



NORTH CAROLINA CENTER FOR
PUBLIC POLICY RESEARCH INC.

News Release

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N.C. Center Assesses State Administrative Procedure Act

The N.C. Center for Public Policy Research says the state Senate should carefully examine a proposed rewrite of the state Administrative Procedure Act (APA). In a report released today, the nonprofit research group mixes praise with criticism in an evaluation of the act which went into effect a decade ago. Rep. William Watkins (D-Granville) has proposed major revisions in the APA. The state House passed the bill on May 3, and it is to be discussed in the Senate Judiciary I Committee this week.

Center director Ran Coble says, "One of the hottest debates of the past few sessions of the General Assembly has raged over what is one of the least understood laws of the state--the Administrative Procedure Act (APA). Probably few citizens have ever heard of it, but the fact is that the APA has much to do with the way our government runs and with the way many of our state institutions operate. The APA affects everything from the quality of our drinking water to the way doctors are licensed. Why? Because the APA establishes minimum, uniform standards for the way state agencies adopt rules and regulations implementing state laws and operating government services and programs."

The proposed rewrite of the APA law is designed to cut down on the burgeoning number of rules that have been adopted over the past decade. The legislative debate centers on who controls the adoption of rules and who controls contested cases, or appeals, of executive branch decisions based on these rules.

To contribute a base of information to this debate, the Center mailed a seven page survey to the 92 APA coordinators in state government--those who administer the APA on a daily basis. The survey asked the respondents for specific information on how the APA affects their agencies--how rules are proposed and adopted, how many rules are contested, what experiences they have had upon review by the courts, and how they feel about a proposed new State Register where all rules would be published.

The results of these surveys were compiled by authors Bill Finger, Jack Betts, Ran Coble, and Jack Nichols in the 59-page report, "Assessing the Administrative Procedure Act." The research was then weighed in relation to the legislation proposed by Rep. Watkins. Finger, Betts, and Coble are staff members of the N.C. Center, while Nichols is an attorney in private practice whose government career included service as the APA coordinator for the Department of Human Resources.

Rep. Watkins is quoted in the report as saying he is trying to solve two main problems. First, he says there are too many rules. "It's gotten so you have to have a lawyer to understand it [the APA]," he adds.

Second, Watkins says agencies use the same person or board to make rules, hear appeals on those rules, and make the final decision on those appeals. This, he says, is like having the same person be "prosecutor, judge, and jury."

"Rep. Watkins is to be commended for identifying some serious problems with the state rulemaking and appeals process," says Coble. "However, our research does raise some questions about the solutions he's offering."

First, the Center's report points out that many legislators, including Watkins, seem to be under the impression that it is the APA alone that gives state agencies the authority to adopt rules. Instead, the Center identified 88 other statutes that give boards and commissions the authority to adopt rules. Still other statutes give such authority to executive-branch agencies. "If you want to reduce the number of rules," says Coble, "you don't attack the APA, but you reduce the number of boards with rulemaking power."

Second, the Center's research shows that of the state agencies with the power to make rules, hear appeals, and make the final decisions on appeals, 11 of the 17 agencies are occupational licensing boards. Yet Watkins' bill exempts such licensing boards from the section of his bill which would require appeals to be heard by a new Office of Administrative Hearings. "The places where Rep. Watkins had identified a problem of the power of prosecutor, judge, and jury resting in one place or board are the very places that are exempt ... the occupational licensing boards," concludes the report.

The Center has praise, however, for Watkins' idea for a State Register. Such a register would contain all final rules affecting the public and any proposed changes in those rules. It would also contain executive orders of the governor and would be published at least monthly. The Center said North Carolina is the only state in the South that does not have a register and is one of only 11 states in the country without a register. Most of the state registers are inexpensive, ranging from \$0 to \$50 per subscription.

Finally, the Center says there are some constitutional questions about parts of the proposed legislation. The bill would create an Administrative Rules Review Commission with the power to review all rules and determine whether they are "necessary" for the agency to carry out its statutory authority. The eight-member commission would be appointed by the legislature. The Center says this may violate the separation of powers provision of the state Constitution. It may also amount to a "legislative veto," a practice which has been held unconstitutional at the federal level by the U.S. Supreme Court.

Other constitutional problems may arise if Watkins pursues his original idea of establishing a new Office of Administrative Hearings and giving its hearing officers the power to make final decisions on appeals. Critics say this amounts to creating a new set of courts, also in violation of the state Constitution. Article 4, Section 1 reads in part, "The General Assembly shall have no power to deprive the judicial department of any power or jurisdiction that rightfully pertains to it as a co-ordinate department of the government, nor shall it establish or authorize any courts other than as permitted by this Article."

Gov. James G. Martin has raised these same constitutional questions about the bill, both in a recent press conference and in testimony submitted by his legal counsel, Samuel A. Wilson III, to the Judiciary I Committee chairman, Sen. Henson Barnes (D-Wayne).

The Center's report includes:

- ° a narrative history of the Administrative Procedure Act in North Carolina, setting the scene for the current legislative debate;
- ° a listing of the landmark dates in the APA;
- ° detailed results of the Center's APA surveys; and
- ° a section on findings and recommendations.

The report is available from the N.C. Center for Public Policy Research for \$7.00, plus \$1.00 for postage and handling at P. O. Box 430, Raleigh, NC 27602, (919) 832-2839.

The Center for Public Policy Research is an independent research and educational organization based in Raleigh. It was formed in 1977 to study state government programs and important public policy questions in North Carolina. The Center receives general operating support from the Mary Reynolds Babcock and Z. Smith Reynolds Foundations, 45 corporate contributors, and 625 individual members. Past research by the Center includes studies of all the boards and commissions in the executive branch of state government, a guide to the legislature, and an examination of state lotteries.

For more information, call Bill Finger, Jack Betts, or Ran Coble at (919) 832-2839.