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Final Fiscal Note

Drafting Number: LLS 21-0715
Prime Sponsors: Sen. Rankin

Date: June 10, 2021
Bill Status: Postponed Indefinitely
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Bill Topic: COST-BENEFIT ANALYSIS FOR RULES ADDITIONAL REQUIREMENTS

Summary of Fiscal Impact:

- State Revenue
- State Expenditure
- State Transfer
- TABOR Refund
- Local Government
- Statutory Public Entity

The bill would have modified and expanded the cost-benefit analyses that may be requested on proposed rules. The bill increased state expenditures on an ongoing basis.

Appropriation Summary:

In FY 2021-22, the bill would have required appropriations of \$252,682 to multiple state agencies.

Fiscal Note Status:

This fiscal note reflects the introduced bill. The bill was not enacted into law; therefore, the impacts identified in this fiscal note do not take effect.

Table 1
State Fiscal Impacts Under SB 21-163

		Budget Year FY 2021-22	Out Year FY 2022-23
Revenue		-	-
Expenditures	General Fund	\$176,698	\$236,469
	Cash Funds	\$75,985	\$73,134
	Centrally Appropriated	\$51,615	\$70,829
	Total Expenditures	\$304,298	\$380,432
	Total FTE	2.7 FTE	3.8 FTE
Transfers		-	-
TABOR Refund		-	-

Summary of Legislation

Under current law, a person may request that a cost-benefit analysis (CBA) of a proposed rule be completed by a rulemaking agency. The bill modifies that process by:

- allowing a CBA to be requested up to 15 days before the scheduled rulemaking hearing, with limited exceptions;
- requiring that the CBA be completed at least 5 days prior to the rulemaking hearing, instead of the current 10 days prior; and
- requiring that the CBA include both economic and non-economic benefits, and whether the proposed rule would have disparate effects on different regions of the state. If it does have disparate effects, the CBA must include the anticipated costs, benefits, and adverse effects for the Western Slope, Front Range, and Eastern Plains regions.

If the agency determines that the proposed rule will have a negative impact, the director of the Department of Regulatory Agencies (DORA) or their designee must make a public presentation on the impacts or submit a written report to be part of the administrative record. When the Public Utilities Commission, the Department of Natural Resources, or the Department of Public Health and Environment complete a CBA, these agencies must present the CBA and allow for public comment during the rulemaking hearing.

Upon request of any interested party, a member of the General Assembly, or on their own initiative, an agency must update its CBA to reflect changes to the draft proposed rules. At least a year after a rule is adopted, a member of the General Assembly may request that an agency perform a CBA of the implementation of a rule to determine actual costs, benefits, and adverse impacts.

State Expenditures

The bill increases state expenditures by \$304,298 in FY 2021-22 and \$380,432 in FY 2022-23 in multiple state agencies from both the General Fund and cash funds, as listed in Table 2 and discussed further below.

Table 2
Expenditures Under SB21-163

Cost Components	FY 2021-22	FY 2022-23
Department of Regulatory Agencies (Cash Funds)		
Personal Services	\$26,918	\$35,892
Operating Expenses	-	\$675
Capital Outlay Costs	\$6,200	-
Computer Programming	\$9,749	-
Centrally Appropriated Costs ¹	\$10,508	\$11,721
FTE – Personal Services	0.4 FTE	0.5 FTE
DORA Subtotal	\$53,375	\$48,288

**Table 2
Expenditures Under SB21-163 (Cont.)**

Cost Components	FY 2021-22	FY 2022-23
Department of Natural Resources (Cash Funds)		
Personal Services	\$26,918	\$35,892
Operating Expenses	-	\$675
Capital Outlay Costs	\$6,200	-
Centrally Appropriated Costs ¹	\$8,072	\$10,054
FTE – Personal Services	0.4 FTE	0.5 FTE
DNR Subtotal	\$41,190	\$46,621
Department of Health Care Policy & Financing (General Fund)		
Personal Services	\$55,175	\$82,763
Operating Expenses	\$1,080	\$1,350
Capital Outlay Costs	\$6,200	-
Centrally Appropriated Costs ¹	\$11,992	\$17,488
FTE – Personal Services	0.7 FTE	1.0 FTE
HCPF Subtotal	\$74,447	\$101,601
Department of Revenue (General Fund)		
Personal Services	\$38,285	\$57,426
Operating Expenses	\$810	\$1,080
Capital Outlay Costs	\$6,200	-
Centrally Appropriated Costs ¹	\$8,464	\$13,196
FTE – Personal Services	0.5 FTE	0.8 FTE
DOR Subtotal	\$53,759	\$71,702
Department of Public Health & Environment (General Fund)		
Personal Services	\$61,668	\$92,500
Operating Expenses	\$1,080	\$1,350
Capital Outlay Costs	\$6,200	-
Centrally Appropriated Costs ¹	\$12,579	\$18,370
FTE – Personal Services	0.7 FTE	1.0 FTE
CDPHE Subtotal	\$81,527	\$112,220
Total	\$304,298	\$380,432
Total FTE	2.7 FTE	3.8 FTE

¹ Centrally appropriated costs are not included in the bill's appropriation.

DORA. DORA requires 0.5 FTE to determine whether the new CBA requests will have economic or non-economic benefits or disparate impacts on regions of the state, thus requiring a full agency analysis. DORA is also required to follow the rulemaking process to determine whether a CBA must be revised, report on positive impacts, and track legislative requests. Additionally, one-time costs will be incurred to modify the current rule and CBA tracking system, reappropriated to the Office of Information Technology. DORA's costs are paid from funds reappropriated to the Executive Director's Office from various cash funds.

CBAs—HCPF, CDPHE, DNR, and DOR. The departments of Health Care Policy and Financing (HCPF) and Public Health and Environment (CDPHE) each require 1.0 FTE to fulfill an estimated three to four additional CBA requests per year, additional regional analyses, and additional CBAs requested by members of the General Assembly, as well as any revisions to CBAs post-rulemaking. Similarly, the Department of Natural Resources (DNR) requires 0.5 FTE and the Department of Revenue (DOR) require 0.8 FTE to implement an estimated one to three additional CBA requests per year, and additional work related to regional analyses and revisions. Staffing has been prorated for an October start date and the General Fund pay date shift, where applicable. All of these agencies' costs are paid from the General Fund, except that DNR's costs are paid from the Oil and Gas Conservation and Environmental Response Fund.

CBAs—Other state agencies. For agencies that do not generally receive CBA requests under current law, the bill will increase workload for any new or complex CBAs requested as a result of the bill. The fiscal note assumes that the additional workload will be accomplished within current appropriations. Should there be a significant increase in the number or complexity of the CBA requests, impacted agencies will request additional resources through the annual budget process.

Legal services. The bill increases the legal services that state agencies require to support rulemaking and the compilation of CBAs. The fiscal note assumes that the additional legal services will be accommodated within each agency's allotment of legal services hours.

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 \$51,615 in FY 2021-22 and \$70,829 in FY 2022-23.

Effective Date

The bill was postponed indefinitely by the Senate Business, Labor, and Technology Committee on March 24, 2021.

State Appropriations

In FY 2021-22, the bill requires the following appropriations:

- \$42,867 from various cash funds to the Department of Regulatory Agencies and 0.4 FTE, of which \$9,749 is reappropriated to the Office of Information Technology;
- \$33,118 from the Oil and Gas Conservation and Environmental Response Fund to the Department of Natural Resources and 0.4 FTE;
- \$62,455 from the General Fund to the Department of Health Care Policy & Financing and 0.7 FTE;
- \$45,295 from the General Fund to the Department of Revenue and 0.5 FTE; and
- \$68,948 from the General Fund to the Colorado Department of Public Health & Environment and 0.7 FTE.

Departmental Difference

CDPHE estimates that the bill will require \$1.5 million in FY 2021-22 and \$1.4 million in FY 2022-23 to implement the bill. Costs include 9.0 FTE in several divisions, \$200,000 in contracting costs, and approximately \$86,000 in additional legal services to support rulemaking. The department assumes that there will be three additional CBAs requested for CDPHE rules per year.

The fiscal note estimates that 1.0 FTE is required to handle two to three additional CBA requests in each of the first two years. This staffing level is based on the assumption that 500 to 700 hours per CBA is sufficient to conduct the analyses required by the bill, and that contracting costs are not required in addition to the new FTE. Additionally, the fiscal note assumes any legal services costs can be accomplished within an agency's current legal services budget or will be addressed through the budget process if necessary.

State and Local Government Contacts

All State Agencies