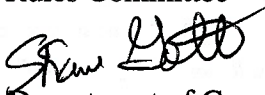


**MEMORANDUM**

Date: September 6, 2007

To: Senator Tom Fischer  
Administrative Rules Committee

From: Shane Goettle   
Commissioner, Department of Commerce

Re: Administrative Agencies Practice Act

The authority of an administrative agency to adopt administrative rules is authority delegated by the legislative assembly in North Dakota Century Code 28-32. As part of that delegation, the legislative assembly reserves to itself the authority to determine when and if rules of administrative agencies are effective. Every administrative agency may adopt, amend, or repeal reasonable rules in conformity with this chapter and any statute administered or enforced by the agency.

Under the Administrative Agencies Practice Act (AAPA) the Economic Development and Finance Division (ED&F) of the North Dakota Department of Commerce is considered "exempt" and therefore does not promulgate rules and regulations under AAPA. The other three divisions, Community Services, Tourism and Workforce Development are subject to the rules and regulations under AAPA.

Only the Division of Community Services has actually established rules and regulations under the AAPA that have statewide application. These rules were promulgated in response to legislation authorizing the establishment of the following programs:

|  |                 |
|--|-----------------|
| State Building Code                                | NDCC 54-21.3-03 |
| Third Party Inspection Program for Modular Housing | NDCC 54-21.3-07 |
| Manufactured Home Installation                     | NDCC 54-21.3-08 |

ED&F provides the following programs and services that could be impacted by modifying the Division's "exempt" status:

- 1) Development Fund
- 2) Agricultural Products Utilizations Commission
- 3) Primary sector certification
- 4) Research and development company certification
- 5) Microbusiness certification
- 6) Seed capital tax credit certification
- 7) Agricultural business tax credit certification

All of the preceding programs and services have procedures, processes and forms that have been developed to ensure that clients receive great service and are understandable and consistent. ED&F remains committed to delivering these programs and services in a timely manner. Therefore, it is our opinion that clients of these programs and services are satisfied with the management and delivery of them and removing ED&F from the "exempt" status from AAPA would not enhance client services. As a matter of fact, removing the "exempt" status could possibly hinder our ability to effectively respond to changes in the marketplace and business community. As an example, the Development Fund Board met last week and considered how the Rural Incentive Fund might be designed to finance businesses that provide essential services in Northwood. Without the "exemption", the Development Fund may not have been able to address the storm related needs of Northwood expeditiously because of the lengthy administrative rules approval process it otherwise might have been subject to.

ED&F's programs and initiatives, whether developed internally, through legislative action or from business/community needs, must be able to be flexible and have the capacity to adjust quickly to national and global market changes, including rapid response to natural or economic disasters. Changes to the programs would be burdensome and therefore we do not recommend any changes to the "exempt" status.