

*Colorado Legislative Council Staff Fiscal Note*

**STATE  
FISCAL IMPACT**

**Note:** This fiscal note is provided pursuant to Joint Rule 22 (b) (2) and reflects strike-below Amendment L.002.

<b>Drafting Number:</b> LLS 15-0232	<b>Date:</b> February 17, 2015
<b>Prime Sponsor(s):</b> Rep. Klingenschmitt	<b>Bill Status:</b> House SVMA
	<b>Fiscal Analyst:</b> Alex Schatz (303-866-4375)

**BILL TOPIC:** PERIODIC LEGISLATIVE REVIEW EXECUTIVE BRANCH RULES

<b>Fiscal Impact Summary*</b>	<b>FY 2015-2016</b>	<b>FY 2016-2017</b>
<b>State Revenue</b>		
<b>State Expenditures</b>	<b>\$59,000</b>	Workload increase. See State Expenditures section.
General Fund	59,000	
<b>FTE Position Change</b>		
<b>Appropriation Required:</b> \$59,000 - Multiple departments (FY 2015-16)		

\* This summary shows changes from current law under the bill for each fiscal year.

**Summary of Legislation**

Under current law, the Department of Regulatory Agencies (DORA) must establish a schedule for the review of the existing administrative rules of each principal department. This review must consider eight different statutory criteria and, at the discretion of the principal department, may result in the continuation, amendment, or repeal of rules based on the review.

**With strike-below Amendment L.002**, this bill replaces DORA's schedule for review with a detailed timeline, to be set by each principal department in an initial report to the Committee on Legal Services (COLS) and the applicable legislative committees of reference. Departmental schedules for the review of existing administrative rules are confined to a four-year period of review between 2015 and 2019. A department must revise its rules to reflect the results of its review.

The initial report of each principal department is a written product due by October 1, 2015, and must include:

- a list of all rules to be reviewed, organized by their citation in the Code of Colorado Regulations (CCR), and stating the topic of each citation and the year in which it will be reviewed;
- the current statutory authority for each citation;
- identification of any future expiration or sunset date affecting departmental rules; and
- the costs, as expressed in full-time equivalent employees (FTE), for the department to enforce each CCR citation.

Each principal department must submit a written progress report to the COLS and committees of reference by October 1 of each year between 2016 and 2018. The progress report includes the status of rules review, a list of any rules modified as a result of review, and any change in the department's review schedule.

By October 1, 2019, principal departments must conclude their review of existing administrative rules and submit a final written report to the COLS and committees of reference. The final report lists all departmental rules by CCR citation and whether rules were revised, unrevised, or eliminated.

**Background**

**The Code of Colorado Regulations.** Administrative rules promulgated in accordance with the state Administrative Procedures Act (APA) are compiled in the CCR. In total, the CCR encompasses 40 bound volumes. The rules of principal departments account for over 39 of these volumes, though the rules of other agencies, such as the Public Employees Retirement Association (PERA), are also subject to the APA and compiled in the CCR. Rules vary widely in length and complexity. The number of rules promulgated by the various principal departments and other state agencies subject to the APA also varies widely. As illustrated in Table 1, agencies with a broad regulatory mission, such as the Colorado Department of Public Health and Environment (CDPHE), generally expend the most effort promulgating and reviewing administrative rules.

<b>Department</b>	<b>Estimated number of sections of rules*</b>	<b>Estimated number of CCR volumes*</b>
Agriculture	53	1.0
Corrections	1	0.1
Education	75	1.0
Health Care Policy & Financing	3	2.0
Higher Education	8	0.5
Human Services	35	3.5
Labor & Employment	20	2.0
Law	6	0.3
Local Affairs	15	0.4
Military & Veterans Affairs	1	0.1
Natural Resources	54	2.0
Personnel & Administration	19	1.3
Public Health & Environment	116	14.0
Public Safety	28	0.5
Regulatory Agencies	124	6.5
Revenue	49	3.0
State	11	0.1
Transportation	26	1.0
Treasury	2	0.1
<b>Total</b>	<b>646</b>	<b>39.4</b>

\* The estimated numbers of sections of rules and number of CCR volumes for each principal department are based on an estimate provided by the OLLS. This estimate does not include repealed rules with residual citations in the CCR.

***The APA and legislative rules review.*** Under current law, administrative rules must be statutorily authorized, not in excess of an agency's statutory authority, and not contrary to other provisions of Colorado statute. All proposed rules since 1967 have been submitted to the state Attorney General for an opinion on the legality of each new rule. Since 1976, the Office of Legislative Legal Services (OLLS) has reviewed all new or amended rules once, in the first year after rules are promulgated. The result of the OLLS review process is the annual rules review bill. Under current law, a rule that lacks statutory authority or is in conflict with other statute is disapproved by bill and allowed to expire. The rules review bill indefinitely extends the effective date of rules not found to violate statutory criteria.

***The APA and executive branch rules review.*** Senate Bill 14-063 amended the APA to require each principal department to establish, in cooperation with DORA, a schedule for the review of existing administrative rules. This review applies eight new statutory criteria but is generally aligned with activities already taking place in the executive branch due to an executive order issued by the Governor in 2012. Executive Order D2012-002 remains in effect until rescinded or superceded by a future executive order. The OLLS has not experienced a substantial increase in the number of new or amended rules submitted for review in the legislative rules review process since the executive branch began its systematic review of existing administrative rules in 2012.

## **State Expenditures**

For all principal departments, production of an initial report increases workload. In four principal departments, the increase in workload requires one-time temporary professional assistance, increasing state expenditures by a total of **\$59,000 in FY 2015-16**. The bill generally increases workload in principal departments for the four-year review period of all administrative rules between 2015 and 2019. The bill may also result in a consequential increase in the workload of the OLLS and the Judicial Department. Beyond FY 2015-16, most impacts of the bill are expected to be minimal, and resources required for any significant increase in workload will be addressed in the annual budget process.

***Assumptions.*** The fiscal note makes the following assumptions in its analysis of the bill's impact on state expenditures:

- The bill applies only to the 19 principal departments of the executive branch, as defined in state law. The effect of the bill on each department is determined by various factors, including the number of rules in each department, the subject matter and complexity of rules, the status of those rules with respect to legislative and executive branch rules review processes, and the resources currently available for rulemaking functions and APA compliance within each department.
- Additional personal services to prepare the initial report, as required, will be provided by temporary staff, at a contract rate of \$50 per hour.
- As a result of the Attorney General's review since 1967 and OLLS legislative rules review since 1976, existing administrative rules are assumed to have an adequate legal basis. Any rules with issues identified by the principal department in its rules review will be within the discretion of the principal department to revise or maintain in their current form.

**Principal departments—Initial report.** Completion of the initial report by October 1, 2015, will increase the workload of all principal departments with existing administrative rules subject to the APA. Each principal department must develop a timeline to complete of all rules and compile a list of those rules, with applicable statutory authority and an estimate of FTE dedicated to enforcement. For many departments, this effort is minimal, as rules directly address statute, enforcement resources are regimented according to specific rules, or other reasons substantially limit the amount of analysis required to complete the initial report.

For certain principal departments, a significant amount of analysis is required to complete the initial report. For each citation in the CCR, these departments will spend multiple hours to identify all applicable statutes and estimate the allocation of departmental resources to rules enforcement. Because the initial report must be prepared in the first three months of FY 2015-16, existing personnel will require assistance. For these departments, the estimated number of hours of temporary professional assistance required, at an estimated contractual rate of \$50 per hour, is summarized in Table 2.

<b>Department</b>	<b>Hours</b>	<b>Cost (at \$50/hour)</b>
Human Services	180	\$9,000
Personnel & Administration	100	5,000
Public Health & Environment	720	36,000
Revenue	180	9,000
<b>Total</b>	<b>1,180</b>	<b>\$59,000</b>

To prepare the initial report, principal departments may also employ legal services provided by the Department of Law, particularly to identify current statutory authority for each citation in the CCR. However, program staff in each department are expected to be familiar with enabling legislation, and legal services will be used to confirm and augment the work of departmental staff. Departments will reallocate their existing budget for legal services as required.

**Principal departments—Progress reports and final report.** For FY 2016-17 through FY 2019-20, the workload of each principal department will increase by a minimal amount to complete a progress report to legislative committees by October 1 of 2016, 2017, and 2018, and a final report by October 1, 2019. The information contained in these reports is collected as an ongoing part of the department's review of its rules. No change in appropriations is required for these reports.

**Principal departments—Revision and repromulgation of rules.** Throughout the four-year review period established by the bill, an agency may find that a rule, or multiple rules, do not satisfy criteria in the executive branch rules review criteria established in statute by SB 14-063. In this event, the department will revise or eliminate the rule or rules. To the extent that new rulemaking is required to revise a rule or replace an eliminated rule, the principal department will incur costs to draft the rule, notify interested parties, engage stakeholders, hold hearings, and employ legal counsel.

Revision and repromulgation of rules occurs only after review and is expected to be coordinated with other departmental rulemaking late in FY 2015-16 and in future fiscal year. New resources will be required only to the extent that revision and repromulgation affects large numbers of rules. The bill does not require new appropriations for this purpose in FY 2015-16, and any future need for resources will be addressed in the annual budget process.

**Office of Legislative Legal Services.** Workload in the legislative rules review process managed by the OLLS will increase to the extent that the bill prompts principal departments to revise and repromulgate rules. The overall impact of the bill on legislative rules review is expected to be minimal, and will occur only after rules are reviewed in accordance with the schedule submitted for initial review. Any appreciable workload increase in the OLLS will occur in FY 2016-17 or future fiscal years, but is not anticipated to require new appropriations.

**Judicial Department.** By amending the APA, the bill creates new procedures subject to judicial review. For example, a party may object that a principal department did not adhere to the bill's directive that the department "shall revise its rules" in circumstances where the agency did not believe its review warranted revision. On the other hand, to the extent that the bill prompts an agency to revise its rules, these new rules would also be subject to judicial review under the APA. Overall, the bill is expected to increase appeals to the courts under the APA by a minimal amount, with no need for new appropriations.

### **Effective Date**

The bill takes effect August 5, 2015, if the General Assembly adjourns on May 6, 2015, as scheduled, and no referendum petition is filed.

### **State Appropriations**

For FY 2015-16, the bill requires appropriations totaling \$59,000 from the General Fund to multiple agencies, as follows:

- \$9,000 to the Department of Human Services;
- \$5,000 to the Department of Personnel and Administration;
- \$36,000 to the Department of Public Health and Environment; and
- \$9,000 to the Department of Revenue.

### **Departmental Differences**

The fiscal note provides resources where implementation of the bill results in a demonstrated need for a principal department to supplement existing staff. Several principal departments estimated a higher level of need, as summarized in Table 3 for FY 2015-16. Differing estimates of fiscal impact also affect FY 2016-17 and future fiscal years.

Department	Departmental estimate		Fiscal note estimate		Difference	
	Cost	Hours*	Cost	Hours*	Cost	Hours
Human Services	\$72,057	2,080	\$9,000	180	\$63,057	1,900
Personnel & Administration	31,624	890	5,000	100	26,624	790
Public Health & Environment	61,008	1,314	36,000	720	25,008	594
Public Safety	195,407	5,824	0	0	195,407	5,824
Revenue	62,507	1,960	9,000	180	53,507	1,780
<b>Total Difference</b>					<b>\$363,603</b>	<b>10,888</b>

\* Estimated impacts are expressed in hours for the purposes of comparison. The estimates submitted by principal departments have been converted into hours where expressed as FTE. The cost estimate for principal departments also includes legal costs if included in the department's analysis of the bill.

Various assumptions used by the principal departments listed in Table 3 account for different estimates of the bill's fiscal impact. Assumptions that caused significant differences, and the reason they were not adopted in the fiscal note, are highlighted below.

- Departmental assumption:** For the initial report, the principal department will develop an accurate estimate of FTE allocated to the enforcement of each citation in the CCR.

**Fiscal note response:** The bill requires an approximate annual cost in FTE, not a detailed cost-accounting model. The fiscal note assumes that the annual budget process already provides a reasonable starting point for total FTE to be divided, or in some cases shared, amongst CCR citations.
- Departmental assumption:** The department will present the initial report to multiple legislative committees, requiring preparation, attendance, and follow-up to questions from the committees.

**Fiscal note response:** Each principal department prepares and submits a written report, limited to the information required by the bill. No other interaction is required with legislative committees as part of the bill.
- Departmental assumption:** Repeal and repromulgation of rules generates extensive workload and requires new training for personnel involved in the rulemaking process.

**Fiscal note response:** The bill does not require extensive revision of existing rules or significant changes in the rulemaking process. Principal departments that find sufficient reason to undertake rulemaking as a result of the bill may seek additional resources in the annual budget process of future fiscal years.

Table 3 is a comparison of the fiscal note and the specific principal departments that identified a need for appropriations. Should the General Assembly consider providing resources above the level provided in the fiscal note, it should be noted that additional resources may be warranted in additional principal departments, such as the Department of Regulatory Agencies (DORA) and the Department of Labor and Employment (CDLE). Such departments, with a substantial volume of existing administrative rules, experience a significant demand on existing resources under the bill. If the General Assembly desires to avoid or mitigate impacts to existing resources, further analysis of the needs of DORA, CDLE, and similarly situated principal departments should be undertaken.

**State and Local Government Contacts**

All Departments  
Legislative Council Staff

Office of Legislative Legal Services