

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H.B. 1164
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HOUSE PRINCIPAL CLERK

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HOUSE DRH40152-ROz-21* (04/04)

Short Title: SBOE Rulemaking Clarification.

(Public)

Sponsors: Representative Moffitt.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY THAT THE STATE BOARD OF EDUCATION IS SUBJECT TO
3 RULE MAKING UNDER THE ADMINISTRATIVE PROCEDURE ACT AND TO
4 PROVIDE A REMEDY WHEN AN AGENCY FAILS TO ACT AS DIRECTED BY
5 STATUTE, AS RECOMMENDED BY THE JOINT LEGISLATIVE ADMINISTRATIVE
6 PROCEDURE OVERSIGHT COMMITTEE.

7 The General Assembly of North Carolina enacts:

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

9 **"§ 115C-12. Powers and duties of the Board generally.**

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

18"

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

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

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

27 **"§ 150B-44. Right to judicial intervention when final decision unreasonably delayed.**

28 ~~Unreasonable delay on the part of any agency or administrative law judge in taking any~~
29 ~~required action shall be justification for any person whose rights, duties, or privileges are~~
30 ~~adversely affected by such delay to seek a court order compelling action by the agency or~~
31 ~~administrative law judge. Failure of an administrative law judge subject to Article 3 of this~~
32 ~~Chapter or failure of an agency subject to Article 3A of this Chapter to make a final decision~~
33 ~~within 120 days of the close of the contested case hearing is justification for a person whose~~
34 ~~rights, duties, or privileges are adversely affected by the delay to seek a court order compelling~~
35 ~~action by the agency or by the administrative law judge. The Board of Trustees of the North~~



1 ~~Carolina State Health Plan for Teachers and State Employees is a "board" for purposes of this~~
2 ~~section."~~

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