Regulatory Review

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Office of State Budget and Management

Joint Legislative Regulatory Reform Committee - November 2011
I. Background
II. Governor’s Executive Order 70
III. Senate Bill 781
IV. Regulatory Process Concerns
V. Resources

- Grading state level regulatory review processes; North Carolina rated **above average**
- North Carolina criticized for:
  - Not having a standing process for **reviewing existing rules**, EO 70 and SB 781 Fixed!
  - Having too much **delay and burden** in the rulemaking process, and
- North Carolina praised for:
  - **economic analysis** requirements
  - Spending analysis time on big rules, not small – **proportionality**, *(vast majority of rule changes impose little to no cost)*
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Review of New Cabinet Rule Changes:

- OSBM shall ensure **ALL** new Cabinet rule changes (Not Council of State or other independent agencies):
  - Should be clearly written, relevant, and up-to-date
  - Be based on **sound** scientific and economic information
  - Are **cost effective** with no undue burden
  - Subjected to **proportional analysis**
  - Are processed in a way so citizens have **better access** to timely and accurate rule info
  - Are completed in a **timely manner**
  - Are coordinated with other agencies
  - **Assess alternatives** to regulation
Monthly Comparison of New Rule Changes Filed by Cabinet Agencies: 5 Year Average vs. Post Executive Order 70

- New rules filed for publication by Cabinet Agencies is down over 50% since EO 70 compared to the previous 5 year levels
Review of Existing Rules:

- April 2011 Report
  - 1327 public comments and 250 were rule related
    - OSBM recommended 224 for further action by agencies
  - Agencies and OSBM recommended 1064 rule repeals
    - 57% repealed or in process
  - Agencies recommended 896 rule changes
    - OSBM recommended 378 of the 896

- January 2012 – Agencies provide status to OSBM on implementing recommendations
- April 2012 – OSBM report on existing and new recommendations
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Significant Changes for All Agencies:

- Threshold for rules with Substantial Economic Impact moved from $3 million financial impact to $500 thousand
- Agencies required to follow regulatory principles (but no enforcement mechanism)
- Heightened restrictions on environmental regulations
- Codifies EO 70 annual review of existing rules and the idea of principles
- Further restrictions on guidance documents
## Senate Bill 781

### Executive Order 70 vs. Senate Bill 781

<table>
<thead>
<tr>
<th>Reforms</th>
<th>EO 70 (Cabinet)</th>
<th>SB 781 (all APA agencies)</th>
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</thead>
<tbody>
<tr>
<td>Ensures regulatory principles are followed</td>
<td>OSBM</td>
<td>Agency?</td>
</tr>
<tr>
<td>Consistent process for economic review</td>
<td>YES</td>
<td>NO</td>
</tr>
<tr>
<td>Proportionality – level of analysis scaled to size</td>
<td>YES</td>
<td>NO</td>
</tr>
<tr>
<td>Review of existing rules</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Heightened restrictions on environmental rules</td>
<td>NO</td>
<td>YES</td>
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Regulatory Process Concerns

1. Length of APA rulemaking process (regulatory and de-regulatory)
   - About a year if no legislative review
   - About two years with legislative review

2. Different review processes for EO70 and S781

3. Statewide enforcement and process ambiguity
   - Study of Virginia found less than 20% of agencies complied when no enforcement process
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Resources

• Public Comments for Executive Order 70

• OSBM Rule Analysis website
  – http://www.osbm.state.nc.us/ncosbm/economic_analysis/regulatory_analysis.shtm

• OSBM Memos on Executive Order 70

• OSBM April Regulatory Report

• Office of Administrative Hearings Rules Division
  – http://www.ncoah.com/rules/

• 52 Experiments with Regulatory Review, Institute for Policy Integrity (2010)