

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE DRS15199-RO-2 (3/7)

Short Title: Improve Rulemaking Process.

(Public)

Sponsors: Senators Hartsell; Foxx and Kerr.

Referred to:

A BILL TO BE ENTITLED

1
2 AN ACT TO AMEND THE ADMINISTRATIVE PROCEDURE ACT TO REVISE
3 THE PROCEDURE FOR ADOPTING PERMANENT AND TEMPORARY
4 RULES, TO CREATE A PROCEDURE FOR THE ADOPTION OF EMERGENCY
5 RULES, AND TO CLARIFY THE ROLE OF THE RULES REVIEW
6 COMMISSION.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** G. S. 150B-20(c) reads as rewritten:

9 "(c) Action. – If an agency denies a rule-making petition, it must send the person
10 who submitted the petition a written statement of the reasons for denying the petition. If
11 an agency grants a rule-making petition, it must inform the person who submitted the
12 rule-making petition of its decision and must initiate rule-making proceedings. When an
13 agency grants a rule-making petition, the ~~notice of rule-making proceedings~~ notice of
14 text it publishes in the North Carolina Register may state that the agency is initiating
15 ~~rule-making proceedings~~ rule making as the result of a rule-making petition and state
16 the name of the person who submitted the rule-making petition. If the rule-making
17 petition requested the creation or amendment of a rule, the notice of text the agency
18 publishes ~~after the notice of rule-making proceedings~~ may set out the text of the
19 requested rule change submitted with the rule-making petition and state whether the
20 agency endorses the proposed text."

21 **SECTION 2.** G.S. 150B-21.1 reads as rewritten:

22 "**§ 150B-21.1. Procedure for adopting a temporary rule.**

23 (a) Adoption. – An agency may adopt a temporary rule ~~without prior notice or~~
24 ~~hearing or upon any abbreviated notice or hearing~~ the agency finds practical when it
25 finds that adherence to the notice and hearing requirements of ~~this Part~~ G.S. 150B-21.2
26 would be contrary to the public interest and that the immediate adoption of the rule is
27 required by one or more of the following:

- ~~(1) A serious and unforeseen threat to the public health, safety, or welfare.~~
- (2) The effective date of a recent act of the General Assembly or the United States Congress.
- (3) A recent change in federal or State budgetary policy.
- (4) A recent federal regulation.
- (5) A recent court order.
- (6) The need for the rule to become effective the same date as the State Medical Facilities Plan approved by the Governor, if the rule addresses a matter included in the State Medical Facilities Plan.

~~An agency must prepare a written statement of its findings of need for a temporary rule. If the temporary rule establishes a new fee or increases an existing fee, the agency shall include in the written statement that it has complied with the requirements of G.S. 12-3.1. The statement must be signed by the head of the agency adopting the rule.~~

~~(a1) Notwithstanding the provisions of subsection (a) of this section, the Wildlife Resources Commission may adopt a temporary rule after prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical to protect the public health, safety, or welfare, conserve wildlife resources, or provide for the orderly and efficient operation of game lands by establishing any of the following:~~

- (7) The need for the Wildlife Resources Commission to establish any of the following:
 - ~~(1)a.~~ No wake zones;
 - ~~(2)b.~~ Hunting or fishing seasons;
 - ~~(3)c.~~ Hunting or fishing bag limits;
 - ~~(4)d.~~ Management of public game lands as defined in G.S. 113-129(8a).

~~When the Wildlife Resources Commission adopts a temporary rule pursuant to this subsection, it must submit the reference to this subsection as its statement of need to the Codifier of Rules.~~

~~(a2) Notwithstanding the provisions of subsection (a) of this section, the Secretary of State may adopt temporary rules~~

- (8) The need for the Secretary of State to implement the certification technology provisions of Article 11A of Chapter 66 of the General Statutes and to adopt uniform Statements of Policy that have been officially adopted by the North American Securities Administrators Association for the purpose of promoting uniformity of state securities regulation. After having the proposed temporary rule published in the North Carolina Register and at least 30 days prior to adopting a temporary rule pursuant to this subsection, the Secretary shall:
 - ~~(1) Notify persons on its mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a temporary rule;~~
 - ~~(2) Accept oral and written comments on the proposed temporary rule; and~~
 - ~~(3) Hold at least one public hearing on the proposed temporary rule.~~

1 ~~When the Secretary adopts a temporary rule pursuant to this subsection, the Secretary~~
2 ~~must submit a reference to this subsection as the Secretary's statement of need to the~~
3 ~~Codifier of Rules.~~

4 ~~Notwithstanding any other provision of this Chapter, the Codifier of Rules shall~~
5 ~~publish in the North Carolina Register a proposed temporary rule received from the~~
6 ~~Secretary in accordance with this subsection.~~

7 ~~(a3) Notwithstanding the provisions of subsection (a) of this section, the~~
8 ~~Commissioner of Insurance may adopt a temporary rule~~

9 ~~(9) The need for the Commissioner of Insurance to implement the~~
10 ~~provisions of G.S. 58-2-205 G.S. 58-2-205 after prior notice or hearing~~
11 ~~or upon any abbreviated notice or hearing. When the Commissioner~~
12 ~~adopts a temporary rule pursuant to this subsection, the Commissioner~~
13 ~~must submit the reference to this subsection as the Commissioner's~~
14 ~~statement of need to the Codifier of Rules.~~

15 ~~(a4) Notwithstanding the provisions of subsection (a) of this section, the State~~
16 ~~Chief Information Officer may adopt temporary rules~~

17 ~~(10) The need for the Chief Information Officer to implement the~~
18 ~~information technology procurement provisions of Article 3D of~~
19 ~~Chapter 147 of the General Statutes. After having the proposed~~
20 ~~temporary rule published in the North Carolina Register and at least 30~~
21 ~~days prior to adopting a temporary rule pursuant to this subsection, the~~
22 ~~Officer shall:~~

23 ~~(1) Notify persons on its mailing list maintained pursuant to G.S.~~
24 ~~150B-21.2(d) and any other interested parties of its intent to adopt a~~
25 ~~temporary rule;~~

26 ~~(2) Accept oral and written comments on the proposed temporary rule;~~
27 ~~and~~

28 ~~(3) Hold at least one public hearing on the proposed temporary rule.~~

29 ~~When the Officer adopts a temporary rule pursuant to this subsection, the Officer must~~
30 ~~submit a reference to this subsection as the Officer's statement of need to the Codifier of~~
31 ~~Rules.~~

32 ~~Notwithstanding any other provision of this Chapter, the Codifier of Rules shall~~
33 ~~publish in the North Carolina Register a proposed temporary rule received from the~~
34 ~~Officer in accordance with this subsection.~~

35 ~~(a5) Notwithstanding the provisions of subsection (a) of this section,~~

36 ~~(11) The need for the State Board of Elections ~~may~~ to adopt a temporary~~
37 ~~rule after prior notice or hearing or upon any abbreviated notice or~~
38 ~~hearing the agency finds practical for one or more of the following:~~

39 ~~(1)a. In accordance with the provisions of G.S. 163-22.2.~~

40 ~~(2)b. To implement any provisions of state or federal law for which~~
41 ~~the State Board of Elections has been authorized to adopt rules.~~

42 ~~(3)c. The need for the rule to become effective immediately in order~~
43 ~~to preserve the integrity of upcoming elections and the elections~~
44 ~~process.~~

1 ~~When the State Board of Elections adopts a temporary rule pursuant to this~~
2 ~~subsection, it must submit the reference to this subsection as its statement of need to the~~
3 ~~Codifier of Rules.~~

4 (a6) Expiration by Session Laws 2001, ch. 421, s. 5.3, effective June 30, 2002.

5 (a7) ~~Notwithstanding the provisions of subdivision (a)(2) of this section,~~

6 (12) ~~The need for an agency may to adopt a temporary rule to implement~~
7 ~~the provisions of any of the following acts until all rules necessary to~~
8 ~~implement the provisions of the act have become effective as either~~
9 ~~temporary or permanent rules:~~

10 a. ~~Repealed by Session Laws 2000, ch. 148, s. 5, effective July 1,~~
11 ~~2002.~~

12 b. **(Repealed effective July 1, 2003)** Article 34B of Chapter 115C
13 of the General Statutes, relating to qualified zone academy
14 bonds.

15 (a8) **(Expires on June 30, 2003)** ~~Notwithstanding the provisions of subsection (a)~~
16 ~~of this section,~~

17 (13) ~~The need for the Secretary of Transportation may to adopt temporary~~
18 ~~rules concerning the permitted height of mobile and modular homes.~~
19 ~~After having the proposed temporary rule published in the North~~
20 ~~Carolina Register and at least 30 days prior to adopting a temporary~~
21 ~~rule pursuant to this subsection, the Secretary shall:~~

22 (1) ~~Notify persons on its mailing list maintained pursuant to G.S.~~
23 ~~150B 21.2(d) and any other interested parties of its intent to adopt a~~
24 ~~temporary rule.~~

25 (2) ~~Accept oral and written comments on the proposed temporary rule.~~

26 (3) ~~Hold at least one public hearing on the proposed temporary rule.~~

27 ~~When the Secretary adopts a temporary rule pursuant to this subsection, the Secretary~~
28 ~~must submit a reference to this subsection as the Secretary's statement of need to the~~
29 ~~Codifier of Rules.~~

30 ~~Notwithstanding any other provision of this Chapter, the Codifier of Rules shall~~
31 ~~publish in the North Carolina Register a proposed temporary rule received from the~~
32 ~~Secretary in accordance with this subsection.~~

33 (a9) **(Expires June 30, 2003)** ~~Notwithstanding the provisions of subsection (a) of~~
34 ~~this section~~

35 (14) ~~The need for, the Secretary of Transportation may to adopt temporary~~
36 ~~rules pursuant to G.S. 113A-11(b) to establish a class of minimum~~
37 ~~criteria projects.~~

38 ~~After having the proposed temporary rule published in the North Carolina Register,~~
39 ~~and at least 30 days prior to adopting a temporary rule pursuant to this subsection, the~~
40 ~~Secretary shall do all of the following:~~

41 (1) ~~Notify persons on its mailing list, maintained pursuant to G.S.~~
42 ~~150B 21.2(d), and any other interested parties, of his intent to adopt a~~
43 ~~temporary rule.~~

44 (2) ~~Accept oral and written comments on the proposed temporary rule.~~

1 (3) ~~Hold at least one public hearing on the proposed temporary rule.~~
2 ~~When the Secretary adopts a temporary rule pursuant to this subsection, the Secretary~~
3 ~~shall submit a reference to this subsection as the Secretary's statement of need to the~~
4 ~~Codifier of Rules.~~

5 ~~Notwithstanding any other provision of this Chapter, the Codifier of Rules shall~~
6 ~~publish in the North Carolina Register a proposed temporary rule received from the~~
7 ~~Secretary in accordance with this subsection.~~

8 ~~(a10) (Expires on October 1, 2004) Notwithstanding the provisions of subsection~~
9 ~~(a) of this section,~~

10 ~~(15) The need for the Department of Health and Human Services may to~~
11 ~~adopt temporary rules concerning the placement of individuals in~~
12 ~~facilities licensed under Article 2 of Chapter 122C of the General~~
13 ~~Statutes and the enrollment of providers of services to such individuals~~
14 ~~in the Medicaid program. After having the proposed temporary rule~~
15 ~~published in the North Carolina Register and at least 30 days prior to~~
16 ~~adopting a temporary rule pursuant to this subsection, the Department~~
17 ~~shall:~~

18 ~~(1) Notify persons on its mailing list maintained pursuant to G.S.~~
19 ~~150B-21.2(d) and any other interested parties of its intent to adopt a~~
20 ~~temporary rule.~~

21 ~~(2) Accept oral and written comments on the proposed temporary rule.~~

22 ~~(3) Hold at least one public hearing on the proposed temporary rule.~~

23 ~~When the Department adopts a temporary rule pursuant to this subsection, the~~
24 ~~Department shall submit a reference to this subsection as the Department's statement of~~
25 ~~need to the Codifier of Rules.~~

26 ~~Notwithstanding any other provision of this Chapter, the Codifier of Rules shall~~
27 ~~publish in the North Carolina Register a proposed temporary rule received from the~~
28 ~~Department in accordance with this subsection.~~

29 A recent act, change, regulation, or order as used in subdivisions (2) through (5) of this
30 subsection means an act, change, regulation, or order occurring or made effective no
31 more than 180 days prior to the submission of a temporary rule to the Rules Review
32 Commission. Upon written request of the agency, the Commission may waive the 180-
33 day requirement upon consideration of the degree of public benefit, whether the agency
34 had control over the circumstances that required the requested waiver, notice to and
35 opposition by the public, the need for the waiver, and previous requests for waivers
36 submitted by the agency.

37 (a1) Unless otherwise provided by law, at least 30 business days prior to adopting
38 a temporary rule, the agency shall:

39 (1) Submit the rule to the Codifier, and the Codifier shall publish the
40 proposed temporary rule on the Internet to be posted within five
41 business days.

42 (2) Notify persons on the mailing list maintained pursuant to G.S.
43 150B-21.2(d) and any other interested parties of its intent to adopt a
44 temporary rule.

1 (3) Accept written comments on the proposed temporary rule for at least
2 15 business days prior to adoption of the temporary rule.

3 (4) Hold at least one public hearing on the proposed temporary rule.

4 An agency must also prepare a written statement of its findings of need for a temporary
5 rule stating why adherence to the notice and hearing requirements in G.S. 150B-21.2
6 would be contrary to the public interest and why the immediate adoption of the rule is
7 required. The statement must be signed by the head of the agency adopting the
8 temporary rule.

9 (b) Review. – When an agency adopts a temporary rule it must submit the rule
10 and the agency's written statement of its findings of the need for the rule to the ~~Codifier~~
11 ~~of Rules~~ Rules Review Commission. ~~Within one business day after an agency submits~~
12 ~~a temporary rule, the Codifier of Rules must review the agency's written statement of~~
13 ~~findings of need for the rule to determine whether the statement of need meets the~~
14 ~~criteria listed in subsection (a) or (a1) of this section.~~ Within 15 business days after
15 receiving the proposed temporary rule, the Commission or its designee must review the
16 agency's written statement of findings of need for the rule to determine whether the
17 statement meets the criteria listed in subsection (a) of this section and the standards in
18 G.S. 150B-21.9. The Commission's designee shall be a member of the Commission or
19 Commission staff who is an attorney licensed to practice law in North Carolina. In
20 reviewing the statement, the ~~Codifier of Rules~~Commission or its designee may consider
21 any information submitted by the agency or another person. If the ~~Codifier of Rules~~
22 Commission or its designee finds that the statement meets the ~~criteria,~~criteria listed in
23 subsection (a) of this section and the standards in G.S. 150B-21.9, the ~~Codifier of Rules~~
24 must notify the head of the agency and enter the rule in the North Carolina
25 Administrative Code.~~Commission or its designee must approve the temporary rule and~~
26 deliver the rule to the Codifier of Rules within two business days of approval. The
27 Codifier must enter the rule into the North Carolina Administrative Code on the sixth
28 business day following receipt from the Commission or its designee.

29 If the ~~Codifier of Rules~~Commission or its designee finds that the statement does not
30 meet ~~either the criteria,~~criteria listed in subsection (a) of this section or the standards in
31 G.S. 150B-21.9, the ~~Codifier of Rules~~Commission or its designee must immediately
32 notify the head of the agency. The agency may supplement its statement of need with
33 additional findings or submit a new statement. If the agency provides additional
34 findings or submits a new statement, the ~~Codifier of Rules~~Commission or its designee
35 must review the additional findings or new statement within ~~one business day~~five
36 business days after the agency submits the additional findings or new statement. If the
37 ~~Codifier of Rules~~Commission or its designee again finds that the statement does not
38 meet the criteria listed in subsection (a) ~~or (a1) of this section,~~section or the standards
39 in G.S. 150B-21.9, the ~~Codifier of Rules~~Commission or its designee must immediately
40 notify the head of the ~~agency~~agency and return the rule to the agency.

41 If an agency decides not to provide additional findings or submit a new statement
42 when notified by the ~~Codifier of Rules~~Commission or its designee that the agency's
43 findings of need for a rule do not meet either the required criteria, or the required
44 standards the agency must notify the ~~Codifier of Rules~~Commission or its designee of its

1 decision. ~~The Codifier of Rules must then enter the rule in the North Carolina~~
2 ~~Administrative Code on the sixth business day after receiving notice of the agency's~~
3 ~~decision. The Commission or its designee shall then return the rule to the agency.~~
4 Notwithstanding any other provision of this subsection, if the agency has not complied
5 with the provisions of G.S. 12-3.1, the Codifier of Rules shall not enter the rule into the
6 Code.

7 (c) Standing. – A person aggrieved by a temporary rule adopted by an agency
8 may file an action for declaratory judgment in Wake County Superior Court pursuant to
9 Article 26 of Chapter 1 of the General Statutes. In the action, the court shall determine
10 whether the agency's written statement of findings of need for the rule meets the criteria
11 listed in subsection (a) ~~or (a1)~~ of this section and whether the rule meets the standards in
12 ~~G.S. 150B-21.9 that apply to review of a permanent rule. G.S. 150B-21.9.~~ The court
13 shall not grant an ex parte temporary restraining order.

14 Filing a petition for rule making or a request for a declaratory ruling with the agency
15 that adopted the rule is not a prerequisite to filing an action under this subsection. A
16 person who files an action for declaratory judgment under this subsection must serve a
17 copy of the complaint on the agency that adopted the rule being contested, the Codifier
18 of Rules, and the Commission.

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.
- 27 (4) The effective date of an act of the General Assembly that specifically
28 disapproves a permanent rule adopted to replace the temporary rule.
- 29 (5) 270 days from the date the temporary rule was published in the North
30 Carolina Register, unless the permanent rule adopted to replace the
31 temporary rule has been submitted to the Commission.

32 (e) Publication. – When the Codifier of Rules enters a temporary rule in the
33 North Carolina Administrative Code, the Codifier must publish the rule in the North
34 Carolina Register. ~~Publication of a temporary rule in the North Carolina Register serves~~
35 ~~as a notice of rule making proceedings for a permanent rule if the permanent rule is~~
36 ~~substantially the same as the published temporary rule, unless the agency published a~~
37 ~~notice of rule making proceedings at least 60 days before it adopted the temporary~~
38 ~~rule."~~

39 **SECTION 3.** Part 2 of Article 2A of Chapter 150B is amended by adding a
40 new section to read:

41 **"§ 150B-21.1A. Adoption of an emergency rule.**

42 (a) An agency may adopt an emergency rule without prior notice or hearing or
43 upon any abbreviated notice or hearing the agency finds practical when it finds that
44 adherence to the notice and hearing requirements of this Part would be contrary to the

1 public interest and that the immediate adoption of the rule is required by a serious and
2 unforeseen threat to the public health, safety, or welfare.

3 (b) An agency must prepare a written statement of its findings of need for an
4 emergency rule. The statement must be signed by the head of the agency adopting the
5 rule. When an agency adopts an emergency rule, it must submit the rule and the
6 agency's written statement of its findings of the need for the rule to the Codifier of
7 Rules. Within two business days after an agency submits an emergency rule, the
8 Codifier of Rules must review the agency's written statement of findings of need for the
9 rule to determine whether the statement of need meets the criteria in subsection (a) of
10 this section. In reviewing the statement, the Codifier of Rules may consider any
11 information submitted by the agency or another person. If the Codifier of Rules finds
12 that the statement meets the criteria, the Codifier of Rules must notify the head of the
13 agency and enter the rule in the North Carolina Administrative Code on the sixth
14 business day following approval by the Codifier.

15 If the Codifier of Rules finds that the statement does not meet the criteria, the
16 Codifier of Rules must immediately notify the head of the agency. The agency may
17 supplement its statement of need with additional findings or submit a new statement. If
18 the agency provides additional findings or submits a new statement, the Codifier of
19 Rules must review the additional findings or new statement within one business day
20 after the agency submits the additional findings or new statement. If the Codifier of
21 Rules again finds that the statement does not meet the criteria in subsection (a) of this
22 section, the Codifier of Rules must immediately notify the head of the agency.

23 If an agency decides not to provide additional findings or submit a new statement
24 when notified by the Codifier of Rules that the agency's findings of need for a rule do
25 not meet the required criteria, the agency must notify the Codifier of Rules of its
26 decision. The Codifier of Rules must then enter the rule in the North Carolina
27 Administrative Code on the sixth business day after receiving notice of the agency's
28 decision. Notwithstanding any other provision of this subsection, if the agency has not
29 complied with the provisions of G.S. 12-3.1, the Codifier of Rules shall not enter the
30 rule into the Code.

31 (c) Standing. – A person aggrieved by an emergency rule adopted by an agency
32 may file an action for declaratory judgment in Wake County Superior Court pursuant to
33 Article 26 of Chapter 1 of the General Statutes. In the action, the court shall determine
34 whether the agency's written statement of findings of need for the rule meets the criteria
35 listed in subsection (a) of this section and whether the rule meets the standards in G.S.
36 150B-21.9. The court shall not grant an ex parte temporary restraining order.

37 Filing a petition for rule making or a request for a declaratory ruling with the agency
38 that adopted the rule is not a prerequisite to filing an action under this subsection. A
39 person who files an action for declaratory judgment under this subsection must serve a
40 copy of the complaint on the agency that adopted the rule being contested, the Codifier
41 of Rules, and the Commission.

42 (d) Effective Date and Expiration. – An emergency rule becomes effective on the
43 date specified in G.S. 150B-21.3. An emergency rule expires on the earliest of the
44 following dates:

- 1 (1) The date specified in the rule.
- 2 (2) The effective date of the permanent rule adopted to replace the
3 emergency rule, if the Commission approves the permanent rule.
- 4 (3) The date the Commission returns to an agency a permanent rule the
5 agency adopted to replace the emergency rule.
- 6 (4) The effective date of an act of the General Assembly that specifically
7 disapproves a permanent rule adopted to replace the emergency rule.
- 8 (5) 270 days from the date the emergency rule was published in the North
9 Carolina Register, unless the permanent rule adopted to replace the
10 emergency rule has been submitted to the Commission.

11 (e) Publication. – When the Codifier of Rules enters an emergency rule in the
12 North Carolina Administrative Code, the Codifier must publish the rule in the North
13 Carolina Register."

14 **SECTION 4.** G.S. 150B-21.2 reads as rewritten:

15 "**§ 150B-21.2. Procedure for adopting a permanent rule.**

16 (a) Steps. – Before an agency adopts a permanent rule, it must take the following
17 actions:

- 18 (1) ~~Publish a notice of rule making proceedings text in the North Carolina~~
19 ~~Register, unless the proposed rule is substantially the same as a~~
20 ~~temporary rule published in the North Carolina Register.~~ Register.
- 21 (2) When required by G.S. 150B-21.4, prepare or obtain a fiscal note for
22 the proposed rule.
- 23 (3) ~~Publish the text of the proposed rule in the North Carolina Register.~~
- 24 (4) When required by subsection (e) of this section, hold a public hearing
25 on the proposed rule after publication of the proposed text of the rule.
- 26 (5) Accept oral or written comments on the proposed rule as required by
27 subsection (f) of this section.

28 (b) ~~Notice of Rule Making Proceedings. — A notice of rule making proceedings~~
29 ~~published in the North Carolina Register must include all of the following:~~

- 30 (1) ~~A statement of the subject matter of the proposed rule making.~~
- 31 (2) ~~A short explanation of the reason for the proposed action.~~
- 32 (3) ~~A citation to the law that gives the agency the authority to adopt a rule~~
33 ~~on the subject matter of the proposed rule making.~~
- 34 (4) ~~The person to whom questions or written comments may be submitted~~
35 ~~on the subject matter of the proposed rule making.~~

36 ~~Publication in the North Carolina Register of an agency's rule making agenda~~
37 ~~satisfies the requirements of this subsection if the agenda includes the information~~
38 ~~required by this subsection.~~

39 (c) ~~Text After Notice of Rule Making Proceedings. — A notice of the proposed~~
40 ~~text of a rule must include all of the following:~~

- 41 (1) The text of the proposed rule.
- 42 (2) A short explanation of the reason for the proposed rule.
- 43 (3) A citation to the law that gives the agency the authority to adopt the
44 rule.

- 1 (4) The proposed effective date of the rule.
- 2 (5) The date, time, and place of any public hearing scheduled on the rule.
- 3 (6) Instructions on how a person may demand a public hearing on a
- 4 proposed rule if the notice does not schedule a public hearing on the
- 5 proposed rule and subsection (e) of this section requires the agency to
- 6 hold a public hearing on the proposed rule when requested to do so.
- 7 (7) The period of time during which and the person to whom written
- 8 comments may be submitted on the proposed rule.
- 9 (8) If a fiscal note has been prepared for the rule, a statement that a copy
- 10 of the fiscal note can be obtained from the agency.
- 11 (9) The procedure by which a person can subject a proposed rule to the
- 12 legislative review process.

13 ~~An agency shall not publish the proposed text of a rule until at least 60 days after the~~
14 ~~date the notice of rule making proceedings for the proposed rule was published in the~~
15 ~~North Carolina Register.~~

16 (d) Mailing List. – An agency must maintain a mailing list of persons who have
17 requested notice of rule making. When an agency publishes in the North Carolina
18 Register a notice of ~~rule making proceedings or the text of a proposed rule~~, it must mail
19 a copy of the notice or text to each person on the mailing list who has requested notice
20 ~~of rule making proceedings~~ on the subject matter described in the notice or the rule
21 affected. An agency may charge an annual fee to each person on the agency's mailing
22 list to cover copying and mailing costs.

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

- 26 (1) ~~The notice of text does not schedule a public hearing on the proposed~~
27 ~~rule.~~
- 28 (2) ~~The~~ the agency receives a written request for a public hearing on the
29 proposed rule within 15 days after the notice of text is published.
- 30 (3) ~~The proposed text is not a changed version of proposed text the agency~~
31 ~~previously published in the course of rule making proceedings but did~~
32 ~~not adopt.~~

33 An agency may hold a public hearing on a proposed rule in other circumstances.
34 When an agency is required to hold a public hearing on a proposed rule or decides to
35 hold a public hearing on a proposed rule when it is not required to do so, the agency
36 must publish in the North Carolina Register a notice of the date, time, and place of the
37 public hearing. The hearing date of a public hearing held after the agency publishes
38 notice of the hearing in the North Carolina Register must be at least 15 days after the
39 date the notice is published. If notice of a public hearing has been published in the
40 North Carolina Register and that public hearing has been cancelled, the agency shall
41 publish notice in the North Carolina Register at least 15 days prior to the date of any
42 rescheduled hearing.

43 (f) Comments. – ~~An agency must accept comments on a notice of proposed~~
44 ~~rule making proceedings published in the North Carolina Register until the text of the~~

~~1 proposed rule that results from the notice is published. An agency must accept~~
~~2 comments on the text of a proposed rule that is published in the North Carolina Register~~
~~3 and that requires a fiscal note under G.S. 150B-21.4(b1) for at least 60 days after the~~
~~4 text is published or until the date of any public hearing held on the proposed rule,~~
~~5 whichever is longer. An agency must accept comments on the text of any other~~
~~6 proposed rule published in the North Carolina Register for at least 30 days after the text~~
~~7 is published or until the date of any public hearing held on the proposed rule, whichever~~
~~8 is longer. An agency must consider fully all written and oral comments received.~~

9 (g) Adoption. – An agency shall not adopt a rule until the time for commenting
10 on the proposed text of the rule has elapsed and shall not adopt a rule if more than 12
11 months have elapsed since the end of the time for commenting on the proposed text of
12 the rule. An agency shall not adopt a rule that differs substantially from the text of a
13 proposed rule published in the North Carolina Register unless the agency publishes the
14 text of the proposed different rule in the North Carolina Register and accepts comments
15 on the proposed different rule for the time set in subsection (f) of this section.

16 An adopted rule differs substantially from a proposed rule if it does one or more of
17 the following:

- 18 (1) Affects the interests of persons who, based on ~~either the notice of~~
19 ~~rule-making proceedings or the proposed text of the rule published in~~
20 the North Carolina Register, could not reasonably have determined
21 that the rule would affect their interests.
- 22 (2) Addresses a subject matter or an issue that is not addressed in the
23 proposed text of the rule.
- 24 (3) Produces an effect that could not reasonably have been expected based
25 on the proposed text of the rule.

26 When an agency adopts a rule, it shall not take subsequent action on the rule without
27 following the procedures in this Part. An agency must submit an adopted rule to the
28 Rules Review Commission within 30 days of the agency's adoption of the rule.

29 (h) Explanation. – An agency must issue a concise written statement explaining
30 why the agency adopted a rule if, within 30 days after the agency adopts the rule, a
31 person asks the agency to do so. The explanation must state the principal reasons for
32 and against adopting the rule and must discuss why the agency rejected any arguments
33 made or considerations urged against the adoption of the rule.

34 (i) Record. – An agency must keep a record of a rule-making proceeding. The
35 record must include all written comments received, a transcript or recording of any
36 public hearing held on the rule, and any written explanation made by the agency for
37 adopting the rule."

38 **SECTION 5.** G.S. 150B-21.3 reads as rewritten:

39 "**§ 150B-21.3. Effective date of rules.**

40 (a) Temporary and Emergency Rule Rules. – A temporary rule or an emergency
41 rule becomes effective on the date the Codifier of Rules enters the rule in the North
42 Carolina Administrative Code.

43 (b) Permanent Rule. – A permanent rule approved by the Commission becomes
44 effective on the first day of the month following the month the rule is approved by the

1 Commission, unless the Commission received written objections to the rule in
2 accordance with subsection (b2) of this section.

3 (b1) If the Commission received written objections to the rule in accordance with
4 subsection (b2) of this section, the rule becomes effective on the earlier of the
5 thirty-first legislative day or the day of adjournment of the next regular session of the
6 General Assembly that begins at least 25 days after the date the Commission approved
7 the rule, unless a different effective date applies under this section. If a bill that
8 specifically disapproves the rule is introduced in either house of the General Assembly
9 before the thirty-first legislative day of that session, the rule becomes effective on the
10 earlier of either the day an unfavorable final action is taken on the bill or the day that
11 session of the General Assembly adjourns without ratifying a bill that specifically
12 disapproves the rule. If the agency adopting the rule specifies a later effective date than
13 the date that would otherwise apply under this subsection, the later date applies. A
14 permanent rule that is not approved by the Commission or that is specifically
15 disapproved by a bill enacted into law before it becomes effective does not become
16 effective.

17 A bill specifically disapproves a rule if it contains a provision that refers to the rule
18 by appropriate North Carolina Administrative Code citation and states that the rule is
19 disapproved. Notwithstanding any rule of either house of the General Assembly, any
20 member of the General Assembly may introduce a bill during the first 30 legislative
21 days of any regular session to disapprove a rule that has been approved by the
22 Commission and that either has not become effective or has become effective by
23 executive order under subsection (c) of this section.

24 (b2) Any person who objects to the adoption of a permanent rule may submit
25 written comments to the agency. If the objection is not resolved prior to adoption of the
26 rule, a person may submit written objections to the Commission. If the Commission
27 receives objections from three or more persons clearly requesting review by the
28 legislature in accordance with instructions contained in the notice pursuant to G.S.
29 150B-21.2(b)(9), and the Commission approves the rule, the rule will become effective
30 as provided in subsection (b1) of this section.

31 (c) Executive Order Exception. – The Governor may, by executive order, make
32 effective a permanent rule that has been approved by the Commission ~~and has not~~
33 ~~become effective under subsection (b)~~ but the effective date of which has been delayed
34 in accordance with subsection (b1) of this section upon finding that it is necessary that
35 the rule become effective in order to protect public health, safety, or welfare. A rule
36 made effective by executive order becomes effective on the date the order is issued or at
37 a later date specified in the order. When the Codifier of Rules enters in the North
38 Carolina Administrative Code a rule made effective by executive order, the entry must
39 reflect this action.

40 A rule that is made effective by executive order remains in effect unless it is
41 specifically disapproved by the General Assembly in a bill enacted into law on or before
42 the day of adjournment of the regular session of the General Assembly that begins at
43 least 25 days after the date the executive order is issued. A rule that is made effective by
44 executive order and that is specifically disapproved by a bill enacted into law is repealed

1 as of the date specified in the bill. If a rule that is made effective by executive order is
2 not specifically disapproved by a bill enacted into law within the time set by this
3 subsection, the Codifier of Rules must note this in the North Carolina Administrative
4 Code.

5 (c1) Fees. – Notwithstanding any other provision of this section, a rule that
6 establishes a new fee or increases an existing fee shall not become effective until the
7 agency has complied with the requirements of G.S. 12-3.1.

8 (d) Legislative Day and Day of Adjournment. – As used in this section:

9 (1) A "legislative day" is a day on which either house of the General
10 Assembly convenes in regular session.

11 (2) The "day of adjournment" of a regular session held in an
12 odd-numbered year is the day the General Assembly adjourns by joint
13 resolution for more than 10 days.

14 (3) The "day of adjournment" of a regular session held in an
15 even-numbered year is the day the General Assembly adjourns sine
16 die.

17 (e) OSHA Standard. – A permanent rule concerning an occupational safety and
18 health standard that is adopted by the Occupational Safety and Health Division of the
19 Department of Labor and is identical to a federal regulation promulgated by the
20 Secretary of the United States Department of Labor becomes effective on the date the
21 Division delivers the rule to the Codifier of Rules, unless the Division specifies a later
22 effective date. If the Division specifies a later effective date, the rule becomes effective
23 on that date.

24 (f) Technical Change. – A permanent rule for which no notice or hearing is
25 required under G.S. 150B-21.5(a)(1) through (a)(5) or G.S. 150B-21.5(b) becomes
26 effective on the first day of the month following the month the rule is approved by the
27 Rules Review Commission."

28 **SECTION 6.** G.S. 150B-21.4(b1) reads as rewritten:

29 "(b1) Substantial Economic Impact. – Before an agency publishes in the North
30 Carolina Register the proposed text of a permanent rule change that would have a
31 substantial economic impact and that is not identical to a federal regulation that the
32 agency is required to adopt, the agency must obtain a fiscal note for the proposed rule
33 change from the Office of State Budget and Management or prepare a fiscal note for the
34 proposed rule change and have the note approved by that Office. If an agency requests
35 the Office of State Budget and Management to prepare a fiscal note for a proposed rule
36 change, that Office must prepare the note within 90 days after receiving a written
37 request for the note. If the Office of State Budget and Management fails to prepare a
38 fiscal note within this time period, the agency proposing the rule change may prepare a
39 fiscal note. A fiscal note prepared in this circumstance does not require approval of the
40 Office of State Budget and Management.

41 If an agency prepares the required fiscal note, the agency must submit the note to the
42 Office of State Budget and Management for review. The Office of State Budget and
43 Management must review the fiscal note within 14 days after it is submitted and either
44 approve the note or inform the agency in writing of the reasons why it does not approve

1 the fiscal note. After addressing these reasons, the agency may submit the revised fiscal
2 note to that Office for its review. If an agency is not sure whether a proposed rule
3 change would have a substantial economic impact, the agency may ask the Office of
4 State Budget and Management to determine whether the proposed rule change has a
5 substantial economic impact.

6 As used in this subsection, the term "substantial economic impact" means an
7 aggregate financial impact on all persons affected of at least ~~five million dollars~~
8 ~~(\$5,000,000)~~ three million dollars (\$3,000,000) in a 12-month period."

9 **SECTION 7.** G.S. 150B-21.5 reads as rewritten:

10 **"§ 150B-21.5. Circumstances when notice and rule-making hearing not required.**

11 (a) Amendment. – An agency is not required to publish a notice of ~~rule-making~~
12 ~~proceedings or a notice of~~ text in the North Carolina Register or hold a public hearing
13 when it proposes to amend a rule to do one of the following:

- 14 (1) Reletter or renumber the rule or subparts of the rule.
- 15 (2) Substitute one name for another when an organization or position is
16 renamed.
- 17 (3) Correct a citation in the rule to another rule or law when the citation
18 has become inaccurate since the rule was adopted because of the repeal
19 or renumbering of the cited rule or law.
- 20 (4) Change information that is readily available to the public, such as an
21 address or a telephone number.
- 22 (5) Correct a typographical error in the North Carolina Administrative
23 Code.
- 24 (6) Change a rule in response to a request or an objection by the
25 Commission.

26 (b) Repeal. – An agency is not required to publish a notice of ~~rule-making~~
27 ~~proceedings or a notice of~~ text in the North Carolina Register or hold a public hearing
28 when it proposes to repeal a rule as a result of any of the following:

- 29 (1) The law under which the rule was adopted is repealed.
- 30 (2) The law under which the rule was adopted or the rule itself is declared
31 unconstitutional.
- 32 (3) The rule is declared to be in excess of the agency's statutory authority.

33 (c) OSHA Standard. – The Occupational Safety and Health Division of the
34 Department of Labor is not required to publish a notice of ~~rule-making proceedings or a~~
35 ~~notice of~~ text in the North Carolina Register or hold a public hearing when it proposes
36 to adopt a rule that concerns an occupational safety and health standard and is identical
37 to a federal regulation promulgated by the Secretary of the United States Department of
38 Labor. The Occupational Safety and Health Division is not required to submit to the
39 Commission for review a rule for which notice and hearing is not required under this
40 subsection.

41 (d) State Building Code. – The Building Code Council is not required to publish
42 a notice of text in the North Carolina Register when it proposes to adopt a rule that
43 concerns the North Carolina State Building Code. ~~The Building Code Council is~~
44 ~~required to publish a notice of rule-making proceeding~~ The Building Code Council is

1 required to publish a notice in the North Carolina Register when it proposes to adopt a
2 rule that concerns the North Carolina State Building Code. The notice must include all
3 of the following:

- 4 (1) A statement of the subject matter of the proposed rule making.
- 5 (2) A short explanation of the reason for the proposed action.
- 6 (3) A citation to the law that gives the agency the authority to adopt a rule
7 on the subject matter of the proposed rule making.
- 8 (4) The person to whom questions or written comments may be submitted
9 on the subject matter of the proposed rule making.

10 The Building Code Council is required to submit to the Commission for review a
11 rule for which notice ~~and hearing~~ of text is not required under this subsection. In
12 adopting a rule, the Council shall comply with the procedural requirements of G.S.
13 150B-21.3."

14 **SECTION 8.** G.S. 150B-21.8 reads as rewritten:

15 "**§ 150B-21.8. Review of rule by Commission.**

16 (a) ~~Temporary—Emergency~~ Rule. – The Commission does not review a
17 ~~temporary~~an emergency rule.

18 (b) ~~Temporary and Permanent Rule.—Rules.~~ – An agency must submit a
19 temporary and permanent rule—rules adopted by it to the Commission before the rule
20 can be included in the North Carolina Administrative Code. The Commission reviews a
21 temporary or permanent rule in accordance with the standards in G.S. 150B-21.9 and
22 follows the procedure in this Part in its review of a ~~permanent~~-rule.

23 (c) Scope. – When the Commission reviews an amendment to a rule, it may
24 review the entire rule that is being amended. The procedure in G.S. 150B-21.12 applies
25 when the Commission objects to a part of a rule that is within its scope of review but is
26 not changed by a rule amendment."

27 **SECTION 9.** G.S. 150B-21.9 reads as rewritten:

28 "**§ 150B-21.9. Standards and timetable for review by Commission.**

29 (a) Standards. – The Commission must determine whether a rule meets all of the
30 following criteria:

- 31 (1) It is within the authority delegated to the agency by the General
32 Assembly.
- 33 (2) It is clear and unambiguous.
- 34 (3) It is reasonably necessary to fulfill a duty delegated to the agency by
35 the General Assembly, when considered in light of (i) the cumulative
36 effect of all rules adopted by the agency related to the specific purpose
37 for which the rule is ~~proposed and proposed,~~ (ii) the legislative intent
38 of the General Assembly in delegating the ~~duty.~~ duty, and (iii) the
39 specificity of the statute which provides the underlying basis for the
40 rule.

41 The Commission shall not consider questions relating to the quality or efficacy of
42 the rule, but shall restrict its review to determination of the standards set forth in this
43 subsection.

1 The Commission ~~may~~ shall, upon written request submitted at least 48 hours prior
2 to a meeting of the Commission, determine if a rule submitted to it was adopted in
3 accordance with Part 2 of this Article. The Commission may ask the Office of State
4 Budget and Management to determine if a rule has a substantial economic impact and is
5 therefore required to have a fiscal note. The Commission must ask the Office of State
6 Budget and Management to make this determination if a fiscal note was not prepared for
7 a rule and the Commission receives a written request for a determination of whether the
8 rule has a substantial economic impact.

9 The Commission must notify the agency that adopted the rule if it determines that a
10 rule was not adopted in accordance with Part 2 of this Article and must return the rule to
11 the agency. Entry of a rule in the North Carolina Administrative Code after review by
12 the Commission is ~~conclusive evidence~~ creates a rebuttable presumption that the rule
13 was adopted in accordance with Part 2 of this Article.

14 (b) Timetable. – The Commission must review a permanent rule submitted to it
15 on or before the twentieth of a month by the last day of the next month. The
16 Commission must review a rule submitted to it after the twentieth of a month by the last
17 day of the second subsequent month. The Commission must review a temporary rule in
18 accordance with the timetable and procedure set forth in G.S. 150B-21.1."

19 **SECTION 10.** G.S. 150B-21.17(a) reads as rewritten:

20 "(a) Content. – The Codifier of Rules must publish the North Carolina Register.
21 The North Carolina Register must be published at least two times a month and must
22 contain the following:

23 (1) Temporary rules entered in the North Carolina Administrative Code.

24 (1a) ~~Notices of rule making proceedings, the~~ The text of proposed rules,
25 and the text of permanent rules approved by the Commission. ~~Except~~
26 ~~with regard to notices of rule making proceedings, this subdivision~~
27 ~~does not apply to the North Carolina State Building Code.~~

28 (1b) Emergency rules entered into the North Carolina Administrative Code.

29 (2) Notices of receipt of a petition for municipal incorporation, as required
30 by G.S. 120-165.

31 (3) Executive orders of the Governor.

32 (4) Final decision letters from the United States Attorney General
33 concerning changes in laws that affect voting in a jurisdiction subject
34 to section 5 of the Voting Rights Act of 1965, as required by G.S.
35 120-30.9H.

36 (5) Orders of the Tax Review Board issued under G.S. 105-241.2.

37 (6) Other information the Codifier determines to be helpful to the public."

38 **SECTION 11.** This act becomes effective July 1, 2003, and applies to rules
39 adopted on or after that date.