



Legislative Council Staff

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Final Fiscal Note

Drafting Number:	LLS 21-0639	Date:	June 28, 2021
Prime Sponsors:	Sen. Kirkmeyer	Bill Status:	Postponed Indefinitely
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Bill Topic: PROMULGATION OF PUBLIC HEALTH RULES & ORDERS

Summary of Fiscal Impact:

<input type="checkbox"/> State Revenue	<input type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure	<input type="checkbox"/> Local Government
<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

The bill would have required the State Board of Health and the Department of Public Health and Environment to follow the State Administrative Procedures Act when promulgating rules and issuing public health orders. The bill would have increased state expenditures beginning in FY 2021-22.

Appropriation Summary: No appropriation would have been required.

Fiscal Note Status: This fiscal note reflects the introduced bill. This bill was not enacted into law; therefore, the impacts identified in this analysis do not take effect.

Summary of Legislation

The bill clarifies that rules promulgated by the State Board of Health and the Department of Public Health and Environment (CDPHE) follow the State Administrative Procedures Act (APA). It also requires any order issued by the board or CDPHE that has the same general applicability of a promulgated rule to follow the APA.

Background

Emergency Rules. Under the APA, an emergency rule may be adopted without a hearing and with less than 20 days notice, or without any notice, becomes effective on adoption and expires automatically after 120 days. After adopting emergency rules, an agency requests an opinion from the Attorney General's Officer regarding whether the rule presents any apparent constitutional or legal deficiency in its form or substance. After the Attorney General issues an opinion, the rule is filed with the Secretary of State (SOS) and the Office of Legislative Legal Services (OLLS) and published in the Colorado Register.

Permanent Rules. Prior to adopting permanent rules, an agency must file notice of proposed rulemaking to be published in the Colorado Register. The agency makes the proposed rules available for a minimum of 20 days prior to holding a rulemaking hearing. After adopting permanent rules, the agency requests an opinion from the Attorney General’s Office regarding whether the rule presents any apparent constitutional or legal deficiency in its form or substance. After receipt of the opinion, the agency files the adopted rule with the SOS and the OLLS and the rule is published in the Colorado Register. The rule becomes effective a minimum of 20 days after publication and is then published in the Colorado Code of Regulations.

The State Board of Health promulgates rules related to Colorado public health under the APA.

State Expenditures

The bill will increase costs in the CDPHE on an ongoing basis to issue public health orders that have the same general applicability of a promulgated rule, following the APA. The number of orders that meet this criterion depends on a number of factors and has not been estimated. Costs to follow the APA when issuing an emergency order are estimated at \$15,675 and 0.1 FTE per rulemaking to be paid from the General Fund. For rules that will be in place beyond 180 days, a permanent rulemaking hearing will be required with an additional cost of approximately \$28,000 and 0.2 FTE. Due to the uncertainty of how many additional rulemaking hearings will be held annually, the fiscal note assumes that these costs will be addressed through the annual budget process.

Effective Date

The bill was postponed indefinitely by the Senate State, Veterans, and Military Affairs Committee on March 2, 2021.

State and Local Government Contacts

Governor	Information Technology
Law	Public Health and Environment