

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 623
Committee Substitute Favorable 5/16/11

Short Title: Eliminate Agency Final Decision Authority.

(Public)

Sponsors:

Referred to:

April 6, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO MODIFY THE PROCEDURES CONCERNING FINAL ADMINISTRATIVE
3 DECISIONS IN CONTESTED CASES HEARD BY THE OFFICE OF
4 ADMINISTRATIVE HEARINGS.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 150B-2(5) reads as rewritten:

7 "(5) "Party" means any person or agency named or admitted as a party or
8 properly seeking as of right to be admitted as a party and includes the agency
9 as appropriate. ~~This subdivision does not permit an agency that makes a final~~
10 ~~decision, or an officer or employee of the agency, to petition for initial~~
11 ~~judicial review of that decision."~~

12 SECTION 2. G.S. 150B-23(a) reads as rewritten:

13 "(a) A contested case shall be commenced by paying a fee in an amount established in
14 G.S. 150B-23.2 and by filing a petition with the Office of Administrative Hearings and, except
15 as provided in Article 3A of this Chapter, shall be conducted by that Office. The party who
16 files the petition shall serve a copy of the petition on all other parties and, if the dispute
17 concerns a license, the person who holds the license. A party who files a petition shall file a
18 certificate of service together with the petition. A petition shall be signed by a party or a
19 representative of the party and, if filed by a party other than an agency, shall state facts tending
20 to establish that the agency named as the respondent has deprived the petitioner of property, has
21 ordered the petitioner to pay a fine or civil penalty, or has otherwise substantially prejudiced
22 the petitioner's rights and that the agency:

- 23 (1) Exceeded its authority or jurisdiction;
24 (2) Acted erroneously;
25 (3) Failed to use proper procedure;
26 (4) Acted arbitrarily or capriciously; or
27 (5) Failed to act as required by law or rule.

28 The parties in a contested case shall be given an opportunity for a hearing without undue delay.
29 Any person aggrieved may commence a contested case hereunder.

30 A local government employee, applicant for employment, or former employee to whom
31 Chapter 126 of the General Statutes applies may commence a contested case under this Article
32 in the same manner as any other petitioner. The case shall be conducted in the same manner as
33 other contested cases under this ~~Article.~~ ~~Article, except that the State Personnel Commission~~
34 ~~shall enter final decisions only in cases in which it is found that the employee, applicant, or~~
35 ~~former employee has been subjected to discrimination prohibited by Article 6 of Chapter 126 of~~
36 ~~the General Statutes or in any case where a binding decision is required by applicable federal~~
37 ~~standards. In these cases, the State Personnel Commission's decision shall be binding on the~~



1 local appointing authority. In all other cases, the final decision shall be made by the applicable
2 appointing authority."

3 **SECTION 3.** G.S. 150B-33(b)(12) is repealed.

4 **SECTION 4.** G.S. 150B-34 reads as rewritten:

5 "**§ 150B-34. Decision of administrative law judge.**Final decision or order.

6 (a) ~~Except as provided in G.S. 150B-36(e), and subsection (e) of this section, in~~ each
7 contested case the administrative law judge shall make a final decision or order that contains
8 findings of fact and conclusions of law ~~and return the decision to the agency for a final decision~~
9 ~~in accordance with G.S. 150B-36 law.~~ The administrative law judge shall decide the case based
10 upon the preponderance of the evidence, giving due regard to the demonstrated knowledge and
11 expertise of the agency with respect to facts and inferences within the specialized knowledge of
12 the agency. All references in this Chapter to the administrative law judge's decision shall
13 include orders entered pursuant to G.S. 150B-36(e).

14 (b) Repealed by Session Laws 1991, c. 35, s. 6.

15 (c) ~~Notwithstanding subsection (a) of this section, in cases arising under Article 9 of~~
16 ~~Chapter 131E of the General Statutes, the administrative law judge shall make a recommended~~
17 ~~decision or order that contains findings of fact and conclusions of law. A final decision shall be~~
18 ~~made by the agency in writing after review of the official record as defined in G.S. 150B-37(a)~~
19 ~~and shall include findings of fact and conclusions of law. The final agency decision shall recite~~
20 ~~and address all of the facts set forth in the recommended decision. For each finding of fact in~~
21 ~~the recommended decision not adopted by the agency, the agency shall state the specific~~
22 ~~reason, based on the evidence, for not adopting the findings of fact and the agency's findings~~
23 ~~shall be supported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or~~
24 ~~150B-31. The provisions of G.S. 150B-36(b), (b1), (b2), (b3), and (d), and G.S. 150B-51 do not~~
25 ~~apply to cases decided under this subsection.~~

26 (d) Except for the exemptions contained in ~~G.S. 150B-1(c) and (e), and subsection (e)~~
27 ~~of this section, G.S. 150B-1,~~ the provisions of this section regarding the decision of the
28 administrative law judge shall apply ~~only~~ to all agencies subject to Article 3 of this Chapter,
29 notwithstanding any other provisions to the contrary relating to recommended decisions by
30 administrative law judges.

31 (e) An administrative law judge may grant judgment on the pleadings, pursuant to a
32 motion made in accordance with G.S. 1A-1, Rule 12(c), or summary judgment, pursuant to a
33 motion made in accordance with G.S. 1A-1, Rule 56, that disposes of all issues in the contested
34 case. Notwithstanding subsection (a) of this section, a decision granting a motion for judgment
35 on the pleadings or summary judgment need not include findings of fact or conclusions of law,
36 except as determined by the administrative law judge to be required or allowed by G.S. 1A-1,
37 Rule 12(c) or Rule 56. A decision by the administrative law judge granting judgment on the
38 pleadings or summary judgment that disposes of all issues in the contested case operates as a
39 final decision."

40 **SECTION 5.** G.S. 150B-35 reads as rewritten:

41 "**§ 150B-35. No ex parte communication; exceptions.**

42 Unless required for disposition of an ex parte matter authorized by law, ~~neither~~ the
43 administrative law judge assigned to a contested case ~~nor a member or employee of the agency~~
44 ~~making a final decision in the case~~ may not communicate, directly or indirectly, in connection
45 with any issue of fact, or question of law, with any person or party or his representative, except
46 on notice and opportunity for all parties to participate."

47 **SECTION 6.** G.S. 150B-36 is repealed.

48 **SECTION 7.** G.S. 150B-37 reads as rewritten:

49 "**§ 150B-37. Official record.**

50 (a) In a contested case, the Office of Administrative Hearings shall prepare an official
51 record of the case that includes:

- 1 (1) Notices, pleadings, motions, and intermediate rulings;
- 2 (2) Questions and offers of proof, objections, and rulings thereon;
- 3 (3) Evidence presented;
- 4 (4) Matters officially noticed, except matters so obvious that a statement of them
- 5 would serve no useful purpose; and
- 6 (5) Repealed by Session Laws 1987, c. 878, s. 25.
- 7 (6) The administrative law judge's ~~decision~~, final decision or order.

8 (b) Proceedings at which oral evidence is presented shall be recorded, but need not be
9 transcribed unless requested by a party. Each party shall bear the cost of the transcript or part
10 thereof or copy of said transcript or part thereof which said party requests, and said transcript or
11 part thereof shall be added to the official record as an exhibit.

12 (c) The Office of Administrative Hearings shall forward a copy of the ~~official record to~~
13 ~~the agency making the final decision and shall forward a copy of the~~ administrative law judge's
14 final decision to each party."

15 **SECTION 8.** G.S. 150B-40(e) reads as rewritten:

16 "(e) When a majority of an agency is unable or elects not to hear a contested case, the
17 agency shall apply to the Director of the Office of Administrative Hearings for the designation
18 of an administrative law judge to preside at the hearing of a contested case under this Article.
19 Upon receipt of the application, the Director shall, without undue delay, assign an
20 administrative law judge to hear the case.

21 The provisions of ~~this Article, rather than the provisions of Article 3,~~ Article 3 of this
22 Chapter shall govern a contested case in which the agency requests an administrative law judge
23 from the Office of Administrative Hearings.

24 ~~The administrative law judge assigned to hear a contested case under this Article shall sit in~~
25 ~~place of the agency and shall have the authority of the presiding officer in a contested case~~
26 ~~under this Article. The administrative law judge shall make a proposal for decision, which shall~~
27 ~~contain proposed findings of fact and proposed conclusions of law.~~

28 An administrative law judge shall stay any contested case under this Article on motion of
29 an agency which is a party to the contested case, if the agency shows by supporting affidavits
30 that it is engaged in other litigation or administrative proceedings, by whatever name called,
31 with or before a federal agency, and this other litigation or administrative proceedings will
32 determine the position, in whole or in part, of the agency in the contested case. At the
33 conclusion of the other litigation or administrative proceedings, the contested case shall
34 proceed and be determined as expeditiously as possible.

35 ~~The agency may make its final decision only after the administrative law judge's proposal~~
36 ~~for decision is served on the parties, and an opportunity is given to each party to file exceptions~~
37 ~~and proposed findings of fact and to present oral and written arguments to the agency."~~

38 **SECTION 9.** G.S. 150B-43 reads as rewritten:

39 **"§ 150B-43. Right to judicial review.**

40 Any ~~person-party~~ who is aggrieved by the final decision in a contested case, and who has
41 exhausted all administrative remedies made available to ~~him~~ the party by statute or agency rule,
42 is entitled to judicial review of the decision under this Article, unless adequate procedure for
43 judicial review is provided by another statute, in which case the review shall be under such
44 other statute. Nothing in this Chapter shall prevent any ~~person-party~~ from invoking any judicial
45 remedy available to ~~him~~ the party under the law to test the validity of any administrative action
46 not made reviewable under this Article."

47 **SECTION 10.** G.S. 150B-44 reads as rewritten:

48 **"§ 150B-44. Right to judicial intervention when decision unreasonably delayed.**

49 Unreasonable delay on the part of any agency or administrative law judge in taking any
50 required action shall be justification for any person whose rights, duties, or privileges are
51 adversely affected by such delay to seek a court order compelling action by the agency or

1 administrative law judge. An agency that is subject to Article 3 of this Chapter and is not a
2 board or commission has 60 days from the day it receives the official record in a contested case
3 from the Office of Administrative Hearings to make a final decision in the case. This time limit
4 may be extended by the parties or, for good cause shown, by the agency for an additional
5 period of up to 60 days. An agency that is subject to Article 3 of this Chapter and is a board or
6 commission has 60 days from the day it receives the official record in a contested case from the
7 Office of Administrative Hearings or 60 days after its next regularly scheduled meeting,
8 whichever is longer, to make a final decision in the case. This time limit may be extended by
9 the parties or, for good cause shown, by the agency for an additional period of up to 60 days. If
10 an agency subject to Article 3 of this Chapter has not made a final decision within these time
11 limits, the agency is considered to have adopted the administrative law judge's decision as the
12 agency's final decision. Failure of an administrative law judge subject to Article 3 of this
13 Chapter or failure of an agency subject to Article 3A of this Chapter to make a final decision
14 within 120 days of the close of the contested case hearing is justification for a person whose
15 rights, duties, or privileges are adversely affected by the delay to seek a court order compelling
16 action by the agency or, if the case was heard by an administrative law judge, or by the
17 administrative law judge. The Board of Trustees of the North Carolina State Health Plan for
18 Teachers and State Employees is a "board" for purposes of this section."

19 **SECTION 11.** G.S. 150B-47 reads as rewritten:

20 **"§ 150B-47. Records filed with clerk of superior court; contents of records; costs.**

21 Within 30 days after receipt of the copy of the petition for review, or within such additional
22 time as the court may allow, the agency that made the final decision in the contested case
23 Office of Administrative Hearings shall transmit to the reviewing court the original or a
24 certified copy of the official record in the contested case under review together with: (i) any
25 exceptions, proposed findings of fact, or written arguments submitted to the agency in
26 accordance with G.S. 150B-36(a); and (ii) the agency's final decision or order. review. With the
27 permission of the court, the record may be shortened by stipulation of all parties to the review
28 proceedings. Any party unreasonably refusing to stipulate to limit the record may be taxed by
29 the court for such additional costs as may be occasioned by the refusal. The court may require
30 or permit subsequent corrections or additions to the record when deemed desirable."

31 **SECTION 12.** G.S. 150B-49 reads as rewritten:

32 **"§ 150B-49. New evidence.**

33 ~~An aggrieved person~~ A party who files a petition in the superior court may apply to the
34 court to present additional evidence. If the court is satisfied that the evidence is material to the
35 issues, is not merely cumulative, and could not reasonably have been presented at the
36 administrative hearing, the court may remand the case so that additional evidence can be taken.
37 If an administrative law judge did not make a final decision in the case, the court shall remand
38 the case to the agency that conducted the administrative ~~hearing~~ hearing under Article 3A of
39 this Chapter and G.S. 150B-34(c). After hearing the evidence, the agency may affirm or modify
40 its previous findings of fact and final decision. If an administrative law judge made a final
41 decision in the case, the court shall remand the case to the administrative law judge. After
42 hearing the evidence, the administrative law judge may affirm or modify his previous findings
43 of fact and final decision. ~~The administrative law judge shall forward a copy of his decision to~~
44 ~~the agency that made the final decision, which in turn may affirm or modify its previous~~
45 ~~findings of fact and final decision.~~ The additional evidence and any affirmation or modification
46 of a final decision of the administrative law judge or final decision shall be made part of the
47 official record."

48 **SECTION 13.** G.S. 150B-50 reads as rewritten:

49 **"§ 150B-50. Review by superior court without jury.**

50 The review by a superior court of ~~agency~~ administrative decisions under this Chapter shall
51 be conducted by the court without a jury."

1 **SECTION 14.** G.S. 150B-51 reads as rewritten:

2 "**§ 150B-51. Scope and standard of review.**

3 ~~(a) In reviewing a final decision in a contested case in which an administrative law~~
4 ~~judge made a recommended decision and the State Personnel Commission made an advisory~~
5 ~~decision in accordance with G.S. 126-37(b1), the court shall make two initial determinations.~~
6 ~~First, the court shall determine whether the applicable appointing authority heard new evidence~~
7 ~~after receiving the recommended decision. If the court determines that the applicable~~
8 ~~appointing authority heard new evidence, the court shall reverse the decision or remand the~~
9 ~~case to the applicable appointing authority to enter a decision in accordance with the evidence~~
10 ~~in the official record. Second, if the applicable appointing authority did not adopt the~~
11 ~~recommended decision, the court shall determine whether the applicable appointing authority's~~
12 ~~decision states the specific reasons why the applicable appointing authority did not adopt the~~
13 ~~recommended decision. If the court determines that the applicable appointing authority did not~~
14 ~~state specific reasons why it did not adopt a recommended decision, the court shall reverse the~~
15 ~~decision or remand the case to the applicable appointing authority to enter the specific reasons.~~

16 ~~(a1) In reviewing a final decision in a contested case in which an administrative law~~
17 ~~judge made a decision, in accordance with G.S. 150B-34(a), and the agency adopted the~~
18 ~~administrative law judge's decision, the court shall determine whether the agency heard new~~
19 ~~evidence after receiving the decision. If the court determines that the agency heard new~~
20 ~~evidence, the court shall reverse the decision or remand the case to the agency to enter a~~
21 ~~decision in accordance with the evidence in the official record. The court shall also determine~~
22 ~~whether the agency specifically rejected findings of fact contained in the administrative law~~
23 ~~judge's decision in the manner provided by G.S. 150B-36(b1) and made findings of fact in~~
24 ~~accordance with G.S. 150B-36(b2). If the court determines that the agency failed to follow the~~
25 ~~procedure set forth in G.S. 150B-36, the court may take appropriate action under subsection (b)~~
26 ~~of this section.~~

27 ~~(b) Except as provided in subsection (c) of this section, in reviewing a final decision,~~
28 ~~the~~The court reviewing a final decision ~~may affirm the decision of the agency or remand the~~
29 ~~case to the agency or to the administrative law judge for further proceedings. It may also~~
30 ~~reverse or modify the agency's decision, or adopt the administrative law judge's decision if the~~
31 ~~substantial rights of the petitioners may have been prejudiced because the agency's findings,~~
32 ~~inferences, conclusions, or decisions are:~~

- 33 (1) In violation of constitutional provisions;
34 (2) In excess of the statutory authority or jurisdiction of the agency;
35 (3) Made upon unlawful procedure;
36 (4) Affected by other error of law;
37 (5) Unsupported by substantial evidence admissible under G.S. 150B-29(a),
38 150B-30, or 150B-31 in view of the entire record as submitted; or
39 (6) Arbitrary, capricious, or an abuse of discretion.

40 ~~(c) In reviewing a final decision in a contested case in which an administrative law~~
41 ~~judge made a decision, in accordance with G.S. 150B-34(a), and the agency does not adopt the~~
42 ~~administrative law judge's decision, the court shall review the official record, de novo, and shall~~
43 ~~make findings of fact and conclusions of law. In reviewing the case, the court shall not give~~
44 ~~deference to any prior decision made in the case and shall not be bound by the findings of fact~~
45 ~~or the conclusions of law contained in the agency's final decision. The court shall determine~~
46 ~~whether the petitioner is entitled to the relief sought in the petition, based upon its review of the~~
47 ~~official record. The court reviewing a final decision under this subsection may adopt the~~
48 ~~administrative law judge's decision; may adopt, reverse, or modify the agency's decision; may~~
49 ~~remand the case to the agency for further explanations under G.S. 150B-36(b1), 150B-36(b2),~~
50 ~~or 150B-36(b3), or reverse or modify the final decision for the agency's failure to provide the~~
51 ~~explanations; and may take any other action allowed by law. case, the court shall determine~~

1 whether the decision is supported by substantial evidence admissible under G.S. 150B-29,
2 150B-30, or 150B-31 in view of the entire record. If the court determines that the decision is
3 not supported by substantial evidence in the record, the court may reverse the decision or
4 remand the case to the administrative law judge if the case was heard under Article 3 of this
5 Chapter or to the agency if the case was heard under Article 3A of this Chapter for entry of a
6 decision in accordance with the evidence in the official record.

7 (d) In reviewing a final ~~agency~~ decision allowing judgment on the pleadings or
8 summary judgment, ~~or in reviewing an agency decision that does not adopt an administrative~~
9 ~~law judge's decision allowing judgment on the pleadings or summary judgment pursuant to~~
10 ~~G.S. 150B-36(d),~~ the court may enter any order allowed by G.S. 1A-1, Rule 12(c) or Rule 56. If
11 the order of the court does not fully adjudicate the case, the court shall remand the case to the
12 administrative law judge for such further proceedings as are just."

13 **SECTION 15.** G.S. 7A-759(e) reads as rewritten:

14 "(e) ~~Notwithstanding G.S. 150B-34 and G.S. 150B-36, an~~ An order entered by an
15 administrative law judge after a contested case hearing on the merits of a deferred charge is a
16 final agency decision and is binding on the parties. The administrative law judge may order
17 whatever remedial action is appropriate to give full relief consistent with the requirements of
18 federal statutes or regulations or State statutes or rules."

19 **SECTION 16.** G.S. 74-58(b) reads as rewritten:

20 "(b) The effective date of any suspension or revocation shall be 30 days following the
21 date of the decision. The filing of a petition for a contested case under G.S. 74-61 shall stay the
22 effective date until ~~the Commission makes issuance of~~ a final decision. If the Department finds
23 at the time of its initial decision that any delay in correcting a violation would result in
24 imminent peril to life or danger to property or to the environment, it shall promptly initiate a
25 proceeding for injunctive relief under G.S. 74-64 hereof and Rule 65 of the Rules of Civil
26 Procedure. The pendency of any appeal from a suspension or revocation of a permit shall have
27 no effect upon an action for injunctive relief."

28 **SECTION 17.** G.S. 74-61 reads as rewritten:

29 "**§ 74-61. Administrative and judicial review of decisions.**

30 An applicant, permittee, or affected person may contest a decision of the Department to
31 deny, suspend, modify, or revoke a permit or a reclamation plan, to refuse to release part or all
32 of a bond or other security, or to assess a civil penalty by filing a petition for a contested case
33 under G.S. 150B-23 within 30 days after the Department makes the decision. ~~The Commission~~
34 ~~shall make the final decision in a contested case under this section.~~ Article 4 of Chapter 150B
35 of the General Statutes governs judicial review of a decision of the Commission."

36 **SECTION 18.** G.S. 74-85 reads as rewritten:

37 "**§ 74-85. Administrative and judicial review of decisions.**

38 Any affected person may contest a decision of the Department to approve, deny, suspend,
39 or revoke a permit, to require additional abandonment work, to refuse to release part or all of a
40 bond or other security, or to assess a civil penalty by filing a petition for a contested case under
41 G.S. 150B-23 within 30 days after the Department makes the decision. ~~The Commission shall~~
42 ~~make the final decision in a contested case under this section.~~ Article 4 of Chapter 150B of the
43 General Statutes governs judicial review of a decision of the Commission."

44 **SECTION 19.** G.S. 108A-70.9A(f) reads as rewritten:

45 "(f) Final Decision. – After a hearing before an administrative law judge, the judge shall
46 return the decision ~~and record~~ to the Department in accordance with ~~G.S. 108A-70.9B,~~
47 ~~G.S. 150B-37.~~ The Department shall ~~make a final decision in the case within 20 days of receipt~~
48 ~~of the decision and record from the administrative law judge and promptly~~ notify the recipient
49 of the final decision and of the right to judicial review of the decision pursuant to Article 4 of
50 Chapter 150B of the General Statutes."

51 **SECTION 20.** G.S. 108A-70.9B(g) reads as rewritten:

1 "(g) Decision. – The administrative law judge assigned to a contested Medicaid case
2 shall hear and decide the case without unnecessary delay. ~~OAH shall send a copy of the~~
3 ~~audiotape or diskette of the hearing to the agency within five days of completion of the hearing.~~
4 The judge shall prepare a written decision and send it to the ~~parties.~~ parties in accordance with
5 G.S. 150B-37. The decision shall be sent together with the record to the agency within 20 days
6 ~~of the conclusion of the hearing."~~

7 **SECTION 21.** G.S. 113-171(e) reads as rewritten:

8 "(e) A licensee served with a notice of suspension or revocation may obtain an
9 administrative review of the suspension or revocation by filing a petition for a contested case
10 under G.S. 150B-23 within 20 days after receiving the notice. The only issue in the hearing
11 shall be whether the licensee was convicted of a criminal offense for which a license must be
12 suspended or revoked. A license remains suspended or revoked pending the final ~~decision by~~
13 ~~the Secretary.~~ decision."

14 **SECTION 22.** G.S. 113-202 reads as rewritten:

15 **"§ 113-202. New and renewal leases for shellfish cultivation; termination of leases issued**
16 **prior to January 1, 1966.**

17 ...

18 (g) After consideration of the public comment received and any additional
19 investigations the Secretary orders to evaluate the comments, the Secretary shall notify the
20 applicant in person or by certified or registered mail of the decision on the lease application.
21 The Secretary shall also notify persons who submitted comments at the public hearing and
22 requested notice of the lease decision. An applicant who is dissatisfied with the Secretary's
23 decision or another person aggrieved by the decision may commence a contested case by filing
24 a petition under G.S. 150B-23 within 20 days after receiving notice of the Secretary's decision.
25 In the event the Secretary's decision is a modification to which the applicant agrees, the lease
26 applicant must furnish an amended map or diagram before the lease can be issued by the
27 Secretary. ~~The Secretary shall make the final agency decision in a contested case.~~

28 ...

29 (m) In the event the leaseholder takes steps within 30 days to remedy the situation upon
30 which the notice of intention to terminate was based and the Secretary is satisfied that
31 continuation of the lease is in the best interests of the shellfish culture of the State, the
32 Secretary may discontinue termination procedures. Where there is no discontinuance of
33 termination procedures, the leaseholder may initiate a contested case by filing a petition under
34 G.S. 150B-23 within 30 days of receipt of notice of intention to terminate. ~~The Secretary shall~~
35 ~~make the final agency decision of all lease terminations.~~ Where the leaseholder does not initiate
36 a contested case, or the ~~Secretary's~~ final decision upholds termination, the Secretary must send
37 a final letter of termination to the leaseholder. The final letter of termination may not be mailed
38 sooner than 30 days after receipt by the leaseholder of the Secretary's notice of intention to
39 terminate, or of the ~~Secretary's~~ final agency decision, as appropriate. The lease is terminated
40 effective at midnight on the day the final notice of termination is served on the leaseholder. The
41 final notice of termination may not be issued pending hearing of a contested case initiated by
42 the leaseholder.

43 Service of any notice required in this subsection may be accomplished by certified mail,
44 return receipt requested; personal service by any law-enforcement officer; or upon the failure of
45 these two methods, publication. Service by publication shall be accomplished by publishing
46 such notices in a newspaper of general circulation within the county where the lease is located
47 for at least once a week for three successive weeks. The format for notice by publication shall
48 be approved by the Attorney General.

49"

50 **SECTION 23.** G.S. 113-229(f) reads as rewritten:

1 "(f) A permit applicant who is dissatisfied with a decision on his application may file a
2 petition for a contested case hearing under G.S. 150B-23 within 20 days after the decision is
3 made. Any other person who is dissatisfied with a decision to deny or grant a permit may file a
4 petition for a contested case hearing only if the Coastal Resources Commission determines, in
5 accordance with G.S. 113A-121.1(c), that a hearing is appropriate. A permit is suspended from
6 the time a person seeks administrative review of the decision concerning the permit until the
7 Commission determines that the person seeking the review cannot commence a contested case
8 or the ~~Commission makes issuance of~~ a final decision in a contested case, as appropriate, and
9 no action may be taken during that time that would be unlawful in the absence of the permit."

10 **SECTION 24.** G.S. 113A-121.1(b) reads as rewritten:

11 "(b) A person other than a permit applicant or the Secretary who is dissatisfied with a
12 decision to deny or grant a minor or major development permit may file a petition for a
13 contested case hearing only if the Commission determines that a hearing is appropriate. A
14 request for a determination of the appropriateness of a contested case hearing shall be made in
15 writing and received by the Commission within 20 days after the disputed permit decision is
16 made. A determination of the appropriateness of a contested case shall be made within 15 days
17 after a request for a determination is received and shall be based on whether the person seeking
18 to commence a contested case:

- 19 (1) Has alleged that the decision is contrary to a statute or rule;
- 20 (2) Is directly affected by the decision; and
- 21 (3) Has alleged facts or made legal arguments that demonstrate that the request
22 for the hearing is not frivolous.

23 If the Commission determines a contested case is appropriate, the petition for a contested
24 case shall be filed within 20 days after the Commission makes its determination. A
25 determination that a person may not commence a contested case is a final agency decision and
26 is subject to judicial review under Article 4 of Chapter 150B of the General Statutes. If, on
27 judicial review, the court determines that the Commission erred in determining that a contested
28 case would not be appropriate, the court shall remand the matter for a contested case hearing
29 under G.S. 150B-23 and final ~~Commission~~ decision on the permit pursuant to G.S. 113A-122.
30 Decisions in such cases shall be rendered pursuant to those rules, regulations, and other
31 applicable laws in effect at the time of the commencement of the contested case."

32 **SECTION 25.** G.S. 113A-126(d) reads as rewritten:

33 "(d) (1) A civil penalty of not more than one thousand dollars (\$1,000) for a minor
34 development violation and ten thousand dollars (\$10,000) for a major
35 development violation may be assessed by the Commission against any
36 person who:

37 ...

- 38 (3) The Commission shall notify a person who is assessed a penalty or
39 investigative costs by registered or certified mail. The notice shall state the
40 reasons for the penalty. A person may contest the assessment of a penalty or
41 investigative costs by filing a petition for a contested case under
42 G.S. 150B-23 within 20 days after receiving the notice of assessment. If a
43 person fails to pay any civil penalty or investigative cost assessed under this
44 subsection, the Commission shall refer the matter to the Attorney General
45 for collection. An action to collect a penalty must be filed within three years
46 after the date the final ~~agency~~ decision was served on the violator.

47 "

48 **SECTION 26.** G.S. 122C-24.1(h) reads as rewritten:

49 "(h) The Secretary may bring a civil action in the superior court of the county wherein
50 the violation occurred to recover the amount of the administrative penalty whenever a facility:

- 1 (1) Which has not requested an administrative hearing fails to pay the penalty
2 within 60 days after being notified of the penalty, or
3 (2) Which has requested an administrative hearing fails to pay the penalty
4 within 60 days after receipt of a written copy of the decision as provided in
5 ~~G.S. 150B-36.~~ G.S. 150B-37."

6 **SECTION 27.** G.S. 122C-151.4(f) reads as rewritten:

7 "(f) Chapter 150B Appeal. – A person who is dissatisfied with a decision of the Panel
8 may commence a contested case under Article 3 of Chapter 150B of the General Statutes.
9 Notwithstanding G.S. 150B-2(1a), an area authority or county program is considered an agency
10 for purposes of the limited appeal authorized by this section. If the need to first appeal to the
11 State MH/DD/SA Appeals Panel is waived by the Secretary, a contractor may appeal directly to
12 the Office of Administrative Hearings after having exhausted the appeals process at the
13 appropriate area authority or county program. ~~The Secretary shall make a final decision in the~~
14 ~~contested case."~~

15 **SECTION 28.** G.S. 126-4.1 is repealed.

16 **SECTION 29.** G.S. 126-14.4(e) reads as rewritten:

17 "(e) Within 90 days after the filing of a contested case petition, the administrative law
18 judge shall issue a ~~recommended~~ final decision to the State Personnel Commission which shall
19 include findings of fact and conclusions of law and, if the administrative law judge has found a
20 violation of G.S. 126-14.2, an appropriate ~~recommended remedy~~ remedy, which may include:

- 21 (1) Directing the State agency, department, or institution to declare the position
22 vacant, and to hire from among the most qualified State employees or
23 applicants for initial State employment who had applied for the position, or
24 (2) Requiring that the vacancy be posted pursuant to this Chapter."

25 **SECTION 30.** G.S. 126-14.4(f) is repealed.

26 **SECTION 31.** G.S. 126-37 reads as rewritten:

27 **"§ 126-37. ~~Personnel Commission to review Administrative Law Judge's recommended~~**
28 **~~decision and make final decision.~~**

29 (a) Appeals involving a disciplinary action, alleged discrimination or harassment, and
30 any other contested case arising under this Chapter shall be conducted in the Office of
31 Administrative Hearings as provided in Article 3 of Chapter 150B; provided that no grievance
32 may be appealed unless the employee has complied with G.S. 126-34. ~~The State Personnel~~
33 ~~Commission shall make a final decision in these cases as provided in G.S. 150B-36, except as~~
34 ~~provided in subsection (b1) of this section.~~ The State Personnel Commission administrative law
35 judge is hereby authorized to reinstate any employee to the position from which the employee
36 has been removed, to order the employment, promotion, transfer, or salary adjustment of any
37 individual to whom it has been wrongfully denied or to direct other suitable action to correct
38 the abuse which may include the requirement of payment for any loss of salary which has
39 resulted from the improperly discriminatory action of the appointing authority.

40 (b) Repealed by 1993 (Reg. Sess., 1994), c. 572, s. 1.

41 (b1) ~~In appeals involving local government employees subject to this Chapter pursuant to~~
42 ~~G.S. 126-5(a)(2), except in appeals in which discrimination prohibited by Article 6 of this~~
43 ~~Chapter is found or in any case where a binding decision is required by applicable federal~~
44 ~~standards, the decision of the State Personnel Commission shall be advisory to the local~~
45 ~~appointing authority. The State Personnel Commission shall comply with all requirements of~~
46 ~~G.S. 150B-44 in making an advisory decision. The local appointing authority shall, within 90~~
47 ~~days of receipt of the advisory decision of the State Personnel Commission, issue a written,~~
48 ~~final decision either accepting, rejecting, or modifying the decision of the State Personnel~~
49 ~~Commission. If the local appointing authority rejects or modifies the advisory decision, the~~
50 ~~local appointing authority must state the specific reasons why it did not adopt the advisory~~

1 decision. A copy of the final decision shall be served on each party personally or by certified
2 mail, and on each party's attorney of record.

3 (b2) The final decision is subject to judicial review pursuant to Article 4 of Chapter 150B
4 of the General Statutes. Appeals in which it is found that discrimination prohibited by Article 6
5 of this Chapter has occurred or in any case where a binding decision is required by applicable
6 federal standards shall be heard as all other ~~appeals, except that the decision of the State~~
7 ~~Personnel Commission shall be final.~~ appeals.

8 (c) If the local appointing authority is other than a board of county commissioners, the
9 local appointing authority must give the county notice of the appeal taken pursuant to
10 subsection (a) of this section. Notice must be given to the county manager or the chairman of
11 the board of county commissioners by certified mail within 15 days of the receipt of the notice
12 of appeal. The county may intervene in the appeal within 30 days of receipt of the notice. If the
13 action is appealed to superior court the county may intervene in the superior court proceeding
14 even if it has not intervened in the administrative proceeding. The decision of the superior court
15 shall be binding on the county even if the county does not intervene."

16 **SECTION 32.** G.S. 131D-34(e) reads as rewritten:

17 "(e) Any facility wishing to contest a penalty shall be entitled to an administrative
18 hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes.
19 A petition for a contested case shall be filed within 30 days after the Department mails a notice
20 of penalty to a licensee. At least the following specific issues shall be addressed at the
21 administrative hearing:

- 22 (1) The reasonableness of the amount of any civil penalty assessed, and
- 23 (2) The degree to which each factor has been evaluated pursuant to subsection
24 (c) of this section to be considered in determining the amount of an initial
25 penalty.

26 If a civil penalty is found to be unreasonable or if the evaluation of each factor is found to
27 be incomplete, the ~~hearing officer may recommend~~ administrative law judge may order that the
28 penalty be adjusted accordingly."

29 **SECTION 33.** G.S. 131E-111(a) reads as rewritten:

30 "(a) After a decision of the Department to issue, deny or withdraw a certificate of need
31 or exemption or to issue a certificate of need pursuant to a settlement agreement with an
32 applicant to the extent permitted by law, any affected person, as defined in subsection (c) of
33 this section, shall be entitled to a contested case hearing under Article 3 of Chapter 150B of the
34 General Statutes. A petition for a contested case shall be filed within 30 days after the
35 Department makes its decision. When a petition is filed, the Department shall send notification
36 of the petition to the proponent of each application that was reviewed with the application for a
37 certificate of need that is the subject of the petition. Any affected person shall be entitled to
38 intervene in a contested case.

39 A contested case shall be conducted in accordance with the following timetable:

- 40 (1) An administrative law judge or a hearing officer, as appropriate, shall be
41 assigned within 15 days after a petition is filed.
- 42 (2) The parties shall complete discovery within 90 days after the assignment of
43 the administrative law judge or hearing officer.
- 44 (3) The hearing at which sworn testimony is taken and evidence is presented
45 shall be held within 45 days after the end of the discovery period.
- 46 (4) The administrative law judge or hearing officer shall make ~~his recommended~~
47 a final decision within 75 days after the hearing.
- 48 (5) ~~The Department shall make its final decision within 30 days of receiving the~~
49 ~~official record of the case from the Office of Administrative Hearings.~~

50 The administrative law judge or hearing officer assigned to a case may extend the
51 deadlines in subdivisions (2) through (4) so long as the administrative law judge or hearing

1 officer makes ~~his recommended~~ a final decision in the case within 270 days after the petition is
2 filed. ~~The Department may extend the deadline in subdivision (5) for up to 30 days by giving~~
3 ~~all parties written notice of the extension."~~

4 **SECTION 34.** G.S. 131F-5(b) reads as rewritten:

5 "(b) Departmental Review. – The Department shall examine each application filed by a
6 charitable organization or sponsor and shall determine whether the licensing requirements are
7 satisfied. If the Department determines that the requirements are not satisfied, the Department
8 shall notify the charitable organization or sponsor within 10 days after its receipt of the
9 application. If the Department does not notify the charitable organization or sponsor within 10
10 days, the application is deemed to be approved and the license shall be granted. Within seven
11 days after receipt of a notification that the requirements are not satisfied, the charitable
12 organization or sponsor may file a petition for a contested case. The State has the burden of
13 proof in the contested case. The contested case hearing must be held within seven days after the
14 petition is filed. ~~A recommended final decision must be made within three five days of the~~
15 ~~hearing. A final decision must be made within two days after the recommended decision.~~ The
16 contested case hearing proceedings shall be conducted in accordance with Chapter 150B of the
17 General Statutes except that the time limits and provisions set forth in this section shall prevail
18 to the extent of any conflict. The applicant shall be permitted to continue to operate or continue
19 operations pending judicial review of the Department's denial of the application. The
20 Department shall make rules regarding the custody and control of any funds collected during
21 the review period and disposal of such funds in the event the denial of the application is
22 affirmed on appeal."

23 **SECTION 35.** G.S. 131F-15(e) reads as rewritten:

24 "(e) Departmental Review. – The Department shall examine each application or renewal
25 filed by a fund-raising consultant and determine whether the requirements are satisfied. If the
26 Department determines that the requirements are not satisfied, the Department shall notify the
27 fund-raising consultant within 10 days after its receipt of the application or renewal. If the
28 Department does not respond within 10 days, the license is deemed approved. Within seven
29 days after receipt of a notification that the license requirements are not satisfied, the applicant
30 may file a petition for a contested case. The State has the burden of proof in the contested case.
31 The contested case hearing must be held within seven days after the petition is filed. ~~A~~
32 ~~recommended final decision must be made within three five days of the hearing. A final~~
33 ~~decision must be made within two days after the recommended decision.~~ The contested case
34 hearing proceedings shall be conducted in accordance with Chapter 150B of the General
35 Statutes, except that the time limits and provisions set forth in this section shall prevail to the
36 extent of any conflict. The applicant shall be permitted to continue to operate or continue
37 operations pending judicial review of the Department's denial of the application. The
38 Department shall make rules regarding the custody and control of any funds collected during
39 the review period and disposal of such funds in the event the denial of the application is
40 affirmed on appeal."

41 **SECTION 36.** G.S. 135-44.7(c) is repealed.

42 **SECTION 37.** G.S. 143-215.22L(o) reads as rewritten:

43 "(o) Administrative and Judicial Review. – Administrative and judicial review of a final
44 decision ~~by the Commission~~ on a petition for a certificate under this section shall be governed
45 by Chapter 150B of the General Statutes."

46 **SECTION 38.** G.S. 143-215.94E(e3) reads as rewritten:

47 "(e3) The Department shall not pay any third party or reimburse any owner or operator
48 who has paid any third party pursuant to any settlement agreement or consent judgment relating
49 to a claim by or on behalf of a third party for compensation for bodily injury or property
50 damage unless the Department has approved the settlement agreement or consent judgment
51 prior to entry into the settlement agreement or consent judgment by the parties or entry of a

1 consent judgment by the court. The approval or disapproval by the Department of a proposed
2 settlement agreement or consent judgment shall be subject to challenge only in a contested case
3 filed under Chapter 150B of the General Statutes. ~~The Secretary shall make the final agency~~
4 ~~decision in a contested case proceeding under this subsection."~~

5 **SECTION 39.** G.S. 143-215.94U(e) reads as rewritten:

6 "(e) The Department may revoke an operating permit only if the owner or operator fails
7 to continuously meet the requirements set out in subsection (a) of this section. If the
8 Department revokes an operating permit, the owner or operator of the facility for which the
9 operating permit was issued shall immediately surrender the operating permit certificate to the
10 Department, unless the revocation is stayed pursuant to G.S. 150B-33. An owner or operator
11 may challenge a decision by the Department to deny or revoke an operating permit by filing a
12 contested case under Article 3 of Chapter 150B of the General Statutes. ~~The Secretary shall~~
13 ~~make the final agency decision regarding the revocation of a permit under this section."~~

14 **SECTION 40.** G.S. 143-215.104P(d) reads as rewritten:

15 "(d) The Secretary shall notify any person assessed a civil penalty for the assessment and
16 the specific reasons therefor by registered or certified mail or by any means authorized by
17 G.S. 1A-1, Rule 4. Contested case petitions shall be filed pursuant to G.S. 150B-23 within 30
18 days of receipt of the notice of assessment. ~~The Secretary shall make the final decision~~
19 ~~regarding assessment of a civil penalty under this section."~~

20 **SECTION 41.** G.S. 143-215.104S reads as rewritten:

21 "**§ 143-215.104S. (Repealed effective January 1, 2012 – See editor's notes) Appeals.**

22 Any person who is aggrieved by a decision of the Commission under G.S. 143-215.104F
23 through G.S. 143-215.104O may commence a contested case by filing a petition under
24 G.S. 150B-23 within 60 days after the Commission's decision. If no contested case is initiated
25 within the allotted time period, the Commission's decision shall be final and not subject to
26 review. ~~The Commission shall make the final agency decision in contested cases initiated~~
27 ~~pursuant to this section.~~ Notwithstanding the provisions of G.S. 6-19.1, no party seeking to
28 compel remediation of dry-cleaning solvent contamination in excess of that required by a
29 dry-cleaning solvent remediation agreement approved by the Commission shall be eligible to
30 recover attorneys' fees. ~~The Commission shall not delegate its authority to make a final agency~~
31 ~~decision pursuant to this section."~~

32 **SECTION 42.** G.S. 153A-223 reads as rewritten:

33 "**§ 153A-223. Enforcement of minimum standards.**

34 If an inspection conducted pursuant to G.S. 153A-222 discloses that the jailers and
35 supervisory and administrative personnel of a local confinement facility do not meet the entry
36 level employment standards established pursuant to Chapter 17C or Chapter 17E or that a local
37 confinement facility does not meet the minimum standards published pursuant to
38 G.S. 153A-221 and, in addition, if the Secretary determines that conditions in the facility
39 jeopardize the safe custody, safety, health, or welfare of persons confined in the facility, the
40 Secretary may order corrective action or close the facility, as provided in this section:

- 41 (1) The Secretary shall give notice of his determination to the governing body
42 and each other local official responsible for the facility. The Secretary shall
43 also send a copy of this notice, along with a copy of the inspector's report, to
44 the senior resident superior court judge of the superior court district or set of
45 districts as defined in G.S. 7A-41.1 in which the facility is located. Upon
46 receipt of the Secretary's notice, the governing body shall call a public
47 hearing to consider the report. The hearing shall be held within 20 days after
48 the day the Secretary's notice is received. The inspector shall appear at this
49 hearing to advise and consult with the governing body concerning any
50 corrective action necessary to bring the facility into conformity with the
51 standards.

- 1 (2) The governing body shall, within 30 days after the day the Secretary's notice
2 is received, request a contested case hearing, initiate appropriate corrective
3 action or close the facility. The corrective action must be completed within a
4 reasonable time.
- 5 (3) A contested case hearing, if requested, shall be conducted pursuant to
6 G.S. 150B, Article 3. The issues shall be: (i) whether the facility meets the
7 minimum standards; (ii) whether the conditions in the facility jeopardize the
8 safe custody, safety, health, or welfare of persons confined therein; and (iii)
9 the appropriate corrective action to be taken and a reasonable time to
10 complete that action.
- 11 (4) If the governing body does not, within 30 days after the day the Secretary's
12 notice is received, or within 30 days after service of the final ~~agency~~
13 decision if a contested case hearing is held, either initiate corrective action or
14 close the facility, or does not complete the action within a reasonable time,
15 the Secretary may order that the facility be closed.
- 16 (5) The governing body may appeal an order of the Secretary or a final decision
17 to the senior resident superior court judge. The governing body shall initiate
18 the appeal by giving by registered mail to the judge and to the Secretary
19 notice of its intention to appeal. The notice must be given within 15 days
20 after the day the Secretary's order or the final decision is received. If notice
21 is not given within the 15-day period, the right to appeal is terminated.
- 22 (6) The senior resident superior court judge shall hear the appeal. He shall cause
23 notice of the date, time, and place of the hearing to be given to each
24 interested party, including the Secretary, the governing body, and each other
25 local official involved. The ~~Secretary, Office of Administrative Hearings,~~ if
26 a contested case hearing has been held, shall file the official record, as
27 defined in G.S. 150B-37, with the senior resident superior court judge and
28 shall serve a copy on each person who has been given notice of the hearing.
29 The judge shall conduct the hearing without a jury. He shall consider the
30 official record, if any, and may accept evidence from the Secretary, the
31 governing body, and each other local official which he finds appropriate.
32 The issue before the court shall be whether the facility continues to
33 jeopardize the safe custody, safety, health, or welfare of persons confined
34 therein. The court may affirm, modify, or reverse the Secretary's order."

35 **SECTION 43.** This act becomes effective January 1, 2012, and applies to contested
36 cases commenced on or after that date.