

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 155*

Short Title: Improve APA Rule-Making Process.

(Public)

Sponsors: Senator Johnson.

Referred to: Judiciary I.

February 21, 1991

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A BILL TO BE ENTITLED
AN ACT TO IMPROVE THE ADMINISTRATIVE RULE-MAKING PROCESS.
The General Assembly of North Carolina enacts:
Section 1. Chapter 150B of the General Statutes is amended by adding a new
Article to read:

“ARTICLE 2A.
“RULES.
“PART 1. GENERAL PROVISIONS.
“§ 150B-18. Scope and effect.

This Article applies to an agency's exercise of its authority to adopt a rule. A rule is not valid unless it is adopted in substantial compliance with this Article.

“§ 150B-19. Restrictions on what can be adopted as a rule.

An agency may not adopt a rule that does one or more of the following:

- (1) Implements or interprets a law unless that law or another law specifically authorizes the agency to do so.
- (2) Enlarges the scope of a profession, occupation, or field of endeavor for which an occupational license is required.
- (3) Imposes criminal liability or a civil penalty for an act or omission, including the violation of a rule, unless a law specifically authorizes the agency to do so or a law declares that violation of the rule is a criminal offense or is grounds for a civil penalty.
- (4) Repeats the content of a law, a rule, or a federal regulation.

- 1 (5) Establishes a fee or other charge for providing a service in fulfillment
2 of a duty unless a law specifically authorizes the agency to do so or the
3 fee or other charge is for one of the following:
4 a. A service to a State, federal, or local governmental unit.
5 b. A copy of part or all of a State publication or other document,
6 the cost of mailing a document, or both.
7 c. A transcript of a public hearing.
8 d. A conference, workshop, or course.
9 e. Data processing services.
10 (6) Allows the agency to waive or modify a requirement set in a rule
11 unless a rule establishes specific guidelines the agency must follow in
12 determining whether to waive or modify the requirement.

13 **"§ 150B-20. Petitioning an agency to adopt a rule.**

14 (a) Petition. – A person may petition an agency to adopt a rule by submitting to
15 the agency a written rule-making petition requesting the adoption. A person may
16 submit written comments with a rule-making petition. If a rule-making petition requests
17 the agency to create or amend a rule, the person must submit the proposed text of the
18 requested rule change and a statement of the effect of the requested rule change. Each
19 agency must establish by rule the procedure for submitting a rule-making petition to it
20 and the procedure the agency follows in considering a rule-making petition.

21 (b) Time. – An agency must grant or deny a rule-making petition submitted to it
22 within 30 days after the date the rule-making petition is submitted, unless the agency is
23 a board or commission. If the agency is a board or commission, it must grant or deny a
24 rule-making petition within 120 days after the date the rule-making petition is
25 submitted.

26 (c) Action. – If an agency denies a rule-making petition, it must send the person
27 who submitted the petition a written statement of the reasons for denying the petition. If
28 an agency grants a rule-making petition, it must inform the person who submitted the
29 rule-making petition of its decision and must initiate rule-making proceedings. When
30 an agency grants a rule-making petition requesting the creation or amendment of a rule,
31 the notice of rule making it publishes in the North Carolina Register may state that the
32 agency is initiating rule-making proceedings as the result of a rule-making petition, state
33 the name of the person who submitted the rule-making petition, set out the text of the
34 requested rule change submitted with the rule-making petition, and state whether the
35 agency endorses the proposed rule change.

36 (d) Review. – Denial of a rule-making petition is a final agency decision and is
37 subject to judicial review under Article 4 of this Chapter. Failure of an agency to grant
38 or deny a rule-making petition within the time limits set in subsection (b) is a denial of
39 the rule-making petition.

40 **"§ 150B-21. Agency must designate rule-making coordinator.**

41 Each agency must designate one or more rule-making coordinators to oversee the
42 agency's rule-making functions. The coordinator must prepare notices of public
43 hearings, coordinate access to the agency's rules, and serve as the liaison between the
44 agency, other agencies, and the public in the rule-making process.

"PART 2. ADOPTION OF RULES.**"§ 150B-21.1. Procedure for adopting a temporary rule.**

(a) Adoption. – An agency may adopt a temporary rule without prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical when it finds that adherence to the notice and hearing requirements of this Part would be contrary to the public interest and that the immediate adoption of the rule is required by one or more of the following:

- (1) A serious and unforeseen threat to the public health, safety, or welfare.
- (2) The effective date of a recent act of the General Assembly or the United States Congress.
- (3) A recent change in federal or State budgetary policy.
- (4) A federal regulation.
- (5) A court order.

An agency must prepare a written statement of its findings of need for a temporary rule. The statement must be signed by the head of the agency adopting the rule and, in some circumstances, by the Governor or another member of the Council of State. The statement must be signed by the Governor if the Governor designates the head of the agency adopting the rule or the agency adopting the rule is located within a department whose secretary is appointed by the Governor. The statement must be signed by the appropriate member of the Council of State if the agency adopting the rule is located within a department headed by a member of the Council of State.

An agency must begin rule-making proceedings for a permanent rule by the day it adopts a temporary rule. An agency begins rule-making proceedings for a permanent rule by publishing in the North Carolina Register notice of its intent to adopt a permanent rule.

(b) Review. – When an agency adopts a temporary rule it must submit the rule, the agency's written statement of its findings of need for the rule, and the notice of intent to adopt a permanent rule to the Codifier of Rules. Within one business day of the day an agency submits a temporary rule, the Codifier of Rules must review the agency's written statement of findings of need for the rule to determine whether the statement of need meets the criteria listed in subsection (a). In reviewing the statement, the Codifier of Rules may consider any information submitted by the agency or another person. If the Codifier of Rules finds that the statement meets the criteria, the Codifier of Rules must notify the head of the agency and enter the rule in the North Carolina Administrative Code.

If the Codifier of Rules finds that the statement does not meet the criteria, the Codifier of Rules must immediately notify the head of the agency. The agency may supplement its statement of need with additional findings or submit a new statement. If the agency does not provide additional findings or the Codifier of Rules again finds that the statement does not meet the criteria, the Codifier of Rules shall return the rule to the agency. A decision on whether a proposed temporary rule does or does not meet the criteria in subsection (a) is subject to judicial review under Article 4 of this Chapter.

(c) Standing. – A person whose rights, duties, or privileges may be affected by a temporary rule adopted by an agency may file an action for declaratory judgment in

1 Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General
2 Statutes. The court shall determine whether the rule meets the standards in G.S. 150B-
3 21.9 for review of a permanent rule. The court may not grant an **ex parte** temporary
4 restraining order.

5 (d) Expiration. – A temporary rule expires on the date specified in the rule or
6 180 days from the date the rule becomes effective, whichever comes first.

7 **"§ 150B-21.2. Procedure for adopting a permanent rule.**

8 (a) Notice. – Before an agency adopts a permanent rule, it must publish notice of
9 its intent to adopt a permanent rule in the North Carolina Register and as required by
10 any other law. The notice published in the North Carolina Register must include all of
11 the following:

12 (1) Either the text of the proposed rule or a statement of the subject matter
13 of the proposed rule making.

14 (2) A short explanation of the reason for the proposed action.

15 (3) A citation to the law that gives the agency the authority to adopt the
16 proposed rule, if the notice includes the text of the proposed rule, or a
17 citation to the law that gives the agency the authority to adopt a rule on
18 the subject matter of the proposed rule making, if the notice includes
19 only a statement of the subject matter of the proposed rule making.

20 (4) The proposed effective date of the proposed rule, if the notice includes
21 the text of the proposed rule, or the proposed effective date of a rule
22 adopted on the subject matter of the proposed rule making, if the
23 notice includes only a statement of the subject matter of the proposed
24 rule making.

25 (5) The date, time, and place of any public hearing scheduled on the
26 proposed rule or subject matter of the proposed rule making.

27 (6) Instructions on how a person may demand a public hearing on a
28 proposed rule if the notice does not schedule a public hearing on the
29 proposed rule and subsection (c) requires the agency to hold a public
30 hearing on the proposed rule when requested to do so.

31 (7) The period of time during which and the person to whom written
32 comments may be submitted on the proposed rule or subject matter of
33 the proposed rule making.

34 (8) If a fiscal note has been prepared for the proposed rule or will be
35 prepared when a rule is proposed on the subject matter of the proposed
36 rule making, a statement that a copy of the fiscal note can be obtained
37 from the agency.

38 (b) Mailing List. – An agency must maintain a mailing list of persons who have
39 requested notice of rule making. When an agency publishes a rule-making notice in the
40 North Carolina Register, it must mail a copy of the notice to each person on the mailing
41 list who has requested notice of rule-making proceedings on the rule or the subject
42 matter for rule making described in the notice. An agency may charge an annual fee to
43 each person on the agency's mailing list to cover copying and mailing costs.

1 (c) Hearing. – An agency must hold a public hearing on a rule it proposes to
2 adopt in two circumstances and may hold a public hearing in other circumstances.
3 When an agency is required to hold a public hearing on a proposed rule or decides to
4 hold a public hearing on a proposed rule when it is not required to do so, the agency
5 must publish in the North Carolina Register a notice of the date, time, and place of the
6 public hearing. The hearing date of a public hearing held after the agency publishes
7 notice of the hearing in the North Carolina Register must be at least 15 days after the
8 date the notice is published.

9 An agency must hold a public hearing on a rule it proposes to adopt in the following
10 two circumstances:

11 (1) The agency publishes a statement of the subject matter of the proposed
12 rule making in the notice in the North Carolina Register.

13 (2) The agency publishes the text of the proposed rule in the notice in the
14 North Carolina Register and all the following apply:

15 a. The notice does not schedule a public hearing on the proposed
16 rule.

17 b. Within 15 days after the notice is published, the agency receives
18 a written request for a public hearing on the proposed rule.

19 c. The proposed rule is not part of a rule-making proceeding the
20 agency initiated by publishing a statement of the subject matter
21 of proposed rule making.

22 d. The proposed text is not a changed version of proposed text the
23 agency previously published in the course of rule-making
24 proceedings but did not adopt.

25 (d) Text After Subject-Matter Notice. – When an agency publishes notice of the
26 subject matter of proposed rule making in the North Carolina Register, it must
27 subsequently publish in the North Carolina Register the text of the rule it proposes to
28 adopt as a result of the public hearing and of any comments received on the subject
29 matter. An agency may not publish the proposed text of a rule for which it published a
30 subject-matter notice before the public hearing on the subject matter.

31 (e) Comments. – An agency must accept comments on the text of a proposed rule
32 published in the North Carolina Register for at least 15 days after the text is published
33 or until the date of any public hearing held on the proposed rule, whichever is longer.
34 An agency must accept comments on a statement of the subject matter of proposed rule
35 making until the public hearing on the subject matter. An agency must consider fully all
36 written and oral comments received.

37 (f) Adoption. – An agency may not adopt a rule until the time for commenting
38 on the proposed text of the rule has elapsed. An agency may not adopt a rule that
39 differs substantially from the text of a proposed rule published in the North Carolina
40 Register unless the agency publishes the text of the proposed different rule in the North
41 Carolina Register and accepts comments on the proposed different rule for the time set
42 in subsection (e).

43 An adopted rule differs substantially from a proposed rule if it does one or more of
44 the following:

1 (1) Affects the interests of persons who, based on the proposed text of the
2 rule, could not reasonably have determined that the rule would affect
3 their interests.

4 (2) Addresses a subject matter or an issue that is not addressed in the
5 proposed text of the rule.

6 (3) Produces an effect that could not reasonably have been expected based
7 on the proposed text of the rule.

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

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

17 **"§ 150B-21.3. Effective date of rules.**

18 (a) Temporary Rule. – A temporary rule becomes effective on the date the
19 Codifier of Rules enters the rule in the North Carolina Administrative Code.

20 (b) Permanent Rule. – A permanent rule approved by the Commission becomes
21 effective five business days after the Commission delivers the rule to the Codifier of
22 Rules, unless the agency adopting the rule specifies a later effective date. If the agency
23 specifies a later effective date, the rule becomes effective on that date.

24 A permanent rule that is not approved by the Commission because the Commission
25 finds the rule is not clear and unambiguous or is not reasonably necessary to fulfill a
26 duty delegated to the agency by the General Assembly becomes effective five business
27 days after the agency adopting the rule delivers the rule to the Codifier of Rules, unless
28 the agency adopting the rule specifies a later effective date. If the agency specifies a
29 later effective date, the rule becomes effective on that date.

30 A permanent rule that is not approved by the Commission because the Commission
31 finds the rule is not within the authority delegated to the agency by the General
32 Assembly becomes effective five business days after the agency adopting the rule
33 delivers to the Codifier of Rules either a court order directing the entry or a declaratory
34 judgment determining that the rule is within the authority delegated to the agency by the
35 General Assembly, unless the agency adopting the rule specifies a later effective date.
36 If the agency specifies a later effective date, the rule becomes effective on that date.

37 (c) OSHA Standard. – A permanent rule concerning an occupational safety and
38 health standard that is adopted by the Occupational Safety and Health Division of the
39 Department of Labor and is identical to a federal regulation promulgated by the
40 Secretary of the United States Department of Labor becomes effective on the date the
41 Division delivers the rule to the Codifier of Rules, unless the Division specifies a later
42 effective date. If the Division specifies a later effective date, the rule becomes effective
43 on that date.

44 **"§ 150B-21.4. Fiscal notes on rules.**

1 (a) State Funds. – Before an agency publishes in the North Carolina Register the
2 proposed text of a permanent rule change that would require the expenditure or
3 distribution of funds subject to the Executive Budget Act, Article 1 of Chapter 143, it
4 must submit the text of the proposed rule change and a fiscal note on the proposed rule
5 change to the Director of the Budget and obtain certification from the Director that the
6 funds that would be required by the proposed rule change are available. The fiscal note
7 must state the amount of funds that would be expended or distributed as a result of the
8 proposed rule change and explain how the amount was computed. The Director of the
9 Budget must certify a proposed rule change if funds are available to cover the
10 expenditure or distribution required by the proposed rule change.

11 (b) Local Funds. – Before an agency publishes in the North Carolina Register the
12 proposed text of a permanent rule change that would affect the expenditures or revenues
13 of a unit of local government, it must submit the text of the proposed rule change and a
14 fiscal note on the proposed rule change to the Fiscal Research Division of the General
15 Assembly, the Office of State Budget and Management, the North Carolina Association
16 of County Commissioners, and the North Carolina League of Municipalities. The fiscal
17 note must state the amount by which the proposed rule change would increase or
18 decrease expenditures or revenues of a unit of local government and must explain how
19 the amount was computed.

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

22 **"§ 150B-21.5. Circumstances when notice and rule-making hearing not required.**

23 (a) Amendment. – An agency is not required to publish a notice of rule making
24 in the North Carolina Register or hold a public hearing when it proposes to amend a
25 rule, without changing the substance of the rule, to do one of the following:

- 26 (1) Reletter or renumber the rule or subparts of the rule.
- 27 (2) Substitute one name for another when an organization or position is
28 renamed.
- 29 (3) Correct a citation in the rule to another rule or law when the citation
30 has become inaccurate since the rule was adopted because of the repeal
31 or renumbering of the cited rule or law.
- 32 (4) Change information that is readily available to the public, such as an
33 address or a telephone number.
- 34 (5) Correct a typographical error made in entering the rule in the North
35 Carolina Administrative Code.
- 36 (6) Change a rule in response to a request or an objection by the
37 Commission.

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

42 (c) OSHA Standard. – The Occupational Safety and Health Division of the
43 Department of Labor is not required to publish a notice of rule making in the North
44 Carolina Register or hold a public hearing when it proposes to adopt a rule that concerns

1 an occupational safety and health standard and is identical to a federal regulation
2 promulgated by the Secretary of the United States Department of Labor. The
3 Occupational Safety and Health Division is not required to submit to the Commission
4 for review a rule for which notice and hearing is not required under this subsection.

5 **"§ 150B-21.6. Incorporating material in a rule by reference.**

6 An agency may incorporate the following material by reference in a rule without
7 repeating the text of the referenced material:

8 (1) Another rule or part of a rule adopted by the agency.

9 (2) All or part of a code, standard, or regulation adopted by another
10 agency, the federal government, or a generally recognized organization
11 or association.

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

13 In incorporating material by reference, the agency must designate in the rule whether
14 or not the incorporation includes subsequent amendments and editions of the referenced
15 material. The agency can change this designation only by a subsequent rule-making
16 proceeding. The agency must have copies of the incorporated material available for
17 inspection and must specify in the rule both where copies of the material can be
18 obtained and the cost on the date the rule is adopted of a copy of the material.

19 A statement in a rule that a rule incorporates material by reference in accordance
20 with former G.S. 150B-14(b) is a statement that the rule does not include
21 subsequent amendments and editions of the referenced material. A statement in a rule
22 that a rule incorporates material by reference in accordance with former G.S. 150B-
23 14(c) is a statement that the rule includes subsequent amendments and editions of the
24 referenced material.

25 **"§ 150B-21.7. Effect of transfer of duties or termination of agency on rules.**

26 When a law that authorizes an agency to adopt a rule is repealed and another law
27 gives the same or another agency substantially the same authority to adopt a rule, the
28 rule remains in effect until the agency amends or repeals the rule. When a law that
29 authorizes an agency to adopt a rule is repealed and another law does not give the same
30 or another agency substantially the same authority to adopt a rule, a rule adopted under
31 the repealed law is repealed as of the date the law is repealed.

32 When an executive order abolishes part or all of an agency and transfers a function
33 of that agency to another agency, a rule concerning the transferred function remains in
34 effect until the agency to which the function is transferred amends or repeals the rule.
35 When an executive order abolishes part or all of an agency and does not transfer a
36 function of that agency to another agency, a rule concerning a function abolished by the
37 executive order is repealed as of the effective date of the executive order.

38 The Director of Fiscal Research of the General Assembly must notify the Codifier of
39 Rules when a rule is repealed under this section. When notified of a rule repealed under
40 this section, the Codifier of Rules must enter the repeal of the rule in the North Carolina
41 Administrative Code.

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

43 **"§ 150B-21.8. Review of rule by Commission.**

44 (a) Temporary Rule. – The Commission does not review a temporary rule.

1 (b) Permanent Rule. – An agency must submit a permanent rule adopted by it to
2 the Commission before the rule can be included in the North Carolina Administrative
3 Code. The Commission reviews a permanent rule in accordance with the standards in
4 G.S. 150B-21.9 and follows the procedure in this Part in its review of a permanent rule.

5 (c) Scope. – When the Commission reviews an amendment to a rule, it may
6 review the entire rule that is being amended. If the Commission objects to part of a rule
7 that is within its scope of review but is not changed by a rule amendment, the part of the
8 rule remains in effect. If the Commission objects on the basis that the agency did not
9 act within its statutory authority in adopting that part of the rule, the part of the rule
10 remains in effect until the Commission obtains a declaratory judgment that the part of
11 the rule is not within the agency's statutory authority. If the Commission objects on the
12 basis that the rule is not clear and unambiguous or is not reasonably necessary, the part
13 of the rule remains in effect until changed by the agency. When the Commission
14 objects to part of a rule under this subsection, the Commission must notify the Codifier
15 of Rules and the Codifier of Rules must enter the objection in the North Carolina
16 Administrative Code.

17 **"§ 150B-21.9. Standards and timetable for review by Commission.**

18 (a) Standards. – The Commission must determine whether a rule meets all of the
19 following criteria:

- 20 (1) It is within the authority delegated to the agency by the General
21 Assembly.
- 22 (2) It is clear and unambiguous.
- 23 (3) It is reasonably necessary to fulfill a duty delegated to the agency by
24 the General Assembly.

25 The Commission may determine if a rule before it for review was adopted in
26 accordance with Part 2 of this Article. The Commission must notify the agency that
27 adopted the rule and the Codifier of Rules if it determines that a rule was not adopted in
28 accordance with Part 2 of this Article.

29 (b) Timetable. – The Commission must review a rule submitted to it on or before
30 the twentieth of a month by the last day of the next month. The Commission must
31 review a rule submitted to it after the twentieth of a month by the last day of the second
32 subsequent month.

33 **"§ 150B-21.10. Commission action on permanent rule.**

34 At the first meeting at which a permanent rule is before the Commission for review,
35 the Commission must take one of the following actions:

- 36 (1) Approve the rule, if the Commission determines that the rule meets the
37 standards for review.
- 38 (2) Object to the rule, if the Commission determines that the rule does not
39 meet the standards for review.
- 40 (3) Extend the period for reviewing the rule, if the Commission
41 determines it needs additional information on the rule to be able to
42 decide whether the rule meets the standards for review.

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

4 **"§ 150B-21.11. Procedure when Commission approves permanent rule.**

5 When the Commission approves a permanent rule, it must notify the agency that
6 adopted the rule of the Commission's approval and must deliver the approved rule to the
7 Codifier of Rules. The Commission must deliver an approved rule by the end of the
8 month in which the Commission approved the rule.

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

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

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

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

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

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

27 A rule to which the Commission has objected remains under review by the
28 Commission until the agency that adopted the rule decides not to satisfy the
29 Commission's objection and makes a written request to the Commission to return the
30 rule to the agency. When the Commission returns a rule to which it has objected, it may
31 send to the President of the Senate and each member of the General Assembly a report
32 of its objection to the rule.

33 (b) Entry In Code. – When the Commission returns a rule to which it has
34 objected to the agency that adopted the rule, the Commission must notify the Codifier of
35 Rules of its action and of the basis of the Commission's objection. An agency whose
36 rule is returned may file the rule with the Codifier of Rules if the Commission objected
37 to the rule because it found the rule is not clear and unambiguous or is not reasonably
38 necessary. An agency whose rule is returned may not file the rule with the Codifier of
39 Rules if the Commission objected to the rule because it found the rule is not within the
40 statutory authority of the agency, unless the agency obtains either a court order directing
41 the entry or a declaratory judgment determining that the rule is within the authority
42 delegated to the agency by the General Assembly. When the Codifier of Rules enters in
43 the North Carolina Administrative Code a rule to which the Commission objected

1 because the rule is not clear and unambiguous or is not reasonably necessary, the entry
2 must reflect the Commission's objection.

3 **"§ 150B-21.13. Procedure when Commission extends period for review of**
4 **permanent rule.**

5 When the Commission extends the period for review of a permanent rule, it must
6 notify the agency that adopted the rule of the extension and the reason for the extension.
7 After the Commission extends the period for review of a rule, it must decide whether to
8 approve or object to the rule within 70 days of the extension.

9 **"§ 150B-21.14. Public hearing on a rule.**

10 At any time before the Commission approves a rule that is before it for review or
11 returns a rule that is before it for review to the agency that adopted the rule, the
12 Commission may call a public hearing on the rule. On its own motion, the Commission
13 may also call a public hearing on a rule that is not before it for review. Calling a public
14 hearing on a rule not already before the Commission for review places the rule before
15 the Commission for review. When the Commission decides to call a public hearing on a
16 rule, it must give at least 15 days' notice of the hearing to the affected agency, to those
17 who have asked to receive notice of any public hearing called on the subject matter of
18 the rule, and to those who, as determined by the Commission, may be affected by the
19 rule.

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

24 **"§ 150B-21.15. Agency has burden of persuasion on rule to which Commission**
25 **objects.**

26 In a proceeding for judicial review or enforcement of a rule filed in the North
27 Carolina Administrative Code by an agency after the Commission objected to it, the part
28 of the rule to which the Commission objected is not presumed to meet the standards in
29 G.S. 150B-21.9. In these proceedings, the agency filing the rule has the burden of
30 persuading the court that the part of the rule to which the Commission objected meets
31 the standards in G.S. 150B-21.9.

32 **"§ 150B-21.16. Agency may seek declaratory judgment on permanent rule to**
33 **which Commission objects.**

34 (a) Action. – When the Commission objects to a permanent rule adopted by an
35 agency based on a lack of statutory authority and returns the rule to the agency, the
36 agency may file an action for declaratory judgment in Wake County Superior Court
37 pursuant to Article 26 of Chapter 1 of the General Statutes. The court shall determine
38 whether the agency exceeded its statutory authority in adopting the rule.

39 (b) Record. – Within 10 days after an agency files an action for a declaratory
40 judgment, the agency must transmit to the court the original or a certified copy of the
41 record in the Commission's review of the rule. The record consists of the rule, the
42 Commission's letter of objection to the rule, and the agency's written response to the
43 Commission's letter.

1 (c) Stay. – During the pendency of an action for declaratory judgment, the
2 Codifier of Rules cannot accept the rule for inclusion in the North Carolina
3 Administrative Code unless the court finds it proper and determines that the agency has
4 a substantial likelihood of prevailing in the action for a declaratory judgment.

5 (d) Dismissal. – When the agency submits to the Commission additional changes
6 to a rule that satisfy the objection while the rule is the subject of an action for a
7 declaratory judgment, the Commission must notify the court and move to dismiss the
8 action for declaratory judgment.

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

10 **"§ 150B-21.17. North Carolina Register.**

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

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

24 (b) Form. – When an agency publishes notice in the North Carolina Register of
25 the proposed text of a new rule, the Codifier of Rules must publish the complete text of
26 the proposed new rule. In publishing the text of a proposed new rule, the Codifier must
27 indicate the rule is new by underlining the proposed text of the rule.

28 When an agency publishes notice in the North Carolina Register of the proposed text
29 of an amendment to an existing rule, the Codifier must publish the complete text of the
30 rule that is being amended unless the Codifier determines that publication of the
31 complete text of the rule being amended is not necessary to enable the reader to
32 understand the proposed amendment. In publishing the text of a proposed amendment
33 to a rule, the Codifier must indicate deleted text with overstrikes and added text with
34 underlines.

35 When an agency publishes notice in the North Carolina Register of the proposed
36 repeal of an existing rule, the Codifier must publish the complete text of the rule the
37 agency proposes to repeal unless the Codifier determines that publication of the
38 complete text is impractical. In publishing the text of a rule the agency proposes to
39 repeal, the Codifier must indicate the rule is to be repealed.

40 **"§ 150B-21.18. North Carolina Administrative Code.**

41 The Codifier of Rules must compile all rules into a Code known as the North
42 Carolina Administrative Code. The format and indexing of the Code must conform as
43 nearly as practical to the format and indexing of the North Carolina General Statutes.
44 The Codifier must publish printed copies of the Code and may publish the Code in other

1 forms. The Codifier must keep the Code current by publishing the Code in a loose-leaf
2 format and periodically providing new pages to be substituted for outdated pages, by
3 publishing the Code in volumes and periodically publishing cumulative supplements, or
4 by another means. The Codifier must keep superseded rules.

5 **"§ 150B-21.19. Requirements for including rule in Code.**

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

- 8 (1) Cite the law under which the rule is adopted.
- 9 (2) Be signed by the head of the agency or the rule-making coordinator for
10 the agency that adopted the rule.
- 11 (3) Be in the physical form specified by the Codifier of Rules.
- 12 (4) Have been reviewed by the Commission, if the rule is a permanent
13 rule.

14 **"§ 150B-21.20. Codifier's authority to revise form of rules.**

15 (a) Authority. – After consulting with the agency that adopted the rule, the
16 Codifier of Rules may revise the form of a rule submitted for inclusion in the North
17 Carolina Administrative Code within 10 business days after the rule is submitted to do
18 one or more of the following:

- 19 (1) Rearrange the order of the rule in the Code or the order of the
20 subsections, subdivisions, or other subparts of the rule.
- 21 (2) Provide a catch line or heading for the rule or revise the catch line or
22 heading of the rule.
- 23 (3) Reletter or renumber the rule or the subparts of the rule in accordance
24 with a uniform system.
- 25 (4) Rearrange definitions and lists.
- 26 (5) Make other changes in arrangement or in form that do not change the
27 substance of the rule and are necessary or desirable for a clear and
28 orderly arrangement of the rule.

29 (b) Effect. – Revision of a rule by the Codifier of Rules under this section does
30 not affect the effective date of the rule or require the agency to readopt or resubmit the
31 rule. When the Codifier of Rules revises the form of a rule, the Codifier of Rules must
32 send the agency that adopted the rule a copy of the revised rule. The revised rule is the
33 official rule.

34 **"§ 150B-21.21. Publication of rules of North Carolina State Bar and exempt**
35 **agencies.**

36 (a) State Bar. – The North Carolina State Bar must submit a rule adopted or
37 approved by it and entered in the minutes of the North Carolina Supreme Court to the
38 Codifier of Rules for inclusion in the North Carolina Administrative Code. The State
39 Bar must submit a rule within 15 days after it is entered in the minutes of the Supreme
40 Court.

41 (b) Exempt Agencies. – Notwithstanding G.S. 150B-1, an agency exempted from
42 this Article by that statute must submit a temporary or permanent rule adopted by it to
43 the Codifier of Rules for inclusion in the North Carolina Administrative Code. An

1 exempt agency must submit a rule to the Codifier of Rules within 15 days after it adopts
2 the rule.

3 (c) Publication. – The Codifier of Rules must compile, make available for public
4 inspection, and publish a rule included in the North Carolina Administrative Code under
5 this section in the same manner as other rules in the Code.

6 **"§ 150B-21.22. Effect of inclusion in Code.**

7 Official or judicial notice can be taken of a rule in the North Carolina Administrative
8 Code and shall be taken when appropriate. Codification of a rule in the North Carolina
9 Administrative Code is **prima facie** evidence of compliance with this Article.

10 **"§ 150B-21.23. Rule publication manual.**

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

14 **"§ 150B-21.24. Free copies of Register and Code.**

15 (a) Register. – The Codifier of Rules must distribute copies of the North Carolina
16 Register as soon after publication as practical, without charge, to the following:

17 (1) A person who receives a free copy of the North Carolina
18 Administrative Code.

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

20 (b) Code. – The Codifier of Rules must distribute copies of the North Carolina
21 Administrative Code as soon after publication as practical, without charge, to the
22 following:

23 (1) One copy to the board of commissioners of each county in the State.

24 (2) One copy to the clerk of superior court of each county in the State.

25 (3) One copy to the Commission.

26 (4) One copy to the clerk of the Supreme Court and to the clerk of the
27 Court of Appeals of North Carolina.

28 (5) One copy to the Supreme Court Library and one copy to the library of
29 the Court of Appeals.

30 (6) One copy to the Administrative Office of the Courts.

31 (7) One copy to the Governor.

32 (8) Five copies to the Legislative Services Commission for the use of the
33 General Assembly.

34 (9) Upon request, one copy to each State official or department to whom
35 or to which copies of the appellate division reports are furnished under
36 G.S. 7A-343.1.

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

39 **"§ 150B-21.25. Paid copies of Register and Code.**

40 A person who is not entitled to a free copy of the North Carolina Administrative
41 Code or North Carolina Register may obtain a copy by paying a fee set by the Codifier
42 of Rules. The Codifier must set separate fees for the North Carolina Register and the
43 North Carolina Administrative Code in amounts that cover publication, copying, and

1 mailing costs. All monies received under this section must be credited to the General
2 Fund."

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

4 "**§ 150B-1. Policy and scope.**

5 (a) Purpose. – The policy of the State is that the three powers of government,
6 legislative, executive, and judicial, are, and should remain, separate. The intent of this
7 Chapter is to prevent the commingling of those powers in any administrative agency
8 and to This Chapter establishes a uniform system of administrative rule making and
9 adjudicatory procedures for agencies. The procedures ensure that the functions of rule
10 making, investigation, advocacy, and adjudication are not all performed by the same
11 person in the administrative process.

12 (b) Rights. –The purpose of this Chapter is to establish as nearly as possible a
13 uniform system of administrative rule making and adjudicatory procedures for State
14 agencies. This Chapter confers procedural rights but does not confer substantive rights.

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

19 (1) The North Carolina National Guard in exercising its court-martial
20 jurisdiction.

21 (2) The Department of Human Resources in exercising its authority over
22 the Camp Butner reservation granted in Article 6 of Chapter 122C of
23 the General Statutes.

24 (3) The Utilities Commission.

25 (4) The Industrial Commission.

26 (5) The Employment Security Commission.

27 (d) Exemptions From Rule Making. – Article 2A of this Chapter does not apply
28 to the following:

29 (1) The Commission.

30 (2) The North Carolina Low-Level Radioactive Waste Management
31 Authority in administering the provisions of G.S. 104G-10 and G.S.
32 104G-11.

33 (3) The North Carolina Hazardous Waste Management Commission in
34 administering the provisions of G.S. 130B-13 and G.S. 130B-14.

35 (4) The Department of Revenue.

36 (5) The Department of Correction.

37 (6) The Department of Transportation.

38 (e) Exemptions From Contested Case Provisions.– The contested case
39 provisions of this Chapter do not apply to the following:

40 (1) The Department of Human Resources and the Department of
41 Environment, Health, and Natural Resources in complying with the
42 procedural safeguards mandated by Section 680 of Part H of Public
43 Law 99-457 as amended (Education of the Handicapped Act
44 Amendments of 1986).

- 1 (2) The Governor's Waste Management Board in administering the
2 provisions of G.S. 104E-6.2 and G.S. 130A-293.
- 3 (3) The North Carolina Low-Level Radioactive Waste Management
4 Authority in administering the provisions of G.S. 104G-9, 104G-10,
5 and 104G-11.
- 6 (4) The North Carolina Hazardous Waste Management Commission in
7 administering the provisions of G.S. 130B-11, 130B-13, and 130B-14.
- 8 (5) Hearings required pursuant to the Rehabilitation Act of 1973, (Public
9 Law 93-122), as amended and federal regulations promulgated
10 thereunder. G.S. 150B-51(a) is considered a contested case hearing
11 provision that does not apply to these hearings.
- 12 (6) The Department of Revenue.
- 13 (7) The Department of Correction.
- 14 (8) The Department of Transportation, except as provided in G.S. 136-29.
- 15 (9) The Occupational Safety and Health Review Board in all actions that
16 do not involve agricultural employers.
- 17 (f) Exemption From All But Judicial Review.– No Article in this Chapter except
18 Article 4 applies to The University of North Carolina.
- 19 (1) ~~The following are specifically exempted from the provisions of this~~
20 ~~Chapter:~~
- 21 a. ~~The Administrative Rules Review Commission;~~
- 22 b. ~~The Employment Security Commission;~~
- 23 c. ~~The Industrial Commission;~~
- 24 d. ~~The Occupational Safety and Health Review Board in all~~
25 ~~actions that do not involve agricultural employers; and~~
- 26 e. ~~The Utilities Commission.~~
- 27 (2) ~~The North Carolina National Guard is exempt from the provisions of~~
28 ~~this Chapter in exercising its court martial jurisdiction.~~
- 29 (3) ~~The Department of Human Resources is exempt from this Chapter in~~
30 ~~exercising its authority over the Camp Butner reservation granted in~~
31 ~~Article 6 of Chapter 122C of the General Statutes. The Department of~~
32 ~~Human Resources and the Department of Environmental, Health, and~~
33 ~~Natural Resources are exempt from Article 3 of this Chapter in~~
34 ~~complying with the procedural safeguards mandated by the Section~~
35 ~~680 of Part H of P.L. 99-457 as amended (Education of the~~
36 ~~Handicapped Act Amendments of 1986).~~
- 37 (4) ~~The Department of Correction is exempt from the provisions of this~~
38 ~~Chapter, except for Article 5 of this Chapter and G.S. 150B-13 which~~
39 ~~shall apply.~~
- 40 (5) ~~Articles 2 and 3 of this Chapter shall not apply to the Department of~~
41 ~~Revenue.~~
- 42 (6) ~~Except as provided in Chapter 136 of the General Statutes, Articles 2~~
43 ~~and 3 of this Chapter do not apply to the Department of~~
44 ~~Transportation.~~

- 1 (7) ~~Article 4 of this Chapter, governing judicial review of final~~
 2 ~~administrative decisions, shall apply to The University of North~~
 3 ~~Carolina and its constituent or affiliated boards, agencies, and~~
 4 ~~institutions, but The University of North Carolina and its constituent or~~
 5 ~~affiliated boards, agencies, and institutions are specifically exempted~~
 6 ~~from the remaining provisions of this Chapter.~~
- 7 (8) ~~Article 4 of this Chapter shall not apply to the State Banking~~
 8 ~~Commission, the Commissioner of Banks, the Savings Institutions~~
 9 ~~Division of the Department of Economic and Community~~
 10 ~~Development, and the Credit Union Division of the Department of~~
 11 ~~Economic and Community Development.~~
- 12 (9) ~~Article 3 of this Chapter shall not apply to agencies governed by the~~
 13 ~~provisions of Article 3A of this Chapter, as set out in G.S. 150B-38(a).~~
- 14 (10) ~~Articles 3 and 3A of this Chapter shall not apply to the Governor's~~
 15 ~~Waste Management Board in administering the provisions of G.S.~~
 16 ~~104E-6.2 and G.S. 130A-293.~~
- 17 (11) ~~Article 2 of this Chapter shall not apply to the North Carolina Low-~~
 18 ~~Level Radioactive Waste Management Authority in administering the~~
 19 ~~provisions of G.S. 104G-10 and G.S. 104G-11. Articles 3 and 3A of~~
 20 ~~this Chapter shall not apply to the North Carolina Low Level~~
 21 ~~Radioactive Waste Management Authority in administering the~~
 22 ~~provisions of G.S. 104G-9, 104G-10, and 104G-11.~~
- 23 (12) ~~Article 2 of this Chapter shall not apply to the North Carolina~~
 24 ~~Hazardous Waste Management Commission in administering the~~
 25 ~~provisions of G.S. 130B-13 and G.S. 130B-14. Articles 3 and 3A of~~
 26 ~~this Chapter shall not apply to the North Carolina Hazardous Waste~~
 27 ~~Management Commission in administering the provisions of G.S.~~
 28 ~~130B-11, 130B-13, and 130B-14.~~
- 29 (13) ~~Article 3 of this Chapter and G.S. 150B-51(a) shall not apply to~~
 30 ~~hearings required pursuant to the Rehabilitation Act of 1973, (Public~~
 31 ~~Law 93-122), as amended and federal regulations promulgated~~
 32 ~~thereunder."~~

33 Sec. 3. G.S. 150B-2 reads as rewritten:

34 **"§ 150B-2. Definitions.**

35 As used in this Chapter,

- 36 (01) 'Administrative law judge' means a person appointed under G.S. 7A-
 37 752, 7A-753, or 7A-757.
- 38 (1) 'Agency' means ~~any agency, institution, board, commission, bureau,~~
 39 ~~department, division, council, member of the Council of State, or~~
 40 ~~officer of the State government of the State of North Carolina but does~~
 41 ~~not include any agency in the legislative or judicial branch of the State~~
 42 ~~government; and does not include counties, cities, towns, villages,~~
 43 ~~other municipal corporations or political subdivisions of the State or~~
 44 ~~any agencies of such subdivisions, or local boards of education, other~~

1 ~~local public districts, units or bodies of any kind, or private~~
2 ~~corporations created by act of the General Assembly. an agency or an~~
3 ~~officer in the executive branch of the government of this State and~~
4 ~~includes the Council of State, the Governor's Office, a board, a~~
5 ~~commission, a department, a division, a council, and any other unit of~~
6 ~~government in the executive branch. A local unit of government is not~~
7 ~~an agency.~~

8 (1a) 'Adopt' means to take final action to create, amend, or repeal a rule.

9 (1b) 'Codifier of Rules' means the Chief Administrative Law Judge of the
10 Office of Administrative Hearings or a designated representative of the
11 Chief Administrative Law Judge.

12 (1c) 'Commission' means the Rules Review Commission.

13 (2) 'Contested case' means an administrative proceeding pursuant to this
14 Chapter to resolve a dispute between an agency and another person
15 that involves the person's rights, duties, or privileges, including
16 licensing or the levy of a monetary penalty. 'Contested case' does not
17 include rule-making, declaratory rulings, or the award or denial of a
18 scholarship or grant.

19 (2a) ~~'Effective' means that a valid rule has been filed as required by G.S.~~
20 ~~150B-59 and, if applicable, that the time specified in that section has~~
21 ~~elapsed. A rule that is effective is enforceable to the extent permitted~~
22 ~~by law.~~

23 (2b) 'Hearing officer' means a person or group of persons designated by an
24 agency that is subject to Article 3A of this Chapter to preside in a
25 contested case hearing conducted under that Article.

26 (2c) 'Law' means an enactment of the General Assembly.

27 (3) 'License' means any certificate, permit or other evidence, by whatever
28 name called, of a right or privilege to engage in any activity, except
29 licenses issued under Chapter 20 and Subchapter I of Chapter 105 of
30 the General Statutes and occupational licenses.

31 (4) 'Licensing' means any administrative action issuing, failing to issue,
32 suspending, or revoking a license or occupational license. 'Licensing'
33 does not include controversies over whether an examination was fair
34 or whether the applicant passed the examination.

35 (4a) 'Occupational license' means any certificate, permit, or other evidence,
36 by whatever name called, of a right of privilege to engage in a
37 profession, occupation, or field of endeavor that is issued by an
38 occupational licensing agency.

39 (4b) 'Occupational licensing agency' means any board, commission,
40 committee or other agency of the State of North Carolina which is
41 established for the primary purpose of regulating the entry of persons
42 into, and/or the conduct of persons within a particular profession,
43 occupation or field of endeavor, and which is authorized to issue and
44 revoke licenses. 'Occupational licensing agency' does not include State

1 agencies or departments which may as only a part of their regular
2 function issue permits or licenses.

3 (5) 'Party' means any person or agency named or admitted as a party or
4 properly seeking as of right to be admitted as a party and includes the
5 agency as appropriate. This subdivision does not permit an agency that
6 makes a final decision, or an officer or employee of the agency, to
7 petition for initial judicial review of that decision.

8 (6) 'Person aggrieved' means any person or group of persons of common
9 interest directly or indirectly affected substantially in his or its person,
10 property, or employment by an administrative decision.

11 (7) 'Person' means any natural person, partnership, corporation, body
12 politic and any unincorporated association, organization, or society
13 which may sue or be sued under a common name.

14 (8) 'Residence' means domicile or principal place of business.

15 (8a) 'Rule' means any agency regulation, ~~standard~~ standard, or statement of
16 general applicability that implements or interprets ~~laws enacted by an~~
17 enactment of the General Assembly or Congress or regulations
18 ~~promulgated a regulation adopted by a federal agency or that describes~~
19 the procedure or practice requirements of an agency. any agency not
20 ~~inconsistent with laws enacted by the General Assembly.~~ The term
21 includes the amendment or repeal of a prior rule. The term does not
22 include the following:

23 a. Statements concerning only the internal management of an
24 agency or group of agencies within the same principal office or
25 department enumerated in G.S. 143-11 or 143B-6, including
26 policies and procedures manuals, if ~~such a~~ the statement does
27 not directly or substantially affect the procedural or substantive
28 rights or duties of a person ~~persons~~ not employed by the agency
29 or group of agencies.

30 b. Budgets and budget policies and procedures issued by the
31 Director of the Budget, by the head of a department, as defined
32 by G.S. 143A-2 or G.S. 143B-3, by an occupational licensing
33 board, as defined by G.S. 93B-1, or by the State Board of
34 Elections.

35 c. Nonbinding interpretative statements within the delegated
36 authority of ~~the an~~ agency that merely define, ~~interpret~~ interpret,
37 or explain the meaning of a statute or rule. ~~other provision of law~~
38 ~~or precedent.~~

39 d. A form, the contents or substantive requirements of which are
40 prescribed by rule or statute. ~~statute or the instructions for the~~
41 ~~execution or use of the form.~~

42 e. Statements of agency policy made in the context of another
43 proceeding, including:

44 1. Declaratory rulings under ~~G.S. 150B-17;~~ G.S. 150B-4.

1 organized and shall have adopted such rules, regulations and bylaws, not inconsistent
2 with this Article, as it shall deem necessary or expedient for the discharge of its duties,
3 the secretary-treasurer shall file with the clerk of the Supreme Court of North Carolina a
4 certificate, to be called the 'certificate of organization,' showing the officers and
5 members of the council, with the judicial districts which the members respectively
6 represent, and their post-office addresses, and the rules, regulations and bylaws adopted
7 by it; and thereupon the Chief Justice of the Supreme Court of North Carolina, or any
8 judge thereof, if the court be then in vacation, shall examine the said certificate and, if
9 of opinion that the requirements of this Article have been complied with, shall cause the
10 said certificate to be spread upon the minutes of the court; but if of opinion that the
11 requirements of this Article have not been complied with, shall return the said certificate
12 to the secretary-treasurer with a statement showing in what respects the provisions of
13 this Article have not been complied with; and the said certificate shall not be again
14 presented to the Chief Justice of the Supreme Court or any judge thereof, until any such
15 defects in the organization of the council shall have been corrected, at which time a new
16 certificate of organization shall be presented and the same course taken as hereinabove
17 provided, and so on until a correct certificate showing the proper organization of the
18 council shall have been presented, and the organization of the council accordingly
19 completed. Upon (a) the entry of an order upon the minutes of the court that the
20 requirements of this Article have been complied with, or (b) if for any reason the Chief
21 Justice or judge should not act thereon within 30 days, then, after the lapse of 30 days
22 from the presentation to the Chief Justice or judge, as the case may be, of any certificate
23 of organization hereinbefore required to be presented by the secretary-treasurer, without
24 either the entry of an order or the return of said certificate with a statement showing the
25 respects in which this Article has not been complied with, the organization of the
26 council shall be deemed to be complete, and it shall be vested with the powers herein set
27 forth; and the certificate of organization shall thereupon forthwith be spread upon the
28 minutes of the court. A copy of the certificate of organization, as spread upon the
29 minutes of the court, shall be published in the next ensuing volume of the North
30 ~~Carolina Reports.~~ Reports and in the North Carolina Administrative Code. The rules and
31 regulations set forth in the certificate of organization, and all other rules and regulations
32 which may be adopted by the council under this Article, may be amended by the council
33 from time to time in any manner not inconsistent with this Article. Copies of all such
34 rules and regulations adopted subsequently to the filing of the certificate of
35 organization, and of all amendments so made by the council, shall be certified to the
36 Chief Justice of the Supreme Court of North Carolina, entered by it upon its minutes,
37 and published in the next ensuing number of the North Carolina ~~Reports.~~ Reports and in
38 the North Carolina Administrative Code. Provided, that the court may decline to have so
39 entered upon its minutes any of such rules, regulations and amendments which in the
40 opinion of the Chief Justice are inconsistent with this Article."

41 Sec. 7. G.S. 95-131 reads as rewritten:

42 "**§ 95-131. Development and promulgation of standards; adoption of federal**
43 **standards and regulations.**

1 (a) All occupational safety and health standards promulgated under the federal
2 act by the Secretary, and any modifications, revision, amendments or revocations in
3 accordance with the authority conferred by the federal act or any other federal act or
4 agency relating to safety and health and adopted by the Secretary, shall be adopted as
5 the rules of the Commissioner of this State unless the Commissioner shall promulgate
6 decides to adopt an alternative State rule or standard as effective as the federal
7 requirement and providing safe and healthful employment in places of employment as
8 required by the federal act and standards and regulations heretofore referred to and as
9 provided by the Occupational Safety and Health Act of 1970. All standards and rules
10 promulgated under the federal act by the Secretary, and any modifications, revisions, or
11 revocations in accordance with the authority conferred by the federal act, or any other federal
12 act or agency relating to safety and health and adopted by the Secretary, shall become effective
13 upon the date the same are filed by the Commissioner in the Office of Administrative Hearings
14 in accordance with G.S. 150B-59. Chapter 150B of the General Statutes governs the
15 adoption of rules by the Commissioner.

16 (b) ~~In the event the Commissioner shall develop his own standards and~~
17 ~~regulations relating to occupational safety and health which he shall consider to be as~~
18 ~~effective and efficient as any of the federal regulations or standards, then the~~
19 ~~Commissioner may by regulation promulgate, modify, or revoke any occupational~~
20 ~~safety or health standard developed by him in the following manner:~~

21 (1) ~~Whenever the need or desirability of promulgating a regulation or~~
22 ~~standard by the Commissioner which serves the objective of this~~
23 ~~Article is indicated by information submitted in writing to the~~
24 ~~Commissioner by any interested person, employer, employee, or~~
25 ~~representative of any organization of employers or employees or upon~~
26 ~~information derived from recognized standards producing~~
27 ~~organizations or upon the basis of information developed by the~~
28 ~~Commissioner or otherwise available to him, he shall determine the~~
29 ~~scope of issue to be covered by such standard or regulation and the~~
30 ~~method to be followed in the development of such standard or~~
31 ~~regulation. If the Commissioner finds it desirable he may request the~~
32 ~~recommendation of the Advisory Council appointed under this Article~~
33 ~~and shall provide such Advisory Council with any proposals of his~~
34 ~~own, together with all pertinent factual information developed by~~
35 ~~technical experts or otherwise available, including the result of~~
36 ~~research, demonstrations, experiments, and experience.~~
37 ~~Recommendations of the Advisory Council shall be submitted to the~~
38 ~~Commissioner within 90 days from the date of the receipt of such~~
39 ~~request or within such longer or shorter period as may be prescribed by~~
40 ~~the Commissioner, but in no event for a period which is longer than~~
41 ~~270 days.~~

42 (2) ~~When the Commissioner wishes to promulgate a regulation or standard~~
43 ~~in this section, he shall consider any proposed revisions prior to~~
44 ~~publication of proposed standards and regulations under subdivision~~

- 1 ~~(3) of this subsection, and may make revisions appropriate to the~~
2 ~~effectiveness of the proposed standards and regulations.~~
- 3 ~~(3) The Commissioner shall, following the review provided for in~~
4 ~~subdivision (2) above, publish a notice that he intends to issue a~~
5 ~~standard or regulation modifying or revoking an occupational safety or~~
6 ~~health standard or regulation in one newspaper of general circulation~~
7 ~~in Asheville, Charlotte, Durham, Greensboro, Raleigh, Wilmington~~
8 ~~and Winston-Salem, and shall afford interested persons a period of 30~~
9 ~~days after publication to submit written data or comments. The notice~~
10 ~~shall describe the content of the proposed regulation and shall state~~
11 ~~where copies of the proposed rule, regulation or standard may be~~
12 ~~obtained.~~
- 13 ~~(4) On or before the last day of the period provided for the submission of~~
14 ~~written data or comment under subdivision (3) above, any interested~~
15 ~~person may file with the Commissioner written objections to the~~
16 ~~proposed regulation, rule or standard, stating the grounds therefor and~~
17 ~~requesting a public hearing on such objections. Within 30 days after~~
18 ~~the last day for filing such objections, the Commissioner shall issue a~~
19 ~~call for a public hearing on the proposed occupational safety or health~~
20 ~~rule, regulation or standard to which such objections have been filed.~~
21 ~~The notice of hearing shall be published in one newspaper of general~~
22 ~~circulation in Asheville, Charlotte, Durham, Greensboro, Raleigh,~~
23 ~~Wilmington and Winston-Salem, 30 days prior to the hearing. The~~
24 ~~notice shall include the date, time, and place of the hearing and shall~~
25 ~~indicate concisely and accurately the subject matter of the proposed~~
26 ~~rule, regulation or standard to which objections have been filed. It shall~~
27 ~~also state where copies of the full text of the proposed rule, regulation~~
28 ~~or standard may be obtained.~~
- 29 ~~(5) The hearing shall be presided over by the Commissioner or any~~
30 ~~authorized agent of the Department, or he may delegate such presiding~~
31 ~~to the Director and shall provide reasonable opportunity for reception~~
32 ~~of opinions, memoranda and advice concerning such proposed~~
33 ~~regulation, rule or standard by interested persons and organizations.~~
- 34 ~~(6) Within 60 days after the expiration of the period provided for the~~
35 ~~submission of written data or comments as provided by this section, or~~
36 ~~within 60 days after the completion of any hearing held under the~~
37 ~~provision of this section, the Commissioner shall issue a regulation~~
38 ~~promulgating, modifying, or revoking such occupational safety or~~
39 ~~health standard, rule or regulation so developed by him, or make a~~
40 ~~determination that such rule, standard or regulation shall not be issued.~~
41 ~~In addition, he shall issue a statement of reasons for any changes made~~
42 ~~from the proposed regulation, rule or standard, or reasons why no~~
43 ~~regulation, rule or standard was issued. Such regulation, rule or~~
44 ~~standard may contain a provision delaying its effective date for such~~

1 period (not in excess of 90 days) as the Commissioner determines may
2 be necessary to insure that affected employers and employees will be
3 informed of the existence of the rule, regulation or standard and of its
4 terms and that employers affected are given an opportunity to
5 familiarize themselves and their employees with the existence of the
6 requirements of the rule, regulation or standard. Notice of such
7 promulgation, modification or revocation, shall be published in the
8 same manner as heretofore provided in this section and as related to
9 the publication of proposed rules, regulations and standards. Copies of
10 the Commissioner's ruling shall be made available without cost to
11 reasonably interested parties.

12 (7) Upon adoption by the enactment of this Article of the occupational
13 safety or health standards, rules or regulations, promulgated under the
14 federal act by the Secretary, and modifications, revisions, or
15 revocations in accordance with the authority conferred by the federal
16 act or any other federal act or agency relating to safety and health
17 adopted by the Secretary, such rules, regulations and standards may be
18 issued and promulgated without meeting the requirements of
19 publication of proposed regulations, rules or standards and without
20 meeting the requirements of hearings as provided in this section.
21 Notice published in the federal register, with reference to proposed
22 change of standards, shall be deemed to be notice to employers and
23 employees with regard to that change. Hearings and the findings of the
24 Secretary of Labor with reference to the proposed change of standards,
25 shall be substituted for the hearing and findings of the Commissioner.

26 (e) (1) The Commissioner shall provide, without regard to the
27 aforementioned subdivision in this section, for an emergency
28 temporary standard to take immediate effect upon publication of
29 such emergency temporary standard in one newspaper of general
30 circulation in Asheville, Charlotte, Durham, Greensboro, Raleigh,
31 Wilmington and Winston-Salem if he determines (i) that employees
32 are exposed to grave danger from exposure to substances or agents
33 determined to be toxic or physically harmful or from new hazards,
34 and (ii) that such emergency standard is necessary to protect
35 employees from such danger.

36 (2) Emergency standards may cover issues not dealt with by statutes or
37 regulations in existence and may displace standards heretofore
38 promulgated.

39 (3) Any such emergency temporary standard shall be effective until
40 superseded by a standard promulgated in accordance with the
41 procedures prescribed in subdivision (4) of this subsection.

42 (4) Upon publication of such emergency temporary standard, the
43 Commissioner shall commence a proceeding in accordance with G.S.
44 95-131(c) of this Article, and the emergency standard as published

1 shall also serve as a proposed regulation for the proceeding. He shall
2 thereupon promulgate a standard under this subdivision no later than
3 six months after publication of the emergency standard as provided in
4 subdivision (1) of this subsection.

5 (d) (1) ~~Regulations issued under subsections (b) and (c) of Rules~~
6 adopted under this section shall provide insofar as possible the
7 highest degree of safety and health protection for employees; other
8 considerations shall be the latest available scientific data in the field,
9 the feasibility of the standard, and experience gained under this and
10 other health and safety laws. Whenever practical the standards
11 ~~promulgated established in a rule~~ shall be expressed in terms of
12 objective criteria and of the performance desired. In ~~promulgating~~
13 establishing standards dealing with toxic materials or harmful
14 physical agents, the Commissioner, after consultation and
15 recommendations of the Department of Human Resources, shall set
16 a standard which most adequately assures, to the extent possible, on
17 the basis of the most available evidence that no employee will suffer
18 material impairment of health or functional capacity even if such
19 employee has regular exposure to the hazard dealt with by such
20 standard for the period of his working life.

21 (2) ~~Upon adoption of this Article, all rules and procedures set forth in~~
22 ~~section 6(b)(7) of the federal act will be hereinafter adopted and~~
23 ~~applied.~~

24 (e) The Commissioner shall ~~not develop or promulgate~~ may not adopt State
25 standards, for products distributed or used in interstate commerce, which are different
26 from federal standards for such products unless the ~~promulgation~~ adoption of such State
27 standard, or standards, ~~are is~~ required by compelling local conditions and ~~do does~~ not
28 unduly burden interstate commerce.

29 (f) ~~Notwithstanding any other provision of this section, in the event the~~
30 ~~Commissioner shall develop any rule, regulation, scope, or standard for agricultural~~
31 ~~employers which differs from the federal regulations or standards, he shall promulgate~~
32 ~~these rules, standards and regulations pursuant to Articles 2 and 5 of Chapter 150B and~~
33 ~~Part 3 of Article 1 of Chapter 143B.~~

34 (g) Any rule, regulation, scope, or standard for agricultural employers adopted or
35 promulgated prior to July 12, 1988, that differs from the federal rule, regulation, scope,
36 or standard is repealed effective September 1, 1989, unless readopted pursuant to
37 Chapter 150B of the General Statutes."

38 Sec. 8. G.S. 143B-14(b) reads as rewritten:

39 "(b) Except as otherwise provided ~~in the Executive Organization Act of 1973, in~~
40 ~~G.S. 120-30.28, or in G.S. 150B-11(3),~~ by law, the powers, duties, and functions of a
41 commission ~~(including but not limited to rule making, regulation, licensing, and~~
42 ~~promulgation of rules, rates, regulations, and standards, and the rendering of findings,~~
43 ~~orders, and adjudications)~~ shall not be ~~are not~~ subject to the approval, review, or control
44 of the head of the department or of the Governor. ~~Provided, however, that the provisions~~

1 of this subsection shall not apply to the review of rules by the Governor's
2 Administrative Rules Review Commission."

3 Sec. 9. G.S. 143B-18 and G.S. 143B-20 are repealed.

4 Sec. 10. The catch line to G.S. 143B-30.1 and G.S. 143B-30.1(a) reads as
5 rewritten:

6 "**§ 143B-30.1. Administrative Rules Review Commission created.**

7 (a) The Administrative Rules Review Commission is created. The Commission
8 shall consist of eight members to be appointed by the General Assembly, four upon the
9 recommendation of the President of the Senate, and four upon the recommendation of
10 the Speaker of the House of Representatives. These appointments shall be made in
11 accordance with G.S. 120-121, and vacancies in these appointments shall be filled in
12 accordance with G.S. 120-122. Except as provided in subsection (b) of this section, all
13 appointees shall serve two-year terms."

14 Sec. 11. G.S. 143B-30.2 reads as rewritten:

15 "**§ 143B-30.2. Review of rules. Purpose of Commission.**

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

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

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

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

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

28 Any rule filed by the 20th of a month shall be reviewed by the Commission by the
29 last day of the next calendar month. Any rule filed after the 20th of a month shall be
30 reviewed by the Commission by the last day of the second subsequent calendar month.
31 The Commission may extend the time for review of a rule by a period of up to 70 days
32 to obtain additional information on the rule. The Commission shall file notice of the
33 extension of time for review of a rule with the agency and the Director of the Office of
34 Administrative Hearings. A rule may not be presented for filing with the Director of the
35 Office of Administrative Hearings under G.S. 150B-59 unless the rule has been
36 reviewed by the Commission as provided in this section.

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

42 (c) ~~If the Commission finds that an agency did not act within the authority~~
43 ~~delegated to it in promulgating a rule or a part of a rule, or that a rule is not clear and~~
44 ~~unambiguous, or that a rule is unnecessary, the Commission shall object and delay the~~

~~1 filing of the rule or part of the rule under G.S. 150B-59 for a period not to exceed 90
2 days. The Commission shall send to the agency, the Governor, the President of the
3 Senate, the Speaker of the House of Representatives, and the Director of the Office of
4 Administrative Hearings, a written report of the objection and delay of the rule or its
5 part and the reasons for the delay. An agency may not present a rule or part of a rule that
6 has been delayed to the Director of the Office of Administrative Hearings for filing
7 under G.S. 150B-59, and a rule or its part that is delayed is not "effective," as defined in
8 G.S. 150B-2(2a).~~

~~9 (d) Within 30 days after receipt of the Commission's written report as authorized
10 by (c), the agency shall either (1) revise the rule to remove the cause of the objections of
11 the Commission and return the revised rule to the Commission or (2) return the rule to
12 the Commission without change with the Commission's objections attached; provided,
13 however, that in the case of a board, committee, council, or commission the response is
14 due within 30 days after receipt of the Commission's written report or within 10 days
15 following the next regularly scheduled meeting of the board, committee, council, or
16 commission, whichever time period is greater. The Commission shall determine
17 whether a revision removes its objections to the rule.~~

~~18 (e) If the Commission determines that a revision of a rule has removed the
19 Commission's objections, the Commission shall note its approval and return the rule to
20 the agency. The agency may then file the rule with the Director of the Office of
21 Administrative Hearings under G.S. 150B-59, and the rule shall become effective as
22 provided in that section.~~

~~23 (f) Regardless of whether the agency returns the rule to the Commission without
24 change instead of revising the rule to remove the Commission's objections or whether
25 the Commission determines that a revision of a rule has not removed its objections, the
26 Commission shall note its review of and objection to the rule once 90 days have passed
27 since the Commission objected and delayed the filing of the rule or part of the rule
28 pursuant to G.S. 143B-30.2(c) and shall return the rule to the agency. The agency may
29 then file the rule with the Director of the Office of Administrative Hearings under G.S.
30 150B-59, and the rule shall become effective as provided in that section. If the agency
31 did not remove the Commission's objections to the rule or part of the rule, the
32 Commission may send to the President of the Senate and the Speaker of the House of
33 Representatives a written report of its objections to the rule. Thereafter, if the General
34 Assembly enacts legislation disapproving the rule, the rule shall no longer be effective.~~

~~35 The Legislative Services Officer shall send a copy of any law disapproving a rule to
36 the agency and the Director of the Office of Administrative Hearings as soon as a copy
37 is available.~~

~~38 (g) While the filing of a rule or its part is delayed, the agency that promulgated it
39 may not adopt another rule, including a temporary rule, that has substantially identical
40 provisions to those for which the Commission delayed the filing of the original rule or
41 part of a rule.~~

~~42 (h) The filing of an amendment to a rule places the entire rule before the
43 Commission for its review.~~

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

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

6 Sec. 12. G.S. 120-30.48 reads as rewritten:

7 "**§ 120-30.48. Fiscal impact of administrative actions.** rules.

8 (a) ~~An agency subject to Article 2 of Chapter 150B of the General Statutes shall~~
9 ~~file a fiscal note for a proposed new rule, or a proposed amendment or repeal of an~~
10 ~~existing rule, that can affect the expenditures or revenues of a unit of local government.~~
11 ~~The fiscal note shall be filed with the Fiscal Research Division, the Office of State~~
12 ~~Budget and Management, the North Carolina Association of County Commissioners,~~
13 ~~and the North Carolina League of Municipalities. The fiscal note shall be filed with the~~
14 ~~entities listed no later than the date specified in G.S. 150B-11.~~

15 (b) ~~This section shall not affect any emergency rule under G.S. 150B-13.~~ is required to
16 prepare a fiscal note on a proposed administrative rule that affects the expenditures or
17 revenues of a unit of local government as provided in G.S. 150B-21.4."

18 Sec. 13. G.S. 147-16.1 reads as rewritten:

19 "**§ 147-16.1. Publication of executive orders.**

20 ~~Executive orders of the Governor shall be filed and published as provided by Article 5 of~~
21 ~~Chapter 150B of the General Statutes.~~ The Governor must submit Executive Orders to the
22 Secretary of State, who must compile, index, and publish the Executive Orders. The
23 Governor's office shall also send a copy of each executive order to the President of the
24 Senate, to the Speaker of the House of Representatives, to the Principal Clerk of the
25 House of Representatives and to the Principal Clerk of the Senate."

26 Sec. 14. G.S. 148-11 reads as rewritten:

27 "**§ 148-11. Authority to make regulations.**

28 The Secretary shall adopt rules for the government of the State prison system and
29 shall file and publish such rules in accordance with ~~the provisions of Article 5 of Chapter~~
30 ~~150B.~~ In the case of temporary rules, such rules shall become effective immediately
31 upon adoption by the Secretary and shall be filed ~~in accordance with G.S. 150B-13~~ with
32 the Codifier of Rules within two working days of adoption. The Secretary shall have
33 such portion of these rules and regulations as pertain to enforcing discipline read to
34 every prisoner when received in the State prison system and a printed copy of these
35 rules and regulations shall be made available to the prisoners."

36 Sec. 15. Section 19 of Chapter 746 of the 1985 Session Laws reads as
37 rewritten:

38 "Sec. 19. This act is effective upon ratification, except Sections 1, 4, 5, 6, 8, 13, 14,
39 15, 16, 17, 18, and 18.1. Sections 1, 4, 8, 13, 14, 15, 16, 17, and 18 shall become
40 effective January 1, 1986. Sections 5 and 6 shall become effective 30 days from the
41 date the Supreme Court issues an advisory opinion on the constitutionality of those
42 sections unless the opinion states that those sections are unconstitutional, in which event
43 those sections shall not become effective. Section 18.1 shall become effective only if
44 the Supreme Court issues an advisory opinion that the appointment of the chief hearing

1 officer by the Chief Justice is unconstitutional and shall become effective on the date
2 that opinion is issued. ~~This act~~ All but Section 5 of this act shall expire January 1, 1992,
3 and shall not be effective on or after that date. This act shall not affect contested cases
4 commenced before January 1, 1986."

5 Sec. 16. This act becomes effective October 1, 1991. The procedures in G.S.
6 150B, Article 2A, as set forth in this act, apply to all rules for which a notice of rule
7 making is published in the North Carolina Register on or after that date, and to all rules
8 that do not require publication of a notice of rule making and are adopted on or after
9 that date.