

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

H

1

HOUSE BILL 191*

Short Title: Require Rule Fiscal Note.

(Public)

Sponsors: Representatives Redwine, Holmes; Adams, Aldridge, Alexander, Allred, Arnold, Berry, Black, Boyd-McIntyre, Brawley, J. Brown, W. Brown, Cansler, Carpenter, Church, Clary, Cocklereece, Crawford, Creech, Culp, Culpepper, Cunningham, Daughtry, Davis, Decker, Dickson, Dockham, Earle, Easterling, Ellis, Esposito, Fitch, Fox, Grady, Gray, Hayes, Hensley, Hiatt, Hightower, Hill, R. Hunter, Hurley, Ives, Justus, Kiser, Lee, Locke, McComas, McCrary, McLaughlin, McMahan, Mercer, Miner, Morgan, Neely, Nichols, Nye, Owens, Pate, Preston, Pulley, Ramsey, Rayfield, Richardson, Rogers, Sexton, Sharpe, Shaw, Sherrill, Shubert, Snowden, Tolson, Wilkins, G. Wilson, Wright, and Yongue.

Referred to: Judiciary I.

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.
4

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

1 the Office of State Budget and Management to determine whether the proposed rule
2 change has a substantial economic impact. The Office of State Budget and Management
3 must prepare a fiscal note for a proposed rule change within 90 days after receiving a
4 written request for the note.

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

6 (1) A description of the persons who would be affected by the proposed
7 rule change.

8 (2) A description of the types of expenditures that persons affected by the
9 proposed rule change would have to make to comply with the rule and
10 an estimate of these expenditures.

11 (3) A description of the purpose and benefits of the proposed rule change.

12 (4) An explanation of how the estimate of expenditures was computed.

13 As used in this subsection, the term 'substantial economic impact' means an aggregate
14 financial impact on all persons affected of at least one million dollars (\$1,000,000) in a
15 12-month period."

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

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

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

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

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

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

34 (1) It is within the authority delegated to the agency by the General
35 Assembly.

36 (2) It is clear and unambiguous.

37 (3) It is reasonably necessary to fulfill a duty delegated to the agency by the
38 General Assembly.

39 The Commission may determine if a rule submitted to it was adopted in accordance
40 with Part 2 of this Article. The Commission may ask the Office of State Budget and
41 Management to determine if a rule has a substantial economic impact and is therefore
42 required to have a fiscal note. The Commission must ask that Office to make this

1 determination if a fiscal note was not prepared for a rule and the Commission receives a
2 written request for a determination of whether the rule has a substantial economic impact.

3 The Commission must notify the agency that adopted the rule if it determines that a
4 rule was not adopted in accordance with Part 2 of this Article and must return the rule to
5 the agency. Entry of a rule in the North Carolina Administrative Code after review by
6 the Commission is conclusive evidence that the rule was adopted in accordance with Part
7 2 of this Article."

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

9 "**§ 62-31. Power to make and enforce rules and regulations for public utilities.**

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

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

19 "(b) Regulations and General and Special Rules. – General and special rules may be
20 adopted, amended, or rescinded by the Commission only after public hearing or
21 opportunity to be heard thereon, of which proper notice has been given by mail to the last
22 known address in cases of special rules, or by publication as herein provided, and by one
23 publication as herein provided as to general rules. The Commission may not take final
24 action on a general or special rule that has a substantial economic impact, as defined in
25 G.S. 150B-21.4(b1), until 60 days after the Office of State Budget and Management
26 prepares a fiscal note for the proposed rule and gives the Commission a copy of the note.
27 General rules shall become effective 10 days after filing with the Secretary of State and
28 publication in one or more newspapers of general circulation in this State. Special rules
29 shall become effective 10 days after notification to or mailing to the last known address
30 of the individuals or concerns affected thereby. Before the adoption, amendment, or
31 repeal of any permanent regulation, the Commission shall publish notice of the public
32 hearing and offer any person an opportunity to present data, opinions, and arguments.
33 The notice shall be published in one or more newspapers of general circulation in this
34 State at least 10 days before the public hearing and at least 20 days prior to the proposed
35 effective date of the proposed permanent regulation. The published notice of public
36 hearing shall include the time and place of the public hearing; a statement of the manner
37 in which data, opinions, and arguments may be submitted to or before the Commission; a
38 statement of the terms or substance of the proposed regulation; a statement of whether a
39 fiscal note has been or will be prepared for the proposed regulation and the proposed
40 effective date of the regulation. Any permanent regulation adopted after following the
41 above procedure shall become effective on its effective date and after it is published in
42 the manner provided for in subsection (c) as well as such additional publication as the
43 Commission deems appropriate. Additionally, the Commission shall provide notice of

1 adoption by mail to the last known addresses of all persons who submitted data, opinions,
2 or arguments to the Commission with respect to the regulation. Temporary regulations
3 may be adopted, amended, or rescinded by the Commission and shall become effective in
4 the manner and at the time prescribed by the Commission but shall remain in force for no
5 longer than 120 days."

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

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

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

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

17 "**§ 105-262. Rules.**

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

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

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

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

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

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

5 Sec. 11. This act becomes effective July 1, 1995. It applies to rules for which
6 a notice of rule making is published in the North Carolina Register on or after the
7 effective date and to rule and Building Code changes that are initiated on or after that
8 date and are not subject to the procedures in Chapter 150B of the General Statutes, the
9 Administrative Procedure Act.