

**HOUSE BILL NO. 1173**

Introduced by

Representative Keiser

1 A BILL for an Act to amend and reenact section 28-34-01 of the North Dakota Century Code,  
2 relating to costs of appeals of local government decisions.

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

4 **SECTION 1. AMENDMENT.** Section 28-34-01 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 **28-34-01. Appeals from local governing bodies - Procedures.**

7 This section, to the extent that it is not inconsistent with procedural rules adopted by the  
8 North Dakota supreme court, governs any appeal provided by statute from the decision of a  
9 local governing body, except those court reviews provided under sections 2-04-11 and  
10 40-51.2-15. For the purposes of this section, "local governing body" includes any officer, board,  
11 commission, resource or conservation district, or other political subdivision. Each appeal is  
12 governed by the following procedure:

- 13 1. The notice of appeal must be filed with the clerk of the court within thirty days after the  
14 decision of the local governing body. A copy of the notice of appeal must be served on  
15 the local governing body in the manner provided by rule 4 of the North Dakota Rules  
16 of Civil Procedure.
- 17 2. The appellee shall prepare and file a single copy of the record on appeal with the  
18 court. Within thirty days, or ~~such~~ longer time as the court by order may direct, after  
19 the notice of appeal has been filed in the court, and after the deposit to the court by  
20 the appellant of the estimated cost of a transcript of ~~the evidence~~ any testimony, the  
21 local governing body shall prepare without charge and file in the office of the clerk of  
22 the court in which the appeal is pending the original or a certified copy of the entire  
23 ~~proceedings~~ record before the local governing body, or ~~such~~ an abstract of the record  
24 as may be agreed upon and stipulated by the parties, including the pleadings, notices,

1 transcripts of all testimony taken, exhibits, reports or memoranda, exceptions or  
2 objections, briefs, findings of fact, proposed findings of fact submitted to the local  
3 governing body, and the decision of the local governing body in the proceedings. If the  
4 notice of appeal specifies ~~that~~ no exception or objection is made to the local governing  
5 body's findings of fact, and ~~that~~ the appeal is concerned only with the local governing  
6 body's conclusions based on the facts found by it, the evidence submitted at the  
7 hearing before the local governing body must be omitted from the record filed in the  
8 court. The court may permit amendments or additions to the record to complete the  
9 record.

- 10 3. If the court determines on its own motion or if an application for leave to adduce  
11 additional evidence is made to the court in which an appeal from a determination from  
12 a local governing body is pending, and it is shown to the satisfaction of the court that  
13 ~~such~~the additional evidence is material and ~~that~~ there are reasonable grounds for the  
14 failure to adduce ~~such~~the evidence in the hearing or proceeding had before the local  
15 governing body, or that ~~such~~the evidence is material to the issues involved and was  
16 rejected or excluded by the local governing body, the court may order that ~~such~~the  
17 additional evidence be taken, heard, and considered by the local governing body on  
18 ~~such~~the terms and conditions as the court may determine. After considering the  
19 additional evidence, the local governing body may amend or modify its decision and  
20 shall file with the court a ~~transcript~~copy of the additional evidence together with its new  
21 or modified decision, if any.