



**Colorado
Legislative
Council
Staff**

SB17-186

**FINAL
FISCAL NOTE**

FISCAL IMPACT: State Local Statutory Public Entity Conditional No Fiscal Impact

| | |
|-------------------------------------|--|
| Drafting Number: LLS 17-0869 | Date: June 20, 2017 |
| Prime Sponsor(s): Sen. Tate | Bill Status: Postponed Indefinitely |
| Rep. Carver; Lawrence | Fiscal Analyst: Anna Gerstle (303-866-4375) |

BILL TOPIC: REDUCE REGULATORY BURDEN RULES ON BUSINESSES

| Fiscal Impact Summary | FY 2017-2018 | FY 2018-2019 |
|---|------------------|------------------|
| State Revenue | \$470,726 | \$475,246 |
| Cash Funds | 470,726 | 475,246 |
| State Expenditures | \$658,321 | \$682,745 |
| General Fund | 135,971 | 148,593 |
| Cash Funds | 386,211 | 384,958 |
| Centrally Appropriated Costs | 136,139 | 149,194 |
| FTE Position Change | 5.9 FTE | 6.5 FTE |
| Appropriation Required: \$522,182 - Multiple departments (FY 2017-18). | | |
| Future Year Impacts: Ongoing revenue and expenditure increase. | | |

NOTE: This bill was not enacted into law; therefore, the impacts identified in this analysis do not take effect.

Summary of Legislation

The bill makes changes to state law related to the adoption of rules by state agencies that impact small businesses.

Regulatory flexibility analyses. The bill requires that prior to the adoption of any rule, a state agency must prepare a regulatory flexibility analysis aimed at minimizing the impact of the rule on small businesses. For the purposes of the regulatory flexibility analyses, the bill defines a small business as one that is independently owned and employs 100 employees or fewer. The flexibility analysis must:

- consider less stringent compliance or reporting requirements, schedules, and deadlines; performance standards for small businesses; exemptions of small businesses from all or any of the proposed requirements; and whether less burdensome rules may be applied to small businesses;
- determine the necessity of proposed rules, including a finding that rules are necessary based on state or federal law, a court ruling, public health and safety, or requests by the regulated community;

- determine the fiscal impact of the proposed rules on small businesses; and
- identify least costly alternatives to the proposed rules.

If the proposed rule is adopted, the agency must adopt the least costly alternative and any exemptions or less burdensome rules identified in the flexibility analysis, unless the agency provides written justification. The regulatory flexibility analysis must be made available five days prior to a public hearing, and must be filed with the Secretary of State's Office (SOS) at the same time as the notice of proposed rulemaking and the proposed rules.

If a small business is adversely affected by an action of an agency, or not satisfied with the flexibility analysis, the business may file a request with the Department of Regulatory Agencies (DORA) for the agency to prepare a cost-benefit analysis. The executive director of DORA must decide whether to require a cost-benefit analysis and may adjust the rulemaking schedule accordingly.

Outreach. Under current law, agencies must convene a representative stakeholder group to participate in public rulemaking hearings and submit views on the proposals. The bill requires state agencies proposing rules that likely impact small businesses to actively solicit representatives of small businesses to participate in the stakeholder groups, as well as to expand outreach and notification to small businesses that may not be represented by a trade association or lobbyist. The bill requires that DORA maintain a website that includes the regulatory flexibility analyses.

Definitions. Under the Administrative Procedures Act (APA), a small business is defined as a business with fewer than 500 employees. The bill modifies the definition in the APA to mean a business entity that is independently owned and operated, employs fewer than 500 employees, and has gross annual sales of less than \$6 million. This definition does not apply to the required regulatory flexibility analyses.

Background

Rulemaking. Under current law, administrative rules are promulgated in accordance with the APA. When an agency wants to promulgate a new rule or amend an existing rule, it must first file a "Notice of Proposed Rulemaking" with the SOS, which publishes a public notice in the Colorado Register. Once the notice is filed with the SOS, the public is allowed to offer comments on the proposed rule, and may request a cost-benefit analysis. Agencies must accept and consider comments from the public before the agency can adopt, amend, or otherwise change any regulation not explicitly exempted from the APA. Following a hearing on a proposed rule, the agency has 180 days to file adopted rules with the SOS. Table 1 shows the number of rules promulgated in 2015 and 2016 by department.

| Department | 2015 | 2016 |
|----------------------------------|-------------|-------------|
| Agriculture | 6 | 18 |
| Corrections | 0 | 0 |
| Education | 21 | 18 |
| Health Care Policy and Financing | 21 | 18 |
| Higher Education | 1 | 1 |
| Human Services | 27 | 46 |

| Table 1. Rules Promulgated by Department in 2015 and 2016 * (Cont.) | | |
|--|--------------|--------------|
| Department | 2015 | 2016 |
| Labor and Employment | 10 | 13 |
| Law | 1 | 1 |
| Local Affairs | 64 | 59 |
| Military Affairs | 0 | 0 |
| Natural Resources | 37 | 41 |
| Personnel and Administration | 9 | 1 |
| Public Health & Environment | 57 | 65 |
| Public Safety | 12 | 8 |
| Regulatory Agencies | 123 | 71 |
| Revenue | 71 | 79 |
| State | 6 | 3 |
| Transportation | 6 | 1 |
| Treasury | 0 | 0 |
| TOTAL | 2,487 | 2,459 |

* Rule review years go from November 1 to November 1.

State Revenue

The bill increases state cash fund revenue to DORA, SOS, and the Department of Revenue (DOR) by \$470,726 in FY 2017-18 and \$475,246 in FY 2018-19. The bill will increase revenue to various cash funds in these departments to cover the increased direct and indirect cash-funded costs as a result of the bill.

State Expenditures

The bill increases state expenditures by \$658,321 in FY 2017-18 and \$682,745 in FY 2018-19 for several state agencies. Costs are listed by department in Table 2 for FY 2017-18 and Table 3 for FY 2018-19 and discussed below.

| Table 2. Expenditures Under SB17-186 in FY 2017-18 | | | | | | |
|---|--------------------------|------------|--------------------------------|--------------------|--------------------------------|------------------|
| Department | Personal Services | FTE | Capital & Operating | Other Costs | Centrally Appropriated* | Total |
| Public Health and Environment | \$88,019 | 1.1 | \$5,748 | - | \$40,730 | \$134,497 |
| Public Safety | 3,776 | 0.1 | - | - | 1,646 | 5,422 |
| Personnel and Administration | 5,586 | 0.1 | - | - | 1,327 | 6,914 |
| Regulatory Agencies | 75,063 | 0.8 | 5,463 | 6,400 | 13,240 | 100,166 |
| Revenue | 301,464 | 3.8 | 22,422 | | 79,196 | 403,082 |
| Secretary of State | - | - | - | 8,240 | - | 8,240 |
| TOTAL | \$473,908 | 5.9 | \$33,633 | \$14,640 | \$136,139 | \$658,321 |

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

| Table 3. Expenditures Under SB17-186 in FY 2018-19 | | | | | | |
|---|--------------------------|------------|--------------------------------|--------------------|--------------------------------|------------------|
| Department | Personal Services | FTE | Capital & Operating | Other Costs | Centrally Appropriated* | Total |
| Public Health and Environment | 105,624 | 1.3 | 1,235 | - | 47,272 | 154,131 |
| Public Safety | 4,532 | 0.1 | - | - | 1,802 | 6,334 |
| Personnel and Administration | 6,703 | 0.1 | - | - | 1,429 | 8,132 |
| Regulatory Agencies | 81,887 | 0.9 | 805 | - | 14,662 | 97,354 |
| Revenue | 328,870 | 4.1 | 3,895 | - | 84,029 | 416,794 |
| TOTAL | \$527,616 | 6.5 | \$5,935 | \$0 | \$149,194 | \$682,745 |

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

Assumptions. The bill requires that a regulatory flexibility analysis be performed for all proposed rules. The fiscal note assumes that the analyses of rules that do not impact small businesses can be accomplished within existing appropriations. For rules that do impact small businesses, the fiscal note assumes between 13 and 50 hours per rule are required, depending on the department. FY 2017-18 costs have been prorated to assume an August 1 start date and the General Fund paydate shift.

In addition, the fiscal note assumes that additional expenditures required to conduct a cost-benefit analysis requested by a small business will be initially accomplished within existing appropriations. Cost-benefit analyses can be requested under current law, so any change is expected to be minimal. Should an agency require additional resources, the affected agencies will request them through the annual budget process.

Public Health and Environment. CDPHE requires 1.1 FTE in FY 2017-18 and 1.3 FTE in FY 2018-19, paid from the General Fund, to conduct substantial regulatory flexibility analyses of 57 rules per year.

Public Safety. The Department of Public Safety requires 0.1 FTE, paid from the General Fund, to conduct substantial regulatory flexibility analyses of six rules per year beginning in FY 2017-18.

Personnel and Administration. The Department of Personnel and Administration requires 0.1 FTE, paid from the General Fund, to conduct regulatory flexibility analyses of six rules per year beginning in FY 2017-18.

Regulatory Agencies. DORA requires 0.8 FTE in FY 2017-18 and 0.9 FTE in FY 2018-19 to conduct substantial regulatory flexibility analyses of 94 rules per year and accept requests by aggrieved small businesses for cost-benefit analyses. In addition, DORA requires \$6,400 to establish a one-stop website for all regulatory flexibility analyses in FY 2017-18. Expenditures are from various cash funds within the divisions of real estate, insurance, professions and occupations, and securities in DORA.

Revenue. The DOR requires 3.8 FTE in FY 2017-18 and 4.1 FTE in FY 2018-19 to conduct substantial regulatory flexibility analyses on 349 rules. Rules made by the Enforcement Business Group (EBG) and Tax Division are the most heavily impacted and require an average of 28 hours and 13 hours per rule, respectively. Of the expenditures, \$291,044 are from the EBG Administration Cash Fund, and \$32,842 are from the General Fund.

Secretary of State. The bill increases expenditures in the SOS by \$8,240 in FY 2017-18 to modify the administrative rules online filing system to allow an agency to attach the regulatory flexibility analysis and to publish the analysis in the Colorado Register. The expenditure is funded by the SOS Cash Fund. The fiscal note assumes 80 hours of computer programming at a rate of \$103 per hour. Additional workload to conduct outreach to small businesses and complete the regulatory flexibility analysis for SOS rules can be accomplished within existing appropriations.

Department of Law. The bill may increase the legal services required by state agencies to conduct rulemaking. The workload is expected to be initially accomplished within existing appropriations. Should individual agencies require additional legal services, they will request them through the annual budget process.

All state agencies — outreach. The bill increases the workload for state agencies to conduct additional outreach to small businesses. The fiscal note assumes that targeting small businesses that are not otherwise represented by trade organizations or lobbyists will be incorporated into each agency's existing outreach and stakeholder process. The workload is expected to be accomplished within existing appropriations.

Minimally impacted state agencies. With the exception of the departments discussed above, the bill increases the workload for all other state agencies to complete regulatory flexibility analyses during the rulemaking process. The increase is expected to be accomplished within existing appropriations; however, should any agency require additional resources, they will request them through the annual budget process.

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. Leased space is included to show the incremental impact of the additional FTE to the DOR, and calculated at a rate of 200 square feet per FTE at a rate of \$27 per square foot. Centrally appropriated costs also include indirect costs for CDPHE and the Department of Public Safety. The centrally appropriated costs subject to this policy are estimated in the fiscal note for informational purposes and summarized in Table 4.

| Cost Components | FY 2017-18 | FY 2018-19 |
|--|-------------------|-------------------|
| Employee Insurance (Health, Life, Dental, and Short-term Disability) | \$47,193 | \$52,011 |
| Supplemental Employee Retirement Payments | 42,465 | 47,277 |
| Indirect Costs (CDPHE, DPS) | 24,341 | 27,766 |
| Leased Space (DOR) | 22,140 | 22,140 |
| TOTAL | \$136,139 | \$149,194 |

Effective Date

The bill was postponed indefinitely by the House Business Affairs and Labor Committee on April 27, 2017.

State Appropriations

Consistent with this fiscal note, the bill includes the following appropriations for FY 2017-18:

- \$3,776 from General Fund and an allocation of 0.1 FTE to the Department of Public Safety;
- \$5,586 from General Fund and an allocation of 0.1 FTE to the Department of Personnel and Administration;
- \$323,886 and an allocation of 3.8 FTE to the Department of Revenue, of which \$291,044 is from Enforcement Business Group Administration Cash Fund, and \$32,842 is from the General Fund;
- \$86,926 from various cash funds and an allocation of 0.8 FTE to the Department of Regulatory Agencies;
- \$8,240 from Secretary of State Cash Fund to the Secretary of State's Office; and
- \$102,664 from the General Fund and an allocation of 1.2 FTE to the Department of Public Health and Environment. However, in accordance with this fiscal note, CDPHE requires an appropriation of \$93,767 from the General Fund and an allocation of 1.1 FTE.

Departmental Difference

CDPHE estimates that the bill will increase department expenditures by \$275,347 and 1.8 FTE in FY 2017-18 and \$263,544 and 1.8 FTE in FY 2018-19. This estimate assumes that: CDPHE will spend 75 hours per rule to conduct cost-benefit analyses on 18 rules per year; division director costs to review regulatory flexibility analyses; a July 1, 2017 start date; and a midrange salary for the requested staff. However, the fiscal note assumes a minimum salary for the required staff positions, no additional costs for division directors, an August 2017 start date consistent with the bill's effective date, and that cost-benefit analyses are conducted under current law and thus, any increase in requests for these analyses will be minimal and does not require additional appropriations. State revenue and expenditures are calculated based on these assumptions.

State and Local Government Contacts

All State Agencies