

GENERAL ASSEMBLY OF NORTH CAROLINA  
1985 SESSION

CHAPTER 746  
HOUSE BILL 52

AN ACT TO AMEND CHAPTER 150A OF THE GENERAL STATUTES, ADD A NEW ARTICLE 60 TO CHAPTER 7A OF THE GENERAL STATUTES, AND MAKE OTHER CHANGES IN THE ADMINISTRATIVE PROCEDURES OF EXECUTIVE AGENCIES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 150A of the General Statutes is rewritten to read:

"Article 1.

"General Provisions.

"§ 150A-1. **Policy and scope.**—(a) The policy of the State is that the three powers of government, legislative, executive, and judicial, are, and should remain, separate. The intent of this Chapter is to prevent the commingling of those powers in any administrative agency and to ensure that the functions of rule making, investigation, advocacy, and adjudication are not all performed by the same person in the administrative process.

(b) The purpose of this Chapter is to establish as nearly as possible a uniform system of administrative rule making and adjudicatory procedures for State agencies.

(c) This Chapter shall apply to every agency, as defined in G.S. 150A-2(1), except to the extent and in the particulars that any statute, including subsection (d) of this section, makes specific provisions to the contrary.

(d) The following are specifically exempted from the provisions of this Chapter: the Administrative Rules Review Commission, the Employment Security Commission, the Industrial Commission, the Occupational Safety and Health Review Board, and the Utilities Commission.

The North Carolina National Guard is exempt from the provisions of this Chapter in exercising its court-martial jurisdiction.

The Department of Correction is exempt from the provisions of this Chapter, except for Article 5 of this Chapter and G.S. 150A- 13 which shall apply.

Articles 2, 3, and 3A of this Chapter shall not apply to the Department of Transportation in rule making or administrative hearings as provided for by Chapter 20 of the General Statutes or to the Department of Revenue.

Article 4 of this Chapter, governing judicial review of final administrative decisions, shall apply to The University of North Carolina and its constituent or affiliated boards, agencies, and institutions, but The University of North Carolina and its constituent or affiliated boards, agencies, and institutions are specifically exempted from the remaining provisions of this Chapter. Article 4 of this Chapter shall not apply to the

State Banking Commission, the Commissioner of Banks, the Savings and Loan Division of the Department of Commerce, and the Credit Union Division of the Department of Commerce.

Article 3 of this Chapter shall not apply to agencies governed by the provisions of Article 3A of this Chapter, as set out in G.S. 150A-38(a).

**"§ 150A-2. Definitions.**—As used in this Chapter,

- (1) 'Agency' means any agency, institution, board, commission, bureau, department, division, council, member of the Council of State, or officer of the State government of the State of North Carolina but does not include any agency in the legislative or judicial branch of the State government; and does not include counties, cities, towns, villages, other municipal corporations or political subdivisions of the State or any agencies of such subdivisions, or local boards of education, other local public districts, units or bodies of any kind, or private corporations created by act of the General Assembly.
- (2) 'Contested case' means any administrative proceeding, by whatever name called, in which the legal rights, duties, or privileges of a party are required by law to be determined after an opportunity for an adjudicatory hearing. 'Contested case' includes licensing and any administrative proceeding to levy a monetary penalty regardless of whether the statute authorizing such a penalty requires an adjudicatory hearing. 'Contested case' does not include rule making, declaratory rulings, or the award or denial of a scholarship or grant.
- (2a) 'Effective' means that a valid rule has been filed as required by G.S. 150A-59 and either has not been delayed by or has been returned to the Administrative Rules Review Commission as required by G.S. 143A-55.3. A rule that is effective is enforceable to the extent permitted by law.
- (3) 'License' means any certificate, permit or other evidence, by whatever name called, of a right or privilege to engage in any activity, except licenses issued under Chapter 20 and Subchapter I of Chapter 105 of the General Statutes and occupational licenses.
- (4) 'Licensing' means any administrative action issuing, failing to issue, suspending, or revoking a license or occupational license. 'Licensing' does not include controversies over whether an examination was fair or whether the applicant passed the examination.
- (4a) 'Occupational license' means any certificate, permit, or other evidence, by whatever name called, of a right or privilege to engage in a profession, occupation, or field of endeavor that is issued by an occupational licensing agency.
- (4b) 'Occupational licensing agency' means any board, commission, committee or other agency of the State of North Carolina which is established for the primary purpose of regulating the entry of persons into, and/or the conduct of persons within a particular profession,

occupation or field of endeavor, and which is authorized to issue and revoke licenses. 'Occupational licensing agency' does not include State agencies or departments which may as only a part of their regular function issue permits or licenses.

- (5) 'Party' means any person or agency named or admitted as a party or properly seeking as of right to be admitted as a party and includes the agency as appropriate; provided this subdivision shall not be construed to permit the hearing agency or any of its officers or employees to appeal its own decision for initial judicial review.
- (6) 'Person aggrieved' means any person or group of persons of common interest directly or indirectly affected substantially in his or its person, property, or employment by an administrative decision.
- (7) 'Person' means any natural person, partnership, corporation, body politic and any unincorporated association, organization, or society which may sue or be sued under a common name.
- (8) 'Residence' means domicile or principal place of business.
- (8a) 'Rule' means any agency regulation, standard or statement of general applicability that implements or interprets laws enacted by the General Assembly or Congress or regulations promulgated by a federal agency or describes the procedure or practice requirements of any agency not inconsistent with laws enacted by the General Assembly. The term includes the amendment or repeal of a prior rule. The term does not include the following:
  - a. Statements concerning only the internal management of an agency or group of agencies, including policies and procedures manuals, if such a statement does not directly or substantially affect the procedural or substantive rights or duties of persons not employed by the agency or group of agencies.
  - b. Budgets and budget policies and procedures issued by the Director of the Budget, by the head of a department, as defined by G.S. 143A- 2 or G.S. 143B-3, by an occupational licensing board, as defined by G.S. 93B-1, or by the State Board of Elections.
  - c. Nonbinding interpretative statements within the delegated authority of the agency that merely define, interpret or explain the meaning of a statute or other provision of law or precedent.
  - d. A form, the contents or substantive requirements of which are prescribed by rule or statute or the instructions for the execution or use of the form.
  - e. Statements of agency policy made in the context of another proceeding, including:
    - 1. declaratory rulings under G.S. 150A-17;
    - 2. orders establishing or fixing rates or tariffs.

- f. Statements of agency policy, provided that the agency policy is not inconsistent with any law enacted by the General Assembly, communicated to the public by use of signs or symbols, concerning:
    - 1. the use or creation of public roads or bridges;
    - 2. the boundaries of public facilities and times when public facilities are open to the public; or
    - 3. safety in use of public facilities.
  - g. Statements that set forth criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections; in settling financial disputes or negotiating financial arrangements; or in the defense, prosecution, or settlement of cases;
  - h. Scientific, architectural, or engineering standards, forms, or procedures.
- (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.

**"§ 150A-3. Special provisions on licensing.**—(a) When an applicant or a licensee makes a timely and sufficient application for issuance or renewal of a license or occupational license, including the payment of any required license fee, the existing license or occupational license does not expire until a decision on the application is finally made by the agency, and if the application is denied or the terms of the new license or occupational license are limited, until the last day for applying for judicial review of the agency order. This subsection does not affect agency action summarily suspending a license or occupational license under subsections (b) and (c) of this section.

(b) Before the commencement of proceedings for the suspension, revocation, annulment, withdrawal, recall, cancellation, or amendment of any license other than an occupational license, the agency shall give notice to the licensee, pursuant to the provisions of G.S. 150A-23. Before the commencement of such proceedings involving an occupational license, the agency shall give notice pursuant to the provisions of G.S. 150A-38. In either case, the licensee shall be given an opportunity to show compliance with all lawful requirements for retention of the license or occupational license.

(c) If the agency finds that the public health, safety, or welfare requires emergency action and incorporates this finding in its order, summary suspension of a license or occupational license may be ordered effective on the date specified in the order or on service of the certified copy of the order at the last known address of the licensee, whichever is later, and effective during the proceedings. The proceedings shall be promptly commenced and determined.

Nothing in this subsection shall be construed as amending or repealing any special statutes, in effect prior to February 1, 1976, which provide for the summary suspension of a license.

"Article 2.  
"Rule Making.

**"§ 150A-9. Minimum procedural requirements; limitations on rule-making authority; no criminal sanctions authorized.**—(a) It is the intent of this Article to establish basic minimum procedural requirements for the adoption, amendment, or repeal of administrative rules. Except for temporary rules which are provided for in G.S. 150A-13, the provisions of this Article are applicable to the exercise of any rule-making authority conferred by any statute, but nothing in this Article repeals or diminishes additional requirements imposed by law or any summary power granted by law to the State or any State agency. No rule hereafter adopted is valid unless adopted in substantial compliance with this Article.

(b) Each agency shall adopt, amend, suspend or repeal its rules in accordance with the procedures specified in this Article and pursuant to authority delegated by law and in full compliance with its duties and obligations. No agency may adopt any rule that implements or interprets any statute or other legislative enactment unless the power, duty, or authority to carry out the provisions of the statute or enactment is specifically conferred on the agency in the enactment, nor may any agency make any rule enlarging the scope of any trade or profession subject to licensing.

(c) The power to declare what shall constitute a crime and how it shall be punished and the power to establish standards for public conduct are vested exclusively in the General Assembly. No agency may adopt any rule imposing a criminal penalty for any act or failure to act, including the violation of any rule, unless the General Assembly authorizes a criminal sanction and specifies a criminal penalty for violation of the rule.

(d) No agency may adopt as a rule the verbatim text of any federal or North Carolina statute or any federal regulation, but an agency may adopt all or any part of such text by reference under G.S. 150A-14.

**"§ 150A-10. Statements of organization and means of access to be published.**—To assist interested persons dealing with it, each agency shall, in a manner prescribed by the Administrative Rules Review Commission, prepare a description of its organization, stating the process whereby the public may obtain information or make submissions or requests. The chief hearing officer of the Office of Administrative Hearings shall publish these descriptions annually.

**"§ 150A-11. Special requirements.**—In addition to other rule-making requirements imposed by law, each agency shall:

- (1) Adopt rules setting forth the nature and requirements of all formal and informal procedures available, including a listing of all forms that are required by the agency. Procedures concerning only internal management which do not directly affect the rights of or procedures available to the public shall not be adopted as rules.
- (2) Make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions, except those used only for internal management of the agency.
- (3) Submit to the Director of the Budget a summary of any proposed rule requiring the expenditure or distribution of State funds and obtain

approval of such expenditure or distribution of State funds prior to publishing the notice of public hearing required by G.S. 150A-12(2). For purposes of this subdivision the term 'State funds' shall have the same meaning as is set out in G.S. 143-1 and shall also apply to the funds of all occupational licensing boards included under G.S. 150A-1. The agency shall include a fiscal note with any proposed rule, other than a temporary rule, so submitted. The fiscal note shall state what effect, if any, the proposed rule will have on the revenues, expenditures, or fiscal liability of the State or its agencies or subdivisions. The fiscal note shall include an explanation of how such effect, if any, was computed.

**"§ 150A-12. Procedure for adoption of rules.**—(a) Before the adoption, amendment or repeal of a rule, an agency shall give notice of a public hearing and offer any person an opportunity to present data, opinions, and arguments. The notice shall be given within the time prescribed by any applicable statute, or if none then at least 30 days before the public hearing and at least 60 days before the adoption, amendment, or repeal of the rule. The notice shall include:

- (1) A reference to the statutory authority under which the action is proposed;
- (2) The time and place of the public hearing and a statement of the manner in which data, opinions, and arguments may be submitted to the agency either at the hearing or at other times by any person; and
- (3) The text of the proposed rule, or amendment in the form required by G.S. 150A-63(d2) and the proposed effective date of the rule or amendment.

(b) The agency shall transmit copies of the notice to the chief hearing officer of the Office of Administrative Hearings, the Attorney General, and the Governor.

(c) The agency shall publish the notice in the North Carolina Register and as prescribed in any applicable statute.

The agency may also publish the notice or a synopsis of the notice in other ways selected by the agency to give notice to persons likely to be affected by the proposed rule. Methods that may be employed by the agency, depending upon the circumstances, include publication of the notice in one or more newspapers of general circulation or, when appropriate, in trade, industry, governmental or professional publications.

(d) The public hearing shall not be conducted as a contested case unless a specific statute requires that the proposed rule be adopted by adjudicatory procedures.

(e) The proposed rule shall not be changed or modified after the notice required by this section is published and before the rule-making hearing. The agency shall consider fully all written and oral submissions respecting the proposed rule. Upon adoption of a rule, the agency, if requested to do so by an interested person either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the consideration urged against its adoption. The record in every rule-making proceeding under this Article shall remain open at least 30 days either before or after the hearing for

the purposes of receiving written comments, and any such comments shall be included in the hearing records. All comments received, as well as any statement of reasons issued to an interested person under this section, shall be included in the rule-making record.

(f) No rule-making hearing is required for the adoption, amendment, or repeal of a rule which solely describes forms or instructions used by the agency.

(g) No rule-making hearing is required if the Administrative Rules Review Commission certifies that the amendment to a rule does not change the substance of the rule and that the amendment is:

- (1) A relettering or renumbering instruction; or,
- (2) The substitution of one name for another when an organization or position is renamed; or,
- (3) The correction of a citation to rules or laws which has become inaccurate since the rule was adopted because of repealing or renumbering of the rule or law cited; or
- (4) The correction of a similar formal defect; or
- (5) A change in information that is readily available to the public such as addresses and telephone numbers.

(h) No rule-making hearing is required to repeal a rule if the repeal of the rule is specifically provided for by the Constitution of the United States, the Constitution of North Carolina, any federal or North Carolina statute, any federal regulation, or a court order.

**"§ 150A-13. Temporary rules.**—(a) Except as provided in subsection (b) of this section, if an agency which is not exempted from the notice and hearing requirements of this Article by G.S. 150A-1 determines in writing that:

- (1) Adherence to the notice and hearing requirements of this Article would be contrary to the public interest; and that
- (2) The immediate adoption, amendment, or repeal of a rule is necessitated by and related to:
  - a. A threat to public health, safety, or welfare resulting from any natural or man-made disaster or other events that constitute a life threatening emergency;
  - b. The effective date of a recent act of the General Assembly or the United States Congress;
  - c. A federal regulation; or
  - d. A court order,

the agency may adopt, amend, or repeal the rule without prior notice or hearing or upon any abbreviated notice or hearing the agency finds practicable. The agency must accompany its rules filing with the chief hearing officer of the Office of Administrative Hearings and the Governor with the agency's written certification of the finding of need for the temporary rule, together with the reasons for that finding and a copy of the notice of hearing on the proposed permanent rule.

The written certification of the finding of need for the temporary rule shall be signed by:

- (1) The member of the Council of State in the case of the Departments of Justice, Insurance, Public Education, Labor, Agriculture, Treasurer, State Auditor, or Secretary of State.
- (2) The chairman of the board in the case of an occupational licensing board.
- (3) The Governor in the case of all other agencies.

(b) If the Department of Crime Control and Public Safety, Transportation, Revenue, or Correction determines in writing that the immediate adoption, amendment, or repeal of a rule is necessitated by:

- (1) The public health, safety, or welfare;
- (2) The effective date of a recent act of the General Assembly or the United States Congress;
- (3) A federal regulation; or
- (4) A court order,

the agency may adopt, amend, or repeal the rule. The agency must accompany its rule filing with the chief hearing officer of the Office of Administrative Hearings and the Governor with the agency's written certification of the finding of need for the temporary rule signed by the Governor together with the reasons for that finding. In the case of the Department of Correction, in addition to the reasons set forth in subdivisions (1) through (4) of this subsection, the Department may file a temporary rule when necessary for the management and control of persons under the custody or supervision of the Department in extraordinary circumstances as certified by the Secretary. The Department shall file any temporary rule within two working days of its adoption by the Secretary under G.S. 148-11.

(c) Rules filed under subsections (a) and (b) of this section shall 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 permanent rule under this Article at the same time the temporary rule is adopted.

**"§ 150A-14. Adoption by reference.**—An agency may adopt by reference in its rules, without publishing the adopted matter in full:

- (1) All or any part of a code, standard, or regulation which has been adopted by any other agency of this State or by any agency of the United States or by a generally recognized organization or association;
- (2) Any plan or material which is adopted to meet the requirements of any agency of the United States and approved by that agency; or
- (3) Any plan, material, manual, guide or other document establishing job application or employment practices or procedures of any State agency other than the State Personnel Commission. The State Personnel Commission, however, shall incorporate by reference in its rules job classification standards, including but not limited to those relating to qualifications and salary levels.

The reference shall fully identify the adopted matter by date and otherwise. The reference shall not cover any later amendments and editions of the adopted matter, but if the agency wishes to incorporate them in its rule it shall amend the rule or promulgate a



new rule. The agency shall have available copies of the adopted matter for inspection and the rules shall state where copies of the adopted matter can be obtained and the amount of any charge for the copy as of the time the rule is adopted.

**"§ 150A-15. Continuation of rules.**—When a law authorizing or directing an agency to promulgate rules is repealed, and (i) substantially the same rule-making power or duty is vested in the same or a successor agency by a new provision of law, or (ii) the function of the agency to which the rules are related is transferred to another agency by law or executive order, the existing rules of the original agency shall continue in effect until amended or repealed, and the agency or successor agency may repeal any rule relating to the transferred duty or function. When a law creating an agency or authorizing or directing it to promulgate rules is repealed or the agency is abolished and (i) substantially the same rule-making power or duty is not vested in the same or a successor agency by a new provision of law and (ii) the function of the agency to which the rules are related is not transferred to another agency, the existing applicable rules of the original agency are automatically repealed as of the effective date of the law repealing the agency's rule-making power or abolishing the agency.

**"§ 150A-16. Petition for adoption of rules.**—Any person may petition an agency to promulgate, amend, or repeal a rule, and may accompany his petition with such data, views, and arguments as he thinks pertinent. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. Within 30 days after submission of a petition, the agency shall either deny the petition in writing, stating its reasons for the denial, or initiate rule-making proceedings in accordance with G.S. 150A-12 and G.S. 150A-13; provided, however, commissions and boards shall act on a petition at their next regularly scheduled meeting, but in any case no later than 120 days after submission of a petition. Denial of the petition to initiate rule making under this section shall be considered a final agency decision for purposes of judicial review.

**"§ 150A-17. Declaratory rulings.**—On request of a person aggrieved, an agency shall issue a declaratory ruling as to the validity of a rule or as to the applicability to a given state of facts of a statute administered by the agency or of a rule or order of the agency, except when the agency for good cause finds issuance of a ruling undesirable. The agency shall prescribe in its rules the circumstances in which rulings shall or shall not be issued. A declaratory ruling is binding on the agency and the person requesting it unless it is altered or set aside by the court. An agency may not retroactively change a declaratory ruling, but nothing in this section prevents an agency from prospectively changing a declaratory ruling. A declaratory ruling is subject to judicial review in the same manner as an order in a contested case. Failure of the agency to issue a declaratory ruling on the merits within 60 days of the request for such ruling shall constitute a denial of the request as well as a denial of the merits of the request and shall be subject to judicial review.

"Article 3.

"Administrative Hearings.

**"§ 150A-23. Commencement; assignment of hearing officer; hearing required; notice; intervention.**—(a) Except as provided in subsection (a1), all contested cases

other than those conducted under Article 3A of this Chapter shall be commenced by the filing of a petition with the Office of Administrative Hearings. Any petition filed by a party other than an agency shall be verified or supported by affidavit and shall state facts tending to establish that the agency named as the respondent has deprived the petitioner of property, has ordered the petitioner to pay a fine or civil penalty, or has otherwise substantially prejudiced the petitioner's rights and that the agency:

- (1) exceeded its authority or jurisdiction;
- (2) acted erroneously;
- (3) failed to use proper procedure;
- (4) acted arbitrarily or capriciously; or
- (5) failed to act as required by law or rule.

The parties in a contested case shall be given an opportunity for a hearing without undue delay.

All contested cases under Chapter 126 of the General Statutes shall be conducted in the Office of Administrative Hearings. Except in contested cases under Chapter 126 of the General Statutes, a party may waive the right to have a contested case conducted by a hearing officer in the Office of Administrative Hearings in the petition filed to commence the case, in which case the contested case shall be conducted by the agency. In the absence of a waiver, a contested case under this Article shall be presided over by the chief hearing officer of the Office of Administrative Hearings or a hearing officer assigned by him. In assigning hearing officers, the chief hearing officer shall attempt to use personnel having expertise in the subject to be dealt with in the hearing.

A local government employee, applicant for employment, or former employee to whom Chapter 126 of the General Statutes applies may commence a contested case under this Article in the same manner as any other petitioner. The case shall be conducted in the Office of Administrative Hearings in the same manner as other contested cases under this Article, except that the decision of the hearing officer shall be advisory only and not binding on the local appointing authority, unless (1) the hearing officer decides that the employee, applicant, or former employee has been subjected to discrimination prohibited by Article 6 of Chapter 126 of the General Statutes or (2) applicable federal standards require a binding decision. In these two cases, the hearing officer's decision shall be final.

(a1) The parties in a contested case in the Department of Human Resources shall be given an opportunity for a hearing without undue delay.

(b) The parties shall be given notice not less than 15 days before the hearing by the Office of Administrative Hearings or the agency, which notice shall include:

- (1) A statement of the date, hour, place, and nature of the hearing;
- (2) A reference to the particular sections of the statutes and rules involved;
- (3) A short and plain statement of the factual allegations; and
- (4) If the agency is the Department of Human Resources, a statement of who will conduct the hearing and that the party may request a hearing officer in the Office of Administrative Hearings as provided in G.S. 150A-32.

(c) Notice shall be given personally or by certified mail. If given by certified mail, it shall be deemed to have been given on the delivery date appearing on the return receipt. If giving of notice cannot be accomplished either personally or by certified mail, notice shall then be given in the manner provided in G.S. 1A-1, Rule 4(j1).

(d) Any person may petition to become a party by filing a motion to intervene in the manner provided in G.S. 1A-1, Rule 24. In addition, any person interested in a contested case may intervene and participate in that proceeding to the extent deemed appropriate by the hearing officer.

(e) All hearings under this Chapter shall be open to the public. Hearings shall be conducted in an impartial manner. Hearings shall be conducted according to the procedures set out in this Article, except to the extent and in the particulars that specific hearing procedures and time standards are governed by another statute.

**"§ 150A-24. Venue of hearing.**—(a) The hearing of a contested case shall be conducted:

- (1) In the county in this State in which any person whose property or rights are the subject matter of the hearing maintains his residence;
- (2) In the county where the agency maintains its principal office if the property or rights that are the subject matter of the hearing do not affect any person or if the subject matter of the hearing is the property or rights of residents of more than one county; or
- (3) In any county determined by the agency or hearing officer in his discretion to promote the ends of justice or better serve the convenience of witnesses.

(b) Any person whose property or rights are the subject matter of the hearing waives his objection to venue by proceeding in the hearing.

**"§ 150A-25. Conduct of hearing; answer.**—(a) If a party fails to appear in a contested case after proper service of notice, and if no adjournment or continuance is granted, the agency or hearing officer may proceed with the hearing in the absence of the party.

(b) A party who has been served with a notice of hearing may file a written response, and a copy must be mailed to all other parties not less than 10 days before the date set for hearing. If the agency is the Department of Human Resources, the response may include a request for a hearing officer in the Office of Administrative Hearings as provided in G.S. 150A-32.

(c) The parties shall be given an opportunity to present arguments on issues of law and policy and an opportunity to present evidence on issues of fact.

(d) A party may cross-examine any witness, including the author of a document prepared by, on behalf of, or for use of the agency and offered in evidence. Any party may submit rebuttal evidence.

**"§ 150A-26. Consolidation.**—When contested cases involving a common question of law or fact or multiple proceedings involving the same or related parties are pending, the chief hearing officer of the Office of Administrative Hearings may order a joint hearing of any matters at issue in the cases, order the cases consolidated, or make other orders to reduce costs or delay in the proceedings. If one or more, but not all parties in a consolidated contested case in the Department of Human Resources involving multiple aggrieved persons requests a hearing officer in the Office of Administrative Hearings as

provided in G.S. 150A-32, the chief hearing officer in the Office of Administrative Hearings shall decide whether to grant the request after consulting with the parties in all the contested cases involved.

**"§ 150A-27. Subpoena.**—After the commencement of a contested case, the agency or hearing officer may issue subpoenas upon his own motion or upon a written request. When a written request for a subpoena has been made, the agency or hearing officer shall issue the requested subpoenas forthwith requiring the attendance and testimony of witnesses and the production of evidence including books, records, correspondence, and documents in their possession or under their control. Upon written request, the agency or hearing officer shall revoke a subpoena if, upon a hearing, he finds that the evidence the production of which is required does not relate to a matter in issue, or if the subpoena does not describe with sufficient particularity the evidence the production of which is required, or if for any other reason sufficient in law the subpoena is invalid. Witness fees shall be paid by the party requesting the subpoena to subpoenaed witnesses in accordance with G.S. 7A-314. However, State officials or employees who are subpoenaed shall not be entitled to witness fees, but they shall receive their normal salary and they shall not be required to take any annual leave for the witness days. Travel expenses of State officials or employees who are subpoenaed shall be reimbursed as provided in G.S. 138-6.

**"§ 150A-28. Depositions and discovery.**—(a) A deposition may be used in lieu of other evidence when taken in compliance with the Rules of Civil Procedure, G.S. 1A-1. Parties in contested cases may engage in discovery pursuant to the provisions of the Rules of Civil Procedure, G.S. 1A-1.

(b) On a request for identifiable agency records, with respect to material facts involved in a contested case, except records related solely to the internal procedures of the agency or which are exempt from disclosure by law, an agency shall promptly make the records available to a party.

**"§ 150A-29. Rules of evidence.**—(a) In all contested cases, irrelevant, immaterial and unduly repetitious evidence shall be excluded. Except as otherwise provided, the rules of evidence as applied in the trial division of the General Court of Justice shall be followed; but, when evidence is not reasonably available under the rules to show relevant facts, then the most reliable and substantial evidence available shall be admitted. It shall not be necessary for a party or his attorney to object at the hearing to evidence in order to preserve the right to object to its consideration by the agency or hearing officer in reaching his decision, or by the court on judicial review.

(b) Evidence in a contested case, including records and documents, shall be offered and made a part of the record. Factual information or evidence not made a part of the record shall not be considered in the determination of the case, except as permitted under G.S. 150A-30. Documentary evidence may be received in the form of a copy or excerpt or may be incorporated by reference, if the materials so incorporated are available for examination by the parties. Upon timely request, a party shall be given an opportunity to compare the copy with the original if available.

**"§ 150A-30. Official notice.**—Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the agency.

The noticed fact and its source shall be stated and made known to affected parties at the earliest practicable time, and any party shall on timely request be afforded an opportunity to dispute the noticed fact through submission of evidence and argument.

**"§ 150A-31. Stipulations.**—(a) The parties in a contested case may, by a stipulation in writing filed with the agency or hearing officer, agree upon any fact involved in the controversy, which stipulation shall be used as evidence at the hearing and be binding on the parties thereto. Parties should agree upon facts when practicable.

(b) Except as otherwise provided by law, disposition may be made of a contested case by stipulation, agreed settlement, consent order, waiver, default, or other method agreed upon by the parties.

**"§ 150A-32. Designation of hearing officer.**—(a) The chief hearing officer of the Office of Administrative Hearings shall assign himself or a hearing officer in the Office of Administrative Hearings to preside as hearing officer in each contested case. If a party waives the right to have a case conducted in the Office of Administrative Hearings in the petition to commence the case, an agency, one or more members of the agency, a person or group of persons designated by statute, or one or more hearing officers designated and authorized by the agency to conduct contested cases.

(a1) A party in a contested case in the Department of Human Resources who has been served with a notice of hearing may request in a response filed pursuant to G.S. 150A-25(b) that the contested case be conducted by a hearing officer in the Office of Administrative Hearings. The agency shall forthwith request the chief hearing officer in the Office of Administrative Hearings to assign himself or another hearing officer to conduct the case, and the chief hearing officer shall make the assignment. In assigning hearing officers, the chief hearing officer shall attempt to use personnel having expertise in the subject to be dealt with in the hearing.

A party waives the right to request a hearing officer in the Office of Administrative Hearings if the response is not filed at least 10 days before the date set for hearing.

(b) On the filing in good faith by a party of a timely and sufficient affidavit of personal bias or disqualification of a hearing officer, the agency shall determine the matter as a part of the record in the case, and this determination shall be subject to judicial review at the conclusion of the proceeding.

(c) When a hearing officer is disqualified or it is impracticable for him to continue the hearing, another hearing officer shall be assigned to continue with the case unless it is shown that substantial prejudice to any party will result, in which event a new hearing shall be held or the case dismissed without prejudice.

**"§ 150A-33. Powers of hearing officer.**—(a) A hearing officer shall stay any contested case under this Article on motion of an agency which is a party to the contested case, if the agency shows by supporting affidavits that it is engaged in other litigation or administrative proceedings, by whatever name called, with or before a federal agency, and this other litigation or administrative proceedings will determine the position, in whole or in part, of the agency in the contested case. At the conclusion of the other litigation or administrative proceedings, the contested case shall proceed and be determined as expeditiously as possible.

(b) A hearing officer may:

- (1) Administer oaths and affirmations;
- (2) Sign and issue subpoenas in the name of the agency or the Office of Administrative Hearings, as applicable, requiring attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence;
- (3) Provide for the taking of testimony by deposition;
- (4) Regulate the course of the hearings, including discovery, set the time and place for continued hearings, and fix the time for filing of briefs and other documents;
- (5) Direct the parties to appear and confer to consider simplification of the issues by consent of the parties;
- (6) Stay the contested action by the agency pending the outcome of the case, upon such terms as he deems proper, and subject to the provisions of G.S. 1A-1, Rule 65;
- (7) Determine whether the hearing shall be recorded by a stenographer or by an electronic device; and
- (8) Apply to any judge of the Superior Court resident in the district or presiding at a term of court in the county where a hearing is pending for an order to show cause why any person should not be held in contempt, and the Court shall have the power to impose punishment as for contempt for acts which would constitute direct or indirect contempt if the acts occurred in an action pending in superior court.
- (9) Determine that a rule as applied in a particular case is void because (1) it is not within the statutory authority of the agency, (2) is not clear and unambiguous to persons it is intended to direct, guide, or assist, or (3) is not 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.

**"§ 150A-34. Proposal for decision; recommended decision.**—(a) In a contested case conducted by a hearing officer other than the agency officials who will make the final decision, the hearing officer shall:

- (1) Make a proposal for decision that contains his findings of fact and conclusions of law and proposed decision, opinion, order, or report;
- (2) Deliver a copy of the proposal for decision to each party; and
- (3) Give each party an opportunity to file exceptions and proposed findings of fact and to present written arguments to him.

(b) After considering any exceptions, proposed findings of fact, and written arguments of the parties, the hearing officer shall make a recommended decision that contains findings of fact and conclusions of law and a recommended decision, opinion, order, or report. He shall include the recommended decision in the official record prepared pursuant to G.S. 150A-37(a) and shall forward a copy of the official record to the agency.

"§ 150A-35. **No ex parte communication; exceptions.**—Unless required for disposition of an ex parte matter authorized by law, a member or employee of an agency assigned to make a decision or to make findings of fact and conclusions of law in a contested case or a hearing officer shall not communicate, directly or indirectly, in connection with any issue of fact, or question of law, with any person or party or his representative, except on notice and opportunity for all parties to participate.

"§ 150A-36. **Final decision.**—A final decision or order in a contested case shall be made by the agency in writing after review of the official record as defined in G.S. 150A-37(a) and shall include findings of fact and conclusions of law. If the agency does not adopt the hearing officer's recommended decision as its final decision in a contested case conducted by a hearing officer, the agency shall include in its decision or order the specific reasons why the hearing officer's recommended decision is not adopted. A decision or order shall not be made except upon consideration of the record as a whole or such portion as may be cited by any party to the proceeding and shall be supported by substantial evidence admissible under G.S. 150A-29(a), 150A-30, or 150A-31. A copy of the decision or order shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency, and a copy shall be furnished to his attorney of record.

"§ 150A-37. **Official record.**—(a) The agency or hearing officer who conducts the hearing in a contested case shall prepare an official record of the hearing which shall include:

- (1) Notices, pleadings, motions, and intermediate rulings;
- (2) Questions and offers of proof, objections, and rulings thereon;
- (3) Evidence presented;
- (4) Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose;
- (5) The hearing officer's proposal for decision and exceptions and proposed findings of fact; and
- (6) The hearing officer's recommended decision, opinion, order, or report.

(b) Proceedings at which oral evidence is presented shall be recorded, but need not be transcribed unless requested by a party. Each party shall bear the cost of the transcript or part thereof or copy of said transcript or part thereof which said party requests, and said transcript or part thereof shall be added to the official record as an exhibit.

"Article 3A.

"Other Administrative Hearings.

"§ 150A-38. **Scope; hearing required; notice; venue.**—(a) The provisions of this Article shall apply to the following agencies:

- (1) Occupational licensing agencies;
- (2) The State Banking Commission, the Commissioner of Banks, the Savings and Loan Division of the Department of Commerce, and the Credit Union Division of the Department of Commerce; and
- (3) The Department of Insurance and the Commissioner of Insurance.

(b) Prior to any agency action in a contested case, the agency shall give the parties in the case an opportunity for a hearing without undue delay and notice not less than 15 days before the hearing. Notice to the parties shall include:

- (1) A statement of the date, hour, place, and nature of the hearing;
- (2) A reference to the particular sections of the statutes and rules involved; and
- (3) A short and plain statement of the facts alleged.

(c) Notice shall be given personally or by certified mail.

If given by certified mail, notice shall be deemed to have been given on the delivery date appearing on the return receipt. If notice cannot be given personally or by certified mail, then notice shall be given in the manner provided in G.S. 1A-1, Rule 4(j1).

(d) A party who has been served with a notice of hearing may file a written response with the agency. If a written response is filed, a copy of the response must be mailed to all other parties not less than 10 days before the date set for the hearing.

(e) All hearings conducted under this Article shall be open to the public. A hearing conducted by the agency shall be held in the county where the agency maintains its principal office. A hearing conducted for the agency by a hearing officer requested under G.S. 150A-40 shall be held in a county in this State where any person whose property or rights are the subject matter of the hearing resides. If a different venue would promote the ends of justice or better serve the convenience of witnesses, the agency or the hearing officer may designate another county. A person whose property or rights are the subject matter of the hearing waives his objection to venue if he proceeds in the hearing.

(f) Any person may petition to become a party by filing with the agency or hearing officer a motion to intervene in the manner provided by G.S. 1A-1, Rule 24. In addition, any person interested in a contested case under this Article may intervene and participate to the extent deemed appropriate by the agency hearing officer.

(g) When contested cases involving a common question of law or fact or multiple proceedings involving the same or related parties are pending before an agency, the agency may order a joint hearing of any matters at issue in the cases, order the cases consolidated, or make other orders to reduce costs or delay in the proceedings.

(h) Every agency shall adopt rules governing the conduct of hearings that are consistent with the provisions of this Article.

**"§ 150A-39. Depositions; discovery; subpoenas.**—(a) A deposition may be used in lieu of other evidence when taken in compliance with the Rules of Civil Procedure, G.S. 1A-1. Parties in a contested case may engage in discovery pursuant to the provisions of the Rules of Civil Procedure, G.S. 1A-1.

(b) Upon a request for an identifiable agency record involving a material fact in a contested case, the agency shall promptly provide the record to a party, unless the record relates solely to the agency's internal procedures or is exempt from disclosure by law.

(c) An agency may issue subpoenas in preparation for, or in the conduct of, a contested case upon its own motion. If a written request is made by a party in a contested case, an agency shall issue subpoenas forthwith requiring the attendance and



testimony of witnesses and the production of evidence including books, records, correspondence, and documents in their possession or under their control. Upon written request, the agency shall revoke a subpoena if, upon a hearing, the agency finds that the evidence, the production of which is required, does not relate to a matter in issue, or if the subpoena does not describe with sufficient particularity the evidence the production of which is required, or if for any other reason sufficient in law the subpoena is invalid. Witness fees shall be paid by the party requesting the subpoena to subpoenaed witnesses in accordance with G.S. 7A-314. However, State officials or employees who are subpoenaed shall not be entitled to any witness fees, but they shall receive their normal salary and they shall not be required to take any annual leave for the witness days. Travel expenses of State officials or employees who are subpoenaed shall be reimbursed as provided in G.S. 138-6.

**"§ 150A-40. Conduct of hearing; presiding officer; ex parte communication.**—(a) Hearings shall be conducted in a fair and impartial manner. At the hearing, the agency and the parties shall be given an opportunity to present evidence on issues of fact, examine and cross-examine witnesses, including the author of a document prepared by, on behalf of or for the use of the agency and offered into evidence, submit rebuttal evidence, and present arguments on issues of law or policy.

If a party fails to appear in a contested case after he has been given proper notice, the agency may continue the hearing or proceed with the hearing and make its decision in the absence of the party.

(b) Except as provided under subsection (e) of this section, hearings under this Article shall be conducted by a majority of the agency. An agency shall designate one or more of its members to preside at the hearing. If a party files in good faith a timely and sufficient affidavit of the personal bias or other reason for disqualification of any member of the agency, the agency shall determine the matter as a part of the record in the case, and its determination shall be subject to judicial review at the conclusion of the proceeding. If a presiding officer is disqualified or it is impracticable for him to continue the hearing, another presiding officer shall be assigned to continue with the case, except that if assignment of a new presiding officer will cause substantial prejudice to any party, a new hearing shall be held or the case dismissed without prejudice.

(c) The presiding officer may:

- (1) Administer oaths and affirmations;
- (2) Sign and issue subpoenas in the name of the agency, requiring attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence;
- (3) Provide for the taking of testimony by deposition;
- (4) Regulate the course of the hearings, set the time and place for continued hearings, and fix the time for filing of briefs and other documents;
- (5) Direct the parties to appear and confer to consider simplification of the issues by consent of the parties; and

(6) Apply to any judge of the superior court resident in the district or presiding at a term of court in the county where a hearing is pending for an order to show cause why any person should not be held in contempt of the agency and its processes, and the court shall have the power to impose punishment as for contempt for acts which would constitute direct or indirect contempt if the acts occurred in an action pending in superior court.

(d) Unless required for disposition of an ex parte matter authorized by law, a member of an agency assigned to make a decision or to make findings of fact and conclusions of law in a contested case under this Article shall not communicate, directly or indirectly, in connection with any issue of fact or question of law, with any person or party or his representative, except on notice and opportunity for all parties to participate. This prohibition begins at the time of the notice of hearing. An agency member may communicate with other members of the agency and may have the aid and advice of the agency staff other than the staff which has been or is engaged in investigating or prosecuting functions in connection with the case under consideration or a factually related case. This section does not apply to an agency employee or party representative with professional training in accounting, actuarial science, economics or financial analysis insofar as the case involves financial practices or conditions.

(e) When a majority of an agency is unable or elects not to hear a contested case, the agency shall apply to the chief hearing officer of the Office of Administrative Hearings for the designation of a hearing officer to preside at the hearing of a contested case under this Article. Upon receipt of the application, the chief hearing officer shall, without undue delay, assign a hearing officer to hear the case.

The provisions of this Article, rather than the provisions of Article 3, shall govern a contested case in which the agency requests a hearing officer from the Office of Administrative Hearings.

The hearing officer assigned to hear a contested case under this Article shall sit in place of the agency and shall have the authority of the presiding officer in a contested case under this Article. The hearing officer shall make a proposal for decision, which shall contain proposed findings of fact and proposed conclusions of law.

A hearing officer shall stay any contested case under this Article on motion of an agency which is a party to the contested case, if the agency shows by supporting affidavits that it is engaged in other litigation or administrative proceedings, by whatever name called, with or before a federal agency, and this other litigation or administrative proceedings will determine the position, in whole or in part, of the agency in the contested case. At the conclusion of the other litigation or administrative proceedings, the contested case shall proceed and be determined as expeditiously as possible.

The agency may make its final decision only after the hearing officer's proposal for decision is served on the parties, and an opportunity is given to each party to file exceptions and proposed findings of fact and to present oral and written arguments to the agency.

**"§ 150A-41. Evidence; stipulations; official notice.**—(a) In all contested cases, irrelevant, immaterial, and unduly repetitious evidence shall be excluded. Except as otherwise provided, the rules of evidence as applied in the trial division of the General Court of Justice shall be followed; but, when evidence is not reasonably available under such rules to show relevant facts, they may be shown by the most reliable and substantial evidence available. It shall not be necessary for a party or his attorney to object to evidence at the hearing in order to preserve the right to object to its consideration by the agency in reaching its decision, or by the court of judicial review.

(b) Evidence in a contested case, including records and documents shall be offered and made a part of the record. Other factual information or evidence shall not be considered in determination of the case, except as permitted under G.S. 150A- 30. Documentary evidence may be received in the form of a copy or excerpt or may be incorporated by reference, if the materials so incorporated are available for examination by the parties. Upon timely request, a party shall be given an opportunity to compare the copy with the original if available.

(c) The parties in a contested case under this Article by a stipulation in writing filed with the agency may agree upon any fact involved in the controversy, which stipulation shall be used as evidence at the hearing and be binding on the parties thereto. Parties should agree upon facts when practicable. Except as otherwise provided by law, disposition may be made of a contested case by stipulation, agreed settlement, consent order, waiver, default, or other method agreed upon by the parties.

(d) Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the agency. The noticed fact and its source shall be stated and made known to affected parties at the earliest practicable time, and any party shall on timely request be afforded an opportunity to dispute the noticed fact through submission of evidence and argument. An agency may use its experience, technical competence, and specialized knowledge in the evaluation of evidence presented to it.

**"§ 150A-42. Final agency decision; official record.**—(a) After compliance with the provisions of G.S. 150A-40(e), if applicable, and review of the official record, as defined in subsection (b) of this section, an agency shall make a written final decision or order in a contested case. The decision or order shall include findings of fact and conclusions of law. Findings of fact shall be based exclusively on the evidence and on matters officially noticed. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting them. A decision or order shall not be made except upon consideration of the record as a whole or such portion thereof as may be cited by any party to the proceeding and shall be supported by substantial evidence admissible under G.S. 150A-41. A copy of the decision or order shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency and a copy shall be furnished to his attorney of record.

- (b) An agency shall prepare an official record of a hearing that shall include:
- (1) Notices, pleadings, motions, and intermediate rulings;
  - (2) Questions and offers of proof, objections, and rulings thereon;

- (3) Evidence presented;
- (4) Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose;
- (5) Proposed findings and exceptions; and
- (6) Any decision, opinion, order, or report by the officer presiding at the hearing and by the agency.

(c) Proceedings at which oral evidence is presented shall be recorded, but need not be transcribed unless requested by a party. Each party shall bear the cost of the transcript or part thereof or copy of said transcript or part thereof which said party requests.

"Article 4.

"Judicial Review.

**"§ 150A-43. Right to judicial review.**—Any person who is aggrieved by the final decision in a contested case, and who has exhausted all administrative remedies made available to him by statute or agency rule, is entitled to judicial review of the decision under this Article, unless adequate procedure for judicial review is provided by another statute, in which case the review shall be under such other statute. Nothing in this Chapter shall prevent any person from invoking any judicial remedy available to him under the law to test the validity of any administrative action not made reviewable under this Article.

**"§ 150A-44. Right to judicial intervention when decision unreasonably delayed.**—Unreasonable delay on the part of any agency or hearing officer in taking any required action shall be justification for any person whose rights, duties, or privileges are adversely affected by such delay to seek a court order compelling action by the agency or hearing officer.

**"§ 150A-45. Manner of seeking review; time for filing petition; waiver.**—In order to obtain judicial review of a final decision under this Chapter, the party seeking review must file a petition in the Superior Court of Wake County or in the superior court of the county where the petitioner resides. The petition may be filed at any time after final decision but must be filed not later than 30 days after a written copy of the decision is served upon the party seeking the review by personal service or by certified mail. Failure to file a petition within the time stated shall operate as a waiver of the right of such party to review under this Chapter, except that, for good cause shown, a judge of the superior court resident in the district or holding court in the county where venue is proper may issue an order permitting a review of the agency decision under this Chapter notwithstanding such waiver.

**"§ 150A-46. Contents of petition; copies served on all parties; intervention.**—The petition shall explicitly state what exceptions are taken to the decision or procedure and what relief the petitioner seeks. Within 10 days after the petition is filed with the court, the party seeking the review shall serve copies of the petition by personal service or by certified mail upon all who were parties of record to the administrative proceedings. Names and addresses of such parties shall be furnished to the petitioner by the agency upon request. Any party to the administrative proceeding may become a party to the

review proceedings by notifying the court within 10 days after receipt of the copy of the petition.

Any person aggrieved may petition to become a party by filing a motion to intervene as provided in G.S. 1A-1, Rule 24.

**"§ 150A-47. Records filed with clerk of superior court; contents of records; costs.**—Within 30 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the agency shall transmit to the reviewing court the original or a certified copy of the official record of the hearing in the contested case under review. With the permission of the court, the record may be shortened by stipulation of all parties to the review proceedings. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for such additional costs as may be occasioned by the refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

**"§ 150A-48. Stay of decision.**—At any time before or during the review proceeding, the person aggrieved may apply to the reviewing court for an order staying the operation of the administrative decision pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper and subject to the provisions of G.S. 1A-1, Rule 65.

**"§ 150A-49. New evidence.**—In a review proceeding under this Article, any party may present evidence not contained in the record that is not repetitive.

**"§ 150A-50. Review by court without jury.**—The review of agency decisions under this Chapter shall be conducted by the court without a jury.

**"§ 150A-51. Scope of review; power of court in disposing of case.**—Based on the record and the evidence presented to the court, the court may affirm, reverse, or modify the decision or remand the case to the agency for further proceedings.

**"§ 150A-52. Appeal to appellate division; obtaining stay of court's decision.**—Any party to the review proceedings, including the agency, may appeal to the appellate division from the final judgment of the superior court under rules of procedure applicable in other civil cases. The appealing party may apply to the superior court for a stay of its final determination, or a stay of the administrative decision, whichever shall be appropriate, pending the outcome of the appeal to the appellate division.

"Article 5.

"Publication of Administrative Rules.

**"§ 150A-58. Short title.**—This Article may be cited as 'The Registration of State Administrative Rules Act'.

**"§ 150A-59. Filing of rules and executive orders.**—(a) Rules adopted by an agency and executive orders of the Governor shall be filed with the chief hearing officer of the Office of Administrative Hearings. No rule, except temporary rules adopted under the provisions of G.S. 150A-13 or curative rules adopted pursuant to G.S. 143B-29.2(d), shall become effective earlier than the first day of the second calendar month after that filing.

(b) The acceptance for filing of a rule by the chief hearing officer, by his notation on its face, shall constitute prima facie evidence of compliance with this Article.

(c) Rules adopted by an agency subject to the provisions of Article 2 of this Chapter in effect on January 1, 1986, that conflict with or violate the provisions of G.S. 150A-9(c) are repealed. Rules adopted by an agency subject to the provisions of Article 2 of this Chapter in effect on January 1, 1986, that do not conflict with or violate the provisions of G.S. 150A-9(c) shall remain in effect until June 30, 1986. These rules are repealed effective July 1, 1986, unless approved by the General Assembly on or before June 30, 1986. The approval of rules by the General Assembly shall not be deemed to enact the approved rules or to prohibit their subsequent amendment, repeal or recodification under the provisions of this Chapter. Rules adopted on or after January 1, 1986, shall become effective as provided in this Chapter.

**"§ 150A-60. Form of rules; responsibilities of agencies; assistance to agencies.**—(a) In order to be acceptable for filing, the rule must:

- (1) Cite the statute or other authority pursuant to which the rule is adopted;
- (2) Bear a certification by the agency of its adoption;
- (3) Cite any prior rule or rules of the agency or its predecessor in authority which it rescinds, amends, supersedes, or supplements;
- (4) Be in the physical form specified by the chief hearing officer of the Office of Administrative Hearings; and
- (5) Bear a notation by the Governor that the rule has been submitted in accordance with G.S. 143A- 55.3(c). This subdivision does not apply to rules adopted by the Industrial Commission, or by the Utilities Commission, or to rules adopted by the Department of Transportation relating to traffic sign ordinances or road and bridge weight limits.

(b) Each agency shall designate one or more administrative procedure coordinators whose duties shall be to oversee all departmental functions required by this Chapter. The coordinator's duties shall include providing notice of public hearings; serving as liaison between the agency and the Office of Administrative Hearings, the Administrative Rules Review Commission and the public; and coordinating access to agency rules.

(c) The chief hearing officer of the Office of Administrative Hearings shall:

- (1) Maintain an agency rule-drafting section in the Office of Administrative Hearings to draft or aid in the drafting of rules or amendments to rules for any agency; and
- (2) Prepare and publish an agency rule-drafting guide which sets out the form and method for drafting rules and amendments to rules, and to which all rules shall comply.

**"§ 150A-61. Authority to revise form.**—(a) The chief hearing officer of the Office of Administrative Hearings shall have the authority, following acceptance of a rule for filing, to revise the form of the rule as follows:

- (1) To rearrange the order of rules, Chapters, Subchapters, Articles, sections, paragraphs, and other divisions or subdivisions;
- (2) To provide or revise titles or catch lines;

- (3) To reletter or renumber the rules and various subdivisions in accordance with a uniform system;
- (4) To rearrange definitions and lists; and
- (5) To make other changes in arrangement or in form that do not alter the substance of the rule and that are necessary or desirable for an accurate, clear, and orderly arrangement of the rules.

Revision of form by the chief hearing officer shall not alter the effective date of a rule, nor shall revision require the agency to readopt or to refile the rule. No later than the close of the fifth working day after the filing of a rule by an agency, the chief hearing officer shall return to the agency that filed the rule a copy of the rule in any revised form made by the chief hearing officer, together with his certification of the date of the rule's filing.

The rule so revised as to form shall be substituted for and shall bear the date of the rule originally filed, and shall be the official rule of the agency.

- (b) In determining the drafting form of rules the chief hearing officer shall:
  - (1) Minimize duplication of statutory language;
  - (2) Not permit incorporations into the rules by reference to publications or other documents which are not conveniently available to the public; and
  - (3) To the extent practicable, use plain language in rules and avoid technical language.

**"§ 150A-62. Public inspection and notification of current and replaced rules.**—(a) Immediately upon notation of a filing as specified in G.S. 150A-59(b), the chief hearing officer of the Office of Administrative Hearings shall make the rule available for public inspection during regular office hours. Superseded, amended, revised, and rescinded rules filed in accordance with the provisions of this Article shall remain available for public inspection. The current and the prior rules so filed shall be separately arranged in compliance with the provisions of G.S. 150A-61(a).

(b) The chief hearing officer shall make copies of current and prior rules, filed in accordance with the provisions of this Article, available to the public at a cost to be determined by him.

(c) Within 50 days of the acceptance by the chief hearing officer of a rule for filing, the agency filing the rule:

- (1) Shall publish the rule as prescribed in any applicable statute; and
- (2) May distribute the rule in a manner selected by the agency as best calculated to give notice to persons likely to be affected by the rule.

The rule so published or distributed shall contain the legend: 'The form of this rule may be revised by the chief hearing officer pursuant to the provisions of G.S. 150A-61.'

**"§ 150A-63. Publication of executive orders and rules; the North Carolina Register.**—(a) The chief hearing officer of the Office of Administrative Hearings shall compile, index and publish executive orders of the Governor and all rules filed and effective pursuant to the provisions of this Article.

(b) As nearly as practicable the compilation shall, in classification, arrangement, numbering, and indexing, conform to the organization of the General Statutes.

(c) If the chief hearing officer determines that publication of any rule would be impracticable, he shall substitute a summary with specific reference to the official rule on file in his office.

(d) As soon as practicable after July 1, 1985, the chief hearing officer shall publish, in print or other form, a compilation of all rules in force pursuant to the provisions of this Article. Cumulative supplements shall be published annually or more frequently in the discretion of the chief hearing officer. Recompilations shall be made in the chief hearing officer's discretion.

(d1) The chief hearing officer shall also publish at periodic intervals, but not less often than once each month, the North Carolina Register which shall contain information relating to agency, executive, legislative or judicial actions that are performed under the authority of, or are required by, or are issued to interpret, or that otherwise affect, this Chapter.

(d2) In publishing proposed amendments to rules, the chief hearing officer shall show the portion of the rule being amended as it is to the degree necessary to provide adequate notice of the nature of the proposed amendment, with changes shown by striking through portions to be deleted and underlining portions to be added.

(e) Reference copies of the compilation, supplements, and recompilations of the rules, and the North Carolina Register shall be distributed by the chief hearing officer as soon after publication as practicable, without charge, to the following officials and departments:

- (1) One copy to each county of the State, which copy may be maintained for public inspection in the county in a place determined by the county commissioners; one copy each to the clerk of the Supreme Court of North Carolina and the clerk of the North Carolina Court of Appeals; one copy each to the libraries of the Supreme Court of North Carolina and the North Carolina Court of Appeals; one copy to the office of the Governor; and five copies to the Legislative Services Commission for the use of the General Assembly;
- (2) One copy to each State official and department to which copies of the appellate division reports are furnished under G.S. 7A-343.1;
- (3) Five copies to the Division of State Library of the Department of Cultural Resources, pursuant to G.S. 147-50.1; and
- (4) One copy of the North Carolina Register to each member of the General Assembly.

(f) The chief hearing officer shall make available copies of the compilation, supplements and recomputations of the rules and the North Carolina Register to other persons at a price determined by him to cover publication and mailing costs. All monies received by the Office of Administrative Hearings pursuant to this section from the sale of copies of said publications shall be deposited in the State treasury in a special funds account to be held in trust for the Office of Administrative Hearings to defray the expense of future recompilation, publication, and distribution of such documents. All monies involved shall be subject to audit by the State Auditor.



(g) Notwithstanding any other provision of law, the Employment Security Commission shall, within 15 days of adoption, file all rules adopted by it with the chief hearing officer for public inspection and publication purposes only. The chief hearing officer shall compile, make available for inspection, and publish the rules filed under this subsection in the same manner as is provided for other rules.

**"§ 150A-63.1. Administrative Rules Review Commission reports.**—The chief hearing officer of the Office of Administrative Hearings shall retain any reports of the Administrative Rules Review Commission'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 G.S. 143A-55.3 or 143A-55.4 and, where applicable, that the objection has been removed.

**"§ 150A-64. Judicial and official notice.**—Judicial or official notice shall be taken of any rule effective under this Article."

Sec. 2. Chapter 7A of the General Statutes is amended by adding a new Subchapter XII to read:

**"SUBCHAPTER XII ADMINISTRATIVE HEARINGS.**

"Article 60.

"Office of Administrative Hearings.

**"§ 7A-750. Creation; status; purpose.**—There is created an Office of Administrative Hearings. The Office of Administrative Hearings is an independent, quasi-judicial agency under Article III, Section 11 of the Constitution and, in accordance with Article IV, Section 3 of the Constitution, has such judicial powers as may be reasonably necessary as an incident to the accomplishment of the purposes for which it is created. The Office of Administrative Hearings is established to provide a source of independent hearing officers to preside in administrative cases and thereby prevent the commingling of legislative, executive, and judicial functions in the administrative process. It shall also maintain dockets and records of contested cases and shall codify and publish all administrative rules.

**"§ 7A-751. Director; powers and duties.**—The head of the Office of Administrative Hearings is the Director. He shall serve as the chief hearing officer of the Office of Administrative Hearings and shall have the powers and duties conferred on him by this Chapter and the Constitution and laws of this State.

The Office of Administrative Hearings is designated the official deferral agency under Section 706 of the Civil Rights Act of 1964, as amended, for all charges filed on a timely basis with the Equal Employment Opportunity Commission by any State or local government employee covered under Chapter 126 of the General Statutes. The Office of Administrative Hearings may contract with the Equal Employment Opportunity Commission to become a 706 deferral agency and may conduct necessary investigations and informal hearings or fact-finding proceedings. The Office of Administrative Hearings may prepare investigation reports with the findings, conclusions, and determinations of probable cause that a 706 deferral agency is required to make and may take other actions required for it to function as a 706 deferral agency for State and local employees covered under Chapter 126 of the General Statutes. Proceedings

conducted by the Office of Administrative Hearings as a 706 deferral agency are not contested cases as defined in G.S. 150A-2(2).

**"§ 7A-752. Director; appointments; vacancy.**—The Director of the Office of Administrative Hearings shall be appointed by the Chief Justice for a term of office of four years. The first chief hearing officer shall be appointed as soon as practicable for a term to begin on the day of his appointment and to end on June 30, 1989. Successors to the first chief hearing officer shall be appointed for a term to begin on July 1 of the year the preceding term ends and to end on June 30 four years later. A chief hearing officer may continue to serve beyond his term until his successor is duly appointed and sworn, but any holdover shall not affect the expiration date of the succeeding term.

If the Director is absent or unable to serve temporarily for any reason, the senior hearing officer present may perform the duties of Director and chief hearing officer. Seniority among hearing officers shall be determined by length of service as hearing officer, date of admission to practice law in the General Court of Justice, and age, in that order.

**"§ 7A-753. Additional hearing officers; appointment; specialization.**—The Director shall appoint five additional hearing officers to serve in the Office of Administrative Hearings.

The Director may, with the approval of the Chief Justice, designate certain hearing officers as having the experience and expertise to preside at specific types of contested cases and assign only these designated hearing officers to preside at those cases.

**"§ 7A-754. Qualifications; standards of conduct; removal.**— Only persons duly authorized to practice law in the General Court of Justice shall be eligible for appointment as the Director and chief hearing officer or as a hearing officer in the Office of Administrative Hearings. Neither the chief hearing officer nor any hearing officer may engage in the private practice of law as defined in G.S. 84-2.1 while in office; violation of this provision shall be grounds for removal. Each hearing officer shall take the oaths required by Chapter 11 of the General Statutes. A hearing officer may be removed from office by the Director of the Office of Administrative Hearings for just cause, as that term is used in G.S. 126-35.

**"§ 7A-755. Expenses reimbursed.**—The Director of the Office of Administrative Hearings and all hearing officers shall be reimbursed for travel and subsistence expenses at the rates allowed to State officers and employees by G.S. 138-6(a).

**"§ 7A-756. Power to administer oaths and issue subpoenas.**—The chief hearing officer and all hearing officers in the Office of Administrative Hearings may, in connection with any pending or potential contested case under Chapter 150A:

- (1) Administer oaths and affirmations;
- (2) Sign and issue subpoenas in the name of the Office of Administrative Hearings requiring attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence; and
- (3) Apply to the General Court of Justice, Superior Court Division, for any order necessary to enforce the powers conferred in this Article.

**"§ 7A-757. Temporary hearing officers; appointments; powers and standards; fees.**—When regularly appointed hearing officers are unavailable, the Director of the Office of Administrative Hearings may contract with qualified individuals to serve as hearing officers for specific assignments. A temporary hearing officer shall have the same powers and adhere to the same standards as a regular hearing officer in the conduct of a hearing. These temporary hearing officers shall not be employees of the State but shall be remunerated for their service at a rate not to exceed three hundred dollars (\$300.00) per day and shall be reimbursed for travel and subsistence expenses at the rate allowed to State officers and employees by G.S. 138-6(a).

**"§ 7A-758. Availability of hearing officer to exempt agencies.**—The Director of the Office of Administrative Hearings may, upon request of the head of the agency, provide a hearing officer to preside at hearings of public bodies not otherwise authorized or required by statute to utilize a hearing officer from the Office of Administrative Hearings including, but not limited to, State agencies exempt from the provisions of Chapter 150A, municipal corporations or other subdivisions of the State, and agencies of such subdivisions."

Sec. 3. Each agency subject to Articles 2 and 5 of Chapter 150A of the General Statutes shall, not later than November 1, 1985, review its rules and report to the General Assembly in the form prescribed by the chief hearing officer of the Office of Administrative Hearings which rules it recommends should continue to be in effect after July 1, 1986. The report shall be in writing on an individual rule basis and, as to each rule, the agency shall state:

- (1) The purpose of the rule;
- (2) Whether the rule must be filed under the definition of a rule in G.S. 150A-2(8a);
- (3) Whether the power to adopt the rule is specifically conferred on the agency by statute or other legislative enactment;
- (4) Whether the rule imposes a criminal penalty;
- (5) Whether the rule minimizes the duplicating of statutory language;
- (6) Whether any documents incorporated in the rule by reference are conveniently available to the public; and
- (7) Whether the rule, to the extent practicable, uses plain language.

Sec. 4. All personnel and equipment presently assigned to the Department of Justice for the purpose of carrying out the provisions of Article 5, Chapter 150A of the General Statutes, are transferred to the Office of Administrative Hearings by a Type I transfer as defined by G.S. 143A-6(a).

Sec. 5. Article 6 of Chapter 143A of the General Statutes is amended by adding the following sections at the end to read:

**"§ 143A-55.2. Administrative Rules Review Commission established.**—The Administrative Rules Review Commission is hereby created in the Department of Justice. 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.

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 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.

A quorum of the Commission shall consist of five members of the Commission.

**"§ 143A-55.3. Review of rules.**—(a) As used in this Article:

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

'Contested case' has the same meaning as is set out in G.S. 150A-2(2).

'Rule' has the same meaning as is set out in G.S. 150A-2(8a).

(b) Rules adopted by an agency to be effective on or after July 1, 1985, shall be filed in the Office of the Governor prior to the filing made with the chief hearing officer of the Office of Administrative Hearings pursuant to G.S. 150A-59.

(c) 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 to persons it is intended to direct, guide, or assist;
- (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 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 chief hearing officer of the Office of Administrative Hearings. Upon that filing, the effectiveness of the rule is delayed for a 60-day period.

(d) 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 the rule or part of the rule. The Commission shall transmit to the agency, the Governor, the President of the Senate, the Speaker of the House of Representatives, the chief hearing officer of the Office of Administrative Hearings 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 chief hearing officer of the Office of Administrative Hearings 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).

(e) Within 30 days after receipt of the Commission's written report, the agency shall either (1) revise a 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.

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

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

(h) 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 disallow 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 chief hearing officer of the Office of Administrative Hearings the written report of the disallowance of the rule. A rule that is disallowed is not 'effective', as defined by G.S. 150A-2(2a).

**"§ 143A-55.4. 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. 143A- 55.3. The Commission shall review the reasons given for the adoption of a temporary rule and may disallow the rule due to the agency's failure to make the finding required by G.S. 150A-13.

**"§ 143A-55.5. Hearings.**—(a) Notwithstanding the time limitation on review of rules contained in G.S. 143A-55.3, 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. 143A-55.3.

(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.

**"§ 143A-55.6. 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 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. 6. G.S. 120-123 is amended by adding a new subsection to read:

"(1a) The Administrative Rules Review Commission as established by G.S. 143A-55.2."

Sec. 7. G.S. 143B-29.1 through G.S. 143B-29.5 are repealed. The Governor's Rules Review Commission established by Chapter 927 of the 1983 Session Laws is abolished and the terms of the members shall terminate on the effective date of this act.

Sec. 8. G.S. 147-16.1 is rewritten to read:

**"§ 147-16.1. Publication of executive orders.**—Executive orders of the Governor shall be filed and published as provided by Article 5 of Chapter 150A of the General Statutes."

Sec. 9. The initial salary of the chief hearing officer of the Office of Administrative Hearings shall be forty-eight thousand two hundred sixteen dollars (\$48,216) annually, payable monthly (equivalent to Grade 86, step 3 of the salary plan for State employees). The initial salary of a hearing officer in the Office of Administrative Hearings shall be forty-one thousand seven hundred sixty dollars (\$41,760) annually, payable monthly (equivalent to Grade 83, step 3 of the salary plan for State employees).

Sec. 10. The last sentence of Section 52 of Chapter 923, Session Laws of 1983, is repealed.

Sec. 11. Section 1 of Chapter 883, Session Laws of 1983, is repealed.

Sec. 12. If any provision of this act or its application to any person or circumstances is held invalid by any court of competent jurisdiction, the invalidity will not affect other provisions or applications that can be given effect without the invalid provision or application; and to this end the provisions of this act are severable.

Sec. 13. G.S. 143B-18 is amended by rewriting the second paragraph to read:

"A public hearing with at least 30 days' notice advertised in the North Carolina Register shall be required prior to the adoption of any rules other than rules inapplicable to the public at large intended solely as administrative procedures of the Commission."

Sec. 14. The notice publication requirements of G.S.

150A-12(c) shall be deemed to be met if an agency publishes notice in three newspapers with general circulation prior to the first publication of the North Carolina Register.

Sec. 15. G.S. 126-37 is amended by rewriting the second, third, fourth and fifth sentences to read:

"Appeals involving disciplinary action or alleged discrimination shall be conducted in the Office of Administrative Hearings as provided in Article 3 of Chapter 150A of the General Statutes. The State Personnel Commission shall make a final decision in these cases as provided in G.S. 150A-36."

Sec. 16. G.S. 126-40 is repealed.

Sec. 17. G.S. 126-43 is rewritten to read:

**"§ 126-43. The Administrative Procedure Act.**—The provisions of Article 3 of Chapter 150A of the General Statutes shall apply to all hearings required by this Chapter, except as otherwise provided in this Article. A contested case under this Chapter shall be commenced as provided in Article 3 of Chapter 150A of the General Statutes within the time limits set out in this Chapter."

Sec. 18. G.S. 143-135.3 is amended by adding a new paragraph at the end to read:

"Chapter 150A of the General Statutes shall not apply to claims filed in accordance with this section."

Sec. 18.1. G.S. 7A-752 is amended by deleting the words "Chief Justice" and substituting the words "Attorney General".

Sec. 18.2. The President of the Senate and the Speaker of the House of Representatives shall request the Supreme Court to issue an advisory opinion on the constitutionality of Sections 5 and 6 of this act and the appointment of the chief hearing officer by the Chief Justice as provided in G.S. 7A-752 in Section 2 of this act.

Sec. 19. This act is effective upon ratification, except Sections 1, 4, 5, 6, 8, 13, 14, 15, 16, 17, 18, and 18.1. Sections 1, 4, 8, 13, 14, 15, 16, 17, and 18 shall become effective January 1, 1986. Sections 5 and 6 shall become effective 30 days from the date the Supreme Court issues an advisory opinion on the constitutionality of those sections unless the opinion states that those sections are unconstitutional, in which event those sections shall not become effective. Section 18.1 shall become effective only if the Supreme Court issues an advisory opinion that the appointment of the chief hearing officer by the Chief Justice is unconstitutional and shall become effective on the date that opinion is issued. This act shall expire January 1, 1992 and shall not be effective on or after that date. This act shall not affect contested cases commenced before January 1, 1986.

In the General Assembly read three times and ratified, this the 12th day of July, 1985.