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Revised Fiscal Note

(replaces fiscal note dated May 21, 2021)

Drafting Number: LLS 21-0472 **Date:** June 7, 2021
Prime Sponsors: Rep. Jackson **Bill Status:** Senate Second Reading
 Sen. Winter; Buckner **Fiscal Analyst:** Christina Van Winkle | 303-866-6289
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Bill Topic: ENVIRONMENTAL JUSTICE DISPROPORTIONATE IMPACTED COMMUNITY

Summary of Fiscal Impact:

- State Revenue
- State Expenditure
- State Transfer
- TABOR Refund
- Local Government
- Statutory Public Entity

This bill creates the environmental justice ombudsperson and advisory board within the Department of Public Health and Environment. It also directs the Air Quality Control Commission (AQCC) to establish a fee on greenhouse gas emissions and to adopt and implement rules limiting greenhouse gas emissions from certain sectors, including potentially through a tradeable emissions credit program. Finally, the bill directs the AQCC to update permitting requirements for sources that affect disproportionately impacted communities, and requires electric utilities to file clean energy plans with the Public Utilities Commission. Beginning in FY 2021-22, it increases state revenue and expenditures on an ongoing basis, and results in an ongoing diversion from the General Fund.

Appropriation Summary: The bill requires an appropriation of \$2.3 million to multiple state agencies.

Fiscal Note Status: This revised fiscal note reflects the reengrossed bill, as amended by the Senate Finance Committee.

Table 1
State Fiscal Impacts Under House Bill 21-1266

		Budget Year FY 2021-22	Out Year FY 2022-23	Out Year FY 2023-24
Revenue	Cash Funds	-	\$3.1 million	\$2.8 million
	Total Revenue	-	\$3.1 million	\$2.8 million
Expenditures	General Fund	\$2,319,079	\$206,138	\$149,500
	Cash Funds	\$377,842	\$2,715,981	\$2,454,213
	Centrally Appropriated	\$323,166	\$997,378	\$877,814
	Total Expenditures	\$3,020,087	\$3,919,497	\$3,481,527
	Total FTE	20.3 FTE	24.5 FTE	20.4 FTE
Diversion	General Fund	(\$400,000)	(\$800,000)	(\$1,200,000)
	Cash Funds	\$400,000	\$800,000	\$1,200,000
	Net Diversion	\$0	\$0	\$0
TABOR Refund		-		-

Summary of Legislation

This bill directs the Air Quality Control Commission (AQCC) within the Department of Public Health and Environment (CDPHE) to update the list of air pollutants that are required to be reported in an air pollutant emission notice (APEN) to include greenhouse gases, and to establish a fee per ton of GHG based on the most recent APEN on file. It also requires electric utilities to submit plans to the Public Utilities Commission (PUC) that includes GHG emission reductions. Lastly, the bill creates an environmental justice ombudsperson and advisory board to promote environmental justice throughout the state, and updates the mission of the Colorado Energy Office. These provisions are described in more detail below.

GHG emissions fee. The bill directs the AQCC to add GHG to the list of air pollutants required to be reported in an APEN by December 31, 2022, and to establish in rule a per-ton fee on GHG emissions in an amount that is sufficient to cover the indirect and direct costs required to develop and administer GHG programs. Fee revenue will be deposited to the Stationary Sources Control Fund and can be used for outreach and engagement with disproportionately impacted communities as well as paying for the environmental justice ombudsperson.

GHG rules and credit trading program. The bill directs the AQCC to promulgate and implement rules that will reduce statewide GHG emissions in the oil and gas sector by 36 percent below 2005 levels by 2025 and 60 percent by 2030, and the manufacturing and industrial sector by 20 percent below 2015 levels by 2030, and authorizes a tradeable GHG credit program. Rules must be promulgated and implemented by January 1, 2022 for the oil and gas sector, and by December 1, 2023 for the industrial and manufacturing sector. The AQCC must adopt rule directing the CDPHE to create a comprehensive accounting system before adopting a rule or program that provides for the use of a trading program.

Social cost of greenhouse gases. The bill directs the AQCC to include the social cost of greenhouse gas emissions in economic impact analyses for rules related to statewide GHG pollution abatement that may materially affect GHG emissions.

GHG inventory. The bill requires the CDPHE, when forecasting GHG emissions, to include a scenario that does not reflect emission reductions projected to occur from a federal, state, or local law, rule, regulation, policy, or program that is not in place as of the date of publication of the inventory.

Electric utilities. The bill requires wholesale generation and transmission electric cooperatives and certain electric utilities to file plans with the Public Utilities Commission (PUC) that will achieve at least an 80 percent reduction by 2030, relative to 2005, in GHG emissions caused by the provision of electricity to customers within the state, including emissions associated with imported electricity. The CDPHE must review and verify emissions reductions associated with the plans. If an electric utility fails to file a plan, or the utility is not achieving the GHG emission reductions reflected in the plan, the AQCC must adopt rules that require an updated plan to be filed that demonstrates achievement of the 2030 targets.

Permitting requirements. The bill directs the AQCC to promulgate rules, by June 1, 2023, that include additional permitting requirements for sources of affected pollutants in disproportionately impacted communities as defined in the bill. The rules must require enhanced modeling and monitoring requirements for new and modified sources of affected pollutants in disproportionately impacted communities, and must identify the types of monitoring technology that can be used. Sources of affected pollutants must pay a processing fee to cover the division's direct and indirect costs of implementing this provision. Fees are deposited to the Stationary Source Control Fund.

Environmental justice ombudsperson. The bill creates the position of an environmental justice ombudsperson within CDPHE, which must provide administrative support to this independent position. The Governor must appoint the ombudsperson no later than February 1, 2022. The ombudsperson is required to:

- collaborate with the environmental justice advisory board to promote environmental justice;
- advocate for and be a liaison to disproportionately impacted communities;
- improve outreach regarding departmental programs;
- enable participation in the decision-making process;
- accept and resolve complaints;
- remove to the extent practicable environmental burdens to disproportionately impacted communities;
- maintain a telephone number, website, email address, and mailing address for complaints and inquiries; and
- advise other state agencies in engaging with disproportionately impacted communities.

Environmental Justice Advisory Board. The bill creates the Environmental Justice Advisory Board in CDPHE to serve in an advisory capacity to the ombudsperson. The twelve-member board will be appointed by the Governor and leadership of the General Assembly and must represent the geographic, racial, and ethnic diversity of the state and have experience with environmental issues. The executive director of CDPHE or a designee will serve as a nonvoting member. Voting members of the board are authorized to receive a per diem of \$200 for regularly scheduled meetings, and reimbursement for actual and necessary expenses. The board must meet at least once every quarter. The advisory board is repealed effective September 1, 2027, following a sunset review.

Environmental Mitigation Project Grant Program. In addition to the duties outlined in the bill, the advisory board must develop guidelines for and support the implementation of an Environmental Mitigation Project Grant Program from funds credited to the Community Impact Cash Fund, created in the bill. The Community Impact Cash Fund consists of money credited to the fund from the receipts of certain fines and penalties collected, and any other money the General Assembly appropriates or transfers to the fund. See State Diversions section for detail on penalty revenue diverted to the fund. Beginning in FY 2022-23, CDPHE may expend money from the fund to provide environmental mitigation project grants, and to pay for the direct and indirect costs of the Environmental Justice Advisory Board, and the department's costs for administering the program.

Colorado Energy Office. The bill changes the mission of the Colorado Energy Office to include support to Colorado's transition to a more equitable, low-carbon, and clean energy economy, and to promote an equitable transition to transportation electrification, zero emission vehicles, transportation systems, and land use patterns that reduce energy use and greenhouse gas emissions.

Air Quality Control Commission Engagement. The bill requires the AQCC to engage with disproportionately impacted communities, as defined in the bill, regarding rule-making proceedings, licensing proceedings, and adjudicatory hearings. Specifically, the bill requires the AQCC to:

- schedule public input meetings at variable times and days of the week;
- provide notice at least 30 days prior to a public comment period or public meetings;
- use multiple methods of outreach;
- provide multiple methods for public input;
- consider a variety of locations for public input on the proposed state action; and
- provide information concerning the proposed state action in the top two languages spoken in the disproportionately impacted community.

State Revenue

Beginning in FY 2022-23, revenue will increase revenue to the Stationary Sources Control Fund in the CDPHE from GHG emissions fees and processing fees.

Fee impact on stationary sources. Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. GHG fee revenue to the Stationary Source Control Fund is anticipated to increase by around \$3.1 million per year beginning in FY 2022-23 to cover costs associated with programs related to GHG emissions, engagement with disproportionately impacted communities, and the environmental justice ombudsperson, and is subject to TABOR. These fee amounts are estimates, and will be set administratively by the CDPHE based on cash fund balance, estimated program costs, the estimated number of stationary sources subject to the fee, and current emissions levels. The fees will be paid by up to 18,000 regulated stationary source facilities. Processing fee revenue to the Stationary Sources Control Fund is expected to increase by \$138,930 in FY 2022-23 to cover the costs associated with implementing rules related to permitting of affected sources. The table below identifies the approximate fee impact of this bill.

Table 2
Fee Impact Under HB 21-1266

Fee Type	Fund	FY 2021-22	FY 2022-23	FY 2023-24
GHG Emissions Fee	Stationery Sources Control Fund	-	\$3.0 million	\$2.8 million
Processing Fee	Stationery Sources Control Fund	-	\$0.1 million	-
Total			\$3.1 million	\$2.8 million

State Diversions

It is assumed that the CDPHE collects, on average, approximately \$2.0 million per year in penalty revenue. The bill diverts penalty revenue collected by the Air Quality Control Division from the General Fund to the Community Impact Cash Fund, as follows:

- 20 percent in FY 2021-22, resulting in a diversion of approximately \$400,000;
- 40 percent in FY 2022-23, resulting in a diversion of approximately \$800,000;
- 60 percent in FY 2023-24, resulting in a diversion of approximately \$1,200,000;
- 80 percent in FY 2024-25, resulting in a diversion of approximately \$1,600,000; and
- 100 percent in FY 2025-26 and ongoing, resulting in a diversion of approximately \$2,000,000.

Actual diversions of revenue to the Community Impact Fund will vary year-to-year based on actual penalties assessed and collected.

State Expenditures

The bill increases expenditures from multiple fund sources by \$3,020,087 and 20.3 FTE in FY 2021-22 and \$3,919,496 and 24.5 FTE in FY 2022-23. These costs are shown in Table 3 and discussed below.

**Table 3
Expenditures in Under HB 21-1266**

Cost Components	FY 2021-22	FY 2022-23	FY 2023-24
Department of Public Health and Environment			
<i>GHG fees and CEP review</i>			
Personal Services	\$305,086	\$489,983	\$378,951
Operating Expenses	\$5,805	\$8,505	\$5,670
Capital Outlay Costs	\$24,800	-	-
Technology Costs	\$252,000	\$47,955	-
Centrally Appropriated Costs ¹	\$66,604	\$219,355	\$155,135
FTE – Personal Services	3.9 FTE	6.3 FTE	4.2 FTE
GHG Fee Subtotal	\$654,295	\$765,797	\$539,756
<i>Permitting</i>			
Personal Services	-	\$92,500	-
Operating Expenses	-	\$1,350	-
Capital Outlay Costs	-	\$6,200	-
Centrally Appropriated Costs ¹	-	\$38,880	-
FTE – Personal Services	-	1.0 FTE	-
Permitting Subtotal	-	\$138,930	-
<i>Environmental Justice Ombudsperson</i>			
Personal Services	\$82,641	\$246,115	\$246,115
Operating Expenses	\$1,755	\$4,455	\$4,455
Capital Outlay Costs	\$18,600	-	-
Meeting and Travel Costs	\$221,172	\$221,172	\$221,172
Communication Materials	\$33,750	\$33,750	\$33,750

Cost Components	FY 2021-22	FY 2022-23	FY 2023-24
Legal Services	\$276,380	\$276,380	\$276,484
Centrally Appropriated Costs ¹	\$17,477	\$215,552	\$215,573
FTE – Personal Services	1 FTE	3.3 FTE	3.3 FTE
FTE – Legal Services	1.4 FTE	1.4 FTE	1.4 FTE
EJ Ombudsperson Subtotal	\$651,775	\$997,424	\$997,549
<i>Environmental Justice Advisory Board</i>			
Personal Services	\$347,372	\$378,951	\$378,951
Operating Expenses	\$5,670	\$5,670	\$5,670
Capital Outlay Costs	\$24,800	-	-
Centrally Appropriated Costs ¹	\$70,430	\$155,135	\$155,135
FTE – Personal Services	3.9 FTE	4.2 FTE	4.2 FTE
EJ Advisory Board Subtotal	\$448,272	\$539,756	\$539,756
<i>AQCC Community Engagement</i>			
Personal Services	\$88,898	\$96,979	\$96,979
Operating Expenses	\$1,755	\$1,755	\$1,755
Capital Outlay Costs	\$6,200	-	-
Intepretation and Translation Services	\$24,000	\$24,000	\$24,000
Public Meeting and Communications Materials	\$73,600	\$73,600	\$73,600
Travel Costs	\$3,238	\$3,238	\$3,238
Centrally Appropriated Costs ¹	\$21,043	\$50,414	\$50,414
FTE – Personal Services	1.3 FTE	1.3 FTE	1.3 FTE
AQCC Subtotal	\$218,734	\$249,986	\$249,986
<i>GHG Rules and Credit Trading Program</i>			
Personal Services	\$593,546	\$647,505	\$647,505
Operating Expenses	\$9,450	\$9,450	\$9,450
Capital Outlay Costs	\$43,400	\$0	\$0
Legal Services	\$106,300	\$106,340	\$106,340
Centrally Appropriated Costs ¹	\$117,705	\$285,053	\$285,062
FTE – Personal Services	6.4 FTE	7 FTE	7 FTE
FTE – Legal Services	0.6 FTE	0.6 FTE	0.6 FTE
GHG Rules and Trading Subtotal	\$870,401	\$1,048,348	\$1,048,357
CDPHE Subtotal	\$2,843,477	\$3,740,241	\$3,375,403
FTE - Personal Services	16.5 FTE	22.5 FTE	19.4 FTE
FTE - Legal Services	2.0 FTE	2.0 FTE	2.0 FTE
<i>Colorado Energy Office</i>			
Personal Services	\$131,603	\$143,566	\$71,783
Operating Expenses	\$2,700	\$2,700	\$1,350
Capital Outlay Costs	\$12,400	-	\$16,495
Centrally Appropriated Costs ¹	\$29,907	\$32,990	\$16,495
FTE – Personal Services	1.8 FTE	2 FTE	1 FTE
CEO Subtotal	\$176,610	\$179,256	\$106,124
Total	\$3,020,087	\$3,919,497	\$3,481,527
FTE	20.3 FTE	24.5 FTE	20.4 FTE

Department of Public Health and Environment. The CDPHE requires the following resources to fulfill the bill's requirements. Standard operating and capital outlay costs have been included for all FTE.

- **GHG fee implementation.** The CDPHE requires 4.0 FTE in FY 2021-22 and 6.0 FTE in 2022-23 and ongoing to promulgate rules and develop systems to facilitate reporting and annual billing for GHG emission fees. In addition to staffing, the CDPHE will require technology upgrades and programming to capture GHG data to facilitate annual billing. Funding for technology costs, as shown in Table 3, is reappropriated to the Office of Information Technology, except for \$12,358 in the first year that will be used by CDPHE for staff to oversee application development.
- **Review energy plans.** The CDPHE requires 0.3 FTE starting in FY 2021-22 to review responsible energy plans and clean energy plans to incorporate reductions into current rules.
- **Permitting.** The CDPHE requires 1.0 FTE in FY 2022-23 to support the rulemaking related to permit requirements for sources of affected pollutants in disproportionately impacted communities.
- **Environmental Justice Ombudsperson.** The CDPHE will require 1.0 FTE to fill the ombudsperson position and 2.0 FTE support staff beginning February 2022. Staff will provide support facilitating meetings, processing complaints, and providing interpretation and translation services. Contractor services may be utilized for additional interpreter services when needed. The CDPHE will also require 0.1 FTE Accountant and 0.1 FTE Human Resources Specialist beginning in February 2022, increasing to 0.5 FTE in FY 2022-23, to review complaints that involve state personnel. This is consistent with other practices, such as complaints submitted through the Department's Fraud Abuse Hotline.

The CDPHE will also incur travel and other community engagement-related costs associated with the ombudsperson. Travel costs include overnight stays and meal per diems, amounting to approximately \$39,000 per year. Facility rental, child care services, and interpreter and translation services are estimated at around \$142,000 per year for the 45 anticipated larger community events (25 percent of total community engagements per year). To support the diverse communication methods required by the bill, the CDPHE will also produce printed communications materials in the form of postcards, flyers, and newsletters. Publication and distribution costs are estimated at \$33,750 annually for the 45 larger community events anticipated.

It is anticipated that the ombudsperson and environmental justice advisory board will also require legal support during the course of its work and during the quarterly meetings. In total, an estimated 2,600 hours of legal services from the Department of Law and 1.4 FTE are required on an annual basis.

- **Environmental Justice Advisory Board.** This fiscal note assumes that the Environmental Justice Advisory Board will meet for two days quarterly at different locations in the state. Travel costs including overnight stays and meal per diems for advisory board members and an administrator amount to approximately \$25,000 per year. The CDPHE will require 1.0 FTE to serve as the Environmental Justice Advisory Board administrator to develop the work products for consideration by the ombudsperson. An additional 0.2 FTE is required to support the quarterly

meetings. This fiscal note estimates that the advisory board will regularly seek information and technical assistance from the CDPHE's environmental health and protection divisions in the study and research of environmental effects on disproportionately impacted communities, requiring 3.0 FTE Environmental Protection Specialists. This fiscal note assumes that administrative staff to support the advisory board may also support the Environmental Justice Task Force created in the bill.

- **Grant program.** The advisory board will also develop and implement a grant program with fine and penalty revenue diverted to the newly created Community Impact Cash Fund. The amount of revenue remaining after this cash fund is used to cover expenditures for the Environmental Justice Advisory Board will be available to administer the Environmental Mitigation Project Grant Program. It is assumed that grants will begin in FY 2022-23 once enough revenue accrues to the fund to begin providing grants and that spending authority will be requested through the annual budget process based on available funding.
- **Air Quality Control Commission engagement.** The bill increases expenditures by \$218,734 in FY 2021-22 and \$249,986 in FY 2022-23 with 1.3 FTE for the community engagement component of the bill. Expenditures in FY 2021-22 will be paid from the General Fund and beginning in FY 2022-23, will be split between the General Fund (30 percent) and the Stationary Sources Control Fund (70 percent). This fund split acknowledges that a portion of AQCC actions are not related to stationary sources (e.g. transportation). The fiscal note assumes that the AQCC will propose eight state actions per year, including rulemaking and adjudicatory hearings, which will impact disproportionately impacted communities, necessitating AQCC outreach as prescribed in the bill. For each hearing, the fiscal note assumes that the AQCC will host 3 public comment sessions, resulting in 24 outreach sessions. Staff workload consists of administrative and management support to coordinate the meetings, attend meetings, and provide follow-up related to the sessions. This includes having an environmental protection specialist participate in the outreach sessions and develop revisions to the proposed state actions based upon community input. Outreach sessions will also incur meeting-related expenses, including translation and interpretation services, facility rental, child care, and printed communication materials. These costs are estimated at \$97,600 annually.
- **GHG rules and credit trading program.** The CDPHE will require 7.0 FTE to support the AQCC in developing the GHG emission reduction rules and the GHG credit trading program from the oil and gas sector and the industrial and manufacturing sectors by the dates specified in the bill. Rules must ensure that the oil and gas sector reduce GHG emissions by 36 percent by 2025, compared to 2005, and that the manufacturing and industrial sector reduce GHG emissions by 20 percent by 2030, compared to 2015. Costs in FY 2022-23 and ongoing can be recovered through the GHG emissions fees, but costs in FY 2021-22 will be paid from the General Fund. These staffing resources are estimates only, once the CDPHE begins to craft rules and gain a better understanding of the staffing and resource needs, these costs may be adjusted through the supplemental or annual budget process.

- **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 reflected in the table above.

Colorado Energy Office. The Colorado Energy Office requires 2.0 FTE to engage in all rulemakings and plan filings related to the PUC and AQCC. Costs are shown in Table 3 above.

Office of the State Auditor. The Office of the State Auditor is required to conduct performance audits of the PUC's implementation of the best value employment metrics requirements outlined in the bill. This fiscal note assumes that these audits can be accommodated in the existing audit plan.

TABOR refunds. The bill increases state revenue subject to TABOR. For FY 2022-23, the March 2021 LCS forecast projects revenue to fall short of the TABOR limit by \$28.6 million, or 0.2 percent of the limit. If actual revenue exceeds the limit, the bill will increase the amount required to be refunded to taxpayers from the General Fund in FY 2023-24.

Federal ARPA funds. This bill increases state revenue, which may impact the state's flexibility in spending federal American Rescue Plan Act (ARPA) funds. For more information, see the LCS memo, titled "Legislative Changes and Flexibility in Use of American Rescue Plan Funds," available online at: <https://leg.colorado.gov/node/2211881>.

Effective Date

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

State Appropriations

For FY 2021-22, the bill requires appropriations as follows:

- \$2,172,376 and 16.5 FTE to the Colorado Department of Public Health and Environment from the General Fund, of which \$382,680 and 2.0 FTE is reappropriated to the Department of Law, and \$239,642 is reappropriated to the Office of Information Technology;
- \$377,842 and 3.9 FTE to the Colorado Department of Public Health and Environment from the Community Impact Control Fund; and
- \$146,703 and 1.8 FTE to the Colorado Energy Office from the General Fund.

State and Local Government Contacts

Colorado Energy Office	Information Technology	Law
Public Health and Environment	Regulatory Agencies	