

Introduced by

Senators Paulson, Larsen, Weston

Representatives Christensen, Satrom, Vetter

1 A BILL ~~for an Act to create and enact two new sections to chapter 28-32 of the North Dakota~~
2 ~~Century Code, relating to agency adjudications and judicial deference in administrative~~
3 ~~hearings; for an Act to create and enact a new section to chapter 28-32 of the North Dakota~~
4 ~~Century Code, relating to judicial deference; to amend and reenact sections 23.1-01-11,~~
5 ~~28-32-31, 28-32-38, and 28-32-39, subsection 1 of section 28-32-42, section 38-19-08,~~
6 ~~subsection 9 of section 50-24.4-01.1, and section 54-23.4-11 of the North Dakota Century~~
7 ~~Code, relating to appeals, reconsideration of agency orders, duties of administrative hearing~~
8 ~~officers, separation of functions for hearing officers, and adjudicative proceedings; and to repeal~~
9 ~~sections 28-32-40 and 38-08-13 of the North Dakota Century Code, relating to reconsideration~~
10 ~~of a final order by an agency.~~

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

12 ~~SECTION 1. A new section to chapter 28-32 of the North Dakota Century Code is created~~
13 ~~and enacted as follows:~~

14 ~~**Administrative hearings - Agency adjudications:**~~

15 ~~Notwithstanding any other provision of law:~~

16 ~~1. The administrative agency initiating a case may not supervise the administrative law~~
17 ~~judge's proceedings:~~

18 ~~2. Except by proper evidence and legal argument, an administrative agency may not~~
19 ~~attempt to influence the findings of fact or the administrative law judge's application of~~
20 ~~the law in a contested matter.~~

21 ~~3. Every decision made by an administrative law judge must contain findings of fact,~~
22 ~~conclusions of law, and a disposition of the case.~~

23 ~~4. Unless a party files an appeal under section 28-32-42, every decision made by an~~
24 ~~administrative law judge is final.~~

1 ~~— **SECTION 2.** A new section to chapter 28-32 of the North Dakota Century Code is created~~
2 ~~and enacted as follows:~~

3 ~~— **Judicial deference.**~~

4 ~~— Notwithstanding any other provision of law:~~

5 ~~— 1. When interpreting a statute, regulation, or regulatory document, an administrative law~~
6 ~~judge may not defer to an administrative agency's interpretation of a statute,~~
7 ~~regulation, or other regulatory document to determine the meaning.~~

8 ~~— 2. In an action involving an administrative agency, the administrative law judge shall~~
9 ~~exercise doubt in favor of a reasonable interpretation that limits agency power and~~
10 ~~maximizes individual liberty.~~

11 **SECTION 1. AMENDMENT.** Section 23.1-01-11 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **23.1-01-11. Appeal from permit proceedings.**

- 14 1. An appeal from the issuance, denial, modification, or revocation of a permit issued
15 under chapter 23.1-03, 23.1-04, 23.1-06, 23.1-08, or 61-28 may be made by the
16 person who filed the permit application, or by any person who is aggrieved by the
17 permit application decision, provided that person participated in or provided comments
18 during the hearing process for the permit application, modification, or revocation. An
19 appeal must be taken within thirty days after the final permit application determination
20 is mailed by first-class mail to the permit applicant and to any interested person who
21 has requested a copy of the final permit determination during the permit hearing
22 process. Except as provided in this section, an appeal of the final permit determination
23 is governed by sections ~~28-32-40~~, 28-32-42, 28-32-43, 28-32-44, 28-32-46, and
24 28-32-49. The department may substitute final permit conditions and written
25 responses to public comments for findings of fact and conclusions of law. Except for a
26 violation of chapter 23.1-03, 23.1-04, 23.1-06, 23.1-08, or 61-28 which occurs after the
27 permit is issued, or any permit condition, rule, order, limitation, or other applicable
28 requirement implementing those chapters which occurs after the permit is issued, any
29 challenge to the department's issuance, modification, or revocation of the permit or
30 permit conditions must be made in the permit hearing process and may not be raised
31 on any collateral or subsequent legal proceeding, and the applicant and any aggrieved

1 person may raise on appeal only issues that were raised to the department in the
2 permit hearing process.

- 3 2. Notwithstanding subsection 1, the department may adopt any procedures governing
4 appeals it determines are necessary and appropriate to develop, implement, or
5 enforce a federally delegated, authorized, or approved program.

6 **SECTION 2. AMENDMENT.** Section 28-32-31 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **28-32-31. Duties of hearing officers.**

9 All hearing officers shall:

- 10 1. Assure that proper notice has been given as required by law.
11 2. Conduct only hearings and related proceedings for which proper notice has been
12 given.
13 3. Assure that all hearings and related proceedings are conducted in a fair and impartial
14 manner.
15 4. ~~Make recommended findings of fact and conclusions of law and issue a recommended~~
16 ~~order, when appropriate.~~
17 ~~5.~~ Conduct the hearing only and perform such other functions of the proceeding as
18 requested, when an agency requests a hearing officer to preside only as a procedural
19 hearing officer. If the hearing officer is presiding only as a procedural hearing officer,
20 the agency head must be present at the hearing and the agency head shall make
21 findings of fact and conclusions of law and issue a final order. The agency shall give
22 proper notice as required by law. The procedural hearing officer may issue orders in
23 regard to the conduct of the hearing pursuant to statute or rule and to otherwise effect
24 an orderly and prompt disposition of the proceedings.
25 ~~6.5.~~ Make findings of fact and conclusions of law and issue a final order, ~~if required by~~
26 ~~statute or requested by an agency.~~
27 ~~7.6.~~ Function only as a procedural hearing officer, when an agency requests a hearing
28 officer to preside for a rulemaking hearing. The agency head need not be present. The
29 agency shall give proper notice as required by law.
30 ~~8.7.~~ Perform any and all other functions required by law, assigned by the director of
31 administrative hearings, or delegated to the hearing officer by the agency.

1 **SECTION 3. AMENDMENT.** Section 28-32-38 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **28-32-38. Separation of functions.**

- 4 1. No person who has served as the agency head, investigator, prosecutor, or advocate
5 in the investigatory or prehearing stage of an adjudicative proceeding may serve as
6 hearing officer.
- 7 2. No person who is subject to the direct authority of one who has served as an
8 investigator, prosecutor, or advocate in the investigatory or prehearing stage of an
9 adjudicative proceeding may serve as hearing officer.
- 10 3. Any other person may serve as hearing officer in an adjudicative proceeding, unless a
11 party demonstrates grounds for disqualification.
- 12 4. Any person may serve as hearing officer at successive stages of the same
13 adjudicative proceeding, unless a party demonstrates grounds for disqualification.

14 **SECTION 4. AMENDMENT.** Section 28-32-39 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **28-32-39. Adjudicative proceedings - Findings of fact, conclusions of law, and order**
17 **of agency - Notice.**

- 18 1. In an adjudicative proceeding ~~an administrative agency~~ a hearing officer shall make
19 and state concisely and explicitly its findings of fact and its separate conclusions of law
20 and the order ~~of the agency~~ based upon its findings and conclusions.
- 21 2. ~~If the agency head, or another person authorized by the agency head or by law to~~
22 ~~issue a final order, is presiding, the order issued is the final order.~~ The agency hearing
23 officer shall serve a copy of the final order and the findings of fact and conclusions of
24 law on which it is based upon all the parties to the proceeding within thirty days after
25 the evidence has been received, briefs filed, and arguments closed, or as soon
26 thereafter as possible, in the manner allowed for service under the North Dakota Rules
27 of Civil Procedure.
- 28 ~~3. If the agency head, or another person authorized by the agency head or by law to~~
29 ~~issue a final order, is not presiding, then the person presiding shall issue~~
30 ~~recommended findings of fact and conclusions of law and a recommended order~~
31 ~~within thirty days after the evidence has been received, briefs filed, and arguments~~

1 closed, or as soon thereafter as possible. The recommended findings of fact and
2 conclusions of law and the recommended order become final unless specifically
3 amended or rejected by the agency head. The agency head may adopt the
4 recommended findings of fact and conclusions of law and the recommended order as
5 final. The agency may allow petitions for review of a recommended order and may
6 allow oral argument pending issuance of a final order. An administrative agency may
7 adopt rules regarding the review of recommended orders and other procedures for
8 issuance of a final order by the agency. If a recommended order is issued, the agency
9 must serve a copy of any final order issued and the findings of fact and conclusions of
10 law on which it is based upon all the parties to the proceeding within sixty days after
11 the evidence has been received, briefs filed, and arguments closed, or as soon
12 thereafter as possible, in the manner allowed for service under the North Dakota Rules
13 of Civil Procedure.

14 **SECTION 5. AMENDMENT.** Subsection 1 of section 28-32-42 of the North Dakota Century
15 Code is amended and reenacted as follows:

- 16 1. Any party to any proceeding heard by an administrative agency, except when the
17 order of the administrative agency is declared final by any other statute, may appeal
18 from the order within thirty days after notice of the order has been given as required by
19 section 28-32-39. ~~If a reconsideration has been requested as provided in section~~
20 ~~28-32-40, the party may appeal within thirty days after notice of the final determination~~
21 ~~upon reconsideration has been given as required by sections 28-32-39 and 28-32-40.~~
22 ~~If an agency does not dispose of a petition for reconsideration within thirty days after~~
23 ~~the filing of the petition, the agency is deemed to have made a final determination~~
24 ~~upon which an appeal may be taken.~~

25 **SECTION 6.** A new section to chapter 28-32 of the North Dakota Century Code is created
26 and enacted as follows:

27 **Judicial deference.**

28 Notwithstanding any other provision of law, in interpreting or applying a state statute,
29 regulation, or rule, an administrative law judge, judge, or hearing officer may not defer to a
30 governmental entity's interpretation of the statute, regulation, or rule. If a rule is ambiguous, the

1 administrative law judge, judge, or hearing officer shall resolve any ambiguity against the
2 regulatory authority of the governmental entity.

3 **SECTION 7. AMENDMENT.** Section 38-19-08 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **38-19-08. Administrative procedure and judicial review.**

6 Any proceedings under this chapter for the adoption or modification of rules or orders,
7 including emergency orders relating to extraction of geothermal energy and determining
8 compliance with rules of the commission, must be conducted in accordance with sections
9 38-08-11, 38-08-12, ~~38-08-13~~, and 38-08-14; and chapter 28-32 governs administrative practice
10 when consistent with the provisions of this chapter and the above-referenced sections.

11 **SECTION 8. AMENDMENT.** Subsection 9 of section 50-24.4-01.1 of the North Dakota
12 Century Code is amended and reenacted as follows:

- 13 9. The appeal determination under subsection 8 is the final administrative decision of the
14 agency. That decision is subject to appeal to the district court, ~~and for that purpose,~~
15 ~~the decision must be treated as a decision on a petition for rehearing made pursuant~~
16 ~~to section 28-32-40.~~ Appeal to the district court must be taken in the manner required
17 by section 28-32-42.

18 **SECTION 9. AMENDMENT.** Section 54-23.4-11 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **54-23.4-11. Attorney's fees.**

21 ~~The division shall determine and award reasonable attorney's fees, commensurate with~~
22 ~~services rendered, to be paid by the state to the attorney representing the claimant if the~~
23 ~~claimant prevails after a petition for reconsideration or rehearing under section 28-32-40 from~~
24 ~~an order reducing or denying crime victims compensation benefits.~~ A district court may award
25 attorney's fees in an appeal pursuant to section 28-32-42 if the claimant prevails on appeal from
26 an order reducing or denying benefits. Attorney's fees are allowable for settlement of a disputed
27 claim. Attorney's fees are not allowable for assisting a claimant in filing a claim. An award of
28 attorney's fees is in addition to an award of compensation. An award of attorney's fees may not
29 exceed the lesser of twenty percent of the compensation awarded or one thousand dollars. No
30 attorney may contract for or receive any larger sum than the amount allowed.

1 | **SECTION 10. REPEAL.** Sections 28-32-40 and 38-08-13 of the North Dakota Century
2 | Code are repealed.