



Colorado Legislative Council Staff Fiscal Note
**STATE and LOCAL
 FISCAL IMPACT**

Drafting Number: LLS 12-0507
Prime Sponsor(s): Sen. Cadman

Date: January 30, 2012
Bill Status: Senate Local Government
Fiscal Analyst: Harry Zeid (303-866-4753)

TITLE: CONCERNING A STATE AGENCY RULE THAT CREATES A STATE MANDATE ON A LOCAL GOVERNMENT.

| Fiscal Impact Summary | FY 2012-2013 | FY 2013-2014 |
|--------------------------------------------------------------------------------------------------------------------------------------------|---------------------|---------------------|
| State Revenue | | |
| State Expenditures General Fund | \$10,000 | |
| FTE Position Change | | |
| Effective Date: August 7, 2012, if the General Assembly adjourns on May 9, 2012, as scheduled, and no referendum petition is filed. | | |
| Appropriation Summary for FY 2012-2013: See the State Appropriations section. | | |
| Local Government Impact: See the Local Government Impact section. | | |

Summary of Legislation

The bill prohibits any state agency from promulgating a rule that creates a state mandate on a local government unless the following three conditions are met:

- the state mandate is specifically required by federal or state law;
- the agency consults with all affected local governments or an organization that represents the affected local governments prior to promulgation of the state mandate; and
- the state provides the funding necessary for the direct costs incurred by the local government in complying with the state mandate.

Prior to filing a notice of proposed rule-making with the Secretary of State, the state agency proposing the rule must provide information to the director of the Office of State Planning and Budgeting (OSPB) that describes: the proposed rule; the nature of the agency's consultation with affected local governments; the concerns of affected local governments; written communications submitted to the agency by local governments; and the agency's reasoning supporting the need to promulgate the rule containing the state mandate.

The director of OSPB must review the information provided, and shall send a written notice of compliance to the agency within 20 days. A public rule-making proceeding may not commence without written notice of compliance.

Each state agency must 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 executive director of each state department shall be responsible for ensuring implementation and compliance with the rule-making procedure.

Background

Executive Order D 2011-005 - *Establishing a Policy to Enhance the Relationship between State and Local Government*, was signed by Governor Hickenlooper on January 11, 2011. Senate Bill 12-026 places the major requirements of the Executive Order into statute and provides additional direction for its implementation.

State Expenditures

This bill will increase state expenditures by at least \$10,000 in FY 2012-13, excluding any future potential expenditures for reimbursing local governments for future mandates.

Office of State Planning and Budgeting (OSPB). **OSPB will require a one-time General Fund expenditure of \$10,000 in FY 2012-13.** The Executive Branch has already developed the systems necessary to comply with the Governor's Executive Order D 2011-005. Any cost associated with implementing the Executive Order should not be a cost attributable to the bill. That said, there is one component of the bill that is not included in the Executive Order that will require additional resources and workload for OSPB. The bill requires the director of OSBP to determine if new rules comply with SB 12-026. OSPB must send a written notice of compliance to the state agency requesting the rule change. On average, as many as 600 rules are evaluated annually by OSPB.

OSPB will add a module to its online Executive Order 5 tool, which was created by the Statewide Internet Portal Authority (SIPA). The module will automate the process by which state agencies receive written notification once OSPB determines that a department has complied with the bill in its rule making process. A one-time General Fund expenditure of \$10,000 in FY 2012-13 will be necessary to create the module.

Department of Law. Since many rules create statewide impact, the potential exists for a significant but indeterminate need for legal assistance by departments in determining whether a proposed rule imposes a state mandate.

Other Departments. The bill could affect other state agencies in two ways. First, it could increase state expenditures to reimburse local governments for their costs in complying with state mandates. Second, it could affect administrative costs in promulgating rules to ensure that any new state mandates on local governments are reimbursed. However, both of these impacts are expected to be minimal as long as Executive Order D 2011-005 is in effect. Even so, actual costs cannot be estimated with any certainty as the future actions of state agencies related to policies affecting local governments are unknown. This fiscal note assumes that any additional expenditure requirements for departments will be identified through the budget process.

Departmental Differences. All departments of state government were contacted for their input in preparing this fiscal note. Many departments indicated that the bill will require additional administrative responsibilities and possibly, additional software expenditures as part of the rule-making process. For example, the Department of Transportation and the Department of Personnel have both identified cost to comply with the bill. In most instances, however, the identified costs will not require any additional appropriations.

Local Government Impact

Based on implementation of the Governor's Executive Order D 2011-005 and the requirements of the bill, it is assumed that few, if any, state rules will be promulgated in the future that create a state mandate on a local government. It is reasonable to expect that any future state agency rule creating a local fiscal impact will be accompanied by the appropriate level of state funding necessary to provide for the direct costs incurred by the local government to comply. Local government impact must be measured on a rule by rule basis.

State Appropriations

The Office of the Governor will require a General Fund appropriation of \$10,000 in FY 2012-13. If legal services are required, each department will need to request additional funding through the supplemental budget process. Based on the assumption that no state mandate will be promulgated against a local government that requires the state to pay for the direct costs incurred to comply with the mandate, no additional appropriation is anticipated in FY 2012-13.

Departments Contacted

All Departments