

Fifty-fifth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1191

Introduced by

Representatives Skarphol, Oban, Carlson, Freier

Senator Robinson

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 committee on administrative rules to call up existing administrative
3 rules for review; to amend and reenact subsection 1 of section 28-32-03.3 of the North Dakota
4 Century Code, relating to authority of the committee on administrative rules to void or object to
5 administrative rules; and to provide an effective date.

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

7 **SECTION 1. AMENDMENT.** Subsection 1 of section 28-32-03.3 of the 1995
8 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 9 1. The legislative council's committee on administrative rules may find that all or any
10 portion of a rule is void if that finding is made within ninety days after the rule is
11 called up for review under section 28-32-03.4, within ninety days after the date of
12 the administrative code supplement in which the rule change appears, or, for rule
13 changes appearing in the administrative code supplement from November first
14 immediately preceding a regular session of the legislative assembly through the
15 following May first, if that finding is made at the first meeting of the administrative
16 rules committee following the regular session of the legislative assembly. The
17 committee on administrative rules may find a rule or portion of a rule void if the
18 committee makes the specific finding that, with regard to that rule or portion of a
19 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.

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 4 of chapter 310 of the 1995 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 28-32-03.4, 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 suspension is made 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.

1 **SECTION 3.** Section 28-32-03.4 of the North Dakota Century Code is created and
2 enacted as follows:

3 **28-32-03.4. Administrative rules called up for review.** The committee on
4 administrative rules may call an administrative rule up for review upon at least thirty days prior
5 notice to the adopting agency of the time the committee will consider the rule. An
6 administrative rule may be called up for review under this section only upon initiation of the
7 question by the committee or the adopting agency on the grounds that the rule is obsolete,
8 archaic, no longer effective, or adopted under statutory law that has been changed and the rule
9 is no longer in harmony with statutory law. The committee shall notify the adopting agency of
10 the reason the rule is called up for review and the adopting agency shall provide a written
11 response to the committee's expressed concerns. A rule called up for review under this section
12 is subject to the authority of the committee on administrative rules under section 28-32-03.3.

13 **SECTION 4. EFFECTIVE DATE.** Sections 1 and 3 of this Act are effective for
14 administrative rules called up for review by the committee on administrative rules after July 31,
15 1997. Section 2 of this Act is suspended from operation, but becomes effective retroactive to
16 August 1, 1997, upon a ruling by the North Dakota supreme court that any portion of
17 subsection 1 of section 28-32-03.3 as created by section 3 of chapter 310 of the 1995 Session
18 Laws and amended by section 1 of this Act is unconstitutional.