

2001 HOUSE JUDICIARY

HB 1028

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1028

House Judiciary Committee

Conference Committee

Hearing Date 01-16-01

Tape Number	Side A	Side B	Meter #
Tape I	x		582 to 2300
Committee Clerk Signature <i>John Dues</i>			

Minutes: Chr DeKrey opened the hearing on HB 1028. The clerk will read the title. John Walstad would you like to come forward and explain the bill.

John Walstad: Legislative Council, Code Revisor - Council for the Administrative Rules Committee. Relating to authorization by the administrative rules committee before administrative rules may be effective on an emergency basis; and to provide an effective date. I am not for or against these bills, just giving the explanation. This bill imposes a new step in rule making process with regard to emergency rule making. Under existing law, agencies have the authority to make rule on an emergency basis for three reasons, imminent peril to public health, safety and welfare or because a delay is likely to cause a loss of revenue or to avoid a delay in implementing an appropriation measure. The committee had some concerns with this. He went on to state an example of a delay. This bill draft was developed by the committee and what it does is requires an agency, making emergency rule, to get prior approval from the Administrative Rules Committee that one of those three reason apply. The bill puts a 120 day limit for approval.

He went on to give further explanation of how this would effect an agency or process of rule making. It is drafted in two revisions because of HB 1030.

Rep Kretschmar: The reasons for adopting an emergency rule are the same in current law in the bill.

John Walstad: That is correct. On page 1 of the bill you can see there is some over struck language. we moved them to page 2 lines 3 - 8. It makes the section a little easier to read.

Rep Kretschmar: It is my understanding, the agency would declare one of the three rules, and it would be in effect and within 120 the Rules Committee would have to approve or what ever they would do. if they did not, it would go out of effect.

John Walstad: That is correct. That can be a problem.

Chr DeKrey: If there are no other question, thank you, John. Anyone else wishing to testify on HB 1028.

Melissa Hauer: Director of the Legal Advisory Unit for the Department of Human Services. (see attached testimony).

Rep Klemin: Your comment, that if an agency has abused its power, the action is properly reviewed by the judicial branch. Doesn't that mean, that in order for that to happen, someone is going to have to be harmed and start a law suit, before the judicial can review that action.

Melissa Hauer: That would be correct.

Rep Klemin: Isn't there a rule of statuary construction, whereby if you have a specific statute and a general statute, the specific statute controls.

Melissa Hauer: That is my recollection too.

Rep Klemin: Would that not address your concern about your comment number 3 on page 4?

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Melissa Hauer: I believe that it would.

Rep Kretschmar: Under current law, do you have any knowledge or your agency have any knowledge, whereby an agency has created an emergency rule and later on having been reviewed by the Administrative Rules Committee, they have objected to it or thrown it out?

Melissa Hauer: I was in the Rules Committee when the Milk Marketing Board situation happened. So I have observed that.

Chr DeKrey: Thank you for appearing in front of this committee. Is there anyone else wishing to appear on HB 1028?

Lynn Helms: Director of Oil and gas Division of the North Dakota Industrial Commission. (see testimony attached).

Chr DeKrey: Does anyone have any question for Mr Helms?

Rep Klemin: When did these emergency rules become effective?

Lynn Helms: The rules became effective on February 4th, 1999. And then as Interim Final rules on August 1, 1999.

Chr DeKrey: If there are no further questions for Mr Helms, thank you for appearing. Anyone else wishing to testify on HB 1028? If not, we will close the hearing and I am going to appoint a subcommittee Chr Prep Grande, Rep Klemin and Pre Eckre to come up with amendments to address the concerns.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1028A

House Judiciary Committee

Conference Committee

Hearing Date 01-17-01

Tape Number	Side A	Side B	Meter #
Tape II		x	764 to 1009
Committee Clerk Signature <i>Jean Davis</i>			

Minutes: Chr DeKrey: reopened the hearing on HB 1028.

Rep Grande: (Chr of the sub-committee) The sub committee decided to amend this bill and gave the reasons for the amendment.

Chr DeKrey: We will vote on the amendments first. Do I have a motion. Rep Grande moved the amendments. Rep Maragos seconded. Voice vote on the amendments. Motion carried.

What are the wishes of the committee. Rep Grande moved a DO PASS as amended. second by Rep Brekke. Motion passes 13 YES< 1 NO, and 1 Absent . Carrier is Rep Grande.

VR  
1/17/01

HOUSE AMENDMENTS TO HB 1028

House Judiciary 01-19-01

Page 2, line 6, remove "or"

Page 2, line 8, replace the underscored period with "; or

(4) Emergency effectiveness is necessary to meet a mandate of federal law."

HOUSE AMENDMENTS TO HB 1028

House Judiciary 01-19-01

Page 3, line 10, remove "or"

Page 3, line 12, replace the underscored period with "; or

d. Emergency effectiveness is necessary to meet a mandate of federal law."

Renumber accordingly

Date: 01-17-01  
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB-1028

House JUDICIARY Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

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

Action Taken Do Pass as amended

Motion Made By Rep Grande Seconded By Rep Brekke

Representatives	Yes	No	Representatives	Yes	No
CHR - Duane DeKrey	✓				
VICE CHR -- Wm E Kretschmar	✓				
Rep Curtis E Brekke	✓				
Rep Lois Delmore		✓			
Rep Rachael Disrud	✓				
Rep Bruce Eckre	✓				
Rep April Fairfield					
Rep Bette Grande	✓				
Rep G. Jane Gunter	✓				
Rep Joyce Kingsbury	✓				
Rep Lawrence R. Klemin	✓				
Rep John Mahoney	✓				
Rep Andrew G Maragos	✓				
Rep Kenton Onstad	✓				
Rep Dwight Wrangham	✓				

Total (Yes) 13 No 1

Absent 1

Floor Assignment Rep Grande

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

**REPORT OF STANDING COMMITTEE**

HB 1028, as amended, Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). placed on the Sixth order on the calendar.

Page 2, line 6, remove "or"

Page 2, line 8, replace the underscored period with "; or

(4) Emergency effectiveness is necessary to meet a mandate of federal law."

Page 3, line 10, remove "or"

Page 3, line 12, replace the underscored period with "; or

d. Emergency effectiveness is necessary to meet a mandate of federal law."

Renumber accordingly

2001 SENATE JUDICIARY

HB 1028

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2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1028

Senate Judiciary Committee

Conference Committee

Hearing Date March 6th, 2001

Tape Number	Side A	Side B	Meter #
1	x		25.6-49
2	x		17.1-20.7
Committee Clerk Signature			

Minutes: **Senator Traynor**, opened the hearing on HB 1028; A BILL FOR AN ACT TO AMEND AND REENACT SUBSECTION 6 OF SECTION 28-32-02 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO AUTHORIZATION BY THE ADMINISTRATIVE RULES COMMITTEE BEFORE ADMINISTRATIVE RULES MAY BE EFFECTIVE ON AN EMERGENCY BASIS; AND TO PROVIDE AN EFFECTIVE DATE.

**John Walstead**, code revisor for the legislative council; Explains the bill. This amends one section in the clause. 2 amendments are intended to do the same thing. Must do this to conform to bill 1030. This provision relates to emergency rule making. Under current law the three reasons agencies can do emergency rule making is on line 9 -13 of page 1. They are over struck, they are not being eliminated they are being moved. Intention is allowing 120 days.

**Senator Traynor**, how does the 30 days fit in?

**John Walstead**, under current law, once an agency has approved a rule and filed a notice, as of that date, the rule is effective. Without the approval of the administrative rules committee. The

law provides for the rule to take place. This bill allows the committee to look over the rule within 120 days. There is a gap when the rule may not be implemented during a review of the rule by the committee.

**Bob Harns**, council for Governor Hoeven, opposes HB 1028. Concern boils down to 3 things: confusion of emergency, void in the rules and how it effects the agency, and the constitutional standpoint. Legislature has delegated power to agencies to adopt rules. Should a committee of the legislature undo an emergency rule? Those are 3 concerns of the governor. He recommends a do not pass.

**Senator Traynor**, is the present law working all right?

**Bob Harns**, we believe that it is and this law is used sparingly.

**Senator Traynor**, could you give an example visible to all of us?

**Bob Harns**, I can't but someone else here may give one more enlightening.

**Senator Nelson**, on line 9 and 10, page 2, is there an objection to adding this?

**Bob Harns**, that is correct.

**Lynn Helms**, Director of the Oil and Gas Division of ND, has not taken a position on the bill.

(testimony attached)

**Senator Traynor**, under the existing law you still need approval of the rules?

**Lynn Helms**, yes.

**Senator Traynor**, when did the administrative committee consider these rules?

**Lynn Helms**, July 1 and then published them Aug. 1

**Senator Nelson**, what is the definition of an emergency.

**Lynn Helms**, something that needs to be adopted right away.

**Senator Traynor**, closed the hearing on HB 1028.

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Senate Judiciary Committee  
Bill/Resolution Number 1028  
Hearing Date March 6th, 2001

Discussion

SENATOR WATNE MOTIONED TO ADOPT AMENDMENTS, SECONDED BY  
SENATOR BERCIER. VOTE INDICATED 7 YEAS, 0 NAYS AND 0 ABSENT AND  
NOT VOTING. SENATOR WATNE MOTIONED TO DO PASS AS AMENDED,  
SECONDED BY SENATOR TRENBEATH. VOTE INDICATED 7 YEAS, 0 NAYS, AND  
0 ABSENT AND NOT VOTING. SENATOR TRAYNOR VOLUNTEERED TO CARRY  
THE BILL.





