

CHAPTER 464

GOVERNMENT - STATE

HOUSE BILL 21-1208

BY REPRESENTATIVE(S) Cutter and Gray, Bacon, Bernett, Bird, Caraveo, Froelich, Kennedy, Kipp, Lontine, McCormick, McLachlan, Michaelson Jenet, Mullica, Ortiz, Ricks, Sirota, Snyder, Sullivan, Tipper, Titone, Young, Amabile, Exum, Jackson, Jodeh;
also SENATOR(S) Priola and Winter, Pettersen.

AN ACT

CONCERNING THE CREATION OF AN ENTERPRISE THAT IS EXEMPT FROM THE REQUIREMENTS OF SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION TO ADMINISTER A FEE-BASED NATURAL DISASTER MITIGATION GRANT PROGRAM.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** 24-33.5-1619 as follows:

24-33.5-1619. Natural disaster mitigation enterprise - fund - goals - grant program - gifts, grants, or donations - legislative declaration - definitions - repeal. (1) **Legislative declaration.** THE GENERAL ASSEMBLY HEREBY:

(a) FINDS AND DETERMINES THAT:

(I) INCREASED GREENHOUSE GAS EMISSIONS AND RAPIDLY RISING TEMPERATURES RESULTING FROM HUMAN ACTIVITY ARE CHANGING THE CLIMATE IN WAYS THAT THREATEN COLORADO'S ECONOMY, THE HEALTH OF ITS RESIDENTS, AND ITS NATURAL LANDSCAPE;

(II) THESE TEMPERATURE INCREASES ARE ALREADY HAVING AN IMPACT ON COLORADO'S ENVIRONMENT, WITH EXTREME WILDFIRES, FLOODS, DROUGHT, EXTREME WEATHER EVENTS, AND HEAT WAVES DRAMATICALLY INCREASING IN RECENT YEARS;

(III) THE ECONOMIC IMPACTS OF THESE INCREASINGLY FREQUENT AND SEVERE DISASTERS ARE ENORMOUS, FOR EXAMPLE WITH THE 2020 WILDFIRES COSTING SEVENTY-SEVEN MILLION DOLLARS TO FIGHT THROUGH AUGUST, AND THE 2012

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

DROUGHT RESULTING IN LOSSES OF SEVEN HUNDRED TWENTY-SIX MILLION DOLLARS FOR THE AGRICULTURE SECTOR ALONE;

(IV) LOCAL GOVERNMENTS ARE ON THE FOREFRONT OF RESPONDING TO THESE CHALLENGES AND POSSESS SIGNIFICANT EXPERIENCE AND EXPERTISE IN ADDRESSING THEM;

(V) ALTHOUGH STATE AND FEDERAL FUNDING IS ROUTINELY MADE AVAILABLE TO HELP LOCAL COMMUNITIES WITH IMMEDIATE DISASTER RESPONSE NEEDS, THERE IS NO LONG-TERM, CONSISTENT SOURCE OF FUNDS TO SUPPORT THE INVESTMENTS NEEDED TO PREVENT DISASTERS FROM HAPPENING AND TO MAKE LOCAL COMMUNITIES MORE RESILIENT AGAINST FUTURE DISASTERS;

(VI) MAKING THESE INVESTMENTS WILL DECREASE LOSSES THAT WOULD OTHERWISE BE LARGELY PAID BY INSURERS;

(VII) AS DOCUMENTED BY A 2019 REPORT FROM THE NATIONAL INSTITUTE OF BUILDING SCIENCE, THE BENEFIT OF THESE INVESTMENTS SIGNIFICANTLY EXCEED THEIR COSTS, IN SOME CASES BY RATIOS AS HIGH AS TEN TO ONE;

(VIII) ACCORDINGLY, FUNDING FOR ONGOING DISASTER MITIGATION EFFORTS SHOULD BE RELATED TO PROPERTY AND CASUALTY INSURANCE PRODUCTS; AND

(b) DECLARES THAT:

(I) THE NATURAL DISASTER MITIGATION ENTERPRISE PROVIDES VALUABLE SERVICES, BENEFITS, AND USEFUL BUSINESS SERVICES TO INSURERS, WHEN, IN EXCHANGE FOR PAYMENT OF THE FEE DESCRIBED IN SUBSECTION (4) OF THIS SECTION, THE ENTERPRISE USES THE FEES TO:

(A) PROVIDE GRANTS TO LOCAL GOVERNMENTS TO IMPLEMENT RESILIENCE AND NATURAL DISASTER MITIGATION MEASURES;

(B) ASSIST ENTITIES THAT APPLY FOR FEDERAL GRANTS DEDICATED TO ASSISTING IN THE IMPLEMENTATION OF PRE-DISASTER NATURAL DISASTER MITIGATION MEASURES BY ISSUING GRANTS TO HELP THE ENTITIES PROVIDE THE MATCHING FUNDS REQUIRED FOR THE FEDERAL GRANTS; AND

(C) PROVIDE LOCAL GOVERNMENTS TECHNICAL ASSISTANCE ON NATURAL DISASTER MITIGATION;

(II) BY PROVIDING THE BENEFITS AND SERVICES SPECIFIED IN SUBSECTION (1)(b)(I) OF THIS SECTION, THE NATURAL DISASTER MITIGATION ENTERPRISE ENGAGES IN AN ACTIVITY CONDUCTED IN THE PURSUIT OF A BENEFIT, GAIN, OR LIVELIHOOD AND THEREFORE OPERATES AS A BUSINESS;

(III) CONSISTENT WITH THE DETERMINATION OF THE COLORADO SUPREME COURT IN *NICHOLL V. E-470 PUBLIC HIGHWAY AUTHORITY*, 896 P.2d 859 (COLO. 1995), THAT THE POWER TO IMPOSE TAXES IS INCONSISTENT WITH ENTERPRISE STATUS UNDER SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION, IT IS THE CONCLUSION OF THE GENERAL ASSEMBLY THAT THE FEE COLLECTED BY THE

ENTERPRISE IS A FEE, NOT A TAX, BECAUSE THE FEE IS IMPOSED FOR THE SPECIFIC PURPOSE OF ALLOWING THE ENTERPRISE TO DEFRAY THE COSTS OF PROVIDING THE BUSINESS SERVICES SPECIFIED IN SUBSECTION (1)(b)(I) OF THIS SECTION TO INSURERS THAT PAY THE FEE AND THE FEE IS COLLECTED AT A RATE THAT IS REASONABLY CALCULATED BASED ON THE BENEFITS RECEIVED BY THOSE INSURERS;

(IV) SO LONG AS THE NATURAL DISASTER MITIGATION ENTERPRISE QUALIFIES AS AN ENTERPRISE FOR PURPOSES OF SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION, THE REVENUE FROM THE FEE COLLECTED BY THE ENTERPRISE IS NOT STATE FISCAL YEAR SPENDING, AS DEFINED IN SECTION 24-77-102 (17), OR STATE REVENUES, AS DEFINED IN SECTION 24-77-103.6 (6)(c), AND DOES NOT COUNT AGAINST EITHER THE STATE FISCAL YEAR SPENDING LIMIT IMPOSED BY SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION OR THE EXCESS STATE REVENUES CAP, AS DEFINED IN SECTION 24-77-103.6 (6)(b)(I)(B); AND

(V) NO OTHER ENTERPRISE CREATED SIMULTANEOUSLY OR WITHIN THE PRECEDING FIVE YEARS SERVES PRIMARILY THE SAME PURPOSE AS THE NATURAL DISASTER MITIGATION ENTERPRISE AND THE NATURAL DISASTER MITIGATION ENTERPRISE WILL GENERATE REVENUE FROM FEES AND SURCHARGES OF LESS THAN ONE HUNDRED MILLION DOLLARS TOTAL IN ITS FIRST FIVE FISCAL YEARS. ACCORDINGLY, THE CREATION OF THE NATURAL DISASTER MITIGATION ENTERPRISE DOES NOT REQUIRE VOTER APPROVAL PURSUANT TO THE PROVISIONS OF SECTION 24-77-108.

(2) **Definitions.** AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "BOARD" MEANS THE BOARD OF DIRECTORS OF THE ENTERPRISE.

(b) "ELIGIBLE ENTITY" MEANS A GOVERNING SUBDIVISION OF THE STATE, INCLUDING COUNTIES, MUNICIPALITIES, SCHOOL DISTRICTS, AND SPECIAL DISTRICTS, THAT IMPLEMENTS OR INTENDS TO IMPLEMENT NATURAL DISASTER MITIGATION MEASURES, OR THAT IS APPLYING FOR A FEDERAL GRANT THAT BOTH REQUIRES MATCHING FUNDS AND IS DEDICATED TO ASSISTING IN THE IMPLEMENTATION OF PRE-DISASTER NATURAL DISASTER MITIGATION MEASURES.

(c) "ENTERPRISE" MEANS THE NATURAL DISASTER MITIGATION ENTERPRISE CREATED IN SUBSECTION (3) OF THIS SECTION.

(d) "FEE" MEANS THE FEE DESCRIBED BY SUBSECTION (4) OF THIS SECTION;

(e) "FUND" MEANS THE NATURAL DISASTER MITIGATION CASH FUND CREATED IN SUBSECTION (5) OF THIS SECTION.

(f) "GRANT PROGRAM" MEANS THE NATURAL DISASTER MITIGATION GRANT PROGRAM CREATED IN SUBSECTION (7) OF THIS SECTION.

(g) "NATURAL DISASTER MITIGATION" MEANS TAKING MEASURES THAT REDUCE THE RISK OF LOSS OF LIFE AND PROPERTY FROM FUTURE NATURAL HAZARD DISASTERS AND DECREASING COSTS ASSOCIATED WITH DISASTER RECOVERY.

(3) **Enterprise.** (a) THERE IS HEREBY CREATED IN THE DEPARTMENT THE NATURAL DISASTER MITIGATION ENTERPRISE. THE ENTERPRISE IS AND OPERATES AS A GOVERNMENT-OWNED BUSINESS WITHIN THE DEPARTMENT FOR THE BUSINESS PURPOSE OF COLLECTING THE FEE CHARGED TO CERTAIN INSURERS, AND UTILIZING THE FEE REVENUE TO ADMINISTER THE GRANT PROGRAM AND TO PROVIDE LOCAL GOVERNMENTS TECHNICAL ASSISTANCE ON NATURAL DISASTER MITIGATION. THE ENTERPRISE EXERCISES ITS POWERS AND PERFORMS ITS DUTIES AND FUNCTIONS UNDER THE DEPARTMENT AS IF TRANSFERRED TO THE DEPARTMENT BY A **TYPE 2** TRANSFER, AS DEFINED IN THE "ADMINISTRATIVE ORGANIZATION ACT OF 1968", ARTICLE 1 OF THIS TITLE 24.

(b) THE ENTERPRISE CONSTITUTES AN ENTERPRISE FOR PURPOSES OF SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION SO LONG AS IT RETAINS THE AUTHORITY TO ISSUE REVENUE BONDS AND RECEIVES LESS THAN TEN PERCENT OF ITS TOTAL REVENUES IN GRANTS FROM ALL COLORADO STATE AND LOCAL GOVERNMENTS COMBINED. SO LONG AS IT CONSTITUTES AN ENTERPRISE PURSUANT TO THIS SUBSECTION (3)(b), THE ENTERPRISE IS NOT SUBJECT TO SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION.

(c) THE ENTERPRISE'S PRIMARY POWERS AND DUTIES ARE TO:

(I) COLLECT THE FEE DESCRIBED IN SUBSECTION (4) OF THIS SECTION;

(II) PROMOTE NATURAL DISASTER MITIGATION BY ISSUING GRANTS AS SPECIFIED IN SUBSECTION (7) OF THIS SECTION;

(III) PROVIDE LOCAL GOVERNMENTS TECHNICAL ASSISTANCE ON NATURAL DISASTER MITIGATION;

(IV) BY RESOLUTION, AUTHORIZE AND ISSUE REVENUE BONDS THAT ARE PAYABLE ONLY FROM THE MONEY IN THE FUND, WHICH REVENUE BONDS MAY BE ISSUED TO PROMOTE THE HAZARD MITIGATION PURPOSES SPECIFIED IN THIS SUBSECTION (3)(c);

(V) ADOPT, AMEND, OR REPEAL POLICIES FOR THE REGULATION OF ITS AFFAIRS AND THE CONDUCT OF ITS BUSINESS CONSISTENT WITH THIS SECTION, INCLUDING ESTABLISHING APPLICATION, REVIEW, APPROVAL, REPORTING, AND OTHER REQUIREMENTS FOR GRANTS; AND

(VI) ENGAGE THE SERVICE OF CONTRACTORS, CONSULTANTS, AND LEGAL COUNSEL, INCLUDING THE DEPARTMENT AND THE ATTORNEY GENERAL'S OFFICE, FOR PROFESSIONAL AND TECHNICAL ASSISTANCE AND ADVICE AND TO SUPPLY OTHER SERVICES RELATED TO THE CONDUCT OF THE AFFAIRS OF THE ENTERPRISE, WITHOUT REGARD TO THE "PROCUREMENT CODE", ARTICLES 101 TO 112 OF TITLE 24. THE BOARD SHALL ENCOURAGE DIVERSITY IN APPLICANTS FOR CONTRACTS AND SHALL GENERALLY AVOID USING SINGLE-SOURCE BIDS.

(d) THE ENTERPRISE IS GOVERNED BY A BOARD OF DIRECTORS. THE BOARD CONSISTS OF THE FOLLOWING THIRTEEN MEMBERS APPOINTED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PUBLIC SAFETY:

(I) ONE MEMBER REPRESENTING THE DEPARTMENT OF PUBLIC SAFETY;

(II) ONE MEMBER REPRESENTING THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT;

(III) ONE MEMBER OF THE COLORADO RESILIENCY OFFICE;

(IV) ONE MEMBER WHO HAS EXPERIENCE IN ENVIRONMENTAL JUSTICE AND REPRESENTING UNDERSERVED COMMUNITIES;

(V) FOUR MEMBERS WHO ARE REPRESENTATIVES OF LOCAL GOVERNMENTS AT LEAST ONE OF WHOM REPRESENTS A COUNTY, ONE OF WHOM REPRESENTS A MUNICIPALITY, AND ALL OF WHOM, TAKEN AS A WHOLE AND TO THE GREATEST EXTENT POSSIBLE, REPRESENT THE GEOGRAPHIC DIVERSITY OF THE STATE;

(VI) TWO MEMBERS WHO ARE SCIENTISTS WITH EXPERTISE IN CLIMATE-INDUCED WEATHER HAZARDS, RESILIENCE PLANNING, OR DISASTER MITIGATION; AND

(VII) THREE MEMBERS REPRESENTING THE INSURANCE INDUSTRY.

(e) THE MEMBER APPOINTED PURSUANT TO SUBSECTION (3)(d)(I) OF THIS SECTION SHALL CALL THE FIRST MEETING OF THE BOARD. THE BOARD SHALL ELECT A CHAIR FROM AMONG ITS MEMBERS TO SERVE FOR A TERM NOT TO EXCEED TWO YEARS, AS DETERMINED BY THE BOARD.

(f) THE TERM OF OFFICE OF BOARD MEMBERS IS FOUR YEARS; EXCEPT THAT THE EXECUTIVE DIRECTOR SHALL DESIGNATE TWO MEMBERS APPOINTED PURSUANT TO SUBSECTION (3)(d)(V) OF THIS SECTION, ONE OF THE MEMBERS APPOINTED PURSUANT TO SUBSECTION (3)(d)(VI) OF THIS SECTION, AND THREE OF THE MEMBERS APPOINTED TO SUBSECTIONS (3)(d)(I), (3)(d)(II), (3)(d)(IV), AND (3)(d)(VII) TO SERVE INITIAL TERMS OF TWO YEARS.

(g) A VACANCY ON THE BOARD IS FILLED IN THE SAME MANNER AS THE ORIGINAL APPOINTMENT WAS MADE. A PERSON APPOINTED TO FILL A VACANCY SERVES FOR THE REMAINDER OF THE UNEXPIRED TERM.

(h) THE BOARD SHALL MEET AT LEAST QUARTERLY AND THE CHAIR MAY CALL ADDITIONAL MEETINGS AS NECESSARY FOR THE BOARD TO COMPLETE ITS DUTIES.

(i) EACH MEMBER OF THE BOARD IS ENTITLED TO RECEIVE FROM MONEY IN THE FUND A PER DIEM ALLOWANCE OF FIFTY DOLLARS FOR EACH DAY SPENT ATTENDING OFFICIAL BOARD MEETINGS.

(4) **Fee.** (a) EACH INSURER THAT HAS A POLICY OR CONTRACT OF INSURANCE OF THE TYPES LISTED IN SUBSECTION (4)(e) OF THIS SECTION COVERING PROPERTY OR RISKS IN THE STATE SHALL PAY A FEE IMPOSED AND COLLECTED BY THE ENTERPRISE. THE ENTERPRISE SHALL TRANSMIT ANY FEE COLLECTED IN ACCORDANCE WITH THIS SUBSECTION (4) TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE FUND. ANY FEE TRANSMITTED TO THE STATE TREASURER THAT IS COLLECTED ON BEHALF OF THE ENTERPRISE IS EXCLUDED FROM THE STATE'S FISCAL YEAR SPENDING. FOR EACH INSURER, THE AMOUNT OF THE FEE MUST EQUAL TWO DOLLARS MULTIPLIED BY THE NUMBER OF CERTAIN POLICIES OR CONTRACTS OF INSURANCE OF THE TYPES LISTED IN SUBSECTION (4)(e) OF THIS SECTION COVERING PROPERTY OR

RISKS IN THE STATE.

(b) ON OR BEFORE JULY 1, 2023, AN INSURER SHALL:

(I) PAY THE FEE FOR THE POLICIES OR CONTRACTS OF INSURANCE OF THE TYPES LISTED IN SUBSECTION (4)(e) OF THIS SECTION COVERING PROPERTY OR RISKS IN THE STATE FROM MARCH 1, 2022, THROUGH DECEMBER 31, 2022, AND HELD BY THE INSURER FROM MARCH 1, 2022, THROUGH DECEMBER 31, 2022; AND

(II) REPORT TO THE ENTERPRISE THE NUMBER OF POLICIES OR CONTRACTS OF INSURANCE OF THE TYPES LISTED IN SUBSECTION (4)(e) OF THIS SECTION COVERING PROPERTY OR RISKS IN THE STATE FROM MARCH 1, 2022, THROUGH DECEMBER 31, 2022, AND HELD BY THE INSURER FROM MARCH 1, 2022, THROUGH DECEMBER 31, 2022.

(c) ON OR BEFORE JULY 1, 2024, AND ON OR BEFORE JULY 1 OF EACH YEAR THEREAFTER THROUGH 2029, AN INSURER SHALL:

(I) PAY THE FEE FOR THE POLICIES OR CONTRACTS OF INSURANCE OF THE TYPES LISTED IN SUBSECTION (4)(e) OF THIS SECTION COVERING PROPERTY OR RISKS IN THE STATE DURING THE PREVIOUS CALENDAR YEAR AND HELD BY THE INSURER IN THE PREVIOUS CALENDAR YEAR; AND

(II) REPORT TO THE ENTERPRISE THE NUMBER OF POLICIES OR CONTRACTS OF INSURANCE OF THE TYPES LISTED IN SUBSECTION (4)(e) OF THIS SECTION COVERING PROPERTY OR RISKS IN THE STATE DURING THE PREVIOUS CALENDAR YEAR AND HELD BY THE INSURER IN THE PREVIOUS CALENDAR YEAR.

(d) ON OR BEFORE DECEMBER 31, 2023, AND ON OR BEFORE DECEMBER 31 EACH YEAR THEREAFTER THROUGH 2029, THE ENTERPRISE SHALL COMPARE THE LIST OF INSURERS WHO PAID THE FEE WITH A LIST COMPILED BY THE DIVISION OF INSURANCE OF THOSE INSURERS THAT HAVE POLICIES OR CONTRACTS OF THE TYPES LISTED IN SUBSECTION (4)(e) OF THIS SECTION COVERING PROPERTY OR RISKS IN THE STATE AND SHALL NOTIFY THE DIVISION OF INSURANCE OF ANY INSURER'S FAILURE TO PAY THE FEE DESCRIBED IN THIS SUBSECTION (4). UPON RECEIVING NOTICE OF AN INSURER'S FAILURE TO PAY THE FEE, THE DIVISION OF INSURANCE SHALL NOTIFY THE INSURER OF THE FEE REQUIREMENT. IF THE INSURER FAILS TO PAY THE FEE WITHIN FIFTEEN DAYS AFTER RECEIVING THE NOTICE, THE DIVISION OF INSURANCE MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN ONE HUNDRED TWENTY PERCENT OF THE AMOUNT DUE. THE INSURER SHALL PAY THE CIVIL PENALTY TO THE DIVISION OF INSURANCE. THE DIVISION OF INSURANCE SHALL TRANSFER THE AMOUNT RECEIVED TO THE STATE TREASURER WHO SHALL CREDIT THE SAME TO THE FUND.

(e) INSURANCE COMPANIES ARE LIABLE FOR THE FEE ON POLICIES OR CONTRACTS COVERING PROPERTY OR RISKS IN THE STATE OF THE FOLLOWING TYPES:

(I) FIRE;

(II) ALLIED LINES;

(III) PRIVATE CROP;

(IV) FARMERS MULTIPLE PERIL;

(V) HOMEOWNERS MULTIPLE PERIL; OR

(VI) COMMERCIAL MULTIPLE PERIL.

(f) EACH INSURER SUBJECT TO THE PROVISIONS OF THIS SUBSECTION (4) IS AUTHORIZED TO RECOUP THE FEE DESCRIBED IN THIS SUBSECTION (4) FROM ITS POLICY HOLDERS.

(g) EACH INSURER SUBJECT TO THE PROVISIONS OF THIS SUBSECTION (4) SHALL NOT RAISE ITS PREMIUMS BASED ON THE FEE DESCRIBED IN THIS SUBSECTION (4).

(h) THE FEE DESCRIBED IN THIS SUBSECTION (4) MUST NOT BE CONSIDERED A PREMIUM FOR ANY PURPOSE, INCLUDING THE COMPUTATION OF THE GROSS PREMIUM TAX DESCRIBED IN SECTION 10-3-209 OR THE PRODUCER'S COMMISSION.

(i) THE ENTERPRISE SHALL ALSO ENSURE, BY LOWERING THE FEE IMPOSED BY THIS SUBSECTION (4) TO THE EXTENT NECESSARY, THAT THE TOTAL AMOUNT OF FEE REVENUE DOES NOT EXCEED ONE HUNDRED MILLION DOLLARS OVER THE FIRST FIVE FISCAL YEARS OF THE ENTERPRISE'S EXISTENCE.

(5) Fund. (a) THERE IS HEREBY CREATED IN THE STATE TREASURY THE NATURAL DISASTER MITIGATION CASH FUND. THE FUND CONSISTS OF MONEY CREDITED TO THE FUND PURSUANT TO SUBSECTION (4) OF THIS SECTION AND ANY OTHER MONEY THAT THE GENERAL ASSEMBLY MAY APPROPRIATE OR TRANSFER TO THE FUND.

(b) THE MONEY IN THE FUND SHALL NOT BE DEPOSITED IN OR TRANSFERRED TO THE GENERAL FUND OR ANY OTHER FUND. THE STATE TREASURER SHALL CREDIT ALL INTEREST AND INCOME DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEY IN THE FUND TO THE FUND. ANY UNENCUMBERED MONEY IN THE FUND SHALL REMAIN IN THE FUND AND SHALL NOT BE CREDITED OR TRANSFERRED TO THE GENERAL FUND OR ANOTHER FUND.

(c) MONEY IN THE FUND IS CONTINUOUSLY APPROPRIATED TO THE ENTERPRISE FOR THE PURPOSES OF:

(I) ADMINISTERING THE GRANT PROGRAM AND AWARDING GRANTS IN ACCORDANCE WITH SUBSECTION (7) OF THIS SECTION;

(II) PROVIDING LOCAL GOVERNMENTS TECHNICAL ASSISTANCE ON NATURAL DISASTER MITIGATION; AND

(III) FOR ANY DIRECT AND INDIRECT ADMINISTRATIVE EXPENSES INCURRED BY THE ENTERPRISE.

(d) THE BOARD MAY SEEK, ACCEPT, AND EXPEND GIFTS, GRANTS, OR DONATIONS FROM PRIVATE OR PUBLIC SOURCES FOR THE PURPOSES OF THIS SECTION, SO LONG AS THE COMBINATION OF GRANTS FROM THE STATE AND LOCAL GOVERNMENTS IS LESS THAN TEN PERCENT OF THE ENTERPRISE'S TOTAL REVENUE.

(6) Natural disaster mitigation goals. THE ENTERPRISE SHALL ADMINISTER THE GRANT PROGRAM AND AWARD GRANTS AND PROVIDE LOCAL GOVERNMENTS TECHNICAL ASSISTANCE ON NATURAL DISASTER MITIGATION TO ACHIEVE THE FOLLOWING NATURAL DISASTER MITIGATION GOALS:

(a) REDUCE THE NEGATIVE IMPACTS FROM FUTURE DISASTERS ON LIVES, PROPERTY, AND THE ECONOMY;

(b) IMPROVE THE RESILIENCE OF LOCAL COMMUNITIES GIVEN THE INCREASED FREQUENCY AND INTENSITY OF SEVERE WEATHER EVENTS RESULTING FROM CLIMATE CHANGE;

(c) ENGAGE IN MITIGATION ACTIVITIES THAT DIRECTLY REDUCE RISKS TO LIVES AND PROPERTY, ARE COST-EFFECTIVE, TECHNICALLY FEASIBLE, SCIENCE-BASED, ECOLOGICALLY SOUND, AND ENVIRONMENTALLY SOUND AS WELL AS ALLOWING STRATEGIC INVESTMENT OF LIMITED RESOURCES AND NOT HARMING UNDERSERVED COMMUNITIES;

(d) REDUCE REPETITIVE LOSSES;

(e) UTILIZE FEDERAL FUNDING AVAILABLE FOR NATURAL DISASTER MITIGATION PROJECTS; AND

(f) SUPPORT COMMUNITIES WITH LIMITED CAPACITY TO PLAN, PREPARE, AND SUBMIT GRANT PROPOSALS UNDER SUBSECTION (7) OF THIS SECTION.

(7) Grant program. (a) THE ENTERPRISE SHALL ADMINISTER THE NATURAL DISASTER MITIGATION GRANT PROGRAM AND, SUBJECT TO AVAILABLE APPROPRIATIONS AND REVENUES, SHALL AWARD GRANTS FROM THE FUND AS PROVIDED IN THIS SUBSECTION (7).

(b) THE PURPOSE OF THE GRANT PROGRAM IS TO ACHIEVE THE GOALS SPECIFIED IN SUBSECTION (6) OF THIS SECTION BY ASSISTING ENTITIES THAT ARE IMPLEMENTING DISASTER MITIGATION MEASURES, OR THAT HAVE APPLIED FOR FEDERAL GRANTS THAT BOTH REQUIRE MATCHING FUNDS AND ARE DEDICATED TO ASSISTING IN THE IMPLEMENTATION OF PRE-DISASTER NATURAL DISASTER MITIGATION MEASURES. THE BOARD MAY NOT AWARD GRANTS FOR RENEWABLE ENERGY GENERATION PROJECTS, RESOURCES, OR TECHNOLOGIES. THE BOARD MAY AWARD GRANTS FOR PROJECTS THAT INCLUDE SLOPE STABILIZATION, WATERSHED RESTORATION, FUELS MITIGATION, DROUGHT MITIGATION, AND SIMILAR ACTIVITIES THAT DIRECTLY REDUCE RISKS TO COMMUNITIES, LIVES, AND PROPERTY. THE BOARD SHALL ESTABLISH CRITERIA TO EVALUATE AND PRIORITIZE APPLICATIONS FOR GRANTS, BASED ON:

(1) IN THE CASE OF AN ELIGIBLE ENTITY THAT IS APPLYING FOR A FEDERAL GRANT THAT BOTH REQUIRES MATCHING FUNDS AND IS DEDICATED TO ASSISTING IN THE IMPLEMENTATION OF PRE-DISASTER NATURAL DISASTER MITIGATION MEASURES, THE FEDERAL EMERGENCY MANAGEMENT AGENCY'S STANDARDIZED BENEFIT-COST ANALYSIS IN ACCORDANCE WITH CURRENT PUBLISHED FEDERAL GUIDANCE; A DIFFERENT METHODOLOGY MAY ONLY BE USED WHEN IT ADDRESSES A NONCORRECTABLE FLAW IN THE FEDERAL EMERGENCY MANAGEMENT AGENCY'S APPROVED METHODOLOGY, AS IDENTIFIED BY THE BOARD;

(II) THE FINANCIAL NEED OF THE ELIGIBLE ENTITY;

(III) THE DEGREE TO WHICH THE ELIGIBLE ENTITY'S PROPOSAL DEMONSTRATES BENEFITS TO UNDERSERVED COMMUNITIES; AND

(IV) THE DEGREE TO WHICH THE ELIGIBLE ENTITY'S PROPOSAL DEMONSTRATES CONSULTATION AND COLLABORATION WITH UNDERSERVED COMMUNITIES.

(c) AN ELIGIBLE ENTITY MAY SUBMIT AN APPLICATION TO THE ENTERPRISE FOR A GRANT PURSUANT TO THE POLICIES AND PROCEDURES SPECIFIED BY THE BOARD.

(d) GRANT RECIPIENTS SHALL ONLY USE THE MONEY RECEIVED THROUGH THE GRANT PROGRAM FOR IMPLEMENTING DISASTER MITIGATION MEASURES, OR TO OFFSET THE RECIPIENT'S FEDERAL MATCH REQUIREMENT FOR FEDERAL GRANTS DEDICATED TO ASSISTING IN THE IMPLEMENTATION OF PRE-DISASTER NATURAL DISASTER MITIGATION MEASURES.

(e) THE BOARD SHALL REVIEW THE APPLICATIONS RECEIVED PURSUANT TO THIS SECTION AND SHALL AWARD:

(I) NO LESS THAN EIGHTY-FIVE PERCENT OF THE ANNUAL FUND REVENUE FOR GRANT AWARDS NOR AWARD MORE THAN FIFTEEN PERCENT OF THE ANNUAL REVENUE IN ANY SINGLE GRANT AWARD; EXCEPT THAT, BY UNANIMOUS VOTE OF THE BOARD, GRANTS OF UP TO TWENTY-FIVE PERCENT OF THE ANNUAL REVENUE CAN BE AWARDED IN EXCEPTIONAL CIRCUMSTANCES;

(II) NO MORE THAN TEN PERCENT OF THE ANNUAL FUND REVENUE FOR TECHNICAL ASSISTANCE TO SUPPORT COMMUNITIES WITH LIMITED CAPACITY TO PLAN, PREPARE, AND SUBMIT GRANT PROPOSALS; AND

(III) NO MORE THAN FIVE PERCENT OF THE ANNUAL FUND REVENUE FOR ADMINISTERING THE GRANT PROGRAM AND AWARDED GRANTS IN ACCORDANCE WITH THIS SUBSECTION (7).

(f) (I) A GRANTEE SHALL REPORT QUARTERLY TO THE BOARD ON THE PROGRESS OF THE PROJECT FINANCED BY THE GRANT PURSUANT TO TERMS SPECIFIED IN THE GRANT AWARD AGREEMENT.

(II) THE BOARD SHALL DEVELOP A POLICY REGARDING A GRANTEE'S NONCOMPLIANCE WITH THE GRANT AGREEMENT ENTERED INTO BY THE GRANTEE AND THE BOARD, WHICH POLICY MAY INCLUDE A MECHANISM FOR THE BOARD TO CONVERT THE GRANTEE'S GRANT TO A LOAN WITH INTEREST.

(g) FOR GRANTEES BEING AWARDED FUNDS FOR USE AS A FEDERAL MATCH, THE AWARD OF ANY GRANT UNDER THIS SUBSECTION (7) IS CONTINGENT UPON THE APPLICANT BEING AWARDED THE FEDERAL GRANT THAT THE APPLICANT SOUGHT ASSISTANCE WITH IN ITS GRANT APPLICATION. GRANTEES MUST COMPLY WITH THE REQUIREMENTS OF ANY FEDERAL GRANTS THEY RECEIVE PURSUANT TO THIS SECTION.

(8) **Reporting.** NOTWITHSTANDING SECTION 24-1-136 (11)(a)(I), THE BOARD

SHALL SUBMIT A REPORT BY JULY 1 OF EACH YEAR TO THE COMMITTEES OF REFERENCE OF THE GENERAL ASSEMBLY TO WHICH THE DEPARTMENT IS ASSIGNED PURSUANT TO SECTION 2-7-204 (1). THE REPORT MUST INCLUDE:

(a) THE UNOBLIGATED BALANCE OF THE FUND, THE NUMBER OF GRANT APPLICATIONS, AND THE NUMBER AND VALUE OF GRANTS AWARDED;

(b) THE ELIGIBLE ENTITIES THAT HAVE APPLIED FOR A GRANT, THE ACTIONS TAKEN BY EACH GRANTEE, OTHER MEASUREMENTS OF SUCCESS, AND THE AMOUNT OF GRANT MONEY DISTRIBUTED TO EACH GRANTEE;

(c) THE PROGRESS TOWARD ACHIEVEMENT OF THE NATURAL DISASTER MITIGATION GOALS SPECIFIED IN SUBSECTION (6) OF THIS SECTION AND THE PRIMARY FACTORS FACILITATING AND INHIBITING THAT PROGRESS; AND

(d) ANY SUGGESTED LEGISLATION OR POLICY CHANGES.

(9) **Repeal.** THIS SECTION IS REPEALED, EFFECTIVE JANUARY 1, 2030.

SECTION 2. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2022 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: July 6, 2021