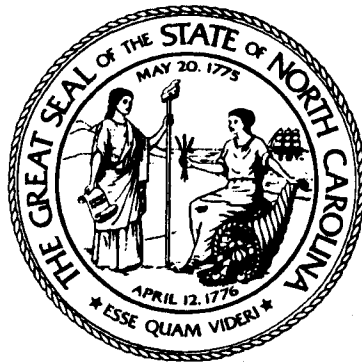


**JOINT LEGISLATIVE
ADMINISTRATIVE PROCEDURE
OVERSIGHT COMMITTEE**



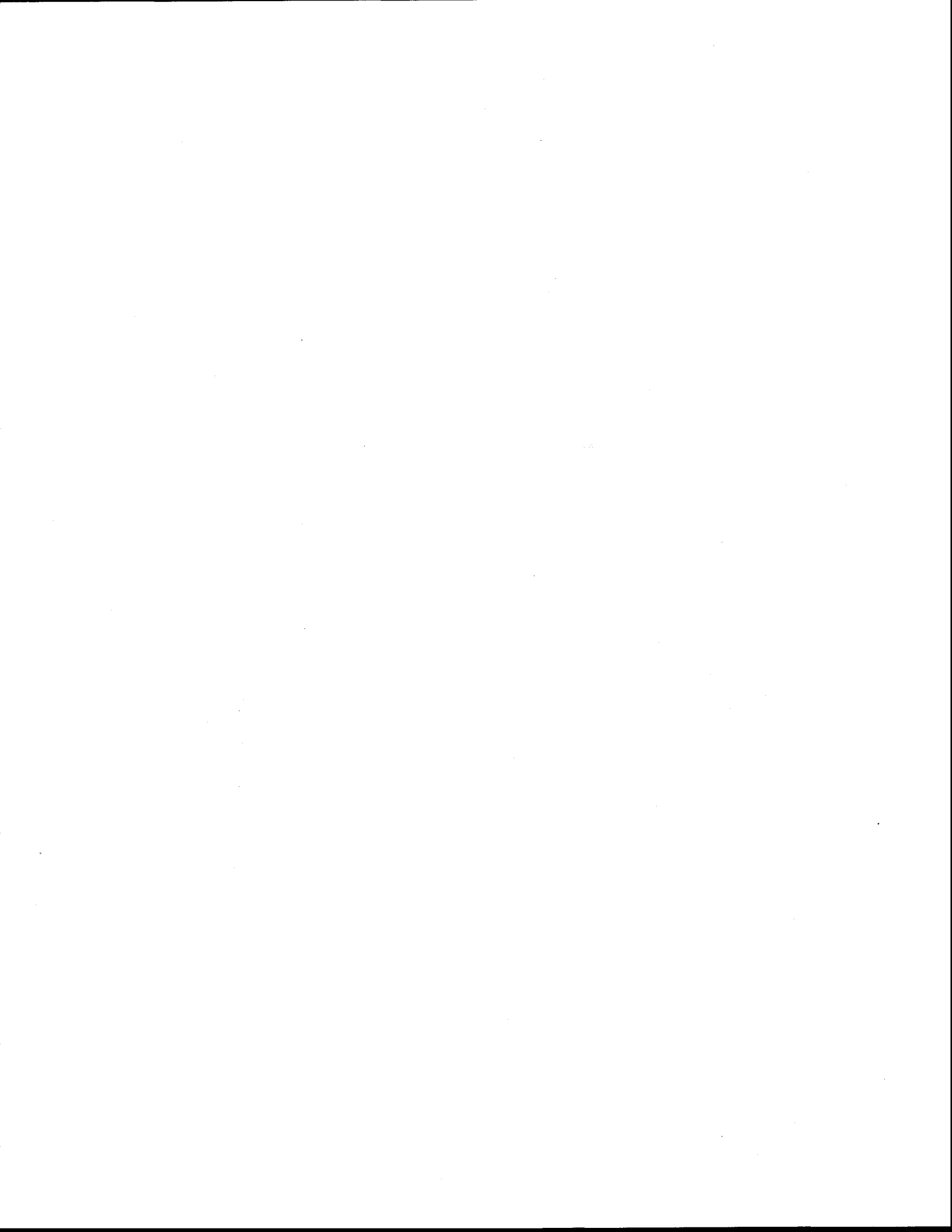
*REPORT TO THE
2013 SESSION OF THE
GENERAL ASSEMBLY
OF NORTH CAROLINA*

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TABLE OF CONTENTS

Letter of Transmittal	5
Membership of the Joint Legislative Administrative Procedure Oversight Committee	7
Staff of the Joint Legislative Administrative Procedure	8
Authorizing Legislation	9
Committee Proceedings	11
Committee Recommendations	15
Legislative Proposal #1: Program Evaluation Division Study Occupational Licensing Board Agencies	17
Legislative Proposal #2: APA Technical and Clarifying Changes	19
Legislative Proposal #3: Use of Criminal History Records by Licensing Boards	23
Legislative Proposal #4: Eliminate Obsolete Boards and Commissions	27
Legislative Proposal #5: Periodic Review and Expiration of Rules	33

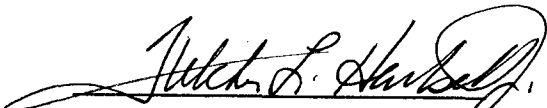


January 9, 2013

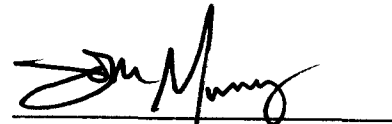
TO THE MEMBERS OF THE 2013-2014 GENERAL ASSEMBLY

The Joint Legislative Administrative Procedure Oversight Committee herewith submits to you for your consideration its report pursuant to G.S. 120-70.101(8).

Respectfully submitted,



Senator Fletcher L. Hartsell, Jr.



Representative Tom Murry

Co-Chairs
Joint Legislative Administrative Procedure Oversight Committee

MEMBERSHIP

JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE 2011-2012

President Pro Tempore's Appointments

Senator Fletcher L. Hartsell, Jr., Cochair
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2012-2013

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AUTHORIZING LEGISLATION

ARTICLE 12K.

Joint Legislative Administrative Procedure Oversight Committee

§ 120-70.100. Creation and membership of Joint Legislative Administrative Procedure Oversight Committee.

- (a) The Joint Legislative Administrative Procedure Oversight Committee is established. The Committee consists of 16 members as follows:
 - (1) Eight members of the Senate appointed by the President Pro Tempore of the Senate, at least three of whom are members of the minority party.
 - (2) Eight members of the House of Representatives appointed by the Speaker of the House of Representatives, at least three of whom are members of the minority party.
- (b) Members of the Committee shall serve a term of two years beginning on January 15 of each odd-numbered year. Members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee. A member continues to serve until the member's successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment. (1995, c. 507, s. 27.8(a); 2011-291, s. 1.3(b); 2012-187, s. 1.)

§ 120-70.101. Purpose and powers of Committee.

The Joint Legislative Administrative Procedure Oversight Committee has the following Powers and duties:

- (1) To review rules to which the Rules Review Commission has objected to determine if statutory changes are needed to enable the agency to fulfill the intent of the General Assembly.
- (2) To receive reports prepared by the Rules Review Commission containing the text and a summary of each rule approved by the Commission.
- (3) Repealed by Session Laws 2009-125, s. 1, effective October 1, 2009.
- (3a) To review the activities of State occupational licensing boards to determine if the boards are operating in accordance with statutory requirements and if NC General Statutes - Chapter 120 271 the boards are still necessary to achieve the purposes for which they were created. This review shall not include decisions concerning board personnel matters or determinations on individual licensing applications or individual disciplinary actions.

- (3) To review State regulatory programs to determine if the programs overlap, have conflicting goals, or could be simplified and still achieve the purpose of the regulation.
- (4) To review existing rules to determine if the rules are necessary or if the rules can be streamlined To review the rule-making process to determine if the procedures for adopting rules give the public adequate notice of and information about proposed rules.
- (5) To review any other concerns about administrative law to determine if statutory changes are needed.
- (6) To report to the General Assembly from time to time concerning the Committee's activities and any recommendations for statutory changes. (1995, c. 507, s. 27.8(a); 1996, 2nd Ex. Sess., c. 18, s. 7.10(h); 2009-125, s. 1; 2011-291, s. 1.3(b); 2012-187, s. 1.)

§ 120-70.102. Organization of Committee.

- (a) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Joint Legislative Administrative Procedure Oversight Committee. The Committee shall meet at least once a quarter and may meet at other times upon the joint call of the cochairs.
- (b) A quorum of the Committee is nine members. No action may be taken except by a majority vote at a meeting at which a quorum is present. While in the discharge of its official duties, the Committee has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4.
- (c) Members of the Committee receive subsistence and travel expenses as provided in G.S. 120-3.1. The Committee may contract for consultants or hire employees in accordance with G.S. 120-32.02. The Committee may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be paid by the Committee. (1995, c. 507, s. 27.8(a); 1996, 2nd Ex. Sess., c. 18, s. 8(1); 2011-291, s. 1.3(b); 2012-187, s. 1.)

§ 120-70.103: Repealed by Session Laws 2009-125, s. 5, effective October 1, 2009.

COMMITTEE PROCEEDINGS

The Joint Legislative Administrative Procedure Oversight Committee met three times from October to December 2012. The committee heard presentations from the following:

October 17, 2012:

The Committee met on Wednesday, October 17, 2012 at 9 a.m. in Room 643 of Legislative Office Building (LOB).

The following business was conducted:

- Senator Fletcher Hartsell chaired the committee and presented a brief review of the topics to be discussed;
- Committee Co-Council, Karen Cochrane-Brown, provided a summary and overview of the committee's responsibility and charge. She also conducted a brief orientation session describing the background of the APA and overview of the rule-making process;
- Judge Julian Mann, Chief Administrative Law Judge and Director of the Office of Administrative Hearings, provided a brief synopsis of the authority, organization and workings of the Office of Administrative Hearings;
- A date was then set for the next meeting followed by adjournment.

November 17, 2012:

The Committee met on Wednesday, November 14, 2012 at 9 a.m. in Room 415 of Legislative Office Building (LOB).

The following business was conducted:

- After introductory remarks by committee co-chair, Representative Tom Murry the minutes were approved for the previous meeting on October 17, 2012;
- Committee Co-Counsel, Karen Cochrane-Brown, provided an update on compliance by occupational licensing boards submitting an annual report and financial statement prior to the October 31 annual deadline;
- A discussion ensued on the application of rules by the North Carolina Board of Barber Examiners. Mr. Manny Perez, owner of Clippin Tyme Salon in Kill Devils Hill, NC, contended the rules were being unfairly administered against his establishment and disputed the Boards authority to exact fines for perceived violations. The violation in question regarded Mr. Perez including the use of a barber pole upon outdoor advertising to promote his business. Mr. William Jones, Jr., Counsel for

the NC Board of Barber Examiners maintained the citations referenced were legal and binding citing an antiquated NC Administrative Rule provision. After a lengthy discussion the Committee encouraged the Barber Board to reconsider the application of the rule to Mr. Perez's case;

- Ms. Lynda Elliott, Executive Director of Cosmetic Arts Examiners Board, then imparted a brief address presenting the Cosmetic Arts Board's legislative agenda for the upcoming 2013 session;
- Mr. Bill Rowe, General Counsel for the North Carolina Justice Center provided an overview on the use of criminal records when making determinations about occupational licensing applications. Mr. Rowe requested that the committee consider legislation to set standards for the use of criminal history records;
- A date was then set for the next meeting followed by adjournment.

December 19, 2012:

The Committee met on Wednesday, December 19, 2012 at 9 a.m. in Room 643 of Legislative Office Building (LOB).

The following business was conducted:

- Senator Fletcher Hartsell chaired the meeting and the minutes were approved for the previous meeting on November 17, 2012. Rep. Tom Murray was unable to attend due to an unforeseen conflict;
- Committee Co-Counsel, Karen Cochrane-Brown, offered a brief report on the rules subject to legislative review for the 2013 session;
- Judge Julian Mann, Chief Administrative Law Judge, and Mr. Bill Cary, General Counsel for Department of Environment and Natural Resources (DENR), delivered a review and summary of the agreement regarding final decisions in DENR cases involving EPA delegated programs;
- Judge Mann and Melanie Bush, Assistant Director, Administration, Division of Medical Assistance advised the committee on a waiver request regarding final decisions involving Medicaid cases;
- An extended presentation was provided by Bobby Bryan and Joe Deluca, staff to the Rules Review Commission (RRC) offering recommendations to create a process for decennial review of existing rules by the RRC. Molly Masich, Codifier of Rules at Office of Administrative Hearings presented the additional resources needed for the increased workload;
- Ms. Cochrane-Brown presented a draft proposal for the use of criminal records in occupational licensing determinations;
- Ms. Cochrane Brown briefly summarized a draft proposal to eliminate unnecessary boards and commissions as identified by committee staff;

- A draft proposal was presented directing the Program Evaluation Division (PED) to study the creation of an umbrella agency for occupational licensing boards. Ms. Cochrane Brown identified several states and commonwealths that already have created and delegated authority to such organizations. Ms. Masich made brief remarks encouraging the committee to consider legislation creating such an entity in North Carolina;
- Ms. Cochrane-Brown presented and discussed a draft proposal of technical corrections aiming to benefit and increase efficiency, provide for expedited service and implement cost savings throughout the administrative procedure process;
- Ms. Cochrane-Brown and Mr. Hudson offered the following issues to the committee for future consideration:
 - Response for policies not adopted as rules as in the case of the Department of Public Instruction;
 - Revision of Office of Administrative Hearings appeal process to North Carolina Court of Appeals;
 - Process to create uniformity among Article 3A agencies;
 - Review of constituent presentation, letter and supporting documents requesting elimination of the NC Dietetics and Nutrition Board.
- After discussion the committee voted to make 5 legislative recommendations and to affirm a final report. The committee adjourned.

COMMITTEE RECOMMENDATIONS

The Joint Legislative Administrative Procedure Oversight Committee offers the following recommendations:

- Authorize the Program Evaluation Division to Study Occupational Licensing Board Agencies

Proposes authorization by the Joint Legislative Program Evaluation Oversight Committee to study the effectiveness and efficiency of the various independent licensing boards and consider the feasibility of creating a single state agency to oversee the administration of boards;

- APA Technical and Clarifying Changes

Recommends several technical, clarifying and conforming changes to the Administrative Procedure Act;

- Use of Criminal History Records by Licensing Boards

Proposes occupational licensing boards consider 7 factors before denying licenses to applicants with criminal records;

- Eliminate Obsolete Boards and Commissions

Advocates the repeal of 9 statutorily created boards and commissions that have become obsolete;

- Periodic Review and Expiration of Rules

Proposes a periodic review and expiration of rules by imposing rotating expiration dates for all permanent rules within the North Carolina Administrative Code (NCAC), thereby requiring re-adoption to extend rules beyond the statutory expiration date.

In conclusion the committee also proposes:

“The Joint Legislative Procedure Oversight Committee recommends that the 2013 Appropriations Committee review the list of legislatively created boards and commissions in connection with their review of State agency budgets. It is further recommended that the Appropriations Committee consider the elimination, reduction, or consolidation of any boards and commissions which the committees deem to be unnecessary, too large, or redundant.”

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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BILL DRAFT 2013-ROz-2 [v.3] (12/13)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
12/18/2012 3:10:14 PM

Short Title: PED Study Occ. Lic Bd. Agency. (Public)

Sponsors: (Primary Sponsor).

Referred to:

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE JOINT LEGISLATIVE PROGRAM EVALUATION OVERSIGHT COMMITTEE TO DIRECT THE PROGRAM EVALUATION DIVISION TO STUDY THE STRUCTURE, ORGANIZATION AND OPERATION OF THE VARIOUS INDEPENDENT OCCUPATIONAL LICENSING BOARDS AND TO CONSIDER THE FEASIBILITY OF CREATING A SINGLE STATE AGENCY TO OVERSEE THE ADMINISTRATION OF THE BOARDS.

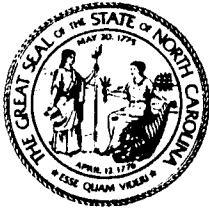
The General Assembly of North Carolina enacts:

SECTION 1. The Joint Legislative Program Evaluation Oversight Committee shall include in the 2013–2014 Work Plan for the Program Evaluation Division of the General Assembly a study to evaluate the structure, organization, and operation of the various independent occupational licensing boards. For purposes of this act, the term "occupational licensing board" has the same meaning as defined in G.S. 93B-1. The Program Evaluation Division shall include the following within this study:

- (1) Consideration of the feasibility of establishing a single state agency to oversee the administration of all or some of the occupational licensing boards.
- (2) Whether greater efficiency and cost-effectiveness can be realized by combining the administrative functions of the boards, while allowing the boards to continue performing the regulatory functions.
- (3) Whether the total number of board should be reduced by combining and/or eliminating some boards.

SECTION 2. The Program Evaluation Division shall submit its findings and recommendations from Section 1 of this act to the Joint Legislative Program Evaluation Oversight Committee and the Joint Legislative Administrative Procedure Oversight Committee at a date to be determined by the Joint Legislative Program Evaluation Oversight Committee.

SECTION 3. This act is effective when it becomes law.



Bill Draft 2013-ROz-2 [v.3]: PED Study Occ. Lic Bd. Agency.

2011-2012 General Assembly

Committee:	Joint Legislative Administrative Procedure Oversight Committee	Date:	December 19, 2012
Introduced by:		Prepared by:	Chris Saunders Committee Counsel
Analysis of:	2013-ROz-2 [v.3]		

SUMMARY: *This draft directs the Joint Legislative Program Evaluation Oversight Committee to direct the Program Evaluation Division to study the effectiveness and efficiency of the various independent licensing boards and consider the feasibility of creating a single state agency to oversee the administration of the boards.*

CURRENT LAW: There are approximately 57 independent occupational licensing boards created by North Carolina statutes. These boards are generally authorized to accept applications, conduct examinations, collect fees, issue licenses and renewals, enforce continuing education requirements, conduct investigations, and discipline those who violate the law. There is no general executive branch oversight of the occupational licensing boards, and the boards function with a great deal of autonomy.

BILL ANALYSIS:

Section 1 directs the Joint Legislative Program Evaluation Oversight Committee to include in the 2013-2014 Work Plan for the Program Evaluation Division a study to evaluate the structure, organization, and operation of the various independent licensing boards and the feasibility of creating a single state agency to oversee the administration of some or all of the occupational licensing boards.

Section 2 directs the Program Evaluation Division to report its findings to the Joint Legislative Program Evaluation Oversight Committee and the Joint Legislative Administrative Procedure Oversight Committee at a date to be determined by the Program Evaluation Oversight Committee.

EFFECTIVE DATE: This draft would be effective when it becomes law.

BACKGROUND: A number of states organize some or all of their occupational licensing boards under a single state agency. In many cases, the individual boards make all policy decisions, including granting licenses and imposing discipline, while the agency staff provides administrative support to the boards.

2013-ROz-2-SMTQ-4 v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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BILL DRAFT 2013-ROz-3 [v.2] (12/14)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
12/18/2012 8:51:08 PM

Short Title: APA Technical/Clarifying Chges. (Public)

Sponsors: (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CERTAIN TECHNICAL, CLARIFYING AND CONFORMING
3 CHANGES TO THE ADMINISTRATIVE PROCEDURE ACT.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 150B-21.2(c) reads as rewritten:

6 "(c) Notice of Text. – A notice of the proposed text of a rule must include all of the
7 following:

- 8 (1) The text of the proposed rule.
9 (2) A short explanation of the reason for the proposed rule and a link to the agency's
10 ~~Web site containing the information required by G.S. 150B-19.1(e) rule.~~
11 (2a) A link to the agency's website containing the information required by
12 G.S. 150B-19.1(c).
13 (3) A citation to the law that gives the agency the authority to adopt the rule.
14 (4) The proposed effective date of the rule.
15 (5) The date, time, and place of any public hearing scheduled on the rule.
16 (6) Instructions on how a person may demand a public hearing on a proposed rule if
17 the notice does not schedule a public hearing on the proposed rule and
18 subsection (e) of this section requires the agency to hold a public hearing on the
19 proposed rule when requested to do so.
20 (7) The period of time during which and the person within the agency to whom
21 written comments may be submitted on the proposed rule.
22 (8) If a fiscal note has been prepared for the rule, a statement that a copy of the
23 fiscal note can be obtained from the agency.

1 ~~(9) The procedure by which a person can object to a proposed rule and the~~
2 ~~requirements for subjecting a proposed rule to the legislative review process."~~

3 **SECTION 2.** G.S. 150B-21.7 reads as rewritten:

4 "**§ 150B-21.7. Effect of transfer of duties or termination of agency on rules.**

5 (a) When a law that authorizes an agency to adopt a rule is repealed and another law gives
6 the same or another agency substantially the same authority to adopt a rule, the rule remains in
7 effect until the agency with authority over the rule amends or repeals the rule. When a law that
8 authorizes an agency to adopt a rule is repealed and another law does not give the same or another
9 agency substantially the same authority to adopt a rule, a rule adopted under the repealed law is
10 repealed as of the date the law is repealed. The agency that adopted the rule shall notify the
11 Codifier of Rules that the rule is repealed pursuant to this subsection.

12 (b) When an executive order abolishes part or all of an agency and transfers a function of
13 that agency to another agency, a rule concerning the transferred function remains in effect until
14 the agency to which the function is transferred amends or repeals the rule. When an executive
15 order abolishes part or all of an agency and does not transfer a function of that agency to another
16 agency, a rule concerning a function abolished by the executive order is repealed as of the
17 effective date of the executive order. The agency that adopted the rule shall notify the Codifier of
18 Rules that the rule is repealed pursuant to this subsection.

19 ~~(c) The Director of Fiscal Research of the General Assembly must notify the Codifier of~~
20 ~~Rules when a rule is repealed under this section~~ When notified of a rule repealed under this
21 section, the Codifier of Rules must enter the repeal of the rule in the North Carolina
22 Administrative Code."

23 **SECTION 3.** G.S. 150B-21.20(a) reads as rewritten:

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

- 27 (1) Rearrange the order of the rule in the Code or the order of the subsections,
28 subdivisions, or other subparts of the rule.
- 29 (2) Provide a catch line or heading for the rule or revise the catch line or heading of
30 the rule.
- 31 (3) Reletter or renumber the rule or the subparts of the rule in accordance with a
32 uniform system.
- 33 (4) Rearrange definitions and lists.
- 34 (5) Make other changes in arrangement or in form that do not change the substance
35 of the rule and are necessary or desirable for a clear and orderly arrangement of
36 the rule.
- 37 (6) Omit from the published rule a map, a diagram, an illustration, a chart, or other
38 graphic material, if the Codifier of Rules determines that the Office of
39 Administrative Hearings does not have the capability to publish the material or
40 that publication of the material is not practicable. When the Codifier of Rules
41 omits graphic material from the published rule, the Codifier must insert a
42 reference to the omitted material and information on how to obtain a copy of the
43 omitted material."

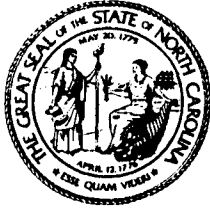
1 **SECTION 4.** G.S. 150B-45(a) reads as rewritten:

2 "(a) Procedure. – To obtain judicial review of a final decision under this Article, the person
3 seeking review must file a petition within 30 days after the person is served with a written copy of
4 the decision. The petition must be filed as follows:

5 (1) Contested tax cases. – A petition for review of a final decision in a contested tax
6 case arising under G.S. 105-241.15 must be filed in the Superior Court of Wake
7 County.

8 (2) Other final decisions. – A petition for review of any other final decision under
9 this Article must be filed in the Superior Court of Wake County or in the
10 superior court of the county where the ~~person~~ party who commenced the
11 contested case resides."

12 **SECTION 5.** This act is effective when it becomes law.



Bill Draft 2013-ROz-3 [v.2]: APA Technical/Clarifying Chges.

2011-2012 General Assembly

Committee:	Joint Legislative Administrative Procedure Oversight Committee	Date:	December 19, 2012
Introduced by:		Prepared by:	Chris Saunders Committee Counsel
Analysis of:	2013-ROz-3 [v.2]		

SUMMARY: *This draft makes several technical, clarifying, and conforming changes to the Administrative Procedure Act.*

BILL ANALYSIS: The draft makes the following changes to the Administrative Procedure Act:

Section 1 amends the Notice of Text provision by separating two distinct items of information that must be contained in the notice. The amendment also deletes an unnecessary requirement that the agency include the procedure for seeking legislative review of a rule. This procedure is already included in the Register by the Office of Administrative Hearings (OAH).

Section 2 clarifies language concerning rules that are repealed as a result of the repeal of an agency's authority to adopt the rule. This provision deletes a requirement that the Director of the Fiscal Research Division of the North Carolina General Assembly notify the Codifier of Rules when a rule is repealed under this section and instead requires the agency that adopted the rule to notify the Codifier of Rules.

Section 3 allows the Codifier of Rules to make certain formatting changes to certain rules more than 10 days after the rule has been submitted.

Section 4 amends the provision relating to appropriate venue for seeking judicial review of a final decision in a contested case. Currently, a petition for judicial review can be filed in Wake County or in the county where the person resides. This language was not changed when OAH was given final decision-making authority. Prior to that change, an agency could not seek judicial review of its own final decision. This amendment clarifies that the "person" in the current law refers to the party that commenced the original contested case.

EFFECTIVE DATE: This draft would be effective when it becomes law.

2013-ROz-3-SMTQ-5 v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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D

BILL DRAFT 2013-ROz-1 [v.6] (12/03)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
12/18/2012 11:29:59 AM

Short Title: Use of Criminal History Records by Lic. Bds. (Public)

Sponsors: (Primary Sponsor).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT OCCUPATIONAL LICENSING BOARDS CONSIDER CERTAIN FACTORS BEFORE DENYING LICENSES TO APPLICANTS WITH CRIMINAL RECORDS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 93B of the General Statutes is amended by adding a new section to read:

"§ 93B-8.1. Use of criminal history records.

(a) The following definitions apply in this section:

- (1) Applicant – means a person who makes application for licensure from an occupational licensing board.
- (2) Board – means an occupational licensing board as defined in G.S. 93B-1.
- (3) Criminal history records – means a State or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon an applicant's or a licensee's fitness to be licensed or disciplined.
- (4) Licensee – means a person who has obtained a license to engage in or represent himself or herself to be a member of a particular profession or occupation.

(b) Unless the law governing a particular occupational licensing board provides otherwise, a board shall not automatically deny licensure on the basis of an applicant's criminal history. If the board is authorized to deny a license to an applicant on the basis of conviction of any crime or for commission of a crime involving fraud or moral turpitude, and the applicant's verified criminal history record reveals one or more convictions of any crime, the board may deny the license if it finds that denial is warranted after consideration of the following factors:

- (1) The level and seriousness of the crime.
- (2) The date of the crime.
- (3) The age of the person at the time of the crime.

- 1 (4) The circumstances surrounding the commission of the crime, if known.
2 (5) The nexus between the criminal conduct and the prospective duties of the
3 applicant as a licensee.
4 (6) The prison, jail, probation, parole, rehabilitation, and employment records of the
5 applicant since the date the crime was committed.
6 (7) The subsequent commission of a crime by the applicant.

7 (c) The board may deny licensure to an applicant who refuses to consent to a criminal
8 history record check or use of fingerprints or other identifying information required by the State
9 or National Repositories of Criminal Histories.

10 **SECTION 2.** This act is effective when it becomes law.



Bill Draft 2013-ROz-1 [v.6]: Use of Criminal History Records by Lic. Bds.

2011-2012 General Assembly

Committee:	Joint Legislative Administrative Procedure Oversight Committee	Date:	December 19, 2012
Introduced by:		Prepared by:	Chris Saunders Committee Counsel
Analysis of:	2013-ROz-1 [v.6]		

SUMMARY: *This draft requires that certain occupational licensing boards consider seven factors before denying licenses to applicants with criminal records.*

CURRENT LAW: Of the approximately 56 existing licensing boards, 35 are required to consider an applicant's criminal record in making a determination whether to issue a license. Most boards do not have any criteria for considering the applicant's criminal record. Several boards have specific statutory criteria for considering the applicant's criminal record. Three boards have no discretion in considering an applicant's criminal record, and must deny the applicant's application if the applicant has ever been convicted of certain crimes.

BILL ANALYSIS: This draft amends Chapter 93B (Occupational Licensing Boards) by adding a new section, G.S. § 93B-8.1 (Use of criminal history records). Subsection (a) provides definitions for use in this section. Unless the law governing a particular licensing board provides otherwise, subsection (b) prohibits a licensing board from automatically denying an applicant from licensure based on the applicant's criminal history and requires the board to consider seven factors before making a determination to deny the license:

- (1) The level and seriousness of the crime.
- (2) The date of the crime.
- (3) The age of the person at the time of the crime.
- (4) The circumstances surrounding the commission of the crime, if known.
- (5) The nexus between the criminal conduct and the prospective duties of the applicant as a licensee.
- (6) The prison, jail, probation, parole, rehabilitation, and employment records of the applicant since the date the crime was committed.
- (7) The subsequent commission of a crime by the applicant.

Subsection (c) provides that the board may automatically deny licensure if the applicant refuses to consent to a criminal record check or to provide fingerprints or other identifying information.

EFFECTIVE DATE: This draft would be effective when it becomes law.

BACKGROUND: At the November 14, 2012 meeting of the Joint Legislative Administrative Procedure Oversight Committee meeting, the Committee heard a presentation from Mr. Bill Rowe, General Counsel to the NC Justice Center, about the use of criminal records in occupational licensing determinations. Mr. Rowe informed the Committee that although most occupational licensing boards have discretion to deny a license application if the applicant has a criminal history, the boards often have no standards in the law that can be used in making these determinations. Mr. Rowe requested that the Committee recommend legislation to include standards to be considered by occupational licensing boards when an applicant has a criminal history.

2013-ROz-1-SMTQ-2 v3

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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BILL DRAFT 2013-SBz-9 [v.3] (12/17)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
12/18/2012 7:12:35 PM

Short Title: Eliminate Obsolete Boards and Commissions. (Public)

Sponsors: (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT ELIMINATE OBSOLETE BOARDS AND COMMISSIONS.
3 The General Assembly of North Carolina enacts:
4
5

6 **PART I. REPEAL THE SMALL BUSINESS CONTRACTOR ACT AND THE SMALL**
7 **BUSINESS CONTRACTOR AUTHORITY**

8 SECTION 1. Part 20 of Article 10 of Chapter 143B of the General Statutes is
9 repealed.
10

11 **PART II. PROVIDE THAT THE COMMITTEE ON DROPOUT PREVENTION SHALL**
12 **TERMINATE ON JULY 1, 2013**

13 SECTION 2. Section 7.32(e) of S.L. 2007-323, as rewritten by Section 7.14(a) of S.L.
14 2008-107 and Section 7.19(e) of S.L. 2010-31, reads as rewritten:

15 "SECTION 7.32.(e) Report. – The Committee shall report to the Joint Legislative
16 Commission on Dropout Prevention and High School Graduation created in subsection (f) of this
17 section by December 1, 2007, on the grants awarded under subsection (d) of this section. The
18 Committee shall terminate July 1, 2013."
19

20 **PART III. ELIMINATE THE STATE EDUCATION COMMISSION ESTABLISHED IN**
21 **CHAPTER 116C OF THE GENERAL STATUTES**

22 SECTION 3.(a) G.S. 116C-1 reads as rewritten:

23 **"§ 116C-1. Education Cabinet created.**

24 (a) The Education Cabinet is created. The Education Cabinet shall be located
25 administratively within, and shall exercise its powers within existing resources of, the Office of
26 the Governor. However, the Education Cabinet shall exercise its statutory powers independently
27 of the Office of the Governor.

1 (b) The Education Cabinet shall consist of the Governor, who shall serve as chair, the
2 President of The University of North Carolina, the State Superintendent of Public Instruction, the
3 Chairman of the State Board of Education, the President of the North Carolina Community
4 Colleges System, the Secretary of Health and Human Services, and the President of the North
5 Carolina Independent Colleges and Universities. The Education Cabinet may invite other
6 representatives of education to participate in its deliberations as adjunct members.

7 (c) The Education Cabinet shall be a nonvoting body that:

8 (1) Works to resolve issues between existing providers of education.

9 ~~(2) Sets the agenda for the State Education Commission.~~

10 (3) Develops a strategic design for a continuum of education programs, in
11 accordance with G.S. 116C-3.

12 (4) Studies other issues referred to it by the Governor or the General Assembly.

13 (d) The Office of the Governor, in coordination with the staffs of The University of North
14 Carolina, the North Carolina Community College System, and the Department of Public
15 Instruction, shall provide staff to the Education Cabinet."

16 SECTION 3.(b) G.S. 116C-2 is repealed.

17
18 **PART IV. ELIMINATE THE STATE EDUCATION COMMISSION ESTABLISHED IN**
19 **ARTICLE 26 OF CHAPTER 143 OF THE GENERAL STATUTES**

20 SECTION 4. Article 26 of Chapter 143 of the General Statutes is repealed.

21
22 **PART V. PROVIDE THAT THE NATIONAL HERITAGE AREA DESIGNATION**
23 **COMMISSION SHALL TERMINATE JULY 1, 2013**

24 SECTION 5. Section 18.10 of S.L. 2001-491 reads as rewritten:

25 "SECTION 18.10. Notwithstanding G.S. 158-8.1, the Western North Carolina
26 Regional Economic Development Commission shall develop a regional heritage tourism plan and
27 shall present the plan to the 2002 Regular Session of the 2001 General Assembly no later than
28 May 1, 2002. The National Heritage Area Designation Commission created pursuant to Section
29 18.4 of this act shall terminate July 1, 2013."

30
31 **PART VI. REPEAL THE GOVERNOR'S MANAGEMENT COUNCIL**

32 SECTION 6. Part 24 of Article 9 of Chapter 143B is repealed.

33
34 **PART VII. REPEAL THE BOARD OF DIRECTORS OF THE NORTH CAROLINA**
35 **CENTER FOR NURSING**

36 SECTION 7. G.S. 90-171.71 is repealed.

37
38 **PART VIII. REPEAL THE BOARD OF CORRECTIONS**

39 SECTION 8.(a) G.S. 143B-711 reads as rewritten:

40 "§ 143B-711. **Division of Adult Correction of the Department of Public Safety –**
41 **organization.**

42 The Division of Adult Correction of the Department of Public Safety shall be organized
43 initially to include the Post-Release Supervision and Parole Commission, ~~the Board of~~
44 ~~Correction~~, the Section of Prisons of the Division of Adult Correction, the Section of Community

1 Corrections, the Section of Alcoholism and Chemical Dependency Treatment Programs, and such
2 other divisions as may be established under the provisions of the Executive Organization Act of
3 1973.

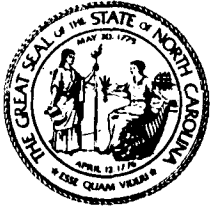
4 **SECTION 8.(b)** G.S. 143B-715 is repealed.
5

6 **PART IX. ENCOURAGE THE CHIEF JUSTICE TO ABOLISH THE ACTUAL**
7 **INNOCENCE COMMISSION**

8 **SECTION 9.** The North Carolina Actual Innocence Commission was established by
9 the Chief Justice of the North Carolina Supreme Court. Its primary purpose was to make
10 recommendations which would reduce or eliminate the possibility of the wrongful conviction of
11 an innocent person. In 2006, the General Assembly enacted S.L. 2006-184, which established the
12 North Carolina Innocence Inquiry Commission as recommended by the North Carolina Actual
13 Innocence Commission. Inasmuch as it appears that the work of the Actual Innocence
14 Commission is complete, the Chief Justice of the North Carolina Supreme Court is encouraged to
15 take appropriate action to formally abolish the Commission.
16

17 **PART X. EFFECTIVE DATE**

18 **SECTION 7.** This act is effective when it becomes law.



Bill Draft 2013-SBz-9 [v.3]: Eliminate Obsolete Boards and Commissions.

2011-2012 General Assembly

Committee:	Joint Legislative Administrative Procedure Oversight Committee	Date:	December 19, 2012
Introduced by:		Prepared by:	Chris Saunders
Analysis of:	2013-SBz-9 [v.3]		Committee Counsel

SUMMARY: *This draft repeals nine statutorily created boards and commissions that have become obsolete.*

CURRENT LAW: Several boards and commissions within state government appear to be no longer functional. These boards and commissions either have no members, no funds, and/or have not met in several years.

BILL ANALYSIS AND BACKGROUND: The following obsolete boards and commissions are terminated:

- 1. Part I repeals the Small Business Contractor Authority.** The Small Business Contractor Authority has never been appointed and funds have never been appropriated for this purpose.
- 2. Part II provides that the Committee on Dropout Prevention shall terminate on July 1, 2013.** There are no funds budgeted for or expended for this program.
- 3. Part III repeals the State Education Commission established in Chapter 116C of the General Statutes.** This Commission is made up of members of the Board of Governors, the State Board of Community Colleges, and the State Board of Education. It was established as a forum for dialogue about Education Cabinet issues. It has not actively met in several years. The three boards could work together without this statute. The bill retains the Education Cabinet but repeals the Commission.
- 4. Part IV repeals the State Education Commission established in Article 26 of Chapter 143 of the General Statutes.** The Commission was established in 1947 to study the State's educational problems and report findings and recommendations to the governor and the 1949 General Assembly. A report was made in 1948-1949, and it does not appear that the Commission still exists. This bill repeals the Article.
- 5. Part V provides that the National Heritage Area Designation Commission shall terminate on July 1, 2013.** The Commission was created in the 2001 Studies Act to work with the federal government to establish the Blue Ridge National Heritage Area. It is no longer functioning.

6. **Part VI repeals the Governor's Management Council.** This Council was created to assist the Governor with management and productivity issues. The Council does not appear to have met in at least eight years.
7. **Part VII repeals the Board of Directors of the North Carolina Center for Nursing.** This board is not functional. State appropriations to the Center were eliminated several years ago based on the results of a legislative Continuation Review.
8. **Part VIII repeals the Board of Corrections.** This board has not met in over a decade.
9. **Part IX encourages the Chief Justice to abolish the Actual Innocence Commission.** The Actual Innocence Commission was established by the Chief Justice of the North Carolina Supreme Court. Its primary purpose was to make recommendations which would reduce or eliminate the possibility of the wrongful conviction of an innocent person. In 2006, the General Assembly enacted S.L. 2006-184, which established the North Carolina Innocence Inquiry Commission as recommended by the North Carolina Actual Innocence Commission. Insofar as it appears that the work of the Actual Innocence Commission is complete, the Chief Justice of the North Carolina Supreme Court is encouraged to take appropriate action to formally abolish the Commission.

EFFECTIVE DATE: This draft would be effective when it becomes law. Except as otherwise noted above, the repeals would become effective when the draft becomes law.

2013-SBz-9-SMTQ-3 v3

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2013

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BILL DRAFT 2013-SBz-8 [v.3] (12/17)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

12/17/2012 2:42:13 PM

Short Title: *Periodic Review and Expiration of Rules.* (Public)

Sponsors: (Primary Sponsor).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE PERIODIC REVIEW AND EXPIRATION OF RULES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 150B-21.2(c) reads as rewritten:

"(c) Notice of Text. – A notice of the proposed text of a rule must include all of the following:

- (1) The text of the proposed ~~rule.~~ rule unless the rule is a readoption without changes to the existing rule proposed to keep a permanent rule from expiring.
- (2) A short explanation of the reason for the proposed rule and a link to the agency's Web site containing the information required by G.S. 150B-19.1(c).
- (3) A citation to the law that gives the agency the authority to adopt the rule.
- (4) The proposed effective date of the rule.
- (5) The date, time, and place of any public hearing scheduled on the rule.
- (6) Instructions on how a person may demand a public hearing on a proposed rule if the notice does not schedule a public hearing on the proposed rule and subsection (e) of this section requires the agency to hold a public hearing on the proposed rule when requested to do so.
- (7) The period of time during which and the person to whom written comments may be submitted on the proposed rule.
- (8) If a fiscal note has been prepared for the rule, a statement that a copy of the fiscal note can be obtained from the agency.
- (9) The procedure by which a person can object to a proposed rule and the requirements for subjecting a proposed rule to the legislative review process."

SECTION 2. Part 2 of Article 2A of Chapter 150B of the General Statutes is amended by adding a new section to read:

1 **"§ 150B-21.3A. Expiration date of permanent rules.**

2 (a) Unless readopted pursuant to the provisions in G.S. 150B-21.2 and approved by the
3 Commission pursuant to the provisions of Part 3 of Article 2A of this Chapter, a permanent rule
4 expires on the latest of any of the following:

5 (1) December 31, 2016 for rules in Title 10A of the North Carolina Administrative
6 Code.

7 (2) December 31, 2017 for rules in Title 15A of the North Carolina Administrative
8 Code.

9 (3) December 31, 2018 for rules in Title 21 of the North Carolina Administrative
10 Code.

11 (4) December 31, 2019 for all remaining rules unless and to the extent the agencies
12 that adopted the rules are exempt from the rulemaking requirements in this
13 Article.

14 (5) 10 years after its effective date.

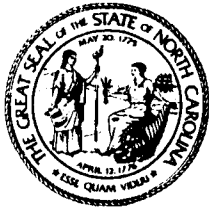
15 (6) 10 years after its readopted effective date.

16 (7) 10 years from the effective date of the most recent amendment to the rule.

17 (b) The Commission shall establish a timeline for the submission of rules subject to
18 expiration after consultation with the adopting agency.

19 (c) The Codifier of Rules shall annually notify agencies of rules that will expire within the
20 next two years."

21 **SECTION 3.** This act is effective when it becomes law.



Bill Draft 2013-SBz-8 [v.3]: Periodic Review and Expiration of Rules.

2011-2012 General Assembly

Committee:	Joint Legislative Administrative Procedure Oversight Committee	Date:	December 19, 2012
Introduced by:		Prepared by:	Chris Saunders
Analysis of:	2013-SBz-8 [v.3]		Committee Counsel

SUMMARY: *This draft provides for the periodic review and expiration of rules by imposing rotating expiration dates for all permanent rules in the North Carolina Administrative Code (NCAC), thereby requiring readoption to extend rules beyond the statutory expiration date.*

CURRENT LAW: Permanent rules in the NCAC do not have a legislatively defined expiration date.

BILL ANALYSIS:

Section 1 amends subsection (c) of G.S. § 150B-21.2 (Procedure for adopting a permanent rule) to remove the requirement that the text of a rule be included in the notice of the proposed text of the rule when the rule is a readoption without changes to the existing rule proposed to keep the permanent rule from expiring.

Section 2 creates a new section G.S. § 150B-21.3A (Expiration date of permanent rules), which provides that existing rules will expire on a rotating basis unless they are readopted by the agency. Section 2 also sets out the following schedule for expiration of permanent rules:

- Department of Health and Human Service rules (Title 10A of the NCAC): December 31, 2016.
- Department of Environment and Natural Resources rules (Title 15A of the NCAC): December 31, 2017.
- Occupational Licensing Boards and Commissions rules (Title 21 of the NCAC): December 31, 2018.
- All other rules: December 31, 2019.

Thereafter, all rules will expire every ten years unless readopted or amended.

EFFECTIVE DATE: This draft would be effective when it becomes law.

BACKGROUND: This draft is part of a proposal instructing the Rules Review Commission (RRC) to conduct a decennial review of all existing rules contained in the NCAC.

2013-SBz-8-SMTQ-1 v2

