

LEGISLATION
REPORTS

File # 126

C.2

LEGISLATIVE RESEARCH COMMISSION

ADMINISTRATIVE RULES



RECEIVED
JAN 22 1981
INSTITUTE OF GOVERNMENT
UNIVERSITY OF NORTH CAROLINA

REPORT TO THE 1981 GENERAL ASSEMBLY OF NORTH CAROLINA

**A limited number of copies of this report is available for
distribution through the Legislative Library.**

**Room 2126, 2226
State Legislative Building
Raleigh, N. C. 27611**

Phone: (919) 733-7778

STATE OF NORTH CAROLINA
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH 27611



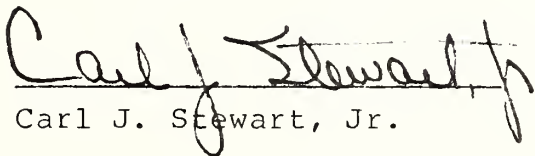
January 14, 1981

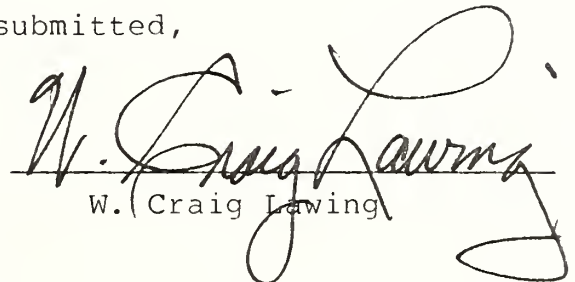
TO THE MEMBERS OF THE 1981 GENERAL ASSEMBLY:

The Legislative Research Commission herewith reports to the 1981 General Assembly on the work of its Administrative Rules Review Committee. The report is made pursuant to G.S. 120-33.3.

This report was prepared by the Legislative Research Commission's Administrative Rules Review Committee and is transmitted without recommendation, by the Legislative Research Commission for your consideration.

Respectfully submitted,


Carl J. Stewart, Jr.


W. Craig Lawing

Cochairmen
Legislative Research Commission



Digitized by the Internet Archive
in 2013

TABLE OF CONTENTS

	<u>Page</u>
Letter of Transmittal	i
Procedures	1
Work	6

Appendices

A. ARTICLE 6C, CHAPTER 120, NORTH CAROLINA GENERAL STATUTES	A-1
B. Legislative Research Commission Membership List	B-1
Committee Membership List	B-1
C. Agency Report	C-1
D. Committee Budget	D-1
E. Table of Rules Filed	E-1
F. North Carolina Board of Nursing	F-1
G. Department of Labor	G-1
H. Department of Natural Resources and Community Development - Wildlife Commission	H-1
I. ARRC Proposed Legislation on Committee Structure	I-1
J. Section by Section Analysis	J-1

ADMINISTRATIVE RULES REVIEW COMMITTEE
PROCEDURES

Article 6C of Chapter 120 of the General Statutes (G.S.) sets forth the statutory scheme underlying the legislative review of administrative rules. A copy of this Article is attached as Appendix A.

Administrative rules in North Carolina are reviewed by the legislative branch in a two-tier process in the Legislative Research Commission. The review began in October 1977 for a two-year trial period (Chapter 915 of the 1977 Session Laws). The 1979 General Assembly extended the life of the review process for an additional two years (Chapter 1030 of the 1979 Session Laws), and enlarged the membership of the Committee from seven to nine (Chapter 1314 of the 1979 Session Laws).

The Administrative Review Committee is the first tier of the review process. The Committee is a permanent committee of the Legislative Research Commission.

The Legislative Research Commission, authorized by Article 6B of Chapter 120 of the General Statutes, is a general purpose study group. The Commission is co-chaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly.

The Committee's nine members are appointed by the cochairmen of the Legislative Research Commission from the General Assembly for two-year terms. The chairman of the Committee is elected by the Committee members (G.S. 120-30.26). In the past, there has been an informal agreement that the chairmanship is held by the house with the fewer members on the Committee. The names of the present Committee members are listed in Appendix B.

The Committee must meet monthly (G.S. 120-30.27). The Committee is staffed from the Legislative Services Office. The Director of Research and three staff attorneys aid the Committee's work on a part-time basis. The Committee employs a research assistant and two computer operators.

G.S. 120-30.25 required the Attorney General to submit copies of all rules filed prior to October 1, 1977 to the Legislative Research Commission for review by the Committee. Rules filed after this date must be filed with the Director of Research prior to being filed with the Attorney General. No rule is effective until filed with the Attorney General (G.S. 150A-59; American Guar. and Liab. Ins. Co. v. Ingram, 32 N. C. App. 552 [1977]) and no rule can be filed with the Attorney General unless it bears a notation that it has been filed with the Director of Research (G.S. 150-60).

G.S. 150A-58 defines rule for the purpose of filing requirements. A rule is every rule adopted by any agency but

does not include rules relating only to internal management of any agency, directives or advisory opinions to any specific person or group with no statewide applicability, dispositions of any specific issue by adjudication, or rate or tariff orders. The definition of agency excludes the State judiciary and legislature, the Employment Security Commission, and political subdivisions of the State. The Industrial Commission and Utilities Commission are exempted from filing with the Director of Research by G.S. 150A-60 and G.S. 120-30.24(1).

G.S. 120-30.25(c) describes the information contained in the Agency Report (see Appendix C) which is required to be filed with each rule. The report requires a brief summary of the rule, citation of the statutory authority for the rule, a statement of the circumstances requiring adoption, amendment, or repeal of the rule, and the effective date of the rule.

Rules filed with the Director are numbered in the order in which they are received. The rules are summarized. With the aid of the computer, the rule's catchline, citation, summary, date of filing, and date of expiration of the review period are entered into a log. The professional staff reviews the rules filed for content and statutory authority. In the log the Committee staff assigns two stars to those rules with which there are serious questions as to statutory authority.

G.S. 120-30.28 requires the Director to submit the rules to the Committee, which determines if the agencies had statutory

authority to promulgate the rules. At its monthly meeting, the Committee reviews the log. If the Committee finds that an agency lacked statutory authority to promulgate a rule, it "objects" to that rule. The Director transmits the report of the objection and the reasons for it to the agency. A sixty-day time period is set in the statute for review of a rule by the Committee. In the case of rules in which the expiration period has expired, G.S. 120-30.35 allows the cochairmen of the Legislative Research Commission to call a public hearing on recommendation of the Committee or motion of any Commission member to review these rules. The statute sets a fifteen-day notice of hearing requirement. To date, the Commission has utilized this statute in one instance.

Following the monthly meeting, the staff sends letters of objection and of inquiry to the appropriate agencies pursuant to the Committee's direction. The Committee has taken the position that a letter of inquiry (which asks questions of an agency about a rule without objecting to the rule) tolls the sixty-day period of the Committee's review. The Committee, once a month, reports to the Legislative Research Commission on the action taken on rules (G.S. 120-30.32).

An agency must amend a rule to which the Committee has objected or return it to the Committee without change within 60 days of notification of the objection (G.S. 120-30.29). Any unchanged rules are referred together with the Committee's

objection by the Director to the Legislative Research Commission.

The second tier of the review process is before the Legislative Research Commission. The Legislative Research Commission may review the rule to determine any lack of statutory authority. The Commission has 60 days to review a rule referred to it.

G.S. 120-30.17 authorizes the Legislative Research Commission:

(5) To review the rules of all administrative agencies pursuant to Article 6C of this Chapter to determine whether or not the agencies acted within their statutory authority in promulgating the rules.

(6) To meet during the regular session of the General Assembly only for the purposes of reviewing rules pursuant to G.S. 120-30.30 or holding public hearings pursuant to G.S. 120-30.35.

If the Commission agrees with the Committee, the rule and the Commission's objections are forwarded to the Director who transmits them to the agency (G.S. 120-30.30).

Objections by the Commission to rules are noted in the history note of the rule contained in the Administrative Code (12

NCAC 2G .0411). Copies of objections by the Committee and by the Commission are sent to agency's head, the administrative procedure act coordinator, and attorney; the head of the State Department in which the agency is contained; and the Governor, if the Department is directly under his supervision.

The agency must respond to the Commission within 30 days of notification of the objection by either amending the rule to meet the Commission's objection or returning the unamended rule (G.S. 120-30.31).

A rule's effectiveness is not affected by the administrative rules review procedure. In the case of a rule which is the basis of a Legislative Research Commission objection, the Commission may submit a report to the next session of the General Assembly recommending "legislative action" (G.S. 120-30.33).

The Legislative Research Commission usually requests proposed legislation from the Committee which reviews the drafts prepared by the staff.

WORK

Through the December, 1980 meeting of the Committee, there have been 12,851 filings of rules. Some of those filings were later rejected by the Attorney General for errors in formatting. In the 38 months the Committee has been in existence, it has reviewed nearly 12,000 rules. The table in Appendix D shows the

number of rules reviewed by each year and month broken down into amendments, recodifications, adoptions, readoptions, repeals and emergency rules.

Pursuant to the authority contained in Article 6C of Chapter 120 of the General Statutes, the Legislative Research Commission recommends the indicated legislative action on the following matters.

North Carolina Board of Nursing

21 NCAC 36 .0202 (Request for and Removal from Inactive Status)

Rule 21 NCAC 36 .0202 (Request for and Removal from Inactive Status) was filed for review with the Administrative Rules Review Committee (ARRC) on November 28, 1979 by the North Carolina Board of Nursing. This rule and supporting materials are found in Appendix F. At its January 24, 1980 meeting the Committee objected to this rule based on a lack of statutory authority. The Board of Nursing had cited G.S. 90-171.4 (a) and (b) as authority for requiring "evidence of successful completion of a North Carolina Board of Nursing approved refresher course", when a registrant's license had lapsed for a period of five years or more. The statute, G.S. 90-171.4 states that "the board may require proof of competence to resume the practice of nursing...".

The Board of Nursing responded on February 18, 1980 that

"completion of a Board-approved refresher course is the submission of proof of competence". The Legislative Research Commission (LRC) continued the committee objection on April 24, 1980. At the May, 1980 meeting of the Legislative Research Commission, the Commission directed the ARRC to prepare legislation to correct the statutory authority.

The APFC approved an amendment to G.S. 90-171.3 and 90-171.4 to allow the Board of Nursing to require a refresher course for removal from inactive status. (Appendix F)

Department of Labor

13 NCAC 3 .0209 (Certificate and Inspection Fees)

Rule 13 NCAC 3 .0209 (Certificate and Inspection Fees) was filed with the Administrative Rules Review Committee on February 8, 1980, by the North Carolina Department of Labor. This rule and supporting materials are found in Appendix G.

During its March 20, 1980, meeting the Administrative Rules Review Committee formally objected to the Rule. The objection was raised on the basis that there existed no specific authority to charge an internal inspection fee of four dollars (\$4.00) and that the schedule of fees for the inspection of power boilers and heating boilers exceeds the schedule set forth in the statute (G.S. 95-68). The Department responded by citing its general statutory authority and provided a controverted analysis of the

issue and controlling authority. On May 29, 1980, the Legislative Research Committee continued the objection made by the Administrative Rules Review Committee. The Department of Labor then responded, in a letter dated June 10, 1980, by returning the rule without change. However, the Department, in a letter dated June 11, 1980, requested that the Administrative Rules Review Committee recommend legislation which would repeal Article 7 (the existing statutory authority prohibiting adoption of the rule). On October 21, 1980 a draft of the legislation which would resolve the conflict in statutory authority was submitted to the committee from the Department. At the December 23, 1980, meeting of the Administrative Rules Review Committee, this drafted bill was approved by the Committee.

Department of Natural Resources and Community Development
Wildlife Resources Commission

15 NCAC .0104 (a) (5)

(Certificate of Number)

15 NCAC 10F .0102

(Application for Certificate of Number)

Rules 15 NCAC .0104 (a) (5) (Certificate of Number) and 15 NCAC 10F .0102 (Application for Certificate of Number) were filed with the Administrative Rules Review Committee (Committee) on August 1, 1980, by the Department of Natural Resources and Community Development, Wildlife Resources Commission. These

rules and supporting materials are found in Appendix H.

During its August 27, 1980, meeting the Committee formally objected to these rules. The Committee objected to the permanent numbering of publically owned motorboats and the numbering without charge of motorboats owned by non-profit rescue squads. The statutory authority cited by the Wildlife Commission does not provide for either situation. In a letter dated October 27, 1980, the Wildlife Resources Commission returned the two rules without change and agreed with the Committee's position. The Committee then forwarded these objections to the Legislative Research Commission which continued its objection on December 16, 1980 and referred the question of statutory changes back to the Committee. During its December 23, 1980, meeting the Administrative Rules Review Committee approved corrective legislation to grant authority to the Wildlife Commission to promulgate these rules. This legislation has been reviewed and approved by the Wildlife Resources Commission. (See Appendix H)

CHANGE IN COMMITTEE STRUCTURE

As outlined above, the process of review reveals itself as a lengthy and involved one. The determination by the Administrative Rules Review Committee (ARRC) that a rule does not have adequate statutory authority even if agreed to by the agency rarely results in the rule being repealed or modified promptly or within the time limits contained in G. S. 120-30.29.

Normally the agency will issue instructions for negotiation with the Committee at the agency's next meeting following receiving an ARRC objection. Frequently these negotiations last for six or more months while the contested rule remains in effect and in the Administrative Code. Where the agency meets infrequently and erratically many months may pass before the offending provisions are removed even when there is no dispute.

Where, disagreeing with the ARRC, an agency believes it has the requisite authority for the rule, the agency returns the rule and the ARRC's objection which is then forwarded to the Legislative Research Commission (LRC) for the Commission's independent review. Because of other duties, the LRC, itself, does not meet frequently. During the last biennium, the LRC delegated to its co-chairmen, in the absence of a meeting, the power to "continue the objection" of ARRC to the rule. The positions of the LRC and of its co-chairmen have been generally to defer to the expertise and recommendations of the ARRC -- both with regard to the continuation of the objection and the recommendation of appropriate legislation to correct the matter if this is deemed necessary.

The present statutory structure of the review process also causes delay in the filling of vacancies on the ARRC. These vacancies must be filled by vote of the entire LRC, necessitating a meeting. This development sometimes causes difficulty in obtaining a quorum for the Committee.

The present statutory structure, under which the ARRC and LRC have conducted their review for the last three and one-quarter years is cumbersome and inefficient and needs modification. The delay in repealing or amending a rule where the agency and ARRC may both agree that the statutory authority is lacking, the committee believes, neither speaks well of the administrative process nor does it adequately protect the public.

The Committee is of the opinion that the citizens and businesses of this State need the protection of an effective and efficient oversight of administrative rules by a legislative instrumentality.

The ARRC's legislative proposal to correct the above cited defects and a section-by-section analysis of the proposal are found at APPENDICES I and J, respectively. Briefly the ARRC recommends that:

1. its membership be expanded by one to give balanced representation to the North Carolina House of Representatives and Senate;
2. the co-chairmen of the LRC, the highest officers of both chambers, appoint members and fill vacancies;
3. the ARRC remains under the Legislative Research Commission, but that it be given the total responsibility of regularly reviewing administrative rules;

4. the effectiveness of all rules be delayed until they can be adequately reviewed by the ARRC;
5. that the ARRC be given the power to further delay the effectiveness of a rule it finds without statutory authority, pending review of the entire matter and its resolution by the next session of the General Assembly;
6. the presumption be eliminated that an administrative rule is valid and within the statutory authority of the agency promulgating it.
7. an appropriation of \$70,000 be made for each year of the next biennium to conduct the Committee's work. The Committee's proposed budget is found at Appendix D.

The ARRC believes that its proposal charts a reasonable and prudent course of legislative oversight of administrative agency rule-making decisions. The committee recommends its careful consideration and urges its enactment.

A P P E N D I C E S

CHAPTER 120. GENERAL ASSEMBLY

ARTICLE 6C.

Review of Administrative Rules.

§ 120-30.24. Definitions.--As used in this Article:

- (1) "Agency" means every agency, institution, board, commission, bureau, department, division, council, member of the Council of State, or officer of the executive branch of State government, any provision of any other statute to the contrary notwithstanding. The provisions of this Article do not apply to agencies in the judicial branch of State government, agencies in the legislative branch of State government, the Industrial Commission, the Utilities Commission, the Employment Security Commission, counties, cities, towns, villages, other municipal corporations or political subdivisions of the State or any agencies of such subdivisions, county or city boards of education, the University of North Carolina, other local public districts, units, or bodies of any kind, or private corporations created by act of the General Assembly.
- (2) "Commission" means the Legislative Research Commission.

- (3) "Committee" means the Administrative Rules Review Committee created by G.S. 120-30.26.
- (4) "Director" means the Director of Research of the Legislative Services Commission.
- (5) "Rule" means every rule, regulation, ordinance, standard, and amendment thereto or repeal thereof adopted by any agency and includes rules and regulations regarding substantive matters, standards for products, and procedural rules for complying with statutory or regulatory authority or with requirements or executive orders of the Governor.

"Rule" does not include:

- a. Rules, procedures, or regulations that relate only to the internal management of an agency;
- b. Directive or advisory opinions to any specifically named person or group with no general applicability throughout the State;
- c. Disposition of any specific issue or matter by the process of adjudication; or
- d. Orders establishing or fixing rates or tariffs.

(1977, c. 915, s. 1; 1979, c. 541, s. 3.)

§ 120-30.35. Filing of rules.--(a) On October 1, 1977, the Attorney General shall transfer to the office of the Legislative Research Commission a copy of every rule that has been filed with him pursuant to Article 5 of General Statutes Chapter 150A.

Rules adopted prior to October 1, 1977, may be reviewed by the Committee and by the Commission.

(b) Rules adopted by an agency on or after October 1, 1977, shall be filed in the office of the Director prior to the filing made with the Attorney General pursuant to G.S. 150A-59.

(c) The rules filed with the Director pursuant to subsection (b) of this section shall be accompanied by a report. This report shall contain:

- (1) A brief summary of the content of the rule if adopted or repealed, or a brief summary of the change in the rule if amended;
- (2) A citation of the enabling legislation purporting to authorize the adoption, amendment, or repeal of the rule;
- (3) A statement of the circumstances that required adoption, amendment, or repeal of the rule; and
- (4) A statement of the effective date of the rule.

(d) Executive orders of the Governor are required to be filed, but executive orders of the Governor are not subject to the provisions of G.S. 120-30.28 through G.S. 120-30.35. (1977, c. 915, s. 1.)

§ 120-30.26. Administrative Rules Review Committee.--There is created a permanent committee of the Legislative Research Commission to be known as the Administrative Rules Review Committee. The Committee shall be composed of nine members. On October 1 of each odd-numbered year, the cochairmen of the

Legislative Research Commission shall jointly appoint Committee members from the membership of the General Assembly for terms of two years, and the members appointed shall elect one of their number to serve as chairman. Any vacancy that occurs in the membership of the Committee for any reason other than the expiration of a term shall be filled for the remainder of the unexpired term by election of a member of the General Assembly by the Commission at its next meeting after the occurrence of the vacancy. The Committee shall perform all of the duties of the Commission with respect to reviewing rules of administrative agencies except as provided in G.S. 120-30.35. (1977, c. 915, s. 1; 1979, c. 1030, s. 3.; 1979, c. 1314, s. 1.)

§ 120-30.27. Meetings of Committee.--The Committee shall meet at least monthly at times and places specified by the chairman. A quorum of the Committee shall consist of the chairman and three other Committee members, or a majority of the Committee, whichever is fewer. The members of the Committee shall be compensated for attending meetings as provided in G.S. 120-30.18. Professional, clerical or other employees required by the Committee shall be provided in accordance with G.S. 120-32. (1977, c. 915, s. 1.; 1979, c. 1314, s. 2.)

§ 120-30.28. Review of rules.--(a) After a rule is filed with the Director, he shall submit it to the Committee, which may determine whether or not the agency acted within its statutory authority in promulgating the rule.

(b) If the Committee finds that an agency did not act within

its statutory authority in promulgating a rule the Committee shall report that fact to the Director who shall transmit the report to the agency that made the rule. The report shall include a written statement of the Committee's objections and the reasons therefor.

(c) The Committee shall review a rule submitted to it by the Director within 60 days following the submission of the rule. (1977, c. 915, s. 1.)

§ 120-30.29. Objections of Committee.--The agency that filed a rule to which the Committee objects may amend the rule to remove the cause of the Committee's objections and return the rule to the Committee for further review. The agency may return the rule without change with the Committee's notation of objection attached. The agency shall return the rule with or without change within 60 days of the notification to the agency of the Committee's objection. When the rule to which the Committee has objected is returned without change, the rule and notation of objection shall be referred by the Director to the Commission. (1977, c. 915, s. 1.)

§ 120-30.30. Review of rule by Legislative Research Commission.--(a) The Commission may review the rule in the same manner as the Committee to determine whether or not the agency acted within its statutory authority in promulgating the rule.

(b) If the Commission determines that an agency did not act within its statutory authority in promulgating a rule, a written statement of its objections and statement of its reasons shall be

attached to the rule, and the rule and objection and statement of reasons shall be forwarded to the Director, who shall transmit it to the rule-making agency.

(c) The Commission shall act on the rule submitted in accordance with G.S. 120-30.29 within 60 days after the rule was returned to the Committee by the rule-making agency. (1977, c. 915, s. 1.)

§ 120-30.31. Regulation objected to by Legislative Research Commission.--The agency may revise a rule to remove the cause of the objections of the Commission, and may return the revised rule to the Commission or it may return the rule without change with the Commission's objections attached. The agency shall return the rule with or without change within 30 days of the notification to the agency of the Commission's objections. (1977, c. 915, s. 1.)

§ 120-30.32. Reports of the Committee.--The Committee shall report monthly to the Commission on all actions taken on rules. (1977, c. 915, s. 1.)

§ 120-30.33. Legislative Research Commission recommendations.--All rules that have been reviewed by the Committee and the Commission shall remain in effect. If the agency returns the rule with the Committee or Commission objections attached without change, the Commission may submit a report to the next regular session of the General Assembly recommending legislative action.

§ 120-30.34. Emergency rules.--Rules adopted in accordance

with the procedures of G.S. 150A-13 may be reviewed by the Committee. The Committee, in addition to reviewing the rules, may review the reasons given in the agency finding of emergency. (1977, c. 915, s. 1.)

§ 120-30.35. Hearings.--(a) Notwithstanding the provisions of G.S. 120-30.28(c) and G.S. 120-30.35(c), the cochairmen of the Commission may call a public hearing on any rule upon the recommendation of the Committee or upon the motion of any member of the Commission.

(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 cochairmen of the Commission consider to be persons that may be affected by the rule, or that may request copies of the notice.

(c) The provisions of G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Committee and the Commission. (1977, c. 915, s. 1.)

APPENDIX B

LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP

House Speaker Carl J. Stewart, Jr.
CoChairman

Senate President Pro Tempore
W. Craig Lawing, CoChairman

Representative Chris S. Barker, Jr.

Senator Henson P. Barnes

Representative John R. Gamble, Jr.

Senator Melvin Daniels, Jr.

Representative H. Parks Helms

Senator Carolyn Mathis

Representative John J. Hunt

Senator R. C. Soles, Jr.

Representative Lura S. Tally

Senator Charles E. Vickery

MEMBERSHIP OF ADMINISTRATIVE RULES REVIEW COMMITTEE

1979-1981

Senator Robert B. Jordan, III, Chairman

Senator William A. Creech

Senator Cecil R. Jenkins, Jr.

Senator Charles E. Vickery

Representative William E. Clark

Representative Charles D. Evans

Representative James F. Morgan

Representative Martin L. Nesbitt

Representative Kenneth B. Spaulding

DATE FILED:

AGENCY REPORT: Legislative Review of Administrative Rules
(G.S. 120-30.20 et seq.)

Date: _____ (for Receipt Stamp)

From: _____
(name)
Adm. Procedures Act Coordinator - _____
(agency & address)

Phone: _____

To: Terrence D. Sullivan
Legislative Research Commission
Legislative Annex
10 East Jones Street
Raleigh, North Carolina 27611 - Phone: 919-733-7044
919-733-6182

LE: _____
(citation; N. C. Administrative Code)

(catchline)

1) RULE SUMMARY

2) STATUTORY AUTHORITY CITATION

3) CIRCUMSTANCES REQUIRING RULE

4) EFFECTIVE DATE

Administrative Rules Review Committee Policies:

1) 60 DAY INITIAL REVIEW PERIOD

G.S. 120-30.23(c) sets up a 60 day period from the time of filing of a rule for the Administrative Rules Review Committee to review the rule. If an Agency has not been notified of an objection to a rule within 60 days of the filing of the rule, the Agency can consider that the rule has been accepted (not approved) by the Committee. No further formal review of the rule will be undertaken by the Committee unless there is a decision to proceed under the public hearing provision of G.S. 120-30.30.

2) CITATION TO FEDERAL LAW OR REGULATION

G.S. 120-30.20(c)(2) requires citation of North Carolina statutory authority for a rule when the rule is filed with the Committee. The Committee requests Agencies to also cite any Federal law or regulation that is relevant to the rule. Some brief treatment of the relevancy of the Federal law or regulation should be included in the statement of circumstances requiring the rule.

3) FILING OF READOPTED RULES

The case of American Guarantee & Liability Insurance Company v. Ingram, 32 N.C. App. 552, has been interpreted to require readoption of rules that do not meet certain procedural requirements. The Committee requests that Agencies give notice of all rules readopted on or after October 1, 1977, in response to this case, but the report on a rule required by G.S. 120-30.20(c) is necessary only with respect to new material included in the readoption. A report shall be made to the Committee only on new rules, amendments to old rules, and repeal of old rules; no report is required on simple readoption of rules identical to old rules.

11/1/77

ADMINISTRATIVE RULES REVIEW COMMITTEE
LEGISLATIVE RESEARCH COMMISSION

BUDGET FOR THE 1981-82 FISCAL YEAR

Members Subsistence and Travel			
12 Monthly Meetings x 9 members x \$90		\$	9,720.00
Special Travel and Subsistence			4,000.00
Staff:			
Director of Research			
Attorney			
Committee Assistant			
Computer Operator I @	\$12,740.00	\$12,740.00	
Social Security		791.00	
Retirement		1,231.00	
Hospital		396.00	
		<u>\$15,148.00</u>	
Computer Operator I @	\$13,104.00	\$13,104.00	
Social Security		804.00	
Retirement		1,266.00	
Hospital		396.00	
		<u>\$15,570.00</u>	
Subtotal		\$30,718.00	30,718.00
Computer Services			
Terminal, Computer Time, etc.			
(\$1,500/month x 12 months)			18,000.00
Copying and Printing			3,000.00
Reserve/Furnishings and Materials			3,000.00
Telephone and Postage			1,562.00
			<hr/>
		TOTAL	\$ 70,000.00
			<u>=====</u>

Approved by the Committee 12/23/80

LOG NO. & DATENUMBER OF RULES

	Amend.	Recod.	Adopt.	Readopt	Repeal	Emerg.	TOTALS
# 1 - Nov. '77	42	3	35	0	1	0	81
# 2 - Dec. '77	40	0	26	5	5	0	76
1977 TOTALS	82	3	61	5	6	0	157
# 3 - Jan. '78	130	0	140	29	12	0	311
# 4 - Feb. '78	214	0	44	9	7	0	274
# 5 - March '78	136	0	71	3	10	0	220
# 6 - April '78	139	15	106	2	44	43	349
# 7 - May '78	58	0	31	7	7	5	108
# 8 - June '78	71	0	23	6	21	0	121
# 9 - July '78	80	0	222	5	30	0	337
#10 - Aug. '78	301	0	90	739	20	6	1156
#11 - Sept. '78	36	0	172	0	63	1	272
#12 - Oct. '78	112	0	95	0	98	2	307
#13 - Nov. '78	263	0	294	0	13	1	571
#14 - Dec. '78	165	0	115	0	48	2	330
1978 TOTALS	1705	15	1403	800	373	60	4356

LOG NO. & DATE

	Arend.	Recod.	Adopt.	Readont	Repeal	Emerg.	TOTALS
#15 - Jan. '79	61	0	163	0	21	1	246
#16 - Feb. '79	78	0	22	0	18	0	118
#17 - March '79	117	0	46	0	18	1	182
#18 - April '79	76	0	93	5	32	0	206
#19 - May '79	176	0	73	17	7	0	273
#20 - June '79	223	0	196	38	62	0	519
#21 - July '79	169	0	82	0	78	1	330
#22 - Aug. '79	118	0	339	1	36	0	494
#23 - Sept. '79	127	0	126	1	18	0	272
#24 - Oct. '79	194	0	195	0	20	70	479
#25 - Nov. '79	98	0	108	0	16	11	233
#26 - Dec. '79	216	0	252	0	16	12	496
1979 TOTALS	1653	0	1695	62	342	96	3848

LOG NO. & DATE

	Amend.	Recod.	Adopt.	Readopt	Repeal	Emerg.	TOTALS
#27 - Jan. '80	140	2	360	0	15	1	518
#28 - Feb. '80	51	0	252	12	38	0	393
#29 - March '80	91	0	169	0	10	0	270
#30 - April '80	239	0	123	0	21	6	389
#31 - May '80	27	0	18	0	6	1	52
#32 - June '80	248	87	129	0	23	0	487
#33 - July '80	380	3	149	0	31	1	564
#34 - Aug. '80	118	1	55	0	8	1	183
#35 - Sept. '80	135	3	256	0	10	0	404
#36 - Oct. '80	120	0	230	0	14	2	366
#37 - Nov. '80	212	0	163	21	35	0	431
#33 - Dec. '80	144	0	165	87	63	5	464
1980 TOTALS	1905	96	2069	120	283	17	4490
FINAL TOTALS	5345	114	5228	987	1004	173	12851

NORTH CAROLINA BOARD OF NURSING

CONTENTS

- I. Rule
 - A. Agency Report (November 28, 1979)
 - B. Rule 21 NCAC 36 .0202 (Request for and Removal from Inactive Status)
- II. Statutory Authority
 - A. G.S. 90-162
 - B. G.S. 90-171.3
 - C. G.S. 90-171.4
- III. Committee Objection
 - A. Correspondence - January 28, 1980
 - B. Objection Form
- IV. N. C. Board of Nursing's Response - Correspondence - February 25, 1980
- V. Correspondence Referring Rule to Legislative Research Commission (March 20, 1980)
- VI. Legislative Research Commission Response (April 25, 1980)
- VII. N. C. Board of Nursing's Response - Correspondence (May 29, 1980)
- VIII. Committee Request for Legislative Proposals - Correspondence (September 18, 1980)
- IX. N. C. Board of Nursing Response - Correspondence (October 10, 1980)

DATE FILED:

REPORT: Legislative Review of Administrative Rules
(G.S. 120-30.20 et seq.)

Date: November 5, 1979

(for Receipt Stamp)

From: Dixie H. King
(name)

Adm. Procedures Act Coordinator - North Carolina Board of Nursing
(agency & address)

P.O. Box 2129, Raleigh, North Carolina 27602

Phone: (919) 828-0740

To: Terrence D. Sullivan
Legislative Research Commission
Legislative Annex
10 East Jones Street
Raleigh, North Carolina 27611 - Phone: 919-733-7044
21 NCAC 36 .0202 and .0203

(citation; N. C. Administrative Code)

Members of North Carolina Board of Nursing
(catchline)

9382-9383

RULE SUMMARY

Additional rules and regulations require nurse registrants with lapsed or inactive licenses, for five (5) years or more, to complete a Board of Nursing approved refresher course.

STATUTORY AUTHORITY CITATION

G.S. 90-162; G.S. 90-171.3 and G.S. 90-171.4

CIRCUMSTANCES REQUIRING RULE

Nurse registrants without current license for five (5) years or more should demonstrate that their knowledge and skills are updated to assure they are qualified to render safe nursing care. This requirement is consistent with the Board's responsibility to protect the public.

EFFECTIVE DATE

January 1, 1980

(g)

Regulation 21 NCAC 36 .0202 REQUEST FOR AND REPEVAL FROM INACTIVE STATUS has been amended by the addition of (g) to read as follows:

(g) On or after January 1, 1980, a registrant whose license has lapsed for a period of five years or more, or whose license has been inactive for a period of five years or more must provide evidence of successful completion of a North Carolina Board of Nursing approved refresher course to be eligible to apply for current license as RN or LPN, whichever applies; however, if such registrant was originally licensed in North Carolina and can present verified evidence of current license in another state, the license may be renewed without completing refresher course.

- (1) The offering of a refresher course must be conducted by a Board approved post-secondary education institution in North Carolina or by a Board approved health care institution in North Carolina.
- (2) The refresher course must be approved by the N.C. Board of Nursing prior to applicant enrollment.
- (3) Evidence of successful completion of an approved refresher course by a registrant shall be given by the course provider to the N.C. Board of Nursing.
- (4) In seeking approval, a provider must present evidence to the N.C. Board of Nursing of:
 - (A) learning experiences, time allocation and evaluation plans for a registrant's renewal of abilities to practice nursing safely as defined in 90-158 and as elaborated in the 1977 N.C. Board of Nursing's "Interpretation of the Legal Definitions of Nursing Practice";
 - (B) nurse teacher(s) qualifications to conduct the refresher course and the role of the teacher in learning sites;
 - (C) clinical learning experiences;
 - (D) clinical resources willing and able to support the patient side of learning experiences.
- (5) A provider must present application for approval of refresher course at least 90 days prior to the expected date of beginning enrollment.
- (6) An approved provider must file an annual report to the N.C. Board of Nursing on forms provided by the Board.
- (7) If a year or more lapses between the initial approval of the provider and the offering of the refresher course, then the provider must reapply for approval.
- (8) Provider approval will be granted by the Board for a period of time not to exceed three years.

- (9) The Board shall:
- (A) give decision on applications to offer refresher courses within 30 days following receipt of the application;
 - (B) make site visits if deemed necessary;
 - (C) publish a list of approved providers;
 - (D) provide forms for applications, annual reports, and evidence of a registrant's successful completion of approved refresher course.
- (10) All other requirements for reinstatement of license must be met by the registrant as set forth in Nursing Practice Act 90-171.4.
- (11) Upon successful completion of an approved refresher course, a registrant must apply for reinstatement within one year of completion of said course to be eligible for current license.

History Note: Statutory Authority G.S. 90-171.4(a), (b);
Effective February 1, 1976;
Amended Effective January 1, 1980.

endorsement or otherwise, shall be deemed to be a bond covering the faithful accounting of the executive director to the extent of the principal amount of the bond for each and every year during which the bond shall be renewed or continued in force, and the provisions of this subsection shall be a part of the contract, terms, and conditions of any such bond.

The Board may employ legal counsel, accountants, and such employees, assistants, and agents as may be necessary in the opinion of the Board to carry into effect this Article and may fix the compensation of such persons employed, and may incur other necessary expenses to effectuate this Article. (1947, c. 1091, s. 1; 1953, c. 1199, ss. 1-3; 1955, c. 1266, s. 1, 1965, c. 578, s. 1; 1969, c. 844, s. 3.)

§ 90-160. Compensation of members of Board. — The members of the Board shall receive such per diem compensation and reimbursement for actual traveling and subsistence expenses as shall be fixed by the Board. (1953, c. 1199, s. 1; 1965, c. 578, s. 1.)

§ 90-161. Expenses payable from fees collected by Board; schedule of fees. — (a) All salaries, compensation, and expenses incurred or allowed for the purposes of carrying out this Article shall be paid by the Board exclusively out of the fees received by the Board as authorized by this Article, or funds received from other sources. In no case shall any salary, expense, or other obligation of the Board be charged against the treasury of the State of North Carolina. All moneys and receipts shall be kept in a special fund by and for the use of the Board for the exclusive purpose of carrying out the provisions of this Article.

(b) The schedule of fees shall not exceed the following rates:

Application for examination leading to certificate and license as registered nurse	\$30.00
Application for certificate and license as registered nurse by endorsement	30.00
Application for each reexamination leading to certificate and license as registered nurse	30.00
Renewal of license to practice as registered nurse (two-year period)	15.00
Reinstatement of lapsed license to practice as a registered nurse and renewal fee	30.00
Application for examination leading to certificate and license as licensed practical nurse by examination	30.00
Application for certificate and license as licensed practical nurse by endorsement	30.00
Application for each reexamination leading to certificate and license as licensed practical nurse	30.00
Renewal of license to practice as a licensed practical nurse (two-year period)	15.00
Reinstatement of lapsed license to practice as a licensed practical nurse and renewal fee	30.00
Reasonable charge for duplication services and materials.	

(c) No refund of fees will be made. (1947, c. 1091, s. 1; 1953, c. 750; c. 1199, ss. 1, 4; 1955, c. 1266, ss. 2, 3; 1961, c. 431, s. 2; 1965, c. 578, s. 1; 1971, c. 534.)

§ 90-162. Official seal of Board; rules and regulations; appointment of subcommittee. — The Board shall adopt an official seal, which shall be affixed to all certificates and licenses issued by it. The Board shall make such rules and regulations not inconsistent with law, as may be necessary to regulate its proceedings and otherwise to carry out the purposes of and enforce this Article.

The Board of Nursing shall appoint and maintain a subcommittee of the Board to work jointly with a subcommittee of the Board of Medical Examiners to develop rules and regulations to govern the performance of medical acts by registered nurses. Rules and regulations developed by this subcommittee from

time to time shall govern the performance of medical acts by registered nurses and shall become effective when they have been adopted by both the Board of Nursing and the Board of Medical Examiners. The Board of Medical Examiners shall have responsibility for securing compliance with these regulations. (1953, c. 1199, s. 1; 1965, c. 578, s. 1; 1973, c. 93, s. 2.)

Editor's Note. -- The 1973 amendment added the second paragraph

§ 90-163. Meetings; quorum; power to compel attendance of witnesses and to take testimony. — The Board shall hold at least one meeting each year for the purpose of considering and acting upon the accreditation of educational units in nursing, and for the transaction of its other business and affairs. The Board shall adopt rules with respect to calling, holding, and conducting regular and special meetings. A majority of the members of the Board shall constitute a quorum. The Board may compel the attendance of witnesses and production of documents, and take testimony and proof concerning any matter within its jurisdiction and for such purposes each member of the Board may administer oaths according to law. Subpoenas shall be issued by the executive director and directed to any sheriff, constable or other officer authorized to serve process, who shall execute the same and make due return to the Board. (1953, c. 1199, s. 1; 1965, c. 578, s. 1.)

§ 90-164. Custody and use of funds. — All fees payable to the Board shall be deposited by the executive director of the Board in financial institutions designated by the Board as official depositories for funds of the Board, which funds shall be deposited in the name of the Board and shall be used for the payment of all expenses of the Board in carrying out this Article and for promoting and extending nursing education in North Carolina, pursuant to Board authorization. An annual audit of the accounts of the Board shall be made by the State Auditor. (1953, c. 1199, s. 1; 1965, c. 578, s. 1.)

§ 90-165. Board may accept contributions, etc. — The Board may accept grants, contributions, devises, bequests, and gifts which shall be kept in a separate fund and shall be used by it in promoting and encouraging nurse recruitment and nurse education in this State, including the making of loans or gifts for the education of worthy student nurses. (1953, c. 1199, s. 1; 1965, c. 578, s. 1.)

§ 90-166. Nurses registered under previous law. — Every person who on June 30, 1965, holds a certificate or license to practice nursing as a registered nurse or licensed practical nurse, issued by competent authority pursuant to the provisions of any statute heretofore providing for the certification and licensing of nurses in North Carolina, shall be deemed to be licensed as a registered nurse or licensed practical nurse under the provisions of this Article, but such person previously licensed shall comply with this Article with respect to the renewal of licenses. (1953, c. 1199, s. 1; 1965, c. 578, s. 1.)

§ 90-167. Practice as registered nurse and licensed practical nurse regulated. — In order to safeguard life and health, any person practicing or offering to practice nursing as defined herein shall be required to submit evidence that he or she is qualified so to practice by virtue of a license with current renewal, issued by the North Carolina Board of Nursing. After December 31, 1965, any person not licensed under this Article who

- (1) Practices or offers to practice nursing; or
 - (2) Uses any card, title, or abbreviation to indicate that such person is a registered nurse or licensed practical nurse,
- shall be guilty of a misdemeanor.

the failure of any nurse to receive an application form for renewal of license shall not excuse said nurse from the requirement for renewal of license herein contained. Upon return of application form and fee and verification of the accuracy thereof, the Board shall issue to each entitled applicant a renewal of license to practice nursing for the period beginning January 1 and ending December 31 two years later. Such license shall render the holder thereof a legal practitioner for the period stated. Failure to renew the license as required by this section shall result in the automatic forfeiture of the right to practice nursing in North Carolina.

Newly registered nurses and licensed practical nurses shall be issued a license without additional fee for the remainder of the calendar year of issuance of the original certificate.

For the biennium, 1966-1968, the Board may issue up to one half of the applicants, selected in the discretion of the Board, a renewal of license to practice nursing for the period beginning January 1, 1966, and ending December 31, 1966, for a fee of two dollars and fifty cents (\$2.50). (1947, c. 1091, s. 1; 1953, c. 1199, s. 1; 1955, c. 1266, s. 3; 1965, c. 578, s. 1.)

§ 90-171.3. Reinstatement of lapsed license. -- A licensee who has allowed license to lapse by failure to renew as herein provided may apply for reinstatement on a form provided by the Board. The Board shall require the applicant to return the completed application with the required fee and to furnish a statement of the reason for failure to apply for renewal prior to the deadline. If the license has lapsed for at least five years, the Board may require the applicant to submit proof of competence to practice nursing. The Board may require any applicant for reinstatement to satisfy the Board that the license should be reinstated. If, in the opinion of the Board, the applicant has so satisfied the Board, it shall issue a renewal of license to practice nursing, or it shall issue a license to practice nursing for a limited time. (1947, c. 1091, s. 1; 1953, c. 1199, s. 1; 1955, c. 1266, s. 3; 1965, c. 578, s. 1.)

§ 90-171.4. Inactive list. -- (a) A licensee who desires to retire temporarily from the practice of nursing in North Carolina shall request inactive status on a form provided by the Board. Upon receipt of the application, the Board shall issue to the licensee a statement of inactive status, and shall place the name of the licensee on the inactive list. While remaining on the inactive list, the individual shall not be subject to renewal fees and shall not practice nursing in North Carolina.

(b) If and when such person desires to be removed from the inactive list and returned to active status, an application shall be submitted on a form provided by the Board, and the fee shall be paid for renewal of license. The Board may require proof of competence to resume the practice of nursing, and if such proof is satisfactory to the Board, the Board shall return the applicant to active status and issue a license, or issue a license for a limited period. (1953, c. 1199, s. 1; 1965, c. 578, s. 1.)

§ 90-171.5. Revocation, suspension, or denial of license. -- The Board may, after notice and hearing in accordance with the provisions of Chapter 150[A] of the General Statutes, revoke or suspend any license to practice nursing which has been issued by the Board or any predecessor board, or deny any license which has been applied for in accordance with this Article, if the Board shall determine upon findings of facts supported by competent evidence adduced at such hearing that such person:

- (1) Has practiced fraud or deceit in procuring or attempting to procure a license to practice nursing;
- (2) Has been convicted of a felony or any other crime involving moral turpitude;
- (3) Is guilty of gross immorality or dishonesty.

ADMINISTRATIVE RULES REVIEW COMMITTEE

LEGISLATIVE RESEARCH COMMISSION

STATE LEGISLATIVE BUILDING

RALEIGH 27611

NATOR ROBERT B. JORDAN, III
CHAIRMAN

REPRESENTATIVE WILLIAM E. CLARK
REPRESENTATIVE CHARLES D. EVANS
REPRESENTATIVE JAMES F. MORGAN
REPRESENTATIVE KENNETH B. SPAULDING
NATOR CHARLES E. VICKERY
NATOR WILLIS P. WHICHARD



STAFF: *[Handwritten initials]*
TERRENCE D. SULLIVAN
DIRECTOR OF RESEARCH

January 28, 1980

Ms. Dixie H. King, Business Administrator
North Carolina Board of Nursing
P. O. Box 2129
Raleigh, North Carolina 27602

Dear Ms. King:

The Administrative Rules Review Committee reviewed Rule 21 NCAC 36 .0202 (g) [Request for and Removal from Inactive Status] (copy attached) at its January 24, 1980, meeting and has objected pursuant to G.S. 120-30.25 to the authority cited for the rule (G.S. 90-171.3 and 90-171.4, copy attached) which requires the applicant "...to submit proof of competence" to practice nursing. When requesting reinstatement after a lapse of five (5) years, your rule requires an applicant to complete a Board approved refresher course. The Committee could find no statutory authority for the imposition of the requirement of a refresher course in addition to that of the applicant's submission of proof of competence.

This objection is filed on the direction of the Administrative Rules Review Committee. A response within 60 days from receipt of this notification is required by Statute (G.S. 120-30.29).

Yours truly,

Terrence D. Sullivan
Terrence D. Sullivan
Director of Research

TDS:WLP, Jr/pv

Attachment

cc: Administrative Rules Review Committee Members
Bob Reilly, Assistant Attorney General

LEGISLATIVE RESEARCH COMMISSION REPORT:

Notice of Objection; Legislative Review of Administrative Rules
(G.S. 120-30.23 and G.S. 120-30.25)

Date: January 23, 1980

From: Terrance D. Sullivan
Legislative Research Commission
2129 State Legislative Building
Raleigh, North Carolina 27611 - Phone: 919-733-7044

TO: Ms. Dixie H. King, Business Administrator
(Name)

Adm. Procedures Act Coordinator - North Carolina Board of Nursing
(Agency & Address)

P. O. Box 2129

Raleigh, North Carolina 27601

Phone: (919) 828-0740

RULE: 21 NCAC 36 .0202
(Citation; N. C. Administrative Code)
Request for and Removal from Inactive Status
(Catchline)

Objection by Administrative Rules Review Committee

Date of Committee decision: January 24, 1980

Date of Agency Response to Committee objection: _____

Objection Continued By Legislative Research Commission

Date of Commission decision: _____

STATEMENT OF OBJECTIONS AND REASONS:

(See Attached Letter)

North Carolina Board of Nursing

P. O. BOX 2129

RALEIGH, NORTH CAROLINA 27602

February 18, 1980

FILED IN ACCORDANCE
WITH ART. 60 OF CHAP.
120 OF THE GENERAL STATUTES

FEB 20 1980

ANNA KUBA, R. N.
EXECUTIVE DIRECTOR

DIRECTOR OF RESEARCH
TELEPHONE
AREA CODE 919 - 828-0740

Mr. Terrence D. Sullivan
Director of Research
Legislative Research Commission
State Legislative Building
Raleigh, N. C. 27611

Sear Mr. Sullivan:

In response to your letter of January 28, 1980 to Mrs. Dixie King, Business Administrator, North Carolina Board of Nursing, regarding Rule 21 NCAC 36 .0202 (g), it is the intent of the Board of Nursing that the completion of a Board-approved refresher course is the submission of proof of competence.

Please telephone if additional information is necessary.

Sincerely,

Anna Kuba

Anna Kuba, R.N.
Executive Director

AK:EP

STATE OF NORTH CAROLINA
ADMINISTRATIVE RULES REVIEW COMMITTEE
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH 27611

SENATOR ROBERT B. JORDAN, III
CHAIRMAN
REPRESENTATIVE WILLIAM E. CLARK
REPRESENTATIVE CHARLES D. EVANS
REPRESENTATIVE JAMES F. MORGAN
REPRESENTATIVE KENNETH B. SPAULDING
SENATOR CHARLES E. VICKERY
SENATOR WILLIS P. WHICHARD



STAFF:
TERRANCE D. SULLIVAN
DIRECTOR OF RESEARCH

March 20, 1980

Speaker Carl J. Stewart, Jr., CoChairman
Senator W. Craig Lawing, CoChairman
Legislative Research Commission
State Legislative Building
Raleigh, North Carolina 27611

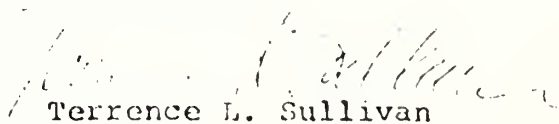
Dear Speaker Stewart and Senator Lawing:

Pursuant to G.S. 120-30.29, I am referring Rule 21 NCAC 36 .0202 (Request for Removal from Inactive Status) to the Legislative Research Commission. This rule was the subject of an objection by the Administrative Rules Review Committee at its January 24, 1980, meeting and has been returned, without change, by the North Carolina Board of Nursing (copy attached).

Pursuant to G.S. 120-30.30, the Legislative Research Commission has 60 days from February 25, 1980, the date the rule was returned to the Administrative Rules Review Committee without change, to complete their review.

Please contact me if I can be of assistance.

Yours truly,


Terrence L. Sullivan
Director of Research

TDS/pv

Attachment

ADMINISTRATIVE RULES REVIEW COMMITTEE

LEGISLATIVE RESEARCH COMMISSION

STATE LEGISLATIVE BUILDING

RALEIGH 27611

APR 7 2 44 '80



STAFF:

TERRENCE D. SULLIVAN
DIRECTOR OF RESEARCH

SENATOR ROBERT B. JORDAN, III
CHAIRMAN

REPRESENTATIVE WILLIAM E. CLARK
REPRESENTATIVE CHARLES O. EVANS
REPRESENTATIVE JAMES F. MORGAN
REPRESENTATIVE KENNETH B. SPAULDING
SENATOR CHARLES E. VICKERY
SENATOR WILLIS P. WHICHARD

April 24, 1980

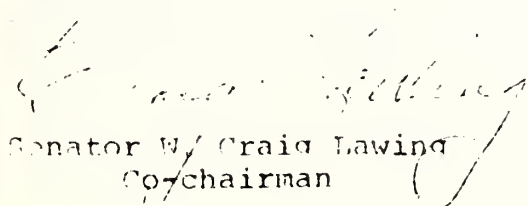
North Carolina Board of Nursing
Mrs. Anna Kuba, R.N.
P. O. Box 2129
Raleigh, North Carolina 27602

Dear Mrs. Kuba:

The Legislative Research Commission hereby continues the objection of its Administrative Rules Review Committee made on January 24, 1980, to Rule 21 NCAC 36 .0202, Request for and Removal From Inactive Status. The rule was returned by the Board of Nursing to the Committee, without change, on February 25, 1980. The earlier objection and the cited rule are attached.

Please note that the State Board of Nursing must return the rule with or without change within 30 days of the notification to the agency of the Commission's objection.

Yours truly,


Senator W. Craig Lawing
Co-chairman


Speaker Carl J. Stewart, Jr.
Co-chairman

WDS/BJR/sp

Attachments

North Carolina Board of Nursing

P. O. BOX 2129

RALEIGH, NORTH CAROLINA 27602

ANNA KUBA, R. N.
EXECUTIVE DIRECTOR

FILED IN ACCORDANCE WITH ART. 60 OF CHAPTER 120 OF THE GENERAL STATUTES
MAY 29 1980
919-828-0

DIRECTOR OF RESEARCH

TO: Senator W. Craig Lawing, Co-chairman
Speaker Carl J. Stewart, Jr., Co-chairman
Legislative Research Commission

FROM: Anna Kuba, R.N., Executive Director
North Carolina Board of Nursing

DATE: May 7, 1980

RE: Rule 21 NCAC 36 .0202, Request for Removal from Inactive
Status

The North Carolina Board of Nursing has as its primary purpose the safeguarding of the public from the unauthorized, unqualified, and improper application of service by individuals in the practice of nursing.

Nursing knowledge is rendered rapidly obsolete by technological advances and scientific discoveries, changing concepts and patterns in the provision of health services, and the increasing complexity of nursing responsibilities.

By requiring nurses whose licenses have been lapsed or inactive for five or more years to successfully complete a Board-approved refresher course that includes both theory and clinical components, the Board has satisfactory proof of competence of the nurse to resume the practice of nursing.

AK/lo

ADMINISTRATIVE RULES REVIEW COMMITTEE
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH 27611

SENATOR ROBERT H. JORDAN III
CHAIRMAN
REPRESENTATIVE WILLIAM E. CLARK
REPRESENTATIVE CHARLES D. EVAN
REPRESENTATIVE JAMES F. MORGAN
REPRESENTATIVE KENNETH B. SPAULDING
SENATOR CHARLES E. VICKERY
SENATOR WILLIE P. WHICHARD



STAFF
TERRENCE D. SULLIVAN
DIRECTOR OF RESEARCH

September 18, 1980

Mrs. Anna Kuba, R.N.
Executive Director
North Carolina Board of Nursing
P. O. Box 2129
Raleigh, North Carolina 27602

Dear Mrs. Kuba:

As I am sure you are aware, the objection by the Administrative Rules Review Committee to Rule 21 NCAC 35 .0202 was continued by the Legislative Research Commission on April 24, 1980. At the last Legislative Research Commission meeting the Commission directed the Administrative Rules Review Committee to prepare legislation to correct the objected to rule and statutory authority.

The Committee requests that the Board of Nursing prepare and submit to it a draft of legislation to resolve the objection raised concerning the above-cited rule. The Committee also wishes you to submit in writing the reasons which you feel support the proposed legislation.

Upon receipt of this requested material, you will be notified of the date of the Committee meeting at which this matter will be discussed.

Very truly yours,

TERRENCE D. SULLIVAN
DIRECTOR OF RESEARCH

Winston L. Page, Jr.

Winston L. Page, Jr.
Staff Attorney

North Carolina Board of Nursing

P. O. BOX 2129

RALEIGH, NORTH CAROLINA 27602

October 9, 1980

WITH ART. 6C OF CHAP.
120 OF THE GENERAL STATUTES

OCT 10 1980

DIRECTOR OF RESEARCH
TELEPHONE

AREA CODE 919 -- 828-0740

NA KUBA, R. N.
EXECUTIVE DIRECTOR

Mr. Winston L. Page, Jr.
Staff Attorney
Legislative Research Commission
State Legislative Building
Raleigh, North Carolina 27611

Dear Mr. Page:

This letter is in response to your letter of September 18, 1980 regarding Rule 21 NCAC 36.0202 to which an objection was made by the Administrative Rules Review Committee.

As has been pointed out several times, the Board of Nursing views the satisfactory completion of an approved refresher course as proof of competence to practice nursing by an individual whose license has been lapsed for at least five years or by an individual who has been on inactive status five or more years. On advice of the Board's attorney, W. C. Harris, Jr., the Board developed rules and regulations, using G.S. 90-171.3 and G.S. 90-171.4(b) as authority.

To resolve the issue, the Board does not object to having legislation introduced which would clearly provide statutory authority to it to require the satisfactory completion of an approved refresher course by specified individuals.

It is suggested that G.S. 90-171.3 be amended as follows:

A licensee who has allowed license to lapse by failure to renew as herein provided may apply for reinstatement on a form provided by the Board. The Board shall require the applicant to return the completed application with the required fee and to furnish a statement of the reason for failure to apply for renewal prior to the deadline. If the license has lapsed for at least five years, the Board may require the applicant to complete satisfactorily a refresher course approved by the Board. The Board may require any applicant for reinstatement to satisfy the Board that the license should be reinstated. If, in the opinion, of the Board, the applicant has so satisfied the Board, it shall issue a renewal of license to practice nursing, or it shall issue a license to practice nursing for a limited time.

(underlined portion is new and replaces "to submit proof of competence to practice nursing.")

It is suggested that G.S. 90-171.4(b) be amended by the addition of the following sentence as the final sentence in the paragraph:

The Board, by regulation, may establish requirements governing the re-entry into practice of inactive persons.

The rationale for the changes is that nursing knowledge is rendered rapidly obsolete by technological advances and scientific discoveries, changing concepts and patterns in the provision of health services, and the increasing complexity of nursing responsibilities. By requiring persons whose nursing licenses have been lapsed or inactive for five or more years to successfully complete a Board-approved refresher course that includes both theory and clinical components, the Board has reasonable evidence of competence of the individual to resume the practice of nursing.

If you have questions about this letter, please do not hesitate to call us.

Sincerely,



Anna Kuba, R.N.
Executive Director

AKuba/mbe

SESSION 197

INTRODUCED BY:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY THE AUTHORITY OF THE NORTH CAROLINA BOARD
3 OF NURSING IN REINSTATING LAPSED LICENSES, AS REQUESTED BY THE
4 ADMINISTRATIVE RULES REVIEW COMMITTEE.

5 The North Carolina General Assembly enacts

6 Section 1. G.S. 90-171.3 is rewritten to read as
7 follows:

8 "A licensee who has allowed license to lapse by failure to
9 renew as herein provided may apply for reinstatement on a form
10 provided by the Board. The Board shall require the applicant
11 to return the completed application with the required fee and
12 to furnish a statement of the reason for failure to apply for
13 renewal prior to the deadline. If the license has lapsed for
14 at least five years, the Board shall require the applicant to
15 complete satisfactorily a refresher course approved by the Board.
16 The Board may require any applicant for reinstatement to satisfy
17 the Board that the license should be reinstated. If, in the opinion,
18 of the Board, the applicant has so satisfied the Board, it shall
19 issue a renewal of license to practice nursing, or it shall issue
20 a license to practice nursing for a limited time."

21 Sec. 2. G.S. 90-171.4(b) is amended by adding a new
22 sentence at the end to read as follows:

23 "The Board, by regulation, may establish requirements
24 governing the re-entry into practice of inactive persons."

SESSION 197_____

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Sec. 3. This act shall become effective on July 1, 198

DEPARTMENT OF LABOR

CONTENTS

- I. Rule
 - A. Agency Report (February 8, 1980)
 - B. Rule 13 NCAC 3 .0209 (Certificate and Inspection Fees)
- II. Statutory Authority
 - A. G.S. 95-69.11
 - B. G.S. 95-69.14
 - C. Article 7 of Chapter 95 of the N. C. General Statutes (also included)
- III. Committee Objection
 - A. Correspondence - March 24, 1980
 - B. Objection Form
- IV. Department of Labor's Response - Correspondence (May 20, 1980)
- V. Correspondence Referring Rule to Legislative Research Commission (May 21, 1980)
- VI. Legislative Research Commission's Response (June 2, 1980)
- VII. Department of Labor's Response - Correspondence (June 10, 1980)
- VIII. Letter to Department Seeking Corrective Legislation (June 13, 1980)
- IX. Department of Labor's Proposed Draft - Legislation - Correspondence (October 21, 1980)

AGENCY REPORT: Legislative Review of Administrative Rules
(G.S. 120-30.20 et seq.)

DATE FILED:
1980 FEB 11
LEGISLATIVE STATUTES
pu
(for Receipt Stamp)
DIRECTOR OF RESEARCH

Date: February 8, 1980

From: Edwin B. Hatch
(name)

Adm. Procedures Act Coordinator - Department of Labor
(agency & address)

117 East North Street

Raleigh, N. C. 27601

Phone: 733-7495

To: Terrence D. Sullivan
Legislative Research Commission
2129 State Legislative Building
Raleigh, North Carolina 27611 - Phone: 919-733-7044

RULE: 13 NCAC 3 .0209(a)
(citation; N. C. Administrative Code)

CERTIFICATE AND INSPECTION FEES
(catchline)

1) RULE SUMMARY

Provides for fee of \$7.00 for each boiler inspection certificate.

10357

2) STATUTORY AUTHORITY CITATION

G.S. 95-69.11; 95-69.14

3) CIRCUMSTANCES REQUIRING RULE

Charge made for issuance of boiler inspection certificate.

Old fee of \$4.00 had been in effect since 1975. Increased cost dictated revision of fee which was approved by the North Carolina Board of Boiler and Pressure Rules.

4) EFFECTIVE DATE February 15, 1980 G-2

Regulation 13 NCAC 3 .0209 (a); CERTIFICATE AND INSPECTION FEES; has been amended to read as follows:

.0209 CERTIFICATE AND INSPECTION FEES

(a) If a boiler or pressure vessel after inspection by a special inspector is found to be suitable and to conform to these rules and regulations, the owner or user shall pay directly to the director a certificate fee of seven dollars (\$7.00) for each boiler and pressure vessel required to be inspected under the act before an inspection certificate shall be issued. Checks and money orders for payment of inspection certificate fees should be made payable to the Director of the Boiler and Pressure Vessel Division.

History Note: Statutory Authority G.S. 95-69.11; 95-69.14;
Eff. February 1, 1976;
Amended Eff. February 15, 1980.

10
Regulation 13 NCAC 3 .0209(b); CERTIFICATE AND INSPECTION FEES; has been amended to read as follows:

.0209 CERTIFICATE AND INSPECTION FEES

(b) When inspected by a state inspector (the director, assistant director or boiler and pressure vessel inspector) an inspection and certificate fee in accordance with the following schedule shall be paid directly to the Director of the Boiler and Pressure Vessel Division, for deposit in the State Treasury, for each boiler or pressure vessel inspected. Seven dollars (\$7.00) of said fee shall be for the issuance of the inspection certificate. The following fee schedule shall apply:

- (1) Power boilers:
 - (A) miniature boilers, which do not exceed 16 inches inside diameter of shell, 100 pounds per square inch maximum allowable working pressure:
 - general inspection.....\$10.00
 - (B) fire tube boilers with handholes only:
 - internal inspection.....\$15.00
 - external inspection while under pressure.....\$10.00
 - (C) fire tube boilers with manholes:
 - internal inspection.....\$25.00
 - external inspection while under pressure.....\$10.00
 - (D) water tube boilers (coil type):
 - general inspection.....\$15.00
 - (E) water tube boilers with not more than 500 square feet of heating surface:
 - internal inspection.....\$20.00
 - external inspection while under pressure.....\$10.00
 - (F) water tube boilers with more than 500 but not more than 3000 square feet of heating surface:
 - internal inspection.....\$30.00
 - external inspection while under pressure.....\$10.00
 - (G) water tube boilers with more than 3000 square feet of heating surface:
 - internal inspection.....\$30.00
 - external inspection while under pressure.....\$10.00
- (2) Heating boilers (low pressure) and pressure vessels:
 - (A) low pressure steam and hot water boilers, equipped only with handholes and washout plugs.....\$12.00
 - (B) low pressure steam and hot water boilers, equipped with manhole.....\$20.00
 - (C) fired hot water supply boilers and fired hot water heaters equipped with a manhole.....\$15.00
 - (D) fired hot water supply boilers and fired hot water heaters without a manhole.....\$10.00
 - (E) each unfired pressure vessel subject to inspection equipped with a manhole or removable heads.....\$15.00
 - (F) each unfired pressure vessel subject to inspection without a manhole.....\$10.00

History Note: Statutory Authority G.S. 95-69.11; 95-69.14;
Eff. February 1, 1976;
Amended Eff. February 15, 1980.

- (8) Pressure vessels that do not exceed five cubic feet in volume and 250 PSIG pressure; or one and one-half cubic feet in volume and 600 PSIG pressure; or an inside diameter of six inches with no limitations on pressure;
- (9) Pressure vessels operating at a working pressure not exceeding 15 PSIG pressure;
- (10) Pressure vessels with a nominal water capacity of 120 gallons or less and containing water under pressure at ambient temperature, including those containing air, the compression of which serves as a cushion;
- (11) Boilers and pressure vessels on railroad steam locomotives that are subject to federal safety regulations.

(c) The construction and inspection requirements established by the Department of Labor shall not apply to hot water supply boilers which are directly fired with oil, gas or electricity, or hot water supply tanks heated by steam or any other indirect means, which do not exceed any of the following limitations:

- (1) Heat input of 200,000 BTU HR;
- (2) Water temperature of 200 degrees F;
- (3) Nominal water capacity of 120 gallons;

provided that they are equipped with ASME Code and National Board certified safety relief valves. (1975, c. 895, s. 3; 1979, c. 920, ss. 1, 2.)

Editor's Note. -- The 1979 amendment, "and shall continue to be subject to field effective July 1, 1979, inserted "and inspection" inspection" which previously appeared at the near the beginning of subsection (c) and deleted end of subsection (c).

§ 95-69.11. Powers and duties of Commissioner. — The Commissioner of Labor is hereby charged, directed, and empowered:

- (1) To adopt, modify or revoke rules and regulations governing the construction, operation and use of boilers and pressure vessels;
- (2) To supervise the office of the Director of Boiler and Pressure Vessel Division;
- (3) To enforce rules and regulations adopted under authority of this Article;
- (4) To inspect boilers and pressure vessels covered under this Article;
- (5) To issue inspection certificates to those boilers and pressure vessels found in compliance with this Article;
- (6) To enjoin violations of this Article in the civil and criminal courts of this State;
- (7) To keep adequate records of the type, dimensions, age, conditions, pressure allowed upon, location and date of the last inspection of all boilers and pressure vessels to which this Article applies;
- (8) To require such periodic reports from inspectors, owners, and operators of boilers and pressure vessels as he deems appropriate in carrying out the purposes of this Article;
- (9) To have free access, without notice, to any location in this State, during reasonable hours, where a boiler or pressure vessel is being built, installed, or operated for the purpose of ascertaining whether such boiler or pressure vessel is built, installed or operated in accordance with the provisions of this Article;
- (10) To investigate serious accidents involving boilers and pressure vessels to determine the causes of such accident(s), and he shall have full subpoena powers in conducting said investigation;
- (11) To establish reasonable fees for the inspection and issuance of inspection certificates for boilers and pressure vessels;
- (12) To establish reasonable fees for the examination and certification of inspectors;

(13) To appoint Vessel Ru

§ 95-69.12. Office created; powers and the Boiler and Pres of Labor. The per carrying out the pr Chapter 126 of t responsibility for t

The Director sha pressure vessels s certificates for tho be responsible for t vessels and transm held in a special ac direct field inspecti this Article shall b

§ 95-69.13. Boal appointment, term the North Carolina nine members appo for a term of one y years, one for a te expiration of their 1 for terms of five y representative of t a representative of of boilermakers wi experience as a boil of pressure vessels vessel manufacture and insurance com the State, one a re one a contractor he mechanical engine licensed profession Commissioner of chairman.

(b) The Board sh

- (1) Studying modificati constructi operation regulation boiler cod amendme council of
- (2) Devise and of compet State.
- (3) Issue, susp and press

(c) The members subsistence and t

volume and 250
ie and 600 PSIG
o limitations on

ceeding 15 PSIG

gallons or less
ature, including
as a cushion;
otives that are

lished by the
ilers which are
anks heated by
f the following

Board certified

subject to field
appeared at the

Commissioner of

governing the
vessels;
essure Vessel

of this Article;
is Article;
essure vessels

courts of this

conditions,
ection of all

nd operators
carrying out

State, during
being built,
hether such
accordance

sure vessels
ll have full

ssuance of

ification of

(13) To appoint qualified individuals to the Board of Boiler and Pressure Vessel Rules. (1975, c. 895, s. 4.)

§ 95-69.12. Office of Director of Boilers and Pressure Vessels Division created; powers and duties. — There is hereby created the office of Director of the Boiler and Pressure Vessel Division within the North Carolina Department of Labor. The person holding this office shall assist the Commissioner in carrying out the provisions of this Article in accordance with the provisions of Chapter 126 of the General Statutes. The Director is charged with the responsibility for the administration of this Article on a day-to-day basis.

The Director shall be primarily responsible for the inspection of boilers and pressure vessels subject to this Article and for the issuance of inspection certificates for those boilers and pressure vessels found suitable. He shall also be responsible for the collection of fees for the inspection of boilers and pressure vessels and transmitting the same to the State Treasurer, where they shall be held in a special account to cover the operating expenses associated with the direct field inspections of this Article. All administrative functions pursuant to this Article shall be paid out of the State general fund. (1975, c. 895, s. 5.)

§ 95-69.13. Board of Boiler and Pressure Vessels Rules created; appointment, terms, compensation and duties. — (a) There is hereby created the North Carolina Board of Boiler and Pressure Vessels Rules consisting of nine members appointed by the Commissioner, of which three shall be appointed for a term of one year, three for a term of two years, one for a term of three years, one for a term of four years, and one for a term of five years. At the expiration of their respective terms of office, their successors shall be appointed for terms of five years each. Of these nine appointed members, one shall be a representative of the owners and users of steam boilers within this State, one a representative of boiler manufacturers within this State, one a representative of boilermakers within this State who has had not less than five years' practical experience as a boilermaker, one shall be a representative of the owners or users of pressure vessels within the State, one shall be a representative of the pressure vessel manufacturers within the State, one a representative of a boiler inspection and insurance company authorized to insure boilers and pressure vessels within the State, one a representative of the operating steam engineers in this State, one a contractor holding a Group I North Carolina Heating License, and one a mechanical engineer on the faculty of a recognized engineering college or a licensed professional engineer having boiler and pressure vessel experience. The Commissioner of Labor shall annually designate one member to serve as chairman.

(b) The Board shall meet at least twice annually and shall be responsible for:

- (1) Studying and proposing rules and regulations, for adoption, modification or revocation by the Commissioner, governing the construction, installation, inspection, repair, alteration, use and operation of boilers and pressure vessels in this State. The rules and regulations so formulated shall conform as nearly as possible to the boiler code of the American Society of Mechanical Engineers and amendments and interpretations thereto made and approved by the council of the Society.
- (2) Devise and administer examinations to applicants seeking a certificate of competency as inspectors of boilers and pressure vessels in this State.
- (3) Issue, suspend, or revoke inspector's commission to inspectors of boilers and pressure vessels within this State.

(c) The members of the Board shall serve without salary but shall be paid a subsistence and travel allowance as established by the Advisory Budget

Commission in accordance with Chapter 138 of the General Statutes. (1975, c. 895, s. 6; 1977, c. 788.)

Editor's Note. — The 1977 amendment, in the first sentence of subsection (a), substituted "nine members" for "seven members," "three shall be appointed" for "two shall be appointed," and "three for a term" for "two for a term," and in the third sentence of subsection (a), substituted "nine appointed members" for "seven appointed members" and "boiler manufacturers within this State, one a representative of boilermakers within this

State" for "boiler manufacturers or boilermakers," deleted "within this State" following "practical experience," as a boilermaker" and "and" following "operating steam engineers in this State" and added the language beginning "and one a mechanical engineer" to the end of the sentence. The amendment also added the fourth sentence of subsection (a).

§ 95-69.14. Rules and regulations governing the construction, operation and use of boilers and pressure vessels. — The Commissioner, after consultation with the Board, may adopt, modify or revoke such rules and regulations governing the construction, installation, repair, alteration, inspection, use and operation of boilers and pressure vessels as he deems appropriate to insure the safe operation and avoidance of injury to person or property from boilers and pressure vessels.

The procedure for the adoption, modification or revocation of such rules and regulations shall be the same as that contained within the Administrative Procedure Act of North Carolina as the same appears in Chapter 150A of the General Statutes. (1975, c. 895, s. 7.)

§ 95-69.15. Classification of inspectors; qualifications; examinations; certificates of competency; inspector's commission. — (a) There shall be three types of inspectors authorized to conduct inspections and report their findings to the Director under this Article:

- (1) Boiler and Pressure Vessel Inspector. — Shall be a qualified individual appointed by the Commissioner, to assist in conducting inspections under this Article and report on the suitability of boilers and pressure vessels so inspected;
- (2) Special Inspector. — Shall be a qualified individual regularly employed by an insurance company authorized to insure in this State against injury to person and/or property from explosions and accidents involving boilers and pressure vessels;
- (3) Owner-User Inspectors. — Shall be a qualified individual employed on a full time basis by a company operating boilers or pressure vessels for its own use and not for resale, and maintains an established inspection program for periodic inspection of boilers and pressure vessels owned or used by that company and where such inspection program is under the supervision of one or more engineers having qualifications satisfactory to the Commissioner.

(b) Inspector's Commission. — Any company authorized to insure in this State against loss to person or property as a result of an explosion or accident involving boilers and pressure vessels or operating boilers and/or pressure vessels for its own use and not for resale, may apply for the issuance of an inspector's commission for an individual within its employ who has a certificate of competency.

A commission authorizes an inspector to make inspections on boilers and pressure vessels and report on the suitability of said boilers and pressure vessels to the Director. Those inspectors holding commissions as special inspectors shall be limited to making inspections on boilers and pressure vessels insured by their employer. Owner-user inspectors shall be limited to conducting inspections on boilers and pressure vessels operated by their respective employers.

(c) Qualified certificate of must:

- (1) Have or
- (2) Have and r Carol
- (3) Hold a Press
- (4) Contin comp

§ 95-69.16. pressure vesse an authorized methods as th In determining pressure vess consideration of inspection individuals like pressure vesse

(b) Upon co report on the Director. The i

(c) Upon rec whether or no regulations ac compliance he or pressure ve not in complia No boiler or pr except pressu administrative by the Board granted beyon pressure vesse Commissioner c. 895, s. 9.)

§ 95-69.17. Board or the commission or has been affor accordance wit same appears

(b) Final dec for a certificate need not await affected party. review within opportunity fo decision below. shall not be sta

§ 95-51. **Police in towns to enforce Article.** — The police officers of any town or city shall investigate the places of business of any person or corporation employing males and females and see that the provisions of this Article are put in force, and shall swear out a warrant before the mayor or other proper officer of any town or city and prosecute all persons, corporations, and managers of corporations violating any of the provisions of this Article. (1913, c. 83, s. 3; C. S., s. 6562.)

§ 95-52. **Sheriff in county to enforce Article.** — When any persons or corporations locate their manufacturing plant or other business outside of any city or town, the sheriff of the county shall investigate the condition of the toilets used by such manufacturing plant or business and see that the provisions of this Article are complied with, and shall swear out a warrant and prosecute anyone violating the provisions of this Article. (1913, c. 83, s. 5; C. S., s. 6563; 1973, c. 108, s. 42.)

Local Modification. — Cleveland, Harnett, Henderson, Johnston, Lee, Northampton, Polk, Rutherford and Sampson: C. S., § 6564

leted "before a justice of the peace" following "warrant" near the end of the section

Editor's Note. — The 1973 amendment de-

§ 95-53. **Enforcement by Department of Labor.** — The Department of Labor shall investigate the places of business of any person or corporation employing males and females, and shall make such rules and regulations for enforcing and carrying out this Article as may be necessary. (1919, c. 100, s. 7; C. S., s. 6563(a); 1931, c. 312, ss. 12, 14.)

ARTICLE 7.

Board of Boiler Rules and Bureau of Boiler Inspection.

§ 95-54. **Board of Boiler Rules created; members, appointment, and qualifications; terms of office; vacancies; meetings.** — There is hereby created the North Carolina Board of Boiler Rules consisting of six members, of whom five shall be appointed to the Board by the Governor, one for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years and one for a term of five years. At the expiration of their respective terms of office, their successors shall be appointed for terms of five years each. Upon the death or incapacity of any member, the vacancy for the remainder of the term shall be filled with a representative of the same class. Of these five appointed members, one shall be a representative of the owners and users of steam boilers within the State of North Carolina, one a representative of the boiler manufacturers or a boilermaker who has had not less than five years' practical experience as a boilermaker within the State of North Carolina, one a representative of a boiler inspection and insurance company licensed to do business within the State of North Carolina, one a representative of the operating steam engineers in the State of North Carolina, and one a licensed heating contractor. The sixth member shall be the Commissioner of Labor, who shall be chairman of the Board. The Board shall meet at least twice yearly at the State capitol or other place designated by the Board. (1935, c. 326, s. 1; 1953, c. 569.)

Cited in Page v. Sloan, 281 N.C. 697, 190 S.E.2d 189 (1972).

§ 95-55. **Formulation of rules and regulations.** — The Board shall formulate rules and regulations for the safe and proper construction, installation, repair,

use and operation of steam boilers, steam and hot water heating boilers, and hot water supply tanks and steam or hot water boilers fired or unfired in this State. The rules and regulations so formulated shall conform as nearly as possible to the boiler code of the American Society of Mechanical Engineers and amendments and interpretations thereto made and approved by the council of the Society. (1935, c. 326, s. 1; 1951, c. 1107, s. 1.)

§ 95-56. Approval of rules and regulations by Governor. — The rules and regulations formulated by the Board of Boiler Rules shall become effective upon approval by the Governor, except that rules applying to the construction of new boilers shall not become effective to prevent the installation of such new boilers until six months after approval by the Governor. Changes in the rules which would raise the standards governing the methods of construction of new boilers or the quality of material used in them shall not become effective until six months after approval by the Governor. (1935, c. 326, s. 2.)

§ 95-57. Compensation and expenses of Board. — The members of the Board of Boiler Rules, exclusive of the chairman thereof, shall serve without salary but shall be paid a subsistence and travel allowance in accordance with the general provisions of the biennial appropriations act, for not to exceed 20 days in any year while in the performance of their duties as members of the Board, to be paid in the same manner as in case of other State officers. The chairman of the Board of Boiler Rules shall countersign all vouchers for expenditures under this section. (1935, c. 326, s. 3; 1951, c. 1107, s. 11.)

§ 95-58. Effect of Article on boilers installed prior to enactment. — This Article shall not be construed as in any way preventing the use or sale of steam boilers and steam and hot water heating boilers and hot water supply tanks and boilers in this State which shall have been installed or in use in this State prior to the taking effect of this Article and which shall have been made to conform to the rules and regulations of the Board of Boiler Rules governing existing installations as provided in G.S. 95-66. (1935, c. 326, s. 4; 1951, c. 1107, s. 2.)

§ 95-59. Commissioner of Labor empowered to appoint chief inspector; qualifications; salary. — After the passage of this Article and at any time thereafter that the office may become vacant, the Commissioner of Labor shall appoint, and may remove for cause when so appointed, a citizen of this State who shall have had at the time of such appointment not less than five years' practical experience with steam boilers as a steam engineer, mechanical engineer, boilermaker or boiler inspector, or who has passed the same kind of examination as that prescribed for deputy or special inspectors in G.S. 95-63, to be chief inspector for a term of two years or until his successor shall have been appointed, at an annual salary to be fixed by the Commissioner of Labor with the approval of the assistant director of the budget. (1935, c. 326, s. 5; 1943, c. 469.)

§ 95-60. Certain boilers excepted. — This Article shall not apply to boilers under federal control or to stationary boilers used by railroads which are inspected regularly by competent inspectors, or to boilers used solely for propelling motor road vehicles; or to boilers of steam fire engines brought into the State for temporary use in times of emergency to check conflagrations; or to portable boilers used for agricultural purposes only or for pumping or drilling in the open field for water, gas or coal, gold, talc or other minerals and metals; or to hot water supply tanks and boilers fired or unfired, which are located in private residences or in apartment houses of less than six families; or to steam boilers used for heating purposes carrying a pressure of not more than 15 pounds per square inch gauge, and which are located in private residences or in apartment houses of less than six families; or to hot water heating boilers

carrying a pressure of not more than 30 pounds per square inch gauge, and which are located in private residences or in apartment houses of less than six families. (1935, c. 326, s. 6; 1937, c. 125, s. 1; 1951, c. 1107, s. 3.)

§ 95-61. Powers of Commissioner of Labor; creation of Bureau of Boiler Inspection. — The Commissioner of Labor is hereby charged, directed and empowered:

- (1) To set up in the Division of Standards and Inspections of the Department of Labor, a Bureau of Boiler Inspection to be supervised by the chief inspector provided for in G.S. 95-59 and one or more deputy inspectors of boilers, who shall have passed the examination provided for in G.S. 95-63, at a salary not to exceed the salary of a senior factory inspector, and such office help as may be necessary.
- (2) To have free access for himself and his chief boiler inspector and deputies, during reasonable hours, to any premises in the State where a steam boiler or steam or hot water heating boiler or hot water supply tank or boiler fired or unfired is built or being built or is being installed or operated, for the purpose of ascertaining whether such boiler or tank is built, installed or operated in accordance with the provisions of this Article.
- (3) To prosecute all violators of the provisions of this Article.
- (4) To issue, suspend and revoke inspection certificates allowing steam boilers to be operated, as provided in this Article.
- (5) To enforce the laws of the State governing the use of steam boilers and steam and hot water heating boilers and hot water supply tanks and boilers fired and unfired and to enforce the rules and regulations of the Board of Boiler Rules.
- (6) To keep a complete record of the type, dimensions, age, condition, pressure allowed upon, location and date of the last inspection of all steam boilers and steam and hot water heating boilers and hot water supply tanks and boilers fired and unfired to which this Article applies.
- (7) To publish and distribute among boiler manufacturers and others requesting them, copies of the rules and regulations adopted by the Board of Boiler Rules. (1935, c. 326, s. 7; 1951, c. 1107, s. 4.)

§ 95-62. Special inspectors; certificate of competency; fees. — In addition to the deputy boiler inspectors authorized by G.S. 95-61, the Commissioner of Labor shall, upon the request of any company authorized to insure against loss from explosion of boilers in this State, issue commissions as special inspectors to any qualified boiler inspectors of said company who have certificates of competency. To be entitled to a certificate of competency a boiler inspector must either—

- (1) Have passed the examination for inspectors provided for by G.S. 95-63, or
- (2) Have passed an examination on boiler inspection in a state having standards therefor equal to this State, or
- (3) Hold a certificate from the National Board of Boiler and Pressure Vessel Inspectors.

The commission shall be in the form of a credential card for which a fee of two dollars (\$2.00) must be paid. The commission remains in force until the next succeeding December 31, and must be renewed annually thereafter.

Such special inspectors shall receive no salary from, nor shall any of their expenses be paid by, the State, and the continuance of a special inspector's commission shall be conditioned upon his continuing in the employ of a boiler inspection and insurance company duly authorized as aforesaid and upon his maintenance of the standards imposed by this Article. Such special inspectors shall inspect all steam boilers insured by their respective companies, and the

owners of such insured boilers shall be exempt from the payment of the fees provided for in G.S. 95-63. Each company employing such special inspectors shall, within 30 days following each annual internal inspection made by such inspectors, file a report of such inspection with the Commissioner of Labor. (1935, c. 326, s. 8; 1951, c. 544, s. 1.)

§ 95-63. Examination for inspectors; revocation of commission. — Application for examination as an inspector of boilers shall be in writing, and in duplicate, upon forms furnished by the Department of Labor, and shall be accompanied by a fee of ten dollars (\$10.00).

Examination for deputy or special inspectors shall be given by the Board of Boiler Rules or by at least two examiners to be appointed by said Board and must be written or part written and part oral recorded in writing and must be confined to questions the answers to which will aid in determining the fitness and competency of the applicant for the intended service and must be of uniform grade throughout the State. In case an applicant for an inspector's appointment or commission fails to pass this examination, he may appeal to the Board of Boiler Rules for a second examination which shall be given by said Board, or if by examiners appointed by said Board, then by examiners other than those by whom the first examination was given and these examiners shall be appointed forthwith to give said second examination. Upon the result of this examination on appeal, the Board shall determine whether the applicant be qualified. The record of any applicant's examination, whether original or on appeal shall be accessible to him and his employer. If the applicant is successful in passing the said examination, he is entitled to a certificate of competency.

A commission may be revoked by the Commissioner of Labor upon the recommendation of the chief inspector of boilers for the incompetence or untrustworthiness of the holder thereof or for wilful falsification of any matter or statement contained in his application or in a report of any inspection. A person whose commission is revoked may appeal from the revocation to the Board of Boiler Rules which shall hear the appeal and either set aside or affirm the revocation and its decision shall be final. The person whose commission has been revoked shall be entitled to be present in person and by counsel on the hearing of the appeal. If a certificate or commission is lost or destroyed, a new certificate or commission shall be issued in its place without another examination. A person who has failed to pass the examination for a commission or whose commission has been revoked shall be entitled to apply for a new examination and commission after 90 days from such failure or revocation. (1935, c. 326, s. 9; 1951, c. 544, s. 2; c. 1107, s. 5.)

§ 95-64. Boiler inspections; fee; certificate; suspension. — On and after April 1, 1935, each steam boiler used or proposed to be used within this State, except boilers exempt under G.S. 95-60, shall be thoroughly inspected internally and externally while not under pressure by the chief inspector or by one of the deputy inspectors or special inspectors provided for herein, as to its design, construction, installation, condition and operation; and if it shall be found to be suitable, and to conform to the rules and regulations of the Board of Boiler Rules, the owner or user of a steam boiler as required in this Article to be inspected shall pay to the chief inspector the sum of four dollars (\$4.00) for each inspection certificate issued, and the chief inspector shall issue to the owner or user thereof an inspection certificate specifying the maximum pressure which it may be allowed to carry. Such inspection certificate shall be valid for not more than 14 months from its date, and it shall be posted under glass in the engine or boiler room containing such boiler, or an engine operated by it, or, in the case of a portable boiler, in the office of the plant where it is located for the time being. No inspection certificate issued for a boiler inspected by a special inspector shall be valid after the boiler for which it was issued shall cease to

be insured by a duly authorized insurance company. The chief inspector or any deputy inspector may, at any time, suspend an inspection certificate when, in his opinion, the boiler for which it was issued may not continue to be operated without menace to the public safety, or when the boiler is found not to comply with the rules herein provided for and a special inspector shall have corresponding powers with respect to inspection certificates for boilers issued by the company employing him. Such suspension of an inspection certificate shall continue in effect until said boiler shall have been made to conform to the rules and regulations of the Board of Boiler Rules and until said inspection certificate shall have been reinstated by a State inspector, if the inspection certificate was suspended by a State inspector, or by a special inspector, if it was suspended by a special inspector. Not more than 14 months shall elapse between such inspections and there shall be at least four such inspections in 37 consecutive months. Each such boiler shall also be inspected externally while under pressure with at least the same frequency, and at no greater intervals. (1935, c. 326, s. 10; 1937, c. 125, s. 2; 1939, c. 361, s. 1; 1967, c. 490, s. 1; 1973, c. 1292, s. 1.)

Editor's Note. — The 1973 amendment increased the fee from \$2.00 to \$4.00. Board of Boiler Rules was transferred to the Department of Labor by § 143A-70, enacted by **State Government Reorganization.** — The Session Laws 1971, c. 864

§ 95-64.1. Inspection of low pressure steam heating boilers, hot water heating and supply boilers and tanks. — (a) This section applies only to low pressure steam heating boilers, hot water heating boilers, hot water supply boilers and hot water supply tanks, fired or unfired.

(b) On and after July 1, 1951, each boiler or tank used or proposed to be used within this State, except boilers or tanks exempt under G.S. 95-60, shall be thoroughly inspected as to their construction, installation, condition and operation as follows:

- (1) Boilers and tanks shall be inspected both internally and externally biennially where construction will permit; provided that a grace period of two months longer than the 24 months' period may elapse between internal inspections of a boiler or tank while not under pressure or between external inspections of a boiler or tank while under pressure. The inspection herein required shall be made by the chief inspector, or by a deputy inspector or by a special inspector, provided for in this Article.
- (2) If at any time a hydrostatic test shall be deemed necessary, it shall be made, at the discretion of the inspector, by the owner or user thereof.
- (3) All boilers or tanks to be installed in this State after the date upon which the rules and regulations of the Board relating to such boilers or tanks become effective shall be inspected during construction as required by the applicable rules and regulations of the Board by an inspector authorized to inspect boilers and tanks in this State, or, if constructed outside the State, by an inspector holding a certificate from the National Board of Boiler and Pressure Vessel Inspectors, or a certificate of competency as an inspector of boilers for a state that has a standard of examination substantially equal to that of this State provided by G.S. 95-63.
- (4) If upon inspection, a boiler or tank is found to comply with the rules and regulations of the Board, the owner or user thereof shall pay directly to the chief inspector, the sum of four dollars (\$4.00) and the chief inspector, or his duly authorized representative, shall issue to such owner or user an inspection certificate bearing the date of inspection

and specifying the maximum pressure under which such boiler or tank may be operated. Such inspection certificate shall be valid for not more than 26 months. Certificates shall be posted under glass in the room containing the boiler or tank inspected or in the case of a portable boiler or tank in a metal container to be fastened to the boiler or to be kept in a toolbox accompanying the boiler.

- (5) No inspection certificate issued for an insured boiler or tank inspected by a special inspector shall be valid after the boiler or tank for which it was issued shall cease to be insured by a company duly authorized by this State to carry such insurance.
- (6) The chief inspector or his authorized representative may at any time suspend an inspection certificate when, in his opinion, the boiler or tank for which it was issued, cannot be operated without menace to public safety, or when the boiler or tank is found not to comply with the rules and regulations herein provided. A special inspector shall have corresponding powers with respect to inspection certificates for boilers or tanks insured by the company employing him. Such suspension of an inspection certificate shall continue in effect until such boiler or tank shall have been made to conform to the rules and regulations of the Board, and until said inspection certificate shall have been reinstated. (1951, c. 1107, s. 6; 1967, c. 490, s. 2; 1973, c. 1292, s. 2.)

Editor's Note. — The 1973 amendment increased the fee in subdivision (4) of subsection (b) from \$2.00 to \$4.00. Cited in Page v. Blom, 12 N.C. App. 433, 184 S.E.2d 813 (1971).

§ 95-65. Operation of unapproved boiler prohibited. — On and after July 1, 1935, it shall be unlawful for any person, firm, partnership or corporation to operate under pressure in this State a steam boiler to which this Article applies without a valid inspection certificate as provided for in this Article. The operation of a steam boiler without an inspection certificate shall constitute a misdemeanor on the part of the owner, user or operator thereof and be punishable by a fine not exceeding one hundred dollars (\$100.00) or imprisonment not to exceed 30 days, or both, in the discretion of the court. (1935, c. 326, s. 11.)

§ 95-65.1. Operation of unapproved low pressure steam heating boilers, or hot water heating and supply boilers and tanks prohibited. — On and after July 1, 1951, it shall be unlawful for any person, firm, partnership, or corporation to operate under pressure in this State a low pressure steam heating boiler, hot water heating boiler, hot water supply boiler or hot water supply tank, fired or unfired, to which this Article applies without a valid inspection certificate as provided for in this Article. The operation of any such boiler or tank without an inspection certificate shall constitute a misdemeanor on the part of the owner, user, or operator thereof and be punishable by a fine not exceeding one hundred dollars (\$100.00) or imprisonment not to exceed 30 days, or both in the discretion of the court. (1951, c. 1107, s. 7.)

§ 95-66. Installation of boilers not conforming to requirements prohibited; boilers now in use to conform. — No steam boiler or steam or hot water heating boiler or hot water supply tank or boiler, fired or unfired which does not conform to the rules and regulations formulated by the Board of Boiler Rules governing new installations shall be installed in this State after six months from the date upon which the said rules and regulations shall become effective by the approval of the Governor.

All boilers and tanks installed and ready for use, or being used, before the said six months shall have elapsed, shall be made to conform to the rules and

regulations of the Board of Boiler Rules governing existing installations and the formula therein prescribed shall be used in determining the maximum allowable working pressure for such boilers and tanks. (1935, c. 326, s. 12; 1951, c. 1107, s. 8.)

§ 95-67. Inspection of boilers during construction in State; outside State.

— All steam boilers and steam and hot water supply tanks and boilers to be installed after six months from the date upon which the rules and regulations of the Board of Boiler Rules shall become effective by the approval of the Governor shall be inspected during construction by an inspector authorized to inspect boilers in this State, or if constructed outside the State, by an inspector holding a certificate of authority from the Commissioner of Labor of this State, which certificate shall be issued by the said Commissioner of Labor to any inspector who holds a certificate of authority to inspect steam boilers issued by a state which shall have adopted boiler rules that require standards of construction and operation substantially equal to those of this State, or an inspector who holds a certificate of inspection issued by the National Board of Boiler and Pressure Vessel Inspectors. (1935, c. 326, s. 12; 1951, c. 1107, s. 9.)

§ 95-68. Fees for internal and external inspections. — The person using, operating or causing to be operated any boiler listed in this section, required by this Article to be inspected by the chief boiler inspector or a deputy inspector, shall pay to the inspector, for the inspection of any such boiler, fees in accordance with the following schedule:

Miniature boilers, which do not exceed 16 inches inside diameter of shell, 100 pounds per square inch maximum allowable working pressure:	
General inspection	\$ 6.00
Fire tube boilers with hand holes only:	
Internal inspection	7.00
External inspection while under pressure	5.00
Fire tube boilers with manholes:	
Internal inspection	15.00
External inspection while under pressure	5.00
Water tube boilers (coil type):	
General inspection	7.00
Water tube boilers with not more than 500 square feet of heating surface:	
Internal inspection	7.00
External inspection while under pressure	5.00
Water tube boilers with more than 500 but not more than 3,000 square feet of heating surface:	
Internal inspection	15.00
External inspection while under pressure	5.00
Water tube boilers with more than 3,000 feet of heating surface:	
Internal inspection	25.00
External inspection while under pressure	8.00

Provided, that four dollars (\$4.00) of each internal inspection fee shall be the fee for the certificate of inspection required by G.S. 95-64. The inspector shall give receipts for said fees and shall pay all sums so received to the Commissioner of Labor, who shall pay the same to the Treasurer of the State. The Treasurer of the State shall hold the fees collected under this section and under G.S. 95-64 in a special account to pay the salaries and expenses incident to the direct field inspection activities of this Article, the surplus, with the approval of the Director of the Budget, to be added to the appropriation for the supervision and administration of this Article within the Department of Labor. (1935, c. 326, s.

13; 1937, c. 125, s. 3; 1939, c. 361, s. 2; 1951, c. 544, s. 3; 1967, c. 490, s. 3, 1973, c. 1292, ss. 3-5.)

Editor's Note. — The 1973 amendment substituted "four dollars (\$4.00)" for "two dollars (\$2.00)" near the beginning of the proviso following the schedule, and substituted "direct field inspection activities" for "administration" and "for the supervision and administration of this Article within the Department of Labor" for "of the Division of Standards and Inspections of the Department of Labor for its general inspections service" in the last sentence of the section.

§ 95-68.1. Other inspection fees. — The person using, operating or causing to be operated any low pressure steam heating boiler, hot water heating boiler, hot water supply boiler, or hot water supply tank, fired or unfired, required by this Article to be inspected by the chief boiler inspector or a deputy inspector, shall pay to the inspector for the biennial inspection of any such boiler or tank fees in accordance with the following schedule: Provided that four dollars (\$4.00) of each inspection fee shall be the fee for the certificate of inspection required by G.S. 95-64.1:

Low pressure steam and hot water boilers, equipped only with hand holes and washout plugs	\$ 6.00
Low pressure steam and hot water boilers, equipped with manhole	15.00
Hot water supply boilers	4.00
Tanks that are not equipped with manhole	4.00
Tanks equipped with manhole	8.00

(1951, c. 1107, s. 10; 1967, c. 490, s. 4; 1973, c. 1292, s. 6.)

Editor's Note. — The 1973 amendment substituted "four dollars (\$4.00)" for "two dollars (\$2.00)" in the proviso preceding the schedule of fees.

§ 95-69. Bonds of chief inspector and deputy inspectors. — The chief inspector shall furnish a bond in the sum of five thousand dollars (\$5,000), and each of the deputy inspectors shall furnish a bond in the sum of one thousand dollars (\$1,000), conditioned upon the faithful performance of their duties and upon a true account of moneys handled by them respectively, and the payment thereof to the proper recipient. The cost of said bonds shall be paid by the State Treasurer out of the special fund provided for in G.S. 95-68. (1935, c. 326, s. 14; 1937, c. 125, s. 4.)

§ 95-69.1. Appeals to Board. — Any person aggrieved by an order or act of the Commissioner of Labor, or the chief inspector, under this Article may, within 15 days after notice thereof, appeal from such order or act to the Board which shall, within 30 days thereafter, hold a hearing after having given at least 10 days' written notice to all interested parties. The Board shall, within 30 days after such hearing, issue an appropriate order either approving, modifying or disapproving said order or act. A copy of such order by the Board shall be delivered to all interested parties. (1951, c. 1107, s. 12.)

§ 95-69.2. Court review of orders and decisions. — (a) Any order or decision made, issued or executed by the Board shall be subject to review in the superior court of the county in which the inspection took place on petition by any person aggrieved filed within 30 days from the date of the delivery of a copy of the order or decision made by the Board to such person. A copy of such petition for review as filed with and certified to by the clerk of said court shall be served upon the chairman of the Board. If such petition for review is not filed within the said 30 days the parties aggrieved shall be deemed to have waived the right to have the merits of the order or decision reviewed and there shall be no trial of the

merits thereof by any court to which application may be made by petition or otherwise, to enforce or restrain the enforcement of the same.

(b) The chairman of the Board shall within 30 days, unless the time be extended by order of court, after the service of the copy of the petition for review as provided in paragraph (a) of this section, cause to be prepared and filed with the clerk of the Superior Court of Wake County a complete transcript of the record of the hearing, if any, had before the Board, and a true copy of the order or decision duly certified. The order or decision of the Board if supported by substantial evidence shall be presumed to be correct and proper. The court may change the place of hearing,

(1) Upon consent of the parties; or

(2) When the convenience of witnesses and the end of justice would be promoted by the change; or

(3) When the judge has at any time been interested as a party or counsel.

The cause shall be heard by the trial judge as a civil case upon transcript of the record for review of findings of fact and errors of law only. It shall be the duty of the trial judge to hear and determine such petition with all convenient speed and to this end the cause shall be placed on the calendar for the next succeeding term for hearing ahead of all other cases except those already given priority by law. If on the hearing before the trial judge it shall appear that the record filed by the chairman of the Board is incomplete, he may by appropriate order direct the chairman to certify any or all parts of the record so omitted.

(c) The trial judge shall have jurisdiction to affirm or to set aside the order or decision of the Board and to restrain the enforcement thereof.

(d) Appeals from all final orders and judgments entered by the superior court in reviewing the orders and decisions of the Board may be taken to the Supreme Court of North Carolina by any party to the action as in other civil cases.

(e) The commencement of proceedings under this section shall not operate as a stay of the Board's order or decision, unless so ordered by the court.

(f) The following rights may be exercised by any party in lieu of the right of review provided by the above subsections (a) through (d):

The person aggrieved by any order or decision of the Board may, within 30 days after delivery to him of a copy of the Board's order or decision, file an appeal and a request for trial de novo and right to jury trial in the superior court of the county in which the inspection took place. Such right must be granted. However, unless such appeal and request for right to trial de novo and jury trial is filed as provided above, such right shall be deemed waived. In the event of such trial de novo, the Board shall file with the clerk of said superior court a certified copy of the Board's order or decision from which appeal is taken, and also, upon written request filed 10 days prior to the trial, furnish to the appealing party a copy of the transcript of the record of the hearing held before the Board. Any party to the action may take appeal to the superior court from any final order and judgment entered by the superior court after any such trial de novo or jury trial, which appeal shall be as in other civil actions. (1951, c. 1107, s. 12; 1953, c. 675, s. 10.)

ARTICLE 8.

Bureau of Labor for the Deaf.

§ 95-70. **Creation.** — There shall be created in the Department of Labor a division devoted to the deaf. (1923, c. 122, s. 1; C. S., s. 7312(j); 1931, c. 312, s. 3.)

§ 95-71. **Appointment of chief of Bureau; duties.** — The Commissioner of Labor shall appoint a competent deaf man to take charge of such division, who shall devote his time to the special work of labor for the deaf under the

about an available job, a job order, the job order, the date representative or other business description or representation listing or other publication, job order for the position. It not be used in more than one publication. It shall not be published any more if false or deceptive or true. Listing service shall not use that applicants will not be (c. 780, s. 2.)

shall give every applicant name and address of the date and the amount of the

listing service shall not publish employer that the job listing

der, or unless the applicant is so

or d to imminent cessation of ed in the publication; or ce or any owner of the job er than ten percent (10%), ublication. (1979, c. 780, s.

each job listing service shall ommissioner the following he 18 months immediately

executed with applicants;

shed orally or in writing, r (including the date it was sentative or other business listed, and records of the ons issued; and under regulations adopted

s Article shall be enforced who shall have the same as in the enforcement of

After the Commissioner ants complaining that the he services of a job listing

service, the Commissioner may contact other applicants who have paid a fee to the job listing service for the purpose of determining what percentage of such applicants obtain employment as a result of the services of the job listing service. After gathering information from such applicants and following the requirements of due process, the Commissioner shall place the survey results in the public records. (1979, c. 780, s. 2.)

§ 95-47.32. Severability. — If any provision of this Article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications, and to this end the provisions of this Article are severable. (1979, c. 780, s. 2.)

ARTICLE 7.

Board of Boiler Rules and Bureau of Boiler Inspection.

§ 95-54. Board of Boiler Rules created; members, appointment, and qualifications; terms of office; vacancies; meetings.

Cross Reference. — For the Uniform Boiler and Pressure Vessel Act, see § 95-69.8 et seq.

§ 95-59. Commissioner of Labor empowered to appoint chief inspector; qualifications; salary. — After the passage of this Article and at any time thereafter that the office may become vacant, the Commissioner of Labor shall appoint, and may remove for cause when so appointed, a citizen of this State who shall have had at the time of such appointment not less than five years' practical experience with steam boilers as a steam engineer, mechanical engineer, boilermaker or boiler inspector, or who has passed the same kind of examination as that prescribed for deputy or special inspectors in G.S. 95-63, to be chief inspector for a term of two years or until his successor shall have been appointed, at an annual salary to be fixed by the Commissioner of Labor with the approval of the Secretary of Administration. (1935, c. 326, s. 5; 1943, c. 469; 1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment. Administration" for "assistant director of the effective July 1, 1975 substituted "Secretary of budget" at the end of the section.

§ 95-68. Fees for internal and external inspections. — The person using, operating or causing to be operated any boiler listed in this section, required by this Article to be inspected by the chief boiler inspector or a deputy inspector, shall pay to the inspector, for the inspection of any such boiler, fees in accordance with the following schedule:

Miniature boilers, which do not exceed 16 inches inside diameter of shell, 100 pounds per square inch maximum allowable working pressure:	
General inspection	\$ 8.00
Fire tube boilers with hand holes only:	
Internal inspection	9.00
External inspection while under pressure	7.00
Fire tube boiler with manholes:	
Internal inspection	17.00
External inspection while under pressure	7.00
Water tube boilers (coil type):	

General inspection	9.00
Water tube boilers with not more than 500 square feet of heating surface:	
Internal inspection	9.00
External inspection while under pressure	7.00
Water tube boilers with more than 500 but not more than 3,000 square feet of heating surface:	
Internal inspection	17.00
External inspection while under pressure	7.00
Water tube boilers with more than 3,000 square feet of heating surface:	
Internal inspection	27.00
External inspection while under pressure	10.00

Provided, that four dollars (\$4.00) of each internal inspection fee shall be the fee for the certificate of inspection required by G.S. 95-64. The inspector shall give receipts for said fees and shall pay all sums so received to the Commissioner of Labor, who shall pay the same to the Treasurer of the State. The Treasurer of the State shall hold the fees collected under this section and under G.S. 95-64 in a special account to pay the salaries and expenses incident to the direct field inspection activities of this Article, the surplus, with the approval of the Director of the Budget, to be added to the appropriation for the supervision and administration of this Article within the Department of Labor. (1935, c. 326, s. 13; 1937, c. 125, s. 3; 1939, c. 361, s. 2; 1951, c. 544, s. 3; 1967, c. 490, s. 3; 1973, c. 1292, ss. 3-5; 1975, c. 541, s. 1.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, for all fired pressure vessels, and Jan. 1, 1976,

for all unfired pressure vessels, increased all of the fees in the schedule.

§ 95-68.1. Other inspection fees.

Revision of Boiler Inspection Fees. — Session Laws 1975, c. 541, which amended § 95-68, provides, in s. 2:

"All other boiler inspection fees pursuant to General Statutes 95-68.1 are hereby revised in accordance with the following schedule:

"Low pressure steam and hot water boilers, equipped only with hand holes and washout plugs	\$ 8.00
"Low pressure steam and hot water boilers, equipped with manhole	17.00

"Fired hot water supply boilers and fired hot water heaters equipped with a manhole	10.00
"Fired hot water supply boilers and fired hot water heaters without a manhole	5.00
"Each unfired pressure vessel subject to inspection equipped with a manhole	10.00
"Each unfired pressure vessel subject to inspection without a manhole	5.00"

§§ 95-69.3 to 95-69.7: Reserved for future codification purposes.

ARTICLE 7A.

Uniform Boiler and Pressure Vessel Act.

§ 95-69.8. Short title. — This Article shall be known as the Uniform Boiler and Pressure Vessel Act of North Carolina. (1975, c. 895, s. 1.)

Editor's Note. — Session Laws 1975, c. 895, s. 13, makes the act effective Jan. 1, 1976.

§ 95-69.9. Defir
 Board of Boiler ai
 (b) The term "b
 steam is generate
 pressure or vacuun
 from the combusti
 "boiler" shall also
 water where these
 within themselves;
 (c) The term "Co
 Labor;
 (d) The term "
 Commissioner to h
 Division within the
 (e) The term "ins
 that a boiler or pre
 adopted under this
 (f) The term "ins
 the Commissioner
 Article to conduct
 (g) The term "pr
 obtained from an in
 source or a direct
 (1975, c. 895, s. 2.)

§ 95-69.10. Appli
 to all boilers and pr
 in this State includi
 connection with bus
 assembly building
 recreation buildings
 boilers and hot wate
 courts, camps, cotta
 or operator adverti
 business for tempor
 (b) This Article sl
 (1) Boilers and
 government
 (2) Pressure ve
 gases when
 U.S. Depar
 marked, ina
 appropriate
 (3) To portable
 only or for
 gold, tale o
 (4) Boilers and
 in apartmen
 (5) Pressure ve
 petroleum
 (6) Air tanks loc
 other state
 substantial
 passengers
 (7) Air tanks ins
 operation o

STATE OF NORTH CAROLINA
ADMINISTRATIVE RULES REVIEW COMMITTEE

LEGISLATIVE RESEARCH COMMISSION

STATE LEGISLATIVE BUILDING

RALEIGH 27611

SENATOR ROBERT B. JORDAN, III
CHAIRMAN

REPRESENTATIVE WILLIAM E. CLARK
REPRESENTATIVE CHARLES D. EVANS
REPRESENTATIVE JAMES F. MORGAN
REPRESENTATIVE KENNETH B. SPAULDING
SENATOR CHARLES E. VICKERY
SENATOR WILLIS P. WHICHARD



STAFF:
TERRENCE D. SULLIVAN
DIRECTOR OF RESEARCH

March 24, 1980

Mr. Edwin B. Hatch
Administrative Procedure Act Coordinator
Department of Labor
111 East North Street
Raleigh, North Carolina 27601

Dear Mr. Hatch:

On March 20, 1980, the Administrative Rules Review Committee reviewed Rule 13 NCAC 3 .0209 (Certificate and Inspection Fees) filed by the Department of Labor. Following its discussion of this rule, the Committee concluded that the Department lacked statutory authority for the promulgation of this rule in both Subsections (a) and (b). Specifically, in Subsection (a) the Department charges "...a certificate fee of seven dollars (\$7.00) for each boiler and pressure vessel required to be inspected...." Although the Department cites general authority for the Commissioner of Labor "...[t]o establish reasonable fees for the inspection and issuance of inspection certificates for boilers and pressure vessels;..." [G.S. 95-69.11(11)] and the authority of the Commissioner to adopt rules governing the inspection of boilers and pressure vessels (G.S. 95-69.14); this fee is set by another, more specific statute. The controlling, specific statutory authority prescribes that "...four dollars (\$4.00) of each internal inspection fee shall be the fee for the certificate of inspection...." (G.S. 95-68).

Subsection (b) of Rule 13 NCAC 3 .0209 (Certificate and Inspection Fees) sets forth a schedule of fees (in addition to the fee for issuance of inspection certificate) for the inspection of power boilers and heating boilers (see copy of rule with schedule, attached). Again the Department relies on the general authority of the Commissioner to set reasonable fees (G.S. 95-69.11) and to make rules (G.S. 95-69.14). However, a specific schedule of fees is set forth in G.S. 95-68 which sets a ceiling for internal and external inspections which the schedule set forth in this rule clearly exceeds.

Mr. Edwin B. Hatch

Page 2.

March 24, 1980

It is a well-established rule of statutory construction in North Carolina that when two statutes on a related subject are in conflict with each other they are to be reconciled, by construction, so far as may be, on any fair hypothesis, and any validity and effect given to both, if this can be done without destroying the evident intent and meaning of the later act [Peoples Bank v. Loven, 172 NC 666, 90 S.E. 948 (1916)]. Adopting also the rule of statutory construction that the specific statute controls over a statute relying on general authority, it is the position of the Administrative Rules Review Committee that the specific statutory authority set forth in G.S. 95-68 providing for specific fees is controlling over the Commissioner's general authority to set "...reasonable fees for the inspection and issuance of inspection certificates (G.S. 95-69.11). Therefore, the Commissioner of Labor's authority to set fees must comply with specific statutes prescribing fees.

The Committee has also directed its staff to call your attention to a recently-enacted law pertaining to the construction of statutes giving general grants of authority to agencies to promulgate rules. G.S. 12-3.1 generally provides that a broad grant of authority is not to be construed by the courts as a grant of authority to establish a fee or charge for rendering any services or fulfilling any duty to the public (Chapter 559 of the 1979 Session Laws). Please note that the effective date of this statute is May 1, 1981.

This objection is filed at the direction of the Administrative Rules Review Committee pursuant to G.S. 120-30.28.

G.S. 120-30.29 requires a response from the agency within 60 days from receipt of this letter.

Yours truly,

TERRENCE D. SULLIVAN
DIRECTOR OF RESEARCH



E. Ann Christian
Staff Attorney

TDS/EAC/pv

Enclosure

CC: Honorable John C. Brooks, Commissioner of Labor
Members of Administrative Rules Review Committee

LEGISLATIVE RESEARCH COMMISSION REPORT:

Notice of Objection; Legislative Review of Administrative Rules
(G.S. 120-30.23 and G.S. 120-30.25)

Date: March 24, 1980

From: Terrence D. Sullivan
Legislative Research Commission
2129 State Legislative Building
Raleigh, North Carolina 27611 - Phone: 919-733-7044

TO: Edwin B. Hatch
(Name)

Adm. Procedures Act Coordinator - _____
(Agency & Address)

Department of Labor
111 East North Street
Raleigh, North Carolina 27601
Phone: 733-7495

RULE: 13 NCAC 3 .0209(a) and (b)
(Citation; N. C. Administrative Code)
Certificate and Inspection Fees
(Catchline)

Objection by Administrative Rules Review Committee

Date of Committee decision: March 20, 1980
Date of Agency Response to Committee objection: _____

Objection Continued by Legislative Research Commission

Date of Commission decision: _____

STATEMENT OF OBJECTIONS AND REASONS:

(See Attached)



JOHN C BROOKS
COMMISSIONER

State of North Carolina
Department of Labor
1 M. Edenton Street
Raleigh 27601

FILED IN ACCORDANCE
WITH ART. 6C OF CHAP.
120 OF THE GENERAL STATUTES

MAY 20 1980

DIRECTOR OF RESEARCH

April 4, 1980

Mr. Terrence D. Sullivan
Director of Research
Legislative Research Commission
Raleigh, North Carolina 27611

Re: Administrative Rules Review

Dear Mr. Sullivan:

Pursuant to G.S. 120-30.29, this agency is responding to your objections to the Department of Labor's filing of Rule 13 NCAC 3 .0209 (Certificate and Inspection Fees), set forth in your letter of March 24, 1980.

As stated in your objection letter, the only ground upon which you base your opinion that the Department of Labor lacked statutory authority for the promulgation of this rule is that the general rule-making power granted in G.S. 95-69.11 and 95-69.14 conflicts with the specific schedule of fees set forth in G.S. 95-68.

We concur with your general premise that the specific prevails over the general when there is a conflict. However, we are of the opinion that such an interpretation in this instance fails to take into consideration other applicable basic rules of statutory construction which are equally well-established and controlling in this matter:

1. Legislative intent is the all-important and controlling factor in the interpretation of statutes. (Citations omitted.)
2. "It is always presumed that the legislature acted with full knowledge of prior and existing law". Investors, Inc. v. Berry, 293 NC 688, 695 (1977).
3. "It is well established that when there are two acts of the legislature applicable to the same subject, their provisions are to be reconciled if this can be done by fair and reasonable intendment, but to the extent that they are necessarily repugnant, the last one enacted shall prevail." (Emphasis added) Leasing Company v. Southeastern Motels, 40 NC App. 120 (1979).

The fee-setting and rule-making power granted to the Commissioner of Labor in G.S. 95-69.11 and 95-69.14 was enacted by the

General Assembly on June 26, 1975 as part of a comprehensive Article known as the Uniform Boiler and Pressure Vessel Act of North Carolina (G.S. 95-09.8). The specific schedule of fees appearing in 95-68, which you rely upon as controlling, was enacted by the General Assembly on June 10, 1975.

Therefore, under this principle of statutory construction, the last enactment prevails as the reasonable intendment of the legislature.

4. The general rule-making and fee-setting powers (G.S. 95-69.11 and 95-69.14) were granted to the Commissioner of Labor in Chapter 895, North Carolina Session Laws of 1975, enacted June 26, 1975. As stated above, these sections were part of the Uniform Boiler and Pressure Vessel Act of North Carolina, which is a comprehensive uniform act dealing with the subject of boiler inspections. Not only was Chapter 895 enacted after the amendment to G.S. 95-68 (Chapter 541, North Carolina Session Laws of 1975, enacted June 10, 1975, Section 12 of Chapter 895 reads as follows: "All laws and clauses of laws in conflict with this act are repealed." Therefore, in addition to the principle that the statute last enacted shall prevail, the 1975 Legislature specifically repealed all statutes in conflict with Chapter 895, including Chapter 541. Further, "... it is always presumed that the legislature acted with full knowledge of prior and existing law." Investors, Inc. v. Berry, supra.

The case of Leasing Company v. Southeastern Motels, supra, is very much in point since it involved not only a later-enacted statute, but also the later enactment contained a specific repealer. The Court said: "Moreover, in enacting the Rules of Civil Procedure, the legislature removed any doubt about conflicting statutes such as these by providing that, 'All laws and clauses of laws in conflict with this act are hereby repealed.'" (Emphasis added.)

5. Finally, it is an accepted principle of statutory construction that where the legislature has enacted statutes to achieve a specific aim, the courts will construe such statutes in a manner which effectuates that legislative purpose. Ross Realty Company v. First Citizens Bank, 296 NC 366 (1979).

The Uniform Boiler and Pressure Vessel Act of North Carolina is a comprehensive enactment by the Legislature which does far more than grant fee-setting and rule-making authority to the Commissioner of Labor. This legislation was intended by the Legislature to deal with all aspects of boiler and pressure vessel inspection and regulation and should be conclusively presumed to supersede all other statutory enactment dealing with this subject.

There are many areas in the uniform act which conflict with the provisions of Article 7 of Chapter 95, which established the old Board of Boiler Rules and Bureau of Boiler Inspection in 1935. For example, the former Board of Boiler Rules consisted of six persons appointed by the Governor and was charged with responsibility for formulating rules and regulations which became effective upon approval by the Governor. The Uniform Act enacted in 1975 created a nine member Board of Boiler and Pressure Vessel Rules appointed by the Commissioner of Labor, and vested in the Commissioner the authority to promulgate rules and regulations.

Therefore, even without the repealer section in Chapter 895, it is patently obvious that it was the intention of the 1975 legislature for Article 7A to supersede and replace Article 7 in all respects. To contend or hold that one section of the old Article 7 should prevail over a conflicting section in new Article 7A is tantamount to nullifying the entire Uniform Act, thereby totally frustrating the intention of the Legislature and squarely contravening the five clearly established principles of statutory construction enumerated hereinabove.

In summary, it is the opinion of this Department that there was ample statutory authority for the promulgation of Rule 13 NCAC 3.0209. We therefore request that this response be considered along with your opinion of March 24, 1980, and that your objection to the promulgation of this rule be removed.

Very truly yours,



Edwin B. Hatch
Administrative Rules Coordinator

EBH:em

LEGISLATIVE RESEARCH COMMISSION REPORT:

Notice of Objection; Legislative Review of Administrative Rules
(G.S. 120-30.23 and G.S. 120-30.25)

Date: May 21, 1980

From: Terrence D. Sullivan
Legislative Research Commission
2129 State Legislative Building
Raleigh, North Carolina 27611 - Phone: 919-733-7044

TO: Edwin B. Hatch
(Name)

Adm. Procedures Act Coordinator - Department of Labor
(Agency & Address)

111 East North Street

Raleigh, North Carolina 27601

Phone: 733-7495

RULE: 13 NCAC 3 .0209
(Citation; N. C. Administrative Code)
Certificate and Inspection Fees
(Catchline)

Objection by Administrative Rules Review Committee

Date of Committee decision: March 20, 1980

Date of Agency Response to Committee objection: May 20, 1980

Objection Continued by Legislative Research Commission

Date of Commission decision: _____

STATEMENT OF OBJECTIONS AND REASONS:

(See Attached)

STATE OF NORTH CAROLINA
ADMINISTRATIVE RULES REVIEW COMMITTEE
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH 27611

SENATOR ROBERT B. JORDAN, III
CHAIRMAN

REPRESENTATIVE WILLIAM E. CLARK
REPRESENTATIVE CHARLES D. EVANS
REPRESENTATIVE JAMES F. MORGAN
REPRESENTATIVE KENNETH B. SPAULDING
SENATOR CHARLES E. VICKERY
SENATOR WILLIS P. WHICHARD



STAFF:
TERRENCE D. SULLIVAN
DIRECTOR OF RESEARCH

May 21, 1980

Senator W. Craig Lawing, CoChairman
Speaker Carl J. Stewart, Jr., CoChairman
Legislative Research Commission
State Legislative Building
Raleigh, North Carolina 27611

Dear Senator Lawing and Speaker Stewart:

Pursuant to G.S. 120-30.29, I am referring Rule 13 NCAC 3 .020 (Certificate and Inspection Fees) to the Legislative Research Commission. This rule was the subject of an objection by the Administrative Rules Review Committee at its March 20, 1980, meeting and has been returned, without change, by the North Carolina Department of Labor.

Pursuant to G.S. 120-30.30, the Legislative Research Commission has 60 days from May 20, 1980, the date the rule was returned to the Administrative Rules Review Committee without change, to complete their review.

Please contact me if I can be of assistance.

Yours truly,

Terrence D. Sullivan
Terrence D. Sullivan
Director of Research

TDS/pv

Attachment

LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH 27611



June 2, 1980

FILED WITH A...
120 OF THE...
JUN
DIRE... RESEARCH

JUN 5 REC'D
[Handwritten signature]

FILED IN ACCORDANCE
WITH ART. 6C OF CHAP.
120 OF THE GENERAL STATUTES

JUN 9 1980

DIRECTOR OF RESEARCH

Mr. Edwin B. Hatch
Administrative Procedure Act Coordinator
Department of Labor
111 East North Street
Raleigh, North Carolina 27611

Dear Mr. Hatch:

The Legislative Research Commission hereby continues the objection of its Administrative Rules Review Committee made on March 20, 1980, to Rule 13 NCAC 3 .0209 (Certificate and Inspection Fees). The rule was returned by the Department of Labor to the Committee, without change, on May 20, 1980. The earlier objection and the cited rule are attached.

Please note that the Department of Labor must return the rule with or without change within 30 days of the notification to the agency of the Commission's objection.

Yours truly,

[Handwritten signature of W. Craig Lawing]
Senator W. Craig Lawing
Co-chairman

[Handwritten signature of Carl J. Stewart, Jr.]
Speaker Carl J. Stewart, Jr.
Co-chairman

TDS/WLPjr/pv

Attachments

- cc: Honorable James B. Hunt, Jr., Governor
- Honorable John C. Brooks, Commissioner of Labor
- Members of the Administrative Rules Review Committee

LEGISLATIVE RESEARCH COMMISSION REPORT:

Notice of Objection; Legislative Review of Administrative Rules
(G.S. 120-30.23 and G.S. 120-30.25)

Date: June 2, 1980

From: Terrence D. Sullivan
Legislative Research Commission
2129 State Legislative Building
Raleigh, North Carolina 27611 - Phone: 919-733-7044

TO: Edwin B. Hatch
(Name)

Adm. Procedures Act Coordinator - Department of Labor
(Agency & Address)

111 East North Street

Raleigh, North Carolina 27601

Phone: 733-7495

RULE: 13 NCAC 3 .0209
(Citation; N. C. Administrative Code)
Certificate and Inspection Fees
(Catchline)

Objection by Administrative Rules Review Committee

Date of Committee decision: March 20, 1980

Date of Agency Response to Committee objection: May 20, 1980

Objection Continued by Legislative Research Commission

Date of Commission decision: May 29, 1980

STATEMENT OF OBJECTIONS AND REASONS:

(See Attached)



JOHN C. BROOKS
COMMISSIONER

State of North Carolina
Department of Labor
4 M. Edenton Street
Raleigh 27601

FILED IN ACCORDANCE
WITH ART. 60 OF CHAP.
120 OF THE GENERAL STATUTES

JUN 10 1980

DIRECTOR OF RESEARCH

June 10, 1980

Senator W. Craig Lawing, Co-Chairman
Speaker Carl J. Stewart, Jr., Co-Chairman
LEGISLATIVE RESEARCH COMMISSION
State Legislative Building
Raleigh, North Carolina 27611

Dear Senator Lawing and Speaker Stewart:

Pursuant to the requirements of G.S. 120-30.31, the Department of Labor herewith returns Rule 13 NCAC 3 .0209 (Certificate and Inspection Fees) to the Legislative Research Commission without change.

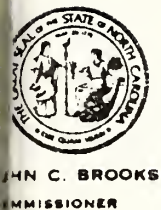
Respectfully yours,

A handwritten signature in cursive script, appearing to read "Edwin B. Hatch".

Edwin B. Hatch

Administrative Procedure Act Coordinator

EBH:em
enclosure



State of North Carolina
Department of Labor
4 West Edenton Street
Raleigh 27601

June 11, 1980

FILED IN ACCORDANCE
WITH ART. 60 OF CHAP.
120 OF THE GENERAL STATUTES
JUN 13 1980
wf
DIRECTOR OF RESEARCH

The Honorable Robert B. Jordan, III, Chairman
Administrative Rules Review Committee
Legislative Research Commission
State Legislative Building
Raleigh, North Carolina 27611

Dear Senator Jordan:

Thank you for the courtesies which you and your committee extended to representatives of this department in your recent consideration of amendments to our Boiler and Pressure Vessel Rules.

I regret that we still find ourselves in disagreement relating to our legal authority to set the amount of fees for inspection. However, we are not in disagreement in recognizing the culprit which caused the problem. The current confusion had its origin in the inadvertent failure to repeal Article 7 of Chapter 95 of the General Statutes when Article 7A was enacted in 1975. We consider Article 7 completely superseded by 7A and believe that Article 7 should be removed from the General Statutes.

We hope that your committee will recommend legislation to repeal Article 7.

We look forward to working with your committee and the staff of the Legislative Research Commission in preparing legislation for introduction in the 1981 session of the General Assembly.

Sincerely,

Taylor McMillan
Chief Deputy Commissioner

TMcM/cd

cc: ✓ Mr. Terrence D. Sullivan

Department of Labor

4 W. Edenton Street

Raleigh 27601

OCT 21 1980

DIRECTOR OF RESEARCH

JOHN C. BROOKS
COMMISSIONER

October 21, 1980

Mr. Terrence D. Sullivan
Director of Research
Legislative Research Commission
State Legislative Building
Raleigh, North Carolina 27611

Attention: E. Ann Christian

Re: 13 NCAC 3 .0209
Boiler Inspection Fees

Dear Ms. Christian:

Enclosed is a draft of proposed legislation which would resolve the conflict between Articles 7 and 7A of Chapter 95 of the General Statutes. The conflict arose after the 1975 General Assembly enacted Article 7A without repealing Article 7. In addition to the conflict with regard to inspection fees, there are numerous other contradictory provisions which remain.

Basically, as previously explained in our submissions to and appearances before the Administrative Rules Review Committee and the Legislative Research Commission, the problem arose in the closing days of the 1975 Session of the General Assembly. Article 7A of Chapter 95 is a comprehensive revision of the laws regulating boilers and pressure vessels wherein the Uniform Boiler and Pressure Vessel Act was adopted for use in North Carolina. This Uniform Act replaced the old laws on this subject which were originally enacted in 1935. While there is a general repealer section contained in the 1975 Legislation, Article 7 was not specifically repealed. All of the subject matter formerly regulated under Article 7 is now comprehensively treated under Article 7A and there is no reason for Article 7 to continue to appear among the General Statutes.

Please advise when the Administrative Rules Review Committee will meet to consider this item.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Edwin B. Hatch".

Edwin B. Hatch

Administrative Rules Coordinator

EBH:em
enclosure

A BILL TO BE ENTITLED

AN ACT TO CLARIFY A CONFLICT BETWEEN ARTICLES 7 AND 7A OF CHAPTER 95
OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

Section 1. Article 7 of Chapter 95 of the General Statutes
is repealed.

Section 2. This act is effective upon ratification.

DEPARTMENT OF NATURAL RESOURCES AND COMMUNITY DEVELOPMENT
WILDLIFE RESOURCES COMMISSION

CONTENTS

I. Rules

- A. Agency Report (August 1, 1980)
- B. Rule 15 NCAC 10F .0104 (a) (5) (Certificate of Number)
and Rule 15 NCAC 10F .0102 (Application for Certificate
of Number)

II. Statutory Authority

- A. G.S. 75A-3
- B. G.S. 75A-5
- C. G.S. 75A-7

III. Committee Objection

- A. Correspondence - August 27, 1980
- B. Objection Form

IV. Department of Natural Resources and Community Development
Wildlife Resources Commission Response - Correspondence
(October 27, 1980)

V. Correspondence Referring Rule to Legislative Research
Commission (December 12, 1980)

VI. Legislative Research Commission's Response
(December 16, 1980)

VII. Draft of ARRC Legislative Proposal

DATE FILED:

NCY REPORT: Legislative Review of Administrative Rules
(G.S. 120-30.24 et seq.)
(G.S. 120-30.24 et seq.)

AUG 1 1980

Date: August 1, 1980

(for Receipt Stamp)
DIRECTOR OF RESEARCH

From: Donald E. Curtis
(name)

Adm. Procedures Act Coordinator - Wildlife Resources Commission
(agency & address)

Archdale Building

512 N. Salisbury Street

Raleigh, N. C. 27611

Phone: 733-3391

To: Terrence D. Sullivan
Legislative Research Commission
Legislative Annex
10 East Jones Street
Raleigh, North Carolina 27611 - Phone: 919-733-7044
919-733-6182

RULE: 15 NCAC 10F .0104 (a)(5)
(citation; N. C. Administrative Code)

CERTIFICATE OF NUMBER
(catchline)

12284

- (1) **RULE SUMMARY :** Adds all but the first sentence to provide for "permanent" numbering of publicly owned motorboats, for immediate expiration of certificate in event of transfer to private ownership (to prevent private use of number temporarily), and to require notification to the Wildlife Resources Commission of any transfer of ownership (already required by statute, but frequently overlooked).
- (2) **STATUTORY AUTHORITY CITATION:** G.S. 75A-3; 75A-5; 75A-7; 33 CFR 174.19.
- (3) **CIRCUMSTANCES REQUIRING RULE:** To eliminate the requirement of annual renewals of several thousand publicly owned motorboats which are numbered without charge.
Cf. 15 NCAC 10F .0102, .0105, .0107.
- (4) **EFFECTIVE DATE :** August 31, 1980.

AGENCY REPORT: Legislative Review of Administrative Rules~~(G.S. 120-30.20 et seq.)~~
(G.S. 120-30.24 et seq.)Date: August 1, 1980

B. (for Receipt Stamp)

From: Donald E. Curtis

(name)

Adm. Procedures Act Coordinator - Wildlife Resources Commission
(agency & address)Archdale Building512 N. Salisbury StreetRaleigh, N. C. 27611Phone: 733-3391To: Terrence D. SullivanLegislative Research CommissionLegislative Annex10 East Jones StreetRaleigh, North Carolina 27611 - Phone: 919-733-7044919-733-6182RULE: 15 NCAC 10F .0102

(citation; N. C. Administrative Code)

APPLICATION FOR CERTIFICATE OF NUMBER

(catchline)

(1) **RULE SUMMARY:** Adds the last two sentences to permit voluntary numbering of publicly owned motorboats and to exempt these and those of nonprofit rescue squads from numbering fees.

(2) **STATUTORY AUTHORITY CITATION :** G.S. 75A-3; 75A-5; 75A-7;
33 CFF 174.17.

(3) **CIRCUMSTANCES REQUIRING RULE :** This is part of a system devised to provide "permanent" certificates of number to motorboats numbered without charge, so as to prevent having to issue new certificates for such boats each year.
Cf. amendments to 15 NCAC 10F .0104, .0105 and .0107.

(4) **EFFECTIVE DATE:** August 31, 1980.

Regulation 15 NCAC 10F .0104; CERTIFICATE OF NUMBER; has been amended in Paragraph (a), Subparagraph (5) to read as follows:

- (5) Certificates of number for motorboats owned by the United States, a state, or a subdivision thereof, may be issued by the Wildlife Resources Commission without payment of a fee upon application in the manner prescribed in these regulations. The certificate of number issued for any such motorboat shall bear no expiration date, but shall be stamped with the word "permanent" and shall not be renewable so long as the vessel remains the property of the governmental entity. If the ownership of any such motorboat is transferred from one governmental entity to another, a new "permanent" certificate may be issued without charge to the successor governmental entity. When any such motorboat is sold to a private owner or is otherwise transferred to private ownership, the applicable certificate of number shall be deemed to have expired immediately prior to such transfer, and the number affixed on each side of the boat shall be either removed or permanently obscured by paint or in some other effective manner by the transferring agency. Prior to further use on the waters of this state, the new owner shall obtain either a temporary certificate of number or a regular certificate bearing a new number as provided by Rules .0102 or .0103 of this Section, as in the case of original registration. Within 15 days after any transfer of a motorboat numbered under this Paragraph, the transferring agency shall provide the Motorboat Registration Section of the Wildlife Resources Commission with written notice of the date of transfer and the name and address of the transferee.

History Note: Authority G.S. 75A-3; 75A-5; 75A-7;
75A-19; 33 CFR 174.19;
Eff. February 1, 1976;
Amended Eff. August 31, 1980; January 1, 1980.

17284

Regulation 15 NCAC 10F .0102; APPLICATION FOR CERTIFICATE OF NUMBER; has been amended in Paragraph (a), Subparagraph (2) to read as follows:

- (2) Those motorboats the operation of which on the waters of this state consists exclusively of competing in boat races which have been authorized by the North Carolina Wildlife Resources Commission or the United States Coast Guard, or the operation of which is incidental to the tuning up of boats and engines preparatory to and within 48 hours prior to such race, shall not be required to be numbered. Motorboats owned by the United States, a state, or a subdivision thereof are exempt from required numbering, but may be numbered under the provisions of Rule .0104(a)(5) of this Section. Motorboats owned and operated by nonprofit rescue squads are required to be numbered, but if they are operated exclusively for rescue purposes, including rescue training, they may be numbered without charge as by a governmental entity as provided by Rule .0104 (a)(5) of this Section.

History Note: Authority G.S. 75A-3; 75A-5; 75A-7;
75A-19; 33 CFR 174.17;
Eff. February 1, 1976;
Amended Eff. August 31, 1980; January 1, 1980;
August 26, 1979; April 15, 1979.

12283

- (3) "Owner" means a person, other than a lienholder, having the property in or title to a motorboat. The term includes a person entitled to the use or possession of a motorboat subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.
- (4) "Person" means an individual, partnership, firm, corporation, association, or other entity.
- (5) "Vessel" means every description of watercraft or structure, other than a seaplane on the water, used or capable of being used as a means of transportation or habitation on the water.
- (6) "Waters of this State" means any waters within the territorial limits of this State, and the marginal sea adjacent to this State and the high seas when navigated as a part of a journey or ride to or from the shore of this State, but does not include private ponds as defined in G.S. 113-129. (1959, c. 1064, s. 2; 1965, c. 634, s. 1; 1969, c. 87.)

§ 75A-3. Wildlife Resources Commission to administer Chapter; Motorboat Committee; funds for administration. — (a) It shall be the duty and responsibility of the North Carolina Wildlife Resources Commission to enforce and administer the provisions of this Chapter.

(b) The chairman of the Wildlife Resources Commission shall designate from among the members of the Wildlife Resources Commission three members who shall serve as the Motorboat Committee of the Wildlife Resources Commission, and who shall, in their activities with the Commission, place special emphasis on the administration and enforcement of this Chapter.

(c) All expenses required for administration and enforcement of this Chapter shall be paid from the funds collected pursuant to the numbering provisions of this Chapter, provided however, that the Wildlife Resources Commission is hereby authorized, subject to the approval of the Advisory Budget Commission and the Governor and Council of State, to borrow funds from the Contingency and Emergency Fund in an amount not to exceed one hundred thousand dollars (\$100,000), to be used for initiating the provisions of this Chapter and to be repaid from the funds collected pursuant to the numbering provisions of this Chapter in four equal installments, the first installment in the amount of twenty-five thousand dollars (\$25,000) to be remitted on or before September 1, 1961, and a like sum to become due and payable on the first day of September during each of the years 1962, 1963 and 1964. All moneys collected pursuant to the numbering provisions of this Chapter shall be deposited in the State treasury and credited to a special fund known as the Wildlife Resources Fund and accounted for as a separate part thereof. The said moneys shall be made available to the Wildlife Resources Commission, subject to the provisions of the Executive Budget Act and the provisions of the Personnel Act of the General Statutes of North Carolina, for the administration and enforcement of this Chapter as herein provided and for educational activities relating to boating safety and for acquisition of land and provision of facilities for access to waters of this State and for no other purpose. All moneys collected pursuant to the numbering provisions of this Chapter and moneys otherwise provided for in this Chapter shall be made available to carry out the intent and purposes as set forth herein in accordance with plans approved by the Wildlife Resources Commission and all such funds are hereby appropriated, reserved, set aside and made available until expended for the enforcement and administration of this Chapter; provided that the Wildlife Resources Commission is hereby authorized to adopt a plan or formula for the use of said moneys for employing and equipping such additional personnel as may be necessary for carrying out the provisions of this Chapter and for paying a proportionate share of the salaries, expense, and operational costs of existing personnel according to the time and effort expended

2447, 60-N.C. REP. 7-115102

by them in carrying out the provisions of this Chapter. Such plan or formula may be altered or amended from time to time by the Wildlife Resources Commission as existing conditions may warrant. No funds derived from the sale of hunting licenses or fishing licenses shall be expended or diverted for carrying out the provisions of this Chapter. (1959, c. 1064, s. 3; 1961, c. 644; 1963, c. 1003.)

State Government Reorganization. — The Wildlife Resources Commission was transferred to the Department of Natural and Economic Resources by former § 143A-118, enacted by Session Laws 1971, c. 864.

§ 75A-4. Identification numbers required. — Every motorboat on the waters of this State shall be numbered. No person shall operate or give permission for the operation of any motorboat on such waters unless the motorboat is numbered in accordance with this Chapter, or in accordance with applicable federal law, or in accordance with a federally approved numbering system of another state, and unless

- (1) The certificate of number awarded to such motorboat is in full force and effect, and
- (2) The identifying number set forth in the certificate of number is displayed on each side of the bow of such motorboat. (1959, c. 1064, s. 4.)

§ 75A-5. Application for numbers; fee; displaying; reciprocity; change of ownership; loss of certificate; presumption from possession of certificate; conformity with United States regulations; award of certificates; records; renewal of certificates; transfer of interest, abandonment, etc.; change of address; unauthorized numbers. — (a) The owner of each motorboat requiring numbering by this State shall file an application for number with the Wildlife Resources Commission on forms approved by it. The application shall be signed by the owner, or his agent, of the motorboat and shall be accompanied by a fee of three dollars (\$3.00). Upon receipt of the application in approved form the Commission shall have the same entered upon the records of its office and issue to the applicant a certificate of number stating the number awarded to the motorboat and the name and address of the owner. The owner shall paint on or attach to each side of the bow of the motorboat the identification number in such manner as may be prescribed by rules and regulations of the Commission in order that it may be clearly visible. The number shall be maintained in legible condition. The certificate of number shall be pocket size and shall be available at all times for inspection on the motorboat for which issued, whenever such motorboat is in operation. Provided, however, any person charged with failing to so carry such certificate of number shall not be convicted if he produces in court a certificate of number theretofore issued to him and valid at the time of his arrest.

(b) The owner of any motorboat already covered by a number in full force and effect which has been awarded to it pursuant to then operative federal law or a federally approved numbering system of another state shall record the number prior to operating the motorboat on the waters of this State in excess of the 90-day reciprocity period provided for in G.S. 75A-7(1). Such recordation shall be in the manner and pursuant to the procedure required for the award of a number under subsection (a) of this section, except that no additional or substitute number shall be issued.

(c) Should the ownership of a motorboat change, a new application form with fee of one dollar (\$1.00) shall be filed with the Wildlife Resources Commission and a new certificate bearing the same number shall be awarded in the manner as provided for in an original award of number. In case a certificate should become lost, a new certificate bearing the same number shall be issued upon

Chapter 75A.

Boating and Water Safety.

**Article 1.
Boating Safety Act.**

- Sec.
75A-8. Boat liveries.
75A-9.1. Muffling devices -- Motorboats.
75A-15. Regulations on water safety; adoption of the Uniform Waterway Marking System
75A-16. Filing and publication of rules and regulations; furnishing copies to owners.
75A-17. Enforcement of Chapter.
75A-18. Penalties.

**Article 2.
North Carolina Water
Safety Committee.**

- 75A-2. Definitions.
75A-5. Application for numbers, fee; displaying; reciprocity; change of ownership; loss of certificate; presumption from possession of certificate; conformity with United States regulations; award of certificates; records; renewal of certificates; transfer of interest, abandonment, etc.; change of address; unauthorized numbers.
75A-5.1. Commercial fishing boats; renewal of number.
75A-6. Classification and required lights and equipment; rules and regulations.
75A-21. Terms and appointment of members.

ARTICLE 1.

Boating Safety Act.

§ 75A-2. **Definitions.** — As used in this Chapter, unless the context clearly requires a different meaning:

- (1) "Motorboat" means any vessel equipped with propulsion machinery of any type, whether or not such machinery is the principal source of propulsion: Provided, that "propulsion machinery" as used in this section shall not include an electric motor when used as the only means of mechanical propulsion of any vessel: Provided further, that the term "motorboat" shall not include a vessel which has a valid marine document issued by the Bureau of Customs of the United States government or any federal agency successor thereto.

(1975, c. 340, s. 1.)

Editor's Note. — The 1975 amendment, effective Jan. 1, 1976, rewrote subdivision (1). As the rest of the section was not changed by the amendment, only the introductory language and subdivision (1) are set out.

§ 75A-5. **Application for numbers; fee; displaying; reciprocity; change of ownership; loss of certificate; presumption from possession of certificate; conformity with United States regulations; award of certificates; records; renewal of certificates; transfer of interest, abandonment, etc.; change of address; unauthorized numbers.** — (a) The owner of each motorboat requiring numbering by this State shall file an application for number with the Wildlife Resources Commission on forms approved by it. The application shall be signed by the owner of the motorboat, or his agent, and shall be accompanied by a fee of five dollars and fifty cents (\$5.50) for a one-year period or by a fee of thirteen dollars (\$13.00) for a three-year period. The applicant shall have the option of selecting a one-year numbering period or a three-year numbering period. Upon receipt of the application in approved form, the Commission shall have the same

entered upon the records of its office and issue to the applicant a certificate of number stating the number awarded to the motorboat and the name and address of the owner, and a validation decal indicating the expiration date of the certificate of number. The owner shall paint on or attach to each side of the bow of the motorboat the identification number in such manner as may be prescribed by rules and regulations of the Commission in order that it may be clearly visible. The number shall be maintained in legible condition. The validation decal shall be displayed on the starboard bow of the motorboat immediately following the number. The certificate of number shall be pocket size and shall be available at all times for inspection on the motorboat for which issued, whenever such motorboat is in operation. Provided, however, any person charged with failing to so carry such certificate of number shall not be convicted if he produces in court a certificate of number theretofore issued to him and valid at the time of his arrest.

(c) Should the ownership of a motorboat change, a new application form with fee of two dollars (\$2.00) shall be filed with the Wildlife Resources Commission and a new certificate bearing the same number shall be awarded in the manner as provided for in an original award of number. In case a certificate should become lost, a new certificate bearing the same number shall be issued upon payment of a fee of two dollars (\$2.00). Possession of the certificate shall in cases involving prosecution for violation of any provision of this Chapter be prima facie evidence that the person whose name appears therein is the owner of the boat referred to therein.

(e) The Wildlife Resources Commission may award any certificate of number directly or may authorize any person to act as agent for the awarding thereof. In the event that a person accepts such authorization, he may be assigned a block of numbers and certificates therefor which upon award, in conformity with this Chapter and with any rules and regulations of the Commission, shall be valid as if awarded directly by the Commission. As compensation for his services any such agent shall be allowed to retain for his own use fifty cents (.50). It is a misdemeanor punishable in the discretion of the court for any such agent to charge or accept any additional fee, remuneration, or other thing of value for such services.

(g) Each certificate of number awarded pursuant to this Chapter, unless sooner terminated or discontinued in accordance with the provisions of this Chapter, shall continue in full force and effect to and including the last day of the same month during which the same was awarded after the lapse of one year in the case of a one-year certificate or three years in the case of a three-year certificate. In addition to the year of expiration, the validation decal required by subsection (a) of this section shall indicate the last month during which the certificate is valid. No person shall willfully remove a validation decal from any vessel during the continuance of its validity or alter, counterfeit, or otherwise tamper with a validation decal attached to any vessel for the purpose of changing or obscuring the indicated date of expiration of the certificate of number of such vessel.

(h) Each certificate of number awarded pursuant to this Chapter must be renewed on or before the first day of the month next succeeding that during which the same expires; otherwise, such certificate shall lapse and be void until such time as it may thereafter be renewed. Application for renewal shall be submitted on a form approved by the Wildlife Resources Commission and shall be accompanied by a fee of five dollars and fifty cents (\$5.50) for a one-year period or by a fee of thirteen dollars (\$13.00) for a three-year period; provided there shall be no fee required for renewal of certificates of number which have been previously issued to commercial fishing boats as defined in G.S. 75A-5.1 upon compliance with all of the requirements of that section.

(k) No number other than the number awarded to a motorboat or granted reciprocity pursuant to this Chapter shall be painted, attached, or otherwise

displayed on either side required by subsection

(l) When certificates subsection (e) of this section by regulation to establish limited to, their financial operated by them and number, validation decal been issued; to prescribe the methods of issuing of ownership of vessels methods of making payments and remaining unissued certificates and decal accountability of such and for certificates as blanket bonds of such loss of public moneys such bonds to be paid for certificates of number agents, or any of them or all of such agents to a limited time pending decals; to establish amounts and kinds of whereby any such agent unissued certificates which have been issued occurrence which is reasonable requirement discretion, deem necessary certificates of number executive director is a convenient for application and for receipts, reports such agents in areas number of such agents and remission of public agents, and to require terminate any such agent or to comply with any or when he has reason and to require immediate decals and State motor such agency. The Administrator of the General Statutes of any agency to issue violation of the regulations punishable in the discretion the issuance of certificates facility upon which title to the Wildlife Resources amount of such check five dollars (\$5.00) or 5; 1961, c. 469, s. 1; ss. 1-7.)

displayed on either side of the bow of such motorboat, except the validation decal required by subsection (a) of this section

(l) When certificates of number are to be issued by agents as provided by subsection (e) of this section, the Wildlife Resources Commission is authorized by regulation to establish the qualifications of such agents, including, but not limited to, their financial responsibility, the locations and types of business operated by them and their facilities for safekeeping of unused certificates of number, validation decals, and the monetary proceeds of certificates which have been issued; to prescribe the duties of such agents, including, but not limited to, the methods of issuing certificates of number and validation decals, the evidence of ownership of vessels to be numbered by applicants for number, the times and methods of making periodic and final reports of certificates and decals issued and remaining unissued and remittances of public moneys and unissued certificates and decals; to establish methods and procedures of ensuring accountability of such agents for the proceeds of certificates and decals issued and for certificates and decals remaining unissued; to require individual or blanket bonds of such agents in amounts sufficient to protect the State against loss of public moneys and unissued certificates and decals, the premiums for such bonds to be paid by the agents; to permit such agents to issue both original certificates of number and validation decals and renewals thereof or to limit such agents, or any of them, to the issuance of the originals only; to authorize some or all of such agents to issue temporary certificates of number for use during a limited time pending delivery of regular certificates of number and validation decals; to establish methods and procedures, including submission of the amounts and kinds of evidence which the Commission may deem sufficient, whereby any such agent may be relieved of accountability for the value of unissued certificates and validation decals, or of the monetary proceeds of those which have been issued, which have been lost or destroyed as the result of any occurrence which is beyond the control of such agent; and to prescribe such other reasonable requirements and conditions as the Commission may, in its discretion, deem necessary or desirable to expedite and control the issuance of certificates of number by such agents. In accordance with such regulations, the executive director is authorized to prepare and distribute all forms necessary or convenient for application for and the appointment and bonding of such agents and for receipts, reports and remittances by such agents; to select and appoint such agents in areas most convenient to the boating public and to limit the number of such agents in any locality; to require prompt and accurate reporting and remission of public moneys and unissued certificates and decals by such agents, and to require periodic or special audits of their accounts; to revoke or terminate any such agency for failure to make timely reports and remittances or to comply with any administrative directive or regulation of the Commission, or when he has reason to believe that State money or property is in jeopardy; and to require immediate surrender of all agency accounts, forms, certificates, decals and State moneys in the event of such revocation or termination of any such agency. The Administrative Procedure Act as contained in Chapter 150A of the General Statutes shall not apply in any case of revocation or termination of any agency to issue certificates of boat number and validation decals. Any violation of the regulations authorized by this subsection shall be a misdemeanor punishable in the discretion of the court. If any check or draft of any agent for the issuance of certificates of boat number shall be returned by the banking facility upon which the same is drawn for lack of funds, such agent shall be liable to the Wildlife Resources Commission for a penalty of five percent (5%) of the amount of such check or draft, but in no event shall such penalty be less than five dollars (\$5.00) or more than two hundred dollars (\$200.00). (1959, c. 1064, s. 5; 1961, c. 469, s. 1; 1963, c. 470; 1975, c. 483, ss. 1, 2; 1977, c. 566; 1979, c. 761, ss. 1-7.)

Editor's Note. — The 1973 amendment substituted "Department of Human Resources" for "State Board of Health" in the first paragraph, and "Commission for Health Services" for

"State Board of Health" in the second, third and fifth paragraphs, of subsection (o).

Cited in *Stanley v. Department of Conservation & Dev.*, 284 N.C. 15, 199 S.E.2d 641 (1973).

§ 75A-7. Exemption from numbering requirements. — A motorboat shall not be required to be numbered under this Chapter if it is:

- (1) A motorboat which is required to be awarded a number pursuant to federal law or a federally approved numbering system of another state, and for which a number has been so awarded: Provided, that any such boat shall not have been within this State for a period in excess of 90 consecutive days.
- (2) A motorboat from a country other than the United States temporarily using the waters of this State.
- (3) A motorboat whose owner is the United States, a state or a subdivision thereof.
- (4) A ship's lifeboat. (1959, c. 1064, s. 7.)

§ 75A-8. Boat liveries. — It shall be unlawful for the owner of a boat livery to rent a boat equipped with more than 10 horsepower to any person unless the provisions of this Chapter have been complied with. It shall be the duty of owners of boat liveries to equip all motorboats rented as required by this Chapter. (1959, c. 1064, s. 8.)

§ 75A-9. Muffling devices. — The exhaust of every internal combustion engine used on any motorboat shall be effectively muffled by equipment so constructed and used to muffle the noise of the exhaust in a reasonable manner. The use of cutouts is prohibited, except for motorboats competing in a regatta or boat race approved as provided in G.S. 75A-14, and for such motorboats while on trial runs, during a period not to exceed 48 hours immediately preceding such regatta or race and for such motorboats while competing in official trials for speed records during a period not to exceed 48 hours immediately following such regatta or race. (1959, c. 1064, s. 9.)

§ 75A-10. Operating boat or manipulating water skis, etc., in reckless manner; operating, etc., while intoxicated, etc.; depositing or discharging litter, etc. — (a) No person shall operate any motorboat or vessel, or manipulate any water skis, surfboard, or similar device in a reckless or negligent manner so as to endanger the life, limb, or property of any person.

(b) No person shall operate any motorboat or vessel, or manipulate any water skis, surfboard, or similar device while intoxicated or under the influence of any narcotic drug, barbiturate, or marijuana.

(c) No person shall place, throw, deposit, or discharge or cause to be placed, thrown, deposited, or discharged into the inland lake waters of this State, any litter, raw sewage, bottles, cans, papers, or other liquid or solid materials which render the waters unsightly, noxious, or otherwise unwholesome so as to be detrimental to the public health or welfare or to the enjoyment and safety of the water for recreational purposes.

Violation of this provision shall be a misdemeanor and subject to penalty as provided in G.S. 75A-18(a). (1959, c. 1064, s. 10; 1965, c. 634, s. 3.)

Stated in *Grindstaff v. Watts*, 254 N.C. 568, 119 S.E.2d 784 (1961).

Conservation & Dev., 284 N.C. 15, 199 S.E.2d 641 (1973).

Cited in *In re Howser's Petition*, 227 F. Supp. 81 (W.D.N.C. 1964); *Stanley v. Department of*

STATE OF NORTH CAROLINA
ADMINISTRATIVE RULES REVIEW COMMITTEE
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH 27611

STAFF:
TERRENCE D. SULLIVAN
DIRECTOR OF RESEARCH

SENATOR ROBERT B. JORDAN, III
CHAIRMAN
REPRESENTATIVE WILLIAM E. CLARK
REPRESENTATIVE CHARLES D. EVANS
REPRESENTATIVE JAMES F. MORGAN
REPRESENTATIVE KENNETH B. SPAULDING
SENATOR CHARLES E. VICKERY
SENATOR WILLIS P. WHICHARD



August 27, 1980

Mr. Donald E. Curtis
Wildlife Resources Commission
Archdale Building
512 North Salisbury Street
Raleigh, North Carolina 27611

Dear Mr. Curtis:

On August 21, 1980, the Administrative Rules Review Committee reviewed Rules 15 NCAC 10F .0102 (Application for Certificate of Number) and 15 NCAC 10F .0104(a)(5) (Certificate of Number) filed by the Wildlife Resources Commission of the Department of Natural Resources and Community Development. Following its discussion of these rules, the Committee concluded that the Department lacked statutory authority for the promulgation of these rules.

Rule 15 NCAC 10F .0102 (Application for Certificate of Number) states that "[m]otorboats owned and operated by nonprofit rescue squads . . . operated exclusively for rescue purposes, including rescue training, . . . may be numbered without charge as by a governmental entity . . ." Although the Department cites the authority of the Commission to collect money pursuant to the numbering provisions of Chapter 75A (G.S. 75A-3), award a certificate of number (G.S. 75A-5), exempt specific classes of motorboats from the numbering requirements (G.S. 75A-7), promulgate rules regarding the operation of watercraft by manufacturers, distributors, dealers, and demonstrators (G.S. 75A-19) and to set out the contents of an application for certificate of number (33 CFR 174.17); there appears no statutory authority exempting nonprofit rescue squads from the general requirement that "[e]very motorboat on the waters of this State shall be numbered." (G.S. 75A-4).

Mr. Donald E. Curtis
Page 2.
August 27, 1980

Rule 15 NCAC 10F .0104(a)(5) (Certificate of Number) provides for the "permanent" numbering of publicly owned motorboats which are numbered without charge. As in the case of the first rule, the Department cites the authority of the Commission to collect money pursuant to the numbering provisions of Chapter 75A (G.S. 75A-3), award a certificate of number (G.S. 75A-5), exempt specific classes of motorboats from the numbering requirements (G.S. 75A-7), and promulgate rules regarding the operation of watercraft by manufacturers, distributors, dealers, and demonstrators (G.S. 75A-19). Again the Code of Federal Regulations is cited as authority but the citation is to Section 33 CFR 174.19, setting out the information which must be contained in each certificate of number. Nowhere, however, does the Department cite the Commission's authority to establish a permanent numbering system for publicly owned motorboats.

This objection is filed at the direction of the Administrative Rules Review Committee pursuant to G.S. 120-30.28.

G.S. 120-30.29 requires a response from the agency within 60 days from the receipt of this letter.

Yours truly,

TERRENCE D. SULLIVAN
DIRECTOR OF RESEARCH



E. Ann Christian
Staff Attorney

Enclosure

cc: Governor James B. Hunt, Jr.
Howard Lee, Secretary of Natural Resources
and Community Development
Members of Administrative Rules Review Committee

LEGISLATIVE RESEARCH COMMISSION REPORT:

Notice of Objection; Legislative Review of Administrative Rules
(G.S. 120-30.23 and G.S. 120-30.25)

Date: August 27, 1980

From: Terrence D. Sullivan
Legislative Research Commission
2129 State Legislative Building
Raleigh, North Carolina 27611 - Phone: 919-733-7044

TO: Donald E. Curtis
(Name)

Adm. Procedures Act Coordinator - Wildlife Resources Commission
(Agency & Address)

Archdale Building
512 North Salisbury Street
Raleigh, North Carolina 27611
Phone: _____

RULE: 15 NCAC 10F .0104(a)(5)
(Citation; N. C. Administrative Code)
Certificate of Number
(Catchline)

Objection by Administrative Rules Review Committee

Date of Committee decision: August 21, 1980
Date of Agency Response to Committee objection: _____

Objection Continued by Legislative Research Commission

Date of Commission decision: _____

STATEMENT OF OBJECTIONS AND REASONS:

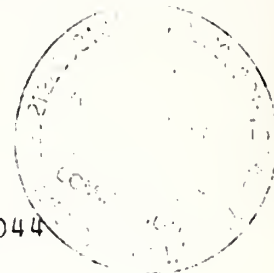
(see attached)

LEGISLATIVE RESEARCH COMMISSION REPORT:

Notice of Objection; Legislative Review of Administrative Rules
(G.S. 120-30.23 and G.S. 120-30.25)

Date: August 27, 1980

From: Terrence D. Sullivan
Legislative Research Commission
2129 State Legislative Building
Raleigh, North Carolina 27611 - Phone: 919-733-7044



TO: Donald E. Curtis
(Name)

Adm. Procedures Act Coordinator - Wildlife Resources Commission
(Agency & Address)

Archdale Building

512 North Salisbury Street

Raleigh, North Carolina 27611

Phone: _____

RULE: 15 NCAC 10F .0102
(Citation; N. C. Administrative Code)

Application for Certificate of Number
(Catchline)

Objection by Administrative Rules Review Committee

Date of Committee decision: August 21, 1980
Date of Agency Response to Committee objection: _____

Objection Continued by Legislative Research Commission

Date of Commission decision: _____

STATEMENT OF OBJECTIONS AND REASONS:

(see attached)



North Carolina
Wildlife
 Resources Commission

Archdale Building, 512 N. Salisbury Street, Raleigh, North Carolina 27611, 919-733-3391

October 27, 1980

Mr. Terrence Sullivan
 Director of Research
 Legislative Rules Review Committee
 10 E. Jones Street
 Raleigh, North Carolina 27611

DIRECTOR OF RESEARCH
 OCT 27 1980
 FILED IN ACCORDANCE
 WITH ART. 6C OF CHAP.
 120 OF THE GENERAL STATUTES

Dear Mr. Sullivan:

We have received and carefully analyzed the objection raised by the Administrative Rules Review Committee with regard to Rule 15 NCAC 10F .0104(a)(5) [Certificate of Number] and Rule 15 NCAC 10F .0102 [Application for Certificate of Number] as promulgated by the Wildlife Resources Commission. We understand the basis of objection to be a lack of specific statutory authority for the Wildlife Resources Commission to enact these rules.

Your evaluation that the agency does not have specific regulatory authority covering these two rules is probably correct; however, the agency has been administering the motorboat registration law since 1959, including the free registration of public boats and boats in use by rescue squads. Our attempt here was to place into the Administrative Code the policy and practice of the agency in handling such registrations. These two rules are a matter of convenience and service to public agencies and rescue squads that utilize motorboats in their work. Without these rules or our previous practice of free registration for these boats, these public boats, which number about 1,230, will be left without any means of external, visible identification. The operators of such unnumbered motorboats belonging to public agencies must then carry some sufficient type of proof aboard that the boat is indeed a public boat and therefore exempt from numbering requirements.

The City of Greensboro, for example, owns a fleet of boats which are rented for public fishing on city-owned lakes. The absence of numbers on these boats would result in adverse public reaction both to the city and to boat numbering practices of the Wildlife

J. Robert Gordon, Laurinburg
 Chairman

W. Vernon Bevill, Raleigh
 Executive Director

M. Woodrow Price, Gloucester
 Vice-Chairman

David L. Allsbrook, Scotland Neck
 William C. Boyd, Kernersville
 Eddie C. Bridges, Greensboro
 Polie Q. Cloninger, Jr., Dallas

Conrad R. Duncan, Jr., Stoneville
 Henry (Buck) Kitchin, Rockingham
 James E. Lambeth, Thomasville
 Henry E. Moore, Jr., Clinton

Lee L. Powers, Lake Lure
 Dan Robinson, Cullowhee
 Dewey W. Wells, Camden

October 27, 1980

Resources Commission. We do not believe this sort of recreational use of government-owned boats was contemplated by the General Assembly when it enacted Chapter 75A of the General Statutes.

As for rescue squads, we believe a permanent, free registration to be warranted in terms of the valuable service these volunteers provide to the boating public.

This is the background information and the explanation of the reason and need for these rules. If, in the opinion of the Committee, additional legislative authority is needed to uphold these rules, we respectfully request that such a recommendation be included in the report of the Committee to the 1981 General Assembly. We will assist in this matter in any way possible.

In view of the above, and in accordance with G.S. 120-30.29, we are returning the two rules without change, and with the notations of objection by the Administrative Rules Review Committee attached.

Sincerely,



W. Vernon Bevill

WVB/lp

cc: Governor James B. Hunt, Jr.

Howard Lee, Secretary of Natural
Resources & Community Development

STATE OF NORTH CAROLINA
ADMINISTRATIVE RULES REVIEW COMMITTEE
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH 27611

NATOR ROBERT B. JORDAN, III
CHAIRMAN

PRESENTATIVE WILLIAM E. CLARK
PRESENTATIVE CHARLES D. EVANS
PRESENTATIVE WILLIAM H. McMILLAN
PRESENTATIVE JAMES F. MORGAN
PRESENTATIVE KENNETH B. SPAULDING
NATOR WILLIAM A. CREECH
NATOR CECIL R. JENKINS, JR.
NATOR CHARLES E. VICKERY



STAFF:
TERRENCE D. SULLIVAN
DIRECTOR OF RESEARCH

December 12, 1980

Senator W. Craig Lawing, CoChairman
Speaker Carl J. Stewart, Jr., CoChairman
Legislative Research Commission
State Legislative Building
Raleigh, North Carolina 27611


Dear Senator Lawing and Speaker Stewart:

Pursuant to G.S. 120-30.29, I am referring Rules 15 NCAC 10F .0102 (Application for Certificate of Number) and 15 NCAC 10F .0104 (Certificate of Number) to the Legislative Research Commission. These rules were the subject of objections by the Administrative Rules Review Committee at its August 21, 1980, meeting and have been returned, without change, by the North Carolina Department of Natural Resources and Community Development. (Copies attached).

Pursuant to G.S. 120-30.30, the Legislative Research Commission has 60 days from October 27, the date the rules were returned to the Administrative Rules Review Committee without change, to complete their review.

Please contact me if I can be of assistance.

Yours truly,


Terrence D. Sullivan
Director of Research

TDS, pv

Attachment

STATE OF NORTH CAROLINA
ADMINISTRATIVE RULES REVIEW COMMITTEE
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH 27611

SENATOR ROBERT B. JORDAN, III
CHAIRMAN

REPRESENTATIVE WILLIAM E. CLARK
REPRESENTATIVE CHARLES D. EVANS
REPRESENTATIVE WILLIAM H. McMILLAN
REPRESENTATIVE JAMES F. MORGAN
REPRESENTATIVE KENNETH B. SPAULDING
SENATOR WILLIAM A. CREECH
SENATOR CECIL R. JENKINS, JR.
SENATOR CHARLES E. VICKERY



STAFF:
TERRENCE D. SULLIVAN
DIRECTOR OF RESEARCH

December 16, 1980

Mr. W. Vernon Bevill
Executive Director
N. C. Wildlife Resources Commission
Archdale Building
512 N. Salisbury Street
Raleigh, North Carolina 27611

Dear Mr. Bevill:

The Legislative Research Commission hereby continues the objection of its Administrative Rules Review Committee made on August 21, 1980, to Rules 15 NCAC 10F .0104(a)(5) (Certificate of Number) and 15 NCAC 10F .0102 (Application for Certificate of Number). The rules were returned by the Wildlife Resources Commission to the Committee, without change, on October 27, 1980. The earlier objections and the cited rules are attached.

Please note that the Wildlife Resources Commission must return these rules with or without change within 30 days of the notification to the agency of the Commission's objection.

Yours truly,


Senator W. Craig Lawing
Co-chairman


Speaker Carl J. Stewart, Jr.
Co-chairman

cc: The Honorable James B. Hunt, Jr., Governor
J. Robert Gordon, Chairman
Wildlife Resources Commission
Terrence D. Sullivan, Director of Research
Patty Johnson, APA Coordinator
Department of Natural Resources and
Community Development
Greg Wallace, Assistant Attorney General

Attachments

LEGISLATIVE RESEARCH COMMISSION REPORT:

Notice of Objection; Legislative Review of Administrative Rules
(G.S. 120-30.23 and G.S. 120-30.25)

Date: December 16, 1980

From: Terrence D. Sullivan
Legislative Research Commission
2129 State Legislative Building
Raleigh, North Carolina 27611 - Phone: 919-733-7044

TO: W. Vernon Bevill, Executive Director
(Name)

Adm. Procedures Act Coordinator - _____
(Agency & Address)

N. C. Wildlife Resources Commission

Archdale Building

Raleigh, North Carolina 27611

Phone: _____

RULE: 15 NCAC 10F .0102
(Citation; N. C. Administrative Code)
Application for Certificate of Number
(Catchline)

Objection by Administrative Rules Review Committee

Date of Committee decision: August 21, 1980

Date of Agency Response to Committee objection: October 27, 1980

Objection Continued by Legislative Research Commission

Date of Commission decision: December 16, 1980

STATEMENT OF OBJECTIONS AND REASONS:

(See Attached)

LEGISLATIVE RESEARCH COMMISSION REPORT:

Notice of Objection; Legislative Review of Administrative Rules
(G.S. 120-30.23 and G.S. 120-30.25)

Date: December 16, 1980

From: Terrence D. Sullivan
Legislative Research Commission
2129 State Legislative Building
Raleigh, North Carolina 27611 - Phone: 919-733-7044

TO: W. Vernon Bevill, Executive Director
(Name)

Adm. Procedures Act Coordinator - _____
(Agency & Address)

N. C. Wildlife Resources Commission

Archdale Building

Raleigh, North Carolina 27611

Phone: _____

RULE: 15 NCAC 10F .0104 (a) (5)
(Citation; N. C. Administrative Code)
Certificate of Number
(Catchline)

Objection by Administrative Rules Review Committee

Date of Committee decision: August 21, 1980
Date of Agency Response to Committee objection: October 27, 1980

Objection Continued by Legislative Research Commission

Date of Commission decision: December 16, 1980

STATEMENT OF OBJECTIONS AND REASONS:

(See Attached)

Short Title: Numbering Motorboats.

(Public)

Senator

Referred to:-----

A BILL TO BE ENTITLED

AN ACT TO AMEND THE GENERAL STATUTES TO EMPOWER THE WILDLIFE RESOURCES COMMISSION TO PERMIT THE VOLUNTARY NUMBERING OF MOTORBOATS OWNED BY A GOVERNMENTAL ENTITY, TO AUTHORIZE THE ISSUANCE OF PERMANENT CERTIFICATES OF NUMBER TO MOTORBOATS OWNED BY GOVERNMENTAL ENTITIES AND TO AUTHORIZE THE ISSUANCE OF PERMANENT CERTIFICATES OF NUMBER TO NONPROFIT RESCUE SQUADS WITHOUT PAYMENT OF A FEE.

The General Assembly of North Carolina enacts:

Section 1. The text of G.S. 75A-7 is amended by designating the existing provision as subsection "(a)" and adding two new subsections as follows:

"(b) The Wildlife Resources Commission is hereby empowered to permit the voluntary numbering of motorboats owned by the United States, a state or a subdivision thereof.

(c) Those motorboats owned by the United States, a state or a subdivision thereof and those owned by nonprofit rescue squads may be assigned a certificate of number bearing no expiration date but which shall be stamped with the word 'permanent' and shall not be renewable so long as the vessel remains the property

of the governmental entity or nonprofit rescue squad. If the ownership of any such boat is transferred from one governmental entity to another or to a nonprofit rescue squad or if a boat owned by a nonprofit rescue squad is transferred to another nonprofit rescue squad or governmental entity, a new permanent certificate may be issued without charge to the successor entity. When any such boat is sold to a private owner or is otherwise transferred to private ownership, the applicable certificate of number shall be deemed to have expired immediately prior to such transfer. Prior to further use on the waters of this State the new owner shall obtain either a temporary certificate of number or a regular certificate pursuant to the provisions of this Chapter."

Sec. 2. G.S. 75A-5(a) as the same appears in the 1979 Cumulative Supplement Volume 2C of the North Carolina General Statutes is hereby amended on line six after the word "period" by inserting the following language:

"; provided, however, there shall be no fee charged for motorboats owned and operated by nonprofit rescue squads if they are operated exclusively for rescue purposes, including rescue training".

Sec. 3. This act is effective upon ratification.

HOUSE

Short Title:

Representative

Referred to:-----

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR A MORE EFFECTIVE REVIEW OF ADMINISTRATIVE RULES, TO MAKE PERMANENT THE LEGISLATIVE RESEARCH COMMISSION'S ADMINISTRATIVE RULES REVIEW COMMITTEE, AND TO MAKE AN APPROPRIATION THEREFOR.

The General Assembly of North Carolina enacts:

Section 1. The language of G.S. 120-30.24(5)(d) is deleted and the following language is inserted:

- "d. orders establishing or fixing rates or tariffs; or
- e. rules, by the State Personnel Commission, relating to salary classifications and job descriptions; or
- f. rules, by the Department of Transportation, relating to traffic sign ordinances, and road and bridge weight limits."

Sec. 2. Subdivisions 5 and 6 of G.S. 120-30.17 are repealed.

Sec. 3. G.S. 120-30.25(a) is amended in its second sentence by deleting the words "and by the Commission".

Sec. 4. G.S. 120-30.26 is rewritten to read:

"§ 120-30.26. Administrative Rules Review Committee.--There is

created a permanent committee of the Legislative Research Commission to be known as the Administrative Rules Review Committee. The Committee is composed of 10 members, five representatives appointed by the Commission cochairman from the House of Representatives, and five senators appointed by the Commission cochairman from the Senate. On October 1, 1977, and biennially thereafter, the cochairmen of the Commission shall appoint the Committee members from the membership of the General Assembly. The members serve for terms of two years, or until they cease to be members of the General Assembly, whichever occurs first. The members so appointed shall elect two of their number to serve as cochairmen. Any vacancy that occurs in the membership of the Committee for any reason other than the expiration of a term shall be filled for the remainder of the unexpired term by appointment of a member of the General Assembly by the authority making the original appointment."

Sec. 5. G.S. 120-30.27 is amended by deleting the second sentence which follows:

"A quorum of the Committee shall consist of the chairman and three other members of the Committee or a majority of the Committee, whichever is fewer."

and inserting in its place the following sentence:

"A quorum of the Committee consists of a cochairman and four other members of the Committee or a majority of the Committee, whichever is fewer."

Sec. 6. G.S. 120-30.28 is rewritten to read as follows:

"§ 120-30.28. Review of rules.--(a) After a rule is filed

with the Director, he shall submit it to the Committee which may determine whether or not the agency acted within its statutory authority in promulgating the rule. The Committee shall review a rule submitted to it by the Director within 60 days following the filing of the rule with the Director. The Committee, 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 the rule.

(b) If the Committee finds that an agency did not act within its statutory authority in promulgating a rule or a part of the rule, the Committee shall delay the effectiveness of the rule or the part of the rule in which the Committee finds that the agency exceeded its statutory authority. The Director of Research shall transmit to the Governor, the President of the Senate, the cochairmen of the Legislative Research Commission, the Attorney General, and the agency a written report of the delay of the rule or its part and the reasons for the delay.

(c) The delay of the effectiveness of the rule or its part is effective when the Attorney General receives the written report transmitted by the Director of Research. A rule or its part that is delayed is not 'effective' as defined in G.S. 150A-2(2a), except as provided in subsection (d).

(d) When the effectiveness of a rule or part of a rule is delayed and the agency does not amend or repeal the rule to cure the defects cited as reasons for the Committee's delay, the Committee shall submit a bill to repeal the delayed rule or part of rule to the General Assembly if then in session or, if not in

session, to the next regular session of the General Assembly. If the bill is not enacted before the adjournment of that part of the regular session held in the year in which the bill is submitted to the General Assembly, the delay is ended and the rule is effective on the day following that adjournment. A bill submitted to the General Assembly under this subsection is eligible for consideration in the session to which the bill is submitted.

(e) While the effectiveness of a rule or its part is delayed, the agency which has promulgated it may not adopt another rule which has substantially identical provisions to those for which the Committee delayed the effectiveness of the original rule or part of rule. The agency may, however, amend or repeal the rule to cure the defects cited as reasons for the Committee's delay.

(f) The filing of an amendment to a rule places the entire rule before the Committee for its review."

Sec. 7. G.S. 120-30.29, 120-30.30, 120-30.31, and 120-30.33 are repealed.

Sec. 8. Subsection (a) of G.S. 120-30.35 is rewritten to read:

"(a) Notwithstanding the time limitation on review of rules contained in G.S. 120-30.28(a), the cochairmen of the Commission may at any time call a public hearing before the Committee on any rule or part of rule upon the recommendation of the Committee or upon the motion of any member of the Commission. Within 60 days after the public hearing, the Committee may find that the agency did not act within its statutory authority in promulgating the

rule or its part and delay the continued effectiveness of the rule or its part in accordance with subsections b, c, d, e, and f of G.S. 120-30.28."

Sec. 9. Subsection (c) of G.S. 120-30.35 is amended by deleting therefrom the words "and the Commission."

Sec. 10. A new section is added to Article 6C of Chapter 120 of the General Statutes to read as follows:

"§ 120-30.36. Failure to delay; inadmissibility into evidence.--(a) The failure of the Committee to 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 Committee, Commission or the legislative branch.

(b) Evidence of the Committee's failure to delay the effectiveness of the rule or its part shall be inadmissible in all civil and criminal trials or other proceedings before courts, administrative agencies, or other tribunals."

Sec. 11. The last sentence of G.S. 150A-13 is rewritten to read as follows:

"This rule may be effective for a period of not longer than 80 days. An agency adopting an emergency rule shall begin normal rule-making procedures on the rule under this Article at the same time the emergency rule is adopted."

Sec. 12. G.S. 150A-59(a) and (b) are rewritten to read as follows:

"(a) Rules adopted by an agency on or after February 1, 1976, shall be filed with the Attorney General. No rule, except emergency rules adopted under the provisions of G.S. 150A-13,

shall become effective earlier than 60 days after that filing. The effectiveness of any rule may be delayed by the Legislative Research Commission's Administrative Rules Review Committee pursuant to Article 6C of Chapter 120 of the General Statutes.

(b) The acceptance for filing of a rule by the Attorney General, by his notation on the face thereof, shall be evidence of compliance with this Article."

Sec. 13. The last sentence of subsection (5) of G.S. 150A-60 is rewritten to read as follows:

"This subsection does not apply to rules adopted by the Industrial Commission, the Utilities Commission, the State Personnel Commission relating to salary classifications and job descriptions, or the Department of Transportation relating to traffic sign ordinances, and road and bridge weight limits."

Sec. 14. A new section is added to Article 5 of Chapter 150A of the General Statutes to read as follows:

"§ 150A-63.1. Administrative Rules Review Committee reports.-- The Attorney General shall retain any reports of the Legislative Research Commission's Administrative Rules Review Committee delaying the effectiveness of a rule. He shall append to any compilation, publication, or summation of that rule a notation that it has been delayed pursuant to Article 6C of Chapter 120 of the General Statutes."

Sec. 15. A new section is added to Chapter 150A:

"§ 150A-70. No presumption of validity.--(a) There shall be no presumption that any rule of any agency is either valid or within the statutory authority of the agency promulgating it.

Whenever the validity or statutory authority of any rule is drawn in question in any court of the United States or of any state, the court shall not uphold the validity or statutory authority of that challenged rule unless the validity or statutory authority is established by a preponderance of the evidence shown; Provided, however, that if any rule is set up as a defense to any criminal prosecution or action for civil penalty, the rule shall be presumed valid and within the statutory authority of the agency promulgating it until the party initiating the criminal prosecution or the action for civil penalty shall have sustained the burden of proof normally applicable in such actions.

(b) Notwithstanding any other provisions of law, for purposes of this section:

- (1) 'Agency' has the same meaning as it does in G.S. 150A-58(c),
- (2) 'Rule' has the same meaning as it does in G.S. 150A-58(b), and
- (3) 'Valid' has the same meaning as it does in G.S. 150A-2(9)."

Sec. 16. Notwithstanding the provisions of G.S. 120-30.26, the new appointment authorized by this act shall be made by the cochairmen of the Legislative Research Commission not later than July 15, 1981. The term of office of a new appointee shall be from time of appointment until October 1, 1981, or until the appointee ceases to be a member of the General Assembly, whichever occurs first.

Sec. 17. Rules that were filed, but whose review

periods have not expired, under the procedures in effect prior to the effective date of this act shall be reviewed and these rules or their parts may be delayed under the provisions of this act not later than 60 days after the effective date of this act. Rules that have been reviewed and that have been objected to by the Administrative Rules Review Committee or the Legislative Research Commission, or both, under the procedures in effect prior to the effective date of this act and that have not been amended or repealed by the appropriate agency in accordance with the objections of the Committee or the Commission, shall be reviewed and the effectiveness of rules or their parts may be delayed by the Committee not later than December 1, 1981, under the provisions of G.S. 120-30.28(b), (c), (d), and (e).

Sec. 18. Section 10 of Chapter 915 of the 1977 Session Laws, as amended by Section 2 of Chapter 1030 of the 1979 Session Laws, is rewritten to read as follows:

"Sec. 10. This act shall become effective on October 1, 1977."

Sec. 19. There is appropriated from the General Fund to the Legislative Research Commission's Administrative Rules Review Committee the sum of seventy thousand dollars (\$70,000) for the 1981-1982 fiscal year and the sum of seventy thousand dollars (\$70,000) for the 1982-1983 fiscal year. From the sums appropriated, the Legislative Services Commission is authorized to employ in a permanent status two computer operators for the work of the Administrative Rules Review Committee.

Sec. 20. This section and Sections 4, 5, 16, 18 and 19 of this act shall become effective on July 1, 1981; all remaining

sections of this act shall become effective on October 1, 1981.

BRIEF SECTION-BY-SECTION ANALYSIS OF A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR A MORE EFFECTIVE REVIEW OF ADMINISTRATIVE RULES, TO MAKE PERMANENT THE LEGISLATIVE RESEARCH COMMISSION'S ADMINISTRATIVE RULES REVIEW COMMITTEE, AND TO MAKE AN APPROPRIATION THEREFOR.

Sections 1 and 13 amend G.S. 120-30.24 and G.S. 150A-60 to delete from Administrative Rules Review Committee (ARRC) the duty of reviewing rules by the State Personnel Commission, relating to salary classifications and job descriptions, and rules by the Department of Transportation relating to traffic sign ordinances and road and bridge weight limits and the filing of these rules with the ARRC by these agencies.

Sec. 2, 3, 7, and 9. Amend various sections of Chapter 120 of the General Statutes to delete the Legislative Research Commission (LRC) from the review process.

Sec. 3. See Section 2 above.

Sec. 4. Rewrites G.S. 120-30.26 to increase to ten (10) the number of members of the ARRC which consists of five Senators appointed by the LRC co-chairman of the Senate and five Representatives appointed by the LRC co-chairman of the House. Members to elect two co-chairmen. Members serve terms of two years or until they cease to be members of the General Assembly, whichever occurs first.

Sec. 5. Amends G.S. 120-30.27 to increase the quorum requirement in an ARRC meeting to the chairman and four other members or a majority, whichever is fewer.

Sec. 6. Rewrites G.S. 120-30-28 to provide that the ARRC must review rule within 60 days of its filing; the ARRC may extend time for review of rule for 60 days to obtain additional information on the rule; the ARRC, if it finds that the agency did not act within its statutory authority in promulgating the rule or a part of a rule, must delay the effectiveness of the rule or its part; the Director of Research must transmit a written report of the delay and the reasons for it to the Governor, the President of the Senate, the co-chairmen of the LRC and the Attorney General. The delay makes the rule ineffective for purposes of the Administrative Procedures Act (APA) (G. S. 150A-2(2a)). If the agency does not amend or repeal the rule to cure the defects, the ARRC must submit a bill to repeal the delayed rule to the General Assembly if in session, or to the next regular session of the General Assembly. If the bill is not enacted in the session to which submitted, the delay is ended and the rule is effective on the day following adjournment. Agency prohibited from adopting another rule having substantially identical provisions to those for which the ARRC delayed the original rule. Agency may amend or repeal the rule to cure the

defects cited as reasons for the Committee's delay. The filing of an amendment to a rule places the entire rule before the Committee for its review.

Sec. 7. See Section 2 above.

Sec. 8. Rewrites G.S. 120-30.35 to allow ARRC to hold a public hearing, review, and delay the effectiveness of any rule upon the call of the co-chairmen of the LRC recommended by the ARRC or any member of the LRC.

Sec. 9. See Section 2 above.

Sec. 10. Adds a new G.S. 120-30-36 to provide that failure of the Committee to delay the effectiveness of a rule or its part is not to be deemed approval of the rule's statutory authority by the ARRC, LRC or the legislative branch, and to make inadmissible any failure to delay, as evidence in all civil and criminal trials or other proceedings before courts, administrative agencies, or other tribunals.

Sec. 11. Rewrites part of G.S. 150A-13 to reduce the period of effectiveness of emergency rules from 120 to 80 days and to require the agency adopting the emergency rule to begin normal rule-making procedures on the rule when the emergency rule is filed.

Sec. 12. Rewrites G.S. 150A-59(a) and (b) specifically to allow delay of effectiveness of rules by the ARRC and to delete the prima facie presumption that acceptance for filing of a rule by the Attorney General is compliance with Article 5 of Chapter 150 ("Publication of Administrative Rules").

Sec. 13. See Section 1 above.

Sec. 14. Adds a new G.S. 150A-63.1 requiring the Attorney General to retain ARRC reports of delay of effectiveness of rules and to append to any compilation, publication or summation of the rule, that its effectiveness has been delayed.

Sec. 15. Adds a new section G.S. 150A-70 to provide that there is no presumption that any rule of any agency is either valid or within the statutory authority of the agency promulgating it. Whenever its validity or statutory authority is questioned in any federal or state court the court shall not uphold the rule unless its validity or statutory authority is established by a preponderance of the evidence. If the rule is set up as a defense to a criminal prosecution or action for civil penalty, the rule shall be presumed valid until the party initiating the criminal prosecution or the action for civil penalty shall have sustained the burden of proof normally applicable in such action.

Sec. 16. Conforming change to permit appointment of 10th member of ARRC.

Sec. 17. Provides procedure for rules under review at time of this Act's effectiveness.

Sec. 18. Technical amendment.

Sec. 19. Provides appropriation of \$70,000 for each year of next biennium to operate ARRC.

Sec. 20. Makes appropriation and new appointment section effective on July 1, 1981 and remaining sections of Act effective on October 1, 1981.

