

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 1363*

Short Title: Resolve APA Problems.

(Public)

Sponsors: Representatives Creech; and Sharpe.

Referred to: Judiciary I.

May 24, 1996

A BILL TO BE ENTITLED

1 AN ACT TO MAKE CHANGES IN THE ADMINISTRATIVE PROCEDURE ACT,
2 TO MAKE CHANGES IN VARIOUS LAWS GRANTING THE POWER TO
3 ADOPT RULES, AND TO CLARIFY THE REQUIREMENTS CONCERNING
4 CERTAIN REMOVALS OF UNDERGROUND STORAGE TANKS, AS
5 RECOMMENDED BY THE ADMINISTRATIVE PROCEDURE OVERSIGHT
6 COMMITTEE.

7
8 The General Assembly of North Carolina enacts:

9 Section 1. G.S. 150B-19 reads as rewritten:

10 **"§ 150B-19. Restrictions on what can be adopted as a rule.**

11 An agency may not adopt a rule that does one or more of the following:

- 12 (1) Implements or interprets a law unless that law or another law
13 specifically authorizes the agency to do so.
14 (2) Enlarges or restricts the scope of a profession, occupation, or field of
15 endeavor for which an occupational license is required.
16 (2a) Sets qualifications for a job or position unless a law specifically
17 authorizes the agency to do so.
18 (3) Imposes criminal liability or a civil penalty for an act or omission,
19 including the violation of a rule, unless a law specifically authorizes the

1 agency to do so or a law declares that violation of the rule is a criminal
2 offense or is grounds for a civil penalty.

3 (4) Repeats the content of a law, a rule, or a federal regulation. A brief
4 statement that informs the public of a requirement imposed by law does
5 not violate this subdivision and satisfies the 'reasonably necessary'
6 standard of review set in G.S. 150B-21.9(a)(3).

7 (5) Establishes a ~~reasonable~~-fee or other ~~reasonable~~-charge for providing a
8 service in fulfillment of a duty unless a law specifically authorizes the
9 agency to do so or the fee or other charge is for one of the following:

- 10 a. A service to a State, federal, or local governmental unit.
11 b. A copy of part or all of a State publication or other document, the
12 cost of mailing a document, or both.
13 c. A transcript of a public hearing.
14 d. A conference, workshop, or course.
15 e. Data processing services.

16 (6) Allows the agency to waive or modify a requirement set in a rule unless
17 a rule establishes specific guidelines the agency must follow in
18 determining whether to waive or modify the requirement."

19 Sec. 2. G.S. 150B-20(e) is repealed.

20 Sec. 3. G.S. 150B-21.1(d) reads as rewritten:

21 "(d) Effective Date and Expiration. – A temporary rule becomes effective on the
22 date specified in G.S. 150B-21.3. A temporary rule expires on the earliest of the
23 following dates:

- 24 (1) The date specified in the rule.
25 (2) The effective date of the permanent rule adopted to replace the
26 temporary rule, if the Commission approves the permanent rule.
27 (3) The date the Commission returns to an agency a permanent rule the
28 agency adopted to replace the temporary rule, ~~if the Commission objects to~~
29 ~~the permanent rule.~~ rule.
30 (4) The effective date of an act of the General Assembly that specifically
31 disapproves a permanent rule adopted to replace the temporary rule.
32 (5) 270 days from the date the temporary rule was published in the North
33 Carolina Register, unless the permanent rule adopted to replace the
34 temporary rule has been submitted to the Commission."

35 Sec. 4. G.S. 150B-21.1(e) reads as rewritten:

36 "(e) Publication. – When the Codifier of Rules enters a temporary rule in the North
37 Carolina Administrative Code, the Codifier must publish the rule in the North Carolina
38 Register. Publication of a temporary rule in the North Carolina Register serves as a notice
39 of rule-making proceedings for a permanent rule ~~that does not differ substantially from~~ if the
40 permanent rule is substantially the same as the published temporary rule. ~~rule.~~ unless the
41 agency published a notice of rule-making proceedings at least 60 days before it adopted
42 the temporary rule."

43 Sec. 5. G.S. 150B-21.2(e) reads as rewritten:

1 "(e) Hearing. – An agency must hold a public hearing on a rule it proposes to adopt
2 if the agency publishes the text of the proposed rule in the North Carolina Register and all
3 the following apply:

- 4 (1) The notice of ~~rule-making proceedings~~ text does not schedule a public
5 hearing on the proposed rule.
6 (2) The agency receives a written request for a public hearing on the
7 proposed rule within 15 days after the notice of ~~rule-making proceedings~~
8 text is published.
9 (3) The proposed text is not a changed version of proposed text the agency
10 previously published in the course of rule-making proceedings but did
11 not adopt.

12 An agency may hold a public hearing on a proposed rule in other circumstances.
13 When an agency is required to hold a public hearing on a proposed rule or decides to hold
14 a public hearing on a proposed rule when it is not required to do so, the agency must
15 publish in the North Carolina Register a notice of the date, time, and place of the public
16 hearing. The hearing date of a public hearing held after the agency publishes notice of
17 the hearing in the North Carolina Register must be at least 15 days after the date the
18 notice is published."

19 Sec. 6. G.S. 150B-21.3 reads as rewritten:

20 "**§ 150B-21.3. Effective date of rules.**

21 (a) Temporary Rule. – A temporary rule becomes effective on the date the
22 Codifier of Rules enters the rule in the North Carolina Administrative Code.

23 (b) Permanent Rule. – A permanent rule approved by the Commission becomes
24 effective on the earlier of the thirty-first legislative day or the day of adjournment of the
25 next regular session of the General Assembly that begins at least 25 days after the date
26 the Commission approved the rule, unless a ~~later-different~~ effective date applies under
27 this ~~subsection-section~~. If a bill that specifically disapproves the rule is introduced in
28 either house of the General Assembly before the thirty-first legislative day of that session,
29 the rule becomes effective on the earlier of either the day an unfavorable final action is
30 taken on the bill or the day that session of the General Assembly adjourns without
31 ratifying a bill that specifically disapproves the rule. If the agency adopting the rule
32 specifies a later effective date than the date that would otherwise apply under this
33 subsection, the later date applies. A permanent rule that is not approved by the
34 Commission or that is specifically disapproved by a bill ratified by the General Assembly
35 before it becomes effective does not become effective.

36 A bill specifically disapproves a rule if it contains a provision that refers to the rule by
37 appropriate North Carolina Administrative Code citation and states that the rule is
38 disapproved. Notwithstanding any rule of either house of the General Assembly, any
39 member of the General Assembly may introduce a bill during the first 30 legislative days
40 of any regular session to disapprove a rule that has been approved by the Commission
41 and that either has not become effective or has become effective by executive order under
42 subsection (c) of this section.

1 (c) Executive Order Exception. – The Governor may, by executive order, make
2 effective a permanent rule that has been approved by the Commission and has not
3 become effective under subsection (b) of this section upon finding that it is necessary that
4 the rule become effective in order to protect public health, safety, or welfare. A rule
5 made effective by executive order becomes effective on the date the order is issued or at a
6 later date specified in the order. When the Codifier of Rules enters in the North Carolina
7 Administrative Code a rule made effective by executive order, the entry must reflect this
8 action.

9 A rule that is made effective by executive order remains in effect unless it is
10 specifically disapproved by the General Assembly in a bill ratified on or before the day of
11 adjournment of the regular session of the General Assembly that begins at least 25 days
12 after the date the executive order is issued. A rule that is made effective by executive
13 order and that is specifically disapproved by a bill ratified by the General Assembly is
14 repealed as of the date specified in the bill. If a rule that is made effective by executive
15 order is not specifically disapproved by a bill ratified by the General Assembly within the
16 time set by this subsection, the Codifier of Rules must note this in the North Carolina
17 Administrative Code.

18 (d) Legislative Day and Day of Adjournment. – As used in this section:

19 (1) A 'legislative day' is a day on which either house of the General
20 Assembly convenes in regular session.

21 (2) The 'day of adjournment' of a regular session held in an odd-numbered
22 year is the day the General Assembly adjourns by joint resolution for
23 more than 10 days.

24 (3) The 'day of adjournment' of a regular session held in an even-numbered
25 year is the day the General Assembly adjourns sine die.

26 (e) OSHA Standard. – A permanent rule concerning an occupational safety and
27 health standard that is adopted by the Occupational Safety and Health Division of the
28 Department of Labor and is identical to a federal regulation promulgated by the Secretary
29 of the United States Department of Labor becomes effective on the date the Division
30 delivers the rule to the Codifier of Rules, unless the Division specifies a later effective
31 date. If the Division specifies a later effective date, the rule becomes effective on that
32 date.

33 (f) Technical Change. – A permanent rule for which no notice or hearing is
34 required under G.S. 150B-21.5(a) or (b) becomes effective on the first day of the month
35 following the month the rule is approved by the Rules Review Commission."

36 Sec. 7. G.S. 150B-2(2) reads as rewritten:

37 "(2) 'Contested case' means an administrative proceeding pursuant to this
38 Chapter to resolve a dispute between an agency and another person that
39 involves the person's rights, duties, or privileges, including licensing or
40 the levy of a monetary penalty. "Contested case" does not include
41 rulemaking, declaratory rulings, or the award or denial of a ~~scholarship~~
42 ~~or grant.~~ scholarship, a grant, or a loan."

43 Sec. 8. G.S. 150B-21.8 reads as rewritten:

1 **"§ 150B-21.8. Review of rule by Commission.**

2 (a) Temporary Rule. – The Commission does not review a temporary rule.

3 (b) Permanent Rule. – An agency must submit a permanent rule adopted by it to
4 the Commission before the rule can be included in the North Carolina Administrative
5 Code. The Commission reviews a permanent rule in accordance with the standards in
6 G.S. 150B-21.9 and follows the procedure in this Part in its review of a permanent rule.

7 (c) Scope. – When the Commission reviews an amendment to a rule, it may
8 review the entire rule that is being amended. The procedure in G.S. 150B-21.12 applies
9 when the Commission objects to a part of a rule that is within its scope of review but is
10 not changed by a rule amendment.

11 (d) Return of Rule. – An agency may withdraw a permanent rule it submits to the
12 Commission at any time while the rule is under review by the Commission. An agency
13 withdraws a permanent rule by making a written request to the Commission to return the
14 rule to the agency."

15 Sec. 9. G.S. 89C-3(6) reads as rewritten:

16 "(6) Practice of engineering. –

- 17 a. Any service or creative work, the adequate performance of which
18 requires engineering education, training, and experience, in the
19 application of special knowledge of the mathematical, physical,
20 and engineering sciences to such services or creative work as
21 consultation, investigation, evaluation, planning, and design of
22 engineering works and systems, planning the use of land and
23 water, engineering surveys, and the observation of construction
24 for the purposes of assuring compliance with drawings and
25 specifications, including the consultation, investigation,
26 evaluation, planning, and design for either private or public use,
27 in connection with any utilities, structures, buildings, machines,
28 equipment, processes, work systems, projects, and industrial or
29 consumer products or equipment of a mechanical, electrical,
30 hydraulic, pneumatic or thermal nature, insofar as they involve
31 safeguarding life, health or property, and including such other
32 professional services as may be necessary to the planning,
33 progress and completion of any engineering services.

34 A person shall be construed to practice or offer to practice
35 engineering, within the meaning and intent of this Chapter, who
36 practices any branch of the profession of engineering; or who, by
37 verbal claim, sign, advertisement, letterhead, card, or in any other
38 way represents himself to be a professional engineer, or through
39 the use of some other title implies that he is a professional
40 engineer or that he is registered under this Chapter; or who holds
41 himself out as able to perform, or who does perform any
42 engineering service or work not exempted by this Chapter, or any

1 other service designated by the practitioner which is recognized
2 as engineering.

- 3 b. The term 'practice of engineering' shall not be construed to
4 permit the location, description, establishment or reestablishment
5 of property lines or descriptions of land boundaries for
6 conveyance. The term does not include the removal of an
7 underground storage tank used to store a petroleum product when
8 there is no discharge or release of the product from the tank."

9 Sec. 10. G.S. 89E-3(4) reads as rewritten:

10 "(4) 'Geology' means the science dealing with the earth and its history;
11 investigation, prediction and location of the materials and structures
12 which compose it; the natural processes that cause change in the earth;
13 and the applied science of utilizing knowledge of the earth and its
14 constituent rocks, minerals, liquids, gases and other materials for the
15 benefit of mankind. This definition shall not include any ~~service of the~~
16 following:

- 17 a. Service or creative works, the adequate performance of which
18 requires engineering education, training, and experience.
19 b. The removal of an underground storage tank used to store a
20 petroleum product when there is no discharge or release of the
21 product from the tank."

22 Sec. 11. G.S. 89C-14(b) reads as rewritten:

23 "(b) ~~The registration fee shall be established by the Board in an~~ An applicant for
24 registration who is required to take the written examination shall pay a fee equal to the
25 cost of the examination to the Board plus an additional amount not to exceed one hundred
26 dollars (\$100.00) which (\$100.00). The fee shall accompany the applications. ~~application.~~
27 The fee for comity registration of engineers and land surveyors who hold unexpired
28 certificates in another state or a territory of the United States or in Canada shall be the
29 total current fee as fixed by the Board."

30 Sec. 12. G.S. 131E-79(a) reads as rewritten:

31 "(a) The Commission shall ~~promulgate~~ adopt rules necessary to implement this
32 Article. The rules may set qualifications and supervision requirements for licensed and
33 unlicensed personnel."

34 Sec. 13. G.S. 131E-104(a) reads as rewritten:

35 "(a) The Commission is authorized to adopt, amend, and repeal all rules necessary
36 for the implementation of this Part. The rules may set qualifications and supervision
37 requirements for licensed and unlicensed personnel."

38 Sec. 14. G.S. 131E-140(a) reads as rewritten:

39 "(a) The Commission is authorized to adopt, ~~amend~~ amend, and repeal all rules
40 necessary for the implementation of this Part. ~~Provided, these rules shall not extend,~~
41 ~~modify, or limit the licensing of individual health professionals by their respective~~
42 ~~licensing boards; nor shall these rules in any way be construed to extend the appropriate~~

1 ~~scope of practice of any individual health care provider. The rules may set qualifications~~
2 ~~and supervision requirements for licensed and unlicensed personnel."~~

3 Sec. 15. G.S. 131E-149(a) reads as rewritten:

4 "(a) The Commission is authorized to adopt, ~~amend~~ ~~amend~~, and repeal all rules
5 necessary for the implementation of this Part. The rules may set qualifications and
6 supervision requirements for licensed and unlicensed personnel. These rules shall be no
7 stricter than those issued by the Commission under G.S. 131E-79 of the Hospital
8 Licensing Act."

9 Sec. 16. G.S. 131E-154.4(a) reads as rewritten:

10 "(a) The Commission shall adopt, amend, and repeal all rules necessary for the
11 implementation of this Part. These rules may set qualifications and supervision
12 requirements for licensed and unlicensed personnel and shall include the following
13 requirements:

14 (1) The nursing pool shall document that each employee who provides care
15 meets the minimum licensing, training, and continuing education
16 standards for the position in which the employee will be working;

17 (2) The nursing pool shall comply with all other pertinent regulations
18 relating to the health and other qualifications of personnel;

19 (3) The nursing pool shall carry general and professional liability insurance
20 to insure against the loss, damage, or expense incident to a claim arising
21 out of the death or injury of any person as the result of negligence or
22 malpractice in the provision of health care services by the nursing pool
23 or its employees;

24 (4) The nursing pool shall have written administrative and personnel
25 policies to govern the services that it provides. These policies shall
26 include those concerning patient care, personnel, training and
27 orientation, supervision, employee evaluation, and organizational
28 structure; and

29 (5) Any other aspects of nursing pool services that may need to be regulated
30 to protect the public."

31 Sec. 17. G.S. 131E-169(a) reads as rewritten:

32 "(a) The Department is authorized to adopt, amend, and repeal all rules as may be
33 designed to further the accomplishment of this Article. The rules may set qualifications
34 and supervision requirements for licensed and unlicensed personnel."

35 Sec. 18. This act is effective upon ratification.