

  
*Colorado Legislative Council Staff Fiscal Note*  
**FINAL**  
**FISCAL NOTE**

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

**Date:** July 13, 2012  
**Bill Status:** Signed into Law  
**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 |
|---|--------------|--------------|
| <b>State Revenue</b>  |              |              |
| <b>State Expenditures</b><br>General Fund   |              | \$10,000     |
| <b>FTE Position Change</b>  |              |              |
| <b>Effective Date:</b> The bill was signed into law by the Governor on May 24, 2012, and takes effect August 8, 2012, assuming no referendum petition is filed. |              |              |
| <b>Appropriation Summary for FY 2012-2013:</b> None required.   |              |              |
| <b>Local Government Impact:</b> 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 agency complies with the requirements of Section 29-1-304.5, C.R.S. This statute states that, with certain exceptions, no new state mandate or increase in the level of service for an existing state mandate beyond the existing level of service required by law shall be mandated by the General Assembly or any state agency on any local government unless the state provides additional moneys to reimburse the local government for the additional costs. The mandate or increased level of service is optional on the part of the local government if additional moneys for reimbursement are not provided.

Exceptions to the prohibition under current law include: those required by federal law; the requirement of a final state or federal court order; financing of the state public school system; state law enacted prior to the second regular session of the 58th General Assembly; actions undertaken at the option of a local government; and an order from the State Board of Education relating to the modification of statutory or regulatory responsibilities of school districts pertaining to charter schools.

Beginning January 1, 2014, for each proposed rule that includes a state mandate, 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. 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. Each agency shall implement its process no later than January 1, 2014. The executive director of each state department shall be responsible for ensuring implementation and compliance with the rule-making procedure.

The bill authorizes the General Assembly to appropriate any moneys necessary for the implementation of the bill to OSPB in the annual general appropriation act for FY 2013-14.

## **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 2013-14, 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 2013-14.** 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), in FY 2013-14. 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 2013-14 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 the administrative costs of some state agencies in promulgating rules to ensure that the conditions of the bill are met. However, these impacts are expected to be minimal as long as Executive Order D 2011-005 is in effect. 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, impacts will result for local governments. 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.

### **Departments Contacted**

All Departments