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HOUSE BILL 623  
Committee Substitute Favorable 5/16/11  
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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~~



1 the General Statutes or in any case where a binding decision is required by applicable federal  
2 standards. In these cases, the State Personnel Commission's decision shall be binding on the  
3 local appointing authority. In all other cases, the final decision shall be made by the applicable  
4 appointing authority."

5 **SECTION 3.** G.S. 150B-33(b)(12) is repealed.

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

7 "**§ 150B-34. Decision of administrative law judge. Final decision or order.**

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

16 (b) Repealed by Session Laws 1991, c. 35, s. 6.

17 (c) ~~Notwithstanding subsection (a) of this section, in cases arising under Article 9 of~~  
18 ~~Chapter 131E of the General Statutes, the administrative law judge shall make a recommended~~  
19 ~~decision or order that contains findings of fact and conclusions of law. A final decision shall be~~  
20 ~~made by the agency in writing after review of the official record as defined in G.S. 150B-37(a)~~  
21 ~~and shall include findings of fact and conclusions of law. The final agency decision shall recite~~  
22 ~~and address all of the facts set forth in the recommended decision. For each finding of fact in~~  
23 ~~the recommended decision not adopted by the agency, the agency shall state the specific~~  
24 ~~reason, based on the evidence, for not adopting the findings of fact and the agency's findings~~  
25 ~~shall be supported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or~~  
26 ~~150B-31. The provisions of G.S. 150B-36(b), (b1), (b2), (b3), and (d), and G.S. 150B-51 do not~~  
27 ~~apply to cases decided under this subsection.~~

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

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

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

43 "**§ 150B-35. No ex parte communication; exceptions.**

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

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

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

51 "**§ 150B-37. Official record.**

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

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

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

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

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

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

23 The agency may elect to have the administrative law judge make (i) only findings of fact  
24 and conclusions of law, (ii) findings of fact, conclusions of law, and a recommended decision,  
25 or (iii) findings of fact, conclusions of law, and a final decision. The provisions of this Article,  
26 rather than the provisions of Article 3, shall govern a contested case in which the agency  
27 requests an administrative law judge from the Office of Administrative Hearings. Hearings,  
28 except that if the agency requests only findings of fact and conclusions of law, or findings of  
29 fact, conclusions of law, and a recommended decision, the agency may make its final decision  
30 only after the administrative law judge's recommended decision is served on the parties, and an  
31 opportunity is given to each party to file exceptions and to present oral and written arguments  
32 to the agency. If the agency elects to have the administrative law judge make findings of fact,  
33 conclusions of law, and a final decision, the decision of the administrative law judge shall be  
34 binding on the agency.

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

39 An administrative law judge may grant judgment on the pleadings, pursuant to a motion  
40 made in accordance with G.S. 1A-1, Rule 12(c), or summary judgment, pursuant to a motion  
41 made in accordance with G.S. 1A-1, Rule 56, that disposes of all issues in the contested case.

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

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

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

2   "**§ 150B-43. Right to judicial review.**

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

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

11   "**§ 150B-44. Right to judicial intervention when decision unreasonably delayed.**

12       Unreasonable delay on the part of any agency or administrative law judge in taking any  
13 required action shall be justification for any person whose rights, duties, or privileges are  
14 adversely affected by such delay to seek a court order compelling action by the agency or  
15 administrative law judge. ~~An agency that is subject to Article 3 of this Chapter and is not a~~  
16 ~~board or commission has 60 days from the day it receives the official record in a contested case~~  
17 ~~from the Office of Administrative Hearings to make a final decision in the case. This time limit~~  
18 ~~may be extended by the parties or, for good cause shown, by the agency for an additional~~  
19 ~~period of up to 60 days. An agency that is subject to Article 3 of this Chapter and is a board or~~  
20 ~~commission has 60 days from the day it receives the official record in a contested case from the~~  
21 ~~Office of Administrative Hearings or 60 days after its next regularly scheduled meeting,~~  
22 ~~whichever is longer, to make a final decision in the case. This time limit may be extended by~~  
23 ~~the parties or, for good cause shown, by the agency for an additional period of up to 60 days. If~~  
24 ~~an agency subject to Article 3 of this Chapter has not made a final decision within these time~~  
25 ~~limits, the agency is considered to have adopted the administrative law judge's decision as the~~  
26 ~~agency's final decision. Failure of an administrative law judge subject to Article 3 of this~~  
27 ~~Chapter or failure of an agency subject to Article 3A of this Chapter to make a final decision~~  
28 ~~within 120 days of the close of the contested case hearing is justification for a person whose~~  
29 ~~rights, duties, or privileges are adversely affected by the delay to seek a court order compelling~~  
30 ~~action by the agency or, if the case was heard by an administrative law judge, or by the~~  
31 ~~administrative law judge. The Board of Trustees of the North Carolina State Health Plan for~~  
32 ~~Teachers and State Employees is a "board" for purposes of this section."~~

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

34   "**§ 150B-47. Records filed with clerk of superior court; contents of records; costs.**

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

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

46   "**§ 150B-49. New evidence.**

47       ~~An aggrieved person-~~ A party who files a petition in the superior court may apply to the  
48 court to present additional evidence. If the court is satisfied that the evidence is material to the  
49 issues, is not merely cumulative, and could not reasonably have been presented at the  
50 administrative hearing, the court may remand the case so that additional evidence can be taken.  
51 If an administrative law judge did not make a final decision in the case, the court shall remand

1 the case to the agency that conducted the administrative ~~hearing~~-hearing under Article 3A of  
2 this Chapter and G.S. 150B-34(c). After hearing the evidence, the agency may affirm or modify  
3 its previous findings of fact and final decision. If an administrative law judge made a final  
4 decision in the case, the court shall remand the case to the administrative law judge. After  
5 hearing the evidence, the administrative law judge may affirm or modify his previous findings  
6 of fact and final decision. ~~The administrative law judge shall forward a copy of his decision to~~  
7 ~~the agency that made the final decision, which in turn may affirm or modify its previous~~  
8 ~~findings of fact and final decision.~~The additional evidence and any affirmation or modification  
9 of a final decision of the administrative law judge or ~~final decision~~ shall be made part of the  
10 official record."

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

12 "**§ 150B-50. Review by superior court without jury.**

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

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

16 "**§ 150B-51. Scope and standard of review.**

17 (a) ~~In reviewing a final decision in a contested case in which an administrative law~~  
18 ~~judge made a recommended decision and the State Personnel Commission made an advisory~~  
19 ~~decision in accordance with G.S. 126-37(b1), the court shall make two initial determinations.~~  
20 ~~First, the court shall determine whether the applicable appointing authority heard new evidence~~  
21 ~~after receiving the recommended decision. If the court determines that the applicable~~  
22 ~~appointing authority heard new evidence, the court shall reverse the decision or remand the~~  
23 ~~case to the applicable appointing authority to enter a decision in accordance with the evidence~~  
24 ~~in the official record. Second, if the applicable appointing authority did not adopt the~~  
25 ~~recommended decision, the court shall determine whether the applicable appointing authority's~~  
26 ~~decision states the specific reasons why the applicable appointing authority did not adopt the~~  
27 ~~recommended decision. If the court determines that the applicable appointing authority did not~~  
28 ~~state specific reasons why it did not adopt a recommended decision, the court shall reverse the~~  
29 ~~decision or remand the case to the applicable appointing authority to enter the specific reasons.~~

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

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

- 47 (1) In violation of constitutional provisions;
- 48 (2) In excess of the statutory authority or jurisdiction of the agency;
- 49 (3) Made upon unlawful procedure;
- 50 (4) Affected by other error of law;

1 (5) Unsupported by substantial evidence admissible under G.S. 150B-29(a),  
2 150B-30, or 150B-31 in view of the entire record as submitted; or

3 (6) Arbitrary, capricious, or an abuse of discretion.

4 (c) In reviewing a final decision in a contested case in which an administrative law  
5 judge made a decision, in accordance with G.S. 150B-34(a), and the agency does not adopt the  
6 administrative law judge's decision, the court shall review the official record, de novo, and shall  
7 make findings of fact and conclusions of law. In reviewing the case, the court shall not give  
8 deference to any prior decision made in the case and shall not be bound by the findings of fact  
9 or the conclusions of law contained in the agency's final decision. The court shall determine  
10 whether the petitioner is entitled to the relief sought in the petition, based upon its review of the  
11 official record. The court reviewing a final decision under this subsection may adopt the  
12 administrative law judge's decision; may adopt, reverse, or modify the agency's decision; may  
13 remand the case to the agency for further explanations under G.S. 150B-36(b1), 150B-36(b2),  
14 or 150B-36(b3), or reverse or modify the final decision for the agency's failure to provide the  
15 explanations; and may take any other action allowed by law. case, the court shall determine  
16 whether the decision is supported by substantial evidence admissible under G.S. 150B-29,  
17 150B-30, or 150B-31 in view of the entire record. If the court determines that the decision is  
18 not supported by substantial evidence in the record, the court may reverse the decision or  
19 remand the case to the administrative law judge if the case was heard under Article 3 of this  
20 Chapter or to the agency if the case was heard under Article 3A of this Chapter for entry of a  
21 decision in accordance with the evidence in the official record.

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

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

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

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

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

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

44 "**§ 74-61. Administrative and judicial review of decisions.**

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

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

1 **"§ 74-85. Administrative and judicial review of decisions.**

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

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

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

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

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

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

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

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

30 **"§ 113-202. New and renewal leases for shellfish cultivation; termination of leases issued**  
31 **prior to January 1, 1966.**

32 ...

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

43 ...

44 (m) In the event the leaseholder takes steps within 30 days to remedy the situation upon  
45 which the notice of intention to terminate was based and the Secretary is satisfied that  
46 continuation of the lease is in the best interests of the shellfish culture of the State, the  
47 Secretary may discontinue termination procedures. Where there is no discontinuance of  
48 termination procedures, the leaseholder may initiate a contested case by filing a petition under  
49 G.S. 150B-23 within 30 days of receipt of notice of intention to terminate. ~~The Secretary shall~~  
50 ~~make the final agency decision of all lease terminations.~~ Where the leaseholder does not initiate  
51 a contested case, or the Secretary's final decision upholds termination, the Secretary must send

1 a final letter of termination to the leaseholder. The final letter of termination may not be mailed  
2 sooner than 30 days after receipt by the leaseholder of the Secretary's notice of intention to  
3 terminate, or of the Secretary's final agency decision, as appropriate. The lease is terminated  
4 effective at midnight on the day the final notice of termination is served on the leaseholder. The  
5 final notice of termination may not be issued pending hearing of a contested case initiated by  
6 the leaseholder.

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

13 ...."

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

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

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

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

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

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

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

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

51 ...



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

...."

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

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

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

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

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

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

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

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

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

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

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

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

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

1 the abuse which may include the requirement of payment for any loss of salary which has  
2 resulted from the improperly discriminatory action of the appointing authority.

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

4 ~~(b1) In appeals involving local government employees subject to this Chapter pursuant to  
5 G.S. 126-5(a)(2), except in appeals in which discrimination prohibited by Article 6 of this  
6 Chapter is found or in any case where a binding decision is required by applicable federal  
7 standards, the decision of the State Personnel Commission shall be advisory to the local  
8 appointing authority. The State Personnel Commission shall comply with all requirements of  
9 G.S. 150B-44 in making an advisory decision. The local appointing authority shall, within 90  
10 days of receipt of the advisory decision of the State Personnel Commission, issue a written,  
11 final decision either accepting, rejecting, or modifying the decision of the State Personnel  
12 Commission. If the local appointing authority rejects or modifies the advisory decision, the  
13 local appointing authority must state the specific reasons why it did not adopt the advisory  
14 decision. A copy of the final decision shall be served on each party personally or by certified  
15 mail, and on each party's attorney of record.~~

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

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

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

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

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

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

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

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

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

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

12 The administrative law judge or hearing officer assigned to a case may extend the  
13 deadlines in subdivisions (2) through (4) so long as the administrative law judge or hearing  
14 officer makes ~~his recommended~~ a final decision in the case within 270 days after the petition is  
15 filed. ~~The Department may extend the deadline in subdivision (5) for up to 30 days by giving~~  
16 ~~all parties written notice of the extension."~~

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

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

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

37 "(e) Departmental Review. – The Department shall examine each application or renewal  
38 filed by a fund-raising consultant and determine whether the requirements are satisfied. If the  
39 Department determines that the requirements are not satisfied, the Department shall notify the  
40 fund-raising consultant within 10 days after its receipt of the application or renewal. If the  
41 Department does not respond within 10 days, the license is deemed approved. Within seven  
42 days after receipt of a notification that the license requirements are not satisfied, the applicant  
43 may file a petition for a contested case. The State has the burden of proof in the contested case.  
44 The contested case hearing must be held within seven days after the petition is filed. A  
45 ~~recommended~~ final decision must be made within ~~three~~ five days of the hearing. ~~A final~~  
46 ~~decision must be made within two days after the recommended decision.~~ The contested case  
47 hearing proceedings shall be conducted in accordance with Chapter 150B of the General  
48 Statutes, except that the time limits and provisions set forth in this section shall prevail to the  
49 extent of any conflict. The applicant shall be permitted to continue to operate or continue  
50 operations pending judicial review of the Department's denial of the application. The  
51 Department shall make rules regarding the custody and control of any funds collected during

1 the review period and disposal of such funds in the event the denial of the application is  
2 affirmed on appeal."

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

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

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

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

9 "(e3) The Department shall not pay any third party or reimburse any owner or operator  
10 who has paid any third party pursuant to any settlement agreement or consent judgment relating  
11 to a claim by or on behalf of a third party for compensation for bodily injury or property  
12 damage unless the Department has approved the settlement agreement or consent judgment  
13 prior to entry into the settlement agreement or consent judgment by the parties or entry of a  
14 consent judgment by the court. The approval or disapproval by the Department of a proposed  
15 settlement agreement or consent judgment shall be subject to challenge only in a contested case  
16 filed under Chapter 150B of the General Statutes. ~~The Secretary shall make the final agency  
17 decision in a contested case proceeding under this subsection."~~

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

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

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

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

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

34 "**§ 143-215.104S. (Repealed effective January 1, 2012 – See editor's notes) Appeals.**

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

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

46 "**§ 153A-223. Enforcement of minimum standards.**

47 If an inspection conducted pursuant to G.S. 153A-222 discloses that the jailers and  
48 supervisory and administrative personnel of a local confinement facility do not meet the entry  
49 level employment standards established pursuant to Chapter 17C or Chapter 17E or that a local  
50 confinement facility does not meet the minimum standards published pursuant to  
51 G.S. 153A-221 and, in addition, if the Secretary determines that conditions in the facility

1 jeopardize the safe custody, safety, health, or welfare of persons confined in the facility, the  
2 Secretary may order corrective action or close the facility, as provided in this section:

- 3 (1) The Secretary shall give notice of his determination to the governing body  
4 and each other local official responsible for the facility. The Secretary shall  
5 also send a copy of this notice, along with a copy of the inspector's report, to  
6 the senior resident superior court judge of the superior court district or set of  
7 districts as defined in G.S. 7A-41.1 in which the facility is located. Upon  
8 receipt of the Secretary's notice, the governing body shall call a public  
9 hearing to consider the report. The hearing shall be held within 20 days after  
10 the day the Secretary's notice is received. The inspector shall appear at this  
11 hearing to advise and consult with the governing body concerning any  
12 corrective action necessary to bring the facility into conformity with the  
13 standards.
- 14 (2) The governing body shall, within 30 days after the day the Secretary's notice  
15 is received, request a contested case hearing, initiate appropriate corrective  
16 action or close the facility. The corrective action must be completed within a  
17 reasonable time.
- 18 (3) A contested case hearing, if requested, shall be conducted pursuant to  
19 G.S. 150B, Article 3. The issues shall be: (i) whether the facility meets the  
20 minimum standards; (ii) whether the conditions in the facility jeopardize the  
21 safe custody, safety, health, or welfare of persons confined therein; and (iii)  
22 the appropriate corrective action to be taken and a reasonable time to  
23 complete that action.
- 24 (4) If the governing body does not, within 30 days after the day the Secretary's  
25 notice is received, or within 30 days after service of the final ~~agency~~  
26 decision if a contested case hearing is held, either initiate corrective action or  
27 close the facility, or does not complete the action within a reasonable time,  
28 the Secretary may order that the facility be closed.
- 29 (5) The governing body may appeal an order of the Secretary or a final decision  
30 to the senior resident superior court judge. The governing body shall initiate  
31 the appeal by giving by registered mail to the judge and to the Secretary  
32 notice of its intention to appeal. The notice must be given within 15 days  
33 after the day the Secretary's order or the final decision is received. If notice  
34 is not given within the 15-day period, the right to appeal is terminated.
- 35 (6) The senior resident superior court judge shall hear the appeal. He shall cause  
36 notice of the date, time, and place of the hearing to be given to each  
37 interested party, including the Secretary, the governing body, and each other  
38 local official involved. The ~~Secretary, Office of Administrative Hearings,~~ if  
39 a contested case hearing has been held, shall file the official record, as  
40 defined in G.S. 150B-37, with the senior resident superior court judge and  
41 shall serve a copy on each person who has been given notice of the hearing.  
42 The judge shall conduct the hearing without a jury. He shall consider the  
43 official record, if any, and may accept evidence from the Secretary, the  
44 governing body, and each other local official which he finds appropriate.  
45 The issue before the court shall be whether the facility continues to  
46 jeopardize the safe custody, safety, health, or welfare of persons confined  
47 therein. The court may affirm, modify, or reverse the Secretary's order.

48 **SECTION 42.1.** Pursuant to 31 U.S.C. § 6504, the Department of Health and  
49 Human Services shall request a waiver from the single State agency requirement contained in  
50 42 C.F.R. § 432.10(e)(3), with regard to final decisions in administrative hearings. The waiver  
51 application shall include the following:

- 1           (1)    The waiver request is made at the direction of the North Carolina General  
2           Assembly which is responsible for the organizational structure of State  
3           government.  
4           (2)    The single State agency requirement prevents the establishment of the most  
5           effective and efficient arrangement for providing administrative hearings to  
6           claimants because it requires that after a hearing and decision by an  
7           administrative law judge, the case must be returned to the agency for a final  
8           decision. The return to the agency is an unnecessary, time consuming, and  
9           costly additional step.  
10          (3)    The use of another State administrative hearings arrangement will not  
11          endanger the objectives of the law authorizing the Medicaid program  
12          because the administrative law judges will abide by the properly adopted  
13          policies, rules, and regulations of the State Medicaid agency in making final  
14          decisions."

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