

**Second Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO**

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 12-0507.01 Ed DeCecco x4216

SENATE BILL 12-026

SENATE SPONSORSHIP

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HOUSE SPONSORSHIP

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Senate Committees

Local Government
Appropriations

House Committees

Local Government
Appropriations

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.*

HOUSE
Am ended 2nd Reading
May 1, 2012

SENATE
3rd Reading Unam ended
April 17, 2012

SENATE
Am ended 2nd Reading
April 12, 2012

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 THE AGENCY COMPLIES WITH
13 THE REQUIREMENTS OF SECTION 29-1-304.5, C.R.S.

1 == ==

2 (c) (I) BEGINNING JANUARY 1, 2014, FOR EACH PROPOSED RULE

3 THAT INCLUDES A STATE MANDATE, AN AGENCY SHALL PROVIDE TO

4 THE DIRECTOR A DESCRIPTION OF:

5 (A) THE PROPOSED RULE;

6 (B) THE NATURE AND EXTENT OF ANY CONSULTATIONS THAT THE

7 AGENCY HAD WITH ELECTED OFFICIALS OR OTHER REPRESENTATIVES OF

8 THE LOCAL GOVERNMENTS THAT WOULD BE AFFECTED BY THE PROPOSED

9 STATE MANDATE;

10 (C) THE NATURE OF ANY CONCERNS OF THE ELECTED OFFICIALS OR

11 OTHER REPRESENTATIVES OF THE LOCAL GOVERNMENTS;

12 (D) ANY WRITTEN COMMUNICATIONS OR COMMENTS SUBMITTED TO

13 THE AGENCY BY AN ELECTED OFFICIAL OR OTHER REPRESENTATIVE OF A

14 LOCAL GOVERNMENT; AND

15 (E) THE AGENCY'S REASONING SUPPORTING THE NEED TO

16 PROMULGATE THE RULE CONTAINING THE STATE MANDATE.

17 (II) THE DIRECTOR SHALL REVIEW THE INFORMATION PROVIDED

18 PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (c) AND, IF IT

19 COMPLIES WITH THE REQUIREMENTS OF THIS PARAGRAPH (c), THE

20 DIRECTOR SHALL SEND A WRITTEN NOTICE OF COMPLIANCE TO THE

21 AGENCY. AN AGENCY SHALL NOT CONDUCT A PUBLIC RULE-MAKING

22 PROCEEDING UNLESS THE AGENCY HAS RECEIVED THE WRITTEN NOTICE OF

23 COMPLIANCE FROM THE DIRECTOR.

24 (d) EACH AGENCY SHALL DEVELOP A PROCESS TO ACTIVELY

25 SOLICIT THE MEANINGFUL AND TIMELY INPUT OF ELECTED OFFICIALS AND

26 OTHER REPRESENTATIVES OF LOCAL GOVERNMENTS INTO THE

27 DEVELOPMENT OF PROPOSED RULES WITH STATE MANDATES AFFECTING

1 LOCAL GOVERNMENTS. EACH AGENCY SHALL IMPLEMENT ITS PROCESS
2 NO LATER THAN JANUARY 1, 2014, AND POST THE PROCESS ON THE
3 AGENCY'S WEB SITE.

4 (e) THE EXECUTIVE DIRECTOR OF EACH DEPARTMENT SHALL BE
5 RESPONSIBLE FOR ENSURING IMPLEMENTATION OF AND COMPLIANCE WITH
6 THIS SUBSECTION (2.7).

7 (f) THE GENERAL ASSEMBLY SHALL APPROPRIATE ANY MONEYS
8 NECESSARY FOR THE IMPLEMENTATION OF THIS SUBSECTION (2.7) TO
9 OFFICE OF STATE PLANNING AND BUDGETING IN THE ANNUAL GENERAL
10 APPROPRIATION ACT FOR THE FISCAL YEAR 2013-14.

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

1 be specifically provided by the statute governing such agency, unless
2 made permanent by compliance with subsections (3) and (4) of this
3 section.

4 (8.1) (b) The agency rule-making record shall contain:

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

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

10 AND

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

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

20 **SECTION 2. Act subject to petition - effective date.** This act
21 takes effect at 12:01 a.m. on the day following the expiration of the
22 ninety-day period after final adjournment of the general assembly (August
23 8, 2012, if adjournment sine die is on May 9, 2012); except that, if a
24 referendum petition is filed pursuant to section 1 (3) of article V of the
25 state constitution against this act or an item, section, or part of this act
26 within such period, then the act, item, section, or part will not take effect
27 unless approved by the people at the general election to be held in

- 1 November 2012 and, in such case, will take effect on the date of the
- 2 official declaration of the vote thereon by the governor.