

NOTE: This bill has been prepared for the signatures of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

An Act

SENATE BILL 20-204

BY SENATOR(S) Fenberg, Bridges, Danielson, Fields, Foote, Ginal, Gonzales, Hansen, Lee, Moreno, Pettersen, Rodriguez, Story, Todd, Winter, Garcia;

also REPRESENTATIVE(S) Jackson and Caraveo, Bird, Buckner, Buentello, Cutter, Duran, Exum, Froelich, Gray, Herod, Hooton, Jaquez Lewis, Kennedy, Kipp, Lontine, McCluskie, McLachlan, Melton, Michaelson Jenet, Mullica, Roberts, Singer, Sirota, Snyder, Titone, Valdez A., Weissman, Woodrow, Young, Becker.

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

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

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

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

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

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

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

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

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

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

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

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

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

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

(h) STATIONARY SOURCES IN COLORADO MAY SEEK AIR QUALITY ENTERPRISE MITIGATION AND MONITORING SERVICES TO IMPLEMENT THEIR OBLIGATIONS UNDER RULES AND PERMITS AND ENVIRONMENTAL, SOCIAL, AND GOVERNANCE OBJECTIVES;

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

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

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

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

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

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

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

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

(l) CONSISTENT WITH THE DETERMINATION OF THE COLORADO SUPREME COURT IN *NICHOLL v. E-470 PUBLIC HIGHWAY AUTHORITY*, 896 P.2d 859 (COLO. 1995), THAT THE POWER TO IMPOSE TAXES IS INCONSISTENT WITH ENTERPRISE STATUS UNDER SECTION 20 OF ARTICLE X OF THE STATE

CONSTITUTION, IT IS THE CONCLUSION OF THE GENERAL ASSEMBLY THAT THE REVENUES COLLECTED BY THE ENTERPRISE ARE FEES, NOT TAXES, BECAUSE THE ENTERPRISE FEES ARE:

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

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

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

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

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

(b) "DEPARTMENT" MEANS THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT.

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

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

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

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

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

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

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

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

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

COMMUNITY STAKEHOLDERS ON FORMULATING RESEARCH PRIORITIES AND SHALL SPECIFICALLY PRIORITIZE:

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

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

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

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

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

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

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

(VI) ENGAGE THE SERVICES OF CONTRACTORS, CONSULTANTS, AND LEGAL COUNSEL, INCLUDING INSTITUTIONS OF HIGHER EDUCATION, PUBLIC RESEARCH LABORATORIES, PRIVATE RESEARCH INSTITUTIONS AND CONSULTANTS WITH EXPERTISE IN AIR QUALITY, THE DEPARTMENT, AND THE ATTORNEY GENERAL'S OFFICE, FOR PROFESSIONAL AND TECHNICAL ASSISTANCE, ADVICE, AND OTHER GOODS AND SERVICES, INCLUDING INFORMATION TECHNOLOGY, RELATED TO THE CONDUCT OF THE AFFAIRS OF

THE ENTERPRISE WITHOUT REGARD TO THE "PROCUREMENT CODE", ARTICLES 101 TO 112 OF TITLE 24. THE BOARD SHALL ENCOURAGE DIVERSITY IN APPLICANTS FOR CONTRACTS AND SHALL GENERALLY AVOID USING SINGLE-SOURCE BIDS. THE DEPARTMENT MAY PROVIDE OFFICE SPACE, ADMINISTRATIVE SERVICES, AND STAFF PURSUANT TO A CONTRACT ENTERED INTO PURSUANT TO THIS SUBSECTION (3)(c)(VI). THE BOARD MAY, IN CONSULTATION WITH THE EXECUTIVE DIRECTOR OR THE EXECUTIVE DIRECTOR'S DESIGNEE, HIRE SUCH OTHER STAFF AS IT DEEMS NECESSARY TO PROVIDE ITS BUSINESS SERVICES.

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

(d) THE ENTERPRISE IS GOVERNED BY A BOARD OF DIRECTORS. THE BOARD CONSISTS OF THE EXECUTIVE DIRECTOR OR THE EXECUTIVE DIRECTOR'S DESIGNEE, TWO MEMBERS OF THE COMMISSION APPOINTED BY THE GOVERNOR, TWO GOVERNOR APPOINTEES TO SERVE AS REPRESENTATIVES OF FEE PAYERS WITH EXPERTISE IN FIELD ENGINEERING OR ENVIRONMENTAL MANAGEMENT, ONE GOVERNOR APPOINTEE WITH SIGNIFICANT PRIVATE SECTOR EXPERIENCE IN THE FIELD OF BUSINESS MANAGEMENT, AND FOUR GOVERNOR APPOINTEES WHO ARE HIGHLY QUALIFIED AND PROFESSIONALLY ACTIVE OR ENGAGED IN THE CONDUCT OF SCIENTIFIC RESEARCH, INCLUDING AT LEAST TWO WHO ARE EXPERTS IN ATMOSPHERIC OR AIR QUALITY MODELING, MONITORING, ASSESSMENT, AND RESEARCH AND ONE MEMBER WHO IS A TOXICOLOGIST, EPIDEMIOLOGIST, PATHOLOGIST, PULMONOLOGIST, CARDIOLOGIST, OR EXPERT IN A SIMILAR FIELD RELATED TO THE PUBLIC HEALTH OR ENVIRONMENTAL EFFECTS OF AIR POLLUTANTS. TO THE EXTENT PRACTICABLE, AT LEAST TWO OF THE GOVERNOR APPOINTEES MUST BE INDIVIDUALS WHO HAVE A RECORD OF PEER-REVIEWED PUBLICATIONS AND WHO ARE AFFILIATED WITH, CURRENTLY HOLD, OR HAVE HELD ACADEMIC OR EQUIVALENT APPOINTMENTS AT UNIVERSITIES, FEDERAL LABORATORIES, OR OTHER RESEARCH INSTITUTIONS.

(e) THE EXECUTIVE DIRECTOR OR THE EXECUTIVE DIRECTOR'S DESIGNEE, IN THE CAPACITY OF A MEMBER OF THE BOARD, SHALL CALL THE FIRST MEETING OF THE BOARD. THE BOARD SHALL ELECT A CHAIR FROM AMONG ITS MEMBERS TO SERVE FOR A TERM NOT TO EXCEED TWO YEARS, AS

DETERMINED BY THE BOARD. THE BOARD SHALL MEET AT LEAST QUARTERLY, AND THE CHAIR MAY CALL ADDITIONAL MEETINGS AS NECESSARY FOR THE BOARD TO COMPLETE ITS DUTIES. THE APPOINTED MEMBERS OF THE BOARD ARE ENTITLED TO RECEIVE FROM MONEY IN THE FUND A PER DIEM ALLOWANCE OF FIFTY DOLLARS FOR EACH DAY SPENT ATTENDING OFFICIAL BOARD MEETINGS.

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

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

(4) **Fund - fees.** (a) THERE IS HEREBY CREATED IN THE STATE TREASURY THE AIR QUALITY ENTERPRISE CASH FUND. THE FUND CONSISTS OF MONEY CREDITED TO THE FUND PURSUANT TO THIS SUBSECTION (4) AND ANY OTHER MONEY THAT THE GENERAL ASSEMBLY MAY APPROPRIATE OR TRANSFER TO THE FUND. THE STATE TREASURER SHALL CREDIT ALL INTEREST AND INCOME DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEY IN THE FUND TO THE FUND.

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

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

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

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

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

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

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

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

(C) USE THE BEST AVAILABLE SCIENTIFIC INFORMATION;

(II) PROVIDE HIGH-QUALITY, INDEPENDENT, AND TRUSTED RESEARCH AND DEVELOPMENT SERVICES REGARDING STATIONARY SOURCE EMISSIONS RATES AND INVENTORIES, MONITORING AND CONTROL TECHNOLOGIES, AND PUBLIC HEALTH RISK IMPACTS FROM THOSE EMISSIONS;

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

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

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

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

(d) THE ENTERPRISE SHALL DEDICATE A MEANINGFUL PORTION OF ITS

ANNUAL REVENUES TOWARD COMPETITIVE GRANTS TO CONDUCT HIGHLY QUALIFIED, PEER-REVIEWED RESEARCH RELATED TO RESEARCH PRIORITIES IDENTIFIED BY THE BOARD. BEFORE FINALIZING A DRAFT RESEARCH PRODUCT, THE BOARD SHALL POST THE DRAFT ON THE BOARD'S WEBSITE AND ALLOW A PERIOD OF TIME FOR PUBLIC COMMENT ON THE DRAFT. THE BOARD SHALL PUBLISH THE RESEARCH PRODUCTS AND MAKE THEM AND ALL DATA COLLECTED PURSUANT TO ENTERPRISE-FUNDED RESEARCH PUBLICLY AVAILABLE.

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

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

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

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

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

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

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

(5) **Report.** NOTWITHSTANDING SECTION 24-1-136 (11)(a)(I), THE BOARD SHALL PROVIDE A REPORT TO THE COMMITTEES OF REFERENCE OF THE GENERAL ASSEMBLY WITH JURISDICTION OVER PUBLIC HEALTH AND THE ENVIRONMENT BY DECEMBER 1 OF EACH YEAR. THE REPORT MUST INCLUDE SUMMARIES OF THE BOARD'S PRIORITIZATION OF RESEARCH NEEDS; MODELING, MONITORING, ASSESSMENT, AND RESEARCH ACCOMPLISHED BY

THE ENTERPRISE; THE ENTERPRISE'S COMPLETED, ONGOING, AND PLANNED EMISSION MITIGATION SERVICES; USE OF THE FUND; ENTERPRISE FEES; AND THE VALUE OF BUSINESS SERVICES PROVIDED TO FEE PAYERS THROUGH THE OPERATION OF THE ENTERPRISE.

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

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

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

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

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

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

25-7-114.1. Air pollutant emission notices - rules. (6) (a) FOR STATE FISCAL YEAR 2020-21, the ~~maximum~~ fee for filing an air pollutant emission notice or AN amendment ~~thereto~~ TO THE NOTICE under this section is ~~one hundred ninety-one dollars and thirteen cents; except that, on each January 1 from 2019 to 2028, the maximum fee is automatically adjusted based on the annual percentage change in the United States department of labor, bureau of labor statistics, consumer price index for Denver-Aurora-Lakewood for all items and all urban consumers, or its successor index~~ TWO HUNDRED SIXTEEN DOLLARS. FOR STATE FISCAL YEAR 2021-22, THE FEE FOR FILING AN AIR POLLUTANT EMISSION NOTICE OR AN AMENDMENT TO THE NOTICE UNDER THIS SECTION IS TWO HUNDRED FORTY-TWO DOLLARS. THEREAFTER, the commission ~~shall set~~ MAY ADJUST the ~~actual~~ fee by rule ~~Beginning on July 1, 2018, the commission, by rule, may periodically adjust the fee up to the maximum fee~~ TO COVER THE

INDIRECT AND DIRECT COSTS REQUIRED TO DEVELOP AND ADMINISTER THE PROGRAMS ESTABLISHED PURSUANT TO THIS ARTICLE 7. The money collected pursuant to this ~~section~~ SUBSECTION (6)(a) shall be transmitted to the state treasurer, who shall credit it to the stationary sources control fund created in section 25-7-114.7 (2)(b)(I).

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

25-7-114.7. Emission fees - fund - rules - definition - repeal.
(2) (a) (I) The commission shall designate by rule those classes of sources of air pollution that 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 shall pay an annual fee as follows:

(A) For STATE fiscal ~~years 2018-19 and thereafter, the maximum~~ YEAR 2020-21, THE fee is ~~twenty-eight dollars and sixty-three cents~~ THIRTY-TWO DOLLARS PER TON OF REGULATED POLLUTANT REPORTED IN THE MOST RECENT AIR POLLUTION EMISSION NOTICE ON FILE WITH THE DIVISION. FOR STATE FISCAL YEAR 2021-22, THE FEE IS THIRTY-SIX DOLLARS per ton of regulated pollutant reported in the most recent air pollution emission notice on file with the division. ~~except that, on each January 1 from 2019 to 2028, the maximum fee is automatically adjusted based on the annual percentage change in the United States department of labor, bureau of labor statistics, consumer price index for Denver-Aurora-Lakewood for all items and all urban consumers, or its successor index.~~ THEREAFTER, the commission ~~shall set~~ MAY ADJUST the ~~actual~~ fee by rule ~~Beginning on July 1, 2018, the commission, by rule, may periodically adjust the fee up to the~~ ~~maximum fee~~ TO COVER THE INDIRECT AND DIRECT COSTS REQUIRED TO DEVELOP AND ADMINISTER THE PROGRAMS ESTABLISHED PURSUANT TO THIS ARTICLE 7.

(B) For STATE fiscal ~~years 2018-19 and thereafter~~ YEAR 2020-21, in addition to the annual fee set forth in subsection (2)(a)(I)(A) of this section, for hazardous air pollutants, including ozone-depleting compounds, a ~~maximum~~ AN annual fee of ~~one hundred ninety-one dollars and thirteen cents~~ TWO HUNDRED SIXTEEN DOLLARS PER TON. FOR STATE FISCAL YEAR 2021-22, IN ADDITION TO THE ANNUAL FEE SET FORTH IN SUBSECTION

(2)(a)(I)(A) OF THIS SECTION, FOR HAZARDOUS AIR POLLUTANTS, INCLUDING OZONE-DEPLETING COMPOUNDS, THERE IS AN ANNUAL FEE OF TWO HUNDRED THIRTY-NINE DOLLARS per ton. ~~except that, on each January 1 from 2019 to 2028, the maximum fee is automatically adjusted based on the annual percentage change in the United States department of labor, bureau of labor statistics, consumer price index for Denver-Aurora-Lakewood for all items and all urban consumers, or its successor index.~~ THEREAFTER, the commission shall set MAY ADJUST the actual fee by rule ~~Beginning on July 1, 2018, the commission, by rule, may periodically adjust the fee up to the maximum fee~~ TO COVER THE INDIRECT AND DIRECT COSTS REQUIRED TO DEVELOP AND ADMINISTER THE PROGRAMS ESTABLISHED PURSUANT TO THIS ARTICLE 7.

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

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

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

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

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

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

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

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

(F) DEVELOPING NEW EMISSION CONTROL STRATEGIES;

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

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

(IV) THE DIVISION SHALL REPORT ANNUALLY REGARDING HOW THE FEES AUTHORIZED BY THIS SECTION HAVE BEEN UTILIZED, WHAT RELATED EFFICIENCY AND PROCESS IMPROVEMENTS HAVE BEEN MADE, AND A PROJECTION OF SHORT-TERM AND LONG-TERM CAPITAL OPERATING

EXPENDITURES. BEFORE MAKING ANY FEE ADJUSTMENT AFTER FISCAL YEAR 2021-22 THAT IS AUTHORIZED BY SECTION 25-7-114.1 (6)(a) OR 25-7-114.7 (2)(a)(I)(A), (2)(a)(I)(B), OR (2)(a)(III), THE DIVISION SHALL REPORT ANNUALLY ABOUT HOW EXISTING FEES HAVE BEEN UTILIZED AND ENGAGE IN A STAKEHOLDER PROCESS WITH IMPACTED STATIONARY SOURCES. THE DIVISION SHALL INITIATE THIS STAKEHOLDER PROCESS AT LEAST SIX MONTHS BEFORE ANY RULE THAT INCREASES FEES BECOMES EFFECTIVE UNLESS EMERGENCY RULEMAKING PURSUANT TO SECTION 24-4-103 IS NECESSARY. THE STAKEHOLDER PROCESS MUST INVOLVE DISCUSSION OF:

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

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

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

(2) For the 2020-21 state fiscal year, \$10,660 is appropriated to the department of law. This appropriation is from reappropriated funds received from the department of public health and environment under subsection (1) of this section. To implement this act, the department of law may use this appropriation to provide legal services for the department of public health and environment.

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

SECTION 8. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Leroy M. Garcia
PRESIDENT OF
THE SENATE

KC Becker
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO