



Legislative Council Staff

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FISCAL NOTE

Drafting Number: LLS 20-0328
Prime Sponsors:

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Bill Status: Bill Request
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Bill Topic: APPLY GENERAL WATER QUALITY PERMIT PROCESS INDIVIDUAL

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

The bill expands multiple processes currently available to general water quality permits to include individual permits, including the ability for an applicant to submit a cost-benefit analysis for consideration, public notice and participation requirements, and the ability to appeal permit requirements. The bill increases state expenditures on an ongoing basis.

Appropriation Summary: For FY 2020-21, the bill requires an appropriation of \$167,050 to the Department of Public Health and Environment.

Fiscal Note Status: The fiscal note reflects the bill draft requested by the Water Resources Review Committee.

Table 1
State Fiscal Impacts Under Bill 4

Table with 4 columns: Category, FY 2020-21, FY 2021-22. Rows include Revenue, Expenditures (General Fund, Cash Funds, Centrally Appropriated, Total), Total FTE, Transfers, and TABOR Refund.

Summary of Legislation

The bill expands multiple processes currently available to general water quality permits to include individual permits. Water quality permit applicants can submit a cost-benefit analysis prepared by a third party chosen from an approved list of analysts, which is developed by the Department of Public Health and Environment (CDPHE) in consultation with industries subject to permitting. The bill also requires CDPHE to provide rationale for, public notice of, and consider public comments received regarding proposed new or amended individual water quality permits. Lastly, the bill confers a limited right of appeal to parties affected by an individual permit.

Background

Facilities that contribute pollutants to waters of the state are regulated through the Colorado Discharge Permit System, administered by CDPHE. Certain types of discharges, typically from sources with predictable characteristics and well-established best management practices, are eligible for regulation under a general permit. Other sources with more unique or site-specific discharge characteristics are regulated under individual permits. Senate Bill 13-073 required CDPHE to take steps facilitating public input when proposing new or amended requirements affecting water dischargers under general permits, and to consider a third-party CBA, if paid for by an affected party.

Assumptions

CDPHE issues about 60 new individual permits per year, including 40 in the public and private utilities sectors and 20 in the commerce and industry sectors. The fiscal note assumes that each year approximately 15 individual permit applicants (25 percent) will submit a CBA for consideration.

State Expenditures

The bill is expected to increase state expenditures for CDPHE by \$210,276 and 0.5 FTE in FY 2020-21, and \$202,805 and 0.5 FTE in FY 2021-22. Costs will be split evenly between General Fund and two CDPHE cash funds. These costs are shown in Table 2 and described below.

**Table 2
 Expenditures Under Bill 4**

	FY 2020-21	FY 2021-22
Department of Public Health and Environment		
Personal Services	\$43,890	\$43,890
Operating Costs	\$675	\$675
Capital Outlay Costs	\$6,200	-
Economics Consultant	\$39,000	\$39,000
Legal Services	\$77,285	\$77,285
Centrally Appropriated Costs*	\$43,226	\$41,955
FTE - Personal Services	0.5 FTE	0.5 FTE
FTE - Legal Services	0.4 FTE	0.4 FTE
Total Cost	\$210,276	\$202,805
Total FTE	0.9 FTE	0.9 FTE

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

Personal services. CDPHE will review an estimated 15 CBAs per year, requiring 70 hours of staff time each (about 1,000 hours total). Tasks required for each affected permit include reviewing each CBA, meeting with and responding to the permittee, and working with consultants to assist in CBA review when outside expertise is needed. Expanding the public review process to include individual permits will entail a negligible workload increase due to the similarity of the bill's requirements to the existing process established in regulation.

Economics consultant. The CDPHE will incur costs for an economics consultant to assist the agency in evaluating each CBA; the fiscal note assumes 17 hours per CBA at a rate of \$150 per hour.

Legal services. It is assumed that two permits per year will be appealed, with an average of one appeal requiring administrative or district court hearings, requiring 725 hours of legal services at a rate of \$106.60 per hour.

Court proceedings. The bill increases workload and costs in the Office of Administrative Courts in the Department of Personnel and Administration for additional hearings related to water permitting. Any potential costs or changes in administrative law judge staffing will be addressed through the annual budget process based on actual use of the courts by executive branch agencies. To the extent administrative decisions are appealed, workload in the trial courts in the Judicial Department may also increase.

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 assessments, are estimated to be \$43,226 in FY 2020-21 and \$41,955 in FY 2021-22.

Effective Date

The bill takes effect August 5, 2020, if the General Assembly adjourns on May 6, 2020, as scheduled, and no referendum petition is filed.

State Appropriations

For FY 2020-21, the bill requires an appropriation of \$167,050 to CDPHE, and an allocation of 0.5 FTE. Of this appropriation, \$83,525 is from the General Fund, \$32,125 is from the Commerce and Industry Fund, and \$51,400 is from the Public and Private Utilities Sector Fund. Of this amount, \$77,285 is reappropriated to the Department of Law, along with an additional allocation of 0.4 FTE for legal services.

State and Local Government Contacts

Public Health and Environment Law