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STATE OF COLORADO
DEPARTMENT OF LAW

Office of the Attorney General

June 8, 2020

M E M O R A N D U M

TO: Members of the Senate Finance Committee
FROM: Jeff Riester, Director of Legislative Affairs and Assistant Attorney General
RE: House Bill 20-1143: Environmental Justice And Projects Increase
Environmental Fines

In 1999, the Environmental Protection Agency (EPA) brought 850 new cases for environmental crimes. Since then, we have seen an over fifty percent decrease in cases with only 302 cases in 2019. In addition, EPA staff and the criminal enforcement budget are steadily decreasing over time.

The EPA, recognizing their own shortcomings, is increasingly seeking to partner with state Attorney Generals or local District Attorneys. However, this puts Colorado in a vulnerable position as we do not have the same penalty authority as the EPA or other states, limiting our state's ability to protect our citizens and waterways. The potential impact of this is significant as the Colorado River supports 40 million people as it flows through seven U.S. states and Mexico.

House Bill 20-1143 (HB 20-1143) seeks to address this by enhancing Colorado's criminal penalties for water pollution to more closely align with other Colorado environmental crimes and EPA authority. This will create a real deterrent for potential polluters, equity in enforcement, and allow Colorado to better protect its waterways when the EPA declines to do so. These changes are a reasonable enhancement of our criminal penalties and can provide benefits to Colorado and our neighboring states.

HB 20-1143 also strengthens our civil penalties in an effort to provide adequate relief for those impacted by polluted waterways. Without clean water, Colorado's \$41 billion agriculture industry would not be able to thrive. By increasing our civil and criminal penalties, we can better protect one of our most precious resources and support some of our state's biggest economic drivers.

For these reasons, the Department of Law supports HB 20-1143. Should have questions, please contact me at jefferey.riester@coag.gov. Thank you for your consideration.



Supporting Testimony for HB20-1143

Environmental Justice and Projects Increase Environmental Fines

GRID Alternatives Colorado
1120 W 12th Ave
Denver, Colorado 80204

Dear Legislators and Committee members,

Thank you for your leadership during this difficult time.

My name is Adrienne Dorsey. I am respectfully submitting testimony **in support of HB20-1143** on behalf of GRID Alternatives Colorado ("GRID"). GRID is a 501(c)3 nonprofit organization whose mission is to make the benefits of renewable energy technology, clean mobility and job training accessible to low-income and underserved communities. GRID advocates for equity, access and inclusion in state renewable energy, environmental and climate policies, aiming to ensure that Colorado's communities who are disproportionately impacted by environmental pollution are prioritized in capturing the tangible benefits of our state's transition to clean energy, including jobs, economic opportunity, and healthier communities.

Toxic air pollutants from industrial activities can cause serious health impacts, including high rates of respiratory complications, heart disease, and certain cancers. Amid the COVID-19 pandemic, neighborhoods that have fought decades of exposure to dangerous pollutants – many of which are lower-income, black, and Latinx – are showing higher incidences of coronavirus infection, complications, and fatality. **Passing this legislation will help ensure that all Coloradans enjoy healthy and safe air quality and defend our most vulnerable communities from dangerous air pollution.** This legislation will also help center environmental justice in our state's decision making and provide resources for communities disproportionately impacted by pollution to lead solutions.

We urge the passage of this bill.

Adrienne Dorsey

Executive Director, GRID Alternatives Colorado

adorsey@gridalternatives.org



Members of the Committee,

My name is Erika Cervantes and I am the climate justice organizer with The Colorado People's Alliance. I write to you in support of HB20-1143 and amendment L008.

COPA started organizing in Commerce City in 2016 after realizing how much concern the community had with environmental issues. Through our outreach and conversations with the community, we constantly heard how folks were concerned with the quality of their air and water and how those issues impacted their health.

House Bill 1143 includes many critical provisions to ensure the facilities that emit hazardous chemicals into our air and water are held accountable. Most importantly HB 1143, as introduced included provisions to ensures these emitters are accountable to the communities they are in. HB 1143 created environmental mitigation projects where money paid by the facility due to permit violations would have to go into the community impacted. This means that communities of color and low-income communities who are most impacted by environmental polluters and environmental racism would be the first to receive funds to begin to fix the environmental damage caused. This is critical. Too often our communities are left behind. Too often polluters are not held accountable to the community, HB1143 would have helped to change that.

While we would have loved to see the entirety of this bill move forward we understand that the budget and fiscal outlook for the state of Colorado is in a challenging place. We are excited about and supportive of the amended bill. By increasing the maximum daily fine that can be charged to a facility that violates their air or water permit to the federal limit, we will better be able to hold polluters accountable for the damage they cause. The bill adds provisions so that corporations who knowingly pollute our communities waterways can be held accountable for this pollution.

Please vote yes HB20-1143 to ensure that facilities that pollute our air and water are held accountable and deterred from doing such.

In solidarity,

Erika Cervantes

erika@coloradopeoplesalliance.org

(720) 732-8558

Testimony for HB 1143

Ashley Plummer

Feb. 10, 2020

- Madames Chair and Vice Chair, members of the [House Energy and Environment Committee](#), thank you for allowing me to speak on behalf of [House Bill 1143](#).
- My name is Ashley Plummer. I am a Nurse Practitioner in the Denver Metro area and a veteran of the United States Air Force.
- You might wonder why I have decided to testify today. Certainly, the legislature will consider dozens of bills on health care policy and practice. Why this bill?
- I am here today in support of HB 1143 because I care deeply about the impacts of air pollution on my patients' health and well-being, and what you, our decision-makers are doing to address this critical issue.
- The science is clear. Air pollution is a serious health risk to all Coloradans. It [kills more people](#) annually than cigarette smoking. It [exacerbates](#) all manner of lung ailments including pediatric and adult asthma, chronic obstructive pulmonary disease and lung cancer. We also know that it has profound impacts on our most vulnerable community members – children, pregnant women, those with pre-existing medical conditions, economically challenged communities and some communities of color.
- In 2019, Denver-Aurora was ranked as the 12th most ozone-polluted urban area in the United States by the American Lung Association. Fort Collins was ranked 24th. 625,000 Coloradans living in these metropolitan areas already suffer from pediatric or adult asthma, chronic obstructive pulmonary disease, cardiovascular disease or lung cancer – all of which are [exacerbated](#) by air pollution.
- In my clinical practice, I have particularly noted two major changes over the past two years – the first, being that my pregnant patients are continually concerned about their drinking water, and that my asthma patients seem to have increased exacerbations, regardless of their treatment. This is something I see in particular with my adolescent patients, many who go away for college, then return over breaks wondering why their asthma attacks are suddenly worse when returning to the Denver Metro Area. As providers, we have told them to pay attention to the air quality index while they are here, but what has become just as concerning is that the number of days it is healthy for these patients to be outside seems to be decreasing at a very steady rate.
- My focus is improving health for my patients, and really all Coloradans. I believe this bill accomplishes two critical goals toward that end.
 - First, it increases fines to a point equal with the federal level, which should get the attention of our state's worst polluters and help to deter toxic pollution.

- Second, it allows impacted communities to decide how to best apply fines towards mitigating the impacts of toxic pollution in their neighborhoods.
- To be clear my goal for being here today is to lend a health provider's voice in urging you to protect Coloradans from dangerous, dirty and unnecessary toxic air pollution.
- For our worst polluters, those with repeat violations and long track records of flaunting the rules, it is my hope they will get the message that these increased fines are a sign and symbol of our commitment to protecting our air, our water and our health.
- Thank you.



HB20-1143: Environmental Justice and Projects Increase Environmental Fines

Sponsors: Reps. Jackson & Gonzales-Gutierrez, Sen. Winter

CFI Position: SUPPORT

Email: Rayna.Hetlage@ColoradoFiscal.org

Dear Legislators and Committee Members,

My name is Rayna Hetlage and I am the Health Policy Analyst at the Colorado Fiscal Institute. CFI provides credible, independent and accessible information and analysis of fiscal and economic issues facing Colorado as a way to make Colorado a state where tax and budget policies promote equity and widespread economic prosperity. I am writing in favor of House Bill 20-1143.

Air and water pollution threaten to undermine the quality of life in Colorado. Colorado has consistently failed to meet EPA air quality standards and as a result the state was downgraded to a "serious" violator of air quality standards by the EPA in 2019. Poor air and water affect health and productivity for Coloradans. The impact of this poor and deteriorating air quality is not distributed equally across neighborhoods and communities in Colorado. Neighborhoods with a higher concentration of residents of color have historically paid the highest cost for violations of air and water quality standards, resulting in poorer than average health outcome for these residents.

The Colorado Fiscal Institute, recently conducted research into health outcomes in areas surrounding an oil refining facility in Commerce City. Our analysis showed that the elimination of air pollutants from this one oil refinery could lead to a savings of up to \$35 million per year. (CFI report) Research suggests that incidence of air and water quality non-compliance is often highest in communities of color. The racial make-up of Commerce City is different than the rest of Colorado. In Commerce City, 47% of residents identify as Hispanic or Latino compared to just 28% of Coloradans as a whole. This particular plant had been charged with violating air quality standards five times between 2011 and 2016, they also paid \$2.2 million to settle in a lawsuit regarding their air pollution, and the same year paid \$1.9 million to settle a lawsuit over dumping toxic sludge into the Sand Creek river. (Earth Justice)

The state of Colorado sets air and water quality standards for industrial and commercial producers. Those standards are only effective, however, if they are consistently met. When they are not met, it is a violation of state and federal law. Fines are the mechanism the public has to enforce compliance with these importance health standards. It is abundantly clear that

current fines have not resulted in compliance levels necessary to protect the health of Coloradans. Moving the maximum fine levels, as proposed in this bill, is a necessary tool to create an incentive for polluters to change industrial practices that have resulted in numerous violations and contributed to unacceptable health outcomes.

HB 1143 not only increases fines to federal maximums but it also assures that the revenue generated by those fines will be used to mitigate damage in neighborhoods most directly affected by the violations and resulting health impacts. It is time that Colorado acknowledge the racially biased impacts of air and water quality violations and target the mitigation efforts in the communities that for way too long, have borne the brunt of certain companies disregard for the law. I urge you to vote yes on House Bill 1143.

Testimony for HB 1143

Ellynn Bannon

Feb. 10, 2020

- Madames Chair and Vice Chair, members of the committee, thank you for allowing me to speak on behalf of [House Bill 1143](#).
- My name is Ellynn Bannon and I work as a registered nurse in Grand Junction.
- Today I'm here to speak on behalf of Healthy Air and Water Colorado – a network of healthcare professionals who seek to address the health-related impacts of pollution and climate change.
- To do this, we combine fact-based research with clinical expertise to raise awareness and encourage action to advance policies that will help to avert what is an ever-growing public health emergency.
- Air and water pollution doesn't just threaten our beautiful vistas and wild places, it threatens our health.

- As far back as the 1800s and Florence Nightingale – the founder of modern nursing – we have understood this link. Nightingale pioneered the approach that a patient’s environment is critical to his or her well-being and health. She knew that the air her patients breathed and the water they drank and washed with was either contributing to their well-being or their illness. We still know this to be true today.
- Unfortunately, with the increasing air pollution here in Colorado I often witness my patients struggle to do something most of us take for granted – breathe. Watching fear spread over a patient’s face as they gasp for air – and literally their life – doesn’t get easier with time. We do our best to keep our patients breathing and healthy, but sometimes no amount of medication or medical interventions can restore their health.
- The science is clear that many of the worst toxins emitted by polluters can cause acute and chronic damage, exacerbate existing health issues and even result in cancer or death.

- That's why Healthy Air & Water Colorado supports increasing fines for our worst polluters. We must take action now to protect the health of our patients, and really of all Coloradans, particularly those who suffer the worst impacts of poor air and water quality.
- It's our hope that by raising the maximum fines, our worst polluters will curb their emissions. And that when these toxic emissions do occur, impacted communities will have access to resources to help mitigate the adverse impacts.
- We know that hazardous chemicals such as cancer-causing benzene and hydrogen cyanide – which can cause seizures, respiratory arrest and worse - are released into our neighborhoods by polluters.
- Research suggests that air pollution now kills more people globally than cigarette smoking. We understand and have acted on the public health crisis of smoking. We are here today to ask for that same kind of action on pollution.

- We need you to act now to help curb these toxic emissions. The health of our patients and all Coloradans depends on you.
- Thank you.



June 4, 2020

Dear Members of the Colorado General Assembly,

Thank you for reviewing written testimony on behalf of House Bill 1143. My name is Karen Moldovan and I am the Director of Policy for Good Business Colorado (GBC). Good Business Colorado is a statewide coalition of values-driven businesses. We represent over 260 Colorado businesses, with a diverse range of sectors, sizes, and geographic location. Good Business Colorado members are united in a desire to leverage business ownership and take community leadership to create a more prosperous, equitable, and sustainable Colorado.

Good Business Colorado and our members support House Bill 1143. We believe the penalties outlined in this bill are critical for accountability. In order to protect our citizens, Colorado businesses must operate safely and in accordance with state and federal standards. However, when businesses are not adhering to their responsibilities, the state must have strong mechanisms in place to ensure that the most egregious polluters are held accountable. We believe this bill is necessary for the health, wellness, and safety of Coloradoans. It is important to note that CDPHE has discretion of levying appropriate fines that are consistent with the size and scope of the damage. Good Business Colorado is not concerned that this bill will have a negative impact on small businesses. We understand that the penalties outlined in the bill are intended to ensure accountability for the most egregious and damaging dangers to public safety. Furthermore, the small businesses located in impacted communities believe this bill will contribute to their long-term economic viability. Small businesses are able to thrive when their communities are healthy and safe for customers.

I ask for your support of House Bill 1143. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Karen Moldovan".

Karen Moldovan
Good Business Colorado
Director of Policy
karen@goodbusinessco.org

Thank you for your consideration today, and for your continued leadership in this volatile time. My name is Katie Belgard, today I write to you as the Government Affairs Director for Conservation Colorado, and on behalf of our over 60,000 members statewide, in support of HB 1265. Colorado is filled with those who are anxiously watching the state's leadership this year, hoping for continued support and relief, and this bill is a part of that equation.

HB 1143 increases the fines for air and water quality violations. Current law caps air quality violations at \$15,000 per day and water quality violations at \$10,000 per day, which is well below the federal fine allowed- up to \$47,357 per day. HB 1143 raises the current fines to this limit and allows the department of public health and environment to adjust the maximum fines based on changes in the consumer price index. House Bill 1143 works to hold polluters accountable to the communities they are impacting.

In addition key components from SB 08 have been included in this bill. This language will increase fines for negligently polluting State Waters to a daily maximum of \$25K and violation is subject to misdemeanor charges with punishment of up to one year of imprisonment in addition to the fine. Intentional pollution of state waters fines will increase the daily fine up to \$50K along with a class 5 felony charge and imprisonment of up to 3 years.

This bill is one piece of a larger puzzle of environmental action to support all Coloradans. As such, please vote yes on HB 1265, and thank you for your time.

Testimony HB20-1143

Environmental Justice And Projects Increase Environmental Fines
House Appropriations Committee

I am Dr. Jan Douglas and I represent the over 100,00 members and active supporters of the Colorado Sierra Club in support of HB 1143. But I also feel like I am representing the patients who were in my care for over 35 years, mostly here in Colorado. For the majority of that time I worked as a family doctor in community clinics-clinics like those in the Denver Health system as well as Clinica Campesina and Clinica Tepeyac. My patients suffered not only from low access to health care but also from irregular and low paid employment, poor housing and transportation, discrimination based on their race or ethnicity, limited access to healthy food, poor high school graduation rates, failing schools for their kids and a built environment that was often dangerous and did not encourage healthy outdoor activity. But we NOW know another very large impact on their health and well-being-an impact that was until recently not appreciated by my patients or by their health providers. Maps now clearly show that large industrial facilities which emit significant water and air pollution are in most cases surrounded by low income and minority communities. These communities which suffer the worst pollution are now the very communities with the highest rates of hospitalization and death from Covid-19.

While I worked in community health clinics, my patients suffered from high rates of asthma, respiratory infections and COPD, diabetes, hypertension, heart disease, obesity, ADHD and other learning problems, persistent headaches and anemia. Certainly, like Covid-19, many of these chronic illnesses were caused or at least exacerbated by the pollution of the air and water surrounding their communities or workplaces. For instance, chronic exposure to particulate matter is associated with heart and lung disease, an increased risk of type 2 diabetes, obesity, asthma and developmental toxicity. Persistent exposure to Benzene is associated with blood disorders like anemia and leukemia and damage to the immune system. Long term Formaldehyde exposure causes decreased lung function, headaches and

attention deficit. Hydrogen sulfide causes headaches, chronic cough and nausea. In turn, many of these chronic diseases are now making the morbidity of Covid-19 worse.

It is only just that fines on polluters who put whole communities of low income and minority folks at risk of significant health issues should be high enough to stop them from polluting and that the funds generated from these increased fines should work to mitigate the environmental damage already done.

I, along with the Colorado Sierra Club, urge your support for this important bill.

Thank you.

References: Analysis of Refinery Chemical Emissions and Health Effects, March 2019
Office Of Environmental Health Assessment, California EPA

Agency for Toxic Substances and Disease Registry, CDC