A BILL FOR AN ACT

CONCERNING THE AUTHORITY OF THE STATE GOVERNMENT TO
REGULATE PERFLUOROALKYL AND POLYFLUOROALKYL
SUBSTANCES, AND, IN CONNECTION THEREWITH, MAKING AN
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.)

The bill addresses the authority of the state government to regulate perfluoroalkyl and polyfluoroalkyl substances (PFAS).

Section 1 of the bill addresses when PFAS may be used for
firefighting foam system testing both in general and in certain aircraft hangars.

Section 2 grants the department of public health and environment the power to adopt and enforce standards and regulations that require public drinking water systems to sample drinking water supply sources and finished drinking water for PFAS.

Section 3 clarifies that the water quality control commission may set standards related to PFAS in surface water and groundwater and may require wastewater systems to collect PFAS data relevant to the commission setting PFAS standards.

Section 4 requires the solid and hazardous waste commission to promulgate rules for a certificate of registration for any facility or fire department that possesses PFAS in firefighting agents or firefighting equipment and for standards for the capture and disposal of PFAS in firefighting agents or firefighting equipment.

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

SECTION 1. In Colorado Revised Statutes, 24-33.5-1234, add (4), (5), and (6) as follows:

24-33.5-1234. Training restrictions with certain firefighting foams - penalty - exemptions - definitions - repeal. (4) As of August 2, 2019, any testing at a structure that is used for the storage or maintenance of aircraft is exempt from the firefighting foam fire system testing restrictions in subsection (1) of this section, so long as:

(a) The structure is located in an airport that:

(I) is a federal aviation administration-designated public-use airport;

(II) is within the state of Colorado; and

(III) has constructed containment systems capable of capturing all discharged firefighting foam for subsequent disposal in accordance with applicable state and federal
(b) The firefighting foam testing occurs:

(I) As required by the standards of the National Fire Protection Association, as stated in the Standard on Aircraft Hangars NFPA 409, 2016 Edition, Revised 2011, as amended;

(II) As referenced in the applicable building codes;

(III) As required by insurance carriers;

(IV) In accordance with manufacturer recommendations for the maintenance of firefighting foam systems; and

(V) In accordance with the rules for the capture and disposal of perfluoroalkyl and polyfluoroalkyl substances promulgated by the Solid and Hazardous Waste Commission under section 25-15-302 (3.2), to the extent that the Commission has promulgated such rules.

(5) Any person or fire department who possesses a certificate of registration issued in accordance with section 25-15-302 (3.2) is exempt from the firefighting foam testing restrictions in subsection (1) of this section.

(6) Subsections (4) and (5) of this section are repealed, effective January 1, 2023.

SECTION 2. In Colorado Revised Statutes, 25-15-302, add (3.2) as follows:

25-15-302. Solid and hazardous waste commission - creation - membership - rules - fees - administration - definition. (3.2) (a) The commission shall promulgate rules establishing a certificate of registration for any facility, fire department, or lessee subject
TO FEDERAL RULES AND REGULATIONS THAT USES OR STORES
PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES IN ITS
OPERATIONS, ESTABLISHING STANDARDS FOR THE CAPTURE AND DISPOSAL
OF PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES, AND SETTING
PENALTIES FOR NOT OBTAINING SUCH A CERTIFICATE OF REGISTRATION OR
FOLLOWING SUCH STANDARDS FOR THE CAPTURE AND DISPOSAL OF
PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES. THE
COMMISSION SHALL TAKE INTO ACCOUNT COSTS, TECHNOLOGICAL
FEASIBILITY, AND THE POSSIBILITY OF EMERGENCY SITUATIONS FOR ANY
RULES IT PROMULGATES.

(b) ANY FACILITY, FIRE DEPARTMENT, OR LESSEE SUBJECT TO
FEDERAL RULES AND REGULATIONS THAT USES OR STORES
PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES IN ITS
OPERATIONS MUST OBTAIN THE CERTIFICATE OF REGISTRATION CREATED
UNDER SUBSECTION (3.2)(a) OF THIS SECTION EITHER BEFORE JUNE 1,
2021, OR SIX MONTHS AFTER IT FIRST OBTAINS PERFLUOROALKYL AND
POLYFLUOROALKYL SUBSTANCES, WHICHEVER IS LATER.

(c) IN ORDER TO OBTAIN THE CERTIFICATE OF REGISTRATION
CREATED UNDER SUBSECTION (3.2)(a) OF THIS SECTION, A FACILITY, FIRE
DEPARTMENT, OR LESSEE SUBJECT TO FEDERAL RULES AND REGULATIONS
MUST PROVE THAT IT FollowS THE STANDARDS FOR THE CAPTURE AND
DISPOSAL OF PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES
CREATED UNDER SUBSECTION (3.2)(a) OF THIS SECTION.

(d) NO FACILITY, FIRE DEPARTMENT, OR LESSEE SUBJECT TO
FEDERAL RULES AND REGULATIONS THAT USES OR STORES
PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES IN ITS
OPERATIONS SHALL BE SUBJECT TO ANY PENALTIES UNDER THIS SECTION
FOR NOT OBTAINING A CERTIFICATE OF REGISTRATION UNLESS THERE HAS BEEN A SUFFICIENT OPPORTUNITY TO APPLY FOR AND RECEIVE A CERTIFICATE OF REGISTRATION.

(e) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(I) "PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES" MEANS CLASS B FIREFIGHTING FOAM, AS DEFINED IN SECTION 25-5-1302 (2), THAT CONTAIN A CLASS OF FLUORINATED ORGANIC CHEMICALS CONTAINING AT LEAST ONE FULLY FLUORINATED CARBON ATOM.

(II) "USES OR STORES" MEANS ACTUAL AND INTENTIONAL OWNERSHIP OR CONTROL OF PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES. "USES OR STORES" DOES NOT MEAN THE INTERCEPTION OR ACCUMULATION OF PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES IN WATER TREATMENT FACILITIES AND DOMESTIC WASTEWATER FACILITIES.

SECTION 3. In Colorado Revised Statutes, add 25-5-1309 as follows:

25-5-1309. Restriction on the use of certain firefighting foam at certain airports - definitions. (1) BEGINNING JANUARY 1, 2023, THE USE OF CLASS B FIREFIGHTING FOAM THAT CONTAINS INTENTIONALLY ADDED PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES SHALL BE PROHIBITED AT STRUCTURES USED FOR THE STORAGE OR MAINTENANCE OF AIRCRAFT WHERE THE STRUCTURE IS LOCATED IN AN AIRPORT THAT:

(a) IS A FEDERAL AVIATION ADMINISTRATION-DESIGNATED PUBLIC-USE AIRPORT; AND

(b) IS WITHIN THE STATE OF COLORADO.

(2) AS USED IN THIS SECTION, "CLASS B FIREFIGHTING FOAM" AND
"PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES" HAVE THE SAME MEANING AS THEY ARE DEFINED IN SECTION 25-5-1302.

SECTION 4. Appropriation. For the 2020-21 state fiscal year, $43,836 is appropriated to the department of public health and environment for use by the hazardous materials and waste management division. This appropriation is from the hazardous waste service fund created in section 25-15-304, C.R.S., and is based on an assumption that the division will require an additional 0.5 FTE. To implement this act, the division may use this appropriation for administration program costs.

SECTION 5. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.