

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 187*

Short Title: APA Technical Changes.

(Public)

Sponsors: Senators Kerr, Ballance, Foxx; and McDaniel.

Referred to: Judiciary.

February 19, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND CLARIFYING CHANGES TO THE LAWS
ON ADMINISTRATIVE PROCEDURE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 150B-4(b) is repealed.

Section 2. G.S. 150B-20(c) reads as rewritten:

"(c) Action. – If an agency denies a rule-making petition, it must send the person who submitted the petition a written statement of the reasons for denying the petition. If an agency grants a rule-making petition, it must inform the person who submitted the rule-making petition of its decision and must initiate rule-making proceedings. When an agency grants a rule-making ~~petition requesting the creation or amendment of a rule, petition,~~ the notice of ~~rule-making rule-making proceedings~~ it publishes in the North Carolina Register may state that the agency is initiating rule-making proceedings as the result of a rule-making ~~petition, petition~~ and state the name of the person who submitted the rule-making ~~petition, petition~~. If the rule-making ~~petition requested the creation or amendment of a rule, the notice of text the agency publishes after the notice of rule-making proceedings may set out the text of the requested rule change submitted with the rule-making petition, petition~~ and state whether the agency endorses the proposed ~~rule change text.~~"

Section 3. G.S. 150B-21.3(f) reads as rewritten:

1 (f) Technical Change. – A permanent rule for which no notice or hearing is
2 required under G.S. ~~150B-21.5(a) or (b)~~ 150B-21.5(a)(1) through (a)(5) or G.S. 150B-
3 21.5(b) becomes effective on the first day of the month following the month the rule is
4 approved by the Rules Review Commission."

5 Section 4. G.S. 150B-21.5 reads as rewritten:

6 **"§ 150B-21.5. Circumstances when notice and rule-making hearing not required.**

7 (a) Amendment. – An agency is not required to publish a notice of ~~rule-making~~
8 rule-making proceedings or a notice of text in the North Carolina Register or hold a
9 public hearing when it proposes to amend a rule, ~~without changing the substance of the rule,~~
10 rule to do one of the following:

11 (1) Reletter or renumber the rule or subparts of the rule.

12 (2) Substitute one name for another when an organization or position is
13 renamed.

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

17 (4) Change information that is readily available to the public, such as an
18 address or a telephone number.

19 (5) Correct a typographical error in the North Carolina Administrative
20 Code.

21 (6) Change a rule in response to a request or an objection by the
22 Commission.

23 (b) Repeal. – An agency is not required to publish a notice of ~~rule-making~~ rule-
24 making proceedings or a notice of text in the North Carolina Register or hold a public
25 hearing when it proposes to repeal a rule as a result of any of the following:

26 (1) The law under which the rule was adopted is repealed.

27 (2) The law under which the rule was adopted or the rule itself is declared
28 unconstitutional.

29 (3) The rule is declared to be in excess of the agency's statutory authority.

30 (c) OSHA Standard. – The Occupational Safety and Health Division of the
31 Department of Labor is not required to publish a notice of ~~rule-making~~ rule-making
32 proceedings or a notice of text in the North Carolina Register or hold a public hearing
33 when it proposes to adopt a rule that concerns an occupational safety and health standard
34 and is identical to a federal regulation promulgated by the Secretary of the United States
35 Department of Labor. The Occupational Safety and Health Division is not required to
36 submit to the Commission for review a rule for which notice and hearing is not required
37 under this subsection."

38 Section 5. G.S. 150B-21.6(3) is repealed.

39 Section 6. G.S. 150B-21.20 reads as rewritten:

40 **"§ 150B-21.20. Codifier's authority to revise form of rules.**

41 (a) Authority. – After consulting with the agency that adopted the rule, the
42 Codifier of Rules may revise the form of a rule submitted for inclusion in the North

1 Carolina Administrative Code within 10 business days after the rule is submitted to do
2 one or more of the following:

- 3 (1) Rearrange the order of the rule in the Code or the order of the
4 subsections, subdivisions, or other subparts of the rule.
- 5 (2) Provide a catch line or heading for the rule or revise the catch line or
6 heading of the rule.
- 7 (3) Reletter or renumber the rule or the subparts of the rule in accordance
8 with a uniform system.
- 9 (4) Rearrange definitions and lists.
- 10 (5) Make other changes in arrangement or in form that do not change the
11 substance of the rule and are necessary or desirable for a clear and
12 orderly arrangement of the rule.
- 13 (6) Omit from the published rule a map, a diagram, an illustration, a chart,
14 or other graphic material, if the Codifier of Rules determines that the
15 Office of Administrative Hearings does not have the capability to
16 publish the material or that publication of the material is not practicable.
17 When the Codifier of Rules omits graphic material from the published
18 rule, the Codifier must insert a reference to the omitted material and
19 information on how to obtain a copy of the omitted material.

20 (b) Effect. – Revision of a rule by the Codifier of Rules under this section does not
21 affect the effective date of the rule or require the agency to readopt or resubmit the rule.
22 When the Codifier of Rules revises the form of a rule, the Codifier of Rules must send the
23 agency that adopted the rule a copy of the revised rule. The revised rule is the official
24 ~~rule.~~ rule, unless the rule was revised under subdivision (a)(6) of this section to omit
25 graphic material. When a rule is revised under that subdivision, the official rule is the
26 published text of the rule plus the graphic material that was not published."

27 Section 7. G.S. 150B-21.21 reads as rewritten:

28 "**§ 150B-21.21. Publication of rules of North Carolina State Bar and exempt**
29 **agencies.**

30 (a) State Bar. – The North Carolina State Bar must submit a rule adopted or
31 approved by it and entered in the minutes of the North Carolina Supreme Court to the
32 Codifier of Rules for inclusion in the North Carolina Administrative Code. The State Bar
33 must submit a rule within ~~15~~30 days after it is entered in the minutes of the Supreme
34 Court. The Codifier of Rules must compile, make available for public inspection, and
35 publish a rule included in the North Carolina Administrative Code under this subsection
36 in the same manner as other rules in the Code.

37 (b) Exempt Agencies. – Notwithstanding G.S. 150B-1, the North Carolina Utilities
38 Commission must submit to the Codifier of Rules those rules of the Utilities Commission
39 that are published from time to time in the publication titled 'North Carolina Utilities
40 Laws and Regulations.' The Utilities Commission must submit a rule required to be
41 included in the Code within ~~15~~30 days after it is adopted. ~~The Codifier of Rules must~~
42 ~~publish the rules submitted by the Utilities Commission in the North Carolina Administrative~~
43 ~~Code in the same format as they are submitted.~~

1 Notwithstanding G.S. 150B-1, an agency other than the Utilities Commission that is
2 exempted from this Article by that statute must submit a temporary or permanent rule
3 adopted by it to the Codifier of Rules for inclusion in the North Carolina Administrative
4 Code. ~~One of these~~ These exempt agencies must submit a rule to the Codifier of Rules
5 within ~~15~~ 30 days after it ~~adopts~~ adopting the rule. The

6 (c) Publication. – A rule submitted to the Codifier of Rules under this section must
7 be in the physical form specified by the Codifier of Rules. The Codifier of Rules must
8 compile, make available for public inspection, and publish a rule ~~of one of these agencies in~~
9 ~~the North Carolina Administrative Code~~ submitted under this section in the same manner as
10 other rules in the North Carolina Administrative Code."

11 Section 8. G.S. 150B-21.22 reads as rewritten:

12 "**§ 150B-21.22. Effect of inclusion in Code.**

13 Official or judicial notice can be taken of a rule in the North Carolina Administrative
14 Code and shall be taken when appropriate. ~~Codification of a rule in the North Carolina~~
15 ~~Administrative Code is~~ **prima facie** evidence of compliance with this Article."

16 Section 9. GS. 150B-21.23 reads as rewritten:

17 "**§ 150B-21.23. Rule publication manual.**

18 The Codifier of Rules must publish a manual that sets out the form and method for
19 publishing a notice of ~~rule making~~ rule-making proceedings and a notice of text in the
20 North Carolina Register and for filing a rule in the North Carolina Administrative Code."

21 Section 10. G.S. 1A-1, Rule 40 reads as rewritten:

22 "Rule 40. Assignment of cases for trial; continuances.

23 (a) The senior resident superior court judge of any superior court district or set of
24 districts as defined in G.S. 7A-41.1 may provide by rule for the calendaring of actions for
25 trial in the superior court division of the various counties within his district or set of
26 districts. Calendaring of actions for trial in the district court shall be in accordance with
27 G.S. 7A-146. Precedence shall be given to actions entitled thereto by any statute of this
28 State.

29 (b) No continuance shall be granted except upon application to the court. A
30 continuance may be granted only for good cause shown and upon such terms and
31 conditions as justice may require. Good cause for granting a continuance shall include
32 those instances when a party to the proceeding, a witness, or counsel of record has an
33 obligation of service to the State of North Carolina, including service as a member of the
34 ~~General Assembly~~ Assembly or the Rules Review Commission."

35 Section 11. G.S. 7A-751 reads as rewritten:

36 "**§ 7A-751. Agency head; powers and duties.**

37 The head of the Office of Administrative Hearings is the Chief Administrative Law
38 ~~Judge.~~ He ~~Judge,~~ who shall serve as Director and have of the Office. The Chief
39 Administrative Law Judge has the powers and duties conferred on ~~him~~ that position by
40 this Chapter and the Constitution and laws of this State. ~~His State~~ and may adopt rules to
41 implement the conferred powers and duties.

42 The salary of the Chief Administrative Law Judge shall be fixed by the General
43 Assembly in the Current Operations Appropriations Act. In lieu of merit and other

1 increment raises, the Chief Administrative Law Judge shall receive longevity pay on the
2 same basis as is provided to employees of the State who are subject to the State Personnel
3 Act."

4 Section 12. G.S. 15A-952(g) reads as rewritten:

5 "(g) In superior or district court, the judge shall consider at least the following
6 factors in determining whether to grant a continuance:

7 (1) Whether the failure to grant a continuance would be likely to result in a
8 miscarriage of justice;

9 (2) Whether the case taken as a whole is so unusual and so complex, due to
10 the number of defendants or the nature of the prosecution or otherwise,
11 that more time is needed for adequate preparation; and

12 (3) Whether the case involves physical or sexual child abuse when a victim
13 or witness is under 16 years of age, and whether further delay would
14 have an adverse impact on the well-being of the child.

15 (4) Good cause for granting a continuance shall include those instances
16 when the defendant, a witness, or counsel of record has an obligation of
17 service to the State of North Carolina, including service as a member of
18 the General ~~Assembly~~ Assembly or the Rules Review Commission."

19 Section 13. This act is effective when it becomes law.