

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1228

2001 HOUSE JUDICIARY

HB 1228

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1228

House Judiciary Committee

Conference Committee

Hearing Date 01-24-01

Tape Number	Side A	Side B	Meter #
Tape 1	X		218 to 4371
Committee Clerk Signature <i>Joan Deera</i>			

Minutes: Chariman DeKrey opened the hearing on HB 1228. Relating to authority of the administrative rules committee to void or suspend administrative rules and to provide an effective date.

John Walstad: An Attorney for the Legislative Council. Serve as Council for the Administrative Rules Committee. This bill is not a committee bill, but I am here today at the chairman's request to explain the bill, I am not for or against this bill. The Administrative Rules Committee has existed since 1978, prior to that agencies had the authority to adopt rules, but they were not published anywhere, the problem was the public had no access. The Legislative provided for the publication of the administrative code, gave that responsibility to our office, and created an Administrative Rules Committee to review rules as they were being made by agencies. From 1978 to 1995, if the committee did not like the rules or had some objections, had the option to object to those rules. In 1995, legislation was enacted giving the administrative rules committee authority to void rules. The authority to void rules extends to those only those rules that come

before the committee. The reasons to void rules is as found on page one and the top of page two.

What this does, extends the authority of the committee to rules already in administrative code.

Chairman DeKrey: Can you speak to the constitutionality question?

John Walstad: Yes, it is still in question, but it is a state constitutionality not federal.

Rep Delmore: One of the problems we had before, was the time table, the number of days the agency meeting that, is that still a problem?

John Walstad: This bill is not a new one, I'm not sure that there is a problem there.

Rep Maragos: Do we have any testimony, what is the difference between 1997 and 1999 bills.

John Walstad: The bill is the same.

Chairman DeKrey: If there are no further questions, thank you for appearing for the committee.

Rep Grande: I put the bill in after having served on the Administrative rules Committee. We are hoping to explain how difficult it is to get work done without reviewing a rule beyond 1975.

Rep Onstad: can you give an example that anyone has asked about a problem this is creating.

Rep Grande: A builder in town asked how he was effected by a rule and it reached back beyond 1975.

Chairman DeKrey: Human Services get a lot of questions about rules.

Rep Eckre: Governor Schaefer vetoed the bill.

Chairman DeKrey: I don't remember that.

Rep Grande: I don't know.

Chairman DeKrey: Anyone else wishing to testify in support of HB 1228. Anyone wishing to testify in opposition to HB 1228?

Ilona Jeffcoat-Sacco: director of the Public Utilities Division of the Public Service Commission
(see attached testimony)

Rep Wrangham: What is the process to review the rule that may not fit what the legislature intended any longer?

Ilona Jeffcoat-Sacco: If it is a repeal of a program, Legislative Council will just delete it. Otherwise we must purpose the change and follow the process to change the law, it could take up to 9 months. We respond to petitions that are filed by anyone.

Rep Klemin: Could Administrative Rules Committee file a petition.

Ilona Jeffcoat-Sacco: I believe the committee could.

Rep Klemin: Once a petition is filed, is it within the discretion of the agency to deny the petition and not do anything further.

Ilona Jeffcoat-Sacco: In our agency we are not sure, so we never do that.

Christine Hogan: Executive Director of the State Bar Association of North Dakota: (see attached testimony).

Rep Grande: As far as the unconstitutional part that you just brought up, as far as the rules were set in place in 1975, they have not been through the administrative rules process.

Christine Hogan: I am not prepared to address that point.

Chairman DeKrey: Are there any other questions for Ms Hogan, if not thank you for appearing in front of this committee.

Chuck Johnson: an attorney for the North Dakota Insurance Department. We do appear in opposition to the bill. There are checks in place whereby the Attorney General does review any rules, then renders an opinion where that rule is allowed and carried out the intent of the statute.

With that check and balance in place, reviewing rules that have been in place for a good number of years and the concern that we have this will render a certain amount of uncertainty into the laws and the rules that we have in place now. This bill short changes the process.

Rep Grande: If something has been done unfairly, and it comes to the forefront of the administrative rules committee, would it not be a good idea for the administrative rules committee to be able say to the agency, can you come down and clarify this rule.

Chuck Johnson: I think there is a bill that will help that quite a bit.

Rep Grande: That is right, that bill came through this committee, what about the past rules?

Chuck Johnson: Certainly I don't see a problem with the Administrative Rules Committee asking an agency to take a look or review a rule, there is a process in place to take care of that.

Rep Delmore: If there is a problem, and I can't get any relief from your agency, during the next legislative session, is there something legislatively to fix that rule.

Chuck Johnson: Yes, there is, go back to legislature and make a law then we have 90 days for remove the rule.

Rep Grande: we are looking at changing the law, it is a two year process before that person can see any result.

Chuck Johnson: That is true, but going thru the whole administrative rules process is about 6 to 9 months.

Chairman DeKrey: If there are no further questions, thank you for appearing in front of the committee and we will be in recess on HB 1228.

Chairman DeKrey: We will reconvene the hearing on HB 1228. Rep Bill Delvin: District 33,

Finley ND. (see attached)

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House Judiciary Committee
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Rep Koppelman: District 13, west Fargo, ND, I am here to speak in favor of HB 1228. If the problem with the rule is one that is in history, this bill would give the committee the right to go back and check the rule and review it. Once the rule becomes effective at present we can't go back and fix any dealing with history. Please give the committee the right to go back and review the rules.

Chairman DeKrey: We will close the hearing on HB 1228.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1228a

House Judiciary Committee

Conference Committee

Hearing Date 02-07-01

Tape Number	Side A	Side B	Meter #
TAPE I		x	4614 to 6223
Committee Clerk Signature <i>Joan Diers</i>			

Minutes: Chairman DeKrey called the committee to order, we will take up HB 1228. We have amendments. Rep Grande goes over the amendments.

DISCUSSION.

COMMITTEE ACTION

Rep Grande moved the amendments, Rep Wrangham seconded. Voice vote on the amendments, amendments pass.

Chairman DeKrey: we now have hb 1228 before us, what are your wishes?

Rep Wrangham moved a DO PASS as amend, seconded by rep Grande.

DISCUSSION

The clerk will call the roll on a DO PASS as amend. The motion fails with a vote of 5YES, 9

NO 1 ABSENT

Rep Maragos moved a DO NOT PASS as amend, seconded by Rep Delmore.

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The clerk will call the roll on a DO NOT PASS as amend. This motion passes 9 YES < 5 NO and

1 ABSENT.

Carrier Rep Maragos

VR
2/7/01

HOUSE AMENDMENTS TO HB 1228 HOUSE JUDICIARY 02-08-01

Page 1, line 6, remove "to void or suspend administrative rules"

Page 1, line 12, after "after" insert "review of"

Page 1, line 13, replace "called up for review" with "reopened"

HOUSE AMENDMENTS TO HB 1228 HOUSE JUDICIARY 02-08-01

Page 2, line 11, after "after" insert "review of"

Page 2, line 12, replace "called up for review" with "reopened"

HOUSE AMENDMENTS TO HB 1228 HOUSE JUDICIARY 02-08-01

Page 3, line 6, after "after" insert "review of"

Page 3, line 7, replace "called up for review" with "reopened"

HOUSE AMENDMENTS TO HB 1228 HOUSE JUDICIARY 02-08-01

Page 4, line 5, after "after" insert "review of" and replace "called up for review" with "reopened"

Page 4, line 30, replace "**Administrative**" with "**Review of administrative**" and replace "called up for review" with "reopened"

Page 4, line 31, replace "call" with "reopen review of" and remove "up for review"

HOUSE AMENDMENTS TO HB 1228 HOUSE JUDICIARY 02-08-01

Page 5, line 2, after "reason" insert "review of" and replace "called up for review" with "reopened"

Page 5, line 3, remove "called up", after "for" insert "which", and after "review" insert "has been reopened"

Page 5, line 8, replace "**Administrative**" with "**Review of administrative**" and replace "called up for review" with "reopened"

Page 5, line 9, replace "call" with "reopen review of" and remove "up for review"

Page 5, line 11, after "reason" insert "review of" and replace "called up for review" with "reopened"

Page 5, line 12, remove "called up", after "for" insert "which", and after "review" insert "has been reopened"

Page 5, line 15, remove "called up", after "for" insert "which", and after "review" insert "has been reopened"

Page 5, line 16, replace "1999" with "2001"

Renumber accordingly

Date: 02-07-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1228

House JUDICIARY Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as amended

Motion Made By Rep Wrangham Seconded By Rep Grande

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) 5 No 9

Absent 1

Floor Assignment _____

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

facts

Date: 02-07-01
Roll Call Vote #: 2

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB-1228

House JUDICIARY Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass as amend

Motion Made By Rep Maragos Seconded By Rep Delmore

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) 9 No 5

Absent 1

Floor Assignment Rep Maragos

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

REPORT OF STANDING COMMITTEE

HB 1228: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (9 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). HB 1228 was placed on the Sixth order on the calendar.

Page 1, line 6, remove "to void or suspend administrative rules"

Page 1, line 12, after "after" insert "review of"

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