

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, and 54-57-03 of the North Dakota Century Code, relating to finality of
3 decisions of administrative law judges in adjudicative proceedings of administrative agencies.

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

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

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

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

16 **28-32-17. Agency to maintain and certify record on appeal.**

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

the agency, or an abstract of the record as may be agreed upon and stipulated by the parties. Upon receiving a copy of the notice of appeal and specifications of error pursuant to subsection 4 of section 28-32-15 and unless the agency is appealing, the administrative agency shall notify the party appealing of the estimated costs of preparation and filing of the record. Thereafter, unless the agency is appealing, the party appealing shall pay the administrative agency the estimated costs required by this subsection. If the actual costs of preparation and filing of the entire record of the proceedings is greater than the estimated costs, the party appealing shall pay to the agency the difference. If the actual costs are less than the estimated costs, the agency shall pay to the party appealing the difference. Any payment for the costs of preparation and filing of the record must be paid into the insurance recovery fund and is hereby appropriated as a refund to the agency for the purposes of defraying the costs of preparing and filing the record. An agency may contract with any person or another agency to prepare and file the record of any proceeding before the agency.

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

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

- a. The complaint, answer, and other initial pleadings or documents.
- b. Notices of all proceedings.
- c. Any prehearing notices, transcripts, documents, or orders.
- d. Any motions, pleadings, briefs, petitions, requests, and intermediate rulings.
- e. A statement of matters officially noticed.
- f. Offers of proof and objections and rulings thereon.
- g. Proposed findings, requested orders, and exceptions.
- h. The transcript of the hearing prepared for the person presiding at the hearing, including all testimony taken, and any written statements, exhibits, reports,

- 1 memoranda, documents, or other information or evidence considered before
2 final disposition of proceedings.
- 3 i. Any recommended or proposed order, recommended or proposed findings of
4 fact and conclusions of law, final order, final findings of fact and conclusions
5 of law, or findings of fact and conclusions of law or orders on reconsideration.
- 6 j. Any information considered pursuant to section 28-32-07.
- 7 k. Matters placed on the record after an ex parte communication.
- 8 5. Except to the extent that this chapter or another statute provides otherwise, the
9 agency record constitutes the exclusive basis for administrative agency action and
10 judicial review of an administrative agency action.
- 11 6. The record on review of agency rulemaking action, as applicable, must consist of
12 only the following:
- 13 a. All agency notices concerning proposed rulemaking.
- 14 b. A copy of the proposed rule upon which written and oral submissions were
15 made.
- 16 c. A copy of the rule as submitted for publication.
- 17 d. Any opinion letters by the attorney general as to a rule's legality or the legality
18 of the agency's rulemaking action.
- 19 e. A copy of any interim rule and the agency's findings and statement of the
20 reasons for an interim rule.
- 21 f. The regulatory analysis of a proposed rule.
- 22 g. The transcript of any oral hearing on a proposed rule.
- 23 h. All written submissions made to the agency on a proposed rule.
- 24 i. Any staff memoranda or data prepared for agency consideration in regard to
25 the proposed rule.
- 26 j. Any other document that the agency believes is relevant to the appeal.
- 27 k. Any other document that is not privileged and which is a public record that the
28 appellant requests the agency to include in the record, if relevant to the
29 appeal.
- 30 7. If the notice of appeal specifies that no exception or objection is made to the
31 agency's findings of fact, and that the appeal is concerned only with the agency's

conclusions of law based on the facts found by it, the agency may submit an abstract of the record along with such portions of the record as the agency deems necessary, to be supplemented by those portions of the record requested to be submitted by the appellant or by the other party when the agency is appealing.

8. The court may permit amendments or additions to the record filed by the administrative agency in order to complete the record.

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

28-32-19. Scope of and procedure on appeal from determination of administrative agency. A judge of the district court must review an appeal from the determination of an administrative agency based only on the record filed with the court. After a hearing, the filing of briefs, or other disposition of the matter as the judge may reasonably require, the court must affirm the order of the agency unless it shall find that any of the following are present:

1. The order is not in accordance with the law.
2. The order is in violation of the constitutional rights of the appellant.
3. Provisions of this chapter have not been complied with in the proceedings before the agency.
4. The rules or procedure of the agency have not afforded the appellant a fair hearing.
5. The findings of fact made by the agency are not supported by a preponderance of the evidence.
6. The conclusions of law and order of the agency are not supported by its findings of fact.
7. The findings of fact made by the agency do not sufficiently address the evidence presented to the agency by the appellant.
8. The conclusions of law and order of the agency do not sufficiently explain the agency's rationale for not adopting any contrary recommendations by a hearing officer or an administrative law judge.

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

1 **SECTION 4. AMENDMENT.** Section 54-57-03 of the 1999 Supplement to the North
2 Dakota Century Code is amended and reenacted as follows:

3 **54-57-03. Hearings before administrative law judges.**

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

- 1 3. Informal disposition of an administrative proceeding or adjudicative proceeding
2 may be made by an agency at any time before or after the designation of an
3 administrative law judge from the office of administrative hearings.
- 4 ~~3.~~ 4. If a party to an administrative proceeding or adjudicative proceeding is in default,
5 the agency may issue a default order and a written notice of default, including a
6 statement of the grounds for default, prior to the hearing. The agency shall
7 determine all the issues involved. If issued, the default notice and order must be
8 served upon all the parties and the administrative law judge, if one has been
9 ~~assigned~~ designated to preside. After service of the default notice and order, if a
10 hearing is necessary to complete the administrative action with or without the
11 participation of the party in default, an administrative law judge from the office of
12 administrative hearings must preside.
- 13 ~~4.~~ 5. When ~~assigning~~ designating administrative law judges to ~~conduct administrative~~
14 ~~hearings or to~~ preside in an administrative proceeding or adjudicative proceeding,
15 the director shall attempt to assign an administrative law judge having expertise in
16 the subject matter to be dealt with.
- 17 ~~5.~~ 6. The director of administrative hearings may assign an administrative law judge to
18 preside in an administrative proceeding or adjudicative proceeding, upon request,
19 to any agency exempted from the provisions of this section, to any agency, or part
20 of any agency, that is not an administrative agency subject to the provisions of
21 chapter 28-32, to any unit of local government in this state, to any tribal
22 government in this state, to the judicial branch, or to any agency to conduct a
23 rulemaking hearing.