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General Q/A re: SB 10-191 Rules

Q: What process will be followed for the review of rules submitted to implement SB 10-191?

A: The rules packet, expected to be promulgated by the State Board of Education by November 9, 2011, will initially follow the normal process for rule review as set forth in section 24-4-103 (8), C.R.S. Accordingly, the rules will first be submitted to the Office of Legislative Legal Services (OLLS) for review. The OLLS will review the rules for any issues, including whether the rules are within the scope of rulemaking authority granted and whether they conflict with other existing statutes. The OLLS will present its findings at a hearing before the Committee on Legal Services (COLS). The COLS will then introduce a separate rule review bill (191 rule review bill) for these rules in the 2012 session containing its recommendations on the SB 191 rules to the General Assembly. The COLS will decide on sponsorship and in what house the bill will be introduced.

Q: *After the COLS introduces the 191 rule review bill, what will happen?*

A: Sections 22-9-104 (2) (f) and 22-9-105.5 (10), C.R.S., create a slightly different rule review process for the rules promulgated to implement S.B. 10-191. Not only will these rules be reviewed by the General Assembly in a bill that is separate from the annual rule review bill, but there is also an accelerated timeline associated with the 191 rule review bill.

Q: To what committee will the 191 rule review bill be assigned after introduction?

A: These are questions for leadership to answer. As with any other bill, leadership will decide to what committee or committees of reference the bill will be assigned.

Q: In what house will the 191 rule review bill start?

A: At this point, we do not know. It depends on the decision of the COLS. Leadership could, however, provide guidance to the COLS regarding this issue.

Q: With regard to the 191 rule review bill, can the General Assembly amend the language of a given rule or does its authority only extend to the repeal (or continuation) of an individual rule?

A: The General Assembly is authorized to repeal (or continue) individual rules (down to the smallest subdivision), but not to alter or amend the language of an individual rule in the rules promulgated by the Board for the implementation of S.B. 10-191.

Q: *By what date does the 191 rule review bill need to be introduced?*

A: The statute is silent on this, but it will need to be introduced in enough time to be passed out of both houses on or before February 15, 2012.

Q: To what does the February 15, 2012, date referenced in statute refer?

A: The date by which the General Assembly must pass the bill and/or send some or all of the rules back to the Board to make changes.

Q: To what does the May 1, 2012, date referenced in statute refer?

A: The date by which the Board must promulgate emergency rules in response to any rules that the General Assembly repealed in the 191 rule review bill and resubmit to the General Assembly.

Q: What is the legal basis for review of the 191 rule review bill?

A: Under section 24-4-103 (8), C.R.S., the standard basis for review of the rules is whether the rule lacks or exceeds statutory authority or conflicts with statute.

Q: What happens to the rules in the 191 rule review bill to which the General Assembly has no objection?

A: So there is no ambiguity about the status of such rules, the OLLS recommends that any rules the General Assembly approves be extended in the 191 rule review bill.

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