NOTE: This bill has been prepared for the signature of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

An Act

SENATE BILL 03-121

BY SENATOR(S) McElhany, Cairns, Johnson S., Jones, Lamborn, May R., and Teck;
also REPRESENTATIVE(S) Williams T., Brophy, Crane, Lee, and Mitchell.

CONCERNING THE PREPARATION OF A COST-BENEFIT ANALYSIS OF RULES PROPOSED FOR ADOPTION BY STATE AGENCIES UNDER THE "STATE ADMINISTRATIVE PROCEDURE ACT" TO DETERMINE THE IMPACT OF THE PROPOSED RULES ON THE STATE'S ECONOMY.

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

SECTION 1. 24-4-101.5, Colorado Revised Statutes, is amended to read:

24-4-101.5. Legislative declaration. The general assembly finds that an agency should not regulate or restrict the freedom of any person to conduct his OR HER affairs, use his OR HER property, or deal with others on mutually agreeable terms unless it finds, after a full consideration of the effects of the agency action, that the action would benefit the public interest and encourage the benefits of a free enterprise system for the citizens of this

---

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

state. The general assembly also finds that many government programs may be adopted without stating the direct and indirect costs to consumers AND BUSINESSES and without consideration of such costs in relation to the benefits to be derived from the programs. The general assembly further recognizes that agency action taken without evaluation of its economic impact may have unintended effects, which may include barriers to competition, reduced economic efficiency, reduced consumer choice, increased producer and consumer costs, and restrictions on employment. THE GENERAL ASSEMBLY FURTHER FINDS THAT AGENCY RULES CAN NEGATIVELY IMPACT THE STATE'S BUSINESS CLIMATE BY IMPEDING THE ABILITY OF LOCAL BUSINESSES TO COMPETE WITH OUT-OF-STATE BUSINESSES, BY DISCOURAGING NEW OR EXISTING BUSINESSES FROM MOVING TO THIS STATE, AND BY HINDERING ECONOMIC COMPETITIVENESS AND JOB CREATION. Accordingly, it is the continuing responsibility of agencies to analyze the economic impact of agency actions and reevaluate the economic impact of continuing agency actions to determine whether the actions promote the public interest.

SECTION 2. 24-4-102, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

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

(5.5) "ECONOMIC COMPETITIVENESS" MEANS THE ABILITY OF THE STATE OF COLORADO TO ATTRACT NEW BUSINESS AND THE ABILITY OF THE BUSINESSES CURRENTLY OPERATING IN COLORADO TO CREATE NEW JOBS AND RAISE PRODUCTIVITY.

(18) "SMALL BUSINESS" MEANS A BUSINESS WITH FEWER THAN FIVE HUNDRED EMPLOYEES.

SECTION 3. 24-4-103 (6), (8.1) (b) (V), and (11) (b), Colorado Revised Statutes, are amended, and the said 24-4-103 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

24-4-103. Rule-making - procedure - repeal. (2.5) (a) AT THE TIME OF FILING A NOTICE OF PROPOSED RULE-MAKING WITH THE SECRETARY OF STATE AS THE SECRETARY MAY REQUIRE, AN AGENCY SHALL SUBMIT A DRAFT OF THE PROPOSED RULE OR THE PROPOSED AMENDMENT TO AN

EXISTING RULE TO THE OFFICE OF THE EXECUTIVE DIRECTOR IN THE DEPARTMENT OF REGULATORY AGENCIES. THE EXECUTIVE DIRECTOR, OR HIS OR HER DESIGNEE, MAY DETERMINE IF THE PROPOSED RULE OR AMENDMENT MAY HAVE A NEGATIVE IMPACT ON ECONOMIC COMPETITIVENESS OR ON SMALL BUSINESS IN COLORADO. IF THE EXECUTIVE DIRECTOR, OR HIS OR HER DESIGNEE, DETERMINES THAT THE PROPOSED RULE OR AMENDMENT MAY HAVE SUCH NEGATIVE IMPACT, HE OR SHE MAY DIRECT THE SUBMITTING AGENCY TO PERFORM A COST-BENEFIT ANALYSIS OF THE RULE OR AMENDMENT. IF THE EXECUTIVE DIRECTOR, OR HIS OR HER DESIGNEE, MAKES SUCH A REQUEST, IT SHALL BE MADE AT LEAST TWENTY DAYS BEFORE THE DATE OF THE HEARING ON THE RULE OR AMENDMENT. THE AGENCY RECEIVING SUCH REQUEST SHALL COMPLETE A COST-BENEFIT ANALYSIS AT LEAST FIVE DAYS BEFORE THE HEARING ON THE RULE OR AMENDMENT, SHALL MAKE THE ANALYSIS AVAILABLE TO THE PUBLIC, AND SHALL SUBMIT A COPY TO THE EXECUTIVE DIRECTOR OR HIS OR HER DESIGNEE. FAILURE TO COMPLETE A REQUESTED COST-BENEFIT ANALYSIS PURSUANT TO THIS SUBSECTION (2.5) SHALL PRECLUDE THE ADOPTION OF SUCH RULE OR AMENDMENT. SUCH COST-BENEFIT ANALYSIS SHALL INCLUDE THE FOLLOWING:

(I) THE REASON FOR THE RULE OR AMENDMENT;

(II) THE ANTICIPATED ECONOMIC BENEFITS OF THE RULE OR AMENDMENT, WHICH SHALL INCLUDE ECONOMIC GROWTH, THE CREATION OF NEW JOBS, AND INCREASED ECONOMIC COMPETITIVENESS;

(III) THE ANTICIPATED COSTS OF THE RULE OR AMENDMENT, WHICH SHALL INCLUDE THE DIRECT COSTS TO THE GOVERNMENT TO ADMINISTER THE RULE OR AMENDMENT AND THE DIRECT AND INDIRECT COSTS TO BUSINESS AND OTHER ENTITIES REQUIRED TO COMPLY WITH THE RULE OR AMENDMENT;

(IV) ANY ADVERSE EFFECTS ON THE ECONOMY, CONSUMERS, PRIVATE MARKETS, SMALL BUSINESSES, JOB CREATION, AND ECONOMIC COMPETITIVENESS; AND

(V) AT LEAST TWO ALTERNATIVES TO THE PROPOSED RULE OR AMENDMENT THAT CAN BE IDENTIFIED BY THE SUBMITTING AGENCY OR A MEMBER OF THE PUBLIC, INCLUDING THE COSTS AND BENEFITS OF PURSUING EACH OF THE ALTERNATIVES IDENTIFIED.

(b) THE EXECUTIVE DIRECTOR, OR HIS OR HER DESIGNEE, SHALL

STUDY THE COST-BENEFIT ANALYSIS AND MAY URGE THE AGENCY TO REVISE THE RULE OR AMENDMENT TO ELIMINATE OR REDUCE THE NEGATIVE ECONOMIC IMPACT. THE EXECUTIVE DIRECTOR, OR HIS OR HER DESIGNEE, MAY INFORM THE PUBLIC ABOUT THE NEGATIVE IMPACT OF THE PROPOSED RULE OR THE PROPOSED AMENDMENT TO AN EXISTING RULE.

(c) ANY PROPRIETARY INFORMATION PROVIDED TO THE DEPARTMENT OF REVENUE BY A BUSINESS OR TRADE ASSOCIATION FOR THE PURPOSE OF PREPARING A COST-BENEFIT ANALYSIS SHALL BE CONFIDENTIAL.

(d) IF THE AGENCY HAS MADE A GOOD FAITH EFFORT TO COMPLY WITH THE REQUIREMENTS OF PARAGRAPH (a) OF THIS SUBSECTION (2.5), THE RULE OR AMENDMENT SHALL NOT BE INVALIDATED ON THE GROUND THAT THE CONTENTS OF THE COST-BENEFIT ANALYSIS ARE INSUFFICIENT OR INACCURATE.

(e) THIS SUBSECTION (2.5) SHALL NOT APPLY TO ORDERS, LICENSES, PERMITS, ADJUDICATION, OR RULES AFFECTING THE DIRECT REIMBURSEMENT OF VENDORS OR PROVIDERS WITH STATE FUNDS.

(f) (I) THIS SUBSECTION (2.5) IS REPEALED, EFFECTIVE JULY 1, 2006.

(II) PRIOR TO SUCH REPEAL, THE PROVISIONS REGARDING THE PREPARATION OF A COST-BENEFIT ANALYSIS PURSUANT TO THIS SUBSECTION (2.5) SHALL BE REVIEWED AS PROVIDED FOR IN SECTION 24-34-104, C.R.S.

(6) A temporary or emergency rule may be adopted without compliance with the procedures prescribed in subsection (4) of this section and with less than the twenty days' notice prescribed in subsection (3) of this section (or where circumstances imperatively require, without notice) only if the agency finds that immediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for the preservation of public health, safety, or welfare and compliance with the requirements of this section would be contrary to the public interest and makes such a finding on the record. Such findings and a statement of the reasons for the action shall be published with the rule. A TEMPORARY OR EMERGENCY RULE MAY BE ADOPTED WITHOUT COMPLIANCE WITH SUBSECTION (2.5) OF THIS SECTION, BUT SHALL NOT BECOME PERMANENT WITHOUT COMPLIANCE WITH SUCH SUBSECTION (2.5). A temporary or emergency rule shall become effective on adoption or on such later date as is stated in the rule, shall be published promptly, and shall have effect for

not more than three months from the adoption thereof or for such shorter period as may be specifically provided by the statute governing such agency, unless made permanent by compliance with subsections (3) and (4) of this section. The period of effectiveness provided by this subsection (6) does not apply to temporary or emergency rules adopted by the public utilities commission under section 40-2-108 (2), C.R.S.

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

(V) A copy of any regulatory analysis OR COST-BENEFIT ANALYSIS prepared for the proceeding upon which the rule was based, if applicable, AND ANY FORMAL STATEMENT MADE TO THE AGENCY PROMULGATING THE RULE BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REGULATORY AGENCIES REGARDING SUCH COST-BENEFIT ANALYSIS;

(11) (b) The secretary of state shall cause to be published in electronic form and may cause to be published in printed form, at the least cost possible to the state, the code of Colorado regulations and the Colorado register no less often than once each calendar month and shall make all diligent effort to enter into a publication agreement to such effect for a period not to exceed five years, but such agreement may include a renewal provision for additional periods not to exceed five years each. THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OR HIS OR HER DESIGNEE MAY WORK WITH THE SECRETARY OF STATE TO MAKE THE CODE OF COLORADO REGULATIONS AND THE COLORADO REGISTER AVAILABLE TO THE PUBLIC IN AN ELECTRONIC FORMAT THAT IS ACCESSIBLE AND USER-FRIENDLY.

SECTION 4. 24-34-104 (37), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (37) The following agencies, functions, or both, shall terminate on July 1, 2006:

(f) THE REQUIREMENTS AND PROCEDURES REGARDING THE PREPARATION OF A COST-BENEFIT ANALYSIS IN ACCORDANCE WITH SECTION 24-4-103 (2.5).

SECTION 5. Effective date - applicability. (1) This act shall take

effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to rules proposed by an

agency as defined by section 24-4-102 (3), Colorado Revised Statutes, on or after the applicable effective date of this act.

John Andrews PRESIDENT OF THE SENATE	Lola Spradley SPEAKER OF THE HOUSE OF REPRESENTATIVES
Mona Heustis SECRETARY OF THE SENATE	Judith Rodrigue CHIEF CLERK OF THE HOUSE OF REPRESENTATIVES

APPROVED_____

Bill Owens
GOVERNOR OF THE STATE OF COLORADO