

NORTH CAROLINA GENERAL ASSEMBLY
1981 SESSION

CHAPTER 688
SENATE BILL 250

AN ACT TO PROVIDE FOR A MORE EFFECTIVE REVIEW OF ADMINISTRATIVE RULES, AND TO MAKE PERMANENT THE LEGISLATIVE RESEARCH COMMISSION'S ADMINISTRATIVE RULES REVIEW COMMITTEE.

The General Assembly of North Carolina enacts:

Section 1. The language of G.S. 120-30.24(5)d. is deleted and the following language is inserted:

- "d. orders establishing or fixing rates or tariffs; or
- e. rules, by the Department of Transportation, relating to traffic sign ordinances, and road and bridge weight limits."

Sec. 2. Subdivisions 5 and 6 of G.S. 120-30.17 are repealed.

Sec. 3. G.S. 120-30.25(a) is amended in its second sentence by deleting the words "and by the Commission".

Sec. 4. G.S. 120-30.26 is rewritten to read:

"§ 120-30.26. 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 is composed of 10 members, five representatives appointed by the Commission cochairman from the House of Representatives, and five senators appointed by the Commission cochairman from the Senate. On October 1, 1977, and biennially thereafter, the cochairmen of the Commission shall appoint the Committee members from the membership of the General Assembly. The members serve for terms of two years, or until they cease to be members of the General Assembly, whichever occurs first. The members so appointed shall elect two of their number to serve as cochairmen. 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 appointment of a member of the General Assembly by the authority making the original appointment."

Sec. 5. G.S. 120-30.27 is amended by deleting the second sentence which follows:

"A quorum of the Committee shall consist of the chairman and three other members of the Committee or a majority of the Committee, whichever is fewer." and inserting in its place the following sentence:

"A quorum of the Committee consists of a cochairman and four other members of the Committee or a majority of the Committee, whichever is fewer."

Sec. 6. G.S. 120-30.28 is rewritten 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. The Director shall file notice of the extension of time for review of a rule with the agency and the Attorney General. Upon that filing, the effectiveness of the rule is delayed for a 60-day period.

(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, pending review by the Governor or the Council of State pursuant to this section, shall object and delay the effectiveness of the rule or the part of the rule in which the Committee finds that the agency exceeded its statutory authority. The Director of Research shall transmit to the Governor, the President of the Senate, the cochairmen of the Legislative Research Commission, the Attorney General, and the agency a written report of the objection and delay of the rule or its part and the reasons for the delay. The delay of the effectiveness of the rule or its part is effective when the Attorney General receives the written report transmitted by the Director of Research. A rule or its part that is delayed is not 'effective' as defined in G.S. 150A-2(2a), unless a written order is received by the Attorney General ending the delay pursuant to subsection (f).

(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 and delay or return the rule unamended to the Committee.

(d) While the effectiveness of a rule or its part is delayed, the agency which has promulgated it may not adopt another rule which has substantially identical provisions to those for which the Committee delayed the effectiveness of the original rule or part of rule. To cure the defects cited as reasons for the Committee's delay, the agency may amend or repeal that 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 does not amend or repeal a delayed rule to cure the defects cited as reasons for the Committee's objection and delay, the Committee shall transmit to the Governor and the cochairmen of the Legislative Research Commission, the written report of the objection and delay of the rule containing the reasons for the objection and delay, 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).

- (1) If the rule whose effectiveness was delayed was promulgated by an agency of the Department of
 - a. Administration
 - b. Commerce
 - c. Correction
 - d. Crime Control and Public Safety
 - e. Cultural Resources
 - f. Human Resources
 - g. Natural Resources and Community Development
 - h. Revenue, or
 - i. Transportation

the Governor, within 30 days of receipt may disagree with the Committee's position and end the delay.

- (2) If the rule whose effectiveness was delayed was promulgated by any other agency, the Council of State by majority vote, within 45 days of receipt of the Committee's report by the Governor, may disagree with the Committee's position and end the delay. Upon receipt of the Committee's report by the Governor, he shall transmit a copy of that report to the other Council of State members.

If the Governor or the Council of State disagrees with the Committee's position, the Governor, acting either for himself or for the Council of State, as the case may be, shall send to the Attorney General, the agency, and to the Committee a written order ending the delay of the

effectiveness of the rule. The delay of the effectiveness of the rule is ended upon receipt by the Attorney General of the Governor's written order.

Notwithstanding any other provision of law, if the Governor or the Council of State, as the case may be, fails to end the delay of the rule, within the applicable time specified in this subsection after receipt of the Committee's report, the rule or its part is automatically repealed.

(g) When a rule or its part has been delayed pursuant to subsection (b) and the Governor or the Council of State, as the case may be, disagrees with the Committee's position and ends the delay, the Committee shall submit a bill to repeal the delayed rule or its part to the General Assembly if then in session or, if not in session, to it the next regular session. The Committee 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. 7. A new section is added to Article 6C of Chapter 120 of the General Statutes to read as follows:

"§ 120-30.29A. Actions on rules. — (a) The Committee may institute an action in the Superior Court of Wake County for a declaratory judgment on the issue of whether a rule that has been delayed and that delay has been ended pursuant to this Article is neither valid nor within the statutory authority of the agency.

The agency whose rule has been objected to and delayed shall be notified of the commencement of the action by service process pursuant to G.S. 1A-1, Rule 4. The Committee shall have standing on behalf of the General Assembly 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.

(b) 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.

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

Sec. 8. G.S. 120-30.29, 120-30.30, 120-30.31, and 120-30.33 are repealed.

Sec. 9. Subsection (a) of G.S. 120-30.35 is rewritten to read:

"(a) Notwithstanding the time limitation on review of rules contained in G.S. 120-30.28(a), the cochairmen 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 delay the continued effectiveness of the rule or its part in accordance with subsections b, c, d, e, f, and g of G.S. 120-30.28."

Sec. 10. Subsection (c) of G.S. 120-30.35 is amended by deleting therefrom the words "and the Commission."

Sec. 11. A new section is added to Article 6C of Chapter 120 of the General Statutes to read as follows:

"§ 120-30.36. Failure to object and delay; inadmissibility into evidence. — (a) The failure of the Committee to object and delay the effectiveness of a rule or its part 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 and delay the effectiveness of the rule or its part shall be inadmissible in all civil and criminal trials or other proceedings before courts, administrative agencies, or other tribunals."

Sec. 12. G.S. 150A-13 is rewritten to read as follows:

§ 150A-13. Temporary rules. — If an agency determines in writing that adherence to the notice and hearing requirements of this Article would be contrary to the public interest and that the public health, safety or welfare requires immediate adoption, amendment or repeal of a rule, the agency may adopt, amend or repeal a temporary rule without prior notice or hearing or upon any abbreviated notice or hearing the agency finds practicable. The agency must accompany its rule filing with the Attorney General and the Legislative Research Commission's Administrative Rules Review Committee with the agency's written certification of the finding of need for the temporary rule, together with the reasons for that finding.

This rule may be effective for a period of not longer than 120 days. An agency adopting a temporary rule shall begin normal rule-making procedures on the rule under this Article at the same time the temporary rule is adopted. The adoption of a rule under this section does not subject the effectiveness of the temporary rule to delay by the Administrative Rules Review Committee pursuant to Article 6C of Chapter 120 of the General Statutes."

Sec. 13. G.S. 150A-59(a) is rewritten 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, shall become effective earlier than the first day of the second calendar month after that filing. The effectiveness of any rule except a temporary rule under the provisions of G.S. 150A-13 may be delayed by the Legislative Research Commission's Administrative Rules Review Committee pursuant to Article 6C of Chapter 120 of the General Statutes."

Sec. 14. The last sentence of subsection (5) of G.S. 150A-60 is rewritten to read as follows:

"This subsection does not apply to rules adopted by the Industrial Commission, the Utilities Commission, or the Department of Transportation relating to traffic sign ordinances, and road and bridge weight limits."

Sec. 15. A new section is added to Article 5 of Chapter 150A of the General Statutes 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 objecting to the rule and delaying the effectiveness of the rule, and any order ending the delay. He shall append to any compilation, publication, or summation of that rule a notation that it has been objected to and delayed pursuant to Article 6C of Chapter 120 of the General Statutes and, where applicable, that the delay has been ended."

Sec. 16. Notwithstanding the provisions of G.S. 120-30.26, the new appointment authorized by this act shall be made by the cochairmen of the Legislative Research Commission not later than July 15, 1981. The term of office of a new appointee shall be from time of appointment until October 1, 1981, or until the appointee ceases to be a member of the General Assembly, whichever occurs first.

Sec. 17. Rules that were filed, but whose review periods have not expired, under the procedures in effect prior to the effective date of this act shall be reviewed and these rules or their parts may be delayed under the provisions of this act prior to December 1, 1981. The continued effectiveness of rules that have been reviewed and that have been objected to by the Administrative Rules Review Committee or the Legislative Research Commission, or both, under the procedures in effect prior to the effective date of this act and that have not been amended or repealed by the appropriate agency in accordance with the objections of the Committee or the Commission, may be delayed by the Committee not later than December 1, 1981, under the provisions of G.S. 120-30.28(b), (c), (d), (e), (f) and (g).

Sec. 18. Section 10 of Chapter 915 of the 1977 Session Laws, as amended by Section 2 of Chapter 1030 of the 1979 Session Laws, is rewritten to read as follows:

"Sec. 10. This act shall become effective on October 1, 1977."

Sec. 19. The second sentence of G.S. 120-30.11 is rewritten to read:

"The term of office shall begin on the day of appointment, and shall end on the date when the next biennial session of the General Assembly convenes in the following odd-numbered calendar year."

Sec. 20. G.S. 143B-14(b) is amended after the words "the Executive Organization Act of 1973" and before the words "or in G.S. 150A-11(4)" by inserting the following ", in G.S. 120-30.28,".

Sec. 21. If any provisions of this act or the application thereof to any circumstances are held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 22. This section and Sections 1, 4, 5, 14, 16, 18, and 19 of this act shall become effective July 1, 1981; all remaining sections of this act shall become effective October 1, 1981.

In the General Assembly read three times and ratified, this the 25th day of June, 1981.