HOUSE BILL 20-1142

A BILL FOR AN ACT

CONCERNING THE CREATION OF AN ENTERPRISE THAT IS EXEMPT FROM
THE REQUIREMENTS OF SECTION 20 OF ARTICLE X OF THE STATE
CONSTITUTION TO ADMINISTER A FEE-BASED HAZARD
MITIGATION GRANT PROGRAM.

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.)

Section 1 of the bill creates the hazard mitigation enterprise (enterprise). The enterprise collects a fee on insurance companies that offer certain insurance policies and use the fee revenue to finance the
hazard mitigation grant program, provide public education on the importance of insurance in buying down risk and for the continuity of business operations, and provide local governments technical information and support on natural hazard mitigation through land use and building codes. The enterprise awards hazard mitigation grants to assist entities that apply for federal grants that require matching funds and are dedicated to assisting in the implementation of pre-disaster hazard mitigation measures.

Section 2 sets the fee at .05% of the insurance premiums collected by insurance companies that offer certain insurance policies.

The enterprise shall submit a report by July 1 of each year to the committees of reference of the general assembly to which the department of public safety is assigned regarding the grant program.

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

SECTION 1. In Colorado Revised Statutes, add 24-33.5-1618 as follows:

24-33.5-1618. Hazard mitigation enterprise - fund - goals - grant program - gifts, grants, or donations - legislative declaration - definitions. (1) Legislative declaration. The General Assembly hereby:

(a) Finds and determines that:

(I) There is no long-term, consistent source of funds to mitigate hazard exposure in Colorado;

(II) This lack of funds limits the ability of local governments, particularly smaller jurisdictions, to take advantage of federal funding available to mitigate known hazards because of federal grant match requirements;

(III) There is a clear relationship between hazard insurance and mitigating hazard exposure and insurers are taking an increasingly active role in encouraging, and in some cases requiring, mitigation efforts among their customers;
(IV) For example, Colorado insurance companies will
often require homeowners who live in wildfire prone areas to
mitigate fire hazards on their property; and
(V) Accordingly, funding for ongoing mitigation efforts
should be related to property and casualty insurance products;
and
(b) Declares that:
(I) The hazard mitigation enterprise provides valuable
services, benefits, and useful business services to insurers, when,
in exchange for payment of the fee described in section 10-3-209
(4), the enterprise uses the fees to:
(A) Assist entities that apply for federal grants
dedicated to assisting in the implementation of pre-disaster
hazard mitigation measures by issuing grants to help the entities
provide the matching funds required for the federal grants;
(B) Provide public education on the importance of
insurance in buying down risk and for the continuity of business
operations; and
(C) Provide local governments technical information and
support on natural hazard mitigation;
(II) By providing the benefits and services specified in
subsection (1)(b)(I) of this section, the hazard mitigation
enterprise engages in an activity conducted in the pursuit of a
benefit, gain, or livelihood and therefore operates as a business;
(III) Consistent with the determination of the Colorado
Supreme Court in Nicholl v. E-470 Public Highway Authority, 896
P.2d 859 (Colo. 1995), the power to impose taxes is inconsistent
WITH ENTERPRISE STATUS UNDER SECTION 20 OF ARTICLE X OF THE STATE
CONSTITUTION, THE USER FEE COLLECTED BY THE ENTERPRISE IS A FEE,
NOT A TAX, BECAUSE THE FEE IS IMPOSED FOR THE SPECIFIC PURPOSE OF
ALLOWING THE ENTERPRISE TO DEFRAY THE COSTS OF PROVIDING THE
BUSINESS SERVICES SPECIFIED IN SUBSECTION (1)(b)(I) OF THIS SECTION TO
INSURERS THAT PAY THE FEE AND THE FEE IS COLLECTED AT RATES THAT
ARE REASONABLY CALCULATED BASED ON THE BENEFITS RECEIVED BY
THOSE INSURERS; AND

(IV) So long as the hazard mitigation enterprise qualifies
as an enterprise for purposes of section 20 of article x of the
state constitution, the revenue from the user fees collected by
the enterprise is not state fiscal year spending, as defined in
section 24-77-102 (17), or state revenues, as defined in section
24-77-103.6 (6)(c), and does not count against either the state
fiscal year spending limit imposed by section 20 of article x of
the state constitution or the excess state revenues cap, as
defined in section 24-77-103.6 (6)(b)(I)(B).

(2) Definitions. As used in this section, unless the context
otherwise requires:

(a) "Eligible entity" means a state agency or political
subdivision of the state that is applying for a federal grant that
both requires matching funds and is dedicated to assisting in the
implementation of pre-disaster hazard mitigation measures.

(b) "Enterprise" means the hazard mitigation enterprise
created in subsection (3) of this section.

(c) "Fee" means the fee imposed by section 10-3-209 (4.5).

(d) "Fund" means the hazard mitigation cash fund created
IN SUBSECTION (4) OF THIS SECTION.

  (e) "GRANT PROGRAM" MEANS THE HAZARD MITIGATION GRANT
  PROGRAM CREATED IN SUBSECTION (6) OF THIS SECTION.

  (f) "HAZARD MITIGATION" MEANS TAKING MEASURES THAT
  REDUCE THE RISK OF LOSS OF LIFE AND PROPERTY FROM FUTURE NATURAL
  HAZARD DISASTERS AND DECREASING COSTS ASSOCIATED WITH DISASTER
  RECOVERY.

  (3) Enterprise. (a) THERE IS HEREBY CREATED IN THE
  DEPARTMENT THE HAZARD MITIGATION ENTERPRISE. THE ENTERPRISE IS
  AND OPERATES AS A GOVERNMENT-OWNED BUSINESS WITHIN THE
  DEPARTMENT FOR THE BUSINESS PURPOSE OF COLLECTING THE FEE
  CHARGED TO CERTAIN INSURERS, AND UTILIZING THE FEE REVENUE TO
  ADMINISTER THE GRANT PROGRAM, TO PROVIDE PUBLIC EDUCATION ON
  THE IMPORTANCE OF INSURANCE IN BUYING DOWN RISK AND FOR THE
  CONTINUITY OF BUSINESS OPERATIONS, AND TO PROVIDE LOCAL
  GOVERNMENTS TECHNICAL INFORMATION AND SUPPORT ON NATURAL
  HAZARD MITIGATION. THE ENTERPRISE EXERCISES ITS POWERS AND
  PERFORMS ITS DUTIES AND FUNCTIONS UNDER THE DEPARTMENT AS IF
  TRANSFERRED TO THE DEPARTMENT BY A TYPE 2 TRANSFER, AS DEFINED
  IN THE "ADMINISTRATIVE ORGANIZATION ACT OF 1968", ARTICLE 1 OF
  THIS TITLE 24.

  (b) THE ENTERPRISE CONSTITUTES AN ENTERPRISE FOR PURPOSES
  OF SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION SO LONG AS IT
  RETAINS THE AUTHORITY TO ISSUE REVENUE BONDS AND RECEIVES LESS
  THAN TEN PERCENT OF ITS TOTAL REVENUES IN GRANTS FROM ALL
  COLORADO STATE AND LOCAL GOVERNMENTS COMBINED. SO LONG AS IT
  CONSTITUTES AN ENTERPRISE PURSUANT TO THIS SUBSECTION (3)(b), THE
ENTERPRISE IS NOT SUBJECT TO SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION.

(c) The enterprise's primary powers and duties are to:

(I) Collect the fee;

(II) Promote hazard mitigation by issuing grants as specified in subsection (6) of this section;

(III) Provide public education on the importance of insurance in buying down risk and for the continuity of business operations;

(IV) Provide local governments technical information and support on natural hazard mitigation;

(V) By resolution, authorize and issue revenue bonds that are payable only from the money in the fund. These revenue bonds may be issued only after approval by both houses of the general assembly either by bill or joint resolution and after approval by the governor in accordance with section 39 of article V of the state constitution; and

(VI) Adopt, amend, or repeal policies for the regulation of its affairs and the conduct of its business consistent with this section, including establishing application, review, approval, reporting, and other requirements for grants.

(d) The director, or his or her designee, governs the enterprise.

(4) Fund. (a) There is hereby created in the state treasury the hazard mitigation cash fund. The fund consists of money credited to the fund pursuant to section 10-3-209 (4.5).

(b) The money in the fund shall not be deposited in or
TRANSFERRED TO THE GENERAL FUND OR ANY OTHER FUND. THE STATE TREAURER SHALL CREDIT ALL INTEREST AND INCOME DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEY IN THE FUND TO THE FUND. ANY UNENCUMBERED MONEY IN THE FUND SHALL REMAIN IN THE FUND AND SHALL NOT BE CREDITED OR TRANSFERRED TO THE GENERAL FUND OR ANOTHER FUND.

(c) MONEY IN THE FUND IS CONTINUOUSLY APPROPRIATED TO THE ENTERPRISE FOR THE PURPOSES OF:

(I) ADMINISTERING THE GRANT PROGRAM AND AWARDING GRANTS IN ACCORDANCE WITH SUBSECTION (6) OF THIS SECTION;

(II) PROVIDING PUBLIC EDUCATION ON THE IMPORTANCE OF INSURANCE IN BUYING DOWN RISK AND FOR THE CONTINUITY OF BUSINESS OPERATIONS;

(III) PROVIDING LOCAL GOVERNMENTS TECHNICAL INFORMATION AND SUPPORT ON NATURAL HAZARD MITIGATION; AND

(IV) FOR ANY DIRECT AND INDIRECT ADMINISTRATIVE EXPENSES INCURRED BY THE ENTERPRISE.

(d) THE ENTERPRISE MAY SEEK, ACCEPT, AND EXPEND GIFTS, GRANTS, OR DONATIONS FROM PRIVATE OR PUBLIC SOURCES FOR THE PURPOSES OF THIS SECTION, SO LONG AS THE COMBINATION OF GRANTS FROM THE STATE AND LOCAL GOVERNMENTS DOES NOT EXCEED TEN PERCENT OF THE ENTERPRISE'S TOTAL REVENUE.

(5) Hazard mitigation goals. The enterprise shall administer the grant program and award grants, provide public education on the importance of insurance in buying down risk and for the continuity of business operations, and provide local governments technical information and support on natural hazard.
HAZARD MITIGATION TO ACHIEVE THE FOLLOWING HAZARD MITIGATION GOALS:

(a) REDUCE THE NEGATIVE IMPACTS FROM FUTURE DISASTERS ON LIVES, PROPERTY, AND THE ECONOMY;

(b) ENGAGE IN MITIGATION ACTIVITIES THAT ARE COST-EFFECTIVE, TECHNICALLY FEASIBLE, AND ENVIRONMENTALLY SOUND AS WELL AS ALLOWING STRATEGIC INVESTMENT OF LIMITED RESOURCES;

(c) REDUCE REPETITIVE LOSSES;

(d) FULLY UTILIZE FEDERAL FUNDING AVAILABLE FOR HAZARD MITIGATION PROJECTS;

(e) INCREASE COMMUNITY RESILIENCY BY BUYING DOWN RISK THROUGH APPROPRIATE INSURANCE; AND

6 Grant program. (a) THE ENTERPRISE SHALL ADMINISTER THE HAZARD MITIGATION GRANT PROGRAM AND, SUBJECT TO AVAILABLE APPROPRIATIONS AND REVENUES, SHALL AWARD GRANTS FROM THE FUND AS PROVIDED IN THIS SUBSECTION (6).

(b) THE PURPOSE OF THE GRANT PROGRAM IS TO ACHIEVE THE GOALS SPECIFIED IN SUBSECTION (5) OF THIS SECTION BY ASSISTING ENTITIES THAT HAVE APPLIED FOR FEDERAL GRANTS THAT BOTH REQUIRE MATCHING FUNDS AND ARE DEDICATED TO ASSISTING IN THE IMPLEMENTATION OF PRE-DISASTER HAZARD MITIGATION MEASURES. THE ENTERPRISE SHALL ESTABLISH CRITERIA TO EVALUATE AND PRIORITIZE APPLICATIONS FOR GRANTS, BASED ON:

(I) THE FEDERAL EMERGENCY MANAGEMENT AGENCY’S STANDARDIZED BENEFIT-COST ANALYSIS IN ACCORDANCE WITH CURRENT PUBLISHED FEDERAL GUIDANCE; A DIFFERENT METHODOLOGY MAY ONLY
BE USED WHEN IT ADDRESSES A NONCORRECTABLE FLAW IN THE FEDERAL
EMERGENCY MANAGEMENT AGENCY'S APPROVED METHODOLOGY, AS
IDENTIFIED BY THE ENTERPRISE; AND

(II) THE FINANCIAL NEED OF THE ELIGIBLE ENTITY.

(c) AN ELIGIBLE ENTITY MAY SUBMIT AN APPLICATION TO THE
ENTERPRISE FOR A GRANT PURSUANT TO THE POLICIES AND PROCEDURES
SPECIFIED BY THE ENTERPRISE.

(d) GRANT RECIPIENTS SHALL ONLY USE THE MONEY RECEIVED
THROUGH THE GRANT PROGRAM TO OFFSET THE RECIPIENT'S FEDERAL
MATCH REQUIREMENT FOR FEDERAL GRANTS DEDICATED TO ASSISTING IN
THE IMPLEMENTATION OF PRE-DISASTER HAZARD MITIGATION MEASURES.

(e) GRANT RECIPIENTS MUST COMPLY WITH THE REQUIREMENTS OF
THE FEDERAL GRANTS THEY RECEIVE PURSUANT TO THIS SECTION.

(f) THE ENTERPRISE SHALL REVIEW THE APPLICATIONS RECEIVED
PURSUANT TO THIS SECTION AND SHALL NEITHER AWARD MORE THAN
EIGHTY PERCENT OF THE ANNUAL FUND REVENUE FOR GRANT AWARDS NOR
AWARD MORE THAN TWENTY-FIVE PERCENT OF THE ANNUAL REVENUE IN
ANY SINGLE GRANT AWARD.

(g)(i) A GRANTEE SHALL REPORT QUARTERLY TO THE ENTERPRISE
ON THE PROGRESS OF THE PROJECT FINANCED BY THE GRANT PURSUANT TO
TERMS SPECIFIED IN THE GRANT AWARD AGREEMENT.

(II) THE ENTERPRISE SHALL DEVELOP A POLICY REGARDING A
GRANTEE'S NONCOMPLIANCE WITH THE GRANT AGREEMENT ENTERED INTO
BY THE GRANTEE AND THE ENTERPRISE, WHICH POLICY MAY INCLUDE A
MECHANISM FOR THE ENTERPRISE TO CONVERT THE GRANTEE'S GRANT TO
A LOAN WITH INTEREST.

(h) THE AWARD OF ANY GRANT UNDER THIS SUBSECTION (6) IS
CONTINGENT UPON THE APPLICANT BEING AWARDED THE FEDERAL GRANT
THAT THE APPLICANT SOUGHT ASSISTANCE WITH IN ITS GRANT
APPLICATION.

(7) **Reporting.** Notwithstanding section 24-1-136 (11)(a)(I),
the enterprise shall submit a report by July 1 of each year to the
committees of reference of the general assembly to which the
department is assigned pursuant to section 2-7-204 (1). The
report must include:

(a) The unobligated balance of the fund, the number of
grant applications, and the number and value of grants
awarded;

(b) The eligible entities that have applied for a grant, the
actions taken by each grantee, other measurements of success,
and the amount of grant money distributed to each grantee;

(c) The progress toward achievement of the hazard
mitigation goals specified in subsection (5) of this section and the
primary factors facilitating and inhibiting that progress; and

(d) Any suggested legislation or policy changes.

**SECTION 2.** In Colorado Revised Statutes, 10-3-209, add (4.5)
as follows:

**10-3-209. Tax on premiums collected - exemptions - penalties**
- fee - repeal. (4.5) (a) In addition to the tax collected under
subsection (1)(b) of this section, the division shall also collect
a fee to finance the hazard mitigation enterprise created in
section 24-33.5-1618 (3).

(b) The fee is equal to five hundredths percent of the
gross amount of all premiums collected or contracted for on
POLICIES OR CONTRACTS OF INSURANCE COVERING PROPERTY OR RISKS IN 
THE STATE DURING THE PREVIOUS CALENDAR YEAR, AFTER DEDUCTING 
FROM SUCH GROSS AMOUNT THE AMOUNT RECEIVED AS REINSURANCE 
PREMIUMS ON BUSINESS IN THE STATE AND THE AMOUNTS PAID TO 
POLICYHOLDERS AS RETURN PREMIUMS, WHICH SHALL INCLUDE DIVIDENDS 
OR UNABSORBED PREMIUMS OR PREMIUM DEPOSITS RETURNED OR 
CREDITED TO POLICYHOLDERS.

(c) ONLY THE INSURANCE COMPANIES, AS LISTED IN THE DIVISION'S 
COLORADO INSURANCE INDUSTRY STATISTICAL REPORT, THAT PROVIDE 
THE FOLLOWING TYPES OF INSURANCE ARE LIABLE FOR THE FEE DESCRIBED 
IN SUBSECTION (4.5)(b) OF THIS SECTION:

(I) FIRE;
(II) ALLIED LINES;
(III) MULTIPLE PERIL CROP;
(IV) PRIVATE CROP;
(V) PRIVATE FLOOD;
(VI) FARMERS MULTIPLE PERIL;
(VII) HOMEOWNERS MULTIPLE PERIL;
(VIII) COMMERCIAL MULTIPLE PERIL;
(IX) EARTHQUAKE;
(X) COMBINED PRIVATE PASSENGER AUTO;
(XI) AIRCRAFT; AND
(XII) BOILER AND MACHINERY.

(d) THE DIVISION SHALL TRANSMIT ANY FEE COLLECTED IN 
ACCORDANCE WITH THIS SUBSECTION (4.5) TO THE STATE TREASURER, 
WHO SHALL CREDIT THE SAME TO THE HAZARD MITIGATION CASH FUND 
CREATED IN SECTION 24-33.5-1618 (4). ANY FEE TRANSMITTED TO THE
STATE TREASURER THAT IS COLLECTED ON BEHALF OF THE HAZARD
MITIGATION ENTERPRISE IS EXCLUDED FROM THE STATE’S FISCAL YEAR
SPENDING.

(e) An insurance company subject to this subsection (4.5)
shall transmit the fee prescribed in this subsection (4.5) to the
division at the same time that the insurance company is required
under subsection (1)(b)(III) of this section to transmit the tax
prescribed in subsection (1)(b) of this section to the division.

Notwithstanding this subsection (4.5), an insurance company
that pays quarterly estimates of the tax prescribed in
subsection (1)(b) of this section to the division in accordance
with subsection (3) of this section shall transmit the fee at the
same time to the division.

SECTION 3. Act subject to petition - effective date. This act
takes effect at 12:01 a.m. on the day following the expiration of the
ninety-day period after final adjournment of the general assembly (August
5, 2020, if adjournment sine die is on May 6, 2020); except that, if a
referendum petition is filed pursuant to section 1 (3) of article V of the
state constitution against this act or an item, section, or part of this act
within such period, then the act, item, section, or part will not take effect
unless approved by the people at the general election to be held in
November 2020 and, in such case, will take effect on the date of the
official declaration of the vote thereon by the governor.