

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE BILL 1139*

Short Title: Standards for Review of Rules by RRC. (Public)

Sponsors: Senators Nesbitt; Foxx, Hartsell, and Kerr.

Referred to: Judiciary I.

May 18, 2004

A BILL TO BE ENTITLED

AN ACT TO AMEND THE ADMINISTRATIVE PROCEDURE ACT TO CREATE A DISTINCTION BETWEEN THE STANDARD FOR REVIEW OF THE ADOPTION OF RULES AND THE STANDARD FOR REVIEW OF THE CONTENT OF RULES TO BE USED BY THE RULES REVIEW COMMISSION IN REVIEWING TEMPORARY AND PERMANENT RULES AND TO MAKE OTHER CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 150B-21.9 is repealed.

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

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

(a) Adoption Standards. – After receipt of a rule from an agency, the Commission shall determine whether the rule was adopted in accordance with Part 2 of this Article. If the Commission determines that the rule was not adopted in accordance with Part 2 of this Article, the Commission shall then return the rule to the agency that adopted the rule, and shall notify the agency of the specific violation of Part 2 of this Article. If the Commission determines that the rule was adopted in accordance with Part 2 of this Article, the Commission shall review the rule based on the content standard set forth in subsection (b) of this section.

(b) Content Standards. – The Commission shall not consider questions relating to the quality or efficacy of the rule or the specific means by which the agency has chosen to execute its statutory authority but shall restrict its review to determination of the standards set forth in this subsection. The Commission shall determine whether a rule meets all of the following criteria:

- (1) The subject matter of the rule is within the authority delegated to the agency by the General Assembly.
- (2) The rule is clear and unambiguous.

1 (3) The rule is reasonably necessary to implement or interpret an
2 enactment of the General Assembly, or of Congress, or a regulation of
3 a federal agency. The Commission shall consider the cumulative effect
4 of all rules adopted by the agency related to the specific purpose for
5 which the rule is proposed.

6 (c) Fiscal Notes. – The Commission may ask the Office of State Budget and
7 Management to determine if a rule has a substantial economic impact and is therefore
8 required to have a fiscal note. The Commission must ask the Office of State Budget and
9 Management to make this determination if a fiscal note was not prepared for a rule and
10 the Commission receives a written request for a determination of whether the rule has a
11 substantial economic impact.

12 (d) Timetable. – The Commission shall review a permanent rule submitted to it
13 on or before the twentieth of a month by the last day of the next month. The
14 Commission shall review a rule submitted to it after the twentieth of a month by the last
15 day of the second subsequent month. The Commission shall review a temporary rule in
16 accordance with the timetable and procedure set forth in G.S. 150B-21.1."

17 **SECTION 3.** G.S. 150B-21.10 reads as rewritten:

18 **"§ 150B-21.10. Commission action on permanent rule.**

19 (a) At the first meeting at which a permanent rule is before the Commission for
20 review, the Commission must take one of the following actions:

21 (1) Approve the rule, if the Commission determines that the rule meets the
22 content standards for ~~review~~; review set out in G.S. 150B-21.9A(b).

23 (2) Object to the rule, if the Commission determines that the rule does not
24 meet the content standards for ~~review~~; review set out in
25 G.S. 150B-21.9A(b).

26 (3) Extend the period for reviewing the rule, if the Commission
27 determines it needs additional information on the rule to be able to
28 decide whether the rule meets the content standards for review.

29 (b) In reviewing a new rule or an amendment to an existing rule, the Commission
30 may request an agency to make technical changes to the rule and may condition its
31 approval of the rule on the agency's making the requested technical changes."

32 **SECTION 4.** G.S. 150B-21.11 reads as rewritten:

33 **"§ 150B-21.11. Procedure when Commission approves permanent rule.**

34 (a) When the Commission approves a permanent rule, it must notify the agency
35 that adopted the rule of the Commission's approval, deliver the approved rule to the
36 Codifier of Rules, and include the text of the approved rule and a summary of the rule in
37 its next report to the Joint Legislative Administrative Procedure Oversight Committee.

38 (b) If the approved rule will increase or decrease expenditures or revenues of a
39 unit of local government, the Commission must also notify the Governor of the
40 Commission's approval of the rule and deliver a copy of the approved rule to the
41 Governor by the end of the month in which the Commission approved the rule.

42 (c) Entry into the Code. – Entry of a rule in the North Carolina Administrative
43 Code after review by the Commission creates a rebuttable presumption that the rule was
44 adopted in accordance with Part 2 of this Article."

1 **SECTION 5.** G.S. 150B-21.12 reads as rewritten:

2 "**§ 150B-21.12. Procedure when Commission objects to a permanent rule.**

3 (a) ~~Action.~~ Notification of Objection. – When the Commission objects to a
4 permanent rule, it must send the agency that adopted the rule a written statement of the
5 objection and the specific reason for the objection. The Commission shall identify each
6 provision of the rule that fails to satisfy any of the content standards set out in
7 G.S. 150B-21.9A(b) and explain how the provision fails to satisfy the standards.

8 (a1) Agency Action. – ~~The~~ Upon notification of objection, the agency that
9 adopted the rule must take one of the following actions:

10 (1) Change the rule to satisfy the Commission's objection and submit the
11 revised rule to the Commission.

12 (2) Submit a written response to the Commission indicating that the
13 agency has decided not to change the rule.

14 (b) Time Limit. – An agency that is not a board or commission must take one of
15 the actions listed in subsection ~~(a)~~ (a1) of this section within 30 days after receiving the
16 Commission's statement of objection. A board or commission must take one of these
17 actions within 30 days after receiving the Commission's statement of objection or within
18 10 days after the board or commission's next regularly scheduled meeting, whichever
19 comes later.

20 (c) ~~Changes.~~ Changes to the Rule. – When an agency changes a rule in response
21 to an objection by the Commission, the Commission ~~must~~ shall determine whether the
22 change satisfies the Commission's objection. If it does, the Commission ~~must~~ shall
23 approve the rule. If it does not, the Commission ~~must~~ shall send the agency a written
24 statement of the Commission's continued objection and the specific reason for the
25 continued objection. The Commission ~~must~~ shall also determine whether the change is
26 substantial. In making this determination, the Commission shall use the standards set
27 forth in G.S. 150B-21.2(g). If the change is substantial, the revised rule shall be
28 published and reviewed in accordance with the procedure set forth in
29 ~~G.S. 150B-21.1(a3) and (b).~~ G.S. 150B-21.1.

30 (d) Return of Rule. – A rule to which the Commission has objected remains
31 under review by the Commission until the agency that adopted the rule decides not to
32 satisfy the Commission's objection and makes a written request to the Commission to
33 return the rule to the agency. When the Commission returns a rule to which it has
34 objected, it must notify the Codifier of Rules of its action and must send a copy of the
35 record of the Commission's review of the rule to the Joint Legislative Administrative
36 Procedure Oversight Committee in its next report to that Committee. If the rule that is
37 returned would have increased or decreased expenditures or revenues of a unit of local
38 government, the Commission must also notify the Governor of its action and must send
39 a copy of the record of the Commission's review of the rule to the Governor. The record
40 of review consists of the rule, the Commission's letter of objection to the rule, the
41 agency's written response to the Commission's letter, and any other relevant documents
42 before the Commission when it decided to object to the rule."

43 **SECTION 6.** This act becomes effective October 1, 2004, and applies to
44 temporary and permanent rules adopted on or after that date.