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MEMORANDUM

TO: Interested Persons

FROM: Office of Legislative Legal Services

DATE: February 16, 2024

SUBJECT: Explanation of H.B. 24-1227, the Rule Review Bill

Explanation of the Rule Review Process

Since 1976, executive agencies have been required by section 24-4-103 (8)(d), C.R.S., of the State Administrative Procedure Act (APA) to submit their rules to the General Assembly for review.

Under section 24-4-103 (8)(c)(I)(A), C.R.S., all rules adopted or amended during any one-year period that begins each November 1 and continues through the following October 31 expire on the May 15 that follows the one-year period, unless the General Assembly by bill acts to postpone the expiration.

Every newly adopted or amended rule is submitted by the adopting agency to the Office of Legislative Legal Services, where the rule is reviewed to determine whether the rule is within the agency's rule-making authority and consistent with law. If the Office finds a possible problem with a rule, and if the Office is unable to resolve the problem with the agency, the Office prepares a memorandum on the issue and presents the issue to the Committee on Legal Services after notice to the affected agency. At the committee hearing, an attorney with the Office explains why the rule lacks statutory authority or conflicts with the law and argues that the rule should not be extended beyond the May 15 expiration date. The committee gives the affected agency an opportunity to respond and gives members of the public or other interested parties an opportunity to speak on the issue. After hearing all the testimony and asking questions,

the committee then takes a vote to determine whether the rule should be extended beyond the May 15 expiration date.

Each year, the committee sponsors a bill (the annual rule review bill) that extends the rules adopted or amended during the previous year (i.e., those rules scheduled to expire on May 15); except that the bill specifically allows the expiration of those rules that the committee voted not to extend beyond the May 15 expiration date. H.B. 24-1227 is the committee's annual rule review bill for 2024.

Explanation of H.B. 24-1227

The following is an explanation of the rules not extended by H.B. 24-1227:

Rules of the Executive Director, Department of Revenue, concerning Wildfire Mitigation Measures Subtraction, 1 CCR 201-2, Rule 39-22-104 (4)(n.5) (LLS Docket No. 230340; SOS Tracking No. 2023-00106) and concerning Wildfire Mitigation Measures Credit, 1 CCR 201-2, Rule 39-22-543 (LLS Docket No. 230354; SOS Tracking No. 2023-00120).

Staff: Megan McCall

Explanation:

Section 39-22-104 (4)(n.5), C.R.S., allows a landowner to subtract an amount from the landowner's federal taxable income for the purpose of determining the state taxable income for income tax years through 2025 for costs incurred in performing wildfire mitigation measures on the landowner's real property (subtraction), and section 39-22-543, C.R.S., allows a landowner an income tax credit (credit) against the landowner's state income taxes for costs incurred by the landowner for performing wildfire mitigation measures. Sections 39-22-104 (4)(n.5) and 39-22-543, C.R.S., do not require that a landowner incur costs primarily for wildfire mitigation measures to claim the subtraction or the credit, but Rules 39-22-104 (4)(n.5) (2) and (3) and 39-22-543 (2) and (3) conflict with statute because they require that a cost eligible for the subtraction or credit must be paid by the landowner primarily for wildfire mitigation measures and require that any cost must be for property or services primarily used for wildfire mitigation measures.

Agency position: The agency did not contest the staff recommendation not to extend the rule.

Rules of the State Board of Education, Colorado Department of Education, concerning rules for the development, expansion, implementation, and

management of the regional service areas, 1 CCR 301-76 (LLS Docket No. 230187; SOS Tracking No. 2023-00028).

Staff: Alana Rosen

Explanation:

Section 22-5.5-105 (2)(a), C.R.S., requires that a minimum of five members be appointed to a regional service council to administer the plan for a regional service area; except that, for regional service councils initially formed or reorganized on or after August 5, 2009, section 22-5.5-105 (2)(a), C.R.S., requires a minimum of six members to be appointed to a regional service council. Rule 2.01(2) conflicts with statute because it only requires a minimum of five members to be appointed to the regional service council.

Section 22-5.5-105 (2)(a)(IV), C.R.S., requires membership for regional service councils initially formed or reorganized on or after August 5, 2009, to include one council member who is a parent of a student enrolled in a public preschool, elementary, secondary, or postsecondary institution located within the regional service area, but the state board's Rule 2.01(2)(d) conflicts with statute because it does not include these parents as part of the council membership.

Agency position: The agency did not contest the staff recommendation not to extend the rule.