



## Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

# Revised Fiscal Note

(replaces fiscal note dated April 15, 2021)

**Drafting Number:** LLS 21-0452 **Date:** May 17, 2021  
**Prime Sponsors:** Rep. Benavidez; Valdez A. **Bill Status:** House Appropriations  
 Sen. Gonzales; Moreno **Fiscal Analyst:** Christina Van Winkle | 303-866-6289  
 Christina.VanWinkle@state.co.us

**Bill Topic:** REGULATE AIR TOXICS

**Summary of Fiscal Impact:**

- State Revenue
- State Expenditure
- State Transfer
- TABOR Refund
- Local Government
- 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 \$480,939 to multiple agencies.

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

**Table 1**  
**State Fiscal Impacts Under HB 21-1189**

		Budget Year FY 2021-22	Out Year FY 2022-23	Out Year FY 2023-24
<b>Revenue</b>	Cash Funds	\$587,591	\$543,399	\$752,116
	<b>Total Revenue</b>	<b>\$587,591</b>	<b>\$543,399</b>	<b>\$752,116</b>
<b>Expenditures</b>	General Fund	-	\$800,000	-
	Cash Funds	\$480,939	\$393,229	\$574,965
	Centrally Appropriated	\$106,652	\$150,170	\$177,151
	<b>Total Expenditures</b>	<b>\$587,591</b>	<b>\$1,343,399</b>	<b>\$752,116</b>
	<b>Total FTE</b>	<b>1.3 FTE</b>	<b>3.4 FTE</b>	<b>4.1 FTE</b>
<b>Transfers</b>		-	-	-
<b>TABOR Refund</b>		-	-	-

## **Summary of Legislation**

This bill expands the monitoring requirements for certain stationary sources of air pollutants and authorizes the Air Quality Control Commission in the Department of Public Health and Environment (CDPHE) 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 CDPHE for approval. The plans must include emergency notification services based on notification thresholds established by CDPHE. 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. The CDPHE may expend up to \$800,000 from the General

Fund to purchase and equip a mobile air-quality monitoring van and up to \$1,000,000 annually to conduct community-based monitoring. Covered facilities are required to pay an annual pro rata share of the direct and indirect costs of conducting community-based monitoring.

## 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 the mobile air monitoring van may be used for community based monitoring at all four covered facilities. Although the bill states that the van is dedicated for use in the northern metropolitan Denver area, one covered facility is based in Pueblo. Since community-based monitoring must occur no less than 30 cumulative days during each quarter of every year, the van is available for use for an additional 60 days each quarter, which suffices to provide community based monitoring in a second geographic area. See Departmental Difference.

## State Revenue

This bill will increase state revenue by an estimated \$0.6 million in FY 2021-22 and FY 2022-23 and \$0.9 million FY 2023-24 and future years to the Stationary Sources Control Fund, which is subject to TABOR. This fiscal note assumes that the processing and monitoring fees 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 <sup>1</sup>	Stationary Sources Control Fund	\$332,179	\$348,353	\$661,531
Processing Fee	Stationary Sources Control Fund	\$255,412	\$205,946	\$234,785
	<b>Total</b>	<b>\$587,591</b>	<b>\$554,299</b>	<b>\$896,316</b>

<sup>1</sup> The Monitoring Fee excludes the purchase of the mobile air monitoring vehicle in FY 2022-23, which will be paid from the General Fund. This fiscal note assumes the purchase of the mobile air monitoring vehicle will not be reimbursed by the covered facilities.

**State Expenditures**

This bill will increase state expenditures in the CDPHE by approximately \$0.6 million and 1.3 FTE in FY 2021-22, \$1.3 million and 3.4 FTE in FY 2022-23, and \$0.8 million and 4.1 FTE in FY 2023-24. Fenceline monitoring and community-based monitoring costs will be paid from the Stationary Sources Control Fund, except for the mobile air monitoring vehicle in FY 2022-23, which will be paid from the General Fund. These expenditures are listed in Table 3 and are discussed below.

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

<b>Cost Components</b>	<b>FY 2021-22</b>	<b>FY 2022-23</b>	<b>FY 2023-34</b>
<b>Department of Public Health and Environment</b>			
<b><i>Fenceline Monitoring</i></b>			
Personal Services	\$91,056	\$108,110	\$122,466
Standard Operating	\$1,620	\$1,890	\$2,160
Capital Outlay	\$6,200	-	-
Public Outreach	\$70,000	\$50,000	\$42,000
Travel Costs	\$825	\$825	\$825
Legal Services	\$12,760	\$12,761	\$12,761
Centrally Appropriated Costs <sup>1</sup>	\$72,951	\$32,360	\$54,573
FTE – Legal Services	0.1 FTE	0.1 FTE	0.1 FTE
FTE – Personal Services	1.2 FTE	1.4 FTE	1.6 FTE
<b>Fencline Monitoring Subtotal</b>	<b>\$255,412</b>	<b>\$205,946</b>	<b>\$234,785</b>
<b><i>Community-Based Monitoring</i></b>			
Personal Services	-	\$133,475	\$177,966
Standard Operating	-	\$2,565	\$3,240
Capital Outlay	-	\$12,400	\$6,200
Technology Software/Database	\$298,478	\$60,303	\$63,147
Mobile Air Monitoring Vehicle	-	\$800,000	-
Mobile Air Monitoring Operating Costs	-	\$10,900	\$144,200
Centrally Appropriated Costs <sup>1</sup>	\$33,701	\$117,810	\$122,578
FTE – Personal Services	0.0 FTE	1.9 FTE	2.4 FTE
<b>Community-Based Monitoring Subtotal</b>	<b>\$332,179</b>	<b>\$1,137,453</b>	<b>\$517,331</b>
<b>Total</b>	<b>\$587,591</b>	<b>\$1,343,399</b>	<b>\$752,116</b>
<b>Total FTE</b>	<b>1.3 FTE</b>	<b>3.4 FTE</b>	<b>4.1 FTE</b>

<sup>1</sup> 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. The CDPHE also requires 0.4 FTE ongoing to establish and support notification thresholds for each covered air toxic, along with an annual travel budget for community engagement.

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. The cost to purchase the van is estimated at \$800,000 with operating costs of \$10,900 in FY 2022-23 and \$144,200 in FY 2023-24 to accommodate a full year of monitoring, and equipment replacement.

**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 of 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 the requirements will be incorporated into the permit the next time it 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 \$106,652 in FY 2021-22, \$179,247 in FY 2022-23, and \$217,253 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.

## Departmental Difference

The CDPHE estimates that it will have costs of \$587,591 in FY 2021-22, \$2,331,546 in FY 2022-23 and \$1,117,625 in FY 2023-24 and future years. The CDPHE estimate is higher than the fiscal note estimate starting in the second year to account for one additional vehicle to conduct community-based monitoring at the Pueblo facility since the bill states that the van *is dedicated for use in the northern metropolitan Denver area*. The additional van will require staff to operate the vehicle and additional operating costs. These additional costs will double the community-based monitoring expenditures reflected in Table 3 above for FY 2022-23 and FY 2023-24. The fiscal note does not include costs for a second mobile unit since a single van can monitor the Pueblo site while also meeting its dedicated purposes in North Denver.

## Effective Date

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

## State Appropriations

In FY 2021-22, the bill requires an appropriation of \$480,939 and 1.2 FTE from the Stationary Sources Control Fund to the Department of Public Health and Environment, of which \$12,760 and an additional 0.1 FTE is reappropriated to the Department of Law and \$283,896 is reappropriated to the Office of Information Technology.

## State and Local Government Contacts

Public Health and Environment

Information Technology

Law