

CHAPTER 209

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**HEALTH AND ENVIRONMENT**

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**HOUSE BILL 95-1228**

BY REPRESENTATIVES Moellenberg, Jerke, Schwarz, Sullivan, and Sullivant;  
also SENATORS Bishop, Dennis, Hopper, Johnson, Matsunaka,  
L. Powers, R. Powers, Schaffer, and Wattenberg.

**AN ACT**

**CONCERNING FLEXIBILITY FOR SMALL COMMUNITIES IN MEETING ENVIRONMENTAL REQUIREMENTS, AND, IN CONNECTION THEREWITH, ESTABLISHING A PROGRAM AUTHORIZING THE APPROVAL OF INTEGRATED ENVIRONMENTAL COMPLIANCE AGREEMENTS THAT PROVIDE SMALL COMMUNITIES UP TO TEN YEARS TO PHASE IN COMPLIANCE WITH ENVIRONMENTAL REQUIREMENTS.**

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

**SECTION 1.** Title 25, Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW ARTICLE to read:

**ARTICLE 19**

**Small Community Environmental Flexibility Act**

**25-19-101. Short title.** THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "SMALL COMMUNITY ENVIRONMENTAL FLEXIBILITY ACT".

**25-19-102. Legislative declaration.** (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DETERMINES THAT SMALL COMMUNITIES THROUGHOUT THE STATE ARE STRUGGLING TO IDENTIFY ADEQUATE RESOURCES, PARTICULARLY FOR INFRASTRUCTURE IMPROVEMENTS, TO COMPLY WITH THE NUMEROUS ENVIRONMENTAL REQUIREMENTS THAT HAVE BEEN ESTABLISHED BY FEDERAL AND STATE LAWS.

(2) THE GENERAL ASSEMBLY FURTHER FINDS AND DETERMINES THAT CITIZENS IN SMALL COMMUNITIES, AS WELL AS ALL CITIZENS OF THE STATE, ARE ENTITLED TO THE BENEFITS OF APPROPRIATE MEASURES FOR PUBLIC HEALTH AND ENVIRONMENTAL

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

PROTECTION.

(3) THE GENERAL ASSEMBLY THEREFORE DECLARES THAT THE PROVISIONS OF THIS ARTICLE ARE ENACTED TO PROVIDE MAXIMUM FLEXIBILITY FOR SMALL COMMUNITIES TO COMPLY WITH THE ENVIRONMENTAL LAWS OF THIS STATE WITHOUT DIMINISHING THE PUBLIC HEALTH AND ENVIRONMENTAL PROTECTION PROVIDED TO THE CITIZENS OF COLORADO.

**25-19-103. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "DEPARTMENT" MEANS THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT CREATED BY SECTION 25-1-102.

(2) "ENVIRONMENTAL PRIORITIES PLAN" MEANS A PLAN PREPARED IN ACCORDANCE WITH SECTION 25-19-104.

(3) "INTEGRATED ENVIRONMENTAL COMPLIANCE AGREEMENT" MEANS AN AGREEMENT ENTERED INTO BETWEEN A SMALL COMMUNITY AND THE DEPARTMENT PURSUANT TO SECTION 25-19-105.

(4) "SMALL COMMUNITY" MEANS A MUNICIPALITY, COUNTY, OR SPECIAL DISTRICT WITH A POPULATION OF LESS THAN TWO THOUSAND FIVE HUNDRED PERSONS OR A COMBINATION OF TWO OR MORE SUCH MUNICIPALITIES, COUNTIES, OR SPECIAL DISTRICTS WORKING TOGETHER PURSUANT TO AN INTERGOVERNMENTAL AGREEMENT FOR PURPOSES OF PARTICIPATION IN THE PROGRAM ESTABLISHED PURSUANT TO THIS ARTICLE.

**25-19-104. Environmental priorities plan.** (1) ANY SMALL COMMUNITY WISHING TO ENTER INTO AN INTEGRATED ENVIRONMENTAL COMPLIANCE AGREEMENT PURSUANT TO SECTION 25-19-105 SHALL SUBMIT TO THE DEPARTMENT ON OR BEFORE JULY 1, 1998, AN ENVIRONMENTAL PRIORITIES PLAN PREPARED IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION; EXCEPT THAT AN ENVIRONMENTAL PRIORITIES PLAN MAY BE SUBMITTED BY A SMALL COMMUNITY AFTER JULY 1, 1998, IF THE DEPARTMENT FINDS THAT THE SMALL COMMUNITY DID NOT BECOME AWARE OF AND COULD NOT HAVE REASONABLY ANTICIPATED THE ENVIRONMENTAL COMPLIANCE CONCERNS OF THE COMMUNITY IN TIME TO MEET THE DEADLINE OF JULY 1, 1998.

(2) AN ENVIRONMENTAL PRIORITIES PLAN SHALL:

(a) IDENTIFY THE ENVIRONMENTAL REQUIREMENTS ENUMERATED IN SECTION 25-19-105 THAT POSE AN EXISTING COMPLIANCE PROBLEM OR A NEAR TERM COMPLIANCE PROBLEM FOR THE SMALL COMMUNITY;

(b) DEMONSTRATE THE RESOURCE LIMITATIONS THAT MAKE IT DIFFICULT FOR THE SMALL COMMUNITY TO ACHIEVE AND SUSTAIN COMPLIANCE WITHIN THE ESTABLISHED STATUTORY OR REGULATORY DEADLINES;

(c) SET FORTH THE SMALL COMMUNITY'S PROPOSED ENVIRONMENTAL COMPLIANCE PRIORITIES, INCLUDING THE IDENTIFIED ACTIONS TO BE TAKEN, ANTICIPATED EXPENDITURES REQUIRED FOR SUCH ACTIONS, AND A PROPOSED SCHEDULE THAT

WOULD RESULT IN COMPLIANCE WITH ALL INDIVIDUAL ENVIRONMENTAL REQUIREMENTS AS SOON AS PRACTICABLE, WITHIN AN OVERALL PERIOD NOT TO EXCEED TEN YEARS, WITHOUT ADVERSELY IMPACTING PUBLIC HEALTH OR THE ENVIRONMENT OUTSIDE OF THE SMALL COMMUNITY; AND

(d) DESCRIBE THE PUBLIC PROCESS THAT HAS RESULTED IN THE FORMULATION OF THE ENVIRONMENTAL COMPLIANCE PRIORITIES FOR THE SMALL COMMUNITY.

(3) A SMALL COMMUNITY PARTICIPATING IN THE PROGRAM CREATED BY THIS ARTICLE SHALL TAKE REASONABLE STEPS TO PROVIDE THE PUBLIC AFFECTED BY ITS ACTIONS WITH A MEANINGFUL OPPORTUNITY TO PARTICIPATE IN THE PREPARATION OF AN ENVIRONMENTAL PRIORITIES PLAN, THROUGH WHATEVER COMBINATION OF PUBLIC MEETINGS OR HEARINGS OR OPPORTUNITY FOR WRITTEN INPUT IS MOST PRACTICAL FOR THE PARTICULAR COMMUNITY.

(4) A SMALL COMMUNITY PARTICIPATING IN THE PROGRAM CREATED BY THIS ARTICLE SHALL PROVIDE A COPY OF ITS PROPOSED PLAN TO ANY PERSON WHO HAS SO REQUESTED PRIOR TO THE SMALL COMMUNITY'S SUBMISSION OF ITS PLAN TO THE DEPARTMENT.

(5) THE MULTI-MEDIA ENVIRONMENTAL INTEGRATION ADVISORY COMMITTEE ESTABLISHED PURSUANT TO SECTION 25-1-108 MAY, FOLLOWING NOTICE TO ASSOCIATIONS OF POLITICAL SUBDIVISIONS ELIGIBLE TO PARTICIPATE IN THE PROGRAM CREATED BY THIS ARTICLE, DEVELOP GUIDANCE DOCUMENTS THAT PROVIDE MORE SPECIFIC CRITERIA FOR THE PREPARATION OF AN ENVIRONMENTAL PRIORITIES PLAN IF THE ADVISORY COMMITTEE DETERMINES THAT SUCH CRITERIA WOULD FURTHER THE PURPOSES OF THIS ARTICLE.

(6) AN ENVIRONMENTAL PRIORITIES PLAN SUBMITTED TO THE DEPARTMENT SHALL BE APPROVED IF THE PLAN MEETS THE REQUIREMENTS OF THIS SECTION AND IS CONSISTENT WITH ANY CRITERIA FOR THE PREPARATION OF SUCH PLANS SET FORTH IN GUIDANCE DOCUMENTS DEVELOPED BY THE MULTI-MEDIA ENVIRONMENTAL INTEGRATION ADVISORY COMMITTEE.

**25-19-105. Integrated environmental compliance agreements.** (1) THE DEPARTMENT IS AUTHORIZED TO ENTER INTO INTEGRATED ENVIRONMENTAL COMPLIANCE AGREEMENTS WITH SMALL COMMUNITIES IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION.

(2) THE ENVIRONMENTAL REQUIREMENTS THAT MAY BE ADDRESSED IN AN INTEGRATED ENVIRONMENTAL COMPLIANCE AGREEMENT ARE THE REQUIREMENTS ESTABLISHED BY OR PURSUANT TO ARTICLE 7, 8, 11, 15, OR 18 OF THIS TITLE OR ARTICLE 20 OF TITLE 30, C.R.S. AN INTEGRATED ENVIRONMENTAL COMPLIANCE AGREEMENT MAY ADDRESS ENVIRONMENTAL REQUIREMENTS APPLICABLE TO A SOLID WASTE DISPOSAL SITE AND FACILITY ONLY IF SUCH SITE AND FACILITY RECEIVES TWENTY TONS PER DAY OR LESS OF SOLID WASTE.

(3) ANY INTEGRATED ENVIRONMENTAL COMPLIANCE AGREEMENT WITH A SMALL COMMUNITY SHALL:

(a) IDENTIFY ACTIONS TO BE TAKEN BY THE SMALL COMMUNITY, INCLUDING A

SCHEDULE WITH INTERIM DEADLINES, THAT WILL RESULT IN COMPLIANCE WITH EACH OF THE APPLICABLE INDIVIDUAL ENVIRONMENTAL REQUIREMENTS AS SOON AS PRACTICABLE, WITHIN AN OVERALL PERIOD NOT TO EXCEED TEN YEARS;

(b) BE CONSISTENT WITH AN APPROVED ENVIRONMENTAL PRIORITIES PLAN FOR THE SMALL COMMUNITY;

(c) CONTAIN A PROVISION DIRECTING THAT THE AGREEMENT WILL NOT TAKE EFFECT UNTIL THE COMMUNITY'S REGISTERED ELECTORS HAVE APPROVED ANY CREATION OF A MULTIPLE-FISCAL YEAR DEBT OR OTHER FINANCIAL OBLIGATION FOR WHICH AN ELECTION IS REQUIRED BY SECTION 20 OF ARTICLE X OF THE COLORADO CONSTITUTION AND WHICH IS REQUIRED TO IMPLEMENT THE TERMS OF THE AGREEMENT;

(d) BE STRUCTURED AS A FORMAL ENFORCEMENT AGREEMENT TO ENSURE CONTINUED COMPLIANCE OR TO RESOLVE AN EXISTING COMPLIANCE ISSUE INVOLVING A SMALL COMMUNITY; AND

(e) BE ENFORCEABLE PURSUANT TO THE PROVISIONS OF THE STATUTES GOVERNING THE INDIVIDUAL ENVIRONMENTAL REQUIREMENTS ADDRESSED IN THE AGREEMENT WITH RESPECT TO ANY OF THE AGREEMENT DEADLINES THAT ARE NOT MET.

(4) A SMALL COMMUNITY PARTICIPATING IN THE PROGRAM CREATED BY THIS ARTICLE SHALL PROVIDE A COPY OF ITS PROPOSED AGREEMENT TO ANY PERSON WHO HAS SO REQUESTED IN WRITING PRIOR TO THE SMALL COMMUNITY'S SUBMISSION OF ITS PLAN TO THE DEPARTMENT. BEFORE THE AGREEMENT IS APPROVED BY THE DEPARTMENT, THE DEPARTMENT SHALL ALLOW AT LEAST TWENTY DAYS WITHIN WHICH ANY PERSON MAY REVIEW AND SUBMIT WRITTEN COMMENTS ON THE AGREEMENT TO THE SMALL COMMUNITY AND THE DEPARTMENT.

(5) AN INTEGRATED ENVIRONMENTAL COMPLIANCE AGREEMENT MAY BE AMENDED BY AGREEMENT OF THE SMALL COMMUNITY AND THE DEPARTMENT TO ADDRESS COMPLIANCE CONCERNS NOT ANTICIPATED AT THE TIME OF THE ORIGINAL AGREEMENT. THE AMENDED AGREEMENT SHALL REQUIRE COMPLIANCE WITH ANY NEW REQUIREMENT ADDED TO THE AMENDED AGREEMENT AS SOON AS PRACTICABLE, WITHIN AN OVERALL PERIOD NOT TO EXCEED TEN YEARS FROM THE DATE OF THE AMENDMENT. THE DEADLINE FOR ANY REQUIREMENT ADDRESSED IN THE ORIGINAL AGREEMENT MAY BE EXTENDED AS A PART OF THE AMENDMENT OF THE AGREEMENT, BUT THE DEADLINE MAY NOT BE EXTENDED BEYOND TEN YEARS AFTER THE DATE OF THE ORIGINAL AGREEMENT.

(6) AN INTEGRATED ENVIRONMENTAL COMPLIANCE AGREEMENT ENTERED INTO UNDER THIS ARTICLE SHALL NOT BE DEEMED TO IMPAIR, MODIFY, OR OTHERWISE AFFECT PRIOR AGREEMENTS ENTERED INTO BETWEEN A SMALL COMMUNITY AND ANY ENTITY OTHER THAN THE DEPARTMENT.

(7) ANY PROVISION OF AN INTEGRATED COMPLIANCE AGREEMENT IMPLEMENTING A REQUIREMENT THAT, ABSENT SUCH AGREEMENT, WOULD NO LONGER BE APPLICABLE AS THE RESULT OF REPEAL OR MODIFICATION OF A STATUTORY OR REGULATORY REQUIREMENT SHALL BE UNENFORCEABLE.

(8) NO COMPONENT OF AN INTEGRATED ENVIRONMENTAL COMPLIANCE AGREEMENT THAT WOULD RESULT IN AN INCREASED REGULATORY COMPLIANCE BURDEN ON ANY OTHER ENTITY SHALL BE APPROVED WITHOUT SUCH ENTITY'S CONSENT.

(9) PARAGRAPH (e) OF SUBSECTION (3) OF THIS SECTION NOTWITHSTANDING, IF REQUESTED BY THE SMALL COMMUNITY, THE DEPARTMENT MAY FILE IN DISTRICT COURT A COMPLAINT AND A PROPOSED CONSENT ORDER EMBODYING THE REQUIREMENTS OF THE INTEGRATED ENVIRONMENTAL COMPLIANCE AGREEMENT TO REQUIRE COMPLIANCE WITH ANY APPLICABLE STANDARD, LIMITATION, OR ORDER.

**25-19-106. Planning assistance.** THE DEPARTMENT OF LOCAL AFFAIRS SHALL PROVIDE ASSISTANCE TO SMALL COMMUNITIES IN THE PREPARATION OF ENVIRONMENTAL PRIORITIES PLANS UPON REQUEST.

**25-19-107. Mentoring.** THE DEPARTMENT, IN COOPERATION WITH THE DEPARTMENT OF LOCAL AFFAIRS, IS AUTHORIZED TO IDENTIFY OPPORTUNITIES FOR SMALL COMMUNITIES WITH SIMILAR COMPLIANCE PROBLEMS TO SHARE INFORMATION OR FOR LARGER COMMUNITIES TO WORK WITH SMALL COMMUNITIES IN ADDRESSING THE TECHNICAL AND OTHER ISSUES INVOLVED IN PREPARING AN ENVIRONMENTAL PRIORITIES PLAN.

**25-19-108. Implementation within existing resources.** ANY DEPARTMENT OF STATE IMPLEMENTING ANY PROVISION OF THIS ARTICLE SHALL DO SO WITHOUT ADDITIONAL APPROPRIATIONS OF STATE MONEYS AND WITHOUT ADDITIONAL PERSONNEL.

**SECTION 2. No appropriation.** The general assembly has determined that this act can be implemented within existing appropriations, and therefore no separate appropriation of state moneys is necessary to carry out the purposes of this act.

**SECTION 3. Effective date.** This act shall take effect July 1, 1995.

**SECTION 4. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 25, 1995