

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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HOUSE DRH80111-LN-27 (1/19)

Short Title: SBE/Comm. College/Rulemaking. (Public)

Sponsors: Representatives Tolson, England, and Sauls (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE STATE BOARD OF EDUCATION AND THE  
STATE BOARD OF COMMUNITY COLLEGES TO IMPLEMENT AN  
EXPEDITED PROCEDURE FOR THE ADOPTION OF PERMANENT RULES.

The General Assembly of North Carolina enacts:

**SECTION 1.** Article 2A of Chapter 150B of the General Statutes is amended by adding the following new section to read:

**"§ 150B-21.2A. Expedited process for certain agencies adopting a permanent rule.**

(a) As used in this section, "Board" refers to the State Board of Education and the State Board of Community Colleges, as applicable.

(b) The State Board of Education and the State Board of Community Colleges may each establish an expedited process for the adoption of permanent rules. The process shall provide for the following:

(1) G.S. 150B-21.1 applies to the adoption of permanent rules by the Board except that:

a. Notwithstanding G.S. 150B-21.2(f), the Board must accept comments on the text that is published in the Register for at least 30 days after the text is published or until the date of any public hearing held on the proposed rule, whichever is longer.

b. Notwithstanding G.S. 150B-21.2(g), permanent rules adopted by the Board in accordance with this section are not subject to review or approval by the Rules Review Commission.

(2) The Board may not adopt a permanent rule earlier than 30 days following the first Board meeting at which the text of the proposed rule was discussed.

(3) G.S. 150B-21.3 does not apply to permanent rules adopted by the Board in accordance with this section. A permanent rule adopted by

1           the Board in accordance with this section and other applicable  
2           provisions of this Article becomes effective on the first day of the  
3           month following the month the rule is adopted by the Board unless an  
4           earlier effective date is necessary to protect the public health, safety, or  
5           welfare.

6           (c) A person aggrieved by a rule adopted by the Board in accordance with this  
7           section may file an action for declaratory judgment in Wake County Superior Court  
8           pursuant to Article 26 of Chapter 1 of the General Statutes. In the action, the court shall  
9           determine whether the rule meets the standards set forth in G.S. 150B-21.9(a)(1)  
10           through (4).

11           (d) Except as otherwise provided in this section, this Article applies to permanent  
12           rules adopted by the Board. The Board may adopt an emergency or temporary rule in  
13           accordance with this Article. Temporary or emergency rules adopted by the Board shall  
14           become effective as provided in G.S. 150B-21.3(a)."

15           **SECTION 2.** G.S. 150B-21.8 reads as rewritten:

16           "**§ 150B-21.8. Review of rule by Commission.**

17           (a) Emergency Rule. – The Commission does not review an emergency rule.

18           (b) ~~Temporary and Permanent Rules.~~ Rules; Exception.– An agency must submit  
19           temporary and permanent rules adopted by it to the Commission before the rule can be  
20           included in the North Carolina Administrative Code. The Commission reviews a  
21           temporary or permanent rule in accordance with the standards in G.S. 150B-21.9 and  
22           follows the procedure in this Part in its review of a rule. This section does not apply to  
23           permanent rules adopted by the State Board of Education or the State Board of  
24           Community Colleges in accordance with G.S. 150B-21.2A.

25           (c) Scope. – When the Commission reviews an amendment to a permanent rule,  
26           it may review the entire rule that is being amended. The procedure in G.S. 150B-21.12  
27           applies when the Commission objects to a part of a permanent rule that is within its  
28           scope of review but is not changed by a rule amendment.

29           (d) Judicial Review. – When the Commission returns a permanent rule to an  
30           agency in accordance with G.S. 150B-21.12(d), the agency may file an action for  
31           declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter  
32           1 of the General Statutes."

33           **SECTION 3.** G.S. 150B-21.17(a) reads as rewritten:

34           "**§ 150B-21.17. North Carolina Register.**

35           (a) Content. – The Codifier of Rules must publish the North Carolina Register.  
36           The North Carolina Register must be published at least two times a month and must  
37           contain the following:

38           (1) Temporary rules entered in the North Carolina Administrative Code.

39           (1a) The text of proposed rules and the text of permanent rules approved by  
40           the Commission.

41           (1b) Emergency rules entered into the North Carolina Administrative Code.

42           (1c) The text of proposed rules and the text of permanent rules adopted by  
43           the State Board of Education and the State Board of Community  
44           Colleges in accordance with G.S. 150B-21.2A.

- 1 (2) Notices of receipt of a petition for municipal incorporation, as required
- 2 by G.S. 120-165.
- 3 (3) Executive orders of the Governor.
- 4 (4) Final decision letters from the United States Attorney General
- 5 concerning changes in laws that affect voting in a jurisdiction subject
- 6 to section 5 of the Voting Rights Act of 1965, as required by
- 7 G.S. 120-30.9H.
- 8 (5) Orders of the Tax Review Board issued under G.S. 105-241.2.
- 9 (6) Other information the Codifier determines to be helpful to the public."

10 **SECTION 4.** G.S. 150B-21.19 reads as rewritten:

11 **"§ 150B-21.19. Requirements for including rule in Code.**

12 To be acceptable for inclusion in the North Carolina Administrative Code, a rule

13 must:

- 14 (1) Cite the law under which the rule is adopted.
- 15 (2) Be signed by the head of the agency or the rule-making coordinator for
- 16 the agency that adopted the rule.
- 17 (3) Be in the physical form specified by the Codifier of Rules.
- 18 (4) Have been approved by the Commission, if the rule is a permanent
- 19 ~~rule~~-rule subject to the Commission's approval.
- 20 (4a) Have been adopted by the State Board of Education or the State Board
- 21 of Community Colleges in accordance with G.S. 150B-21.2A.
- 22 (5) Have complied with the provisions of G.S. 12-3.1, if the rule
- 23 establishes a new fee or increases an existing fee."

24 **SECTION 5.** This act becomes effective October 1, 2005, and applies to

25 rules proposed and adopted on and after that date.