

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SECOND EXTRA SESSION 1996**

**S**

**1**

SENATE BILL 26

Short Title: Administrative Procedures Technical Changes.

(Public)

---

Sponsors: Senator Sherron.

---

Referred to: Finance.

---

July 19, 1996

A BILL TO BE ENTITLED

1  
2 AN ACT TO MAKE CHANGES IN THE ADMINISTRATIVE PROCEDURE ACT,  
3 TO MAKE CHANGES IN VARIOUS LAWS GRANTING THE POWER TO  
4 ADOPT RULES, TO CLARIFY THE REPORTING DATE OF THE JOINT  
5 LEGISLATIVE ADMINISTRATIVE PROCEDURES OVERSIGHT COMMITTEE,  
6 AND TO CLARIFY THE REQUIREMENTS CONCERNING CERTAIN  
7 REMOVALS OF UNDERGROUND STORAGE TANKS.

8 The General Assembly of North Carolina enacts:

9 Section 1. G.S. 150B-19 reads as rewritten:

10 **"§ 150B-19. Restrictions on what can be adopted as a rule.**

11 An agency may not adopt a rule that does one or more of the following:

- 12 (1) Implements or interprets a law unless that law or another law  
13 specifically authorizes the agency to do so.  
14 (2) Enlarges the scope of a profession, occupation, or field of endeavor for  
15 which an occupational license is required.  
16 (3) Imposes criminal liability or a civil penalty for an act or omission,  
17 including the violation of a rule, unless a law specifically authorizes the  
18 agency to do so or a law declares that violation of the rule is a criminal  
19 offense or is grounds for a civil penalty.

1 (4) Repeats the content of a law, a rule, or a federal regulation. A brief  
2 statement that informs the public of a requirement imposed by law does  
3 not violate this subdivision and satisfies the 'reasonably necessary'  
4 standard of review set in G.S. 150B-21.9(a)(3).

5 (5) Establishes a ~~reasonable~~-fee or other ~~reasonable~~-charge for providing a  
6 service in fulfillment of a duty unless a law specifically authorizes the  
7 agency to do so or the fee or other charge is for one of the following:

- 8 a. A service to a State, federal, or local governmental unit.  
9 b. A copy of part or all of a State publication or other document, the  
10 cost of mailing a document, or both.  
11 c. A transcript of a public hearing.  
12 d. A conference, workshop, or course.  
13 e. Data processing services.

14 (6) Allows the agency to waive or modify a requirement set in a rule unless  
15 a rule establishes specific guidelines the agency must follow in  
16 determining whether to waive or modify the requirement."

17 Sec. 2. G.S. 150B-20(e) is repealed.

18 Sec. 3. G.S. 150B-21.1(d) reads as rewritten:

19 "(d) Effective Date and Expiration. – A temporary rule becomes effective on the  
20 date specified in G.S. 150B-21.3. A temporary rule expires on the earliest of the  
21 following dates:

- 22 (1) The date specified in the rule.  
23 (2) The effective date of the permanent rule adopted to replace the  
24 temporary rule, if the Commission approves the permanent rule.  
25 (3) The date the Commission returns to an agency a permanent rule the  
26 agency adopted to replace the temporary rule, ~~if the Commission objects to~~  
27 ~~the permanent rule.~~ rule.  
28 (4) The effective date of an act of the General Assembly that specifically  
29 disapproves a permanent rule adopted to replace the temporary rule.  
30 (5) 270 days from the date the temporary rule was published in the North  
31 Carolina Register, unless the permanent rule adopted to replace the  
32 temporary rule has been submitted to the Commission."

33 Sec. 4. G.S. 150B-21.1(e) reads as rewritten:

34 "(e) Publication. – When the Codifier of Rules enters a temporary rule in the North  
35 Carolina Administrative Code, the Codifier must publish the rule in the North Carolina  
36 Register. Publication of a temporary rule in the North Carolina Register serves as a notice  
37 of rule-making proceedings for a permanent rule ~~that does not differ substantially from~~ if the  
38 permanent rule is substantially the same as the published temporary rule. ~~rule.~~ unless the  
39 agency published a notice of rule-making proceedings at least 60 days before it adopted  
40 the temporary rule."

41 Sec. 5. G.S. 150B-21.2(e) reads as rewritten:

1       "(e) Hearing. – An agency must hold a public hearing on a rule it proposes to adopt  
2 if the agency publishes the text of the proposed rule in the North Carolina Register and all  
3 the following apply:

- 4           (1) The notice of ~~rule-making proceedings~~ text does not schedule a public  
5 hearing on the proposed rule.  
6           (2) The agency receives a written request for a public hearing on the  
7 proposed rule within 15 days after the notice of ~~rule-making proceedings~~  
8 text is published.  
9           (3) The proposed text is not a changed version of proposed text the agency  
10 previously published in the course of rule-making proceedings but did  
11 not adopt.

12       An agency may hold a public hearing on a proposed rule in other circumstances.  
13 When an agency is required to hold a public hearing on a proposed rule or decides to hold  
14 a public hearing on a proposed rule when it is not required to do so, the agency must  
15 publish in the North Carolina Register a notice of the date, time, and place of the public  
16 hearing. The hearing date of a public hearing held after the agency publishes notice of  
17 the hearing in the North Carolina Register must be at least 15 days after the date the  
18 notice is published."

19       Sec. 6. G.S. 150B-21.3 is amended by adding a new subsection to read:

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

23       Sec. 7. G.S. 150B-2(2) reads as rewritten:

- 24       "(2) 'Contested case' means an administrative proceeding pursuant to this  
25 Chapter to resolve a dispute between an agency and another person that  
26 involves the person's rights, duties, or privileges, including licensing or  
27 the levy of a monetary penalty. "Contested case" does not include  
28 rulemaking, declaratory rulings, or the award or denial of a ~~scholarship~~  
29 ~~or grant.~~ scholarship, a grant, or a loan."

30       Sec. 8. G.S. 120-70.101(8) reads as rewritten:

- 31       "(8) To report to the General Assembly ~~at the beginning of each regular session~~  
32 from time to time concerning the Committee's activities and any  
33 recommendations for statutory changes."

34       Sec. 9. G.S. 89C-3(6) reads as rewritten:

- 35       "(6) Practice of engineering. –

- 36       a. Any service or creative work, the adequate performance of which  
37 requires engineering education, training, and experience, in the  
38 application of special knowledge of the mathematical, physical,  
39 and engineering sciences to such services or creative work as  
40 consultation, investigation, evaluation, planning, and design of  
41 engineering works and systems, planning the use of land and  
42 water, engineering surveys, and the observation of construction  
43 for the purposes of assuring compliance with drawings and

1 specifications, including the consultation, investigation,  
2 evaluation, planning, and design for either private or public use,  
3 in connection with any utilities, structures, buildings, machines,  
4 equipment, processes, work systems, projects, and industrial or  
5 consumer products or equipment of a mechanical, electrical,  
6 hydraulic, pneumatic or thermal nature, insofar as they involve  
7 safeguarding life, health or property, and including such other  
8 professional services as may be necessary to the planning,  
9 progress and completion of any engineering services.

10 A person shall be construed to practice or offer to practice  
11 engineering, within the meaning and intent of this Chapter, who  
12 practices any branch of the profession of engineering; or who, by  
13 verbal claim, sign, advertisement, letterhead, card, or in any other  
14 way represents himself to be a professional engineer, or through  
15 the use of some other title implies that he is a professional  
16 engineer or that he is registered under this Chapter; or who holds  
17 himself out as able to perform, or who does perform any  
18 engineering service or work not exempted by this Chapter, or any  
19 other service designated by the practitioner which is recognized  
20 as engineering.

- 21 b. The term 'practice of engineering' shall not be construed to  
22 permit the location, description, establishment or reestablishment  
23 of property lines or descriptions of land boundaries for  
24 conveyance. The term does not include the assessment of an  
25 underground storage tank required by applicable rules at closure  
26 or change in service unless there has been a discharge or release  
27 of the product from the tank."

28 Sec. 10. G.S. 89E-3(4) reads as rewritten:

29 "(4) 'Geology' means the science dealing with the earth and its history;  
30 investigation, prediction and location of the materials and structures  
31 which compose it; the natural processes that cause change in the earth;  
32 and the applied science of utilizing knowledge of the earth and its  
33 constituent rocks, minerals, liquids, gases and other materials for the  
34 benefit of mankind. This definition shall not include any ~~service~~ of the  
35 following:

- 36 a. Service or creative works, the adequate performance of which  
37 requires engineering education, training, and experience.  
38 b. The assessment of an underground storage tank required by  
39 applicable rules at closure or change in service unless there has  
40 been a discharge or release of the product from the tank."

41 Sec. 11. G.S. 89C-14(b) reads as rewritten:

42 "(b) ~~The registration fee shall be established by the Board in an~~ An applicant for  
43 registration who is required to take the written examination shall pay a fee equal to the

1 cost of the examination to the Board plus an additional amount not to exceed one hundred  
2 dollars ~~(\$100.00) which~~ ~~(\$100.00).~~ The fee shall accompany the ~~applications.~~ application.

3 The fee for comity registration of engineers and land surveyors who hold unexpired  
4 certificates in another state or a territory of the United States or in Canada shall be the  
5 total current fee as fixed by the Board."

6       Sec. 12. Section 3 of this act becomes effective December 1, 1996, and applies  
7 to temporary rules published on or after December 1, 1995, except temporary rules  
8 published on or after December 1, 1995, for which the permanent rules adopted to replace  
9 the temporary rules have not been submitted to the Rules Review Commission within 270  
10 days of publication of the temporary rules may remain effective under this section if the  
11 permanent rules are submitted to the Rules Review Commission by December 1, 1996.  
12 All other sections of this act are effective upon ratification.