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Revised Fiscal Note

(replaces fiscal note dated April 7)

Drafting Number: LLS 21-0452 **Date:** April 15, 2021
Prime Sponsors: Rep. Benavidez; Valdez A. **Bill Status:** House Finance
 Sen. Gonzales; Moreno **Fiscal Analyst:** Christina Van Winkle | 303-866-6289
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Bill Topic: **REGULATE AIR TOXICS**

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

The bill adds news requirements for certain stationary sources of hazardous air pollutants, including monitoring, community outreach, and corrective actions. Beginning in FY 2021-22, the bill increases state revenue, and state and local government expenditures, on an ongoing basis.

Appropriation Summary: For FY 2021-22, the bill requires an appropriation of \$151,514 to the Department of Public Health and Environment. It also requires reappropriation of funds totaling \$296,657 to the Office of Information Technology and Department of Law.

Fiscal Note Status: The fiscal note reflects the introduced bill, as amended by the House Energy and Environment Committee. It has been updated to show the correct fund source.

Table 1
State Fiscal Impacts Under HB 21-1189

		Budget Year FY 2021-22	Out Year FY 2022-23	Out Year FY 2023-24
Revenue	Cash Funds	\$696,999	\$2,155,587	\$2,207,893
	Total Revenue	\$696,999	\$2,155,587	\$2,207,893
Expenditures	Cash Funds	\$550,267	\$1,743,921	\$1,784,591
	Centrally Appropriated	\$146,732	\$411,666	\$423,302
	Total Expenditures	\$696,999	\$2,155,587	\$2,207,893
	Total FTE	2.1 FTE	3.3 FTE	3.5 FTE
Transfers		-	-	-
TABOR Refund		-	-	-

Summary of Legislation

This bill expands the monitoring requirements for certain stationary sources of air pollutants and authorizes the Air Quality Control Commission to list additional hazardous air pollutants as covered air toxics in rule. Current law defines covered air toxics as hydrogen cyanide, hydrogen sulfide, and benzene.

Covered facilities. The bill defines covered facilities that are required to conduct fenceline monitoring. Specifically, it applies to stationary sources in the following industry sectors according to the North American Industry Classification System (NAICS) codes established by the Federal Office of Management and Budget:

- petroleum refineries (NAICS code 324110);
- other aircraft parts and auxiliary equipment manufacturing (NAICS code 336413);
- petroleum bulk stations and terminals (NAICS code 42710), if the source is within an 8-hour ozone control area and has reported benzene emissions in its federal toxic release inventory filing for the years 2017 through 2019, as of July 1, 2020; or
- any other NAICS code listed by rule.

The bill directs the Air Quality Control Commission to consider, at least every 5 years beginning in 2027, adding new covered air toxics and additional stationary sources to the definition of covered facilities.

Fenceline monitoring. The bill requires covered facilities to conduct fenceline monitoring of covered air toxics beginning July 1, 2024, except for petroleum refineries that must begin fenceline monitoring beginning January 1, 2023. One year prior to conducting fenceline monitoring, the facility must submit a draft plan, including translations of the plan in relevant languages, to the Colorado Department of Public Health and Environment (CDPHE) for approval. In considering the draft fenceline monitoring plan, CDPHE is required to:

- post the draft plan on their website;
- allow 90 days for public comment, and respond to each in writing;
- consult with local governments and community members in relevant areas;
- consult with communities and hold at least two public hearings within two months near the covered facility;
- allow for remote participation; and
- provide interpretation and child care services.

Covered facilities are responsible for covering the costs of fenceline monitoring, and must provide a processing fee to CDPHE for the costs of reviewing and approving monitoring plans.

Community-based monitoring. The bill requires CDPHE, beginning no later than January 1, 2023, to conduct community-based monitoring of covered air toxics for at least 30 cumulative days each quarter. Beginning July 1, 2022 and every three years thereafter CDPHE must publicly post a list of the intended community-based equipment locations and allow 90 days for public comment. CDPHE is required to consider local government and school district input in relevant areas, and make monitoring data available to the public.

Background

Air toxics regulation. The Air Pollution Control Division within CDPHE is responsible for implementing air quality programs as directed by the Air Quality Control Commission. The Federal Clean Air Act and Colorado law are incorporated into rules regulating hazardous air pollutants, or air toxins. These air pollutants differ from the six common air pollutants, known as criteria pollutants, which are regulated through National Ambient Air Quality Standards based on human health and/or environmental criteria. Air toxics are pollutants that are known or suspected to cause cancer or other serious health effects, and are regulated through technology-based standards known as Maximum Achievable Control Technology (MACT) standards. Colorado, by adopting the corresponding federal regulation, is the delegated authority to regulate air toxics through these MACT standards. CDPHE performs special projects for covered air toxics, including hydrogen cyanide, hydrogen sulfide, and benzene, but does not have routine monitoring in place as no ambient air standards are specified for them.

Assumptions

This fiscal note assumes that CDPHE will be able to collect fee revenue to the Air Quality Enterprise Cash Fund sufficient to cover the costs of community based monitoring.

State Revenue

This bill will increase state revenue by an estimated \$0.7 million in FY 2021-22 and \$2.2 million in FY 2022-23 and FY 2023-24 to the Stationary Sources Control Fund, which is subject to TABOR, and the Air Quality Enterprise Cash Fund in CDPHE, which is not subject to TABOR. This fiscal note assumes that the processing fee will be paid by the four facilities that meet the definition of a covered facility in advance of the department incurring any costs related to the provisions of this bill. Table 2 below identifies the fee impact of this bill.

Table 2
Fee Impact Under HB 21-1189

Fee Type	Fund	FY 2021-22	FY 2022-23	FY 2023-24
Monitoring Fee	Air Quality Enterprise Cash Fund	\$500,538	\$1,966,602	\$2,007,625
Processing Fee	Stationary Sources Control Fund	\$196,461	\$188,985	\$200,268
	Total	\$696,999	\$2,155,587	\$2,207,893

State Expenditures

This bill will increase state expenditures by approximately \$0.7 million and 2.1 FTE in FY 2021-22, \$2.2 million and 3.3 FTE in FY 2022-23, and \$2.2 million and 3.5 FTE in FY 2023-24 in the CDPHE. Fenceline monitoring costs will be paid from the Stationary Source Control Fund, and community-based monitoring costs will be paid from the continuously appropriated Air Quality Enterprise Cash Fund. These expenditures are listed in Table 3 and are discussed below.

**Table 3
 Expenditures Under HB 21-1189**

Cost Components	FY 2021-22	FY 2022-23	FY 2023-34
Department of Public Health and Environment			
<i>Fenceline Monitoring</i>			
Personal Services	\$61,473	\$78,528	\$92,884
Standard Operating	\$1,080	\$1,350	\$1,620
Capital Outlay	\$6,200	-	-
Public Outreach	\$70,000	\$50,000	\$42,000
Legal Services	\$12,761	\$12,761	\$12,761
Centrally Appropriated Costs ¹	\$44,622	\$46,346	\$51,003
FTE – Personal Services	0.8 FTE	1.0 FTE	1.2 FTE
FM Subtotal	\$196,136	\$188,985	\$200,268
<i>Community Based Monitoring</i>			
Personal Services	\$92,455	\$166,409	\$166,409
Standard Operating	\$1,620	\$9,170	\$2,970
Capital Outlay	\$6,200	-	-
Technology Software/Database	\$298,478	\$60,303	\$63,147
Monitoring Equipment Capital Costs	-	\$664,000	-
Monitoring Operating Costs	-	\$701,400	\$1,402,800
Centrally Appropriated Costs ¹	\$102,110	\$365,320	\$372,299
FTE – Personal Services	1.2 FTE	2.2 FTE	2.2 FTE
FTE – Legal Services	0.1 FTE	0.1 FTE	0.1 FTE
CBM Subtotal	\$500,863	\$1,966,602	\$2,007,625
Total	\$696,999	\$2,155,587	\$2,207,893
Total FTE	2.1 FTE	3.3 FTE	3.5 FTE

¹ Centrally appropriated costs are not included in the bill's appropriation.

Staffing and operating costs. CDPHE will require additional staff to support fenceline plan review, conduct public outreach, and develop and implement the community-based monitoring plan. The fiscal note assumes that the fenceline monitoring plans will require two draft plans prior to the final plan, with each plan requiring public participation and input. The costs presented here include a phase-in of staffing resources to support fenceline monitoring plans beginning in FY 2021-22, and implementation beginning January 1, 2023. Staff resources are also required to implement the community-based monitoring plan by January 1, 2023.

Public outreach. CDPHE will incur interpretation, child care, and translation services, and venue rental costs, to hold public hearings to consult community members on fenceline monitoring plans. The fiscal note assumes four public hearings for each fenceline monitoring plan.

Air quality monitoring equipment. CDPHE will incur one-time costs to purchase monitoring equipment and technology solutions before community-based monitoring operations can begin on January 1, 2023, as required in the bill. Monitoring equipment will be installed at 10 community locations to cover the four currently identified facilities, and will generate samples for 24 hours over each three-day period. Monitoring equipment costs are estimated to be \$664,000 in FY 2022-23, with equipment operation and maintenance costs of \$1,402,800 for a full-year of implementation beginning in FY 2023-24.

Technology costs. CDPHE will incur costs to develop applications and database systems to manage and distribute data from community-based monitoring to the public. The applications and databases will be developed by the Office of Information Technology. Costs are estimated at \$298,478 in FY 2021-22 and approximately \$60,000 annually on an ongoing basis. Except for \$14,582 in the first year that will be used by CDPHE for staff to oversee application development, this funding will be reappropriated to the Office of Information Technology.

Legal services. CDPHE will require 120 hours legal services per year from the Department of Law when disapproving or unilaterally modifying a fenceline monitoring plan. If a covered facility seeks judicial review of any disapproved or unilaterally modified plan, legal services costs will be determined by the scope and specific nature of the action and, if needed, will be addressed through the annual budget process.

Enforcement. CDPHE will incorporate fenceline monitoring requirements into the covered facility's operating permit if the facility is a major stationary source. It is assumed that incorporation will occur the next time the permit is opened or modified by the department. Once incorporated, the data can result in a permit violation which would require the facility to take corrective action as outlined in the bill. This fiscal note assumes that the cost for enforcement can be funded within existing appropriations or if existing appropriations are not sufficient, addressed 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. These costs, which include employee insurance, supplemental employee retirement payments, and indirect cost recoveries, are estimated to be \$146,732 in FY 2021-22, \$411,665 in FY 2022-23, and \$423,302 in FY 2023-24.

TABOR refunds. The bill increases state revenue subject to TABOR. For FY 2022-23, the March 2021 LCS forecast projects revenue to fall short of the TABOR limit by \$28.6 million, or 0.2 percent of the limit. If actual revenue exceeds the limit, the bill will increase the amount required to be refunded to taxpayers from the General Fund in FY 2023-24.

Local Government

Local governments and school districts will have workload impacts to participate in public meetings concerning fenceline monitoring plans and monitoring equipment locations under the community-based monitoring plan.

Effective Date

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

State Appropriations

Although the Air Quality Enterprise Cash Fund is continuously appropriated, for FY 2021-22, the bill requires a reappropriation from the Department of Public Health and Environment to the Office of Information Technology of \$283,896.

In addition, for FY 2021-22, the bill requires an appropriation of \$151,514 from the Stationary Source Control Fund to the Department of Public Health and Environment, of which \$12,761 and 0.1 FTE is reappropriated to the Department of Law.

State and Local Government Contacts

Public Health and Environment