

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 27

Environment and Natural Resources Committee Substitute Adopted 2/20/89

Short Title: NC May Exceed US Environmental Regs.

(Public)

Sponsors:

Referred to:

January 18, 1989

A BILL TO BE ENTITLED

AN ACT TO REPEAL THOSE PORTIONS OF THE GENERAL STATUTES WHICH REQUIRE THAT ENVIRONMENTAL RULES BE NO MORE RESTRICTIVE THAN COMPARABLE FEDERAL REGULATIONS, TO REQUIRE THAT AN ASSESSMENT REPORT BE PREPARED AS TO THE BENEFITS AND BURDENS LIKELY TO RESULT FROM ENVIRONMENTAL RULE-MAKING, AND TO REQUIRE THAT THE BENEFITS OF ENVIRONMENTAL RULE-MAKING EXCEED THE BURDENS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-128.2(a) reads as rewritten:

"(a) The rules and regulations promulgated pursuant to G.S. 143-215.107(a)(6) for the purposes of this section shall be limited to carbon monoxide, shall be statewide in scope but enforced on a county unit basis when ambient air pollutant concentrations exceed the National Ambient Air Quality Standards established pursuant to the Clean Air Act of 1970 as amended by the Clean Air Act amendments of 1977 and when the Environmental Management Commission certifies to the Commissioner of Motor Vehicles that the ambient air quality within a specified county requires a motor vehicle inspection/maintenance program; provided the Environmental Management Commission may prescribe different standards for different areas as may be necessary and appropriate to facilitate accomplishment of the stated purposes of this section. ~~Such standards shall be no more restrictive or stringent than federal standards, as required by G.S. 143-215.107(f).~~"

Sec. 2. G.S. 130-166.21D is repealed.

1 Sec. 3. G.S. 143-215 reads as rewritten:

2 **"§ 143-215. Effluent standards and limitations.**

3 (a) The Commission is authorized and directed to develop, adopt, modify and
4 revoke effluent standards and limitations and waste treatment management practices as
5 it determines necessary to prohibit, abate, or control water pollution. The effluent
6 standards or limitations or management practices may provide, without limitation,
7 standards or limitations or management practices for any point source or sources;
8 standards, limitations, management practices, or prohibitions for toxic wastes or
9 combinations of toxic wastes discharged from any point source or sources; and
10 pretreatment standards for wastes discharged to any disposal system subject to effluent
11 standards or limitations or management practices.

12 (b) The effluent standards and limitations developed and adopted by the
13 Commission shall provide limitations upon the effluents discharged from pretreatment
14 facilities and from outlets and point sources to the waters of the State adequate to limit
15 the waste loads upon the waters of the State to the extent necessary to maintain or
16 enhance the chemical, physical, biological and radiological integrity of the waters. The
17 management practices developed and adopted by the Commission shall prescribe
18 practices necessary to be employed in order to prevent or reduce contribution of
19 pollutants to the State's waters.

20 ~~(c) In adopting effluent standards and limitations and management practices the
21 Commission shall be guided by the same considerations and criteria set forth, from time
22 to time, in federal law for the guidance of federal agencies administering the Federal
23 Water Pollution Control Program. It is the intent of the General Assembly that the
24 effluent standards and limitations and management practices adopted hereunder shall be
25 no more restrictive than the most nearly applicable federal effluent standards and
26 limitations and management practices."~~

27 Sec. 4. G.S. 143-215.3(a)(15) reads as rewritten:

28 ~~"(15) To implement programs to prevent pollution from underground tanks
29 containing oil or hazardous substances, in accordance with those
30 requirements made mandatory upon approved State programs by
31 federal agencies administering the Resource Conservation and
32 Recovery Act, as amended, including the Hazardous and Solid Waste
33 Amendments of 1984. To adopt rules and implement programs to
34 prevent pollution from underground tanks containing petroleum,
35 petroleum products, or hazardous substances."~~

36 Sec. 5. G.S. 143-215.107 reads as rewritten:

37 **"§ 143-215.107. Air quality standards and classifications.**

38 (a) Duty to Adopt Plans, Standards, etc. – The Commission is hereby directed
39 and empowered, as rapidly as possible within the limits of funds and facilities available
40 to it, and subject to the procedural requirements of this Article and Article 21:

41 (1) To prepare and develop, after proper study, a comprehensive plan or
42 plans for the prevention, abatement and control of air pollution in the
43 State or in any designated area of the State.

- 1 (2) To determine by means of field sampling and other studies, including
2 the examination of available data collected by any local, State or
3 federal agency or any person, the degree of air contamination and air
4 pollution in the State and the several areas of the State.
- 5 (3) To develop and adopt, after proper study, air quality standards
6 applicable to the State as a whole or to any designated area of the State
7 as the Commission deems proper in order to promote the policies and
8 purposes of this Article and Article 21 most effectively.
- 9 (4) To develop and adopt classifications for use in classifying air
10 contaminant sources, which in the judgment of the Commission may
11 cause or contribute to air pollution, according to levels and types of
12 emissions and other characteristics which relate to air pollution and
13 may require reporting for any such class or classes. Such
14 classifications may be for application to the State as a whole or to any
15 designated area of the State, and shall be made with special reference
16 to effects on health, economic and social factors, and physical effects
17 on property. Any person operating or responsible for the operation of
18 air contaminant sources of any class for which the Commission
19 requires reporting shall make reports containing such information as
20 may be required by the Commission concerning location, size, and
21 height of contaminant outlets, processes employed, fuels used, and the
22 nature and time periods or duration of emissions, and such other
23 information as is relevant to air pollution and available or reasonably
24 capable of being assembled.
- 25 (5) To develop and adopt such emission control standards as in the
26 judgment of the Commission may be necessary to prohibit, abate or
27 control air pollution commensurate with established air quality
28 standards. Such standards may be applied uniformly to the State as a
29 whole or to any area of the State designated by the Commission.
- 30 (6) To adopt, when necessary and practicable, a program for testing
31 emissions from motor vehicles and to adopt motor vehicle emission
32 standards in compliance with applicable federal regulations.
- 33 (7) To develop and adopt standards and plans necessary to implement
34 programs for the prevention of significant deterioration and for the
35 attainment of air quality standards in nonattainment areas; ~~provided, that~~
36 ~~the Commission shall adopt no standard which is not made mandatory upon~~
37 ~~approved State programs by rules, regulations or published guidelines of the~~
38 ~~United States Environmental Protection Agency or the Federal Clean Air~~
39 ~~Act.~~ areas.
- 40 (b) Criteria for Standards. – In developing air quality and emission control
41 standards, the Commission shall recognize varying local conditions and requirements
42 and may prescribe different standards for different areas as may be necessary and
43 appropriate to facilitate accomplishment of the stated purposes of this Article and
44 Article 21.

1 (c) Chapter 150B of the General Statutes governs the adoption and publication of
2 rules under this Article.

3 ~~(f) Guidance of Federal Criteria and Legislative Intent.—In adopting air quality
4 policies, rules, and procedures, the Commission or any other State or local regulatory
5 body shall be guided by the same standards, definitions, considerations and criteria set
6 forth, from time to time, in federal law, rules or regulations for the guidance of federal,
7 State or local agencies administering the Federal Clean Air Program.~~

8 ~~It is the intent of the General Assembly (i) that the air quality rules, procedures,
9 plans, practices, air quality standards, and emission control standards adopted by the
10 Commission pursuant to this Article or Article 21, or by any other State or local
11 regulatory body under the General Statutes of North Carolina, shall be no more
12 restrictive and no more stringent than required to comply with federal ambient air
13 quality standards or other applicable federal requirements, if any, adopted in final or
14 proposed regulations by the United States Environmental Protection Agency under or
15 pursuant to the Federal Clean Air Act, and amendments thereto; except (ii) that no air
16 quality rules, procedures, plans, practices, air quality standards or emission control
17 standards shall be adopted by the Commission with respect to matters on which the
18 United States Environmental Protection Agency has not proposed or adopted final
19 regulations unless the Commission first considers, among other things, an assessment of
20 the economic impact of the proposed standards. The Department shall prepare and
21 submit into the record of the rule-making hearing an economic impact study of such
22 proposed standards. Such study shall include an estimate of the economic and social
23 costs to commerce and industry, units of local government, and agriculture necessary to
24 comply with the proposed standards and an examination of the economic and social
25 benefits of such compliance."~~

26 Sec. 6. G.S. 143B-30.2(a) reads as rewritten:

27 "(a) Rules adopted by an agency on or after September 1, 1986, shall be submitted
28 to the Administrative Rules Review Commission, which shall review the rule to
29 determine whether it:

- 30 (1) Is within the authority delegated to the agency by the General
31 Assembly;
- 32 (2) Is clear and unambiguous;
- 33 (3) Is reasonably necessary to enable the administrative agency to perform
34 a function assigned to it by statute or to enable or facilitate the
35 implementation of a program or policy in aid of which the rule was
36 adopted, provided that, for rule-making for which an assessment report
37 is required by G.S. 150B-11.1, no rule shall be determined to be
38 reasonably necessary unless the agency has found that the benefits of
39 the rule exceed its burdens.

40 Any rule filed by the 20th of a month shall be reviewed by the Commission by the
41 last day of the next calendar month. Any rule filed after the 20th of a month shall be
42 reviewed by the Commission by the last day of the second subsequent calendar month.
43 The Commission may extend the time for review of a rule by a period of up to 70 days
44 to obtain additional information on the rule. The Commission shall file notice of the

1 extension of time for review of a rule with the agency and the Director of the Office of
2 Administrative Hearings. A rule may not be presented for filing with the Director of the
3 Office of Administrative Hearings under G.S. 150B-59 unless the rule has been
4 reviewed by the Commission as provided in this section."

5 Sec. 7. Chapter 150B of the General Statutes is amended by adding a new
6 section to read:

7 **"§ 150B-11.1. Additional requirements applicable to certain rule-making.**

8 (a) In addition to other rule-making requirements imposed by law, and except as
9 provided in subsection (b) of this section, the requirements of this section shall apply to
10 rule-making pursuant to:

11 (1) G.S. 20-128.2;

12 (2) Articles 9, 10, and 11 of Chapter 130A of the General Statutes; and

13 (3) Articles 21, 21A, 21B, and 38 of Chapter 143 of the General Statutes.

14 (b) This section shall not apply to any federal regulation adopted by reference
15 pursuant to G.S. 150B-14, to any State standard that is identical to a federal standard, to
16 any State standard the form of which prescribed by federal law or regulation, to rule-
17 making for which no hearing is required as provided by G.S. 150B-12(f) through (h), or
18 to temporary rule-making pursuant to G.S. 150B-13.

19 (c) An agency which proposes to adopt, amend, or repeal rules pursuant to any
20 provision of law to which this section applies shall prepare and consider an assessment
21 report as a part of the rule-making process. The assessment report shall consist of an
22 estimate of the aggregate social and economic benefits and burdens likely to result from
23 the proposed rule-making and shall include, at a minimum, an examination of benefits
24 and burdens to: (i) the environment and the ecology; (ii) public health; (iii) commerce
25 and industry; (iv) State and local governments; and (v) agriculture. The assessment
26 report shall also include, to the extent practical, an estimate of the extent to which
27 proposed rule-making will result in an increase or decrease in paperwork. No rule shall
28 be adopted, amended, or repealed pursuant to any provision of law to which this section
29 applies unless the agency finds that the benefits of such rule-making exceed its burdens.

30 (d) The assessment report shall present all relevant data, assumptions, analysis,
31 and calculations in sufficient detail to permit the agency and any reviewing body to
32 easily understand the information presented. The scope of the assessment report and the
33 resources allocated to its preparation shall be commensurate with the availability of
34 information and the relative significance of the proposed rule-making. The agency
35 responsible for the preparation of an assessment report shall make reasonable efforts to
36 secure information needed for the report, including the exercise of any statutory
37 authority for the collection of information.

38 (e) The assessment required by this section shall take into account the
39 uncertainties associated with the estimation of particular benefits and burdens and the
40 difficulties involved in the comparison of qualitatively and quantitatively dissimilar
41 benefits and burdens. The assessment of benefits and burdens which cannot be
42 precisely quantified may be expressed in qualitative terms. The assessment required by
43 this section shall include consideration of both short-term and long-term benefits and
44 burdens.

1 (f) This section shall not be interpreted to require a numerically precise cost-
2 benefit analysis nor to require an assessment or consideration of costs where such
3 assessment and consideration is prohibited by federal law or regulation.

4 (g) In preparing the assessment report, the agency may request technical
5 assistance from any department of State government, the Agricultural Extension
6 Service, and the institutions of The University of North Carolina regarding the
7 acquisition and analysis of data necessary to assess the benefits and burdens of proposed
8 rule-making.

9 (h) A notice of proposed rule-making shall include information as to the
10 availability of an assessment report unless the agency proposes not to prepare an
11 assessment report as provided by subsection (i) of this section. The assessment report
12 shall be completed and copies shall be available for distribution to the public at least 15
13 days prior to the rule-making hearing. The agency may charge a reasonable fee to cover
14 the cost of printing and postage.

15 (i) An agency may propose not to prepare an assessment report if it reasonably
16 determines that proposed rule-making is not likely to result in any significant burden to
17 any person. An agency shall include notice of its intent not to prepare an assessment
18 report unless requested and the procedure for requesting that an assessment report be
19 prepared in the notice of proposed rule-making. A rule-making hearing shall not be
20 held earlier than 60 days after the date such notice is published. Any person may,
21 within 30 days of the publication of such notice, request in writing that an assessment
22 report be prepared. A request that an assessment report be prepared must include
23 sufficient data to demonstrate that the proposed rule-making would result in a
24 significant burden to the person making the request. Upon receipt of a timely written
25 request the agency shall prepare an assessment report as required by this section, and
26 the rule-making hearing shall not be held until the assessment report has been
27 completed as required by subsection (h) of this section.

28 (j) If a proposed rule is modified during the course of the rule-making
29 proceeding, and such modification would significantly affect the assessment of benefits
30 and burdens, the assessment report shall be amended accordingly. The agency shall
31 include the final assessment report in the record of the rule-making proceeding.

32 (k) This section shall not be construed to affect the validity of any rule in force
33 on the effective date of this section."

34 Sec. 8. This act shall not be construed to obligate the General Assembly to
35 make any appropriation to implement the provisions of this act. Each department and
36 agency to which this act applies shall implement the provisions of this act from funds
37 otherwise appropriated to that department or agency.

38 Sec. 9. This act is effective upon ratification. Section 7 of this act shall not
39 apply to any rule-making proceeding in which notice of public hearing has been
40 published as of the effective date of this act.