

GENERAL ASSEMBLY OF NORTH CAROLINA
1985 SESSION

CHAPTER 1028
SENATE BILL 726

AN ACT TO ABOLISH CERTAIN EXECUTIVE BRANCH BOARDS AND TO CONSOLIDATE THE FUNCTIONS OF OTHER BOARDS AND TO CREATE THE ADMINISTRATIVE RULES REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. The Secretary of Natural Resources and Community Development shall abolish the Outdoors North Carolina Advisory Panel, created by directive of the Secretary dated January 11, 1980, within 30 days of the effective date of this act.

Sec. 2. The Secretary of Human Resources shall abolish the State Community Work Experience Committee within 30 days of the effective date of this act. The Secretary's directives establishing this committee shall be rescinded.

Sec. 3. The Governor's Commission for Recognition of State Employees, created by Executive Order Number 53 dated October 5, 1980, is abolished. The State Personnel Commission is authorized to perform the functions of this Commission.

Sec. 4. The Advisory Board for the Public Management Program, created by Executive Order Numbers 32 and 89, dated June 6, 1979, and January 11, 1983, respectively, is abolished. The State Personnel Commission is authorized to perform the functions of this Board.

Sec. 5. The Committee for Recognition of Management Excellence, created by Executive Order Number 94 dated July 1, 1983, is abolished. The State Personnel Commission is authorized to perform the functions of this Committee.

Sec. 6. G.S. 126-4 is amended by adding a new subdivision to read:

"(14) Recognition of State employees, public personnel management, and management excellence."

Sec. 7. The Governor's Oversight Committee for Official Labor Market Information, created by Executive Order Number 77 dated March 3, 1982, is abolished.

Sec. 8. The Wanchese Harbor Citizens Advisory Council is abolished, and Chapter 612 of the 1977 Session Laws is repealed. The Seafood Industrial Park Authority is authorized to perform the functions of this Council.

Sec. 9. The Arson Awareness Council is abolished. The North Carolina Arson Awareness Council, incorporated on June 20, 1985, is authorized to perform the functions of this Council.

Sec. 10. The Archaeological Advisory Committee is abolished, and Part 5 of Article 2 of Chapter 143B of the General Statutes, G.S. 143B-66 is repealed.

Sec. 11. The U.S.S. Monitor Technical Advisory Committee and the U.S.S. Monitor Research Council, created by Executive Order Number 20 dated March 31, 1978, are abolished.

Sec. 12. The Capital Area Visitor Service Committee, created by Executive Order Number 64 dated May 12, 1981, is abolished.

Sec. 13. The Theater Arts Advisory Board, created in 7 North Carolina Administrative Code 3D .0008, is abolished. The North Carolina Arts Council is authorized to perform the functions of the Board.

Sec. 14. G.S. 143B-87 is amended by deleting the word "and" at the end of subdivision (5), by changing the period at the end of subdivision (6) to a semicolon and adding the word "and" after the semicolon, and by adding a new subdivision to read:

"(7) To advise the Secretary concerning the promotion of theater arts in the State."

Sec. 15. G.S. 143B-61.1 is rewritten to read:

"§ 143B-61.1. Termination of the Art Museum Building Commission.—(a) The Art Museum Building Commission shall expire when it submits its final report. The Commission shall make its final report to the General Assembly and Governor 120 days after the final resolution of all cases or claims in which the Commission is a party or that are brought under G.S. 143-135.3 regarding the State Art Museum."

Sec. 16. G.S. 140-5.3 through 140-5.6 are repealed.

Sec. 17. G.S. 140-5.17 is amended by deleting the phrase "Article 1A of Chapter 140 and in".

Sec. 18. G.S. 143B-58 is amended by adding a new subdivision to read:

"(9) To defend any suit against it, prosecute any cause of action that it may possess, assert any claim it may have, and defend any claim that might be brought against it."

Sec. 19. G.S. 143B-58(7) is rewritten to read:

"(7) To report to the General Assembly and the Governor on November 1 of each year on its activities in the preceding fiscal year, to make any special reports requested by the General Assembly or Governor, and to make a final report as required by G.S. 143B-61.1."

Sec. 20. The Governor's Council on Management and Development is abolished. The Governor's Management Council is authorized to perform the functions of the Council on Management and Development.

Sec. 21. The Special Advisory Committee on Non-Public Education, created by Executive Order Number 49 dated April 30, 1980, is abolished.

Sec. 22. The North Carolina Employment and Training Council is abolished.

Sec. 23. The Community Employment and Training Council is abolished.

Sec. 24. The Balance of State Private Industry Council is abolished.

Sec. 25. G.S. 143B-279(17) and Part 24 of Article 7 of Chapter 143B of the General Statutes, G.S. 143B-340 and 143B-341, are repealed.

Sec. 26. The Coastal Energy Impact Program Advisory Board, created by 15 North Carolina Administrative Code 7N .0205, is abolished.

Sec. 27. The Governor's Task Force on Ridesharing, created by Executive Order Number 50, dated May 15, 1980, is abolished. The North Carolina Public Transportation Advisory Council is authorized to perform the duties of the Task Force.

Sec. 28. The North Carolina Arthritis Committee is abolished, and Part 16A of Article 3 of Chapter 143B of the General Statutes, G.S. 143B-184 and 143B-185, is repealed. The Commission for Health Services is authorized to perform the functions of the Committee.

Sec. 29. The North Carolina Advisory Council on Teacher Education, created in 16 North Carolina Administrative Code 2H .0103, is abolished.

Sec. 30. The John H. Kerr Reservoir Committee is abolished. G.S. 143B-279(19) and Part 19 of Article 7 of Chapter 143B of the General Statutes, G.S. 143B-328 through 143B-330, are repealed. This act does not prevent local officials in counties affected by the reservoir from establishing a local advisory group.

Sec. 31. The Child and Family Services Interagency Committees are abolished and Part 21 of Article 8 of Chapter 143B of the General Statutes, G.S. 143B-426.2 through 143B-426.7A, is repealed.

Sec. 32. Article 1 of Chapter 143B of the General Statutes is amended by adding a new Part 3 to read:

"Part 3. Administrative Rules Review Commission.

"§ 143B-30. Definitions.—As used in this Part, the following definitions apply:

'Agency' means an agency subject to the provisions of Article 2 of Chapter 150B of the General Statutes.

'Commission' means the Administrative Rules Review Commission. 'Rule' means a 'rule', as defined in G.S. 150B-2(8a).

"§ 143B-30.1. Administrative Rules Review Commission created.—The Administrative Rules Review Commission is created. The Commission shall consist of eight members to be appointed by the General Assembly, four upon the recommendation of the President of the Senate, and four upon the recommendation of the Speaker of the House of Representatives. These appointments shall be made in accordance with G.S. 120-121, and vacancies in these 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, ineligibility, death, or disability of any member shall be for the balance of the unexpired term. The chairman shall be elected by the Commission, and he shall designate the times and places at which the Commission shall meet. The Commission shall meet at least once a month. A quorum of the Commission shall consist of five members of the Commission.

Members of the Commission who are not officers or employees of the State shall receive compensation of two hundred dollars (\$200.00) for each day or part of a day of service plus 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.

The Office of Administrative Hearings shall provide administrative and support staff to the Commission to assist it in performing its duties.

"§ 143B-30.2. Review of rules.—(a) Rules adopted by an agency on or after September 1, 1986, shall be submitted to the Administrative Rules Review Commission, which shall review the rule to determine whether it:

- (1) Is within the authority delegated to the agency by the General Assembly;
- (2) Is clear and unambiguous;
- (3) Is reasonably necessary to enable the administrative agency to perform a function assigned to it by statute or to enable or facilitate the implementation of a program or policy in aid of which the rule was adopted.

The Commission shall review a rule submitted to it not later than the last day of the first calendar month following the month when the rule was submitted. 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 Director of the Office of Administrative Hearings. An agency may not present a rule for filing with the Director of the Office of Administrative Hearings under G.S. 150B-59 unless the rule has been reviewed by the Commission as provided in this section.

(b) If the Commission reviews a rule and determines that it is within the authority delegated to the agency, is clear and unambiguous, and is reasonably necessary, the Commission shall note its approval and return the rule to the agency. The agency may then file the rule with the Director of the Office of Administrative Hearings under G.S. 150B-59, and the rule shall become effective as provided in that section.

(c) If the Commission finds that an agency did not act within the authority delegated to it 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 filing of the rule or part of the rule under G.S. 150B-59 for a period not to exceed 90 days. The Commission shall send to the agency, the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Director of the Office of Administrative Hearings, a written report of the objection and delay of the rule or its part and the reasons for the delay. An agency may not present a rule or part of a rule that has been delayed to the Director of the Office of Administrative Hearings for filing under G.S. 150B-59, and a rule or its part that is delayed is not 'effective', as defined in G.S. 150B-2(2a).

(d) Within 30 days after receipt of the Commission's written report, the agency shall either (1) revise the rule to remove the cause of the objections of the Commission and return the revised rule to the Commission or (2) return the rule to the Commission without change with the Commission's objections attached. The Commission shall determine whether a revision removes its objections to the rule.

(e) If the Commission determines that a revision of a rule has removed the Commission's objections, the Commission shall note its approval and return the rule to the agency. The agency may then file the rule with the Director of the Office of

Administrative Hearings under G.S. 150B-59, and the rule shall become effective as provided in that section.

(f) Regardless of whether the agency returns the rule to the Commission without change instead of revising the rule to remove the Commission's objections or whether the Commission determines that a revision of a rule has not removed its objections, the Commission shall note its approval of the rule once 90 days have passed since the Commission objected and delayed the filing of the rule or part of the rule pursuant to G.S. 143B-30.2(c) and shall return the rule to the agency. However, if the agency returns the rule to the Commission without change instead of revising the rule to remove the Commission's objections, or if the Commission determines that a revision of a rule has not removed its objections, the Commission's approval shall be accompanied by a notation of the Commission's objection to the rule. The agency may then file the rule with the Director of the Office of Administrative Hearings under G.S. 150B-59, and the rule shall become effective as provided in that section. If the agency did not remove the Commission's objections to the rule or part of the rule, the Commission may send to the President of the Senate and the Speaker of the House of Representatives a written report of its objections to the rule. Thereafter, if the General Assembly enacts legislation disapproving the rule, the rule shall no longer be effective.

The Legislative Services Officer shall send a copy of any law disapproving a rule to the agency and the Director of the Office of Administrative Hearings as soon as a copy is available.

(g) While the filing of a rule or its part is delayed, the agency that promulgated it may not adopt another rule, including a temporary rule, that has substantially identical provisions to those for which the Commission delayed the filing of the original rule or part of a rule.

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

"§ 143B-30.3. Hearings.—(a) Notwithstanding G.S. 143B-30.2(a), the chairman of the Commission may at any time before the time for review set out in that subsection expires call a public hearing on any rule or part of a rule upon the recommendation of the Commission or on the 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 the authority delegated to it in promulgating the rule, or that the rule is not clear and unambiguous, or that the rule is unnecessary, and object to and delay the rule in accordance with G.S. 143B-30.2.

(b) At least 15 days before the public hearing, the Commission shall give notice of the hearing to the rulemaking agency, to any person who requests a copy of the notice, and to any person who may be affected by the rule in the opinion of the chairman of the Commission.

"§ 143B-30.4. Evidence.—Evidence of the Commission's failure to object to and delay the filing of a rule or its part shall be inadmissible in all civil or criminal trials or other proceedings before courts, administrative agencies, or other tribunals."

Sec. 33. G.S. 120-123 is amended by adding a new section to read:

"(1a) The Administrative Rules Review Commission as established by G.S. 143B-30.1."

Sec. 34. G.S. 150B-59(a) is amended by deleting from the second sentence the phrase "or curative rules adopted pursuant to G.S. 143B-29.2(d)" and substituting the phrase "or rules approved under G.S. 143B-30.2(e) or (f)".

Sec. 35. G.S. 150B-60(a)(5) is rewritten to read:

"(5) Bear a notation from the Administrative Rules Review Commission that it has reviewed and approved the rule in accordance with G.S. 143B-30.2."

Sec. 36. The second, third, and fourth sentences of G.S. 150B-59(c) are rewritten to read:

"Rules adopted by an agency subject to the provisions of Article 2 of this Chapter in effect on September 1, 1986, that do not conflict with or violate the provisions of G.S. 150B-9(c) shall remain in effect until June 30, 1988. These rules are repealed effective July 1, 1988, unless the Administrative Rules Review Commission determines that a rule complies with G.S. 143B-30.2(a). Review of these rules shall be carried out in the manner prescribed in G.S. 143B-30.2 except that a rule determined to be in compliance shall remain in effect."

Sec. 37. Each agency subject to Articles 2 and 5 of Chapter 150B of the General Statutes shall, not later than September 1, 1986, review its rules as required by Section 3 of Chapter 746 of the 1985 Session Laws except that the report required therein shall be filed with the Administrative Rules Review Commission and not the General Assembly. An agency that substantially complied with Section 3 of Chapter 746 of the 1985 Session Laws shall not refile the report filed with the General Assembly but shall supplement that report by filing a similar report with the Administrative Rules Review Commission as to any rules that became effective after the preparation of the original report. The Legislative Services Officer shall deliver all reports filed in compliance with Section 3 of Chapter 746 of the 1985 Session Laws to the chairman of the Administrative Rules Review Commission. The chairman may require an agency to file a new report if there is any dispute as to whether one has been filed or whether one that has been filed complies with the requirements set forth in that section.

Sec. 38. The provisions of this act are severable, and if any provision of this act is held invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions of this act that can be given effect without the invalid provision.

Sec. 39. Sections 1 through 31 of this act shall not affect pending litigation.

Sec. 40. The second sentence of G.S. 150B-32(a) is amended by deleting the words "in the petition to commence the case" and is further amended by deleting the language following the last comma and substituting the following:

"or one or more hearing officers designated by the agency to conduct contested cases shall preside at the contested case."

Sec. 41. Sections 1 through 31 of this act shall become effective 30 days after ratification. Sections 32 through 38 of this act are effective upon ratification.

In the General Assembly read three times and ratified, this the 16th day of July, 1986.