

NORTH CAROLINA GENERAL ASSEMBLY



JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE

REPORT TO THE 2014 SESSION of the 2013 GENERAL ASSEMBLY

MAY 13, 2014

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TRANSMITTAL LETTER

May 13, 2014

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TO THE MEMBERS OF THE 2014 REGULAR SESSION
OF THE 2013 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 Tim D. Moffitt

Co-Chairs
Joint Legislative Administrative Procedure Oversight Committee

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STATUTORY AUTHORITY

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NORTH CAROLINA GENERAL STATUTES

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.

§ 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 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.
- (4) 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.

- (5) To review existing rules to determine if the rules are necessary or if the rules can be streamlined.
- (6) 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.
- (7) To review any other concerns about administrative law to determine if statutory changes are needed.
- (8) To report to the General Assembly from time to time concerning the Committee's activities and any recommendations for statutory changes.

§ 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.

§ 120-70.103: Repealed by Session Laws 2009-125, s. 5, effective October 1, 2009.

COMMITTEE MEMBERSHIP

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JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE

2013-2014 Membership

<p>Senator Fletcher L. Hartsell, Jr., Chair 300-C Legislative Office Building Raleigh, North Carolina 27603 (919) 733-7223 Fletcher.Hartsell@ncleg.net</p>	<p>Representative Tim Moffitt, Chair 2119 Legislative Building Raleigh, North Carolina 27601 (919) 715-3012 Tim.Moffitt@ncleg.net</p>
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<p>Ms. DeAnne Mangum 300-B Legislative Office Building Raleigh, North Carolina 27603 (919) 733-2405 DeAnne.Mangum@ncleg.net</p>	

COMMITTEE PROCEEDINGS

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The Joint Legislative Administrative Procedure Oversight Committee (Committee) met six times during the interim between the 2013 and the 2014 Regular Sessions of the General Assembly. The Committee's Charge can be found [here](#). The following is a brief summary of the Committee's proceedings. Detailed minutes and information from each Committee meeting are available in the Legislative Library and [online](#).

November 5, 2013

The Committee met on Tuesday, November 5, 2013 at 10:00 a.m. in Room 544 of the Legislative Office Building (LOB).

The following business was conducted:

- Senator Fletcher L. Hartsell chaired the Committee and presented a brief review of the topics to be discussed;
- Legislative members and staff introduced themselves;
- Ms. Karen Cochrane-Brown, Committee Co-Counsel, provided a background of the Administrative Procedure Act, an overview of the rulemaking process, and discussed the differences between federal and State laws;
- Mr. Jeff Hudson, Committee Co-Counsel, gave a review of the bills introduced from recommendations of the 2012 Joint Legislative Administrative Procedure Oversight Committee to the 2013 General Assembly;
- Judge Julian Mann, Chief Administrative Law Judge and Director of the Office of Administrative Hearings, gave a brief synopsis of the authority, organization, and workings of the Office of Administrative Hearings;
- Ms. Molly Masich, Codifier of Rules, Office of Administrative Hearings, provided a report on the implementation of existing rules review program;
- The Committee discussed potential issues for future consideration;
- A date was then set for the next meeting followed by adjournment.

December 3, 2013

The Committee met on Tuesday, December 3, 2013 at 10:00 a.m. in Room 544 of the Legislative Office Building (LOB).

The following business was conducted:

- After introductory remarks by the Committee Co-Chair, Representative Tim D. Moffitt, the minutes were approved for the previous meeting on November 5, 2013;
- Ms. Karen Cochrane-Brown, Committee Co-Counsel, provided an update on compliance by occupational licensing boards submitting an annual report and financial statement prior to the October 31 annual deadline;
- Mr. Jody Tyson, Taylor-Tyson Funeral Services, contended that the Funeral Services Board was instituting unnecessary fee increases. Mr. Peter Burke, Executive Director of the North Carolina Board of Funeral Services gave additional details on the operations of the Funeral Services Board. Mr. Burke said that the Board has not had a fee increase since 1991. The Board would like fees increased so they can hire an additional inspector and initiate online registration;
- Ms. Lynda Elliot, Executive Director of the North Carolina Board of Cosmetic Arts Examiners (Cosmetology Board), explained the disagreement between the Cosmetology Board and the Barber Board with regard to facial shaves. Mr. Wayne Mixon, Executive Director of the North Carolina Barber Board, stated that the Cosmetology Board has ignored the Barber Board's rules by allowing 48 salons to use the name "barber" in their names, salons, and/or advertising. Mr. Mixon had concerns that cosmetologists are not being properly trained on razor use. Ms. Elliot said that although the curriculums are different, cosmetologist are trained on razor use;
- Ms. Ruth Foster, BSN, MA, DSc Candidate, expressed concerns that current law only recognizes the licensing of registered dieticians, not holistic nutritionists and suggested that the licensing requirement should be eliminated. Ms. Charla Burrill, Executive Director of the North Carolina Board of Dietetics and Nutrition, said that licensure is necessary to protect the public;
- Mr. John Turcotte, Director of the Program Evaluation Division (PED), North Carolina General Assembly, gave an update on the PED Study of Occupational Licensing Boards;
- Mr. Jeff Hudson, Committee Co-Counsel, gave an update on the review of rulemaking exemptions;
- A date was then set for the next meeting followed by adjournment.

February 4, 2014

The Committee met on Tuesday, February 4, 2014 at 10:00 a.m. in Room 544 of the Legislative Office Building (LOB).

The following business was conducted:

- After introductory remarks by the Committee Co-Chair, Senator Fletcher L. Hartsell, Jr., the minutes were approved for the previous meeting on December 3, 2013;
- Ms. Karen Cochrane-Brown, Committee Co-Counsel, provided an updated chart of the 2013 Occupational Licensing Board Annual Report/Financial Statement submissions. The update reflected receipt of reports from several licensing boards that failed to submit their reports and financial statements before the October 31 annual deadline. There was Committee discussion on potential legislation with regard to non-compliance;
- Mr. Jeff Hudson, Committee Co-Counsel, provided a review of the rulemaking exemption study authorized by HB 74 in the last session and the letters that were sent to the exempt agencies. Representatives from the Department of Commerce, the University of North Carolina, the State Board of Community Colleges, and the State Board of Education, provided agency responses;
- Ms. Molly Masich, Codifier of Rules, Office of Administrative Hearings, provided an update on the implementation of existing rules review program.
- A date was then set for the next meeting followed by adjournment.

March 4, 2014

The Committee met on Tuesday, March 4, 2014 at 3:00 p.m. in Room 544 of the Legislative Office Building (LOB).

The following business was conducted:

- After introductory remarks by the Committee Co-Chair, Representative Tim D. Moffitt, the minutes were approved for the previous meeting on February 4, 2014;
- Representatives from the State Board of Elections, the Department of Transportation, the Department of Health and Human Services, and the Department of Revenue, provided agency responses to the review of exemptions from rulemaking;

- Mr. Scott Makey, Chairman of the North Carolina Landscape Contractors' Registration Board, gave a review of issues related to the Board and sought the committee's support for a bill to convert the Board to a licensing board;
- Judge Julian Mann, Chief Administrative Law Judge and Director of the Office of Administrative Hearings, gave an update of the electronic filing system for the Office of Administrative Hearings;
- A date was then set for the next meeting followed by adjournment.

April 1, 2014

The Committee met on Tuesday, April 1, 2014 at 10:00 a.m. in Room 544 of the Legislative Office Building (LOB).

The following business was conducted:

- After introductory remarks by the Committee Co-Chair, Representative Tim D. Moffitt, the minutes were approved for the previous meeting on March 4, 2014;
- Representatives from the Department of Cultural Resources and the Department of Public Safety, provided agency responses to the review of exemptions from rulemaking;
- Ms. Karen Cochrane-Brown, Committee Co-Counsel, discussed administrative law issues raised in a recent court decision;
- Judge Julian Mann, Chief Administrative Law Judge and Director of the Office of Administrative Hearings, discussed burden of proof issues in certain contested cases;
- Mr. Wendell Bullard, Chair of the North Carolina High School for Accelerated Learning, Inc., discussed the procedure for approval of charter schools;
- Ms. Molly Masich, Codifier of Rules, Office of Administrative Hearings, provided an update on the existing rules review program;
- A date was then set for the next meeting followed by adjournment.

May 13, 2014

The Committee met on Tuesday, May 13, 2014 at 1:00 p.m. in Room 544 of the Legislative Office Building (LOB).

The following business was conducted:

- Ms. Karen Cochrane-Brown, Committee Co-Counsel, reviewed the draft interim report and summarized each of the 8 legislative proposals. An amendment was offered and adopted for one of the proposals. The committee approved the draft report as amended.
- Mr. Randy Phillips, Chair, NC Board of Law Examiners, presented a proposal related to the expunction of criminal records.
- Mr. Benjamin Downing, Legislative Liaison, Office of State Human Resources presented a proposal for amendments to the Human Resources law.
- The Chair outlined a list of issues that the committee may consider after the short session. The meeting was then adjourned.

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COMMITTEE RECOMMENDATIONS

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

- **Eliminate Obsolete Boards and Commissions**

Proposes to eliminate various obsolete boards and commissions including, the Small Business Contractor Authority, the Committee on Dropout Prevention, the State Education Commission, National Heritage Area Designation Commission, Governor's Management Council, Board of Director's of the North Carolina Center for Nursing, Board of Corrections. The bill would also encourage the Chief Justice of the North Carolina Supreme Court to abolish the Actual Innocence Commission.

- **Clarify Existing Rule Readoption Process**

Proposes to clarify the process for readoption of existing rules in accordance with the periodic review and expiration of existing rules provision of the Administrative Procedure Act (APA).

- **Licensing Boards Rules for Professional Corporations**

Proposes to authorize licensing boards subject to Chapter 55B of the General Statutes ([Professional Corporation Act](#)) to adopt rules to implement the provisions of the Chapter.

- **Amend Occupational Licensing Boards Reporting Requirements**

Proposes to amend the reporting requirements for occupational licensing boards to include the total number of licensees supervised by the board and require the Committee to notify any board that fails to file the reports as required.

- **Office of Administrative Hearings Electronic Filing**

Proposes to authorize the Office of Administrative Hearings to allow documents in a contested case to be filed electronically.

- **State Board of Education Rulemaking Clarification**

Proposes to clarify that the State Board of Education is subject to rulemaking under the APA and provide a remedy when an agency fails to act as directed by statute.

- **Streamline Rulemaking Process**

Proposes to streamline the rulemaking process by eliminating the requirement that an agency obtain a certification of adherence to rulemaking principles prior to submitting the proposed text of a rule for publication.

- **Burden of Proof in Contested Cases**

Proposes to clarify that the petitioner has the burden of proof in most contested cases and establish that the State agency has the burden of proof in certain contested cases.

LEGISLATIVE PROPOSALS

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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D

BILL DRAFT 2013-RO-16 [v.2] (04/02)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/28/2014 11:40:37 AM

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

Sponsors: Unknown (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ELIMINATE OBSOLETE BOARDS AND COMMISSIONS, AS
3 RECOMMENDED BY THE JOINT LEGISLATIVE ADMINISTRATIVE
4 PROCEDURE OVERSIGHT COMMITTEE.

5 The General Assembly of North Carolina enacts:

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

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

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

14 **SECTION 2.** Section 7.32(e) of S.L. 2007-323, as rewritten by Section
15 7.14(a) of S.L. 2008-107 and Section 7.19(e) of S.L. 2010-31, reads as rewritten:

16 "**SECTION 7.32.(e)** Report. – The Committee shall report to the Joint Legislative
17 Commission on Dropout Prevention and High School Graduation created in subsection
18 (f) of this section by December 1, 2007, on the grants awarded under subsection (d) of
19 this section. The Committee shall terminate July 1, 2014."

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

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

24 "**§ 116C-1. Education Cabinet created.**

25 (a) The Education Cabinet is created. The Education Cabinet shall be located
26 administratively within, and shall exercise its powers within existing resources of, the

1 Office of the Governor. However, the Education Cabinet shall exercise its statutory
2 powers independently of the Office of the Governor.

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

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

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

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

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

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

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

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

21
22 **PART IV. ELIMINATE THE STATE EDUCATION COMMISSION**
23 **ESTABLISHED IN ARTICLE 26 OF CHAPTER 143 OF THE GENERAL**
24 **STATUTES**

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

26
27 **PART V. PROVIDE THAT THE NATIONAL HERITAGE AREA DESIGNATION**
28 **COMMISSION SHALL TERMINATE JULY 1, 2014**

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

30 "SECTION 18.10. Notwithstanding G.S. 158-8.1, the Western North Carolina
31 Regional Economic Development Commission shall develop a regional heritage tourism
32 plan and shall present the plan to the 2002 Regular Session of the 2001 General
33 Assembly no later than May 1, 2002. The National Heritage Area Designation
34 Commission created pursuant to Section 18.4 of this act shall terminate July 1, 2014."

35
36 **PART VI. REPEAL THE GOVERNOR'S MANAGEMENT COUNCIL**

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

38
39 **PART VII. REPEAL THE BOARD OF DIRECTORS OF THE NORTH**
40 **CAROLINA CENTER FOR NURSING**

41 **SECTION 7.** G.S. 90-171.71 is repealed.

42
43 **PART VIII. REPEAL THE BOARD OF CORRECTIONS**

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

45 "**§ 143B-711. Division of Adult Correction of the Department of Public Safety –**
46 **organization.**"

1 The Division of Adult Correction of the Department of Public Safety shall be
2 organized initially to include the Post-Release Supervision and Parole Commission, ~~the~~
3 ~~Board of Correction,~~ the Section of Prisons of the Division of Adult Correction, the
4 Section of Community Corrections, the Section of Alcoholism and Chemical
5 Dependency Treatment Programs, and such other divisions as may be established under
6 the provisions of the Executive Organization Act of 1973."

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

9 **PART IX. ENCOURAGE THE CHIEF JUSTICE TO ABOLISH THE ACTUAL**
10 **INNOCENCE COMMISSION**

11 **SECTION 9.** The North Carolina Actual Innocence Commission was
12 established by the Chief Justice of the North Carolina Supreme Court. Its primary
13 purpose was to make recommendations which would reduce or eliminate the possibility
14 of the wrongful conviction of an innocent person. In 2006, the General Assembly enacted
15 S.L. 2006-184, which established the North Carolina Innocence Inquiry Commission, as
16 recommended by the North Carolina Actual Innocence Commission. Inasmuch as it
17 appears that the work of the Actual Innocence Commission is complete, the Chief Justice
18 of the North Carolina Supreme Court is encouraged to take appropriate action to formally
19 abolish the Commission.
20

21 **PART X. EFFECTIVE DATE**

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

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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D

BILL DRAFT 2013-RO-17 [v.1] (04/04)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/29/2014 11:17:22 AM

Short Title: Clarify Existing Rule Readoption Process. (Public)

Sponsors: (Primary Sponsor).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE PROCESS FOR RE-ADOPTION OF EXISTING RULES
IN ACCORDANCE WITH THE PERIODIC REVIEW AND EXPIRATION OF
EXISTING RULES PROVISION OF THE ADMINISTRATIVE PROCEDURE
ACT AS RECOMMENDED BY THE JOINT LEGISLATIVE ADMINISTRATIVE
PROCEDURE OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 150B-21.3A(d) reads as rewritten:

"(d) Timetable. – The Commission shall establish a schedule for the review and readoption of existing rules in accordance with this section on a decennial basis as follows:

(1) With regard to the review process, the Commission shall assign by assigning each Title of the Administrative Code a date by which the review required by this section must be completed. In establishing the schedule, the Commission shall consider the scope and complexity of rules subject to this section and the resources required to conduct the review required by this section. The Commission shall have broad authority to modify the schedule and extend the time for review in appropriate circumstances. Except as provided in ~~subsection~~ subsections (d1) and (e) of this section, if the agency fails to conduct the review by the date set by the Commission, the rules contained in that Title which have not been reviewed will expire. The Commission shall report to the Committee any agency that fails to conduct the review. The Commission may exempt rules that have been adopted or amended within the previous 10 years from the review required by this section. However, any rule exempted on this basis must be reviewed in accordance with this section no more than 10 years following the last time the rule was amended.

(2) With regard to the readoption of rules as required by subsection (c)(2)g. of this section, once the final determination report becomes effective, the Commission shall establish a date by which the agency

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must readopt the rules. The Commission shall consult with the agency and shall consider the agency's rulemaking priorities in establishing the readoption date. The agency may amend a rule as part of the readoption process. If a rule is readopted without change, the agency is not required to prepare a fiscal note as provided by G.S. 150B-21.4."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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D

BILL DRAFT 2013-RO-18 [v.2] (04/04)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
5/1/2014 5:16:31 PM

Short Title: Licensing Boards Rules for Prof. Corps. (Public)

Sponsors: (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE LICENSING BOARDS SUBJECT TO CHAPTER 55B OF
3 THE GENERAL STATUTES TO ADOPT RULES TO IMPLEMENT THE
4 PROVISIONS OF THE CHAPTER AS RECOMMENDED BY THE JOINT
5 LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE .

6 The General Assembly of North Carolina enacts:

7 SECTION 1. G.S. 55B-12 reads as rewritten:

8 "§ 55B-12. Application of regulations of licensing boards.

9 (a) A professional corporation shall be subject to the applicable rules and
10 regulations adopted by, and all the disciplinary powers of, the licensing board as herein
11 defined. Nothing in this Chapter shall impair the disciplinary powers of any licensing
12 board applicable to a licensee as herein defined. No professional corporation may do any
13 act which its shareholders as licensees are prohibited from doing.

14 (b) Subject to the requirements of Article 2A of Chapter 150B of the General
15 Statutes, any licensing board subject to this Chapter may adopt rules to implement the
16 provisions of this Chapter, including any rules needed to establish fees within the limits
17 set by this Chapter."

18 SECTION 2. This act is effective when it becomes law.

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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D

BILL DRAFT 2013-RO-19 [v.3] (04/04)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
5/13/2014 3:44:21 PM

Short Title: Amend OLB Reporting Requirements .

(Public)

Sponsors: (Primary Sponsor).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AMEND THE REPORTING REQUIREMENTS FOR OCCUPATIONAL
LICENSING BOARDS AS RECOMMENDED BY THE JOINT LEGISLATIVE
ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 93B-2 reads as rewritten:

"§ 93B-2. Annual reports required; contents; open to inspection; sanction for failure to report.

(a) No later than October 31 of each year, each occupational licensing board shall file electronically with the Secretary of State, the Attorney General, and the Joint ~~Regulatory Reform~~ Legislative Administrative Procedure Oversight Committee an annual report containing all of the following information:

(1) The address of the board, and the names of its members and officers.

(1a) The total number of licensees supervised by the board.

(2) The number of persons who applied to the board for examination.

(3) The number who were refused examination.

(4) The number who took the examination.

(5) The number to whom initial licenses were issued.

(5a) The number who failed the examination.

(6) The number who applied for license by reciprocity or comity.

(7) The number who were granted licenses by reciprocity or comity.

(7a) The number of official complaints received involving licensed and unlicensed activities.

(7b) The number of disciplinary actions taken against licensees, or other actions taken against nonlicensees, including injunctive relief.

(8) The number of licenses suspended or revoked.

(9) The number of licenses terminated for any reason other than failure to pay the required renewal fee.

(10) The substance of any anticipated request by the occupational licensing board to the General Assembly to amend statutes related to the occupational licensing board.

1 (11) The substance of any anticipated change in rules adopted by the
2 occupational licensing board or the substance of any anticipated
3 adoption of new rules by the occupational licensing board.

4 (b) No later than October 31 of each year, each occupational licensing board shall
5 file electronically with the Secretary of State, the Attorney General, the Office of State
6 Budget and Management, and the Joint ~~Regulatory Reform~~ Legislative Administrative
7 Procedure Oversight Committee a financial report that includes the source and amount of
8 all funds credited to the occupational licensing board and the purpose and amount of all
9 funds disbursed by the occupational licensing board during the previous fiscal year.

10 (c) The reports required by this section shall be open to public inspection.

11 (d) The Joint Legislative Administrative Procedure Oversight Committee shall
12 notify any board that fails to file the reports required by this section. Failure of a board to
13 comply with the reporting requirements of this section by October 31 of each year shall
14 result in a suspension of the board's authority to expend any funds until such time as the
15 board files the required reports. Suspension of a board's authority to expend funds under
16 this subsection shall not affect the board's duty to issue and renew licenses or the validity
17 of any application or license for which fees have been tendered in accordance with law.
18 Each board shall adopt rules establishing a procedure for implementing this subsection
19 and shall maintain an escrow account into which any fees tendered during a board's
20 period of suspension under this subsection shall be deposited."

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

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BILL DRAFT 2013-RO-20 [v.2] (04/04)

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

5/1/2014 3:51:03 PM

Short Title: OAH Electronic Filing.

(Public)

Sponsors: (Primary Sponsor).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE OFFICE OF ADMINISTRATIVE HEARINGS TO
ALLOW DOCUMENTS IN A CONTESTED CASE TO BE FILED
ELECTRONICALLY AS RECOMMENDED BY THE JOINT LEGISLATIVE
ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 150B of the General Statutes is amended
by adding a new section to read:

"§ 150B-23.3. Electronic filing.

(a) In addition to any other method specified in G.S. 150B-23, documents filed
and served in a contested case may be filed and served electronically by means of an
Electronic Filing Service Provider. For purposes of this section the following definitions
apply:

(1) Electronic filing means the electronic transmission of the petition,
notice of hearing, pleadings or any other documents filed in a
contested case with the Office of Administrative Hearings, as further
defined by rules adopted by the Office of Administrative Hearings.

(2) Electronic Filing Service Provider (EFSP) means the service provided
by the Office of Administrative Hearings for e-filing and e-service of
documents via the internet.

(3) Electronic service means the electronic transmission of the petition,
notice of hearing, pleadings, or any other documents in a contested
case as further defined by rules adopted by the Office of
Administrative Hearings."

SECTION 2. This act is effective when it becomes law and applies to
contested cases filed on or after that date.

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BILL DRAFT 2013-RO-21 [v.2] (04/04)

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

5/1/2014 4:18:03 PM

Short Title: SBOE Rulemaking Clarification.

(Public)

Sponsors: (Primary Sponsor).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT THE STATE BOARD OF EDUCATION IS SUBJECT TO RULEMAKING UNDER THE ADMINISTRATIVE PROCEDURE ACT AND TO PROVIDE A REMEDY WHEN AN AGENCY FAILS TO ACT AS DIRECTED BY STATUTE AS RECOMMENDED BY THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE .

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-12 reads as rewritten:

§ 115C-12. Powers and duties of the Board generally.

The general supervision and administration of the free public school system shall be vested in the State Board of Education. The State Board of Education shall establish policy for the system of free public schools, subject to laws enacted by the General Assembly. The State Board of Education is subject to Article 2A of Chapter 150B of the General Statutes. The State Board of Education may not implement or enforce against any person a policy that meets the definition of a rule contained in G.S. 150B-2(8a) if the policy has not been adopted as a rule in accordance with Article 2A of Chapter 150B of the General Statutes. The powers and duties of the State Board of Education are defined as follows:

..."

SECTION 2. G.S. 150B-23 is amended by adding a new subsection to read:

(a4) If an agency fails to take any required action within the time period specified by law, any person whose rights are substantially prejudiced by the agency's failure to act may commence a contested case in accordance with this section seeking an order that the agency act as required by law. If the administrative law judge finds that the agency has failed to act as required by law, the administrative law judge may order that the agency take the required action within a specified time period."

SECTION 3. G.S. 150B-44 reads as rewritten:

"**§ 150B-44. Right to judicial intervention when final decision unreasonably delayed.**

~~Unreasonable delay on the part of any agency or administrative law judge in taking any required action shall be justification for any person whose rights, duties, or privileges~~

1 ~~are adversely affected by such delay to seek a court order compelling action by the~~
2 ~~agency or administrative law judge. Failure of an administrative law judge subject to~~
3 ~~Article 3 of this Chapter or failure of an agency subject to Article 3A of this Chapter to~~
4 ~~make a final decision within 120 days of the close of the contested case hearing is~~
5 ~~justification for a person whose rights, duties, or privileges are adversely affected by the~~
6 ~~delay to seek a court order compelling action by the agency or by the administrative law~~
7 ~~judge. The Board of Trustees of the North Carolina State Health Plan for Teachers and~~
8 ~~State Employees is a "board" for purposes of this section."~~

9 **SECTION 4.** This act is effective when it becomes law.

**GENERAL ASSEMBLY OF NORTH CAROLINA
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BILL DRAFT 2013-RO-22 [v.1] (04/04)

**(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/30/2014 11:56:28 AM**

Short Title: Streamline Rulemaking Process.

(Public)

Sponsors: (Primary Sponsor).

Referred to:

A BILL TO BE ENTITLED

1
2 AN ACT TO STREAMLINE THE RULEMAKING PROCESS BY ELIMINATING
3 THE REQUIREMENT THAT AN AGENCY OBTAIN A CERTIFICATION OF
4 ADHERENCE TO RULEMAKING PRINCIPLES PRIOR TO SUBMITTING THE
5 PROPOSED TEXT OF A RULE FOR PUBLICATION AS RECOMMENDED BY
6 THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT
7 COMMITTEE.

8 The General Assembly of North Carolina enacts:

9 **SECTION 1.** G.S. 150B-19.1(h) is repealed.

10 **SECTION 2.** G.S. 150B-21.4(b1) reads as rewritten:

11 "(b1) Substantial Economic Impact. – Before an agency adopts a permanent rule
12 change that would have a substantial economic impact and that is not identical to a
13 federal regulation that the agency is required to adopt, the agency shall prepare a fiscal
14 note for the proposed rule change and have the note approved by the Office of State
15 Budget and Management. The agency must also obtain from the Office a certification that
16 the agency adhered to the regulatory principles set forth in G.S. 150B-19.1(a)(2),(5), and
17 (6). The agency may request the Office of State Budget and Management to prepare the
18 fiscal note only after, working with the Office, it has exhausted all resources, internal and
19 external, to otherwise prepare the required fiscal note. If an agency requests the Office of
20 State Budget and Management to prepare a fiscal note for a proposed rule change, that
21 Office must prepare the note within 90 days after receiving a written request for the note.
22 If the Office of State Budget and Management fails to prepare a fiscal note within this
23 time period, the agency proposing the rule change shall prepare a fiscal note. A fiscal
24 note prepared in this circumstance does not require approval of the Office of State Budget
25 and Management.

26 If an agency prepares the required fiscal note, the agency must submit the note to the
27 Office of State Budget and Management for review. The Office of State Budget and
28 Management shall review the fiscal note within 14 days after it is submitted and either
29 approve the note or inform the agency in writing of the reasons why it does not approve
30 the fiscal note. After addressing these reasons, the agency may submit the revised fiscal
31 note to that Office for its review. If an agency is not sure whether a proposed rule change

1 would have a substantial economic impact, the agency shall ask the Office of State
2 Budget and Management to determine whether the proposed rule change has a substantial
3 economic impact. Failure to prepare or obtain approval of the fiscal note as required by
4 this subsection shall be a basis for objection to the rule under G.S. 150B-21.9(a)(4).

5 As used in this subsection, the term "substantial economic impact" means an
6 aggregate financial impact on all persons affected of at least one million dollars
7 (\$1,000,000) in a 12-month period. In analyzing substantial economic impact, an agency
8 shall do the following:

- 9 (1) Determine and identify the appropriate time frame of the analysis.
- 10 (2) Assess the baseline conditions against which the proposed rule is to be
11 measured.
- 12 (3) Describe the persons who would be subject to the proposed rule and
13 the type of expenditures these persons would be required to make.
- 14 (4) Estimate any additional costs that would be created by implementation
15 of the proposed rule by measuring the incremental difference between
16 the baseline and the future condition expected after implementation of
17 the rule. The analysis should include direct costs as well as opportunity
18 costs. Cost estimates must be monetized to the greatest extent possible.
19 Where costs are not monetized, they must be listed and described.
- 20 (5) For costs that occur in the future, the agency shall determine the net
21 present value of the costs by using a discount factor of seven percent
22 (7%)."

23 **SECTION 3.** This act is effective when it becomes law and applies to
24 proposed rules published on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
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BILL DRAFT 2013-RO-23 [v.2] (04/04)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
5/1/2014 10:25:29 AM

Short Title: Burden of Proof in Certain Contested Cases. (Public)

Sponsors: (Primary Sponsor).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THAT THE STATE AGENCY HAS THE BURDEN OF
PROOF IN CERTAIN CONTESTED CASES AS RECOMMENDED BY THE
JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT
COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 150B of the General Statutes is amended
by adding a new section to read:

"§ 150B-25.1. Burden of proof.

(a) Except as provided by this section, the petitioner in a contested case has the burden of proving the facts alleged in the petition by a preponderance of the evidence.

(b) In a contested case involving the imposition of civil fines or penalties by a State agency for violation of the law, the burden of showing that the person who was fined actually committed the act for which the fine or penalty was imposed rests with the State agency.

(c) The burden of showing that a career State employee subject to Chapter 126 of the General Statutes was discharged, suspended, or demoted for just cause rests with the agency employer."

SECTION 2. The Joint Legislative Administrative Procedure Oversight Committee shall study whether there are other categories of contested cases in which the burden of proof should be placed with the agency.

SECTION 3. This act is effective when it becomes law and applies to contested cases commenced on or after that date.