

First Regular Session  
Seventy-fourth General Assembly  
STATE OF COLORADO

DRAFT  
8.24.22

Bill 9

LLS NO. 23-0090.01 Jennifer Berman x3286

INTERIM COMMITTEE BILL

Water Resources and Agriculture Review Committee

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**BILL TOPIC: "Science Adv Bd Review EPA Guidance CDPHE Rules"**

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**A BILL FOR AN ACT**

101      **CONCERNING A REQUIREMENT THAT A RULE ADOPTED BY THE**  
102            **DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT THAT IS**  
103            **BASED ON GUIDANCE FROM THE ENVIRONMENTAL PROTECTION**  
104            **AGENCY BE SUPPORTED BY EVIDENCE THAT THE SCIENCE**  
105            **ADVISORY BOARD OF THE ENVIRONMENTAL PROTECTION**  
106            **AGENCY SUPPORTS THE ENVIRONMENTAL PROTECTION**  
107            **AGENCY'S GUIDANCE.**

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**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/>.)*

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.*

**Water Resources and Agriculture Review Committee.** The bill specifies that any rule or rule amendment adopted by a rule-making agency or official of the department of public health and environment (department) on or after July 1, 2021, which rule or rule amendment directly affects water quality or air quality in the state, may be based on regulations, standards, or health advisories of the federal environmental protection agency (EPA) only if the science advisory board (board) of the EPA has first reviewed the EPA regulation, standard, or health advisory and has issued a report substantially supporting the EPA regulation, standard, or health advisory.

For any such rule or rule amendment proposed on or after September 1, 2023, there is an additional requirement that the department rule-making agency or official include a link to the board's report in the published notice of proposed rule-making and include a copy of the report in the official rule-making record.

A department rule or rule amendment that is not in compliance with the requirements is void and cannot be enforced.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** 25-1-137 as  
3 follows:

4 **25-1-137. Rules may be based on EPA guidance only if EPA**  
5 **guidance is supported by science advisory board - definitions.**

6 (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE  
7 CONTRARY, ANY DEPARTMENT RULE OR RULE AMENDMENT THAT IS  
8 ADOPTED ON OR AFTER JULY 1, 2021, AND THAT DIRECTLY AFFECTS  
9 WATER QUALITY OR AIR QUALITY IN THE STATE MAY BE BASED ON AN EPA  
10 REGULATION, STANDARD, OR HEALTH ADVISORY ONLY IF:

11 (a) THE SCIENCE ADVISORY BOARD HAS FIRST ISSUED A REPORT  
12 REGARDING THE EPA REGULATION, STANDARD, OR HEALTH ADVISORY;

13 (b) THE DEPARTMENT DETERMINES THAT THE REPORT  
14 SUBSTANTIALLY SUPPORTS THE EPA REGULATION, STANDARD, OR HEALTH  
15 ADVISORY; AND

16 (c) FOR DEPARTMENT RULES OR RULE AMENDMENTS PROPOSED ON

1 OR AFTER SEPTEMBER 1, 2023, A LINK TO AN ELECTRONIC COPY OF THE  
2 REPORT IS INCLUDED WITH THE NOTICE OF PROPOSED RULE-MAKING  
3 PUBLISHED PURSUANT TO SECTION 24-4-103 (3)(a) AND A COPY OF THE  
4 REPORT IS INCLUDED IN THE OFFICIAL RULE-MAKING RECORD MAINTAINED  
5 PURSUANT TO SECTION 24-4-103 (8.1).

6 (2) A DEPARTMENT RULE OR RULE AMENDMENT THAT DOES NOT  
7 COMPLY WITH SUBSECTION (1) OF THIS SECTION IS DEEMED VOID AND  
8 CANNOT BE ENFORCED.

9 (3) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE  
10 REQUIRES:

11 (a) "ADVISORY REPORT" MEANS A REPORT OF THE SCIENCE  
12 ADVISORY BOARD IN WHICH THE BOARD PROVIDES TECHNICAL ADVICE TO  
13 THE EPA REGARDING A SPECIFIC EPA PROJECT OR ACTION DURING THE  
14 PERIOD IN WHICH THE PROJECT OR ACTION IS BEING PLANNED AND NOT YET  
15 IMPLEMENTED.

16 (b) (I) "DEPARTMENT RULE OR RULE AMENDMENT" MEANS AN  
17 ADMINISTRATIVE RULE OR AMENDMENT TO AN ADMINISTRATIVE RULE  
18 THAT A DEPARTMENT AGENCY OR OFFICIAL WITH RULE-MAKING  
19 AUTHORITY ADOPTS.

20 (II) "DEPARTMENT RULE OR RULE AMENDMENT" INCLUDES A RULE  
21 OR RULE AMENDMENT THAT THE AIR QUALITY CONTROL COMMISSION  
22 CREATED IN SECTION 25-7-104 (1) OR THE WATER QUALITY CONTROL  
23 COMMISSION CREATED IN SECTION 25-8-201 (1)(a) ADOPTS.

24 (c) "EPA" MEANS THE FEDERAL ENVIRONMENTAL PROTECTION  
25 AGENCY.

26 (d) "PEER REVIEW REPORT" MEANS A REPORT OF THE SCIENCE  
27 ADVISORY BOARD IN WHICH THE BOARD PROVIDES TECHNICAL ADVICE TO

1 THE EPA REGARDING A SPECIFIC EPA PROJECT OR ACTION AFTER  
2 IMPLEMENTATION OF THE PROJECT OR ACTION HAS ALREADY COMMENCED.

3 (e) "REPORT" MEANS AN ADVISORY REPORT OR PEER REVIEW  
4 REPORT OF THE SCIENCE ADVISORY BOARD.

5 (f) "SCIENCE ADVISORY BOARD" MEANS THE EPA BOARD CREATED  
6 PURSUANT TO SECTION 8 OF THE FEDERAL "ENVIRONMENTAL RESEARCH,  
7 DEVELOPMENT, AND DEMONSTRATION AUTHORIZATION ACT OF 1978",  
8 42 U.S.C. SEC. 4365, AS AMENDED, TO PROVIDE THE EPA WITH  
9 INDEPENDENT ADVICE AND PEER REVIEW ON THE SCIENTIFIC AND  
10 TECHNICAL ASPECTS OF ENVIRONMENTAL ISSUES.

11 **SECTION 2. Act subject to petition - effective date.** This act  
12 takes effect at 12:01 a.m. on the day following the expiration of the  
13 ninety-day period after final adjournment of the general assembly; except  
14 that, if a referendum petition is filed pursuant to section 1 (3) of article V  
15 of the state constitution against this act or an item, section, or part of this  
16 act within such period, then the act, item, section, or part will not take  
17 effect unless approved by the people at the general election to be held in  
18 November 2024 and, in such case, will take effect on the date of the  
19 official declaration of the vote thereon by the governor.