

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

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SENATE BILL 744

Short Title: Remove Reserve Ceiling/Real Est. Comm/Notice. (Public)

Sponsors: Senators Rand; and Swindell.

Referred to: Commerce, Small Business and Entrepreneurship.

March 14, 2007

A BILL TO BE ENTITLED

1 AN ACT AUTHORIZING THE NORTH CAROLINA REAL ESTATE
2 COMMISSION TO REMOVE THE TEN PERCENT CEILING ON ITS EXPENSE
3 RESERVE FUND UNDER THE REAL ESTATE LICENSING LAWS AND
4 AMENDING THE LAWS PERTAINING TO CONTESTED CASE HEARINGS
5 UNDER THE ADMINISTRATIVE PROCEDURE ACT TO ALLOW
6 OCCUPATIONAL LICENSING BOARDS TO SERVE NOTICE OF HEARING
7 BY FIRST-CLASS MAIL ON APPLICANTS REQUESTING HEARINGS
8 REGARDING THE APPLICANTS' CHARACTER OR FITNESS FOR
9 LICENSURE.
10

11 The General Assembly of North Carolina enacts:

12 **SECTION 1.** G.S. 93A-3(b) reads as rewritten:

13 "(b) The provisions of G.S. 93B-5 notwithstanding, members of the Commission
14 shall receive as compensation for each day spent on work for the Commission a per
15 diem in an amount established by the Commission by rule, and mileage reimbursement
16 for transportation by privately owned automobile at the business standard mileage rate
17 set by the Internal Revenue Service per mile of travel along with actual cost of tolls
18 paid. The total expense of the administration of this Chapter shall not exceed the total
19 income therefrom; and none of the expenses of said Commission or the compensation or
20 expenses of any office thereof or any employee shall ever be paid or payable out of the
21 treasury of the State of North Carolina; and neither the Commission nor any officer or
22 employee thereof shall have any power or authority to make or incur any expense, debt
23 or other financial obligation binding upon the State of North Carolina. ~~After all~~
24 ~~expenses of operation, the Commission may set aside an expense reserve each year not~~
25 ~~to exceed ten percent (10%) of the previous year's gross income; then any surplus shall~~
26 ~~go to the general fund of the State of North Carolina.~~ The Commission may deposit
27 moneys in accounts, certificates of deposit, or time deposits as the Commission may
28 approve, in any bank, savings and loan association, or trust company. Moneys also may
29 be invested in the same classes of securities referenced in G.S. 159-30(c)."

1 **SECTION 2.** G.S. 150B-38 reads as rewritten:

2 "**§ 150B-38. Scope; hearing required; notice; venue.**

3 (a) The provisions of this Article shall apply to:

4 (1) Occupational licensing agencies.

5 (2) The State Banking Commission, the Commissioner of Banks, and the
6 Credit Union Division of the Department of Commerce.

7 (3) The Department of Insurance and the Commissioner of Insurance.

8 (4) The State Chief Information Officer in the administration of the
9 provisions of Article 3D of Chapter 147 of the General Statutes.

10 (5) The North Carolina State Building Code Council.

11 (b) Prior to any agency action in a contested case, the agency shall give the
12 parties in the case an opportunity for a hearing without undue delay and notice not less
13 than 15 days before the hearing. Notice to the parties shall include:

14 (1) A statement of the date, hour, place, and nature of the hearing;

15 (2) A reference to the particular sections of the statutes and rules involved;
16 and

17 (3) A short and plain statement of the facts alleged.

18 (c) ~~Notice~~ Except as provided in subsection (c1) of this section, notice shall be
19 given personally or by certified mail. If given by certified mail, notice shall be deemed
20 to have been given on the delivery date appearing on the return receipt. If notice cannot
21 be given personally or by certified mail, then notice shall be given in the manner
22 provided in G.S. 1A-1, Rule 4(j1).

23 (c1) In a contested case commenced upon the request of a party applying for an
24 occupational license to be heard on the question of moral character or fitness for
25 licensure, the notice of hearing shall be deemed given to the party when a copy of the
26 notice is deposited in an official depository of the United States Postal Service
27 addressed to the party at the latest mailing address provided by the party to the
28 occupational licensing agency.

29 (d) A party who has been served with a notice of hearing may file a written
30 response with the agency. If a written response is filed, a copy of the response must be
31 mailed to all other parties not less than 10 days before the date set for the hearing.

32 (e) All hearings conducted under this Article shall be open to the public. A
33 hearing conducted by the agency shall be held in the county where the agency maintains
34 its principal office. A hearing conducted for the agency by an administrative law judge
35 requested under G.S. 150B-40 shall be held in a county in this State where any person
36 whose property or rights are the subject matter of the hearing resides. If a different
37 venue would promote the ends of justice or better serve the convenience of witnesses,
38 the agency or the administrative law judge may designate another county. A person
39 whose property or rights are the subject matter of the hearing waives his objection to
40 venue if he proceeds in the hearing.

41 (f) Any person may petition to become a party by filing with the agency or
42 hearing officer a motion to intervene in the manner provided by G.S. 1A-1, Rule 24. In
43 addition, any person interested in a contested case under this Article may intervene and
44 participate to the extent deemed appropriate by the agency hearing officer.

1 (g) When contested cases involving a common question of law or fact or multiple
2 proceedings involving the same or related parties are pending before an agency, the
3 agency may order a joint hearing of any matters at issue in the cases, order the cases
4 consolidated, or make other orders to reduce costs or delay in the proceedings.

5 (h) Every agency shall adopt rules governing the conduct of hearings that are
6 consistent with the provisions of this Article."

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