



2023-2024 General Assembly

# HOUSE BILL 259: 2023 Appropriations Act, Sec. 21.2: Amend Rulemaking Procedures in the Administrative Procedure Act

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<b>Committee:</b>		<b>Date:</b>	December 18, 2023
<b>Introduced by:</b>		<b>Prepared by:</b>	Kellette Wade Staff Attorney
<b>Analysis of:</b>	Sec. 21.2 of S.L. 2023-134		

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**OVERVIEW:** *Section 21.2 of S.L. 2023-134 makes various changes to the Administrative Procedure Act.*

*This section became effective October 3, 2023.*

## CURRENT LAW AND BILL ANALYSIS:

- Procedure for adopting a temporary rule:
  - When the Rules Review Commission (Commission) or its designee finds that a statement of need for a proposed temporary rule doesn't meet certain criteria, current law allows an agency to supplement its statement of need with additional findings or submit a new statement. If an agency decides not to provide these additional findings, the agency can file an action for declaratory judgment in Wake County Superior Court after the Commission has returned the rule to the agency. This section requires the agency to submit that new or supplemental statement within 30 days of the Commission's notification, and if the agency satisfies this 30-day requirement, the Commission must review the additional information. This section also provides that the action for declaratory judgment must be filed within 30 days of the date the rule is returned to the agency.
  - This section provides that if the Commission objects to a proposed permanent rule intended to replace a temporary rule (which results in the expiration of the temporary rule), the holder of a permit issued by the agency can submit revised plans for a revised permit that does not adhere to the returned rule, if:
    - The permit was conditioned upon compliance with a temporary rule that the returned proposed permanent rule was intended to replace.
    - The revised plans comply with all other applicable regulations.
  - This section provides that a temporary rule must expire within 12 months of its effective date.
- Procedure for adopting a permanent rule:
  - When an agency is required or decides to hold a public hearing on a proposed rule, the agency is required to publish notice of the hearing date, time, and place in the North Carolina Register, and the hearing must be at least 15 days after the date the notice is published. This section now requires that it must be at least 15 days but not later than 60 days after the date the notice is published.

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# House Bill 259

Page 2

- Effective date of rules:
  - This section removes the ability of an agency to adopt a rule as a temporary rule when a rule is subject to legislative disapproval. This section also allows the Codifier of Rules, rather than the Commission, to approve a delayed effective date for rules that did not receive 10 letters of objection and are part of a group of related rules that did, at the request of the agency.
  - Previously, certain permanent rules without notice or hearing requirements became effective on the first day of the month following the month the rule is approved by the Commission. This section provides that the rule becomes effective on the first day of the month following the month the rule is approved by the Commission or the Codifier of Rules.
- Fiscal and regulatory impact analysis on rules:
  - An agency was previously required to submit the text of a proposed rule change and a fiscal note to the Office of State Budget and Management, the Fiscal Research Division of the General Assembly, the North Carolina Association of County Commissioners, and the North Carolina League of Municipalities before the agency publishes the proposed text of the rule change that would affect the expenditures or revenues of a unit of local government. This section broadens the fiscal note requirement to apply to all rules that would affect "a unit of local government" rather than "the expenditures or revenues of a unit of local government." This section also requires the fiscal note to state the amount by which the proposed rule would affect the "direct or indirect" expenditures of the local government.
- Notice, hearing, and submission requirements:
  - The State Occupational Safety and Health Division was exempt from the notice and hearing requirements and review by the Commission when it "proposes to adopt a rule that concerns an occupational safety and health standard and is identical to a federal regulation promulgated by the Secretary of the United States Department of Labor." This section repeals that exemption, requiring the Division to follow all the procedures set forth in the Administrative Procedure Act (APA) when adopting rules identical to federal regulations.
- Commission review of rules:
  - This section includes temporary rules in the scope of rules that can be reviewed by the Commission in their entirety when an amendment to a temporary rule is being reviewed. The section applies the statutory procedures for temporary rules when the Commission objects to part of a temporary rule within its scope of review that is not changed by the rule amendment. This section also imposes a 30-day time limitation for an agency to file an action for declaratory judgment in Wake County Superior Court when the Commission returns a permanent rule to an agency under procedures for objections to permanent rules.
- Standards and timetable for review by Commission:
  - This section requires the Commission to object to a temporary or permanent rule if that rule fails to comply with statutory review criteria and eliminates the rebuttable presumption that the rule was adopted in accordance with the procedural requirements of the APA because it was entered into the North Carolina Administrative Code.
- Procedure when Commission objects to a permanent rule:

# House Bill 259

Page 3

- Previously, when an agency changes a rule in response to an objection by the Commission, the Commission must determine if the change satisfies the Commission's objection and whether the change is substantial. In determining whether the change is substantial, prior law required the Commission to publish and review the revised rule in accordance with certain procedures for adopting a temporary rule. This section amends this requirement to provide that the Commission must publish and review the revised rule in accordance with certain procedures for adopting a permanent rule. This section also eliminates the requirement that an agency must submit a written request for return of a rule to which the Commission has objected. If the agency does not satisfy the Commission's objection or submit a written statement that the agency does not intend to change the rule, the Commission must return the rule to the agency 30 days after the objection.
- U.S. Attorney General decision for publication in North Carolina Register:
  - This section requires letters and other documents received by the authorities required to submit any "changes affecting voting" from the Attorney General of the United States in which a final decision is made concerning a submitted "change affecting voting" to be filed with the Codifier of Rules rather than the Director of the Office of Administrative Hearings.
- Duties of Executive Director of State Board:
  - This section directs the Executive Director of the State Board of Elections to publish written opinions to candidates, the communications media, political committees, referendum committees regarding filing procedures, and compliance with the Article governing contributions and expenditures in political campaigns on the State Board of Elections website rather than in the Administrative Code.
- Proposed temporary rules submitted on or the day prior to the effective date:
  - This section directs the Commission to return any proposed temporary rules pending on the effective date of this section if:
    - The Commission has notified the agency that the agency's statement of its findings of need does not meet statutory criteria.
    - The agency has not supplemented its statement of need with additional findings or submitted a new statement that meets statutory criteria.
    - More than 60 days have passed since the Commission first notified the agency that the statement does not meet statutory criteria.
- Proposed permanent rule submitted on or before the day prior to the effective date:
  - This section directs the Commission to return any proposed permanent rules pending on the effective date of this section if:
    - The Commission has notified the agency that it has objected to the proposed permanent rule.
    - The agency has not submitted a change to the rule to satisfy the Commission's objection.
    - More than 60 days have passed since the Commission first notified the agency of the Commission's objection to the proposed rule.

**EFFECTIVE DATE:** This section became effective October 3, 2023.