



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Final Fiscal Note

Drafting Number: LLS 22-0545
Prime Sponsors: Rep. Pico

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Bill Status: Postponed Indefinitely
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Bill Topic: **PRIOR REVIEW OF AGENCY RULES THAT BURDEN INDUSTRY**

Summary of Fiscal Impact:

- State Revenue
- State Expenditure
- State Transfer
- TABOR Refund
- Local Government
- Statutory Public Entity

The bill would have made changes to rule review processes, including review by the General Assembly and Governor's Office and consideration of rules that are expected to have an economic impact. The bill would have increased state expenditures on an ongoing basis.

Appropriation Summary:

For FY 2022-23, the bill would have required an appropriation of \$688,357 to multiple state agencies.

Fiscal Note Status:

The fiscal note reflects the introduced bill. The bill was not enacted into law; therefore, the impacts identified in this fiscal note do not take effect.

Table 1
State Fiscal Impacts Under HB 22-1128

		Budget Year FY 2022-23	Out Year FY 2023-24
Revenue		-	-
Expenditures	General Fund	\$634,328	\$664,639
	Cash Funds	\$54,029	\$4,770
	Centrally Appropriated	\$25,168	\$31,699
	Total Expenditures	\$713,525	\$701,108
	Total FTE	4.1 FTE	4.4 FTE
Transfers		-	-
Other Budget Impacts	General Fund Reserve	\$95,149	\$99,696

Summary of Legislation

The bill makes changes to state law related to rule review processes, beginning November 1, 2022.

Determination of economic impact rules. Beginning November 1, 2022, the bill requires that a state agency make a determination at a rulemaking hearing whether a proposed rule is expected to have an economic impact and include that determination in its regulatory analysis of a proposed rule. “Economic impact rules” are defined as those that significantly increase the regulatory burden on businesses, professions, or industry, including oil and gas, aerospace, energy efficiency, environmental technology, transportation, and agriculture industries.

Governor’s Office review. Beginning November 1, 2022, rules or rule changes must be submitted to the Governor’s Office for review, and state agencies may not adopt a rule or rule change unless the Governor’s Office determines that it complies with current statutory criteria related to agency rulemaking authority.

Legislative review. State agencies must submit a list of economic impact rules to the General Assembly, the Office of Legislative Legal Services (OLLS), and the Secretary of State’s Office. An economic impact rule does not take effect if a prior review committee decides whether to conduct a review of the bill. A rule not selected by a prior review committee takes effect on the 22nd day of the legislative session. For a rule selected by a prior review committee, the agency must submit relevant records and the committee must consider whether the rule satisfies current statutory criteria related to the agency’s rulemaking authority and the need for the rule. No later than 64 days after the start of the legislative session, a committee may:

- vote to let the rule take effect immediately or upon a later date;
- vote to void the rule because it exceeds the agency’s rulemaking authority or fails to meet statutory criteria; or
- not take action. If no action is taken, the rule is deemed effective on the 65th day of the session.

A prior review committee is:

- the first assigned committee of reference for the bill that established the agency’s duty to promulgate rules, if the agency’s duty was established in legislation; or
- the applicable committee of reference for each department’s SMART Act hearings.

Exemptions. The General Assembly may exempt in statute an economic impact rule from the prior review process. Temporary or emergency rules are not subject to an economic impact determination or prior review process.

Background

Under current law, OLLS and state agencies use specified criteria in statute to review rules. This bill also applies these criteria to the new processes for the review of rules by the Governor Office and prior review committees. Current law criteria for reviewing rules include whether:

- rules are within an agency’s statutory authorization;
- rules are not deemed to be within statutory authorization just because the rule doesn’t conflict with state law;
- the record of the rulemaking demonstrates the need for the regulation;
- to the extent practicable, the rules are clearly and simply stated;
- the rules do not conflict with other sections of law; and
- any duplicative or overlapping rules are explained by the agency proposing the rule.

State Revenue

The bill may increase state revenue from business filing fees to the Department of State Cash Fund by a minimal amount to cover the additional expenditures required by the bill. Filing fees are subject to TABOR. Any change in fees will occur through regular fee setting processes.

State Expenditures

The bill increases state expenditures by \$713,525 in FY 2022-23 and \$701,108 in FY 2023-24 in the Governor’s Office, Secretary of State’s Office, and Department of Law. Workload will also increase for all state agencies. Costs are listed in Table 2 and discussed further below.

**Table 2
 Expenditures Under HB22-1128**

Cost Components	FY 2022-23	FY 2023-24
Secretary of State		
Personal Services	\$7,949	\$4,770
Operating Expenses	\$0	\$0
Capital Outlay Costs	\$0	\$0
Computer Programming	\$46,080	\$0
Centrally Appropriated Costs ¹	\$2,715	\$1,429
FTE – Personal Services	0.2 FTE	0.1 FTE
Dept. Subtotal	\$56,744	\$6,199
Governor's Office		
Personal Services	\$127,323	\$169,764
Operating Expenses	\$1,755	\$2,025
Capital Outlay Costs	\$12,400	\$0
Centrally Appropriated Costs ¹	\$22,453	\$30,270
FTE – Personal Services	1.1 FTE	1.5 FTE
Dept. Subtotal	\$163,931	\$202,059

**Table 2
 Expenditures Under HB22-1128 (Cont.)**

Department of Law		
Legal Services	\$492,850	\$492,850
FTE – Legal Services	2.8 FTE	2.8 FTE
Dept. Subtotal	\$492,850	\$492,850
Total	\$713,525	\$701,108
Total FTE	4.1 FTE	4.4 FTE

¹ Centrally appropriated costs are not included in the bill's appropriation.

Secretary of State. The bill increases expenditures for the Secretary of State’s Office to modify the Code of Colorado Regulations filing system to accommodate the new processes. One-time computer costs are expected to require 384 hours at a rate of \$120 per hour. The Secretary of State’s Office also requires 0.2 FTE in FY 2022-23 and 0.1 FTE in subsequent years to update rulemaking materials and monitor changes to the rulemaking processes. Costs are prorated for a September start date, and paid out of the Department of State Cash Fund.

Governor’s Office. The Governor’s Office requires 1.5 FTE to review each new rule or rule change for compliance with the statutory criteria discussed in the background section. An average of 200 rules are expected per year. The FTE is prorated for a September start date and the General Fund paydate shift in FY 2022-23.

Department of Law. The Department of Law requires 5,000 hours of legal services, to be split between state agencies as needed to support the rulemaking process and identification of economic impact rules. Legal services are provided at a rate of \$98.57 per hour. The required hours are the equivalent of 2.8 FTE. It is not known how these additional legal hours will be used among different state agencies, although the departments of Regulatory Agencies, Revenue, Public Health and Environment, Local Affairs, and Natural Resources are likely to use the bulk of the hours.

All state agencies. The bill increases workload for state agencies to identify economic impact rules and incorporate the analysis and prior review process into the rulemaking process. The fiscal note assumes that initial workload associated with the new process will be incorporated in the current rulemaking processes. Should agencies require additional resources, it will be requested through the annual budget process. Some agencies are more likely to have a significant number of economic impact rules, and thus, have a more significant workload and potential cost increase. These agencies include the departments of Regulatory Agencies, Revenue, Public Health and Environment, Natural Resources, and Local Affairs.

Legislative Department. The bill will increase workload for OLLS to review the economic impact rules for compliance with statutory criteria, as well as to support the prior review committees, potentially including written memoranda and presentations to the committees. The workload increase will depend on the number and timing of the economic impact rules. The number of economic impact rules that a committee will take up is unknown. OLLS will initially absorb the additional workload; this assumes that the workload for the new rules will be spread throughout the year. However, should the number of rules exceed capacity, or should the rules be submitted entirely in November through January, OLLS will request additional resources through the budget process.

The bill will also increase workload by a minimal amount for Legislative Council Staff to staff any additional committee hearings to consider economic impact rules. The fiscal note assumes that there will be no change in legislative meeting or per diem costs. No changes in appropriations are required.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are shown in Table 2.

Other Budget Impacts

General Fund reserve. Under current law, an amount equal to 15 percent of General Fund appropriations must be set aside in the General Fund statutory reserve beginning in FY 2022-23. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve by \$95,149 in FY 2022-23 and \$99,696 in FY 2023-24, which will decrease the amount of General Fund available for other purposes.

Effective Date

The bill was postponed indefinitely by the House State, Civic, Veterans, and Military Affairs Committee on February 7, 2022.

State Appropriations

In FY 2022-23, the bill requires the follow appropriations:

- \$141,478 from the General Fund to the Governor's Office, and 1.1 FTE;
- \$492,850 from the General Fund to the Department of Law, and 2.8 FTE;
- \$54,029 from the Department of State Cash Fund to the Secretary of State's Office, and 0.2 FTE.

Departmental Difference

The Colorado Department of Public Health and Environment estimates that the bill will increase department expenditures by \$2.6 million and 16.8 FTE beginning in FY 2022-23. Staff increases are in the Air Pollution Control, Water Quality Control, Hazardous Materials and Waste Management, Disease Control and Public Health Response, and Health Facilities and Emergency Medical Services

divisions to prepare economic impact analyses, support additional meetings of boards with rulemaking authority, and coordinate with the Governor's Office and legislature. Costs also include 9,800 legal services hours provided by the Department of Law.

The fiscal note does not include these costs for several reasons. First, the fiscal note assumes that the determination of whether a rule is an economic impact rule and coordination with the legislature will be built into current rulemaking processes and will not require additional rulemaking hearings, or staff time at the level the department estimated. In addition, the current rulemaking process already includes a process for interested parties to request an economic analysis of proposed rules; it is assumed that this detailed work could occur under current law, even with the addition of the economic impact rule determination under this bill. Additionally, the fiscal note includes additional legal services, to be used by CDPHE or other agencies that require them, although at a lower level than estimated by the department.

Given these assumptions and other uncertainty about the number of rules and reviews required, the fiscal note assumes that agencies should request additional resources through the budget process if costs and workload are higher than assumed in this fiscal note.

State and Local Government Contacts

All State Agencies