

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1469

2005 HOUSE POLITICAL SUBDIVISIONS

HB 1469

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1469

House Political Subdivisions Committee

Conference Committee

Hearing Date February 10, 2005

| Tape Number | Side A | Side B | Meter # |
|---|--------|--------|-------------|
| 1 | x | | 26.5 to end |
| 1 | | x | 0.4 to 22.9 |
| 2 | | x | 47.1 to end |
| Committee Clerk Signature <i>Lawrence J. Zint</i> | | | |

Minutes: **Rep. Devlin, Chairman** opened the hearing on HB 1469, A Bill for an Act to create and enact a new section to chapter 28-32 of the North Dakota Century code, relating to expiration of administrative rules; and to amend and reenact subsection 1 of section 28-32-02 of the North Dakota Century Code, relating to specific statutory directives for rulemaking authority of administrative agencies; and to provide an effective date.

Rep. Koppelman representing District 13 and one of the sponsors of the bill. (Chairman Devlin the prime sponsor had been called to testify at another committee). This is one of three pieces of legislation to be considered on the same general topic -- the administrative rules process.

The rule basically are the authority of an agency to make law. There is an administrative rule committee which has the authority to void or to amend administrative rules. This committee has the over sight of the agencies rule making process and authority. There is a check and balance between the agencies and the legislature. One other thing the bill addresses is when those rule should be made. And the second is for the agencies to look at their rules and decide when to

sunset and when to keep the rules. Some do become outdated. And again, there are some procedural rules and some interpretive rules. John Walstad was asked to come before the committee to aid in making the distinction between these two types of rules and would make his appearance a bit later.

Rep. Ekstrom (35.2) Are we trying to micro manage the agencies?

Rep. Koppelman (36.1) that certainly is not the intent.

Thereafter there was a series of questions and answers concerning the large number of both state and federal rules; the complexity of managing and knowing the content and extent of the rules; the prospect of doing away with the rules process; etc.

John Walstad (51.5) Discussed the bill as well as explained the concept of procedural versus interpretive rules. His discussion and the questions and answers continued to the end of side A of tape 1.

Tape 1 Side B - John Walstad's presentation continued to (4.1).

Illona Jeffcoat Saco Executive Secretary for the Public Utilities Director testified in opposition to HB 1469. A copy of her prepared remarks which she followed quite closely is attached. She questioned the philosophical issues as well as the functional impact of going through years and years of rules among many divisions of her agencies; then notifying utility companies nationwide and then making the remaining rules cohesive. (14.8)

Unidentified person who did not sign in and did not state his name stated there was no intention on his part to testify but as he listened he wanted to at least appear in a neutral stance.

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Representing the State Board of Pharmacy he wanted the committee to know that the process has become more complex, the cost has increased and in some ways it would be nice to reduce the number of rule and to have more in the statute.

Bruce Hicks representing the State Industrial Commission also taking a 'neutral' position stating that the proposed statute needed clarification -- the major problem was in the section regarding 'sunset' provisions and the date July 31, 2005 not allowing enough time for compliance. The second thought was the bill should have a fiscal note as the agencies did not have provisions in their budgets.

Rep. Devlin, Chairman there being no further testimony for nor against, closed the hearing on HB 1469 (22.9).

Tape 2 Side B (47.1) Committee action --- HB 1469.

Rep. Herbal, Vice Chairman moved a 'Do Not Pass' motion for HB 1469. **Rep. Ekstrom** seconded the motion. On a roll call vote the motion carried **9 ayes 2 nays 0 absent**.

Rep. N. Johnson was designated to carry HB 1469 on the floor.

End of record near the end of Side B Tape 2.

Date: Feb 10, 2005
 Roll Call Vote:

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. HB 1469

House POLITICAL SUBDIVISIONS Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken D N P

Motion Made By Herr Seconded By EK

| 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 | A | | | | |
| Rep. Pietsch | ✓ | | | | |
| Rep. Wrangham | | ✓ | | | |
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Total (Yes) 9 No 2

Absent 1

Floor Assignment Rep Johnson

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

REPORT OF STANDING COMMITTEE (410)
February 11, 2005 7:55 a.m.

Module No: HR-28-2501
Carrier: N. Johnson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1469: Political Subdivisions Committee (Rep. Devlin, Chairman) recommends DO NOT PASS (9 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). HB 1469 was placed on the Eleventh order on the calendar.

2005 TESTIMONY

HB 1469

H.B. 1469

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. 1469.

We believe the proposal embodied in H.B. 1469 represents a step backward for North Dakota. H.B. 1469 limits an agency's future rulemaking authority to areas where the agency has specific rulemaking authority under state or federal law or federal rules. In addition, H.B. 1469 voids all rules except those on which the administrative rules committee makes a specific finding that the rules are procedural or interpretive.

First of all, the two provisions are inconsistent. Under H.B. 1469, all rules are not held to the same standard. New rules require specific authority, old rules must be procedural or interpretive. An old rule promulgated under specific statutory authority would be void if it is not designated as procedural or interpretive. A new rule could be truly procedural or interpretive, but disallowed under section one if the underlying authority for rulemaking is insufficient.

Secondly, we are very concerned with the possibility that currently effective, useful, working rules, on which many regulated entities and interested persons have relied, may become void if the committee is not convinced that the rule is procedural or interpretive. We have more fully addressed this problem in our testimony on H.B. 1468 (copy attached) and respectfully ask the Committee to consider that testimony here, as well.

The Administrative Agencies Practices Act has included general authority for agency rulemaking as far back as 1941. I can imagine why such a provision was originally enacted and that is because requiring specific rulemaking authority only provides a loophole to those hoping to defeat an otherwise beneficial regulation. The Public Service Commission, for example, has specific statutory

authority for telephone disconnect procedures and processes, but not for electric or gas disconnects. The Commission does have a general rulemaking statute (N.D.C.C. section 49-02-04) which provides that the Commission "shall prescribe, after hearing, rules and regulations for the performance of any service, or the furnishing of any commodity, of a character furnished or supplied by any public utility." The Commission does have rules specifying how and when telephone, gas and electric utilities can disconnect customers. Is the authority in 49-02-04 sufficient to comply with HB 1469? I don't know. I certainly can envision an argument, however, that under H.B. 1469, electric and gas companies would be free to implement whatever disconnect policies they wished, even if that meant disconnecting without prior notice, for example, because the electric and gas disconnect rules were written under general rather than specific authority.

A similar concern arises under section two of the bill. Using the same example as above, can the electric and gas disconnect rules be considered procedural? No. Can they be considered interpretive? Maybe. Again, if the electric and gas disconnect rules interpret the Commission's general authority to regulate electric and gas

companies, it makes a convincing argument against section one of HB 1469. If that argument does not hold up, the electric and gas disconnect rules will be void.

Another, related problem with H.B. 1469 is that there has been no opportunity for any interested party, agency, regulated entity, or interested member of the public to propose any statutory changes that might be necessary to bring a government program into compliance with section one of H.B. 1469. There may be perfectly acceptable, good rules in the pipeline as of 31 July 2005 which cannot be adopted if H.B. 1469 passes, unless the affected agency's statutes are revised to clearly provide specific authority. However, it is too late for bills to be introduced to make those revisions. The alternative, a rush to add amendments to existing bills that may or may not be related, is worse. If the policy expressed in section one of H.B. 1469 is enacted, it should not take effect until time has been allowed to agencies and other interested parties to bring their statutes into compliance.

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

H.B. 1468

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. 1468.

H.B. 1468 would authorize the Legislature's Administrative Rules Committee to call up for review any current, effective, administrative rule, which the Administrative Rules Committee can then void for any of the reasons mentioned in section 28-32-18. We have substantial concerns with this bill and appreciate an opportunity to share them with you.

Administrative rules have the force and effect of law because those rules are promulgated by following very stringent procedural requirements that include notice and opportunity for all affected or interested persons to participate. The procedural hoops ensure that these "laws" conform strictly

to the authority and parameters provided the agency by statute, and that participants have been afforded all constitutional and statutory protections before their government takes any action affecting them.

On the other side of the balance, rules which have the force and effect of law allow all those affected by a rule to rely on the content of that rule and act accordingly. Without that stability, those affected could not rely on a rule when choosing a course of action. H.B. 1468 upsets that balance by allowing previously effective rules to be called into question, and perhaps voided, by a committee meeting between legislative sessions, with notice to the agency but not to those affected by the rule.

We know the legislature is concerned with the impact of administrative rules on North Dakotans. This is the reason for both the takings assessment requirement, the small entity impact assessment and the regulatory analysis requirement in current law, among other provisions. The legislature has determined as a matter of public policy that great efforts should be taken to determine how a rule could impact the citizens of the state. Yet H.B. 1468 could negatively impact all North Dakotans who have relied on the existence of an effective rule and acted on that reliance—all

without any of the statutory protections afforded by the rulemaking process or the cost-benefit analyses required for rules proposed by an agency.

Certainty is a very important consideration in both business and personal decisions. H.B. 1468 calls the certainty of long standing administrative rules into question, without any of the protections offered citizens by either the legislative or administrative processes.

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