

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 1965  
Committee Substitute Favorable 6/30/94

Short Title: Advance Notice of Rule Making.

(Public)

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Sponsors:

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Referred to: Environment.

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June 1, 1994

1                                   A BILL TO BE ENTITLED  
2 AN ACT TO REQUIRE THAT AGENCIES GIVE NOTICE OF PROPOSED RULE-  
3 MAKING PROCEEDINGS BEFORE PUBLISHING THE PROPOSED TEXT OF  
4 A PERMANENT RULE OR A SUBJECT MATTER NOTICE FOR A  
5 PERMANENT RULE.

6 The General Assembly of North Carolina enacts:

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

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

- 13           (1) A serious and unforeseen threat to the public health, safety, or welfare.  
14           (2) The effective date of a recent act of the General Assembly or the  
15           United States Congress.  
16           (3) A recent change in federal or State budgetary policy.  
17           (4) A federal regulation.  
18           (5) A court order.  
19           (6) The need for the rule to become effective the same date as the State  
20           Medical Facilities Plan approved by the Governor, if the rule addresses  
21           a matter included in the State Medical Facilities Plan.

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

1 An agency must begin rule-making proceedings for a permanent rule by the day it  
2 adopts a temporary rule. An agency begins rule-making proceedings for a permanent  
3 rule by submitting to the Codifier of Rules ~~written notice of its intent to adopt a permanent~~  
4 ~~rule—a notice that complies with the requirements set in G.S. 150B-21.2(a1) for a notice~~  
5 of the proposed text of a permanent rule."

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

7 "**§ 150B-21.2. Procedure for adopting a permanent rule.**

8 (a) ~~Notice.~~Notice of Proposed Proceedings. – Before an agency adopts a  
9 permanent rule, it must publish a notice of its intent to adopt a permanent rule in the North  
10 Carolina Register and as required by any other law. rule-making proceedings in the North  
11 Carolina Register, unless the permanent rule is substantially the same as a temporary  
12 rule previously published in the North Carolina Register. A notice of rule-making  
13 proceedings must include a brief statement of the subject matter of the proposed  
14 proceedings, a brief explanation of the reason for the proposed proceedings, and the  
15 person to whom questions or comments on the proposed proceedings may be addressed.  
16 A notice of rule-making proceedings must be published at least 60 days before the  
17 agency submits to the Codifier of Rules either the proposed text of a permanent rule or a  
18 subject matter notice for a permanent rule under subsection (a1) of this section, and the  
19 agency must accept comments on the proposed proceedings during this period.

20 (a1) Notice of Text or Subject Matter. – After complying with subsection (a) of  
21 this section, an agency may continue the process of adopting a permanent rule by  
22 publishing in the North Carolina Register either the proposed text of the rule or a  
23 subject matter notice of the proposed rule. The notice published in the North Carolina  
24 Register must include all of the following:

- 25 (1) Either the text of the proposed rule or a statement of the subject matter  
26 of the proposed rule making.
- 27 (2) A short explanation of the reason for the proposed action.
- 28 (3) A citation to the law that gives the agency the authority to adopt the  
29 proposed rule, if the notice includes the text of the proposed rule, or a  
30 citation to the law that gives the agency the authority to adopt a rule on  
31 the subject matter of the proposed rule making, if the notice includes  
32 only a statement of the subject matter of the proposed rule making.
- 33 (4) The proposed effective date of the proposed rule, if the notice includes  
34 the text of the proposed rule, or the proposed effective date of a rule  
35 adopted on the subject matter of the proposed rule making, if the  
36 notice includes only a statement of the subject matter of the proposed  
37 rule making.
- 38 (5) The date, time, and place of any public hearing scheduled on the  
39 proposed rule or subject matter of the proposed rule making.
- 40 (6) Instructions on how a person may demand a public hearing on a  
41 proposed rule if the notice does not schedule a public hearing on the  
42 proposed rule and subsection (c) requires the agency to hold a public  
43 hearing on the proposed rule when requested to do so.

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

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

8 (b) Mailing List. – An agency must maintain a mailing list of persons who have  
9 requested notice of rule making. When an agency publishes a rule-making notice in the  
10 North Carolina Register, it must mail a copy of the notice to each person on the mailing  
11 list who has requested notice of rule-making proceedings on the rule or the subject  
12 matter for rule making described in the notice. An agency may charge an annual fee to  
13 each person on the agency's mailing list to cover copying and mailing costs.

14 (c) Hearing. – An agency must hold a public hearing on a rule it proposes to  
15 adopt in two circumstances and may hold a public hearing in other circumstances.  
16 When an agency is required to hold a public hearing on a proposed rule or decides to  
17 hold a public hearing on a proposed rule when it is not required to do so, the agency  
18 must publish in the North Carolina Register a notice of the date, time, and place of the  
19 public hearing. The hearing date of a public hearing held after the agency publishes  
20 notice of the hearing in the North Carolina Register must be at least 15 days after the  
21 date the notice is published.

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

24 (1) The agency publishes a statement of the subject matter of the proposed  
25 rule making in the notice in the North Carolina Register.

26 (2) The agency publishes the text of the proposed rule in the notice in the  
27 North Carolina Register and all the following apply:

28 a. The notice does not schedule a public hearing on the proposed  
29 rule.

30 b. Within 15 days after the notice is published, the agency receives  
31 a written request for a public hearing on the proposed rule.

32 c. The proposed rule is not part of a rule-making proceeding the  
33 agency initiated by publishing a statement of the subject matter  
34 of proposed rule making.

35 d. The proposed text is not a changed version of proposed text the  
36 agency previously published in the course of rule-making  
37 proceedings but did not adopt.

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

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

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

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

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

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

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

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

34 (i) Optional Rule-Making Agenda. – An agency may periodically publish in the  
35 North Carolina Register one or more agenda that describe the substantive areas with  
36 respect to which the agency is contemplating or plans the adoption of a permanent rule."

37 Sec. 3. This act becomes effective January 1, 1995, and applies to rules  
38 adopted on or after that date for which publication of a notice of rule-making is  
39 required.