

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 22-0545.01 Brita Darling x2241

HOUSE BILL 22-1128

HOUSE SPONSORSHIP

Pico, Luck

SENATE SPONSORSHIP

(None), Lundeen

House Committees

State, Civic, Military, & Veterans Affairs

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING LEGISLATIVE REVIEW OF GOVERNMENT REGULATIONS**
102 **THAT SIGNIFICANTLY INCREASE THE REGULATORY BURDEN ON**
103 **CERTAIN REGULATED ENTITIES.**

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>.)

Under current law, executive agency rules take effect 20 days after the agency adopts the rule, or on a later date if specified in the rule. After adoption, the office of legislative legal services (OLLS) at the direction of the general assembly's committee on legal services (committee) reviews agency rules on an annual cycle, commencing with agency rules

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.

adopted on or after November 1 of one year through October 31 of the following year, and recommends the expiration of certain rules to the committee based a determination that the rules do not comply with statute. The committee votes on whether to recommend the nonextension of those rules to the general assembly, as reflected in the annual rule review bill. Rules that are not extended by the general assembly in the annual rule review bill expire on May 15 of the year following the year in which they were enacted.

The bill requires the governor or the governor's designee to review each proposed rule for compliance with the agency's statutory authority and other criteria set forth in statute, and prohibits an agency from adopting such proposed rule unless and until the governor or governor's designee determines its compliance.

The bill creates a new prior review process for review of rules adopted by an agency on and after November 1, 2022, that significantly increase the regulatory burden on businesses, professions, occupations, and industries, including the oil and gas, aerospace, energy efficiency and environmental technology, transportation, and agriculture industries (economic impact rules). As part of the rule-making process, the agency determines whether the rule is an economic impact rule at the conclusion of the rule-making process. The agency must send the list of economic impact rules to the general assembly, the OLLS, and the secretary of state. A rule that an agency determines to be an economic impact rule cannot take effect until completion of the prior review process established in the bill.

Each economic impact rule is assigned to a single legislative prior review committee consisting of the members of either the house of representatives' or senate's committee of reference that hears matters relating to the subject of the economic impact rule or that considered the legislation authorizing the economic impact rule. Within 21 days after the commencement of the regular legislative session, the prior review committee may select economic impact rules for review under the prior review process established in the bill. Economic impact rules that are not selected for prior review take effect on the twenty-second day after the commencement of the legislative session.

With respect to economic impact rules selected by a prior review committee for prior review, the prior review committee may take the following actions:

- By majority vote, make the rule effective immediately or on another date;
- By majority vote, determine that the rule exceeds the agency's rule-making authority or fails to meet other requirements for rule-making set forth in statute; or
- Take no action.

If the committee takes no action on a selected economic impact rule

within 64 days after the commencement of the applicable regular legislative session, the selected rule is deemed effective on the sixty-fifth day after the commencement of the legislative session.

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

2 **SECTION 1.** The short title of this act is "The Regulatory
3 Department Transparency and Accountability Act".

4 **SECTION 2.** In Colorado Revised Statutes, 24-4-102, **add** (5.7),
5 (12.3), (12.5), (13.7), and (17.5) as follows:

6 **24-4-102. Definitions.** As used in this article 4, unless the context
7 otherwise requires:

8 (5.7) "ECONOMIC IMPACT RULE" MEANS A RULE THAT
9 SIGNIFICANTLY INCREASES THE REGULATORY BURDEN ON BUSINESSES,
10 PROFESSIONS, OCCUPATIONS, OR INDUSTRY, AS DETERMINED BY THE
11 ADOPTING AGENCY. AS USED IN THIS SUBSECTION (5.7), "INDUSTRY"
12 INCLUDES THE OIL AND GAS, AEROSPACE, ENERGY EFFICIENCY AND
13 ENVIRONMENTAL TECHNOLOGY, TRANSPORTATION, AND AGRICULTURE
14 INDUSTRIES.

15 (12.3) "PRIOR REVIEW" MEANS THE REVIEW OF AN ECONOMIC
16 IMPACT RULE ESTABLISHED IN SECTION 24-4-103 (15).

17 (12.5) "PRIOR REVIEW COMMITTEE" MEANS:

18 (a) IF AN ECONOMIC IMPACT RULE IS PROMULGATED IN RESPONSE
19 TO A SPECIFIC DUTY TO PROMULGATE RULES, AS SET FORTH IN A BILL
20 ENACTED IN A REGULAR OR EXTRAORDINARY LEGISLATIVE SESSION
21 IMMEDIATELY PRECEDING PROMULGATION OF THE RULE, THE FIRST
22 ASSIGNED COMMITTEE OF REFERENCE OF THE GENERAL ASSEMBLY THAT
23 WAS ASSIGNED TO THE BILL IN THE BILL'S HOUSE OF ORIGIN; OR

24 (b) IF SUBSECTION (12.5)(a) OF THIS SECTION DOES NOT APPLY,

1 THE APPLICABLE COMMITTEE OF REFERENCE FOR EACH DEPARTMENT AS
2 ASSIGNED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE
3 PRESIDENT OF THE SENATE FOR PURPOSES OF CONDUCTING HEARINGS
4 UNDER THE "STATE MEASUREMENT FOR ACCOUNTABLE, RESPONSIVE,
5 AND TRANSPARENT (SMART) GOVERNMENT ACT" ESTABLISHED IN PART
6 2 OF ARTICLE 7 OF TITLE 2. THE SPEAKER OF THE HOUSE OF
7 REPRESENTATIVES AND THE PRESIDENT OF THE SENATE SHALL DETERMINE
8 FOR EACH RULE WHICH HOUSE SHALL SERVE AS THE SINGLE PRIOR REVIEW
9 COMMITTEE FOR THE RULE.

10 (13.7) "REGULATORY BURDEN" MEANS A CHANGE IN THE METHOD,
11 REQUIREMENTS, OR COST OF DOING BUSINESS OR PRACTICING A
12 PROFESSION OR OCCUPATION THAT REQUIRES A PERSON TO USE
13 ADDITIONAL MONEY OR RESOURCES TO COMPLY WITH THE REGULATION,
14 WHEN COMPARED WITH THE MONEY OR RESOURCES REQUIRED HAD THE
15 REGULATION NOT EXISTED.

16 (17.5) "SELECTED RULE" MEANS AN ECONOMIC IMPACT RULE
17 IDENTIFIED FOR PRIOR REVIEW PURSUANT TO SECTION 24-4-103 (15)(b).

18 **SECTION 3.** In Colorado Revised Statutes, 24-4-103, **amend**
19 (4)(a), (4)(c), (4.5)(a) introductory portion, (4.5)(a)(V), and (4.5)(a)(VI);
20 and **add** (4.5)(a)(VII), (8)(b.5), and (15) as follows:

21 **24-4-103. Rule-making - procedure - definitions - statutory**
22 **citation correction - prior review process.** (4) (a) (I) At the place and
23 time stated in the notice AS PROVIDED IN SUBSECTION (3)(a) OF THIS
24 SECTION, the agency shall hold a public hearing at which it shall afford
25 interested persons an opportunity to submit written data, views, or
26 arguments and to present the same orally unless the agency deems it
27 unnecessary. The agency shall consider all such submissions. THE

1 AGENCY SHALL MAKE AVAILABLE TO ANY PERSON any proposed rule or
2 revised proposed rule ~~by an agency which~~ THAT is to be considered at the
3 public hearing, together with a proposed statement of basis, specific
4 statutory authority, purpose, and the regulatory analysis required in
5 subsection (4.5) of this section, ~~shall be made available to any person at~~
6 least five days prior to ~~said~~ THE hearing.

7 (II) ON AND AFTER NOVEMBER 1, 2022, AND EXCEPT AS PROVIDED
8 IN SUBSECTION (15)(a)(I) OF THIS SECTION, THE AGENCY SHALL MAKE A
9 DETERMINATION AT THE HEARING WHETHER THE PROPOSED RULE IS AN
10 ECONOMIC IMPACT RULE. THE NOTICE OF PROPOSED RULE-MAKING FOR A
11 HEARING HELD ON OR AFTER NOVEMBER 1, 2022, MUST INCLUDE A
12 STATEMENT THAT THE AGENCY WILL DETERMINE AT THE HEARING
13 WHETHER A PROPOSED RULE IS AN ECONOMIC IMPACT RULE AND THAT AN
14 INTERESTED PERSON MAY SUBMIT WRITTEN DATA, VIEWS, OR ARGUMENTS
15 ON THE ISSUES AND PRESENT THE SAME ORALLY UNLESS THE AGENCY
16 DEEMS IT UNNECESSARY. The rules promulgated by the agency ~~shall~~ MUST
17 be based on the record, which ~~shall~~ MUST consist of proposed rules,
18 evidence, exhibits, and other matters presented or considered; matters
19 officially noticed; rulings on exceptions; any findings of fact and
20 conclusions of law proposed by any party; and any written comments or
21 briefs filed.

22 (c) Rules, as finally adopted, ~~shall~~ MUST be consistent with the
23 subject matter as set forth in the notice of proposed rule-making provided
24 in subsection (11) of this section. After consideration of the relevant
25 matter presented, the agency shall incorporate by reference on the rules
26 adopted a written concise general statement of their basis, specific
27 statutory authority, and purpose, AND, FOR RULES ADOPTED ON AND AFTER

1 NOVEMBER 1, 2022, WHETHER THE RULE IS AN ECONOMIC IMPACT RULE
2 SUBJECT TO SUBSECTION (15) OF THIS SECTION. The written statement of
3 the basis, specific authority, regulatory analysis required by subsection
4 (4.5) of this section, and purpose of a rule ~~which~~ THAT involves scientific
5 or technological issues ~~shall~~ MUST include an evaluation of the scientific
6 or technological rationale justifying the rule. Each agency shall maintain
7 a copy of its currently effective rules, ~~and~~ the current status of each
8 published proposal for rules, ~~and~~ minutes of all its action upon rules, ~~as~~
9 ~~well as~~ THE GOVERNOR'S REVIEW OF RULES ADOPTED ON AND AFTER
10 NOVEMBER 1, 2022, PURSUANT TO SUBSECTION (8)(b.5) OF THIS SECTION,
11 AND any attorney general's opinion rendered on any adopted or proposed
12 rule. THE AGENCY SHALL MAKE such materials ~~shall be~~ available for
13 inspection by any person during regular office hours.

14 (4.5) (a) Upon request of any person, at least fifteen days prior to
15 the hearing, the agency shall issue a regulatory analysis of a proposed
16 rule. The regulatory analysis ~~shall~~ MUST contain:

17 (V) A determination of whether there are less costly methods or
18 less intrusive methods for achieving the purpose of the proposed rule; ~~and~~

19 (VI) A description of any alternative methods for achieving the
20 purpose of the proposed rule that were seriously considered by the agency
21 and the reasons why they were rejected in favor of the proposed rule; AND

22 (VII) A DETERMINATION OF WHETHER THE RULE IS AN ECONOMIC
23 IMPACT RULE SUBJECT TO SUBSECTION (15) OF THIS SECTION, AND THE
24 ANALYSIS SUPPORTING THAT DETERMINATION.

25 (8) (b.5) ON AND AFTER NOVEMBER 1, 2022, AN AGENCY SHALL
26 NOT ADOPT A RULE OR AMEND AN EXISTING RULE WITHOUT FIRST
27 SUBMITTING THE PROPOSED RULE TO THE GOVERNOR OR THE GOVERNOR'S

1 DESIGNEE FOR REVIEW OF THE PROPOSED RULE PURSUANT TO THE
2 CRITERIA SET FORTH IN SUBSECTIONS (4)(b) AND (8)(a) OF THIS SECTION,
3 AND THE GOVERNOR OR GOVERNOR'S DESIGNEE DETERMINING THAT THE
4 RULE COMPLIES WITH SUBSECTIONS (4)(b) AND (8)(a) OF THIS SECTION.

5 (15) (a) (I) AN AGENCY'S TEMPORARY OR EMERGENCY RULE
6 ADOPTED PURSUANT TO SUBSECTION (6)(a) OF THIS SECTION IS NOT
7 SUBJECT TO A DETERMINATION WHETHER THE RULE IS AN ECONOMIC
8 IMPACT RULE PURSUANT TO SUBSECTION (4)(a) OF THIS SECTION OR TO THE
9 PRIOR REVIEW PROCESS SET FORTH IN SUBSECTION (15)(b) OF THIS
10 SECTION.

11 (II) THE ADOPTING AGENCY SHALL SUBMIT TO THE GENERAL
12 ASSEMBLY FOR DISTRIBUTION TO THE MEMBERS OF THE GENERAL
13 ASSEMBLY, TO THE OFFICE OF LEGISLATIVE LEGAL SERVICES, AND TO THE
14 SECRETARY OF STATE FOR PUBLICATION, A LIST OF RULES THAT THE
15 AGENCY HAS DETERMINED ARE ECONOMIC IMPACT RULES, INCLUDING A
16 SHORT SUMMARY OF THE SUBJECT OF EACH RULE.

17 (b) (I) NOTWITHSTANDING THE PROVISIONS OF SUBSECTIONS (5)
18 AND (11)(d)(II) OF THIS SECTION, AND EXCEPT AS PROVIDED IN
19 SUBSECTION (15)(b)(II) OF THIS SECTION, AN ECONOMIC IMPACT RULE
20 ADOPTED ON OR AFTER NOVEMBER 1, 2022, SHALL NOT TAKE EFFECT, AND
21 THE SECRETARY OF STATE SHALL NOT PUBLISH THE ECONOMIC IMPACT
22 RULE IN THE COLORADO REGISTER IF, WITHIN TWENTY-ONE DAYS AFTER
23 THE COMMENCEMENT OF THE FIRST REGULAR LEGISLATIVE SESSION
24 FOLLOWING THE ADOPTION OF THE RULE, A MOTION IS ADOPTED BY A
25 MAJORITY OF THE MEMBERS OF THE PRIOR REVIEW COMMITTEE TO
26 CONDUCT PRIOR REVIEW OF THE RULE.

27 (II) AN ECONOMIC IMPACT RULE NOT SELECTED FOR PRIOR REVIEW

1 PURSUANT TO SUBSECTION (15)(b)(I) OF THIS SECTION BECOMES
2 EFFECTIVE ON THE TWENTY-SECOND DAY FOLLOWING THE
3 COMMENCEMENT OF THE APPLICABLE REGULAR LEGISLATIVE SESSION, AND
4 THE OFFICE OF LEGISLATIVE LEGAL SERVICES SHALL PROMPTLY NOTIFY
5 THE SECRETARY OF STATE THAT THE RULE HAS NOT BEEN SELECTED FOR
6 PRIOR REVIEW. UPON RECEIVING NOTICE FROM THE OFFICE OF LEGISLATIVE
7 LEGAL SERVICES, THE SECRETARY OF STATE SHALL PUBLISH THE RULE IN
8 THE COLORADO REGISTER.

9 (c) THE AGENCY THAT HAS ADOPTED A RULE SELECTED BY THE
10 PRIOR REVIEW COMMITTEE FOR PRIOR REVIEW MUST SUBMIT THE SELECTED
11 RULE TO THE PRIOR REVIEW COMMITTEE. THE AGENCY'S SUBMISSION OF
12 THE SELECTED RULE PURSUANT TO THIS SUBSECTION (15)(c) MUST
13 INCLUDE THE INFORMATION DESCRIBED IN SUBSECTION (4)(a) OF THIS
14 SECTION THAT MUST BE MADE AVAILABLE TO ANY PERSON PRIOR TO THE
15 RULE-MAKING HEARING. IN ADDITION, THE SUBMISSION SHALL INCLUDE A
16 LINK TO ANY PORTION OF THE RULE-MAKING RECORD OR DOCUMENTS
17 DESCRIBED IN SUBSECTIONS (4)(a) AND (4)(a.5) OF THIS SECTION THAT ARE
18 AVAILABLE IN ELECTRONIC FORMAT, AS WELL AS INFORMATION
19 IDENTIFYING WHERE INFORMATION OR DOCUMENTS THAT ARE NOT
20 AVAILABLE ELECTRONICALLY MAY BE INSPECTED.

21 (d) (I) THE PRIOR REVIEW COMMITTEE MAY, BUT IS NOT REQUIRED
22 TO, CONSIDER THE SELECTED RULE AT A COMMITTEE MEETING OR TAKE
23 PUBLIC COMMENT OR PUBLIC TESTIMONY ON THE SELECTED RULE.

24 (II) THE PRIOR REVIEW COMMITTEE'S PRIOR REVIEW OF A SELECTED
25 RULE IS LIMITED TO WHETHER THE RULE SATISFIES THE REQUIREMENTS OF
26 SUBSECTIONS (4)(b) AND (8)(a) OF THIS SECTION.

27 (e) (I) NOT LATER THAN SIXTY-FOUR DAYS AFTER THE

1 COMMENCEMENT OF THE APPLICABLE LEGISLATIVE SESSION, THE PRIOR
2 REVIEW COMMITTEE MAY TAKE THE FOLLOWING ACTION CONCERNING A
3 SELECTED RULE:

4 (A) BY MAJORITY VOTE OF THE MEMBERS OF THE PRIOR REVIEW
5 COMMITTEE, MAKE THE SELECTED RULE EFFECTIVE IMMEDIATELY, OR
6 EFFECTIVE ON A LATER DATE IF A DELAY IS NECESSARY, AND INSTRUCT
7 THE AGENCY TO PROMPTLY SUBMIT THE SELECTED RULE TO THE
8 SECRETARY OF STATE FOR PUBLICATION IN THE COLORADO REGISTER;

9 (B) BY MAJORITY VOTE OF THE MEMBERS OF THE PRIOR REVIEW
10 COMMITTEE, DETERMINE THAT THE SELECTED RULE EXCEEDS THE
11 AGENCY'S RULE-MAKING AUTHORITY OR IS VOID FOR REASONS SET FORTH
12 IN SUBSECTIONS (4)(b) AND (8)(a) OF THIS SECTION; OR

13 (C) TAKE NO ACTION.

14 (II) IF THE PRIOR REVIEW COMMITTEE DOES NOT TAKE ACTION ON
15 A SELECTED RULE WITHIN SIXTY-FOUR DAYS AFTER THE COMMENCEMENT
16 OF THE FIRST REGULAR LEGISLATIVE SESSION FOLLOWING THE ADOPTION
17 OF THE RULE, THE SELECTED RULE IS DEEMED EFFECTIVE ON THE
18 SIXTY-FIFTH DAY AFTER THE COMMENCEMENT OF THE APPLICABLE
19 LEGISLATIVE SESSION WITHOUT FURTHER ACTION BY THE PRIOR REVIEW
20 COMMITTEE. THE OFFICE OF LEGISLATIVE LEGAL SERVICES SHALL
21 PROMPTLY NOTIFY THE SECRETARY OF STATE THAT THE RULE IS DEEMED
22 EFFECTIVE. UPON RECEIVING THE NOTIFICATION FROM THE OFFICE OF
23 LEGISLATIVE LEGAL SERVICES, THE SECRETARY OF STATE SHALL PUBLISH
24 THE RULE IN THE COLORADO REGISTER.

25 (f) THE GENERAL ASSEMBLY MAY EXEMPT IN STATUTE AN
26 ECONOMIC IMPACT RULE FROM ECONOMIC IMPACT ANALYSIS UNDER
27 SUBSECTION (4)(a)(II) OF THIS SECTION AND FROM PRIOR REVIEW UNDER

1 THIS SUBSECTION (15).

2 **SECTION 4. Act subject to petition - effective date.** This act
3 takes effect at 12:01 a.m. on the day following the expiration of the
4 ninety-day period after final adjournment of the general assembly; except
5 that, if a referendum petition is filed pursuant to section 1 (3) of article V
6 of the state constitution against this act or an item, section, or part of this
7 act within such period, then the act, item, section, or part will not take
8 effect unless approved by the people at the general election to be held in
9 November 2022 and, in such case, will take effect on the date of the
10 official declaration of the vote thereon by the governor.