



Legislative
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HB 20-1143

**REVISED
FISCAL NOTE**

(replaces fiscal note dated February 25, 2020)

Drafting Number: LLS 20-0275	Date: March 25, 2020
Prime Sponsors: Rep. Jackson; Gonzales-Gutierrez Sen. Winter	Bill Status: House Appropriations
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Bill Topic: **ENVIRONMENTAL JUSTICE AND PROJECTS INCREASE ENVIRONMENTAL FINES**

Summary of Fiscal Impact:

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

The bill increases the maximum per day fine for air and water quality violations, and creates an environmental justice ombudsman and environmental justice advisory board to identify and advocate for environmental mitigation projects. The bill increases state revenue and expenditures on an ongoing basis.

Appropriation Summary: The bill requires an appropriation of \$1,902,298 to the Department of Public Health and Environment in FY 2020-21.

Fiscal Note Status: This revised fiscal note reflects the introduced bill, as amended by the House Energy and Environment Committee and House Finance Committee.

**Table 1
State Fiscal Impacts Under HB 20-1143**

		FY 2020-21	FY 2021-22	FY 2022-23
Revenue	Cash Funds	\$537,479	\$1,506,978	\$2,938,678
	Total	\$537,479	\$1,506,978	\$2,938,678
Expenditures	Cash Funds	\$1,902,298	\$2,879,195	\$4,260,545
	Centrally Appropriated	\$191,881	\$184,483	\$234,832
	Total	\$2,094,179	\$3,063,678	\$4,495,377
	Total FTE	3.6 FTE	3.9 FTE	4.8 FTE
Diversions	General Fund	(\$1,556,700)	(\$1,556,700)	(\$1,556,700)
	Cash Funds	\$1,556,700	\$1,556,700	\$1,556,700
	Total	\$0	\$0	\$0
TABOR Refund		-	-	-

Summary of Legislation

The bill increases the maximum daily fine for air quality violations from \$15,000 to \$47,357 and for water quality violations from \$10,000 to \$54,833. The maximum daily fine will be adjusted for inflation annually based on the Consumer Price Index. The bill directs all revenue from air quality violations to the newly created Community Impact Cash Fund, rather than the General Fund. Revenue from water quality violations continue to be deposited into the Water Quality Improvement Fund (WQIF), which is newly authorized to fund environmental mitigation projects (EMPs), and the repeal date for the WQIF is extended to September 1, 2025.

The bill creates the Environmental Justice Ombudsman (ombudsman) position, and the newly created Environmental Justice Advisory Board (EJAB) within the Department of Public Health and Environment (CDPHE). Appointments to the EJAB and their first meeting must occur by January 1, 2021.

Funds deposited into the Community Impact Cash Fund may be used to finance the direct and indirect costs of EMPs, the ombudsman position, and the EJAB. The ombudsman serves as chief staff to the EJAB and advocates for environmental justice communities. EMPs are projects that avoid, minimize, or mitigate the adverse effects of an air or water quality violation or other cumulative environmental impact. Funding is directed to projects that directly address the environmental justice communities that were harmed by violations, or to address public health or environmental effects in connection with violations. Environmental justice communities are defined as:

- communities where residents are predominantly minorities or have low income;
- have been excluded from the environmental policy-setting process;
- are subject to a disproportionate impact from one or more environmental hazards; or
- experience disparate implementation of environmental regulations, requirements, practices, and activities.

The EJAB has the following responsibilities:

- advise the CDHPE on the identification of environmental justice communities;
- recommend EMPs to the CDPHE in response to violations that occur in or directly affect environmental justice communities;
- develop procedures for soliciting, evaluating, and recommending EMPs that address environmental violations in environmental justice communities;
- submit an annual report including a description of all EMPs recommended by the EJAB; and
- make recommendations to advance the CDPHE's efforts in incorporating principles of environmental justice.

Background and Assumptions

Most enforcement settlements pursued by CDPHE include monetary penalties, and in some cases supplemental environmental projects (SEPs) may be used to mitigate a portion of the monetary penalty. SEPs are projects funded by the regulated entity that benefit the environment or public health. The Supplemental Environmental Projects Coordinator, within the Division of Environmental Health and Sustainability, works with CDPHE enforcement staff, the regulated entity, and third party recipients to identify and negotiate SEPs. Currently, SEP costs account for approximately 30 percent of total penalties.

The bill increases the maximum daily fine for air and water quality violations by approximately 320 percent and 550 percent, respectively. However, due to lags in implementation and agency discretion, this fiscal note assumes that fine revenue will increase incrementally over the next three years. Additionally, some portion of fines will be assessed at rates below the maximum allowable fine due to mitigating circumstances. Therefore, fine revenue is assumed to increase by 10 percent in FY 2020-21, 50 percent in FY 2021-22, and 100 percent in FY 2022-23. Additionally, due to the required inflation adjustment for these fines, it is assumed that the maximum allowable fine will increase by 2.7 percent each year for the next 3 years.

State Revenue

Revenue will increase by \$537,479 in FY 2020-21, \$1,506,978 in FY 2021-22, and \$2,938,678 in FY 2022-23, as shown in Table 2 below. Revenue is expected to level off in FY 2022-23 as the increased fines are fully phased in. The additional revenue from water quality violations is subject to TABOR, while revenue from air quality violations is considered a damage award, and therefore not subject to TABOR.

Table 2
Revenue Under HB 20-1143

	FY 2020-21	FY 2021-22	FY 2022-23
Air Quality Violation Fines	\$377,764	\$841,396	\$1,640,762
Water Quality Violation Fines	\$159,715	\$665,582	\$1,297,916
Total Revenue	\$537,479	\$1,506,978	\$2,938,678

State Diversions

This bill diverts \$1,556,700 from the General Fund beginning in FY 2020-21. This occurs because revenue from air quality violation fines will be deposited into the Community Impact Fund rather than the General Fund going forward.

State Expenditures

State cash fund expenditures will increase by \$2,094,179 and 3.6 FTE in FY 2020-21, by \$3,063,678 and 3.9 FTE in FY2021-22, and by \$4,495,377 and 4.8 FTE in FY 2022-23, as shown in Table 3 and discussed below.

**Table 3
 Expenditures Under HB 20-1143**

	FY 2020-21	FY 2021-22	FY 2022-23
Department of Public Health and Environment			
Personal Services	\$251,233	\$273,759	\$325,740
Operating Expenses	\$4,860	\$5,265	\$6,480
Capital Outlay Costs	\$24,800	-	-
Travel Expenses	\$6,952	\$12,898	\$12,898
Language Services	\$6,380	\$6,380	\$6,380
GIFTs Licenses	\$5,840	\$5,840	\$5,840
EMP Grants	\$1,602,233	\$2,575,053	\$3,903,207
Centrally Appropriated Costs*	\$191,881	\$184,483	\$234,832
	FTE	3.6 FTE	3.9 FTE
Total Cost	\$2,094,179	\$3,063,678	\$4,495,377

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

Staffing costs. The CDPHE requires an increase in staff to implement the bill. The following staff will begin July 1, 2020:

- program manager to oversee the Community Impact Fund, and supervise the staff;
- program administrator to conduct financial risk assessments, route contracts, maintain records, and authorize reimbursements; and
- public health and community outreach professional to implement best practices for community engagement, soliciting community input, and administering public hearings.

The following staff are expected to begin October 1, 2020, and their personal services costs have been prorated to reflect that date:

- environmental justice ombudsman to serve as a community liaison and advocate, support the EJAB, and coordinate with other CDPHE divisions and other state agencies on environmental justice issues;
- grants specialists to develop requests for applications and statements of work for EMPs, monitor contracts, support the EJAB and develop annual reports; and
- accountant to process requests for applications and grant management.

Environmental Mitigation Projects. Expenditures for EMP grants are equal to the total revenue from air and water quality violations less the administrative costs of the program. EMP grants increase from 1.6 million in FY 2020-21, to 2.6 million in FY 2021-22, and to 3.9 million in FY 2022-23.

Travel expenses. These costs include mileage, per diem, facility rentals, lodging, etc. It is anticipated that the EJAB will meet 6 times in FY 2020-21 beginning in December 2020, and 12 times in FY 2021-22 and FY 2022-23. In order to facilitate community outreach, some EJAB meetings will be held outside the Denver metro area to be closer to affected environmental justice communities, which necessitates additional mileage costs, per diem for staff, facility rentals, and lodging.

Software licenses. CDPHE will have costs of \$5,840 per year to purchase 4 annual software licenses to GIFTS, an online grant management program, for the grants specialists, program manager, and environmental protection specialist.

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 \$191,881 in FY 2020-21, \$184,483 in FY 2021-22, and \$234,832 in FY 2022-23.

TABOR refund. Under the March 2020 LCS Economic and Revenue Forecast, the state is not expected to collect revenue above the TABOR limit in either FY 2020-21 or FY 2021-22, and refund obligations are not anticipated for these years. This bill does not change these expectations concerning refunds to taxpayers.

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 an appropriation of \$1,902,298 to the Department of Public Health and Environment from the Community Support Cash Fund, and an allocation of 3.6 FTE.

State and Local Government Contacts

Counties	Information Technology	Judicial
Municipalities	Personnel	Public Health and Environment