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SENATE BILL DRS45333-SB-15 (01/31)

Short Title: Protection From Government Overreach Act. (Public)

Sponsors: Senators Wells, Gunn, and Wade (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PLACE RESTRICTIONS ON RULES WITH SUBSTANTIAL FINANCIAL
3 COSTS.

4 The General Assembly of North Carolina enacts:

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

7 "**§ 150B-19.4. Requirements on rules with substantial financial costs.**

8 (a) Prohibition. – Notwithstanding any authority given to an agency to adopt a rule, an
9 agency may not adopt a permanent rule or set of rules with a projected aggregate financial cost
10 to all persons affected equal to or greater than one hundred million dollars (\$100,000,000)
11 during any five-year period. The agency's determination of the projected aggregate financial
12 cost of a permanent rule or set of rules shall comply with the requirements of
13 G.S. 150B-21.4(b1). The agency's determination of the projected aggregate financial cost of a
14 permanent rule or set of rules shall not include any financial benefits of the permanent rule or
15 set of rules.

16 (b) Limitation. – If an agency determines that a proposed permanent rule or set of rules
17 will have a projected aggregate financial cost to all persons affected equal to or greater than ten
18 million dollars (\$10,000,000) during any five-year period, the adoption of the permanent rule or
19 set of rules must comply with the following:

20 (1) If the agency is a board, a commission, a council, or other similar unit of
21 government, a certification that the adoption of the rule or set of rules must
22 be approved by at least sixty percent (60%) of those voting on the rule or set
23 of rules.

24 (2) For an agency headed by a member of the Council of State, the adoption of
25 the rule or set of rules must be accompanied by a certification signed by the
26 member of the Council of State indicating the member's review and support
27 of the rule or set of rules.

28 (3) For all other agencies, the adoption of the rule or set of rules must be
29 accompanied by a certification signed by the Governor indicating the
30 Governor's review and support of the rule or set of rules.

31 (c) Legislative Review. – A permanent rule or set of rules subject to the limitation of
32 subsection (b) of this section shall be subject to the provisions of G.S. 150B-21.3(b1) as if,
33 pursuant to G.S. 150B-21.3(b2), the rule or set of rules received written objections from 10 or
34 more persons and a bill specifically disapproving the rule or set of rules was introduced in a
35 house of the General Assembly before the thirty-first legislative day."

36 SECTION 2. G.S. 150B-21.6 reads as rewritten:



1 **"§ 150B-21.6. Incorporating material in a rule by reference.**

2 An agency may incorporate the following material by reference in a rule without repeating
3 the text of the referenced material:

- 4 (1) Another rule or part of a rule adopted by the agency.
5 (2) All or part of a code, standard, or regulation adopted by another ~~agency, the~~
6 ~~federal government, agency~~ or a generally recognized organization or
7 association.
8 (3) Repealed by Session Laws 1997-34, s. 5.
9 (4) All or part of a code, standard, or regulation adopted by the federal
10 government if the agency establishes a procedure by which any change by
11 the federal government is reviewed and approved by the agency within 120
12 days of the change.

13 In incorporating material by reference, the agency must designate in the rule whether or not
14 the incorporation includes subsequent amendments and editions of the referenced material. The
15 agency can change this designation only by a subsequent rule-making proceeding. The agency
16 must have copies of the incorporated material available for inspection and must specify in the
17 rule both where copies of the material can be obtained and the cost on the date the rule is
18 adopted of a copy of the material.

19 A statement in a rule that a rule incorporates material by reference in accordance with
20 former G.S. 150B-14(b) is a statement that the rule does not include subsequent amendments
21 and editions of the referenced material. A statement in a rule that a rule incorporates material
22 by reference in accordance with former G.S. 150B-14(c) is a statement that the rule includes
23 subsequent amendments and editions of the referenced material."

24 **SECTION 3.** G.S. 150B-19.3(a) reads as rewritten:

25 "(a) An agency authorized to implement and enforce State and federal environmental
26 laws may not adopt a permanent rule for the protection of the environment or natural resources
27 that imposes a more restrictive standard, limitation, or requirement than those imposed by
28 federal law or rule, if a federal law or rule pertaining to the same subject matter has been
29 adopted, unless adoption of the rule is required by one of the subdivisions of this subsection. A
30 permanent rule required by a serious and unforeseen threat to public health, safety, or welfare
31 shall be subject to the limitation and legislative review provisions of G.S. 150B-19.4(b) and (c).
32 A permanent rule required by one of the following subdivisions of this subsection shall be
33 subject to the provisions of G.S. 150B-21.3(b1) as if the rule received written objections from
34 10 or more persons under G.S. 150B-21.3(b2):

- 35 (1) ~~A serious and unforeseen threat to the public health, safety, or welfare.~~
36 (2) An act of the General Assembly or United States Congress that expressly
37 requires the agency to adopt rules.
38 (3) A change in federal or State budgetary policy.
39 (4) A federal regulation required by an act of the United States Congress to be
40 adopted or administered by the State.
41 (5) A court order."

42 **SECTION 4.** This act is effective when it becomes law. Sections 1 and 3 apply to
43 proposed permanent and readopted rules published in the North Carolina Register and proposed
44 permanent rules posted on the Web site of the Office of Administrative Hearings on or after
45 August 1, 2017.