

# NORTH CAROLINA GENERAL ASSEMBLY



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## JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE

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### REPORT TO THE 2022 SESSION of the 2021 GENERAL ASSEMBLY OF NORTH CAROLINA

APRIL 5, 2022

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# TRANSMITTAL LETTER

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April 5, 2022

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TO THE MEMBERS OF THE 2022 REGULAR SESSION  
OF THE 2021 GENERAL ASSEMBLY

The **JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE**, respectfully submits the following report to the 2022 Regular Session of the 2021 General Assembly.

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Sen. Kathy Harrington (Co-Chair)

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Rep. Sarah Stevens (Co-Chair)

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# COMMITTEE PROCEEDINGS

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The Committee on Joint Legislative Administrative Procedure Oversight Committee met 2 times after the 2021 Regular Session. The following is a brief summary of the Committee's proceedings. Detailed minutes and information from each Committee meeting are available in the Legislative Library.

## **March 8, 2022**

The Committee met on Tuesday, March 8, 2022, at 1:00 p.m. in Room 643 of the Legislative Office Building (LOB). Meeting minutes for the referenced committee meeting can be found [here](#).

The following business was conducted:

- Senator Kathy Harrington chaired the Committee and presented a brief review of the topics to be discussed. Co-Chair Sarah Stevens gave introductory remarks.
- Senator Harrington recognized Aaron McGlothlin, Committee Counsel. He gave an overview of the Committee Charge.
- Senator Harrington recognized Chris Saunders, Committee Counsel. He gave an overview of the Administrative Procedure Act. Representative Stevens summarized several issues that the Committee has reviewed over the past several years.
- Senator Harrington recognized Bill Peaslee, Legislative Liaison for the Office of Administrative Hearings (OAH). He gave a presentation on issues related to the Administrative Procedure Act and OAH staffing policy that OAH wanted to bring to the Committee's attention. There was Committee discussion about the issues raised by OAH. Senator Harrington directed Mr. Peaslee to work with Committee staff to prepare drafts of OAH's recommendations to be reviewed at the April meeting.
- Senator Harrington recognized Chris Saunders, Committee Counsel. He presented about occupational licensing boards' reporting on military applicants and presented a draft legislative proposal to clarify the information that occupational licensing boards are to include in their annual reports.
- Senator Harrington recognized Mike Tadych, General Counsel for the North Carolina Acupuncture Licensing Board. He gave a presentation requesting that the Board not be consolidated with another Board or State agency.

Representative Stevens asked several questions about the number of denied applications, complaints received per year, number of members of the Board and how often they meet, and the geographic distribution of Board members. There was some additional Committee discussion.

- Senator Harrington recognized Robert Cooke, Chair of the North Carolina State Board of Examiners of Fee-Based Practicing Pastoral Counselors. He gave a presentation indicating that the Board is open to exploring consolidation but has not talked to other licensing boards to see who would be receptive to consolidation. There was Committee discussion about the difference between the various counseling boards.
- Senator Harrington recognized Martin Baker, Chair of the North Carolina Board of Athletic Trainer Examiners. He gave a presentation requesting that the Board not be consolidated with another Board or State agency. There was some Committee discussion about national certification and the difference between athletic trainers and physical therapists.
- The Committee discussed potential issues for future consideration.
- A date was then set for the next meeting followed by adjournment at 2:30 p.m.

#### **April 5, 2022**

The agenda and proceedings from the April 5, 2022 meeting will be included here in the final report.



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## COMMITTEE MEMBERSHIP

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2021-2022

**President Pro Tempore of the Senate**  
**Appointments:**

Sen. Kathy Harrington (Co-Chair)

Sen. Danny Earl Britt, Jr.  
Sen. Warren Daniel  
Sen. Amy S. Galey  
Sen. Jeff Jackson  
Sen. Julie Mayfield  
Sen. Bob Steinburg  
Sen. Joyce Waddell

**Speaker of the House of Representatives**  
**Appointments:**

Rep. Sarah Stevens (Co-Chair)

Rep. Dennis Riddell (Vice-Chair)  
Rep. Allison A. Dahle  
Rep. Jon Hardister  
Rep. Timothy D. Moffitt  
Rep. Robert T. Reives, II  
Rep. Larry C. Strickland  
Rep. Brian Turner

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## COMMITTEE CHARGE/STATUTORY AUTHORITY

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### NORTH CAROLINA GENERAL STATUTES

#### ARTICLE 12K.

##### *Joint Legislative Administrative Procedure Oversight Committee.*

##### **§ 120-70.100. Creation and membership of Joint Legislative Administrative Procedure Oversight Committee.**

(a) The Joint Legislative Administrative Procedure Oversight Committee is established. The Committee consists of 16 members as follows:

- (1) Eight members of the Senate appointed by the President Pro Tempore of the Senate, at least three of whom are members of the minority party.
- (2) Eight members of the House of Representatives appointed by the Speaker of the House of Representatives, at least three of whom are members of the minority party.

(b) Members of the Committee shall serve a term of two years beginning on January 15 of each odd-numbered year. Members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee. A member continues to serve until the member's successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment.

##### **§ 120-70.101. Purpose and powers of Committee.**

The Joint Legislative Administrative Procedure Oversight Committee has the following powers and duties:

- (1) To review rules to which the Rules Review Commission has objected to determine if statutory changes are needed to enable the agency to fulfill the intent of the General Assembly.
- (2) To receive reports prepared by the Rules Review Commission containing the text and a summary of each rule approved by the Commission.
- (3) Repealed by Session Laws 2009-125, s. 1, effective October 1, 2009.
- (3a) To review the activities of State occupational licensing boards to determine if the boards are operating in accordance with statutory requirements and if the boards are still necessary to achieve the purposes for which they were created. This review shall not include decisions concerning board personnel matters or determinations on individual licensing applications or individual disciplinary actions.

- (4) To review State regulatory programs to determine if the programs overlap, have conflicting goals, or could be simplified and still achieve the purpose of the regulation.
- (5) To review existing rules to determine if the rules are necessary or if the rules can be streamlined.
- (6) To review the rule-making process to determine if the procedures for adopting rules give the public adequate notice of and information about proposed rules.
- (7) To review any other concerns about administrative law to determine if statutory changes are needed.
- (8) To report to the General Assembly from time to time concerning the Committee's activities and any recommendations for statutory changes.

**§ 120-70.102. Organization of Committee.**

(a) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Joint Legislative Administrative Procedure Oversight Committee. The Committee shall meet at least once a quarter and may meet at other times upon the joint call of the cochairs.

(b) A quorum of the Committee is nine members. No action may be taken except by a majority vote at a meeting at which a quorum is present. While in the discharge of its official duties, the Committee has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4.

(c) Members of the Committee receive subsistence and travel expenses as provided in G.S. 120-3.1. The Committee may contract for consultants or hire employees in accordance with G.S. 120-32.02. The Committee may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be paid by the Committee.

**§ 120-70.103:** Repealed by Session Laws 2009-125, s. 5, effective October 1, 2009.

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## LEGISLATIVE PROPOSALS

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GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2021

U

D

BILL DRAFT 2021-TQ-38 [v.1]

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)  
03/24/2022 09:45:08 AM

Short Title: OAH Staffing Flexibility.

(Public)

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Sponsors:

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Referred to:

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1 A BILL TO BE ENTITLED  
2 AN ACT TO GIVE THE CHIEF ADMINISTRATIVE LAW JUDGE GREATER  
3 FLEXIBILITY IN OFFICE OF ADMINISTRATIVE HEARINGS STAFFING.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 7A-760 reads as rewritten:

6 "§ 7A-760. Number and status of employees; staff ~~assignments; role of State Human~~  
7 ~~Resources Commission-assignments.~~

8 (a) The number of administrative law judges ~~and employees~~ of the Office of  
9 Administrative Hearings shall be established by the General Assembly. The Chief  
10 Administrative Law Judge may establish subordinate positions within the Office of  
11 Administrative Hearings, make appointments to those positions, remove persons appointed  
12 to those positions, and set salaries, within the limitations of appropriations to the Office of  
13 Administrative Hearings and subject to the State Budget Act and North Carolina Human  
14 Resources Act. The Chief Administrative Law Judge is exempt from provisions of the  
15 North Carolina Human Resources Act as provided by G.S. 126-5(c1)(27). All other  
16 employees of the Office of Administrative Hearings are subject to the North Carolina  
17 Human Resources Act.

18 ...."

19 SECTION 2. This act is effective when it becomes law.



1 material only by a subsequent rule-making proceeding. The agency must have copies of  
2 the incorporated material available for inspection ~~and must specify in the rule both where~~  
3 ~~copies of the material can be obtained and the cost on the date the rule is adopted of a copy~~  
4 ~~of the material and the incorporated material, as written at the time of adoption, must be~~  
5 ~~available to the general public on the internet without cost to be enforceable.~~

6 A statement in a rule that a rule incorporates material by reference in accordance with  
7 former G.S. 150B-14(b) is a statement that the rule does not include subsequent  
8 amendments and editions of the referenced material. ~~A statement in a rule that a rule~~  
9 ~~incorporates material by reference in accordance with former G.S. 150B-14(c) is a~~  
10 ~~statement that the rule includes subsequent amendments and editions of the referenced~~  
11 ~~material."~~

12 **SECTION 3.** Any agency with effective rules that incorporate material by  
13 reference that includes subsequent amendments and editions of the referenced material, or  
14 a statement that the rule incorporates material by reference in accordance with former G.S.  
15 150B-14(c), shall immediately initiate rulemaking to amend its rules to comply with  
16 Section 2 of this act.

17 **SECTION 4.** Section 2 of this act becomes effective June 1, 2023. The  
18 remainder of this act is effective when it becomes law. Any rules that are required to be  
19 amended under section 3 of this act shall remain effective until the permanent rules  
20 replacing the current rules become effective.

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2021**

U

D

**BILL DRAFT 2021-TQ-37 [v.2]**

**(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)  
03/17/2022 11:38:42 AM**

Short Title:     Require Rulemaking for Scientific Standards.

(Public)

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Sponsors:

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Referred to:

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1                                   A BILL TO BE ENTITLED  
2 AN ACT TO REQUIRE SCIENTIFIC, ARCHITECTURAL, AND ENGINEERING  
3 STANDARDS, FORMS, AND PROCEDURES TO BE ADOPTED AS RULES.

4 The General Assembly of North Carolina enacts:

5                   **SECTION 1.** G.S. 150B-2 reads as rewritten:

6 "**§ 150B-2. Definitions.**

7       As used in this Chapter, the following definitions apply:

8                   ...

9           (8a)   Rule. – Any agency regulation, standard, or statement of general  
10                   applicability that implements or interprets an enactment of the General  
11                   Assembly or Congress or a regulation adopted by a federal agency or  
12                   that describes the procedure or practice requirements of an agency. The  
13                   term includes the establishment of a fee and the amendment or repeal of  
14                   a prior rule. The term does not include the following:

15                   ...

16           h.     ~~Scientific, architectural, or engineering standards, forms, or~~  
17                   ~~procedures, including design~~Design criteria and construction  
18                   standards used to construct or maintain highways, bridges, or  
19                   ferries.

20                   ...

21                   ...."

22                   **SECTION 2.** Any agency that uses scientific, architectural, or engineering  
23 standards, forms, or procedures that are not adopted as rules, shall adopt rules to comply  
24 with Section 1 of this act.

25                   **SECTION 3.** This act is effective when it becomes law. Any rules in conflict  
26 with this act shall remain effective until rules containing the scientific, architectural, or  
27 engineering standards, forms, or procedures pursuant to Section 1 of this act become  
28 effective.  
29

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2021**

**U**

**D**

**BILL DRAFT 2021-TQ-40 [v.1]**

**(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)  
03/31/2022 03:57:33 PM**

Short Title: ALJ Authority to Void Rules.

(Public)

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Sponsors:

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Referred to:

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1 A BILL TO BE ENTITLED  
2 AN ACT TO ALLOW ADMINISTRATIVE LAW JUDGES TO VOID  
3 ADMINISTRATIVE RULES.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 150B-33(b) reads as rewritten:

6 "(b) An administrative law judge may:

7 ...

8 (9) Determine that a rule ~~as applied in a particular case~~ is void because (1)  
9 it is not within the statutory authority of the agency, (2) is not clear and  
10 unambiguous to persons it is intended to direct, guide, or assist, or (3)  
11 is not reasonably necessary to enable the agency to fulfill a duty  
12 delegated to it by the General Assembly.

13 ...."

14 **SECTION 2.** This act is effective when it becomes law, and applies to  
15 decisions issued on or after that date.  
16



**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2021**

U

D

**BILL DRAFT 2021-TQ-41 [v.4]**

**(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)  
04/01/2022 11:29:56 AM**

Short Title:   Crim. Just. Ed/Training Stds. Comm. Hearings.

(Public)

Sponsors:

Referred to:

1                                   A BILL TO BE ENTITLED  
2 AN ACT TO AMEND THE HEARINGS PROCESS FOR THE NORTH CAROLINA  
3 CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS  
4 COMMISSION.

5 The General Assembly of North Carolina enacts:

6       **SECTION 1.** G.S. 150B-25.1 is amended by adding a new subsection to read:

7       "(d) The burden of showing by a preponderance of the evidence that a person  
8 certified under the provisions of Article 1 of Chapter 17C of the General Statutes to be  
9 employed at entry level and retained as criminal justice officers should have his or her  
10 certification suspended or revoked, or his or her recertification denied, rests with the North  
11 Carolina Criminal Justice Education and Training Standards Commission."

12       **SECTION 2.** G.S. 150B-33(b) reads as rewritten:

13       "(b) An administrative law judge may:

14               ...

15       (13) Award reasonable attorney's fees and witness's fees against the North  
16 Carolina Criminal Justice Education and Training Standards  
17 Commission in contested cases decided under this Article where the  
18 administrative law judge finds that the Commission has substantially  
19 prejudiced the petitioner's rights and did any of the acts listed in  
20 subdivisions (1) through (5) of G.S. 150B-23(a). This subdivision shall  
21 not apply to contested cases involving the denial of a certification  
22 pursuant to G.S. 17C-6(a)(3)."

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

24       (a) The provisions of this Article shall apply to:

25       (1) Occupational licensing ~~agencies~~ agencies, except for the North Carolina  
26 Criminal Justice Education and Training Standards Commission with  
27 respect to certification of criminal justice officers pursuant to G.S. 17C-  
28 6(a)(3).

29               ...."

30       **SECTION 4.** This act is effective when it becomes law, and applies to  
31 contested cases filed on or after that date.