

Colorado Legislative Council Staff Fiscal Note
STATE and STATUTORY PUBLIC ENTITY
FISCAL IMPACT

Drafting Number: LLS 12-0509
Prime Sponsor(s): Sen. Cadman

Date: January 31, 2012
Bill Status: Senate Judiciary
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TITLE: CONCERNING ADDING CONSIDERATION OF LEGISLATIVE INTENT TO THE STANDARDS FOR RULES OF EXECUTIVE BRANCH AGENCIES.

Fiscal Impact Summary	FY 2012-2013	FY 2013-2014
State Revenue		
State Expenditures		
<u>Total</u>	<u>\$90,591*</u>	<u>\$90,591*</u>
General Fund	13,153	13,153
Various Cash Funds	39,509	39,509
Reappropriated Funds	23,977	23,977
Federal Funds	13,952	13,952
FTE Position Change	1.5 FTE	1.5 FTE
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 Appropriations section.		
Local Government Impact: None.		

** These costs are spread across the 9 agencies identified in the State Expenditures section. The fund sources provided are an estimate based on affected agencies' fund sources at the department level.*

Summary of Legislation

The bill prohibits an executive branch agency from adopting a rule pursuant to the State Administrative Procedure Act unless the agency finds that the rule is consistent with the clear legislative intent of the General Assembly. Justification that the intent requirement has been met must be evidenced by the public records of committee hearings and floor debates, including any statements made by the principal sponsors or proponents of the bill or an amendment to the bill before its adoption. The effect of the bill is to provide another ground for the Committee on Legal Services and its staff to use when it reviews rules adopted by executive agencies.

The bill applies to the rules of executive branch agencies adopted on or after August 7, 2012, unless a referendum petition is filed.

Background

Rule review is a process authorized by the State Administrative Procedure Act (APA) that provides for legislative oversight of executive branch rule making. Section 24-4-103 (8) (d), C.R.S., requires executive branch agencies to submit new or amended rules to the Office of Legislative Legal Services (OLLS). The statute directs OLLS staff to review the rules to determine whether they are within the agency's authority. OLLS staff performs rule review under the direction of the Committee on Legal Services (COLS). Executive branch agencies issue approximately 15,000 pages of rules each year, representing approximately 550 rules. Each of these is reviewed by an OLLS staff member.

Review of a rule by the OLLS takes into account a number of factors, from the procedural (e.g., whether certain time deadlines were met) to more substantive issues, such as whether a rule conflicts with a statutory provision enacted by the legislature or whether an agency's rule goes beyond the authority granted by the General Assembly. Some issues also require that the rules be checked against the Colorado Constitution, federal regulations and statutes, and the United States Constitution. This bill would require that the analysis also consider whether or not the rule is consistent with the legislative intent of the General Assembly.

The rule review process runs a full year, from November 1 to October 31. The rule review bill that is introduced in the following legislative session specifically lists those rules that have been deemed improper by action of the COLS and designates them for expiration. All other rules meeting the required criteria are allowed to continue.

State Expenditures

The bill will affect all state agencies that promulgate rules, and drives measurable costs in 9 state agencies by a total of \$90,591 and 1.5 FTE per year beginning in FY 2012-13. Based on the mix of fund sources appropriated to the affected agencies in the current fiscal year, it is estimated that \$13,153 will be from the General Fund, \$39,509 will be from various cash funds, \$23,977 will be from reappropriated funds, and \$13,952 will be from federal funds. The exact fund sources for each agency have not been identified, as the fund source depends on the programs within a department involved in rule making. Table 1 provides an overview of total costs by agency.

The workload increase to agencies is based on the average number of new rules filed with the Office of Legislative Legal Services **as a result of legislation over the past three years**, which is approximately 150 every year. Requiring agencies to ensure that rules have been promulgated in keeping with clear legislative intent is assumed to create **an additional 15 hours of analysis per rule**. In order to capture the differences in the complexity of agencies' rule making, the workload for each agency has been adjusted based on the average page length of each agency's rules compared to the statewide average for rules promulgated.

Table 1. Expenditures by Agency under SB 12-073				
Agency	Number of New Rules	Staff Time Required (Hours)	FTE	Total
Education	11	135	0.1	\$6,339
Health Care Policy and Financing	8	405	0.2	12,677
Human Services	12	285	0.1	6,339
Natural Resources	3	195	0.1	6,339
Public Health and Environment	11	120	0.1	6,339
Regulatory Agencies	56	675	0.3	19,015
Revenue	26	120	0.1	6,339
State	4	120	0.1	6,339
Personnel, Division of Archives	NA	750	0.4	20,865
Total		2,805	1.5	\$90,591

The Department of Personnel and Administration, Division of Archives, will see an increase in its workload as a result of agencies' requests for archival materials relating to legislative intent. FY 2012-13 expenses are estimated at \$20,865 and 0.4 FTE, and the same for FY 2013-14. These estimates assume that 75 requests will be made and that the division will spend 10 hours per request for a total of 750 hours. These costs are included in the Reappropriated Funds totals shown on page 1 and would be paid by state agencies accessing the archives.

The staffing level for any individual agency does not rise to the 0.5 FTE minimum required for standard operating and capital outlay expenses and, as a result, those costs are not included in this analysis. Staffing is assumed to be at the General Professional IV level for all agencies except the Department of Personnel and Administration. The FTE required in the Division of Archives is at the General Professional III level.

Expenditures Not Included

Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. The centrally appropriated costs subject to this policy are summarized in Table 2.

Table 2. Expenditures Not Included Under SB12-073*		
Cost Components	FY 2012-13	FY 2013-14
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$9,218	\$9,218
Supplemental Employee Retirement Payments	4,830	5,560
TOTAL	\$14,048	\$14,778

*More information is available at: <http://colorado.gov/fiscalnotes>

Statutory Public Entity Impact

The bill affects statutory public entities such as the Public Employee Retirement Association (PERA) that are subject to the state administrative procedure law. These entities generally have a small number of rules and can accomplish the required regulatory analyses within existing resources.

State Appropriations

FY 2012-13, the following state agencies require appropriations in the amounts shown below (exact funding sources for each agency have not been identified at this time and will be addressed in a revised fiscal note):

- \$6,339 and 0.1 FTE to the Department of Education;
- \$12,677 and 0.2 FTE to the Department of Health Care Policy and Financing;
- \$6,339 and 0.1 FTE to the Department of Human Services;
- \$6,339 and 0.1 FTE to the Department of Natural Resources;
- \$6,339 and 0.1 FTE to the Department of Public Health And Environment;
- \$19,015 and 0.3 FTE to the Department of Regulatory Agencies;
- \$6,339 and 0.1 FTE to the Department of Revenue;
- \$6,339 and 0.1 FTE to the Department of State; and
- \$20,865 and 0.4 FTE to the Department of Personnel and Administration.

Departmental Difference

When applicable, Legislative Council Staff is utilizing a consistent approach in evaluating the fiscal impact of bills that add duties to agencies that promulgate rules. A summary of the standardized approach begins on page 2 of this fiscal note. Application of the standardized approach accounts for the difference between the numbers in this fiscal note and the requests of the three departments that object to the methodology used to derive the fiscal impact of this bill. The figures below account for an adjustment in year one due to the appropriation delay caused by the referendum clause. Further, costs associated with employee insurance, supplemental employee retirement, and short term disability are not included.

Human Services. For FY 2012-13, the department requests \$59,195 GF and 0.8 FTE, with \$15,833 reappropriated to the Department of Law. The FY 2013-14 request is \$72,112 GF with \$19,000 reappropriated to the Department of Law. This fiscal note assumes costs of \$6,339 and 0.1 FTE in each year, consistent with the estimated costs for all other agencies..

Department of Public Health and Environment. For FY 2012-13, the department requests \$61,947 in indirect cost recoveries to fund 0.8 FTE. The FY 2013-14 request is \$72,731 in indirect cost recoveries and 1.0 FTE. This fiscal note assumes costs of \$6,339 and 0.1 FTE in each year, consistent with the estimated costs for all other agencies.

Health Care Policy and Financing. For FY 2012-13, the department requests \$26,693 GF, 26,694 FF, and 0.8 FTE. The FY 2013-14 request is \$31,105 GF, \$31,016 FF, and 1.0 FTE. This fiscal note assumes costs of \$12,677 and 0.2 FTE in each year, consistent with the estimated costs for all other agencies.

Departments Contacted

All Departments