

General Statute

§ 150B-20. Petitioning an agency to adopt a rule.

(a) Petition. - A person may petition an agency to adopt a rule by submitting to the agency a written rule-making petition requesting the adoption. A person may submit written comments with a rule-making petition. If a rule-making petition requests the agency to create or amend a rule, the person must submit the proposed text of the requested rule change and a statement of the effect of the requested rule change. Each agency must establish by rule the procedure for submitting a rule-making petition to it and the procedure the agency follows in considering a rule-making petition.

(b) Time. - An agency must grant or deny a rule-making petition submitted to it within 30 days after the date the rule-making petition is submitted, unless the agency is a board or commission. If the agency is a board or commission, it must grant or deny a rule-making petition within 120 days after the date the rule-making petition is submitted.

(c) Action. - If an agency denies a rule-making petition, it must send the person who submitted the petition a written statement of the reasons for denying the petition. If an agency grants a rule-making petition, it must inform the person who submitted the rule-making petition of its decision and must initiate rule-making proceedings. When an agency grants a rule-making petition, the notice of text it publishes in the North Carolina Register may state that the agency is initiating rule making as the result of a rule-making petition and state the name of the person who submitted the rule-making petition. If the rule-making petition requested the creation or amendment of a rule, the notice of text the agency publishes may set out the text of the requested rule change submitted with the rule-making petition and state whether the agency endorses the proposed text.

(d) Review. - Denial of a rule-making petition is a final agency decision and is subject to judicial review under Article 4 of this Chapter. Failure of an agency to grant or deny a rule-making petition within the time limits set in subsection (b) is a denial of the rule-making petition.

SECTION .0800 RULES

.0801 PETITIONS FOR ADOPTION, AMENDMENT OR REPEAL OF RULES

(a) The procedure for petitioning the Board to adopt, amend, or repeal a rule and for the Board's response is governed by G.S. 150B-20. [*See insert below.*]

(b) Rule-making petitions shall be sent to the Board. No special form is required, but the petitioner shall state his or her name and address. The petition shall include:

Summary of the Rule-Making Process

- (1) A draft of any proposed rule or amendment to a rule;
- (2) The reason for the proposal;
- (3) The effect of the proposal on existing rules or decisions;
- (4) Any data supporting the proposed rule change;
- (5) Practices likely to be affected by the proposed rule change;
- (6) Persons likely to be affected by the proposed rule change.

.0802

RULE MAKING NOTICE AND PUBLIC HEARING

(a) Any person who wishes to receive individual notice of agency rule making shall file a written request with the Board and shall be responsible for the actual cost of printing and mailing said notice.

(b) Any public rule-making hearing shall be conducted by the Board Chair or by any person he or she may designate. The presiding officer shall have control of the hearing, including setting limits on oral presentations, and shall conduct the hearing so as to provide a reasonable opportunity for any interested person to present views, data and comments.

DECLARATORY RULINGS

(a) The issuance of declaratory rulings by the Board is governed by G.S. 150B-4.

(b) A request for a declaratory ruling shall be in writing and addressed to the Board. The request shall contain the following information:

- (1) The name and address of the person making the request;
- (2) The statute or rule to which the request relates;
- (3) A concise statement of the manner in which the person has been, or may be aggrieved by the statute or rule; and
- (4) A statement as to whether a hearing is desired, and if desired, the reason therefore.

(c) The Board shall refuse to issue a declaratory ruling under the following circumstances:

- (1) When the Board has already made a controlling decision on substantially similar facts in a contested case;
- (2) When the facts underlying the request for a ruling on a rule were specifically considered at the time of the adoption of the rule in question; and
- (3) When the subject matter of the request is involved in pending litigation in North Carolina.

Also see the Board website: http://www.bmbt.org/pages/Rule_Making.html