

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 299

Short Title: GPAC-Move N.C. Register & Code.

(Public)

Sponsors: Senator Martin of Guilford.

Referred to: Government Performance Audit.

February 22, 1993

A BILL TO BE ENTITLED

1
2 AN ACT TO IMPLEMENT A RECOMMENDATION OF THE GOVERNMENT
3 PERFORMANCE AUDIT COMMITTEE TO TRANSFER PUBLICATION OF
4 THE NORTH CAROLINA REGISTER AND THE NORTH CAROLINA
5 ADMINISTRATIVE CODE FROM THE OFFICE OF ADMINISTRATIVE
6 HEARINGS TO THE SECRETARY OF STATE.

7 Whereas, the Office of Administrative Hearings conducts contested case
8 hearings and publishes the North Carolina Register and the North Carolina
9 Administrative Code; and

10 Whereas, the Government Performance Audit Committee finds that the
11 Secretary of State has a publications division that performs functions similar to those
12 performed by the publications division of the Office of Administrative Hearings; and

13 Whereas, for these reasons, the Government Performance Audit Committee
14 recommends that the publication functions of the Office of Administrative Hearings be
15 transferred to the Secretary of State; Now, therefore,

16 The General Assembly of North Carolina enacts:

17 Section 1. G.S. 150B-2(1b) reads as rewritten:

18 "(1b) 'Codifier of Rules' means the ~~Chief Administrative Law Judge of the~~
19 ~~Office of Administrative Hearings~~ Secretary of State or a designated
20 representative of the ~~Chief Administrative Law Judge~~ Secretary of
21 State."

22 Sec. 2. G.S. 150B-21.1 reads as rewritten:

23 "**§ 150B-21.1. Procedure for adopting a temporary rule.**

1 (a) Adoption. – An agency may adopt a temporary rule without prior notice or
2 hearing or upon any abbreviated notice or hearing the agency finds practical when it
3 finds that adherence to the notice and hearing requirements of this Part would be
4 contrary to the public interest and that the immediate adoption of the rule is required by
5 one or more of the following:

- 6 (1) A serious and unforeseen threat to the public health, safety, or welfare.
- 7 (2) The effective date of a recent act of the General Assembly or the
8 United States Congress.
- 9 (3) A recent change in federal or State budgetary policy.
- 10 (4) A federal regulation.
- 11 (5) A court order.
- 12 (6) The need for the rule to become effective the same date as the State
13 Medical Facilities Plan approved by the Governor, if the rule addresses
14 a matter included in the State Medical Facilities Plan.

15 An agency must prepare a written statement of its findings of need for a temporary
16 rule. The statement must be signed by the head of the agency adopting the rule.

17 An agency must begin rule-making proceedings for a permanent rule by the day it
18 adopts a temporary rule. An agency begins rule-making proceedings for a permanent
19 rule by submitting to the ~~codifier~~ Codifier of Rules written notice of its intent to adopt a
20 permanent rule.

21 (b) Review. – When an agency adopts a temporary rule it must submit the ~~rule,~~
22 ~~rule and~~ the agency's written statement of its findings of need for the ~~rule,~~ ~~and the notice~~
23 ~~of intent to adopt a permanent rule to the Codifier of Rules.~~ rule to the Chief Administrative
24 Law Judge of the Office of Administrative Hearings. Within one business day after an
25 agency submits a temporary rule, the ~~Codifier of Rules~~ Chief Administrative Law Judge
26 or another administrative law judge designated by the Chief must review the agency's
27 written statement of findings of need for the rule to determine whether the statement of
28 need meets the criteria listed in subsection (a). In reviewing the statement, the ~~Codifier~~
29 ~~of Rules~~ administrative law judge may consider any information submitted by the
30 agency or another person. If the ~~Codifier of Rules~~ administrative law judge finds that the
31 statement meets the criteria, the ~~Codifier of Rules~~ administrative law judge must notify
32 the head of the agency and direct the Codifier of Rules to enter the rule in the North
33 Carolina Administrative Code.

34 If the ~~Codifier of Rules~~ administrative law judge finds that the statement does not
35 meet the criteria, the ~~Codifier of Rules~~ administrative law judge must immediately notify
36 the head of the agency. The agency may supplement its statement of need with
37 additional findings or submit a new statement. If the agency provides additional
38 findings or submits a new statement, the ~~Codifier of Rules~~ administrative law judge must
39 review the additional findings or new statement within one business day after the
40 agency submits the additional findings or new statement. If the ~~Codifier of Rules~~
41 administrative law judge again finds that the statement does not meet the criteria listed
42 in subsection (a), the ~~Codifier of Rules~~ administrative law judge must immediately notify
43 the head of the agency.

1 If an agency decides not to provide additional findings or submit a new statement
2 when notified by ~~the Codifier of Rules~~ an administrative law judge that the agency's
3 findings of need for a rule do not meet the required criteria, the agency must notify the
4 ~~Codifier of Rules~~ administrative law judge of its decision. The ~~Codifier of Rules~~
5 administrative law judge must then direct the Codifier of Rules to enter the rule in the
6 North Carolina Administrative Code on the sixth business day after receiving notice of
7 the agency's decision.

8 (c) Standing. – A person aggrieved by a temporary rule adopted by an agency
9 may file an action for declaratory judgment in Wake County Superior Court pursuant to
10 Article 26 of Chapter 1 of the General Statutes. In the action, the court shall determine
11 whether the agency's written statement of findings of need for the rule meets the criteria
12 listed in subsection (a) and whether the rule meets the standards in G.S. 150B-21.9 that
13 apply to review of a permanent rule. The court may not grant an **ex parte** temporary
14 restraining order.

15 Filing a petition for rule making or a request for a declaratory ruling with the agency
16 that adopted the rule is not a prerequisite to filing an action under this subsection. A
17 person who files an action for declaratory judgment under this subsection must serve a
18 copy of the complaint on the agency that adopted the rule being contested, the Chief
19 Administrative Law Judge, the Codifier of Rules, and the Commission.

20 (d) Effective Date and Expiration. – A temporary rule becomes effective on the
21 date specified in G.S. 150B-21.3. A temporary rule expires on the date specified in the
22 rule or 180 days from the date the rule becomes effective, whichever comes first."

23 Sec. 3. The following four positions at the Office of Administrative Hearings
24 are transferred from that Office to the Office of the Secretary of State: Director of APA
25 Services, Publications Coordinator, Editorial Assistant II, and Editorial Assistant I.

26 Sec. 4. The base budget of the Office of Administrative Hearings is reduced
27 by two hundred eighty thousand two hundred sixty-three dollars (\$280,263) for the
28 1994-95 fiscal year due to the transfer of positions by Section 3 of this act and the base
29 budget of the Office of the Secretary of State is increased by the same amount.

30 Sec. 5. This act becomes effective July 1, 1994.