

NORTH CAROLINA GENERAL ASSEMBLY
1981 SESSION

CHAPTER 1233
HOUSE BILL 1506

AN ACT TO ALTER THE POWERS OF THE LEGISLATIVE RESEARCH
COMMISSION'S ADMINISTRATIVE RULES REVIEW COMMITTEE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 120-30.25(c) is amended by inserting the following between "report" and the period:

"on a form approved by the Administrative Rules Review Committee".

Sec. 2. G.S. 120-30.28 as rewritten by Chapter 688 of the 1981 Session Laws of North Carolina (First Session, 1981) is amended to read as follows:

§ 120-30.28. 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. The Committee shall review a rule submitted to it by the Director not later than the last day of the first calendar month following the filing of the rule with the Director.

The Committee, by a majority vote of the members present and voting, may extend the time for review of a rule by 60 days to obtain additional information on the rule.

(b) If the Committee finds that an agency did not act within its statutory authority in promulgating a rule or a part of the rule, the Committee shall object to the rule. The Director of Research shall transmit to the cochairmen of the Legislative Research Commission, the Attorney General, and the agency a written report of the objection to the rule and the reasons therefor.

(c) Within 30 days after receipt of the Committee's written report, an agency shall either amend or repeal the rule to cure the defects cited as reasons for the Committee's objection or return the rule unamended to the Committee.

(d) To cure the defects cited as reasons for the Committee's objection, the agency may amend or repeal a rule without complying with the notice and hearing requirements contained in G.S. 150A-12. The curative rule is effective upon its filing with the Attorney General.

(e) The filing of an amendment to a rule places the entire rule before the Committee for its review.

(f) If an agency amends or repeals a rule to meet the Committee objection, the Committee shall transmit to the cochairmen of the Legislative Research Commission, the Attorney General, and the agency a written report removing its objection to the rule. If an agency does not amend or repeal a rule to cure the defects cited as reasons for the Committee's objection, the Committee, by a majority vote of the members present and voting, may remove its objection and shall transmit a written report of such action to the cochairmen of the Legislative Research Commission, the Attorney General, and the agency. If the objection is not removed, the Committee shall transmit to the Governor and the cochairmen of the Legislative Research Commission a written report of the objection to the rule containing the reasons for the objection and the notation that the agency returned the rule unamended to the Committee or failed to return the rule within the time specified in subsection (c).

(g) The Committee or Commission may submit corrective legislation concerning a rule or its part to which the Committee has objected to the General Assembly if then in session or, if

not in session, to it in the next regular session. The Committee or Commission may consider and recommend to the General Assembly any legislation it believes would improve administrative procedure and practices in this State. A bill submitted to the General Assembly under this subsection is eligible for consideration in that part of the regular session to which the bill is submitted."

Sec. 3. G.S. 120-30.29A as set forth in Chapter 688 of the 1981 Session Laws of North Carolina (First Session, 1981) is rewritten to read as follows:

"§ 120-30. 29A. Actions on rules. — The Committee may institute an action in the Superior Court of Wake County for a declaratory judgment on the issue of whether a rule to which the Committee has objected is valid or within the statutory authority of the agency.

The agency which promulgated the rule shall be notified of the commencement of the action by service of process pursuant to G.S. 1A-1, Rule 4. The Committee shall have standing to appear in any action authorized by this section or any appeals therefrom. Notwithstanding any other provision of law, the Committee may direct any licensed attorney on the staff of the General Assembly or contract with other counsel to represent the Committee in the action.

In any action in which a rule is determinative of the outcome and in which the rule was objected to by the Committee, the agency must prove that the rule is valid as defined in G.S. 150A-2(9) and within the statutory authority of the agency; provided, however, that five years after the date of adoption of a rule, there is a presumption that the rule was filed in accordance with the procedures set forth in Chapter 150A.

The clerk of the superior court shall file a copy of the order of the court with the Attorney General."

Sec. 4. G.S. 120-30.35 as amended by Chapter 688 of the 1981 Session Laws (First Session, 1981) is further amended by rewriting subsection (a) to read as follows:

"(a) Notwithstanding the time limitation on review of rules contained in G.S. 120-30.28(a), the cochairs of the Commission may at any time call a public hearing before the Committee on any rule or part of rule upon the recommendation of the Committee or upon the motion of any member of the Commission. Within 60 days after the public hearing, the Committee may find that the agency did not act within its statutory authority in promulgating the rule or its part and object to the rule in accordance with subsections b, c, d, e, f, and g of G.S. 120-30.28."

Sec. 5. G.S. 120-30.36 as amended by Chapter 688 of the 1981 Session Laws (First Session, 1981) is further amended to read as follows:

"§ 120-30.36. Failure to object; inadmissibility into evidence. — (a) The failure of the Committee to object to a rule shall not be deemed to be approval of the statutory authority of the rule or its part by the Committee, Commission or the legislative branch.

(b) Evidence of the Committee's failure to object to the rule shall be inadmissible in all civil and criminal trials or other proceedings before courts, administrative agencies, or other tribunals."

Sec. 6. G.S. 150A-59(a) as amended by Chapter 688 of the 1981 Session Laws (First Session, 1981) is further amended by rewriting subsection (a) to read as follows:

"(a) Rules adopted by an agency on or after February 1, 1976, shall be filed with the Attorney General. No rule, except temporary rules adopted under the provisions of G.S. 150A-13 or curative rules adopted pursuant to G.S. 120-30.28, shall become effective earlier than the first day of the second calendar month after that filing."

Sec. 7. G.S. 150A-63.1 as set forth in Chapter 688 of the 1981 Session Laws (First Session, 1981) is amended to read as follows:

"§150A-63.1. Administrative Rules Review Committee reports. — The Attorney General shall retain any reports of the Legislative Research Commission's Administrative Rules Review Committee's objection to a rule. He shall append to any compilation, publication, or summation

of that rule a notation that it has been objected to pursuant to Article 6C of Chapter 120 of the General Statutes and, where applicable, that the objection has been removed."

Sec. 8. This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 18th day of June, 1982.