

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 434

Short Title: Regulatory Mandates Limited.

(Public)

Sponsors: Representatives Joye; Alphin, Brawley, Edwards, Gardner, Hall, Howard, R. Hunter, Ives, Jenkins, Lemmond, McCombs, McCrary, McLawhorn, Mercer, Mitchell, Nichols, C. Preston, Smith, Stewart, R. Thompson, and Wilkins.

Referred to: Judiciary I.

March 17, 1993

A BILL TO BE ENTITLED

1
2 AN ACT TO AMEND THE LAWS OF NORTH CAROLINA TO LIMIT CERTAIN
3 UNFUNDED REGULATORY MANDATES TO COUNTIES AND CITIES BY
4 THE STATE OF NORTH CAROLINA AND TO AMEND THE GENERAL
5 STATUTES TO MAKE MANDATORY THE PREPARATION OF FISCAL
6 NOTES FOR PROPOSED REGULATIONS THAT COULD REQUIRE
7 COUNTIES AND CITIES TO SPEND FUNDS.

8 The General Assembly of North Carolina enacts:

9 Section 1. G.S. 150B-19 reads as rewritten:

10 **"§ 150B-19. Restrictions on what can be adopted as a rule.**

11 An agency may not adopt a rule that does one or more of the following:

- 12 (1) Implements or interprets a law unless that law or another law
13 specifically authorizes the agency to do so.
14 (2) Enlarges the scope of a profession, occupation, or field of endeavor for
15 which an occupational license is required.
16 (3) Imposes criminal liability or a civil penalty for an act or omission,
17 including the violation of a rule, unless a law specifically authorizes
18 the agency to do so or a law declares that violation of the rule is a
19 criminal offense or is grounds for a civil penalty.
20 (4) Repeats the content of a law, a rule, or a federal regulation.

- 1 (5) Establishes a reasonable fee or other reasonable charge for providing a
2 service in fulfillment of a duty unless a law specifically authorizes the
3 agency to do so or the fee or other charge is for one of the following:
4 a. A service to a State, federal, or local governmental unit.
5 b. A copy of part or all of a State publication or other document,
6 the cost of mailing a document, or both.
7 c. A transcript of a public hearing.
8 d. A conference, workshop, or course.
9 e. Data processing services.
- 10 (6) Allows the agency to waive or modify a requirement set in a rule
11 unless a rule establishes specific guidelines the agency must follow in
12 determining whether to waive or modify the requirement.
- 13 (7) Requires a county or municipality to spend funds unless funds have
14 been appropriated by the General Assembly that will be sufficient to
15 fund the expenditure at the time the rule becomes effective or the
16 expenditure is required by a federal law requirement or required for
17 eligibility for a federal entitlement, which federal requirement
18 specifically contemplates actions by counties or municipalities for
19 compliance."
- 20 Sec. 2. G.S. 150B-21.2(a) reads as rewritten:
- 21 "(a) Notice. – Before an agency adopts a permanent rule, it must publish notice of
22 its intent to adopt a permanent rule in the North Carolina Register and as required by
23 any other law. The notice published in the North Carolina Register must include all of
24 the following:
- 25 (1) Either the text of the proposed rule or a statement of the subject matter
26 of the proposed rule making.
- 27 (2) A short explanation of the reason for the proposed action.
- 28 (3) A citation to the law that gives the agency the authority to adopt the
29 proposed rule, if the notice includes the text of the proposed rule, or a
30 citation to the law that gives the agency the authority to adopt a rule on
31 the subject matter of the proposed rule making, if the notice includes
32 only a statement of the subject matter of the proposed rule making.
- 33 (4) The proposed effective date of the proposed rule, if the notice includes
34 the text of the proposed rule, or the proposed effective date of a rule
35 adopted on the subject matter of the proposed rule making, if the
36 notice includes only a statement of the subject matter of the proposed
37 rule making.
- 38 (5) The date, time, and place of any public hearing scheduled on the
39 proposed rule or subject matter of the proposed rule making.
- 40 (6) Instructions on how a person may demand a public hearing on a
41 proposed rule if the notice does not schedule a public hearing on the
42 proposed rule and subsection (c) requires the agency to hold a public
43 hearing on the proposed rule when requested to do so.

- 1 (7) The period of time during which and the person to whom written
2 comments may be submitted on the proposed rule or subject matter of
3 the proposed rule making.
- 4 (8) If a fiscal note has been prepared for the proposed rule or will be
5 prepared when a rule is proposed on the subject matter of the proposed
6 rule making, a statement that a copy of the fiscal note can be obtained
7 from the agency.
- 8 (9) If a fiscal note is required by G.S. 150B-21.4 or G.S. 120-30.48, a
9 statement that a copy of the fiscal note has been provided to the Joint
10 Legislative Commission on Governmental Operations of the General
11 Assembly, the Fiscal Research Division of the General Assembly, the
12 North Carolina Association of County Commissioners, and the North
13 Carolina League of Municipalities."

14 Sec. 3. G.S. 150B-21.4 reads as rewritten:

15 "**§ 150B-21.4. Fiscal notes on rules.**

16 (a) State Funds. – Before an agency publishes in the North Carolina Register the
17 proposed text of a permanent rule change that would require the expenditure or
18 distribution of funds subject to the Executive Budget Act, Article 1 of Chapter 143, it
19 must submit the text of the proposed rule change and a fiscal note on the proposed rule
20 change to the Director of the Budget and obtain certification from the Director that the
21 funds that would be required by the proposed rule change are available. The fiscal note
22 must state the amount of funds that would be expended or distributed as a result of the
23 proposed rule change and explain how the amount was computed. The Director of the
24 Budget must certify a proposed rule change if funds are available to cover the
25 expenditure or distribution required by the proposed rule change.

26 (b) Local Funds. – Before an agency publishes in the North Carolina Register the
27 proposed text of a permanent rule change that ~~would affect the expenditures or revenues of~~
28 ~~a unit of local government, could require a county or municipality to spend funds or affect~~
29 the revenues of local government, it must submit the text of the proposed rule change
30 and a fiscal note on the proposed rule change to the Fiscal Research Division of the
31 General Assembly, Joint Legislative Commission on Governmental Operations of the
32 General Assembly, the Fiscal Research Division of the General Assembly, the Office of
33 State Budget and Management, the North Carolina Association of County
34 Commissioners, and the North Carolina League of Municipalities. The fiscal note must
35 state the amount by which the proposed rule change would increase or decrease expenditures or
36 revenues of a unit of local government and must explain how the amount was computed. The
37 fiscal note shall identify and estimate, for the first five fiscal years the proposed rule
38 would be in effect, all costs of the proposed rule. The fiscal note shall indicate whether
39 there has been an appropriation by the General Assembly that will be sufficient to fund,
40 at the time the proposed rule would become effective, any expenditures toward
41 compliance with the proposed rule by counties or municipalities affected by the
42 proposed rule. If, after careful investigation, the agency determines that no dollar
43 estimate is possible, the note shall contain a statement to that effect, setting forth the

1 reasons why no dollar amount can be given. No comment or opinion shall be included
2 in the fiscal note with regard to the merits of the rule for which it is prepared.

3 (c) ~~Errors. – An erroneous fiscal note prepared in good faith does not affect the~~
4 ~~validity of a rule prepared by an agency that was not prepared after careful investigation~~
5 ~~or that is in substantial error shall invalidate the rule for which the erroneous fiscal note~~
6 ~~was prepared. An erroneous fiscal note prepared by an agency in good faith after~~
7 ~~careful investigation shall not affect the validity of the rule for which it was prepared.~~

8 (d) Rules Invalidated. – If the preparation of a fiscal note for a proposed rule is
9 required by G.S. 120-30.48 or by subsection (b) of this section and a fiscal note is not
10 prepared for the proposed rule, then the failure to prepare the fiscal note shall invalidate
11 the rule."

12 Sec. 4. G.S. 120-30.48 reads as rewritten:

13 **"§ 120-30.48. Fiscal impact of administrative rules.**

14 ~~An agency is required to prepare a fiscal note on a proposed administrative rule that~~
15 ~~affects the expenditures or revenues of a unit of local government as provided in G.S.~~
16 ~~150B-21.4. Any State agency authorized to adopt rules under Article 2A of Chapter~~
17 ~~150B of the General Statutes or any State agency otherwise authorized by statute to~~
18 ~~adopt regulations affecting local governments is required to prepare a fiscal note for~~
19 ~~every proposed administrative rule that could require a county or municipality to spend~~
20 ~~funds. The fiscal note shall be prepared in accordance with G.S. 150B-21.4."~~

21 Sec. 5. This act is effective upon ratification.