

**HOUSE BILL NO. 1421
with Senate Amendments**

Fifty-ninth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1421

Introduced by

Representatives Bernstein, Grande, Koppelman, Skarphol

Senators Andrist, Wardner

1 A BILL for an Act to amend and reenact sections 28-32-10 and 28-32-12, subsection 2 of
2 section 28-32-15, and sections 28-32-18 and 28-32-19 of the North Dakota Century Code,
3 relating to the effective date, rulemaking notice, period for comments, review, and publication of
4 administrative rules; and to provide an effective date.

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

6 **SECTION 1. AMENDMENT.** Section 28-32-10 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **28-32-10. Notice of rulemaking - Hearing date.**

- 9 1. An agency shall prepare a full notice and an abbreviated notice of rulemaking.
- 10 a. The agency's full notice of the proposed adoption, amendment, or repeal of a
- 11 rule must include a short, specific explanation of the proposed rule and the
- 12 purpose of the proposed rule, a determination of whether the proposed
- 13 rulemaking is expected to have an impact on the regulated community in
- 14 excess of fifty thousand dollars, identify at least one location where interested
- 15 persons may review the text of the proposed rule, provide the address to
- 16 which written comments concerning the proposed rule may be sent, provide
- 17 the deadline for submission of written comments, provide a telephone number
- 18 at which a copy of the rules and regulatory analysis may be requested, and,
- 19 in the case of a substantive rule, provide the time and place set for each oral
- 20 hearing. The agency's full notice must be filed with the office of the legislative
- 21 council, and the agency shall request publication of an abbreviated
- 22 newspaper publication notice at least once in each official county newspaper
- 23 published in this state. The notice filed with the office of the legislative council
- 24 must be accompanied by a copy of the proposed rules.

- 1 b. The abbreviated newspaper publication of notice must be in a display-type
2 format with a minimum width of one column of approximately two inches
3 [5.08 centimeters] and a depth of from three inches [7.62 centimeters] to four
4 inches [10.16 centimeters] with a headline describing the general topic of the
5 proposed rules. The notice must also include the telephone number or
6 address to use to obtain a copy of the proposed rules, the address to use and
7 the deadline to submit written comments, and the location, date, and time of
8 the public hearing on the rules.
- 9 2. The agency shall mail a copy of the agency's full notice to each person who has
10 made a timely request to the agency for a mailed copy of the notice. The agency
11 may mail or otherwise provide a copy of the agency's full notice to any person who
12 is likely to be an interested person. The agency shall mail or deliver a copy of the
13 rules to any person requesting a copy. The agency may charge for the actual cost
14 of providing copies of the proposed rule.
- 15 3. In addition to the other notice requirements of this subsection, the superintendent
16 of public instruction shall provide notice of any proposed rulemaking by the
17 superintendent of public instruction to each association with statewide membership
18 whose primary focus is elementary and secondary education issues which has
19 requested to receive notice from the superintendent under this subsection and to
20 the superintendent of each public school district in this state, or the president of the
21 school board for school districts that have no superintendent, at least ~~thirty~~ twenty
22 days before the date of the hearing described in the notice. Notice provided by the
23 superintendent of public instruction under this section must be by first-class mail.
24 However, upon request of a group or person entitled to notice under this section,
25 the superintendent of public instruction shall provide the group or person notice by
26 electronic mail.
- 27 4. The legislative council shall establish standard procedures for all agencies to
28 follow in complying with the provisions of this section and a procedure to allow any
29 person to request and receive mailed copies of all filings made by agencies
30 pursuant to this section. The legislative council may charge an annual fee as
31 established by the administrative rules committee for providing copies of the filings.

1 5. At least ~~thirty~~ twenty days must elapse between the ~~later of the~~ date of the
2 publication of the notice ~~or the date the legislative council mails copies of an~~
3 ~~agency's notice~~ and the date of the hearing. ~~The thirty-day period begins on the~~
4 ~~first business day of the month in which the notices must be mailed or on the date~~
5 ~~of the publication, whichever is later. Subject to subsection 4, notices filed on or~~
6 ~~before the last calendar day of the preceding month~~ Within fifteen business days
7 after receipt of a notice under this section, a copy of the notice must be mailed by
8 the legislative council ~~on the first business day of the following month~~ to any
9 person ~~making a request~~ who has paid the annual fee established under
10 subsection 4.

11 **SECTION 2. AMENDMENT.** Section 28-32-12 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **28-32-12. Comment period.** The agency shall allow, after the conclusion of any
14 rulemaking hearing, a comment period of at least ~~thirty~~ ten days during which data, views, or
15 arguments concerning the proposed rulemaking will be received by the agency and made a
16 part of the rulemaking record to be considered by the agency.

17 **SECTION 3. AMENDMENT.** Subsection 2 of section 28-32-15 of the North Dakota
18 Century Code is amended and reenacted as follows:

19 2. a. Nonemergency rules approved by the attorney general as to legality, adopted
20 by an administrative agency, and filed with the office of the legislative council
21 and not voided or held for consideration by the administrative rules committee
22 become effective ~~the first day of the month after the month of publication as~~
23 ~~provided for in section 28-32-19, except that if a later date is required by~~
24 ~~statute, specified in the rule, or provided under section 28-32-18, the later~~
25 ~~date is the effective date. A rule found to be void by the administrative rules~~
26 ~~committee is void from the time provided under section 28-32-18~~ according to
27 the following schedule:

28 (1) Rules filed with the legislative council from August sixteenth through
29 November fifteenth become effective on the immediately succeeding
30 January first.

- 1 (2) Rules filed with the legislative council from November sixteenth through
2 February fifteenth become effective on the immediately succeeding
3 April first.
- 4 (3) Rules filed with the legislative council from February sixteenth through
5 May fifteenth become effective on the immediately succeeding July
6 first.
- 7 (4) Rules filed with the legislative council from May sixteenth through
8 August fifteenth become effective on the immediately succeeding
9 October first.
- 10 b. ~~If publication is delayed due to technological problems or lack of funds for any~~
11 reason other than action of the administrative rules committee,
12 nonemergency rules, unless otherwise provided, become effective ~~on the first~~
13 ~~day of the month after the month~~ when publication would have occurred but
14 for the delay.
- 15 c. A rule held for consideration by the administrative rules committee becomes
16 effective on the first effective date of rules under the schedule in subdivision a
17 following the meeting at which that rule is reconsidered by the committee.

18 **SECTION 4. AMENDMENT.** Section 28-32-18 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **28-32-18. Administrative rules committee may void rule - Grounds - Amendment**
21 **by agreement of agency and committee.**

- 22 1. The legislative council's administrative rules committee may find that all or any
23 portion of a rule is void if that rule is initially considered by the committee ~~within~~
24 ~~ninety days after~~ not later than the fifteenth day of the month before the date of the
25 administrative code supplement in which the rule change ~~appears, or, for rule~~
26 ~~changes appearing in the administrative code supplement from November first~~
27 ~~immediately preceding a regular session of the legislative assembly through the~~
28 ~~following May first, if that rule is initially considered by the committee at the first~~
29 ~~meeting of the administrative rules committee following the regular session of the~~
30 ~~legislative assembly~~ is scheduled to appear. The administrative rules committee

- 1 may find a rule or portion of a rule void if the committee makes the specific finding
2 that, with regard to that rule or portion of a rule, there is:
- 3 a. An absence of statutory authority.
 - 4 b. An emergency relating to public health, safety, or welfare.
 - 5 c. A failure to comply with express legislative intent or to substantially meet the
6 procedural requirements of this chapter for adoption of the rule.
 - 7 d. A conflict with state law.
 - 8 e. Arbitrariness and capriciousness.
 - 9 f. A failure to make a written record of its consideration of written and oral
10 submissions respecting the rule under section 28-32-11.
- 11 2. The administrative rules committee may find a rule void at the meeting at which the
12 rule is initially considered by the committee or may hold consideration of that rule
13 for one subsequent meeting. Within three business days after the administrative
14 rules committee finds that a rule is void, the office of the legislative council shall
15 provide written notice of that finding and the committee's specific finding under
16 subdivisions a through f of subsection 1 to the adopting agency and to the
17 chairman of the legislative council. Within fourteen days after receipt of the notice,
18 the adopting agency may file a petition with the chairman of the legislative council
19 for review by the legislative council of the decision of the administrative rules
20 committee. If the adopting agency does not file a petition for review, the rule
21 becomes void on the fifteenth day after the notice from the office of the legislative
22 council to the adopting agency. If within sixty days after receipt of the petition from
23 the adopting agency the legislative council has not disapproved by motion the
24 finding of the administrative rules committee, the rule is void.
- 25 3. An agency may amend or repeal a rule or create a related rule if, after
26 consideration of rules by the administrative rules committee, the agency and
27 committee agree that the rule amendment, repeal, or creation is necessary to
28 address any of the considerations under subsection 1. A rule amended, repealed,
29 or created under this subsection is not subject to the other requirements of this
30 chapter relating to adoption of administrative rules and may be ~~resubmitted~~
31 published by the ~~agency to the legislative council for publication~~ as amended,

1 repealed, or created ~~and~~. If requested by the agency or any interested party, a
2 rule amended, repealed, or created under this subsection must be reconsidered by
3 the administrative rules committee at a subsequent meeting at which public
4 comment on the agreed rule change must be allowed.

5 **SECTION 5. AMENDMENT.** Section 28-32-19 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **28-32-19. Publication of administrative code and code supplement.**

- 8 1. The office of the legislative council shall compile, index, and publish all rules filed
9 pursuant to this chapter in a publication which must be known as the North Dakota
10 Administrative Code, in this chapter referred to as the code. The code must also
11 contain all objections filed with the office of the legislative council by the
12 administrative rules committee pursuant to section 28-32-17. The code must be
13 printed or otherwise duplicated in looseleaf form. The office of the legislative
14 council shall revise all or part of the code as often as the legislative council deems
15 necessary.
- 16 2. The office of the legislative council may prescribe a format, style, and arrangement
17 for rules which are to be published in the code, and may refuse to accept the filing
18 of any rule that is not in substantial compliance therewith. In arranging rules for
19 publication, the office of the legislative council may make such corrections in
20 spelling, grammatical construction, format, and punctuation of the rules as deemed
21 proper. The office of the legislative council shall keep and maintain a permanent
22 code of all rules filed, including superseded and repealed rules, which must be
23 open to public inspection during office hours.
- 24 3. The office of the legislative council shall compile and publish the North Dakota
25 Administrative Code supplement, ~~in this chapter referred to as the code~~
26 ~~supplement, the month after the month that rules are submitted to the office of the~~
27 ~~legislative council for publication unless technological problems or lack of funds~~
28 ~~prevent the publication at that time. Any delayed supplements must be published~~
29 ~~as soon as the technological problems are resolved or the necessary funds are~~
30 ~~available~~ according to the schedule of effective dates of rules in section 28-32-15.

- 1 a. The code supplement must contain all rules that have been filed with the
2 office of the legislative council or which have become effective since the
3 compilation and publication of the preceding issue of the code supplement.
4 ~~The office of the legislative council may establish a due date by which rules~~
5 ~~must be submitted by an agency for publication during any month.~~
- 6 b. The code supplement must contain all objections filed with the office of the
7 legislative council by the administrative rules committee pursuant to section
8 28-32-17.
- 9 c. The code supplement must be printed or duplicated in the same style as the
10 code so as to permit changes to be inserted as pages in the code in lieu of
11 the pages containing superseded material and to permit additions to the code.
- 12 4. The office of the legislative council, with the consent of the adopting agency, may
13 omit from the code or code supplement any rule the publication of which would be
14 unduly cumbersome, expensive, or otherwise inexpedient, if the rule in printed or
15 duplicated form is made available on application to the agency, and if the code or
16 code supplement contains a notice stating the general subject matter of the
17 omitted rule and stating how a copy may be obtained.
- 18 5. The code must be arranged, indexed, and printed or duplicated in a manner to
19 permit separate publication of portions thereof relating to individual agencies. An
20 agency may print as many copies of such separate portions of the code as it may
21 require. If the office of the legislative council does not publish the code
22 supplement due to technological problems or lack of funds, the agency whose
23 rules would have been published in the code supplement shall provide a copy of
24 the rules to any person upon request. The agency may charge for the actual cost
25 of providing copies of the rules.

26 **SECTION 6. EFFECTIVE DATE.** This Act is effective for administrative rules for which
27 notice of hearing is filed with the office of the legislative council after July 31, 2005.