



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

FISCAL NOTE

Drafting Number: LLS 19-0534
Prime Sponsors: Sen. Sonnenberg

Date: January 22, 2019
Bill Status: Senate SVMA
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Bill Topic: LIMIT AGENCY RULE-MAKING AUTHORITY TO AMEND RULES

- Summary of Fiscal Impact: State Revenue, State Expenditure, State Transfer, TABOR Refund, Local Government, Statutory Public Entity

This bill requires all state agencies to receive a statutory grant of rulemaking authority before amending or reinterpreting any rule unless certain conditions are met. The bill will affect state revenue and expenditures on an ongoing basis.

Appropriation Summary: No appropriation is required.

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

Summary of Legislation

This bill requires all state agencies to receive a statutory grant of rulemaking authority before amending or reinterpreting any rule. Executive branch agencies do not need a grant of rulemaking authority if they are replacing a rule that has or will expire as a result of the annual rule review bill or that has been rendered unconstitutional or otherwise found to be in conflict with existing law due to a court decision or change in state or federal statute. Any rule adopted or modified without this additional authority is void.

Background

The General Assembly may grant executive agencies the authority to adopt rules to implement certain statutes. The executive agency must follow the Administrative Procedure Act (APA) when enacting or modifying its rules. As part of that process, each new rule expires on May 15 the following year unless the General Assembly extends the rule indefinitely through the rule review bill. According to a schedule determined by the Department of Regulatory Agencies, each principle executive agency must also review all rules to determine if they should continue in their current form.

## **State Revenue**

Starting in FY 2019-20, state agencies that have the authority to adjust fee and fine amounts in rule will not be able to do so unless the conditions of the bill are met, which will potentially affect state revenue. As a result, these agencies may not be able to adjust their fees to ensure that their expenses are paid using fee revenue. Agencies in this situation will likely be required to request authority to adjust fee in legislation each year as part of the annual budget process.

## **State Expenditures**

Starting in FY 2019-20, state expenditures will be affected by this bill in several ways. First, each time an agency wishes to amend or reinterpret a rule, legal costs for agencies and workload to the Department of Law will increase to determine if additional authority is required. Second, agencies will have additional workload to seek permission to adjust rules when the conditions of the bill do not apply. Third, workload will decrease for agencies that do not have the authority to adjust rules, since the agency will not be able to go through the rulemaking process. Lastly, agencies may be required to adjust expenditures to align with available fee revenue, if they are unable to modify their fees under the bill. The exact expenditure impact cannot be determined at this time but it is assumed that any adjustments to appropriations will be requested through the annual budget process.

## **Effective Date**

The bill takes effect August 2, 2019, if the General Assembly adjourns on May 3, 2019, as scheduled, and no referendum petition is filed.

## **State and Local Government Contacts**

All State Agencies