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Deanna Goldrath 10/2/03
Operator's Signature Date

2003 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1212

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1212

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 1-14-03

Tape Number	Side A	Side B	Meter #
1		XX	14.5--end
2	XX		00--15.6
Committee Clerk Signature	Pam Dever		

Minutes: **Chairmen Keiser:** Hearing is open for HB 1212. Testimony is being passed out.

Rep. Dosch: Support bill. I appear before you as a businessman. **(SEE ATTACHED)** I feel you will hear some opposition from various government agencies. I don't think they like this bill because it does step on some toes. It does take away some freedom to impose rules whenever they want. It will require them to do a little more work before they issue another rule. This bill is intended to do that. I would much rather have one agency take more time to consider the impact of what they are doing small business before a rule is issued; then to have hundreds of small businesses have to deal with the consequences after it is implemented.

Rep. Ekstrom: I am a co-sponsor. This bill is not intended to circumvent environment regulations, public health, and life safety that protect the overall environment. Right?

Rep. Dosch: Absolutely not. Purpose is to see what the burden is on small business to comply with the new rule that is coming out. We are not saying that small business should be exempt.

Rep.Kasper: 20.0 Did you consider putting in this bill requiring the regulatory authority to review the current rules in effect that they might look at modifying them to benefit small business in our state?

Rep. Dosch: We did not do that. It would be a good idea.

Rep. Ruby: This would not exempt any rules and regulations that are federal?

Rep. Dosch: No, this deals with state rules.

Jim Henderson, SBA, Denver, CO: support HB1212. **(SEE ATTACHED TESTIMONY)**

Rep. Severson: Are there other state that have followed this program (Reg. Flex Act) ?

Jim: This is an on going effort. We have pushed it at some other state conferences before. This is the first time we have taken the content and molded model legislation. There are several states that have it in place: CT, OK, NY, NJ. Puerto Rico.

Rep. Ekstrom: I am a small business owner. Can you give us a percentage of how many small business in the region and overall employment? How many are small VS large?

Jim: I can get the number. I'm not sure what it is with our definition. 500 employees or less is small; 96% of firms fall under that. 80% in this state are 20 employees or less. I will get the other info for you.

Chairman Keiser: Would you explain the judicial review; process, authority, penalty? Why would you take it to court?

Jim: You don't go to court unless pressed to do that. The judicial review is important because it gives them an avenue, an independent party. At the federal level, we have repeatedly done that

Rep. Zaiser: In the states you have the model working, have you been able to see a success? I was a planning director in a city and we used a simple version of this within city codes. We

found that it almost became counter productive in the time it took to adjust to fit the regulations, etc. Have you had any experience with that?

Jim: Each state has shown that there has been savings. I have found that businesses have felt it was counterproductive. I have found agencies that felt it was taking too much of their time. I'm sure you will hear from some agencies. One rule does not fit all.

Bill Butcher, NFIB: Support HB1212.**(SEE ATTACHED TESTIMONY)** I also bring a letter from Russell Henegard to share with you.**(SEE ATTACHED)** Please do pass. I would like to comment on judicial review. I called legal dept. in D.C. They told me of several cases in which the small business cases were referred back to agencies and told to start again. They did not have the small businesses best interest in mind. Another case, the agency was required to pay legal fees. So there can be penalty involved.

Dave McvIver, Pres. Bis-Mandan Chamber of Commerce: In Support of HB1212. I talked to our members. They are extremely pleased with this bill. This bill makes more sense to them, than other legislation that has come down.

John Carlson, Fargo: Small business owner, run a catering business, and NFIB member. In support of bill. I deal with this everyday. I am here to talk about what is going on with the ND sales tax code. We have 92 cities in ND that have a local option tax in two counties. The bureaucracy of this system upon small business is unreal. It takes my and my general manager 2 hours each quarter just to figure out my spread sheet to get it right for the tax department. We also have to do it for MN. It only takes me ten minutes to do the MN one.They have neat classifications

(end side B, tape 1)(begin tape 2, side A) I am going up to the Tax Dept. And telling this story again. It has to be fixed. My job is to push food, create jobs, send income to my house and your house.

David Glatt, ND Health Dept.: Neutral on bill. We are in support of small businesses. We try to minimize the impact of some of the regulations. I will address what is an adverse impact. Right now it can mean anything to anybody. The state has been very judicious in accepting federal requirements and turning back federal. There is an administrative process in our rule. If someone feels they are aggrieved, they can to administrative process prior to going to judicial review. May not want to jump right to a court hearing.

Illona Jeffcoat-Sacco, PSC: (3.6) Opposed . I do have an amendment. **(SEE ATTACHED)** If you amendment this bill, then we will be neutral.

Rep. Froseth: (8.4) How do you determine if the impact will be greater then $25,00 or $50,000 by your analysis.

Illona: I can't say that we quickly do. It is easier in some cases than others. I do most of the rule oversight. We had a rule about putting a different kind of a gate on a farm, a safety issue, so that you could get the weigh trucks in and out. You can find out by asking people in the industry, what the cost of the new gate or scale. You times the number of operators and you get an impact. In some cases, I can invision a telecommunications rule that may not impact the telephone companies by $50,000, so I don't do a regulatory analysis. But is could impact your small businesses by $100.00 each. Is this a hundred times whatever and figure that out. That's part of why we don't want to be forced to do it in every situation.

Rep. Thorpe: Is this bill different then SB2832?

Illona: I don't see it as a lot different. In SB2832 , without this bill, we have to look at all the same things. People are able to comment. We have to notice, get info, balance that info, and we have to explain how we did it. In our order, we have to explain.

Rep. Kasper: Your testimony is the exact reason we want this bill. I think the intent of this bill to change the mind set of the bureaucracy of our state to address the concerns of the small business people of the state. This will take time.

Rep. Ruby: There was no consideration of allowing some flexibility for each proposal to determine the cost. Does the small business go out of business to comply or if it's a small change then not. Did you talk to anyone to come up with a different number then $25,000? Can there we some approach to flexibility.

Illona: I have no problem with that. It was hard to come up with a number at the last minute. I think the philosophy of a threshold might be a helpful thing. I would be willing to brainstorm with some people about what the number ought to be. I think it's overkill if you have to do it for everything.

Rep. Severson: If we did not put in a threshold at all, would you tell us in next session that we had to? Isn't it better to have the information enough to have a threshold?

Illona: Yes. We do have it in an informal way. We have a draft. I agree that next session we would have more info from all agencies as to where that line should be.

Hearing Closed

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1212

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 1-15-03

Tape Number	Side A	Side B	Meter #
4	XX		37.0--end
Committee Clerk Signature	Pam Dever		

Minutes: **Chairman Keiser:** Take a look at HB1212.

Rep. Severson: The agencies wanted a threshold of $25,000. I have not done anything with that. I like the bill the way it is without the amendment. I believe this bill is good enough to pass the house the way it is. I hate to give in to agencies. I think we need to send a message. There has been no fiscal attached to it. I will do what committee wants. I like the bill.

Rep. Dosch: I would like to see the bill stay the way it is.

Chairman Keiser: Agencies are use to working with thresholds. There will be a tremendous reaction. You could loose the whole bill by not putting in a threshold. That's my fear.

Rep. M. Klein: I move a DO PASS.

Rep. Ruby: I second

VOTE: 12 YES 1 NO 1 Absent **PASSED** Rep. Severson will carry

FISCAL NOTE

Requested by Legislative Council
01/10/2003

Bill/Resolution No.: HB 1212

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	$0	$0	$0	$0	$0	$0
Expenditures	$0	$0	$0	$0	$0	$0
Appropriations	$0	$0	$0	$0	$0	$0

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

0

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*
   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

   B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

This fiscal note assumes that the adopting agencies would use existing staff to prepare the analyses and economic impact statements required by this bill, thus, appropriations or expenditures would not be affected.

   C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Pam Sharp	**Agency:**	OMB
Phone Number:	328-4606	**Date Prepared:**	01/10/2003

Date: 1/15/03
Roll Call Vote #:

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1212

House **Industry, Business & Labor** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Klein Seconded By Ruby

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Rep.Boe	✓	
Rep.Severson, Vice-Chair	✓		Rep.Ekstrom	✓	
Rep.Dosch	✓		Rep.Thorpe	✓	
Rep. Froseth	✓		Rep. Zaiser		✓
Rep. Johnson	✓				
Rep.Kasper	✓				
Rep. Klein	✓				
Rep. Nottlestad	✓				
Rep. Ruby	✓				
Rep.Tieman	A				

Total (Yes) ~~13~~ 12 No ~~0~~ 1

Absent 1

Floor Assignment Severson

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

Amendments.

REPORT OF STANDING COMMITTEE (410)
January 16, 2003 12:11 p.m.

Module No: HR-08-0643
Carrier: Severson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1212: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **DO PASS** (12 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). HB 1212 was placed on the Eleventh order on the calendar.

2003 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1212

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1212

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 02-26-03

Tape Number	Side A	Side B	Meter #
1	xxx		0-end
Committee Clerk Signature	Lisa VanBerkom		

Minutes:Chairman Mutch opened the hearing on HB 1212. Senator Heitkamp was absent.

HB 1212 relates to requirement of consideration the effect of proposed administrative rules on small businesses, organizations, and political subdivisions; and to provide an effective date.

Testimony is support of HB 1212

Representative Dosch introduced the bill. See attached testimony.

Representative Keiser also spoke in support of the bill. He stated that this bill asks for the consideration of the implications these administrative rules will have on businesses.

Representative Keiser stated that he is the President of the Charles Hall Youth Home, a home for troubled boys in Bismarck. This home distributes a brochure featuring pictures of the children living there. These pictures were only published with the permission of the child, the parents, the social worker, and the court. The department of Human Services recently imposed a rule that will not allow them to use the kids in the brochure anymore. The new policy states that Charles Hall will have to hire actors and pay them to pose for pictures for the brochure. The budget is limited,

therefore causing the stop of production of the brochures. This new policy had an adverse effect on the business. Not having the brochure caused a decrease in fund raising.

Senator Krebsbach: What do you see the ruling of the administrative committee in this process being?

Representative Keiser: When the committee meets, the agency brings in the rule and shares it with the committee for review.

Bill Butcher: NFIB introduced the testimony of Jim Henderson, Region VII Advocate Office of Advocacy, U.S. Small Business Administration. He could not attend the hearing. See attached. He also submitted his personal testimony. See attached.

John Carlson, owner of Oven Door Catering, Fargo, stated his support of the bill.

Marilyn Foss, North Dakota Bankers Association, stated for the record her support of the bill.

Opposing testimony

L. David Glatt, Environment Health Section Chief of the North Dakota Dept. of Health. See attached testimony. In his testimony he enclosed proposed amendments. See attached.

Senator Klein: You are already doing this aren't you?

Dave: Yes, that is one of our concerns with the bill because there are many duplications.

Senator Krebsbach: I have concerns about the language of subsection 5. Where does the judicial rule take place?

Dave: That is also something we are concerned about.

Illona Jeffcoat-Sacco, Public Service Commission, testified in opposition. See written testimony.

Senator Every: Is the PSC like the Health Dept. in that the Attorney General's opinion is considered?

Illona: Yes.

Mary Christensen, Dakota Resource Council, spoke in opposition. See attached.

Senator Nething: How does your committee form their view point?

Mary: We formed a legislative committee that meets via telephone weekly.

Rosie Sand, Dept. of Public Instruction, spoke in opposition. She states that this bill does not protect the citizens. It will affect school districts, and there is no time frame for this. It is also duplicative of the language already in the statute.

End testimony. No action taken at this time.

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1212

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 03-26-03

Tape Number	Side A	Side B	Meter #
1	xxxx		0-1940

Committee Clerk Signature Lisa VanBerkom

Minutes:Chairman Mutch opened the discussion on HB 1212. Senator Espegard was absent.

HB 1212 relates to requirement of consideration the effect of proposed administrative rules on small businesses, organizations, and political subdivisions.

Senator Klein: We got a note from Bill Butcher which ensured us that this only effects state agencies, not small businesses. I think what happened is at the federal level, congress passes a bill which requires federal agencies to present a fiscal note as to how it would effect business in the country. What we are doing is putting this bill in state statute. We can do what a lot of other states are doing. People making the rules will have to address what the effect might be on small business.

Senator Nething: My problem is we have various boards and commissions who have rule making authority. It seems to me that this covers any adopting agency. If someone can provide a definition of agency that means these agencies only. Are you under the impression that it dealt with all boards and commissions?

Representative Keiser: We did not address that issue.

Senator Krebsbach presented amendments from herself. The amendments puts this into a study.

Senator Krebsbach: Just in the title of the bill it applies to small business organizations and political subdivision. In the definition of small business it defines all businesses with 25 or fewer employees. The agency would have to consider all of those agencies when adopting a rule.

Senator Klein: If they don't have any business making rules or any idea of how much it will cost, they shouldn't be doing it. I think if other states can figure out how to do it, we can too. There are 13 states doing this right now.

Representative Dosch's amendments are presented to the committee. See attached.

Senator Nething moved to adopt Rep. Dosch's amendments. Senator Klein seconded.

Roll Call Vote: 3 yes. 3 no. 1 absent.

The committee recessed.

The committee was called back to order. All Senators were present.

Senator Nething presented amendments to the committee.

Senator Espegard moved to adopt amendment 30397.0101.

Senator Nething seconded.

Roll Call Vote: 5 yes. 2 no. 0 absent.

Senator Nething moved to adopt amendment 30397.0103. Senator Espegard seconded.

Roll Call Vote: 5 yes. 2 no. 0 absent.

Senator Nething moved to adopt Sen. Krebach's amendments.

Senator Heitkamp seconded.

Roll Call Vote: 7 yes. 0 no. 0 absent.

Senator Nething moved a DO PASS AS AMENDED. Senator Klein seconded.

Roll Call Vote: 7 yes. 0 no. 0 absent.

Carrier: Senator Nething

30397.0101
Title.

Prepared by the Legislative Council staff for
Representative Dosch
March 7, 2003

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1212

Page 2, remove lines 13 through 16

Page 2, line 17, replace "4." with "3."

Page 2, line 28, replace "5." with "4."

Page 3, after line 2, insert:

"5. This section does not apply to rules mandated by federal law.

6. The adopting agency shall provide the administrative rules committee copies of any regulatory analysis or economic impact statement, or both, prepared under this section when the committee is considering the associated rules."

Renumber accordingly

Date: 3-26-03
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

Senate 1212 Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 30397.0101

Action Taken Adopt Amendments from Rep. Dosch

Motion Made By Nething Seconded By Klein

Senators	Yes	No	Senators	Yes	No
Mutch	X				
Klein	X				
Krebsbach		X			
Nething	X				
Every		X			
Espegaard	A	A			
Wetzel		X			

Total (Yes) 3 No 3

Absent 1

Floor Assignment

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

Date: 3/26-03
Roll Call Vote #: 2

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

Senate 1212 Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 30397.0101

Action Taken Adopt Amendments from Rep. Dosch

Motion Made By Espegaard Seconded By Nething

Senators	Yes	No	Senators	Yes	No
Mutch	X				
Klein	X				
Krebsbach	X				
Nething	X				
Heitkamp		X			
Every		X			
Espegaard	X				

Total (Yes) 5 No 2

Absent 0

Floor Assignment

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

30397.0103
Title.

Prepared by the Legislative Council staff for
Senator Nething
March 26, 2003

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1212

Page 3, after line 2, insert:

"6. This section does not apply to any agency that is an occupational or professional licensing authority, nor does this section apply to the following agencies:

a. Council on the arts.

b. Beef commission.

c. Dairy promotion commission.

d. Dry bean council.

e. Highway patrolmen's retirement board.

f. Indian affairs commission.

g. Board for Indian scholarships.

h. State personnel board.

i. Potato council.

j. Board of public school education.

k. Real estate trust account committee.

l. Seed commission.

m. Soil conservation committee.

n. Oilseed council.

o. Wheat commission.

p. State seed arbitration board."

Renumber accordingly

Date: 3-26-03
Roll Call Vote #: 3

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

Senate 1212 Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 30397.0103

Action Taken Adopt Amend from Sen. Nething

Motion Made By Nething Seconded By Espegaard

Senators	Yes	No	Senators	Yes	No
Mutch	X				
Klein		X			
Krebsbach	X				
Nething	X				
Heitkamp	X				
Berry		X			
Espegaard	X				

Total (Yes) 5 No 2

Absent 0

Floor Assignment

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

Date: 3-26-03
Roll Call Vote #: 4

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

Senate 1212 Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Adopt Amendments

Motion Made By Nething Seconded By Heitkamp

Senators	Yes	No	Senators	Yes	No
Mutch	X				
Klein	X				
Krebsbach	X				
Nething	X				
Heitkamp	X				
Every	X				
Espegaard	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment

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

Study Amendment –
add - "should study"
Shall

Date: 3-26-03
Roll Call Vote #: 5

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

Senate 1212 Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass As Amended

Motion Made By Nething Seconded By Klein

Senators	Yes	No	Senators	Yes	No
Mutch	X				
Klein	X				
Krebsbach	X				
Nothing	X				
Heitkamp	X				
Every	X				
Espegaard	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Nothing

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

REPORT OF STANDING COMMITTEE

HB 1212: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1212 was placed on the Sixth order on the calendar.

Page 1, line 3, after "subdivisions" insert "; to provide for a legislative council study"

Page 2, remove lines 13 through 16

Page 2, line 17, replace "4." with "3."

Page 2, line 28, replace "5." with "4."

Page 3, after line 2, insert:

"5. This section does not apply to any agency that is an occupational or professional licensing authority, nor does this section apply to the following agencies:

a. Council on the arts.

b. Beef commission.

c. Dairy promotion commission.

d. Dry bean council.

e. Highway patrolmen's retirement board.

f. Indian affairs commission.

g. Board for Indian scholarships.

h. State personnel board.

i. Potato council.

j. Board of public school education.

k. Real estate trust account committee.

l. Seed commission.

m. Soil conservation committee.

n. Oilseed council.

o. Wheat commission.

p. State seed arbitration board.

6. This section does not apply to rules mandated by federal law.

7. The adopting agency shall provide the administrative rules committee copies of any regulatory analysis or economic impact statement, or both,

prepared under this section when the committee is considering the associated rules.

SECTION 2. LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying, during the 2003-04 interim, the effects and operation of requiring agency consideration of the effect of proposed administrative rules on small businesses, organizations, and political subdivisions. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly."

Renumber accordingly

2003 TESTIMONY

HB 1212

H. B. 1212

Presented by: **Illona A. Jeffcoat-Sacco**
Director, Public Utilities Division
Public Service Commission

Before: **House Committee on Industry, Business and Labor**
Honorable George J. Keiser, Chairman

Date: **14 January 2003**

TESTIMONY

Mr. Chairman and committee members, I am Illona Jeffcoat-Sacco, Director of the Public Service Commission's Public Utility Division. The Public Utilities Division administers the Commission's jurisdiction over telephone, gas and electric public utilities in North Dakota. I appear today on behalf of the Commission in opposition to HB 1212 in its current form.

While we understand the concerns that small businesses and other small entities have about the cost of complying with some agency rules, the Commission is concerned about this bill because of the additional time and costs to prepare the additional regulatory analysis and economic impact statement that would be required by HB 1212. It will be very difficult for an agency to determine all estimated costs of a proposed rule as envisioned by Subsection 4 on page 2 of HB 1212. How detailed would the cost and other financial analyses have to be for the economic impact statement?

North Dakota Century Code Chapter 28-32 already requires agencies to prepare a regulatory analysis for proposed rules if the projected costs to the regulated industry will be greater than $50,000. This provision protects

those potentially impacted while balancing the burden of preparing a regulatory analysis against the benefits to be gained. We believe that a similar balance should be struck regarding the small businesses and other small entities that are the intended beneficiaries of HB 1212. Consequently, we propose an amendment that would insert a $25,000 threshold into HB 1212.

Another concern we have with the bill is that many of the Commission's rules must be consistent with federal rules. This is especially the case with the Commission's coal regulatory and gas safety programs. We are frequently required by the federal agencies to make rule changes to these programs so they remain consistent with revised federal regulations. This is needed in order to maintain state control over these programs. Carrying out the additional regulatory analysis and an economic impact statement requirements for rules affecting these programs would be a make-work project. Insertion of a threshold as proposed above would help mitigate this problem.

For these reasons, the Commission opposes HB 1212 unless it is amended as we recommend.

This completes my testimony. I will be happy to answer any questions you may have.

Prepared by Public Service Commission

PROPOSED AMENDMENT TO HOUSE BILL NO. 1212

Page 1, line 21, after "rule" insert "that is expected to have an impact on small entities in excess of twenty-five thousand dollars"

Page 2, line 14, after "entities" insert "in excess of twenty-five thousand dollars"

Page 2, line 18, after "entities" insert "in excess of twenty-five thousand dollars"

Renumber accordingly

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HOUSE BILL 1212
January 13, 2003
Industry Business & Labor

Chairman Keiser, distinguished members of the IBL committee. My name is Mark Dosch, representative of District 32 South Bismarck. I come before you today, not as a Legislator, but as a businessman concerned about the effect of government on small business in the State of North Dakota.

I believe that government can have an enormously positive effect on business, or, on the other hand can thwart, crush, or even destroy it. America has been a land of opportunity. A haven where entrepreneurials have grown and prospered, and had made American a nation envied by the world.

Today North Dakota is struggling. Struggling to revive our entrepreneurial spirit. The mission of our governor, and the 58th Legislative Assembly is to grow ND. Understanding that in order to grow our economy and keep our people in our great state, we must do everything possible to assist our business community in the development of new business and new jobs. Much of this growth I believe is going to come from within. From small business. In order for this to happen however, I believe we must have a government that encourages business, and not regulate it out of business.

In a small business, the owner is often the president, who is also the CEO, who is also the accountant, secretary, Worker Comp compliance officer, OSHA compliance officer, personal director, salesman, and at the end of the day, yes even the janitor. A small business owner simply does not have the resources to employ the array of professionals needed to keep up with what seems is an unending stream of government regulation. Thus, the more time they must dedicate to the paperwork suffel the less time they have to grow their business.

Government, and the government bureaucracy often has no idea of the compliance hardship they are placing on small business. This is why ladies and gentleman that I have introduced HB 1212. HB 1212 simply requires the government to consider the effect of proposed administrative rules on small businesses, organizations, and political subdivisions as described in section two of the bill. It further requires them to consider the economic effect it will have on business as stated in section 3 and 4 of the bill. And finally, section 5 will give a small entity that is adversely affected or aggrieved by agency action the right to seek judicial review.

Members of this committee, join with me today, and with every other small entity across ND in assisting them in their efforts to grow their business, and the future of all North Dakotans. I urge you to support HB 1212.

Thank you for your time and consideration.

TESTIMONY OF

JIM HENDERSON

REGION VIII ADVOCATE

OFFICE OF ADVOCACY

U.S. SMALL BUSINESS ADMINISTRATION

BEFORE THE

HOUSE INDUSTRY, BUSINESS AND LABOR COMMITTEE

NORTH DAKOTA STATE LEGISLATURE

JANUARY 14, 2003

Chairman Keiser, members of the House Industry, Business and Labor Committee, I am pleased to be here today to testify on behalf of proposed legislation to create a regulatory flexibility act for North Dakota. I will briefly summarize my thoughts on this legislation and ask that my full statement be made a part of the hearing record.

My nam · is Jim Henderson and I am the Region VIII Advocate for the Office of Advocacy in the U.S. Small Business Administration. Region VIII includes North Dakota, South Dakota, Montana, Wyoming, Utah, and Colorado. I am based in Denver. The Office of Advocacy was established by federal statute in 1976 (15 USCS 634). While much of the focal point of that legislation relates to the authority of the Office of Advocacy to assist small businesses by improving the regulatory practices of the Federal government, the legislated primary functions of the Office are broad. In fact, from its very beginning Advocacy recognized that to carry out its role of assisting small businesses throughout the U.S., some examination of state policies that could help or harm small businesses had to be done.

In 1978, barely after the Office of Advocacy was up and running, it sponsored the first of many national conferences bringing together state small business leaders and state policy makers to share successful examples of good policy for small business that already existed within the states. In fact, in the two most recent conferences in 1998 and 1999, North Dakota received recognition for Fargo-Cass County Economic Development Corporation and for the Center for Innovation in Grand Forks.

The central mission of the Office of Advocacy remains reducing the excessive regulatory burden that falls on small business. An Advocacy research study, *The Impact of Regulatory Costs on Small Business,* establishes that small businesses with less than 20 employees spend nearly $7,000 each year per employee just to comply with federal regulations and mandates. That's 60 percent more than large firms. State and local regulatory burdens simply add to that cost.

The key to Advocacy's effectiveness in fighting federal regulations has been the Regulatory Flexibility Act (RFA) passed by Congress in 1980 and strengthened in 1996. The premise behind RFA is <u>not</u> that there should be no regulations at all but rather that regulatory agencies should be acutely aware of the fact that burdens disproportionately fall on small entities. Under this law federal agencies are required to consider the impact of proposed regulations on small entities and to discuss alternative ways to achieve their regulatory objective without imposing undue burdens.

Under RFA, Advocacy has shown time and again that regulations can be reduced and the economy improved without sacrificing such important goals as environmental quality, travel safety, workplace safety, and family financial security. By working with federal agencies to implement the RFA, the Office of Advocacy in 2002 saved small businesses over $21 billion in foregone regulatory costs that can now be used to create jobs, buy equipment and expand access to health care for millions of Americans.

25.6

Advocacy has always recognized that states can and do impose significant regulatory burdens for small business as well. To help address this, Advocacy has drafted model legislation for consideration by states. The model bill mirrors the RFA.

Its intent is to foster a climate for entrepreneurial success in the states, so that small businesses will continue to create jobs, produce innovative new products and services, bring more Americans into the economic mainstream, and broaden the tax base.

This is not a new idea. Many states already have similar legislation and it has been one of the topics discussed at many of the Advocacy state and local government conferences over the years. Unfortunately, North Dakota is not one of those states. We applaud this effort to offer this important new tool to help small businesses deal with the problems of burdensome state regulation.

We believe that there are five critical elements that are contained in the model bill. Successful state-level regulatory flexibility laws should address: (1) a small business definition that includes most small businesses, (2) a requirement that state agencies perform an economic impact analysis before they regulate, (3) a requirement that state agencies consider less burdensome alternatives that still meet regulatory goals, (4) judicial review so that the law has teeth, and (5) a provision that forces state government to periodically review all its regulations. Likewise, there should be few, if any exemptions from the law. Even the best regulatory flexibility initiative has little value if the majority of state agencies are exempted from it.

We are pleased that many states around the country are recognizing the need for state regulatory flexibility laws if they do not have them or strengthening them if they do. Oklahoma and Hawaii have just recently enacted this kind of legislation and the Commonwealth of Puerto Rico has had remarkable success with a small business

ombudsman's office that has regulatory flexibility authority. These examples do show that successful legislation is the important first step in bringing needed regulatory relief to small entities.

The process doesn't end there, however. There remains a need for committed executive leadership, for trained and educated state agencies so that they will know what their responsibilities are and how to accomplish them, and for continued involvement of the small business community to provide feedback on what still needs to be done.

There is no question that small business is the backbone of the economy here in North Dakota just as it is throughout the country. Sometimes, because small business is small, it is easy to overlook their aggregate importance to the economy—and it is very easy to overlook the negative impact of regulatory activities on them. The intent of this legislation is to compel regulatory agencies to consider small businesses in the process by which regulations are developed and particularly consider the disproportionate impact that those regulations might have.

This legislation is needed. The Office of Advocacy commends you for bringing this forward and we urge its support.

Thank you for this opportunity to appear and I would be happy to attempt to answer any questions that you might have.

NFIB.
The Voice of Small Business

NORTH DAKOTA

Testimony of Bill Butcher, State Director, National Federation of Independent Business (NFIB) <u>in support of HB 1212</u>

NFIB represents approximately 3000 small business owners throughout North Dakota.

Positions on issues before the Legislature taken by NFIB are determined entirely by member ballots. Our members in North Dakota and throughout the nation have voted consistently time after time to reduce the regulatory burden on small businesses. HB 1212 does just that. It requires state agencies to seek input from and take into consideration the interests of small business when implementing new regulations. It establishes new law that embraces the old adage that one size indeed does not necessarily fit all.

Most importantly, HB 1212 provides for judicial review. That means that if a small business owner anywhere in North Dakota feels that the effect of a state regulation on his or her business was not taken into consideration when it was implemented, he or she can request judicial review that may ultimately result in revision of the regulation so that it does take small businesses interests into account or other legal remedies. That gives teeth to the requirement for regulatory flexibility.

In December 2002 NFIB/ND member Russell Handegard, President of Curtis Construction Company, Inc. of Fargo, copied me on a letter he sent to the North Dakota Department of Health relating to storm water discharge permits for small projects. Actually, he copied President Bush, Governor Hoeven, our entire congressional delegation and me. I have provided you with a copy of that letter which, while addressing a federal regulation administered by a state agency, hits the nail on the head. Mr. Handegard was unable to be here today to testify, but I would like to quote from his letter:

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"What happened to the goals of reducing paper work, and bureaucratic and regulatory over reach?... Why does the government insist upon using a scattergun approach in these matters when a rifle approach is clearly called for?"

NFIB President Jack Faris spoke about the federal Regulatory Flexibility Act just last December in his column, which is published throughout the nation. He urged state lawmakers to enact model legislation patterned after the federal law to assure that the voice of small business is heard early in the regulatory process on the state level as well as on the federal level. A copy of Mr. Faris' column is included with my testimony.

I want to thank you, Chairman Keiser, and Committee members Representative Eckstrom and Representative Dosch for sponsoring this bill. On behalf of the members of NFIB, Russell Handegard, Jack Faris and I urge the Committee to cast a vote for small business by forwarding on to your House colleagues a do pass recommendation on HB 1212.

CURTIS CONSTRUCTION COMPANY, INC.

December 4, 2002

NORTH DAKOTA DEPARTMENT OF HEALTH
P. O. Box 5520
Bismarck, ND 58506-5520

STORM WATER DISCHARGE PERMITS FOR SMALL PROJECTS

Gentlemen:

I have just read through a letter dated November 25, 2002 from the ND Department of Health. Due to all the legalese and acronyms, I felt I was reading a foreign language. What I was able to discern was that the new permit requirements would waste a lot of time and accomplish virtually nothing. I also noted the date the final rule was published (December 8, 1999), late in the eleventh hour of the Clinton administration.

What happened to the goals of reducing paper work, and bureaucratic and regulatory over reach? If the goal is to waste citizen's time and create government jobs, it should be successful. If the goal is to control sedimentation and runoff, it is a waste of time. One good gully washing rain storm, spring flood (Grand Forks, 1997), or Midwest wind storm will likely have more impact than contractors and developers over a decade or possibly a century. One large farmer's practices will certainly have substantially more impact than that of hundreds of contractors.

Why does the government insist upon using a scattergun approach in these matters when a rifle approach is clearly called for? If one is working within a short distance of a major waterway, a permit may have merit. For a new school in the middle of Cass County, it is a totally useless exercise. When will bureaucrats and politicians learn that cost must be offset by benefits?

This new regulation should be fought and repealed. I have better things to do than prepare NOI's, draft SUPP's, calculate RUSLE's, submit NOT's and deliver yearly ALRR's. At the least we will be able to save trees if we stop this regulation.

Sincerely,

Russell Handegard
President

CC: President George W. Bush
Governor John Hoeven
Senator Byron Dorgan
Senator Kent Conrad
Representative Earl Pomeroy
NFIB

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DESIGN
ENGINEERING
CONSTRUCTION

What's the Big Idea?

by

Jack Faris, President

National Federation of Independent Business

"It's the most wonderful time of the year," the song goes, extolling the endless variety of holiday traditions that Americans celebrate as the calendar winds down. For the nation's small-business sector, especially retail outlets, this season helps make up for slower revenue periods. For others, it means time to relax, enjoy our friends and families and rededicate ourselves to those values that undergird our democracy.

This time of year, it's virtually impossible to avoid feelings of hope and optimism for what the future may bring. New Year's resolutions are more than traditions, they're the challenges we extend to ourselves to improve something important in our lives.

It's rare that small-business owners turn to the nation's capital for hope and optimism, but just a few days ago, one government agency offered up an idea that, if fulfilled, could not only boost the morale of business people everywhere, but encourage those who have never taken the entrepreneurial leap to do so.

What's the big idea? Legislation.

Normally, just the mention of that very word strikes fear in the hearts of business owners. After all, their experience in the legislative arena is one of defense, of constant struggles to roll back some ill-conceived law that threatened to swipe additional dollars from their cash registers in the form of new taxes or reduce their bottom lines by adding costly regulations.

But the Office of Advocacy of the U.S. Small Business Administration (SBA) isn't your typical government agency. After all, they know a small business when they see one.

And the idea that has been offered by Thomas M. Sullivan, chief counsel for advocacy at SBA, is one that bears close attention. He claims that this proposal could save billions in foregone regulatory costs.

Sullivan recently proposed that state lawmakers enact model legislation patterned after the federal Regulatory Flexibility Act. That law requires federal agencies to consider the impact on small business before issuing final regulations.

Just in the past year, Sullivan said, the Office of Advocacy saved small-business owners more than $4 billion in potential regulatory compliance costs. How? By making sure that the voice of small business was heard early in the regulatory process. He believes the same thing can happen in all 50 states if lawmakers adopt the model bill.

It makes sense. By paying heed to those who own and operate the nation's Main Street firms, federal agencies can ensure that dollars that would have been wasted on burdensome new rules are available to be used in hiring new employees, buying new equipment and funding other business-growth investments. And, this still allows government agencies to meet regulatory requirements that range from improved environmental quality to increased family security.

Many states currently have a patchwork of laws that protect small-business owners and their employees from excessive regulatory mandates. Some offer protections similar to the Regulatory Flexibility Act. Others offer no protection.

This is a big idea. Let's hope state legislators make it one of their New Year's resolutions; it certainly is one of NFIB's.

Jack Faris is president of NFIB (the National Federation of Independent Business), the nation's largest small-business advocacy group. A non-profit, non-partisan organization founded in 1943, NFIB represents the consensus views of its 600,000 members in Washington, D.C., and all 50 state capitals. More information is available on-line at www.nfib.com.

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Testimony on HB 1212
House Industry, Business and Labor Committee
January 14, 2003

Dear Chairman Keiser and Members of the Committee,

Dakota Resource Council stands in opposition to this bill. The people of North Dakota expect their government to enact and enforce laws that protect the health and welfare of the state. HB 1212, on the other hand, forces government to fritter away its scarce resources in figuring out how not to enforce the law.

There is already ample time for businesses both small and large to let the government know if they have concerns about proposed rules that might affect them--the comment period that precedes the adoption of new regulations. During this period, businesses and individuals are encouraged to submit comments regarding their concerns about the impacts of the proposed rule. These comments must then be considered by the sponsoring agency.

We believe this process puts the responsibilities in the right order. However, if this bill were passed, the responsibility to determine possible "adverse effects" would now be on the sponsoring agency rather than on the affected industry. Besides, The term "adverse impacts" is so vague that just defining what those might be would be a daunting task for an agency. Coming up with an exhaustive list of possible "adverse affects" would tie up the agency in red tape and wind up costing the taxpayer many more dollars than necessary--red tape that may actually discourage agencies from seeking the enactment of rules that are necessary if government is to enforce the law. Surely that is not an outcome this legislature wants.

Finally, this committee should remember that some small businesses pose threats to public health and the environment that are disproportionate to their gross receipts or the size of their payroll. Businesses such as hazardous waste incinerators, landfills, or factory-style livestock facilities may have only a handful of employees yet a great responsibility to the public for the management of dangerous substances or byproducts. We certainly do not want our government agencies prevented from taking timely action in enacting new regulations to protect against threats to the public health and environment just because those threats come from a relatively small company.

We urge you to recommend that this bill not be passed.

Respectfully submitted by Mary Christensen, staff, Dakota Resource Council

NFIB
The Voice of Small Business

NORTH DAKOTA

Testimony of Bill Butcher, State Director, National Federation of Independent Business (NFIB) <u>in support of HB 1212</u>

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Most importantly, HB 1212 provides for judicial review. That means that if a small business owner anywhere in North Dakota feels that the effect of a state regulation on his or her business was not taken into consideration when it was implemented, he or she can request judicial review that may ultimately result in revision of a regulation so that it does take small businesses interests into account. That gives teeth to the requirement for regulatory flexibility.

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nail on the head. Mr. Handegard was unable to be here today to testify, but I would like to quote from his letter:

> "What happened to the goals of reducing paperwork, and bureaucratic and regulatory over reach?... Why does the government insist upon using a scattergun approach in these matters when a rifle approach is clearly called for?"

NFIB President Jack Faris spoke about the federal Regulatory Flexibility Act just last December in his column, which is published throughout the nation. He points out that the federal Regulatory Flexibility Act saved small business owners more than $4 billion in potential regulatory compliance costs in 2001. Mr. Faris urges state lawmakers in North Dakota and other states to enact model legislation patterned after the federal law to assure that the voice of small business is heard early in the regulatory process on the state level as well as on the federal level. A copy of Mr. Faris' column is included with my testimony.

I want to thank you, Chairman Mutch, for being a sponsor of this bill. The House passed it on a vote of 88 to 1 and I hope the Senate will deal with it similarly. This is good legislation for small business! On behalf of the 3000 members of NFIB/ND, Russell Handegard, Jack Faris and I urge this Committee to cast a vote for small business by forwarding a unanimous do pass recommendation on HB 1212.

TESTIMONY
HOUSE BILL 1212
February 26, 2002
Industry Business & Labor

Chairman Mutch, distinguished members of the IBL committee. For the record my name is Mark Dosch, representative of District 32 South Bismarck. I come before you today, not as a Legislator, but as a businessman concerned about the effect of government on small business in the State of North Dakota.

I believe that government can have an enormously positive effect on business, or, on the other hand an extremely negative one. America has always been a land of opportunity. A haven where entrepreneurials have grown and prospered, and had made American a nation envied by the world.

Today North Dakota is struggling. Struggling to revive our entrepreneurial spirit. The mission of our governor, and the 58th Legislative Assembly is to grow ND. Understanding that in order to grow our economy and keep our people in our great state, we must do everything possible to assist our business community in the development of new business and new jobs. Much of this growth I believe is going to come from within. From small business. In order for this to happen however, **I believe we must have a government that encourages business, and not regulate it out of business.**

In a small business, the owner is often the president, who is also the CEO, who is also the accountant, secretary, Worker Comp and OSHA compliance officer, personal director, salesman, and at the end of the day, yes even the janitor. A small business owner simply does not have the resources to employ the array of professionals needed to keep up with what seems is an unending stream of government regulation. Thus, **the more time they must dedicate to the paperwork suffel the less time they have to grow their business.**

Government, and the government bureaucracy often has no idea of the compliance hardship they are placing on small business. This is why ladies and gentleman that I have introduced HB 1212. HB 1212 simply requires the government to consider the effect of proposed administrative rules on small businesses, organizations, and political subdivisions as described in section two of the bill. It further requires them to consider the economic effect it will have on business as stated in section 3 and 4 of the bill. And finally, section 5 will give a small entity that is adversely affected or aggrieved by agency action, the right to seek judicial review.

Today, I'm assuming you will also hear some opposition on this bill from various government agencies. They don't like this bill because it does step on their toes. They don't like it because it takes away their freedom to impost whatever rules they want. They don't like it because it will require them to do a little more homework before they simply issue another new rule.

Understand, that this bill does in no way exempt small business from regulation or public health and environmental issues. It simply requires them to determine the impact, and to determine if there is a better or less intrusive way small business can comply. It could be something as simple as quarterly reporting requirements rather then monthly.

Some will also say that there exists already a comment period that precedes the adoption of new regulations, however I don't know about you, but I would much rather have ONE agency take the time to consider the impact on small business before the rule is issued, rather than have HUNDREDS of small business have to keep up on new regulation, and deal with the consequences after it is imposed.

Members of this committee, please join with me today, and with every other small entity across ND in assisting them in their efforts to grow their business, and the future of all North Dakotans. I urge you to support HB 1212.

Thank you for your time and consideration. I will answer any questions you may have.

H. B. 1212

Presented by: **Illona A. Jeffcoat-Sacco**
Director, Public Utilities Division
Public Service Commission

Before: **Senate Committee on Industry, Business and Labor**
Honorable Duane Mutch, Chairman

Date: **26 February 2003**

TESTIMONY

Mr. Chairman and committee members, I am Illona Jeffcoat-Sacco, Director of the Public Service Commission's Public Utility Division. The Public Utilities Division administers the Commission's jurisdiction over telephone, gas and electric public utilities in North Dakota. I appear today on behalf of the Commission in opposition to HB 1212 in its current form.

While we understand the concerns that small businesses and other small entities have about the cost of complying with some agency rules, the Commission is concerned about this bill because of the additional time and costs to prepare the additional regulatory analysis and economic impact statement that would be required by HB 1212. It will be very difficult for an agency to determine all estimated costs of a proposed rule as envisioned by Subsection 4 on page 2 of HB 1212. How detailed would the cost and other financial analyses have to be for the economic impact statement? Is an analysis to be prepared only on the impact to regulated small entities, or also on the impact to all the small entities that do business with regulated entities?

North Dakota Century Code Chapter 28-32 already requires agencies to prepare a regulatory analysis for proposed rules if the projected costs to the regulated industry will be greater than $50,000. This provision protects those potentially impacted while balancing the burden of preparing a regulatory analysis against the benefits to be gained. We believe that a similar balance should be struck regarding the small businesses and other small entities that are the intended beneficiaries of HB 1212. Consequently, we propose an amendment that would insert a $25,000 threshold into HB 1212.

Another concern we have with the bill is that many of the Commission's rules must be consistent with federal rules if they are promulgated to implement federal programs or to support federal grant funds. This is especially the case with the Commission's coal regulatory and gas safety programs. We are frequently required by the federal agencies to make rule changes to these programs so they remain consistent with revised federal regulations. This is needed in order to maintain state control over these programs. Carrying out the additional regulatory analysis and economic impact statement requirements for rules affecting these programs would be a make-work project. Insertion of a threshold as proposed above would help mitigate this problem.

For these reasons, the Commission opposes HB 1212 unless it is amended as we recommend. I have attached a proposed amendment for your review.

This completes my testimony. I will be happy to answer any questions you may have.

Prepared by Public Service Commission

PROPOSED AMENDMENT TO HOUSE BILL NO. 1212

Page 1, line 21, after "rule" insert "that is expected to have an impact on small entities in excess of twenty-five thousand dollars"

Page 2, line 14, after "entities" insert "in excess of twenty-five thousand dollars"

Page 2, line 18, after "entities" insert "in excess of twenty-five thousand dollars"

Renumber accordingly

Legal/2003HB Testimony/AmendmentHB1212.doc

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Testimony on HB 1212
Senate Industry, Business and Labor Committee
February 26, 2003

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Finally, this committee should remember that some small businesses pose threats to public health and the environment that are disproportionate to their gross receipts or the size of their payroll. Businesses such as hazardous waste incinerators, landfills, or factory-style livestock facilities may have only a handful of employees yet a great responsibility to the public for the management of dangerous substances or byproducts. We certainly do not want our government agencies prevented from taking timely action in enacting new regulations to protect against threats to the public health and environment just because those threats come from a relatively small company.

We urge you to recommend that this bill not be passed.

Respectfully submitted by Mary Christensen, staff, Dakota Resource Council

Testimony

House Bill 1212

Senate Industry, Business and Labor Committee

February 26, 2003

9:00 a.m.

North Dakota Department of Health

Mr. Chairman and members of the committee, my name is L. David Glatt and I am the Environmental Health Section Chief for the North Dakota Department of Health. I am here today to present testimony in opposition of House Bill 1212.

The North Dakota Department of Health currently supports a transparent and open rule-making process and implements many of the concepts identified in House Bill 1212. However, the Department has some concerns about the bill as it currently is written.

Most of the concepts in House Bill 1212 relating to the impact of a proposed rule on the regulated community already are required in NDCC 28-32, Administrative Agencies Practices Act. I have attached a copy of the relevant sections of NDCC 28-32 that address many of the issues identified in items 2 and 4 of House Bill 1212. In addition, under NDCC 28-32, each administrative agency is required to provide adequate public notice, provide written response to public comments, obtain an Attorney General's opinion of the rules, and receive approval from the Legislative Council prior to rules being adopted.

To reinforce the intent of NDCC 28-32, which is to provide a transparent and open rule-making process, the Department of Health is required to seek approval from the State Health Council prior to initiating a public comment period and also after the comment period has been completed. The State Health Council is composed of four members from the health care field, five members representing consumer interests, one member from the energy industry and one from the manufacturing and processing industry. In addition to the required public comment period identified in NDCC 28-32, interested parties also may provide input as to the need or appropriateness of any proposed rule at the regularly scheduled Health Council meetings. The time required to propose and reach adoption of a rule can take anywhere from six months to a year or more, allowing adequate time for comments.

If small business representatives believe the current process and law do not address their interests, NDCC 28-32 could be amended as an alternative to House Bill 1212. For example, an amendment could require that statewide associations representing small business, the Department of Commerce or any other appropriate entity be notified of the intent to propose a rule that could impact their constituencies. Such an amendment would involve those entities in the rule-making process. The Department of Health is willing to work with the Committee or representatives of small businesses to craft amendment language to meet their concerns.

If the committee decides to move forward with the House Bill 1212 in its current form, the Department of Health would like to identify the following concerns:

- First, House Bill 1212 does not encourage ground-floor or up-front involvement by the regulated community. Instead, it directs the agencies to develop a regulatory analysis with some input from the Department of Commerce with no mention of other input from small business. Based upon my experience, the best rules are developed when the regulated community is involved throughout the process, from rule drafting to implementation.

- Second, House Bill 1212 does not define "adversely affected or aggrieved" as referenced in section 5. Because the definition of "adversely affected" can vary from person to person, a reasonable threshold for "adverse impact" should be identified. Without the establishment of a threshold, any small business could claim it has been adversely affected and ask for a judicial review, even though the impact would be deemed minor by most opinions. Addressing such claims could result in unnecessary expenditures of state funds.

- Finally, HB 1212 does not address federally mandated rules adopted by an agency. Department of Health experience has shown that state control and implementation of federal rules typically is preferred by the regulated community and, in some cases, is required to ensure state primacy and program delegation. As currently written, House Bill 1212 could prohibit the adoption of federal rules if a small business claims an adverse impact. Experience in the environmental field indicates that federal implementation of a rule typically costs the regulated community more and provides less opportunity for technical assistance than rules implemented by the state.

The North Dakota Department of Health is willing to work with members of the Committee or small business representatives to provide amendments to House Bill1212 that address the concerns identified in this testimony.

This concludes my comments on House Bill 1212. I am happy to answer any questions the committee may have.

6. An interim final rule is ineffective one hundred eighty days after its declared effective date unless first adopted as a final rule.

28-32-04. Repeal or waiver of rules from federal guidelines.

1. An agency shall repeal or amend any existing rule that was adopted from federal guidelines and which is not relevant to state regulatory programs.

2. An agency may not adopt rules from federal guidelines which are not relevant to state regulatory programs when developing or modifying programs.

3. An agency shall seek a waiver from the appropriate United States agency when the United States agency is evaluating current programs or delegating or modifying programs, to relieve the agency from complying with or adopting rules that are not relevant to state regulatory programs.

28-32-05. Adoption by reference of certain rules.

1. When adopting rules, an agency shall adopt by reference any applicable existing permit or procedural rules that may be adapted for use in a new or existing program.

2. An agency shall seek authorization from the appropriate United States agency to adopt by reference applicable existing permit or procedural rules that may be adapted for use in a new or existing program when the United States agency is delegating or modifying a program.

28-32-06. Force and effect of rules. Upon becoming effective, rules have the force and effect of law until amended or repealed by the agency, declared invalid by a final court decision, suspended or found to be void by the administrative rules committee, or determined repealed by the office of the legislative council because the authority for adoption of the rules is repealed or transferred to another agency.

28-32-07. Deadline for rules to implement statutory change. Any rule change, including a creation, amendment, or repeal, made to implement a statutory change must be adopted and filed with the office of the legislative council within nine months of the effective date of the statutory change. If an agency needs additional time for the rule change, a request for additional time must be made to the legislative council. The legislative council may extend the time within which the agency must adopt the rule change if the request by the agency is supported by evidence that the agency needs more time through no deliberate fault of its own.

28-32-08. Regulatory analysis.

1. An agency shall issue a regulatory analysis of a proposed rule if:

   a. Within twenty days after the last published notice date of a proposed rule hearing, a written request for the analysis is filed by the governor or a member of the legislative assembly; or

   b. The proposed rule is expected to have an impact on the regulated community in excess of fifty thousand dollars. The analysis under this subdivision must be available on or before the first date of public notice as provided for in section 28-32-10.

2. The regulatory analysis must contain:

   a. A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;

b. A description of the probable impact, including economic impact, of the proposed rule;

c. The probable costs to the agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues; and

d. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why the methods were rejected in favor of the proposed rule.

3. Each regulatory analysis must include quantification of the data to the extent practicable.

4. The agency shall mail or deliver a copy of the regulatory analysis to any person who requests a copy of the regulatory analysis. The agency may charge for the actual cost of providing copies of the regulatory analysis.

5. If required under subsection 1, the preparation and issuance of a regulatory analysis is a mandatory duty of the agency proposing a rule. Errors in a regulatory analysis, including erroneous determinations concerning the impact of the proposed rule on the regulated community, are not a ground upon which the invalidity of a rule may be asserted or declared.

28-32-09. Takings assessment.

1. An agency shall prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private real property. The agency's assessment must:

   a. Assess the likelihood that the proposed rule may result in a taking or regulatory taking.

   b. Clearly and specifically identify the purpose of the proposed rule.

   c. Explain why the proposed rule is necessary to substantially advance that purpose and why no alternative action is available that would achieve the agency's goals while reducing the impact on private property owners.

   d. Estimate the potential cost to the government if a court determines that the proposed rule constitutes a taking or regulatory taking.

   e. Identify the source of payment within the agency's budget for any compensation that may be ordered.

   f. Certify that the benefits of the proposed rule exceed the estimated compensation costs.

2. Any private landowner who is or may be affected by a rule that limits the use of the landowner's private real property may request in writing that the agency reconsider the application or need for the rule. Within thirty days of receiving the request, the agency shall consider the request and shall in writing inform the landowner whether the agency intends to keep the rule in place, modify application of the rule, or repeal the rule.

3. In an agency's analysis of the takings implications of a proposed rule, "taking" means the taking of private real property, as defined in section 47-01-03, by government action which requires compensation to the owner of that property by the fifth or fourteenth amendment to the Constitution of the United States or section 16 of article I of the Constitution of North Dakota. "Regulatory taking" means a taking of

real property through the exercise of the police and regulatory powers of the state which reduces the value of the real property by more than fifty percent. However, the exercise of a police or regulatory power does not effect a taking if it substantially advances legitimate state interests, does not deny an owner economically viable use of the owner's land, or is in accordance with applicable state or federal law.

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 data, views, or arguments concerning the proposed rule may be sent, 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 address and telephone number to use to obtain a copy of the proposed rules or 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 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 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 must be mailed by the legislative council on the first business day of the following month to any person making a request.

28-32-11. Conduct of hearings - Notice of administrative rules committee consideration - Consideration and written record of comments. The agency shall adopt a procedure whereby all interested persons are afforded reasonable opportunity to submit data, views, or arguments, orally or in writing, concerning the proposed rule, including data respecting the impact of the proposed rule. The agency shall adopt a procedure to allow interested parties to request and receive notice from the agency of the date and place the rule will be reviewed by the administrative rules committee. In case of substantive rules, the agency shall conduct an oral hearing. The agency shall consider fully all written and oral submissions respecting a proposed rule prior to the adoption, amendment, or repeal of any rule not of an emergency nature. The agency shall make a written record of its consideration of all written and oral submissions contained in the rulemaking record respecting a proposed rule.

28-32-12. Comment period. The agency shall allow, after the conclusion of any rulemaking hearing, a comment period of at least thirty 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.

28-32-13. Substantial compliance with rulemaking procedure. A rule is invalid unless adopted in substantial compliance with this chapter. However, inadvertent failure to supply any person with a notice required by section 28-32-10 does not invalidate a rule. Notwithstanding subsection 2 of section 28-32-42, an action to contest the validity of a rule on the grounds of noncompliance with this chapter may not be commenced more than two years after the effective date of the rule.

28-32-14. Attorney general review of rules. Every rule proposed by any administrative agency must be submitted to the attorney general for an opinion as to its legality before final adoption, and the attorney general promptly shall furnish each such opinion. The attorney general may not approve any rule as to legality when the rule exceeds the statutory authority of the agency or is written in a manner that is not concise or easily understandable or when the procedural requirements for adoption of the rule in this chapter are not substantially met. The attorney general shall advise an agency of any revision or rewording of a rule necessary to correct objections as to legality.

28-32-15. Filing of rules for publication - Effective date of rules.

1. A copy of each rule adopted by an administrative agency, a copy of each written comment and a written summary of each oral comment on the rule, and the attorney general's opinion on the rule must be filed by the adopting agency with the office of the legislative council for publication of the rule in the North Dakota Administrative Code.

2. Nonemergency rules approved by the attorney general as to legality, adopted by an administrative agency, and filed with the office of the legislative council 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. If publication is delayed due to technological problems or lack of funds, nonemergency rules, unless otherwise provided, become effective on the first day of the month after the month publication would have occurred but for the delay.

TESTIMONY OF

JIM HENDERSON

REGION VIII ADVOCATE

OFFICE OF ADVOCACY

U.S. SMALL BUSINESS ADMINISTRATION

BEFORE THE

SENATE INDUSTRY, BUSINESS AND LABOR COMMITTEE

NORTH DAKOTA STATE LEGISLATURE

February 26th, 2003

Chairman Mutch, members of the Senate Industry, Business and Labor Committee, my name is Jim Henderson and I am the Region VIII Advocate for the Office of Advocacy in the U.S. Small Business Administration. Region VIII includes North Dakota, South Dakota, Montana, Wyoming, Utah, and Colorado. I am based in Denver. I regret that I can not be in Bismarck today to testify in person on behalf of HB 1212 – the proposed legislation to create a regulatory flexibility act for North Dakota. I do, however, deeply appreciate that NFIB/ND State Director, Bill Butcher, has provided my written statement to you for your consideration.

The Office of Advocacy was established by federal statute in 1976 (15 USCS 634). While much of the focal point of that legislation relates to the authority of the Office of Advocacy to assist small businesses by improving the regulatory practices of the Federal government, the legislated primary functions of the Office are broad. In fact, from its very beginning Advocacy recognized that to carry out its role of assisting small businesses throughout the U.S., some examination of state policies that could help or harm small businesses had to be done.

In 1978, barely after the Office of Advocacy was up and running, it sponsored the first of many national conferences bringing together state small business leaders and state policy makers to share successful examples of good policy for small business that already existed within the states. In fact, in the two most recent conferences in 1998 and 1999, North Dakota received recognition for Fargo-Cass County Economic Development

Corporation and for the Center for Innovation in Grand Forks.

The central mission of the Office of Advocacy remains reducing the excessive regulatory burden that falls on small business. An Advocacy research study, *The Impact of Regulatory Costs on Small Business*, establishes that small businesses with less than 20 employees spend nearly $7,000 each year per employee just to comply with federal regulations and mandates. That's 60 percent more than large firms. State and local regulatory burdens simply add to that cost.

The key to Advocacy's effectiveness in fighting federal regulations has been the Regulatory Flexibility Act (RFA) passed by Congress in 1980 and strengthened in 1996. The premise behind RFA is not that there should be no regulations at all but rather that regulatory agencies should be acutely aware of the fact that burdens disproportionately fall on small entities. Under this law federal agencies are required to consider the impact of proposed regulations on small entities and to discuss alternative ways to achieve their regulatory objective without imposing undue burdens.

Under RFA, Advocacy has shown time and again that regulations can be reduced and the economy improved without sacrificing such important goals as environmental quality, travel safety, workplace safety, and family financial security. By working with federal agencies to implement the RFA, the Office of Advocacy in 2002 saved small businesses over $21 billion in foregone regulatory costs that can now be used to create jobs, buy equipment and expand access to health care for millions of Americans.

Advocacy has always recognized that states can and do impose significant regulatory burdens for small business as well. To help address this, Advocacy has drafted model legislation for consideration by states. The model bill mirrors the RFA.

Its intent is to foster a climate for entrepreneurial success in the states, so that small businesses will continue to create jobs, produce innovative new products and services, bring more Americans into the economic mainstream, and broaden the tax base.

This is not a new idea. Many states already have similar legislation and it has been one of the topics discussed at many of the Advocacy state and local government conferences over the years. Unfortunately, North Dakota is not one of those states. We applaud this effort to offer this important new tool to help small businesses deal with the problems of burdensome state regulation.

We believe that there are five critical elements that are contained in the model bill. Successful state-level regulatory flexibility laws should address. (1) a small business definition that includes most small businesses, (2) a requirement that state agencies perform an economic impact analysis before they regulate, (3) a requirement that state agencies consider less burdensome alternatives that still meet regulatory goals, (4) judicial review so that the law has teeth, and (5) a provision that forces state government to periodically review all its regulations. Likewise, there should be few, if any exemptions from the law. Even the best regulatory flexibility initiative has little value if the majority of state agencies are exempted from it.

We are pleased that many states around the country are recognizing the need for state regulatory flexibility laws if they do not have them or strengthening them if they do. Oklahoma and Hawaii have just recently enacted this kind of legislation and the Commonwealth of Puerto Rico has had remarkable success with a small business

ombudsman's office that has regulatory flexibility authority. These examples do show that successful legislation is the important first step in bringing needed regulatory relief to small entities.

The process doesn't end there, however. There remains a need for committed executive leadership, for trained and educated state agencies so that they will know what their responsibilities are and how to accomplish them, and for continued involvement of the small business community to provide feedback on what still needs to be done.

There is no question that small business is the backbone of the economy here in North Dakota just as it is throughout the country. Sometimes, because small business is small, it is easy to overlook their aggregate importance to the economy—and it is very easy to overlook the negative impact of regulatory activities on them. The intent of this legislation is to compel regulatory agencies to consider small businesses in the process by which regulations are developed and particularly consider the disproportionate impact that those regulations might have.

This legislation is needed. The Office of Advocacy commends you for bringing this forward and we urge its support.

Thank you for this opportunity to provide a statement.