



**Colorado
Legislative
Council
Staff**

SB17-002

FISCAL NOTE

FISCAL IMPACT: State Local Statutory Public Entity Conditional No Fiscal Impact

Drafting Number: LLS 17-0578

Date: February 6, 2017

Prime Sponsor(s): Sen. Martinez Humenik

Bill Status: Senate Business

Fiscal Analyst: Ryan Long (303-866-2066)

BILL TOPIC: COMPULSORY REVIEW OF RULES BY EACH PRINCIPAL DEPARTMENT

Fiscal Impact Summary	FY 2016-2017 (current year)	FY 2017-2018	FY 2018-2019
State Revenue			
State Expenditures		<u>\$1,163,274</u>	<u>\$856,959</u>
General Fund		267,772	206,158
Cash Funds	Workload increase.	460,238	329,916
Reappropriated Funds		2,791	
Federal Funds		151,951	106,811
Centrally Appropriated Costs		280,522	214,074
FTE Position Change		10.9 FTE	8.4 FTE
Appropriation Required: \$882,752 - Multiple departments (FY 2017-18).			
Future Year Impacts: Ongoing expenditure increase.			

Note: *While all agencies were canvassed for this fiscal note, not all agencies responded with complete information. Therefore, this fiscal note should be considered preliminary. It will be updated if new information becomes available.*

Summary of Legislation

This bill replaces the current rule review process established by the Department of Regulatory Agencies (DORA), and requires each principal department to conduct a review of its rules every three years starting in 2017. A review of all agency rules must be completed prior to November 1, 2017. Additionally, the bill creates a requirement that agencies conducting rulemaking must give the public at least 14 business days to provide input on the agency's rules. The rule review must include a report that contains any input from the public or other state agencies. Updates to each report must be posted on the principal department's official website.

Background

Senate Bill 14-063 amended the Administrative Procedures Act (APA) to require each principal department to establish, in cooperation with DORA, a schedule for the review of existing administrative rules. The current rule review schedule for agencies can be found in Table 1. This bill applied eight new statutory criteria, but was generally aligned with activities already taking place in the Executive Branch due to an executive order issued by the Governor in 2012. Executive Order D 2012-002 remains in effect until rescinded or superceded by a future executive order.

Table 1. 2016 Principal Department Rule Review Schedule	
Department	DORA Rule Review Schedule
Agriculture	3 years
Corrections*	N/A
Education	Unknown
Governor*	N/A
Health Care Policy and Financing	5 years
Higher Education	1 year
Human Services	3 years
Judicial*	N/A
Labor and Employment	Unknown
Law	Unknown
Legislature*	N/A
Local Affairs	Unknown
Military and Veterans Affairs*	N/A
Natural Resources	3 years
Personnel and Administration	3 years
Public Health and Environment	7 years
Public Safety	5 years
Regulatory Agencies	5 years
Revenue	5 years
State	3 years
Transportation	1 year
Treasury*	N/A

*Department has no rules reviewed that pertain to this bill.

Administrative rules promulgated in accordance with the APA are compiled in the Code of Colorado Regulations (CCR). Rules vary widely in length and complexity. The number of rules promulgated by the various principal departments and other state agencies subject to the APA also varies widely.

When an agency wants to promulgate a new rule or amend an existing rule, it must first file a "Notice of Proposed Rulemaking" with the Secretary of State. The Secretary of State then publishes the notice in the Colorado Register, which acts as notice to the public. Once the notice is filed with the Secretary of State, the public is allowed to offer comments on the proposed rule. Colorado state agencies must accept and consider comments from the public before the agency

can adopt, amend, or otherwise change any regulation not explicitly exempted from the APA. At the hearing on a proposed rule, an agency accepts written and oral testimony about the rule. Following this hearing, the agency has 180 days to file adopted rules with the Secretary of State for publication in the Colorado Register. Adopted rules go into effect 20 days after publication, or a later date if stated in the rule.

State Expenditures

This bill is expected to increase state expenditures primarily in the Department of Health Care Policy and Financing (HCPF), the Department of Public Health and Environment (CDPHE), and the Department of Revenue (DOR) by \$1,163,274 in FY 2017-18 and \$856,959 in FY 2018-19. These costs are paid using General Fund, cash funds, reappropriated funds, and federal funds. Additionally, all state agencies will experience workload increases in FY 2016-17 in order to review all rules by the November 1 deadline.

Assumptions. The following assumptions are applied to the analysis in this fiscal note:

- FTE will be hired in FY 2017-18;
- 33 percent of all rules will be reviewed in each year of the three year cycle; and
- rules already reviewed in the current cycle can be counted for the report due November 1.

All state agencies. In the current FY 2016-17, all state agencies that promulgate rules will see an increase in workload in order to review all of their rules by the November 1 deadline and to implement the schedule as outlined in the bill. With the exception of HCPF, CDPHE, and DOR, state agencies will be able to accomplish the increase in workload within existing appropriations. This fiscal note assumes that any further resources needed by agencies not listed below will be requested through the annual budget process.

Due to the varying complexity of rules between state agencies and varying degree of time needed to gather stakeholder input, the workload between different agencies can vary widely. In addition, as shown in Table 1, the amount of time departments currently have to complete their current DORA scheduled rule review varies. Agencies that are currently on a three year review cycle will see fewer impacts to their current rule review process than agencies on a five or seven year rule review cycle. The two primary drivers for the departments requiring additional FTE are:

- the compression of their rule review schedule from their current schedule to a three year review schedule; and
- the complexity of department rules and level of stakeholder involvement required by these agencies.

Table 2. Expenditures Under SB17-002		
Cost Components	FY 2017-18	FY 2018-19
Health Care Policy and Financing Subtotal	\$314,971	\$209,211
Personal Services	\$242,173	\$170,550
FTE	3.9	2.8
Operating Expenses and Capital Outlay Costs	22,232	2,660
Centrally Appropriated Costs*	50,566	36,001

Table 2. Expenditures Under SB17-002 (Cont.)		
Cost Components	FY 2017-18	FY 2018-19
Public Health and Environment Subtotal	\$574,162	\$425,682
Personal Services	\$383,893	\$297,100
FTE	3.7	2.8
Operating Expenses and Capital Outlay Costs	22,137	2,660
Centrally Appropriated Costs*	168,132	125,922
Revenue Subtotal	\$274,141	\$222,066
Personal Services	\$195,168	\$167,255
FTE	3.3	2.8
Operating Expenses and Capital Outlay Costs	17,149	2,660
Centrally Appropriated Costs*	61,824	52,151
TOTAL COSTS	\$1,163,274	\$856,959
TOTAL FTE	10.9	8.4

* Centrally appropriated costs are not included in the bill's appropriation.

Department of Health Care Policy and Financing. The department requires 3.9 FTE in FY 2017-18 and 2.8 FTE in FY 2018-19 and thereafter to help with the full review of all department rules by November 1 and collapse their current five year review schedule into the three year review schedule required under this bill. HCPF rules are generally related to health benefits, health program eligibility, provider enrollment, and recovery of payments. These rules are complex, and have a high degree of interest and participation from stakeholders. This fiscal note assumes the department will continue to involve the Medical Services Board in the rule review process. These costs will be paid from General Fund, the Hospital Provider Fee Cash Fund, and federal funds.

Department of Public Health and Environment. The department requires 3.7 FTE in FY 2017-18 and 2.8 FTE in FY 2018-19 and thereafter to complete a full review of all department rules and collapse their current seven year review schedule to three year review schedule as required under this bill. The technical nature of the department's activities, such as regulating power plant emissions or hazardous waste, means that rules are highly technical and detailed. These costs will be paid from General Fund, various cash funds in CDPHE, reappropriated funds, and federal funds.

Department of Revenue. The department requires 3.3 FTE in FY 2017-18 and 2.8 FTE in FY 2018-19 and thereafter to complete a full review of all rules and collapse their current five year review schedule to a three year review schedule as required under this bill. Much of the rule review for this department is managed by a single section of staff, rather than spread between multiple sections and managers. These costs will be paid from General Fund and various cash funds in DOR.

Centrally appropriated costs. 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 estimated in the fiscal note for informational purposes and summarized in Table 3. CDPHE indirect costs are 25.5 percent. DOR leased space is included to show the incremental impact of the additional FTE, and calculated at DOR's rate of 200 square feet per FTE at a rate of \$27 per square foot.

Cost Components	FY 2017-18	FY 2018-19
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$85,037	\$65,624
Supplemental Employee Retirement Payments	73,587	56,891
Indirect Costs (CDPHE)	103,538	76,439
Leased Space (DOR)	18,360	15,120
TOTAL	\$280,522	\$214,074

Technical Note

The November 1, 2017, reporting deadline will likely not allow agencies enough time to perform the tasks required under the bill.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State Appropriations

For FY 2017-18, this bill requires the following appropriations:

- \$264,405 to HCPF, and an allocation of 3.9 FTE;
- \$406,030 to CDPHE, and an allocation of 3.7 FTE; and
- \$212,317 to DOR, and an allocation of 3.3 FTE.

A breakdown of funds is displayed below in Table 4.

Department	General Fund	Cash Funds (Various)	Reappropriated Funds	Federal Funds
HCPF	\$82,589	\$49,614		\$132,203
CDPHE	80,822	302,668	2,791	19,748
DOR	104,361	107,956		
Total	\$267,772	\$460,238	\$2,791	\$151,951

Departmental Difference

The fiscal note assumes that since the CDPHE currently has the longest review schedule, the most complicated rules, and an extensive stakeholder input process they represent the baseline for FTE requests. For FY 2018-19, the FTE requests for HCPF and DOR were brought in line with

the CDPHE baseline. This fiscal note assumes that the full FTE requests for FY 2017-18 are necessary to implement the new schedule and engage in a review of all department rules by the November 1 deadline. Table 5 shows the amount requested and variance between that amount and the amount shown in this analysis.

Table 5. Summary of Departmental Differences for FY 2018-19						
Department	Departmental estimate		Fiscal note estimate		Difference	
	Cost	FTE	Cost	FTE	Cost	FTE
HCPF	\$252,087	4.0	173,210	2.8	78,877	1.2

State and Local Government Contacts

All State Agencies