

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 860

Short Title: APA Technical Changes.

(Public)

Sponsors: Senator Johnson of Wake.

Referred to: Judiciary III.

April 12, 1989

A BILL TO BE ENTITLED

AN ACT TO REQUIRE ADMINISTRATIVE LAW JUDGES TO MAKE FINAL DECISIONS IN CERTAIN CONTESTED CASES UNDER THE ADMINISTRATIVE PROCEDURE ACT AND TO MAKE UNIFORM THE JUDICIAL REVIEW OF ADMINISTRATIVE DECISIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 150B-1 reads as rewritten:

"§ 150B-1. Policy and scope.

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

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

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

(d) The following are specifically exempted from the provisions of this Chapter: ~~Chapter~~ Chapter except Article 5, which shall apply: the Administrative Rules Review Commission, the Employment Security Commission, the Industrial Commission, the Occupational Safety and Health Review Board in all actions that do not involve agricultural employers, and the Utilities Commission.

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

3 The Department of Human Resources is exempt from this Chapter in exercising its
4 authority over the Camp Butner reservation granted in Article 6 of Chapter 122C of the
5 General Statutes.

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

8 Articles 2 and 3 of this Chapter shall not apply to the Department of Revenue.
9 Except as provided in Chapter 136 of the General Statutes, Articles 2 and 3 of this
10 Chapter do not apply to the Department of Transportation.

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

18 Except as provided in G.S. 150B-40(e), Article 3 of this Chapter shall not apply to
19 agencies governed by the provisions of Article 3A of this Chapter, as set out in G.S.
20 150B-38(a).

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

23 Article 2 of this Chapter shall not apply to the North Carolina Low-Level
24 Radioactive Waste Management Authority in administering the provisions of G.S.
25 104G-10 and G.S. 104G-11. Articles 3 and 3A of this Chapter shall not apply to the
26 North Carolina Low-Level Radioactive Waste Management Authority in administering
27 the provisions of G.S. 104G-9, 104G-10, and 104G-11."

28 Sec. 2. G.S. 150B-2(2b) is repealed.

29 Sec. 3. G.S. 150B-23(a) reads as rewritten:

30 "(a) ~~A-Except as provided in Article 3A,~~ a contested case shall be commenced by
31 filing a petition with the Office of Administrative Hearings ~~and, except as provided in~~
32 ~~Article 3A of this Chapter,~~ and shall be conducted by that Office. The party who files the
33 petition shall also serve a copy of the petition on all other parties and shall file a
34 certificate of service together with the petition. Any petition filed by a party other than
35 an agency shall be verified or supported by affidavit and shall state facts tending to
36 establish that the agency named as the respondent has deprived the petitioner of
37 property, has ordered the petitioner to pay a fine or civil penalty, or has otherwise
38 substantially prejudiced the petitioner's rights and that the agency:

39 (1) Exceeded its authority or jurisdiction;

40 (2) Acted erroneously;

41 (3) Failed to use proper procedure;

42 (4) Acted arbitrarily or capriciously; or

43 (5) Failed to act as required by ~~law~~ the Constitution, legislative enactment
44 or rule.

1 The parties in a contested case shall be given an opportunity for a hearing without
2 undue delay. Any person aggrieved may commence a contested case hereunder.

3 A local government employee, applicant for employment, or former employee to
4 whom Chapter 126 of the General Statutes applies may commence a contested case
5 under this Article in the same manner as any other petitioner. The case shall be
6 conducted in the Office of Administrative Hearings in the same manner as other
7 contested cases under this Article, ~~except that the decision of the State Personnel~~
8 ~~Commission shall be advisory only and not binding on the local appointing authority, unless (1)~~
9 ~~the employee, applicant, or former employee has been subjected to discrimination~~
10 ~~prohibited by Article 6 of Chapter 126 of the General Statutes or (2) applicable federal~~
11 ~~standards require a binding decision. In these two cases, the State Personnel Commission's~~
12 ~~decision shall be binding.~~ Article."

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

14 "**§ 150B-26. Consolidation.**

15 When contested cases involving a common question of law or fact or multiple
16 proceedings involving the same or related parties are pending, the ~~Director~~ Chief
17 Administrative Law Judge of the Office of Administrative Hearings may order a joint
18 hearing of any matters at issue in the cases, order the cases consolidated, or make other
19 orders to reduce costs or delay in the proceedings."

20 Sec. 5. G.S. 150B-32 reads as rewritten:

21 "**§ 150B-32. Designation of administrative law judge.**

22 (a) The ~~Director~~ Chief Administrative Law Judge of the Office of Administrative
23 Hearings shall assign himself or another administrative law judge to preside over a
24 contested case.

25 (a1) Repealed by Sessions Laws 1985 (Reg. Sess., 1986), c. 1022, s. 1(15),
26 effective July 15, 1986.

27 (b) On the filing in good faith by a party of a timely and sufficient affidavit of
28 personal bias or disqualification of an administrative law judge, the administrative law
29 judge shall determine the matter as a part of the record in the case, and this
30 determination shall be subject to judicial review at the conclusion of the proceeding.

31 (c) When an administrative law judge is disqualified or it is impracticable for
32 him to continue the hearing, the ~~Director~~ Chief Administrative Law Judge shall assign
33 another administrative law judge to continue with the case unless it is shown that
34 substantial prejudice to any party will result, in which event a new hearing shall be held
35 or the case dismissed without prejudice."

36 Sec. 6. G.S. 150B-34 reads as rewritten:

37 "**§ 150B-34. ~~Recommended decision~~ Decision or order of administrative law judge.**

38 (a) ~~Except as provided in G.S. 150B-36(e), in~~ In each contested case the
39 administrative law judge shall make a ~~recommended~~ final decision or order that contains
40 findings of fact and conclusions of law.

41 (b) ~~After hearing the contested case and prior to issuing a recommended decision,~~
42 ~~the administrative law judge shall give each party an opportunity to file proposed~~
43 ~~findings of fact and to present written arguments to him.~~ A copy of the decision or order
44 shall be served upon each party personally or by certified mail addressed to the party at

1 the latest address given by the party and a copy shall be furnished to his attorney of
2 record."

3 Sec. 7. G.S. 150B-35 reads as rewritten:

4 **"§ 150B-35. No ex parte communication; exceptions.**

5 Unless required for disposition of an **ex parte** matter authorized by law, ~~neither the~~
6 administrative law judge assigned to a contested case ~~nor a member or employee of the~~
7 ~~agency making a final decision in the case may~~ not communicate, directly or indirectly, in
8 connection with any issue of fact, or question of law, with any person or party or his
9 representative, except on notice and opportunity for all parties to participate. Nothing in
10 this section shall be interpreted to prohibit necessary communication between the
11 administrative law judge and any employee of the Office of Administrative Hearings
12 regarding the contested case."

13 Sec. 8. G.S. 150B-36 is repealed.

14 Sec. 9. G.S. 150B-37 reads as rewritten:

15 **"§ 150B-37. Official record.**

16 (a) In a ~~any~~ contested case, ~~case in which~~ judicial review of a final decision made
17 under G.S. 150B-34 is sought under Article 4 of this Chapter, the Office of
18 Administrative Hearings shall prepare an official record of the case that includes:

19 (1) Notices, pleadings, motions, and intermediate rulings;

20 (2) Questions and offers of proof, objections, and rulings thereon;

21 (3) ~~Evidence~~ Documentary evidence presented;

22 (4) Matters officially noticed, except matters so obvious that a statement
23 of them would serve no useful purpose; and

24 (5) Repealed by Session Laws 1987, c. 878, s. 25, effective August 14,
25 1987.

26 (6) The administrative law judge's ~~recommended~~ decision, or order.

27 (b) Proceedings at which oral evidence is presented shall be recorded, but need
28 not be transcribed unless requested by a party. Each party shall bear the cost of the
29 transcript or part thereof or copy of said transcript or part thereof which said party
30 requests, and said transcript or part thereof shall be added to the official record as an
31 exhibit.

32 ~~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~~
34 ~~recommended decision to each party."~~

35 Sec. 10. G.S. 150B-40(e) reads as rewritten:

36 "(e) When a majority of an agency is unable or elects not to hear a contested case,
37 the agency shall apply to the ~~Director~~ Chief Administrative Law Judge of the Office of
38 Administrative Hearings for the designation of an administrative law judge to preside at
39 the hearing of a contested case under this Article. Upon receipt of the application, the
40 ~~Director~~ Chief Administrative Law Judge shall, without undue delay, assign an
41 administrative law judge to hear the case.

42 ~~The~~ Except as otherwise provided in this Article, the provisions of this Article,
43 Article 3, and the hearing procedures in Chapter 3, Title 26 of the North Carolina
44 Administrative Code, rather than the provisions of Article 3, this Article, shall govern a

1 contested case in which the agency requests an administrative law judge from the Office
2 of Administrative Hearings.

3 The administrative law judge assigned to hear a contested case under this Article
4 shall sit in place of the agency and shall ~~have the authority of the presiding officer in a~~
5 ~~contested case under this Article. The administrative law judge shall make a proposal for~~
6 ~~decision, recommended decision which shall contain ~~proposed~~ findings of fact and~~
7 ~~proposed~~ conclusions of law.

8 ~~An~~ The administrative law judge shall stay any contested case under this Article on
9 motion of an agency which is a party to the contested case, if the agency shows by
10 supporting affidavits that it is engaged in other litigation or administrative proceedings,
11 by whatever name called, with or before a federal agency, and this other litigation or
12 administrative proceedings will determine the position, in whole or in part, of the
13 agency in the contested case. At the conclusion of the other litigation or administrative
14 proceedings, the contested case shall proceed and be determined as expeditiously as
15 possible.

16 The agency may make its final decision only after the administrative law judge's
17 ~~proposal for recommended decision is served on the parties, and an opportunity is given~~
18 ~~to each party to file exceptions and proposed findings of fact and to present oral and~~
19 ~~written arguments to the agency."~~

20 Sec. 11. G.S. 150B-45 reads as rewritten:

21 "**§ 150B-45. Procedure for seeking review; waiver.**

22 (a) ~~To obtain judicial review of a final decision under this Article, the person~~
23 ~~seeking review must file a petition in the Superior Court of Wake County or in the~~
24 ~~superior court of the county where the person resides.~~

25 ~~The person seeking review must file the petition within 30 days after the person is~~
26 ~~served with a written copy of the decision. A person who fails to file a petition within~~
27 ~~the required time waives the right to judicial review under this Article. For good cause~~
28 ~~shown, however, the superior court may accept an untimely petition. in a contested case~~
29 ~~in which an administrative law judge made the decision under Article 3 or a~~
30 ~~recommended decision under Article 3A, the person seeking review must file a notice of~~
31 ~~appeal in the Court of Appeals.~~

32 (b) To obtain judicial review of a final agency decision in a contested case in
33 which an administrative law judge did not make a final decision or a recommended
34 decision the person seeking review must file a petition in the Superior Court of Wake
35 County or in the superior court of the county where the person resides.

36 (c) The person seeking review must file the notice of appeal or petition, within
37 30 days after the person is served personally or by certified mail with a written copy of
38 the decision. A person who fails to file a notice of appeal or petition, within the required
39 time waives the right to judicial review under this Article. For good cause shown,
40 however, the Court of Appeals or the superior court, respectively, may accept an
41 untimely notice of appeal or petition."

42 Sec. 12. G.S. 150B-46 reads as rewritten:

43 "**§ 150B-46. Contents of notice or petition; copies served on all parties;**
44 **intervention.**

1 (a) A notice of appeal filed in the Court of Appeals shall be in the form and
2 contain the information required by the rules of procedure governing practice in that
3 Court.

4 (b) A petition filed in superior court shall state explicitly the exceptions taken to
5 the decision and the relief sought. The petition shall explicitly state what exceptions are
6 taken to the decision or procedure and what relief the petitioner seeks. Within 10 days
7 after ~~the a~~ petition is filed with the in superior court, the party person seeking the review
8 shall serve copies of the petition by personal service or by certified mail upon all who
9 were parties of record to the administrative proceedings. Names and addresses of such
10 parties shall be furnished to the petitioner by the agency upon request. Any party to the
11 administrative proceeding may become a party to the review proceedings by notifying
12 the court within 10 days after receipt of the copy of the petition.

13 Any person aggrieved may petition to become a party by filing a motion to intervene
14 as provided in G.S. 1A-1, Rule 24."

15 Sec. 13. G.S. 150B-47 reads as rewritten:

16 "**§ 150B-47. Records filed with clerk of superior forwarded to reviewing court;**
17 **contents of records; costs.**

18 Within 30 days after receipt of the copy of ~~the a~~ petition for review, review in
19 superior court of a final decision made under G.S. 150B-42(a), or within such additional
20 time as the court may allow, the agency that made the final decision in the contested
21 case shall transmit to the reviewing court the original or a certified copy of the official
22 record in the contested case under review together with: ~~(i) any exceptions, proposed~~
23 ~~findings of fact, or written arguments submitted to the agency in accordance with G.S. 150B-~~
24 ~~36(a); and (ii) the agency's final decision or order.~~ review. With the permission of the court,
25 the record may be shortened by stipulation of all parties to the review proceedings. Any
26 party unreasonably refusing to stipulate to limit the record may be taxed by the court for
27 such additional costs as may be occasioned by the refusal. The court may require or
28 permit subsequent corrections or additions to the record when deemed desirable."

29 Sec. 14. G.S. 150B-48 reads as rewritten:

30 "**§ 150B-48. Stay of decision.**

31 At any time before or during the review proceeding, ~~the a~~ person aggrieved may
32 apply to the reviewing court for an order staying the operation of the administrative
33 decision pending the outcome of the review. The court may grant or deny the stay in its
34 discretion upon such terms as it deems ~~proper and subject to the provisions of G.S. 1A-1,~~
35 Rule 65, proper.

36 Sec. 15. G.S. 150B-49 reads as rewritten:

37 "**§ 150B-49. New evidence.**

38 An aggrieved person who files a petition in ~~the superior court~~ for review of a final
39 decision entered under G.S. 150B-42(a) may apply to the court to present additional
40 evidence. If the court is satisfied that the evidence is material to the issues, is not
41 merely cumulative, and could not reasonably have been presented at the administrative
42 hearing, the court may remand the case so that additional evidence can be taken. ~~If an~~
43 ~~administrative law judge did not make a recommended decision in the case, the~~ The court
44 shall remand the case to the agency that conducted the administrative hearing. After

1 hearing the evidence, the agency may affirm or modify its previous findings of fact and
2 final decision. ~~If an administrative law judge made a recommended decision in the case, the~~
3 ~~court shall remand the case to the administrative law judge. After hearing the evidence, the~~
4 ~~administrative law judge may affirm or modify his previous findings of fact and recommended~~
5 ~~decision. The administrative law judge shall forward a copy of his decision to the agency that~~
6 ~~made the final decision, which in turn may affirm or modify its previous findings of fact and~~
7 ~~final decision.—The additional evidence and any affirmation or modification of a~~
8 ~~recommended decision or the final decision shall be made part of the official record."~~

9 Sec. 16. G.S. 150B-51 reads as rewritten:

10 **"§ 150B-51. Scope of review.**

11 (a) ~~Initial Determination in Certain Cases. In reviewing a final decision in a~~
12 ~~contested case in which an administrative law judge made a recommended decision, the~~
13 ~~court shall make two initial determinations. First, the court shall determine whether the~~
14 ~~agency heard new evidence after receiving the recommended decision. If the court~~
15 ~~determines that the agency heard new evidence, the court shall reverse the decision or~~
16 ~~remand the case to the agency to enter a decision in accordance with the evidence in the~~
17 ~~official record. Second, if the agency did not adopt the recommended decision, the~~
18 ~~court shall determine whether the agency's decision states the specific reasons why the~~
19 ~~agency did not adopt the recommended decision. If the court determines that the~~
20 ~~agency did not state specific reasons why it did not adopt a recommended decision, the~~
21 ~~court shall reverse the decision or remand the case to the agency to enter the specific~~
22 ~~reasons.~~

23 (b) ~~Standard of Review. After making the determinations, if any, required by~~
24 ~~subsection (a), the~~ The court reviewing a final decision may affirm the decision of the
25 agency or remand the case for further proceedings. It may also reverse or modify the
26 agency's decision if the substantial rights of the ~~petitioners~~ petitioner may have been
27 prejudiced because the ~~agency's~~ findings, inferences, conclusions, or decisions are:

- 28 (1) In violation of constitutional provisions;
- 29 (2) In excess of ~~the~~ statutory authority or ~~jurisdiction of the agency;~~
30 jurisdiction;
- 31 (3) Made upon unlawful procedure;
- 32 (4) Affected by other error of law;
- 33 (5) Unsupported by substantial evidence admissible under G.S. 150B-
34 29(a), 150B-30, or 150B-31 in view of the entire record as submitted;
35 or
- 36 (6) Arbitrary or capricious."

37 Sec. 17. G.S. 150B-52 reads as rewritten:

38 **"§ 150B-52. Appeal; stay of court's decision.**

39 A party to a review proceeding in a superior court may appeal to the appellate
40 division from the final judgment of the superior court as provided in G.S. 7A-27. A
41 party to a review proceeding before the Court of Appeals may appeal to the Supreme
42 Court as provided in G.S. 7A-31. Pending the outcome of an appeal, an appealing party
43 may apply to the court that issued the judgment under appeal for a stay of that judgment
44 or a stay of the administrative decision that is the subject of the appeal, as appropriate."

1 Sec. 18. G.S. 7A-29(a) reads as rewritten:

2 "(a) From any final order or decision of the North Carolina Utilities Commission
3 not governed by subsection (b), ~~the Department of Human Resources pursuant to G.S.~~
4 ~~131E-188(b), the Commissioner of Banks pursuant to Articles 17 and 18 of Chapter 53~~
5 ~~of the General Statutes, the Administrator of Savings and Loans pursuant to Article 3A~~
6 ~~of Chapter 54B of the General Statutes, the North Carolina Industrial Commission, the~~
7 North Carolina State Bar pursuant to G.S. 84-28, or the Property Tax Commission
8 pursuant to G.S. 105-290 and 105-342, ~~the Board of State Contract Appeals pursuant to~~
9 ~~G.S. 143-135.9, or an appeal from the Commissioner of Insurance pursuant to G.S. 58-~~
10 ~~9.4, or from the Governor's Waste Management Board pursuant to G.S. 130A-293 and~~
11 ~~G.S. 104E-6.2, or from a final administrative decision in a contested case subject to G.S.~~
12 150B-32(a) or G.S. 150B-40(e), appeal as of right lies directly to the Court of Appeals."

13 Sec. 19. G.S. 7A-31(a) reads as rewritten:

14 "(a) In any cause in which appeal is taken to the Court of Appeals, except a cause
15 appealed from the North Carolina Industrial Commission, the North Carolina State Bar
16 pursuant to G.S. 84-28, or the Property Tax Commission pursuant to G.S. 105-345, ~~the~~
17 ~~Board of State Contract Appeals pursuant to G.S. 143-135.9, or the Commissioner of Insurance~~
18 ~~pursuant to G.S. 58-9.4, or a motion for appropriate relief or valuation of exempt property~~
19 pursuant to G.S. 7A-28, the Supreme Court may, in its discretion, on motion of any
20 party to the cause or on its own motion, certify the cause for review by the Supreme
21 Court, either before or after it has been determined by the Court of Appeals. A cause
22 appealed to the Court of Appeals from any of the administrative bodies listed in the
23 preceding sentence may be certified in similar fashion, but only after determination of
24 the cause in the Court of Appeals. The effect of such certification is to transfer the cause
25 from the Court of Appeals to the Supreme Court for review by the Supreme Court. If
26 the cause is certified for transfer to the Supreme Court before its determination in the
27 Court of Appeals, review is not had in the Court of Appeals but the cause is forthwith
28 transferred for review in the first instance by the Supreme Court. If the cause is certified
29 for transfer to the Supreme Court after its determination by the Court of Appeals, the
30 Supreme Court reviews the decision of the Court of Appeals.

31 Except in motions within the purview of G.S. 7A-28, the State may move for
32 certification for review of any criminal cause, but only after determination of the cause
33 by the Court of Appeals."

34 Sec. 20. G.S. 53-215 reads as rewritten:

35 "**§ 53-215. Appeal of Commissioner's decision.**

36 A person aggrieved by a decision of the Commissioner in a proceeding under G.S.
37 53-211, 53-212(2) or 53-227.1 may appeal the decision to the State Banking
38 Commission by filing a notice of appeal with the Commission within 30 days after
39 receiving the Commissioner's decision. Any aggrieved party in a proceeding under G.S. 53-
40 211, G.S. 53-212(2) or G.S. 53-227.1 may, within 30 days after final decision of the
41 Commissioner, appeal his decision to the State Banking Commission.—The State Banking
42 Commission, within 30 days of receipt of the notice of appeal, shall approve, disapprove
43 or modify the Commissioner's decision—decision as provided in Article 3A of Chapter
44 150B. Failure of the State Banking Commission to act within 30 days of receipt of

1 notice of appeal shall constitute a final decision of the State Banking Commission
2 approving the decision of the Commissioner. ~~Notwithstanding any other provision of law,~~
3 ~~any aggrieved party to a decision of the State Banking Commission, within 30 days after final~~
4 ~~decision of the Commission, may appeal directly to the North Carolina Court of Appeals for~~
5 ~~judicial review on the record. Article 4 of Chapter 150B governs judicial review of a~~
6 ~~decision of the State Banking Commission."~~

7 Sec. 21. G.S. 53-231 reads as rewritten:

8 **"§ 53-231. Appeal of Commissioner's decision.**

9 ~~Notwithstanding any other provision of law, any aggrieved party may, within 30~~
10 ~~days after final decision of the Commissioner and by written notice to the~~
11 ~~Commissioner, appeal directly to the North Carolina Court of Appeals for judicial~~
12 ~~review on the record. In the event of an appeal, the Commissioner shall certify the~~
13 ~~record to the Clerk of the Court of Appeals within 30 days thereafter. Such record shall~~
14 ~~include all memoranda, briefs and any other documents, data, information or evidence~~
15 ~~submitted by any party to such proceeding except for material such as trade secrets~~
16 ~~normally not available through commercial publication for which such party has made a~~
17 ~~claim of confidentiality and requested exclusion from the record which the~~
18 ~~Commissioner deems confidential. All factual information contained in any report of~~
19 ~~examination or investigation submitted to or obtained by the Commissioner's staff shall~~
20 ~~also be made a part of the record unless deemed confidential by the Commissioner.~~
21 ~~Article 4 of Chapter 150B governs judicial review of a decision of the Commission in a~~
22 ~~proceeding under this Article. Before seeking judicial review, a person aggrieved by a~~
23 ~~final decision of the Commissioner in a proceeding under G.S. 53-277.1 shall appeal the~~
24 ~~decision to the Commission as provided in G.S. 53-215."~~

25 Sec. 22. G.S. 54B-48.7 reads as rewritten:

26 **"§ 54B-48.7. Appeal of Administrator's decision.**

27 ~~Notwithstanding any other provision of law, any aggrieved party in a proceeding~~
28 ~~under G.S. 54B-48.3 or G.S. 54B-48.4(2) may, within 30 days after final decision of the~~
29 ~~Administrator and by written notice to the Administrator, appeal directly to the North~~
30 ~~Carolina Court of Appeals for judicial review on the record. In the event of an appeal,~~
31 ~~the Administrator shall certify the record to the Clerk of the Court of Appeals within 30~~
32 ~~days after filing of the appeal. Article 4 of Chapter 150B governs judicial review of a~~
33 ~~final decision of the Administrator in a proceeding under G.S. 54B-48.3 or G.S. 54B-~~
34 ~~48.4(2)."~~

35 Sec. 23. G.S. 54B-71 reads as rewritten:

36 **"§ 54B-71. Judicial review.**

37 ~~Any person or State association against whom a cease and desist order is issued or a~~
38 ~~fine is imposed may have such order or fine reviewed by a court of competent~~
39 ~~jurisdiction. Except as otherwise provided, an appeal may be made only within 30 days~~
40 ~~of the issuance of the order or the imposition of the fine, whichever is later. Article 4 of~~
41 ~~Chapter 150B governs judicial review of a cease and desist order issued under G.S.~~
42 ~~54B-59 or a penalty imposed under this Article."~~

43 Sec. 24. G.S. 58-9.3 reads as rewritten:

44 **"§ 58-9.3. Court review of orders and decisions.**

~~(a) Any order or decision made, issued or executed by the Commissioner, except an order to make good an impairment of capital or surplus or a deficiency in the amount of admitted assets and except an order or decision that the premium rates charged or filed on all or any class of risks are excessive, inadequate, unreasonable, unfairly discriminatory or are otherwise not in the public interest or that a classification assignment is unwarranted, unreasonable, improper, unfairly discriminatory, or not in the public interest, shall be subject to review in the Superior Court of Wake County on petition by any person aggrieved filed within 30 days from the date of the delivery of a copy of the order or decision made by the Commissioner upon such person. A copy of such petition for review as filed with and certified to by the clerk of said court shall be served upon the Commissioner or in his absence upon someone in active charge of the Department within five days after the filing thereof. If such petition for review is not filed within the said 30 days, the parties aggrieved shall be deemed to have waived the right to have the merits of the order or decision reviewed and there shall be no trial of the merits thereof by any court to which application may be made by petition or otherwise, to enforce or restrain the enforcement of the same.~~

~~(b) The Commissioner shall within 30 days, unless the time be extended by order of court, after the service of the copy of the petition for review as provided in subsection (a) of this section, prepare and file with the clerk of the Superior Court of Wake County a complete transcript of the record of the hearing, if any, had before him, and a true copy of the order or decision duly certified. The order or decision of the Commissioner if supported by substantial evidence shall be presumed to be correct and proper. The court may change the place of hearing,~~

~~(1) Upon consent of the parties; or~~

~~(2) When the convenience of witnesses and the ends of _____ justice would be promoted by the change; or~~

~~(3) When the judge has at any time been interested as a _____ party or counsel.~~

~~The cause shall be heard by the trial judge as a civil case upon transcript of the record for review of findings of fact and errors of law only. It shall be the duty of the trial judge to hear and determine such petition with all convenient speed and to this end the cause shall be placed on the calendar for the next succeeding term for hearing ahead of all other cases except those already given priority by law. If on the hearing before the trial judge it shall appear that the record filed by the Commissioner is incomplete, he may by appropriate order direct the Commissioner to certify any or all parts of the record so omitted.~~

~~(c) The trial judge shall have jurisdiction to affirm or to set aside the order or decision of the Commissioner and to restrain the enforcement thereof.~~

~~(d) Appeals from all final orders and judgments entered by the superior court in reviewing the orders and decisions of the Commissioner may be taken to the appellate division of the General Court of Justice by any party to the action as in other civil cases.~~

~~(e) The commencement of proceedings under this section shall not operate as a stay of the Commissioner's order or decision, unless otherwise ordered by the court.~~

1 Article 4 of Chapter 150B of the General Statutes governs judicial review of an order or
2 decision of the Commissioner."

3 Sec. 25. G.S. 58-9.4, 58-9.5, and 58-9.6 are repealed.

4 Sec. 26. G.S. 131E-188 reads as rewritten:

5 **"§ 131E-188. Administrative and judicial review.**

6 (a) After a decision of the Department to issue, deny or withdraw a certificate of
7 need or exemption, any affected person, as defined in subsection (c) of this section,
8 shall be entitled to a contested case hearing under Article 3 of Chapter 150B of the
9 General Statutes. A petition for a contested case shall be filed within 30 days after the
10 Department makes its decision. When a petition is filed, the Department shall send
11 notification of the petition to the proponent of each application that was reviewed with
12 the application for a certificate of need that is the subject of the petition.

13 A contested case shall be conducted in accordance with the following timetable:

- 14 (1) An administrative law judge ~~or a hearing officer, as appropriate,~~ shall be
15 assigned within 15 days after a petition is filed.
- 16 (2) The parties shall complete discovery within ~~90~~ 60 days after the
17 assignment of the administrative law ~~judge or hearing officer~~ judge.
- 18 (3) The hearing at which sworn testimony is taken and evidence is
19 presented shall be ~~held~~ commenced within ~~45~~ 60 days after the end of
20 the discovery period.
- 21 (4) The administrative law judge ~~or hearing officer~~ shall make his
22 ~~recommended~~ decision within ~~75~~ 45 days after the hearing.
- 23 (5) ~~The Department shall make its final decision within 30 days of~~
24 ~~receiving the recommended decision.~~

25 The administrative law judge ~~or hearing officer~~ assigned to a case may extend the
26 deadlines in subdivisions (2) ~~through or (3)~~ and the Chief Administrative Law
27 Judge may extend the deadline in subdivision (4) so long as the administrative law
28 judge ~~or hearing officer~~ makes his ~~recommended~~ decision in the case within 270 days after
29 the petition is filed. ~~The Department may extend the deadline in subdivision (5) for up to 30~~
30 ~~days by giving all parties written notice of the extension.~~

31 (a1) As a condition precedent to proceeding with a contested case hearing on the
32 approval of an applicant for a certificate of need, the petitioner shall deposit a bond with
33 the clerk of superior court where the new institutional health service that is the subject
34 of the petition is proposed to be located. The bond shall be secured by cash or its
35 equivalent in an amount equal to five percent (5%) of the cost of the proposed new
36 institutional health service that is the subject of the petition, but may not be less than
37 five thousand dollars (\$5,000) and may not exceed fifty thousand dollars (\$50,000). A
38 petitioner who received approval for a certificate of need and is contesting only a
39 condition in the certificate is not required to file a bond under this subsection.

40 The applicant who received approval for the new institutional health service that is
41 the subject of the petition may bring an action against a bond filed under this subsection
42 in the superior court of the county where the bond was filed. Upon finding that the
43 petition for a contested case was frivolous or filed to delay the applicant, the court may
44 award the applicant part or all of the bond filed under this subsection.

1 (b) ~~Any affected person who was a party in a contested case hearing shall be~~
2 ~~entitled to judicial review of all or any portion of any final decision of the Department~~
3 ~~in the following manner. The appeal shall be to the Court of Appeals as provided in~~
4 ~~G.S. 7A-29(a). The procedure for the appeal shall be as provided by the rules of~~
5 ~~appellate procedure. The appeal of the final decision of the Department shall be taken~~
6 ~~within 30 days of the receipt of the written notice of decision required by G.S. 131E-~~
7 ~~187 and notice of appeal shall be filed with the Division of Facility Services,~~
8 ~~Department of Human Resources and with all other affected persons who were parties~~
9 ~~to the contested hearing. Article 4 of Chapter 150B governs judicial review of a final~~
10 decision in a contested case.

11 (b1) Before filing an appeal of a decision by the Department granting a certificate
12 of need, the affected person shall deposit a bond with the Clerk of the Court of Appeals.
13 The bond shall be secured by cash or its equivalent in an amount equal to five percent
14 (5%) of the cost of the proposed new institutional health service that is the subject of the
15 appeal, but may not be less than five thousand dollars (\$5,000) and may not exceed fifty
16 thousand dollars (\$50,000). A holder of a certificate of need who is appealing only a
17 condition in the certificate is not required to file a bond under this subsection.

18 If the Court of Appeals finds that the appeal was frivolous or filed to delay the
19 applicant, the court shall remand the case to the superior court of the county where a
20 bond was filed for the contested case hearing on the certificate of need. The superior
21 court may award the holder of the certificate of need part or all of the bond. The court
22 shall award the holder of the certificate of need reasonable attorney fees and costs
23 incurred in the appeal to the Court of Appeals.

24 (c) The term 'affected persons' includes: the applicant; the health systems agency
25 for the health service area in which the proposed project is to be located; health systems
26 agencies serving contiguous health service areas or located within the same standard
27 metropolitan statistical area; any person residing within the geographic area served or to
28 be served by the applicant; any person who regularly uses health service facilities within
29 that geographic area; health service facilities and health maintenance organizations
30 (HMOs) located in the health service area in which the project is proposed to be located,
31 which provide services similar to the services of the facility under review; health service
32 facilities and HMOs which, prior to receipt by the agency of the proposal being
33 reviewed, have formally indicated an intention to provide similar services in the future;
34 third party payers who reimburse health service facilities for services in the health
35 service area in which the project is proposed to be located; and any agency which
36 establishes rates for health service facilities or HMOs located in the health service area
37 in which the project is proposed to be located."

38 Sec. 27. G.S. 18B-104 reads as rewritten:

39 **"§ 18B-104. Administrative penalties.**

40 (a) Penalties. – For any violation of the ABC laws, the Commission may take
41 any of the following actions against a permittee:

- 42 (1) Suspend the permittee's permit for a specified period of time not
43 longer than three years;
- 44 (2) Revoke the permittee's permit;

1 (3) Fine the permittee up to five hundred dollars (\$500.00) for the first
 2 violation, up to seven hundred fifty dollars (\$750.00) for the second
 3 violation, and up to one thousand dollars (\$1,000) for the third
 4 violation; or

5 (4) Suspend the permittee's permit under subdivision (1) and impose a fine
 6 under subdivision (3).

7 (b) Compromise. – In any case in which the Commission is entitled to suspend or
 8 revoke a permit, the Commission may accept from the permittee an offer in compromise
 9 to pay a penalty of not more than five thousand dollars (\$5,000). The Commission may
 10 either accept a compromise or revoke a permit, but not both. The Commission may
 11 accept a compromise and suspend the permit in the same case.

12 (c) Fines and Penalties to Treasurer. – All fines and penalties collected under
 13 subsections (a) and (b) shall be remitted by the Commission to the State Treasurer for
 14 the General Fund.

15 (d) Effect on Licenses. – Suspension or revocation of a permit includes automatic
 16 suspension or revocation of any related State or local revenue license.

17 (e) Effect on Other Permits. – Unless some other disposition is ordered by the
 18 Commission, revocation or suspension of a permit under subsection (a) includes
 19 automatic revocation or suspension, respectively, of any other ABC permit held by the
 20 same permittee for the same establishment.

21 (f) Review of Commission Action. – Commission action under this section shall
 22 be by informal procedures in accordance with G.S. 150B-22. A permittee who is
 23 dissatisfied with the action may commence a contested case under Article 3 of Chapter
 24 150B."

25 Sec. 28. G.S. 18B-906 reads as rewritten:

26 "**§ 18B-906. Applicability of Administrative Procedure Act.**

27 (a) ~~Act Applies.~~—An ABC permit is a 'license' within the meaning of G.S. 150A-
 28 ~~2, 150B-2,~~ and a Commission action on issuance, suspension or revocation of an ABC
 29 permit, other than a temporary permit issued under G.S. 18B-905, is a 'contested case'
 30 subject to the provisions of Chapter 150A ~~except as provided in subsection (b).~~ 150B.

31 (b) ~~Exception on Hearing Location.~~—~~Hearings on ABC permits shall be held in~~
 32 ~~Ahoskie, Asheville, Bryson City, Charlotte, Elizabeth City, Fayetteville, Franklin,~~
 33 ~~Goldsboro, Greensboro, Greenville, Hickory, Jacksonville, Kinston, New Bern, Raleigh,~~
 34 ~~Statesville, Wilmington, and Winston-Salem. Hearings shall be held within 100 miles,~~
 35 ~~as best can be determined by the Commission, of the county seat of the county in which~~
 36 ~~the licensed business or proposed business is located. The hearing may be held,~~
 37 ~~however, at any place upon agreement of the Commission and all other parties."~~

38 Sec. 29. G.S. 95-135(j) reads as rewritten:

39 "(j) Notwithstanding any other provision of this section, appeals from citations
 40 and abatement periods that involve agricultural employers and from all types of
 41 penalties that involve agricultural employers shall be subject to the provisions of
 42 Articles 3 and 4 of Chapter 150B. ~~The determination of the Board in accordance with G.S.~~
 43 ~~150B-36 shall be a final agency decision subject to judicial review in accordance with Article 4~~
 44 ~~of Chapter 150B."~~

1 Sec. 30. G.S. 95-138(a) reads as rewritten:

2 "(a) Any employer who willfully or repeatedly violates the requirements of this
3 Article, any standard, rule or order promulgated pursuant to this Article, or regulations
4 prescribed pursuant to this Article, may upon the recommendation of the Director to the
5 Commissioner be assessed by the Commissioner a civil penalty of not more than ten
6 thousand dollars (\$10,000) for each violation. Any employer who has received a citation
7 for a serious violation of the requirements of this Article or any standard, rule, or order
8 promulgated under this Article or of any regulation prescribed pursuant to this Article,
9 shall be assessed by the Commissioner a civil penalty of up to one thousand dollars
10 (\$1,000) for each such violation. If the violation is adjudged not to be of a serious
11 nature, then the employer may be assessed a civil penalty of up to one thousand dollars
12 (\$1,000) for each such violation. Any employer who fails to correct a violation for
13 which a citation has been issued under this Article within the period allowed for its
14 correction (which period shall not begin to run until the date of the final order of the
15 ~~Board~~ in the case of any appeal proceedings in this Article initiated by the employer in
16 good faith and not solely for the delay or avoidance of penalties), may be assessed a
17 civil penalty of not more than one thousand dollars (\$1,000). Such assessment shall be
18 made to apply to each day during which such failure or violation continues. Any
19 employer who violates any of the posting requirements, as prescribed under the
20 provision of this Article, shall be assessed a civil penalty of not more than one thousand
21 dollars (\$1,000) for such violation. The Commissioner upon recommendation of the
22 ~~Director, or the Board in case of an appeal,~~ Director shall have authority to assess all civil
23 penalties provided by this Article, giving due consideration to the appropriateness of the
24 penalty with respect to the size of the business of the employer being charged, the
25 gravity of the violation, the good faith of the employer and the record of previous
26 violations. If the decision of the Director is appealed, the Board or an administrative law
27 judge shall have such authority when making the final agency decision."

28 Sec. 31. G.S. 115C-116 reads as rewritten:

29 "**§ 115C-116. Notice of decisions; mediation, administrative review, and judicial**
30 **review of disagreements.**

31 (a) Notice. – The parent, guardian, or surrogate parent of a child shall be notified
32 promptly when:

- 33 (1) The local educational agency proposes to initiate or change, or refuses
34 to initiate or change, the identification of a child as a child with special
35 needs; or
36 (2) The local educational agency proposes to initiate or change, or refuses
37 to initiate or change, the child's individualized education program.

38 The notice shall be in writing and shall contain a statement advising the parent,
39 guardian, or surrogate parent of the right to review the proposed decision; a statement
40 offering the parent, guardian, or surrogate parent the opportunity for mediation; and a
41 copy of this statute and G.S. 150B-23 through 150B-37 or an explanation of the rights
42 afforded by these statutes. It shall be hand-delivered to the parent, guardian, or
43 surrogate parent or forwarded by certified or registered mail, return receipt requested.

1 (b) Mediation. – Mediation of disputes or disagreements regarding the
2 identification of children with special needs and the provision of special education for
3 children with special needs prior to formal administrative review is encouraged. If a
4 request for formal administrative review has not been filed, the superintendent, upon the
5 request of a parent, guardian, or surrogate parent, shall meet, or designate an assistant or
6 associate superintendent to meet, with the parent, guardian, or surrogate parent to
7 attempt to resolve the dispute or disagreement. The meeting shall be informal and the
8 General Assembly intends that the meeting shall be nonadversarial, as required by G.S.
9 150B-22.

10 (c) Right of Review. – The parent, guardian, or surrogate parent may obtain
11 review of proposed decisions on the following grounds:

- 12 (1) The child has not been identified or has been incorrectly identified as a
13 child with special needs;
- 14 (2) The child's individualized education plan is not appropriate to meet his
15 needs;
- 16 (3) The child's individualized education plan is not being implemented; or
- 17 (4) The child is otherwise being denied a free, appropriate education.

18 In addition, a local educational agency may obtain review as provided by this section if
19 a parent, guardian, or surrogate parent refuses to consent to the evaluation of the child
20 for the purpose of determining whether the child is a child with special needs or for the
21 purpose of developing a free appropriate educational program for the child.

22 (d) Administrative Review. – Except as otherwise provided in this section, the
23 administrative review shall be initiated and conducted in accordance with Article 3 of
24 Chapter 150B of the General Statutes, the Administrative Procedure Act.

25 (e) Scope of Review. – Notwithstanding the provisions of G.S. 150B-23(a) and
26 G.S. 150B-33(b)(9), the issues for review shall be limited to those set forth in
27 subsection (c).

28 (f) Venue of Hearing. – Notwithstanding the provisions of G.S. 150B-24, the
29 hearing shall be conducted in the county where the child attends school or is entitled to
30 enroll pursuant to G.S. 115C-366.

31 (g) Hearing Closed. – Notwithstanding the provisions of G.S. 150B-23(e), the
32 hearing shall be closed to the public unless the parent, guardian, or surrogate parent,
33 prior to the beginning of the hearing, requests in writing that the hearing be open to the
34 public.

35 ~~(h) Recommended Decision. – Following the hearing, the administrative law
36 judge shall make a recommended decision to the State Board of Education. The
37 recommended decision shall conform to and be prepared in accordance with G.S. 150B-
38 34.~~

39 ~~(i) Final Decision by the State Board of Education. – The final decision shall be
40 made by the State Board of Education in accordance with G.S. 150B-36. In its
41 discretion, the State Board may appoint a panel of at least two members of the Board to
42 make the final decision for and on its behalf in accordance with G.S. 150B-36, and if
43 the Board elects to exercise its discretion the decision of the panel shall be the final
44 decision.~~

1 (j) Power to Enforce Final Decision. — ~~The State Board~~ An administrative law
2 judge shall have the power to enforce ~~its~~ a final decision by ordering a local educational
3 agency:

- 4 (1) To provide a child with an appropriate education;
- 5 (2) To place a child in a private school that is approved to provide special
6 education and that can provide the child an appropriate education; or
- 7 (3) To reimburse parents for reasonable private school placement costs in
8 accordance with the provisions of G.S. 115C-115 in the event it
9 determines that the local educational agency did not offer or provide
10 the child with an appropriate education and the private school in which
11 the parent, guardian, or surrogate parent placed the child was an
12 approved school and did provide the child an appropriate education.

13 (k) Judicial Review. — Any party aggrieved by the ~~State Board's~~ final decision
14 may seek judicial review in the State courts as provided in Chapter 150B, Article 4 of
15 the General Statutes, or in federal court as provided in 20 U.S.C. § 1415.

16 (l) Change in Placement. — Upon the filing of a petition, no change may be made
17 in the child's status or program by school officials during the period of the
18 administrative review or subsequent judicial review, unless the parent, guardian, or
19 surrogate parent gives written consent."

20 Sec. 32. G.S. 126-4 reads as rewritten:

21 **"§ 126-4. Powers and duties of State Personnel Commission.**

22 Subject to the approval of the Governor, the State Personnel Commission shall
23 establish policies and rules governing each of the following:

- 24 (1) A position classification plan which shall provide for the classification
25 and reclassification of all positions subject to this Chapter according to
26 the duties and responsibilities of the positions.
- 27 (2) A compensation plan which shall provide for minimum, maximum,
28 and intermediate rates of pay for all employees subject to the
29 provisions of this Chapter.
- 30 (3) For each class of positions, reasonable qualifications, as to age,
31 character, physical condition, and other attributes pertinent to the work
32 to be performed.
- 33 (4) A recruitment program to attract applicants to public employment and
34 determine the relative fitness of applicants for the respective positions.
- 35 (5) Hours and days of work, holidays, vacation, sick leave, and other
36 matters pertaining to the conditions of employment. The legal public
37 holidays established by the Commission as paid holidays for State
38 employees shall include Martin Luther King, Jr.'s, Birthday for all
39 years after 1987. Provided, however, that the Commission shall not
40 provide for a greater number of total paid holidays than were
41 established for the year 1986. The Commission shall not delete
42 Veterans Day as a holiday.
- 43 (6) The appointment, promotion, transfer, demotion and
44 suspension.

- 1 (7) Cooperation with the Department of Public Instruction, the State
 2 Board of Education, the Board of Governors of the University of North
 3 Carolina, and the colleges and universities of the State in developing
 4 pre-service and in-service training programs.
- 5 (7a) The separation of employees.
- 6 (8) The evaluation of employee performance, the granting of salary
 7 increments, and a program of meritorious ~~seriee~~ service awards.
- 8 ~~(9) The investigation of complaints and the issuing of such binding
 9 corrective orders or such other appropriate action concerning
 10 employment, promotion, demotion, transfer, discharge, and
 11 reinstatement in all cases as the Commission shall find justified.~~
- 12 (10) Such other programs and procedures as may be necessary to promote
 13 efficiency of administration and provide for a fair and reasonable
 14 system of personnel administration. This subdivision may not be
 15 construed to authorize the establishment of an incentive pay program.
- 16 ~~(11) In cases where the Commission finds discrimination or orders
 17 reinstatement or back pay whether (i) heard by the Commission or (ii)
 18 appealed for limited review after settlement or (iii) resolved at the
 19 agency level, the assessment of reasonable attorneys' fees and
 20 witnesses' fees against the State agency involved.~~
- 21 (12) Repealed by Session Laws 1987, c. 320, s. 2.
- 22 (13) Repealed by Session Laws 1987, c. 320, s. 3.
- 23 (14) The implementation of G.S. 126-5(e).
- 24 (15) Recognition of State employees, public personnel management, and
 25 management excellence.

26 Such policies and rules shall not limit the power of any elected or appointed
 27 department head, in his discretion and upon his determination that it is in the best
 28 interest of the Department, to transfer, demote, or separate a State

- 29 (1) Employee in a grade 60 or lower position who has not been
 30 continuously employed by the State of North Carolina for the
 31 immediate 12 preceding months;
- 32 (2) Employee in a grade 61 to grade 65 position who has not been
 33 continuously employed by the State of North Carolina for the
 34 immediate 36 preceding months;
- 35 (3) Employee in a grade 66 to grade 70 position who has not been
 36 continuously employed by the State of North Carolina for the
 37 immediate 48 preceding months; or
- 38 (4) Employee in a grade 71 or higher position who has not been
 39 continuously employed by the State of North Carolina for the
 40 immediate 60 preceding months."

41 Sec. 33. G.S. 126-25 reads as rewritten:

42 **"§ 126-25. Remedies of employee objecting to material in file.**

43 An employee, former employee or applicant for employment who objects to material
 44 in his file may place in his file a statement relating to the material he considers to be

1 inaccurate or misleading. An employee, former employee or applicant for employment
2 who objects to material in his file because he considers it inaccurate or misleading may
3 seek the removal of such material from his file in accordance with the grievance
4 procedure of that ~~department, including appeal to the State Personnel Commission-~~
5 department. The decision of the department is subject to appeal under Article 3 and
6 judicial review under Article 4 of Chapter 150B. When a department, division, bureau,
7 commission, or other agency agrees or is ordered by ~~the State Personnel Commission-an~~
8 administrative law judge or by the General Court of Justice of this State to remove
9 inaccurate or misleading material from an employee's file, which information was
10 placed in the file by the supervisor or other agent of management, it shall destroy the
11 original and all copies of the material removed and may not retain any inaccurate or
12 misleading information derived from the material removed."

13 Sec. 34. G.S. 126-35 reads as rewritten:

14 **"§ 126-35. Written statement of reason for disciplinary action.**

15 No permanent employee subject to the State Personnel Act shall be discharged,
16 suspended, or reduced in pay or position, except for just cause. In cases of such
17 disciplinary action, the employee shall, before the action is taken, be furnished with a
18 statement in writing setting forth in numerical order the specific acts or omissions that
19 are the reasons for the disciplinary action and the employee's appeal rights. The
20 employee shall be permitted 15 days from the date the statement is delivered to appeal
21 to the head of the department. A copy of the written statement given the employee and
22 the employee's appeal shall be filed by the department with the State Personnel Director
23 within five days of their delivery. However, an employee may be suspended without
24 warning for causes relating to personal conduct detrimental to State service, pending the
25 giving of written reasons, in order to avoid undue disruption of work or to protect the
26 safety of persons or property or for other serious reasons. The employee, if he is not
27 satisfied with the final decision of the head of the department, or if he is unable, within
28 a reasonable period of time, to obtain a final decision by the head of the department,
29 ~~may appeal to the State Personnel Commission. Such appeal file a contested case as~~
30 provided in Article 3 of Chapter 150B. The petition shall be filed not later than 30 days
31 after receipt of notice of the department head's decision."

32 Sec. 35. G.S. 126-36 reads as rewritten:

33 **"§ 126-36. Appeal of unlawful State employment practice.**

34 Any State employee or former State employee who has reason to believe that
35 employment, promotion, training, or transfer was denied him or that demotion, layoff or
36 termination of employment was forced upon him in retaliation for opposition to alleged
37 discrimination or because of his age, sex, race, color, national origin, religion, creed,
38 political affiliation, or handicapped [handicapping] condition as defined by G.S. 168A-3
39 except where specific age, sex or physical requirements constitute a bona fide
40 occupational qualification necessary to proper and efficient administration, shall have
41 the right to ~~appeal directly to the State Personnel Commission. file a contested case as~~
42 provided in Article 3 of Chapter 150B."

43 Sec. 36. G.S. 126-36.1 reads as rewritten:

44 **"§ 126-36.1. Appeal to Personnel Commission by applicant for employment.**

1 Any applicant for State employment who has reason to believe that employment was
2 denied in violation of G.S. 126-16 shall have the right to ~~appeal directly to the State~~
3 ~~Personnel Commission~~ file a contested case as provided in Article 3 of Chapter 150B."

4 Sec. 37. G.S. 126-36.2 reads as rewritten:

5 "**§ 126-36.2. Appeal to Personnel Commission by State employee denied notice of**
6 **vacancy or priority consideration.**

7 Any State employee who has reason to believe that he was denied promotion due to
8 the failure of the agency, department, or institution that had a job vacancy to:

9 (1) Post notice of the job vacancy pursuant to G.S. 126-7.1(a) or;

10 (2) Give him priority consideration pursuant to G.S. 126-7.1(c) ~~may appeal~~
11 ~~directly to the State Personnel Commission~~ file a contested case as
12 provided in Article 3 of Chapter 150B."

13 Sec. 38. G.S. 126-37 reads as rewritten:

14 "**§ 126-37. Personnel Director to investigate, hear and recommend settlement;**
15 **Personnel Commission to hear or review findings and make binding**
16 **decision. Binding decisions.**

17 (a) The State Personnel Director or any other person or persons designated by the
18 Commission shall investigate ~~the any~~ disciplinary action or alleged discrimination
19 which is ~~appealed to the Commission~~ appealed. Appeals involving a disciplinary action,
20 alleged discrimination, ~~and or~~ any other contested case arising under this Chapter shall
21 be conducted in the Office of Administrative Hearings as provided in Article 3 of
22 Chapter 150B; provided that no grievance may be appealed unless the employee has
23 complied with G.S. 126-34. ~~The State Personnel Commission shall make a final decision in~~
24 ~~these cases as provided in G.S. 150B-36. Nothing in this Chapter shall be construed to limit~~
25 the right of an employee to initiate a contested case available to him under Chapter
26 150B. The State Personnel Commission may file a written recommendation in the
27 contested case. An administrative law judge is hereby authorized to reinstate any
28 employee to the position from which he has been removed, to order the employment,
29 promotion, transfer, or salary adjustment of any individual to whom it has been
30 wrongfully denied or to direct other suitable action to correct the abuse which may
31 include the requirement of payment for any loss of salary which has resulted from the
32 improperly discriminatory action of the appointing authority ~~authority~~ and of reasonable
33 attorneys' fees and witnesses' fees.

34 (b) ~~The decisions of the State Personnel Commission~~ administrative law judge shall
35 be binding in appeals of local employees subject to this Chapter ~~Chapter~~ if the
36 Commission finds that the employee has been subjected to discrimination prohibited by
37 Article 6 of this Chapter or in any case where a binding decision is required by
38 applicable federal standards. However, in all other local employee appeals, the decisions
39 of the State Personnel Commission shall be advisory to the local appointing authority.

40 (b) ~~An action brought in superior court by an employee who is dissatisfied with~~
41 ~~an advisory decision of the State Personnel Commission or with the action taken by the~~
42 ~~local appointing authority pursuant to the decision shall be heard upon the record and~~
43 ~~not as a trial de novo. In such an action brought by a local employee under this section,~~
44 ~~the defendant shall be the local appointing authority. If superior court affirms the~~

1 ~~decision of the Commission, the decision of superior court shall be binding on the local~~
2 ~~appointing authority.~~

3 (c) ~~If the local appointing authority is other than a board of county commissioners,~~
4 ~~the~~ The employee must give the county notice of the appeal taken pursuant to subsection
5 (a) of this section. Notice must be given to the county manager or the chairman of the
6 board of county commissioners by certified mail within 15 days of the filing of the
7 notice of appeal. ~~The~~ If the local appointing authority is other than a board of county
8 commissioners, the county may intervene in the appeal within 30 days of receipt of the
9 notice. ~~If the action is appealed to superior court the county may intervene in the superior~~
10 court proceeding even if it has not intervened in the administrative proceeding. ~~The decision~~
11 ~~of the superior court~~ administrative law judge shall be binding on the county even if the
12 county does not intervene."

13 Sec. 39. G.S. 126-38 reads as rewritten:

14 **"§ 126-38. Time limit for appeals.**

15 Any employee appealing any personnel decision or action ~~to the Commission~~ shall
16 file a written statement of appeal with the Commission or its designate petition as provided in
17 G.S. 150B-23(a) no later than 30 days after receipt of notice of the decision or action
18 which triggers the right of appeal."

19 Sec. 40. G.S. 126-41 reads as rewritten:

20 **"§ 126-41. Attorney and witness fees.**

21 The decision of ~~the Commission~~ an administrative law judge assessing or refusing to
22 assess reasonable witness fees or a reasonable attorney's fee as provided in G.S. ~~126-~~
23 ~~4(11)~~ 126-37 is a final agency decision appealable under Article 4 of Chapter 150B
24 of the General Statutes. The reviewing court may reverse or modify the decision ~~of the~~
25 ~~Commission~~ if the decision is unreasonable or the award is inadequate. The reviewing
26 court shall award court costs and a reasonable attorney's fee for representation in
27 connection with the appeal to an employee who obtains a reversal or modification of the
28 ~~Commission's~~ decision in an appeal under this section."

29 Sec. 41. This act shall become effective July 1, 1989. Section 1 and Sections
30 11 through 27 shall apply to petitions for contested cases and to petitions for or notices
31 of appeal filed on or after July 1, 1989. Section 3, Sections 6 through 10 and Sections
32 27 through 40 shall apply to all petitions for contested cases filed in and to all contested
33 cases pending in the Office of Administrative Hearings on or after July 1, 1989.