

Colorado Legislative Council Staff Fiscal Note

**FINAL
FISCAL NOTE**

Drafting Number: LLS 12-0338
Prime Sponsor(s): Rep. Szabo
 Sen. Grantham

Date: June 12, 2012
Bill Status: Postponed Indefinitely
Fiscal Analyst: Bill Zepernick (303-866-4777)

TITLE: CONCERNING THE REQUIREMENT THAT A REGULATORY ANALYSIS BE ISSUED PRIOR TO THE PROMULGATION OF RULES BY A STATE ADMINISTRATIVE AGENCY.

Fiscal Impact Summary	FY 2012-2013	FY 2013-2014
State Revenue		
State Expenditures		
<u>Total</u>	<u>\$230,891*</u>	<u>\$230,891*</u>
General Fund	28,011	28,011
Various Cash Funds	117,898	117,898
Reappropriated Funds	12,060	12,060
Federal Funds	72,922	72,922
FTE Position Change	3.5 FTE	3.5 FTE
Effective Date: The bill was postponed indefinitely by the Senate Local Government Committee on March 20, 2012.		
Appropriation Summary for FY 2012-2013: See State Appropriations section.		
Local Government Impact: See Statutory Public Entity Impact section.		

* *These costs are spread across all agencies as discussed in the State Expenditures section. The fund sources provided are an estimate based on affected agencies' fund sources at the department level.*

Summary of Legislation

The bill requires state agencies to issue a regulatory analysis for *all* proposed rules and to make the analysis available to the public at least thirty days prior to the rule-making hearing. Agencies are exempted from issuing regulatory analyses for non-substantive changes to rules such as grammatical and formatting changes, as well as for temporary and emergency rules. Rule making by the Division of Parks and Wildlife in the Department of Natural Resources concerning hunting and fishing is also exempt. In addition, the bill expands the scope of the regulatory analysis to include the effect of the proposed rule on jobs in Colorado, including whether the rule:

- creates or eliminates jobs;
- causes those affected by the rule to divert resources to comply with the rule; and
- requires those affected by the rule to hire additional employees or increase the costs for goods and services solely to comply with the rule.

In addition, the bill requires that agencies provide a name and other contact information in each regulatory analysis of a point of contact in the agency concerning the analysis.

Background

Under current law, a regulatory analysis is only required if the agency is requested to conduct one. In addition, the analysis need only examine if there are less costly or intrusive methods for achieving the purpose of the proposed rule and describe alternatives to the rules that were seriously considered and why they were rejected.

State Expenditures

The bill will increase workload across all state agencies by **\$230,891 and 3.5 FTE** per year beginning in FY 2012-13. Based on the mix of fund sources appropriated to the affected agencies in the current fiscal year, it is estimated that \$28,011 will be from the General Fund, \$117,898 will be from various cash funds, \$12,060 will be from reappropriated funds, and \$72,922 will be from federal funds. However, the exact fund sources for each agency have not been identified, as the fund source depends on the programs within a department involved in rule making.

Regulatory analysis costs. Requiring a jobs analysis for all new rules is the primary driver of costs in the bill. Costs to state agencies are mostly for staff to conduct the required regulatory analysis. Standard operating and capital outlay expenses for agencies requiring more than 0.5 FTE are also included. Staffing is assumed to be at the General Professional IV level. Table 1 provides an overview of total costs by agency.

The workload increase to agencies is based on the average number of new rules filed with the Office of Legislative Legal Services for rule review each year from 2009 to 2011. Expanding the regulatory analysis to *all* rules and requiring the additional analysis on jobs impacts are assumed to create **an additional 15 hours of regulatory analysis per rule**. In order to capture the differences in the complexity of agencies' rule making, the workload for each agency has been adjusted based on the average page length of each agency's rules compared to the statewide average for rules promulgated.

No appropriation clause. The bill specifies that state agencies are required to implement the provisions of this bill within existing resources and that no additional appropriation of funds or FTE is required. However, even when bills specify that no appropriation is required, legislative rules require that fiscal notes analyze the workload and cost impacts to state agencies that are expected to result from the bill. To the extent that workload increases as estimated in the fiscal note and funding is not provided in the bill, agencies may be required to seek additional funding through the annual budget process in the future.

Table 1. Expenditures by Agency under HB 12-1007				
Agency	Number of New Rules	Staff Time Required (Hours)	FTE	Total
Agriculture	13	255	0.1	\$6,339
Education	22	195	0.1	6,339
Health Care Policy and Financing	20	660	0.3	19,015
Human Services	34	720	0.3	19,015
Labor And Employment	18	375	0.2	12,677
Local Affairs	86	660	0.3	19,015
Natural Resources	9*	180	0.1	6,339
Public Health and Environment	67	1,875	0.9	62,133
Public Safety	6	105	0.1	6,339
Regulatory Agencies	148	1,545	0.7	48,325
Revenue	71	450	0.2	12,677
State	11	180	0.1	6,339
Transportation	4	135	0.1	6,339
	524*	7,335	3.5	\$230,891

* The total includes rules from agencies with a small number of rules promulgated that did not have costs under the bill, and rules on hunting and fishing in the Department of Natural Resources have been excluded.

Statutory Public Entity Impact

The bill affects statutory public entities such as the Public Employee Retirement Association (PERA) that are subject to the state administrative procedure law. These entities generally have a small number of rules and can accomplish the required regulatory analyses within existing resources.

State Appropriations

While the bill specifies that no appropriation is required, this analysis concludes that the following appropriation are required for FY 2012-13 (exact funding sources for each agency have not been identified at this time and will be addressed in a revised fiscal note):

- \$6,339 and 0.1 FTE to the Department of Agriculture;
- \$6,339 and 0.1 FTE to the Department of Education;
- \$19,015 and 0.3 FTE to the Department of Health Care Policy and Financing;
- \$19,015 and 0.3 FTE to the Department of Human Services;
- \$12,677 and 0.2 FTE to the Department of Labor And Employment;

- \$19,015 and 0.3 FTE to the Department of Local Affairs;
- \$6,339 and 0.1 FTE to the Department of Natural Resources;
- \$62,133 and 0.9 FTE to the Department of Public Health And Environment;
- \$6,339 and 0.1 FTE to the Department of Public Safety;
- \$48,325 and 0.7 FTE to the Department of Regulatory Agencies;
- \$12,677 and 0.2 FTE to the Department of Revenue;
- \$6,339 and 0.1 FTE to the Department of State; and
- \$6,339 and 0.1 FTE to the Department of Transportation.

Departments Contacted

All Departments