



HOUSE BILL 162: Amend Administrative Procedure Laws.

2017-2018 General Assembly

Committee:	House Select Committee on Administrative Procedure Laws	Date:	January 25, 2018
Introduced by:	Reps. Jordan, Stevens, Hardister, Floyd	Prepared by:	Chris Saunders Staff Attorney
Analysis of:	Conference Committee Substitute (H162-CCSSB-7)		

OVERVIEW: *House Bill 162 would make various changes to State administrative procedure laws.*

The Proposed Conference Committee Substitute differs from the Third Edition of the bill by (i) eliminating a provision in Section 4 requiring that a proposed permanent rule or set of rules with a projected aggregate cost of ten million dollars (\$10,000,000) over any five year period be treated as if a bill to disapprove the rule had been introduced, and (ii) requiring the Rules Review Commission to report to the General Assembly on such rules.

[As introduced, this bill was identical to S16, as introduced by Sens. Wells, Barringer, Daniel.]

BACKGROUND: Sections 1, 2, and 3 of House Bill 162 comprise several recommendations from the Joint Legislative Administrative Procedure Oversight Committee (APO) to the 2017 Regular Session of the 2017 General Assembly. These recommendations were proposed to APO by the Office of Administrative Hearings and the Rules Review Commission.

BILL ANALYSIS:

Sections 1.(a) and 1.(b): Authorize Rule Technical Changes

Under current law, an agency can make certain types of technical changes to its rules without publishing notice of the text in the North Carolina Register or holding a public hearing, but such a change must still be submitted to the Rules Review Commission.

Section 1.(a) would provide that these technical changes would not need to be submitted to the Rules Review Commission.

Section 1.(b) would authorize the Codifier of Rules to make certain types of technical changes to an agency's rules. The Codifier could only do this after consulting with the agency.

Sections 2.(a) and 2.(b): Clarify Contested Case Policy

Under current law, a person aggrieved by an agency action is not required to petition the agency for rule making or to seek or obtain a declaratory ruling before seeking judicial review.

Section 2.(a) would provide that a person aggrieved by an agency action is not required to petition the agency for rule making or to seek or obtain a declaratory ruling before commencing a contested case.

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Section 2.(b) would make a conforming change.

Section 3: Amend Periodic Review of Rules Process

Under the current process for the periodic review of rules, agencies must classify their rules as necessary with substantive public interest, necessary without substantive public interest, or unnecessary. Agencies must then readopt the rules that were classified as necessary with substantive public interest. Such rules are subject to notice and public comment requirements and review by the Rules Review Commission. Rules that are classified as unnecessary or necessary without substantive public interest are not subject to readoption.

Section 3 would eliminate the category of necessary without substantive public interest so that all rules would be classified as either necessary or unnecessary. Rules that are classified as necessary would be subject to readoption.

Section 4: Restrictions on Rules with Substantial Financial Costs

Section 4 would place the following restrictions on rules that would have a substantial projected financial cost:

- Prohibit an agency from adopting a permanent rule or set of rules with a projected aggregate financial cost equal to or greater than one hundred million dollars during any five-year period.
- Place the following requirements on an agency adopting a permanent rule or set of rules with a projected aggregate financial cost equal to or greater than ten million dollars during any five-year period.
 - If the agency is a board or commission, the rule or set of rules must be approved by at least sixty percent of those voting.
 - If the agency is headed by a member of the Council of State, the Council of State member must sign a certification indicating the review and support of the rule or set of rules.
 - For other agencies, the Governor must sign a certification indicating the review and support of the rule or set of rules.
- Provide that a permanent rule or set of rules with a projected aggregate financial cost equal to or greater than ten million dollars during any five-year period is automatically subject to legislative review as if ten letters of objection had been received. The Rules Review Commission must provide a list of the rules and sets of rules subject to this provision to the Joint Legislative Administrative Procedure Oversight Committee and the Joint Legislative Commission on Governmental Operations before the start of each regular session of the General Assembly.

Section 5: Amend Incorporating Materials in a Rule by Reference

Section 5 would prohibit an agency from incorporating all or part of a code, standard, or regulation adopted by the federal government, unless the agency establishes a procedure by which any change by the federal government is reviewed and approved by the agency within 120 days of the change.

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Section 6: Adoption of Permanent Environmental Rules that Exceed Federal Requirements in Cases of Serious and Unforeseen Threats

Under current law, an agency authorized to implement and enforce State and federal environmental laws may not adopt a rule that imposes a more restrictive standard, limitation, or requirement than imposed by federal law unless adoption of the rule is required by (i) a serious and unforeseen threat to public health, safety or welfare; (ii) an act of the General Assembly or United States Congress that expressly requires the agency to adopt rules; (iii) a change in federal or State budgetary policy; (iv) a federal regulation required by an act of United States Congress to be adopted or administered by the State, or (v) a court order.

Section 6 would provide that a permanent rule adopted by an agency authorized to implement and enforce State and federal environmental laws that imposes a more restrictive standard, limitation, or requirement than imposed by federal law and that is adopted to address a serious and unforeseen threat to public health, safety, or welfare is subject to the same limitations and legislative review requirements set out in Section 4 that apply to a rule or set of rules with a projected aggregate financial cost equal to or greater than ten million dollars during any five-year period.

EFFECTIVE DATE: House Bill 162 would be effective when it becomes law. Section 3 would apply to agency rule reports submitted to the Office of Administrative Hearings pursuant to G.S. 150B-21.3A(c)(1) on or after October 1, 2017. Sections 4 and 6 would apply to proposed permanent and readopted rules published in the North Carolina Register and proposed permanent rules posted on the Web site of the Office of Administrative Hearings on or after October 1, 2017.

Jeff Hudson, Staff Attorney, substantially contributed to this summary.