

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S

1

SENATE BILL 215*

Short Title: Legis. Approval of Rules.

(Public)

Sponsors: Senators Sherron, Blackmon; Parnell, Ballance, Plyler, Hoyle, Hartsell, Shaw, Cochrane, Ballantine, Davis, Allran, East, Little, Ledbetter, Forrester, Clark, Foxx, Carpenter, Carrington, McDaniel, Perdue, Edwards, Conder, Hobbs, Kerr, Simpson, Webster, McKoy, Lucas, Odom, Jordan, Rand, Warren, Smith, Kincaid, Albertson, Sawyer, Plexico, Soles, Speed, and Martin of Pitt.

Referred to: Judiciary I/Constitution.

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

6 The General Assembly of North Carolina enacts:

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

9 **"ARTICLE 12K.**

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

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

14 The Joint Legislative Administrative Procedure Oversight Committee is established.
15 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 two of whom are members of the minority party; and
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, which begin on appointment.
8 Members may complete a term of service on the Committee even if they do not seek
9 reelection or are not reelected to the General Assembly, but resignation or removal from
10 service in the General Assembly constitutes resignation or removal from service on the
11 Committee.

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

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

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

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

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

37 **"§ 120-70.102. Organization of Committee.**

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

42 (b) A quorum of the Committee is nine members. No action may be taken except
43 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 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 Legislative Services Commission, through the
6 Legislative Administrative Officer, shall assign professional staff to assist the Committee
7 in its work. Upon the direction of the Legislative Services Commission, the Supervisors
8 of Clerks of the Senate and of the House of Representatives shall assign clerical staff to
9 the Committee. The expenses for clerical employees shall be borne by the Committee."

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

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

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

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

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

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

27 "**§ 150B-21.10. Commission action on permanent rule.**

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

- 30 (1) Approve the rule, if the Commission determines that the rule meets the
31 standards for review.
32 (2) Object to the rule, if the Commission determines that the rule does not
33 meet the standards for review.
34 (3) Extend the period for reviewing the rule, if the Commission determines
35 it needs additional information on the rule to be able to decide whether
36 the rule meets the standards for review.

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

40 (b) No less than once each quarter, the Commission shall report to the Joint
41 Legislative Administrative Procedure Oversight Committee. Each report shall include
42 the text of each rule reviewed by the Commission, a summary of the rule, and the
43 recommendation of the Commission as to whether the rule should be approved. When

1 the Commission objects to a rule or extends the period for review, it must follow the
2 procedure set forth in G.S. 150B-21.12 and G.S. 150B-21.13.

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

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

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

9 "**§ 150B-21.12. Procedure when Commission objects to a permanent rule.**

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

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

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

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

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

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

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

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

43 Sec. 8. 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 by the ~~Commission~~, Commission and by the Joint
9 Legislative Administrative Procedure Oversight Committee, if the rule
10 is a permanent rule.
11 (5) Be sent to the Codifier of Rules by the Rules Review Commission with
12 a copy of the act of the General Assembly approving the rule."

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