

Second Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 12-0518.01 Esther van Mourik x4215

SENATE BILL 12-027

SENATE SPONSORSHIP

Scheffel,

HOUSE SPONSORSHIP

(None),

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 CONCERNING AN ADDITIONAL REVIEW OF RULES PROMULGATED
102 PURSUANT TO THE "STATE ADMINISTRATIVE PROCEDURE ACT"
103 BY COMMITTEES OF REFERENCE OF THE GENERAL ASSEMBLY.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill creates an additional rule review process for rules adopted on or after November 1, 2011, that are determined by the staff of the committee on legal services (the office of legislative legal services) to be related to legislation enacted during any legislative session, regular or

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

special, commencing on or after January 1, 2011. The rules are to be reviewed by a committee of reference of the general assembly. The legislative council staff determines what committee of reference appears to be the most appropriate based on the principal departments assigned to each committee of reference as specified in legislative rule. The committees of reference must review all assigned rules no later than the 45th day of the legislative session. Each committee of reference may establish its own procedures for the review, but the bill sets forth minimum requirements for at least one public meeting. The bill allows the committees of reference to disapprove a rule for any reason, but provides the committees of reference some minimum considerations.

The bill requires that the committees of reference recommend to the general assembly a bill regarding the committee's determinations related to the expiration or postponement of the expiration of rules assigned to and reviewed by the committee of reference.

The bill also requires the posting of a completed cost-benefit analysis on the official web sites of the agencies completing the cost-benefit analysis and the official web site of the department of regulatory agencies.

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

2 **SECTION 1.** In Colorado Revised Statutes, 24-4-103, **amend**
3 (2.5) (a) introductory portion, (8) (d), and (11) (a); and **add** (8) (e) as
4 follows:

5 **24-4-103. Rule-making - procedure - repeal.** (2.5) (a) At the
6 time of filing a notice of proposed rule-making with the secretary of state
7 as the secretary may require, an agency shall submit a draft of the
8 proposed rule or the proposed amendment to an existing rule and a
9 statement, in plain language, concerning the subject matter or purpose of
10 the proposed rule or amendment to the office of the executive director in
11 the department of regulatory agencies. The executive director, or his or
12 her designee, may determine if the proposed rule or amendment may have
13 a negative impact on economic competitiveness or on small business in
14 Colorado. If the executive director, or his or her designee, determines that

1 the proposed rule or amendment may have such negative impact, he or
2 she may direct the submitting agency to perform a cost-benefit analysis
3 of the rule or amendment. If the executive director, or his or her designee,
4 makes such a request, it shall be made at least twenty days before the date
5 of the hearing on the rule or amendment. The agency receiving such
6 request shall complete a cost-benefit analysis at least five days before the
7 hearing on the rule or amendment, shall make the analysis available to the
8 public, SHALL POST THE ANALYSIS ON THE AGENCY'S OFFICIAL WEB SITE,
9 and shall submit a copy to the executive director or his or her designee.
10 THE EXECUTIVE DIRECTOR OR HIS OR HER DESIGNEE SHALL POST THE
11 ANALYSIS ON THE DEPARTMENT OF REGULATORY AGENCIES' OFFICIAL WEB
12 SITE. Failure to complete a requested cost-benefit analysis pursuant to this
13 subsection (2.5) shall preclude the adoption of such rule or amendment.

14 Such cost-benefit analysis shall include the following:

15 (8) (d) All rules adopted or amended on or after July 1, 1976,
16 including temporary or emergency rules, shall be submitted AND FILED by
17 the adopting agency ~~to~~ WITH the office of legislative legal services in the
18 form and manner prescribed by the committee on legal services. Said
19 rules and amendments to existing rules shall be filed by and in such office
20 and shall be first reviewed by the staff of said committee to determine
21 whether said rules and amendments are within the agency's rule-making
22 authority and for later review by the committee on legal services for its
23 opinion as to whether the rules conform with paragraph (a) of this
24 subsection (8). The committee on legal services shall direct the staff of
25 the committee to review the rules submitted by adopting agencies using
26 graduated levels of review based on criteria established by the committee.
27 The criteria developed by the committee shall provide that every rule

1 shall be reviewed as to form and compliance with filing procedures and
2 that, upon request of any member of the committee or any other member
3 of the general assembly, the staff shall provide full legal review of any
4 rule during the time period that such rule is subject to review by the
5 committee. The official certificate of the director of the office of
6 legislative legal services as to the fact of submission or the date of
7 submission of a rule as shown by the records of his office, as well as to
8 the fact of nonsubmission as shown by the nonexistence of such records,
9 shall be received and held in all civil cases as competent evidence of the
10 facts contained therein. Records regarding the review of rules pursuant to
11 this section shall be retained by the office of legislative legal services in
12 accordance with policies established pursuant to section 2-3-303 (2),
13 C.R.S. Any such rule or amendment to an existing rule issued by any
14 agency without being so submitted within twenty days after the date of
15 the attorney general's opinion rendered thereon to the office of legislative
16 legal services for review by the committee on legal services shall be void.
17 The staff's findings shall be presented to said committee at a public
18 meeting held after timely notice to the public and affected agencies. The
19 committee on legal services shall, on affirmative vote, submit such rules,
20 comments, and proposed legislation at the next regular session of the
21 general assembly. The committee on legal services shall be the committee
22 of reference for any bill introduced pursuant to this paragraph (d). Any
23 member of the general assembly may introduce a bill which rescinds or
24 deletes portions of the rule. Rejection of such a bill does not constitute
25 legislative approval of the rule. Only that portion of any rule specifically
26 disapproved by bill shall no longer be effective, and that portion of the
27 rule which remains after deletion of a portion thereof shall retain its

1 character as an administrative rule. Each agency shall revise its rules to
2 conform with the action taken by the general assembly PURSUANT TO THIS
3 PARAGRAPH (d) AND PARAGRAPH (e) OF THIS SUBSECTION (8). A rule
4 which has been allowed to expire by action of the general assembly
5 pursuant to the provisions of paragraph (c) of this subsection (8) because
6 such rule, in the opinion of the general assembly, is not authorized by the
7 state constitution or statute, OR IS NOT APPROVED AFTER THE PROCESS
8 ESTABLISHED IN PARAGRAPH (e) OF THIS SUBSECTION (8), shall not be
9 repromulgated by an agency unless the authority to promulgate such rule
10 has been granted to such agency by a statutory amendment or by the state
11 constitution or by a judicial determination that statutory or constitutional
12 authority exists. Any rule so repromulgated shall be void. Such revision
13 shall be transmitted to the secretary of state for publication pursuant to
14 subsection (11) of this section. Passage of a bill repealing a rule does not
15 result in revival of a predecessor rule. This paragraph (d), PARAGRAPH (e)
16 OF THIS SUBSECTION (8), and subsection (4.5) of this section do not apply
17 to rules of agency organization or general statements of policy which are
18 not meant to be binding as rules. For the purpose of performing the
19 functions assigned it by this paragraph (d), the committee on legal
20 services, with the approval of the speaker of the house of representatives
21 and the president of the senate, may appoint subcommittees from the
22 membership of the general assembly.

23 (e) (I) FOR RULES ADOPTED ON OR AFTER NOVEMBER 1, 2011, THE
24 STAFF OF THE COMMITTEE ON LEGAL SERVICES SHALL IDENTIFY THE RULES
25 THAT WERE ADOPTED DURING EACH APPLICABLE ONE-YEAR PERIOD AS A
26 RESULT OF LEGISLATION ENACTED DURING ANY LEGISLATIVE SESSION,
27 REGULAR OR SPECIAL, COMMENCING ON OR AFTER JANUARY 1, 2011.

1 AFTER SUCH RULES HAVE BEEN IDENTIFIED, THE STAFF OF THE COMMITTEE
2 ON LEGAL SERVICES SHALL PROVIDE ONE COPY OF EACH RULE TO THE
3 STAFF OF THE LEGISLATIVE COUNCIL FOR DISTRIBUTION PURSUANT TO THE
4 PROCEDURE OUTLINED IN THIS PARAGRAPH (e). ALL RULES DISTRIBUTED
5 TO THE STAFF OF THE LEGISLATIVE COUNCIL SHALL BE REVIEWED BY A
6 COMMITTEE OF REFERENCE AS DEFINED IN SECTION 2-7-202 (1), C.R.S.,
7 THAT APPEARS TO THE STAFF OF THE LEGISLATIVE COUNCIL TO BE THE
8 MOST APPROPRIATE BASED ON THE PRINCIPAL DEPARTMENTS ASSIGNED TO
9 EACH COMMITTEE OF REFERENCE AS SPECIFIED IN RULE 25 OF THE JOINT
10 RULES OF THE SENATE AND THE HOUSE OF REPRESENTATIVES. A RULE
11 RELATED TO ENACTED LEGISLATION THAT WAS INTRODUCED IN THE HOUSE
12 OF REPRESENTATIVES SHALL BE ASSIGNED TO THE APPROPRIATE HOUSE
13 COMMITTEE OF REFERENCE AND A RULE RELATED TO ENACTED
14 LEGISLATION THAT WAS INTRODUCED IN THE SENATE SHALL BE ASSIGNED
15 TO THE APPROPRIATE SENATE COMMITTEE OF REFERENCE.

16 (II) THE COMMITTEES OF REFERENCE SHALL REVIEW ALL ASSIGNED
17 RULES NO LATER THAN THE FORTY-FIFTH DAY OF THE LEGISLATIVE
18 SESSION. EACH COMMITTEE OF REFERENCE MAY ESTABLISH ITS OWN
19 PROCEDURES FOR THE REVIEW BUT, AT A MINIMUM, SHALL HAVE AT LEAST
20 ONE PUBLIC MEETING HELD AFTER TIMELY NOTICE TO THE PUBLIC AND
21 AFFECTED AGENCIES, AT WHICH TIME THE COMMITTEE SHALL BY MAJORITY
22 VOTE APPROVE AN ASSIGNED RULE AND POSTPONE ITS EXPIRATION
23 PURSUANT TO THE PROVISIONS OF PARAGRAPH (c) OF THIS SUBSECTION (8)
24 OR SET THE ASSIGNED RULE FOR HEARING. IF A RULE IS SET FOR HEARING,
25 THE MATTER SHALL BE SCHEDULED ON THE COMMITTEE OF REFERENCE'S
26 CALENDAR FOR ANOTHER PUBLIC MEETING HELD AFTER TIMELY NOTICE TO
27 THE PUBLIC AND AFFECTED AGENCIES. THE AFFECTED AGENCIES AND THE

1 PUBLIC SHALL HAVE THE OPPORTUNITY TO PRESENT MATTERS RELATED TO
2 THE RULE AT THE HEARING.

3 (III) THE COMMITTEE OF REFERENCE MAY DISAPPROVE A RULE SET
4 FOR HEARING FOR ANY REASON, BUT ITS REVIEW SHALL INCLUDE
5 CONSIDERATION OF, BUT SHALL NOT BE LIMITED TO, THE FOLLOWING:

6 (A) THE REASON FOR THE RULE;

7 (B) THE ECONOMIC BENEFITS OR BURDENS OF THE RULE;

8 (C) ANY ADVERSE EFFECTS ON THE ECONOMY, CONSUMERS,
9 PRIVATE MARKETS, SMALL BUSINESSES, JOB CREATION, AND ECONOMIC
10 COMPETITIVENESS AS A RESULT OF THE ADOPTION OF THE RULE;

11 (D) WHETHER THE RULE IS REQUIRED BY FEDERAL LAW; AND

12 (E) WHETHER THE PROMULGATING AGENCY COMPLETED A
13 COST-BENEFIT ANALYSIS PURSUANT TO SUBSECTION (2.5) OF THIS SECTION
14 AND, IF A COST-BENEFIT ANALYSIS WAS COMPLETED, WHETHER THE
15 ANALYSIS WAS SUFFICIENT.

16 (IV) UPON COMPLETION OF THE RULE REVIEW PROCESS SPECIFIED
17 IN THIS PARAGRAPH (e), BUT NO LATER THAN THE SIXTIETH LEGISLATIVE
18 DAY, EACH COMMITTEE OF REFERENCE SHALL RECOMMEND TO THE
19 GENERAL ASSEMBLY A BILL REGARDING THE COMMITTEE'S
20 DETERMINATIONS RELATED TO THE EXPIRATION OR POSTPONEMENT OF THE
21 EXPIRATION OF RULES ASSIGNED TO AND REVIEWED BY THE COMMITTEE OF
22 REFERENCE. THE BILL SHALL BE EXEMPT FROM THE FIVE-BILL LIMITATION
23 SPECIFIED IN RULE 24 OF THE JOINT RULES OF THE SENATE AND THE HOUSE
24 OF REPRESENTATIVES.

25 (11) (a) There is hereby established the code of Colorado
26 regulations for the publication of rules of agencies of the executive
27 branch and the Colorado register for the publication of notices of

1 rule-making, proposed rules, attorney general's opinions relating to such
2 rules, and adopted rules. The code and the register shall be the sole
3 official publications for such rules, notices of rule-making, proposed
4 rules, and attorney general's opinions. The code and the register shall
5 contain, where applicable, references to court opinions and
6 recommendations of the legal services committee of the general assembly
7 OR OF COMMITTEES OF REFERENCE OF THE GENERAL ASSEMBLY that relate
8 to or affect such rules and references to any action of the general
9 assembly relating to the extension, expiration, deletion, or rescission of
10 such rules and may contain other items that, in the opinion of the editor,
11 are relevant to such rules. The register may also include other public
12 notices; however, except as specifically permitted by law, the inclusion
13 of such notices in the register shall be in addition to and not in
14 substitution for existing public notice requirements.

15 **SECTION 2. Safety clause.** The general assembly hereby finds,
16 determines, and declares that this act is necessary for the immediate
17 preservation of the public peace, health, and safety.