

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**SESSION 1995**

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**SENATE BILL 173**

Short Title: Advance Notice of Rule Making.

(Public)

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Sponsors: Senators Jordan; and Plexico.

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Referred to: Judiciary II/Election Laws.

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February 9, 1995

**A BILL TO BE ENTITLED**

**AN ACT TO REQUIRE THAT, FOR A PERMANENT RULE, AGENCIES GIVE NOTICE OF PROPOSED RULE-MAKING PROCEEDINGS, FOLLOWED BY PUBLISHING THE PROPOSED TEXT OF THE PERMANENT RULE OR PUBLISHING A SUBJECT MATTER NOTICE OF THE RULE AND TO PROVIDE FOR OPTIONAL PUBLISHING OF AGENDAS THAT DESCRIBE THE SUBSTANTIVE AREAS WITH RESPECT TO A PROPOSED RULE.**

The General Assembly of North Carolina enacts:

Section 1. G.S. 150B-21.1(a) reads as rewritten:

"(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.

- 1           (6) The need for the rule to become effective the same date as the State  
2           Medical Facilities Plan approved by the Governor, if the rule addresses  
3           a matter included in the State Medical Facilities Plan.

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

6           An agency must begin rule-making proceedings for a permanent rule by the day it  
7           adopts a temporary rule. An agency begins rule-making proceedings for a permanent rule  
8           by submitting to the Codifier of Rules ~~written notice of its intent to adopt a permanent rule. a~~  
9           notice that complies with the requirements set in G.S. 150B-21.2(a1) for a notice of the  
10          proposed text of a permanent rule."

11          Sec. 2. G.S. 150B-21.2 reads as rewritten:

12          "**§ 150B-21.2. Procedure for adopting a permanent rule.**

13          (a) ~~Notice.~~Notice of Proposed Proceedings. – Before an agency adopts a permanent  
14          rule, it must publish a notice of its intent to adopt a permanent rule in the North Carolina  
15          Register and as required by any other law. rule-making proceedings in the North Carolina  
16          Register, unless the permanent rule is substantially the same as a temporary rule  
17          previously published in the North Carolina Register. A notice of rule-making  
18          proceedings must include a brief statement of the subject matter of the proposed  
19          proceedings, a brief explanation of the reason for the proposed proceedings, and the  
20          person to whom questions or comments on the proposed proceedings may be addressed.  
21          A notice of rule-making proceedings must be published at least 60 days before the agency  
22          submits to the Codifier of Rules either the proposed text of a permanent rule or a subject  
23          matter notice for a permanent rule under subsection (a1) of this section, and the agency  
24          must accept comments on the proposed proceedings during this period.

25          (a1) Notice of Text or Subject Matter. – After complying with subsection (a) of this  
26          section, an agency may continue the process of adopting a permanent rule by publishing  
27          in the North Carolina Register either the proposed text of the rule or a subject matter  
28          notice of the proposed rule. The notice published in the North Carolina Register must  
29          include all of the following:

- 30           (1) Either the text of the proposed rule or a statement of the subject matter  
31           of the proposed rule making.  
32           (2) A short explanation of the reason for the proposed action.  
33           (3) A citation to the law that gives the agency the authority to adopt the  
34           proposed rule, if the notice includes the text of the proposed rule, or a  
35           citation to the law that gives the agency the authority to adopt a rule on  
36           the subject matter of the proposed rule making, if the notice includes  
37           only a statement of the subject matter of the proposed rule making.  
38           (4) The proposed effective date of the proposed rule, if the notice includes  
39           the text of the proposed rule, or the proposed effective date of a rule  
40           adopted on the subject matter of the proposed rule making, if the notice  
41           includes only a statement of the subject matter of the proposed rule  
42           making.

- 1 (5) The date, time, and place of any public hearing scheduled on the  
2 proposed rule or subject matter of the proposed rule making.
- 3 (6) Instructions on how a person may demand a public hearing on a  
4 proposed rule if the notice does not schedule a public hearing on the  
5 proposed rule and subsection (c) requires the agency to hold a public  
6 hearing on the proposed rule when requested to do so.
- 7 (7) The period of time during which and the person to whom written  
8 comments may be submitted on the proposed rule or subject matter of  
9 the proposed rule making.
- 10 (8) If a fiscal note has been prepared for the proposed rule or will be  
11 prepared when a rule is proposed on the subject matter of the proposed  
12 rule making, a statement that a copy of the fiscal note can be obtained  
13 from the agency.

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

20 (c) Hearing. – An agency must hold a public hearing on a rule it proposes to adopt  
21 in two circumstances and may hold a public hearing in other circumstances. When an  
22 agency is required to hold a public hearing on a proposed rule or decides to hold a public  
23 hearing on a proposed rule when it is not required to do so, the agency must publish in  
24 the North Carolina Register a notice of the date, time, and place of the public hearing.  
25 The hearing date of a public hearing held after the agency publishes notice of the hearing  
26 in the North Carolina Register must be at least 15 days after the date the notice is  
27 published.

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

- 30 (1) The agency publishes a statement of the subject matter of the proposed  
31 rule making in the notice in the North Carolina Register.
- 32 (2) The agency publishes the text of the proposed rule in the notice in the  
33 North Carolina Register and all the following apply:
- 34 a. The notice does not schedule a public hearing on the proposed  
35 rule.
- 36 b. Within 15 days after the notice is published, the agency receives  
37 a written request for a public hearing on the proposed rule.
- 38 c. The proposed rule is not part of a rule-making proceeding the  
39 agency initiated by publishing a statement of the subject matter  
40 of proposed rule making.
- 41 d. The proposed text is not a changed version of proposed text the  
42 agency previously published in the course of rule-making  
43 proceedings but did not adopt.

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

7 (e) Comments. – An agency must accept comments on the text of a proposed rule  
8 published in the North Carolina Register for at least 30 days after the text is published or  
9 until the date of any public hearing held on the proposed rule, whichever is longer. An  
10 agency must accept comments on a statement of the subject matter of proposed rule  
11 making until the public hearing on the subject matter. An agency must consider fully all  
12 written and oral comments received.

13 (f) Adoption. – An agency may not adopt a rule until the time for commenting on  
14 the proposed text of the rule has elapsed and may not adopt a rule if more than 12 months  
15 have elapsed since the end of the time for commenting on the proposed text of the rule.  
16 An agency may not adopt a rule that differs substantially from the text of a proposed rule  
17 published in the North Carolina Register unless the agency publishes the text of the  
18 proposed different rule in the North Carolina Register and accepts comments on the  
19 proposed different rule for the time set in subsection (e).

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

- 22 (1) Affects the interests of persons who, based on the notice published in  
23 the North Carolina Register or the proposed text of the rule, could not  
24 reasonably have determined that the rule would affect their interests.
- 25 (2) Addresses a subject matter or an issue that is not addressed in the  
26 proposed text of the rule.
- 27 (3) Produces an effect that could not reasonably have been expected based  
28 on the proposed text of the rule.

29 When an agency adopts a rule, it may not take subsequent action on the rule without  
30 following the procedures in this Part.

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

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

40 (i) Optional Rule-Making Agenda. – An agency may periodically publish in the  
41 North Carolina Register one or more agenda that describe the substantive areas with  
42 respect to which the agency is contemplating or plans the adoption of a permanent rule."

1           Sec. 3. This act becomes effective January 1, 1996, and applies to rules  
2 adopted on or after that date for which publication of a notice of rule making is required  
3 pursuant to G.S. 150B-21.2, as amended by Section 2 of this act.