



**Colorado
Legislative
Council
Staff**

SB17-002

**REVISED
FISCAL NOTE**

(replaces fiscal note dated April 11, 2017)

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

Drafting Number: LLS 17-0578 **Date:** April 24, 2017
Prime Sponsor(s): Sen. Martinez Humenik **Bill Status:** House SVMA
 Rep. Lawrence **Fiscal Analyst:** Ryan Long (303-866-2066)

BILL TOPIC: COMPULSORY REVIEW OF RULES BY EACH PRINCIPAL DEPARTMENT

| Fiscal Impact Summary | FY 2017-2018 | FY 2018-2019 | FY 2019-20 |
|---|--------------|---------------------------|---------------------------|
| State Revenue | | | |
| State Expenditures | | <u>\$1,097,690</u> | <u>\$1,266,346</u> |
| General Fund | | 596,538 | 666,091 |
| Cash Funds | | 147,961 | 163,353 |
| Federal Funds | | 83,106 | 126,044 |
| Centrally Appropriated Costs | | 270,085 | 310,858 |
| FTE Position Change | | 8.4 FTE | 10.5 FTE |
| Appropriation Required: None. | | | |
| Future Year Impacts: Ongoing expenditure increase. | | | |

Note: The fiscal note was revised to reflect new information.

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 **reengrossed** bill, each agency must complete a review of all its rules by November 1, 2018. Commencing in 2021 and triennially thereafter, each department must complete a full review of all its rules.

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 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. Agencies are encouraged to conduct an examination in years the triennial rule review is not due to ensure agency rules conform with state and federal laws. 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 superseded 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

The bill will increase state expenditures by \$1,097,690 and 8.4 FTE in FY 2018-19 and by \$1,266,364 and 10.5 FTE in FY 2019-20 and thereafter. These costs are paid using General Fund, cash funds, and federal funds.

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

- additional FTE will be hired in FY 2018-19;
- 33 percent of all rules will be reviewed in each year of the three year cycle;
- rules already reviewed in the current rule review cycle can be counted toward the review completed by November 2018; and
- state agencies can complete their current rule review schedule by November 2018 within existing appropriations.

All state agencies. Beginning in FY 2018-19, state expenditures are expected to increase 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. Additionally, it is assumed that any examination to ensure that rules conform with state and federal laws can be done within existing appropriations.

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.

| Table 2. Expenditures Under SB17-002 | | | |
|--|-------------------|-------------------|-------------------|
| Cost Components | FY 2017-18 | FY 2018-19 | FY 2019-20 |
| Health Care Policy and Financing Subtotal | | \$196,947 | \$303,942 |
| Personal Services | | \$144,835 | \$248,287 |
| FTE | | 2.4 | 4.0 |
| Operating Expenses and Capital Outlay Costs | | 21,377 | 3,800 |
| Centrally Appropriated Costs* | | 30,735 | 51,855 |

| Table 2. Expenditures Under SB17-002 (Cont.) | | | |
|---|-------------------|--------------------|--------------------|
| Cost Components | FY 2017-18 | FY 2018-19 | FY 2019-20 |
| Public Health and Environment Subtotal | | \$611,015 | \$670,144 |
| Personal Services (New FTE) | | \$206,292 | \$225,046 |
| FTE | | 2.6 | 2.8 |
| Personal Services (Existing FTE) | | 213,496 | 252,249 |
| Operating Expenses and Capital Outlay Costs | | 16,769 | 2,660 |
| Centrally Appropriated Costs* | | 174,458 | 190,189 |
| Revenue Subtotal | | \$289,728 | \$292,260 |
| Personal Services | | \$202,509 | \$219,931 |
| FTE | | 3.4 | 3.7 |
| Operating Expenses and Capital Outlay Costs | | 22,327 | 3,515 |
| Centrally Appropriated Costs* | | 64,892 | 68,814 |
| TOTAL COSTS | | \$1,097,690 | \$1,266,346 |
| TOTAL FTE | | 8.4 | 10.5 |

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

Department of Health Care Policy and Financing (HCPF). HCPF requires 2.4 FTE in FY 2018-19 to collapse their current five-year review schedule into the three-year review schedule required under this bill. Costs in FY 2018-19 assume a November 1, 2018, start date for new FTE and are prorated to account for the General Fund payday shift. 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). CDPHE requires 2.6 FTE and an increase in appropriations for existing staff in FY 2018-19 to collapse their current seven-year review schedule to three-year review schedule as required under this bill. Costs in FY 2018-19 are prorated to account for the General Fund payday shift. The nature of the department's activities, such as regulating power plant emissions or hazardous waste, means that rules are highly technical and detailed.

Department of Revenue (DOR). DOR requires 3.4 FTE in FY 2018-19 to collapse their current five-year review schedule to a three-year review schedule as required under this bill. Costs in FY 2018-19 are prorated to account for the General Fund payday shift. Much of the rule review for this department is managed by a single section of staff, rather than spread between multiple sections and managers.

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.

| Table 3. Centrally Appropriated Costs Under SB17-002 | | | |
|--|-------------------|-------------------|-------------------|
| Cost Components | FY 2017-18 | FY 2018-19 | FY 2019-20 |
| Employee Insurance (Health, Life, Dental, and Short-term Disability) | | \$76,337 | \$93,032 |
| Supplemental Employee Retirement Payments | | 66,722 | 82,226 |
| Indirect Costs (CDPHE) | | 107,046 | 115,620 |
| Leased Space (DOR) | | 19,980 | 19,980 |
| TOTAL | | \$270,085 | \$310,858 |

Effective Date

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

Departmental Difference

CDPHE estimates that it will require \$594,244 and a new allocation of 2.6 FTE in FY 2017-18 to complete their current rule review schedule and begin the compression of their seven-year rule review schedule to a three-year rule review schedule. This estimate is based on the assumption that they will require additional appropriations to complete their current rule review schedule and the assumption that they will hire new staff in FY 2017-18. The fiscal note assumes that the current review schedule can be completed within existing appropriations, and that any new employees will be hired after July 1, 2018. As such, the impacts in this fiscal note begin in FY 2018-19, and FTE and costs reflect the resources needed to complete a comprehensive rule review schedule every three years.

State and Local Government Contacts

All state agencies