

**STATE and LOCAL
REVISED FISCAL IMPACT**

(replaces fiscal note dated January 25, 2012)

Drafting Number: LLS 12-0650	Date: February 21, 2012
Prime Sponsor(s): Rep. Sonnenberg Sen. Jahn	Bill Status: Senate Business, Labor and Technology
	Fiscal Analyst: Alex Schatz (303-866-4375)

TITLE: CONCERNING THE RULES OF STATE AGENCIES APPLICABLE TO APPLICATIONS FOR PERMITS.

Fiscal Impact Summary	FY 2012-2013	FY 2013-2014
State Revenue		
State Expenditures	See State Expenditures section.	
FTE Position Change		
Effective Date: August 8, 2012, if the General Assembly adjourns on May 9, 2012, as scheduled, and no referendum petition is filed.		
Appropriation Summary for FY 2012-2013: None required.		
Local Government Impact: Potential savings. See Local Government Impact section.		

Summary of Legislation

The **reengrossed** bill amends the State Administrative Procedure Act (APA) to establish a standard procedure for permit applications and permit renewals when an applicable rule is subject to change due to recent legislation, pending rulemaking, or an agency interpretation of statutes. Under the bill, state agencies that process permits, not including professional licenses, are required to process the application or renewal using the rules in effect on the date of application, unless an applicant opts to be processed under new rules and requirements.

The bill provides exceptions for state agencies that determine the application of new rules or requirements is likely needed to avoid an unsafe situation, or to comply with federal law or a court order. The health and safety exemption is available when an agency makes a written determination that an unsafe situation is likely. To process an application under new rules, an agency must provide notice to the applicant that the pending application requires additional submittal information to comply with specific new requirements.

State Expenditures

For many state agencies, the bill is consistent with current practice and will have no impact on costs or workload. For certain other agencies, the bill requires the agency to update permitting practices, particularly to track the date of application; however, due to relatively stable rules (e.g., infrequent rulemaking, typically only small incremental changes in law, etc.) the implementation of the bill in these agencies is absorbable within existing resources.

The bill will have an indeterminate, but potentially significant, effect on costs and workload for state agencies that administer permits:

- with a long processing time;
- that reference standards outside of state law; or
- that concern health and life safety issues.

As one example of a potentially impacted agency, the Division of Oil and Public Safety (DOPS) in the Department of Labor and Employment manages permitting activities for boilers, underground storage tanks, elevators, escalators, and certain other industrial and building equipment. A contractor will frequently make application for a DOPS permit at the time of building permit application, prior to any construction, but will not finalize the permit until the installation is inspected, commonly months to 2 or more years after construction commences on a large building project. DOPS rules also incorporate standards adopted by the American Society for Testing and Materials (ASTM), subject to regular updating outside of the legal process. At a minimum, the department will incur programming costs to track dates of application in its permit process. The department may also incur costs to review current and future rules (e.g., those involving ASTM or building code references) more intensively with the Attorney General's office.

The Colorado Department of Public Health and Environment (CDPHE) oversees the permit process for numerous health and safety-related regulations. To maintain compliance with federal law—including implementation of statutory principles such as antibacksliding, evolving best practices, and mandates from the federal Environmental Protection Agency—CDPHE frequently undertakes rulemaking with its basis, at least in part, on standards for public health and safety. In addition to costs noted above (e.g., to track permits, seek legal analysis), the bill will impose on CDPHE a duty to assess whether its various proposed rules are subject to an exemption, to issue written determinations and notices, and to maintain reference materials and personnel with sufficient knowledge to regulate according to potentially multiple sets of standards at any given time.

Finally, to the extent that the bill is perceived to, or in fact does, create a safe harbor favorable to an industry, an agency may experience a large influx of applicants seeking to stake a claim under an existing rule in advance of rulemaking. The Department of Natural Resources (DNR) administers various permit programs applicable to extractive industry (e.g., oil and gas, mineral production) and, as an example of one potentially affected agency, may see temporary increases in workload under the bill. Based on its experience with rulemaking, the DNR believes such workload spikes can be absorbed within existing resources.

The fiscal note assumes that where the bill increases costs to state agencies, affected agencies will request additional resources, as needed, through the standard budget process.

Local Government Impact

Local governments that are also applicants and permittees under programs administered by state agencies may experience savings under the bill. Prolonged application or renewal processes for permits drive costs for permittees and, under current law, may require the permittee to maintain

expertise equivalent to the permitting agency concerning submittal requirements. Under the bill, permittees could rely on existing standards and state agency guidance to obtain compliance. The amount of such savings to local governments is indeterminate due to the varying levels of expertise within local government, as well as the variable costs to prepare submittals and apply for permits across all state agencies.

Departments Contacted

All Departments