

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 664*
Commerce Committee Substitute Adopted 4/27/05

Short Title: Small Business Regulatory Improvement Act.

(Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

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

19
20 The General Assembly of North Carolina enacts:

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

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

24 **"§ 150B-21.7A. Findings; definitions.**

25 (a) The General Assembly finds the following:

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

- 1 (2) In adopting and enforcing administrative rules, State agencies should
2 seek to achieve statutory goals as effectively and efficiently as possible
3 without imposing unnecessary burdens on employers.
- 4 (3) The failure to recognize differences in the scale and resources of
5 regulated businesses can adversely affect competition in the
6 marketplace, discourage innovation, and restrict improvements in
7 productivity.
- 8 (4) The practice of treating all regulated businesses as equal may lead to
9 inefficient use of regulatory agency resources, enforcement problems,
10 and, in some cases, actions inconsistent with the legislative intent of
11 health, safety, environmental, and economic welfare legislation.
- 12 (b) As used in this Part, the term:
- 13 (1) 'Adverse economic impact' means any financial impact on small
14 businesses affected by the rule.
- 15 (2) 'Committee' means the Small Business Regulatory Review Committee
16 established under G.S. 143B-472.99.
- 17 (3) 'Small business' means a business entity, including its affiliates, that is
18 both independently owned and operated and has not more than 250
19 employees.

20 **"§ 150B-21.7B. Rules affecting small businesses; economic impact statement by**
21 **agency.**

- 22 (a) Before an agency publishes in the North Carolina Register the proposed text
23 of a permanent rule that would have an adverse economic impact on small businesses,
24 the agency 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 (b) The agency shall include the adverse economic impact statement in the notice
34 of text in accordance with G.S. 150B-21.2(c).

35 **"§ 150B-21.7C. Agency review of existing rules.**

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

- 38 (1) The continued need for the rule.
- 39 (2) The nature of complaints or comments received from the public
40 concerning the rule.
- 41 (3) The complexity of the rule.
- 42 (4) The extent to which the rule overlaps, duplicates, or conflicts with
43 other federal or State rules or local government ordinances.

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

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

5 **"§ 150B-21.7D. Periodic agency review of rules.**

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

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

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

21 (1) The continued need for the rule.

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

24 (3) The complexity of the rule.

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

27 (5) The length of time since the rule has been evaluated or the degree to
28 which economic conditions or other factors have changed or no longer
29 exist in the area affected by the rule.

30 **"§ 150B-21.7E. Proposed permanent rules; agency determination of impact on**
31 **small business; notice to Small Business Regulatory Review Committee.**

32 If the economic impact statement prepared as required under G.S. 150B-21.7B
33 indicates the proposed permanent rule may have an adverse economic impact on small
34 business, the agency proposing the permanent rule shall provide a copy of the notice of
35 text including the impact statement to the Small Business Regulatory Review
36 Committee established under G.S. 143B-472.99 for its timely review, comment, and
37 recommendations. The agency shall submit the documents to the Committee when it
38 submits the notice of text to the Register for publication. If the Committee determines
39 that the proposed permanent rule may have an adverse economic impact on small
40 business, the Committee shall request that the agency consider the following:

41 (1) The availability and practicability of less restrictive alternatives that
42 could be implemented; and

43 (2) Creative, innovative, or flexible methods of compliance by small
44 business.

1 "§ 150B-21.7F. Permanent rules; petition objecting to adverse economic impact on
2 small business; judicial review.

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

6 (1) The agency's failure to comply with the requirements of
7 G.S. 150B-21.7B.

8 (2) The actual effect on small business significantly exceeded or was not
9 reflected in the small business impact statement formulated by the
10 agency in accordance with this Part.

11 (3) The actual or estimated adverse economic impact was either not
12 considered in public hearings on the rule, or there were no public
13 hearings conducted on the rule.

14 (4) The technology, economic conditions, or other relevant factors
15 underlying the purpose of the rule have changed or no longer exist.

16 (b) Upon receipt of the petition, the agency shall forward a copy of the petition to
17 the Small Business Regulatory Review Committee as notification of a petition filed
18 under this Part. The agency shall promptly consider the petition and may seek advice
19 and counsel regarding the petition. Within 60 days after the receipt of the petition, the
20 agency shall determine whether the impact statement or the public hearing addressed the
21 actual and significant impact of the rule on small business, or if conditions underlying
22 the purpose of the rule have changed or no longer exist. The agency shall provide a
23 copy of its determination to the Committee.

24 (c) If the agency determines that the petition merits amendment to or repeal of a
25 rule, it shall initiate rule making in accordance with the applicable requirements of this
26 Chapter. If the agency determines that the petition does not merit the amendment or
27 repeal of a rule, any small business adversely affected by the agency's determination
28 may seek review of the agency's determination by the Committee. Upon request for
29 review, the Committee shall convene a meeting for the purpose of determining whether
30 to recommend that the agency initiate proceedings to amend or repeal a rule. The
31 Committee's review shall not be de novo but shall be based on the actual record
32 presented to the agency. The Committee may base its recommendation on any of the
33 following:

34 (1) The failure of the agency to comply with the requirements of
35 G.S. 150B-21.7B.

36 (2) The actual effect on small business significantly exceeded or was not
37 reflected in the small business impact statement formulated by the
38 agency pursuant to G.S. 150B-21.7B.

39 (3) The actual economic impact was not previously considered by the
40 agency.

41 (4) The technology, economic conditions, or other relevant factors
42 underlying the purpose for the rule have changed or no longer exist.

43 (d) If the Committee recommends that the agency initiate rule making for any
44 reason stated in subsection (c) of this section, then the small business that is adversely

1 affected or aggrieved by the adoption of a permanent rule may seek judicial review of
2 the petition under this section. The small business may seek judicial review under this
3 subsection during the period commencing on the date the permanent rule becomes
4 effective and end one year from that date. If the court finds in favor of the petitioner, it
5 may direct the agency to initiate rule making or provide other appropriate relief.

6 (e) The Committee shall submit to the Joint Administrative Procedure Oversight
7 Committee ("Oversight Committee") an evaluation report and the agency's
8 determination of the petition's merits. The Oversight Committee shall review the
9 Committee's report and agency determination and shall make recommendations to the
10 General Assembly for legislative action, if necessary.

11 **"§ 150B-21.7G. Waiver of administrative penalties.**

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

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

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

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

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

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

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

27 (4) The violation results in or poses a threat of serious health, safety, or
28 environmental impact.

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

32 (c) An agency shall adopt rules providing for the waiver of administrative fines
33 or penalties in accordance with this section."

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

36 "Part 20. Small Business Regulatory Review Committee.

37 **"§ 143B-472.99. Small Business Regulatory Review Committee established;**
38 **members; chairman; selection; removal; compensation; quorum;**
39 **services.**

40 (a) There is established the Small Business Regulatory Review Committee
41 ("Committee"). The Committee shall be located in the Department of Commerce for
42 budgetary purposes only. The Committee shall consist of 15 members, each of whom
43 shall be appointed by the Governor. In making appointments, the Governor shall ensure

1 that members represent the geographic regions of the State and are employed by or own
2 a small business, as defined in G.S. 150B-21.7B.

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

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

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

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

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

18 (g) The Secretary of Commerce shall provide clerical and other services required
19 for the Committee to carry out its duties, including the designation of a Small Business
20 Advocate. The Advocate shall review all proposed rules submitted to the Committee
21 and make recommendations on less intrusive and less costly alternative methods of
22 achieving the purpose of the proposed rule.

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

25 **"§ 143B-472.100. Duties of the Small Business Regulatory Review Committee.**

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

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

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

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

41 **"§ 150B-21.9. Standards and timetable for review by Commission.**

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

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

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

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

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

25 **SECTION 4.** G.S. 150B-21.2(c) reads as rewritten:

26 "(c) Notice of Text. – A notice of the proposed text of a rule must include all of
27 the following:

- 28 (1) The text of the proposed rule.
- 29 (2) A short explanation of the reason for the proposed rule.
- 30 (3) A citation to the law that gives the agency the authority to adopt the
31 rule.
- 32 (4) The proposed effective date of the rule.
- 33 (4a) An adverse economic impact statement on small business as required
34 by G.S. 150B-21.7B.
- 35 (5) The date, time, and place of any public hearing scheduled on the rule.
- 36 (6) Instructions on how a person may demand a public hearing on a
37 proposed rule if the notice does not schedule a public hearing on the
38 proposed rule and subsection (e) of this section requires the agency to
39 hold a public hearing on the proposed rule when requested to do so.
- 40 (7) The period of time during which and the person to whom written
41 comments may be submitted on the proposed rule.
- 42 (8) If a fiscal note has been prepared for the rule, a statement that a copy
43 of the fiscal note can be obtained from the agency.

1 (9) The procedure by which a person can object to a proposed rule and the
2 requirements for subjecting a proposed rule to the legislative review
3 process."

4 **SECTION 5.** There is appropriated to the Department of Commerce the sum
5 of sixty thousand dollars (\$60,000) for the 2005-2006 fiscal year to be used for the
6 support of the Small Business Regulatory Review Committee.

7 **SECTION 6.** This act becomes effective October 1, 2005, and applies to
8 notices of text for proposed permanent rules published in the North Carolina Register on
9 and after that date.