

**Fifty-fifth Legislative Assembly, State of North Dakota, begun in the
Capitol in the City of Bismarck, on Monday, the sixth day of January,
one thousand nine hundred and ninety-seven**

HOUSE BILL NO. 1191
(Representatives Skarphol, Oban, Carlson, Freier)
(Senator Robinson)

AN ACT to create and enact section 28-32-03.4 of the North Dakota Century Code, relating to authority of the committee on administrative rules 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, relating to authority of the committee on administrative rules to void or object to administrative rules; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 28-32-03.3 of the 1995 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 the rule is called up for review under section 28-32-03.4, 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 finding is made 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 4 of chapter 310 of the 1995 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 the rule is called up for review under section 28-32-03.4, 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 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 3. Section 28-32-03.4 of the North Dakota Century Code is created and enacted as follows:

28-32-03.4. Administrative rules called up for review. The committee on administrative rules may call an administrative rule up for review upon at least thirty days prior notice to the adopting agency of the time the committee will consider the rule. An administrative rule may be called up for review under this section only upon initiation of the question by the committee or the adopting agency on the grounds that the rule is obsolete, archaic, no longer effective, or adopted under statutory law that has been changed and the rule is no longer in harmony with statutory law. The committee shall notify the adopting agency of the reason the rule is called up for review and the adopting agency shall provide a written response to the committee's expressed concerns. A rule called up for review under this section is subject to the authority of the committee on administrative rules under section 28-32-03.3.

SECTION 4. EFFECTIVE DATE. Sections 1 and 3 of this Act are effective for administrative rules called up for review by the committee on administrative rules after July 31, 1997. Section 2 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 amended by section 1 of this Act 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-fifth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1191.

House Vote: Yeas 94 Nays 1 Absent 2

Senate Vote: Yeas 25 Nays 22 Absent 2

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 1997.

Approved at _____ M. on _____, 1997.

Governor

Filed in this office this _____ day of _____, 1997,

at _____ o'clock _____ M.

Secretary of State

Date of Action: April 9, 1997

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

I certify that this Act, House Bill No. 1191, together with the objections of Governor Edward T. Schafer, was returned to the House, being the body in which it originated, on April 5, 1997, at 10:15 a.m.; that the objections of the Governor were read at length on April 5, 1997, and entered upon the Journal; that the Bill was taken up for reconsideration; that the motion for reconsideration prevailed on April 9, 1997; 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	44
	Nays	46
	Absent and not voting	7

Speaker of the House

Chief Clerk of the House