

**FIRST ENGROSSMENT
with Conference Committee Amendments**

ENGROSSED HOUSE BILL NO. 1024

Introduced by

Legislative Council

(Administrative Rules Committee)

1 A BILL for an Act to create and enact section 28-32-03.4 of the North Dakota Century Code,
2 relating to authority of the administrative rules committee to call up existing administrative rules
3 for review; to amend and reenact subsection 1 of section 4-18.1-20, subsections 4 and 7 of
4 section 28-32-02, and section 28-32-04 of the North Dakota Century Code, relating to statutory
5 references to administrative rulemaking provisions, administrative rulemaking procedures,
6 authority of the administrative rules committee to suspend or object to administrative rules, and
7 petitions for reconsideration of administrative rules; and to provide an effective date.

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

9 **SECTION 1. AMENDMENT.** Subsection 1 of section 4-18.1-20 of the North Dakota
10 Century Code is amended and reenacted as follows:

11 1. The rules of practice, regulations, and stabilization plans issued by the board are
12 ~~declared to be "rules and regulations" as that phrase is defined in chapter 28-32.~~
13 The requirements of sections 28-32-02 through 28-32-04 are applicable to any
14 board proceeding ~~which~~ that results in the adoption, amendment, or repeal of any
15 rule of practice, regulation, or stabilization plan.

16 **SECTION 2. AMENDMENT.** Subsections 4 and 7 of section 28-32-02 of the 1997
17 Supplement to the North Dakota Century Code are amended and reenacted as follows:

18 4. The agency's notice of the proposed adoption, amendment, or repeal of a rule
19 must include a short, specific explanation of the proposed rule and the purpose of
20 the proposed rule, a determination of whether the proposed rulemaking is
21 expected to have an impact on the regulated community in excess of fifty thousand
22 dollars, identify at least one location where interested persons may review the text
23 of the proposed rule, provide the address to which written data, views, or
24 arguments concerning the proposed rule may be sent, provide a phone number at

1 which a copy of the rules and regulatory analysis may be requested, and, in the
2 case of a substantive rule, provide the time and place set for each oral hearing.
3 The notice must be filed with the office of the legislative council and published at
4 least twice in each daily newspaper of general circulation published in this state.
5 The agency shall mail a copy of the notice to each person who has made a timely
6 request to the agency for a mailed copy of the notice. The agency may mail or
7 otherwise provide a copy of the notice to any person who is likely to be an
8 interested person. The agency shall mail or deliver a copy of the rules to any
9 person requesting a copy. The agency may charge for the actual cost of providing
10 copies of the proposed rule. At least thirty days must elapse between the later of
11 the date of the second publication of the notice or the date the legislative council
12 mails copies of an agency's notice and the date of the hearing. ~~The thirty-day~~
13 ~~period begins on the first business day of the month in which the notices must be~~
14 ~~mailed or on the date of the second publication, whichever is later.~~ At least thirty
15 days before the hearing, the agency shall provide the attorney general a copy of
16 the notice and the proposed rules. Subject to subsection 5, notices filed on or
17 before the last calendar day of the preceding month must be mailed by the
18 legislative council on the first business day of the following month to any person
19 making a request. The agency shall allow, after the conclusion of any rulemaking
20 hearing, a comment period of not less than thirty days during which data, views, or
21 arguments concerning the proposed rulemaking will be received by the agency
22 and made a part of the rulemaking record to be considered by the agency.

23 7. Every rule ~~proposed~~ submitted to the attorney general by any administrative
24 agency must be ~~submitted to~~ reviewed by the attorney general for an opinion as to
25 its legality before final adoption, ~~and the~~. The attorney general shall promptly
26 furnish each such the agency a preliminary opinion, based upon the rules as
27 submitted, by the close of the comment period for those rules. After the close of
28 the comment period, the agency shall advise the attorney general of each change
29 to the proposed rules made in contemplation of final adoption and the attorney
30 general shall promptly furnish an opinion as to legality of the rules contemplated
31 for final adoption. The attorney general may not approve any rule as to legality

1 when the rule exceeds the statutory authority of the agency or is written in a
2 manner that is not concise or easily understandable, or when the procedural
3 requirements for adoption of the rule in this chapter are not substantially met. The
4 attorney general shall advise an agency of any revision or rewording of a rule
5 necessary to correct objections as to legality.

6 **SECTION 3.** Section 28-32-03.4 of the North Dakota Century Code is created and
7 enacted as follows:

8 **28-32-03.4. Administrative rules called up for review.** Upon request of any person
9 substantially interested in the effect of a rule who has previously petitioned the adopting agency
10 for review of the rule under section 28-32-04 or upon request of the adopting agency, and if the
11 administrative rules committee makes the specific finding that there is substantial evidence that
12 with regard to that rule or portion of a rule there is an absence of statutory authority or a conflict
13 with state law or express legislative intent, the administrative rules committee may call an
14 administrative rule up for review upon at least thirty days' prior notice to the adopting agency of
15 the time the committee will consider the rule. The committee shall notify the adopting agency
16 of the reason the rule is called up for review and the adopting agency shall provide a written
17 response to the committee's expressed concerns. A rule called up for review under this section
18 is subject to the authority of the administrative rules committee under section 28-32-03.3 except
19 that the administrative rules committee may not void a rule called up for review under this
20 section but may suspend from operation all or part of such a rule through July thirty-first of the
21 first ensuing odd-numbered year if the committee makes the specific finding that with regard to
22 that rule or portion of a rule there is an absence of statutory authority or a conflict with state law
23 or express legislative intent.

24 **SECTION 4. AMENDMENT.** Section 28-32-04 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **28-32-04. Petition for reconsideration review of rule - Hearing by agency.** Any
27 person substantially interested in the effect of a rule adopted by an administrative agency may
28 petition such agency for a reconsideration review of the effect and consideration of any such
29 the rule or for an consideration of amendment or repeal thereof of the rule. Such The petition
30 must state clearly and concisely the petitioners' alleged grounds for such reconsideration the
31 review, or for the proposed repeal or amendment of such the rule. The agency in its discretion

1 may grant the petitioner a public hearing, upon such terms and conditions as the agency may
2 prescribe.

3 **SECTION 5. EFFECTIVE DATE.** Section 2 of this Act is effective for administrative
4 rulemaking proceedings for which the notice of rulemaking is published after July 31, 1999.
5 Section 3 of this Act is effective for administrative rules called up for review by the
6 administrative rules committee after July 31, 1999.