

AGENCIES EXEMPTED FROM THE ADMINISTRATIVE AGENCIES PRACTICE ACT - BACKGROUND MEMORANDUM

House Bill No. 1479 (attached) as introduced would have eliminated all agency exemptions from the Administrative Agencies Practice Act (North Dakota Century Code (NDCC) Chapter 28-32). It became apparent during consideration of the bill that there was not sufficient time for consideration of each of the agency exemptions from the Administrative Agencies Practice Act. The bill was amended into a Legislative Council study proposal, which was assigned by the Legislative Council to the Administrative Rules Committee. The bill calls for a study of the appropriateness of each agency exemption from the Administrative Agencies Practice Act. The bill provides that the study should include discussion and analysis of each exemption, and a presentation by each agency entitled to an exemption, under the Administrative Agencies Practice Act.

BACKGROUND

From 1941 until 1981, the Administrative Agencies Practice Act defined administrative agency to include any entity having statewide jurisdiction and authority to make any order, finding, determination, award, or assessment which has the force and effect of law and which by statute is subject to review in the courts of this state. During the 1979-80 interim, the Legislative Council interim Administrative Rules Committee studied the definition of administrative agency and requested information from numerous boards and commissions about the status of rulemaking and court review of agency decisions. The committee recommended a bill to redefine administrative agency to include every administrative unit of the executive branch of state government, with a listing of agencies specifically exempted from the definition. The recommended legislation was enacted in 1981 and contained a list of 25 agencies excluded from the definition.

CURRENT DEFINITION

Since 1981, agencies have been added to or removed from the list of agencies exempted from the definition of administrative agency under NDCC Section 28-32-01. However, there has not been a comprehensive review of the rationale for each exemption. Subsection 2 of Section 28-32-01 currently defines administrative agency as follows:

2. "Administrative agency" or "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency.

An administrative unit located within or subordinate to an administrative agency must be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. The term administrative agency does not include:

- a. The office of management and budget except with respect to rules made under section 32-12.2-14, rules relating to conduct on the capitol grounds and in buildings located on the capitol grounds under section 54-21-18, rules relating to the classified service as authorized under section 54-44.3-07, and rules relating to state purchasing practices as required under section 54-44.4-04.
- b. The adjutant general with respect to the department of emergency services.
- c. The council on the arts.
- d. The state auditor.
- e. The department of commerce with respect to the division of economic development and finance.
- f. The dairy promotion commission.
- g. The education factfinding commission.
- h. The educational technology council.
- i. The board of equalization.
- j. The board of higher education.
- k. The Indian affairs commission.
- l. The industrial commission with respect to the activities of the Bank of North Dakota, North Dakota housing finance agency, public finance authority, North Dakota mill and elevator association, North Dakota farm finance agency, the North Dakota transmission authority, and the North Dakota pipeline authority.
- m. The department of corrections and rehabilitation except with respect to the activities of the division of adult services under chapter 54-23.4.
- n. The pardon advisory board.
- o. The parks and recreation department.
- p. The parole board.
- q. The state fair association.
- r. The attorney general with respect to activities of the state toxicologist and the state crime laboratory.
- s. The board of university and school lands except with respect to activities under chapter 47-30.1.

- t. The administrative committee on veterans' affairs except with respect to rules relating to the supervision and government of the veterans' home and the implementation of programs or services provided by the veterans' home.
- u. The industrial commission with respect to the lignite research fund except as required under section 57-61-01.5.
- v. The attorney general with respect to guidelines adopted under section 12.1-32-15 for the risk assessment of sexual offenders, the risk level review process, and public disclosure of information under section 12.1-32-15.
- w. The commission on legal counsel for indigents.

It is important to recognize that the Administrative Agencies Practice Act applies to more than rulemaking by agencies. North Dakota Century Code Sections 28-32-01 through 28-32-20 apply to rulemaking and Sections 28-32-21 through 28-32-52 apply to adjudicative proceedings. Some agencies may have a need for an exemption from one part of the Act but not the other.

SUGGESTED STUDY APPROACH

The study directive requires discussion and analysis of each exemption and a presentation by each agency entitled to an exemption. If the discussion, analysis, and presentation for each agency exemption is limited to 20 minutes, it would require more than an hour and 30 minutes of time on the agenda for each of the five required Administrative Rules Committee meetings before the committee report to the Legislative Council in 2008.

As representatives of agencies are requested to present information regarding exemptions, proposed questions for them to address are:

1. Is the Administrative Agencies Practice Act exemption for your agency still appropriate to the functions of your agency? Please describe why or why not.
2. Has the Administrative Agencies Practice Act exemption for your agency been the subject of a court case or opinion of the Attorney General? If so, please explain.
3. Does the Administrative Agencies Practice Act exemption for your agency relate primarily to rulemaking or adjudicative proceedings of your agency?
4. Does your agency suggest any changes to the exemption for your agency under the Administrative Agencies Practice Act?

ATTACH:1

**Sixtieth Legislative Assembly of North Dakota
In Regular Session Commencing Wednesday, January 3, 2007**

HOUSE BILL NO. 1479
(Representatives Koppelman, Boehning, S. Meyer, Thoreson)
(Senators Freborg, Klein)

AN ACT to provide for a legislative council study of agency exemptions from the Administrative Agencies Practice Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL STUDY - ADMINISTRATIVE AGENCIES PRACTICE ACT EXEMPTION. The legislative council shall consider studying, during the 2007-08 interim, the appropriateness of each agency exemption from the Administrative Agencies Practice Act. The study should include discussion and analysis of each exemption, and a presentation by each agency entitled to an exemption, under the Administrative Agencies Practice Act. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.