

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

5

SENATE BILL 182

Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/8/97

Third Edition Engrossed 4/15/97

House Committee Substitute Favorable 7/23/97

Fifth Edition Engrossed 7/30/97

Short Title: Wildlife Comm. Temporary Rules.

(Public)

Sponsors:

Referred to:

February 19, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE WILDLIFE RESOURCES COMMISSION TO ADOPT CERTAIN TEMPORARY RULES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 150B-21.1 is amended by adding a new subsection to read:

"(a1) Notwithstanding the provisions of subsection (a) of this section, the Wildlife Resources Commission may adopt a temporary rule after prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical to protect the public health, safety, or welfare, conserve wildlife resources, or provide for the orderly and efficient operation of game lands by establishing any of the following:

(1) No wake zones;

(2) Hunting or fishing seasons;

(3) Hunting or fishing bag limits;

(4) Management of public game lands as defined in G.S. 113-129(8a).

1        When the Wildlife Resources Commission adopts a temporary rule pursuant to this  
2 subsection, it must submit the reference to this subsection as its statement of need to the  
3 Codifier of Rules."

4            Section 2. G.S. 150B-21.1(b) reads as rewritten:

5        "(b) Review. – When an agency adopts a temporary rule it must submit the rule and  
6 the agency's written statement of its findings of the need for the rule to the Codifier of  
7 Rules. Within one business day after an agency submits a temporary rule, the Codifier of  
8 Rules must review the agency's written statement of findings of need for the rule to  
9 determine whether the statement of need meets the criteria listed in ~~subsection (a).~~  
10 subsection (a) or (a1) of this section. In reviewing the statement, the Codifier of Rules  
11 may consider any information submitted by the agency or another person. If the Codifier  
12 of Rules finds that the statement meets the criteria, the Codifier of Rules must notify the  
13 head of the agency and enter the rule in the North Carolina Administrative Code.

14        If the Codifier of Rules finds that the statement does not meet the criteria, the Codifier  
15 of Rules must immediately notify the head of the agency. The agency may supplement its  
16 statement of need with additional findings or submit a new statement. If the agency  
17 provides additional findings or submits a new statement, the Codifier of Rules must  
18 review the additional findings or new statement within one business day after the agency  
19 submits the additional findings or new statement. If the Codifier of Rules again finds that  
20 the statement does not meet the criteria listed in ~~subsection (a),~~ subsection (a) or (a1) of  
21 this section, the Codifier of Rules must immediately notify the head of the agency.

22        If an agency decides not to provide additional findings or submit a new statement  
23 when notified by the Codifier of Rules that the agency's findings of need for a rule do not  
24 meet the required criteria, the agency must notify the Codifier of Rules of its decision.  
25 The Codifier of Rules must then enter the rule in the North Carolina Administrative Code  
26 on the sixth business day after receiving notice of the agency's decision."

27            Section 3. G.S. 150B-21.1(c) reads as rewritten:

28        "(c) Standing. – A person aggrieved by a temporary rule adopted by an agency may  
29 file an action for declaratory judgment in Wake County Superior Court pursuant to  
30 Article 26 of Chapter 1 of the General Statutes. In the action, the court shall determine  
31 whether the agency's written statement of findings of need for the rule meets the criteria  
32 listed in subsection (a) or (a1) of this section and whether the rule meets the standards in  
33 G.S. 150B-21.9 that apply to review of a permanent rule. The court shall not grant an ex  
34 parte temporary restraining order.

35        Filing a petition for rule making or a request for a declaratory ruling with the agency  
36 that adopted the rule is not a prerequisite to filing an action under this subsection. A  
37 person who files an action for declaratory judgment under this subsection must serve a  
38 copy of the complaint on the agency that adopted the rule being contested, the Codifier of  
39 Rules, and the Commission."

40            Section 4. This act is effective when it becomes law.