

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

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SENATE DRS35130-LN-58 (3/5)

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

Sponsors: Senator Hartsell.

Referred to:

A BILL TO BE ENTITLED

AN ACT PROVIDING FOR A SEPARATE PROCESS REQUIRING AGENCIES TO REVIEW THE ECONOMIC IMPACT OF PROPOSED RULES ON SMALL BUSINESS BEFORE PUBLISHING THE PROPOSED TEXT OF THE RULE IN THE NORTH CAROLINA REGISTER.

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. Economic impact analysis for rules affecting small business.

- (a) Short title. – This Part may be cited as the Regulatory Flexibility Act of 2003.
- (b) Findings. – The General Assembly finds the following:
 - (1) A vibrant and growing small business sector is critical to creating jobs in a dynamic economy.
 - (2) Small businesses bear a disproportionate share of regulatory costs and burdens.
 - (3) Fundamental changes that are needed in the regulatory and enforcement culture of State agencies to make them more responsive to small business can be made without compromising the statutory mission of the agency.
 - (4) When adopting rules to protect the health, safety, and economic welfare of the State, State agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on employers.
 - (5) Uniform regulatory and reporting requirements can impose unnecessary and disproportionately burdensome demands including

1 legal, accounting, and consulting costs upon small businesses with
2 limited resources.

3 (6) The failure to recognize differences in the scale and resources of
4 regulated businesses can adversely affect competition in the
5 marketplace, discourage innovation, and restrict improvements in
6 productivity.

7 (7) Unnecessary rules create entry barriers in many industries and
8 discourage potential entrepreneurs from introducing beneficial
9 products and processes.

10 (8) The practice of treating all regulated businesses the same may lead to
11 inefficient use of regulatory agency resources, enforcement problems,
12 and, in some cases, actions inconsistent with the legislative intent of
13 health, safety, environmental, and economic welfare legislation.

14 (9) Alternative regulatory approaches that do not conflict with the stated
15 objective of applicable statutes may be available to minimize the
16 significant economic impact of rules on small businesses.

17 (c) Definition. – As used in this Part, the term 'small business' means a business
18 entity, including its affiliates, that is both independently owned and operated and
19 employs fewer than 500 full-time employees or has gross annual sales of less than six
20 million dollars (\$6,000,000).

21 **"§ 150B-21.7B. Economic impact statements.**

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

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

27 (2) The projected reporting, record keeping, and other administrative costs
28 required for compliance with the proposed rule, including the type of
29 professional skills necessary for preparation of the report or record.

30 (3) A statement of the probable effect on impacted small businesses.

31 (4) A description of any less intrusive or less costly alternative methods of
32 achieving the purpose of the proposed rule.

33 **"§ 150B-21.7C. Rules affecting small businesses.**

34 (a) Before an agency publishes in the North Carolina Register the proposed text
35 of a permanent rule that would impact small businesses, the agency shall prepare a
36 regulatory flexibility analysis in which the agency shall, where consistent with health,
37 safety, and environmental and economic welfare, consider utilizing regulatory methods
38 that will accomplish the objectives of applicable statutory authority, while minimizing
39 the adverse impact on small businesses. The agency shall consider each of the following
40 methods of reducing the impact of the proposed rule on small businesses:

41 (1) The establishment of less stringent compliance or reporting
42 requirements for small businesses.

43 (2) The establishment of less stringent schedules or deadlines for
44 compliance or reporting requirements for small businesses.

1 (3) The consolidation or simplification of compliance or reporting
2 requirements for small businesses.

3 (4) The establishment of performance standards for small businesses to
4 replace design or operational standards required in the proposed rule.

5 (5) The exemption of small businesses from all or any part of the
6 requirements of the proposed rule.

7 (b) Before an agency publishes in the North Carolina Register the proposed text
8 of a permanent rule that would impact small businesses, the agency shall notify the
9 North Carolina Department of Commerce of its intent to publish the proposed text in the
10 North Carolina Register. Upon receipt of notice from the agency, the Department of
11 Commerce shall advise and assist the agency in complying with this section.

12 (c) A small business that is adversely affected or aggrieved by the adoption of a
13 permanent rule subject to this section may seek judicial review of the agency's
14 compliance with this section. The small business may seek judicial review under this
15 subsection during the period commencing on the date the permanent rule becomes
16 effective and end one year from that date.

17 "**§ 150B-21.7D. Periodic review of rules.**

18 (a) Within four years of the date this Part becomes effective, each agency shall
19 review existing rules adopted prior to the effective date of this Part to determine
20 whether the rules should be continued without change, amended, or repealed, consistent
21 with the underlying statutory authority for the rule, in order to minimize adverse impact
22 of the rules on small businesses.

23 (b) Rules that become effective after the date this Part becomes effective shall be
24 reviewed within five years of the date the rule becomes effective, and every five years
25 thereafter to ensure that the rule minimizes the adverse economic impact on small
26 businesses in a manner consistent with the purposes of the underlying statutory
27 authority for the rule.

28 (c) In reviewing rules to minimize the adverse economic impact on small
29 businesses, the agency shall consider the following:

30 (1) The continued need for the rule.

31 (2) The nature of complaints or comments received from the public
32 concerning the rule.

33 (3) The complexity of the rule.

34 (4) The extent to which the rule overlaps, duplicates, or conflicts with
35 other federal or State rules or local government ordinances.

36 (5) The length of time since the rule has been evaluated or the degree to
37 which technology, economic conditions, or other factors have changed
38 in the area affected by the rule.

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

40 "**§ 150B-21.9. Standards and timetable for review by Commission.**

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

43 (1) It is within the authority delegated to the agency by the General
44 Assembly.

1 (2) It is clear and unambiguous.

2 (3) It is reasonably necessary to fulfill a duty delegated to the agency by
3 the General Assembly, when considered in light of the cumulative
4 effect of all rules adopted by the agency related to the specific purpose
5 for which the rule is proposed and the legislative intent of the General
6 Assembly in delegating the duty.

7 The Commission may determine if a rule submitted to it was adopted in accordance
8 with Part 2 and Part 2A of this Article. The Commission may ask the Office of State
9 Budget and Management to determine if a rule has a substantial economic impact and is
10 therefore required to have a fiscal note. The Commission must ask the Office of State
11 Budget and Management to make this determination if a fiscal note was not prepared for
12 a rule and the Commission receives a written request for a determination of whether the
13 rule has a substantial economic impact.

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

19 (b) Timetable. – The Commission must review a rule submitted to it on or before
20 the twentieth of a month by the last day of the next month. The Commission must
21 review a rule submitted to it after the twentieth of a month by the last day of the second
22 subsequent month."

23 **SECTION 3.** This act becomes effective October 1, 2004.