

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011**

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**SENATE BILL 781*
Commerce Committee Substitute Adopted 6/8/11**

Short Title: Regulatory Reform Act of 2011.

(Public)

Sponsors:

Referred to:

June 6, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE REGULATORY EFFICIENCY IN ORDER TO BALANCE JOB
3 CREATION AND ENVIRONMENTAL PROTECTION.

4 The General Assembly of North Carolina enacts:

5 **PART I. RULE MAKING**

6 SECTION 1. G.S. 150B-18 reads as rewritten:

7 "**§ 150B-18. Scope and effect.**

8 This Article applies to an agency's exercise of its authority to adopt a rule. A rule is not
9 valid unless it is adopted in substantial compliance with this Article. An agency shall not seek
10 to implement or enforce against any person a policy, guideline, or other nonbinding interpretive
11 statement that meets the definition of a rule contained in G.S. 150B-2(8a) if the policy,
12 guideline, or other nonbinding interpretive statement has not been adopted as a rule in
13 accordance with this Article."

14 SECTION 2. Article 2A of Chapter 150B of the General Statutes is amended by
15 adding three new sections to read:

16 "**§ 150B-19.1. Requirements for agencies in the rule-making process.**

17 (a) In developing and drafting rules for adoption in accordance with this Article,
18 agencies shall adhere to the following principles:

19 (1) An agency may adopt only rules that are expressly authorized by federal or
20 State law and that are necessary to serve the public interest.

21 (2) An agency shall seek to reduce the burden upon those persons or entities
22 who must comply with the rule.

23 (3) Rules shall be written in a clear and unambiguous manner and must be
24 reasonably necessary to implement or interpret federal or State law.

25 (4) An agency shall consider the cumulative effect of all rules adopted by the
26 agency related to the specific purpose for which the rule is proposed. The
27 agency shall not adopt a rule that is unnecessary or redundant.

28 (5) When appropriate, rules shall be based on sound, reasonably available
29 scientific, technical, economic, and other relevant information. Agencies
30 shall include a reference to this information in the notice of text required by
31 G.S. 150B-21.2(c).

32 (6) Rules shall be designed to achieve the regulatory objective in a
33 cost-effective and timely manner.

34 (b) Each agency subject to this Article shall conduct an annual review of its rules to
35 identify existing rules that are unnecessary, unduly burdensome, or inconsistent with the



1 principles set forth in subsection (a) of this section. The agency shall repeal any rule identified
2 by this review.

3 (c) Each agency subject to this Article shall post on its Web site when the agency
4 submits the notice of text for publication in accordance with G.S. 150B-21.2 all of the
5 following:

6 (1) The text of a proposed rule.

7 (2) An explanation of the proposed rule and the reason for the proposed rule.

8 (3) The federal certification required by subsection (g) of this section.

9 (4) Instructions on how and where to submit oral or written comments on the
10 proposed rule.

11 (5) Any fiscal note that has been prepared for the proposed rule.

12 The agency shall maintain the information in a searchable database and shall periodically
13 update this online information to reflect changes in the proposed rule or the fiscal note prior to
14 adoption.

15 (d) Each agency shall determine whether its policies and programs overlap with the
16 policies and programs of another agency. In the event two or more agencies' policies and
17 programs overlap, the agencies shall coordinate the rules adopted by each agency to avoid
18 unnecessary, unduly burdensome, or inconsistent rules.

19 (e) Each agency shall quantify the costs and benefits to all parties of a proposed rule to
20 the greatest extent possible. Prior to submission of a proposed rule for publication in
21 accordance with G.S. 150B-21.2, the agency shall review the details of any fiscal note prepared
22 in connection with the proposed rule with the rule-making body, and the rule-making body
23 must approve the fiscal note before submission.

24 (f) If the agency determines that a proposed rule will have a substantial economic
25 impact as defined in G.S. 150B-21.4(b1), the agency shall consider at least two alternatives to
26 the proposed rule. The alternatives may have been identified by the agency or by members of
27 the public.

28 (g) Whenever an agency proposes a rule that is purported to implement a federal law, or
29 required by or necessary for compliance with federal law, or on which the receipt of federal
30 funds is conditioned, the agency shall:

31 (1) Prepare a certification identifying the federal law requiring adoption of the
32 proposed rule. The certification shall contain a statement setting forth the
33 reasons why the proposed rule is required by federal law. If all or part of the
34 proposed rule is not required by federal law or exceeds the requirements of
35 federal law, then the certification shall state the reasons for that opinion.

36 (2) Post the certification on the agency Web site in accordance with subsection
37 (c) of this section.

38 (3) Maintain a copy of the federal law and provide to the Office of State Budget
39 and Management the citation to the federal law requiring or pertaining to the
40 proposed rule.

41 **"§ 150B-19.2. Review of existing rules.**

42 (a) The Rules Modification and Improvement Program. – The Rules Modification and
43 Improvement Program is established to conduct an annual review of existing rules. The Office
44 of State Budget and Management (OSBM) shall coordinate and oversee the Rules Modification
45 and Improvement Program. The OSBM shall invite comments from the public on whether any
46 existing rules, implementation processes, or associated requirements are unnecessary, unduly
47 burdensome, or inconsistent with the principles set forth in G.S. 150B-19.1. Comments must
48 identify a specific rule or regulatory program and may include recommendations regarding
49 modifying, expanding, or repealing existing rules or changing the rule review and publication
50 process. The OSBM shall direct each agency to conduct an internal review of its rules as
51 required by G.S. 150B-19.1(b) and to forward a report of its review to the OSBM. The OSBM

1 shall assemble and evaluate the public comments and forward any comments it deems to have
2 merit to the appropriate agency for further review. Agencies shall review the public comments
3 and prepare a report on whether any of the recommendations contained in the comments have
4 potential merit and justify further action. Agencies shall submit a report of their findings to the
5 OSBM by January 31 of each year. The OSBM shall publish an annual report by April 30 of
6 each year summarizing all public comments and resulting actions taken or planned.

7 (b) The OSBM shall establish a single Web portal dedicated to receiving public
8 comments and tracking agency progress on reforming rules.

9 **"§ 150B-19.3. Limitation on certain environmental rules.**

10 (a) An agency authorized to implement and enforce State and federal environmental
11 laws may not adopt a rule for the protection of the environment or natural resources that
12 imposes a more restrictive standard, limitation, or requirement than those imposed by federal
13 law or rule, if a federal law or rule pertaining to the same subject matter has been adopted,
14 unless adoption of the rule is required by one of the following:

15 (1) A serious and unforeseen threat to the public health, safety, or welfare.

16 (2) An act of the General Assembly or United States Congress that expressly
17 requires the agency to adopt rules.

18 (3) A change in federal or State budgetary policy.

19 (4) A federal regulation required by an act of the United States Congress to be
20 adopted or administered by the State.

21 (5) A court order.

22 (b) For purposes of this section, "an agency authorized to implement and enforce State
23 and federal environmental laws" means any of the following:

24 (1) The Department of Environment and Natural Resources created pursuant to
25 G.S. 143B-279.1.

26 (2) The Environmental Management Commission created pursuant to
27 G.S. 143B-282.

28 (3) The Coastal Resources Commission established pursuant to G.S. 113A-104.

29 (4) The Marine Fisheries Commission created pursuant to G.S. 143B-289.51.

30 (5) The Wildlife Resources Commission created pursuant to G.S. 143-240.

31 (6) The Commission for Public Health created pursuant to G.S. 130A-29.

32 (7) The Sedimentation Control Commission created pursuant to G.S. 143B-298.

33 (8) The Mining Commission created pursuant to G.S. 143B-290.

34 (9) The Pesticide Board created pursuant to G.S. 143-436."

35 **SECTION 3.** G.S. 150B-21(f) is repealed.

36 **SECTION 4.** G.S. 150B-21.1(a3) reads as rewritten:

37 "(a3) Unless otherwise provided by law, ~~at least 30 business days prior to adopting a~~
38 ~~temporary rule,~~ the agency shall:

39 (1) ~~Submit~~ At least 30 business days prior to adopting a temporary rule, submit
40 the rule and a notice of public hearing to the Codifier of Rules, and the
41 Codifier of Rules shall publish the proposed temporary rule and the notice of
42 public hearing on the Internet to be posted within five business days.

43 (2) ~~Notify~~ At least 30 business days prior to adopting a temporary rule, notify
44 persons on the mailing list maintained pursuant to G.S. 150B-21.2(d) and
45 any other interested parties of its intent to adopt a temporary rule and of the
46 public hearing.

47 (3) Accept written comments on the proposed temporary rule for at least 15
48 business days prior to adoption of the temporary rule.

49 (4) Hold at least one public hearing on the proposed temporary rule no less than
50 five days after the rule and notice have been published."

51 **SECTION 5.** G.S. 150B-21.2 reads as rewritten:

1 **"§ 150B-21.2. Procedure for adopting a permanent rule.**

2 (a) Steps. – Before an agency adopts a permanent rule, the agency must comply with
3 the requirements of G.S. 150B-19.1, and it must take the following actions:

4 (1) Publish a notice of text in the North Carolina Register.

5 (2) When required by G.S. 150B-21.4, prepare or obtain a fiscal note for the
6 proposed rule.

7 (3) Repealed by Session Laws 2003-229, s. 4, effective July 1, 2003.

8 (4) When required by subsection (e) of this section, hold a public hearing on the
9 proposed rule after publication of the proposed text of the rule.

10 (5) Accept oral or written comments on the proposed rule as required by
11 subsection (f) of this section.

12 (b) Repealed by Session Laws 2003-229, s. 4, effective July 1, 2003.

13 (c) Notice of Text. – A notice of the proposed text of a rule must include all of the
14 following:

15 (1) The text of the proposed rule.

16 (2) A short explanation of the reason for the proposed ~~rule~~ rule and a link to the
17 agency's Web site containing the information required by G.S. 150B-19.1(c).

18 (3) A citation to the law that gives the agency the authority to adopt the rule.

19 (4) The proposed effective date of the rule.

20 (5) The date, time, and place of any public hearing scheduled on the rule.

21 (6) Instructions on how a person may demand a public hearing on a proposed
22 rule if the notice does not schedule a public hearing on the proposed rule and
23 subsection (e) of this section requires the agency to hold a public hearing on
24 the proposed rule when requested to do so.

25 (7) The period of time during which and the person to whom written comments
26 may be submitted on the proposed rule.

27 (8) If a fiscal note has been prepared for the rule, a statement that a copy of the
28 fiscal note can be obtained from the agency.

29 (9) The procedure by which a person can object to a proposed rule and the
30 requirements for subjecting a proposed rule to the legislative review process.

31 (d) Mailing List. – An agency must maintain a mailing list of persons who have
32 requested notice of rule making. When an agency publishes in the North Carolina Register a
33 notice of text of a proposed rule, it must mail a copy of the notice or text to each person on the
34 mailing list who has requested notice on the subject matter described in the notice or the rule
35 affected. An agency may charge an annual fee to each person on the agency's mailing list to
36 cover copying and mailing costs.

37 (e) Hearing. – An agency must hold a public hearing on a rule it proposes to adopt if the
38 agency publishes the text of the proposed rule in the North Carolina Register and the agency
39 receives a written request for a public hearing on the proposed rule within 15 days after the
40 notice of text is published. The agency must accept comments at the public hearing on both the
41 proposed rule and any fiscal note that has been prepared in connection with the proposed rule.

42 An agency may hold a public hearing on a proposed rule and fiscal note in other
43 circumstances. When an agency is required to hold a public hearing on a proposed rule or
44 decides to hold a public hearing on a proposed rule when it is not required to do so, the agency
45 must publish in the North Carolina Register a notice of the date, time, and place of the public
46 hearing. The hearing date of a public hearing held after the agency publishes notice of the
47 hearing in the North Carolina Register must be at least 15 days after the date the notice is
48 published. If notice of a public hearing has been published in the North Carolina Register and
49 that public hearing has been cancelled, the agency shall publish notice in the North Carolina
50 Register at least 15 days prior to the date of any rescheduled hearing.

1 (f) Comments. – An agency must accept comments on the text of a proposed rule that is
2 published in the North Carolina Register and any fiscal note that has been prepared in
3 connection with the proposed rule for at least 60 days after the text is published or until the date
4 of any public hearing held on the proposed rule, whichever is longer. An agency must consider
5 fully all written and oral comments received.

6 (g) Adoption. – An agency shall not adopt a rule until the time for commenting on the
7 proposed text of the rule has elapsed and shall not adopt a rule if more than 12 months have
8 elapsed since the end of the time for commenting on the proposed text of the rule. Prior to
9 adoption, an agency shall review any fiscal note that has been prepared for the proposed rule
10 and consider any public comments received in connection with the proposed rule or the fiscal
11 note. An agency shall not adopt a rule that differs substantially from the text of a proposed rule
12 published in the North Carolina Register unless the agency publishes the text of the proposed
13 different rule in the North Carolina Register and accepts comments on the proposed different
14 rule for the time set in subsection (f) of this section.

15 An adopted rule differs substantially from a proposed rule if it does one or more of the
16 following:

- 17 (1) Affects the interests of persons who, based on the proposed text of the rule
18 published in the North Carolina Register, could not reasonably have
19 determined that the rule would affect their interests.
- 20 (2) Addresses a subject matter or an issue that is not addressed in the proposed
21 text of the rule.
- 22 (3) Produces an effect that could not reasonably have been expected based on
23 the proposed text of the rule.

24 When an agency adopts a rule, it shall not take subsequent action on the rule without following
25 the procedures in this Part. An agency must submit an adopted rule to the Rules Review
26 Commission within 30 days of the agency's adoption of the rule.

27 (h) Explanation. – An agency must issue a concise written statement explaining why the
28 agency adopted a rule if, within 15 days after the agency adopts the rule, a person asks the
29 agency to do so. The explanation must state the principal reasons for and against adopting the
30 rule and must discuss why the agency rejected any arguments made or considerations urged
31 against the adoption of the rule. The agency must issue the explanation within 15 days after
32 receipt of the request for an explanation.

33 (i) Record. – An agency must keep a record of a rule-making proceeding. The record
34 must include all written comments received, a transcript or recording of any public hearing held
35 on the rule, any fiscal note that has been prepared for the rule, and any written explanation
36 made by the agency for adopting the rule."

37 **SECTION 6.** G.S. 150B-21.4 reads as rewritten:

38 "**§ 150B-21.4. Fiscal notes on rules.**

39 (a) State Funds. – Before an agency publishes in the North Carolina Register the
40 proposed text of a permanent rule change that would require the expenditure or distribution of
41 funds subject to the State Budget Act, Chapter 143C of the General Statutes it must submit the
42 text of the proposed rule ~~change~~ change, an analysis of the proposed rule change, and a fiscal
43 note on the proposed rule change to the ~~Director of the Budget Office of State Budget and~~
44 Management and obtain certification from the ~~Director Office~~ that the funds that would be
45 required by the proposed rule change are available. The Office must also determine and certify
46 that the agency adhered to the principles set forth in G.S. 150B-19.1. The fiscal note must state
47 the amount of funds that would be expended or distributed as a result of the proposed rule
48 change and explain how the amount was computed. The ~~Director of the Budget Office of State~~
49 Budget and Management must certify a proposed rule change if funds are available to cover the
50 expenditure or distribution required by the proposed rule change.

1 (a1) DOT Analyses. – In addition to the requirements of subsection (a) of this section,
2 any agency that adopts a rule affecting environmental permitting of Department of
3 Transportation projects shall conduct an analysis to determine if the rule will result in an
4 increased cost to the Department of Transportation. The analysis shall be conducted and
5 submitted to the Board of Transportation before the agency publishes the proposed text of the
6 rule change in the North Carolina Register. The agency shall consider any recommendations
7 offered by the Board of Transportation prior to adopting the rule. Once a rule subject to this
8 subsection is adopted, the Board of Transportation may submit any objection to the rule it may
9 have to the Rules Review Commission. If the Rules Review Commission receives an objection
10 to a rule from the Board of Transportation no later than 5:00 P.M. of the day following the day
11 the Commission approves the rule, then the rule shall only become effective as provided in
12 G.S. 150B-21.3(b1).

13 (b) Local Funds. – Before an agency publishes in the North Carolina Register the
14 proposed text of a permanent rule change that would affect the expenditures or revenues of a
15 unit of local government, it must submit the text of the proposed rule change and a fiscal note
16 on the proposed rule change to the Office of ~~the Governor~~ State Budget and Management as
17 provided by G.S. 150B-21.26, the Fiscal Research Division of the General Assembly, ~~the~~
18 ~~Office of State Budget and Management~~, the North Carolina Association of County
19 Commissioners, and the North Carolina League of Municipalities. The fiscal note must state
20 the amount by which the proposed rule change would increase or decrease expenditures or
21 revenues of a unit of local government and must explain how the amount was computed.

22 (b1) Substantial Economic Impact. – Before an agency publishes in the North Carolina
23 Register the proposed text of a permanent rule change that would have a substantial economic
24 impact and that is not identical to a federal regulation that the agency is required to adopt, the
25 agency ~~must obtain a fiscal note for the proposed rule change from the Office of State Budget~~
26 ~~and Management or shall prepare a fiscal note for the proposed rule change and have the note~~
27 ~~approved by that Office.~~ the Office of State Budget and Management. The agency may request
28 the Office of State Budget and Management to prepare the fiscal note only after, working with
29 the Office, it has exhausted all resources, internal and external, to otherwise prepare the
30 required fiscal note. If an agency requests the Office of State Budget and Management to
31 prepare a fiscal note for a proposed rule change, that Office must prepare the note within 90
32 days after receiving a written request for the note. If the Office of State Budget and
33 Management fails to prepare a fiscal note within this time period, the agency proposing the rule
34 change ~~may~~ shall prepare a fiscal note. A fiscal note prepared in this circumstance does not
35 require approval of the Office of State Budget and Management.

36 If an agency prepares the required fiscal note, the agency must submit the note to the Office
37 of State Budget and Management for review. The Office of State Budget and Management
38 ~~must~~ shall review the fiscal note within 14 days after it is submitted and either approve the
39 note or inform the agency in writing of the reasons why it does not approve the fiscal note.
40 After addressing these reasons, the agency may submit the revised fiscal note to that Office for
41 its review. If an agency is not sure whether a proposed rule change would have a substantial
42 economic impact, the agency ~~may~~ shall ask the Office of State Budget and Management to
43 determine whether the proposed rule change has a substantial economic impact. Failure to
44 prepare or obtain approval of the fiscal note as required by this subsection shall be a basis for
45 objection to the rule under G.S. 150B-21.9(a)(4).

46 As used in this subsection, the term "substantial economic impact" means an aggregate
47 financial impact on all persons affected of at least ~~three million dollars (\$3,000,000)~~ five
48 hundred thousand dollars (\$500,000) in a 12-month period. In analyzing substantial economic
49 impact, an agency shall do the following:

- 50 (1) Determine and identify the appropriate time frame of the analysis.

- 1 (2) Assess the baseline conditions against which the proposed rule is to be
2 measured.
- 3 (3) Describe the persons who would be subject to the proposed rule and the type
4 of expenditures these persons would be required to make.
- 5 (4) Estimate any additional costs that would be created by implementation of the
6 proposed rule by measuring the incremental difference between the baseline
7 and the future condition expected after implementation of the rule. The
8 analysis should include direct costs as well as opportunity costs. Cost
9 estimates must be monetized to the greatest extent possible. Where costs are
10 not monetized, they must be listed and described.
- 11 (5) For costs that occur in the future, the agency shall determine the net present
12 value of the costs by using a discount factor of seven percent (7%).
- 13 (b2) Content. – A fiscal note required by subsection (b1) of this section must contain the
14 following:
- 15 (1) A description of the persons who would be affected by the proposed rule
16 change.
- 17 (2) A description of the types of expenditures that persons affected by the
18 proposed rule change would have to make to comply with the rule and an
19 estimate of these expenditures.
- 20 (3) A description of the purpose and benefits of the proposed rule change.
- 21 (4) An explanation of how the estimate of expenditures was computed.
- 22 (5) A description of at least two alternatives to the proposed rule that were
23 considered by the agency and the reason the alternatives were rejected. The
24 alternatives may have been identified by the agency or by members of the
25 public.
- 26 (c) Errors. – An erroneous fiscal note prepared in good faith does not affect the validity
27 of a rule."

28 **SECTION 7.** G.S. 150B-21.11 reads as rewritten:

29 "**§ 150B-21.11. Procedure when Commission approves permanent rule.**

30 When the Commission approves a permanent rule, it must notify the agency that adopted
31 the rule of the Commission's approval, and deliver the approved rule to the Codifier of Rules,
32 and include the text of the approved rule and a summary of the rule in its next report to the
33 Joint Legislative Administrative Procedure Oversight Committee.~~Rules.~~

34 If the approved rule will increase or decrease expenditures or revenues of a unit of local
35 government, the Commission must also notify the Governor of the Commission's approval of
36 the rule and deliver a copy of the approved rule to the Governor by the end of the month in
37 which the Commission approved the rule."

38 **SECTION 8.** G.S. 150B-21.12(d) reads as rewritten:

39 "(d) Return of Rule. – A rule to which the Commission has objected remains under
40 review by the Commission until the agency that adopted the rule decides not to satisfy the
41 Commission's objection and makes a written request to the Commission to return the rule to the
42 agency. When the Commission returns a rule to which it has objected, it must notify the
43 Codifier of Rules of its ~~action and must send a copy of the record of the Commission's review~~
44 ~~of the rule to the Joint Legislative Administrative Procedure Oversight Committee in its next~~
45 ~~report to that Committee~~action. If the rule that is returned would have increased or decreased
46 expenditures or revenues of a unit of local government, the Commission must also notify the
47 Governor of its action and must send a copy of the record of the Commission's review of the
48 rule to the Governor. The record of review consists of the rule, the Commission's letter of
49 objection to the rule, the agency's written response to the Commission's letter, and any other
50 relevant documents before the Commission when it decided to object to the rule."

51 **SECTION 9.** G.S. 150B-21.16 is repealed.

1 **SECTION 10.** G.S. 150B-21.17(a) reads as rewritten:

2 "(a) Content. – The Codifier of Rules must publish the North Carolina Register. The
3 North Carolina Register must be published at least two times a month and must contain the
4 following:

5 (1) Temporary rules entered in the North Carolina Administrative Code.

6 (1a) The text of proposed rules and the text of permanent rules approved by the
7 Commission.

8 (1b) Emergency rules entered into the North Carolina Administrative Code.

9 ~~(2) Notices of receipt of a petition for municipal incorporation, as required by~~
10 ~~G.S. 120-165.~~

11 (3) Executive orders of the Governor.

12 (4) Final decision letters from the United States Attorney General concerning
13 changes in laws that affect voting in a jurisdiction subject to section 5 of the
14 Voting Rights Act of 1965, as required by G.S. 120-30.9H.

15 ~~(5) Orders of the Tax Review Board issued under G.S. 105-241.2.~~

16 (6) Other information the Codifier determines to be helpful to the public."

17 **SECTION 11.** G.S. 150B-21.18 reads as rewritten:

18 "**§ 150B-21.18. North Carolina Administrative Code.**

19 The Codifier of Rules must compile all rules into a Code known as the North Carolina
20 Administrative Code. The format and indexing of the Code must conform as nearly as practical
21 to the format and indexing of the North Carolina General Statutes. The Codifier must publish
22 printed copies of the Code and may publish the Code in other forms. ~~The Codifier must keep~~
23 ~~the Code current by publishing the Code in a loose leaf format and periodically providing new~~
24 ~~pages to be substituted for outdated pages, by publishing the Code in volumes and periodically~~
25 ~~publishing cumulative supplements, or by another means.~~ The Codifier may authorize and
26 license the private indexing, marketing, sales, reproduction, and distribution of the Code. The
27 Codifier must keep superseded rules."

28 **SECTION 12.** G.S. 150B-21.21(b) reads as rewritten:

29 "(b) Exempt Agencies. – ~~Notwithstanding G.S. 150B-1, the North Carolina Utilities~~
30 ~~Commission must submit to the Codifier of Rules those rules of the Utilities Commission that~~
31 ~~are published from time to time in the publication titled "North Carolina Utilities Laws and~~
32 ~~Regulations." The Utilities Commission must submit a rule required to be included in the Code~~
33 ~~within 30 days after it is adopted.~~

34 Notwithstanding G.S. 150B-1, any other provision of law, an agency ~~other than the Utilities~~
35 ~~Commission~~ that is exempted from this Article by ~~that statute~~ G.S. 150B-1 or any other statute
36 must submit a temporary or permanent rule adopted by it to the Codifier of Rules for inclusion
37 in the North Carolina Administrative Code. These exempt agencies must submit a rule to the
38 Codifier of Rules within 30 days after adopting the rule."

39 **SECTION 13.** G.S. 150B-21.23 is repealed.

40 **SECTION 14.** G.S. 150B-21.26 reads as rewritten:

41 "Part 5. Rules Affecting Local Governments.

42 "**§ 150B-21.26. Governor Office of State Budget and Management to conduct preliminary**
43 **review of certain administrative rules.**

44 (a) Preliminary Review. – At least ~~30~~60 days before an agency publishes in the North
45 Carolina Register the proposed text of a permanent rule change that would affect the
46 expenditures or revenues of a unit of local government, the agency must submit all of the
47 following to the ~~Governor~~Office of State Budget and Management for preliminary review:

48 (1) The text of the proposed rule change.

49 (2) A short explanation of the reason for the proposed change.

(3) A fiscal note stating the amount by which the proposed rule change would increase or decrease expenditures or revenues of a unit of local government and explaining how the amount was computed.

(b) Scope. – The Governor's preliminary review of a proposed permanent rule change that would affect the expenditures or revenues of a unit of local government shall include consideration of the following:

(1) The agency's explanation of the reason for the proposed change.

(2) Any unanticipated effects of the proposed change on local government budgets.

(3) The potential costs of the proposed change weighed against the potential risks to the public of not taking the proposed change."

PART II. CONTESTED CASES

SECTION 15. G.S. 150B-2(5) reads as rewritten:

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

SECTION 16. G.S. 150B-23(a) reads as rewritten:

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

(1) Exceeded its authority or jurisdiction;

(2) Acted erroneously;

(3) Failed to use proper procedure;

(4) Acted arbitrarily or capriciously; or

(5) Failed to act as required by law or rule.

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

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

SECTION 17. G.S. 150B-33(b) reads as rewritten:

"(b) An administrative law judge may:

...

(12) ~~Except as provided in G.S. 150B-36(d), accept a remanded case from an agency only when a claim for relief has been raised in the petition, and the~~

1 decision of the administrative law judge makes no findings of fact or
2 conclusions of law regarding the claim for relief, and the agency requests
3 that the administrative law judge make findings of fact and conclusions of
4 law as to the specific claim for relief. The administrative law judge may
5 refuse to accept a remand if there is a sufficient record to allow the agency to
6 make a final decision."

7 **SECTION 18.** G.S. 150B-34 reads as rewritten:

8 "**§ 150B-34. Decision of administrative law judge.**Final decision or order.

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

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

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

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

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

41 **SECTION 19.** G.S. 150B-35 reads as rewritten:

42 "**§ 150B-35. No ex parte communication; exceptions.**

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

48 **SECTION 20.** G.S. 150B-36 is repealed.

49 **SECTION 21.** G.S. 150B-37 reads as rewritten:

50 "**§ 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 22.** G.S. 150B-43 reads as rewritten:

18 **"§ 150B-43. Right to judicial review.**

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

27 **SECTION 23.** G.S. 150B-44 reads as rewritten:

28 **"§ 150B-44. Right to judicial intervention when decision unreasonably delayed.**

29 Unreasonable delay on the part of any agency or administrative law judge in taking any
30 required action shall be justification for any person whose rights, duties, or privileges are
31 adversely affected by such delay to seek a court order compelling action by the agency or
32 administrative law judge. ~~An agency that is subject to Article 3 of this Chapter and is not a~~
33 ~~board or commission has 60 days from the day it receives the official record in a contested case~~
34 ~~from the Office of Administrative Hearings to make a final decision in the case. This time limit~~
35 ~~may be extended by the parties or, for good cause shown, by the agency for an additional~~
36 ~~period of up to 60 days. An agency that is subject to Article 3 of this Chapter and is a board or~~
37 ~~commission has 60 days from the day it receives the official record in a contested case from the~~
38 ~~Office of Administrative Hearings or 60 days after its next regularly scheduled meeting,~~
39 ~~whichever is longer, to make a final decision in the case. This time limit may be extended by~~
40 ~~the parties or, for good cause shown, by the agency for an additional period of up to 60 days. If~~
41 ~~an agency subject to Article 3 of this Chapter has not made a final decision within these time~~
42 ~~limits, the agency is considered to have adopted the administrative law judge's decision as the~~
43 ~~agency's final decision.~~ Failure of an administrative law judge subject to Article 3 of this
44 Chapter or failure of an agency subject to Article 3A of this Chapter to make a final decision
45 within 120 days of the close of the contested case hearing is justification for a person whose
46 rights, duties, or privileges are adversely affected by the delay to seek a court order compelling
47 action by the agency ~~or, if the case was heard by an administrative law judge, or~~ by the
48 administrative law judge. The Board of Trustees of the North Carolina State Health Plan for
49 Teachers and State Employees is a "board" for purposes of this section."

50 **SECTION 24.** G.S. 150B-47 reads as rewritten:

51 **"§ 150B-47. Records filed with clerk of superior court; contents of records; costs.**

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

11 **SECTION 25.** G.S. 150B-49 reads as rewritten:

12 **"§ 150B-49. New evidence.**

13 ~~An aggrieved person~~ A party or person aggrieved who files a petition in the superior court
14 may apply to the court to present additional evidence. If the court is satisfied that the evidence
15 is material to the issues, is not merely cumulative, and could not reasonably have been
16 presented at the administrative hearing, the court may remand the case so that additional
17 evidence can be taken. If an administrative law judge did not make a final decision in the case,
18 the court shall remand the case to the agency that conducted the administrative ~~hearing.~~hearing
19 under Article 3A of this Chapter. After hearing the evidence, the agency may affirm or modify
20 its previous findings of fact and final decision. If an administrative law judge made a final
21 decision in the case, the court shall remand the case to the administrative law judge. After
22 hearing the evidence, the administrative law judge may affirm or modify his previous findings
23 of fact and final decision. ~~The administrative law judge shall forward a copy of his decision to~~
24 ~~the agency that made the final decision, which in turn may affirm or modify its previous~~
25 ~~findings of fact and final decision.~~ The additional evidence and any affirmation or modification
26 of a final decision ~~of the administrative law judge or final decision~~ shall be made part of the
27 official record."

28 **SECTION 26.** G.S. 150B-50 reads as rewritten:

29 **"§ 150B-50. Review by superior court without jury.**

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

32 **SECTION 27.** G.S. 150B-51 reads as rewritten:

33 **"§ 150B-51. Scope and standard of review.**

34 (a) ~~In reviewing a final decision in a contested case in which an administrative law~~
35 ~~judge made a recommended decision and the State Personnel Commission made an advisory~~
36 ~~decision in accordance with G.S. 126-37(b1), the court shall make two initial determinations.~~
37 ~~First, the court shall determine whether the applicable appointing authority heard new evidence~~
38 ~~after receiving the recommended decision. If the court determines that the applicable~~
39 ~~appointing authority heard new evidence, the court shall reverse the decision or remand the~~
40 ~~case to the applicable appointing authority to enter a decision in accordance with the evidence~~
41 ~~in the official record. Second, if the applicable appointing authority did not adopt the~~
42 ~~recommended decision, the court shall determine whether the applicable appointing authority's~~
43 ~~decision states the specific reasons why the applicable appointing authority did not adopt the~~
44 ~~recommended decision. If the court determines that the applicable appointing authority did not~~
45 ~~state specific reasons why it did not adopt a recommended decision, the court shall reverse the~~
46 ~~decision or remand the case to the applicable appointing authority to enter the specific reasons.~~

47 (a1) ~~In reviewing a final decision in a contested case in which an administrative law~~
48 ~~judge made a decision, in accordance with G.S. 150B-34(a), and the agency adopted the~~
49 ~~administrative law judge's decision, the court shall determine whether the agency heard new~~
50 ~~evidence after receiving the decision. If the court determines that the agency heard new~~
51 ~~evidence, the court shall reverse the decision or remand the case to the agency to enter a~~

1 decision in accordance with the evidence in the official record. The court shall also determine
2 whether the agency specifically rejected findings of fact contained in the administrative law
3 judge's decision in the manner provided by G.S. 150B-36(b1) and made findings of fact in
4 accordance with G.S. 150B-36(b2). If the court determines that the agency failed to follow the
5 procedure set forth in G.S. 150B-36, the court may take appropriate action under subsection (b)
6 of this section.

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

- 13 (1) In violation of constitutional provisions;
- 14 (2) In excess of the statutory authority or jurisdiction of the ~~agency;~~ agency or
15 administrative law judge;
- 16 (3) Made upon unlawful procedure;
- 17 (4) Affected by other error of law;
- 18 (5) Unsupported by substantial evidence admissible under G.S. 150B-29(a),
19 150B-30, or 150B-31 in view of the entire record as submitted; or
- 20 (6) Arbitrary, capricious, or an abuse of discretion.

21 (c) In reviewing a final decision in a contested case ~~in which an administrative law~~
22 judge made a decision, in accordance with G.S. 150B-34(a), and the agency does not adopt the
23 administrative law judge's decision, the court shall review the official record, de novo, and shall
24 make findings of fact and conclusions of law. In reviewing the case, the court shall not give
25 deference to any prior decision made in the case and shall not be bound by the findings of fact
26 or the conclusions of law contained in the agency's final decision. The court shall determine
27 whether the petitioner is entitled to the relief sought in the petition, based upon its review of the
28 official record. The court reviewing a final decision under this subsection may adopt the
29 administrative law judge's decision; may adopt, reverse, or modify the agency's decision; may
30 remand the case to the agency for further explanations under G.S. 150B-36(b1), 150B-36(b2),
31 or 150B-36(b3), or reverse or modify the final decision for the agency's failure to provide the
32 explanations; and may take any other action allowed by law. ~~case, the court shall determine~~
33 whether the petitioner is entitled to the relief sought in the petition based upon its review of the
34 final decision and the official record. With regard to asserted errors pursuant to subdivisions (1)
35 through (4) of subsection (b) of this section, the court shall conduct its review of the final
36 decision using the de novo standard of review. With regard to asserted errors pursuant to
37 subdivisions (5) and (6) of subsection (b) of this section, the court shall conduct its review of
38 the final decision using the whole record standard of review.

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

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

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

51 **SECTION 29.** G.S. 74-58(b) reads as rewritten:

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

9 **SECTION 30.** G.S. 74-61 reads as rewritten:

10 "**§ 74-61. Administrative and judicial review of decisions.**

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

17 **SECTION 31.** G.S. 74-85 reads as rewritten:

18 "**§ 74-85. Administrative and judicial review of decisions.**

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

25 **SECTION 32.** G.S. 108A-70.9A(f) reads as rewritten:

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

32 **SECTION 33.** G.S. 108A-70.9B(g) reads as rewritten:

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

39 **SECTION 34.** G.S. 113-171(e) reads as rewritten:

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

46 **SECTION 35.** G.S. 113-202 reads as rewritten:

47 "**§ 113-202. New and renewal leases for shellfish cultivation; termination of leases issued**
48 **prior to January 1, 1966.**

49 ...

50 (g) After consideration of the public comment received and any additional
51 investigations the Secretary orders to evaluate the comments, the Secretary shall notify the

1 applicant in person or by certified or registered mail of the decision on the lease application.
2 The Secretary shall also notify persons who submitted comments at the public hearing and
3 requested notice of the lease decision. An applicant who is dissatisfied with the Secretary's
4 decision or another person aggrieved by the decision may commence a contested case by filing
5 a petition under G.S. 150B-23 within 20 days after receiving notice of the Secretary's decision.
6 In the event the Secretary's decision is a modification to which the applicant agrees, the lease
7 applicant must furnish an amended map or diagram before the lease can be issued by the
8 Secretary. ~~The Secretary shall make the final agency decision in a contested case.~~

9 ...
10 (m) In the event the leaseholder takes steps within 30 days to remedy the situation upon
11 which the notice of intention to terminate was based and the Secretary is satisfied that
12 continuation of the lease is in the best interests of the shellfish culture of the State, the
13 Secretary may discontinue termination procedures. Where there is no discontinuance of
14 termination procedures, the leaseholder may initiate a contested case by filing a petition under
15 G.S. 150B-23 within 30 days of receipt of notice of intention to terminate. ~~The Secretary shall~~
16 ~~make the final agency decision of all lease terminations.~~ Where the leaseholder does not initiate
17 a contested case, or the Secretary's final decision upholds termination, the Secretary must send
18 a final letter of termination to the leaseholder. The final letter of termination may not be mailed
19 sooner than 30 days after receipt by the leaseholder of the Secretary's notice of intention to
20 terminate, or of the Secretary's final agency decision, as appropriate. The lease is terminated
21 effective at midnight on the day the final notice of termination is served on the leaseholder. The
22 final notice of termination may not be issued pending hearing of a contested case initiated by
23 the leaseholder.

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

30"

31 **SECTION 36.** G.S. 113-229(f) reads as rewritten:

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

41 **SECTION 37.** G.S. 113A-121.1(b) reads as rewritten:

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

- 50 (1) Has alleged that the decision is contrary to a statute or rule;
- 51 (2) Is directly affected by the decision; and

- 1 (3) Has alleged facts or made legal arguments that demonstrate that the request
2 for the hearing is not frivolous.

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

12 **SECTION 38.** G.S. 113A-126(d) reads as rewritten:

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

17 ...

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

27"

28 **SECTION 39.** G.S. 122C-24.1(h) reads as rewritten:

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

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

36 **SECTION 40.** G.S. 122C-151.4(f) reads as rewritten:

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

45 **SECTION 41.** G.S. 126-4.1 is repealed.

46 **SECTION 42.** G.S. 126-14.4(e) reads as rewritten:

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

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

5 **SECTION 43.** G.S. 126-14.4(f) is repealed.

6 **SECTION 44.** G.S. 126-37 reads as rewritten:

7 "**§ 126-37. ~~Personnel Commission to review Administrative Law Judge's recommended~~**
8 **~~decision and make final decision.~~**

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

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

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

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

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

46 **SECTION 45.** G.S. 131D-34(e) reads as rewritten:

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

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

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

8 **SECTION 46.** G.S. 131E-188(a) reads as rewritten:

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

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

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

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

34 **SECTION 47.** G.S. 131F-5(b) reads as rewritten:

35 "(b) Departmental Review. – The Department shall examine each application filed by a
36 charitable organization or sponsor and shall determine whether the licensing requirements are
37 satisfied. If the Department determines that the requirements are not satisfied, the Department
38 shall notify the charitable organization or sponsor within 10 days after its receipt of the
39 application. If the Department does not notify the charitable organization or sponsor within 10
40 days, the application is deemed to be approved and the license shall be granted. Within seven
41 days after receipt of a notification that the requirements are not satisfied, the charitable
42 organization or sponsor may file a petition for a contested case. The State has the burden of
43 proof in the contested case. The contested case hearing must be held within seven days after the
44 petition is filed. A ~~recommended final~~ decision must be made within ~~three~~ five days of the
45 hearing. ~~A final decision must be made within two days after the recommended decision.~~ The
46 contested case hearing proceedings shall be conducted in accordance with Chapter 150B of the
47 General Statutes except that the time limits and provisions set forth in this section shall prevail
48 to the extent of any conflict. The applicant shall be permitted to continue to operate or continue
49 operations pending judicial review of the Department's denial of the application. The
50 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 48.** G.S. 131F-15(e) reads as rewritten:

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

21 **SECTION 49.** G.S. 135-44.7(c) is repealed.

22 **SECTION 50.** G.S. 143-215.22L(o) reads as rewritten:

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

26 **SECTION 51.** G.S. 143-215.94E(e3) reads as rewritten:

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

36 **SECTION 52.** G.S. 143-215.94U(e) reads as rewritten:

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

45 **SECTION 53.** G.S. 143-215.104P(d) reads as rewritten:

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

51 **SECTION 54.** G.S. 143-215.104S reads as rewritten:

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

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

12 **SECTION 55.** G.S. 153A-223 reads as rewritten:

13 **"§ 153A-223. Enforcement of minimum standards.**

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

- 21 (1) The Secretary shall give notice of his determination to the governing body
22 and each other local official responsible for the facility. The Secretary shall
23 also send a copy of this notice, along with a copy of the inspector's report, to
24 the senior resident superior court judge of the superior court district or set of
25 districts as defined in G.S. 7A-41.1 in which the facility is located. Upon
26 receipt of the Secretary's notice, the governing body shall call a public
27 hearing to consider the report. The hearing shall be held within 20 days after
28 the day the Secretary's notice is received. The inspector shall appear at this
29 hearing to advise and consult with the governing body concerning any
30 corrective action necessary to bring the facility into conformity with the
31 standards.
- 32 (2) The governing body shall, within 30 days after the day the Secretary's notice
33 is received, request a contested case hearing, initiate appropriate corrective
34 action or close the facility. The corrective action must be completed within a
35 reasonable time.
- 36 (3) A contested case hearing, if requested, shall be conducted pursuant to
37 G.S. 150B, Article 3. The issues shall be: (i) whether the facility meets the
38 minimum standards; (ii) whether the conditions in the facility jeopardize the
39 safe custody, safety, health, or welfare of persons confined therein; and (iii)
40 the appropriate corrective action to be taken and a reasonable time to
41 complete that action.
- 42 (4) If the governing body does not, within 30 days after the day the Secretary's
43 notice is received, or within 30 days after service of the final ~~agency~~
44 decision if a contested case hearing is held, either initiate corrective action or
45 close the facility, or does not complete the action within a reasonable time,
46 the Secretary may order that the facility be closed.
- 47 (5) The governing body may appeal an order of the Secretary or a final decision
48 to the senior resident superior court judge. The governing body shall initiate
49 the appeal by giving by registered mail to the judge and to the Secretary
50 notice of its intention to appeal. The notice must be given within 15 days

1 after the day the Secretary's order or the final decision is received. If notice
2 is not given within the 15-day period, the right to appeal is terminated.

- 3 (6) The senior resident superior court judge shall hear the appeal. He shall cause
4 notice of the date, time, and place of the hearing to be given to each
5 interested party, including the Secretary, the governing body, and each other
6 local official involved. The ~~Secretary, Office of Administrative Hearings,~~ if
7 a contested case hearing has been held, shall file the official record, as
8 defined in G.S. 150B-37, with the senior resident superior court judge and
9 shall serve a copy on each person who has been given notice of the hearing.
10 The judge shall conduct the hearing without a jury. He shall consider the
11 official record, if any, and may accept evidence from the Secretary, the
12 governing body, and each other local official which he finds appropriate.
13 The issue before the court shall be whether the facility continues to
14 jeopardize the safe custody, safety, health, or welfare of persons confined
15 therein. The court may affirm, modify, or reverse the Secretary's order."

16 **SECTION 55.1.** Pursuant to 31 U.S.C. § 6504, the Department of Health and
17 Human Services shall request a waiver from the single State agency requirement contained in
18 42 § CFR 432.10(e)(3) with regard to final decisions in administrative hearings. The waiver
19 application shall include the following:

- 20 (1) The waiver request is made at the direction of the North Carolina General
21 Assembly, which is responsible for the organizational structure of State
22 government.
23 (2) The single State agency requirement prevents the establishment of the most
24 effective and efficient arrangement for providing administrative hearings to
25 claimants because it requires that after a hearing and decision by an
26 administrative law judge, the case must be returned to the agency for a final
27 decision. The return to the agency is an unnecessary, time-consuming, and
28 costly additional step.
29 (3) The use of another State administrative hearings arrangement will not
30 endanger the objectives of the law authorizing the Medicaid program
31 because the administrative law judges will abide by the properly adopted
32 policies, rules, and regulations of the State Medicaid agency in making final
33 decisions.

34 **PART III. MISCELLANEOUS ISSUES**

35 **SECTION 56.** G.S. 150B-4 reads as rewritten:

36 **"§ 150B-4. Declaratory rulings.**

37 (a) On request of a person aggrieved, an agency shall issue a declaratory ruling as to the
38 validity of a rule or as to the applicability to a given state of facts of a statute administered by
39 the agency or of a rule or order of the agency, ~~except when the agency for good cause finds~~
40 ~~issuance of a ruling undesirable.~~ agency. Upon request, an agency shall also issue a declaratory
41 ruling to resolve a conflict or inconsistency within the agency regarding an interpretation of the
42 law or a rule adopted by the agency. The agency shall prescribe in its rules the procedure for
43 requesting a declaratory ruling and the circumstances in which rulings shall or shall not be
44 issued. A declaratory ruling is binding on the agency and the person requesting it unless it is
45 altered or set aside by the court. An agency may not retroactively change a declaratory ruling,
46 but nothing in this section prevents an agency from prospectively changing a declaratory ruling.
47 ~~A declaratory ruling is subject to judicial review in the same manner as an order in a contested~~
48 ~~ease. Failure of the agency to issue a declaratory ruling on the merits within 60 days of the~~
49 ~~request for such ruling shall constitute a denial of the request as well as a denial of the merits of~~
50 ~~the request and shall be subject to judicial review.~~

- 51 (a1) An agency shall respond to a request for a declaratory ruling as follows:

- 1 (1) Within 30 days of receipt of the request for a declaratory ruling, the agency
2 shall make a written decision to grant or deny the request. If the agency fails
3 to make a written decision to grant or deny the request within 30 days, the
4 failure shall be deemed a decision to deny the request.
- 5 (2) If the agency denies the request, the decision is immediately subject to
6 judicial review in accordance with Article 4 of this Chapter.
- 7 (3) If the agency grants the request, the agency shall issue a written ruling on the
8 merits within 45 days of the decision to grant the request. A declaratory
9 ruling is subject to judicial review in accordance with Article 4 of this
10 Chapter.
- 11 (4) If the agency fails to issue a declaratory ruling within 45 days, the failure
12 shall be deemed a denial on the merits, and the person aggrieved may seek
13 judicial review pursuant to Article 4 of this Chapter. Upon review of an
14 agency's failure to issue a declaratory ruling, the court shall not consider any
15 basis for the denial that was not presented in writing to the person
16 aggrieved."

17 (b) Repealed by Session Laws 1997-34, s. 1."

18 **SECTION 57.** Every State agency, board, commission, or other body with
19 rule-making powers shall deliver to the Joint Select Regulatory Reform Committee of the
20 General Assembly no later than October 1, 2011, a list of all permanent rules adopted by the
21 body that includes for each rule the following information:

- 22 (1) Whether the rule is mandated by a federal law or regulation.
- 23 (2) If the rule is not mandated by a federal law or regulation, whether there is a
24 federal regulation that is analogous to the rule. For purposes of this
25 subdivision, "analogous" means the federal regulation regulates the same
26 conduct or activity as the State regulation.
- 27 (3) If there is a federal statute or regulation analogous to the rule, whether the
28 rule is more stringent than the federal law or regulation.

29 **SECTION 58.** The Joint Regulatory Reform Committee shall study the procedural
30 and substantive requirements of administrative hearings conducted under Article 3A of Chapter
31 150B of the General Statutes. The Committee shall examine the various procedures used by
32 the entities that conduct administrative hearings under Article 3A to identify areas of
33 consistency and inconsistency with the purpose of designing procedures that are applicable to
34 all Article 3A hearings and that ensure that the hearings provide a meaningful opportunity to be
35 heard and for dispute resolution. The Joint Regulatory Reform Committee shall report its
36 findings and recommendations to the 2012 Regular Session of the 2011 General Assembly.

37 **SECTION 59.(a)** G.S. 113A-12 reads as rewritten:

38 "**§ 113A-12. Environmental document not required in certain cases.**

39 No environmental document shall be required in connection with:

- 40 (1) The construction, maintenance, or removal of an electric power line, water
41 line, sewage line, stormwater drainage line, telephone line, telegraph line,
42 cable television line, data transmission line, or natural gas line within or
43 across the right-of-way of any street or highway.
- 44 (2) An action approved under a general permit issued under G.S. 113A-118.1,
45 143-215.1(b)(3), or 143-215.108(c)(8).
- 46 (3) A lease or easement granted by a State agency for:
- 47 a. The use of an existing building or facility.
- 48 b. Placement of a wastewater line on or under submerged lands
49 pursuant to a permit granted under G.S. 143-215.1.
- 50 c. A shellfish cultivation lease granted under G.S. 113-202.
- 51 (4) The construction of a driveway connection to a public roadway.

1 (5) A project for which public monies are expended if the expenditure is solely
2 for the payment of incentives pursuant to an agreement that makes the
3 incentive payments contingent on prior completion of the project or activity,
4 or completion on a specified timetable, and a specified level of job creation
5 or new capital investment.

6 (6) A major development as defined in G.S. 113A-118(c) that receives a permit
7 issued under Article 7 of Chapter 113A of the General Statutes."

8 **SECTION 59.(b)** This section is effective when it becomes law and applies to any
9 major development for which a permit application is received by the Department of
10 Environment and Natural Resources on or after that date.

11 **SECTION 60.(a)** G.S. 143-215.108(d1) reads as rewritten:

12 "(d1) No Title V permit issued pursuant to this section shall be issued or renewed for a
13 term exceeding five years. All other permits issued pursuant to this section shall be issued for a
14 term of eight years."

15 **SECTION 60.(b)** G.S. 143-215.1(c) reads as rewritten:

16 "(c) Applications for Permits and Renewals for Facilities Discharging to the Surface
17 Waters. –

18 (1) All applications for permits and for renewal of existing permits for outlets
19 and point sources and for treatment works and disposal systems discharging
20 to the surface waters of the State shall be in writing, and the Commission
21 may prescribe the form of such applications. All applications shall be filed
22 with the Commission at least 180 days in advance of the date on which it is
23 desired to commence the discharge of wastes or the date on which an
24 existing permit expires, as the case may be. The Commission shall act on a
25 permit application as quickly as possible. The Commission may conduct any
26 inquiry or investigation it considers necessary before acting on an
27 application and may require an applicant to submit plans, specifications, and
28 other information the Commission considers necessary to evaluate the
29 application.

30 (2) a. The Department shall refer each application for permit, or renewal of
31 an existing permit, for outlets and point sources and treatment works
32 and disposal systems discharging to the surface waters of the State to
33 its staff for written evaluation and proposed determination with
34 regard to issuance or denial of the permit. If the Commission concurs
35 in the proposed determination, it shall give notice of intent to issue or
36 deny the permit, along with any other data that the Commission may
37 determine appropriate, to be given to the appropriate State, interstate
38 and federal agencies, to interested persons, and to the public.

39 a1. The Commission shall prescribe the form and content of the notice.
40 Public notice shall be given at least 45 days prior to any proposed
41 final action granting or denying the permit. Public notice shall be
42 given by publication of the notice one time in a newspaper having
43 general circulation within the county.

44 b. Repealed by Session Laws 1987, c. 734.

45 (3) If any person desires a public hearing on any application for permit or
46 renewal of an existing permit provided for in this subsection, he shall so
47 request in writing to the Commission within 30 days following date of the
48 notice of intent. The Commission shall consider all such requests for
49 hearing, and if the Commission determines that there is a significant public
50 interest in holding such hearing, at least 30 days' notice of such hearing shall
51 be given to all persons to whom notice of intent was sent and to any other

1 person requesting notice. At least 30 days prior to the date of hearing, the
2 Commission shall also cause a copy of the notice thereof to be published at
3 least one time in a newspaper having general circulation in such county. In
4 any county in which there is more than one newspaper having general
5 circulation in that county, the Commission shall cause a copy of such notice
6 to be published in as many newspapers having general circulation in the
7 county as the Commission in its discretion determines may be necessary to
8 assure that such notice is generally available throughout the county. The
9 Commission shall prescribe the form and content of the notices.

10 The Commission shall prescribe the procedures to be followed in
11 hearings. If the hearing is not conducted by the Commission, detailed
12 minutes of the hearing shall be kept and shall be submitted, along with any
13 other written comments, exhibits or documents presented at the hearing, to
14 the Commission for its consideration prior to final action granting or
15 denying the permit.

16 (4) Not later than 60 days following notice of intent or, if a public hearing is
17 held, within 90 days following consideration of the matters and things
18 presented at such hearing, the Commission shall grant or deny any
19 application for issuance of a new permit or for renewal of an existing permit.
20 All permits or renewals issued by the Commission and all decisions denying
21 application for permit or renewal shall be in writing.

22 ~~(5) No permit issued pursuant to this subsection (c) shall be issued or renewed~~
23 ~~for a term exceeding five years.~~

24 (6) The Commission shall not act upon an application for a new nonmunicipal
25 domestic wastewater discharge facility until it has received a written
26 statement from each city and county government having jurisdiction over
27 any part of the lands on which the proposed facility and its appurtenances
28 are to be located which states whether the city or county has in effect a
29 zoning or subdivision ordinance and, if such an ordinance is in effect,
30 whether the proposed facility is consistent with the ordinance. The
31 Commission shall not approve a permit application for any facility which a
32 city or county has determined to be inconsistent with its zoning or
33 subdivision ordinance unless it determines that the approval of such
34 application has statewide significance and is in the best interest of the State.
35 An applicant for a permit shall request that each city and county government
36 having jurisdiction issue the statement required by this subdivision by
37 mailing by certified mail, return receipt requested, a written request for such
38 statement and a copy of the draft permit application to the clerk of the city or
39 county. If a local government fails to mail the statement required by this
40 subdivision, as evidenced by a postmark, within 15 days after receiving and
41 signing for the certified mail, the Commission may proceed to consider the
42 permit application notwithstanding this subdivision."

43 **SECTION 60.(c)** G.S. 143-215.1 is amended by adding a new subsection to read:

44 "(d2) No permit issued pursuant to subsection (c) of this section shall be issued or
45 renewed for a term exceeding five years. All other permits issued pursuant to this section for
46 which an expiration date is specified shall be issued for a term of eight years."

47 **SECTION 60.(d)** The Department of Environment and Natural Resources shall
48 review the types of permits issued by the Department and the rule-making agencies under the
49 Department and recommend whether the duration of any of the types of permits should be
50 extended beyond their duration under current law or rule. The Department shall report its

1 findings and recommendations to the Environmental Review Commission no later than
2 February 1, 2012.

3 **SECTION 60.(e)** This section is effective when this act becomes law and applies
4 to permits that are issued on or after July 1, 2011.

5 **SECTION 61.** The Secretary of Environment and Natural Resources shall develop
6 a uniform policy for notification of deficiencies and violations for all of the regulatory
7 programs within the Department of Environment and Natural Resources. In developing the
8 notification policy, the Secretary shall establish different types of notification based on the
9 potential or actual level of harm to public health, the environment, and the natural resources of
10 the State. The Secretary shall also review the notification policies of the United States
11 Environmental Protection Agency and the environmental regulatory programs of other states.
12 The Secretary shall report on the development of the notification policy to the Environmental
13 Review Commission and the Joint Select Regulatory Reform Committee no later than October
14 1, 2011. The Secretary shall implement the uniform notification policy no later than February
15 1, 2012.

16 **SECTION 61.1.** The Office of Administrative Hearings shall evaluate the use of
17 mediated settlement conferences under G.S. 150B-23.1 and shall develop a plan to expand the
18 use of mediation in the contested case process. The Office of Administrative Hearings shall
19 report its findings and recommendations to the Joint Legislative Regulatory Reform Committee
20 by February 1, 2012.

21 **SECTION 61.2.** S.L. 2011-13 is repealed.

22 **SECTION 62.** If any provision of this act is held invalid by a court of competent
23 jurisdiction, the invalidity does not affect other provisions of the act that can be given effect
24 without the invalid provision.

25 **SECTION 63.** Sections 2 through 14 of this act become effective October 1, 2011,
26 and apply to rules adopted on or after that date. Sections 15 through 55 of this act become
27 effective January 1, 2012, and apply to contested cases commenced on or after that date. Unless
28 otherwise provided elsewhere in this act, the remainder of this act is effective when it becomes
29 law.