

**HOUSE BILL NO. 1228**

Introduced by

Representatives Grande, Devlin, Koppelman

Senators Andrist, Stenehjem

1 A BILL for an Act to create and enact a new section to chapter 28-32 of the North Dakota  
2 Century Code, relating to authority of the administrative rules committee to call up existing  
3 administrative rules for review; to amend and reenact subsection 1 of section 28-32-03.3 of the  
4 North Dakota Century Code or in the alternative to amend and reenact subsection 1 of section  
5 28-32-18 of the North Dakota Century Code, relating to authority of the administrative rules  
6 committee to void or suspend administrative rules; and to provide an effective date.

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

8 **SECTION 1. AMENDMENT.** If House Bill No. 1030 does not become effective,  
9 subsection 1 of section 28-32-03.3 of the 1999 Supplement to the North Dakota Century Code  
10 is amended and reenacted as follows:

- 11 1. The legislative council's committee on administrative rules may find that all or any  
12 portion of a rule is void if that finding is made within ninety days after the rule is  
13 called up for review under section 5 of this Act, that rule is initially considered by  
14 the committee within ninety days after the date of the administrative code  
15 supplement in which the rule change appears, or, for rule changes appearing in the  
16 administrative code supplement from November first immediately preceding a  
17 regular session of the legislative assembly through the following May first, if that  
18 rule is initially considered by the committee at the first meeting of the administrative  
19 rules committee following the regular session of the legislative assembly. The  
20 committee on administrative rules may find a rule or portion of a rule void if the  
21 committee makes the specific finding that, with regard to that rule or portion of a  
22 rule, there is:
- 23 a. An absence of statutory authority.
- 24 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 28-32-18 of the North Dakota Century Code as created by section 11 of House Bill No. 1030, as approved by the fifty-seventh legislative assembly, is amended and reenacted as follows:

1. The legislative council's administrative rules committee may find that all or any portion of a rule is void if (a) that finding is made within ninety days after the rule is called up for review under section 6 of this Act, (b) 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, (c) 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 administrative rules committee 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 section 28-32-11.

**SECTION 3. AMENDMENT.** If House Bill No. 1030 does not become effective, 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 5 of this Act, 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. AMENDMENT.** Subsection 1 of section 28-32-18 of the North Dakota Century Code, as amended by section 12 of House Bill No. 1030, as approved by the fifty-seventh legislative assembly, is amended and reenacted as follows:

- 1           1. The legislative council's administrative rules committee may find, for any reason  
2           under this subsection, that all or any portion of a rule should be reviewed by the  
3           legislative assembly ~~and the~~. The committee may suspend the rule or portion of a  
4           rule under this subsection if the finding that the rule should be reviewed by the  
5           legislative assembly is made within ninety days after the rule is called up for review  
6           under section 6 of this Act, or the rule is initially considered by the committee within  
7           ninety days after the date of the administrative code supplement in which the rule  
8           change appears, or, for rule changes appearing in the administrative code  
9           supplement from November first immediately preceding a regular session of the  
10          legislative assembly through the following May first, ~~if that~~ the rule is initially  
11          considered by the committee at the first meeting of the administrative rules  
12          committee following the regular session of the legislative assembly. A rule or  
13          portion of a rule suspended under this subsection becomes permanently ineffective  
14          unless it is ratified by both houses of the legislative assembly during the next  
15          session of the legislative assembly, in which case it is effective as of the date of  
16          ratification by the second house of the legislative assembly. An agency seeking  
17          ratification of its rule shall introduce a bill for that purpose. The administrative rules  
18          committee may suspend a rule or portion of a rule if the committee makes the  
19          specific finding that, with regard to that rule or 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.
  - 25          e. Arbitrariness and capriciousness.
  - 26          f. A failure to make a written record of its consideration of written and oral  
27          submissions respecting the rule under section 28-32-11.

28          **SECTION 5.** If House Bill No. 1030 does not become effective, a new section to  
29 chapter 28-32 of the North Dakota Century Code is created and enacted as follows:

30          **Administrative rules called up for review.** The administrative rules committee may  
31 call an administrative rule up for review upon at least thirty days' prior notice to the adopting

1 agency of the time the committee will consider the rule. The committee shall notify the adopting  
2 agency of the reason the rule is called up for review and the adopting agency shall provide a  
3 written response to the committee's expressed concerns. A rule called up for review under this  
4 section is subject to the authority of the administrative rules committee under section  
5 28-32-03.3.

6       **SECTION 6.** If House Bill No. 1030 becomes effective, a new section to chapter 28-32  
7 of the North Dakota Century Code is created and enacted as follows:

8       **Administrative rules called up for review.** The administrative rules committee may  
9 call an administrative rule up for review upon at least thirty days' prior notice to the adopting  
10 agency of the time the committee will consider the rule. The committee shall notify the adopting  
11 agency of the reason the rule is called up for review and the adopting agency shall provide a  
12 written response to the committee's expressed concerns. A rule called up for review under this  
13 section is subject to the authority of the administrative rules committee under section 28-32-18.

14       **SECTION 7. EFFECTIVE DATE.** Sections 1, 2, 5, and 6 of this Act are effective for  
15 administrative rules called up for review by the administrative rules committee after July 31,  
16 1999. Section 3 of this Act is suspended from operation, but becomes effective retroactive to  
17 August 1, 1997, upon a ruling by the North Dakota supreme court that any portion of  
18 subsection 1 of section 28-32-03.3 as created by section 3 of chapter 310 of the 1995 Session  
19 Laws, and as it is subsequently amended, is unconstitutional. Section 4 of this Act is  
20 suspended from operation and becomes effective retroactive to August 1, 2001, upon a ruling  
21 by the North Dakota supreme court that any portion of subsection 1 of section 28-32-18 as  
22 created by section 11 of House Bill No. 1030 is unconstitutional.