

**Fifty-ninth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2005**

HOUSE BILL NO. 1421
(Representatives Bernstein, Grande, Koppelman, Skarphol)
(Senators Andrist, Wardner)

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

1. An agency shall prepare a full notice and an abbreviated notice of rulemaking.
 - a. The agency's full notice of the proposed adoption, amendment, or repeal of a rule must include a short, specific explanation of the proposed rule and the purpose of the proposed rule, a determination of whether the proposed rulemaking is expected to have an impact on the regulated community in excess of fifty thousand dollars, identify at least one location where interested persons may review the text of the proposed rule, provide the address to which written comments concerning the proposed rule may be sent, provide the deadline for submission of written comments, provide a telephone number at which a copy of the rules and regulatory analysis may be requested, and, in the case of a substantive rule, provide the time and place set for each oral hearing. The agency's full notice must be filed with the office of the legislative council, and the agency shall request publication of an abbreviated newspaper publication notice at least once in each official county newspaper published in this state. The notice filed with the office of the legislative council must be accompanied by a copy of the proposed rules.
 - b. The abbreviated newspaper publication of notice must be in a display-type format with a minimum width of one column of approximately two inches [5.08 centimeters] and a depth of from three inches [7.62 centimeters] to four inches [10.16 centimeters] with a headline describing the general topic of the proposed rules. The notice must also include the telephone number or address to use to obtain a copy of the proposed rules, the address to use and the deadline to submit written comments, and the location, date, and time of the public hearing on the rules.
2. The agency shall mail a copy of the agency's full notice to each person who has made a timely request to the agency for a mailed copy of the notice. The agency may mail or otherwise provide a copy of the agency's full notice to any person who is likely to be an interested person. The agency shall mail or deliver a copy of the rules to any person requesting a copy. The agency may charge for the actual cost of providing copies of the proposed rule.
3. In addition to the other notice requirements of this subsection, the superintendent of public instruction shall provide notice of any proposed rulemaking by the superintendent of public instruction to each association with statewide membership whose primary focus is elementary and secondary education issues which has requested to receive notice from the superintendent under this subsection and to the superintendent of each public school

district in this state, or the president of the school board for school districts that have no superintendent, at least ~~thirty~~ twenty days before the date of the hearing described in the notice. Notice provided by the superintendent of public instruction under this section must be by first-class mail. However, upon request of a group or person entitled to notice under this section, the superintendent of public instruction shall provide the group or person notice by electronic mail.

4. The legislative council shall establish standard procedures for all agencies to follow in complying with the provisions of this section and a procedure to allow any person to request and receive mailed copies of all filings made by agencies pursuant to this section. The legislative council may charge an annual fee as established by the administrative rules committee for providing copies of the filings.
5. At least ~~thirty~~ twenty days must elapse between the ~~later of the date of the publication of the notice or the date the legislative council mails copies of an agency's notice and the date of the hearing. The thirty day period begins on the first business day of the month in which the notices must be mailed or on the date of the publication, whichever is later. Subject to subsection 4, notices filed on or before the last calendar day of the preceding month~~ Within fifteen business days after receipt of a notice under this section, a copy of the notice must be mailed by the legislative council on the first business day of the following month to any person making a request who has paid the annual fee established under subsection 4.

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

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

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

2.
 - a. Nonemergency rules approved by the attorney general as to legality, adopted by an administrative agency, and filed with the office of the legislative council and not voided or held for consideration by the administrative rules committee become effective the first day of the month after the month of publication as provided for in section 28-32-19, except that if a later date is required by statute, specified in the rule, or provided under section 28-32-18, the later date is the effective date. A rule found to be void by the administrative rules committee is void from the time provided under section 28-32-18 according to the following schedule:
 - (1) Rules filed with the legislative council from August sixteenth through November fifteenth become effective on the immediately succeeding January first.
 - (2) Rules filed with the legislative council from November sixteenth through February fifteenth become effective on the immediately succeeding April first.
 - (3) Rules filed with the legislative council from February sixteenth through May fifteenth become effective on the immediately succeeding July first.
 - (4) Rules filed with the legislative council from May sixteenth through August fifteenth become effective on the immediately succeeding October first.
 - b. If publication is delayed due to technological problems or lack of funds for any reason other than action of the administrative rules committee, nonemergency rules, unless

otherwise provided, become effective ~~on the first day of the month after the month when~~ publication would have occurred but for the delay.

- c. A rule held for consideration by the administrative rules committee becomes effective on the first effective date of rules under the schedule in subdivision a following the meeting at which that rule is reconsidered by the committee.

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

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

1. The legislative council's administrative rules committee may find that all or any portion of a rule is void if that rule is initially considered by the committee ~~within ninety days after not later than the fifteenth day of the month before the date of the administrative code supplement in which the rule change appears, or, for rule changes appearing in the administrative code supplement from November first immediately preceding a regular session of the legislative assembly through the following May first, if that rule is initially considered by the committee at the first meeting of the administrative rules committee following the regular session of the legislative assembly is scheduled to appear.~~ The administrative rules committee may find a rule or portion of a rule void if the committee makes the specific finding that, with regard to that rule or portion of a rule, there is:
 - a. An absence of statutory authority.
 - b. An emergency relating to public health, safety, or welfare.
 - c. A failure to comply with express legislative intent or to substantially meet the procedural requirements of this chapter for adoption of the rule.
 - d. A conflict with state law.
 - e. Arbitrariness and capriciousness.
 - f. A failure to make a written record of its consideration of written and oral submissions respecting the rule under section 28-32-11.
2. The administrative rules committee may find a rule void at the meeting at which the rule is initially considered by the committee or may hold consideration of that rule for one subsequent meeting. Within three business days after the administrative rules committee finds that a rule is void, the office of the legislative council shall provide written notice of that finding and the committee's specific finding under subdivisions a through f of subsection 1 to the adopting agency and to the chairman of the legislative council. Within fourteen days after receipt of the notice, the adopting agency may file a petition with the chairman of the legislative council for review by the legislative council of the decision of the administrative rules committee. If the adopting agency does not file a petition for review, the rule becomes void on the fifteenth day after the notice from the office of the legislative council to the adopting agency. If within sixty days after receipt of the petition from the adopting agency the legislative council has not disapproved by motion the finding of the administrative rules committee, the rule is void.
3. An agency may amend or repeal a rule or create a related rule if, after consideration of rules by the administrative rules committee, the agency and committee agree that the rule amendment, repeal, or creation is necessary to address any of the considerations under subsection 1. A rule amended, repealed, or created under this subsection is not subject to the other requirements of this chapter relating to adoption of administrative rules and may be ~~resubmitted~~ published by the ~~agency to the legislative council for publication as~~

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

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

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

1. The office of the legislative council shall compile, index, and publish all rules filed pursuant to this chapter in a publication which must be known as the North Dakota Administrative Code, in this chapter referred to as the code. The code must also contain all objections filed with the office of the legislative council by the administrative rules committee pursuant to section 28-32-17. The code must be printed or otherwise duplicated in looseleaf form. The office of the legislative council shall revise all or part of the code as often as the legislative council deems necessary.
2. The office of the legislative council may prescribe a format, style, and arrangement for rules which are to be published in the code, and may refuse to accept the filing of any rule that is not in substantial compliance therewith. In arranging rules for publication, the office of the legislative council may make such corrections in spelling, grammatical construction, format, and punctuation of the rules as deemed proper. The office of the legislative council shall keep and maintain a permanent code of all rules filed, including superseded and repealed rules, which must be open to public inspection during office hours.
3. ~~The office of the legislative council shall compile and publish the North Dakota Administrative Code supplement, in this chapter referred to as the code supplement, the month after the month that rules are submitted to the office of the legislative council for publication unless technological problems or lack of funds prevent the publication at that time. Any delayed supplements must be published as soon as the technological problems are resolved or the necessary funds are available according to the schedule of effective dates of rules in section 28-32-15.~~
 - a. ~~The code supplement must contain all rules that have been filed with the office of the legislative council or which have become effective since the compilation and publication of the preceding issue of the code supplement. The office of the legislative council may establish a due date by which rules must be submitted by an agency for publication during any month.~~
 - b. The code supplement must contain all objections filed with the office of the legislative council by the administrative rules committee pursuant to section 28-32-17.
 - c. The code supplement must be printed or duplicated in the same style as the code so as to permit changes to be inserted as pages in the code in lieu of the pages containing superseded material and to permit additions to the code.
4. The office of the legislative council, with the consent of the adopting agency, may omit from the code or code supplement any rule the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if the rule in printed or duplicated form is made available on application to the agency, and if the code or code supplement contains a notice stating the general subject matter of the omitted rule and stating how a copy may be obtained.
5. The code must be arranged, indexed, and printed or duplicated in a manner to permit separate publication of portions thereof relating to individual agencies. An agency may print as many copies of such separate portions of the code as it may require. If the office of the legislative council does not publish the code supplement due to technological

problems or lack of funds, the agency whose rules would have been published in the code supplement shall provide a copy of the rules to any person upon request. The agency may charge for the actual cost of providing copies of the rules.

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

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-ninth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1421.

House Vote: Yeas 74 Nays 17 Absent 3

Senate Vote: Yeas 47 Nays 0 Absent 0

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2005.

Approved at _____ M. on _____, 2005.

Governor

Filed in this office this _____ day of _____, 2005,

at _____ o'clock _____ M.

Secretary of State