



# HOUSE BILL 402: NC REINS Act.

2025-2026 General Assembly

<b>Committee:</b>	House Rules, Calendar, and Operations of the House	<b>Date:</b>	April 15, 2025
<b>Introduced by:</b>	Reps. Chesser, Bell, Zenger, Schietzelt	<b>Prepared by:</b>	Chris Saunders
<b>Analysis of:</b>	Second Edition		Staff Attorney

## OVERVIEW: *House Bill 402 would do the following:*

- *Require that a proposed permanent rule or suite of rules with a substantial economic impact (an aggregate economic impact on all persons affected of at least \$1,000,000 in a 12-month period, calculated based on the combined cost of the baseline conditions and the proposed rule) is subject to legislative disapproval. Any member of the General Assembly could file a bill to disapprove the rule, and the rule would not become effective if the disapproval bill became law.*
- *Provide that an administrative law judge must exercise his or her independent judgment in contested cases, and provide that the court must exercise independent judgment on appeal.*

[As introduced, this bill was identical to S290, as introduced by Sens. Jarvis, Moffitt, Sawrey, which is currently in Senate Rules and Operations of the Senate.]

## CURRENT LAW AND BILL ANALYSIS:

Under current law, when an agency proposes a permanent rule that would have a substantial economic impact, defined as an aggregate financial impact on all persons affected of at least \$1,000,000 in a 12-month period, the agency must prepare a fiscal note, which is reviewed by the Office of State Budget and Management. The agency must calculate the economic impact by assessing the baseline conditions against which the proposed rule is to be measured and estimating the additional costs that would be created by implementation of the proposed rule by measuring the incremental difference between the baseline and the future condition expected after implementation of the rule.

A proposed rule must be reviewed by the Rules Review Commission (RRC). If the RRC receives written objections to the proposed rule from at least 10 people, the rule becomes subject to legislative review. A rule subject to legislative review becomes effective on the earlier of the 31st legislative day or the day of adjournment of the next regular session of the General Assembly that begins at least 25 days after the date the RRC approved the rule. If any member of the General Assembly introduces a bill to disapprove the rule before the 31st legislative day of that session, the rule becomes effective on the earlier of the day the General Assembly takes an unfavorable final action on the disapproval bill, or the date that the General Assembly adjourns without ratifying the disapproval bill. If the disapproval bill is enacted into law, the rule cannot become effective.

**Section 1** of the bill would automatically make rules with a substantial economic impact subject to legislative review as if they had received 10 letters of objection.

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**Section 2** would change the way that substantial economic impact is calculated. If the proposed rule amends or readopts an existing rule, the agency would also be required to estimate the baseline cost of the rule. The economic impact would be the combined cost of the baseline conditions and the additional costs that would be created by implementation of the proposed rule.

In 2024, the U.S. Supreme Court ruled in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024) that under the federal Administrative Procedure Act, courts may not defer to an agency's interpretation of the law simply because a statute is ambiguous, and must instead exercise independent judgment in deciding whether an agency has acted within its statutory authority. This overruled *Chevron v. NRDC*, 467 U.S. 837 (1984), and the doctrine resulting from that decision, known as Chevron deference, which required courts to defer to an agency's interpretation of an ambiguous statute if the agency's interpretation was reasonable.

Because *Chevron* applied to the federal Administrative Procedure Act, State courts have not applied Chevron deference in reviewing State agency decisions regarding enforcement of rules. However, in *N.C. Acupuncture Licensing Bd. v. N.C. Bd. of Physical Therapy Exam'rs*, 371 N.C. 697, 700 (2018), the North Carolina Supreme Court held that the Court gives "great weight to an agency's interpretation of a statute it is charged with administering; however, 'an agency's interpretation is not binding.'"

The North Carolina Administrative Procedure Act (APA) currently requires an administrative law judge (ALJ) to "giv[e] due regard to the demonstrated knowledge and expertise of the agency with respect to facts and inferences within the specialized knowledge of the agency." An ALJ's decision can be appealed to superior court, where it is reviewed *de novo*, with questions of fact addressed with deference to the ALJ's findings using the "whole record" standard of review. In other words, if the issue is fact-intensive, the standard of review is whether the agency's decision is supported by substantial evidence based on the whole record. The assignments of error permitted under the APA that are subject to "whole record" review are whether the decision was supported by substantial evidence and whether the decision was arbitrary, capricious, or an abuse of discretion.

**Section 3** would require that in deciding a contested case, an ALJ "shall be informed by" the agency's demonstrated knowledge and expertise but must exercise independent judgment in making a final decision or order.

**Section 4** would require that in an appeal of a contested case, when conducting its review of the ALJ's final decision, the superior court must also exercise independent judgment in making a final decision or order.

**EFFECTIVE DATE:** This act would be effective when it becomes law. Sections 1 and 2 of the PCS would apply to rules adopted on or after that date. Sections 3 and 4 would apply to actions pending or filed on or after that date.