2017 SENATE GOVERNMENT AND VETERANS AFFAIRS

SB 2264

2019 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Sheyenne River Room, State Capitol

SB2264
1/24/2019
31370

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature : Pam Dever

Explanation or reason for introduction of bill/resolution:

Relating to meetings & policy approval process of the board of university & school land & exempt administrative agencies.

Minutes:

Att #1-Sen Unruh; Att #2-Jodi Smith;Att #3-Brady Pelton

Chairman Davison: Let's open SB2264. Welcome back Sen Unruh.

Sen Jessica Unruh, Dist.33, Beulah: I am here to introduce this bill. (see att #1) (.20-1.32)

Chairman Davison: We are not rolling it all the way back, just we will be more comfortable with the change.

Sen Unruh: Yes, exactly correct. We had heated discussions last session in conference committees. (2.31) We are here to fix and make it easier for all; industry and commissioner's office.

Jodi Smith, Commissioner & Secretary for Board of University/School Lands: I am here in support. (see att #2) (3.05-9.05) Any questions?

Chairman Davison: Could you tell me about the steps in order to do the administrative **rule** process? You started in July of 2017. I was on administrative rule so I know how it works. Others may not. Tell the extra steps you had to take.

Jodi: It was hard because we were not just amending one rule but create for the entire division. We had to go division by division, and we have six divisions. We had to review all the statutes that apply to each division. We had to look at board policies because we couldn't supersede a board policy without the board to rescind those policies. We had to start developing them based off of the Administrative Rules Act. It took a year and a half to get it in place. Unclaimed property had the ability to enter into the Act early in the 1980's, but they never opted to do that. There was no negative impact by pushing them through. Same with Energy Infrastructure/Impacts Grant Office. There are not a lot of rules and regulation there. We are involved in 6900 wells in North Dakota. Each one requires a separate lease from use. (11.46) We don't want to be a regulatory agency. We have the PSC. (12.49) This bill

helps with transparency, which is good. I recommended to Sen Unruh that you put this in statute. This will protect the nature of what we are trying to do here. It becomes a legal requirement instead of a board policy. (14.18)

Sen. Erin Oban: Why was HB1300 brought forward? It went in front of Energy, Natural Resources.

Jodi: (15.24) The department was experiences several issues. We had had a performance audit. We had 54 findings against the department. 19 were under the unclaimed properties. 29-30 were with land and surface management. Issues also about transparency. Some people were pushing agendas the day before meetings. This would not give any stake holder or industry leader any time to look at those policies beforehand. Lack of communication and cultural issues also there. The cultural were within my department when I came in. I started November 27, 2017. We worked hard to address the cultural issue. I had a survey to ask if we were the worse in the state and the answer was, yes you are. Now, we are not. (17.50)

Chairman Davison: How is your board selected?

Jodi: Those have been in the constitution since 1889. The Governor, Secretary of State, Attorney General, State Treasurer, and the Superintendent of Schools are the board. On our board you cannot have a proxy. The only board in the state that you cannot delegate responsibilities. We have a full board when we meet. (18.41)

Brady Pelton, Gov Affairs Director, North Dakota Petroleum Council: We are urge a DO PASS on SB2264. (see att #3) Any question?

Chairman Davison: Thank you. Any more testimony in support? Any agencies? Any against? Seeing none, we are closed.

2019 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Sheyenne River Room, State Capitol

SB2264
2/8/2019
32463

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature : Pam Dever

Explanation or reason for introduction of bill/resolution:

Relating to meetings & policy approval process of the board of university & school lands & exempt administrative agencies.

Minutes:

Chairman Davison: Look at SB2264. I did not see any notes I made. Any concerns?

Sen. Richard Marcellais: The only thing I have is they talked about administrative rules. That is only highlight I had.

Sen. Kristin Roers: Sen. Unruh sent me a note saying this is just codifying the administrative rules. (1.02)

Chairman Davison: What are the committee wishes?

Sen. Kristin Roers: I move a DO PASS. **Vice Chair Meyer**: I second.

Chairman Davison: Any discussion? Take roll: **YES -- 7 NO -- 0 -0-absent**
PASSED Vice Chair Meyer will carry the bill.

End (1.54)

Date: 2/8/19
Roll Call Vote #: 1

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2264

Senate Government and Veterans Affairs Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation:
☐ Adopt Amendment
☑ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Sen Roers Seconded By Sen Meyer

Senators	Yes	No	Senators	Yes	No
Chair Davison	✓		Sen. Oban	✓	
Vice Chair Meyer	✓		Sen. Marcellais	✓	
Sen. Elkin	✓				
Sen. K Roers	✓				
Sen. Vedaa	✓				

Total (Yes) 7 No 0

Absent -0-

Floor Assignment Sen Meyer

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2264: Government and Veterans Affairs Committee (Sen. Davison, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2264 was placed on the Eleventh order on the calendar.

2019 HOUSE GOVERNMENT AND VETERANS AFFAIRS

SB 2264

2019 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Fort Union Room, State Capitol

SB 2264
3/14/2019
#33732

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Carmen Hart Typed by Jeanette Cook

Explanation or reason for introduction of bill/resolution:

Relating to meetings and policy approval process of the board of university and school lands and exempt administrative agencies

Minutes:

Attachments 1-4

Chairman Kasper opened the hearing on SB 2264.

Senator Jessica Unruh appeared in support. Attachment 1. (:21-2:07)

Rep. Louser: Can you elaborate a little more on the mistake that we made, and how to correct it?

Senator Unruh: This was something we pushed for last session. There was a lot of concerns from industry about transparency in the process, and things that were happening over at the land commissioner's office. In the last two years we have seen a change in leadership, a change in processes, a change in transparency, and we've seen the folks who warned us about this not working the way we intended it to work, making sure that that actually did happen. I think that we are at a point where we have clearly identified what can fall under the administrative rule process, and what should stay confidential and follow the rules under the land board. We would be codifying this bill in front of you today.

Rep. Schauer: What worked and what didn't work?

Senator Unruh: The land commissioner could better explain that. I do strongly believe that the changes that we have in front of you are necessary for them to do their duties as a board with constitutional authority.

Jodi Smith, Commissioner, ND Department of Trust Lands, appeared in support. Attachment 2. (4:43-11:32)

Rep. Laning: If this were to go forward, what would your department do to insure transparency for the general public.

Jodi Smith: We have already started that process. We now require a policy to be brought to the board, it has a first reading and is subject to a second reading. That allows for the public to have time for public comment before the board adopts public policy.

Rep. Laning: Are your minutes posted on internet?

Jodi Smith: They are.

Rep. Karls: On your last page of testimony it states that passing this bill would result in increased costs for industry. To what bill are you referring?

Jodi Smith: It was probably the previous bill. If we don't pass this, it will result in significant delays. I get the question quite often, "How did you not know that this was coming?" It was very challenging for our department. We probably didn't adequately communicate that. We didn't have **any** administrative rules. When our department started modifying this, we weren't **modifying one** rule, we were literally trying to encapsulate the **entire department**. When you start putting the processes on paper, you really understand what the impacts are going to be on industry. That is everything we do: from investments, to surface management, and to minerals management. Right now, it takes us about two weeks to issue an easement, if all paperwork comes in. This would mean a minimum of three months for that. Right now our leases take about two months once a lease is negotiated. We anticipate it will take 12 to 18 months if this bill doesn't pass to exempt these portions of the work that we do.

Rep. Louser: Do you record your easements?

Jodi Smith: No, we do not.

Rep. Schauer: Explain what kind of emergency you might be talking about on page 2?

Jodi Smith: I am not sure. Because things come up fairly regularly, we do bring things to the board that happen on an emergency basis. If it is not recorded on our lease, there are exceptions that need to be dealt with. I am not sure what could come up as an emergency, so I would like the board to adopt this. Since it is a very public hearing, we would be able to get that message out. We intentionally reach out to our partners if something comes up on an agenda fairly quickly.

Vice Chair Steiner: Are all state lands in the west open for hunting?

Jodi Smith: They are not. We do lease them out, so it is up to the lessee.

Ron Ness, President of ND Petroleum Council, appeared in support. Attachment 3. (18:53-20:15)

Rep. Louser: Do you see that process as necessary at all in this instance or is this the right move?

Mr. Ness: This is the solution that came off that discussion in the Administrative Rules Committee. It was frustrating for everyone. It was a big task to take the history of the whole

agency and put it under administrative rules. We just want due process on big decisions, and this in our opinion gives us that. We support this bill.

Rep. Laning: You and the Lignite industry are partially to blame for the legislators' mistake last time?

Mr. Ness: You can point the finger at me.

There was no further support for SB 2264.
There was no oppositional or neutral testimony on SB 2264.

The hearing was closed on SB 2264.

Rep. Louser moved a DO PASS on SB 2264.
Rep. Karl seconded the motion.
A voice vote was taken: Yes 13 No 0 Absent 1
The motion passed.
Rep. Louser will carry SB 2264.

* Additional information on hunting on state lands was provided for the record by e-mail. See attachment #4.

2019 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Fort Union Room, State Capitol

SB 2264
3/28/2019
34332

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Carmen Hart

Explanation or reason for introduction of bill/resolution:

Relating to meetings and policy approval process of the board of university and school lands and exempt administrative agencies

Minutes:

Chairman Kasper opened the meeting on SB 2264. A few days ago SB 2264 had been rereferred back to the GVA committee for further consideration.

Rep. C. Johnson moved to accept SB 2264 back into committee for reconsideration.

Rep. Johnston seconded the motion.

Voice vote. Motion carries.

Chairman Kasper: I do not plan on acting on the bill this week. That is the controversial bill on the boards and the administrative rules oversight. It was killed on the floor, and the motion for reconsideration came back and now in front of us to look at. We will take this up next week. We are not going to reopen the hearing, but there will be people down here that we will be able to ask questions of, so I would like all the committee to really take a look at 2264 between now and next week and come up with any ideas you can think of. One of the controversial things on that is should the university of school lands board be subject to the adoption of all of their rules or part of the rules and part of the areas or what not. The governor indicated to me recently that there really is some consternation about having all of the process of the board subject to the rules making process because of the dealing with minerals and contracts and those types of things. In 2017 the university and school lands board was instructed to adopt rules by legislative action. He asked the law intern to research and to get out to all of the committee what has happened in the rules making process up to this date.

This meeting was closed.

2019 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Fort Union Room, State Capitol

SB 2264
4/4/2019
34512

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Carmen Hart

Explanation or reason for introduction of bill/resolution:

Relating to meetings and policy approval process of the board of university and school lands and exempt administrative agencies

Minutes: Attachments 1-9

Chairman Kasper opened the meeting on SB 2264. This is the bill that has to deal with administrative rules for the school and land board. It was rereferred back to our committee and last week we had voted to reconsider this bill.

Rep. Bill Devlin appeared. Attachment 1 and 2. (1:52-4:23)

Chairman Kasper: You totally support the amendment?

Rep. Devlin: I totally support it, and everybody involved to my knowledge totally supports it.

Rep. Karls: It still keeps the land department under administrative rules, but exempts them from what?

Rep. Devlin: Adjudicative proceedings. It essentially is a method of resolving a dispute between the agency and another person whose rights or interests have been impacted by the order of the agency. The parties to do these proceedings may present evidence and testimony to a hearing officer or administrative law judge who will make recommendations to the agency. After considering the recommendations, the agency will make a final determination regarding the dispute. Either party may ask for the final determination to be reconsidered. Either party also may appeal the decision to a court. The process is not directly related to the administrative rulemaking process. As I said earlier, that type of thing has to move rather quickly. The board has to have the authority to be able to do that.

Rep Kim Koppelman appeared. This all occurred last session when there were concerns about the way procedures were conducted, etc. The legislature brought the land board under the administrative rules process where it had not been before. Throughout the interim there was a struggle to try to get them into the fold and actually making their rules, and they continually came before the committee saying they couldn't do this. I think a lot of that was

misunderstanding, but I do understand their concern in the way their legal counsel was advising them which is counter to the way most agencies in government interpret Chapter 28-32. The section of code that they are being exempted from in the amendment is the section that deals with the office of administrative hearings. I do understand the land board's concern there, because those are adjudicative proceedings and they are different than district court which is where they want these things settled now and where I think they ought to be. This is a much cleaner way to do it, and I do support it. Legislative Council made sure 28-32-51 is what is correct on the amendment.

Jodi Smith, Commissioner, ND Department of Trust Lands, appeared. Attachment 3. (10:42-13:17). Attachment 4 was also handed out.

Rep. Louser: If we fail to pass this on the floor, give us a couple of examples that would be delayed through the adjudicated process.

Jodi Smith: We recently went through our spring land leasing auctions. We had one where there were two gentlemen in the room who obviously had a feud amongst them, and they bid up that land to about 100% more than what the land was worth. If these are not gone through, they could contest that lease and hold that lease up. Potentially, that lease could be held up all the way through the crop growing season, so we would lose money to the trust because we would have to go through this proceedings process. Also, we are working through some issues with some of our oil operators. I recently denied an oil operator an extension on their lease. That lease will go up for auction in August. If we had to go through this process as it is currently written, they could petition that and they could petition my decision to do that and this tract of land could be held up for about 18 months instead of going back into operations and producing oil and getting that revenue back into the state.

Vice Chair Steiner: Do you want 51 or 52?

Jodi Smith: It should say through 51.

Vice Chair Steiner: You don't want 52?

Jodi Smith: No.

Chairman Kasper: To summarize, with the amended version passed, your agency would be able to do its job properly from your perspective? You will be able to make the rulings on a timely basis and not hold up areas that should not be held up? The people who might like the decision and might not like the decision will have had due process to the point so when the decision is done, it is done?

Jodi Smith: That is correct.

Ron Ness, ND Petroleum Council, appeared. We applaud the work of Rep. Devlin, Koppelman, and others, and we support the amendment.

Chairman Kasper closed the meeting. Attachments 5-9 had been given out by the law intern prior to the meeting.

Rep. B. Koppelman moved that we adopt 19.1009.01002.

Rep. Karls seconded the motion.

Voice vote. Motion carries.

Rep. B. Koppelman made a motion for a DO PASS AS AMENDED.

Rep. Schauer seconded the motion.

A roll call vote was taken. 13-0, 1 absent.

Rep. Louser will carry the bill.

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1 of 2

19.1009.01002
Title.02000

Prepared by the Legislative Council staff for
Representative Devlin
April 4, 2019

PROPOSED AMENDMENTS TO SENATE BILL NO. 2264

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 2 of section 28-32-01 of the North Dakota Century Code, relating to the board of university and school lands and exempt administrative agencies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Administrative agency" or "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency. An administrative unit located within or subordinate to an administrative agency must be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. The term administrative agency does not include:

   a. The office of management and budget except with respect to rules made under section 32-12.2-14, rules relating to conduct on the capitol grounds and in buildings located on the capitol grounds under section 54-21-18, rules relating to the classified service as authorized under section 54-44.3-07, and rules relating to state purchasing practices as required under section 54-44.4-04.

   b. The adjutant general with respect to the department of emergency services.

   c. The council on the arts.

   d. The state auditor.

   e. The department of commerce with respect to the division of economic development and finance.

   f. The dairy promotion commission.

   g. The education factfinding commission.

   h. The educational technology council.

   i. The board of equalization.

   j. The board of higher education.

   k. The Indian affairs commission.

   l. The industrial commission with respect to the activities of the Bank of North Dakota, North Dakota housing finance agency, public finance authority, North Dakota mill and elevator association, North Dakota

DP 4/4/19
2 of 2

farm finance agency, the North Dakota transmission authority, and the North Dakota pipeline authority.

m. The department of corrections and rehabilitation except with respect to the activities of the division of adult services under chapter 54-23.4.

n. The pardon advisory board.

o. The parks and recreation department.

p. The parole board.

q. The state fair association.

r. The attorney general with respect to activities of the state toxicologist and the state crime laboratory.

s. The administrative committee on veterans' affairs except with respect to rules relating to the supervision and government of the veterans' home and the implementation of programs or services provided by the veterans' home.

t. The industrial commission with respect to the lignite research fund except as required under section 57-61-01.5.

u. The attorney general with respect to guidelines adopted under section 12.1-32-15 for the risk assessment of sexual offenders, the risk level review process, and public disclosure of information under section 12.1-32-15.

v. The commission on legal counsel for indigents.

w. The attorney general with respect to twenty-four seven sobriety program guidelines and program fees.

x. The industrial commission with respect to approving or setting water rates under chapter 61-40.

y. The board of university and school lands with respect to the adjudicative proceeding requirements and procedures under sections 28-32-21 through 28-32-51."

Renumber accordingly

Date: 3-14-19
Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2264

House Government and Veterans Affairs Committee

☐ Subcommittee

Amendment LC# or Description:

Recommendation:
☐ Adopt Amendment
☑ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐

Motion Made By Rep Louser Seconded By Rep Karls

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper	X		Rep. Pamela Anderson	X	
Vice Chair Vicky Steiner	X		Rep. Mary Schneider	X	
Rep. Jeff Hoverson	X				
Rep. Craig Johnson	X				
Rep. Daniel Johnston	X				
Rep. Karen Karls	X				
Rep. Ben Koppelman	A				
Rep. Vernon Laning	X				
Rep. Scott Louser	X				
Rep. Karen Rohr	X				
Rep. Austen Schauer	X				
Rep. Steve Vetter	X				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep Louser

If the vote is on an amendment, briefly indicate intent:

Date: 3-28-19
Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2264

House Government and Veterans Affairs Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation:
☐ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☑ Reconsider ☐ _____

Motion Made By Rep. C. Johnson Seconded By Rep. Johnston

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper			Rep. Pamela Anderson		
Vice Chair Vicky Steiner			Rep. Mary Schneider		
Rep. Jeff Hoverson			Voice vote		
Rep. Craig Johnson					
Rep. Daniel Johnston			Motion		
Rep. Karen Karls					
Rep. Ben Koppelman			Carries		
Rep. Vernon Laning					
Rep. Scott Louser					
Rep. Karen Rohr					
Rep. Austen Schauer					
Rep. Steve Vetter					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 4-4-19
Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2264

House Government and Veterans Affairs Committee

☐ Subcommittee

Amendment LC# or Description: 19.1009.01002

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐

Motion Made By Rep. B. Koppelman Seconded By Rep Karls

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper			Rep. Pamela Anderson		
Vice Chair Vicky Steiner			Rep. Mary Schneider		
Rep. Jeff Hoverson					
Rep. Craig Johnson					
Rep. Daniel Johnston					
Rep. Karen Karls					
Rep. Ben Koppelman					
Rep. Vernon Laning					
Rep. Scott Louser					
Rep. Karen Rohr					
Rep. Austen Schauer					
Rep. Steve Vetter					

Voice Vote motion carries

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 4-4-19
Roll Call Vote #: 2

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2264

House Government and Veterans Affairs Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation:
☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. B. Koppelman Seconded By Rep. Schauer

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper	X		Rep. Pamela Anderson	A	
Vice Chair Vicky Steiner	X		Rep. Mary Schneider	X	
Rep. Jeff Hoverson	X				
Rep. Craig Johnson	X				
Rep. Daniel Johnston	X				
Rep. Karen Karls	X				
Rep. Ben Koppelman	X				
Rep. Vernon Laning	X				
Rep. Scott Louser	X				
Rep. Karen Rohr	X				
Rep. Austen Schauer	X				
Rep. Steve Vetter	X				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Louser

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2264: Government and Veterans Affairs Committee (Rep. Kasper, Chairman) recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2264 was placed on the Fourteenth order on the calendar.

REPORT OF STANDING COMMITTEE

SB 2264: Government and Veterans Affairs Committee (Rep. Kasper, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2264 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 2 of section 28-32-01 of the North Dakota Century Code, relating to the board of university and school lands and exempt administrative agencies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Administrative agency" or "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency. An administrative unit located within or subordinate to an administrative agency must be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. The term administrative agency does not include:

   a. The office of management and budget except with respect to rules made under section 32-12.2-14, rules relating to conduct on the capitol grounds and in buildings located on the capitol grounds under section 54-21-18, rules relating to the classified service as authorized under section 54-44.3-07, and rules relating to state purchasing practices as required under section 54-44.4-04.

   b. The adjutant general with respect to the department of emergency services.

   c. The council on the arts.

   d. The state auditor.

   e. The department of commerce with respect to the division of economic development and finance.

   f. The dairy promotion commission.

   g. The education factfinding commission.

   h. The educational technology council.

   i. The board of equalization.

   j. The board of higher education.

   k. The Indian affairs commission.

   l. The industrial commission with respect to the activities of the Bank of North Dakota, North Dakota housing finance agency, public finance authority, North Dakota mill and elevator association, North Dakota farm finance agency, the North Dakota transmission authority, and the North Dakota pipeline authority.

m. The department of corrections and rehabilitation except with respect to the activities of the division of adult services under chapter 54-23.4.

n. The pardon advisory board.

o. The parks and recreation department.

p. The parole board.

q. The state fair association.

r. The attorney general with respect to activities of the state toxicologist and the state crime laboratory.

s. The administrative committee on veterans' affairs except with respect to rules relating to the supervision and government of the veterans' home and the implementation of programs or services provided by the veterans' home.

t. The industrial commission with respect to the lignite research fund except as required under section 57-61-01.5.

u. The attorney general with respect to guidelines adopted under section 12.1-32-15 for the risk assessment of sexual offenders, the risk level review process, and public disclosure of information under section 12.1-32-15.

v. The commission on legal counsel for indigents.

w. The attorney general with respect to twenty-four seven sobriety program guidelines and program fees.

x. The industrial commission with respect to approving or setting water rates under chapter 61-40.

y. The board of university and school lands with respect to the adjudicative proceeding requirements and procedures under sections 28-32-21 through 28-32-51."

Renumber accordingly

2017 TESTIMONY

SB 2264

SB 2264
1-24-19
Att #1
pg 1

North Dakota Senate

State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505-0360

Senator Jessica Unruh
District 33
1224 First Avenue NE
Beulah, ND 58523-6301

jkunruh@nd.gov

Committees:
Energy and Natural Resources, Chairman
Finance and Taxation

01/24/2019

Section 1 of SB 2264 codifies the current rulemaking practice of the Land Board to ensure any rule that is adopted allows for public input. Section 2 of SB 2264 exempts the board of university and school lands from the administrative rule process except for chapter 47-30.1 (unclaimed property) and chapter 57-62 (impact grant program).

Traditionally, the Land Commissioner's office has been exempt from the administrative rules process because of the highly confidential nature of the job. Last session, many concerns were brought forward about providing some transparency to the office. As a legislature, we hoped the administrative rules process would bring more transparency and structure to the functions of the office, even though we were warned against it.

During this past interim, I've worked closely with the Land Commissioner on the process of writing new rules to go through the administrative rules process. And I can say confidently that that those who had warned us were correct - requiring all functions of the Land Commissioner's office to admin rules is cumbersome and actually takes everyone involved two steps backward. The two sections identified in this bill are the areas within the department that are not confidential and make sense to include and codifying the current rulemaking process of the Land Board adds a layer of required transparency that wasn't there before.

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Jodi A. Smith, Commissioner

TESTIMONY OF JODI SMITH
COMMISSIONER
North Dakota Department of Trust Lands

Senate Bill 2264

Senate Government and Veterans Affairs Committee
January 24, 2019

Chairman Davison and members of the Senate Government and Veterans Affairs Committee, I am Jodi Smith, the Commissioner and Secretary for the Board of University and School Lands (Board). I am here to testify in support of Senate Bill 2264.

The Department of Trust Lands (Department) is the administrative arm of the Board, serving under the direction and authority of the Board. The Board is comprised of the Governor, Secretary of State, Attorney General, State Treasurer, and Superintendent of Public Instruction. The Department's primary responsibility is managing the Common Schools Trust Fund and 13 other permanent educational trust funds. The beneficiaries of the trust funds include local school districts, various colleges and universities, and other institutions in North Dakota. The Department manages four additional funds: the Strategic Investment and Improvements Fund, the Coal Development Trust Fund, the Capitol Building Fund, and the Indian Cultural Education Trust.

The Department also administers the responsibilities outlined in the Uniform Unclaimed Property Act, N.D.C.C. ch. 47-30.1. In this role the Department collects "unclaimed property" (uncashed checks, unused bank accounts, etc.), and processes owners' claims. This property is held in permanent trust for owners to claim, with the revenue from the investment of the property benefiting the Common Schools Trust Fund.

Additionally, the Department operates the Energy Infrastructure and Impact Office (EIIO), which provides financial support to political subdivisions that are affected by energy development. Assistance is provided through both the oil and gas impact grant program and the coal impact loan program. The EIIO also distributes energy and flood grants carried over from prior biennia.

The Department has implemented Administrative Rules as a result of House Bill 1300, in which the 65th Legislative Assembly directed the Board no longer be exempt from N.D.C.C. ch. 28-32, the Administrative Agencies Practice Act (Act) for General Administration, Energy Infrastructure and Impact Grants, and Unclaimed Property. Those rules can be found at Title 85 of the North Dakota Administrative Code.

General Administration

Article 85-01 of the North Dakota Administrative Code, titled General Administration, includes a Definitions and General Provisions chapter. That chapter contains two sections as follows:

85-01-01-01 Definitions
85-01-01-02 Exception

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Energy Infrastructure and Impact Office

Article 85-02 of the North Dakota Administrative Code includes the Energy Infrastructure and Impact Grants chapters, titled Definitions, Grant Processing, Grant Award, and Aged Grants. Those chapters contain 19 sections, as follows:

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85-03-03-05 Claims Submitted by Heir Finder

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The Board's role, as stated in the Constitution and the North Dakota Century Code, is to act as a trustee in managing land, minerals and proceeds of the permanent trust funds for the exclusive benefit of specific beneficiaries.

The Board conducts its business in an open forum and posts its meetings in accordance with the State's open meetings laws. Meetings are posted on the Secretary of State's public meetings web portal which provides the public with an opportunity to receive notifications when meetings are scheduled, to view agendas, and to receive updates when any details relating to the meeting are changed. Per N.D.C.C. § 15-01-03, the Board "shall meet on the last Thursday of each month." It is the intention of the Department to post the meeting agenda and the supporting Board packet the Friday prior to the meeting to allow adequate time for review of materials.

To provide guidance for Department operations and to set reasonable limits for conducting business, the Board does adopt policies relating to prudent management of permanent trust assets. Currently, these include 706,600 surface acres and 2.6 million mineral acres. Since January 2018, the Department has been reviewing the policies of each of its Divisions and updating them. The Department has a formal schedule to review all Department policies the January after Legislative Session.

In September 2018, the Board adopted a policy that governs the introduction, amendment and passage of Board policies which provides that no Board policy will be adopted, revised, or repealed without having been reviewed and considered at two duly called meetings of the Board that include a reading of the policy at each meeting. During the second reading, the Board may take action to adopt, revise, or repeal the policy. If the Board determines it is in the best interest of the trusts to take immediate action, the second reading may be waived in order to adopt, revise, or repeal the proposed Board policy. Once a policy is adopted, it becomes Board policy and supersedes any previous policy on that issue.

The Board will review all Board policies on a biennial basis and revise them as needed. The Commissioner guides the Board in such effort and advises the Board from time to time of the need for policy revision so that all Board policies are in conformance with state and federal laws and regulations.

The Board in its trust management role has the ability to consider the interests of its business partners in decision-making. Because it has the authority to negotiate, the Board can respond favorably to requests by agricultural stakeholders and energy development partners on a case-by-case basis if it benefits the trusts.

Requiring the Board adhere to the Act in all aspects of its duties would require strict adherence to administrative rules that could not be negotiated or changed without months of public hearings, rule review, and appeals. This would negatively impact the Board's ability to make business decisions in a timely manner, potentially resulting in lost revenue to the trusts.

In managing trust assets, the Board's fiduciary role is similar to that of a large landowner or a trust manager in a financial institution. The Board operates in the context of contractual relationships and has the authority to negotiate when it is in the best interests of the trusts. Because it is a business and not a regulatory relationship, parties to Board transactions have the option to, or not to, conduct business with the Board. For the most part, the function of the Board is not akin to other regulatory agencies that are subject to the Act.

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Subjecting the Board to the adjudicative proceedings portion of the Act in all aspects of its duties would implement two drastic changes to the way the Board currently operates:

1. Any order issued by the Board could be the subject of a petition for reconsideration or appeal to district court as provided under N.D.C.C. §§ 28-32-40, 28-32-42. **An order is defined as, "any agency action of particular applicability which determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons."** N.D.C.C. § 28-32-01(7). This broad definition potentially includes a majority of the routine, everyday decisions made by the Board. Rather than having timely finality of Board action, decisions or orders would not be final until the end of the appeal period (no less than 60 days).

2. Under the Act, a formal hearing is required whenever required by law or if the agency acts in a quasi-judicial capacity. *Steele v. N.D. Workmen's Comp. Bureau,* 273 N.W.2d 692, 701 (N.D. 1978). Quasi-judicial capacity has been defined as decision making by an agency when it has the power to exercise judgment and discretion. *See Kouba v. State,* 2004 ND 186, ¶ 9, 687 N.W.2d 466.

Legislative review of this topic in 1986, 1987, 1993, and 2008 concluded that the Board's management of Trust assets outside the requirements of the Act is appropriate. Case law indicates the Board's duties and powers require an exercise of judgment and discretion.

> The board . . . has full control of the selecting, appraisement, rental, sale, disposal and management of school lands of the state. It acts as a body for and on behalf of the state. With this grant of general power is expressly and impliedly conferred the duty of using judgment and discretion in such matters, commensurate with the importance of the trust reposed in it. This is the plain intent of the Constitution and statute creating the board and defining its duties. It is then a board vested with discretion in the performance of its duties generally . . . .

Fuller v. Bd. of Univ. & Sch. Lands, 129 N.W. 1029, 1031 (N.D. 1911).

Because judgment and discretion guide a majority of its decisions, the Commissioner and the Board are concerned the requirements of the Act will restrict the ability to timely grant exceptions to policies in response to unique situations. Under the Act, the Board's land use and leasing decision making would more closely resemble Federal process requirements imposed on industry by, for example, the United States Forest Service and the Bureau of Land Management.

If modified language is not passed, policy exception requests that currently could be addressed by the Board on a monthly basis would need to be deferred to adjudicative proceedings which could take many months to complete, resulting in delays and increased costs for both industry and the Board.

Some examples of common activities that could be subject to formal adjudicative proceedings under the Act include:

- Granting extensions of oil and gas leases
- Accepting late payments to avoid lease cancellation
- Renegotiating royalties
- Reinstating cancelled leases
- Analyzing shut-in well requests

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- Implementing lease corrections
- Determining force majeure applications
- Processing assignment requests
- Processing right-of-way requests
- Assessment, reduction, or waiver of penalty and interest

Besides delaying development, passing this bill would result in increased costs for industry. In many of the instances referred to above, time is money. Project delays and burdensome administrative requirements come with a price.

Significant costs to the Trusts would be realized as well. The Department will incur increased costs related to rulemaking and adjudicative proceedings, considerably increasing legal costs, publication costs, and costs for contracted hearing officers.

In addition to the direct costs, more staff resources would be devoted to administrative oversight and less to on-the-ground land management, lessee relations, and improving trust assets.

In conclusion, Senate Bill 2264 ensures activities under N.D.C.C. chs. 47-30.1 and 57-62 are appropriately placed under the Act. It also provides for a mechanism by which the Board allows for public comment on any change of Board policy.

We look forward to working with the committee on these issues and would be happy to answer any questions.

See attached Addendum for examples of current discretionary authority.

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ADDENDUM
EXAMPLES OF CURRENT DISCRETIONARY AUTHORITY

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Mineral Leasing

- **Extension Requests.** The Board's oil and gas lease requires commercial production prior to expiration of the primary term of the lease but allows, at the Commissioner's discretion, for an extension for up to two (2) 180-day periods. Lease extension requests typically are made on the eve of the primary term expiration, meaning the lease has expired, or will expire, prior to finalizing the paperwork. Should SB 2264 not pass with amended language, the Board will have to require a formal application, give notice, and hold a formal evidentiary hearing in order to extend a lease. This process could take months. Lease extension requests filed on the eve of expiration will expire at 12:01 a.m. of the fifth anniversary of the lease.

- **Renegotiated Royalties:** N.D.C.C. § 15-05-01 previously required the Board to issue coal leases with a royalty rate of the greater of $0.25 per ton or 6% of the cost of coal. The statute was amended in 2013 to remove the minimum allowable royalty rate and allowed the Board discretion to renegotiate terms of leases. The Board did not oppose the changes. Since N.D.C.C. § 15-05-01 was amended, the Board has re-negotiated a lower royalty rate on several coal leases which has allowed state-owned minerals to continue to be mined. Subjecting all Board activity to the Act would result in the Board only being able to adjust a royalty rate after receiving a formal application, giving notice, and having a public evidentiary hearing. The Board may not be allowed to negotiate directly with coal companies on a new rate.

- **Shut-in requests.** Board oil and gas leases require that a lease remain in producing status to stay active. A non-producing lease will expire after 60 days with no production. Due to the serious implications of lease termination, when breakdowns at the wellsite require repair time, and production stops, latitude has been given regarding the timing of shut-in requests. In subjecting all Board activity to the Act the Board may only be able to grant a shut-in request if a formal application is filed with the Board, notice is given and an evidentiary hearing is held. Such a process would not only strip the Board of the ability to negotiate directly with the operator but would take months, leaving operators in limbo about the status of their lease.

- **Lease Assignments.** Each year, the Department handles thousands of requests to shift a lease, or a portion thereof, from one entity to another. Under the terms of the lease, these assignments must be approved by the Board. Any disruption in the current process would lead to delays in companies buying, selling, or trading all or a portion of their leases.

- **Lease Corrections.** Any lease correction or modification would potentially need to go through the adjudicative proceedings process. Something as simple as a scrivener's error on a description could take months to propose a corrective order and implement a fix. Currently, staff handles these errors at the administration level.

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- **Lease Auctions.** The Minerals Management Division hosts a quarterly auction offering mineral tracts for oil and gas leasing. In advance of auctions, tracts are nominated, vetted for archeological, historical and wildlife impact, title issues and offered at public auction. If all the duties of the Board are subject to Administrative Rules, hearings and possible appeals may become part of the vetting process. This has the effect of stalling development for industry, delaying revenue to the trusts, and devaluing state-owned resources.

- **Force Majeure Determinations.** Situations involving accidents, breakdowns, natural disasters or other "Acts of God" occur during development. If these incidents were not contemplated and approved in rulemaking, an order would likely be required to reach resolution.

Surface Leasing

- **Dropped Tracts/Minimum Rents:** The Board's surface leasing policy provides guidelines for setting minimum rents if a tract is terminated for non-payment. Exceptions are considered when an unleased tract results in not only lost income for the Trusts, but also incurs management expense. Under the Act, such requests may require the Board to follow formal adjudicative proceedings to reduce the minimum rent in order to lease a tract.

Rights-of-Way

- **Price negotiations.** On behalf of the Board, staff negotiates right-of-way consideration on a tract-by-tract basis to ensure fair compensation to the Trusts for rights-of-way issued on trust land compared to compensation for rights-of-way on private land.

- **Routing.** The Board issues may different types of rights-of-way. Each type is unique and requires consideration of environmental impact and future development potential of the tract. Delays will result if each route needs to be evaluated through an adjudicative proceeding.

Land Sales

- The Board's limited land sale policy provides guidelines regarding if trust property is eligible for sale. The Board would need to consider any requests for policy exceptions relative to potential sales that may have a long-term benefit to the Trusts. Policy exceptions relating to appraisals have also been necessary in establishing the minimum opening bid to ensure fair compensation to the trusts. Under the Act, sale decisions may require the Board to follow formal adjudicative proceedings to consider such a request.

Revenue Compliance - Penalty and Interest Assessments

- Operator requests for waivers of penalty and interest can be granted by the Department for requests up to $2,500 and requests exceeding $2500 are brought before the Board. Under the Act, such requests would require a formal application to the Board, public notice, and a formal adjudicative hearing. This process would strip the Board of the ability to work directly with the operator on these issues and delay decisions for months.

- Oftentimes errors occur during reporting, due to a new payor or new employees conducting the reporting, software upgrade issues, or from data entry errors. Department staff has used discretion and not assessed penalties in certain situations. With administrative rules, these

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penalties will likely be assessed and will require a hearing to waive, even if the errors are outside of the payor's control or for insignificant amounts.

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pg 1

Senate Bill 2264

Testimony of Brady Pelton

Senate Government and Veterans Affairs Committee

January 24, 2019

Chairman Davison and members of the Senate Government and Veterans Affairs Committee, my name is Brady Pelton, government affairs director of the North Dakota Petroleum Council. The North Dakota Petroleum Council represents more than 500 companies in all aspects of the oil and gas industry, including oil and gas production, refining, pipeline, transportation, mineral leasing, consulting, legal work, and oilfield service activities in North Dakota. I appear before you today in support of Senate Bill 2264.

During the 2017 Legislative Session, the Board of University and School Lands ("Board") was removed from the list of agencies excluded from coverage by the Administrative Agencies Practice Act (Chapter 28-32 N.D.C.C.). The North Dakota Petroleum Council supported this change as it was believed that making the Land Board subject to the Administrative Agencies Practice Act would ensure due process with respect to the Board's ability to adopt and modify its rules, at least with respect to those on surface or mineral leasing and finding a person in violation of its rules.

However, as mentioned previously, complications arose following the enactment of that bill. Senate Bill 2264 is in direct response to those complications. The bill provides due process approval procedures for new Board policy and Board policy amendments via a required first and second reading of the proposed policy or amendment, as well as a public review and comment period for proposals. SB 2264 presents a reasonable solution whereby the Board affords basic rights, like notice and opportunity to offer comment on policy proposals, without impacting the Board's ability to continue to act in a manner necessary to protect the public trust.

In conclusion, the North Dakota Petroleum Council urges your support of **SB 2264** and respectfully requests a favorable **Do Pass** recommendation. Thank you, and I would be happy to answer any questions.

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03/14/2019

North Dakota Senate
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505-0360

Senator Jessica Unruh
District 33
1224 First Avenue NE
Beulah, ND 58523-6301
jkunruh@nd.gov

Committees:
Energy and Natural Resources, Chairman
Finance and Taxation

Section 1 of SB 2264 codifies the current rulemaking practice of the Land Board to ensure any rule that is adopted allows for public input. Section 2 of SB 2264 exempts the board of university and school lands from the administrative rule process except for chapter 47-30.1 (unclaimed property) and chapter 57-62 (impact grant program).

Traditionally, the Land Commissioner's office has been exempt from the administrative rules process because of the highly confidential nature of the job. Last session, many concerns were brought forward about providing some transparency to the office. As a legislature, we hoped the administrative rules process would bring more transparency and structure to the functions of the office, even though we were warned against it. It has actually done the opposite.

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Jodi A. Smith, Commissioner

TESTIMONY OF JODI SMITH
COMMISSIONER
North Dakota Department of Trust Lands

Senate Bill 2264

House Government and Veterans Affairs Committee
March 14, 2019

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Besides delaying development, passing this bill would result in increased costs for industry. In many of the instances referred to above, time is money. Project delays and burdensome administrative requirements come with a price.

Significant costs to the trusts would be realized as well. The Department will incur increased costs related to rulemaking and adjudicative proceedings, considerably increasing legal costs, publication costs, and costs for contracted hearing officers.

In addition to the direct costs, more staff resources would be devoted to administrative oversight and less to on-the-ground land management, lessee relations, and improving trust assets.

In conclusion, Senate Bill 2264 ensures activities under N.D.C.C. chs. 47-30.1 and 57-62 are appropriately placed under the Act. It also provides for a mechanism by which the Board allows for public comment on any change of Board policy.

We look forward to working with the committee on these issues and would be happy to answer any questions.

See attached Addendum for examples of current discretionary authority.

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ADDENDUM
EXAMPLES OF CURRENT DISCRETIONARY AUTHORITY

Mineral Leasing

- **Extension Requests.** The Board's oil and gas lease requires commercial production prior to expiration of the primary term of the lease but allows, at the Commissioner's discretion, for an extension for up to two (2) 180-day periods. Lease extension requests typically are made on the eve of the primary term expiration, meaning the lease has expired, or will expire, prior to finalizing the paperwork. Should SB 2264 not pass, the Board will have to require a formal application, give notice, and hold a formal evidentiary hearing in order to extend a lease. This process could take months. Lease extension requests filed on the eve of expiration will expire at 12:01 a.m. of the fifth anniversary of the lease.

- **Renegotiated Royalties:** N.D.C.C. § 15-05-01 previously required the Board to issue coal leases with a royalty rate of the greater of $0.25 per ton or 6% of the cost of coal. The statute was amended in 2013 to remove the minimum allowable royalty rate and allowed the Board discretion to renegotiate terms of leases. The Board did not oppose the changes. Since N.D.C.C. § 15-05-01 was amended, the Board has re-negotiated a lower royalty rate on several coal leases which has allowed state-owned minerals to continue to be mined. Subjecting all Board activity to the Act would result in the Board only being able to adjust a royalty rate after receiving a formal application, giving notice, and having a public evidentiary hearing. The Board may not be allowed to negotiate directly with coal companies on a new rate.

- **Shut-in requests.** Board oil and gas leases require that a lease remain in producing status to stay active. A non-producing lease will expire after 60 days with no production. Due to the serious implications of lease termination, when breakdowns at the wellsite require repair time, and production stops, latitude has been given regarding the timing of shut-in requests. In subjecting all Board activity to the Act the Board may only be able to grant a shut-in request if a formal application is filed with the Board, notice is given and an evidentiary hearing is held. Such a process would not only strip the Board of the ability to negotiate directly with the operator but would take months, leaving operators in limbo about the status of their lease.

- **Lease Assignments.** Each year, the Department handles thousands of requests to shift a lease, or a portion thereof, from one entity to another. Under the terms of the lease, these assignments must be approved by the Board. Any disruption in the current process would lead to delays in companies buying, selling, or trading all or a portion of their leases.

- **Lease Corrections.** Any lease correction or modification would potentially need to go through the adjudicative proceedings process. Something as simple as a scrivener's error on a description could take months to propose a corrective order and implement a fix. Currently, staff handles these errors at the administration level.

- **Lease Auctions.** The Minerals Management Division hosts a quarterly auction offering mineral tracts for oil and gas leasing. In advance of auctions, tracts are nominated, vetted for archeological, historical and wildlife impact, and title issues, and offered at public auction. If all the duties of the Board are subject to Administrative Rules, hearings and possible appeals may

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become part of the vetting process. This has the effect of stalling development for industry, delaying revenue to the trusts, and devaluing state-owned resources.

- **Force Majeure Determinations.** Situations involving accidents, breakdowns, natural disasters or other "Acts of God" occur during development. If these incidents were not contemplated and approved in rulemaking, an order would likely be required to reach resolution.

Surface Leasing

- **Dropped Tracts/Minimum Rents:** The Board's surface leasing policy provides guidelines for setting minimum rents if a tract is terminated for non-payment. Exceptions are considered when an unleased tract results in not only lost income for the trusts, but also incurs management expense. Under the Act, such requests may require the Board to follow formal adjudicative proceedings to reduce the minimum rent in order to lease a tract.

Rights-of-Way

- **Price negotiations.** On behalf of the Board, staff negotiates right-of-way consideration on a tract-by-tract basis to ensure fair compensation to the trusts for rights-of-way issued on trust land compared to compensation for rights-of-way on private land.

- **Routing.** The Board issues may different types of rights-of-way. Each type is unique and requires consideration of environmental impact and future development potential of the tract. Delays will result if each route needs to be evaluated through an adjudicative proceeding.

Land Sales

- The Board's limited land sale policy provides guidelines regarding whether trust property is eligible for sale. The Board would need to consider any requests for policy exceptions relative to potential sales that may have a long-term benefit to the trusts. Policy exceptions relating to appraisals have also been necessary in establishing the minimum opening bid to ensure fair compensation to the trusts. Under the Act, sale decisions may require the Board to follow formal adjudicative proceedings to consider such a request.

Revenue Compliance - Penalty and Interest Assessments

- Operator requests for waivers of penalty and interest can be granted by the Department for requests up to $2,500 and requests exceeding $2500 are brought before the Board. Under the Act, such requests would require a formal application to the Board, public notice, and a formal adjudicative hearing. This process would strip the Board of the ability to work directly with the operator on these issues and delay decisions for months.

- Oftentimes errors occur during reporting due to a new payor or new employees conducting the reporting, software upgrade issues, or from data entry errors. Department staff has used discretion and not assessed penalties in certain situations. With administrative rules, these penalties would likely be assessed and require a hearing to waive, even if the errors are outside of the payor's control or for insignificant amounts.

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NORTH DAKOTA
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Senate Bill 2264

Testimony of Ron Ness

House Government and Veterans Affairs Committee

March 14, 2019

Chairman Kasper and members of the House Government and Veterans Affairs Committee, my name is Ron Ness, president of the North Dakota Petroleum Council. The North Dakota Petroleum Council represents more than 500 companies in all aspects of the oil and gas industry, including oil and gas production, refining, pipeline, transportation, mineral leasing, consulting, legal work, and oilfield service activities in North Dakota. I appear before you today in support of Senate Bill 2264.

During the 2017 Legislative Session, the Board of University and School Lands ("Land Board") was removed from the list of agencies excluded from coverage by the Administrative Agencies Practice Act (Chapter 28-32 N.D.C.C.). The North Dakota Petroleum Council supported this change as it was believed that making the Land Board subject to the Administrative Agencies Practice Act would ensure due process with respect to the Board's ability to adopt and modify its rules, at least with respect to those on surface or mineral leasing and finding a person in violation of its rules.

However, complications arose following the enactment of that bill. Senate Bill 2264 is in direct response to those complications. The bill provides due process approval procedures for new Board policy and Board policy amendments via a required first and second reading of the proposed policy or amendment, as well as a public review and comment period for proposals. SB 2264 presents a reasonable solution whereby the Board affords basic rights, like notice and opportunity to offer comment on policy proposals, without impacting the Board's ability to continue to act in a manner necessary to protect the public trust.

In conclusion, the North Dakota Petroleum Council urges your support of **SB 2264** and respectfully requests a favorable **Do Pass** recommendation. Thank you, and I would be happy to answer any questions.

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From: Smith, Jodi A.
Sent: Friday, March 15, 2019 8:25 AM
To: Kasper, Jim M. <jkasper@nd.gov>; Steiner, Vicky L. <vsteiner@nd.gov>; Anderson, Pamela K. <pkanderson@nd.gov>; Hoverson, Jeff A. <jahoverson@nd.gov>; Johnson, Craig A. <craigjohnson@nd.gov>; Karls, Karen <kkarls@nd.gov>; Koppelman, Ben <bkoppelman@nd.gov>; Laning, Vernon R. <vrlaning@nd.gov>; Louser, Scott C. <sclouser@nd.gov>; Rohr, Karen M. <kmrohr@nd.gov>; Schauer, Austen <aschauer@nd.gov>; Schneider, Mary <mschneider@nd.gov>; Vetter, Steve M. <smvetter@nd.gov>
Subject: Department of Trust Lands Board Policy on State Lands for Hunting

Good Morning-
I wanted to follow-up on more detailed response to hunting on State Lands.

State Trust Lands are open to non-vehicular public access unless posted with signs issued by the Department of Trust Lands. We issue three types of signs and they are as follows: (1) Closed to Public (due to livestock on the land); (2) Notify the Lessee prior to entering (this does not stop a hunter from accessing the land but allows the lessee to know who is on the land); (3) Walking Access reminder sign.

98% of Trust Lands are not signed and are open to non-vehicular public access without needing permission from anyone.

Please let me know if you have any additional questions.

Jodi Smith, MNM, MNT
Land Commissioner

701.328.2807 • jodi.smith@nd.gov • land.nd.gov

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Good morning, Chairman Kasper and esteemed members of the GVA Committee. I am here at the request of the chairman to present amendments to SB2264 for the committee's consideration.

As you will recall SB2264 was sent back to committee to see an agreement could be reached on the bill. Rep. Louser, asked if I work on the issue as Chairman of the Administrative Rules Committee. He is a valued member of that committee as well as this one. After some initial discussions I concluded that an agreement could be reached that would acceptable to the Board, the Administrative Rules Committee and others interested parties. Whether it is acceptable to this committee is up to you.

Commissioner Smith and I exchanged some emails and we felt an agreement could be reached. I put her in touch with Vonette Richter of Legislative Council who is a recognized expert in the rules process, to work on an amendment. She is here today if you have any legal questions as she drafted the amendment that was agreed to by the commissioner and myself.

The amendment before you will keep the Board of University and School Lands under the administrative Rules process but exempt them from **Adjudicative Proceedings.** Which you will find in sections 28-32-21 through 28-32-51 of the century code. An adjudicative proceeding essentially is a method of resolving a dispute between an administrative agency and another person whose rights or interests have been impacted by an order of the agency. The parties to the proceeding may present evidence and testimony to a hearing officer or administrative law judge, who will make recommendations to the agency. After considering the recommendations, the agency will make a final determination regarding the dispute. Either party may ask for the final determination to be reconsidered. Either party also may appeal the decision to a court. The process is not directly related to the administrative rulemaking process.

Obviously, those type of procedures need to move much quicker than you could do through the rule making process. There are also other agency functions that are elsewhere in statute and written policy that the board operates under that don't go through the Administrative Rules process.

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Chairman Kasper and members of the committee I could read three pages of legal language that spells all this out but to sum it up. This amendment will follow the original intent of the legislature to keep the Board of University and School Lands under the Administrative Rules Process. But the changes being proposed today give the board the flexibility to operate in a timely manner in the areas they were concerned about.

I believe Commissioner Smith would like to offer supportive testimony. As I said earlier Vonette Richter can answer any legal questions you might have on this issue. Before I step down I would like to personally thank Rep. Kasper, Rep Louser, Commissioner Smith and Vonette Richter for helping to bring this amendment together.

Chairman Kasper and Members of the GVA Committee I hope you will adopt the amendment and give the amended bill a do pass recommendation. I will verbally support the bill on the House Floor if Rep. Louser wants me to do that. Thank you, Chairman Kasper and members of the Committee.

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19.1009.01002
Title.

Prepared by the Legislative Council staff for
Representative Devlin
April 4, 2019

PROPOSED AMENDMENTS TO SENATE BILL NO. 2264

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 2 of section 28-32-01 of the North Dakota Century Code, relating to the board of university and school lands and exempt administrative agencies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Administrative agency" or "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency. An administrative unit located within or subordinate to an administrative agency must be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. The term administrative agency does not include:

   a. The office of management and budget except with respect to rules made under section 32-12.2-14, rules relating to conduct on the capitol grounds and in buildings located on the capitol grounds under section 54-21-18, rules relating to the classified service as authorized under section 54-44.3-07, and rules relating to state purchasing practices as required under section 54-44.4-04.

   b. The adjutant general with respect to the department of emergency services.

   c. The council on the arts.

   d. The state auditor.

   e. The department of commerce with respect to the division of economic development and finance.

   f. The dairy promotion commission.

   g. The education factfinding commission.

   h. The educational technology council.

   i. The board of equalization.

   j. The board of higher education.

   k. The Indian affairs commission.

   l. The industrial commission with respect to the activities of the Bank of North Dakota, North Dakota housing finance agency, public finance authority, North Dakota mill and elevator association, North Dakota

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farm finance agency, the North Dakota transmission authority, and the North Dakota pipeline authority.

m. The department of corrections and rehabilitation except with respect to the activities of the division of adult services under chapter 54-23.4.

n. The pardon advisory board.

o. The parks and recreation department.

p. The parole board.

q. The state fair association.

r. The attorney general with respect to activities of the state toxicologist and the state crime laboratory.

s. The administrative committee on veterans' affairs except with respect to rules relating to the supervision and government of the veterans' home and the implementation of programs or services provided by the veterans' home.

t. The industrial commission with respect to the lignite research fund except as required under section 57-61-01.5.

u. The attorney general with respect to guidelines adopted under section 12.1-32-15 for the risk assessment of sexual offenders, the risk level review process, and public disclosure of information under section 12.1-32-15.

v. The commission on legal counsel for indigents.

w. The attorney general with respect to twenty-four seven sobriety program guidelines and program fees.

x. The industrial commission with respect to approving or setting water rates under chapter 61-40.

y. The board of university and school lands with respect to the adjudicative proceeding requirements and procedures under sections 28-32-21 through 28-32-51."

Renumber accordingly

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Jodi A. Smith, Commissioner

TESTIMONY OF JODI SMITH
COMMISSIONER
North Dakota Department of Trust Lands

Senate Bill 2264

House Government and Veterans Affairs Committee
April 4, 2019

Chairman Kasper and members of the House Government and Veterans Affairs Committee, I am Jodi Smith, the Commissioner and Secretary for the Board of University and School Lands (Board). I am here to testify in support of Senate Bill 2264.

The Department has implemented Administrative Rules as a result of House Bill 1300, in which the 65th Legislative Assembly directed the Board no longer be exempt from N.D.C.C. ch. 28-32, the Administrative Agencies Practice Act ("the Act"). Rules enacted by the Board can be found at Title 85 of the North Dakota Administrative Code.

Through the administrative rule writing process, the Department was able to clearly identify processes throughout the Divisions which could be negatively impacted by the adjudicative process. Subjecting the Board to the adjudicative proceedings portion of the Act in all aspects of its duties would impose two drastic changes to the way the Board currently operates:

1. Any order issued by the Board could be the subject of a petition for reconsideration or appeal to district court as provided under N.D.C.C. §§ 28-32-40, 28-32-42. **An order is defined as, "any agency action of particular applicability which determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons."** N.D.C.C. § 28-32-01(7). This broad definition potentially includes a majority of the routine, everyday decisions made by the Board. Rather than having timely finality of Board action, decisions or orders would not be final until the end of the appeal period (no less than 60 days).

2. Under the Act, a formal hearing is required whenever required by law or if the agency acts in a quasi-judicial capacity. *Steele v. N.D. Workmen's Comp. Bureau,* 273 N.W.2d 692, 701 (N.D. 1978). Quasi-judicial capacity has been defined as decision making by an agency when it has the power to exercise judgment and discretion. *See Kouba v. State,* 2004 ND 186, ¶ 9, 687 N.W.2d 466.

Requiring the Board adhere to the Act in all aspects of its duties would require strict adherence to administrative rules that could not be negotiated or changed without months of public hearings, rule review, and appeals. This would negatively impact the Board's ability to make business decisions in a timely manner, potentially resulting in lost revenue to the trusts. The Board in its trust management role has the ability to consider the interests of its business partners in decision-making. Because it has the

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authority to negotiate, the Board can respond favorably to requests by agricultural stakeholders and energy development partners on a case-by-case basis if it benefits the trusts.

Because judgment and discretion guide a majority of decisions, the Commissioner and the Board are concerned the requirements of the Act will restrict the ability to timely grant exceptions to policies in response to unique situations. Under the Act, the Board's land use and leasing decision making would more closely resemble Federal process requirements imposed on industry by, for example, the United States Forest Service and the Bureau of Land Management.

If modified language is not passed, policy exception requests that currently could be addressed by the Board on a monthly basis would need to be deferred to adjudicative proceedings which could take many months to complete, resulting in delays and increased costs for both industry and the Board.

Some examples of common activities that could be subject to formal adjudicative proceedings under the Act include:

- Granting extensions of oil and gas leases
- Accepting late payments to avoid lease cancellation
- Renegotiating royalties
- Reinstating cancelled leases
- Analyzing shut-in well requests
- Implementing lease corrections
- Determining force majeure applications
- Processing assignment requests
- Processing right-of-way requests
- Assessment, reduction, or waiver of penalty and interest

If it is determined that the Board is subject to Administrative Rules, it is important that it not be subject to the adjudicative process, provided in N.D.C.C. §§ 28-32-21 through 28-32-52.

The Department supports the amendments as presented by Representative Devlin. We look forward to continuing to work with the committee on this bill and am be happy to answer any questions.

CHAPTER 28-32
ADMINISTRATIVE AGENCIES PRACTICE ACT

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28-32-01. Definitions.

In this chapter, unless the context or subject matter otherwise provides:

1. "Adjudicative proceeding" means an administrative matter resulting in an agency issuing an order after an opportunity for hearing is provided or required. An adjudicative proceeding includes administrative matters involving a hearing on a complaint against a specific-named respondent; a hearing on an application seeking a right, privilege, or an authorization from an agency, such as a ratemaking or licensing hearing; or a hearing on an appeal to an agency. An adjudicative proceeding includes reconsideration, rehearing, or reopening. Once an adjudicative proceeding has begun, the adjudicative proceeding includes any informal disposition of the administrative matter under section 28-32-22 or another specific statute or rule, unless the matter has been specifically converted to another type of proceeding under section 28-32-22. An adjudicative proceeding does not include a decision or order to file or not to file a complaint, or to initiate an investigation, an adjudicative proceeding, or any other proceeding before the agency, or another agency, or a court. An adjudicative proceeding does not include a decision or order to issue, reconsider, or reopen an order that precedes an opportunity for hearing or that under another section of this code is not subject to review in an adjudicative proceeding. An adjudicative proceeding does not include rulemaking under this chapter.
2. "Administrative agency" or "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency. An administrative unit located within or subordinate to an administrative agency must be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. The term administrative agency does not include:
   a. The office of management and budget except with respect to rules made under section 32-12.2-14, rules relating to conduct on the capitol grounds and in buildings located on the capitol grounds under section 54-21-18, rules relating to the classified service as authorized under section 54-44.3-07, and rules relating to state purchasing practices as required under section 54-44.4-04.
   b. The adjutant general with respect to the department of emergency services.
   c. The council on the arts.
   d. The state auditor.
   e. The department of commerce with respect to the division of economic development and finance.
   f. The dairy promotion commission.
   g. The education factfinding commission.
   h. The educational technology council.
   i. The board of equalization.
   j. The board of higher education.
   k. The Indian affairs commission.
   l. The industrial commission with respect to the activities of the Bank of North Dakota, North Dakota housing finance agency, public finance authority, North Dakota mill and elevator association, North Dakota farm finance agency, the North Dakota transmission authority, and the North Dakota pipeline authority.
   m. The department of corrections and rehabilitation except with respect to the activities of the division of adult services under chapter 54-23.4.
   n. The pardon advisory board.
   o. The parks and recreation department.
   p. The parole board.
   q. The state fair association.

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r. The attorney general with respect to activities of the state toxicologist and the state crime laboratory.
s. The administrative committee on veterans' affairs except with respect to rules relating to the supervision and government of the veterans' home and the implementation of programs or services provided by the veterans' home.
t. The industrial commission with respect to the lignite research fund except as required under section 57-61-01.5.
u. The attorney general with respect to guidelines adopted under section 12.1-32-15 for the risk assessment of sexual offenders, the risk level review process, and public disclosure of information under section 12.1-32-15.
v. The commission on legal counsel for indigents.
w. The attorney general with respect to twenty-four seven sobriety program guidelines and program fees.
x. The industrial commission with respect to approving or setting water rates under chapter 61-40.

3. "Agency head" means an individual or body of individuals in whom the ultimate legal authority of the agency is vested by law.
4. "Complainant" means any person who files a complaint before an administrative agency pursuant to section 28-32-21 and any administrative agency that, when authorized by law, files such a complaint before such agency or any other agency.
5. "Hearing officer" means any agency head or one or more members of the agency head when presiding in an administrative proceeding, or, unless prohibited by law, one or more other persons designated by the agency head to preside in an administrative proceeding, an administrative law judge from the office of administrative hearings, or any other person duly assigned, appointed, or designated to preside in an administrative proceeding pursuant to statute or rule.
6. "License" means a franchise, permit, certification, approval, registration, charter, or similar form of authorization required by law.
7. "Order" means any agency action of particular applicability which determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons. The term does not include an executive order issued by the governor.
8. "Party" means each person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party. An administrative agency may be a party. In a hearing for the suspension, revocation, or disqualification of an operator's license under title 39, the term may include each city and each county in which the alleged conduct occurred, but the city or county may not appeal the decision of the hearing officer.
9. "Person" includes an individual, association, partnership, corporation, limited liability company, state governmental agency or governmental subdivision, or an agency of such governmental subdivision.
10. "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the administrative action more probable or less probable than it would be without the evidence.
11. "Rule" means the whole or a part of an agency statement of general applicability which implements or prescribes law or policy or the organization, procedure, or practice requirements of the agency. The term includes the adoption of new rules and the amendment, repeal, or suspension of an existing rule. The term does not include:
    a. A rule concerning only the internal management of an agency which does not directly or substantially affect the substantive or procedural rights or duties of any segment of the public.
    b. A rule that sets forth criteria or guidelines to be used by the staff of an agency in the performance of audits, investigations, inspections, and settling commercial disputes or negotiating commercial arrangements, or in the defense, prosecution, or settlement of cases, if the disclosure of the statement would:
        (1) Enable law violators to avoid detection;
        (2) Facilitate disregard of requirements imposed by law; or

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(3) Give a clearly improper advantage to persons who are in an adverse position to the state.

c. A rule establishing specific prices to be charged for particular goods or services sold by an agency.

d. A rule concerning only the physical servicing, maintenance, or care of agency-owned or agency-operated facilities or property.

e. A rule relating only to the use of a particular facility or property owned, operated, or maintained by the state or any of its subdivisions, if the substance of the rule is adequately indicated by means of signs or signals to persons who use the facility or property.

f. A rule concerning only inmates of a correctional or detention facility, students enrolled in an educational institution, or patients admitted to a hospital, if adopted by that facility, institution, or hospital.

g. A form whose contents or substantive requirements are prescribed by rule or statute or are instructions for the execution or use of the form.

h. An agency budget.

i. An opinion of the attorney general.

j. A rule adopted by an agency selection committee under section 54-44.7-03.

k. Any material, including a guideline, interpretive statement, statement of general policy, manual, brochure, or pamphlet, which is explanatory and not intended to have the force and effect of law.

28-32-02. Rulemaking power of agency - Organizational rule.

1. The authority of an administrative agency to adopt administrative rules is authority delegated by the legislative assembly. 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.
2. In addition to other rulemaking requirements imposed by law, each agency may include in its rules a description of that portion of its organization and functions subject to this chapter and may include a statement of the general course and method of its operations and how the public may obtain information or make submissions or requests.

28-32-03. Emergency rules.

1. If the agency, with the approval of the governor, finds that emergency rulemaking is necessary, the agency may declare the proposed rule to be an interim final rule effective on a date no earlier than the date of filing with the legislative council of the notice required by section 28-32-10.
2. A proposed rule may be given effect on an emergency basis under this section if any of the following grounds exists regarding that rule:
   a. Imminent peril threatens public health, safety, or welfare, which would be abated by emergency effectiveness;
   b. A delay in the effective date of the rule is likely to cause a loss of funds appropriated to support a duty imposed by law upon the agency;
   c. Emergency effectiveness is reasonably necessary to avoid a delay in implementing an appropriations measure; or
   d. Emergency effectiveness is necessary to meet a mandate of federal law.
3. A final rule adopted after consideration of all written and oral submissions respecting the interim final rule, which is substantially similar to the interim final rule, is effective as of the declared effective date of the interim final rule.
4. The agency's finding, and a brief statement of the agency's reasons for the finding, must be filed with the legislative council with the final adopted emergency rule.
5. The agency shall attempt to make interim final rules known to persons who the agency can reasonably be expected to believe may have a substantial interest in them. As

used in this subsection, "substantial interest" means an interest in the effect of the rules which surpasses the common interest of all citizens. An agency adopting emergency rules shall comply with the notice requirements of section 28-32-10 which relate to emergency rules and shall provide notice to the chairman of the administrative rules committee of the emergency status, declared effective date, and grounds for emergency status of the rules under subsection 2. When notice of emergency rule adoption is received, the legislative council shall publish the notice and emergency rules on its website.

6. An interim final rule is ineffective one hundred eighty days after its declared effective date unless first adopted as a final rule.

28-32-04. Repeal or waiver of rules from federal guidelines.

1. An agency shall repeal or amend any existing rule that was adopted from federal guidelines and which is not relevant to state regulatory programs.
2. An agency may not adopt rules from federal guidelines which are not relevant to state regulatory programs when developing or modifying programs.
3. An agency shall seek a waiver from the appropriate United States agency when the United States agency is evaluating current programs or delegating or modifying programs to relieve the agency from complying with or adopting rules that are not relevant to state regulatory programs.

28-32-05. Adoption by reference of certain rules.

1. When adopting rules, an agency shall adopt by reference any applicable existing permit or procedural rules that may be adapted for use in a new or existing program.
2. An agency shall seek authorization from the appropriate United States agency to adopt by reference applicable existing permit or procedural rules that may be adapted for use in a new or existing program when the United States agency is delegating or modifying a program.

28-32-06. Force and effect of rules.

Upon becoming effective, rules have the force and effect of law until amended or repealed by the agency, declared invalid by a final court decision, suspended or found to be void by the administrative rules committee, or determined repealed by the legislative council because the authority for adoption of the rules is repealed or transferred to another agency.

28-32-07. Deadline for rules to implement statutory change.

Any rule change, including a creation, amendment, or repeal, made to implement a statutory change must be adopted and filed with the legislative council within nine months of the effective date of the statutory change. If an agency needs additional time for the rule change, a request for additional time must be made to the legislative council. The legislative council may extend the time within which the agency must adopt the rule change if the request by the agency is supported by evidence that the agency needs more time through no deliberate fault of its own.

28-32-08. Regulatory analysis.

1. An agency shall issue a regulatory analysis of a proposed rule if:
   a. Within twenty days after the last published notice date of a proposed rule hearing, a written request for the analysis is filed by the governor or a member of the legislative assembly; or
   b. The proposed rule is expected to have an impact on the regulated community in excess of fifty thousand dollars. The analysis under this subdivision must be available on or before the first date of public notice as provided for in section 28-32-10.
2. The regulatory analysis must contain:

a. A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;
b. A description of the probable impact, including economic impact, of the proposed rule;
c. The probable costs to the agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues; and
d. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why the methods were rejected in favor of the proposed rule.

3. Each regulatory analysis must include quantification of the data to the extent practicable.
4. The agency shall mail or deliver a copy of the regulatory analysis to any person who requests a copy of the regulatory analysis. The agency may charge a fee for a copy of the regulatory analysis as allowed under section 44-04-18.
5. If required under subsection 1, the preparation and issuance of a regulatory analysis is a mandatory duty of the agency proposing a rule. Errors in a regulatory analysis, including erroneous determinations concerning the impact of the proposed rule on the regulated community, are not a ground upon which the invalidity of a rule may be asserted or declared.

28-32-08.1. Rules affecting small entities - Analysis - Economic impact statements - Judicial review.

1. As used in this section:
   a. "Small business" means a business entity, including its affiliates, which:
      (1) Is independently owned and operated; and
      (2) Employs fewer than twenty-five full-time employees or has gross annual sales of less than two million five hundred thousand dollars;
   b. "Small entity" includes small business, small organization, and small political subdivision;
   c. "Small organization" means any not-for-profit enterprise that is independently owned and operated and is not dominant in its field; and
   d. "Small political subdivision" means a political subdivision with a population of less than five thousand.
2. Before adoption of any proposed rule, the adopting agency shall prepare a regulatory analysis in which, consistent with public health, safety, and welfare, the agency considers utilizing regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse impact on small entities. The agency shall consider each of the following methods of reducing impact of the proposed rule on small entities:
   a. Establishment of less stringent compliance or reporting requirements for small entities;
   b. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities;
   c. Consolidation or simplification of compliance or reporting requirements for small entities;
   d. Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule; and
   e. Exemption of small entities from all or any part of the requirements contained in the proposed rule.
3. Before adoption of any proposed rule that may have an adverse impact on small entities, the adopting agency shall prepare an economic impact statement that includes consideration of:
   a. The small entities subject to the proposed rule;
   b. The administrative and other costs required for compliance with the proposed rule;

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c. The probable cost and benefit to private persons and consumers who are affected by the proposed rule;
d. The probable effect of the proposed rule on state revenues; and
e. Any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule.

4. For any rule subject to this section, a small entity that is adversely affected or aggrieved by final agency action is entitled to judicial review of agency compliance with the requirements of this section. A small entity seeking judicial review under this section must file a petition for judicial review within one year from the date of final agency action.
5. This section does not apply to any agency that is an occupational or professional licensing authority, nor does this section apply to the following agencies or divisions of agencies:
   a. Council on the arts.
   b. Beef commission.
   c. Dairy promotion commission.
   d. Dry bean council.
   e. Highway patrolmen's retirement board.
   f. Indian affairs commission.
   g. Board for Indian scholarships.
   h. State personnel board.
   i. Potato council.
   j. Board of public school education.
   k. Real estate trust account committee.
   l. Seed commission.
   m. Soil conservation committee.
   n. Oilseed council.
   o. Wheat commission.
   p. State seed arbitration board.
   q. North Dakota lottery.
6. This section does not apply to rules mandated by federal law.
7. The adopting agency shall provide the administrative rules committee copies of any regulatory analysis or economic impact statement, or both, prepared under this section when the committee is considering the associated rules.

28-32-08.2. Fiscal notes for administrative rules.

When an agency presents rules for administrative rules committee consideration, the agency shall provide a fiscal note or a statement in its testimony that the rules have no fiscal effect. A fiscal note must reflect the effect of the rules changes on state revenues and expenditures, including any effect on funds controlled by the agency.

28-32-09. Takings assessment.

1. An agency shall prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private real property. The agency's assessment must:
   a. Assess the likelihood that the proposed rule may result in a taking or regulatory taking.
   b. Clearly and specifically identify the purpose of the proposed rule.
   c. Explain why the proposed rule is necessary to substantially advance that purpose and why no alternative action is available that would achieve the agency's goals while reducing the impact on private property owners.
   d. Estimate the potential cost to the government if a court determines that the proposed rule constitutes a taking or regulatory taking.
   e. Identify the source of payment within the agency's budget for any compensation that may be ordered.

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f. Certify that the benefits of the proposed rule exceed the estimated compensation costs.

2. Any private landowner who is or may be affected by a rule that limits the use of the landowner's private real property may request in writing that the agency reconsider the application or need for the rule. Within thirty days of receiving the request, the agency shall consider the request and shall in writing inform the landowner whether the agency intends to keep the rule in place, modify application of the rule, or repeal the rule.

3. In an agency's analysis of the takings implications of a proposed rule, "taking" means the taking of private real property, as defined in section 47-01-03, by government action which requires compensation to the owner of that property by the fifth or fourteenth amendment to the Constitution of the United States or section 16 of article I of the Constitution of North Dakota. "Regulatory taking" means a taking of real property through the exercise of the police and regulatory powers of the state which reduces the value of the real property by more than fifty percent. However, the exercise of a police or regulatory power does not effect a taking if it substantially advances legitimate state interests, does not deny an owner economically viable use of the owner's land, or is in accordance with applicable state or federal law.

28-32-10. Notice of rulemaking - Hearing date.

1. An agency shall prepare a full notice and an abbreviated notice of rulemaking.
   a. The agency's full notice of the proposed adoption, amendment, or repeal of a rule must include a short, specific explanation of the proposed rule and the purpose of the proposed rule, identify the emergency status and declared effective date of any emergency rules, include a determination of whether the proposed rulemaking is expected to have an impact on the regulated community in excess of fifty thousand dollars, identify at least one location where interested persons may review the text of the proposed rule, provide the address to which written comments concerning the proposed rule may be sent, provide the deadline for submission of written comments, provide a telephone number and post-office or electronic mail address at which a copy of the rules and regulatory analysis may be requested, and, in the case of a substantive rule, provide the time and place set for each oral hearing. The agency's full notice must include a statement of the bill number and general subject matter of any legislation, enacted during the most recent session of the legislative assembly, which is being implemented by the proposed rule. The agency's full notice must be filed with the legislative council, accompanied by a copy of the proposed rules.
   b. The agency shall request publication of an abbreviated newspaper publication notice at least once in each official county newspaper published in this state. The abbreviated newspaper publication of notice must be in a display-type format with a minimum width of one column of approximately two inches [5.08 centimeters] and a minimum depth of approximately three inches [7.62 centimeters] and with a headline describing the general topic of the proposed rules. The notice must also include the telephone number or address to use to obtain a copy of the proposed rules, identification of the emergency status and declared effective date of any emergency rules, the address to use and the deadline to submit written comments, and the location, date, and time of the public hearing on the rules.
2. The agency shall mail or deliver by electronic mail a copy of the agency's full notice and proposed rule to each member of the legislative assembly whose name appeared as a sponsor or cosponsor of legislation, enacted during the most recent session of the legislative assembly, which is being implemented by the proposed rule and to each person who has made a timely request to the agency for a copy of the notice and proposed rule. The agency may mail or otherwise provide a copy of the agency's full notice to any person who is likely to be an interested person. The agency may charge persons who are not members of the legislative assembly fees for copies of the proposed rule as allowed under section 44-04-18.

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3. In addition to the other notice requirements of this subsection, the superintendent of public instruction shall provide notice of any proposed rulemaking by the superintendent of public instruction to each association with statewide membership whose primary focus is elementary and secondary education issues which has requested to receive notice from the superintendent under this subsection and to the superintendent of each public school district in this state, or the president of the school board for school districts that have no superintendent, at least twenty days before the date of the hearing described in the notice. Notice provided by the superintendent of public instruction under this section must be by first-class mail. However, upon request of a group or person entitled to notice under this section, the superintendent of public instruction shall provide the group or person notice by electronic mail.
4. The legislative council shall establish standard procedures for all agencies to follow in complying with the provisions of this section and a procedure to allow any person to request and receive mailed copies of all filings made by agencies pursuant to this section. The legislative council may charge an annual fee as established by the administrative rules committee for providing copies of the filings.
5. At least twenty days must elapse between the date of the publication of the notice and the date of the hearing. Within fifteen business days after receipt of a notice under this section, a copy of the notice must be mailed by the legislative council to any person who has paid the annual fee established under subsection 4.

28-32-11. Conduct of hearings - Notice of administrative rules committee consideration - Consideration and written record of comments.

The agency shall adopt a procedure whereby all interested persons are afforded reasonable opportunity to submit data, views, or arguments, orally or in writing, concerning the proposed rule, including data respecting the impact of the proposed rule. The agency shall adopt a procedure to allow interested parties to request and receive notice from the agency of the date and place the rule will be reviewed by the administrative rules committee. In case of substantive rules, the agency shall conduct an oral hearing. The agency shall consider fully all written and oral submissions respecting a proposed rule prior to the adoption, amendment, or repeal of any rule not of an emergency nature. The agency shall make a written record of its consideration of all written and oral submissions contained in the rulemaking record respecting a proposed rule.

28-32-12. Comment period.

The agency shall allow, after the conclusion of any rulemaking hearing, a comment period of at least ten days during which data, views, or arguments concerning the proposed rulemaking will be received by the agency and made a part of the rulemaking record to be considered by the agency.

28-32-13. Substantial compliance with rulemaking procedure.

A rule is invalid unless adopted in substantial compliance with this chapter. However, inadvertent failure to supply any person with a notice required by section 28-32-10 does not invalidate a rule. Notwithstanding subsection 2 of section 28-32-42, an action to contest the validity of a rule on the grounds of noncompliance with this chapter may not be commenced more than two years after the effective date of the rule.

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

Every rule proposed by any administrative agency must be submitted to the attorney general for an opinion as to its legality before final adoption, and the attorney general promptly shall furnish each such opinion. The attorney general may not approve any rule as to legality when the rule exceeds the statutory authority of the agency or is written in a manner that is not concise or easily understandable or when the procedural requirements for adoption of the rule in this chapter are not substantially met. The attorney general shall advise an agency of any revision or rewording of a rule necessary to correct objections as to legality.

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28-32-15. Filing of rules for publication - Effective date of rules.

1. A copy of each rule adopted by an administrative agency, a copy of each written comment and a written summary of each oral comment on the rule, and the attorney general's opinion on the rule must be filed by the adopting agency with the legislative council for publication of the rule in the North Dakota Administrative Code.
2. a. Nonemergency rules approved by the attorney general as to legality, adopted by an administrative agency, and filed with the legislative council and not voided or held for consideration by the administrative rules committee become effective according to the following schedule:
   (1) Rules filed with the legislative council from August second through November first become effective on the immediately succeeding January first.
   (2) Rules filed with the legislative council from November second through February first become effective on the immediately succeeding April first.
   (3) Rules filed with the legislative council from February second through May first become effective on the immediately succeeding July first.
   (4) Rules filed with the legislative council from May second through August first become effective on the immediately succeeding October first.

   b. If publication is delayed for any reason other than action of the administrative rules committee, nonemergency rules, unless otherwise provided, become effective when publication would have occurred but for the delay.

   c. A rule held for consideration by the administrative rules committee becomes effective on the first effective date of rules under the schedule in subdivision a following the meeting at which that rule is reconsidered by the committee.

28-32-16. Petition for reconsideration of rule - Hearing by agency.

Any person substantially interested in the effect of a rule adopted by an administrative agency may petition such agency for a reconsideration of any such rule or for an amendment or repeal thereof. Such petition must state clearly and concisely the petitioners' alleged grounds for such reconsideration or for the proposed repeal or amendment of such rule. The agency may grant the petitioner a public hearing upon such terms and conditions as the agency may prescribe.

28-32-17. Administrative rules committee objection.

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

1. The legislative council shall attach to each objection a certification of the time and date of its filing and, as soon as possible, shall transmit a copy of the objection and the certification to the agency adopting the rule in question. The legislative council also shall maintain a permanent register of all committee objections.
2. The legislative council shall publish an objection filed pursuant to this section in the next issue of the code supplement. In case of a filed committee objection to a rule subject to the exceptions of the definition of rule in section 28-32-01, the agency shall indicate the existence of that objection adjacent to the rule in any compilation containing that rule.
3. Within fourteen days after the filing of a committee objection to a rule, the adopting agency shall respond in writing to the committee. After receipt of the response, the committee may withdraw or modify its objection.
4. After the filing of a committee objection, the burden of persuasion is upon the agency in any action for judicial review or for enforcement of the rule to establish that the whole or portion thereof objected to is within the procedural and substantive authority delegated to the agency. If the agency fails to meet its burden of persuasion, the court shall declare the whole or portion of the rule objected to invalid and judgment must be

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rendered against the agency for court costs. These court costs must include a reasonable attorney's fee and must be payable from the appropriation of the agency which adopted the rule in question.

28-32-18. Administrative rules committee may void rule - Grounds - Amendment by agreement of agency and committee.

1. The legislative management's administrative rules committee may find that all or any portion of a rule is void if that rule is initially considered by the committee not later than the fifteenth day of the month before the date of the administrative code supplement in which the rule change is scheduled to appear. The administrative rules committee may find a rule or portion of a rule void if the committee makes the specific finding that, with regard to that rule or portion of a rule, there is:
   a. An absence of statutory authority.
   b. An emergency relating to public health, safety, or welfare.
   c. A failure to comply with express legislative intent or to substantially meet the procedural requirements of this chapter for adoption of the rule.
   d. A conflict with state law.
   e. Arbitrariness and capriciousness.
   f. A failure to make a written record of its consideration of written and oral submissions respecting the rule under section 28-32-11.
2. The administrative rules committee may find a rule void at the meeting at which the rule is initially considered by the committee or may hold consideration of that rule for one subsequent meeting. If no representative of the agency appears before the administrative rules committee when rules are scheduled for committee consideration, those rules are held over for consideration at the next subsequent committee meeting. Rules are not considered initially considered by the committee under this subsection until a representative of the agency appears before the administrative rules committee when the rules are scheduled for committee consideration. If no representative of the agency appears before the administrative rules committee meeting to which rules are held over for consideration, the rules are void if the rules were adopted as emergency rules and for rules not adopted as emergency rules the administrative rules committee may void the rules, allow the rules to become effective, or hold over consideration of the rules to the next subsequent committee meeting. Within three business days after the administrative rules committee finds that a rule is void, the legislative council shall provide written notice of that finding and the committee's specific finding under subdivisions a through f of subsection 1 to the adopting agency and to the chairman of the legislative management. Within fourteen days after receipt of the notice, the adopting agency may file a petition with the chairman of the legislative management for review by the legislative management of the decision of the administrative rules committee. If the adopting agency does not file a petition for review, the rule becomes void on the fifteenth day after the notice from the legislative council to the adopting agency. If within sixty days after receipt of the petition from the adopting agency the legislative management has not disapproved by motion the finding of the administrative rules committee, the rule is void.
3. An agency may amend or repeal a rule or create a related rule if, after consideration of rules by the administrative rules committee, the agency and committee agree that the rule amendment, repeal, or creation is necessary to address any of the considerations under subsection 1. A rule amended, repealed, or created under this subsection is not subject to the other requirements of this chapter relating to adoption of administrative rules and may be published by the legislative council as amended, repealed, or created. If requested by the agency or any interested party, a rule amended, repealed, or created under this subsection must be reconsidered by the administrative rules committee at a subsequent meeting at which public comment on the agreed rule change must be allowed.

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28-32-18.1. Administrative rules committee review of existing administrative rules.

1. Upon request by the administrative rules committee, an administrative agency shall brief the committee on its existing administrative rules and point out any provisions that appear to be obsolete and any areas in which statutory authority has changed or been repealed since the rules were adopted or amended.
2. An agency may amend or repeal a rule without complying with the other requirements of this chapter relating to adoption of administrative rules and may resubmit the change to the legislative council for publication provided:
   a. The agency initiates the request to the administrative rules committee for consideration of the amendment or repeal;
   b. The agency provides notice to the regulated community, in a manner reasonably calculated to provide notice to those persons interested in the rule, of the time and place the administrative rules committee will consider the request for amendment or repeal of the rule; and
   c. 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 from the amendment or repeal.

28-32-19. Publication of administrative code and code supplement.

1. The legislative council shall compile, index, and publish all rules filed pursuant to this chapter in a publication which must be known as the North Dakota Administrative Code, in this chapter referred to as the code. The code also must contain all objections filed with the legislative council by the administrative rules committee pursuant to section 28-32-17. The legislative council shall revise all or part of the code as often as the legislative council determines necessary.
2. The legislative council may prescribe a format, style, and arrangement for rules which are to be published in the code and may refuse to accept the filing of any rule that is not in substantial compliance therewith. In arranging rules for publication, the legislative council may make such corrections in spelling, grammatical construction, format, and punctuation of the rules as determined proper. The legislative council shall keep and maintain a permanent code of all rules filed, including superseded and repealed rules, which must be open to public inspection during office hours.
3. The legislative council shall compile and publish the North Dakota Administrative Code supplement according to the schedule of effective dates of rules in section 28-32-15.
   a. The code supplement must contain all rules that have been filed with the legislative council or which have become effective since the compilation and publication of the preceding issue of the code supplement.
   b. The code supplement must contain all objections filed with the legislative council by the administrative rules committee pursuant to section 28-32-17.
4. The legislative council, with the consent of the adopting agency, may omit from the code or code supplement any rule the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if the rule in printed or duplicated form is made available on application to the agency, and if the code or code supplement contains a notice stating the general subject matter of the omitted rule and stating how a copy may be obtained.
5. The code must be arranged, indexed, and printed or duplicated in a manner to permit separate publication of portions thereof relating to individual agencies. An agency may print as many copies of such separate portions of the code as it may require. If the legislative council does not publish the code supplement due to technological problems or lack of funds, the agency whose rules would have been published in the code supplement shall provide a copy of the rules to any person upon request. The agency may charge a fee for a copy of the rules as allowed under section 44-04-18.

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28-32-20. Printing, sales, and distribution of code and code supplement.

1. The secretary of state shall distribute the code and code supplement and shall distribute copies of the code, revisions, and the code supplement without charge to the following:
   a. Governor, one copy.
   b. Attorney general, one copy.
   c. Each supreme court judge, one copy.
   d. Each district court judge, one copy.
   e. Each county auditor of this state, for the use of county officials and the public, one copy.
   f. Supreme court library, one copy.
   g. State library, one copy.
   h. Law library of the university of North Dakota, one copy.
   i. Each of the five depository libraries in this state, one copy, upon request.
   j. Secretary of state, one copy.
   k. Legislative council, four copies.
   l. Each member of the legislative assembly, one copy, upon request.
2. The legislative council, each county auditor in the state, and the librarians for the supreme court library, the state library, the university of North Dakota law library, and the five depository libraries as designated according to subsection 1 and section 54-24-09 shall maintain a complete, current set of the code, including revisions and the code supplement.
3. The secretary of state shall make copies of and subscriptions to the code and code supplement available to any person upon payment of the appropriate subscription fee.
4. The legislative council shall determine the appropriate fee for subscribing to the code and code supplement.
5. All fees collected by the secretary of state must be deposited in the general fund of the state treasury.
6. If applicable, the administrative code, revisions to the administrative code, and the code supplement must be considered sixth-class printing under sections 46-02-04 and 46-02-09.

28-32-21. Adjudicative proceedings - Procedures.

Administrative agencies shall comply with the following procedures in all adjudicative proceedings:

1. a. For adjudicative proceedings involving a hearing on a complaint against a specific-named respondent, a complainant shall prepare and file a clear and concise complaint with the agency having subject matter jurisdiction of the proceeding. The complaint shall contain a concise statement of the claims or charges upon which the complainant relies, including reference to the statute or rule alleged to be violated, and the relief sought.
   b. After a complaint is filed, the appropriate administrative agency shall serve a copy of the complaint upon the respondent in the manner allowed for the service of process under the North Dakota Rules of Civil Procedure at least forty-five days before the hearing on the complaint.
   c. The administrative agency shall designate the time and place for the hearing and shall serve a copy of the notice of hearing upon the respondent in the manner allowed for service under the North Dakota Rules of Civil Procedure, at least twenty days before the hearing on the complaint. Service of the notice of hearing may be waived in writing by the respondent, or the parties may agree on a definite time and place for hearing with the consent of the agency having jurisdiction.
   d. A complaint may be served less than forty-five days before the time specified for a hearing on the complaint and a notice of hearing on a complaint may be served less than twenty days before the time specified for hearing if otherwise authorized by statute. However, an administrative hearing regarding the renewal,

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suspension, or revocation of a license may not be held fewer than ten days after the licensee has been served, personally or by certified mail, with a copy of a notice for hearing with an affidavit, complaint, specification of issues, or other document alleging violations upon which the license hearing is based.

e. A complaint may inform the respondent that an answer to the complaint must be served upon the complainant and the agency with which the complaint is filed within twenty days after service of the complaint, or the agency may deem the complaint to be admitted. If the respondent fails to answer as required within twenty days after service of the complaint, the agency may enter an order in default as the facts and law may warrant. Answers must be served in the manner allowed for service under the North Dakota Rules of Civil Procedure.

f. Service is complete upon compliance with the provisions of the North Dakota Rules of Civil Procedure. Proof of service may be made as provided in the North Dakota Rules of Civil Procedure.

g. A respondent may be given less than twenty days to answer the complaint, pursuant to another statute, but no respondent may be required to answer a complaint in less than five days and an answer must be served on the complainant and the agency with which the complaint is filed at least two days before the hearing on the complaint.

h. Amended and supplemental pleadings may be served and filed with the agency in the manner allowed for amended and supplemental pleadings under the North Dakota Rules of Civil Procedure.

2. At any hearing in an adjudicative proceeding, the parties shall be afforded opportunity to present evidence and to examine and cross-examine witnesses as is permitted under sections 28-32-24 and 28-32-35.

3. a. If the adjudicative proceeding does not involve a hearing on a complaint against a specific-named respondent, the provisions of subsection 1 do not apply. Unless otherwise provided by law, the provisions of subdivisions b through d apply.

b. The administrative agency shall designate the time and place for the hearing and shall serve a copy of the notice of hearing upon all the parties in the manner allowed for service under the North Dakota Rules of Civil Procedure at least twenty days before the hearing. Service of the notice of hearing may be waived in writing by the parties, or the parties may agree on a definite time and place for the hearing with the consent of the agency having jurisdiction.

c. A hearing under this subsection may not be held unless the parties have been properly served with a copy of the notice of hearing as well as a written specification of issues for hearing or other document indicating the issues to be considered and determined at the hearing. In lieu of, or in addition to, a specification of issues or other document, an explanation about the nature of the hearing and the issues to be considered and determined at the hearing may be contained in the notice.

d. Service is complete upon compliance with the provisions of the North Dakota Rules of Civil Procedure. Proof of service may be made as provided in the North Dakota Rules of Civil Procedure.

28-32-22. Informal disposition.

Unless otherwise prohibited by specific statute or rule, informal disposition may be made of any adjudicative proceeding, or any part or issue thereof, by stipulation, settlement, waiver of hearing, consent order, default, alternative dispute resolution, or other informal disposition, subject to agency approval. Any administrative agency may adopt rules of practice or procedure for informal disposition if such rules do not substantially prejudice the rights of any party. Such rules may establish procedures for converting an administrative matter from one type of proceeding to another type of proceeding.

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28-32-23. Adjudicative proceedings - Exceptions - Rules of procedure.

Notwithstanding the requirements for standardization of procedures in adjudicative proceedings under this chapter, an administrative agency may adopt specific agency rules of procedure not inconsistent with this chapter. An administrative agency may also adopt specific agency rules of procedure when necessary to comply with requirements found elsewhere in this code or when necessary to comply with the requirements of federal statutes, rules, or standards.

28-32-24. Evidence to be considered by agency - Official notice.

1. The admissibility of evidence in any adjudicative proceeding before an administrative agency shall be determined in accordance with the North Dakota Rules of Evidence. An administrative agency, or any person conducting proceedings for it, may waive application of the North Dakota Rules of Evidence if a waiver is necessary to ascertain the substantial rights of a party to the proceeding, but only relevant evidence shall be admitted. The waiver must be specifically stated, orally or in writing, either prior to or at a hearing or other proceeding.
2. All objections offered to evidence shall be noted in the record of the proceeding. No information or evidence except that which has been offered, admitted, and made a part of the official record of the proceeding shall be considered by the administrative agency, except as otherwise provided in this chapter.
3. Upon proper objection, evidence that is irrelevant, immaterial, unduly repetitious, or excludable on constitutional or statutory grounds, or on the basis of evidentiary privilege recognized in the courts of this state, may be excluded. In the absence of proper objection, the agency, or any person conducting a proceeding for it, may exclude objectionable evidence.
4. The North Dakota Rules of Evidence in regard to privileges apply at all stages of an administrative proceeding under this chapter.
5. All testimony must be made under oath or affirmation. Relevant statements presented by nonparties may be received as evidence if all parties are given an opportunity to cross-examine the nonparty witness or to otherwise challenge or rebut the statements. Nonparties may not examine or cross-examine witnesses except pursuant to a grant of intervention.
6. Evidence may be received in written form if doing so will expedite the proceeding without substantial prejudice to the interests of any party.
7. Official notice may be taken of any facts that could be judicially noticed in the courts of this state. Additionally, official notice may be taken of any facts as authorized in agency rules.

28-32-25. Adjudicative proceedings - Consideration of information not presented at a hearing.

In any adjudicative proceeding, an administrative agency may avail itself of competent and relevant information or evidence in its possession or furnished by members of its staff, or secured from any person in the course of an independent investigation conducted by the agency, in addition to the evidence presented at the hearing. It may do so after first transmitting a copy of the information or evidence or an abstract thereof to each party of record in the proceeding. The agency must afford each party, upon written request, an opportunity to examine the information or evidence and to present its own information or evidence and to cross-examine the person furnishing the information or evidence. Any further testimony that is necessary shall be taken at a hearing to be called and held, giving at least ten days' notice. Notice must be served upon the parties in the manner allowed for service under the North Dakota Rules of Civil Procedure. This section also applies to information officially noticed after the hearing when the issuance of any initial or final order is based in whole or in part on the facts or material noticed.

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28-32-26. Costs of investigation.

An agency may assess the costs of an investigation to a person found to be in violation of a statute or rule as a result of an adjudicative proceeding or informal disposition. The total costs assessed and any civil penalty that may be imposed as a result of violation may not exceed the statutorily authorized civil penalty for the violation. For the purposes of this section, costs mean reasonable out-of-pocket agency costs, not including any attorney's fees, actually incurred in conducting the investigation for which they may be assessed. Any such costs paid must be paid into the general fund and are appropriated as a refund to the agency for the purposes of defraying the costs of undertaking the investigation.

28-32-27. Hearing officer - Disqualification - Substitution.

1. Any person or persons presiding for the agency in an administrative proceeding must be referred to individually or collectively as hearing officer. Any person from the office of administrative hearings presiding for the agency as a hearing officer in an administrative proceeding must be referred to as an administrative law judge.
2. Any hearing officer is subject to disqualification for good cause shown.
3. Any party may petition for the disqualification of any person presiding as a hearing officer upon discovering facts establishing grounds for disqualification.
4. A person whose disqualification is requested shall determine whether to grant the petition, stating facts and reasons for the determination.
5. If a substitute is required for a person who is disqualified or becomes unavailable for any other reason, the substitute may be appointed by:
   a. The attorney general, if the disqualified or unavailable person is an assistant attorney general;
   b. The agency head, if the disqualified or unavailable person is one or more members of the agency head or one or more other persons designated by the agency head;
   c. A supervising hearing officer, if the disqualified or unavailable person is a hearing officer designated from an office, pool, panel, or division of hearing officers; or
   d. The governor, in all other cases.
6. Any action taken by a duly appointed substitute for a disqualified or unavailable person is as effective as if taken by the disqualified or unavailable person.
7. Any hearing officer in an administrative proceeding, from the time of appointment or designation, may exercise any authority granted by law or rule. A hearing officer may be designated to preside over the entire administrative proceeding and may issue orders accordingly. A procedural hearing officer may only issue orders in regard to the course and conduct of the hearing under statute or rule and to otherwise effect an orderly hearing. If a procedural hearing officer is designated, the agency head must be present at the hearing and the agency head shall issue findings of fact and conclusions of law, as well as any order resulting from the hearing.

28-32-28. Intervention.

An administrative agency may grant intervention in an adjudicative proceeding to promote the interests of justice if intervention will not impair the orderly and prompt conduct of the proceeding and if the petitioning intervenor demonstrates that the petitioner's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of statute or rule. The agency may impose conditions and limitations upon intervention. The agency shall give reasonable notice of the intervention to all parties. An administrative agency may adopt rules relating to intervention in an adjudicative proceeding.

28-32-29. Prehearing conference.

Before a hearing, an administrative agency may conduct a prehearing conference after giving reasonable notice to all parties and other interested persons. A prehearing conference may be conducted in total or in part by making use of telephone, facsimile services, television,

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or other electronic means, as long as such use does not substantially prejudice or infringe on the rights and interests of any party. An administrative agency may adopt rules regarding the availability of, notice of, and procedures for prehearing conferences.

28-32-30. Default.

1. If a party fails to attend or participate in a prehearing conference, hearing, or other stage of an adjudicative proceeding, the agency may enter and serve upon all parties written notice of default and a default order, including a statement of the grounds for default.
2. Within seven days after service of the default notice, order, and grounds, the party against whom default was ordered may file a written motion requesting that the default order be vacated and stating the grounds relied upon. During the time within which a party may file a written motion under this section, or at the time of issuing notice and the default order, the agency may adjourn the proceedings or conduct them without the participation of the party against whom a default order was issued, having due regard for the interests of justice and the orderly and prompt conduct of the proceedings. If an agency conducts further proceedings necessary to complete the administrative action without the participation of a party in default, it shall determine all the issues involved, including those affecting the defaulting party.

28-32-31. Duties of hearing officers.

All hearing officers shall:

1. Assure that proper notice has been given as required by law.
2. Conduct only hearings and related proceedings for which proper notice has been given.
3. Assure that all hearings and related proceedings are conducted in a fair and impartial manner.
4. Make recommended findings of fact and conclusions of law and issue a recommended order, when appropriate.
5. Conduct the hearing only and perform such other functions of the proceeding as requested, when an agency requests a hearing officer to preside only as a procedural hearing officer. If the hearing officer is presiding only as a procedural hearing officer, the agency head must be present at the hearing and the agency head shall make findings of fact and conclusions of law and issue a final order. The agency shall give proper notice as required by law. The procedural hearing officer may issue orders in regard to the conduct of the hearing pursuant to statute or rule and to otherwise effect an orderly and prompt disposition of the proceedings.
6. Make findings of fact and conclusions of law and issue a final order, if required by statute or requested by an agency.
7. Function only as a procedural hearing officer, when an agency requests a hearing officer to preside for a rulemaking hearing. The agency head need not be present. The agency shall give proper notice as required by law.
8. Perform any and all other functions required by law, assigned by the director of administrative hearings, or delegated to the hearing officer by the agency.

28-32-32. Emergency adjudicative proceedings.

An administrative agency may use an emergency adjudicative proceeding, in its discretion, in an emergency situation involving imminent peril to the public health, safety, or welfare.

1. In an emergency, the administrative agency may take action pursuant to a specific statute as is necessary to prevent or avoid imminent peril to the public health, safety, or welfare.
2. In an emergency, in the absence of a specific statute, an administrative agency may serve a complaint fewer than forty-five days before the hearing and give notice of a hearing on the complaint by giving less than twenty days' notice as is necessary to prevent or avoid imminent peril to the public health, safety, or welfare. But, every party

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to the emergency adjudicative proceeding must be given a reasonable time within which to serve an answer and to prepare for the hearing, which may be extended by the agency upon good cause being shown.

3. In an emergency, in the absence of a specific statute, in an adjudicative proceeding that does not involve a complaint against a specific-named respondent, an administrative agency may give notice of a hearing by giving less than twenty days' notice as is necessary to prevent or avoid imminent peril to the public health, safety, or welfare. But, every party to the emergency adjudicative proceeding shall be given a reasonable time to prepare for the hearing, which may be extended by the agency upon good cause being shown.
4. As a result of the emergency adjudicative proceeding, in the absence of a specific statute requiring other administrative action, the administrative agency shall issue an order. The order must include a brief statement of the reasons justifying the determination of imminent peril to the public health, safety, or welfare and requiring an emergency adjudicative proceeding to prevent or avoid the imminent peril.
5. After issuing an order pursuant to this section, the administrative agency shall proceed as soon as possible to complete any other proceedings related to the emergency adjudicative proceeding that do not involve imminent peril to the public health, safety, or welfare.

28-32-33. Adjudicative proceedings - Subpoenas - Discovery - Protective orders.

1. In an adjudicative proceeding, discovery may be obtained in accordance with the North Dakota Rules of Civil Procedure.
2. In any adjudicative proceeding, upon the request or motion of any party to the proceeding or upon the hearing officer's own motion on behalf of the agency, a hearing officer may issue subpoenas, discovery orders, and protective orders in accordance with the North Dakota Rules of Civil Procedure. A motion to quash or modify, or any other motion relating to subpoenas, discovery, or protective orders must be made to the hearing officer. The hearing officer's rulings on these motions may be appealed under section 28-32-42 after issuance of the final order by the agency. The cost of issuing and serving a subpoena in any adjudicative proceeding must be paid by the person or agency requesting it.
3. Any witness who is subpoenaed under the provisions of this section and who appears at a hearing or other part of an adjudicative proceeding, or whose deposition is taken, shall receive the same fees and mileage as a witness in a civil case in the district court. Witness fees and mileage shall be paid by the party or agency at whose instance the witness appears. Any hearing officer may order the payment of witness fees or mileage by the appropriate party or agency.
4. Subpoenas, discovery orders, protective orders, and other orders issued under this section may be enforced by applying to any judge of the district court for an order requiring the attendance of a witness, the production of all documents and objects described in the subpoena, or otherwise enforcing an order. Failure of a witness or other person to comply with the order of the district court is contempt of court which is punishable by the district court, upon application. The judge may award attorney's fees to the prevailing party in an application under this subsection.

28-32-34. Administration of oaths - Parties to be advised of perjury provisions.

Any hearing officer in an administrative proceeding has the power to examine witnesses and records and to administer oaths to witnesses. At the time the person presiding administers the oath to a witness, the person shall advise the witness of the provisions of subsection 1 of section 12.1-11-01 and of the maximum penalty for perjury.

28-32-35. Procedure at hearing.

The person presiding at a hearing shall regulate the course of the hearing in conformity with this chapter and any rules adopted under this chapter by an administrative agency, any other

applicable laws, and any prehearing order. To the extent necessary for full disclosure of all relevant facts and issues, the person presiding at the hearing shall afford to all parties and other persons allowed to participate the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence, except as restricted or conditioned by a grant of intervention or by a prehearing order. A hearing may be conducted in total or in part by making use of telephone, television, facsimile services, or other electronic means if each participant in the hearing has an opportunity to participate in, to hear, and, if practicable, to see the entire proceeding while it is taking place, and if such use does not substantially prejudice or infringe on the rights and interests of any party.

28-32-36. Agency to make record.

An administrative agency shall make a record of all testimony, written statements, documents, exhibits, and other evidence presented at any adjudicative proceeding or other administrative proceeding heard by it. Oral testimony may be taken by a court reporter, by a stenographer, or by use of an electronic recording device. All evidence presented at any proceeding before the administrative agency shall be filed with the agency. A copy of the record of any proceeding before an administrative agency, or a part thereof, must be furnished to any party to the proceeding and to any other person allowed to participate in the proceeding, upon written request submitted to the agency and upon payment of a uniform charge to be set by the agency. Any fee paid to an administrative agency for the record, or a part thereof, shall be paid into the general fund and is appropriated as a refund to the agency for the purposes of defraying the costs of preparing the record. An agency may contract with any person or another agency to prepare a record, or a part thereof, of any proceeding before the agency.

28-32-37. Ex parte communications.

1. Except as provided in subsections 2 and 4 or unless required for the disposition of ex parte matters specifically authorized by another statute, an agency head or hearing officer in an adjudicative proceeding may not communicate, directly or indirectly, regarding any issue in the proceeding, while the proceeding is pending, with any party, with any person who has a direct or indirect interest in the outcome of the proceeding, with any other person allowed to participate in the proceeding, or with any person who presided at a previous stage of the proceeding, without notice and opportunity for all parties to participate in the communication.
2. When more than one person is the hearing officer in an adjudicative proceeding, those persons may communicate with each other regarding a matter pending before the panel. An agency head or hearing officer may communicate with or receive aid from staff assistants if the assistants do not furnish, augment, diminish, or modify the evidence in the record.
3. Except as provided in subsection 4 or unless required for the disposition of ex parte matters specifically authorized by statute, no party to an adjudicative proceeding, no person who has a direct or indirect interest in the outcome of the proceeding, no person allowed to participate in the proceeding, and no person who presided at a previous stage in the proceeding may communicate directly or indirectly in connection with any issue in that proceeding, while the proceeding is pending, with any agency head or hearing officer in the proceeding without notice and opportunity for all parties to participate in the communication.
4. In an adjudicative proceeding conducted by a hearing officer other than the agency head, counsel for the administrative agency and the agency head, without notice and opportunity for all parties to participate, may communicate and consult regarding the status of the adjudicative proceeding, discovery, settlement, litigation decisions, and other matters commonly communicated between attorney and client, to permit the agency head to make informed decisions. This subsection does not apply after recommended findings of fact, conclusions of law, and orders have been issued, except counsel for the administrative agency and the agency head may communicate regarding settlement and negotiation after recommended findings of fact, conclusions of law, and orders have been issued.

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5. If, before being assigned, designated, or appointed to preside in an adjudicative proceeding, a person receives an ex parte communication of a type that could not properly be received while presiding, the person, promptly after being assigned, designated, or appointed, shall disclose the communication in the manner prescribed in subsection 6.
6. An agency head or hearing officer in an adjudicative proceeding who receives an ex parte communication in violation of this section shall place on the record of the pending matter all written communications received, all written responses to the communications, or a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person from whom the person received an ex parte oral communication, and shall advise all parties, interested persons, and other persons allowed to participate that these matters have been placed on the record. Any person desiring to rebut the ex parte communication must be allowed to do so, upon requesting the opportunity for rebuttal. A request for rebuttal must be made within ten days after notice of the communication.
7. If necessary to eliminate the effect of an ex parte communication received in violation of this section, an agency head or hearing officer in an adjudicative proceeding who receives the communication may be disqualified, upon good cause being shown in writing to the hearing officer or to the agency. The portions of the record pertaining to the communication may be sealed by protective order issued by the agency.
8. The agency shall, and any party may, report any willful violation of this section to the appropriate authorities for any disciplinary proceedings provided by law. In addition, an administrative agency may, by rule, provide for appropriate sanctions, including default, for any violations of this section.
9. Nothing in this section prohibits a member of the general public, not acting on behalf or at the request of any party, from communicating with an agency in cases of general interest. The agency shall disclose such written communications in adjudicative proceedings.

28-32-38. Separation of functions.

1. No person who has served as investigator, prosecutor, or advocate in the investigatory or prehearing stage of an adjudicative proceeding may serve as hearing officer.
2. No person who is subject to the direct authority of one who has served as an investigator, prosecutor, or advocate in the investigatory or prehearing stage of an adjudicative proceeding may serve as hearing officer.
3. Any other person may serve as hearing officer in an adjudicative proceeding, unless a party demonstrates grounds for disqualification.
4. Any person may serve as hearing officer at successive stages of the same adjudicative proceeding, unless a party demonstrates grounds for disqualification.

28-32-39. Adjudicative proceedings - Findings of fact, conclusions of law, and order of agency - Notice.

1. In an adjudicative proceeding an administrative agency shall make and state concisely and explicitly its findings of fact and its separate conclusions of law and the order of the agency based upon its findings and conclusions.
2. If the agency head, or another person authorized by the agency head or by law to issue a final order, is presiding, the order issued is the final order. The agency shall serve a copy of the final order and the findings of fact and conclusions of law on which it is based upon all the parties to the proceeding within thirty days after the evidence has been received, briefs filed, and arguments closed, or as soon thereafter as possible, in the manner allowed for service under the North Dakota Rules of Civil Procedure.
3. If the agency head, or another person authorized by the agency head or by law to issue a final order, is not presiding, then the person presiding shall issue recommended findings of fact and conclusions of law and a recommended order within thirty days after the evidence has been received, briefs filed, and arguments closed, or

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as soon thereafter as possible. The recommended findings of fact and conclusions of law and the recommended order become final unless specifically amended or rejected by the agency head. The agency head may adopt the recommended findings of fact and conclusions of law and the recommended order as final. The agency may allow petitions for review of a recommended order and may allow oral argument pending issuance of a final order. An administrative agency may adopt rules regarding the review of recommended orders and other procedures for issuance of a final order by the agency. If a recommended order is issued, the agency must serve a copy of any final order issued and the findings of fact and conclusions of law on which it is based upon all the parties to the proceeding within sixty days after the evidence has been received, briefs filed, and arguments closed, or as soon thereafter as possible, in the manner allowed for service under the North Dakota Rules of Civil Procedure.

28-32-40. Petition for reconsideration.

1. Any party before an administrative agency who is aggrieved by the final order of the agency, including the administrative agency when the hearing officer is not the agency head or one or more members of the agency head, within fifteen days after notice has been given as required by section 28-32-39, may file a petition for reconsideration with the agency. Filing of the petition is not a prerequisite for seeking judicial review. If the agency's hearing officer issues the agency's final order, the petition for reconsideration must be addressed to the hearing officer, who may grant or deny the petition under subsection 4.
2. Any party, including workforce safety and insurance, that appears before workforce safety and insurance may file a petition for reconsideration within thirty days after notice has been given as required by section 28-32-39.
3. The party must submit with the petition for reconsideration a statement of the specific grounds upon which relief is requested or a statement of any further showing to be made in the proceeding. The petition must also state whether a rehearing is requested. The petition and any statement shall be considered a part of the record in the proceeding.
4. The administrative agency may deny the petition for reconsideration or may grant the petition on such terms as it may prescribe. If a rehearing is granted, the agency may allow a new hearing or limit the hearing as appropriate. The agency may dissolve or amend the final order and set the matter for further hearing. The petition is deemed to have been denied if the agency does not dispose of it within thirty days after the filing of the petition. Any rehearing must be presided over by the same person or persons presiding previously at the hearing, if available. Any amended findings, conclusions, and orders must be issued by the same person or persons who issued the previous recommended or final orders, if available. Within thirty days after the close of proceedings upon reconsideration, or as soon thereafter as possible, the agency shall issue and give notice of its order upon reconsideration as required in subsection 3 of section 28-32-39.
5. This section does not limit the right of any agency to reopen any proceeding or rehear any matter under any continuing jurisdiction which is granted to the agency by statute.

28-32-41. Effectiveness of orders.

Unless a later date is stated in the order, a final order of an administrative agency is effective immediately, but a party may not be required to comply with a final order unless it has been served upon the party and notice is deemed given pursuant to section 28-32-39 or the party has actual knowledge of the final order. A nonparty may not be required to comply with a final order unless the agency has made the final order available for public inspection and copying or the nonparty has actual knowledge of the final order. This section does not preclude an agency from taking emergency action to protect the public health, safety, or welfare as authorized by statute.

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28-32-42. Appeal from determination of agency - Time to appeal - How appeal taken.

1. Any party to any proceeding heard by an administrative agency, except when the order of the administrative agency is declared final by any other statute, may appeal from the order within thirty days after notice of the order has been given as required by section 28-32-39. If a reconsideration has been requested as provided in section 28-32-40, the party may appeal within thirty days after notice of the final determination upon reconsideration has been given as required by sections 28-32-39 and 28-32-40. If an agency does not dispose of a petition for reconsideration within thirty days after the filing of the petition, the agency is deemed to have made a final determination upon which an appeal may be taken.
2. Any interested person who has participated in the rulemaking process of an administrative agency may appeal the agency's rulemaking action if the appeal is taken within ninety days after the date of publication in the North Dakota Administrative Code of the rule resulting from the agency rulemaking action.
3. a. The appeal of an order may be taken to the district court designated by law, and if none is designated, then to the district court of the county in which the hearing or a part thereof was held. If the administrative proceeding was disposed of informally, or for some other reason no hearing was held, an appeal may be taken to the district court of Burleigh County. Only final orders are appealable. A procedural order made by an administrative agency while a proceeding is pending before it is not a final order.
   b. The appeal of an agency's rulemaking action may be taken to the district court of Burleigh County.
4. An appeal shall be taken by serving a notice of appeal and specifications of error specifying the grounds on which the appeal is taken, upon the administrative agency concerned, upon the attorney general or an assistant attorney general, and upon all the parties to the proceeding before the administrative agency, and by filing the notice of appeal and specifications of error together with proof of service of the notice of appeal, and the undertaking required by this section, with the clerk of the district court to which the appeal is taken. In an appeal of an agency's rulemaking action, only the administrative agency concerned, the attorney general, or an assistant attorney general, as well as the legislative council, need to be notified.
5. The notice of appeal must specify the parties taking the appeal as appellants. The agency and all other parties of record who are not designated as appellants must be named as appellees. A notice of appeal of agency rulemaking actions need not name all persons participating in the rulemaking proceeding as appellees. The agency and all parties of record have the right to participate in the appeal. In the appeal of agency rulemaking action, any person who has participated in the rulemaking process has the right to participate in the appeal.
6. A bond or other undertaking for costs on appeal must be filed by the appellant as is required by appellants for costs on appeal in civil cases under the rules of appellate procedure. The bond or other undertaking must be filed with the clerk of the district court with the notice of appeal, must be made to the state of North Dakota, and may be enforced by the agency concerned for and on behalf of the state as obligee. A bond or other undertaking is not required when filing fees have been waived by a district court pursuant to section 27-01-07 or when the costs of preparation and filing of the record of administrative agency proceedings have been waived by a district court pursuant to subsection 3 of section 28-32-44.

28-32-43. Docketing of appeals.

Appeals taken in accordance with this chapter must be docketed as other cases pending in the district court are docketed and must be heard and determined by the court without a jury at such time as the court shall determine.

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28-32-44. Agency to maintain and certify record on appeal.

1. An administrative agency shall maintain an official record of each adjudicative proceeding or other administrative proceeding heard by it.
2. Within thirty days, or a longer time as the court by order may direct, after an appeal has been taken to the district court as provided in this chapter, and after payment by the appellant of the estimated cost of preparation and filing of the entire record of the proceedings before the agency, the administrative agency concerned shall prepare and file in the office of the clerk of the district court in which the appeal is pending the original or a certified copy of the entire record of proceedings before the agency, or an abstract of the record as may be agreed upon and stipulated by the parties. Upon receiving a copy of the notice of appeal and specifications of error pursuant to subsection 4 of section 28-32-42 and unless the agency is appealing, the administrative agency shall notify the party appealing of the estimated costs of preparation and filing of the record. Thereafter, unless the agency is appealing, the party appealing shall pay the administrative agency the estimated costs required by this subsection. If the actual costs of preparation and filing of the entire record of the proceedings is greater than the estimated costs, the party appealing shall pay to the agency the difference. If the actual costs are less than the estimated costs, the agency shall pay to the party appealing the difference. Any payment for the costs of preparation and filing of the record must be paid into the insurance recovery fund and is appropriated as a refund to the agency for the purposes of defraying the costs of preparing and filing the record. An agency may contract with any person or another agency to prepare and file the record of any proceeding before the agency.
3. The cost of preparation and filing of the record may be waived by the district court upon application by an appellant, showing that the appellant is a low-income person unable to afford these costs. When a waiver is granted, the costs of preparation and filing of the record must be paid by the administrative agency.
4. The agency record of the proceedings, as applicable, may consist of only the following:
   a. The complaint, answer, and other initial pleadings or documents.
   b. Notices of all proceedings.
   c. Any prehearing notices, transcripts, documents, or orders.
   d. Any motions, pleadings, briefs, petitions, requests, and intermediate rulings.
   e. A statement of matters officially noticed.
   f. Offers of proof and objections and rulings thereon.
   g. Proposed findings, requested orders, and exceptions.
   h. The transcript of the hearing prepared for the person presiding at the hearing, including all testimony taken, and any written statements, exhibits, reports, memoranda, documents, or other information or evidence considered before final disposition of proceedings.
   i. Any recommended or proposed order, recommended or proposed findings of fact and conclusions of law, final order, final findings of fact and conclusions of law, or findings of fact and conclusions of law or orders on reconsideration.
   j. Any information considered pursuant to section 28-32-25.
   k. Matters placed on the record after an ex parte communication.
5. Except to the extent that this chapter or another statute provides otherwise, the agency record constitutes the exclusive basis for administrative agency action and judicial review of an administrative agency action.
6. The record on review of agency rulemaking action, as applicable, may consist of only the following:
   a. All agency notices concerning proposed rulemaking.
   b. A copy of the proposed rule upon which written and oral submissions were made.
   c. A copy of the rule as submitted for publication.
   d. Any opinion letters by the attorney general as to a rule's legality or the legality of the agency's rulemaking action.

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e. A copy of any interim rule and the agency's findings and statement of the reasons for an interim rule.
f. The regulatory analysis of a proposed rule.
g. The transcript of any oral hearing on a proposed rule.
h. All written submissions made to the agency on a proposed rule.
i. Any staff memoranda or data prepared for agency consideration in regard to the proposed rule.
j. Any other document that the agency believes is relevant to the appeal.
k. Any other document that is not privileged and which is a public record that the appellant requests the agency to include in the record, if relevant to the appeal.

7. If the notice of appeal specifies that no exception or objection is made to the agency's findings of fact, and that the appeal is concerned only with the agency's conclusions of law based on the facts found by it, the agency may submit an abstract of the record along with such portions of the record as the agency deems necessary, to be supplemented by those portions of the record requested to be submitted by the appellant or by the other party when the agency is appealing.
8. The court may permit amendments or additions to the record filed by the administrative agency in order to complete the record.

28-32-45. Consideration of additional or excluded evidence.

If an application for leave to offer additional testimony, written statements, documents, exhibits, or other evidence is made to the court in which an appeal from a determination of an administrative agency is pending, and it is shown to the satisfaction of the court that the additional evidence is relevant and material and that there were reasonable grounds for the failure to offer the evidence in the hearing or proceeding, or that the evidence is relevant and material to the issues involved and was rejected or excluded by the agency, the court may order that the additional evidence be taken, heard, and considered by the agency on terms and conditions as the court may deem proper. After considering the additional evidence, the administrative agency may amend or reject its findings of fact, conclusions of law, and order and shall file with the court a transcript of the additional evidence with its new or amended findings of fact, conclusions of law, and order, if any, which constitute a part of the record with the court.

28-32-46. Scope of and procedure on appeal from determination of administrative agency.

A judge of the district court must review an appeal from the determination of an administrative agency based only on the record filed with the court. After a hearing, the filing of briefs, or other disposition of the matter as the judge may reasonably require, the court must affirm the order of the agency unless it finds that any of the following are present:

1. The order is not in accordance with the law.
2. The order is in violation of the constitutional rights of the appellant.
3. The provisions of this chapter have not been complied with in the proceedings before the agency.
4. The rules or procedure of the agency have not afforded the appellant a fair hearing.
5. The findings of fact made by the agency are not supported by a preponderance of the evidence.
6. The conclusions of law and order of the agency are not supported by its findings of fact.
7. The findings of fact made by the agency do not sufficiently address the evidence presented to the agency by the appellant.
8. The conclusions of law and order of the agency do not sufficiently explain the agency's rationale for not adopting any contrary recommendations by a hearing officer or an administrative law judge.

If the order of the agency is not affirmed by the court, it must be modified or reversed, and the case shall be remanded to the agency for disposition in accordance with the order of the court.

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28-32-47. Scope of and procedure on appeal from agency rulemaking.

A judge of the district court shall review an appeal from an administrative agency's rulemaking action based only on the record filed with the court. If an appellant requests documents to be included in the record but the agency does not include them, the court, upon application by the appellant, may compel their inclusion. After a hearing, the filing of briefs, or other disposition of the matter as the judge may reasonably require, the court shall affirm the agency's rulemaking action unless it finds that any of the following are present:

1. The provisions of this chapter have not been substantially complied with in the agency's rulemaking actions.
2. A rule published as a result of the rulemaking action appealed is unconstitutional on the face of the language adopted.
3. A rule published as a result of the rulemaking action appealed is beyond the scope of the agency's authority to adopt.
4. A rule published as a result of the rulemaking action appealed is on the face of the language adopted an arbitrary or capricious application of authority granted by statute.

If the rulemaking action of the agency is not affirmed by the court, it must be remanded to the agency for disposition in accordance with the order of the court, or the rule or a portion of the rule resulting from the rulemaking action of the agency must be declared invalid for reasons stated by the court.

28-32-48. Appeal - Stay of proceedings.

An appeal from an order or the rulemaking action of an administrative agency does not stay the enforcement of the order or the effect of a published rule unless the court to which the appeal is taken, upon application and after a hearing or the submission of briefs, orders a stay. The court may impose terms and conditions for a stay of the enforcement of the order or for a stay in the effect of a published rule. This section does not prohibit the operation of an automatic stay upon the enforcement of an administrative order as may be required by another statute.

28-32-49. Review in supreme court.

The judgment of the district court in an appeal from an order or rulemaking action of an administrative agency may be reviewed in the supreme court on appeal in the same manner as provided in section 28-32-46 or 28-32-47, except that the appeal to the supreme court must be taken within sixty days after the service of the notice of entry of judgment in the district court. Any party of record, including the agency, may take an appeal from the final judgment of the district court to the supreme court. If an appeal from the judgment of the district court is taken by an agency, the agency may not be required to pay a docket fee or file a bond for costs or equivalent security.

28-32-50. Actions against administrative agencies - Attorney's fees and costs.

1. In any civil judicial proceeding involving as adverse parties an administrative agency and a party not an administrative agency or an agent of an administrative agency, the court must award the party not an administrative agency reasonable attorney's fees and costs if the court finds in favor of that party and, in the case of a final agency order, determines that the administrative agency acted without substantial justification.
2. This section applies to an administrative or civil judicial proceeding brought by a party not an administrative agency against an administrative agency for judicial review of a final agency order, or for judicial review pursuant to this chapter of the legality of agency rulemaking action or a rule adopted by an agency as a result of the rulemaking action being appealed.
3. Any attorney's fees and costs awarded pursuant to this section must be paid from funds available to the administrative agency the final order, rulemaking action, or rule of which was reviewed by the court. The court may withhold all or part of the attorney's fees from any award if the court finds the administrative agency's action, in the case of a final agency order, was substantially justified or that special circumstances exist which make the award of all or a portion of the attorney's fees unjust.

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4. This section does not alter the rights of a party to collect any fees under other applicable law.
5. In any civil judicial proceeding involving adverse parties to an appeal or enforcement action involving an environmental permit issued under chapter 23-20.3, 23-25, 23-29, or 61-28 in which two or more of the adverse parties are not an administrative agency or an agent of an administrative agency, the court may award the prevailing nonagency party reasonable attorney's fees and costs if the court finds in favor of that party and determines that the nonprevailing nonagency party acted without substantial justification, or on the basis of claims or allegations that are factually unsupported. The court shall award reasonable attorney's fees and costs if the court determines that the nonprevailing nonagency party's claims or allegations are frivolous as provided in section 28-26-01. If the appeal or civil judicial proceeding covered by this subsection involves multiple claims or allegations, the court may apportion attorney's fees and costs in proportion to the time reasonably spent by a prevailing party relating to claims pursued by the nonprevailing party that were frivolous, factually unsupported, or without substantial justification.

(Contingent effective date - See note) Actions against administrative agencies - Attorney's fees and costs.

1. In any civil judicial proceeding involving as adverse parties an administrative agency and a party not an administrative agency or an agent of an administrative agency, the court must award the party not an administrative agency reasonable attorney's fees and costs if the court finds in favor of that party and, in the case of a final agency order, determines that the administrative agency acted without substantial justification.
2. This section applies to an administrative or civil judicial proceeding brought by a party not an administrative agency against an administrative agency for judicial review of a final agency order, or for judicial review pursuant to this chapter of the legality of agency rulemaking action or a rule adopted by an agency as a result of the rulemaking action being appealed.
3. Any attorney's fees and costs awarded pursuant to this section must be paid from funds available to the administrative agency the final order, rulemaking action, or rule of which was reviewed by the court. The court may withhold all or part of the attorney's fees from any award if the court finds the administrative agency's action, in the case of a final agency order, was substantially justified or that special circumstances exist which make the award of all or a portion of the attorney's fees unjust.
4. This section does not alter the rights of a party to collect any fees under other applicable law.
5. In any civil judicial proceeding involving adverse parties to an appeal or enforcement action involving an environmental permit issued under chapter 23.1-04, 23.1-06, 23.1-08, or 61-28 in which two or more of the adverse parties are not an administrative agency or an agent of an administrative agency, the court may award the prevailing nonagency party reasonable attorney's fees and costs if the court finds in favor of that party and determines that the nonprevailing nonagency party acted without substantial justification, or on the basis of claims or allegations that are factually unsupported. The court shall award reasonable attorney's fees and costs if the court determines that the nonprevailing nonagency party's claims or allegations are frivolous as provided in section 28-26-01. If the appeal or civil judicial proceeding covered by this subsection involves multiple claims or allegations, the court may apportion attorney's fees and costs in proportion to the time reasonably spent by a prevailing party relating to claims pursued by the nonprevailing party that were frivolous, factually unsupported, or without substantial justification.

28-32-51. Witnesses - Immunity.

If any person objects to testifying or producing evidence, documentary or otherwise, at any proceeding before an administrative agency, claiming a privilege against self-incrimination, but is directed to testify or produce evidence pursuant to the written approval of the attorney general, that person must comply with the direction but no testimony or evidence compelled

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from that person, after a valid claim of privilege against self-incrimination has been made, may be used against that person in any criminal proceeding subjecting that person to a penalty or forfeiture. No person testifying at any proceeding before an administrative agency may be exempted from prosecution and punishment for perjury or giving a false statement, or for contempt committed in answering, or failing to answer, or in producing, or in failing to produce, evidence pursuant to direction given under this section.

28-32-52. Elected official authority.

This chapter does not prohibit an elected official from presiding at that agency's cases, nor from deciding cases within that agency's jurisdiction.

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ARTICLE 85-01
GENERAL ADMINISTRATION

Chapter
85-01-01 Definitions and General Provisions

CHAPTER 85-01-01
DEFINITIONS AND GENERAL PROVISIONS

Section
85-01-01-01 Definitions
85-01-01-02 Exception

85-01-01-01. Definitions.

The following definitions, in addition to the definitions in North Dakota Century Code chapters 15-05, 15-06, 15-07, 47-30.1, and 57-62, apply to this title:

1. "Board" means the board of university and school lands.
2. "Commissioner" means the commissioner of university and school lands.
3. "Department" means the office of the commissioner and the department of trust lands.
4. "Trust lands" means any property owned by the state of North Dakota and managed by the board.
5. "Trusts" means permanent trusts and other funds managed or controlled by the board.

History: Effective January 1, 2019.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 15-01

85-01-01-02. Exception.

The board may grant an exception to article 85-03, after due notice and hearing, when such exception is in the best interests of the trusts.

History: Effective January 1, 2019.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 15-01-02

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ARTICLE 85-02
ENERGY INFRASTRUCTURE AND IMPACT GRANTS

Chapter
85-02-01 Definitions
85-02-02 Grant Processing
85-02-03 Grant Award
85-02-04 Aged Grants

CHAPTER 85-02-01
DEFINITIONS

Section
85-02-01-01 Definitions

85-02-01-01. Definitions.

The following definitions, in addition to the definitions in North Dakota Century Code chapter 57-62, apply to this article:

1. "Advisory committee" means the committee selected by the board to review grant applications and make recommendations to the board. Committee members must possess expertise and experience within a particular sector relevant to the grants being awarded.

2. "Aged grant" means a grant that has not been fully expended, is past the expected completion date, and does not have written approval to extend the completion date.

3. "Director" means the director of the energy infrastructure and impact office or director's designee.

History: Effective January 1, 2019.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 15-01-02, 57-62-05

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CHAPTER 85-02-02
GRANT PROCESSING

Section
85-02-02-01 Grant Announcement
85-02-02-02 Applications
85-02-02-03 Signatures
85-02-02-04 Scoring
85-02-02-05 Assignment of Funds
85-02-02-06 Supplement
85-02-02-07 Advisory Committee Recommendations

85-02-02-01. Grant announcement.

All grant announcements must be posted on the energy impact webpage. Grant announcements may be sent either electronically or by postal mail to:

1. Media contacts;
2. Members of the North Dakota legislative assembly;
3. North Dakota league of cities or association of counties, whichever applies;
4. Other associations representing targeted grant sectors;
5. Board members;
6. All department contacts for the targeted grant sector; and
7. Anyone who requests a copy.

History: Effective January 1, 2019.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 57-62-05

85-02-02-02. Applications.

1. An applicant shall complete and submit a grant application prescribed by the director along with supporting documentation, including engineer estimates, vendor bids or quotes, most recent audited financial statements, established budget for the political subdivision, mill levy and taxable valuation used to determine the mill levy, and any other supplemental information requested by the director or published in the grant announcement.
2. A grant application must be received by the energy infrastructure and impact office before the deadline listed in the grant announcement. For good cause shown, a grant application received after the deadline may be considered at the discretion of the advisory committee, board, or director.

History: Effective January 1, 2019.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 57-62-05

85-02-02-03. Signatures.

1. For political subdivisions, a grant application must be signed by an appointed or elected government official and the primary fiscal officer assigned the duties of managing grant communications, reports, and reimbursement requests.

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2. For an entity exempted from statutory political subdivision requirements, a grant application must be signed by the primary executive and the primary fiscal officer assigned the duties of managing grant communications, reports, and reimbursement requests.

3. An electronic signature is permissible.

History: Effective January 1, 2019.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 57-62-05, 57-62-06

85-02-02-04. Scoring.

The director has discretion not to score a substantially incomplete application, resulting in the disqualification of the substantially incomplete application. In reviewing a grant application, the following may be considered:

1. Objective;

2. Project readiness and timeline for completion;

3. Impact of energy activity;

4. Health, welfare, and safety of citizens where the project contributes to sustained economic development or activity;

5. Budget and other available funding;

6. Completeness of the application; and

7. Any other criteria deemed relevant by the advisory committee, board, or director.

History: Effective January 1, 2019.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 57-62-05, 57-62-06

85-02-02-05. Assignment of funds.

If an advisory committee is appointed, it shall review each application and assign a recommended amount to each grantee, the aggregate not to exceed that authorized by the board.

History: Effective January 1, 2019.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 15-01-02, 57-62-05

85-02-02-06. Supplement.

If approved in advance by the director, an applicant may supplement its application.

History: Effective January 1, 2019.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 57-62-05

85-02-02-07. Advisory committee recommendations.

The advisory committee, if appointed, shall submit to the director its recommendations for funding, as well as a list of the applications not recommended for funding. The director shall submit the recommendations for the board's consideration and approval. The director may also submit the director's recommendations, if different from the advisory committee, for board consideration and approval.

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History: Effective January 1, 2019.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 15-01-02, 57-62-05

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CHAPTER 85-02-03
GRANT AWARD

Section
85-02-03-01 Authority
85-02-03-02 Signatures
85-02-03-03 Acceptance of Grant
85-02-03-04 Vendor Registry
85-02-03-05 Grant Period
85-02-03-06 Progress Report
85-02-03-07 Payment of Grant
85-02-03-08 Grant Extension or Retirement
85-02-03-09 Changes to Purpose or Scope of Project

85-02-03-01. Authority.

The board retains final authority to award grant funds.

History: Effective January 1, 2019.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 15-01-02

85-02-03-02. Signatures.

All correspondence, grant extension requests, grant allocation change requests, or other presentations must be signed by the following:

1. A political subdivision--an appointed or elected government official.

2. An entity exempted from statutory political subdivision requirements--the primary executive or the primary fiscal officer assigned the duties of managing grant communications, reports, and reimbursement requests.

History: Effective January 1, 2019.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 57-62-05, 57-62-06

85-02-03-03. Acceptance of grant.

A grant recipient shall receive written notification of the grant awarded by the board from the director. The grant recipient shall acknowledge and return, within thirty days of the date of the notice, the recipient's acceptance or declination of funds on a form provided by the director. If a recipient fails to acknowledge acceptance of the grant funds within the thirty days, the board may declare the grant award void.

History: Effective January 1, 2019.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 15-01-02, 57-62-05

85-02-03-04. Vendor registry.

A grant recipient must be registered with the office of management and budget as an active participant to receive electronic payment transactions.

History: Effective January 1, 2019.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 57-62-05

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85-02-03-05. Grant period.

The length of a grant period is three years, unless otherwise adjusted by the board.

History: Effective January 1, 2019.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 57-62-05

85-02-03-06. Progress report.

1. The grantee shall submit to the director a biannual progress report, prescribed by the energy infrastructure and impact office. The biannual progress report must be received by the energy infrastructure and impact office by the twentieth day of June and December of every year of the project.

2. The director may conduct onsite project status visits to review and document utilization of the grant. The director shall provide advance notice to the grantee of any project status visits. The grantee shall provide the director with any project documentation upon request by the director; assist with inspection of equipment purchased, completed construction, or review of any other project expenditures; and provide a description of the remaining budget and timeline for the project.

3. If a grantee is delinquent in submitting a progress report or does not comply with the project status visit, the director may delay grant reimbursements.

History: Effective January 1, 2019.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 57-62-05

85-02-03-07. Payment of grant.

1. Grant funds are distributed based on documentation of either expenditures for project completion or asset acquisition, as approved by the director. Reimbursement may be authorized in phases or based on the incurrence of expenditures by the grantee. A grantee shall submit a request for reimbursement on forms prescribed by the energy infrastructure and impact office in order to receive reimbursement. A request for reimbursement must include:

   a. A vendor invoice; and

   b. Documentation of payment or formal meeting minutes, if authority is required by a governing body, which approves payment of project expenditures.

2. The director shall transmit the reimbursement electronically, if possible.

3. For final payment, the grantee shall submit a request for reimbursement no later than twenty days after the end of the grant period.

History: Effective January 1, 2019.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 57-62-05

85-02-03-08. Grant extension or retirement.

1. The grantee may submit a written request to the director if a grant project will not be completed by expiration of the grant period. The request must be received by the director no later than seventy-five days prior to expiration of the grant period. The request must detail:

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a. The necessity for the request and the specific reasons why the project cannot be completed by the end of the grant period;

b. The portion of the project completed since the grant was awarded;

c. The efforts the grantee has taken to complete the project prior to expiration of the grant period;

d. The timeline for completion of the project; and

e. Any additional information requested by the director.

2. The grantee shall submit written notice to the director of a project's completion and any remaining unused funds prior to the expiration of the grant period. If a project is not initiated, a grantee shall submit written notice of project retirement to the director. The board may retire the grant and return the remaining balance to the originating grant fund.

History: Effective January 1, 2019.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 57-62-05

85-02-03-09. Changes to purpose or scope of project.

Funds must be used for the purpose or scope proposed in the grantee's application, unless a grantee makes a written request to the director for authorization to modify the purpose or scope of the project. The grantee must provide supporting documentation detailing the proposed modification. Authorization for a modification may be granted, as follows:

1. A modification that does not change the overall project goals, as originally proposed, may be approved by the director.

2. A modification that changes the overall project goals, as originally proposed, or reallocates the funding to costs not included in the grantee's application may only be approved by the board.

History: Effective January 1, 2019.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 15-01-02, 57-62-05

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CHAPTER 85-02-04
AGED GRANTS

Section
85-02-04-01 Aged Grants
85-02-04-02 Grant Deemed Unresponsive

85-02-04-01. Aged grants.

In the event of an aged grant, the director shall notify the grantee in writing that the board intends to cancel the grant and retire the remaining balance. Within fifteen days of the postmark of the notice, the grantee shall:

1. Submit a written response to the director indicating that the grantee concurs with cancellation of the grant; or

2. Submit a request for a grant extension.

History: Effective January 1, 2019.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 57-62-05

85-02-04-02. Grant deemed unresponsive.

A grantee that does not respond to the director's notice is deemed to concur with the cancellation of the grant. The board may cancel the grant immediately and retire the remaining balance to the originating grant fund. If an extension of an aged grant is not granted, the board may cancel the grant immediately and retire the remaining balance to the originating grant fund.

History: Effective January 1, 2019.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 15-01-02, 57-62-05

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ARTICLE 85-03
UNCLAIMED PROPERTY

Chapter
85-03-01 Definitions
85-03-02 Reporting Abandoned Property
85-03-03 Claiming Property

CHAPTER 85-03-01
DEFINITIONS

Section
85-03-01-01 Definitions

85-03-01-01. Definitions.

The following definitions, in addition to the definitions in North Dakota Century Code chapter 47-30.1, apply to this article:

1. "Claim" means the formal filing that initiates the process of returning unclaimed property to the rightful owner.

2. "Claimant" means the individual submitting the claim form for unclaimed property.

3. "Claim form" means the form prescribed by the administrator by which a claim can be initiated.

4. "Due diligence" means the holder's efforts to contact the owner prior to remitting property to the administrator, as required under North Dakota Century Code section 47-30.1-17.

5. "Heir finder" means an individual or business that assists owners in locating unclaimed property for a fee.

History: Effective January 1, 2019.
General Authority: NDCC 47-30.1-38
Law Implemented: NDCC 47-30.1

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CHAPTER 85-03-02
REPORTING ABANDONED PROPERTY

Section
85-03-02-01 Electronic Reporting of Abandoned Property
85-03-02-02 Information Contained in Reports
85-03-02-03 Due Diligence
85-03-02-04 Mineral Proceeds
85-03-02-05 Early Reporting

85-03-02-01. Electronic reporting of abandoned property.

A holder shall report abandoned property electronically to the administrator in the standard national association of unclaimed property administrators' format.

History: Effective January 1, 2019.
General Authority: NDCC 47-30.1-38
Law Implemented: NDCC 47-30.1-17, 47-30.1-27

85-03-02-02. Information contained in reports.

In addition to the requirements in North Dakota Century Code section 47-30.1-17, a holder shall submit the following information in the report, if available:

1. Owner social security number;
2. Identifying account or policy number;
3. Owner date of birth;
4. Payee and remitter information for all cashier's checks, money orders, and traveler's checks; and
5. For mineral proceeds, a legal land description, well number, recording information, and any other information to adequately describe the lease.

History: Effective January 1, 2019.
General Authority: NDCC 47-30.1-38
Law Implemented: NDCC 47-30.1-17, 47-30.1-27

85-03-02-03. Due diligence.

Holder due diligence, including written or electronic communication, must include:

1. A deadline for owner response to holder;
2. Property type;
3. Property value; and
4. Unclaimed property division contact information.

History: Effective January 1, 2019.
General Authority: NDCC 47-30.1-38
Law Implemented: NDCC 47-30.1-17

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85-03-02-04. Mineral proceeds.

A holder shall accumulate mineral proceeds and submit an annual lump sum report to the administrator by November first for the amount due through June thirtieth.

History: Effective January 1, 2019.
General Authority: NDCC 47-30.1-38
Law Implemented: NDCC 47-30.1-16.1, 47-30.1-17, 47-30.1-27

85-03-02-05. Early reporting.

A holder may report property before it is deemed abandoned if the holder:

1. Has been granted prior written approval by the administrator; and

2. Demonstrates to the satisfaction of the administrator that due diligence has been performed.

History: Effective January 1, 2019.
General Authority: NDCC 47-30.1-38
Law Implemented: NDCC 47-30.1-17, 47-30.1-27

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CHAPTER 85-03-03
CLAIMING PROPERTY

Section
85-03-03-01 Claims
85-03-03-02 Required Documentation
85-03-03-03 Payment of Claim
85-03-03-04 Heir Finder Requests
85-03-03-05 Claims Submitted by Heir Finder

85-03-03-01. Claims.

A claim must be submitted on a claim form and signed under penalty of perjury.

History: Effective January 1, 2019.
General Authority: NDCC 47-30.1-38
Law Implemented: NDCC 47-30.1-24, 47-30.1-24.1, 47-30.1-25

85-03-03-02. Required documentation.

A claimant shall provide adequate documentation to establish ownership of the abandoned property, including photo identification and documentation of social security number.

1. The following additional documentation is required when a claim is submitted on behalf of:

   a. Deceased individuals: Copy of death certificate and documentation providing legal claim authority.

   b. Business claims: Federal employer identification number and documentation providing legal claim authority.

   c. Incapacitated individuals: Copy of documentation providing legal claim authority.

2. If there are multiple owners, all reported owners or the legal representative shall submit a claim form.

3. The administrator may request additional documentation necessary to support a claim.

4. If a claimant chooses to donate the property to the common schools trust fund, required documentation remains the same.

History: Effective January 1, 2019.
General Authority: NDCC 47-30.1-38
Law Implemented: NDCC 47-30.1-24, 47-30.1-24.1, 47-30.1-25

85-03-03-03. Payment of claim.

Upon approval of a claim, payment must be issued:

1. In the name of the reported owner;

2. In accordance with a court order; or

3. In the name of the rightful owner, as determined by the administrator, based on the records of the holder and other information available to the administrator.

History: Effective January 1, 2019.
General Authority: NDCC 47-30.1-38

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Law Implemented: NDCC 47-30.1-24, 47-30.1-25

85-03-03-04. Heir finder requests.

1. An electronic list of owners must be provided upon request. The list includes:
   a. Property held by the unclaimed property division as of the date of the request;
   b. Owner's name;
   c. Owner's last known address;
   d. Holder information;
   e. Date of last activity; and
   f. Type of property.
2. A paper copy of the list must be provided upon request for a fee to be set by the administrator.

History: Effective January 1, 2019.
General Authority: NDCC 47-30.1-38
Law Implemented: NDCC 47-30.1-19.1

85-03-03-05. Claims submitted by heir finder.

An approved claim submitted by an heir finder must be paid in the name of the original owner.

History: Effective January 1, 2019.
General Authority: NDCC 47-30.1-38
Law Implemented: NDCC 47-30.1-24, 47-30.1-35

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TITLE 15
EDUCATION

CHAPTER 15-01
BOARD OF UNIVERSITY AND SCHOOL LANDS

15-01-01. Board - Membership - Officers.

The governor, secretary of state, state treasurer, attorney general, and superintendent of public instruction shall constitute the "board of university and school lands". The governor must be the chairman, the secretary of state must be the vice chairman, and the commissioner of university and school lands must be the secretary of the board. In the absence of the commissioner at any meeting of the board, the deputy commissioner of university and school lands shall act as secretary. When acting as the board of university and school lands, the members of the board shall act in person and may not be represented by any assistant, clerk, or deputy.

15-01-02. Powers - Control of public lands and permanent funds.

The board has:

1. Full control of the selection, appraisement, rental, sale, disposal, and management of:
   a. Lands donated or granted by or received from the United States or from any other source for the support and maintenance of the common schools.
   b. All lands which fall to the state by escheat.
   c. All lands donated or granted by or received from the United States or from any other source for the maintenance of the educational, penal, or charitable institutions.
   d. All lands acquired by the state through the investment of the permanent school funds of the state as the result of mortgage foreclosure or otherwise.
2. Full control of the investment of the permanent funds derived from the sale of any of the lands described in subsection 1.
3. Full control of such percent of the proceeds of any sale of public lands as may be granted to the state by the United States on such sale.
4. Full control of the proceeds of any property that fall to the state by escheat and of the proceeds of all gifts and donations to the state for the support or maintenance of the common schools, and of all other property otherwise acquired by the state for the maintenance of the common schools. Any gift to the state not specifically appropriated to any other purpose must be considered as a gift for the support and maintenance of the common schools.
5. Authority to expend moneys for the purpose of making refunds in cases in which an error has been made by the board, or a person dealing with the board, with regard to any of the lands, minerals, funds, proceeds, or any other kind of property managed by the board. Moneys expended to make refunds must come from the same fund or account into which the money to be refunded was originally placed.
6. Authority to award and distribute energy infrastructure and impact grants from moneys deposited in the oil and gas impact grant fund, except that grants awarded annually may not exceed sixty percent of the biennial appropriation for energy infrastructure and impact grants. The board may create an advisory committee to assist the board in making its grant award determinations.

15-01-02.1. Board of university and school lands to set and establish fees - Collections.

The board of university and school lands shall have authority to set and establish fees in amounts equal to the cost of the issuance of patents, deeds, leases, assignments, land contracts, holding land sales, furnishing documents, receiving and processing all loans made by the board, managing property acquired under chapter 15-08.1, and managing property for other

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state entities. All fees provided for in this section must be deposited in the state lands maintenance fund.

15-01-03. Meetings of board - Quorum.

The board shall meet on the last Thursday of each month. If it appears a quorum will not be present for any meeting of the board, the meeting may be rescheduled by the commissioner upon reasonable notice to all members. Special meetings of the board may be held at any time at the written call of the chairman, the commissioner, or any two members of the board. Three members of the board constitute a quorum.

15-01-04. Record of meeting.

The secretary of the board shall enter in a suitable book kept for that purpose a full and correct record of all the proceedings of the board at each session thereof. The record, when approved by the board, must be signed by the chairman or presiding officer of the meeting and by the secretary.

15-01-05. Expenses of board - How paid - Limitations.

Necessary incidental expenses of the board, within the limits of any appropriation made therefor by the legislative assembly, must be paid by the office of management and budget from the state land maintenance fund upon satisfactory vouchers. The office of management and budget shall issue its warrant for such expenses.

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prescribe the terms and conditions of such loans within the provisions of this chapter and shall require a warrant executed by the governing body of the county, city, or school district as evidence of such loan. The warrants must bear interest at a rate not to exceed six percent. The warrants shall be payable only from the allocations of moneys from the coal development fund to the borrowing county, city, or school district and shall not constitute a general obligation of the county, city, or school district nor may such loans be considered as indebtedness of the county, city, or school district. Loans made in advance of actual coal mining must provide that repayment is to begin when the borrowing county, city, or school district receives allocations from the coal development fund. The terms of the loan must provide that not less than ten percent of each allocation made to the borrowing county, city, or school district pursuant to this chapter must be withheld by the state treasurer to repay the principal of the warrants and the interest thereon. The amount withheld by the state treasurer as payment of interest must be deposited in the general fund and the amount withheld by the state treasurer as payment of principal must be remitted to the board of university and school lands and deposited by the board in the trust fund provided for in subsection 2 of section 57-62-02. The warrants executed by the county, city, or school district have all of the qualities and incidents of negotiable paper and are not subject to taxation by the state of North Dakota or by any political subdivision thereof.

The board of university and school lands is authorized to sell such warrants to other parties and the proceeds of such sale which constitute principal must be deposited in the coal development trust fund and that which constitutes interest in the general fund. If the future allocations of moneys to the borrowing county, city, or school district should, for any reason, permanently cease, the loan shall be canceled except that if the county, city, or school district is merged with another county, city, or school district which receives an allocation of moneys from the coal development fund, the surviving county, city, or school district is obligated to repay the loan from such allocation. If the loan is canceled due to the permanent cessation of allocations of moneys to the county, city, or school district pursuant to this chapter, the board of university and school lands shall cancel those warrants it holds from such county, city, or school district and shall pay from any moneys in the trust fund provided for in subsection 2 of section 57-62-02 the principal and interest, as it becomes due, on those warrants of the county, city, or school district which are held by another party.

57-62-03.1. Oil and gas impact grant fund.

The moneys accumulated in the oil and gas impact grant fund must be allocated as provided by law and as appropriated by the legislative assembly for distribution through grants by the energy infrastructure and impact office to oil and gas development-impacted cities, counties, school districts, and other taxing districts or for industrial commission enforcement of laws and rules relating to geophysical exploration in this state.

57-62-04. Energy infrastructure and impact office - Appointment of director.

There is hereby created an energy infrastructure and impact office, to be a division within the office of the commissioner of the board of university and school lands, the director of which must be appointed by and serve at the pleasure of the board of university and school lands. The director shall have knowledge of state and local government and shall have experience or training in the fields of taxation and accounting. The salary of the director must be set by the commissioner of university and school lands within the limits of legislative appropriations. The director may employ such other persons as may be necessary and may fix their compensation within the appropriation made for such purpose. The board of university and school lands shall fill any vacancy in the position of director in the same manner as listed above. All action by the board of university and school lands, including appointment of a director, must be by majority vote.

57-62-05. Powers and duties of energy infrastructure and impact office director.

The energy infrastructure and impact office director shall:

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1. Develop a plan for the assistance, through financial grants for services and facilities, of counties, cities, school districts, and other political subdivisions in coal development and oil and gas development impact areas.
2. Establish procedures and provide proper forms to political subdivisions for use in making application for funds for impact assistance as provided in this chapter.
3. Make grants disbursements to counties, cities, school districts, and other taxing districts for grants awarded by the board of university and school lands pursuant to chapter 15-01, as provided in this chapter and within the appropriations made for such purposes. In determining the amount of impact grants for which political subdivisions are eligible, consideration must be given to the amount of revenue to which such political subdivisions will be entitled from taxes upon the real property of coal and oil and gas development plants and from other tax or fund distribution formulas provided by law.
4. Receive and review applications for impact assistance pursuant to this chapter.
5. Make recommendations to the board of university and school lands on grants to counties, cities, school districts, and other political subdivisions in oil and gas development impact areas based on identified needs, and other sources of revenue available to the political subdivision.

57-62-06. Legislative intent and guidelines on impact grants.

The legislative assembly intends that the moneys appropriated to, and distributed by, the energy infrastructure and impact office for grants are to be used by grantees to meet initial impacts affecting basic governmental services, and directly necessitated by coal development and oil and gas development impact. As used in this section, "basic governmental services" do not include activities relating to marriage or guidance counseling, services or programs to alleviate other sociological impacts, or services or facilities to meet secondary impacts. All grant applications and presentations to the energy infrastructure and impact office must be made by an appointed or elected government official.

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(3) Give a clearly improper advantage to persons who are in an adverse position to the state.

c. A rule establishing specific prices to be charged for particular goods or services sold by an agency.

d. A rule concerning only the physical servicing, maintenance, or care of agency-owned or agency-operated facilities or property.

e. A rule relating only to the use of a particular facility or property owned, operated, or maintained by the state or any of its subdivisions, if the substance of the rule is adequately indicated by means of signs or signals to persons who use the facility or property.

f. A rule concerning only inmates of a correctional or detention facility, students enrolled in an educational institution, or patients admitted to a hospital, if adopted by that facility, institution, or hospital.

g. A form whose contents or substantive requirements are prescribed by rule or statute or are instructions for the execution or use of the form.

h. An agency budget.

i. An opinion of the attorney general.

j. A rule adopted by an agency selection committee under section 54-44.7-03.

k. Any material, including a guideline, interpretive statement, statement of general policy, manual, brochure, or pamphlet, which is explanatory and not intended to have the force and effect of law.

28-32-02. Rulemaking power of agency - Organizational rule.

1. The authority of an administrative agency to adopt administrative rules is authority delegated by the legislative assembly. 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.
2. In addition to other rulemaking requirements imposed by law, each agency may include in its rules a description of that portion of its organization and functions subject to this chapter and may include a statement of the general course and method of its operations and how the public may obtain information or make submissions or requests.

28-32-03. Emergency rules.

1. If the agency, with the approval of the governor, finds that emergency rulemaking is necessary, the agency may declare the proposed rule to be an interim final rule effective on a date no earlier than the date of filing with the legislative council of the notice required by section 28-32-10.
2. A proposed rule may be given effect on an emergency basis under this section if any of the following grounds exists regarding that rule:
   a. Imminent peril threatens public health, safety, or welfare, which would be abated by emergency effectiveness;
   b. A delay in the effective date of the rule is likely to cause a loss of funds appropriated to support a duty imposed by law upon the agency;
   c. Emergency effectiveness is reasonably necessary to avoid a delay in implementing an appropriations measure; or
   d. Emergency effectiveness is necessary to meet a mandate of federal law.
3. A final rule adopted after consideration of all written and oral submissions respecting the interim final rule, which is substantially similar to the interim final rule, is effective as of the declared effective date of the interim final rule.
4. The agency's finding, and a brief statement of the agency's reasons for the finding, must be filed with the legislative council with the final adopted emergency rule.
5. The agency shall attempt to make interim final rules known to persons who the agency can reasonably be expected to believe may have a substantial interest in them. As

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Sixty-fifth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2017

HOUSE BILL NO. 1300
(Representatives Kempenich, K. Koppelman, Olson)
(Senators Klein, D. Larson, Unruh)

AN ACT to amend and reenact subsection 2 of section 28-32-01 of the North Dakota Century Code, relating to agencies exempt from the definition of administrative agency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Administrative agency" or "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency. An administrative unit located within or subordinate to an administrative agency must be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. The term administrative agency does not include:

   a. The office of management and budget except with respect to rules made under section 32-12.2-14, rules relating to conduct on the capitol grounds and in buildings located on the capitol grounds under section 54-21-18, rules relating to the classified service as authorized under section 54-44.3-07, and rules relating to state purchasing practices as required under section 54-44.4-04.

   b. The adjutant general with respect to the department of emergency services.

   c. The council on the arts.

   d. The state auditor.

   e. The department of commerce with respect to the division of economic development and finance.

   f. The dairy promotion commission.

   g. The education factfinding commission.

   h. The educational technology council.

   i. The board of equalization.

   j. The board of higher education.

   k. The Indian affairs commission.

   l. The industrial commission with respect to the activities of the Bank of North Dakota, North Dakota housing finance agency, public finance authority, North Dakota mill and elevator association, North Dakota farm finance agency, the North Dakota transmission authority, and the North Dakota pipeline authority.

   m. The department of corrections and rehabilitation except with respect to the activities of the division of adult services under chapter 54-23.4.

   n. The pardon advisory board.

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o. The parks and recreation department.

p. The parole board.

q. The state fair association.

r. The attorney general with respect to activities of the state toxicologist and the state crime laboratory.

s. ~~The board of university and school lands except with respect to activities under chapter 47-30.1.~~

~~t.~~ The administrative committee on veterans' affairs except with respect to rules relating to the supervision and government of the veterans' home and the implementation of programs or services provided by the veterans' home.

~~u.~~t. The industrial commission with respect to the lignite research fund except as required under section 57-61-01.5.

~~v.~~u. The attorney general with respect to guidelines adopted under section 12.1-32-15 for the risk assessment of sexual offenders, the risk level review process, and public disclosure of information under section 12.1-32-15.

~~w.~~v. The commission on legal counsel for indigents.

~~x.~~w. The attorney general with respect to twenty-four seven sobriety program guidelines and program fees.

~~y.~~x. The industrial commission with respect to approving or setting water rates under chapter 61-40.

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Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-fifth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1300.

House Vote:	Yeas 88	Nays 2	Absent 4
Senate Vote:	Yeas 43	Nays 3	Absent 1

Chief Clerk of the House

Received by the Governor at _____M. on _____, 2017.

Approved at _____M. on _____, 2017.

Governor

Filed in this office this _____day of _____, 2017,

at _____ o'clock _____M.

Secretary of State

North Dakota Legislative Branch

Bill Actions for HB 1300

Send me to Bill No. (9999): Go!

HJ=House Journal; SJ=Senate Journal

Introduced by Rep. Kempenich, K. Koppelman, Olson

Introduced by Sen. Klein, D. Larson, Unruh

AN ACT to amend and reenact subsection 2 of section 28-32-01 of the North Dakota Century Code, relating to agencies exempt from the definition of administrative agency.

Date	Chamber	Meeting Description	Journal
01/12	House	Introduced, first reading, referred Political Subdivisions Committee	HJ 125
01/27	House	Committee Hearing 10:30	
01/31	House	Reported back, do pass, place on calendar 13 1 1	HJ 310
02/06	House	Second reading, passed, yeas 88 nays 2	HJ 378
02/20	Senate	Received from House	SJ 542
		Introduced, first reading, referred Political Subdivisions Committee	SJ 568
03/01	Senate	Request return from committee	SJ 648
		Rereferred to Energy and Natural Resources	SJ 648
03/10	Senate	Committee Hearing 09:00	
04/03	Senate	Reported back amended, do pass, amendment placed on calendar 6 1 0	SJ 1090
04/04	Senate	Laid over one legislative day	SJ 1104
04/05	Senate	Amendment adopted, placed on calendar	SJ 1187
		Second reading, passed as amended, yeas 41 nays 6	SJ 1187
	House	Returned to House (12)	HJ 1432
04/07	House	Refused to concur	HJ 1516
		Conference committee appointed Klemin K. Koppelman Hanson	HJ 1516
04/10	Senate	Conference committee appointed Unruh Cook Armstrong	SJ 1331
04/13	House	Reported back from conference committee, placed on calendar (Senate recede)	HJ 1656
04/17	House	Conference committee report adopted	HJ 1694
	Senate	Reported back from conference committee, placed on calendar (Senate recede)	SJ 1474
		Conference committee report adopted	SJ 1479

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Date	Chamber	Meeting Description	Journal
		Second reading, passed, yeas 43 nays 3	SJ 1479
04/18	Senate	Signed by President	SJ 1509
	House	Signed by Speaker	HJ 1745
		Sent to Governor	HJ 1746
04/21	House	Signed by Governor 04/20	HJ 1839
04/27		Filed with Secretary Of State 04/21	

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CHAPTER 28-32
ADMINISTRATIVE AGENCIES PRACTICE ACT

28-32-01. Definitions.

In this chapter, unless the context or subject matter otherwise provides:

1. "Adjudicative proceeding" means an administrative matter resulting in an agency issuing an order after an opportunity for hearing is provided or required. An adjudicative proceeding includes administrative matters involving a hearing on a complaint against a specific-named respondent; a hearing on an application seeking a right, privilege, or an authorization from an agency, such as a ratemaking or licensing hearing; or a hearing on an appeal to an agency. An adjudicative proceeding includes reconsideration, rehearing, or reopening. Once an adjudicative proceeding has begun, the adjudicative proceeding includes any informal disposition of the administrative matter under section 28-32-22 or another specific statute or rule, unless the matter has been specifically converted to another type of proceeding under section 28-32-22. An adjudicative proceeding does not include a decision or order to file or not to file a complaint, or to initiate an investigation, an adjudicative proceeding, or any other proceeding before the agency, or another agency, or a court. An adjudicative proceeding does not include a decision or order to issue, reconsider, or reopen an order that precedes an opportunity for hearing or that under another section of this code is not subject to review in an adjudicative proceeding. An adjudicative proceeding does not include rulemaking under this chapter.
2. "Administrative agency" or "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency. An administrative unit located within or subordinate to an administrative agency must be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. The term administrative agency does not include:
   a. The office of management and budget except with respect to rules made under section 32-12.2-14, rules relating to conduct on the capitol grounds and in buildings located on the capitol grounds under section 54-21-18, rules relating to the classified service as authorized under section 54-44.3-07, and rules relating to state purchasing practices as required under section 54-44.4-04.
   b. The adjutant general with respect to the department of emergency services.
   c. The council on the arts.
   d. The state auditor.
   e. The department of commerce with respect to the division of economic development and finance.
   f. The dairy promotion commission.
   g. The education factfinding commission.
   h. The educational technology council.
   i. The board of equalization.
   j. The board of higher education.
   k. The Indian affairs commission.
   l. The industrial commission with respect to the activities of the Bank of North Dakota, North Dakota housing finance agency, public finance authority, North Dakota mill and elevator association, North Dakota farm finance agency, the North Dakota transmission authority, and the North Dakota pipeline authority.
   m. The department of corrections and rehabilitation except with respect to the activities of the division of adult services under chapter 54-23.4.
   n. The pardon advisory board.
   o. The parks and recreation department.
   p. The parole board.
   q. The state fair association.

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r. The attorney general with respect to activities of the state toxicologist and the state crime laboratory.
s. The administrative committee on veterans' affairs except with respect to rules relating to the supervision and government of the veterans' home and the implementation of programs or services provided by the veterans' home.
t. The industrial commission with respect to the lignite research fund except as required under section 57-61-01.5.
u. The attorney general with respect to guidelines adopted under section 12.1-32-15 for the risk assessment of sexual offenders, the risk level review process, and public disclosure of information under section 12.1-32-15.
v. The commission on legal counsel for indigents.
w. The attorney general with respect to twenty-four seven sobriety program guidelines and program fees.
x. The industrial commission with respect to approving or setting water rates under chapter 61-40.

3. "Agency head" means an individual or body of individuals in whom the ultimate legal authority of the agency is vested by law.
4. "Complainant" means any person who files a complaint before an administrative agency pursuant to section 28-32-21 and any administrative agency that, when authorized by law, files such a complaint before such agency or any other agency.
5. "Hearing officer" means any agency head or one or more members of the agency head when presiding in an administrative proceeding, or, unless prohibited by law, one or more other persons designated by the agency head to preside in an administrative proceeding, an administrative law judge from the office of administrative hearings, or any other person duly assigned, appointed, or designated to preside in an administrative proceeding pursuant to statute or rule.
6. "License" means a franchise, permit, certification, approval, registration, charter, or similar form of authorization required by law.
7. "Order" means any agency action of particular applicability which determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons. The term does not include an executive order issued by the governor.
8. "Party" means each person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party. An administrative agency may be a party. In a hearing for the suspension, revocation, or disqualification of an operator's license under title 39, the term may include each city and each county in which the alleged conduct occurred, but the city or county may not appeal the decision of the hearing officer.
9. "Person" includes an individual, association, partnership, corporation, limited liability company, state governmental agency or governmental subdivision, or an agency of such governmental subdivision.
10. "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the administrative action more probable or less probable than it would be without the evidence.
11. "Rule" means the whole or a part of an agency statement of general applicability which implements or prescribes law or policy or the organization, procedure, or practice requirements of the agency. The term includes the adoption of new rules and the amendment, repeal, or suspension of an existing rule. The term does not include:
    a. A rule concerning only the internal management of an agency which does not directly or substantially affect the substantive or procedural rights or duties of any segment of the public.
    b. A rule that sets forth criteria or guidelines to be used by the staff of an agency in the performance of audits, investigations, inspections, and settling commercial disputes or negotiating commercial arrangements, or in the defense, prosecution, or settlement of cases, if the disclosure of the statement would:
        (1) Enable law violators to avoid detection;
        (2) Facilitate disregard of requirements imposed by law; or

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(3) Give a clearly improper advantage to persons who are in an adverse position to the state.

c. A rule establishing specific prices to be charged for particular goods or services sold by an agency.

d. A rule concerning only the physical servicing, maintenance, or care of agency-owned or agency-operated facilities or property.

e. A rule relating only to the use of a particular facility or property owned, operated, or maintained by the state or any of its subdivisions, if the substance of the rule is adequately indicated by means of signs or signals to persons who use the facility or property.

f. A rule concerning only inmates of a correctional or detention facility, students enrolled in an educational institution, or patients admitted to a hospital, if adopted by that facility, institution, or hospital.

g. A form whose contents or substantive requirements are prescribed by rule or statute or are instructions for the execution or use of the form.

h. An agency budget.

i. An opinion of the attorney general.

j. A rule adopted by an agency selection committee under section 54-44.7-03.

k. Any material, including a guideline, interpretive statement, statement of general policy, manual, brochure, or pamphlet, which is explanatory and not intended to have the force and effect of law.

28-32-02. Rulemaking power of agency - Organizational rule.

1. The authority of an administrative agency to adopt administrative rules is authority delegated by the legislative assembly. 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.
2. In addition to other rulemaking requirements imposed by law, each agency may include in its rules a description of that portion of its organization and functions subject to this chapter and may include a statement of the general course and method of its operations and how the public may obtain information or make submissions or requests.

28-32-03. Emergency rules.

1. If the agency, with the approval of the governor, finds that emergency rulemaking is necessary, the agency may declare the proposed rule to be an interim final rule effective on a date no earlier than the date of filing with the legislative council of the notice required by section 28-32-10.
2. A proposed rule may be given effect on an emergency basis under this section if any of the following grounds exists regarding that rule:
   a. Imminent peril threatens public health, safety, or welfare, which would be abated by emergency effectiveness;
   b. A delay in the effective date of the rule is likely to cause a loss of funds appropriated to support a duty imposed by law upon the agency;
   c. Emergency effectiveness is reasonably necessary to avoid a delay in implementing an appropriations measure; or
   d. Emergency effectiveness is necessary to meet a mandate of federal law.
3. A final rule adopted after consideration of all written and oral submissions respecting the interim final rule, which is substantially similar to the interim final rule, is effective as of the declared effective date of the interim final rule.
4. The agency's finding, and a brief statement of the agency's reasons for the finding, must be filed with the legislative council with the final adopted emergency rule.
5. The agency shall attempt to make interim final rules known to persons who the agency can reasonably be expected to believe may have a substantial interest in them. As

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NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

ADMINISTRATIVE RULES COMMITTEE

Wednesday, September 12, 2018
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Bill Devlin, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Bill Devlin, Randy Boehning, Kim Koppelman, Scott Louser, Brandy Pyle, Jay Seibel, Nathan Toman; Senators Howard C. Anderson, Jr., Joan Heckaman, Ralph Kilzer, Jerry Klein, Scott Meyer, Nicole Poolman, David S. Rust

Members absent: Representatives Joshua A. Boschee, Mary Schneider, Robin Weisz; Senator Kelly M. Armstrong

Others present: See Appendix A

It was moved by Senator Rust, seconded by Representative Seibel, and carried on a voice vote that the minutes of the June 14, 2018, meeting be approved as distributed.

ATTORNEY GENERAL

Chairman Devlin called on Mr. Randy Miller, Director, Lottery Division, Attorney General's office, for testimony (Appendix B) regarding the October 2018 rules of the Attorney General.

In response to a question from Representative Koppelman, Mr. Miller said the North Dakota Lottery began offering subscriptions in 2005. He said the change to online play called "Pick & Click" is a rebranding of the former subscription service. He said the name of the state's lottery, North Dakota Lottery, is a registered trademark.

In response to a question from Representative Boehning, Mr. Miller said the former subscription service required a player to sign up for either a 13-week, 26-week, or full-year subscription. He said the subscription service, which was more cumbersome, required registrations to be entered manually. He said the manual process increased the opportunities for error. He said Pick & Click, which is done online by the player, allows a player to choose as few as one draw up to a full year of draws. He said an individual may not have more than one account and there is a cap of $100 per player per week using Pick & Click. He said the player registration process includes comprehensive safeguards to verify a player's identity.

In response to a question from Senator Klein, Mr. Miller said Pick & Click, which was developed by the North Dakota Lottery, is not a Multi-State Lottery Association product. He said the North Dakota Lottery conducts five multistate games--Powerball, 2by2, Mega Millions, Lucky for Life, and Lotto America. He said the Hot Lotto game ended October 28, 2017, and Lotto America was added on November 12, 2017. He said for the fiscal year ending June 30, 2018, sales exceeded $30 million, the second highest sales year for the North Dakota Lottery. He said over $7 million was transferred to the general fund for the 2017-18 fiscal year, an amount consistent with previous years. He said the legislative members on the North Dakota Lottery Advisory Commission are Senator Nicole Poolman and Representative Thomas Beadle. He said the third legislative member, Representative Karla Rose Hanson, will be replacing Representative Lois Delmore on the commission. He said the other two members of the North Dakota Lottery Advisory Commission are Mr. Mike Rud, who serves as Chairman, and Mr. Russ Hanson, both of whom were appointed by the Attorney General.

STATE BOARD OF FUNERAL SERVICE

Chairman Devlin called on Mr. Dale G. Niewoehner, Executive Secretary, State Board of Funeral Service, for testimony (Appendix C) regarding the October 2018 rules of the State Board of Funeral Service.

In response to a question from Chairman Devlin, Mr. Niewoehner said the change in educational requirements from 2 years to 1 year for intern embalmers will allow more people to be an intern before enrolling in mortuary school. He said this change will allow embalmer interns to better understand the profession before making the commitment to attend mortuary school.

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In response to a question from Representative Koppelman, Mr. Niewoehner said the difference between an embalmer and a funeral practitioner is the amount of education required and the intern component.

In response to a question from Representative Seibel, Mr. Niewoehner said some states have separate licenses for funeral directors and embalmers. He said North Dakota uses one license to license both professions.

STATE DEPARTMENT OF HEALTH

Chairman Devlin called on Mr. Dale Patrick, Radiation and Asbestos Control Program, State Department of Health, for testimony (Appendix D) regarding the October 2018 rules of the State Department of Health. Mr. Patrick said the rules update provisions regarding radioactive materials. He said North Dakota adopts the rules of the federal Nuclear Regulatory Commission, by reference.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Chairman Devlin called on Mr. Dave Glatt, Chief, Environmental Section, State Department of Health, for testimony (Appendix E) regarding the October 2018 rules of the Department of Environmental Quality (DEQ). Mr Glatt said the purpose of adopting the rules in newly created North Dakota Administrative Rules (NDAC) Title 33.1 is to implement 2017 Senate Bill No. 2327, which provided for the creation of DEQ. He said the bill requires the chief of the Environmental Section to take "all necessary and appropriate steps to transfer authority, powers, and duties" relating to environmental quality from the State Department of Health to DEQ. He said as part of this process, the chief of the Environmental Section is authorized to adopt the rules necessary for DEQ to accomplish the transfer. He said the rules before the committee transfer the existing State Department of Health rules regarding environmental quality from NDAC Title 33, with minor edits, to NDAC Title 33.1.

In response to a question from Chairman Devlin, Mr. Glatt said because of environmental concerns regarding nutrient waste, NDAC Section 33-16-03.1-13(1) adds "significant revisions to a facility's nutrient management plan" to the list of actions for which a public notice may be required before a permit is issued. He said a nutrient management plan includes how much waste is generated, where the waste is deposited, and what is the quality of land upon which the waste is deposited. He said the authority to conduct a public hearing on a permit application is applied very judiciously.

In response to a question from Representative Koppelman, Mr. Glatt said significant revision is an identifiable standard.

Senator Klein said to allow input from interested parties, including the North Dakota Stockmen's Association, it may be necessary to hold over the new language in NDAC Section 33-16-03.1-13(1).

Mr. Glatt said the State Department of Health has permitted hundreds of animal feeding operations. However, he said, only four permit requests have resulted in a hearing since 1996. He said hearings, which can be contentious, require an administrative process and an opportunity for public input. He said if the option for an administrative hearing is removed from the permit application process, the matter potentially could be taken to court and decided by a judge. He said both state and local zoning play a role in the permitting process.

In response to a question from Senator Klein, Mr. Glatt said if the language in NDAC Section 33-16-03.1-13(1) is held over, he will work with the interested groups to better define "significant revisions."

In response to a question from Senator Anderson, Mr. Glatt said when citing to the Code of Federal Regulations, the regulations in effect on the effective date of the rules are the regulations relied upon for guidance.

In response to a question from Chairman Devlin, Mr. Peter Wax, Division of Water Quality, State Department of Health, said when considering rules regarding water pretreatment requirements, the human health criteria was re-evaluated. He said the changes are still below a detectable limit.

In response to a question from Senator Heckaman, Mr. Glatt said as part of the DEQ primacy approval process, he is required to submit the rules to the federal Environmental Protection Agency. He said the state rules are not more stringent than the federal rules.

In response to a question from Representative Boehning, Mr. Glatt said there are some rules that address areas for which only the state has rules and on which the federal government is silent.

In response to a question from Representative Koppelman, Mr. Glatt said the State Department of Health must be careful in defining "significant" because of the effect of the definition on other rules. However, he said, the definition of the term can be limited by stating the definition of the term only applies to the subsection in question.

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He said NDAC Section 33-16-03.1-13 is a state rule. He said holding over this subsection to the next meeting will not hinder the federal approval process.

Mr. Glatt said the issue in dispute is not whether public hearings may be conducted under NDAC Section 33-16-03.1-13 but rather whether the public hearing process may be used for a permit that involves "significant revisions to a facility's nutrient management plan."

It was moved by Senator Klein, seconded by Representative Koppelman, and carried on a roll call vote that the new language in NDAC Section 33-16-03.1-13(1), "significant revisions to a facility's nutrient management plan" be held over to the December 2018 meeting. Representatives Devlin, Boehning, Koppelman, Louser, Pyle, Seibel, and Toman and Senators Anderson, Heckaman, Kilzer, Klein, Meyer, Poolman, and Rust voted "aye." No negative votes were cast.

RACING COMMISSION

Chairman Devlin called on Mr. Gunner laCour, Director, North Dakota Racing Commission, for testimony (Appendix F) regarding the October 2018 rules of the North Dakota Racing Commission.

In response to a question from Chairman Devlin, Mr. laCour said no one appeared at the hearing and no comments were received.

DEPARTMENT OF HUMAN SERVICES

Chairman Devlin called on Mr. Jonathan Alm, Legal Advisory Unit, Department of Human Services, for testimony (Appendix G) regarding the October 2018 rules of the Department of Human Services.

In response to a question from Senator Anderson, Mr. Jim Fleming, Director, Child Support Enforcement, Department of Human Services, said the word "treaty" was added in NDAC Section 75-02-04.2-02(5). He said while the state does not have treaties with other countries, the state relies on treaties between the United States and other countries to aid in child support enforcement. He said federal law requires the Department of Human Services to use the language contained in this section.

PEACE OFFICER STANDARDS AND TRAINING BOARD

Chairman Devlin called on Mr. Duane Stanley, Executive Secretary, Peace Officer Standards and Training Board, for testimony (Appendix H) regarding July 2018 rules carried over from the June 14, 2018, meeting. Mr. Stanley said the Peace Officer Standards and Training (POST) Board met on August 15, 2018, to address the concerns raised by Mr. Ladd Erickson at the June 14, 2018, meeting. He said the POST Board agreed to add the words "in person" before "surreptitious" in NDAC Sections 109-02-01-01(8), 109-02-06-01(1), and 109-02-06-01(7). He said Mr. Erickson is in agreement with the changes approved by the POST Board.

It was moved by Senator Anderson, seconded by Representative Seibel, and carried on a roll call vote to amend the POST Board rules to add the words "in person" before "surreptitious" in NDAC Sections 109-02-01-01(8), 109-02-06-01(1), and 109-02-06-01(7). Representatives Devlin, Boehning, Koppelman, Louser, Pyle, Seibel, and Toman and Senators Anderson, Heckaman, Kilzer, Klein, Meyer, Poolman, and Rust voted "aye." No negative votes were cast.

DEPARTMENT OF TRUST LANDS

Chairman Devlin called on Ms. Jodi A. Smith, Commissioner, Department of Trust Lands, for testimony (Appendix I) regarding a request for an extension for the adoption of rules by the Department of Trust Lands (DTL).

Representative Koppelman said it is unclear as to why DTL does not understand the legislative intent of 2017 House Bill No. 1300. He said the previous commissioner understood the intent. He said making DTL subject to North Dakota Century Code (NDCC) Chapter 28-32 does not mean the Legislative Assembly will be scrutinizing every decision of DTL. He said the rules adopted by DTL will carry the effect of law. He said the administrative rules should mirror the processes currently used by DTL. He said the rules do not have to require an administrative process for every decision and contract. He said the awarding of contracts can be done by following a procedure set out in rule but the procedure itself does not need to be subject to NDCC Chapter 28-32.

Ms. Smith said upon becoming Commissioner of DTL in November 2017, the drafting of administrative rules was underway. She said she is unsure if it was the Legislative Assembly's intent for the rules to be adopted for DTL's loan programs. She said with the exception of surface management, minerals management, and the loan programs, the administrative rules have been drafted. She said the goal of the Board of University and School Lands is to create transparency. She said transparency includes an opportunity for industry and the public to comment.

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In response to a question from Representative Koppelman, Ms. Smith said due to costs, she is requesting an extension for all rules until after the 2019 legislative session. She said if the committee would prefer, DTL could move forward the two divisions for which rules have been drafted.

Representative Koppelman said it sets a bad precedent when the Legislative Assembly directs an agency to do something and the directive is not followed, but rather the agency waits to ask for clarification in the next legislative session. He said DTL should move forward with the rules of the two divisions for which the rules have been completed.

In response to a question from Senator Heckaman, Ms. Smith said the easements and leases would be subject to up to an 18-month delay because those easements and leases have become subject to the requirements of NDCC Chapter 28-32.

Representative Koppelman said the rules should provide for the same process currently used. He said each easement and lease does not need to come before the Administrative Rules Committee.

Mr. David Garner, Attorney General's office, said because DTL now is subject to NDCC Chapter 28-32, the right to an administrative hearing is triggered. He said that right to a hearing changes the time frame for approving easements and leases. He said it was not until the rules were drafted that DTL realized the issues the department would face under NDCC Chapter 28-32.

In response to a question from Representative Koppelman, Ms. Smith said DTL has discussed the rules with the industry. She said she has spent considerable time identifying internal policies and determining which of those policies should be in rule. She said DTL's rules and policies have been intertwined which made it difficult to separate the two areas. She said a signed lease triggers an order, which then is subject to administrative hearing requirements of NDCC Chapter 28-32. She said rules regarding grants and unclaimed property have been drafted and have a hearing scheduled.

Chairman Devlin said the Administrative Rules Committee granted DTL an extension in March 2018. He said the Legislative Assembly was clear in its intent. He said he would resist any efforts of DTL to make changes in the 2019 legislative session. He said he would like the rules to be completed and brought forward to the Administrative Rules Committee as soon as possible.

Representative Koppelman said he is also reluctant to give an extension. He said DTL should go forward with rules that are ready and continue to work on the remaining rules.

Senator Anderson said whatever DTL's policies and procedures are should be adopted as rules.

Representative Koppelman said if expediency is required and the reason fits the criteria set forth in NDCC Chapter 28-32, DTL can ask the Governor for emergency rulemaking authority.

Chairman Devlin said DTL may not understand the administrative rules process. He said perhaps Representative Koppelman may wish to share his expertise with DTL to answer their questions.

Ms. Smith said because DTL does not have the money for outside assistance, the department would welcome any advice.

OTHER BUSINESS

At the request of Chairman Devlin, the Legislative Council staff presented a memorandum entitled *Administrative Rulemaking Statistics 2017-18.* The Legislative Council staff said the memorandum summarizes the number of sections and pages reviewed by the committee during the 2017-18 biennium. She said the memorandum also includes a statistical summary of rulemaking by agency. She said the number of sections affected in a biennium is not necessarily reflective of the number of pages of rules. She said a statutory change in the mid-1990s, which allowed the Administrative Rules Committee to reject or carry over rules, has resulted in more carefully drafted rules.

It was moved by Senator Klein, seconded by Representative Koppelman, and carried on a voice vote that the Chairman and the Legislative Council staff be requested to prepare a report and to present the report to the Legislative Management.

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No further business appearing, Chairman Devlin adjourned the meeting at 11:50 a.m.

Vonette J. Richter
Legal Division Director

ATTACH:9

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Jodi A. Smith, Commissioner

TESTIMONY OF JODI SMITH
Commissioner of University and School Lands
North Dakota Department of Trust Lands

Administrative Rules Committee
September 12, 2018

Chairman Devlin and members of the Administrative Rules Committee, I am Jodi Smith, Commissioner of University and School Lands, with the North Dakota Department of Trust Lands (the "Department"). I am here today on behalf of the Department to provide information regarding the status of administrative rules.

The Department is the administrative arm of the Board of University and School Lands, which has the primary responsibility of managing the Common Schools Trust Fund and 13 other permanent educational trust funds. The beneficiaries of the trust funds include local school districts, various colleges and universities, and other institutions in North Dakota. The Department manages four additional funds: the Strategic Investment and Improvements Fund; the Coal Development Trust Fund; the Capitol Building Fund, and; the Indian Cultural Education Trust.

The Department also administers the responsibilities outlined in the Uniform Unclaimed Property Act. In this role the Department collects "unclaimed property" (uncashed checks, unused bank accounts, etc.), and processes owners' claims. This property is held in permanent trust for owners to claim, but the revenue from the investment of the property benefits the common schools trust fund.

Additionally, the Department operates the Energy Infrastructure and Impact Office, which provides financial support to political subdivisions that are affected by energy development. Assistance is provided through both the oil and gas impact grant program and the coal impact loan program. The Office also distributes energy and flood grants carried over from prior biennia.

In House Bill 1300, the 65th Legislative Assembly directed the Board of University and School Lands (the "Board") no longer be exempt from the N.D.C.C. ch. 28-32, the Administrative Agencies Practice Act (the "Act"). With passage of this legislation, the Department began preparing administrative rules to be considered by the Board, reviewed by the Office of Attorney General, and heard by the Legislative Rules Committee. The intent was to adopt these administrative rules with an effective date of October 1, 2018.

The Department considered existing statutes and rules, together with policies and procedures, to incorporate those into administrative rules to comply with the Act.

The initial draft of the proposed administrative rules for the Department (Energy Infrastructure and Impact Office, Unclaimed Property, Loan Programs, Surface Land Management, and Minerals Management) outline agency regulations and standards used to implement, interpret, or set policy for the Board and the Department.

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Energy Infrastructure and Impact Office

The Energy Infrastructure and Impact Office created four chapters, including 20 sections, as follows:

Definitions
Grant Processing
Grant Award
Aged Grants
Grant Announcement
Applications
Signatures
Scoring
Assignment of Funds
Supplement
Advisory Committee Recommendations
Authority
Signatures
Acceptance of Grant
Vendor Registry
Grant Period
Progress Report
Payment of Grant
Grant Extension or Retirement
Changes to Scope of Project
Aged Grants
Grant Deemed Unresponsive

It is anticipated there will be minimal impact on the program or budgetary implications for the Energy Infrastructure and Impact Office with the implementation of administrative rules.

North Dakota Unclaimed Property

In 1975, the North Dakota Unclaimed Property Division was created under the guidance of the Board with the Common Schools Trust Fund as the guardian of the assets. In 1985 as part of North Dakota's Uniform Unclaimed Property Act, N.D.C.C. § 47-30.1-30 was enacted directing that the unclaimed property "administrator may adopt necessary rules to carry out this chapter." It is unclear if the Unclaimed Property Division is subject to the Act, N.D.C.C. § 28-32-01, due to repeal of the following language: "The board of university and school lands except with respect to activities under chapter 47-30.1." At this time, the Department created three chapters, including 13 sections, as follows:

Definitions
Reporting Abandoned Property
Claiming Property
Electronic Reporting of Abandoned Property
Information Contained in Reports
Due Diligence
Mineral Proceeds
Early Reporting
Claims
Required Documentation
Payment of Claim
Heir Finder Requests
Claims Submitted by Heir Finders

It is anticipated there will be minimal impact on the program or budgetary implications for the North Dakota Unclaimed Property Division with the implementation of administrative rules.

Loan Programs

The Farm Loan Pool (FLP) was created in 1977 with the passage of Senate Bill 2106. This bill was one of two bills passed during the legislative session that restructured certain responsibilities of the Bank of North Dakota ("BND") and the Board to better fit each agency's core competencies. Senate Bill 2106 turned farm lending functions previously performed by the Board over to BND to administer on behalf of the Board.

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The Coal Development Impact Office was created in 1975 under N.D.C.C. ch. 57-62. N.D.C.C. § 57-62-02(1) states:

> Those funds held in trust and administered by the board of university and school lands on March 5, 1981, pursuant to section 12, chapter 563, 1975 Session Laws; section 12, chapter 560, 1977 Session Laws; or section 13, chapter 626, 1979 Session Laws must also be deposited in the trust fund created pursuant to this subsection. The fund must be held in trust and administered by the board of university and school lands for loans to coal-impacted counties, cities, and school districts as provided in section 57-62-03 and for loans to school districts pursuant to chapter 15.1-36. The board of university and school lands may invest such funds as are not loaned out as provided in this chapter and may consult with the state investment board as provided by law. The income, including interest payments on loans, from the trust must be used first to replace uncollectible loans made from the fund and the balance must be deposited in the general fund. Loan principal payments must be redeposited in the trust fund. The trust fund must be perpetual and held in trust as a replacement for depleted natural resources subject to the provisions of this chapter and chapter 15.1-36.

Currently, the Loan Programs have a combined total of two chapters, including 20 sections, as follows:

Definitions
Dedication of Funds to the Loan Pool Account
Withdrawal of Funds from the Loan Pool Account
Terms
Authority of Bank
Investment of Funds
Reporting Procedure
Crediting of Principal Payments Received
Crediting of Interest Payments Received
Bank Service Fee
Mortgagor
Costs and Fees
Penalties
Renegotiation
Foreclosure
Deeds in Lieu of Foreclosure
Partial Release
Subordination
Applicant
Authority
Interest Rate
Warrant

The Department believes there will be unintended consequences to both the Board and BND with the adoption of administrative rules under the Act. Thus, the Department is seeking clarification from the 66th Legislative Assembly regarding the Farm Loan Program and the Coal Loan Program.

Surface Land Management and Minerals Management

The Surface and Minerals Management Divisions have drafted nine chapters, including 89 sections, as follows:

Surface Land Management

Definitions
Leasing Trust Lands for Agricultural Use
Construction Aggregate
Permanent Improvements
Encumbrances of Trust Lands
Public Access and Use

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Failure to Pay or Nonsufficient Funds at Auction
Annual Lease Rental Payment
Assignment and Use by a Third Party
Sale of Lease for Agricultural Use Prohibited
Inspection by Prospective Lessee or Purchaser
Custodial Agreement
Right of Entry
Lease Termination
Board Review
Cost Share on Leased Premises
Cost Share Application
Cost Share on Cropland
Cost Share Payments
Biological Control Agents
Record Maintenance
Application Public Notice of Application, Comment Period, Commissioner Review
Lease Terms
Commissioner Authorization
Auctioned Leases
Use of Leased Premises
Advance Royalties
Royalties
Testing
Mining and Reclamation Plan
Bond
Theft and Construction Aggregate
Records and Inspections
Organized Events
Mining Operations
Reserved Rights and Termination
Surrender by Lessee
Conditions on Expiration, Termination or Surrender
Surface Owner Consent
Surface Lessee Protection
Protection of Cultural Resources
Permanent and Nonpermanent Improvements
Application
Rent Credit, Cost Share and Depreciation
General Standards for a Permit for a Permanent Improvement
Issuance of a Permit for Permanent Improvement
Application
Surveying and Planning Permit Requirements
Public Notice of Application, Comment Period, Commissioner Review
General Standards for an Encumbrance
Issuance of an Encumbrance
Right of Entry
Expiration of an Encumbrance
Exemptions
Vehicular Access
Public Access
Prohibited Activities

Minerals Management

Lease Nomination
Public Notice of Nomination, Comment Period, Commissioner Review
Advertisement for Public Auction
Public Auction
Rejection of Nomination and Bids
Form and Term of Lease
Assignments
Voluntary Release
Royalties
Disputed Title Royalty Escrow Account
Breach of Lease
Reports of Lessee – Delinquency Penalty
Audit and Examination
Protection of Archaeological, Historical, and Paleontological Resources
Request for Shut-In Status for Oil
Prospecting Permits
Lands Subject to Lease
Application for Lease
Notice of Leasing
Negotiation of Lease
Term of Lease
Testing
Voluntary Release
Breach of Lease
Minimum Delay Rentals
Royalty

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Assignments
Surface Owner Protection
Financial Obligation to Reclaim

Reports of Lessee – Delinquency Penalty
Audit and Examination

As the proposed administrative rules are currently drafted, they will subject the divisions to extensive processes that may have negative unintended consequences on the agricultural and energy sectors. Interested parties will find significant delays with several processes which, under current policies, would be considered relatively routine and expedient. A delay may cause decreases in revenue generated from the trust lands, as well as greatly complicating the process for our industry partners to do business with the Surface Management and Minerals Divisions. The Department's goal is to seek legislative intent from the 66th Legislative Assembly and continue to develop administrative rules that are based on sensible best practices, reasonable from a cost-benefit perspective, and do not put undue burden on companies who are hoping to invest in and create jobs throughout the State of North Dakota.

In conclusion, the Board currently has various rules, policies and procedures related to the management of land, oil and gas leasing, coal, easements, land sales and auctions, together with Constitutional and statutory requirements. The Department is seeking an extension in implementing administrative rules for the Energy Infrastructure and Impact Office, Unclaimed Property, Loan Programs, Surface Land Management and Minerals Management Divisions. This will allow the Commissioner to seek legislative intent during the 66th Legislative Assembly to clarify whether repealing "[t]he board of university and school lands except with respect to activities under chapter 47-30.1" in N.D.C.C. § 28-32-01 applies to Unclaimed Property, request exemptions for Loan Programs with direct implications to the Board and BND, and address concerns regarding unintended consequences for the agricultural and energy sectors.

Additional budgetary consideration will be sought as the initial costs associated with the developing and publishing of the proposed administrative rules to-date is over $60,000. The unintended consequences of implementing administrative rules without a clear understanding of legislative intent will have significant impact on the operations of the Department.

Thank you for your time and I appreciate your consideration.