

Fifty-seventh
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1228

Introduced by

Representatives Grande, Devlin, Koppelman

Senators Andrist, Stenehjem

1 A BILL for an Act to create and enact a new section to chapter 28-32 of the North Dakota
2 Century Code, relating to authority of the administrative rules committee to call up existing
3 administrative rules for review; to amend and reenact subsection 1 of section 28-32-03.3 of the
4 North Dakota Century Code or in the alternative to amend and reenact subsection 1 of section
5 28-32-18 of the North Dakota Century Code, relating to authority of the administrative rules
6 committee; and to provide an effective date.

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

8 **SECTION 1. AMENDMENT.** If House Bill No. 1030 does not become effective,
9 subsection 1 of section 28-32-03.3 of the 1999 Supplement to the North Dakota Century Code
10 is amended and reenacted as follows:

11 1. The legislative council's committee on administrative rules may find that all or any
12 portion of a rule is void if that finding is made within ninety days after review of the
13 rule is reopened under section 5 of this Act, that rule is initially considered by the
14 committee within ninety days after the date of the administrative code supplement
15 in which the rule change appears, or, for rule changes appearing in the
16 administrative code supplement from November first immediately preceding a
17 regular session of the legislative assembly through the following May first, if that
18 rule is initially considered by the committee at the first meeting of the
19 administrative rules committee following the regular session of the legislative
20 assembly. The committee on administrative rules may find a rule or portion of a
21 rule void if the committee makes the specific finding that, with regard to that rule or
22 portion of a rule, there is:

- 23 a. An absence of statutory authority.
24 b. An emergency relating to public health, safety, or welfare.

- 1 c. A failure to comply with express legislative intent or to substantially meet the
- 2 procedural requirements of this chapter for adoption of the rule.
- 3 d. A conflict with state law.
- 4 e. Arbitrariness and capriciousness.
- 5 f. A failure to make a written record of its consideration of written and oral
- 6 submissions respecting the rule under subsection 3 of section 28-32-02.

7 **SECTION 2. AMENDMENT.** Subsection 1 of section 28-32-18 of the North Dakota
8 Century Code as created by section 11 of House Bill No. 1030, as approved by the fifty-seventh
9 legislative assembly, is amended and reenacted as follows:

- 10 1. The legislative council's administrative rules committee may find that all or any
- 11 portion of a rule is void if (a) that finding is made within ninety days after review of
- 12 the rule is reopened under section 6 of this Act, (b) the rule is initially considered
- 13 by the committee within ninety days after the date of the administrative code
- 14 supplement in which the rule change appears, or, (c) for rule changes appearing in
- 15 the administrative code supplement from November first immediately preceding a
- 16 regular session of the legislative assembly through the following May first, if that
- 17 rule is initially considered by the committee at the first meeting of the
- 18 administrative rules committee following the regular session of the legislative
- 19 assembly. The administrative rules committee may find a rule or portion of a rule
- 20 void if the committee makes the specific finding that, with regard to that rule or
- 21 portion of a rule, there is:
- 22 a. An absence of statutory authority.
- 23 b. An emergency relating to public health, safety, or welfare.
- 24 c. A failure to comply with express legislative intent or to substantially meet the
- 25 procedural requirements of this chapter for adoption of the rule.
- 26 d. A conflict with state law.
- 27 e. Arbitrariness and capriciousness.
- 28 f. A failure to make a written record of its consideration of written and oral
- 29 submissions respecting the rule under section 28-32-11.

30 **SECTION 3. AMENDMENT.** If House Bill No. 1030 does not become effective,
31 subsection 1 of section 28-32-03.3 of the North Dakota Century Code as amended by section 4

1 of chapter 310 of the 1995 Session Laws as amended by section 2 of chapter 279 of the 1997
2 Session Laws is amended and reenacted as follows:

- 3 1. The legislative council's committee on administrative rules may find, for any reason
4 under this subsection, that all or any portion of a rule should be reviewed by the
5 legislative assembly, and the committee may suspend the rule or portion of a rule
6 under this subsection if the suspension is made within ninety days after review of
7 the rule is reopened under section 5 of this Act, the rule is initially considered by
8 the committee within ninety days after the date of the administrative code
9 supplement in which the rule change appears or, for rule changes appearing in the
10 administrative code supplement from November first immediately preceding a
11 regular session of the legislative assembly through the following May first, if that
12 rule is initially considered by the committee at the first meeting of the
13 administrative rules committee following the regular session of the legislative
14 assembly. A rule or a portion of a rule suspended under this subsection becomes
15 permanently ineffective unless it is ratified by both houses of the legislative
16 assembly during the next session of the legislative assembly, in which case it is
17 effective as of the date of ratification by the second house of the legislative
18 assembly. An agency seeking ratification of its rule shall introduce a bill for that
19 purpose. The committee on administrative rules may suspend a rule or portion of
20 a rule if the committee specifically finds that, with regard to the rule, there is:
21 a. An absence of statutory authority.
22 b. An emergency relating to public health, safety, or welfare.
23 c. A failure to comply with express legislative intent or to substantially meet the
24 procedural requirements of this chapter for adoption of the rule.
25 d. A conflict with state law.
26 e. Arbitrariness and capriciousness.
27 f. A failure to make a written record of its consideration of written and oral
28 submissions respecting the rule under subsection 3 of section 28-32-02.

29 **SECTION 4. AMENDMENT.** Subsection 1 of section 28-32-18 of the North Dakota
30 Century Code, as amended by section 12 of House Bill No. 1030, as approved by the
31 fifty-seventh legislative assembly, is amended and reenacted as follows:

- 1 1. The legislative council's administrative rules committee may find, for any reason
2 under this subsection, that all or any portion of a rule should be reviewed by the
3 legislative assembly ~~and the~~. The committee may suspend the rule or portion of a
4 rule under this subsection if the finding that the rule should be reviewed by the
5 legislative assembly is made within ninety days after review of the rule is reopened
6 under section 6 of this Act, or the rule is initially considered by the committee
7 within ninety days after the date of the administrative code supplement in which
8 the rule change appears, or, for rule changes appearing in the administrative code
9 supplement from November first immediately preceding a regular session of the
10 legislative assembly through the following May first, ~~if that~~ the rule is initially
11 considered by the committee at the first meeting of the administrative rules
12 committee following the regular session of the legislative assembly. A rule or
13 portion of a rule suspended under this subsection becomes permanently
14 ineffective unless it is ratified by both houses of the legislative assembly during the
15 next session of the legislative assembly, in which case it is effective as of the date
16 of ratification by the second house of the legislative assembly. An agency seeking
17 ratification of its rule shall introduce a bill for that purpose. The administrative rules
18 committee may suspend a rule or portion of a rule if the committee makes the
19 specific finding that, with regard to that rule or portion of a rule, there is:
20 a. An absence of statutory authority.
21 b. An emergency relating to public health, safety, or welfare.
22 c. A failure to comply with express legislative intent or to substantially meet the
23 procedural requirements of this chapter for adoption of the rule.
24 d. A conflict with state law.
25 e. Arbitrariness and capriciousness.
26 f. A failure to make a written record of its consideration of written and oral
27 submissions respecting the rule under section 28-32-11.

28 **SECTION 5.** If House Bill No. 1030 does not become effective, a new section to
29 chapter 28-32 of the North Dakota Century Code is created and enacted as follows:

30 **Review of administrative rules reopened.** The administrative rules committee may
31 reopen review of an administrative rule upon at least thirty days' prior notice to the adopting

1 agency of the time the committee will consider the rule. The committee shall notify the
2 adopting agency of the reason review of the rule is reopened and the adopting agency shall
3 provide a written response to the committee's expressed concerns. A rule for which review has
4 been reopened under this section is subject to the authority of the administrative rules
5 committee under section 28-32-03.3.

6 **SECTION 6.** If House Bill No. 1030 becomes effective, a new section to chapter 28-32
7 of the North Dakota Century Code is created and enacted as follows:

8 **Review of administrative rules reopened.** The administrative rules committee may
9 reopen review of an administrative rule upon at least thirty days' prior notice to the adopting
10 agency of the time the committee will consider the rule. The committee shall notify the
11 adopting agency of the reason review of the rule is reopened and the adopting agency shall
12 provide a written response to the committee's expressed concerns. A rule for which review has
13 been reopened under this section is subject to the authority of the administrative rules
14 committee under section 28-32-18.

15 **SECTION 7. EFFECTIVE DATE.** Sections 1, 2, 5, and 6 of this Act are effective for
16 administrative rules for which review has been reopened by the administrative rules committee
17 after July 31, 2001. Section 3 of this Act is suspended from operation, but becomes effective
18 retroactive to August 1, 1997, upon a ruling by the North Dakota supreme court that any portion
19 of subsection 1 of section 28-32-03.3 as created by section 3 of chapter 310 of the 1995
20 Session Laws, and as it is subsequently amended, is unconstitutional. Section 4 of this Act is
21 suspended from operation and becomes effective retroactive to August 1, 2001, upon a ruling
22 by the North Dakota supreme court that any portion of subsection 1 of section 28-32-18 as
23 created by section 11 of House Bill No. 1030 is unconstitutional.