

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 415
HOUSE BILL 895

AN ACT TO PROVIDE NOTICE OF FEDERAL MANDATES BY REQUIRING THE CERTIFICATION OF PROPOSED LEGISLATION AND RULES PURPORTED TO BE REQUIRED BY FEDERAL LAW, TO PROVIDE FOR REVIEW BY THE GOVERNOR OF ADMINISTRATIVE RULES THAT WOULD INCREASE OR DECREASE EXPENDITURES OR REVENUES OF UNITS OF LOCAL GOVERNMENT, TO AMEND THE LOCAL GOVERNMENT FISCAL INFORMATION ACT TO REQUIRE THE PREPARATION OF FISCAL NOTES FOR CERTAIN PROPOSED LEGISLATION, AND TO PROVIDE FOR THE COMPILATION OF THE COSTS OF FEDERAL MANDATES ON THE EXPENDITURES AND REVENUES OF STATE GOVERNMENT AND LOCAL GOVERNMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 150B-21 reads as rewritten:

"§ 150B-21. **Agency must designate rule-making ~~coordinator~~. coordinator; duties of coordinator.**

(a) Each agency must designate one or more rule-making coordinators to oversee the agency's rule-making functions. The coordinator ~~must prepare notices of public hearings, coordinate access to the agency's rules, and shall~~ serve as the liaison between the agency, other agencies, units of local government, and the public in the rule-making process. The coordinator shall report directly to the agency head.

(b) The rule-making coordinator shall be responsible for the following:

- (1) Preparing notices of public hearings.
- (2) Coordinating access to the agency's rules.
- (3) Screening all proposed rule actions prior to publication in the North Carolina Register to assure that an accurate fiscal note has been completed as required by G.S. 150B-21.4(b).
- (4) Consulting with the North Carolina Association of County Commissioners and the North Carolina League of Municipalities to determine which local governments would be affected by any proposed rule action.
- (5) Providing the North Carolina Association of County Commissioners and the North Carolina League of Municipalities with copies of all fiscal notes required by G.S. 150B-21.4(b), prior to the publication of proposed rules in the North Carolina Register.

(6) Coordinating the submission of proposed rules to the Governor as provided by G.S. 150B-21.26.

(c) At the earliest point in the rule-making process and in consultation with the North Carolina Association of County Commissioners, the North Carolina League of Municipalities, and with samples of county managers or city managers, as appropriate, the rule-making coordinator shall lead the agency's efforts in the development and drafting of any rules or rule changes that could:

- (1) Require any unit of local government, including a county, city, school administrative unit, or other local entity funded by or through a unit of local government to carry out additional or modified responsibilities;
- (2) Increase the cost of providing or delivering a public service funded in whole or in part by any unit of local government; or
- (3) Otherwise affect the expenditures or revenues of a unit of local government.

(d) The rule-making coordinator shall send to the Office of State Budget and Management for compilation a copy of each final fiscal note prepared pursuant to G.S. 150B-21.4(b).

(e) The rule-making coordinator shall compile a schedule of the administrative rules and amendments expected to be proposed during the next fiscal year. The coordinator shall provide a copy of the schedule to the Office of State Budget and Management in a manner proposed by that Office.

(f) Whenever an agency proposes a rule that is purported to implement a federal law, or required by or necessary for compliance with federal law, or on which the receipt of federal funds is conditioned, the rule-making coordinator shall:

- (1) Attach to the proposed rule a certificate prepared by the rule-making coordinator identifying the federal law requiring adoption of the proposed rule. The certification shall contain a statement setting forth the reasons for why the proposed rule is required by law. If all or part of the proposed rule is not required by federal law or exceeds the requirements of federal law, then the certification shall state the reasons for that opinion. No comment or opinion shall be included in the certification with regard to the merits of the proposed rule; and
- (2) The rule-making coordinator shall maintain a copy of the federal law and shall provide to the Office of State Budget and Management for compilation the citation to the federal law requiring or pertaining to the proposed rule."

Sec. 2. G.S. 150B-21.4(b) reads as rewritten:

"(b) Local Funds. – Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would affect the expenditures or revenues of a unit of local government, it must submit the text of the proposed rule change and a fiscal note on the proposed rule change to the Office of the Governor as provided by G.S. 150B-21.26, the Fiscal Research Division of the General Assembly, the Office of State Budget and Management, the North Carolina Association of County Commissioners, and the North Carolina League of Municipalities. The fiscal note must

state the amount by which the proposed rule change would increase or decrease expenditures or revenues of a unit of local government and must explain how the amount was computed."

Sec. 3. Article 2A of Chapter 150B of the General Statutes is amended by adding a new Part to read:

"Part 4. Rules Affecting Local Governments.

"§ 150B-21.26. Governor to conduct preliminary review of certain administrative rules.

(a) Preliminary Review. – Before an agency adopts a permanent rule that would affect the expenditures or revenues of a unit of local government, and at least 30 days prior to publishing notice of its intent to adopt such permanent rule in the North Carolina Register as required by G.S. 150B-21.2, an agency shall submit the rule to the Governor for preliminary review.

(b) Submission. – To facilitate the Governor's preliminary review of a permanent rule as required by subsection (a) of this section, the agency shall submit to the Governor the following:

- (1) Either the text of the proposed rule or a statement of the subject matter of the proposed rule.
- (2) A short explanation of the reason for the proposed action.
- (3) A fiscal note stating the amount by which the proposed rule change would increase or decrease expenditures or revenues of a unit of local government and explaining how the amount was computed.

(c) Scope. – The Governor's preliminary review of a proposed rule that would affect the expenditures or revenues of a unit of local government shall include consideration of the following:

- (1) The agency's explanation of the reason for the proposed action.
- (2) Any unanticipated effects of the proposed action on local government budgets.
- (3) The potential costs of the proposed action weighed against the potential risks to the public of not taking the proposed action.

"§ 150B-21.27. Minimizing the effects of rules on local budgets.

(a) In adopting rules that would increase or decrease the expenditure or revenues of a unit of local government, the agency shall consider the timing for implementation of the proposed rule as part of the preparation of the fiscal note required by G.S. 150B-21.4(b).

(b) In cases where the computation of costs in a fiscal note indicates that the proposed rule action will disrupt the budget process as set out in the Local Government Budget and Fiscal Control Act, Article 3 of Chapter 159 of the General Statutes, the agency shall establish the effective date of the rule or action as the later of July 1 of the fiscal year following publication of the rule in the North Carolina Register or six months following publication.

(c) If conditions beyond the control of an agency compel an agency to adopt rules with other than the July 1 effective date, the agency shall include a statement with the fiscal note explaining the basis for the effective date.

"§ 150B-21.28. Role of the Office of State Budget and Management.

The Office of State Budget and Management shall:

- (1) Compile an annual summary of the projected fiscal impact on units of local government of State administrative rules adopted during the preceding fiscal year.
- (2) Compile from information provided by each agency schedules of anticipated rule actions for the upcoming fiscal year.
- (3) Provide the Governor, the General Assembly, the North Carolina Association of County Commissioners, and the North Carolina League of Municipalities with a copy of the annual summary and schedules by no later than March 1 of each year."

Sec. 4. G.S. 150B-21.11 reads as rewritten:

"§ 150B-21.11. Procedure when Commission approves permanent rule.

(a) When the Commission approves a permanent rule, it must notify the agency that adopted the rule of the Commission's approval and must deliver the approved rule to the Codifier of Rules. The Commission must deliver an approved rule by the end of the month in which the Commission approved the rule, unless the agency asks the Commission to delay the delivery of the rule.

(b) When the Commission approves a permanent rule that would increase or decrease expenditures or revenues of a unit of local government, the Commission shall notify the Governor and deliver a copy of the approved rule to the Governor by the end of the month in which the Commission approved the rule."

Sec. 5. G.S. 150B-21.12(a) reads as rewritten:

"(a) Action. – When the Commission objects to a permanent rule, it must send the agency that adopted the rule a written statement of the objection and the reason for the objection. The agency that adopted the rule must take one of the following actions:

- (1) Change the rule to satisfy the Commission's objection and submit the revised rule to the Commission.
- (2) Submit a written response to the Commission indicating that the agency has decided not to change the rule.

An agency that is not a board or commission must take one of these actions within 30 days after receiving the Commission's statement of objection. A board or commission must take one of these actions within 30 days after receiving the Commission's statement of objection or within 10 days after the board or commission's next regularly scheduled meeting, whichever comes later.

When an agency changes a rule in response to an objection by the Commission, the Commission must determine whether the change satisfies the Commission's objection. If it does, the Commission must approve the rule. If it does not, the Commission must send the agency a written statement of the Commission's continued objection and the reason for the continued objection.

A rule to which the Commission has objected remains under review by the Commission until the agency that adopted the rule decides not to satisfy the Commission's objection and makes a written request to the Commission to return the rule to the agency. When the Commission returns a rule to which it has objected, it may

send to the President of the Senate and each member of the General Assembly a report of its objection to the rule.

When the Commission objects to a permanent rule that would increase or decrease expenditures or revenues of a unit of local government, the Commission shall notify the Governor and deliver to the Governor a copy of the written statement of the objection and the reason for the objection. When the Commission returns to a rule to which it has objected that would increase or decrease expenditures or revenues of a unit of local government, it shall send to the Governor a report of its objection to the rule."

Sec. 6. G.S. 120-30.45 reads as rewritten:

"§ 120-30.45. Fiscal note on legislation.

~~At the request of the sponsor of any bill or resolution affecting the expenditures or revenues of units of local government of this State, or of the chairman of the committee to which such a measure is referred, or of any of the chairmen of the Local Government Committees, or of any of the chairmen of the Appropriations, Finance, Rules, or Senate Ways and Means Committees, the Fiscal Research Division shall prepare a fiscal note containing an estimate of the impact of the measure on the finances of the units of local government affected during the ensuing two fiscal years.~~

(a) Every bill and resolution introduced in the General Assembly proposing any change in the law that could increase or decrease expenditures or revenues of a unit of local government shall have attached to it at the time of its consideration by the General Assembly a fiscal note prepared by the Fiscal Research Division. The fiscal note shall identify and estimate, for the first five fiscal years the proposed change would be in effect, all costs of the proposed legislation. If, after careful investigation, the Fiscal Research Division determines that no dollar estimate is possible, the note shall contain a statement to that effect, setting forth the reasons why no dollar amount can be given. No comment or opinion shall be included in the fiscal note with regard to the merits of the measure for which the note is prepared. However, technical and mechanical defects may be noted.

(b) The sponsor of each bill or resolution to which this section applies shall present a copy of the bill or resolution with the request for a fiscal note to the Fiscal Research Division. Upon receipt of the request and the copy of the bill or resolution, the Fiscal Research Division shall prepare the fiscal note as promptly as possible. The Fiscal Research Division shall prepare the fiscal note and transmit it to the sponsor within two weeks after the request is made, unless the sponsor agrees to an extension of time.

(c) This fiscal note shall be attached to the original of each proposed bill or resolution that is reported favorably by any committee of the General Assembly, but shall be separate from the bill or resolution and shall be clearly designated as a fiscal note. A fiscal note attached to a bill or resolution pursuant to this subsection is not a part of the bill or resolution and is not an expression of legislative intent proposed by the bill or resolution.

(d) If a committee of the General Assembly reports favorably a proposed bill or resolution with an amendment that proposes a change in the law that could increase or decrease expenditures or revenues of a unit of local government, the chair of the

committee shall obtain from the Fiscal Research Division and attach to the amended bill or resolution a fiscal note as provided in this section.

(e) The Office of State Budget and Management, the Department of Revenue, the Department of the State Treasurer, the Department of the State Auditor, the State department most directly concerned, and, where appropriate, officials of units of local government, upon the request of Fiscal Research Division, shall assist the Fiscal Research Division in the preparation of the fiscal note.

(f) Copies of fiscal notes prepared by the Fiscal Research Division shall be furnished to the sponsor of the bill or resolution, the chairmen of the Local Government Committees, and the chairmen of the Appropriations, Finance, Rules, or the Senate Ways and Means Committees as appropriate."

Sec. 7. Article 6D of Chapter 120 of the General Statutes is amended by adding a new section to read:

"§ 120-30.49. Compiling federal mandates; annual report.

(a) The Fiscal Research Division shall, in consultation with the appropriate staff of the Research and Bill Drafting Divisions, make an annual report to the General Assembly pertaining to the fiscal effect of federal mandates on, or federal law on which is conditioned the receipt of federal funds by the State and units of local government. The annual report on federal mandates shall include the following:

- (1) A listing of federal laws that require the State and any unit of local government, including a county, city, school administrative unit, or other local entity funded by or through a unit of local government to carry out additional or modified responsibilities;
- (2) An estimate of the amount of any increase or decrease in the costs to the State and units of local government in providing or delivering public services required by federal law that are funded in whole or in part by the State or units of local government; and
- (3) A listing of any other federal actions directly affecting the expenditures or revenues of the State and units of local government.

(b) The Office of State Budget and Management shall assist the Fiscal Research Division in the preparation of the annual report on federal mandates upon the request of the Division. Each State department, agency, or institution shall cooperate fully with the Fiscal Research Division in compiling the annual report on federal mandates and shall supply information to the Division in accordance with G.S. 120-32.01. The North Carolina Association of County Commissioners, the North Carolina League of Municipalities, and units of local government shall cooperate with the Fiscal Research Division in compiling the annual report on federal mandates, as requested, by supplying information relevant to the expenditures or revenues of units of local government.

(c) Copies of the annual report on federal mandates to the State and units of local government shall be provided to members of the General Assembly and to the Governor, the Office of State Budget and Management, the North Carolina Association of County Commissioners, and the North Carolina League of Municipalities."

Sec. 8. Article 7A of Chapter 120 of the General Statutes is amended by adding a new section to read:

"§ 120-36.8. Certification of legislation required by federal law.

(a) Every bill and resolution introduced in the General Assembly proposing any change in the law which purports to implement federal law or to be required or necessary for compliance with federal law, or on which is conditioned the receipt of federal funds shall have attached to it at the time of its consideration by the General Assembly a certification prepared by the Fiscal Research Division, in consultation with the Bill Drafting and Research Divisions, identifying the federal law requiring passage of the bill or resolution. The certification shall contain a statement setting forth the reasons why the bill or resolution is required by federal law. If the bill or resolution is not required by federal law or exceeds the requirements of federal law, then the certification shall state the reasons for that opinion. No comment or opinion shall be included in the certification with regard to the merits of the measure for which the certification is prepared. However, technical and mechanical defects may be noted.

(b) The sponsor of each bill or resolution to which this section applies shall present a copy of the bill or resolution with the request for certification to the Fiscal Research Division. Upon receipt of the request and the copy of the bill or resolution, the Fiscal Research Division shall consult with the Bill Drafting and Research Divisions, and may consult with the Office of State Budget and Management or any State agency on preparation of the certification as promptly as possible. The Fiscal Research Division shall prepare the certification and transmit it to the sponsor within two weeks after the request is made, unless the sponsor agrees to an extension of time.

(c) This certification shall be attached to the original of each proposed bill or resolution that is reported favorably by any committee of the General Assembly, but shall be separate from the bill or resolution and shall be clearly designated as a certification. A certification attached to a bill or resolution pursuant to this section is not a part of the bill or resolution and is not an expression of legislative intent proposed by the bill or resolution.

(d) If a committee of the General Assembly reports favorably a proposed bill or resolution with an amendment proposing any change in the law which purports to implement federal law or to be required or necessary for compliance with federal law, the chair of the committee shall obtain from the Fiscal Research Division and attach to the amended bill or resolution a certification as provided in this section."

Sec. 9. This act becomes effective October 1, 1995.

In the General Assembly read three times and ratified this the 11th day of July, 1995.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives