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 AND ALLOCATING THE FINES TO ENVIRONMENTAL MITIGATION PROJECTS.

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:

! Specifies that the department is to use money in the community impact cash fund for environmental mitigation projects (EMPs);

! 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;

! Creates the environmental justice advisory board to recommend EMPs in response to violations or alleged violations that affect environmental justice communities; and

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

2 SECTION 1. In Colorado Revised Statutes, 2-3-1203, add

3 (16)(a)(VI) as follows:

4 2-3-1203. Sunset review of advisory committees - legislative
declaration - definition - repeal. (16) (a) The following statutory authorizations for the designated advisory committees will repeal on September 1, 2025:

(VI) THE ENVIRONMENTAL JUSTICE ADVISORY BOARD CREATED IN SECTION 25-7-129 (3).

SECTION 2. 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, 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 violation; except that:

(I) BEGINNING IN 2021, THE COMMISSION SHALL, BY RULE, ANNULARLY 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 DENVER-AURORA-LAKEWOOD CONSUMER PRICE INDEX 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.

(d) 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 commits a violation of section 25-7-109.6 shall be subject to a civil penalty of not more than fifteen FORTY-SEVEN thousand THREE HUNDRED FIFTY-SEVEN dollars per day for each violation; EXCEPT THAT, BEGINNING IN 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 3. In Colorado Revised Statutes, amend 25-7-129 as follows:

25-7-129. Disposition of fines - community impact cash fund - environmental justice ombudsperson - environmental justice
advisory board - environmental mitigation projects - definitions -
repeal. (1) Community impact cash fund. (a) All receipts from
penalties or fines collected under the provisions of sections 25-7-115,
25-7-122, and 25-7-123 shall be credited to the general fund of the state
COMMUNITY IMPACT CASH FUND, WHICH IS HEREBY CREATED IN THE STATE
treasury. The fund consists of money credited to the fund
pursuant to this subsection (1) and any other money that the
general assembly may appropriate or transfer to the fund. The
state treasurer shall credit all interest and income derived
from the deposit and investment of money in the fund to the
fund. For accounting purposes, each penalty and fine credited to
the fund pursuant to this section is a damage award.

(b) Subject to annual appropriation by the general
assembly, the department may expend money from the fund for
its direct and indirect costs in implementing environmental
mitigation projects as specified in this section, including costs
associated with the environmental justice ombudsperson
position created in subsection (2) of this section and the
environmental justice advisory board created in subsection (3)
of this section.

(2) Environmental justice ombudsperson. There is hereby
created in the department an environmental justice
ombudsperson. The ombudsperson shall advocate within the
department for environmental justice communities and serve as
chief staff to the board and a centralized point of contact for
environmental justice communities.

(3) Environmental justice advisory board. (a) There is
HEREBY CREATED IN THE DEPARTMENT THE ENVIRONMENTAL JUSTICE
ADVISORY BOARD.

(b) (I) The board consists of the ombudsperson, who serves
ex officio as a nonvoting member of the board, five members
appointed by the executive director of the department, of whom
at least three must be a resident of an environmental justice
community and one must be from a nongovernmental
organization that represents statewide interests to advance
environmental protections, and four members appointed as
follows:

(A) One member appointed by the speaker of the house of
representatives;

(B) One member appointed by the minority leader of the
house of representatives;

(C) One member appointed by the president of the senate;
and

(D) One member appointed by the minority leader of the
senate.

(II) The appointing authorities shall make the initial
appointments to the board no later than January 1, 2021. When
making appointments, the appointing authorities shall consider
guidance issued by the administrator regarding environmental
justice.

(c) Each appointed member of the board serves at the
pleasure of the applicable appointing authority. The term of
appointment is four years; except that the initial term of each
member appointed pursuant to subsections (3)(b)(I)(C) and
(3)(b)(I)(D) OF THIS SECTION AND ONE MEMBER APPOINTED BY THE
EXECUTIVE DIRECTOR IS TWO YEARS.

(d) Each appointed member of the board is entitled to
receive payment of per diem and reimbursement for actual and
necessary expenses at the rates specified pursuant to section
2-2-326 (1)(b) as though the member were a legislator; except
that the source of the money is the fund.

(e) The ombudsperson shall call the first meeting of the
board by January 1, 2021. The board shall elect a chairperson
from among its members at least every two years. The board
shall meet at least once every quarter. The chairperson may
call such additional meetings as are necessary for the board to
complete its duties.

(4) Powers and duties of the board. (a) The board has the
following powers and duties:

(I) To advise the department on the identification of
environmental justice communities;

(II) To recommend to the department EMPs in response to
violations that occur in, or directly affect residents or
workers in, environmental justice communities;

(III) To develop procedures for soliciting for, evaluating,
and recommending EMPs that address environmental violations
in environmental justice communities, including eligibility
requirements. The procedures must:

(A) Specify EMP criteria in accordance with subsection
(5)(d) of this section, including for when it may be appropriate to combine penalties from multiple case settlements into one solicitation;

(B) Include processes for: Notifying each environmental justice community that was affected by the violation or will be affected by the proposed EMP; soliciting feedback from residents of, workers in, and representatives of those communities; and holding a public hearing at which the public has an opportunity to comment on the proposed EMP; and

(C) Include public engagement best practices and consideration of community input received and a process for collaborating with impacted communities when soliciting for EMP proposals;

(IV) To submit an annual report to the commission with a summary of the board’s actions, including a description of all EMPs recommended during the previous year; and

(V) To make recommendations, as requested by the ombudsperson, to advance the department’s efforts in incorporating principles of environmental justice.

(b) (I) The board shall not be involved in an enforcement matter until the department notifies the board that the department has resolved the matter.

(II) The board shall use its best efforts to recommend EMPs within one hundred eighty days after notification by the department that an enforcement matter has been resolved with fines that will be paid into the fund.

(c) This subsection (4) is repealed, effective September 1,
BEFORE THE REPEAL, THE FUNCTIONS OF THE BOARD ARE SCHEDULED FOR REVIEW IN ACCORDANCE WITH SECTION 2-3-1203.

(5) **Environmental mitigation projects.** (a) The department shall use money in the fund to pay for EMPs.

(b) For violations that occurred in or directly affected an environmental justice community, the department shall consider EMPs recommended by the board that benefit the impacted community.

(c) For violations that did not occur in or directly affect an environmental justice community, the department shall award EMPs in accordance with subsection (5)(d) of this section and shall:

(I) (A) Seek public comment on an EMP that the department intends to award by posting a summary of the EMP on the department's website in a format that allows the public to submit comments; and

(B) Not approve an EMP until at least thirty days after the EMP has been posted on the department's website; and

(II) Prepare an annual report to the commission regarding the department’s use of the fund that includes a description of all department-approved EMPs.

(d) In consultation with the board, the department shall develop criteria to guide it in making decisions concerning the awarding of EMPs. The criteria may include:

(I) The needs of the community where the violation occurred;

(II) Community support for the proposed EMP;
(III) THE FEASIBILITY OF SUCCESSFUL IMPLEMENTATION OF THE
PROPOSED EMP;

(IV) THE NEXUS OF THE EMP TO THE VIOLATION; AND

(V) THE ENVIRONMENTAL AND PUBLIC HEALTH BENEFITS
RESULTING FROM THE IMPLEMENTATION OF THE EMP.

(6) Definitions. As used in this section:

(a) "BOARD" MEANS THE ENVIRONMENTAL JUSTICE ADVISORY
BOARD CREATED IN SUBSECTION (3) OF THIS SECTION.

(b) "DEPARTMENT" MEANS THE DEPARTMENT OF PUBLIC HEALTH
AND ENVIRONMENT, CREATED IN SECTION 25-1-102.

(c) "ENVIRONMENTAL JUSTICE COMMUNITY" MEANS A COMMUNITY
WHERE RESIDENTS:

(I) ARE PREDOMINANTLY MINORITIES OR HAVE LOW INCOME;

(II) HAVE BEEN EXCLUDED FROM THE ENVIRONMENTAL
POLICY-SETTING OR DECISION-MAKING PROCESSES;

(III) ARE SUBJECT TO A DISPROPORTIONATE IMPACT FROM ONE OR
MORE ENVIRONMENTAL HAZARDS; OR

(IV) EXPERIENCE DISPARATE IMPLEMENTATION OF
ENVIRONMENTAL REGULATIONS, REQUIREMENTS, PRACTICES, AND
ACTIVITIES.

(d) "ENVIRONMENTAL MITIGATION PROJECT" OR "EMP" MEANS A
PROJECT THAT AVOIDS, MINIMIZES, OR MITIGATES THE ADVERSE EFFECTS
OF A VIOLATION OR OTHER CUMULATIVE ENVIRONMENTAL IMPACTS IN AN
ENVIRONMENTAL JUSTICE COMMUNITY.

(e) "FUND" MEANS THE COMMUNITY IMPACT CASH FUND CREATED
IN SUBSECTION (1) OF THIS SECTION.

(f) "OMBUDSPERSON" MEANS THE ENVIRONMENTAL JUSTICE
OMBUDSPERSON POSITION CREATED IN SUBSECTION (2) OF THIS SECTION.

(g) "VIOLATION" MEANS A VIOLATION OR ALLEGED VIOLATION OF
THIS ARTICLE 7 OR ARTICLE 8 OF THIS TITLE 25.

SECTION 4. In Colorado Revised Statutes, 25-8-608, amend (1)
introductory portion, (1.7)(a) introductory portion, (1.7)(a)(III),
(1.7)(a)(IV), (1.7)(c), and (1.7)(d)(II); and add (1.7)(a)(V) as follows:

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 A
person who violates any provision of this article or of any THIS ARTICLE
8, a permit issued under this article, or any ARTICLE 8, a control
regulation promulgated pursuant to this article ARTICLE 8, or any A final
cease-and-desist order or clean-up order shall be IS subject to a civil
penalty of not more than ten FORTY-SEVEN thousand THREE HUNDRED
FIFTY-SEVEN dollars per day for each day during which such THE violation
occurs; EXCEPT THAT, BEGINNING IN 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) (a) The department OF PUBLIC HEALTH AND ENVIRONMENT
shall expend MONEY in the water quality improvement fund for
the following purposes:

(III) Providing the nonfederal match funding for nonpoint source
projects under 33 U.S.C. sec. 1329; or
(IV) Providing grants for storm water management training and best practices training to prevent or reduce the pollution of state waters; OR

(V) ENVIRONMENTAL MITIGATION PROJECTS FOR VIOLATIONS OF THIS ARTICLE 8 THAT HAVE BEEN APPROVED BY THE ENVIRONMENTAL JUSTICE ADVISORY BOARD CREATED IN SECTION 25-7-129(3) AND BY THE DEPARTMENT PURSUANT TO THE CRITERIA SPECIFIED IN SECTION 25-7-129(5).

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

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

SECTION 5. Applicability. This act applies to fines assessed on or after the effective date of this act.

SECTION 6. 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.