

# MEMORANDUM



## JOINT BUDGET COMMITTEE

TO Joint Budget Committee Members  
FROM JBC Staff  
DATE February 14, 2018  
SUBJECT JBC Bill Drafts and Memos

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This memo includes the following bill draft for the Committees consideration.

- LLS 18-857 “Concerning Broadband Deployment into Unserved Areas of the State, and, in Connection Therewith, Making an Appropriation.” (Vance Roper)
- Potential Bill #30 – Stationary Sources Fund Fee Increase Evaluation (Tom Dermody)
- Potential Bill #51 – Accelerate the Plugging and Reclamation of Orphan Wells (Scott Thompson)

Second Regular Session  
Seventy-first General Assembly  
STATE OF COLORADO

DRAFT  
2.9.18

DRAFT

LLS NO. 18-0857.01 Jennifer Berman x3286

COMMITTEE BILL

Joint Budget Committee

**BILL TOPIC:** "Broadband Support Mechanism & Deployment Board"

**A BILL FOR AN ACT**

101 CONCERNING BROADBAND DEPLOYMENT INTO UNSERVED AREAS OF  
102 THE STATE, AND, IN CONNECTION THEREWITH, MAKING AN  
103 APPROPRIATION.

**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)*

**Joint Budget Committee.** To support universal access to broadband service, **section 2** of the bill requires the public utilities commission (commission) to establish a broadband support mechanism and to require each telecommunications provider that provides certain data services in the state to charge and collect a data surcharge from its

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.*

customers in the state, which money will go into the broadband support mechanism. The commission shall direct a third-party contractor maintaining the broadband support mechanism to disburse money from the mechanism to broadband deployment grant applicants approved by the broadband deployment board (board).

**Sections 3 and 4** move the board from the department of regulatory agencies to the office of economic development within the office of the governor. Section 4 also:

- Allows public-private partnerships to apply for broadband deployment grant awards;
- Allows nonprofit entities to apply for broadband deployment grant awards for an unserved area if for-profit entities and public-private partnerships have not applied for broadband deployment grant awards in that area. A local government entity may so apply only if the local government entity has been authorized to provide or offer broadband service by a vote of the people served by the local government entity at an election or by statutory exemption.
- Allows an incumbent provider to exercise a right of first refusal to implement a project for an unserved area only if the incumbent provider submitted an application for a proposed project for the unserved area in the same grant cycle that another applicant submitted an application for the unserved area. An incumbent provider exercising a right of first refusal is required to complete its proposed project within one year after another applicant submitted a proposed project for the area and is required to provide demonstrated downstream and upstream speeds equal to or greater than, and costs equal to or less than, the speeds and costs indicated in the other applicant's proposed project.
- Requires the board, on or before September 1, 2018, to establish a reverse auction process for granting broadband deployment grant awards.

**Section 8** appropriates \$8 million from the general fund to the broadband deployment board for the purpose of making broadband deployment grant awards.

**Sections 1, 2, and 7** make conforming amendments.

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

2           **SECTION 1.** In Colorado Revised Statutes, 40-15-102, **amend**  
3 the introductory portion; and **repeal** (6.7) as follows:

1           **40-15-102. Definitions.** As used in this ~~article~~ ARTICLE 15, unless  
2 the context otherwise requires:

3           (6.7) "~~Eligible applicant~~" means ~~an applicant seeking grant~~  
4 ~~funding for a proposed broadband project under section 40-15-509.5 with~~  
5 ~~a sufficient business track record to indicate that the applicant's~~  
6 ~~operations will be sustainable after receiving infrastructure support under~~  
7 ~~section 40-15-509.5. The term is limited to for-profit entities, except that~~  
8 ~~a nonprofit telephone cooperative, including its affiliates and subsidiaries,~~  
9 ~~or a nonprofit rural electric association that existed on May 10, 2014,~~  
10 ~~qualifies as an "eligible applicant". The term is not limited to a current~~  
11 ~~recipient of high cost support mechanism funds.~~

12           **SECTION 2.** In Colorado Revised Statutes, 40-15-208, **amend**  
13 **(2)(a)(I)(B), (2)(a)(III), and (3)(a); and add (2.5) as follows:**

14           **40-15-208. High cost support mechanism - Colorado high cost**  
15 **administration fund - broadband support mechanism - creation -**  
16 **purpose - operation - rules - report - repeal.** (2) (a) (I) The  
17 commission is hereby authorized to establish a mechanism for the support  
18 of universal service, also referred to in this section as the "high cost  
19 support mechanism", which must operate in accordance with rules  
20 adopted by the commission. The primary purpose of the high cost support  
21 mechanism is to provide financial assistance as a support mechanism to:

22           (B) Provide access to broadband service through broadband  
23 networks in unserved areas pursuant to section ~~40-15-509.5~~ **24-48.5-403**  
24 only.

25           (III) The commission, at its regularly scheduled meetings to  
26 establish the high cost support mechanism surcharge and surcharge rate  
27 shall reduce the amount of the high cost support mechanism surcharge by

1 the following percentages of the new broadband funds allocated in that  
2 year pursuant to section ~~40-15-509.5 (3)~~ **24-48.5-403 (2)** from the high  
3 cost support mechanism ACCOUNT DEDICATED TO BASIC VOICE SERVICE  
4 to the HIGH COST SUPPORT MECHANISM ACCOUNT DEDICATED TO  
5 broadband fund, ~~created in section 40-15-509.5 (4)~~ DEPLOYMENT:

- 6 (A) In years 2016 and 2017, five percent;
- 7 (B) In years 2018 and 2019, ten percent;
- 8 (C) In years 2020 and 2021, fifteen percent; and
- 9 (D) In years 2022 and 2023, twenty percent.

10 (2.5) (a) IN ORDER TO SUPPORT UNIVERSAL ACCESS TO  
11 BROADBAND SERVICE IN ACCORDANCE WITH SECTIONS 40-15-502 (5) AND  
12 24-48.5-403, THE COMMISSION SHALL CREATE A BROADBAND SUPPORT  
13 MECHANISM CONSISTING OF THE MONEY COLLECTED FROM THE DATA  
14 SURCHARGE IMPOSED BY TELECOMMUNICATIONS PROVIDERS IN  
15 ACCORDANCE WITH SUBSECTION (2.5)(b)(I) OF THIS SECTION. THE  
16 THIRD-PARTY CONTRACTOR THAT MAINTAINS THE HIGH COST SUPPORT  
17 MECHANISM SHALL MAINTAIN THE BROADBAND SUPPORT MECHANISM. THE  
18 COMMISSION SHALL DIRECT THE THIRD-PARTY CONTRACTOR TO DISBURSE  
19 MONEY FROM THE BROADBAND SUPPORT MECHANISM TO BROADBAND  
20 DEPLOYMENT GRANT APPLICANTS APPROVED BY THE BROADBAND  
21 DEPLOYMENT BOARD IN ACCORDANCE WITH SECTION 24-48.5-403 (6).

22 (b) (I) THE COMMISSION SHALL REQUIRE EACH  
23 TELECOMMUNICATIONS PROVIDER OFFERING THE FOLLOWING DATA  
24 SERVICES IN COLORADO TO CHARGE AND COLLECT A DATA SURCHARGE  
25 FROM THE PROVIDER'S CUSTOMERS:

- 26 (A) ETHERNET;
- 27 (B) DIGITAL SUBSCRIBER LINE;

1 (C) BROADBAND INTERNET SERVICE;  
2 (D) DIAL-UP INTERNET ACCESS;  
3 (E) IP-ENABLED SERVICE;  
4 (F) VOIP SERVICE; AND  
5 (G) DATA SERVICES PROVIDED THROUGH COMMERCIAL MOBILE  
6 RADIO SERVICE, INCLUDING INTERNET ACCESS, TEXT MESSAGING, VIDEO  
7 MESSAGING, AND IP-ENABLED SERVICE APPLICATIONS.

8 (II) THE SURCHARGE AMOUNT THAT A PROVIDER CHARGES ITS  
9 CUSTOMERS PURSUANT TO SUBSECTION (2.5)(b)(I) OF THIS SECTION IS  
10 BASED ON THE SURCHARGE RATE ESTABLISHED BY THE COMMISSION IN  
11 ACCORDANCE WITH SUBSECTION (2.5)(c) OF THIS SECTION.

12 (c) THE COMMISSION SHALL INITIALLY ESTABLISH THE SURCHARGE  
13 RATE FOR THE BROADBAND SUPPORT MECHANISM AT TWO AND SIX-TENTHS  
14 PERCENT. THE COMMISSION, AT ITS REGULARLY SCHEDULED MEETINGS TO  
15 ESTABLISH THE HIGH COST SUPPORT MECHANISM SURCHARGE AND  
16 SURCHARGE RATE, SHALL SET THE BROADBAND SUPPORT MECHANISM  
17 SURCHARGE RATE AT THE SAME SURCHARGE RATE ESTABLISHED FOR THE  
18 HIGH COST SUPPORT MECHANISM.

19 (d) THE COMMISSION, IN COLLABORATION WITH THE BROADBAND  
20 DEPLOYMENT BOARD, SHALL DETERMINE THE AMOUNT OF MONEY  
21 REQUIRED TO COVER THE DIRECT AND INDIRECT ADMINISTRATIVE COSTS  
22 OF THE COMMISSION AND THE BROADBAND DEPLOYMENT BOARD WITH  
23 RESPECT TO BROADBAND DEPLOYMENT. IN DETERMINING THE AMOUNT OF  
24 MONEY REQUIRED TO COVER THEIR DIRECT AND INDIRECT  
25 ADMINISTRATIVE COSTS, THE COMMISSION, IN COLLABORATION WITH THE  
26 BROADBAND DEPLOYMENT BOARD, SHALL DETERMINE THE PERCENTAGE  
27 OF ADMINISTRATIVE COSTS TO BE ALLOCATED FROM THE BROADBAND

1 SUPPORT MECHANISM AND THE PERCENTAGE TO BE ALLOCATED FROM THE  
2 HIGH COST SUPPORT MECHANISM. BASED ON THE PERCENTAGES  
3 DETERMINED, THE COMMISSION SHALL DIRECT THE THIRD-PARTY  
4 ADMINISTRATOR TO ALLOCATE MONEY FROM THE BROADBAND SUPPORT  
5 MECHANISM TO THE COLORADO HIGH COST ADMINISTRATION FUND,  
6 CREATED IN SUBSECTION (3) OF THIS SECTION, AND THE BROADBAND  
7 ADMINISTRATIVE FUND, CREATED IN SECTION 24-48.5-403 (3).

8 (e) THE COMMISSION, IN COLLABORATION WITH THE BROADBAND  
9 DEPLOYMENT BOARD, MAY PROMULGATE RULES CONCERNING THE  
10 BROADBAND SUPPORT MECHANISM AND THE DATA SURCHARGE  
11 ESTABLISHED IN THIS SUBSECTION (2.5).

12 (f) THIS SUBSECTION (2.5) IS REPEALED, EFFECTIVE SEPTEMBER 1,  
13 2024. BEFORE ITS REPEAL, THIS SUBSECTION (2.5) IS SCHEDULED FOR  
14 REVIEW IN ACCORDANCE WITH SECTION 24-34-104.

15 (3) (a) There is hereby created, in the state treasury, the Colorado  
16 high cost administration fund, referred to in this section as the "fund",  
17 which shall be used to reimburse the commission and its contractors for  
18 reasonable expenses incurred in the administration of the high cost  
19 support mechanism AND THE BROADBAND SUPPORT MECHANISM,  
20 including administrative costs incurred in association with broadband  
21 service, as determined by rules of the commission. The general assembly  
22 shall appropriate annually the ~~moneys~~ MONEY in the fund that ~~are~~ IS to be  
23 used for the direct and indirect administrative costs incurred by the  
24 commission and its contractors. At the end of any fiscal year, all  
25 unexpended and unencumbered ~~moneys~~ MONEY in the fund ~~remain~~  
26 REMAINS in the fund and shall not be credited or transferred to the general  
27 fund or any other fund. Based upon the high cost support mechanism, THE

1 BROADBAND SUPPORT MECHANISM, the balance remaining in the fund, and  
2 the amount appropriated annually by the general assembly for use by the  
3 commission, each year the commission shall determine BOTH the  
4 nondiscriminatory, competitively neutral HIGH COST SUPPORT MECHANISM  
5 assessment on all telecommunications service providers in Colorado AND  
6 THE NONDISCRIMINATORY, COMPETITIVELY NEUTRAL BROADBAND  
7 SUPPORT MECHANISM ASSESSMENT ON ALL TELECOMMUNICATIONS  
8 SERVICE PROVIDERS IN COLORADO THAT PROVIDE DATA SERVICES IN  
9 ACCORDANCE WITH SUBSECTION (2.5)(b)(I) OF THIS SECTION that will be  
10 necessary to cover the cost of implementing and administering the high  
11 cost support mechanism AND THE BROADBAND SUPPORT MECHANISM.  
12 Only the ~~moneys~~ MONEY from the ~~assessment~~ ASSESSMENTS for  
13 administering the high cost support mechanism AND THE BROADBAND  
14 SUPPORT MECHANISM shall be transmitted to the state treasurer, who shall  
15 credit the same to the fund. All interest derived from the deposit and  
16 investment of ~~moneys~~ MONEY in the fund ~~remain~~ REMAINS in the fund and  
17 ~~do~~ DOES not revert to the general fund.

18 **SECTION 3.** In Colorado Revised Statutes, **repeal** 40-15-509.5.

19 **SECTION 4.** In Colorado Revised Statutes, 24-34-104, **amend**  
20 (25)(a)(VI) as follows:

21 **24-34-104. General assembly review of regulatory agencies**  
22 **and functions for repeal, continuation, or reestablishment - legislative**  
23 **declaration - repeal.** (25) (a) The following agencies, functions, or both,  
24 are scheduled for repeal on September 1, 2024:

25 (VI) The functions of the broadband deployment board created in  
26 section ~~40-15-509.5~~, regarding the administration of the broadband fund  
27 ~~created in section 40-15-509.5~~ 24-48.5-403 AND THE BROADBAND



1 SUPPORT MECHANISM ESTABLISHED PURSUANT TO SECTION 40-15-208  
2 (2.5);

3 **SECTION 5.** In Colorado Revised Statutes, 24-48.5-101, **amend**  
4 (4); and **add** (2)(i) as follows:

5 **24-48.5-101. Colorado office of economic development -**  
6 **creation - duties - report.** (2) The Colorado office of economic  
7 development shall:

8 (i) OVERSEE THE BROADBAND DEPLOYMENT BOARD, CREATED IN  
9 PART 4 OF THIS ARTICLE 48.5.

10 (4) The Colorado office of economic development shall provide  
11 staff support for the gateway computer network AND THE BROADBAND  
12 DEPLOYMENT BOARD.

13 **SECTION 6.** In Colorado Revised Statutes, **add with amended**  
14 **and relocated provisions** part 4 to article 48.5 of title 24 as follows:

15 PART 4

16 BROADBAND DEPLOYMENT BOARD

17 **24-48.5-401. Short title.** THE SHORT TITLE OF THIS PART 4 IS THE  
18 "CONNECT COLORADO TO ENHANCE ECONOMIC DEVELOPMENT,  
19 TELEHEALTH, EDUCATION, AND SAFETY ACT".

20 **24-48.5-402. Definitions.** AS USED IN THIS PART 4, UNLESS THE  
21 CONTEXT OTHERWISE REQUIRES:

22 (1) "BOARD" MEANS THE BROADBAND DEPLOYMENT BOARD  
23 CREATED IN SECTION 24-48.5-403.

24 (2) "BROADBAND" OR "BROADBAND SERVICE" HAS THE MEANING  
25 SET FORTH IN SECTION 40-15-102 (3.3).

26 (3) "BROADBAND INTERNET SERVICE" HAS THE MEANING SET  
27 FORTH IN SECTION 40-15-102 (3.5).

1 (4) "BROADBAND NETWORK" HAS THE MEANING SET FORTH IN  
2 SECTION 40-15-102 (3.7).

3 (5) "BROADBAND SUPPORT MECHANISM" OR "BSM" MEANS THE  
4 BROADBAND SUPPORT MECHANISM ESTABLISHED PURSUANT TO SECTION  
5 40-15-208 (2.5).

6 (6) "COMMISSION" MEANS THE PUBLIC UTILITIES COMMISSION  
7 CREATED IN SECTION 40-2-101.

8 (7) "COMPETITIVE LOCAL EXCHANGE CARRIER" HAS THE MEANING  
9 SET FORTH IN SECTION 40-15-102 (5.5).

10 (8) (a) "ELIGIBLE APPLICANT" MEANS AN APPLICANT SEEKING  
11 GRANT FUNDING FOR A PROPOSED BROADBAND PROJECT, WHICH  
12 APPLICANT HAS A SUFFICIENT BUSINESS TRACK RECORD TO INDICATE THAT  
13 THE APPLICANT'S OPERATIONS WILL BE SUSTAINABLE AFTER RECEIVING  
14 INFRASTRUCTURE SUPPORT UNDER SECTION 24-48.5-403.

15 (b) THE TERM "ELIGIBLE APPLICANT":

16 (I) IS NOT LIMITED TO FOR-PROFIT ENTITIES AND MAY INCLUDE A  
17 LOCAL GOVERNMENT ENTITY THAT, BY VOTE OF THE PEOPLE AT AN  
18 ELECTION PURSUANT TO SECTION 29-27-201 OR AS EXEMPTED PURSUANT  
19 TO SECTION 29-27-202, IS AUTHORIZED TO PROVIDE OR OFFER TO PROVIDE  
20 ADVANCED SERVICE, AS THAT TERM IS DEFINED IN SECTION 29-27-102 (1);  
21 AND

22 (II) MAY INCLUDE PUBLIC-PRIVATE PARTNERSHIPS.

23 (9) "HIGH COST SUPPORT MECHANISM" OR "HCSM" MEANS THE  
24 HIGH COST SUPPORT MECHANISM ESTABLISHED PURSUANT TO SECTION  
25 40-15-208.

26 (10) "INCUMBENT PROVIDER" HAS THE MEANING SET FORTH IN  
27 SECTION 40-15-102 (9.5).

1 (11) "LOCAL ENTITY" HAS THE MEANING SET FORTH IN SECTION  
2 40-15-102 (17.5).

3 (12) "LOCAL EXCHANGE CARRIER" HAS THE MEANING SET FORTH  
4 IN SECTION 40-15-102 (18).

5 (13) "OFFICE" MEANS THE COLORADO OFFICE OF ECONOMIC  
6 DEVELOPMENT CREATED IN SECTION 24-48.5-101.

7 (14) "UNSERVED AREA" HAS THE MEANING SET FORTH IN SECTION  
8 40-15-102 (32).

9 **24-48.5-403. Broadband service - definition - report -**  
10 **broadband deployment board - broadband administrative fund -**  
11 **creation - repeal. [Formerly 40-15-509.5]** (1) THE GENERAL ASSEMBLY  
12 HEREBY FINDS, DETERMINES, AND DECLARES THAT TO PROMOTE THE STATE  
13 POLICY OF PROVIDING UNIVERSAL ACCESS TO BROADBAND SERVICE, AS SET  
14 FORTH IN SECTION 40-15-502 (5), IT MAY BE NECESSARY TO PROVIDE  
15 FINANCIAL ASSISTANCE THROUGH ADDITIONAL SUPPORT MECHANISMS IF  
16 COMPETITION FOR LOCAL EXCHANGE SERVICES FAILS TO DELIVER  
17 BROADBAND SERVICE THROUGHOUT THE STATE. "ADVANCED SERVICE"  
18 INCLUDES "BROADBAND SERVICE" FOR PURPOSES OF THIS SECTION ONLY.

19 (2) THE COMMISSION MAY ALLOCATE THE HIGH COST SUPPORT  
20 MECHANISM AND THE BROADBAND SUPPORT MECHANISM FOR THE  
21 DEPLOYMENT OF BROADBAND SERVICE IN UNSERVED AREAS OF THE STATE.  
22 THE COMMISSION MAY FUND THE DEPLOYMENT OF BROADBAND SERVICE  
23 IN UNSERVED AREAS OF THE STATE THROUGH USE OF THE HCSM  
24 SURCHARGE AND SURCHARGE RATE IN EFFECT ON MAY 10, 2014, AND THE  
25 SURCHARGE AND SURCHARGE RATE ESTABLISHED FOR THE BSM.  
26 PURSUANT TO SUBSECTION (3) OF THIS SECTION AND CONSISTENT WITH  
27 SECTIONS 40-15-207 AND 40-15-208, THE COMMISSION SHALL DETERMINE

1 FUNDS AVAILABLE FOR BROADBAND DEPLOYMENT AND THE  
2 ADMINISTRATION OF THE BOARD ONLY FROM THE HCSM MONEY THAT IT  
3 DETERMINES IS NO LONGER REQUIRED BY THE HCSM TO SUPPORT  
4 UNIVERSAL BASIC SERVICE THROUGH AN EFFECTIVE COMPETITION  
5 DETERMINATION AND FROM THE BSM. THE HCSM MONEY AVAILABLE  
6 FOR BROADBAND DEPLOYMENT SHALL BE MAINTAINED BY THE HCSM  
7 THIRD-PARTY CONTRACTOR AND HELD IN A SEPARATE ACCOUNT FROM  
8 MONEY USED FOR BASIC VOICE SERVICE. HCSM MONEY HELD FOR  
9 BROADBAND DEPLOYMENT SHALL NOT BE DISBURSED FOR BASIC VOICE  
10 SERVICE, AND MONEY HELD FOR BASIC VOICE SERVICE SHALL NOT BE  
11 DISBURSED FOR BROADBAND DEPLOYMENT. THE COMMISSION SHALL ONLY  
12 DISBURSE MONEY FOR BROADBAND DEPLOYMENT GRANTS FROM THE  
13 HCSM OR FROM THE BSM AS DIRECTED BY THE BOARD. NOTHING IN THIS  
14 SECTION INCREASES ANY SURCHARGE RATE CHARGED TO HELP FUND THE  
15 HCSM OR THE BSM.

16 (3) THERE IS HEREBY CREATED IN THE STATE TREASURY THE  
17 BROADBAND ADMINISTRATIVE FUND, REFERRED TO IN THIS SECTION AS  
18 THE "FUND". THE FUND CONSISTS OF ALL MONEY ALLOCATED FROM THE  
19 HCSM OR THE BSM FOR THE ADMINISTRATION OF THE BOARD AND ALL  
20 MONEY THAT THE GENERAL ASSEMBLY MAY APPROPRIATE TO THE FUND.  
21 THE MONEY IN THE FUND IS SUBJECT TO ANNUAL APPROPRIATION BY THE  
22 GENERAL ASSEMBLY FOR THE PURPOSES SET FORTH IN THIS SECTION. ALL  
23 INTEREST EARNED FROM THE INVESTMENT OF MONEY IN THE FUND IS  
24 CREDITED TO THE FUND. ALL MONEY NOT EXPENDED AT THE END OF THE  
25 FISCAL YEAR REMAINS IN THE FUND AND DOES NOT REVERT TO THE  
26 GENERAL FUND OR ANY OTHER FUND.

27 (4) (a) THERE IS HEREBY CREATED IN THE OFFICE THE BROADBAND

1 DEPLOYMENT BOARD. THE BOARD IS AN INDEPENDENT BOARD CREATED TO  
2 IMPLEMENT AND ADMINISTER THE DEPLOYMENT OF BROADBAND SERVICE  
3 IN UNSERVED AREAS FROM THE FUND. THE OFFICE SHALL STAFF THE  
4 BOARD. THE BOARD HAS THE POWERS AND DUTIES SPECIFIED IN THIS  
5 SECTION.

6 (b) THE BOARD CONSISTS OF SIXTEEN MEMBERS. THE MEMBERS OF  
7 THE BOARD SHALL BE SELECTED ON THE BASIS OF THEIR KNOWLEDGE OF  
8 AND INTEREST IN BROADBAND SERVICE AND SHALL SERVE FOR FOUR-YEAR  
9 TERMS; EXCEPT THAT, OF THE MEMBERS FIRST APPOINTED TO THE BOARD,  
10 EIGHT MEMBERS SHALL SERVE FOR TERMS OF TWO YEARS, AND EIGHT  
11 MEMBERS SHALL SERVE FOR TERMS OF FOUR YEARS. A MEMBER OF THE  
12 BOARD SHALL NOT SERVE MORE THAN TWO CONSECUTIVE FULL FOUR-YEAR  
13 TERMS.

14 (c) NO MORE THAN EIGHT MEMBERS OF ANY ONE MAJOR POLITICAL  
15 PARTY MAY SERVE ON THE BOARD AT THE SAME TIME. MEMBERS OF THE  
16 BOARD ARE ENTITLED TO SEVENTY-FIVE DOLLARS PER DIEM FOR  
17 ATTENDANCE AT OFFICIAL MEETINGS PLUS ACTUAL AND NECESSARY  
18 EXPENSES INCURRED IN THE CONDUCT OF OFFICIAL BUSINESS. MEMBERS  
19 OF THE BOARD SHALL BE APPOINTED AS FOLLOWS:

20 (I) ONE MEMBER FROM THE COMMISSION; ONE MEMBER FROM THE  
21 OFFICE; ONE MEMBER FROM THE DEPARTMENT OF LOCAL AFFAIRS,  
22 CREATED IN SECTION 24-1-125; AND ONE MEMBER FROM THE OFFICE OF  
23 INFORMATION TECHNOLOGY, CREATED IN SECTION 24-37.5-103, AS  
24 APPOINTED BY THE GOVERNOR. THE GOVERNOR SHALL DETERMINE WHICH  
25 THREE OF THESE FOUR BOARD MEMBERS WILL SERVE AS VOTING MEMBERS  
26 OF THE BOARD. THE FOURTH PERSON WILL SERVE AS A NONVOTING  
27 MEMBER OF THE BOARD.

1 (II) THREE VOTING MEMBERS REPRESENTING LOCAL ENTITIES:

2 (A) ONE OF WHOM IS A COUNTY COMMISSIONER, AS APPOINTED BY  
3 THE PRESIDENT OF THE SENATE IN CONSULTATION WITH COLORADO  
4 COUNTIES, INC.;

5 (B) ONE OF WHOM IS A MAYOR OR CITY COUNCILPERSON, AS  
6 APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES IN  
7 CONSULTATION WITH THE COLORADO MUNICIPAL LEAGUE; AND

8 (C) ONE OF WHOM IS ANY OTHER REPRESENTATIVE OF A LOCAL  
9 ENTITY, AS APPOINTED BY THE MINORITY LEADER OF THE SENATE;

10 (III) SIX VOTING MEMBERS REPRESENTING THE BROADBAND  
11 INDUSTRY:

12 (A) ONE OF WHOM REPRESENTS A WIRELESS PROVIDER, AS  
13 APPOINTED BY THE MINORITY LEADER OF THE HOUSE OF  
14 REPRESENTATIVES;

15 (B) ONE OF WHOM REPRESENTS A WIRELINE PROVIDER, AS  
16 APPOINTED BY THE MINORITY LEADER OF THE SENATE;

17 (C) ONE OF WHOM REPRESENTS A BROADBAND SATELLITE  
18 PROVIDER, AS APPOINTED BY THE GOVERNOR;

19 (D) ONE OF WHOM REPRESENTS A CABLE PROVIDER, AS APPOINTED  
20 BY THE PRESIDENT OF THE SENATE;

21 (E) ONE OF WHOM REPRESENTS A RURAL LOCAL EXCHANGE  
22 CARRIER, AS APPOINTED BY THE GOVERNOR; AND

23 (F) ONE OF WHOM REPRESENTS A COMPETITIVE LOCAL EXCHANGE  
24 CARRIER, AS APPOINTED BY THE SPEAKER OF THE HOUSE OF  
25 REPRESENTATIVES;

26 (IV) THREE VOTING MEMBERS OF THE PUBLIC:

27 (A) ONE OF WHOM RESIDES IN AN UNSERVED AREA OF THE

1 WESTERN SLOPE OF THE STATE, AS APPOINTED BY THE PRESIDENT OF THE  
2 SENATE;

3 (B) ONE OF WHOM RESIDES IN AN UNSERVED AREA OF THE  
4 EASTERN SLOPE OF THE STATE, AS APPOINTED BY THE MINORITY LEADER  
5 OF THE HOUSE OF REPRESENTATIVES; AND

6 (C) ONE OF WHOM RESIDES IN AN UNSERVED URBAN AREA OF THE  
7 STATE, AS APPOINTED BY THE SPEAKER OF THE HOUSE OF  
8 REPRESENTATIVES.

9 (d) THE BOARD SHALL MEET AS OFTEN AS NECESSARY TO CARRY  
10 OUT ITS DUTIES AS DEFINED IN THIS SECTION.

11 (e) THE TERM OF ANY MEMBER OF THE BOARD WHO MISSES MORE  
12 THAN TWO CONSECUTIVE REGULAR BOARD MEETINGS WITHOUT GOOD  
13 CAUSE SHALL BE TERMINATED, AND HIS OR HER SUCCESSOR SHALL BE  
14 APPOINTED IN THE MANNER PROVIDED FOR APPOINTMENTS UNDER THIS  
15 SECTION.

16 (f) IF A BOARD MEMBER HAS A CONFLICT OF INTEREST WITH  
17 RESPECT TO ANY MATTER ADDRESSED BY THE BOARD, INCLUDING A  
18 FINANCIAL INTEREST IN THE MATTER, THE MEMBER SHALL RECUSE  
19 HIMSELF OR HERSELF FROM ANY DISCUSSION OR DECISIONS ON THE  
20 MATTER.

21 (5) THE BOARD SHALL DIRECT THE COMMISSION TO TRANSFER  
22 MONEY, IN A MANNER CONSISTENT WITH THIS SECTION, FROM THE  
23 ACCOUNT FOR BROADBAND DEPLOYMENT ESTABLISHED IN THE HCSM OR  
24 FROM THE BSM TO APPROVED GRANT APPLICANTS. THE BOARD SHALL  
25 DEVELOP CRITERIA FOR AWARDING MONEY FOR NEW PROJECTS EXPANDING  
26 BROADBAND NETWORKS INTO UNSERVED AREAS, INCLUDING:

27 (a) UNTIL THE BOARD DEVELOPS A REVERSE AUCTION PROCESS IN

1 ACCORDANCE WITH SUBSECTION (8) OF THIS SECTION, DEVELOPING A  
2 PROJECT APPLICATION PROCESS THAT PLACES THE BURDEN ON AN ELIGIBLE  
3 APPLICANT TO DEMONSTRATE THAT ITS PROPOSED PROJECT MEETS THE  
4 PROJECT ELIGIBILITY CRITERIA ESTABLISHED IN THIS SUBSECTION (5),  
5 INCLUDING A REQUIREMENT THAT THE PROPOSAL CONCERN A NEW  
6 PROJECT, AND NOT A PROJECT ALREADY IN PROGRESS, AND A  
7 REQUIREMENT TO PROVE THAT THE AREA TO BE SERVED BY THE PROPOSED  
8 PROJECT IS AN UNSERVED AREA. TO PROVE THAT THE AREA TO BE SERVED  
9 IS AN UNSERVED AREA, THE APPLICANT MUST SUBMIT A MAP  
10 DEMONSTRATING THE INSUFFICIENT AVAILABILITY OF BROADBAND  
11 SERVICE IN THE AREA. THE APPLICANT MUST SUBMIT THE APPLICATION  
12 AND MAP TO: THE BOARD; THE BOARD OF COUNTY COMMISSIONERS, CITY  
13 COUNCIL, OR OTHER LOCAL ENTITY WITH AUTHORITY OVER THE AREA TO  
14 BE SERVED; AND AN INCUMBENT PROVIDER. THE BOARD SHALL ESTABLISH  
15 A NOTICE AND COMMENT PERIOD OF AT LEAST SIXTY DAYS WITHIN WHICH  
16 THE LOCAL ENTITY MAY REVIEW AND COMMENT ON THE APPLICATION.

17 (b) DEVELOPING A METHODOLOGY FOR DETERMINING WHETHER A  
18 PROPOSED PROJECT WILL SERVE UNSERVED AREAS;

19 (c) MINIMIZING CONFLICTS WITH, OR DUPLICATION OF, FEDERAL  
20 SOURCES OF HIGH COST SUPPORT OR FEDERAL BROADBAND GRANTS SO AS  
21 TO MAXIMIZE THE TOTAL AVAILABLE STATE AND FEDERAL SUPPORT FOR  
22 RURAL BROADBAND DEVELOPMENT;

23 (d) ENSURING THAT A PROPOSED PROJECT INCLUDES:

24 (I) ACCESS TO A BROADBAND NETWORK;

25 (II) INDEPENDENT FUNDING SECURED FOR AT LEAST TWENTY-FIVE  
26 PERCENT OF THE TOTAL COST OF THE PROPOSED PROJECT; AND

27 (III) A REQUIREMENT TO UTILIZE ANY AWARD GRANTED FROM THE



1 FUND FOR INFRASTRUCTURE PURPOSES ONLY AND NOT FOR OPERATIONS;

2 (e) PROVIDING ADDITIONAL CONSIDERATION FOR PROPOSED  
3 PROJECTS THAT INCLUDE AT LEAST SOME OF THE FOLLOWING FACTORS:

4 (I) PROPOSED PROJECTS THAT ARE ENDORSED BY LOCAL ENTITIES  
5 INTERESTED IN OBTAINING BROADBAND INTERNET SERVICE IN UNSERVED  
6 AREAS OF THE STATE;

7 (II) PROPOSED PROJECTS THAT HAVE DOWNSTREAM AND  
8 UPSTREAM SPEEDS IN EXCESS OF THE MINIMUM REQUIRED UNDER SECTION  
9 40-15-102 (3.7);

10 (III) PROPOSED PROJECTS FOR WHICH THE APPLICANT HAS AN  
11 ESTABLISHED RECORD OF OPERATION IN THE AREA OF THE GRANT  
12 APPLICATION; AND

13 (IV) PROPOSED PROJECTS PROVIDING LAST-MILE BROADBAND  
14 SERVICE, WHICH IS DEFINED AS THE PORTION OF BROADBAND SERVICE  
15 THAT DELIVERS AN INTERNET CONNECTION TO AN END USER THAT LACKS  
16 ACCESS TO BROADBAND SERVICE AT MEASURABLE SPEEDS GREATER THAN  
17 FIFTY-SIX KILOBITS PER SECOND;

18 (f) PROVIDING AN ASSESSMENT OF THE FOLLOWING FACTORS:

19 (I) WHETHER THE PROPOSED PROJECT WILL PROVIDE SERVICES VIA  
20 A LICENSED OR UNLICENSED MEANS OF TRANSMISSION;

21 (II) THE COST-EFFECTIVENESS OF THE PROPOSED PROJECT'S  
22 PROPOSED METHOD FOR EXPANDING BROADBAND INTERNET SERVICE INTO  
23 UNSERVED AREAS; AND

24 (III) THE RELIABILITY OF THE NETWORK PROVIDING BROADBAND  
25 SERVICES;

26 (g) (I) WITH REGARD TO AN APPLICANT THAT HAS SUBMITTED A  
27 PROPOSED PROJECT TO THE BOARD, AFFORDING EACH INCUMBENT

1 PROVIDER IN THE AREA THAT IS NOT PROVIDING ACCESS TO A BROADBAND  
2 NETWORK IN THE UNSERVED AREA A RIGHT OF FIRST REFUSAL REGARDING  
3 THE IMPLEMENTATION OF A PROJECT IN THE UNSERVED AREA IF THE  
4 INCUMBENT PROVIDER SUBMITTED AN APPLICATION FOR THE UNSERVED  
5 AREA IN THE SAME GRANT CYCLE AS THE APPLICANT.

6 (II) IF AN INCUMBENT PROVIDER PROPOSES A PROJECT FOR THE  
7 AREA, THE INCUMBENT PROVIDER COMMITS TO PROVIDING ACCESS TO A  
8 BROADBAND NETWORK:

9 (A) WITHIN ONE YEAR AFTER THE APPLICANT'S SUBMISSION OF A  
10 PROPOSED PROJECT;

11 (B) AT DEMONSTRATED DOWNSTREAM AND UPSTREAM SPEEDS  
12 EQUAL TO OR FASTER THAN THE SPEEDS INDICATED IN THE APPLICANT'S  
13 PROPOSED PROJECT; AND

14 (C) AT A COST PER HOUSEHOLD IN THE AREA TO BE SERVED THAT  
15 IS EQUAL TO OR LESS THAN THE COST PER HOUSEHOLD INDICATED IN THE  
16 APPLICANT'S PROPOSED PROJECT.

17 (h) ENSURING THAT BROADBAND SERVICE GRANT AWARDS ARE  
18 NOT PROVIDED IN AREAS OTHER THAN UNSERVED AREAS;

19 (i) IN THE CASE OF A FRANCHISE AGREEMENT, ENSURING THAT  
20 BROADBAND SERVICE GRANT AWARDS ARE NOT PROVIDED IN AREAS WITH  
21 A POPULATION DENSITY LARGE ENOUGH TO REQUIRE SERVICE UNDER AN  
22 EXISTING FRANCHISE AGREEMENT;

23 (j) ALLOWING A PUBLIC ENTITY, INCLUDING A LOCAL GOVERNMENT  
24 ENTITY THAT, BY VOTE OF THE PEOPLE AT AN ELECTION PURSUANT TO  
25 SECTION 29-27-201 OR AS EXEMPTED PURSUANT TO SECTION 29-27-202,  
26 IS AUTHORIZED TO PROVIDE OR OFFER TO PROVIDE ADVANCED SERVICE, AS  
27 THAT TERM IS DEFINED IN SECTION 29-27-102 (1), TO APPLY TO SERVE AN

1 UNSERVED AREA ONLY IF NO PRIVATE, FOR-PROFIT ENTITY OR  
2 PUBLIC-PRIVATE PARTNERSHIP HAS YET APPLIED FOR APPROVAL OF A  
3 PROJECT TO SERVE THAT UNSERVED AREA;

4 (k) ESTABLISHING A GRANT AWARD PROCESS THAT:

5 (I) ALLOWS FOR ONLY ONE GRANT TO BE AWARDED PER APPLICANT  
6 PER YEAR;

7 (II) ENSURES THE GEOGRAPHICALLY EQUITABLE DISTRIBUTION OF  
8 GRANT AWARDS; AND

9 (III) PROVIDES FOR AN APPEALS PROCESS FOR ANY PARTY  
10 AGGRIEVED BY AN AWARD OR DENIAL OF GRANT MONEY;

11 (l) ESTABLISHING REPORTING AND ACCOUNTABILITY  
12 REQUIREMENTS FOR A PROJECT RECEIVING FINANCIAL SUPPORT FROM THE  
13 FUND, INCLUDING CONTRACTUAL REQUIREMENTS THAT:

14 (I) THE APPLICANT SECURE A PERFORMANCE BOND FOR THE  
15 PROJECT, AS APPROPRIATE;

16 (II) THE APPLICANT DEMONSTRATE AN ABILITY TO PROVIDE  
17 BROADBAND SERVICE AT A REASONABLE COST PER HOUSEHOLD IN THE  
18 AREA TO BE SERVED BY THE PROPOSED PROJECT;

19 (III) THE APPLICANT DEMONSTRATE AN ABILITY TO COMPLETE THE  
20 PROPOSED PROJECT WITHIN A REASONABLE TIME, NOT TO EXCEED TWO  
21 YEARS, UNLESS DELAYED BY A GOVERNMENT ENTITY; AND

22 (IV) PROHIBIT AN APPLICANT FROM USING GRANT AWARD MONEY  
23 TO OFFER, PROVIDE, OR SELL BROADBAND SERVICES IN AN AREA NOT  
24 MEETING THE DEFINITION OF UNSERVED AREA.

25 (6) (a) THE BOARD SHALL REPORT ANNUALLY TO THE  
26 TRANSPORTATION AND ENERGY COMMITTEE AND BUSINESS, LABOR, AND  
27 ECONOMIC AND WORKFORCE DEVELOPMENT COMMITTEE IN THE HOUSE OF

1 REPRESENTATIVES AND TO THE AGRICULTURE, NATURAL RESOURCES, AND  
2 ENERGY COMMITTEE AND BUSINESS, LABOR, AND TECHNOLOGY  
3 COMMITTEE IN THE SENATE, OR THEIR SUCCESSOR COMMITTEES, ON THE  
4 PROJECTS SUPPORTED BY MONEY FROM THE FUND IN A GIVEN YEAR,  
5 INCLUDING INFORMATION ON:

- 6 (I) THE NUMBER OF PROJECTS APPROVED;
- 7 (II) THE LOCATION OF EACH APPROVED PROJECT;
- 8 (III) THE AMOUNT OF FUNDING RECEIVED FOR EACH APPROVED  
9 PROJECT; AND
- 10 (IV) A DESCRIPTION OF EACH APPROVED PROJECT.

11 (b) NOTWITHSTANDING SECTION 24-1-136 (11), THE REPORT  
12 REQUIRED UNDER THIS SUBSECTION (6) CONTINUES INDEFINITELY.

13 (7) LOCAL ENTITIES ARE ENCOURAGED TO COOPERATE WITH  
14 RESPECT TO TIMELINES AND PERMIT FEES CONCERNING PROJECTS IN THEIR  
15 GEOGRAPHIC AREA.

16 (8) (a) NOTWITHSTANDING SUBSECTION (5)(a) OF THIS SECTION,  
17 THE BOARD, ON OR BEFORE SEPTEMBER 1, 2018, SHALL IMPLEMENT A  
18 REVERSE AUCTION PROCESS FOR DISTRIBUTING BROADBAND DEPLOYMENT  
19 GRANTS IN ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION. TO  
20 EFFECTUATE THIS SUBSECTION (8), THE BOARD MAY IMPOSE ADDITIONAL  
21 OR DISTINCT REQUIREMENTS ON REVERSE AUCTION APPLICANTS AND ON  
22 WINNING BIDDERS THAN THE REQUIREMENTS SET FORTH IN THIS SECTION.

23 (b) THE BOARD SHALL PROVIDE AT LEAST THIRTY DAYS' NOTICE ON  
24 ITS WEBSITE OF THE REVERSE AUCTION PROCESS BEFORE THE PROCESS IS  
25 IMPLEMENTED AND SHALL PROVIDE LINKS TO ANY MAPS AND FORMS THAT  
26 THE BOARD DEVELOPS TO FACILITATE THE PROCESS.

27 (c) ANY APPLICATION RECEIVED BY THE BOARD BEFORE THE

1 REVERSE AUCTION PROCESS IS IMPLEMENTED THAT IS STILL PENDING AT  
2 THE TIME THAT THE REVERSE AUCTION PROCESS IS IMPLEMENTED SHALL  
3 NOT BE DENIED SOLELY ON THE BASIS THAT THE APPLICATION DOES NOT  
4 MEET THE REQUIREMENTS THE BOARD ESTABLISHES FOR THE REVERSE  
5 AUCTION PROCESS. RATHER, THE BOARD MAY ASK THE APPLICANT TO  
6 SUPPLEMENT THE APPLICANT'S APPLICATION IN ACCORDANCE WITH THE  
7 REQUIREMENTS THE BOARD ESTABLISHES FOR THE REVERSE AUCTION  
8 PROCESS.

9 (9) THIS SECTION IS REPEALED, EFFECTIVE SEPTEMBER 1, 2024.  
10 BEFORE ITS REPEAL, THE POWERS, DUTIES, AND FUNCTIONS OF THE BOARD  
11 REGARDING THE DEPLOYMENT OF BROADBAND SERVICES INTO UNSERVED  
12 AREAS ARE SCHEDULED FOR REVIEW IN ACCORDANCE WITH SECTION  
13 24-34-104.

14 **SECTION 7.** In Colorado Revised Statutes, 40-15-502, **amend**  
15 (5)(a) as follows:

16 **40-15-502. Expressions of state policy. (5) Universal service**  
17 **support mechanisms.** (a) In order to accomplish the goals of universal  
18 basic service, universal access to advanced service under section  
19 ~~40-15-509.5~~ 24-48.5-403, and any revision of the definition of basic  
20 service under subsection (2) of this section, the commission shall create  
21 a system of support mechanisms to assist in the provision of basic service  
22 in high-cost areas that are without effective competition for basic service,  
23 applying the factors stated in section 40-15-207; except that support  
24 provided in a particular geographic support area is not affected until the  
25 commission makes a finding applying the factors listed in section  
26 40-15-207. The commission shall fund these support mechanisms  
27 equitably and on a nondiscriminatory, competitively neutral basis through

1 assessments, which may include a rate element, on all  
2 telecommunications service providers in Colorado, and the commission  
3 shall distribute the funds equitably and on a nondiscriminatory,  
4 competitively neutral basis. For purposes of administering the support  
5 mechanisms, the commission shall divide the state into reasonably  
6 compact, competitively neutral geographic support areas. A provider's  
7 eligibility to receive support under the support mechanisms is conditioned  
8 upon the provider's offering basic service throughout an entire support  
9 area. The commission shall review the costs of basic service and shall  
10 administer the support mechanisms.

11 **SECTION 8. Appropriation.** For the 2018-19 state fiscal year,  
12 \$8,000,000 is appropriated to the office of economic development in the  
13 office of the governor for use by the broadband deployment board. This  
14 appropriation is from the general fund. To implement this act, the  
15 broadband deployment board may use this appropriation for the purpose  
16 of making broadband deployment grant awards.

17 **SECTION 9. Safety clause.** The general assembly hereby finds,  
18 determines, and declares that this act is necessary for the immediate  
19 preservation of the public peace, health, and safety.

# MEMORANDUM



## JOINT BUDGET COMMITTEE

TO Joint Budget Committee  
FROM Tom Dermody, JBC Staff (303-866-4963)  
DATE February 12, 2018  
SUBJECT Potential Bill #30 - Stationary Sources Fund Fee Increase Evaluation

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The Stationary Sources Control Fund, created in Section 25-7-114.7 (2)(b)(I), C.R.S., experienced a write-off of accounts receivables that has resulted in a significant reduction of the Fund's balance. While the Fund has sufficient cash resources to support the Air Pollution Control Division's (APCD) programming in FY 2017-18, substantial programmatic cuts will be necessary beginning in FY 2018-19. The APCD funds a large portion of its regulatory programs from emissions and permitting fees paid into the Stationary Sources Control Fund. From FY 2008-09 to FY 2017-18, the revenue generated by these fees increased by about 30.0 percent; however, over the same period expenditures from the Fund have increased by almost 48.0 percent.

During the briefing for the Department of Public Health and Environment, JBC Staff recommended that the Committee sponsor legislation amending the hourly rate cap for permit application processing (\$76.45) dictated in Section 25-7-114.7 (2)(a)(III), C.R.S., for FY 2018-19. While the Department expressed support for staff's recommendation, it voiced some concern regarding its temporary and limited nature. At the Department's request, and with the Committee's permission, staff has worked with the Department to consider sponsoring legislation that more permanently addresses the revenue problem facing the Stationary Sources Control Fund. These considerations include amending the criteria pollutants fee cap (\$22.90; Section 25-7-114.7 (2)(a)(I), C.R.S.), the hazardous pollutants fee cap (\$152.90; Section 25-7-114.7 (2)(a)(II), C.R.S.), and the Air Pollution Emissions Notice (APEN) filing fee (\$152.90, Section 25-7-114.1, C.R.S.).

### **STAKEHOLDER OUTREACH EFFORT AND RESULTS**

To date the APCD has met with many of the largest Stationary Source Fund fee payers including Xcel, Noble Energy, Colorado Springs Utilities, Tri-State Generation, DCP Midstream, Black Hills and Suncor Energy. The Division has also met with various impacted trade groups including Colorado Oil and Gas Association, Colorado Association of Commerce and Industry, Colorado Petroleum Association, and the Colorado Mining Association. In addition to these smaller meetings, the APCD held a large group stakeholder meeting on December 4. Open invitations to the meeting were sent to potentially interested parties through a variety of e-mail lists that the APCD and Colorado Air Quality Control Commission have used over the years to inform stakeholders about various air quality matters. Stakeholders had the options to attend this meeting in person, or via the web.

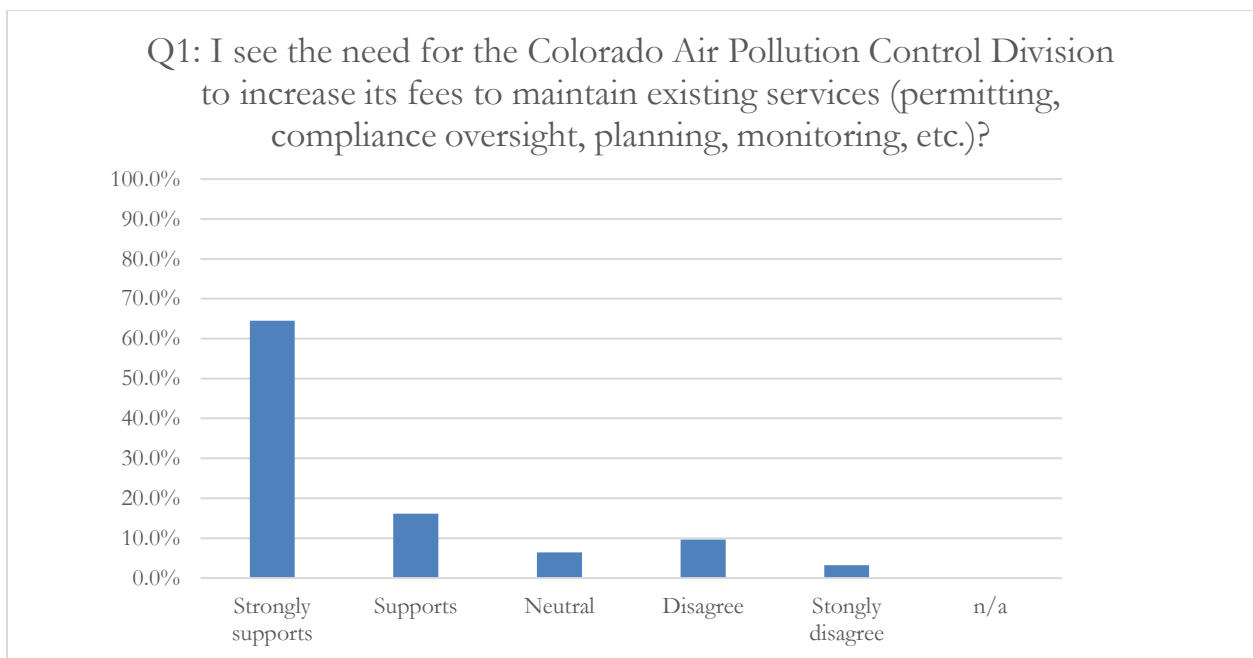
As part of these outreach efforts, the APCD sent a brief survey to approximately 100 stakeholders, including the top 25 fee payers, major stakeholder trade associations, industry representatives, and consumer advocacy groups. Of those that received the survey, 31 responded. The survey consisted of three questions and the ability for the respondent to provide comments. The respondents were asked to rate the three questions on a scale of 1 to 5, with 1 being "strongly disagree" and 5 being "strongly agree." The three questions were:

1. "I see the need for the Colorado Air Pollution Control Division to increase its fees to maintain existing services (permitting, compliance oversight, planning, monitoring, etc.)?"
2. "Scenario 1 - Fee increase over 2 years."

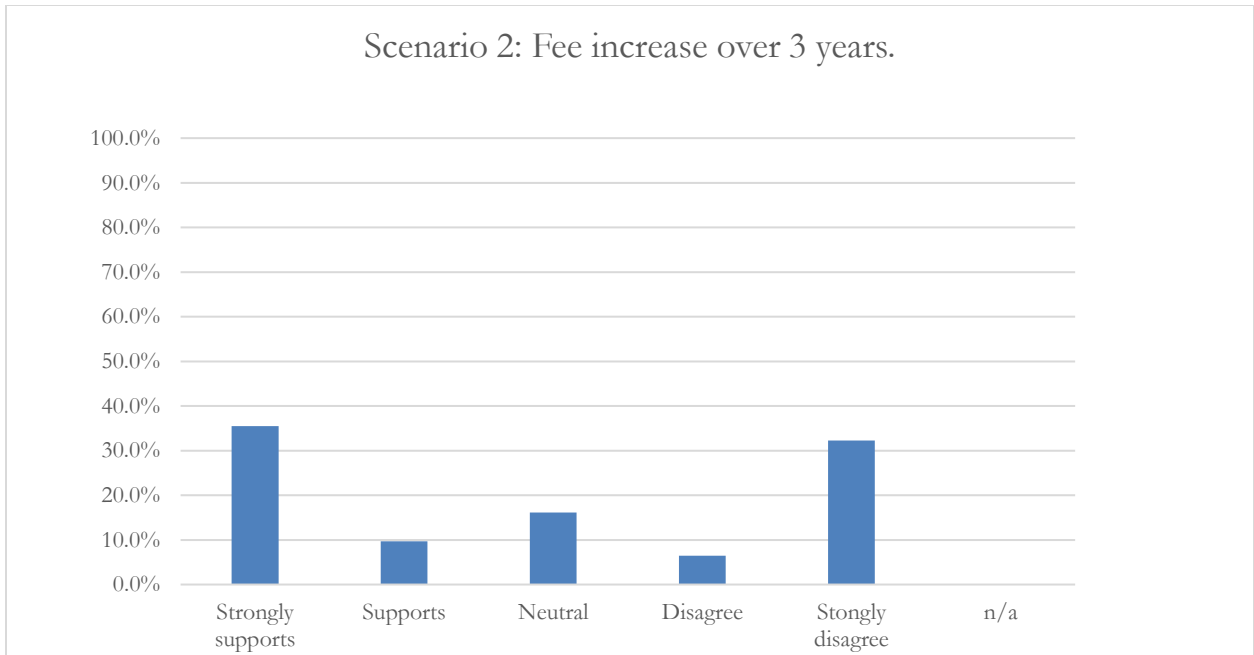
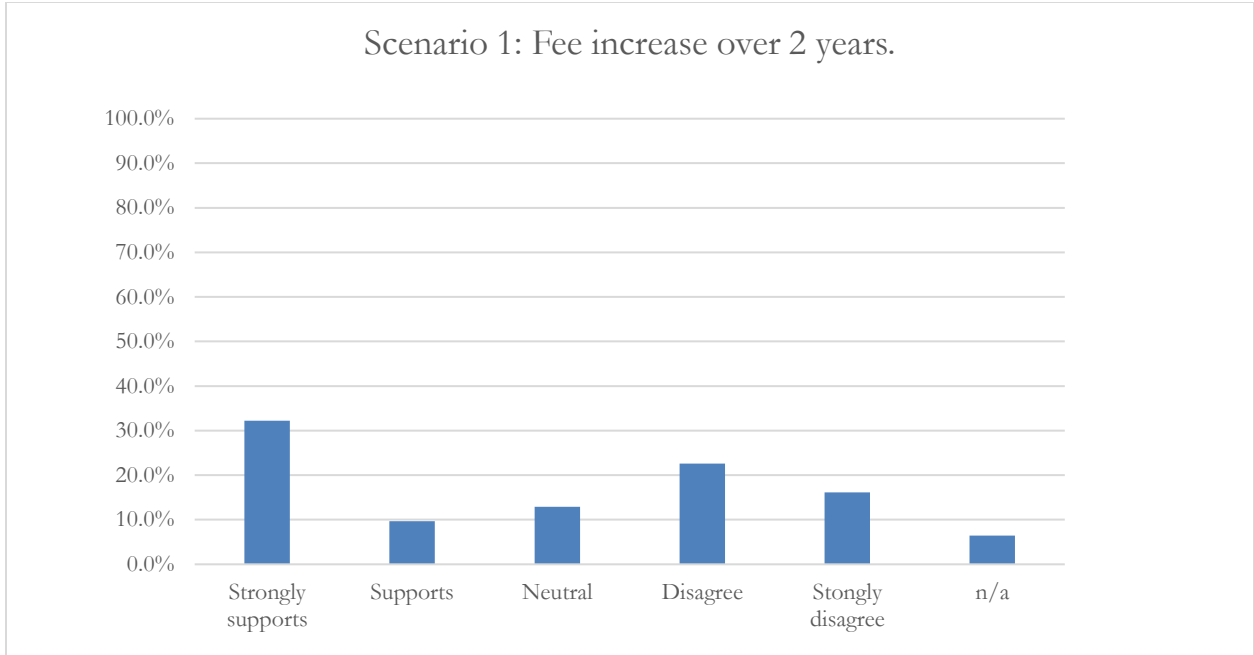
3. “Scenario 2 - Fee increase over 3 years.”

The survey results show that most respondents strongly agree that a fee increase is needed. However, the respondents were about evenly split on whether the fee increase should be phased in over a two or three year period. Additionally, respondent comments were consistent in asking that the APCD find operational efficiencies to reduce expenditures and the amount of time it takes to process permits. Several respondents requested that any phased fee increase be accompanied by a detailed analysis and examination of the processes used by APCD to evaluate and process permits. At least one industry trade organization provided the APCD with a memo response (see Attachment A) to their survey, requesting a broad review of their regulator and permitting processes.

The survey results are shown below.





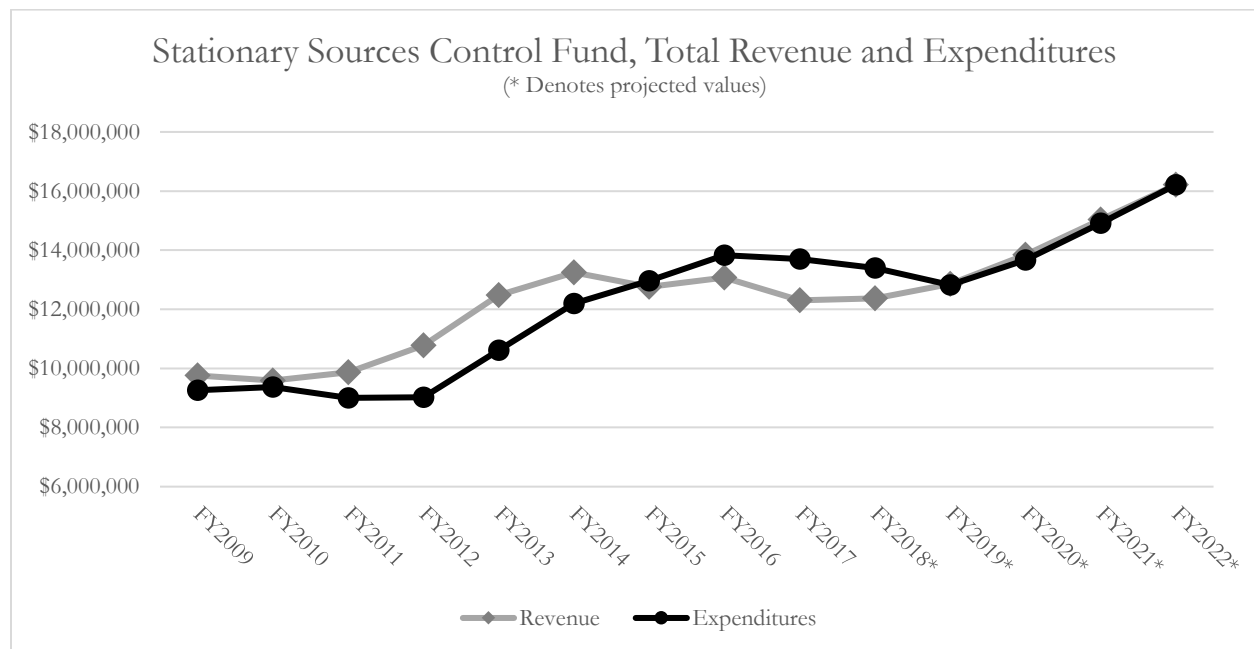


**PROPOSED FEE ADJUSTMENTS**

The APCD has proposed increasing its permitting and filing fees by a total 35.0 percent and their emissions fees by a total 45.0 percent. The Division is proposing to phase in these fee increases over a two to three year period.

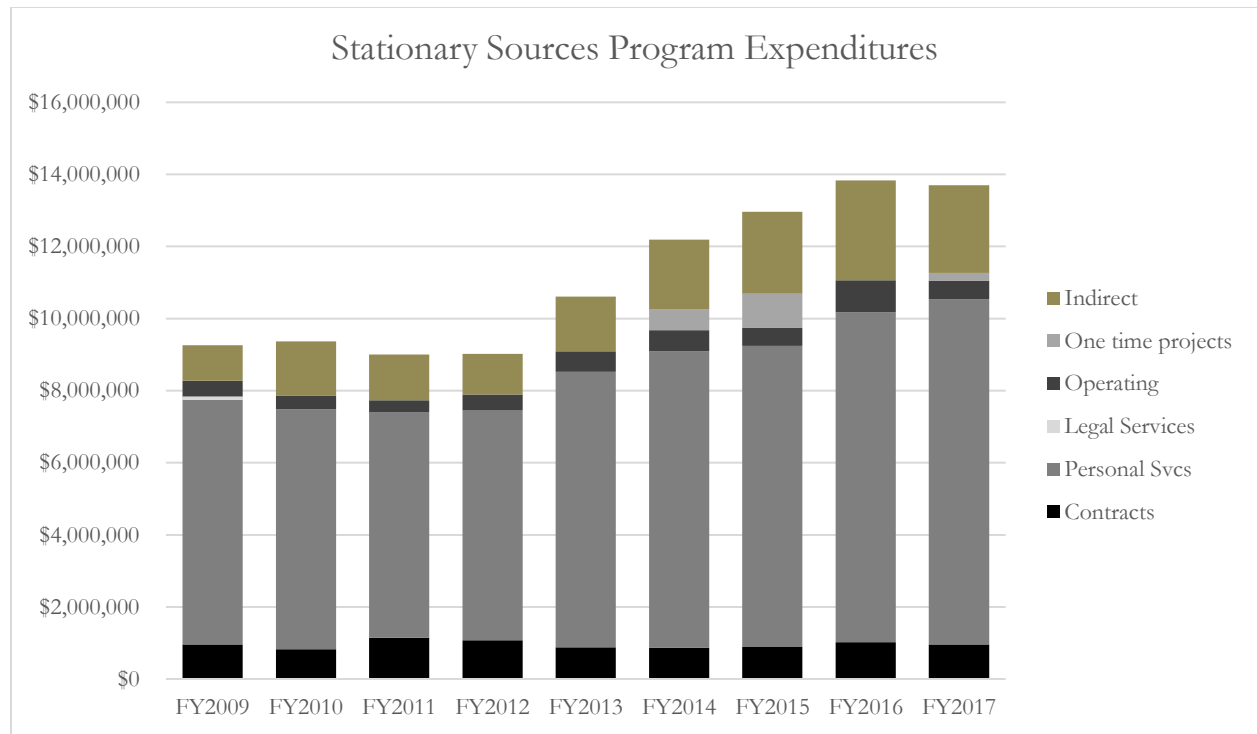
PROPOSED FEE ADJUSTMENTS			
FEE	CURRENT RATE	ADJUSTED RATE	PERCENTAGE INCREASE
Permit Processing	\$76.45	\$103.21	35.0%
APEN	152.90	206.42	35.0%
Criteria Pollutant	22.90	32.52	42.0%
Hazardous Pollutant	\$152.90	\$217.12	42.0%

Using these adjusted fee rates and assuming a three-year phase in of the increases, the Division projects that revenue will moderately surpass anticipated expenditures beginning in FY 2018-19. It should be noted that the APCD is projected an estimated \$1.0 million annual deficit in the current fiscal year; however, the Stationary Sources Control Fund has sufficient reserves to cover this fiscal year's anticipated expenditures.

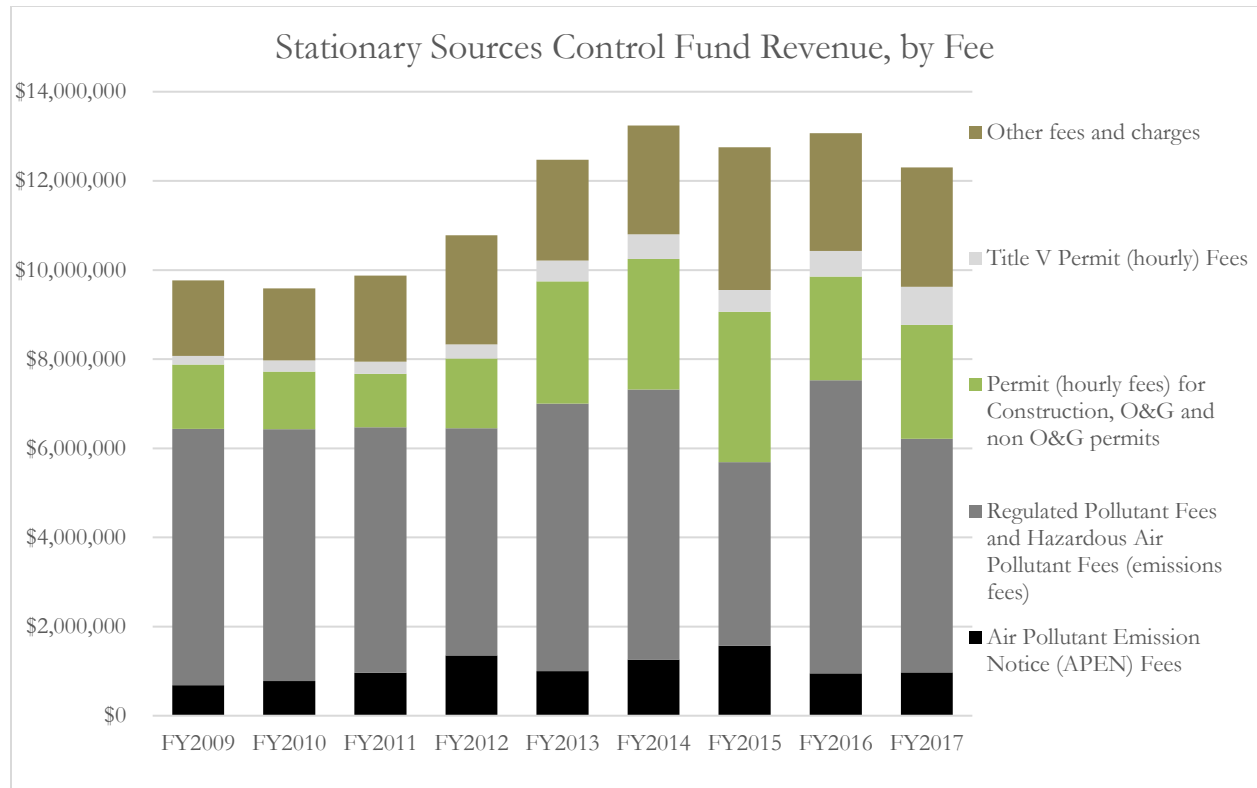


The most significant source of expenditures for the APCD is from personal services, which increased by 25.3 percent from FY 2012-13 to FY 2016-17, the last year for which we have complete data. This increase is driven by two funding decisions made by the General Assembly. In FY 2012-13, the Division received an appropriation for an additional 13.0 FTE for the Oil and Gas sector to address workload increases in permitting and inspections. Also, in FY 2015-16 the Division received 13.0 FTE to address workloads in Title V permits, inspections, and enforcement, as well as staff trained to use infrared cameras for visual inspections. These increases have helped to reduce the Oil and Gas sector permit backlog from 1,700 applications to 17 applications and have increased the Division's capacity to perform visual inspections on stationary sources. Despite these staff level increases, the Division's

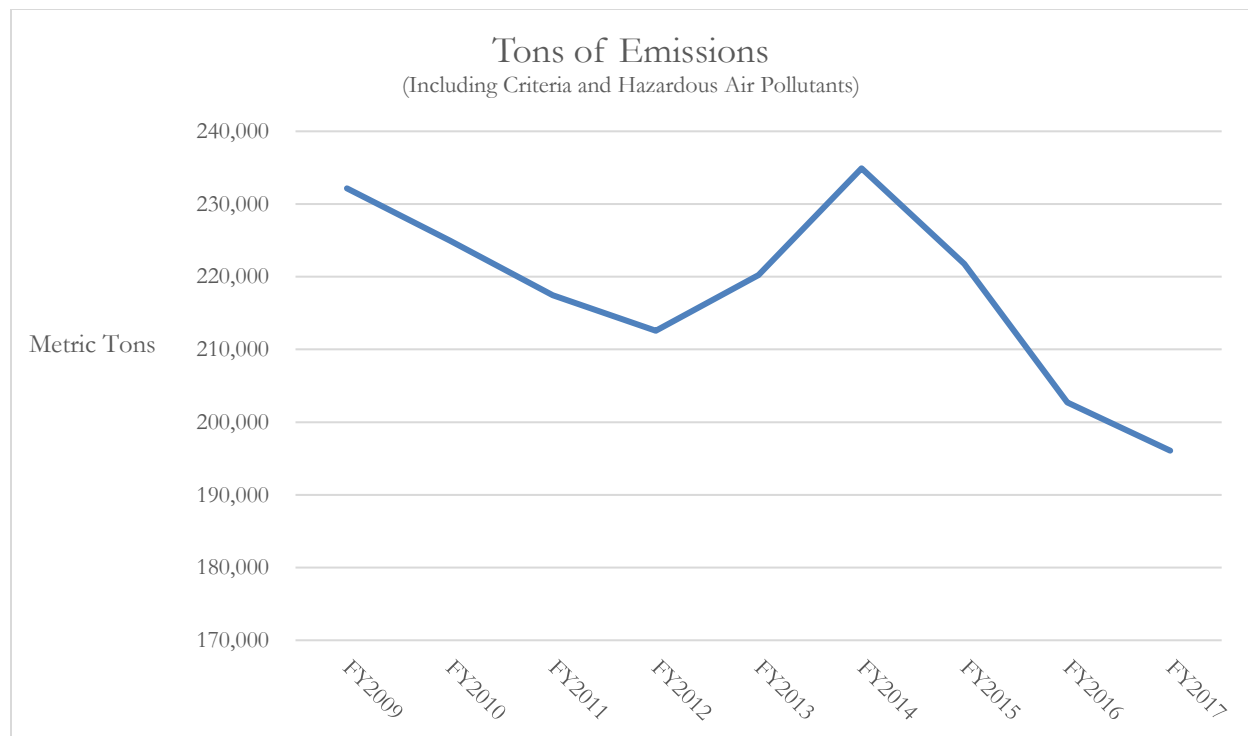
workload continues to grow. From 2013 through 2016, the number of regulated facilities in the state increased from approximately 13,000 to 16,000. Expenditures for the last nine years are detailed below.



Revenue from filing fees (e.g., permit application and APEN) have remained relatively constant, with permit application fees accounting for an average of 18.2 percent of revenue and APEN fees accounting for an average of 9.2 percent. Emissions fees, including both criteria and hazardous air pollutants, account for approximately 49.0 percent of revenue generated by the Stationary Sources program. This means that the Division is heavily reliant on emissions fees for their operations. However, between FY 2008-09 and FY 2016-17 total emissions have decreased by approximately 15.5 percent. Revenue from fees are detailed below.



Emissions data is detailed below.



## ATTACHMENT A TO JBC STAFF STATIONARY SOURCES CONTROL FUND MEMO DATE FEB. 12, 2018

The following memorandum from the Colorado Association of Commerce & Industry (CACI) was sent to the Air Pollution Control Division (APCD) on January 16, 2018 in response to the Division's stakeholder outreach survey. CACI is generally supportive of a fee increase to the relevant stationary sources permit, filing, and emissions fees, while hopeful that the APCD can find operational efficiencies to reduce the costs and number of hours necessary to process permits. Their memorandum includes a substantial list of questions, comments, and suggestions. JBC Staff can address a few of these points, but most of the comments (Q4-Q7, Q9-Q12) would be better addressed by APCD directly to CACI.

### **JBC STAFF LIMITED RESPONSE**

CACI, Q1 and Q2: The Department of Public Health and Environment and the APCD have worked directly with the State Controller's Office (SCO) and have taken the following steps to implement a more reliable reconciliation process to prevent similar accounting errors from occurring in the future:

- 1 In April 2015, the Department volunteered to pilot and test the state's new CORE A/R system. The Department has worked with OIT and the SCO to design and implement this new software module that includes automated billing interfaces and online payment portals.
- 2 The Department conducted a full inventory of its cash funds and worked with its divisions to reconcile each fund to complete any necessary accounts receivable write-offs.
- 3 The Department has instituted quarterly meetings between its central accounting and budget units and division fiscal and leadership staff. These meetings are used to review various financial matters, including conducting an analysis of cash revenue billed verse cash revenue collected. Divisions will be using actual revenue collected as a primary planning tool for their future budget needs.

CACI, Q3: CACI suggests that APCD conduct a comparative analysis of Colorado's regulatory framework and efforts with those of other states and the EPA. While there is certainly value in periodic process improvement analysis, any comparison of the state's regulatory framework with other states and federal efforts comes with several caveats.

- 1 The federal government, specifically the EPA, sets the minimum air quality and stationary source emissions standards required for states to meet. State are delegated enforcement authority by the EPA and are allowed to exceed those minimum standards, if deemed appropriate. Changes to federal requirements have varied impacts on APCD's regulatory and programmatic activities. Any comparison with federal regulatory efforts will have to take into account the federal-state relationship as it pertains to air quality and stationary source emissions regulations.
- 2 Colorado's statutory and regulatory requirements for air quality and stationary source emissions are, when taken as a whole, stricter than the federally required minimum. Any process improvement analysis will need to address those aspects of APCD's program that are directed by rules and regulations versus those dictated by statute. The rules and regulations the APCD follows are determined by the Air Quality Control Commission (AQCC), created in Section 25-7-104 (1),

C.R.S. The AQCC has formal procedures for promulgating rules and regulations. Any statutory considerations would have to be made by the General Assembly.

- 3 Colorado has a unique geography and topography, which has resulted in some of the state's regions having higher levels of ambient air pollution than other regions and states. Any comparative analysis of Colorado's regulatory framework with other states would need to carefully choose those peer states. States with similar geography and topography, as well as similar demographics and business activities should be included in this analysis. The analysis should avoid those states that do not share those factors and are significantly dissimilar from Colorado.

CACI, Q8: The average time needed to conduct major inspections from FY 2005-06 to FY 2011-12 was 23 hours. In FY 2017-18, the Department estimates that the average time needed for major inspections is 40 hours. Additionally, the Department reports that in FY 2016-17 the average time needed to process a permit was 10.4 hours, roughly 1.6 hours more than the previous fiscal year. Part of the reason for the increase in hours necessary to conduct inspections and process permits is that, since 2008, the EPA has adopted 53 new and revised federal air quality regulations. These changes have added requirements to Colorado's permitting and inspection processes.

CACI, Q13: Staff agrees that any potential fee increase legislation should consider utilizing a consumer price index adjustment requirement to some or all of the Stationary Sources Control Fund fees. This requirement, if implemented correctly, would alleviate some of the pressure caused by stagnant fee revenue and expenditure increases partially driven by inflation. Staff is analyzing options for this type of mechanism.

The CACI memorandum follows.



**CACI** COLORADO ASSOCIATION  
OF COMMERCE & INDUSTRY

**To: Mr. Garry Kaufman, Director, Air Pollution Control Division, CDPHE**  
**From: CACI Air Quality Committee**  
**Date: January 16, 2018**  
**Re: Stationary Source Fund Fee Issue**

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The Colorado Association of Commerce & Industry (CACI) is the state chamber of commerce, representing hundreds of businesses across the state, as well as trade associations, economic development organizations, and local chambers of commerce.

On November 16, 2017, representatives of the Colorado Department of Public Health and Environment (CDPHE) Air Pollution Control Division (APCD) presented information on the Stationary Sources Fund issue to the CACI Energy and Environment Council. Then on December 4, 2017, you and several members of your staff sponsored an open public meeting to further discuss the issue and present two proposed fee increase structures. Subsequently, on December 13, 2017, the APCD issued a survey soliciting input from the regulated community on the proposed fee increase structures. During this time, CACI members have been engaged and have been discussing topics related to the shortfall in the Stationary Sources Fund account, the information you and your staff have presented, and how to move forward. These discussions have included a range of topics, including efficiency improvements that could be implemented and other options to ensure long term stability of the fund. While CACI understands that it is unlikely that the funding shortfall can be rectified solely by efficiency improvements, we believe that such improvements are an integral part of determining funding levels and should be considered and discussed.

CACI recognizes and appreciates the efforts that you and your staff have undertaken to reach out to the regulated community to provide information about this funding issue and possible options to increase fees on stationary sources to address the issue. Given that there has not been an increase in the permit processing or emission fees in the past ten years and due to many of the issues you have raised, it does appear that some increase in these fees is warranted. While we appreciate the discussions so far, CACI believes it would be beneficial to both industry and the APCD to continue the conversations prior to introducing any proposed legislation to increase these fees. We propose meeting in the very near future to continue the conversation and address comments and ideas for efficiency improvements raised by members to find common ground.

Many of the CACI members that have been involved in these discussions have received the survey distributed by the APCD and this letter is submitted on their behalf in lieu of them making a response to the survey. CACI members have found it difficult to respond to the survey given the comments and recommendations identified below that we would like to discuss. CACI respectfully submits this memo with the following questions, comments, and recommendations for your consideration and for further discussion.

- 1) There is concern that the accounting error of approximately \$3.3M took years to accrue and was only noticed by chance when implementing a new accounting system. We suggest that accounting process changes and QA/QC procedures should be identified to prevent errors from occurring in the future and to identify them sooner, such as implementing a periodic audit, public review, and any other processes designed to prevent such error from occurring in the future.
- 2) Did this accounting error impact any other department?

- 3) During the December 4, 2017 stakeholder meeting, APCD provided fee values for nearby states and information on increases in Colorado staff time required for various activities. To adequately compare fees and identify efficiency measures used by other states, we suggest that a benchmarking study be incorporated into any fee increase legislation. This study would compare the effort EPA and other states expend on enforcement/inspection, permitting, and planning activities and compare those to Colorado's. These comparisons would be done on a per activity basis where possible: per inspection, per permit, and per nonattainment area. The study should also identify cost effective efficiencies and ongoing and periodic efficiency improvement programs that other states may employ, and discuss the possibility of implementation in Colorado. This study should be conducted after a phase 1 fee increase and before any subsequent fee increases.
- 4) We suggest that APCD standardize or create template permit text for source types, or improve the use of standardized text where it has already been created. APCD has stated in the past that they are working towards this goal, but the regulated community continues to see this as an issue. The same or similar pieces of equipment should have the same or similar permit terms, even at different locations. Additionally, we suggest that permit engineers be directed to not revise permit terms during permit renewals if nothing has changed. We also suggest developing better management of the information permit engineers already have, so that we can limit the requests for information that new permit engineers make when that information is in the application, is in the facility file, or is not needed for permit processing and approval.
- 5) We suggest that APCD look for efficiencies in the permitting and permit modification process by considering the following:
  - a) Create a streamlined process for small sources and small modifications (such as a registration, waiver, or permit by rule) to reduce permit processing time.
  - b) Update the permitting database to improve efficiency in the permitting process from application log in through permit issuance.
  - c) Do not process Construction Permits for sites that are deemed to be exempt from Construction Permitting where the Operator does not voluntarily request a Construction Permit (i.e., APEN-only sources at a site that is exempt from Construction Permitting). Currently, the General APEN notice form is combined with the Application for Construction Permit, which leads to confusion about whether APEN-only sources are applying for a Construction Permit and results in unnecessary permit processing.
- 6) We suggest that APCD provide permit application guidance for non-O&G construction permit applications, Title V permit applications, and Title V permit modification applications that specifies the application components that are required for a complete application. This could also specify the preferred format and order, and perhaps include a checklist like the O&G guidance. Receipt of better and more complete applications should reduce the effort needed for permit issuance.
- 7) We suggest that APCD standardize emission testing protocol requirements to reduce staff time spent on protocol review and approval. The same or similar equipment across multiple facilities that are subject to the same regulatory requirements for testing should be able to use the same emission testing protocol. Additionally, if there is no change to the regulatory requirement for testing of a particular piece of equipment, we suggest that staff be directed to not change the protocols for testing from one test to the next.
- 8) We request the APCD provide more information on the cause for the increase in the average time for facility inspection and report preparation from 23 hours to 40 hours. We acknowledge that there are more requirements and that some of them are complicated, but please consider the following suggestions to reduce inspection and report preparation time:
  - a) Create a checklist for the field inspections for each industry type that could be completed on site.



- b) Create a checklist for inspection records requests for each industry type to expedite the inspection process.
  - c) For companies with good compliance history or a voluntary construction permit, only conduct a records review instead of a site visit and records review.
  - d) Re-evaluate the application of risk-based inspections to reduce the number of facilities receiving the most resource-intensive inspections.
  - e) Only prepare the narrative inspection reports when noncompliance is identified; otherwise, only return the completed field inspection and/or records request checklists to the Operator as record of the inspection.
  - f) Look for other efficiencies in the inspection and reporting process.
- 9) We suggest that APCD create a procedure to streamline response to voluntary self audits to reduce the resources spent evaluating self audit submittals.
- 10) We suggest that APCD evaluate methods to improve efficiency within the modeling step of permit applications (e.g., the assumptions that are being required in modeling analyses that tend to stack conservative assumptions). For example:
- a) Approved modeling protocols should not be changed to explore unrealistic scenarios.
  - b) A method to spot check a portion of modeling analyses should be identified to avoid APCD staff fully remodeling all analyses, if the analysis was prepared by APCD pre-approved third party contractors.
- 11) We suggest that APCD consider using a scale of permit processing rates for new versus experienced permit engineers.
- 12) We suggest that APCD combine permit application fees (the APEN fees and the permit processing fee) into a single fee payment to reduce the number of payment transactions and improve administrative efficiency in the billing and tracking process.
- 13) CACI would be open to discussing incorporating into any fee increase legislation a CPI (or similar) index adjustment that sunsets, perhaps after ten years, combined with a decrease in the fee increase that was proposed on December 4th.

CACI appreciates the opportunity to work with you on this Stationary Source Fund issue that you have raised. CACI believes this is an important issue and that further discussion is necessary regarding the suggestions above. We will continue to consider this issue and potential recommendations for discussion. We suggest setting up an additional meeting in the very near future to discuss the above comments and continue our dialogue. Thank you again for your effort to engage our members on this important issue.

# MEMORANDUM



## JOINT BUDGET COMMITTEE

TO Joint Budget Committee  
FROM Scott Philip Thompson, JBC Staff (303-866-4957)  
DATE February 14, 2018  
SUBJECT Estimated Revenue Generated by Oil and Gas Fee Levy

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This memo answers the question: “How much does the mill on oil and gas development need to increase to generate an additional \$2 million to \$3 million revenue for the Oil and Gas Conservation Commission (OGCC) and Environmental Response Fund to fund enhanced orphan well plugging and reclamation?”

**SHORT ANSWER:** Under current market conditions, each incremental increase to the mill (i.e. 0.1 mills) is projected to generate approximately \$1 million. Therefore, to generate \$2 million to \$3 million, the mill would need to be increased by between 0.2 and 0.3 mills.

**DETAILS:** Mill levy revenue projections are highly dependent on the price and production of oil and gas so it is difficult to identify an exact rate that will generate a specific amount of revenue over any significant period of time. However, under current market conditions, a useful "rule of thumb" is that each 0.1 mill increase would generate approximately \$1.0 million annually in additional revenue for the Oil and Gas Conservation and Environmental Response Fund (Response Fund). Applied in the context of this question, an increase of 0.2-0.3 mills would generate approximately \$2 million to \$3 million in additional revenue per year. This is accompanied by the usual caveat that both the rule and the rate may not be accurate in the future, if market conditions change.

In December, the OGCC noted that expenditures from the Response Fund have exceeded revenue by \$2.0 million to \$3.0 million per year over the past three fiscal years. The OGCC has been able to sustain this temporarily by: (1) spending down substantial reserves that were built up during the recent oil boom in FY 2013-14 and FY 2014-15; (2) replacing mill levy with increased appropriations from the Severance Tax Operational Fund; and (3) holding up to 9.0 FTE vacant when necessary to ensure the Response Fund remained solvent.

However, at the current levy rate of 0.7 mills, the Response Fund is projected to run out of non-restricted revenue sometime before the end of FY 2018-19. A detailed analysis of the Response Fund performed by the Department indicates an initial increase of approximately 0.4 mills, or \$4.0 million, is needed just to support current obligations and achieve an adequate fund balance to cover emergency expenditures and manage cash flow during the first quarter of each fiscal year.

JBC staff believes the OGCC will increase the fee by increasing the mill by at least 0.4 mills by rules. An OGCC rulemaking meeting was scheduled for Monday, February 12, not long after this document was finalized. Staff from the Office of Legislative Legal Services and JBC staff agree that this is a fee and therefore may be increased by the General Assembly through a special bill. JBC staff recommends any bill to increase the fee specifically identify that the increased fee is in addition to the fee the OGCC may change by rule, to avoid unintentional consequences of a both legislation and rule changing the fee structure. It should also include a repeal date to ensure the measure is to address the temporary backlog.

The Department reports the Response Fund would ideally end each fiscal year with a balance between \$5.0 million and \$6.0 million, which requires an increase that is slightly more than what would be required to offset the difference between revenue and expenditures. Accordingly, the OGCC has an upcoming rulemaking in mid-February to consider a mill levy increase to help ensure the long-term health of the Response Fund.

Finally, fee revenue is based on production that is calculated at the end of each quarter. OGCC receives the revenue two months after the end of the quarter when production numbers are finalized. As a result, mill levy from production in the last quarter of a fiscal year—April-June—doesn't come in until mid-August and must be accrued back to the fiscal year when the production actually occurred. Then, the OGCC must wait for first quarter production—July-September—to be completed and finalized and for payment to be submitted before any current year revenue comes into the Response Fund. This generally occurs in late November-early December. This is why a robust year-end fund balance is so important. The OGCC needs to spend about \$1.0 million per month out of the fund and thus needs at least \$5.0 million on hand to support the agency until current year revenue comes in. It is also a precaution against assuming revenue will be generated immediately upon passage of any legislation. This revenue stream takes at least a quarter to ramp up.