

Fifty-fifth  
Legislative Assembly  
of North Dakota

## ENGROSSED 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 one subsequent meeting. Within three business days after the committee  
7 on administrative rules finds that a rule is void, the office of the legislative council  
8 shall provide written notice of that finding and the committee's specific finding  
9 under subdivisions a through f of subsection 1 to the adopting agency and to the  
10 chairman of the legislative council. Within fourteen days after receipt of the notice,  
11 the adopting agency may file a petition with the chairman of the legislative council  
12 for review by the legislative council of the decision of the committee on  
13 administrative rules. If the adopting agency does not file a petition for review, the  
14 rule becomes void on the fifteenth day after the notice from the office of the  
15 legislative council to the adopting agency. If within sixty days after receipt of the  
16 petition from the adopting agency the legislative council has not disapproved by  
17 motion the finding of the committee on administrative rules, the rule is void.
- 18 3. If the legislative council's committee on administrative rules objects to all or any  
19 portion of a rule because the committee deems it to be unreasonable, arbitrary,  
20 capricious, or beyond the authority delegated to the adopting agency, the  
21 committee may file that objection in certified form in the office of the legislative  
22 council. The filed objection must contain a concise statement of the committee's  
23 reasons for its action.

24 a. The office of the legislative council shall attach to each objection a  
25 certification of the time and date of its filing and, as soon as possible, shall  
26 transmit a copy of the objection and the certification to the agency adopting  
27 the rule in question. The office of the legislative council shall also maintain a  
28 permanent register of all committee objections.

29 b. The office of the legislative council shall publish an objection filed pursuant to  
30 this section in the next issue of the code supplement. In case of a filed  
31 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:

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

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

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~~ 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 ~~suspension is made~~ 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.

2. The committee on administrative rules may suspend a rule at the meeting at which the rule is initially considered by the committee or may hold consideration of that rule for one subsequent meeting. 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.
  - 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

1 and must be payable from the appropriation of the agency which adopted the  
2 rule in question.

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

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