

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 16-0922.01 Thomas Morris x4218

SENATE BILL 16-092

SENATE SPONSORSHIP

Grantham, Lambert, Steadman

HOUSE SPONSORSHIP

Rankin, Hamner, Young

Senate Committees
Appropriations

House Committees
Appropriations

A BILL FOR AN ACT

101 CONCERNING THE AUTHORIZATION OF THE STATE TO ACT PURSUANT
102 TO THE FEDERAL "OIL POLLUTION ACT OF 1990".

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://www.leg.state.co.us/billsummaries>.)

Joint Budget Committee. Current law authorizes the department of public health and environment and the attorney general to act as trustees under the federal "Comprehensive Environmental Response, Compensation, and Liability Act" (aka Superfund) for the receipt of natural resource damages and to conduct and expend money for response actions. The bill adds the federal "Oil Pollution Act of 1990" as a source

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

HOUSE
2nd Reading Unamended
March 7, 2016

SENATE
3rd Reading Unamended
February 18, 2016

SENATE
2nd Reading Unamended
February 17, 2016

of natural resource damages and as authority for response actions that the department and attorney general may conduct and expend money on.

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

2 **SECTION 1.** In Colorado Revised Statutes, 25-16-102, **amend**
3 (5) and (9); and **add** (5.3) and (5.6) as follows:

4 **25-16-102. Definitions.** As used in this article, unless the context
5 otherwise requires:

6 (5) "National contingency plan" has the same meaning as that
7 ascribed to it in the federal act AND THE OPA.

8 (5.3) "OIL" HAS THE SAME MEANING AS THAT ASCRIBED TO IT IN
9 THE OPA.

10 (5.6) "OPA" MEANS THE FEDERAL "OIL POLLUTION ACT OF 1990",
11 33 U.S.C. SEC. 2701 ET SEQ., AS AMENDED.

12 (9) "Responsible party" has the same meaning as that ascribed to
13 it in the federal act AND THE OPA.

14 **SECTION 2.** In Colorado Revised Statutes, 25-16-103, **amend**
15 (1) introductory portion as follows:

16 **25-16-103. Authorization to participate - implementation.**

17 (1) The general assembly hereby authorizes the department of public
18 health and environment to participate in federal implementation of the
19 federal act AND THE OPA and, for such purpose, the department has the
20 authority to participate in the selection and performance of responses and
21 remedial actions and to enter into cooperative agreements with the federal
22 government providing for remedial actions and responses. The
23 department, with the consent of the governor, has the authority to decline
24 to participate with the federal government on remedial actions which the
25 department determines are not in the interest of the state. Any cooperative

1 agreements entered into under this article may provide assurances
2 acceptable to the federal government that:

3 **SECTION 3.** In Colorado Revised Statutes, 25-16-104.5, **amend**
4 (1.7) (b) (II) as follows:

5 **25-16-104.5. Solid waste user fee - imposed - rate - direction**
6 **- legislative declaration - repeal.** (1.7) (b) (II) The portions of the fee
7 imposed under this subsection (1.7) that are collected for the costs
8 described in subparagraphs (II) and (III) of paragraph (a) of this
9 subsection (1.7) shall be transmitted to the department for deposit into the
10 hazardous substance response fund created in section 25-16-104.6. The
11 department may expend ~~moneys~~ MONEY from the portion of the fee
12 collected under subparagraph (III) of paragraph (a) of this subsection
13 (1.7) to compensate the department of law for all or a portion of the
14 expenses incurred for services rendered under the federal act AND THE
15 OPA, as billed to the department by the department of law.

16 **SECTION 4.** In Colorado Revised Statutes, 25-16-104.6, **amend**
17 (1) (a), (2.5) introductory portion, and (2.5) (a) as follows:

18 **25-16-104.6. Fund established - administration - revenue**
19 **sources - use.** (1) (a) There is hereby established in the state treasury the
20 hazardous substance response fund. The fund ~~shall be~~ IS composed of ~~any~~
21 ~~moneys~~ MONEY that the general assembly may choose to appropriate from
22 the general fund, ~~and any moneys~~ MONEY derived from the fee imposed
23 pursuant to section 25-16-104.5, and any interest derived therefrom; ~~any~~
24 ~~moneys~~ MONEY recovered from responsible parties pursuant to the federal
25 act OR THE OPA that are not generated by the state litigating as trustee for
26 natural resources pursuant to section 25-16-104.7; ~~any moneys~~ MONEY
27 recovered through litigation by the state pursuant to the federal act OR THE

1 OPA that are designated for future response cost; and any other ~~moneys~~
2 MONEY derived from public or private sources that may be credited to the
3 fund. ~~Moneys~~ MONEY in the fund shall be annually appropriated by the
4 general assembly, subject to ~~the provisions of~~ section 25-16-104, ~~shall~~
5 ~~remain~~ REMAINS available for the purposes of this article, and ~~shall~~ DOES
6 not revert ~~or be transferred~~ to the general fund of the state at the end of
7 any fiscal year. If the fund balance exceeds ten million dollars in any state
8 fiscal year and the fund balance is not projected to fall below ten million
9 dollars within twenty-four months, the department shall evaluate the need
10 to reduce fees to bring the balance of the fund below ten million dollars,
11 and shall present the evaluation to the commission.

12 (2.5) ~~Moneys~~ MONEY in the hazardous substance response fund
13 ~~created pursuant to this section~~ may be appropriated as follows:

14 (a) To finance any litigation arising under this part 1, ~~or~~ the
15 federal act, OR THE OPA on behalf of the state;

16 **SECTION 5.** In Colorado Revised Statutes, 25-16-104.7, **amend**
17 (1) and (3) as follows:

18 **25-16-104.7. Natural resource damage recoveries - fund**
19 **created - repeal.** (1) Except as provided in subsection (3) of this section,
20 ~~any moneys~~ MONEY recovered through litigation by the state acting as
21 trustee of natural resources pursuant to the federal act OR THE OPA, and
22 any interest derived therefrom, are credited to the natural resource
23 damage recovery fund, which fund is hereby created. The department may
24 expend the custodial ~~moneys~~ MONEY in the fund without further
25 appropriation for purposes authorized by the federal act OR THE OPA,
26 including the restoration, replacement, or acquisition of the equivalent of
27 natural resources that have been injured, destroyed, or lost as a result of

1 a release of a hazardous substance OR OIL. In addition, the department
2 shall use the ~~moneys~~ MONEY in the natural resource damage recovery
3 fund in a manner that is consistent with any judicial order, decree, or
4 judgment governing the use of any particular recovery credited to the
5 fund.

6 (3) To the extent authorized by law, and consistent with a final
7 judicial order or decree in any litigation by the state acting as trustee of
8 natural resources pursuant to the federal act OR THE OPA, any recovery
9 of natural resource damage assessment or other costs, including litigation
10 costs and fees, shall be credited to the fund from which such costs were
11 originally paid.

12 **SECTION 6. Act subject to petition - effective date -**
13 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
14 the expiration of the ninety-day period after final adjournment of the
15 general assembly (August 10, 2016, if adjournment sine die is on May 11,
16 2016); except that, if a referendum petition is filed pursuant to section 1
17 (3) of article V of the state constitution against this act or an item, section,
18 or part of this act within such period, then the act, item, section, or part
19 will not take effect unless approved by the people at the general election
20 to be held in November 2016 and, in such case, will take effect on the
21 date of the official declaration of the vote thereon by the governor.

22 (2) This act applies to conduct undertaken pursuant to the federal
23 "Oil Pollution Act of 1990" occurring on or after the applicable effective
24 date of this act.