

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 310

Short Title: GPAC-Office of Administrative Hearings.

(Public)

Sponsors: (by request) Representatives Nesbitt, Blue, Barnes, Diamont, Hackney, Hensley, H. Hunter, G. Miller, and Robinson.

Referred to: Judiciary III.

February 25, 1993

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNMENT
PERFORMANCE AUDIT COMMITTEE REGARDING THE OFFICE OF
ADMINISTRATIVE HEARINGS.

The General Assembly of North Carolina enacts:

—LET AOC STAFF SUPPORT OAH.

Section 1. (a) The General Assembly finds that:

- (1) 16 of the 40 full-time staff positions at the Office of Administrative Hearings, including three secretaries on personal services contracts, are support-related and perform functions similar to those performed by the staff of the Administrative Office of the Courts;
- (2) These 16 positions are responsible for providing secretarial support and research, scheduling cases, and handling budgetary, fiscal, personnel, and other administrative matters;
- (3) The Administrative Office of the Courts has a large, well-trained staff and systems in place to support the additional work load from the Office of Administrative Hearings;
- (4) Of the 16 support positions at the Office of Administrative Hearings, two would be needed to handle the extra work load at the Administrative Office of the Courts but the remaining 14 could be eliminated;
- (5) If the Administrative Office of the Courts provides support services to the Office of Administrative Hearings, the Office of Administrative

1 Hearings would need to move so that it is physically located with the
2 staff of the Administrative Office of the Courts.

3 (b) The State Property Office shall find suitable space for the Administrative
4 Office of the Courts and the Office of Administrative Hearings so that the Office of
5 Administrative Hearings is physically located with the staff of the Administrative Office
6 of the Courts.

7 (c) The following two positions are transferred from the Office of Administrative
8 Hearings to the Administrative Office of the Courts: Administrative Assistant II and
9 Clerk/Typist V. The base budget of the Administrative Office of the Courts is increased
10 by ninety-one thousand six hundred thirty-nine dollars (\$91,639) for the 1994-95 fiscal
11 year as the result of the transfer of positions required by this section and the base budget
12 of the Office of Administrative Hearings is reduced by the same amount.

13 (d) The following 14 positions at the Office of Administrative Hearings are
14 eliminated: Deputy Director, Internal Auditor, Administrative Service Manager, Clerk
15 IV, Accounting Technician V, Administrative Assistant III, Clerk Typist V, Chief
16 Hearing Clerk, Clerk IV, Paralegal III, Receptionist Clerk IV, Paralegal II,
17 Administrative Officer II, and Clerk/Typist V. The base budget of the Office of
18 Administrative Hearings is reduced by four hundred fifty-three thousand nine hundred
19 seventy dollars (\$453,970) for the 1994-95 fiscal year as the result of the positions
20 eliminated by this subsection.

21 (e) The Office of Administrative Hearings shall not renew its three personal
22 services contracts for secretarial services.

23 (f) This section becomes effective July 1, 1994.

24 —MOVE N.C. REGISTER & CODE.

25 Sec. 2. (a) The General Assembly finds that:

26 (1) The Office of Administrative Hearings conducts contested case
27 hearings and publishes the North Carolina Register and the North
28 Carolina Administrative Code;

29 (2) The Government Performance Audit Committee finds that the
30 Secretary of State has a publications division that performs functions
31 similar to those performed by the publications division of the Office of
32 Administrative Hearings;

33 (3) For these reasons, the Government Performance Audit Committee
34 recommends that the publication functions of the Office of
35 Administrative Hearings be transferred to the Secretary of State;

36 (b) G.S. 150B-2(1b) reads as rewritten:

37 "(1b) 'Codifier of Rules' means the ~~Chief Administrative Law Judge of the~~
38 ~~Office of Administrative Hearings~~ Secretary of State or a designated
39 representative of the ~~Chief Administrative Law Judge~~ Secretary of
40 State."

41 (c) G.S. 150B-21.1 reads as rewritten:

42 "**§ 150B-21.1. Procedure for adopting a temporary rule.**

43 (a) Adoption. – An agency may adopt a temporary rule without prior notice or
44 hearing or upon any abbreviated notice or hearing the agency finds practical when it

1 finds that adherence to the notice and hearing requirements of this Part would be
2 contrary to the public interest and that the immediate adoption of the rule is required by
3 one or more of the following:

- 4 (1) A serious and unforeseen threat to the public health, safety, or welfare.
- 5 (2) The effective date of a recent act of the General Assembly or the
6 United States Congress.
- 7 (3) A recent change in federal or State budgetary policy.
- 8 (4) A federal regulation.
- 9 (5) A court order.
- 10 (6) The need for the rule to become effective the same date as the State
11 Medical Facilities Plan approved by the Governor, if the rule addresses
12 a matter included in the State Medical Facilities Plan.

13 An agency must prepare a written statement of its findings of need for a temporary
14 rule. The statement must be signed by the head of the agency adopting the rule.

15 An agency must begin rule-making proceedings for a permanent rule by the day it
16 adopts a temporary rule. An agency begins rule-making proceedings for a permanent
17 rule by submitting to the ~~codifier~~Codifier of Rules written notice of its intent to adopt a
18 permanent rule.

19 (b) Review. – When an agency adopts a temporary rule it must submit the ~~rule,~~
20 rule and the agency's written statement of its findings of need for the ~~rule, and the notice~~
21 ~~of intent to adopt a permanent rule to the Codifier of Rules.~~ rule to the Chief Administrative
22 Law Judge of the Office of Administrative Hearings. Within one business day after an
23 agency submits a temporary rule, the ~~Codifier of Rules~~Chief Administrative Law Judge
24 or another administrative law judge designated by the Chief must review the agency's
25 written statement of findings of need for the rule to determine whether the statement of
26 need meets the criteria listed in subsection (a). In reviewing the statement, the ~~Codifier~~
27 ~~of Rules~~administrative law judge may consider any information submitted by the
28 agency or another person. If the ~~Codifier of Rules~~administrative law judge finds that the
29 statement meets the criteria, the ~~Codifier of Rules~~administrative law judge must notify
30 the head of the agency and direct the Codifier of Rules to enter the rule in the North
31 Carolina Administrative Code.

32 If the ~~Codifier of Rules~~administrative law judge finds that the statement does not
33 meet the criteria, the ~~Codifier of Rules~~administrative law judge must immediately notify
34 the head of the agency. The agency may supplement its statement of need with
35 additional findings or submit a new statement. If the agency provides additional
36 findings or submits a new statement, the ~~Codifier of Rules~~administrative law judge must
37 review the additional findings or new statement within one business day after the
38 agency submits the additional findings or new statement. If the ~~Codifier of Rules~~
39 administrative law judge again finds that the statement does not meet the criteria listed
40 in subsection (a), the ~~Codifier of Rules~~administrative law judge must immediately notify
41 the head of the agency.

42 If an agency decides not to provide additional findings or submit a new statement
43 when notified by the ~~Codifier of Rules~~an administrative law judge that the agency's
44 findings of need for a rule do not meet the required criteria, the agency must notify the

1 ~~Codifier of Rules~~ administrative law judge of its decision. The ~~Codifier of Rules~~
2 administrative law judge must then direct the Codifier of Rules to enter the rule in the
3 North Carolina Administrative Code on the sixth business day after receiving notice of
4 the agency's decision.

5 (c) Standing. – A person aggrieved by a temporary rule adopted by an agency
6 may file an action for declaratory judgment in Wake County Superior Court pursuant to
7 Article 26 of Chapter 1 of the General Statutes. In the action, the court shall determine
8 whether the agency's written statement of findings of need for the rule meets the criteria
9 listed in subsection (a) and whether the rule meets the standards in G.S. 150B-21.9 that
10 apply to review of a permanent rule. The court may not grant an **ex parte** temporary
11 restraining order.

12 Filing a petition for rule making or a request for a declaratory ruling with the agency
13 that adopted the rule is not a prerequisite to filing an action under this subsection. A
14 person who files an action for declaratory judgment under this subsection must serve a
15 copy of the complaint on the agency that adopted the rule being contested, the Chief
16 Administrative Law Judge, the Codifier of Rules, and the Commission.

17 (d) Effective Date and Expiration. – A temporary rule becomes effective on the
18 date specified in G.S. 150B-21.3. A temporary rule expires on the date specified in the
19 rule or 180 days from the date the rule becomes effective, whichever comes first."

20 (d) The following four positions at the Office of Administrative Hearings are
21 transferred from that Office to the Office of the Secretary of State: Director of APA
22 Services, Publications Coordinator, Editorial Assistant II, and Editorial Assistant I.

23 (e) The base budget of the Office of Administrative Hearings is reduced by
24 two hundred eighty thousand two hundred sixty-three dollars (\$280,263) for the 1994-
25 95 fiscal year due to the transfer of positions by subsection (g) of this section and the
26 base budget of the Office of the Secretary of State is increased by the same amount.

27 (f) This section becomes effective July 1, 1994.

28 ~~—NO OAH HIGH POINT OFFICE.~~

29 Sec. 3. (a) The General Assembly finds that:

- 30 (1) The Office of Administrative Hearings has a regional office in High
31 Point with a staff of one administrative law judge and one part-time
32 secretary;
- 33 (2) The regional High Point Office was established on a trial basis to
34 handle cases in the western part of the State; and
- 35 (3) The Government Performance Audit Committee recommends that this
36 regional office be eliminated.

37 (b) The Office of Administrative Hearings shall close its High Point regional
38 office. The administrative law judge assigned to the regional office is reassigned to the
39 Raleigh office of the Office of Administrative Hearings. The personal services contract
40 of the part-time secretary assigned to the High Point regional office shall not be
41 renewed.

42 (c) This section becomes effective July 1, 1993.

43 ~~—OAH FEE STRUCTURE.~~

44 Sec. 4. (a) The General Assembly finds that:

- 1 (1) No fees are currently charged in contested cases conducted by the
 2 Office of Administrative Hearings;
 3 (2) The Government Performance Audit Committee recommends that
 4 25% of the operating budget of the Office of Administrative Hearings
 5 come from user fees;
 6 (3) User fees discourage frivolous cases and reduce reliance on General
 7 Fund appropriations.

8 (b) The Office of Administrative Hearings shall prepare a proposed schedule of
 9 fees to apply in contested cases conducted by that Office and must submit the proposed
 10 schedule to the General Government Subcommittees of the House and Senate
 11 Appropriations Committees of the General Assembly by March 15, 1993. The proposed
 12 schedule shall generate approximately 25% of the operating budget of the Office
 13 through fees. The fees may be filing fees, costs assessed against the losing party in a
 14 contested case, or a combination of these.

15 (c) This section is effective upon ratification.

16 ~~---~~MODIFY AGENCY DECISION PROCESS.

17 Sec. 5. (a) G.S. 150B-34 reads as rewritten:

18 "**§ 150B-34. Recommended decision or ~~order of administrative law judge.~~ order;**
 19 **reconsideration of decision or order.**

20 "(a) Except as provided in G.S. 150B-36(c), in each contested case the presiding
 21 administrative law judge shall make a recommended decision or order that contains
 22 findings of fact and conclusions of law. The Office of Administrative Hearings must
 23 forward a copy of the recommended decision or order to each party. Within 10 days
 24 after a party receives the recommended decision or order, the party may apply to the
 25 administrative law judge for a new hearing or other appropriate relief allowed under
 26 G.S. 1A-1, the Rules of Civil Procedure.

27 (b) ~~Repealed by Session Laws 1991, c. 35, s. 6."~~

28 (b) G.S. 150B-36 reads as rewritten:

29 "**§ 150B-36. Final decision.**

30 (a) ~~Before the agency makes a final decision, it shall~~ After an agency receives the
 31 official record in a contested case, the agency must give each party an opportunity to the
 32 contested case 15 days to file exceptions to the decision or order recommended by the
 33 administrative law judge, judge and to present written arguments to those in the agency
 34 who will make the final decision or order. If none of the parties files exceptions to the
 35 recommended decision or order within the 15-day period, the agency is considered to
 36 have adopted the administrative law judge's recommended decision or order as the
 37 agency's final decision or order.

38 If a party files in good faith a timely and sufficient affidavit of personal bias or other
 39 reason for disqualification of a member of the agency making the final decision, the
 40 agency shall determine the matter as a part of the record in the case, and the case. The
 41 determination is subject to judicial review at the conclusion of the case.

42 (b) A final decision or order in a contested case shall be made by the agency ~~in~~
 43 ~~writing after review of agency~~ within the time set by G.S. 150B-44. If the agency does
 44 not adopt as its final decision or order the recommended decision or order made in the

1 contested case under subsection (a) of this section, it must make a written final decision
2 or order. In making its final decision or order, the agency may consider only the official
3 record as defined in G.S. 150B-37(a) and the exceptions filed by a party. The final
4 decision or order shall include findings of fact and conclusions of law. The
5 findings of fact and conclusions of law made in the contested case by the administrative
6 law judge are binding on the agency in making its final decision or order if they are
7 supported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or
8 150B-31 in view of the entire record. If

9 If the agency does not adopt the administrative law judge's recommended decision or
10 order as its final decision, decision or order, the agency shall state in its decision or order
11 the specific reasons why it did not adopt the administrative law judge's recommended
12 decision. The agency may consider only the official record prepared pursuant to G.S. 150B-37
13 in making a final decision or order, and the final decision or order shall be supported by
14 substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31. decision or
15 order. A copy of the agency's decision or order shall be served upon each party
16 personally or by certified mail addressed to the party at the latest address given by the
17 party to the agency, and a copy shall be furnished to his each party's attorney of record
18 and the Office of Administrative Hearings.

19 (c) The following decisions made by administrative law judges in contested cases
20 are final decisions:

- 21 (1) A determination that the Office of Administrative Hearings lacks
22 jurisdiction.
- 23 (2) An order entered pursuant to the authority in G.S. 7A-759(e).
- 24 (3) An order entered pursuant to a written prehearing motion that either
25 dismisses the contested case for failure of the petitioner to prosecute or
26 grants the relief requested when a party does not comply with
27 procedural requirements.
- 28 (4) An order entered pursuant to a prehearing motion to dismiss the
29 contested case in accordance with G.S. 1A-1, Rule 12(b) when the
30 order disposes of all issues in the contested case."

31 (c) G.S. 150B-37(c) reads as rewritten:

32 "(c) The Office of Administrative Hearings shall forward a copy of the official
33 record to the agency making the final decision and shall forward a copy of the recommended
34 decision to each party. decision."

35 (d) G.S. 150B-44 reads as rewritten:

36 "**§ 150B-44. Right to judicial intervention when decision unreasonably delayed.**

37 Unreasonable delay on the part of any agency or administrative law judge in taking
38 any required action shall be justification for any person whose rights, duties, or
39 privileges are adversely affected by such delay to seek a court order compelling action
40 by the agency or administrative law judge. An agency that is subject to Article 3 of this
41 Chapter and is not a board or commission has ~~90-45~~ days from the day it receives the
42 official record in a contested case from the Office of Administrative Hearings to make a
43 final decision in the case. This time limit may be extended by the parties or, for good
44 cause shown, by the agency for an additional period of up to ~~90-30~~ days. An agency

1 that is subject to Article 3 of this Chapter and is a board or commission has ~~90~~45 days
2 from the day it receives the official record in a contested case from the Office of
3 Administrative Hearings or ~~90~~45 days after its next regularly scheduled meeting,
4 whichever is longer, to make a final decision in the case. This time limit may be
5 extended by the parties or, for good cause shown, by the agency for an additional period
6 of up to ~~90~~30 days. If an agency subject to Article 3 of this Chapter has not made a
7 final decision within these time limits, the agency is considered to have adopted the
8 administrative law judge's recommended decision as the agency's final decision. Failure
9 of an agency subject to Article 3A of this Chapter to make a final decision within ~~180~~75
10 days of the close of the contested case hearing is justification for a person whose rights,
11 duties, or privileges are adversely affected by the delay to seek a court order compelling
12 action by the agency or, if the case was heard by an administrative law judge, by the
13 administrative law judge."

14 (e) G.S. 150B-51 reads as rewritten:

15 "**§ 150B-51. Scope of review.**

16 (a) Initial Determination in Certain Cases. — In reviewing a final decision in a
17 contested case in which an administrative law judge made a recommended decision, the
18 court shall make ~~two~~three initial determinations. First, the court shall determine
19 whether the agency heard new evidence after receiving the recommended decision. If
20 the court determines that the agency heard new evidence, the court shall reverse the
21 decision or remand the case to the agency to enter a decision in accordance with the
22 evidence in the official record. ~~Second,~~

23 Second, if the agency did not adopt the recommended decision, the court shall
24 determine whether the administrative law judge's findings of fact and conclusions of
25 law are supported by substantial evidence admissible under G.S. 150B-29(a), 150B-30,
26 or 150B-31 in view of the entire record. If the court determines that the agency failed to
27 adhere to the administrative law judge's findings of fact and conclusions of law that are
28 supported by substantial evidence, the court shall reverse the decision or remand the
29 case to the agency to enter a decision in accordance with the evidence in the official
30 record.

31 Third, if the agency did not adopt the recommended decision, the court shall
32 determine whether the agency's decision states the specific reasons why the agency did
33 not adopt the recommended decision. If the court determines that the agency did not
34 state specific reasons why it did not adopt a recommended decision, the court shall
35 reverse the decision or remand the case to the agency to enter the specific reasons.

36 (b) Standard of Review. — After making the determinations, if any, required by
37 subsection (a), the court reviewing a final decision may affirm the decision of the
38 agency or remand the case for further proceedings. It may also reverse or modify the
39 agency's decision if the substantial rights of the petitioners may have been prejudiced
40 because the agency's findings, inferences, conclusions, or decisions are:

- 41 (1) In violation of constitutional provisions;
- 42 (2) In excess of the statutory authority or jurisdiction of the agency;
- 43 (3) Made upon unlawful procedure;
- 44 (4) Affected by other error of law;

- 1 (5) Unsupported by substantial evidence admissible under G.S. 150B-
2 29(a), 150B-30, or 150B-31 in view of the entire record as submitted;
3 or
4 (6) Arbitrary or capricious."
5 (f) This section becomes effective October 1, 1993, and applies to contested
6 cases commenced on or after that date.