

CHAPTER 246

HEALTH

SENATE BILL 94-217

BY SENATORS Ament, Norton, and Johnson;
also REPRESENTATIVE Anderson.

AN ACT**CONCERNING AIR QUALITY PROGRAMS WITHIN THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT RELATED TO STATIONARY SOURCES OF AIR POLLUTION, AND MAKING APPROPRIATIONS IN CONNECTION THEREWITH.**

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

SECTION 1. Legislative declaration. The general assembly hereby recognizes that provisions of this act increase fees to fund the operation of the state stationary source air pollution program. The general assembly further finds that the burden of paying these fees falls upon the business community of this state. The general assembly hereby declares that fees for the stationary source air pollution program are being increased to comply with a mandate of the federal government related to the level of funding required for Colorado's air pollution control program; if the level of fees for this program are not increased, the federal government could declare Colorado's program out of compliance with federal law, preempt Colorado's authority to operate the program, and interfere with Colorado's inherent authority to implement federal air quality environmental policies in a manner consistent with Colorado's authority under the United States constitution, the Colorado constitution, and federal and state law. Therefore, the general assembly hereby declares that fees for the stationary source air pollution program are being increased under duress from the federal government, and this action is being taken by the general assembly under protest.

SECTION 2. 25-7-114.7 (2) (a) (I) (A), (2) (b), and (2) (c), Colorado Revised Statutes, 1989 Repl. Vol., as amended, are amended, and the said 25-7-114.7 (2) (a) (I) is further amended BY THE ADDITION OF A NEW SUB-SUBPARAGRAPH, to read:

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

25-7-114.7. Emission fees - fund. (2) (a) (I) The commission shall designate by rule and regulation those classes of sources of air pollution which are exempt from the requirement to pay an annual emission fee. Every owner or operator of an air pollution source not otherwise exempt in accordance with such commission rules and regulations shall pay an annual fee as follows:

(A) For fiscal year ~~1993-94 and thereafter, ten dollars and ninety-eight cents~~ YEARS 1994-95 AND THEREAFTER, FOURTEEN DOLLARS AND NINETY-EIGHT CENTS per ton of regulated pollutant reported in the most recent air pollution emission notice on file with the division. SUCH FEE MAY BE INCREASED BY THE EXECUTIVE DIRECTOR FOR FISCAL YEAR 1996-97 BY AN AMOUNT EQUAL TO THE ANNUAL AUTHORIZED INCREASE IN THE DIVISION'S DIRECT PERSONNEL SALARY COSTS FOR THE REGULATION OF STATIONARY SOURCES FOR SUCH FISCAL YEAR AS INCORPORATED AND ENACTED IN THE ANNUAL GENERAL APPROPRIATION ACT FOR SUCH FISCAL YEAR.

(A.5) A LATE PAYMENT FEE. SUCH FEE SHALL BE ASSESSED AT THE RATE OF ONE PERCENT PER MONTH FOR ACCOUNTS MORE THAN SIXTY DAYS PAST DUE; EXCEPT THAT NO LATE PAYMENT FEE MAY BE ASSESSED DURING A PERIOD IN WHICH AN ACCOUNT IS UNDER ADMINISTRATIVE REVIEW BY THE DIVISION IN ORDER TO RESPOND TO A REASONABLE REQUEST BY THE OWNER OR OPERATOR OF A SOURCE FOR ALLOCATION OF THE FEES AMONG MULTIPLE SOURCES OR TO RESOLVE A GOOD FAITH CLAIM BY THE OWNER OR OPERATOR OF A SOURCE THAT THERE HAS BEEN AN ERROR IN CALCULATION OF THE AMOUNT OF FEES DUE. AT THE END OF THE ADMINISTRATIVE REVIEW, THE DIVISION SHALL INFORM THE OWNER OR OPERATOR OF THE SOURCE IN WRITING OF ANY FINDINGS.

(b) The moneys collected pursuant to this section shall be remitted to the state treasurer, who shall credit the same to the stationary sources control fund, which fund is hereby created. From such fund, the general assembly shall appropriate to the department of health, at least annually, such moneys as may be necessary to cover the division's direct and indirect costs required to develop and administer the programs established pursuant to parts 1 to 4 of this article for the control of air pollution from stationary sources. Any permit fee moneys not appropriated by the general assembly and any appropriated funds not spent by the division shall remain in the stationary sources control fund and shall not revert to the general fund of the state at the end of any fiscal year. Any such moneys shall be separately accounted for and used to reduce the permit fees BEGINNING IN FISCAL YEAR 1996-97 to be assessed against sources pursuant to this article. Until June 30, 1994, any interest earned on moneys in the stationary sources control fund pursuant to this article shall remain in the fund and shall not revert to the general fund of the state at the end of any fiscal year. Any such interest shall be separately accounted for and used to reduce the permit fees to be assessed against sources pursuant to this article. Beginning with fiscal year 1994-95 and thereafter, all interest earned on moneys in the stationary sources control fund shall revert to the general fund.

(c) The general assembly by bill shall ~~annually~~ adjust the fees established in this section as necessary to cover the reasonable costs, both direct and indirect, of the stationary source program and to assure that adequate personnel and funding will be available to administer the permit program.

SECTION 3. 25-7-114.7 (2) (a), Colorado Revised Statutes, 1989 Repl. Vol., as

amended, is amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

25-7-114.7. Emission fees - fund - legislative declaration - task force created.

(2) (a) (IV) (A) AFTER CONSULTATION WITH THE PROGRAM MANAGERS OF THE STATIONARY SOURCE PROGRAM OF THE DIVISION CHARGED WITH THE ADMINISTRATION AND ENFORCEMENT OF THE PROGRAM WHICH INCLUDES THE OPERATING PERMIT PROGRAM, AND AFTER REVIEWING THE REQUIREMENTS OF TITLE V OF THE FEDERAL ACT, THE GENERAL ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT THE FEES AUTHORIZED TO BE COLLECTED FOR FISCAL YEARS 1994-95 AND 1995-96 SET FORTH IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (a) ARE SUFFICIENT TO COVER ALL REASONABLE DIRECT AND INDIRECT COSTS REQUIRED TO DEVELOP AND ADMINISTER THE OPERATING PERMIT PROGRAM REQUIREMENTS OF THE FEDERAL ACT. THE GENERAL ASSEMBLY FURTHER FINDS, DETERMINES, AND DECLARES THAT SUFFICIENT FUNDS WILL BE GENERATED BY THE FEES AUTHORIZED TO BE COLLECTED FOR FISCAL YEARS 1994-95 AND 1995-96 SET FORTH IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (a) FOR ADMINISTERING THE REST OF THE STATIONARY SOURCE PROGRAM AS REQUIRED UNDER THE FEDERAL ACT.

(B) IN ORDER TO INCREASE COMMUNICATION BETWEEN THE DIVISION AND THE PRIVATE SECTOR ON OPTIONS AVAILABLE TO INCREASE OPERATING EFFICIENCY AND MINIMIZE THE NEED FOR FUTURE FEE INCREASES TO FUND THE STATIONARY SOURCE PROGRAM, THE GENERAL ASSEMBLY HEREBY DIRECTS THE DIVISION TO CONVENE A COORDINATED EFFICIENCY TASK FORCE MADE UP OF REPRESENTATIVES FROM THE REGULATED AND ENVIRONMENTAL COMMUNITIES. THE TASK FORCE SHALL PURSUE WAYS TO INCREASE EFFICIENCIES, ECONOMIES, AND THE USE OF AUTOMATION AND TO IDENTIFY ALTERNATIVES TO ADDING TO STAFFING LEVELS WITHIN THE DIVISION IN ORDER TO REDUCE THE COSTS AND IMPROVE THE EFFICIENCY OF THE STATIONARY SOURCE PROGRAM. THE TASK FORCE MAY ALSO ADDRESS ALTERNATIVE FUNDING MECHANISMS WHICH EQUITABLY DISTRIBUTE THE COSTS OF THE PROGRAM. THE TASK FORCE SHALL CONSIST OF NINE MEMBERS APPOINTED BY THE EXECUTIVE DIRECTOR FROM A LIST OF PERSONS WHO VOLUNTEER TO SERVE WITHOUT COMPENSATION. ITS MEMBERSHIP SHALL REASONABLY REPRESENT THE VARIED INTERESTS OF LARGE AND SMALL BUSINESSES, THE ENVIRONMENTAL COMMUNITY, AND THE DEPARTMENT. THE TASK FORCE SHALL REPORT TO THE GOVERNOR AND THE GENERAL ASSEMBLY ON ITS RECOMMENDATIONS NO LATER THAN JULY 31, 1995. THE TASK FORCE MAY PROVIDE INTERIM REPORTS. THE TASK FORCE SHALL BEGIN ITS WORK NO LATER THAN THIRTY DAYS AFTER THE EFFECTIVE DATE OF THIS SUBPARAGRAPH (IV) AND THE TASK FORCE SHALL EXPIRE ON JULY 1, 1996.

(C) THIS SUBPARAGRAPH (IV) IS REPEALED, EFFECTIVE JULY 1, 1996.

SECTION 4. Part 2 of article 7 of title 25, Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

25-7-212. Actions of federal government affecting visibility - evaluation report.

(1) AS A PART OF THE STATE'S ONGOING DEVELOPMENT AND IMPLEMENTATION OF A LONG-TERM STRATEGY IN CONNECTION WITH VISIBILITY AND AIR QUALITY RELATED VALUES WITHIN CLASS I AREAS, THE DIVISION SHALL EVALUATE THE EXTENT TO WHICH THE ACTIVITIES OF THE FEDERAL GOVERNMENT ARE DIRECTLY ADVERSELY IMPACTING VISIBILITY AND AIR QUALITY RELATED VALUES WITHIN A

CLASS I AREA AND MAKE A DETERMINATION WHETHER SUCH ENTITIES HAVE TAKEN OR ARE TAKING ALL REASONABLE STEPS NECESSARY TO REMEDY THAT IMPACT. AT ANY TIME, THE DIVISION MAY MAKE, AND A FEDERAL LAND MANAGER SHALL RESPOND TO, REASONABLE REQUESTS FOR INFORMATION NECESSARY FOR THE DIVISION TO PERFORM SUCH REGULATION.

(2) THE JOINT PUBLIC HEARING REQUIRED UNDER SECTION 25-7-105 (4) (a) AND THE REPORT TO THE GOVERNOR AND THE GENERAL ASSEMBLY REQUIRED UNDER SECTION 25-7-105 (6) SHALL REPORT ON THE RESULTS OF THE EVALUATION REQUIRED UNDER SUBSECTION (1) OF THIS SECTION.

25-7-213. Visibility and air quality related values policy task force. (1) IN ORDER TO IDENTIFY AND DISCUSS POLICY ISSUES AND MAKE RECOMMENDATIONS TO THE GENERAL ASSEMBLY, THE GOVERNOR, AND THE AIR QUALITY CONTROL COMMISSION CONCERNING VISIBILITY AND AIR QUALITY RELATED VALUES PROTECTION AND ENHANCEMENT STRATEGIES FOR CLASS I AREAS AND THE NEED FOR LEGISLATION AND REGULATION, THERE IS HEREBY ESTABLISHED A VISIBILITY AND AIR QUALITY RELATED VALUES POLICY TASK FORCE. THE MEMBERSHIP OF THE TASK FORCE SHALL CONSIST OF TWELVE MEMBERS. THE GOVERNOR SHALL APPOINT EIGHT MEMBERS. THE SPEAKER OF THE HOUSE OF REPRESENTATIVES SHALL APPOINT TWO MEMBERS, ONE OF WHOM MAY BE A MEMBER OF THE HOUSE OF REPRESENTATIVES. THE PRESIDENT OF THE SENATE SHALL APPOINT TWO MEMBERS, ONE OF WHOM MAY BE A MEMBER OF THE SENATE. THE REVIEW COMMITTEE SHALL RECEIVE STAFF ASSISTANCE FROM THE LEGISLATIVE COUNCIL STAFF, THE OFFICE OF LEGISLATIVE LEGAL SERVICES, AND THE AIR POLLUTION CONTROL DIVISION AND SHALL CONSULT WITH OTHER INTERESTED PERSONS, INCLUDING REPRESENTATIVES FROM FEDERAL LAND MANAGEMENT AGENCIES.

(2) THE TASK FORCE SHALL MEET AT LEAST MONTHLY.

(3) (a) APPOINTMENTS TO THE TASK FORCE SHALL BE MADE NO LATER THAN JUNE 1, 1994.

(b) (I) THE APPOINTEES SHALL CONSIST OF A CROSS-SECTION OF CONCERNED PERSONS INCLUDING: ENVIRONMENTAL GROUPS; COAL PRODUCERS; LABOR; MANUFACTURING; NATURAL GAS PRODUCERS; ELECTRIC UTILITIES; LOCAL GOVERNMENT; AND THE AIR QUALITY CONTROL COMMISSION.

(II) AT LEAST ONE LOCAL GOVERNMENT APPOINTEE SHALL RESIDE WEST OF THE CONTINENTAL DIVIDE.

(c) THE FIRST MEETING SHALL BE WITHIN THIRTY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION. THE TASK FORCE SHALL REPORT ITS RESULTS TO THE GENERAL ASSEMBLY BY NOVEMBER 1, 1994. THE MEMBERS OF THE TASK FORCE SHALL SERVE WITHOUT COMPENSATION.

(4) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 1995.

SECTION 5. Appropriations. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the stationary sources control fund not otherwise appropriated, to the department of public health and environment, for

allocation to the air quality control division, for the fiscal year beginning July 1, 1994, the sum of eight hundred twenty-three thousand eighty-six dollars (\$823,086) and 12.3 FTE, or so much thereof as may be necessary, for the implementation of this act.

(2) In addition to any other appropriation, there is hereby appropriated, to the department of law, for the fiscal year beginning July 1, 1994, the sum of forty-five thousand six hundred eighty dollars (\$45,680) and 0.75 FTE, or so much thereof as may be necessary, for the implementation of this act. Such sum shall be from cash funds received from the department of public health and environment out of the appropriation made in subsection (1) of this section.

(3) In addition to any other appropriation, there is hereby appropriated, to the department of public health and environment, for allocation to the division of administration and support, for the fiscal year beginning July 1, 1994, the sum of fifty-three thousand two hundred eight dollars (\$53,208) and 1.0 FTE, or so much thereof as may be necessary, for implementing periodic review of administrative practices and procedures to improve efficiency and effectiveness of programs of the department of public health and environment, with particular emphasis on regulatory programs seeking fee increases. Such sum shall be from indirect cost recoveries out of cash funds appropriated in subsection (1) of this section.

(4) The general assembly has determined that this act can be implemented by the legislative department within existing appropriations, and therefore no separate appropriation of state moneys to the legislative department is necessary to carry out the purposes of this act.

SECTION 6. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 25, 1994