

Fifty-fifth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1030

Introduced by

Legislative Council

(Administrative Rules Committee)

1 A BILL for an Act to amend and reenact section 28-32-03.3 of the North Dakota Century Code,
2 relating to consideration of administrative rules by the administrative rules committee; and to
3 provide an effective date.

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

5 **SECTION 1. AMENDMENT.** Section 28-32-03.3 of the 1995 Supplement to the North
6 Dakota Century Code is amended and reenacted as follows:

7 **28-32-03.3. Committee on administrative rules - Finding that rules are void -**
8 **Objection to rules - Effects of objection.**

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

1 e. Arbitrariness and capriciousness.

2 f. A failure to make a written record of its consideration of written and oral
3 submissions respecting the rule under subsection 3 of section 28-32-02.

4 2. The committee on administrative rules may find a rule void at the meeting at which
5 the rule is initially considered by the committee or may hold consideration of that
6 rule for at least one subsequent meeting. A rule held for consideration under this
7 subsection may not be held beyond the first committee meeting following the next
8 regular session of the legislative assembly beginning after the meeting at which the
9 rule is initially considered by the committee. Within three business days after the
10 committee on administrative rules finds that a rule is void, the office of the
11 legislative council shall provide written notice of that finding and the committee's
12 specific finding under subdivisions a through f of subsection 1 to the adopting
13 agency and to the chairman of the legislative council. Within fourteen days after
14 receipt of the notice, the adopting agency may file a petition with the chairman of
15 the legislative council for review by the legislative council of the decision of the
16 committee on administrative rules. If the adopting agency does not file a petition
17 for review, the rule becomes void on the fifteenth day after the notice from the
18 office of the legislative council to the adopting agency. If within sixty days after
19 receipt of the petition from the adopting agency the legislative council has not
20 disapproved by motion the finding of the committee on administrative rules, the rule
21 is void.

22 3. If the legislative council's committee on administrative rules objects to all or any
23 portion of a rule because the committee deems it to be unreasonable, arbitrary,
24 capricious, or beyond the authority delegated to the adopting agency, the
25 committee may file that objection in certified form in the office of the legislative
26 council. The filed objection must contain a concise statement of the committee's
27 reasons for its action.

28 a. The office of the legislative council shall attach to each objection a certification
29 of the time and date of its filing and, as soon as possible, shall transmit a copy
30 of the objection and the certification to the agency adopting the rule in

question. The office of the legislative council shall also maintain a permanent register of all committee objections.

- b. The office of the legislative council shall publish an objection filed pursuant to this section in the next issue of the code supplement. In case of a filed committee objection to a rule subject to the exceptions of the definition of rule in section 28-32-01, the agency shall indicate the existence of that objection adjacent to the rule in any compilation containing that rule.
- c. Within fourteen days after the filing of a committee objection to a rule, the adopting agency shall respond in writing to the committee. After receipt of the response, the committee may withdraw or modify its objection.
- d. After the filing of a committee objection, the burden of persuasion is upon the agency in any action for judicial review or for enforcement of the rule to establish that the whole or portion thereof objected to is within the procedural and substantive authority delegated to the agency. If the agency fails to meet its burden of persuasion, the court shall declare the whole or portion of the rule objected to invalid and judgment must be rendered against the agency for court costs. These court costs must include a reasonable attorney's fee and must be payable from the appropriation of the agency which adopted the rule in question.

- 4. An agency may amend or repeal a rule or create a related rule if, after consideration of rules by the committee on administrative rules, the agency and committee agree that the rule amendment, repeal, or creation is necessary to address any of the considerations under subsection 1. A rule amended, repealed, or created under this subsection is not subject to the other requirements of this chapter relating to adoption of administrative rules and may be resubmitted by the agency to the legislative council for publication as amended, repealed, or created and reconsidered by the committee on administrative rules at a subsequent meeting at which public comment on the agreed rule change must be allowed.

SECTION 2. AMENDMENT. Section 4 of chapter 310 of the 1995 Session Laws is amended and reenacted as follows:

1 **SECTION 4. AMENDMENT.** Section 28-32-03.3 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **28-32-03.3. Committee on administrative rules - Suspension of rules - Objection**
4 **to rules - Effects of objection.**

- 5 1. The legislative council's committee on administrative rules may find, for any reason
6 under this subsection, that all or any portion of a rule should be reviewed by the
7 legislative assembly, and the committee may suspend the rule or portion of a rule
8 under this subsection if the ~~suspension is made~~ rule is initially considered by the
9 committee within ninety days after the date of the administrative code supplement
10 in which the rule change appears or, for rule changes appearing in the
11 administrative code supplement from November first immediately preceding a
12 regular session of the legislative assembly through the following May first, if that
13 ~~suspension is made~~ rule is initially considered by the committee at the first meeting
14 of the administrative rules committee following the regular session of the legislative
15 assembly. A rule or a portion of a rule suspended under this subsection becomes
16 permanently ineffective unless it is ratified by both houses of the legislative
17 assembly during the next session of the legislative assembly, in which case it is
18 effective as of the date of ratification by the second house of the legislative
19 assembly. An agency seeking ratification of its rule shall introduce a bill for that
20 purpose. The committee on administrative rules may suspend a rule or portion of a
21 rule if the committee specifically finds that, with regard to the 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 subsection 3 of section 28-32-02.
- 30 2. The committee on administrative rules may suspend a rule at the meeting at which
31 the rule is initially considered by the committee or may hold consideration of that

rule for at least one subsequent meeting. A rule held for consideration under this subsection may not be held beyond the first committee meeting following the next regular session of the legislative assembly beginning after the meeting at which the rule is initially considered by the committee. Within three business days after the committee on administrative rules suspends a rule, the office of the legislative council shall provide written notice of that suspension and the committee's specific finding under subdivisions a through f of subsection 1 to the adopting agency and to the chairman of the legislative council. Within fourteen days after receipt of the notice, the adopting agency may file a petition with the chairman of the legislative council for review by the legislative council of the decision of the committee on administrative rules. After receipt of the petition and before the next session of the legislative assembly, the legislative council by motion may lift the suspension and reinstate the rule's effectiveness.

3. If the legislative council's committee on administrative rules objects to all or any portion of a rule because the committee deems it to be unreasonable, arbitrary, capricious, or beyond the authority delegated to the adopting agency, the committee may file that objection in certified form in the office of the legislative council. The filed objection must contain a concise statement of the committee's reasons for its action.
 - a. The office of the legislative council shall attach to each objection a certification of the time and date of its filing and, as soon as possible, shall transmit a copy of the objection and the certification to the agency adopting the rule in question. The office of the legislative council shall also maintain a permanent register of all committee objections.
 - b. The office of the legislative council shall publish an objection filed pursuant to this section in the next issue of the code supplement. In case of a filed committee objection to a rule subject to the exceptions of the definition of rule in section 28-32-01, the agency shall indicate the existence of that objection adjacent to the rule in any compilation containing that rule.

1 c. Within fourteen days after the filing of a committee objection to a rule, the
2 adopting agency shall respond in writing to the committee. After receipt of the
3 response, the committee may withdraw or modify its objection.

4 d. After the filing of a committee objection, the burden of persuasion is upon the
5 agency in any action for judicial review or for enforcement of the rule to
6 establish that the whole or portion thereof objected to is within the procedural
7 and substantive authority delegated to the agency. If the agency fails to meet
8 its burden of persuasion, the court shall declare the whole or portion of the
9 rule objected to invalid and judgment must be rendered against the agency for
10 court costs. These court costs must include a reasonable attorney's fee and
11 must be payable from the appropriation of the agency which adopted the rule
12 in question.

13 4. An agency may amend or repeal a rule or create a related rule if, after
14 consideration of rules by the committee on administrative rules, the agency and
15 committee agree that the rule amendment, repeal, or creation is necessary to
16 address any of the considerations under subsection 1. A rule amended, repealed,
17 or created under this subsection is not subject to the other requirements of this
18 chapter relating to adoption of administrative rules and may be resubmitted by the
19 agency to the legislative council for publication as amended, repealed, or created
20 and reconsidered by the committee on administrative rules at a subsequent
21 meeting at which public comment on the agreed rule change must be allowed.

22 **SECTION 3. EFFECTIVE DATE.** Section 1 of this Act is effective for administrative
23 rules taking effect after July 31, 1997. Section 2 of this Act is suspended from operation, but
24 becomes effective retroactive to August 1, 1997, upon a ruling by the North Dakota supreme
25 court that any portion of subsection 1 of section 28-32-03.3 as created by section 3 of
26 chapter 310 of the 1995 Session Laws and amended by section 1 of this Act is unconstitutional.