

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 1237*

Short Title: Amend Contested Case Proc.

(Public)

Sponsors: Senators Hartsell and Miller.

Referred to: Judiciary.

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE PROCEDURES CONCERNING FINAL
ADMINISTRATIVE DECISIONS IN CONTESTED CASES HEARD BY THE
OFFICE OF ADMINISTRATIVE HEARINGS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 150B-2(5) reads as rewritten:

"(5) "Party" means any person or agency named or admitted as a party or properly seeking as of right to be admitted as a party and includes the agency as appropriate. This subdivision does not permit an agency that makes a final decision, or an officer or employee of the agency, to petition for initial judicial review of that ~~decision.~~ decision, except as provided by G.S. 150B-43(b)."

Section 2. G.S. 150B-29(a) reads as rewritten:

"(a) In all contested cases, irrelevant, immaterial and unduly repetitious evidence shall be excluded. Except as otherwise provided, the rules of evidence as applied in the trial division of the General Court of Justice shall be followed; but, when evidence is not reasonably available under the rules to show relevant facts, then the most reliable and substantial evidence available shall be admitted. On the judge's own motion, an administrative law judge may exclude evidence that is inadmissible under this section. The party with the burden of proof in a contested case must establish the facts required by

1 G.S. 150B-23(a) by a preponderance of the evidence. It shall not be necessary for a party
2 or his attorney to object at the hearing to evidence in order to preserve the right to object
3 to its consideration by the administrative law judge in making a recommended decision,
4 by the agency in making a final decision, or by the court on judicial review."

5 Section 3. G.S. 150B-34 reads as rewritten:

6 **"§ 150B-34. Recommended decision or order of administrative law judge.**

7 (a) Except as provided in G.S. 150B-36(c), in each contested case the
8 administrative law judge shall make a recommended decision or order that contains
9 findings of fact and conclusions of law. The findings of fact shall be supported by a
10 preponderance of the evidence admissible under G.S. 150B-29, 150B-30, or 150B-31."

11 Section 4. G.S. 150B-36 reads as rewritten:

12 **"§ 150B-36. Final decision.**

13 (a) (1) ~~Before the agency makes a final decision, it shall~~ After an agency
14 receives the official record in a contested case, the agency must give
15 each party an opportunity to the contested case 15 days to file
16 exceptions to the decision or order recommended by the
17 administrative law judge, judge and to present written arguments to
18 those in the agency who will make the final decision or order. If none
19 of the parties files exceptions to the recommended decision or order
20 within the 15-day period, the agency is considered to have adopted the
21 administrative law judge's recommended decision or order as the
22 agency's final decision or order.

23 (2) If a party files in good faith a timely and sufficient affidavit of personal
24 bias or other reason for disqualification of a member of the agency
25 making the final decision, the agency shall determine the matter as a
26 part of the record in the ~~case, and the case.~~ The determination is subject
27 to judicial review at the conclusion of the case.

28 (b) (1) A final decision or order in a contested case shall be made by
29 the agency ~~in writing after review of~~ within the time set by G.S. 150B-
30 44. If the agency does not adopt as its final decision or order the
31 recommended decision or order made in the contested case under
32 subsection (a) of this section, it must make a written final decision or
33 order. In making its final decision or order, the agency may consider
34 only the official record as defined in G.S. 150B-37(a) and the
35 exceptions filed by a party. The final decision or order shall include
36 findings of fact and conclusions of law. The findings of fact made in
37 the contested case by the administrative law judge are binding on the
38 agency in making its final decision or order if they are supported by
39 substantial evidence admissible under G.S. 150B-29, 150B-30, or
40 150B-31 in view of the entire record. Nothing in this subdivision
41 shall affect the policies and need determinations in the State Medical
42 Facilities Plan which have been adopted in accordance with law and
43 shall have the effect of law for this purpose.

1 (2) If the agency does not adopt the administrative law judge's
2 recommended decision or order as its final ~~decision~~, decision or order,
3 the agency shall state in its decision or order the specific reasons why it
4 did not adopt the administrative law judge's recommended ~~decision~~. The
5 agency may consider only the official record prepared pursuant to G.S. 150B-
6 37 in making a final decision or order, and the final decision or order shall be
7 supported by substantial evidence admissible under G.S. 150B-29(a), 150B-
8 30, or 150B-31. decision or order. A copy of the agency's decision or
9 order shall be served upon each party personally or by certified mail
10 addressed to the party at the latest address given by the party to the
11 agency, and a copy shall be furnished to ~~his~~ each party's attorney of
12 record and the Office of Administrative Hearings.

13 (c) The following decisions made by administrative law judges in contested cases
14 are final decisions:

15 (1) A determination that the Office of Administrative Hearings lacks
16 jurisdiction.

17 (2) An order entered pursuant to the authority in G.S. 7A-759(e).

18 (3) An order entered pursuant to a written prehearing motion that either
19 dismisses the contested case for failure of the petitioner to prosecute or
20 grants the relief requested when a party does not comply with
21 procedural requirements.

22 (4) An order entered pursuant to a prehearing motion to dismiss the
23 contested case in accordance with G.S. 1A-1, Rule 12(b) when the order
24 disposes of all issues in the contested case."

25 Section 5. G.S. 150B-37(c) reads as rewritten:

26 "(c) The Office of Administrative Hearings shall forward a copy of the official
27 record to the agency making the final ~~decision~~ and shall forward a copy of the recommended
28 ~~decision to each party.~~ decision."

29 Section 6. G.S. 150B-43 reads as rewritten:

30 "**§ 150B-43. Right to judicial review.**

31 (a) Any person who is aggrieved by the final decision in a contested case, and who
32 has exhausted all administrative remedies made available to him by statute or agency
33 rule, is entitled to judicial review of the decision under this Article, unless adequate
34 procedure for judicial review is provided by another statute, in which case the review
35 shall be under such other statute. Nothing in this Chapter shall prevent any person from
36 invoking any judicial remedy available to him under the law to test the validity of any
37 administrative action not made reviewable under this Article.

38 (b) An agency may seek judicial review of procedural errors made by the
39 administrative law judge in the contested case if the agency was required to adopt the
40 administrative law judge's findings of fact and the agency concludes that, although the
41 findings are supported by substantial evidence, the record contains significant evidentiary
42 errors."

43 Section 7. G.S. 150B-44 reads as rewritten:

"§ 150B-44. Right to judicial intervention when decision unreasonably delayed.

Unreasonable delay on the part of any agency or administrative law judge in taking any required action shall be justification for any person whose rights, duties, or privileges are adversely affected by such delay to seek a court order compelling action by the agency or administrative law judge. An agency that is subject to Article 3 of this Chapter and is not a board or commission has ~~90-45~~ days from the day it receives the official record in a contested case from the Office of Administrative Hearings to make a final decision in the case. This time limit may be extended by the parties or, for good cause shown, by the agency for an additional period of up to ~~90-30~~ days. An agency that is subject to Article 3 of this Chapter and is a board or commission has ~~90-45~~ days from the day it receives the official record in a contested case from the Office of Administrative Hearings or ~~90-45~~ days after its next regularly scheduled meeting, whichever is longer, to make a final decision in the case. This time limit may be extended by the parties or, for good cause shown, by the agency for an additional period of up to ~~90-30~~ days. If an agency subject to Article 3 of this Chapter has not made a final decision within these time limits, the agency is considered to have adopted the administrative law judge's recommended decision as the agency's final decision. Failure of an agency subject to Article 3A of this Chapter to make a final decision within ~~180-75~~ days of the close of the contested case hearing is justification for a person whose rights, duties, or privileges are adversely affected by the delay to seek a court order compelling action by the agency or, if the case was heard by an administrative law judge, by the administrative law judge."

Section 8. G.S. 150B-51 reads as rewritten:

"§ 150B-51. Scope of review.

(a) Initial Determination in Certain Cases. In reviewing a final decision in a contested case in which an administrative law judge made a recommended decision, the court shall make ~~two-three~~ initial determinations. ~~determinations as follows:~~

(1) ~~First, the~~ The court shall determine whether the agency heard new evidence after receiving the recommended decision. If the court determines that the agency heard new evidence, the court shall reverse the decision or remand the case to the agency to enter a decision in accordance with the evidence in the official record.

(2) ~~Second, if~~ If the agency did not adopt the recommended decision, the court shall determine whether the administrative law judge's findings of fact are supported by substantial evidence admissible under G.S. 150B-29, 150B-30, or 150B-31 in view of the entire record. If the court determines that the agency failed to adhere to the administrative law judge's findings of fact that are supported by substantial evidence, the court shall reverse the decision or remand the case to the agency to enter a decision in accordance with the evidence in the official record.

(3) If the agency did not adopt the recommended decision, the court shall determine whether the agency's decision states the specific reasons why the agency did not adopt the recommended decision. If the court determines that the agency did not state specific reasons why it did not

1 adopt a recommended decision, the court shall reverse the decision or
2 remand the case to the agency to enter the specific reasons.

3 (b) Standard of Review. After making the determinations, if any, required by
4 subsection (a), the court reviewing a final decision may affirm the decision of the agency
5 or remand the case for further proceedings. It may also reverse or modify the agency's
6 decision if the substantial rights of the petitioners may have been prejudiced because the
7 agency's findings, inferences, conclusions, or decisions are:

- 8 (1) In violation of constitutional provisions;
- 9 (2) In excess of the statutory authority or jurisdiction of the agency;
- 10 (3) Made upon unlawful procedure;
- 11 (4) Affected by other error of law;
- 12 (5) Unsupported by substantial evidence admissible under G.S. 150B-29(a),
13 150B-30, or 150B-31 in view of the entire record as submitted; or
- 14 (6) Arbitrary or capricious."

15 Section 9. This act is effective when it becomes law. Sections 1, 4, 5, 6, 7,
16 and 8 of this act apply to any recommended decision or order made by an administrative
17 law judge on or after the effective date. The remainder of the act applies to contested
18 cases commenced on or after the effective date.