

## Chapter 150B.

### Administrative Procedure Act.

#### Article 1.

#### General Provisions.

#### § 150B-1. Policy and scope.

(a) Purpose. – This Chapter establishes a uniform system of administrative rule making and adjudicatory procedures for agencies. The procedures ensure that the functions of rule making, investigation, advocacy, and adjudication are not all performed by the same person in the administrative process.

(b) Rights. – This Chapter confers procedural rights.

(c) Full Exemptions. – This Chapter applies to every agency except:

- (1) The North Carolina National Guard in exercising its court-martial jurisdiction.
- (2) The Department of Health and Human Services in exercising its authority over the Camp Butner reservation granted in Article 6 of Chapter 122C of the General Statutes.
- (3) The Utilities Commission.
- (4) Repealed by Session Laws 2011-287, s. 21(a), effective June 24, 2011, and applicable to rules adopted on or after that date.
- (5) Repealed by Session Laws 2011-401, s. 1.10(a), effective November 1, 2011.
- (6) The State Board of Elections in administering the HAVA Administrative Complaint Procedure of Article 8A of Chapter 163 of the General Statutes.
- (7) The North Carolina State Lottery.
- (8) [Expired June 30, 2012.]

(d) Exemptions from Rule Making. – Article 2A of this Chapter does not apply to the following:

- (1) The Commission.
- (2) Repealed by Session Laws 2000-189, s. 14, effective July 1, 2000.
- (3) Repealed by Session Laws 2001-474, s. 34, effective November 29, 2001.
- (4) The Department of Revenue, with respect to the notice and hearing requirements contained in Part 2 of Article 2A. With respect to the Secretary of Revenue's authority to redetermine the State net taxable income of a corporation under G.S. 105-130.5A, the Department is subject to the rule-making requirements of G.S. 105-262.1.
- (5) The North Carolina Global TransPark Authority with respect to the acquisition, construction, operation, or use, including fees or charges, of any portion of a cargo airport complex.
- (6) The Department of Public Safety, with respect to matters relating to executions under Article 19 of Chapter 15 of the General Statutes and matters relating solely to persons in its custody or under its supervision, including prisoners, probationers, and parolees.
- (6a) The Criminal Justice Education and Training Standards Commission with respect to establishing minimum standards for in-service training for criminal justice officers under G.S. 17C-6(a)(14).
- (6b) The Sheriffs' Education and Training Standards Commission with respect to establishing minimum standards for in-service training for justice officers under G.S. 17E-4(a)(11).
- (7) The State Health Plan for Teachers and State Employees in administering the provisions of Article 3B of Chapter 135 of the General Statutes.

- (8) The North Carolina Federal Tax Reform Allocation Committee, with respect to the adoption of the annual qualified allocation plan required by 26 U.S.C. § 42(m), and any agency designated by the Committee to the extent necessary to administer the annual qualified allocation plan.
- (9) The Department of Health and Human Services in adopting new or amending existing medical coverage policies for the State Medicaid program pursuant to G.S. 108A-54.2.
- (10) The Economic Investment Committee in developing criteria for the Job Development Investment Grant Program under Part 2F of Article 10 of Chapter 143B of the General Statutes.
- (11) The North Carolina State Ports Authority with respect to fees established pursuant to G.S. 136-262(a)(11).
- (12) The Department of Commerce and the Economic Investment Committee in developing criteria and administering the Site Infrastructure Development Program under G.S. 143B-437.02.
- (13) The Department of Commerce and the Governor's Office in developing guidelines for the One North Carolina Fund under Part 2H of Article 10 of Chapter 143B of the General Statutes.
- (14) Repealed by Session Laws 2011-145, s. 8.18(a), as amended by Session Laws 2011-391, s. 19, effective June 15, 2011.
- (15) Repealed by Session Laws 2009-445, s. 41(b), effective August 7, 2009.
- (16) The State Ethics Commission with respect to Chapter 138A and Chapter 120C of the General Statutes.
- (17) The Department of Commerce in developing guidelines for the NC Green Business Fund under Part 2B of Article 10 of Chapter 143B of the General Statutes.
- (18) The Department of Commerce and the Economic Investment Committee in developing criteria and administering the Job Maintenance and Capital Development Fund under G.S. 143B-437.012.
- (18a) The Department of Commerce in developing criteria and administering the Expanded Gas Products Service to Agriculture Fund under G.S. 143B-437.020.
- (18b) The Department of Commerce in administering the Film and Entertainment Grant Fund under G.S. 143B-437.02A.
- (19) Repealed by Session Laws 2011-145, s. 8.18(a), as amended by Session Laws 2011-391, s. 19, effective June 15, 2011.
- (20) The Department of Health and Human Services in implementing, operating, or overseeing new 1915(b)/(c) Medicaid Waiver programs or amendments to existing 1915(b)/(c) Medicaid Waiver programs.
- (21) Reserved for future codification purposes.
- (22) The Department of Health and Human Services with respect to the content of State Plans, State Plan Amendments, and Waivers approved by the Centers for Medicare and Medicaid Services (CMS) for the North Carolina Medicaid program.
- (23) The Department of Natural and Cultural Resources with respect to operating hours, admission fees, or related activity fees at historic sites and museums pursuant to G.S. 121-7.3.
- (24) Tryon Palace Commission with respect to operating hours, admission fees, or related activity fees pursuant to G.S. 143B-71.

- (25) U.S.S. Battleship Commission with respect to operating hours, admission fees, or related activity fees pursuant to G.S. 143B-73.
- (26) The Board of Agriculture in the Department of Agriculture and Consumer Services with respect to the following:
  - a. Annual admission fees for the State Fair.
  - b. Operating hours, admission fees, or related activity fees at State forests.

The Board shall annually post the admission fee and operating hours schedule on its Web site and provide notice of the schedule, along with a citation to this section, to all persons named on the mailing list maintained pursuant to G.S. 150B-21.2(d).

- c. Fee schedules for the preparation of forest management plans developed pursuant to G.S. 106-1004.
  - d. Fees for State phytosanitary certificates.
- (27) The Department of Natural and Cultural Resources with respect to operating hours, admission fees, or related activity fees at:
  - a. The North Carolina Zoological Park pursuant to G.S. 143B-135.205.
  - b. State parks pursuant to G.S. 143B-135.16.
  - c. The North Carolina Aquariums pursuant to G.S. 143B-135.188.
  - d. The North Carolina Museum of Natural Sciences.

The exclusion from rule making for the setting of operating hours set forth in this subdivision (i) shall not apply to a decision to eliminate all public operating hours for the sites and facilities listed and (ii) does not authorize any of the sites and facilities listed in this subdivision that do not currently charge an admission fee to charge an admission fee until authorized by an act of the General Assembly.

- (28) The Division of Motor Vehicles with respect to fee adjustments under G.S. 20-4.02.
- (29) The Commission for Public Health with respect to adding to the Newborn Screening Program established under G.S. 130A-125 screening tests for Pompe disease, Mucopolysaccharidosis Type I (MPS I), and X-Linked Adrenoleukodystrophy (X-ALD).
- (30) **(For applicability, see editor's note)** The Retirement System Boards of Trustees established under G.S. 128-28 and G.S. 135-6 when adopting actuarial tables, assumptions, and contribution-based benefit cap factors after presentation of recommendations from the actuary. This exemption includes, but is not limited to, the following actuarial tables, assumptions, methods, and factors:
  - a. Joint and survivor tables.
  - b. Reserve transfer tables.
  - c. Interest rate assumptions.
  - d. Salary increase assumptions.
  - e. Mortality assumptions.
  - f. Separation and retirement assumptions.
  - g. Asset smoothing methods.
  - h. Actuarial cost methods.
  - i. Contribution-based benefit cap factors.
  - j. Required contribution rates.
  - k. Amortization policies.

- (31) The Retirement System Board of Trustees established under G.S. 128-28 with respect to determining if the total fund is providing sufficient investment gains to cover the additional actuarial liabilities on account of a one-time pension supplement authorized under G.S. 128-27(k1).
- (32) The Alcoholic Beverage Control Commission with respect to approval of alcoholic beverages to be sold in local ABC stores through the State warehouse and by special order pursuant to Article 8 of Chapter 18B of the General Statutes.
- (33) The Eastern North Carolina School for the Deaf, the North Carolina School for the Deaf, and the Governor Morehead School for the Blind.
- (34) The Department of Health and Human Services with respect to the development, application, and amendment of any formula under G.S. 122C-115.6.

(e) Exemptions From Contested Case Provisions. – The contested case provisions of this Chapter apply to all agencies and all proceedings not expressly exempted from the Chapter. The contested case provisions of this Chapter do not apply to the following:

- (1) The Department of Health and Human Services and the Department of Environmental Quality in complying with the procedural safeguards mandated by Section 680 of Part H of Public Law 99-457 as amended (Education of the Handicapped Act Amendments of 1986).
- (2) Repealed by Session Laws 1993, c. 501, s. 29.
- (3), (4) Repealed by Session Laws 2001-474, s. 35, effective November 29, 2001.
- (5) Hearings required pursuant to the Rehabilitation Act of 1973, (Public Law 93-122), as amended and federal regulations promulgated thereunder. G.S. 150B-51(a) is considered a contested case hearing provision that does not apply to these hearings.
- (6) Repealed by Session Laws 2007-491, s. 2, effective January 1, 2008.
- (7) The Department of Adult Correction.
- (8) The Department of Transportation, except as provided in G.S. 136-29.
- (9) The North Carolina Occupational Safety and Health Review Commission.
- (10) The North Carolina Global TransPark Authority with respect to the acquisition, construction, operation, or use, including fees or charges, of any portion of a cargo airport complex.
- (11) Repealed by Session Laws 2019-177, s. 8.2, effective July 26, 2019.
- (12) The State Health Plan for Teachers and State Employees with respect to disputes involving the performance, terms, or conditions of a contract between the Plan and an entity under contract with the Plan.
- (13) The State Health Plan for Teachers and State Employees with respect to (i) decisions by the Executive Administrator that an internal appeal is not subject to external review under G.S. 135-48.24, or (ii) a determination by the Executive Administrator, the Plan's designated utilization review organization, or a self-funded health maintenance organization under contract with the Plan that an admission, availability of care, continued stay, or other health care service has been reviewed and, based upon the information provided, does not meet the Plan's benefits offering, or requirements for medical necessity, appropriateness, health care setting, level of care, or effectiveness, and the requested service is therefore denied, reduced, or terminated.
- (14) The Department of Public Safety for hearings and appeals authorized under Chapter 20 of the General Statutes.

- (15) The Wildlife Resources Commission with respect to determinations of whether to authorize or terminate the authority of a person to sell licenses and permits as a license agent of the Wildlife Resources Commission.
- (16) Repealed by Session Laws 2011-399, s. 3, effective July 25, 2011.
- (17) Repealed by Session Laws 2022-74, s. 9D.15(y), effective April 1, 2023 – see note.
- (18) Hearings provided by the Department of Health and Human Services to decide appeals pertaining to adult care home resident discharges initiated by adult care homes under G.S. 131D-4.8.
- (19) The Industrial Commission.
- (20) The Department of Commerce for hearings and appeals authorized under Chapter 96 of the General Statutes.
- (21) The Department of Health and Human Services for actions taken under G.S. 122C-124.2, for decisions to approve or disapprove a merger or consolidation of area authorities under G.S. 122C-115.5, and for decisions to approve or disapprove a county request for realignment under G.S. 108D-46(b).
- (22) The Department of Public Safety, with respect to matters relating to executions under Article 19 of Chapter 15 of the General Statutes.
- (23) The Secretary of Environmental Quality for the waiver or modification of non-State cost-share requirements under G.S. 143-215.73J.
- (24) The Department of Information Technology in the written decision from a protest petition under G.S. 143B-1373.
- (25) The Department of Health and Human Services with respect to disputes involving the performance, terms, or conditions of a contract between the Department and any of the following:
  - a. A prepaid health plan, as defined in G.S. 108D-1.
  - b. A prepaid inpatient health plan, as defined in 42 C.F.R. § 438.2.
  - c. A primary care case management entity, as defined in 42 C.F.R. § 438.2.
- (26) The State Board of Education with respect to the disapproval, termination, renewal, or nonrenewal of charters under Article 14A of Chapter 115C of the General Statutes.
- (27) The Department of Health and Human Services with respect to the development and application of any formula under G.S. 122C-115.6.
- (28) The Department of Health and Human Services with respect to any decision under G.S. 122C-121.1(b) to discharge an employee of an area authority who is in a position designated as key personnel.
- (29) The Governor Morehead School for the Blind, Eastern North Carolina School for the Deaf, and the North Carolina School for the Deaf, with respect to eligibility determinations under G.S. 115C-150.13A.

(f) Exemption for the University of North Carolina. – Except as provided in G.S. 143-135.3, no Article in this Chapter except Article 4 applies to The University of North Carolina.

(g) Exemption for the State Board of Community Colleges. – Except as provided in G.S. 143-135.3, no Article in this Chapter except Article 4 applies to the State Board of Community Colleges. (1973, c. 1331, s. 1; 1975, c. 390; c. 716, s. 5; c. 721, s. 1; c. 742, s. 4; 1981, c. 614, s. 22; 1983, c. 147, s. 2; c. 927, s. 13; 1985, c. 746, ss. 1, 19; 1987, c. 112, s. 2; c. 335, s. 2; c. 536, s. 1; c. 847, s. 2; c. 850, s. 20; 1987 (Reg. Sess., 1988), c. 1082, s. 14; c. 1111, s. 9; 1989, c. 76, s. 29; c. 168, s. 33; c. 373, s. 2; c. 538, s. 1; c. 751, s. 7(44); 1989 (Reg. Sess., 1990), c. 1004, s.

36; 1991, c. 103, s. 1; c. 418, s. 2; c. 477, s. 1; c. 749, ss. 9, 10; 1991 (Reg. Sess., 1992), c. 1030, s. 46; 1993, c. 501, s. 29; 1993 (Reg. Sess., 1994), c. 777, ss. 4(j), 4(k); 1995, c. 249, s. 4; c. 507, s. 27.8(m); 1997-35, s. 2; 1997-278, s. 1; 1997-412, s. 8; 1997-443, ss. 11A.110, 11A.119(a); 2000-189, s. 14; 2001-192, s. 1; 2001-299, s. 1; 2001-395, s. 6(c); 2001-424, ss. 6.20(b), 21.20(c); 2001-446, s. 5(d); 2001-474, ss. 34, 35; 2001-496, s. 8(c); 2002-99, s. 7(b); 2002-159, ss. 31.5(b), 49; 2002-172, s. 2.6; 2002-190, s. 16; 2003-226, s. 17(b); 2003-416, s. 2; 2003-435, 2nd Ex. Sess., s. 1.3; 2004-88, s. 1(e); 2005-133, s. 10; 2005-276, s. 31.1(ff); 2005-300, s. 1; 2005-344, s. 11.1; 2005-455, s. 3.3; 2006-66, ss. 12.8(c), 8.10(d); 2006-201, s. 2(a); 2007-323, ss. 13.2(c), 28.22A(o); 2007-345, s. 12; 2007-491, s. 2; 2007-552, 1st. Ex. Sess., s. 3; 2008-107, s. 10.15A(f); 2008-168, s. 5(a); 2008-187, s. 26(b); 2009-445, s. 41(b); 2009-475, s. 4; 2009-523, s. 2(a); 2010-70, s. 2; 2011-85, s. 2.11(a); 2011-145, ss. 8.18(a), (b), 14.6(j), 19.1(g), (h); 2011-264, s. 4; 2011-272, s. 5; 2011-287, s. 21(a), (b); 2011-391, s. 19; 2011-399, ss. 2, 3; 2011-401, ss. 1.10(a), (b); 2012-43, s. 3; 2013-85, s. 10; 2013-360, ss. 19.2(d), 12H.6(c), 12H.9(c); 2014-100, ss. 13.2(a), 15.13(b), 15.14B(b); 2014-103, s. 17; 2015-198, ss. 3, 4; 2015-241, ss. 14.6(g), 14.11(a), 14.30(c), (s), (u), (v), (w), 29.30(t); 2016-113, s. 7(a); 2017-6, s. 3; 2017-186, s. 2(ddddddddd); 2017-212, s. 4.3; 2018-5, ss. 11E.1(b), 37.1(h); 2018-142, s. 21; 2018-146, ss. 3.1(a), (b), 6.1; 2019-81, s. 10; 2019-165, s. 7; 2019-177, s. 8.2; 2020-48, s. 4.1(c); 2021-125, s. 3(c); 2021-138, s. 12(a); 2021-178, s. 3(b); 2021-180, ss. 10.2(b), 14.2(b), 19C.9(oooo); 2022-51, s. 12; 2022-74, s. 9D.15(y); 2023-10, s. 2(e); 2023-11, s. 3.2(f), (g); 2023-121, s. 8(a); 2023-134, ss. 9E.23(b1), 9G.7A(a15), (a16), (a17), (d2); 2024-1, s. 2.8E(a); 2024-57, s. 3J.5(c).)