

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE DRS85142-LY-157 (3/9)

Short Title: Small Business Friendly Regulation.

(Public)

Sponsors: Senator Jacumin.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REQUIRE AGENCIES PROPOSING PERMANENT RULES THAT HAVE AN ADVERSE IMPACT ON SMALL BUSINESS TO COMPLETE A FISCAL NOTE AND CONSIDER ALTERNATIVES AND TO REQUIRE PERIODIC AGENCY REVIEW OF EXISTING RULES.

The General Assembly of North Carolina enacts:

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

"(b2) Adverse Impact on Small Businesses. – Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would have an adverse impact on small businesses and that is not identical to a federal regulation that the agency is required to adopt, the agency must obtain a fiscal note for the proposed rule change from the Office of State Budget and Management or prepare a fiscal note for the proposed rule change and have the note approved by that Office. If an agency requests the Office of State Budget and Management to prepare a fiscal note for a proposed rule change, that Office must prepare the note within 90 days after receiving a written request for the note. If the Office of State Budget and Management fails to prepare a fiscal note within this time period, the agency proposing the rule change may prepare a fiscal note. A fiscal note prepared in this circumstance does not require approval of the Office of State Budget and Management.

If an agency prepares the required fiscal note, the agency must submit the note to the Office of State Budget and Management for review. The Office of State Budget and Management must review the fiscal note within 14 days after it is submitted and either approve the note or inform the agency in writing of the reasons why it does not approve the fiscal note. After addressing these reasons, the agency may submit the revised fiscal note to that Office for its review. If an agency is not sure whether a proposed rule change would have an adverse impact on small businesses, the agency may ask the

1 Office of State Budget and Management to determine whether the proposed rule change
2 has an adverse impact on small businesses.

3 In determining whether a rule has an adverse impact on small businesses, the agency
4 must consider the impact of the rule on small businesses, the impact of the rule on larger
5 businesses within the same sector, and the competitive nature of the sector to which the
6 rule applies. Depending on the particular circumstances, a rule may still have an adverse
7 impact on small businesses when the rule does not have a substantial economic impact
8 under subsection (b1) of this section."

9 **SECTION 2.** Article 2A of Chapter 150B of the General Statutes is
10 amended by adding the following new Part to read:

11 "Part 2A. Regulatory Flexibility.

12 **"§ 150B-21.7A. Definition.**

13 As used in this Part, the term 'small business' means a business entity, including its
14 affiliates, that is both independently owned and operated and employs fewer than 500
15 full-time employees or has gross annual revenues of less than six million dollars
16 (\$6,000,000).

17 **"§ 150B-21.7B. Regulatory flexibility analysis.**

18 Before an agency publishes in the North Carolina Register the proposed text of a
19 permanent rule that would have an adverse impact on small businesses, the agency shall
20 prepare a regulatory flexibility analysis. The purpose of the regulatory flexibility
21 analysis is the consideration of alternative means of accomplishing the objectives of the
22 applicable statutes while minimizing the adverse impact on small businesses. The Rules
23 Review Commission shall advise agencies in complying with this section. In conducting
24 the analysis, the agency shall consider the following methods for reducing the adverse
25 impact on small businesses:

- 26 (1) The establishment of less stringent compliance or reporting
27 requirements for small businesses.
- 28 (2) The establishment of less stringent schedules or deadlines for
29 compliance or reporting requirements for small businesses.
- 30 (3) The consolidation or simplification of compliance or reporting
31 requirements for small businesses.
- 32 (4) The establishment of performance standards for small businesses to
33 replace design or operation standards required in the proposed rule.
- 34 (5) The exemption of small businesses from all or part of the requirements
35 contained in the proposed rule.

36 **"§ 150B-21.7C. Review of existing rules.**

37 Each agency must periodically review the rules adopted by the agency to ensure that
38 they minimize the adverse impact on small businesses in a manner consistent with the
39 objectives of the applicable statutes. This review must take place at least once every five
40 years. In reviewing rules under this section, the agency shall consider the following
41 factors:

- 42 (1) The continued need for the rule.
- 43 (2) The nature of complaints or comments received from the public
44 concerning the rule.

- 1 (3) The complexity of the rule.
- 2 (4) The extent to which the rule overlaps, duplicates, or conflicts with
3 other federal or State rules or local government ordinances.
- 4 (5) The length of time since the rule has been evaluated and an estimate on
5 the length of time the rule will continue to be necessary.
- 6 (6) The degree to which technology, economic conditions, or other factors
7 have changed in the area affected by the rule."

8 **SECTION 3.** G.S. 150B-21.9 reads as rewritten:

9 "**§ 150B-21.9. Standards and timetable for review by Commission.**

10 (a) Standards. – The Commission must determine whether a rule meets all of the
11 following criteria:

- 12 (1) It is within the authority delegated to the agency by the General
13 Assembly.
- 14 (2) It is clear and unambiguous.
- 15 (3) It is reasonably necessary to fulfill a duty delegated to the agency by
16 the General Assembly, when considered in light of the cumulative
17 effect of all rules adopted by the agency related to the specific purpose
18 for which the rule is proposed and the legislative intent of the General
19 Assembly in delegating the duty.

20 The Commission may determine if a rule submitted to it was adopted in accordance
21 with Part 2 and Part 2A of this Article. The Commission may ask the Office of State
22 Budget and Management to determine if a rule has a substantial economic impact and is
23 therefore required to have a fiscal note. The Commission must ask the Office of State
24 Budget and Management to make this determination if a fiscal note was not prepared for
25 a rule and the Commission receives a written request for a determination of whether the
26 rule has a substantial economic impact.

27 The Commission must notify the agency that adopted the rule if it determines that a
28 rule was not adopted in accordance with Part 2 or Part 2A of this Article and must
29 return the rule to the agency. Entry of a rule in the North Carolina Administrative Code
30 after review by the Commission is conclusive evidence that the rule was adopted in
31 accordance with Part 2 and Part 2A of this Article.

32 (b) Timetable. – The Commission must review a rule submitted to it on or before
33 the twentieth of a month by the last day of the next month. The Commission must
34 review a rule submitted to it after the twentieth of a month by the last day of the second
35 subsequent month."

36 **SECTION 4.** For rules that are in effect when this act becomes effective, the
37 first review required under G.S. 150B-21.7C, enacted under Section 2 of this act, must
38 be conducted within five years after the date this act becomes effective.

39 **SECTION 5.** This act becomes effective October 1, 2005.