

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 1284*

Short Title: APA Technical Changes.

(Public)

Sponsors: Senators Foxx; Ballance, Hartsell, Kerr, Miller, Purcell, and Webster.

Referred to: Judiciary II.

May 17, 2000

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT A RECOMMENDATION OF THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE TO REVISE OBSOLETE STATUTORY REFERENCES TO VARIOUS ADMINISTRATIVE PROCEDURE ACT PROVISIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-1368.6(e) reads as rewritten:

"(e) Revocation Hearing. – Before finally revoking post-release supervision, the Commission shall, unless the supervisee waived the hearing or the time limit, provide a hearing within 45 days of the supervisee's reconfinement to determine whether to revoke supervision finally. For purposes of this subsection, the 45-day period begins when the preliminary hearing required by subsection (b) of this section is held or waived, or upon the passage of seven working days after arrest, whichever is sooner. The Commission shall adopt rules governing the hearing and shall file and publish them as provided in Article 5 of Chapter 150B of the General Statutes. hearing."

Section 2. G.S 15A-1376 reads as rewritten:

"(e) Revocation Hearing. – Before finally revoking parole, the Post-Release Supervision and Parole Commission must, unless the parolee waived the hearing or the time limit, provide a hearing within 45 days of the parolee's reconfinement to determine whether to revoke parole finally. The Post-Release Supervision and Parole Commission

1 must adopt ~~regulations~~ rules governing the hearing and must file and publish them as provided
2 in ~~Article 5 of Chapter 150B of the General Statutes.~~ hearing."

3 Section 3. G.S. 15B-6(a)(1) reads as rewritten:

4 "(a) In addition to powers authorized by this Chapter and Chapter 150B, the
5 Commission may:

6 (1) Adopt rules in accordance with Part 3, Article 1 of Chapter 143B and
7 Article ~~2-2A~~ of Chapter 150B of the General Statutes necessary to carry
8 out the purposes of this Chapter;"

9 Section 4. G.S. 90-88(d) reads as rewritten:

10 "(d) If any substance is designated, rescheduled or deleted as a controlled substance
11 under federal law, the Commission shall similarly control or cease control of, the
12 substance under this Article unless the Commission objects to such inclusion. The
13 Commission, at its next regularly scheduled meeting that takes ~~places~~ ~~{place}~~ place 30
14 days after publication in the Federal Register of a final order scheduling a substance,
15 shall determine either to adopt a rule to similarly control the substance under this Article
16 or to object to such action. No rule-making notice or hearing as specified by ~~G.S.~~
17 ~~{Chapter}~~ Chapter 150B of the General Statutes is required if the Commission makes a
18 decision to similarly control a ~~substance, but any rule so adopted shall be filed pursuant to~~
19 ~~Article 5 of Chapter 150B.~~ substance. However, if the Commission makes a decision to
20 object to adoption of the federal action, it shall initiate rule-making procedures pursuant
21 to ~~G.S. {Chapter} 150B~~ Chapter 150B of the General Statutes within 180 days of its
22 decision to object."

23 Section 5. G.S. 90-116 reads as rewritten:

24 "**§ 90-116. Board of Examiners in Optometry.**

25 In order to properly regulate the practice of optometry, there is established a North
26 Carolina State Board of Examiners in Optometry, which shall consist of five regularly
27 graduated optometrists who have been engaged in the practice of optometry in this State
28 for at least five years and two members to represent the public at large.

29 No public member shall at any time be a health care provider, be related to or be the
30 spouse of a health care provider, or have any pecuniary interest in the profitability of a
31 health care provider. For purposes of this section, the term "health care provider" shall
32 have the same meaning as provided in G.S. 58-47-5(4). The Governor shall appoint the
33 two public members not later than July 1, 1981.

34 The optometric members of the Board shall be appointed by the Governor from a list
35 provided by the North Carolina State Optometric Society. For each vacancy, the society
36 must submit at least three names to the Governor. The society shall establish procedures
37 for the nomination and election of optometrist members of the Board. These procedures
38 shall be adopted under the rule-making procedures described in Article ~~2,~~ 2A, Chapter
39 150B of the General Statutes, and notice of the proposed procedures shall be given to all
40 licensed optometrists residing in North Carolina. Such procedures shall not conflict with
41 the provisions of this section. Every optometrist with a current North Carolina license
42 residing in the State shall be eligible to vote in all such elections, and the list of licensed
43 optometrists shall constitute the registration list for elections. Any decision of the society

1 relative to the conduct of such elections may be challenged by civil action in the Wake
2 County Superior Court. A challenge must be filed not later than 30 days after the society
3 has rendered the decision in controversy, and all such cases shall be heard de novo.

4 All Board members serving on June 30, 1981, shall be eligible to complete their
5 respective terms. No member appointed to a term on or after July 1, 1981, shall serve
6 more than two complete consecutive five-year terms, except that each member shall serve
7 until his successor is chosen and qualifies.

8 The Governor may remove any member for good cause shown. Any vacancy in the
9 optometrist membership of the Board shall be filled for the period of the unexpired term
10 by the Governor from a list of at least three names submitted by the North Carolina State
11 Optometric Society Executive Council. Any vacancy in the public membership of the
12 Board shall be filled by the Governor for the unexpired term."

13 Section 6. G.S. 90-140 reads as rewritten:

14 **"§ 90-140. Selection of chiropractic members of Board.**

15 The Governor and the General Assembly upon the recommendation of the President
16 Pro Tempore of the Senate shall appoint chiropractic members of the Board for terms of
17 three years from a list provided by the Board, and the General Assembly upon the
18 recommendation of the Speaker of the House of Representatives shall appoint a
19 chiropractic member of the Board for a term of two years from a list provided by the
20 Board. For each vacancy, the Board must submit at least three names to the Governor,
21 President Pro Tempore of the Senate and Speaker of the House.

22 The Board shall establish procedures for the nomination and election of chiropractic
23 members. These procedures shall be adopted under Article ~~2-2A~~ of Chapter 150B of the
24 General Statutes, and notice of the proposed procedures shall be given to all licensed
25 chiropractors residing in North Carolina. These procedures shall not conflict with the
26 provisions of this section. Every chiropractor with a current North Carolina license
27 residing in this State shall be eligible to vote in all such elections, and the list of licensed
28 chiropractors shall constitute the registration list for elections. Any decision of the Board
29 relative to the conduct of such elections may be challenged by civil action in the Wake
30 County Superior Court. A challenge must be filed not later than 30 days after the Board
31 has rendered the decision in controversy, and all such cases shall be heard de novo."

32 Section 7. G.S. 90-223(b)(1) reads as rewritten:

33 "(b) The Board shall have the authority to make or amend rules and
34 regulations not inconsistent with this Article governing the practice of dental hygiene and
35 the granting, revocation and suspension of licenses and provisional licenses of dental
36 hygienists.

- 37 (1) Any rule ~~promulgated or amended adopted~~ under this Article shall be
38 ~~filed and distributed in accordance with the provisions of Article 5 of~~
39 ~~Chapter 150B of the General Statutes of North Carolina. A copy must~~
40 be distributed to all licensed dentists and all licensed dental hygienists
41 within 30 days of final approval by the Board."

42 Section 8. G.S. 113-55.2(a) reads as rewritten:

1 "(a) To encourage the cooperation of the public in achieving the objectives of the
2 forest laws, the Secretary may provide for the issuance of warning tickets instead of the
3 initiation of criminal prosecution by forest rangers and forest law-enforcement officers.
4 Issuance of the warning tickets shall be in accordance with criteria administratively
5 promulgated by the Secretary within the requirements of this section. These criteria are
6 exempt from Article ~~2-2A~~ of Chapter 150B of the General Statutes ~~but shall be filed in~~
7 ~~accordance with Article 5 of that Chapter.~~ Statutes."

8 Section 9. G.S. 113-221(e1) reads as rewritten:

9 "(e1) Pursuant to the request of five or more members of the Marine Fisheries
10 Commission, its chairman may call an emergency meeting of the Commission to review:
11 (1) a proposed issuance or issuance of proclamations under the authority delegated to the
12 Fisheries Director pursuant to (e) of this section, except those proclamations issued for
13 reasons of public health; or (2) the need to issue a proclamation to allow the taking of
14 certain fisheries resources in areas not opened through proclamations issued by the
15 Fisheries Director. At least 48 hours prior to any such meeting, a public announcement of
16 the meeting shall be issued that describes the action requested by the members of the
17 Commission; and the Department must make every reasonable effort to give actual notice
18 of the meeting to persons who may be affected thereby. After its review is complete, the
19 Marine Fisheries Commission, consistent with its duty to protect, preserve, and enhance
20 the commercial and sports fisheries resources of the State, may (1) approve, cancel, or
21 modify the proposed proclamation or issued proclamation under review; or (2) direct the
22 Fisheries Director to issue a proclamation that allows the taking of certain fisheries
23 resources.

24 The variable conditions that affect such resource management decisions require that
25 these emergency meetings and any resulting orders by the Commission be exempt from
26 the provisions of ~~Articles 2 and 5~~ Article 2A of Chapter 150B. The decisions of the Marine
27 Fisheries Commission shall be the final decision of the State and shall not be set aside on
28 judicial review unless found to be arbitrary and capricious."

29 Section 10. G.S. 113-275(a1) reads as rewritten:

30 "(a1) Notwithstanding the fees specified for nonresident individuals by G.S. 113-
31 270.2, 113-270.3, 113-270.5, 113-271, 113-272, 113-272.2, and 113-273, if the Wildlife
32 Resources Commission finds that a state has a nonresident license fee related to wildlife
33 resources that exceeds the fee for a comparable nonresident license in North Carolina, the
34 Wildlife Resources Commission may, by resolution in official session, increase the
35 nonresident license fee applicable to citizens of that state to an amount equal to the fee a
36 North Carolina resident is required to pay in that state.

37 The action of the Wildlife Resources Commission to increase a fee pursuant to this
38 subsection is not subject to the provisions of Article ~~2-2A~~ of Chapter 150B of the General
39 Statutes. ~~Notwithstanding the provisions of G.S. 150B-59(a), the~~ The action of the Wildlife
40 Resources Commission to increase a fee pursuant to this subsection becomes effective on
41 the date specified by the Wildlife Resources Commission."

42 Section 11. G.S. 113A-115(a) reads as rewritten:

1 (a) Prior to adopting any rule permanently designating any area of environmental
2 concern the Secretary and the Commission shall hold a public hearing in each county in
3 which lands to be affected are located, at which public and private parties shall have the
4 opportunity to present comments and views. Hearings required by this section are in
5 addition to the hearing required by Article ~~2-2A~~ of Chapter 150B of the General Statutes.
6 The following provisions shall apply for all such hearings:

- 7 (1) Notice of any such hearing shall be given not less than 30 days before
8 the date of such hearing and shall state the date, time and place of the
9 hearing, the subject of the hearing, and the action to be taken. The
10 notice shall specify that a copy of the description of the area or areas of
11 environmental concern proposed by the Secretary is available for public
12 inspection at the county courthouse of each county affected.
- 13 (2) Any such notice shall be published at least once in one newspaper of
14 general circulation in the county or counties affected at least 30 days
15 before the date on which the public hearing is scheduled to begin.
- 16 (3) Any person who desires to be heard at such public hearing shall give
17 notice thereof in writing to the Secretary on or before the first date set
18 for the hearing. The Secretary is authorized to set reasonable time limits
19 for the oral presentation of views by any one person at any such hearing.
20 The Secretary shall permit anyone who so desires to file a written
21 argument or other statement with him in relation to any proposed plan
22 any time within 30 days following the conclusion of any public hearing
23 or within such additional time as he may allow by notice given as
24 prescribed in this section.
- 25 (4) Upon completion of the hearing and consideration of submitted
26 evidence and arguments with respect to any proposed action pursuant to
27 this section, the Commission shall adopt its final action with respect
28 thereto and shall file a duly certified copy thereof with the Attorney
29 General and with the board of commissioners of each county affected
30 thereby."

31 Section 12. G.S. 130A-309.29 reads as rewritten:

32 **"§ 130A-309.29. Adoption of rules.**

33 The Commission may adopt rules to implement the provisions of this Part pursuant to
34 Article ~~2-2A~~ of Chapter 150B of the General Statutes."

35 Section 13. G.S. 130B-8(a)(8) reads as rewritten:

36 (a) Neither the Commission nor any contractor performing services on behalf of
37 the Commission shall be subject to the following provisions of the General Statutes:

- 38 ...
- 39 (8) Article ~~2-2A~~ of Chapter 150B shall not apply to contractor selection or
40 technology selection pursuant to G.S. 130B-13 and G.S. 130B-14.
41 Articles 3 and 3A of Chapter 150B shall not apply to final decisions
42 regarding site selection, contractor selection or technology selection
43 pursuant to G.S. 130B-11, 130B-13, and 130B-14."

- 1 Section 14. G.S. 150B-1(d)(2) is repealed.
- 2 Section 15. Effective dates. Section 14 of this act is effective July 1, 2000.
- 3 The remainder of this act is effective when it becomes law.