

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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HOUSE BILL 874

Short Title: Title Change/Safety and Health Review Board. (Public)

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Sponsors: Representative Goodwin.

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Referred to: State Government.

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March 24, 2005

1 A BILL TO BE ENTITLED  
2 AN ACT TO CHANGE THE TITLE OF THE SAFETY AND HEALTH REVIEW  
3 BOARD UNDER THE OCCUPATIONAL SAFETY AND HEALTH ACT OF  
4 NORTH CAROLINA TO THE NORTH CAROLINA OCCUPATIONAL SAFETY  
5 AND HEALTH REVIEW COMMISSION.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** Under the Occupational Safety and Health Act of North  
8 Carolina, the name of the Safety and Health Review Board is changed to the North  
9 Carolina Occupational Safety and Health Review Commission. The Revisor of Statutes  
10 is authorized to substitute the term "Commission" for the term "Board" wherever that  
11 term appears in the General Statutes in relation to the Act.

12 **SECTION 2.** G.S. 95-127(2) reads as rewritten:

13 "(2) The term "~~Board~~"Commission' means the ~~Safety and Health Review~~  
14 ~~Board~~North Carolina Occupational Safety and Health Review  
15 Commission established under this Article."

16 **SECTION 3.** G.S. 95-135 reads as rewritten:

17 "**§ 95-135. ~~Safety and Health Review Board.~~North Carolina Occupational Safety**  
18 **and Health Review Commission.**

19 (a) The ~~Safety and Health Review Board~~North Carolina Occupational Safety and  
20 Review Commission is hereby established. The ~~Board-Commission~~ shall be composed  
21 of three members from among persons who, by reason of training, education or  
22 experience, are qualified to carry out the functions of the ~~Board-Commission~~ under this  
23 Article. The Governor shall appoint the members of the ~~Board-Commission~~ and name  
24 one of the members as chairman of the ~~Board-Commission~~. The terms of the members  
25 of the ~~Board-Commission~~ shall be six years except that the members of the ~~Board~~  
26 Commission first taking office shall serve, as designated by the Governor at the time of  
27 appointment, one for a term of two years, one for a term of four years, and the member  
28 of the ~~Board-Commission~~ designated as chairman shall serve for a term of six years.  
29 Any vacancy caused by the death, resignation, or removal of a member prior to the

1 expiration of the term for which he was appointed shall be filled by the Governor for the  
2 remainder of the unexpired term. The Governor shall fill all vacancies occurring by  
3 reason of the expiration of the term of any members of the ~~Board-Commission~~.

4 (b) The ~~Board-Commission~~ shall hear and issue decisions on appeals entered  
5 from citations and abatement periods and from all types of penalties. Appeals from  
6 orders of the Director dealing with conditions or practices that constitute imminent  
7 danger shall not be stayed by the ~~Board-Commission~~ until after full and adequate  
8 hearing. The ~~Board-Commission~~ in the discharge of its duties under this Article is  
9 authorized and empowered to administer oaths and affirmations and institute motions,  
10 cause the taking of depositions, interrogatories, certify to official acts, and issue  
11 subpoenas to compel the attendance of witnesses and the production of books, papers,  
12 correspondence, memoranda, and other records deemed necessary as evidence in  
13 connection with any appeal or proceeding for review before the ~~Board-Commission~~.

14 (c) The ~~Board-Commission~~ shall meet at least once each calendar quarter but it  
15 may hold call meetings or hearings upon at least three days' notice to each member by  
16 the chairman and at such time and place as the chairman may fix. The chairman shall be  
17 responsible on behalf of the ~~Board-Commission~~ for the administrative operations of the  
18 ~~Board-Commission~~ and shall appoint such hearing examiners and other employees as he  
19 deems necessary to assist in the performance of the ~~Board's-Commission's~~ functions and  
20 fix the compensation of such employees with the approval of the Governor. The  
21 assignment and removal of hearing examiners shall be made by the ~~Board-Commission~~,  
22 and any hearing examiner may be removed for misfeasance, malfeasance, misconduct,  
23 immoral conduct, incompetency, the commission of any crime, or for any other good  
24 and adequate reason as found by the ~~Board-Commission~~. The ~~Board-Commission~~ shall  
25 give notice to such hearing examiner, along with written allegations as to the charges  
26 against him, and the same shall be heard by the ~~Board-Commission~~, and its decision  
27 shall be final. The compensation of the members of the ~~Board-Commission~~ shall be on a  
28 per diem basis and shall be fixed by the Governor. The chairman of the ~~Board~~  
29 ~~Commission~~ may be paid a higher rate of compensation than the other two members of  
30 the ~~Board-Commission~~. For the purpose of carrying out its duties and functions under  
31 this Article, two members of the ~~Board-Commission~~ shall constitute a quorum and  
32 official action can be taken only on the affirmative vote of at least two members of the  
33 ~~Board-Commission~~. On matters properly before the ~~Board-Commission~~ the chairman  
34 may issue temporary orders, subpoenas, and other temporary types of orders subject to  
35 the subsequent review of the ~~Board-Commission~~. The issuance of subpoenas, orders to  
36 take depositions, orders requiring interrogatories and other procedural matters of  
37 evidence issued by the chairman shall not be subject to review. Prior to taking any  
38 action under this subsection to set compensation, the Governor may consult with the  
39 Advisory Budget Commission.

40 (d) Every official act of the ~~Board-Commission~~ shall be entered of record and its  
41 hearings and records shall be open to the public. The ~~Board-Commission~~ is authorized  
42 and empowered to make such procedural rules as are necessary for the orderly  
43 transaction of its proceedings. Unless the ~~Board-Commission~~ adopts a different rule, the  
44 proceedings, as nearly as possible, shall be in accordance with the Rules of Civil

1 Procedure, G.S. 1A-1. The ~~Board-Commission~~ may order testimony to be taken by  
2 deposition in any proceeding pending before it at any stage of such proceeding. Any  
3 person, firm or corporation, and its agents or officials, may be compelled to appear and  
4 testify and produce like documentary evidence before the ~~Board-Commission~~.  
5 Witnesses whose depositions are taken under this section, and the persons taking such  
6 depositions, shall be entitled to the same fees as are paid for like services in the courts  
7 of the State.

8 (e) The rules of procedure prescribed or adopted by the ~~Board-Commission~~ shall  
9 provide affected employees or representatives of affected employees an opportunity to  
10 participate as parties to hearings under this section.

11 (f) Any member of the ~~Board-Commission~~ may be removed by the Governor for  
12 inefficiency, neglect of duty, or any misfeasance or malfeasance in office. Before such  
13 removal the Governor shall give notice of hearing and state the allegations against the  
14 member of the ~~Board-Commission~~, and the same shall be heard by the Governor, and  
15 his decision shall be final. The principal office of the ~~Board-Commission~~ shall be in  
16 Raleigh, North Carolina, but whenever it deems that the convenience of the public or of  
17 the parties may be promoted, or delay or expense may be minimized, the ~~Board~~  
18 ~~Commission~~ may hold hearings or conduct other proceedings at any place in the State.

19 (g) In case of a contumacy, failure or refusal of any person to testify before the  
20 ~~Board-Commission~~, give any type of evidence, or to produce any books, records,  
21 papers, correspondence, memoranda or other records, such person upon such failure to  
22 obey the orders of the ~~Board-Commission~~ may be punished for contempt or any other  
23 matter involving contempt as set forth and described by the general laws of the State.  
24 The ~~Board-Commission~~ shall issue no order for contempt without first finding the facts  
25 involved in the proceeding. Witnesses appearing before the ~~Board-Commission~~ shall be  
26 entitled to the same fees as those paid for the services of said witnesses in the courts of  
27 the State, and all such fees shall be taxed against the interested parties according to the  
28 judgment and discretion of the ~~Board-Commission~~.

29 (h) The Director shall consult with the chairman of the Board with respect to the  
30 preparation and presentation to the ~~Board-Commission~~ for adoption of all necessary  
31 forms or citations, notices of all kinds, forms of stop orders, all forms and orders  
32 imposing penalties and all forms of notices or applications for review by the  
33 ~~Board-Commission~~, and any and all other procedural papers and documents necessary  
34 for the administration of the Article as applied to employers and employees and for all  
35 procedures and proceedings brought before the ~~Board-Commission~~ for review.

36 (i) A hearing examiner appointed by the chairman of the ~~Board-Commission~~  
37 shall hear, and make a determination upon, any proceeding instituted before the ~~Board~~  
38 ~~Commission~~ and may hear any motion in connection therewith, assigned to the hearing  
39 examiner, and shall make a report of the determination which constitutes the hearing  
40 examiner's final disposition of the proceedings. A copy of the report of the hearing  
41 examiner shall be furnished to the Director and all interested parties involved in any  
42 appeal or any proceeding before the hearing examiner for the hearing examiner's  
43 determination. The report of the hearing examiner shall become the final order of the  
44 ~~Board-Commission~~ 30 days from the date of the report as determined by the hearing

1 examiner, unless within the 30-day period any member of the ~~Board-Commission~~ had  
2 directed that the report shall be reviewed by the entire ~~Board-Commission~~ as a whole.  
3 Upon application for review of any report or determination of a hearing examiner,  
4 before the 30-day period expires, the ~~Board-Commission~~ shall schedule the matter for  
5 hearing, on the record, except the ~~Board-Commission~~ may allow the introduction of  
6 newly discovered evidence, or in its discretion the taking of further evidence upon any  
7 question or issue. All interested parties to the original hearing shall be notified of the  
8 date, time and place of the hearing and shall be allowed to appear in person or by  
9 attorney at the hearing. Upon review of the report and determination by the hearing  
10 examiner the ~~Board-Commission~~ may adopt, modify or vacate the report of the hearing  
11 examiner and notify the interested parties. The report of the hearing examiner, and the  
12 report, decision, or determination of the ~~Board-Commission~~ upon review shall be in  
13 writing and shall include findings of fact, conclusions of law, and the reasons or bases  
14 for them, on all the material issues of fact, law, or discretion presented on the record.  
15 The report, decision or determination of the ~~Board-Commission~~ upon review shall be  
16 final unless further appeal is made to the courts under the provisions of Chapter 150B of  
17 the General Statutes, as amended, entitled: "Judicial Review of Decisions of Certain  
18 Administrative Agencies.

19 (j) Repealed by Session Laws 1993, c. 300, s. 1."

20 **SECTION 4.** G.S. 150B-1(e) reads as rewritten:

21 "(e) Exemptions From Contested Case Provisions. – The contested case  
22 provisions of this Chapter apply to all agencies and all proceedings not expressly  
23 exempted from the Chapter. The contested case provisions of this Chapter do not apply  
24 to the following:

- 25 (1) The Department of Health and Human Services and the Department of  
26 Environment and Natural Resources in complying with the procedural  
27 safeguards mandated by Section 680 of Part H of Public Law 99-457  
28 as amended (Education of the Handicapped Act Amendments of  
29 1986).
- 30 (2) Repealed by Session Laws 1993, c. 501, s. 29.
- 31 (3), (4) Repealed by Session Laws 2001-474, s. 35, effective November  
32 29, 2001.
- 33 (5) Hearings required pursuant to the Rehabilitation Act of 1973, (Public  
34 Law 93-122), as amended and federal regulations promulgated  
35 thereunder. G.S. 150B-51(a) is considered a contested case hearing  
36 provision that does not apply to these hearings.
- 37 (6) The Department of Revenue.
- 38 (7) The Department of Correction.
- 39 (8) The Department of Transportation, except as provided in G.S. 136-29.
- 40 (9) ~~The Occupational Safety and Health Review Board.~~ The North  
41 Carolina Occupational Safety and Health Review Commission.
- 42 (10) The North Carolina Global TransPark Authority with respect to the  
43 acquisition, construction, operation, or use, including fees or charges,  
44 of any portion of a cargo airport complex.

1           (11) Hearings that are provided by the Department of Health and Human  
2           Services regarding the eligibility and provision of services for eligible  
3           assaultive and violent children, as defined in G.S. 122C-3(13a), shall  
4           be conducted pursuant to the provisions outlined in G.S. 122C, Article  
5           4, Part 7."

6           **SECTION 5.** G.S. 150B-21.3(e) reads as rewritten:

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

14          **SECTION 6.** G.S. 150B-21.5(c) reads as rewritten:

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

22          **SECTION 7.** This act is effective when it becomes law.