

## **RRC STAFF OPINION**

*PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.*

AGENCY: North Carolina Agricultural Finance Authority

RULE CITATION: 02 NCAC 63 .0101, Temporary Rule

RECOMMENDATION DATE: August 23, 2024

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
  - ☒ Lack of statutory authority
  - ☒ Unclear or ambiguous
  - ☐ Unnecessary
  - ☒ Failure to comply with the APA
  - ☐ Extend the period of review

COMMENT:

### Background

The North Carolina Agricultural Finance Authority (hereinafter “the Authority”) was established by Chapter 122D, the 1983 North Carolina Agricultural Finance Act (hereinafter “the Act”), specifically G.S. 122D-4. While the Authority is “a body politic and corporate” “within the Department of Agriculture and Consumer Services” (hereinafter “the Department”), the Authority has rulemaking authority independent of the Department pursuant to G.S. 122D-6(4) to “adopt, promulgate and amend rules for the administration of this Chapter.” <sup>1</sup>

In Part X of Session Law 2023-134 (the “Current Operations Appropriations Act of 2023” more commonly known as the “Budget Bill”), the General Assembly adopted Article 88, titled the “Large Animal Healthcare Enhancement Act,” as part of Chapter 106 of the North Carolina

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<sup>1</sup> THE DEPARTMENT IS ONLY MENTIONED FOUR TIMES IN THE ACT AND DOES NOT APPEAR TO PLAY A SIGNIFICANT ROLE IN THE OPERATIONS OF THE AUTHORITY. IT APPEARS TO HAVE A SIMILAR RELATIONSHIP AS THE OFFICE OF ADMINISTRATIVE HEARINGS HAS TO THE RULE REVIEW COMMISSION.

William W. Peaslee  
Commission Counsel

General Statutes. <sup>2</sup> Part X establishes the Large Animal Healthcare Enhancement Fund within the Department of Agriculture and Consumer Services to be “administered by the Authority.”

In Part X of S.L. 2023-134, the General Assembly mandates that the Authority “adopt rules temporary rules to implement this section as soon as practicable...”<sup>3</sup>

Part X of S.L. 2023-134 further creates G.S. 106-1073 which establishes “The Large Animal Healthcare Enhancement Advisory Committee” (hereinafter, “the Committee”).

Part X of S.L. 2023-134 further creates G.S. 106-1074 which provides in relevant part:

*(e) Limitations. –The Advisory Committee shall review applicants on an annual basis to determine eligibility under the criteria developed under subsection (c) of this section. The Advisory Committee shall also review each recipient of grant funds at the end of each fiscal year. A recipient whose veterinary license expires, is revoked, or is suspended during the fiscal year in which the grant is awarded, or who fails to practice large animal veterinary medicine in the designated counties named in the recipient's application, shall repay the amount received from the Fund.*

The implication is that the Committee will make grant funding decisions.

## I.

The above captioned rule, which is mostly preambulatory in nature and arguably unnecessary pursuant to G.S. 150B021-9(a)(4), states that the Committee and its Chair<sup>4</sup> is “under the guidance of the [Department]” implying that the Department has some managerial authority over the Committee.

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<sup>2</sup> CHAPTER 106 IS ENTITLED “AGRICULTURE.”

<sup>3</sup> In the History Note for each rule the Authority cites G.S. 106-1074 as its authority to adopt rules. The language of G.S. 106-1074 does not contain rulemaking authority; only Section 10.1(c) of S.L. 2023-134 does. This error can and should be easily remedied. The Authority may want to consider asking the General Assembly to write its rulemaking authority into Article 88 of Chapter 106 of the North Carolina General Statutes rather than just the Session Law.

<sup>4</sup> THE COMMISSIONER OF AGRICULTURE OR AN EMPLOYEE OF THE DEPARTMENT SHALL SERVE AT THE CHAIR OF THE COMMITTEE PURSUANT TO G.S. 106-1073(A)(1) AS ADOPTED IN PART X OF S.L. 2023-134.

William W. Peaslee  
Commission Counsel

Staff sees no language which places either the Committee or its Chair under any authority of the Department.

Staff counsel inquired about this issue in the request for changes. As of the issuance of this opinion, the Authority has not responded.

Further, it is under clear what the Authority means by “guidance.”

Accordingly, staff recommends objection to the temporary rules pursuant to G.S. 150B-21.9(a)(1) for the Authority adopting a rule which exceeds its authority and (a)(2) for the ambiguity of the language.

## II.

The above captioned rule also states that, “Procedures and guidelines for participating applicants shall also be described [in the Section.]” “Guidelines” do not meet the definition of “rules” and therefore cannot be adopted as rules and entered into the North Carolina Administrative Code. Staff’s recommendation is consistent with the Commission’s previous decisions.

Accordingly, staff recommends objection to the temporary rules pursuant to G.S. 150B-21.9(a)(1) for the Authority adopting a rule which exceeds its authority and (a)(4) for the ambiguity of the language.

**§ 150B-21.9. Standards and timetable for review by Commission.**

(a) Standards. - The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

(a1) Entry of a rule in the North Carolina Administrative Code after review by the Commission creates a rebuttable presumption that the rule was adopted in accordance with Part 2 of this Article.

(b) Timetable. - The Commission must review a permanent rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month. The Commission must review a temporary rule in accordance with the timetable and procedure set forth in G.S. 150B-21.1. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(f); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 9.)

## **§ 150B-2. Definitions.**

As used in this Chapter, the following definitions apply:

- (1) Administrative law judge. - A person appointed under G.S. 7A-752, 7A-753, or 7A-757.
- (1a) Adopt. - To take final action to create, amend, or repeal a rule.
- (1b) Agency. - An agency or an officer in the executive branch of the government of this State. The term includes the Council of State, the Governor's Office, a board, a commission, a department, a division, a council, and any other unit of government in the executive branch. A local unit of government is not an agency.
- (1c) Codifier of Rules. - The person appointed by the Chief Administrative Law Judge of the Office of Administrative Hearings pursuant to G.S. 7A-760(b).
- (1d) Commission. - The Rules Review Commission.
- (2) Contested case. - An administrative proceeding pursuant to this Chapter to resolve a dispute between an agency and another person that involves the person's rights, duties, or privileges, including licensing or the levy of a monetary penalty. The term does not include rulemaking, declaratory rulings, or the award or denial of a scholarship, a grant, or a loan.
- (2a) Repealed by Session Laws 1991, c. 418, s. 3.
- (2b) Hearing officer. - A person or group of persons designated by an agency that is subject to Article 3A of this Chapter to preside in a contested case hearing conducted under that Article.
- (3) License. - Any certificate, permit, or other evidence, by whatever name called, of a right or privilege to engage in any activity, except licenses issued under Chapter 20 and Subchapter I of Chapter 105 of the General Statutes, occupational licenses, and certifications of electronic poll books, ballot duplication systems, or voting systems under G.S. 163-165.7.
- (4) Licensing. - Any administrative action issuing, failing to issue, suspending, or revoking a license or occupational license. The term does not include controversies over whether an examination was fair or whether the applicant passed the examination.
- (4a) Occupational license. - Any certificate, permit, or other evidence, by whatever name called, of a right or privilege to engage in a profession, occupation, or field of endeavor that is issued by an occupational licensing agency.
- (4b) Occupational licensing agency. - Any board, commission, committee, or other agency of the State that is established for the primary purpose of regulating the entry of persons into, or the conduct of persons within a particular profession, occupation, or field of endeavor, and that is authorized to issue and revoke licenses. The term does not include State agencies or departments that may as only a part of their regular function issue permits or licenses.
- (5) Party. - Any person or agency named or admitted as a party or properly seeking as of right to be admitted as a party and includes the agency as appropriate.
- (5a) Person. - Any natural person, partnership, corporation, body politic, and any unincorporated association, organization, or society that may sue or be sued under a common name.

- (6) Person aggrieved. - Any person or group of persons of common interest directly or indirectly affected substantially in his, her, or its person, property, or employment by an administrative decision.
- (7) Recodified as subdivision (5a) of this section by Session Laws 2021-88, s. 16(a), effective July 22, 2021.
- (7a) Policy. - Any nonbinding interpretive statement within the delegated authority of an agency that merely defines, interprets, or explains the meaning of a statute or rule. The term includes any document issued by an agency that is intended and used purely to assist a person to comply with the law, such as a guidance document.
- (8) Residence. - Domicile or principal place of business.
- (8a) Rule. - Any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. The term includes the establishment of a fee and the amendment or repeal of a prior rule. The term does not include the following:
- a. Statements concerning only the internal management of an agency or group of agencies within the same principal office or department enumerated in G.S. 143A-11 or 143B-6, including policies and procedures manuals, if the statement does not directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency or group of agencies.
  - b. Budgets and budget policies and procedures issued by the Director of the Budget, by the head of a department, as defined by G.S. 143A-2 or G.S. 143B-3, or by an occupational licensing board, as defined by G.S. 93B-1.
  - c. Nonbinding interpretative statements within the delegated authority of an agency that merely define, interpret, or explain the meaning of a statute or rule.
  - d. A form, the contents or substantive requirements of which are prescribed by rule or statute.
  - e. Statements of agency policy made in the context of another proceeding, including:
    - 1. Declaratory rulings under G.S. 150B-4.
    - 2. Orders establishing or fixing rates or tariffs.
  - f. Requirements, communicated to the public by the use of signs or symbols, concerning the use of public roads, bridges, ferries, buildings, or facilities.
  - g. Statements that set forth criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections; in settling financial disputes or negotiating financial arrangements; or in the defense, prosecution, or settlement of cases.
  - h. Scientific, architectural, or engineering standards, forms, or procedures, including design criteria and construction standards used to construct or maintain highways, bridges, or ferries.

- i. Job classification standards, job qualifications, and salaries established for positions under the jurisdiction of the State Human Resources Commission.
  - j. Establishment of the interest rate that applies to tax assessments under G.S. 105-241.21.
  - k. The State Medical Facilities Plan, if the Plan has been prepared with public notice and hearing as provided in G.S. 131E-176(25), reviewed by the Commission for compliance with G.S. 131E-176(25), and approved by the Governor.
  - l. Standards adopted by the State Chief Information Officer and applied to information technology as defined in G.S. 143B-1320.
- (8b) Repealed by Session Laws 2011-398, s. 61.2, effective July 25, 2011.
- (8c) Substantial evidence. - Relevant evidence a reasonable mind might accept as adequate to support a conclusion.
- (9) Repealed by Session Laws 1991, c. 418, s. 3. (1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, ss. 61, 62; 1977, c. 915, s. 5; 1983, c. 641, s. 1; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, s. 1(2)-1(5); 1987, c. 878, ss. 1, 2, 21; 1987 (Reg. Sess., 1988), c. 1111, s. 17; 1991, c. 418, s. 3; c. 477, ss. 3.1, 3.2, 9; 1995, c. 390, s. 29; 1996, 2nd Ex. Sess., c. 18, s. 7.10(g); 1997-456, s. 27; 2003-229, s. 12; 2007-491, s. 44(1)b; 2011-13, s. 2; 2011-398, ss. 15, 61.2; 2013-188, s. 7; 2013-382, s. 9.1(c); 2013-413, s. 1; 2015-2, s. 2.2(c); 2015-241, ss. 7A.3, 30.16(a); 2017-6, s. 3; 2018-13, s. 3.8(b); 2018-146, ss. 3.1(a), (b), 4.5(b); 2021-88, s. 16(a), (b).)

**§ 122D-4. North Carolina Agricultural Finance Authority.**

(a) The North Carolina Agricultural Finance Authority, a body politic and corporate, is hereby created within the Department of Agriculture and Consumer Services. The Authority shall be constituted a public agency and an instrumentality of the State for the performance of essential public functions.

(b) The Authority shall be composed of 10 members appointed to three-year terms as follows:

- (1) One member appointed by the Governor to a term that expires on 1 July of years that precede by one year those years that are evenly divisible by three.
- (2) One member appointed by the Governor to a term that expires on 1 July of years that are evenly divisible by three.
- (3) One member appointed by the Governor to a term that expires on 1 July of years that follow by one year those years that are evenly divisible by three.
- (4) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate to a term that expires on 1 July of years that precede by one year those years that are evenly divisible by three.
- (5) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate to a term that expires on 1 July of years that are evenly divisible by three.
- (6) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate to a term that expires on 1 July of years that follow by one year those years that are evenly divisible by three.
- (7) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives to a term that expires on 1 July of years that precede by one year those years that are evenly divisible by three.
- (8) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives to a term that expires on 1 July of years that are evenly divisible by three.
- (9) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives to a term that expires on 1 July of years that follow by one year those years that are evenly divisible by three.
- (10) The Commissioner or the Commissioner's designee shall serve ex officio, with the same rights and privileges, including voting rights, as other members.

(c) A member appointed under subdivisions (1) through (9) of subsection (b) of this section may be reappointed to no more than two successive three-year terms. Upon the expiration of a three-year term, a member shall continue to serve until a successor is appointed and duly qualified as provided by G.S. 128-7.

(d) Vacancies in the offices of any appointed members of the Authority shall be filled in accordance with G.S. 120-122 for the remainder of the unexpired term. No vacant office shall be included in the determination of a quorum. No vacancy in office shall impair the rights of the members to exercise all rights and to conduct official business of the Authority.

(e) The domicile of the Authority shall be the City of Raleigh.

(f) A majority of the members shall constitute a quorum for the transaction of official business. All official actions of the Authority shall require an affirmative vote of a majority of the members present and voting at any meeting.



(g) Members of the Authority shall not receive any salary for the performance of their duties as members. Appointed members may receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(h) The Authority shall meet quarterly and may meet more frequently upon call.

(i) The Authority may delegate to one or more of its members, officers, employees or agents such powers and duties as it may deem proper. (1983, c. 789, s. 1; 1985, c. 583, s. 2; 1985 (Reg. Sess., 1986), c. 1011, s. 1; 1989, c. 500, s. 109(e); 1989 (Reg. Sess., 1990), c. 1074, s. 32(b); 1995, c. 490, s. 4; 1997-261, s. 109; 2004-195, s. 5.1.)

#### **§ 122D-6. General powers of Authority.**

The Authority shall have all the powers necessary to give effect to and carry out the purposes and provisions of this Chapter, including the following powers in addition to all other powers granted by other provisions of this Chapter, to:

- (1) Sue and be sued in its own name and in the name of any subsidiary corporation or entity which may be created pursuant to paragraph (19) of this section;
- (2) Have a seal and alter the same at its pleasure;
- (3) Adopt bylaws for the internal organization and government of the Authority;
- (4) **Adopt, promulgate and amend rules for the administration of the Chapter;**
- (4a) Limit the definition of agricultural loan under G.S. 122D-3(1);
- (5) Make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this Chapter with any federal or State governmental agency, public or private corporation, lending institution or other entity or person, and each and any North Carolina governmental agency is hereby authorized to enter into contracts and otherwise cooperate with the agency to facilitate the purposes of this Chapter;
- (6) Accept, administer and expend donations of movable or immovable property from any source, and receive, administer and expend appropriations from the legislature and financial assistance, guarantees, insurance or subsidies from the federal or State government;
- (7) Subject to the rights of holders of bonds of the Authority, to renegotiate, refinance or foreclose on any mortgage, security interest or lien; or commence any action to protect or enforce any right or benefit conferred upon the Authority by any law, mortgage, security interest, lien, contract or other agreement; and bid for and purchase property at any foreclosure or at any other sale or otherwise acquire or take possession of any property; and in any such event, the Authority may complete, administer, pay the principal of and interest on any obligation incurred in connection with such property, dispose of and otherwise deal with such property in such manner as may be necessary or desirable to protect the interest of the Authority or of holders of its bonds therein;
- (8) Procure or provide for the procurement of insurance or reinsurance against any loss in connection with its property or operations, including but not limited to insurance, reinsurance or other guarantees from any federal or State governmental agency or private insurance company for the payment of any bonds issued by the Authority, or bond, notes or any other obligations or evidences of indebtedness issued or made by any subsidiary corporation or entity created pursuant to subdivision (19) of this section or by any lending institution or other entity or person, or insurance or reinsurance against loss with respect to agricultural loans, mortgages or mortgage loans, or any other type of loans, including the power to pay premiums on such insurance or reinsurance;
- (9) Make, insure, coinsure, reinsure, or cause to be insured, coinsured or reinsured, agricultural loans, mortgage loans or mortgages, or any other type of loans and pay or receive premiums on such insurance, coinsurance or reinsurance, and establish reserves for losses, and participate in the insurance, coinsurance or reinsurance of agricultural loans, mortgage loans or mortgages, or any other type of loans with the federal or State government or any private insurance company;

- (10) Undertake and carry out or authorize the completion of studies and analyses of agricultural conditions and needs within the State and needs relating to the promotion of agricultural exports and ways of meeting such needs, and make such studies and analyses available to the public and to the agricultural industry, and to engage in research or disseminate information on agriculture and agricultural exports;
- (11) Accept federal, State or private financial or technical assistance and comply with any conditions for such assistance, provided such conditions are not in conflict with the intent of this Chapter;
- (12) Establish, pay and collect fees and charge in connection with its loans, deposits, insurance commitments and services, including but not limited to, reimbursement of costs of issuing bonds, origination and servicing fees, and insurance premiums;
- (13) Make loans to or deposits with lending institutions and purchase or sell agricultural loans;
- (14) Acquire or contract to acquire from any person, firm, corporation, municipality, federal or State agency, by grant, purchase or otherwise, movable or immovable property or any interest therein; own, hold, clear, improve, lease, construct or rehabilitate, and sell, invest, assign, exchange, transfer, convey, lease, mortgage or otherwise dispose of or encumber the same, subject to the rights of holders of the bonds of the Authority, at public or private sale, with or without public bidding;
- (15) Borrow money, issue bonds, and provide for the rights of the lenders or holders thereof and purchase, discount, sell, negotiate and guarantee, insure, coinsure and reinsure note, drafts, checks, bills of exchange, acceptances, bankers acceptances, cable transfers, letters of credit and other evidence of indebtedness with or without credit enhancement devices;
- (16) Subject to the rights of holders of the bonds of the Authority, consent to any modification with respect to the rate of interest, time, payment of any installment of principal or interest, security or any other term or condition of any loan, contract, mortgage, mortgage loan or commitment therefor or agreement of any kind to which the Authority is a party or beneficiary;
- (17) Maintain an office at such place or places as the Authority shall determine;
- (18) Serve as the beneficiary of any public trust;
- (19) After reporting to the agriculture committees of the House of Representatives and the Senate, to create such subsidiary corporations or entities as may be necessary to borrow money, insure or reinsure agricultural loans, or issue bonds in the international financial market; and
- (20) Purchase or participate in the purchase and enter into commitments by itself or together with others for the purchase of federally issued securities; provided that the proceeds of such securities will be utilized in accordance with the provisions of this Chapter.

PART X. AGRICULTURE AND CONSUMER SERVICES

LARGE ANIMAL HEALTH ENHANCEMENT FUND

SECTION 10.1.(a) Funds appropriated in this act to the Department of Agriculture and Consumer Services for the enhancement of large animal veterinary services in the State shall be allocated to the Large Animal Healthcare Enhancement Fund created in Article 88 of Chapter 106 of the General Statutes, as enacted by subsection (b) of this section, for the purposes set forth therein.

SECTION 10.1.(b) Chapter 106 of the General Statutes is amended by adding a new Article to read:

"Article 88.

"Large Animal Healthcare Enhancement Act.

**"§ 106-1071. Title.**

This Article shall be known and may be cited as the "Large Animal Healthcare Enhancement Act of 2023."

**"§ 106-1072. Definitions.**

The following definitions apply in this Article:

- (1) Advisory Committee. – The Large Animal Healthcare Enhancement Advisory Committee, as established by G.S. 106-1073.
- (2) Authority. – The North Carolina Agricultural Finance Authority, as created by G.S. 122D-4.
- (3) Board. – The North Carolina Board of Agriculture, as created by G.S. 106-2.
- (4) Commissioner. – The Commissioner of Agriculture.
- (5) Department. – The Department of Agriculture and Consumer Services.
- (6) Designated county. – A county in this State with a population of less than 100,000 people according to the latest decennial census.
- (7) Fund. – The Large Animal Healthcare Enhancement Fund, as created by G.S. 106-1074.
- (8) Large animal veterinarian. – A person who is actively engaged in and is licensed to practice veterinary medicine pursuant to Article 11 of Chapter 90 of the General Statutes and whose specialties include livestock, poultry, or equine animals.
- (9) Large animal veterinary medicine. – The practice of veterinary medicine, as defined in G.S. 90-181, for livestock, poultry, or equine animals.

**"§ 106-1073. Advisory Committee.**

(a) Committee Established. – The Large Animal Healthcare Enhancement Advisory Committee is established within the North Carolina Agricultural Finance Authority and shall consist of membership as follows:

- (1) The Commissioner of Agriculture or an employee of the Department designated by the Commissioner, who shall serve as chair.
- (2) The State Veterinarian or the State Veterinarian's designee.
- (3) A member of the Food Animal Scholars Program steering and mentoring committee.
- (4) Two practicing large animal veterinarians, to be appointed by the Commissioner. The veterinarians shall have different specialties in their practice.
- (5) Two representatives of the livestock industry, to be appointed by the Commissioner. The representatives shall represent different segments of the livestock industry.
- (6) The Executive Director of the Authority or the Executive Director's designee, who shall not be a voting member.

The Commissioner and the State Veterinarian may each designate one additional at-large member of the Advisory Committee.

(b) Terms of Members. – Members of the Advisory Committee shall serve terms of four years, beginning effective July 1 of the year of appointment.

(c) Vacancies. – Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be made by the original appointing authority and shall be for the balance of the unexpired term.

(d) Removal. – The appointing authority shall have the power to remove any member of the Commission appointed by that authority from office for misfeasance, malfeasance, or nonfeasance.

(e) Reimbursement. – The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(f) Meetings. – The Advisory Committee shall meet at least once every six months and may meet more often upon the call of the chair. A majority of the members of the Commission shall constitute a quorum for the transaction of business.

(g) Ethics. – Members of the Advisory Committee are public servants as defined by G.S. 138A-3(70).

(h) Staff. – The staff of the Authority shall serve as staff to assist the Advisory Committee in carrying out administrative functions in the discharge of its duties and responsibilities.

#### **"§ 106-1074. Large Animal Healthcare Enhancement Fund.**

(a) Fund Created. – The Large Animal Healthcare Enhancement Fund is created as a special fund within the Department of Agriculture and Consumer Services. The Fund shall be administered by the Authority. The purpose of the fund is to make grants to encourage veterinary students to enter and stay in large animal veterinarian practice and to support large animal veterinarian practices to enable them to better serve their designated counties.

(b) Fund Sources. – The Fund shall consist of any money appropriated to it by the General Assembly and any money received from public or private sources. Unexpended, unencumbered money in the Fund from sources other than appropriations from the General Assembly shall not revert and shall remain available for expenditure in accordance with this section. The Authority may use up to five percent (5%) of General Fund appropriations in each fiscal year for administrative support.

(c) Grant Eligibility. – A large animal veterinarian who practices or plans to practice in one or more designated counties may be eligible for a grant of up to twenty-five thousand dollars (\$25,000) per fiscal year. Applicants shall apply in a format to be determined by the Advisory Commission, but the application shall require the applicant to state the designated counties in which the large animal veterinarian is practicing or plans to practice, the amount of funding requested, and the approved use for which the applicant intends to use the funds. When determining which applicants shall be awarded grant funds, the Advisory Committee shall consider all of the following criteria:

- (1) The geographic area of the State that an applicant serves or would serve and the need for large animal veterinary services in that area of the State.
- (2) The number of designated counties that an applicant serves or would serve.
- (3) The number of different large animal veterinarian specialties in which the applicant practices.
- (4) The percentage of time the applicant devotes to large animal veterinary services.
- (5) Any additional criteria the Advisory Committee determines to be appropriate.

(d) Uses of Grant Funds. – The grant recipient may use the funds to support the recipient's large animal veterinary practice, including any of the following:

- (1) The repayment of educational loans related to the recipient's veterinary degree.
- (2) The purchase of equipment or technology for use in the recipient's large animal veterinary practice.
- (3) Any additional uses the Advisory Committee determines is appropriate to promote and develop large animal veterinarians to practice in designated counties.

(e) Limitations. –The Advisory Committee shall review applicants on an annual basis to determine eligibility under the criteria developed under subsection (c) of this section. The Advisory Committee shall also review each recipient of grant funds at the end of each fiscal year. A recipient whose veterinary license expires, is revoked, or is suspended during the fiscal year in which the grant is awarded, or who fails to practice large animal veterinary medicine in the designated counties named in the recipient's application, shall repay the amount received from the Fund.

(f) Report. – The Agricultural Finance Authority shall report no later than October 1 each year to the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources and the Fiscal Research Division of the General Assembly regarding the implementation of this section during the previous fiscal year. The report shall include a list of the recipients of grants from the Fund for the previous fiscal year, the amount of the grants received, how recipients used awarded grant funds, and whether any awarded funds were required to be repaid by recipients."

**SECTION 10.1.(c)** The Agricultural Finance Authority, in consultation with the Large Animal Healthcare Enhancement Advisory Committee established by G.S. 106-1073, as enacted by subsection (b) of this section, shall adopt temporary rules to implement this section as soon as practicable and shall concurrently begin adopting permanent rules to replace the temporary rules.

**SECTION 10.1.(d)** This section is effective when it becomes law.



# TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

**1. Rule-Making Agency:**

North Carolina Finance Authority

**2. Rule citation & name:**

02 NCAC 63 .0101: PURPOSE

**3. Action:** ☒ Adoption

☐ Amendment

☐ Repeal

Temporary adoption

**4. Was this an Emergency Rule:** ☐ Yes

☒ No

Effective date: 10/01/24

**5. Provide dates for the following actions as applicable:**

a. Proposed Temporary Rule submitted to OAH: 6/11/24

b. Proposed Temporary Rule published on the OAH website: 6/12/24

c. Public Hearing date: 6/25/24

d. Comment Period: 6/13/24 - 7/5/24

e. Notice pursuant to G.S. 150B-21.1(a3)(2): 6/11/24

f. Adoption by agency on: 8/8/24

g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: 10/01/24

**6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.**

- ☐ A serious and unforeseen threat to the public health, safety or welfare.
- ☒ The effective date of a recent act of the General Assembly or of the U.S. Congress.  
Cite: House Bill 259, Session Law 2023-134  
Effective date: October 3rd, 2023
- ☐ A recent change in federal or state budgetary policy.  
Effective date of change:
- ☐ A recent federal regulation.  
Cite:  
Effective date:
- ☐ A recent court order.  
Cite order:
- ☐ Other:

**Explain:**

The 2023 Appropriations Act - House Bill 259 became law on October 3, 2023. The Large Animal Healthcare Enhancement Fund language can be found at the below link beginning on page 322.

H259v7.pdf (ncleg.gov)

<https://www.ncleg.gov/Sessions/2023/Bills/House/PDF/H259v7.pdf>



7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:  
Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator:

Anna R. Hayworth

Phone:

(919) 745-9356

E-Mail:

anna.hayworth@ncagr.gov

Agency contact, if any:

Robert Hosford

Phone:

n/a

E-Mail: robert.hosford@ncagr.gov

10. Signature of Agency Head\*:



\* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name:

Anna Hayworth

Title:

Rule-making coordinator

E-Mail:

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

02 NCAC 63 .0101 is proposed for adoption under temporary procedures as follows:

**CHAPTER 63 – LARGE ANIMAL HEALTHCARE ENHANCEMENT ADVISORY COMMITTEE**

**SECTION .0100 - GENERAL PROVISIONS**

**02 NCAC 63 .0101 PURPOSE**

This Chapter describes the operating procedures for the Large Animal Healthcare Enhancement Advisory Committee and the Chair under the guidance of the North Carolina Department of Agriculture and Consumer Services, and the North Carolina Agricultural Finance Authority implementing the Large Animal Healthcare Enhancement Fund for the enhancement of large animal veterinary services in North Carolina. Procedures and guidelines for participating applicants are also described. The purpose of the program is to provide grants to encourage veterinary students to sustainably serve as large or mixed animal veterinarians in underserved areas in the state and to provide additional resources for large or mixed animal veterinary practices that operate in underserved areas to help them to better serve their communities.

History Note: Authority G.S. 106-1074;

Temporary Adoption Eff.