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**ATTORNEY GENERAL**



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## **Memorandum**

To: North Carolina Coastal Resources Commission (CRC-25-16)

From: Mary L. Lucasse, Special Deputy Attorney General.

Date: April 15, 2025

Re: History of N.C. Gen. Stat. § 150B-19.1(b)

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In 2010, Governor Perdue issued Executive Order (“EO”) 70 stating that “rulemaking is one of the most significant public policy actions government can take, directly affecting businesses and citizens alike [and] . . . outdated, unnecessary, or vague rules often impose unnecessary costs and burdens on local governments, small businesses, and other regulated entities.” Governor Perdue required all executive agencies to review their existing rules and submit comments through a portal to the Office of State Budget and Management (“OSBM”). Upon submission to the OSBM, any rules deemed unnecessary were compiled in a list and presented to the General Assembly. This review continued for a while with agencies submitting through the OSBM portal. In 2014, EO 70 was amended by Governor McCrory in EO 48 to delete the requirement that executive agencies review existing rules annually and submit comments to OSBM.

The General Assembly did not directly act on the rules submitted as a result of EO 70. However, in 2011 it enacted new provisions to the North Carolina Administrative Procedure Act (“APA”) including N.C. Gen. Stat. § 150B-19.1 which requires that,

Each agency subject to this Article shall conduct an annual review of its rules to identify existing rules that are unnecessary, unduly burdensome, or inconsistent with the principles set forth in subsection (a) of this section. The agency shall repeal any rule identified by this review.

N.C. Gen. Stat. § 150B- 19.1(b). Two years later in 2013, the General Assembly amended the APA to require agencies to review their existing rules using a different process. *See* N.C. Gen. Stat. § 150B-21.3A establishing the decennial Existing Rules Review. From my exchange with an individual who was employed at the Office of Administrative Hearings (“OAH”) at that time, I learned that there were discussions at the OAH and with the Rules Review Commission (“RRC”) about requesting N.C. Gen. Stat. § 150B-19.1(b) be repealed as it would not be needed. That has not happened. Even though 19.1(b) is still law, the necessity of conducting a formal annual review to weed out unnecessary rules appears to have been overtaken by the decennial review process.

From an informal survey, it is my opinion that the vast majority of agencies are not doing a formal annual review of their rules. I have heard of only one—the N.C. Credit Union Division— whose staff reviews their rules each January. The annual review requirement in the APA is internal within the agency (i.e., it does not include a report to the RRC or OSBM). The statutory provision does not specify the manner or process for conducting an annual review.

It is my understanding that although the CRC and its staff at the Division of Coastal Management touch the CRC's rules often, it has not been the CRC's practice to include an agenda item on an annual basis during a regularly scheduled meeting to formally review all its rules at the same time. Following this background information, DCM staff will provide information on the ongoing rule review process.

Attachments:

1. N.C. Gen. Stat. § 150B-19
2. Executive Order 70 signed October 21, 2010
3. Executive Order 48 signed April 9, 2014

**§ 150B-19.1. Requirements for agencies in the rule-making process.**

(a) In developing and drafting rules for adoption in accordance with this Article, agencies shall adhere to the following principles:

- (1) An agency may adopt only rules that are expressly authorized by federal or State law and that are necessary to serve the public interest.
- (2) An agency shall seek to reduce the burden upon those persons or entities who must comply with the rule.
- (3) Rules shall be written in a clear and unambiguous manner and must be reasonably necessary to implement or interpret federal or State law.
- (4) An agency shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed. The agency shall not adopt a rule that is unnecessary or redundant.
- (5) When appropriate, rules shall be based on sound, reasonably available scientific, technical, economic, and other relevant information. Agencies shall include a reference to this information in the notice of text required by G.S. 150B-21.2(c).
- (6) Rules shall be designed to achieve the regulatory objective in a cost-effective and timely manner.

(b) Each agency subject to this Article shall conduct an annual review of its rules to identify existing rules that are unnecessary, unduly burdensome, or inconsistent with the principles set forth in subsection (a) of this section. The agency shall repeal any rule identified by this review.

(c) Each agency subject to this Article shall post on its Web site, no later than the publication date of the notice of text in the North Carolina Register, all of the following:

- (1) The text of a proposed rule.
- (2) An explanation of the proposed rule and the reason for the proposed rule.
- (3) The federal certification required by subsection (g) of this section.
- (4) Instructions on how and where to submit oral or written comments on the proposed rule, including a description of the procedure by which a person can object to a proposed rule and subject the proposed rule to legislative review.
- (5) Any fiscal note that has been prepared for the proposed rule.

If an agency proposes any change to a rule or fiscal note prior to the date it proposes to adopt a rule, the agency shall publish the proposed change on its Web site as soon as practicable after the change is drafted. If an agency's staff proposes any such change to be presented to the rule-making agency, the staff shall publish the proposed change on the agency's Web site as soon as practicable after the change is drafted.

(d) Each agency shall determine whether its policies and programs overlap with the policies and programs of another agency. In the event two or more agencies' policies and programs overlap, the agencies shall coordinate the rules adopted by each agency to avoid unnecessary, unduly burdensome, or inconsistent rules.

(e) Each agency shall quantify the costs and benefits to all parties of a proposed rule to the greatest extent possible. Prior to submission of a proposed rule for publication in accordance with G.S. 150B-21.2, the agency shall review the details of any fiscal note prepared in connection with the proposed rule and approve the fiscal note before submission.

(f) If the agency determines that a proposed rule will have a substantial economic impact as defined in G.S. 150B-21.4(b1), the agency shall consider at least two alternatives to the proposed rule. The alternatives may have been identified by the agency or by members of the public.

(g) Whenever an agency proposes a rule that is purported to implement a federal law, or required by or necessary for compliance with federal law, or on which the receipt of federal funds is conditioned, the agency shall:

- (1) Prepare a certification identifying the federal law requiring adoption of the proposed rule. The certification shall contain a statement setting forth the reasons why the proposed rule is required by federal law. If all or part of the proposed rule is not required by federal law or exceeds the requirements of federal law, then the certification shall state the reasons for that opinion.
- (2) Post the certification on the agency Web site in accordance with subsection (c) of this section.
- (3) Maintain a copy of the federal law and provide to the Office of State Budget and Management the citation to the federal law requiring or pertaining to the proposed rule.

(h) Repealed by Session Laws 2014-120, s. 6(a), effective September 18, 2014, and applicable to proposed rules published on or after that date. (2011-398, s. 2; 2012-187, s. 3; 2013-143, s. 1.1; 2014-120, s. 6(a).)



BEVERLY EAVES PERDUE  
GOVERNOR

## EXECUTIVE ORDER NO. 70

### RULES MODIFICATION AND IMPROVEMENT PROGRAM

**WHEREAS**, rulemaking is one of the most significant public policy actions government can take, directly affecting businesses and citizens alike; and

**WHEREAS**, improved rulemaking provides more effective protections for public health, safety, welfare, and the environment; and

**WHEREAS**, outdated, unnecessary, or vague rules often impose unnecessary costs and burdens on local governments, small businesses, and other regulated entities; and

**WHEREAS**, North Carolina citizens deserve better access to regulatory information; and

**WHEREAS**, rules, as defined by N.C. Gen. Stat. § 150B-2(8a), are required for a functioning market economy; and

**WHEREAS**, the development of rules should be informed with rigorous analysis; and

**WHEREAS**, in promulgating rules, agencies should seek to achieve statutory goals as effectively and efficiently as possible; and

**WHEREAS**, public comment is encouraged for all rules, including both new and existing rules; and

**WHEREAS**, N.C. Gen. Stat. § 150B-21.26 requires a preliminary review of certain rules before the proposed text is published in the North Carolina Register; and

**WHEREAS**, for the last fifteen years, the Office of State Budget and Management has reviewed all significant rule changes before the proposed text is published in the North Carolina Register under N.C. Gen. Stat. §150B-21.4.

**NOW, THEREFORE**, by the power vested in me as Governor by the laws and Constitution of the State of North Carolina, **IT IS ORDERED:**

## **Section 1. Scope of Executive Order**

This Executive Order applies to all Cabinet agencies and all boards and commission with rule-making powers located within the Cabinet agencies.

The Governor urges the heads of Council of State agencies, the Board of Governors of the University of North Carolina, the State Board of Community Colleges, the State Board of Education, and all other boards with rule-making authority to participate in this Order.

## **Section 2. Statement of Regulatory Principles**

1. The following principles shall guide the drafting, adoption, modification and review of any rules and regulations:
  - a. Rules shall only be adopted when required by federal or state law or when deemed necessary by the agency to serve the public interest.
  - b. Rules shall not impose undue burden upon those persons or entities who must comply with the rules.
  - c. Rules shall be clearly written, relevant and up-to-date.
  - d. Rules shall be based on sound, reasonably available scientific, technical, economic, and other relevant information. Agencies shall cite this information in support of regulatory proposals.
  - e. Rules shall be designed to achieve their regulatory objective in a cost-effective and timely manner.
2. All agency heads shall implement the following requirements to ensure that regulations are drafted and adopted in accordance with the above principles.
  - a. Rules shall be subject to periodic evaluation and review in accordance with the procedures described in this Executive Order.
  - b. Agencies shall encourage public comment and involvement on all rules by posting new rule actions and rule analysis and fiscal notes online.
  - c. Agencies shall ensure citizens have better access to timely and accurate rule information.
  - d. Fiscal notes and rule analysis shall be updated to reflect any significant changes before the rule is adopted.

- e. Approved rule actions shall be completed in a timely manner to ensure proper protection of the public and clear implementation of law.
- f. Agencies shall coordinate rule actions with other agencies where rules, policies and programs overlap.
- g. Agencies shall quantify the costs and benefits to all parties of a rule to the greatest extent possible. The level of analysis shall be proportional to the significance of the rule.
- h. Agencies shall identify and assess available alternatives to regulation, including the use of economic incentives, information disclosure requirements, and performance standards.
- i. Each agency head will be held accountable for ensuring that the policies and objectives in this Executive Order are put into effect and that information requested in connection with the requirements of this Executive Order is provided on a timely basis.

### **Section 3. Review of Existing Rules**

A Rules Modification and Improvement Program (“RMIP”) shall be established to annually evaluate, reform, expand, or, where necessary, repeal existing rules and associated requirements in order to promote the goals of this Executive Order. The Office of State Budget and Management (“OSBM”) shall coordinate and oversee the RMIP. OSBM shall consult with experts, stakeholders and other relevant parties in implementing the RMIP.

1. The RMIP shall accomplish the following within the first 30 days after publication of this Executive Order:
  - a. Invite comment on whether any existing rules, implementation processes and associated requirements are unnecessary, unduly burdensome, or inconsistent with the goals of this Executive Order. Comments may include modifying, expanding, or rescinding existing rule programs or the rule review and publication process.
  - b. Direct agencies to undertake an internal review to identify existing rules and associated requirements that are unnecessary, unduly burdensome, or inconsistent with the goals of this Executive Order.
2. The RMIP shall continue to invite and consider comment on rule reforms beyond the first 30 days after publication of this Executive Order. Comments received during the first 30 days will inform the first annual report required by paragraph 8 of this section, while comments received after the first 30 days will inform future reports.

3. The State Chief Information Officer shall ensure that there is a single web portal for receiving public comments and tracking agency progress on any resulting rule reform actions.
4. OSBM shall assemble and evaluate the reform suggestions resulting from the public comment process and internal agency reviews.
5. Agencies, as requested by OSBM, shall review the merits of the reform suggestions.
6. Agencies shall prepare a report, in a form designated by OSBM, on whether reform suggestions have potential merit and justify further action. The report shall be submitted to OSBM by January 31 each year.
7. OSBM shall make final determinations on which reform suggestions have potential merit and justify further action. OSBM shall also consider and propose recommended improvements to the rule process to the Governor, including any legislation that may be necessary to achieve reforms.
8. OSBM shall publish by April 30 every year an annual report summarizing all reform comments and any resulting actions taken or planned.
9. OSBM shall receive assistance, services, or data from any state agency as it determines is reasonably necessary to carry out the purposes of this Executive Order.
10. The State CIO shall coordinate and consolidate systems across state government required to comply with existing rules at the direction of OSBM.

#### **Section 4. Review of New Rules**

Rule improvement efforts shall extend beyond an evaluation of existing rules to the current process used to promulgate new rules. Given the significant impact of rules, rule decisions shall be informed by a careful assessment of the likely consequences of rule action.

1. During OSBM's review and approval process for fiscal notes and rule analysis under N.C. Gen. Stat. §150B-21.4, OSBM shall ensure agencies adhere to the principles outlined in Section 2 of this Executive Order.
2. For significant rules, agency heads shall certify completion of a fiscal note and rule analysis and submit them to OSBM for review under N.C. Gen. Stat. § 150B-21.4 and other related statutes, at least 60 days prior to rule publication.
3. In order that an independent analysis can be made, state agencies shall not request OSBM to prepare a fiscal note and rule analysis under N.C. Gen. Stat. § 150B-21.4(b1) until the agency, working with OSBM, has exhausted all resources, internal and external, to otherwise prepare the required analysis.

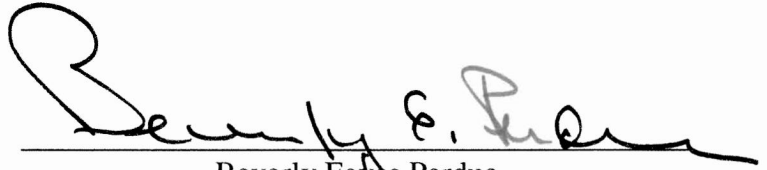
4. OSBM, as part of the Office of the Governor, shall conduct the preliminary review in N.C. Gen. Stat. § 150B-21.26 on behalf of the Governor.
5. Consistent with N.C. Gen. Stat. § 150B-21.26, agencies shall submit the required rule information to OSBM at least 60 days prior to rule publication for rules that impact local governments.

**Section 5. Effect and Duration**

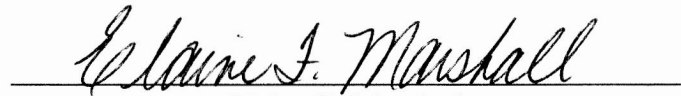
This Executive Order is effective immediately and shall remain in effect until rescinded. It supersedes and replaces all other executive orders on this subject.

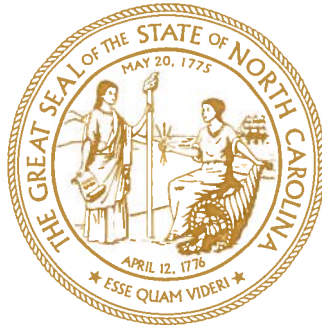
**IN WITNESS WHEREOF**, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this twenty-first day of October in the year of our Lord two thousand and ten and of the Independence of the United States of America the two hundred and thirty-fifth.



  
Beverly Eaves Perdue  
Governor

**ATTEST:**

  
Elaine F. Marshall  
Secretary of State



# State of North Carolina

PAT McCrORY  
GOVERNOR

April 9, 2014

## EXECUTIVE ORDER NO. 48

### AMENDING EXECUTIVE ORDER NO. 70: RULES MODIFICATION AND IMPROVEMENT PROGRAM

By the power vested in me as Governor by the laws and Constitution of the State of North Carolina, **IT IS ORDERED:**

Executive Order 70, *Rules Modification and Improvement Program*, issued by Governor Perdue on October 21, 2010, is hereby amended as follows:

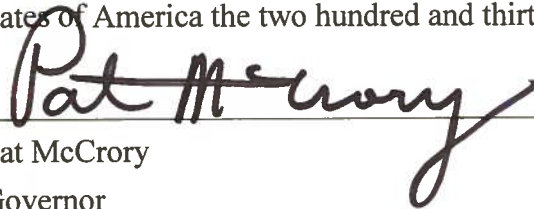
Section 3, *Review of Existing Rules*, is hereby repealed.

Section 4, *Review of New Rules*, is amended by adding the following:


Any board, commission or agency exempt from the provisions of Chapter 150B of the General Statutes that require the preparation of fiscal notes for any rule proposed shall also be exempt from the provisions of this section.

Except as amended herein, Executive Order 70 remains in full force and effect. This Executive Order is effective immediately and shall remain in effect until rescinded.

**IN WITNESS WHEREOF**, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 9<sup>th</sup> day of April in the year of our Lord two thousand and fourteen and of the Independence of the United States of America the two hundred and thirty-eight.

  
Pat McCrory  
Governor

ATTEST:

  
Elaine F. Marshall  
Secretary of State

