



Legislative
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FISCAL NOTE

Drafting Number: LLS 19-0797
Prime Sponsors: Rep. Carver
 Sen. Smallwood; Tate

Date: February 22, 2019
Bill Status: House Energy & Environment
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Bill Topic: REDUCE REGULATORY BURDEN RULES ON BUSINESSES

Summary of Fiscal Impact:

<input checked="" type="checkbox"/> State Revenue	<input checked="" type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure	<input type="checkbox"/> Local Government
<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

The bill makes changes to state law related to the adoption of rules by state agencies that impact small businesses. It increases state revenue and expenditures on an ongoing basis.

Appropriation Summary: In FY 2019-20, the bill requires an appropriation of \$455,281 for various state agencies. See State Appropriation section.

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

**Table 1
State Fiscal Impacts Under HB 19-1163**

		FY 2019-20	FY 2020-21
Revenue	Cash Funds	\$461,618	\$464,784
	Total	\$461,618	\$464,784
Expenditures	General Fund	\$72,841	\$82,259
	Cash Funds	\$382,440	\$376,202
	Centrally Appropriated	\$99,580	\$108,368
	Total	\$554,861	\$566,829
Total FTE		5.3 FTE	5.8 FTE
Transfers		-	-
TABOR Refund	General Fund	\$461,618	-

Summary of Legislation

The bill makes changes to state law related to the adoption of rules by state agencies that impact small businesses.

Regulatory flexibility analyses. The bill requires that, prior to the adoption of any rule, a state agency must prepare a regulatory flexibility analysis aimed at minimizing the impact of the rule on small businesses. For the purposes of the regulatory flexibility analyses, the bill defines a small business as one that is independently owned and employs 100 employees or fewer. The flexibility analysis must:

- consider less stringent compliance or reporting requirements, schedules, and deadlines; performance standards for small businesses; exemptions of small businesses from all or any of the proposed requirements; and whether less burdensome rules may applied to small businesses;
- determine the necessity of proposed rules, including a finding that rules are necessary based on state or federal law, a court ruling, public health and safety, or requests by the regulated community;
- determine the fiscal impact of the proposed rules on small businesses; and
- identify least costly alternatives to the proposed rules.

If the proposed rule is adopted, the agency must adopt the least costly alternative and any exemptions or less burdensome rules identified in the flexibility analysis, unless the agency provides written justification. The regulatory flexibility analysis must be made available five days prior to a public hearing, and must be filed with the Secretary of State's Office (SOS) at the same time as the notice of proposed rulemaking and the proposed rules.

If a small business is adversely affected by an action of an agency, or not satisfied with the flexibility analysis, the business may file a request with the Department of Regulatory Agencies (DORA) for the agency to prepare a cost-benefit analysis. The executive director of DORA must decide whether to require a cost-benefit analysis and may adjust the rulemaking schedule accordingly. Adversely affected small businesses may also request a hearing before an administrative law judge with DORA and the agency that prepared the regulatory flexibility analysis.

Outreach. Under current law, agencies must convene a representative stakeholder group to participate in public rulemaking hearings and submit views on the proposals. The bill requires state agencies proposing rules that likely impact small businesses to actively solicit representatives of small businesses to participate in the stakeholder groups, as well as well as perform good faith outreach and notification to small businesses that may not be represented by a trade association or lobbyist. The bill requires that DORA maintain a website that includes the regulatory flexibility analyses.

Background

Under current law, administrative rules are promulgated in accordance with the Administrative Procedures Act. 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 SOS, which publishes a public notice in the Colorado Register. Once the notice is filed with the SOS, the public is allowed to offer comments on the proposed rule, and may request a cost-benefit analysis. 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 Administrative Procedures Act. Following a hearing on a proposed rule, the agency has 180 days to file adopted rules with the SOS. Table 2 shows the number of rules promulgated in 2017 and 2018 by department.

Table 2
Rules Promulgated by Department in 2017 and 2018

Department	Rules
Agriculture	35
Corrections	N/A
Education	36
Health Care Policy and Financing	71
Higher Education	276
Human Services	92
Labor and Employment	27
Law	19
Local Affairs	0
Military Affairs	N/A
Natural Resources	110
Personnel and Administration	4
Public Health and Environment	82
Public Safety	21
Regulatory Agencies	288
Revenue	76
State	13
Transportation	6
Treasury	0

Assumptions

This fiscal note assumes that state agencies will comply with the requirement to prepare a regulatory flexibility analysis. The fiscal note also assumes that workload will increase for each department conducting rulemaking to prepare a regulatory flexibility analysis and conduct outreach.

State Revenue

The bill increases state fund cash revenue to the Department of Public Health and Environment (CDPHE), DORA, the Department of Revenue (DOR), and the SOS by \$461,618 in FY 2019-20 and \$464,784 in FY 2020-21. The bill will increase fee revenue to various cash fund in these departments to cover the increased direct and indirect cash-funded costs as a result of this bill. Fee revenue is subject to TABOR.

State Expenditures

The bill increases state expenditures by \$554,861 in FY 2019-20 and 5.3 FTE and by \$566,829 in FY 2020-21 and 5.8 FTE for several state agencies. Costs are listed by department in Table 3 for FY 2019-20 and Table 4 for FY 2020-21 and discussed below.

**Table 3
Expenditures Under HB 19-1163 in FY 2019-20**

Department	Personal Services	FTE	Capital & Operating	Computer Programming	Centrally Appropriated*	Total
Public Health & Environment	\$49,524	0.6	\$4,704	-	\$23,876	\$78,104
Public Safety	\$9,396	0.2	-	-	\$3,888	\$13,284
Regulatory Agencies	\$95,847	1.0	\$4,705	\$6,400	\$17,860	\$124,812
Revenue	\$245,692	3.3	\$18,819	-	\$51,331	\$315,842
Secretary of State	\$8,322	0.2	-	\$11,872	\$2,625	\$22,819
Total	\$408,781	5.3 FTE	\$28,228	\$18,272	\$99,580	\$554,861

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

**Table 4
Expenditures Under HB 19-1163 in FY 2020-2021**

Department	Personal Services	FTE	Capital & Operating	Computer Programming	Centrally Appropriated*	Total
Public Health & Environment	\$54,025	0.6	\$570	-	\$24,380	\$78,975
Public Safety	\$11,274	0.2	-	-	\$4,273	\$15,547
Regulatory Agencies	\$104,559	1.1	\$1,045	-	\$19,567	\$125,171
Revenue	\$274,394	3.7	\$3,515	-	\$57,454	\$335,363
Secretary of State	\$9,079	0.2	-	-	\$2,694	\$11,773
Total	\$453,331	5.8 FTE	\$5,130	\$0	\$108,368	\$566,829

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

Assumptions. The bill requires that a regulatory flexibility analysis be performed for all proposed rules. The fiscal note assumes that the analyses of rules that do not impact small businesses can be accomplished within existing appropriations. For rules that do impact small businesses, the fiscal note assumes between 20 to 50 hours per rule are required, depending on the department and the complexity of the department's rules. FY 2019-20 costs have been prorated to assume an August 1 start date and the General Fund payday shift.

In addition, the fiscal note assumes that additional expenditures required to conduct a cost-benefit analysis requested by a small business will be initially accomplished within existing appropriations. Cost-benefit analyses can be requested under current law, so any change is expected to be minimal. Should an agency require additional resources, the affected agencies will request them through the annual budget process.

Department of Public Health and Environment. CDPHE requires 0.6 FTE beginning in FY 2019-20, paid from the various program cash funds, to conduct substantial regulatory flexibility analyses of 40 rules per year.

Department of Public Safety. The Department of Public Safety requires 0.2 FTE, paid from the General Fund, to conduct substantial regulatory flexibility analyses of eight rules per year beginning in FY 2019-20.

Department of Regulatory Agencies. DORA requires 1.0 FTE in FY 2019-20 and 1.1 FTE in FY 2020-21 to conduct substantial regulatory flexibility analyses of 144 rules per year and accept requests by aggrieved small businesses for cost-benefit analyses. In addition, DORA requires \$6,400 to establish a one-stop website for all regulatory flexibility analyses in FY 2019-20. This fiscal note assumes 80 hours of computer programming at \$80 per hour. Expenditures are from the Division of Professions and Occupations Cash Fund and other various cash funds within DORA.

Department of Revenue. DOR requires 3.3 FTE in FY 2019-20 and 3.7 FTE in FY 2020-21 to conduct substantial regulatory flexibility analyses on 230 rules. Rules made by the Tax Division, Marijuana Enforcement Division, and Liquor Enforcement Division are the most heavily impacted and range between 28 hours to 50 hours per rule. Of the expenditures, \$63,445 are from the General Fund, \$138,562 is from the Marijuana Cash Fund, \$48,723 is from the Liquor Enforcement Cash Fund, and \$13,781 is from the Auto Dealers Cash Fund.

Secretary of State. SOS requires 0.2 FTE in FY 2019-20, paid from the SOS Cash Fund, to conduct substantial regulatory flexibility analysis of eight rules. The bill also increases expenditures in the SOS by \$11,872 in FY 2019-20 to modify the administrative rules online filing system to allow an agency to attach the regulatory flexibility analysis and to publish the analysis in the Colorado Register. The fiscal note assumes 112 hours of computer programming at a rate of \$106 per hour.

Department of Personnel and Administration. The bill may increase workload for administrative law judges to conduct hearings requested by adversely affected small businesses. The increase is expected to be accomplished within existing appropriations; however, should the department require additional resources, they will request them through the annual budget process.

Department of Law. The bill may increase the legal services required by state agencies to conduct rulemaking. This minimal increase in legal services costs will be accounted for through the annual budget process, with the Department of Law billing client agencies based on their historical utilization of legal services. Therefore, no change in appropriations is required in this bill.

All state agencies. With the exception of the departments discussed above, the bill increases the workload for all other state agencies to complete regulatory flexibility analyses during the rulemaking process. The increase is expected to be accomplished within existing appropriations; however, should any agency require additional resources, they will request them through the annual budget process.

- *Outreach.* The bill increases the workload for state agencies to conduct additional outreach to small businesses. The fiscal note assumes that targeting small businesses that are not otherwise represented by trade organizations or lobbyists will be incorporated into each agency's existing outreach and stakeholder process. The workload is expected to be accomplished within existing appropriations.

TABOR refunds. The bill is expected to increase state General Fund obligations for TABOR refunds by \$461,618 in FY 2019-20. Under current law and the December 2018 forecast, the bill will correspondingly increase the amount refunded to taxpayers via sales tax refunds on income tax returns for tax year 2020. The state is not expected to collect a TABOR surplus in FY 2020-21.

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. These costs, which include employee insurance and supplemental employee retirement payments, are estimated to be \$99,580 in FY 2019-20 and \$108,368 in FY 2020-21.

Effective Date

The bill takes effect August 2, 2019, if the General Assembly adjourns on May 3, 2019, as scheduled, and no referendum petition is filed.

State Appropriations

For FY 2019-20, the bill requires the following appropriations:

- \$54,228 to the Department of Public Health and Environment from various cash funds and allocation of 0.6 FTE;
- \$9,396 to the Department of Public Safety from the General Fund and an allocation of 0.2 FTE;
- \$106,952 to the Department of Regulatory Agencies from the Division of Professions and Occupations Cash Fund and other cash funds, and an allocation of 1.0 FTE;
- \$264,511 to the Department of Revenue with \$63,445 from the General Fund, \$138,562 from the Marijuana Cash Fund, \$48,723 from the Liquor Enforcement Cash Fund, \$13,781 from the Auto Dealers Cash Fund, and an allocation of 3.3 FTE; and
- \$20,194 to the Secretary of State from the SOS Cash Fund and allocation of 0.2 FTE.

Departmental Difference

DOR's Liquor Enforcement Division estimates that the bill will increase division expenditures by \$112,423 and 1.2 FTE in FY 2019-20 and \$120,928 and 1.2 FTE in FY 2020-21. The estimate assumes division director and deputy director costs to work with stakeholders and review regulatory flexibility analyses; and criminal investigator costs to provide information to and review regulatory flexibility analyses. This fiscal note estimates 0.5 FTE for the Liquor Enforcement Division beginning in FY 2019-20. The fiscal note assumes no additional costs for division directors and that small business outreach can be incorporated into each agency's existing outreach and stakeholder process.

State and Local Government Contacts

All State Agencies