

HOUSE COMMITTEE OF REFERENCE REPORT

Chair of Committee

Date

February 10, 2020

Committee on Energy & Environment.

After consideration on the merits, the Committee recommends the following:

HB20-1143 be amended as follows, and as so amended, be referred to the Committee on Finance with favorable recommendation:

1 Amend printed bill, page 5, line 11, after the period add "FOR
2 ACCOUNTING PURPOSES, EACH PENALTY AND FINE CREDITED TO THE FUND
3 PURSUANT TO THIS SECTION IS A DAMAGE AWARD."

4 Page 6, line 3, strike "THREE" and substitute "FIVE".

5 Page 6, line 5, strike "ONE" and substitute "AT LEAST THREE".

6 Page 7, strike lines 12 through 27.

7 Strike page 8.

8 Page 9, strike lines 1 through 3 and substitute:

9 **"(4) Powers and duties of the board. (a) THE BOARD HAS THE**
10 FOLLOWING POWERS AND DUTIES:

11 (I) TO ADVISE THE DEPARTMENT ON THE IDENTIFICATION OF
12 ENVIRONMENTAL JUSTICE COMMUNITIES;

13 (II) TO RECOMMEND TO THE DEPARTMENT EMPs IN RESPONSE TO
14 VIOLATIONS THAT OCCUR IN, OR DIRECTLY AFFECT RESIDENTS OR
15 WORKERS IN, ENVIRONMENTAL JUSTICE COMMUNITIES;

16 (III) TO DEVELOP PROCEDURES FOR SOLICITING FOR, EVALUATING,
17 AND RECOMMENDING EMPs THAT ADDRESS ENVIRONMENTAL VIOLATIONS
18 IN ENVIRONMENTAL JUSTICE COMMUNITIES, INCLUDING ELIGIBILITY
19 REQUIREMENTS. THE PROCEDURES MUST:

1 (A) SPECIFY EMP CRITERIA IN ACCORDANCE WITH SUBSECTION
2 (5)(d) OF THIS SECTION, INCLUDING FOR WHEN IT MAY BE APPROPRIATE TO
3 COMBINE PENALTIES FROM MULTIPLE CASE SETTLEMENTS INTO ONE
4 SOLICITATION;

5 (B) INCLUDE PROCESSES FOR: NOTIFYING EACH ENVIRONMENTAL
6 JUSTICE COMMUNITY THAT WAS AFFECTED BY THE VIOLATION OR WILL BE
7 AFFECTED BY THE PROPOSED EMP; SOLICITING FEEDBACK FROM
8 RESIDENTS OF, WORKERS IN, AND REPRESENTATIVES OF THOSE
9 COMMUNITIES; AND HOLDING A PUBLIC HEARING AT WHICH THE PUBLIC
10 HAS AN OPPORTUNITY TO COMMENT ON THE PROPOSED EMP; AND

11 (C) INCLUDE PUBLIC ENGAGEMENT BEST PRACTICES AND
12 CONSIDERATION OF COMMUNITY INPUT RECEIVED AND A PROCESS FOR
13 COLLABORATING WITH IMPACTED COMMUNITIES WHEN SOLICITING FOR
14 EMP PROPOSALS;

15 (IV) TO SUBMIT AN ANNUAL REPORT TO THE COMMISSION WITH A
16 SUMMARY OF THE BOARD'S ACTIONS, INCLUDING A DESCRIPTION OF ALL
17 EMPs RECOMMENDED DURING THE PREVIOUS YEAR; AND

18 (V) TO MAKE RECOMMENDATIONS, AS REQUESTED BY THE
19 OMBUDSPERSON, TO ADVANCE THE DEPARTMENT'S EFFORTS IN
20 INCORPORATING PRINCIPLES OF ENVIRONMENTAL JUSTICE.

21 (b) (I) THE BOARD SHALL NOT BE INVOLVED IN AN ENFORCEMENT
22 MATTER UNTIL THE DEPARTMENT NOTIFIES THE BOARD THAT THE
23 DEPARTMENT HAS RESOLVED THE MATTER.

24 (II) THE BOARD SHALL USE ITS BEST EFFORTS TO RECOMMEND
25 EMPs WITHIN ONE HUNDRED EIGHTY DAYS AFTER NOTIFICATION BY THE
26 DEPARTMENT THAT AN ENFORCEMENT MATTER HAS BEEN RESOLVED WITH
27 FINES THAT WILL BE PAID INTO THE FUND.

28 (c) THIS SUBSECTION (4) IS REPEALED, EFFECTIVE SEPTEMBER 1,
29 2025. BEFORE THE REPEAL, THE FUNCTIONS OF THE BOARD ARE
30 SCHEDULED FOR REVIEW IN ACCORDANCE WITH SECTION 2-3-1203.

31 (5) **Environmental mitigation projects.** (a) THE DEPARTMENT
32 SHALL USE MONEY IN THE FUND TO PAY FOR EMPs.

33 (b) FOR VIOLATIONS THAT OCCURRED IN OR DIRECTLY AFFECTED
34 AN ENVIRONMENTAL JUSTICE COMMUNITY, THE DEPARTMENT SHALL
35 CONSIDER EMPs RECOMMENDED BY THE BOARD THAT BENEFIT THE
36 IMPACTED COMMUNITY.

37 (c) FOR VIOLATIONS THAT DID NOT OCCUR IN OR DIRECTLY AFFECT
38 AN ENVIRONMENTAL JUSTICE COMMUNITY, THE DEPARTMENT SHALL
39 AWARD EMPs IN ACCORDANCE WITH SUBSECTION (5)(d) OF THIS SECTION
40 AND SHALL:

41 (I) (A) SEEK PUBLIC COMMENT ON AN EMP THAT THE

1 DEPARTMENT INTENDS TO AWARD BY POSTING A SUMMARY OF THE EMP
2 ON THE DEPARTMENT'S WEBSITE IN A FORMAT THAT ALLOWS THE PUBLIC
3 TO SUBMIT COMMENTS; AND
4 (B) NOT APPROVE AN EMP UNTIL AT LEAST THIRTY DAYS AFTER
5 THE EMP HAS BEEN POSTED ON THE DEPARTMENT'S WEBSITE; AND
6 (II) PREPARE AN ANNUAL REPORT TO THE COMMISSION REGARDING
7 THE DEPARTMENT'S USE OF THE FUND THAT INCLUDES A DESCRIPTION OF
8 ALL DEPARTMENT-APPROVED EMPs.
9 (d) IN CONSULTATION WITH THE BOARD, THE DEPARTMENT SHALL
10 DEVELOP CRITERIA TO GUIDE IT IN MAKING DECISIONS CONCERNING THE
11 AWARDING OF EMPs. THE CRITERIA MAY INCLUDE:
12 (I) THE NEEDS OF THE COMMUNITY WHERE THE VIOLATION
13 OCCURRED;
14 (II) COMMUNITY SUPPORT FOR THE PROPOSED EMP;
15 (III) THE FEASIBILITY OF SUCCESSFUL IMPLEMENTATION OF THE
16 PROPOSED EMP;
17 (IV) THE NEXUS OF THE EMP TO THE VIOLATION; AND
18 (V) THE ENVIRONMENTAL AND PUBLIC HEALTH BENEFITS
19 RESULTING FROM THE IMPLEMENTATION OF THE EMP."

20 Renumber succeeding subsection accordingly.

21 Page 10, line 4, after "(1.7)(a)(IV)," insert "(1.7)(c),".

22 Page 11, line 5, strike "STANDARDS" and substitute "CRITERIA".

23 Page 11, line 6, strike "(4)." and substitute "(5).".

24 Page 11, after line 6 insert:

25 "(c) The commission shall promulgate rules as may be necessary
26 to administer this subsection (1.7), including ~~but not limited to~~, rules
27 defining who is eligible for grants and what criteria shall be used in
28 awarding grants; EXCEPT THAT THE COMMISSION NEED NOT PROMULGATE
29 RULES TO ADMINISTER SUBSECTION (1.7)(a)(V) OF THIS SECTION. Any
30 rules shall be promulgated in accordance with article 4 of title 24.
31 C.R.S."

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