

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 535

Short Title: Simplify APA Rule Making Process.

(Public)

Sponsors: Senator Johnson of Wake.

Referred to: Judiciary III.

March 20, 1989

1 A BILL TO BE ENTITLED
2 AN ACT TO SIMPLIFY THE RULE MAKING PROCESS, TO MAKE THE
3 PROCESS MORE UNIFORM, AND TO TRANSFER THE RESPONSIBILITY
4 FOR THE NORTH CAROLINA ADMINISTRATIVE CODE AND THE NORTH
5 CAROLINA REGISTER TO THE SECRETARY OF STATE.

6 The General Assembly of North Carolina enacts:

7 Section 1. Chapter 150B of the General Statutes is amended by adding a new
8 Article to read:

9 **“ARTICLE 6.**
10 **"RULE MAKING.**
11 **"PART 1. GENERAL PROVISIONS.**

12 **"§ 150B-69. Scope and effect.**

13 This Article applies to the exercise of any rule making authority by an agency. A
14 rule is not valid unless it is adopted in substantial compliance with this Article.

15 **"§ 150B-70. Restrictions on what can be adopted as a rule.**

16 An agency may not adopt a rule that:

- 17 (1) Implements or interprets a law unless the authority to carry out the law
18 is conferred by law on the agency;
- 19 (2) Enlarges the scope of a trade or profession;
- 20 (3) Imposes a penalty for an act or omission, including violating a rule,
21 unless a statute specifically authorizes the agency to do so;
- 22 (4) Repeats the content of a statute or federal regulation; or

- 1 (5) Establishes a fee or charge for rendering a service or fulfilling a duty
2 to the public unless a statute specifically authorizes the agency to do so
3 or the rule establishes a fee or charge:
4 a. To a State, federal, or local governmental unit;
5 b. For providing a copy of part or all of a document;
6 c. For a transcript of a public hearing;
7 d. For registering for a conference or workshop; or
8 e. For the agency's cost to provide data processing services to
9 another person.

10 **"§ 150B-71. Petitioning an agency to adopt a rule.**

11 (a) A person may ask an agency to adopt a rule by submitting to the agency a
12 written petition requesting the adoption. The person may accompany his petition with
13 written comments. Each agency must prescribe by rule the procedure for submitting a
14 rule making petition to it and the procedure followed by the agency in considering the
15 petition.

16 (b) An agency must grant or deny a rule making petition submitting to it within
17 30 days after it is submitted, unless the agency is a board or commission. If the agency
18 is a board or commission, it must grant or deny a rule making petition within 120 days
19 after it is submitted or at its next regularly scheduled meeting, whichever comes first.

20 (c) If an agency denies a rule making petition, it must send the person who
21 submitted the petition a written statement of the reasons for denying the petition. If an
22 agency grants a rule making petition, it must inform the person who submitted the
23 petition of its decision and must initiate rule making proceedings. Denial of a rule
24 making petition is a final agency decision and is subject to judicial review under Article
25 4 of this Chapter.

26 **"§ 150B-72. Declaratory rulings by an agency on a statute or rule.**

27 (a) A person affected by a statute or rule administered by an agency may ask the
28 agency for a ruling on the validity of the rule or on the application of the statute or rule
29 to a given set of facts by submitting to the agency a written petition requesting the
30 ruling. When an agency receives a request for a declaratory ruling, it must make a
31 ruling unless it finds that making a ruling is not appropriate. Each agency must
32 prescribe by rule the procedure for submitting a request for a declaratory ruling to it, the
33 procedure followed by the agency in considering the request, and the circumstances
34 under which the agency will not make a declaratory ruling.

35 (b) An agency must grant or deny a request for a declaratory ruling submitted to
36 it within 30 days after it is submitted, unless the agency is a board or commission. If the
37 agency is a board or commission, it must grant or deny the request within 120 days after
38 it is submitted or at its next regularly scheduled meeting, whichever comes first.

39 (c) If an agency denies a request for a declaratory ruling, it must send the person
40 who submitted the request a written statement of the reasons for denying the request. If
41 an agency grants a request for a declaratory ruling, it must send the person who
42 submitted the request a copy of its ruling. A declaratory ruling is a final agency
43 decision and is subject to judicial review under Article 4 of this Chapter. Failure of an

1 agency to make a declaratory ruling is a denial of the request as well as a denial of the
2 merits of the request and is subject to judicial review under Article 4 of this Chapter.

3 (d) A declaratory ruling is binding on the agency that issued it, the person that
4 requested it, and any other party to the proceeding except to the extent that it is altered
5 or set aside by a court. An agency may not retroactively change a declaratory ruling,
6 but an agency may prospectively adopt a rule that differs from a declaratory ruling.

7 (e) An agency must give a copy of a declaratory ruling concerning a specific rule
8 or statute to a person who requests a copy of any rulings made by the agency on the rule
9 or statute.

10 **"§ 150B-73. Agency must designate rule making coordinator.**

11 Each agency must designate one or more administrative procedure coordinators to
12 oversee the agency's rule making functions. The coordinator must prepare notices of
13 public hearings, coordinate access to the agency's rules, and serve as the liaison between
14 the agency and other agencies in the rule making process and between the agency and
15 the public.

16 **"PART 2. ADOPTION OF RULES.**

17 **"§ 150B-74. Procedure for adopting permanent rules.**

18 (a) Notice. Before an agency adopts a permanent rule, it must publish notice of
19 its intent to adopt a permanent rule in the North Carolina Register and as prescribed by
20 any other statute. The notice published in the Register must include:

- 21 (1) Either the text of the rule or a statement of the subject matter of
22 proposed rule making;
- 23 (2) A short explanation of the reason for the proposed action;
- 24 (3) A citation to the statute or other legal authority that gives the agency
25 the authority to adopt the rule;
- 26 (4) The period of time during which and the person to whom written
27 comments may be submitted on the rule;
- 28 (5) If the agency publishes a statement of the subject matter of the rule,
29 the date, time, and place of the public hearing on the rule and
30 instructions on how a person may obtain a copy of and comment on
31 the text of the rule;
- 32 (6) If the agency publishes the text of the rule and decides to hold a public
33 hearing on the rule, the date, time, and place of the public hearing;
- 34 (7) If the agency publishes the text of the rule and does not schedule a
35 public hearing on the rule, instructions on how a person may demand a
36 public hearing on the rule;
- 37 (8) If a fiscal note has been prepared for the rule, a statement that a copy
38 of the fiscal note can be obtained from the agency; and
- 39 (9) If the rule incorporates material by reference, an indication of whether
40 the incorporation by reference automatically includes subsequent
41 changes to the material.

42 An agency may publish the notice or a synopsis of the notice in other ways selected by
43 the agency to give notice to persons likely to be affected by the proposed rule.

1 **(b) Mailing list.** An agency must maintain a mailing list of persons who have
2 requested to receive copies of notices of rule making. When an agency publishes a rule
3 making notice in the North Carolina Register, it must mail a copy of the notice to each
4 person on the mailing list who has requested to receive a copy of a notice of rule
5 making proceedings on the rule or subject area of the rule described in the notice.

6 **(c) Hearing.** An agency must hold a public hearing on a rule it proposes to adopt
7 if it does not publish the text of the rule in the notice in the North Carolina Register.
8 The hearing date must be at least 30 days after the date the notice of the hearing is
9 published.

10 An agency must hold a public hearing on a rule it proposes to adopt if it publishes
11 the text of the rule in the notice in the Register, the notice does not schedule a public
12 hearing, and, within 20 days after the notice is published, the agency receives a written
13 request for a public hearing. When an agency receives a written request for a public
14 hearing, it must schedule a hearing and must publish the date, time, and place of the
15 hearing in the Register. The hearing date must be at least 20 days after the date the
16 notice of the hearing is published.

17 A rule making hearing must be recorded.

18 **(d) Distribution of text.** When an agency does not publish the text of a proposed
19 rule in the North Carolina Register, it must mail a copy of the text it proposes to adopt
20 to each person who attended the public hearing on the rule, each person on its mailing
21 list for rule making notices on the rule or subject matter of the rule, and each person
22 who has requested a copy of the proposed text. The proposed text must be mailed after
23 the public hearing on the rule.

24 **(e) Comments.** An agency must accept comments on a proposed rule until it
25 adopts the rule. The agency must consider fully all written and oral comments received
26 on a rule.

27 **(f) Adoption.** An agency that publishes a statement of the subject matter of a
28 proposed rule in the North Carolina Register may not adopt a rule addressing that
29 subject matter until 15 days after the agency mails the proposed text of the rule to those
30 on its mailing list, those at the public hearing on the rule, and those who, as of the date
31 of the hearing, had requested to receive a copy of the proposed text. An agency that
32 publishes the text of a proposed rule in the Register may not adopt the rule until the time
33 for requesting a public hearing on the rule has elapsed or, if a public hearing is
34 requested or otherwise scheduled, until after the hearing on the rule.

35 An agency may not adopt a rule that differs substantially from the proposed text of a
36 rule published in the Register or distributed after a public hearing. if the agency decides
37 adoption of a substantially different rule is appropriate, the agency must terminate the
38 rule making proceeding and begin a new rule making proceeding to adopt the
39 substantially different rule.

40 An adopted rule differs substantially from a proposed rule if it:

- 41 **(1)** Affects the interests of persons who, based on the proposed text of the
42 rule, could not reasonably have determined that the rule would affect
43 their interests;

1 (2) Addresses a subject matter or an issue that is not addressed in the
2 proposed rule; or

3 (3) Produces an effect that could not reasonably have been expected based
4 on the proposed text.

5 (g) Explanation. An agency must issue a concise written statement explaining
6 why the agency adopted a rule if, within 30 days after the agency adopts the rule, a
7 person asks the agency to do so. The explanation must state the principal reasons for
8 and against adopting the rule and must discuss why the agency rejected any arguments
9 made or considerations urged against the adoption of the rule.

10 (h) Record. An agency must keep a record of a rule making proceeding. The
11 record must include all written comments received, the transcript or recording of any
12 public hearing held on the rule, and any written explanation made by the agency for
13 adopting the rule.

14 **"§ 150B-75. Procedure for adopting temporary rules.**

15 (a) Adoption. An agency may adopt a temporary rule without prior notice or
16 hearing or upon any abbreviated notice or hearing the agency finds practicable when it
17 determines in writing that:

18 (1) Adherence to the notice and hearing requirements of this Part would be
19 contrary to the public interest; and

20 (2) The immediate adoption of a rule is required by:

21 a. A serious and unforeseen threat to the public health, safety, or
22 welfare;

23 b. The effective date of a recent act of the General Assembly or
24 the United States Congress;

25 c. A recent change in federal or State budgetary policy;

26 d. A federal regulation;

27 e. A court order; or

28 f. The need to control persons under the custody or supervision of
29 the Department of Correction.

30 The written determination of need for a temporary rule must state the reasons for the
31 determination and must be signed by the head of the agency that adopts the rule. When
32 an agency adopts a temporary rule, it must begin rule making proceedings for a
33 permanent rule no later than the date it adopts the temporary rule.

34 (b) Filing. When an agency adopts a temporary rule, it must file with the
35 Codifier of Rules and the Commission a copy of the rule, the agency's written
36 determination of need for the rule, and a copy of the notice of rule making on the
37 proposed permanent rule.

38 (c) Expiration. A temporary rule expires on the date specified in the rule or 180
39 days from the date the rule becomes effective, whichever comes first.

40 **"§ 150B-76. Effective date of rules.**

41 (a) Permanent rules. A permanent rule approved by the Commission becomes
42 effective on the date the Commission delivers the rule to the Codifier of Rules, unless
43 the agency adopting the rule specifies a later effective date. If the agency specifies a
44 later effective date, the rule becomes effective on that date.

1 A permanent rule that is not approved by the Commission becomes effective on the
2 date the agency adopting the rule delivers the rule to the Codifier of Rules, unless the
3 agency specifies a later effective date. If the agency specifies a later effective date, the
4 rule becomes effective on that date.

5 (b) Temporary Rules. A temporary rule adopted for a reason other than to
6 control persons under the custody or supervision of the Department of Correction
7 becomes effective on the date the agency adopting the rule delivers the rule to the
8 Codifier of Rules. A temporary rule adopted to control persons under the custody or
9 supervision of the Department of Correction becomes effective on the day it is adopted.

10 **"§ 150B-77. Fiscal notes on rules.**

11 (a) State Funds. Before an agency adopts a rule that affects the agency's
12 revenues or requires the expenditure or distribution of funds appropriated by the
13 General Assembly or received from the federal government, it must submit the text of
14 the proposed rule and a fiscal note on the proposed rule to the Director of the Budget
15 and obtain certification from the Director that the funds required by the rule are
16 available. The fiscal note must state the amount of funds to be expended or distributed
17 as a result of the proposed rule and explain how the amount was computed. The
18 director of the Budget must certify a rule if funds are available to cover the expenditure
19 or distribution required by the rule.

20 (b) Local Funds. An agency must submit a fiscal note for a proposed rule that
21 affects the expenditures or revenues of a unit of local government in accordance with
22 G.S. 120-30.48. The fiscal note must be submitted no later than the date when the
23 notice of rule making on the proposed rule is published in the North Carolina Register.

24 (c) Errors. An erroneous fiscal note prepared in good faith does not affect the
25 validity of a rule.

26 **"§ 150B-78. Circumstances when notice and rule making hearing not required.**

27 (a) Amendment. An agency is not required to publish a notice of rule making in
28 the North Carolina Register or hold a public hearing when it proposes to amend a rule,
29 without changing the substance of the rule, to

30 (1) Reletter or renumber the rule or subparts of the rule;

31 (2) Substitute one name for another when an organization or position is
32 renamed;

33 (3) Correct a citation in the rule to another rule or law when the citation
34 has become inaccurate since the rule was adopted because of the repeal
35 or renumbering of the cited rule or law;

36 (4) Change information that is readily available to the public, such as an
37 address or a telephone number;

38 (5) Correct a typographical error; or

39 (6) Change a rule in response to a request or objection by the Commission.

40 (b) Repeal. An agency is not required to publish a notice of rule making in the
41 North Carolina Register or hold a public hearing when it proposes to repeal a rule if the
42 statute under which the rule was adopted is repealed, or if the statute under which the
43 rule was adopted or the rule itself is declared unconstitutional.

44 **"§ 150B-79. Incorporating material in a rule by reference.**

1 (a) An agency may incorporate by reference in a rule, without repeating the text
2 of the material:

3 (1) Another rule or part of a rule adopted by the agency;

4 (2) All or part of a code, standard, or regulation adopted by another
5 agency, the federal government, or a generally recognized organization
6 or association; or

7 (3) Material adopted to meet a requirement of the federal government.

8 In incorporating material by reference, the agency must specify in the rule whether
9 the incorporation is under subsection (b) or subsection (c) of this section. The agency
10 can change this election only by a subsequent rule making proceeding. The agency
11 must have copies of the incorporated material available for inspection and must specify
12 in the rule where copies of the material can be obtained and the cost of a copy on the
13 date the agency adopts the rule.

14 (b) If an agency incorporates material by reference under this subsection, the
15 incorporation does not include subsequent amendments and editions of the material
16 incorporated. If the agency wants to incorporate subsequent changes in the incorporated
17 material, it must amend the rule.

18 (c) If an agency incorporates material by reference under this subsection, the
19 incorporation automatically includes subsequent amendments and editions of the
20 material incorporated.

21 **"§ 150B-80. Effect of transfer of duties or termination of agency on rules.**

22 (a) When a law that authorizes an agency to adopt a rule is repealed and another
23 law gives the same agency substantially the same power to adopt a rule, the rule remains
24 in effect until the agency amends or repeals the rule. When a law that authorizes an
25 agency to adopt a rule is repealed and another law does not give the same or another
26 agency substantially the same power to adopt a rule, a rule adopted under the repealed
27 law is repealed as of the date the law is repealed.

28 (b) When a law or an executive order abolishes an agency and does not transfer
29 the function of the agency to another agency, any rule related to the performance of a
30 function assigned to that agency is repealed as of the effective date of the law or order.

31 (c) The Codifier of Rules must enter in the North Carolina Administrative Code
32 the repeal of a rule under this section.

33 **"PART 3. REVIEW BY COMMISSION.**

34 **"§ 150B-81. Review of rule by Commission.**

35 (a) Temporary Rules. An agency must submit a temporary rule adopted by it to
36 the Commission when it files the rule with the Codifier of Rules. The Commission
37 reviews a temporary rule in accordance with the standards in G.S. 150B-82 and reviews
38 the agency's written determination of need for the temporary rule.

39 If the Commission finds that the rule does not meet the standards for review, the
40 Commission notifies the Codifier of Rules and the agency of its findings. When the
41 Codifier is notified of the Commission's objection to a temporary rule, the Codifier must
42 make an entry in the code to reflect the Commission's objection.

43 If the Commission finds that the reasons given in the agency's determination of need
44 are inadequate, the Commission notifies the governor, if the agency is headed by a

1 person appointed by the governor, and the head of the agency that adopted the rule of its
2 findings.

3 (b) Permanent Rules. An agency must submit a permanent rule adopted by it to
4 the Commission before the rule can be included in the North Carolina Administrative
5 Code. The Commission reviews a permanent rule in accordance with the standards in
6 G.S. 150B-82 and the procedure in this Part.

7 (c) Scope. When the commission reviews an amendment to a rule, it may review
8 the entire rule that is being amended.

9 **"§ 150B-82. Standard and timetable for review by Commission.**

10 (a) The Commission must determine whether a rule:

- 11 (1) Is within the authority delegated to the agency by the General
12 Assembly;
- 13 (2) Is clear and unambiguous; and
- 14 (3) Is reasonably necessary.

15 (b) The Commission must review a rule submitted to it on or before the 20th of a
16 month by the last day of the next month. The Commission must review a rule submitted
17 to it after the 20th of a month by the last day of the second subsequent month.

18 **"§ 150B-83. Commission action on permanent rule.**

19 At the first meeting at which a permanent rule is before the Commission for review,
20 the Commission must:

- 21 (1) Approve the rule, if the Commission determines that the rule meets the
22 standards for review; or
- 23 (2) Object to the rule, if the Commission determines that the rule does not
24 meet the standards for review; or
- 25 (3) Extend the period for reviewing the rule, if the Commission
26 determines it needs additional information on the rule to be able to
27 decide whether the rule meets the standards for review.

28 In reviewing a rule, the Commission may request an agency to make technical changes
29 to the rule and may condition its action on the rule on the agency's making the requested
30 technical changes.

31 **"§ 150B-84. Procedure when Commission extends period of review of permanent**
32 **rule.**

33 When the Commission extends the period for review of a permanent rule, it must
34 notify the agency of the extension and the reason for the extension. After the
35 Commission extends the period for reviewing a rule, it must decide whether to approve
36 or object to the rule within 70 days of the extension.

37 **"§ 150B-85. Procedure when Commission objects to a permanent rule.**

38 When the Commission objects to a permanent rule, it must send the agency that
39 adopted the rule a written statement of the objection and the reason for the objection.
40 The agency that adopted the rule must:

- 41 (1) Change the rule to satisfy the Commission's objection and submit the
42 revised rule to the Commission; or
- 43 (2) Submit a written response to the Commission indicating that the
44 agency has decided not to change the rule.

1 An agency that is not a board or commission must take one of these actions within
2 30 days after receiving the Commission's statement. A board or commission must take
3 one of these actions within 30 days after receiving the Commission's statement or 10
4 days after the board or commission's next regularly scheduled meeting, whichever
5 comes later.

6 When an agency changes a rule in response to an objection by the Commission, the
7 Commission must determine whether the change satisfies the Commission's objection.
8 If it does, the Commission must approve the rule.

9 (If a proposed agency change does not satisfy the Commission's objection or if the
10 agency elects not to change the rule, the Commission may keep the rule for up to 90
11 days after the date the Commission originally objected to the rule. During that time, the
12 agency may submit additional changes to the rule in response to the Commission's
13 objection. When 90 days have expired and the rule has not been changed to satisfy the
14 Commission's objection, the Commission may send to the President of the Senate and
15 each member of the General Assembly a report of its objection to the rule.

16 **"§ 150B-86. Public hearing on a rule.**

17 (a) At any time before the Commission approves or objects to a rule that is
18 before it for review, it may call a public hearing on the rule. On its own motion, the
19 Commission may also call a public hearing on a rule that is not before it for review.
20 Calling a public hearing on a rule not already before the Commission for review places
21 the rule before the Commission for review. When the commission decides to call a
22 public hearing on a rule, it must give notice of the hearing to the agency that adopted the
23 rule, to those who have asked to receive notice of any public hearing called on the rule
24 or subject area of the rule, and to those who, as determined by the Commission, may be
25 affected by the rule.

26 After a public hearing on a rule, the Commission must approve the rule or object to
27 the rule in accordance with the standards and procedures in this Part. The Commission
28 must make its decision of whether to approve or object to the rule within 70 days after
29 the public hearing.

30 **"§ 150B-87. Transmittal to Codifer of Rules.**

31 When the Commission approves a rule, it must deliver the approved rule to the
32 codifier of Rules by the end of the month in which the Commission approved the rule.
33 When the Commission objects to a rule and the agency does not change the rule to
34 satisfy the Commission's objection, the Commission must return the rule to the agency
35 that adopted it. The agency may submit the rule to the Codifier of Rules for inclusion in
36 the North Carolina Administrative Code. When the Codifier enters a permanent rule
37 submitted by an agency in the Code, the entry must reflect the Commission's objection
38 to the rule.

39 **"§ 150B-88. Burden of proof for rules to which Commission objects.**

40 If the Commission objects to a rule and the agency that adopted the rule decides to
41 file the rule in the North Carolina Administrative Code, the agency has the burden in a
42 proceeding for judicial review that concerns the rule or in an action to enforce the rule
43 to establish that the rule is within the authority delegated to the agency.

44 **"§ 150B-89. Legislation concerning rules to which Commission objects.**

1 On or before December 31 of each year, the Commission must report to the Codifier
2 of Rules the rules that were the subject of an objection by the Commission during that
3 year, based on lack of statutory authority, and were not changed to satisfy the
4 Commission's objection. The Codifier must recommend to each regular session of the
5 General Assembly the enactment of statutory changes needed to delegate statutory
6 authority to an agency concerning each rule included in the Commission's report. The
7 Codifier's recommendation must be presented in bill form to the Speaker of the House
8 of Representatives and the President Pro Tempore of the Senate.

9 Failure of part or all of the bill to be enacted creates no implications concerning the
10 existence or adequacy of authority for a rule whose authority is addressed in the bill or
11 part of the bill that is not enacted. The enactment of legislation that makes it clear that
12 an agency does not have authority for a rule included in the Commission's report repeals
13 the rule as of the effective date of the legislation. The Codifier of Rules must enter in
14 the North Carolina Administrative Code the repeal of a rule under this section.

15 **"PART 4. PUBLICATION OF CODE AND REGISTER.**

16 **"§ 150B-90. North Carolina Register.**

17 (a) The Codifier of Rules must publish the North Carolina Register. The
18 Register must be published at least two times a month and must contain notices of:

- 19 (1) Proposed adoptions of rules;
- 20 (2) Notices of receipt of a petition for municipal incorporation, as required
21 by G.S. 120-165;
- 22 (3) Executive orders of the Governor;
- 23 (4) Final decision letters from the United States Attorney General
24 concerning changes in laws that affect voting in jurisdiction subject to
25 the Voting Rights Act of 1965, as required by G.S. 120-30.9H;
- 26 (5) Decisions of the Tax Review Board;
- 27 (6) Other information the Codifier determines helpful to the public.

28 (b) When an agency decides to publish the proposed text of a new rule or
29 amendment to a rule or the text of a rule it proposes to repeal, the Codifier must publish
30 the complete text of the rule. In publishing the text of a proposed amendment to a rule,
31 the Codifier must indicate deleted text with overstrikes and added text with underlines.

32 **"§ 150B-91. North Carolina Administrative Code.**

33 The Codifier of Rules must compile all rules into a Code known as the North
34 Carolina Administrative Code. The format and indexing of the Code must conform as
35 nearly as practicable to the format and indexing of the North Carolina General Statutes.
36 The Codifier must publish printed copies of the Code and may publish the Code in other
37 forms. The Codifier must keep the Code current by publishing the Code in a loose-leaf
38 format and periodically providing new pages to be substituted for outdated pages, by
39 publishing the Code in volumes and periodically publishing cumulative supplements, or
40 by another means.

41 **"§ 150B-92. Requirements for including rule in Code.**

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

- 44 (1) Cite the statute or other authority under which the rule is adopted;

- (2) Be signed by the agency that adopted the rule;
- (3) Be in the physical form specified by the Codifier of Rules; and
- (4) Have been reviewed by the Commission.

4 **"§ 150B-93. Codifier's authority to revise form of rules.**

5 (a) The Codifier of Rules may revise the form of a rule submitted for inclusion in
6 the Code within 10 days after the rule is submitted to:

- 7 (1) Rearrange the order of the rule in the Code or the order of the
8 subsections, subdivision, or other subparts of the rule;
- 9 (2) Provide or revise the catch line or heading of the rule;
- 10 (3) Reletter or renumber the rule or the subparts of the rule in accordance
11 with a uniform system;
- 12 (4) Rearrange definitions and lists; or
- 13 (5) Make other changes in arrangement or in form that do not change the
14 substance of the rule and are necessary or desirable for a clear and
15 orderly arrangement of the rule.

16 (b) Revision of a rule by the Codifier under this section does not affect the
17 effective date of the rule or require the agency to readopt or resubmit the rule. When
18 the Codifier revises the form of a rule, the Codifier must send the agency that adopted
19 the rule a copy of the revised rule. The revised rule is the official rule.

20 **"§ 150B-94. Notice of rule making and publication of rules of certain exempt**
21 **agencies.**

22 (a) Notwithstanding G.S. 150B-1, the Employment Security Commission, the
23 Industrial Commission, and the Utilities Commission must publish notice in the North
24 Carolina Register of pending rule making proceedings before adopting a rule. The
25 notice must state the subject of the rule making proceedings and the date of any
26 scheduled public hearing. In addition, these Commissions must submit rules adopted by
27 them to the Codifier of Rules for inclusion in the North Carolina Administrative Code.
28 A rule must be submitted within 15 days after it is adopted.

29 (b) The North Carolina State Bar must submit rules adopted or approved by it
30 and entered in the minutes of the North Carolina Supreme Court to the Codifier of Rules
31 for inclusion in the North Carolina Administrative Code. The State Bar must submit a
32 rule within 15 days after it is entered in the minutes of the Supreme Court.

33 (c) The Codifier must compile, make available for public inspection, and publish
34 rules included in the Code under this section in the same manner as other rules in the
35 Code.

36 **"§ 150B-95. Effect of inclusion in Code.**

37 Official or judicial notice can be taken of a rule in the North Carolina Administrative
38 Code. Codification of a rule in the North Carolina Administrative Code is **prima facie**
39 evidence of compliance with this Article.

40 **"§ 150B-96. Rule publication manual.**

41 The Codifier of Rules must publish a manual that sets out the form and method for
42 publishing a notice of rule making in the North Carolina Register and for filing a rule in
43 the North Carolina Administrative Code.

44 **"§ 150B-97. Free copies of Register and Code.**

1 (a) Register. Notwithstanding Article 1A of Chapter 125 of the General Statutes,
2 copies of the North Carolina Register must be distributed by the Codifier as soon after
3 publication as practicable, without charge, to the following:

4 (1) Persons who receive free copies of the North Carolina Administrative
5 Code; and

6 (2) Upon request, one copy to each member of the General Assembly.

7 (b) Code. Notwithstanding Article 1A of Chapter 125 of the General Statutes,
8 copies of the North Carolina Administrative Code must be distributed by the Codifier as
9 soon after publication as practicable, without charge, to the following:

10 (1) One copy to the board of commissioners of each county in the State;

11 (2) One copy to the clerk of superior court of each county in the State;

12 (3) One copy to the Commission;

13 (4) One copy to the clerk of the Supreme Court and to the clerk of the
14 Court of Appeals of North Carolina;

15 (5) One copy to the Supreme Court Library and one copy to the library of
16 the Court of Appeals;

17 (6) One copy to the Administrative Office of the Courts;

18 (7) One copy to the Governor;

19 (8) Five copies to the Legislative Services Commission for the use of the
20 General Assembly;

21 (9) Upon request, one copy to each State official and department to which
22 copies of the appellate division reports are furnished under G.S. 7A-
23 343.1; and

24 (10) Five copies to the Division of State Library of the Department of
25 Cultural Resources pursuant to G.S. 125-11.7.

26 **"§ 150B-98. Paid copies of Register and Code.**

27 A person who is not entitled to a free copy of the Code or Register may obtain a
28 copy by paying a fee set by the Codifier. The Codifier must set separate fees for the
29 North Carolina Register and the Administrative Code in amounts that cover publication,
30 copying, and mailing costs. All monies received under this section must be deposited in
31 the General Fund."

32 Sec. 2. G.S. 150B-1 reads as rewritten:

33 **"§ 150B-1. Policy and scope.**

34 (a) ~~The policy of the State is that the three powers of government, legislative,~~
35 ~~executive, and judicial, are, and should remain, separate. The intent of this Chapter is to~~
36 ~~prevent the commingling of those powers in any administrative agency and to ensure~~
37 ~~that the functions of rule making, investigation, advocacy, and adjudication are not all~~
38 ~~performed by the same person in the administrative process.~~

39 (b) ~~The purpose of this Chapter is to establish as nearly as possible a uniform~~
40 ~~system of administrative rule making and adjudicatory procedures for State agencies.~~

41 (c) ~~This Chapter shall apply to every agency, as defined in G.S. 150B-2(1),~~
42 ~~except to the extent and in the particulars that any statute, including subsection (d) of~~
43 ~~this section, makes specific provisions to the contrary.~~

1 ~~(d) The following are specifically exempted from the provisions of this Chapter:~~
2 ~~the Administrative Rules Review Commission, the Employment Security Commission,~~
3 ~~the Industrial Commission, the Occupational Safety and Health Review Board in all~~
4 ~~actions that do not involve agricultural employers, and the Utilities Commission.~~

5 ~~The North Carolina National Guard is exempt from the provisions of this Chapter in~~
6 ~~exercising its court-martial jurisdiction.~~

7 ~~The Department of Human Resources is exempt from this Chapter in exercising its~~
8 ~~authority over the Camp Butner reservation granted in Article 6 of Chapter 122C of the~~
9 ~~General Statutes.~~

10 ~~The Department of Correction is exempt from the provisions of this Chapter, except~~
11 ~~for Article 5 of this Chapter and G.S. 150B-13 which shall apply.~~

12 ~~Articles 2 and 3 of this Chapter shall not apply to the Department of Revenue.~~
13 ~~Except as provided in Chapter 136 of the General Statutes, Articles 2 and 3 of this~~
14 ~~Chapter do not apply to the Department of Transportation.~~

15 ~~Article 4 of this Chapter, governing judicial review of final administrative decisions,~~
16 ~~shall apply to The University of North Carolina and its constituent or affiliated boards,~~
17 ~~agencies, and institutions, but The University of North Carolina and its constituent or~~
18 ~~affiliated boards, agencies, and institutions are specifically exempted from the~~
19 ~~remaining provisions of this Chapter. Article 4 of this Chapter shall not apply to the~~
20 ~~State Banking Commission, the Commissioner of Banks, the Savings and Loan Division~~
21 ~~of the Department of Commerce, and the Credit Union Division of the Department of~~
22 ~~Commerce.~~

23 ~~Article 3 of this Chapter shall not apply to agencies governed by the provisions of~~
24 ~~Article 3A of this Chapter, as set out in G.S. 150B-38(a).~~

25 ~~Articles 3 and 3A of this Chapter shall not apply to the Governor's Waste~~
26 ~~Management Board in administering the provisions of G.S. 104E-6.2.~~

27 ~~Article 2 of this Chapter shall not apply to the North Carolina Low-Level~~
28 ~~Radioactive Waste Management Authority in administering the provisions of G.S.~~
29 ~~104G-10 and G.S. 104G-11. Articles 3 and 3A of this Chapter shall not apply to the~~
30 ~~North Carolina Low-Level Radioactive Waste Management Authority in administering~~
31 ~~the provisions of G.S. 104G-9, 104G-10, and 104G-11.~~

32 (a) This Chapter establishes a uniform system of administrative rule making and
33 adjudicatory procedures for agencies. It confers procedural rights but does not confer
34 substantive rights.

35 (b) This Chapter applies to every agency except:

36 (1) The Employment Security Commission;

37 (2) The Industrial Commission;

38 (3) The Utilities Commission;

39 (4) The North Carolina National Guard in exercising its court-martial
40 jurisdiction; or

41 (5) The Department of Human Resources in exercising its authority over
42 the Camp Butner reservation granted in Article 6 of Chapter 122C of
43 the General Statutes.

1 (c) The administrative hearing provisions and the judicial review provisions of
2 this Chapter do not apply to:

3 (1) The Department of Correction;

4 (2) The Department of Revenue; or

5 (3) The Department of Insurance in its ratemaking proceedings.

6 (d) The rule making provisions and the administrative hearing provisions of this
7 Chapter do not apply to The University of North Carolina.

8 (e) The rule making provisions of this Chapter do not apply to the Commission."

9 Sec. 3. The Rules Review Commission must review the rules of the
10 Departments of Correction, Transportation, and Revenue to determine if the rules meet
11 the standards for review in G.S. 150B-82. A rule that does not meet the standards is
12 repealed effective January 1, 1991. The departments may adopt, recodify, amend, or
13 repeal a rule in response to an objection by the Commission in the course of this review
14 without publishing notice in the North Carolina Register or holding a rule making
15 hearing.

16 Sec. 4. G.S. 150B-2 reads as rewritten:

17 **"§ 150B-2. Definitions.**

18 As used in this Chapter,

19 (01) 'Administrative law judge' means a person appointed under G.S. 7A-752, 7A-
20 753, or 7A-757.

21 (1) ~~'Agency' means any agency, institution, board, commission, bureau,~~
22 ~~department, division, council, member of the Council of State, or~~
23 ~~officer of the State government of the State of North Carolina but does~~
24 ~~not include any agency in the legislative or judicial branch of the State~~
25 ~~government; and does not include counties, cities, towns, villages,~~
26 ~~other municipal corporations or political subdivisions of the State or~~
27 ~~any agencies of such subdivisions, or local boards of education, other~~
28 ~~local public districts, units or bodies of any kind, or private~~
29 ~~corporations created by act of the General Assembly. an agency in the~~
30 ~~executive branch of the government of this State and includes the~~
31 ~~Council of State, the Governor's Office, a board, a commission, a~~
32 ~~department, a division, a council, and any other unit of government in~~
33 ~~the executive branch. A local unit of government is not an agency.~~

34 (1a) 'Adopt' means to take final action to create, amend, or repeal a rule.

35 (1b) 'Codifier of Rules' means the Secretary of State or his designee.

36 (1c) 'Commission' means the Rules Review Commission.

37 (2) 'Contested case' means an administrative proceeding pursuant to this
38 Chapter to resolve a dispute between an agency and another person
39 that involves the person's rights, duties, or privileges, including
40 licensing or the levy of a monetary penalty. 'Contested case' does not
41 include rule making, declaratory rulings, or the award or denial of a
42 scholarship or grant.

43 (2a) ~~'Effective' means that a valid rule has been filed as required by G.S.~~
44 ~~150B-59 and, if applicable, that the time specified in that section has~~

- 1 ~~elapsed. A rule that is effective is enforceable to the extent permitted~~
2 ~~by law.~~
- 3 (2b) 'Hearing officer' means a person or group of persons designated by an
4 agency that is subject to Article 3A of this Chapter to preside in a
5 contested case hearing conducted under that Article.
- 6 (3) 'License' means any certificate, permit or other evidence, by whatever
7 name called, of a right or privilege to engage in any activity, except
8 licenses issued under Chapter 20 and Subchapter I of Chapter 105 of
9 the General Statutes and occupational licenses.
- 10 (4) 'Licensing' means any administrative action issuing, failing to issue,
11 suspending, or revoking a license or occupational license. 'Licensing'
12 does not include controversies over whether an examination was fair
13 or whether the applicant passed the examination.
- 14 (4a) 'Occupational license' means any certificate, permit, or other evidence,
15 by whatever name called, of a right of privilege to engage in a
16 profession, occupation, or field of endeavor that is issued by an
17 occupational licensing agency.
- 18 (4b) 'Occupational licensing agency' means any board, commission,
19 committee or other agency of the State of North Carolina which is
20 established for the primary purpose of regulating the entry of persons
21 into, and/or the conduct of persons within a particular profession,
22 occupation or field of endeavor, and which is authorized to issue and
23 revoke licenses. 'Occupational licensing agency' does not include State
24 agencies or departments which may as only a part of their regular
25 function issue permits or licenses.
- 26 (5) 'Party' means any person or agency named or admitted as a party or
27 properly seeking as of right to be admitted as a party and includes the
28 agency as appropriate. This subdivision does not permit an agency that
29 makes a final decision, or an officer or employee of the agency, to
30 petition for initial judicial review of that decision.
- 31 (6) 'Person aggrieved' means any person or group of persons of common
32 interest directly or indirectly affected substantially in his or its person,
33 property, or employment by an administrative decision.
- 34 (7) 'Person' means any natural person, partnership, corporation, body
35 politic and any unincorporated association, organization, or society
36 which may sue or be sued under a common name.
- 37 (8) 'Residence' means domicile or principal place of business.
- 38 (8a) 'Rule' means any agency regulation, ~~standard~~ standard, or statement of
39 general applicability that implements or interprets laws enacted by the
40 General Assembly or Congress or regulations ~~promulgated~~ adopted by a
41 federal agency or that describes the procedure or practice requirements
42 of an agency. ~~any agency not inconsistent with laws enacted by the General~~
43 ~~Assembly. The term includes the amendment or repeal of a prior rule.~~ The
44 term does not include the following:

- 1 a. Statements concerning only the internal management of an
2 agency or group of agencies within the same principal office or
3 department enumerated in G.S. 143-11 or 143B-6, including
4 policies and procedures manuals, if ~~such a~~ the statement does
5 not directly or substantially affect the procedural or substantive
6 rights or duties of a person ~~persons~~ not employed by the agency
7 or group of agencies.
- 8 b. Budgets and budget policies and procedures issued by the
9 Director of the Budget, by the head of a department, as defined
10 by G.S. 143A-2 or G.S. 143B-3, by an occupational licensing
11 board, as defined by G.S. 93B-1, or by the State Board of
12 Elections.
- 13 c. Nonbinding interpretative statements within the delegated
14 authority of ~~the~~ an agency that merely define, ~~interpret~~ interpret,
15 or explain the meaning of a statute or rule. ~~other provision of law~~
16 ~~or precedent~~.
- 17 d. A form, the contents or substantive requirements of which are
18 prescribed by rule or statute. ~~statute or the instructions for the~~
19 ~~execution or use of the form~~.
- 20 e. Statements of agency policy made in the context of another
21 proceeding, including:
- 22 1. Declaratory rulings under ~~G.S. 150B-17~~; G.S. 150B-17.
23 2. Orders establishing or fixing rates or tariffs.
- 24 f. ~~Statements of agency policy, provided that the agency policy is not~~
25 ~~inconsistent with any law enacted by the General Assembly,~~
26 Instructions, communicated to the public by the use of signs or
27 symbols, concerning the use of public roads, bridges, or
28 facilities, concerning:
- 29 ~~1. The use or creation of public roads or bridges;~~
30 ~~2. The boundaries of public facilities and times when~~
31 ~~public facilities are open to the public; or~~
32 ~~3. Safety in use of public facilities.~~
- 33 g. Statements that set forth criteria or guidelines to be used by the
34 staff of an agency in performing audits, investigations, or
35 inspections; in settling financial disputes or negotiating
36 financial arrangements; or in the defense, prosecution, or
37 settlement of cases;
- 38 h. Scientific, architectural, or engineering standards, forms, or
39 procedures.
- 40 i. Job classification standards, job qualifications, and salaries
41 established for positions under the jurisdiction of the State
42 Personnel Commission.
- 43 (8b) 'Substantial evidence' means relevant evidence a reasonable mind
44 might accept as adequate to support a conclusion.

1 (9) ~~'Valid' means that the rule has been adopted pursuant to the procedure~~
2 ~~required by law. A valid rule is unenforceable until it becomes~~
3 ~~effective."~~

4 Sec. 5. Articles 2 and 5 of Chapter 150B of the General Statutes and G.S.
5 143B-30 and 143B-30.3 are repealed.

6 Sec. 6. G.S. 84-21 reads as rewritten:

7 **"§ 84-21. Organization of council; publication of rules, regulations and bylaws.**

8 Upon receiving notification of the election of a councilor for each judicial district,
9 or, if such notification shall not have been received from all said districts, within 120
10 days after this Article shall have gone into effect, the clerk of the Supreme Court of
11 North Carolina shall call a meeting of the councilors of whose election he shall have
12 been notified, to be held in the City of Raleigh not less than 20 days nor more than 30
13 days after the date of said call; and at the meeting so held the councilors attending the
14 same shall proceed to organize the council by electing officers, taking appropriate steps
15 toward the adoption of rules and regulations, electing councilors for judicial districts
16 which have failed to elect them, and taking such other action as they may deem to be in
17 furtherance of this Article. The regular term of all officers shall be one year, but those
18 first elected shall serve until January 1, 1935. The council shall be the judge of the
19 election and qualifications of its own members. When the council shall have been fully
20 organized and shall have adopted such rules, regulations and bylaws, not inconsistent
21 with this Article, as it shall deem necessary or expedient for the discharge of its duties,
22 the secretary-treasurer shall file with the clerk of the Supreme Court of North Carolina a
23 certificate, to be called the 'certificate of organization,' showing the officers and
24 members of the council, with the judicial districts which the members respectively
25 represent, and their post-office addresses, and the rules, regulations and bylaws adopted
26 by it; and thereupon the Chief Justice of the Supreme Court of North Carolina, or any
27 judge thereof, if the court be then in vacation, shall examine the said certificate and, if
28 of opinion that the requirements of this Article have been complied with, shall cause the
29 said certificate to be spread upon the minutes of the court; but if of opinion that the
30 requirements of this Article have not been complied with, shall return the said certificate
31 to the secretary-treasurer with a statement showing in what respects the provisions of
32 this Article have not been complied with; and the said certificate shall not be again
33 presented to the Chief Justice of the Supreme Court or any judge thereof, until any such
34 defects in the organization of the council shall have been corrected, at which time a new
35 certificate of organization shall be presented and the same course taken as hereinabove
36 provided, and so on until a correct certificate showing the proper organization of the
37 council shall have been presented, and the organization of the council accordingly
38 completed. Upon (a) the entry of an order upon the minutes of the court that the
39 requirements of this Article have been complied with, or (b) if for any reason the Chief
40 Justice or judge should not act thereon within 30 days, then, after the lapse of 30 days
41 from the presentation to the Chief Justice or judge, as the case may be, of any certificate
42 of organization hereinbefore required to be presented by the secretary-treasurer, without
43 either the entry of an order or the return of said certificate with a statement showing the
44 respects in which this Article has not been complied with, the organization of the

1 council shall be deemed to be complete, and it shall be vested with the powers herein set
2 forth; and the certificate of organization shall thereupon forthwith be spread upon the
3 minutes of the court. A copy of the certificate of organization, as spread upon the
4 minutes of the court, shall be published in the next ensuing volume of the North
5 Carolina ~~Reports~~ Reports and in the North Carolina Administrative Code. The rules and
6 regulations set forth in the certificate of organization, and all other rules and regulations
7 which may be adopted by the council under this Article, may be amended by the council
8 from time to time in any manner not inconsistent with this Article. Copies of all such
9 rules and regulations adopted subsequently to the filing of the certificate of
10 organization, and of all amendments so made by the council, shall be certified to the
11 Chief Justice of the Supreme Court of North Carolina, entered by it upon its minutes,
12 and published in the next ensuing number of the North Carolina ~~Reports~~ Reports and in
13 the North Carolina Administrative Code: Provided, that the court may decline to have so
14 entered upon its minutes any of such rules, regulations and amendments which in the
15 opinion of the Chief Justice are inconsistent with this Article."

16 Sec. 7. G.S. 143B-30.1 reads as rewritten:

17 "**§ 143B-30.1. ~~Administrative~~ Rules Review Commission created.**

18 The ~~Administrative~~ Rules Review Commission is created. The Commission shall
19 consist of eight members to be appointed by the General Assembly, four upon the
20 recommendation of the President of the Senate, and four upon the recommendation of
21 the Speaker of the House of Representatives. These appointments shall be made in
22 accordance with G.S. 120-121, and vacancies in these appointments shall be filled in
23 accordance with G.S. 120-122. All appointees shall serve two-year terms. Any
24 appointment to fill a vacancy on the Commission created by the resignation, dismissal,
25 ineligibility, death, or disability of any member shall be for the balance of the unexpired
26 term. The chairman shall be elected by the Commission, and he shall designate the
27 times and places at which the Commission shall meet. The Commission shall meet at
28 least once a month. A quorum of the Commission shall consist of five members of the
29 Commission. The Commission is an independent agency under Article III, Section 11 of
30 the Constitution.

31 Members of the Commission who are not officers or employees of the State shall
32 receive compensation of two hundred dollars (\$200.00) for each day or part of a day of
33 service plus reimbursement for travel and subsistence expenses at the rates specified in
34 G.S. 138-5. Members of the Commission who are officers or employees of the State
35 shall receive reimbursement for travel and subsistence at the rate set out in G.S. 138-6.

36 Any other provision of the General Statutes notwithstanding, the appointment of
37 employees of the Commission shall be made by the Commission. Nothing in this Article
38 shall be construed to exempt employees of the Commission from the State Personnel
39 Act.

40 The Commission shall prescribe procedures and forms to be used in submitting rules
41 to the Commission for review."

42 Sec. 8. G.S. 143B-30.2 reads as rewritten:

43 "**§ 143B-30.2. ~~Review of rules~~ Purpose of Commission.**

1 The Rules Review Commission reviews administrative rules in accordance with
2 Chapter 150B of the General Statutes.

3 ~~(a) Rules adopted by an agency on or after September 1, 1986, shall be submitted~~
4 ~~to the Administrative Rules Review Commission, which shall review the rule to~~
5 ~~determine whether it:~~

6 ~~(1) Is within the authority delegated to the agency by the General Assembly;~~

7 ~~(2) Is clear and unambiguous;~~

8 ~~(3) Is reasonably necessary to enable the administrative agency to perform a~~
9 ~~function assigned to it by statute or to enable or facilitate the implementation of a~~
10 ~~program or policy in aid of which the rule was adopted.~~

11 ~~Any rule filed by the 20th of a month shall be reviewed by the Commission by the~~
12 ~~last day of the next calendar month. Any rule filed after the 20th of a month shall be~~
13 ~~reviewed by the Commission by the last day of the second subsequent calendar month.~~
14 ~~The Commission may extend the time for review of a rule by a period of up to 70 days~~
15 ~~to obtain additional information on the rule. The Commission shall file notice of the~~
16 ~~extension of time for review of a rule with the agency and the Director of the Office of~~
17 ~~Administrative Hearings. A rule may not be presented for filing with the Director of the~~
18 ~~Office of Administrative Hearings under G.S. 150B-59 unless the rule has been~~
19 ~~reviewed by the Commission as provided in this section.~~

20 ~~(b) If the Commission reviews a rule and determines that it is within the authority~~
21 ~~delegated to the agency, is clear and unambiguous, and is reasonably necessary, the~~
22 ~~Commission shall note its approval, notify the agency, and file the rule with the Director~~
23 ~~of the Office of Administrative Hearings under G.S. 150B-59, and the rule shall become~~
24 ~~effective as provided in that section.~~

25 ~~(c) If the Commission finds that an agency did not act within the authority~~
26 ~~delegated to it in promulgating a rule or a part of a rule, or that a rule is not clear and~~
27 ~~unambiguous, or that a rule is unnecessary, the Commission shall object and delay the~~
28 ~~filing of the rule or part of the rule under G.S. 150B-59 for a period not to exceed 90~~
29 ~~days. The Commission shall send to the agency, the Governor, the President of the~~
30 ~~Senate, the Speaker of the House of Representatives, and the Director of the Office of~~
31 ~~Administrative Hearings, a written report of the objection and delay of the rule or its~~
32 ~~part and the reasons for the delay. An agency may not present a rule or part of a rule that~~
33 ~~has been delayed to the Director of the Office of Administrative Hearings for filing~~
34 ~~under G.S. 150B-59, and a rule or its part that is delayed is not "effective," as defined in~~
35 ~~G.S. 150B-2(2a).~~

36 ~~(d) Within 30 days after receipt of the Commission's written report as authorized~~
37 ~~by (c), the agency shall either (1) revise the rule to remove the cause of the objections of~~
38 ~~the Commission and return the revised rule to the Commission or (2) return the rule to~~
39 ~~the Commission without change with the Commission's objections attached; provided,~~
40 ~~however, that in the case of a board, committee, council, or commission the response is~~
41 ~~due within 30 days after receipt of the Commission's written report or within 10 days~~
42 ~~following the next regularly scheduled meeting of the board, committee, council, or~~
43 ~~commission, whichever time period is greater. The Commission shall determine~~
44 ~~whether a revision removes its objections to the rule.~~

1 (e) If the Commission determines that a revision of a rule has removed the
2 Commission's objections, the Commission shall note its approval and return the rule to
3 the agency. The agency may then file the rule with the Director of the Office of
4 Administrative Hearings under G.S. 150B-59, and the rule shall become effective as
5 provided in that section.

6 (f) Regardless of whether the agency returns the rule to the Commission without
7 change instead of revising the rule to remove the Commission's objections or whether
8 the Commission determines that a revision of a rule has not removed its objections, the
9 Commission shall note its review of and objection to the rule once 90 days have passed
10 since the Commission objected and delayed the filing of the rule or part of the rule
11 pursuant to G.S. 143B-30.2(e) and shall return the rule to the agency. The agency may
12 then file the rule with the Director of the Office of Administrative Hearings under G.S.
13 150B-59, and the rule shall become effective as provided in that section. If the agency
14 did not remove the Commission's objections to the rule or part of the rule, the
15 Commission may send to the President of the Senate and the Speaker of the House of
16 Representatives a written report of its objections to the rule. Thereafter, if the General
17 Assembly enacts legislation disapproving the rule, the rule shall no longer be effective.

18 The Legislative Services Officer shall send a copy of any law disapproving a rule to
19 the agency and the Director of the Office of Administrative Hearings as soon as a copy
20 is available.

21 (g) While the filing of a rule or its part is delayed, the agency that promulgated it
22 may not adopt another rule, including a temporary rule, that has substantially identical
23 provisions to those for which the Commission delayed the filing of the original rule or
24 part of a rule.

25 (h) The filing of an amendment to a rule places the entire rule before the
26 Commission for its review.

27 (i) Rules adopted in accordance with the procedure in G.S. 150B-13 shall be
28 reviewed by the Commission and are subject to objection as provided in (c).

29 The Commission shall review the reasons given for the adoption of a temporary rule
30 and may object to the rule due to the agency's failure to make the finding required by
31 G.S. 150B-13."

32 Sec. 9. G.S. 147-16.1 reads as rewritten:

33 **"§ 147-16.1. Publication of executive orders.**

34 Executive orders of the Governor shall be filed and published as provided by Article 5 of
35 Chapter 150B of the General Statutes. The Governor must submit Executive Orders to the
36 Secretary of State, who must compile, index, and publish the Executive Orders. The
37 Governor's office shall also send a copy of each executive order to the President of the
38 Senate, to the Speaker of the House of Representatives, to the Principal Clerk of the
39 House of Representatives and to the Principal Clerk of the Senate."

40 Sec. 10. G.S. 148-11 reads as rewritten:

41 **"§ 148-11. Authority to make regulations.**

42 The Secretary shall adopt rules for the government of the State prison system and
43 shall file and publish such rules in accordance with the provisions of Article 5 of
44 Chapter 150B. In the case of temporary rules, such rules shall become effective

1 ~~immediately upon adoption by the Secretary and shall be filed in accordance with G.S.~~
2 ~~150B-13 within two working days of adoption. Rules adopted by the Secretary to~~
3 ~~govern the State prison system must be adopted in accordance with Chapter 150B of the~~
4 ~~General Statutes.~~ The Secretary shall have such portion of these rules and regulations
5 as pertain to enforcing discipline read to every prisoner when received in the State
6 prison system and a printed copy of these rules and regulations shall be made available
7 to the prisoners."

8 Sec. 11. Section 19 of Chapter 746 of the 1985 Session Laws reads as
9 rewritten:

10 "Sec. 19. This act is effective upon ratification, except Sections 1, 4, 5, 6, 8, 13, 14,
11 15, 16, 17, 18, and 18.1. Sections 1, 4, 8, 13, 14, 15, 16, 17, and 18 shall become
12 effective January 1, 1986. Sections 5 and 6 shall become effective 30 days from the
13 date the Supreme Court issues an advisory opinion on the constitutionality of those
14 sections unless the opinion states that those sections are unconstitutional, in which event
15 those sections shall not become effective. Section 18.1 shall become effective only if
16 the Supreme Court issues an advisory opinion that the appointment of the chief hearing
17 officer by the Chief Justice is unconstitutional and shall become effective on the date
18 that opinion is issued. ~~This act.~~ All but Section 5 of this act shall expire January 1, 1992,
19 and shall not be effective on or after that date. This act shall not affect contested cases
20 commenced before January 1, 1986."

21 Sec. 12. This act shall become effective October 1, 1989. The procedures in
22 G.S. 150B, Article 6, as set forth in this act, shall apply to all rules for which a notice of
23 rule making is published in the North Carolina Register on or after that date, and to all
24 rules that do not require publication of a notice of rule making and are adopted on or
25 after that date.