



Legislative Council Staff

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Final Fiscal Note

Drafting Number: LLS 22-0433
Prime Sponsors: Sen. Donovan

Date: May 31, 2022
Bill Status: Postponed Indefinitely
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Bill Topic: GEOGRAPHICAL AREA HAZARDOUS AIR POLLUTION RULE

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

The bill would have directed the Air Pollution Control Division within the Department of Public Health and Environment to analyze hazardous air pollution data and propose a rule to the Air Quality Control Commission to reduce pollutants within geographic areas with the greatest potential for causing chronic human health effects by July 1, 2023. The bill would have increased state expenditures beginning in FY 2022-23, and increased state revenue beginning in FY 2023-24.

Appropriation Summary: For FY 2022-23, the bill would have required an appropriation of \$304,616 to the Department of Public Health and Environment.

Fiscal Note Status: The fiscal note reflects the introduced bill. This bill was not enacted into law; therefore, the impacts identified in this analysis do not take effect.

Table 1
State Fiscal Impacts Under SB 22-082

Table with 4 columns: Category, Sub-category, Budget Year FY 2022-23, and Out Year FY 2023-24. Rows include Revenue (Cash Fund), Expenditures (General Fund, Cash Funds, Centrally Appropriated, Total Expenditures, Total FTE), Transfers, and Other Budget Impacts (General Fund Reserve, TABOR Refund).

Summary of Legislation

The bill requires the Air Pollution Control Division (APCD) within the Department of Public Health and Environment (CDPHE) to analyze hazardous air pollution (HAP) data published by the U.S. Environmental Protection Agency (EPA) and to identify and map geographic areas where HAPs have the greatest potential for causing chronic human health effects. The APCD must produce and make publically available a map showing these geographic areas, and must propose a rule to the Air Quality Control Commission (AQCC) in order to reduce these HAPs in the identified geographic areas by July 1, 2023. The AQCC must hold a hearing and comply with the required analysis of proposed air quality rules as outlined in current law.

State Revenue

Beginning in FY 2023-24, revenue will increase by \$0.4 million per year to the Stationary Sources Control Fund in the CDPHE from hazardous air pollutant emission fees. This revenue is subject to TABOR.

Fee impact on regulated entities. Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. The APCD currently collects emission fees for hazardous air pollutants from 2,013 regulated entities, with annual fee revenue estimated at \$1.3 million. Emission fees are based on the amount of pollutants reported in the most recent air pollution emission notice on file with the APCD. For FY 2021-22, emission fees for hazardous air pollutants are set in statute at \$239 per ton. The AQCC is authorized to adjust the fee by rule in future years to cover the indirect and direct costs required to administer air quality control programs. This fiscal note assumes that emission fees will increase by approximately 30 percent to \$313 per ton in FY 2023-24 to cover CDPHE's costs associated with implementing this bill, assuming constant emissions level. Table 2 identifies the approximate fee impact of this bill.

Table 2
Fee Impact on SB 22-082

Fee Type	Fund	FY 2022-23	FY 2023-24
Emissions	Stationary Source Control Fund	-	\$401,019
	Total	-	\$401,019

State Expenditures

The bill increases state expenditures in CDPHE by \$362,663 in FY 2022-23 from the General Fund and \$401,019 in FY 2023-24 and beyond from the Stationary Source Control Fund. The CDPHE requires a 9 to 12 month review process before adjusting emission fees. Therefore, FY 2022-23 costs require a General Fund appropriation. Expenditures are shown in Table 3 and detailed below.

**Table 3
 Expenditures Under SB 22-082**

	FY 2022-23	FY 2023-24
Department of Public Health and Environment		
Personal Services	\$226,274	\$235,053
Operating Expenses	\$4,185	\$3,645
Capital Outlay Costs	\$24,800	-
Legal Services	\$44,357	\$44,357
Communication and Outreach Materials	\$5,000	\$5,000
Centrally Appropriated Costs ¹	\$58,047	\$112,964
FTE – Personal Services	3.0 FTE	2.7 FTE
FTE – Legal Services	0.3 FTE	0.3 FTE
Total	\$362,663	\$401,019
Total FTE	3.3 FTE	3.0 FTE

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

Department of Public Health and Environment. Beginning in FY 2022-23, the APCD requires an increase in staff to analyze hazardous air pollutants from risk screening environmental indicators, identify and map geographic areas with the greatest potential for chronic human health effects, conduct communication and outreach to stakeholders, and propose a rule to the AQCC to reduce these pollutants. Outreach includes community engagement meetings, presentations, and translation services. This fiscal note assumes a September 1 start date, includes standard operating and capital outlay costs, and reflects the General Fund pay date shift. Staff resources in FY 2024-25 and beyond for monitoring and enforcing compliance with the new rules will be determined once rule-making is complete, and will be requested through the annual budget process.

- *Legal services.* Beginning in FY 2022-23, the APCD requires an estimated 450 hours of legal services annually from the Department of Law to support rule language development, stakeholder communications, and rulemaking, advise on rule implementation, and represent the CDPHE with challenges to the rule.

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 3.

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 \$45,692 in FY 2022-23, which will decrease the amount of General Fund available for other purposes.

TABOR refunds. The bill is expected to increase the amount of state revenue required to be refunded to taxpayers by \$401,019 for FY 2023-24. This estimate assumes the December 2021 LCS revenue forecast. A forecast of state revenue subject to TABOR is not available beyond FY 2023-24. Because TABOR refunds are paid from the General Fund, increased cash fund revenue will reduce the amount of General Fund available to spend or save.

Effective Date

This bill was postponed indefinitely by the Senate Health and Human Services Committee on February 16, 2022.

State Appropriations

In FY 2022-23, the bill would have required a General Fund appropriation of \$304,616 to the Department of Public Health and Environment, and 3.3 FTE. Of this amount, \$44,357 would have been reappropriated to the Department of Law, and 0.3 FTE.

State and Local Government Contacts

Public Health and Environment

Law

Information Technology