

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 74
PROPOSED COMMITTEE SUBSTITUTE H74-PCS70391-RO-3

Short Title: Periodic Review and Expiration of Rules.

(Public)

Sponsors:

Referred to:

February 7, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR THE PERIODIC REVIEW AND EXPIRATION OF RULES.
3 The General Assembly of North Carolina enacts:

4 SECTION 1. G.S. 150B-21.2(c) reads as rewritten:

5 "(c) Notice of Text. – A notice of the proposed text of a rule must include all of the
6 following:

- 7 (1) The text of the proposed ~~rule~~rule, unless the rule is a readoption without
8 substantive changes to the existing rule proposed in accordance with
9 G.S. 150B-21.3A.
10 (2) A short explanation of the reason for the proposed rule and a link to the
11 agency's Web site containing the information required by G.S. 150B-19.1(c).
12 (3) A citation to the law that gives the agency the authority to adopt the rule.
13 (4) The proposed effective date of the rule.
14 (5) The date, time, and place of any public hearing scheduled on the rule.
15 (6) Instructions on how a person may demand a public hearing on a proposed
16 rule if the notice does not schedule a public hearing on the proposed rule and
17 subsection (e) of this section requires the agency to hold a public hearing on
18 the proposed rule when requested to do so.
19 (7) The period of time during which and the person to whom written comments
20 may be submitted on the proposed rule.
21 (8) If a fiscal note has been prepared for the rule, a statement that a copy of the
22 fiscal note can be obtained from the agency.
23 (9) The procedure by which a person can object to a proposed rule and the
24 requirements for subjecting a proposed rule to the legislative review
25 process."

26 SECTION 2. Part 2 of Article 2A of Chapter 150B of the General Statutes is
27 amended by adding a new section to read:

28 "**§ 150B-21.3A. Periodic review and expiration of existing rules.**

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

- 30 (1) Commission. – Means the Rules Review Commission.
31 (2) Committee. – Means the Joint Legislative Administrative Procedure
32 Oversight Committee.
33 (3) Necessary with substantive public interest. – Means any rule for which the
34 agency has received public comments within the past two years. A rule is
35 also "necessary with substantive public interest" if the rule affects the



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

- 1 d. A summary of the Commission's determinations regarding public
2 comments.
- 3 e. A determination that all rules that the agency determined to be
4 necessary and without substantive public interest and for which no
5 public comment was received or for which the Commission
6 determined that the public comment was without merit be allowed to
7 remain in effect without further action.
- 8 f. A determination that all rules that the agency determined to be
9 unnecessary and for which no public comment was received or for
10 which the Commission determined that the public comment was
11 without merit shall expire on the first day of the month following the
12 date the report becomes effective in accordance with this section.
- 13 g. A determination that all rules that the agency determined to be
14 necessary with substantive public interest or that the Commission
15 designated as necessary with public interest as provided in this
16 subdivision shall be readopted as though the rules were new rules in
17 accordance with this Article.

18 (3) Step 3: The final determination report shall not become effective until the
19 agency has consulted with the Committee. The determinations contained in
20 the report pursuant to sub-subdivisions e., f., and g. of subdivision (2) of this
21 subsection shall become effective on the date the report is reviewed by the
22 Committee. If the Committee does not hold a meeting to hear the
23 consultation required by this subdivision within 60 days of receipt of the
24 final determination report, the consultation requirement is deemed satisfied,
25 and the determinations contained in the report become effective on the 61st
26 day following the date the Committee received the report. If the Committee
27 disagrees with a determination regarding a specific rule contained in the
28 report, the Committee may recommend that the General Assembly direct the
29 agency conduct a review of the specific rule in accordance with this section
30 in the next year following the consultation.

31 (d) Timetable – Upon the effective date of this act, the Commission shall establish a
32 schedule for the review of existing rules in accordance with this section on a decennial basis by
33 assigning each Title of the Administrative Code a date by which the review required by this
34 section must be completed. In establishing the schedule, the Commission shall consider the
35 scope and complexity of rules subject to this section and the resources required to conduct the
36 review required by this section. If the agency fails to conduct the review by the date set by the
37 Commission, the rules contained in that Title will expire. The Commission may exempt rules
38 that have been adopted or amended within the previous 10 years from the review required by
39 this section. However, any rule exempted on this basis must be reviewed in accordance with
40 this section no more than 10 years following the last time the rule was amended.

41 (e) Other Reviews – Notwithstanding any provision of this section, an agency may
42 subject a rule that it determines to be unnecessary to review under this section at any time by
43 notifying the Commission that it wishes to be placed on the schedule for the current year. The
44 Commission may also subject a rule to review under this section at any time by notifying the
45 agency that the rule has been placed on the schedule for the current year."

46 **SECTION 3.** G.S. 150B-19.2 is repealed.

47 **SECTION 4.** This act is effective when it becomes law.