

Fifty-sixth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1024

Introduced by

Legislative Council

(Administrative Rules Committee)

1 A BILL for an Act to create and enact section 28-32-03.4 of the North Dakota Century Code,
2 relating to authority of the administrative rules committee to call up existing administrative rules
3 for review; to amend and reenact subsection 1 of section 4-18.1-20, subsections 4 and 7 of
4 section 28-32-02, subsection 1 of section 28-32-03.3, and section 28-32-04 of the North Dakota
5 Century Code, relating to statutory references to administrative rulemaking provisions,
6 administrative rulemaking procedures, authority of the administrative rules committee to void or
7 object to administrative rules, and petitions for reconsideration of administrative rules; and to
8 provide an effective date.

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

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

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

17 **SECTION 2. AMENDMENT.** Subsections 4 and 7 of section 28-32-02 of the 1997
18 Supplement to the North Dakota Century Code are amended and reenacted as follows:

19 4. The agency's notice of the proposed adoption, amendment, or repeal of a rule
20 must include a short, specific explanation of the proposed rule and the purpose of
21 the proposed rule, a determination of whether the proposed rulemaking is
22 expected to have an impact on the regulated community in excess of fifty thousand
23 dollars, identify at least one location where interested persons may review the text
24 of the proposed rule, provide the address to which written data, views, or

1 arguments concerning the proposed rule may be sent, provide a phone number at
2 which a copy of the rules and regulatory analysis may be requested, and, in the
3 case of a substantive rule, provide the time and place set for each oral hearing.
4 The notice must be filed with the office of the legislative council and published at
5 least twice in each daily newspaper of general circulation published in this state.
6 The agency shall mail a copy of the notice to each person who has made a timely
7 request to the agency for a mailed copy of the notice. The agency may mail or
8 otherwise provide a copy of the notice to any person who is likely to be an
9 interested person. The agency shall mail or deliver a copy of the rules to any
10 person requesting a copy. The agency may charge for the actual cost of providing
11 copies of the proposed rule. At least ~~thirty~~ fourteen days must elapse between the
12 later of the date of the second publication of the notice or the date the legislative
13 council mails copies of an agency's notice and the date of the hearing. ~~The~~
14 ~~thirty day period begins on the first business day of the month in which the notices~~
15 ~~must be mailed or on the date of the second publication, whichever is later. At~~
16 least fourteen days before the hearing, the agency shall provide the attorney
17 general a copy of the notice and the proposed rules. Subject to subsection 5,
18 notices filed on or before the last calendar day of the preceding month must be
19 mailed by the legislative council on the first business day of the following month to
20 any person making a request. The agency shall allow, after the conclusion of any
21 rulemaking hearing, a comment period of not less than ~~thirty~~ fourteen days during
22 which data, views, or arguments concerning the proposed rulemaking will be
23 received by the agency and made a part of the rulemaking record to be considered
24 by the agency.

25 7. Every rule ~~proposed~~ submitted to the attorney general by any administrative
26 agency must be ~~submitted to~~ reviewed by the attorney general for an opinion as to
27 its legality before final adoption, ~~and the~~. The attorney general shall promptly
28 furnish each such the agency a preliminary opinion, based upon the rules as
29 submitted, by the close of the comment period for those rules. After the close of
30 the comment period, the agency shall advise the attorney general of each change
31 to the proposed rules made in contemplation of final adoption and the attorney

1 general shall promptly furnish an opinion as to legality of the rules contemplated
2 for final adoption. The attorney general may not approve any rule as to legality
3 when the rule exceeds the statutory authority of the agency or is written in a
4 manner that is not concise or easily understandable, or when the procedural
5 requirements for adoption of the rule in this chapter are not substantially met. The
6 attorney general shall advise an agency of any revision or rewording of a rule
7 necessary to correct objections as to legality.

8 **SECTION 3. AMENDMENT.** Subsection 1 of section 28-32-03.3 of the 1997
9 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 10 1. The legislative council's committee on administrative rules may find that all or any
11 portion of a rule is void if that finding is made within ninety days after the rule is
12 called up for review under section 28-32-03.4, that rule is initially considered by the
13 committee within ninety days after the date of the administrative code supplement
14 in which the rule change appears, or, for rule changes appearing in the
15 administrative code supplement from November first immediately preceding a
16 regular session of the legislative assembly through the following May first, if that
17 rule is initially considered by the committee at the first meeting of the
18 administrative rules committee following the regular session of the legislative
19 assembly. The committee on administrative rules may find a rule or portion of a
20 rule void if the committee makes the specific finding that, with regard to that rule or
21 portion of a rule, there is:
- 22 a. An absence of statutory authority.
 - 23 b. An emergency relating to public health, safety, or welfare.
 - 24 c. A failure to comply with express legislative intent or to substantially meet the
25 procedural requirements of this chapter for adoption of the rule.
 - 26 d. A conflict with state law.
 - 27 e. Arbitrariness and capriciousness.
 - 28 f. A failure to make a written record of its consideration of written and oral
29 submissions respecting the rule under subsection 3 of section 28-32-02.

1 **SECTION 4. AMENDMENT.** Subsection 1 of section 28-32-03.3 of the North Dakota
2 Century Code as amended by section 4 of chapter 310 of the 1995 Session Laws as amended
3 by section 2 of chapter 279 of the 1997 Session Laws is amended and reenacted as follows:

4 1. The legislative council's committee on administrative rules may find, for any reason
5 under this subsection, that all or any portion of a rule should be reviewed by the
6 legislative assembly, and the committee may suspend the rule or portion of a rule
7 under this subsection if the suspension is made within ninety days after the rule is
8 called up for review under section 28-32-03.4, the rule is initially considered by the
9 committee within ninety days after the date of the administrative code supplement
10 in which the rule change appears or, for rule changes appearing in the
11 administrative code supplement from November first immediately preceding a
12 regular session of the legislative assembly through the following May first, if that
13 rule is initially considered by the committee at the first meeting of the
14 administrative rules committee following the regular session of the legislative
15 assembly. A rule or a portion of a rule suspended under this subsection becomes
16 permanently ineffective unless it is ratified by both houses of the legislative
17 assembly during the next session of the legislative assembly, in which case it is
18 effective as of the date of ratification by the second house of the legislative
19 assembly. An agency seeking ratification of its rule shall introduce a bill for that
20 purpose. The committee on administrative rules may suspend a rule or portion of
21 a rule if the committee specifically finds that, with regard to the rule, there is:
22 a. An absence of statutory authority.
23 b. An emergency relating to public health, safety, or welfare.
24 c. A failure to comply with express legislative intent or to substantially meet the
25 procedural requirements of this chapter for adoption of the rule.
26 d. A conflict with state law.
27 e. Arbitrariness and capriciousness.
28 f. A failure to make a written record of its consideration of written and oral
29 submissions respecting the rule under subsection 3 of section 28-32-02.

30 **SECTION 5.** Section 28-32-03.4 of the North Dakota Century Code is created and
31 enacted as follows:

1 **28-32-03.4. Administrative rules called up for review.** Upon request of any person
2 substantially interested in the effect of a rule who has previously petitioned the adopting agency
3 for review of the rule under section 28-32-04 or upon request of the adopting agency, the
4 administrative rules committee may call an administrative rule up for review upon at least thirty
5 days' prior notice to the adopting agency of the time the committee will consider the rule. The
6 committee shall notify the adopting agency of the reason the rule is called up for review and the
7 adopting agency shall provide a written response to the committee's expressed concerns. A
8 rule called up for review under this section is subject to the authority of the administrative rules
9 committee under section 28-32-03.3.

10 **SECTION 6. AMENDMENT.** Section 28-32-04 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **28-32-04. Petition for ~~reconsideration~~ review of rule - Hearing by agency.** Any
13 person substantially interested in the effect of a rule adopted by an administrative agency may
14 petition such agency for a ~~reconsideration~~ review of the effect and consideration of any such
15 the rule or for an consideration of amendment or repeal thereof of the rule. ~~Such~~ The petition
16 must state clearly and concisely the petitioners' alleged grounds for ~~such reconsideration~~ the
17 review, or for the proposed repeal or amendment of ~~such~~ the rule. The agency ~~in its discretion~~
18 shall grant the petitioner a public hearing if the petitioner has not previously petitioned the
19 agency under this section and otherwise may grant the petitioner a public hearing, upon such
20 terms and conditions as the agency may prescribe.

21 **SECTION 7. EFFECTIVE DATE.** Section 2 of this Act is effective for administrative
22 rulemaking proceedings for which the notice of rulemaking is published after July 31, 1999.
23 Sections 3 and 5 of this Act are effective for administrative rules called up for review by the
24 administrative rules committee after July 31, 1999. Section 4 of this Act is suspended from
25 operation, but becomes effective retroactive to August 1, 1997, upon a ruling by the North
26 Dakota supreme court that any portion of subsection 1 of section 28-32-03.3 as created by
27 section 3 of chapter 310 of the 1995 Session Laws, and as it is subsequently amended, is
28 unconstitutional.