

Fifty-sixth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1024

Introduced by

Legislative Council

(Administrative Rules Committee)

A BILL for an Act to create and enact section 28-32-03.4 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 4-18.1-20 and subsection 1 of section 28-32-03.3 of the North Dakota Century Code, relating to statutory references to administrative rulemaking provisions and authority of the administrative rules committee to void or object to administrative rules; to repeal section 28-32-04 of the North Dakota Century Code, relating to petitions for reconsideration of administrative rulemaking; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 4-18.1-20 of the North Dakota Century Code is amended and reenacted as follows:

1. The rules of practice, regulations, and stabilization plans issued by the board are ~~declared to be "rules and regulations" as that phrase is defined in chapter 28-32.~~ The requirements of sections 28-32-02 through ~~28-32-04~~ 28-32-03.3 are applicable to any board proceeding ~~which that~~ results in the adoption, amendment, or repeal of any rule of practice, regulation, or stabilization plan.

SECTION 2. AMENDMENT. Subsection 1 of section 28-32-03.3 of the 1997 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, 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 3. AMENDMENT. 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 the rule is called up for review under section 28-32-03.4, 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. 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 administrative rules committee 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. 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 administrative rules committee under section 28-32-03.3.

SECTION 5. REPEAL. Section 28-32-04 of the North Dakota Century Code is repealed.

SECTION 6. EFFECTIVE DATE. Sections 2 and 4 of this Act are effective for administrative rules called up for review by the administrative rules committee after July 31, 1999. 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.