

GENERAL ASSEMBLY OF NORTH CAROLINA
1991 SESSION

CHAPTER 477
SENATE BILL 12

AN ACT MAKING THE ADMINISTRATIVE RULE-MAKING PROCESS MORE
UNIFORM AND TO CLARIFY THE SCOPE OF A RULE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 150B-1(d), as enacted by Section 2 of Chapter 418 of the 1991 Session Laws, is amended by deleting subdivisions (d)(5) and (d)(6) and by rewriting subdivision (d)(4) to read as rewritten:

"(4) The Department of ~~Revenue~~ Revenue, except that Parts 3 and 4 of Article 2A apply to the Department."

Sec. 2. G.S. 150B-20, as enacted by Section 1 of Chapter 418 of the 1991 Session Laws, is amended by adding a new subsection to read:

"(e) Exception. – This section does not apply to the Department of Correction."

Sec. 2.1. G.S. 150B-17, as recodified as G.S. 150B-4 by Section 4 of Chapter 418 of the 1991 Session Laws, reads as rewritten:

"§ 150B-17. Declaratory rulings.

(a) On request of a person aggrieved, an agency shall issue a declaratory ruling as to the validity of a rule or as to the applicability to a given state of facts of a statute administered by the agency or of a rule or order of the agency, except when the agency for good cause finds issuance of a ruling undesirable. The agency shall prescribe in its rules the circumstances in which rulings shall or shall not be issued. A declaratory ruling is binding on the agency and the person requesting it unless it is altered or set aside by the court. An agency may not retroactively change a declaratory ruling, but nothing in this section prevents an agency from prospectively changing a declaratory ruling. A declaratory ruling is subject to judicial review in the same manner as an order in a contested case. Failure of the agency to issue a declaratory ruling on the merits within 60 days of the request for such ruling shall constitute a denial of the request as well as a denial of the merits of the request and shall be subject to judicial review.

(b) This section does not apply to the Department of Correction."

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 A rule that does not meet the standards is repealed effective January 1, 1994.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

Sec. 3.1. G.S. 150B-2(8a)f., as amended by Section 3 of Chapter 418 of the 1991 Session Laws, reads as rewritten:

"f. ~~Instructions, Requirements,~~ communicated to the public by the use of signs or symbols, concerning the use of public roads, bridges, ferries, buildings, or facilities."

Sec. 3.2. G.S. 150B-2(8a)h. reads as rewritten:

"h. Scientific, architectural, or engineering standards, forms, or ~~procedures.~~ procedures, including design criteria and construction standards used to construct or maintain highways, bridges, or ferries."

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

"§ 20-2. Commissioner of Motor ~~Vehiele~~s. Vehicles; rules.

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

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

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

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

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

The operations of the Department of Transportation shall be subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes. Rules adopted by the Department of Transportation are subject to Chapter 150B of the General Statutes."

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

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

The Secretary shall adopt rules for the government of the State prison system ~~and shall file and publish such rules in accordance with the provisions of Article 5 of Chapter 150B. In the case of temporary rules, such rules shall become effective immediately upon adoption by the Secretary and shall be filed in accordance with G.S. 150B-13 within two working days of adoption.~~ system. Chapter 150B of the General Statutes governs the adoption of rules by the Secretary. The Secretary shall have ~~such portion of these~~ the rules and regulations as that pertain to enforcing discipline read to

every prisoner when received in the State prison system and a printed copy of these rules ~~and regulations shall be made~~ available to the prisoners."

Sec. 7. G.S. 105-262, as amended by Section 28 of Chapter 45 of the 1991 Session Laws, reads as rewritten:

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

The Secretary of Revenue may adopt ~~regulations~~ rules needed to administer a tax collected by the Secretary or to fulfill another duty delegated to the Secretary. ~~A regulation becomes effective when it is approved by the Tax Review Board. All regulations and amendments thereto shall be published and made available by the Secretary of Revenue. The Tax Review Board shall review a new rule or a change to a rule before it is filed in the North Carolina Administrative Code.~~

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

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

Sec. 8. Section 15 of Chapter 418 of the 1991 Session Laws is repealed.

Sec. 9. G.S. 150B-2(8a) is amended by adding a new subpart to read:

"i. Establishment of the interest rate that applies to tax assessments under G.S. 105-241.1 and the variable component of the excise tax on motor fuel under G.S. 105-434."

Sec. 10. This act becomes effective October 1, 1991, and applies to rules for which a notice of rule making is required to be published in the North Carolina Register on or after that date and to all rules that do not require publication of a notice of rule making and are adopted on or after that date.

In the General Assembly read three times and ratified this the 2nd day of July, 1991.

James C. Gardner
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives