

**Fifty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 9, 2001**

HOUSE BILL NO. 1228
(Representatives Grande, Devlin, Koppelman)
(Senators Andrist, Stenehjem)

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

1. The legislative council's committee on administrative rules may find that all or any portion of a rule is void if that finding is made within ninety days after review of the rule is reopened under section 5 of this Act, that 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. The committee on administrative rules 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 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. The legislative council's administrative rules committee 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~~. The committee may suspend the rule or portion of a rule under this subsection if the finding that the rule should be reviewed by the legislative assembly is made within ninety days after review of the rule is reopened under section 6 of this Act, or 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 the~~ 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 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 administrative rules committee may suspend a rule or portion of a rule 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 5. If House Bill No. 1030 does not become effective, a new section to chapter 28-32 of the North Dakota Century Code is created and enacted as follows:

Review of administrative rules reopened. The administrative rules committee may reopen review of an administrative rule upon at least thirty days' prior notice to the adopting agency of the time the committee will consider the rule. The committee shall notify the adopting agency of the reason review of the rule is reopened and the adopting agency shall provide a written response to the committee's expressed concerns. A rule for which review has been reopened under this section is subject to the authority of the administrative rules committee under section 28-32-03.3.

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

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

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

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-seventh Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1228.

House Vote: Yeas 50 Nays 47 Absent 1

Senate Vote: Yeas 26 Nays 20 Absent 3

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2001.

Approved at _____ M. on _____, 2001.

Governor

Filed in this office this _____ day of _____, 2001,
at _____ o'clock _____ M.

Secretary of State

Date of Action: April 9, 2001

Honorable Alvin A. Jaeger
Secretary of State
Bismarck, North Dakota

I certify that this Act, House Bill No. 1228, together with the objections of Governor John Hoeven, was returned to the House, being the body in which it originated, on April 5, 2001, at 4:00 p.m.; that the objections of the Governor were read at length on April 9, 2001, and entered upon the Journal; that the Bill was taken up for reconsideration; that the motion for reconsideration prevailed on April 9, 2001; and that the roll was called and the Bill failed to pass, with less than two-thirds of the members-elect voting in the affirmative.

Vote:	Yeas	43
	Nays	53
	Absent and not voting	2

Speaker of the House

Chief Clerk of the House