

Second Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 12-0507.01 Ed DeCecco x4216

SENATE BILL 12-026

SENATE SPONSORSHIP

Cadman,

HOUSE SPONSORSHIP

(None),

Senate Committees
Local Government

House Committees

A BILL FOR AN ACT

101 CONCERNING A STATE AGENCY RULE THAT CREATES A STATE MANDATE
102 ON A LOCAL GOVERNMENT.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill prohibits an agency from promulgating a rule creating a state mandate on a local government unless:

- ! The state mandate is specifically required by federal or state law;
- ! The agency consults with local governments prior to

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

promulgation of the rule; and

- ! The state provides the funding necessary for the direct costs incurred by the local government in complying with the state mandate.

For each proposed rule that includes a state mandate, prior to filing a notice of proposed rule-making with the secretary of state, an agency is required to provide information to the director of the office of state planning and budgeting relating to the rule and contact with local governments. The agency is prohibited from conducting a public hearing on the proposed rule unless it receives a written notice that the information complies with the law. The agency must include the information and the director's notice in the agency rule-making record and provide copies of them to the executive committee of the legislative council.

An agency is also required to develop a process to actively solicit the input of elected officials and other representatives of local governments into the development of proposed rules affecting a local government.

The bill permits an agency to adopt a temporary or emergency rule without complying with these new requirements, but such compliance is required in order for the rule to become permanent.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 24-4-103, **amend** (6)
3 (a), (8.1) (b) (VIII), and (8.1) (b) (IX); and **add** (2.7), (8.1) (b) (X), and
4 (8.1) (d) as follows:

5 **24-4-103. Rule-making - procedure - definitions - repeal.**

6 (2.7) (a) AS USED IN THIS SUBSECTION (2.7):

7 (I) "DIRECTOR" MEANS THE DIRECTOR OF THE OFFICE OF STATE
8 PLANNING AND BUDGETING.

9 (II) "STATE MANDATE" HAS THE SAME MEANING AS SET FORTH IN
10 SECTION 29-1-304.5 (3) (d), C.R.S.

11 (b) NO AGENCY SHALL PROMULGATE A RULE CREATING A STATE
12 MANDATE ON A LOCAL GOVERNMENT UNLESS:

13 (I) THE STATE MANDATE IS SPECIFICALLY REQUIRED BY FEDERAL

1 OR STATE LAW;

2 (II) THE AGENCY CONSULTS WITH ALL AFFECTED LOCAL
3 GOVERNMENTS OR AN ORGANIZATION THAT REPRESENTS THE AFFECTED
4 LOCAL GOVERNMENTS PRIOR TO PROMULGATION OF THE STATE MANDATE;
5 AND

6 (III) THE STATE PROVIDES THE FUNDING NECESSARY FOR THE
7 DIRECT COSTS INCURRED BY THE LOCAL GOVERNMENT IN COMPLYING WITH
8 THE STATE MANDATE.

9 (c) (I) FOR EACH PROPOSED RULE THAT INCLUDES A STATE
10 MANDATE, PRIOR TO FILING A NOTICE OF PROPOSED RULE-MAKING WITH
11 THE SECRETARY OF STATE, AN AGENCY SHALL PROVIDE TO THE DIRECTOR
12 A DESCRIPTION OF:

13 (A) THE PROPOSED RULE;

14 (B) THE NATURE AND EXTENT OF THE AGENCY'S CONSULTATION
15 WITH REPRESENTATIVES OF THE LOCAL GOVERNMENTS THAT WOULD BE
16 AFFECTED BY THE PROPOSED STATE MANDATE;

17 (C) THE NATURE OF THE CONCERNS OF THE REPRESENTATIVES OF
18 THE LOCAL GOVERNMENTS;

19 (D) ANY WRITTEN COMMUNICATIONS OR COMMENTS SUBMITTED TO
20 THE AGENCY BY A LOCAL GOVERNMENT; AND

21 (E) THE AGENCY'S REASONING SUPPORTING THE NEED TO
22 PROMULGATE THE RULE CONTAINING THE STATE MANDATE.

23 (II) THE DIRECTOR SHALL REVIEW THE INFORMATION PROVIDED
24 PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (c) AND, IF IT
25 COMPLIES WITH THE REQUIREMENTS OF THIS PARAGRAPH (c), THE
26 DIRECTOR SHALL SEND A WRITTEN NOTICE OF COMPLIANCE TO THE
27 AGENCY PRIOR TO THE TWENTIETH DAY FROM THE DATE THE DIRECTOR

1 RECEIVES THE INFORMATION. AN AGENCY SHALL NOT CONDUCT A PUBLIC
2 RULE-MAKING PROCEEDING UNLESS THE AGENCY HAS RECEIVED THE
3 WRITTEN NOTICE OF COMPLIANCE FROM THE DIRECTOR.

4 (d) EACH AGENCY SHALL DEVELOP A PROCESS TO ACTIVELY
5 SOLICIT THE MEANINGFUL AND TIMELY INPUT OF ELECTED OFFICIALS AND
6 OTHER REPRESENTATIVES OF LOCAL GOVERNMENTS INTO THE
7 DEVELOPMENT OF PROPOSED RULES WITH STATE MANDATES AFFECTING
8 LOCAL GOVERNMENTS. EACH AGENCY SHALL IMPLEMENT ITS PROCESS AS
9 SOON AS PRACTICABLE AND POST THE PROCESS ON THE AGENCY'S WEB
10 SITE.

11 (e) THE EXECUTIVE DIRECTOR OF EACH DEPARTMENT SHALL BE
12 RESPONSIBLE FOR ENSURING IMPLEMENTATION OF AND COMPLIANCE WITH
13 THIS SUBSECTION (2.7).

14 (6) (a) A temporary or emergency rule may be adopted without
15 compliance with the procedures prescribed in subsection (4) of this
16 section and with less than the twenty days' notice prescribed in subsection
17 (3) of this section, or where circumstances imperatively require, without
18 notice, only if the agency finds that immediate adoption of the rule is
19 imperatively necessary to comply with a state or federal law or federal
20 regulation or for the preservation of public health, safety, or welfare and
21 compliance with the requirements of this section would be contrary to the
22 public interest and makes such a finding on the record. Such findings and
23 a statement of the reasons for the action shall be published with the rule.
24 A temporary or emergency rule may be adopted without compliance with
25 ~~subsection (2.5)~~ SUBSECTIONS (2.5) AND (2.7) of this section, but shall not
26 become permanent without compliance with such ~~subsection (2.5)~~
27 SUBSECTIONS (2.5) AND (2.7). A temporary or emergency rule shall

1 become effective on adoption or on such later date as is stated in the rule,
2 shall be published promptly, and shall have effect for not more than one
3 hundred twenty days after its adoption or for such shorter period as may
4 be specifically provided by the statute governing such agency, unless
5 made permanent by compliance with subsections (3) and (4) of this
6 section.

7 (8.1) (b) The agency rule-making record shall contain:

8 (VIII) A copy of any objection to the rule presented to the
9 committee on legal services of the general assembly by its staff pursuant
10 to paragraph (d) of subsection (8) of this section and the agency's
11 response; ~~and~~

12 (IX) A copy of any filed executive order with respect to the rule;

13 AND

14 (X) A COPY OF ANY INFORMATION PROVIDED TO THE DIRECTOR
15 PURSUANT TO PARAGRAPH (c) OF SUBSECTION (2.7) OF THIS SECTION AND
16 THE WRITTEN NOTICE OF COMPLIANCE FROM THE DIRECTOR.

17 (d) IF AN AGENCY INCLUDES INFORMATION REQUIRED BY
18 SUBPARAGRAPH (X) OF PARAGRAPH (b) OF THIS SUBSECTION (8.1) IN THE
19 RULE-MAKING RECORD, THE AGENCY SHALL PROVIDE A COPY OF THE
20 PORTION OF THE RECORD THAT INCLUDES SUCH INFORMATION WITH THE
21 EXECUTIVE COMMITTEE OF THE LEGISLATIVE COUNCIL IN ACCORDANCE
22 WITH THE PROVISIONS OF SECTION 24-1-136 (9).

23 **SECTION 2. Act subject to petition - effective date.** This act
24 takes effect at 12:01 a.m. on the day following the expiration of the
25 ninety-day period after final adjournment of the general assembly (August
26 7, 2012, if adjournment sine die is on May 9, 2012); except that, if a
27 referendum petition is filed pursuant to section 1 (3) of article V of the

1 state constitution against this act or an item, section, or part of this act
2 within such period, then the act, item, section, or part will not take effect
3 unless approved by the people at the general election to be held in
4 November 2012 and, in such case, will take effect on the date of the
5 official declaration of the vote thereon by the governor.