

GENERAL ASSEMBLY OF NORTH CAROLINA  
1987 SESSION

CHAPTER 878  
HOUSE BILL 978

AN ACT TO ESTABLISH A MORE UNIFORM SYSTEM OF RESOLVING  
ADMINISTRATIVE DISPUTES AND TO MODIFY JUDICIAL REVIEW OF  
ADMINISTRATIVE DECISIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 150B-2 is amended as follows:

(1) by rewriting subdivision (2b) to read:

"(2b) 'Hearing officer' means a person or group of persons designated by an agency that is subject to Article 3A of this Chapter to preside in a contested case hearing conducted under that Article."; and

(2) by adding the following definition in the appropriate alphabetical order:

"(01) 'Administrative law judge' means a person appointed under G.S. 7A-752, 7A-753, or 7A-757."

Sec. 2. G.S. 150B-2(5) is amended by changing the semicolon following the word "appropriate" to a period and rewriting the remainder of that subdivision to read:

"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."

Sec. 3. G.S. 150B-23(a) is amended as follows:

(1) by rewriting the first sentence of that subsection to read:

"A contested case shall be commenced 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.";

(2) by deleting the second paragraph of that subsection; and

(3) by adding a new sentence at the end of the first paragraph of that subsection as follows:

"Any person aggrieved may commence a contested case hereunder."

Sec. 4. G.S. 150B-23(b) is amended by deleting the words "or the agency".

Sec. 5. G.S. 150B-23(d), 150B-33, 150B-34(b), and 150B-44 are each amended by deleting the words "hearing officer" each place they appear, including the catchline, and substituting the words "administrative law judge".

Sec. 6. G.S. 150B-24(a)(3), 150B-25(a), 150B-27, and 150B-31(a) are each amended by deleting the words "agency or hearing officer" and substituting the words "administrative law judge".

Sec. 7. G.S. 150B-29(a) is amended in the last sentence by deleting the words "agency or hearing officer in reaching his decision" and substituting the phrase

"administrative law judge in making a recommended decision, by the agency in making a final decision".

Sec. 8. G.S. 150B-32 is amended as follows:

(1) by rewriting the catchline to read: "Designation of administrative law judge.";

(2) by rewriting subsection (a) to read:

"(a) The Director of the Office of Administrative Hearings shall assign himself or another administrative law judge to preside over a contested case.";

(3) by deleting the phrase "a hearing officer, the hearing officer" in subsection (b) and substituting the phrase "an administrative law judge, the administrative law judge";

(4) by deleting the words "a hearing officer" in subsection (c) and substituting the words "an administrative law judge"; and

(5) by deleting the words "another hearing officer shall be assigned" in subsection (c) and substituting the words "the Director shall assign another administrative law judge".

Sec. 9. G.S. 150B-33(a) and (b) are each amended by deleting the words "A hearing officer" and substituting the words "An administrative law judge".

Sec. 10. G.S. 150B-33(b)(2) is amended by deleting the phrase "agency or the Office of Administrative Hearings, as applicable" and substituting the phrase "Office of Administrative Hearings".

Sec. 11. G.S. 150B-35 is amended by deleting the phrase "a member or employee of an agency assigned to make a decision or to make findings of fact and conclusions of law in a contested case or a hearing officer shall not" and substituting the phrase "neither the administrative law judge assigned to a contested case nor a member or employee of the agency making a final decision in the case may".

Sec. 12. G.S. 150B-36 is amended by rewriting the second sentence of that section to read:

"If the agency does not adopt the administrative law judge's recommended decision as its final decision, the agency shall state in its decision or order the specific reasons why it did not adopt the administrative law judge's recommended decision."

Sec. 13. G.S. 150B-37(a)(5) and (6) are each amended by deleting the words "hearing officer's" and substituting the words "administrative law judge's".

Sec. 14. G.S. 7A-757 is amended by deleting the words "hearing officers" and "hearing officer" each place they appear and substituting the words "administrative law judges" and "administrative law judge" respectively.

Sec. 15. G.S. 7A-758 is amended by deleting the words "hearing officer" and "a hearing officer" each place they appear, including the catchline, and substituting the words "administrative law judge" and "an administrative law judge" respectively.

Sec. 16. G.S. 150B-45 is rewritten to read:

**§ 150B-45. Procedure for seeking review; waiver.**—To obtain judicial review of a final decision under this Article, the person seeking review must file a petition in the Superior Court of Wake County or in the superior court of the county where the person resides.

The person seeking review must file the petition within 30 days after the person is served with a written copy of the decision. A person who fails to file a petition within the required time waives the right to judicial review under this Article. For good cause shown, however, the superior court may accept an untimely petition."

Sec. 17. G.S. 150B-49 is rewritten to read:

"§ **150B-49. New evidence.**—An aggrieved person who files a petition in the superior court may apply to the court to present additional evidence. If the court is satisfied that the evidence is material to the issues, is not merely cumulative, and could not reasonably have been presented at the administrative hearing, the court may remand the case so that additional evidence can be taken. If an administrative law judge did not make a recommended decision in the case, the court shall remand the case to the agency that conducted the administrative hearing. After hearing the evidence, the agency may affirm or modify its previous findings of fact and final decision. If an administrative law judge made a recommended decision in the case, the court shall remand the case to the administrative law judge. After hearing the evidence, the administrative law judge may affirm or modify his previous findings of fact and recommended decision. The administrative law judge shall forward a copy of his decision to the agency that made the final decision, which in turn may affirm or modify its previous findings of fact and final decision. The additional evidence and any affirmation or modification of a recommended decision or final decision shall be made part of the official record."

Sec. 18. G.S. 150B-50 is amended by inserting the word "superior" before the word "court" in the catchline of the section and by inserting between the words "review" and "of" the words "by a superior court".

Sec. 19. G.S. 150B-51 is rewritten to read:

"§ **150B-51. Scope of review.**—(a) Initial Determination in Certain Cases. In reviewing a final decision in a contested case in which an administrative law judge made a recommended decision, the court shall make two initial determinations. First, the court shall determine whether the agency heard new evidence after receiving the recommended decision. If the court determines that the agency heard new evidence, the court shall reverse the decision or remand the case to the agency to enter a decision in accordance with the evidence in the official record. Second, if the agency did not adopt the recommended decision, the court shall determine whether the agency's decision states the specific reasons why the agency did not adopt the recommended decision. If the court determines that the agency did not state specific reasons why it did not adopt a recommended decision, the court shall reverse the decision or remand the case to the agency to enter the specific reasons.

(b) Standard of Review. After making the determinations, if any, required by subsection (a), the court reviewing a final decision may affirm the decision of the agency or remand the case for further proceedings. It may also reverse or modify the agency's decision if the substantial rights of the petitioners may have been prejudiced because the agency's findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional provisions;
- (2) In excess of the statutory authority or jurisdiction of the agency;
- (3) Made upon unlawful procedure;

- (4) Affected by other error of law;
- (5) Unsupported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31 in view of the entire record as submitted; or
- (6) Arbitrary or capricious."

Sec. 20. G.S. 150B-52 is rewritten to read:

**"§ 150B-52. Appeal; stay of court's decision.**—A party to a review proceeding in a superior court may appeal to the appellate division from the final judgment of the superior court as provided in G.S. 7A-27. Pending the outcome of an appeal, an appealing party may apply to the court that issued the judgment under appeal for a stay of that judgment or a stay of the administrative decision that is the subject of the appeal, as appropriate."

Sec. 21. G.S. 150B-2 is amended by adding the following definition in the appropriate alphabetical order:

"(01) 'Substantial evidence' means relevant evidence a reasonable mind might accept as adequate to support a conclusion."

Sec. 22. G.S. 150B-47 is amended by rewriting the first sentence of the section to read:

"Within 30 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the agency that made the final decision in the contested case shall transmit to the reviewing court the original or a certified copy of the official record in the contested case under review together with: (i) any exceptions, proposed findings of fact, or written arguments submitted to the agency in accordance with G.S. 150B-36(a); and (ii) the agency's final decision or order."

Sec. 23. G.S. 150B-34 is rewritten to read:

**"§ 150B-34. Recommended decision or order of administrative law judge.**—(a) In a contested case, the administrative law judge shall make a recommended decision or order that contains findings of fact and conclusions of law.

(b) After hearing the contested case and prior to issuing a recommended decision, the administrative law judge shall give each party an opportunity to file proposed findings of fact and to present written arguments to him."

Sec. 24. G.S. 150B-36 is amended by designating the current language of that section as subsection (b) and adding a new subsection (a) to read:

"(a) Before the agency makes a final decision, it shall give each party an opportunity to file exceptions to the decision recommended by the administrative law judge, and to present written arguments to those in the agency who will make the final decision or order."

Sec. 25. G.S. 150B-37 is amended as follows:

- (1) by rewriting that part of subsection (a) preceding the colon to read:

"In a contested case, the Office of Administrative Hearings shall prepare an official record of the case that includes";

- (2) by adding the word "and" after the semicolon following subdivision (a)(4);
- (3) by deleting subdivision (a)(5);

(4) by deleting the phrase ", opinion, order, or report" in subdivision (a)(6) and substituting the words "or order"; and

(5) by adding a new subsection to read:

"(c) The Office of Administrative Hearings shall forward a copy of the official record to the agency making the final decision and shall forward a copy of the recommended decision to each party."

Sec. 26. G.S. 150B-33(b)(9) is amended by deleting the word "administrative".

Sec. 27. G.S. 150B-44 is amended by deleting the second sentence and substituting the following:

"Except for an agency that is a board or commission, an agency's failure to make a final decision within 60 days of the date on which all exceptions or arguments are filed under G.S. 150B-36(a) with the agency constitutes an unreasonable delay. A board or commission's failure to make a final decision within the later of the 60 days allowed other agencies or 60 days after the board's or commission's next regularly scheduled meeting constitutes an unreasonable delay."

Sec. 28. Sections 1 through 20 of this act shall become effective September 1, 1987; the remaining sections of this act are effective upon ratification. Sections 1 through 15 shall apply to contested cases commenced on or after September 1, 1987. Sections 16 through 20 shall apply to petitions for review filed on or after September 1, 1987.

In the General Assembly read three times and ratified this the 14th day of August, 1987.