

GENERAL ASSEMBLY OF NORTH CAROLINA  
1987 SESSION

CHAPTER 285  
HOUSE BILL 977

AN ACT TO MAKE TECHNICAL AMENDMENTS TO THE ADMINISTRATIVE  
PROCEDURE ACT, THE ADMINISTRATIVE RULES REVIEW COMMISSION  
STATUTES, AND RELATED STATUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-30.2(a) is amended by rewriting the second paragraph thereof to read as follows:

"Any rule filed by the 20th of a month shall be reviewed by the Commission by the last day of the next calendar month. Any rule filed after the 20th of a month shall be reviewed by the Commission by the last day of the second subsequent calendar month. The Commission may extend the time for review of a rule by a period of up to 70 days to obtain additional information on the rule. The Commission shall file notice of the extension of time for review of a rule with the agency and the Director of the Office of Administrative Hearings. A rule may not be presented for filing with the Director of the Office of Administrative Hearings under G.S. 150B-59 unless the rule has been reviewed by the Commission as provided in this section."

Sec. 2. G.S. 143B-30.2(b) is further amended by rewriting subsection (b) to read as follows:

"(b) If the Commission reviews a rule and determines that it is within the authority delegated to the agency, is clear and unambiguous, and is reasonably necessary, the Commission shall note its approval, notify the agency, and file the rule with the Director of the Office of Administrative Hearings under G.S. 150B-59, and the rule shall become effective as provided in that section."

Sec. 3. G.S. 143B-30.2(d) is amended by inserting "as authorized by (c)" between "report" and the comma, and further amended by inserting the following language between "attached" and the period:

"; provided, however, that in the case of a board, committee, council, or commission the response is due within 30 days after receipt of the Commission's written report or within 10 days following the next regularly scheduled meeting of the board, committee, council, or commission, whichever time period is greater".

Sec. 4. G.S. 143B-30.2(f) is amended by deleting the words "approval of" in the first sentence and substituting in lieu thereof:

"review of and objection to" and by deleting the second sentence in its entirety.

Sec. 5. G.S. 143B-30.2 is further amended by adding a new subsection (i) to read as follows:

"(i) Rules adopted in accordance with the procedure in G.S. 150B-13 shall be reviewed by the Commission and are subject to objection as provided in (c).

The Commission shall review the reasons given for the adoption of a temporary rule and may object to the rule due to the agency's failure to make the finding required by G.S. 150B-13."

Sec. 6. G.S. 143B-30.3(a) is amended by rewriting the first sentence to read:

"Notwithstanding G.S. 143B-30.2(a), at any time before the time for review set out in that subsection expires or upon the written request of any agency, the Commission may call a public hearing on any rule."

Sec. 7. G.S. 150B-12(a) is amended by deleting the following language:

"at least 60 days".

Sec. 8. G.S. 150B-12(b) is repealed.

Sec. 9. G.S. 150B-12 is further amended by adding a new sentence at the end of subsection (h) to read as follows:

"No rule-making hearing is required to amend or repeal a rule to comply with G.S. 143B-30.2 in accordance with G.S. 150B-59(c)."

Sec. 10. G.S. 150B-13(a)(2)a. is rewritten to read:

"A serious and unforeseeable threat to public health, safety, or welfare;"

Sec. 11. G.S. 150B-13(a)(2) is further amended by inserting a new subparagraph c. to read as follows and by relettering the existing subparagraphs c. and d. accordingly:

"c. A recent change in federal or State budgetary policy;"

Sec. 12. G.S. 150B-13(c) is amended by deleting "120 days" and inserting in lieu thereof:

"180 days and are subject to review as provided in G.S. 143B-30.2(i)".

Sec. 13. G.S. 150B-14 is rewritten to read as follows:

"(a) An agency may adopt by reference in its rules, without publishing the adopted matter in full:

- (1) all or any part of a code, standard, or regulation which has been adopted by any other agency of this State or by any agency of the United States or by a generally recognized organization or association;
- (2) any plan or material which is adopted to meet the requirements of any agency of the United States and approved by that agency;
- (3) any plan, material, manual, guide or other document establishing job application or employment practices or procedures of any State agency other than the State Personnel Commission. The State Personnel Commission, however, shall incorporate by reference in its rules job classification standards, including but not limited to those relating to qualifications and salary levels; or
- (4) the hearings division rules promulgated by the Office of Administrative Hearings.

In adopting matter by reference, the agency shall specify in the rule and in the Register whether such adoption is in accordance with the provisions of subsection (b) or

(c) of this section. The agency can change this election only by a subsequent rulemaking proceeding.

(b) If an agency adopts matter by reference in accordance with this subsection, such reference shall not cover any later amendments and editions of the adopted matter, but if the agency wishes to incorporate them in its rule it shall amend the rule or promulgate a new rule.

(c) If any agency adopts matter by reference in accordance with this subsection, such reference shall automatically include any later amendments and editions of the adopted matter.

(d) An agency may cross-reference its own rules in the North Carolina Administrative Code without violating the provisions of (a)(1) of this section."

Sec. 14. G.S. 150B-59(a) is amended by inserting the following language between "Hearings" and the period: "no sooner than 90 days before their effective date", and further amended by inserting the following language between "or" and "(f)": "reviewed and objected to under".

Sec. 15. G.S. 150B-59 is further amended by inserting new sentences between the existing fourth and fifth sentences of subsection (c) to read as follows:

"In the event of rules which the Commission determines do not comply with G.S. 143B-30.2, such rules may be revised or repealed by the agency without a rule-making hearing in accordance with G.S. 150B-12(h). Revised rules shall be returned to the Commission. If the Commission approves the rules, the Commission shall notify the agency and file the rules with the Office of Administrative Hearings."

Sec. 16. G.S. 150B-60(a)(5) is amended by deleting the words "and approved".

Sec. 17. G.S. 95-131(a) is rewritten to read as follows:

"(a) All occupational safety and health standards promulgated under the federal act by the Secretary, and any modifications, revision, amendments or revocations in accordance with the authority conferred by the federal act or any other federal act or agency relating to safety and health and adopted by the Secretary, shall be the rules of the Commissioner of this State unless the Commissioner shall promulgate an alternative State rule or standard as effective as the federal requirement and providing safe and healthful employment in places of employment as required by the federal act and standards and regulations heretofore referred to and as provided by the Occupational Safety and Health Act of 1970. All standards and rules promulgated under the federal act by the Secretary, and any modifications, revisions, or revocations in accordance with the authority conferred by the federal act, or any other federal act or agency relating to safety and health and adopted by the Secretary, shall become effective upon the date the same are filed by the Commissioner in the Office of Administrative Hearings in accordance with G.S. 150B-59."

Sec. 18. G.S. 106-266.8(10)a. is amended by deleting ", after investigation and public hearing," and by inserting a new sentence at the end thereof to read as follows:

"Notwithstanding the provisions of G.S. 150B-59(a), such rules shall become effective when approved by the Commission. The Commission shall file any rule with

the Director of the Office of Administrative Hearings within two working days of its adoption by the Commission."

Sec. 19. This act shall become effective on the first day of the fourth calendar month after ratification.

In the General Assembly read three times and ratified this the 4th day of June, 1987.