

SENATE BILL NO. 2375

Introduced by

Senators Stenehjem, Lyson, O'Connell

Representatives Carlson, Kretschmar, S. Meyer

1 A BILL for an Act to amend and reenact sections 39-06.2-10.6, 39-06.2-10.7, and 39-06.2-10.8,
2 subsection 1 of section 39-20-03.1, section 39-20-03.2, subsection 1 of section 39-20-04,
3 sections 39-20-05 and 39-20-06, and subsection 1 of section 54-57-03 of the North Dakota
4 Century Code, relating to the transfer of administrative hearings from the department of
5 transportation to the office of administrative hearings.

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

7 **SECTION 1. AMENDMENT.** Section 39-06.2-10.6 of the North Dakota Century Code
8 is amended and reenacted as follows:

9 **39-06.2-10.6. Administrative hearing on request.**

- 10 1. Before issuing an order of suspension, revocation, or disqualification under section
11 39-06.2-10, the director shall afford that person an opportunity for a hearing as
12 provided by section 39-20-05, if the person mails a request for the hearing to the
13 director within ten days after the date of issuance of the temporary driver's permit.
- 14 2. If the issue to be determined by the hearing concerns license suspension for
15 operating a commercial motor vehicle while having an alcohol concentration of at
16 least four one-hundredths of one percent by weight, the hearing must be before a
17 ~~hearing officer assigned by the director~~ an administrative law judge and at a time
18 and place designated by the director of the office of administrative hearings. The
19 hearing must be recorded and its scope may cover only the issues of whether the
20 arresting officer had reasonable grounds to believe the person had been driving or
21 was in actual physical control of a commercial motor vehicle in violation of section
22 39-06.2-10.1, whether the person was lawfully detained, whether the person was
23 tested in accordance with section 39-06.2-10.2, and whether the test results show
24 the person had an alcohol concentration of at least four one-hundredths of one

1 percent by weight. For purposes of this section, a copy of a certified copy of an
2 analytical report of a blood or urine sample from the office of the director of the
3 state crime laboratory or the director's designee, or a certified copy of the checklist
4 and test records from a certified breath test operator establish prima facie the
5 alcohol concentration shown therein. Whether the person was warned that the
6 privilege to drive might be suspended based on the results of the test is not an
7 issue.

8 3. If the issue to be determined by the hearing concerns license revocation for
9 refusing to submit to a test under section 39-06.2-10.2, the hearing must be before
10 ~~a hearing officer assigned by the director~~ an administrative law judge at a time and
11 place designated by the director of the office of administrative hearings. The
12 hearing must be recorded. The scope of a hearing for refusing to submit to a test
13 under section 39-06.2-10.2 may cover only the issues of whether a law
14 enforcement officer had reasonable grounds to believe the person had been
15 driving or was in actual physical control of a commercial motor vehicle in violation
16 of section 39-06.2-10.1, whether the person was lawfully detained, and whether
17 that person refused to submit to the test or tests. The scope of a hearing for
18 refusing to submit to a test under subsection 3 of section 39-06.2-10.4 may cover
19 only the issues of whether the law enforcement officer had reason to believe the
20 person committed a moving traffic violation or was involved in a traffic accident as
21 a driver, whether in conjunction with the violation or the accident the officer has,
22 through the officer's observations, formulated an opinion that the person's body
23 contains alcohol and, whether the person refused to submit to the onsite screening
24 test. Whether the person was warned that the privilege to drive would be revoked
25 or denied for refusal to submit to the test or tests is not an issue.

26 4. At a hearing under this section, the regularly kept records of the director may be
27 introduced. Those records establish prima facie their contents without further
28 foundation. For purposes of this chapter, the following are deemed regularly kept
29 records of the director: any copy of a certified copy of an analytical report of a
30 blood or urine sample received by the director from the director of the state crime
31 laboratory or the director's designee or a law enforcement officer, a certified copy

1 of the checklist and test records received by the director from a certified breath test
2 operator, and any copy of a certified copy of a certificate of the director of the state
3 crime laboratory or the director's designee relating to approved methods, devices,
4 operators, materials, and checklists used for testing for alcohol concentration
5 received by the director from the director of the state crime laboratory or the
6 director's designee, or the recorder, unless the board of county commissioners has
7 designated a different official to maintain the certificate.

8 5. At the close of the hearing, the ~~hearing officer~~ administrative law judge shall notify
9 the person of the ~~hearing officer's~~ administrative law judge's findings of fact,
10 conclusions of law, and decision based on the findings and conclusions and shall
11 immediately deliver to the person a copy of the decision. If the ~~hearing officer~~
12 administrative law judge does not find in favor of the person, the copy of the
13 decision serves as the director's official notification to the person of the revocation,
14 suspension, or denial of driving privileges in this state. If the ~~hearing officer~~
15 administrative law judge finds, based on a preponderance of the evidence, that the
16 person refused a test under section 39-06.2-10.2 or that the person had an alcohol
17 concentration of at least four one-hundredths of one percent by weight, the ~~hearing~~
18 ~~officer shall~~ administrative law judge immediately shall take possession of the
19 person's temporary driver's permit issued under this chapter. If the ~~hearing officer~~
20 administrative law judge does not find against the person, the ~~hearing officer~~
21 administrative law judge shall sign, date, and mark on the person's permit an
22 extension of driving privileges for the next twenty days and shall return the permit
23 to the person. The ~~hearing officer~~ administrative law judge shall report the
24 findings, conclusions, and decisions to the director within ten days of the
25 conclusion of the hearing. If the ~~hearing officer~~ administrative law judge has
26 determined in favor of the person, the director shall return the person's commercial
27 driver's license by regular mail to the address on file with the director under section
28 39-06.2-08.

29 6. If the person who requested a hearing under this section fails to appear at the
30 hearing without justification, the right to the hearing is waived, and the ~~hearing~~
31 ~~officer's~~ administrative law judge's determination on license revocation,

1 suspension, or denial will be based on the written request for hearing, law
2 enforcement officer's report, and other evidence as may be available. On the date
3 for which the hearing is scheduled, the ~~hearing officer~~ administrative law judge
4 shall mail to the person, by regular mail, at the address on file with the director
5 under section 39-06-20, or at any other address for the person or the person's
6 legal representative supplied in the request for hearing, a copy of the decision
7 which serves as the director's official notification to the person of the revocation,
8 suspension, or denial of driving privileges in this state. Even if the person for
9 whom the hearing is scheduled fails to appear at the hearing, the hearing is
10 deemed to have been held on the date for which it is scheduled for purposes of
11 appeal under section 39-06.2-10.7.

12 **SECTION 2. AMENDMENT.** Section 39-06.2-10.7 of the North Dakota Century Code
13 is amended and reenacted as follows:

14 **39-06.2-10.7. Judicial review.** Any person whose commercial driver's license or
15 privilege has been suspended, revoked, or denied by the decision of the ~~hearing officer~~
16 administrative law judge under section 39-06.2-10.6 may appeal within seven days after the
17 date of the hearing under section 39-06.2-10.6 as shown by the date of the ~~hearing officer's~~
18 administrative law judge's decision, section 28-32-42 notwithstanding, by serving on the director
19 and filing a notice of appeal and specifications of error in the district court in the county where
20 the events occurred for which the demand for a test was made, or in the county in which the
21 administrative hearing was held. The court shall set the matter for hearing, and the petitioner
22 shall give twenty days' notice of the hearing to the director ~~and to the hearing officer who~~
23 ~~rendered the decision. Neither the director nor the~~. The court may not stay the decision
24 pending decision on appeal. Within twenty days after receipt of the notice of appeal, the
25 director ~~or the hearing officer who rendered the decision~~ shall file in the office of the clerk of
26 court to which the appeal is taken a certified transcript of the testimony and all other
27 proceedings. It is the record on which the appeal must be determined. ~~No~~ The court may not
28 hear additional evidence ~~may be heard~~. The court shall affirm the decision of the ~~director or~~
29 ~~hearing officer~~ administrative law judge unless ~~it~~ the court finds the evidence insufficient to
30 warrant the conclusion reached by the ~~director or hearing officer~~ administrative law judge. The

1 court may direct that the matter be returned to the ~~director or hearing officer~~ administrative law
2 judge for rehearing and the presentation of additional evidence.

3 **SECTION 3. AMENDMENT.** Section 39-06.2-10.8 of the North Dakota Century Code
4 is amended and reenacted as follows:

5 **39-06.2-10.8. Temporary driver's permit.** A temporary driver's permit extends driving
6 privileges for twenty-five days, unless earlier terminated by the decision of ~~a hearing officer~~ an
7 administrative law judge under section 39-06.2-10.6. The law enforcement officer must sign
8 and note the date of issuance on the temporary driver's permit. The temporary driver's permit
9 serves as the director's official notification to the driver of the director's intent to revoke,
10 suspend, or deny driving privileges in this state. ~~No~~ A temporary driver's permit may not be
11 issued for the period covered by an out-of-service order.

12 **SECTION 4. AMENDMENT.** Subsection 1 of section 39-20-03.1 of the North Dakota
13 Century Code is amended and reenacted as follows:

14 1. The law enforcement officer shall immediately take possession of the person's
15 operator's license if it is then available and shall immediately issue to that person a
16 temporary operator's permit if the person then has valid operating privileges,
17 extending driving privileges for the next twenty-five days, or until earlier terminated
18 by the decision of ~~a hearing officer~~ an administrative law judge under section
19 39-20-05. The law enforcement officer shall sign and note the date on the
20 temporary operator's permit. The temporary operator's permit serves as the
21 director's official notification to the person of the director's intent to revoke,
22 suspend, or deny driving privileges in this state.

23 **SECTION 5. AMENDMENT.** Section 39-20-03.2 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **39-20-03.2. Action following test result or on refusing test by nonresident**
26 **operator.** If a person licensed in another state refuses in this state to submit to a test provided
27 under section 39-20-01 or 39-20-14, or who submits to a test under section 39-20-01, 39-20-02,
28 or 39-20-03 and the test results show the person to have an alcohol concentration of at least
29 eight one-hundredths of one percent by weight or, with respect to a person under twenty-one
30 years of age, an alcohol concentration of at least two one-hundredths of one percent by weight

1 at the time of performance of a test within two hours after driving or being in physical control of
2 a motor vehicle, the following procedures apply:

- 3 1. Without taking possession of the person's out-of-state operator's license, the law
4 enforcement officer shall issue to the person a notification of the test results and a
5 temporary operator's permit extending nonresident operating privileges in this state
6 for twenty-five days from the date of issuance or until earlier terminated by the
7 decision of ~~a hearing officer~~ an administrative law judge under section 39-20-05.
8 The temporary permit must be signed and dated by the officer and serves as the
9 director's official notification to the person of the director's intent to revoke,
10 suspend, or deny driving privileges in this state, and of the hearing procedures
11 under this chapter.
- 12 2. If the test was administered by saliva or urine sample or by drawing blood, the law
13 enforcement officer, on reviewing the alcohol concentration analysis showing the
14 person had an alcohol concentration of at least eight one-hundredths of one
15 percent by weight or, with respect to a person under twenty-one years of age, an
16 alcohol concentration of at least two one-hundredths of one percent by weight,
17 shall mail or issue to the person a notification of the test results, a temporary
18 operator's permit extending nonresident operating privileges in this state for
19 twenty-five days from the date of mailing or issuance or until earlier terminated by
20 the decision of ~~a hearing officer~~ an administrative law judge under section
21 39-20-05, and notice of the intent to revoke, suspend, or deny driving privileges in
22 this state, together with the notice provided under section 39-06.1-07 of the
23 procedures available under this chapter. The temporary operator's permit must be
24 signed and dated by the officer.
- 25 3. The law enforcement officer, within five days of issuing the temporary operator's
26 permit, shall forward to the director a certified written report in the form required by
27 the director and a certified copy of the operational checklist and test records of a
28 breath test and a copy of the certified copy of the analytical report for a blood,
29 saliva, or urine test for all tests administered at the direction of the officer. If the
30 person was issued a temporary operator's permit because of the person's refusal
31 to submit to a test under sections 39-20-01 and 39-20-14, the report must include

1 information as provided in section 39-20-04. If the person was issued a temporary
2 operator's permit because of the results of a test, the report must show that the
3 officer had reasonable grounds to believe the person had been driving or was in
4 actual physical control of a motor vehicle while in violation of section 39-08-01, or
5 equivalent ordinance, that the person was lawfully arrested, that the person was
6 tested for alcohol concentration under this chapter, and that the results of the test
7 show that the person had an alcohol concentration of at least eight one-hundredths
8 of one percent by weight or, with respect to a person under twenty-one years of
9 age, an alcohol concentration of at least two one-hundredths of one percent by
10 weight.

11 **SECTION 6. AMENDMENT.** Subsection 1 of section 39-20-04 of the North Dakota
12 Century Code is amended and reenacted as follows:

- 13 1. If a person refuses to submit to testing under section 39-20-01 or 39-20-14, none
14 may be given, but the law enforcement officer shall immediately take possession of
15 the person's operator's license if it is then available and shall immediately issue to
16 that person a temporary operator's permit, if the person then has valid operating
17 privileges, extending driving privileges for the next twenty-five days or until earlier
18 terminated by a decision of ~~a hearing officer~~ an administrative law judge under
19 section 39-20-05. The law enforcement officer shall sign and note the date on the
20 temporary operator's permit. The temporary operator's permit serves as the
21 director's official notification to the person of the director's intent to revoke driving
22 privileges in this state and of the hearing procedures under this chapter. The
23 director, upon the receipt of that person's operator's license and a certified written
24 report of the law enforcement officer in the form required by the director, forwarded
25 by the officer within five days after issuing the temporary operator's permit,
26 showing that the officer had reasonable grounds to believe the person had been
27 driving or was in actual physical control of a motor vehicle while in violation of
28 section 39-08-01 or equivalent ordinance or, for purposes of section 39-20-14, had
29 reason to believe that the person committed a moving traffic violation or was
30 involved in a traffic accident as a driver, and in conjunction with the violation or
31 accident the officer has, through the officer's observations, formulated an opinion

1 that the person's body contains alcohol, that the person was lawfully arrested if
2 applicable, and that the person had refused to submit to the test or tests under
3 section 39-20-01 or 39-20-14, shall revoke that person's license or permit to drive
4 and any nonresident operating privilege for the appropriate period under this
5 section, or if the person is a resident without a license or a permit to operate a
6 motor vehicle in this state, the director shall deny to the person the issuance of a
7 license or permit for the appropriate period under this section after the date of the
8 alleged violation, subject to the opportunity for a prerevocation hearing and
9 postrevocation review as provided in this chapter. In the revocation of the person's
10 operator's license the director shall give credit for time in which the person was
11 without an operator's license after the day of the person's refusal to submit to the
12 test except that the director may not give credit for time in which the person
13 retained driving privileges through a temporary operator's permit issued under this
14 section or section 39-20-03.2. The period of revocation or denial of issuance of a
15 license or permit under this section is:

- 16 a. One year if the person's driving record shows that within the five years
17 preceding the most recent violation of this section, the person's operator's
18 license has not previously been suspended, revoked, or issuance denied for a
19 violation of this chapter or section 39-08-01 or equivalent ordinance.
- 20 b. Three years if the person's driving record shows that within the five years
21 preceding the most recent violation of this section, the person's operator's
22 license has been once previously suspended, revoked, or issuance denied for
23 a violation of this chapter or section 39-08-01 or equivalent ordinance.
- 24 c. Four years if the person's driving record shows that within the five years
25 preceding the most recent violation of this section, the person's operator's
26 license has at least twice previously been suspended, revoked, or issuance
27 denied under this chapter, or for a violation of section 39-08-01 or equivalent
28 ordinance, or any combination of the same, and the suspensions, revocations,
29 or denials resulted from at least two separate arrests.

30 **SECTION 7. AMENDMENT.** Section 39-20-05 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **39-20-05. Administrative hearing on request.**

2 1. Before issuing an order of suspension, revocation, or denial under section
3 39-20-04 or 39-20-04.1, the director shall afford that person an opportunity for a
4 hearing if the person mails or communicates by other means authorized by the
5 director a request for the hearing to the director within ten days after the date of
6 issuance of the temporary operator's permit. The hearing must be held within thirty
7 days after the date of issuance of the temporary operator's permit. If ~~no~~ a hearing
8 is not requested within the time limits in this section, and ~~no~~ an affidavit is not
9 submitted within the time limits under subsection 2 of section 39-20-04, the
10 expiration of the temporary operator's permit serves as the director's official
11 notification to the person of the revocation, suspension, or denial of driving
12 privileges in this state.

13 2. If the issue to be determined by the hearing concerns license suspension for
14 operating a motor vehicle while having an alcohol concentration of at least eight
15 one-hundredths of one percent by weight or, with respect to a person under
16 twenty-one years of age, an alcohol concentration of at least two one-hundredths
17 of one percent by weight, the hearing must be before ~~a hearing officer assigned by~~
18 ~~the director~~ an administrative law judge and at a time and place designated by the
19 director of the office of administrative hearings. The hearing must be recorded and
20 its scope may cover only the issues of whether the arresting officer had reasonable
21 grounds to believe the person had been driving or was in actual physical control of
22 a vehicle in violation of section 39-08-01 or equivalent ordinance or, with respect to
23 a person under twenty-one years of age, the person had been driving or was in
24 actual physical control of a vehicle while having an alcohol concentration of at least
25 two one-hundredths of one percent by weight; whether the person was placed
26 under arrest, unless the person was under twenty-one years of age and the alcohol
27 concentration was less than eight one-hundredths of one percent by weight, then
28 arrest is not required and is not an issue under any provision of this chapter;
29 whether the person was tested in accordance with section 39-20-01 or 39-20-03
30 and, if applicable, section 39-20-02; and whether the test results show the person
31 had an alcohol concentration of at least eight one-hundredths of one percent by

1 weight or, with respect to a person under twenty-one years of age, an alcohol
2 concentration of at least two one-hundredths of one percent by weight. For
3 purposes of this section, a copy of a certified copy of an analytical report of a
4 blood, urine, or saliva sample from the director of the state crime laboratory or the
5 director's designee or a certified copy of the checklist and test records from a
6 certified breath test operator establish prima facie the alcohol concentration shown
7 therein. Whether the person was informed that the privilege to drive might be
8 suspended based on the results of the test is not an issue.

9 3. If the issue to be determined by the hearing concerns license revocation for
10 refusing to submit to a test under section 39-20-01 or 39-20-14, the hearing must
11 be before ~~a hearing officer assigned by the director~~ an administrative law judge at
12 a time and place designated by the director of the office of administrative hearings.
13 The hearing must be recorded. The scope of a hearing for refusing to submit to a
14 test under section 39-20-01 may cover only the issues of whether a law
15 enforcement officer had reasonable grounds to believe the person had been
16 driving or was in actual physical control of a vehicle in violation of section 39-08-01
17 or equivalent ordinance or, with respect to a person under twenty-one years of age,
18 the person had been driving or was in actual physical control of a vehicle while
19 having an alcohol concentration of at least two one-hundredths of one percent by
20 weight; whether the person was placed under arrest; and whether that person
21 refused to submit to the test or tests. The scope of a hearing for refusing to submit
22 to a test under section 39-20-14 may cover only the issues of whether the law
23 enforcement officer had reason to believe the person committed a moving traffic
24 violation or was involved in a traffic accident as a driver, whether in conjunction
25 with the violation or the accident the officer has, through the officer's observations,
26 formulated an opinion that the person's body contains alcohol and, whether the
27 person refused to submit to the onsite screening test. Whether the person was
28 informed that the privilege to drive would be revoked or denied for refusal to submit
29 to the test or tests is not an issue.

30 4. At a hearing under this section, the regularly kept records of the director may be
31 introduced. Those records establish prima facie their contents without further

1 foundation. For purposes of this chapter, the following are deemed regularly kept
2 records of the director: any copy of a certified copy of an analytical report of a
3 blood, urine, or saliva sample received by the director from the director of the state
4 crime laboratory or the director's designee or a law enforcement officer, a certified
5 copy of the checklist and test records received by the director from a certified
6 breath test operator, and any copy of a certified copy of a certificate of the director
7 of the state crime laboratory or the director's designee relating to approved
8 methods, devices, operators, materials, and checklists used for testing for alcohol
9 concentration received by the director from the director of the state crime
10 laboratory, the director's designee, or the recorder, unless the board of county
11 commissioners has designated a different official to maintain the certificate.

12 5. At the close of the hearing, the ~~hearing officer~~ administrative law judge shall notify
13 the person of the ~~hearing officer's~~ administrative law judge's findings of fact,
14 conclusions of law, and decision based on the findings and conclusions and shall
15 immediately deliver to the person a copy of the decision. If the ~~hearing officer~~
16 administrative law judge does not find in favor of the person, the copy of the
17 decision serves as the director's official notification to the person of the revocation,
18 suspension, or denial of driving privileges in this state. If the ~~hearing officer~~
19 administrative law judge finds, based on a preponderance of the evidence, that the
20 person refused a test under section 39-20-01 or 39-20-14 or that the person had
21 an alcohol concentration of at least eight one-hundredths of one percent by weight
22 or, with respect to a person under twenty-one years of age, an alcohol
23 concentration of at least two one-hundredths of one percent by weight, the ~~hearing~~
24 ~~officer shall~~ administrative law judge immediately shall take possession of the
25 person's temporary operator's permit issued under this chapter. If the ~~hearing~~
26 ~~officer~~ administrative law judge does not find against the person, the ~~hearing~~
27 ~~officer~~ administrative law judge shall sign, date, and mark on the person's permit
28 an extension of driving privileges for the next twenty days and shall return the
29 permit to the person. The ~~hearing officer~~ administrative law judge shall report the
30 findings, conclusions, and decisions to the director within ten days of the
31 conclusion of the hearing. If the ~~hearing officer~~ administrative law judge has

1 determined in favor of the person, the director shall return the person's operator's
2 license by regular mail to the address on file with the director under section
3 39-06-20.

4 6. If the person who requested a hearing under this section fails to appear at the
5 hearing without justification, the right to the hearing is waived, and the ~~hearing~~
6 ~~officer's~~ administrative law judge's determination on license revocation,
7 suspension, or denial will be based on the written request for hearing, law
8 enforcement officer's report, and other evidence as may be available. The ~~hearing~~
9 ~~officer shall~~ administrative law judge, on the date for which the hearing is
10 scheduled, shall mail to the person, by regular mail, at the address on file with the
11 director under section 39-06-20, or at any other address for the person or the
12 person's legal representative supplied in the request for hearing, a copy of the
13 decision which serves as the director's official notification to the person of the
14 revocation, suspension, or denial of driving privileges in this state. Even if the
15 person for whom the hearing is scheduled fails to appear at the hearing, the
16 hearing is deemed to have been held on the date for which it is scheduled for
17 purposes of appeal under section 39-20-06.

18 **SECTION 8. AMENDMENT.** Section 39-20-06 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **39-20-06. Judicial review.** Any person whose operator's license or privilege has been
21 suspended, revoked, or denied by the decision of the ~~hearing officer~~ administrative law judge
22 under section 39-20-05 may appeal within seven days after the date of the hearing under
23 section 39-20-05 as shown by the date of the ~~hearing officer's~~ administrative law judge's
24 decision, section 28-32-42 notwithstanding, by serving on the director and filing a notice of
25 appeal and specifications of error in the district court in the county where the events occurred
26 for which the demand for a test was made, or in the county in which the administrative hearing
27 was held. The court shall set the matter for hearing, and the petitioner shall give twenty days'
28 notice of the hearing to the director ~~and to the hearing officer who rendered the decision.~~
29 ~~Neither the director nor the~~ The court may not stay the decision pending decision on appeal.
30 Within twenty days after receipt of the notice of appeal, the director ~~or the hearing officer who~~
31 ~~rendered the decision~~ shall file in the office of the clerk of court to which the appeal is taken a

1 certified transcript of the testimony and all other proceedings. It is the record on which the
2 appeal must be determined. ~~No~~ The court may not hear additional evidence ~~may be heard~~.
3 The court shall affirm the decision of the ~~director or hearing officer~~ administrative law judge
4 unless ~~it~~ the court finds the evidence insufficient to warrant the conclusion reached by the
5 ~~director or hearing officer~~ administrative law judge. The court may direct that the matter be
6 returned to the ~~director or hearing officer~~ administrative law judge for rehearing and the
7 presentation of additional evidence.

8 **SECTION 10. AMENDMENT.** Subsection 1 of section 54-57-03 of the North Dakota
9 Century Code is amended and reenacted as follows:

10 1. Notwithstanding the authority granted in chapter 28-32 allowing agency heads or
11 other persons to preside in an administrative proceeding, all adjudicative
12 proceedings of administrative agencies under chapter 28-32, except those of the
13 public service commission, the industrial commission, the insurance commissioner,
14 workforce safety and insurance, the state engineer, the department of
15 transportation, job service North Dakota, and the labor commissioner, must be
16 conducted by the office of administrative hearings in accordance with the
17 adjudicative proceedings provisions of chapter 28-32 and any rules adopted
18 pursuant to chapter 28-32. ~~But, appeals~~ Appeals hearings pursuant to section
19 61-03-22 and drainage appeals from water resource boards to the state engineer
20 pursuant to chapter 61-32 must be conducted by the office of administrative
21 hearings. ~~Additionally, hearings~~ Hearings of the department of corrections and
22 rehabilitation for the parole board in accordance with chapter 12-59, regarding
23 parole violations; job discipline and dismissal appeals to the board of higher
24 education; Individuals With Disabilities Education Act and section 504 due process
25 hearings of the superintendent of public instruction; ~~and~~ chapter 37-19.1 veterans'
26 preferences hearings for any agency; and hearings of the department of
27 transportation under sections 39-06.2-10.6 and 39-20-05 must be conducted by the
28 office of administrative hearings in accordance with applicable laws.