

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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HOUSE BILL 757*

Short Title: Small Business Regulatory Improvement Act. (Public)

Sponsors: Representatives Brubaker, Gibson (Primary Sponsors); and Gibson.

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

March 17, 2005

A BILL TO BE ENTITLED

1
2 AN ACT TO REQUIRE STATE AGENCIES PROPOSING PERMANENT RULES
3 TO CONSIDER THE ADVERSE ECONOMIC IMPACT OF THE PROPOSED
4 RULE ON SMALL BUSINESS; TO REQUIRE STATE AGENCY REVIEW OF
5 EXISTING RULES PRIOR TO AMENDMENT TO DETERMINE THE IMPACT
6 ON SMALL BUSINESS; TO ESTABLISH THE SMALL BUSINESS
7 REGULATORY COMMITTEE IN THE DEPARTMENT OF COMMERCE; TO
8 PROVIDE FOR SMALL BUSINESS REGULATORY COMMITTEE REVIEW OF
9 PROPOSED PERMANENT RULES THAT MAY HAVE AN ADVERSE IMPACT
10 ON SMALL BUSINESS AND SMALL BUSINESS REGULATORY
11 COMMITTEE RECOMMENDATIONS TO THE AGENCY AND GENERAL
12 ASSEMBLY; TO AUTHORIZE PETITION BY A SMALL BUSINESS
13 OBJECTING TO A PERMANENT RULE ON SPECIFIED GROUNDS;
14 PROVIDING FOR SMALL BUSINESS REGULATORY COMMITTEE REVIEW
15 OF THE AGENCY'S RESPONSE TO THE PETITION; AND AUTHORIZING
16 AGENCY WAIVER OF ADMINISTRATIVE FINES OR PENALTIES FOR
17 VIOLATIONS BY SMALL BUSINESS.

18 Whereas, a vibrant and growing small business sector is critical to creating
19 jobs in a dynamic economy; and

20 Whereas, small businesses bear a disproportionate share of regulatory costs
21 and burdens; and

22 Whereas, fundamental changes that are needed in the regulatory and
23 enforcement culture of State agencies to make them more responsive to small business
24 can be made without compromising the statutory mission of the agency; and

25 Whereas, uniform regulatory and reporting requirements can impose
26 unnecessary and disproportionately burdensome demands including legal, accounting,
27 and consulting costs upon small businesses with limited resources; and

1 Whereas, unnecessary rules create entry barriers in many industries and
2 discourage potential entrepreneurs from introducing beneficial products and processes;
3 and

4 Whereas, alternative regulatory approaches that do not conflict with the stated
5 objective of applicable statutes may be available to minimize the significant economic
6 impact of rules on small businesses; Now, therefore,
7 The General Assembly of North Carolina enacts:

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

10 "Part 2A. Small Business Regulatory Improvement Act.

11 **"§ 150B-21.7A. Findings; definitions.**

12 (a) The General Assembly finds the following:

13 (1) A uniform system for administrative rule making and adjudicatory
14 process is necessary to ensure that rules to protect the health, safety,
15 and economic welfare of the State are adopted and enforced in an
16 open, fair, and equitable manner.

17 (2) In adopting and enforcing administrative rules, State agencies should
18 seek to achieve statutory goals as effectively and efficiently as possible
19 without imposing unnecessary burdens on employers.

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

24 (4) The practice of treating all regulated businesses as equal may lead to
25 inefficient use of regulatory agency resources, enforcement problems,
26 and, in some cases, actions inconsistent with the legislative intent of
27 health, safety, environmental, and economic welfare legislation.

28 (b) As used in this Part, the term:

29 (1) 'Adverse economic impact' means an aggregate financial impact on
30 small businesses affected by the rule of at least two million dollars
31 (\$2,000,000) in a 12-month period.

32 (2) 'Committee' means the Small Business Regulatory Committee
33 established under G.S. 143B-472.99.

34 (3) 'Small business' means a business entity, including its affiliates, that is
35 both independently owned and operated and has not more than 250
36 employees.

37 **"§ 150B-21.7B. Rules affecting small businesses; economic impact statement by**
38 **agency; judicial review of agency compliance.**

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

42 (1) An identification and estimate of the number of small businesses
43 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 (b) A small business that is adversely affected or aggrieved by the adoption of a
8 permanent rule subject to this section may seek judicial review of the agency's
9 compliance with this section. The small business may seek judicial review under this
10 subsection during the period commencing on the date the permanent rule becomes
11 effective and end one year from that date.

12 **"§ 150B-21.7C. Agency review of existing rules.**

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

15 (1) The continued need for the rule.

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

18 (3) The complexity of the rule.

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

21 (5) The length of time since the rule has been evaluated and an estimate on
22 the length of time the rule will continue to be necessary.

23 (6) The degree to which technology, economic conditions, or other factors
24 have changed or no longer exist in the area affected by the rule.

25 **"§ 150B-21.7D. Periodic agency review of rules.**

26 (a) Within four years of the enactment of this act, each agency shall review all
27 agency rules existing at the time of enactment to determine whether the rules should be
28 continued without change, or should be amended or repealed, consistent with the stated
29 objectives of the underlying statutes, to minimize economic impact of the rules on small
30 businesses in a manner consistent with the stated objectives of applicable statutes. If the
31 head of the agency determines that completion of the review of existing rules is not
32 feasible by the established date, the agency shall publish a statement certifying that
33 determination. The agency may extend the completion date by one year at a time for a
34 total of not more than five years.

35 (b) Rules adopted after the enactment of this act shall be reviewed within five
36 years of the publication of the final rule and every five years thereafter to ensure that
37 they minimize economic impact on small businesses in a manner consistent with the
38 stated objectives of the underlying statutes.

39 (c) In reviewing rules to minimize economic impact on small businesses, the
40 agency shall consider all of the following factors:

41 (1) The continued need for the rule.

42 (2) The nature of complaints or comments received concerning the rule
43 from members of the public.

44 (3) The complexity of the rule.

- 1 (4) The extent to which the rule overlaps, duplicates, or conflicts with
2 other federal, State, or local government rules.
- 3 (5) The length of time since the rule has been evaluated or the degree to
4 which economic conditions or other factors have changed or no longer
5 exist in the area affected by the rule.

6 **"§ 150B-21.7E. Proposed permanent rules; agency determination of impact on**
7 **small business; notice to Small Business Regulatory Committee.**

8 If the economic impact statement prepared as required under G.S. 150B-21.7B
9 indicates the proposed permanent rule may have an adverse economic impact on small
10 business, the agency proposing the permanent rule shall provide a copy of the rule and
11 the impact statement to the Small Business Regulatory Committee established under
12 G.S. 143B-472.99 for its timely review, comment, and recommendations. If the
13 Committee determines that the proposed permanent rule may have an adverse economic
14 impact on small business, the Committee shall request that the agency consider the
15 following:

- 16 (1) The availability and practicability of less restrictive alternatives that
17 could be implemented; and
- 18 (2) Creative, innovative, or flexible methods of compliance by small
19 business.

20 **"§ 150B-21.7F. Permanent rules; petition objecting to adverse economic impact on**
21 **small business.**

22 (a) If a permanent rule has an adverse economic impact on a small business, that
23 small business may file a written petition with the State agency that adopted the rule
24 objecting to all or part of the rule on any of the following grounds:

- 25 (1) The actual effect on small business significantly exceeded or was not
26 reflected in the small business impact statement formulated by the
27 agency in accordance with this Part.
- 28 (2) The actual or estimated adverse economic impact was either not
29 considered in public hearings on the rule, or there were no public
30 hearings conducted on the rule.
- 31 (3) The technology, economic conditions, or other relevant factors
32 underlying the purpose of the rule have changed or no longer exist.

33 (b) Upon receipt of the petition, the agency shall forward a copy of the petition to
34 the Small Business Regulatory Committee as notification of a petition filed under this
35 Part. The agency shall promptly consider the petition and may seek advice and counsel
36 regarding the petition. Within 60 days after the receipt of the petition, the agency shall
37 determine whether the impact statement or the public hearing addressed the actual and
38 significant impact of the rule on small business, or if conditions underlying the purpose
39 of the rule have changed or no longer exist. The agency shall provide a copy of its
40 determination to the Committee.

41 (c) If the agency determines that the petition merits amendment to or repeal of a
42 rule, it may initiate proceedings in accordance with the applicable requirements of this
43 Chapter. If the agency determines that the petition does not merit the amendment or
44 repeal of a rule, any small business adversely affected by the agency's determination

1 may seek review of the agency's determination by the Committee. Upon request for
2 review, the Committee shall convene a meeting for the purpose of determining whether
3 to recommend that the agency initiate proceedings to amend or repeal a rule. The
4 Committee's review shall not be de novo but shall be based on the actual record
5 presented to the agency. The Committee may base its recommendation on any of the
6 following:

7 (1) The actual effect on small business significantly exceeded or was not
8 reflected in the small business impact statement formulated by the
9 agency pursuant to G.S. 150B-21.7B.

10 (2) The actual economic impact was not previously considered by the
11 agency.

12 (3) The technology, economic conditions, or other relevant factors
13 underlying the purpose for the rule have changed or no longer exist.

14 (d) If the Committee recommends that the agency initiate proceedings for any
15 reason stated in subsection (c) of this section, then the Committee shall submit to the
16 Joint Administrative Procedure Oversight Committee ("Oversight Committee") an
17 evaluation report and the agency's determination of the petition's merits. The Oversight
18 Committee shall review the Committee's report and agency determination and shall
19 make recommendations to the General Assembly for legislative action, if necessary.

20 **"§ 150B-21.7G. Waiver of administrative penalties.**

21 (a) Notwithstanding any other law to the contrary, a State agency that is
22 authorized to assess administrative fines or penalties upon a business may waive or
23 reduce the administrative fine or penalty for a violation of a statute or rule by a small
24 business only under the following conditions:

25 (1) The small business corrects the violation within 30 days after receipt
26 of notice of the violation.

27 (2) The violation was the result of an excusable misunderstanding of the
28 agency's interpretation of the rule.

29 (b) An agency may not waive an administrative fine or penalty when:

30 (1) A small business has been notified of the violation and has been given
31 a prior opportunity to correct the violation on a prior occasion.

32 (2) A small business fails to exercise good faith in complying with the
33 statute or rule.

34 (3) The violation involves willful or criminal misconduct by the small
35 business or its agents or employees.

36 (4) The violation results in or poses the threat of serious health, safety, or
37 environmental impact.

38 (5) The penalty or fine is assessed pursuant to a federal law or regulation
39 and for which no waiver or reduction is authorized by the federal law
40 or regulation.

41 (c) An agency may adopt rules providing for the waiver of administrative fines or
42 penalties in accordance with this section."

43 **SECTION 2.** Article 10 of Chapter 143B of the General Statutes is amended
44 by adding the following new Part to read:

1 "Part 20. Small Business Regulatory Review Committee.

2 "§ 143B-472.99. Small Business Regulatory Review Committee established;
3 members; chairman; selection; removal; compensation; quorum;
4 services.

5 (a) There is established the Small Business Regulatory Committee
6 ("Committee"). The Committee shall be located in the Department of Commerce for
7 budgetary purposes only. The Committee shall consist of 15 members, 10 of whom
8 shall be appointed by the Governor. In making appointments, the Governor shall ensure
9 that members represent the geographic regions of the State and are employed by or own
10 a small business, as defined in G.S. 150B-21.7B.

11 (b) The Governor shall designate one member of the Committee to serve as
12 Chairman at the pleasure of the Governor.

13 (c) Members shall be appointed for a term of four years, except that one-third of
14 the initial members appointed by the Governor shall be appointed to serve for a term of
15 two years. Members shall serve until their successors are appointed and qualify. Any
16 appointment to fill a vacancy on the Committee created by the resignation, dismissal,
17 death, or disability of a member shall be for the balance of the unexpired term. A
18 member shall not be appointed for more than two consecutive terms.

19 (d) The Governor shall have the power to remove any member of the Committee
20 from office in accordance with the provisions of G.S. 143B-16 of the Executive
21 Organization Act of 1973.

22 (e) Members of the Committee shall receive per diem and necessary travel and
23 subsistence expenses in accordance with the provisions of G.S. 138-5.

24 (f) A majority of the Committee shall constitute a quorum for the transaction of
25 business.

26 (g) The Secretary of Commerce shall provide clerical and other services required
27 for the Committee to carry out its duties.

28 (h) The Committee shall meet at least semiannually, or more often if necessary as
29 determined by the Chair.

30 "§ 143B-472.100. Duties of the Small Business Regulatory Committee.

31 The duties of the Small Business Regulatory Committee are as follows:

32 (1) Provide State agencies with input regarding proposed permanent rules
33 which may have an adverse economic impact, as defined in
34 G.S. 150B-21.7B, upon small business and for which notice has been
35 published in the North Carolina Register in accordance with
36 G.S. 150B-21.2. The Committee shall provide its comment and
37 recommendations to the State agency within 30 days of receipt of the
38 proposed permanent rule and impact statement from the State agency
39 pursuant to G.S. 150B-21.7E.

40 (2) Review any permanent rule proposed by a State agency for which the
41 agency has notified the Committee that the proposed rule has an
42 adverse economic impact upon small business and make
43 recommendations to the agency and the General Assembly regarding
44 the need for further agency or legislative action."

1 **SECTION 3.** G.S. 150B-21.9 reads as rewritten:

2 "**§ 150B-21.9. Standards and timetable for review by Commission.**

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

5 (1) It is within the authority delegated to the agency by the General
6 Assembly.

7 (2) It is clear and unambiguous.

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

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

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

25 (b) Timetable. – The Commission must review a rule submitted to it on or before
26 the twentieth of a month by the last day of the next month. The Commission must
27 review a rule submitted to it after the twentieth of a month by the last day of the second
28 subsequent month."

29 **SECTION 3.** The Department of Commerce shall use funds appropriated to
30 it for the support of the Small Business Regulatory Committee established under this
31 act.

32 **SECTION 4.** This act becomes effective October 1, 2005, and applies to
33 proposed permanent rules the text of which is published in the North Carolina Register
34 on and after that date.