

**First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO**

PREAMENDED

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

LLS NO. 13-0135.01 Debbie Haskins x2045

SENATE BILL 13-158

SENATE SPONSORSHIP

Balmer,

HOUSE SPONSORSHIP

Ryden,

Senate Committees
Business, Labor, & Technology

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE CONTINUATION OF THE PREPARATION OF**
102 **COST-BENEFIT ANALYSIS OF PROPOSED RULES OF EXECUTIVE**
103 **BRANCH AGENCIES, AND, IN CONNECTION THEREWITH,**
104 **IMPLEMENTING THE RECOMMENDATIONS OF THE 2012 SUNSET**
105 **REPORT OF THE DEPARTMENT OF REGULATORY AGENCIES.**

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>.)

Sunset Process - Senate Business, Labor, and Technology

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.

Committee. The bill implements the recommendations of the sunset review and report on the requirements and procedures regarding the preparation of a cost-benefit analysis of proposed rules of state agencies, which recommended that the cost-benefit analysis of proposed rules be continued with modifications.

Under current law, an agency proposing rules pursuant to the "State Administrative Procedure Act" (APA) submits a draft of the proposed rules to the executive director of the department of regulatory agencies (DORA) who then determines whether proposed rules may have a negative impact on economic competitiveness or on small business and directs the agency to perform a cost-benefit analysis. The bill shifts the responsibility for deciding whether an agency needs to conduct a cost-benefit analysis of proposed rules from the executive director of DORA to the agency that is proposing rules. If an agency determines that the proposed rules have a significant negative impact on small business, job creation, or economic competitiveness, then the agency must prepare a cost-benefit analysis.

Under current law, the executive director of DORA decides whether a cost-benefit analysis is necessary no later than 20 days prior to the rule-making hearing, and the agency must complete the analysis and submit it to DORA no later than 5 days prior to the hearing, thereby limiting stakeholder input. The bill requires that the agency prepare the cost-benefit analysis prior to issuing the notice of rule-making. The bill requires the agency to submit the cost-benefit analysis and the draft of the proposed rules at the same time that the agency files the notice of rule-making with the secretary of state, thereby providing stakeholders and the public with the cost-benefit analysis and the proposed rules at an earlier time in the rule-making process.

The agency determines the proper methods for the cost-benefit analysis and may consult with representative groups regarding the cost-benefit analysis.

Under current law, a separate section of the APA provides the opportunity for any person, at least 15 days prior to the hearing, to request that the agency prepare a regulatory analysis of a proposed rule, which must be made available to the public at least 5 days prior to the rule-making hearing. The bill requires that the agency prepare a regulatory analysis for proposed rules that do not have a significant impact on small business, job creation, or economic competitiveness and for which the agency is not preparing a cost-benefit analysis. The bill requires that the agency prepare the regulatory analysis prior to issuing the notice of rule-making and to submit the regulatory analysis and the draft of the proposed rules at the same time that the agency files the notice of rule-making with the secretary of state.

The agency is not required to prepare a cost-benefit analysis or a regulatory analysis for proposed rules that implement specific

requirements of legislation enacted by the general assembly or that implement requirements of federal law or federal rules.

The bill repeals the requirement that the preparation of the cost-benefit analysis be reviewed in the future through the sunset process.

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

2 **SECTION 1.** In Colorado Revised Statutes, 24-4-102, **add** (17.5)
3 as follows:

4 **24-4-102. Definitions.** As used in this article, unless the context
5 otherwise requires:

6 (17.5) "SIGNIFICANT IMPACT" MEANS A MAJOR NEGATIVE EFFECT
7 ON SMALL BUSINESS, JOB CREATION, OR ECONOMIC COMPETITIVENESS.

8 **SECTION 2.** In Colorado Revised Statutes, 24-4-103, **amend** (2),
9 (2.5), (4) (a), and (8.1) (b) (V); and repeal (4.5) as follows:

10 **24-4-103. Rule-making - procedure - definitions - repeal.**
11 (2) When rule-making is contemplated, public announcement thereof
12 may be made at such time and in such manner as the agency determines.
13 The agency shall establish a representative group of participants with an
14 interest in the subject of the rule-making to submit views or otherwise
15 participate informally in conferences on the proposals under
16 consideration, INCLUDING PROVIDING INPUT ON THE ELEMENTS OF A
17 REGULATORY ANALYSIS OF PROPOSED RULES AS PROVIDED IN SUBSECTION
18 (2.5) OF THIS SECTION, or to participate in the public rule-making
19 proceedings on the proposed rules. In establishing the representative
20 group, the agency shall make diligent attempts to solicit input from
21 representatives of each of the various stakeholder interests that may be
22 affected positively or negatively by the proposed rules. If the agency
23 convenes a representative group prior to issuing a notice of proposed

1 rule-making as provided in paragraph (a) of subsection (3) of this section,
2 the agency shall add those persons who participated in the representative
3 group to the list of persons who receive notification of proposed
4 rule-making as provided in paragraph (b) of subsection (3) of this section.

5 (2.5) (a) At the time of filing a notice of proposed rule-making
6 with the secretary of state as the secretary may require, an agency shall
7 submit a draft of the proposed rule or the proposed amendment to an
8 existing rule and INCLUDE a statement, in plain language, concerning the
9 subject matter or purpose of the proposed rule or amendment AND, IN A
10 SEPARATE CLEARLY MARKED SECTION, A REGULATORY ANALYSIS TO THE
11 SECRETARY OF STATE AND to the office of the executive director in the
12 department of regulatory agencies. The executive director, or his or her
13 designee, may determine if the proposed rule or amendment may have a
14 negative impact on economic competitiveness or on small business in
15 Colorado. If the executive director, or his or her designee, determines that
16 the proposed rule or amendment may have such negative impact, he or
17 she may direct the submitting agency to perform a cost-benefit analysis
18 of the rule or amendment. If the executive director, or his or her designee,
19 makes such a request, it shall be made at least twenty days before the date
20 of the hearing on the rule or amendment. The agency receiving such
21 request shall complete a cost-benefit analysis at least five days before the
22 hearing on the rule or amendment, shall make the analysis available to the
23 public, and shall submit a copy to the executive director or his or her
24 designee. Failure to complete a requested cost-benefit analysis pursuant
25 to this subsection (2.5) shall preclude the adoption of such rule or
26 amendment. Such cost-benefit THE REGULATORY analysis shall include
27 TO THE EXTENT PRACTICABLE the following:

1 (I) The reason for the rule or amendment A DESCRIPTION OF THE
2 CLASSES OF PERSONS WHO WILL BE AFFECTED BY THE PROPOSED RULE OR
3 AMENDMENT, INCLUDING CLASSES THAT WILL BEAR THE COSTS OF AND
4 CLASSES THAT WILL BENEFIT FROM THE PROPOSED RULE OR AMENDMENT;

5 (II) The anticipated, PROBABLE economic benefits of the rule or
6 amendment; which shall include economic growth, the creation of new
7 jobs, and increased economic competitiveness;

8 (III) The anticipated, PROBABLE costs of the rule or amendment,
9 which shall include the direct costs to the government to administer the
10 rule or amendment and the direct and indirect costs to SMALL business and
11 other entities required to comply with the rule or amendment;

12 (IV) A COMPARISON OF THE ANTICIPATED, PROBABLE COSTS AND
13 BENEFITS OF THE PROPOSED RULE TO THE ANTICIPATED PROBABLE COSTS
14 AND BENEFITS OF INACTION;

15 ~~(IV)~~ (V) Any ANTICIPATED, PROBABLE adverse effects on the
16 economy, consumers, private markets, small businesses, job creation, and
17 economic competitiveness; and

18 (VI) A DETERMINATION OF WHETHER THERE ARE LESS COSTLY
19 METHODS OR LESS INTRUSIVE METHODS FOR ACHIEVING THE PURPOSE OF
20 THE PROPOSED RULE OR AMENDMENT;

21 ~~(V)~~ (VII) At least two A DESCRIPTION OF ANY alternatives to the
22 proposed rule or amendment that can be identified by the submitting
23 WERE SERIOUSLY CONSIDERED BY THE agency, or a member of the public,
24 including the costs and benefits of pursuing each of the alternatives
25 identified, AND THE REASONS WHY THEY WERE REJECTED IN FAVOR OF THE
26 PROPOSED RULE OR AMENDMENT;

27 ~~(b)~~ (VIII) The executive director, or his or her designee, shall

1 ~~study the cost-benefit analysis and may urge~~ A DESCRIPTION OF HOW the
2 ~~agency to revise~~ DRAFTED the rule or amendment to eliminate or reduce
3 ~~the any~~ ANTICIPATED, PROBABLE negative economic impact. The
4 ~~executive director, or his or her designee, may inform the public about the~~
5 ~~negative impact of the proposed rule or the proposed amendment to an~~
6 ~~existing rule~~ IMPACTS.

7 (b) AFTER RECEIVING A REGULATORY ANALYSIS FROM A
8 RULE-MAKING AGENCY, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT
9 OF REGULATORY AGENCIES SHALL POST THE REGULATORY ANALYSIS ON
10 THE DEPARTMENT OF REGULATORY AGENCIES' WEB SITE.

11 ~~(c) Any proprietary information provided to the department of~~
12 ~~revenue by a business or trade association for the purpose of preparing a~~
13 ~~cost-benefit analysis shall be confidential.~~

14 ~~(d) (c) If the agency has made a good faith effort to comply with~~
15 ~~the requirements of paragraph (a) of this subsection (2.5), the rule or~~
16 ~~amendment shall not be invalidated on the ground that the contents of the~~
17 ~~cost-benefit REGULATORY analysis are insufficient or inaccurate.~~

18 ~~(e) (d) This subsection (2.5) shall not apply to: orders, licenses,~~
19 ~~permits, adjudication, or rules affecting the direct reimbursement of~~
20 ~~vendors or providers with state funds.~~

21 (I) RULES OR AMENDMENTS PROMULGATED BY THE DEPARTMENT
22 OF REVENUE REGARDING THE ADMINISTRATION OF ANY TAX WHICH IS
23 WITHIN THE AUTHORITY OF SAID DEPARTMENT;

24 (II) RULES OR AMENDMENTS REGARDING ANNUAL CHANGES TO
25 HUNTING AND FISHING REGULATIONS;

26 (III) RULES OR AMENDMENTS THAT IMPLEMENT SPECIFIC
27 SUBSTANTIVE RULES OR AMENDMENT REQUIREMENTS OF LEGISLATION

1 ENACTED BY THE GENERAL ASSEMBLY;

2 (IV) RULES OR AMENDMENTS THAT IMPLEMENT MANDATES OR
3 REQUIREMENTS OF FEDERAL LAW OR FEDERAL RULES.

4 (e) NOTWITHSTANDING PARAGRAPH (d) OF THIS SUBSECTION (2.5)
5 AND REGARDING ANY PROPOSED RULE OR AMENDMENT, AN AGENCY MAY,
6 AT ANY TIME PRIOR TO THE PROMULGATION OF A RULE OR AMENDMENT
7 NOT OTHERWISE SUBJECT TO A REGULATORY ANALYSIS, CONDUCT A
8 REGULATORY ANALYSIS, OR A VARIATION OF A REGULATORY ANALYSIS, OF
9 A PROPOSED RULE OF AMENDMENT, PROVIDING ADEQUATE TIME FOR
10 PUBLIC INPUT.

11 (f) NOTWITHSTANDING ANY PROVISION OF THIS SUBSECTION (2.5)
12 AND WITHIN TEN DAYS AFTER THE FILING OF THE NOTICE OF PROPOSED
13 RULE-MAKING, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF
14 REGULATORY AGENCIES MAY DIRECT AN AGENCY TO PERFORM A
15 REGULATORY ANALYSIS, OR CONDUCT A MORE THOROUGH REGULATORY
16 COST-BENEFIT ANALYSIS, WHEREUPON THE AGENCY SHALL SUSPEND THE
17 RULE-MAKING TIME FRAMES TO CONDUCT SUCH ANALYSIS AND TO
18 INCLUDE ADEQUATE TIME FOR PUBLIC INPUT, WHEN:

19 (I) THE EXECUTIVE DIRECTOR HAS CONSULTED WITH THE AGENCY
20 ON THE NEED FOR SUCH AN ANALYSIS AND THE EXECUTIVE DIRECTOR
21 DETERMINES THAT SUCH AN ANALYSIS IS WARRANTED; OR

22 (II) ANY PERSON SUBMITS TO THE EXECUTIVE DIRECTOR WITHIN
23 FIVE DAYS AFTER THE FILING OF THE NOTICE OF PROPOSED RULE-MAKING
24 A REQUEST THAT THE AGENCY CONDUCT A REGULATORY ANALYSIS, OR A
25 MORE THOROUGH REGULATORY COST-BENEFIT ANALYSIS, AND THE
26 EXECUTIVE DIRECTOR, AFTER CONSULTATION WITH THE AGENCY,
27 DETERMINES THAT SUCH AN ANALYSIS IS WARRANTED.

1 (g) NOTWITHSTANDING THE REQUIREMENTS OF THIS SUBSECTION
2 (2.5), FOR ANY RULE THAT HAS BEEN EXEMPTED PURSUANT TO PARAGRAPH
3 (d) OF THIS SUBSECTION (2.5) FROM THE REQUIREMENT OF PREPARING A
4 REGULATORY ANALYSIS, THE AGENCY SHALL PREPARE A REGULATORY
5 ANALYSIS UPON THE REQUEST OF ANY PERSON MADE AT LEAST FIFTEEN
6 DAYS PRIOR TO THE RULE-MAKING HEARING.

7 (f) (h) (I) This subsection (2.5) is repealed, effective July 1, 2013
8 2018.

9 (II) Prior to such repeal, the provisions regarding the preparation
10 of a cost-benefit analysis pursuant to this subsection (2.5) shall be
11 reviewed as provided for in section 24-34-104, C.R.S.

12 (4) (a) At the place and time stated in the notice, the agency shall
13 hold a public hearing at which it shall afford interested persons an
14 opportunity to submit written data, views, or arguments and to present the
15 same orally unless the agency deems it unnecessary. The agency shall
16 consider all such submissions. Any proposed rule or revised proposed rule
17 by an agency which is to be considered at the public hearing, together
18 with a proposed statement of basis, specific statutory authority, purpose,
19 and the regulatory analysis, IF ONE WAS PREPARED AS required in
20 subsection ~~(4.5)~~ (2.5) of this section, OR THE REGULATORY COST-BENEFIT
21 ANALYSIS, IF ONE WAS PREPARED AS REQUIRED IN SUBSECTION (2.5) OF
22 THIS SECTION, shall be made available to any person at least five days
23 prior to said hearing. The rules promulgated by the agency shall be based
24 on the record, which shall consist of proposed rules, evidence, exhibits,
25 and other matters presented or considered, matters officially noticed,
26 rulings on exceptions, any findings of fact and conclusions of law
27 proposed by any party, and any written comments or briefs filed.

1 ~~(4.5) (a) Upon request of any person, at least fifteen days prior to~~
2 ~~the hearing, the agency shall issue a regulatory analysis of a proposed~~
3 ~~rule. The regulatory analysis shall contain:~~

4 ~~(I) A description of the classes of persons who will be affected by~~
5 ~~the proposed rule, including classes that will bear the costs of the~~
6 ~~proposed rule and classes that will benefit from the proposed rule;~~

7 ~~(II) To the extent practicable, a description of the probable~~
8 ~~quantitative and qualitative impact of the proposed rule, economic or~~
9 ~~otherwise, upon affected classes of persons;~~

10 ~~(III) The probable costs to the agency and to any other agency of~~
11 ~~the implementation and enforcement of the proposed rule and any~~
12 ~~anticipated effect on state revenues;~~

13 ~~(IV) A comparison of the probable costs and benefits of the~~
14 ~~proposed rule to the probable costs and benefits of inaction;~~

15 ~~(V) A determination of whether there are less costly methods or~~
16 ~~less intrusive methods for achieving the purpose of the proposed rule; and~~

17 ~~(VI) A description of any alternative methods for achieving the~~
18 ~~purpose of the proposed rule that were seriously considered by the agency~~
19 ~~and the reasons why they were rejected in favor of the proposed rule.~~

20 ~~(b) Each regulatory analysis shall include quantification of the~~
21 ~~data to the extent practicable and shall take account of both short-term~~
22 ~~and long-term consequences.~~

23 ~~(c) The regulatory analysis shall be available to the public at least~~
24 ~~five days prior to the rule-making hearing.~~

25 ~~(d) If the agency has made a good faith effort to comply with the~~
26 ~~requirements of paragraphs (a) to (c) of this subsection (4.5), the rule~~
27 ~~shall not be invalidated on the ground that the contents of the regulatory~~

1 analysis are insufficient or inaccurate.

2 (e) Nothing in paragraphs (a) to (c) of this subsection (4.5) shall
3 limit an agency's discretionary authority to adopt or amend rules.

4 (f) The provisions of this subsection (4.5) shall not apply to rules
5 and regulations promulgated by the department of revenue regarding the
6 administration of any tax which is within the authority of said department.

7 (8.1) (b) The agency rule-making record shall contain:

8 (V) A copy of any regulatory analysis or ANY REGULATORY
9 cost-benefit analysis prepared for the proceeding upon which the rule was
10 based, if applicable, and any formal statement made to the agency
11 promulgating the rule by the executive director of the department of
12 regulatory agencies regarding such cost-benefit analysis; _____

13 **SECTION 3.** In Colorado Revised Statutes, 24-34-104, **add**
14 **(49.5) (e); and repeal (44) (o) as follows:**

15 **24-34-104. General assembly review of regulatory agencies**
16 **and functions for termination, continuation, or reestablishment.**

17 (44) The following agencies, functions, or both, shall terminate on July
18 1, 2013:

19 (o) ~~The requirements and procedures regarding the preparation of~~
20 ~~a cost-benefit analysis in accordance with section 24-4-103 (2.5);~~

21 (49.5) The following agencies, functions, or both, shall terminate
22 on September 1, 2018:

23 (e) **THE REQUIREMENTS AND PROCEDURES REGARDING THE**
24 **PREPARATION OF A REGULATORY ANALYSIS OR A REGULATORY**
25 **COST-BENEFIT ANALYSIS IN ACCORDANCE WITH SECTION 24-4-103 (2.5);**

26 **SECTION 4. Effective date.** This act takes effect July 1, 2013.

27 **SECTION 5. Safety clause.** The general assembly hereby finds,

- 1 determines, and declares that this act is necessary for the immediate
- 2 preservation of the public peace, health, and safety.