

Description of Legislation

1. Summary of Legislation:

The bill rewrites G.S. 150B to make the Departments of Transportation and Correction subject to the rulemaking procedures (Article 2) of the Administrative Procedures Act (APA). It also makes conforming changes in statutory sections concerning rulemaking by those departments and the Department of Revenue.

Section 2 of the bill rewrites G.S. 150B-16 to prohibit a person from submitting a petition to the Department of Correction on a rule that addresses a matter that is subject to the department's Administrative Remedy Procedure which is a grievance procedure for inmates.

Section 7 of the bill rewrites G.S. 105-262 to eliminate the distinction in the Department of Revenue between rules and regulations and requires the Tax Review Board to review all rules adopted by the Secretary of Revenue before they are filed in the NC Administrative Code.

Compliance with Article 2 of the APA would require the Departments of Transportation and Correction to:

1. Publish notice of rule-making in the NC Register.
2. Hold public hearing on the rule.
3. Submit rule to the Administrative Rules Review Commission for review.

2. Effective Date: July 1, 1991

3. Fund or Tax Affected: None

4. Principal Department/Program Affected: Rules Review Commission; Office of Administrative Hearings, and the Departments of Correction and Transportation.

Cost or Revenue Impact on State

	<u>FY</u> 91-92	<u>FY</u> 92-93	<u>FY</u>
1. Non-Recurring Costs/Revenues	-0-	-0-	
2. Recurring Costs/Revenues	-0-	-0-	
3. Fiscal/Revenue Assumptions			

The additional responsibilities imposed on the various departments could be performed without additional cost to the State. This assumption is based on the information which follows.

RULES REVIEW COMMISSION (RRC)

Sec. 3 of the bill establishes January 1, 1994 as the date for repeal of any rules which do not meet certain standards. This time frame appears reasonable to allow the required review by the RRC and the respective

agencies during the course of their ongoing operations with existing staff and operating budget.

The rules filed by the respective agencies in the Administrative Code in the 1990 calendar year which would be subject to review consisted of the following number of pages.

<u>Department</u>	<u>No. of Pages</u>
Correction	386
Transportation	454
Revenue	732

OFFICE OF ADMINISTRATIVE HEARINGS (OAH)

The expense of publishing the notices of rulemaking in the NC Register for the additional departments would be very minimal and could be absorbed by OAH in its operating budget.

DEPARTMENTS OF TRANSPORTATION (DOT) AND CORRECTION

The Departments are already subject to the following provisions of the APA:

- Article 1: Definition of a Rule
- Article 4: Judicial review of contested, final administrative decisions
- Article 5: Required to file all rules with OAH for publication in the Administrative Code

The NC Administrative Code in the 1990 calendar year contained the following number of rule activities for the departments.

	<u>DOT</u>	<u>CORRECTION</u>
New rules adopted	18	8
Rules amended	42	4
Rules repealed	1	0
Total	* 61	12

* Many of these are the Division of Motor Vehicles.

The bill has no effect nor does it make any changes in what constitutes a rule. Consequently, the scope of what is currently subject to the rulemaking process would not be broadened.

The DOT is currently authorized a staff of 9 attorneys and 12 support positions for work on administrative matters. Another 17 attorneys and 7 support staff are assigned to construction projects (work orders). The staff was increased by 10 last year with money from the Highway Trust Fund. Three positions in the Administrative Section are still vacant.

Since the staff is already proficient in rule-making tasks for the Division of Motor Vehicles and the Board of Transportation, any additional work such as public hearings on rules should be easily absorbed.

The Department of Correction has a legal staff of 5 attorneys, 1 paralegal, 1 person who works with the Interstate Compact for detainers, and 3 support staff.

Based on the number of rules the department filed in the Administrative Code (12 in 1990 calendar year and 7 in 1989) and the fact that staff are already adept in the rulemaking process, the additional responsibilities could be performed by existing staff and absorbed within their current operating budget.

The likelihood that the Department of Correction would receive a large volume of petitions for rule changes or declaratory ruling requests appears unlikely. The bill prohibits a person from filing a petition that is covered under the grievance procedures for inmates. The lack of individual relief that could be obtained through the petition process further diminishes the likelihood.

The department is concerned that it will receive a large volume of petitions for rules changes and requests for declaratory rulings. If the department should be inundated with such requests, the impact could be as much as \$150,000.

If the Department of Correction was exempted from the request process, the bill would definitely not have a fiscal impact on the department.

Cost/Revenue Impact on County or Local Government

	<u>FY</u> <u>91-92</u>	<u>FY</u> <u>92-93</u>	<u>FY</u>
1. Non-Recurring Costs/Revenues	-0-	-0-	
2. Recurring Costs/Revenues	-0-	-0-	
3. Fiscal/Revenue Assumptions	-0-	-0-	

Sources of Data for Fiscal Note: Rules Review Commission; Office of Administrative Hearings, and the Departments of Correction and Transportation

Technical Considerations/Comments

To ensure that the Department of Correction is not inundated with requests, an amendment to the bill to exempt the Department of Correction from the declaratory ruling proceedings and the petition for rulemaking proceedings may be worthy of consideration.



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