

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 408

Short Title: GPAC/Modify Agency Decision Process.

(Public)

Sponsors: Senator Martin of Guilford.

Referred to: Government Performance Audit.

February 25, 1993

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT A RECOMMENDATION OF THE GOVERNMENT PERFORMANCE AUDIT COMMITTEE TO MODIFY THE PROCEDURES CONCERNING FINAL ADMINISTRATIVE DECISIONS IN CONTESTED CASES HEARD BY THE OFFICE OF ADMINISTRATIVE HEARINGS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 150B-34 reads as rewritten:

"§ 150B-34. ~~Recommended decision or order of administrative law judge. order;~~
reconsideration of decision or order.

"(a) Except as provided in G.S. 150B-36(c), in each contested case the presiding administrative law judge shall make a recommended decision or order that contains findings of fact and conclusions of law. The Office of Administrative Hearings must forward a copy of the recommended decision or order to each party. Within 10 days after a party receives the recommended decision or order, the party may apply to the administrative law judge for a new hearing or other appropriate relief allowed under G.S. 1A-1, the Rules of Civil Procedure.

~~(b) Repealed by Session Laws 1991, c. 35, s. 6."~~

Sec. 2. G.S. 150B-36 reads as rewritten:

"§ 150B-36. **Final decision.**

(a) ~~Before the agency makes a final decision, it shall~~After an agency receives the official record in a contested case, the agency must give each party an opportunity to the contested case 15 days to file exceptions to the decision or order recommended by the administrative law judge, judge and to present written arguments to those in the agency who will make the final decision or order. If none of the parties files exceptions to the

1 recommended decision or order within the 15-day period, the agency is considered to
2 have adopted the administrative law judge's recommended decision or order as the
3 agency's final decision or order.

4 If a party files in good faith a timely and sufficient affidavit of personal bias or other
5 reason for disqualification of a member of the agency making the final decision, the
6 agency shall determine the matter as a part of the record in the case, and the case. The
7 determination is subject to judicial review at the conclusion of the case.

8 (b) A final decision or order in a contested case shall be made by the agency in
9 writing after review of agency within the time set by G.S. 150B-44. If the agency does
10 not adopt as its final decision or order the recommended decision or order made in the
11 contested case under subsection (a) of this section, it must make a written final decision
12 or order. In making its final decision or order, the agency may consider only the official
13 record as defined in G.S. 150B-37(a) and the exceptions filed by a party. The final
14 decision or order shall include findings of fact and conclusions of law. The
15 findings of fact and conclusions of law made in the contested case by the administrative
16 law judge are binding on the agency in making its final decision or order if they are
17 supported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or
18 150B-31 in view of the entire record. If

19 If the agency does not adopt the administrative law judge's recommended decision or
20 order as its final decision, decision or order, the agency shall state in its decision or order
21 the specific reasons why it did not adopt the administrative law judge's recommended
22 decision. The agency may consider only the official record prepared pursuant to G.S. 150B-37
23 in making a final decision or order, and the final decision or order shall be supported by
24 substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31. decision or
25 order. A copy of the agency's decision or order shall be served upon each party
26 personally or by certified mail addressed to the party at the latest address given by the
27 party to the agency, and a copy shall be furnished to his each party's attorney of record
28 and the Office of Administrative Hearings.

29 (c) The following decisions made by administrative law judges in contested cases
30 are final decisions:

- 31 (1) A determination that the Office of Administrative Hearings lacks
32 jurisdiction.
- 33 (2) An order entered pursuant to the authority in G.S. 7A-759(e).
- 34 (3) An order entered pursuant to a written prehearing motion that either
35 dismisses the contested case for failure of the petitioner to prosecute or
36 grants the relief requested when a party does not comply with
37 procedural requirements.
- 38 (4) An order entered pursuant to a prehearing motion to dismiss the
39 contested case in accordance with G.S. 1A-1, Rule 12(b) when the
40 order disposes of all issues in the contested case."

41 Sec. 3. G.S. 150B-37(c) reads as rewritten:

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

1 Sec. 4. G.S. 150B-44 reads as rewritten:

2 "**§ 150B-44. Right to judicial intervention when decision unreasonably delayed.**

3 Unreasonable delay on the part of any agency or administrative law judge in taking
4 any required action shall be justification for any person whose rights, duties, or
5 privileges are adversely affected by such delay to seek a court order compelling action
6 by the agency or administrative law judge. An agency that is subject to Article 3 of this
7 Chapter and is not a board or commission has ~~90~~45 days from the day it receives the
8 official record in a contested case from the Office of Administrative Hearings to make a
9 final decision in the case. This time limit may be extended by the parties or, for good
10 cause shown, by the agency for an additional period of up to ~~90~~30 days. An agency
11 that is subject to Article 3 of this Chapter and is a board or commission has ~~90~~45 days
12 from the day it receives the official record in a contested case from the Office of
13 Administrative Hearings or ~~90~~45 days after its next regularly scheduled meeting,
14 whichever is longer, to make a final decision in the case. This time limit may be
15 extended by the parties or, for good cause shown, by the agency for an additional period
16 of up to ~~90~~30 days. If an agency subject to Article 3 of this Chapter has not made a
17 final decision within these time limits, the agency is considered to have adopted the
18 administrative law judge's recommended decision as the agency's final decision. Failure
19 of an agency subject to Article 3A of this Chapter to make a final decision within ~~180~~75
20 days of the close of the contested case hearing is justification for a person whose rights,
21 duties, or privileges are adversely affected by the delay to seek a court order compelling
22 action by the agency or, if the case was heard by an administrative law judge, by the
23 administrative law judge."

24 Sec. 5. G.S. 150B-51 reads as rewritten:

25 "**§ 150B-51. Scope of review.**

26 (a) Initial Determination in Certain Cases. In reviewing a final decision in a
27 contested case in which an administrative law judge made a recommended decision, the
28 court shall make ~~two~~three initial determinations. First, the court shall determine
29 whether the agency heard new evidence after receiving the recommended decision. If
30 the court determines that the agency heard new evidence, the court shall reverse the
31 decision or remand the case to the agency to enter a decision in accordance with the
32 evidence in the official record. ~~Second,~~

33 ~~Second, if the agency did not adopt the recommended decision, the court shall~~
34 determine whether the administrative law judge's findings of fact and conclusions of
35 law are supported by substantial evidence admissible under G.S. 150B-29(a), 150B-30,
36 or 150B-31 in view of the entire record. If the court determines that the agency failed to
37 adhere to the administrative law judge's findings of fact and conclusions of law that are
38 supported by substantial evidence, the court shall reverse the decision or remand the
39 case to the agency to enter a decision in accordance with the evidence in the official
40 record.

41 Third, if the agency did not adopt the recommended decision, the court shall
42 determine whether the agency's decision states the specific reasons why the agency did
43 not adopt the recommended decision. If the court determines that the agency did not

1 state specific reasons why it did not adopt a recommended decision, the court shall
2 reverse the decision or remand the case to the agency to enter the specific reasons.

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

8 (1) In violation of constitutional provisions;

9 (2) In excess of the statutory authority or jurisdiction of the agency;

10 (3) Made upon unlawful procedure;

11 (4) Affected by other error of law;

12 (5) Unsupported by substantial evidence admissible under G.S. 150B-
13 29(a), 150B-30, or 150B-31 in view of the entire record as submitted;

14 or

15 (6) Arbitrary or capricious."

16 Sec. 6. This act becomes effective October 1, 1993, and applies to contested
17 cases commenced on or after that date.