

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 162
Committee Substitute Favorable 3/1/17
Senate Judiciary Committee Substitute Adopted 6/21/17

Short Title: Amend Administrative Procedure Laws.

(Public)

Sponsors:

Referred to:

February 23, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND VARIOUS ADMINISTRATIVE PROCEDURE LAWS.
3 The General Assembly of North Carolina enacts:

4
5 **AUTHORIZE RULE TECHNICAL CORRECTIONS**

6 SECTION 1.(a) G.S. 150B-21.5 reads as rewritten:

7 "§ 150B-21.5. Circumstances when notice and rule-making hearing not
8 ~~required~~required; circumstances when submission to the Commission not
9 required.

10 (a) Amendment. – An agency is not required to publish a notice of text in the North
11 Carolina ~~Register or Register~~, hold a public ~~hearing~~hearing, or submit the amended rule to the
12 Commission for review when it proposes to amend a rule to do one of the following:

- 13 (1) Reletter or renumber the rule or subparts of the rule.
14 (2) Substitute one name for another when an organization or position is
15 renamed.
16 (3) Correct a citation in the rule to another rule or law when the citation has
17 become inaccurate since the rule was adopted because of the repeal or
18 renumbering of the cited rule or law.
19 (4) Change information that is readily available to the public, such as an ~~address~~
20 ~~or address~~, a telephone ~~number~~number, or a Web site.
21 (5) Correct a ~~typographical error in the North Carolina Administrative~~
22 ~~Code~~typographical error.
23 (6) ~~Change a rule in response to a request or an objection by the Commission,~~
24 ~~unless the Commission determines that the change is substantial.~~

25 (a1) Response to Commission. – An agency is not required to publish a notice of text in
26 the North Carolina Register or hold a public hearing when it proposes to change the rule in
27 response to a request or an objection by the Commission, unless the Commission determines
28 that the change is substantial.

29 (b) Repeal. – An agency is not required to publish a notice of text in the North Carolina
30 Register or hold a public hearing when it proposes to repeal a rule as a result of any of the
31 following:

- 32 (1) The law under which the rule was adopted is repealed.
33 (2) The law under which the rule was adopted or the rule itself is declared
34 unconstitutional.
35 (3) The rule is declared to be in excess of the agency's statutory authority.



1 (c) OSHA Standard. – The Occupational Safety and Health Division of the Department
2 of Labor is not required to publish a notice of text in the North Carolina Register or hold a
3 public hearing when it proposes to adopt a rule that concerns an occupational safety and health
4 standard and is identical to a federal regulation promulgated by the Secretary of the United
5 States Department of Labor. The Occupational Safety and Health Division is not required to
6 submit to the Commission for review a rule for which notice and hearing is not required under
7 this subsection.

8 (d) State Building Code. – The Building Code Council is not required to publish a
9 notice of text in the North Carolina Register when it proposes to adopt a rule that concerns the
10 North Carolina State Building Code. The Building Code Council is required to publish a notice
11 in the North Carolina Register when it proposes to adopt a rule that concerns the North
12 Carolina State Building Code. The notice must include all of the following:

- 13 (1) A statement of the subject matter of the proposed rule making.
- 14 (2) A short explanation of the reason for the proposed action.
- 15 (3) A citation to the law that gives the agency the authority to adopt a rule on the
16 subject matter of the proposed rule making.
- 17 (4) The person to whom questions or written comments may be submitted on the
18 subject matter of the proposed rule making.

19 The Building Code Council is required to submit to the Commission for review a rule for
20 which notice of text is not required under this subsection. In adopting a rule, the Council shall
21 comply with the procedural requirements of G.S. 150B-21.3.

22 (e) An agency that adopts or amends a rule pursuant to subsection (a) or (c) of this
23 section shall notify the Codifier of Rules of its actions. When notified of an agency action taken
24 pursuant to subsection (a) or (c) of this section, the Codifier of Rules shall make the appropriate
25 change to the North Carolina Administrative Code."

26 **SECTION 1.(b)** G.S. 150B-21.20 reads as rewritten:

27 **"§ 150B-21.20. Codifier's authority to revise ~~form of~~ rules.**

28 (a) Authority. – After consulting with the agency that adopted the rule, the Codifier of
29 Rules may revise ~~the form of a rule submitted for inclusion in the North Carolina~~
30 ~~Administrative Code a rule~~ to do one or more of the following:

- 31 (1) Rearrange the order of the rule in the Code or the order of the subsections,
32 subdivisions, or other subparts of the rule.
- 33 (2) Provide a catch line or heading for the rule or revise the catch line or
34 heading of the rule.
- 35 (3) Reletter or renumber the rule or the subparts of the rule in accordance with a
36 uniform system.
- 37 (4) Rearrange definitions and lists.
- 38 (5) Make other changes in arrangement or in form that do not change the
39 substance of the rule and are necessary or desirable for a clear and orderly
40 arrangement of the rule.
- 41 (6) Omit from the published rule a map, a diagram, an illustration, a chart, or
42 other graphic material, if the Codifier of Rules determines that the Office of
43 Administrative Hearings does not have the capability to publish the material
44 or that publication of the material is not practicable. When the Codifier of
45 Rules omits graphic material from the published rule, the Codifier must
46 insert a reference to the omitted material and information on how to obtain a
47 copy of the omitted material.
- 48 (7) Substitute one name for another when an organization or position is
49 renamed.

1 (8) Correct a citation in the rule to another rule or law when the citation has
2 become inaccurate since the rule was adopted because of the repeal or
3 renumbering of the cited rule or law.

4 (9) Change information that is readily available to the public, such as an
5 address, a telephone number, or a Web site.

6 (10) Correct a typographical error.

7 (b) Effect. – Revision of a rule by the Codifier of Rules under this section does not
8 affect the effective date of the rule or require the agency to readopt or resubmit the rule. When
9 the Codifier of Rules revises the form of a rule, the Codifier of Rules must send the agency that
10 adopted the rule a copy of the revised rule. The revised rule is the official rule, unless the rule
11 was revised under subdivision (a)(6) of this section to omit graphic material. When a rule is
12 revised under that subdivision, the official rule is the published text of the rule plus the graphic
13 material that was not published."
14

15 CLARIFY CONTESTED CASE POLICY

16 **SECTION 2.(a)** G.S. 150B-22 reads as rewritten:

17 **"§ 150B-22. Settlement; contested case.**

18 (a) It is the policy of this State that any dispute between an agency and another person
19 that involves the person's rights, duties, or privileges, including licensing or the levy of a
20 monetary penalty, should be settled through informal procedures. In trying to reach a settlement
21 through informal procedures, the agency may not conduct a proceeding at which sworn
22 testimony is taken and witnesses may be cross-examined.

23 (b) If the agency and the other person do not agree to a resolution of the dispute through
24 informal procedures, either the agency or the person may commence an administrative
25 proceeding to determine the person's rights, duties, or privileges, at which time the dispute
26 becomes a "contested case." A party or person aggrieved shall not be required to petition an
27 agency for rule making or to seek or obtain a declaratory ruling before commencing a contested
28 case pursuant to G.S. 150B-23."

29 **SECTION 2.(b)** G.S. 150B-43 reads as rewritten:

30 **"§ 150B-43. Right to judicial review.**

31 Any party or person aggrieved by the final decision in a contested case, and who has
32 exhausted all administrative remedies made available to the party or person aggrieved by
33 statute or agency rule, is entitled to judicial review of the decision under this Article, unless
34 adequate procedure for judicial review is provided by another statute, in which case the review
35 shall be under such other statute. Nothing in this Chapter shall prevent any party or person
36 aggrieved from invoking any judicial remedy available to the party or person aggrieved under
37 the law to test the validity of any administrative action not made reviewable under this Article.
38 ~~Absent a specific statutory requirement, nothing in this Chapter shall require a~~ A party or person
39 aggrieved shall not be required to petition an agency for rule making or to seek or obtain a
40 declaratory ruling before obtaining judicial review of a final decision or order made pursuant to
41 G.S. 150B-34."
42

43 AMEND PERIODIC REVIEW OF RULES PROCESS

44 **SECTION 3.** G.S. 150B-21.3A reads as rewritten:

45 **"§ 150B-21.3A. Periodic review and expiration of existing rules.**

46 (a) Definitions. – For purposes of this section, the following definitions apply:

47 (1) Commission. – Means the Rules Review Commission.

48 (2) Committee. – Means the Joint Legislative Administrative Procedure
49 Oversight Committee.

50 (2a) Necessary rule. – Means any rule other than an unnecessary rule.

- 1 (3) ~~Necessary with substantive public interest. — Means any rule for which the~~
2 ~~agency has received public comments within the past two years. A rule is~~
3 ~~also "necessary with substantive public interest" if the rule affects the~~
4 ~~property interest of the regulated public and the agency knows or suspects~~
5 ~~that any person may object to the rule.~~
- 6 (4) ~~Necessary without substantive public interest. — Means a rule for which the~~
7 ~~agency has not received a public comment concerning the rule within the~~
8 ~~past two years. A "necessary without substantive public interest" rule~~
9 ~~includes a rule that merely identifies information that is readily available to~~
10 ~~the public, such as an address or a telephone number.~~
- 11 (5) Public comment. – Means written comments objecting to the rule, in whole
12 or in part, or objecting to an agency's determination of the rule as necessary
13 or unnecessary, received by an agency from any member of the public,
14 including an association or other organization representing the regulated
15 community or other members of the public.
- 16 (6) Unnecessary rule. – Means a rule that the agency determines to be obsolete,
17 redundant, or otherwise not needed.
- 18 (b) Automatic Expiration. – Except as provided in subsection (e) of this section, any
19 rule for which the agency that adopted the rule has not conducted a review in accordance with
20 this section shall expire on the date set in the schedule established by the Commission pursuant
21 to subsection (d) of this section.
- 22 (c) Review Process. – Each agency subject to this Article shall conduct a review of the
23 agency's existing rules at least once every 10 years in accordance with the following process:
- 24 (1) Step 1: The agency shall conduct an analysis of each existing rule and make
25 an initial determination as to whether the rule is ~~(i) necessary with~~
26 ~~substantive public interest, (ii) necessary without substantive public interest,~~
27 ~~or (iii) necessary or unnecessary.~~ The agency shall then post the results of the
28 initial determination on its Web site and invite the public to comment on the
29 rules and the agency's initial determination. The agency shall also submit the
30 results of the initial determination to the Office of Administrative Hearings
31 for posting on its Web site. The agency shall accept public comment for no
32 less than 60 days following the posting. The agency shall review the public
33 comments and prepare a brief response addressing the merits of each
34 comment. After completing this process, the agency shall submit a report to
35 the Commission. The report shall include the following items:
- 36 a. The agency's initial determination.
- 37 b. All public comments received in response to the agency's initial
38 determination.
- 39 c. The agency's response to the public comments.
- 40 (2) Step 2: The Commission shall review the reports received from the agencies
41 pursuant to subdivision (1) of this subsection. If a public comment relates to
42 a rule that the agency determined to be ~~necessary and without substantive~~
43 ~~public interest or unnecessary~~, the Commission shall determine whether the
44 public comment has merit and, if so, designate the rule as ~~necessary with~~
45 ~~substantive public interest.~~necessary. For purposes of this subsection, a
46 public comment has merit if it addresses the specific substance of the ~~rule~~
47 ~~and relates to any of the standards for review by the Commission set forth in~~
48 ~~G.S. 150B-21.9(a).rule.~~ The Commission shall prepare a final determination
49 report and submit the report to the Committee for consultation in accordance
50 with subdivision (3) of this subsection. The report shall include the
51 following items:

- 1 a. The agency's initial determination.
2 b. All public comments received in response to the agency's initial
3 determination.
4 c. The agency's response to the public comments.
5 d. A summary of the Commission's determinations regarding public
6 comments.
7 ~~e. A determination that all rules that the agency determined to be
8 necessary and without substantive public interest and for which no
9 public comment was received or for which the Commission
10 determined that the public comment was without merit be allowed to
11 remain in effect without further action.~~
12 f. A determination that all rules that the agency determined to be
13 unnecessary and for which no public comment was received or for
14 which the Commission determined that the public comment was
15 without merit shall expire on the first day of the month following the
16 date the report becomes effective in accordance with this section.
17 g. A determination that all rules that the agency determined to be
18 necessary ~~with substantive public interest~~ or that the Commission
19 designated as necessary ~~with public interest as provided in this
20 subdivision~~ shall be readopted as though the rules were new rules in
21 accordance with this Article.
- 22 (3) Step 3: The final determination report shall not become effective until the
23 agency has consulted with the Committee. The determinations contained in
24 the report pursuant to sub-subdivisions ~~e., f., f.~~ and g. of subdivision (2) of
25 this subsection shall become effective on the date the report is reviewed by
26 the Committee. If the Committee does not hold a meeting to hear the
27 consultation required by this subdivision within 60 days of receipt of the
28 final determination report, the consultation requirement is deemed satisfied,
29 and the determinations contained in the report become effective on the 61st
30 day following the date the Committee received the report. If the Committee
31 disagrees with a determination regarding a specific rule contained in the
32 report, the Committee may recommend that the General Assembly direct the
33 agency to conduct a review of the specific rule in accordance with this
34 section in the next year following the consultation.
- 35 (d) Timetable. – The Commission shall establish a schedule for the review and
36 readoption of existing rules in accordance with this section on a decennial basis as follows:
- 37 (1) With regard to the review process, the Commission shall assign each Title of
38 the Administrative Code a date by which the review required by this section
39 must be completed. In establishing the schedule, the Commission shall
40 consider the scope and complexity of rules subject to this section and the
41 resources required to conduct the review required by this section. The
42 Commission shall have broad authority to modify the schedule and extend
43 the time for review in appropriate circumstances. Except as provided in
44 subsections (e) and (f) of this section, if the agency fails to conduct the
45 review by the date set by the Commission, the rules contained in that Title
46 which have not been reviewed will expire. The Commission shall report to
47 the Committee any agency that fails to conduct the review. The Commission
48 may exempt rules that have been adopted or amended within the previous 10
49 years from the review required by this section. However, any rule exempted
50 on this basis must be reviewed in accordance with this section no more than
51 10 years following the last time the rule was amended.

(2) With regard to the readoption of rules as required by sub-subdivision (c)(2)g. of this section, once the final determination report becomes effective, the Commission shall establish a date by which the agency must readopt the rules. The Commission shall consult with the agency and shall consider the agency's rule-making priorities in establishing the readoption date. The agency may amend a rule as part of the readoption process. If a rule is readopted without substantive change or if the rule is amended to impose a less stringent burden on regulated persons, the agency is not required to prepare a fiscal note as provided by G.S. 150B-21.4.

~~(e) Rules to Conform to or Implement Federal Law. — Rules adopted to conform to or implement federal law shall not expire as provided by this section. The Commission shall report annually to the Committee on any rules that do not expire pursuant to this subsection.~~
Exclusions. — The Commission shall report annually to the Committee on any rules that do not expire pursuant to this subsection. The following rules shall not expire as provided in this section:

(1) Rules adopted to conform to or implement federal law.

(2) Rules deemed by the Boards of Trustees established under G.S. 128-28 and G.S. 135-6 to protect inchoate or accrued rights of members of the Retirement Systems administered by the State Treasurer.

~~(e1) Rules to Protect Inchoate or Accrued Rights of Retirement Systems Members. — Rules deemed by the Boards of Trustees established under G.S. 128-28 and G.S. 135-6 to protect inchoate or accrued rights of members of the Retirement Systems administered by the State Treasurer shall not expire as provided by this section. The Commission shall report annually to the Committee on any rules that do not expire pursuant to this subsection.~~

(f) Other Reviews. — Notwithstanding any provision of this section, an agency may subject a rule that it determines to be unnecessary to review under this section at any time by notifying the Commission that it wishes to be placed on the schedule for the current year. The Commission may also subject a rule to review under this section at any time by notifying the agency that the rule has been placed on the schedule for the current year."

RESTRICTIONS ON RULES WITH SUBSTANTIAL FINANCIAL COSTS

SECTION 4. Part 1 of Article 2A of Chapter 150B of the General Statutes is amended by adding a new section to read:

"§ 150B-19.4. Requirements on rules with substantial financial costs.

(a) Prohibition. — Notwithstanding any authority given to an agency to adopt a rule, an agency may not adopt a permanent rule or set of rules with a projected aggregate financial cost to all persons affected equal to or greater than one hundred million dollars (\$100,000,000) during any five-year period. The agency's determination of the projected aggregate financial cost of a permanent rule or set of rules shall comply with the requirements of G.S. 150B-21.4(b1). The agency's determination of the projected aggregate financial cost of a permanent rule or set of rules shall not include any financial benefits of the permanent rule or set of rules.

(b) Limitation. — If an agency determines that a proposed permanent rule or set of rules will have a projected aggregate financial cost to all persons affected equal to or greater than ten million dollars (\$10,000,000) during any five-year period, the adoption of the permanent rule or set of rules must comply with the following:

(1) If the agency is a board, a commission, a council, or other similar unit of government, a certification that the adoption of the rule or set of rules must be approved by at least sixty percent (60%) of those voting on the rule or set of rules.

1 (2) For an agency headed by a member of the Council of State, the adoption of
2 the rule or set of rules must be accompanied by a certification signed by the
3 member of the Council of State indicating the member's review and support
4 of the rule or set of rules.

5 (3) For all other agencies, the adoption of the rule or set of rules must be
6 accompanied by a certification signed by the Governor indicating the
7 Governor's review and support of the rule or set of rules.

8 (c) Legislative Review. – A permanent rule or set of rules subject to the limitation of
9 subsection (b) of this section shall be subject to the provisions of G.S. 150B-21.3(b1) as if,
10 pursuant to G.S. 150B-21.3(b2), the rule or set of rules received written objections from 10 or
11 more persons and a bill specifically disapproving the rule or set of rules was introduced in a
12 house of the General Assembly before the thirty-first legislative day."

13 14 **AMEND INCORPORATING MATERIALS IN A RULE BY REFERENCE**

15 **SECTION 5.** G.S. 150B-21.6 reads as rewritten:

16 **"§ 150B-21.6. Incorporating material in a rule by reference.**

17 An agency may incorporate the following material by reference in a rule without repeating
18 the text of the referenced material:

19 (1) Another rule or part of a rule adopted by the agency.

20 (2) All or part of a code, standard, or regulation adopted by another ~~agency, the~~
21 ~~federal government, agency~~ or a generally recognized organization or
22 association.

23 (3) Repealed by Session Laws 1997-34, s. 5.

24 (4) All or part of a code, standard, or regulation adopted by the federal
25 government if the agency establishes a procedure by which any change by
26 the federal government is reviewed and approved by the agency within 120
27 days of the change.

28 In incorporating material by reference, the agency must designate in the rule whether or not
29 the incorporation includes subsequent amendments and editions of the referenced material. The
30 agency can change this designation only by a subsequent rule-making proceeding. The agency
31 must have copies of the incorporated material available for inspection and must specify in the
32 rule both where copies of the material can be obtained and the cost on the date the rule is
33 adopted of a copy of the material.

34 A statement in a rule that a rule incorporates material by reference in accordance with
35 former G.S. 150B-14(b) is a statement that the rule does not include subsequent amendments
36 and editions of the referenced material. A statement in a rule that a rule incorporates material
37 by reference in accordance with former G.S. 150B-14(c) is a statement that the rule includes
38 subsequent amendments and editions of the referenced material."

39 40 **ADOPTION OF PERMANENT ENVIRONMENTAL RULES THAT EXCEED** 41 **FEDERAL REQUIREMENTS IN CASES OF SERIOUS AND UNFORESEEN** 42 **THREATS**

43 **SECTION 6.** G.S. 150B-19.3(a) reads as rewritten:

44 "(a) An agency authorized to implement and enforce State and federal environmental
45 laws may not adopt a permanent rule for the protection of the environment or natural resources
46 that imposes a more restrictive standard, limitation, or requirement than those imposed by
47 federal law or rule, if a federal law or rule pertaining to the same subject matter has been
48 adopted, unless adoption of the rule is required by one of the subdivisions of this subsection. A
49 permanent rule required by a serious and unforeseen threat to public health, safety, or welfare
50 shall be subject to the limitation and legislative review provisions of G.S. 150B-19.4(b) and (c).
51 A permanent rule required by one of the following subdivisions of this subsection shall be

1 subject to the provisions of G.S. 150B-21.3(b1) as if the rule received written objections from
2 10 or more persons under G.S. 150B-21.3(b2):

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

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

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

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

9 (5) A court order."
10

11 **EFFECTIVE DATE**

12 **SECTION 7.** This act is effective when it becomes law. Section 3 of this act
13 applies to agency rule reports submitted to the Office of Administrative Hearings pursuant to
14 G.S. 150B-21.3A(c)(1) on or after October 1, 2017. Sections 4 and 6 apply to proposed
15 permanent and readopted rules published in the North Carolina Register and proposed
16 permanent rules posted on the Web site of the Office of Administrative Hearings on or after
17 October 1, 2017.