

NORTH CAROLINA GENERAL ASSEMBLY
1977 SESSION

CHAPTER 915
SENATE BILL 460

AN ACT PROVIDING FOR THE REVIEW OF ADMINISTRATIVE RULES.

The General Assembly of North Carolina enacts:

Section 1. General Statutes Chapter 120 is amended by adding a new Article to read as follows:

"ARTICLE 6C.

"Review of Administrative Rules.

§ 120-30.19. Definitions. — As used in this Article:

(1) 'Agency' means every agency, institution, board, commission, bureau, department, division, council, member of the Council of State, or officer of the executive branch of State government, any provision of any other statute to the contrary notwithstanding. The provisions of this Article do not apply to agencies in the judicial branch of State government, agencies in the legislative branch of State government, the Industrial Commission, the Utilities Commission, counties, cities, towns, villages, other municipal corporations or political subdivisions of the State or any agencies of such subdivisions, county or city boards of education, The University of North Carolina, other local public districts, units, or bodies of any kind, or private corporations created by act of the General Assembly.

(2) 'Commission' means the Legislative Research Commission.

(3) 'Committee' means the Administrative Rules Review Committee created by G.S. 120-30.21.

(4) 'Director' means the Director of Research of the Legislative Services Commission.

(5) 'Rule' means every rule, regulation, ordinance, standard, and amendment thereto or repeal thereof adopted by any agency and includes rules and regulations regarding substantive matters, standards for products, and procedural rules for complying with statutory or regulatory authority or with requirements or executive orders of the Governor.

'Rule' does not include:

- a. rules, procedures, or regulations that relate only to the internal management of an agency;
- b. directives or advisory opinions to any specifically named person or group with no general applicability throughout the State;
- c. disposition of any specific issue or matter by the process of adjudication; or
- d. orders establishing or fixing rates or tariffs.

§ 120-30.20. Filing of rules. — (a) On October 1, 1977, the Attorney General shall transfer to the office of the Legislative Research Commission a copy of every rule that has been filed with him pursuant to Article 5 of General Statutes Chapter 150A. Rules adopted prior to October 1, 1977, may be reviewed by the committee and by the commission.

(b) Rules adopted by an agency on or after October 1, 1977, shall be filed in the office of the director at the same time filing is made with the Attorney General pursuant to G.S. 150A-59.

(c) The rules filed with the director pursuant to subsection (b) of this section shall be accompanied by a report. This report shall contain:

- (1) a brief summary of the content of the rule if adopted or repealed, or a brief summary of the change in the rule if amended;
- (2) a citation of the enabling legislation purporting to authorize the adoption, amendment, or repeal of the rule;
- (3) a statement of the circumstances that required adoption, amendment, or repeal of the rule; and
- (4) a statement of the effective date of the rule.

(d) Executive orders of the Governor are required to be filed, but executive orders of the Governor are not subject to the provisions of G.S. 120-30.23 through G.S. 120-30.30.

"§ 120-30.21. Administrative Rules Review Committee. — There is created a permanent committee of the Legislative Research Commission to be known as the Administrative Rules Review Committee. The committee shall be composed of seven members. On October 1, 1977, the cochairmen of the commission shall appoint the committee members from the membership of the General Assembly for terms of two years, and the members so appointed shall elect one of their number to serve as chairman. Any vacancy that occurs in the membership of the committee for any reason other than the expiration of a term shall be filled for the remainder of the unexpired term by election of a member of the General Assembly by the commission at its next meeting after the occurrence of the vacancy. The committee shall perform all of the duties of the commission with respect to reviewing rules of administrative agencies except as provided in G.S. 120-30.25.

"§ 120-30.22. Meetings of committee. — The committee shall meet at least monthly at times and places specified by the chairman. The members of the committee shall be compensated for attending meetings as provided in G.S. 120-30.18. Professional, clerical or other employees required by the committee shall be provided in accordance with G.S. 120-32.

"§ 120-30.23. Review of rules. — (a) After a rule is filed with the director, he shall submit it to the committee, which may determine whether or not the agency acted within its statutory authority in promulgating the rule.

(b) If the committee finds that an agency did not act within its statutory authority in promulgating a rule the committee shall report that fact to the director who shall transmit the report to the agency that made the rule. The report shall include a written statement of the committee's objections and the reasons therefor.

(c) The committee shall review a rule submitted to it by the director within 60 days following the submission of the rule.

"§ 120-30.24. Objections of committee. — The agency that filed a rule to which the committee objects may amend the rule to remove the cause of the committee's objections and return the rule to the committee for further review. The agency may return the rule without change with the committee's notation of objection attached. The agency shall return the rule with or without change within 60 days of the notification to the agency of the committee's objection. When the rule to which the committee has objected is returned without change, the rule and notation of objection shall be referred by the director to the commission.

"§ 120-30.25. Review of rule by Legislative Research Commission. — (a) The commission may review the rule in the same manner as the committee to determine whether or not the agency acted within its statutory authority in promulgating the rule.

(b) If the commission determines that an agency did not act within its statutory authority in promulgating a rule, a written statement of its objections and statement of its

reasons shall be attached to the rule, and the rule and objection and statement of reasons shall be forwarded to the director, who shall transmit it to the rule-making agency.

(c) The commission shall act on the rule submitted in accordance with G.S. 120-30.24 within 60 days after the rule was returned to the committee by the rule-making agency.

"§ 120-30.26. Regulation objected to by Legislative Research Commission. — The agency may revise a rule to remove the cause of the objections of the commission, and may return the revised rule to the commission or it may return the rule without change with the commission's objections attached. The agency shall return the rule with or without change within 30 days of the notification to the agency of the commission's objections.

"§ 120-30.27. Reports of the committee. — The committee shall report monthly to the commission on all actions taken on rules.

"§ 120-30.28. Legislative Research Commission recommendations. — All rules that have been reviewed by the committee and the commission shall remain in effect. If the agency returns the rule with the committee or commission objections attached without change, the commission may submit a report to the next regular session of the General Assembly recommending legislative action.

"§ 120-30.29. Emergency rules. — Rules adopted in accordance with the procedures of G.S. 150A-13 may be reviewed by the committee. The committee, in addition to reviewing the rules, may review the reasons given in the agency finding of emergency.

"§ 120-30.30. Hearings. — (a) Notwithstanding the provisions of G.S. 120-30.23(c) and G.S. 120-30.25(c), the cochairs of the commission may call a public hearing on any rule upon the recommendation of the committee or upon the motion of any member of the commission.

(b) At least 15 days before the hearing, notice of the hearing shall be given to the rule-making agency and to such other persons that desire to be heard, that the cochairs of the commission consider to be persons that may be affected by the rule, or that may request copies of the notice.

(c) The provisions of G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the committee and the commission."

Sec. 2. G.S. 150A-12(b) is amended by adding after "General" and before "and" the following:

"the Director of Research of the Legislative Services Commission".

Sec. 3. G.S. 120-30.17, as it appears in the 1974 Replacement of Volume 3B, is amended by adding two new subdivisions to read as follows:

(5) To review the rules of all administrative agencies pursuant to Article 6C of this Chapter to determine whether or not the agencies acted within their statutory authority in promulgating the rules.

(6) To meet during the regular session of the General Assembly only for the purposes of reviewing rules pursuant to G.S. 120-30.25 or holding public hearings pursuant to G.S. 120-30.30."

Sec. 4. G.S. 120-30.11, as it appears in the 1975 Cumulative Supplement to Volume 3B, is amended by deleting the period at the end of the second sentence and adding the following clause:

"or at the time of appointment of the subsequent commission, whichever shall be later."

Sec. 5. G.S. 150A-2, as it appears in the 1975 Cumulative Supplement to Volume 3C, is amended by adding two new subdivisions to read as follows:

(9) 'Valid' means that the rule has been adopted pursuant to the procedure required by law. A valid rule is unenforceable until it is made effective.

(10) 'Effective' means that a valid rule has been filed as required by this Chapter. A rule which is effective is enforceable to the extent permitted by law."

Sec. 6. All agencies, as defined by G.S. 120-30.19(a)(1) and that were not subject to the provisions of G.S. 150A-59 prior to the effective date of this act, shall file in the office of

the Director of Research of the Legislative Services Commission copies of all rules, as defined in G.S. 120-30. 19(b)(4), that were adopted prior to October 1, 1977.

Sec. 7. G.S. 150A-58 is amended by adding a new subsection to read as follows:

"(c) 'Agency' means every agency, institution, board, commission, bureau, department, division, council, member of the Council of State, or officer of the executive branch of State government; any provision of any other statute to the contrary notwithstanding. The provisions of this Article do not apply to agencies in the judicial branch of State government, agencies in the legislative branch of State government, counties, cities, towns, villages, other municipal corporations or political subdivisions of the State or any agencies of such subdivisions, county or city boards of education, The University of North Carolina, other local public districts, units, or bodies of any kind, or private corporations created by act of the General Assembly."

Sec. 8. Nothing herein contained shall be construed to obligate the General Assembly to appropriate additional funds to implement the provisions of this act.

Sec. 9. If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity will not affect other provisions or applications of the act that can be given effect without the invalid provision or application; and to this end the provisions of this act are severable.

Sec. 10. This act shall become effective on October 1, 1977, and shall expire on June 30, 1979.

In the General Assembly read three times and ratified, this the 1st day of July, 1977.