



1 Section 2. G.S. 150B-34 reads as rewritten:

2 **"§ 150B-34. Recommended decision or order of administrative law judge.**

3 (a) Except as provided in G.S. 150B-36(c), in each contested case the  
4 administrative law judge shall make a recommended decision or order that contains  
5 findings of fact and conclusions of law. The findings of fact shall be supported by a  
6 preponderance of the evidence admissible under G.S. 150B-29, 150B-30, or 150B-31."

7 Section 3. G.S. 150B-36 reads as rewritten:

8 **"§ 150B-36. Final decision.**

9 (a) (1) ~~Before the agency makes a final decision, it shall~~ After an agency  
10 receives the official record in a contested case, the agency must give  
11 each party an opportunity to the contested case 30 days to file  
12 exceptions to the decision or order recommended by the  
13 administrative law judge, judge and to present written arguments to  
14 those in the agency who will make the final decision or order. If none  
15 of the parties files exceptions to the recommended decision or order  
16 within the 30-day period, the agency is considered to have adopted the  
17 administrative law judge's recommended decision or order as the  
18 agency's final decision or order.

19 (2) If a party files in good faith a timely and sufficient affidavit of personal  
20 bias or other reason for disqualification of a member of the agency  
21 making the final decision, the agency shall determine the matter as a  
22 part of the record in the ~~case, and the case.~~ The determination is subject  
23 to judicial review at the conclusion of the case.

24 (b) (1) A final decision or order in a contested case shall be made by  
25 the agency ~~in writing after review of~~ within the time set by G.S. 150B-  
26 44. If the agency does not adopt as its final decision or order the  
27 recommended decision or order made in the contested case under  
28 subsection (a) of this section, it must make a written final decision or  
29 order. In making its final decision or order, the agency may consider  
30 only the official record as defined in G.S. 150B-37(a) and the  
31 exceptions filed by a party. The final decision or order shall include  
32 findings of fact and conclusions of law. The findings of fact made in  
33 the contested case by the administrative law judge are binding on the  
34 agency in making its final decision or order if they are supported by  
35 substantial evidence admissible under G.S. 150B-29, 150B-30, or  
36 150B-31 in view of the entire record.

37 (2) If the agency does not adopt the administrative law judge's  
38 recommended decision or order as its final ~~decision,~~ decision or order,  
39 the agency shall state in its decision or order the specific reasons why it  
40 did not adopt the administrative law judge's recommended ~~decision.~~ The  
41 agency may consider only the official record prepared pursuant to G.S. 150B-  
42 37 in making a final decision or order, and the final decision or order shall be  
43 supported by substantial evidence admissible under G.S. 150B-29(a), 150B-

1           ~~30, or 150B-31.~~ decision or order. A copy of the agency's decision or  
2 order shall be served upon each party personally or by certified mail  
3 addressed to the party at the latest address given by the party to the  
4 agency, and a copy shall be furnished to ~~his~~ each party's attorney of  
5 record and the Office of Administrative Hearings.

6       (c) The following decisions made by administrative law judges in contested cases  
7 are final decisions:

8           (1) A determination that the Office of Administrative Hearings lacks  
9 jurisdiction.

10          (2) An order entered pursuant to the authority in G.S. 7A-759(e).

11          (3) An order entered pursuant to a written prehearing motion that either  
12 dismisses the contested case for failure of the petitioner to prosecute or  
13 grants the relief requested when a party does not comply with  
14 procedural requirements.

15          (4) An order entered pursuant to a prehearing motion to dismiss the  
16 contested case in accordance with G.S. 1A-1, Rule 12(b) when the order  
17 disposes of all issues in the contested case."

18       Section 4. G.S. 150B-37(c) reads as rewritten:

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

22       Section 5. G.S. 150B-44 reads as rewritten:

23 **"§ 150B-44. Right to judicial intervention when decision unreasonably delayed.**

24       Unreasonable delay on the part of any agency or administrative law judge in taking  
25 any required action shall be justification for any person whose rights, duties, or privileges  
26 are adversely affected by such delay to seek a court order compelling action by the  
27 agency or administrative law judge. An agency that is subject to Article 3 of this Chapter  
28 and is not a board or commission has ~~90-45~~ 90-45 days from the day it receives the official  
29 record in a contested case from the Office of Administrative Hearings to make a final  
30 decision in the case. This time limit may be extended by the parties or, for good cause  
31 shown, by the agency for an additional period of up to ~~90-30~~ 90-30 days. An agency that is  
32 subject to Article 3 of this Chapter and is a board or commission has ~~90-45~~ 90-45 days from the  
33 day it receives the official record in a contested case from the Office of Administrative  
34 Hearings or ~~90-45~~ 90-45 days after its next regularly scheduled meeting, whichever is longer, to  
35 make a final decision in the case. This time limit may be extended by the parties or, for  
36 good cause shown, by the agency for an additional period of up to ~~90-30~~ 90-30 days. If an  
37 agency subject to Article 3 of this Chapter has not made a final decision within these time  
38 limits, the agency is considered to have adopted the administrative law judge's  
39 recommended decision as the agency's final decision. Failure of an agency subject to  
40 Article 3A of this Chapter to make a final decision within ~~180-75~~ 180-75 days of the close of the  
41 contested case hearing is justification for a person whose rights, duties, or privileges are  
42 adversely affected by the delay to seek a court order compelling action by the agency or,  
43 if the case was heard by an administrative law judge, by the administrative law judge."

1 Section 6. G.S. 150B-51 reads as rewritten:

2 **"§ 150B-51. Scope of review.**

3 (a) Initial Determination in Certain Cases. In reviewing a final decision in a  
4 contested case in which an administrative law judge made a recommended decision, the  
5 court shall make ~~two~~ three initial ~~determinations.~~ determinations as follows:

6 (1) ~~First, the~~ The court shall determine whether the agency heard new  
7 evidence after receiving the recommended decision. If the court  
8 determines that the agency heard new evidence, the court shall reverse  
9 the decision or remand the case to the agency to enter a decision in  
10 accordance with the evidence in the official record.

11 (2) ~~Second, if~~ If the agency did not adopt the recommended decision, the  
12 court shall determine whether the administrative law judge's findings of  
13 fact are supported by substantial evidence admissible under G.S. 150B-  
14 29, 150B-30, or 150B-31 in view of the entire record. If the court  
15 determines that the agency failed to adhere to the administrative law  
16 judge's findings of fact that are supported by substantial evidence, the  
17 court shall reverse the decision or remand the case to the agency to enter  
18 a decision in accordance with the evidence in the official record.

19 (3) If the agency did not adopt the recommended decision, the court shall  
20 determine whether the agency's decision states the specific reasons why  
21 the agency did not adopt the recommended decision. If the court  
22 determines that the agency did not state specific reasons why it did not  
23 adopt a recommended decision, the court shall reverse the decision or  
24 remand the case to the agency to enter the specific reasons.

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

- 30 (1) In violation of constitutional provisions;  
31 (2) In excess of the statutory authority or jurisdiction of the agency;  
32 (3) Made upon unlawful procedure;  
33 (4) Affected by other error of law;  
34 (5) Unsupported by substantial evidence admissible under G.S. 150B-29(a),  
35 150B-30, or 150B-31 in view of the entire record as submitted; or  
36 (6) Arbitrary or capricious."

37 Section 7. This act becomes effective January 1, 2000, and applies to  
38 contested cases commenced on or after the effective date.