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Final Fiscal Note

Drafting Number: LLS 21-0452 **Date:** July 23, 2021
Prime Sponsors: Rep. Benavidez; Valdez A. **Bill Status:** Signed into Law
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Bill Topic: **REGULATE AIR TOXICS**

- Summary of Fiscal Impact:**
- State Revenue
 - State Expenditure
 - State Transfer
 - TABOR Refund
 - Local Government
 - Statutory Public Entity

The bill adds news requirements for certain stationary sources of hazardous air pollutants, including monitoring, community outreach, and corrective actions. Beginning in FY 2021-22, the bill increases state revenue, and state and local government expenditures, on an ongoing basis.

Appropriation Summary: For FY 2021-22, the bill requires and includes an appropriation of \$480,939 to multiple state agencies.

Fiscal Note Status: The fiscal note reflects the enacted bill.

**Table 1
State Fiscal Impacts Under HB 21-1189**

		Budget Year FY 2021-22	Out Year FY 2022-23	Out Year FY 2023-24
Revenue	Cash Funds	\$587,591	\$543,399	\$752,116
	Total Revenue	\$587,591	\$543,399	\$752,116
Expenditures	General Fund	-	\$800,000	-
	Cash Funds	\$480,939	\$393,229	\$574,965
	Centrally Appropriated	\$106,652	\$150,170	\$177,151
	Total Expenditures	\$587,591	\$1,343,399	\$752,116
	Total FTE	1.3 FTE	3.4 FTE	4.1 FTE
Transfers		-	-	-
TABOR Refund		\$587,591	\$543,399	-

Summary of Legislation

This bill expands the monitoring requirements for certain stationary sources of air pollutants and authorizes the Air Quality Control Commission in the Department of Public Health and Environment (CDPHE) to list additional hazardous air pollutants as covered air toxics in rule. Current law defines covered air toxics as hydrogen cyanide, hydrogen sulfide, and benzene.

Covered facilities. The bill defines covered facilities that are required to conduct fenceline monitoring. Specifically, it applies to stationary sources in the following industry sectors according to the North American Industry Classification System (NAICS) codes established by the Federal Office of Management and Budget:

- petroleum refineries (NAICS code 324110);
- other aircraft parts and auxiliary equipment manufacturing (NAICS code 336413);
- petroleum bulk stations and terminals (NAICS code 42710), if the source is within an 8-hour ozone control area and has reported benzene emissions in its federal toxic release inventory filing for the years 2017 through 2019, as of July 1, 2020; or
- any other NAICS code listed by rule.

The bill directs the Air Quality Control Commission to consider, at least every 5 years beginning in 2027, adding new covered air toxics and additional stationary sources to the definition of covered facilities.

Fenceline monitoring. The bill requires covered facilities to conduct fenceline monitoring of covered air toxics beginning July 1, 2024, except for petroleum refineries that must begin fenceline monitoring beginning January 1, 2023. One year prior to conducting fenceline monitoring, the facility must submit a draft plan, including translations of the plan in relevant languages, to the CDPHE for approval. The plans must include emergency notification services based on notification thresholds established by the CDPHE. In considering the draft fenceline monitoring plan, the CDPHE is required to:

- post the draft plan on their website;
- allow 90 days for public comment, and respond to each in writing;
- consult with local governments and community members in relevant areas;
- consult with communities and hold at least two public hearings within two months near the covered facility;
- allow for remote participation; and
- provide interpretation and child care services.

Covered facilities are responsible for covering the costs of fenceline monitoring, and must provide a processing fee to the CDPHE for the costs of reviewing and approving monitoring plans.

Community-based monitoring. The bill requires the CDPHE, beginning no later than January 1, 2023, to conduct community-based monitoring of covered air toxics for at least 30 cumulative days each quarter. Beginning July 1, 2022 and every three years thereafter the CDPHE must publicly post a list of the intended community-based equipment locations and allow 90 days for public comment. The CDPHE is required to consider local government and school district input in relevant areas, and make monitoring data available to the public. The CDPHE may expend up to \$800,000 from the General

Fund to purchase and equip a mobile air-quality monitoring van and up to \$1,000,000 annually to conduct community-based monitoring. Covered facilities are required to pay an annual pro rata share of the direct and indirect costs of conducting community-based monitoring.

Background

Air toxics regulation. The Air Pollution Control Division within the CDPHE is responsible for implementing air quality programs as directed by the Air Quality Control Commission. The Federal Clean Air Act and Colorado law are incorporated into rules regulating hazardous air pollutants, or air toxics. These air pollutants differ from the six common air pollutants, known as criteria pollutants, which are regulated through National Ambient Air Quality Standards based on human health and/or environmental criteria. Air toxics are pollutants that are known or suspected to cause cancer or other serious health effects, and are regulated through technology-based standards known as Maximum Achievable Control Technology (MACT) standards. Colorado, by adopting the corresponding federal regulation, is the delegated authority to regulate air toxics through these MACT standards. The CDPHE performs special projects for covered air toxics, including hydrogen cyanide, hydrogen sulfide, and benzene, but does not have routine monitoring in place as no ambient air standards are specified for them.

State Revenue

This bill will increase state revenue by an estimated \$0.6 million in FY 2021-22 and FY 2022-23 and \$0.8 million FY 2023-24 and future years to the Stationary Sources Control Fund, which is subject to TABOR.

Fee impact on Covered Facilities. Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. These fee amounts are estimates only, actual fees will be set administratively by the CDPHE based on cash fund balance, estimated program costs, and the estimated number of facilities subject to the fee.

This fiscal note assumes that the processing and monitoring fees will be paid by the four facilities that meet the definition of a covered facility in advance of the CDPHE incurring any costs related to the provisions of this bill. Table 2 below identifies the fee impact of this bill.

Table 2
Fee Impact Under HB 21-1189

Fee Type	Fund	FY 2021-22	FY 2022-23	FY 2023-24
Monitoring Fee ¹	Stationary Sources Control Fund	\$332,179	\$337,453	\$517,331
Processing Fee	Stationary Sources Control Fund	\$255,412	\$205,946	\$234,785
	Total	\$587,591	\$543,399	\$752,116

¹ The Monitoring Fee excludes the purchase of the mobile air monitoring vehicle in FY 2022-23, which will be paid from the General Fund. This fiscal note assumes the purchase of the mobile air monitoring vehicle will not be reimbursed by the covered facilities.

State Expenditures

This bill will increase state expenditures in the CDPHE by approximately \$0.6 million and 1.3 FTE in FY 2021-22, \$1.3 million and 3.4 FTE in FY 2022-23, and \$0.8 million and 4.1 FTE in FY 2023-24 and ongoing. Fenceline monitoring and community-based monitoring costs will be paid from the Stationary Sources Control Fund, except for the mobile air monitoring vehicle in FY 2022-23, which will be paid from the General Fund. These expenditures are listed in Table 3 and are discussed below.

**Table 3
Expenditures Under HB 21-1189**

Cost Components	FY 2021-22	FY 2022-23	FY 2023-24
Department of Public Health and Environment			
<i>Fenceline Monitoring</i>			
Personal Services	\$91,056	\$108,110	\$122,466
Standard Operating	\$1,620	\$1,890	\$2,160
Capital Outlay	\$6,200	-	-
Public Outreach	\$70,000	\$50,000	\$42,000
Travel Costs	\$825	\$825	\$825
Legal Services	\$12,760	\$12,761	\$12,761
Centrally Appropriated Costs ¹	\$72,951	\$32,360	\$54,573
FTE – Legal Services	0.1 FTE	0.1 FTE	0.1 FTE
FTE – Personal Services	1.2 FTE	1.4 FTE	1.6 FTE
Fenceline Monitoring Subtotal	\$255,412	\$205,946	\$234,785
<i>Community-Based Monitoring</i>			
Personal Services	-	\$133,475	\$177,966
Standard Operating	-	\$2,565	\$3,240
Capital Outlay	-	\$12,400	\$6,200
Technology Software/Database	\$298,478	\$60,303	\$63,147
Mobile Air Monitoring Vehicle	-	\$800,000	-
Mobile Air Monitoring Operating Costs	-	\$10,900	\$144,200
Centrally Appropriated Costs ¹	\$33,701	\$117,810	\$122,578
FTE – Personal Services	0.0 FTE	1.9 FTE	2.4 FTE
Community-Based Monitoring Subtotal	\$332,179	\$1,137,453	\$517,331
Total	\$587,591	\$1,343,399	\$752,116
Total FTE	1.3 FTE	3.4 FTE	4.1 FTE

¹ Centrally appropriated costs are not included in the bill's appropriation.

Staffing and operating costs. The CDPHE will require additional staff to support fenceline monitoring plan review, conduct public outreach, and develop and implement the community-based monitoring plan. The fiscal note assumes that the fenceline monitoring plans will require two draft plans prior to the final plan, with each plan requiring public participation and input. The costs presented here include a phase-in of staffing resources to support fenceline monitoring plans

beginning in FY 2021-22, and implementation beginning January 1, 2023. The CDPHE also requires 0.4 FTE ongoing to establish and support notification thresholds for each covered air toxic, along with an annual travel budget for community engagement.

Staff resources are also required to implement the community-based monitoring plan by January 1, 2023.

Public outreach. The CDPHE will incur interpretation, child care, translation services, and venue rental costs to hold public hearings to consult community members on fenceline monitoring plans. The fiscal note assumes four public hearings for each fenceline monitoring plan.

Air quality monitoring equipment. The CDPHE will incur one-time costs to purchase monitoring equipment and technology solutions before community-based monitoring operations can begin on January 1, 2023, as required in the bill. The cost to purchase the van is estimated at \$800,000 with operating costs of \$10,900 in FY 2022-23 and \$144,200 in FY 2023-24 to accommodate a full year of monitoring, and equipment replacement.

Technology costs. The CDPHE will incur costs to develop applications and database systems to manage and distribute data from community-based monitoring to the public. The applications and databases will be developed by the Office of Information Technology. Costs are estimated at \$298,478 in FY 2021-22 and approximately \$60,000 annually on an ongoing basis. Except for \$14,582 in the first year that will be used by the CDPHE for staff to oversee application development, this funding will be reappropriated to the Office of Information Technology.

Legal services. The CDPHE will require 120 hours of legal services per year from the Department of Law when disapproving or unilaterally modifying a fenceline monitoring plan. If a covered facility seeks judicial review of any disapproved or unilaterally modified plan, legal services costs will be determined by the scope and specific nature of the action and, if needed, will be addressed through the annual budget process.

Enforcement. The CDPHE will incorporate fenceline monitoring requirements into the covered facility's operating permit if the facility is a major stationary source. It is assumed that the requirements will be incorporated into the permit the next time it is opened or modified by the department. Once incorporated, the data can result in a permit violation which would require the facility to take corrective action as outlined in the bill. This fiscal note assumes that the cost for enforcement can be funded within existing appropriations or if existing appropriations are not sufficient, addressed through the annual budget process.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance, supplemental employee retirement payments, and indirect cost recoveries, are estimated to be \$106,652 in FY 2021-22, \$179,247 in FY 2022-23, and \$217,253 in FY 2023-24.

TABOR refunds. The bill is expected to increase the amount of state revenue required to be refunded to taxpayers by \$587,591 for FY 2021-22 and \$543,399 for FY 2022-23. TABOR refunds are paid from the General Fund. This estimate is based on the June 2021 LCS revenue forecast, which incorporates the revenue impacts of bills passed during the 2021 session. A forecast of state revenue subject to TABOR is not available beyond FY 2022-23.

Federal ARPA funds. This bill increases state revenue, which may impact the state's flexibility in spending federal American Rescue Plan Act (ARPA) funds. For more information, see the LCS memo, titled "Legislative Changes and Flexibility in Use of American Rescue Plan Funds," available online at: <https://leg.colorado.gov/node/2211881>.

Local Government

Local governments and school districts will have workload impacts to participate in public meetings concerning fenceline monitoring plans and monitoring equipment locations under the community-based monitoring plan.

Effective Date

The bill was signed into law by the Governor and took effect on June 24, 2021.

State Appropriations

In FY 2021-22, the bill requires and includes an appropriation of \$480,939 and 1.2 FTE from the Stationary Sources Control Fund to the Department of Public Health and Environment, of which \$12,760 and an additional 0.1 FTE is reappropriated to the Department of Law and \$283,896 is reappropriated to the Office of Information Technology.

State and Local Government Contacts

Public Health and Environment

Information Technology

Law