

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 857

Short Title: Admin. Adjudicator Status.

(Public)

Sponsors: Senator Barker. (By Request)

Referred to: Rules.

April 12, 1989

A BILL TO BE ENTITLED

AN ACT TO CONFIRM THE STATUS OF THE UTILITIES COMMISSION, THE INDUSTRIAL COMMISSION AND THE OFFICE OF ADMINISTRATIVE HEARINGS AS INDEPENDENT ADJUDICATIVE AGENCIES UNDER ARTICLE III, SECTION 11, AND ARTICLE IV, SECTION 3 OF THE CONSTITUTION, TO PROVIDE FOR THEIR ADMINISTRATION, AND TO EQUALIZE THE SALARIES, BENEFITS AND POWERS OF ADMINISTRATIVE ADJUDICATORS.

The General Assembly of North Carolina enacts:

Section 1. A new Chapter 143C is added to the General Statutes to provide for, and consolidate the statutes related to, the establishment of the independent, quasi-judicial agencies of State government contemplated by Article IV, Section 3, and to provide for their administration in accordance with Article III, Section 11, of the Constitution.

Sec. 2. Article 1 of Chapter 143C of the General Statutes is enacted to read:

**“CHAPTER 143C.**

**"ADMINISTRATIVE ADJUDICATORY AGENCIES.**

**"ARTICLE 1.**

**"PURPOSE.**

**"§ 143C-1. Policy.**

The Constitution mandates that the three powers of State government are, and should remain, separate. Necessity requires and the Constitution permits the establishment of independent administrative agencies with such judicial powers as are reasonably necessary to carry out the purposes for which they are created.

1 **"§ 143C-2. Adjudicatory agencies.**

2 (a) The North Carolina Utilities Commission, the North Carolina Industrial  
3 Commission and the Office of Administrative Hearings have been established for  
4 purposes that require judicial powers for their accomplishment. Those three agencies  
5 constitute and may be referred to as 'the adjudicatory agencies.'

6 (b) The Utilities Commission has the responsibilities set forth in Chapter 62 of  
7 the General Statutes.

8 (c) The Industrial Commission has the responsibilities set forth in Chapter 97 of  
9 the General Statutes.

10 (d) The Office of Administrative Hearings has the responsibilities set forth in  
11 Chapter 150B of the General Statutes.

12 (e) Nothing in this Chapter shall limit the authority of the General Assembly to  
13 vest reasonably necessary judicial powers, within constitutional limits, in administrative  
14 agencies other than the adjudicatory agencies by specific statute.

15 **"§ 143C-3. Independent status.**

16 The Utilities Commission, the Industrial Commission and the Office of  
17 Administrative Hearings are independent, quasi-judicial, administrative agencies under  
18 Article III, Section 11 of the Constitution and are not allocated within a principal  
19 department.

20 **"§ 143C-4. Administrative services.**

21 Administrative support for the adjudicatory agencies shall be provided by the  
22 Administrative Services Division as set out in Article 5 of this Chapter."

23 Sec. 3. G.S. 62-10 through G.S. 62-29 are recodified as G.S. 143C-10  
24 through G.S. 143C-29 respectively and shall constitute Article 2 of Chapter 143C of the  
25 General Statutes, to be entitled "Utilities Commission."

26 The Revisor of Statutes shall change references to G.S. 62-10 through G.S.  
27 62-98 wherever they appear in the General Statutes to conform to the renumbering  
28 resulting from this recodification.

29 Sec. 4. G.S. 97-77 through G.S. 97-81 are recodified as G.S. 143C-31  
30 through G.S. 143C-35 respectively and shall constitute Article 3 of Chapter 143C of the  
31 General Statutes, to be entitled "Industrial Commission."

32 The Revisor of Statutes shall change references to G.S. 97-77 through G.S.  
33 97-81 wherever they appear in the General Statutes to conform to the renumbering  
34 resulting from this recodification.

35 Sec. 5. G.S. 7A-750 through G.S. 7A-759 are recodified as G.S. 143C-40  
36 through G.S. 143C-49 respectively and shall constitute Article 4 of Chapter 143C of the  
37 General Statutes to be entitled "Office of Administrative Hearings."

38 The Revisor of Statutes shall change references to G.S. 7A-750 through G.S.  
39 7A-759 wherever they appear in the General Statutes to conform to the renumbering  
40 resulting from this recodification.

41 Sec. 6. G.S. 62-10(h) and (i), which are recodified by Section 3 of this act as  
42 G.S. 143C-10(h) and (i), read as rewritten:

43 "(h) The salary of each commissioner shall be the same as that fixed from time to  
44 time for judges of the superior court except that the commissioner designated as

1 chairman shall receive ~~one thousand dollars (\$1,000) additional per annum. the salary fixed~~  
2 for a senior resident judge of superior court. In lieu of merit and other increment raises  
3 paid to regular State employees, each commissioner, including the commissioner  
4 designated as chairman, shall receive as longevity pay an annual amount equal to four  
5 and eight tenths percent (4.8%) of the annual salary set forth in the Current Operations  
6 Appropriations Act payable monthly after five years of service, and nine and six tenths percent  
7 (9.6%) after 10 years of service. 'Service' means service as a member of the Utilities  
8 Commission, payable monthly at the rates provided in G.S. 7A-65 and based upon his  
9 years of State service. The salary of each hearing examiner employed by the  
10 Commission shall be the same as that provided from time to time for judges of the  
11 district court, except that one such hearing examiner may be designated senior hearing  
12 examiner and he shall receive the salary provided for a chief district court judge.  
13 Notwithstanding the provisions of G.S. 126-5(c1)(5), such hearing examiners shall be  
14 subject to the State Personnel Act.

15 (i) The standards of judicial conduct provided for judges in Article 30 Chapter  
16 7A of the General Statutes shall apply to members of the ~~Commission.~~ Commission and  
17 to hearing examiners employed by the Commission. Members of the Commission shall  
18 be liable to impeachment for the causes and in the manner provided for judges of the  
19 General Court of Justice in Chapter 123 of the General Statutes. Hearing examiners  
20 shall be subject to discharge for just cause for violation of such standards. Members of  
21 the Commission and hearing examiners shall not engage in any other employment,  
22 business, profession, or vocation while in office."

23 Sec. 7. G.S. 62-14, which is recodified by Section 3 of this act as G.S. 143C-  
24 14, is amended by adding a new subsection to read:

25 "(d) The Commission may employ an executive assistant whose duties shall be  
26 prescribed by the Chairman and who, upon entering upon his duties, shall give bond in  
27 such sum as may be fixed by the Commission, and who shall be subject to the State  
28 Personnel Act except that he may be removed at the will of the Chairman."

29 Sec. 8. G.S. 97-2(8) reads as rewritten:

30 "(8) Commission. – The term 'Commission' means the North Carolina Industrial  
31 ~~Commission, to be created under the provisions of this Article.~~ Commission."

32 Sec. 9. G.S. 97-77, which is recodified by Section 4 of this act as G.S. 143C-  
33 31, reads as rewritten:

34 "**~~§97.~~members appointed by Governor; terms of office; chairman.**

35 There is hereby created a commission to be known as the North Carolina Industrial  
36 Commission, consisting of three commissioners who shall devote their entire time to the  
37 duties of the Commission. The Governor shall appoint the members of the ~~Commission,~~  
38 ~~one for a term of two years, one for a term of four years, and one for a term of six years.~~  
39 Commission subject to confirmation by the General Assembly in joint session. The  
40 terms of each member serving on June 30, 1989, are extended by two years. Upon the  
41 expiration of each term as above mentioned, the Governor shall appoint a successor for  
42 a term of six-eight years, and thereafter the term of office of each commissioner shall be  
43 six-eight years. The names of commissioners to be appointed by the Governor shall be  
44 submitted by the Governor to the General Assembly for confirmation by the General

1 Assembly on or before May 1 of the year in which the terms for which the appointments  
2 are to be made are to expire. Upon failure of the Governor to submit names as herein  
3 provided, the President of the Senate and Speaker of the House of Representatives  
4 jointly shall submit the names of a like number of commissioners to the General  
5 Assembly on or before May 15 of the same year for confirmation by the General  
6 Assembly. Regardless of the way in which names of commissioners are submitted,  
7 confirmation of commissioners must be accomplished prior to adjournment of the then  
8 current session of the General Assembly. Not more than one appointee shall be a person  
9 who, on account of his previous vocation, employment or affiliations, can be classed as  
10 a representative of employers, and not more than one appointee shall be a person who,  
11 on account of his previous vocation, employment or affiliations, can be classed as a  
12 representative of employees. One member, to be designated by the Governor, shall act  
13 as chairman."

14           Sec. 10. G.S. 97-78(a) and (b), which are recodified by this act as G.S. 143C-  
15 32(a) and (b), read as rewritten:

16       "(a) The salaries of the chairman and each of the other commissioners shall be  
17 fixed by the General Assembly in the Current Operations Appropriations Act. the same as  
18 those of the chairman and the members of the Utilities Commission respectively. In  
19 lieu of merit and other increment raises paid to regular State employees, each  
20 commissioner, including the commissioner designated as chairman, shall receive as  
21 longevity pay an annual amount payable monthly at the rates provided in G.S. 7A-65  
22 and based upon his years of State service.

23       (b) The Commission may appoint a secretary an executive assistant whose duties  
24 shall be prescribed by the Commission, and who shall be subject to the State Personnel  
25 System and who, upon entering upon his duties, shall give bond in such sum as may be  
26 fixed by the Commission, and who may be removed at the will of the Commission. The  
27 Commission may also employ such clerical or other assistance as it may deem necessary,  
28 and fix the compensation of all persons so employed, such compensation to be in keeping with  
29 the compensation paid to the persons employed to do similar work in other State departments.  
30 necessary. The salaries and compensation of all such personnel shall be fixed in the  
31 manner provided by law for fixing and regulating salaries and compensation by other  
32 State agencies."

33           Sec. 11. G.S. 97-79(b), which is recodified by Section 4 of this act as G.S.  
34 143C-33(b), reads as rewritten:

35       "(b) The Commission may appoint deputies who shall have the same power to  
36 issue subpoenas, administer oaths, conduct hearings, hold persons, firms or corporations  
37 in contempt as provided in Chapter 5A of the General Statutes, take evidence, and enter  
38 orders, opinions, and awards based thereon as is possessed by the members of the  
39 Commission, and Commission. The salary of each deputy shall be the same as that  
40 provided for hearing examiners of the Utilities Commission except that one such deputy  
41 may be designated chief deputy and he shall receive the salary provided for the senior  
42 hearing examiner. Notwithstanding the provisions of G.S. 126-5(c1)(5), such deputy or  
43 deputies shall be subject to the State Personnel System Act."

1           Sec. 12. G.S. 97-79, which is recodified by Section 4 of this act as G.S.  
2 143C-32, is amended by adding a new subsection to read:

3           "(f) The standards of judicial conduct provided for judges in Article 30, Chapter  
4 7A of the General Statutes shall apply to members of the Commission and their  
5 deputies. Members of the Commission shall be liable to impeachment for the causes and  
6 in the manner provided for judges of the General Court of Justice in Chapter 123 of the  
7 General Statutes. Deputy commissioners shall be subject to discharge for just cause for  
8 violation of such standards. Members of the Commission and deputy commissioners  
9 shall not engage in any other employment, business, profession, or vocation while in  
10 office."

11           Sec. 13. G.S. 7A-751, which is recodified by Section 5 of this act as G.S.  
12 143C-41, reads as rewritten:

13 "~~§ 7A~~ **The head of the Office of Administrative Hearings is the Chief**  
14 **Administrative Law Judge. He shall serve as Director and have the**  
15 **powers and duties conferred on him by this Chapter and the**  
16 **Constitution and laws of this State. His salary shall be fixed by the**  
17 **General Assembly in the Current Operations Appropriations Act, the same as**  
18 **is provided for the Chairman of the Utilities Commission and the**  
19 **Chairman of the Industrial Commission.**

20           In lieu of merit and other increment raises, the Chief Administrative Law Judge shall  
21 receive as longevity an annual amount payable monthly at the rates provided in G.S.  
22 7A-65 and based upon his years of State service."

23           Sec. 14. G.S. 7A-752, which is recodified by Section 5 of this act as G.S.  
24 143C-42, reads as rewritten:

25 "~~§ 7A~~ **vacancy.**

26           (a) The Chief Administrative Law Judge of the Office of Administrative  
27 Hearings shall be appointed by the Chief Justice for a term of office of four years. The  
28 first Chief Administrative Law Judge shall be appointed as soon as practicable for a term to  
29 begin on the day of his appointment and to end on June 30, 1989, years subject to  
30 confirmation by the General Assembly in joint session, provided that the term of the  
31 Chief Administrative Law Judge serving on June 30, 1989, under the provisions of G.S.  
32 7A-752 shall expire on June 30, 1993. Successors to the first such Chief Administrative  
33 Law Judge shall be appointed for a term to begin on July 1 of the year the preceding  
34 term ends and to end on June 30 four eight years later. A Chief Administrative Law Judge  
35 may continue to serve beyond his term until his successor is duly appointed and sworn, but any  
36 holdover shall not affect the expiration date of the succeeding term.

37           ~~The Chief Administrative Law Judge shall designate one administrative law judge as~~  
38 ~~senior administrative law judge. The senior administrative law judge may perform the~~  
39 ~~duties of Chief Administrative Law Judge if the Chief Administrative Law Judge is~~  
40 ~~absent or unable to serve temporarily for any reason.~~

41           (b) The name of a Chief Administrative Law Judge to be appointed by the Chief  
42 Justice shall be submitted by the Chief Justice to the General Assembly for confirmation  
43 by the General Assembly on or before May 1 of the year in which the term for which  
44 the appointment is to be made is to expire. Upon failure of the Chief Justice to submit a

1 name as herein provided, the President of the Senate and Speaker of the House of  
2 Representatives jointly shall submit a name to the General Assembly on or before May  
3 15 of the same year for confirmation by the General Assembly. Regardless of the way in  
4 which the name is submitted, confirmation must be accomplished prior to adjournment  
5 of the then current session of the General Assembly."

6 Sec. 15. G.S. 7A-753, which is recodified by Section 5 of this act as G.S.  
7 143C-43, reads as rewritten:

8 "**~~§ 7A~~appointment; specialization.**

9 (a) The Chief Administrative Law Judge shall appoint additional administrative  
10 law judges to serve in the Office of Administrative Hearings in such numbers as the  
11 General Assembly provides. No person shall be appointed or designated an  
12 administrative law judge except as provided in this Article.

13 (b) The Chief Administrative Law Judge may designate certain administrative  
14 law judges as having the experience and expertise to preside at specific types of  
15 contested cases and assign only these designated administrative law judges to preside at  
16 those cases.

17 (c) The salary of each such administrative law judge shall be the same as that  
18 provided for hearing examiners of the Utilities Commission and deputy commissioners  
19 of the Industrial Commission except that the senior administrative law judge shall  
20 receive the same salary provided for the senior hearing examiner and the chief deputy.  
21 Notwithstanding the provisions of G.S. 126-5(c1)(5), administrative law judges shall be  
22 subject to the State Personnel Act."

23 Sec. 16. G.S. 7A-754, which is recodified by Section 5 of this act as G.S.  
24 143C-44, reads as rewritten:

25 "**~~§ 7A~~removal.**

26 (a) Only persons duly authorized to practice law in the General Court of Justice  
27 shall be eligible for appointment as the Director and chief administrative law judge or as  
28 an administrative law judge in the Office of Administrative Hearings. Neither the chief  
29 administrative law judge nor any administrative law judge may engage in the private  
30 practice of law as defined in G.S. 84-2.1 while in office; violation of this provision shall  
31 be grounds for removal. Each administrative law judge shall take the oaths required by  
32 Chapter 11 of the General Statutes. An administrative law judge may be removed from  
33 office by the Director of the Office of Administrative Hearings for just cause, as that  
34 term is used in G.S. 126-35.

35 (b) The standards of judicial conduct provided for judges in Article 30, Chapter  
36 7A of the General Statutes shall apply to the Chief Administrative Law Judge and each  
37 administrative law judge. The Chief Administrative Law Judge shall be liable to  
38 impeachment for the causes and in the manner provided for judges of the General Court  
39 of Justice in Chapter 123 of the General Statutes. Administrative law judges shall be  
40 subject to discharge for just cause for violation of such standards."

41 Sec. 17. G.S. 7A-756, which is recodified by Section 5 of this act as G.S.  
42 143C-46, reads as rewritten:

43 "**~~§ 7A~~subpoenas.**

1       ~~The chief administrative law judge and all administrative law judges in the Office of~~  
 2 ~~Administrative Hearings may, in connection with any pending or potential contested~~  
 3 ~~ease under Chapter 150A:~~

4       ~~(1) Administer oaths and affirmations;~~

5       ~~(2) Sign and issue subpoenas in the name of the Office of Administrative~~  
 6 ~~Hearings requiring attendance and giving of testimony by witnesses and the production~~  
 7 ~~of books, papers, and other documentary evidence; and~~

8       ~~(3) Apply to the General Court of Justice, Superior Court Division, for any order~~  
 9 ~~necessary to enforce the powers conferred in this Article. **Powers of administrative**~~  
 10 ~~**law judge.**~~

11       The Chief Administrative Law Judge and all administrative law judges have the  
 12 same power to compel the attendance of witnesses, require the examination of persons  
 13 and parties, and compel the production of books and papers, and punish for contempt, as  
 14 by law is conferred on members of the Utilities Commission or the Industrial  
 15 Commission."

16       Sec. 18. G.S. 150B-33(b) reads as rewritten:

17       "(b) An administrative law judge may:

18       (1) Administer oaths and affirmations;

19       (2) Sign and issue subpoenas in the name of the Office of Administrative  
 20 Hearings, requiring attendance and giving of testimony by witnesses  
 21 and the production of books, papers, and other documentary evidence;

22       (3) Provide for the taking of testimony by deposition;

23       (4) Regulate the course of the hearings, including discovery, set the time  
 24 and place for continued hearings, and fix the time for filing of briefs  
 25 and other documents;

26       (5) Direct the parties to appear and confer to consider simplification of the  
 27 issues by consent of the parties;

28       (6) Stay the contested action by the agency pending the outcome of the  
 29 case, upon such terms as he deems proper, and subject to the  
 30 provisions of G.S. 1A-1, Rule 65;

31       (7) Determine whether the hearing shall be recorded by a stenographer or  
 32 by an electronic device; and

33       ~~(8) Enter an order returnable in the General Court of Justice, Superior~~  
 34 ~~Court Division, to show cause why the person should not be held in~~  
 35 ~~contempt. The Court shall have the power to impose punishment as for~~  
 36 ~~contempt for any act which would constitute direct or indirect~~  
 37 ~~contempt if the act occurred in an action pending in Superior Court.~~

38       (9) Determine that a rule as applied in a particular case is void because (1)  
 39 it is not within the statutory authority of the agency, (2) is not clear and  
 40 unambiguous to persons it is intended to direct, guide, or assist, or (3)  
 41 is not reasonably necessary to enable the agency to perform a function  
 42 assigned to it by statute or to enable or facilitate the implementation of  
 43 a program or policy in aid of which the rule was adopted.

1 (10) Impose the sanctions provided for in G.S. 1A-1 or Chapter 3 of Title  
2 26 of the North Carolina Administrative Code for noncompliance with  
3 applicable procedural rules."

4 Sec. 19. Article 5 of Chapter 143C of the General Statutes is enacted to read:

5 **"ARTICLE 5.**

6 **"ADMINISTRATIVE SERVICES.**

7 **"§ 143C-60. Administrative Services Division.**

8 (a) There is hereby created an Administrative Services Division for the  
9 adjudicatory agencies which will be responsible for the provision of all administrative  
10 services to the Utilities Commission, the Industrial Commission and the Office of  
11 Administrative Hearings. The Division shall be a concomitant part of each of those  
12 agencies and shall have equal responsibilities of each of them.

13 (b) The Chairman of the Utilities Commission, the Chairman of the Industrial  
14 Commission and the Chief Administrative Law Judge shall constitute a management  
15 committee to oversee the operations of the Administrative Services Division. The one  
16 among them senior in State service shall act as chairman.

17 **"§ 143C-61. Director.**

18 (a) The Administrative Services Division shall have a Director who is  
19 responsible for its operations to the management committee. His salary shall be the  
20 same as is provided from time to time for the Assistant Administrative Officer of the  
21 Courts.

22 (b) Subject to the provisions of subsection (c) the Director shall be appointed by  
23 the management committee and he shall be subject to the State Personnel Act.

24 (c) The person serving as Deputy Director of the Office of Administrative  
25 Hearings on June 30, 1989, shall serve as the initial Director of the Administrative  
26 Services Division.

27 **"§ 143C-62. Services; budgets.**

28 (a) The services to be provided to the adjudicatory agencies by the  
29 Administrative Services Division shall include, but not be limited to, budget, personnel,  
30 payroll, purchasing, printing and duplicating, telephone, travel, library, reporting of  
31 hearings and transcript preparation, and acquisition of offices and other physical plant  
32 requirements.

33 (b) Separate appropriations for operations shall be made for each of the  
34 adjudicatory agencies and for the Administrative Services Division and shall be  
35 identified by individual budget codes. Separate budgets for each of the adjudicatory  
36 agencies and for the Administrative Services Division shall be maintained and  
37 administered by the Administrative Services Division.

38 (c) Except as specifically provided by law, the adjudicatory agencies and the  
39 Administrative Services Division shall be subject to statutes and rules governing the  
40 administrative operation of State agencies generally.

41 (d) Employees of the Administrative Services Division, including the Director,  
42 the provisions of G.S. 126-5(c1)(5) notwithstanding, shall be subject to the State  
43 Personnel Act."



1           Sec. 20. (a) The North Carolina Utilities Commission is separated from the  
2 Department of Commerce and it is given the status of an independent agency. It shall  
3 retain its statutory authority, powers, duties, functions, records and personnel. Its  
4 property, unexpended balances of appropriations, allocations or other funds, and the  
5 functions of budgeting and purchasing, are assigned to the Administrative Services  
6 Division of the adjudicatory agencies for the benefit of the Utilities Commission.

7           (b) The North Carolina Industrial Commission is separated from the  
8 Department of Commerce and it is given the status of an independent agency. It shall  
9 retain its statutory authority, powers, duties, functions, records and personnel. Its  
10 property, unexpended balances of appropriations, allocations or other funds, and the  
11 functions of budgeting and purchasing, are assigned to the Administrative Services  
12 Division of the adjudicatory agencies for the benefit of the Industrial Commission.

13           (c) The status of the Office of Administrative Hearings as an independent  
14 agency is reconfirmed. It shall retain its statutory authority, powers, duties, functions,  
15 records and personnel. Its property, unexpended balances of appropriations, allocations  
16 or other funds, and the functions of budgeting and purchasing, are assigned to the  
17 Administrative Services Division of the adjudicatory agencies for the benefit of the  
18 Office of Administrative Hearings.

19           (d) Notwithstanding the provisions of subsections (a), (b) and (c), employees  
20 of the Department of Commerce and of the Office of Administrative Hearings whose  
21 primary duties are to provide budget, personnel, purchasing, case reporting or similar or  
22 related services for the Utilities Commission, the Industrial Commission or the Office of  
23 Administrative Hearings are transferred to the Administrative Services Division of the  
24 adjudicatory agencies together with the unexpended balances of appropriations,  
25 allocations or other funds supporting them.

26           (e) Notwithstanding any other provision of law, no employee whose position  
27 is redesignated, transferred or reallocated or whose salary is established by this act shall  
28 be reduced in salary, grade or step as a result of the redesignation, transfer or  
29 reallocation or by any personnel action: provided that nothing herein shall be construed  
30 to prevent disciplinary action under G.S. 126-35. Positions previously classified by the  
31 General Assembly under Section 68(a) of Chapter 830 of the 1987 Session Laws, except  
32 administrative law judges, are made subject to the State Personnel Act by this act but  
33 shall not be reclassified downward by the Office of State Personnel or the State  
34 Personnel Commission. Any employee transferred by this act who is performing duties  
35 substantially comparable to an employee in a higher classification shall be reclassified  
36 upward to equalize the grades and duties.

37           Sec. 21. The fourth sentence of Section 19 of Chapter 746, Session Laws of  
38 1985, as amended by Section 7 of Chapter 1022, Session Laws of 1987, is repealed.

39           Sec. 22. This act shall become effective July 1, 1989.