

HB1044_L.002

HOUSE COMMITTEE OF REFERENCE AMENDMENT

Committee on State, Veterans, & Military Affairs.HB15-1044 be amended as follows:

1 Amend printed bill, strike everything below the enacting clause and
2 substitute:

3 **"SECTION 1. Legislative declaration.** (1) In a democratic
4 republic that is accountable to the people, rules that govern the people
5 should generally be made by those elected officials who are most
6 accountable to the voters and generally not by unelected administrators
7 who cannot be easily held accountable by the people or voted out of
8 office. The Colorado constitution vests power in the hands of the people
9 to govern themselves and make laws for themselves primarily through the
10 hands of their elected representatives in the general assembly, not
11 primarily through the hands of a growing bureaucracy of rule-makers that
12 now govern the people but cannot easily be removed or replaced by the
13 vote of the people.

14 (2) The general assembly finds that its own members'
15 responsibility for legislative review of administrative rules promulgated
16 by the executive branch has lapsed. While the general assembly's
17 committee on legal services reviews and approves new rules promulgated
18 by departments and agencies every year, there has not been a thorough
19 legislative review of all of the existing administrative rules since 1984.

20 (3) The sheer volume of the Colorado Code of Regulations
21 (CCR), which is the sole official public repository of rules promulgated
22 and enforced upon the people by the executive branch, has grown over
23 the decades and is now approaching 40 volumes, enough to fill an entire
24 library shelf. The majority of these rules were not promulgated in the past
25 year, meaning the vast majority, perhaps ninety-five percent or more of
26 these rules, have not recently been reviewed or re-approved by the
27 legislature. Many or even most rules will likely never expire unless the
28 legislature either acts to review them or the executive agencies undertake
29 a dedicated and rigorous approach to reviewing rules and questioning
30 whether the rules need to exist.

31 (4) While all existing rules in the CCR theoretically have some
32 basis in legislated or delegated authority derived from the Colorado
33 Revised Statutes (C.R.S.), many old and outdated rules in the CCR may
34 have lost their legal authority either due to changes in the C.R.S. or
35 through mission creep, by expanding beyond what existing statute
36 intended. This allows the potential for a runaway bureaucracy, or, worse,
37 an unlawful one. If the legislature delegates too much authority without



1 continued oversight, the people of Colorado will eventually, if they are
2 not already, be governed by an unconstitutional ruling class of unelected
3 officials rather than by those whom the people elected to help them
4 self-govern.

5 (5) Indeed, some existing but unreviewed administrative rules
6 promulgated in the 1980s were written by executive agency heads who
7 have long since retired or died; yet ironically, these rule-makers still
8 theoretically govern our people from the grave. Without current executive
9 review and legislative review through its oversight committees, they will
10 continue to do so, theoretically forever.

11 (5) The general assembly finds that the executive branch has
12 embarked on a project to conduct regulatory efficiency reviews of agency
13 rules and has eliminated many unnecessary, duplicative, obsolete, or
14 burdensome rules through this process, but the pace of the review has
15 been slow. In 2014, the general assembly codified this review into the
16 "State Administrative Procedure Act" in hopes that this valuable work
17 would continue. That legislation directed that the reports of this
18 mandatory review be submitted to the applicable legislative committees
19 of reference that oversee the principal departments. In the past three
20 years, it is estimated that twenty percent of the existing rules have been
21 reviewed through this process.

22 (6) The general assembly therefore declares that the purpose of
23 House Bill 15-1044 is to accelerate the timeframe for the executive
24 branch agencies to review their administrative rules by directing the
25 executive branch agencies to create and follow a schedule over a
26 four-year period of time to complete the remaining review of all of their
27 rules. This legislation requires the agencies to create a plan for the review
28 of their rules and to report annually on their progress in completing this
29 work to the properly accountable and elected officials in the general
30 assembly.

31 **SECTION 2.** In Colorado Revised Statutes, **amend 24-4-103.3**
32 as follows:

33 **24-4-103.3. Mandatory review of rules by agencies - report on**
34 **results of review in departmental regulatory agendas and to**
35 **legislative committees.** (1) ~~The department of regulatory agencies shall~~
36 ~~establish a schedule, in consultation with~~ Each principal department
37 SHALL REPORT TO THE JOINT COMMITTEE OF REFERENCE, AS DEFINED IN
38 SECTION 2-7-203 (1), C.R.S., ASSIGNED WITH LEGISLATIVE OVERSIGHT
39 RESPONSIBILITY FOR THAT PARTICULAR AGENCY THE SCHEDULE AND TIME
40 LINE for the review of all of the rules for ~~each~~ THAT principal department
41 AS OUTLINED IN SUBSECTION (1.5) OF THIS SECTION. Each principal

1 department shall conduct a review of all of its rules to assess the
2 continuing need for and the appropriateness and cost-effectiveness of its
3 rules to determine if they should be continued in their current form,
4 modified, or repealed. The applicable rule-making agency or official in
5 the principal department shall consider the following:

- 6 (a) Whether the rule is necessary;
- 7 (b) Whether the rule overlaps or duplicates other rules of the
8 agency or with other federal, state, or local government rules;
- 9 (c) Whether the rule is written in plain language and is easy to
10 understand;
- 11 (d) Whether the rule has achieved the desired intent and whether
12 more or less regulation is necessary;
- 13 (e) Whether the rule can be amended to give more flexibility,
14 reduce regulatory burdens, or reduce unnecessary paperwork or steps
15 while maintaining its benefits;
- 16 (f) Whether the rule is implemented in an efficient and effective
17 manner, including the requirements for the issuance of permits and
18 licenses;
- 19 (g) Whether a cost-benefit analysis was performed by the
20 applicable rule-making agency or official in the principal department
21 pursuant to section 24-4-103 (2.5); and
- 22 (h) Whether the rule is adequate for the protection of the safety,
23 health, and welfare of the state or its residents.

24 (1.5) (a) ON OR BEFORE OCTOBER 1, 2015, EACH PRINCIPAL
25 DEPARTMENT SHALL SUBMIT A WRITTEN REPORT TO THE COMMITTEE ON
26 LEGAL SERVICES AND TO THE APPLICABLE JOINT COMMITTEE OF
27 REFERENCE THAT HAS OVERSIGHT OVER THAT DEPARTMENT WITH A
28 SCHEDULE FOR THE REVIEW OF ALL OF THE RULES OF THAT DEPARTMENT
29 USING THE CRITERIA OUTLINED IN SUBSECTION (1) OF THIS SECTION. THE
30 REPORT MUST CONTAIN THE DEPARTMENT'S PLAN AND TIME LINE FOR
31 REVIEWING ITS RULES OVER A FOUR-YEAR PERIOD THAT COMMENCES ON
32 OCTOBER 1, 2015, AND CONCLUDES NO LATER THAN OCTOBER 1, 2019. IN
33 THE WRITTEN REPORT AND SCHEDULE FOR REVIEW SUBMITTED ON
34 OCTOBER 1, 2015, EACH PRINCIPAL DEPARTMENT SHALL SPECIFY:

- 35 (I) THE TOPICS AND THE CCR CITATIONS IN THE CODE OF
36 COLORADO REGULATIONS THAT WOULD BE REVIEWED IN EACH YEAR OF
37 THE FOUR-YEAR PERIOD OF REVIEW;
- 38 (II) THE EXISTING STATE STATUTES THAT THE GENERAL ASSEMBLY
39 HAS ENACTED THAT SPECIFICALLY AUTHORIZE THE AGENCY TO CREATE OR
40 PROMULGATE THE RULES NOW LISTED UNDER THAT TOPIC FOR EACH OF
41 THE CCR CITATIONS;

1 (III) THE FUTURE DATE OF ANY EXISTING EXPIRATION OR SUNSET
2 DATES OR WHETHER THERE IS NO EXISTING SUNSET DATE, IF INDEFINITE,
3 FOR EACH OF THE CCR CITATIONS OR THE APPLICABLE STATUTES; AND

4 (IV) THE APPROXIMATE ANNUAL COST IN FULL-TIME EQUIVALENT
5 EMPLOYEES TO THE AGENCY IN ENFORCING EACH OF THE CCR CITATIONS.

6 (b) ON OR BEFORE OCTOBER 1, 2016, OCTOBER 1, 2017, AND
7 OCTOBER 1, 2018, EACH PRINCIPAL DEPARTMENT SHALL SUBMIT A
8 WRITTEN REPORT TO THE COMMITTEE ON LEGAL SERVICES AND TO THE
9 APPLICABLE JOINT COMMITTEE OF REFERENCE REPORTING ON THE RESULTS
10 OF THE DEPARTMENT'S REVIEW OF ITS RULES, ITS PROGRESS TOWARD
11 COMPLETING THE FULL REVIEW OF ALL OF THE DEPARTMENT'S RULES,
12 INCLUDING THE PERCENTAGE OF RULES THAT HAVE BEEN COMPLETED AND
13 THE PERCENTAGE OF RULES THAT STILL REMAIN TO BE REVIEWED, LISTING
14 WHICH RULES WERE REVISED, UNREVISED, OR ELIMINATED UPON REVIEW
15 FOR EACH OF THE CCR CITATIONS, ANY ADJUSTMENTS TO THE
16 DEPARTMENT'S SCHEDULE AND PLAN FOR REVIEW, AND ANY REVISIONS TO
17 ANY INFORMATION IN THE REPORT SUBMITTED IN A PREVIOUS YEAR. ON OR
18 BEFORE OCTOBER 1, 2019, EACH PRINCIPAL DEPARTMENT SHALL SUBMIT
19 A FINAL WRITTEN REPORT TO THE COMMITTEE ON LEGAL SERVICES AND TO
20 THE APPLICABLE JOINT COMMITTEE OF REFERENCE REPORTING ON THE
21 RESULTS OF ITS REVIEW OF THE DEPARTMENT'S RULES. THE FINAL REPORT
22 SHALL INCLUDE A LIST OF THE RULES THAT WERE REVISED, UNREVISED, OR
23 ELIMINATED UPON REVIEW FOR EACH OF THE CCR CITATIONS AS A RESULT
24 OF THE MANDATORY REVIEW. IT IS THE INTENT OF THE GENERAL
25 ASSEMBLY THAT THE PRINCIPAL DEPARTMENTS WILL CONCLUDE THEIR
26 REVIEW OF ALL OF THEIR RULES BY OCTOBER 1, 2019.

27 (2) Each rule-making agency or official shall provide public
28 notice on the agency's official web site of its review of the rules, give the
29 public an appropriate opportunity to provide input, and notify other state
30 agencies that may have jurisdiction over the subject matter of the rules to
31 allow for collaboration and input. Based on this THE MANDATORY review
32 OF ITS RULES USING THE CRITERIA SPECIFIED IN SUBSECTION (1) OF THIS
33 SECTION, the rule-making agency or official shall determine whether the
34 existing rules should be continued in their current form, amended, or
35 repealed AND SHALL REVISE ITS RULES ACCORDINGLY. If the rule-making
36 agency or official decides that a rule should be amended or repealed, the
37 rule-making agency or official shall comply with the notice and hearing
38 requirements of section 24-4-103.

39 ~~The department of regulatory agencies~~ A PRINCIPAL
40 DEPARTMENT shall not schedule mandatory review under this section
41 during the year of and during the year following any scheduled sunset

1 review conducted by the department of regulatory agencies pursuant to
2 section 24-34-104.

3 (4) Each principal department shall ALSO include a report on the
4 results of its mandatory review of rules as part of its departmental
5 regulatory agenda that it submits to the staff of the legislative council for
6 distribution to the applicable committee of reference of the general
7 assembly as outlined in section 2-7-203, C.R.S.

8 **SECTION 3. Act subject to petition - effective date.** This act
9 takes effect at 12:01 a.m. on the day following the expiration of the
10 ninety-day period after final adjournment of the general assembly (August
11 5, 2015, if adjournment sine die is on May 6, 2015); except that, if a
12 referendum petition is filed pursuant to section 1 (3) of article V of the
13 state constitution against this act or an item, section, or part of this act
14 within such period, then the act, item, section, or part will not take effect
15 unless approved by the people at the general election to be held in
16 November 2016 and, in such case, will take effect on the date of the
17 official declaration of the vote thereon by the governor."

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