those rule would become effective January 1st. Later in the bill we will see that the Administrative Rules Committee will have to consider rule 15 days before the schedule effective day --

**Rep. Koppelman ( 31.6 )** Back on page 3 -- when talking about those time tables there -- regarding the January 1st deadline there is Christmas and New Years holidays in there - -

It could put the Administrative Rules Committe ina position to meet between Christmas and new years every year.

**John Walstad** - that was considered and changed -- the Rule Committee would have to look at those rules at least 15 days before that date so they would need to meet before December 16th at the latest.

**Rep. Devlin, Chairman** - What would be the earliest then?

**John Walstad** -- It would be the fastest our office could process those rule and get them out to the committee and set a meeting date. That's about ten days after the 15th of November. The agencies are giving up something here and the Administrative Rules Committee is giving up something also.

There followed a period of discussion citing several possible scenarios as to how the law would effect various aspects of notices, hearings, publications, etc.

**John Walstad** -- Without going through each time table -- beginning on page 4 line ten -- If publication is delayed for any reason other than what the Rule Committee does and what this refers to is if our computers crash and we can't get the rule done or if staff can't process 1200 pages received on environmental stuff on the 15th -- for whatever reason -- that is not the agencies fault and their rules would still take effect according to the schedule in the bill.

The only exception is if the Rule Committee carries over consideration of the rules -- those rule do not become effective at that scheduled time. They would become effective on the first of the next quarterly period. In response to Rep. Koppelman -- John Walstad pointed out that the Administrative Committee faces that 15 day deadline again so they must meet-- if they don't meet they loose their authority to void those rules.

Again several examples of scheduling and rescheduling due to blizzards etc. Were discussed with John Walstad.

**John Walstad** -- Looking at section 4 of the bill -- This is the committee's authority to find the rules void. If a rule is initially considered by the Committee not later than the 15th day of the month before the date of the supplement in the rules change is scheduled to appear -- that date of the supplement would be January 1, April 1, July 1 -- that quarterly schedule that is laid out in the previous section -- part of the advantage here for those who have the joy of serving on that committee -- under current law all the rules the committee is working on are rules already in a set and if the committee changes those rules or void those rules -- whatever-- by agency agreement or otherwise then we have a situation where -- a rule in place for a short period of time and the is either gone or changed and anybody who justifiably relied on that rule at a time when it was in effect maybe put into a difficult situation because of the change -- by making this change the committee will always be looking at rules that have not yet become effective -- so that any changes by agreement with the agency or otherwise will occur before the rule actually becomes effective and before anybody is legally entitled to rely on the content that rule. Page 5 mostly -- nothing is being changed there but down on the bottom and top of page 6 -- this relates on when the Rules committee and the agency may agree on a rules change to address some concerns raised for concerns by the committee -- it could require the agency to resubmit those amended rule to the Legislative Council for publication.-- Walstad has found that is not what happens that when meetings are over and they don't think about rewriting the rule and sending it to the Legislative Council and so the Council just goes ahead and does it. Therefor the statute was changed to reflect what actually happens. The council will publish the change and the second thing is that current law requires that once an amendment is agreed to by the agency and the committee it has to be considered again at the next meeting of the Committee -- and experience has shown that

when the next meeting comes up nobody wants to talk about it anymore -- its over with -- and I have put these on the agenda for the next meeting and when it come up the committee has all look at me 'why is that on there?' This will provide it won't go on the next meeting's agenda unless somebody has an issue with it -- if the agency requests it or an interested party requests it. The bottom of page 6 -- this is about the Legislative Council office's publication of the supplement -- right now the law requires the publication of the supplement the 1st of each month -- and those rules take effect the first of the following month -- that is replaced by that reference to the quarterly schedule in the earlier section of the bill -- so that will be the schedule of the supplements to the Administrative Code. Then on top of page 7 -- the supplement has to contain all the rules filed with the Council or that have become effective since the compilation of the previous supplement. The reason it says or which has become effective -- is if the committee carries over the consideration of a rule -- those won't go out until the meeting when the committee reconsiders. Then you can see language is struck out -- giving the Council the Authority to set the due date for when the rules must be submitted -- right now they set the due date for the 20th of the month -- they won't need to do that any more because of the sets up the statutory schedule in the quarterly schedule. Then the effective date-- that will apply to rules for which the notice of hearing has been filed the council office after the 31st of July this year. There will be a bit of transition period -- they will still be doing a monthly supplement -- still be on the 90 day schedule for the Rules Committee but it is necessary to do that unless an emergency clause was added. There is as much detail as we can give you.



**Rep. Devlin, Chairman** good job -- I want to thank the work the Senate has gone to and the work that John Walstad has put into this -- we appreciate it. It is a great improvement. Sen Cook do you want to add anything.

**Sen. Cook** -- We will take all the complements we can get -- but all the work was done up in John Walstad's office.

**Sen. Fairfield** -- do we need an emergency clause on this.

**Rep. Koppelman** it is not needed -- there is a transition period for July.

**Rep. Koppelman** moved that the House accede to the Senate amendments on HB 1421.

**Rep. Ekstrom** seconded the motion. On a roll call vote the motion carried unanimously.

End of record ( 54.9 )

**REPORT OF CONFERENCE COMMITTEE  
(ACCEDE/RECEDE)**

Bill Number HB 1421 (, as (re)engrossed):

Date: April 5, 2005

Your Conference Committee Political Subdivisions

4/5 For the Senate:

YES / NO 4/5 For the House:

YES / NO

✓ Sen. D. Cook	✓		✓ Rep. W. Devlin	✓	
✓ Sen. G. Lee	✓		✓ Rep. K. Koppelman	✓	
✓ Sen. A. Fairfield	✓		✓ Rep. M. Ekstrom	✓	

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate) amendments on (SJ/HJ) page(s) 1392 -- 1396

✓, and place HB1421 on the Seventh order.

\_\_\_\_\_, adopt (further) amendments as follows, and place \_\_\_\_\_ on the Seventh order:

\_\_\_\_\_, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) HB1421 was placed on the Seventh order of business on the calendar.

DATE: 4/5/05

CARRIER: Rep. Koppelman

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: Rep. Koppelman

SECONDED BY: Rep. Ekstrom

VOTE COUNT 6 YES 0 NO 0 ABSENT

**Insert LC: .**

**REPORT OF CONFERENCE COMMITTEE**

**HB 1421, as engrossed:** Your conference committee (Sens. Cook, G. Lee, Fairfield and Reps. Devlin, Koppelman, Ekstrom) recommends that the **HOUSE ACCEDE** to the Senate amendments on HJ pages 1392-1396

Engrossed HB 1421 was placed on the Seventh order of business on the calendar.

2005 TESTIMONY

HB 1421

## **H.B. 1421**

**Presented by:** Illona A. Jeffcoat-Sacco  
Executive Secretary  
Public Utilities Director

**Before:** House Political Subdivisions  
Honorable William R. Devlin, Chairman

**Date:** 10 February 2005

### **TESTIMONY**

Chairman Devlin and members of the House Political Subdivisions Committee, I am Illona A. Jeffcoat-Sacco, Executive Secretary and Director of the Public Utilities Division of the Public Service Commission. The Commission asked me to appear here today in opposition to H.B. 1421. The Commission is concerned that H.B. 1421 will unreasonably and unnecessarily delay the rulemaking process.

The rulemaking process already includes written, published notice, several cost-benefit analyses, oral and written comments from interested parties, a written explanation from the agency about how it considered the comments, and an analysis of authority and legality by an Assistant Attorney General. This process, at a minimum, is six months long. H.B. 1421 can add another six months of delay to the eventual effective date. We believe this delay is unnecessary and unreasonably burdens those who could benefit from a rule.

Rules are not inherently bad for the regulated community or the public. Often new rules can help reduce costs and improve

efficiencies for industry, or make applications and paperwork for North Dakota citizens simpler and easier to complete.

One example from the Public Service Commission is the rule in which the Commission adopted new provisions to allow mining companies to provide letters of credit rather than a surety bond or other types of collateral bonds to meet their reclamation bonding requirements. This rule was adopted due to the very high cost and limited availability of surety bonds for surface coal mines and it gives mining companies another bonding option. If a mining company had no other option in meeting its bonding requirements when the letter of credit rule was adopted, delaying the effective date of the rule would have resulted in serious adverse impacts to the mining company. There is simply no reason to delay implementation of such a beneficial rule.

This completes my testimony. I would be happy to answer any questions you may have.

**H.B. 1421**

**Presented by:** Illona A. Jeffcoat-Sacco  
Executive Secretary  
Public Utilities Director

**Before:** Senate Political Subdivisions  
Honorable Dwight Cook, Chairman

**Date:** 11 March 2005

**TESTIMONY**

Chairman Cook and members of the Senate Political Subdivisions Committee, I am Illona A. Jeffcoat-Sacco, Executive Secretary and Director of the Public Utilities Division of the Public Service Commission. The Commission asked me to appear here today in opposition to H.B. 1421. The Commission is concerned that H.B. 1421 will unreasonably and unnecessarily delay the rulemaking process.

The rulemaking process already includes written, published notice, several cost-benefit analyses, oral and written comments from interested parties, a written explanation from the agency about how it considered the comments, and an analysis of authority and legality by an Assistant Attorney General. This process, at a minimum, is six months long. H.B. 1421 can add another six months or more of delay to the eventual effective date. We believe this delay is unnecessary and unreasonably burdens those who could benefit from a rule.

Rules are not inherently bad for the regulated community or the public. Often new rules can help reduce costs and improve

efficiencies for industry, or make applications and paperwork for North Dakota citizens simpler and easier to complete.

One example from the Public Service Commission is the rule in which the Commission adopted new provisions to allow mining companies to provide letters of credit rather than a surety bond or other types of collateral bonds to meet their reclamation bonding requirements. This rule was adopted due to the very high cost and limited availability of surety bonds for surface coal mines and it gives mining companies another bonding option. If a mining company had no other option in meeting its bonding requirements when the letter of credit rule was adopted, delaying the effective date of the rule would have resulted in serious adverse impacts to the mining company. There is simply no reason to delay implementation of such a beneficial rule.

This completes my testimony. I would be happy to answer any questions you may have.



**TESTIMONY BEFORE THE  
SENATE POLITICAL SUBDIVISIONS COMMITTEE  
REGARDING HOUSE BILL 1421  
MARCH 11, 2005**

**Chairman Cook and members of the Committee, my name is Melissa Hauer. I am an attorney for the Department of Human Services. I am here today to testify in opposition to House Bill 1421.**

**The language of the bill provides that nonemergency rules do not become effective until the first day of the month after the month in which the administrative rules committee has considered the rules and has no further authority under North Dakota Century Code section 28-32-18. The Department is concerned that the provisions of this bill could add significant delay to the rulemaking process which is already fairly lengthy.**

**The rulemaking process currently requires notice to be published in all official County newspapers, several cost-benefit analyses, the consideration of oral and written comments from interested parties and an analysis of legality by the Attorney General. Once all of these steps are completed, the rules are not effective until one month after the month in which they are published by the Legislative Council. This process currently takes approximately nine months to complete.**

**HB 1421 would have the potential to add months of delay to the rulemaking process. In the best case, it would not add any additional time to the process. In the worst case, it could add over a year. For example, if an agency adopted a rule in November 2006, after the Administrative Rules Committee's October meeting, the Administrative Rules Committee would not review the rule until July 2007 because the Committee does not meet during legislative sessions. If, at that July meeting, the Committee decided**

to hold the rule over to its next meeting (November 2007), the rule would not become effective until December 2007. That could mean an additional 13 months' delay in the effective date of the rule. Something that was a nine-month process may become a two-year process. Had this bill been in effect during the last two years, it would have delayed the effective date of the rules adopted by the Department during the 2003-2005 interim by up to 291 days and an average of 94 days. The delays caused by this bill could also result in the need to use emergency rulemaking more frequently in order to ensure that rules will be effective in a timely manner.

For these reasons, the Department urges this Committee to consider giving this bill a do not pass recommendation. I would be happy to try to answer any questions the committee members may have. Thank you.

**TESTIMONY ON HB 1421  
SENATE POLITICAL SUBDIVISIONS COMMITTEE  
Honorable Dwight Cook, Chairman  
March 11, 2005  
Department of Public Instruction**

Mr. Chairman and members of the committee:

My name is Gary Gronberg and I am an assistant superintendent of the Department of Public Instruction. On behalf of the DPI, I am here to speak in opposition to HB 1421.

HB 1421 would delay the effective date of administrative rules until after the Administrative Rules Committee has met. The bill would extend what is already a very lengthy process to adopt or amend rules. The bill would also create an element of uncertainty because the Administrative Rules Committee could carry over its review for a subsequent meeting. The Department is concerned that these factors would cause problems at the local level for school staff and other persons working with programs administered by the Department. Some programs run on a cycle that coincides closely with the school year, such as the school lunch program and the summer food service. If the effective date of a rule change is delayed or up in the air, there is an extra burden on local workers.

Rules can benefit the regulated community. An example is the Department's rule that provides mediation services at no cost where parents of a child with a disability have a dispute with the school. [ND Admin Code sec. 67-23-04-02] These rules use plain English to inform parents and schools about their rights to access free mediation services. There does not

seem to be any good reason delay the effective date of a beneficial rule such as this.

Mr. Chairman, that concludes my testimony. I would be happy to answer any questions the committee may have.

## Cook, Dwight C.

From: Glenn Elliott [ge-nodak@gcentral.com]  
 Sent: Thursday, March 17, 2005 2:08 AM  
 To: Cook, Dwight C.  
 Subject: HBs 1421 and 1468 - Administrative Rules

Dwight:

As I promised (or warned), here are some thoughts regarding House Bills 1421 (administrative or "admin" rule effective date) and 1468 (legislative review of existing admin rules). Forward this on, or print it and pass it around, if and as you wish.

### 01. Summary:

a. The legislature is the "big cheese" on lawmaking. Administrative rulemaking is lawmaking by delegation of the legislature. The legislature can say "no" to a rule like any other law, meaning IT'S "NO!" AND THAT'S IT!

b. Having the admin rules committee examine existing admin rules is not a new or strange concept. Others thought of it.

c. The rulemaking procedure doesn't give agencies the same closeness to the public as the legislature has.

d. Agencies defer to the legislature and don't try to get around it. Anyone thinking "or else what?" better not.

e. There's no reason that legislative review has to gum up the administrative rulemaking works. Idea: While the Attorney General reviews a proposed rule, so does the admin rules committee.

02. As a citizen, I believe that the supreme law-making body is the legislature. Both the executive (including administrative agencies) and the judiciary defer on that basis. The North Dakota Constitution seems to agree (Article III, Section 1, first sentence). Put simply, if it smells like a law, it's in the legislature's bailiwick and nobody says otherwise.

03. "Administrative law deals with officers and agencies exercising \*delegated\* powers and not with the exercise of the constitutional powers of the executive" (2 Am Jur 2d "Admin Law" [2004] Sec. 1; have Senator Triplett explain this if you're curious). Who delegated those powers? The legislature did, and what it giveth it can taketh away.

04. "An administrative agency cannot promulgate rules and regulations that contravene the will of the legislature..." (2 Am Jur 2d "Admin Law" [2004] Sec. 132). Which is better suited to determine the legislature's will -- the agency or the admin rules committee?

05. From the comments by those from "the tower," the idea of having a legislative committee reviewing existing admin rules is at least novel and at worst outlandish, and perhaps same for even having that committee. Not so, kemo sabe. The 1981 version of the Model State Administrative Procedure Act allows for a (legislative) admin rules committee (MSAPA Section 3-203) and that the committee may selectively review possible, proposed, \*or\* adopted\* rules (MSAPA Sec. 3-204(a)) or recommend a rule to an agency (MSAPA Sec. 3-204(e)).

06. Those from the tower also made much about the care and protections in the rulemaking process. However:

a. The major (perhaps only) participants in that process are the regulator and those regulated. The regulators probably don't hear that often from the public.

b. The agencies also have an interest in effective and efficient administration, or

at least what they consider it to be, so this may temper their concerns for the public.

07. I believe Rick Clayburgh said that an effect of HB 1468 would be to encourage agencies to go more to policy statements instead of rules.

a. Frankly, "them's fightin' words." If the admin agencies pull that crap, I as a citizen would expect the legislature to do a major "smackdown" on the tower for trying that dodge. We have the ND Administrative Code as a way of bringing all these out into the light as public standards. Policy statements would seem to go the other way.

b. From American Jurisprudence Second Series, in Title 2 under the "Administrative Law" topic:

(1) On page 153, above Section 149, policy statements are grouped together with procedural rules instead of with legislative rules (formed by agency under its authority) or interpretive (of statute) rules. To me, this indicate that policy statements are not on the same level as "substantive" rules.

(2) From Section 149: "Procedural rules generally deal with an agency's method of operation and are not intended to change the agency's basic regulatory standards."

(3) According to Section 150, federal agency policy statements are said to lack "the firmness of a prescribed standard, and are generally considered not to be substantive rules or subject to rule-making requirements." [NOTE: Not subject to rule-making requirements, as may be expected for state agency policies.]

(4) From Section 151: "[State agency p]olicy statements may not have to be promulgated as rules under state law. However, rules which govern administrative regulations may apply to an administrative agency policy which has the effect of a regulation."

08. I don't know if anyone said this, but I think that the agencies really don't want the legislature in "their" business. However:

a. I learned in Command and General Staff Course (your taxes at work) that senior leaders (like the legislature?), while they shouldn't micromanage their subordinates, are not prevented and are in fact required to give particular instructions, even on "minor" matters, if they believe that the instructions are important to mission success.

b. The legislature may not want the public in their business either, but the ND Constitution says the public has the right to do so (initiative, referendum). It may be unwise for the public to do so, but it's their call. Same on administrative rules: It may be unwise for the legislature to void or alter a rule, or to override it by statute, but it is the legislature's prerogative.

09. I think the gentleman from DPI brought up that the agencies make a number of rules to implement Federal directives, and the admin rules committee could mess this up if it voids a rule or wants amendment.

a. If an admin rule implements a Federal directive, then refer to the Federal law, rule, or order in the state admin rule so anyone (rules committee included) can read and understand that.

b. I don't know why the admin rules committee would mess with a rule that it knows is implementing a Federal directive, but if this is that much of a concern, then amend NDCC Chapter 28-32 to state that the administrative rules committee cannot void or request amendment of any state administrative rule that specifically implements any federal directive which unconditionally orders such implementation, or requires it as a condition of receiving federal funds or participating in a federal program under which federal funds are expected to be available. If anyone says this idea is nuts, tell them to see 2 Am Jur 2d "Admin Law" (2004) Sec. 22 (Senator Triplett knows where that is).

10. Concern was raised on both bills about time and uncertainty added to the admin rulemaking process by committee review.

a. I overheard Doug Barr saying that a proposed rule could go to the admin rules committee when it goes to the Attorney General. I say it could also be submitted before that as a draft so the committee can confirm the final proposal and rule not long after the AG's review is done, as the committee is (about) quarterly but AG review could be done in 30 days.

Common concerns could be discussed between the AG and someone from the committee or Legislative Council.

b. Stability in the law is valued, but nobody is entitled to a legal status quo. There is no more risk that the legislature (itself or the admin rules committee) could change or void an administrative rule than that the courts could decide that a rule or law is unconstitutional, that a rule is superseded by another statute, or that a rule or law is unworkable because of a conflict of law.

11. One more bit of legal wisdom: "Confining delegated lawmaking authority within its intended bounds helps to assure that ultimate control over policymaking rests with the legislative branch of government rather than with unelected administrative officials" (2 Am Jur 2d "Admin Law" [2004] Sec. 54).

-- End (finally) --



# Public Service Commission

## State of North Dakota

*Attachment #1*  
*Hearing 2*

### COMMISSIONERS

Tony Clark, President  
Susan E. Wefald  
Kevin Cramer

Executive Secretary  
Illona A. Jeffcoat-Sacco

18 March 2005

600 E. Boulevard Ave. Dept 408  
Bismarck, North Dakota 58505-0480  
web: [www.psc.state.nd.us](http://www.psc.state.nd.us)  
e-mail: [ndpsc@state.nd.us](mailto:ndpsc@state.nd.us)  
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Fax 701-328-2410  
Phone 701-328-2400

Honorable Dwight Cook, Chairman  
Senate Political Subdivisions Committee  
600 East Boulevard Avenue  
Bismarck, ND 58505

Dear Chairman Cook:

As you requested, representatives of several agencies met on 17 March to discuss possible changes to HB 1421. Agencies represented at the meeting were the Public Service Commission, the Office of the Attorney General, the Department of Public Instruction, the Oil and Gas Division of the Industrial Commission, the Department of Human Services and Human Resource Management Services. Some of these agencies testified before your committee, or before the House committee.

We recognize the concerns of the sponsors, other members of the Administrative Rules Committee and other legislators, and appreciate the opportunity you provided us to work toward resolution of our differences. Our attempts to reconcile these led us to conclude that we need to conduct a more in depth effort than time and resources permit this session. The complexity of the rules process, the number of statutory provisions impacted, and the likelihood of unintended consequences led us to conclude that it is not in anyone's best interest to offer amendments that may turn out to be bad law.

Consequently, we are proposing that in lieu of enacting HB 1421 and HB 1468, we convene a task force made up of interested legislators, agency representatives, regulated industry and other constituents to comprehensively review the rulemaking process during the interim, including the role and process of the Administrative Rules Committee and the existing statutory time frames that impact the length of time it takes to promulgate rules. We envision that this task force would draft proposed legislation, for review by the Administrative Rules Committee and the Legislative Council, for the 2007-2009 legislative session.

The agencies represented below have agreed to participate in this task force. Although we have not had time to contact them, we believe other agencies with rulemaking experience and expertise will also be willing to participate. We strongly believe that by all of us working together, we can develop a process for promulgating rules that not only satisfies the concerns of both the executive branch and the legislative branch, but also produces the best possible rules for the citizens of North Dakota.



Honorable Dwight Cook  
18 March 2005  
Page 2

Thank you again for this opportunity to provide input to the Committee. If you have any questions, please do not hesitate to call or e-mail.

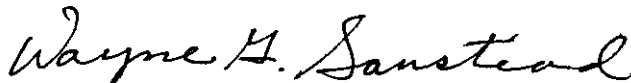
Best regards,



Illona A. Jeffcoat-Sacco  
Executive Secretary  
Public Service Commission



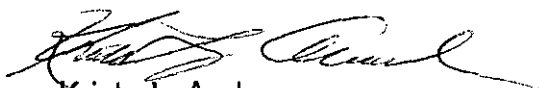
Bob Christman  
Deputy State Tax Commissioner



Dr. Wayne G. Sanstead  
Superintendent of Public Instruction



Laurie Sterioti Hammeren, SPHR  
Director  
ND Human Resource Management Services



Krista L. Andrews  
Attorney, Legal Advisory Unit  
N.D. Dept. of Human Services

c: Senator Nicholas P. Hacker, Vice Chairman  
Senator Dick Dever  
Senator April Fairfield  
Senator Gary A. Lee  
Senator Constance Triplett

**H.B. 1421**

**Presented by:** Illona A. Jeffcoat-Sacco  
Executive Secretary  
Public Utilities Director

**Before:** Senate Political Subdivisions  
Honorable Dwight Cook, Chairman

**Date:** 24 March 2005

**SUPPLEMENTAL TESTIMONY**

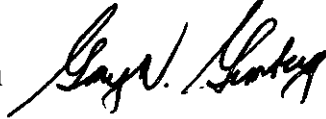
Chairman Cook and members of the Senate Political Subdivisions Committee, I am Illona A. Jeffcoat-Sacco, Executive Secretary and Director of the Public Utilities Division of the Public Service Commission. The Commission asked me to appear here today to provide supplemental testimony on H.B. 1421.

The Commission very much appreciates having the opportunity to work with other interested parties on HB 1421. Our original concern that H.B. 1421 would delay the rulemaking process, and thereby unnecessarily and unreasonably burden those who could benefit from a rule, has been substantially addressed by the proposed amendments. Administrative Rules Committee review earlier in the process, the specific effective dates, and the shortening of certain time frames without adversely impacting the opportunity for public input, should make the rulemaking process better for everyone.

This completes my testimony. I would be happy to answer any questions you may have.

Memo to: Senate Political Subdivisions Committee

From: Department of Public Instruction



Re: Relationship of HB 1421, existing NDCC sec. 54-35-21(4) No Child Left Behind Select Committee, and HB 1434 with Senate Amendments

Date: March 24, 2005

At the March 24, 2005, meeting of the Senate Political Subdivisions to hear proposed amendments to HB 1421, Chairman Cook requested that DPI and John Walstad of the Legislative Council confer so that the timeframe for activities of the No Child Left Behind Select Committee will be compatible with the revised administrative rulemaking process.

1. Distinction between state accountability plan and state rules

DPI has no rules on matters governed by the NCLB of 2001. DPI has no plans to adopt rules on matters governed by NCLB. Any changes to the rulemaking process in NDCC Ch. 28-32 would have no effect on North Dakota's activities under NCLB.

North Dakota has a state accountability plan as required by NCLB at Title IX, Part C, Section 9302 of NCLB [Public Law 107-110]. The state accountability plan is known as the "AYP [Adequate Yearly Progress] Workbook." The state accountability plan would be affected by HB 1434 with Senate Amendments (document 50128.0200). HB 1434 as amended would require the superintendent to present proposed changes in the state accountability plan to the interim NCLB committee. This process is separate and distinct from state rulemaking.

2. HB 1421 and existing NDCC sec. 54-35-21(4)

If DPI were to adopt rules on a matter governed by NCLB, current law requires notice to the select committee. This notice is in addition to the notice required by the general rulemaking statutes. The statute on the NCLB select committee now states:

54-35-21. No Child Left Behind Act Of 2001 - Select Committee - Appointment - Duties.

....

4. When an agency files a notice of proposed rulemaking with the office of the legislative council under subsection 1 of section 28-32-10 on any matter governed by the No Child Left Behind Act of 2001, the agency shall provide a copy of the notice to the chairman of the committee. The chairman shall convene the committee within sixty days of receiving the notice, or as soon thereafter as practicable, for the purpose of receiving a presentation by the agency regarding the nature and scope of the proposed rules and for the purpose of receiving

presentations by members of the public regarding the nature and scope of the proposed rules.

NCLB select committee review of agency rulemaking under current law is triggered by the agency filing a notice of rulemaking. HB 1421 as amended does not affect the filing of notice of rulemaking. HB 1421 as amended would not change NCLB select committee activities under current law.

### 3. HB 1421 and HB 1434 with Senate Amendments

HB 1434 with Senate Amendments would remove the language in current law regarding committee review of agency rulemaking.

~~When an agency files a notice of proposed rulemaking with the office of the legislative council under subsection 1 of section 28-32-10 on any matter governed by the No Child Left Behind Act of 2001, the agency shall provide a copy of the notice to the chairman of the committee. The chairman shall convene the committee within sixty days of receiving the notice, or as soon thereafter as practicable, for the purpose of receiving a presentation by the agency regarding the nature and scope of the proposed rules and for the purpose of receiving presentations by members of the public regarding the nature and scope of the proposed rules.~~

HB 1434 with Senate Amendments (document 50128.0200), p. 2 lines 14 through 22. The same analysis applies as with current law. The contemplated changes to rulemaking in general under NDCC Ch. 28-32 are unrelated to interim NCLB committee activities.