

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1479

2007 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1479

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1479

House Government and Veterans Affairs Committee

Check here for Conference Committee

Hearing Date: February 1, 2007

Recorder Job Number: 2642

Committee Clerk Signature

*Morgan Renke*

Minutes:

**Rep. Koppelman:** *The state of ND passed the Administrative Practice's Act back in the 1970's. Prior to that, administrative agencies in ND essentially established policies and each agency kind of dealt with it differently. In the late 70's when these laws passed it basically put an essential law into the code to govern how administrative rules are made. It is very important about that, for those of us who are legislators I believe that is administrative rules carry in effect the force of law. It is very important to remember that because we as a legislature make up the constitutionally mandated lawmaking body of government. So when the rules are made, we are essentially delegating the right to make law from the legislative branch of government to the executive branch of government. In 1995 I sponsored a bill that passed which gave the Administrative rules committee of the legislator the authority to oversee that process in a meaningful way. Under the provisions of that bill and other ones, that committee has had the authority to void rules under very circumstances. It also allows the administrative rules committee of the legislature to agree with the agency to amend the rule if there is an issue that comes up that wasn't anticipated. It also asks that committee to remove sections from the Administrative book. We've had instances were some new federal guidelines come down for example and an agency of government comes to the administrative rules committee and say*

*rather than making us go through the lawmaking process, will you just void them for us? While that was a very fearful process when that bill was first introduced, I think most will tell you it's not a very positive string. They work closely together if the check and balance we are supposed to have under the branches of government. No one has overridden anybody else. It is a very deliberative process that is good for our state and citizens. When the administrative practices act was first passed the government came to legislators and said don't put us under that. People would just sit there and say "I think I'll make a law today". There was no oversight on this and I think it's working very well. I don't want to pick and choose agencies that ought to be included and agencies that shouldn't. There might be some good reasons for certain agencies to be exempt, and I will leave it up to the wisdom of this committee to decide when and where that is true. I do encourage you to look at this carefully, consider it deliberatively, and to make good decisions on how you want to amend this and look at who ought to be a part of this, and who ought to be exempt.*

**Rep. Kasper:** If this bill was passed the way it is, would this require a larger committee that would be responsible for that? How would you get all your work done if you had to overview all of these?

**Rep. Koppelman:** I can respond to that only with respect with those with experience. It took them awhile to get their rules put together, to go through the process. During the last session a number of us got together because we were concerned on how the administrative rules were set up. It would go through the process of rule making, and the rules would become able to take effect. The administrative rules committee would come down and take a look at that. It only makes sense for that committee to review the rules before that action takes effect. We made that happen last session with the support of agencies under the process. In doing that we also shortened up and streamlined the process. Now it doesn't take as long and isn't as

costly. The direct answer to your question is that that is a decision for the legislator and the legislator council to make. We have a pretty good membership and attendance there with good oversight.

**Rep. Dahl:** This is a pretty long list here. What is the general breakdown of the number of agencies currently under the rule?

**Rep. Koppelman:** That is a great question but I don't have the answer. I suspect and believe that more agencies are under the administrative ruling process that are not.

**Rep. Boehning:** Just looking through this list and stuff, do all these agencies currently have rules in place that govern their areas, or are they just running on other things besides roads?

**Rep. Koppelman:** I suspect they do have or they wouldn't all be here to talk to you about this.

How they make those rules I'm not sure.

**Ken Sorenson:** Testimony Attached.

**Pat Seaworth:** Testimony Attached.

**General Sprynczynatik:** Testimony Attached.

**Pam Sharp:** Testimony Attached.

**Leanne Bertsch:** Testimony Attached.

**Rep. Haas:** We are nearing the time when I said we have to terminate this hearing.

Sometime's as a chairman I think its imperative that we make decisions that maintain the integrity of the legislative process. In view of the complications of this bill and our inability to hear all the agencies today, I think we have two choices. I'm going to recommend to the committee that we do one of two things. That we either put this into a study, where these issues can be thoughtfully considered, or we simply kill this bill.

**Rep. Dahl:** I move a do not pass

**Rep. Weiler:** I Second that

**Rep. Haas:** Is there any discussion? The do not pass motion on HB 1479 passes by a vote of 10-1-2. Is there a volunteer to carry the bill?

**Rep. Dahl:** I will.

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1479

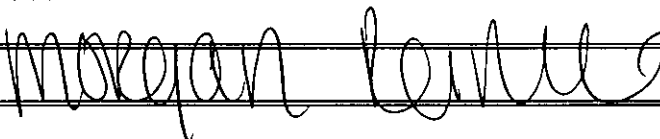
House Government and Veterans Affairs Committee

Check here for Conference Committee

Hearing Date: February 8, 2007

Recorder Job Number: 3141

Committee Clerk Signature



Minutes:

**Rep. Haas:** We have already passed this bill out of committee already, and now I'm going to ask for a motion to reconsider it. This is the bill that would have removed all agencies from the exempt list on administrative rules, and if you recall on this testimony there and we had a little bit of a discussion about it, it was unrealistic for us to get into that issue and make any kind of informed judgment with the time we had and the information. That is why I'm asking for a motion to reconsider.

**Rep. Weiler:** I move to reconsider.

**Rep. Grande:** I second that.

**Rep. Haas:** We now have a motion to reconsider HB 1479. Is there any discussion?

**Rep. Amerman:** I thought it was unfair when the presenter of the bill listed probably every agency that isn't under them right now. It's extremely not fair to you or this committee to pick and choose.

**Rep. Grande:** In all fairness to the bill sponsor, I know where he is coming from on this. We have heard this before. I actually believe I heard this when I was serving in Judiciary. He meant for all of them out and all of them stay out. I served on the administrative rules and the

feeling that is within the administrative rules committee that the administrative rule is equal to law. These agencies are setting law with no oversight and that is where the problem is.

**Rep. Dahl:** I think the administrative rules can already look specifically into each one of these agencies. I just felt that it was responsible to give us this overwhelming list. If there was a disagreement that said they can already to this.

**Rep. Haas:** The agencies that are listed on the bill are exempt from the Administrative rules. Instead it eliminates oversight by the Administrative Rules committee.

**Rep. Dahl:** Can't they already study this on the rules committee?

**Rep. Haas:** No, I don't think so. It would have to be a study that was selected by the council.

**Rep. Haas:** Is there any other discussion on the motion to reconsider? I just want to add one thing. If we do pass the motion to reconsider and if we amend it and put it into a study, it does not guarantee that the legislative council will select it as a study. There are always a lot more studies recommended that can be implemented. All of favor say 'aye', all opposed say 'no'.

The motion carries.

**Rep. Haas:** We have the amendment before us.

**Rep. Weiler:** I move the amendment.

**Rep. Boehning:** I second that.

**Rep. Haas:** Is there any more discussion on the amendment? We will take a voice vote. All of favor say 'aye', all opposed say 'no'. The amendment is carried.

**Rep. Weiler:** I move a do pass as amended.

**Rep. Grande:** I second that.

**Rep. Haas:** Is there any further discussion on the bill as amended? If not we will take a roll call vote on do pass motion as amended on HB 1479. The do pass as amended motion carries by



a vote of 10-3-0. Is there a volunteer to carry this?

**Rep. Amerman:** I will.

Date: 2-1-07  
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. "Click here to type Bill/Resolution No."

House Government and Veterans Affairs Committee

Check here for Conference Committee

Legislative Council Amendment Number HB 1479

Action Taken Do NOT pass

Motion Made By Rep Dahl Seconded By Rep Weiler

Representatives	Yes	No	Representatives	Yes	No
Rep. C. B Haas Chairman	X		Rep. Bill Amerman	X	
Rep. Bette Grande VC		X	Rep. Louise Potter	X	
Rep. Randy Boehning		X	Rep. Jasper Schneider	X	
Rep. Stacey Dahl	X		Rep. Lisa Wolf	X	
Rep. Glen Froseth	X				
Rep. Karen Karls	X				
Rep. Jim Kasper					
Rep. Lisa Meier	X				
Rep. Dave Weiler	X				

Total (Yes) 10 No 1

Absent 2

Floor Assignment Rep. Dahl

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

REPORT OF STANDING COMMITTEE (410)  
February 1, 2007 4:21 p.m.

Module No: HR-22-1853  
Carrier: Dahl  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

**HB 1479: Government and Veterans Affairs Committee (Rep. Haas, Chairman)**  
recommends **DO NOT PASS** (10 YEAS, 1 NAY, 2 ABSENT AND NOT VOTING).  
HB 1479 was placed on the Eleventh order on the calendar.

**House Amendments to HB 1479 (70729.0101) - Government and Veterans Affairs  
Committee 02/08/2007**

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative council study of agency exemptions from the Administrative Agencies Practice Act.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. LEGISLATIVE COUNCIL STUDY - ADMINISTRATIVE AGENCIES PRACTICE ACT EXEMPTION.** The legislative council shall consider studying, during the 2007-08 interim, the appropriateness of each agency exemption from the Administrative Agencies Practice Act. The study should include discussion and analysis of each exemption, and a presentation by each agency entitled to an exemption, under the Administrative Agencies Practice Act. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly."

Renumber accordingly

Date: 2-8-07  
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. "Click here to type Bill/Resolution No."

House Government and Veterans Affairs Committee

Check here for Conference Committee

Legislative Council Amendment Number HB 1479

Action Taken Reconsider

Motion Made By Rep Weiler Seconded By Rep Grande

Representatives	Yes	No	Representatives	Yes	No
Rep. C. B Haas Chairman			Rep. Bill Amerman		
Rep. Bette Grande VC			Rep. Louise Potter		
Rep. Randy Boehning			Rep. Jasper Schneider		
Rep. Stacey Dahl			Rep. Lisa Wolf		
Rep. Glen Froseth					
Rep. Karen Karls					
Rep. Jim Kasper					
Rep. Lisa Meier					
Rep. Dave Weiler					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment Rep.

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

Date: 2-8-07  
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. "Click here to type Bill/Resolution No."

House Government and Veterans Affairs Committee

Check here for Conference Committee

Legislative Council Amendment Number HB 1479

Action Taken move amendment

Motion Made By Rep. Weiler Seconded By Rep. Boehning

Representatives	Yes	No	Representatives	Yes	No
Rep. C. B Haas Chairman			Rep. Bill Amerman		
Rep. Bette Grande VC			Rep. Louise Potter		
Rep. Randy Boehning			Rep. Jasper Schneider		
Rep. Stacey Dahl			Rep. Lisa Wolf		
Rep. Glen Froseth					
Rep. Karen Karls					
Rep. Jim Kasper					
Rep. Lisa Meier					
Rep. Dave Weiler					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment Rep.

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

Date: 2-8-07  
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. "Click here to type Bill/Resolution No."

House Government and Veterans Affairs Committee

Check here for Conference Committee

Legislative Council Amendment Number HB 1479

Action Taken DO PASS as amended

Motion Made By Rep Weiler Seconded By Rep Grande

Representatives	Yes	No	Representatives	Yes	No
Rep. C. B Haas Chairman	X		Rep. Bill Amerman	X	
Rep. Bette Grande VC	X		Rep. Louise Potter		X
Rep. Randy Boehning	X		Rep. Jasper Schneider		X
Rep. Stacey Dahl		X	Rep. Lisa Wolf	X	
Rep. Glen Froseth	X				
Rep. Karen Karls	X				
Rep. Jim Kasper	X				
Rep. Lisa Meier	X				
Rep. Dave Weiler	X				

Total (Yes) 10 No 3

Absent 0

Floor Assignment Rep. Amerman

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

**REPORT OF STANDING COMMITTEE**

**HB 1479: Government and Veterans Affairs Committee (Rep. Haas, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1479 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative council study of agency exemptions from the Administrative Agencies Practice Act.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. LEGISLATIVE COUNCIL STUDY - ADMINISTRATIVE AGENCIES PRACTICE ACT EXEMPTION.** The legislative council shall consider studying, during the 2007-08 interim, the appropriateness of each agency exemption from the Administrative Agencies Practice Act. The study should include discussion and analysis of each exemption, and a presentation by each agency entitled to an exemption, under the Administrative Agencies Practice Act. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly."

Renumber accordingly



2007 SENATE JUDICIARY

HB 1479

# 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1479**

## Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: March 7, 2007

Recorder Job Number: 4594

Committee Clerk Signature *Maria L. Salberg*

**Minutes:** Relating to study of agency exemptions from the Administrative Agency Practice Act.

**Senator David Nething**, Chairman called the Judiciary committee to order. All Senators were present except for Sen. Olafson. The hearing opened with the following hearing:

### Testimony in Favor of the Bill:

**Rep. Kim Koppelman**, Dist. #13, introduced the bill stating that the Administrative rules carry the force and affect of the law. Until a bill is passed this is the law. Rep. Koppelman spoke of the history, the oversight, the duties and authority of the Administrative rules committee. The issue is they make the laws within the boundaries or parameters set 12 years ago. This committee has been given the ability to make a rule until legislation is made at the next session. The process costs money. Spoke of Agencies coming to the committee to make changes in the administrative code. The administrative code would dwarf the century code. The number of law in the books made by the administrative code are huge then the laws the legislature passes every two years in Bismarck. Many of the state government agencies are under the administrative practices act and are governed by this process. Some agencies are except. We put one under the process and it worked out very well. Rather than picking what

agencies should change this bill would put all of the agencies under this. The intent is to allow the agencies to come forward and say, we are and should remain exempt and here is why. This would be too much work and we turned it into a study.

**Sen. Nething** (meter 5:32) told a story about Moses.

**Sen. Fiebiger** asked (meter 6:18) if there was a specific problem that has led to the belief to study this? No, This is out of our responsibility to govern every part of our state and with this there is an imbalance over the groups that we are overseeing. **Sen. Nething** spoke (meter 7:40) of the difficulty this has been the past 12 years and they discussed it.

**Mike Anderson**, ND Director of Housing and Finance submitted testimony from **Karlene Fine**, Executive Dir. and Secretary Industrial Commission of ND – Att. #1

**Testimony Against the bill:**

None

**Testimony Neutral to the bill:**

None

**Senator David Nething**, Chairman closed the hearing.

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1479**

### Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: March 12, 2007

Recorder Job Number: 4892

Committee Clerk Signature

**Minutes:** Relating to study of agency exemptions from the Administrative Agency Practice Act.

**Senator David Nething**, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following committee work:

**Sen. Nething** reviewed the study speaking to the exemption lists. **Sen. Nelson** spoke of her opinion as being negative to the idea. Discussion of legislative council can consider doing the study.

**Sen. Lyson** made the motion to Do Pass HB 1479 and **Sen. Olafson** seconded the motion.

All members were in favor except for **Sen. Nelson** and the motion passes.

Carrier: **Sen. Olafson**

**Senator David Nething**, Chairman closed the hearing.

Date: 3-12-07  
 Roll Call Vote # 1-of 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1479

Senate \_\_\_\_\_ Judiciary \_\_\_\_\_ Committee \_\_\_\_\_

Check here for Conference Committee

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

Action Taken Do Pass

Motion Made By Sen. Lyson Seconded By Sen. Olafson

Senators	Yes	No	Senators	Yes	No
Sen. Nething	✓		Sen. Flebiger	✓	
Sen. Lyson	✓		Sen. Marcellais	✓	
Sen. Olafson	✓		Sen. Nelson		✓

Total Yes 5 No 1

Absent 0

Floor Assignment Sen. Olafson

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

**REPORT OF STANDING COMMITTEE (410)**  
March 12, 2007 2:06 p.m.

**Module No: SR-46-5010**  
**Carrier: Olafson**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1479, as engrossed: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). Engrossed HB 1479 was placed on the Fourteenth order on the calendar.**

2007 TESTIMONY

HB 1479

**House Government and Veteran's Affairs Committee  
Representative C.B. Haas, Chairman  
February 1, 2007**

---

**Warren R. Emmer, Clerk  
N.D. Parole Board and N.D. Pardon Advisory Board  
Presenting Testimony re: HB 1479**

---

Good Afternoon, Mr. Chairman and members of the committee, my name is Warren R. Emmer. I am the clerk to the North Dakota Parole Board as well as the North Dakota Pardon Advisory Board. Both the Pardon Advisory Board and the Parole Board are exempt from the Administrative Agencies Practice Act. Both Boards respectfully recommend that the functions of each Board continue to be exempt from the Administrative Agencies Practice Act.

Both the Parole Board and the Pardon Board serve a very important public safety function for the state of North Dakota; they do so in a very efficient and effective manner. Requiring that the boards' functions be subject to the Administrative Agencies Practice Act would be costly in both time and money without enhancing public safety. This mandate would also expand the scope of inmate grievance of our boards' processes to include judicial review of Pardon and Parole decisions.

Allow me to point out how enactment of H.B.1479 would affect the day to day work of our two boards.

Parole Board

All Parole Board Procedures would be subject to the administrative rule making processes of NDCC Chapter 28-32. Examples include:

1. Parole Eligibility Review
2. Emergency Parole
3. Eligibility Dates



4. Risk Assessments
5. Parole Good Time
6. Intermediate Measures
7. Termination of Parole
8. Victim Notification
9. Taking parolees into custody
10. Placement of parolees into programs such as BTC and TRCC
11. Parole revocation hearings, while already subject to the Office of Administrative Hearings, would be subject to the Administrative Agencies Practice Act adjudicative proceedings procedures.

#### Pardon Advisory Board

Everything that is a Pardon Advisory Board policy would need to be reduced to a formal administrative rule. This is problematic due to the following reasons:

1. As previously stated, this would cost both time and money, without enhancing public safety.
2. The Pardon Advisory Board is an *advisory board for the Governor*. The board's recommendations should not be subject to judicial review.

STATE AUDITOR  
GERT R. PETERSON



PHONE  
(701) 328-2241  
FAX  
(701) 328-1406

STATE OF NORTH DAKOTA  
**OFFICE OF THE STATE AUDITOR**  
STATE CAPITOL  
600 E. BOULEVARD AVE. - DEPT. 117  
BISMARCK, ND 58505

**TESTIMONY BEFORE THE HOUSE  
GOVERNMENT AND VETERANS AFFAIRS COMMITTEE**

February 1, 2007

House Bill No. 1479

Testimony - Presented by Ed Nagel  
Director

Chairman Haas and members of the committee, I am here to testify in opposition to House Bill No. 1479 in its current form.

Under current state law, the term "administrative agency" does not include the State Auditor's Office. The State Auditor's Office has never been an administrative agency. We believe that our office should continue to be exempt from the requirements of the Administrative Agencies Practice Act (N.D.C.C. Chapter 28-32).

Our office audits state agencies and local governments. We do not issue any rules or policies that affect the general public. It is my understanding that the purpose of the Administrative Agencies Practice Act is to allow the general public an opportunity for input on rules or guidelines issued by state agencies, which will affect the general public and are intended to have the force and effect of law.

We see no benefit to the state or the general public by requiring our office to comply with the provisions of the Administrative Agencies Practice Act.

In summary Mr. Chairman, our office would encourage that HB 1479 receive a "do not pass" from this committee as it is currently written, or that the amendment on the reverse side be made to HB 1479.

I would gladly answer any questions you may have.

Thank you.

Proposed Amendment to HB 1479

Prepared by the State Auditor's Office – February 1, 2007

Page 1, line 13, remove the overstrike over ~~The term administrative agency does not include:~~

Page 1, line 22, remove the overstrike over ~~"The state auditor."~~

Renumber accordingly

TESTIMONY  
HB 1479 – February 1, 2007  
House Government & Veterans Affairs  
Bob Hanson, Commissioner  
ND Dept. of Veterans' Affairs

Mr. Chairman, members of the committee. I am Bob Hanson, North Dakota commissioner of veterans' affairs.

The Administrative Committee on Veterans' Affairs (Committee) is one of the entities affected by this bill. It is composed of 15 members. Each of the state's 5 veterans organizations has 3 members on the Committee. These individuals are appointed by the Governor from lists of names submitted by each organization. It oversees the department of veterans' affairs and the veterans home.

This bill would require the Administrative Committee on Veterans Affairs to become involved in long, costly processes to make changes to department of veterans' affairs' programs such as the hardship grant program and the veterans aid loan program.

The hardship grant programs help our less fortunate veterans by providing grants for dental, optical and hearing needs. The money for this program comes from the income earned by the veterans postwar trust fund. The amounts of the grants can rise or fall based on what income is earned.

Our veterans aid loan program provides loans up to \$5000.00 to veterans for up to 4 years at 8% with half the interest waived if loan is paid on time.

Concerns:

1. Current system used by the Committee is flexible, efficient and economical. It has sufficient oversight and is concerned about insuring the needs of the veteran are met in a speedy, timely manner.
2. We need flexibility for our programs. Proposal lengthens process to address needs provided to veterans by the Committee. These issues can now take place in a short period of time, at regular public meetings of the 15 member committee. This Committee provides oversight on these programs.
3. Puts the needs of our veterans in jeopardy with lengthy waits for changes in the program, i.e. increases in amounts for grants for dental, hearing and optical needs of qualified veterans; or loans for items needed such as repairs to furnace, car, home and the like. .
4. Would subject veteran to potential lengthy appeals process with using the administrative law judge system. Whereas now veterans may file an appeal of a decision regarding the denial of a grant or loan with the Committee and have it heard and decided upon within a short time period. An example, a recent appeal was received one day and the hearing was held within 3 days and a decision was rendered at that time. One must remember these are issues of major concern for the veteran.
5. Costs to the Committee and the department of veterans' affairs would increase greatly if this were to pass.
6. The current system works well for our needs.

We encourage you to recommend a do not pass on HB 1479.

Thank you.

