

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1501

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new subsection to section 28-32-50 and a new section to chapter 61-28 of the North Dakota Century Code, relating to appeals regarding permits for livestock feedlots and other permitted facilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 28-32-50 of the North Dakota Century Code is created and enacted as follows:

In any civil judicial proceeding involving adverse parties to an appeal or enforcement action involving an environmental permit issued under chapters 23-20.3, 23-25, 23-29, or 61-28 in which two or more of the adverse parties are not an administrative agency or an agent of an administrative agency, the court may award the prevailing nonagency party reasonable attorney's fees and costs if the court finds in favor of that party and determines that the nonprevailing nonagency party acted without substantial justification, or on the basis of claims or allegations that are factually unsupported. The court shall award reasonable attorney's fees and costs if the court determines that the nonprevailing nonagency party's claims or allegations are frivolous as provided in section 28-26-01. If the appeal or civil judicial proceeding covered by this subsection involves multiple claims or allegations, the court may apportion attorney's fees and costs in proportion to the time reasonably spent by a prevailing party relating to claims pursued by the nonprevailing party that were frivolous, factually unsupported, or without substantial justification.

SECTION 2. A new section to chapter 61-28 of the North Dakota Century Code is created and enacted as follows:

Appeal from permit proceedings. An appeal from the issuance, denial, modification, or revocation of a permit for which public notice or hearing is required under this chapter may be made by the person who filed the permit application, or by any person who is aggrieved by the permit application decision, provided that person participated in or provided comments during the hearing process for the permit application, modification, or revocation. An appeal must be taken within thirty days after the final permit application determination is mailed by first-class mail to the permit applicant and to any interested person who has requested a copy of the final permit determination during the permit hearing process. Except as provided in this section, an appeal of the final permit determination is governed by chapter 28-32. The department may substitute final permit conditions and written responses to public comments for findings of fact and conclusions of law. Except for violations of this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter which occur after the permit is issued, all challenges to the department's issuance, modification, or revocation of the permit or permit conditions must be made in the permit hearing process and may not be raised in any collateral or subsequent legal proceeding, and the applicant and any aggrieved person may raise on appeal only issues that were raised to the department in the permit hearing process."

Renumber accordingly