



Legislative
Council Staff

Nonpartisan Services for Colorado's Legislature

HB 20-1143

REVISED FISCAL NOTE

(replaces fiscal note dated March 25, 2020)

Drafting Number:	LLS 20-0275	Date:	June 3, 2020
Prime Sponsors:	Rep. Jackson; Gonzales-Gutierrez Sen. Winter	Bill Status:	House Second Reading
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Bill Topic: ENVIRONMENTAL JUSTICE & PROJECTS INCREASE ENVIRONMENTAL FINES

Summary of Fiscal Impact:	<input checked="" type="checkbox"/> State Revenue	<input type="checkbox"/> TABOR Refund
	<input checked="" type="checkbox"/> State Expenditure	<input checked="" type="checkbox"/> Local Government
	<input type="checkbox"/> State Diversion	<input type="checkbox"/> Statutory Public Entity

The bill increases the maximum per day civil fine for air and water quality violations, and increases criminal penalties for the pollution of state waters. Further, the bill gives jurisdiction in these criminal matters to district attorneys and the Attorney General upon receipt of a complaint. The bill increases state revenue on an ongoing basis, and may increase state and local government workload.

Appropriation Summary: No appropriation is required.

Fiscal Note Status: This revised fiscal note reflects the introduced bill, as amended by the House Energy and Environment Committee, House Finance Committee, and House Appropriations Committee.

**Table 1
State Fiscal Impacts Under HB 20-1143**

		FY 2020-21	FY 2021-22	FY 2022-23
Revenue	Cash Funds	\$537,479	\$1,506,978	\$2,938,678
Expenditures		-	-	
Transfers		-	-	
TABOR Refund		-	-	

Summary of Legislation

This bill raises the maximum civil and criminal penalties that can be levied for environmental violations as described below.

Civil penalties. The bill increases the maximum per day civil penalty for air and water quality violations in Colorado that can be sought by the Department of Public Health and Environment (CDPHE). The maximum per day penalty for air quality violations is increased from \$15,000 to \$47,357, and the maximum per day penalty for water quality violations is increased from \$10,000 to \$54,833. The maximum civil penalty for air and water quality violations will also be adjusted annually for inflation. Revenue from air quality violations is deposited into the General Fund, and revenue from water quality violations is deposited into the Water Quality Improvement Fund (WQIF). The bill extends the repeal date for the WQIF to September 1, 2025.

Criminal penalties. The bill also increases penalties on a person who commits criminal pollution of state waters as follows. For a violation committed:

- *with criminal negligence or recklessly*, the violator is guilty of an unclassified misdemeanor punishable by a maximum fine of \$25,000 per day for each day the violation occurs, imprisonment of up to 1 year, or both — increased from the current maximum daily fine of \$12,500; and
- *knowingly or intentionally*, the violator is guilty of a class 5 felony punishable by a maximum fine of \$50,000 per day for each day the violation occurs, imprisonment of up to 3 years, or both — increased from the current daily maximum fine of \$25,000.

Further, the bill increases penalties for a person who knowingly makes any false representation in a required record or who knowingly renders inaccurate any required water quality monitoring device or method commits a misdemeanor. The current penalty is a maximum fine of \$10,000, imprisonment in the county jail for not more than 6 months, or both. Under the proposed amendment, this offense and penalty are increased to a class 5 felony punishable by a maximum fine of \$100,000, imprisonment from a minimum of 1 year to a maximum of 3 years with a mandatory 2-year parole period. If a person commits two separate offenses in two separate occurrences within a period of two years, the maximum fine and imprisonment for the second offense are double the default amounts.

Finally, the bill requires prosecution under these criminal statutes to be commenced upon request, by either the CDPHE or a peace officer, to either the Attorney General or district attorney in the district where the alleged violation occurred.

Comparable Crime Analysis

Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or changes an element of an existing crime. This section outlines data on crimes comparable to the offense in this bill and discusses assumptions on future rates of criminal conviction for those offense.

Prior conviction data and assumptions. This bill reclassifies the existing fine penalties for offenses of criminal water pollution and falsification or tampering of water records or devices to an unclassified misdemeanor or a class 5 felony. In the past 10 years, there have been 3 prosecutions under these statutes. Demographic data is unknown.

Assumptions

The bill increases the maximum daily fine for air and water quality violations by approximately 320 percent and 550 percent, respectively. However, due to lags in implementation and agency discretion, this fiscal note assumes that fine revenue will increase incrementally over the next three years. Additionally, some portion of fines will be assessed at rates below the maximum allowable fine due to mitigating circumstances. Therefore, fine revenue is assumed to increase by 10 percent in FY 2020-21, 50 percent in FY 2021-22, and 100 percent in FY 2022-23. Additionally, due to the required inflation adjustment for these fines, it is assumed that the maximum allowable fine will increase by 2.7 percent each year for the next 3 years.

State Revenue and Expenditures

The bill will increase state revenue and workload beginning in FY 2020-21, as discussed below.

Civil penalties. The bill will increase revenue from civil fines by \$537,479 in FY 2020-21, \$1,506,978 in FY 2021-22, and \$2,938,678 in FY 2022-23, as shown in Table 2 below. Revenue is expected to level off in FY 2022-23 as the increased fines are fully phased in.

Table 2
Revenue Under HB 20-1143

	FY 2020-21	FY 2021-22	FY 2022-23
Air Quality Violation Fines	\$377,764	\$841,396	\$1,640,762
Water Quality Violation Fines	\$159,715	\$665,582	\$1,297,916
Total Revenue	\$537,479	\$1,506,978	\$2,938,678

Criminal penalties. This analysis assumes that there will be a minimal increase in criminal case filings as a result of the proposed amendment, some of which may be prosecuted by the Attorney General. Any increase in fines credited to the General Fund and court fees are expected to be minimal. Similarly, potential workload increases for the Department of Law, the Judicial Department, the Division of Probation, agencies that provide representation to indigent persons, and the Department of Corrections require no change in appropriations. If there are more cases than anticipated by this memo, these costs will be addressed through the annual budget process. Visit leg.colorado.gov/fiscalnotes for more information about criminal justice costs in fiscal notes.

Local Government

Similar to the state, it is expected that any workload or cost increase for district attorneys to prosecute offenses subject to the new criminal penalties created by the bill will be minimal. Similarly, the impact on county jails is expected to be minimal.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State and Local Government Contacts

Corrections
Information Technology
Natural Resources
Public Safety

Counties
Judicial
Personnel
Sheriffs

District Attorneys
Law
Public Health and Environment