

GENERAL ASSEMBLY OF NORTH CAROLINA
1983 SESSION

CHAPTER 927
HOUSE BILL 810

AN ACT TO ESTABLISH THE GOVERNOR'S ADMINISTRATIVE RULES
REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 143B of the General Statutes is amended by designating the existing sections as Part 1 and adding a new Part 2 to read:

"Part 2. Governor's Administrative Rules Review Commission.

"§ 143B-29.1. Governor's Administrative Rules Review Commission established.—

The Governor's Administrative Rules Review Commission is hereby created in the Office of the Governor. The Commission shall consist of ten members, four to be appointed by the Governor and six by the General Assembly, three upon the recommendation of the President of the Senate, and three upon the recommendation of the Speaker of the House of Representatives. Appointments by the General Assembly shall be made in accordance with G.S. 120-121 and vacancies in those appointments shall be filled in accordance with G.S. 120-122. All appointees shall serve two-year terms. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of any member shall be for the balance of the unexpired term. The Chairman shall be appointed by the Governor.

The Commission shall meet at such times and places as the Chairman shall designate but in any event shall meet at least once a month.

Members of the Commission who are not officers or employees of the State shall receive compensation and reimbursement for travel and subsistence expenses at the rates specified in G.S. 138-5. Members of the Commission who are officers or employees of the State shall receive reimbursement for travel and subsistence at the rate set out in G.S. 138-6.

A quorum of the Commission shall consist of the Chairman and four other Commission members, or a majority of the Commission, whichever is fewer.

"§ 143B-29.2. Review of rules.—(a) Rules adopted by an agency to be effective on or after January 1, 1984, shall be filed in the Office of the Governor prior to the filing made with the Attorney General pursuant to G.S. 150A-59.

(b) After a rule is filed with the Governor, he shall submit it to the Commission which shall determine whether the rule:

- (1) is within the statutory authority of the agency;
- (2) is clear and unambiguous;
- (3) is necessary.

The Commission shall review a rule submitted to it by the Governor not later than the last day of the first calendar month following the filing of the rule with the Governor. The Commission, 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 a rule. The Commission 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.

(c) If the Commission finds that an agency did not act within its statutory authority in promulgating a rule or a part of a rule, or that a rule is not clear and unambiguous, or that a rule is unnecessary, the Commission shall object and delay the effectiveness of said rule or part of a rule. The Commission shall transmit to the agency, the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Attorney General 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 Commission. A rule or its part that is delayed is not 'effective', as defined by G.S. 150A-2(2a).

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

(e) 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 Commission delayed the effectiveness of the original rule or part of a rule.

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

(g) If an agency does not amend or repeal a delayed rule to cure the defects cited as reasons for the Commission's objection and delay, the Commission shall veto the rule. The Commission shall transmit to the agency, the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Attorney General the written report of the veto of the rule. A rule that is vetoed is not 'effective', as defined by G.S. 150A-2(2a).

"§ 143B-29.3. Temporary rules.—Rules adopted in accordance with the procedures in G.S. 150A-13 shall be reviewed by the Commission and are subject to objection as provided in G.S. 143B-29.2. The Commission shall review the reasons given for the adoption of a temporary rule and may veto the rule due to the agency's failure to make the finding required by G.S. 150A-13.

"§ 143B-29.4. Hearings.—(a) Notwithstanding the time limitation on review of rules contained in G.S. 143B-29.2, the chairman of the Commission may at any time call a public hearing before the Commission on any rule or part of a rule upon the recommendation of the Commission or upon motion of any member of the Commission. Within 60 days after the public hearing, the Commission may find that the agency did not act within its statutory authority in promulgating the rule, or that the rule is not clear

and unambiguous or that the rule is unnecessary, and object to the rule in accordance with G.S. 143B-29.2.

(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 Chairman of the Commission considers to be persons that may be affected by the rule or that may request copies of the notice.

"§ 143B-29.5. Failure to object and delay; inadmissibility into evidence.—(a) The failure of the Commission to object to 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 Commission.

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

Sec. 2. Article 6C of Chapter 120 of the General Statutes is repealed.

Sec. 3. G.S. 150A-12(b) is amended by deleting "Director of Research of the Legislative Services Commission".

Sec. 4. G.S. 150A-13(a) and (b) are amended by deleting "and the Legislative Research Commission's Administrative Rules Review Committee".

Sec. 5. G.S. 150A-59(c) is amended by adding a new sentence at the end to read: "The effectiveness of rules adopted prior to December 31, 1983, shall not be affected by the imposition of the filing requirement with the Governor under G.S. 150A-60(5)."

Sec. 6. G.S. 150A-60(4) is amended by inserting a period after "Attorney General" and by deleting the remaining language of that section.

Sec. 7. The first sentence of G.S. 150A-12(b) is rewritten to read:

"The agency shall transmit copies of the notice to the Attorney General, the Governor, and all persons who have requested the agency in writing for advance notice of proposed action which may affect them."

Sec. 8. The second sentences of G.S. 150A-13(a) and (b) are amended by inserting after "Attorney General" and before "with the" the following: "and the Governor".

Sec. 9. G.S. 150A-60(4) is rewritten to read as follows:

"(4) Be in the physical form specified by the Attorney General; and

(5) Bear a notation by the Governor that the rule has been filed in accordance with Part 2 of Article 1 of Chapter 143B. 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. 10. G.S. 150A-63.1 is amended by inserting "and Governor's Administrative Rules Review Commission" between "Committee" and "reports" in the catchline and is further amended by inserting "or the Governor's Administrative Rules Review Commission's" between "Committee's" and "objection" in the first sentence.

Sec. 11. G.S. 143B-14(b) is amended by adding a new sentence at the end of the subsection to read: "Provided, however, that the provisions of this subsection shall

not apply to the review of rules by the Governor's Administrative Rules Review Commission."

Sec. 12. On November 1, 1983, the Legislative Services Officer shall transfer from the funds appropriated to the Legislative Research Commission's Administrative Rules Review Committee to the Office of the Governor for the work of the Governor's Administrative Rules Review Commission all unencumbered funds.

Sec. 13. The second sentence of G.S. 150A-1(a) is amended by inserting after "Chapter:" and before "the Employment Security Commission" the following: "The Governor's Administrative Rules Review Commission,".

Sec. 14. This act shall become effective November 1, 1983, except for Sections 2, 3, 4, and 6 which shall become effective August 1, 1983.

In the General Assembly read three times and ratified, this the 22nd day of July, 1983.