

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 214\*

Short Title: Require Rule Fiscal Note.

(Public)

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Sponsors: Senators Sherron and Blackmon; Parnell, Ballance, Plyler, Hoyle, McDaniel, Shaw, Hartsell, Ballantine, Davis, McKoy, Allran, East, Little, Forrester, Clark, Ledbetter, Foxx, Carpenter, Carrington, Simpson, Kincaid, Smith, Albertson, Edwards, Conder, Hobbs, Kerr, Webster, Perdue, Lucas, Odom, Jordan, Rand, Warren, Cochrane, Sawyer, Soles, Speed, and Martin of Pitt.

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Referred to: Judiciary I/Constitution.

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February 15, 1995

A BILL TO BE ENTITLED

1 AN ACT TO REQUIRE A FISCAL NOTE FOR ALL PROPOSED RULES THAT  
2 HAVE A SUBSTANTIAL ECONOMIC IMPACT AND TO APPROPRIATE  
3 FUNDS TO IMPLEMENT THIS REQUIREMENT.  
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5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 150B-21.4 is amended by adding a new subsection to read:

7 "(b1) Substantial Economic Impact. – Before an agency publishes in the North  
8 Carolina Register the proposed text of a permanent rule change that would have a  
9 substantial economic impact and is not identical to a federal regulation the agency is  
10 required to adopt, the agency must obtain from the Office of State Budget and  
11 Management a fiscal note for the proposed rule change. If an agency is not sure whether  
12 a proposed rule change would have a substantial economic impact, the agency may ask  
13 the Office of State Budget and Management to determine whether the proposed rule  
14 change has a substantial economic impact. The Office of State Budget and Management  
15 must prepare a fiscal note for a proposed rule change within 90 days after receiving a  
16 written request for the note.

1 A fiscal note for a proposed rule change must contain the following:

- 2 (1) A description of the persons who would be affected by the proposed  
3 rule change.  
4 (2) A description of the types of expenditures that persons affected by the  
5 proposed rule change would have to make to comply with the rule and  
6 an estimate of these expenditures.  
7 (3) A description of the purpose and benefits of the proposed rule change.  
8 (4) An explanation of how the estimate of expenditures was computed.

9 As used in this subsection, the term 'substantial economic impact' means an aggregate  
10 financial impact on all persons affected of at least one million dollars (\$1,000,000) in a  
11 12-month period."

12 Sec. 2. G.S. 150B-21.1(d) reads as rewritten:

13 "(d) Effective Date and Expiration. – A temporary rule becomes effective on the  
14 date specified in G.S. 150B-21.3. A temporary rule expires on the date specified in the  
15 rule or ~~180~~210 days from the date the rule becomes effective, whichever comes first."

16 Sec. 3. G.S. 150B-21.2(e) reads as rewritten:

17 "(e) Comments. – An agency must accept comments on the text of a proposed rule  
18 that is published in the North Carolina Register and requires a fiscal analysis under G.S.  
19 150B-21.4(b1) for at least 60 days after the text is published or until the date of any  
20 public hearing held on the proposed rule, whichever is longer. An agency must accept  
21 comments on the text of a~~any other~~ proposed rule published in the North Carolina  
22 Register for at least 30 days after the text is published or until the date of any public  
23 hearing held on the proposed rule, whichever is longer. An agency must accept  
24 comments on a statement of the subject matter of proposed rule making until the public  
25 hearing on the subject matter. An agency must consider fully all written and oral  
26 comments received."

27 Sec. 4. G.S. 150B-21.9(a) reads as rewritten:

28 "(a) Standards. – The Commission must determine whether a rule meets all of the  
29 following criteria:

- 30 (1) It is within the authority delegated to the agency by the General  
31 Assembly.  
32 (2) It is clear and unambiguous.  
33 (3) It is reasonably necessary to fulfill a duty delegated to the agency by the  
34 General Assembly.

35 The Commission may determine if a rule submitted to it was adopted in accordance  
36 with Part 2 of this Article. The Commission may ask the Office of State Budget and  
37 Management to determine if a rule has a substantial economic impact and is therefore  
38 required to have a fiscal note. The Commission must ask that Office to make this  
39 determination if a fiscal note was not prepared for a rule and the Commission receives a  
40 written request for a determination of whether the rule has a substantial economic impact.

41 The Commission must notify the agency that adopted the rule if it determines that a  
42 rule was not adopted in accordance with Part 2 of this Article and must return the rule to  
43 the agency. Entry of a rule in the North Carolina Administrative Code after review by

1 the Commission is conclusive evidence that the rule was adopted in accordance with Part  
2 of this Article."

3 Sec. 5. [Utilities Commission] G.S. 62-31 reads as rewritten:

4 **"§ 62-31. Power to make and enforce rules and regulations for public utilities.**

5 The Commission shall have and exercise full power and authority to administer and  
6 enforce the provisions of this Chapter, and to make and enforce reasonable and necessary  
7 rules and regulations to that end. The Commission shall request the Office of State  
8 Budget and Management to prepare a fiscal note for a proposed new or amended rule or  
9 regulation that has a substantial economic impact, as defined in G.S. 150B-21.4(b1). The  
10 Commission shall not take final action on a proposed rule change that has a substantial  
11 economic impact until at least 60 days after the Office of State Budget and Management  
12 gives the Commission a copy of the fiscal note for the proposed change."

13 Sec. 6. [Employment Security Commission] G.S. 96-4(b) reads as rewritten:

14 "(b) Regulations and General and Special Rules. – General and special rules may be  
15 adopted, amended, or rescinded by the Commission only after public hearing or  
16 opportunity to be heard thereon, of which proper notice has been given by mail to the last  
17 known address in cases of special rules, or by publication as herein provided, and by one  
18 publication as herein provided as to general rules. The Commission may not take final  
19 action on a general or special rule that has a substantial economic impact, as defined in  
20 G.S. 150B-21.4(b1), until 60 days after the Office of State Budget and Management  
21 prepares a fiscal note for the proposed rule and gives the Commission a copy of the note.  
22 General rules shall become effective 10 days after filing with the Secretary of State and  
23 publication in one or more newspapers of general circulation in this State. Special rules  
24 shall become effective 10 days after notification to or mailing to the last known address  
25 of the individuals or concerns affected thereby. Before the adoption, amendment, or  
26 repeal of any permanent regulation, the Commission shall publish notice of the public  
27 hearing and offer any person an opportunity to present data, opinions, and arguments.  
28 The notice shall be published in one or more newspapers of general circulation in this  
29 State at least 10 days before the public hearing and at least 20 days prior to the proposed  
30 effective date of the proposed permanent regulation. The published notice of public  
31 hearing shall include the time and place of the public hearing; a statement of the manner  
32 in which data, opinions, and arguments may be submitted to or before the Commission; a  
33 statement of the terms or substance of the proposed regulation; a statement of whether a  
34 fiscal note has been or will be prepared for the proposed regulation and the proposed  
35 effective date of the regulation. Any permanent regulation adopted after following the  
36 above procedure shall become effective on its effective date and after it is published in  
37 the manner provided for in subsection (c) as well as such additional publication as the  
38 Commission deems appropriate. Additionally, the Commission shall provide notice of  
39 adoption by mail to the last known addresses of all persons who submitted data, opinions,  
40 or arguments to the Commission with respect to the regulation. Temporary regulations  
41 may be adopted, amended, or rescinded by the Commission and shall become effective in  
42 the manner and at the time prescribed by the Commission but shall remain in force for no  
43 longer than 120 days."

1           Sec. 7. [Industrial Commission] G.S. 97-80(a) reads as rewritten:

2           "(a) The Commission may make rules, not inconsistent with this Article, for  
3 carrying out the provisions of this Article. The Commission shall request the Office of  
4 State Budget and Management to prepare a fiscal note for a proposed new or amended  
5 rule that has a substantial economic impact, as defined in G.S. 150B-21.4(b1). The  
6 Commission shall not take final action on a proposed rule change that has a substantial  
7 economic impact until at least 60 days after the Office of State Budget and Management  
8 gives the Commission a copy of the fiscal note for the proposed change.

9           Processes, procedure, and discovery under this Article shall be as summary and  
10 simple as reasonably may be."

11           Sec. 8. [Department of Revenue] G.S. 105-262 reads as rewritten:

12 **"§ 105-262. Rules.**

13           The Secretary of Revenue may adopt rules needed to administer a tax collected by the  
14 Secretary or to fulfill another duty delegated to the Secretary. The Tax Review Board  
15 shall review a new rule or a change to a rule before it is filed in the North Carolina  
16 Administrative Code.

17           The Secretary must ask the Office of State Budget and Management to prepare a  
18 fiscal note for a proposed new rule or a proposed change to a rule that has a substantial  
19 economic impact, as defined in G.S. 150B-21.4(b1). The Secretary may not take final  
20 action on a proposed rule change that has a substantial economic impact until at least 60  
21 days after the Office of State Budget and Management gives the Commission a copy of  
22 the fiscal note for the proposed change."

23           Sec. 9. [Building Code Council] G.S. 143-138(a) reads as rewritten:

24           "(a) Preparation and Adoption. – The Building Code Council is hereby empowered  
25 to prepare and adopt, in accordance with the provisions of this Article, a North Carolina  
26 State Building Code. Prior to the adoption of this Code, or any part thereof, the Council  
27 shall hold at least one public hearing. A notice of such public hearing shall be given once  
28 a week for two successive calendar weeks in a newspaper published in Raleigh, said  
29 notice to be published the first time not less than 15 days prior to the date fixed for said  
30 hearing. The Council may hold such other public hearings and give such other notice as  
31 it may deem necessary.

32           The Council shall request the Office of State Budget and Management to prepare a  
33 fiscal note for a proposed Code change that has a substantial economic impact, as defined  
34 in G.S. 150B-21.4(b1). The Commission shall not take final action on a proposed Code  
35 change that has a substantial economic impact until at least 60 days after the Office of  
36 State Budget and Management gives the Commission a copy of the fiscal note for the  
37 proposed change."

38           Sec. 10. There is appropriated from the General Fund to the Office of State  
39 Budget and Management the sum of four hundred fifty thousand dollars (\$450,000) for  
40 fiscal year 1995-96 and the sum of nine hundred thousand dollars (\$900,000) for fiscal  
41 year 1996-97 to implement this act.

42           Sec. 11. This act becomes effective July 1, 1995. It applies to rules for which  
43 a notice of rule making is published in the North Carolina Register on or after the

- 1 effective date and to rule and Building Code changes that are initiated on or after that
- 2 date and are not subject to the procedures in Chapter 150B of the General Statutes, the
- 3 Administrative Procedure Act.