

GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION

CHAPTER 1111
SENATE BILL 1676

AN ACT TO CLARIFY THE ADMINISTRATIVE RULES REVIEW COMMISSION'S STATUS AS AN INDEPENDENT AGENCY, TO EXTEND THE REVIEW OF CERTAIN EXISTING RULES, TO REPEAL CERTAIN OCCUPATIONAL SAFETY AND HEALTH STANDARDS THAT DIFFER FROM THE FEDERAL STANDARDS, TO REVISE THE PROCEDURAL REQUIREMENTS FOR ADOPTION OF CERTAIN OCCUPATIONAL SAFETY AND HEALTH STANDARDS AND THE HEARING PROCESS FOR APPEALS OF CERTAIN OCCUPATIONAL SAFETY AND HEALTH CITATIONS AND PENALTIES, TO CONTINUE THE STAFFING OF THE OFFICE OF ADMINISTRATIVE HEARINGS, TO ESTABLISH A CIVIL RIGHTS DIVISION IN THAT OFFICE AND TO MAKE OTHER AMENDMENTS TO CHAPTERS 7A, 84 AND 150B OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

Section 1. (a) The persons employed by the Office of Administrative Hearings on July 9, 1988, who were performing functions for the Administrative Rules Review Commission shall be employed by the Administrative Rules Review Commission at the same salary as they were earning on July 9, 1988, and their salary shall remain the same through June 30, 1989.

(b) The Administrative Rules Review Commission shall submit to the Office of State Budget and Management a proposed budget in line-item format for the 1989-91 biennium.

Sec. 2. G.S. 143B-30.1 is amended:

(1) By adding a sentence to the first paragraph to read: "The Commission is an independent agency under Article III, Section 11 of the Constitution.";

(2) By rewriting the third paragraph to read: "Any other provision of the General Statutes notwithstanding, the appointment of employees of the Commission shall be made by the Commission. Nothing in this Article shall be construed to exempt employees of the Commission from the State Personnel Act; and

(3) By adding a new paragraph at the end to read: "The Commission shall prescribe procedures and forms to be used in submitting rules to the Commission for review".

Sec. 3. G.S. 150B-63(e) is amended:

(1) By deleting "Notwithstanding G.S. 147-50", and substituting "Notwithstanding Article 1A of Chapter 125 of the General Statutes";

(2) By inserting immediately before the words "one copy each to the clerk of the Supreme Court", the words "one copy to the Administrative Rules Review Commission;" ; and

(3) By deleting "147-50.1" and substituting "125-11.7".

Sec. 4. G.S. 150B-59(c) reads as rewritten:

"(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. 150B-9(c) are repealed. Rules adopted by an agency subject to the provisions of Article 2 of this Chapter in effect on September 1, 1986, that do not conflict with or violate the provisions of G.S. 150B-9(c) shall remain in effect until July 15, 1988. These rules are repealed effective July 16, 1988, unless the Administrative Rules Review Commission determines that a rule complies with G.S. 143B-30.2(a). Provided, however, that:

- (1) The rules of the Office of State Personnel and the occupational licensing boards shall remain in effect until February 28, 1989, but are repealed effective March 1, 1989, unless approved by the Administrative Rules Review Commission.
- (2) The rules of the Department of Human Resources shall remain in effect until June 30, 1989, but are repealed effective July 1, 1989, unless approved by the Administrative Rules Review Commission.
- (3) Although the Department of Cultural Resources, the Office of the Governor, and the Council of State did not file the reports required under Chapter 746, Session Laws of 1985, nevertheless the rules of these three agencies shall remain in effect until February 28, 1989, but are repealed effective March 1, 1989, unless approved by the Administrative Rules Review Commission.

Review of these rules shall be carried out in the manner prescribed in G.S. 143B-30.2 except that a rule determined to be in compliance shall remain in effect. In the event of rules which the Commission determines do not comply with G.S. 143B-30.2, such rules may be revised or repealed by the agency without a rulemaking hearing in accordance with G.S. 150B-12(h). Revised rules shall be returned to the Commission. If the Commission approves the rules, the Commission shall notify the agency and file the rules with the Office of Administrative Hearings. Rules adopted on or after January 1, 1986, shall become effective as provided in this Chapter."

Sec. 5. G.S. 150B-23 is amended by adding a new subsection to read:

"(f) Unless another statute or a federal statute or regulation sets a time limitation for the filing of a petition in contested cases against a specified agency, the general limitation for the filing of a petition in a contested case is 60 days. The time limitation, whether established by another statute, federal statute, or federal regulation, or this section, shall commence when notice is given of the agency decision to all persons aggrieved who are known to the agency by personal delivery or by the placing of the notice in an official depository of the United States Postal Service wrapped in a wrapper addressed to the person at the latest address given by the person to the agency. The notice shall be in writing, and shall set forth the agency action, and shall inform the persons of the right, the procedure, and the time limit to file a contested case petition."

Sec. 6. G.S. 130A-294(f) is amended by adding the following sentences at the end of the second paragraph of the subsection to read:

"The Department may impose conditions in a permit in response to these factors. The Department's denial of an application shall be in writing, shall state the reasons for the denial, and shall inform the applicant of the right to appeal the denial."

Sec. 7. G.S. 95-131 is amended by adding a new subsection at the end to read:

"(f) Notwithstanding any other provision of this section, in the event the Commissioner shall develop any rule, regulation, scope, or standard for agricultural employers which differs from the federal regulations or standards, he shall promulgate these rules, standards and regulations pursuant to Articles 2 and 5 of Chapter 150B and Part 3 of Article 1 of Chapter 143B."

Sec. 8. G.S. 95-131 is amended by adding another new subsection at the end to read:

"(g) Any rule, regulation, scope, or standard for agricultural employers adopted or promulgated prior to July 12, 1988, that differs from the federal rule, regulation, scope, or standard is repealed effective September 1, 1989, unless readopted pursuant to Chapter 150B of the General Statutes."

Sec. 9. G.S. 150B-1(d) is amended by adding after the words "the Occupational Safety and Health Review Board" the words "in all actions that do not involve agricultural employers".

Sec. 10. G.S. 95-135 is amended by adding a new subsection to read:

"(j) Notwithstanding any other provision of this section, appeals from citations and abatement periods that involve agricultural employers and from all types of penalties that involve agricultural employers shall be subject to the provisions of Articles 3 and 4 of Chapter 150B. The determination of the Board in accordance with G.S. 150B-36 shall be a final agency decision subject to judicial review in accordance with Article 4 of Chapter 150B."

Sec. 11. G.S. 95-137(b) is amended by adding a new subdivision to read:

"(5) Notwithstanding subdivision (4) of this section, if an agricultural employer notifies the Director that he intends to contest a citation issued under the provisions of this Article or notification issued under the provisions of this Article, or if, within 15 working days of the receipt of a citation under this Article, any employee of an agricultural employer or the employee's representative files a notice with the Director alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the Director shall immediately advise the person giving such notice of his right to file a petition for a contested case under the provisions of Article 3 of Chapter 150B. Upon showing by an employer of a good faith effort to comply with the abatement requirements of a citation, and that an abatement has not been completed because of factors beyond his reasonable control, the administrative law judge, after an opportunity for a hearing as provided in Article 3 of Chapter 150B, may issue an order affirming or modifying the abatement requirements in such citation. Affected employees or representatives of affected employees shall be considered aggrieved persons under G.S. 150B-23 for contested cases under this section."

Sec. 12. G.S. 95-138(a) is amended:

- (1) In the fourth sentence by deleting "review", and substituting "appeal";
and
(2) In the seventh sentence by deleting "a review", and substituting "an appeal".

Sec. 13. Subsections (a) and (b) of Section 68 of Chapter 830 of the 1987 Session Laws are reenacted, except that the following changes are made in the number, classifications, and grades of employees of the Office of Administrative Hearings:

| <u>Classification</u> | <u>Grade</u> | <u>Number</u> |
|--|--------------|---------------|
| PRESENT: Executive Legal Specialist | 80 | 1 |
| CHANGED TO: Director of APA Services | 78 | 1 |
| PRESENT: Assistant Director | 77 | 1 |
| CHANGED TO: Director, Civil Rights Division | 77 | 1 |
| PRESENT: Administrative Legal Specialist | 77 | 1 |
| Mediation Supervisor | 76 | 1 |
| CHANGED TO: Senior Civil Rights Investigator | 75 | 2 |
| PRESENT: Mediation Specialist | 74 | 2 |
| CHANGED TO: Civil Rights Investigator | 73 | 3 |
| PRESENT: Internal Auditor II | 74 | 1 |
| CHANGED TO: Director of Administrative Services | 74 | 1 |
| PRESENT: Administrative Services Manager | 73 | 1 |
| CHANGED TO: Fiscal Officer | 73 | 1 |
| PRESENT: Clerk/Typist V | 61 | 4 |
| CHANGED TO: Clerk/Typist V | 61 | 3 |

| | | |
|------------------------|----|----|
| PRESENT: | | |
| Records Clerk V | 61 | 1 |
| CHANGED TO: | | |
| Records Clerk V | 61 | 2 |
| PRESENT: | | |
| Word Processor IV | 59 | 3 |
| CHANGED TO: | | |
| Word Processor IV | 59 | 2 |
| PRESENT: | | |
| Clerk IV | 59 | 1 |
| CHANGED TO: | | |
| Clerk IV | 59 | 2 |
| DELETE: | | |
| Clerk/Receptionist III | 57 | 1. |

Sec. 14. (a) Subsection (c) of this section is required by the Federal Equal Employment Opportunity Commission in order for the State to continue to be a deferral agency.

(b) G.S. 7A-751 is rewritten to read:

"§ 7A-751. **Agency head; powers and duties.** – The head of the Office of Administrative Hearings is the Chief Administrative Law Judge. He shall serve as Director and have the powers and duties conferred on him by this Chapter and the Constitution and laws of this State. His salary shall be fixed by the General Assembly in the Current Operations Appropriations Act."

(c) Article 60 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"§ 7A-759. **Role as deferral agency.** – (a) The Office of Administrative Hearings is designated to serve as the State's deferral agency for cases deferred by the Equal Employment Opportunity Commission to the Office of Administrative Hearings as provided in Section 706 of the Civil Rights Act of 1964, 42 U.S.C. 2000e-5, or the Age Discrimination in Employment Act, 29 U.S.C. 621 for charges filed by State or local government employees covered under Chapter 126 of the General Statutes and shall have all of the powers and authority necessary to function as a deferral agency.

(b) The Chief Administrative Law Judge is authorized and directed to contract with the Equal Employment Opportunity Commission for the Office of Administrative Hearings to serve as a deferral agency and to establish and maintain a Civil Rights Division in the Office of Administrative Hearings to carry out the functions of a deferral agency.

(c) In investigating charges an employee of the Civil Rights Division of the Office of Administrative Hearings specifically designated by an order of the Chief

Administrative Law Judge filed in the pending case may administer oaths and affirmations.

(d) Any charge not resolved by informal methods of conference, conciliation or persuasion shall be heard as a contested case as provided in Article 3 of Chapter 150B of the General Statutes.

(e) Notwithstanding G.S. 150B-34 and G.S. 150B-36, an order entered by an administrative law judge after a contested case hearing on the merits of a deferred charge is a final agency decision and is binding on the parties. The administrative law judge may order whatever remedial action is appropriate to give full relief consistent with the requirements of federal statutes or regulations.

(f) In addition to the authority vested in G.S. 7A-756 and G.S. 150B-33, an administrative law judge may monitor compliance with any negotiated settlement, conciliation agreement or order entered in a deferred case.

(g) The standards of confidentiality established by federal statute or regulation for discrimination charges shall apply to deferred cases investigated or heard by the Office of Administrative Hearings.

(h) Nothing in this section shall be construed as limiting the authority or right of any federal agency to act under any federal statute or regulation."

Sec. 15. G.S. 7A-752 is amended by deleting the second paragraph and inserting in lieu thereof:

"The Chief Administrative Law Judge shall designate one administrative law judge as senior administrative law judge. The senior administrative law judge may perform the duties of Chief Administrative Law Judge if the Chief Administrative Law Judge is absent or unable to serve temporarily for any reason."

Sec. 17. G.S. 150B-2(8a)a is amended by adding the words "within the same principal office or department enumerated in G.S. 143A-11 or 143B-6" after the word "agencies" the first time it appears.

Sec. 18. G.S. 150B-33(b)(8) is rewritten to read:

"(8) Enter an order returnable in the General Court of Justice, Superior Court Division, to show cause why the person should not be held in contempt. The Court shall have the power to impose punishment as for contempt for any act which would constitute direct or indirect contempt if the act occurred in an action pending in Superior Court."

Sec. 19. G.S. 150B-33(b) is amended by adding a new subdivision to read:

"(10) Impose the sanctions provided for in G.S. 1A-1 or Chapter 3 of Title 26 of the North Carolina Administrative Code for noncompliance with applicable procedural rules."

Sec. 20. G.S. 150B-36 is amended by adding a new subsection (c) to read:

"(c) A determination by an administrative law judge in a contested case that the Office of Administrative Hearings lacks jurisdiction, or an order entered pursuant to the authority in G.S. 7A-759(e) shall constitute a final decision."

Sec. 21. G.S. 150B-34(a) reads as rewritten:

"(a) ~~In a contested case,~~ Except as provided in G.S. 150B-36(c), in each contested case the administrative law judge shall make a recommended decision or order that contains findings of fact and conclusions of law."

Sec. 23. G.S. 150B-61 is amended by adding a new subsection to read:

"(c) The agency shall be responsible for notifying the Director within 30 days after a rule becomes effective of any typographical or technical error in the rule as codified. The Director shall correct the codified rule if it differs from the rule as adopted by the agency. Errors in any rule discovered more than 30 days after codification shall be changed only by the procedures established by Article 2 of this Chapter."

Sec. 24. G.S. 7A-753 is amended by adding a sentence to the first paragraph to read:

"No person shall be appointed or designated an administrative law judge except as provided in this Article."

Sec. 25. G.S. 7A-752, 7A-753, 7A-755, 7A-757, and 7A-758 are each amended by changing the word "Director" to the words "Chief Administrative Law Judge" each time they appear.

Sec. 26. Section 5 of this act shall become effective with respect to agency decisions made on or after October 1, 1988. Sections 9 through 12 shall apply to citations and notifications issued and to notices filed under Article 16 of Chapter 95 on or after October 1, 1988. Sections 14 and 18 through 21 shall apply to contested cases or charges pending in the Office of Administrative Hearings on or after the date of ratification of this act. Section 20 of this act is effective upon ratification. The remainder of this act shall become effective July 1, 1988.

In the General Assembly read three times and ratified this the 12th day of July, 1988.