

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 550

Short Title: SBE/Comm. College/Rulemaking. (Public)

Sponsors: Representatives Tolson, England, Sauls (Primary Sponsors); B. Allen, Bordsen, Brown, Cole, Coleman, Farmer-Butterfield, Fisher, Frye, Glazier, McGee, Parmon, Rapp, Stiller, Wainwright, Warren, Williams, and Wray.

Referred to: Rules, Calendar, and Operations of the House.

March 10, 2005

A BILL TO BE ENTITLED

1 AN ACT TO AUTHORIZE THE STATE BOARD OF EDUCATION AND THE
2 STATE BOARD OF COMMUNITY COLLEGES TO IMPLEMENT AN
3 EXPEDITED PROCEDURE FOR THE ADOPTION OF PERMANENT RULES.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Article 2A of Chapter 150B of the General Statutes is
6 amended by adding the following new section to read:

7 "**§ 150B-21.2A. Expedited process for certain agencies adopting a permanent rule.**

8 (a) As used in this section, "Board" refers to the State Board of Education and the
9 State Board of Community Colleges, as applicable.

10 (b) The State Board of Education and the State Board of Community Colleges
11 may each establish an expedited process for the adoption of permanent rules. The
12 process shall provide for the following:

13 (1) G.S. 150B-21.1 applies to the adoption of permanent rules by the
14 Board except that:

15 a. Notwithstanding G.S. 150B-21.2(f), the Board must accept
16 comments on the text that is published in the Register for at
17 least 30 days after the text is published or until the date of any
18 public hearing held on the proposed rule, whichever is longer.

19 b. Notwithstanding G.S. 150B-21.2(g), permanent rules adopted
20 by the Board in accordance with this section are not subject to
21 review or approval by the Rules Review Commission.

22 (2) The Board may not adopt a permanent rule earlier than 30 days
23 following the first Board meeting at which the text of the proposed
24 rule was discussed.
25

1 (3) G.S. 150B-21.3 does not apply to permanent rules adopted by the
2 Board in accordance with this section. A permanent rule adopted by
3 the Board in accordance with this section and other applicable
4 provisions of this Article becomes effective on the first day of the
5 month following the month the rule is adopted by the Board unless an
6 earlier effective date is necessary to protect the public health, safety, or
7 welfare.

8 (c) A person aggrieved by a rule adopted by the Board in accordance with this
9 section may file an action for declaratory judgment in Wake County Superior Court
10 pursuant to Article 26 of Chapter 1 of the General Statutes. In the action, the court shall
11 determine whether the rule meets the standards set forth in G.S. 150B-21.9(a)(1)
12 through (4).

13 (d) Except as otherwise provided in this section, this Article applies to permanent
14 rules adopted by the Board. The Board may adopt an emergency or temporary rule in
15 accordance with this Article. Temporary or emergency rules adopted by the Board shall
16 become effective as provided in G.S. 150B-21.3(a)."

17 **SECTION 2.** G.S. 150B-21.8 reads as rewritten:

18 **"§ 150B-21.8. Review of rule by Commission.**

19 (a) Emergency Rule. – The Commission does not review an emergency rule.

20 (b) Temporary and Permanent ~~Rules.~~ Rules; Exception.– An agency must submit
21 temporary and permanent rules adopted by it to the Commission before the rule can be
22 included in the North Carolina Administrative Code. The Commission reviews a
23 temporary or permanent rule in accordance with the standards in G.S. 150B-21.9 and
24 follows the procedure in this Part in its review of a rule. This section does not apply to
25 permanent rules adopted by the State Board of Education or the State Board of
26 Community Colleges in accordance with G.S. 150B-21.2A.

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

31 (d) Judicial Review. – When the Commission returns a permanent rule to an
32 agency in accordance with G.S. 150B-21.12(d), the agency may file an action for
33 declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter
34 1 of the General Statutes."

35 **SECTION 3.** G.S. 150B-21.17(a) reads as rewritten:

36 **"§ 150B-21.17. North Carolina Register.**

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) The text of proposed rules and the text of permanent rules approved by
42 the Commission.

43 (1b) Emergency rules entered into the North Carolina Administrative Code.

- 1 (1c) The text of proposed rules and the text of permanent rules adopted by
2 the State Board of Education and the State Board of Community
3 Colleges in accordance with G.S. 150B-21.2A.
4 (2) Notices of receipt of a petition for municipal incorporation, as required
5 by G.S. 120-165.
6 (3) Executive orders of the Governor.
7 (4) Final decision letters from the United States Attorney General
8 concerning changes in laws that affect voting in a jurisdiction subject
9 to section 5 of the Voting Rights Act of 1965, as required by
10 G.S. 120-30.9H.
11 (5) Orders of the Tax Review Board issued under G.S. 105-241.2.
12 (6) Other information the Codifier determines to be helpful to the public."

13 **SECTION 4.** G.S. 150B-21.19 reads as rewritten:

14 **"§ 150B-21.19. Requirements for including rule in Code.**

15 To be acceptable for inclusion in the North Carolina Administrative Code, a rule
16 must:

- 17 (1) Cite the law under which the rule is adopted.
18 (2) Be signed by the head of the agency or the rule-making coordinator for
19 the agency that adopted the rule.
20 (3) Be in the physical form specified by the Codifier of Rules.
21 (4) Have been approved by the Commission, if the rule is a permanent
22 ~~rule~~-rule subject to the Commission's approval.
23 (4a) Have been adopted by the State Board of Education or the State Board
24 of Community Colleges in accordance with G.S. 150B-21.2A.
25 (5) Have complied with the provisions of G.S. 12-3.1, if the rule
26 establishes a new fee or increases an existing fee."

27 **SECTION 5.** This act becomes effective October 1, 2005, and applies to
28 rules proposed and adopted on and after that date.