

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2019

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HOUSE BILL 590  
Committee Substitute Favorable 4/15/19  
PROPOSED COMMITTEE SUBSTITUTE H590-PCS40451-SU-28

Short Title: Amend Administrative Procedure Laws.

(Public)

Sponsors:

Referred to:

April 4, 2019

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 **PART I. 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 ~~required~~required;**  
8 **circumstances when submission to the Commission not required.**

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

12 ...

13 (4) Change information that is readily available to the public, such as an ~~address~~  
14 ~~or address, email address, a telephone number-number, or a Web site.~~

15 (5) Correct a ~~typographical error in the North Carolina Administrative~~  
16 ~~Code~~typographical error.

17 (6) ~~Change a rule in response to a request or an objection by the Commission,~~  
18 ~~unless the Commission determines that the change is substantial.~~

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

23 ...

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

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

29 "**§ 150B-21.20. Codifier's authority to revise ~~form of rules.~~**

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

33 ...

34 (7) Substitute one name for another when an organization or position is renamed.



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- 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 address,  
 5           email address, a telephone number, or a Web site.  
 6           (10)    Correct a typographical error.

7           ...."

## 9     **PART II. CLARIFY CONTESTED CASE POLICY**

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

### 11     **"§ 150B-22. Settlement; contested case.**

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

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

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

### 24     **"§ 150B-43. Right to judicial review.**

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

## 37     **PART III. AMEND PERIODIC REVIEW OF RULES PROCESS**

38           **SECTION 3.(a)** G.S. 150B-21.3A reads as rewritten:

### 39     **"§ 150B-21.3A. Periodic review and expiration of existing rules.**

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

41           ...

42           (2a)    Necessary rule. – Means any rule other than an unnecessary rule.

43           (3)     ~~Necessary with substantive public interest. – Means any rule for which the~~  
 44           ~~agency has received public comments within the past two years. A rule is also~~  
 45           ~~"necessary with substantive public interest" if the rule affects the property~~  
 46           ~~interest of the regulated public and the agency knows or suspects that any~~  
 47           ~~person may object to the rule.~~

48           (4)     ~~Necessary without substantive public interest. – Means a rule for which the~~  
 49           ~~agency has not received a public comment concerning the rule within the past~~  
 50           ~~two years. A "necessary without substantive public interest" rule includes a~~

1 ~~rule that merely identifies information that is readily available to the public,~~  
2 ~~such as an address or a telephone number.~~

- 3 (5) Public comment. – Means written comments objecting to the rule, in whole or  
4 in part, or objecting to an agency's determination of the rule as necessary or  
5 unnecessary, received by an agency from any member of the public, including  
6 an association or other organization representing the regulated community or  
7 other members of the public.

8 ...

9 (c) Review Process. – Each agency subject to this Article shall conduct a review of the  
10 agency's existing rules at least once every 10 years in accordance with the following process:

- 11 (1) Step 1: The agency shall conduct an analysis of each existing rule and make  
12 an initial determination as to whether the rule is ~~(i) necessary with substantive~~  
13 ~~public interest, (ii) necessary without substantive public interest, or (iii)~~  
14 necessary or unnecessary. The agency shall then post the results of the initial  
15 determination on its Web site and invite the public to comment on the rules  
16 and the agency's initial determination. The agency shall also submit the results  
17 of the initial determination to the Office of Administrative Hearings for  
18 posting on its Web site. The agency shall accept public comment for no less  
19 than 60 days following the posting. The agency shall review the public  
20 comments and prepare a brief response addressing the merits of each  
21 comment. After completing this process, the agency shall submit a report to  
22 the Commission. The report shall include the following items:

- 23 a. The agency's initial determination.  
24 b. All public comments received in response to the agency's initial  
25 determination.  
26 c. The agency's response to the public comments.

- 27 (2) Step 2: The Commission shall review the reports received from the agencies  
28 pursuant to subdivision (1) of this subsection. If a public comment relates to  
29 a rule that the agency determined to be ~~necessary and without substantive~~  
30 ~~public interest or unnecessary~~, the Commission shall determine whether the  
31 public comment has merit and, if so, designate the rule as ~~necessary with~~  
32 ~~substantive public interest.~~ necessary. For purposes of this subsection, a public  
33 comment has merit if it addresses the specific substance of the ~~rule and relates~~  
34 ~~to any of the standards for review by the Commission set forth in G.S.~~  
35 ~~150B-21.9(a).~~ rule. The Commission shall prepare a final determination report  
36 and submit the report to the Committee for consultation in accordance with  
37 subdivision (3) of this subsection. The report shall include the following  
38 items:

39 ...

- 40 e. ~~A determination that all rules that the agency determined to be~~  
41 ~~necessary and without substantive public interest and for which no~~  
42 ~~public comment was received or for which the Commission~~  
43 ~~determined that the public comment was without merit be allowed to~~  
44 ~~remain in effect without further action.~~  
45 f. A determination that all rules that the agency determined to be  
46 unnecessary and for which no public comment was received or for  
47 which the Commission determined that the public comment was  
48 without merit shall expire on the first day of the month following the  
49 date the report becomes effective in accordance with this section.  
50 g. A determination that all rules that the agency determined to be  
51 necessary ~~with substantive public interest~~ or that the Commission

designated as necessary ~~with public interest as provided in this subdivision~~ shall be readopted as though the rules were new rules in accordance with this Article.

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

...

~~(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.~~

...."

**SECTION 3.(b)** This Part is effective when it becomes law and applies to agency rule reports submitted to the Office of Administrative Hearings pursuant to G.S. 150B-21.3A(c)(1) on or after October 1, 2019.

**PART IV. EFFECTIVE DATE**

**SECTION 4.** Except as otherwise provided, this act is effective when it becomes law.