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SENATE BILL DRS15259-TQ-13

Short Title: Limit Rules With Substantial Financial Costs. (Public)

Sponsors: Senators Jarvis and Moffitt (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PUT LIMITATIONS ON RULES WITH SUBSTANTIAL FINANCIAL COSTS.
3 The General Assembly of North Carolina enacts:

4 **SECTION 1.** G.S. 150B-21.4(b1) reads as rewritten:

5 "(b1) Substantial Economic Impact. – Before an agency publishes in the North Carolina
6 Register the proposed text of a permanent rule change that would have a substantial economic
7 impact and that is not identical to a federal regulation that the agency is required to adopt, the
8 agency shall prepare a fiscal note for the proposed rule change and have the note approved by
9 the Office of State Budget and Management. The agency must also obtain from the Office a
10 certification that the agency adhered to the regulatory principles set forth in
11 G.S. 150B-19.1(a)(2), (5), and (6). The agency may request the Office of State Budget and
12 Management to prepare the fiscal note only after, working with the Office, it has exhausted all
13 resources, internal and external, to otherwise prepare the required fiscal note. If an agency
14 requests the Office of State Budget and Management to prepare a fiscal note for a proposed rule
15 change, that Office must prepare the note within 90 days after receiving a written request for the
16 note. If the Office of State Budget and Management fails to prepare a fiscal note within this time
17 period, the agency proposing the rule change shall prepare a fiscal note. A fiscal note prepared
18 in this circumstance does not require approval of the Office of State Budget and Management.

19 If an agency prepares the required fiscal note, the agency must submit the note to the Office
20 of State Budget and Management for review. The Office of State Budget and Management shall
21 review the fiscal note within 14 days after it is submitted and either approve the note or inform
22 the agency in writing of the reasons why it does not approve the fiscal note. After addressing
23 these reasons, the agency may submit the revised fiscal note to that Office for its review. If an
24 agency is not sure whether a proposed rule change would have a substantial economic impact,
25 the agency shall ask the Office of State Budget and Management to determine whether the
26 proposed rule change has a substantial economic impact. Failure to prepare or obtain approval of
27 the fiscal note as required by this subsection shall be a basis for objection to the rule under
28 G.S. 150B-21.9(a)(4).

29 As used in this subsection, the term "substantial economic impact" means an aggregate
30 financial impact on all persons affected of at least one million dollars (\$1,000,000) in a ~~12-month~~
31 five-year period. In analyzing substantial economic impact, an agency shall do the following:

- 32 (1) Determine and identify the appropriate time frame of the analysis.
33 (2) Assess the baseline conditions against which the proposed rule is to be
34 measured.
35 (3) Describe the persons who would be subject to the proposed rule and the type
36 of expenditures these persons would be required to make.



- (4) Estimate any additional costs that would be created by implementation of the proposed rule by measuring the incremental difference between the baseline and the future condition expected after implementation of the rule. The analysis should include direct costs as well as opportunity costs. Cost estimates must be monetized to the greatest extent possible. Where costs are not monetized, they must be listed and described.
- (5) For costs that occur in the future, the agency shall determine the net present value of the costs by using a discount factor of seven percent (7%)."

SECTION 2. Part 1 of Article 2A of Chapter 150B of the General Statutes is amended by adding a new section to read:

"§ 150B-19.4. Limitation on rules with substantial financial costs.

(a) If an agency determines that a proposed permanent rule or set of rules will have a projected aggregate financial cost to all persons affected equal to or greater than one million dollars (\$1,000,000) during any five-year period and the agency is a board, a commission, a council, or other similar unit of government, the permanent rule or set of rules must be adopted by a vote of at least two-thirds of the board or commission members present and voting on the rule or set of rules.

(b) If an agency determines that a proposed permanent rule or set of rules will have a projected aggregate financial cost to all persons affected equal to or greater than ten million dollars (\$10,000,000) during any five-year period and the agency is a board, a commission, a council, or other similar unit of government, the permanent rule or set of rules must be adopted by a unanimous vote of the board or commission members present and voting on the rule or set of rules. Provided, however, that if the rule or set of rules is required by federal law, including a rule or set of rules necessary to maintain compliance with a program delegated to the State from a federal agency, the permanent rule or set of rules must be adopted by a vote of at least two-thirds of the board or commission members present and voting on the rule or set of rules.

(c) This section shall apply to all rules adopted pursuant to Article 2A of Chapter 150B of the General Statutes, including rules undergoing periodic review and readoption under G.S. 150B-21.3A.

(d) For purposes of this section, "aggregate financial cost" means the amount of costs to all persons affected identified in a substantial economic impact analysis conducted according to G.S. 150B-21.4(b1), not inclusive of benefits."

SECTION 2. This section is effective when it becomes law and applies to rules adopted on or after that date.