



Legislative Council Staff

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Fiscal Note

Drafting Number: LLS 21-0101
Prime Sponsors: Sen. Gardner

Date: February 16, 2021
Bill Status: Senate SVMA
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Bill Topic: **ADDITIONAL REQMNTS ISSUE EMERGENCY PUBLIC HEALTH ORDER**

Summary of Fiscal Impact:

- | | |
|--|--|
| <input type="checkbox"/> State Revenue | <input type="checkbox"/> TABOR Refund |
| <input checked="" type="checkbox"/> State Expenditure (<i>conditional</i>) | <input type="checkbox"/> Local Government |
| <input type="checkbox"/> State Transfer | <input type="checkbox"/> Statutory Public Entity |

This bill requires that a state agency follow the Administrative Procedures Act requirements for emergency rules when issuing an emergency public health order and for permanent rules to extend the order past the 120-day limit on emergency rules. State expenditures will increase conditional upon the necessity of issuing an emergency public health order.

Appropriation Summary: No appropriation is required.

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

Summary of Legislation

This bill requires that a state agency follow the Administrative Procedures Act (APA) requirements for emergency rules when issuing an emergency public health order. This includes the Department of Public Health and Environment acting under its statutory powers and duties. To extend the order past the 120-day limit on emergency rules, the agency is required to adopt permanent rules under 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.

State Expenditures

This bill will increase General Fund expenditures for the Department of Public Health and Environment (CDPHE) conditioned on the need to issue an emergency public health order. Prior to the COVID19 pandemic, the CDPHE issued very few emergency public health orders. Costs to develop permanent rules, provide notice, conduct a rulemaking hearing, and finalize the rules are estimated at approximately \$28,000 and 0.2 FTE per rulemaking. If the issuance of emergency orders becomes more frequent even after the pandemic is under control, the CDPHE may seek additional funding through the annual budget process.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature. It applies to emergency public health orders issued on or after the effective date.

State and Local Government Contacts

Governor	Information Technology
Law	Public Health and Environment