



Legislative
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FISCAL NOTE

Drafting Number:	LLS 20-0814	Date:	April 2, 2020
Prime Sponsors:	Sen. Fenberg Rep. Jackson; Caraveo	Bill Status:	Senate Transportation
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Bill Topic: **ADDITIONAL RESOURCES TO PROTECT AIR QUALITY**

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 checked="" type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

This bill creates the TABOR-exempt Air Quality Enterprise in the Department of Public Health and Environment to conduct air quality modeling, monitoring, assessment, data analysis, and research, and to provide its data to fee payers and state regulators. The bill also increases revenue to the department from emissions fees to provide additional funding for improvements to air quality. The bill will increase state revenue and expenditures on an ongoing basis.

Appropriation Summary: For FY 2020-21, the bill requires an appropriation of \$60,762, increases revenue to fund appropriations in two decision items requested by the Department of Public Health and Environment, and creates a continuously appropriated cash fund. See State Appropriations section.

Fiscal Note Status: The fiscal note reflects the introduced bill.

**Table 1
State Fiscal Impacts Under SB 20-204**

		FY 2020-21	FY 2021-22
Revenue*	Cash Funds	\$1,915,943	\$2,500,029
	Total	\$1,915,943	\$2,500,029
Expenditures*	Cash Funds	\$60,762	\$60,762
	Total	\$60,762	\$60,762
	Total FTE	0.3 FTE	0.3 FTE
Transfers	General Fund	(\$60,762)	-
	Cash Funds	\$60,762	-
	Total	\$0	-
TABOR Refund		-	-

* The fiscal note does not include an estimate of the fee revenue and expenditures of the new Air Quality Enterprise, as sufficient information is not known at this time to make an estimate.

Summary of Legislation

This bill creates the TABOR-exempt Air Quality Enterprise (enterprise) in the Department of Public Health and Environment (CDPHE). The bill also increases revenue to the Air Pollution Control Division in the CDPHE from emissions fees to fund new air quality control programs.

Air Quality Enterprise. The enterprise's powers and duties are to:

- conduct air quality modeling, monitoring, assessment, data analysis, and research;
- establish and collect fees;
- allocate enterprise revenues and contract for services;
- issue revenue bonds;
- receive fees and other payments for services provided;
- engage the services of contractors, consultants, and legal counsel, for professional and technical assistance, advice, and other goods and services without regard to the state procurement code.

The bill requires a General Fund transfer to provide start-up funding for the enterprise on July 1, 2020. The enterprise is required to repay the General Fund plus interest at an annual rate of 3.0 percent by July 1, 2023. The enterprise board may seek, accept, and expend gifts, grants, and donations from private or public sources.

Enterprise fees. The bill creates the continuously appropriated Air Quality Enterprise Cash Fund. The enterprise board may set fees in an amount that reflects the value of services provided in aggregate. This includes a fee:

- per ton of air pollutant emitted by a stationary source annually;
- for custom or additional air quality modeling, monitoring, assessment, or research services; and
- for emission mitigation project services sought by fee payers.

Enterprise board. The enterprise will be governed by a seven-member board of directors. The board is required to meet at least quarterly and the appointed members are entitled to receive a \$50 per diem for each day spent attending official board meetings.

Reporting. The board is required to report to the General Assembly by December 1 of each year on the board's prioritization of research needs, enterprise accomplishments, services, revenue, expenditures, and the value of business services provided to fee payers.

Stationary source fee increase. For FY 2020-21, the bill increases fees for:

- filing an air pollutant emission notice or an amendment to the notice;
- annual emissions;
- hazardous air pollutants; and
- application processing fees.

These fees are deposited into the Stationary Sources Control Fund. The Air Quality Control Commission (AQCC) may adjust the fees going forward to cover the indirect and direct costs required to develop and administer the new air quality control programs established under the bill. Only the portion of revenue collected attributable to the increased fees may be used for new programs identified in the bill.

Background

The CDPHE has two budget decision items (R1 and BA3) for FY 2020-21 requesting appropriations of \$2.8 million and 19.9 FTE, funded from the Stationary Sources Control Fund. The fiscal note assumes that the new fee revenue to this fund under this bill will be used to fund the decision items and that the necessary appropriations will be included in the Long Bill, rather than in this bill.

State Revenue

The bill increases state cash fund revenue by at least \$1.9 million in FY 2020-21 and at least \$2.5 million in FY 2021-22. The bill specifies fee increases for FY 2020-21 and grants the AQCC the authority to increase fees in future years. The bill also authorizes the enterprise board of directors to set fees for the enterprise; however, this fee revenue has not been estimated in the fiscal note and will depend on future decisions by the new enterprise on fee and services offered.

Air Quality Enterprise. The bill grants the enterprise authority to assess fees that reflect the value of services provided. While the types of services that will be provided are described in the bill, the amount of services that may be provided is not, and will be determined by the board. As such, there is insufficient information on which to base a revenue estimate at this time. If additional information becomes available, the fiscal note will be revised.

Fee impact on pollution sources. Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. These fee amounts are set by the bill for FY 2020-21. The fees shown beginning in FY 2021-22 are estimates; actual fees will be set administratively by the CDPHE based on cash fund balance, estimated program costs, and the estimated number of entities subject to the fee. Table 2 below identifies the fee impact of this bill which are subject to TABOR.

**Table 2
 Fee Impact on Pollution Sources**

Fiscal Year	Type of Fee	Proposed Fee Increase	Number Affected	Total Fee Impact
FY 2020-21	Air pollutant emission notices	\$26.87	9,117	\$244,974
	Per ton fee for regulated pollutants	\$4.37	152,830	\$667,867
	Per ton fee for hazardous pollutants	\$26.87	5,995	\$161,086
	Per-hour permit processing fee	\$13.44	62,650	\$842,016
FY 2020-21 Total				\$1,915,943
FY 2021-22	Air pollutant emission notices	\$33.41	9,363	\$312,818
	Per ton fee for regulated pollutants	\$5.36	152,728	\$818,622
	Per ton fee for hazardous pollutants	\$33.41	5,991	\$200,159
	Per-hour permit processing fee	\$16.71	69,924	\$1,168,430
FY 2021-22 Total				\$2,500,029

State Transfers

In FY 2020-21, the bill requires a transfer from the General Fund to the new Air Quality Enterprise Cash Fund to cover the start-up expenses of the enterprise. Based on assumptions described in the State Expenditures section, this is estimated at \$60,762. Should additional information regarding start-up costs become available, this number will be revised.

State Expenditures

This bill will increase expenditures in the CDPHE by at least \$60,762 per year in FY 2020-21 and future years for administrative expenses associated with the new enterprise. In addition, expenditures will increase within the enterprise to provide services using fees charged to customers of the enterprise. As discussed in the State Revenue section, these expenditures will depend on future decisions of the enterprise board, fees collected, and other information that is unknown at this time. Impacts to the CDPHE and other state agencies are discussed below.

CDPHE. This bill will increase expenditures from the Air Quality Enterprise Cash Fund by \$60,762 for the Air Quality Enterprise in the CDPHE. The fiscal note assumes that the enterprise will require 570 hours of legal services per fiscal year at a rate of \$106.60 per hour for rulemaking and legal support. These funds will be reappropriated to the Department of Law for legal services provided to the enterprise and 0.3 FTE. Expenditure increases beyond this will be funded by enterprise revenue and continuously appropriated to the enterprise and not through the annual budget process. These expenditures are not estimated because there is insufficient information in the bill on which to base an estimate.

Other state agencies. State agencies with facilities that are permitted as pollution sources by CDPHE will have an increase in permitting fees under the bill. This increase has not been estimated for the fiscal note.

TABOR refund. Under the March 2020 LCS Economic and Revenue Forecast, the state is not expected to collect revenue above the TABOR limit in either FY 2020-21 or FY 2021-22, and refund obligations are not anticipated for these years. This bill does not change these expectations concerning refunds to taxpayers.

Local Government and School Districts

Like state government agencies, local government and school district facilities that are permitted as pollution sources by the CDPHE will have increased costs for permitting fees under the bill. This increase has not been estimated for the fiscal note.

Effective Date

The bill takes effect July 1, 2020, and applies to fees paid on or after this date.

State Appropriations

For FY 2020-21, the Department of Law requires \$60,762 and 0.3 FTE in reappropriated funds from the continuously appropriated Air Quality Enterprise Cash Fund.

The fiscal note assumes that appropriations for FY 2020-21 to fund the CDPHE decision items R1 and BA3 will be appropriated in the Long Bill and that no appropriation is required in this bill.

No appropriations are required for the new enterprise, as the Air Quality Enterprise Cash Fund is continuously appropriated to the CDPHE.

State and Local Government Contacts

Counties
Information Technology
Municipalities
Public Health and Environment

Higher Education
Law
Personnel