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SB 20- 204

**REVISED
FISCAL NOTE**

(replaces fiscal note dated April 2, 2020)

Drafting Number:	LLS 20-0814	Date:	June 8, 2020
Prime Sponsors:	Sen. Fenberg Rep. Jackson; Caraveo	Bill Status:	House Energy & Environment
		Fiscal Analyst:	Clare Pramuk 303-866-2677 clare.pramuk@state.co.us

Bill Topic: **ADDITIONAL RESOURCES TO PROTECT AIR QUALITY**

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

This bill creates the TABOR-exempt Air Quality Enterprise in the Department of Public Health and Environment to conduct air quality modeling, monitoring, assessment, data analysis, and research, and to provide its data to fee payers and state regulators. The bill also increases revenue to the department from emissions fees to provide additional funding for improvements to air quality. The bill will increase state revenue and expenditures on an ongoing basis.

Appropriation Summary: For FY 2020-21, the bill requires an appropriation of \$10,660 to the Department of Public Health and Environment.

Fiscal Note Status: The fiscal note reflects the reengrossed bill.

**Table 1
State Fiscal Impacts Under SB 20-204**

		FY 2020-21	FY 2021-22
Revenue*	Cash Funds	\$1,596,889	\$3,444,659
Expenditures*	General Fund	\$10,660	-
	Cash Funds	-	\$60,762
Transfers		-	-
TABOR Refund		-	-

* The fiscal note does not include an estimate of the fee revenue and expenditures of the new Air Quality Enterprise, as sufficient information is not known at this time to make an estimate.

Summary of Legislation

This bill creates the TABOR-exempt Air Quality Enterprise (enterprise) in the Department of Public Health and Environment (CDPHE). The bill also increases revenue to the Air Pollution Control Division in the CDPHE from emissions fees to fund new air quality control programs. The enterprise is scheduled for repeal on September 1, 2034, after a sunset review.

Air Quality Enterprise. The enterprise's powers and duties are to:

- conduct science-based, unbiased air quality modeling, monitoring, assessment, data analysis, and research;
- establish and collect fees;
- allocate enterprise revenues and contract for services;
- issue revenue bonds;
- receive fees and other payments for services provided;
- engage the services of contractors, consultants, and legal counsel, for professional and technical assistance, advice, and other goods and services without regard to the state procurement code; and
- promote the development of unbiased, high quality, science and not advocate for or develop air quality policy.

Enterprise fees. The bill creates the continuously appropriated Air Quality Enterprise Cash Fund. The enterprise board may set fees in an amount that reflects the value of services provided in aggregate. Before establishing fees, the board is required to conduct a stakeholder process and will not collect fees prior to July 1, 2021. Fees may be charged:

- per ton of air pollutant emitted by a stationary source annually;
- for custom or additional air quality modeling, monitoring, assessment, or research services; and
- for emission mitigation project services sought by fee payers.

The amount of fees collected are limited to \$1.0 million in FY 2021-22, \$3.0 million in FY 2022-23, \$4.0 million in FY 2023-24, and \$5.0 million for fiscal years commencing on or after July 1, 2024.

Enterprise board. The enterprise will be governed by an ten-member board of directors. The board is required to meet at least quarterly and the appointed members are entitled to receive a \$50 per diem for each day spent attending official board meetings. Board meetings are subject to open meetings requirements.

Reporting. The board is required to report to the General Assembly by December 1 of each year on the board's prioritization of research needs, enterprise accomplishments, services, revenue, expenditures, and the value of business services provided to fee payers.

Stationary source fee increase. For FY 2020-21, the bill increases the fees for:

- filing an air pollutant emission notice or an amendment to the notice;
- annual emissions;
- hazardous air pollutants; and
- application processing fees.

These fees are deposited into the Stationary Sources Control Fund. The Air Quality Control Commission (AQCC) may adjust the fees going forward to cover the indirect and direct costs required to develop and administer the new air quality control programs established under the bill. Only the portion of revenue collected attributable to the increased fees may be used for new programs identified in the bill.

Background

The CDPHE received funding for two budget decision items (R1 and BA3) through the FY 2020-21 Long Bill, which appropriated \$2.0 million cash funds and 18.9 FTE, funded from the Stationary Sources Control Fund. The fiscal note assumes that the new fee revenue to this fund under this bill will be used to fund the decision items. The necessary appropriations are included in the Long Bill, rather than in this bill.

State Revenue

The bill increases state cash fund revenue by at least \$1.6 million in FY 2020-21 and at least \$3.4 million in FY 2021-22. The bill specifies fee increases for FY 2020-21 and FY 2021-22 and grants the AQCC the authority to increase fees in future years. The bill also authorizes the enterprise board of directors to set fees for the enterprise; however, this fee revenue has not been estimated in the fiscal note and will depend on future decisions by the new enterprise on fee and services offered.

Air Quality Enterprise. The bill grants the enterprise authority to assess fees that reflect the value of services provided. A maximum amount for this fee is established in statute, growing from \$1.0 million in FY 2021-22 to \$5.0 million in FY 2024-25 in future years. Actual fees will be established following a stakeholder process, and are not estimated. This revenue is not subject to TABOR.

Fee impact on pollution sources. Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. These fee amounts are set by the bill for FY 2020-21 and FY 2021-22. In future years, fees will be set administratively by the CDPHE based on cash fund balance, estimated program costs, and the estimated number of entities subject to the fee. Table 2 below identifies the fee impact of this bill, which are subject to TABOR.

**Table 2
Fee Impact on Pollution Sources**

Fiscal Year	Type of Fee	Proposed Fee Increase	Number Affected	Total Fee Impact
FY 2020-21	Air pollutant emission notices	\$16.00	9,117	\$145,872
	Per ton fee for regulated pollutants	\$3.37	152,830	\$515,037
	Per ton fee for hazardous pollutants	\$24.87	5,995	\$149,096
	Per-hour permit processing fee	\$12.56	62,650	\$786,884
			FY 2020-21 Total	\$1,596,889
FY 2021-22	Air pollutant emission notices	\$42.00	9,363	\$393,246
	Per ton fee for regulated pollutants	\$7.37	152,728	\$1,125,605
	Per ton fee for hazardous pollutants	\$47.87	5,991	\$286,789
	Per-hour permit processing fee	\$23.44	69,924	\$1,639,019
			FY 2021-22 Total	\$3,444,659

State Expenditures

This bill will increase expenditures in the CDPHE by \$10,660 in FY 2020-21 and \$60,762 per year beginning in FY 2020-21 and future years for administrative expenses associated with the new enterprise. In addition, expenditures will increase within the enterprise to provide services using fees charged to customers of the enterprise. As discussed in the State Revenue section, these expenditures will depend on future decisions of the enterprise board, fees collected, and other information that is unknown at this time. Impacts to the CDPHE and other state agencies are discussed below.

CDPHE. This bill will increase expenditures from the Air Quality Enterprise Cash Fund by \$10,660 in FY 2020-21 and \$60,762 in FY 2021-22 for the Air Quality Enterprise in the CDPHE. The fiscal note assumes that the enterprise will require 100 hours of legal services in FY 2020-21 and 570 hours of legal services per fiscal year beginning in FY 2021-22 at a rate of \$106.60 per hour for rulemaking and legal support. These funds will be reappropriated to the Department of Law for legal services provided to the enterprise. The Department of Law will require 0.3 FTE for this purpose beginning in FY 2021-22. Expenditure increases beyond this will be funded by enterprise revenue and continuously appropriated to the enterprise and not through the annual budget process. These expenditures are not estimated because there is insufficient information in the bill on which to base an estimate.

Other state agencies. State agencies with facilities that are permitted as pollution sources by CDPHE will have an increase in permitting fees under the bill. This increase has not been estimated for the fiscal note.

Local Government and School Districts

Like state government agencies, local government and school district facilities that are permitted as pollution sources by the CDPHE will have increased costs for permitting fees under the bill. This increase has not been estimated for the fiscal note.

Effective Date

The bill takes effect July 1, 2020, and applies to fees paid on or after this date.

State Appropriations

For FY 2020-21, the CDPHE requires a General Fund appropriation of \$10,660, to be reappropriated to the Department of Law .

The fiscal note assumes that appropriations for FY 2020-21 to fund the CDPHE decision items R1 and BA3 will be appropriated in the Long Bill and that no appropriation is required in this bill.

State and Local Government Contacts

Law Public Health and Environment