

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE BILL 1151
Committee Substitute Favorable 4/28/03

Short Title: Improve Rule-Making Process.

(Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE ADMINISTRATIVE PROCEDURE ACT TO REVISE THE PROCEDURE FOR ADOPTING PERMANENT AND TEMPORARY RULES, TO CREATE A PROCEDURE FOR THE ADOPTION OF EMERGENCY RULES, TO CLARIFY THE ROLE OF THE RULES REVIEW COMMISSION AND TO EXCLUDE THE STATE MEDICAL FACILITIES PLAN FROM THE DEFINITION OF A RULE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 150B-20(c) reads as rewritten:

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

SECTION 2. 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~~ G.S. 150B-21.2 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 recent federal regulation.
- (5) A recent court order.
- (6) The need for the rule to ~~become effective the same date as~~ be made consistent with the State Medical Facilities Plan approved by the Governor, if the rule addresses a matter included in the State Medical Facilities Plan.

~~An agency must prepare a written statement of its findings of need for a temporary rule. If the temporary rule establishes a new fee or increases an existing fee, the agency shall include in the written statement that it has complied with the requirements of G.S. 12-3.1. The statement must be signed by the head of the agency adopting the rule.~~

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

- (7) The need for the Wildlife Resources Commission to establish any of the following:
 - (1)a. No wake zones;
 - (2)b. Hunting or fishing seasons;
 - (3)c. Hunting or fishing bag limits;
 - (4)d. Management of public game lands as defined in G.S. 113-129(8a).

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

~~(a2) Notwithstanding the provisions of subsection (a) of this section, the Secretary of State may adopt temporary rules~~

- (8) The need for the Secretary of State to implement the certification technology provisions of Article 11A of Chapter 66 of the General Statutes and to adopt uniform Statements of Policy that have been officially adopted by the North American Securities Administrators Association for the purpose of promoting uniformity of state securities regulation. After having the proposed temporary rule published in the North Carolina Register and at least 30 days prior to adopting a temporary rule pursuant to this subsection, the Secretary shall:
 - ~~(1) Notify persons on its mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a temporary rule;~~
 - ~~(2) Accept oral and written comments on the proposed temporary rule; and~~
 - ~~(3) Hold at least one public hearing on the proposed temporary rule.~~

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

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

~~(a3) Notwithstanding the provisions of subsection (a) of this section, the Commissioner of Insurance may adopt a temporary rule~~

~~(9) The need for the Commissioner of Insurance to implement the provisions of G.S. 58-2-205 G.S. 58-2-205 after prior notice or hearing or upon any abbreviated notice or hearing. When the Commissioner adopts a temporary rule pursuant to this subsection, the Commissioner must submit the reference to this subsection as the Commissioner's statement of need to the Codifier of Rules.~~

~~(a4) Notwithstanding the provisions of subsection (a) of this section, the State Chief Information Officer may adopt temporary rules~~

~~(10) The need for the Chief Information Officer to implement the information technology procurement provisions of Article 3D of Chapter 147 of the General Statutes. After having the proposed temporary rule published in the North Carolina Register and at least 30 days prior to adopting a temporary rule pursuant to this subsection, the Officer shall:~~

~~(1) Notify persons on its mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a temporary rule;~~

~~(2) Accept oral and written comments on the proposed temporary rule; and~~

~~(3) Hold at least one public hearing on the proposed temporary rule.~~

~~When the Officer adopts a temporary rule pursuant to this subsection, the Officer must submit a reference to this subsection as the Officer's statement of need to the Codifier of Rules.~~

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

~~(a5) Notwithstanding the provisions of subsection (a) of this section,~~

~~(11) The need for the State Board of Elections ~~may~~ to adopt a temporary rule after prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical for one or more of the following:~~

~~(1)a. In accordance with the provisions of G.S. 163-22.2.~~

~~(2)b. To implement any provisions of state or federal law for which the State Board of Elections has been authorized to adopt rules.~~

~~(3)c. The need for the rule to become effective immediately in order to preserve the integrity of upcoming elections and the elections process.~~

1 ~~When the State Board of Elections adopts a temporary rule pursuant to this~~
2 ~~subsection, it must submit the reference to this subsection as its statement of need to the~~
3 ~~Codifier of Rules.~~

4 ~~(a6) Expiration by Session Laws 2001, ch. 421, s. 5.3, effective June 30, 2002.~~

5 ~~(a7) Notwithstanding the provisions of subdivision (a)(2) of this section,~~

6 ~~(12) The need for an agency may to adopt a temporary rule to implement~~
7 ~~the provisions of any of the following acts until all rules necessary to~~
8 ~~implement the provisions of the act have become effective as either~~
9 ~~temporary or permanent rules:~~

10 a. ~~Repealed by Session Laws 2000, ch. 148, s. 5, effective July 1,~~
11 ~~2002.~~

12 b. ~~(Repealed effective July 1, 2003) Article 34B of Chapter 115C~~
13 ~~of the General Statutes, relating to qualified zone academy~~
14 ~~bonds.~~

15 ~~(a8) (Expires on June 30, 2003) Notwithstanding the provisions of subsection (a)~~
16 ~~of this section,~~

17 ~~(13) The need for the Secretary of Transportation may to adopt temporary~~
18 ~~rules concerning the permitted height of mobile and modular homes.~~
19 ~~After having the proposed temporary rule published in the North~~
20 ~~Carolina Register and at least 30 days prior to adopting a temporary~~
21 ~~rule pursuant to this subsection, the Secretary shall:~~

22 ~~(1) Notify persons on its mailing list maintained pursuant to G.S.~~
23 ~~150B-21.2(d) and any other interested parties of its intent to adopt a~~
24 ~~temporary rule.~~

25 ~~(2) Accept oral and written comments on the proposed temporary rule.~~

26 ~~(3) Hold at least one public hearing on the proposed temporary rule.~~

27 ~~When the Secretary adopts a temporary rule pursuant to this subsection, the Secretary~~
28 ~~must submit a reference to this subsection as the Secretary's statement of need to the~~
29 ~~Codifier of Rules.~~

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

33 ~~(a9) (Expires June 30, 2003) Notwithstanding the provisions of subsection (a) of~~
34 ~~this section,~~

35 ~~(14) The need for the Secretary of Transportation may to adopt temporary~~
36 ~~rules pursuant to G.S. 113A-11(b) to establish a class of minimum~~
37 ~~criteria projects.~~

38 ~~After having the proposed temporary rule published in the North Carolina Register,~~
39 ~~and at least 30 days prior to adopting a temporary rule pursuant to this subsection, the~~
40 ~~Secretary shall do all of the following:~~

41 ~~(1) Notify persons on its mailing list, maintained pursuant to G.S.~~
42 ~~150B-21.2(d), and any other interested parties, of his intent to adopt a~~
43 ~~temporary rule.~~

44 ~~(2) Accept oral and written comments on the proposed temporary rule.~~

1 (3) ~~Hold at least one public hearing on the proposed temporary rule.~~
2 ~~When the Secretary adopts a temporary rule pursuant to this subsection, the Secretary~~
3 ~~shall submit a reference to this subsection as the Secretary's statement of need to the~~
4 ~~Codifier of Rules.~~

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

8 ~~(a10) (Expires on October 1, 2004) Notwithstanding the provisions of subsection~~
9 ~~(a) of this section,~~

10 (15) The need for the Department of Health and Human Services may to
11 adopt temporary rules concerning the placement of individuals in
12 facilities licensed under Article 2 of Chapter 122C of the General
13 Statutes and the enrollment of providers of services to such individuals
14 in the Medicaid program. After having the proposed temporary rule
15 published in the North Carolina Register and at least 30 days prior to
16 adopting a temporary rule pursuant to this subsection, the Department
17 shall:

18 (1) ~~Notify persons on its mailing list maintained pursuant to G.S.~~
19 ~~150B-21.2(d) and any other interested parties of its intent to adopt a~~
20 ~~temporary rule.~~

21 (2) ~~Accept oral and written comments on the proposed temporary rule.~~

22 (3) ~~Hold at least one public hearing on the proposed temporary rule.~~

23 ~~When the Department adopts a temporary rule pursuant to this subsection, the~~
24 ~~Department shall submit a reference to this subsection as the Department's statement of~~
25 ~~need to the Codifier of Rules.~~

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

29 A recent act, change, regulation, or order as used in subdivisions (2) through (5) of
30 this subsection means an act, change, regulation, or order occurring or made effective
31 no more than 210 days prior to the submission of a temporary rule to the Rules Review
32 Commission. Upon written request of the agency, the Commission may waive the
33 210-day requirement upon consideration of the degree of public benefit, whether the
34 agency had control over the circumstances that required the requested waiver, notice to
35 and opposition by the public, the need for the waiver, and previous requests for waivers
36 submitted by the agency.

37 (a1) Unless otherwise provided by law, at least 30 business days prior to adopting
38 a temporary rule, the agency shall:

39 (1) Submit the rule to the Codifier of Rules, and the Codifier of Rules
40 shall publish the proposed temporary rule on the Internet to be posted
41 within five business days.

42 (2) Notify persons on the mailing list maintained pursuant to G.S.
43 150B-21.2(d) and any other interested parties of its intent to adopt a
44 temporary rule.

(3) Accept written comments on the proposed temporary rule for at least 15 business days prior to adoption of the temporary rule.

(4) Hold at least one public hearing on the proposed temporary rule.

An agency must also prepare a written statement of its findings of need for a temporary rule stating why adherence to the notice and hearing requirements in G.S. 150B-21.2 would be contrary to the public interest and why the immediate adoption of the rule is required. The statement must be signed by the head of the agency adopting the temporary rule.

(b) Review. – When an agency adopts a temporary rule it must submit the rule and the agency's written statement of its findings of the need for the rule to the ~~Codifier of Rules~~ Rules Review Commission. ~~Within one business day after an agency submits a temporary rule, the Codifier of Rules must review the agency's written statement of findings of need for the rule to determine whether the statement of need meets the criteria listed in subsection (a) or (a1) of this section.~~ Within 15 business days after receiving the proposed temporary rule, the Commission or its designee must review the agency's written statement of findings of need for the rule to determine whether the statement meets the criteria listed in subsection (a) of this section and the standards in G.S. 150B-21.9. The Commission's designee shall be a member of the Commission or Commission staff who is an attorney licensed to practice law in North Carolina. In reviewing the statement, the ~~Codifier of Rules~~ Commission or its designee may consider any information submitted by the agency or another person. If the ~~Codifier of Rules~~ Commission or its designee finds that the statement meets the ~~criteria~~ criteria listed in subsection (a) of this section and the standards in G.S. 150B-21.9, the ~~Codifier of Rules~~ Commission or its designee must notify the head of the agency and enter the rule in the North Carolina Administrative Code. Commission or its designee must approve the temporary rule and deliver the rule to the Codifier of Rules within two business days of approval. The Codifier of Rules must enter the rule into the North Carolina Administrative Code on the sixth business day following receipt from the Commission or its designee.

~~If the Codifier of Rules~~ Commission or its designee finds that the statement does not meet ~~either the criteria~~ criteria listed in subsection (a) of this section or the standards in G.S. 150B-21.9, the ~~Codifier of Rules~~ Commission or its designee must immediately notify the head of the agency. The agency may supplement its statement of need with additional findings or submit a new statement. If the agency provides additional findings or submits a new statement, the ~~Codifier of Rules~~ Commission or its designee must review the additional findings or new statement ~~within one business day~~ five business days after the agency submits the additional findings or new statement. If the ~~Codifier of Rules~~ Commission or its designee again finds that the statement does not meet the criteria listed in subsection (a) ~~or (a1) of this section~~ section or the standards in G.S. 150B-21.9, the ~~Codifier of Rules~~ Commission or its designee must immediately notify the head of the ~~agency~~ agency and return the rule to the agency.

If an agency decides not to provide additional findings or submit a new statement when notified by the ~~Codifier of Rules~~ Commission or its designee that the agency's findings of need for a rule do not meet ~~either the required criteria~~ criteria or the required standards, the agency must notify the ~~Codifier of Rules~~ Commission or its

1 ~~designee of its decision. The Codifier of Rules must then enter the rule in the North~~
2 ~~Carolina Administrative Code on the sixth business day after receiving notice of the~~
3 ~~agency's decision. The Commission or its designee shall then return the rule to the~~
4 ~~agency. When the Commission returns a rule to an agency in accordance with this~~
5 ~~subsection, the agency may file an action for declaratory judgment in Wake County~~
6 ~~Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes.~~
7 Notwithstanding any other provision of this subsection, if the agency has not complied
8 with the provisions of G.S. 12-3.1, the Codifier of Rules shall not enter the rule into the
9 Code.

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

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

22 (d) Effective Date and Expiration. – A temporary rule becomes effective on the
23 date specified in G.S. 150B-21.3. A temporary rule expires on the earliest of the
24 following dates:

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

35 (e) Publication. – When the Codifier of Rules enters a temporary rule in the
36 North Carolina Administrative Code, the Codifier must publish the rule in the North
37 Carolina Register. ~~Publication of a temporary rule in the North Carolina Register serves~~
38 ~~as a notice of rule making proceedings for a permanent rule if the permanent rule is~~
39 ~~substantially the same as the published temporary rule, unless the agency published a~~
40 ~~notice of rule making proceedings at least 60 days before it adopted the temporary~~
41 ~~rule."~~

42 **SECTION 3.** Part 2 of Article 2A of Chapter 150B of the General Statutes is
43 amended by adding a new section to read:

44 **"§ 150B-21.1A. Adoption of an emergency rule.**

1 (a) Adoption. – An agency may adopt an emergency rule without prior notice or
2 hearing or upon any abbreviated notice or hearing the agency finds practical when it
3 finds that adherence to the notice and hearing requirements of this Part would be
4 contrary to the public interest and that the immediate adoption of the rule is required by
5 a serious and unforeseen threat to the public health or safety. When an agency adopts an
6 emergency rule, it must simultaneously commence the process for adopting a temporary
7 rule by submitting the rule to the Codifier of Rules for publication on the Internet in
8 accordance with G.S. 150B-21.1(a1).

9 (b) Review. – An agency must prepare a written statement of its findings of need
10 for an emergency rule. The statement must be signed by the head of the agency adopting
11 the rule. When an agency adopts an emergency rule, it must submit the rule and the
12 agency's written statement of its findings of the need for the rule to the Codifier of
13 Rules. Within two business days after an agency submits an emergency rule, the
14 Codifier of Rules must review the agency's written statement of findings of need for the
15 rule to determine whether the statement of need meets the criteria in subsection (a) of
16 this section. In reviewing the statement, the Codifier of Rules may consider any
17 information submitted by the agency or another person. If the Codifier of Rules finds
18 that the statement meets the criteria, the Codifier of Rules must notify the head of the
19 agency and enter the rule in the North Carolina Administrative Code on the sixth
20 business day following approval by the Codifier.

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

30 If an agency decides not to provide additional findings or submit a new statement
31 when notified by the Codifier of Rules that the agency's findings of need for a rule do
32 not meet the required criteria, the agency must notify the Codifier of Rules of its
33 decision. The Codifier of Rules must then enter the rule in the North Carolina
34 Administrative Code on the sixth business day after receiving notice of the agency's
35 decision. Notwithstanding any other provision of this subsection, if the agency has not
36 complied with the provisions of G.S. 12-3.1, the Codifier of Rules shall not enter the
37 rule into the Code.

38 (c) Standing. – A person aggrieved by an emergency rule adopted by an agency
39 may file an action for declaratory judgment in Wake County Superior Court pursuant to
40 Article 26 of Chapter 1 of the General Statutes. In the action, the court shall determine
41 whether the agency's written statement of findings of need for the rule meets the criteria
42 listed in subsection (a) of this section and whether the rule meets the standards in G.S.
43 150B-21.9. The court shall not grant an ex parte temporary restraining order.

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

6 (d) Effective Date and Expiration. – An emergency rule becomes effective on the
7 date specified in G.S. 150B-21.3. An emergency rule expires on the earliest of the
8 following dates:

9 (1) The date specified in the rule.

10 (2) The effective date of the temporary rule adopted to replace the
11 emergency rule, if the Commission approves the temporary rule.

12 (3) The date the Commission returns to an agency a temporary rule the
13 agency adopted to replace the emergency rule.

14 (4) Sixty days from the date the emergency rule was published in the
15 North Carolina Register, unless the temporary rule adopted to replace
16 the emergency rule has been submitted to the Commission.

17 (e) Publication. – When the Codifier of Rules enters an emergency rule in the
18 North Carolina Administrative Code, the Codifier of Rules must publish the rule in the
19 North Carolina Register."

20 **SECTION 4.** G.S. 150B-21.2 reads as rewritten:

21 **"§ 150B-21.2. Procedure for adopting a permanent rule.**

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

24 (1) Publish a notice of rule-making proceedings-text in the North Carolina
25 Register, unless the proposed rule is substantially the same as a
26 temporary rule published in the North Carolina Register.

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

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

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

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

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

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

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

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

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

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

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

- (1) The text of the proposed rule.
- (2) A short explanation of the reason for the proposed rule.
- (3) A citation to the law that gives the agency the authority to adopt the rule.
- (4) The proposed effective date of the rule.
- (5) The date, time, and place of any public hearing scheduled on the rule.
- (6) Instructions on how a person may demand a public hearing on a proposed rule if the notice does not schedule a public hearing on the proposed rule and subsection (e) of this section requires the agency to hold a public hearing on the proposed rule when requested to do so.
- (7) The period of time during which and the person to whom written comments may be submitted on the proposed rule.
- (8) If a fiscal note has been prepared for the rule, a statement that a copy of the fiscal note can be obtained from the agency.
- (9) The procedure by which a person can object to a proposed rule and the requirements for subjecting a proposed rule to the legislative review process.

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

(d) Mailing List. – An agency must maintain a mailing list of persons who have requested notice of rule making. When an agency publishes in the North Carolina Register a notice of ~~rule making proceedings or the text of a proposed rule~~, it must mail a copy of the notice or text to each person on the mailing list who has requested notice ~~of rule making proceedings~~ on the subject matter described in the notice or the rule affected. An agency may charge an annual fee to each person on the agency's mailing list to cover copying and mailing costs.

(e) Hearing. – An agency must hold a public hearing on a rule it proposes to adopt if the agency publishes the text of the proposed rule in the North Carolina Register and ~~all the following apply~~:

- (1) ~~The notice of text does not schedule a public hearing on the proposed rule.~~
- (2) ~~The~~ the agency receives a written request for a public hearing on the proposed rule within 15 days after the notice of text is published.
- (3) ~~The proposed text is not a changed version of proposed text the agency previously published in the course of rule making proceedings but did not adopt.~~

An agency may hold a public hearing on a proposed rule in other circumstances. When an agency is required to hold a public hearing on a proposed rule or decides to hold a public hearing on a proposed rule when it is not required to do so, the agency must publish in the North Carolina Register a notice of the date, time, and place of the public hearing. The hearing date of a public hearing held after the agency publishes

notice of the hearing in the North Carolina Register must be at least 15 days after the date the notice is published. If notice of a public hearing has been published in the North Carolina Register and that public hearing has been cancelled, the agency shall publish notice in the North Carolina Register at least 15 days prior to the date of any rescheduled hearing.

(f) Comments. – ~~An agency must accept comments on a notice of proposed rule-making proceedings published in the North Carolina Register until the text of the proposed rule that results from the notice is published.~~ An agency must accept comments on the text of a proposed rule that is published in the North Carolina Register and that requires a fiscal note under G.S. 150B-21.4(b1) for at least 60 days after the text is published or until the date of any public hearing held on the proposed rule, whichever is longer. ~~An agency must accept comments on the text of any other proposed rule published in the North Carolina Register for at least 30 days after the text is published or until the date of any public hearing held on the proposed rule, whichever is longer.~~ An agency must consider fully all written and oral comments received.

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

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

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

When an agency adopts a rule, it shall not take subsequent action on the rule without following the procedures in this Part. An agency must submit an adopted rule to the Rules Review Commission within 30 days of the agency's adoption of the rule.

(h) Explanation. – An agency must issue a concise written statement explaining why the agency adopted a rule if, within ~~30~~ 15 days after the agency adopts the rule, a person asks the agency to do so. The explanation must state the principal reasons for and against adopting the rule and must discuss why the agency rejected any arguments made or considerations urged against the adoption of the rule. The agency must issue the explanation within 15 days after receipt of the request for an explanation.

(i) Record. – An agency must keep a record of a rule-making proceeding. The record must include all written comments received, a transcript or recording of any

1 public hearing held on the rule, and any written explanation made by the agency for
2 adopting the rule."

3 **SECTION 5.** G.S. 150B-21.3 reads as rewritten:

4 **"§ 150B-21.3. Effective date of rules.**

5 (a) Temporary and Emergency Rule. ~~Rules.~~ – A temporary rule or an emergency
6 rule becomes effective on the date the Codifier of Rules enters the rule in the North
7 Carolina Administrative Code.

8 (b) Permanent Rule. – A permanent rule approved by the Commission becomes
9 effective on the first day of the month following the month the rule is approved by the
10 Commission, unless the Commission received written objections to the rule in
11 accordance with subsection (b2) of this section.

12 (b1) Delayed Effective Dates. – If the Commission received written objections to
13 the rule in accordance with subsection (b2) of this section, the rule becomes effective on
14 the earlier of the thirty-first legislative day or the day of adjournment of the next regular
15 session of the General Assembly that begins at least 25 days after the date the
16 Commission approved the rule, unless a different effective date applies under this
17 section. If a bill that specifically disapproves the rule is introduced in either house of the
18 General Assembly before the thirty-first legislative day of that session, the rule becomes
19 effective on the earlier of either the day an unfavorable final action is taken on the bill
20 or the day that session of the General Assembly adjourns without ratifying a bill that
21 specifically disapproves the rule. If the agency adopting the rule specifies a later
22 effective date than the date that would otherwise apply under this subsection, the later
23 date applies. A permanent rule that is not approved by the Commission or that is
24 specifically disapproved by a bill enacted into law before it becomes effective does not
25 become effective.

26 A bill specifically disapproves a rule if it contains a provision that refers to the rule
27 by appropriate North Carolina Administrative Code citation and states that the rule is
28 disapproved. Notwithstanding any rule of either house of the General Assembly, any
29 member of the General Assembly may introduce a bill during the first 30 legislative
30 days of any regular session to disapprove a rule that has been approved by the
31 Commission and that either has not become effective or has become effective by
32 executive order under subsection (c) of this section.

33 (b2) Objection. – Any person who objects to the adoption of a permanent rule may
34 submit written comments to the agency. If the objection is not resolved prior to adoption
35 of the rule, a person may submit written objections to the Commission. If the
36 Commission receives written objections from 10 or more persons clearly requesting
37 review by the legislature in accordance with instructions contained in the notice
38 pursuant to G.S. 150B-21.2(c)(9) and the Commission approves the rule, the rule will
39 become effective as provided in subsection (b1) of this section. When the requirements
40 of this subsection have been met and a rule is subject to legislative disapproval, the
41 agency may adopt the rule as a temporary rule if the rule would have met the criteria
42 listed in G.S. 150B-21.1(a) at the time the notice of text for the permanent rule was
43 published in the North Carolina Register.

(c) Executive Order Exception. – The Governor may, by executive order, make effective a permanent rule that has been approved by the Commission ~~and has not become effective under subsection (b)~~ but the effective date of which has been delayed in accordance with subsection (b1) of this section upon finding that it is necessary that the rule become effective in order to protect public health, safety, or welfare. A rule made effective by executive order becomes effective on the date the order is issued or at a later date specified in the order. When the Codifier of Rules enters in the North Carolina Administrative Code a rule made effective by executive order, the entry must reflect this action.

A rule that is made effective by executive order remains in effect unless it is specifically disapproved by the General Assembly in a bill enacted into law on or before the day of adjournment of the regular session of the General Assembly that begins at least 25 days after the date the executive order is issued. A rule that is made effective by executive order and that is specifically disapproved by a bill enacted into law is repealed as of the date specified in the bill. If a rule that is made effective by executive order is not specifically disapproved by a bill enacted into law within the time set by this subsection, the Codifier of Rules must note this in the North Carolina Administrative Code.

(c1) Fees. – Notwithstanding any other provision of this section, a rule that establishes a new fee or increases an existing fee shall not become effective until the agency has complied with the requirements of G.S. 12-3.1.

(d) Legislative Day and Day of Adjournment. – As used in this section:

- (1) A "legislative day" is a day on which either house of the General Assembly convenes in regular session.
- (2) The "day of adjournment" of a regular session held in an odd-numbered year is the day the General Assembly adjourns by joint resolution for more than 10 days.
- (3) The "day of adjournment" of a regular session held in an even-numbered year is the day the General Assembly adjourns sine die.

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

(f) Technical Change. – A permanent rule for which no notice or hearing is required under G.S. 150B-21.5(a)(1) through (a)(5) or G.S. 150B-21.5(b) becomes effective on the first day of the month following the month the rule is approved by the Rules Review Commission."

SECTION 6. G.S. 150B-21.4(b1) reads as rewritten:

"(b1) Substantial Economic Impact. – Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would have a

1 substantial economic impact and that is not identical to a federal regulation that the
2 agency is required to adopt, the agency must obtain a fiscal note for the proposed rule
3 change from the Office of State Budget and Management or prepare a fiscal note for the
4 proposed rule change and have the note approved by that Office. If an agency requests
5 the Office of State Budget and Management to prepare a fiscal note for a proposed rule
6 change, that Office must prepare the note within 90 days after receiving a written
7 request for the note. If the Office of State Budget and Management fails to prepare a
8 fiscal note within this time period, the agency proposing the rule change may prepare a
9 fiscal note. A fiscal note prepared in this circumstance does not require approval of the
10 Office of State Budget and Management.

11 If an agency prepares the required fiscal note, the agency must submit the note to the
12 Office of State Budget and Management for review. The Office of State Budget and
13 Management must review the fiscal note within 14 days after it is submitted and either
14 approve the note or inform the agency in writing of the reasons why it does not approve
15 the fiscal note. After addressing these reasons, the agency may submit the revised fiscal
16 note to that Office for its review. If an agency is not sure whether a proposed rule
17 change would have a substantial economic impact, the agency may ask the Office of
18 State Budget and Management to determine whether the proposed rule change has a
19 substantial economic impact.

20 As used in this subsection, the term "substantial economic impact" means an
21 aggregate financial impact on all persons affected of at least ~~five million dollars~~
22 ~~(\$5,000,000)~~ three million dollars (\$3,000,000) in a 12-month period."

23 **SECTION 7.** G.S. 150B-21.5 reads as rewritten:

24 **"§ 150B-21.5. Circumstances when notice and rule-making hearing not required.**

25 (a) Amendment. – An agency is not required to publish a notice of ~~rule-making~~
26 ~~proceedings or a notice of~~ text in the North Carolina Register or hold a public hearing
27 when it proposes to amend a rule to do one of the following:

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

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

- 44 (1) The law under which the rule was adopted is repealed.

(2) The law under which the rule was adopted or the rule itself is declared unconstitutional.

(3) The rule is declared to be in excess of the agency's statutory authority.

(c) OSHA Standard. – The Occupational Safety and Health Division of the Department of Labor is not required to publish a notice of ~~rule-making proceedings or a notice of text~~ in the North Carolina Register or hold a public hearing when it proposes to adopt a rule that concerns an occupational safety and health standard and is identical to a federal regulation promulgated by the Secretary of the United States Department of Labor. The Occupational Safety and Health Division is not required to submit to the Commission for review a rule for which notice and hearing is not required under this subsection.

(d) State Building Code. – The Building Code Council is not required to publish a notice of text in the North Carolina Register when it proposes to adopt a rule that concerns the North Carolina State Building Code. The Building Code Council is required to publish a notice ~~of rule-making proceeding~~ in the North Carolina Register when it proposes to adopt a rule that concerns the North Carolina State Building Code. The notice must include all of the following:

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

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

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

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

The Building Code Council is required to submit to the Commission for review a rule for which notice ~~and hearing~~ of text is not required under this subsection. In adopting a rule, the Council shall comply with the procedural requirements of G.S. 150B-21.3."

SECTION 8. G.S. 150B-21.8 reads as rewritten:

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

(a) ~~Temporary-Emergency Rule.~~ – The Commission does not review a ~~temporary~~ an emergency rule.

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

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

(d) Judicial Review. – When the Commission returns a permanent rule to an agency in accordance with G.S. 150B-21.12(d), the agency may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes."

1 **SECTION 9.** G.S. 150B-21.9 reads as rewritten:

2 **"§ 150B-21.9. Standards and timetable for review by Commission.**

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

5 (1) It is within the authority delegated to the agency by the General
6 Assembly.

7 (2) It is clear and unambiguous.

8 (3) It is reasonably necessary to ~~fulfill a duty delegated to the agency by~~
9 ~~implement or interpret an enactment of the General Assembly, or of~~
10 ~~Congress, or a regulation of a federal agency. when considered in light~~
11 ~~of. The Commission shall consider~~ the cumulative effect of all rules
12 adopted by the agency related to the specific purpose for which the
13 rule is ~~proposed and the legislative intent of the General Assembly in~~
14 ~~delegating the duty proposed.~~

15 (4) It was adopted in accordance with Part 2 of this Article.

16 The Commission shall not consider questions relating to the quality or efficacy of
17 the rule but shall restrict its review to determination of the standards set forth in this
18 subsection.

19 ~~The Commission may determine if a rule submitted to it was adopted in accordance~~
20 ~~with Part 2 of this Article.~~ The Commission may ask the Office of State Budget and
21 Management to determine if a rule has a substantial economic impact and is therefore
22 required to have a fiscal note. The Commission must ask the Office of State Budget and
23 Management to make this determination if a fiscal note was not prepared for a rule and
24 the Commission receives a written request for a determination of whether the rule has a
25 substantial economic impact.

26 ~~The Commission must notify the agency that adopted the rule if it determines that a~~
27 ~~rule was not adopted in accordance with Part 2 of this Article and must return the rule to~~
28 ~~the agency.~~ Entry of a rule in the North Carolina Administrative Code after review by
29 the Commission is ~~conclusive evidence~~ creates a rebuttable presumption that the rule
30 was adopted in accordance with Part 2 of this Article.

31 (b) Timetable. – The Commission must review a permanent rule submitted to it
32 on or before the twentieth of a month by the last day of the next month. The
33 Commission must review a rule submitted to it after the twentieth of a month by the last
34 day of the second subsequent month. The Commission must review a temporary rule in
35 accordance with the timetable and procedure set forth in G.S. 150B-21.1."

36 **SECTION 10.** G.S. 150B-21.17(a) reads as rewritten:

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

40 (1) Temporary rules entered in the North Carolina Administrative Code.

41 (1a) ~~Notices of rule-making proceedings, the~~ The text of proposed rules,
42 rules and the text of permanent rules approved by the Commission.
43 ~~Except with regard to notices of rule-making proceedings, this~~
44 ~~subdivision does not apply to the North Carolina State Building Code.~~

- 1 (1b) Emergency rules entered into the North Carolina Administrative Code.
2 (2) Notices of receipt of a petition for municipal incorporation, as required
3 by G.S. 120-165.
4 (3) Executive orders of the Governor.
5 (4) Final decision letters from the United States Attorney General
6 concerning changes in laws that affect voting in a jurisdiction subject
7 to section 5 of the Voting Rights Act of 1965, as required by G.S.
8 120-30.9H.
9 (5) Orders of the Tax Review Board issued under G.S. 105-241.2.
10 (6) Other information the Codifier determines to be helpful to the public."

11 **SECTION 11.** G.S. 150B-2(8a) reads as rewritten:

- 12 "(8a) "Rule" means any agency regulation, standard, or statement of general
13 applicability that implements or interprets an enactment of the General
14 Assembly or Congress or a regulation adopted by a federal agency or
15 that describes the procedure or practice requirements of an agency.
16 The term includes the establishment of a fee and the amendment or
17 repeal of a prior rule. The term does not include the following:
18 a. Statements concerning only the internal management of an
19 agency or group of agencies within the same principal office or
20 department enumerated in G.S. 143A-11 or 143B-6, including
21 policies and procedures manuals, if the statement does not
22 directly or substantially affect the procedural or substantive
23 rights or duties of a person not employed by the agency or
24 group of agencies.
25 b. Budgets and budget policies and procedures issued by the
26 Director of the Budget, by the head of a department, as defined
27 by G.S. 143A-2 or G.S. 143B-3, by an occupational licensing
28 board, as defined by G.S. 93B-1, or by the State Board of
29 Elections.
30 c. Nonbinding interpretative statements within the delegated
31 authority of an agency that merely define, interpret, or explain
32 the meaning of a statute or rule.
33 d. A form, the contents or substantive requirements of which are
34 prescribed by rule or statute.
35 e. Statements of agency policy made in the context of another
36 proceeding, including:
37 1. Declaratory rulings under G.S. 150B-4.
38 2. Orders of establishing or fixing rates or tariffs.
39 f. Requirements, communicated to the public by the use of signs
40 or symbols, concerning the use of public roads, bridges, ferries,
41 buildings, or facilities.
42 g. Statements that set forth criteria or guidelines to be used by the
43 staff of an agency in performing audits, investigations, or
44 inspections; in settling financial disputes or negotiating

1 financial arrangements; or in the defense, prosecution, or
2 settlement of cases.

3 h. Scientific, architectural, or engineering standards, forms, or
4 procedures, including design criteria and construction standards
5 used to construct or maintain highways, bridges, or ferries.

6 i. Job classification standards, job qualifications, and salaries
7 established for positions under the jurisdiction of the State
8 Personnel Commission.

9 j. Establishment of the interest rate that applies to tax assessments
10 under G.S. 105-241.1 and the variable component of the excise
11 tax on motor fuel under G.S. 105-449.80.

12 k. The State Medical Facilities Plan, if the Plan has been prepared
13 with public notice and hearing as provided in G.S.
14 131E-176(25), reviewed by the Commission, and approved by
15 the Governor."

16 **SECTION 12.** G.S. 131E-176(25) reads as rewritten:

17 "(25) "State Medical Facilities Plan" means the plan prepared by the
18 Department of Health and Human Services and the North Carolina
19 State Health Coordinating Council, and approved by the Governor. In
20 preparing the Plan, the Department and the State Health Coordinating
21 Council shall maintain a mailing list of persons who have requested
22 notice of public hearings regarding the Plan. Not less than 15 days
23 prior to a scheduled public hearing, the Department shall notify
24 persons on its mailing list of the date, time, and location of the hearing.
25 The Department shall hold at least one public hearing prior to the
26 adoption of the proposed Plan and at least six public hearings after the
27 adoption of the proposed Plan by the State Health Coordinating
28 Council. The Council shall accept oral and written comments from the
29 public concerning the Plan."

30 **SECTION 13.** Nothing in this act shall be construed to limit or repeal any
31 specific grant of temporary rule-making authority to an agency enacted by the General
32 Assembly prior to the effective date of this act.

33 **SECTION 14.** This act becomes effective July 1, 2003, and applies to
34 temporary and emergency rules adopted on or after that date, and to permanent rules
35 adopted on or after October 1, 2003.