



**Colorado
Legislative
Council
Staff**

SB17-002

**REVISED
FISCAL NOTE**

(replaces fiscal note dated February 6, 2017)

FISCAL IMPACT: State Local Statutory Public Entity Conditional No Fiscal Impact

Drafting Number: LLS 17-0578

Date: March 17, 2017

Prime Sponsor(s): Sen. Martinez Humenik
Rep. Lawrence

Bill Status: Senate Appropriations

Fiscal Analyst: Ryan Long (303-866-2066)

BILL TOPIC: COMPULSORY REVIEW OF RULES BY EACH PRINCIPAL DEPARTMENT

Fiscal Impact Summary	FY 2016-2017 (current year)	FY 2017-2018	FY 2018-2019
State Revenue			
State Expenditures		<u>\$2,551,108</u>	<u>\$1,521,376</u>
General Fund	Workload increase.	434,810	279,501
Cash Funds		1,328,923	710,386
Federal Funds		155,419	138,817
Centrally Appropriated Costs		631,956	392,672
FTE Position Change		22.3 FTE	13.5 FTE
Appropriation Required: \$1,919,152 - Multiple departments (FY 2017-18).			
Future Year Impacts: Ongoing expenditure increase.			

Summary of Legislation

Under current law, each agency reviews its rules based on a schedule set by the Department of Regulatory Agencies (DORA). Under this bill, **as amended by the Senate Business Committee**, each agency must complete a review of all its rules by November 1, 2017, provide an update to its rules in 2018, and review all its rules every three years thereafter.

The bill creates a requirement that agencies conducting rulemaking must give the public at least 14 business days to provide input on the agency's rules. The 2018 and triennial rule reviews must include a report that contains any input from the public or other state agencies, as well as an evaluation of how each rule accounts for any applicable federal or state law passed within the previous three years. Updates to each report must be posted on the principal department's official website.

Background

Senate Bill 14-063 amended the Administrative Procedures Act (APA) to require each principal department to establish, in cooperation with the Department of Regulatory Agencies (DORA), a schedule for the review of existing administrative rules. The current rule review

schedule for agencies can be found in Table 1. SB 14-063 applied eight new statutory criteria, but was generally aligned with activities already taking place in the Executive Branch due to an executive order issued by the Governor in 2012. Executive Order D 2012-002 remains in effect until rescinded or superceded by a future executive order.

Table 1. 2016 Principal Department Rule Review Schedule	
Department	DORA Rule Review Schedule
Agriculture	3 years
Corrections*	N/A
Education	Unknown
Governor*	N/A
Health Care Policy and Financing	5 years
Higher Education	1 year
Human Services	3 years
Judicial*	N/A
Labor and Employment	Unknown
Law	Unknown
Legislature*	N/A
Local Affairs	Unknown
Military and Veterans Affairs*	N/A
Natural Resources	3 years
Personnel and Administration	3 years
Public Health and Environment	7 years
Public Safety	5 years
Regulatory Agencies	5 years
Revenue	5 years
State	3 years
Transportation	1 year
Treasury*	N/A

*Department has no rules reviewed that pertain to this bill.

Administrative rules promulgated in accordance with the APA are compiled in the Code of Colorado Regulations (CCR). Rules vary widely in length and complexity. The number of rules promulgated by the various principal departments and other state agencies subject to the APA also varies widely.

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 Secretary of State. The Secretary of State then publishes the notice in the Colorado Register, which acts as notice to the public. Once the notice is filed with the Secretary of State, the public is allowed to offer comments on the proposed rule. Colorado state 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 APA. At the hearing on a proposed rule, an agency accepts written and oral testimony about the rule. Following this hearing, the agency has 180 days to file adopted rules with the Secretary of State for publication in the Colorado Register. Adopted rules go into effect 20 days after publication, or a later date if stated in the rule.

State Expenditures

This bill is expected to increase state expenditures in multiple agencies by about \$2.6 million and 22.3 FTE in FY 2017-19 and about \$1.5 million and 13.5 FTE in FY 2018-19. These costs are paid using General Fund, cash funds, and federal funds. Additionally, all state agencies will experience workload increases in FY 2016-17 in order to review all rules by the November 1, 2017 deadline.

Assumptions. The following assumptions are applied to the analysis in this fiscal note:

- additional FTE will be hired in FY 2017-18;
- 33 percent of all rules will be reviewed in each year of the three year cycle; and
- rules already reviewed in the current rule review cycle can be counted toward the review completed by November 2017.

All state agencies. In the current FY 2016-17, all state agencies that promulgate rules will see an increase in workload in order to review all of their rules by the November 1, 2017 deadline. In subsequent years, workload will increase to complete an additional review of rules by November 2018, and to implement the three-year schedule as outlined in the bill. With the exception of the agencies listed below, state agencies will be able to accomplish the increase in workload within existing appropriations. This fiscal note assumes that any further resources needed by agencies not listed below will be requested through the annual budget process.

Due to the varying complexity of rules between state agencies and varying degree of time needed to gather stakeholder input, the workload between different agencies can vary widely. In addition, as shown in Table 1, the amount of time departments have to complete their current DORA scheduled rule review varies. Agencies that are currently on a three-year review cycle will see fewer impacts to their current rule review process than agencies on a five- or seven-year rule review cycle. The two primary drivers for the departments requiring additional FTE are:

- the compression of their rule review schedule from their current schedule to a three year review schedule; and
- the complexity of department rules and level of stakeholder involvement required by these agencies.

Cost Components	FY 2017-18	FY 2018-19
Health Care Policy and Financing Subtotal	\$314,971	\$303,942
Personal Services	\$242,173	\$248,287
FTE	3.9	4.0
Operating Expenses and Capital Outlay Costs	22,232	3,800
Centrally Appropriated Costs*	50,566	51,855
Public Health and Environment Subtotal	\$1,350,477	\$925,173
Personal Services	\$931,925	\$647,660
FTE	8.5	5.8
Operating Expenses and Capital Outlay Costs	22,274	5,510
Centrally Appropriated Costs*	396,278	272,003

Table 2. Expenditures Under SB17-002 (Cont.)		
Cost Components	FY 2017-18	FY 2018-19
Revenue Subtotal	\$833,415	\$292,260
Personal Services	\$596,370	\$219,931
FTE	9.6	3.7
Operating Expenses and Capital Outlay Costs	56,150	3,515
Centrally Appropriated Costs*	180,895	68,814
Education Subtotal	\$20,932	\$0
Personal Services	\$20,932	\$0
FTE	0.3	0.0
Operating Expenses and Capital Outlay Costs	285	0
Centrally Appropriated Costs*	4,217	0
Human Services Subtotal	\$26,810	\$0
Temporary Employee	\$26,810	\$0
TOTAL COSTS	\$2,551,107	\$1,521,375
TOTAL FTE	22.3	13.5

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

Department of Health Care Policy and Financing (HCPF). The department requires 3.9 FTE in FY 2017-18 and 4.0 FTE in FY 2018-19 to complete a full review of rules by November 2017, to complete an update in 2018, and to collapse their current five year review schedule into the three year review schedule required under this bill. HCPF rules are generally related to health benefits, health program eligibility, provider enrollment, and recovery of payments. These rules are complex, and have a high degree of interest and participation from stakeholders. This fiscal note assumes the department will continue to involve the Medical Services Board in the rule review process. These costs will be paid from General Fund, the Hospital Provider Fee Cash Fund, and federal funds.

Department of Public Health and Environment (CDPHE). The department requires 8.5 FTE in FY 2017-18 and 5.8 FTE in FY 2018-19 to complete a full review of all department rules, complete an update in 2018, and collapse their current seven-year review schedule to three-year review schedule as required under this bill. The nature of the department's activities, such as regulating power plant emissions or hazardous waste, means that rules are highly technical and detailed. These costs will be paid from General Fund, various cash funds in CDPHE, reappropriated funds, and federal funds.

Department of Revenue (DOR). The department requires 9.6 FTE in FY 2017-18 and 3.7 FTE in FY 2018-19 to complete a full review of all rules, complete an update in 2018, and collapse their current five-year review schedule to a three-year review schedule as required under this bill. Much of the rule review for this department is managed by a single section of staff, rather than spread between multiple sections and managers. These costs will be paid from General Fund and various cash funds in DOR.

Other agencies. The Department of Education (CDE) requires 0.3 FTE to assist with the review of all rules in 2018. The Department of Human Services (CDHS) requires \$26,810 for a temporary employee in FY 2017-18 to assist with the rule update due in 2018. It is assumed the temporary employee will be paid hourly.

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. The centrally appropriated costs subject to this policy are estimated in the fiscal note for informational purposes and summarized in Table 3. CDPHE indirect costs are 25.5 percent. DOR leased space is included to show the incremental impact of the additional FTE, and calculated at DOR's rate of 200 square feet per FTE at a rate of \$27 per square foot.

Cost Components	FY 2017-18	FY 2018-19
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$176,275	\$106,144
Supplemental Employee Retirement Payments	160,520	99,989
Indirect Costs (CDPHE)	243,321	166,559
Leased Space (DOR)	51,840	19,980
TOTAL	\$631,956	\$392,672

Technical Note

The November 1, 2017, reporting deadline will likely not allow agencies enough time to perform the tasks required under the bill.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State Appropriations

The bill includes a provision requiring state agencies to implement the bill within existing resources. However, the fiscal note estimates that for FY 2017-18, this bill requires the following appropriations:

- \$264,406 to HCPF, and an allocation of 3.9 FTE;
- \$954,199 to CDPHE, and an allocation of 8.5 FTE;
- \$652,520 to DOR, and an allocation of 9.6 FTE;
- \$21,217 to CDE, and an allocation of 0.3 FTE; and
- \$26,810 to CDHS.

A breakdown of funds is displayed below in Table 4.

Department	General Fund	Cash Funds (Various)	Federal Funds	Total Appropriation
HCPF	\$82,589	\$49,614	\$132,203	\$264,406
CDPHE	161,034	774,506	18,659	954,199
DOR	147,717	504,803		652,520
CDE	21,217			21,217
CDHS	22,253		4,557	26,810
Total	\$391,340	\$1,328,923	\$150,862	\$1,919,152

State and Local Government Contacts

All State Agencies