

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 192\*

Short Title: Legis. Approval of Rules.

(Public)

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Sponsors: Representatives Redwine, Holmes; Aldridge, Alexander, Allred, Arnold, Baker, Berry, Black, Brawley, J. Brown, W. Brown, Buchanan, Cansler, Carpenter, Church, Clary, Cocklereece, Crawford, Creech, Culp, Culpepper, Cummings, Daughtry, Davis, Decker, Dickson, Dockham, Easterling, Ellis, Esposito, Fitch, Fox, Gray, Hayes, Hensley, Hightower, Hill, R. Hunter, Hurley, Ives, Justus, Kiser, Lee, Lemmond, Linney, Locke, McComas, McCrary, McMahan, Mercer, Miner, Morgan, Nichols, Owens, Pate, Preston, Pulley, Ramsey, Rayfield, Richardson, Rogers, Sexton, Sharpe, Shaw, Sherrill, Shubert, Snowden, Tolson, Wilkins, G. Wilson, Wright, and Yongue.

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Referred to: Judiciary I.

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February 15, 1995

A BILL TO BE ENTITLED

1 AN ACT TO CREATE THE JOINT LEGISLATIVE ADMINISTRATIVE  
2 PROCEDURE OVERSIGHT COMMITTEE AND TO PROVIDE THAT NO  
3 ADMINISTRATIVE RULE SHALL BECOME EFFECTIVE UNTIL APPROVED  
4 BY THE GENERAL ASSEMBLY.

5 The General Assembly of North Carolina enacts:

6 Section 1. Chapter 120 of the General Statutes is amended by adding a new  
7 Article to read:

8 **"ARTICLE 12K.**

9 **"JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT**  
10 **COMMITTEE.**

11 **"§ 120-70.100. Creation and membership of Joint Legislative Administrative**  
12 **Procedure Oversight Committee.**  
13

1       The Joint Legislative Administrative Procedure Oversight Committee is established.  
2 The Committee consists of 16 members as follows:

- 3           (1) Eight members of the Senate appointed by the President Pro Tempore of  
4           the Senate, at least two of whom are members of the minority party; and  
5           (2) Eight members of the House of Representatives appointed by the  
6           Speaker of the House of Representatives, at least three of whom are  
7           members of the minority party.

8       Terms on the Committee are for two years and begin on January 15 of each odd-  
9 numbered year, except the terms of the initial members, which begin on appointment.  
10 Members may complete a term of service on the Committee even if they do not seek  
11 reelection or are not reelected to the General Assembly, but resignation or removal from  
12 service in the General Assembly constitutes resignation or removal from service on the  
13 Committee.

14       A member continues to serve until his successor is appointed. A vacancy shall be  
15 filled within 30 days by the officer who made the original appointment.

16 **"§ 120-70.101. Purpose and powers of Committee.**

- 17       (a) The Joint Legislative Administrative Procedure Oversight Committee shall:  
18           (1) Review reports prepared by the Rules Review Commission containing  
19           the text and a summary of each rule reviewed by the Commission in  
20           accordance with Article 2B of Chapter 150B of the General Statutes and  
21           the Commission's recommendation regarding approval of the rule.  
22           (2) Accept or reject the recommendation of the Rules Review Commission  
23           with regard to the approval of each rule.  
24           (3) Report to the General Assembly, as needed, its determinations  
25           regarding the approval of rules.  
26           (4) Request that an agency present a written explanation of any alternatives  
27           to rule making which the agency may have considered and the reasons  
28           for rejecting the alternatives.  
29           (5) Request information from any agency or other interested party  
30           concerning the necessity of any administrative rule or other information  
31           relating to the rule-making process.

32       These powers, which are enumerated by way of illustration, shall be liberally  
33 construed to provide for the maximum oversight by the Committee of all rule-making  
34 activity in this State.

35       (b) The Committee may make interim reports to the General Assembly  
36 recommending the approval of any rules submitted to it by the Rules Review  
37 Commission. A report to the General Assembly may contain any legislation needed to  
38 implement a recommendation of the Committee.

39 **"§ 120-70.102. Organization of Committee.**

40       (a) The President Pro Tempore of the Senate and the Speaker of the House of  
41 Representatives shall each designate a cochair of the Joint Legislative Administrative  
42 Procedure Oversight Committee. The Committee shall meet at least once a quarter and  
43 may meet at other times upon the joint call of the cochairs.

1 (b) A quorum of the Committee is nine members. No action may be taken except  
2 by a majority vote at a meeting at which a quorum is present. While in the discharge of  
3 its official duties, the Committee has the powers of a joint committee under G.S. 120-19  
4 and G.S. 120-19.1 through 120-19.4.

5 (c) Members of the Committee receive subsistence and travel expenses as  
6 provided in G.S. 120-3.1. The Committee may contract for consultants or hire employees  
7 in accordance with G.S. 120-32.02. The Legislative Services Commission, through the  
8 Legislative Administrative Officer, shall assign professional staff to assist the Committee  
9 in its work. Upon the direction of the Legislative Services Commission, the Supervisors  
10 of Clerks of the Senate and of the House of Representatives shall assign clerical staff to  
11 the Committee. The expenses for clerical employees shall be borne by the Committee."

12 Sec. 2. G.S. 150B-21.1(d) reads as rewritten:

13 "(d) Effective Date and Expiration. – A temporary rule becomes effective on the  
14 date specified in G.S. 150B-21.3. A temporary rule expires on the date specified in the  
15 rule or 180 days from the date the rule becomes effective, the last day of the next regular  
16 session of the General Assembly that begins at least one month after the rule is adopted,  
17 whichever comes first."

18 Sec. 3. G.S. 150B-21.3(b) reads as rewritten:

19 "(b) Permanent Rule. – A permanent rule approved by the Commission becomes  
20 effective five business days after the Commission delivers the rule to the Codifier of Rules,  
21 ratification of a bill in the General Assembly approving the rule, unless the agency  
22 adopting the rule specifies a later effective date. If the agency specifies a later effective  
23 date, the rule becomes effective on that date.

24 A permanent rule that is not approved by the Commission becomes effective five  
25 business days after the agency adopting the rule delivers the rule to the Codifier of Rules,  
26 unless the agency adopting the rule specifies a later effective date. If the agency specifies  
27 a later effective date, the rule becomes effective on that date."

28 Sec. 4. G.S. 150B-21.10 reads as rewritten:

29 **"§ 150B-21.10. Commission action on permanent rule.**

30 (a) At the first meeting at which a permanent rule is before the Commission for  
31 review, the Commission must take one of the following actions:

32 (1) Approve the rule, if the Commission determines that the rule meets the  
33 standards for review.

34 (2) Object to the rule, if the Commission determines that the rule does not  
35 meet the standards for review.

36 (3) Extend the period for reviewing the rule, if the Commission determines  
37 it needs additional information on the rule to be able to decide whether  
38 the rule meets the standards for review.

39 In reviewing a new rule or an amendment to an existing rule, the Commission may  
40 request an agency to make technical changes to the rule and may condition its approval of  
41 the rule on the agency's making the requested technical changes.

42 (b) No less than once each quarter, the Commission shall report to the Joint  
43 Legislative Administrative Procedure Oversight Committee. Each report shall include

1 the text of each rule reviewed by the Commission, a summary of the rule, and the  
2 recommendation of the Commission as to whether the rule should be approved. When  
3 the Commission objects to a rule or extends the period for review, it must follow the  
4 procedure set forth in G.S. 150B-21.12 and G.S. 150B-21.13.

5 (c) Whenever the General Assembly enacts a law approving the adoption of rules,  
6 the Commission shall immediately inform the affected agencies in writing, of such  
7 approval. No rule may be accepted for inclusion in the North Carolina Administrative  
8 Code unless it has been approved by the General Assembly."

9 Sec. 5. G.S. 150B-21.11 is repealed.

10 Sec. 6. G.S. 150B-21.12 reads as rewritten:

11 "**§ 150B-21.12. Procedure when Commission objects to a permanent rule.**

12 (a) ~~Action.~~—When the Commission objects to a permanent rule, it must send the  
13 agency that adopted the rule a written statement of the objection and the reason for the  
14 objection. The agency that adopted the rule must take one of the following actions:

15 (1) Change the rule to satisfy the Commission's objection and submit the  
16 revised rule to the Commission.

17 (2) Submit a written response to the Commission indicating that the agency  
18 has decided not to change the rule.

19 An agency that is not a board or commission must take one of these actions within 30  
20 days after receiving the Commission's statement of objection. A board or commission  
21 must take one of these actions within 30 days after receiving the Commission's statement  
22 of objection or within 10 days after the board or commission's next regularly scheduled  
23 meeting, whichever comes later.

24 When an agency changes a rule in response to an objection by the Commission, the  
25 Commission must determine whether the change satisfies the Commission's objection. If  
26 it does, the Commission must approve the rule. If it does not, the Commission must send  
27 the agency a written statement of the Commission's continued objection and the reason  
28 for the continued objection.

29 A rule to which the Commission has objected remains under review by the  
30 Commission until the agency that adopted the rule decides not to satisfy the  
31 Commission's objection and makes a written request to the Commission to return the rule  
32 to the agency. When the Commission returns a rule to which it has objected, it ~~may send~~  
33 ~~to the President of the Senate and each member of the General Assembly a report of its objection~~  
34 ~~to the rule.~~ shall include a record of the entire transaction relating to the rule in the  
35 Commission's next report to the Joint Legislative Administrative Procedure Oversight  
36 Committee.

37 (b) ~~Entry In Code.~~—~~When the Commission returns a rule to which it has objected~~  
38 ~~to the agency that adopted the rule, the Commission must notify the Codifier of Rules of~~  
39 ~~its action and of the basis of the Commission's objection.~~ ~~An agency whose rule is~~  
40 ~~returned may file the rule with the Codifier of Rules.~~ ~~When the Codifier of Rules enters~~  
41 ~~in the North Carolina Administrative Code a rule to which the Commission objected, the~~  
42 ~~entry must reflect the Commission's objection and must state the standard on which the~~  
43 ~~Commission based its objection."~~

1           Sec. 7. G.S. 150B-21.15 is repealed.

2           Sec. 8. G.S. 150B-21.19 reads as rewritten:

3   **"§ 150B-21.19. Requirements for including rule in Code.**

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

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

7           (2)   Be signed by the head of the agency or the rule-making coordinator for  
8               the agency that adopted the rule.

9           (3)   Be in the physical form specified by the Codifier of Rules.

10          (4)   Have been reviewed by the ~~Commission~~, Commission and by the Joint  
11               Legislative Administrative Procedure Oversight Committee, if the rule  
12               is a permanent rule.

13          (5)   Be sent to the Codifier of Rules by the Rules Review Commission with  
14               a copy of the act of the General Assembly approving the rule."

15          Sec. 9. This act becomes effective October 1, 1995, and shall apply to all rules  
16 for which a notice of rule making is published in the North Carolina Register on or after  
17 that date, and to all rules that do not require publication of a notice of rule making and are  
18 adopted on or after that date.