

Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO

REENGROSSED

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

LLS NO. 20-0275.01 Thomas Morris x4218

HOUSE BILL 20-1143

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A BILL FOR AN ACT

101 **CONCERNING ADDITIONAL PUBLIC HEALTH PROTECTIONS REGARDING**
102 **ALLEGED ENVIRONMENTAL VIOLATIONS, AND, IN CONNECTION**
103 **THEREWITH, RAISING THE MAXIMUM FINES FOR AIR QUALITY**
104 **AND WATER QUALITY VIOLATIONS.**

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>.)

Current state law sets the maximum civil fine for most air quality violations at \$15,000 per day and most water quality violations at \$10,000 per day, but federal law allows the federal environmental protection

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.

HOUSE
3rd Reading Unamended
June 5, 2020

HOUSE
Amended 2nd Reading
June 4, 2020

agency to assess a maximum daily fine per violation of \$47,357 for these violations. **Sections 2 and 4** of the bill raise the maximum fine to \$47,357 per day and direct the air quality control commission and the water quality control commission in the department of public health and environment (department) to annually adjust the maximum fine based on changes in the consumer price index.

Current law allocates all water quality fines to the water quality improvement fund; **section 4** authorizes the use of money in that fund to pay for projects addressing impacts to environmental justice communities. Section 4 also extends the repeal date for the water quality improvement fund to September 1, 2025.

Current law allocates all air quality fines to the general fund; **section 3** allocates them to the newly created community impact cash fund. Section 3 also:

- ! Specifies that the department is to use money in the community impact cash fund for environmental mitigation projects (EMPs);
- ! Defines an EMP as a project that avoids, minimizes, or mitigates the adverse effects of a violation or alleged violation of the air quality or water quality laws;
- ! Creates the environmental justice advisory board to recommend EMPs in response to violations or alleged violations that affect environmental justice communities; and
- ! Creates an environmental justice ombudsperson position within the department, who serves as chief staff to the advisory board and advocates for environmental justice communities.

Section 3 also requires the department to post proposed EMPs on the department's website in a format that allows the public to submit comments on the proposed EMP, not approve an EMP until at least 45 days after the EMP has been posted on its website, and include a description of all approved EMPs in its departmental SMART Act presentations.

Section 1 sunsets the advisory board on September 1, 2025.

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

2 **SECTION 1.** In Colorado Revised Statutes, 25-7-122, **amend** (1)
3 introductory portion, (1)(b), and (1)(d) as follows:

4 **25-7-122. Civil penalties - rules.** (1) Upon application of the
5 division, penalties as determined under this ~~article~~ **ARTICLE 7** may be

1 collected by the division by action instituted in the district court for the
2 district in which is located the air pollution source affected in accordance
3 with the following provisions:

4 (b) Any person who violates any requirement or prohibition of an
5 applicable emission control regulation of the commission, the state
6 implementation plan, a construction permit, any provision for the
7 prevention of significant deterioration under part 2 of this ~~article~~ ARTICLE
8 7, any provision related to attainment under part 3 of this ~~article~~ ARTICLE
9 7, or any provision of section 25-7-105, 25-7-106, 25-7-106.3,
10 25-7-106.8, ~~25-7-106.9~~, 25-7-108, 25-7-109, 25-7-111, 25-7-112,
11 25-7-113, 25-7-114.2, 25-7-114.5, 25-7-118, 25-7-206, 25-7-403,
12 25-7-404, 25-7-405, 25-7-407, 42-4-403, 42-4-404, 42-4-405, 42-4-406,
13 42-4-407, 42-4-409, 42-4-410, or 42-4-414 C.R.S., ~~shall be~~ IS subject to
14 a civil penalty of not more than ~~fifteen~~ FORTY-SEVEN thousand THREE
15 HUNDRED FIFTY-SEVEN dollars per day for each day of ~~such~~ THE violation;
16 except that:

17 (I) ON OR BEFORE DECEMBER 31, 2021, THE COMMISSION SHALL,
18 BY RULE, ANNUALLY ADJUST THE AMOUNT OF THE MAXIMUM CIVIL
19 PENALTY BASED ON THE PERCENTAGE CHANGE IN THE UNITED STATES
20 DEPARTMENT OF LABOR'S BUREAU OF LABOR STATISTICS CONSUMER PRICE
21 INDEX FOR DENVER-AURORA-LAKEWOOD FOR ALL ITEMS AND ALL URBAN
22 CONSUMERS, OR ITS SUCCESSOR INDEX; AND

23 (II) ~~There shall be no~~ Civil penalties SHALL NOT BE assessed or
24 collected against persons who violate emission regulations promulgated
25 by the commission for the control of odor until a compliance order issued
26 pursuant to section 25-7-115 and ordering compliance with the odor
27 regulation has been violated.

1 (d) Any person who violates any requirement, prohibition, or
2 order respecting an operating permit issued pursuant to section
3 25-7-114.3, including ~~but not limited to~~ failure to obtain such a permit,
4 ~~or to operate in compliance with any term or condition thereof~~ OF THE
5 PERMIT, or to pay the permit fee required under section 25-7-114.7 (2), or
6 WHO commits a violation of section 25-7-109.6 ~~shall be~~ IS subject to a
7 civil penalty of not more than ~~fifteen~~ FORTY-SEVEN thousand THREE
8 HUNDRED FIFTY-SEVEN dollars per day for each violation; EXCEPT THAT,
9 ON OR BEFORE DECEMBER 31, 2021, THE COMMISSION SHALL, BY RULE,
10 ANNUALLY ADJUST THE AMOUNT OF THE MAXIMUM CIVIL PENALTY BASED
11 ON THE PERCENTAGE CHANGE IN THE UNITED STATES DEPARTMENT OF
12 LABOR'S BUREAU OF LABOR STATISTICS CONSUMER PRICE INDEX FOR
13 DENVER-AURORA-LAKEWOOD FOR ALL ITEMS AND ALL URBAN
14 CONSUMERS, OR ITS SUCCESSOR INDEX.

15 **SECTION 2.** In Colorado Revised Statutes, 25-8-608, **amend** (1)
16 introductory portion and (1.7)(d)(II) as follows:

17 **25-8-608. Civil penalties - rules - fund created - temporary**
18 **moratorium on penalties for minor violations - definitions - repeal.**

19 (1) ~~Except as otherwise provided in subsection (3) of this section, any A~~
20 ~~person who violates any provision of this article or of any~~ THIS ARTICLE
21 ~~8, A permit issued under this article, or any~~ ARTICLE 8, A control
22 ~~regulation promulgated pursuant to this article~~ ARTICLE 8, or ~~any~~ A final
23 ~~cease-and-desist order or clean-up order shall be~~ IS subject to a civil
24 ~~penalty of not more than ten~~ FIFTY-FOUR thousand EIGHT HUNDRED
25 ~~THIRTY-THREE~~ dollars per day ~~for each day during which such~~ PER
26 ~~violation; occurs~~ EXCEPT THAT, ON OR BEFORE DECEMBER 31, 2021, THE
27 COMMISSION SHALL, BY RULE, ANNUALLY ADJUST THE AMOUNT OF THE

1 MAXIMUM CIVIL PENALTY BASED ON THE PERCENTAGE CHANGE IN THE
2 UNITED STATES DEPARTMENT OF LABOR'S BUREAU OF LABOR STATISTICS
3 CONSUMER PRICE INDEX FOR DENVER-AURORA-LAKEWOOD FOR ALL
4 ITEMS AND ALL URBAN CONSUMERS, OR ITS SUCCESSOR INDEX. In
5 determining the amount of a penalty under this part 6, the following
6 factors shall be considered:

7 (1.7) (d) (II) This subsection (1.7)(d) is repealed, effective
8 September 1, 2021 2025.

9 **SECTION 3.** In Colorado Revised Statutes, 25-8-609, amend (2),
10 (3) introductory portion, (3)(a), and (3)(b) as follows:

11 **25-8-609. Criminal pollution - penalties.** (2) Prosecution under
12 ~~paragraph (a) of subsection (1) of this section shall be commenced only~~
13 ~~upon complaint filed~~ REQUEST by the division or a peace officer, WHO
14 MUST PRESENT EVIDENCE BASED ON REASONABLE SUSPICION TO EITHER
15 THE ATTORNEY GENERAL OR A DISTRICT ATTORNEY FOR THE DISTRICT IN
16 WHICH AN ALLEGED VIOLATION OCCURS. NO CRIMINAL VIOLATION WILL BE
17 CHARGED WITHOUT PROBABLE CAUSE.

18 (3) Any person who commits criminal pollution of state waters
19 shall be ~~fined, for each day the violation occurs,~~ PENALIZED as follows:

20 (a) ~~If the~~ FOR A violation is committed with criminal negligence
21 or recklessly, as BOTH TERMS ARE defined in section 18-1-501, C.R.S., the
22 VIOLATOR IS GUILTY OF A MISDEMEANOR, PUNISHABLE BY A maximum
23 fine ~~shall be twelve~~ OF TWENTY-FIVE thousand ~~five hundred~~ dollars PER
24 DAY FOR EACH DAY THE VIOLATION OCCURS, IMPRISONMENT OF UP TO
25 THREE HUNDRED SIXTY-FOUR DAYS, OR BOTH.

26 (b) ~~If the~~ FOR A violation is committed knowingly or intentionally,
27 as BOTH TERMS ARE defined in section 18-1-501, C.R.S., the VIOLATOR IS

1 GUILTY OF A CLASS 5 FELONY AND, NOTWITHSTANDING SECTION
2 18-1.3-401, UPON CONVICTION THEREOF, SHALL BE PUNISHED BY A
3 maximum fine ~~shall be twenty-five~~ OF FIFTY thousand dollars PER DAY
4 FOR EACH DAY THE VIOLATION OCCURS, IMPRISONMENT OF UP TO THREE
5 YEARS, OR BOTH.

6 **SECTION 4.** In Colorado Revised Statutes, **amend** 25-8-610 as
7 follows:

8 **25-8-610. Falsification and tampering - penalties.** (1) Any
9 person who knowingly makes any MATERIAL false statement,
10 representation, or certification in any application, record, report, plan, or
11 other document filed or required to be maintained under this ~~article~~
12 ARTICLE 8 or who falsifies, tampers with, or knowingly renders inaccurate
13 any monitoring device or method required to be maintained under this
14 ~~article~~ ARTICLE 8 is guilty of a ~~misdemeanor~~ CLASS 5 FELONY and, upon
15 conviction thereof, shall be punished by a fine of not more than ten
16 thousand dollars, or by imprisonment in the county jail for not more than
17 six months, or by both such fine and imprisonment AS SPECIFIED IN
18 SECTION 18-1.3-401.

19 (2) PROSECUTION UNDER THIS SECTION SHALL BE COMMENCED
20 UPON REQUEST BY THE DIVISION OR A PEACE OFFICER, WHO MUST PRESENT
21 EVIDENCE BASED ON REASONABLE SUSPICION TO EITHER THE ATTORNEY
22 GENERAL OR A DISTRICT ATTORNEY FOR THE DISTRICT IN WHICH AN
23 ALLEGED VIOLATION OCCURS. NO CRIMINAL VIOLATION WILL BE CHARGED
24 WITHOUT PROBABLE CAUSE.

25 (3) IF TWO SEPARATE OFFENSES UNDER THIS SECTION OCCUR IN
26 TWO SEPARATE OCCURRENCES DURING A PERIOD OF TWO YEARS,
27 NOTWITHSTANDING SECTION 18-1.3-401, THE MAXIMUM FINE AND PERIOD

1 OF IMPRISONMENT FOR THE SECOND OFFENSE ARE DOUBLE THE AMOUNTS
2 SPECIFIED IN SECTION 18-1.3-401.

3 ~~(2)~~ (4) Any penalty collected under this section shall be credited
4 to the general fund.

5 **SECTION 5. Potential appropriation.** Pursuant to section
6 2-2-703, C.R.S., any bill that results in a net increase in periods of
7 imprisonment in state correctional facilities must include an appropriation
8 of money that is sufficient to cover any increased capital construction, any
9 operational costs, and increased parole costs that are the result of the bill
10 for the department of corrections in each of the first five years following
11 the effective date of the bill. Because this act may increase periods of
12 imprisonment, this act may require a five-year appropriation.

13 **SECTION 6. Applicability.** This act applies to conduct
14 occurring, including fines assessed, on or after the effective date of this
15 act.

16 **SECTION 7. Safety clause.** The general assembly hereby finds,
17 determines, and declares that this act is necessary for the immediate
18 preservation of the public peace, health, or safety.