



**Legislative  
Council Staff**

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**FISCAL NOTE**

<b>Drafting Number:</b>	LLS 20-0069	<b>Date:</b>	March 6, 2020
<b>Prime Sponsors:</b>	Rep. Benavidez; Valdez A. Sen. Gonzales; Moreno	<b>Bill Status:</b>	House Energy & Environment
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**Bill Topic:** **INCREASE PUBLIC PROTECTION AIR TOXICS EMISSIONS**

**Summary of Fiscal Impact:**

<input checked="" type="checkbox"/> State Revenue	<input checked="" type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure	<input type="checkbox"/> Local Government
<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

This bill requires the Department of Public Health and Environment to regulate the emissions of air toxics by certain stationary sources. It also requires the creation of a real-time community alert system for emissions incidents. The bill will increase state revenue and expenditures on an ongoing basis.

**Appropriation Summary:** For FY 2020-21, the bill requires an appropriation of \$1,524,731 to the Department of Public Health and Environment.

**Fiscal Note Status:** The fiscal note reflects the introduced bill.

**Table 1  
State Fiscal Impacts Under HB 20-1265**

		FY 2020-21	FY 2021-22	FY 2022-23
<b>Revenue</b>	Cash Funds	-	\$4,192,605	\$3,756,914
	<b>Total</b>	-	<b>\$4,192,605</b>	<b>\$3,756,914</b>
<b>Expenditures</b>	General Fund	\$1,524,731	-	-
	Cash Funds	-	\$3,366,225	\$2,905,716
	Centrally Appropriated	\$350,315	\$826,380	\$851,198
	<b>Total</b>	<b>\$1,875,046</b>	<b>\$4,192,605</b>	<b>\$3,756,914</b>
<b>Total FTE</b>		<b>13.8 FTE</b>	<b>22.8 FTE</b>	<b>23.7 FTE</b>
<b>Transfers</b>		-	-	-
<b>TABOR Refund</b>	General Fund	-	\$4,192,605	Not estimated

**Summary of Legislation**

This bill expands the Colorado Hazardous Air Pollutant Control and Reduction Program in the Department of Public Health and Environment (CDPHE) to include the regulation of covered air toxics shown in Table 2 and any other hazardous air pollutant listed in rule by the Air Quality Control Commission (commission). Regulation is required to be more stringent than under the Federal Clean Air Act. Stationary sources that reported at least one of the release amounts of covered air toxics shown in Table 2 in its federal toxics release inventory filing is considered a covered facility for purposes of this bill.

**Table 2**  
**Release Amounts to be Considered a Covered Facility**  
**Under HB 20-1265**

<b>Covered Air Toxic</b>	<b>Release Amount</b>
Hydrogen Cyanide	10,000 lbs.
Hydrogen Flouride	10,000 lbs.
Hydrogen Sulfide	5,000 lbs.
Benzene	1,000 lbs.

**Commission responsibilities.** Beginning in 2026 and at least every five years thereafter, the commission is required to determine whether additional hazardous air pollutants should be listed as covered air toxics, the emission threshold for covered facilities, and whether any emission threshold for existing covered facilities should be lowered, and to make those changes in rule. The commission must also:

- promulgate rules requiring fence-line monitoring and near-source monitoring by January 1, 2021;
- report to the General Assembly on the resources needed to set the health-based emission limits by January 1, 2021;
- set, by rule, a health-based emission limit for each covered air toxic that has no existing state or federal limit according to provisions in the bill;
- identify disproportionately affected communities in rule;
- promulgate rules for violations related to emissions from flares and pressure relief devices at refineries;
- consider adopting regulations related to leak detection and repair and to reduce emissions from equipment leaks and wastewater at refineries;
- make all research, studies and underlying support for health-based emission limits available to the public;
- establish a real-time community alert system for air pollutant incidents; and
- set a fee in rule to cover the indirect and direct administration costs of the bill.

The commission is prohibited from revising a health-based emission limit in a covered facility's permit unless the revision is more protective of public health or solely considering cost or technical feasibility in setting a limit.

**Air Pollution Control Division Responsibilities.** The bill requires the Air Pollution Control Division (division) in the CDPHE to:

- post draft monitoring plans on its website for at least 90 days of public comment;
- hold at least two public hearings regarding a draft monitoring plan at a location near the covered facility, one of which must be held during a weekend;
- provide interpretation services for the two most prevalent languages spoken in the affected community;
- with a covered facility, consult with affected local governments;
- respond in writing to all written and oral public comments received before approving a monitoring plan;
- post approved plans in the two most prevalent languages on the division website; and
- provide hard copies of the approved plan publicly available at the division.

**Covered facilities responsibilities.** By May 1, 2021, each covered facility is required to submit a fence-line monitoring and near-source monitoring plan to the division. The plan must be written in the two most prevalent languages spoken in the affected community and must identify:

- monitoring equipment;
- siting and equipment specifications;
- maintenance and quality assurance procedures;
- methods for disseminating monitoring data; and
- other air pollutants that the monitors can measure.

Within two years after initiating the monitoring plan, all data dissemination must be written in the two most prevalent languages spoken in the affected community. The covered facility must also report air pollutants measured by the monitors even if they are not considered air toxics. Covered facilities are required to update and resubmit for division approval their monitoring plans every five years and make hard copies of approved plans publicly available at libraries in the affected communities. Covered facilities will be charged a processing fee to cover the division's indirect and direct costs of reviewing and approving the plan.

**Cumulative impacts.** Covered facilities are required to conduct a cumulative impacts analysis as part of their air pollution permit application. If the division determines that the existing emissions have an unacceptable adverse cumulative impact on any disproportionately impacted community, the division will require a decrease or cessation of the emissions within 90 days.

**Public notice of incidents.** As noted above, the commission will establish a real-time community alert system for air pollutant incidents in rule. Information disseminated by the alert system must be in the two most prevalent languages spoken in the affected community and be available:

- through opt-out text messages and reverse 911 calls;
- to local emergency planning and response organizations and area health agencies, clinics, and hospitals;
- to local governments and the public; and
- to school administrators and parents of school children.

Covered facilities are required to immediately call the incident reporting number, the division, and the Department of Public Safety (DPS). The DPS is required to work with local emergency planning and response organizations to develop a model memorandum of understanding between jurisdictions.

## Background

Based on the 2018 U.S. Environmental Protection Agency's Toxics Release Inventory (TRI), eight stationary sources in Colorado reported at least one air toxic at or above the thresholds in the bill to qualify as covered facilities. These are:

- Clean Harbors - Deer Trail (Hydrogen Flouride)
- EVRAZ Rocky Mountain Steel Mill - Pueblo (Hydrogen Flouride)
- General Shale Brick - Denver (Hydrogen Flouride)
- Goodrich Carbon Operations - Pueblo (Benzene)
- Public Service Co., Comanche Power Plant - Pueblo (Hydrogen Flouride)
- Sinclair Terminal - Henderson (Benzene)
- Suncor Refinery - Commerce City (Hydrogen Cyanide, Hydrogen Sulfide, Benzene)
- Tri-State Generation and Transmission - Craig (Hydrogen Flouride)

## State Revenue

This bill will increase state revenue by \$4,192,605 in FY 2021-22 and \$3,756,914 in FY 2022-23 from fees on covered facilities to recover the costs of implementation. The fees will be set by the commission in rule for deposit into the Stationary Sources Control Fund and are assumed to be based on the type and amount of air toxics emitted by a covered facility. This revenue is subject to TABOR.

## State Expenditures

This bill will increase state expenditures by \$1,875,046 in FY 2020-21 and 13.8 FTE, \$4,192,605 in FY 2021-22 and 22.8 FTE, and \$3,756,914 in FY 2022-23 and 23.7 FTE for the CDPHE. The Department of Public Safety will experience a workload increase. Expenditures for FY 2020-21 will be paid from the General Fund and in subsequent years from the Stationary Sources Control Fund. Expenditures are shown in Table 3 and explained below.

**Table 3  
 Expenditures Under HB 20-1265**

	<b>FY 2020-21</b>	<b>FY 2021-22</b>	<b>FY 2022-23</b>
<b>Department of Public Health and Environment</b>			
Personal Services	\$1,015,170	\$1,833,516	\$1,919,084
Operating Expenses	\$17,685	\$29,700	\$30,915
Capital Outlay Costs	\$80,600	\$55,800	\$6,200
Data Warehouse and Public Portal	-	\$1,219,620	\$719,810
Legal Services	\$326,196	\$155,636	\$155,636
Meeting Costs	\$42,480	\$32,281	\$32,280
Travel	\$42,600	\$39,672	\$41,791
Centrally Appropriated Costs*	\$350,315	\$826,380	\$851,198
FTE – Personal Services	12.1 FTE	22.0 FTE	22.9 FTE
FTE – Legal Services	1.7 FTE	0.8 FTE	0.8 FTE
<b>Total Cost</b>	<b>\$1,875,046</b>	<b>\$4,192,605</b>	<b>\$3,756,914</b>
<b>Total FTE</b>	<b>13.8 FTE</b>	<b>22.8 FTE</b>	<b>23.7 FTE</b>

\* Centrally appropriated costs are not included in the bill's appropriation.

**Administration.** CDPHE will need an increasing number of staff to implement the provisions of the bill. This will include scientists, engineers, environmental protection specialists, statistical analysts, an administrator and support staff. Staffing by year is shown in Table 3 above.

**Rulemaking.** The bill requires six rulemakings over the next three years. These include rules on:

- disproportionately impacted communities;
- monitoring, recordkeeping, and reporting requirements for covered facilities;
- health-based standards;
- real-time community alert system;
- refinery requirements; and
- fees.

Rulemaking will require staff travel, research, data collection, analysis, rule drafting, as well as stakeholder meetings. CDPHE requires 3,060 hours of legal services provided by the Department of Law for rulemaking and general counsel in FY 2020-21 and 1,460 hours in FY 2021-22 and FY 2022-23.

**Covered facility monitoring plans.** CDPHE staff will review draft monitoring plans for completeness and accuracy of required elements, and work with facilities to revise draft plans. They will also hold public meetings, consult with local governments, respond to comments, and post the final plans.

**Permitting.** Beginning in FY 2021-22, staff will begin incorporating approved monitoring plans into operating permit renewals. After health-based standards for covered air toxics are adopted in rule, permits will be reopened and reissued to include the standards.

**Health-based standards resource report.** The Toxicology and Risk Assessment Section in the Disease Control and Environmental Epidemiology Division will develop the technical report for the commission to submit to the General Assembly on the estimated resources needed to promulgate the rules establishing health-based emission limits.

**Compliance and enforcement.** Environmental protection staff will be responsible for compliance oversight and enforcement activities. This will include inspections of covered facilities, review of emissions data, and initiating enforcement actions for violations.

**Data warehouse and public portal.** The Office of Information Technology will develop and maintain a new system for the receipt and storage of data and for making the information accessible to the public. CDPHE staff will provide input on the design of the system. The project will begin in FY 2021-22 with costs of \$1,219,620. Costs in FY 2022-23 are \$719,810. The system will have annual ongoing costs of \$320,000.

**Meeting costs.** Costs for meetings include room rental, security, interpreters, and translation of the documents provided to participants.

**Travel.** Travel includes costs to attend community meetings, make site visits, training, and a leased vehicle. The Department of Personnel and Administration will be reappropriated \$8,000 per year beginning in FY 2020-21.

**Department of Public Safety.** The DPS will have an increase in workload to develop a model memorandum of understanding between adjacent jurisdictions to integrate alert systems to work across jurisdictional boundaries. This workload increase can be accomplished within existing appropriations.

**Centrally appropriated costs.** Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are estimated to be \$350,315 in FY 2020-21, \$826,380 in FY 2021-22, and \$851,198 in FY 2022-23.

**TABOR refund.** The bill is expected to increase state General Fund obligations for TABOR refunds by \$4,192,605 in FY 2021-22. Under current law and the December 2019 Legislative Council Staff forecast, the bill will correspondingly increase the amount refunded to taxpayers via sales tax refunds made available on income tax returns for tax years 2022, respectively. A forecast of state revenue subject to TABOR is not available beyond FY 2021-22.

## Local Government

The bill will increase workload for local jurisdictions to work with the CDPHE and the DPS to coordinate emergency planning and response. Local jurisdictions may also be involved in the development of monitoring plans for covered facilities.

## Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

**State Appropriations**

For FY 2020-21, the bill requires a General Fund appropriation of \$1,524,731 to the Department of Public Health and Environment and 12.1 FTE with funds reappropriated as follows:

- \$326,196 and 1.7 FTE to the Department of Law; and
- \$8,000 to the Department of Personnel and Administration

**Departmental Difference**

The CDPHE identified a fiscal impact for FY 2020-21 of \$5,556,830 and 15.3 FTE. The key difference between this fiscal note and the CDPHE estimate is CDPHE's assumption that the division needs to install monitoring equipment in addition to the equipment the covered facilities must provide. The division estimates that it will operate and maintain 16 monitoring sites, which requires an initial expenditure of \$2,880,000 for monitoring equipment and ongoing costs of \$64,000 per year for maintenance. The bill only requires covered facilities to have monitoring equipment, so these costs were not included in the fiscal note.

**State and Local Government Contacts**

Counties  
Local Affairs  
Public Safety

Information Technology  
Municipalities

Law  
Public Health and Environment