



Legislative
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FISCAL NOTE

Drafting Number:	LLS 18-0444	Date:	February 7, 2018
Prime Sponsors:	Rep. Neville P. Sen. Neville T.; Marble	Bill Status:	House SVMA
		Fiscal Analyst:	Erin Reynolds 303-866-4146 Erin.Reynolds@state.co.us

Bill Topic: SMALL BUSINESS REGULATORY REFORM

Summary of Fiscal Impact:	<input checked="" type="checkbox"/> State Revenue (<i>minimal</i>)	<input type="checkbox"/> TABOR Refund
	<input checked="" type="checkbox"/> State Expenditure (<i>minimal</i>)	<input type="checkbox"/> Local Government
	<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

This bill creates special enforcement provisions for small businesses employing 100 or fewer employees that incur minor violations of a new rule. It also requires state agencies to develop fact sheets to aid in rule compliance. It will minimally decrease state fine revenue and minimally increase state workload on an ongoing basis.

Appropriation Summary: No appropriation is required.

Fiscal Note Status: This fiscal note reflects the introduced bill.

Summary of Legislation

Under current law, state agencies are generally authorized by the Administrative Procedures Act (APA) to initiate an enforcement action when an individual or business violates an administrative rule. This bill creates special enforcement provisions under the APA that apply to small businesses employing 100 or fewer employees following a minor violation of an administrative rule. The bill also requires state agencies to develop fact sheets that will promote compliance with all new rules promulgated under the APA.

A minor violation occurs when a small business fails to adhere to the requirements of an administrative rule that has been in effect for less than one year. This type of violation involves only requirements that are minor in nature, such as recordkeeping, and does not include:

- a matter that places the safety of a person at risk;
- state-issued permits, licenses, or registrations;
- bidding on state contracts;
- any activity required by federal law;
- certain activities of the Attorney General's Office; or
- rules adopted by the Colorado Civil Rights Division and the Colorado Department of Public Health and Environment.

A state agency must issue a written warning for a first-time minor violation and perform outreach that informs the offending business on how to comply with the new rule. The state agency must distribute its fact sheets to any business that violates a new rule, including both minor violations and other violations.

Background

Rulemaking under the APA requires detailed documentation, and many state agencies develop fact sheets in conjunction with, or immediately after, the rulemaking process. It is standard practice for state agencies to provide fact sheets and educational outreach to regulated businesses. As a matter of enforcement discretion under the APA, a number of agencies currently provide warnings to businesses for first-time violations and minor violations.

State Revenue

The bill may decrease state revenue by a minimal amount. To the extent that state agencies currently assess financial penalties for first-time minor violations committed by businesses of 100 or fewer employees, the bill prohibits future collection of this revenue. The exact amount of any such fines is unknown; however, the potential decrease of state revenue is anticipated to be minimal.

TABOR Refund

The bill may decrease state revenue subject to TABOR by a minimal amount on an ongoing basis. State revenue is not currently expected to exceed the TABOR limit in the current forecast period; therefore, the bill is not expected to impact TABOR refunds in FY 2018-19 or FY 2019-20. However, refunds in future years when the state next collects a TABOR surplus may be reduced.

State Expenditures

Beginning in FY 2018-19, the bill increases the workload required for state agencies.

Initially, state agencies will experience a one-time increase in workload to determine whether, and to what extent, their rules concern matters of public safety; state-issued permits, licenses, or registrations; or other activities exempted by the bill. A significant amount of state regulatory activity is likely to be exempt, including, for example, the majority of programs in the Departments of Regulatory Agencies and Public Health and Environment. State agencies may require legal services to make this determination, but will do so as a part of routine legal consultation and within existing appropriations.

To implement the bill, state agencies must develop a means to track the size of businesses subject to regulation, either as part of a registration process or at the time an enforcement action is contemplated. No new appropriations are necessary for state agencies to collect this information on a case-by-case basis, and to modify agency systems and forms as part of currently budgeted updates and improvements.

All agencies are required to develop and disseminate fact sheets for new rules. Many agencies produce such fact sheets currently. To the extent that fact sheets for each new rule constitute increased workload for any given agency, a minimal effort is required to compile pertinent information from the rulemaking process. The fiscal note assumes that the development of each fact sheet includes the development of any additional educational materials intended for outreach to offending businesses. No new appropriations are required for most state agencies to comply with new APA requirements concerning fact sheets and educational outreach. Agencies that undertake especially complex or comprehensive rulemakings may seek additional resources for outreach efforts through the annual budget process.

Effective Date

The bill takes effect August 8, 2018, if the General Assembly adjourns on May 9, 2018, as scheduled, and no referendum petition is filed. It applies to offenses committed on or after this date.

State and Local Government Contacts

All State Agencies