This Bill Analysis reflects the contents of the bill as it was presented in committee.

HOUSE BILL 402: Limit Rules With Substantial Financial Costs.

2025-2026 General Assembly

Committee:	Senate Rules and Operations of the Senate	**Date:**	June 4, 2025
Introduced by:	Reps. Chesser, Bell, Zenger, Schietzelt	**Prepared by:**	Chris Saunders Committee Counsel
Analysis of:	PCS to Second Edition H402-CSTQ-26		

OVERVIEW: The Proposed Committee Substitute (PCS) to House Bill 402 would require a fiscal note under the Administrative Procedure Act for all rules with an aggregate financial impact of $1,000,000 on all persons affected by the rule over five years, rather than 12 months. The PCS would also impose the following limitations on how permanent rules proposed by boards and commissions may be adopted:

- ***For proposed permanent rules with an aggregate financial cost of at least $1,000,000 over a five-year period, the rule must be adopted by a vote of at least 2/3 of all members present and voting.***
- ***For proposed permanent rules with an aggregate financial cost of $10,000,000 over a five-year period, the rule must be adopted by a unanimous vote of all members present and voting, except that if the rule or set of rules is required by federal law, then the rule may be adopted by a vote of at least 2/3 of all members present and voting.***

The PCS replaces the contents of the Second Edition with the contents of Senate Bill 705.

CURRENT LAW AND BILL ANALYSIS:

Under current law, if a proposed permanent rule would have a "substantial economic impact," defined as an aggregate financial impact on all persons affected by the rule of $1,000,000 in a 12-month period, the agency proposing the rule must prepare a fiscal note.

Section 1 of the PCS would change the definition of "substantial economic impact" to mean an aggregate financial impact on all persons affected by a proposed rule of $1,000,000 in a 5-year period.

Section 2 of the PCS would impose limitations on permanent rules adopted by a board, commission, council, or similar unit of government, including rules adopted as part of the periodic review and readoption process, as follows:

- For proposed permanent rules with an aggregate financial cost of at least $1,000,000 over a five-year period, the rule must be adopted by a vote of at least 2/3 of all members present and voting.
- For proposed permanent rules with an aggregate financial cost of $10,000,000 over a five-year period, the rule must be adopted by a unanimous vote of all members present and voting, except that if the rule or set of rules is required by federal law, then the rule may be adopted by a vote of at least 2/3 of all members present and voting.

"Aggregate financial cost" would mean the amount of costs to all persons affected, as identified in a substantial economic impact analysis, and would not include benefits.

EFFECTIVE DATE: This act would be effective when it becomes law and would apply to rules adopted on or after that date.

BACKGROUND: Legislation requiring a supermajority of the members of a board or commission to adopt a rule may implicate several provisions of the State's constitution, including:

- Article I, Section 6 of the State's Constitution, which provides:
  Sec. 6. Separation of powers.
  The legislative, executive, and supreme judicial powers of the State government shall be forever separate and distinct from each other.
- Article II, Section 1, of the State's Constitution, which provides:
  Section 1. Legislative power.
  The legislative power of the State shall be vested in the General Assembly, which shall consist of a Senate and a House of Representatives.
- Article III, Section 1 of the State's Constitution, which provides:
  Section 1. Executive power.
  The executive power of the State shall be vested in the Governor.
- Article III, Section 5, Clauses 4 and 8, of the State's Constitution (Executive), which provides:
  Sec. 5. Duties of Governor.
  (4) Execution of laws. The Governor shall take care that the laws be faithfully executed.

There is no case law directly on point for this type of legislation, but a relevant decision of the North Carolina Supreme Court analyzing separation of powers issues may include McCrory v. Berger, 368 N.C. 633, 781 S.E. 2d 248 (2016). In this case, the Court considered a challenge to legislation that gave the General Assembly a majority of the members of the Coal Ash Commission, Oil & Gas Commission, and Mining Commission relative to the Governor. The Court held that the challenged appointment provisions violated the separation of powers clause, and stated:

> *"When the General Assembly appoints executive officers that the Governor has little power to remove, it can appoint them essentially without the Governor's influence. That leaves the Governor with little control over the views and priorities of the officers that the General Assembly appoints. When those officers form a majority on a commission that has the final say on how to execute the laws, the General Assembly, not the Governor, can exert most of the control over the executive policy that is implemented in any area of the law that the commission regulates. As a result, the Governor cannot take care that the laws are faithfully executed in that area. The separation of powers clause plainly and clearly does not allow the General Assembly to take this much control over the execution of the laws from the Governor and lodge it with itself."*