

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 12

Short Title: APA Rule Making Applies to All Depts.

(Public)

Sponsors: Senator Johnson.

Referred to: Judiciary I.

February 5, 1991

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A BILL TO BE ENTITLED
AN ACT MAKING THE ADMINISTRATIVE RULE-MAKING PROCESS MORE
UNIFORM BY APPLYING THE ADMINISTRATIVE PROCEDURE ACT'S
RULE-MAKING PROVISIONS TO ALL PRINCIPAL STATE DEPARTMENTS.
The General Assembly of North Carolina enacts:
Section 1. G.S. 150B-1(d) reads as rewritten:
"(d) (1) The following are specifically exempted from the provisions
of this Chapter:
a. The Administrative Rules Review Commission;
b. The Employment Security Commission;
c. The Industrial Commission;
d. The Occupational Safety and Health Review Board in all
actions that do not involve agricultural employers; and
e. The Utilities Commission.
(2) The North Carolina National Guard is exempt from the provisions of
this Chapter in exercising its court-martial jurisdiction.
(3) The Department of Human Resources is exempt from this Chapter in
exercising its authority over the Camp Butner reservation granted in
Article 6 of Chapter 122C of the General Statutes. The Department of
Human Resources and the Department of Environmental, Health, and
Natural Resources are exempt from Article 3 of this Chapter in
complying with the procedural safeguards mandated by the Section
680 of Part H of P.L. 99-457 as amended (Education of the
Handicapped Act Amendments of 1986).

- 1 (4) ~~The Department of Correction is exempt from the provisions of this~~
2 ~~Chapter, except for Article 5 of this Chapter and G.S. 150B-13 which~~
3 ~~shall apply. Article 3 of this Chapter does not apply to the Department~~
4 ~~of Correction.~~
- 5 (5) ~~Articles 2 and Article 3~~ of this Chapter ~~shall~~ does not apply to the
6 Department of Revenue.
- 7 (6) Except as provided in Chapter 136 of the General Statutes, ~~Articles 2~~
8 ~~and Article 3~~ of this Chapter ~~do~~ does not apply to the Department of
9 Transportation.
- 10 (7) Article 4 of this Chapter, governing judicial review of final
11 administrative decisions, shall apply to The University of North
12 Carolina and its constituent or affiliated boards, agencies, and
13 institutions, but The University of North Carolina and its constituent or
14 affiliated boards, agencies, and institutions are specifically exempted
15 from the remaining provisions of this Chapter.
- 16 (8) Article 4 of this Chapter shall not apply to the State Banking
17 Commission, the Commissioner of Banks, the Savings Institutions
18 Division of the Department of Economic and Community
19 Development, and the Credit Union Division of the Department of
20 Economic and Community Development.
- 21 (9) Article 3 of this Chapter shall not apply to agencies governed by the
22 provisions of Article 3A of this Chapter, as set out in G.S. 150B-38(a).
- 23 (10) Articles 3 and 3A of this Chapter shall not apply to the Governor's
24 Waste Management Board in administering the provisions of G.S.
25 104E-6.2 and G.S. 130A-293.
- 26 (11) Article 2 of this Chapter shall not apply to the North Carolina Low-
27 Level Radioactive Waste Management Authority in administering the
28 provisions of G.S. 104G-10 and G.S. 104G-11. Articles 3 and 3A of
29 this Chapter shall not apply to the North Carolina Low-Level
30 Radioactive Waste Management Authority in administering the
31 provisions of G.S. 104G-9, 104G-10, and 104G-11.
- 32 (12) Article 2 of this Chapter shall not apply to the North Carolina
33 Hazardous Waste Management Commission in administering the
34 provisions of G.S. 130B-13 and G.S. 130B-14. Articles 3 and 3A of
35 this Chapter shall not apply to the North Carolina Hazardous Waste
36 Management Commission in administering the provisions of G.S.
37 130B-11, 130B-13, and 130B-14.
- 38 (13) Article 3 and G.S. 150B-51(a) of this Chapter shall not apply to
39 hearings required pursuant to the Rehabilitation Act of 1973, (Public
40 Law 93-122), as amended and federal regulations promulgated
41 thereunder."

42 Sec. 2. G.S. 150B-16 reads as rewritten:

43 "**§ 150B-16. Petition for adoption of rules.**

1 (a) Except as provided in subsection (b), any ~~any~~ person may petition an agency
2 to promulgate, amend, or repeal a rule, and may accompany his petition with such data,
3 views, and arguments as he thinks pertinent. Each agency shall prescribe by rule the
4 form for petitions and the procedure for their submission, consideration, and disposition.
5 Within 30 days after submission of a petition, the agency shall either deny the petition
6 in writing, stating its reasons for the denial, or initiate rule-making proceedings in
7 accordance with G.S. 150B-12 and G.S. 150B-13; provided, however, commissions and
8 boards shall act on a petition at their next regularly scheduled meeting, but in any case
9 no later than 120 days after submission of a petition. Denial of the petition to initiate
10 rule making under this section shall be considered a final agency decision for purposes
11 of judicial review.

12 (b) A person may not submit a petition to the Department of Correction if the
13 petition addresses a matter that is subject to the Department's Administrative Remedy
14 Procedure adopted under G.S. 148-118.1."

15 Sec. 3. The Rules Review Commission must review the rules of the
16 Departments of Correction, Transportation, and Revenue to determine if the rules meet
17 the standards for review in G.S. 143B-30.2. A rule that does not meet the standards is
18 repealed effective January 1, 1994. The agencies may adopt, recodify, amend, or repeal
19 a rule in response to an objection by the Commission in the course of this review
20 without publishing notice in the North Carolina Register or holding a rule-making
21 hearing.

22 Sec. 4. G.S. 20-2 reads as rewritten:

23 "**§ 20-2. Commissioner of Motor ~~Vehicles.~~ Vehicles; rules.**

24 (a) Commissioner and Assistants.— The Division of Motor Vehicles shall be
25 administered by the Commissioner of Motor Vehicles, who shall be appointed by and
26 serve at the pleasure of the Secretary of the Department of Transportation. The
27 Commissioner shall be paid an annual salary to be fixed by the General Assembly in the
28 Current Operations Appropriations Act and allowed his traveling expenses as allowed
29 by law.

30 In any action, proceeding, or matter of any kind, to which the Commissioner of
31 Motor Vehicles is a party or in which he may have an interest, all pleadings, legal
32 notices, proof of claim, warrants for collection, certificates of tax liability, executions,
33 and other legal documents, may be signed and verified on behalf of the Commissioner
34 of Motor Vehicles by the Assistant Commissioner of Motor Vehicles or by any director
35 or assistant director of any section of the Division of Motor Vehicles or by any other
36 agent or employee of the Division so authorized by the Commissioner of Motor
37 Vehicles.

38 (b) Rules. The Commissioner may adopt rules to implement this Chapter.
39 Chapter 150B of the General Statutes governs the adoption of rules by the
40 Commissioner."

41 Sec. 5. G.S. 136-10 reads as rewritten:

42 "**§ 136-10. ~~Audit.~~ Audit and rules.**

43 The operations of the Department of Transportation shall be subject to the oversight
44 of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes.

1 Rules adopted by the Department of Transportation are subject to Chapter 150B of the
2 General Statutes."

3 Sec. 6. G.S. 148-11 reads as rewritten:

4 "**§ 148-11. Authority to ~~make regulations.~~ adopt rules.**

5 The Secretary shall adopt rules for the government of the State prison system and
6 shall file and publish such rules in accordance with the provisions of Article 5 of
7 Chapter 150B. In the case of temporary rules, such rules shall become effective
8 immediately upon adoption by the Secretary and shall be filed in accordance with G.S.
9 150B-13 within two working days of adoption. system. Chapter 150B of the General
10 Statutes governs the adoption of rules by the Secretary. The Secretary shall have such
11 portion of these the rules and regulations as that pertain to enforcing discipline read to
12 every prisoner when received in the State prison system and a printed copy of these
13 rules ~~and regulations shall be made available to the prisoners.~~"

14 Sec. 7. G.S. 105-262 reads as rewritten:

15 "**§ 105-262. ~~Rules and regulations.~~ Rules.**

16 The Secretary of Revenue shall, ~~from time to time, initiate and prepare such~~
17 ~~regulations, not inconsistent with law, as may be useful and necessary to implement the~~
18 ~~provisions of all the Articles of Subchapter I (except Article 8B) and Article 36 of~~
19 ~~Subchapter V, such regulations to become effective when approved by the Tax Review~~
20 ~~Board. All regulations and amendments thereto shall be published and made available~~
21 ~~by the Secretary of Revenue.~~ may adopt rules needed to administer a tax collected by
22 the Secretary or to fulfill another duty delegated to the Secretary. Chapter 150B of the
23 General Statutes governs the adoption of rules by the Secretary.

24 ~~The Secretary of Revenue may, from time to time, make and prescribe such~~
25 ~~administrative rules, not inconsistent with law and the regulations approved by the Tax~~
26 ~~Review Board, as may be useful for the administration of his department and the~~
27 ~~discharge of his responsibilities.~~

28 ~~References to rules and regulations of the Secretary of Revenue in this Chapter and~~
29 ~~in any subsequent amendments or additions thereto (unless expressly provided to the~~
30 ~~contrary therein) shall be construed to mean those rules and regulations promulgated~~
31 ~~under the provisions of this section."~~

32 Sec. 8. This act becomes effective July 1, 1991, and applies to rules for
33 which a notice of rule making is required to be published in the North Carolina Register
34 on or after that date and to all rules that do not require publication of a notice of rule
35 making and are adopted on or after that date.