

GENERAL ASSEMBLY OF NORTH CAROLINA
1985 SESSION

CHAPTER 1022
SENATE BILL 1295

AN ACT TO MAKE AMENDMENTS TO THE ADMINISTRATIVE PROCEDURE
ACT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 150B of the General Statutes is amended as follows:

(1) By deleting the words "chief hearing officer" each time they appear and substituting the word "Director";

(2) G.S. 150B-2(2a) is amended by deleting from the first sentence the phrase "and either has not been delayed by or has been returned to the Administrative Rules Review Commission as required by G.S. 143A-55.3." and substituting the phrase "and, if applicable, that the time specified in that section has elapsed."

(3) G.S. 150B-2 is amended by adding a new subsection (2b) to read:

"(2b) 'Hearing officer' means an administrative law judge appointed under G.S. 7A-753 or an agency employee or person or group of persons designated by an agency to preside in a contested case hearing under this Chapter."

(4) G.S. 150B-2(2) is rewritten to read:

"'Contested case' means an administrative proceeding pursuant to this Chapter to resolve a dispute between an agency and another person that involves the person's rights, duties, or privileges, including licensing or the levy of a monetary penalty. 'Contested case' does not include rulemaking, declaratory rulings, or the award or denial of a scholarship or grant."

(5) G.S. 150B-2(9) is amended by deleting from the second sentence the words "is made" and substituting the word "becomes".

(6) G.S. 150B-10 is amended by deleting the words "Administrative Rules Review Commission" and substituting the words "Director of the Office of Administrative Hearings".

(7) G.S. 150B-12(g) is amended by deleting the words "Administrative Rules Review Commission certifies" and substituting the words "Director of the Office of Administrative Hearings determines".

(8) G.S. 150B-13(a) is amended by designating the third sentence as subsection (a1) and by rewriting subdivision (2) of that sentence to read:

"The chairman of the board in the case of an occupational licensing board or the Director of the Office of Administrative Hearings in the case of that agency."

(9) G.S. 150B-23 is amended as follows:

(1) by repealing subsection (a1);

(2) by adding the word "and" at the end of subdivision (b)(2);

- (3) by deleting "; and" from subdivision (b)(3) and substituting a period; and
- (4) by repealing subdivision (b)(4).
- (10) G.S. 150B-23(a) is amended as follows:
 - (1) by rewriting the fourth and fifth sentences to read:

"All contested cases under Chapter 126 of the General Statutes shall be conducted in the Office of Administrative Hearings, and no party may waive the right to have the case conducted in the Office of Administrative Hearings. In other contested cases, if a nonagency party commences the case, that party may waive the right to have the case conducted in the Office of Administrative Hearings in the petition filed to commence the case. If an agency commences the contested case, a nonagency party-respondent may, within 15 days of service of the petition, waive the right to have the contested case conducted in the Office of Administrative Hearings by notifying the Director of the Office of Administrative Hearings in writing. If there is more than one nonagency party-respondent, the waiver shall not be effective unless joined by all of these parties."; and

- (2) by inserting between the first and second sentences a new sentence to read:

"The party who files the petition shall also serve a copy of the petition on all other parties and shall file a certificate of service together with the petition."; and

- (3) by rewriting the current ninth and tenth sentences to read:

"The case shall be conducted in the Office of Administrative Hearings in the same manner as other contested cases under this Article, except that the decision of the State Personnel Commission shall be advisory only and not binding on the local appointing authority, unless (1) the employee, applicant, or former employee has been subjected to discrimination prohibited by Article 6 of Chapter 126 of the General Statutes or (2) applicable federal standards require a binding decision. In these two cases, the State Personnel Commission's decision shall be binding."; and

- (4) by deleting from the first sentence the phrase

"Except as provided in subsection (a1), all" and substituting the word "All".

- (11) Article 3 of Chapter 150B is amended by adding a new section to read:

"§ 150B-22. **Settlement; contested case.**—It is the policy of this State that any dispute between an agency and another person that involves the person's rights, duties, or privileges, including licensing or the levy of a monetary penalty, should be settled through informal procedures. In trying to reach a settlement through informal procedures, the agency may not conduct a proceeding at which sworn testimony is taken and witnesses may be cross-examined. Notwithstanding any other provision of law, if the agency and the other person do not agree to a resolution of the dispute through informal procedures, either the agency or the person may commence an administrative proceeding to determine the person's rights, duties, or privileges, at which time the dispute becomes a 'contested case'."

- (12) G.S. 150B-32(b) is amended by deleting the word "agency" and substituting the words "hearing officer".

- (13) G.S. 150B-25(b) is amended by deleting the second sentence.

- (14) G.S. 150B-26 is amended by deleting the second sentence.

(15) G.S. 150B-32(a1) is repealed.

(16) G.S. 150B-36 is amended by rewriting the third sentence to read:

"The agency may consider only the official record prepared pursuant to G.S. 150B-37 in making a final decision or order, and the final decision or order shall be supported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31."; and is further amended by deleting the period at the end of the last sentence and substituting the following:

"and the Office of Administrative Hearings."

(17) G.S. 150B-44 is amended by adding a new sentence at the end to read:

"An agency's failure to make a final decision within 60 days of receiving the official record from the hearing officer constitutes an unreasonable delay; provided that boards and commissions shall make a final decision at their next regularly scheduled meeting, but in any case no later than 120 days after the official record is received."

(18) The first sentence of G.S. 150B-47 is amended by inserting between the word "the" and the word "agency" the following:

"Office of Administrative Hearings, or if that office did not conduct the contested case, the".

(19) G.S. 150B-63(e) is amended by deleting the word "Reference" at the beginning and substituting the following:

"Notwithstanding G.S. 147-50, reference"; and is further amended by inserting between the phrase "without charge," and the word "to" the word "only".

(20) G.S. 150B-63.1 is repealed.

Sec. 2. G.S. 7A-343.1 is amended by inserting between the line that begins with "Industrial Commission" and the line that begins with "Employment Security Commission" the following lines:

"Office of Administrative Hearings 2"

"Community Colleges, Department of 1".

Sec. 3. G.S. 7A-752 is amended by deleting from the second, third, and fourth sentences the words "chief hearing officer" each time they appear and substituting the word "Director"; and is further amended by deleting from the fifth sentence the phrase "and chief hearing officer".

Sec. 4. G.S. 7A-753 is amended by deleting the word "five"; and is further amended by deleting the period at the end of the first sentence and substituting the following:

"in such numbers as the General Assembly provides."; and is further amended by deleting from the second sentence the following: ", with the approval of the Chief Justice,".

Sec. 5. G.S. 7A-757 is amended by deleting from the third sentence the phrase:

"These temporary hearing officers shall not be employees of the State but" and substituting the following: "A temporary hearing officer shall not be considered a State employee by virtue of this assignment, and"; and is further amended by deleting the word "their" and substituting the word "his"; and is further amended by adding a new sentence at the end to read:

"The Director may also designate a full-time State employee to serve as a temporary hearing officer with the consent of the employee and his supervisor; however, the employee is not entitled to any additional pay for this service."

Sec. 6. G.S. 150B-23(a), 150B-38(e), 150B-40(e), and 7A-752 through 7A-756 are amended as follows:

(1) by deleting the words "chief hearing officer" each time they appear and substituting the words "chief administrative law judge", except that this subsection shall not apply to G.S. 7A-752, 150B-23(a), or 150B-40(e);

(2) by deleting the words "hearing officers" each time they appear and substituting the words "administrative law judges";

(3) by deleting the words "hearing officer" each time they appear and substituting the words "administrative law judge"; and

(4) by deleting from G.S. 150B-40(e) the words "hearing officer's" and substituting the words "administrative law judge's".

The Revisor of Statutes shall change any articles that precede the words amended in this section to make them grammatically correct.

Sec. 7. Section 19 of Chapter 746 of the 1985 Session Laws is amended by deleting from the third sentence the word "advisory".

Sec. 8. G.S. 84-4.1 is amended by inserting immediately after the phrase "or the North Carolina Industrial Commission" each time it appears the phrase "or the Office of Administrative Hearings of North Carolina".

Sec. 9. G.S. 126-5(h) is rewritten to read:

"In case of dispute as to whether an employee is subject to the provisions of this Chapter, the question shall be investigated by the State Personnel Office, and the dispute shall be resolved as provided in Article 3 of Chapter 150B."

Sec. 10. G.S. 126-37 is amended by rewriting the second sentence to read:

"Appeals involving a disciplinary action, alleged discrimination, and any other contested case arising under this Chapter shall be conducted in the Office of Administrative Hearings as provided in Article 3 of Chapter 150B; provided that no grievance may be appealed unless the employee has complied with G.S. 126-34."

Sec. 11. This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 15th day of July, 1986.