

FIRST ENGROSSMENT
with Senate Amendments

Sixtieth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1501

Introduced by

Representatives Brandenburg, Headland, Pollert

Senators Erbele, Olafson, Wanzek

1 A BILL for an Act to create and enact a new subsection to section 28-32-50 and a new section
2 to chapter 61-28 of the North Dakota Century Code, relating to appeals regarding permits for
3 livestock feedlots and other permitted facilities.

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

5 **SECTION 1.** A new subsection to section 28-32-50 of the North Dakota Century Code
6 is created and enacted as follows:

7 In any civil judicial proceeding involving adverse parties to an appeal or
8 enforcement action involving an environmental permit issued under chapters
9 23-20.3, 23-25, 23-29, or 61-28 in which two or more of the adverse parties are not
10 an administrative agency or an agent of an administrative agency, the court may
11 award the prevailing nonagency party reasonable attorney's fees and costs if the
12 court finds in favor of that party and determines that the nonprevailing nonagency
13 party acted without substantial justification, or on the basis of claims or allegations
14 that are factually unsupported. The court shall award reasonable attorney's fees
15 and costs if the court determines that the nonprevailing nonagency party's claims
16 or allegations are frivolous as provided in section 28-26-01. If the appeal or civil
17 judicial proceeding covered by this subsection involves multiple claims or
18 allegations, the court may apportion attorney's fees and costs in proportion to the
19 time reasonably spent by a prevailing party relating to claims pursued by the
20 nonprevailing party that were frivolous, factually unsupported, or without
21 substantial justification.

22 **SECTION 2.** A new section to chapter 61-28 of the North Dakota Century Code is
23 created and enacted as follows:

1 **Appeal from permit proceedings.** An appeal from the issuance, denial, modification,
2 or revocation of a permit issued under chapter 23-20.3, 23-25, 23-29, or 61-28 may be made by
3 the person who filed the permit application, or by any person who is aggrieved by the permit
4 application decision, provided that person participated in or provided comments during the
5 hearing process for the permit application, modification, or revocation. An appeal must be
6 taken within thirty days after the final permit application determination is mailed by first-class
7 mail to the permit applicant and to any interested person who has requested a copy of the final
8 permit determination during the permit hearing process. Except as provided in this section, an
9 appeal of the final permit determination is governed by sections 28-32-40, 28-32-42, 28-32-43,
10 28-32-44, 28-32-46, and 28-32-49. The department may substitute final permit conditions and
11 written responses to public comments for findings of fact and conclusions of law. Except for a
12 violation of chapter 23-20.3, 23-25, 23-29, or 61-28 which occurs after the permit is issued, or
13 any permit condition, rule, order, limitation, or other applicable requirement implementing those
14 chapters which occurs after the permit is issued, any challenge to the department's issuance,
15 modification, or revocation of the permit or permit conditions must be made in the permit
16 hearing process and may not be raised in any collateral or subsequent legal proceeding, and
17 the applicant and any aggrieved person may raise on appeal only issues that were raised to the
18 department in the permit hearing process.