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Final Fiscal Note

Drafting Number:	LLS 24-0833	Date:	July 18, 2024
Prime Sponsors:	Sen. Winter F. Rep. Froelich; Velasco	Bill Status:	Postponed Indefinitely
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Bill Topic: **AIR QUALITY ENFORCEMENT**

Summary of Fiscal Impact:	<input checked="" type="checkbox"/> State Revenue	<input type="checkbox"/> State Transfer	<input checked="" type="checkbox"/> Local Government
	<input checked="" type="checkbox"/> State Expenditure	<input checked="" type="checkbox"/> TABOR Refund	<input type="checkbox"/> Statutory Public Entity

The bill would have strengthened state and local enforcement of air quality regulations. It would have increased state expenditures beginning in FY 2024-25, and state revenue beginning in FY 2025-26. Local revenue may have also increased.

Appropriation Summary: For FY 2024-25, the bill would have required an appropriation of \$4,474,599 to the Department of Public Health and Environment.

Fiscal Note Status: This final fiscal note reflects the introduced bill, as amended by the Senate Transportation and Energy Committee. This bill was postponed indefinitely by the Senate Finance Committee on May 2, 2024; therefore, the impacts identified in this analysis do not take effect.

Table 1
State Fiscal Impacts Under SB 24-166

		Budget Year FY 2024-25	Out Year FY 2025-26
Revenue	Cash Funds	-	\$14,281,110
	Total Revenue	-	\$14,281,110
Expenditures	General Fund	\$4,474,599	-
	Cash Funds	-	\$14,281,110
	Total Expenditures	\$4,474,599	\$14,281,110
	Total FTE	25.5 FTE	73.2 FTE
Transfers		-	-
Other Budget Impacts	TABOR Refund ¹	(\$190 million)	(\$175 million)
	General Fund Reserve	\$671,190	-

¹ The bill specifies that any civil penalty assessed by a state agency constitutes a damage award and, as such, is not subject to TABOR. Actual reduction in TABOR refunds will vary depending on actual penalties imposed and may vary from this estimate.

Summary of Legislation

The bill strengthens state and local enforcement of air quality regulations, requires the Department of Public Health and Environment (CDPHE) to publish enforcement reports, and exempts civil penalties assessed by all state agencies from the state's revenue limit.

Enforcement of repeat violations. Under current law, CDPHE must investigate complaints regarding potential violations of air quality control rules. The bill requires stricter enforcement of repeat violators and certain high-priority repeat violators. CDPHE may not take informal action regarding repeat violations and must issue compliance orders and fines, and high-priority repeat violators must submit a root cause analysis documenting methods to prevent future violations. High-priority repeat violators must also reduce emissions in a manner determined by the nature of the violation.

Penalties. The bill authorizes CDPHE to assess civil penalties without bringing an action in district court. Current law establishes maximum penalties that CDPHE or a district court may assess. The bill specifies minimum penalties assessed for repeat violations. Also, the bill raises the maximum civil penalty for violations of local government emissions regulations from \$300 to the same amounts that the state may assess.

Civil actions. The bill authorizes individuals to bring civil action against an alleged violator after the individual has notified CDPHE and the alleged violator, unless CDPHE is actively seeking enforcement of a compliance order or is pursuing court action itself. CDPHE may intervene as a matter of right in any action. The court may award attorney fees and other costs to the plaintiff. The bill also authorizes district courts to award these costs to the plaintiff in a civil action regarding energy and carbon management regulation.

Enforcement reports. CDPHE must publish an air quality enforcement report on its website by February 1 each year, beginning in 2025. The report includes data on its informal and formal actions, the number of days of violation, repeat and high-priority repeat violators, and fines assessed and collected.

Stationary source reports. Owners or operators of stationary sources of air pollution must submit certain reports and records to CDPHE within six months of generating the documents. CDPHE must publish those documents on its website.

State revenue limit. Under current law, damage awards are not subject to the state's revenue limit under the Taxpayer's Bill of Rights (TABOR). The bill specifies that any civil penalty assessed by a state agency constitutes a damage award.

State Revenue

The bill increase state cash fund revenue in the CDPHE from fees by an estimated \$14.3 million per year starting in FY 2025-26. It may also increase revenue from civil penalties and court fees. These impacts are described below.

Fee impact on stationary sources. Permit applicants and operators pay fees depending on the type of permit sought, the amount of emissions allowed, and the time required for CDPHE to process the permit. This fee revenue accrues to the Stationary Sources Control Fund. The fiscal note assumes that CDPHE will adjust its fees as necessary in FY 2024-25 to generate revenue that covers its costs, or about \$14.3 million, beginning in FY 2025-26. This revenue is subject to TABOR. If CDPHE cannot generate sufficient revenue, additional General Fund may be required in future years, which will be addressed through the annual budget process. While the fiscal note estimates the total amount of revenue, given the multitude of different fees charged by the CDPHE for permits, the impact on individual permit types cannot be estimated.

Civil penalties. The bill requires CDPHE to issue civil penalties in additional situations involving repeat violators. Enforcement actions by CDPHE that are generated from the bill’s new private cause of action may also lead to additional civil penalties. In current practice, fines range from \$3,000 to over \$1 million. The bill may increase this amount substantially. Actual impacts will depend on regulated entity behavior following passage of the bill. Under the bill, these penalties are damage awards and not subject to TABOR.

Court fees. To the extent that the bill leads to additional case filings in district courts, revenue will increase in the Judicial Department from filing fees, which is subject to TABOR. The fiscal note assumes that the number of cases will be minimal.

State Expenditures

The bill increases state expenditures in the Department of Public Health and Environment by about \$4.5 million in FY 2024-25 and \$14.3 million in FY 2025-26 and ongoing. Expenditures are paid from the General Fund in the first year only, until additional fee revenue is available in the Stationary Sources Control Fund. Expenditures are shown in Table 2 and detailed below.

**Table 2
Expenditures Under SB 24-166**

	FY 2024-25	FY 2025-26
Department of Public Health and Environment		
Personal Services	\$989,555	\$1,787,356
Operating Expenses	\$15,104	\$27,008
Capital Outlay Costs	\$80,040	\$60,030
Legal Services	\$3,161,070	\$11,995,858
Employee Benefits	\$228,830	\$410,858
FTE – Personal Services	11.8 FTE	21.1 FTE
FTE – Legal Services	13.7 FTE	52.1 FTE
Total Cost	\$4,474,599	\$14,281,110
Total FTE	25.5 FTE	73.2 FTE

Department of Public Health and Environment. The bill increases expenditures to conduct additional enforcement activity and to adjudicate appeals of regulatory actions. For all staff, standard operating and capital outlay costs are included.

- **Assumptions.** The bill increases expenditure in both CDPHE and the Department of Law for adjudicatory appeals. The increase in formal enforcement actions and increased penalties are expected to increase the number of actions appealed by alleged violators. The fiscal note assumes that appeals will ramp-up over multiple years, and that there is a half-year impact in FY 2024-25 due to the six-month deadline for issuing formal enforcement orders.
- **Formal enforcement against repeat violators.** It is estimated that under the bill, 25 percent of its inspections will lead to formal enforcement actions against repeat violators. Workload also increases to meet the six-month deadline for issuing formal compliance orders. This results in an average of 121 new actions each year and requires 6.3 FTE.
- **Adjudicatory appeals.** Each appeal increases workload for staff to provide technical support, sit for depositions, and testify at hearings. Assuming 175 hours per hearing, this requires 2.7 FTE in FY 2024-25 and 10.7 FTE in FY 2025-26. As the regulated community adapts to the bill's requirements, any subsequent changes to expenditures will be addressed through the annual budget process.
- **Support staff and reporting.** The bill increases workload to provide supervisory and administrative support for the above functions, compile and publish the annual enforcement report, and publish reports received from stationary source operators. This requires 2.8 FTE in FY 2024-25 and 4.1 FTE in FY 2025-26.
- **Legal services.** Each new formal enforcement action requires 20 hours of legal services, and each new adjudicatory appeal requires at least 700 additional hours. Using the assumptions about appeals above, this results in about 25,000 hours in FY 2024-25, which equates to 13.7 FTE, and about 94,000 hours in FY 2025-26, which equates to 52.1 FTE. Legal services are provided by the Department of Law at a rate of \$128.02 per hour.

Department of Natural Resources. If alleged violators appeal regulatory decisions by the Energy and Carbon Management Commission after exhausting other adjudicatory processes, legal services expenditures will increase. Any increase is expected to be minimal, and no change in appropriations is required.

Judicial Department. The bill may increase expenditures in district courts to hear additional cases brought by private parties against alleged violators or if stronger penalties cause alleged violators to appeal more cases after exhausting other adjudicatory processes. The number of such cases is expected to be minimal and no change in appropriations is required.

Employee insurance and supplemental retirement. Pursuant to fiscal note and Joint Budget Committee policy, centrally appropriated costs for bills involving more than 20 FTE are appropriated in the bill, rather than through the annual budget process. These costs, which are shown in Table 2, include employee insurance and supplemental employee retirement payments.

Other Budget Impacts

TABOR refunds. The bill is expected to both increase and reduce the amount of state revenue required to be refunded to taxpayers, with an overall net reduction to TABOR refunds of between \$175 and \$190 million per year.

Cash fund revenue to the Stationary Sources Control Fund will increase the amount required to be refunded, reducing the amount of General Fund available to spend or save beginning in FY 2025-26.

Making all civil penalties damage awards for all agencies and not subject to the state's TABOR limit will reduce the state's TABOR refund obligation and increase the amount of General Fund available to spend or save. Based on civil penalty revenue collected in recent years, this is estimated at \$190 million beginning in FY 2024-25.

General Fund reserve. Under current law, an amount equal to 15 percent of General Fund appropriations must be set aside in the General Fund statutory reserve. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve by the amounts shown in Table 1, decreasing the amount of General Fund available for other purposes.

Local Government

The bill increases revenue to local governments that assess higher penalties for violations of their emissions regulations.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature, and applies to enforcement actions occurring on or after this date.

State Appropriations

For FY 2024-25, the bill requires a General Fund appropriation of \$4,474,599 to the Department of Public Health and Environment and 11.8 FTE. Of this amount, \$3,161,070 is reappropriated to the Department of Law, with an additional 13.7 FTE.

Departmental Difference

CDPHE estimates that the bill increases its costs by about \$61 million and 470 FTE per year, including about \$12 million and 53 FTE of legal services per year. This estimate assumes that CDPHE must conduct additional investigations of stationary source operators every six months under Section 4 of the bill. The fiscal note instead assumes that receiving and posting reports from operators to its website will not result in any additional investigations relative to what otherwise would be conducted under the bill. CDPHE's estimate also assumes a higher rate of appeals than the fiscal note.

State and Local Government Contacts

Judicial
Personnel

Law
Public Health and Environment

Natural Resources

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](#).