

Second Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 12-0650.01 Debbie Haskins x2045

HOUSE BILL 12-1002

HOUSE SPONSORSHIP

Sonnenberg,

SENATE SPONSORSHIP

Jahn,

House Committees

Economic and Business Development

Senate Committees

Business, Labor and Technology

Finance

A BILL FOR AN ACT

101 **CONCERNING THE RULES OF STATE AGENCIES APPLICABLE TO**
102 **APPLICATIONS FOR PERMITS.**

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 creates the "CLEAR Act", which stands for "Creating Level Expectations For Application Review".

The bill amends the "State Administrative Procedure Act" (APA) to state that the rules of a state agency in effect on the date that a person applies for a new or renewed permit govern the application for a new

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
3rd Reading Unamended
February 2, 2012

HOUSE
Amended 2nd Reading
February 1, 2012

permit or for renewal of the permit. If the statutes governing the agency's permit process and the requirements to qualify for a permit have changed and the agency has not yet adopted revisions to the rules to implement the new statute as of the date that a person applies for a new or renewed permit, the agency must grandfather in the application under the rules in effect on the date of the application, unless the agency determines in writing that the statutory changes materially affect the health and safety of the public and that use of the existing, unrevised rules is likely to result in an unsafe situation if the applicant does not comply with the new statutory requirements and with new rules. If the agency makes this determination, the agency must treat the application as pending, provide a written notice to the person that states the reasons the application is incomplete, and give the person a reasonable opportunity to comply with all new lawful requirements.

The bill defines "permit" as a grant of authority by an agency that authorizes the holder of the permit to do some act not forbidden by law but not allowed to be performed without such authority. "Permit" does not include a professional license issued by a licensing board or agency to conduct a profession or occupation.

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

2 **SECTION 1. Short title.** This act shall be known as the
3 "Creating Level Expectations for Application Review Act" or the
4 "CLEAR Act".

5 **SECTION 2.** In Colorado Revised Statutes, **add** 24-4-104.5 as
6 follows:

7 **24-4-104.5. Permits - rules in effect at time of submission of**
8 **application for a permit control.** (1) FOR PURPOSES OF THIS SECTION,
9 UNLESS THE CONTEXT OTHERWISE REQUIRES, "PERMIT" MEANS A GRANT OF
10 AUTHORITY BY AN AGENCY THAT AUTHORIZES THE HOLDER OF THE PERMIT
11 TO DO SOME ACT NOT FORBIDDEN BY LAW BUT NOT ALLOWED TO BE
12 PERFORMED WITHOUT SUCH AUTHORITY. "PERMIT" DOES NOT INCLUDE A
13 PROFESSIONAL LICENSE ISSUED BY A LICENSING BOARD OR AN AGENCY TO
14 CONDUCT A PROFESSION OR OCCUPATION. "PERMIT" DOES NOT INCLUDE A

1 REGISTRATION OR CERTIFICATION ISSUED BY A BOARD OR STATE AGENCY
2 TO AN INDIVIDUAL TO PURSUE A PROFESSION, PRACTICE, OR OCCUPATION.
3 "PERMIT" DOES NOT INCLUDE A WATER WELL PERMIT ISSUED BY THE STATE
4 ENGINEER PURSUANT TO TITLE 37, C.R.S.

5 (2) (a) THE RULES AND ANY WRITTEN STATEMENTS OF AGENCY
6 INTERPRETATION OF THE STATUTES OF AN AGENCY THAT ARE IN EFFECT ON
7 THE DATE THAT A PERSON APPLIES FOR ISSUANCE OR RENEWAL OF A PERMIT
8 GOVERN THE APPLICATION PROCESS AND ANY PERMIT ELIGIBILITY
9 REQUIREMENT. IF THE RULES OR ANY WRITTEN STATEMENTS OF AGENCY
10 INTERPRETATION OF THE STATUTES GOVERNING THE AGENCY'S PERMIT
11 PROCESS OR THE REQUIREMENTS TO QUALIFY FOR A PERMIT HAVE BEEN
12 AMENDED, THE AGENCY SHALL PROCESS THE APPLICATION UNDER THE
13 RULES AND ANY WRITTEN STATEMENTS OF AGENCY INTERPRETATION OF
14 THE STATUTES IN EFFECT ON THE DATE OF THE APPLICATION, UNLESS THE
15 AGENCY DETERMINES IN WRITING THAT:

16 (I) (A) THE NEW RULES MATERIALLY AFFECT THE HEALTH AND
17 SAFETY OF THE PUBLIC; AND

18 (B) USE OF THE RULES IN EFFECT ON THE DATE OF APPLICATION IS
19 LIKELY TO RESULT IN AN UNSAFE SITUATION IF THE APPLICANT DOES NOT
20 COMPLY WITH THE NEW RULES; OR

21 (II) NEW RULES OR NEW REQUIREMENTS ARE NECESSARY TO
22 ENSURE THAT THE AGENCY AND THE PERMIT WILL BE IN COMPLIANCE WITH
23 THE REQUIREMENTS OF FEDERAL LAW AND FEDERAL REGULATIONS; OR

24 (III) NEW RULES OR NEW REQUIREMENTS ARE NECESSARY TO
25 ENSURE THAT THE AGENCY AND THE PERMIT WILL BE IN COMPLIANCE WITH
26 THE REQUIREMENTS OF A COURT ORDER.

27 (b) IF THE AGENCY DETERMINES THAT ONE OF THE EXCEPTIONS TO

1 THE REQUIREMENTS OF PARAGRAPH (a) OF THIS SUBSECTION (2) WILL
2 OCCUR IF THE APPLICANT DOES NOT COMPLY WITH THE NEW RULES OR NEW
3 REQUIREMENTS, THE AGENCY SHALL:

4 (I) TREAT THE APPLICATION AS PENDING;

5 (II) PROVIDE A WRITTEN NOTICE TO THE APPLICANT STATING THE
6 REASONS THE APPLICATION IS INCOMPLETE; AND

7 (III) GIVE THE APPLICANT A REASONABLE OPPORTUNITY TO
8 COMPLY WITH THE NEW RULES OR NEW REQUIREMENTS.

9 (3) IF AN AGENCY ADOPTS OR AMENDS RULES THAT GOVERN OR
10 IMPACT THE APPLICATION PROCESS OR ANY PERMIT ELIGIBILITY
11 REQUIREMENTS AFTER A PERSON HAS APPLIED FOR A PERMIT OR RENEWAL
12 OF A PERMIT AND WHILE THE APPLICATION IS PENDING WITH THE AGENCY,
13 THE PERSON SHALL HAVE THE OPTION TO HAVE THE APPLICATION
14 PROCESSED UNDER THE RULES IN EXISTENCE AT THE TIME OF THE FILING OF
15 THE APPLICATION OR UNDER THE NEW RULES.

16 **SECTION 3. Act subject to petition - effective date -**
17 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
18 the expiration of the ninety-day period after final adjournment of the
19 general assembly (August 7, 2012, if adjournment sine die is on May 9,
20 2012); except that, if a referendum petition is filed pursuant to section 1
21 (3) of article V of the state constitution against this act or an item, section,
22 or part of this act within such period, then the act, item, section, or part
23 will not take effect unless approved by the people at the general election
24 to be held in November 2012 and, in such case, will take effect on the date
25 of the official declaration of the vote thereon by the governor.

26 (2) The provisions of this act apply to any applications for new

- 1 permits or for renewals of permits submitted to state agencies on or after
- 2 the applicable effective date of this act.