

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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SENATE BILL 535

Short Title: APA: Modify Final Administrative Decisions.

(Public)

Sponsors: Senator Hartsell.

Referred to: Judiciary I.

April 12, 2011

1 A BILL TO BE ENTITLED  
2 AN ACT TO MODIFY THE PROCEDURES CONCERNING FINAL ADMINISTRATIVE  
3 DECISIONS IN CONTESTED CASES HEARD BY THE OFFICE OF  
4 ADMINISTRATIVE HEARINGS.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 150B-36 reads as rewritten:

7 "§ 150B-36. Final decision.

8 (a) ~~Before the agency makes a final decision, it shall~~After an agency receives the  
9 official record in a contested case, the agency must give each party ~~an opportunity to the~~  
10 contested case 15 days to file exceptions to the decision or order made by the administrative  
11 law judge, judge and to present written arguments to those in the agency who will make the  
12 final decision or order. If none of the parties files exceptions to the recommended decision or  
13 order within the 15-day period, the agency is considered to have adopted the administrative law  
14 judge's recommended decision or order as the agency's final decision or order.

15 (a1) If a party files in good faith a timely and sufficient affidavit of personal bias or other  
16 reason for disqualification of a member of the agency making the final decision, the agency  
17 shall determine the matter as a part of the record in the ~~ease, and the case.~~ The determination is  
18 subject to judicial review at the conclusion of the case.

19 (b) Except as provided in G.S. 150B-34(c) or subsection (d) of this section, a final  
20 decision or order in a contested case shall be made by the ~~agency in writing after review~~  
21 ~~of agency within the time set by G.S. 150B-44. If the agency does not adopt as its final decision~~  
22 or order the recommended decision or order made in the contested case under subsection (a) of  
23 this section, it must make a written final decision or order. In making its final decision or order,  
24 the agency may consider only the official record as defined in G.S. 150B-37(a) and the  
25 exceptions filed by a party. The final decision or order shall include findings of fact and  
26 conclusions of law. The agency shall adopt each finding of fact contained in the administrative  
27 law judge's decision unless the finding is clearly contrary to the preponderance of the  
28 admissible evidence, giving due regard to the opportunity of the administrative law judge to  
29 evaluate the credibility of witnesses. The findings of fact and conclusions of law made in the  
30 contested case by the administrative law judge are binding on the agency in making its final  
31 decision or order if they are supported by substantial evidence admissible under  
32 G.S. 150B-29(a), 150B-30, or 150B-31 in view of the entire record. For each finding of fact not  
33 adopted by the agency and each finding of fact made by the agency that is not contained in the  
34 administrative law judge's decision, the agency shall follow the procedures set forth in  
35 subsections (b1) and (b2) of this section.

36 (b1) For each finding of fact not adopted by the agency, the agency shall set forth  
37 separately and in detail the following:



1 (1) The specific reasons for not adopting the findings of fact.

2 (2) The evidence in the record relied upon by the agency in not adopting the  
3 finding of fact contained in the administrative law judge's decision.

4 Any finding of fact not specifically rejected as required by this subsection shall be deemed  
5 accepted for purposes of judicial review of the final decision pursuant to Article 4 of this  
6 Chapter.

7 (b2) For each finding of fact made by the agency that is not contained in the  
8 administrative law judge's decision, the agency shall set forth separately and in detail the  
9 evidence in the record relied upon by the agency in making the finding of fact. Any new  
10 finding of fact made by the agency shall be supported by a ~~preponderance of the~~  
11 ~~admissible~~ substantial evidence in the record. The agency shall not make any new finding of  
12 fact that is inconsistent with a finding of fact contained in the administrative law judge's  
13 decision unless the finding of fact in the administrative law judge's decision is not adopted as  
14 required by subsection (b1) of this section.

15 ~~(b3) Except as provided in G.S. 150B-34(e), the agency shall adopt the decision of the~~  
16 ~~administrative law judge unless the agency demonstrates that the decision of the administrative~~  
17 ~~law judge is clearly contrary to the preponderance of the admissible evidence in the record. If~~  
18 ~~the agency does not adopt the administrative law judge's decision as its final decision, the~~  
19 ~~agency shall set forth its reasoning for the final decision in light of the findings of fact and~~  
20 ~~conclusions of law in the final decision, including any exercise of discretion by the agency. The~~  
21 ~~agency may consider only the official record prepared pursuant to G.S. 150B-37 in making a~~  
22 ~~final decision.~~ A copy of the agency's decision shall be served upon each party personally or by  
23 certified mail addressed to the party at the latest address given by the party to the agency, and a  
24 copy shall be furnished to ~~his~~ the party's attorney of record and the Office of Administrative  
25 Hearings.

26 (c) The following decisions made by administrative law judges in contested cases are  
27 final decisions appealable directly to superior court under Article 4 of this Chapter:

28 (1) A determination that the Office of Administrative Hearings lacks  
29 jurisdiction.

30 (2) An order entered pursuant to the authority in G.S. 7A-759(e).

31 (3) An order entered pursuant to a written prehearing motion that either  
32 dismisses the contested case for failure of the petitioner to prosecute or  
33 grants the relief requested when a party does not comply with procedural  
34 requirements.

35 (4) An order entered pursuant to a prehearing motion to dismiss the contested  
36 case in accordance with G.S. 1A-1, Rule 12(b) when the order disposes of all  
37 issues in the contested case.

38 (5) An order entered pursuant to the authority in G.S. 150B-31(b) when the  
39 stipulation or waiver confers final decision authority on the administrative  
40 law judge.

41 (d) An administrative law judge may grant judgment on the pleadings, pursuant to a  
42 motion made in accordance with G.S. 1A-1, Rule 12(c), or summary judgment, pursuant to a  
43 motion made in accordance with G.S. 1A-1, Rule 56, that disposes of all issues in the contested  
44 case. Notwithstanding subsection (b) of this section, a decision granting a motion for judgment  
45 on the pleadings or summary judgment need not include findings of fact or conclusions of law,  
46 except as determined by the administrative law judge to be required or allowed by G.S. 1A-1,  
47 Rule 12(c) or Rule 56. For any decision by the administrative law judge granting judgment on  
48 the pleadings or summary judgment that disposes of all issues in the contested case, the agency  
49 shall make a final decision. If the agency does not adopt the administrative law judge's  
50 decision, it shall set forth the basis for failing to adopt the decision and shall remand the case to

1 the administrative law judge for hearing. The party aggrieved by the agency's decision shall be  
2 entitled to immediate judicial review of the decision under Article 4 of this Chapter."

3 **SECTION 2.** G.S. 150B-44 reads as rewritten:

4 "**§ 150B-44. Right to judicial intervention when decision unreasonably delayed.**

5 Unreasonable delay on the part of any agency or administrative law judge in taking any  
6 required action shall be justification for any person whose rights, duties, or privileges are  
7 adversely affected by such delay to seek a court order compelling action by the agency or  
8 administrative law judge. An agency that is subject to Article 3 of this Chapter and is not a  
9 board or commission has ~~60~~45 days from the day it receives the official record in a contested  
10 case from the Office of Administrative Hearings to make a final decision in the case. This time  
11 limit may be extended by the parties or, for good cause shown, by the agency for an additional  
12 period of up to ~~60~~30 days. An agency that is subject to Article 3 of this Chapter and is a board  
13 or commission has ~~60~~45 days from the day it receives the official record in a contested case  
14 from the Office of Administrative Hearings or ~~60~~45 days after its next regularly scheduled  
15 meeting, whichever is longer, to make a final decision in the case. This time limit may be  
16 extended by the parties or, for good cause shown, by the agency for an additional period of up  
17 to ~~60~~30 days. If an agency subject to Article 3 of this Chapter has not made a final decision  
18 within these time limits, the agency is considered to have adopted the administrative law  
19 judge's decision as the agency's final decision. Failure of an agency subject to Article 3A of this  
20 Chapter to make a final decision within ~~120~~75 days of the close of the contested case hearing  
21 is justification for a person whose rights, duties, or privileges are adversely affected by the  
22 delay to seek a court order compelling action by the agency or, if the case was heard by an  
23 administrative law judge, by the administrative law judge. The Board of Trustees of the North  
24 Carolina State Health Plan for Teachers and State Employees is a "board" for purposes of this  
25 section."

26 **SECTION 3.** G.S. 150B-51 reads as rewritten:

27 "**§ 150B-51. Scope and standard of review.**

28 (a) In reviewing a final decision in a contested case in which an administrative law  
29 judge made a recommended decision and the State Personnel Commission made an advisory  
30 decision in accordance with G.S. 126-37(b1), the court shall make ~~two~~three initial  
31 ~~determinations. First, determinations, as follows:~~

32 (1) ~~the~~The court shall determine whether the applicable appointing authority  
33 heard new evidence after receiving the recommended decision. If the court  
34 determines that the applicable appointing authority heard new evidence, the  
35 court shall reverse the decision or remand the case to the applicable  
36 appointing authority to enter a decision in accordance with the evidence in  
37 the official record. ~~Second, if~~

38 (2) If the applicable appointing authority did not adopt the recommended  
39 decision, the court shall determine whether the administrative law judge's  
40 findings of fact and conclusions of law are supported by substantial evidence  
41 admissible under G.S. 150B-29(a), 150B-30, or 150B-31 in view of the  
42 entire record. If the court determines that the applicable appointing authority  
43 failed to adhere to the administrative law judge's findings of fact and  
44 conclusions of law that are supported by substantial evidence, the court shall  
45 reverse the decision or remand the case to the applicable appointing  
46 authority to enter a decision in accordance with the evidence in the official  
47 record.

48 (3) If the applicable appointing authority did not adopt the recommended  
49 decision, the court shall determine whether the applicable appointing  
50 authority's decision states the specific reasons why the applicable appointing  
51 authority did not adopt the recommended decision. If the court determines

1 that the applicable appointing authority did not state specific reasons why it  
2 did not adopt a recommended decision, the court shall reverse the decision  
3 or remand the case to the applicable appointing authority to enter the specific  
4 reasons.

5 (a1) In reviewing a final decision in a contested case in which an administrative law  
6 judge made a decision, in accordance with G.S. 150B-34(a), and the agency adopted the  
7 administrative law judge's decision, the court shall determine whether the agency heard new  
8 evidence after receiving the decision. If the court determines that the agency heard new  
9 evidence, the court shall reverse the decision or remand the case to the agency to enter a  
10 decision in accordance with the evidence in the official record. The court shall also determine  
11 whether the agency specifically rejected findings of fact contained in the administrative law  
12 judge's decision in the manner provided by G.S. 150B-36(b1) and made findings of fact in  
13 accordance with G.S. 150B-36(b2). If the court determines that the agency failed to follow the  
14 procedure set forth in G.S. 150B-36, the court may take appropriate action under subsection (b)  
15 of this section.

16 (b) Except as provided in subsection (c) of this section, in reviewing a final decision,  
17 the court may affirm the decision of the agency or remand the case to the agency or to the  
18 administrative law judge for further proceedings. It may also reverse or modify the agency's  
19 decision, or adopt the administrative law judge's decision if the substantial rights of the  
20 petitioners may have been prejudiced because the agency's findings, inferences, conclusions, or  
21 decisions are:

- 22 (1) In violation of constitutional provisions;
- 23 (2) In excess of the statutory authority or jurisdiction of the agency;
- 24 (3) Made upon unlawful procedure;
- 25 (4) Affected by other error of law;
- 26 (5) Unsupported by substantial evidence admissible under G.S. 150B-29(a),  
27 150B-30, or 150B-31 in view of the entire record as submitted; or
- 28 (6) Arbitrary, capricious, or an abuse of discretion.

29 (c) In reviewing a final decision in a contested case in which an administrative law  
30 judge made a decision, in accordance with G.S. 150B-34(a), and the agency does not adopt the  
31 administrative law judge's decision, the court shall review the official record, de novo, and shall  
32 make findings of fact and conclusions of law. In reviewing the case, the court shall not give  
33 deference to any prior decision made in the case and shall not be bound by the findings of fact  
34 or the conclusions of law contained in the agency's final decision. The court shall determine  
35 whether the petitioner is entitled to the relief sought in the petition, based upon its review of the  
36 official record. The court reviewing a final decision under this subsection may adopt the  
37 administrative law judge's decision; may adopt, reverse, or modify the agency's decision; may  
38 remand the case to the agency for further explanations under G.S. 150B-36(b1), 150B-36(b2),  
39 or 150B-36(b3), or reverse or modify the final decision for the agency's failure to provide the  
40 explanations; and may take any other action allowed by law.

41 (d) In reviewing a final agency decision allowing judgment on the pleadings or  
42 summary judgment, or in reviewing an agency decision that does not adopt an administrative  
43 law judge's decision allowing judgment on the pleadings or summary judgment pursuant to  
44 G.S. 150B-36(d), the court may enter any order allowed by G.S. 1A-1, Rule 12(c) or Rule 56. If  
45 the order of the court does not fully adjudicate the case, the court shall remand the case to the  
46 administrative law judge for such further proceedings as are just."

47 **SECTION 4.** This act is effective when it becomes law and applies to contested  
48 cases commenced on or after that date.