

Article 4

Judicial Review.

§ 150B-43. Right to judicial review.

Any party or person aggrieved by the final decision in a contested case, and who has exhausted all administrative remedies made available to the party or person aggrieved by statute or agency rule, is entitled to judicial review of the decision under this Article, unless adequate procedure for judicial review is provided by another statute, in which case the review shall be under such other statute. Nothing in this Chapter shall prevent any party or person aggrieved from invoking any judicial remedy available to the party or person aggrieved under the law to test the validity of any administrative action not made reviewable under this Article. A party or person aggrieved shall not be required to petition an agency for rule making or to seek or obtain a declaratory ruling before obtaining judicial review of a final decision or order made pursuant to G.S. 150B-34. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 2011-398, s. 22; 2012-194, s. 62.1; 2019-140, s. 2(b).)

§ 150B-44. Right to judicial intervention when final decision unreasonably delayed.

Failure of an administrative law judge subject to Article 3 of this Chapter or failure of an agency subject to Article 3A of this Chapter to make a final decision within 120 days of the close of the contested case hearing is justification for a person whose rights, duties, or privileges are adversely affected by the delay to seek a court order compelling action by the agency or by the administrative law judge. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, s. 1(17); 1987, c. 878, ss. 5, 27; 1991, c. 35, s. 9; 2000-190, s. 9; 2008-168, s. 5(b); 2011-398, s. 23; 2014-120, s. 59(b).)

§ 150B-45. Procedure for seeking review; waiver.

(a) Procedure. – To obtain judicial review of a final decision under this Article, the person seeking review must file a petition within 30 days after the person is served with a written copy of the decision. The petition must be filed as follows:

- (1) Contested tax cases. – A petition for review of a final decision in a contested tax case arising under G.S. 105-241.15 must be filed in the Superior Court of Wake County.
- (2) Other final decisions. – A petition for review of any other final decision under this Article must be filed in the superior court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, in the county where the contested case which resulted in the final decision was filed.

(b) Waiver. – A person who fails to file a petition within the required time waives the right to judicial review under this Article. For good cause shown, however, the superior court may accept an untimely petition.

(c) Judicial Review for State Board of Elections and Ethics Enforcement. – For a stay entered pursuant to G.S. 150B-33(b)(6), the State Board of Elections and Ethics Enforcement may obtain judicial review of the temporary restraining order or preliminary injunction in the superior court of the county designated in subsection (a) of this section. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1987, c. 878, s. 16; 2007-491, s. 43; 2013-143, s. 4; 2018-13, s. 3.1.)

§ 150B-46. Contents of petition; copies served on all parties; intervention.

The petition shall explicitly state what exceptions are taken to the decision or procedure and what relief the petitioner seeks. Within 10 days after the petition is filed with the court, the party seeking the review shall serve copies of the petition by personal service or by certified mail upon all who were parties of record to the administrative proceedings. Names and addresses of such parties shall be furnished to the petitioner by the agency upon request. Any party to the administrative proceeding is a party to the review proceedings unless the party withdraws by notifying the court of the withdrawal and serving the other parties with notice of the withdrawal. Other parties to the proceeding may file a response to the petition within 30 days of service. Parties, including agencies, may state exceptions to the decision or procedure and what relief is sought in the response.

Any person aggrieved may petition to become a party by filing a motion to intervene as provided in G.S. 1A-1, Rule 24. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1991, c. 35, s. 10.)

§ 150B-47. Records filed with clerk of superior court; contents of records; costs.

Within 30 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the Office of Administrative Hearings shall transmit to the reviewing court the original or a certified copy of the official record in the contested case under review. With the permission of the court, the record may be shortened by stipulation of all parties to the review proceedings. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for such additional costs as may be occasioned by the refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable. (1973, c. 1331, s. 1; 1983, c. 919, s. 3; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, s. 1(18); 1987, c. 878, s. 22; 2011-398, s. 24.)

§ 150B-48. Stay of decision.

At any time before or during the review proceeding, the person aggrieved may apply to the reviewing court for an order staying the operation of the administrative decision pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper and subject to the provisions of G.S. 1A-1, Rule 65. (1973, c. 1331, s. 1; 1985, c. 746, s. 1.)

§ 150B-49. New evidence.

A party or person aggrieved who files a petition in the superior court may apply to the court to present additional evidence. If the court is satisfied that the evidence is material to the issues, is not merely cumulative, and could not reasonably have been presented at the administrative hearing, the court may remand the case so that additional evidence can be taken. If an administrative law judge did not make a final decision in the case, the court shall remand the case to the agency that conducted the administrative hearing under Article 3A of this Chapter. After hearing the evidence, the agency may affirm or modify its previous findings of fact and final decision. If an administrative law judge made a final decision in the case, the court shall remand the case to the administrative law judge. After hearing the evidence, the administrative law judge may affirm or modify his previous findings of fact and final decision. The additional evidence and any affirmation or modification of a final decision shall be made part of the official record. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1987, c. 878, s. 17; 2000-190, s. 10; 2011-398, s. 25.)

§ 150B-50. Review by superior court without jury.

The review by a superior court of administrative decisions under this Chapter shall be conducted by the court without a jury. (1973, c. 1331, s. 1; 1983, c. 919, s. 2; 1985, c. 746, s. 1; 1987, c. 878, s. 18; 2011-398, s. 26.)

§ 150B-51. Scope and standard of review.

(a), (a1) Repealed by Sessions Laws, 2011-398, s. 27. For effective date and applicability, see editor's note.

(b) The court reviewing a final decision may affirm the decision or remand the case for further proceedings. It may also reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional provisions;
- (2) In excess of the statutory authority or jurisdiction of the agency or administrative law judge;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Unsupported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31 in view of the entire record as submitted; or
- (6) Arbitrary, capricious, or an abuse of discretion.

(c) In reviewing a final decision in a contested case, the court shall determine whether the petitioner is entitled to the relief sought in the petition based upon its review of the final decision and the official record. With regard to asserted errors pursuant to subdivisions (1) through (4) of subsection (b) of this section, the court shall conduct its review of the final decision using the de novo standard of review. With regard to asserted errors pursuant to subdivisions (5) and (6) of subsection (b) of this section, the court shall conduct its review of the final decision using the whole record standard of review.

(d) In reviewing a final decision allowing judgment on the pleadings or summary judgment, the court may enter any order allowed by G.S. 1A-1, Rule 12(c) or Rule 56. If the order of the court does not fully adjudicate the case, the court shall remand the case to the administrative law judge for such further proceedings as are just. (1973, c. 1331, s. 1; 1983, c. 919, s. 4; 1985, c. 746, s. 1; 1987, c. 878, s. 19; 2000-140, s. 94.1; 2000-190, s. 11; 2011-398, s. 27.)

§ 150B-52. Appeal; stay of court's decision.

A party to a review proceeding in a superior court may appeal to the appellate division from the final judgment of the superior court as provided in G.S. 7A-27. The scope of review to be applied by the appellate court under this section is the same as it is for other civil cases. In cases reviewed under G.S. 150B-51(c), the court's findings of fact shall be upheld if supported by substantial evidence. Pending the outcome of an appeal, an appealing party may apply to the court that issued the judgment under appeal for a stay of that judgment or a stay of the administrative decision that is the subject of the appeal, as appropriate. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1987, c. 878, s. 20; 2000-140, s. 94; 2000-190, s. 12.)

§§ 150B-53 through 150B-57. Reserved for future codification purposes.