A BILL TO BE ENTITLED

AN ACT TO PROMOTE NORTH CAROLINA JOB GROWTH THROUGH REGULATORY REFORM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 150B-2 is amended by adding the following subdivisions to read:

"§ 150B-2. Definitions."

As used in this Chapter,

(8b) "Significant rule change" means a proposed rule that may do one or more of the following:

a. Have a significant effect on the economy, State, or local funds.

b. Create an inconsistency with an action taken or planned by another agency.

c. Raise novel policy issues.

(8c) "Small business" means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) either has gross annual sales of less than six million dollars ($6,000,000) or employs fewer than 500 full-time employees.

(8d) "Substantial evidence" means relevant evidence a reasonable mind might accept as adequate to support a conclusion.

SECTION 2. G.S. 150B-19 is amended by adding a new subdivision to read:

"§ 150B-19. Restrictions on what can be adopted as a rule."

An agency may not adopt a rule that does one or more of the following:

(8) Exceeds standards or requirements established by an act of Congress or federal regulation, unless expressly required by an act of the General Assembly.

SECTION 3. G.S. 150B-21.2 reads as rewritten:

"§ 150B-21.2. Procedure for adopting a permanent rule."

(a) Steps. – Before an agency adopts a permanent rule, it must take the following actions:

(1) Publish a notice of text in the North Carolina Register.
When required by G.S. 150B-21.4, prepare or obtain a fiscal note, cost-benefit analysis, and small business regulatory flexibility analysis for the proposed rule.

(3) Repealed by Session Laws 2003-229, s. 4, effective July 1, 2003.

(4) When required by subsection (e) of this section, hold a public hearing on the proposed rule after publication of the proposed text of the rule.

(5) Accept oral or written comments on the proposed rule as required by subsection (f) of this section.

Repealed by Session Laws 2003-229, s. 4, effective July 1, 2003.

(b) When required by subsection (e) of this section, hold a public hearing on the proposed rule after publication of the proposed text of the rule.

(5) Accept oral or written comments on the proposed rule as required by subsection (f) of this section.

A notice of the proposed text of a rule, or textual changes to an existing rule, must include all of the following:

(1) The text of the proposed rule.

(2) A short explanation of the reason for the proposed rule, a summary of the existing regulations and an explanation of how the proposed rule would change the existing regulations. This information should explain the purpose of the proposed rule and what specific problem or problems the proposed rule is attempting to address. In order to meet the requirements of this subdivision, the agency shall use plain language that is easily understandable to the general public.

(3) A citation to the law that gives the agency the authority to adopt the rule and a detailed explanation as to why the specific citations provide the necessary authority. The explanation should clarify why there is no reasonable argument that statutory authority does not exist.

If a fiscal note, cost-benefit analysis, or small business regulatory flexibility analysis has been prepared for the rule, a statement explaining that a note or analysis has been conducted and how to obtain the note or analysis on the agency Web site and how to obtain a hard copy of the fiscal note can be obtained from the agency.

(9) The procedure by which a person can object to a proposed rule and the requirements for subjecting a proposed rule to the legislative review process.

(10) The right of judicial review for any person that seeks to challenge the adoption of a rule.

SECTION 4. G.S. 150B-21.4 reads as rewritten:

"§ 150B-21.4. Fiscal notes on notes, cost-benefit analysis, periodic review, and small business regulatory flexibility analysis for rules.

(b1) Substantial Economic Impact. Significant Rule Change. – Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would have a substantial economic impact, be a significant rule change and that is not identical to a federal regulation that the agency is required to adopt, the agency must obtain a fiscal note, cost-benefit analysis for the proposed rule change from the Office of State Budget and Management or prepare a fiscal note, cost-benefit analysis for the proposed rule change and have the note analysis approved by that Office. If an agency requests the Office of State Budget and Management to prepare a fiscal note, cost-benefit analysis for a proposed rule change, that Office must prepare the note analysis within 90 days after receiving a written request for the note analysis. If the Office of State Budget and Management fails to prepare a fiscal note, cost-benefit analysis within this time period, the agency proposing the rule change may 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 cost-benefit analysis, the agency must submit the note analysis to the Office of State Budget and Management for review. The Office of State Budget and Management must review the fiscal note cost-benefit analysis within 14 days after it is submitted and either approve the note analysis or inform the agency in writing of the reasons why it does not approve the fiscal note cost-benefit analysis. After addressing these reasons, the agency may submit the revised fiscal note cost-benefit analysis to that Office for its review. If an agency is not sure whether a proposed rule change would have a substantial economic impact or be a significant rule change, the agency may ask the Office of State Budget and Management to determine whether the proposed rule change has a substantial economic impact or is a significant rule change.

As used in this subsection, the term "substantial economic impact" means an "significant rule change" would include any rule that has an aggregate financial impact on all persons affected of at least three million dollars ($3,000,000) in a 12-month period.

(b2) Content. – A fiscal note cost-benefit analysis required by subsection (b1) of this section must contain the following:

1. A description of the persons who would be affected by the proposed rule change.
2. A description of the types of expenditures that persons affected by the proposed rule change would have to make to comply with the rule and an estimate of these expenditures.
3. A description of the purpose and benefits of the proposed rule change.
4. An explanation of how the estimate of expenditures was computed.
5. A comprehensive list of the costs and benefits resulting from the proposed rule change. In developing this list, the costs and benefits should be quantified in monetary terms to the greatest extent possible. Costs shall include opportunity costs borne by affected people.
6. Alternatives considered instead of the proposed rule change and why the proposed rule was selected instead of one of the alternatives.
7. Other factors that the Office of State Budget and Management deems necessary for an exhaustive cost-benefit analysis.

(b3) The Office of State Budget and Management shall reject the proposed rule based on a cost-benefit analysis if any of the following are true:

1. The projected costs exceed projected benefits. In making this determination, the Office of State Budget and Management shall base its decision on whether any reasonable scenario yields costs that exceed benefits.
2. An alternative to the proposed change is less costly and is reasonably likely to achieve, in significant part, the same objective.
3. The proposed rule change would not achieve the stated purpose of the rule.

(b4) The Office of State Budget and Management shall approve the proposed rule, notwithstanding subsection (b3) of this section, if the rule minimizes the economic impact to the greatest extent possible and the rule is required to respond to at least one of the following:

1. A serious and unforeseen threat to the public health, safety, or welfare.
2. An act of the General Assembly that expressly requires the specific rule.
3. An act of Congress or federal regulation that expressly requires the specific rule and the General Assembly has given the agency authority to respond to the federal requirement.
4. A change in federal or State budgetary policy.
5. A court order.

(b5) Periodic Review of Rules. –

1. Within six months after enactment of this law, each agency shall review all of its rules existing at the time of enactment to determine whether such rules
should be continued without change or should be amended or rescinded to
minimize the economic impact of the rules. Each agency shall invite and
review written public comments, as prescribed under this Article. Each
agency shall submit a report to the Joint Legislative Administrative
Procedure Oversight Committee on or before six months after enactment of
this law to justify the existence of its rules and may take action to amend or
rescind rules at any time.

(2) Rules adopted after the enactment of this law shall be reviewed every year to
ensure that the rules minimize their economic impact.

(3) In reviewing rules to minimize their economic impact, each agency shall
consider the following factors:
   a. The continued need for the rule.
   b. The nature of complaints or comments received concerning the rule
      from the public.
   c. The complexity of the rule.
   d. The extent to which the rule overlaps, duplicates, or conflicts with
      other federal, State, or local governmental rules.
   e. The length of time since the rule has been evaluated or the degree to
      which technology, economic conditions, or other factors have
      changed in the area affected by the rule.

(4) Each agency shall annually submit a list of its rules to the Office of State
Budget and Management, including an explanation as to its economic
impact.

(5) The Office of State Budget and Management shall direct an agency to amend
or rescind a rule if the agency is unable to demonstrate each of the
following:
   a. There is a continued need for the rule.
   b. The nature of complaints or comments received concerning the rule
      from the public does not justify amending or rescinding the rule.
   c. The rule is not too complex.
   d. The rule does not overlap, duplicate, or conflict with other federal, State,
      and local governmental rules or such overlap is nominal.
   e. Technology, economic conditions, or other factors have not changed
      in the area affected by the rule.

(6) Notwithstanding subdivision (5) of this subsection, a rule may be amended
or rescinded only if the rule is not required to respond to at least one of the
following:
   a. A serious and unforeseen threat to the public health, safety, or
      welfare.
   b. An act of the General Assembly that expressly requires the specific
      rule.
   c. An act of Congress or federal regulation that expressly requires the
      specific rule and the General Assembly has given the agency
      authority to respond to the federal requirement.
   d. A change in federal or State budgetary policy.
   e. A court order.

(7) The Office of State Budget and Management shall submit an annual
summary of its findings to the Commission as required under
G.S. 150B-21.17.

(b6) Small Business Regulatory Flexibility Analysis.
Prior to the adoption of any proposed regulation that may have an adverse impact on small businesses, each agency shall prepare a small business impact statement that includes each of the following:

a. An identification and estimate of the number of the small businesses subject to the proposed regulation.

b. The projected reporting, record keeping, and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.

c. A statement of the probable effect on impacted small businesses.

Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change, it shall consider and provide to the Office of State Budget and Management, without limitation, each of the following methods of reducing the impact of the proposed regulation on small businesses:

a. The establishment of less stringent compliance or reporting requirements for small businesses.

b. The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses.

c. The consolidation or simplification of compliance or reporting requirements for small businesses.

d. The establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation.

e. The exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

The Office of State Budget and Management shall reject a proposed rule if the agency has not taken reasonable steps to reduce the impact on small businesses.

(a) Standards for the review of rules by the Commission.

(1) It is within the clear authority delegated to the agency by the General Assembly, and no reasonable argument can be made that that authority does not exist.

(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, and the General Assembly, when enacting the law, likely intended for the agency to adopt such a rule. 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) The Office of State Budget and Management properly approved the cost-benefit analysis and small business regulatory flexibility analysis developed for the rule, in accordance with G.S. 150B-21.4.

(5) 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 cost-benefit analysis. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note cost-benefit analysis 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.

The Commission may ask the Office of State Budget and Management to determine if a rule may have an adverse impact on small businesses and is therefore required to have a small business regulatory flexibility analysis. The Commission must ask the Office of State Budget and Management to make this determination if a small business regulatory flexibility analysis was not prepared for a rule and the Commission receives a written request for a determination of whether the rule may have an adverse impact on small businesses.

(a1) Entry of a rule in the North Carolina Administrative Code after review by the Commission creates a rebuttable presumption that the rule was adopted in accordance with Part 2 of this Article.

SECTION 6. Chapter 150B of the General Statutes is amended by adding a new section to read:


(a) The Office of State Budget and Management shall provide an annual summary of its findings to the Commission explaining why it directed each agency to rescind or amend a rule, or decided that no action on a rule was necessary.

(b) The Commission shall direct the Office of State Budget and Management to amend or rescind a rule if the Commission believes that an agency was unable to demonstrate all of the following:

(1) There is a continued need for the rule.

(2) The nature of complaints or comments received concerning the rule from the public does not justify amending or rescinding the rule.

(3) The rule is not too complex.

(4) The rule does not overlap, duplicate, or conflict with other federal, State, and local governmental rules, or such overlap is nominal.

(5) Technology, economic conditions, or other factors have not changed in the area affected by the rule.

(c) Notwithstanding subsection (b) of this section, 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 the public health, safety, or welfare.

(2) An act of the General Assembly that expressly requires the specific rule.

(3) An act of Congress or federal regulation that expressly requires the specific rule and the General Assembly has given the agency authority to respond to the federal requirement.

(4) A change in federal or State budgetary policy.

(5) A court order."

SECTION 7. G.S. 150B-43 reads as rewritten:

"§ 150B-43. Right to judicial review.

Any person who is aggrieved by the final decision in a contested case, and who has exhausted all administrative remedies made available to him by statute or agency rule, is entitled to judicial review of the decision under this Article, unless adequate procedure for judicial review is provided by another statute, in which case the review shall be under such other statute. Within one year after the effective date of a final rule, any person is entitled to
judicial review in order to determine whether a rule has been properly adopted as required under this Article. Nothing in this Chapter shall prevent any person from invoking any judicial remedy available to him under the law to test the validity of any administrative action not made reviewable under this Article."

SECTION 8. G.S. 62-3 is amended by adding a new subdivision to read:

As used in this Chapter, unless the context otherwise requires, the term:

(31) "Using and consuming public" means utility consumers solely in their role as consumers."

SECTION 9. G.S. 62-15 reads as rewritten:


... (e) In representing the using and consuming public, the Public Staff shall not consider general societal interests but 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 for consumers unless the higher prices are clearly justified because of more reliable, or otherwise better quality, utility services for the using and consuming public.

(e1) The public staff shall have no duty, responsibility, or authority with respect to the laws, rules or regulations pertaining to the physical facilities or equipment of common, contract and exempt carriers, the registration of vehicles or of insurance coverage of vehicles of common, contract and exempt carriers; the licensing, training, or qualifications of drivers or other persons employed by common, contract and exempt carriers, or the operation of motor vehicle equipment by common, contract and exempt carriers in the State.

... (j) A member of the using and consuming public may petition the Commission to initiate a review of whether the Public Staff has acted consistently with subsection (e) of this section. If the Commission determines that the Public Staff has not acted consistently with subsection (e) of this section, it shall make formal public notice of this finding and submit a written finding to the Joint Legislative Utility Review Committee and request the Public Staff to reconsider any action taken that is inconsistent with subsection (e) of this section."

SECTION 10.1. Commission Created. – There is created the Legislative Study Commission on Occupational Licensing. The Commission shall consist of 12 voting members appointed as follows:

(1) Four members appointed by the Governor, to include at least one member of the general public.
(2) Four members appointed by the President Pro Tempore of the Senate, to include the following:
   a. Two members of the Senate.
   b. Two members of the general public.
(3) Four members appointed by the Speaker of the House of Representatives, to include the following:
   a. Two members of the House of Representatives.
   b. Two members of the general public.

SECTION 10.2. Duties. – The Commission shall do each of the following:

(1) Identify outdated and unnecessary occupational licensing laws that should be repealed.
(2) Identify existing occupations that are regulated that do not require licensing.
(3) Study alternatives to occupational licensing laws that would work effectively.
(4) Study to what extent occupational licensing laws create barriers for individuals, including low-income individuals, from entering into new occupations.

(5) Study any other matters that the Commission deems relevant.

SECTION 10.3. Report. – The Commission shall make a final report to the General Assembly with specific recommendations, including any proposed legislation, to the 2012 Regular Session of the 2011 General Assembly upon its convening. The Commission shall terminate upon filing its final report.

SECTION 10.4. Administration. – The Speaker of the House of Representatives and the President Pro Tempore of the Senate each shall appoint a cochair for the Commission. The Commission may contract for consultant services as provided by G.S. 120-32.02. Upon approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional and clerical staff to assist in the work of the Commission. Clerical staff shall be furnished to the Commission through the offices of the House of Representatives and the Senate Directors of Legislative Assistants. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission. Members of the Commission shall receive per diem, subsistence, and travel allowances at the rate established in G.S. 120-3.1. The appointing authority shall fill vacancies. The Commission, while in the discharge of its official duties, may exercise all the powers provided under the provisions of G.S. 120-19 through G.S. 120-19.4, including the power to request all officers, agents, agencies, and departments of the State to provide any information, data, or documents within their possession, ascertainable from their records, or otherwise available to them and the power to subpoena witnesses.

SECTION 10.5. Appropriation. – There is appropriated from the General Fund to the General Assembly the sum of fifty thousand dollars ($50,000) for the 2011-2012 fiscal year to fund the work of the Legislative Study Commission on Occupational Licensing created by this act.

SECTION 11. This act becomes effective July 1, 2011.