

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 18-0455.01 Jennifer Berman x3286

HOUSE BILL 18-1237

HOUSE SPONSORSHIP

Kraft-Tharp and Van Winkle, Arndt, Coleman, Garnett, Gray, Liston, Rosenthal, Sandridge, Sias, Thurlow, Williams D.

SENATE SPONSORSHIP

Neville T.,

House Committees
Business Affairs and Labor

Senate Committees
Business, Labor, & Technology
Appropriations

A BILL FOR AN ACT

101 **CONCERNING THE CONTINUATION OF THE REQUIREMENTS REGARDING**
102 **THE PREPARATION OF A COST-BENEFIT ANALYSIS AS**
103 **ADMINISTERED BY THE DEPARTMENT OF REGULATORY**
104 **AGENCIES, AND, IN CONNECTION THEREWITH, IMPLEMENTING**
105 **THE RECOMMENDATIONS CONTAINED IN THE 2017 SUNSET**
106 **REPORT BY THE DEPARTMENT OF REGULATORY AGENCIES AND**
107 **MAKING AN APPROPRIATION.**

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/>.)

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.*

SENATE
3rd Reading Unamended
April 6, 2018

SENATE
Amended 2nd Reading
April 5, 2018

HOUSE
3rd Reading Unamended
March 5, 2018

HOUSE
2nd Reading Unamended
February 28, 2018

Sunset Process - House Business Affairs and Labor Committee. The bill implements the recommendations of the department of regulatory agencies' (department) sunset review and report on requirements and procedures regarding the preparation of a cost-benefit analysis by:

- ! Continuing the requirements and procedures indefinitely (*recommendation 1, sections 1 and 2* of the bill);
- ! Requiring state rule-making agencies to include on their applicable websites information about the cost-benefit analysis process and a link to the online regulatory notice enrollment form created by the executive director of the department or the executive director's designee (section 2).

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

2 **SECTION 1.** In Colorado Revised Statutes, 24-34-104, **repeal**
3 (15)(a)(VI) as follows:

4 **24-34-104. General assembly review of regulatory agencies**
5 **and functions for repeal, continuation, or reestablishment - legislative**
6 **declaration - repeal.** (15) (a) The following agencies, functions, or both,
7 will repeal on September 1, 2018:

8 (VI) ~~The requirements and procedures regarding the preparation~~
9 ~~of a cost-benefit analysis specified in section 24-4-103 (2.5);~~

10 **SECTION 2.** In Colorado Revised Statutes, 24-4-103, **amend**
11 **(2.5)(a) and (2.5)(b); repeal (2.5)(f); and add (2.5)(g), (2.5)(h), and**
12 **(2.5)(i) as follows:**

13 **24-4-103. Rule-making - procedure - definitions - statutory**
14 **citation correction - reporting - repeal.** (2.5) (a) (I) At the time of
15 filing a notice of proposed rule-making with the secretary of state as the
16 secretary may require, an agency shall submit a draft of the proposed rule
17 or the proposed amendment to an existing rule and a statement, in plain
18 language, concerning the subject matter or purpose of the proposed rule

1 or amendment to the office of the executive director in the department of
2 regulatory agencies. The executive director, or his or her designee, shall
3 distribute the proposed rule or amendment, the agency's statement
4 concerning the subject matter or purpose of the proposed rule or
5 amendment, and any cost-benefit analysis prepared pursuant to this
6 section to all persons who have submitted a request to receive notices
7 from the department of regulatory agencies about proposed rule-making.

8 (II) WITHIN FIVE DAYS AFTER RECEIVING A DRAFT OF AN AGENCY'S
9 PROPOSED RULE OR PROPOSED AMENDMENT PURSUANT TO SUBSECTION
10 (2.5)(a)(I) OF THIS SECTION, THE EXECUTIVE DIRECTOR OF THE
11 DEPARTMENT OF REGULATORY AGENCIES, OR THE EXECUTIVE DIRECTOR'S
12 DESIGNEE, SHALL REVIEW THE PROPOSED RULE OR PROPOSED AMENDMENT
13 TO DETERMINE IF ANY PORTION OF IT CONSTITUTES A SIGNIFICANT
14 REGULATORY ACTION. IF THE EXECUTIVE DIRECTOR OR THE EXECUTIVE
15 DIRECTOR'S DESIGNEE DETERMINES THAT ANY PORTION OF THE PROPOSED
16 RULE OR PROPOSED AMENDMENT CONSTITUTES A SIGNIFICANT
17 REGULATORY ACTION, HE OR SHE SHALL SEND A COPY OF THE PROPOSED
18 RULE OR PROPOSED AMENDMENT, ALONG WITH AN EXPLANATION WHY IT
19 CONSTITUTES A SIGNIFICANT REGULATORY ACTION, TO THE OFFICE. AT
20 LEAST TEN BUSINESS DAYS BEFORE THE AGENCY'S HEARING ON THE
21 PROPOSED RULE OR PROPOSED AMENDMENT, THE DIRECTOR OF THE OFFICE
22 OR THE DIRECTOR'S DESIGNEE, IN COLLABORATION WITH THE AGENCY,
23 SHALL CONDUCT A COST-BENEFIT ANALYSIS OF THE PROPOSED RULE OR
24 PROPOSED AMENDMENT PURSUANT TO SUBSECTION (2.5)(a)(V) OF THIS
25 SECTION AND SHALL SEND THE COST-BENEFIT ANALYSIS TO THE
26 EXECUTIVE DIRECTOR AND TO THE AGENCY. THE AGENCY SHALL MAKE
27 THE COST-BENEFIT ANALYSIS AVAILABLE TO THE PUBLIC BY POSTING IT ON

1 THE AGENCY'S OFFICIAL WEBSITE. THE EXECUTIVE DIRECTOR, OR THE
2 EXECUTIVE DIRECTOR'S DESIGNEE, SHALL POST THE ANALYSIS ON THE
3 DEPARTMENT OF REGULATORY AGENCIES' OFFICIAL WEBSITE.

4 (III) Any person may, within five BUSINESS days after publication
5 of the notice of proposed rule-making in the Colorado register, request
6 that the department of regulatory agencies require the agency submitting
7 the proposed rule or amendment to prepare a cost-benefit analysis. The
8 executive director, or his or her designee, shall determine, after
9 consultation with the agency proposing the rule or amendment, whether
10 to require the agency to prepare a cost-benefit analysis. If the executive
11 director, or his or her designee, determines that a cost-benefit analysis is
12 required, THE DEPARTMENT SHALL REQUIRE the agency shall TO complete
13 a cost-benefit analysis at least ten BUSINESS days before the hearing on the
14 rule or amendment, shall make the analysis available to the public by
15 posting the analysis on the agency's official website, and shall submit a
16 copy to the executive director OF THE DEPARTMENT or his or her designee.
17 The executive director, or his or her designee, shall post the analysis on
18 the department of regulatory agencies' official website.

19 (IV) By filing an additional notice published in the Colorado
20 register, the agency may postpone the hearing on the rule or amendment
21 to comply with the requirement to complete the THAT ANY cost-benefit
22 analysis REQUIRED PURSUANT TO SUBSECTION (2)(a)(II) OR (2)(a)(III) OF
23 THIS SECTION BE COMPLETED at least ten days before the hearing. Failure
24 to complete a requested IF A cost-benefit analysis IS REQUIRED FOR A
25 PROPOSED RULE OR AMENDMENT pursuant to this subsection (2.5), shall
26 preclude the adoption of such THE AGENCY SHALL NOT ADOPT THE rule or
27 amendment Such UNTIL THE COST-BENEFIT ANALYSIS HAS BEEN

1 COMPLETED.

2 (V) A cost-benefit analysis, shall WHETHER CONDUCTED BY THE
3 OFFICE IN COLLABORATION WITH AN AGENCY, OR SOLELY BY THE AGENCY,
4 MUST include the following:

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

6 (H) (B) The anticipated economic benefits of the rule or
7 amendment, which shall include INCLUDING economic growth, the
8 creation of new jobs, and increased economic competitiveness;

9 (H) (C) The anticipated costs of the rule or amendment, which
10 shall include INCLUDING the direct costs to the government to administer
11 the rule or amendment and the direct and indirect costs to business and
12 other entities required to comply with the rule or amendment;

13 (H) (D) Any adverse effects on the economy, consumers, private
14 markets, small businesses, job creation, and economic competitiveness;
15 and

16 (V) (E) At least two alternatives to the proposed rule or
17 amendment that can be identified by the submitting agency, THE OFFICE,
18 or a member of the public, including the costs and benefits of pursuing
19 each of the alternatives identified.

20 (b) The executive director OF THE DEPARTMENT OF REGULATORY
21 AGENCIES, or his or her designee, OR, FOR A COST-BENEFIT ANALYSIS
22 CONDUCTED PURSUANT TO SUBSECTION (2.5)(a)(II), THE DIRECTOR OR THE
23 DIRECTOR'S DESIGNEE, shall study the cost-benefit analysis and may urge
24 the agency to revise the rule or amendment to eliminate or reduce the
25 negative economic impact. The executive director, or his or her designee,
26 may inform the public about the negative impact of the proposed rule or
27 the proposed amendment to an existing rule.

1 ~~(f) (1) This subsection (2.5) is repealed, effective September 1,~~
2 ~~2018.~~

3 ~~(H) Prior to such repeal, the provisions regarding the preparation~~
4 ~~of a cost-benefit analysis pursuant to this subsection (2.5) shall be~~
5 ~~reviewed as provided for in section 24-34-104.~~

6 (g) EACH STATE RULE-MAKING AGENCY WITH A WEBSITE
7 CONTAINING RULE-MAKING INFORMATION SHALL INCLUDE THE FOLLOWING
8 INFORMATION ON ITS WEBSITE:

9 (I) INFORMATION ABOUT THE COST-BENEFIT ANALYSIS PROCESS
10 SET FORTH IN THIS SUBSECTION (2.5); AND

11 (II) A LINK TO THE ONLINE REGULATORY NOTICE ENROLLMENT
12 FORM CREATED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF
13 REGULATORY AGENCIES OR THE EXECUTIVE DIRECTOR'S DESIGNEE AND
14 LISTED ON THE DEPARTMENT'S WEBSITE.

15

(h) (1) NOTWITHSTANDING SECTION 24-1-136(11), THE EXECUTIVE

16 DIRECTOR OF THE DEPARTMENT OF REGULATORY AGENCIES OR THE
17 EXECUTIVE DIRECTOR'S DESIGNEE SHALL, ON AN ANNUAL BASIS, PREPARE
18 A REPORT SUMMARIZING THE COST-BENEFIT ANALYSES CONDUCTED IN THE
19 PREVIOUS TWELVE-MONTH PERIOD, INCLUDING:

20 (A) THE NUMBER OF COST-BENEFIT ANALYSES PREPARED;

21 (B) THE AGENCIES FOR WHICH ONE OR MORE COST-BENEFIT
22 ANALYSES WERE PREPARED;

23 (C) A SUMMARY OF ANY PROPOSED RULE OR PROPOSED
24 AMENDMENT TO AN EXISTING RULE THAT WAS MODIFIED IN RESPONSE TO
25 A COST-BENEFIT ANALYSIS CONDUCTED AND THE MANNER IN WHICH IT
26 WAS MODIFIED; AND

27 (D) FOR COST-BENEFIT ANALYSES THAT WERE PREPARED AS A

1 RESULT OF A DETERMINATION THAT THE PROPOSED RULE OR PROPOSED
2 AMENDMENT TO AN EXISTING RULE CONSTITUTED A SIGNIFICANT
3 REGULATORY ACTION, THE BASIS FOR THE SIGNIFICANT REGULATORY
4 ACTION DETERMINATION.

5 (II) ON OR BEFORE OCTOBER 31, 2019, AND ON OR BEFORE
6 OCTOBER 31 OF EACH YEAR THEREAFTER, THE EXECUTIVE DIRECTOR OR
7 THE EXECUTIVE DIRECTOR'S DESIGNEE SHALL SEND COPIES OF THE REPORT
8 TO THE BUSINESS, LABOR, AND TECHNOLOGY COMMITTEE IN THE SENATE,
9 THE BUSINESS AFFAIRS AND LABOR COMMITTEE IN THE HOUSE OF
10 REPRESENTATIVES, AND THE LEGISLATIVE AUDIT COMMITTEE, OR THEIR
11 SUCCESSOR COMMITTEES.

12 (i) AS USED IN THIS SUBSECTION (2.5):

13 (I) "OFFICE" MEANS THE OFFICE OF STATE PLANNING AND
14 BUDGETING CREATED IN SECTION 24-37-102.

15 (II) "SIGNIFICANT REGULATORY ACTION" MEANS A PROPOSED RULE
16 THAT, IF ADOPTED, IS LIKELY TO RESULT IN ONE OR MORE OF THE
17 FOLLOWING:

18 (A) A COST OF TEN MILLION DOLLARS OR MORE OVER A FIVE-YEAR
19 PERIOD TO THE REGULATED INDUSTRY OR OTHER PRIVATE ENTITIES TO
20 COMPLY WITH THE RULE; OR

21 (B) A SERIOUS INCONSISTENCY OR OTHER FORM OF INTERFERENCE
22 WITH AN ACTION TAKEN OR PLANNED BY ANOTHER AGENCY.

23 **SECTION 3. Appropriation.** For the 2018-19 state fiscal year,
24 \$30,000 is appropriated to the governor's office for use by the office of
25 state planning and budgeting. This appropriation is from the general fund.
26 To implement this act, the office may use this appropriation for personal
27 services.

1 **SECTION 4. Act subject to petition - effective date.** This act
2 takes effect at 12:01 a.m. on the day following the expiration of the
3 ninety-day period after final adjournment of the general assembly (August
4 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a
5 referendum petition is filed pursuant to section 1 (3) of article V of the
6 state constitution against this act or an item, section, or part of this act
7 within such period, then the act, item, section, or part will not take effect
8 unless approved by the people at the general election to be held in
9 November 2018 and, in such case, will take effect on the date of the
10 official declaration of the vote thereon by the governor.