

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2023

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SENATE BILL DRS15299-TQ-2

Short Title: Administrative Procedure Act Amendments. (Public)

Sponsors: Senator Moffitt (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND RULEMAKING PROCEDURES IN THE ADMINISTRATIVE  
3 PROCEDURE ACT.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 150B-2(6) reads as rewritten:

6 "(6) Person aggrieved. – Any person or group of persons of common interest  
7 directly or indirectly affected substantially in his, her, or its person, property,  
8 or employment by an administrative ~~decision~~.decision or by the adoption of a  
9 temporary or permanent rule."

10 SECTION 2. G.S. 150B-19.3(a) reads as rewritten:

11 "§ 150B-19.3. Limitation on certain environmental rules.

12 (a) An agency authorized to implement and enforce State and federal environmental laws  
13 may not adopt a rule for the protection of the environment or natural resources that imposes a  
14 more restrictive standard, limitation, or requirement than those imposed by federal law or rule, if  
15 a federal law or rule pertaining to the same subject matter has been adopted, unless adoption of  
16 the rule is required by one of the subdivisions of this subsection. An agency authorized to  
17 implement and enforce State and federal environmental laws may not adopt a rule for the  
18 protection of the environment or natural resources if a specific State statute, federal law, or  
19 federal regulation does not exist pertaining to and regulating the same subject matter unless  
20 adoption of the rule is required by State statute, federal law, or federal regulation. A rule required  
21 by one of the following subdivisions of this subsection shall be subject to the provisions of  
22 G.S. 150B-21.3(b1) as if the rule received written objections from 10 or more persons under  
23 G.S. 150B-21.3(b2):

- 24 (1) A serious and unforeseen threat to the public health, safety, or welfare.  
25 (2) An act of the General Assembly or United States Congress that expressly  
26 requires the agency to adopt rules.  
27 (3) A change in federal or State budgetary policy.  
28 (4) A federal regulation required by an act of the United States Congress to be  
29 adopted or administered by the State.  
30 (5) A court order."

31 SECTION 3. G.S. 150B-21.1 reads as rewritten:

32 "§ 150B-21.1. Procedure for adopting a temporary rule.

33 ...

34 (b1) If the Commission or its designee finds that the statement does not meet the criteria  
35 listed in subsection (a) of this section or that the rule does not meet the standards in  
36 ~~G.S. 150B-21.9~~, G.S. 150B-21.9 or Part 1 of this Article, the Commission or its designee must



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1 immediately notify the head of the agency. The agency may supplement its statement of need  
2 with additional findings or submit a new ~~statement~~. statement within 30 days of the notification.  
3 If the agency fails to supplement its statement of need with additional findings or submit a new  
4 statement to the Commission within 30 days, or submits written notice within 30 days to the  
5 Commission that the agency does not intend to supplement its statement of need with additional  
6 findings or submit a new statement, the Commission or its designee shall immediately return the  
7 rule to the agency. If the agency provides additional findings or submits a new statement, the  
8 Commission or its designee must review the additional findings or new statement within five  
9 business days after the agency submits the additional findings or new statement. If the  
10 Commission or its designee again finds that the statement does not meet the criteria listed in  
11 subsection (a) of this section or that the rule does not meet the standards in ~~G.S. 150B-21.9,~~  
12 G.S. 150B-21.9 or Part 1 of this Article, the Commission or its designee must immediately notify  
13 the head of the agency and return the rule to the agency. When the Commission returns a rule to  
14 an agency in accordance with this subsection, the agency may file an action for declaratory  
15 judgment within 30 days after notification by the Commission in Wake County Superior Court  
16 pursuant to Article 26 of Chapter 1 of the General Statutes.

17 ~~(b2) If an agency decides not to provide additional findings or submit a new statement~~  
18 ~~when notified by the Commission or its designee that the agency's findings of need for a rule do~~  
19 ~~not meet the required criteria or that the rule does not meet the required standards, the agency~~  
20 ~~must notify the Commission or its designee of its decision. The Commission or its designee shall~~  
21 ~~then return the rule to the agency. When the Commission returns a rule to an agency in~~  
22 ~~accordance with this subsection, the agency may file an action for declaratory judgment in Wake~~  
23 ~~County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes.~~

24 (b3) When the Commission returns to an agency a proposed permanent rule intended to  
25 replace a temporary rule, the holder of a permit from the agency may submit revised plans for a  
26 revised permit removing the impacts of the returned rule if all of the following conditions apply:

27 (1) The permit was conditioned upon adherence to the requirements of a  
28 temporary rule that the returned proposed permanent rule was intended to  
29 replace.

30 (2) The revised plans comply with all other applicable development regulations.

31 The agency shall review the revised plans and approve or deny the revised permit within 45  
32 days of the receipt of the revised plans. The agency may not impose an additional permit fee for  
33 review of a revised plan resulting from the expiration of a temporary rule.

34 (b4) If an agency has proposed a permanent rule pursuant to G.S. 150B-21.2 and the  
35 Commission has objected to the rule, the agency may not propose a temporary rule of  
36 substantially the same subject matter within 24 months unless either of the following  
37 circumstances applies:

38 (1) Adoption of the rule is otherwise required by State or federal law.

39 (2) There are changed conditions or circumstances that support the proposed  
40 temporary rule and the agency provides a statement citing the changed  
41 conditions or circumstances. For purposes of this subdivision, the changed  
42 conditions or circumstances shall be limited to changes in State or federal law  
43 or federal regulation. If the Commission finds that there are changed  
44 conditions or circumstances that justify the adoption of the proposed  
45 temporary rule, the agency may proceed with temporary rulemaking and may  
46 adopt a permanent rule to replace the temporary rule.

47 (b5) Once an agency has proposed a permanent rule pursuant to G.S. 150B-21.2 and the  
48 proposed rule has been published in the North Carolina Register, the agency may not propose a  
49 temporary rule of substantially the same subject matter within 24 months of the publication of  
50 the proposed permanent rule unless otherwise required by State or federal law.

1       ~~(b3)~~(b6) Notwithstanding any other provision of this subsection, if the agency has not  
2 complied with the provisions of G.S. 12-3.1, the Codifier of Rules shall not enter the rule into  
3 the Code.

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

10       (c1) Filing a petition for rule making or a request for a declaratory ruling with the agency  
11 that adopted the rule is not a prerequisite to filing an action under this subsection. A person who  
12 files an action for declaratory judgment under this subsection must serve a copy of the complaint  
13 on the agency that adopted the rule being contested, the Codifier of Rules, and the Commission.

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

16           (1) The date specified in the rule.

17           (2) The effective date of the permanent rule adopted to replace the temporary rule,  
18 if the Commission approves the permanent rule.

19           (3) The date the Commission returns to an agency a permanent rule the agency  
20 adopted to replace the temporary rule.

21           (4) The effective date of an act of the General Assembly that specifically  
22 disapproves a permanent rule adopted to replace the temporary rule.

23           (5) 270 days from the date the temporary rule was published in the North Carolina  
24 Register, unless the permanent rule adopted to replace the temporary rule has  
25 been submitted to the Commission.

26           (6) Notwithstanding subdivision (5) of this subsection, 12 months after the  
27 effective date of the temporary rule.

28       (e) Publication. – When the Codifier of Rules enters a temporary rule in the North  
29 Carolina Administrative Code, the Codifier must publish the rule in the North Carolina Register.

30       (f) Any person aggrieved by the adoption of a temporary rule or by the amendment of a  
31 temporary rule may file a petition for a contested case in accordance with the requirements set  
32 forth under G.S. 150B-23(a) within 30 days of the effective date of a temporary rule adoption or  
33 amendment."

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

35       **"§ 150B-21.2. Procedure for adopting a permanent rule.**

36       (a) Steps. – Before an agency adopts a permanent rule, the agency must comply with the  
37 requirements of this Article, including G.S. 150B-19.1, and it must take the following actions:

38           ...

39       (e) Hearing. – An agency must hold a public hearing on a rule it proposes to adopt if the  
40 agency publishes the text of the proposed rule in the North Carolina Register and the agency  
41 receives a written request for a public hearing on the proposed rule within 15 days after the notice  
42 of text is published. The agency must accept comments at the public hearing on both the proposed  
43 rule and any fiscal note that has been prepared in connection with the proposed rule.

44       An agency may hold a public hearing on a proposed rule and fiscal note in other  
45 circumstances. When an agency is required to hold a public hearing on a proposed rule or decides  
46 to hold a public hearing on a proposed rule when it is not required to do so, the agency must  
47 publish in the North Carolina Register a notice of the date, time, and place of the public hearing.  
48 The hearing date of a public hearing held after the agency publishes notice of the hearing in the  
49 North Carolina Register must be at least 15 but not later than 60 days after the date the notice is  
50 published. If notice of a public hearing has been published in the North Carolina Register and

1 that public hearing has been cancelled, the agency must publish notice in the North Carolina  
2 Register at least 15 days prior to the date of any rescheduled hearing.

3 (f) Comments. – An agency must accept comments on the text of a proposed rule that is  
4 published in the North Carolina Register and any fiscal note that has been prepared in connection  
5 with the proposed rule for at least 60 days after the text is published or until the date of any public  
6 hearing held on the proposed rule, whichever is longer. An agency must consider fully all written  
7 and oral comments received.

8 (g) Adoption. – An agency shall not adopt a rule until the time for commenting on the  
9 proposed text of the rule has elapsed and shall not adopt a rule if more than 12 months have  
10 elapsed since the end of the time for commenting on the proposed text of the rule. Prior to  
11 adoption, an agency must review any fiscal note that has been prepared for the proposed rule and  
12 consider any public comments received in connection with the proposed rule or the fiscal note.  
13 An agency shall not adopt a rule that differs substantially from the text of a proposed rule  
14 published in the North Carolina Register unless the agency ~~publishes the text of the proposed~~  
15 ~~different rule in the North Carolina Register and accepts comments on the proposed different rule~~  
16 ~~for the time set in subsection (f) of this section~~ complies with this Article, including  
17 G.S. 150B-19.1.

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

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

27 When an agency adopts a rule, it shall not take subsequent action on the rule without following  
28 the procedures in this Part. An agency must submit an adopted rule to the Rules Review  
29 Commission within 30 days of the agency's adoption of the rule. After 12 months have elapsed  
30 without approval of the proposed rule by the Commission, the Commission shall return the rule  
31 to the agency. An agency may propose a permanent rule with substantially the same subject  
32 matter following its return, but the new proposed rule must comply with the requirements set  
33 forth in subsections (a) through (f) of this section and G.S. 150B-21.9 prior to adoption of the  
34 rule.

35 (h) Explanation. – An agency must issue a concise written statement explaining why the  
36 agency adopted a rule if, within 15 days after the agency adopts the rule, a person asks the agency  
37 to do so. The explanation must state the principal reasons for and against adopting the rule and  
38 must discuss why the agency rejected any arguments made or considerations urged against the  
39 adoption of the rule. The agency must issue the explanation within 15 days after receipt of the  
40 request for an explanation.

41 (i) Record. – An agency must keep a record of a rulemaking proceeding. The record must  
42 include all written comments received, a transcript or recording of any public hearing held on the  
43 rule, any fiscal note that has been prepared for the rule, and any written explanation made by the  
44 agency for adopting the rule.

45 (j) Any person aggrieved by the adoption of a permanent rule or by the amendment of a  
46 permanent rule may file a petition for a contested case in accordance with the requirements set  
47 forth under G.S. 150B-23(a) within 30 days of the effective date of a permanent rule adoption or  
48 amendment."

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

50 **"§ 150B-21.3. Effective date of rules.**

51 ...

1 (b2) Objection. – Any person who objects to the adoption of a permanent rule may submit  
2 written comments to the agency. If the objection is not resolved prior to adoption of the rule, a  
3 person may submit written objections to the Commission. If the Commission receives written  
4 objections from 10 or more persons, no later than 5:00 P.M. of the day ~~following~~ seven days after  
5 the day the Commission approves the rule, clearly requesting review by the legislature in  
6 accordance with instructions posted on the agency's Web site pursuant to G.S. 150B-19.1(c)(4),  
7 and the Commission approves the rule, the rule will become effective as provided in subsection  
8 (b1) of this section. The Commission shall notify the agency that the rule is subject to legislative  
9 disapproval on the day following the day it receives 10 or more written objections. ~~When the~~  
10 ~~requirements of this subsection have been met and a rule is subject to legislative disapproval, the~~  
11 ~~agency may adopt the rule as a temporary rule if the rule would have met the criteria listed in~~  
12 ~~G.S. 150B-21.1(a) at the time the notice of text for the permanent rule was published in the North~~  
13 ~~Carolina Register.~~ If the Commission receives objections from 10 or more persons clearly  
14 requesting review by the legislature, and the rule objected to is one of a group of related rules  
15 adopted by the agency at the same time, the agency that adopted the rule may cause any of the  
16 other rules in the group to become effective as provided in subsection (b1) of this section by  
17 submitting a written statement to that effect to the ~~Commission~~ Codifier of Rules before the other  
18 rules become effective.

19 ...

20 (f) Technical Change. – A permanent rule for which no notice or hearing is required  
21 under G.S. 150B-21.5(a)(1) through (a)(5) or G.S. 150B-21.5(b) becomes effective on the first  
22 day of the month following the month the rule is approved by the Rules Review  
23 ~~Commission~~ Commission or the Codifier of Rules, as applicable."

24 **SECTION 6.** G.S. 150B-21.4 reads as rewritten:

25 **"§ 150B-21.4. Fiscal and regulatory impact analysis on rules.**

26 ...

27 (b) Local Funds. – Before an agency publishes in the North Carolina Register the  
28 proposed text of a permanent rule change that would affect ~~the expenditures or revenues of~~ a unit  
29 of local government, it must submit the text of the proposed rule change and a fiscal note on the  
30 proposed rule change to the Office of State Budget and Management as provided by  
31 G.S. 150B-21.26, the Fiscal Research Division of the General Assembly, the North Carolina  
32 Association of County Commissioners, and the North Carolina League of Municipalities. The  
33 fiscal note must state the amount by which the proposed rule change would increase or decrease  
34 expenditures or revenues of a unit of local government and must explain how the amount was  
35 computed.

36 (b1) Substantial Economic Impact. – Before an agency publishes in the North Carolina  
37 Register the proposed text of a permanent rule change that would have a substantial economic  
38 impact and that is not identical to a federal regulation that the agency is required to adopt, the  
39 agency shall prepare a fiscal note for the proposed rule change and have the note approved by  
40 the Office of State Budget and Management. The agency must also obtain from the Office a  
41 certification that the agency adhered to the regulatory principles set forth in  
42 G.S. 150B-19.1(a)(2), (5), and (6). The agency may request the Office of State Budget and  
43 Management to prepare the fiscal note only after, working with the Office, it has exhausted all  
44 resources, internal and external, to otherwise prepare the required fiscal note. If an agency  
45 requests the Office of State Budget and Management to prepare a fiscal note for a proposed rule  
46 change, that Office must prepare the note within 90 days after receiving a written request for the  
47 note. If the Office of State Budget and Management fails to prepare a fiscal note within this time  
48 period, the agency proposing the rule change shall prepare a fiscal note. A fiscal note prepared  
49 in this circumstance does not require approval of the Office of State Budget and Management.

50 If an agency prepares the required fiscal note, the agency must submit the note to the Office  
51 of State Budget and Management for review. The Office of State Budget and Management shall

1 review the fiscal note within 14 days after it is submitted and either approve the note or inform  
2 the agency in writing of the reasons why it does not approve the fiscal note. After addressing  
3 these reasons, the agency may submit the revised fiscal note to that Office for its review. If an  
4 agency is not sure whether a proposed rule change would have a substantial economic impact,  
5 the agency shall ask the Office of State Budget and Management to determine whether the  
6 proposed rule change has a substantial economic impact. Failure to prepare or obtain approval of  
7 the fiscal note as required by this subsection shall be a basis for objection to the rule under ~~G.S.~~  
8 ~~150B-21.9(a)(4)~~. G.S. 150B-21.9(a)(4), notwithstanding any review, certification, or  
9 determination by the Office of State Budget and Management described in this section.

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

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

26 (b2) Content. – A fiscal note required by subsection (b1) of this section must contain the  
27 following:

- 28 (1) A description of the persons who would be affected by the proposed rule  
29 change.
- 30 (2) A description of the types of expenditures that persons affected by the  
31 proposed rule change would have to make to comply with the rule and an  
32 estimate of these expenditures.
- 33 (3) A description of the purpose and benefits of the proposed rule change.
- 34 (4) An explanation of how the estimate of expenditures was computed.
- 35 (5) A description of at least two alternatives to the proposed rule that were  
36 considered by the agency and the reason the alternatives were rejected. The  
37 alternatives may have been identified by the agency or by members of the  
38 public.

39 (c) Errors. – An erroneous fiscal note prepared in good faith does not affect the validity  
40 of a rule.

41 (d) If an agency proposes the repeal of an existing rule, the agency is not required to  
42 prepare a fiscal note on the proposed rule change as provided by this section.

43 (e) If an agency proposes a temporary or permanent rule that regulates the same subject  
44 matter as an existing temporary or permanent rule, the agency shall prepare a fiscal note  
45 consistent with the requirements set forth under subsection (b2) of this section. This subsection  
46 shall apply to rules and subject matters that an agency currently has general authority to regulate,  
47 but where the proposed temporary or permanent rule seeks to establish more specific regulations  
48 than those already codified and results in a substantial economic impact."

49 **SECTION 7.** G.S. 150B-21.8 reads as rewritten:

50 **"§ 150B-21.8. Review of rule by Commission.**

- 51 (a) Emergency Rule. – The Commission does not review an emergency rule.

1 (b) Temporary and Permanent Rules. – An agency must submit temporary and permanent  
2 rules adopted by it to the Commission before the rule can be included in the North Carolina  
3 Administrative Code. The Commission reviews a temporary or permanent rule in accordance  
4 with the standards in G.S. 150B-21.9 and follows the procedure in this Part in its review of a rule.  
5 In the event the Commission finds the proposed temporary or permanent rule does not comply  
6 with the standards set forth in G.S. 150B-21.9, the Commission shall object to the proposed  
7 temporary or permanent rule.

8 (c) Scope. – When the Commission reviews an amendment to a temporary or permanent  
9 rule, it may review the entire rule that is being amended. The procedure in G.S. 150B-21.1 applies  
10 when the Commission objects to part of a temporary rule that is within its scope of review but is  
11 not changed by a rule amendment. The procedure in G.S. 150B-21.12 applies when the  
12 Commission objects to a part of a permanent rule that is within its scope of review but is not  
13 changed by a rule amendment.

14 (d) Judicial Review. – When the Commission returns a permanent rule to an agency in  
15 accordance with G.S. 150B-21.12(d), the agency may file an action for declaratory judgment in  
16 Wake County Superior Court within 30 days of the date the rule is returned to the agency,  
17 pursuant to Article 26 of Chapter 1 of the General Statutes."

18 **SECTION 8.** G.S. 150B-21.9 reads as rewritten:

19 **"§ 150B-21.9. Standards and timetable for review by Commission.**

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

- 22 (1) It is within the authority delegated to the agency by the General Assembly.
- 23 (2) It is clear and unambiguous.
- 24 (3) It is reasonably necessary to implement or interpret an enactment of the  
25 General Assembly, or of Congress, or a regulation of a federal agency. The  
26 Commission shall consider the cumulative effect of all rules adopted by the  
27 agency related to the specific purpose for which the rule is proposed.
- 28 (4) It was adopted in accordance with ~~Part 2 of this Article.~~ all applicable  
29 provisions of this Chapter.

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

32 The Commission may ask the Office of State Budget and Management to determine if a rule  
33 has a substantial economic impact and is therefore required to have a fiscal note. The Commission  
34 must ask the Office of State Budget and Management to make this determination if a fiscal note  
35 was not prepared for a rule and the Commission receives a written request for a determination of  
36 whether the rule has a substantial economic impact.

37 In the event that a proposed temporary or permanent rule fails to comply with any of the  
38 standards set forth in this section, the Commission shall object to the temporary or permanent  
39 rule.

40 ~~(a1) Entry of a rule in the North Carolina Administrative Code after review by the~~  
41 ~~Commission creates a rebuttable presumption that the rule was adopted in accordance with Part~~  
42 ~~2 of this Article.~~

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

48 **SECTION 9.** G.S. 150B-21.12 reads as rewritten:

49 **"§ 150B-21.12. Procedure when Commission objects to a permanent rule.**

1 (a) Action. – When the Commission objects to a permanent rule, it must send the agency  
2 that adopted the rule a written statement of the objection and the reason for the objection. The  
3 agency that adopted the rule must take one of the following actions:

- 4 (1) Change the rule to satisfy the Commission's objection and submit the revised  
5 rule to the Commission.  
6 (2) Submit a written response to the Commission indicating that the agency has  
7 decided not to change the rule.

8 (b) Time Limit. – An agency that is not a board or commission must take one of the  
9 actions listed in subsection (a) of this section within 30 days after receiving the Commission's  
10 statement of objection. A board or commission must take one of these actions within 30 days  
11 after receiving the Commission's statement of objection or within 10 days after the board or  
12 commission's next regularly scheduled meeting, whichever comes later.

13 (c) Changes. – When an agency changes a rule in response to an objection by the  
14 Commission, the Commission must determine whether the change satisfies the Commission's  
15 objection. If it does, the Commission must approve the rule. If it does not, the Commission must  
16 send the agency a written statement of the Commission's continued objection and the reason for  
17 the continued objection. The Commission must also determine whether the change is substantial.  
18 In making this determination, the Commission shall use the standards set forth in  
19 G.S. 150B-21.2(g). If the change is substantial, the revised rule shall be published and reviewed  
20 in accordance with the procedure set forth in G.S. 150B-21.1(a3) and (b).

21 (d) Return of Rule. – A rule to which the Commission has objected remains under review  
22 by the Commission until the agency that adopted the rule ~~decides not to satisfy~~ satisfies the  
23 Commission's objection ~~and makes a written request to the Commission to return the rule to the~~  
24 ~~agency. When the Commission returns a rule to which it has objected, it must or~~ submits a written  
25 response to the Commission indicating that the agency has decided not to change the rule. If the  
26 agency does not submit a revised rule to satisfy the Commission's objection within the time limit  
27 established in subsection (b) of this section, or submits a written response indicating that the  
28 agency has decided not to change the rule, the Commission shall return the rule to the agency  
29 and notify the Codifier of Rules of its action. If the rule that is returned would have increased or  
30 decreased expenditures or revenues of a unit of local government, the Commission must also  
31 notify the Governor of its action and must send a copy of the record of the Commission's review  
32 of the rule to the Governor. The record of review consists of the rule, the Commission's letter of  
33 objection to the rule, the agency's written response to the Commission's letter, and any other  
34 relevant documents before the Commission when it decided to object to the rule.

35 **Regulatory Reform"**

36 **SECTION 10.** G.S. 150B-33(b) reads as rewritten:

37 "(b) An administrative law judge may:

38 ...

- 39 (13) Construe, implement, invalidate, or enforce any decision, or any agreement or  
40 settlement agreement, between a person aggrieved and an agency."

41 **SECTION 11.** Any pending proposed temporary rule submitted to the Rules Review  
42 Commission pursuant to G.S. 150B-21.1 on or before the day immediately prior to the effective  
43 date of this act shall be returned to the agency by the Commission if:

- 44 (1) The Commission has notified the agency that the agency's statement of its  
45 findings of need does not meet the criteria listed in G.S. 150B-21.1(a) or that  
46 the rule does not meet the standards in G.S. 150B-21.9 or Article 2A of  
47 Chapter 150B of the General Statutes;  
48 (2) The agency has not supplemented its statement of need with additional  
49 findings or submitted a new statement that meets the criteria listed in  
50 G.S. 150B-21.1(a) or that the rule meets the standards in G.S. 150B-21.9 or



1 Article 2A of Chapter 150B of the General Statutes, as determined by the  
2 Commission; and  
3 (3) More than 60 days have passed since the Commission first notified the agency  
4 that the statement does not meet the criteria listed in G.S. 150B-21.1(a) or that  
5 the rule does not meet the standards in G.S. 150B-21.9 or Article 2A of  
6 Chapter 150B of the General Statutes.

7 If a rule is returned to the agency under this section, the agency may file an action for  
8 declaratory judgment within 30 days after the rule is returned in Wake County Superior Court  
9 pursuant to Article 26 of Chapter 1 of the General Statutes and G.S. 150B-21.1(b2).

10 **SECTION 12.** Any pending proposed permanent rule submitted to the Commission  
11 pursuant to G.S. 150B-21.2 on or before the day immediately prior to the effective date of this  
12 act shall immediately be returned to the agency if:

- 13 (1) The Commission has notified the agency that it has objected to the proposed  
14 permanent rule.
- 15 (2) The agency has not submitted a change to the rule to satisfy the Commission's  
16 objection.
- 17 (3) More than 60 days have passed since the Commission first notified the agency  
18 of the Commission's objection to the proposed rule.

19 If a rule is returned to the agency under this section, the agency may file an action for  
20 declaratory judgment within 30 days after the rule is returned to the agency in Wake County  
21 Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes.

22 **SECTION 13.** Sections 11 and 12 of this act are effective when they become law.  
23 The remainder of this act is retroactively effective December 31, 2021, and applies to temporary  
24 rules and permanent rules proposed or adopted on or after that date.