

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003**

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**SENATE BILL 540**

Short Title: APA Rules/Economic Impact Review. (Public)

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Sponsors: Senators Hartsell; Foxx and Smith.

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Referred to: Commerce.

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March 26, 2003

1 A BILL TO BE ENTITLED  
2 AN ACT PROVIDING FOR A SEPARATE PROCESS REQUIRING AGENCIES TO  
3 REVIEW THE ECONOMIC IMPACT OF PROPOSED RULES ON SMALL  
4 BUSINESS BEFORE PUBLISHING THE PROPOSED TEXT OF THE RULE IN  
5 THE NORTH CAROLINA REGISTER.

6 The General Assembly of North Carolina enacts:

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

9 "Part 2A. Regulatory Flexibility.

10 "**§ 150B-21.7A. Economic impact analysis for rules affecting small business.**

- 11 (a) Short title. – This Part may be cited as the Regulatory Flexibility Act of 2003.  
12 (b) Findings. – The General Assembly finds the following:  
13 (1) A vibrant and growing small business sector is critical to creating jobs  
14 in a dynamic economy.  
15 (2) Small businesses bear a disproportionate share of regulatory costs and  
16 burdens.  
17 (3) Fundamental changes that are needed in the regulatory and  
18 enforcement culture of State agencies to make them more responsive  
19 to small business can be made without compromising the statutory  
20 mission of the agency.  
21 (4) When adopting rules to protect the health, safety, and economic  
22 welfare of the State, State agencies should seek to achieve statutory  
23 goals as effectively and efficiently as possible without imposing  
24 unnecessary burdens on employers.  
25 (5) Uniform regulatory and reporting requirements can impose  
26 unnecessary and disproportionately burdensome demands including  
27 legal, accounting, and consulting costs upon small businesses with  
28 limited resources.

1           (6) The failure to recognize differences in the scale and resources of  
2 regulated businesses can adversely affect competition in the  
3 marketplace, discourage innovation, and restrict improvements in  
4 productivity.

5           (7) Unnecessary rules create entry barriers in many industries and  
6 discourage potential entrepreneurs from introducing beneficial  
7 products and processes.

8           (8) The practice of treating all regulated businesses the same 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           (9) Alternative regulatory approaches that do not conflict with the stated  
13 objective of applicable statutes may be available to minimize the  
14 significant economic impact of rules on small businesses.

15           (c) Definition. – As used in this Part, the term 'small business' means a business  
16 entity, including its affiliates, that is both independently owned and operated and  
17 employs fewer than 500 full-time employees or has gross annual sales of less than six  
18 million dollars (\$6,000,000).

19 **"§ 150B-21.7B. Economic impact statements.**

20           (a) Before an agency publishes in the North Carolina Register the proposed text  
21 of a permanent rule that would have an adverse impact on small businesses, the agency  
22 shall prepare an economic impact statement that includes the following:

23           (1) An identification and estimate of the number of small businesses  
24 subject to the proposed rule.

25           (2) The projected reporting, record keeping, and other administrative costs  
26 required for compliance with the proposed rule, including the type of  
27 professional skills necessary for preparation of the report or record.

28           (3) A statement of the probable effect on impacted small businesses.

29           (4) A description of any less intrusive or less costly alternative methods of  
30 achieving the purpose of the proposed rule.

31 **"§ 150B-21.7C. Rules affecting small businesses.**

32           (a) Before an agency publishes in the North Carolina Register the proposed text  
33 of a permanent rule that would impact small businesses, the agency shall prepare a  
34 regulatory flexibility analysis in which the agency shall, where consistent with health,  
35 safety, and environmental and economic welfare, consider utilizing regulatory methods  
36 that will accomplish the objectives of applicable statutory authority, while minimizing  
37 the adverse impact on small businesses. The agency shall consider each of the following  
38 methods of reducing the impact of the proposed rule on small businesses:

39           (1) The establishment of less stringent compliance or reporting  
40 requirements for small businesses.

41           (2) The establishment of less stringent schedules or deadlines for  
42 compliance or reporting requirements for small businesses.

43           (3) The consolidation or simplification of compliance or reporting  
44 requirements for small businesses.

1           (4) The establishment of performance standards for small businesses to  
2 replace design or operational standards required in the proposed rule.

3           (5) The exemption of small businesses from all or any part of the  
4 requirements of the proposed rule.

5           (b) Before an agency publishes in the North Carolina Register the proposed text  
6 of a permanent rule that would impact small businesses, the agency shall notify the  
7 North Carolina Department of Commerce of its intent to publish the proposed text in the  
8 North Carolina Register. Upon receipt of notice from the agency, the Department of  
9 Commerce shall advise and assist the agency in complying with this section.

10          (c) A small business that is adversely affected or aggrieved by the adoption of a  
11 permanent rule subject to this section may seek judicial review of the agency's  
12 compliance with this section. The small business may seek judicial review under this  
13 subsection during the period commencing on the date the permanent rule becomes  
14 effective and end one year from that date.

15 **"§ 150B-21.7D. Periodic review of rules.**

16          (a) Within four years of the date this Part becomes effective, each agency shall  
17 review existing rules adopted prior to the effective date of this Part to determine  
18 whether the rules should be continued without change, amended, or repealed, consistent  
19 with the underlying statutory authority for the rule, in order to minimize adverse impact  
20 of the rules on small businesses.

21          (b) Rules that become effective after the date this Part becomes effective shall be  
22 reviewed within five years of the date the rule becomes effective, and every five years  
23 thereafter to ensure that the rule minimizes the adverse economic impact on small  
24 businesses in a manner consistent with the purposes of the underlying statutory  
25 authority for the rule.

26          (c) In reviewing rules to minimize the adverse economic impact on small  
27 businesses, the agency shall consider the following:

28           (1) The continued need for the rule.

29           (2) The nature of complaints or comments received from the public  
30 concerning the rule.

31           (3) The complexity of the rule.

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

34           (5) The length of time since the rule has been evaluated or the degree to  
35 which technology, economic conditions, or other factors have changed  
36 in the area affected by the rule.

37           **SECTION 2.** G.S. 150B-21.9 reads as rewritten:

38 **"§ 150B-21.9. Standards and timetable for review by Commission.**

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

41           (1) It is within the authority delegated to the agency by the General  
42 Assembly.

43           (2) It is clear and unambiguous.

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

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

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

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

22          **SECTION 3.** This act becomes effective October 1, 2004.