



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

HB 18-1237

FINAL FISCAL NOTE

Drafting Number: LLS 18-0455 Date: September 10, 2018
Prime Sponsors: Rep. Kraft-Tharp; Van Winkle; Sen. Neville T. Bill Status: Signed into Law
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Bill Topic: SUNSET CONTINUE COST-BENEFIT ANALYSIS FOR RULES

- Summary of Fiscal Impact: State Revenue, State Expenditure, State Transfer, TABOR Refund, Local Government, Statutory Public Entity

Sunset bill. This bill continues the provision of the Administrative Procedures Act allowing any person to request a cost-benefit analysis of proposed state agency rules, scheduled to repeal on September 1, 2018, and expands the program.

Appropriation Summary: For FY 2018-19, the bill requires and includes an appropriation of \$30,000 to the Office of State Planning and Budgeting.

Fiscal Note Status: The fiscal note reflects the enacted bill.

Table 1 State Fiscal Impacts Under HB 18-1237\*

Table with 3 columns: Category, FY 2018-19, FY 2019-20. Rows include New Impacts (Revenue, Expenditures) and Continuing Program Impacts (Revenue, Expenditures).

\* Table 1 shows the new impacts resulting from changes to the program under the bill. The continuing program impacts are workload only and do not require an appropriation.

## Summary of Legislation

Under current law, the Administrative Procedure Act (APA) allows anyone to request that any agency proposing a new rule or revising an existing rule conduct a cost-benefit analysis of the rule. This request must be made within five days after the notice of proposed rulemaking is published. When a request is received by the Office of Policy, Research, and Regulatory Reform within the Department of Regulatory Agencies (DORA), the office contacts the agency that proposed the new or amended rule to determine whether an analysis is needed. Analyses must be completed 10 days before the rulemaking hearing. The cost-benefit analysis must: include the reason for the new or amended rule; identify the anticipated economic costs and benefits of the rule; identify any adverse effects on consumers, small businesses, or the economy; and provide two alternatives to the proposed new or amended rule.

This bill continues the cost-benefit analysis process under the APA indefinitely. It also requires that each state agency with rulemaking authority post the following information on its website:

- information about the cost-benefit analysis process; and
- a link to the online regulatory notice enrollment form on the DORA website.

In addition, the bill requires DORA to determine, within 5 days, whether any rule submitted by any state agency constitutes significant regulatory action. Significant regulatory action is defined as a proposed rule that, if adopted, is likely to result in a cost of \$10 million or more over a five-year period to the regulated industry, or a serious inconsistency or other form of interference with an action taken or planned by another agency.

Rules that are determined by DORA to constitute significant regulatory action must be sent to the Office of State Planning and Budgeting (OSPB) in the Governor's Office for the preparation of a cost-benefit analysis in collaboration with the affected agency. The analysis must be completed at least 10 business days before the hearing on the rule.

On or before October 31, 2019, and each year thereafter, DORA is required to prepare a report on the cost-benefit analyses prepared and submit it to the business committees of the General Assembly.

## Background

Senate Bill 03-121 required state agencies to submit new or amended rule proposals to DORA for the purpose of determining if the rule may have a negative impact on economic competitiveness or small business in Colorado. Initially, it was at the discretion of the executive director of DORA to determine whether the proposed rule or amendment required a cost-benefit study be prepared by the submitting agency. Senate Bill 13-158 modified the requirement so that a cost-benefit analysis must only be prepared when a person requests one from the affected agency.

## Continuing Program Impacts

The Office of Policy, Research, and Regulatory Reform within DORA and affected state agencies currently coordinate cost-benefit analyses within existing appropriations. This workload impact will continue indefinitely.

## State Expenditures

Beginning in FY 2018-19, the bill increases state General Fund expenditures by \$30,000 per year for OSPB. It will also increase workload for all state agencies.

**Office of State Planning and Budgeting.** OSPB will contract with an economic consultant to perform the cost-benefit analyses at an estimated rate of \$150 hour for an estimated 25 hours per analysis. The fiscal note assumes there will be at least 8 analyses per year that cannot be accomplished within the existing workloads of the OSPB, resulting in a cost of at least \$30,000 per year. If more cost-benefit analyses meet the bill's threshold than estimated, additional appropriations will be requested through the annual budget process.

**Department of Regulatory Agencies.** Workload will increase in the Office of Policy, Research, and Regulatory Reform in DORA to identify rules that constitute significant regulatory action and to annually report to the General Assembly on the results of all cost-benefit analyses. DORA reviews over 400 rules per year. The fiscal note assumes that DORA will work with the relevant state agencies to determine whether a rule is significant enough to send to OSPB and that no change in appropriations is required.

**All state agencies.** All state agencies that perform rulemaking will have one-time workload increases in FY 2018-19 to update their websites to include information about the cost-benefit analysis process. Agencies will also be required to work with DORA and OSPB on the additional cost-benefit analyses created under the bill on an ongoing basis. These workload increases do not require a change in appropriations for any state agency.

## State Appropriations

For FY 2018-19, the bill requires and includes a General Fund appropriation of \$30,000 to the Office of State Planning and Budgeting in the Governor's Office.

## Departmental Difference

DORA estimates that it will have costs of \$72,505 and 1.0 FTE in FY 2018-19 and \$67,802 and 1.0 FTE in FY 2019-20 and ongoing to hire an economist who will work in the Office of Policy, Research, and Regulatory Reform and review the 400-plus rules per year to make the determination about whether a rule constitutes significant regulatory action as defined in the bill. The fiscal note assumes that the lowest cost alternative for DORA is to work with state agencies to develop a process within existing workloads to communicate whether a new or amended rule is significant, and that OSPB is responsible for performing the economic analyses.

## Effective Date

The bill was signed into law by the Governor on April 25, 2018, and it took effect August 8, 2018.

**State and Local Government Contacts**

All State Agencies