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Fiscal Note

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Prime Sponsors:

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Bill Status: Bill Request
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Bill Topic: **SCIENCE ADVISORY BOARD REVIEW EPA GUIDANCE CDPHE RULES**

Summary of Fiscal Impact:

- State Revenue
- State Expenditure
- State Transfer
- TABOR Refund
- Local Government
- Statutory Public Entity

The bill creates new requirements concerning certain water and air quality rulemaking in the Department of Public Health and Environment beginning July 1, 2021. The bill increases state expenditures on an ongoing basis beginning in FY 2023-24.

Appropriation Summary:

For FY 2023-24, the bill requires an appropriation of \$321,821 to the Department of Public Health and Environment.

Fiscal Note Status:

The fiscal note reflects the draft bill requested by the Water Resources and Agriculture Review Committee.

Table 1
State Fiscal Impacts Under Bill 9

		Budget Year FY 2023-24	Out Year FY 2024-25
Revenue		-	-
Expenditures	General Fund	\$321,821	\$469,184
	Centrally Appropriated	\$48,210	\$60,524
	Total Expenditures	\$370,031	\$529,708
	Total FTE	2.9 FTE	4.0 FTE
Transfers		-	-
Other Budget Impacts	General Fund Reserve	\$48,273	\$70,378

Summary of Legislation

The bill modifies the basis by which the Department of Public Health and Environment may adopt rules or rule amendments that directly affect water or air quality. Specifically, for rules adopted on or after July 1, 2021 that are based on an Environmental Protection Agency (EPA) regulation, standard, or health advisory, the Science Advisory Board of the EPA must have previously issued a report regarding the regulation, standard, or health advisory. The CDPHE is required to determine that the Science Advisory Board report substantially supports the EPA regulation, standard, or health advisory.

Beginning September 1, 2023, the CDPHE is required to include a link to an electronic copy of the Science Advisory Board report with the notice of proposed rulemaking and a copy of the report in the official rulemaking record.

A CDPHE rule or rule amendment not in compliance with these requirements is void.

Background

The Science Advisory Board was established within the EPA to provide independent scientific and technical peer review and advice to the Administrator. The Science Advisory Board is authorized to review the quality and relevance of the scientific and technical information being used by the EPA or proposed as the basis for EPA regulations, and review EPA research programs and plans. A key priority for the EPA is to base actions on sound scientific data, analyses, and interpretations. The Science Advisory Board provides a mechanism for the EPA to receive peer review and other advice in the production and use of science.

Assumptions

Under the bill, it is assumed that:

- promulgation of new rules by the Air Quality Control Commission (AQCC) and the Water Quality Control Commission (WQCC) will continue at a rate comparable to previous years;
- per the rule review schedule, approximately 18 AQCC and WQCC rules are reviewed each year, and any changes needed to comply with the bill will be made during the scheduled review; and
- there will be at least one rulemaking challenge in FY 2023-24, and at least two rulemaking challenges per year in FY 2024-25 and ongoing.

State Expenditures

The bill increases state expenditures in the Department of Public Health and Environment by \$370,031 in FY 2023-24 and \$529,708 in FY 2024-25 and ongoing from the General Fund. Expenditures are shown in Table 2 and detailed below.

**Table 2
Expenditures Under Bill 9**

Cost Components	FY 2023-24	FY 2024-25
Department of Public Health and Environment		
Personal Services	\$182,466	\$243,289
Operating Expenses	\$3,105	\$3,915
Capital Outlay Costs	\$20,010	-
Legal Services	\$105,740	\$211,480
Translation	\$10,500	\$10,500
Centrally Appropriated Costs ¹	\$48,210	\$60,524
FTE – Personal Services	2.3 FTE	2.9 FTE
FTE – Legal Services	0.6 FTE	1.1 FTE
Total	\$370,031	\$529,708
Total FTE	2.9 FTE	4.0 FTE

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

Staffing costs. Beginning in FY 2023-24, the CDPHE requires additional staff across multiple divisions to incorporate these new rulemaking requirements. Specifically, additional staff include:

- 0.4 FTE to provide managerial oversight;
- 0.4 FTE to provide general administrative support, including assistance with stakeholder engagement activities;
- 0.4 FTE to review Science Advisory Board reports, and present information to relevant advisory boards and stakeholder groups to determine whether any changes to rules are needed;
- 1.0 FTE to perform research, and draft and communicate information about the report's impact on rulemaking and administrative processes;
- 0.5 FTE to coordinate public notices, public meetings and outreach; and
- 0.2 FTE to perform a toxicological review for various air and water-related rules and documents.

Staff costs are adjusted for the General Fund paydate shift and assume a September 1, 2023, start date. Standard operating and capital outlay costs are included.

Translation costs. Beginning in FY 2023-24, translation costs for materials related to incorporating the Science Advisory Board report into the rulemaking process are estimated to be \$10,500 annually.

Legal costs. Based on the assumptions stated above, the CDPHE requires 1,000 hours of legal services in FY 2023-24, and 2,000 hours of legal services in FY 2024-25 and ongoing to provide assistance with rulemaking tasks, and litigation support for rulemaking challenges. To the extent that additional legal services hours are required under the bill, funds will be requested through the annual budget process. Legal services are provided by the Department of Law at a rate of \$105.74 per hour.

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

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 beginning in FY 2023-24. 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, which will decrease the amount of General Fund available for other purposes.

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 2023-24, the bill requires a General Fund appropriation of \$321,821 to the Department of Public Health and Environment and 2.3 FTE. Of this amount, \$105,740 is reappropriated to the Department of Law with an additional 0.6 FTE for legal services.

State and Local Government Contacts

Information Technology
Local Affairs
Public Health and Environment
Secretary of State

Law
Natural Resources
Regulatory Agencies
Transportation