

Fifty-seventh  
Legislative Assembly  
of North Dakota

## ENGROSSED HOUSE BILL NO. 1455

Introduced by

Representatives Koppelman, Aarsvold, Belter, Devlin

Senators G. Nelson, Robinson

1 A BILL for an Act to amend and reenact subsection 1 of section 28-32-14 and sections  
2 28-32-17, 28-32-19, subsection 1 of section 28-34-01, and section 54-57-03 of the North  
3 Dakota Century Code, relating to finality of decisions of administrative law judges in  
4 adjudicative proceedings of administrative agencies and appeals from decisions of local  
5 governing bodies.

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

7 **SECTION 1. AMENDMENT.** Subsection 1 of section 28-32-14 of the 1999  
8 Supplement to the North Dakota Century Code is amended and reenacted as follows:

9 1. Any party before an administrative agency who is aggrieved by the final order of  
10 the agency, within fifteen days after notice has been given as required by section  
11 28-32-13, may file a petition for reconsideration with the agency. Filing of the  
12 petition is not a prerequisite for seeking judicial review. If the agency's hearing  
13 officer issues the agency's final order, the petition for reconsideration must be  
14 addressed to the hearing officer, who may grant or deny the petition under  
15 subsection 4, and the provisions of subsection 5 do not apply.

16 **SECTION 2. AMENDMENT.** Section 28-32-17 of the 1999 Supplement to the North  
17 Dakota Century Code is amended and reenacted as follows:

18 **28-32-17. Agency to maintain and certify record on appeal.**

19 1. An administrative agency shall maintain an official record of each adjudicative  
20 proceeding or other administrative proceeding heard by it.  
21 2. Within thirty days, or a longer time as the court by order may direct, after an appeal  
22 has been taken to the district court as provided in this chapter, and after payment  
23 by the appellant of the estimated cost of preparation and filing of the entire record  
24 of the proceedings before the agency, the administrative agency concerned shall

1           prepare and file in the office of the clerk of the district court in which the appeal is  
2           pending the original or a certified copy of the entire record of proceedings before  
3           the agency, or an abstract of the record as may be agreed upon and stipulated by  
4           the parties. Upon receiving a copy of the notice of appeal and specifications of  
5           error pursuant to subsection 4 of section 28-32-15 and unless the agency is  
6           appealing, the administrative agency shall notify the party appealing of the  
7           estimated costs of preparation and filing of the record. Thereafter, unless the  
8           agency is appealing, the party appealing shall pay the administrative agency the  
9           estimated costs required by this subsection. If the actual costs of preparation and  
10          filing of the entire record of the proceedings is greater than the estimated costs,  
11          the party appealing shall pay to the agency the difference. If the actual costs are  
12          less than the estimated costs, the agency shall pay to the party appealing the  
13          difference. Any payment for the costs of preparation and filing of the record must  
14          be paid into the insurance recovery fund and is hereby appropriated as a refund to  
15          the agency for the purposes of defraying the costs of preparing and filing the  
16          record. An agency may contract with any person or another agency to prepare  
17          and file the record of any proceeding before the agency.

18          3. The cost of preparation and filing of the record may be waived by the district court  
19          upon application by an appellant, showing that the appellant is a low-income  
20          person unable to afford these costs. When a waiver is granted, the costs of  
21          preparation and filing of the record must be paid by the administrative agency.

22          4. The agency record of the proceedings, as applicable, must consist of only the  
23          following:

- 24          a. The complaint, answer, and other initial pleadings or documents.
- 25          b. Notices of all proceedings.
- 26          c. Any prehearing notices, transcripts, documents, or orders.
- 27          d. Any motions, pleadings, briefs, petitions, requests, and intermediate rulings.
- 28          e. A statement of matters officially noticed.
- 29          f. Offers of proof and objections and rulings thereon.
- 30          g. Proposed findings, requested orders, and exceptions.

- 1           h.    The transcript of the hearing prepared for the person presiding at the hearing,  
2           including all testimony taken, and any written statements, exhibits, reports,  
3           memoranda, documents, or other information or evidence considered before  
4           final disposition of proceedings.
- 5           i.    Any recommended or proposed order, recommended or proposed findings of  
6           fact and conclusions of law, final order, final findings of fact and conclusions  
7           of law, or findings of fact and conclusions of law or orders on reconsideration.
- 8           j.    Any information considered pursuant to section 28-32-07.
- 9           k.    Matters placed on the record after an ex parte communication.
- 10          5.    Except to the extent that this chapter or another statute provides otherwise, the  
11          agency record constitutes the exclusive basis for administrative agency action and  
12          judicial review of an administrative agency action.
- 13          6.    The record on review of agency rulemaking action, as applicable, must consist of  
14          only the following:
  - 15          a.    All agency notices concerning proposed rulemaking.
  - 16          b.    A copy of the proposed rule upon which written and oral submissions were  
17          made.
  - 18          c.    A copy of the rule as submitted for publication.
  - 19          d.    Any opinion letters by the attorney general as to a rule's legality or the legality  
20          of the agency's rulemaking action.
  - 21          e.    A copy of any interim rule and the agency's findings and statement of the  
22          reasons for an interim rule.
  - 23          f.    The regulatory analysis of a proposed rule.
  - 24          g.    The transcript of any oral hearing on a proposed rule.
  - 25          h.    All written submissions made to the agency on a proposed rule.
  - 26          i.    Any staff memoranda or data prepared for agency consideration in regard to  
27          the proposed rule.
  - 28          j.    Any other document that the agency believes is relevant to the appeal.
  - 29          k.    Any other document that is not privileged and which is a public record that the  
30          appellant requests the agency to include in the record, if relevant to the  
31          appeal.

- 1           7. If the notice of appeal specifies that no exception or objection is made to the  
2           agency's findings of fact, and that the appeal is concerned only with the agency's  
3           conclusions of law based on the facts found by it, the agency may submit an  
4           abstract of the record along with such portions of the record as the agency deems  
5           necessary, to be supplemented by those portions of the record requested to be  
6           submitted by the appellant or by the other party when the agency is appealing.  
7           8. The court may permit amendments or additions to the record filed by the  
8           administrative agency in order to complete the record.

9           **SECTION 3. AMENDMENT.** Section 28-32-19 of the North Dakota Century Code is  
10          amended and reenacted as follows:

11           **28-32-19. Scope of and procedure on appeal from determination of administrative**  
12          **agency.** A notice of appeal may include a request for de novo review by the district court. If  
13          there is no request for de novo review, a judge of the district court must review an appeal from  
14          the determination of an administrative agency based only on the record filed with the court.  
15          After a hearing, the filing of briefs, or other disposition of the matter as the judge may  
16          reasonably require, the court must affirm the order of the agency unless it shall find that any of  
17          the following are present:

- 18           1. The order is not in accordance with the law.  
19           2. The order is in violation of the constitutional rights of the appellant.  
20           3. Provisions of this chapter have not been complied with in the proceedings before  
21           the agency.  
22           4. The rules or procedure of the agency have not afforded the appellant a fair  
23           hearing.  
24           5. The findings of fact made by the agency are not supported by a preponderance of  
25           the evidence.  
26           6. The conclusions of law and order of the agency are not supported by its findings of  
27           fact.

28          If the order of the agency is not affirmed by the court, it shall be modified or reversed, and the  
29          case shall be remanded to the agency for disposition in accordance with the order of the court.

30           **SECTION 4. AMENDMENT.** Subsection 1 of section 28-34-01 of the 1999  
31          Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 1           1. The notice of appeal must be filed with the clerk of the court within thirty days after  
2           the decision of the local governing body. The notice of appeal may include a  
3           request for de novo review by the court. A copy of the notice of appeal must be  
4           served on the local governing body in the manner provided by rule 4 of the North  
5           Dakota Rules of Civil Procedure.

6           **SECTION 5. AMENDMENT.** Section 54-57-03 of the 1999 Supplement to the North  
7           Dakota Century Code is amended and reenacted as follows:

8           **54-57-03. Hearings before administrative law judges.**

- 9           1. Notwithstanding the authority granted in chapter 28-32 allowing agency heads or  
10          other persons to preside in an administrative proceeding, all hearings adjudicative  
11          proceedings of administrative agencies under chapter 28-32, except hearings  
12          ~~conducted by those of~~ the public service commission, the industrial commission,  
13          the insurance commissioner ~~of insurance~~, the workers compensation bureau, the  
14          state engineer, the department of transportation, job service North Dakota, and the  
15          labor commissioner ~~of labor~~, ~~except investigatory hearings under section 28-32-08,~~  
16          ~~and except rulemaking hearings held in accordance with section 28-32-02,~~ must  
17          be conducted by the office of administrative hearings in accordance with the  
18          ~~administrative hearings~~ adjudicative proceedings provisions of chapter 28-32 and  
19          any rules adopted pursuant to chapter 28-32. But, appeals hearings pursuant to  
20          section 61-03-22 and drainage appeals from water resource boards to the state  
21          engineer pursuant to chapter 61-32 must be conducted by the office of  
22          administrative hearings. Additionally, hearings of the department of corrections  
23          and rehabilitation for the parole board in accordance with chapters 12-56.1 and  
24          12-59, regarding parole violations; job discipline and dismissal appeals to the  
25          board of higher education; Individuals With Disabilities Education Act and  
26          section 504 due process hearings of the superintendent of public instruction; and  
27          chapter 37-19.1 veterans' preferences hearings for any agency must be conducted  
28          by the office of administrative hearings in accordance with applicable laws.
- 29          2. The agency head shall make a written request to the director requesting the  
30          designation of an administrative law judge to preside for each administrative  
31          hearing proceeding or adjudicative proceeding to be held. An agency may request

- 1 an administrative law judge to be designated to preside over the entire  
2 administrative proceeding.
- 3 3. All administrative agencies required to have their administrative proceedings or  
4 adjudicative proceedings conducted by the office of administrative hearings under  
5 subsection 1 must request an administrative law judge to be designated to preside  
6 over the entire administrative proceeding or adjudicative proceeding and to issue  
7 the final order of the agency under subsection 6 of section 28-32-08.5. However,  
8 boards and commissions may request an administrative law judge to be  
9 designated to preside over the entire administrative proceeding or adjudicative  
10 proceeding and to issue the final order of the agency under subsection 6 of section  
11 28-32-08.5, or they may request an administrative law judge to be designated to  
12 preside only as procedural hearing officer under subsection 5 of section  
13 28-32-08.5. An administrative agency required to have its administrative  
14 proceedings or adjudicative proceedings conducted by the office of administrative  
15 hearings under subsection 1 may not request an administrative law judge to be  
16 designated to preside over the entire administrative proceeding or adjudicative  
17 proceeding and to issue a recommended order to the agency under subsection 4  
18 of section 28-32-08.5.
- 19 4. Informal disposition of an administrative proceeding or adjudicative proceeding  
20 may be made by an agency at any time before or after the designation of an  
21 administrative law judge from the office of administrative hearings.
- 22 ~~3.~~ 5. If a party to an administrative proceeding or adjudicative proceeding is in default,  
23 the agency may issue a default order and a written notice of default, including a  
24 statement of the grounds for default, prior to the hearing. The agency shall  
25 determine all the issues involved. If issued, the default notice and order must be  
26 served upon all the parties and the administrative law judge, if one has been  
27 ~~assigned~~ designated to preside. After service of the default notice and order, if a  
28 hearing is necessary to complete the administrative action with or without the  
29 participation of the party in default, an administrative law judge from the office of  
30 administrative hearings must preside.

1       4. ~~6.~~   When ~~assigning~~ designating administrative law judges to ~~conduct administrative~~  
2           hearings or to preside in an administrative proceeding or adjudicative proceeding,  
3           the director shall attempt to assign an administrative law judge having expertise in  
4           the subject matter to be dealt with.

5       5. ~~7.~~   The director of administrative hearings may assign an administrative law judge to  
6           preside in an administrative proceeding or adjudicative proceeding, upon request,  
7           to any agency exempted from the provisions of this section, to any agency, or part  
8           of any agency, that is not an administrative agency subject to the provisions of  
9           chapter 28-32, to any unit of local government in this state, to any tribal  
10          government in this state, to the judicial branch, or to any agency to conduct a  
11          rulemaking hearing.