A BILL FOR AN ACT

CONCERNING ADDITIONAL PUBLIC HEALTH PROTECTIONS REGARDING ALLEGED ENVIRONMENTAL VIOLATIONS, AND, IN CONNECTION THEREWITH, RAISING THE MAXIMUM FINES FOR AIR QUALITY AND WATER QUALITY VIOLATIONS.

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.)

Current state law sets the maximum civil fine for most air quality violations at $15,000 per day and most water quality violations at $10,000 per day, but federal law allows the federal environmental protection...
agency to assess a maximum daily fine per violation of $47,357 for these violations. Sections 2 and 4 of the bill raise the maximum fine to $47,357 per day and direct the air quality control commission and the water quality control commission in the department of public health and environment (department) to annually adjust the maximum fine based on changes in the consumer price index.

Current law allocates all water quality fines to the water quality improvement fund; section 4 authorizes the use of money in that fund to pay for projects addressing impacts to environmental justice communities. Section 4 also extends the repeal date for the water quality improvement fund to September 1, 2025.

Current law allocates all air quality fines to the general fund; section 3 allocates them to the newly created community impact cash fund. Section 3 also:

1. Specifies that the department is to use money in the community impact cash fund for environmental mitigation projects (EMPs);
2. Defines an EMP as a project that avoids, minimizes, or mitigates the adverse effects of a violation or alleged violation of the air quality or water quality laws;
3. Creates the environmental justice advisory board to recommend EMPs in response to violations or alleged violations that affect environmental justice communities; and
4. Creates an environmental justice ombudsperson position within the department, who serves as chief staff to the advisory board and advocates for environmental justice communities.

Section 3 also requires the department to post proposed EMPs on the department's website in a format that allows the public to submit comments on the proposed EMP, not approve an EMP until at least 45 days after the EMP has been posted on its website, and include a description of all approved EMPs in its departmental SMART Act presentations.

Section 1 sunsets the advisory board on September 1, 2025.

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

SECTION 1. In Colorado Revised Statutes, 25-7-122, amend (1) introductory portion, (1)(b), and (1)(d) as follows:

25-7-122. Civil penalties - rules. (1) Upon application of the division, penalties as determined under this article ARTICLE 7 may be
collected by the division by action instituted in the district court for the
district in which is located the air pollution source affected in accordance
with the following provisions:

(b) Any person who violates any requirement or prohibition of an
applicable emission control regulation of the commission, the state
implementation plan, a construction permit, any provision for the
prevention of significant deterioration under part 2 of this article ARTICLE
7, any provision related to attainment under part 3 of this article ARTICLE
7, or any provision of section 25-7-105, 25-7-106, 25-7-106.3,
25-7-106.8, 25-7-106.9, 25-7-108, 25-7-109, 25-7-111, 25-7-112,
25-7-113, 25-7-114.2, 25-7-114.5, 25-7-118, 25-7-206, 25-7-403,
25-7-404, 25-7-405, 25-7-407, 25-7-409, 42-4-403, 42-4-404, 42-4-405, 42-4-406,
42-4-407, 42-4-409, 42-4-410, or 42-4-414 C.R.S., shall be subject to
a civil penalty of not more than fifteen forty-seven thousand three
hundred fifty-seven dollars per day for each day of such the violation;
except that:

(I) ON OR BEFORE DECEMBER 31, 2021, THE COMMISSION SHALL,
BY RULE, ANNUALLY ADJUST THE AMOUNT OF THE MAXIMUM CIVIL
PENALTY BASED ON THE PERCENTAGE CHANGE IN THE UNITED STATES
DEPARTMENT OF LABOR’S BUREAU OF LABOR STATISTICS CONSUMER PRICE
INDEX FOR DENVER-AURORA-LAKEWOOD FOR ALL ITEMS AND ALL URBAN
CONSUMERS, OR ITS SUCCESSOR INDEX; AND

(II) THERE SHALL BE NO CIVIL PENALTIES SHALL NOT BE ASSESSED OR
COLLECTED AGAINST PERSONS WHO VIOLATE EMISSION REGULATIONS PROMULGATED
BY THE COMMISSION FOR THE CONTROL OF ODOR UNTIL A COMPLIANCE ORDER ISSUED
Pursuant to section 25-7-115 and ordering compliance with the odor
REGULATION HAS BEEN VIOLATED.
Any person who violates any requirement, prohibition, or order respecting an operating permit issued pursuant to section 25-7-114.3, including but not limited to failure to obtain such a permit, or to operate in compliance with any term or condition thereof of the permit, or to pay the permit fee required under section 25-7-114.7 (2), or who commits a violation of section 25-7-109.6 shall be subject to a civil penalty of not more than fifteen thousand four hundred seventy dollars per day for each violation; except that, on or before December 31, 2021, the commission shall, by rule, annually adjust the amount of the maximum civil penalty based on the percentage change in the United States Department of Labor’s Bureau of Labor Statistics consumer price index for Denver-Aurora-Lakewood for all items and all urban consumers, or its successor index.

SECTION 2. In Colorado Revised Statutes, 25-8-608, amend (1) introductory portion and (1.7)(d)(II) as follows:

Section 25-8-608. Civil penalties - rules - fund created - temporary moratorium on penalties for minor violations - definitions - repeal. (1) Except as otherwise provided in subsection (3) of this section, any person who violates any provision of this article or of any control regulation promulgated pursuant to this article, or any final cease-and-desist order or clean-up order shall be subject to a civil penalty of not more than ten thousand eight hundred thirty-three dollars per day for each day during which such violation occurs; except that, on or before December 31, 2021, the commission shall, by rule, annually adjust the amount of the
MAXIMUM CIVIL PENALTY BASED ON THE PERCENTAGE CHANGE IN THE
UNITED STATES DEPARTMENT OF LABOR'S BUREAU OF LABOR STATISTICS
CONSUMER PRICE INDEX FOR DENVER-AURORA-LAKEWOOD FOR ALL
ITEMS AND ALL URBAN CONSUMERS, OR ITS SUCCESSOR INDEX. In
determining the amount of a penalty under this part 6, the following
factors shall be considered:

(1.7) (d) (II) This subsection (1.7)(d) is repealed, effective September 1, 2024 2025.

SECTION 3. In Colorado Revised Statutes, 25-8-609, amend (2),
(3) introductory portion, (3)(a), and (3)(b) as follows:

25-8-609. Criminal pollution - penalties. (2) Prosecution under
paragraph (a) of subsection (1) of this section shall be commenced only
upon complaint filed REQUEST by the division or a peace officer, WHO
MUST PRESENT EVIDENCE BASED ON REASONABLE SUSPICION TO EITHER
THE ATTORNEY GENERAL OR A DISTRICT ATTORNEY FOR THE DISTRICT IN
WHICH AN ALLEGED VIOLATION OCCURS. NO CRIMINAL VIOLATION WILL BE
CHARGED WITHOUT PROBABLE CAUSE.

(3) Any person who commits criminal pollution of state waters
shall be fined, FOR EACH DAY THE VIOLATION OCCURS, PENALIZED AS FOLLOWS:

(a) If the FOR A VIOLATION IS COMMITTED WITH CRIMINAL NEGLIGENCE
OR RECKLESSLY, AS BOTH TERMS ARE DEFINED IN SECTION 18-1-501, C.R.S., THE
VIOLATOR IS GUILTY OF A MISDEMEANOR, PUNISHABLE BY A MAXIMUM
FINE SHALL BE TWELVE OF TWENTY-FIVE THOUSAND FIVE HUNDRED DOLLARS PER
DAY FOR EACH DAY THE VIOLATION OCCURS, IMPRISONMENT OF UP TO
THREE HUNDRED SIXTY-FOUR DAYS, OR BOTH.

(b) IF THE FOR A VIOLATION IS COMMITTED KNOWINGLY OR INTENTIONALLY,
AS BOTH TERMS ARE DEFINED IN SECTION 18-1-501, C.R.S., THE VIOLATOR IS
GUILTY OF A CLASS 5 FELONY AND, NOTWITHSTANDING SECTION 18-1.3-401, UPON CONVICTION THEREOF, SHALL BE PUNISHED BY A maximum fine shall be twenty-five thousand dollars PER DAY FOR EACH DAY THE VIOLATION OCCURS, IMPRISONMENT OF UP TO THREE YEARS, OR BOTH.

SECTION 4. In Colorado Revised Statutes, amend 25-8-610 as follows:

25-8-610. Falsification and tampering - penalties. (1) Any person who knowingly makes any MATERIAL false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this article ARTICLE 8 or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this article ARTICLE 8 is guilty of a misdemeanor CLASS 5 FELONY and, upon conviction thereof, shall be punished by a fine of not more than ten thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment AS SPECIFIED IN SECTION 18-1.3-401.

(2) PROSECUTION UNDER THIS SECTION SHALL BE COMMENCED UPON REQUEST BY THE DIVISION OR A PEACE OFFICER, WHO MUST PRESENT EVIDENCE BASED ON REASONABLE SUSPICION TO EITHER THE ATTORNEY GENERAL OR A DISTRICT ATTORNEY FOR THE DISTRICT IN WHICH AN ALLEGED VIOLATION OCCURS. NO CRIMINAL VIOLATION WILL BE CHARGED WITHOUT PROBABLE CAUSE.

(3) IF TWO SEparate OFFENSES UNDER THIS SECTION OCCUR IN TWO SEparate OCCURRENCES DURING A PERIOD OF TWO YEARS, NOTWITHSTANDING SECTION 18-1.3-401, THE MAXIMUM FINE AND PERIOD
OF IMPRISONMENT FOR THE SECOND OFFENSE ARE DOUBLE THE AMOUNTS

SPECIFIED IN SECTION 18-1.3-401.

(2) (4) Any penalty collected under this section shall be credited
to the general fund.

SECTION 5. Potential appropriation. Pursuant to section

2-2-703, C.R.S., any bill that results in a net increase in periods of
imprisonment in state correctional facilities must include an appropriation
of money that is sufficient to cover any increased capital construction, any
operational costs, and increased parole costs that are the result of the bill
for the department of corrections in each of the first five years following
the effective date of the bill. Because this act may increase periods of
imprisonment, this act may require a five-year appropriation.

SECTION 6. Applicability. This act applies to conduct
occurring, including fines assessed, on or after the effective date of this
act.

SECTION 7. 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.