



North Dakota Legislative Council

Prepared for the Administrative Rules Committee
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VOIDING AND CARRYING OVER ADMINISTRATIVE RULES

North Dakota Century Code Section 28-32-18 gives the Administrative Rules Committee the authority to find all or a portion of a rule is void if the committee makes the specific finding there is:

1. An absence of statutory authority.
2. An emergency relating to public health, safety, or welfare.
3. A failure of the adopting agency to comply with express legislative intent or to substantially meet the procedural requirements of Chapter 28-32 regarding adoption of the rule.
4. A conflict with state law.
5. Arbitrariness and capriciousness.
6. A failure of the adopting agency to make a written record of its consideration or written and oral submissions respecting the rule during the hearing process and comment period.

Section 28-32-18 allows the Administrative Rules Committee to find a rule void if the rule initially is considered by the committee not later than the 15th day of the month before the date of the Administrative Code supplement in which the rule change is scheduled to appear. If the rule initially is considered within the required time frame, the committee may carry over consideration of the rule to one subsequent committee meeting to determine whether to void the rule. If an agency representative does not appear at the scheduled meeting, the rules automatically are held over for consideration. If a representative does not appear at the subsequent meeting, the rules are void if the rules are emergency rules and otherwise the committee may void the rules, allow the rules to become effective, or carry over consideration of the rules. A rule carried over for consideration is delayed in taking effect until the 1st day of the calendar quarter following the meeting at which the rule is reconsidered.

If the Administrative Rules Committee finds a rule void, the Legislative Council shall provide written notice to the adopting agency and to the Chairman of the Legislative Management. Within 14 days after receipt of the notice, the agency may file a petition with the Chairman of the Legislative Management for review by the Legislative Management of the committee's decision. If the agency does not file a petition, the rule becomes void on the 15th day after the agency received the notice from the Legislative Council. If within 60 days after receipt of the petition from the agency the Legislative Management has not disapproved the finding of the committee, the rule is void.

Section 28-32-18 allows a rule change to be made after consideration of rules by the Administrative Rules Committee if the agency and committee agree the rule change is necessary to address any of the considerations for which the committee may find a rule to be void. This allows an agency to change an administrative rule when the committee expresses concerns and in those circumstances the agency is not required to commence a new rulemaking proceeding. If the committee carries consideration of a rule to one subsequent committee meeting to decide whether to void the rule, an agency may present an amended rule at the subsequent committee meeting. If a rule change is agreed to by the committee and the agency, the rule must be reconsidered, if requested by the agency or any interested party, at a subsequent committee meeting and public comment on the agreed rule change must be allowed.