

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

H

1

HOUSE BILL 1965

Short Title: Advance Notice of Rule Making.

(Public)

Sponsors: Representatives Culp; Gottovi, Dockham, and Richardson.

Referred to: Environment.

June 1, 1994

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT AGENCIES GIVE NOTICE OF INTENDED RULE
MAKING BEFORE THE COMMENCEMENT OF RULE MAKING, AS
RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 150B-21.1(a) reads as rewritten:

"(a) Adoption. – An agency may adopt a temporary rule without prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical when it finds that adherence to the notice and hearing requirements of this Part would be contrary to the public interest and that the immediate adoption of the rule is required by one or more of the following:

- (1) A serious and unforeseen threat to the public health, safety, or welfare.
- (2) The effective date of a recent act of the General Assembly or the United States Congress.
- (3) A recent change in federal or State budgetary policy.
- (4) A federal regulation.
- (5) A court order.
- (6) The need for the rule to become effective the same date as the State Medical Facilities Plan approved by the Governor, if the rule addresses a matter included in the State Medical Facilities Plan.

An agency must prepare a written statement of its findings of need for a temporary rule. The statement must be signed by the head of the agency adopting the rule.

An agency must begin rule-making proceedings for a permanent rule by the day it adopts a temporary rule. An agency begins rule-making proceedings for a permanent

1 rule by ~~submitting to the Codifier of Rules written notice of its intent to adopt a permanent~~
2 ~~rule.~~ publishing a Notice of Intended Rule Making in the North Carolina Register."

3 Sec. 2. G.S. 150B-21.2 is amended by adding a new subsection to read:

4 "(a1) Notice Of Intended Rule Making.— Before the commencement of rule
5 making, an agency shall publish a Notice of Intended Rule Making in the North
6 Carolina Register. The Notice of Intended Rule Making shall describe the subject
7 matter and intent of the rule the agency intends to propose, and shall specify the period
8 of time during which the agency will receive comment on its intention to propose the
9 rule. The agency shall receive public comment for not less than 60 days after the date
10 the Notice of Intended Rule Making is published in the North Carolina Register. In
11 formulating a proposed rule, the agency shall consider all comments received by the
12 agency during the comment period. The agency shall not publish the proposed rule in
13 the North Carolina Register until the comment period specified on the Notice of
14 Intended Rule Making has closed."

15 Sec. 3. G.S. 150B-21.2(a) reads as rewritten:

16 "(a) Notice. – Before an agency adopts a permanent rule, it must publish notice of
17 its intent to adopt a permanent rule in the North Carolina Register and as required by
18 any other law. The notice published in the North Carolina Register must include all of
19 the following:

- 20 (1) ~~Either the~~ The text of the proposed rule ~~or a statement of the subject~~
21 ~~matter of the proposed rule making.~~ rule.
- 22 (2) A short explanation of the reason for the proposed action.
- 23 (3) A citation to the law that gives the agency the authority to adopt the
24 proposed rule, if the notice includes the text of the proposed rule, or a
25 citation to the law that gives the agency the authority to adopt a rule on
26 the subject matter of the proposed rule making, if the notice includes
27 only a statement of the subject matter of the proposed rule making.
- 28 (4) The proposed effective date of the proposed rule, if the notice includes
29 the text of the proposed rule, or the proposed effective date of a rule
30 adopted on the subject matter of the proposed rule making, if the
31 notice includes only a statement of the subject matter of the proposed
32 rule making.
- 33 (5) The date, time, and place of any public hearing scheduled on the
34 proposed rule or subject matter of the proposed rule making.
- 35 (6) Instructions on how a person may demand a public hearing on a
36 proposed rule if the notice does not schedule a public hearing on the
37 proposed rule and subsection (c) requires the agency to hold a public
38 hearing on the proposed rule when requested to do so.
- 39 (7) The period of time during which and the person to whom written
40 comments may be submitted on the proposed rule or subject matter of
41 the proposed rule making.
- 42 (8) If a fiscal note has been prepared for the proposed rule or will be
43 prepared when a rule is proposed on the subject matter of the proposed

1 rule making, a statement that a copy of the fiscal note can be obtained
2 from the agency."

3 Sec. 4. G.S. 150B-21.2 is amended by a new subsection to read:

4 "(i) Optional Rule-Making Agenda. – An agency, at its sole discretion, may
5 periodically publish in the North Carolina Register one or more agenda that describe the
6 substantive areas with respect to which the agency plans or is contemplating the
7 issuance of a Notice of Intended Rule Making, the publication of a proposed rule, the
8 text of a proposed rule, or a final rule for the period specified in that agenda. The
9 publication or nonpublication of any agenda in the North Carolina Register shall not
10 affect the proposal or adoption of any rule under this Part."

11 Sec. 5. This act is effective upon ratification and applies to rule making
12 commenced on or after that date.