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LLS NO. 13-0135.01 Debbie Haskins x2045

SUNSET BILL

Sunset Process - Senate Business, Labor, and Technology Committee

SHORT TITLE: "Sunset Cost-benefit Analysis Of State Rules"

DEADLINES: Finalize by: 23 JAN 2013 File by: 25 JAN 2013

A BILL FOR AN ACT

101 **CONCERNING THE CONTINUATION OF THE PREPARATION OF**
102 **COST-BENEFIT ANALYSIS OF PROPOSED RULES OF EXECUTIVE**
103 **BRANCH AGENCIES, AND, IN CONNECTION THEREWITH,**
104 **IMPLEMENTING THE RECOMMENDATIONS OF THE 2012 SUNSET**
105 **REPORT OF THE DEPARTMENT OF REGULATORY AGENCIES.**

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://www.leg.state.co.us/billsummaries>.)

Sunset Process - Senate Business, Labor, and Technology

*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

Committee. The bill implements the recommendations of the sunset review and report on the requirements and procedures regarding the preparation of a cost-benefit analysis of proposed rules of state agencies, which recommended that the cost-benefit analysis of proposed rules be continued with modifications.

Under current law, an agency proposing rules pursuant to the "State Administrative Procedure Act" (APA) submits a draft of the proposed rules to the executive director of the department of regulatory agencies (DORA) who then determines whether proposed rules may have a negative impact on economic competitiveness or on small business and directs the agency to perform a cost-benefit analysis. The bill shifts the responsibility for deciding whether an agency needs to conduct a cost-benefit analysis of proposed rules from the executive director of DORA to the agency that is proposing rules. If an agency determines that the proposed rules have a significant negative impact on small business, job creation, or economic competitiveness, then the agency must prepare a cost-benefit analysis.

Under current law, the executive director of DORA decides whether a cost-benefit analysis is necessary no later than 20 days prior to the rule-making hearing, and the agency must complete the analysis and submit it to DORA no later than 5 days prior to the hearing, thereby limiting stakeholder input. The bill requires that the agency prepare the cost-benefit analysis prior to issuing the notice of rule-making. The bill requires the agency to submit the cost-benefit analysis and the draft of the proposed rules at the same time that the agency files the notice of rule-making with the secretary of state, thereby providing stakeholders and the public with the cost-benefit analysis and the proposed rules at an earlier time in the rule-making process.

The agency determines the proper methods for the cost-benefit analysis and may consult with representative groups regarding the cost-benefit analysis.

Under current law, a separate section of the APA provides the opportunity for any person, at least 15 days prior to the hearing, to request that the agency prepare a regulatory analysis of a proposed rule, which must be made available to the public at least 5 days prior to the rule-making hearing. The bill requires that the agency prepare a regulatory analysis for proposed rules that do not have a significant impact on small business, job creation, or economic competitiveness and for which the agency is not preparing a cost-benefit analysis. The bill requires that the agency prepare the regulatory analysis prior to issuing the notice of rule-making and to submit the regulatory analysis and the draft of the proposed rules at the same time that the agency files the notice of rule-making with the secretary of state.

The agency is not required to prepare a cost-benefit analysis or a regulatory analysis for proposed rules that implement specific

requirements of legislation enacted by the general assembly or that implement requirements of federal law or federal rules.

The bill repeals the requirement that the preparation of the cost-benefit analysis be reviewed in the future through the sunset process.

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

2 **SECTION 1.** In Colorado Revised Statutes, 24-4-102, **add** (17.5)

3 as follows:

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

6 (17.5) "SIGNIFICANT IMPACT" MEANS A MAJOR NEGATIVE EFFECT
7 ON SMALL BUSINESS, JOB CREATION, OR ECONOMIC COMPETITIVENESS.

8 "SIGNIFICANT IMPACT" MEANS/INCLUDES PROPOSED RULES THAT:

9 <*The report recommends that the general assembly define "significant*
10 *impact". How does the committee want to define this term for purposes*
11 *of triggering whether a cost-benefit analysis is prepared?*>

12 **SECTION 2.** In Colorado Revised Statutes, 24-4-103, **amend** (2),
13 (2.5), (3) (a), (4) (a), (4.5), and (8.1) (b) (V) as follows:

14 **24-4-103. Rule-making - procedure - definitions.** (2) When
15 rule-making is contemplated, public announcement thereof may be made
16 at such time and in such manner as the agency determines. The agency
17 shall establish a representative group of participants with an interest in the
18 subject of the rule-making to submit views or otherwise participate
19 informally in conferences on the proposals under consideration,
20 INCLUDING PROVIDING INPUT ON THE METHOD FOR PREPARING A
21 COST-BENEFIT ANALYSIS OF PROPOSED RULES, or to participate in the
22 public rule-making proceedings on the proposed rules. In establishing the
23 representative group, the agency shall make diligent attempts to solicit

1 input from representatives of each of the various stakeholder interests that
2 may be affected positively or negatively by the proposed rules. If the
3 agency convenes a representative group prior to issuing a notice of
4 proposed rule-making as provided in paragraph (a) of subsection (3) of
5 this section, the agency shall add those persons who participated in the
6 representative group to the list of persons who receive notification of
7 proposed rule-making as provided in paragraph (b) of subsection (3) of
8 this section.

9 (2.5) (a) ~~At the time of filing a notice of proposed rule-making~~
10 ~~with the secretary of state as the secretary may require, an agency shall~~
11 ~~submit a draft of the proposed rule or the proposed amendment to an~~
12 ~~existing rule and a statement, in plain language, concerning the subject~~
13 ~~matter or purpose of the proposed rule or amendment to the office of the~~
14 ~~executive director in the department of regulatory agencies. PRIOR TO~~
15 ~~FILING THE NOTICE OF PROPOSED RULE-MAKING WITH THE SECRETARY OF~~
16 ~~STATE, the executive director OF THE RULE-MAKING AGENCY, or his or her~~
17 ~~designee, may~~ SHALL determine if the proposed rule or amendment may
18 have a ~~negative~~ SIGNIFICANT impact ~~on economic competitiveness or on~~
19 ~~small business, JOB CREATION, OR ECONOMIC COMPETITIVENESS in~~
20 ~~Colorado. If the executive director, or his or her designee, determines that~~
21 ~~the proposed rule or amendment may have such negative~~ A SIGNIFICANT
22 impact, ~~he or she may direct the submitting agency to~~ SHALL perform a
23 cost-benefit analysis of the rule or amendment. ~~If the executive director,~~
24 ~~or his or her designee, makes such a request, it shall be made at least~~
25 ~~twenty days before the date of the hearing on the rule or amendment. The~~
26 ~~agency receiving such request shall complete a cost-benefit analysis at~~
27 ~~least five days before the hearing on the rule or amendment, shall make~~

1 ~~the analysis available to the public, and shall submit a copy to the~~
2 ~~executive director or his or her designee.~~ THE AGENCY SHALL DETERMINE
3 THE PROPER METHOD TO ANALYZE AND ASSESS THE COSTS AND BENEFITS
4 OF THE PROPOSED RULE OR AMENDMENT AND MAY <*does the committee*
5 *want to require that the agency convene a representative group?*>
6 CONSULT WITH A REPRESENTATIVE GROUP REGARDING THE METHOD FOR
7 THE COST-BENEFIT ANALYSIS. Failure to complete a ~~requested~~ cost-benefit
8 analysis pursuant to this subsection (2.5) shall preclude the adoption of
9 such rule or amendment. Such cost-benefit analysis shall include the
10 following:

11 (I) The ~~reason~~ REASONS AND THE NEED for the rule or amendment;

12 (II) The anticipated economic benefits of the rule or amendment,
13 which shall include economic growth, the creation of new jobs, and
14 increased economic competitiveness;

15 (III) The anticipated costs of the rule or amendment, which shall
16 include the direct costs to the government to administer the rule or
17 amendment and the direct and indirect costs to business and other entities
18 required to comply with the rule or amendment;

19 (IV) Any adverse effects on the economy, consumers, private
20 markets, small businesses, job creation, and economic competitiveness;

21 ~~and~~

22 (V) At least two alternatives to the proposed rule or amendment
23 that can be identified by the submitting agency or a member of the public,
24 including the costs and benefits of pursuing each of the alternatives
25 identified;

26 <*does the committee want to add other requirements to the cost-benefit*
27 *analysis as discussed in the report on p. 21-23?*>

1 (b) ~~The executive director, or his or her designee, shall study the~~
2 ~~cost-benefit analysis and may urge the agency to revise the rule or~~
3 ~~amendment to eliminate or reduce the negative economic impact. The~~
4 ~~executive director, or his or her designee, may inform the public about the~~
5 ~~negative impact of the proposed rule or the proposed amendment to an~~
6 ~~existing rule.~~

7 (c) Any proprietary information provided to the department of
8 revenue by a business or trade association for the purpose of preparing a
9 cost-benefit analysis shall be confidential.

10 (d) If the agency has made a good faith effort to comply with the
11 requirements of paragraph (a) of this subsection (2.5), the rule or
12 amendment shall not be invalidated on the ground that the contents of the
13 cost-benefit analysis are insufficient or inaccurate.

14 (e) This subsection (2.5) shall not apply to orders, licenses,
15 permits, adjudication, or rules affecting the direct reimbursement of
16 vendors or providers with state funds. THIS SUBSECTION (2.5) SHALL NOT
17 APPLY TO RULES THAT IMPLEMENT SPECIFIC REQUIREMENTS OF
18 LEGISLATION ENACTED BY THE GENERAL ASSEMBLY OR THAT IMPLEMENT
19 MANDATES OR REQUIREMENTS OF FEDERAL LAW OR FEDERAL RULES.

20 (f) (I) ~~This subsection (2.5) is repealed, effective July 1, 2013.~~
21 (II) ~~Prior to such repeal, the provisions regarding the preparation~~
22 ~~of a cost-benefit analysis pursuant to this subsection (2.5) shall be~~
23 ~~reviewed as provided for in section 24-34-104, C.R.S.~~

24 (3) (a) Notice of proposed rule-making shall be published as
25 provided in subsection (11) of this section and shall state the time, place,
26 and nature of public rule-making proceedings that shall not be held less
27 than twenty days after such publication, the authority under which the rule

1 is proposed, and either the terms or the substance of the proposed rule or
2 a description of the subjects and issues involved. IF THE AGENCY HAS
3 PREPARED EITHER A COST-BENEFIT ANALYSIS OR A REGULATORY ANALYSIS
4 FOR A PROPOSED RULE OR PROPOSED AMENDMENT TO AN EXISTING RULE,
5 AS REQUIRED BY SUBSECTION (2.5) OR (4.5) OF THIS SECTION, THE AGENCY
6 SHALL SUBMIT THE COST-BENEFIT ANALYSIS OR THE REGULATORY
7 ANALYSIS TO THE SECRETARY OF STATE AND THE DRAFT OF THE PROPOSED
8 RULE OR THE PROPOSED AMENDMENT TO THE EXISTING RULE WHEN IT
9 FILES THE NOTICE OF PROPOSED RULE-MAKING WITH THE SECRETARY OF
10 STATE.

11 (4) (a) At the place and time stated in the notice, the agency shall
12 hold a public hearing at which it shall afford interested persons an
13 opportunity to submit written data, views, or arguments and to present the
14 same orally unless the agency deems it unnecessary. The agency shall
15 consider all such submissions. Any proposed rule or revised proposed rule
16 by an agency which is to be considered at the public hearing, together
17 with a proposed statement of basis, specific statutory authority, purpose,
18 and THE COST-BENEFIT ANALYSIS, IF ONE WAS PREPARED, AS REQUIRED IN
19 SUBSECTION (2.5) OF THIS SECTION, OR the regulatory analysis, IF ONE WAS
20 PREPARED, AS required in subsection (4.5) of this section, shall be made
21 available to any person at least five days prior to said hearing. The rules
22 promulgated by the agency shall be based on the record, which shall
23 consist of proposed rules, evidence, exhibits, and other matters presented
24 or considered, matters officially noticed, rulings on exceptions, any
25 findings of fact and conclusions of law proposed by any party, and any
26 written comments or briefs filed.

27 (4.5) (a) ~~Upon request of any person, at least fifteen days prior to~~

1 ~~the hearing~~; PRIOR TO FILING A NOTICE OF PROPOSED RULE-MAKING WITH
2 THE SECRETARY OF STATE, the agency shall issue a regulatory analysis of
3 a proposed rule THAT THE AGENCY HAS DETERMINED DOES NOT HAVE A
4 SIGNIFICANT IMPACT ON SMALL BUSINESS, JOB CREATION, OR ECONOMIC
5 COMPETITIVENESS AND FOR WHICH THE AGENCY IS NOT PREPARING A
6 COST-BENEFIT ANALYSIS. The regulatory analysis shall contain:

7 (I) A description of the classes of persons who will be affected by
8 the proposed rule, including classes that will bear the costs of the
9 proposed rule and classes that will benefit from the proposed rule;

10 (II) To the extent practicable, a description of the probable
11 quantitative and qualitative impact of the proposed rule, economic or
12 otherwise, upon affected classes of persons;

13 (III) The probable costs to the agency and to any other agency of
14 the implementation and enforcement of the proposed rule and any
15 anticipated effect on state revenues;

16 (IV) A comparison of the probable costs and benefits of the
17 proposed rule to the probable costs and benefits of inaction;

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

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

23 (b) Each regulatory analysis shall include quantification of the
24 data to the extent practicable and shall take account of both short-term
25 and long-term consequences.

26 (c) ~~The regulatory analysis shall be available to the public at least~~
27 ~~five days prior to the rule-making hearing.~~

1 (d) If the agency has made a good faith effort to comply with the
2 requirements of paragraphs (a) ~~to (c)~~ AND (b) of this subsection (4.5), the
3 rule shall not be invalidated on the ground that the contents of the
4 regulatory analysis are insufficient or inaccurate.

5 (e) Nothing in paragraphs (a) ~~to (c)~~ AND (b) of this subsection
6 (4.5) shall limit an agency's discretionary authority to adopt or amend
7 rules.

8 (f) ~~The provisions of~~ This subsection (4.5) shall not apply to rules
9 ~~and regulations~~ promulgated by the department of revenue regarding the
10 administration of any tax which is within the authority of said department.

11 (g) THIS SUBSECTION (4.5) SHALL NOT APPLY TO RULES THAT
12 IMPLEMENT SPECIFIC REQUIREMENTS OF LEGISLATION ENACTED BY THE
13 GENERAL ASSEMBLY OR THAT IMPLEMENT MANDATES OR REQUIREMENTS
14 OF FEDERAL LAW OR FEDERAL RULES.

15 (8.1) (b) The agency rule-making record shall contain:

16 (V) A copy of any regulatory analysis or cost-benefit analysis
17 prepared for the proceeding upon which the rule was based, if applicable;
18 ~~and any formal statement made to the agency promulgating the rule by~~
19 ~~the executive director of the department of regulatory agencies regarding~~
20 ~~such cost-benefit analysis;~~

21 **SECTION 3.** In Colorado Revised Statutes, 24-34-104, **repeal**
22 (44) (o) as follows:

23 **24-34-104. General assembly review of regulatory agencies**
24 **and functions for termination, continuation, or reestablishment.**

25 (44) The following agencies, functions, or both, shall terminate on July
26 1, 2013:

27 (o) ~~The requirements and procedures regarding the preparation of~~

1 ~~a cost-benefit analysis in accordance with section 24-4-103 (2.5);~~

2 **SECTION 4. Effective date.** This act takes effect July 1, 2013.

3 **SECTION 5. Safety clause.** The general assembly hereby finds,
4 determines, and declares that this act is necessary for the immediate
5 preservation of the public peace, health, and safety.