

1999 HOUSE JUDICIARY

HB 1024

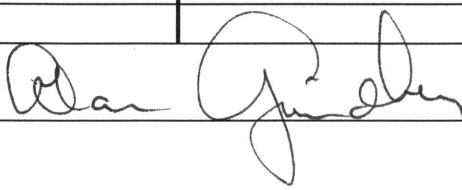
1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1024

House Judiciary Committee

Conference Committee

Hearing Date January 11, 1999

Tape Number	Side A	Side B	Meter #
1		X	0
Committee Clerk Signature 			

Minutes:

REP. NELSON: I support this bill and the other three that came from the Administrative Rules Committee. They are intended to address the lack of openness in the rule making procedure.

Notice of rule making is published but seldom read. I have 11 school districts in my district and none of the administrators had heard of a rule that turned out to be quite controversial.

JOHN WALSTAD (LC) The rule making process came out of the 1977 session. Prior to 1995 the Administrative Rules Committee could only file objections to a rule it did not like. In 1995 legislation was passed that gave the committee some power. This bill would extend the power to void rules already on the books., where under current law they can only void those that are being proposed.

BLAINE NORDWALL (Hum Ser) Presented prepared testimony in opposition, a copy of which is attached.

Page 2

House Judiciary Committee

Bill/Resolution Number 1024

Hearing Date January 11, 1999

CHUCK JOHNSON: (PSC) Presented prepared testimony, a copy of which is attached.

COMMITTEE ACTION: February 10, 1999

CLAIRE CARLSON (Office of Gov.) Addressed the committee on the process of preparing the amendments to this bill, which was done with bill sponsors, agencies and Governor's office.

REP. KOPPELMAN presented the amendment. Rep. Koppelman moved the adoption of the amendment and Rep. Hawken seconded. Rep. Klemin moved to further amend and Rep.

Koppelman seconded. Rep. Meyer moved to further amend the bill so that the rules committee would be composed of equal numbers of Democrats and Republicans..

Rep. Meyers amendment was passed on a voice vote. Rep. Klemin's amendment was passed on a vote of 12 to 3. Rep. Koppelman's amendment was passed on a voice vote

REP. MARAGOS Moved that the committee recommend that the bill DO NOT PASS AS AMENDED. Rep. Delmore seconded and that motion carried with a roll call vote of 11 ayes, 4 nays and 0 absent. Rep. Maragos was assigned to carry the bill on the floor.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1024

Page 1, line 3, replace the second "and" with ", subsections 4 and 7 of section 28-32-02,"

Page 1, line 4, after "28-32-03.3" insert ", and section 28-32-04"

Page 1, line 5, replace "and" with ", administrative rulemaking procedures,"

Page 1, line 6, after "rules" insert ", and petitions for reconsideration of administrative rules" and remove "to repeal section 28-32-04 of the North Dakota Century Code, relating to"

Page 1, line 7, remove "petitions for reconsideration of administrative rulemaking;"

Page 1, line 13, remove the overstrike over "~~28-32-04~~" and remove "28-32-03.3"

Page 1, after line 15, insert:

"SECTION 2. AMENDMENT. Subsections 4 and 7 of section 28-32-02 of the 1997 Supplement to the North Dakota Century Code are amended and reenacted as follows:

4. The agency's 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 data, views, or arguments concerning the proposed rule may be sent, provide a phone 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 notice must be filed with the office of the legislative council and published at least twice in each daily newspaper of general circulation published in this state. The agency shall mail a copy of the 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 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. At least ~~thirty~~ fourteen days must elapse between the later of the date of the second 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 second publication, whichever is later.~~ At least fourteen days before the hearing, the agency shall provide the attorney general a copy of the notice and the proposed rules. Subject to subsection 5, notices filed on or before the last calendar day of the preceding month must be mailed by the legislative council on the first business day of the following month to any person making a request. The agency shall allow, after the conclusion of any rulemaking hearing, a comment period of not less than ~~thirty~~ fourteen 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.

7. Every rule ~~proposed~~ submitted to the attorney general by any administrative agency must be ~~submitted to~~ reviewed by the attorney general for an opinion as to its legality before final adoption, ~~and the~~. The attorney general shall ~~promptly~~ furnish each ~~such~~ the agency a preliminary opinion, based upon the rules as submitted, by the close of the comment period for those rules. After the close of the comment period, the agency shall advise the attorney general of each change to the proposed rules made in contemplation of final adoption and the attorney general shall promptly furnish an opinion as to legality of the rules contemplated for final adoption. The attorney general may not approve any rule as to legality when the rule exceeds the statutory authority of the agency or is written in a manner that is not concise or easily understandable, or when the procedural requirements for adoption of the rule in this chapter are not substantially met. The attorney general shall advise an agency of any revision or rewording of a rule necessary to correct objections as to legality."

Page 3, line 14, replace "The" with "Upon request of any person substantially interested in the effect of a rule who has previously petitioned the adopting agency for reconsideration of the rule under section 28-32-04 or upon request of the adopting agency, the"

Page 3, replace lines 21 and 22 with:

"SECTION 6. AMENDMENT. Section 28-32-04 of the North Dakota Century Code is amended and reenacted as follows:

28-32-04. Petition for reconsideration review of rule - Hearing by agency. Any person substantially interested in the effect of a rule adopted by an administrative agency may petition such agency for a ~~reconsideration~~ review of the effect and consideration of any ~~such~~ the rule or for an consideration of amendment or repeal ~~thereof of the rule~~. ~~Such~~ The petition must state clearly and concisely the petitioners' alleged grounds for ~~such reconsideration~~ the review, or for the proposed repeal or amendment of ~~such~~ the rule. The agency ~~in its discretion~~ shall grant the petitioner a public hearing if the petitioner has not previously petitioned the agency under this section and otherwise may grant the petitioner a public hearing, upon such terms and conditions as the agency may prescribe."

Page 3, line 23, after the second period insert "Section 2 of this Act is effective for administrative rulemaking proceedings for which the notice of rulemaking is published after July 31, 1999.", replace "2" with "3", and replace "4" with "5"

Page 3, line 25, replace "3" with "4"

Re-number accordingly

VK
2/10/99
102

HOUSE AMENDMENTS TO HOUSE BILL NO. 1024 Jud 2/11/99

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HOUSE AMENDMENTS TO HOUSE BILL NO. 1024 Jud 2/11/99

Page 2, line 2, after the period insert "The committee on administrative rules must be politically neutral and consist of members in proportion to the political party affiliations of the legislative assembly."

HOUSE AMENDMENTS TO HOUSE BILL 1024 Jud 2/11/99

Page 3, line 14, replace "The" with "Upon request of any person substantially interested in the effect of a rule who has previously petitioned the adopting agency for review of the rule under section 28-32-04 or upon request of the adopting agency, the"

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DIVISION A

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DIVISION B

Page 2, line 2, after the period insert "The committee on administrative rules must be politically neutral and consist of members in proportion to the political party affiliations of the legislative assembly."

Page 3, line 20, after the underscored period insert "Notice of the time and place the rule will be reviewed must be published at least twice in each daily newspaper of general circulation published in this state."

Renumber accordingly

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1024

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Page 2, line 2, after the period insert "The membership of the administrative rules committee must include an equal number of members from each of the two political parties having the most members in the legislative assembly."

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Renumber accordingly

Date: 2/10/99
 Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1042

House JUDICIARY Committee

Subcommittee on _____
 or
 Conference Committee

Legislative Council Amendment Number Amendment # 2

Action Taken _____

Motion Made By _____ Seconded By _____

Representatives	Yes	No	Representatives	Yes	No
REP. DEKREY		✓	REP. KELSH	✓	
REP. CLEARY	✓		REP. KLEMIN		✓
REP. DELMORE	✓		REP. KOPPELMAN		✓
REP. DISRUD	✓		REP. MAHONEY	✓	
REP. FAIRFIELD	✓		REP. MARAGOS	✓	
REP. GORDER	✓		REP. MEYER	✓	
REP. GUNTER	✓		REP. SVEEN	✓	
REP. HAWKEN	✓				

Total Yes _____ No _____

Absent _____

Floor Assignment _____

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

Date: 2/10/99
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1024

House JUDICIARY Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass As Amended

Motion Made By Maragos Seconded By Delmore

Representatives	Yes	No	Representatives	Yes	No
REP. DEKREY	✓		REP. KELSH	✓	
REP. CLEARY	✓		REP. KLEMIN		✓
REP. DELMORE	✓		REP. KOPPELMAN	✓	✓
REP. DISRUD	✓		REP. MAHONEY	✓	
REP. FAIRFIELD	✓		REP. MARAGOS	✓	
REP. GORDER	✓		REP. MEYER		✓
✓ REP. GUNTER		✓	REP. SVEEN	✓	
REP. HAWKEN	✓				

Total Yes 11 No 4

Absent 0

Floor Assignment Maragos

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

REPORT OF STANDING COMMITTEE

HB 1024: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO NOT PASS (11 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). HB 1024 was placed on the Eleventh order on the calendar.

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Re-number accordingly

REPORT OF STANDING COMMITTEE

HB 1024: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO NOT PASS (11 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). HB 1024 was placed on the Sixth order on the calendar.

Page 1, line 3, replace the second "and" with ", subsections 4 and 7 of section 28-32-02,"

Page 1, line 4, after "28-32-03.3" insert ", and section 28-32-04"

Page 1, line 5, replace "and" with ", administrative rulemaking procedures,"

Page 1, line 6, after "rules" insert ", and petitions for reconsideration of administrative rules" and remove "to repeal section 28-32-04 of the North Dakota Century Code, relating to"

Page 1, line 7, remove "petitions for reconsideration of administrative rulemaking;"

Page 1, line 13, remove the overstrike over "~~28-32-04~~" and remove "28-32-03.3"

Page 1, after line 15, insert:

"SECTION 2. AMENDMENT. Subsections 4 and 7 of section 28-32-02 of the 1997 Supplement to the North Dakota Century Code are amended and reenacted as follows:

4. The agency's 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 data, views, or arguments concerning the proposed rule may be sent, provide a phone 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 notice must be filed with the office of the legislative council and published at least twice in each daily newspaper of general circulation published in this state. The agency shall mail a copy of the 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 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. At least ~~thirty~~ fourteen days must elapse between the later of the date of the second 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 second publication, whichever is later.~~ At least fourteen days before the hearing, the agency shall provide the attorney general a copy of the notice and the proposed rules. Subject to subsection 5, notices filed on or before the last calendar day of the preceding month must be mailed by the legislative council on the first business day of the following month to any person making a request. The agency shall allow, after the conclusion of any rulemaking hearing, a comment period of not less than ~~thirty~~ fourteen 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.

7. Every rule ~~proposed~~ submitted to the attorney general by any administrative agency must be ~~submitted to~~ reviewed by the attorney general for an opinion as to its legality before final adoption, ~~and the~~. The attorney general shall promptly furnish each such the agency a preliminary opinion, based upon the rules as submitted, by the close of the comment period for those rules. After the close of the comment period, the agency shall advise the attorney general of each change to the proposed rules made in contemplation of final adoption and the attorney general shall promptly furnish an opinion as to legality of the rules contemplated for final adoption. The attorney general may not approve any rule as to legality when the rule exceeds the statutory authority of the agency or is written in a manner that is not concise or easily understandable, or when the procedural requirements for adoption of the rule in this chapter are not substantially met. The attorney general shall advise an agency of any revision or rewording of a rule necessary to correct objections as to legality."

Page 2, line 2, after the period insert "The membership of the administrative rules committee must include an equal number of members from each of the two political parties having the most members in the legislative assembly."

Page 3, line 14, replace "The" with "Upon request of any person substantially interested in the effect of a rule who has previously petitioned the adopting agency for review of the rule under section 28-32-04 or upon request of the adopting agency, the"

Page 3, line 20, after the underscored period insert "Notice of the time and place the rule will be reviewed must be published at least twice in each daily newspaper of general circulation published in this state."

Page 3, replace lines 21 and 22 with:

"SECTION 6. AMENDMENT. Section 28-32-04 of the North Dakota Century Code is amended and reenacted as follows:

28-32-04. Petition for ~~reconsideration~~ review of rule - Hearing by agency. Any person substantially interested in the effect of a rule adopted by an administrative agency may petition such agency for a ~~reconsideration~~ review of the effect and consideration of any such the rule or for an consideration of amendment or repeal thereof of the rule. ~~Such~~ The petition must state clearly and concisely the petitioners' alleged grounds for ~~such reconsideration~~ the review, or for the proposed repeal or amendment of ~~such the~~ rule. The agency ~~in its discretion~~ shall grant the petitioner a public hearing if the petitioner has not previously petitioned the agency under this section and otherwise may grant the petitioner a public hearing, upon such terms and conditions as the agency may prescribe."

Page 3, line 23, after the second period insert "Section 2 of this Act is effective for administrative rulemaking proceedings for which the notice of rulemaking is published after July 31, 1999.", replace "2" with "3", and replace "4" with "5"

Page 3, line 25, replace "3" with "4"

Renumber accordingly

1999 SENATE GOVERNMENT AND VETERANS AFFAIRS

HB 1024

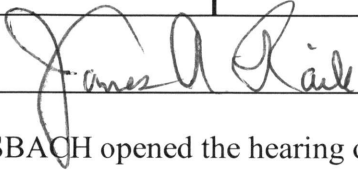
1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1024

Senate Government and Veterans Affairs Committee

Conference Committee

Hearing Date March 18, 1999

Tape Number	Side A	Side B	Meter #
1	X		2580-END
1		X	0-1925
Committee Clerk Signature 			

Minutes: CHAIRMAN KREBSBACH opened the hearing on HB 1024 which relates to the administrative rules committee to call up existing administrative rules for review. Appearing before the committee was REPRESENTATIVE LEROY BERNSTEIN, district 45, Fargo appeared before the committee to introduce the bill. HB 1024 was put out by the administrative rules committee in an effort to make administrative rules an ability to call up a rule that has been adopted and been on the books for a number of years that an individual does not have to go through the process that he does now. Now what he has to do, generally he has to hire a lawyer, to call up a rule. This bill would simplify the process. I don't think this will be used very often but it will make the process more user friendly and more friendly to our constituents. This is being done to level the playing field. There were no questions from the committee.

REPRESENTATIVE KIM KOPPELMAN, District 13, West Fargo, appeared before the committee. He is cosponsor of this bill. He indicated that HB 1024 gives the legislature via the

administrative rules committee some authority over rules that already exist. I understand that there was a bill similar to this in the past and that bill basically allowed the administrative rules committee to call up any rule it wanted to and deal with it. Frankly, I think that bill went too far and that was how this bill was worded in it's original form. I am very pleased with the amendments the house placed on the bill, and I worked personally at the request of Representative Bernstein and the Governor's office and Representative DeKrey, the chairman of the house judiciary committee. At their request I worked with the Governor's office very closely trying to create an amendment that would make it more palatable. I can't necessarily tell you here today that it's perfect or that all the I's have been dotted and the T' crossed. I'm sure in your wisdom your committee may want to look at that further. However, I think what you see before you is a very good bill, a much improved bill. The process set forward in the engrossed version of HB 1024 is that if an individual or an industry has a problem with an administrative rule that's on the books. That individual or industry would first have to go to the agency involved and try to work that problem out. If that is unsuccessful, that individual, company, or organization has some other redress by coming to the administrative rules committee and saying look we've got this rule that is putting us out of business, we've talked to the agency involved, they don't seem to be willing to do anything about it, would you please take a look at it for us and see if you can help us? The committee could still decide that this is a frivolous issue however, at their discretion this could be something to look at and they could call that rule up. But only after those first steps. He asked for committees favorable consideration of the bill. SENATOR STENEHJEM, I don't understand the point of an agency, an advantage of them bringing up a rule to the administrative rules committee when they always had the authority to readopt or

amend or repeal. REPRESENTATIVE KOPPELMAN, In discussion with the governors office, they felt that at least the agencies under their per view would benefit from that because if they want to alter an administrative rule they can do that right now, but the process is so cumbersome so lengthy and so costly that it's probably not a real good use of taxpayer money and a lot of bad rules so to speak just stay there, or they'll come to the next legislature and ask for it be changed through a bill because of that process. This would allow them to come and say well, would you look at this now and help us out? SENATOR STENEHJEM, it would allow an administrative agency to go to the administrative rules committee and by pass everything and have that committee amend a rule. REPRESENTATIVE KOPPELMAN, I believe that is correct. You'd have to look at the specifics of the amendments to discover how that would work. Again, my view of that is that it would be similar to the authority of the administrative rules committee that they have now, with respect to rules going into place. In that those changes could not or should not be substantive. If it doesn't say that it maybe ought to say that. That's my view of it.

SENATOR DEMERS, I thought, just correct me if I am wrong, rules are supposed to reflect the intent of the law. REPRESENTATIVE KOPPELMAN, that is correct. SENATOR DEMERS, it is now the duty of the administrative rules committee to make sure that that happens. Then why would we have rules that we wanted to change if they've already gone through that process. I guess I'm not sure what a non-substantive rule is. Could you give me an example.

REPRESENTATIVE KOPPELMAN, The answer to your first question, most of the rules in the administrative code have not gone through that process with the current situation. Most of the administrative code went into effect before any of that check and balance was there and so the question is what all these rules that have been sitting there so long that some of which are

onerous or a problem or whatever. I'm not sure if I can give you a specific example of a non substantive rule. Perhaps Mr. Walstad could do a better job of that. SENATOR DEMERS, you made a comment that these protections have not been in the law, but we've had an administrative rules committee for how long? They may not have functioned the way you wanted them to function but they function the way the rest of the legislators wanted them to function at that time. REPRESENTATIVE KOPPELMAN, responded to the question. SENATOR W. STENEHJEM, could you tell me what happened with this bill over in the house? We have these blue amendments and then there are these pink amendments. What happened? You amended it in committee. REPRESENTATIVE KOPPELMAN, There was an amendment attached in the house committee and then there was a division of amendments on the floor. The amendment defeated on the house floor would have required the committee be made up of half members from each political party. That was defeated. JOHN WALSTAD, with Legislative Council Staff appeared in neutral position on the bill. He serves as council for the administrative rules committee. HB 1024, the engrossed version is substantially different from the original version of the bill as introduced. He ran through the bill with the committee section by section (Meter #'s 4492-END of Side A, Tape 1 and Side B, Tape 1, Meter #'s 0-625) Questions were offered by SENATORS STENEHJEM, DEMERS and WARDNER. (Meter #'s above). BOB HARMS, counsel to Governor Schafer appeared before the committee to testify in opposition to HB 1024. His testimony is found on (Tape 1, Side B, Meter #'s 679-1344). Questions and comments for Mr. Harms were offered by SENATORS KREBSBACH, STENEHJEM, and WARDNER. BLAINE NORDWALL, appearing on behalf of the Department of Human Services presented testimony in opposition to the bill. A copy of his written testimony is attached. MIKE

MULLAN with the Department of Health appeared on behalf of Francis Schwindt, section chief of the environmental section of the department of health. He wanted to call the committees attention to the fact that a large number of the rules of the department of health protecting the environment under the delegated authority of the federal clean water act and the clean air act, the department is required to enforce those rules. We have reached an agreement with the federal environmental protection agency that we will enforce certain set of rules and if we or the administrative rules committee or some petitioner was to ask them to change those rules it might create a problem as to whether or not the state department of health would continue to have this delegated authority to enforce those federal laws. Yet, the way this bill is drafted that may be a possibility and that is a concern to the department. We also share some of the concerns you have heard in other testimony. SENATOR DEMERS, if that would happen then the feds would step in and do the enforcement? MR. MULLAN, then the state would lose the power to have our local state employees enforce those federal laws. SENATOR DEMERS, and so the federal government would come in, is that what you are saying? MR. MULLEN, that could be a possibility. There was no further testimony on the bill CHAIRMAN KREBSBACH closed the hearing at this time.

COMMITTEE DISCUSSION, March 25, 1999, Tape 1, Side A, Meter #'s 996-2199.

Chairman Krebsbach opened the discussion on HB 1024 which relates to administrative rules. She indicated that the committee as a whole was not really satisfied with what HB 1024 was attempting to do. Leaving in section 2 of the first engrossment of HB 1024 would not be too bad of a plan. It would shorten the time between the date of the publication and the notice to the legislative council and it would also involve the attorney general's office in review for

opinions upon introduction of the proposed rule. Therefore we had William draft amendments to remove all but section 2 of the first engrossment. Senator Wardner, there are two other parts in this bill that I really am not too enthused about. He proceeded to explain this to the committee. Questions and comments were made by SENATORS DEMERS, WARDNER, THANE, KREBSBACH, and W. STENEHJEM participating. Following discussion it was decided not to act on this bill until Friday morning.

COMMITTEE DISCUSSION/ACTION, March 26, 1999, Tape 1, Side A, Meter #'s

1090-3004. REPRESENTATIVE KIM KOPPELMAN appeared before the committee to offer amendments to HB 1024. CHAIRMAN KREBSBACH indicated that SENATOR WARDNER also had a set of amendments to offer. REPRESENTATIVE KOPPELMAN presented his amendments and explained how they would affect the bill. Questions and comments were offered by SENATORS THANE, DEMERS, and W. STENEHJEM.

SENATOR WARDNER appeared before the committee and presented his set of proposed amendments to HB 1024. He indicated that these amendments take everything out of the bill except sections 1 and 2. There was some concern about 14 days and he spoke with Beth Baumstark about this. He indicated to the committee that he got her opinion on this and she indicated that this time frame should not be a problem. CHAIRMAN KREBSBACH asked if he visited with her on section 7. She indicated that she did not have a problem with that section. SENATOR STENEHJEM offered some comments. Following the discussion a motion was made to amend the bill using the .0501 amendments prepared by the council for SENATOR WARDNER by SENATOR WARDNER, seconded by SENATOR THANE. ROLL CALL VOTE indicated 7 yeas, 0 Nays, 0 Absent or not voting.

Page 7

Senate Government and Veterans Affairs Committee

Bill/Resolution Number HB 1024 Minutes

Hearing Date March 18, 1999

SENATOR WARDNER made a motion for DO PASS AS AMENDED, seconded by

SENATOR THANE. Before a vote was taken, SENATOR DEMERS commented to the

committee that she would guess that the house will not concur if we pass this back to them

so she would like a commitment that the committee will hold firm because she doesn't want

to see the other bill back. I'll vote for this but it worries me that we might give in at

conference time and I guess I would express my preference that the senate hold firm on this

one. SENATOR WARDNER, it would be my feelings that if we decided that it wasn't

worth the fight that we would bring it back and kill it. SENATOR KREBSBACH

indicated she believed that was the feeling of a lot of us. ROLL CALL VOTE indicated 7

Yeas, 0 Nays, 0 Absent or not voting. SENATOR WARDNER will carry the bill.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1024

Page 5, line 3, after "agency" insert ", and if the administrative rules committee makes the specific finding that there is substantial evidence that with regard to that rule or portion of a rule one or more of the grounds for voiding a rule under subdivisions a through f of subsection 1 of section 28-32-03.3 exists"

Page 5, line 9, after "committee" insert "and the legislative council"

Renumber accordingly

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1024

Page 1, line 1, remove "to create and enact section 28-32-03.4 of the North Dakota Century Code,"

Page 1, remove line 2

Page 1, line 3, remove "for review;" and replace the comma with "and"

Page 1, line 4, remove ", subsection 1 of section 28-32-03.3, and section 28-32-04"

Page 1, line 5, replace the second comma with "and"

Page 1, line 6, remove ", authority of the administrative rules committee to void or"

Page 1, line 7, remove "object to administrative rules, and petitions for reconsideration of administrative rules"

Page 3, remove lines 8 through 29

Page 4, remove lines 1 through 31

Page 5, remove lines 1 through 20

Page 5, remove lines 23 through 28

Re-number accordingly

Date: 3/26/99
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1024

Senate GOVERNMENT AND VETERAN'S AFFAIRS Committee

Subcommittee on _____
or

Conference Committee

Legislative Council Amendment Number _____

Action Taken Motion to Amend . 0501

Motion Made By Sen. Wardner Seconded By Sen. Thane

Senators	Yes	No	Senators	Yes	No
SENATOR KREBSBACH	✓				
SENATOR WARDNER	✓				
SENATOR KILZER	✓				
SENATOR STENEHJEM	✓				
SENATOR THANE	✓				
SENATOR DEMERS	✓				
SENATOR MUTZENBERGER	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

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

Date: 3/26/99
Roll Call Vote #: 2

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1024

Senate GOVERNMENT AND VETERAN'S AFFAIRS Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Sen Wardner Seconded By Sen Thane

Senators	Yes	No	Senators	Yes	No
SENATOR KREBSBACH	✓				
SENATOR WARDNER	✓				
SENATOR KILZER	✓				
SENATOR STENEHJEM	✓				
SENATOR THANE	✓				
SENATOR DEMERS	✓				
SENATOR MUTZENBERGER	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen. Wardner

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

REPORT OF STANDING COMMITTEE

HB 1024, as engrossed: Government and Veterans Affairs Committee (Sen. Krebsbach, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1024 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "to create and enact section 28-32-03.4 of the North Dakota Century Code,"

Page 1, remove line 2

Page 1, line 3, remove "for review;" and replace the comma with "and"

Page 1, line 4, remove ", subsection 1 of section 28-32-03.3, and section 28-32-04"

Page 1, line 5, replace the second comma with "and"

Page 1, line 6, remove ", authority of the administrative rules committee to void or"

Page 1, line 7, remove "object to administrative rules, and petitions for reconsideration of administrative rules"

Page 3, remove lines 8 through 29

Page 4, remove lines 1 through 31

Page 5, remove lines 1 through 20

Page 5, remove lines 23 through 28

Renumber accordingly

1999 HOUSE JUDICIARY

HB 1024

CONFERENCE COMMITTEE

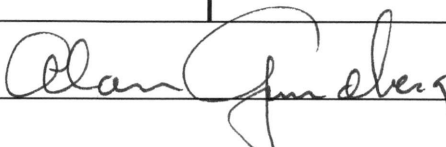
1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1024

House Judiciary Committee

Conference Committee

Hearing Date April 7 & 9, 1999

Tape Number	Side A	Side B	Meter #
4/7 1	X		0
4/9 1	X		0
Committee Clerk Signature 			

Minutes: April 7

The clerk called the roll and reported that all committee members were present.

REP. KOPPELMAN explained that this bill came out of the interim committee and resembles a bill that the Governor vetoed last session. We have worked with his office to try to get a bill that will cover his concerns. This bill tried to streamline the rule making process. Now it is very difficult to get rid of a rule that is not wanted.

SEN. WARDNER stated that the Senate amendments took out two concepts, first that anyone can bring up a rule to agency and that all old bills can be considered.

REP. MEYER discussed two situations where a bad rule was stopped at the last second, by chance..

SEN. STENEHJEM I would prefer to have these questions coming to the legislature to having the Administrative Rules Committee voiding rules.

Page 2

House Judiciary Committee

Bill/Resolution Number 1024

Hearing Date : April 7 & 9, 1999

REP. KLEMIN I suggest that the committee only be allowed to enjoin enforcement of a rule until after the next legislative session, which would give the legislature a chance to act.

April 9, 1999

REP. KOPPELMAN reported that he had some proposed amendments that had been developed by he, Rep. Klemin and John Walstad. He asked Rep. Klemin to explain them.

REP. KLEMIN The amendments change the publication from twice to once and changes the waiting time from 14 days to 30 days, It further states that the ARC may only "suspend" a rule,, not void it.

A recess was had over the noon hour and the committee reconvened at t:30

REP. KOPPELMAN introduced amendment 0508. Rep. Klemin moves that the Senate recede from its amendments and that the committee adopt amendment 0508. Rep. Wardner seconded the motion and it was passed on a roll call vote with 6 ayes, 0 nays and 0 absent. Rep. Koppelman was assigned to carry the bill.

REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE) - 420

07398

*April 9
no action AM
1:15 PM - Action*

(Bill Number) 1024 (~~as~~ engrossed)

Your Conference Committee

For the Senate:

For the House:

Sen. Wardner Y
Sen. W. Stenehjem Y
Sen. DeMers Y

Rep. Koppelman Y
Rep. Klemin Y
Rep. Meyer Y

recommends that the SENATE/HOUSE (ACCEDE to) (RECEDE from) the Senate/House amendments on (SJ/HJ) page(s) _____ - _____

and place _____ 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.

~~(As)~~ Engrossed) 1024 was placed on the Seventh order of business on the calendar.

DATE: 04/09/99

CARRIER: Koppelman

LC NO. _____ of amendment

LC NO. _____ of engrossment

Emergency clause added or deleted _____

Statement of purpose of amendment _____

(1) LC (2) LC (3) DESK (4) COMM.

SECOND READING OF HOUSE BILL

HB 1020: A BILL for an Act to provide an appropriation for defraying the expenses of the state board for vocational and technical education.

ROLL CALL

The question being on the final passage of the amended bill, which has been read, the roll was called and there were 77 YEAS, 17 NAYS, 0 EXCUSED, 4 ABSENT AND NOT VOTING.

YEAS: Aarsvold; Belter; Berg; Boehm; Brandenburg; Brekke; Brusegaard; Byerly; Carlisle; Carlson; Clark; Cleary; Dalrymple; DeKrey; Delmore; Devlin; Disrud; Dorso; Drovdal; Eckre; Froelich; Froseth; Glassheim; Gorder; Grosz; Grumbo; Gunter; Haas; Hawken; Henegar; Herbel; Huether; Jensen; Johnson, D.; Johnson, N.; Keiser; Kelsch, R.; Kempenich; Kerzman; Klein; Klemin; Kliniske; Koppang; Koppelman; Lemieux; Lloyd; Martinson; Metcalf; Meyer; Mickelson; Monson; Mueller; Nelson; Nicholas; Nichols; Niemeier; Nottestad; Nowatzki; Pollert; Poolman; Porter; Price; Rennerfeldt; Sandvig; Schmidt; Severson; Svedjan; Sveen; Thoreson, B.; Thoreson, L.; Timm; Tollefson; Weisz; Wentz; Wikenheiser; Winrich; Speaker Wald

NAYS: Boucher; Delzer; Ekstrom; Fairfield; Gulleeson; Hanson; Hoffner; Kelsh, S.; Kroeber; Lundgren; Mahoney; Maragos; Rose; Solberg; Stefanowicz; Thorpe; Warner

ABSENT AND NOT VOTING: Bernstein; Galvin; Grande; Renner

Reengrossed HB 1020 passed and the title was agreed to.

MOTION

REP. DORSO MOVED that Engrossed HB 1037 be placed at the bottom of the calendar, which motion prevailed.

REPORT OF CONFERENCE COMMITTEE

REP. DELZER MOVED that the conference committee report on Reengrossed HB 1043 as printed on HJ pages 1349-1353 be adopted, which motion prevailed.

Reengrossed HB 1043, as amended, was placed on the Eleventh order.

SECOND READING OF HOUSE BILL

HB 1043: A BILL for an Act to create and enact a new section to chapter 14-02.4 and chapter 14-02.5 of the North Dakota Century Code, relating to discriminatory housing practices; to amend and reenact section 14-02.4-19 of the North Dakota Century Code, relating to actions for discrimination; to repeal sections 14-02.4-12 and 14-02.4-13, relating to unfair housing; to provide a penalty; to provide an appropriation; to provide a continuing appropriation; and to provide an effective date.

ROLL CALL

The question being on the final passage of the amended bill, which has been read, the roll was called and there were 74 YEAS, 20 NAYS, 0 EXCUSED, 4 ABSENT AND NOT VOTING.

YEAS: Belter; Berg; Brandenburg; Brekke; Brusegaard; Byerly; Carlisle; Clark; Cleary; Dalrymple; DeKrey; Delmore; Devlin; Disrud; Dorso; Eckre; Froseth; Glassheim; Gorder; Grumbo; Gulleeson; Gunter; Haas; Hanson; Hawken; Henegar; Herbel; Hoffner; Huether; Jensen; Johnson, D.; Johnson, N.; Keiser; Kelsch, R.; Kempenich; Kerzman; Klein; Klemin; Kliniske; Koppang; Koppelman; Kroeber; Lloyd; Lundgren; Mahoney; Maragos; Martinson; Metcalf; Meyer; Mickelson; Monson; Mueller; Nelson; Nicholas; Nichols; Nottestad; Nowatzki; Pollert; Poolman; Porter; Price; Rennerfeldt; Schmidt; Severson; Svedjan; Sveen; Thoreson, B.; Thoreson, L.; Timm; Tollefson; Weisz; Wentz; Wikenheiser; Speaker Wald

NAYS: Aarsvold; Boehm; Boucher; Carlson; Delzer; Drovdal; Ekstrom; Fairfield; Froelich; Grosz; Kelsh, S.; Lemieux; Niemeier; Rose; Sandvig; Solberg; Stefanowicz; Thorpe; Warner; Winrich

ABSENT AND NOT VOTING: Bernstein; Galvin; Grande; Renner

Reengrossed HB 1043, as amended, passed and the title was agreed to.

REPORT OF CONFERENCE COMMITTEE

REP. SVEEN MOVED that the conference committee report on Engrossed HB 1405 as printed on HJ page 1354 be adopted, which motion prevailed.

Reengrossed HB 1405 was placed on the Eleventh order.

SECOND READING OF HOUSE BILL

HB 1405: A BILL for an Act to amend and reenact sections 39-12-02 and 43-09-21 of the North Dakota Century Code, relating to applications for moving and electrical certificates for manufactured buildings and modular units.

ROLL CALL

The question being on the final passage of the amended bill, which has been read, the roll was called and there were 94 YEAS, 0 NAYS, 0 EXCUSED, 4 ABSENT AND NOT VOTING.

YEAS: Aarsvold; Belter; Berg; Boehm; Boucher; Brandenburg; Brekke; Brusegaard; Byerly; Carlisle; Carlson; Clark; Cleary; Dalrymple; DeKrey; Delmore; Delzer; Devlin; Disrud; Dorso; Drovdal; Eckre; Ekstrom; Fairfield; Froelich; Froseth; Glassheim; Gorder; Grosz; Grumbo; Gulleeson; Gunter; Haas; Hanson; Hawken; Henegar; Herbel; Hoffner; Huether; Jensen; Johnson, D.; Johnson, N.; Keiser; Kelsch, R.; Kelsh, S.; Kempenich; Kerzman; Klein; Klemin; Kliniske; Koppang; Koppelman; Kroeber; Lemieux; Lloyd; Lundgren; Mahoney; Maragos; Martinson; Metcalf; Meyer; Mickelson; Monson; Mueller; Nelson; Nicholas; Nichols; Niemeier; Nottestad; Nowatzki; Pollert; Poolman; Porter; Price; Rennerfeldt; Rose; Sandvig; Schmidt; Severson; Solberg; Stefanowicz; Svedjan; Sveen; Thoreson, B.; Thoreson, L.; Thorpe; Timm; Tollefson; Warner; Weisz; Wentz; Wikenheiser; Winrich; Speaker Wald

ABSENT AND NOT VOTING: Bernstein; Galvin; Grande; Renner

Reengrossed HB 1405 passed and the title was agreed to.

MESSAGE TO THE SENATE FROM THE HOUSE (LANCE HAGEN, CHIEF CLERK)

MADAM PRESIDENT: The House has adopted the conference committee report and subsequently passed: SB 2038, SB 2171.

MESSAGE TO THE SENATE FROM THE HOUSE (LANCE HAGEN, CHIEF CLERK)

MADAM PRESIDENT: The House has adopted the conference committee report and subsequently passed: HB 1020, HB 1043, HB 1405.

MOTION

REP. MONSON MOVED that the House be on the Seventh and Twelfth orders of business and at the conclusion of those orders, the House stand in recess until 1:00 p.m., which motion prevailed.

REPORT OF CONFERENCE COMMITTEE

HB 1024, as engrossed: Your conference committee (Sens. Wardner, W. Stenehjem, DeMers and Reps. Koppelman, Klemin, Meyer) recommends that the SENATE RECEDE from the Senate amendments on HJ page 1068, adopt further amendments as follows; and place HB 1024 on the Seventh order:

That the Senate recede from its amendments as printed on page 1068 of the House Journal and page 911 of the Senate Journal and that Engrossed House Bill No. 1024 be amended as follows:

Page 1, line 4, remove "subsection 1 of section 28-32-03.3,"

Page 1, line 6, replace "void" with "suspend"

Page 2, line 11, remove the overstrike over "~~thirty~~" and remove "fourteen"

Page 2, line 16, replace "fourteen" with "thirty"

Page 2, line 21, remove the overstrike over "~~thirty~~" and remove "fourteen"

Page 3, remove lines 8 through 29

Page 4, remove lines 1 through 29

Page 5, line 1, after "agency" insert ", and if the administrative rules committee makes the specific finding that there is substantial evidence that with regard to that rule or portion of a rule there is an absence of statutory authority or a conflict with state law or express legislative intent"

Page 5, line 9, after "28-32-03.3" insert "except that the administrative rules committee may not void a rule called up for review under this section but may suspend from operation all or part of such a rule through July thirty-first of the first ensuing odd-numbered year if the committee makes the specific finding that with regard to that rule or portion of a rule there is an absence of statutory authority or a conflict with state law or express legislative intent"

Page 5, remove line 18

Page 5, line 19, remove "agency under this section and otherwise"

Page 5, line 23, replace "Sections" with "Section", remove "and 5", and replace "are" with "is"

Page 5, line 24, remove "Section 4 of this Act is suspended from"

Page 5, remove lines 25 through 28

Renumber accordingly

Engrossed HB 1024 was placed on the Seventh order of business on the calendar.

REPORT OF CONFERENCE COMMITTEE

HB 1089, as reengrossed: Your conference committee (Sens. Mutch, Krebsbach, Thompson and Reps. Berg, Poolman, Huether) recommends that the SENATE RECEDE from the Senate amendments on HJ page 1121, adopt amendments as follows, and place HB 1089 on the Seventh order:

That the Senate recede from its amendments as printed on page 1121 of the House Journal and pages 711 and 712 of the Senate Journal and that Reengrossed House Bill No. 1089 be amended as follows:

Page 1, line 4, after the second semicolon insert "to provide a continuing appropriation;"

Page 1, line 8, after "audit" insert "- Continuing appropriation"

Page 2, line 8, replace "money" with "moneys", replace "and" with an underscored comma, and after "2001" insert ", and 2002"

Page 2, line 10, replace "money is" with "moneys are"

Page 2, line 11, after the underscored period insert "Moneys are hereby appropriated for the federal fiscal years identified in this subsection for purposes of administration of the unemployment compensation program."

Page 3, line 1, replace "and" with a comma, after "2001" insert ", and 2002", and replace "\$300,000" with "\$327,000"

Page 3, line 4, replace "one" with "one-half"

Page 3, line 5, after "preceding" insert "program" and after the first comma insert "excluding every claimant who is on temporary layoff and returning to employment with the former employer within four weeks and excluding every claimant with demonstrated job attachment and a reasonable expectation of returning to a former base period employer once work becomes available"

Renumber accordingly

Reengrossed HB 1089 was placed on the Seventh order of business on the calendar.

REPORT OF CONFERENCE COMMITTEE

HB 1490, as engrossed: Your conference committee (Sens. Cook, Freborg, O'Connell and Reps. D. Johnson, Drovdal, Solberg) recommends that the SENATE RECEDE from the Senate amendments on HJ pages 1047-1048, adopt amendments as follows, and place HB 1490 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1047 and 1048 of the House Journal and pages 849 and 850 of the Senate Journal and that Engrossed House Bill No. 1490 be amended as follows:

Page 1, line 1, after "to" insert "create and enact a new section to chapter 15-40.1 of the North Dakota Century Code, relating to the closure of schools in weather emergencies; to"

Page 1, line 3, after "year" insert "; and to repeal section 15-40.1-09.1 of the North Dakota Century Code, relating to the closure of schools due to emergencies"

Page 1, after line 4, insert:

"SECTION 1. A new section to chapter 15-40.1 of the North Dakota Century Code is created and enacted as follows:

Weather or other emergency conditions - Closure of schools - Foundation aid. If because of severe weather or other emergency conditions a school or school district remains closed or provides less than a full day of instruction, the school or school district shall make every effort to reschedule classes so that students receive at least one hundred seventy-three full days of instruction. Any school or school district for which the rescheduling of classes would create undue hardship may request that, for purposes of foundation aid, the governor waive the rescheduling in whole or in part. The governor may not grant a waiver for less than a full day of instruction.

Page 1, line 20, overstrike "of instruction time"

Page 1, line 21, after "students" insert ", during which time the students are required to be in attendance for the purpose of receiving curricular instruction"

Page 1, line 22, overstrike "of instruction time" and after "students" insert ", during which time the students are required to be in attendance for the purpose of receiving curricular instruction"

Page 2, line 1, replace "Instruction time exceeding the minimum number of hours per day required for a full" with "If a school's calendar provides for an extension of each schoolday beyond the statutorily required minimum number of hours, and if the extensions when aggregated over an entire school year amount to more than eighty-four hours of additional classroom instruction during the school year, the school is exempt from having to make up six hours of instruction time lost as a result of weather-related closure. In order to make up lost classroom instruction time beyond the six hours, the school must extend its normal school calendar day by at least thirty minutes.

4. A school that does not qualify under the provisions of subsection 3 must extend its normal schoolday by at least thirty minutes to make up classroom instruction time lost as a result of weather-related closure.

Page 2, remove lines 2 and 3

Page 2, line 20, overstrike "of instruction time" and after "students" insert ", during which time the students are required to be in attendance for the purpose of receiving curricular instruction"

Page 2, line 22, overstrike "of instruction time" and after "students" insert ", during which time the students are required to be in attendance for the purpose of receiving curricular instruction"

Page 2, line 23, replace "Instruction time exceeding the minimum number of hours per day required for a full" with "If a school's calendar provides for an extension of each schoolday beyond the statutorily required minimum number of hours, and if the extensions when aggregated over an entire school year amount to more than eighty-four hours of additional classroom instruction during the school year, the school is exempt from having to make up six hours of instruction time lost as a result of weather-related closure. In order to make up lost classroom instruction time beyond the six hours, the school must extend its normal school calendar day by at least thirty minutes.

4. A school that does not qualify under the provisions of subsection 3 must extend its normal schoolday by at least thirty minutes to make up classroom instruction time lost as a result of weather-related closure.

1999 TESTIMONY

HB 1024

**TESTIMONY BEFORE THE
HOUSE JUDICIARY COMMITTEE
REGARDING HOUSE BILL NO. 1024
January 11, 1999**

Chairman DeKrey and members of the House Judiciary Committee, my name is Blaine Nordwall. I appear on behalf of the Department of Human Services. The department urges this committee recommend a "do not pass" on House Bill No. 1024.

Except for the technical correction in Section 1, this bill repeats 1997 House Bill No. 1191. Governor Schafer vetoed House Bill 1191. Attachment 1 to my testimony is a copy of Governor Schafer's 1997 veto letter. To summarize that letter, Governor Schafer was concerned that the bill was unnecessary, unconstitutional, and had the capacity to create great practical mischief. All of the reasons provided by Governor Schafer remain valid.

I also want to reiterate the suggestion made with respect to House Bill 1023. A proper legislative study should be commenced to improve the rulemaking process.

Presented by:

**Blaine L. Nordwall
Director, Legal Advisory Unit
ND Department of Human Services**

H.B. 1024

Presented by: Charles E. Johnson
Public Service Commission

Before: Judiciary Committee
Representative Duane DeKrey, Chairman

Date: January 11, 1999

TESTIMONY

Mr. Chairman and committee members, I am Charles E. Johnson, an attorney with the Public Service Commission (Commission). I appear on behalf of the Commission.

The Commission is concerned about Section 4 of this bill.

If the legislature or the legislative rules committee was concerned about an existing rule, the legislature could address the matter directly in the next legislative session by passing a law that would nullify the rulemaking, just as it did in the Commission's proposed 1+equal access rulemaking as discussed in our testimony on HB 1023.

The Commission also is concerned because of the due process considerations for those that provided input in the initial rulemaking and because of the lack of finality to a rulemaking, as discussed in our testimony relating to HB 1023.

I believe that the amendments to HB 1024 which Legislative Council has just drawn up are a reasonable compromise and a win-win approach, because:

1. Agencies of government are helped by:
 - A. A simplified, shortened rule-making process;
 - B. Having the exclusive initial authority to deal with citizen concerns about existing rules they object to;
 - C. Receiving the right to ask the Administrative Rules Committee to call up a rule the agency objects to or wants changed, thus avoiding the long, bureaucratic, costly rule making process now necessary to change an existing rule.

2. The Legislative Branch is helped by allowing the committee it appoints to oversee administrative rules the authority to call up an old rule, but only when an agency has first had an opportunity to deal with it or when the agency itself has asked that the rule be reviewed.

**TESTIMONY BEFORE THE
SENATE GOVERNMENT AND VETERANS AFFAIRS COMMITTEE
REGARDING ENGROSSED HOUSE BILL NO. 1024
March 18, 1999**

Chairman Krebsbach and members of the Senate Government and Veterans Affairs Committee, my name is Blaine Nordwall. I appear on behalf of the Department of Human Services. The department urges this committee to consider substantial amendments or to recommend a "do not pass" on House Bill No. 1024.

As introduced, but for the technical correction in Section 1, this bill repeated 1997 House Bill No. 1191. Governor Schafer vetoed House Bill 1191. Attachment 1 to my testimony is a copy of Governor Schafer's 1997 veto letter. To summarize that letter, Governor Schafer was concerned that the bill was unnecessary, unconstitutional, and had the capacity to create great practical mischief. Notwithstanding the House Amendments, all of the reasons provided by Governor Schafer remain valid.

The first sentence in Section 5 and Section 6 of the bill were added by the House in an attempt to create some sort of remedy for persons dissatisfied with the application of a rule. Section 6 provides a mandatory public hearing upon request each time a person is dissatisfied with the effect of a rule. We have not provided an estimate of the cost of holding those hearings because no fiscal note was requested. But we cannot do that work without cost.

Under Section 5 of the bill, a person who is dissatisfied with a Section 6 review of a rule can ask the Administrative Rules Committee to review the rule. In addition, the Administrative Rules Committee could call up existing rules for review. That review responsibility violates the separation of powers doctrine, intruding on both the executive and judicial branches. More significantly, it delegates lawmaking powers to a committee of legislators acting when the legislature is in adjournment.

This is not idle speculation. At least one member of the North Dakota Supreme Court holds the opinion that N.D.C.C. § 28-32-03.3 is an improper delegation of legislative authority to the Administrative Rules Committee. *Eklund v. Eklund*, 538 N.W.2d 182 (N.D. 1995), Sandstrom concurring. The court has not yet had a case that provides a true opportunity for ruling on the constitutionality of section 28-32-03.3.

Sections 5 and 6 greatly increase the likelihood that the Administrative Rules Committee will be confronted with opportunities to review rules that have made constituents unhappy. If the Administrative Rules Committee voids a rule in response, someone else who favored the operation of that rule will be forced to seek a court declaration that N.D.C.C. § 28-32-03.3 is unconstitutional.

If a court holds that the powers delegated to the Administrative Rules Committee violate the Constitution, it could also call into question the powers delegated to other statutory committees of the Legislative Council. No good can come of that.

The remedy is simple. Amend this bill so as to repeal N.D.C.C. § 28-32-03.3.

I'd be happy to try and answer any questions.

Presented by:

**Blaine L. Nordwall
Director, Legal Advisory Unit
ND Department of Human Services**



EDWARD T. SCHAFER
GOVERNOR

State of North Dakota

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April 4, 1997

The Honorable Mike Timm
Speaker of the House
House Chamber
State Capitol
Bismarck, ND 58505

RE: House Bill 1191

Dear Speaker Timm:

I respectfully return unsigned and hereby veto HB 1191. This bill expands the authority given in the 1995 session to the Administrative Rules Committee. Currently the Committee may void any part of a rule within ninety days after it is published in the administrative code. HB 1191 expands that authority to any rule upon 30 days notice to the agency which issued the rule. Under HB 1191, the committee may call up a rule regardless of how long it has been in place, and void all or any part of an administrative rule. I am troubled by the bill and its direction.

Administrative rules serve a very important function. They represent the Legislature's delegation of its authority to the agency and serve as the means by which air quality standards are set, water quality is maintained, child support obligations are determined, and a host of other complex issues are managed.. Rules are carefully reviewed by the agency, the Attorney General, the Legislative Council, the public, and the Administrative Rules Committee before they become effective. I urge us to be cautious in striking down rules that are developed under the stringent requirements of chapter 28-32 NDCC.

Specifically, these are my concerns.

First, the bill is unnecessary. The Legislature itself, by enacting a law, has the authority to change any administrative rule it chooses. The Legislature rightfully retains that authority. An agency also may change a rule through Chapter 28-32 of the North Dakota Century Code. And the Administrative Rules Committee also has limited authority to void all or part of a rule within ninety days of the rule being published. But, I do not believe we need to extend that authority beyond the initial ninety days to allow the committee to strike down a rule at anytime thereafter.

Second, I have constitutional concerns based upon separation of powers principles. The bill intrudes into essentially an executive branch arena. Our Constitution creates three branches of government that are equal—and does not contemplate one branch being more powerful than another. Power is dispersed by design. In the case of Verry v. Trenbeath, 148 N.W. 2d 567 (N.D. 1967) the Supreme Court explained this principle and said,

“..The Legislative branch deliberates upon and decides the policies and principles to be adopted for the future and enacts them into law. The executive branch administers the law so enacted.”

The Honorable Mike Timm
Page 2
April 4, 1997

Our constitution provides an implied exclusion of each branch from the exercise of the functions of the others, as demonstrated by the Court in the case of City of Carrington v. Foster County, 155 N.W. 2d 377 (N.D. 1969)

In that structure, the Legislature as a whole has delegated authority to administrative agencies. But this bill allows that authority to be substituted to a legislative committee.. I am concerned that we continue to add more and more responsibilities to legislative committees, interim committees, and legislators themselves as we slowly migrate towards a full-time legislature, which is not consistent with the wishes of the voters, nor the Constitution.

Further, the bill raises serious constitutional questions concerning delegation of legislative authority. Article IV, Section 13 of the Constitution says that, "No law may be enacted except by a bill passed by both houses". HB 1191 appears to run contrary to that provision. The Administrative Rules Committee would have the authority to void any rule or part of a rule, which could change the entire meaning of the rule. So, the practical effect is to give one committee of the Legislative Assembly the authority to substitute its judgment for the judgment of the whole legislature, or that of the agency. As a result, one committee is given authority to make law, rather than both houses of the Legislature.

These constitutional concerns for this process were recognized when the Administrative Rules Committee was given its authority in the 1995 session, as demonstrated by Section 5, Chapter 310 of the 1995 Session Laws, which declares

"Section 4 of this Act is suspended from operation and becomes effective retroactive to August 1, 1995, upon a ruling by the North Dakota Supreme Court that any portion of subsection 1 of section 28-32-03.3 as created by section 3 of this Act is unconstitutional."

We are continuing to build upon this house of sand in section 4 of the bill, which again recognizes potential constitutional infirmity and declares,

"Section 2 of this Act is suspended from operation, but becomes effective retroactive to August 1, 1997, upon a ruling by the North Dakota Supreme Court that any portion of subsection 1 of section 28-32-03.3 as created by section 3 of chapter 310 of the 1995 Session Laws and amended by section 1 of this Act is unconstitutional."

The bill sets up a complex scheme of legislation which is the result of constitutional concerns., and then prepares for that possibility by suspending operation of part of the bill until the Supreme Court finds another section of the law unconstitutional.

Finally I am concerned about the practical problems the bill may create. We could cause great mischief if we allow the bill to stand. Consider these examples. Imagine the impact to the investor, in a multi-million dollar facility if he has no confidence in the regulatory climate in which he is expected to do business. Investors in Pro Gold, or Premium Beef want to have stability in the regulations under which they do business. Likewise, our people would not approve of environmental regulations which are administrative rules, being struck down by a legislative committee that has little expertise in highly technical fields such as air quality standards. Furthermore, imagine the chaos we might face if the committee found all child support rules "arbitrary or capricious", and changed the method or manner in which child support obligations were determined. These are but a few examples that I see as being dangerous and the potential ramification of allowing HB 1191 to become law. I signed the bill giving the committee limited authority for this activity in 1995, and did so with some reservation. In this

The Honorable Mike Timm


Page 3

April 4, 1997

session. I also signed HB 1030 that gives the committee an additional meeting in which to accomplish its work. I hesitate to expand that authority further, and believe it will be a serious mistake to do so.

For these reasons, I have vetoed HB 1191.

Sincerely,


Edward T. Schafer
Governor

13:07

10:15 AM 4/5/97 David H

Proposed Amendments to
House Bill No. 1024

Page 1, line 1, remove "create and enact section 28-32-03.4 of the North Dakota Century Code,"

Page 1, remove line 2

Page 1, line 3, remove "for review;" and remove "subsection 1 of section 4-18.1-20,"

Page 1, line 4, remove ", subsection 1 of section 28-32-03.3, and section 28-32-04 "

Page 1, line 5, remove "statutory references to administrative rulemaking provisions,"

Page 1, line 6, remove ", authority of the administrative rules committee to void or"

Page 1, remove line 7

Page 1, line 8, remove "provide an effective date"

Page 1, remove lines 10 through 16

Page 3, remove lines 8 through 31

remove pages 4 and 5

Renumber accordingly