

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 22-0427.01 Brita Darling x2241

SENATE BILL 22-091

SENATE SPONSORSHIP

Buckner and Cooke, Gardner, Lee, Rodriguez

HOUSE SPONSORSHIP

Herod and Van Winkle, Snyder, Soper, Weissman

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 **CONCERNING MAKING NONSUBSTANTIVE CHANGES TO LANGUAGE IN**
102 **STATUTORY PROVISIONS RELATING TO THE REVIEW OF**
103 **EXECUTIVE AGENCY RULES, AND, IN CONNECTION THEREWITH,**
104 **REPEALING OBSOLETE AND REDUNDANT STATUTORY PROVISIONS**
105 **AND CONFORMING OTHER STATUTORY PROVISIONS TO MODERN**
106 **DRAFTING PRACTICES.**

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://leg.colorado.gov/>.)

Committee on Legal Services. Section 2 of the bill repeals a

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

SENATE
2nd Reading Unamended
February 15, 2022

section of the "State Administrative Procedure Act", as some of its provisions are obsolete, while its other provisions are redundant with the statute setting forth the process for reviewing executive agency rules. **Sections 1 and 3 to 10** make conforming amendments relating to the repeal.

Section 1 of the bill also conforms language in the statute setting forth the process for reviewing executive agency rules to reflect current drafting practices relating to, among other practices, the use of gender-neutral language in statute.

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 (8)(b), (8)(c)(I), (8)(d), (8.1)(b) introductory portion, (8.1)(b)(VIII), and
4 (11)(d) as follows:

5 **24-4-103. Rule-making - procedure - definitions - statutory**
6 **citation correction.** (8) (b) ~~On and after July 1, 1967, no rule may be~~
7 ~~issued nor existing rule amended by any agency~~ AN AGENCY SHALL NOT
8 ISSUE A RULE OR AMEND AN EXISTING RULE unless ~~it is first submitted by~~
9 the issuing agency FIRST SUBMITS THE RULE to the attorney general for ~~his~~
10 ~~or her~~ THE ATTORNEY GENERAL'S opinion as to its constitutionality and
11 legality. ~~Any~~ IF AN AGENCY ISSUES A rule or AN amendment to an existing
12 rule ~~issued by any agency without being so submitted~~ FIRST SUBMITTING
13 THE RULE OR AMENDMENT to the attorney general, THE RULE OR
14 AMENDMENT is void.

15 (c) (I) (A) Notwithstanding any other provision of law to the
16 contrary, ~~and the provisions of~~ INCLUDING section 24-4-107, ~~all rules~~
17 ~~adopted or amended on or after January 1, 1993, and before November 1,~~
18 ~~1993, expire at 11:59 p.m. on May 15 of the year following their adoption~~
19 ~~unless the general assembly by bill acts to postpone the expiration of a~~
20 ~~specific rule, and commencing with rules adopted or amended on or~~ AND

1 EXCEPT AS PROVIDED IN SUBSECTION (8)(c)(I)(B) OF THIS SECTION, ON
2 AND after November 1, 1993, all rules adopted or amended during any
3 one-year period that begins each November 1 and continues through the
4 following October 31 expire at 11:59 p.m. on the May 15 that follows
5 such one-year period unless the general assembly by bill acts to postpone
6 the expiration of a specific rule. ~~except that~~

7 (B) A rule adopted pursuant to section 25.5-4-402.4 (6)(b)(III)
8 expires at 11:59 p.m. on the May 15 following the adoption of the rule
9 unless the general assembly acts by bill to postpone the expiration of a
10 specific rule. ~~The general assembly, in its discretion, may postpone such~~
11 ~~expiration, in which case, the provisions of section 24-4-108 or~~
12 ~~24-34-104 apply and the rules expire or are subject to review as provided~~
13 ~~in those sections.~~

14 (C) ~~The postponement of~~ POSTPONING the expiration of a rule
15 does not constitute legislative approval of the rule and is not admissible
16 in any court as evidence of legislative intent. ~~The postponement of~~
17 POSTPONING the expiration date of a specific rule does not prohibit any
18 action by the general assembly pursuant to ~~the provisions of~~ subsection
19 (8)(d) of this section with respect to the rule.

20 (d) (I) ~~All rules adopted or amended on or after July 1, 1976, AN~~
21 ~~AGENCY THAT HAS ADOPTED OR AMENDED A RULE SHALL SUBMIT THE~~
22 ~~ADOPTED OR AMENDED RULE, including A temporary or emergency rules,~~
23 ~~shall be submitted by the adopting agency~~ RULE, to the office of
24 legislative legal services in the form and manner prescribed by the
25 committee on legal services. ~~Said rules and amendments~~ THE OFFICE OF
26 LEGISLATIVE LEGAL SERVICES SHALL FIRST REVIEW THE RULE OR
27 AMENDMENT to THE existing rules shall be filed by and in such office and

1 ~~shall be first reviewed by the staff of said committee~~ RULE to determine
2 whether ~~said rules and amendments are~~ THE RULE OR AMENDMENT IS
3 within the agency's rule-making authority and for later review by the
4 committee on legal services for its opinion as to whether the ~~rules~~
5 ~~conform~~ RULE CONFORMS with ~~paragraph (a) of this subsection (8)~~
6 SUBSECTION (8)(a) OF THIS SECTION.

7 (II) The committee on legal services shall direct the ~~staff of the~~
8 ~~committee~~ OFFICE OF LEGISLATIVE LEGAL SERVICES to review the rules
9 submitted by adopting agencies using graduated levels of review based
10 on criteria established by the committee. The criteria developed by the
11 committee ~~shall provide that every rule shall be reviewed~~ ON LEGAL
12 SERVICES MUST PROVIDE THAT THE OFFICE OF LEGISLATIVE LEGAL
13 SERVICES REVIEW EVERY RULE as to form and compliance with filing
14 procedures and that, upon request of any member of the committee or any
15 other member of the general assembly, the ~~staff shall~~ OFFICE OF
16 LEGISLATIVE LEGAL SERVICES provide full legal review of any rule during
17 the time period that ~~such~~ THE rule is subject to review by the committee.

18 (III) The official certificate of the director of the office of
19 legislative legal services, OR THE DIRECTOR'S DESIGNEE, as to the fact ~~of~~
20 ~~submission or the date of submission of a rule~~ THAT AN AGENCY
21 SUBMITTED A RULE TO THE OFFICE OF LEGISLATIVE LEGAL SERVICES OR AS
22 TO THE DATE AN AGENCY SUBMITTED A RULE, as shown by the records of
23 ~~his~~ THE DIRECTOR'S office, as well as to the fact ~~of nonsubmission~~ THAT
24 AN AGENCY FAILED TO SUBMIT A RULE TO THE OFFICE OF LEGISLATIVE
25 LEGAL SERVICES, as shown by the nonexistence of such records, shall be
26 received and held in all civil cases as competent evidence of the facts
27 contained ~~therein. Records~~ IN THE OFFICIAL CERTIFICATE. THE OFFICE OF

1 LEGISLATIVE LEGAL SERVICES SHALL RETAIN RECORDS regarding the
2 review of rules pursuant to this section ~~shall be retained by the office of~~
3 ~~legislative legal services~~ in accordance with policies established pursuant
4 to section 2-3-303 (2). ~~C.R.S. Any such~~ IF AN AGENCY ISSUES A rule or AN
5 amendment to an existing rule ~~issued by any agency~~ FOR REVIEW BY THE
6 COMMITTEE ON LEGAL SERVICES PURSUANT TO THIS SUBSECTION (8)
7 ~~without being so submitted~~ SUBMITTING THE RULE OR AMENDMENT TO
8 THE OFFICE OF LEGISLATIVE LEGAL SERVICES within twenty days after the
9 date of the attorney general's opinion ~~rendered thereon to the office of~~
10 ~~legislative legal services for review by the committee on legal services~~
11 ~~shall be void~~ ON THE RULE OR AMENDMENT PURSUANT TO SUBSECTION
12 (8)(b) OF THIS SECTION, THE RULE OR AMENDMENT IS VOID.

13 (IV) The ~~staff's findings shall be presented to said committee~~
14 OFFICE OF LEGISLATIVE LEGAL SERVICES SHALL PRESENT ITS FINDINGS TO
15 THE COMMITTEE ON LEGAL SERVICES at a public meeting held after timely
16 notice to the public and affected agencies. The committee on legal
17 services shall, on affirmative vote, submit such rules, comments, and
18 proposed legislation at the next regular session of the general assembly.
19 The committee on legal services ~~shall be~~ IS the committee of reference for
20 any bill introduced pursuant to this ~~paragraph (d)~~ SUBSECTION (8)(d)(IV).
21 Any member of the general assembly may introduce a bill ~~which~~ THAT
22 rescinds or deletes portions of the rule. Rejection of such a bill does not
23 constitute legislative approval of the rule. Only that portion of any rule
24 specifically disapproved by bill ~~shall~~ IS no longer ~~be~~ effective, and that
25 portion of the rule ~~which~~ THAT remains after deletion of a portion ~~thereof~~
26 ~~shall retain~~ OF THE RULE RETAINS its character as an administrative rule.

27 (V) Each agency shall revise its rules to conform with the action

1 taken by the general assembly. AN AGENCY SHALL NOT REPROMULGATE
2 a rule ~~which~~ THAT has been allowed to expire by action of the general
3 assembly pursuant to ~~the provisions of paragraph (c) of this subsection (8)~~
4 SUBSECTION (8)(c) OF THIS SECTION because ~~such~~ THE rule, in the opinion
5 of the general assembly, is not authorized by the state constitution or
6 statute, ~~shall not be repromulgated by an agency~~ unless the authority to
7 promulgate ~~such~~ THE rule has been granted to ~~such~~ THE agency by a
8 statutory amendment, ~~or~~ by the state constitution, or by a judicial
9 determination that statutory or constitutional authority exists. Any rule so
10 repromulgated ~~shall be void. Such revision~~ IS VOID. ANY RULE THAT AN
11 AGENCY REVISES PURSUANT TO THIS SUBSECTION (8)(d)(V) shall be
12 transmitted to the secretary of state for publication pursuant to subsection
13 (11) of this section. Passage of a bill repealing a rule does not result in
14 revival of a predecessor rule.

15 (VI) This ~~paragraph (d)~~ SUBSECTION (8)(d) and subsection (4.5)
16 of this section do not apply to rules of agency organization or general
17 statements of policy ~~which~~ THAT are not meant to be binding as rules.

18 (VII) For the purpose of performing the functions assigned it by
19 this ~~paragraph (d)~~ SUBSECTION (8)(d), the committee on legal services,
20 with the approval of the speaker of the house of representatives and the
21 president of the senate, may appoint subcommittees from the membership
22 of the general assembly.

23 (8.1) (b) The agency rule-making record ~~shall~~ MUST contain:

24 (VIII) A copy of any objection to the rule presented to the
25 committee on legal services ~~of the general assembly by its staff~~ BY THE
26 OFFICE OF LEGISLATIVE LEGAL SERVICES pursuant to ~~paragraph (d) of~~
27 ~~subsection (8)~~ SUBSECTION (8)(d) of this section and the agency's

1 response;

2 (11) (d) ~~(f) (Deleted by amendment, L. 2010, (SB 10-123), ch.~~
3 ~~104, p. 350, § 1, effective April 15, 2010.)~~

4 ~~(H) Each rule, adopted~~ THE AGENCY ADOPTING A RULE SHALL FILE
5 THE ADOPTED RULE, together with the attorney general's opinion rendered
6 in connection ~~therewith, shall be filed~~ WITH THE RULE, WITH THE
7 SECRETARY OF STATE FOR PUBLICATION IN THE COLORADO REGISTER
8 pursuant to subsection (12) of this section within twenty days after
9 adoption ~~with the secretary of state for publication in the Colorado~~
10 ~~register~~ OF THE RULE. Upon written request of an agency, the secretary of
11 state shall correct typographical and other nonsubstantive errors
12 appearing in the rules as filed by ~~such~~ THE agency that occur after final
13 adoption of the rules by the agency during the preparation of ~~such~~ THE
14 rules for publication in order to conform the published rules with the
15 adopted rules. THE AGENCY SHALL ALSO FILE notices of rule-making
16 proceedings pursuant to subsection (3) of this section ~~shall also be filed~~
17 with the secretary of state in sufficient time for publication IN THE
18 REGISTER pursuant to subsection (5) of this section. ~~in the register.~~ AN
19 AGENCY SHALL FILE rules revised to conform with action taken by the
20 general assembly ~~shall be filed~~ with the secretary of state for publication
21 in the register and in the code of Colorado regulations. The OFFICE OF
22 LEGISLATIVE legal services ~~committee of the general assembly~~ shall notify
23 the secretary of state whenever a rule published in the code is rescinded
24 or a portion ~~thereof~~ OF THE RULE is deleted by the general assembly and
25 whenever a rule or a portion ~~thereof~~ OF A RULE is allowed to expire in
26 accordance with ~~section 24-4-108 or with subparagraph (f) of paragraph~~
27 ~~(e) of subsection (8)~~ SUBSECTION (8)(c)(I) of this section. ~~and The~~

1 secretary of state shall direct the removal from the code of material ~~so~~
2 THAT WAS deleted, rescinded, or allowed to expire.

3 **SECTION 2.** In Colorado Revised Statutes, **repeal** 24-4-108.

4 **SECTION 3.** In Colorado Revised Statutes, 11-35-101, **amend**
5 (3) as follows:

6 **11-35-101. Alternatives to surety bonds permitted -**
7 **requirements - definition - rules.** (3) All rules adopted or amended by
8 state agencies pursuant to subsection (2) of this section are subject to
9 ~~section 24-4-103 (8)(c) and (8)(d), C.R.S., and section 24-4-108 or~~
10 ~~24-34-104 (6)(b), C.R.S.~~ SECTION 24-4-103.

11 **SECTION 4.** In Colorado Revised Statutes, 23-3.1-104, **amend**
12 (3) as follows:

13 **23-3.1-104. Duties and powers of division - rules.** (3) ~~On or~~
14 ~~after July 1, 1979,~~ All rules ~~and regulations~~ promulgated by the division
15 pursuant to ~~the provisions of paragraph (a) of subsection (1)~~ SUBSECTION
16 (1)(a) of this section ~~shall be~~ ARE subject to ~~sections 24-4-103 (8) and~~
17 ~~24-4-108, C.R.S.~~ SECTION 24-4-103. Any guarantee made pursuant to any
18 rule ~~or regulation shall continue~~ CONTINUES to be governed by the rule ~~or~~
19 ~~regulation~~ in effect at the time when the guarantee was made, whether or
20 not ~~such~~ THE rule ~~or regulation~~ has been continued.

21 **SECTION 5.** In Colorado Revised Statutes, 24-90-105, **amend**
22 (1)(a)(II) as follows:

23 **24-90-105. Powers and duties of state librarian - rules.** (1) The
24 state librarian has the following powers and duties with respect to the
25 state library:

26 (a) (II) Rules ~~or regulations~~ promulgated under ~~provisions of this~~
27 part 1 ~~shall be~~ ARE subject to ~~sections 24-4-103 (8)(c) and (8)(d) and~~

1 ~~24-4-108~~ SECTION 24-4-103.

2 **SECTION 6.** In Colorado Revised Statutes, 25-4-904, **amend** (2)
3 as follows:

4 **25-4-904. Rules - immunization rules - rule-making authority**
5 **of state board of health.** (2) All rule-making authority granted to the
6 state board of health under ~~the provisions of this article~~ THIS ARTICLE 4
7 is granted on the condition that the general assembly reserves the power
8 to delete or rescind any rule of the board. All rules promulgated pursuant
9 to this subsection (2) ~~shall be~~ ARE subject to ~~sections 24-4-103 (8)(c) and~~
10 ~~(8)(d) and 24-4-108, C.R.S.~~ SECTION 24-4-103.

11 **SECTION 7.** In Colorado Revised Statutes, 25-7-105, **amend**
12 (1)(a)(IV) as follows:

13 **25-7-105. Duties of commission - rules - legislative declaration**
14 **- definitions.** (1) Except as provided in sections 25-7-130 and 25-7-131,
15 the commission shall promulgate rules that are consistent with the
16 legislative declaration set forth in section 25-7-102 and necessary for the
17 proper implementation and administration of this article 7, including:

18 (a) (IV) Notwithstanding the provisions of section 25-7-133, the
19 expiration of the state implementation plan for ozone maintenance and
20 related rules of the air quality control commission, and the amendments
21 to commission regulations ~~number~~ NUMBERS 3 and 7, which state
22 implementation plan and rules, and amendments to regulations ~~number~~
23 NUMBERS 3 and 7, were adopted or amended by the commission on March
24 21, 1996, and which are therefore scheduled for expiration May 15, 1997,
25 is postponed until December 31, 2005. ~~and the provisions of section~~
26 ~~24-4-108, C.R.S., shall apply.~~

27 **SECTION 8.** In Colorado Revised Statutes, 25-7-127, **amend** (1)

1 as follows:

2 **25-7-127. Continuance of existing rules and orders.** (1) All
3 rules or amendments to existing rules adopted by the commission on or
4 after June 20, 1979, ~~shall be~~ ARE subject to ~~sections 24-4-103 (8)(c) and~~
5 ~~(8)(d) and 24-4-108, C.R.S.~~ SECTION 24-4-103.

6 **SECTION 9.** In Colorado Revised Statutes, 25-15-302, **amend**
7 (5) as follows:

8 **25-15-302. Solid and hazardous waste commission - creation**
9 **- membership - rules - fees - administration - definition.** (5) The rules
10 ~~and regulations~~ promulgated by the commission ~~shall be~~ ARE subject to
11 expiration in accordance with ~~sections 24-4-103 (8)(c) and 24-4-108,~~
12 ~~C.R.S.~~ SECTION 24-4-103.

13 **SECTION 10.** In Colorado Revised Statutes, 33-3-104, **amend**
14 (8) as follows:

15 **33-3-104. When state is liable - rules.** (8) All rules concerning
16 damages by wildlife adopted or amended by the commission on or after
17 July 1, 1979, ~~shall be~~ ARE subject to ~~sections 24-4-103 (8)(c) and (8)(d)~~
18 ~~and 24-4-108, C.R.S.~~ SECTION 24-4-103.

19 **SECTION 11. Act subject to petition - effective date.** This act
20 takes effect at 12:01 a.m. on the day following the expiration of the
21 ninety-day period after final adjournment of the general assembly; except
22 that, if a referendum petition is filed pursuant to section 1 (3) of article V
23 of the state constitution against this act or an item, section, or part of this
24 act within such period, then the act, item, section, or part will not take
25 effect unless approved by the people at the general election to be held in
26 November 2022 and, in such case, will take effect on the date of the
27 official declaration of the vote thereon by the governor.