Committee on Energy & Environment.

After consideration on the merits, the Committee recommends the following:

HB20-1143 be amended as follows, and as so amended, be referred to the Committee on Finance with favorable recommendation:

Amend printed bill, page 5, line 11, after the period add "FOR ACCOUNTING PURPOSES, EACH PENALTY AND FINE CREDITED TO THE FUND PURSUANT TO THIS SECTION IS A DAMAGE AWARD.".

Page 6, line 3, strike "THREE" and substitute "FIVE".

Page 6, line 5, strike "ONE" and substitute "AT LEAST THREE".

Page 7, strike lines 12 through 27.

Strike page 8.

Page 9, strike lines 1 through 3 and substitute:

"(4) **Powers and duties of the board.** (a) The board has the following powers and duties:

(I) To advise the department on the identification of environmental justice communities;

(II) To recommend to the department EMPs in response to violations that occur in, or directly affect residents or workers in, environmental justice communities;

(III) To develop procedures for soliciting for, evaluating, and recommending EMPs that address environmental violations in environmental justice communities, including eligibility requirements. The procedures must:
(A) Specify EMP criteria in accordance with subsection (5)(d) of this section, including for when it may be appropriate to combine penalties from multiple case settlements into one solicitation;

(B) Include processes for: Notifying each environmental justice community that was affected by the violation or will be affected by the proposed EMP; soliciting feedback from residents of, workers in, and representatives of those communities; and holding a public hearing at which the public has an opportunity to comment on the proposed EMP; and

(C) Include public engagement best practices and consideration of community input received and a process for collaborating with impacted communities when soliciting for EMP proposals;

(IV) To submit an annual report to the commission with a summary of the board’s actions, including a description of all EMPs recommended during the previous year; and

(V) To make recommendations, as requested by the ombudsperson, to advance the department’s efforts in incorporating principles of environmental justice.

(b) (I) The board shall not be involved in an enforcement matter until the department notifies the board that the department has resolved the matter.

(II) The board shall use its best efforts to recommend EMPs within one hundred eighty days after notification by the department that an enforcement matter has been resolved with fines that will be paid into the fund.

(c) This subsection (4) is repealed, effective September 1, 2025. Before the repeal, the functions of the board are scheduled for review in accordance with section 2-3-1203.

(5) Environmental mitigation projects. (a) The department shall use money in the fund to pay for EMPs.

(b) For violations that occurred in or directly affected an environmental justice community, the department shall consider EMPs recommended by the board that benefit the impacted community.

(c) For violations that did not occur in or directly affect an environmental justice community, the department shall award EMPs in accordance with subsection (5)(d) of this section and shall:

(I) (A) Seek public comment on an EMP that the
DEPARTMENT INTENDS TO AWARD BY POSTING A SUMMARY OF THE EMP ON THE DEPARTMENT'S WEBSITE IN A FORMAT THAT ALLOWS THE PUBLIC TO SUBMIT COMMENTS; AND

(B) NOT APPROVE AN EMP UNTIL AT LEAST THIRTY DAYS AFTER THE EMP HAS BEEN POSTED ON THE DEPARTMENT'S WEBSITE; AND

(II) PREPARE AN ANNUAL REPORT TO THE COMMISSION REGARDING THE DEPARTMENT'S USE OF THE FUND THAT INCLUDES A DESCRIPTION OF ALL DEPARTMENT-APPROVED EMPS.

(d) IN CONSULTATION WITH THE BOARD, THE DEPARTMENT SHALL DEVELOP CRITERIA TO GUIDE IT IN MAKING DECISIONS CONCERNING THE AWARDING OF EMPS. THE CRITERIA MAY INCLUDE:

(I) THE NEEDS OF THE COMMUNITY WHERE THE VIOLATION OCCURRED;

(II) COMMUNITY SUPPORT FOR THE PROPOSED EMP;

(III) THE FEASIBILITY OF SUCCESSFUL IMPLEMENTATION OF THE PROPOSED EMP;

(IV) THE NEXUS OF THE EMP TO THE VIOLATION; AND

(V) THE ENVIRONMENTAL AND PUBLIC HEALTH BENEFITS RESULTING FROM THE IMPLEMENTATION OF THE EMP.

Renumber succeeding subsection accordingly.

Page 10, line 4, after "(1.7)(a)(IV)," insert "(1.7)(c),".

Page 11, line 5, strike "STANDARDS" and substitute "CRITERIA".

Page 11, line 6, strike "(4)." and substitute "(5).".

Page 11, after line 6 insert:

"(c) The commission shall promulgate rules as may be necessary to administer this subsection (1.7), including but not limited to, rules defining who is eligible for grants and what criteria shall be used in awarding grants; EXCEPT THAT THE COMMISSION NEED NOT PROMULGATE RULES TO ADMINISTER SUBSECTION (1.7)(a)(V) OF THIS SECTION. Any rules shall be promulgated in accordance with article 4 of title 24. C.R.S.".

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