

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 162
Committee Substitute Favorable 3/1/17

Short Title: Amend Administrative Procedure Laws.

(Public)

Sponsors:

Referred to:

February 23, 2017

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE AGENCIES TO MAKE RULE TECHNICAL CORRECTIONS WITHOUT REVIEW BY THE RULES REVIEW COMMISSION AND TO AUTHORIZE THE CODIFIER OF RULES TO MAKE RULE TECHNICAL CORRECTIONS, TO CLARIFY THAT A PARTY MAY COMMENCE A CONTESTED CASE IN A DISPUTE WITH AN AGENCY WITHOUT PETITIONING THE AGENCY FOR RULE MAKING OR OBTAINING A DECLARATORY RULING, AND TO REVISE THE PROCESS FOR THE REVIEW AND READOPTION OF EXISTING RULES, AS RECOMMENDED BY THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

AUTHORIZE RULE TECHNICAL CORRECTIONS

SECTION 1.1. G.S. 150B-21.5 reads as rewritten:

"§ 150B-21.5. Circumstances when notice and rule-making hearing not required; required; circumstances when submission to the Commission not required.

(a) Amendment. – An agency is not required to publish a notice of text in the North Carolina Register or Register, hold a public hearing hearing, or submit the amended rule to the Commission for review when it proposes to amend a rule to do one of the following:

- (1) Reletter or renumber the rule or subparts of the rule.
- (2) Substitute one name for another when an organization or position is renamed.
- (3) Correct a citation in the rule to another rule or law when the citation has become inaccurate since the rule was adopted because of the repeal or renumbering of the cited rule or law.
- (4) Change information that is readily available to the public, such as an address or address, a telephone number-number, or a Web site.
- (5) Correct a typographical error in the North Carolina Administrative Code-typographical error.
- (6) Change a rule in response to a request or an objection by the Commission, unless the Commission determines that the change is substantial.

(a1) Response to Commission. – An agency is not required to publish a notice of text in the North Carolina Register or hold a public hearing when it proposes to change the rule in response to a request or an objection by the Commission, unless the Commission determines that the change is substantial.

(b) Repeal. – An agency is not required to publish a notice of text in the North Carolina Register or hold a public hearing when it proposes to repeal a rule as a result of any of the following:



- 1 (1) The law under which the rule was adopted is repealed.
- 2 (2) The law under which the rule was adopted or the rule itself is declared
- 3 unconstitutional.
- 4 (3) The rule is declared to be in excess of the agency's statutory authority.

5 (c) OSHA Standard. – The Occupational Safety and Health Division of the Department of
6 Labor is not required to publish a notice of text in the North Carolina Register or hold a public
7 hearing when it proposes to adopt a rule that concerns an occupational safety and health standard
8 and is identical to a federal regulation promulgated by the Secretary of the United States
9 Department of Labor. The Occupational Safety and Health Division is not required to submit to
10 the Commission for review a rule for which notice and hearing is not required under this
11 subsection.

12 (d) State Building Code. – The Building Code Council is not required to publish a notice
13 of text in the North Carolina Register when it proposes to adopt a rule that concerns the North
14 Carolina State Building Code. The Building Code Council is required to publish a notice in the
15 North Carolina Register when it proposes to adopt a rule that concerns the North Carolina State
16 Building Code. The notice must include all of the following:

- 17 (1) A statement of the subject matter of the proposed rule making.
- 18 (2) A short explanation of the reason for the proposed action.
- 19 (3) A citation to the law that gives the agency the authority to adopt a rule on the
- 20 subject matter of the proposed rule making.
- 21 (4) The person to whom questions or written comments may be submitted on the
- 22 subject matter of the proposed rule making.

23 The Building Code Council is required to submit to the Commission for review a rule for
24 which notice of text is not required under this subsection. In adopting a rule, the Council shall
25 comply with the procedural requirements of G.S. 150B-21.3.

26 (e) An agency that adopts or amends a rule pursuant to subsection (a) or (c) of this section
27 shall notify the Codifier of Rules of its actions. When notified of an agency action taken pursuant
28 to subsection (a) or (c) of this section, the Codifier of Rules shall make the appropriate change to
29 the North Carolina Administrative Code."

30 **SECTION 1.2.** G.S. 150B-21.20 reads as rewritten:

31 "**§ 150B-21.20. Codifier's authority to revise ~~form of~~ rules.**

32 (a) Authority. – After consulting with the agency that adopted the rule, the Codifier of
33 Rules may revise ~~the form of a rule submitted for inclusion in the North Carolina Administrative~~
34 ~~Code~~ a rule to do one or more of the following:

- 35 (1) Rearrange the order of the rule in the Code or the order of the subsections,
36 subdivisions, or other subparts of the rule.
- 37 (2) Provide a catch line or heading for the rule or revise the catch line or heading of
38 the rule.
- 39 (3) Reletter or renumber the rule or the subparts of the rule in accordance with a
40 uniform system.
- 41 (4) Rearrange definitions and lists.
- 42 (5) Make other changes in arrangement or in form that do not change the substance
43 of the rule and are necessary or desirable for a clear and orderly arrangement of
44 the rule.
- 45 (6) Omit from the published rule a map, a diagram, an illustration, a chart, or other
46 graphic material, if the Codifier of Rules determines that the Office of
47 Administrative Hearings does not have the capability to publish the material or
48 that publication of the material is not practicable. When the Codifier of Rules
49 omits graphic material from the published rule, the Codifier must insert a
50 reference to the omitted material and information on how to obtain a copy of
51 the omitted material.

1 (7) Substitute one name for another when an organization or position is renamed.
2 (8) Correct a citation in the rule to another rule or law when the citation has
3 become inaccurate since the rule was adopted because of the repeal or
4 renumbering of the cited rule or law.

5 (9) Change information that is readily available to the public, such as an address, a
6 telephone number, or a Web site.

7 (10) Correct a typographical error.

8 (b) Effect. – Revision of a rule by the Codifier of Rules under this section does not affect
9 the effective date of the rule or require the agency to readopt or resubmit the rule. When the
10 Codifier of Rules revises the form of a rule, the Codifier of Rules must send the agency that
11 adopted the rule a copy of the revised rule. The revised rule is the official rule, unless the rule was
12 revised under subdivision (a)(6) of this section to omit graphic material. When a rule is revised
13 under that subdivision, the official rule is the published text of the rule plus the graphic material
14 that was not published."
15

16 **CLARIFY CONTESTED CASE POLICY**

17 **SECTION 2.1.** G.S. 150B-22 reads as rewritten:

18 **"§ 150B-22. Settlement; contested case.**

19 (a) It is the policy of this State that any dispute between an agency and another person that
20 involves the person's rights, duties, or privileges, including licensing or the levy of a monetary
21 penalty, should be settled through informal procedures. In trying to reach a settlement through
22 informal procedures, the agency may not conduct a proceeding at which sworn testimony is taken
23 and witnesses may be cross-examined.

24 (b) If the agency and the other person do not agree to a resolution of the dispute through
25 informal procedures, either the agency or the person may commence an administrative proceeding
26 to determine the person's rights, duties, or privileges, at which time the dispute becomes a
27 "contested case." A party or person aggrieved shall not be required to petition an agency for rule
28 making or to seek or obtain a declaratory ruling before commencing a contested case pursuant to
29 G.S. 150B-23."

30 **SECTION 2.2.** G.S. 150B-43 reads as rewritten:

31 **"§ 150B-43. Right to judicial review.**

32 Any party or person aggrieved by the final decision in a contested case, and who has exhausted
33 all administrative remedies made available to the party or person aggrieved by statute or agency
34 rule, is entitled to judicial review of the decision under this Article, unless adequate procedure for
35 judicial review is provided by another statute, in which case the review shall be under such other
36 statute. Nothing in this Chapter shall prevent any party or person aggrieved from invoking any
37 judicial remedy available to the party or person aggrieved under the law to test the validity of any
38 administrative action not made reviewable under this Article. ~~Absent a specific statutory~~
39 ~~requirement, nothing in this Chapter shall require a~~ party or person aggrieved shall not be
40 required to petition an agency for rule making or to seek or obtain a declaratory ruling before
41 obtaining judicial review of a final decision or order made pursuant to G.S. 150B-34."
42

43 **AMEND PERIODIC REVIEW OF RULES PROCESS**

44 **SECTION 3.** G.S. 150B-21.3A reads as rewritten:

45 **"§ 150B-21.3A. Periodic review and expiration of existing rules.**

46 (a) Definitions. – For purposes of this section, the following definitions apply:

47 (1) Commission. – Means the Rules Review Commission.

48 (2) Committee. – Means the Joint Legislative Administrative Procedure Oversight
49 Committee.

50 (2a) Necessary rule. – Means any rule other than an unnecessary rule.

- 1 (3) ~~Necessary with substantive public interest. — Means any rule for which the~~
2 ~~agency has received public comments within the past two years. A rule is also~~
3 ~~"necessary with substantive public interest" if the rule affects the property~~
4 ~~interest of the regulated public and the agency knows or suspects that any~~
5 ~~person may object to the rule.~~
- 6 (4) ~~Necessary without substantive public interest. — Means a rule for which the~~
7 ~~agency has not received a public comment concerning the rule within the past~~
8 ~~two years. A "necessary without substantive public interest" rule includes a rule~~
9 ~~that merely identifies information that is readily available to the public, such as~~
10 ~~an address or a telephone number.~~
- 11 (5) Public comment. – Means written comments objecting to the rule, in whole or
12 in part, or objecting to an agency's determination of the rule as necessary or
13 unnecessary, received by an agency from any member of the public, including
14 an association or other organization representing the regulated community or
15 other members of the public.
- 16 (6) Unnecessary rule. – Means a rule that the agency determines to be obsolete,
17 redundant, or otherwise not needed.
- 18 (b) Automatic Expiration. – Except as provided in subsection (e) of this section, any rule
19 for which the agency that adopted the rule has not conducted a review in accordance with this
20 section shall expire on the date set in the schedule established by the Commission pursuant to
21 subsection (d) of this section.
- 22 (c) Review Process. – Each agency subject to this Article shall conduct a review of the
23 agency's existing rules at least once every 10 years in accordance with the following process:
- 24 (1) Step 1: The agency shall conduct an analysis of each existing rule and make an
25 initial determination as to whether the rule is ~~(i) necessary with substantive~~
26 ~~public interest, (ii) necessary without substantive public interest, or~~
27 ~~(iii) necessary or unnecessary~~. The agency shall then post the results of the
28 initial determination on its Web site and invite the public to comment on the
29 rules and the agency's initial determination. The agency shall also submit the
30 results of the initial determination to the Office of Administrative Hearings for
31 posting on its Web site. The agency shall accept public comment for no less
32 than 60 days following the posting. The agency shall review the public
33 comments and prepare a brief response addressing the merits of each comment.
34 After completing this process, the agency shall submit a report to the
35 Commission. The report shall include the following items:
36 a. The agency's initial determination.
37 b. All public comments received in response to the agency's initial
38 determination.
39 c. The agency's response to the public comments.
- 40 (2) Step 2: The Commission shall review the reports received from the agencies
41 pursuant to subdivision (1) of this subsection. If a public comment relates to a
42 rule that the agency determined to be ~~necessary and without substantive public~~
43 ~~interest or unnecessary~~, the Commission shall determine whether the public
44 comment has merit and, if so, designate the rule as ~~necessary with substantive~~
45 ~~public interest~~necessary. For purposes of this subsection, a public comment has
46 merit if it addresses the specific substance of the ~~rule and relates to any of the~~
47 ~~standards for review by the Commission set forth in G.S. 150B-21.9(a) rule~~.
48 The Commission shall prepare a final determination report and submit the
49 report to the Committee for consultation in accordance with subdivision (3) of
50 this subsection. The report shall include the following items:
51 a. The agency's initial determination.

- 1 b. All public comments received in response to the agency's initial
2 determination.
- 3 c. The agency's response to the public comments.
- 4 d. A summary of the Commission's determinations regarding public
5 comments.
- 6 ~~e. A determination that all rules that the agency determined to be
7 necessary and without substantive public interest and for which no
8 public comment was received or for which the Commission determined
9 that the public comment was without merit be allowed to remain in
10 effect without further action.~~
- 11 f. A determination that all rules that the agency determined to be
12 unnecessary and for which no public comment was received or for
13 which the Commission determined that the public comment was without
14 merit shall expire on the first day of the month following the date the
15 report becomes effective in accordance with this section.
- 16 g. A determination that all rules that the agency determined to be
17 necessary ~~with substantive public interest~~ or that the Commission
18 designated as necessary ~~with public interest as provided in this
19 subdivision~~ shall be readopted as though the rules were new rules in
20 accordance with this Article.
- 21 (3) Step 3: The final determination report shall not become effective until the
22 agency has consulted with the Committee. The determinations contained in the
23 report pursuant to sub-subdivisions ~~e., f., f.~~ and g. of subdivision (2) of this
24 subsection shall become effective on the date the report is reviewed by the
25 Committee. If the Committee does not hold a meeting to hear the consultation
26 required by this subdivision within 60 days of receipt of the final determination
27 report, the consultation requirement is deemed satisfied, and the determinations
28 contained in the report become effective on the 61st day following the date the
29 Committee received the report. If the Committee disagrees with a determination
30 regarding a specific rule contained in the report, the Committee may
31 recommend that the General Assembly direct the agency to conduct a review of
32 the specific rule in accordance with this section in the next year following the
33 consultation.
- 34 (d) Timetable. – The Commission shall establish a schedule for the review and readoption
35 of existing rules in accordance with this section on a decennial basis as follows:
- 36 (1) With regard to the review process, the Commission shall assign each Title of
37 the Administrative Code a date by which the review required by this section
38 must be completed. In establishing the schedule, the Commission shall consider
39 the scope and complexity of rules subject to this section and the resources
40 required to conduct the review required by this section. The Commission shall
41 have broad authority to modify the schedule and extend the time for review in
42 appropriate circumstances. Except as provided in subsections (e) and (f) of this
43 section, if the agency fails to conduct the review by the date set by the
44 Commission, the rules contained in that Title which have not been reviewed
45 will expire. The Commission shall report to the Committee any agency that
46 fails to conduct the review. The Commission may exempt rules that have been
47 adopted or amended within the previous 10 years from the review required by
48 this section. However, any rule exempted on this basis must be reviewed in
49 accordance with this section no more than 10 years following the last time the
50 rule was amended.

1 (2) With regard to the readoption of rules as required by sub-subdivision (c)(2)g. of
2 this section, once the final determination report becomes effective, the
3 Commission shall establish a date by which the agency must readopt the rules.
4 The Commission shall consult with the agency and shall consider the agency's
5 rule-making priorities in establishing the readoption date. The agency may
6 amend a rule as part of the readoption process. If a rule is readopted without
7 substantive change or if the rule is amended to impose a less stringent burden
8 on regulated persons, the agency is not required to prepare a fiscal note as
9 provided by G.S. 150B-21.4.

10 (e) ~~Rules to Conform to or Implement Federal Law. — Rules adopted to conform to or~~
11 ~~implement federal law shall not expire as provided by this section. The Commission shall report~~
12 ~~annually to the Committee on any rules that do not expire pursuant to this subsection.~~

13 (e1) ~~Rules to Protect Inchoate or Accrued Rights of Retirement Systems Members. — Rules~~
14 ~~deemed by the Boards of Trustees established under G.S. 128-28 and G.S. 135-6 to protect~~
15 ~~inchoate or accrued rights of members of the Retirement Systems administered by the State~~
16 ~~Treasurer shall not expire as provided by this section. The Commission shall report annually to the~~
17 ~~Committee on any rules that do not expire pursuant to this subsection.~~Exclusions. — The
18 Commission shall report annually to the Committee on any rules that do not expire pursuant to this
19 subsection. The following rules shall not expire as provided in this section:

20 (1) Rules adopted to conform to or implement federal law.

21 (2) Rules deemed by the Boards of Trustees established under G.S. 128-28 and
22 G.S. 135-6 to protect inchoate or accrued rights of members of the Retirement
23 Systems administered by the State Treasurer.

24 (f) Other Reviews. — Notwithstanding any provision of this section, an agency may subject
25 a rule that it determines to be unnecessary to review under this section at any time by notifying the
26 Commission that it wishes to be placed on the schedule for the current year. The Commission may
27 also subject a rule to review under this section at any time by notifying the agency that the rule has
28 been placed on the schedule for the current year."

29 **SECTION 4.** This act is effective when it becomes law. Section 3 of this act applies to
30 agency rule reports submitted to the Office of Administrative Hearings pursuant to
31 G.S. 150B-21.3A(c)(1) on or after May 1, 2017.