



**STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS**

December 19, 2024

Keith Ray Beavers, Chairman
North Carolina Agricultural Finance Authority
1101 Spring Forest Road, Ste. 150
Raleigh, North Carolina C 27615

And via email care of Christopher McLennan, Esq.: Cmcclennan@ncdoj.gov

Re: Objection to 24 NCAC 02D .0101, .0102, .0103, .0104, .0105, & .0106 (Temporary)

Dear Mr. Beavers:

This letter will serve as the written notice of objection pursuant to G.S. 150B-21.1(b1).

At its meeting on December 19, 2024, the Rules Review Commission objected to temporary rules 02 NCAC .0101, .0102, .0103, .0104, .0105, & .0106 finding that the rules did not satisfy G.S. 150B-21.9(a). Specifically, the Commission adopted the written opinion of staff attached hereto.

Please respond to this objection pursuant to G.S. 150B-21.1(b)(1) or (2). (See S.L. 2023-134)

If you have any questions regarding the Commission's actions, please let me know.

Sincerely,

/s/ William W. Peaslee
William W. Peaslee
Commission Counsel

CC: Anna Hayworth anna.hayworth@ncagr.gov
Robert Hosford robert.hosford@ncagr.gov

Donald Robert van der Vaart, Director
Chief Administrative Law Judge

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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: 24 NCAC 02D .0101, .0102, .0103, .0104, and .0105 (Temporary)

RECOMMENDATION DATE: December 13, 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:

Pursuant to G.S. 150B-21.1 (a3),

Unless otherwise provided by law, the agency shall:

(1) At least 30 business days prior to adopting (emphasis added) a temporary rule, submit the rule and a notice of public hearing to the Codifier of Rules, and the Codifier of Rules shall publish the proposed temporary rule and the notice of public hearing on the Internet to be posted within five business days.

(2) At least 30 business days prior to adopting (emphasis added) a temporary rule, notify persons on the mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a temporary rule and of the public hearing.

(3) Accept written comments on the proposed temporary rule for at least 15 business days prior to adoption of the temporary rule.

(4) Hold at least one public hearing on the proposed temporary rule no less than five days after the rule and notice have been published. If notice of a public hearing has been published and that public hearing has been cancelled, the agency shall publish notice at least five days prior to the date of any rescheduled hearing.

William W. Peaslee
Commission Counsel

On the original Forms .0500 submitted with the above captioned, the agency stated that the rules were submitted to the Codifier of Rules on September 5, 2024 pursuant to G.S. 150B-21.1(a3)(1), that the comment period was from September 11, 2024 to October 2, 2024 pursuant to G.S. 150B-21.1(a3)(3), and that a public comment hearing was held on September 17, 2024 pursuant to G.S. 150B-21.1(a3)(4).

The agency did not provide a date for the notice pursuant to G.S. 150B-21.1(a3)(2) but rather provided an internet link to the Secretary of State's website which appears to be a calendar of when the agency held a meeting. The link was unrevealing as to when notice was provided.

The Forms .0500 stated that the adoption date for the above captioned rules was on June 11, 2024. It appeared to staff counsel that the agency approved the rules prior to fulfilling the pre-adoption requirements of G.S. 150B-21.1(a3).

On December 6, 2024, staff counsel emailed the agency rulemaker asking for confirmation of the June 11, 2024 adoption date and suggested that G.S. 150B-21.1(a3) be reviewed prior to responding. Having not received a reply, on December 12, 2024, staff counsel requested a response to the December 6, 2024 email.

On December 12, 2024, the agency submitted amended Forms .0500. Except for the date of adoption, the forms were identical to those previously submitted.

The agency now states that the adoption date is August 8, 2024.¹

Like its predecessor, this new adoption date is, by the agency's own filings, prior to the date of submission to the Codifier and the agency's comment period. It remains unclear when the agency provided notice to its mailing list pursuant to G.S. 150B-21.1(a3)(2).

1 THE TEMPORARY RULES SUBMITTED FOR CONSIDERATION ARE VERBATIM TO THE TEMPORARY RULES TO WHICH THE RULES REVIEW COMMISSION (RRC) OBJECTED AT ITS AUGUST 28, 2024 MEETING. THE AVERRED AUGUST 8, 2024 ADOPTION DATE FOR THE ABOVE CAPTIONED RULES PREDATES STAFF COUNSEL'S REQUEST FOR CHANGES (AUGUST 22, 2024) AND OPINIONS (AUGUST 16 AND 23, 2024) RECOMMENDING OBJECTION FOR THE AUGUST RRC MEETING. IT IS CURIOUS THAT THE AGENCY WOULD ADOPT ANEW TEMPORARY RULES FOR WHICH, AT THAT TIME, THE RRC HAD GIVEN NO HINT WOULD BE IN PERIL OF OBJECTION.

Accordingly, staff counsel recommends objection to the rule pursuant to G.S. 150B-21.9(a)(4) for failure to adopt the temporary rules in accordance with Part 2 of Article 2 of the Administrative Procedure Act.

William W. Peaslee
Commission Counsel

§ 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.)

Part 2. Adoption of Rules.

§ 150B-21.1. Procedure for adopting a temporary rule.

(a) Adoption. - An agency may adopt a temporary rule when it finds that adherence to the notice and hearing requirements of G.S. 150B-21.2 would be contrary to the public interest and that the immediate adoption of the rule is required by one or more of the following:

- (1) A serious and unforeseen threat to the public health, safety, or welfare.
- (2) The effective date of a recent act of the General Assembly or the United States Congress.
- (3) A recent change in federal or State budgetary policy.
- (4) A recent federal regulation.
- (5) A recent court order.
- (6) The need for a rule establishing review criteria as authorized by G.S. 131E-183(b) to complement or be made consistent with the State Medical Facilities Plan approved by the Governor, if the rule addresses a matter included in the State Medical Facilities Plan, and the proposed rule and a notice of public hearing is submitted to the Codifier of Rules prior to the effective date of the Plan.
- (7) The need for the Wildlife Resources Commission to establish any of the following:
 - a. No wake zones.
 - b. Hunting or fishing seasons, including provisions for manner of take or any other conditions required for the implementation of such season.
 - c. Hunting or fishing bag limits.
 - d. Management of public game lands as defined in G.S. 113-129(8a).
- (8) The need for the Secretary of State to implement the certification technology provisions of Article 11A of Chapter 66 of the General Statutes, to adopt uniform Statements of Policy that have been officially adopted by the North American Securities Administrators Association, Inc., for the purpose of promoting uniformity of state securities regulation, and to adopt rules governing the conduct of hearings pursuant to this Chapter.
- (9) The need for the Commissioner of Insurance to implement the provisions of G.S. 58-2-205.
- (10) The need for the State Chief Information Officer to implement the information technology procurement provisions of Article 15 of Chapter 143B of the General Statutes.
- (11) The need for the State Board of Elections to adopt a temporary rule after prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical for one or more of the following:
 - a. In accordance with the provisions of G.S. 163-22.2.
 - b. To implement any provisions of state or federal law for which the State Board of Elections has been authorized to adopt rules.
 - c. The need for the rule to become effective immediately in order to preserve the integrity of upcoming elections and the elections process.
- (12) Repealed by Session Laws 2015-264, s. 22, effective October 1, 2015.
- (13), (14) Reserved.
- (15) Expired pursuant to Session Laws 2002-164, s. 5, effective October 1, 2004.
- (16) Expired pursuant to Session Laws 2003-184, s. 3, effective July 1, 2005.

- (17) To maximize receipt of federal funds for the Medicaid or NC Health Choice programs within existing State appropriations, to reduce Medicaid or NC Health Choice expenditures, and to reduce Medicaid and NC Health Choice fraud and abuse.

(a1) Recodified as subdivision (a)(16) of this section by Session Laws 2004-156, s. 1.

(a2) A recent act, change, regulation, or order as used in subdivisions (2) through (5) of subsection (a) of this section means an act, change, regulation, or order occurring or made effective no more than 210 days prior to the submission of a temporary rule to the Rules Review Commission. Upon written request of the agency, the Commission may waive the 210-day requirement upon consideration of the degree of public benefit, whether the agency had control over the circumstances that required the requested waiver, notice to and opposition by the public, the need for the waiver, and previous requests for waivers submitted by the agency.

(a3) Unless otherwise provided by law, the agency shall:

- (1) At least 30 business days prior to adopting a temporary rule, submit the rule and a notice of public hearing to the Codifier of Rules, and the Codifier of Rules shall publish the proposed temporary rule and the notice of public hearing on the Internet to be posted within five business days.
- (2) At least 30 business days prior to adopting a temporary rule, notify persons on the mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a temporary rule and of the public hearing.
- (3) Accept written comments on the proposed temporary rule for at least 15 business days prior to adoption of the temporary rule.
- (4) Hold at least one public hearing on the proposed temporary rule no less than five days after the rule and notice have been published. If notice of a public hearing has been published and that public hearing has been cancelled, the agency shall publish notice at least five days prior to the date of any rescheduled hearing.

(a4) An agency must also prepare a written statement of its findings of need for a temporary rule stating why adherence to the notice and hearing requirements in G.S. 150B-21.2 would be contrary to the public interest and why the immediate adoption of the rule is required. If the temporary rule establishes a new fee or increases an existing fee, the agency shall include in the written statement that it has complied with the requirements of G.S. 12-3.1. The statement must be signed by the head of the agency adopting the temporary rule.

(b) Review. - When an agency adopts a temporary rule it must submit the rule and the agency's written statement of its findings of the need for the rule to the Rules Review Commission. Within 15 business days after receiving the proposed temporary rule, the Commission shall review the agency's written statement of findings of need for the rule and the rule to determine whether the statement meets the criteria listed in subsection (a) of this section and the rule meets the standards in G.S. 150B-21.9. The Commission shall direct a member of its staff who is an attorney licensed to practice law in North Carolina to review the statement of findings of need and the rule. The staff member shall make a recommendation to the Commission, which must be approved by the Commission or its designee. The Commission's designee shall be a panel of at least three members of the Commission. In reviewing the statement, the Commission or its designee may consider any information submitted by the agency or another person. If the Commission or its designee finds that the statement meets the criteria listed in subsection (a) of this section and the rule meets the standards in G.S. 150B-21.9, the Commission or its designee must approve the temporary rule and deliver the rule to the Codifier of Rules within two business days of approval. The Codifier of Rules

must enter the rule into the North Carolina Administrative Code on the sixth business day following receipt from the Commission or its designee.

(b1) If the Commission or its designee finds that the statement does not meet the criteria listed in subsection (a) of this section or that the rule does not meet the standards in G.S. 150B-21.9, the Commission or its designee must immediately notify the head of the agency. The agency may supplement its statement of need with additional findings or submit a new statement within 30 days of the notification. If the agency fails to supplement its statement of need with additional findings or submit a new statement to the Commission within 30 days, or submits written notice within 30 days to the Commission that the agency does not intend to supplement its statement of need with additional findings or submit a new statement, the Commission or its designee shall immediately return the rule to the agency. If the agency provides additional findings or submits a new statement within 30 days of the notification, the Commission or its designee must review the additional findings or new statement within five business days after the agency submits the additional findings or new statement. If the Commission or its designee again finds that the statement does not meet the criteria listed in subsection (a) of this section or that the rule does not meet the standards in G.S. 150B-21.9, the Commission or its designee must immediately notify the head of the agency and return the rule to the agency. When the Commission returns a rule to an agency in accordance with this subsection, the agency may file an action for declaratory judgment within 30 days after notification of the return of the rule by the Commission in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes.

(b2) If an agency decides not to provide additional findings or submit a new statement when notified by the Commission or its designee that the agency's findings of need for a rule do not meet the required criteria or that the rule does not meet the required standards, the agency must notify the Commission or its designee of its decision. The Commission or its designee shall then return the rule to the agency. When the Commission returns a rule to an agency in accordance with this subsection, the agency may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes within 30 days of the date the rule is returned to the agency.

(b3) Notwithstanding any other provision of this subsection, if the agency has not complied with the provisions of G.S. 12-3.1, the Codifier of Rules shall not enter the rule into the Code.

(b4) When the Commission returns to an agency a proposed permanent rule intended to replace a temporary rule, the holder of a permit from the agency may submit revised plans for a revised permit removing the impacts of the returned rule if all of the following conditions apply:

- (1) The permit was conditioned upon adherence to the requirements of a temporary rule that the returned proposed permanent rule was intended to replace.
- (2) The revised plans comply with all other applicable regulations.

The agency shall review the revised plans and approve or deny the revised permit within 45 days of the receipt of the revised plans. The agency may not impose an additional permit fee for review of a revised plan resulting from the expiration of a temporary rule.

(c) Standing. - A person aggrieved by a temporary rule adopted by an agency may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes. In the action, the court shall determine whether the agency's written statement of findings of need for the rule meets the criteria listed in subsection (a) of this section and whether the rule meets the standards in G.S. 150B-21.9. The court shall not grant an ex parte temporary restraining order.

(c1) Filing a petition for rule making or a request for a declaratory ruling with the agency that adopted the rule is not a prerequisite to filing an action under this subsection. A person who files an action for declaratory judgment under this subsection must serve a copy of the complaint on the agency that adopted the rule being contested, the Codifier of Rules, and the Commission.

(d) Effective Date and Expiration. - A temporary rule becomes effective on the date specified in G.S. 150B-21.3. A temporary rule expires on the earliest of the following dates:

- (1) The date specified in the rule.
- (2) The effective date of the permanent rule adopted to replace the temporary rule, if the Commission approves the permanent rule.
- (3) The date the Commission returns to an agency a permanent rule the agency adopted to replace the temporary rule.
- (4) The effective date of an act of the General Assembly that specifically disapproves a permanent rule adopted to replace the temporary rule.
- (5) 270 days from the date the temporary rule was published in the North Carolina Register, unless the permanent rule adopted to replace the temporary rule has been submitted to the Commission.
- (6) Notwithstanding subdivision (5) of this subsection, 12 months after the effective date of the temporary rule.

(e) Publication. - When the Codifier of Rules enters a temporary rule in the North Carolina Administrative Code, the Codifier must publish the rule in the North Carolina Register.

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: 24 NCAC 02D .0103

RECOMMENDATION DATE: December 14, 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:

When submitted for Rules Review Commission ("RRC") consideration in December 2024, the language of this temporary rule was identical to the temporary rule to which the RRC objected in August 2024 for, *inter alia*, lack of authority. The RRC adopted the staff opinion of August 23, 2024, attached hereto.

Specifically, the RRC objected to Paragraph (f) in which The Large Animal Healthcare Enhancement Advisory Committee would make a "recommendations to the Commissioner [of Agriculture]" for grant funding." Such a procedure was contrary to S.L. 2023-134. After the RRC objected, the North Carolina Agricultural Finance Authority ("Authority") withdrew the rule.

Subsequent to a request for changes dated December 7, 2024, the Authority revised the rule by, *inter alia*, striking "to the Commissioner."

William W. Peaslee
Commission Counsel

As written, it is unclear to whom the advisory committee is making recommendations.¹

Accordingly, staff recommends objection to the temporary rule for ambiguity pursuant to G.S. 150B-21.9.

¹ IF THE AUTHORITY WERE TO MERELY IDENTIFY TO WHOM THE RECOMMENDATIONS ARE MADE, THE RULE WOULD THEN LIKELY RECEIVE A STAFF OPINION RECOMMENDING OBJECTION FOR LACK OF AUTHORITY PURSUANT TO G.S. 150B-21.9(A)(1) ON THE SAME BASIS AS THE AUGUST 23, 2024 OPINION, THE READING OF WHICH IS RECOMMENDED.

William W. Peaslee
Commission Counsel

§ 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.)

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 .0103, 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.” ²

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

² 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

“Large Animal Healthcare Enhancement Act,” as part of Chapter 106 of the North Carolina General Statutes.³ 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...”⁴

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.

In Paragraph (g) of the rule, the advisory committee is to “make recommendations to the Commissioner [of Agriculture] on applicants for funding.” The implication is that the Commissioner will make the final decision on grant funding.

This is contrary to the implied language of the Act. Further, the Act only mentions the Commissioner of Agriculture is in the context of membership on the Committee.

³ CHAPTER 106 IS ENTITLED “AGRICULTURE.”

⁴ 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.

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

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.

William W. Peaslee
Commission Counsel

§ 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.)

§ 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.

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: 24 NCAC 02D .0101, .0102, .0103, .0104, .0105, & .0106 Temporary Rules

RECOMMENDATION DATE: December 13, 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:

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 General Statutes. Part X establishes the Large Animal Healthcare Enhancement Fund within the Department of Agriculture and Consumer Services to be "administered by the Authority."

Part X of S.L. 2023-134, the General Assembly mandates that the Authority "adopt temporary rules to implement this section as soon as practicable..."

S.L. 2023-134 became effective October 3, 2023.

Pursuant to G.S. 150B-21.1(a), to engage in temporary rulemaking the immediate adoption of a rule must be required by listed circumstances including "the effective date of a recent act of the

William W. Peaslee
Commission Counsel

General Assembly...” It is on this basis that the Authority claims authority to engage in temporary rulemaking as it cited on the Forms 0500.

“Recent act” is defined in G.S. 150B-21.1(a2) as submission to the Rules Review Commission within 210 days of the effective date of the act. The effective date of S.L. 2023-134 was October 3, 2023. The authority submitted these rules to the Commission on December 6, 2024, 430 days after the effective date of the act. ¹

The Authority may contend that the language of S.L. 2023-134 supersedes the requirements set forth in G.S. 150B-21.1(a), thereby allowing the Authority to adopt temporary rules beyond the 210-day limitation. However, this interpretation is problematic for several reasons:

1. **Statutory Integrity:** Such a broad interpretation would effectively render G.S. 150B-21.1(a) meaningless for any agency mandated to adopt temporary rules by legislation, unless the General Assembly explicitly states that agencies must adhere to the Administrative Procedure Act (APA).
2. **Legislative Intent:** It is unlikely that the legislature intended to create such a sweeping exception to the APA without clear and unambiguous language to that effect.
3. **Due Process and Notice:** The APA contains important provisions for due process and public notice, which are fundamental to good governance and transparency.

A more appropriate interpretation is that the Authority is required to adopt temporary rules in accordance with the processes and procedures prescribed in the APA, including the 210-day limitation. This interpretation maintains the integrity of existing statutes and ensures consistency in administrative rulemaking across agencies. If the legislature intended to exempt an agency from specific APA requirements, it would do so explicitly. For instance, by including language such as "notwithstanding the requirements of G.S. 150B-21.1(a)" in the enabling legislation. Absent such clear direction, agencies should be presumed to operate within the established framework of the APA. This approach preserves the balance between legislative authority and administrative procedure, ensuring that temporary rules remain truly temporary and that the public's right to participate in the rulemaking process is protected.

¹ ON THE FORMS 0500 SUBMITTED WITH THE TEMPORARY RULES THE AUTHORITY ORIGINALLY STATED THAT THE RULES WERE ADOPTED ON JUNE 11, 2024. AFTER A REQUEST FOR CONFIRMATION OF THAT DATE, THE AUTHORITY NOW STATES THAT AUGUST 8, 2024 IS THE DATE OF ADOPTION. IT IS UNCLEAR WHY THE AUTHORITY WAITED 59 DAYS TO SUBMIT THE RULES TO THE RRC.

Accordingly, staff recommends objection to the temporary rules pursuant to G.S. 150B-21.9(a)(4) for the Authority's failure to adopt the rules in accordance with the Administrative Procedures Act.

On the Forms 0500, the Authority states that it "is also submitting a written request for a waiver of the 210-day period contemplated by G.S. 150B-21.1(a2)." To date, staff counsel has not received a request or averments, other than those contained in the Forms 0500, despite reminding the Authority that the RCC must consider, and the Authority should address:

"the degree of public benefit, whether the agency had control over the circumstances that required the requested waiver, notice to and opposition by the public, the need for the waiver, and previous requests for waivers submitted by the agency"

pursuant to G.S. 150B-21.1(a2).

Whether to grant the waiver is in the discretion of the RRC after having considered these factors. Staff counsel makes no recommendation concerning the waiver except to remind the Commission that it objected to the same rules for the reasons stated herein, among others, at its August 2024 meeting.

William W. Peaslee
Commission Counsel

§ 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-21.1. Procedure for adopting a temporary rule.

(a) Adoption. - An agency may adopt a temporary rule when it finds that adherence to the notice and hearing requirements of G.S. 150B-21.2 would be contrary to the public interest and that the immediate adoption of the rule is required by one or more of the following:

- (1) A serious and unforeseen threat to the public health, safety, or welfare.
- (2) The effective date of a recent act of the General Assembly or the United States Congress.
- (3) A recent change in federal or State budgetary policy.
- (4) A recent federal regulation.
- (5) A recent court order.
- (6) The need for a rule establishing review criteria as authorized by G.S. 131E-183(b) to complement or be made consistent with the State Medical Facilities Plan approved by the Governor, if the rule addresses a matter included in the State Medical Facilities Plan, and the proposed rule and a notice of public hearing is submitted to the Codifier of Rules prior to the effective date of the Plan.
- (7) The need for the Wildlife Resources Commission to establish any of the following:
 - a. No wake zones.
 - b. Hunting or fishing seasons, including provisions for manner of take or any other conditions required for the implementation of such season.
 - c. Hunting or fishing bag limits.
 - d. Management of public game lands as defined in G.S. 113-129(8a).
- (8) The need for the Secretary of State to implement the certification technology provisions of Article 11A of Chapter 66 of the General Statutes, to adopt uniform Statements of Policy that have been officially adopted by the North American Securities Administrators Association, Inc., for the purpose of promoting uniformity of state securities regulation, and to adopt rules governing the conduct of hearings pursuant to this Chapter.
- (9) The need for the Commissioner of Insurance to implement the provisions of G.S. 58-2-205.
- (10) The need for the State Chief Information Officer to implement the information technology procurement provisions of Article 15 of Chapter 143B of the General Statutes.
- (11) The need for the State Board of Elections to adopt a temporary rule after prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical for one or more of the following:
 - a. In accordance with the provisions of G.S. 163-22.2.
 - b. To implement any provisions of state or federal law for which the State Board of Elections has been authorized to adopt rules.
 - c. The need for the rule to become effective immediately in order to preserve the integrity of upcoming elections and the elections process.
- (12) Repealed by Session Laws 2015-264, s. 22, effective October 1, 2015.
- (13), (14) Reserved.
- (15) Expired pursuant to Session Laws 2002-164, s. 5, effective October 1, 2004.
- (16) Expired pursuant to Session Laws 2003-184, s. 3, effective July 1, 2005.
- (17) To maximize receipt of federal funds for the Medicaid or NC Health Choice programs within existing State appropriations, to reduce Medicaid or NC Health

Choice expenditures, and to reduce Medicaid and NC Health Choice fraud and abuse.

(a1) Recodified as subdivision (a)(16) of this section by Session Laws 2004-156, s. 1.

(a2) A recent act, change, regulation, or order as used in subdivisions (2) through (5) of subsection (a) of this section means an act, change, regulation, or order occurring or made effective no more than 210 days prior to the submission of a temporary rule to the Rules Review Commission.

Upon written request of the agency, the Commission may waive the 210-day requirement upon consideration of the degree of public benefit, whether the agency had control over the circumstances that required the requested waiver, notice to and opposition by the public, the need for the waiver, and previous requests for waivers submitted by the agency.

(a3) Unless otherwise provided by law, the agency shall:

(1) At least 30 business days prior to adopting a temporary rule, submit the rule and a notice of public hearing to the Codifier of Rules, and the Codifier of Rules shall publish the proposed temporary rule and the notice of public hearing on the Internet to be posted within five business days.

(2) At least 30 business days prior to adopting a temporary rule, notify persons on the mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a temporary rule and of the public hearing.

(3) Accept written comments on the proposed temporary rule for at least 15 business days prior to adoption of the temporary rule.

(4) Hold at least one public hearing on the proposed temporary rule no less than five days after the rule and notice have been published. If notice of a public hearing has been published and that public hearing has been cancelled, the agency shall publish notice at least five days prior to the date of any rescheduled hearing.

(a4) An agency must also prepare a written statement of its findings of need for a temporary rule stating why adherence to the notice and hearing requirements in G.S. 150B-21.2 would be contrary to the public interest and why the immediate adoption of the rule is required. If the temporary rule establishes a new fee or increases an existing fee, the agency shall include in the written statement that it has complied with the requirements of G.S. 12-3.1. The statement must be signed by the head of the agency adopting the temporary rule.

(b) Review. - When an agency adopts a temporary rule it must submit the rule and the agency's written statement of its findings of the need for the rule to the Rules Review Commission. Within 15 business days after receiving the proposed temporary rule, the Commission shall review the agency's written statement of findings of need for the rule and the rule to determine whether the statement meets the criteria listed in subsection (a) of this section and the rule meets the standards in G.S. 150B-21.9. The Commission shall direct a member of its staff who is an attorney licensed to practice law in North Carolina to review the statement of findings of need and the rule. The staff member shall make a recommendation to the Commission, which must be approved by the Commission or its designee. The Commission's designee shall be a panel of at least three members of the Commission. In reviewing the statement, the Commission or its designee may consider any information submitted by the agency or another person. If the Commission or its designee finds that the statement meets the criteria listed in subsection (a) of this section and the rule meets the standards in G.S. 150B-21.9, the Commission or its designee must approve the temporary rule and deliver the rule to the Codifier of Rules within two business days of approval. The Codifier of Rules must enter the rule into the North Carolina Administrative Code on the sixth business day following receipt from the Commission or its designee.

(b1) If the Commission or its designee finds that the statement does not meet the criteria listed in subsection (a) of this section or that the rule does not meet the standards in G.S. 150B-21.9, the Commission or its designee must immediately notify the head of the agency. The agency may supplement its statement of need with additional findings or submit a new statement within 30 days of the notification. If the agency fails to supplement its statement of need with additional findings or submit a new statement to the Commission within 30 days, or submits written notice within 30 days to the Commission that the agency does not intend to supplement its statement of need with additional findings or submit a new statement, the Commission or its designee shall immediately return the rule to the agency. If the agency provides additional findings or submits a new statement within 30 days of the notification, the Commission or its designee must review the additional findings or new statement within five business days after the agency submits the additional findings or new statement. If the Commission or its designee again finds that the statement does not meet the criteria listed in subsection (a) of this section or that the rule does not meet the standards in G.S. 150B-21.9, the Commission or its designee must immediately notify the head of the agency and return the rule to the agency. When the Commission returns a rule to an agency in accordance with this subsection, the agency may file an action for declaratory judgment within 30 days after notification of the return of the rule by the Commission in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes.

(b2) If an agency decides not to provide additional findings or submit a new statement when notified by the Commission or its designee that the agency's findings of need for a rule do not meet the required criteria or that the rule does not meet the required standards, the agency must notify the Commission or its designee of its decision. The Commission or its designee shall then return the rule to the agency. When the Commission returns a rule to an agency in accordance with this subsection, the agency may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes within 30 days of the date the rule is returned to the agency.

(b3) Notwithstanding any other provision of this subsection, if the agency has not complied with the provisions of G.S. 12-3.1, the Codifier of Rules shall not enter the rule into the Code.

(b4) When the Commission returns to an agency a proposed permanent rule intended to replace a temporary rule, the holder of a permit from the agency may submit revised plans for a revised permit removing the impacts of the returned rule if all of the following conditions apply:

(1) The permit was conditioned upon adherence to the requirements of a temporary rule that the returned proposed permanent rule was intended to replace.

(2) The revised plans comply with all other applicable regulations.

The agency shall review the revised plans and approve or deny the revised permit within 45 days of the receipt of the revised plans. The agency may not impose an additional permit fee for review of a revised plan resulting from the expiration of a temporary rule.

(c) Standing. - A person aggrieved by a temporary rule adopted by an agency may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes. In the action, the court shall determine whether the agency's written statement of findings of need for the rule meets the criteria listed in subsection (a) of this section and whether the rule meets the standards in G.S. 150B-21.9. The court shall not grant an ex parte temporary restraining order.

(c1) Filing a petition for rule making or a request for a declaratory ruling with the agency that adopted the rule is not a prerequisite to filing an action under this subsection. A person who files an

action for declaratory judgment under this subsection must serve a copy of the complaint on the agency that adopted the rule being contested, the Codifier of Rules, and the Commission.

(d) Effective Date and Expiration. - A temporary rule becomes effective on the date specified in G.S. 150B-21.3. A temporary rule expires on the earliest of the following dates:

- (1) The date specified in the rule.
- (2) The effective date of the permanent rule adopted to replace the temporary rule, if the Commission approves the permanent rule.
- (3) The date the Commission returns to an agency a permanent rule the agency adopted to replace the temporary rule.
- (4) The effective date of an act of the General Assembly that specifically disapproves a permanent rule adopted to replace the temporary rule.
- (5) 270 days from the date the temporary rule was published in the North Carolina Register, unless the permanent rule adopted to replace the temporary rule has been submitted to the Commission.
- (6) Notwithstanding subdivision (5) of this subsection, 12 months after the effective date of the temporary rule.

(e) Publication. - When the Codifier of Rules enters a temporary rule in the North Carolina Administrative Code, the Codifier must publish the rule in the North Carolina Register.

PART X. AGRICULTURE AND CONSUMER SERVICES

LARGE ANIMAL HEALTH ENHANCEMENT FUND

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"§ 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.