

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 192*

Committee Substitute Favorable 4/24/95

Senate Judiciary I/Constitution Committee Substitute Adopted 6/20/95

Short Title: RRC Changes/Leg. Oversight.

(Public)

Sponsors:

Referred to:

February 15, 1995

A BILL TO BE ENTITLED

AN ACT TO CREATE THE JOINT LEGISLATIVE ADMINISTRATIVE
PROCEDURE OVERSIGHT COMMITTEE, TO STRENGTHEN THE
AUTHORITY OF THE RULES REVIEW COMMISSION, AND TO MAKE
PROPOSED ADMINISTRATIVE RULES EFFECTIVE AFTER THE
LEGISLATURE HAS HAD TIME TO ACT TO DISAPPROVE THE RULE BUT
NOT LATER THAN THE END OF THE LEGISLATIVE SESSION.

The General Assembly of North Carolina enacts:

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

"ARTICLE 12K.

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

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

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

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

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

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

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

14 **"§ 120-70.101. Purpose and powers of Committee.**

15 The Joint Legislative Administrative Procedure Oversight Committee has the
16 following powers and duties:

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

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

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

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

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

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

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

38 **"§ 120-70.102. Organization of Committee.**

39 (a) The President Pro Tempore of the Senate and the Speaker of the House of
40 Representatives shall each designate a cochair of the Joint Legislative Administrative
41 Procedure Oversight Committee. The Committee shall meet at least once a quarter and
42 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 G.S. 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 Committee may meet in the Legislative
8 Building or the Legislative Office Building upon the approval of the Legislative Services
9 Commission. The Legislative Services Commission, through the Legislative
10 Administrative Officer, shall assign professional staff to assist the Committee in its work.
11 Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of
12 the Senate and of the House of Representatives shall assign clerical staff to the
13 Committee. The expenses for clerical employees shall be paid by the Committee.

14 **"§ 120-70.103. Exercise of duty to maintain a notebook of approved rules.**

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

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

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

25 (1) The date specified in the rule or 180 days from the date the rule
26 becomes effective, whichever comes first. rule.

27 (2) The effective date of the permanent rule adopted to replace the
28 temporary rule, if the Commission approves the permanent rule.

29 (3) The date the Commission returns to an agency a permanent rule the
30 agency adopted to replace the temporary rule, if the Commission objects
31 to the permanent rule."

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

33 "(b) Permanent Rule. – A permanent rule approved by the Commission becomes
34 effective five business days after the Commission delivers the rule to the Codifier of
35 Rules, unless the agency adopting the rule specifies a later effective date. If the agency
36 specifies a later effective date, the rule becomes effective on that date. A permanent rule
37 that is not approved by the Commission becomes effective five business days after the
38 agency adopting the rule delivers the rule to the Codifier of Rules, unless the agency
39 adopting the rule specifies a later effective date. If the agency specifies a later effective
40 date, the rule becomes effective on that date. on the thirty-first legislative day of both the
41 House of Representatives and Senate after the commencement of the next regular session
42 of the General Assembly that begins at least 25 days after the date the Commission
43 approves the rule, or the effective date specified by the agency, if later, unless a bill to

1 disapprove the rule, which makes specific reference to the rule, is introduced in either
2 house of the General Assembly before the thirty-first legislative day. If a bill to
3 disapprove a rule is introduced, the rule shall become effective upon the earlier of (i) an
4 unfavorable final action on the bill, or (ii) the day of adjournment of that session of the
5 General Assembly without ratification of the bill disapproving the rule, unless the agency
6 specified the effective date of the rule to be later, in which event the specified date shall
7 apply. For purposes of this section, the rules of both houses of the General Assembly
8 shall allow a bill to disapprove a rule to be introduced by any member in any regular
9 session. A permanent rule that is not approved by the Commission does not become
10 effective.

11 The day of adjournment of a regular session held in an odd-numbered year is the day
12 the General Assembly adjourns by joint resolution for more than 10 days. The day of
13 adjournment of a regular session held in an even-numbered year is the day the General
14 Assembly adjourns sine die."

15 Sec. 4. G.S. 150B-21.3 is amended by adding a new subsection to read:

16 "(b1) Rule Made Effective by Executive Order of the Governor. – Notwithstanding
17 subsection (b) of this section, the Governor may by executive order put into effect until
18 the day of adjournment of the next regular session of the General Assembly that begins at
19 least 25 days after the date the Commission approves the rule, any permanent rule
20 approved by the Commission upon a finding that making the rule effective at that time is
21 necessary to protect public health, safety, or welfare. The Codifier of Rules shall note
22 that the rule has been adopted pursuant to an executive order. A rule that becomes
23 effective pursuant to an executive order under this section shall become effective as a
24 permanent rule under subsection (b) of this section on the day of adjournment of the next
25 regular session of the General Assembly that began at least 25 days after the date the
26 Commission approved the rule, unless a bill disapproving the rule is ratified during that
27 session of the General Assembly."

28 Sec. 5. G.S. 150B-21.9(a) reads as rewritten:

29 **"§ 150B-21.9. Standards and timetable for review by Commission.**

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

- 32 (1) It is within the authority delegated to the agency by the General
33 Assembly.
- 34 (2) It is clear and unambiguous.
- 35 (3) It is reasonably necessary to fulfill a duty delegated to the agency by the
36 General Assembly. Assembly, when considered in light of the
37 cumulative effect of all rules adopted by the agency related to the
38 specific purpose for which the rule is proposed and the legislative intent
39 of the General Assembly in delegating the duty.

40 The Commission may determine if a rule submitted to it was adopted in accordance
41 with Part 2 of this Article. The Commission must notify the agency that adopted the rule
42 if it determines that a rule was not adopted in accordance with Part 2 of this Article and
43 must return the rule to the agency. Entry of a rule in the North Carolina Administrative

1 Code after review by the Commission is conclusive evidence that the rule was adopted in
2 accordance with Part 2 of this Article."

3 Sec. 6. G.S. 150B-21.11 reads as rewritten:

4 **"§ 150B-21.11. Procedure when Commission approves permanent rule.**

5 When the Commission approves a permanent rule, it must notify the agency that
6 adopted the rule of the Commission's ~~approval and must approval,~~ deliver the approved
7 rule to the Codifier of Rules. Rules, and include the text of the approved rule and a
8 summary of the rule in its next report to the Joint Legislative Administrative Procedure
9 Oversight Committee. The Commission must deliver an approved rule by the end of the month
10 in which the Commission approved the rule, unless the agency asks the Commission to delay the
11 delivery of the rule."

12 Sec. 7. G.S. 150B-21.12 reads as rewritten:

13 **"§ 150B-21.12. Procedure when Commission objects to a permanent rule.**

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

- 17 (1) Change the rule to satisfy the Commission's objection and submit the
18 revised rule to the Commission.
19 (2) Submit a written response to the Commission indicating that the agency
20 has decided not to change the rule.

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

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

31 A rule to which the Commission has objected remains under review by the
32 Commission until the agency that adopted the rule decides not to satisfy the
33 Commission's objection and makes a written request to the Commission to return the rule
34 to the agency. When the Commission returns a rule to which it has objected, it ~~may send~~
35 ~~to the President of the Senate and each member of the General Assembly a report of its objection~~
36 ~~to the rule. must send a copy of the record of the Commission's review of the rule to the~~
37 Joint Legislative Administrative Procedure Oversight Committee in its next report to that
38 Committee. The record of review consists of the rule, the Commission's letter of
39 objection to the rule, the agency's written response to the Commission's letter, and any
40 other relevant documents before the Commission when it decided to object to the rule.

41 (b) Entry In Code. ~~When the Commission returns a rule to which it has objected~~
42 ~~to the agency that adopted the rule, the Commission must notify the Codifier of Rules of~~
43 ~~its action and of the basis of the Commission's objection. An agency whose rule is~~

1 returned may file the rule with the Codifier of Rules. When the Codifier of Rules enters
2 in the North Carolina Administrative Code a rule to which the Commission objected, the
3 entry must reflect the Commission's objection and must state the standard on which the
4 Commission based its objection. Changes After Report Made. – After the Commission
5 sends a report of its objection to a rule to the Joint Legislative Administrative Procedure
6 Oversight Committee, the agency that adopted the rule may submit to the Commission
7 changes in the rule to satisfy the Commission's objection. The agency must submit the
8 changes before the date the rule would have become effective if the Commission had not
9 objected to the rule. If the Commission determines that the changes submitted to the rule
10 satisfy its objection, the Commission must accept the changes, file the revised rule with
11 the Codifier of Rules, and notify the Joint Legislative Administrative Procedure
12 Oversight Committee of its action."

13 Sec. 8. G.S. 150B-21.15 is repealed.

14 Sec. 9. Part 3 of Article 2B of Chapter 150B of the General Statutes is
15 amended by adding a new section to read:

16 "**§ 150B-21.16. Report to Joint Legislative Administrative Procedure Oversight**
17 **Committee.**

18 The Commission must make monthly reports to the Joint Legislative Administrative
19 Procedure Oversight Committee. The reports are due by the last day of the month. A
20 report must include the rules approved by the Commission at its meeting held in the
21 month in which the report is due and the rules the Commission returned to agencies
22 during that month after the Commission objected to the rule. A report must include any
23 other information requested by the Joint Legislative Administrative Procedure Oversight
24 Committee."

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

26 "**§ 150B-21.19. Requirements for including rule in Code.**

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

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

35 Sec. 11. This act becomes effective October 1, 1995, and applies to all rules for
36 which a notice of rule making is published in the North Carolina Register on or after that
37 date. Section 8 of this act shall not abate any action or appeal brought under G.S. 150B-
38 21.15 prior to the effective date of this act.