

## CHAPTER 358

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**HEALTH AND ENVIRONMENT**

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**HOUSE BILL 10-1329**

BY REPRESENTATIVE(S) Peniston, Casso, Court, Fischer, Frangas, Hullinghorst, Labuda, Levy, McCann, Miklosi, Pommer, Riesberg, Solano, Tyler, Vigil, Gerou, Roberts;  
also SENATOR(S) Boyd, Bacon, Hodge, Hudak, Keller, Romer, Steadman, Tochtrop, Williams.

**AN ACT**

**CONCERNING SOLID WASTE USER FEES, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.**

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

**SECTION 1.** 25-16-102, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**25-16-102. Definitions.** As used in this article, unless the context otherwise requires:

(1.5) "COMMISSION" MEANS THE SOLID AND HAZARDOUS WASTE COMMISSION CREATED IN SECTION 25-15-302.

**SECTION 2.** 25-16-104.5 (6), Colorado Revised Statutes, is amended, and the said 25-16-104.5 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

**25-16-104.5. Solid waste user fee - imposed - rate - direction - legislative declaration - repeal.** (1.7) (a) ON OR AFTER JULY 1, 2010, THE COMMISSION SHALL PROMULGATE RULES THAT ESTABLISH A SOLID WASTE USER FEE UPON EACH PERSON DISPOSING OF SOLID WASTE AT AN ATTENDED SOLID WASTE DISPOSAL SITE. THE OPERATOR OF THE SITE AT THE TIME OF DISPOSAL SHALL COLLECT THE FEE FROM WASTE PRODUCERS OR OTHER PERSONS DISPOSING OF SOLID WASTE. THE EFFECTIVE DATE AND AMOUNT OF THE FEE SHALL BE SET BY RULE OF THE COMMISSION, AND THE AMOUNT SHALL BE SUFFICIENT TO OFFSET:

(I) THE DEPARTMENT'S DIRECT AND INDIRECT COSTS ASSOCIATED WITH

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

IMPLEMENTATION OF THE SOLID WASTE MANAGEMENT PROGRAM UNDER SECTION 30-20-101.5, C.R.S.;

(II) THE DEPARTMENT'S DIRECT AND INDIRECT COSTS FOR THE IMPLEMENTATION OF ITS RESPONSIBILITIES UNDER THE FEDERAL ACT, AS DESCRIBED IN THIS PART 1, AND TO PROVIDE MATCHING FUNDS AND COVER FUTURE MAINTENANCE COSTS PURSUANT TO SECTION 25-16-103; AND

(III) THE ANTICIPATED PAYMENTS TO THE DEPARTMENT OF LAW, PURSUANT TO SUBPARAGRAPH (II) OF PARAGRAPH (b) OF THIS SUBSECTION (1.7), FOR THE DIRECT AND INDIRECT COSTS OF THE DEPARTMENT OF LAW FOR THE IMPLEMENTATION OF ITS RESPONSIBILITIES UNDER THE FEDERAL ACT, AS DESCRIBED IN THIS PART 1, WHICH COSTS ARE DISTINCT FROM THOSE DESCRIBED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (a).

(b) (I) THE PORTION OF THE FEE COLLECTED FOR THE COSTS DESCRIBED IN SUBPARAGRAPH (I) OF PARAGRAPH (a) OF THIS SUBSECTION (1.7) SHALL BE TRANSMITTED TO THE DEPARTMENT FOR DEPOSIT INTO THE SOLID WASTE MANAGEMENT FUND CREATED IN SECTION 30-20-118, C.R.S.

(II) THE PORTIONS OF THE FEE IMPOSED UNDER THIS SUBSECTION (1.7) THAT ARE COLLECTED FOR THE COSTS DESCRIBED IN SUBPARAGRAPHS (II) AND (III) OF PARAGRAPH (a) OF THIS SUBSECTION (1.7) SHALL BE TRANSMITTED TO THE DEPARTMENT FOR DEPOSIT INTO THE HAZARDOUS SUBSTANCE RESPONSE FUND CREATED IN SECTION 25-16-104.6. THE DEPARTMENT MAY EXPEND MONEYS FROM THE PORTION OF THE FEE COLLECTED UNDER SUBPARAGRAPH (III) OF PARAGRAPH (a) OF THIS SUBSECTION (1.7) TO COMPENSATE THE DEPARTMENT OF LAW FOR ALL OR A PORTION OF THE EXPENSES INCURRED FOR SERVICES RENDERED UNDER THE FEDERAL ACT, AS BILLED TO THE DEPARTMENT BY THE DEPARTMENT OF LAW.

(c) THE FEE ESTABLISHED BY THE COMMISSION UNDER THIS SUBSECTION (1.7) SHALL NOT EXCEED FIFTY CENTS PER CUBIC YARD OF SOLID WASTE, OF WHICH NO MORE THAN THREE AND ONE-HALF CENTS SHALL PAY FOR THE COSTS DESCRIBED IN SUBPARAGRAPH (III) OF PARAGRAPH (a) OF THIS SUBSECTION (1.7).

(d) THE DEPARTMENT SHALL GIVE THE OPERATORS OF ATTENDED SOLID WASTE DISPOSAL SITES WRITTEN NOTICE OF CHANGES TO THE SOLID WASTE USER FEES NO LATER THAN NINETY DAYS BEFORE THE EFFECTIVE DATE OF THE CHANGES. FAILURE TO PROVIDE THE NOTICE REQUIRED BY THIS PARAGRAPH (d) SHALL INVALIDATE THE RULES THAT CHANGED THE FEES.

(6) This section is repealed, effective July 1, ~~2010~~ 2017.

(7) SUBSECTIONS (1), (3), AND (3.7) OF THIS SECTION, THIS SUBSECTION (7), AND PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION ARE REPEALED, EFFECTIVE UPON THE DATE THAT THE FEE ADOPTED PURSUANT TO SUBSECTION (1.7) OF THIS SECTION TAKES EFFECT OR ON JULY 1, 2011, WHICHEVER OCCURS FIRST.

**SECTION 3.** 25-16-104.5 (2), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

**25-16-104.5. Solid waste user fee - imposed - rate - direction - legislative declaration - repeal.** (2) (a.5) NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, ONE HUNDRED PERCENT OF THE MONEYS COLLECTED PURSUANT TO SUBPARAGRAPH (II) OF PARAGRAPH (a) OF SUBSECTION (1.7) OF THIS SECTION FROM PERSONS DISPOSING OF SOLID WASTE AT AN ATTENDED SOLID WASTE DISPOSAL SITE WHERE A LOCAL GOVERNMENT SOLID WASTE DISPOSAL FEE IS IMPOSED TO FUND HAZARDOUS SUBSTANCE RESPONSE ACTIVITIES AT SITES DESIGNATED ON THE NATIONAL PRIORITY LIST PURSUANT TO THE FEDERAL ACT SHALL BE TRANSMITTED TO THE OWNER OF THE SOLID WASTE DISPOSAL SITE TO THE EXTENT THAT THE MONEYS ARE USED TO FUND THE RESPONSE ACTIVITIES AT THE SITES ON THE NATIONAL PRIORITY LIST. THE BALANCE OF ANY MONEYS DESCRIBED UNDER THIS PARAGRAPH (a.5) THAT ARE NOT USED TO FUND SUCH RESPONSE ACTIVITIES SHALL BE CREDITED TO THE HAZARDOUS SUBSTANCE RESPONSE FUND CREATED IN SECTION 25-16-104.6.

**SECTION 4.** 25-16-104.6 (1) (a), Colorado Revised Statutes, is amended, and the said 25-16-104.6 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

**25-16-104.6. Fund established - administration - revenue sources - use.** (1) (a) There is hereby established in the state treasury the hazardous substance response fund. The fund shall be composed of any moneys that the general assembly may choose to appropriate from the general fund and any moneys derived from the fee imposed pursuant to section 25-16-104.5 and any interest derived therefrom; any moneys recovered from responsible parties pursuant to the federal act that are not generated by the state litigating as trustee for natural resources pursuant to section 25-16-104.7; any moneys recovered through litigation by the state pursuant to the federal act that are designated for future response cost; and any other moneys derived from public or private sources that may be credited to the fund. Moneys in the fund shall be annually appropriated by the general assembly, subject to the provisions of section 25-16-104, shall remain available for the purposes of this article, and shall not revert or be transferred to the general fund of the state at the end of any fiscal year. IF THE FUND BALANCE EXCEEDS TEN MILLION DOLLARS IN ANY STATE FISCAL YEAR AND THE FUND BALANCE IS NOT PROJECTED TO FALL BELOW TEN MILLION DOLLARS WITHIN TWENTY-FOUR MONTHS, THE DEPARTMENT SHALL EVALUATE THE NEED TO REDUCE FEES TO BRING THE BALANCE OF THE FUND BELOW TEN MILLION DOLLARS, AND SHALL PRESENT THE EVALUATION TO THE COMMISSION.

(f) NOTWITHSTANDING ANY PROVISION OF PARAGRAPH (a) OF THIS SUBSECTION (1) TO THE CONTRARY, FOR THE STATE FISCAL YEAR COMMENCING JULY 1, 2010, THE STATE TREASURER SHALL MAKE A ONE-TIME TRANSFER FROM THE HAZARDOUS SUBSTANCE RESPONSE FUND TO THE SOLID WASTE MANAGEMENT FUND CREATED IN SECTION 30-20-118, C.R.S., OF UP TO FOUR HUNDRED THOUSAND DOLLARS, TO BE USED IN CONNECTION WITH THE DEPARTMENT'S SOLID WASTE MANAGEMENT ACTIVITIES.

**SECTION 5.** 30-20-115, Colorado Revised Statutes, is amended to read:

**30-20-115. Solid wastes disposal site and facility fund - tax - fees.** (1) Any governing body having jurisdiction is authorized to establish a solid wastes disposal

site and facility fund. The governing body having jurisdiction may levy a solid wastes disposal site and facility tax, in addition to any other tax authorized by law, on the taxable property within ~~such~~ A county or municipality, the proceeds of which shall be deposited to the credit of said fund and appropriated to pay the cost of land, labor, equipment, and services needed in the operation of solid wastes disposal sites and facilities and for any other solid wastes management purpose in or on behalf of that county or municipality. Any governing body having jurisdiction is also authorized, after a public hearing, to fix, modify, and collect service charges from users of solid wastes disposal sites and facilities or transfer stations for the purpose of financing solid wastes management in that county or municipality. In the event that a countywide solid waste disposal site and facility tax has been imposed with the consent of a majority of the voters in the county, that tax may continue to be collected countywide and may accrue to the county's solid waste disposal site and facility fund, notwithstanding any subsequent taxes as may be levied by any municipalities within the county under this section.

(2) (a) NOTHING IN SUBSECTION (1) OF THIS SECTION SHALL BE CONSTRUED TO AUTHORIZE ANY GOVERNING BODY HAVING JURISDICTION TO COLLECT SERVICE CHARGES FROM USERS OF ANY PRIVATELY OWNED OR OPERATED SITE AND FACILITY THAT IS FOR THE PRIMARY PURPOSE OF PROCESSING, RECLAIMING, OR RECYCLING:

(I) RECYCLABLE MATERIALS;

(II) EXCLUDED SCRAP METAL;

(III) AUTO PARTS; OR

(IV) SCRAP THAT IS COMPOSED OF WORN OUT METAL OR A METAL PRODUCT THAT HAS OUTLIVED ITS ORIGINAL USE, COMMONLY REFERRED TO AS OBSOLETE SCRAP.

(b) NOTHING IN THIS SUBSECTION (2) SHALL BE CONSTRUED TO PROHIBIT ANY GOVERNING BODY HAVING JURISDICTION FROM LEVYING OR COLLECTING SERVICE CHARGES FROM USERS OF A SOLID WASTES DISPOSAL SITE AND FACILITY AT WHICH RECYCLING OCCURS.

**SECTION 6. Appropriation - adjustments in long bill.** (1) For the implementation of this act, appropriations made in the annual general appropriation act, for the fiscal year beginning July 1, 2010, to the department of law, shall be adjusted as follows:

(a) Appropriations to the administration division are decreased by thirty-seven thousand six hundred ninety-one dollars (\$37,691) general fund and are increased by thirty-seven thousand six hundred ninety-one dollars (\$37,691) reappropriated funds received from the department of public health and environment out of the appropriation made in subsection (3) of this section.

(b) The appropriation to the criminal justice and appellate division, appellate unit, is decreased by forty-one thousand three hundred eighty-four dollars (\$41,384) general fund and is increased by forty-one thousand three hundred eighty-four dollars (\$41,384) reappropriated funds from indirect cost recoveries.

(c) The appropriation to the water and natural resources division, comprehensive environmental response, compensation and liability act, is decreased by three hundred fifty-seven thousand eighty-four dollars (\$357,084) general fund and is increased by three hundred fifty-seven thousand eighty-four dollars (\$357,084) reappropriated funds received from the department of public health and environment out of the appropriation made in subsection (3) of this section.

(d) The appropriation to the water and natural resources division, comprehensive environmental response, compensation and liability act contracts, is decreased by seventy-five thousand dollars (\$75,000) general fund and is increased by seventy-five thousand dollars (\$75,000) reappropriated funds received from the department of public health and environment out of the appropriation made in subsection (3) of this section.

(2) In addition to any other appropriation, there is hereby appropriated, to the department of law, water and natural resources division, for indirect cost assessment, for the fiscal year beginning July 1, 2010, the sum of forty-one thousand three hundred eighty-four dollars (\$41,384) reappropriated funds. Said sum shall be from reappropriated funds received from the department of public health and environment out of the appropriation made in subsection (3) of this section.

(3) In addition to any other appropriation, there is hereby appropriated, to the department of public health and environment, hazardous materials and waste management division, contaminated site cleanups, for payments to the department of law for CERCLA-related services pursuant to section 25-16-104.5 (1.7) (b) (II), Colorado Revised Statutes, from the hazardous substance response fund created in section 25-16-104.6 (1) (a), Colorado Revised Statutes, for the fiscal year beginning July 1, 2010, the sum of five hundred eleven thousand one hundred fifty-nine dollars (\$511,159) cash funds, or so much as may be necessary for the implementation of this act.

**SECTION 7. 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: June 7, 2010