

Fifty-seventh
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1455

Introduced by

Representatives Koppelman, Aarsvold, Belter, Devlin

Senators G. Nelson, Robinson

1 A BILL for an Act to amend and reenact subsection 1 of section 28-32-14 and sections
2 28-32-17, 28-32-19, subsection 1 of section 28-34-01, and section 54-57-03 of the North
3 Dakota Century Code, relating to finality of decisions of administrative law judges in
4 adjudicative proceedings of administrative agencies and appeals from decisions of local
5 governing bodies.

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

7 **SECTION 1. AMENDMENT.** Subsection 1 of section 28-32-14 of the 1999
8 Supplement to the North Dakota Century Code is amended and reenacted as follows:

9 1. Any party before an administrative agency who is aggrieved by the final order of
10 the agency, within fifteen days after notice has been given as required by section
11 28-32-13, may file a petition for reconsideration with the agency. Filing of the
12 petition is not a prerequisite for seeking judicial review. If the agency's hearing
13 officer issues the agency's final order, the petition for reconsideration must be
14 addressed to the hearing officer, who may grant or deny the petition under
15 subsection 4, and the provisions of subsection 5 do not apply.

16 **SECTION 2. AMENDMENT.** Section 28-32-17 of the 1999 Supplement to the North
17 Dakota Century Code is amended and reenacted as follows:

18 **28-32-17. Agency to maintain and certify record on appeal.**

19 1. An administrative agency shall maintain an official record of each adjudicative
20 proceeding or other administrative proceeding heard by it.
21 2. Within thirty days, or a longer time as the court by order may direct, after an appeal
22 has been taken to the district court as provided in this chapter, and after payment
23 by the appellant of the estimated cost of preparation and filing of the entire record
24 of the proceedings before the agency, the administrative agency concerned shall

1 prepare and file in the office of the clerk of the district court in which the appeal is
2 pending the original or a certified copy of the entire record of proceedings before
3 the agency, or an abstract of the record as may be agreed upon and stipulated by
4 the parties. Upon receiving a copy of the notice of appeal and specifications of
5 error pursuant to subsection 4 of section 28-32-15 and unless the agency is
6 appealing, the administrative agency shall notify the party appealing of the
7 estimated costs of preparation and filing of the record. Thereafter, unless the
8 agency is appealing, the party appealing shall pay the administrative agency the
9 estimated costs required by this subsection. If the actual costs of preparation and
10 filing of the entire record of the proceedings is greater than the estimated costs,
11 the party appealing shall pay to the agency the difference. If the actual costs are
12 less than the estimated costs, the agency shall pay to the party appealing the
13 difference. Any payment for the costs of preparation and filing of the record must
14 be paid into the insurance recovery fund and is hereby appropriated as a refund to
15 the agency for the purposes of defraying the costs of preparing and filing the
16 record. An agency may contract with any person or another agency to prepare
17 and file the record of any proceeding before the agency.

18 3. The cost of preparation and filing of the record may be waived by the district court
19 upon application by an appellant, showing that the appellant is a low-income
20 person unable to afford these costs. When a waiver is granted, the costs of
21 preparation and filing of the record must be paid by the administrative agency.

22 4. The agency record of the proceedings, as applicable, must consist of only the
23 following:

- 24 a. The complaint, answer, and other initial pleadings or documents.
- 25 b. Notices of all proceedings.
- 26 c. Any prehearing notices, transcripts, documents, or orders.
- 27 d. Any motions, pleadings, briefs, petitions, requests, and intermediate rulings.
- 28 e. A statement of matters officially noticed.
- 29 f. Offers of proof and objections and rulings thereon.
- 30 g. Proposed findings, requested orders, and exceptions.

- 1 h. The transcript of the hearing prepared for the person presiding at the hearing,
2 including all testimony taken, and any written statements, exhibits, reports,
3 memoranda, documents, or other information or evidence considered before
4 final disposition of proceedings.
- 5 i. Any recommended or proposed order, recommended or proposed findings of
6 fact and conclusions of law, final order, final findings of fact and conclusions
7 of law, or findings of fact and conclusions of law or orders on reconsideration.
- 8 j. Any information considered pursuant to section 28-32-07.
- 9 k. Matters placed on the record after an ex parte communication.
- 10 5. Except to the extent that this chapter or another statute provides otherwise, the
11 agency record constitutes the exclusive basis for administrative agency action and
12 judicial review of an administrative agency action.
- 13 6. The record on review of agency rulemaking action, as applicable, must consist of
14 only the following:
 - 15 a. All agency notices concerning proposed rulemaking.
 - 16 b. A copy of the proposed rule upon which written and oral submissions were
17 made.
 - 18 c. A copy of the rule as submitted for publication.
 - 19 d. Any opinion letters by the attorney general as to a rule's legality or the legality
20 of the agency's rulemaking action.
 - 21 e. A copy of any interim rule and the agency's findings and statement of the
22 reasons for an interim rule.
 - 23 f. The regulatory analysis of a proposed rule.
 - 24 g. The transcript of any oral hearing on a proposed rule.
 - 25 h. All written submissions made to the agency on a proposed rule.
 - 26 i. Any staff memoranda or data prepared for agency consideration in regard to
27 the proposed rule.
 - 28 j. Any other document that the agency believes is relevant to the appeal.
 - 29 k. Any other document that is not privileged and which is a public record that the
30 appellant requests the agency to include in the record, if relevant to the
31 appeal.

7. If the notice of appeal specifies that no exception or objection is made to the agency's findings of fact, and that the appeal is concerned only with the agency's conclusions of law based on the facts found by it, the agency may submit an abstract of the record along with such portions of the record as the agency deems necessary, to be supplemented by those portions of the record requested to be submitted by the appellant or by the other party when the agency is appealing.

8. The court may permit amendments or additions to the record filed by the administrative agency in order to complete the record.

SECTION 3. AMENDMENT. Section 28-32-19 of the North Dakota Century Code is amended and reenacted as follows:

28-32-19. Scope of and procedure on appeal from determination of administrative agency. A notice of appeal may include a request for de novo review by the district court. If there is no request for de novo review, a judge of the district court must review an appeal from the determination of an administrative agency based only on the record filed with the court. After a hearing, the filing of briefs, or other disposition of the matter as the judge may reasonably require, the court must affirm the order of the agency unless it shall find that any of the following are present:

1. The order is not in accordance with the law.
2. The order is in violation of the constitutional rights of the appellant.
3. Provisions of this chapter have not been complied with in the proceedings before the agency.
4. The rules or procedure of the agency have not afforded the appellant a fair hearing.
5. The findings of fact made by the agency are not supported by a preponderance of the evidence.
6. The conclusions of law and order of the agency are not supported by its findings of fact.

If the order of the agency is not affirmed by the court, it shall be modified or reversed, and the case shall be remanded to the agency for disposition in accordance with the order of the court.

SECTION 4. AMENDMENT. Subsection 1 of section 28-34-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 1 1. The notice of appeal must be filed with the clerk of the court within thirty days after
2 the decision of the local governing body. The notice of appeal may include a
3 request for de novo review by the court. A copy of the notice of appeal must be
4 served on the local governing body in the manner provided by rule 4 of the North
5 Dakota Rules of Civil Procedure.

6 **SECTION 5. AMENDMENT.** Section 54-57-03 of the 1999 Supplement to the North
7 Dakota Century Code is amended and reenacted as follows:

8 **54-57-03. Hearings before administrative law judges.**

- 9 1. Notwithstanding the authority granted in chapter 28-32 allowing agency heads or
10 other persons to preside in an administrative proceeding, all ~~hearings~~ adjudicative
11 proceedings of administrative agencies under chapter 28-32, except ~~hearings~~
12 ~~conducted by those of~~ the public service commission, the industrial commission,
13 the insurance commissioner ~~of insurance~~, the workers compensation bureau, the
14 state engineer, the department of transportation, job service North Dakota, and the
15 labor commissioner ~~of labor~~, ~~except investigatory hearings under section 28-32-08,~~
16 ~~and except rulemaking hearings held in accordance with section 28-32-02,~~ must
17 be conducted by the office of administrative hearings in accordance with the
18 ~~administrative hearings~~ adjudicative proceedings provisions of chapter 28-32 and
19 any rules adopted pursuant to chapter 28-32. But, appeals hearings pursuant to
20 section 61-03-22 and drainage appeals from water resource boards to the state
21 engineer pursuant to chapter 61-32 must be conducted by the office of
22 administrative hearings. Additionally, hearings of the department of corrections
23 and rehabilitation for the parole board in accordance with chapters 12-56.1 and
24 12-59, regarding parole violations; job discipline and dismissal appeals to the
25 board of higher education; Individuals With Disabilities Education Act and
26 section 504 due process hearings of the superintendent of public instruction; and
27 chapter 37-19.1 veterans' preferences hearings for any agency must be conducted
28 by the office of administrative hearings in accordance with applicable laws.
- 29 2. The agency head shall make a written request to the director requesting the
30 designation of an administrative law judge to preside for each administrative
31 ~~hearing~~ proceeding or adjudicative proceeding to be held. An agency may request

an administrative law judge to be designated to preside over the entire administrative proceeding.

3. All administrative agencies required to have their administrative proceedings or adjudicative proceedings conducted by the office of administrative hearings under subsection 1 must request an administrative law judge to be designated to preside over the entire administrative proceeding or adjudicative proceeding and to issue the final order of the agency under subsection 6 of section 28-32-08.5. However, boards and commissions may request an administrative law judge to be designated to preside over the entire administrative proceeding or adjudicative proceeding and to issue the final order of the agency under subsection 6 of section 28-32-08.5, or they may request an administrative law judge to be designated to preside only as procedural hearing officer under subsection 5 of section 28-32-08.5. An administrative agency required to have its administrative proceedings or adjudicative proceedings conducted by the office of administrative hearings under subsection 1 may not request an administrative law judge to be designated to preside over the entire administrative proceeding or adjudicative proceeding and to issue a recommended order to the agency under subsection 4 of section 28-32-08.5.

4. Informal disposition of an administrative proceeding or adjudicative proceeding may be made by an agency at any time before or after the designation of an administrative law judge from the office of administrative hearings.

~~3.~~ 5. If a party to an administrative proceeding or adjudicative proceeding is in default, the agency may issue a default order and a written notice of default, including a statement of the grounds for default, prior to the hearing. The agency shall determine all the issues involved. If issued, the default notice and order must be served upon all the parties and the administrative law judge, if one has been ~~assigned~~ designated to preside. After service of the default notice and order, if a hearing is necessary to complete the administrative action with or without the participation of the party in default, an administrative law judge from the office of administrative hearings must preside.

- 1 4. ~~6.~~ When ~~assigning~~ designating administrative law judges to ~~conduct administrative~~
2 ~~hearings or to~~ preside in an administrative proceeding or adjudicative proceeding,
3 the director shall attempt to assign an administrative law judge having expertise in
4 the subject matter to be dealt with.
- 5 5. ~~7.~~ The director of administrative hearings may assign an administrative law judge to
6 preside in an administrative proceeding or adjudicative proceeding, upon request,
7 to any agency exempted from the provisions of this section, to any agency, or part
8 of any agency, that is not an administrative agency subject to the provisions of
9 chapter 28-32, to any unit of local government in this state, to any tribal
10 government in this state, to the judicial branch, or to any agency to conduct a
11 rulemaking hearing.