

Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 20-0814.02 Thomas Morris x4218

SENATE BILL 20-204

SENATE SPONSORSHIP

Fenberg,

HOUSE SPONSORSHIP

Jackson and Caraveo,

Senate Committees

Transportation & Energy
Finance
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE PROVISION OF ADDITIONAL RESOURCES TO PROTECT**
102 **AIR QUALITY, AND, IN CONNECTION THEREWITH, INCREASING**
103 **FEES, CREATING THE AIR QUALITY ENTERPRISE, AND MAKING AN**
104 **APPROPRIATION.**

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>.)

Section 3 of the bill creates the air quality enterprise and specifies that its revenues are exempt from the state constitution's TABOR provisions. The enterprise will conduct air quality modeling, monitoring,

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
Amended 2nd Reading
June 4, 2020

data assessment, and research; implement emission mitigation projects; and provide its data to the division of administration and the air quality control commission in the department of public health and environment to facilitate the administration of the state's air quality laws, including by facilitating the timely issuance and effective enforcement of appropriate emission permits.

The enterprise's board of directors shall establish by rule the following enterprise fees in an amount sufficient, in aggregate, to cover its indirect and direct costs in implementing its powers and duties:

- ! A fee per ton of air pollutant; and
- ! A fee for services performed for third parties for air quality modeling, monitoring, assessment, or research and to conduct mitigation and monitoring projects.

The fees are credited to the newly created air quality enterprise cash fund.

Section 4 removes the statutory maximum for fees assessed for air pollutant emission notices, establishes a fee for fiscal year 2020-21, and allows the commission to thereafter adjust the fees by rule. **Section 5** removes the statutory maximums for annual per-ton emission fees and processing fees, establishes a fee for fiscal year 2020-21, allows the commission to thereafter adjust these fees by rule, and specifies the purposes for which these increased revenues may be spent.

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

2 **SECTION 1. Short title.** The short title of this act is the "Clean
3 Up Colorado's Air Act".

4 **SECTION 2.** In Colorado Revised Statutes, **add** 25-7-103.5 as
5 follows:

6 **25-7-103.5. Air quality enterprise - legislative declaration -
7 fund - definitions - gifts, grants, or donations - rules - report - repeal.**

8 (1) **Legislative declaration.** THE GENERAL ASSEMBLY HEREBY FINDS AND
9 DECLARES THAT:

10 (a) COLORADO FACES NUMEROUS SERIOUS AIR QUALITY
11 CHALLENGES, WHICH ARE HAVING SUBSTANTIAL ADVERSE HEALTH AND
12 ENVIRONMENTAL IMPACTS AND IMPOSE ADDITIONAL BURDENS ON
13 COLORADO'S ECONOMY;

1 (b) THE STATE OF COLORADO AND STATIONARY SOURCES SHARE
2 THE NEED FOR SCIENCE-BASED AIR QUALITY OBJECTIVES THAT WILL
3 REQUIRE REDUCTIONS IN EMISSIONS OF OZONE PRECURSORS, GREENHOUSE
4 GASES, AND OTHER POLLUTANTS;

5 (c) COLORADO RESIDENTS AND STATIONARY SOURCES WILL
6 BENEFIT FROM EFFECTIVE OZONE CONTROL STRATEGIES THAT ARE
7 INFORMED BY THE BEST AVAILABLE SCIENCE TO AVOID RECLASSIFICATION
8 OF AREAS IN ATTAINMENT TO NONATTAINMENT STATUS OR
9 RECLASSIFICATION FROM SERIOUS TO A MORE STRINGENT CATEGORY OF
10 NONATTAINMENT THAT WILL IMPOSE ADDITIONAL REGULATORY
11 REQUIREMENTS;

12 (d) ENHANCED MONITORING TECHNIQUES, CAPACITY, AND
13 TECHNOLOGY WILL PROVIDE BETTER ENVIRONMENTAL RESULTS AT A
14 LOWER LONG-TERM COST;

15 (e) AIR QUALITY MONITORING CONDUCTED BY AN ENTERPRISE IN
16 AREAS WITH A HIGH CONCENTRATION OF AIR POLLUTION SOURCES WILL
17 PROVIDE TRUSTED DATA ON THE OVERALL IMPACT OF THESE AIR
18 POLLUTION SOURCES ON NEARBY RESIDENTS, WHILE PROVIDING A
19 COST-EFFECTIVE METHOD TO MONITOR THE EMISSIONS THEY PRODUCE;

20 (f) EFFECTIVE ENGAGEMENT WITH LOCAL COMMUNITIES OFTEN
21 REQUIRES TRUSTED THIRD-PARTY DATA AND VERIFICATION REGARDING
22 EMISSIONS AND ENVIRONMENTAL PERFORMANCE;

23 (g) IMPROVED MONITORING OF EMISSIONS, BETTER ACCURACY OF
24 EMISSION INVENTORIES, AND ACCESS TO TRUSTED SCIENCE WILL ENSURE
25 A LEVEL COMPETITIVE PLAYING FIELD FOR COLORADO BUSINESSES;

26 (h) STATIONARY SOURCES IN COLORADO MAY SEEK AIR QUALITY
27 ENTERPRISE MITIGATION AND MONITORING SERVICES TO IMPLEMENT THEIR

1 OBLIGATIONS UNDER RULES AND PERMITS AND ENVIRONMENTAL, SOCIAL,
2 AND GOVERNANCE OBJECTIVES;

3 (i) EMISSION MITIGATION AND MONITORING PROGRAMS CAN BE
4 MORE EFFECTIVE WITH ECONOMIES OF SCALE AND WHEN CONDUCTED ON
5 A STATEWIDE OR REGIONAL BASIS THROUGH AN ENTERPRISE;

6 (j) THE AIR QUALITY ENTERPRISE PROVIDES BUSINESS SERVICES
7 WHEN, IN EXCHANGE FOR PAYMENT OF FEES, IT PROVIDES:

8 (I) HIGH-QUALITY, INDEPENDENT, AND TRUSTED RESEARCH AND
9 SCIENCE REGARDING EMISSIONS RATES AND INVENTORIES, MONITORING
10 AND CONTROL TECHNOLOGIES, AND HEALTH EFFECTS AND EMISSIONS
11 IMPACTS;

12 (II) HIGH-QUALITY, INDEPENDENT, AND TRUSTED DATA
13 REGARDING POLLUTANT EMISSIONS FROM STATIONARY SOURCES AND
14 CONCENTRATIONS TO REDUCE WASTE OF VALUABLE PRODUCTS AND
15 RESOURCE STREAMS, ENHANCE COST-EFFECTIVE REGULATORY
16 COMPLIANCE, AND SUPPORT CORPORATE ENVIRONMENTAL, SOCIAL, AND
17 GOVERNANCE OBJECTIVES;

18 (III) TOOLS, DATA, AND RESEARCH FOR MORE EFFECTIVE
19 COMMUNITY ENGAGEMENT ON AIR POLLUTION ISSUES;

20 (IV) OPPORTUNITIES FOR TRUSTED AND COST-EFFECTIVE
21 MITIGATION PROJECT DEVELOPMENT; AND

22 (V) ADDITIONAL BUSINESS SERVICES TO FEE PAYERS AS MAY BE
23 PROVIDED BY LAW;

24 (k) IT IS NECESSARY, APPROPRIATE, AND IN THE BEST INTEREST OF
25 THE STATE TO ACKNOWLEDGE THAT, BY PROVIDING THE BUSINESS
26 SERVICES SPECIFIED IN THIS SECTION, THE ENTERPRISE ENGAGES IN AN
27 ACTIVITY CONDUCTED IN THE PURSUIT OF A BENEFIT, GAIN, OR LIVELIHOOD

1 AND THEREFORE OPERATES AS A BUSINESS;

2 (l) CONSISTENT WITH THE DETERMINATION OF THE COLORADO
3 SUPREME COURT IN *NICHOLL V. E-470 PUBLIC HIGHWAY AUTHORITY*, 896
4 P.2d 859 (COLO. 1995), THAT THE POWER TO IMPOSE TAXES IS
5 INCONSISTENT WITH ENTERPRISE STATUS UNDER SECTION 20 OF ARTICLE
6 X OF THE STATE CONSTITUTION, IT IS THE CONCLUSION OF THE GENERAL
7 ASSEMBLY THAT THE REVENUES COLLECTED BY THE ENTERPRISE ARE FEES,
8 NOT TAXES, BECAUSE THE ENTERPRISE FEES ARE:

9 (I) IMPOSED FOR THE SPECIFIC PURPOSE OF ALLOWING THE
10 ENTERPRISE TO DEFRAY THE COSTS OF PROVIDING THE BUSINESS SERVICES
11 SPECIFIED IN THIS SECTION TO FEE PAYERS; AND

12 (II) COLLECTED AT RATES THAT ARE REASONABLY CALCULATED
13 BASED ON THE BENEFITS RECEIVED BY THOSE ENTITIES AND THE COSTS OF
14 THE SERVICES THE ENTERPRISE PROVIDES; AND

15 (m) SO LONG AS THE ENTERPRISE QUALIFIES AS AN ENTERPRISE FOR
16 PURPOSES OF SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION, THE
17 REVENUE FROM THE FEES COLLECTED BY THE ENTERPRISE IS NOT STATE
18 FISCAL YEAR SPENDING, AS DEFINED IN SECTION 24-77-102 (17), OR STATE
19 REVENUES, AS DEFINED IN SECTION 24-77-103.6 (6)(c), AND DOES NOT
20 COUNT AGAINST EITHER THE STATE FISCAL YEAR SPENDING LIMIT IMPOSED
21 BY SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION OR THE EXCESS
22 STATE REVENUES CAP, AS DEFINED IN SECTION 24-77-103.6 (6)(b)(I)(D).

23 (2) **Definitions.** AS USED IN THIS SECTION, UNLESS THE CONTEXT
24 OTHERWISE REQUIRES:

25 (a) "BOARD" MEANS THE BOARD OF DIRECTORS OF THE
26 ENTERPRISE.

27 (b) "DEPARTMENT" MEANS THE DEPARTMENT OF PUBLIC HEALTH

1 AND ENVIRONMENT.

2 (c) "ENTERPRISE" MEANS THE AIR QUALITY ENTERPRISE CREATED
3 IN SUBSECTION (3) OF THIS SECTION.

4 (d) "ENTERPRISE FEE" OR "FEE" MEANS MONEY COLLECTED
5 THROUGH FEES AUTHORIZED BY SUBSECTION (4) OF THIS SECTION.

6 (e) "EXECUTIVE DIRECTOR" MEANS THE EXECUTIVE DIRECTOR OF
7 THE DEPARTMENT.

8 (f) "FUND" MEANS THE AIR QUALITY ENTERPRISE CASH FUND
9 CREATED IN SUBSECTION (4) OF THIS SECTION.

10 (g) "GREENHOUSE GAS" HAS THE MEANING ESTABLISHED IN
11 SECTION 25-7-140 (6).

12 (3) **Enterprise.** (a) THERE IS HEREBY CREATED IN THE
13 DEPARTMENT THE AIR QUALITY ENTERPRISE. THE ENTERPRISE IS AND
14 OPERATES AS A GOVERNMENT-OWNED BUSINESS WITHIN THE DEPARTMENT
15 FOR THE PURPOSE OF CONDUCTING THE BUSINESS ACTIVITIES SPECIFIED IN
16 THIS SECTION. THE ENTERPRISE EXERCISES ITS POWERS AND PERFORMS ITS
17 DUTIES AND FUNCTIONS UNDER THE DEPARTMENT AS IF TRANSFERRED TO
18 THE DEPARTMENT BY A **TYPE 1** TRANSFER, AS DEFINED IN SECTION
19 24-1-105.

20 (b) THE ENTERPRISE CONSTITUTES AN ENTERPRISE FOR PURPOSES
21 OF SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION SO LONG AS IT
22 RETAINS THE AUTHORITY TO ISSUE REVENUE BONDS AND RECEIVES LESS
23 THAN TEN PERCENT OF ITS TOTAL REVENUES IN GRANTS FROM ALL
24 COLORADO STATE AND LOCAL GOVERNMENTS COMBINED. SO LONG AS IT
25 CONSTITUTES AN ENTERPRISE PURSUANT TO THIS SUBSECTION (3)(b), THE
26 ENTERPRISE IS NOT SUBJECT TO SECTION 20 OF ARTICLE X OF THE STATE
27 CONSTITUTION.

1 (c) IN ADDITION TO ANY OTHER POWERS AND DUTIES SPECIFIED IN
2 THIS SECTION, THE ENTERPRISE'S POWERS AND DUTIES ARE TO:

3 (I) CONDUCT SCIENCE-BASED, UNBIASED AIR QUALITY MODELING,
4 MONITORING, ASSESSMENT, DATA ANALYSIS, AND RESEARCH, WHICH MAY
5 INCLUDE OBTAINING, ANALYZING, AND REPORTING PERMITTING AND
6 ENFORCEMENT DATA; DATA REGARDING POTENTIAL HEALTH RISKS FROM
7 EMISSIONS; EMISSION DATA; AMBIENT AIR QUALITY, VISIBILITY, AND
8 METEOROLOGICAL SAMPLING DATA; AND SIMILAR DATA. THE BOARD
9 SHALL PRIORITIZE THESE ACTIVITIES BASED ON A RESEARCH PROJECT'S
10 ABILITY TO PROVIDE INFORMATION THAT WILL: SUPPORT TANGIBLE
11 PROGRESS TOWARD AIDING FEE PAYERS' OBLIGATIONS AND COMMITMENTS
12 TO REDUCING AIR POLLUTANTS EMITTED BY THE FEE PAYERS; SUPPORT FEE
13 PAYERS IN ATTAINING STANDARDS AND HEALTH-BASED OR
14 ENVIRONMENTAL GUIDELINES; AND ASSESS PUBLIC HEALTH THAT MAY BE
15 AFFECTED BY FEE PAYER EMISSIONS. THE BOARD SHALL ENSURE THAT ALL
16 RESEARCH CONDUCTED BY THE ENTERPRISE AND ITS CONTRACTORS IS
17 IMPARTIAL, TRANSPARENT, AND MEETS HIGH STANDARDS FOR SCIENTIFIC
18 RIGOR. THE BOARD SHALL CONSULT WITH FEE PAYERS, ATMOSPHERIC
19 SCIENCE AND PUBLIC HEALTH EXPERTS, ENGINEERS WITH AIR QUALITY
20 EXPERTISE, AND COMMUNITY STAKEHOLDERS ON FORMULATING RESEARCH
21 PRIORITIES AND SHALL SPECIFICALLY PRIORITIZE:

22 (A) ENHANCED MONITORING PROJECTS, INCLUDING THE
23 PLACEMENT OF PERMANENT MONITORING STATIONS USING GAS
24 CHROMATOGRAPHY OR PROVEN, STATE-OF-THE-ART TECHNOLOGY TO
25 MEASURE, IN REAL TIME OR NEARLY SO, NITROGEN OXIDES, VOLATILE
26 ORGANIC COMPOUNDS, OZONE, METHANE, AND PARTICULATES AT KEY
27 LOCATIONS UPWIND, DOWNWIND, AND WITHIN HIGH EMISSION REGIONS;

1 (B) REGULAR AERIAL SURVEYS AND OBSERVATIONS TO ASSIST
2 LEAK DETECTION AND REPAIR ACTIVITIES, IMPROVE THE ACCURACY OF
3 EMISSION INVENTORIES, AND CREATE A BETTER UNDERSTANDING OF
4 REGIONAL EMISSION PROFILES; AND

5 (C) ASSESSING LOCAL EXPOSURES TO AND THE PUBLIC HEALTH
6 RISK IMPACTS OF NEARBY AIR TOXICS SOURCES;

7 (II) ESTABLISH THE ENTERPRISE FEES SPECIFIED IN SUBSECTION (4)
8 OF THIS SECTION BY RULE AND COLLECT THE FEES;

9 (III) ALLOCATE ENTERPRISE REVENUES TO THE SERVICES
10 DESCRIBED IN THIS SECTION AND CONTRACT FOR ANY NECESSARY
11 SERVICES FROM STATE AGENCIES OR OTHER PARTIES, INCLUDING
12 UNIVERSITIES, PRIVATE ENTITIES, AND FEDERAL LABORATORIES;

13 (IV) ISSUE REVENUE BONDS PAYABLE FROM THE REVENUES OF THE
14 ENTERPRISE TO IMPLEMENT ITS POWERS AND DUTIES;

15 (V) RECEIVE FEES OR OTHER PAYMENTS, INCLUDING THOSE
16 NEGOTIATED TO CONDUCT EMISSION MITIGATION PROJECTS AND CUSTOM
17 MONITORING OR TECHNOLOGY DEVELOPMENT OR EVALUATION PROJECTS;

18 ==

19 (VI) ENGAGE THE SERVICES OF CONTRACTORS, CONSULTANTS,
20 AND LEGAL COUNSEL, INCLUDING INSTITUTIONS OF HIGHER EDUCATION,
21 PUBLIC RESEARCH LABORATORIES, PRIVATE RESEARCH INSTITUTIONS AND
22 CONSULTANTS WITH EXPERTISE IN AIR QUALITY, THE DEPARTMENT, AND
23 THE ATTORNEY GENERAL'S OFFICE, FOR PROFESSIONAL AND TECHNICAL
24 ASSISTANCE, ADVICE, AND OTHER GOODS AND SERVICES, INCLUDING
25 INFORMATION TECHNOLOGY, RELATED TO THE CONDUCT OF THE AFFAIRS
26 OF THE ENTERPRISE WITHOUT REGARD TO THE "PROCUREMENT CODE",
27 ARTICLES 101 TO 112 OF TITLE 24. THE BOARD SHALL ENCOURAGE

1 DIVERSITY IN APPLICANTS FOR CONTRACTS AND SHALL GENERALLY AVOID
2 USING SINGLE-SOURCE BIDS. THE DEPARTMENT MAY PROVIDE OFFICE
3 SPACE, ADMINISTRATIVE SERVICES, AND STAFF PURSUANT TO A CONTRACT
4 ENTERED INTO PURSUANT TO THIS SUBSECTION (3)(c)(VI). THE BOARD
5 MAY, IN CONSULTATION WITH THE EXECUTIVE DIRECTOR OR THE
6 EXECUTIVE DIRECTOR'S DESIGNEE, HIRE SUCH OTHER STAFF AS IT DEEMS
7 NECESSARY TO PROVIDE ITS BUSINESS SERVICES; AND

8 (VII) PROMOTE THE DEVELOPMENT OF UNBIASED, HIGH QUALITY
9 SCIENCE AND NOT ADVOCATE FOR OR DEVELOP AIR QUALITY POLICY.
10 CONSISTENT WITH THIS, THE BOARD SHALL NOT PARTICIPATE AS A PARTY
11 IN ANY AIR QUALITY-RELATED RULEMAKING PROCEEDINGS OR HAVE ANY
12 ROLE IN THE IMPLEMENTATION OF COLORADO'S AIR QUALITY LAWS.

13 (d) THE ENTERPRISE IS GOVERNED BY A BOARD OF DIRECTORS. THE
14 BOARD CONSISTS OF THE EXECUTIVE DIRECTOR OR THE EXECUTIVE
15 DIRECTOR'S DESIGNEE, TWO MEMBERS OF THE COMMISSION APPOINTED BY
16 THE GOVERNOR, TWO GOVERNOR APPOINTEES TO SERVE AS
17 REPRESENTATIVES OF FEE PAYERS WITH EXPERTISE IN FIELD ENGINEERING
18 OR ENVIRONMENTAL MANAGEMENT, ONE GOVERNOR APPOINTEE WITH
19 SIGNIFICANT PRIVATE SECTOR EXPERIENCE IN THE FIELD OF BUSINESS
20 MANAGEMENT, AND FOUR GOVERNOR APPOINTEES WHO ARE HIGHLY
21 QUALIFIED AND PROFESSIONALLY ACTIVE OR ENGAGED IN THE CONDUCT
22 OF SCIENTIFIC RESEARCH, INCLUDING AT LEAST TWO WHO ARE EXPERTS IN
23 ATMOSPHERIC OR AIR QUALITY MODELING, MONITORING, ASSESSMENT,
24 AND RESEARCH AND ONE MEMBER WHO IS A TOXICOLOGIST,
25 EPIDEMIOLOGIST, PATHOLOGIST, PULMONOLOGIST, CARDIOLOGIST, OR
26 EXPERT IN A SIMILAR FIELD RELATED TO THE PUBLIC HEALTH OR
27 ENVIRONMENTAL EFFECTS OF AIR POLLUTANTS. TO THE EXTENT

1 PRACTICABLE, AT LEAST TWO OF THE GOVERNOR APPOINTEES MUST BE
2 INDIVIDUALS WHO HAVE A RECORD OF PEER-REVIEWED PUBLICATIONS AND
3 WHO ARE AFFILIATED WITH, CURRENTLY HOLD, OR HAVE HELD ACADEMIC
4 OR EQUIVALENT APPOINTMENTS AT UNIVERSITIES, FEDERAL
5 LABORATORIES, OR OTHER RESEARCH INSTITUTIONS.

6 (e) THE EXECUTIVE DIRECTOR OR THE EXECUTIVE DIRECTOR'S
7 DESIGNEE, IN THE CAPACITY OF A MEMBER OF THE BOARD, SHALL CALL THE
8 FIRST MEETING OF THE BOARD. THE BOARD SHALL ELECT A CHAIR FROM
9 AMONG ITS MEMBERS TO SERVE FOR A TERM NOT TO EXCEED TWO YEARS,
10 AS DETERMINED BY THE BOARD. THE BOARD SHALL MEET AT LEAST
11 QUARTERLY, AND THE CHAIR MAY CALL ADDITIONAL MEETINGS AS
12 NECESSARY FOR THE BOARD TO COMPLETE ITS DUTIES. THE APPOINTED
13 MEMBERS OF THE BOARD ARE ENTITLED TO RECEIVE FROM MONEY IN THE
14 FUND A PER DIEM ALLOWANCE OF FIFTY DOLLARS FOR EACH DAY SPENT
15 ATTENDING OFFICIAL BOARD MEETINGS.

16 (f) THE TERM OF OFFICE OF APPOINTED BOARD MEMBERS IS THREE
17 YEARS; EXCEPT THAT THE INITIAL TERMS OF TWO BOARD MEMBERS AS
18 DETERMINED BY THE EXECUTIVE DIRECTOR OR THE EXECUTIVE DIRECTOR'S
19 DESIGNEE ARE TWO YEARS.

20 (g) THE BOARD SHALL CONDUCT THE ENTERPRISE'S BUSINESS AS
21 REQUIRED BY STATE LAW, INCLUDING THE OPEN MEETING REQUIREMENTS
22 OF PART 4 OF ARTICLE 6 OF TITLE 24 AND THE OPEN RECORD
23 REQUIREMENTS OF ARTICLE 72 OF TITLE 24.

24 (4) **Fund - fees.** (a) THERE IS HEREBY CREATED IN THE STATE
25 TREASURY THE AIR QUALITY ENTERPRISE CASH FUND. THE FUND CONSISTS
26 OF MONEY CREDITED TO THE FUND PURSUANT TO THIS SUBSECTION (4) AND
27 ANY OTHER MONEY THAT THE GENERAL ASSEMBLY MAY APPROPRIATE OR

1 TRANSFER TO THE FUND. THE STATE TREASURER SHALL CREDIT ALL
2 INTEREST AND INCOME DERIVED FROM THE DEPOSIT AND INVESTMENT OF
3 MONEY IN THE FUND TO THE FUND.

4 (b) THE BOARD SHALL ESTABLISH BY RULE ENTERPRISE FEES,
5 WHICH MAY INCLUDE THE FOLLOWING ENTERPRISE FEES IN AN AMOUNT
6 THAT, IN THE AGGREGATE, REFLECTS THE VALUE OF THE SERVICES
7 PROVIDED:

8 (I) A FEE PER TON OF AIR POLLUTANT EMITTED BY A STATIONARY
9 SOURCE ANNUALLY, WHICH FEE MAY VARY BASED ON THE AIR POLLUTANT
10 RELATIVE TO THE EXTENT OF RESEARCH OR MITIGATION NEEDS
11 ASSOCIATED WITH THE POLLUTANT;

12 (II) A FEE FOR CUSTOM OR ADDITIONAL AIR QUALITY MODELING,
13 MONITORING, ASSESSMENT, OR RESEARCH SERVICES; AND

14 (III) A FEE FOR EMISSION MITIGATION PROJECT SERVICES SOUGHT
15 BY FEE PAYERS.

16 (c) MONEY IN THE FUND IS CONTINUOUSLY APPROPRIATED TO THE
17 ENTERPRISE TO ACCOMPLISH THE PURPOSES SET FORTH IN SUBSECTION
18 (3)(c) OF THIS SECTION, INCLUDING TO:

19 (I) CONDUCT AND BROADLY DISSEMINATE AIR QUALITY MODELING,
20 MONITORING, ASSESSMENT, DATA ANALYSIS, HEALTH RISK ASSESSMENT,
21 AND RESEARCH RELATED TO STATIONARY SOURCES THAT:

22 (A) FOLLOW OR ADVANCE BEST PRACTICES FOR RISK ASSESSMENT,
23 RISK MANAGEMENT, MONITORING, MODELING, AND ASSESSMENT;

24 (B) USE CONSISTENT, DATA-DRIVEN, AND TRANSPARENT
25 PROCESSES FOR SCOPING AND PRIORITIZING ACTIVITIES; AND

26 (C) USE THE BEST AVAILABLE SCIENTIFIC INFORMATION;

27 (II) PROVIDE HIGH-QUALITY, INDEPENDENT, AND TRUSTED

1 RESEARCH AND DEVELOPMENT SERVICES REGARDING STATIONARY SOURCE
2 EMISSIONS RATES AND INVENTORIES, MONITORING AND CONTROL
3 TECHNOLOGIES, AND PUBLIC HEALTH RISK IMPACTS FROM THOSE
4 EMISSIONS;

5 (III) PROVIDE HIGH-QUALITY, INDEPENDENT, AND TRUSTED DATA
6 REGARDING POLLUTANT EMISSIONS FROM STATIONARY SOURCES AND
7 CONCENTRATIONS TO REDUCE WASTE OF VALUABLE PRODUCTS AND
8 RESOURCE STREAMS, ENHANCE COST-EFFECTIVE REGULATORY
9 COMPLIANCE, AND SUPPORT CORPORATE ENVIRONMENTAL, SOCIAL, AND
10 GOVERNANCE OBJECTIVES;

11 (IV) PROVIDE TRUSTED AND COST-EFFECTIVE MITIGATION PROJECT
12 SERVICES TO MEET CORPORATE SUSTAINABILITY, SETTLEMENT, AND OTHER
13 OBJECTIVES;

14 (V) PROVIDE ADDITIONAL BUSINESS SERVICES TO FEE PAYERS AS
15 MAY BE PROVIDED BY LAW; AND

16 (VI) PROVIDE ITS DATA TO FEE PAYERS, THE DIVISION, AND THE
17 COMMISSION TO FACILITATE THE FEE PAYERS' EMISSIONS MITIGATION AND
18 COMPLIANCE EFFORTS AND THE DIVISION'S AND COMMISSION'S
19 ENFORCEMENT AND ADMINISTRATION OF THIS ARTICLE 7.

20 (d) THE ENTERPRISE SHALL DEDICATE A MEANINGFUL PORTION OF
21 ITS ANNUAL REVENUES TOWARD COMPETITIVE GRANTS TO CONDUCT
22 HIGHLY QUALIFIED, PEER-REVIEWED RESEARCH RELATED TO RESEARCH
23 PRIORITIES IDENTIFIED BY THE BOARD. BEFORE FINALIZING A DRAFT
24 RESEARCH PRODUCT, THE BOARD SHALL POST THE DRAFT ON THE BOARD'S
25 WEBSITE AND ALLOW A PERIOD OF TIME FOR PUBLIC COMMENT ON THE
26 DRAFT. THE BOARD SHALL PUBLISH THE RESEARCH PRODUCTS AND MAKE
27 THEM AND ALL DATA COLLECTED PURSUANT TO ENTERPRISE-FUNDED

1 RESEARCH PUBLICLY AVAILABLE.

2 (e) BEFORE ESTABLISHING FEES, THE BOARD SHALL CONDUCT A
3 STAKEHOLDER PROCESS TO SOLICIT INPUT FROM POTENTIAL FEE PAYERS
4 AND OTHER STAKEHOLDERS ON THE APPROPRIATE FEE STRUCTURE. THE
5 ENTERPRISE SHALL NOT COLLECT ANY FEES BEFORE JULY 1, 2021. THE
6 AMOUNT OF ENTERPRISE FEES COLLECTED IS LIMITED AS FOLLOWS:

7 (I) FOR STATE FISCAL YEAR 2021-22, FEES MUST NOT EXCEED ONE
8 MILLION DOLLARS;

9 (II) FOR STATE FISCAL YEAR 2022-23, FEES MUST NOT EXCEED
10 THREE MILLION DOLLARS;

11 (III) FOR STATE FISCAL YEAR 2023-24, FEES MUST NOT EXCEED
12 FOUR MILLION DOLLARS; AND

13 (IV) (A) FOR STATE FISCAL YEARS COMMENCING ON OR AFTER
14 JULY 1, 2024, FEES MUST NOT EXCEED FIVE MILLION DOLLARS.

15 (B) SUBSECTION (4)(e)(I) TO (4)(e)(III) OF THIS SECTION AND THIS
16 SUBSECTION (4)(e)(IV)(B) ARE REPEALED, EFFECTIVE SEPTEMBER 1, 2026.

17 (f) THE BOARD MAY SEEK, ACCEPT, AND EXPEND GIFTS, GRANTS,
18 OR DONATIONS FROM PRIVATE OR PUBLIC SOURCES FOR THE PURPOSES OF
19 THIS SECTION.

20 (5) **Report.** NOTWITHSTANDING SECTION 24-1-136 (11)(a)(I), THE
21 BOARD SHALL PROVIDE A REPORT TO THE COMMITTEES OF REFERENCE OF
22 THE GENERAL ASSEMBLY WITH JURISDICTION OVER PUBLIC HEALTH AND
23 THE ENVIRONMENT BY DECEMBER 1 OF EACH YEAR. THE REPORT MUST
24 INCLUDE SUMMARIES OF THE BOARD'S PRIORITIZATION OF RESEARCH
25 NEEDS; MODELING, MONITORING, ASSESSMENT, AND RESEARCH
26 ACCOMPLISHED BY THE ENTERPRISE; THE ENTERPRISE'S COMPLETED,
27 ONGOING, AND PLANNED EMISSION MITIGATION SERVICES; USE OF THE

1 FUND; ENTERPRISE FEES; AND THE VALUE OF BUSINESS SERVICES PROVIDED
2 TO FEE PAYERS THROUGH THE OPERATION OF THE ENTERPRISE.

3 (6) Repeal. (a) THIS SECTION IS REPEALED, EFFECTIVE SEPTEMBER
4 1, 2034. BEFORE THE REPEAL, THE ENTERPRISE IS SCHEDULED FOR REVIEW
5 IN ACCORDANCE WITH SECTION 24-34-104.

6 (b) ON SEPTEMBER 1, 2034, THE STATE TREASURER SHALL
7 TRANSFER ALL UNALLOCATED MONEY IN THE FUND TO THE STATIONARY
8 SOURCES CONTROL FUND CREATED IN SECTION 25-7-114.7 (2)(b)(I).

9 SECTION 3. In Colorado Revised Statutes, 24-34-104, add
10 (35)(a)(IV) as follows:

11 24-34-104. General assembly review of regulatory agencies
12 and functions for repeal, continuation, or reestablishment - legislative
13 declaration - repeal. (35) (a) The following agencies, functions, or both,
14 are scheduled for repeal on September 1, 2034:

15 (IV) THE AIR QUALITY ENTERPRISE CREATED BY SECTION
16 25-7-103.5.

17 SECTION 4. In Colorado Revised Statutes, 25-7-114.1, amend
18 (6)(a) as follows:

19 25-7-114.1. Air pollutant emission notices - rules. (6) (a) FOR
20 STATE FISCAL YEAR 2020-21, the maximum fee for filing an air pollutant
21 emission notice or AN amendment thereto TO THE NOTICE under this
22 section is one hundred ninety-one dollars and thirteen cents; except that,
23 on each January 1 from 2019 to 2028, the maximum fee is automatically
24 adjusted based on the annual percentage change in the United States
25 department of labor, bureau of labor statistics, consumer price index for
26 Denver-Aurora-Lakewood for all items and all urban consumers, or its
27 successor index TWO HUNDRED SIXTEEN DOLLARS. FOR STATE FISCAL

1 YEAR 2021-22, THE FEE FOR FILING AN AIR POLLUTANT EMISSION NOTICE
2 OR AN AMENDMENT TO THE NOTICE UNDER THIS SECTION IS TWO HUNDRED
3 FORTY-TWO DOLLARS. THEREAFTER, the commission ~~shall set~~ MAY
4 ADJUST the actual fee by rule ~~Beginning on July 1, 2018, the commission,~~
5 ~~by rule, may periodically adjust the fee up to the maximum fee~~ TO COVER
6 THE INDIRECT AND DIRECT COSTS REQUIRED TO DEVELOP AND ADMINISTER
7 THE PROGRAMS ESTABLISHED PURSUANT TO THIS ARTICLE 7. The money
8 collected pursuant to this ~~section~~ SUBSECTION (6)(a) shall be transmitted
9 to the state treasurer, who shall credit it to the stationary sources control
10 fund created in section 25-7-114.7 (2)(b)(I).

11 **SECTION 5.** In Colorado Revised Statutes, 25-7-114.7, **amend**
12 (2)(a)(I)(A), (2)(a)(I)(B), and (2)(a)(III); and **add** (2)(b)(III) and
13 (2)(b)(IV) as follows:

14 **25-7-114.7. Emission fees - fund - rules - definition - repeal.**
15 (2) (a) (I) The commission shall designate by rule those classes of
16 sources of air pollution that are exempt from the requirement to pay an
17 annual emission fee. Every owner or operator of an air pollution source
18 not otherwise exempt in accordance with such commission rules shall pay
19 an annual fee as follows:

20 (A) For STATE fiscal ~~years 2018-19 and thereafter, the maximum~~
21 YEAR 2020-21, THE fee is ~~twenty-eight dollars and sixty-three cents~~
22 THIRTY-TWO DOLLARS PER TON OF REGULATED POLLUTANT REPORTED IN
23 THE MOST RECENT AIR POLLUTION EMISSION NOTICE ON FILE WITH THE
24 DIVISION. FOR STATE FISCAL YEAR 2021-22, THE FEE IS THIRTY-SIX
25 DOLLARS per ton of regulated pollutant reported in the most recent air
26 pollution emission notice on file with the division. ~~except that, on each~~
27 January 1 from 2019 to 2028, the maximum fee is automatically adjusted

1 ~~based on the annual percentage change in the United States department~~
2 ~~of labor, bureau of labor statistics, consumer price index for~~
3 ~~Denver-Aurora-Lakewood for all items and all urban consumers, or its~~
4 ~~successor index.~~ THEREAFTER, the commission shall set MAY ADJUST the
5 actual fee by rule ~~Beginning on July 1, 2018, the commission, by rule,~~
6 ~~may periodically adjust the fee up to the maximum fee~~ TO COVER THE
7 INDIRECT AND DIRECT COSTS REQUIRED TO DEVELOP AND ADMINISTER THE
8 PROGRAMS ESTABLISHED PURSUANT TO THIS ARTICLE 7.

9 (B) For STATE fiscal years ~~2018-19 and thereafter~~ YEAR 2020-21,
10 in addition to the annual fee set forth in subsection (2)(a)(I)(A) of this
11 section, for hazardous air pollutants, including ozone-depleting
12 compounds, ~~a maximum AN annual fee of one hundred ninety-one dollars~~
13 ~~and thirteen cents~~ TWO HUNDRED SIXTEEN DOLLARS PER TON. FOR STATE
14 FISCAL YEAR 2021-22, IN ADDITION TO THE ANNUAL FEE SET FORTH IN
15 SUBSECTION (2)(a)(I)(A) OF THIS SECTION, FOR HAZARDOUS AIR
16 POLLUTANTS, INCLUDING OZONE-DEPLETING COMPOUNDS, THERE IS AN
17 ANNUAL FEE OF TWO HUNDRED THIRTY-NINE DOLLARS per ton. ~~except that,~~
18 ~~on each January 1 from 2019 to 2028, the maximum fee is automatically~~
19 ~~adjusted based on the annual percentage change in the United States~~
20 ~~department of labor, bureau of labor statistics, consumer price index for~~
21 ~~Denver-Aurora-Lakewood for all items and all urban consumers, or its~~
22 ~~successor index.~~ THEREAFTER, the commission shall set MAY ADJUST the
23 actual fee by rule ~~Beginning on July 1, 2018, the commission, by rule,~~
24 ~~may periodically adjust the fee up to the maximum fee~~ TO COVER THE
25 INDIRECT AND DIRECT COSTS REQUIRED TO DEVELOP AND ADMINISTER THE
26 PROGRAMS ESTABLISHED PURSUANT TO THIS ARTICLE 7.

27 (III) Every owner or operator subject to the requirements to pay

1 fees set forth in subsection (2)(a)(I) of this section shall also pay a
2 processing fee for the costs of processing any application other than an air
3 pollution emission notice under this article 7. Every significant user of
4 prescribed fire, including federal facilities, submitting a planning
5 document to the commission pursuant to section 25-7-106 (8)(b) shall pay
6 a fee for costs of evaluating the documents. For STATE fiscal year
7 ~~2018-19~~ 2020-21, the division shall assess a fee for work it performs, up
8 to a maximum of thirty hours at a ~~maximum~~ rate of ~~ninety-five dollars~~
9 ~~and fifty-six cents~~ ONE HUNDRED EIGHT DOLLARS AND TWELVE CENTS PER
10 HOUR. FOR STATE FISCAL YEAR 2021-22, THE DIVISION SHALL ASSESS A
11 FEE FOR WORK IT PERFORMS, UP TO A MAXIMUM OF THIRTY HOURS AT A
12 RATE OF ONE HUNDRED NINETEEN DOLLARS per hour. ~~except that, on each~~
13 ~~January 1 from 2019 to 2028, the maximum fee is automatically adjusted~~
14 ~~based on the annual percentage change in the United States department~~
15 ~~of labor, bureau of labor statistics, consumer price index for~~
16 ~~Denver-Aurora-Lakewood for all items and all urban consumers, or its~~
17 ~~successor index. THEREAFTER, the commission shall set~~ MAY ADJUST the
18 actual fee by rule ~~Beginning on July 1, 2018, the commission, by rule,~~
19 ~~may periodically adjust the fee up to the maximum fee~~ TO COVER THE
20 INDIRECT AND DIRECT COSTS REQUIRED TO DEVELOP AND ADMINISTER THE
21 PROGRAMS ESTABLISHED PURSUANT TO THIS ARTICLE 7. If the division
22 requires more than thirty hours to process the application or evaluate the
23 prescribed fire-related planning documents, the ~~fee paid by the applicant~~
24 ~~must not exceed three thousand seven hundred fifty dollars unless the~~
25 ~~division has informed the source that the respective billings may exceed~~
26 ~~three thousand seven hundred fifty dollars and has provided~~ DIVISION
27 SHALL PROVIDE the STATIONARY source with an estimate of what the

1 actual charges may be ~~prior to commencing the work~~ BEFORE WORKING
2 MORE THAN THIRTY HOURS.

3 (b) (III) THE DIVISION SHALL EXPEND THE PORTION OF THE FEE
4 REVENUE COLLECTED PURSUANT TO SUBSECTIONS (2)(a)(I)(A),
5 (2)(a)(I)(B), AND (2)(a)(III) OF THIS SECTION AND SECTION 25-7-114.1
6 (6)(a) ATTRIBUTABLE TO THE INCREASES AUTHORIZED IN 2020 BY SENATE
7 BILL 20-204 FOR THE FOLLOWING PURPOSES:

8 (A) ENSURING THAT REQUIREMENTS IMPOSED BY RULES TO
9 MINIMIZE EMISSIONS ARE INCLUDED IN PERMITS AND COMPLIED WITH;

10 (B) DEPLOYING MORE RESOURCES TO FIND, AND CAUSE OIL AND
11 GAS OPERATORS TO REPAIR, LEAKS AND RELEASES OF HYDROCARBONS
12 SUCH AS BENZENE THAT CONTRIBUTE TO OZONE NONATTAINMENT AND
13 HUMAN HEALTH RISKS;

14 (C) INCREASING COMPLIANCE BY STATIONARY SOURCES WITH ALL
15 APPLICABLE AIR QUALITY REQUIREMENTS;

16 (D) INCREASING THE NUMBER OF INSPECTIONS AND ENFORCEMENT
17 ACTIONS TAKEN BY THE DIVISION;

18 (E) EXPANDING THE DIVISION'S CAPACITY TO CONDUCT
19 MONITORING OF STATIONARY SOURCE EMISSIONS;

20 (F) DEVELOPING NEW EMISSION CONTROL STRATEGIES;

21 (G) EXPANDING THE DIVISION'S CAPACITY TO QUICKLY RESPOND
22 TO AND BETTER UNDERSTAND PUBLIC HEALTH ISSUES THAT ARE RELATED
23 TO EXPOSURE TO AIR TOXICS, SUCH AS BENZENE AND OTHER VOLATILE
24 ORGANIC COMPOUNDS; AND

25 (H) IMPROVING THE DIVISION'S COMPLAINT MANAGEMENT
26 SYSTEMS AS THEY RELATE TO AIR QUALITY AND ASSOCIATED HEALTH
27 IMPACTS.

1 (IV) THE DIVISION SHALL REPORT ANNUALLY REGARDING HOW THE
2 FEES AUTHORIZED BY THIS SECTION HAVE BEEN UTILIZED, WHAT RELATED
3 EFFICIENCY AND PROCESS IMPROVEMENTS HAVE BEEN MADE, AND A
4 PROJECTION OF SHORT-TERM AND LONG-TERM CAPITAL OPERATING
5 EXPENDITURES. BEFORE MAKING ANY FEE ADJUSTMENT AFTER FISCAL
6 YEAR 2021-22 THAT IS AUTHORIZED BY SECTION 25-7-114.1 (6)(a) OR
7 25-7-114.7 (2)(a)(I)(A), (2)(a)(I)(B), OR (2)(a)(III), THE DIVISION SHALL
8 REPORT ANNUALLY ABOUT HOW EXISTING FEES HAVE BEEN UTILIZED AND
9 ENGAGE IN A STAKEHOLDER PROCESS WITH IMPACTED STATIONARY
10 SOURCES. THE DIVISION SHALL INITIATE THIS STAKEHOLDER PROCESS AT
11 LEAST SIX MONTHS BEFORE ANY RULE THAT INCREASES FEES BECOMES
12 EFFECTIVE UNLESS EMERGENCY RULEMAKING PURSUANT TO SECTION
13 24-4-103 IS NECESSARY. THE STAKEHOLDER PROCESS MUST INVOLVE
14 DISCUSSION OF:

15 (A) ONGOING EFFICIENCY IMPROVEMENT PROJECTS AND PROGRESS
16 TOWARDS COMPLETION OF THOSE PROJECTS, INCLUDING DATABASE
17 IMPROVEMENTS AND REPLACING THE EXISTING AIR POLLUTION EMISSION
18 NOTICE PROCESS WITH AN IMPROVED EMISSION INVENTORY PROCESS; AND

19 (B) THE JUSTIFICATION AND NECESSITY OF ADDITIONAL FEE
20 INCREASES, INCLUDING AN OUTLINE OF WHERE INCREASES IN FEES WILL BE
21 UTILIZED MOVING FORWARD.

22 **SECTION 6. Appropriation.** (1) For the 2020-21 state fiscal
23 year, \$10,660 is appropriated to the department of public health and
24 environment. This appropriation is from the general fund. To implement
25 this act, the department may use this appropriation for the purchase of
26 legal services.

27 (2) For the 2020-21 state fiscal year, \$10,660 is appropriated to

1 the department of law. This appropriation is from reappropriated funds
2 received from the department of public health and environment under
3 subsection (1) of this section. To implement this act, the department of
4 law may use this appropriation to provide legal services for the
5 department of public health and environment.

6 **SECTION 7. Effective date - applicability.** This act takes effect
7 July 1, 2020, and applies to fees paid on or after said date.

8 **SECTION 8. Safety clause.** The general assembly hereby finds,
9 determines, and declares that this act is necessary for the immediate
10 preservation of the public peace, health, or safety.