

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 192*
Committee Substitute Favorable 4/24/95

Short Title: RRC Changes/Leg. Oversight.

(Public)

Sponsors:

Referred to:

February 15, 1995

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE THE JOINT LEGISLATIVE ADMINISTRATIVE
3 PROCEDURE OVERSIGHT COMMITTEE, TO STRENGTHEN THE
4 AUTHORITY OF THE RULES REVIEW COMMISSION, AND TO MAKE
5 PROPOSED ADMINISTRATIVE RULES EFFECTIVE AT THE END OF THE
6 LEGISLATIVE SESSION.

7 The General Assembly of North Carolina enacts:

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

10 **"ARTICLE 12K.**
11 **"JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT**
12 **COMMITTEE.**
13 **"§ 120-70.100. Creation and membership of Joint Legislative Administrative**
14 **Procedure Oversight Committee.**

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

17 (1) Eight members of the Senate appointed by the President Pro Tempore of
18 the Senate, at least three of whom are members of the minority party.

1 (2) Eight members of the House of Representatives appointed by the
2 Speaker of the House of Representatives, at least three of whom are
3 members of the minority party.

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

10 A member continues to serve until the member's successor is appointed. A vacancy
11 shall be filled within 30 days by the officer who made the original appointment.

12 **"§ 120-70.101. Purpose and powers of Committee.**

13 The Joint Legislative Administrative Procedure Oversight Committee has the
14 following powers and duties:

15 (1) To review rules to which the Rules Review Commission has objected to
16 determine if statutory changes are needed to enable the agency to fulfill
17 the intent of the General Assembly.

18 (2) To receive reports prepared by the Rules Review Commission
19 containing the text and a summary of each rule approved by the
20 Commission.

21 (3) To prepare and make available to members of the General Assembly
22 one or more notebooks that contain the administrative rules that have
23 been approved by the Rules Review Commission and reported to the
24 Committee.

25 (4) To review State regulatory programs to determine if the programs
26 overlap, have conflicting goals, or could be simplified and still achieve
27 the purpose of the regulation.

28 (5) To review the rule-making process to determine if the procedures for
29 adopting rules give the public adequate notice of and information about
30 proposed rules.

31 (6) To review any other concerns about administrative law to determine if
32 statutory changes are needed.

33 (7) To report to the General Assembly at the beginning of each regular
34 session concerning the Committee's activities and any recommendations
35 for statutory changes.

36 **"§ 120-70.102. Organization of Committee.**

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

41 (b) A quorum of the Committee is nine members. No action may be taken except
42 by a majority vote at a meeting at which a quorum is present. While in the discharge of

1 its official duties, the Committee has the powers of a joint committee under G.S. 120-19
2 and G.S. 120-19.1 through G.S. 120-19.4.

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

12 **"§ 120-70.103. Exercise of duty to maintain a notebook of approved rules.**

13 With the approval of the Legislative Services Commission, the Joint Legislative
14 Administrative Procedure Oversight Committee may delegate to the Legislative Library
15 the duty to maintain a notebook containing rules approved by the Rules Review
16 Commission. Whether the notebook is maintained by the Committee or by the
17 Legislative Library, rules shall be filed in the notebook in accordance with the numbering
18 system used in the North Carolina Administrative Code."

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

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 earliest of the
22 following dates:

23 (1) The date specified in the rule or 180 days from the date the rule
24 becomes effective, whichever comes first. 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
29 to the permanent rule."

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

31 "(b) Permanent Rule. – A permanent rule approved by the Commission becomes
32 effective ~~five business days after the Commission delivers the rule to the Codifier of Rules, on~~
33 the day of adjournment of the next regular session of the General Assembly that begins at
34 least 25 days after the date the Commission approved the rule, unless the agency adopting
35 the rule specifies a later effective date. If the agency specifies a later effective date, the
36 rule becomes effective on that date. A permanent rule that is not approved by the
37 Commission becomes effective five business days after the agency adopting the rule delivers
38 the rule to the Codifier of Rules, unless the agency adopting the rule specifies a later effective
39 date. If the agency specifies a later effective date, the rule becomes effective on that date. does
40 not become effective.

41 The day of adjournment of a regular session held in an odd-numbered year is the day
42 the General Assembly adjourns by joint resolution for more than 10 days. The day of

1 adjournment of a regular session held in an even-numbered year is the day the General
2 Assembly adjourns sine die."

3 Sec. 4. G.S. 150B-21.9(a) reads as rewritten:

4 **"§ 150B-21.9. Standards and timetable for review by Commission.**

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

7 (1) It is within the authority delegated to the agency by the General
8 Assembly.

9 (2) It is clear and unambiguous.

10 (3) It is reasonably necessary to fulfill a duty delegated to the agency by the
11 General Assembly. ~~Assembly,~~ when considered in light of the
12 cumulative effect of all rules adopted by the agency related to the
13 specific purpose for which the rule is proposed and the legislative intent
14 of the General Assembly in delegating the duty.

15 The Commission may determine if a rule submitted to it was adopted in accordance
16 with Part 2 of this Article. The Commission must notify the agency that adopted the rule
17 if it determines that a rule was not adopted in accordance with Part 2 of this Article and
18 must return the rule to the agency. Entry of a rule in the North Carolina Administrative
19 Code after review by the Commission is conclusive evidence that the rule was adopted in
20 accordance with Part 2 of this Article."

21 Sec. 5. G.S. 150B-21.11 reads as rewritten:

22 **"§ 150B-21.11. Procedure when Commission approves permanent rule.**

23 When the Commission approves a permanent rule, it must notify the agency that
24 adopted the rule of the Commission's ~~approval and must approval,~~ deliver the approved
25 rule to the Codifier of ~~Rules.~~ Rules, and include the text of the approved rule and a
26 summary of the rule in its next report to the Joint Legislative Administrative Procedure
27 Oversight Committee. ~~The Commission must deliver an approved rule by the end of the month~~
28 ~~in which the Commission approved the rule, unless the agency asks the Commission to delay the~~
29 ~~delivery of the rule."~~

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

31 **"§ 150B-21.12. Procedure when Commission objects to a permanent rule.**

32 (a) Action. – When the Commission objects to a permanent rule, it must send the
33 agency that adopted the rule a written statement of the objection and the reason for the
34 objection. The agency that adopted the rule must take one of the following actions:

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

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

39 An agency that is not a board or commission must take one of these actions within 30
40 days after receiving the Commission's statement of objection. A board or commission
41 must take one of these actions within 30 days after receiving the Commission's statement
42 of objection or within 10 days after the board or commission's next regularly scheduled
43 meeting, whichever comes later.

1 When an agency changes a rule in response to an objection by the Commission, the
2 Commission must determine whether the change satisfies the Commission's objection. If
3 it does, the Commission must approve the rule. If it does not, the Commission must send
4 the agency a written statement of the Commission's continued objection and the reason
5 for the continued objection.

6 A rule to which the Commission has objected remains under review by the
7 Commission until the agency that adopted the rule decides not to satisfy the
8 Commission's objection and makes a written request to the Commission to return the rule
9 to the agency. When the Commission returns a rule to which it has objected, it ~~may send~~
10 ~~to the President of the Senate and each member of the General Assembly a report of its objection~~
11 ~~to the rule. must send a copy of the record of the Commission's review of the rule to the~~
12 ~~Joint Legislative Administrative Procedure Oversight Committee in its next report to that~~
13 ~~Committee. The record of review consists of the rule, the Commission's letter of~~
14 ~~objection to the rule, the agency's written response to the Commission's letter, and any~~
15 ~~other relevant documents before the Commission when it decided to object to the rule.~~

16 (b) ~~Entry In Code. — When the Commission returns a rule to which it has objected~~
17 ~~to the agency that adopted the rule, the Commission must notify the Codifier of Rules of~~
18 ~~its action and of the basis of the Commission's objection. An agency whose rule is~~
19 ~~returned may file the rule with the Codifier of Rules. When the Codifier of Rules enters~~
20 ~~in the North Carolina Administrative Code a rule to which the Commission objected, the~~
21 ~~entry must reflect the Commission's objection and must state the standard on which the~~
22 ~~Commission based its objection. Changes After Report Made. — After the Commission~~
23 ~~sends a report of its objection to a rule to the Joint Legislative Administrative Procedure~~
24 ~~Oversight Committee, the agency that adopted the rule may submit to the Commission~~
25 ~~changes in the rule to satisfy the Commission's objection. The agency must submit the~~
26 ~~changes before the date the rule would have become effective if the Commission had not~~
27 ~~objected to the rule. If the Commission determines that the changes submitted to the rule~~
28 ~~satisfy its objection, the Commission must accept the changes, file the revised rule with~~
29 ~~the Codifier of Rules, and notify the Joint Legislative Administrative Procedure~~
30 ~~Oversight Committee of its action."~~

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

32 Sec. 8. Part 3 of Article 2B of Chapter 150B of the General Statutes is
33 amended by adding a new section to read:

34 "**§ 150B-21.16. Report to Joint Legislative Administrative Procedure Oversight**
35 **Committee.**

36 The Commission must make monthly reports to the Joint Legislative Administrative
37 Procedure Oversight Committee. The reports are due by the last day of the month. A
38 report must include the rules approved by the Commission at its meeting held in the
39 month in which the report is due and the rules the Commission returned to agencies
40 during that month after the Commission objected to the rule. A report must include any
41 other information requested by the Joint Legislative Administrative Procedure Oversight
42 Committee."

43 Sec. 9. G.S. 150B-21.19 reads as rewritten:

1 **"§ 150B-21.19. Requirements for including rule in Code.**

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

- 4 (1) Cite the law under which the rule is adopted.
5 (2) Be signed by the head of the agency or the rule-making coordinator for
6 the agency that adopted the rule.
7 (3) Be in the physical form specified by the Codifier of Rules.
8 (4) Have been ~~reviewed~~approved by the Commission, if the rule is a
9 permanent rule."

10 Sec. 10. This act becomes effective October 1, 1995, and applies to all rules for
11 which a notice of rule making is published in the North Carolina Register on or after that
12 date. Section 7 of this act shall not abate any action or appeal brought under G.S. 150B-
13 21.15 prior to the effective date of this act.