

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 895

Short Title: Notice of Mandates.

(Public)

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Sponsors: Representatives R. Hunter, Crawford, Church, McCombs, McMahan, W. Brown, Hunt, Mitchell, Lee, Earle, Buchanan, Hurley, Fox, Hill, Hightower, Fitch, Culpepper, Rogers, Owens, Wood, Warner; Beall, McCrary, Ramsey, Russell, Hensley, Buchanan, and H. Hunter.

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Referred to: Rules, Calendar, and Operations of the House.

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April 12, 1995

A BILL TO BE ENTITLED

1  
2 AN ACT TO PROVIDE NOTICE OF FEDERAL MANDATES BY REQUIRING THE  
3 CERTIFICATION OF PROPOSED LEGISLATION AND RULES PURPORTED  
4 TO BE REQUIRED BY FEDERAL LAW, TO PROVIDE FOR REVIEW BY THE  
5 GOVERNOR OF ADMINISTRATIVE RULES THAT WOULD INCREASE OR  
6 DECREASE EXPENDITURES OR REVENUES OF UNITS OF LOCAL  
7 GOVERNMENT, TO AMEND THE LOCAL GOVERNMENT FISCAL  
8 INFORMATION ACT TO REQUIRE THE PREPARATION OF FISCAL NOTES  
9 FOR CERTAIN PROPOSED LEGISLATION, AND TO PROVIDE FOR THE  
10 COMPILATION OF THE COSTS OF FEDERAL MANDATES ON THE  
11 EXPENDITURES AND REVENUES OF LOCAL GOVERNMENTS.

12 The General Assembly of North Carolina enacts:

13 Section 1. G.S. 150B-21 reads as rewritten:

14 "**§ 150B-21. Agency must designate rule-making ~~coordinator.~~ coordinator; duties of**  
15 **coordinator.**

16 (a) Each agency must designate one or more rule-making coordinators to oversee  
17 the agency's rule-making functions. The coordinator ~~must prepare notices of public hearings,~~

1 ~~coordinate access to the agency's rules, and shall serve~~ as the liaison between the agency,  
2 other agencies, units of local government, and the public in the rule-making process. The  
3 coordinator shall report directly to the agency head.

4 (b) The rule-making coordinator shall be responsible for the following:

5 (1) Preparing notices of public hearings.

6 (2) Coordinating access to the agency's rules.

7 (3) Screening all proposed rule actions prior to publication in the North  
8 Carolina Register to assure that an accurate fiscal note has been  
9 completed as required by G.S. 150B-21.4(b).

10 (4) Consulting with the North Carolina Association of County  
11 Commissioners and the North Carolina League of Municipalities to  
12 determine which local governments would be affected by any proposed  
13 rule action.

14 (5) Providing the North Carolina Association of County Commissioners  
15 and the North Carolina League of Municipalities with copies of all fiscal  
16 notes required by G.S. 150B-21.4(b), prior to the publication of  
17 proposed rules in the North Carolina Register.

18 (6) Coordinating the submission of proposed rules to the Governor as  
19 provided by G.S. 150B-21.26.

20 (c) At the earliest point in the rule-making process and in consultation with the  
21 North Carolina Association of County Commissioners, the North Carolina League of  
22 Municipalities, and with samples of county managers or city managers, as appropriate,  
23 the rule-making coordinator shall lead the agency's efforts in the development and  
24 drafting of any rules or rule changes that could:

25 (1) Require any unit of local government, including a county, city, school  
26 administrative unit, or other local entity funded by or through a unit of  
27 local government to carry out additional or modified responsibilities;

28 (2) Increase the cost of providing or delivering a public service funded in  
29 whole or in part by any unit of local government; or

30 (3) Otherwise affect the expenditures or revenues of a unit of local  
31 government.

32 (d) The rule-making coordinator shall send to the Office of State Budget and  
33 Management for compilation a copy of each final fiscal note prepared pursuant to G.S.  
34 150B-21.4(b).

35 (e) The rule-making coordinator shall compile a schedule of the administrative  
36 rules and amendments expected to be proposed during the next fiscal year. The  
37 coordinator shall provide a copy of the schedule to the Office of State Budget and  
38 Management in a manner proposed by that Office.

39 (f) Whenever an agency proposes a rule that is purported to implement a federal  
40 law or to be required or necessary for compliance with federal law, the rule-making  
41 coordinator shall:

42 (1) Attach to the proposed rule a certificate prepared by the rule-making  
43 coordinator identifying the federal law requiring adoption of the

1           proposed rule. The certification shall contain a statement setting forth  
2           the reasons for why the proposed rule is required by law. If all or part  
3           of the proposed rule is not required by federal law or exceeds the  
4           requirements of federal law, then the certification shall state the reasons  
5           for that opinion. No comment or opinion shall be included in the  
6           certification with regard to the merits of the proposed rule; and

7           (2) The rule-making coordinator shall maintain a copy of the federal law  
8           and shall provide to the Office of State Budget and Management for  
9           compilation the citation to the federal law requiring or pertaining to the  
10           proposed rule."

11           Sec. 2. G.S. 150B-21.4(b) reads as rewritten:

12           "(b) Local Funds. – Before an agency publishes in the North Carolina Register the  
13 proposed text of a permanent rule change that would affect the expenditures or revenues  
14 of a unit of local government, it must submit the text of the proposed rule change and a  
15 fiscal note on the proposed rule change to the Office of the Governor as provided by G.S.  
16 150B-21.26, the Fiscal Research Division of the General Assembly, the Office of State  
17 Budget and Management, the North Carolina Association of County Commissioners, and  
18 the North Carolina League of Municipalities. The fiscal note must state the amount by  
19 which the proposed rule change would increase or decrease expenditures or revenues of a  
20 unit of local government and must explain how the amount was computed."

21           Sec. 3. Article 2A of Chapter 150B of the General Statutes is amended by  
22 adding a new Part to read:

23           **"PART 4. RULES AFFECTING LOCAL GOVERNMENTS.**

24           **"§ 150B-21.26. Governor to conduct preliminary review of certain administrative**  
25           **rules.**

26           (a) Preliminary Review. – Before an agency adopts a permanent rule that would  
27 affect the expenditures or revenues of a unit of local government, and at least 30 days  
28 prior to publishing notice of its intent to adopt such permanent rule in the North Carolina  
29 Register as required by G.S. 150B-21.2, an agency shall submit the rule to the Governor  
30 for preliminary review.

31           (b) Submission. – To facilitate the Governor's preliminary review of a permanent  
32 rule as required by subsection (a) of this section, the agency shall submit to the Governor  
33 the following:

34           (1) Either the text of the proposed rule or a statement of the subject matter  
35           of the proposed rule.

36           (2) A short explanation of the reason for the proposed action.

37           (3) A fiscal note stating the amount by which the proposed rule change  
38           would increase or decrease expenditures or revenues of a unit of local  
39           government and explaining how the amount was computed.

40           (c) Scope. – The Governor's preliminary review of a proposed rule that would  
41 affect the expenditures or revenues of a unit of local government shall include  
42 consideration of the following:

43           (1) The agency's explanation of the reason for the proposed action.

1           (2) Any unanticipated effects of the proposed action on local government  
2           budgets.

3           (3) The potential costs of the proposed action weighed against the potential  
4           risks to the public of not taking the proposed action.

5 **"§ 150B-21.27. Minimizing the effects of rules on local budgets.**

6           (a) In adopting rules that would increase or decrease the expenditure or revenues  
7 of a unit of local government, the agency shall consider the timing for implementation of  
8 the proposed rule as part of the preparation of the fiscal note required by G.S. 150B-  
9 21.4(b).

10          (b) In cases where the computation of costs in a fiscal note indicates that the  
11 proposed rule action will disrupt the budget process as set out in the Local Government  
12 Budget and Fiscal Control Act, Article 3 of Chapter 159 of the General Statutes, the  
13 agency shall establish the effective date of the rule or action as the later of July 1 of the  
14 fiscal year following publication of the rule in the North Carolina Register or six months  
15 following publication.

16          (c) If conditions beyond the control of an agency compel an agency to adopt rules  
17 with other than the July 1 effective date, the agency shall include a statement with the  
18 fiscal note explaining the basis for the effective date.

19 **"§ 150B-21.28. Role of the Office of State Budget and Management.**

20          The Office of State Budget and Management shall:

21           (1) Compile an annual summary of the projected fiscal impact on units of  
22 local government of State administrative rules adopted during the  
23 preceding fiscal year.

24           (2) Compile from information provided by each agency schedules of  
25 anticipated rule actions for the upcoming fiscal year.

26           (3) Provide the Governor, the North Carolina Association of County  
27 Commissioners, and the North Carolina League of Municipalities with a  
28 copy of the annual summary and schedules by no later than March 1 of  
29 each year."

30          Sec. 4. G.S. 150B-21.11 reads as rewritten:

31 **"§ 150B-21.11. Procedure when Commission approves permanent rule.**

32          (a) When the Commission approves a permanent rule, it must notify the agency  
33 that adopted the rule of the Commission's approval and must deliver the approved rule to  
34 the Codifier of Rules. The Commission must deliver an approved rule by the end of the  
35 month in which the Commission approved the rule, unless the agency asks the  
36 Commission to delay the delivery of the rule.

37          (b) When the Commission approves a permanent rule that would increase or  
38 decrease expenditures or revenues of a unit of local government, the Commission shall  
39 notify the Governor and deliver a copy of the approved rule to the Governor by the end of  
40 the month in which the Commission approved the rule."

41          Sec. 5. G.S. 150B-21.12(a) reads as rewritten:

1       "(a) Action. – When the Commission objects to a permanent rule, it must send the  
2 agency that adopted the rule a written statement of the objection and the reason for the  
3 objection. The agency that adopted the rule must take one of the following actions:

- 4           (1) Change the rule to satisfy the Commission's objection and submit the  
5               revised rule to the Commission.
- 6           (2) Submit a written response to the Commission indicating that the agency  
7               has decided not to change the rule.

8       An agency that is not a board or commission must take one of these actions within 30  
9 days after receiving the Commission's statement of objection. A board or commission  
10 must take one of these actions within 30 days after receiving the Commission's statement  
11 of objection or within 10 days after the board or commission's next regularly scheduled  
12 meeting, whichever comes later.

13       When an agency changes a rule in response to an objection by the Commission, the  
14 Commission must determine whether the change satisfies the Commission's objection. If  
15 it does, the Commission must approve the rule. If it does not, the Commission must send  
16 the agency a written statement of the Commission's continued objection and the reason  
17 for the continued objection.

18       A rule to which the Commission has objected remains under review by the  
19 Commission until the agency that adopted the rule decides not to satisfy the  
20 Commission's objection and makes a written request to the Commission to return the rule  
21 to the agency. When the Commission returns a rule to which it has objected, it may send  
22 to the President of the Senate and each member of the General Assembly a report of its  
23 objection to the rule.

24       When the Commission objects to a permanent rule that would increase or decrease  
25 expenditures or revenues of a unit of local government, the Commission shall notify the  
26 Governor and deliver to the Governor a copy of the written statement of the objection and  
27 the reason for the objection. When the Commission returns to a rule to which it has  
28 objected that would increase or decrease expenditures or revenues of a unit of local  
29 government, it shall send to the Governor a report of its objection to the rule."

30       Sec. 6. G.S. 120-30.45 reads as rewritten:

31       "**§ 120-30.45. Fiscal note on legislation.**

32       ~~At the request of the sponsor of any bill or resolution affecting the expenditures or~~  
33 ~~revenues of units of local government of this State, or of the chairman of the committee~~  
34 ~~to which such a measure is referred, or of any of the chairmen of the Local Government~~  
35 ~~Committees, or of any of the chairmen of the Appropriations, Finance, Rules, or Senate~~  
36 ~~Ways and Means Committees, the Fiscal Research Division shall prepare a fiscal note~~  
37 ~~containing an estimate of the impact of the measure on the finances of the units of local~~  
38 ~~government affected during the ensuing two fiscal years.~~

39       (a) Every bill and resolution introduced in the General Assembly proposing any  
40 change in the law that could increase or decrease expenditures or revenues of a unit of  
41 local government shall have attached to it at the time of its consideration by the General  
42 Assembly a fiscal note prepared by the Fiscal Research Division. The fiscal note shall  
43 identify and estimate, for the first five fiscal years the proposed change would be in

1 effect, all costs of the proposed legislation. If, after careful investigation, the Fiscal  
2 Research Division determines that no dollar estimate is possible, the note shall contain a  
3 statement to that effect, setting forth the reasons why no dollar amount can be given. No  
4 comment or opinion shall be included in the fiscal note with regard to the merits of the  
5 measure for which the note is prepared. However, technical and mechanical defects may  
6 be noted.

7 (b) The sponsor of each bill or resolution to which this section applies shall  
8 present a copy of the bill or resolution with the request for a fiscal note to the Fiscal  
9 Research Division. Upon receipt of the request and the copy of the bill or resolution, the  
10 Fiscal Research Division shall prepare the fiscal note as promptly as possible. The Fiscal  
11 Research Division shall prepare the fiscal note and transmit it to the sponsor within two  
12 weeks after the request is made, unless the sponsor agrees to an extension of time.

13 (c) This fiscal note shall be attached to the original of each proposed bill or  
14 resolution that is reported favorably by any committee of the General Assembly, but shall  
15 be separate from the bill or resolution and shall be clearly designated as a fiscal note. A  
16 fiscal note attached to a bill or resolution pursuant to this subsection is not a part of the  
17 bill or resolution and is not an expression of legislative intent proposed by the bill or  
18 resolution.

19 (d) If a committee of the General Assembly reports favorably a proposed bill or  
20 resolution with an amendment that proposes a change in the law that could increase or  
21 decrease expenditures or revenues of a unit of local government, the chair of the  
22 committee shall obtain from the Fiscal Research Division and attach to the amended bill  
23 or resolution a fiscal note as provided in this section.

24 (e) The Office of State Budget and Management, the Department of Revenue, the  
25 Department of the State Treasurer, the Department of the State Auditor, the State  
26 department most directly concerned, and, where appropriate, officials of units of local  
27 government, upon the request of Fiscal Research Division, shall assist the Fiscal  
28 Research Division in the preparation of the fiscal note.

29 (f) Copies of fiscal notes prepared by the Fiscal Research Division shall be  
30 furnished to the sponsor of the bill or resolution, the chairmen of the Local Government  
31 Committees, and the chairmen of the Appropriations, Finance, Rules, or the Senate Ways  
32 and Means Committees as appropriate."

33 Sec. 7. Article 6D of Chapter 120 of the General Statutes is amended by  
34 adding a new section to read:

35 **"§ 120-30.49. Compiling federal mandates; annual report.**

36 (a) The Fiscal Research Division shall, in consultation with the appropriate staff of  
37 the General Research and Bill Drafting Divisions, make an annual report to the General  
38 Assembly pertaining to the fiscal effect of federal mandates on units of local government.  
39 The annual report on federal mandates shall include the following:

- 40 (1) A listing of federal laws that require any unit of local government,  
41 including a county, city, school administrative unit, or other local entity  
42 funded by or through a unit of local government to carry out additional  
43 or modified responsibilities;

1           (2) An estimate of the amount of any increase or decrease in the costs to  
2 units of local government in providing or delivering public services  
3 required by federal law that are funded in whole or in part by units of  
4 local government; and

5           (3) A listing of any other federal actions directly affecting the expenditures  
6 or revenues of units of local government.

7           (b) The Office of State Budget and Management shall assist the Fiscal Research  
8 Division in the preparation of the annual report on federal mandates upon the request of  
9 the Division. Each State department, agency, or institution shall cooperate fully with the  
10 Fiscal Research Division in compiling the annual report on federal mandates and shall  
11 supply information to the Division in accordance with G.S. 120-32.01. The North  
12 Carolina Association of County Commissioners, the North Carolina League of  
13 Municipalities, and units of local government shall cooperate with the Fiscal Research  
14 Division in compiling the annual report on federal mandates, as requested, by supplying  
15 information relevant to the expenditures or revenues of units of local government.

16           (c) Copies of the annual report on federal mandates to units of local government  
17 shall be provided to members of the General Assembly and to the Governor, the Office of  
18 State Budget and Management, the North Carolina Association of County  
19 Commissioners, and the North Carolina League of Municipalities."

20           Sec. 8. Article 7A of the General Statutes is amended by adding a new section  
21 to read:

22 **"§ 120-36.8. Certification of legislation required by federal law.**

23           (a) Every bill and resolution introduced in the General Assembly proposing any  
24 change in the law which purports to implement federal law or to be required or necessary  
25 for compliance with federal law shall have attached to it at the time of its consideration  
26 by the General Assembly a certification prepared by the Fiscal Research Division, in  
27 consultation with the Bill Drafting and General Research Divisions, identifying the  
28 federal law requiring passage of the bill or resolution. The certification shall contain a  
29 statement setting forth the reasons why the bill or resolution is required by federal law. If  
30 the bill or resolution is not required by federal law or exceeds the requirements of federal  
31 law then the certification shall state the reasons for that opinion. No comment or opinion  
32 shall be included in the certification with regard to the merits of the measure for which  
33 the certification is prepared. However, technical and mechanical defects may be noted.

34           (b) The sponsor of each bill or resolution to which this section applies shall  
35 present a copy of the bill or resolution with the request for certification to the Fiscal  
36 Research Division. Upon receipt of the request and the copy of the bill or resolution, the  
37 Fiscal Research Division shall consult with the Bill Drafting and General Research  
38 Divisions, and may consult with the Office of State Budget and Management or any State  
39 agency on preparation of the certification as promptly as possible. The Fiscal Research  
40 Division shall prepare the certification and transmit it to the sponsor within two weeks  
41 after the request is made, unless the sponsor agrees to an extension of time.

42           (c) This certification shall be attached to the original of each proposed bill or  
43 resolution that is reported favorably by any committee of the General Assembly, but shall

1 be separate from the bill or resolution and shall be clearly designated as a certification. A  
2 certification attached to a bill or resolution pursuant to this section is not a part of the bill  
3 or resolution and is not an expression of legislative intent proposed by the bill or  
4 resolution.

5 (d) If a committee of the General Assembly reports favorably a proposed bill or  
6 resolution with an amendment proposing any change in the law which purports to  
7 implement federal law or to be required or necessary for compliance with federal law, the  
8 chair of the committee shall obtain from the Fiscal Research Division and attach to the  
9 amended bill or resolution a certification as provided in this section."

10 Sec. 9. This act is effective upon ratification.