

# *The* **NORTH CAROLINA REGISTER**

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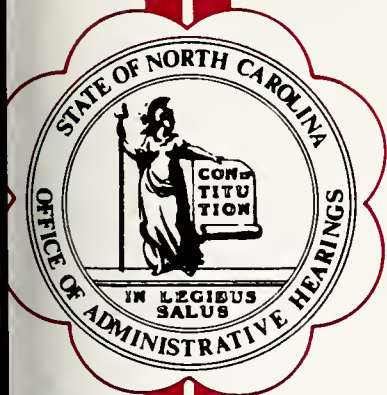
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**ISSUE DATE: JUNE 3, 1991**

**Volume 6 • Issue 5 • Pages 227-246**



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# INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

## NORTH CAROLINA REGISTER

The *North Carolina Register* is published bi-monthly and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed, administrative rules and amendments filed under Chapter 150B must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions. The *North Carolina Register* is available by yearly subscription at a cost of one hundred and five dollars (\$105.00) for 24 issues.

Requests for subscriptions to the *North Carolina Register* should be directed to the Office of Administrative Hearings, P. O. Drawer 27447, Raleigh, N. C. 27611-7447, Attn: *Subscriptions*.

## ADOPTION, AMENDMENT, AND REPEAL OF RULES

An agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing; a statement of how public comments may be submitted to the agency either at the hearing or otherwise; the text of the proposed rule or amendment; a reference to the Statutory Authority for the action and the proposed effective date.

The Director of the Office of Administrative Hearings has authority to publish a summary, rather than the full text, of any **amendment** which is considered to be too lengthy. In such case, the full text of the rule containing the proposed amendment will be available for public inspection at the Rules Division of the Office of Administrative Hearings and at the office of the promulgating agency.

Unless a specific statute provides otherwise, at least 30 days must elapse following publication of the proposal in the *North Carolina Register* before the agency may conduct the required public hearing and take action on the proposed adoption, amendment or repeal.

When final action is taken, the promulgating agency must file any adopted or amended rule for approval by the Administrative Rules Review Commission. Upon approval of ARRC, the adopted or amended rule must be filed with the Office of Administrative Hearings. If it differs substantially from the proposed form published as part of the public notice, upon request by the agency, the adopted version will again be published in the *North Carolina Register*.

A rule, or amended rule cannot become effective earlier than the first day of the second calendar month after the adoption is filed with the Office of Administrative Hearings for publication in the NCAC.

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency.

## TEMPORARY RULES

Under certain conditions of an emergency nature, some agencies may issue temporary rules. A temporary rule becomes effective when adopted and remains in

effect for the period specified in the rule or 180 days, whichever is less. An agency adopting a temporary rule must begin normal rule-making procedures on the permanent rule at the same time the temporary rule is adopted.

## NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size single spaced pages of material of which approximately 35% is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-63(b).

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 1 page or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 53 volumes totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication available.

Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

## NOTE

The foregoing is a generalized statement of the procedures to be followed. For specific statutory language it is suggested that Articles 2 and 5 of Chapter 150B of the General Statutes be examined carefully.

## CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue number and date. **1:1 NCR 101-201, April 1, 1986** refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

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# NORTH CAROLINA REGISTER



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# NORTH CAROLINA REGISTER

## *Publication Schedule*

(April 1991 - December 1992)

| Issue<br>Date | Last Day<br>for<br>Filing | Last Day<br>for<br>Electronic<br>Filing | Earliest<br>Date for<br>Public<br>Hearing &<br>Adoption by<br>Agency | *<br>Earliest<br>Effective<br>Date |
|---------------|---------------------------|---|--|------------------------------------|
| *****         | *****                     | *****                                   | *****  | *****                              |
| 04/01/91      | 03/11/91                  | 03/18/91                                | 05/01/91   | 08/01/91                           |
| 04/15/91      | 03/22/91                  | 04/01/91                                | 05/15/91   | 08/01/91                           |
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| 05/15/91      | 04/24/91                  | 05/01/91                                | 06/14/91   | 09/01/91                           |
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| 06/14/91      | 05/23/91                  | 05/31/91                                | 07/14/91   | 10/01/91                           |
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| 04/01/92      | 03/11/92                  | 03/18/92                                | 05/01/92   | 08/01/92                           |
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| 08/03/92      | 07/13/92                  | 07/20/92                                | 09/02/92   | 12/01/92                           |
| 08/14/92      | 07/24/92                  | 07/31/92                                | 09/13/92   | 12/01/92                           |
| 09/01/92      | 08/11/92                  | 08/18/92                                | 10/01/92   | 01/01/93                           |
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| 12/15/92      | 11/24/92                  | 12/01/92                                | 01/14/93   | 04/01/93                           |

\* The "Earliest Effective Date" is computed assuming that the public hearing and adoption occur in the calendar month immediately following the "Issue Date", that the agency files the rule with The Administrative Rules Review Commission by the 20th of the same calendar month and that ARRC approves the rule at the next calendar month meeting.



**EXECUTIVE ORDER NUMBER 142  
CHILD PROTECTIVE SERVICES**

WHEREAS, the future of North Carolina depends on its children; and

WHEREAS, the number of abuse and neglect cases have skyrocketed in recent years, in too many instances cutting short the lives of our youngest citizens; and

WHEREAS, county departments of social services received 36,000 reports of child abuse and neglect in state fiscal year 1989 involving more than 52,000 children; and

WHEREAS, reports of abuse and neglect are increasing dramatically at a time when both the state and counties are facing serious revenue shortfalls, leaving them unable to provide the funds necessary for the number of social services workers needed to investigate abuse/neglect reports and provide treatment for children and their families; and

WHEREAS, it is the duty of the Department of Human Resources' Division of Social Services to assist counties in providing the services necessary to protect children from abusive home situations;

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

Section 1. The Secretary of Human Resources is responsible for ensuring that the Division of Social Services strengthen its supervision of county administered Child Protective Services (CPS) programs through such mechanisms and methods as: the procedures for division review of child fatalities, the establishment of Community Child Protection Teams, more effective monitoring of CPS screening decisions, improvements to the Central Registry for Child Abuse and Neglect, increased training and community awareness, enhancement of the Child Medical Evaluation Program and proposed legislative actions.

Section 2. The Secretary of Human Resources is hereby directed to request the Social Services Commission to enact emergency rules, in accordance with Chapter 150B of the North Carolina General Statutes, requiring each County Department of Social Services to establish a Community Child Protection Team to review defined cases of child abuse or neglect, including child fatalities. It is my recommendation that the

membership of each team include, but not be limited to, the following individuals: the director of Social Services and a member of their staff, local law enforcement, the District Attorney's office, the medical profession, community action agency, school personnel, county social services board member and, at their option, three to five members appointed by the county board of commissioners. The county board of commissioners may by action within 30 days designate the chairman of the review team. Otherwise, the director of Social Services will chair the team.

In cases of abuse/neglect, the focus of the team shall be to ensure appropriate community involvement in the protection of the children and to assist the county department of social services in evaluating allegations of maltreatment and in planning and providing services to prevent further abuse/neglect. In the review of child fatalities resulting from maltreatment, the focus of the review team will be to identify gaps and deficiencies in the local child protection system and help put into place needed remedies, and to assist the county department of social services in the protection of surviving siblings.

The teams shall conduct their reviews in compliance with all laws and regulations governing confidentiality of abuse/neglect records.

Section 3. It shall be the responsibility of the Department of Human Resources Division of Social Services, in accordance with the laws and through the adoption of emergency rules by the Social Services Commission, to:

1. Develop procedures to guide the operation of community child protection teams and to define the cases which will be subject to review by the county teams.
2. Standardize among counties the interpretation of "caretaker" so all counties investigate allegations of abuse and neglect involving non-traditional family members, such as boyfriends.
3. Require each county department of social services to have a two level review prior to making a decision not to investigate a report of alleged abuse or neglect. Such review would, at a minimum, involve the worker receiving the call and that person's supervisor and could include review by the county director.

4. Monitor closely county cases in which the decision was made not to investigate a report.
5. Require each county department to establish a process by which the reporting person may request and obtain a review of the decision not to investigate, and will require that such persons be informed of the process for obtaining such a review.
6. Require that all county Child Protective Services staff attend basic training courses developed by the Division of Social Services after consultation with the Office of State Personnel.
7. Make improvements to the Central Registry for Child Abuse and Neglect by amending 10 N.C.A.C. 411 .0102. These improvements will allow county departments of social services to identify whether children who are the subject of abuse/neglect investigations have been previously reported as abused or neglected, or whether the child is a member of a family in which a child fatality due to maltreatment has occurred in any county in the state. These improvements shall allow law enforcement and medical professionals to have all pertinent information from the State Central Registry which legally may be disclosed. Further, these improvements shall allow the Department of Human Resources and the division to provide access, as allowed by law, to the Central Registry by law enforcement and the Chief Medical Examiner's office in the event of a child fatality to determine whether abuse or neglect should be evaluated as a cause of death.
8. Provide quarterly reports to the public on child fatalities that occur due to maltreatment.

Section 4. Funds from the Community Services Block Grant administered by local Community Action Agencies shall be allocated for Community Awareness Conferences across the state. The Conferences will seek to increase citizen and agency participation in appropriate reporting of child abuse neglect and fatalities, and in family preservation and child protection activities.

Section 5. The terms and conditions of this Executive Order which may conflict with the terms and conditions of previous Executive Orders on this subject shall control.

Section 6. This Order shall become effective immediately.

Done in the Capital City of Raleigh, North Carolina, this the 1st day of May, 1991.

EXECUTIVE ORDER NUMBER 143  
NORTH CAROLINA ADVISORY COUNCIL ON  
VOCATIONAL AND APPLIED TECHNOLOGY  
EDUCATION

WHEREAS, the Carl D. Perkins Vocational Education Act was enacted by Congress through Public Law 88-210 on December 18, 1963, and amended by Public Law 98-524 on October 19, 1984; and

WHEREAS, Public Law 101-392, the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990, was enacted by Congress on September 25, 1990, for the purpose of enabling further improvements in the provision of services under such Act;

THEREFORE, by the authority vested in me as Governor by the Constitution and laws of North Carolina, it is ORDERED:

Section 1. Executive Order Number 3 Rescinded. Executive Order Number 3, dated March 27, 1985, is hereby rescinded. All records of the North Carolina Advisory Council on Vocational Education created pursuant to Executive Order Number 3 are transferred to the Council created herein. The Council established in Section 2 of this executive order shall be the successor to the North Carolina Advisory Council on Vocational Education.

Section 2. Establishment. The North Carolina Advisory Council on Vocational and Applied Technology Education (hereinafter Council) is hereby established in accordance with the requirements of Section 112 of Public Law 98-524 as amended by Public Law 101-392.

Section 3. Membership. The Council shall consist of 13 members appointed by the Governor and who serve at his pleasure. The composition of the Council's membership shall be as prescribed by Sec. 112 of Public Law 98-524 as amended by Public Law 101-392.

Section 4. Duties and Responsibilities. The Council shall meet, select from among its membership a chairperson who shall be a representative of the private sector, and perform all duties

and responsibilities required by Public Law 98-524 as amended by Public Law 101-392, Carl D. Perkins Vocational and Applied Technology Education Act (hereinafter Act).

Section 5. Administration. The State of North Carolina and all its constituent departments, agencies and institutions shall cooperate with the Council including providing appropriate office space and support services.

This Order is effective immediately.

Done this the 1st day of May, 1991.

EXECUTIVE ORDER NUMBER 144  
AMENDING AND EXTENDING EXECUTIVE  
ORDER NUMBER 53  
THE GOVERNOR'S INTER-AGENCY  
ADVISORY TEAM ON ALCOHOL AND OTHER  
DRUG ABUSE

By the authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

Executive Order Number 53, as amended by Executive Order Number 85, is hereby amended to add the following member to the Advisory Team.

Section 1. Establishment

The Advisory Team shall consist of not less than eleven members and shall include the following. . .

A representative from the Department of Environment, Health and Natural Resources.

Executive Order Number 53 is hereby extended until March 1, 1993.

This Executive Order shall become effective immediately.

Done in Raleigh, this the 3rd day of May, 1991.

**VOTING RIGHTS ACT FINAL DECISION LETTER**

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*[G.S. 120-30.9H, effective July 16, 1986, requires that all letters and other documents issued by the Attorney General of the United States in which a final decision is made concerning a "change affecting voting" under Section 5 of the Voting Rights Act of 1965 be published in the North Carolina Register.]*

U.S. Department of Justice  
Civil Rights Division

JRD:RBJ:JRN:rac  
DJ 166-012-3  
91-0668  
91-0680

Voting Section  
P.O. Box 66128  
Washington, D.C. 20035-6128

May 1, 1991

David A. Holec, Esq.  
City Attorney  
P. O. Box 1388  
Lumberton, North Carolina 28359-1388

Dear Mr. Holec:

This refers to three annexations [Ordinance Nos. 1271, 1272, and 1273 (1991)] and the designation of the annexed areas to wards for the City of Lumberton in Robeson County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submissions on March 5 and 6, 1991.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

John R. Dunne  
Assistant Attorney General  
Civil Rights Division

By:

J. Gerald Hebert  
Acting Chief, Voting Section



**TITLE 4 - DEPARTMENT OF ECONOMIC  
AND COMMUNITY DEVELOPMENT**

*Notice is hereby given in accordance with G.S. 150B-12 that the NCDOECD, Credit Union Division intends to amend rule(s) cited as 4 NCAC 6C .0305.*

*The proposed effective date of this action is October 1, 1991.*

*The public hearing will be conducted at 10:00 a.m. on July 3, 1991 at 1110 Navaho Drive, Suite 300, Raleigh, North Carolina 27609.*

*Comment Procedures: Any interested person may present his/her comments either in writing three days prior to or at the hearing or orally at the hearing for a maximum of ten minutes. Any person may request information by writing or calling Mr. Stanley W. Brown, Jr., Credit Union Division, 1110 Navaho Drive, Suite 300, Raleigh, North Carolina 919-850-2929.*

**CHAPTER 6 - CREDIT UNION DIVISION**

**SUBCHAPTER 6C - CREDIT UNIONS**

**SECTION .0300 - BASIC INTERNAL  
CONTROLS: BOOKKEEPING PROCEDURES  
AND OPERATION STANDARDS FOR  
STATE-CHARTERED CREDIT UNIONS**

**.0305 INDEPENDENT AUDITS**

(a) Unless otherwise approved by the Administrator, all credit unions with assets of five hundred thousand dollars (\$500,000) or more as of December 31 of the previous year shall have, in lieu of the supervisory committee audit, an annual independent audit conducted by a CPA or bonded outside auditing firm or person who is bonded or has accountants' professional liability insurance coverage. The Administrator, at his discretion, may require other independent or supplemental audits of any credit union upon evidence that a credit union is operating in an unsafe or unsound manner, or where the supervisory committee appears to be functioning improperly.

(b) The cost of any audit made pursuant to this Rule shall be paid by the Credit Union audited.

(c) This Rule shall not in any manner modify or limit the administrator's responsibility or authority to examine credit unions as set forth in G.S. 51-109.16, and shall not modify or limit the Administrator's authority to assess the cost of the examination against any credit union.

(a) An audit of each state-chartered credit unions shall occur at least once each calendar year and shall cover the period elapsed since the last audit. The audit will be performed using generally accepted auditing procedures and standards. It is the responsibility of the supervisory committee, or board of directors if there is no supervisory committee, to ensure that the annual audit is timely, that generally accepted auditing standards are used, that an adequate audit of the credit union records is conducted, and the audit report is promptly prepared and submitted to the board of directors. Workpapers of the supervisory committee and/or its independent auditors shall be made available for review by the Credit Union Division.

(b) Compensated auditors performing audits for credit unions must be independent of the credit union's employees, members of the board of directors, supervisory committee, credit committee, and/or the credit union's loan officers and members of their immediate families. Compensated auditors must be a Certified Public Accountant (CPA), or a bonded auditing firm, or a person who is bonded or has accountants' professional liability insurance coverage.

(c) Annual verification of depositors' and members' accounts will be done in conjunction with the annual audit and shall be made by either a controlled verification of 100 percent of share, deposit and loan accounts or a controlled random sampling method that provides assurance that the General Ledger accounts are fairly stated and that members' and depositors' accounts are properly safeguarded.

(d) A credit union shall obtain an outside independent audit by a certified public accountant for any fiscal year during which any one of the following is present:

- (1) the required annual audit was not performed or was not in accordance with Paragraphs (a), (b), and/or (c) of this Rule;
- (2) the credit union has experienced serious and/or persistent recordkeeping deficiencies. Persistent means continuing to exist or endure. Serious is when there is given cause for concern that the financial condition is not fairly and accurately presented and/or that management practices are not sufficient to safeguard the assets of the credit union. When a credit union fails to comply with this Rule, the administrator has the authority to engage an outside certified public accountant at the credit union's expense to conduct the required annual audit.

(c) This Rule shall not in any manner modify or limit the administrator's responsibility or authority to examine credit unions as set forth in G.S. 54-109.16, and it shall not modify or limit the administrator's authority to assess the cost of the examination against any credit union.

*Statutory Authority G.S. 54-109.12; 54-109.17; 54-109.35(b); 54-109.49.*

## TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

*Notice is hereby given in accordance with G.S. 150B-12 that the Department of Human Resources Division of Medical Assistance intends to amend rule(s) cited as 10 NCAC 50B .0305.*

*The proposed effective date of this action is October 1, 1991.*

*The public hearing will be conducted at 1:30 p.m. on July 5, 1991 at the North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 201, Raleigh, N.C. 27603.*

*Comment Procedures: Written comments concerning this amendment must be submitted by July 5, 1991, to: Division of Medical Assistance, 1985 Umstead Drive, Raleigh, North Carolina 27603, ATTN.: Bill Hottel, APA Coordinator. Oral comments may be presented at the hearing. In addition, a fiscal impact statement is available upon written request from the same address.*

### CHAPTER 50 - MEDICAL ASSISTANCE

#### SUBCHAPTER 50B - ELIGIBILITY DETERMINATION

#### SECTION .0300 - CONDITIONS FOR ELIGIBILITY

##### .0305 DEPRIVATION

Deprivation shall be due to:

- (1) Death of either parent.
- (2) Physical or mental incapacity of either parents based on a physical or mental defect, illness, or impairment of such a ~~debilitation~~ debilitating nature as to reduce substantially or eliminate the parent's ability to support or care for the otherwise eligible child: provided, that the defect, illness, or impairment shall be expected to last for at least ~~thirty~~ 30 days.
- (3) Continued absence of parent for reason other than death or hospitalization, and this

absence interferes with the child's receipt of maintenance, physical care, or guidance from his parent and precludes the parent's being counted on for support or care for the child. Such continued absence may be due to any of the following:

- (a) Divorce.
- (b) Separation.
- (c) Desertion or abandonment.
- (d) Absence from the home for treatment or medical care and the expected duration of the absence will exceed 12 months.
- (e) Incarceration in an institution.
- (f) Temporary absence of the payee relative or of the child from the home shall not affect eligibility, if the absent member of the household has not established another abode of a permanent nature, and the reasons for absence indicate that the absence will be temporary. A child may be temporarily absent from the home for various reasons, but the responsible relative shall have a definite plan for bringing the child back into the home when the need for his absence has passed. The exercise of parental control and guidance by the relative, rather than the physical presence of the relative or the child in the home, shall be the important factor to be considered.
- (g) Parents living together and not married to each other. The child shall be deprived if the putative father's duty to support the child has not been established.
- (4) Unemployed Parent Status. The child shall be deprived if ~~the~~ both parents are ~~legally married in the home and:~~
  - (a) The principle wage earner (the parent who earns the greatest amount of income in the 24 months prior to the month of application) is unemployed, or
  - (b) If the gross wages of both parents are equal, the parent who worked the lesser number of hours shall be considered the principle wage earner, or
  - (c) If the hours worked are equal, the parents must designate in writing the principle wage earner.

*Authority G.S. 108A-28; 108A-54; 42 C.F.R. 435.510; 89 CVS 922.*

## TITLE 21 - OCCUPATIONAL LICENSING BOARD

*Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Board of Archi-*

ture intends to amend rule(s) cited as 21 NCAC 2 .0209.

*The proposed effective date of this action is October 1, 1991.*

*The public hearing will be conducted at 10:00 a.m. on July 17, 1991 at the North Carolina Board of Architecture, 501 N. Blount Street, Raleigh, NC 27604.*

**Comment Procedures:** Any person interested in this rule may present oral comments at the public rule-making hearing or deliver them to the Board office by July 15, 1991. Anyone planning to attend the hearing should notify the Board office by 4:00 p.m., July 15, 1991 whether they will speak on the proposal and whether they will speak for or against the proposal.

## CHAPTER 2 - BOARD OF ARCHITECTURE

### SECTION .0200 - PRACTICE OF ARCHITECTURE

#### .0209 UNPROFESSIONAL CONDUCT

In addition to those grounds as stated in G.S. 83A-15(3) the following acts or omissions, among others, may be deemed to be "unprofessional conduct", and to be cause for the levy of a civil penalty or for denial, suspension, or revocation of a license or certificate of registration to practice architecture:

(8) Misrepresentation Regarding Prior Experience. Because of the reliance the public places on architects' qualifications, the following guidelines are provided regarding the representation of past professional experience.

(a) It shall be the responsibility of each registered architect to appropriately state prior

professional experience of the architect and/or the firm the architect is representing in presenting qualifications to prospective clients, both public and private. If an architect uses photographic representations of prior experience and is not the architect-of-record, the architect-of-record must be identified immediately beneath the photograph if in printed media or on the slide if in slide media.

(b) An architect who has been an employee of another architectural practice may not claim unconditional credit for projects contracted for in the name of the previous employer. The architect shall indicate, next to the listing for each project, that individual experience gained in connection with the project was acquired as an employee, and identify the previous architectural firm. The architect shall also describe the nature and extent of his/her participation in the project.

(c) An architect who was formerly a principal in a firm may legitimately make additional claims provided he/she discloses the nature of ownership in the previous architectural firm (e.g. stockholder or junior partner) and identifies with specificity his/her responsibilities for that project.

(d) An architect who presents a project that has received awards recognition must comply with the requirements in Subparagraph (8) of this Rule with regard to project presentation to the public and prospective clients.

(e) Projects which remain unconstructed and which are listed as credits should be listed as "unbuilt" or a similar designation.

Statutory Authority G.S. 83A-6; 83A-14; 83A-15.



*The List of Rules Codified is a listing of rules that were filed to be effective in the month indicated.*

*Rules filed for publication in the NCAC may not be identical to the proposed text published previously in the Register. Rules filed with changes are noted with **\*\* Amended, \*\* Adopted**. Please contact this office if you have any questions.*

*Adopted rules filed by the Departments of Correction, Revenue and Transportation are published in this section. These departments are not subject to the provisions of G.S. 150B, Article 2 requiring publication in the N.C. Register of proposed rules.*

*Upon request from the adopting agency, the text of rules will be published in this section.*

*Punctuation, typographical and technical changes to rules are incorporated into the **List of Rules Codified** and are noted as **\* Correction**. These changes do not change the effective date of the rule.*

## TITLE 17 - DEPARTMENT OF REVENUE

### CHAPTER 6 - INDIVIDUAL INCOME TAX DIVISION

#### SUBCHAPTER 6B - INDIVIDUAL INCOME TAX

#### SECTION .0100 - FILING INDIVIDUAL INCOME TAX RETURNS

##### .0117 TRANSITIONAL ADJUSTMENTS

The following transitional adjustments are required because of differences in the way State and Federal law treated certain tax transactions prior to January 1, 1989.

- (1) Amounts that were included in the basis of property under Federal law but not under State law prior to January 1, 1989, must be added to taxable income in the year of disposition of the property. These adjustments include the increase in basis for Federal gift tax paid on property received as a gift and in certain cases where the individual was permitted under Federal law to capitalize certain expenditures for interest and taxes.
- (2) Amounts that were included in the basis of property under State law but not under Federal law prior to January 1, 1989, must be deducted from an individual's taxable income in the year of disposition of the property. Deductions of this type include the increase in basis for State gift tax paid on property received as a gift and certain business expenditures that an individual elected to expense under Section 179 of the Internal Revenue Code but which were required to be capitalized for State income tax purposes.
- (3) A loss or deduction that was incurred or paid and deducted in full for North Carolina income tax purposes under prior State law in a taxable year beginning before January 1, 1989, but was carried forward and deducted from Federal taxable income in a taxable year beginning on or after January 1, 1989, must be added to taxable income.

In determining the amount to add back, a capital loss from taxable years beginning prior to January 1, 1989, must be applied before applying a capital loss that was sustained in a taxable year beginning on or after January 1, 1989.

EXAMPLE: The full amount of a capital loss incurred in 1988 would have been deductible on an individual's 1988 State income tax return but on his Federal income tax return the amount of the deductible loss would have been limited to his capital gains plus three thousand dollars (\$3,000) [one thousand five hundred dollars (\$1,500) if married and filing a separate return]. Any remaining



loss could be carried forward to subsequent tax years and deducted on his Federal income tax return in computing his Federal taxable income. In this instance, the individual must add back each year that portion of the 1988 loss deducted from his Federal taxable income in arriving at the amount of his North Carolina taxable income.

[An individual had a six thousand five hundred dollar (\$6,500) capital loss in 1988 which was limited to three thousand dollars (\$3,000) on his Federal income tax return but which was deducted in full on the State return. An additional net capital loss was also incurred in 1989. Since the individual's 1989 Federal taxable income would include a three thousand dollar (\$3,000) loss carry-over the individual must add back three thousand dollars (\$3,000) to Federal taxable income on the 1989 State return. The remaining five hundred dollars (\$500.00) would be added back to the individual's Federal taxable income for 1990.]

EXAMPLE: Prior State law required charitable contributions to be deducted in the year they were paid and did not permit any amount to be carried over to another tax year. Under Federal law, an individual who may not be entitled to deduct the full amount of certain contributions because of an adjusted gross income limitation may carry over the unused portion to the succeeding tax year. In this situation, the individual must add back to Federal taxable income the contributions carry-over from 1988 if he itemized deductions on his Federal income tax return.

EXAMPLE: Generally, for Federal income tax purposes for tax years beginning on or after January 1, 1987, to the extent that the total deductions from passive activities exceed the total income from such activities for the tax year, the excess (passive activity loss) is not allowed as a deduction for that year. A disallowed passive loss is allowed to be carried forward as a deduction from passive activity income in the next succeeding tax year. Generally, losses from passive activities may not be deducted from other types of income (e.g., wages, interest, or dividends). A passive activity is one that involves the conduct of any trade or business in which the taxpayer does not materially participate. Any rental activity is a passive activity regardless of whether the taxpayer materially participates. Special rules apply to rental activities. Under State law, a passive loss carried forward from a tax year beginning prior to January 1, 1989, must be added back to Federal taxable income since the entire loss was deductible on the taxpayer's return for the year the loss was incurred.

- (4) Amounts deducted on an individual's Federal income tax return as net operating losses brought forward from tax years beginning prior to January 1, 1989, must be added to Federal taxable income. For tax years prior to January 1, 1989, State law allowed a net economic loss to be carried forward to subsequent years but was computed differently from the Federal net operating loss. Prior State law did not permit the loss to be carried back to prior tax years as did Federal law.

EXAMPLE: An individual sustains a business loss of one hundred thousand dollars (\$100,000) in 1988, had no other business income or business expenses for that year, and received interest income of eighty-two thousand dollars (\$82,000) from City of Raleigh bonds during the taxable year. For Federal income tax purposes, the individual would have sustained a net operating loss of one hundred thousand dollars (\$100,000). If the individual had no income in the prior three tax years to offset the net operating loss, he could carry the one hundred thousand dollar (\$100,000) loss forward for up to 15 years and deduct it as a net operating loss on his subsequent Federal income tax returns. Under prior State law, the individual would have incurred a net economic loss of eighteen thousand dollars (\$18,000) [business loss of one hundred thousand dollars (\$100,000) less nontaxable income of eighty-two thousand dollars (\$82,000)] that could be carried forward up to five years after reducing it by both taxable and nontaxable income. In this situation, the individual must add back the net operating loss deduction to his Federal taxable income.

- (5) If an individual recovered all or any portion of his contributions to an annuity for State income tax purposes for taxable years beginning prior to January 1, 1989, but such amount was not recovered for federal income tax purposes, he must include a ratable portion of the difference in the cost previously recovered for North Carolina purposes and the amount previously recovered for Federal purposes on the North Carolina return for each year beginning on or after January 1, 1989.

EXAMPLE: Both the employee and the employer contributed to the cost of the employee's annuity and the employee will recover his contribution within three years from the annuity starting date. For tax years beginning prior to January 1, 1989, the employee was entitled under State law to recover his contributions to the annuity in full before being taxed on the benefits. The ratable portion to be added to Federal taxable income is determined as follows:

$$\begin{array}{rcl} \text{Amount recovered} & & \text{Amount recovered} \\ \text{on State return} & - & \text{on Federal return} \\ \hline & = & \text{Addition to} \end{array}$$

**Remaining Years Life Expectancy**

**Taxable Income**

If the cost recovered for federal income tax purposes for taxable years beginning prior to January 1, 1989, is greater than the cost recovered for State income tax purposes for years prior to 1989, the ratable portion to be deducted from federal taxable income is determined as follows:

$$\frac{\text{Amount recovered on Federal return}}{\text{Remaining Years Life Expectancy}} - \frac{\text{Amount recovered on State return}}{\text{Remaining Years Life Expectancy}} = \text{Deduction from Taxable Income}$$

The amount of difference in the numerator of the fractions in this Subparagraph should reflect the cost recovered during the taxpayer's period of residence in North Carolina and exclude any cost recovered during residence in another state. In the denominator, the remaining years life expectancy to be entered is the life expectancy determined for federal income tax purposes for the year the annuity started less the number of tax years the annuity was reportable for federal tax purposes prior to January 1, 1989. The amount of the transitional adjustment computed for the tax year 1989 will remain the same for each year of the individual's remaining life expectancy.

This transitional adjustment will not apply to retirement annuities from any federal retirement program which were taxed unconstitutionally prior to January 1, 1989, and to annuities which were exempt under prior State law, including retirement annuities from the North Carolina Teachers' and State Employees' Retirement System and the North Carolina Local Governmental Employees' Retirement System. Also, this transitional adjustment will not apply to retirement annuities received by former teachers and state employees of other states which were fully exempt from North Carolina income tax prior to January 1, 1989, because the other state had no income tax law or practiced reciprocity with North Carolina with respect to taxing such benefits.

This transitional adjustment will apply to retirement annuities received by former teachers and state employees of other states which were not fully exempt because those states practiced no reciprocity or only partial reciprocity with North Carolina with respect to such benefits for taxable years beginning prior to January 1, 1989. The amount of cost recovered on the North Carolina return prior to January 1, 1989, to be used in the formula for computing the addition to federal taxable income is to be computed without considering any benefits which were excluded as the result of partial reciprocity.

- (6) Net economic losses sustained in the five taxable years preceding an individual's first taxable year beginning on or after January 1, 1989, may be carried forward and deducted from taxable income as under prior law. Under prior law, a net economic loss could be carried forward for up to five years. The law defines a net economic loss as the amount by which allowable deductions for the year other than personal exemptions, nonbusiness deductions and prior-year losses exceed income from all sources in the year, including any nontaxable income.
- (7) A Federal net operating loss for a taxable year beginning on or after January 1, 1989, carried back for Federal income tax purposes to a taxable year beginning before January 1, 1989, may be deducted from Federal taxable income in the taxable year following the taxable year in which the loss occurred.
- (8) Adjustments must also be made in the taxable income of a shareholder of an S corporation. (See 17 NCAC 6B .4000)
- (9) When a parent elects to report his child's unearned income, the child is treated as having no gross income for the year and is not required to file a Federal income tax return. A parent electing to report a child's unearned income for Federal tax purposes must add back to his Federal taxable income the amount of the child's unearned income in excess of five hundred dollars (\$500.00) but not exceeding one thousand dollars (\$1,000).  
Other additions and deductions to Federal taxable income may be required to ensure that the transition to the new tax law does not result in the double taxation of income, the exemption of otherwise taxable income or double allowance of deductions.
- (10) For taxable years beginning prior to January 1, 1989, an individual engaged in the commercial growing of trees could elect to claim a current income tax deduction for reasonable expenses paid for reforestation and cultivation or he could elect to amortize such expenses over a period of 60 months. Federal law required such expenses to be amortized on the federal return over 84 months.

If a taxpayer elected to claim reforestation expenses currently on his North Carolina tax return for tax years beginning prior to January 1, 1989, he must add to Federal taxable income the amount deducted as amortization expenses each year on his Federal income tax return.

A taxpayer who amortized such expenses on his North Carolina return for tax years beginning prior to January 1, 1989, may continue to amortize by deducting the allowable amortization expenses each year on his North Carolina return; however, federal taxable income must be increased by the amortization expenses claimed each year on his federal income tax return.

*History Note: Statutory Authority G.S. 105-134.7; 105-262;  
Eff. June 1, 1990;  
Amended Eff. July 1, 1991; February 1, 1991.*

## **SECTION .3500 - PARTNERSHIPS**

### **.3503 PARTNERSHIP RETURNS**

(a) A North Carolina partnership return (Form D-403), must be filed by every partnership doing business in North Carolina if a Federal partnership return was required to be filed. For individual income tax purposes, the term "business carried on in this State" means the operation of any activity within North Carolina regularly, continuously, and systematically for the purpose of income or profit. A sporadic activity, a hobby, or an amusement diversion does not come within the definition of a business carried on in this State. Income from an intangible source, including gain realized from the sale of intangible property, which is received in the course of a business carried on in this State so as to have a taxable situs here (including such income which is included in the distributive share of partnership income, whether distributed or not) is included in the numerator of the fraction used in determining the portion of federal taxable income that is taxable to North Carolina by a nonresident. The return must include the names and addresses of the individuals entitled to share in the net income of the partnership and must be signed by the managing partner and the individual preparing the return.

(b) A copy of the Federal Partnership Income Tax Return, Form 1065, and all schedules, including each K-1 must be attached to the North Carolina partnership return.

(c) In determining whether a partnership is carrying on a trade or business in North Carolina if its principal business activity is "investments," all facts and circumstances must be considered. Determining factors include the following:

- (1) the extent of business operations in this State, including maintaining an office, number of employees, property, bank transactions in this State, etc.,
- (2) the source of principal income (interest and dividends versus gain from the sale of securities),
- (3) the length of time securities are held (long-term holding of securities for capital appreciation versus short-term trading for profit),
- (4) volume of transactions and value of securities bought and sold.

If a partnership's only activities within North Carolina are in the nature of an investment account in which the securities are held for capital appreciation and income, the receipt of dividends and interest and the occasional sales of stocks and bonds does not constitute carrying on a trade or business in this State. A nonresident partner does not include his distributive share of the partnership's income in the numerator of the fraction in determining North Carolina taxable income. If the activities of the partnership are extensive, including sales of securities with reasonable frequency, the partnership is deemed to be engaged in a trade or business and a nonresident partner must include his distributive share of the partnership's income in the numerator. This Rule is effective January 11, 1991.

*History Note: Statutory Authority G.S. 105-152(a)(2); 105-154(b); 105-262;  
Eff. February 1, 1976;  
Amended Eff. July 1, 1991; June 1, 1990; June 1, 1982.*

### **.3527 DISPOSITION OF PARTNER'S INTEREST**

(a) An interest in a partnership is intangible personal property. A nonresident does not include the gain from the sale of his interest in a partnership in the numerator of the fraction unless the sale of the partnership interest conveys title to specific partnership property. If a partnership owning an interest in another partnership sells its interest in that partnership, the nonresident partners do not include their distributive shares of the gain realized by the partnership from the sale of its partnership interest in the



numerator unless the partnership selling its interest is domiciled and carrying on a trade or business in this State.

(b) A nonresident must include his distributive share of the gains or losses from the sale or other disposition of the partnership's assets in the numerator of the fraction in determining North Carolina taxable income. If the sale of partnership interests conveys title to specific partnership property instead of to limited interests in the partnership, the transaction will be considered as a sale of partnership assets for purposes of determining North Carolina taxable income. In determining whether a sale or other disposition of partnership assets or of partnership interests has occurred, the substance of the transaction, rather than the form, controls the taxable consequences of the sale or other disposition. This Rule is effective December 28, 1990.

*History Note: Statutory Authority G.S. 105-134.5; 105-152; 105-154; 105-262;  
Eff. July 1, 1991.*



## ARRC OBJECTIONS

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*The Administrative Rules Review Commission (ARRC) objected to the following rules in accordance with G.S. 143B-30.2(c). State agencies are required to respond to ARRC as provided in G.S. 143B-30.2(d).*

### AGRICULTURE

#### Plant Industry

|   |                |         |
|---|----------------|---------|
| 2 NCAC 48F .0306 - Collection and Sale of Venus Flytrap | ARRC Objection | 4/18/91 |
| Agency Revised Rule                                     | Obj. Removed   | 4/18/91 |

### ECONOMIC AND COMMUNITY DEVELOPMENT

#### Banking Commission

|  |                |         |
|--|----------------|---------|
| 4 NCAC 3G .0203 - Expiration and Renewal             | ARRC Objection | 3/21/91 |
| Agency Revised Rule                                  | Obj. Removed   | 4/18/91 |
| 4 NCAC 3G .0502 - Annual Report                      | ARRC Objection | 3/21/91 |
| Agency Revised Rule                                  | Obj. Removed   | 4/18/91 |
| 4 NCAC 3G .0601 - Revocation or Suspension; Hearings | ARRC Objection | 3/21/91 |
| Agency Revised Rule                                  | Obj. Removed   | 4/18/91 |

#### Hazardous Waste Management Commission

|                                |                |         |
|--------------------------------|----------------|---------|
| 4 NCAC 18 .0309 - Final Site   | ARRC Objection | 1/18/91 |
| Agency Returned Rule Unchanged | No Action      | 2/25/91 |
|                                | ARRC Objection | 4/18/91 |

### ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

#### Adult Health

|  |                |         |
|--|----------------|---------|
| 15A NCAC 16A .0804 - Financial Eligibility                   | ARRC Objection | 1/18/91 |
| No Response from Agency                                      |                | 2/25/91 |
| Agency Responded   | No Action      | 3/21/91 |
| No Response from Agency                                      | No Action      | 4/18/91 |
| 15A NCAC 16A .0806 - Billing the HIV Health Services Program | ARRC Objection | 1/18/91 |
| No Response from Agency                                      |                | 2/25/91 |
| Agency Responded   | No Action      | 3/21/91 |
| No Response from Agency                                      | No Action      | 4/18/91 |

#### Coastal Management

|                                     |                |         |
|-------------------------------------|----------------|---------|
| 15A NCAC 7J .0409 - Civil Penalties | ARRC Objection | 1/18/91 |
| Agency Returned Rule Unchanged      | No Action      | 2/25/91 |
| Rule Returned to Agency             | No Action      | 4/18/91 |
| Agency Filed Rule with OAH          | Rule Eff.      | 6/1/91  |
| 15A NCAC 7J .1109 - Permit Fee      | ARRC Objection | 1/18/91 |
| Agency Withdrew Rule                |                | 2/25/91 |

#### Environmental Health

|                              |                |         |
|------------------------------|----------------|---------|
| 15A NCAC 18A .2537 - Appeals | ARRC Objection | 3/21/91 |
|------------------------------|----------------|---------|

## ARRC OBJECTIONS

|  |                       |                |
|--|-----------------------|----------------|
| <i>Agency Responded</i>  | <i>No Action</i>      | <i>4/18/91</i> |
| <i>15A NCAC 18A .2616 - Requirements for Employees</i>         | <i>ARRC Objection</i> | <i>4/18/91</i> |
| <i>15A NCAC 18A .2618 - Cleaning of Equipment and Utensils</i> | <i>ARRC Objection</i> | <i>3/21/91</i> |
| <i>Agency Responded</i>  | <i>No Action</i>      | <i>4/18/91</i> |
| <i>15A NCAC 18A .2711 - Toilet Facilities</i>                  | <i>ARRC Objection</i> | <i>3/21/91</i> |
| <i>Agency Responded</i>  | <i>No Action</i>      | <i>4/18/91</i> |

### HUMAN RESOURCES

#### Facility Services

|  |                       |                |
|--|-----------------------|----------------|
| <i>10 NCAC 3C .0914 - Defs Applicable/Psychiatric/Substance Abuse Svcs</i> | <i>ARRC Objection</i> | <i>4/18/91</i> |
| <i>Agency Revised Rule</i>   | <i>Obj. Removed</i>   | <i>4/18/91</i> |
| <i>10 NCAC 3J .2401 - Requirement for Operations Manual</i>                | <i>ARRC Objection</i> | <i>4/18/91</i> |
| <i>Agency Revised Rule</i>   | <i>Obj. Removed</i>   | <i>4/18/91</i> |
| <i>10 NCAC 3T .0102 - Definitions</i>                                      | <i>ARRC Objection</i> | <i>4/18/91</i> |
| <i>Agency Revised Rule</i>   | <i>Obj. Removed</i>   | <i>4/18/91</i> |
| <i>10 NCAC 3T .0603 - Home Health Aide Services</i>                        | <i>ARRC Objection</i> | <i>4/18/91</i> |
| <i>Agency Revised Rule</i>   | <i>Obj. Removed</i>   | <i>4/18/91</i> |
| <i>10 NCAC 3T .1101 - Administration</i>                                   | <i>ARRC Objection</i> | <i>4/18/91</i> |
| <i>Agency Revised Rule</i>   | <i>Obj. Removed</i>   | <i>4/18/91</i> |
| <i>10 NCAC 3T .1112 - Design and Construction</i>                          | <i>ARRC Objection</i> | <i>4/18/91</i> |
| <i>Agency Revised Rule</i>   | <i>Obj. Removed</i>   | <i>4/18/91</i> |
| <i>10 NCAC 3T .1114 - Plumbing</i>   | <i>ARRC Objection</i> | <i>4/18/91</i> |
| <i>Agency Revised Rule</i>   | <i>Obj. Removed</i>   | <i>4/18/91</i> |
| <i>10 NCAC 3T .1206 - Hospice Inpatient Fire and Safety Requirements</i>   | <i>ARRC Objection</i> | <i>4/18/91</i> |
| <i>Agency Revised Rule</i>   | <i>Obj. Removed</i>   | <i>4/18/91</i> |

#### Individual and Family Support

|   |                       |                 |
|---|-----------------------|-----------------|
| <i>10 NCAC 42B .1201 - Personnel Requirements</i>                           | <i>ARRC Objection</i> | <i>1/18/91</i>  |
| <i>No Response from Agency</i>  |                       | <i>2/25/91</i>  |
| <i>Agency Returned Rule Unchanged</i>                                       | <i>No Action</i>      | <i>3/21/91</i>  |
| <i>10 NCAC 42C .2001 - Qualifications of Administrator</i>                  | <i>ARRC Objection</i> | <i>1/18/91</i>  |
| <i>No Response from Agency</i>  |                       | <i>2/25/91</i>  |
| <i>Agency Returned Rule Unchanged</i>                                       | <i>No Action</i>      | <i>3/21/91</i>  |
| <i>10 NCAC 42C .2002 - Qualifications of Supervisor-in-Charge</i>           | <i>ARRC Objection</i> | <i>1/18/91</i>  |
| <i>No Response from Agency</i>  |                       | <i>2/25/91</i>  |
| <i>Agency Returned Rule Unchanged</i>                                       | <i>No Action</i>      | <i>3/21/91</i>  |
| <i>10 NCAC 42C .2006 - Qualifications of Activities Coordinator</i>         | <i>ARRC Objection</i> | <i>1/18/91</i>  |
| <i>No Response from Agency</i>  |                       | <i>2/25/91</i>  |
| <i>Agency Returned Rule Unchanged</i>                                       | <i>No Action</i>      | <i>3/21/91</i>  |
| <i>10 NCAC 42C .3301 - Existing Building</i>                                | <i>ARRC Objection</i> | <i>11/14/90</i> |
| <i>Agency Returned Rule Unchanged</i>                                       | <i>No Action</i>      | <i>12/20/90</i> |
| <i>10 NCAC 42D .1401 - Qualifications of Administrator Co-Administrator</i> | <i>ARRC Objection</i> | <i>11/14/90</i> |
| <i>Agency Returned Rule Unchanged</i>                                       | <i>No Action</i>      | <i>12/20/90</i> |

#### Social Services

|  |                       |                |
|--|-----------------------|----------------|
| <i>10 NCAC 24A .0303 - Sel County Board Members/Social Svcs Comm</i> | <i>ARRC Objection</i> | <i>4/18/91</i> |
| <i>10 NCAC 39D .0202 - Conciliation Procedure</i>                    | <i>ARRC Objection</i> | <i>4/18/91</i> |
| <i>Agency Revised Rule</i>   | <i>Obj. Removed</i>   | <i>4/18/91</i> |
| <i>10 NCAC 39D .0408 - Participation Expenses</i>                    | <i>ARRC Objection</i> | <i>4/18/91</i> |
| <i>Agency Revised Rule</i>   | <i>Obj. Removed</i>   | <i>4/18/91</i> |
| <i>10 NCAC 39D .0409 - One-Time Work Related Expenses</i>            | <i>ARRC Objection</i> | <i>4/18/91</i> |

## ARRC OBJECTIONS

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|  |                       |                |
|--|-----------------------|----------------|
| <i>Agency Revised Rule</i>   | <i>Obj. Removed</i>   | <i>4/18/91</i> |
| <i>10 NCAC 39D .0411 - Supportive Svcs//Available in Non-JOBs Counties</i> | <i>ARRC Objection</i> | <i>4/18/91</i> |
| <i>Agency Revised Rule</i>   | <i>Obj. Removed</i>   | <i>4/18/91</i> |

### JUSTICE

#### NC Criminal Justice Education

|  |                       |                |
|--|-----------------------|----------------|
| <i>12 NCAC 9B .0301 - Certification of Instructors</i>     | <i>ARRC Objection</i> | <i>4/18/91</i> |
| <i>12 NCAC 9B .0302 - General Instructor Certification</i> | <i>ARRC Objection</i> | <i>4/18/91</i> |
| <i>Agency Revised Rule</i>                                 | <i>Obj. Removed</i>   | <i>4/18/91</i> |

### LABOR

#### Migrant Housing

|  |                       |                |
|--|-----------------------|----------------|
| <i>13 NCAC 16 .0201 - Conduct of Preoccupancy Inspections</i>          | <i>ARRC Objection</i> | <i>4/18/91</i> |
| <i>Agency Revised Rule</i>   | <i>Obj. Removed</i>   | <i>4/18/91</i> |
| <i>13 NCAC 16 .0301 - Provisional Occupancy</i>                        | <i>ARRC Objection</i> | <i>4/18/91</i> |
| <i>Agency Revised Rule</i>   | <i>Obj. Removed</i>   | <i>4/18/91</i> |
| <i>13 NCAC 16 .0302 - Provisional Occupancy Denied</i>                 | <i>ARRC Objection</i> | <i>4/18/91</i> |
| <i>Agency Revised Rule</i>   | <i>Obj. Removed</i>   | <i>4/18/91</i> |
| <i>13 NCAC 16 .0303 - Inspection of Provisionally Occupied Housing</i> | <i>ARRC Objection</i> | <i>4/18/91</i> |
| <i>Agency Revised Rule</i>   | <i>Obj. Removed</i>   | <i>4/18/91</i> |

### LICENSING BOARDS AND COMMISSIONS

#### Auctioneer's Commission

|                                       |                       |                |
|---------------------------------------|-----------------------|----------------|
| <i>21 NCAC 4B .0602 - Advertising</i> | <i>ARRC Objection</i> | <i>3/21/91</i> |
| <i>Agency Revised Rule</i>            | <i>Obj. Removed</i>   | <i>4/18/91</i> |

#### Cosmetic Art Examiners

|  |                       |                |
|--|-----------------------|----------------|
| <i>21 NCAC 14I .0302 - Library</i>                         | <i>ARRC Objection</i> | <i>2/25/91</i> |
| <i>Agency Responded</i>                                    | <i>No Action</i>      | <i>3/21/91</i> |
| <i>Agency Revised Rule</i>                                 | <i>Obj. Removed</i>   | <i>4/18/91</i> |
| <i>21 NCAC 14L .0210 - Effect on Student-Teacher Ratio</i> | <i>ARRC Objection</i> | <i>2/25/91</i> |
| <i>Agency Responded</i>                                    | <i>No Action</i>      | <i>3/21/91</i> |
| <i>Agency Revised Rule</i>                                 | <i>Obj. Removed</i>   | <i>4/18/91</i> |

#### Dental Examiners

|   |                       |                |
|---|-----------------------|----------------|
| <i>21 NCAC 16C .0310 - Reexamination</i>            | <i>ARRC Objection</i> | <i>3/21/91</i> |
| <i>Agency Withdrew Rule</i>                         |                       | <i>4/18/91</i> |
| <i>21 NCAC 16D .0101 - Eligibility Requirements</i> | <i>ARRC Objection</i> | <i>3/21/91</i> |
| <i>Agency Revised Rule</i>                          | <i>Obj. Removed</i>   | <i>4/18/91</i> |

#### Medical Examiners

|   |                       |                |
|---|-----------------------|----------------|
| <i>21 NCAC 32B .0309 - Personal Interview</i> | <i>ARRC Objection</i> | <i>2/25/91</i> |
| <i>Agency Responded</i>                       | <i>No Action</i>      | <i>3/21/91</i> |

### SECRETARY OF STATE

#### Securities Division

## ARRC OBJECTIONS

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18 NCAC 6 .1210 - Securities Exchgs/Autod Quot. Sys. Approved/Admin ARRC Objection 12/20/90  
Agency Responded to Objection No Action 1/18/91

### STATE PERSONNEL

25 NCAC 1D .0509 - Severance Salary Continuation ARRC Objection 1/18/91  
Agency's Response Unacceptable 2/25/91



*This Section of the Register lists the recent decisions issued by the North Carolina Supreme Court, Court of Appeals, Superior Court (when available), and the Office of Administrative Hearings which invalidate a rule in the North Carolina Administrative Code.*

**10 NCAC 26I .0101 - PURPOSE: SCOPE/NOTICE OF CHANGE IN LEVEL OF CARE**

**10 NCAC 26I .0102 - REQUESTS FOR RECONSIDERATION AND RECIPIENT APPEALS**

**10 NCAC 26I .0104 - FORMAL APPEALS**

Thomas R. West, Administrative Law Judge with the Office of Administrative Hearings, declared Rules 10 NCAC 26I .0101, 10 NCAC 26I .0102 and 10 NCAC 26I .0104 void as applied in *Linda Allred, Petitioner v. North Carolina Department of Human Resources, Division of Medical Assistance, Respondent* (90 DHR 0940).

**10 NCAC 42W .0003(c) - COUNTY DEPT OF SOCIAL SERVICES RESPONSIBILITIES**

**10 NCAC 42W .0005 - REPORTING CASES OF RAPE AND INCEST**

The North Carolina Court of Appeals, per Judge Robert F. Orr, declared Rules 10 NCAC 42W .0003(c) and 10 NCAC 42W .0005 void as applied in *Rankin Whittington, Daniel C. Hudgins, Dr. Takey Crist, Dr. Gwendolyn Boyd and Planned Parenthood of Greater Charlotte, Inc., Plaintiffs v. The North Carolina Department of Human Resources, David Flaherty, in his capacity as Secretary of the North Carolina Department of Human Resources, The North Carolina Social Services Commission, and C. Barry McCarty, in his capacity as Chairperson of the North Carolina Social Services Commission, Defendants* [100 N.C. App. 603, 398 S.E.2d 40 (1990)].

**16 NCAC 6D .0105 - USE OF SCHOOL DAY**

The North Carolina Supreme Court, per Associate Justice Henry E. Frye, held invalid Rule 16 NCAC 6D .0105 as decided in *The State of North Carolina; The North Carolina State Board of Education; and Bob Etheridge, State Superintendent of Public Instruction, Plaintiffs v. Whittle Communications and The Thomasville City Board of Education, Defendant-Counterclaimants and The Davidson County Board of Education, Defendant-Intervenor and Counterclaimant v. The State of North Carolina; The North Carolina State Board of Education; and Bob Etheridge, State Superintendent of Public Instruction; and Howard S. Haworth; Barbara M. Tapscott; Kenneth R. Harris; Teena Smith Little; W.C. Meekins Jr.; Mary B. Morgan; Patricia H. Neal; Cary C. Owen; Donald D. Pollock; Prezell R. Robinson; Norma B. Turnage; State Treasurer Harlan E. Boyles; and Lt. Governor James C. Gardner; in their official capacities as members of The North Carolina State Board of Education, Counterclaim Defendants* [328 N.C. \_\_\_\_\_, \_\_\_\_\_ S.E.2d \_\_\_\_\_ (1991)].

**15A NCAC 7H .0308 - SPECIFIC USE STANDARDS**

The North Carolina Court of Appeals, per Judge Sidney S. Eagles Jr., held that it was error for the Coastal Resources Commission to fail to follow the required notice and comment procedure prior to the adoption of temporary rule 15A NCAC 7H .0308(a)(1)(M), but that the CRC followed proper procedures when it adopted the text of the temporary rule as a permanent rule [15A NCAC 7H .0308(a)(1)(M)]. *Conservation Council of North Carolina v. Haste* [102 N.C. App. \_\_\_\_\_, 402 S.E.2d 447 (1991)].

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## NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM

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*The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.*

### TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

| TITLE | DEPARTMENT                                 | LICENSING BOARDS                                  | CHAPTER |
|-------|--|---|---------|
| 1     | Administration                             | Architecture                                      | 2       |
| 2     | Agriculture                                | Auctioneers                                       | 4       |
| 3     | Auditor                                    | Barber Examiners                                  | 6       |
| 4     | Economic and Community Development         | Certified Public Accountant Examiners             | 8       |
| 5     | Correction                                 | Chiropractic Examiners                            | 10      |
| 6     | Council of State                           | General Contractors                               | 12      |
| 7     | Cultural Resources                         | Cosmetic Art Examiners                            | 14      |
| 8     | Elections                                  | Dental Examiners                                  | 16      |
| 9     | Governor                                   | Electrical Contractors                            | 18      |
| 10    | Human Resources                            | Foresters   | 20      |
| 11    | Insurance                                  | Geologists  | 21      |
| 12    | Justice                                    | Hearing Aid Dealers and Fitters                   | 22      |
| 13    | Labor                                      | Landscape Architects                              | 26      |
| 14A   | Crime Control and Public Safety            | Landscape Contractors                             | 28      |
| 15A   | Environment, Health, and Natural Resources | Marital & Family Therapy                          | 31      |
| 16    | Public Education                           | Medical Examiners                                 | 32      |
| 17    | Revenue                                    | Midwifery Joint Committee                         | 33      |
| 18    | Secretary of State                         | Mortuary Science                                  | 34      |
| 19A   | Transportation                             | Nursing   | 36      |
| 20    | Treasurer                                  | Nursing Home Administrators                       | 37      |
| *21   | Occupational Licensing Boards              | Occupational Therapists                           | 38      |
| 22    | Administrative Procedures                  | Opticians   | 40      |
| 23    | Community Colleges                         | Optometry   | 42      |
| 24    | Independent Agencies                       | Osteopathic Examination and Registration          | 44      |
| 25    | State Personnel                            | Pharmacy  | 46      |
| 26    | Administrative Hearings                    | Physical Therapy Examiners                        | 48      |
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|       |  | Podiatry Examiners                                | 52      |
|       |  | Practicing Counselors                             | 53      |
|       |  | Practicing Psychologists                          | 54      |
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- AO - Administrative Order
- AG - Attorney General's Opinions
- C - Correction
- FR - Final Rule
- GS - General Statute
- JO - Judicial Orders or Decision
- M - Miscellaneous
- NP - Notice of Petitions
- PR - Proposed Rule
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