

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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SENATE BILL 825

Short Title: APA Stay Hearing Pending Appeal.

(Public)

Sponsors: Senator Rand.

Referred to: Judiciary I.

April 3, 2001

A BILL TO BE ENTITLED

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2 AN ACT TO REQUIRE AN ADMINISTRATIVE LAW JUDGE TO STAY A
3 CONTESTED CASE PENDING THE OUTCOME OF AN APPEAL
4 CHALLENGING THE JURISDICTION OF THE OFFICE OF
5 ADMINISTRATIVE HEARINGS TO HEAR THE CASE; AND TO CLARIFY
6 THAT SUPERIOR COURT MAY GRANT INJUNCTIVE AND DECLARATORY
7 RELIEF WITHOUT REGARD TO EXHAUSTION OF ADMINISTRATIVE
8 REMEDIES.

9 The General Assembly of North Carolina enacts:

10 **SECTION 1.** G.S. 150B-33 is amended by adding the following new
11 subsection to read:

12 "(a1) On motion of a party to a contested case under this Article, an administrative
13 law judge shall stay the contested case pending the outcome of an appeal challenging
14 the jurisdiction of the Office of Administrative Hearings to hear the contested case.
15 Upon a decision of the court hearing the appeal that jurisdiction is properly in the Office
16 of Administrative Hearings, the contested case shall proceed and be determined as
17 expeditiously as possible."

18 **SECTION 2.** G.S. 7A-245 reads as rewritten:

19 **"§ 7A-245. Injunctive and declaratory relief to enforce or invalidate statutes;**
20 **constitutional rights.**

21 (a) The superior court division is the proper division without regard to the
22 amount in controversy, and without regard to whether the party seeking relief has
23 exhausted available administrative remedies, for the trial of civil actions where the
24 principal relief prayed is

25 (1) Injunctive relief against the enforcement of any statute, ordinance, or
26 regulation;

27 (2) Injunctive relief to compel enforcement of any statute, ordinance, or
28 regulation;

1 (3) Declaratory relief to establish or disestablish the validity of any statute,
2 ordinance, or regulation; or

3 (4) The enforcement or declaration of any claim of constitutional right.

4 (b) When a case is otherwise properly in the district court division, a prayer for
5 injunctive or declaratory relief by any party not a plaintiff on grounds stated in this
6 section is not ground for transfer."

7 **SECTION 3.** This act is effective when it becomes law and applies to
8 actions arising on and after that date.