

Office of Legislative Legal Services

Colorado General Assembly



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MEMORANDUM

To: Interested Persons
From: Office of Legislative Legal Services
Date: April 2, 2025
Subject: Explanation of S.B. 25-125

Explanation of the Rule Review Process

Since 1976, executive agencies have been required by section 24-4-103 (8)(d), C.R.S., of the State Administrative Procedure Act to submit their rules to the General Assembly for review.

Under section 24-4-103 (8)(c)(I)(A), C.R.S., all rules adopted or amended during any one-year period that begins each November 1 and continues through the following October 31 expire on the May 15 that follows the one-year period, unless the General Assembly by bill acts to postpone the expiration.

Every newly adopted or amended rule is submitted by the adopting agency to the Office of Legislative Legal Services, where the rule is reviewed to determine whether the rule is within the agency's rule-making authority and consistent with law. If the Office finds a possible problem with a rule, and if the Office is unable to resolve the problem with the agency, the Office prepares a memorandum on the issue and, after notice to the affected agency, presents the issue to the Committee on Legal Services.

At the committee hearing, an attorney with the Office explains why the rule lacks statutory authority or conflicts with the law and argues that the rule should not be extended beyond the May 15 expiration date. The committee gives the affected agency an opportunity to respond and gives members of the public or other interested parties an opportunity to speak on the issue. After hearing all the

testimony and asking questions, the committee then takes a vote to determine whether the rule should be extended beyond the May 15 expiration date.

Each year, the committee sponsors a bill (the annual rule review bill) that extends the rules adopted or amended during the previous year (i.e., those rules scheduled to expire on May 15); except that the bill specifically allows the expiration of those rules that the committee voted not to extend beyond the May 15 expiration date. S.B. 25-125 is the committee's annual rule review bill for 2025.

Explanation of S.B. 25-125

The following is an explanation of the rules not extended by S.B. 25-125:

Rules of the Director, Division of Fire Prevention and Control, Department of Public Safety, concerning the Wildfire Resilient Homes Grant Program, 8 CCR 1507-37 (LLS Docket No. 240114; SOS Tracking No. 2023-00766).

Staff: Megan McCall, Brita Darling

Explanation:

Section 24-33.5-1239 (1)(b), C.R.S., defines "homeowner," for purposes of eligibility for the wildfire resilient homes grant program (grant program), as a person who owns property "on which there is a house and on which there may also be other nonresidential structures that is in the state and located in an area that is susceptible to risk of wildfires." Section 24-33.5-1239, C.R.S., does not require that the residence on the property be the homeowner's primary residence, but the definition of "homeowner" within **Rule 2.1** of the director of the Division of Fire Prevention and Control conflicts with statute because it requires that the house on the person's property be the person's primary residence and also by creating ambiguity as to which structures on the property may be improved through the grant program.

Agency position: The agency did not contest the staff recommendation not to extend the rule.

Rules of the State Board of Education, Department of Education, concerning rules for the administration of the Public School Finance Act of 1994, 1 CCR 301-39 (LLS Docket No. 240210; SOS Tracking No. 2023-00808)

Staff: Jacob Baus

Explanation:

Section 22-54-103 (10)(a)(I), C.R.S., requires the annual pupil enrollment determination to occur on the pupil enrollment count day. Section 22-54-103 (10.5)(a), C.R.S., specifies that the pupil enrollment count day generally occurs on October 1, with exceptions that include authority for the Department of Education to establish alternative count dates, subject to limitation. But the State Board of Education's (board) **Rule 3.04** conflicts with statute because it creates an 11-day count period that considers the five days preceding the applicable count day, the count day, and the five days following the applicable count day, thereby counting students in a pupil enrollment determination on days that are not the pupil enrollment count day. Further, **Rule 3.04** conflicts with statute because the 11-day count period is not classified as an alternative count date in the board's rules, which detaches it from required limitations for alternative count dates.

Rule 5.04 also applies the 11-day count period created in Rule 3.04 and, therefore, conflicts with statute by counting students in a school district's pupil enrollment before and after the statutorily required date.

In addition, **Rule 5.12(6)** applies the 11-day count period created in Rule 3.04 and, therefore, conflicts with statute by counting students in a school district's pupil enrollment before and after the statutorily required date. Furthermore, section 24-4-103 (4)(b)(III), C.R.S., requires a rule to be stated clearly and simply enough to be understood by anyone who is required to comply with it, but **Rule 5.12(6)**, concerning the circumstances in which a pupil meets the funding criteria at multiple districts, conflicts with statute because the rule is internally inconsistent and confusing, making it so vague that it is impossible to know specifically how to comply with it.

Agency position: The agency did not contest the staff recommendation not to extend the rules.

Rule of the Division of Labor Standards and Statistics, Department of Labor and Employment, concerning the Protections for Public Workers Act (“PROPWA”) Rules, 7 CCR 1103-17 (LLS Docket No. 240475; SOS Tracking No. 2024-00432)

Staff: Brita Darling

Explanation:

Section 24-4-103 (12.5), C.R.S., authorizes an agency to “incorporate by reference all or any part of a code, standard, guideline, or rule that has been adopted by an agency of . . . this state . . .” if the agency satisfies specific requirements set forth in that section. The Division of Labor Standards and Statistics in the Department of Labor and Employment, in **Rule 1.3**, incorporated by reference in the “Protection for Public Workers Act” (PROPWA), article 33 of title 29, C.R.S. The General Assembly is not an “agency”; article 33 of title 29, C.R.S., is not a “code, standard, guideline, or rule” that can be incorporated by reference; and the incorporation by reference fails to identify the date of the incorporated material as required by section 24-4-103 (12.5)(a)(II), C.R.S.

Agency position: The agency did not contest the staff recommendation not to extend the rules.

Rules of the State Board of Nursing, Division of Professions and Occupations, Department of Regulatory Agencies, concerning certified midwives, 3 CCR 716-1 (LLS Docket No. 240131; SOS Tracking No. 2023-00803)

Staff: Christy Chase

Explanation:

Section 24-4-103 (12.5), C.R.S., authorizes agencies to “incorporate by reference” all or a portion of a code, standard, guideline, or rule that has been “adopted or published by a nationally recognized organization or association” if certain conditions are met, including that the reference fully identify the incorporated material “by citation,” that the rule states it does not include later amendments or editions of the incorporated material, and that the rule identifies where copies of the incorporated material are available from the organization or association that issued it. **Rule 1.28 K.1** of the State Board of Nursing attempts to incorporate by reference certified midwife scope of practice standards and regulations set by the American College of Nurse-Midwives, but the incorporation by reference fails to comply with the requirements set forth in section 24-4-103 (12.5)(a), C.R.S.

Agency position: The agency did not contest the staff recommendation not to extend the rules.