

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2003**

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**HOUSE DRH60428-ROz-9\* (5/3)**

Short Title: APA Technical/Clarifying Changes. (Public)

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Sponsors: Representative Fisher.

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Referred to:

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A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND CLARIFYING CHANGES TO THE  
ADMINISTRATIVE PROCEDURE ACT.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 150B-21.1 reads as rewritten:

**"§ 150B-21.1. Procedure for adopting a temporary rule.**

(a) Adoption. – An agency may adopt a temporary rule when it finds that adherence to the notice and hearing requirements of G.S. 150B-21.2 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 recent federal regulation.
- (5) A recent court order.
- (6) The need for the rule to implement or be made consistent with the State Medical Facilities Plan approved by the Governor, if the rule addresses a matter included in the State Medical Facilities Plan.
- (7) The need for the Wildlife Resources Commission to establish any of the following:
  - a. No wake zones.
  - b. Hunting or fishing seasons.
  - c. Hunting or fishing bag limits.
  - d. Management of public game lands as defined in G.S. 113-129(8a).

- 1 (8) The need for the Secretary of State to implement the certification  
2 technology provisions of Article 11A of Chapter 66 of the General  
3 Statutes, to adopt uniform Statements of Policy that have been  
4 officially adopted by the North American Securities Administrators  
5 Association, Inc., for the purpose of promoting uniformity of state  
6 securities regulation, and to adopt rules governing the conduct of  
7 hearings pursuant to this Chapter.
- 8 (9) The need for the Commissioner of Insurance to implement the  
9 provisions of G.S. 58-2-205.
- 10 (10) The need for the Chief Information Officer to implement the  
11 information technology procurement provisions of Article 3D of  
12 Chapter 147 of the General Statutes.
- 13 (11) The need for the State Board of Elections to adopt a temporary rule  
14 after prior notice or hearing or upon any abbreviated notice or hearing  
15 the agency finds practical for one or more of the following:  
16 a. In accordance with the provisions of G.S. 163-22.2.  
17 b. To implement any provisions of state or federal law for which  
18 the State Board of Elections has been authorized to adopt rules.  
19 c. The need for the rule to become effective immediately in order  
20 to preserve the integrity of upcoming elections and the elections  
21 process.
- 22 (12) The need for an agency to adopt a temporary rule to implement the  
23 provisions of any of the following acts until all rules necessary to  
24 implement the provisions of the act have become effective as either  
25 temporary or permanent rules:  
26 a. Repealed by Session Laws 2000-148, s. 5, effective July 1,  
27 2002.  
28 b. Repealed by Session Laws 2000-69, s. 5, effective July 1, 2003.
- 29 (13) (14) Reserved.
- 30 (15) The need for the Department of Health and Human Services to adopt  
31 temporary rules concerning the placement of individuals in facilities  
32 licensed under Article 2 of Chapter 122C of the General Statutes and  
33 the enrollment of providers of services to such individuals in the  
34 Medicaid program.
- 35 ~~(a1) (16) (Expires July 1, 2005) Notwithstanding the provisions of~~  
36 ~~subsection (a) of this section, The need for the Department of~~  
37 ~~Transportation may to adopt temporary rules concerning logo signs~~  
38 ~~pursuant to G.S. 136-89.56. After having the proposed temporary rule~~  
39 ~~published in the North Carolina Register and at least 30 days prior to~~  
40 ~~adopting a temporary rule pursuant to this subsection, the Department~~  
41 ~~shall:~~
- 42 ~~(1) Notify persons on its mailing list maintained pursuant to~~  
43 ~~G.S. 150B-21.2(d) and any other interested parties of its intent to adopt~~  
44 ~~a temporary rule.~~

1           ~~(2) Accept oral and written comments on the proposed temporary rule.~~  
2           ~~(3) Hold at least one public hearing on the proposed temporary rule.~~  
3 ~~When the Department adopts a temporary rule pursuant to this subsection, the~~  
4 ~~Department shall submit a reference to this subsection as the Department's statement of~~  
5 ~~need to the Codifier of Rules.~~

6       ~~Notwithstanding any other provision of this Chapter, the Codifier of Rules shall~~  
7 ~~publish in the North Carolina Register a proposed temporary rule received from the~~  
8 ~~Department in accordance with this subsection.~~

9       ~~(a2)~~ (a1) A recent act, change, regulation, or order as used in subdivisions (2)  
10 through (5) of subsection (a) of this section means an act, change, regulation, or order  
11 occurring or made effective no more than 210 days prior to the submission of a  
12 temporary rule to the Rules Review Commission. Upon written request of the agency,  
13 the Commission may waive the 210-day requirement upon consideration of the degree  
14 of public benefit, whether the agency had control over the circumstances that required  
15 the requested waiver, notice to and opposition by the public, the need for the waiver,  
16 and previous requests for waivers submitted by the agency.

17       ~~(a3)~~ (a2) Unless otherwise provided by law, at least 30 business days prior to  
18 adopting a temporary rule, the agency shall:

- 19           (1) Submit the rule and a notice of public hearing to the Codifier of Rules,  
20           and the Codifier of Rules shall publish the proposed temporary rule  
21           and the notice of public hearing on the Internet to be posted within five  
22           business days.
- 23           (2) Notify persons on the mailing list maintained pursuant to  
24           G.S. 150B-21.2(d) and any other interested parties of its intent to adopt  
25           a temporary rule and of the public hearing.
- 26           (3) Accept written comments on the proposed temporary rule for at least  
27           15 business days prior to adoption of the temporary rule.
- 28           (4) Hold at least one public hearing on the proposed temporary rule no  
29           less than five days after the rule and notice have been published.

30       (a3) An agency must also prepare a written statement of its findings of need for a  
31 temporary rule stating why adherence to the notice and hearing requirements in  
32 G.S. 150B-21.2 would be contrary to the public interest and why the immediate  
33 adoption of the rule is required. If the temporary rule establishes a new fee or increases  
34 an existing fee, the agency shall include in the written statement that it has complied  
35 with the requirements of G.S. 12-3.1. The statement must be signed by the head of the  
36 agency adopting the temporary rule.

37       (b) Review. – When an agency adopts a temporary rule it must submit the rule  
38 and the agency's written statement of its findings of the need for the rule to the Rules  
39 Review Commission. Within 15 business days after receiving the proposed temporary  
40 rule, the Commission shall review the agency's written statement of findings of need for  
41 the rule and the rule to determine whether the statement meets the criteria listed in  
42 subsection (a) of this section and the rule meets the standards in G.S. 150B-21.9. The  
43 Commission shall direct a member of its staff who is an attorney licensed to practice  
44 law in North Carolina to review the statement of findings of need and the rule. The staff

1 member shall make a recommendation to the Commission, which must be approved by  
2 the Commission or its designee. The Commission's designee shall be a panel of at least  
3 three members of the Commission. In reviewing the statement, the Commission or its  
4 designee may consider any information submitted by the agency or another person. If  
5 the Commission or its designee finds that the statement meets the criteria listed in  
6 subsection (a) of this section and the rule meets the standards in G.S. 150B-21.9, the  
7 Commission or its designee must approve the temporary rule and deliver the rule to the  
8 Codifier of Rules within two business days of approval. The Codifier of Rules must  
9 enter the rule into the North Carolina Administrative Code on the sixth business day  
10 following receipt from the Commission or its designee.

11 (b1) If the Commission or its designee finds that the statement does not meet the  
12 criteria listed in subsection (a) of this section or that the rule does not meet the standards  
13 in G.S. 150B-21.9, the Commission or its designee must immediately notify the head of  
14 the agency. The agency may supplement its statement of need with additional findings  
15 or submit a new statement. If the agency provides additional findings or submits a new  
16 statement, the Commission or its designee must review the additional findings or new  
17 statement within five business days after the agency submits the additional findings or  
18 new statement. If the Commission or its designee again finds that the statement does not  
19 meet the criteria listed in subsection (a) of this section or that the rule does not meet the  
20 standards in G.S. 150B-21.9, the Commission or its designee must immediately notify  
21 the head of the agency and return the rule to the agency.

22 (b2) If an agency decides not to provide additional findings or submit a new  
23 statement when notified by the Commission or its designee that the agency's findings of  
24 need for a rule do not meet the required criteria or that the rule does not meet the  
25 required standards, the agency must notify the Commission or its designee of its  
26 decision. The Commission or its designee shall then return the rule to the agency. When  
27 the Commission returns a rule to an agency in accordance with this subsection, the  
28 agency may file an action for declaratory judgment in Wake County Superior Court  
29 pursuant to Article 26 of Chapter 1 of the General Statutes.

30 (b3) Notwithstanding any other provision of this subsection, if the agency has not  
31 complied with the provisions of G.S. 12-3.1, the Codifier of Rules shall not enter the  
32 rule into the Code.

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

39 (c1) Filing a petition for rule making or a request for a declaratory ruling with the  
40 agency that adopted the rule is not a prerequisite to filing an action under this  
41 subsection. A person who files an action for declaratory judgment under this subsection  
42 must serve a copy of the complaint on the agency that adopted the rule being contested,  
43 the Codifier of Rules, and the Commission.

1 (d) Effective Date and Expiration. – A temporary rule becomes effective on the  
2 date specified in G.S. 150B-21.3. A temporary rule expires on the earliest of the  
3 following dates:

4 (1) The date specified in the rule.

5 (2) The effective date of the permanent rule adopted to replace the  
6 temporary rule, if the Commission approves the permanent rule.

7 (3) The date the Commission returns to an agency a permanent rule the  
8 agency adopted to replace the temporary rule.

9 (4) The effective date of an act of the General Assembly that specifically  
10 disapproves a permanent rule adopted to replace the temporary rule.

11 (5) 270 days from the date the temporary rule was published in the North  
12 Carolina Register, unless the permanent rule adopted to replace the  
13 temporary rule has been submitted to the Commission.

14 (e) Publication. – When the Codifier of Rules enters a temporary rule in the  
15 North Carolina Administrative Code, the Codifier must publish the rule in the North  
16 Carolina Register."

17 **SECTION 2.** G.S. 150B-21.3(b2) reads as rewritten:

18 "(b2) Objection. – Any person who objects to the adoption of a permanent rule may  
19 submit written comments to the agency. If the objection is not resolved prior to adoption  
20 of the rule, a person may submit written objections to the Commission. If the  
21 Commission receives written objections from 10 or more ~~persons~~ persons, on or before  
22 the date it reviews the rule, clearly requesting review by the legislature in accordance  
23 with instructions contained in the notice pursuant to G.S. 150B-21.2(c)(9), and the  
24 Commission approves the rule, the rule will become effective as provided in subsection  
25 (b1) of this section. When the requirements of this subsection have been met and a rule  
26 is subject to legislative disapproval, the agency may adopt the rule as a temporary rule if  
27 the rule would have met the criteria listed in G.S. 150B-21.1(a) at the time the notice of  
28 text for the permanent rule was published in the North Carolina Register."

29 **SECTION 3.** This act is effective when it becomes law.