

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:

1. Administrative agencies are properly implementing legislative purpose and intent.
2. There is dissatisfaction with administrative rules or statutes relating to administrative rules.
3. 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 the statutory authority for the rule. The committee also may find a rule void or agree with an agency to amend or repeal an administrative rule to address committee concerns, without requiring the agency to begin a new rulemaking proceeding.

The Legislative Management delegated to the committee its authority under NDCC Section 28-32-10 to distribute administrative agency notices of proposed rulemaking and to establish standard procedures for agency compliance with notice requirements, its authority under Section 28-32-07 to approve extensions of time for administrative agencies to adopt rules, and its responsibility under Section 28-32-42 to receive notice of appeal of an administrative agency's rulemaking action.

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 Representatives Bill Devlin (Chairman), Randy Boehning, Joshua A. Boschee, Robert Frantsvog, Brenda Heller, Ben Koppelman, Kim Koppelman, Mark S. Owens, Mike Schatz, Peter F. Silbernagel, Blair Thoreson, Nathan Toman, and Robin Weisz; and Senators John Andrist, Kelly M. Armstrong, Joan Heckaman, Jerry Klein, and Connie Triplett.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2014.

ADMINISTRATIVE AGENCY RULES REVIEW

Administrative agencies are those 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 Administrative Rules Committee to review administrative rules adopted under Chapter 28-32. This continues the rules review process initiated in 1979.

For rules scheduled for review, each adopting agency is requested to address:

1. Whether the rules resulted from statutory changes made by the Legislative Assembly.
2. 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 to explain any options the agency had in adopting the rules.
3. 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.
4. Whether any person has 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 response of the agency, 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 these rules.
5. The approximate cost of giving public notice and holding hearings on the rules and the approximate cost (not including staff time) used in developing and adopting the rules.
6. The subject matter of the rules and the reasons for adopting the rules.

7. Whether a written request for a regulatory analysis was filed by the Governor or an agency, whether the rules are expected to have an impact on the regulated community in excess of \$50,000, and whether a regulatory analysis was issued. If a regulatory analysis was prepared, a copy is to be provided to the committee.
8. Whether a regulatory analysis or small entity economic impact statement was prepared as required by NDCC Section 28-32-08.1. If a small entity impact assessment was prepared, a copy is to be provided to the committee.
9. Whether the rules have a fiscal effect on state revenues and expenditures, including any effect on funds controlled by the agency. Copies of any fiscal note are to be provided to the committee.
10. Whether a constitutional takings assessment was prepared as required by NDCC Section 28-32-09. If a constitutional takings assessment was prepared, a copy is to be provided to the committee.
11. If the rules were adopted as emergency rules under NDCC Section 28-32-03, the agency is to provide the statutory grounds from that section for declaring the rules to be an emergency and the facts that support the declaration and a copy of the Governor's approval of the emergency status of the rules.

During committee review of the rules, agency testimony is required and any interested party may submit oral or written comments. If no representative of the agency appears 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 does appear before the committee.

CURRENT RULEMAKING STATISTICS

The committee reviewed 1,383 rules sections and 2,116 pages of rules that were changed from January 2011 through October 2012. Although there were substantially more sections reviewed, the rules comprised substantially fewer pages than during the previous biennial period. 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 administrative rules sections affected during biennial periods is one method of comparing the volume of administrative rules reviewed by the committee. The following table shows the number of NDAC sections amended, repealed, created, superseded, reserved, or redesignated during designated time periods:

Time Period	Number of Sections
November 1986-October 1988	2,681
November 1988-October 1990	2,325
November 1990-October 1992	3,079
November 1992-October 1994	3,235
November 1994-October 1996	2,762
November 1996-October 1998	2,789
November 1998-November 2000	2,074
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

For committee review of rules at each meeting, the Legislative Council staff prepares an administrative 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 administrative rules reviewed by the committee. The following table shows the number of pages in administrative rules supplements during designated time periods:

Time Period	Supplement Pages
November 1992-October 1994	3,809
November 1994-October 1996	3,140
November 1996-October 1998	4,123
November 1998-November 2000	1,947
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

Rule Review Schedule

Since September 2005, NDAC supplements have been published on a calendar quarter basis. The current 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 administrative 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 Administrative Rules 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 not later than the 15th day of the month before the date of the NDAC supplement in which the rule change appears. The committee may carry over consideration of voiding administrative 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 work with affected groups to develop mutually satisfactory rules. 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:

1. An absence of statutory authority;
2. An emergency relating to public health, safety, or welfare;
3. 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;
4. A conflict with state law;
5. Arbitrariness and capriciousness; or
6. 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 three 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.

Rules Carried Over or Amended by Committee Approval

Rules of the Board of Registration for Professional Engineers and Land Surveyors were carried over by statutory requirement because no representative of the agency was able to appear at the scheduled meeting. The committee received testimony from an agency representative at the subsequent meeting and took no action regarding the rules.

At its final meeting before preparation of this report to the Legislative Management, the committee approved a motion to carry over consideration of a portion of rules of the Education Standards and Practices Board, relating to a requirement for a second major for certain special education majors. The committee will reconsider the rules at its meeting in December 2014.

Rules Voided by Committee

The committee did not void any rules submitted by administrative agencies from January 2013 through October 2014.

TABLE A

**Statistical Summary of Rulemaking
January 2013 Through October 2014 - Supplements 347 Through 354**

Title	Supplement No.	Agency	Amend	Create	Supersede	Repeal	Special	Reserved	Total
4	347 - JAN 13	Office of Management and Budget	1	0	0	0	0	0	1
	353 - JUL 14		18	2	0	6	0	0	26
4.5	353 - JUL 14	Board of Addiction Counseling Examiners	12	0	0	0	0	0	12
7	348 - APR 13	Agriculture Commissioner	9	3	0	5	0	0	17
	354 - OCT 14		1	4	0	0	0	0	5
8	351 - JAN 14	Board of Architecture and Landscape Architecture	24	2	0	7	0	0	33
10	347 - JAN 13	Attorney General	3	0	0	0	0	0	3
	348 - APR 13		4	0	0	0	0	0	4
	351 - JAN 14		23	1	0	0	0	0	24
13	347 - JAN 13	Department of Financial Institutions	25	2	0	1	0	0	28
	348 - APR 13		16	6	0	2	0	0	24
17	352 - APR 14	State Board of Chiropractic Examiners	1	0	0	0	0	0	1
24	353 - JUL 14	State Board of Registration for Professional Engineers and Land Surveyors	18	0	0	0	0	0	18
28	354 - OCT 14		5	0	0	0	0	0	5
30	347 - JAN 13		14	3	0	2	0	0	19
	351 - JAN 14	10	0	0	0	0	0	10	
33	347 - JAN 13	State Department of Health	21	1	0	0	0	0	22
	351 - JAN 14		11	10	0	6	0	0	27
	352 - APR 14		15	0	0	0	0	0	15
37	352 - APR 14	Department of Transportation	3	1	0	0	0	0	4
38	349 - JUL 13	Highway Patrol	9	3	0	0	0	0	12
43	348 - APR 13	Industrial Commission	17	20	0	1	0	0	38
	349 - JUL 13		34	107	0	7	0	0	148
	352 - APR 14		36	5	0	0	0	0	41
45	351 - JAN 14		13	1	0	0	0	0	14
	352 - APR 14	12	17	0	1	0	0	30	
50	349 - JUL 13	State Board of Medical Examiners	3	0	0	0	0	0	3
54	349 - JUL 13	State Electrical Board	1	0	0	0	0	0	1
	352 - APR 14	Board of Nursing	84	16	0	16	0	0	116
55.5	352 - APR 14	Board of Occupational Therapy Practice	8	4	0	1	0	0	13
60	347 - JAN 13	Pesticide Control Board	14	2	0	3	0	0	19
61	348 - APR 13	State Board of Pharmacy	1	0	0	0	0	0	1
	354 - OCT 14		12	2	0	0	0	0	14
62	351 - JAN 14	State Plumbing Board	1	0	0	0	0	0	1
63	348 - APR 13	Board of Podiatric Medicine	8	0	0	0	0	0	8
67.1	349 - JUL 13	Education Standards and Practices Board	4	0	0	0	0	0	4
	349 - JUL 13		4	0	0	0	0	0	4
	354 - OCT 14		13	1	0	0	0	0	14
69	348 - APR 13	Public Service Commission	25	9	0	1	0	0	35
	350 - OCT 13		0	0	0	2	0	0	2
	354 - OCT 14		1	0	0	0	0	0	1
69.5	350 - OCT 13	Racing Commission	2	0	0	0	0	0	2
	353 - JUL 14		1	0	0	0	0	0	1
71	351 - JAN 14	Public Employees Retirement System	0	0	0	5	0	0	5
	352 - APR 14		16	1	0	0	0	0	17
75	347 - JAN 13	Department of Human Services	55	0	0	1	0	0	56
	351 - JAN 14		25	0	0	1	0	0	26
	352 - APR 14		72	20	0	0	0	0	92
	353 - JUL 14		76	16	0	1	0	0	93
	354 - OCT 14		8	3	0	0	0	0	11
81	352 - APR 14	Tax Commissioner	1	5	0	0	0	0	6
87	351 - JAN 14	Board of Veterinary Medical Examiners	6	0	0	0	0	0	6
89	353 - JUL 14	State Water Commission	96	3	0	8	0	0	107
92	352 - APR 14	Workforce Safety and Insurance	14	0	0	0	0	0	14
93	350 - OCT 13	Private Investigative and Security Board	3	0	0	0	0	0	3
96	348 - APR 13	Board of Clinical Laboratory Practice	1	0	0	0	0	0	1
97	353 - JUL 14	Board of Counselor Examiners	10	3	0	2	0	0	15
109	352 - APR 14	Peace Officer Standards and Training	40	3	0	6	0	0	49
112	348 - APR 13	Board of Integrated Health Care	0	54	0	0	0	0	54
113	351 - JAN 14	Information Technology Department	0	8	0	0	0	0	8
Total			960	338	0	85	0	0	1383