

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Fiscal Note

BILL NUMBER: House Bill 587 (First Edition)

SHORT TITLE: North Carolina Jobs Bill.

SPONSOR(S): Representatives Torbett, Bradley, Hastings, and H. Warren

FISCAL IMPACT

Yes (X) No () No Estimate Available ()

FY 2011-12 FY 2012-13 FY 2013-14 FY 2014-15 FY 2015-16

REVENUES

Judicial Branch

Exact amount cannot be determined

EXPENDITURES

General Fund

Judicial Branch

*** Indeterminate Fiscal Impact ***

Office of State Budget

& Management	\$73,546	\$78,641	\$84,067	\$88,578	\$92,380
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Office of Administrative

& Hearings	\$528,980	\$545,637	\$579,088	\$606,575	\$630,022
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General Assembly

\$29,363 to \$30,037	\$0	\$0	\$0	\$0	\$0
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Other State Agencies

*** Indeterminate Fiscal Impact ***

Non-General Fund

Utilities Commission/

Public Staff *** Indeterminate Fiscal Impact. See Assumptions & Methodology ***

POSITIONS (cumulative):

None Anticipated

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:

Office of State Budget & Management, General Assembly, All State Agencies that Develop Rules,
Utilities Commission/Public Staff

EFFECTIVE DATE: July 1, 2011

BILL SUMMARY:

House Bill 587, North Carolina Jobs Bill, makes several changes to the Administrative Procedures Act (G.S. Chapter 150B). First, HB 587 adds definitions for “significant rule change” and “small business” to the definitions applicable to the Administrative Procedure Act (G.S. 105B-2). A significant rule change is defined as a proposed rule that may: (1) have a significant effect on the economy, state, or local funds, (2) create an inconsistency with an action taken or planned by another agency, or (3) raise novel policy issues. A small business is defined as a business entity, including affiliates, that (1) is independently owned and operated and (2) either has gross annual sales less than \$6 million or employs fewer than 500 full-time employees.

The bill creates a new G.S. 150B-19(8), which prohibits an agency from adopting a rule that exceeds standards or requirements established by federal law or regulation, unless expressly required by an act of the General Assembly.

HB 587 makes several changes to G.S. 150B-21.2, Procedures for Adopting a Permanent Rule. HB 587 requires that agencies prepare or obtain, when required by G.S. 150B-21.4, a fiscal note, cost-benefit analysis, and small business regulatory flexibility analysis before adopting a permanent rule. The new G.S. 150B-21.4(b6) added by HB 587 defines small business regulatory flexibility analysis. Under current law, only a fiscal note is required. It also makes changes to the notice published regarding the rule, adding the following information to the current notice requirements:

- A short summary of the existing regulations;
- An explanation of how the proposed rule would change those regulations,
- The citation of the law giving the agency authority to adopt the rule and a detailed explanation of why the citation provides the necessary authority;
- Information on how the fiscal note, cost-benefit analysis, or small business regulatory flexibility analysis was conducted and how to obtain copies, if applicable; and
- The right to judicial review for any person seeking to challenge the rule adoption.

HB 587 requires an agency to prepare or obtain from the Office of State Budget and Management (OSBM) a cost-benefit analysis for any “significant rule change”, currently referred to as a “substantial economic impact,” that is not identical to a federal regulation the agency is required to adopt. If the agency prepares the cost benefit analysis, OSBM must review and approve that analysis. Any rule with an aggregate financial impact on all persons affected of at least \$3 million in a 12 -month period is considered to be a significant rule change. Currently, only a fiscal note is required on such a rule. Three new items are required in the cost benefit analysis: (1) a comprehensive list of the costs and benefits; (2) alternatives considered instead of the proposed rule and why the proposed rule was selected instead of one of the alternatives; and (3) other factors that OSBM deems necessary for an exhaustive cost benefit analysis.

Per G.S. 150B-21.4(b3), OSBM is to reject the proposed rule based on the cost-benefit analysis if: (1) the projected costs exceed projected benefits; (2) an alternative is less costly and likely to achieve the same objective; or (3) the rule change would not achieve the stated purpose. G.S. 150B-21.4(b4) directs OSBM to approve a proposed rule if it (1) minimizes the economic impact to the greatest extent possible and (2) responds to at least one of five specified considerations (a

threat to public health, safety, or welfare; an act of the General Assembly; an act of Congress or federal regulation; a change in federal or State budgetary policy; or a court order).

Subsection (b5) requires a periodic review of all rules. Each agency is directed to review all of its rules within six months of the adoption of HB 587 to determine whether each rule should be continued. Following this review, each agency is required to submit a report to the Joint Legislative Administrative Procedure Oversight Committee to justify the existence of its rules. Rules adopted after the enactment of HB 587 shall be reviewed every year to minimize their economic impact; detailed factors to consider in this review are listed. Agencies must provide this list and a review of its economic impact to OSBM annually. HB 587 lays out reasons that OSBM shall direct an agency to amend or rescind a rule. OSBM is directed to submit an annual report of its findings to the Commission.

HB 587 amends G.S. 150B-21.9, Standards and Timetables for Review by the Rules Review Commission (The Commission), clarifying that the Commission must determine whether the rule is within the clear authority delegated to the agency by the General Assembly, and no reasonable argument can be made that the authority does not exist. The Commission must also determine that the rule is reasonably necessary to implement or interpret a state law (currently, state law or federal law or regulation), and that the General Assembly likely intended for the agency to adopt the rule. The Commission must also determine that the OSBM properly approved the cost-benefit analysis and small business regulatory flexibility analysis. The Commission may ask OSBM to determine if the rule may have an adverse impact on small businesses and consequently requires a small business regulatory flexibility analysis, and directs the Commission to make the inquiry if an analysis was not prepared and the Commission receives a written request for determination. HB 587 also deletes G.S. 150B-21.9(a1), which created a rebuttable presumption that a rule was adopted in accordance with Part 2 (Adoption of Rules) of the Administrative Procedures Act.

OSBM shall provide an annual summary of its findings on agency rules to the Commission, explaining why the OSBM directed each agency to rescind or amend a rule, or decided that no action on a rule was necessary. The Commission shall direct OSBM to amend or rescind a rule if the Commission determines that the agency could not demonstrate that (1) there is a continued need for the rule; (2) the complaints or comments concerning the rule do not justify amending or rescinding the rule; (3) the rule is not too complex; (4) the rule does not overlap with other federal, State, and local rules or that such overlap is nominal; and (5) technology, economic conditions, or other factors have not changed in the area affected by the rule. A rule may be amended or rescinded only if the rule is not required to respond to at least one of the following: (1) a serious and unforeseen threat to public health, safety, or welfare; (2) an act of the General Assembly that expressly requires the rule; (3) an act of Congress or federal regulation that requires the rule; (4) a change in federal or State budgetary policy; or (5) a court order.. HB 587 provides that, within one year after the final rule's effective date, any person is entitled to judicial review to determine whether a rule has been properly adopted.

HB 587 also makes changes to the Utilities Commission and the Public Staff in the Utilities Commission. It defines “using and consuming public” as utility consumers solely in their roles as consumers. It also directs the Public Staff in the Utilities Commission to consider only the interests of the using and consuming public in their interest as consumers. The Public Staff may not take

any action that would lead to higher prices unless the prices are clearly justified for more reliable or better utility services. Members of the using and consuming public may petition the Utilities Commission to review whether the Public Staff acted according to this directive, and lays out the specifics steps that the Utilities Commission should take if the Public Staff does not follow this directive.

Lastly, HB 587 creates a 12 member Legislative Study Commission on Occupational Licensing. The Study Commission shall identify outdated and unnecessary occupational licensing laws, identify existing occupations that are regulated but not licensed, and study alternatives to occupational licensing laws that would work effectively. The Study Commission shall report to the 2012 Regular Session of the General Assembly, and will be terminates after filing the report. HB 587 appropriates \$50,000 from the General Fund to the General Assembly for FY2011-12 to fund the Study Commission.

ASSUMPTIONS AND METHODOLOGY:

Expenditures

Judicial Branch

The Administrative Office of the Courts (AOC) stated the proposed legislation allows for a judicial review for any person that seeks to challenge the adoption of a rule. Data from the Office of Administrative Hearings, Rules Division, show that judicial reviews are uncommon, and have lately occurred only once every few years. If these reviews were heard in Superior Court, AOC estimates that the monetary value of each case would be approximately \$353, for Superior Court judge and Deputy Clerk resources.

Each case would be accompanied with a \$160 civil superior court filing fee. From this fee, the General Fund receives \$125.40 per case. Table 1 below contains detail on this fee.

Table 1: Superior Court Civil Filing Fee			
Fee:	Revenue to:	Filing Fee per case:	Amount to General Fund:
General Court of Justice	General Fund	\$122	\$122.00
	State Bar*	\$3	\$0.30
Phone	Court System	\$4	--
Facilities	Local Government*	\$16	\$1.60
Service of Civil Process	Local Government*	\$15	\$1.50
Collection Assistance Fee	General Fund*		
TOTAL		\$160	\$125.40

*Ten percent (10 percent) of the State Bar, Facilities, and Process Served fee is remitted to the General Fund as a collection assistance fee.

Because of indigency cases, it is reasonable to assume that less than 100% of the applicable fees will be collected. There is no available data to estimate the percentage of cases that will be considered indigent for purposes of fee collection.

Overall, in FY 2009-10, a typical felony case took approximately 216 days to dispose in Superior Court. A typical misdemeanor case took approximately 91 days to dispose in District Court. Any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

Office of State Budget and Management

The Office of State Budget and Management (OSBM) anticipates that it would need an additional Economic Analyst in order to meet the requirements under Sections 4, 5 and 6 of House Bill 587. This Economic Analyst would have the following duties: 1) prepare the cost-benefit analyses of proposed amendments and new rules; 2) review the cost-benefit analyses and small business impact statements submitted by the agencies; and 3) write the annual summary to be submitted to the Rules Review Commission. OSBM estimates that this bill would cost \$73,546 to administer in FY 2011-12. Table 2 below provides a breakdown of this cost. The recurring cost of House Bill 587 will increase based on inflation in future years.

TABLE 2: Estimated Cost to OSBM to Administer House Bill 587 in FY 2011-12	
Description	Cost
1 Economic Analyst: Salaries and Benefits	\$72,281 R
Communications & Data Processing	\$1,265 R
TOTAL	\$ 73,546

Office of Administrative Hearings

Section 6 of the House Bill 587 requires the Rules Review Commission (RRC) in the Office of Administrative Hearings (OAH) to direct OSBM to amend or rescind a rule if the RRC determines the agency could not demonstrate five specified circumstances. The bill does not specify what the RRC is to review or set out a timeframe.

Assuming that the bill would require the RRC to conduct an annual review of every rule in the Administrative Code, OAH anticipates that it would need at least four additional attorneys and one clerical assistant. OAH expects that it would need an additional attorney for every 6,000 rules reviewed per year, and OAH reports that there are approximately 24,000 rules in the Administrative Code.

OAH reports that the two attorneys currently employed by OAH review approximately 1,200 to 1,600 rules per year on average. While the periodic review required by this bill would be different than the current review process, OAH reports that it would be difficult to envision any meaningful review of the entire Administrative Code on an annual basis by fewer than four attorneys. Not only would the additional 4 attorneys be required to review the rules in the Administrative Code, the attorneys would also need to review the agencies' findings to make any reasonable determination of whether the rules meet the five specified criteria.

OAH estimates that this bill would cost \$528,980 to administer in FY 2011-12. This estimate includes the cost of the salary and benefits for the 5 new employees, purchased services, supplies and equipment. Table 3 below provides a breakdown of this cost. The recurring cost of House Bill 587 will increase based on inflation in future years.

TABLE 3: Estimated Cost to OAH to Administer House Bill 587 in FY 2011-12	
Description	Cost
4 Attorneys: Salaries and Benefits	\$394,287 R
1 Clerical Assistant: Salaries and Benefits	\$49,143 R
Contractual Services for Statistical Software	\$5,000 NR
Rental/Lease Space	\$37,500 R
Communications and Data Processing (Includes \$10,000 for Documentum Software)	\$23,875R
General Administrative Supplies	\$1,500 R
Research/Development and Educational	\$4,800 R
Other Materials and Supplies	\$1,000 R
Equipment/Furniture	\$11,875 NR
TOTAL	\$528,980

If a narrower review is anticipated, OAH reports that the fiscal impact on its operations would perhaps be lower. OAH also reports that the addition of a periodic review to the responsibilities of the RRC could also have a fiscal impact on RRC operations. While note anticipated, OAH reports that it is possible that the additional responsibilities of this bill could require more meetings—which occur once per month.

Utilities Commission/Public Staff

Sections 8 and 9 pertain to the Utilities Commission and Public Staff. The Commission and the Public Staff stated that they have been unable to determine what the fiscal impact of these sections would be. They are interpreting the bill to mean that the Public Staff could never recommend any rate increases or tariff adjustments, even if justified under the provisions of Chapter 62. They state that this could result in the full litigation of proceedings that could have otherwise been settled and thus create additional work for the Commission, which considers the Public Staff's auditing recommendations in determining whether rate increases are appropriate under the law. They further state that they have no way of determining the fiscal impact of prohibiting settlements by the Public Staff, which would lead to more work by the Commission and its staff.

Likewise, Fiscal Research is unable to determine the impact of these sections on the Utilities Commission and Public Staff, but it is likely that there would be some impact and change in staffing needs and requirements.

General Assembly

Section 10.1 of House Bill 587 creates the Legislative Study Commission on Occupational Licensing (Commission). The Governor would appoint 4 members, and at least one of these 4

members would be from the general public. The President Pro Tempore of the Senate and the Speaker of the House would each appoint two public members and two legislative members.

This bill directs the Commission to issue a final report to the 2012 Regular Session of the 2011 General Assembly. The Commission would terminate upon filing the final report. Fiscal Research assumes that the Commission would begin meeting in the 2011 Interim as early as September 2011. This assumption provides the potential for at least 8 monthly meetings with the last meeting scheduled by April 2012 to meet the final report requirement.

The subsistence for legislative members is lower than the subsistence for general public members. Depending upon the combination of the 4 members appointed by the Governor, the cost of the Commission could range from \$29,363 to \$30,037. If 7 legislative members and 5 public members were to hold 8 meetings, the estimated cost for subsistence, travel expenses, and in-house clerical support would be \$29,363. If 4 legislative members and 8 public members were to hold 8 meetings, the estimated cost for subsistence, travel expenses, and in-house clerical support would be \$30,037.

Section 10.4 of the bill allows the Commission to contract consultant services. However, this estimate does not include an allowance for special travel and expenses or other ancillary costs. Section 10.5 of the bill appropriates \$50,000 from the General Fund to the General Assembly to fund the work of the Commission.

Other State Agencies

HB 587 requires that State agencies prepare or obtain, when required by G.S. 150B-21.4, a fiscal note, cost-benefit analysis, and small business regulatory flexibility analysis before adopting a permanent rule. Under current law, only a fiscal note is required. State agencies currently have staffers who have the skills needed to conduct cost-benefit analyses and small business regulatory flexibility analyses. Fiscal Research does not anticipate that this change would have a significant fiscal impact on the State agencies or generate any savings.

Subsection (b5) also requires each agency to review all of its rules within six months of the adoption of HB 587 to determine whether each rule should be continued. Following this review, each agency is required to submit a report to the Joint Legislative Administrative Procedure Oversight Committee to justify the existence of its rules. Rules adopted after the enactment of HB 587 shall be reviewed every year to minimize their economic impact. Fiscal Research is not able to determine whether this section would have a fiscal impact on the operations of each State agency.

SOURCES OF DATA: Bill Summary adapted from Bill Digest H.B. 587 (04/04/0201); Office of Budget and Management; Office of Administrative Hearings; Utilities Commission and Public Staff; Judicial Branch.

TECHNICAL CONSIDERATIONS: None

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