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Revised Fiscal Note

(replaces fiscal note dated April 2, 2024)

Drafting Number: LLS 24-0964 Date: May 2, 2024
Prime Sponsors: Rep. McCluskie; McCormick Sen. Roberts Bill Status: Senate Finance
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Bill Topic: REGULATE DREDGE & FILL ACTIVITIES IN STATE WATERS

Summary of Fiscal Impact: [X] State Revenue [X] State Transfer [ ] Local Government
[X] State Expenditure [X] TABOR Refund [ ] Statutory Public Entity

The bill creates a dredge and fill permitting program in the Colorado Department of Public Health and Environment. The bill increases state expenditures beginning FY 2024-25, and both state revenue and expenditures beginning FY 2025-26.

Appropriation Summary: For FY 2024-25, the bill includes an appropriation of \$747,639 to the Colorado Department of Public Health and Environment.

Fiscal Note Status: The revised fiscal note reflects the introduced bill, as amended by the House Appropriations Committee.

Table 1
State Fiscal Impacts Under HB 24-1379

Table with 5 columns: Category, Sub-category, Budget Year FY 2024-25, Out Year FY 2025-26, Out Year FY 2026-27. Rows include Revenue (Clean Water Cash Fund, Total Revenue), Expenditures (Clean Water Cash Fund, Centrally Appropriated, Total Expenditures, Total FTE), Transfers (General Fund, Severance Tax Operational Cash Fund, Clean Water Cash Fund, Net Transfer), and Other Budget Impacts (TABOR Refund).

## **Summary of Legislation**

The bill expands the authority of the Colorado Department of Public Health and Environment (CDPHE) to establish requirements, prohibitions, and standards for the regulation of discharged dredge and fill materials into state waters, including wetlands. The bill specifies activities that are exempt from dredge and fill program requirements, and exclusions for certain types of waters that may otherwise fall under the definition of "state waters."

**Program rules.** By May 31, 2025, the Water Quality Control Commission (WQCC) in CDPHE must adopt rules to implement a state dredge and fill discharge authorization program and related fees. The new rules must be at least as protective as the guidelines used by the Environmental Protection Agency and the Army Corps of Engineers in their existing regulatory program for discharge of dredge and fill materials into waters of the United States. At minimum, the rules must include: procedures for issuing authorizations to individuals and for general applications; public notice and participation requirements; the duration of an authorization not to exceed five years; authorization fees; and details concerning compensatory mitigation requirements. The bill details other issues that may be addressed in the WQCC rules.

**Division duties.** Following adoption of rules, the bill details the department's duties in administering the dredge and fill discharge authorization program, including individual authorizations with compensatory mitigation requirements. The department must issue general authorizations for categories of activities that are similar in nature and impact on water quality, cause only minimal adverse effects when performed separately, and have only minimal adverse effects on water quality and the aquatic environment. Both individual and general authorizations must include conditions for subjecting the authorization to administrative reconsideration or judicial review.

**Transition and repeal.** Until the rules adopted by WQCC take effect, the department may issue temporary authorizations for certain activities that would have been covered under the federal nationwide or regional permit process, but do not qualify for enforcement discretion due to requirements for compensatory mitigation. The transition period and temporary authorizations repeal September 1, 2026.

**Exemptions and exclusions.** The bill specifies the activities that do not require prior authorization from CDPHE for discharging material into state waters, and also excludes certain types of water features where discharges do not require prior authorization, e.g., drainage ditches or canals, artificially irrigated lands, small ornamental manmade bodies of water, and the like.

**Transfers.** In FY 2024-25 and FY 2025-26, the bill transfers \$748,000 from the Severance Tax Operational Cash Fund to the Clean Water Cash Fund for use by CDPHE in administering the program. Beginning FY 2026-27, the bill transfers \$248,304 per year from the General Fund to the Clean Water Cash Fund.

**State Transfers**

In both FY 2024-25 and FY 2025-26, the bill transfers \$748,000 from the Severance Tax Operational Cash Fund to the Clean Water Cash Fund. Beginning FY 2026-27, the bill transfers \$248,304 annually from the General Fund to the Clean Water Cash Fund.

**State Revenue**

Beginning in FY 2025-26, the bill increases state revenue by an estimated \$190,202 to the Clean Water Cash Fund from permitting fees. This estimate assumes that the WQCC adopts a fee schedule such that General Fund is available for 60 percent of the dredge and fill program, and cash funding is available for the remaining 40 percent, which is the current General Fund to cash funds ratio for WQCC programs. Permit fee revenue is subject to TABOR.

**State Expenditures**

The bill increases state expenditures in the CDPHE by about \$546,000 in FY 2024-25, paid from the Clean Water Cash Fund, and by about \$573,000 in FY 2025-26 and ongoing, paid from a combination of General Fund and the Clean Water Cash Fund. Expenditures are displayed in Table 2 and described below.

**Table 2  
 Expenditures Under HB 24-1279**

	<b>FY 2024-25</b>	<b>FY 2025-26</b>	<b>FY 2026-27</b>
<b>Department of Public Health and</b>			
Personal Services	\$397,560	\$463,925	\$463,925
Operating Expenses	\$5,120	\$6,016	\$6,016
Capital Outlay Costs	\$33,350	-	-
Travel and Per Diem	\$5,565	\$5,565	\$5,565
Legal Services	\$20,739	-	-
Centrally Appropriated Costs <sup>1</sup>	\$83,393	\$97,687	\$97,687
FTE – Personal Services	4.0 FTE	4.7 FTE	4.7 FTE
FTE – Legal Services	0.1 FTE	-	-
<b>Total Cost</b>	<b>\$545,728</b>	<b>\$573,193</b>	<b>\$573,193</b>
<b>Total FTE</b>	<b>4.1 FTE</b>	<b>4.7 FTE</b>	<b>4.7 FTE</b>

<sup>1</sup> Centrally appropriated costs are not included in the bill's appropriation.

**Staff.** CDPHE requires 4.7 FTE environmental specialists beginning in FY 2024-25. Staff is required to review federal rules and guidelines and draft and adopt Colorado rules for the dredge and fill permitting program. This work includes stakeholder engagement and at least three rounds of review and revisions in order to adopt all rules for the program by May 31, 2025. Beginning in FY 2025-26, staff transitions to permitting and regulatory activities for discharged

dredge and fill materials in state waters. This includes both permitting and mitigation activities for a presumed 110 projects. This estimate is based on the general notice of operations issued by the Army Corps of Engineers for dredge and fill permitting prior to the current FY 2023-24. Personal services include standard operating and capital outlay costs, and have been prorated for a presumed September 1 start date. As the program is anticipated to apply statewide, per diem, mileage, and lodging expenses are also included.

**Legal services.** In FY 2024-25, the Department of Law will provide 162 hours of legal services to assist the CDPHE to adopt rules for the new program. Legal services are billed at \$128.02 per hour. Legal services in FY 2025-26 and ongoing are assumed to be within the existing threshold for legal services in the department's annual budget (100 hours) and require no new appropriations.

**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 and supplemental employee retirement payments, are shown in Table 2.

### **Other Budget Impacts**

**TABOR refunds.** The bill is expected to increase the amount of state revenue required to be refunded to taxpayers by the amounts shown in the State Revenue section above. This estimate assumes the March 2024 LCS revenue forecast. A forecast of state revenue subject to TABOR is not available beyond FY 2025-26. Because TABOR refunds are paid from the General Fund, increased cash fund revenue will reduce the amount of General Fund available to spend or save.

### **Effective Date**

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed.

### **State Appropriations**

For FY 2024-25, the bill requires and includes a cash funds appropriation of \$747,639 from the Clean Water Cash Fund to the Department of Public Health and Environment, and 8.7 FTE. It includes roll-forward spending authority through FY 2025-26. Of this amount, \$20,739 is reappropriated to the Department of Law, with an additional 0.1 FTE.

### **State and Local Government Contacts**

Information Technology  
Public Health and Environment

Law

Natural Resources

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The revenue and expenditure impacts in this fiscal note represent changes from current law under the bill for each fiscal year. For additional information about fiscal notes, please visit the [General Assembly website](#).