

**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.

