

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 175

Short Title: Rules Approved by Gen. Assmb.

(Public)

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Sponsors: Representatives Cansler; Aldridge, Baker, Brawley, J. Brown, Buchanan, Capps, Carpenter, Cocklereece, Culp, Davis, Edwards, Hayes, Ives, Linney, McComas, K. Miller, Mitchell, Nichols, Rayfield, Reynolds, Russell, Sexton, Sharpe, and Shubert.

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Referred to: Judiciary I.

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February 14, 1995

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE THAT RULES ADOPTED BY STATE AGENCIES DO NOT  
2 BECOME EFFECTIVE UNLESS APPROVED BY THE GENERAL ASSEMBLY.

3 The General Assembly of North Carolina enacts:

4 Section 1. G.S. 150B-1(a) reads as rewritten:

5 "(a) Purpose. – This Chapter establishes a uniform system of administrative rule  
6 making and adjudicatory procedures for agencies. The procedures ensure that the  
7 functions of rule making, investigation, advocacy, and adjudication are not all performed  
8 by the same person in the administrative process. The requirement in G.S. 150B-21.3  
9 that a rule adopted by an agency does not become effective unless approved by the  
10 General Assembly is intended to ensure that rules affecting the rights and privileges of  
11 the citizens of this State are written clearly, are minimally intrusive on those rights and  
12 privileges, and include only those provisions necessary to carry out the purposes of the  
13 law pursuant to which the rule is adopted."

14 Sec. 2. G.S. 150B-21.2(a) reads as rewritten:

15 "(a) Notice. – Before an agency adopts a permanent rule, it must publish notice of  
16 its intent to adopt a permanent rule in the North Carolina Register and as required by any  
17

1 other law. The notice published in the North Carolina Register must include all of the  
2 following:

- 3 (1) Either the text of the proposed rule or a statement of the subject matter  
4 of the proposed rule making.
- 5 (2) A short explanation of the reason for the proposed action.
- 6 (3) A citation to the law that gives the agency the authority to adopt the  
7 proposed rule, if the notice includes the text of the proposed rule, or a  
8 citation to the law that gives the agency the authority to adopt a rule on  
9 the subject matter of the proposed rule making, if the notice includes  
10 only a statement of the subject matter of the proposed rule making.
- 11 (4) The proposed effective date of the proposed rule, if the notice includes  
12 the text of the proposed rule, or the proposed effective date of a rule  
13 adopted on the subject matter of the proposed rule making, if the notice  
14 includes only a statement of the subject matter of the proposed rule  
15 making.
- 16 (5) The date, time, and place of any public hearing scheduled on the  
17 proposed rule or subject matter of the proposed rule making.
- 18 (6) Instructions on how a person may demand a public hearing on a  
19 proposed rule if the notice does not schedule a public hearing on the  
20 proposed rule and subsection (c) requires the agency to hold a public  
21 hearing on the proposed rule when requested to do so.
- 22 (7) The period of time during which and the person to whom written  
23 comments may be submitted on the proposed rule or subject matter of  
24 the proposed rule making.
- 25 (8) If a fiscal note has been prepared for the proposed rule or will be  
26 prepared when a rule is proposed on the subject matter of the proposed  
27 rule making, a statement that a copy of the fiscal note can be obtained  
28 from the agency.
- 29 (9) A statement indicating that the proposed rule is subject to approval by  
30 the General Assembly and, if not approved, does not take effect."

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

32 "(d) Effective Date and Expiration. – A temporary rule becomes effective on the  
33 date specified in G.S. 150B-21.3. A temporary rule expires on the date specified in the  
34 rule or ~~180 days from the date the rule becomes effective,~~ 90 days after the convening of the  
35 next Regular Session of the General Assembly that begins at least one month after the  
36 date the rule is adopted, whichever comes first."

37 Sec. 4. G.S. 150B-21.3(b) reads as rewritten:

38 "(b) Permanent Rule. – ~~A permanent rule approved by the Commission becomes~~  
39 ~~effective five business days after the Commission delivers the rule to the Codifier of~~  
40 ~~Rules, unless the agency adopting the rule specifies a later effective date. If the agency~~  
41 ~~specifies a later effective date, the rule becomes effective on that date.~~

42 ~~A permanent rule that is not approved by the Commission becomes effective five~~  
43 ~~business days after the agency adopting the rule delivers the rule to the Codifier of Rules,~~

1 unless the agency adopting the rule specifies a later effective date. If the agency specifies  
2 a later effective date, the rule becomes effective on that date. A permanent rule becomes  
3 effective as follows:

4 (1) A permanent rule that is exempt from notice and public hearing  
5 requirements under this Article and is approved by the Commission  
6 becomes effective five business days after the Commission delivers the  
7 rule to the Codifier of Rules, unless the agency adopting the rule  
8 specifies a later effective date. If the agency specifies a later effective  
9 date, the rule becomes effective on that date.

10 (2) A permanent rule that is exempt from notice and public hearing  
11 requirements under this Article and is not approved by the Commission  
12 becomes effective five business days after the agency adopting the rule  
13 delivers the rule to the Codifier of Rules, unless the agency adopting the  
14 rule specifies a later effective date. If the agency specifies a later  
15 effective date, the rule becomes effective on that date.

16 (3) A permanent rule subject to the requirements of notice of rule making  
17 and public hearing under this Article must be approved by the General  
18 Assembly in a bill ratified within 90 days after the convening of a  
19 Regular Session of the General Assembly that begins at least one month  
20 following the adoption of the rule by the agency. If an agency or the  
21 Commission submits a rule to the General Assembly after convening  
22 but during the time the General Assembly is in session, then in order to  
23 become effective the rule must be approved in a bill ratified within 90  
24 days of receipt of the rule by the General Assembly. A permanent rule  
25 subject to the notice and hearing requirements of this Article becomes  
26 effective five business days after the General Assembly has ratified a  
27 bill approving the rule."

28 Sec. 5. G.S. 150B-21.8 reads as rewritten:

29 **"§ 150B-21.8. Review of rule by Commission.**

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

31 (b) Permanent Rule. – An agency must submit a permanent rule adopted by it to  
32 the Commission for review before the rule can be considered by the General Assembly  
33 for approval in a ratified bill. ~~included in the North Carolina Administrative Code.~~ The  
34 Commission reviews a permanent rule in accordance with the standards in G.S. 150B-  
35 21.9 and follows the procedure in this Part in its review of a permanent rule.

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

40 Sec. 6. G.S. 150B-21.9 reads as rewritten:

41 **"§ 150B-21.9. Standards and timetable for review by Commission.**

42 (a) Standards. – The Commission must determine whether a rule meets all of the  
43 following criteria:

- 1 (1) It is within the authority delegated to the agency by the General
- 2 Assembly.
- 3 (2) It is clear and unambiguous.
- 4 (3) It is reasonably necessary to fulfill a duty delegated to the agency by the
- 5 General Assembly.

6 The Commission may determine if a rule submitted to it was adopted in accordance  
7 with Part 2 of this Article. The Commission must notify the agency that adopted the rule  
8 if it determines that a rule was not adopted in accordance with Part 2 of this Article and  
9 must return the rule to the agency. Entry of a rule in the North Carolina Administrative  
10 Code after review by the Commission and approval by the General Assembly if approval  
11 is required under G.S. 150B-21.3(3) is conclusive evidence that the rule was adopted  
12 in accordance with Part 2 of this Article.

13 (b) Timetable. – The Commission must review a rule submitted to it on or before  
14 the twentieth of a month by the last day of the next month. The Commission must review  
15 a rule submitted to it after the twentieth of a month by the last day of the second  
16 subsequent month."

17 Sec. 7. G.S. 150B-21.11 reads as rewritten:

18 **"§ 150B-21.11. Procedure when Commission approves permanent rule.**

19 When the Commission approves a permanent rule, it must notify the agency that  
20 adopted the rule of the Commission's approval and must deliver the approved rule to the  
21 ~~Codifier of Rules.~~ General Assembly for action in the next regular session that begins at  
22 least one month after the rule is approved by the Commission. The Commission must  
23 deliver an approved rule by the end of the month in which the Commission approved the  
24 rule, unless the agency asks the Commission to delay the delivery of the rule."

25 Sec. 8. G.S. 150B-21.12(b) reads as rewritten:

26 "(b) Entry In Code. – When the Commission returns a rule to which it has objected  
27 to the agency that adopted the rule, the Commission must notify the General Assembly  
28 and the Codifier of Rules of its action and of the basis of the Commission's objection. An  
29 agency whose rule is returned ~~may file the rule with the Codifier of Rules.~~ may submit the  
30 rule to the next Regular Session of the General Assembly that begins at least one month  
31 after the rule is returned to the agency. If the General Assembly ratifies a bill approving  
32 the rule in accordance with G.S. 150B-21.3(b)(3), then the ratified bill approving the rule  
33 shall be delivered to the Codifier of Rules for entry into the North Carolina  
34 Administrative Code. ~~When the Codifier of Rules enters in the North Carolina Administrative~~  
35 ~~Code a rule to which the Commission objected, the entry must reflect the Commission's~~  
36 ~~objection and must state the standard on which the Commission based its objection."~~

37 Sec. 9. G.S. 150B-21.15 is repealed.

38 Sec. 10. G.S. 150B-21.19 reads as rewritten:

39 **"§ 150B-21.19. Requirements for including rule in Code.**

40 To be acceptable for inclusion in the North Carolina Administrative Code, a rule  
41 must:

- 42 (1) Cite the law under which the rule is adopted.

- 1 (2) Be signed by the head of the agency or the rule-making coordinator for
- 2 the agency that adopted the rule.
- 3 (3) Be in the physical form specified by the Codifier of Rules.
- 4 (4) Have been reviewed by the Commission, if the rule is a permanent rule.
- 5 (5) Have been approved by the General Assembly in accordance with this
- 6 Chapter."

7 Sec. 11. G.S. 150B-33(b) reads as rewritten:

8 "(b) An administrative law judge may:

- 9 (1) Administer oaths and affirmations;
- 10 (2) Sign, issue, and rule on subpoenas in accordance with G.S. 150B-27 and
- 11 G.S. 1A-1, Rule 45;
- 12 (3) Provide for the taking of testimony by deposition and rule on all
- 13 objections to discovery in accordance with G.S. 1A-1, the Rules of Civil
- 14 Procedure;
- 15 (3a) Rule on all prehearing motions that are authorized by G.S. 1A-1, the
- 16 Rules of Civil Procedure;
- 17 (4) Regulate the course of the hearings, including discovery, set the time
- 18 and place for continued hearings, and fix the time for filing of briefs and
- 19 other documents;
- 20 (5) Direct the parties to appear and confer to consider simplification of the
- 21 issues by consent of the parties;
- 22 (6) Stay the contested action by the agency pending the outcome of the
- 23 case, upon such terms as he deems proper, and subject to the provisions
- 24 of G.S. 1A-1, Rule 65;
- 25 (7) Determine whether the hearing shall be recorded by a stenographer or
- 26 by an electronic device; and
- 27 (8) Enter an order returnable in the General Court of Justice, Superior Court
- 28 Division, to show cause why the person should not be held in contempt.
- 29 The Court shall have the power to impose punishment as for contempt
- 30 for any act which would constitute direct or indirect contempt if the act
- 31 occurred in an action pending in Superior Court.
- 32 (9) ~~Determine that a rule as applied in a particular case is void because (1)~~
- 33 ~~it is not within the statutory authority of the agency, (2) is not clear and~~
- 34 ~~unambiguous to persons it is intended to direct, guide, or assist, or (3) is~~
- 35 ~~not reasonably necessary to enable the agency to fulfill a duty delegated~~
- 36 ~~to it by the General Assembly.~~
- 37 (10) Impose the sanctions provided for in G.S. 1A-1 or Chapter 3 of Title 26
- 38 of the North Carolina Administrative Code for noncompliance with
- 39 applicable procedural rules."

40 Sec. 12. This act is effective upon ratification and applies to all rules for which

41 a notice of rule making is published in the North Carolina Register on or after January 1,

42 1995.