

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: North Carolina Office of State Fire Marshal (“OSFM”)

RULE CITATION: 11 NCAC 05A .0901, .0902, .0903, .0904, .0905, .0907, .0908, .0910, .0911,
and .0912

RECOMMENDATION DATE: May 27, 2026

RECOMMENDED ACTION:

- No action
 - X Approve, but note staff’s comment
- Object, based on:
- Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
 - Extend the period of review

COMMENT:

OSFM asserts that these rule submissions do not require a fiscal note because the amendments do not constitute rule changes that would affect units of local government within the meaning of G.S. 150B-21.4(b).

G.S. 150B-21.4(b) requires agencies to draft and submit a fiscal note to the Office of State Budget and Management as provided by G.S. 150B-21.26, the Fiscal Research Division of the General Assembly, the North Carolina Association of County Commissioners, and the North Carolina League of Municipalities for permanent rule changes that would “affect” a unit of local government. The fiscal note must state the amount by which the proposed rule change would increase or decrease the direct or indirect expenditures or revenues of a unit of local government and must explain how the amount was computed.

Among other things, the rules in question shorten the re-inspection cycle for fire departments, clarify standards for district boundary extensions, modify equipment specifications for engines and tankers, amend requirements for trainings offered by fire departments, shorten reporting deadlines, and expand record keeping obligations (including newly specified retention periods).

In responses to Staff inquiries, OSFM argues that a fiscal note was not required because the rule amendments “either (1) reflected obligations already independently imposed by statute, or (2) involved permissive or clarifying changes that did not directly require or cause identifiable fiscal consequences for local governments.” Thus, OSFM does not anticipate that any local fire department will incur additional costs as a result of the proposed amendments.¹

Nonetheless, it’s conceivable that these amendments could have an impact on local government units. For example, under amended rule 11 NCAC 05A .0905, it is possible that a fire station could now purchase fewer traffic vests and still comply with OSFM’s rule. And under amended rule 11 NCAC 05A .0911, fire departments may need to expand physical or electronic storage space and expend additional staff hours in order to meet the new records retention requirements.

However, Staff does not possess any evidence clearly demonstrating that these rules will have fiscal impacts on local governments, nor has Staff received any comments to date regarding this issue. As such, Staff is inclined to accept the position taken by OSFM.

In addition to the fiscal note requirements of G.S. 150B-21.4(b), G.S. 150B-21(b)(4) imposes a responsibility on rulemaking coordinators to “consult[] 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.” This statutory responsibility could be read as a trigger for, or a supplemental requirement to, G.S. 150B-21.4(b).

OSFM informed Staff that it did not separately consult with the North Carolina Association of County Commissioners (NCACC) or the North Carolina League of Municipalities (NCLM) during this rulemaking process.²

The Rules Review Commission may want to further consider the interplay between G.S. 150B-21, G.S. 150B-21.4, and the rule set in question submitted by OSFM.

¹ See <https://www.oah.nc.gov/media/18368/download?attachment>.

² *Id.*

APPENDIX A:
§ 150B-21.9. Standards and timetable for review by Commission.

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

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

In the event that a proposed temporary or permanent rule fails to comply with any of the standards set forth in this section, the Commission shall object to the temporary or permanent rule.

(a1) Repealed by Session Laws 2023-134, s. 21.2(g), effective October 3, 2023.

(b) Timetable. - The Commission must review a permanent rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month. The Commission must review a temporary rule in accordance with the timetable and procedure set forth in G.S. 150B-21.1. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(f); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 9; 2023-134, s. 21.2(g).)

APPENDIX B:
§ 150B-21.4. Fiscal and regulatory impact analysis on rules.

(a) State Funds. - Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would require the expenditure or distribution of funds subject to the State Budget Act, Chapter 143C of the General Statutes, it must submit the text of the proposed rule change, an analysis of the proposed rule change, and a fiscal note on the proposed rule change to the Office of State Budget and Management and obtain certification from the Office of State Budget and Management that the funds that would be required by the proposed rule change are available. The fiscal note must state the amount of funds that would be expended or distributed as a result of the proposed rule change and explain how the amount was computed. The Office of State Budget and Management must certify a proposed rule change if funds are available to cover the expenditure or distribution required by the proposed rule change.

(a1) DOT Analyses. - In addition to the requirements of subsection (a) of this section, any agency that adopts a rule affecting environmental permitting of Department of Transportation projects shall conduct an analysis to determine if the rule will result in an increased cost to the Department of Transportation. The analysis shall be conducted and submitted to the Board of Transportation when the agency submits the notice of text for publication. The agency shall consider any recommendations offered by the Board of Transportation prior to adopting the rule. Once a rule subject to this subsection is adopted, the Board of Transportation may submit any objection to the rule it may have to the Rules Review Commission. If the Rules Review Commission receives an objection to a rule from the Board of Transportation no later than 5:00 P.M. of the day following the day the Commission approves the rule, then the rule shall only become effective as provided in G.S. 150B-21.3(b1).

(b) Local Funds. - Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would affect 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 State Budget and Management as provided by G.S. 150B-21.26, the Fiscal Research Division of the General Assembly, 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 the direct or indirect expenditures or revenues of a unit of local government and must explain how the amount was computed.

(b1) Substantial Economic Impact. - Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would have a substantial economic impact and that is not identical to a federal regulation that the agency is required to adopt, the agency shall prepare a fiscal note for the proposed rule change and have the note approved by the Office of State Budget and Management. The agency must also obtain from the Office a certification that the agency adhered to the regulatory principles set forth in G.S. 150B-19.1(a)(2), (5), and (6). The agency may request the Office of State Budget and Management to prepare the fiscal note only after, working with the Office, it has exhausted all resources, internal and external, to otherwise prepare the required fiscal note. If an agency requests the Office of State Budget and Management to prepare a fiscal note for a proposed rule change, that Office must prepare the note within 90 days after receiving a written request for the note. If the Office of State Budget and Management fails to prepare a fiscal note within this time period, the agency proposing the rule change shall prepare a

fiscal note. A fiscal note prepared in this circumstance does not require approval of the Office of State Budget and Management.

If an agency prepares the required fiscal note, the agency must submit the note to the Office of State Budget and Management for review. The Office of State Budget and Management shall review the fiscal note within 14 days after it is submitted and either approve the note or inform the agency in writing of the reasons why it does not approve the fiscal note. After addressing these reasons, the agency may submit the revised fiscal note to that Office for its review. If an agency is not sure whether a proposed rule change would have a substantial economic impact, the agency shall ask the Office of State Budget and Management to determine whether the proposed rule change has a substantial economic impact. Failure to prepare or obtain approval of the fiscal note as required by this subsection shall be a basis for objection to the rule under G.S. 150B-21.9(a)(4).

...

(1973, c. 1331, s. 1; 1979, 2nd Sess., c. 1137, s. 41.1; 1983, c. 761, s. 185; 1985, c. 746, s. 1; 1987, c. 827, s. 54; 1991, c. 418, s. 1; 1995, c. 415, s. 2; c. 507, s. 27.8(b); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 6; 2005-276, s. 28.8(a); 2006-203, s. 124; 2011-398, s. 6; 2012-187, s. 4; 2013-149, s. 1; 2013-413, s. 2; 2014-115, s. 17; 2014-120, s. 6(b); 2023-134, s. 21.2(d); 2025-82, s. 2.)

APPENDIX C:

§ 150B-21. Agency must designate rulemaking coordinator; duties of coordinator.

(a) Each agency must designate one or more rulemaking coordinators to oversee the agency's rulemaking functions. The coordinator shall serve as the liaison between the agency, other agencies, units of local government, and the public in the rulemaking process. The coordinator shall report directly to the agency head.

(b) The rulemaking 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 publication in the North Carolina Register of the proposed text of a permanent rule change.
- (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 rulemaking 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 rulemaking 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 rulemaking 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 rulemaking 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) Repealed by Session Laws 2011-398, s. 3, effective October 1, 2011, and applicable to rules adopted on or after that date. (1991, c. 418, s. 1; 1995, c. 415, s. 1; c. 507, s. 27.8(v); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2011-398, s. 3; 2025-25, s. 29(6).)