

GENERAL ASSEMBLY OF NORTH CAROLINA
1997 SESSION

S.L. 1997-34
SENATE BILL 187

AN ACT TO MAKE TECHNICAL AND CLARIFYING CHANGES TO THE LAWS
ON ADMINISTRATIVE PROCEDURE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 150B-4(b) is repealed.

Section 2. G.S. 150B-20(c) reads as rewritten:

"(c) Action. – If an agency denies a rule-making petition, it must send the person who submitted the petition a written statement of the reasons for denying the petition. If an agency grants a rule-making petition, it must inform the person who submitted the rule-making petition of its decision and must initiate rule-making proceedings. When an agency grants a rule-making ~~petition requesting the creation or amendment of a rule,~~ petition, the notice of ~~rule-making~~ rule-making proceedings it publishes in the North Carolina Register may state that the agency is initiating rule-making proceedings as the result of a rule-making ~~petition,~~ petition and state the name of the person who submitted the rule-making ~~petition,~~ petition. If the rule-making petition requested the creation or amendment of a rule, the notice of text the agency publishes after the notice of rule-making proceedings may set out the text of the requested rule change submitted with the rule-making ~~petition,~~ petition and state whether the agency endorses the proposed ~~rule change.~~ text."

Section 3. G.S. 150B-21.3(f) reads as rewritten:

"(f) Technical Change. – A permanent rule for which no notice or hearing is required under G.S. ~~150B-21.5(a) or (b)~~ 150B-21.5(a)(1) through (a)(5) or G.S. 150B-21.5(b) becomes effective on the first day of the month following the month the rule is approved by the Rules Review Commission."

Section 4. G.S. 150B-21.5 reads as rewritten:

"§ 150B-21.5. Circumstances when notice and rule-making hearing not required.

(a) Amendment. – An agency is not required to publish a notice of ~~rule-making~~ rule-making proceedings or a notice of text in the North Carolina Register or hold a public hearing when it proposes to amend a ~~rule, without changing the substance of the~~ rule, rule to do one of the following:

- (1) Reletter or renumber the rule or subparts of the rule.
- (2) Substitute one name for another when an organization or position is renamed.

- (3) Correct a citation in the rule to another rule or law when the citation has become inaccurate since the rule was adopted because of the repeal or renumbering of the cited rule or law.
- (4) Change information that is readily available to the public, such as an address or a telephone number.
- (5) Correct a typographical error in the North Carolina Administrative Code.
- (6) Change a rule in response to a request or an objection by the Commission.

(b) Repeal. – An agency is not required to publish a notice of ~~rule-making~~ rule-making proceedings or a notice of text in the North Carolina Register or hold a public hearing when it proposes to repeal a rule as a result of any of the following:

- (1) The law under which the rule was adopted is repealed.
- (2) The law under which the rule was adopted or the rule itself is declared unconstitutional.
- (3) The rule is declared to be in excess of the agency's statutory authority.

(c) OSHA Standard. – The Occupational Safety and Health Division of the Department of Labor is not required to publish a notice of ~~rule-making~~ rule-making proceedings or a notice of text in the North Carolina Register or hold a public hearing when it proposes to adopt a rule that concerns an occupational safety and health standard and is identical to a federal regulation promulgated by the Secretary of the United States Department of Labor. The Occupational Safety and Health Division is not required to submit to the Commission for review a rule for which notice and hearing is not required under this subsection."

Section 5. G.S. 150B-21.6(3) is repealed.

Section 6. G.S. 150B-21.20 reads as rewritten:

"§ 150B-21.20. Codifier's authority to revise form of rules.

(a) Authority. – After consulting with the agency that adopted the rule, the Codifier of Rules may revise the form of a rule submitted for inclusion in the North Carolina Administrative Code within 10 business days after the rule is submitted to do one or more of the following:

- (1) Rearrange the order of the rule in the Code or the order of the subsections, subdivisions, or other subparts of the rule.
- (2) Provide a catch line or heading for the rule or revise the catch line or heading of the rule.
- (3) Reletter or renumber the rule or the subparts of the rule in accordance with a uniform system.
- (4) Rearrange definitions and lists.
- (5) Make other changes in arrangement or in form that do not change the substance of the rule and are necessary or desirable for a clear and orderly arrangement of the rule.
- (6) Omit from the published rule a map, a diagram, an illustration, a chart, or other graphic material, if the Codifier of Rules determines that the Office of Administrative Hearings does not have the capability to

publish the material or that publication of the material is not practicable. When the Codifier of Rules omits graphic material from the published rule, the Codifier must insert a reference to the omitted material and information on how to obtain a copy of the omitted material.

(b) Effect. – Revision of a rule by the Codifier of Rules under this section does not affect the effective date of the rule or require the agency to readopt or resubmit the rule. When the Codifier of Rules revises the form of a rule, the Codifier of Rules must send the agency that adopted the rule a copy of the revised rule. The revised rule is the official rule, unless the rule was revised under subdivision (a)(6) of this section to omit graphic material. When a rule is revised under that subdivision, the official rule is the published text of the rule plus the graphic material that was not published."

Section 7. G.S. 150B-21.21 reads as rewritten:

"§ 150B-21.21. Publication of rules of North Carolina State Bar and exempt agencies.

(a) State Bar. – The North Carolina State Bar must submit a rule adopted or approved by it and entered in the minutes of the North Carolina Supreme Court to the Codifier of Rules for inclusion in the North Carolina Administrative Code. The State Bar must submit a rule within ~~15–30~~ days after it is entered in the minutes of the Supreme Court. The Codifier of Rules must compile, make available for public inspection, and publish a rule included in the North Carolina Administrative Code under this subsection in the same manner as other rules in the Code.

(b) Exempt Agencies. – Notwithstanding G.S. 150B-1, the North Carolina Utilities Commission must submit to the Codifier of Rules those rules of the Utilities Commission that are published from time to time in the publication titled 'North Carolina Utilities Laws and Regulations.' The Utilities Commission must submit a rule required to be included in the Code within ~~15–30~~ days after it is adopted. ~~The Codifier of Rules must publish the rules submitted by the Utilities Commission in the North Carolina Administrative Code in the same format as they are submitted.~~

Notwithstanding G.S. 150B-1, an agency other than the Utilities Commission that is exempted from this Article by that statute must submit a temporary or permanent rule adopted by it to the Codifier of Rules for inclusion in the North Carolina Administrative Code. ~~One of these~~ These exempt agencies must submit a rule to the Codifier of Rules within ~~15–30~~ days after it ~~adopts~~ adopting the rule. The

(c) Publication. – A rule submitted to the Codifier of Rules under this section must be in the physical form specified by the Codifier of Rules. The Codifier of Rules must compile, make available for public inspection, and publish a rule of one of these agencies in the North Carolina Administrative Code submitted under this section in the same manner as other rules in the North Carolina Administrative Code."

Section 8. G.S. 150B-21.22 reads as rewritten:

"§ 150B-21.22. Effect of inclusion in Code.

Official or judicial notice can be taken of a rule in the North Carolina Administrative Code and shall be taken when appropriate. ~~Codification of a rule in the North Carolina Administrative Code is~~ **prima facie** evidence of compliance with this Article."

Section 9. G.S. 150B-21.23 reads as rewritten:

"§ 150B-21.23. Rule publication manual.

The Codifier of Rules must publish a manual that sets out the form and method for publishing a notice of ~~rule-making~~ rule-making proceedings and a notice of text in the North Carolina Register and for filing a rule in the North Carolina Administrative Code."

Section 10. G.S. 1A-1, Rule 40 reads as rewritten:

"Rule 40. Assignment of cases for trial; continuances.

(a) The senior resident superior court judge of any superior court district or set of districts as defined in G.S. 7A-41.1 may provide by rule for the calendaring of actions for trial in the superior court division of the various counties within his district or set of districts. Calendaring of actions for trial in the district court shall be in accordance with G.S. 7A-146. Precedence shall be given to actions entitled thereto by any statute of this State.

(b) No continuance shall be granted except upon application to the court. A continuance may be granted only for good cause shown and upon such terms and conditions as justice may require. Good cause for granting a continuance shall include those instances when a party to the proceeding, a witness, or counsel of record has an obligation of service to the State of North Carolina, including service as a member of the General ~~Assembly~~. Assembly or the Rules Review Commission."

Section 11. G.S. 7A-751 reads as rewritten:

"§ 7A-751. Agency head; powers and duties.

The head of the Office of Administrative Hearings is the Chief Administrative Law Judge. ~~He Judge, who shall serve as Director and have of the Office. The Chief Administrative Law Judge has the powers and duties conferred on him that position by this Chapter and the Constitution and laws of this State. His State and may adopt rules to implement the conferred powers and duties.~~

The salary of the Chief Administrative Law Judge shall be fixed by the General Assembly in the Current Operations Appropriations Act. In lieu of merit and other increment raises, the Chief Administrative Law Judge shall receive longevity pay on the same basis as is provided to employees of the State who are subject to the State Personnel Act."

Section 12. G.S. 15A-952(g) reads as rewritten:

"(g) In superior or district court, the judge shall consider at least the following factors in determining whether to grant a continuance:

- (1) Whether the failure to grant a continuance would be likely to result in a miscarriage of justice;
- (2) Whether the case taken as a whole is so unusual and so complex, due to the number of defendants or the nature of the prosecution or otherwise, that more time is needed for adequate preparation; and
- (3) Whether the case involves physical or sexual child abuse when a victim or witness is under 16 years of age, and whether further delay would have an adverse impact on the well-being of the child.

- (4) Good cause for granting a continuance shall include those instances when the defendant, a witness, or counsel of record has an obligation of service to the State of North Carolina, including service as a member of the General ~~Assembly~~. Assembly or the Rules Review Commission."

Section 13. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 14th day of April, 1997.

s/ Dennis A. Wicker
President of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 2:00 p.m. this 23rd day of April, 1997