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Final Fiscal Note

Drafting Number: LLS 22-0745 Date: July 19, 2022
Prime Sponsors: Rep. Benavidez; Valdez A. Bill Status: Signed into Law
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Bill Topic: WATER QUALITY REGULATION

- Summary of Fiscal Impact:
- State Revenue
- State Expenditure
- State Transfer
- TABOR Refund
- Local Government
- Statutory Public Entity

The bill requires the Water Quality Control Commission to conduct enhanced outreach to disproportionately impacted communities regarding proposed state actions. It also requires the commission to utilize criteria established in rule for designating waters as use protected, and creates a 5-year statute of limitations for bringing actions under the Colorado Water Quality Control Act.

Appropriation Summary: No appropriation is required.

Fiscal Note Status: The fiscal note reflected the enacted bill.

Table 1
State Fiscal Impacts Under HB 22-1322

Table with 3 columns: Category, Budget Year FY 2022-23, and Out Year FY 2023-24. Rows include Revenue, Expenditures (General Fund, Centrally Appropriated, Total Expenditure, Total FTE), Transfers, and Other Budget Impacts (General Fund Reserve).

Summary of Legislation

The bill adds the Water Quality Control Commission (WQCC) in the Department of Public Health and Environment (CDPHE) to the list of agencies required to conduct outreach to and engagement of disproportionately impacted communities regarding proposed state actions, defined under current law as rulemaking proceedings, licensing proceedings, and adjudicatory hearings. The WQCC must conduct the required outreach and engagement for all proposed state actions beginning July 1, 2023, except for certain outreach requirements for rulemaking proceedings concerning the classification and numeric standards for certain river basins, which go into effect on the effective date of the bill. The bill also requires the commission to utilize criteria promulgated in rule for designating waters as use-protected, and establishes a five-year statute of limitations for bringing actions alleging a violation of the Water Quality Control Act or any rules or orders under the act.

Background

Enhanced engagement. The Environmental Justice Act, enacted by House Bill 21-1266, requires the Air Quality Control Commission (AQCC) to create new ways to gather input from disproportionately impacted communities regarding proposed state actions. Specifically, the bill required the AQCC to:

- schedule public input meetings at variable times and days of the week;
- provide notice at least 30 days prior to a public comment period or public meetings;
- use multiple methods of outreach;
- provide multiple methods for public input;
- consider a variety of locations for public input on the proposed state action; and
- provide information concerning the proposed state action in the top two languages spoken in the disproportionately impacted community.

This bill adds these requirements to the Water Quality Control Commission for proposed state actions.

Use-protected waters. Current law authorizes the Water Quality Control Commission to designate waters as outstanding waters or use-protected waters, and requires the commission to promulgate criteria governing these designations. Use-protected waters are those waters with existing water quality that is not better than necessary to support fish and wildlife propagation as well as recreation.

State Expenditures

The bill increases General Fund expenditures in the CDPHE by \$304,595 and 2.0 FTE in FY 2023-24 and ongoing. These costs are included in Table 2 and described below.

Table 2
State Expenditures Under HB 22-1322

	FY 2022-23	FY 2023-24
Department of Public Health and Environment		
Personal Services	-	\$164,500
Operating Expenses	-	\$2,700
Capital Outlay Costs	-	\$12,400
Meeting and Communication Materials	-	\$71,776
Travel Costs	-	\$8,422
Interpretation and Translation Services	-	\$12,000
Centrally Appropriated Costs ¹	-	\$32,797
Total	-	\$304,595
Total FTE	-	1.8 FTE

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

Department of Public Health and Environment. Beginning in FY 2023-24, the CDPHE requires 2.0 FTE for a liaison and an environmental protection specialist to prepare meeting and outreach materials, conduct outreach events, respond to public inquiries, and revise draft rules taking into consideration public input. In addition to staff resources, which include standard operating and capital outlay expenses, costs will be incurred to develop and translate meeting and communication materials, reserve meeting space, and travel to in-person meeting venues. The Water Quality Control Commission conducts, on average, ten proposed state actions, including rulemaking and adjudicatory hearings, per year. This fiscal note assumes that one public meeting will be conducted per month, totaling 12 public meetings per year. Staff costs include standard operating and capital outlay costs, and reflect the General Fund pay date shift.

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 and supplemental employee retirement payments, are shown in Table 2.

Other Budget Impacts

General Fund reserve. Under current law, an amount equal to 15 percent of General Fund appropriations must be set aside in the General Fund statutory reserve beginning in FY 2022-23. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve by the amount shown in Table 1, which will decrease the amount of General Fund available for other purposes.

Effective Date

The bill was signed into law by the Governor and took effect on June 8, 2022.

Departmental Difference

The CDPHE estimates that the bill will increase its General Fund expenditures by \$800,138 in FY 2023-24 and \$818,986 in FY 2024-25 and ongoing, on the assumption that the CDPHE requires 7.3 FTE to coordinate, prepare for, facilitate, and follow up from public outreach related to rulemaking hearings at the commission. The CDPHE was appropriated approximately \$240,000 per fiscal year and 1.3 FTE to engage in enhanced outreach efforts to disproportionately communities under HB 21-1266, and contends that these resources are insufficient for the current air quality engagement and that additional funding should be provided under this bill for the water quality engagement. However, this fiscal note analysis assumes that the amount appropriated under HB 21-1266 was sufficient for the CDPHE to meet the minimum requirements of the bill. Based on this information provided by the CDPHE about its prior implementation of HB 21-1266 and the LCS assessment of the requirements of this bill, the fiscal note assumes that an appropriation of approximately \$300,000 per fiscal year and 2.0 FTE, which is 50 percent higher than the staff resources appropriated in HB21-1266, suffices to meet the requirements of this bill.

State and Local Government Contacts

Public Health and Environment