



Office of Administrative Hearings

BILL PEASLEE, LEGISLATIVE LIAISON

JEANETTE DORAN, CHAIR RULES REVIEW
COMMISSION

North Carolina Office of Administrative Hearings

Director & Chief Administrative Law Judge
Donald van der Vaart

Agency Divisions

- Hearings
- Civil Rights
- Rulemaking



Hearings Division

Senior Administrative Law Judge John C. Evans

Administrative Law Judges (ALJ) hear disputes and provide resolutions between state agencies and citizens.

- (e.g., environmental permits & fines; tax disputes; DHHS actions & fines; teacher license actions...)
- Medicaid Recipient Appeals

ALJ Decisions may be appealed to Superior Court/Court of Appeals

Structural

- 12 ALJs (1 Waynesville; 1 High Point, 1 Onslow, and 9 in Raleigh)
- Law Clerks and Paralegals Support



Civil Rights Division

Executive Director – Jonathan Ekblad

Housing Discrimination Section – Enforces the State Fair Housing Act through administrative investigations, and litigation of cases where reasonable cause exists to believe unlawful discrimination has occurred.

- **Employment Discrimination Section** - serves as the State's deferral agency for cases deferred by the U.S. Equal Employment Opportunity Commission for charges filed by State and local government employees covered under Chapter 126 of the North Carolina General Statutes.
- **Staffs the Human Relations Commission** - provides services and programs aimed at improving relationships among all citizens of the state, while seeking to ensure equal opportunities in the areas of employment, housing, public accommodations, recreation, education, justice and governmental services.



Rules Division

Codifier of Rules – Brian Liebman

Administers rulemaking process throughout State government

Publishes the North Carolina Register (NCR) and the North Carolina Administrative Code

Staffs the Rules Review Commission (RRC)

Oversight of periodic review of rules under the Regulatory Reform Act of 2013

- Requires agencies to review all codified rules every 10 years



OAH Rules Division

Publications Staff

- Publishes the NC Register
- Enters changes into the Code
- Processes filings
- Ultimate grammar editors

Rules Review

Commission Staff

- RRC's staff attorneys and paralegal
- Provide trainings to agencies on rulemaking process

Delegation of Authority to Make the Law

Article II Section 1. “The legislative power of the State shall be vested in the General Assembly, which shall consist of a Senate and a House of Representatives.

Article III Sec. 5 (10) “The General Assembly shall prescribe the functions, powers, and duties of the administrative departments and agencies of the State and may alter them from time to time, ...”

“Arbitrary Government is where a people have men set over them, without their choice or allowance; who have power to govern them and judge their causes without a rule.”

- *John Winthrop, 1644*

North Carolina General Statutes Chapter 150B

The Administrative Procedures Act



§ 150B-1. Policy and scope.

(a) Purpose. - This Chapter establishes a uniform system of administrative rule making and adjudicatory procedures for agencies. The procedures ensure that the functions of rule making, investigation, advocacy, and adjudication are not all performed by the same person in the administrative process.

What is a “rule?”

“Any **agency regulation, standard, or statement of general applicability** that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the **procedure or practice requirements of an agency**. The term includes the establishment of a fee and the amendment or repeal of a prior rule.”

G.S. 150B-2(8a)

Rulemaking: Three Procedures for Promulgating a Rule



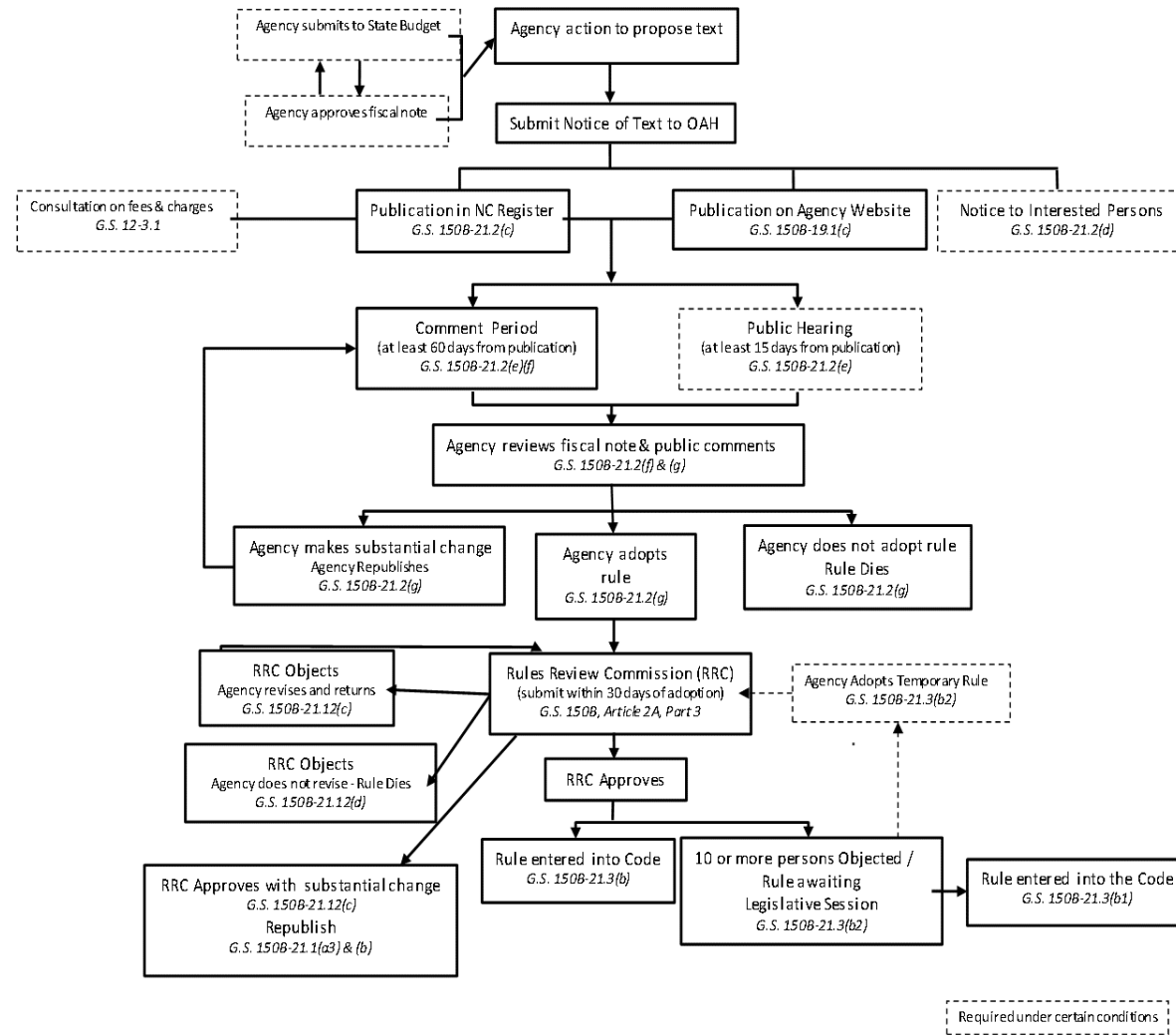
EMERGENCY
G.S. 150B-21.1A



TEMPORARY
G.S. 150B-21.1



PERMANENT
G.S. 150B-21.2



Rules Review Commission



Consists of 10 members appointed by the General Assembly, 5 by the Speaker of the House and 5 by the President Pro Tempore of the Senate. G.S. 143B-30.1.



Appointed to two-year terms.



Charged with reviewing administrative rules in accordance with G.S. 150B.



Meets every month.

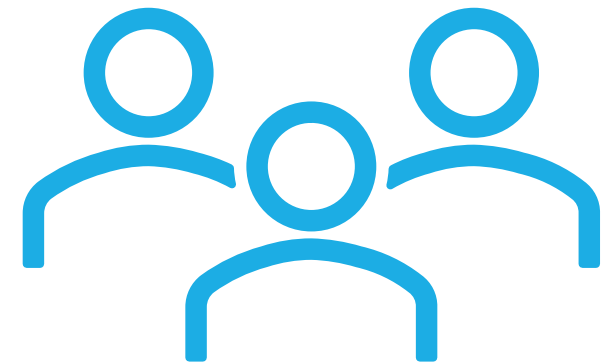


“An agency must submit temporary and permanent rules adopted by it to the Commission before the rule can be included in the North Carolina Administrative Code.” G.S. 150B-21.8(b).

Rules Review Commission

- Clarity
 - Necessity
 - Statutory Authority
 - Compliance with the APA
-
- The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

G.S. 150B-21.9



ISSUES: STATUTORY AUTHORITY

- How broad or specific is the grant of rulemaking authority?
- Does any other agency have rulemaking authority over the same subject?

§ 113A-11. Adoption of rules.

- (a) The Department of Administration shall adopt rules to implement this Article.

§ 143B-62. North Carolina Historical Commission – creation, powers and duties.

- (2) The Historical Commission shall have the power and duty to establish standards and provide rules and regulations as follows:
 - a. For the acquisition and use of historical materials suitable for acceptance in the North Carolina Office of Archives and History.
 - b. For the disposition of public records under provisions of Chapter 121 of the General Statutes of North Carolina.
 - c. For the certification of records in the North Carolina State Archives as provided in Chapter 121 of the General Statutes of North Carolina.
 - d. For the use by the public of historic, architectural, archaeological, or cultural properties as provided in Chapter 121 of the General Statutes of North Carolina.
 - e. For the acquisition of historic, archaeological, architectural, or cultural properties by the State.
 - f. For the extension of State aid or appropriations through the Department of Natural and Cultural Resources to counties, municipalities, organizations, or individuals for the purpose of historic preservation or restoration.
 - fl. For the extension of State aid or appropriations through the Department of Natural and Cultural Resources to nonstate-owned nonprofit history museums.
 - g. For qualification for grants-in-aid or other assistance from the federal government for historic preservation or restoration as provided in Chapter 121 of the General Statutes of North Carolina. This section shall be construed liberally in order that the State and its citizens may benefit from such grants-in-aid.

§ 122C-112.1. Powers and duties of the Secretary.

(a) The Secretary shall do all of the following:

- (1) Oversee development and implementation of the State Plan for Mental Health, Developmental Disabilities, and Substance Abuse Services.
- (2) Enforce the provisions of this Chapter and the rules of the Commission and the Secretary.
- (3) Establish a process and criteria for the submission, review, and approval or disapproval of LME business plans submitted by area authorities and county programs for the management of mental health, developmental disabilities, and substance abuse services.
- (4) Adopt rules specifying the content and format of LME business plans.
- (5) Review LME business plans and, upon approval of the plan, certify the submitting area authority or county program to manage the delivery of mental health, developmental disabilities, and substance abuse services in the applicable catchment area.
- (6) Establish comprehensive, cohesive oversight and monitoring procedures and processes to ensure continuous compliance by area authorities, county programs, and all providers of public services with State and federal policy, law, and standards. The procedures shall include the development and use of critical performance measures and report cards for each area authority and county program.

Questions?

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