ADMINISTRATIVE RULES COMMITTEE

The Administrative Rules Committee is a statutory committee deriving its authority from North Dakota Century Code (NDCC) Sections 54-35-02.5, 54-35-02.6, 28-32-17, 28-32-18, and 28-32-18.1. The committee is required to review administrative agency rules to determine whether:

- Administrative agencies are properly implementing legislative purpose and intent.
- There is dissatisfaction with administrative rules or statutes relating to administrative rules.
- There are unclear or ambiguous statutes relating to administrative rules.

The committee may recommend rule changes to an agency, formally object to a rule, or recommend to the Legislative Management the amendment or repeal of statutes relating to administrative rules. The committee also may find a rule void or agree with an agency to amend or repeal an administrative rule or create a related rule to address any of the considerations under NDCC Section 28-32-18(1)(a)-(f), without requiring the agency to begin a new rulemaking process.

The committee is authorized under NDCC Sections 54-06-32 and 54-06-33 to approve rules adopted by Human Resource Management Services authorizing service awards and employer-paid costs of training to employees in the classified service.

Committee members were Senators Bob Paulson (Chairman), Todd Beard, Jerry Klein, Janne Myrdal, Kristin Roers, and Mike Wobbema and Representatives Clayton Fegley, Donna Henderson, Zachary Ista, Daniel Johnston, Donald W. Longmuir, Andrew Marschall, Carrie McLeod, Brandy L. Pyle, Dan Ruby, Bernie Satrom, Vicky Steiner, and Christina Wolff.

ADMINISTRATIVE AGENCY RULES REVIEW

Administrative agencies are the state agencies authorized to adopt rules under the Administrative Agencies Practice Act (NDCC Chapter 28-32). A rule is an agency's statement of general applicability that implements or prescribes law or policy, or the organization, procedure, or practice requirements of the agency. Properly adopted rules have the force and effect of law. Each rule adopted by an administrative agency must be filed with the Legislative Council office for publication in the North Dakota Administrative Code (NDAC).

Under NDCC Section 54-35-02.6, it is the standing duty of the committee to review administrative rules adopted under NDCC Chapter 28-32. For rules scheduled for review, each adopting agency is requested to address:

- Whether the rules resulted from statutory changes made by the Legislative Assembly.
- Whether the rules are related to any federal statute or regulation. If so, the agency is requested to indicate whether the rules are mandated by federal law or explain any options the agency had in adopting the rules.
- A description of the rulemaking procedure followed in adopting the rules, e.g., the time and method of public notice and the extent of public hearings on the rules.
- Whether any person presented a written or oral concern, objection, or complaint for agency consideration with regard to the rules. Each agency is asked to describe any such concern, objection, or complaint, and the agency's response, including any change made in the rules to address the concern, objection, or complaint, and to summarize the comments of any person who offered comments at the public hearings on the rules.
- The approximate cost of providing public notice and holding hearings on the rules and the approximate cost (not including staff time) used in developing and adopting the rules.
- The subject matter of the rules and the reasons for adopting the rules.
- Whether a regulatory analysis was required by NDCC Section 28-32-08. If a regulatory analysis was prepared, a copy must be provided to the committee.
- Whether a regulatory analysis or small entity economic impact statement was required by NDCC Section 28-32-08.1. If a regulatory analysis or small entity economic impact statement was prepared, a copy must be provided to the committee.
- Whether the rules have a fiscal effect on state revenues and expenditures, including any effect on funds controlled by the agency. If a fiscal note was prepared, a copy must be provided to the committee.
- Whether a constitutional takings assessment was prepared as required by NDCC Section 28-32-09. If a takings assessment was prepared, a copy must be provided to the committee.

- If the rules were adopted as emergency rules under NDCC Section 28-32-03, the agency must provide the statutory grounds for declaring the rules to be an emergency, the facts that support the declaration, a copy of the Governor's approval of the emergency status of the rules, and the steps taken to make the rules known to individuals who could reasonably be expected to have a substantial interest in the rules.

During committee review of the rules, agency testimony is required, and any interested party may submit written comments or provide oral testimony as permitted by the Chairman. If a representative of the agency does not appear before the committee to provide testimony, the rules are required by statute to be carried over for consideration and may be delayed in taking effect until a representative of the agency appears before the committee.

CURRENT RULEMAKING STATISTICS

The committee reviewed 1,269 rules sections and 1,618 pages of rules changed from January 2025 through October 2026. Table A at the end of this report shows the number of rules amended, created, superseded, repealed, reserved, or redesignated for each administrative agency that appeared before the committee.

Although rules differ in length and complexity, comparison of the number of rules sections affected during biennial periods is one method of comparing the volume of rules reviewed by the committee. The following table shows the number of rules sections amended, repealed, created, superseded, reserved, or redesignated during designated time periods:

Time Period	Number of Sections
December 2000-November 2002	1,417
December 2002-November 2004	2,306
December 2004-October 2006	1,353
January 2007-October 2008	1,194
January 2009-October 2010	1,451
January 2011-October 2012	907
January 2013-October 2014	1,383
January 2015-October 2016	2,108
January 2017-October 2018	3,736
January 2019-October 2020	1,950
January 2021-October 2022	1,218
January 2023-October 2024	1,531
January 2025-October 2026	1,269

For committee review of rules at each meeting, the Legislative Council staff prepares a rules supplement containing all rules changes submitted for publication since the previous committee meeting. The supplement is prepared in a style similar to bill drafts, with changes indicated by overstrike and underscore. Comparison of the number of pages of rules amended, created, or repealed is another method of comparing the volume of rules reviewed by the committee. The following table shows the number of pages in rules supplements during designated time periods:

Time Period	Supplement Pages
December 2000-November 2002	2,016
December 2002-November 2004	4,085
December 2004-October 2006	1,920
January 2007-October 2008	1,663
January 2009-October 2010	2,011
January 2011-October 2012	2,399
January 2013-October 2014	2,116
January 2015-October 2016	2,938
January 2017-October 2018	4,047
January 2019-October 2020	2,285
January 2021-October 2022	1,716
January 2023-October 2024	1,939
January 2025-October 2026	1,618

Rule Review Schedule

Since September 2005, rules supplements have been published on a calendar quarter basis. The deadlines and effective dates are as follows:

Filing Date	Committee Meeting Deadline	Effective Date
August 2-November 1	December 15	January 1
November 2-February 1	March 15	April 1
February 2-May 1	June 15	July 1
May 2-August 1	September 15	October 1

COMMITTEE ACTION ON RULES REVIEWED

Repealing Obsolete Rules

Under NDCC Section 28-32-18.1, an agency may amend or repeal a rule without complying with the normal notice and hearing requirements relating to adoption of rules if the agency initiates the request to the committee, the agency provides notice to the regulated community of the time and place the committee will consider the request, and the agency and the committee agree the rule amendment or repeal eliminates a provision that is obsolete or no longer in compliance with law and that no detriment would result to the substantive rights of the regulated community.

Voiding or Carrying Over Rules

Under NDCC Section 28-32-18, the committee may void all or part of a rule if that rule is initially considered by the committee no later than the 15th day of the month before the date of the rules supplement in which the rule change appears. The committee may carry over consideration of voiding rules for not more than one additional meeting. This allows the committee to act more deliberately in rules decisions and allows agencies additional time to provide information or to address any of the considerations for which the committee may find a rule to be void. The committee may void all or part of a rule if the committee makes the specific finding that with regard to the rule there is:

- An absence of statutory authority;
- An emergency relating to public health, safety, or welfare;
- A failure to comply with express legislative intent or to substantially meet the procedural requirements of NDCC Chapter 28-32 for adoption of the rule;
- A conflict with state law;
- Arbitrariness and capriciousness; or
- A failure to make a written record of an agency's consideration of written and oral submissions respecting the rule under NDCC Section 28-32-11.

Within 3 business days after the committee finds a rule void, the Legislative Council office is required to provide written notice to the adopting agency and the Chairman of the Legislative Management. Within 14 days after receipt of the notice, the agency may file a petition with the Chairman of the Legislative Management for Legislative Management review of the decision of the committee. If the adopting agency does not file a petition, the rule becomes void on the 15th day after the notice to the adopting agency. If within 60 days after receipt of a petition from the agency the Legislative Management has not disapproved the finding of the committee, the rule is void.

Because the Legislative Assembly recognized there are constitutional questions about the committee voiding rules, an alternative amendment to NDCC Section 28-32-18 will take effect if the North Dakota Supreme Court rules the authority to void rules is unconstitutional. The alternative amendment is the same in all respects as the amendment allowing the committee to find rules void, except under the alternative amendment the committee may not find a rule to be void, but may suspend a rule or portion of a rule. The effect of a suspension is the rule becomes ineffective temporarily and will become permanently ineffective unless it is ratified by both houses of the Legislative Assembly during the next legislative session. The amendment requires the agency seeking ratification of a suspended rule to introduce a bill for that purpose. The authority of the Legislative Management to reverse the decision of the committee also applies in the case of a suspension of a rule.

Amending, Repealing, or Creating a Rule

If the agency and committee agree the rule change is necessary to address any of the considerations for which the committee may find a rule to be void, NDCC Section 28-32-18 allows an agency to amend, repeal, or create a related rule after consideration of the rules by the committee. This allows an agency to change an administrative rule when the committee expresses concerns, and in those circumstances the agency is not required to commence a new rulemaking process.

If the committee carries over consideration of a rule to one subsequent committee meeting to decide whether to void the rule, an agency may present an amended rule at the subsequent committee meeting. If a rule change is agreed to by the committee and the agency, the rule must be reconsidered, if requested by the agency or any interested party, at a subsequent committee meeting and public comment on the agreed rule change must be allowed.

January 2025 Through October 2026 Committee Action

Rules Carried Over for Consideration

The committee carried over for consideration NDAC Section 96-02-10-01(20), adopted by the Board of Clinical Laboratory Practice, related to tests by polymerase chain reaction using a closed system that detects DNA or RNA.

The committee carried over for consideration NDAC Chapters 33-41-01 and 33-41-01.1, repealed and adopted by the Department of Health and Human Services, related to tattoos and body art.

The committee carried over for consideration NDAC Chapter 33.1-21-01, adopted by the Department of Environmental Quality, related to the technical requirements and licensing of installers of onsite wastewater treatment systems or septic systems.

Rules Amended by Committee

The committee, pursuant to NDCC Section 28-32-18(3) after finding an absence of statutory authority, amended NDAC Sections 10-16-02-06 and 10-16-03-05, adopted by the North Dakota Lottery, to remove the authority to accept credit cards as payment for lottery tickets.

The committee repealed NDAC Article 69-08 and amended NDAC Chapter 69-01-01, as requested by the Public Service Commission pursuant to NDCC Section 28-32-18.1, because provisions relating to the Public Service Commission regulating auctioneers and auction clerks were obsolete and no longer in compliance with law due to the enactment of House Bill 1191 (2023).

The committee, pursuant to NDCC Section 28-32-18(3) after finding an absence of statutory authority, amended NDAC Section 10-16-03-05, adopted by the North Dakota Lottery, to explicitly provide retailers may not accept credit cards for a lottery ticket.

At the next meeting following the meeting at which the committee carried over for consideration NDAC Section 96-02-10-01(20), the committee amended NDAC Section 96-02-10-01(20), as requested by the Board of Clinical Laboratory Practice pursuant to NDCC Section 28-32-18(3), to add "human rhinovirus" as an exempt test that may be performed by an individual under the supervision of a board-licensed professional, advanced practice registered nurse, or physician.

Rules Voided by Committee

The committee, after finding an absence of statutory authority pursuant to NDCC Section 28-32-18(1), voided NDAC Section 99-01.3-09-01, adopted by the State Gaming Commission, relating to the maximum amount of a poker tournament fee. The State Gaming Commission requested the Legislative Management review and disapprove the finding of the committee. The Legislative Management took no action to disapprove the finding of the committee.

TABLE A

Statistical Summary of Rulemaking
January 2025 Through October 2026 - Supplements 395 Through 401

Title	Supplement No.	Agency	Amend	Create	Supersede	Repeal	Special	Reserved	Total
3	398 - Jan 26	Accountancy, Board of	4	0	0	0	0	0	4
4	400 - Jul 26	Management and Budget, Office of	29	1	0	0	0	0	30
4.5	397 - Oct 25	Addiction Counseling Examiners, Board of	11	0	0	0	0	0	11
7	399 - Apr 26	Agriculture Commissioner	12	0	0	5	0	0	17
10	396 - Apr 25	Attorney General	12	1	0	1	0	0	14
	398 - Jan 26		30	4	0	0	0	0	34
	400 - Jul 26		3	0	0	0	0	0	3
11	400 - Jul 26	Audiology and Speech-Language Pathology, Board of Examiners on	9	0	0	0	0	0	9
20	399 - Apr 26	State Board of Dental Examiners	29	10	0	0	0	0	39
24.1	400 - Jul 26	State Electrical Board	20	13	0	1	0	0	34
30	399 - Apr 26	Game and Fish Department	4	0	0	0	0	0	4
32	398 - Jan 26	Cosmetology, Board of	56	36	0	11	0	0	103
33	395 - Jan 25	State Department of Health	3	0	0	0	0	0	3
	397 - Oct 25		12	10	0	0	0	0	22
	398 - Jan 26		26	2	0	0	0	0	28
	399 - Apr 26		12	8	0	0	0	0	20
	401 - Oct 26		4	20	0	1	0	0	25
33.1	398 - Jan 26	Department of Environmental Quality	2	0	0	0	0	0	2
	399 - Apr 26		17	14	0	0	0	0	31
	401 - Oct 26		18	15	0	0	0	0	33
43	399 - Apr 26	Industrial Commission	24	1	0	1	0	0	26
	400 - Jul 26		0	37	0	0	0	0	37
48.1	399 - Apr 26	State Board of Animal Health	5	3	0	1	0	0	9
50	395 - Jan 25	North Dakota Board of Medicine	1	10	0	0	0	0	11
	398 - Jan 26		5	2	0	0	0	0	7
54	396 - Apr 25	Board of Nursing	0	3	0	1	0	0	4
60	399 - Apr 26	Pesticide Control Board	5	0	0	0	0	0	5
67	397 - Oct 25	Public Instruction, Superintendent of	2	0	0	0	0	0	2
	399 - Apr 26		4	15	0	1	0	0	20
	401 - Oct 26		9	1	0	0	0	0	10
67.1	396 - Apr 25	Education Standards and Practices Board	11	2	0	0	0	0	13
71	395 - Jan 25	Retirement Board	22	10	0	3	0	0	35
	398 - Jan 26		6	0	0	0	0	0	6
	400 - Jul 26		28	5	0	0	0	0	33
72	397 - Oct 25	Secretary of State	16	0	0	0	0	0	16
	398 - Jan 26		0	12	0	0	0	0	12
75	395 - Jan 25	Department of Human Services	41	3	0	10	0	0	54
	398 - Jan 26		22	11	0	0	0	0	33
	399 - Apr 26		46	44	0	2	0	0	92
	400 - Jul 26		5	1	0	0	0	0	6
85	399 - Apr 26	University and School Lands, Board of	61	3	0	0	0	0	64
87	399 - Apr 26	Veterinary Medical Examiners, Board of	20	19	0	11	0	0	50
89	399 - Apr 26	Water Commission	70	11	0	32	0	0	113
90	399 - Apr 26	State Board of Water Well Contractors	27	0	0	2	0	0	29
92	398 - Jan 26	Workforce Safety and Insurance	17	2	0	4	0	0	23
95	399 - Apr 26	Agricultural Products Utilization Commission	6	0	0	0	0	0	6
96	395 - Jan 25	Board of Clinical Laboratory Practice	3	2	0	0	0	0	5
	398 - Jan 26		3	0	0	0	0	0	3
	399 - Apr 26		1	0	0	0	0	0	1
99	400 - Jul 26	State Gaming Commission	56	1	0	0	0	0	57
115	395 - Jan 25	Ethics Commission	4	1	0	0	0	0	5
	399 - Apr 26		9	2	0	0	0	0	11
	400 - Jul 26		0	5	0	0	0	0	5
Total			842	340	0	87	0	0	1269