

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.

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

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

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

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

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

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

**SECTION 4. AMENDMENT.** Subsection 1 of section 28-32-18 of the North Dakota Century Code, as amended by section 12 of House Bill No. 1030, as approved by the 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.