

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Fiscal Note

BILL NUMBER: Senate Bill 781 (First Edition)

SHORT TITLE: Regulatory Reform Act of 2011.

SPONSOR(S): Senators Brown and Rouzer

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
REVENUES	***None Anticipated***				
EXPENDITURES					
<u>General Fund</u>					
Office of State Budget & Management	\$73,546	\$78,641	\$84,067	\$88,578	\$92,380
Department of Administration	\$56,217	\$32,465	\$34,542	\$36,268	\$37,720
Department of Revenue	\$191,923	\$174,830	\$186,363	\$195,951	\$204,020
Department of Insurance	\$26,000	\$26,000	\$26,000	\$26,000	\$26,000
Dept. of Ag & Consumer Services	\$20,000	\$0	\$0	\$0	\$0
Dept. of Environment & Natural Resources	\$1,443,398	\$1,435,618	\$1,516,129	\$1,612,748	\$1,642,761
Department of Public Instruction	***Impact Could Be Significant: See Assumptions & Methodology***				
CCPS	***Impact Could Be Significant: See Assumptions & Methodology***				
<u>Non-General Fund</u>					
Some Occupational Licensing Boards	***Indeterminate: See Assumptions & Methodology***				

FISCAL IMPACT CONTINUED

Yes (X) No () No Estimate Available ()

FY 2011-12 FY 2012-13 FY 2013-14 FY 2014-15 FY 2015-16

POSITIONS (cumulative):

General Fund

Department of Administration	0.5	0.5	0.5	0.5	0.5
Dept. of Environment & Natural Resources	16.9	15.9	15.9	15.9	15.65
Office of State Budget & Management	1	1	1	1	1
Department of Revenue	2	2	2	2	2

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: All State Entities subject to the rule making process.

EFFECTIVE DATE: Sections 2 through 15 of the act become effective October 1, 2011, and apply to rules adopted on or after that date. Sections 15 through 55 become effective January 1, 2012, and apply to contested cases commenced on or after that date. Unless otherwise provided, the remainder of the act becomes effective when it becomes law.

BILL SUMMARY:

Part I: Rulemaking

Section 1: This section amends the law related to the scope and effect of rules to add a requirement that an agency shall not seek to enforce a policy, guideline, or other nonbinding interpretive statement that has not been adopted as a rule in accordance with the APA.

Section 2: This section adds 3 new sections to Article 2A of Chapter 150B.

The first new section, G.S. 150B-19.1, is a set of regulatory principles that agencies must follow when developing and adopting proposed rules. The principles include:

- An agency may only adopt rules that are clearly authorized by federal or State law and that are necessary to serve the public interest.
- An agency shall seek to reduce the burden upon those who must comply with the rule.

- Rules must be written in a clear and unambiguous manner and must be reasonably necessary to implement or interpret federal or State law.
- An agency must consider the cumulative effect of rules and shall not adopt a rule that is unnecessary or redundant.
- Rules should be based on sound scientific, technical, economic or other relevant information.
- Rules must be designed to achieve the regulatory objective in a cost-effective and timely manner.

Senate Bill 781 requires agencies to conduct a review of existing rules and repeal any rules which it finds to be unnecessary, unduly burdensome, or inconsistent with the principles each year. Agencies must post information about a proposed rule on its website when it submits the rule for publication in the NC Register. Agencies must determine whether there is overlap in its policies and programs with another agency and coordinate their rulemaking activity. Agencies must review details of fiscal note with the rulemaking body. Agencies must consider at least 2 alternatives to the proposed rule if the rule has a substantial economic impact. Agencies must prepare federal certification if the rule is required by federal law and post the certification on the website.

The second new section, G.S. 150B-19.2, codifies the Rules Modification and Improvement Program from the Governor's Executive Order 70. This requires OSBM to coordinate and oversee an annual review of existing rules. The program directs OSBM to create a web portal dedicated to receiving public comments on rules and tracking agency progress on reforming rules.

The third new section, G.S. 150B-19.3, prohibits certain enumerated agencies authorized to implement and enforce environmental laws from adopting rules for the protection of the environment or natural resources that impose standards and limitations that are more restrictive than those imposed by an analogous federal law or rule, unless the rule responds to an emergency, a specific law, a change in budgetary policy, or a court order.

Section 3: Repeals a provision relating to federal certification that was moved to a new section.

Section 4: Clarifies a provision relating to temporary rulemaking.

Section 5: Makes conforming changes to the procedure for adopting a permanent rule and clarifies that fiscal notes are subject to public comment. The section also requires that agencies review any fiscal notes and the public comments related to them before adoption of a proposed rule.

Section 6: Amends the fiscal note section to (1) require OSBM to enforce the regulatory principles; (2) make failure to prepare a substantial economic impact fiscal note a basis to disapprove a rule; (3) define the steps in preparing a substantial economic impact fiscal note; and (4) add a requirement that the fiscal note identify the 2 alternative to the rule that were considered by the agency. This section also reduces the threshold for a substantial economic impact from \$3,000,000 to \$500,000.

Sections 7, 8 and 9: Remove obsolete references to reports to the Joint Legislative Administrative Procedure Oversight Committee.

Section 10: Deletes unused and obsolete references.

Section 11: Removes obsolete reference to a "loose leaf" format previously used for the Administrative Code.

Section 12: Clarifies that agencies which are exempt from rulemaking under the APA must submit rules inclusion in the Code.

Section 13: Deletes an unused and obsolete provision relating to a manual for notice of rulemaking proceeding and notice of text.

Section 14: Conforms reference to review by OSBM of rules that affect local government expenditures.

Part II: Contested Cases.

Sections 15 through 27 amend Articles 3 and 4 of the APA to eliminate the requirement that an Administrative Law Judge's (ALJ's) decision be returned to the agency for a final decision. The bill makes the ALJ's decision the final administrative decision in the contested case. The bill also amends the law to provide that certificate of need cases and local government personnel cases will be handled in the same manner as all other cases decided under Article 3.

Inasmuch as the bill eliminates the possibility of an agency reversal of an ALJ decision, the standard for judicial review is also modified. The bill provides that in reviewing a final decision the court will determine whether the decision is supported by substantial evidence in view of the entire record. If the court finds that the decision is not supported by substantial evidence, it may reverse the decision and remand the case to the ALJ in Article 3 cases, or to the agency in Article 3A cases.

Sections 28 through 55 of the bill contain conforming amendments to various provisions in the General Statutes that refer to final agency decisions.

Part III: Miscellaneous Issues.

Section 56: Amends the provision of the APA which directs an agency to issue a declaratory ruling upon the request of an aggrieved person. The amendment authorizes the agency to issue a declaratory ruling to resolve a conflict or inconsistency within the agency. The section also provides that failure to issue the ruling within 60 days constitutes a determination in favor of the aggrieved person.

Section 57: Directs every state agency with rulemaking power to compile a list of all of the agency's rules that fit the following criteria:

- Rules that are mandated by federal law or regulation.
- If not mandated by federal law or regulation, rules that have a federal regulation that is analogous.

- If there is an analogous law or regulation, whether the rule is more stringent than the federal law or regulation.

The list must be delivered to the Joint Regulatory Reform Committee by October 1, 2011.

Section 58: Directs the Joint Regulatory Reform Committee to study the requirements for administrative hearings conducted under Article 3A of the APA. The agencies subject to Article 3A are occupational licensing agencies, the State Banking Commission and the Commissioner of Banks, the Credit Union Division, the Department of Insurance, the State Chief Information Officer in certain cases, the State Building Code Council, and the State Board of Elections in cases involving regulation of campaign contributions and expenditures. The Committee must report to the 2012 Session of the 2011 General Assembly.

Section 59: Provides that major developments subject to permitting under the Coastal Area Management Act are exempt from the Environmental Policy Act.

Section 60: Provides that certain environmental regulatory permits issued on or after July 1, 2011 shall be valid for up to 10 years. Currently, most permits expire after five years or less.

Section 61: Directs the Secretary of the Department of Environment and Natural Resources to develop uniform policy for notification of deficiencies and violations with differing notifications based on the level of potential harm. The Secretary is directed to report to the Legislative Environmental Review Commission by October 1, 2011, and to implement the plan by February 1, 2012.

Section 62: Severability clause

Source: Research Division (June 6, 2011)

BACKGROUND:

Senate Bill 781 is a recommendation of the Joint Legislative Regulatory Reform Committee. Also, Senate Bill 781 would—in part—codify Executive Order (EO) 70, *Rules Modification and Improvement*. This EO guides the drafting, adoption, modification and review of any rules and regulations. This EO also requires a review of existing rules, among other requirements. This EO only applies to Cabinet State agencies—not the Council of State, occupational licensing boards or the Judicial Branch.

ASSUMPTIONS AND METHODOLOGY:

General Government State Agencies and Boards/Commissions

Office of State Budget and Management

The Office of State Budget and Management (OSBM) anticipates that it would need an additional Economic Analyst in order to meet the requirements under Sections 1, 2, and 7 of Senate Bill 781.

This Economic Analyst would have the following duties: 1) review more rules due to the impact of Section 1; 2) review all rules for compliance with Section 2; 3) conduct a yearly review of all rules, consistent with Section 2; and 4) review more fiscal notes as required in Section 7.

OSBM estimates that this bill would cost \$73,546 to administer in FY 2011-12. Table 2 below provides a breakdown of this cost. Fiscal Research concurs with OSBM’s assessment. The recurring cost of Senate Bill 781 will increase based on inflation in future years.

TABLE 1: Estimated Cost to OSBM to Administer Senate Bill 781 in FY 2011-12	
Description	Cost
1 Economic Analyst: Salaries and Benefits	\$72,281 R
Communications & Data Processing	\$1,265 R
TOTAL	\$ 73,546

Department of Administration

The Department of Administration (DOA) indicates that the bill would have a fiscal impact. Costs identified by the Department include a half-time Paralegal I position for \$28,425, position startup costs of \$700 nonrecurring, associated operating costs of \$2,092, and contractual services totaling \$25,000. The Department states that the paralegal position would be required due to the requirements in the legislation that are broader than those in Executive Order 70. While EO 70 requires a one-time review of rules to identify existing rules that are unnecessary, unduly burdensome, or inconsistent with the goals of the executive order, the proposed legislation would expand that requirement to an annual review. Additionally, while EO 70 requires each agency to coordinate rule actions with other agencies with overlap, the legislation also directs a review of existing rules and programs to determine any overlap.

The DOA states that additional legal and paralegal resources would be required, in particular in the near term, to review existing rules to determine whether they are mandated by federal laws or regulations, analogous to federal laws or regulations, or more stringent than federal laws or regulations. The DOA states that dedicated legal resources in the form of a contract attorney retained for three months full-time will be necessary to meet the October 1 deadline required by the legislation. After the initial analysis is completed, the demand for additional legal resources will be lessened. The cost of three months of attorney contractual services is estimated at \$25,000.

Data indicates that the DOA currently has 794 rules. Assuming 40 hours per week, 3 months of a contract attorney’s time would equate to an average of 40 minutes per rule reviewed.

TABLE 2: Estimated Cost to DOA to Implement Senate Bill 781 in FY 2011-12	
Description	Cost
Paralegal I (0.50 FTE)	\$28,425 R
Communications & Data Processing	\$1,792 R
Supplies	\$300 R
Equipment	\$700 NR
Contract Attorney	\$25,000 NR
TOTAL	\$ 56,217

Lastly, the DOA interprets the requirement under new 150B-19.1(c) for agencies to maintain data in a searchable database to mean that the DOA will upload information into a database that is developed, but that the DOA will not be responsible for developing the database. Therefore, the DOA does not anticipate costs for system development. If the DOA is in fact required to develop a database, information technology resources will be impacted.

Department of Revenue

The Department of Revenue (DOR) reports that it would not be able to absorb the additional workload that is required to administer Senate Bill 781. DOR reports that it would need to hire an Advanced Paralegal and an Economic Analyst. The Advanced Paralegal would conduct the annual review of DOR rules, and the Economic Analyst would quantify the cost and benefits to all parties of a proposed rule. Section 2 of the bill also requires DOR to implement a searchable database on its Website.

In total, DOR estimates that it would cost \$191,923 to administer Senate Bill 781 in FY 2011-12. Fiscal Research concurs with DOR’s assessment. The recurring cost of Senate Bill 781 will increase based on inflation in future years. Table 3 below provides a breakdown of this cost.

TABLE 3: Estimated Cost to DOR to Implement Senate Bill 781 in FY 2011-12	
Description	Cost
1 Advanced Paralegal : Salaries and Benefits	\$66,420 R
1 Economic Analyst: Salaries and Benefits	\$87,642 R
Maintenance Agreements	\$708 R ((\$8,243 in subsequent years)
Communications and Data Processing	\$700 R
General Administrative Supplies	\$1,000 R
Office Equipment and Furniture	\$18,200 NR
Intangible Assets	\$17,253 NR
TOTAL	\$ 191,923

Department of Insurance

The Department of Insurance (DOI) reports that a list of the proposed rules for DOI is already available on DOI’s Website for each division. DOI anticipates that it can modify the DOI homepage on its Website to access proposed rule information available at the Office of Administrative Hearing’s Website. If this does not meet the requirements Section 2, DOI anticipates that its Information Systems Division could develop the database and modify the DOI Website to meet the requirement of Section 2. DOI reports that this could be done in-house; however, DOI would have to submit the project to Information Technology Services for approval.

Under the new requirements proposed in General Statutes 150B-19.1(e) and (f) of the bill, DOI anticipates that the Building Code Council, Qualification Board, and the Home Inspectors Licensing Board would need to conduct 1 additional meeting per quarter. The additional cost of

these 3 additional meetings per quarter would be \$6,500 per quarter, or \$26,000 per Fiscal Year. Fiscal Research concurs with DOI's assessment.

Office of Administrative Hearings

The Office of Administrative Hearings anticipates that Senate Bill 781 would have no fiscal impact on the Rules Division. At this time, this agency is not able to determine whether the bill would have a fiscal impact on its Hearings Division.

Secretary of State, Office of State Controller, State Board of Elections, and the Department of State Treasurer

These agencies did not provide an analysis of how Senate Bill 781 would impact their current operations. Due to a lack of data, Fiscal Research is not able to estimate whether these agencies would need additional resources to administer this bill.

North Carolina Medical Board

The North Carolina Medical Board (NCMB) reports that it would not likely need any additional positions to administer Senate Bill 781. Section 2 of the bill requires the NCMB to implement a searchable database on its Website. At this point, NCMB is not able to estimate the cost of this requirement. Section 56 of the bill imposes a 60-day deadline on the board or agency making the declaratory ruling. NCMB reports that this 60-day deadline could result in significant additional costs. Without further data, Fiscal Research is not able to estimate the cost of NCMB to administer Senate Bill 781.

North Carolina Board of Electrolysis Examiners

The North Carolina Board of Electrolysis Examiners (NCBEE) reports that it does not have an Executive Director at this time, and that it only has 1 part-time position to meet the current daily duties. NCBEE reports that the bill would not have a fiscal impact on its current operations, but that it is unlikely that the members of the NCBEE would be able to administer the requirements of Senate Bill 871. Due to this conflicting analysis, Fiscal Research is not able to determine if there would be a fiscal impact on NCBEE without further data.

North Carolina Board of Pharmacists

The North Carolina Board of Pharmacists (NCBOP) reports that Senate Bill 871 would likely require significant additional duties to be undertaken by the staff and counsel.

Section 2 of the bill codifies a new General Statute 150B-19.2, which directs an annual internal review of NCBOP's rules and a submission of a report to the OSBM. This bill authorizes OSBM to direct agencies to take action on comments received from the public on existing rules. These requirements would require additional time by both staff and counsel. NCBOP reports that the cost of staff time is difficult to estimate because this cost would depend on the number of actions that OSBM would require NCBOP to propose. NCBOP reports that the cost of additional counsel

hours would likely total \$10,000 to \$12,000 (50 to 60 counsel hours at \$200 per hour) in FY 2011-12. Thereafter, NCBOP anticipates this cost would likely drop to \$8,000 to \$9,000 (40 to 45 counsel hours at \$200 per hour).

The NCBOP anticipates that it would prepare more fiscal notes and in greater detail under Section 6 of Senate Bill 781. The NCBOP anticipates that the new requirements of some fiscal note would require them to affiliate outside economic experts. However, NCBOP reports that it is not able to estimate how often it would need to affiliate outside economic experts because this would depend upon future rulemaking efforts by NCBOP and market prices for economic consultant services.

Section 56 of Senate Bill 781 requires agencies to issue declaratory rulings when requested. NCBOP reports that the cost to administer this provision is difficult to predict. NCBOP reports that this cost would likely exist, but would depend on the number of requests for declaratory ruling submitted to each year. NCBOP's counsel can currently administer all requests for declaratory rulings received.

Section 57 of Senate Bill 781 would require NCBOP to produce a report by October 1, 2011 explaining in detail the intersection of federal laws or rules with all permanent rules. NCBOP reports that its counsel would develop this report and the report required in Section 2 of the bill at the same time. Therefore, this section of the bill would not require any additional funds outside of the aforementioned estimated cost of \$10,000 to \$15,000 under Section 2 of the bill. If the report required under Section 2 of this bill were not required, NCBOP reports that the production of the report required under Section 57 would likely cost \$5,000 to \$10,000.

Overall, the NCBOP anticipates that additional resources would be need to administer Senate Bill 781, but is not able provide an estimated cost. Fiscal Research concurs that NCBOP would likely require additional resources to administer Senate Bill 781, but is not able to provide an approximate estimate.

North Carolina Board of Podiatry Examiners

The North Carolina Board of Podiatry Examiners (NCBOPE) reports that additional IT, staff, counsel, and Board members' time would be required to administer Senate Bill 781. NCBOPE reports that Sections 2 and 18 would require additional legal fees and administrative resources. Currently, NCBOPE's counsel is on retainer, and anticipates that \$7,000 would be required to pay for these legal fees. NCBOPE anticipates that it would need an additional \$100 for administrative supplies each fiscal year. The recurring cost of Senate Bill 781 would increase based on inflation in future years.

Section 2 would also require NCBOPE to post a searchable database on its Website. Assuming that NCBOPE could modify the homepage on its Website to access proposed rule information available at the Office of Administrative Hearing's Website, NCBOPE anticipates that this requirement would require no additional cost. If this plan does not meet the requirements of the bill, NCBOPE is not able to provide an estimated cost because a request for proposal would need to be prepared for the bidding process.

North Carolina Real Estate Commission

The North Carolina Real Estate Commission (NCREC) reports that significant additional time from staff and outside computer consultants would likely be necessary to implement the bill. The cost of these duties would include additional time for reporting, additional compilation of data, greater analysis of costs, and the need for computer programming.

Section 2 of the bill requires NCREC to post 5 new requirements—including a searchable database—on its website. NCREC anticipates that the development of the searchable database require additional resources. NCREC estimate this requirement to cost \$5,500. This cost would be lower if a searchable PDF file would satisfy the requirements of the bill.

NCREC reports that quantifying the costs in accordance with General Statute 150B-19.1(e) of the bill would require the development of a methodology quantifying the costs and benefits to all parties of a proposed rule. Depending upon the volume of the rules, NCREC reports that the cost of this requirement could be approximately \$2,500. NCREC anticipates that two hours would be required per rule to meet the requirement of this provision.

Under General Statute 150B-19.2(a) of the bill, agencies would be required review all rules and public comments, and issue an annual report to OSBM. NCREC reports that administering this provision would require additional resources. NCREC reports that it is staffed to handle one to two proposed rules per year. If OSBM would send requests for rule-making on an ongoing basis, requiring multiple rule-makings at different stages at the same time, NCREC reports this would require management and oversight and possibly another position. NCREC estimates this cost to be approximately \$24,000.

With respect to General Statute 150B-21 (a3), NCREC reports that it does not anticipate any costs, assuming that OSBM does not require NCREC to adopt temporary rules.

With respect to Part II of Senate Bill 781, NCREC reports that the elimination of an agency's ability to make a final decision in a contested case would likely result in substantial additional costs to agencies. However, NCREC reports that Part II of the bill would apply to NCREC only in instances where NCREC proceeds before the Office of Administrative Hearings; this scenario is rare. Therefore, NCREC reports that the fiscal impact of Part II of the bill would be limited.

Section 56 of Senate Bill amends the provision of the APA which directs an agency to issue a declaratory ruling upon the request of an aggrieved person, and also provides that failure to issue the ruling within 60 days constitutes a determination in favor of the aggrieved person. NCREC reports that it would likely respond to every request for a declaratory ruling, and anticipates that the rate of requests for such rulings would increase under this bill. NCREC reports that responding to requests for declaratory rulings even when they have no merit would result in the need for additional resources.

Section 57 directs every state agency with rulemaking power to compile a list of all of the agency's rules that fit listed criteria. This list must be delivered to the Joint Regulatory Reform Committee

by October 1, 2011. NCREC anticipates that professional and administrative staff time would be required to analyze each rule against federal law and create the required report.

Fiscal Research is not able to concur with NCREC's entire assessment because more data would be needed to validate some of the anticipated costs. With that said, Fiscal Research anticipates that NCREC would likely not be able to absorb the additional workload requirement by this bill.

North Carolina Board of Plumbing, Heating and Fire Sprinkler Contractors & North Carolina Board of Electrical Contractors

The North Carolina Board of Plumbing, Heating and Fire Sprinkler Contractors and the North Carolina Board of Electrical Contractors anticipate that Senate Bill 781 may require additional resources.

Section 6 defines the steps in preparing a substantial economic impact fiscal note and reduces the threshold for a substantial economic impact from \$3,000,000 to \$500,000. These boards estimate that a review of a rule over \$500,000 would likely occur every three years, and each rule would likely impose an additional cost that is indeterminate at this point.

Section 57 of Senate Bill 781 would require these boards to produce a report by October 1, 2011 explaining in detail the intersection of federal laws or rules with current permanent rules. These boards estimate that this requirement may impose an additional cost that is indeterminate at this point.

Natural and Economic Resources (NER) Agencies

Department of Agriculture & Consumer Services

To comply with SB 781, DACS anticipates the need for an additional 400 hours in legal services. The Department would hire an attorney on a contract basis to provide these services. The expected hourly rate is \$50 per hour, resulting in a total cost of approximately \$20,000. DACS expects to hire the attorney starting July 1, 2011, and contract for all 400 hours during FY 2011-12. The Department does not expect to need additional legal support after FY 2011-12. Following the initial reporting on department rules required in G.S. 150B-19.2, existing staff will assume responsibility for the added requirements of SB 781. Lastly, assuming that SB 781 does not require agencies to have identical databases and websites pursuant to G.S. 150B-19.1(c), DACS does not expect the bill to substantially impact the Department's IT staff.

Department of Environment & Natural Resources

The proposed legislation Regulatory Reform Act of 2011 would impose additional workload requirements on the Department of Environment and Natural Resources, which is broken out below by division. A total of 16.9 positions and associated operating costs would be necessary for the Department to fulfill the bill's requirements pertaining to the rulemaking process, an online searchable database, fiscal notes and cost-benefit analysis.

Division of Air Quality

Senate Bill 781 will not require additional staff in the Division of Air Quality (DAQ), but increased time will be necessary in order to develop and obtain approval of cost-benefit analyses and do an assessment of reasonable alternatives. This in turn may make it difficult for the Division to meet federal deadlines for rule adoption, which in some cases are as short as one year. DAQ estimates it may take 2-4 months longer to develop and obtain approval of an assessment depending on the complexity of the rule. Failure to complete timely adoption of rules required to maintain the state's delegated Clean Air Act program could affect the State's ability to comply with federal grant conditions; currently DAQ receives a program grant in the amount of \$2,094,000. The proposed changes to G.S. 143-215.108(d1) in Section 60(a) of the SB 781 will not result in a reduction in permit fee revenues for DAQ.

Division of Coastal Management

The level of analysis required by SB 781 would significantly increase the workload of existing staff within the Division's Policy and Planning Section and would reduce the amount of time that staff can devote to their remaining core program duties. Therefore the Division would require an additional full-time Economist II to conduct the necessary analysis and provide guidance in the development of rules and policies. The additional requirement of having the Coastal Resources Commission review and approve fiscal notes for substantial economic impact will add to the workload of the Commission, creating the need for an additional Environmental Senior Specialist to provide support to both the Economist II and the Commission with respect to determining substantial economic impacts, writing fiscal notes and the added responsibilities of conducting public hearings and processing/responding to public comment associated with fiscal notes. The Environmental Senior Specialist would lead the proposed annual review of the Commission's rules and address comments received through the Rules Modification and Improvement Program. The added responsibility for approval of fiscal notes and substantial economic impact analysis by the Coastal Resources Commission will add to the Commission's meeting agendas both during the rule and policy development process as well as during the public hearing and comment proceedings. The additional time required to discuss comments related to fiscal analyses may require additional meeting times and Commissioner reimbursement for travel and subsistence, although the exact number of additional meetings is unknown at this time.

Division of Environmental Health

SB 781 requires the Division of Environmental Health's Public Water Supply Section to review all agency rules annually. The Public Water Supply Section has approximately 360 pages of rules related to federal program requirements that would need to undergo this evaluation annually. As all existing staff are currently engaged in meeting the fundamental requirements related to state implementation of the federal Safe Drinking Water Act, no staff are available to assign to these

new tasks and therefore an additional four Journey-level Engineers and one Journey-level Economist would be required to accomplish the work required in the bill.

Division of Land Resources

The Division of Land Resources has not had to do much rulemaking in recent years; however, upcoming legislative requirements for special erosion and sedimentation control for waters of special interest and for the development of environmental standards for future oil and gas exploration will expand the Division's rulemaking requirements. Furthermore, the Regulatory Reform Act of 2011 would apply to the Division's three regulatory programs of dam safety, mine reclamation and dam safety, and their three corresponding State Commissions: the Mining Commission, the Sedimentation Control Commission and the Environmental Management Commission. The Division of Land Resources does not have capacity to undertake any additional administrative duties related to the Regulatory Reform Act with existing staff; therefore one additional Environmental Program Consultant position would be needed to fulfill the new requirements of the bill.

Division of Soil and Water Conservation

The Soil and Water Conservation Commission, working through the Division of Soil and Water Conservation (DSWC) and the 96 statewide soil and water conservation districts, administers the Agriculture Cost Share Program and the Community Conservation Assistance Program. Presently, many of the specific requirements for the practices cost shared are referenced as policy of the Soil and Water Conservation Commission. SB 781 requires the Commission to adopt rules to replace its current policy, which will take a great deal of time and effort to do initially and to maintain. Currently the Commission has few rules for its programs and therefore DSWC does not have a particular position with primary responsibility for coordinating rulemaking activities. The requirements of SB 781 will dramatically increase the workload for rulemaking and annual rule review and maintenance, which cannot be accomplished by existing staff. Therefore, DSWC would require one additional full-time Economist II to fulfill the requirements of the bill.

Division of Waste Management

The Division of Waste Management would require the following staff in order to fulfill the requirements of SB 781: one part-time Environmental Program Supervisor II position to oversee all division work on rule development, process, fiscal note development, compliance with legislation, and an annual review to determine if existing rules are unnecessary, burdensome, or inconsistent with principles; one part-time Environmental Engineer position to perform fiscal and cost-benefit analyses on every rule; and one part-time Environmental Senior Specialist position to manage the division's rulemaking procedures and the implement uniform policy for notification of deficiencies.

Division of Water Quality

In order to meet the requirements of SB 781 regarding increased fiscal note requirements, annual existing rule reviews, more involved rule development, increased likelihood of permit and enforcement litigation, and additional APA requirements, the Division of Water Quality (DWQ)

would need five additional staff members: one Economist II to quantify costs and benefits for proposed rules and to determine future costs for alternative requirements; two Environmental Program Consultants to coordinate rule development and interagency coordination, existing rule reviews, program and policy review and coordination, and website development and updating; and two Environmental Program to coordinate rule and policy/program reviews between agencies and report to OSBM.

Administration

The Department would need central staff to provide guidance and oversight to the divisions for compliance with the proposed legislation, including one Attorney III for the work associated with increased litigation that could result from the proposed legislation and to present cases to Administrative Law Judges; one Environmental Program Consultants to serve as an interagency coordinator for rule development and interagency coordination, existing rule reviews, program and policy review and coordination, and website development and updating; and one Business and Technology Application Specialist to create an online searchable database for information on proposed rules, maintain the information and develop other applications to make department compliance efficient and effective for divisions and the public.

TABLE 4: Estimated Cost to DENR to Implement Senate Bill 781 in FY 2011-12	
Description	Cost
4.0 Economist II	\$340,246 R
1.5 Environmental Senior Specialist	\$83,312 R
4.0 Engineer	\$279,672 R
1.0 Business & Technology Application Specialist	\$89,351 R
0.65 Environmental Program Supervisor II	\$55,290 R
4.0 Environmental Program Consultant	\$325,887 R
1.0 Attorney III	\$95,360 R
0.75 Environmental Engineer	\$54,122 R
Maintenance & Utility Services	\$59,079 R
Supplies & Equipment	\$18,355 R
Computers and Office Furniture	\$40,744 NR
TOTAL Known Costs	\$ 1,441,398

Department of Health and Human Services

The Department of Health and Human Services (DHHS) did not provide an analysis of how Senate Bill would impact their current operations. Due to a lack of data, Fiscal Research is not able to estimate whether DHHS would need additional resources to administer this bill.

ITS

The Information Technology Services is not able to estimate the fiscal impact of Senate Bill 781 on their current operations.

Department of Public Instruction

The Department of Public Instruction (DPI) estimates that Senate Bill would require 5 additional positions responsible for identifying, developing, modifying, repealing and tracking the necessary modifications to all rules. The staff would include 1 financial director, 1 attorney, 1 paralegal, and 2 administrative assistants. DPI estimates the salary and benefits of these positions to be \$331,866 in FY 2011-12. The recurring cost of these positions would increase based on inflation in future years.

Specifically, for public education, there are hundreds of rule changes annually with respect to State and federal "expressly authorized rules." The rulemaking process itself requires staff time to convene stakeholders, hold public hearings, prepare reports, respond to public and commission inquiries, and maintain/archive/communicate the rule modifications.

In addition, Senate Bill 781 requires the agency to develop, track, archive and maintain a searchable website of rules and policies accessible to the public. DPI estimates a one-time cost for developing the system to be \$1,500,000, and maintenance costs in future years to begin at \$200,000, growing each year with inflation.

Fiscal Research is not able to concur with DPI's assessment because more data would be needed to validate some of the anticipated costs. With that said, Fiscal Research anticipates that DPI would likely not be able to absorb the additional workload requirement by this bill.

State Board of Community Colleges

Although the State Board of Community Colleges currently is subject to the Administrative Procedures Act, Section 8.18 of Ratified House Bill 200 amends G.S. 150B and 115D to exempt the State Board from the Act. As such, the NC Community College System is not impacted by this bill.

ITS

The Information Technology Services is not able to estimate the fiscal impact of Senate Bill 781 on their current operations.

Department of Crime Control and Public Safety

The Department of Crime Control and Public Safety (CCPS) stated that the contested case section of the bill could have a significant fiscal impact on the Department. However, CCPS does not have any way to estimate the exact amount of fiscal impact. To give some idea, the Department noted that since February 1997, OAH has ruled against CCPS (reversed the Department's personnel decisions) in seventeen (17) cases. Should the proposed legislation become law, the Department would be required to expend funds to appeal all such adverse OAH decisions to Superior Court.

Department of Juvenile Justice and Delinquency Prevention

The Department of Juvenile Justice and Delinquency Prevention (DJJDP) reported that the Department would require two additional policy specialist positions for a total cost of \$113,619 to assist existing staff with the increase in workload associated with the proposed legislation. The additional staff would be involved with:

1. Reviewing the Department's current policies and procedures
2. Comparing DJJDP policies to other agencies that may have similar policies,
3. Providing technical assistance to agency staff and other parties affected by the Department's policies.
4. Fulfilling the other work functions outlined the bill.

However, due to the relatively few number of rules within the Department, Fiscal Research believes DJJDP can absorb any additional impact from the proposed legislation into existing personnel.

State Entities Anticipating No Fiscal Impact

Several State entities reported that the additional work required by this bill could be absorbed by existing staff. These State entities include the following: Department of Transportation, Department of Cultural Resources, Lieutenant Governor's Office, Office of State Personnel, Office of State Auditor, Housing Finance Agency, Board of Examiners for Engineers and Surveyors, Board of Occupational Therapy, Auctioneer Licensing Board, Board of Refrigeration Examiners, Board of Massage and Bodywork Therapy, Substance Abuse Professional Practice Board, Board of Funeral Service, Board of Registration for Foresters, Board of Physical Therapy Examiners, Licensing Board for General Contractors, Board of CPA Examiners, Acupuncture Licensing Board, Board of Athletic Trainer Examiners, Board of Nursing, Board of Opticians, Board of Chiropractic Examiners, the Department of Commerce, the ABC Commission, the Banking Commission, the Credit Union Division, the Ports Authority, the Rural Electrification Authority, the Utilities Commission & Public Staff, and the Wildlife Resources Commission.

SOURCES OF DATA: State Entities subject to the rule making process.

TECHNICAL CONSIDERATIONS:

1. The impact of SB 781 on the Department of Environment and Natural Resources (DENR) includes resources needed by the Divisions of Forest Resources, Environmental Health, and Soil & Water Conservation, which are transferred out of the DENR in HB 200, the FY 2011-13 Biennial Budget. Ultimately, the resources required by these Divisions to comply with SB 781 will not be needed within DENR but within the receiving Departments (Agriculture & Consumer Services and Health & Human Services).

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