

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 217\*

Short Title: Subject Matter Rule Notice.

(Public)

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Sponsors: Senators Sherron and Blackmon.

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Referred to: Judiciary I/Constitution.

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February 15, 1995

A BILL TO BE ENTITLED

1 AN ACT TO REQUIRE AGENCIES TO BEGIN THE PROCESS OF ADOPTING A  
2 PERMANENT RULE BY PUBLISHING A NOTICE OF RULE-MAKING  
3 PROCEEDINGS RATHER THAN BY PUBLISHING THE PROPOSED TEXT OF  
4 A RULE CHANGE.  
5

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 150B-21.1 reads as rewritten:

8 "**§ 150B-21.1. Procedure for adopting a temporary rule.**

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

- 14 (1) A serious and unforeseen threat to the public health, safety, or welfare.  
15 (2) The effective date of a recent act of the General Assembly or the United  
16 States Congress.  
17 (3) A recent change in federal or State budgetary policy.  
18 (4) A federal regulation.  
19 (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~~  
9 ~~rule.~~

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

20 If the Codifier of Rules finds that the statement does not meet the criteria, the Codifier  
21 of Rules must immediately notify the head of the agency. The agency may supplement its  
22 statement of need with additional findings or submit a new statement. If the agency  
23 provides additional findings or submits a new statement, the Codifier of Rules must  
24 review the additional findings or new statement within one business day after the agency  
25 submits the additional findings or new statement. If the Codifier of Rules again finds that  
26 the statement does not meet the criteria listed in subsection (a), the Codifier of Rules  
27 must immediately notify the head of the agency.

28 If an agency decides not to provide additional findings or submit a new statement  
29 when notified by the Codifier of Rules that the agency's findings of need for a rule do not  
30 meet the required criteria, the agency must notify the Codifier of Rules of its decision.  
31 The Codifier of Rules must then enter the rule in the North Carolina Administrative Code  
32 on the sixth business day after receiving notice of the agency's decision.

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

40 Filing a petition for rule making or a request for a declaratory ruling with the agency  
41 that adopted the rule is not a prerequisite to filing an action under this subsection. A  
42 person who files an action for declaratory judgment under this subsection must serve a

1 copy of the complaint on the agency that adopted the rule being contested, the Codifier of  
2 Rules, and the Commission.

3 (d) Effective Date and Expiration. – A temporary rule becomes effective on the  
4 date specified in G.S. 150B-21.3. A temporary rule expires on the date specified in the  
5 rule or ~~180~~240 days from the date the rule becomes effective, whichever comes first.

6 (e) Publication. – When the Codifier of Rules enters a temporary rule in the North  
7 Carolina Administrative Code, the Codifier must publish the rule in the North Carolina  
8 Register. Publication of a temporary rule in the North Carolina Register serves as a  
9 notice of rule-making proceedings for a permanent rule that does not differ substantially  
10 from the published temporary rule."

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

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

13 (a) Steps. – Before an agency adopts a permanent rule, it must take the following  
14 actions:

15 (1) Publish a notice of rule-making proceedings in the North Carolina  
16 Register, unless the proposed rule is substantially the same as a  
17 temporary rule published in the North Carolina Register.

18 (2) When required by G.S. 150B-21.4, prepare or obtain a fiscal note for the  
19 proposed rule.

20 (3) Publish the text of the proposed rule in the North Carolina Register.

21 (4) When required by subsection (e) of this section, hold a public hearing  
22 on the proposed rule after publication of the proposed text of the rule.

23 (5) Accept oral or written comments on the proposed rule as required by  
24 subsection (f) of this section.

25 ~~Notice.—Before an agency adopts a permanent rule, it must publish notice of its intent to~~  
26 ~~adopt a permanent rule in the North Carolina Register and as required by any other law.~~  
27 ~~The notice published in the North Carolina Register must include all of the following:~~

28 (1) ~~Either the text of the proposed rule or a statement of the subject matter~~  
29 ~~of the proposed rule making.~~

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

31 (3) ~~A citation to the law that gives the agency the authority to adopt the~~  
32 ~~proposed rule, if the notice includes the text of the proposed rule, or a~~  
33 ~~citation to the law that gives the agency the authority to adopt a rule on~~  
34 ~~the subject matter of the proposed rule making, if the notice includes~~  
35 ~~only a statement of the subject matter of the proposed rule making.~~

36 (4) ~~The proposed effective date of the proposed rule, if the notice includes~~  
37 ~~the text of the proposed rule, or the proposed effective date of a rule~~  
38 ~~adopted on the subject matter of the proposed rule making, if the notice~~  
39 ~~includes only a statement of the subject matter of the proposed rule~~  
40 ~~making.~~

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

1           ~~(6) Instructions on how a person may demand a public hearing on a~~  
2           ~~proposed rule if the notice does not schedule a public hearing on the~~  
3           ~~proposed rule and subsection (e) requires the agency to hold a public~~  
4           ~~hearing on the proposed rule when requested to do so.~~

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

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

12           (b) Notice of Rule-Making Proceedings. – A notice of rule-making proceedings  
13 published in the North Carolina Register must include all of the following:

14           (1) A statement of the subject matter of the proposed rule making.

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

16           (3) A citation to the law that gives the agency the authority to adopt a rule  
17 on the subject matter of the proposed rule making.

18           (4) The person to whom questions or written comments may be submitted  
19 on the subject matter of the proposed rule making.

20           Publication in the North Carolina Register of an agency's rule-making agenda satisfies  
21 the requirements of this subsection if the agenda includes the information required by this  
22 subsection.

23           (c) Text After Notice of Rule-Making Proceedings. – A notice of the proposed text  
24 of a rule must include all of the following:

25           (1) The text of the proposed rule.

26           (2) A short explanation of the reason for the proposed rule.

27           (3) A citation to the law that gives the agency the authority to adopt the  
28 rule.

29           (4) The proposed effective date of the rule.

30           (5) The date, time, and place of any public hearing scheduled on the rule.

31           (6) Instructions on how a person may demand a public hearing on a  
32 proposed rule if the notice does not schedule a public hearing on the  
33 proposed rule and subsection (e) of this section requires the agency to  
34 hold a public hearing on the proposed rule when requested to do so.

35           (7) The period of time during which and the person to whom written  
36 comments may be submitted on the proposed rule.

37           (8) If a fiscal note has been prepared for the rule, a statement that a copy of  
38 the fiscal note can be obtained from the agency.

39           An agency may not publish the proposed text of a rule until at least 60 days after the  
40 date the notice of rule-making proceedings for the proposed rule was published in the  
41 North Carolina Register.

42           ~~(b)~~   (d) Mailing List. – An agency must maintain a mailing list of persons who have  
43 requested notice of rule making. When an agency publishes a rule-making notice in the

1 North Carolina Register, ~~Register a notice of rule-making proceedings or the text of a~~  
2 proposed rule, it must mail a copy of the notice or text to each person on the mailing list  
3 who has requested notice of rule-making proceedings on the rule or the subject matter for  
4 rule-making described in the notice. ~~notice or the rule affected.~~ An agency may charge an  
5 annual fee to each person on the agency's mailing list to cover copying and mailing costs.

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

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

- 16 (1) ~~The agency publishes a statement of the subject matter of the proposed~~  
17 ~~rule making in the notice in the North Carolina Register.~~
- 18 (2) ~~The~~ when the agency publishes the text of the  
19 proposed rule ~~in the notice in the North Carolina Register and all the following apply:~~
- 20 a. (1) The notice does not schedule a public hearing on the proposed rule.  
21 b. (2) Within 15 days after the notice is published, the agency receives a  
22 written request for a public hearing on the proposed rule.  
23 e. ~~The proposed rule is not part of a rule-making proceeding the agency~~  
24 ~~initiated by publishing a statement of the subject matter of proposed rule~~  
25 ~~making.~~
- 26 d. (3) The proposed text is not a changed version of proposed text the agency  
27 previously published in the course of rule-making proceedings but did  
28 not adopt.

29 An agency may hold a public hearing on a proposed rule in other circumstances.  
30 When an agency is required to hold a public hearing on a proposed rule or decides to hold  
31 a public hearing on a proposed rule when it is not required to do so, the agency must  
32 publish in the North Carolina Register a notice of the date, time, and place of the public  
33 hearing. The hearing date of a public hearing held after the agency publishes notice of  
34 the hearing in the North Carolina Register must be at least 15 days after the date the  
35 notice is published.

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

42 (e) (f) Comments. – An agency must accept comments on a notice of proposed  
43 rule-making proceedings published in the North Carolina Register until the text of the

1 proposed rule that results from the notice is published. An agency must accept comments  
2 on the text of a proposed rule published in the North Carolina Register for at least 30  
3 days after the text is published or until the date of any public hearing held on the  
4 proposed rule, whichever is longer. ~~An agency must accept comments on a statement of the~~  
5 ~~subject matter of proposed rule-making until the public hearing on the subject matter.~~—An  
6 agency must consider fully all written and oral comments received.

7 ~~(f)~~ (g) Adoption. – An agency may not adopt a rule until the time for commenting  
8 on the proposed text of the rule has elapsed and may not adopt a rule if more than 12  
9 months have elapsed since the end of the time for commenting on the proposed text of the  
10 rule. An agency may not adopt a rule that differs substantially from the text of a  
11 proposed rule published in the North Carolina Register unless the agency publishes the  
12 text of the proposed different rule in the North Carolina Register and accepts comments  
13 on the proposed different rule for the time set in subsection ~~(e)~~-(f) of this section.

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

- 16 (1) Affects the interests of persons who, based on either the notice ~~published~~  
17 ~~in the North Carolina Register of rule-making proceedings~~ or the proposed  
18 text of the ~~rule,~~ rule published in the North Carolina Register, could not  
19 reasonably have determined that the rule would affect their interests.
- 20 (2) Addresses a subject matter or an issue that is not addressed in the  
21 proposed text of the rule.
- 22 (3) Produces an effect that could not reasonably have been expected based  
23 on the proposed text of the rule.

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

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

31 ~~(h)~~ (i) Record. – An agency must keep a record of a rule-making proceeding. The  
32 record must include all written comments received, a transcript or recording of any public  
33 hearing held on the rule, and any written explanation made by the agency for adopting the  
34 rule."

35 Sec. 3. G.S. 150B-21.17(a) reads as rewritten:

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

- 39 (1) Temporary rules entered in the North Carolina Administrative Code.  
40 ~~(1)(a) Notices of proposed adoptions rule-making proceedings and of the text of~~  
41 proposed rules.
- 42 (2) Notices of receipt of a petition for municipal incorporation, as required  
43 by G.S. 120-165.

- 1           (3) Executive orders of the Governor.
- 2           (4) Final decision letters from the United States Attorney General  
3           concerning changes in laws that affect voting in a jurisdiction subject to  
4           section 5 of the Voting Rights Act of 1965, as required by G.S. 120-  
5           30.9H.
- 6           (5) Orders of the Tax Review Board issued under G.S. 105-241.2.
- 7           (6) Other information the Codifier determines to be helpful to the public."
- 8           Sec. 4. This act becomes effective October 1, 1995, and applies to rules for  
9           which a notice of rule making is published in the North Carolina Register on or after that  
10          date.