Sixty-sixth Legislative Assembly of North Dakota

HOUSE BILL NO. 1173

Introduced by

Representative Keiser

1 A BILL for an Act to amend and reenact section 28-34-01 of the North Dakota Century Code,

2 relating to costs of appeals of local government decisions.

3 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

4 SECTION 1. AMENDMENT. Section 28-34-01 of the North Dakota Century Code is

5 amended and reenacted as follows:

6 **28-34-01.** Appeals from local governing bodies - Procedures.

This section, to the extent that it is not inconsistent with procedural rules adopted by the
North Dakota supreme court, governs any appeal provided by statute from the decision of a
local governing body, except those court reviews provided under sections 2-04-11 and
40-51.2-15. For the purposes of this section, "local governing body" includes any officer, board,
commission, resource or conservation district, or other political subdivision. Each appeal is
governed by the following procedure:

- The notice of appeal must be filed with the clerk of the court within thirty days after the
 decision of the local governing body. A copy of the notice of appeal must be served on
 the local governing body in the manner provided by rule 4 of the North Dakota Rules
 of Civil Procedure.
- 17 The appellee shall prepare and file a single copy of the record on appeal with the 2. 18 court. Within thirty days, or sucha longer time as the court by order may direct, after 19 the notice of appeal has been filed in the court, and after the deposit to the court by 20 the appellant of the estimated cost of a transcript of the evidenceany testimony, the 21 local governing body shall prepare without charge and file in the office of the clerk of 22 the court in which the appeal is pending the original or a certified copy of the entire 23 proceedingsrecord before the local governing body, or such an abstract of the record 24 as may be agreed upon and stipulated by the parties, including the pleadings, notices,

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1 transcripts of all testimony taken, exhibits, reports or memoranda, exceptions or 2 objections, briefs, findings of fact, proposed findings of fact submitted to the local 3 governing body, and the decision of the local governing body in the proceedings. If the 4 notice of appeal specifies that no exception or objection is made to the local governing 5 body's findings of fact, and that the appeal is concerned only with the local governing 6 body's conclusions based on the facts found by it, the evidence submitted at the 7 hearing before the local governing body must be omitted from the record filed in the 8 court. The court may permit amendments or additions to the record to complete the 9 record.

10 3. If the court determines on its own motion or if an application for leave to adduce 11 additional evidence is made to the court in which an appeal from a determination from 12 a local governing body is pending, and it is shown to the satisfaction of the court that 13 such the additional evidence is material and that there are reasonable grounds for the 14 failure to adduce such the evidence in the hearing or proceeding had before the local 15 governing body, or that such the evidence is material to the issues involved and was 16 rejected or excluded by the local governing body, the court may order that such the 17 additional evidence be taken, heard, and considered by the local governing body on 18 suchthe terms and conditions as the court may determine. After considering the 19 additional evidence, the local governing body may amend or modify its decision and 20 shall file with the court a transcriptcopy of the additional evidence together with its new 21 or modified decision, if any.