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SENATE BILL 155*

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Short Title: Improve APA Rule-Making Process.

(Public)

Sponsors:

Referred to:

February 21, 1991

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.

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

14 **"§ 150B-20. Petitioning an agency to adopt a rule.**

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

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

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

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

41 **"§ 150B-21. Agency must designate rule-making coordinator.**

42 Each agency must designate one or more rule-making coordinators to oversee the
43 agency's rule-making functions. The coordinator must prepare notices of public

1 hearings, coordinate access to the agency's rules, and serve as the liaison between the
2 agency, other agencies, and the public in the rule-making process.

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

4 **"§ 150B-21.1. Procedure for adopting a temporary rule.**

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

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

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

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

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

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

40 If an agency decides not to provide additional findings or submit a new statement
41 when notified by the Codifier of Rules that the agency's findings of need for a rule do
42 not meet the required criteria, the agency must notify the Codifier of Rules of its
43 decision. The Codifier of Rules must then enter the rule in the North Carolina

1 Administrative Code on the sixth business day after receiving notice of the agency's
2 decision.

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

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

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

18 **"§ 150B-21.2. Procedure for adopting a permanent rule.**

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

- 23 (1) Either the text of the proposed rule or a statement of the subject matter
24 of the proposed rule making.
- 25 (2) A short explanation of the reason for the proposed action.
- 26 (3) A citation to the law that gives the agency the authority to adopt the
27 proposed rule, if the notice includes the text of the proposed rule, or a
28 citation to the law that gives the agency the authority to adopt a rule on
29 the subject matter of the proposed rule making, if the notice includes
30 only a statement of the subject matter of the proposed rule making.
- 31 (4) The proposed effective date of the proposed rule, if the notice includes
32 the text of the proposed rule, or the proposed effective date of a rule
33 adopted on the subject matter of the proposed rule making, if the
34 notice includes only a statement of the subject matter of the proposed
35 rule making.
- 36 (5) The date, time, and place of any public hearing scheduled on the
37 proposed rule or subject matter of the proposed rule making.
- 38 (6) Instructions on how a person may demand a public hearing on a
39 proposed rule if the notice does not schedule a public hearing on the
40 proposed rule and subsection (c) requires the agency to hold a public
41 hearing on the proposed rule when requested to do so.
- 42 (7) The period of time during which and the person to whom written
43 comments may be submitted on the proposed rule or subject matter of
44 the proposed rule making.

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

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

11 (c) Hearing. – An agency must hold a public hearing on a rule it proposes to
12 adopt in two circumstances and may hold a public hearing in other circumstances.
13 When an agency is required to hold a public hearing on a proposed rule or decides to
14 hold a public hearing on a proposed rule when it is not required to do so, the agency
15 must publish in the North Carolina Register a notice of the date, time, and place of the
16 public hearing. The hearing date of a public hearing held after the agency publishes
17 notice of the hearing in the North Carolina Register must be at least 15 days after the
18 date the notice is published.

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

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

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

25 a. The notice does not schedule a public hearing on the proposed
26 rule.

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

29 c. The proposed rule is not part of a rule-making proceeding the
30 agency initiated by publishing a statement of the subject matter
31 of proposed rule making.

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

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

41 (e) Comments. – An agency must accept comments on the text of a proposed rule
42 published in the North Carolina Register for at least 30 days after the text is published
43 or until the date of any public hearing held on the proposed rule, whichever is longer.
44 An agency must accept comments on a statement of the subject matter of proposed rule

1 making until the public hearing on the subject matter. An agency must consider fully all
2 written and oral comments received.

3 (f) Adoption. – An agency may not adopt a rule until the time for commenting
4 on the proposed text of the rule has elapsed. An agency may not adopt a rule that
5 differs substantially from the text of a proposed rule published in the North Carolina
6 Register unless the agency publishes the text of the proposed different rule in the North
7 Carolina Register and accepts comments on the proposed different rule for the time set
8 in subsection (e).

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

11 (1) Affects the interests of persons who, based on the notice published in
12 the North Carolina Register or the proposed text of the rule, could not
13 reasonably have determined that the rule would affect their interests.

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

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

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

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

27 **"§ 150B-21.3. Effective date of rules.**

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

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

34 A permanent rule that is not approved by the Commission becomes effective five
35 business days after the agency adopting the rule delivers the rule to the Codifier of
36 Rules, unless the agency adopting the rule specifies a later effective date. If the agency
37 specifies a later effective date, the rule becomes effective on that date.

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

1 **"§ 150B-21.4. Fiscal notes on rules.**

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

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

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

23 **"§ 150B-21.5. Circumstances when notice and rule-making hearing not required.**

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

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

39 (b) Repeal. – An agency is not required to publish a notice of rule making in the
40 North Carolina Register or hold a public hearing when it proposes to repeal a rule as a
41 result of any of the following:

- 42 (1) The law under which the rule was adopted is repealed.
- 43 (2) The law under which the rule was adopted or the rule itself is declared
44 unconstitutional.

1 (3) The rule is declared to be in excess of the agency's statutory authority.
2 (c) OSHA Standard. – The Occupational Safety and Health Division of the
3 Department of Labor is not required to publish a notice of rule making in the North
4 Carolina Register or hold a public hearing when it proposes to adopt a rule that concerns
5 an occupational safety and health standard and is identical to a federal regulation
6 promulgated by the Secretary of the United States Department of Labor. The
7 Occupational Safety and Health Division is not required to submit to the Commission
8 for review a rule for which notice and hearing is not required under this subsection.

9 **"§ 150B-21.6. Incorporating material in a rule by reference.**

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

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

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

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

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

23 A statement in a rule that a rule incorporates material by reference in accordance
24 with former G.S. 150B-14(b) is a statement that the rule does not include
25 subsequent amendments and editions of the referenced material. A statement in a rule
26 that a rule incorporates material by reference in accordance with former G.S. 150B-
27 14(c) is a statement that the rule includes subsequent amendments and editions of the
28 referenced material.

29 **"§ 150B-21.7. Effect of transfer of duties or termination of agency on rules.**

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

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

42 The Director of Fiscal Research of the General Assembly must notify the Codifier of
43 Rules when a rule is repealed under this section. When notified of a rule repealed under

1 this section, the Codifier of Rules must enter the repeal of the rule in the North Carolina
2 Administrative Code.

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

4 **"§ 150B-21.8. Review of rule by Commission.**

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

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

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

14 **"§ 150B-21.9. Standards and timetable for review by Commission.**

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

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

22 The Commission may determine if a rule submitted to it was adopted in accordance
23 with Part 2 of this Article. The Commission must notify the agency that adopted the
24 rule if it determines that a rule was not adopted in accordance with Part 2 of this Article
25 and must return the rule to the agency. Entry of a rule in the North Carolina
26 Administrative Code after review by the Commission is conclusive evidence that the
27 rule was adopted in accordance with Part 2 of this Article.

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

32 **"§ 150B-21.10. Commission action on permanent rule.**

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

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

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

1 **"§ 150B-21.11. Procedure when Commission approves permanent rule.**

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

6 **"§ 150B-21.12. Procedure when Commission objects to a permanent rule.**

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

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

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

14 An agency that is not a board or commission must take one of these actions within
15 30 days after receiving the Commission's statement of objection. A board or
16 commission must take one of these actions within 30 days after receiving the
17 Commission's statement of objection or within 10 days after the board or commission's
18 next regularly scheduled meeting, whichever comes later.

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

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

30 (b) Entry In Code. – When the Commission returns a rule to which it has
31 objected to the agency that adopted the rule, the Commission must notify the Codifier of
32 Rules of its action and of the basis of the Commission's objection. An agency whose
33 rule is returned may file the rule with the Codifier of Rules. When the Codifier of Rules
34 enters in the North Carolina Administrative Code a rule to which the Commission
35 objected, the entry must reflect the Commission's objection and must state the standard
36 on which the Commission based its objection.

37 **"§ 150B-21.13. Procedure when Commission extends period for review of**
38 **permanent rule.**

39 When the Commission extends the period for review of a permanent rule, it must
40 notify the agency that adopted the rule of the extension and the reason for the extension.
41 After the Commission extends the period for review of a rule, it may call a public
42 hearing on the rule. Within 70 days after extending the period for review of a rule, the
43 Commission must decide whether to approve the rule, object to the rule, or call a public
44 hearing on the rule.

1 **"§ 150B-21.14. Public hearing on a rule.**

2 The Commission may call a public hearing on a rule when it extends the period for
3 review of the rule. At the request of an agency, the Commission may call a public
4 hearing on a rule that is not before it for review. Calling a public hearing on a rule not
5 already before the Commission for review places the rule before the Commission for
6 review. When the Commission decides to call a public hearing on a rule, it must
7 publish notice of the public hearing in the North Carolina Register.

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

12 **"§ 150B-21.15. Declaratory judgment action authorized when Commission objects**
13 **to a permanent rule.**

14 (a) Standing. – A person aggrieved by a permanent rule entered in the North
15 Carolina Administrative Code with an objection by the Commission based on a lack of
16 statutory authority may file an action for declaratory judgment in Wake County
17 Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes. In the
18 action, the court shall determine whether the agency exceeded its authority in adopting
19 the rule.

20 A declaratory judgment action under this section must be filed within 90 days after
21 the rule that is the subject of the action is entered in the Code. Filing a petition for rule-
22 making or a request for a declaratory ruling with the agency that adopted the rule is not
23 a prerequisite to filing an action under this section. A person who files an action for
24 declaratory judgment under this section must serve a copy of the complaint on the
25 agency that adopted the rule being contested, the Codifier of Rules, and the
26 Commission.

27 (b) Record. – Within 10 days after a declaratory judgment action is filed under
28 this section, the agency that adopted the rule that is the subject of the action must send
29 to the court the original or a certified copy of the record in the Commission's review of
30 the rule. The record consists of the rule, the Commission's letter of objection to the rule,
31 the agency's written response to the Commission's letter, and any other relevant
32 documents before the Commission when it decided to object to the rule.

33 (c) Effect. – A rule remains in effect during the pendency of an action for
34 declaratory judgment under this section unless the court suspends the rule after finding
35 that the agency that adopted the rule has no substantial likelihood of prevailing in the
36 action.

37 (d) Changes. – While a rule is the subject of a declaratory judgment action under
38 this section, the agency that adopted the rule may submit to the Commission changes in
39 the rule to satisfy the Commission's objection. If the Commission determines that
40 changes submitted to it satisfy its objection, the Commission must accept the changes
41 and file the revised rule with the Codifier of Rules. The Codifier must then enter the
42 rule in the North Carolina Administrative Code. When the Commission determines that
43 changes submitted to it satisfy its objection, the agency that submitted the changes must
44 notify the court of the changes and of the Commission's action.

"PART 4. PUBLICATION OF CODE AND REGISTER.**"§ 150B-21.17. North Carolina Register.**

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

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

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

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

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

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

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

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

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

- (1) Cite the law under which the rule is adopted.

- 1 (2) Be signed by the head of the agency or the rule-making coordinator for
2 the agency that adopted the rule.
3 (3) Be in the physical form specified by the Codifier of Rules.
4 (4) Have been reviewed by the Commission, if the rule is a permanent
5 rule.

6 **"§ 150B-21.20. Codifier's authority to revise form of rules.**

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

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

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

26 **"§ 150B-21.21. Publication of rules of North Carolina State Bar and exempt**
27 **agencies.**

28 (a) State Bar. – The North Carolina State Bar must submit a rule adopted or
29 approved by it and entered in the minutes of the North Carolina Supreme Court to the
30 Codifier of Rules for inclusion in the North Carolina Administrative Code. The State
31 Bar must submit a rule within 15 days after it is entered in the minutes of the Supreme
32 Court. The Codifier of Rules must compile, make available for public inspection, and
33 publish a rule included in the North Carolina Administrative Code under this subsection
34 in the same manner as other rules in the Code.

35 (b) Exempt Agencies. – Notwithstanding G.S. 150B-1, the North Carolina
36 Utilities Commission must submit to the Codifier of Rules those rules of the Utilities
37 Commission that are published from time to time in the publication titled 'North
38 Carolina Utilities Laws and Regulations.' The Utilities Commission must submit a rule
39 required to be included in the Code within 15 days after it is adopted. The Codifier of
40 Rules must publish the rules submitted by the Utilities Commission in the North
41 Carolina Administrative Code in the same format as they are submitted.

42 Notwithstanding G.S. 150B-1, an agency other than the Utilities Commission that is
43 exempted from this Article by that statute must submit a temporary or permanent rule
44 adopted by it to the Codifier of Rules for inclusion in the North Carolina Administrative

1 Code. One of these exempt agencies must submit a rule to the Codifier of Rules within
2 15 days after it adopts the rule. The Codifier of Rules must compile, make available for
3 public inspection, and publish a rule of one of these agencies in the North Carolina
4 Administrative Code in the same manner as other rules in the Code.

5 **"§ 150B-21.22. Effect of inclusion in Code.**

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

9 **"§ 150B-21.23. Rule publication manual.**

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

13 **"§ 150B-21.24. Free copies of Register and Code.**

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

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

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

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

22 (1) One copy to the clerk of superior court of each county in the State,
23 which shall be open to public inspection at his office.

24 (2) One copy to the Commission.

25 (3) One copy to the Clerk of the Supreme Court and to the Clerk of the
26 Court of Appeals of North Carolina.

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

29 (5) One copy to the Administrative Office of the Courts.

30 (6) One copy to the Governor.

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

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

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

38 **"§ 150B-21.25. Paid copies of Register and Code.**

39 A person who is not entitled to a free copy of the North Carolina Administrative
40 Code or North Carolina Register may obtain a copy by paying a fee set by the Codifier
41 of Rules. The Codifier must set separate fees for the North Carolina Register and the
42 North Carolina Administrative Code in amounts that cover publication, copying, and
43 mailing costs. All monies received under this section must be credited to the General
44 Fund."

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

2 "**§ 150B-1. Policy and scope.**

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

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

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

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

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

22 (3) The Utilities Commission.

23 (4) The Industrial Commission.

24 (5) The Employment Security Commission.

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

27 (1) The Commission.

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

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

33 (4) The Department of Revenue.

34 (5) The Department of Correction.

35 (6) The Department of Transportation.

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

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

43 (2) The Governor's Waste Management Board in administering the
44 provisions of G.S. 104E-6.2 and G.S. 130A-293.

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

1 ~~Carolina and its constituent or affiliated boards, agencies, and~~
 2 ~~institutions, but The University of North Carolina and its constituent or~~
 3 ~~affiliated boards, agencies, and institutions are specifically exempted~~
 4 ~~from the remaining provisions of this Chapter.~~

5 (8) ~~Article 4 of this Chapter shall not apply to the State Banking~~
 6 ~~Commission, the Commissioner of Banks, the Savings Institutions~~
 7 ~~Division of the Department of Economic and Community~~
 8 ~~Development, and the Credit Union Division of the Department of~~
 9 ~~Economic and Community Development.~~

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

12 (10) ~~Articles 3 and 3A of this Chapter shall not apply to the Governor's~~
 13 ~~Waste Management Board in administering the provisions of G.S.~~
 14 ~~104E-6.2 and G.S. 130A-293.~~

15 (11) ~~Article 2 of this Chapter shall not apply to the North Carolina Low-~~
 16 ~~Level Radioactive Waste Management Authority in administering the~~
 17 ~~provisions of G.S. 104G-10 and G.S. 104G-11. Articles 3 and 3A of~~
 18 ~~this Chapter shall not apply to the North Carolina Low Level~~
 19 ~~Radioactive Waste Management Authority in administering the~~
 20 ~~provisions of G.S. 104G-9, 104G-10, and 104G-11.~~

21 (12) ~~Article 2 of this Chapter shall not apply to the North Carolina~~
 22 ~~Hazardous Waste Management Commission in administering the~~
 23 ~~provisions of G.S. 130B-13 and G.S. 130B-14. Articles 3 and 3A of~~
 24 ~~this Chapter shall not apply to the North Carolina Hazardous Waste~~
 25 ~~Management Commission in administering the provisions of G.S.~~
 26 ~~130B-11, 130B-13, and 130B-14.~~

27 (13) ~~Article 3 of this Chapter and G.S. 150B-51(a) shall not apply to~~
 28 ~~hearings required pursuant to the Rehabilitation Act of 1973, (Public~~
 29 ~~Law 93-122), as amended and federal regulations promulgated~~
 30 ~~thereunder."~~

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

32 **"§ 150B-2. Definitions.**

33 As used in this Chapter,

34 (01) 'Administrative law judge' means a person appointed under G.S. 7A-
 35 752, 7A-753, or 7A-757.

36 (1) 'Agency' means ~~any agency, institution, board, commission, bureau,~~
 37 ~~department, division, council, member of the Council of State, or~~
 38 ~~officer of the State government of the State of North Carolina but does~~
 39 ~~not include any agency in the legislative or judicial branch of the State~~
 40 ~~government, and does not include counties, cities, towns, villages,~~
 41 ~~other municipal corporations or political subdivisions of the State or~~
 42 ~~any agencies of such subdivisions, or local boards of education, other~~
 43 ~~local public districts, units or bodies of any kind, or private~~
 44 ~~corporations created by act of the General Assembly. an agency or an~~

1 officer in the executive branch of the government of this State and
2 includes the Council of State, the Governor's Office, a board, a
3 commission, a department, a division, a council, and any other unit of
4 government in the executive branch. A local unit of government is not
5 an agency.

6 (1a) 'Adopt' means to take final action to create, amend, or repeal a rule.

7 (1b) 'Codifier of Rules' means the Chief Administrative Law Judge of the
8 Office of Administrative Hearings or a designated representative of the
9 Chief Administrative Law Judge.

10 (1c) 'Commission' means the Rules Review Commission.

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

17 (2a) ~~'Effective' means that a valid rule has been filed as required by G.S.~~
18 ~~150B-59 and, if applicable, that the time specified in that section has~~
19 ~~elapsed. A rule that is effective is enforceable to the extent permitted~~
20 ~~by law.~~

21 (2b) 'Hearing officer' means a person or group of persons designated by an
22 agency that is subject to Article 3A of this Chapter to preside in a
23 contested case hearing conducted under that Article.

24 (2c) 'Law' means an enactment of the General Assembly.

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

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

33 (4a) 'Occupational license' means any certificate, permit, or other evidence,
34 by whatever name called, of a right of privilege to engage in a
35 profession, occupation, or field of endeavor that is issued by an
36 occupational licensing agency.

37 (4b) 'Occupational licensing agency' means any board, commission,
38 committee or other agency of the State of North Carolina which is
39 established for the primary purpose of regulating the entry of persons
40 into, and/or the conduct of persons within a particular profession,
41 occupation or field of endeavor, and which is authorized to issue and
42 revoke licenses. 'Occupational licensing agency' does not include State
43 agencies or departments which may as only a part of their regular
44 function issue permits or licenses.

- 1 (5) 'Party' means any person or agency named or admitted as a party or
 2 properly seeking as of right to be admitted as a party and includes the
 3 agency as appropriate. This subdivision does not permit an agency that
 4 makes a final decision, or an officer or employee of the agency, to
 5 petition for initial judicial review of that decision.
- 6 (6) 'Person aggrieved' means any person or group of persons of common
 7 interest directly or indirectly affected substantially in his or its person,
 8 property, or employment by an administrative decision.
- 9 (7) 'Person' means any natural person, partnership, corporation, body
 10 politic and any unincorporated association, organization, or society
 11 which may sue or be sued under a common name.
- 12 (8) 'Residence' means domicile or principal place of business.
- 13 (8a) 'Rule' means any agency regulation, ~~standard~~ standard, or statement of
 14 general applicability that implements or interprets ~~laws enacted by an~~
 15 enactment of the General Assembly or Congress or regulations
 16 ~~promulgated a regulation adopted~~ by a federal agency or that describes
 17 the procedure or practice requirements of an agency. ~~any agency not~~
 18 ~~inconsistent with laws enacted by the General Assembly.~~ The term
 19 includes the establishment of a fee and the amendment or repeal of a
 20 prior rule. The term does not include the following:
- 21 a. Statements concerning only the internal management of an
 22 agency or group of agencies within the same principal office or
 23 department enumerated in G.S. 143-11 or 143B-6, including
 24 policies and procedures manuals, if ~~such a~~ the statement does
 25 not directly or substantially affect the procedural or substantive
 26 rights or duties of a person ~~persons~~ not employed by the agency
 27 or group of agencies.
- 28 b. Budgets and budget policies and procedures issued by the
 29 Director of the Budget, by the head of a department, as defined
 30 by G.S. 143A-2 or G.S. 143B-3, by an occupational licensing
 31 board, as defined by G.S. 93B-1, or by the State Board of
 32 Elections.
- 33 c. Nonbinding interpretative statements within the delegated
 34 authority of ~~the an~~ agency that merely define, ~~interpret~~ interpret,
 35 or explain the meaning of a statute or rule. ~~other provision of law~~
 36 ~~or precedent.~~
- 37 d. A form, the contents or substantive requirements of which are
 38 prescribed by rule or statute. ~~statute or the instructions for the~~
 39 ~~execution or use of the form.~~
- 40 e. Statements of agency policy made in the context of another
 41 proceeding, including:
- 42 1. Declaratory rulings under ~~G.S. 150B-17;~~ G.S. 150B-4.
 43 2. Orders establishing or fixing rates or tariffs.

- 1 f. ~~Statements of agency policy, provided that the agency policy is not~~
 2 ~~inconsistent with any law enacted by the General Assembly,~~
 3 Instructions, communicated to the public by the use of signs or
 4 symbols, concerning the use of public roads, bridges, or
 5 facilities, concerning:
 6 1. ~~The use or creation of public roads or bridges;~~
 7 2. ~~The boundaries of public facilities and times when~~
 8 ~~public facilities are open to the public; or~~
 9 3. ~~Safety in use of public facilities.~~
- 10 g. Statements that set forth criteria or guidelines to be used by the
 11 staff of an agency in performing audits, investigations, or
 12 inspections; in settling financial disputes or negotiating
 13 financial arrangements; or in the defense, prosecution, or
 14 settlement of ~~eases; cases.~~
- 15 h. Scientific, architectural, or engineering standards, forms, or
 16 procedures.
- 17 i. Job classification standards, job qualifications, and salaries
 18 established for positions under the jurisdiction of the State
 19 Personnel Commission.

20 (8b) 'Substantial evidence' means relevant evidence a reasonable mind
 21 might accept as adequate to support a conclusion.

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

25 Sec. 4. G.S. 150B-17 is recodified as G.S. 150B-4 in Article 1 of Chapter
 26 150B of the General Statutes.

27 Sec. 5. Article 2 of Chapter 150B of the General Statutes, as amended by this
 28 act, Article 5 of Chapter 150B of the General Statutes, G.S. 143B-30, and G.S. 143B-
 29 30.3 are repealed.

30 Sec. 6. G.S. 12-3.1(c) reads as rewritten:

31 "(c) This section does not apply to any of the following:

- 32 (1) ~~rules~~ Rules establishing fees or charges to State, federal or local
 33 governmental ~~units,~~ units.
- 34 (2) ~~A nor to any~~ reasonable fee or charge for copying, transcripts of public
 35 hearings, State publications, or mailing a document or other item.
- 36 (3) Reasonable registration fees covering the cost of a conference or
 37 ~~workshop,~~ workshop.
- 38 (4) Reasonable ~~or~~ user fees covering the cost of providing data processing
 39 services."

40 Sec. 7. G.S. 84-21 reads as rewritten:

41 "**§ 84-21. Organization of council; publication of rules, regulations and bylaws.**

42 Upon receiving notification of the election of a councilor for each judicial district,
 43 or, if such notification shall not have been received from all said districts, within 120
 44 days after this Article shall have gone into effect, the clerk of the Supreme Court of

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

1 Chief Justice of the Supreme Court of North Carolina, entered by it upon its minutes,
2 and published in the next ensuing number of the North Carolina ~~Reports~~ Reports and in
3 the North Carolina Administrative Code: Provided, that the court may decline to have so
4 entered upon its minutes any of such rules, regulations and amendments which in the
5 opinion of the Chief Justice are inconsistent with this Article."

6 Sec. 8. G.S. 95-131 reads as rewritten:

7 "**§ 95-131. Development and promulgation of standards; adoption of federal**
8 **standards and regulations.**

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

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

29 (1) ~~Whenever the need or desirability of promulgating a regulation or~~
30 ~~standard by the Commissioner which serves the objective of this~~
31 ~~Article is indicated by information submitted in writing to the~~
32 ~~Commissioner by any interested person, employer, employee, or~~
33 ~~representative of any organization of employers or employees or upon~~
34 ~~information derived from recognized standards producing~~
35 ~~organizations or upon the basis of information developed by the~~
36 ~~Commissioner or otherwise available to him, he shall determine the~~
37 ~~scope of issue to be covered by such standard or regulation and the~~
38 ~~method to be followed in the development of such standard or~~
39 ~~regulation. If the Commissioner finds it desirable he may request the~~
40 ~~recommendation of the Advisory Council appointed under this Article~~
41 ~~and shall provide such Advisory Council with any proposals of his~~
42 ~~own, together with all pertinent factual information developed by~~
43 ~~technical experts or otherwise available, including the result of~~
44 ~~research, demonstrations, experiments, and experience.~~

1 Recommendations of the Advisory Council shall be submitted to the
2 Commissioner within 90 days from the date of the receipt of such
3 request or within such longer or shorter period as may be prescribed by
4 the Commissioner, but in no event for a period which is longer than
5 270 days.

6 (2) ~~When the Commissioner wishes to promulgate a regulation or standard
7 in this section, he shall consider any proposed revisions prior to
8 publication of proposed standards and regulations under subdivision
9 (3) of this subsection, and may make revisions appropriate to the
10 effectiveness of the proposed standards and regulations.~~

11 (3) ~~The Commissioner shall, following the review provided for in
12 subdivision (2) above, publish a notice that he intends to issue a
13 standard or regulation modifying or revoking an occupational safety or
14 health standard or regulation in one newspaper of general circulation
15 in Asheville, Charlotte, Durham, Greensboro, Raleigh, Wilmington
16 and Winston-Salem, and shall afford interested persons a period of 30
17 days after publication to submit written data or comments. The notice
18 shall describe the content of the proposed regulation and shall state
19 where copies of the proposed rule, regulation or standard may be
20 obtained.~~

21 (4) ~~On or before the last day of the period provided for the submission of
22 written data or comment under subdivision (3) above, any interested
23 person may file with the Commissioner written objections to the
24 proposed regulation, rule or standard, stating the grounds therefor and
25 requesting a public hearing on such objections. Within 30 days after
26 the last day for filing such objections, the Commissioner shall issue a
27 call for a public hearing on the proposed occupational safety or health
28 rule, regulation or standard to which such objections have been filed.
29 The notice of hearing shall be published in one newspaper of general
30 circulation in Asheville, Charlotte, Durham, Greensboro, Raleigh,
31 Wilmington and Winston-Salem, 30 days prior to the hearing. The
32 notice shall include the date, time, and place of the hearing and shall
33 indicate concisely and accurately the subject matter of the proposed
34 rule, regulation or standard to which objections have been filed. It shall
35 also state where copies of the full text of the proposed rule, regulation
36 or standard may be obtained.~~

37 (5) ~~The hearing shall be presided over by the Commissioner or any
38 authorized agent of the Department, or he may delegate such presiding
39 to the Director and shall provide reasonable opportunity for reception
40 of opinions, memoranda and advice concerning such proposed
41 regulation, rule or standard by interested persons and organizations.~~

42 (6) ~~Within 60 days after the expiration of the period provided for the
43 submission of written data or comments as provided by this section, or
44 within 60 days after the completion of any hearing held under the~~

1 provision of this section, the Commissioner shall issue a regulation
2 promulgating, modifying, or revoking such occupational safety or
3 health standard, rule or regulation so developed by him, or make a
4 determination that such rule, standard or regulation shall not be issued.
5 In addition, he shall issue a statement of reasons for any changes made
6 from the proposed regulation, rule or standard, or reasons why no
7 regulation, rule or standard was issued. Such regulation, rule or
8 standard may contain a provision delaying its effective date for such
9 period (not in excess of 90 days) as the Commissioner determines may
10 be necessary to insure that affected employers and employees will be
11 informed of the existence of the rule, regulation or standard and of its
12 terms and that employers affected are given an opportunity to
13 familiarize themselves and their employees with the existence of the
14 requirements of the rule, regulation or standard. Notice of such
15 promulgation, modification or revocation, shall be published in the
16 same manner as heretofore provided in this section and as related to
17 the publication of proposed rules, regulations and standards. Copies of
18 the Commissioner's ruling shall be made available without cost to
19 reasonably interested parties.

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

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

- 1 (2) ~~Emergency standards may cover issues not dealt with by statutes or~~
2 ~~regulations in existence and may displace standards heretofore~~
3 ~~promulgated.~~
- 4 (3) ~~Any such emergency temporary standard shall be effective until~~
5 ~~superseded by a standard promulgated in accordance with the~~
6 ~~procedures prescribed in subdivision (4) of this subsection.~~
- 7 (4) ~~Upon publication of such emergency temporary standard, the~~
8 ~~Commissioner shall commence a proceeding in accordance with G.S.~~
9 ~~95-131(e) of this Article, and the emergency standard as published~~
10 ~~shall also serve as a proposed regulation for the proceeding. He shall~~
11 ~~thereupon promulgate a standard under this subdivision no later than~~
12 ~~six months after publication of the emergency standard as provided in~~
13 ~~subdivision (1) of this subsection.~~
- 14 (d) (1) ~~Regulations issued under subsections (b) and (c) of Rules~~
15 ~~adopted under this section shall provide insofar as possible the~~
16 ~~highest degree of safety and health protection for employees; other~~
17 ~~considerations shall be the latest available scientific data in the field,~~
18 ~~the feasibility of the standard, and experience gained under this and~~
19 ~~other health and safety laws. Whenever practical the standards~~
20 ~~promulgated-established in a rule shall be expressed in terms of~~
21 ~~objective criteria and of the performance desired. In promulgating~~
22 ~~establishing standards dealing with toxic materials or harmful~~
23 ~~physical agents, the Commissioner, after consultation and~~
24 ~~recommendations of the Department of Human Resources, shall set~~
25 ~~a standard which most adequately assures, to the extent possible, on~~
26 ~~the basis of the most available evidence that no employee will suffer~~
27 ~~material impairment of health or functional capacity even if such~~
28 ~~employee has regular exposure to the hazard dealt with by such~~
29 ~~standard for the period of his working life.~~
- 30 (2) ~~Upon adoption of this Article, all rules and procedures set forth in~~
31 ~~section 6(b)(7) of the federal act will be hereinafter adopted and~~
32 ~~applied.~~
- 33 (e) The Commissioner ~~shall not develop or promulgate~~ may not adopt State
34 standards, for products distributed or used in interstate commerce, which are different
35 from federal standards for such products unless the ~~promulgation~~ adoption of such State
36 standard, or standards, ~~are~~ is required by compelling local conditions and ~~do~~ does not
37 unduly burden interstate commerce.
- 38 (f) ~~Notwithstanding any other provision of this section, in the event the~~
39 ~~Commissioner shall develop any rule, regulation, scope, or standard for agricultural~~
40 ~~employers which differs from the federal regulations or standards, he shall promulgate~~
41 ~~these rules, standards and regulations pursuant to Articles 2 and 5 of Chapter 150B and~~
42 ~~Part 3 of Article 1 of Chapter 143B.~~
- 43 (g) Any rule, regulation, scope, or standard for agricultural employers adopted or
44 promulgated prior to July 12, 1988, that differs from the federal rule, regulation, scope,

1 or standard is repealed effective September 1, 1989, unless readopted pursuant to
2 Chapter 150B of the General Statutes."

3 Sec. 9. G.S. 143B-14(b) reads as rewritten:

4 "(b) Except as otherwise provided ~~in the Executive Organization Act of 1973, in~~
5 ~~G.S. 120-30.28, or in G.S. 150B-11(3), by law,~~ the powers, duties, and functions of a
6 commission (including but not limited to rule making, regulation, licensing, and
7 promulgation of rules, rates, regulations, and standards, and the rendering of findings,
8 orders, and adjudications) shall not be ~~are not~~ subject to the approval, review, or control
9 of the head of the department or of the Governor. ~~Provided, however, that the provisions~~
10 ~~of this subsection shall not apply to the review of rules by the Governor's~~
11 ~~Administrative Rules Review Commission."~~

12 Sec. 10. G.S. 143B-18 and G.S. 143B-20 are repealed.

13 Sec. 11. The catch line to G.S. 143B-30.1 and G.S. 143B-30.1(a) reads as
14 rewritten:

15 "**§ 143B-30.1. Administrative Rules Review Commission created.**

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

23 Sec. 12. G.S. 143B-30.2 reads as rewritten:

24 "**§ 143B-30.2. Review of rules. Purpose of Commission.**

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

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

- 30 (1) ~~Is within the authority delegated to the agency by the General~~
31 ~~Assembly;~~
32 (2) ~~Is clear and unambiguous;~~
33 (3) ~~Is reasonably necessary to enable the administrative agency to perform~~
34 ~~a function assigned to it by statute or to enable or facilitate the~~
35 ~~implementation of a program or policy in aid of which the rule was~~
36 ~~adopted.~~

37 ~~Any rule filed by the 20th of a month shall be reviewed by the Commission by the~~
38 ~~last day of the next calendar month. Any rule filed after the 20th of a month shall be~~
39 ~~reviewed by the Commission by the last day of the second subsequent calendar month.~~
40 ~~The Commission may extend the time for review of a rule by a period of up to 70 days~~
41 ~~to obtain additional information on the rule. The Commission shall file notice of the~~
42 ~~extension of time for review of a rule with the agency and the Director of the Office of~~
43 ~~Administrative Hearings. A rule may not be presented for filing with the Director of the~~

~~1 Office of Administrative Hearings under G.S. 150B-59 unless the rule has been
2 reviewed by the Commission as provided in this section.~~

~~3 (b) If the Commission reviews a rule and determines that it is within the authority
4 delegated to the agency, is clear and unambiguous, and is reasonably necessary, the
5 Commission shall note its approval, notify the agency, and file the rule with the Director
6 of the Office of Administrative Hearings under G.S. 150B-59, and the rule shall become
7 effective as provided in that section.~~

~~8 (c) If the Commission finds that an agency did not act within the authority
9 delegated to it in promulgating a rule or a part of a rule, or that a rule is not clear and
10 unambiguous, or that a rule is unnecessary, the Commission shall object and delay the
11 filing of the rule or part of the rule under G.S. 150B-59 for a period not to exceed 90
12 days. The Commission shall send to the agency, the Governor, the President of the
13 Senate, the Speaker of the House of Representatives, and the Director of the Office of
14 Administrative Hearings, a written report of the objection and delay of the rule or its
15 part and the reasons for the delay. An agency may not present a rule or part of a rule that
16 has been delayed to the Director of the Office of Administrative Hearings for filing
17 under G.S. 150B-59, and a rule or its part that is delayed is not "effective," as defined in
18 G.S. 150B-2(2a).~~

~~19 (d) Within 30 days after receipt of the Commission's written report as authorized
20 by (c), the agency shall either (1) revise the rule to remove the cause of the objections of
21 the Commission and return the revised rule to the Commission or (2) return the rule to
22 the Commission without change with the Commission's objections attached; provided,
23 however, that in the case of a board, committee, council, or commission the response is
24 due within 30 days after receipt of the Commission's written report or within 10 days
25 following the next regularly scheduled meeting of the board, committee, council, or
26 commission, whichever time period is greater. The Commission shall determine
27 whether a revision removes its objections to the rule.~~

~~28 (e) If the Commission determines that a revision of a rule has removed the
29 Commission's objections, the Commission shall note its approval and return the rule to
30 the agency. The agency may then file the rule with the Director of the Office of
31 Administrative Hearings under G.S. 150B-59, and the rule shall become effective as
32 provided in that section.~~

~~33 (f) Regardless of whether the agency returns the rule to the Commission without
34 change instead of revising the rule to remove the Commission's objections or whether
35 the Commission determines that a revision of a rule has not removed its objections, the
36 Commission shall note its review of and objection to the rule once 90 days have passed
37 since the Commission objected and delayed the filing of the rule or part of the rule
38 pursuant to G.S. 143B-30.2(c) and shall return the rule to the agency. The agency may
39 then file the rule with the Director of the Office of Administrative Hearings under G.S.
40 150B-59, and the rule shall become effective as provided in that section. If the agency
41 did not remove the Commission's objections to the rule or part of the rule, the
42 Commission may send to the President of the Senate and the Speaker of the House of
43 Representatives a written report of its objections to the rule. Thereafter, if the General
44 Assembly enacts legislation disapproving the rule, the rule shall no longer be effective.~~

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

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

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

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

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

15 Sec. 13. G.S. 120-30.48 reads as rewritten:

16 **"§ 120-30.48. Fiscal impact of administrative actions. rules.**

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

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

27 Sec. 14. G.S. 147-16.1 reads as rewritten:

28 **"§ 147-16.1. Publication of executive orders.**

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

35 Sec. 15. G.S. 148-11 reads as rewritten:

36 **"§ 148-11. Authority to make regulations.**

37 The Secretary shall adopt rules for the government of the State prison system and
38 shall file and publish such rules in accordance with the provisions of Article 5 of Chapter
39 150B. In the case of temporary rules, such rules shall become effective immediately
40 upon adoption by the Secretary and shall be filed ~~in accordance with G.S. 150B-13~~ with
41 the Codifier of Rules within two working days of adoption. The Secretary shall have
42 such portion of these rules and regulations as pertain to enforcing discipline read to
43 every prisoner when received in the State prison system and a printed copy of these
44 rules and regulations shall be made available to the prisoners."

1 Sec. 16. This act becomes effective October 1, 1991. The procedures in G.S.
2 150B, Article 2A, as set forth in this act, apply to all rules for which a notice of rule
3 making is published in the North Carolina Register on or after that date, and to all rules
4 that do not require publication of a notice of rule making and are adopted on or after
5 that date. The Utilities Commission shall submit to the Codifier of Rules the rules of
6 the Commission that are included in the publication "North Carolina Utilities Laws and
7 Regulations" within 15 days after the effective date of this act.