

# NORTH CAROLINA GENERAL ASSEMBLY

## LEGISLATIVE FISCAL NOTE

**BILL NUMBER:** House Bill 1151 (Third Edition)

**SHORT TITLE:** Improve Rule-Making Process

**SPONSOR(S):** Representatives Nesbitt, C. Wilson, and Culpepper, et al.

### FISCAL IMPACT

	Yes (x)	No ( )	No Estimate Available ( )		
	<u>FY 2003-04</u>	<u>FY 2004-05</u>	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>
<b>EXPENDITURES</b>					
<b>General Fund</b>	\$35,634	\$28,372	\$28,537	\$28,705	\$28,879
<b>Occupational     Licensing     Board Funds</b>	\$27,070	\$10,310	\$26,810	\$14,435	\$24,060
[Table 1 on page 4 reflects the detail information received in response to this legislation.]					

### POSITIONS:

<b>General Fund (FTE)</b>	0.13	0.12	0.12	0.12	0.12
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### PRINCIPAL DEPARTMENT(S) &

**PROGRAM(S) AFFECTED:** Office of Administrative Hearings; Rules Review Commission; Department of Health and Human Services; NC State Board of Dental Examiners; NC Board for General Contractors; NC Board of Massage and Bodywork Therapy; NC Board of Nursing; NC Board of Occupational Therapy; and NC Respiratory Care Board.

**EFFECTIVE DATE:** July 1, 2003.

**BILL SUMMARY:** This legislation changes the rulemaking process by altering the Administrative Procedure Act (APA) procedure for adopting temporary rules; by providing a process for adopting an emergency rule; and by modifying the process for adopting permanent rules. The procedure for adopting a temporary rule would require agencies to give notice to interested parties and hold at least one public hearing. The Rules Review Commission (RRC) would review temporary rules, using the same standards used for permanent rules including a review of both the statement of need and the rule. Provision is made for the RRC's designee (a panel of at least three members of the RRC) to make the final determination if an agency's statement of findings of need and the temporary rule meet statutory standards. Agencies are

authorized to seek judicial review via the Wake County Superior Court when a temporary rule is rejected by the RRC. This legislation also creates a new category of rules, i.e., the emergency rules, for cases of serious and unforeseen threat to public health or safety. These rules are adopted using the same procedure used currently for adopting a temporary rule. Emergency rules are to be reviewed by the Codifier of rules (Chief Administrative Law Judge, Office of Administrative Hearings) and then entered into the Administrative Code. Agencies are to simultaneously commence the new process for adopting a temporary rule when it adopts an emergency rule. The Department of Health and Human Services (DHHS) is authorized to adopt emergency rules under certain conditions to provide for new or increased services and benefits to children and families. Changes to the rulemaking process for permanent rules include decreasing the time for a permanent rule to go into effect (permanent rules would go into effect on the first day of the month following the month they are approved by the RRC, unless the RRC receives written objections from ten or more people); reducing the substantial economic impact threshold from \$5 to \$3 million, thereby triggering a fiscal note; and authorizing judicial review via the Wake County Superior Court when a permanent rule is rejected by the RRC. The State Medical Facilities Plan is excluded from the definition of a rule and new notice and hearing requirements are provided in legislation for the adoption of the Plan. The RRC is only to review the State Medical Facilities Plan for compliance with the notice and hearings requirements (hold at least one public hearing prior to the adoption of the Plan and six public hearings after adoption, and notify interested persons not less than 15 days prior to scheduled hearing).

## **ASSUMPTIONS AND METHODOLOGY:**

All state agencies and occupational licensing boards were directed to assess their operations for fiscal impact due to the legislation. All assumptions and estimates of fiscal impact were provided by the agencies and licensing boards unless otherwise stated in this fiscal note. Where applicable, personnel costs were adjusted for inflation using the following percentages: FY 2004-05 (3.9%); FY 2005-06 (3.6%); FY 2006-07 (3.5%); and FY 2007-08 (3.5%). No inflationary rates were applied to non-salary estimated costs.

The Administrative Office of the Courts (AOC), the University of North Carolina (UNC) System (effective until December 31, 2006), the Utilities Commission, the Industrial Commission, the Employment Commission (ESC), and the Board of Law Examiners are fully exempted by statute from the Administrative Procedures Act (APA) rule-making process. The legislation, therefore, would not fiscally impact their operations. Other specific agencies listed in G.S. 150B-1(d), are exempted from rulemaking also and would not be expected to have any fiscal impact from this legislation. At this time, the State Board of Elections (SBoE) has not provided its estimate of fiscal impact resulting from this legislation, however, it is anticipated this may exist for the SBoE.

## **State Agencies & Occupational Licensing Boards – Minimal or No Significant Impact:**

The following state agencies determined that there was minimal or no significant fiscal impact to their operations as a result the legislation: Department of Administration (DOA); Department of Agriculture and Consumer Services (DACS); Alcohol Beverage Control Commission (ABC Commission); Department of Commerce; NC Community College System (NCCCS); Department of Correction (DOC); Credit Union Commission; Department of Crime Control and

Public Safety (CCPC); Department of Culture Resources (DCR); Department of Environment and Natural Resources (DENR); General Assembly; Office of the Governor (GOV); NC Housing Finance Agency (NCHFA); Office of Information Technology Services (ITS); Department of Insurance (DOI); Department of Justice (DOJ); Department of Juvenile Justice and Delinquency Prevention (DJJDP); Department of Labor (DOL); NC Ports Authority; Department of Revenue (DOR); Office of the Secretary of State (SOS); Office of the State Auditor (OSA); Office of State Budget and Management (OSBM); Office of the State Controller (OSC); Office of State Personnel (OSP); Department of Public Instruction (DPI); Department of Transportation (DOT); Department of State Treasurer (DST); and Wildlife Resource Commission.

The following occupational licensing boards identified minimal or no significant estimated fiscal impact as a result of this legislation: NC Board of Architecture; NC Auctioneer Licensing Board; NC Board of Barber Examiners; NC State Board of Certified Public Account Examiners (CPA Examiners); NC Board of Examiners for Engineers and Surveyors; NC State Board of Examiners for Nursing Home Administrators; NC Board of Examiners for Speech & Language Pathologists and Audiologists; NC Landscape Contractors Registration Board; NC Board of Mortuary Science; NC State Board of Opticians; NC Board of Physical Therapy Examiners; NC Board of Podiatry Examiners; NC Psychology Board; and the NC Veterinary Medical Board. The NC Board of Examiners of Electrical Contractors and the NC Board of Examiners of Plumbing, Heating, and Fire Sprinkler Contractors reported anticipating *saving* money due to this legislation due to reduced processing time for rulemaking. The Board of Examiners of Electrical Contractors estimates a savings of approximately \$2,500 annually due to the proposed changes to the APA rulemaking process overall. The NC Board of Examiners of Plumbing, Heating, and Fire Sprinkler Contractors estimated a combined savings of \$2,500 annually due to changes in the elimination of Notice of Rulemaking for permanent rules per Section 4 (\$1,500) and the effective date of rules as amended in Section 5 (\$1,000). Neither reported any significant fiscal cost to comply with the legislation.

### **State Agencies and Occupational Licensing Boards – Fiscal Impact Estimates**

The following agencies and occupational licensing boards provided estimates of fiscal impact to their organizational operations and existing resources: Office of Administrative Hearings (OAH); Department of Health and Human Services (DHHS); NC Rules Review Commission (RRC); NC Licensing Board for General Contractors; NC State Board of Dental Examiners; NC Board of Massage & Bodywork Therapy; NC Board of Nursing; NC Board of Occupational Therapy; NC Board of Pharmacy; NC Real Estate Commission; and the NC Respiratory Care Board.

Table 1 on page 4 summarizes the estimated total costs and personnel (measured in ‘full time equivalent’ or FTE) that agencies and boards determined are needed to comply with the legislation’s provisions.

**TABLE 1**  
**Total Estimated Fiscal and Personnel Costs**  
**Per Agency & Licensing Board**

	<b>FY 2003-04</b>	<b>FY 2004-05</b>	<b>FY 2005-06</b>	<b>FY 2006-07</b>	<b>FY 2007-08</b>
<b>OAH</b>					
Cost	\$11,788	\$5,300	\$5,300	\$5,300	\$5,300
<b>RRC</b>					
Cost	\$8,450	\$8,450	\$8,450	\$8,450	\$8,450
<b>DHHS</b>					
Cost	\$15,396	\$14,622	\$14,787	\$14,955	\$15,129
Positions (FTE)	0.13	0.12	0.12	0.12	0.12
<b>General Fund</b>					
Total Cost	<b>\$35,634</b>	<b>\$28,372</b>	<b>\$28,537</b>	<b>\$28,705</b>	<b>\$28,879</b>
Total FTE	<b>0.13</b>	<b>0.12</b>	<b>0.12</b>	<b>0.12</b>	<b>0.12</b>
<b>NC State Board of Dental Examiners</b>					
Cost	\$1,750	Not determined	Not determined	Not determined	Not determined
<b>NC Licensing Board for General Contractors</b>					
Cost	\$4,820	\$3,560	\$3,560	\$3,560	\$3,560
<b>NC Board of Massage and Bodywork Therapy</b>					
Cost	\$3,250	\$3,250	\$3,250	\$3,250	\$3,250
<b>NC Board of Nursing</b>					
Cost	\$250	\$250	\$250	\$250	\$250
<b>NC Board of Occupational Therapy</b>					
Cost	\$3,250	\$3,250	\$3,250	\$3,250	\$3,250
<b>NC Respiratory Care Board</b>					
Cost	\$13,750	\$0	\$16,500	\$4,125	\$13,750
<b>Occupational Licensing Board Funds</b>					
Total Cost	<b>\$27,070</b>	<b>\$10,310</b>	<b>\$26,810</b>	<b>\$14,435</b>	<b>\$24,060</b>

The agency and occupational licensing board totals in Table 1 include only the estimated costs reported. The following agencies and boards anticipate additional cost for their organization to comply with legislation, however, no fiscal estimates are included in Table 1 because they were not able to determine estimated cost at this time: the Department of Health and Human Resources' Division of Medical Assistance (DMA); the NC Board of Pharmacy; and the NC Real Estate Commission.

### **State Agencies:**

Agencies generally identified their estimated costs to be for temporary rulemaking, emergency rule adoption, changes to permanent rule adoption, and changes to the State Medical Facilities Plan approval process (for DHHS only).

**Office of Administrative Hearings (OAH)** – OAH performs administrative and technical duties in the compilation, production and publication of the *North Carolina Register* and the *North Carolina Administrative Code* (NCAC). OAH is responsible for codifying the state administrative rules and interacts with all rule-making coordinators. The volume of rules filed for publication in the *Register* has ranged from its high of 3,226 in 2000 to 1,484 in 2002. The number of rules filed for publication in the NCAC was 2,452 in 2000; 1,641 in 2001; and 2,224 in 2002. OAH, itself subject to the APA rulemaking process, determined that it would not incur significant costs to comply with this legislation. However, OAH identified several required activities to enable the Codifier of rules to modify the current rulemaking process to comply with the legislation.

OAH assumes that the following activities will add costs only in FY 2003-04. First, OAH determined that it would incur contract costs of \$420 for new or revised forms and web accessible forms for proposed temporary, emergency and permanent rules (3 hours labor x \$35 per hour x 4 form models). The creation of website publications would require an estimated \$438 (2 hours labor x \$73 per contract hour x 3 new website publications). Not included in OAH's estimate of fiscal impact is the potential maintenance cost for updating the website. OAH could not determine this cost until the publications are designed and programmed. OAH would develop a rulemaking flowchart for an estimated \$105 (work requiring 3 hours x \$35 per contract hour) and produce a publication schedule for estimated \$175 (document design estimated to require 5 hours x \$35 per contract hour). Additional revision of its rulemaking manual (as per G.S. 150B-21.23) is to be performed by the Institute of Government (IOG). IOG has been in the process of writing the manual. After it is revised to reflect the proposed changes from this legislation, it is to be published. The cost of the revisions and additional publication cost is estimated to be \$5,000 in FY 2003-04.

OAH assumes rulemaking coordinators and other agency staff will require annual training on the modified rulemaking process as it would be new and rulemaking coordinator assignments are changed frequently. OAH assumes a one-time development of training documents in FY 2003-04, estimated to be \$350 (document design requiring an estimated 10 hours x \$35 per hour). There would be on-going training costs of \$5,000 annually (site rental for up to 200 attendees and equipment, or \$1,250 per training session x 4 sessions per year). Other activities for which OAH believes will be required and which will have estimated additional fiscal impact on the agency include the creation of an electronic email listing (i.e., listserv) and its monthly maintenance costs by the Office of Information Technology Services (ITS) of \$25, or an estimated \$300 per year. Although the listserv and, therefore, notification of interested persons about emergency rules is not required per legislation, OAH assumes that electronic notification of emergency rules during the two day window of notification opportunity is prudent and an efficient practice. This is an ongoing cost and is outsourced to the Office of Information Technology Services (ITS) for technical reasons regarding access and administrative resource. A potential fiscal impact for which estimates of cost is not easily determined is for increased costs for printing and postage of the new category of emergency rules in the *Register*. OAH anticipates that these potential increases in printing and postage of the *Register* costs may occur in the first three fiscal years of this legislation's passage.

**Rules Review Commission (RRC)** – The RRC is responsible for reviewing administrative rules. The Commission is exempted from Article 2A of G.S. 150B and does not anticipate any fiscal impact. Several sections of the legislation address the RRC's review duties. The RRC

anticipates fiscal impact to comply with the new review of temporary rules. The RRC would have the authority to review temporary rules before they can be effective and this review would require at least three commissioners to meet at least one additional time per month to review temporary rules. Commissioners who are not officers or employees of the State are compensated \$200 per day or part day of service plus reimbursement for travel and subsistence as per G.S. 143B-30.1(d), and Commissioners who are officers or employees of the State are reimbursed for travel and subsistence. RRC staff estimates that reviewing temporary rules will cost \$8,450 per year (assume three Commissioners who are not officers or employees of the State @ \$200 each per day x 12 meetings plus an estimated \$50 per month for travel and teleconference costs per month; add an additional \$650 for a thirteenth meeting to comply with temporary rule review).

The RRC also identified potential fiscal impact of legal fees to respond to lawsuits from state agencies and licensing boards who might challenge the Commission if it does not approve of a rule and objects to the rule based on the lack of need or basis for a rule. The RRC cannot determine the costs of defending such lawsuits, but estimates that such may reach \$10,000 and could possibly exceed \$100,000. With no reasonable method for predetermining lawsuits at this time, no estimate of potential litigation costs is included.

#### **Department of Health and Human Services (DHHS) –**

**Division of Child Development (DCD)** – The Division is responsible for establishing rules for licensed childcare facilities. While DCD does not anticipate impacts from the proposed legislation in most years, the Division expects some impacts in FY 2003-04 as a result of statutory changes to temporary rulemaking. In order to conform certain rules to anticipated statutory changes that may occur in the current fiscal year, DCD is expecting that this legislation would create an additional 50 hours of staff time. The cost of this impact is estimated at \$1,475 in FY 2003-04. Additional costs associated with reimbursement of Child Care and Social Service Commission members and mailing for commission meetings is estimated to be \$1,400 in FY 2003-04. As stated, no fiscal impacts are projected for DCD in subsequent years. Also, DCD is not expecting any additional impacts from the establishment of emergency rulemaking or from amending the statutes governing permanent rulemaking.

**Division of Mental Health, Developmental Disability, and Substance Abuse Services (DMHDDSAS)** – The Division addresses proposed rule changes through the Mental Health, Developmental Disability, Substance Abuse Services Commission. The legislation is expected to fiscally impact the Division through proposed amendments to the temporary rulemaking statutes. DMHDDSAS projects that the proposed legislation will result in an additional 90 hours of staff time in FY 2003-04 and 120 additional hours in each subsequent year. This translates to expected personnel costs of \$1,935 (FY 2003-04); \$2,681 (FY 2004-05); \$2,777 (FY 2005-06); \$2,874 (FY 2006-07); and \$2,975 (FY 2007-08). The Division assumed no additional costs in proposing temporary rules under the provisions of this legislation. Also, the Division did not anticipate additional costs associated with the creation of emergency rules or the amendment of permanent rules as proposed in the legislation.

**Division of Public Health (DPH)** – The Division staffs and manages the budget for the Health Commission. In recent years, the Division has had to propose new rules and rule changes to address new challenges in the public health arena. Bioterrorism preparedness, smallpox vaccinations, West Nile Virus, and Severe Acute Respiratory Syndrome (SARS) have required rule changes that DPH anticipates would qualify under the legislation's standard for emergency rulemaking. Based on trend data from the past two years, the Division is estimating that they will have roughly four emergency rule proposals per year in each of the next five fiscal years. DPH does not project additional staff time associated with these emergency rules, but the Division expects additional costs associated with convening the Health Commission four additional times per year. Based on current travel and per diem costs for the Health Commission, DPH expects each meeting to cost \$1,000. Assuming the occurrence of four meetings per year, the proposed legislation is anticipated to cost DPH an additional \$4,000 per year. Also, the Division does not expect a fiscal impact from the proposed legislation regarding changes to temporary and permanent rulemaking.

**Division of Facility Services (DFS)** – The Division proposes rules for the regulating of public and private healthcare facilities throughout the State. The Division anticipates that changes to the temporary rulemaking statutes by this proposed legislation will result in a fiscal impact to DFS. The changes proposed by the legislation are projected to result in 50 additional staff hours for the Division in FY 2003-04 and 60 additional hours in subsequent years. The fiscal impact of these additional staff hours is as follows: \$1,050 (FY 2003-04); \$1,455 (FY 2004-05); \$1,507 (FY 2005-06); \$1,560 (FY 2006-07); and \$1,615 (FY 2007-08). In addition to these staff costs, DFS expects that there will be increased costs associated with mailings and additional public hearings. DFS projects these costs to be \$2,800 in FY 2003-04 and \$3,732 in subsequent years. DFS does not expect additional costs stemming from the proposed establishment of emergency rulemaking or proposed changes to permanent rulemaking as stated in the legislation.

Section 13 of the proposed bill places additional requirements on the DFS regarding the State Medical Facilities Plan. This plan establishes the policies and need projections for various types of healthcare facilities throughout the State. The proposed statutory changes to the preparation of the State Medical Facilities Plan are expected to fiscally impact the Division. DFS anticipates that the legislation will result in an additional 18 staff hours per year. The projected costs for these additional hours are as follows: \$464 (FY 2003-04); \$482 (FY 2004-05); \$499 (FY 2005-06); \$517 (FY 2006-07); and \$535 (FY 2007-08). In addition to new personnel costs, the Division anticipates increased costs associated with convening a greater number of public hearings. These increased costs are anticipated to be \$2,272 per year.

**The following divisions reported no fiscal impact as a result of this proposed legislation:** Division of Aging, Division of Social Services, Office of Educational Services, Division of Services to the Blind, Division of Services to the Deaf and Hard of Hearing, and the Division of Vocational Rehabilitation.

**Division of Medical Assistance (DMA):** DMA anticipates some type of fiscal impact from enactment of the proposed legislation, but was unable to provide an estimate within the timeframe necessary for this fiscal note.

## **Occupational Licensing Boards:**

The licensing boards generally identified estimated costs for temporary rulemaking, emergency rule adoption, permanent rule adoption procedures, and the reduction in substantial economic impact threshold from \$5 to \$3 million.

**NC State Board of Dental Examiners** – The Dental Board examines and licenses dentists and is authorized to make regulations to conduct such activities. The Board anticipates some fiscal impact from the review of temporary rules and potentially from any new emergency rules it might adopt. If additional public hearings are required because the Board proposes a temporary rule under this legislation, the Board estimates that these hearings would cost approximately \$1,350 per each temporary rule (attorney fee, \$400; court reporter, \$800; and copies, \$150). The Board suggests that the same potential cost would apply if it were to adopt an emergency rule (the Board interprets the requirements of Section 3 to include costs associated with having to simultaneously commence the process for adopting a temporary rule and, therefore, costs approximately \$1,350 per temporary rule). Also, the Board anticipates that Section 8, or a review of temporary rules by the RRC would require an estimated \$400 per temporary rule for attorney cost. The Board could not determine how many temporary rules it would adopt over the next five years, however, in FY 2002-03, the Board adopted 30 temporary rules. It is assumed that the Board may adopt at least one temporary rule during FY 2003-04, estimated to cost the Board \$1,750 (\$1,350 and \$400 per Sections 2 and 8). The Board is not currently able to determine its temporary rulemaking needs. Without further temporary rulemaking information, no additional estimated cost is included in the Board's estimated costs to comply with the legislation.

**NC Licensing Board for General Contractors** - The General Contractors Board is responsible for examining and providing certificates of licensure for general contractors who are persons, firms or corporations construction projects costing \$30,000 or more. The Board has historically not adopted temporary rules. If this Board were to adopt a temporary rule, it assumes that one rule would cost about \$1,260 (counsel and fiscal expertise x \$105 per hour x 12 hours). For adoption of a permanent rule, the Board estimates an annual cost of \$1,680 (attorney fees for 4 to 5 proposed rules annually for a total of an estimated 16 hours of legal charges at \$105 per hour). Hearing notice costs are estimated to be \$200 per year. For this Board, reducing the threshold of "substantial economic impact" to \$3 million is anticipated to affect many more contractors. Board costs are estimated to be \$1,680 for two rules with fiscal notes per year (16 hours x \$105 per attorney hour). For FY 2003-04, the Board estimates it will cost \$4,820 for adopting temporary rules and permanent rules and anticipated an increase in fiscal note preparation to address the change in the "substantial economic impact" threshold. For FY 2004-05 and beyond, the Board estimates a fiscal impact of \$3,560 annually for permanent rules and additional fiscal note preparation.

**NC Board of Massage and Bodywork Therapy** - This Board is responsible for examining and issuing, renewing, denying, suspending, or revoking licenses to individuals who conduct massage and body work therapy. This agency is authorized to adopt, amend, or repeal rules necessary to carry out the purposes of statutory authority and the duties and responsibilities of the Board, including those related to the approval of massage and bodywork therapy school and



establishments. The Board, although proposing no rules in FY 2002-03, estimates that it would incur annual costs as a result of this legislation for emergency, temporary and permanent rules to cover the cost of expert resource. The agency estimates that expert resource is needed at the cost of \$3,250 annually (\$1,000 for temporary rulemaking, \$750 for emergency rulemaking, \$1,000 for permanent rulemaking, \$250 for dealing with issues around the delay of a permanent rule, and \$250 for costs the Board assumes it will incur to comply with the RRC's review of temporary rules and review of amended permanent rules).

**NC Board of Nursing** - The Board provides for the examination of applicants, and licenses and renews licenses for nurses in North Carolina. The agency assumes additional public hearings for temporary rules for two temporary rules per year. The Board indicated that the legislation's temporary rulemaking process would require additional Board staff hours and an estimated \$250 per year for the two proposed public hearings for anticipated temporary rules.

**NC Board of Occupational Therapy** - This Board is responsible for regulating occupational therapists. It is authorized to examine, license, and discipline practitioners of occupational therapy in North Carolina. Paralleling the NC Board of Massage and Bodywork Therapy, the Occupational Therapy Board estimates that it will incur annual costs for emergency, temporary and permanent rulemaking to cover the cost of expert resource. This Board did not propose rules in either FY 2001-02 or FY 2002-03. The agency reported estimates for expert resource at the cost of \$3,250 annually as a result of changes to the current rulemaking process (\$1,000 for temporary rulemaking, \$750 for emergency rulemaking, \$1,000 for permanent rulemaking, \$250 to cover activities resulting from the delay of adoption of a permanent rule, and \$250 for Board costs estimated to be needed to comply with the RRC's review of temporary rules and review of amended permanent rules).

**NC Respiratory Care Board** - This occupational licensing board is responsible for licensing respiratory care givers and has the authority to promulgate rules to carry out its statutory authority including discipline of practitioners. The Board estimated varying fiscal cost per year to comply with the proposed legislation based on its projection of rulemaking. For example, based upon what additional legislation the General Assembly ratifies this session in regards to respiratory care, the Board anticipates adopting four to six rules during FY 2003-04, and then two to four rules each subsequent year. The Board also anticipates amending rules over the next five years. The Respiratory Board estimates a cost of \$4,125 for counsel assistance for FY 2006-07 for the adoption of an emergency rule if one were to be needed (e.g., any national emergency might require emergency rules). The estimated cost is based upon the need to simultaneously commence a temporary rule and the anticipated cost of required legal counsel hours. The Board anticipates annual expenditures of about \$4,125 (15 hours x \$275 per hour) for legal counsel to adopt permanent rules in FY 2003-04, FY 2005-06 and FY 2007-08. The Board estimates \$8,250 for 20 hours of legal counsel per year for FY 2003-04, FY 2005-06 and FY 2007-08 to respond to situations that arise from persons filing written comments and rules not being adopted as a result. The Respiratory Care Board also anticipates counsel fees of \$1,375 (5 hours at \$275 per hour) to prepare additional fiscal notes due to the reduction in the "substantial economic impact" threshold from \$5 to \$3 million for FY 2003-04, FY 2005-06, and FY 2007-08. The Board also estimates that it will incur counsel costs of \$2,750 (10 counsel hours at \$275 per hour) in FY 2005-06 as a result of additional review of temporary rules by the RRC and the potential to appeal proposed rules not approved by the RRC to superior court.

### **Boards Reporting Potential Impact But Without Sufficient Estimated Costs for Table 1:**

**NC Board of Pharmacy** - The Pharmacy Board licenses pharmacists and regulates pharmacy schools and colleges. It reported that rulemaking per permanent rule currently costs the Board an estimated \$3,000. This cost includes Board member per diem and travel expenses for required hearings, cost of rental for hearing location, cost of recording the hearing, and cost to pay Board counsel and staff. The Board had not determined costs per temporary rule and could not determine the number of temporary rules it may adopt. The Pharmacy Board historically adopted permanent rules annually, however, it did not report an estimate of fiscal impact for adopting permanent rules or emergencies rules. Without this information, the fiscal impact for this agency cannot be determined and subsequently no costs are included in Table 1 on page 4.

**NC Real Estate Commission** - The Commission examines applicants and confers licenses on those individuals as real estate brokers or real estate salespersons. The Commission has the authority to adopt rules connected with license application, examination, renewal and reinstatement of licensees. It can also adopt rules to regulate real estate schools, instructors, and textbooks for instruction, administration and course/program of such schools. The Commission anticipates increased staff hours required to perform fiscal notes in 2006-07 and 2007-08 as a result of the reduction in the "substantial economic impact" threshold from \$5 to \$3 million. This agency also anticipates an average of one additional staff hour per year needed for the modified review of temporary and permanent rules by the RRC. The Real Estate Commission did not report any fiscal impact in terms of money, so no estimated of cost is included in Table 1 on page 4 for this Commission.

**SOURCES OF DATA:** All state agencies and occupational licensing boards included in this fiscal note.

### **TECHNICAL CONSIDERATIONS:**

There may be fiscal impact to one or more state agencies (e.g., the RRC, the Wake County Superior Court, state agencies or occupational licensing boards) as a result of the allowance of judicial review under G.S. 150B-21.1(b) and 21.8(d). The Administrative Office of the Courts (AOC) reported that cost estimates for such potential court cases are undeterminable at this time. AOC also assumed this change would not lead to many new civil cases, but it may result in relatively more complex court cases.

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**APPROVED BY:** James D. Johnson, Director, Fiscal Research Division

**DATE:** June 16, 2003



**Signed Copy Located in the NCGA Principal Clerk's Offices**