

CHAPTER 240

HEALTH

SENATE BILL 94-151

BY SENATORS Norton, Ament, Bird, Bishop, Blickensderfer, Hopper, Johnson, Lacy, Meiklejohn, Owens, R. Powers, Tebedo, and Traylor;
also REPRESENTATIVES Ratterree, Schauer, Chlouber, Epps, Grampsas, May, Nichol, Owen, Pfiffner, and Shoemaker.

AN ACT

CONCERNING THE REQUIREMENT THAT ANY AGENCY STATEMENT OF GENERAL APPLICABILITY AND FUTURE EFFECT RELATED TO THE ENFORCEMENT OF CERTAIN ENVIRONMENTAL LAWS BE PUBLISHED AND MADE AVAILABLE TO THE PUBLIC.

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

SECTION 1. Title 25, Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 6.5

General Provisions for Rules and Regulations for the Enforcement of Environmental Control

25-6.5-101. Legislative declaration. (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DETERMINES THAT THE PROTECTION OF THE NATURAL ENVIRONMENT OF THIS STATE IS IMPORTANT TO THE PUBLIC HEALTH AND WELFARE OF THE CITIZENS OF COLORADO.

(2) THE GENERAL ASSEMBLY FURTHER FINDS AND DETERMINES THAT THE ENVIRONMENTAL LAWS OF THIS STATE RELATING TO AIR QUALITY CONTROL IN ARTICLE 7 OF THIS TITLE, WATER QUALITY CONTROL IN ARTICLE 8 OF THIS TITLE, HAZARDOUS WASTE IN ARTICLE 15 OF THIS TITLE, AND SOLID WASTE IN ARTICLE 20 OF TITLE 30, C.R.S., MAY BE HIGHLY TECHNICAL, COMPLEX, AND SUBJECT TO VARYING INTERPRETATION.

(3) THE GENERAL ASSEMBLY, THEREFORE, DECLARES THAT THE PROVISIONS OF THIS ARTICLE ARE ENACTED TO ENHANCE PUBLIC NOTICE AND AWARENESS OF RULES, REGULATIONS, AND INTERPRETATIONS OF THE ENVIRONMENTAL LAWS OF THIS STATE

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

AND TO ENSURE PUBLIC CONFIDENCE IN THE FAIRNESS OF THE ENFORCEMENT OF ANY AGENCY REQUIREMENTS.

25-6.5-102. Requirements for environmental rules - publication. (1) ALL AGENCY POLICIES AND GUIDANCE, INCLUDING ANY AMENDMENTS OR REVISIONS THERETO, RELATING TO THE IMPLEMENTATION, ADMINISTRATION, AND ENFORCEMENT OF ARTICLE 7, 8, 11, 15, OR 18 OF THIS TITLE OR ARTICLE 20 OF TITLE 30, C.R.S., EXCEPT FOR POLICIES RELATING TO PERSONNEL OR OTHER INTERNAL ADMINISTRATIVE MATTERS NOT DIRECTLY RELATED TO ENFORCEABLE REQUIREMENTS UNDER SUCH ARTICLES, SHALL BE REDUCED TO WRITING AND PUBLISHED. THREE COPIES SHALL BE FILED WITH THE STATE LIBRARIAN FOR THE STATE PUBLICATIONS DEPOSITORY AND DISTRIBUTION CENTER. COPIES OF EACH SUCH POLICY OR GUIDANCE ISSUED UNDER ARTICLE 7, 8, 11, 15, OR 18 OF THIS TITLE OR ARTICLE 20 OF TITLE 30, C.R.S., SHALL BE MADE AVAILABLE TO THE PUBLIC UPON REQUEST. INTERPRETIVE RULES ISSUED UNDER ARTICLE 15 OF THIS TITLE SHALL ALSO BE MADE AVAILABLE TO THE PUBLIC UPON REQUEST. EACH AFFECTED AGENCY SHALL MAINTAIN AND MAKE AVAILABLE TO THE PUBLIC A CURRENT INDEX OF ALL SUCH POLICIES, GUIDANCE, AND INTERPRETIVE RULES IN EFFECT. COPIES OF ANY POLICY, GUIDANCE, INTERPRETIVE RULE, OR INDEX SHALL BE PROVIDED TO THE PUBLIC AT COST.

(2) NO POLICY OR GUIDANCE REFERRED TO IN SUBSECTION (1) OF THIS SECTION SHALL HAVE THE FORCE AND EFFECT OF A RULE UNLESS IT HAS BEEN PROMULGATED BY THE RELEVANT COMMISSION PURSUANT TO THE PROVISIONS OF THE "STATE ADMINISTRATIVE PROCEDURE ACT", ARTICLE 4 OF TITLE 24, C.R.S., AND APPLICABLE PROVISIONS OF ARTICLE 7, 8, 11, 15, OR 18 OF THIS TITLE OR ARTICLE 20 OF TITLE 30, C.R.S., PERTAINING TO RULE-MAKING PROCEDURES OR AUTHORIZING THE PROMULGATION OF RULES, AND MADE AVAILABLE TO THE PUBLIC IN ACCORDANCE WITH SECTION 24-4-103, C.R.S.

(3) (a) ANY POLICY OR GUIDANCE, INCLUDING ANY AMENDMENTS OR REVISIONS THERETO, MAY BE BROUGHT TO THE ATTENTION OF THE RELEVANT DIVISION DIRECTOR AND THEREAFTER MAY BE BROUGHT TO THE RELEVANT COMMISSION FOR REVIEW. THE REVIEW SHALL DETERMINE WHETHER SUCH POLICY OR GUIDANCE IS WITHIN THE STATUTORY AUTHORITY OF THE RELEVANT AGENCY, IS CONSISTENT WITH APPLICABLE STATUTES AND ANY APPLICABLE REGULATIONS, INCLUDING THE PROVISIONS OF SUBSECTION (1) OF THIS SECTION, AND IS APPROPRIATE FOR THE RELEVANT COMMISSION TO UNDERTAKE RULE-MAKING WITH RESPECT TO THE SUBJECT MATTER OF THE POLICY OR GUIDANCE AND SHALL CONSIDER OTHER QUESTIONS WITHIN THE SCOPE OF THE RELEVANT COMMISSION'S AUTHORITY RELATED TO SUCH POLICY OR GUIDANCE.

(b) FOLLOWING SUCH REVIEW, THE COMMISSION SHALL TAKE ACTION OR, IF APPROPRIATE, REFER THE MATTER TO THE RELEVANT DIVISION DIRECTOR TO TAKE ACTION WITHIN A SPECIFIED PERIOD OF TIME IN ACCORDANCE WITH ITS DETERMINATION.

(4) ANY OBLIGATION TO SUBMIT PAYMENT OF ANY MONETARY PENALTY ARISING FROM AN ENFORCEMENT ACTION THAT CONCERNS A MATTER UNDER REVIEW BY THE RELEVANT COMMISSION SHALL BE STAYED UNTIL THE RELEVANT COMMISSION COMPLETES ITS REVIEW.

(5) THE COMMISSION REVIEW REGARDING THE POLICY OR GUIDANCE SHALL NOT CONSTITUTE AN ADJUDICATION OF ANY FACTS OF A SPECIFIC ENFORCEMENT ACTION.

(6) FAILURE TO REQUEST A REVIEW UNDER THIS SECTION SHALL NOT BE CONSIDERED IN ANY PERMIT APPEAL OR ENFORCEMENT ACTION.

(7) AS USED IN THIS SECTION:

(a) "RELEVANT COMMISSION" MEANS THE COMMISSION OR AGENCY RESPONSIBLE FOR THE PROMULGATION OF RULES FOR THE ENVIRONMENTAL PROGRAM UNDER WHICH THE GUIDANCE OR POLICY IS ISSUED.

(b) "RELEVANT DIVISION DIRECTOR" MEANS THE DIRECTOR OF THE DIVISION WITHIN THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, RESPONSIBLE FOR THE SUBJECT MATTER OF THE GUIDANCE OR POLICY AT ISSUE.

SECTION 2. No appropriation. The general assembly has determined that this act can be implemented within existing appropriations, and therefore no separate appropriation of state moneys is necessary to carry out the purposes of this act.

SECTION 3. Effective date. This act shall take effect July 1, 1994.

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 25, 1994