

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SEN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1451

2001 HOUSE JUDICIARY

HB 1451

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1451

House Judiciary Committee

☐ Conference Committee

Hearing Date 01-31-01

Tape Number	Side A	Side B	Meter #
TAPE II	x		3419 to 6255
TAPE II		x	01 to 1559
Committee Clerk Signature <i>Jean Deora</i>			

Minutes: Chairman DeKrey opened the hearing on HB 1451. A bill for an act to provide for administrative rules committee review of existing administrative rules and to provide for elimination of obsolete provisions and provisions that do not comply with law.

Rep Koppelman: District 13 Fargo, (see attached testimony)

Chairman DeKrey: How is this bill different from Rep Grande's bill?

Rep Koppelman: The main difference is the procedure. This bill encourages the committees to review their own rules.

Rep Delmore: Would you favor something in this bill, going through the rules with the permission of the agencies, who want to get rid of out dated or obsolete provisions?

Rep Koppelman: We went through a lot of rules at the request of agencies, to say that only agencies should have the authority ignores the check and balance of our rules.

Rep Delmore: I think that there are people that would question has the right. I see this as a group of people to go in and micro manage an agency. Could that happen with this bill?

Rep Koppelman: I suppose anything can happen.

Rep Maragos: you maintain that the legislature doesn't have the time to go back and look at all the rules, we probably could do it in one Interim with one Interim Committee to look at the rules and that would solve the problem.

Rep Koppelman: If you want to amend the bill, you certainly may, it will be interesting.

Rep Maragos: I don't think we need legislation, we need an interim committee.

Rep Koppelman: I don't know that we do.

Rep Maragos: we have three or four standing committees, these are not interim committees. I believe the Legislative Council has the power to do this, if they want to do this. I don't think we need legislation to do this.

Rep Koppelman: That may be a good idea. However without statutory authority, the only way to accomplish that would be to bring all those rules before the legislature.

Rep Maragos: I do like to give up my authority to a smaller group within the body.

Rep Koppelman: I understand that position, you would still have the authority two years from now.

Rep Mahoney: In the event that this bill passes, do you think that any people of the administrative rules committee will hold down a day job too.

Rep Koppelman: I think that this would be something to do over a long period of time, it may take a session or two We need to start now..

Rep Klemin: What would happen if we simply require an agency to do a self review and report to the legislature.

Rep Koppelman: Section one of the bill says that.

Rep Klemen: The committee could establish a time schedule.

Rep Koppelman: That language is not to say, the intention is to work with agency to establish a schedule.

Chairman DeKrey: If there are no further questions for Rep Koppelman, thank you for appearing. Is there anyone else wishing to testify in support, we will move to the opposition.

Rick Clayburn: State Tax Commissioner. We have only voided one rule, since I have been in office. The legislature was concerned about the policy that was being made by the agency, unwritten rules. Agencies were given the authority to make written rules so that the public could see and have an opportunity to respond. He went on talk about tax issues and how complicated it has become. There are concerns about constitutionality challenge. This bill is taking this one step further and we stand in opposition to it. We do review our rules. Part of step two and we find something in conflict of the law, we have no authority to remove it. Section three has the more dangerous area, this is the area of where it may become unconstitutional.

TAPE 1 SIDE B

Rick Clayburn testimony continues. He goes on to state his objections to HB 1451.

Rep Wrangham: Do you agree, you wouldn't have time for a day job, because you would have to look at too many rules that are obsolete.

Rick Clayburn: I do not believe that a review of the tax department would be of much concern.

Rep Wrangham: A department that is run like yours, it probably wouldn't take much time to review the rules.

Rick Clayburn: You are right.

Rep Mahoney: It says the rules committee shall establish a schedule for the review of rules. I would read that as the Administrative Rules Committee would have to review all the rules. If they ask you to review, we would be back to where we are without this law.

Rick Clayburn: Speaking for the tax department, we manage our rules.

Chairman DeKrey: If there are no further questions, thank yo for appearing.

Hona A Jeffcoat-Sacco: director of the Public Utilities Division of the Public Service Commission. (see attached testimony)

Chairman DeKrey: Any questions, if not thank you for appearing. Is there anyone else wishing to testify.

Melissa Hauer: Director of the Legal Advisory Unit for the Department of Human Services (see attached testimony).

Rep Klemin: If you have obsolete rules, in order to repeal those rules, you have to go through the same process that you would to enact a rule.

Melissa Hauer: That's true.

Rep Klemin: Maybe there should be some short cut method to repeal obsolete provisions.

Melissa Hauer: That would be one way of doing it.

Rep Klemin: If there was such a process, could a member of public do it also.

Melissa Hauer: That right is already there.

Rep Klemin: That's correct, but you have to go through the whole process to repeal

Melissa Hauer: That is correct.

Chairman DeKrey: If there are no further questions, thank you for appearing.

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House Judiciary Committee  
Bill/Resolution Number HB 1451  
Hearing Date 01-31-01

Chuck Johnson: Attorney with the Insurance Department. We are opposed to HB 1451. He gave his reasons for the opposition of his department.

Rep Klemm: You are saying that there should not be some short cut process to repeal a rule.

Chuck Johnson: Yes, it is too dangerous to short cut the process.

Chairman DeKrey: If there are no further questions, thank you for appearing. If there is no further testimony, we will close the hearing on HB 1451.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1451a

House Judiciary Committee

☐ Conference Committee

Hearing Date 02-14-01

Tape Number	Side A	Side B	Meter #
TAPE II	X		2627 to 4241
Committee Clerk Signature <i>Jean Diers</i>			

Minutes: Chairman DeKrey called the committee to order, we will take up HB 1451.

Rep Koppelman was there to explain the differences in this bill.

Chairman DeKrey: What is the difference in this bill.

Rep Koppelman: The other bill is more selective, mine calls for a review by the agency.

DISCUSSION

COMMITTEE ACTION

Chairman DeKrey: if there is no further discussion or questions, what are the wishes? Rep

Delmore moved a DO NOT PASS, Rep Onstad seconded.

DISCUSSION

Rep Klemin: Sub section one has some merit .Maybe we should consider to amend by deleting section two and three.

Rep Delmore: I will withdraw my motion.

Rep Onstad: I will withdraw my second.



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House Judiciary Committee  
Bill/Resolution Number HB 1451  
Hearing Date 02-14-01

Rep Klemm: Moved to amend HB 1451, by deleting lines 12 through 20.

Rep Kingsbury: I will second.

#### DISCUSSION

#### COMMITTEE ACTION

Chairman DeKrey: We will have a voice vote on the amendment. Motion carries. What are the wishes of the committee? Rep Wrangham moved a DO PASS as amend, seconded by Rep Kingsbury. The clerk will call the roll on a DO PASS as amend motion on HB 1451. The motion passes with 8 YES, 6 NO and 1 ABSENT. Carrier Rep Wrangham

10728.0101  
Title.0200

Adopted by the Judiciary Committee  
February 14, 2001

VR  
2/15/01

**HOUSE AMENDMENTS TO HB 1451 HOUSE JUDICIARY 02-15-01**  
Page 1, line 2, remove "and to provide for elimination of obsolete provisions and provisions that do not comply"

Page 1, line 3, remove "with law"

Page 1, line 7, remove "1."

Page 1, remove lines 12 through 20

Renumber accordingly

Date: 02-14-01  
Roll Call Vote #: /

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB-1451

House JUDICIARY Committee

☐ Subcommittee on \_\_\_\_\_  
or  
☐ Conference Committee

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

Action Taken Do Pass as amended

Motion Made By Rep Wrangham Seconded By Rep Kingsbury

Representatives	Yes	No	Representatives	Yes	No
CHR - Duane DeKrey	✓				
VICE CHR -- Wm E Kretschmar	✓				
Rep Curtis E Brekke	✓				
Rep Lois Delmore		✓			
Rep Rachael Disrud		✓			
Rep Bruce Eckre	✓				
Rep April Fairfield		✓			
Rep Bette Grande					
Rep G. Jane Gunter	✓				
Rep Joyce Kingsbury	✓				
Rep Lawrence R. Klemin	✓				
Rep John Mahoney	<del>✓</del>	✓			
Rep Andrew G Maragos		✓			
Rep Kenton Onstad		✓			
Rep Dwight Wrangham	✓				

Total (Yes) 8 No 6

Absent 1

Floor Assignment Rep Wrangham

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

**REPORT OF STANDING COMMITTEE**

**HB 1451: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (8 YEAS, 6 NAYS, 1 ABSENT AND NOT VOTING). HB 1451 was placed on the Sixth order on the calendar.

Page 1, line 2, remove "and to provide for elimination of obsolete provisions and provisions that do not comply"

Page 1, line 3, remove "with law"

Page 1, line 7, remove "1."

Page 1, remove lines 12 through 20

Renumber accordingly

2001 SENATE GOVERNMENT AND VETERANS AFFAIRS

HB 1451

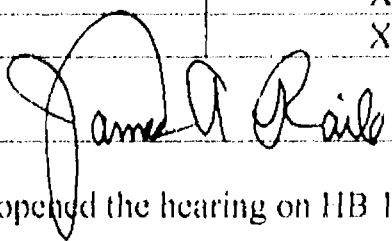
2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1451

Senate Government and Veterans Affairs Committee

☐ Conference Committee

Hearing Date March 22, 2001

Tape Number	Side A	Side B	Meter #
1	X		42.8-End
1		X	0.0-8.9
1		X	24.3-40.9
Committee Clerk Signature 			

Minutes: **Chairman Krebsbach** opened the hearing on HB 1451 which relates to a bill for an act to provide for administrative rules committee review of existing administrative rules.

Appearing before the committee to introduce this proposed legislation was **Representative Kim Koppelman**, District 13. A copy of his written testimony is attached. **Senator T. Mather** inquired about the proposed amendments to the bill. He wondered if these had to be added to accomplish what you were seeking to accomplish. **Representative Koppelman** indicated that he believed they were necessary to accomplish what needs to happen in this bill. The amendments actually return the bill to the way it was initially introduced. **Senator Dever** noted that HB 1228 was passed by the Senate in spite of a veto threat by the governor. One of the objections raised by the chairman of the Judiciary Committee was that the repeal of an administrative rule by an agency involves a hearing process and that the bill would allow the administrative rules committee to void it without that hearing process. How does that reconcile with this? **Representative Koppelman** indicated that while he respects the governors position and

his authority and he visited with him on numerous occasions on this very issue, and his authority certainly exists to veto any legislation we've passed. However, and I could be mistaken about this, there is a statute somewhere and perhaps its even constitutional that prohibits the governor from threatening vetoes on pending legislation. So that is going a little bit far if that happened. Having said that I would not be surprised if there is a veto. That bill was vetoed by a previous governor. Regarding hearings, every administrative rules committee meeting is a public meeting just like your hearings here. To make that statement is almost like saying gee, the senate government and veteran's affairs committee ought not do what it does because it is not a public hearing. Certainly it is, you are here and anyone who wants to walk in this room can, be it the media, be it the public, be it the other branches of government are certainly welcome. The only questions that comes into play is that adequate enough public notice. He indicated he would not be opposed to additional notice. One option would be to have agencies who are reviewing rules to notify the regulative community. He says the agency rather than the community because they better know who is regulated by a specific rule. He would have no objection to that. All of this ought to be done in the light of day and he has no objection to this. **Senator Dever** indicated that another objection was that the administrative rules committee really acts as a body and it should be the larger body of the legislature that deals with these kinds of issues. Representative Koppelman indicated that because we are not a full time legislature we delegate responsibility and authority to certain groups like the legislative council and the administrative rules committee to act in our stead. When people make comments like that, like well, gee, this could be unconstitutional because the legislature is delegating authority to a smaller group of its own, they ignore the fact that the entire administrative rules process is in affect a delegated authority to make law, and lawmaking or policy making is an authority that clearly rests constitutionally with

the legislative branch of government. So if it is constitutional for us to delegate our lawmaking authority to the executive branch, it's certainly constitutional he would submit for us to oversee that process or have some sort of check and balance in place to deal with it. **Senator Wardner** inquired if Representative Koppelman knew why the house amended the bill. **Representative Koppelman** indicated was that this was done hastily. It was one of the last bills out of the judiciary committee in the house before crossover and he thinks frankly that some of the same issues discussed by this committee were brought up then. Representative Koppelman indicated that if you do amend the bill, and in view of what has been spoken of in the governors office concerns, he would be happy if the senate amends this bill and it goes into conference committee to work with both those offices to attempt to arrive at a solution to this whole process that is palatable to all concerned. That is what we should be striving for. **Senator Dever** indicated that he wondered how gigantic a task this is. Are looking for just a cursory review of administrative rules and then any that require further review would go to the next step. **Chairman Krebsbach** inquired about whether or not the agencies can already do this on their own. **Representative Koppelman** indicated they can't in this way. Yes, they can get rid of a rule but the way they do it is by going through the administrative rules promulgation process which is very lengthy, very cumbersome, requires a lot of time, a lot of publication, and then review by the administrative rules committee. Theoretically they could but it would be several months in doing and it would take a lot of time and money to do it. This would be a way to do it a little more streamlined he would think. Appearing before the committee in a neutral position on the bill was **Hlona A. Jeffcoat-Sacco**, director of the public utilities division of the public service commission. A copy of her written testimony is attached. **Don Litchfield** with the GNDA appeared in support of HB 1451. There were no questions from the committee. There was no further testimony in support



of, in neutral position on, or in opposition to HB 1451. **Chairman Krebsbach** closed the hearing on HB 1451. The discussion of HB 1451 was reopened at this time by **Chairman Krebsbach**. **Senator C. Nelson** indicated we have had at least three of these same bills in judiciary. Basically they covered sections two and three. She indicated she would just as soon not put them back into the bill. That was where the testimony opposed in the house was. There was reason to take two and three out of the original bill. **Senator Wardner** indicated that he concurred with Senator Nelson. He thinks we should pass the bill just the way it is and leave the amendments off. **Senator Dever** indicated that it seems to him that it is going to take them at least two years to review their rules. Then we can decide how they are going to deal with them. **Senator T. Mathern** indicated that he was wondering if the committee should further amend. He was thinking the first line sends up all kinds of authority that we are giving to that committee to march every administrative agency out with a schedule. He presumed they must know. Maybe we should amend to take that first line out and put administrative rules before the word committee on line 6 so that it is a more deliberate process by administrative rules committee. Why put together a schedule for every agency to review their administrative rules. He was just wondering if the first line sets it up for a bunch of conflict. **Senator Wardner** indicated that this sort of concerns him and he talked with the agencies and they don't have a problem with it. He really wants to protect what we have and it really concerns him when we start allowing the administrative rules committee to go and really start changing law and stuff without any input from the public and without any hearing process. This could be good if it is done in a good way. He has served on administrative rules three terms and it is amazing, sometimes some of the individuals do go too far and get carried away on some of this stuff. At this time **Chairman Krebsbach** explained to the guests in the room what the committee was working on. **Senator**

**Wardner** indicated that he can live with this. We only meet four times a year at most. We have other rules that we have to go through. We don't have time to review a lot of agencies so at most he could see one or two agencies coming in every time they meet and maybe saying hey, we don't have any rules. The schedule is going to be over a number of years and that is the way he would see it. He doesn't see having all of the agencies within this next biennium have to have the rules reviewed. That would be impossible. **Senator C. Nelson** indicated she would just be blunt. So what would happen if we just didn't have this? So what is the big change here? Are we just adding more stuff to the code? **Senator Wardner** indicated that all he would see was some of the agencies where there's industry that feels they have some rules that need to be looked at, they would go to the top of the list and they would be reviewed down the line. As far as bringing them all in he just doesn't see where it would be possible. **Senator T. Mathern** indicated that was why he raised the question. In light of what Senator Wardner said. It would appear that your committee would be irresponsible in not doing it. This would be a law saying that you had better do this. If you can't do it in four meetings, you had better create eight. Administrative rules committee better be meeting more, looking at more rules so you can get this done. It has the word "all" in there, all administrative rules. He indicated he was not that opposed to this if it would be done. **Chairman Krebsbach** asked if she was hearing him say that he would like to eliminate the wording in line 1, from the administrative rules committee shall establish a schedule for review and then put in, upon request by the administrative rules committee and administrative agency shall bring. **Senator T. Mathern** indicated that he would eliminate the first sentence. **Chairman Krebsbach** indicated that it makes it more palatable and makes it easier for the administrative rules committee to operate. **Senator T. Mathern** moved to delete the first sentence starting on line five, the administrative through rules on line 6, and

Page 6  
Senate Government and Veterans Affairs Committee  
Bill/Resolution Number HB 1451  
Hearing Date March 22, 2001

add the words administrative rules committee after the word the on line 6 page 1. He thinks this gets closer to what is possible and still meets the sponsors intent. It makes the bill better. The motion was seconded by **Senator C. Nelson**. Roll Call Vote indicated 6 Yeas, 0 Nays, and 0 Absent or Not Voting. A motion for a Do Pass As Amended was made by **Senator Wardner**. He indicated that he wanted to inform the committee that this is going to conference committee and we will see these other two amendments again. The motion was seconded by **Senator Dever**. Roll Call Vote indicated 3 Yeas, 3 Nays, 0 Absent or Not Voting. The motions fails. **Senator C. Nelson** moved a Do Not Pass as Amended, seconded by **Senator T. Mathern**. Roll Call Vote indicated 3 Yeas, 3 Nays, and 0 Absent or Not Voting. The motion fails. **Senator Wardner** moved that the bill be sent to the floor without committee recommendation on HB 1451 as amended. Motion seconded by **Senator Kilzer**. Roll Call Vote indicated 5 Yeas, 1 Nay and 0 Absent or Not Voting. **Senator Wardner** will carry the bill.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1451

Page 1, line 2, after "rules" Insert "and to provide for elimination of obsolete provisions and provisions that do not comply with law"

Page 1, line 5, after the period insert:

"1."

Page 1, after line 9, insert:

- "2. An agency may amend or repeal a rule if, after consideration of the rule by the administrative rules committee, the agency and committee agree that the rule amendment or repeal eliminates a provision that is obsolete or no longer in compliance with law.
3. If the administrative rules committee finds that, with regard to a rule reviewed under this section, any consideration exists under section 28-32-03.3 for which the committee may declare a rule void, then the procedures of section 28-32-03.3 apply with regard to that rule and the committee may proceed according to that section with consideration of whether to find the rule void."

Renumber accordingly

March 22, 2001

*13*  
*3-23-1*

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1451

Page 1, line 5, remove "The administrative rules committee shall establish a schedule for review of all"

Page 1, line 6, remove "administrative rules." and after the first "the" insert "administrative rules"

Renumber accordingly

Date: 3/22/01  
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1451 (Engrossed)

Senate GOVERNMENT AND VETERAN'S AFFAIRS Committee

☐ Subcommittee on \_\_\_\_\_  
or  
☐ Conference Committee

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

Action Taken Amend

Motion Made By Sen. T. Mathern Seconded By Sen. C. Nelson

Senators	Yes	No	Senators	Yes	No
Senator Karen Krebsbach, Chr.	✓		Senator Carolyn Nelson	✓	
Senator Dick Dever, Vice-Chr.	✓		Senator Tim Mathern	✓	
Senator Ralph Kilzer	✓				
Senator Rich Wardner	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment \_\_\_\_\_

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

Date: 3/22/01  
Roll Call Vote #: 2

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1451 (Engrossed)

Senate GOVERNMENT AND VETERAN'S AFFAIRS Committee

☐ Subcommittee on \_\_\_\_\_  
or \_\_\_\_\_

☐ Conference Committee

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

Action Taken No Pass as Amended

Motion Made By Sen. Wordner Seconded By Sen. Dever

[illegible]

Total (Yes) 3 No 3

Absent 0

**Floor Assignment**

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

Date: 3/22/  
Roll Call Vote #: 3

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1451 (Engrossed)

Senate GOVERNMENT AND VETERAN'S AFFAIRS Committee

☐ Subcommittee on \_\_\_\_\_  
or  
☐ Conference Committee

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

Action Taken Do Not Pass as Amended

Motion Made By Sen. C Nelson Seconded By Sen. T. Mathern

Senators	Yes	No	Senators	Yes	No
Senator Karen Krebsbach, Chr.	✓		Senator Carolyn Nelson	✓	
Senator Dick Dever, Vice-Chr.		✓	Senator Tim Mathern	✓	
Senator Ralph Kilzer		✓			
Senator Rich Wardner		✓			

Total (Yes) 3 No 3

Absent 0

Floor Assignment \_\_\_\_\_

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



Date: 3/22/01  
Roll Call Vote #: L

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1451 (F)

Senate GOVERNMENT AND VETERAN'S AFFAIRS Committee

☐ Subcommittee on \_\_\_\_\_  
or  
☐ Conference Committee

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

Action Taken No Recommendation as Amended

Motion Made By Sen. Wardner Seconded By Sen. Kilzer

[illegible]

Total (Yes) 5 No 1

Absent 0

Floor Assignment Sen. Wardner

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

**REPORT OF STANDING COMMITTEE**

HB 1451, as engrossed: Government and Veterans Affairs Committee (Sen. Krebsbach, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **BE PLACED ON THE CALENDAR WITHOUT RECOMMENDATION** (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). Engrossed HB 1451 was placed on the Sixth order on the calendar.

Page 1, line 5, remove "The administrative rules committee shall establish a schedule for review of all"

Page 1, line 6, remove "administrative rules." and after the first "the" insert "administrative rules"

Renumber accordingly

2001 HOUSE JUDICIARY  
CONFERENCE COMMITTEE  
HB 1451

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HIB 1451-conference

House Judiciary Committee

☒ Conference Committee

Hearing Date 04-09-01

Tape Number	Side A	Side B	Meter #
TAPE III	x		01 to 1370
Committee Clerk Signature <i>Joan Davis</i>			

Minutes: Chairman Grande opened the hearing on conference committee hearing on HIB 1451.

Note that all members of the committee are present.

Senator Wardner: The Senate amended the bill for only one reason, the way we read it, the administrative rules would have to review all of the administrative rules, have to set up a schedule, have to get it done in the next two years. We decided to take it out and if they want to set up a schedule in the next two years, the chairman would be free to do that. We took out line 5 (refers to amendments 10728,0209)

Chairman Grande: Rep Koppelman has asked to for the opportunity to speak to this committee and I would like him to come forward at this time.

Rep Koppelman: I would like to address a point that was brought up, it is correct that the committee can review a rule when ever they want. The only reason that language appears in the bill is because the discussion has always been, how do we get at the existing bill. Instructing the committee to set up a schedule to review would be productive. It would undertake some review

of the existing rules. Reviewing the rules would not be accomplished in one single interim. We have been working with the governors office to draft some amendments to this bill that would be acceptable. We don't have them at this time, but ask that the committee come back to consider them.

Rep Fekre: Do you have any problem with Senator Wardner's amendment.

Rep Koppelman: No.

Chairman Grande: If I understand correctly, there is just a concern of the shall or may.

Senator Wardner: That is what happens with the amendments. I don't know at this point that the rest of the language is important because this bill gives the Administrative Rules Committee the ability to tell an agency, we would like you to bring your rules forward for a review with us. As of right now, I question whether the Administrative Rules could do that now.

Chairman Grande: I have not seen anything here that says that we have to complete this in a two year time frame. I would say this is a standing opportunity and we could do it if we stay with the Senate amendments. The only thing would be the must vs shall.

Senator Wardner: It says they shall, I was looking at the next biennium that this had to be done and this is why we took it out.

Senator Nelson: I think when we were discussing this, the first sentence, you had to set up the schedule first and in order to establish a schedule, you have to investigate every one of the agencies to see what is there. So that you know what the priorities are and that takes a lot of time. If we take out that sentence and say the Administrative Rules by request can pull up any one of them. I have a question about the amendments that are being proposed, if they are new to the bill or an extension.

Rep Koppelman: The amendments are germane to the bill.

Bob Harnes: The amendments are essentially what the governor's office and the some of the legislator's efforts in trying to resurrect section two of the bill as it was originally drafted. We have two issues that we are trying to resolve. Whether section one of the bill, as it stands now, should be substituted or left in. The other issue is section two, we have rewritten it to say you could have the summary treatment, amending or repealing it at the agency's request that the committee would concur.

Senator Wardner: Bob, so you are talking about the original bill.

Bob Harnes: Yes, goes on to give an explanation.

Rep Eckre: In the House minutes, they deleted lines one through twenty, can you tell me why that did that.

Rep Koppelman: House Committee said lets just cut section two and three out and get it out to the floor. We will talk about it when it gets to the Senate.

Rep Eckre: It also says the insurance agency, tax department and some others were opposed to this bill.

Rep Koppelman: The testimony was against section three primarily.

Chairman Grande: Is there any other discussion.

Rep Eckre: Are we waiting for an amendment.

Chairman Grande: I would like to take a look at the new amendments (looking at 10728.0202) we can accept them or deny them. Does the word shall mean the same as must sometimes it does and sometime it doesn't or can we keep the amendments in tact.

Senator Nelson: Makes a comment.

Senator Wardner: The way I see it, whoever is chairman of the Administrative Rules Committee at the first reading and they decide they want to take four agencies and call up their old rules, they could.

Chairman Grande: It sets it up for communication on the rules to the rules committee.

Senator Wardner: There is no question that we leave it up to the chairman and the committee, if the chairman wants to pursue this.

Chairman Grande: I would like to adjourn this committee at such time when the amendments are ready.

Senator Wardner: We could look at this tomorrow, you are Judiciary and we are GVA, is there any possibility.

Chairman Grande: I would be happy with that. We will recess until the amendments are ready.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1451-conference-b

House Judiciary Committee

☒ Conference Committee

Hearing Date 04-10-01

Tape Number	Side A	Side B	Meter #
TAPE II	x		01 to 854
Committee Clerk Signature <i>Joan Diers</i>			

Minutes: Chairman Grande: called the community to order on HB 1451. Note for the record that all conferees are present. You have before you a copy of the proposed amendments prepared by Rep Koppelman, that we talked about yesterday.(10728.0209) I will give you a minute to look at them and then we can discuss them. As you can see on those amendments, they are pretty much the same as the original bill, section two, only with clarification, as to how that procedure will take place. I understand with a discussion with Rep Koppelman and the Governors Office this was worked out together. They feel that this is a very good way to proceed.

Rep Eckre: Did we except the proposed amendments that Senator Wardner talked about yesterday.

Chairman Grande: The proposed amendments of Senator Wardner are the Senate amendments. We have in front of us, the House bill that was amended by the Senate. The discussion is to accept or not accept the Senate amendments. We also have in front of us the other option of the Koppelman amendments.



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House Judiciary Committee

Bill/Resolution Number HB 1451

Hearing Date 04-10-01

Rep Eekre: I move that the House recede to the Senate amendments and further amend with 10728.0209.

Rep Kingsbury: Second.

Chairman Grande: we have a motion to accept the Senate amendments and further amend with the amendments proposed by Rep Koppelman. Any further discussion.

Senator Wardner: Just so I am clear, that amendment part A, the agency initiates the request for the review. In B, we say that we have to give notice to regulatory community.

Senator Kilzer: In the notice to the regulatory community, is that specified in the news paper or a mailing to each one or what is that.

Chairman Grande: There is a set procedure for Administrative Rules that the agencies do follow. They will continue following in that fashion. To me, it is the Legislative intent for this to continue as they would for any other Administrative Rule. No, clarification then Mr Harmes.

Bob Harmes: I think, the amendments that you have in front of you are a mechanism for summary, amending or repealing rules. The opening language in the amendment in section two, it begins "an agency may amend or repeal a rule without complying with the requirements of this chapter. We would notify those companys so they would know what the agency is proposing to do.

Senator Nelson: Do you have a definition of regulated community.

Bob Harmes: It is not defined but is recognized.

Senator Nelson: The reason I ask is we are talking about agencies and then we switch to regulated community.

Chairman Grande: Explains the meaning of regulated community.

Page 3  
House Judiciary Committee  
Bill/Resolution Number HB 1451  
Hearing Date 04-10-01

Senator Nelson: I was thinking more of Human Services and some of those giant agencies and what would comp to a regulated community.

Chairman Grande: Explains which department it is and how they are notified. The clerk will call the roll on purposed amendments. Voice vote on amendments. The motion carries.

#### DISCUSSION

Chairman Grande: Call the roll on the bill as amended. The House accede to the Senate amendments. The motion passes with a vote of 5 YES, 1 NO and 0 ABSENT. The committee is adjourned.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1451

That the House accede to the Senate amendments as printed on page 1121 of the House Journal and page 952 of the Senate Journal and that Engrossed House Bill No. 1451 be further amended as follows:

Page 1, line 5, after the period insert:

"1."

Page 1, after line 9, insert:

- "2. An agency may amend or repeal a rule without complying with the other requirements of this chapter relating to adoption of administrative rules and may resubmit the change to the legislative council for publication provided:
  - a. The agency initiates the request to the administrative rules committee for consideration of the amendment or repeal;
  - b. The agency provides notice to the regulated community, in a manner reasonably calculated to provide notice to those persons interested in the rule, of the time and place the administrative rules committee will consider the request for amendment or repeal of the rule; and
  - c. The agency and the administrative rules committee agree the rule amendment or repeal eliminates a provision that is obsolete or no longer in compliance with law and that no detriment would result to the substantive rights of the regulated community from the amendment or repeal."

Renumber accordingly

April 10, 2001

VR  
4/10/01

CONFERENCE COMMITTEE AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1451 JUD 04-11-01

That the House accede to the Senate amendments as printed on page 1121 of the House Journal and page 952 of the Senate Journal and that Engrossed House Bill No. 1451 be further amended as follows:

Page 1, line 5, after the period insert:

"1,"

Page 1, after line 9, insert:

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  - c. The agency and the administrative rules committee agree the rule amendment or repeal eliminates a provision that is obsolete or no longer in compliance with law and that no detriment would result to the substantive rights of the regulated community from the amendment or repeal."

Renumber accordingly

Date: 04-10-01

### Roll Call Vote #

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. *HB-1451*

House

Committee



Subcommittee on

or

**X**

## Conference Committee

Legislative Council Amendment Number

### Action Taken

Action Taken House accede to Sen amend & further amend

**Motion Made By**

Motion Made By Rep Eckre Seconded By Rep Kingsbury

[illegible]

**Total**

(Yes)

No

**Absent**

### Floor Assignment

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

**REPORT OF CONFERENCE COMMITTEE**

**HB 1451, as engrossed:** Your conference committee (Sens. Wardner, Kilzer, C. Nelson and Reps. Grande, Kingsbury, Eckre) recommends that the **HOUSE ACCEDE** to the Senate amendments on HJ page 1121, adopt further amendments as follows, and place HB 1451 on the Seventh order:

That the House accede to the Senate amendments as printed on page 1121 of the House Journal and page 952 of the Senate Journal and that Engrossed House Bill No. 1451 be further amended as follows:

Page 1, line 5, after the period insert:

"1."

Page 1, after line 9, insert:

- "2. An agency may amend or repeal a rule without complying with the other requirements of this chapter relating to adoption of administrative rules and may resubmit the change to the legislative council for publication provided:
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  - c. The agency and the administrative rules committee agree the rule amendment or repeal eliminates a provision that is obsolete or no longer in compliance with law and that no detriment would result to the substantive rights of the regulated community from the amendment or repeal."

Renumber accordingly

Engrossed HB 1451 was placed on the Seventh order of business on the calendar.

REPORT OF CONFERENCE COMMITTEE  
(ACCEDE/RECEDE) - 420

07398

(Bill Number) 1451 (, as (re)engrossed):

Your Conference Committee

For the Senate:

Sen Wardner  
Sen Kulzer  
Sen C Nelson

For the House:

Chm Strand  
Rep Kingsbury  
Rep Eckert

☐ recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)  
723/724 725/726 8724/W726 8723/W725  
the (Senate/House) amendments on (SJ/HJ) page(s) 1121 - \_\_\_\_\_

☐ and place \_\_\_\_\_ on the Seventh order.  
127

☒ , adopt (further) amendments as follows, and place  
1451 on the Seventh order:

☐ having been unable to agree, recommends that the committee be discharged  
and a new committee be appointed. 690/515

((Re)Engrossed) 1451 was placed on the Seventh order of business on the  
calendar.

DATE: 04/10/01

CARRIER: \_\_\_\_\_

LC NO. 10228 , 0210 of amendment

LC NO. \_\_\_\_\_ of engrossment

Emergency clause added or deleted \_\_\_\_\_

Statement of purpose of amendment \_\_\_\_\_

(1) LC (2) LC (3) DESK (4) COMM.

2001 TESTIMONY

HB 1451



## **H.B. 1451**

**Presented by:** Illona A. Jeffcoat-Sacco

**Before:** House Judiciary Committee  
Honorable Duane L. DeKrey, Chairman

**Date:** 31 January 2001

### **TESTIMONY**

Chairman DeKrey and members of the House Judiciary Committee, I am Illona A. Jeffcoat-Sacco, director of the Public Utilities Division of the Public Service Commission. The Commission asked me to appear here today in opposition to H.B. 1451.

Let me say at the onset that subsection one of the proposed new section seems to be a reasonable approach to addressing the concerns often raised by members of the Administrative Rules Committee (ARC). Such an organized, scheduled review of existing rules would go far toward opening the lines of communication between the ARC and the agencies involved in rulemaking. If such a discourse were to take place over a biennium, perhaps the ARC's concerns with existing rules would be satisfactorily addressed.

However, we do have some concerns with other provisions of the bill which we would like to bring to your attention. Our main concern involves subsection three of the new section. This language would authorize the Legislature's Administrative Rules Committee to void any current, effective, administrative rule, which the Administrative Rules Committee is reviewing under the schedule proposed by subsection one of the new section, for any of the reasons mentioned in current law for voiding newly

promulgated rules which come before the Committee. We have substantial concerns with the voiding provisions of 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 in the effectiveness of a rule, those affected could not rely on that rule in choosing a course of action. H.B. 1451 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 and the regulatory analysis requirement in current law, among other provisions. H.B. 1451 could negatively impact all North Dakotans who have relied on the existence of an effective rule and acted on that reliance. Certainty is a very important consideration in both business and personal decisions. H.B. 1451 calls the certainty of long standing

administrative rules into question, without any of the protections offered citizens by either the legislative or administrative processes.

We have an additional minor concern with the bill. Subsection two of the proposed new section seems to limit an agency's authority to amend or repeal existing rules to those which the Administrative Rules Committee has reviewed under subsection one, and then only to those on which there is an agreement to amend or repeal between the ARC and the agency. It is a well settled legal principal that the authority to enact includes the authority to amend or repeal. Without the three legs of the rulemaking stool, an agency's rulemaking powers are rendered almost ineffective. When the authority to repeal or amend is limited, as it appears to be in this bill, an agency's rulemaking hands are tied which will undoubtedly affect that agency's ability to carry out its legislative mandate.

If the limitations in subsection two are meant to apply only to rules as they come up for the scheduled review in subsection one, clarifying language should be added to that effect.

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



# NORTH DAKOTA HOUSE OF REPRESENTATIVES



COMMITTEES:  
Appropriations

Representative Kim Koppelman  
District 13  
13 First Avenue Northwest  
West Fargo, ND 58078-1101

STATE CAPITOL  
600 EAST BOULEVARD  
BISMARCK, ND 58505-0360

## Testimony on House Bill 1451 before the House Judiciary Committee

1-31-01

Good Afternoon, Chairman Dekrey and Members of the House Judiciary Committee. For the record, I am Rep. Kim Koppelman and I represent District 13. I appear before you today in support of House Bill 1451.

As you may be aware, the North Dakota Administrative Code now dwarfs the North Dakota Century Code. In other words, the government "rules and regulations" our citizens and businesses are subject to are far more voluminous than the laws those of us they elect to represent them have passed. This is even more alarming, when you consider that the Administrative Code is a product of the last 25 years or so, while the Century Code represents the compiled, standing law since statehood.

Many legislators can attest to being accosted by a constituent about the "dumb law" we passed, only to learn, upon investigation, that the problem isn't the law at all, but an administrative rule. The legislature has taken great steps in recent years to address this problem.

Since 1995, the Legislature's Administrative Rules Committee has had the authority to void or agree with agencies to amend rules which stray from legislative intent, exceed statutory authority or otherwise go beyond the boundaries of appropriate rule making. Mr. Chairman and members of the committee, this process is working well and has, I believe, led to a closer working relationship and a proper check and balance between the legislative and executive branches of government in North Dakota.

There is one problem with the current procedure, however. It can only be exercised when new rules are being made and has no impact on rules which have been in existence for many years. This bill would create both a logical procedure for reviewing old rules and also apply the current role of the Administrative Rules Committee to old, as well as new rules.

I believe this would be a "win-win" proposition because it would save money, time and effort, by allowing agencies to amend or delete rules which are antiquated or need updating, without going through the expensive, time-consuming promulgation process. It also calls for the cooperative, collaborative process between these two branches of government, for cleaning up old rules, which has worked very well for the past six years, in creating new ones.

Some may oppose this concept and point out that the legislature can repeal or change administrative rules now, through bill introduction during each legislative session. Technically, that is true, but practically, it's an unworkable solution.

Legislators simply don't have the time or information necessary to individually review the massive administrative code, looking for antiquated or undesirable rules. In fact, seldom are rules changed through legislative action and in the rare cases that it does occur, it is typically the result of constituent complaint about a rule which has become so onerous that it has had an extremely negative effect. This bill gives all of us in state government the opportunity to be proactive, rather than reactive, and to deliver better, less oppressive government for the people we serve.

Mr. Chairman and members of the committee, I urge your favorable consideration of this bill and I'd be glad to attempt to answer any questions you may have.

**TESTIMONY BEFORE THE  
HOUSE JUDICIARY COMMITTEE  
REGARDING  
HOUSE BILL NO. 1451  
JANUARY 31, 2001**

Chairman DeKrey and members of the Committee, my name is Melissa Hauer. I am the Director of the Legal Advisory Unit for the Department of Human Services. I appear before you to testify regarding House Bill 1451. The Department is opposed to this bill and we urge you to give it a do not pass recommendation.

The Administrative Rules Committee currently reviews all administrative rules being promulgated by those agencies governed by the Administrative Practices Act (NDCC ch. 28-32). When the Administrative Rules Committee reviews new rules, it has the authority to void all or part of a rule within ninety days after it is published in the North Dakota Administrative Code. This bill would expand that authority to allow the Administrative Rules Committee to review any rule at any time, even those that have already been reviewed by the Administrative Rules Committee upon promulgation, as well as those that have been in place for years. The Administrative Rules Committee would also be given the power to void a rule regardless of how long it has been in existence.

A bill that was almost identical to this bill was introduced during the 1997 session (HB 1191). It would have given the Administrative Rules Committee the power to call up any existing administrative rule for review upon thirty days notice to an agency and to void the rule. That bill was vetoed by Governor Schafer.

Chapter 28-32 of the North Dakota Century Code already contains stringent requirements for how administrative rules may be developed. Rules are drafted and reviewed by the agency; a notice is published in every county newspaper in the

state; a public hearing must be held at which time any person wishing to make comments about the proposed rules may speak; written comments must be accepted by the agency for at least thirty days after the public hearing; the agency must consider all comments made by the public and must summarize its consideration and its response to each comment; the agency must then obtain an opinion from the Attorney General's office as to the legality of the rules; the rules must be published by the Legislative Council and are then reviewed by the Administrative Rules Committee which can void all or any part of a rule.

In light of these stringent requirements, this bill is unnecessary. By enacting a law, the Legislature itself has the authority to change any administrative rule it chooses. An agency also has the authority to change a rule by the process contained in chapter 28-32. Any person interested in a rule also has the right under current law to petition an agency for reconsideration or amendment of a rule. The Administrative Rules Committee already has the authority to void all or part of a rule within ninety days of the rule being published. To extend that authority beyond the initial ninety days to allow the Committee to strike down a rule at any time it chooses is troublesome for at least several reasons.

The Legislature as a whole delegates authority to administrative agencies to deal with the sometimes massive and complex issues that arise when a law is executed. This bill would allow that authority to be substituted to one legislative committee. The practical effect of this would be to give one committee of the Legislative Assembly the authority to substitute its own judgment for the judgment of the whole Legislature and that of the agency to which such authority has been delegated. The power to delay, void, or negotiate changes to administrative rules is the power to make law. As a result, one committee is given the power to make law.

There are problems with the other practical effects of the bill as well. If administrative rules are subject to being voided at the desire of one committee at any time, agencies and those who are regulated by them will forever live with uncertainty as to what rules govern their activities. For instance, the Department of Human Services is concerned about the impact this may have to the investor who wishes to build a multi-million dollar residential child care facility if the investor has no confidence in the regulatory climate in which he is expected to do business. Or, for example, the state would incur substantial expense to develop an entirely new child support system if the Administrative Rules Committee found all or even some of the child support rules 'arbitrary or capricious', and changed the method or manner in which such obligations are determined.

There are numerous safeguards already in place which govern the rulemaking process. This bill is not only unnecessary, it poses several constitutional and practical problems. For these reasons, we urge a do not pass recommendation on House Bill 1451. I would be happy to try to answer any questions the Committee members may have. Thank you.

Testimony by:

Melissa Hauer, Director  
Legal Advisory Unit  
ND Dept. Of Human Services





# NORTH DAKOTA HOUSE OF REPRESENTATIVES

STATE CAPITOL  
600 EAST BOULEVARD  
BISMARCK, ND 58505-0380



COMMITTEES:  
Appropriations

Representative Kim Koppelman  
District 13  
11st Avenue Northwest  
Fargo, ND 58078-1101

## Testimony on House Bill 1451 before the Senate Government and Veterans Affairs Committee

3-22-01

Good morning, Madam Chairman and Members of the Senate Government and Veterans Affairs Committee. For the record, I am Rep. Kim Koppelman and I represent District 13, which consists of West Fargo and a small surrounding rural area. I appear before you today in support of House Bill 1451.

I am also offering an amendment which would essentially restore the bill to its original form. It was hastily amended before Crossover in the House committee and I would encourage you to consider the original contents of the bill.

As you may be aware, the North Dakota Administrative Code now dwarfs the North Dakota Century Code. In other words, the government "rules and regulations" our citizens and businesses are subject to are far more voluminous than the laws those of us they elect to represent have passed. This is even more alarming, when you consider that the Administrative Code is a product of the last 25 years or so, while the Century Code represents the compiled, standing law since statehood.

Many legislators can attest to being accosted by a constituent about the "dumb law" we passed, only to learn, upon investigation, that the problem isn't the law at all, but an administrative rule. The legislature has taken great steps in recent years to address this problem.

Since 1995, the Legislature's Administrative Rules Committee has had the authority to void or agree with agencies to amend rules which stray from legislative intent, exceed statutory authority or otherwise go beyond the boundaries of appropriate rule making. Madam Chairman and members of the committee, this process is working well and has, I believe, led to a closer working relationship and a proper check and balance between the legislative and executive branches of government in North Dakota.

There is one problem with the current procedure, however. It can only be exercised when new rules are being made and has no impact on rules which have been in existence for many years. This bill would create both a logical procedure for reviewing old rules and also apply the statutory role of the Administrative Rules Committee to existing rules.

I believe this would be a "win-win" proposition because it would save money, time and effort, by allowing agencies to delete or amend rules which are antiquated or need updating, without going through the expensive, time-consuming promulgation process. It also applies the cooperative, collaborative process between these two branches of government for cleaning up old rules, which has worked very well for the past six years, in creating new ones.

Some may oppose this concept and point out that the legislature can repeal or change administrative rules now, through bill introduction during each legislative session. Technically, that is true, but practically, it's an unworkable solution.

Legislators simply don't have the time or information necessary to individually review the massive administrative code, looking for antiquated or undesirable rules. In fact, seldom are rules changed through legislative action and in the rare cases that does occur, it is typically the result of constituent complaint about a rule which, by that time, has become so onerous that it has already had an extremely negative effect. This bill gives all of us in state government the opportunity to be proactive, rather than reactive, and to deliver better, less oppressive, more responsive government for the people we serve.

Madam Chairman and members of the committee, I urge your adoption of the proposed amendment and your favorable consideration of this bill and I'd be glad to attempt to answer any questions you may have.

## **H.B. 1451**

**Presented by:** Illona A. Jeffcoat-Sacco

**Before:** Senate Committee on Government and Veterans Affairs  
Honorable, Karen Krebsbach, Chair

**Date:** 22 March 2001

### **TESTIMONY**

Madam Chairman and members of the Senate Committee on Government and Veterans Affairs, I am Illona A. Jeffcoat-Sacco, director of the Public Utilities Division of the Public Service Commission. The Commission is neutral on engrossed H.B. 1451 and asked me to appear here today only to let you know that the Commission opposed the portions of the bill that were deleted by the House. We appreciate the House addressing our concerns through its amendments.

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