



This Bill Analysis reflects the contents of the bill as it was presented in committee.

HOUSE BILL 117: Modify Administrative Law Provisions.

2023-2024 General Assembly

Committee:	House Judiciary 2. If favorable, re-refer to Rules, Calendar, and Operations of the House	Date:	May 2, 2023
Introduced by:	Reps. Stevens, Riddell	Prepared by:	Susan Sitze
Analysis of:	PCS to First Edition H117-CSSA-17		Staff Attorney

OVERVIEW: *The Proposed Committee Substitute (PCS) for House Bill 117 would modify various statutory provisions pertaining to administrative law including the following:*

- *Repeal a provision exempting the Occupational Safety and Health Division (OSH Division) of the Department of Labor from (i) publishing a notice of text, (ii) holding a public hearing, or (iii) review by the Rules Review Commission when adopting rules identical to federal regulations.*
- *Prohibit certain agencies from incorporating subsequent amendments to rules incorporated by reference except through approval by the Codifier or subsequent rule-making proceedings.*

CURRENT LAW:

The Administrative Procedure Act, Chapter 150B of the General Statutes, sets out the procedures that most executive agencies must follow to adopt "rules," which are the agency regulations, standards, or statements of general applicability that implement or interpret an act of the North Carolina General Assembly or federal law. Rules must be adopted following the procedures set forth in that Chapter, which generally includes the following:

- Determination that a rule is needed.
- Determination of whether there is State fiscal impact, local fiscal impact, or substantial economic impact, and if so, submission of a fiscal note to the Office of State Budget and Management.
- Publication of proposed text.
- A public comment period and in most instances a public hearing.
- Review and approval by the Rules Review Commission.

For permanent rules, this process generally takes 9-12 months. There is a somewhat compressed temporary rule process that generally reduces that time by about 3 months, but that can only be used in situations where the public interest requires faster adoption of the rule, and temporary rules expire after 270 days unless the agency adopts permanent rules to replace them.

BILL ANALYSIS:

Section 1

G.S. 150B-21.5(c) exempts the State OSH Division from the notice and hearing requirements, and the review by the Rules Review Commission when it "proposes to adopt a rule that concerns an occupational

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safety and health standard and is identical to a federal regulation promulgated by the Secretary of the United States Department of Labor."

Section 1 of the bill would repeal G.S. 150B-21.5(c). Going forward, the OSH Division would have to follow all of the procedures set forth in Chapter 150B when adopting rules identical to federal regulations.

This section would be effective when it becomes law and apply to rules adopted by the OSH Division on or after that date.

Section 2

G.S. 150B-21.6 allows rules and parts of rules, codes, standards, and regulations adopted by the adopting agency, another agency, the federal government, or a generally recognized organization or association to be incorporated by reference to the material, rather than inclusion of the full text. If material is incorporated by reference, the rule must indicate whether subsequent amendments to the incorporated material are included. If the rule indicates that subsequent amendments to the incorporated material are included, then the agency is not required to adopt a new rule in order to include the subsequent amendments to the reference material.

Section 2 of the bill would amend G.S. 150B-21.6 in the following ways:

- Require a rule to specify the date the incorporated material was published.
- Limit the following agencies' ability to incorporate subsequent amendments to referenced material without subsequent rule-making proceedings:
 - The Department of Environmental Quality
 - The Environmental Management Commission
 - The Coastal Resources Commission
 - The Marine Fisheries Commission
 - The Wildlife Resources Commission
 - The Commission for Public Health
 - The Sedimentation Control Commission
 - The North Carolina Oil and Gas Commission
 - The Pesticide Board
- Provide the following process for determining whether one of the agencies listed above may incorporate specific subsequent amendments without subsequent rule-making proceedings:
 - The agency must submit the proposed amendment to the Codifier, provide notice through the agency's mailing list, and provide notice on the agency's website, including instructions on how to object to incorporation of the amendment.
 - If the Codifier does not receive at least 10 objections, the Codifier shall enter the updated incorporation into the Code.
 - If the Codifier receives 10 or more objections within 45 days of the initial posting of the notice to the agency's website, the Codifier must review the proposed amendments within 15 days, using the standards provided in G.S. 150B-21.2(g).

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- If the Codifier determines the amendments differ substantially, the amendments are not incorporated and the agency must adopt them by permanent rule pursuant to G.S. 150B-21.2.
- If the Codifier determines the amendments do not differ substantially, the Codifier shall enter the updated incorporation into the Code.

This section would become effective July 1, 2024, and apply to all rules adopted on or after that date.

EFFECTIVE DATE: Except as otherwise provided, this act would be effective when it becomes law.

**Chris Saunders, Staff Attorney, substantially contributed to this summary.*