

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

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HOUSE BILL 162  
Committee Substitute Favorable 3/1/17  
PROPOSED SENATE COMMITTEE SUBSTITUTE H162-PCS40627-SB-25

Short Title: Amend Administrative Procedure Laws.

(Public)

Sponsors:

Referred to:

February 23, 2017

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND VARIOUS ADMINISTRATIVE PROCEDURE LAWS.  
3 The General Assembly of North Carolina enacts:

4  
5 **AUTHORIZE RULE TECHNICAL CORRECTIONS**

6 SECTION 1.(a) G.S. 150B-21.5 reads as rewritten:

7 "§ 150B-21.5. **Circumstances when notice and rule-making hearing not**  
8 **required; required; circumstances when submission to the Commission not**  
9 **required.**

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

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

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

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

- 32 (1) The law under which the rule was adopted is repealed.  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



\* H 1 6 2 - P C S 4 0 6 2 7 - S B - 2 5 \*

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

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

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

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

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

26 **SECTION 1.(b)** G.S. 150B-21.20 reads as rewritten:

27 **"§ 150B-21.20. Codifier's authority to revise ~~form of~~ rules.**

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

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

1           (8)    Correct a citation in the rule to another rule or law when the citation has  
2                    become inaccurate since the rule was adopted because of the repeal or  
3                    renumbering of the cited rule or law.

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

6           (10) Correct a typographical error.

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

## 15 CLARIFY CONTESTED CASE POLICY

16           **SECTION 2.(a)** G.S. 150B-22 reads as rewritten:

17 **"§ 150B-22. Settlement; contested case.**

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

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

29           **SECTION 2.(b)** G.S. 150B-43 reads as rewritten:

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

31           Any party or person aggrieved by the final decision in a contested case, and who has  
32 exhausted all administrative remedies made available to the party or person aggrieved by  
33 statute or agency rule, is entitled to judicial review of the decision under this Article, unless  
34 adequate 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 party or person  
36 aggrieved from invoking any judicial remedy available to the party or person aggrieved under  
37 the law to test the validity of any administrative action not made reviewable under this Article.  
38 ~~Absent a specific statutory requirement, nothing in this Chapter shall require a~~ A party or person  
39 aggrieved shall not be required to petition an agency for rule making or to seek or obtain a  
40 declaratory ruling before obtaining judicial review of a final decision or order made pursuant to  
41 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  
49                            Oversight 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~~  
3 ~~also "necessary with substantive public interest" if the rule affects the~~  
4 ~~property interest of the regulated public and the agency knows or suspects~~  
5 ~~that any 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~~  
8 ~~past two years. A "necessary without substantive public interest" rule~~  
9 ~~includes a rule that merely identifies information that is readily available to~~  
10 ~~the public, such as an address or a telephone number.~~
- 11           (5) Public comment. – Means written comments objecting to the rule, in whole  
12 or in part, or objecting to an agency's determination of the rule as necessary  
13 or unnecessary, received by an agency from any member of the public,  
14 including an association or other organization representing the regulated  
15 community or 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  
19 rule for which the agency that adopted the rule has not conducted a review in accordance with  
20 this section shall expire on the date set in the schedule established by the Commission pursuant  
21 to 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  
25 an initial determination as to whether the rule is ~~(i) necessary with~~  
26 ~~substantive public interest, (ii) necessary without substantive public interest,~~  
27 ~~or (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  
31 for posting on its Web site. The agency shall accept public comment for no  
32 less than 60 days following the posting. The agency shall review the public  
33 comments and prepare a brief response addressing the merits of each  
34 comment. After completing this process, the agency shall submit a report to  
35 the 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  
42 a rule that the agency determined to be ~~necessary and without substantive~~  
43 ~~public interest or unnecessary~~, the Commission shall determine whether the  
44 public comment has merit and, if so, designate the rule as ~~necessary with~~  
45 ~~substantive public interest.~~necessary. For purposes of this subsection, a  
46 public comment has merit if it addresses the specific substance of the ~~rule~~  
47 ~~and relates to any of the standards for review by the Commission set forth in~~  
48 ~~G.S. 150B-21.9(a) rule.~~ The Commission shall prepare a final determination  
49 report and submit the report to the Committee for consultation in accordance  
50 with subdivision (3) of this subsection. The report shall include the  
51 following items:

- 1 a. The agency's initial determination.  
2 b. All public comments received in response to the agency's initial  
3 determination.  
4 c. The agency's response to the public comments.  
5 d. A summary of the Commission's determinations regarding public  
6 comments.  
7 ~~e. A determination that all rules that the agency determined to be  
8 necessary and without substantive public interest and for which no  
9 public comment was received or for which the Commission  
10 determined that the public comment was without merit be allowed to  
11 remain in effect without further action.~~  
12 f. A determination that all rules that the agency determined to be  
13 unnecessary and for which no public comment was received or for  
14 which the Commission determined that the public comment was  
15 without merit shall expire on the first day of the month following the  
16 date the report becomes effective in accordance with this section.  
17 g. A determination that all rules that the agency determined to be  
18 necessary ~~with substantive public interest~~ or that the Commission  
19 designated as necessary ~~with public interest as provided in this~~  
20 ~~subdivision~~ shall be readopted as though the rules were new rules in  
21 accordance with this Article.
- 22 (3) Step 3: The final determination report shall not become effective until the  
23 agency has consulted with the Committee. The determinations contained in  
24 the report pursuant to sub-subdivisions ~~e., f., f.~~ and g. of subdivision (2) of  
25 this subsection shall become effective on the date the report is reviewed by  
26 the Committee. If the Committee does not hold a meeting to hear the  
27 consultation required by this subdivision within 60 days of receipt of the  
28 final determination report, the consultation requirement is deemed satisfied,  
29 and the determinations contained in the report become effective on the 61st  
30 day following the date the Committee received the report. If the Committee  
31 disagrees with a determination regarding a specific rule contained in the  
32 report, the Committee may recommend that the General Assembly direct the  
33 agency to conduct a review of the specific rule in accordance with this  
34 section in the next year following the consultation.
- 35 (d) Timetable. – The Commission shall establish a schedule for the review and  
36 readoption of existing rules in accordance with this section on a decennial basis as follows:
- 37 (1) With regard to the review process, the Commission shall assign each Title of  
38 the Administrative Code a date by which the review required by this section  
39 must be completed. In establishing the schedule, the Commission shall  
40 consider the scope and complexity of rules subject to this section and the  
41 resources required to conduct the review required by this section. The  
42 Commission shall have broad authority to modify the schedule and extend  
43 the time for review in appropriate circumstances. Except as provided in  
44 subsections (e) and (f) of this section, if the agency fails to conduct the  
45 review by the date set by the Commission, the rules contained in that Title  
46 which have not been reviewed will expire. The Commission shall report to  
47 the Committee any agency that fails to conduct the review. The Commission  
48 may exempt rules that have been adopted or amended within the previous 10  
49 years from the review required by this section. However, any rule exempted  
50 on this basis must be reviewed in accordance with this section no more than  
51 10 years following the last time the rule was amended.

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

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

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

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

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

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

## RESTRICTIONS ON RULES WITH SUBSTANTIAL FINANCIAL COSTS

SECTION 4. Part 1 of Article 2A of Chapter 150B of the General Statutes is amended by adding a new section to read:

### "§ 150B-19.4. Requirements on rules with substantial financial costs.

(a) Prohibition. — Notwithstanding any authority given to an agency to adopt a rule, an agency may not adopt a permanent rule or set of rules with a projected aggregate financial cost to all persons affected equal to or greater than one hundred million dollars (\$100,000,000) during any five-year period. The agency's determination of the projected aggregate financial cost of a permanent rule or set of rules shall comply with the requirements of G.S. 150B-21.4(b1). The agency's determination of the projected aggregate financial cost of a permanent rule or set of rules shall not include any financial benefits of the permanent rule or set of rules.

(b) Limitation. — If an agency determines that a proposed permanent rule or set of rules will have a projected aggregate financial cost to all persons affected equal to or greater than ten million dollars (\$10,000,000) during any five-year period, the adoption of the permanent rule or set of rules must comply with the following:

(1) If the agency is a board, a commission, a council, or other similar unit of government, a certification that the adoption of the rule or set of rules must be approved by at least sixty percent (60%) of those voting on the rule or set of rules.

1           (2)    For an agency headed by a member of the Council of State, the adoption of  
2           the rule or set of rules must be accompanied by a certification signed by the  
3           member of the Council of State indicating the member's review and support  
4           of the rule or set of rules.

5           (3)    For all other agencies, the adoption of the rule or set of rules must be  
6           accompanied by a certification signed by the Governor indicating the  
7           Governor's review and support of the rule or set of rules.

8           (c)    Legislative Review. – A permanent rule or set of rules subject to the limitation of  
9           subsection (b) of this section shall be subject to the provisions of G.S. 150B-21.3(b1) as if,  
10          pursuant to G.S. 150B-21.3(b2), the rule or set of rules received written objections from 10 or  
11          more persons and a bill specifically disapproving the rule or set of rules was introduced in a  
12          house of the General Assembly before the thirty-first legislative day."

## 13 14 **AMEND INCORPORATING MATERIALS IN A RULE BY REFERENCE**

15           **SECTION 5.** G.S. 150B-21.6 reads as rewritten:

### 16 **"§ 150B-21.6. Incorporating material in a rule by reference.**

17           An agency may incorporate the following material by reference in a rule without repeating  
18           the text of the referenced material:

19           (1)    Another rule or part of a rule adopted by the agency.

20           (2)    All or part of a code, standard, or regulation adopted by another ~~agency, the~~  
21           ~~federal government, agency~~ or a generally recognized organization or  
22           association.

23           (3)    Repealed by Session Laws 1997-34, s. 5.

24           (4)    All or part of a code, standard, or regulation adopted by the federal  
25           government if the agency establishes a procedure by which any change by  
26           the federal government is reviewed and approved by the agency within 120  
27           days of the change.

28           In incorporating material by reference, the agency must designate in the rule whether or not  
29           the incorporation includes subsequent amendments and editions of the referenced material. The  
30           agency can change this designation only by a subsequent rule-making proceeding. The agency  
31           must have copies of the incorporated material available for inspection and must specify in the  
32           rule both where copies of the material can be obtained and the cost on the date the rule is  
33           adopted of a copy of the material.

34           A statement in a rule that a rule incorporates material by reference in accordance with  
35           former G.S. 150B-14(b) is a statement that the rule does not include subsequent amendments  
36           and editions of the referenced material. A statement in a rule that a rule incorporates material  
37           by reference in accordance with former G.S. 150B-14(c) is a statement that the rule includes  
38           subsequent amendments and editions of the referenced material."

## 39 40 **ADOPTION OF PERMANENT ENVIRONMENTAL RULES THAT EXCEED** 41 **FEDERAL REQUIREMENTS IN CASES OF SERIOUS AND UNFORESEEN** 42 **THREATS**

43           **SECTION 6.** G.S. 150B-19.3(a) reads as rewritten:

44           "(a)    An agency authorized to implement and enforce State and federal environmental  
45           laws may not adopt a permanent rule for the protection of the environment or natural resources  
46           that imposes a more restrictive standard, limitation, or requirement than those imposed by  
47           federal law or rule, if a federal law or rule pertaining to the same subject matter has been  
48           adopted, unless adoption of the rule is required by one of the subdivisions of this subsection. A  
49           permanent rule required by a serious and unforeseen threat to public health, safety, or welfare  
50           shall be subject to the limitation and legislative review provisions of G.S. 150B-19.4(b) and (c).  
51           A permanent rule required by one of the following subdivisions of this subsection shall be

1 subject to the provisions of G.S. 150B-21.3(b1) as if the rule received written objections from  
2 10 or more persons under G.S. 150B-21.3(b2):

3 ~~(1) A serious and unforeseen threat to the public health, safety, or welfare.~~

4 (2) An act of the General Assembly or United States Congress that expressly  
5 requires the agency to adopt rules.

6 (3) A change in federal or State budgetary policy.

7 (4) A federal regulation required by an act of the United States Congress to be  
8 adopted or administered by the State.

9 (5) A court order."

10  
11 **EFFECTIVE DATE**

12 **SECTION 7.** This act is effective when it becomes law. Section 3 of this act  
13 applies to agency rule reports submitted to the Office of Administrative Hearings pursuant to  
14 G.S. 150B-21.3A(c)(1) on or after October 1, 2017. Sections 4 and 6 apply to proposed  
15 permanent and readopted rules published in the North Carolina Register and proposed  
16 permanent rules posted on the Web site of the Office of Administrative Hearings on or after  
17 October 1, 2017.