

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 968
Committee Substitute Favorable 4/22/99

Short Title: Amend Contested Case Proc.

(Public)

Sponsors:

Referred to:

April 12, 1999

1 A BILL TO BE ENTITLED
2 AN ACT TO MODIFY THE PROCEDURES CONCERNING FINAL
3 ADMINISTRATIVE DECISIONS IN CONTESTED CASES HEARD BY THE
4 OFFICE OF ADMINISTRATIVE HEARINGS.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 150B-2(5) reads as rewritten:

7 "(5) "Party" means any person or agency named or admitted as a party or
8 properly seeking as of right to be admitted as a party and includes the
9 agency as appropriate. ~~This subdivision does not permit an agency that~~
10 ~~makes a final decision, or an officer or employee of the agency, to petition for~~
11 ~~initial judicial review of that decision."~~

12 Section 2. G.S. 150B-29(a) reads as rewritten:

13 "(a) In all contested cases, irrelevant, immaterial and unduly repetitious evidence
14 shall be excluded. Except as otherwise provided, the rules of evidence as applied in the
15 trial division of the General Court of Justice shall be followed; but, when evidence is not
16 reasonably available under the rules to show relevant facts, then the most reliable and
17 substantial evidence available shall be admitted. On the judge's own motion, an
18 administrative law judge may exclude evidence that is inadmissible under this section.

19 The party with the burden of proof in a contested case must establish the facts required by

1 G.S. 150B-23(a) by a preponderance of the evidence. It shall not be necessary for a party
2 or his attorney to object at the hearing to evidence in order to preserve the right to object
3 to its consideration by the administrative law judge in making a recommended decision,
4 by the agency in making a final decision, or by the court on judicial review."

5 Section 3. G.S. 150B-34 reads as rewritten:

6 "**§ 150B-34. ~~Recommended~~ Final decision or order of administrative law judge.**
7 **order.**

8 (a) Except as provided in ~~G.S. 150B-36(e)~~, subsection (c) of this section, in each
9 contested case the administrative law judge shall make a ~~recommended~~ final decision or
10 order that contains findings of fact and conclusions of law.

11 (b) Repealed by Session Laws 1991, c. 35, s. 6.

12 (c) Notwithstanding subsection (a) of this section, in cases arising under Article 9
13 of Chapter 131E of the General Statutes, the administrative law judge shall make a
14 recommended decision or order that contains findings of fact and conclusions of law. A
15 final decision shall be made by the agency after review of the official record as defined in
16 G.S. 150B-37(a) and shall include findings of fact and conclusions of law. The final
17 agency decision shall recite and address all of the facts set forth in the recommended
18 decision. For each finding of fact in the recommended decision not adopted by the
19 agency, the agency shall state the specific reason, based on the evidence, for not adopting
20 the findings of fact and the agency's findings shall be supported by substantial evidence
21 admissible under G.S. 150B-29(a), 150B-30, or 150B-31.

22 (d) Except for the exemptions contained in G.S. 150B-1, and subsection (c) of this
23 section, the provisions of this section shall apply to all agencies subject to Article 3 of
24 this Chapter, notwithstanding any other provisions to the contrary relating to
25 recommended decisions by administrative law judges and final agency decisions."

26 Section 4. G.S. 150B-35 reads as rewritten:

27 "**§ 150B-35. No ex parte communication; exceptions.**

28 Unless required for disposition of an ex parte matter authorized by law, ~~neither~~ the
29 administrative law judge assigned to a contested case ~~nor a member or employee of the~~
30 ~~agency making a final decision in the case~~ may not communicate, directly or indirectly, in
31 connection with any issue of fact, or question of law, with any person or party or his
32 representative, except on notice and opportunity for all parties to participate."

33 Section 5. G.S. 150B-36 is repealed.

34 Section 6. G.S. 150B-37 reads as rewritten:

35 "**§ 150B-37. Official record.**

36 (a) In a contested case, the Office of Administrative Hearings shall prepare an
37 official record of the case that includes:

- 38 (1) Notices, pleadings, motions, and intermediate rulings;
- 39 (2) Questions and offers of proof, objections, and rulings thereon;
- 40 (3) Evidence presented;
- 41 (4) Matters officially noticed, except matters so obvious that a statement of
- 42 them would serve no useful purpose; and
- 43 (5) Repealed by Session Laws 1987, c. 878, s. 25.

1 (6) The administrative law judge's ~~recommended~~ final decision, or order.

2 (b) Proceedings at which oral evidence is presented shall be recorded, but need not
3 be transcribed unless requested by a party. Each party shall bear the cost of the transcript
4 or part thereof or copy of said transcript or part thereof which said party requests, and
5 said transcript or part thereof shall be added to the official record as an exhibit.

6 (c) The Office of Administrative Hearings shall forward a copy of the ~~official~~
7 ~~record to the agency making the final decision and shall forward a copy of the~~
8 ~~recommended~~ decision to each party."

9 Section 7. G.S. 150B-44 reads as rewritten:

10 **"§ 150B-44. Right to judicial intervention when decision unreasonably delayed.**

11 Unreasonable delay on the part of any agency or administrative law judge in taking
12 any required action shall be justification for any person whose rights, duties, or privileges
13 are adversely affected by such delay to seek a court order compelling action by the
14 agency or administrative law judge. ~~An agency that is subject to Article 3 of this Chapter~~
15 ~~and is not a board or commission has 90 days from the day it receives the official record in a~~
16 ~~contested case from the Office of Administrative Hearings to make a final decision in the case.~~
17 ~~This time limit may be extended by the parties or, for good cause shown, by the agency for an~~
18 ~~additional period of up to 90 days. An agency that is subject to Article 3 of this Chapter and is a~~
19 ~~board or commission has 90 days from the day it receives the official record in a contested case~~
20 ~~from the Office of Administrative Hearings or 90 days after its next regularly scheduled meeting,~~
21 ~~whichever is longer, to make a final decision in the case. This time limit may be extended by the~~
22 ~~parties or, for good cause shown, by the agency for an additional period of up to 90 days. If an~~
23 ~~agency subject to Article 3 of this Chapter has not made a final decision within these time limits,~~
24 ~~the agency is considered to have adopted the administrative law judge's recommended decision~~
25 ~~as the agency's final decision.—Failure of an administrative law judge subject to Article 3 of~~
26 this Chapter or failure of an agency subject to Article 3A of this Chapter to make a final
27 decision within 180 days of the close of the contested case hearing is justification for a
28 person whose rights, duties, or privileges are adversely affected by the delay to seek a
29 court order compelling action by the agency or, if the case was heard by an administrative
30 law judge, or by the administrative law judge."

31 Section 8. G.S. 150B-43 reads as rewritten:

32 **"§ 150B-43. Right to judicial review.**

33 Any ~~person-party~~ who is aggrieved by the final decision in a contested case, and who
34 has exhausted all administrative remedies made available to ~~him~~ the party by statute or
35 agency rule, is entitled to judicial review of the decision under this Article, unless
36 adequate procedure for judicial review is provided by another statute, in which case the
37 review shall be under such other statute. Nothing in this Chapter shall prevent any ~~person~~
38 party from invoking any judicial remedy available to ~~him~~ the party under the law to test
39 the validity of any administrative action not made reviewable under this Article."

40 Section 9. G.S. 150B-47 reads as rewritten:

41 **"§ 150B-47. Records filed with clerk of superior court; contents of records; costs.**

42 Within 30 days after receipt of the copy of the petition for review, or within such
43 additional time as the court may allow, the ~~agency that made the final decision in the~~
44 ~~contested case~~ Office of Administrative Hearings shall transmit to the reviewing court the

1 original or a certified copy of the official record in the contested case under review
2 together with: (i) any exceptions, proposed findings of fact, or written arguments submitted
3 to the agency in accordance with G.S. 150B-36(a); and (ii) the agency's final decision or order
4 review. With the permission of the court, the record may be shortened by stipulation of
5 all parties to the review proceedings. Any party unreasonably refusing to stipulate to limit
6 the record may be taxed by the court for such additional costs as may be occasioned by
7 the refusal. The court may require or permit subsequent corrections or additions to the
8 record when deemed desirable."

9 Section 10. G.S. 150B-49 reads as rewritten:

10 **"§ 150B-49. New evidence.**

11 ~~An aggrieved person~~ A party who files a petition in the superior court may apply to the
12 court to present additional evidence. If the court is satisfied that the evidence is material
13 to the issues, is not merely cumulative, and could not reasonably have been presented at
14 the administrative hearing, the court may remand the case so that additional evidence can
15 be taken. If an administrative law judge did not make a ~~recommended final~~ decision in the
16 case, the court shall remand the case to the agency that conducted the administrative
17 ~~hearing~~ hearing, under Article 3A of this Chapter and under G.S. 150B-34(c) of this
18 Chapter. After hearing the evidence, the agency may affirm or modify its previous
19 findings of fact and final decision. If an administrative law judge made a ~~recommended~~
20 the final decision in the case, the court shall remand the case to the administrative law
21 judge. After hearing the evidence, the administrative law judge may affirm or modify his
22 previous findings of fact and ~~recommended final~~ decision. ~~The administrative law judge~~
23 ~~shall forward a copy of his decision to the agency that made the final decision, which in turn may~~
24 ~~affirm or modify its previous findings of fact and final decision.~~—The additional evidence and
25 any affirmation or modification of a ~~recommended decision or final~~ decision shall be made
26 part of the official record."

27 Section 11. G.S. 150B-50 reads as rewritten:

28 **"§ 150B-50. Review by superior court without jury.**

29 The review by a superior court of ~~agency administrative~~ decisions under this Chapter
30 shall be conducted by the court without a jury."

31 Section 12. G.S. 150B-51 reads as rewritten:

32 **"§ 150B-51. Scope of review.**

33 (a) ~~Initial Determination in Certain Cases.~~ In reviewing a final decision in a
34 contested case in which an administrative law judge made a recommended decision, the
35 court shall make two initial determinations. First, the court shall determine whether the
36 agency heard new evidence after receiving the recommended decision. If the court
37 determines that the agency heard new evidence, the court shall reverse the decision or
38 remand the case to the agency to enter a decision in accordance with the evidence in the
39 official record. Second, if the agency did not adopt the recommended decision, the court
40 shall determine whether the agency's decision states the specific reasons why the agency
41 did not adopt the recommended decision. If the court determines that the agency did not
42 state specific reasons why it did not adopt a recommended decision, the court shall
43 reverse the decision or remand the case to the agency to enter the specific reasons.

1 ~~(b) Standard of Review. After making the determinations, if any, required by subsection~~
2 ~~(a), the~~ The court reviewing a final decision may affirm the decision of the agency or
3 remand the case for further proceedings. It may also reverse or modify the agency's
4 decision if the substantial rights of the petitioners may have been prejudiced because the
5 ~~agency's~~ findings, inferences, conclusions, or decisions are:

- 6 (1) In violation of constitutional provisions;
- 7 (2) In excess of the statutory authority or jurisdiction of the agency;
- 8 (3) Made upon unlawful procedure;
- 9 (4) Affected by other error of law;
- 10 (5) Unsupported by substantial evidence admissible under G.S. 150B-29(a),
11 150B-30, or 150B-31 in view of the entire record as submitted; or
- 12 (6) Arbitrary or capricious."

13 Section 13. This act becomes effective January 1, 2000, and applies to
14 contested cases commenced on or after the effective date.