

First Regular Session  
Seventy-third General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 21-0715.01 Jennifer Berman x3286

SENATE BILL 21-163

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SENATE SPONSORSHIP

Rankin,

HOUSE SPONSORSHIP

(None),

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Senate Committees

Business, Labor, & Technology

House Committees

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A BILL FOR AN ACT

101 CONCERNING ADDITIONAL REQUIREMENTS FOR A COST-BENEFIT  
102 ANALYSIS PERFORMED IN CONNECTION WITH A STATE AGENCY'S  
103 ADOPTION OF RULES.

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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://leg.colorado.gov>.)*

Under current law, any person may ask the executive director of the department of regulatory agencies or the executive director's designee (executive director) to require a rule-making agency to conduct a cost-benefit analysis of a draft rule or draft amendment to a rule (proposed rule) for which the agency has filed a notice of proposed

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
Capital letters or bold & italic numbers indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.

rule-making (notice). The bill extends the time period for which such request may be made from up to 5 days after the notice has been filed to up to 15 days before the scheduled rule-making hearing or, if the rule-making hearing is scheduled only 20 days after the notice was filed, up to 10 days after the notice was filed. The agency is required to complete the cost-benefit analysis at least 5 days before the scheduled rule-making hearing.

The bill also specifies the following regarding a cost-benefit analysis:

- If the executive director determines that the proposed rule would likely have materially disparate effects on different regions of the state, the agency must include in the cost-benefit analysis a determination of the anticipated benefits, costs, and adverse effects of the proposed rule on different regions of the state;
- If the executive director determines that the proposed rule would have a negative economic or noneconomic impact, the executive director shall inform the public by either making a public presentation about the negative impact and any counterbalancing positive impact at the rule-making hearing or publishing a written report summarizing the impacts;
- The executive director, upon request of any party to the rule-making or member of the general assembly or upon the executive director's own motion, may require an agency to update a cost-benefit analysis to reflect material changes made to the proposed or adopted rule either before, during, or after the rule-making hearing;
- A member of the general assembly, no earlier than one year after a rule has been adopted, may request that the adopting agency conduct a cost-benefit analysis regarding the rule's implementation; and
- The public utilities commission, the department of natural resources, or the department of public health and environment, with regard to any cost-benefit analysis conducted by that agency, shall present the cost-benefit analysis at the rule-making hearing and allow public testimony at the hearing regarding the cost-benefit analysis.

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

2           **SECTION 1.** In Colorado Revised Statutes, 24-4-103, **amend**  
3 (2.5)(a), (2.5)(b), (8.1)(b) introductory portion, and (8.1)(b)(V); and **add**

1 (2.5)(d.5) as follows:

2 **24-4-103. Rule-making - procedure - definitions - statutory**  
3 **citation correction.** (2.5) (a) (I) At the time of filing a notice of  
4 proposed rule-making with the secretary of state as the secretary may  
5 require, an agency shall submit a draft of the proposed rule or the  
6 proposed amendment to an existing rule and a statement, in plain  
7 language, concerning the subject matter or purpose of the proposed rule  
8 or amendment to the office of the executive director in the department of  
9 regulatory agencies. The executive director or ~~his or her~~ THE EXECUTIVE  
10 DIRECTOR'S designee shall distribute the proposed rule or amendment, the  
11 agency's statement concerning the subject matter or purpose of the  
12 proposed rule or amendment, and any cost-benefit analysis prepared  
13 pursuant to this section to all persons who have submitted a request to  
14 receive notices from the department of regulatory agencies about  
15 proposed rule-making.

16 (II) ~~Any person may, within five days~~ AT ANY TIME after  
17 publication of the notice of proposed rule-making in the Colorado register  
18 AND UP TO FIFTEEN DAYS BEFORE THE SCHEDULED RULE-MAKING HEARING  
19 OR, IF THE SCHEDULED RULE-MAKING HEARING IS ONLY TWENTY DAYS  
20 AFTER THE NOTICE OF PROPOSED RULE-MAKING WAS PUBLISHED, WITHIN  
21 TEN DAYS AFTER PUBLICATION, A PERSON MAY request that the department  
22 of regulatory agencies require the agency submitting the proposed rule or  
23 amendment to prepare a cost-benefit analysis. The executive director or  
24 ~~his or her~~ THE EXECUTIVE DIRECTOR'S designee shall determine, after  
25 consultation with the agency proposing the rule or amendment, whether  
26 to require the agency to prepare a cost-benefit analysis.

27 (III) If the executive director or ~~his or her~~ THE EXECUTIVE

1 DIRECTOR'S designee determines that a cost-benefit analysis is required,  
2 the agency shall complete a cost-benefit analysis at least ~~ten~~ FIVE days  
3 before the hearing on the rule or amendment, shall make the analysis  
4 available to the public by posting the analysis on the agency's official  
5 website, and shall submit a copy to the executive director or ~~his or her~~  
6 THE EXECUTIVE DIRECTOR'S designee. The executive director or ~~his or her~~  
7 THE EXECUTIVE DIRECTOR'S designee shall post the analysis on the  
8 department of regulatory agencies' official website.

9 (IV) By filing an additional notice published in the Colorado  
10 register, the agency may postpone the hearing on the rule or amendment  
11 to comply with the requirement to complete the cost-benefit analysis at  
12 least ~~ten~~ FIVE days before the hearing. Failure to complete a requested  
13 cost-benefit analysis pursuant to this subsection (2.5) ~~shall preclude~~  
14 PRECLUDES the ~~adoption of such~~ AGENCY FROM ADOPTING THE rule or  
15 amendment.

16 (V) ~~Such~~ A cost-benefit analysis ~~shall~~ MUST include the  
17 following:

18 (H) (A) The reason for the rule or amendment;

19 (H) (B) The anticipated economic benefits AND NONECONOMIC  
20 BENEFITS, INCLUDING INCREASED TRANSPARENCY, of the rule or  
21 amendment, ~~which shall include~~ SUCH AS economic growth, the creation  
22 of new jobs, ~~and~~ OR increased economic competitiveness;

23 (H) (C) The anticipated costs of the rule or amendment, ~~which~~  
24 ~~shall include~~ INCLUDING the direct costs to the government to administer  
25 the rule or amendment and the direct and indirect costs to business and  
26 other entities required to comply with the rule or amendment;

27 (H) (D) Any adverse effects on the economy, consumers, private

1 markets, small businesses, job creation, and economic competitiveness;  
2 and

3 ~~(V)~~ (E) At least two alternatives to the proposed rule or  
4 amendment that can be identified by the submitting agency or a member  
5 of the public, including the costs and benefits of pursuing each of the  
6 alternatives identified; AND

7 (F) IF, IN THE OPINION OF THE EXECUTIVE DIRECTOR OR THE  
8 EXECUTIVE DIRECTOR'S DESIGNEE, AS CONVEYED TO THE AGENCY AT THE  
9 TIME THAT THE COST-BENEFIT ANALYSIS IS REQUIRED PURSUANT TO  
10 SUBSECTION (2.5)(a)(III) OF THIS SECTION, THE PROPOSED RULE OR  
11 AMENDMENT WOULD LIKELY HAVE MATERIALLY DISPARATE EFFECTS ON  
12 DIFFERENT REGIONS OF THE STATE, THE ANTICIPATED BENEFITS, COSTS,  
13 AND ADVERSE EFFECTS FOR EACH OF THE DIFFERENT REGIONS OF THE  
14 STATE, WHICH DIFFERENT REGIONS MUST BE BROKEN DOWN INTO AT LEAST  
15 THREE REGIONS REPRESENTED BY THE WESTERN SLOPE, THE FRONT RANGE,  
16 AND THE EASTERN PLAINS.

17 (b) (I) The executive director or ~~his or her~~ THE EXECUTIVE  
18 DIRECTOR'S designee shall study the cost-benefit analysis and may urge  
19 the agency to revise the rule or amendment to eliminate or reduce the  
20 negative economic impact. If the executive director or ~~his or her~~ THE  
21 EXECUTIVE DIRECTOR'S designee ~~may~~ DETERMINES THAT THE PROPOSED  
22 RULE OR AMENDMENT WILL HAVE A MATERIAL NEGATIVE ECONOMIC OR  
23 NONECONOMIC IMPACT, THE EXECUTIVE DIRECTOR OR THE EXECUTIVE  
24 DIRECTOR'S DESIGNEE SHALL inform the public about the MATERIAL  
25 negative impact AND ANY COUNTERBALANCING POSITIVE IMPACT of the  
26 proposed rule or the proposed amendment to an existing rule BY:

27 (A) MAKING A PUBLIC PRESENTATION AT THE BEGINNING OF THE

1 RULE-MAKING HEARING SUMMARIZING THE IMPACTS; OR

2 (B) SUBMITTING A WRITTEN REPORT SUMMARIZING THE IMPACTS,  
3 WHICH REPORT THE AGENCY SHALL MAKE PART OF THE ADMINISTRATIVE  
4 RECORD FOR THE PROPOSED RULE OR AMENDMENT.

5 (II) (A) THE EXECUTIVE DIRECTOR OR THE EXECUTIVE DIRECTOR'S  
6 DESIGNEE, UPON REQUEST OF ANY PARTY TO THE RULE-MAKING OR  
7 MEMBER OF THE GENERAL ASSEMBLY OR ON THE EXECUTIVE DIRECTOR'S  
8 OR THE EXECUTIVE DIRECTOR'S DESIGNEE'S OWN MOTION, MAY REQUIRE  
9 AN AGENCY TO UPDATE ITS COST-BENEFIT ANALYSIS BEFORE, DURING, OR  
10 AFTER THE RULE-MAKING HEARING TO REFLECT MATERIAL CHANGES MADE  
11 TO THE PROPOSED OR ADOPTED RULE OR AMENDMENT IN COMPARISON TO  
12 THE DRAFT PROPOSED RULE OR AMENDMENT INCLUDED IN THE NOTICE OF  
13 PROPOSED RULE-MAKING. THE EXECUTIVE DIRECTOR OR THE EXECUTIVE  
14 DIRECTOR'S DESIGNEE MAY REQUIRE THAT THE COST-BENEFIT ANALYSIS  
15 BE UPDATED MORE THAN ONCE IF MATERIAL CHANGES HAVE BEEN MADE  
16 TO THE PROPOSED OR ADOPTED RULE BEFORE, DURING, OR AFTER THE  
17 RULE-MAKING HEARING.

18 (B) IF AN AGENCY IS REQUIRED TO UPDATE THE COST-BENEFIT  
19 ANALYSIS BEFORE OR DURING THE RULE-MAKING HEARING, THE AGENCY  
20 MAY POSTPONE THE RULE-MAKING HEARING PURSUANT TO THE PROCESS  
21 SET FORTH IN SUBSECTION (2.5)(a)(IV) OF THIS SECTION AND SHALL CAUSE  
22 THE UPDATED COST-BENEFIT ANALYSIS TO BE PUBLISHED IN ACCORDANCE  
23 WITH SUBSECTION (2.5)(a)(III) OF THIS SECTION.

24 (C) IF AN AGENCY IS REQUIRED TO UPDATE THE COST-BENEFIT  
25 ANALYSIS AFTER THE RULE-MAKING HEARING, THE AGENCY SHALL CAUSE  
26 THE UPDATED COST-BENEFIT ANALYSIS TO BE PUBLISHED IN ACCORDANCE  
27 WITH SUBSECTION (2.5)(a)(III) OF THIS SECTION.

1 (D) NO EARLIER THAN ONE YEAR AFTER A RULE HAS BEEN  
2 ADOPTED, A MEMBER OF THE GENERAL ASSEMBLY MAY REQUEST THAT AN  
3 AGENCY PERFORM A COST-BENEFIT ANALYSIS REGARDING ITS  
4 IMPLEMENTATION OF THE RULE TO DETERMINE THE ACTUAL ECONOMIC  
5 BENEFITS, COSTS, AND ADVERSE IMPACTS OF THE RULE'S  
6 IMPLEMENTATION. REGARDLESS OF THE NUMBER OF REQUESTS AN AGENCY  
7 RECEIVES, THE AGENCY NEED NOT PERFORM MORE THAN ONE  
8 COST-BENEFIT ANALYSIS PER RULE EVERY TWO YEARS PURSUANT TO THIS  
9 SUBSECTION (2.5)(b)(II)(D).

10 (d.5) IF THE PUBLIC UTILITIES COMMISSION, THE DEPARTMENT OF  
11 NATURAL RESOURCES, OR THE DEPARTMENT OF PUBLIC HEALTH AND  
12 ENVIRONMENT PERFORMS A COST-BENEFIT ANALYSIS PURSUANT TO THIS  
13 SUBSECTION (2.5), THE AGENCY SHALL DEDICATE A PORTION OF THE  
14 RULE-MAKING HEARING TO PRESENTING AND REVIEWING THE  
15 COST-BENEFIT ANALYSIS AND SHALL ALLOW PUBLIC TESTIMONY  
16 REGARDING THE COST-BENEFIT ANALYSIS DURING THAT PORTION OF THE  
17 HEARING.

18 (8.1) (b) The agency rule-making record ~~shall~~ MUST contain:

19 (V) A copy of any regulatory analysis, ~~or~~ cost-benefit analysis  
20 prepared for the proceeding upon which the rule was based, OR UPDATED  
21 COST-BENEFIT ANALYSIS PREPARED PURSUANT TO SUBSECTION (2.5)(b)(II)  
22 OF THIS SECTION, if applicable; A COPY OF ANY REPORT SUMMARIZING THE  
23 IMPACTS OF THE RULE, AS PREPARED BY THE EXECUTIVE DIRECTOR OF THE  
24 DEPARTMENT OF REGULATORY AGENCIES OR THE EXECUTIVE DIRECTOR'S  
25 DESIGNEE PURSUANT TO SUBSECTION (2.5)(b)(I)(B) OF THIS SECTION; and  
26 any formal statement ~~made~~ OR WRITTEN REPORT THAT THE EXECUTIVE  
27 DIRECTOR OR THE EXECUTIVE DIRECTOR'S DESIGNEE PROVIDED to the

1 agency promulgating the rule ~~by the executive director of the department~~  
2 ~~of regulatory agencies~~ regarding such cost-benefit analysis;

3 **SECTION 2. Act subject to petition - effective date -**  
4 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following  
5 the expiration of the ninety-day period after final adjournment of the  
6 general assembly; except that, if a referendum petition is filed pursuant  
7 to section 1 (3) of article V of the state constitution against this act or an  
8 item, section, or part of this act within such period, then the act, item,  
9 section, or part will not take effect unless approved by the people at the  
10 general election to be held in November 2022 and, in such case, will take  
11 effect on the date of the official declaration of the vote thereon by the  
12 governor.

13 (2) This act applies to notices of proposed rule-making filed on or  
14 after the applicable effective date of this act; except that section 24-4-103  
15 (2.5)(b)(II)(D), Colorado Revised Statutes, in section 1 of this act applies  
16 to rules promulgated before the effective date of this act.