

HOUSE BILL NO. 1024

Introduced by

Legislative Council

(Administrative Rules Committee)

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 administrative rules committee to call up existing administrative rules
3 for review; to amend and reenact subsection 1 of section 4-18.1-20 and subsection 1 of section
4 28-32-03.3 of the North Dakota Century Code, relating to statutory references to administrative
5 rulemaking provisions and authority of the administrative rules committee to void or object to
6 administrative rules; to repeal section 28-32-04 of the North Dakota Century Code, relating to
7 petitions for reconsideration of administrative rulemaking; and to provide an effective date.

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

9 **SECTION 1. AMENDMENT.** Subsection 1 of section 4-18.1-20 of the North Dakota
10 Century Code is amended and reenacted as follows:

11 1. The rules of practice, regulations, and stabilization plans issued by the board are
12 ~~declared to be "rules and regulations" as that phrase is defined in chapter 28-32.~~
13 The requirements of sections 28-32-02 through ~~28-32-04~~ 28-32-03.3 are
14 applicable to any board proceeding ~~which that~~ results in the adoption, amendment,
15 or repeal of any rule of practice, regulation, or stabilization plan.

16 **SECTION 2. AMENDMENT.** Subsection 1 of section 28-32-03.3 of the 1997
17 Supplement to the North Dakota Century Code is amended and reenacted as follows:

18 1. The legislative council's committee on administrative rules may find that all or any
19 portion of a rule is void if that finding is made within ninety days after the rule is
20 called up for review under section 28-32-03.4, that rule is initially considered by the
21 committee within ninety days after the date of the administrative code supplement
22 in which the rule change appears, or, for rule changes appearing in the
23 administrative code supplement from November first immediately preceding a
24 regular session of the legislative assembly through the following May first, if that

1 rule is initially considered by the committee at the first meeting of the administrative
2 rules committee following the regular session of the legislative assembly. The
3 committee on administrative rules may find a rule or portion of a rule void if the
4 committee makes the specific finding that, with regard to that rule or portion of a
5 rule, there is:

- 6 a. An absence of statutory authority.
- 7 b. An emergency relating to public health, safety, or welfare.
- 8 c. A failure to comply with express legislative intent or to substantially meet the
9 procedural requirements of this chapter for adoption of the rule.
- 10 d. A conflict with state law.
- 11 e. Arbitrariness and capriciousness.
- 12 f. A failure to make a written record of its consideration of written and oral
13 submissions respecting the rule under subsection 3 of section 28-32-02.

14 **SECTION 3. AMENDMENT.** Subsection 1 of section 28-32-03.3 of the North Dakota
15 Century Code as amended by section 4 of chapter 310 of the 1995 Session Laws as amended
16 by section 2 of chapter 279 of the 1997 Session Laws is amended and reenacted as follows:

- 17 1. The legislative council's committee on administrative rules may find, for any reason
18 under this subsection, that all or any portion of a rule should be reviewed by the
19 legislative assembly, and the committee may suspend the rule or portion of a rule
20 under this subsection if the suspension is made within ninety days after the rule is
21 called up for review under section 28-32-03.4, the rule is initially considered by the
22 committee within ninety days after the date of the administrative code supplement
23 in which the rule change appears or, for rule changes appearing in the
24 administrative code supplement from November first immediately preceding a
25 regular session of the legislative assembly through the following May first, if that
26 rule is initially considered by the committee at the first meeting of the administrative
27 rules committee following the regular session of the legislative assembly. A rule or
28 a portion of a rule suspended under this subsection becomes permanently
29 ineffective unless it is ratified by both houses of the legislative assembly during the
30 next session of the legislative assembly, in which case it is effective as of the date
31 of ratification by the second house of the legislative assembly. An agency seeking

1 ratification of its rule shall introduce a bill for that purpose. The committee on
2 administrative rules may suspend a rule or portion of a rule if the committee
3 specifically finds that, with regard to the rule, there is:

- 4 a. An absence of statutory authority.
- 5 b. An emergency relating to public health, safety, or welfare.
- 6 c. A failure to comply with express legislative intent or to substantially meet the
7 procedural requirements of this chapter for adoption of the rule.
- 8 d. A conflict with state law.
- 9 e. Arbitrariness and capriciousness.
- 10 f. A failure to make a written record of its consideration of written and oral
11 submissions respecting the rule under subsection 3 of section 28-32-02.

12 **SECTION 4.** Section 28-32-03.4 of the North Dakota Century Code is created and
13 enacted as follows:

14 **28-32-03.4. Administrative rules called up for review.** The administrative rules
15 committee may call an administrative rule up for review upon at least thirty days' prior notice to
16 the adopting agency of the time the committee will consider the rule. The committee shall notify
17 the adopting agency of the reason the rule is called up for review and the adopting agency shall
18 provide a written response to the committee's expressed concerns. A rule called up for review
19 under this section is subject to the authority of the administrative rules committee under section
20 28-32-03.3.

21 **SECTION 5. REPEAL.** Section 28-32-04 of the North Dakota Century Code is
22 repealed.

23 **SECTION 6. EFFECTIVE DATE.** Sections 2 and 4 of this Act are effective for
24 administrative rules called up for review by the administrative rules committee after July 31,
25 1999. Section 3 of this Act is suspended from operation, but becomes effective retroactive to
26 August 1, 1997, upon a ruling by the North Dakota supreme court that any portion of
27 subsection 1 of section 28-32-03.3 as created by section 3 of chapter 310 of the 1995 Session
28 Laws, and as it is subsequently amended, is unconstitutional.