

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE DRH80224-LN-71 (3/11)

Short Title: APA Rules/Small Bus. Economic Impact. (Public)

Sponsors: Representative C. Wilson.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REQUIRE AGENCIES PROPOSING PERMANENT RULES TO CONSIDER THE ADVERSE ECONOMIC IMPACT OF THE PROPOSED RULE ON SMALL BUSINESS; TO REQUIRE AGENCY REVIEW OF EXISTING RULES PRIOR TO AMENDMENT TO DETERMINE THE IMPACT ON SMALL BUSINESS; AND TO PROVIDE THAT AGENCIES MAY NOT ADOPT RULES THAT ARE MORE RESTRICTIVE THAN APPLICABLE FEDERAL LAW GOVERNING THE SAME SUBJECT MATTER.

The General Assembly of North Carolina enacts:

SECTION 1. Article 2A of Chapter 150B of the General Statutes is amended by adding the following new Part to read:

"Part 2A. Regulatory Flexibility.

"§ 150B-21.7A. Rules affecting small businesses.

(a) As used in this Part, unless the context clearly requires otherwise, the term:

(1) 'Adverse economic impact' means an aggregate financial impact on small businesses affected by the rule of at least six hundred thousand dollars (\$600,000) in a 12-month period.

(2) 'Small business' means a business entity, including its affiliates, that is both independently owned and operated and employs fewer than 500 full-time employees or has gross annual sales of less than six million dollars (\$6,000,000).

(b) Before an agency publishes in the North Carolina Register the proposed text of a permanent rule that would have an adverse impact on small businesses, the agency shall prepare an economic impact statement that includes the following:

(1) An identification and estimate of the number of small businesses subject to the proposed rule.

- 1 (2) The projected reporting, record keeping, and other administrative costs
2 required for compliance with the proposed rule, including the type of
3 professional skills necessary for preparation of the report or record.
4 (3) A statement of the probable effect on impacted small businesses.
5 (4) A description of any less intrusive or less costly alternative methods of
6 achieving the purpose of the proposed rule.

7 **"§ 150B-21.7B. Review of existing rules.**

8 In order to minimize the adverse economic impact on small businesses, prior to
9 amending a permanent rule, the agency shall consider the following:

- 10 (1) The continued need for the rule.
11 (2) The nature of complaints or comments received from the public
12 concerning the rule.
13 (3) The complexity of the rule.
14 (4) The extent to which the rule overlaps, duplicates, or conflicts with
15 other federal or State rules or local government ordinances.
16 (5) The length of time since the rule has been evaluated and an estimate on
17 the length of time the rule will continue to be necessary.
18 (6) The degree to which technology, economic conditions, or other factors
19 have changed in the area affected by the rule."

20 **SECTION 2.** G.S. 150B-21.9 reads as rewritten:

21 **"§ 150B-21.9. Standards and timetable for review by Commission.**

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

- 24 (1) It is within the authority delegated to the agency by the General
25 Assembly.
26 (2) It is clear and unambiguous.
27 (3) It is reasonably necessary to fulfill a duty delegated to the agency by
28 the General Assembly, when considered in light of the cumulative
29 effect of all rules adopted by the agency related to the specific purpose
30 for which the rule is proposed and the legislative intent of the General
31 Assembly in delegating the duty.

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

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

1 (b) Timetable. – The Commission must review a rule submitted to it on or before
2 the twentieth of a month by the last day of the next month. The Commission must
3 review a rule submitted to it after the twentieth of a month by the last day of the second
4 subsequent month."

5 **SECTION 3.** G.S. 150B-19 reads as rewritten:

6 "**§ 150B-19. Restrictions on what can be adopted as a rule.**

7 An agency may not adopt a rule that does one or more of the following:

- 8 (1) Implements or interprets a law unless that law or another law
9 specifically authorizes the agency to do so.
- 10 (2) Enlarges the scope of a profession, occupation, or field of endeavor for
11 which an occupational license is required.
- 12 (3) Imposes criminal liability or a civil penalty for an act or omission,
13 including the violation of a rule, unless a law specifically authorizes
14 the agency to do so or a law declares that violation of the rule is a
15 criminal offense or is grounds for a civil penalty.
- 16 (4) Repeats the content of a law, a rule, or a federal regulation. A brief
17 statement that informs the public of a requirement imposed by law
18 does not violate this subdivision and satisfies the "reasonably
19 necessary" standard of review set in G.S. 150B-21.9(a)(3).
- 20 (5) Establishes a fee or other charge for providing a service in fulfillment
21 of a duty unless a law specifically authorizes the agency to do so or the
22 fee or other charge is for one of the following:
 - 23 a. A service to a State, federal, or local governmental unit.
 - 24 b. A copy of part or all of a State publication or other document,
25 the cost of mailing a document, or both.
 - 26 c. A transcript of a public hearing.
 - 27 d. A conference, workshop, or course.
 - 28 e. Data processing services.
- 29 (6) Allows the agency to waive or modify a requirement set in a rule
30 unless a rule establishes specific guidelines the agency must follow in
31 determining whether to waive or modify the requirement.
- 32 (7) Is more restrictive than applicable federal law or rule governing the
33 same subject matter."

34 **SECTION 4.** This act becomes effective October 1, 2003, and applies to
35 proposed permanent rules the text of which is published in the North Carolina Register
36 on and after that date.