

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

1

SENATE BILL 1299*

Short Title: Codify Temp. Rule Exceptions.

(Public)

Sponsors: Senator Hartsell.

Referred to: Judiciary I.

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT A RECOMMENDATION OF THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE TO CODIFY AND CROSS-REFERENCE PROVISIONS OF THE GENERAL STATUTES AND SESSION LAWS GRANTING TEMPORARY RULE-MAKING AUTHORITY TO VARIOUS AGENCIES.

The General Assembly of North Carolina enacts:

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

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

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

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

- 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 (7) The need for the Division of Medical Assistance, Department of Health
5 and Human Services, to administer Medicaid estate recovery mandated
6 by the Omnibus Budget Reconciliation Act of 1993, (OBRA 1993), 42
7 U.S.C. § 1396p(b), and G.S. 108-70.5.
- 8 (8) A finding by the Department of Health and Human Services that rules
9 are necessary to maximize receipt of federal funds, to reduce Medicaid
10 expenditures, and to reduce fraud and abuse.
- 11 (9) The provisions of G.S. 143-215.1B(c).
- 12 (10) The provisions of G.S. 130A-125(b1).
- 13 (11) The provisions of G.S. 108A-27(c).
- 14 (12) The provisions of G.S. 143B-289.52(e).
- 15 (13) The provisions of G.S. 113-291.2(a1), provided nothing contained in
16 this subsection shall supersede the public notice requirements contained
17 in G.S. 113-291.2(a1).
- 18 (14) Until July 1, 2005, the Coastal Resources Commission, when adopting
19 temporary rules governing coastal energy facilities.

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

22 (a1) Notwithstanding the provisions of subsection (a) of this section, the Wildlife
23 Resources Commission may adopt a temporary rule after prior notice or hearing or upon
24 any abbreviated notice or hearing the agency finds practical to protect the public health,
25 safety, or welfare, conserve wildlife resources, or provide for the orderly and efficient
26 operation of game lands by establishing any of the following:

- 27 (1) No wake zones;
- 28 (2) Hunting or fishing seasons;
- 29 (3) Hunting or fishing bag limits;
- 30 (4) Management of public game lands as defined in G.S. 113-129(8a).

31 When the Wildlife Resources Commission adopts a temporary rule pursuant to this
32 subsection, it must submit the reference to this subsection as its statement of need to the
33 Codifier of Rules.

34 (a2) Notwithstanding the provisions of subsection (a) of this section, the Secretary
35 of State may adopt temporary rules to implement the certification technology provisions
36 of Article 11A of Chapter 66 of the General Statutes. After having the proposed
37 temporary rule published in the North Carolina Register and at least 30 days prior to
38 adopting a temporary rule pursuant to this subsection, the Secretary shall:

- 39 (1) Notify persons on its mailing list maintained pursuant to G.S. 150B-
40 21.2(d) and any other interested parties of its intent to adopt a temporary
41 rule;
- 42 (2) Accept oral and written comments on the proposed temporary rule; and
- 43 (3) Hold at least one public hearing on the proposed temporary rule.

1 When the Secretary adopts a temporary rule pursuant to this subsection, the Secretary
2 must submit a reference to this subsection as the Secretary's statement of need to the
3 Codifier of Rules.

4 Notwithstanding any other provision of this Chapter, the Codifier of Rules shall
5 publish in the North Carolina Register a proposed temporary rule received from the
6 Secretary in accordance with this subsection.

7 (a3) Notwithstanding the provisions of subsection (a) of this section, the
8 Commissioner of Insurance may adopt a temporary rule to implement the provisions of
9 G.S. 58-2-205 after prior notice or hearing or upon any abbreviated notice or hearing.
10 When the Commissioner adopts a temporary rule pursuant to this subsection, the
11 Commissioner must submit the reference to this subsection as the Commissioner's
12 statement of need to the Codifier of Rules.

13 (a4) Notwithstanding the provisions of subsection (a) of this section, the Secretary
14 of Commerce may adopt temporary rules to implement the information technology
15 procurement provisions of Part 16 of Article 10 of Chapter 143B of the General Statutes.
16 After having the proposed temporary rule published in the North Carolina Register and at
17 least 30 days prior to adopting a temporary rule pursuant to this subsection, the Secretary
18 shall:

- 19 (1) Notify persons on its mailing list maintained pursuant to G.S. 150B-
20 21.2(d) and any other interested parties of its intent to adopt a temporary
21 rule;
- 22 (2) Accept oral and written comments on the proposed temporary rule; and
- 23 (3) Hold at least one public hearing on the proposed temporary rule.

24 When the Secretary adopts a temporary rule pursuant to this subsection, the Secretary
25 must submit a reference to this subsection as the Secretary's statement of need to the
26 Codifier of Rules.

27 Notwithstanding any other provision of this Chapter, the Codifier of Rules shall
28 publish in the North Carolina Register a proposed temporary rule received from the
29 Secretary in accordance with this subsection.

30 (a5) Notwithstanding the provisions of subsection (a) of this section, the State
31 Board of Elections may adopt a temporary rule after prior notice or hearing or upon any
32 abbreviated notice or hearing the agency finds practical for one or more of the following:

- 33 (1) In accordance with the provisions of G.S. 163-22.2.
- 34 (2) To implement any provisions of state or federal law for which the State
35 Board of Elections has been authorized to adopt rules.
- 36 (3) The need for the rule to become effective immediately in order to
37 preserve the integrity of upcoming elections and the elections process.

38 When the State Board of Elections adopts a temporary rule pursuant to this
39 subsection, it must submit the reference to this subsection as its statement of need to the
40 Codifier of Rules.

41 (a6) Notwithstanding the provisions of subsection (a) of this section and Section 8.6
42 of S.L. 1997-458, until July 1, 2001, the Environmental Management Commission may
43 adopt temporary rules to protect water quality standards and uses as required to

1 implement basinwide water quality management plans for the Cape Fear, Catawba, and
2 Tar-Pamlico River Basins pursuant to G.S. 143-214.1, 143-214.7, 143-215.3, and 143B-
3 282. Prior to the adoption of a temporary rule under this subsection, the Commission
4 shall:

5 (1) Consult with persons who may be interested in the subject matter of the
6 temporary rule during the development of the text of the proposed
7 temporary rule.

8 (2) Publish a notice of intent to adopt a temporary rule in the North
9 Carolina Register. The notice shall set out the text of the proposed
10 temporary rule and include the name of the person to whom questions
11 and written comment on the proposed rule may be submitted. The
12 Commission shall accept written comment on the proposed temporary
13 rule for at least 30 days after the notice of intent to adopt the temporary
14 rule is published in the North Carolina Register.

15 (3) Hold a public hearing on the proposed temporary rule in the river basin
16 to which the proposed temporary rule applies.

17 (a7) Notwithstanding the provisions of subdivision (a)(2) of this section, an agency
18 may adopt a temporary rule to implement the provisions of any of the following acts until
19 all rules necessary to implement the provisions of the act have become effective as either
20 temporary or permanent rules:

21 (1) S.L. 1998-212, Section 9.1(e), relating to Driving Education
22 Certificates.

23 (2) S.L. 1997-400, Section 6.10, relating to the Fisheries Reform Act of
24 1997.

25 (3) S.L. 1998-225, Section 5.3, relating to amendments to the Fisheries
26 Reform Act of 1997.

27 (4) S.L. 1997-507, Section 8, relating to Dropout Prevention/Drivers
28 License.

29 (5) S.L. 1999-463 ES, Section 4, relating to the Hurricane Floyd Recovery
30 Act of 1999. Any agency that adopts a temporary rule pursuant to this
31 subdivision shall report the text of the rule and the agency's written
32 statement of its findings of the need for the rule to the Joint Legislative
33 Administrative Procedure Oversight Committee within 30 days of the
34 adoption of the temporary rule.

35 (b) Review. – When an agency adopts a temporary rule it must submit the rule and
36 the agency's written statement of its findings of the need for the rule to the Codifier of
37 Rules. Within one business day after an agency submits a temporary rule, the Codifier of
38 Rules must review the agency's written statement of findings of need for the rule to
39 determine whether the statement of need meets the criteria listed in subsection (a) or (a1)
40 of this section. In reviewing the statement, the Codifier of Rules may consider any
41 information submitted by the agency or another person. If the Codifier of Rules finds that
42 the statement meets the criteria, the Codifier of Rules must notify the head of the agency
43 and enter the rule in the North Carolina Administrative Code.

1 If the Codifier of Rules finds that the statement does not meet the criteria, the Codifier
2 of Rules must immediately notify the head of the agency. The agency may supplement its
3 statement of need with additional findings or submit a new statement. If the agency
4 provides additional findings or submits a new statement, the Codifier of Rules must
5 review the additional findings or new statement within one business day after the agency
6 submits the additional findings or new statement. If the Codifier of Rules again finds that
7 the statement does not meet the criteria listed in subsection (a) or (a1) of this
8 section, the Codifier of Rules must immediately notify the head of the agency.

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

14 (c) Standing. – A person aggrieved by a temporary rule adopted by an agency may
15 file an action for declaratory judgment in Wake County Superior Court pursuant to
16 Article 26 of Chapter 1 of the General Statutes. In the action, the court shall determine
17 whether the agency's written statement of findings of need for the rule meets the criteria
18 listed in subsection (a) or (a1) of this section and whether the rule meets the standards in
19 G.S. 150B-21.9 that apply to review of a permanent rule. The court shall not grant an ex
20 parte temporary restraining order.

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

26 (d) Effective Date and Expiration. – A temporary rule becomes effective on the
27 date specified in G.S. 150B-21.3. A-Except as provided in subsection (d1) of this section,
28 a temporary rule expires on the earliest of the following dates:

- 29 (1) The date specified in the rule.
- 30 (2) The effective date of the permanent rule adopted to replace the
31 temporary rule, if the Commission approves the permanent rule.
- 32 (3) The date the Commission returns to an agency a permanent rule the
33 agency adopted to replace the temporary rule.
- 34 (4) The effective date of an act of the General Assembly that specifically
35 disapproves a permanent rule adopted to replace the temporary rule.
- 36 (5) 270 days from the date the temporary rule was published in the North
37 Carolina Register, unless the permanent rule adopted to replace the
38 temporary rule has been submitted to the Commission.

39 (d1) Notwithstanding the provisions of subsection (d) of this section, the following
40 expiration dates shall apply:

- 41 (1) Temporary rules adopted to implement G.S. 143-215.94V, as enacted by
42 Section 1 of Chapter 377 of the 1995 Session Laws, may remain in

1 effect until the Environmental Management Commission adopts
2 permanent rules, and
3 (2) Temporary rules adopted to implement the Hurricane Floyd Recovery
4 Act of 1999, (S.L. 1999-463 ES, Section 4) shall specify the date on
5 which the rule will expire and shall continue in effect until that date.
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 notice
9 of rule-making proceedings for a permanent rule if the permanent rule is substantially the
10 same as the published temporary rule, unless the agency published a notice of rule-
11 making proceedings at least 60 days before it adopted the temporary rule."
12 Section 2. This act is effective when it becomes law.