

HOUSE BILL NO. 1322

Introduced by

Representatives B. Koppelman, K. Koppelman, Pyle, D. Ruby, Steiner

Senators Burckhard, Clemens, Lemm, Meyer, J. Roers

1 A BILL for an Act to amend and reenact sections 28-32-14 and 28-32-17 and subsection 1 of
2 section 28-32-18 of the North Dakota Century Code, relating to the attorney general's review of
3 proposed administrative rules and the authority of the administrative rules committee to object
4 to or void an administrative rule.

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

6 **SECTION 1. AMENDMENT.** Section 28-32-14 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **28-32-14. Attorney general review of rules.**

- 9 1. Every rule proposed by any administrative agency must be submitted to the attorney
10 general for an opinion as to ~~its~~the rule's legality before final adoption, and the attorney
11 general promptly shall furnish ~~each such~~that opinion.
- 12 2. The attorney general may not approve any rule as to legality ~~when theif:~~
- 13 a. The rule exceeds the statutory authority of the agency or;
- 14 b. The rule is written in a manner that is not concise or easily understandable;
- 15 c. The rule is contrary to legislative intent, which includes the defeat of a legislative
16 measure; or when the
- 17 d. The procedural requirements for adoption of the rule in this chapter are not
18 substantially met.
- 19 3. The attorney general shall advise an agency of any revision or rewording of a rule
20 necessary to correct objections as to legality.

21 **SECTION 2. AMENDMENT.** Section 28-32-17 of the North Dakota Century Code is
22 amended and reenacted as follows:

1 **28-32-17. Administrative rules committee objection.**

2 If the legislative management's administrative rules committee objects to all or any portion
3 of a rule because the committee deems ~~it~~the rule or portion of the rule to be unreasonable,
4 unnecessary, arbitrary, capricious, or beyond the authority delegated to the adopting agency,
5 the committee may file ~~that~~the objection in certified form with the legislative council. The filed
6 objection must contain a concise statement of the committee's reasons for its action.

7 1. The legislative council shall attach to each objection a certification of the time and date
8 of its filing and, as soon as possible, shall transmit a copy of the objection and the
9 certification to the agency adopting the rule in question. The legislative council also
10 shall maintain a permanent register of all committee objections.

11 2. The legislative council shall publish an objection filed pursuant to this section in the
12 next issue of the code supplement. In case of a filed committee objection to a rule
13 subject to the exceptions of the definition of rule in section 28-32-01, the agency shall
14 indicate the existence of that objection adjacent to the rule in any compilation
15 containing that rule.

16 3. Within fourteen days after the filing of a committee objection to a rule, the adopting
17 agency shall respond in writing to the committee. After receipt of the response, the
18 committee may withdraw or modify ~~it~~the committee's objection.

19 4. After the filing of a committee objection, the burden of persuasion is upon the agency
20 in any action for judicial review or for enforcement of the rule to establish that the
21 whole or portion ~~thereof~~of the rule objected to is within the procedural and substantive
22 authority delegated to the agency. If the agency fails to meet its burden of persuasion,
23 the court shall declare the whole or portion of the rule objected to invalid and judgment
24 must be rendered against the agency for court costs. These court costs must include a
25 reasonable attorney's fee and must be payable from the appropriation of the agency
26 which adopted the rule in question.

27 **SECTION 3. AMENDMENT.** Subsection 1 of section 28-32-18 of the North Dakota Century
28 Code is amended and reenacted as follows:

29 1. The legislative management's administrative rules committee may find that all or any
30 portion of a rule is void if that rule is initially considered by the committee not later than
31 the fifteenth day of the month before the date of the administrative code supplement in

- 1 which the rule change is scheduled to appear. The administrative rules committee may
2 find a rule or portion of a rule void if the committee makes the specific finding that, with
3 regard to that rule or portion of a rule, there is:
- 4 a. An absence of statutory authority.
 - 5 b. An emergency relating to public health, safety, or welfare.
 - 6 c. A failure to comply with express legislative intent or to substantially meet the
7 procedural requirements of this chapter for adoption of the rule.
 - 8 d. A conflict with state law.
 - 9 e. Arbitrariness and capriciousness.
 - 10 f. A failure to make a written record of its consideration of written and oral
11 submissions respecting the rule under section 28-32-11.
 - 12 g. An absence of necessity.
 - 13 h. An absence of reasonableness.