



Legislative Council Staff

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Revised Fiscal Note

(replaces fiscal note dated April 27, 2022)

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|-------------------------|--|------------------------|--|
| Drafting Number: | LLS 22-0552 | Date: | May 10, 2022 |
| Prime Sponsors: | Rep. Kennedy; Gonzales-Gutierrez Sen. Gonzales | Bill Status: | Senate Second Reading |
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Bill Topic: PUBLIC PROTECTIONS FROM TOXIC AIR CONTAMINANTS

| | | |
|----------------------------------|---|--|
| 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 type="checkbox"/> State Transfer | <input type="checkbox"/> Statutory Public Entity |

The bill creates a new program in the Department of Public Health and Environment to regulate toxic air contaminants based on adverse health effects. It requires certain sources to submit annual toxic emissions reports and creates a toxic air contaminant monitoring program. It also requires the Air Quality Control Commission to identify up to five priority toxic air contaminants, establish health-based standards, and adopt emission control regulations. Beginning in FY 2022-23, the bill increases state expenditures on an ongoing basis.

Appropriation Summary: For FY 2022-23, the bill requires an appropriation of \$3.1 million to the Department of Public Health and Environment.

Fiscal Note Status: This revised fiscal note reflects the reengrossed bill, as amended by the Senate State Veterans and Military Affairs Committee.

**Table 1
State Fiscal Impacts Under HB 22-1244**

| | | Budget Year FY 2022-23 | Out Year FY 2023-24 | Out Year FY 2024-25 |
|-----------------------------|---------------------------|---------------------------|------------------------|------------------------|
| Revenue | | - | - | - |
| Expenditures | General Fund | \$3,135,853 | \$3,417,491 | \$4,605,389 |
| | Centrally Appropriated | \$339,183 | \$519,723 | \$750,235 |
| | Total Expenditures | \$3,475,036 | \$3,937,214 | \$5,355,624 |
| | Total FTE | 17.5 FTE | 28.0 FTE | 39.5 FTE |
| Other Budget Impacts | General Fund Reserve | \$470,378 | \$512,624 | \$690,808 |

Summary of Legislation

The bill creates a new program in the Department of Public Health and Environment (CDPHE) to regulate toxic air contaminants (TACs) based on adverse health effects. Toxic air contaminants are defined in the bill as hazardous air pollutants, covered air toxics, and any other air pollutant designated by the Air Quality Control Commission (AQCC). The AQCC must adopt rules to implement the program. Program details and an implementation timeline are described in the table and narrative below.

Table 2
Implementation Timeline of HB22-1244

| Date | Activity |
|--------------------|--|
| October 1, 2022 | AQCC designates an initial list of TACs |
| January 1, 2024 | CDPHE begins TAC ambient air quality monitoring program |
| June 30, 2024 | Owners and operators of major and synthetic minor sources begin submitting annual toxic emissions reports to CDPHE |
| April 30, 2025 | AQCC considers adopting rules requiring additional information in annual emissions inventory report, based on gap assessment AQCC identifies up to five priority TACs |
| October 1, 2025 | CDPHE prepares annual report summarizing findings of the monitoring program |
| December 31, 2025 | CDPHE conducts a needs assessment to administer an air permitting program for new, modified, and existing stationary sources |
| April 30, 2026 | AQCC establishes health-based standards and emission control regulations for priority TACs |
| September 30, 2029 | AQCC reviews priority TAC list and determines whether to add additional TACs and associated health-based standards |

Toxic air contaminant list. The CDPHE will publish an initial list of TACs by October 1, 2022, including hazardous air pollutants and covered air toxics. Beginning no later than September 30, 2030, and every five years thereafter, the AQCC must review the list of TACs and determine by rule whether to add additional TACs to the list. The AQCC must take into consideration data gathered through annual toxic emissions reports, federal toxic release inventories, and peer reviewed scientific data, as well as public input and information from other states.

Annual toxic emissions reports. Beginning June 30, 2024, all owners and operators of major sources and minor synthetic sources must submit annual toxic emissions reports to the CDPHE that report information on the amount of each TAC emitted in the preceding calendar year. The CDPHE is required to make these reports available to the public. The CDPHE will conduct an analysis on the reporting requirements and informational gaps and submit a report on those findings to the AQCC by October 1, 2024. The AQCC will consider adopting rules by April 30, 2025, that require additional information to be included in the annual toxic emissions reports based on the report findings.

Ambient air monitoring. The CDPHE will begin conducting a monitoring program to determine TACs in the ambient air in the state by January 1, 2024. At least three long-term monitoring sites must be in operation by January 1, 2024, and at least three additional monitoring sites must be in operation by July 1, 2025. In determining the location of monitoring sites, the CDPHE must provide an opportunity for public input and give priority to locations within disproportionately impacted communities. The CDPHE must prepare an annual report on the findings of the monitoring sites by October 1, 2025, and each year thereafter.

Health-based standards. By April 30, 2025, the AQCC will adopt rules that identify up to five priority TACs based data gathered through the monitoring programs, the annual toxic emissions reports, input from the scientific community, and any other relevant data submitted to the AQCC. By April 30, 2026, the AQCC must establish health-based standards for priority TACs that are protective of public health and identify the excess cancer and non-cancer risk levels for use in setting the health-based standards. By September 30, 2029, and every five years thereafter, the AQCC must determine whether to identify additional priority TACs and adopt health-based standards.

Emission control regulations. By April 30, 2026, the AQCC will adopt emission control regulations for each priority TAC and prioritize reductions in disproportionately impacted communities. By September 30, 2030, and every five years thereafter, the AQCC will adopt emission control regulations for additional priority TACs identified in rule. When reviewing and approving renewable operating permits, the CDPHE must include any applicable emission control regulations in the permit. The CDPHE will include applicable emission control regulations when reviewing and approving air pollution permits.

Air permitting program. By December 31, 2025, the CDPHE will conduct a needs assessment to administer an air permitting program to regulate new, modified, and existing stationary sources that emit levels of priority TACs. The CDPHE will report findings and recommendations to relevant legislative committees.

Background

There are currently 187 hazardous air pollutants, or air toxics, that have been associated with adverse health effects. These air toxics differ from the six common air pollutants, known as criteria pollutants, which are regulated through National Ambient Air Quality Standards based on human health and/or environmental criteria. Air toxics are pollutants that are known or suspected to cause cancer or other serious health effects, and are regulated through technology-based national emission standards.

Colorado, by adopting the corresponding federal regulation under the Clean Air Act, is the delegated authority to regulate air toxics through these technology-based standards. The CDPHE requires reporting and control measures for certain air toxics as required by federal law. The CDPHE also performs special projects for covered air toxics, including hydrogen cyanide, hydrogen sulfide, and benzene, but does not have routine monitoring in place as no ambient air standards are specified for them.

In 2021, the General Assembly enacted House Bill 21-1189 which imposed requirements for fence-line and community-based monitoring of covered air toxics for certain stationary sources, including petroleum refineries, aircraft parts manufacturing, and certain petroleum bulk stations and terminals.

State Revenue

To the extent that the CDPHE is able to impose fees from owners and operators of TAC sources to cover administrative costs, revenue will increase. This fiscal note assumes that General Fund will be required in the first few years while the program is being established. Once program rules, the population subject to regulation, and additional detailed are known, it is assumed that the CDPHE, at the earliest, could establish program fees around FY 2025-26. This potential fee revenue has not been estimated. This fiscal note also assumes that any fee revenue collected will be deposited to the Stationary Source Control Fund, which is subject to TABOR.

State Expenditures

The bill increases state General Fund expenditures in the CDPHE by \$3.5 million in FY 2022-23, \$3.9 million in FY 2023-24, and \$5.4 million in FY 2024-25. The fiscal note assumes that the General Fund will be used to establish the new regulatory program in the first few years, which may be funded by the Stationary Source Control Fund in future years. Expenditures are shown in Table 3 and detailed below.

**Table 3
 Expenditures Under HB22-1244**

| | FY 2022-23 | FY 2023-24 | FY 2024-25 |
|--|--------------------|--------------------|--------------------|
| Department of Public Health and Environment | | | |
| Personal Services | \$1,484,862 | \$2,163,660 | \$3,038,162 |
| Operating Expenses | \$25,245 | \$35,370 | \$50,895 |
| Capital Outlay Costs | \$117,800 | \$43,400 | \$74,400 |
| Legal Services | \$73,928 | \$325,281 | \$325,281 |
| Monitoring Stations | \$342,000 | \$272,250 | \$903,335 |
| Contractual Services – Toxicology | \$400,000 | \$350,000 | - |
| Computer Programming | \$597,228 | \$117,740 | \$121,526 |
| Software Licensing and Cloud Storage | - | \$15,000 | \$15,000 |
| Public Outreach and Communications | \$76,000 | \$76,000 | \$58,000 |
| Travel | \$18,790 | \$18,790 | \$18,790 |
| Centrally Appropriated Costs ¹ | \$339,183 | \$519,723 | \$750,235 |
| FTE – Personal Services | 17.1 FTE | 26.2 FTE | 37.7 FTE |
| FTE – Legal Services | 0.4 FTE | 1.8 FTE | 1.8 FTE |
| Total Cost | \$3,475,036 | \$3,937,214 | \$5,355,624 |
| Total FTE | 17.5 FTE | 28.0 FTE | 39.5 FTE |

¹ Centrally appropriated costs are not included in the bill's appropriation.

Staffing. Beginning in FY 2022-23, the CDPHE requires staff resources to ramp up over the course of five fiscal years to establish the new regulatory program for TACs. These staff resources are described below.

- *Rulemaking.* The CDPHE requires 4.0 FTE in FY 2022-23 and 5.0 FTE in FY 2023-24 to develop rules establishing the list of TAC covered by the program, and to design a reporting program for owners and operators to begin submitting toxic emissions reports by June 30, 2024. The bill requires the AQCC to consider public input and data gathered from monitoring programs and other sources of information. Staff will also be required beginning in FY 2024-25 to establish health-based emissions standards and emission control measures in rule for priority TACs, estimated at approximately 11 FTE per year. These staff resources in out years are estimates only and will be determined based on the identification of priority TACs.
- *Toxic emissions reports.* The CDPHE requires 3.0 FTE in FY 2022-23, 6.0 FTE in FY 2023-24, and 7.0 FTE in FY 2024-25 and onwards to support report processing and database management. Staff will also conduct a study as required in the bill to analyze existing reporting requirements, assess the availability and quality of TAC data, and identify informational gaps in reporting. Based on the findings of this study, additional staff resources may be required in out years to create and maintain a more robust reporting framework.
- *Monitoring program.* The CDPHE will develop a monitoring program to determine ambient concentrations of TACs. In addition to monitoring equipment costs and contractual services, as discussed below, 2.0 FTE in FY 2022-23, 4.0 FTE in FY 2023-24, and 5.5 FTE in FY 2024-25 and onwards are needed to install and operate three monitoring stations by January 1, 2024, and three additional stations by July 1, 2025. Staff will install equipment, develop local contracts, operate the stations, review and analyze the data, develop reports, and hold public hearings.
- *Program management and administrative support.* The bill requires the CDPHE to add staff across several divisions, to ensure coordination of the new program and to provide human resources and data management support. These staff will be responsible for air toxics policy development, communication, and researching and assessing air toxic health impacts, including overseeing toxicology contractual services. In total, an additional 4.5 FTE in FY 2022-23, increasing to 9.0 FTE by FY 2024-25, are needed.
- *Environmental justice.* The CDPHE requires additional staff resources in the Environmental Justice Unit to support outreach and advise on addressing the needs of disproportionately impacted communities when developing the program. Staff resources of 1.2 FTE in FY 2022-23 and ongoing will evaluate TACs and how to incorporate these pollutants into existing tools such as EnviroScreen, conduct outreach to communities related to identifying locations for monitoring stations, and assist in sharing monitoring and inventory information with the public and community members.
- *Needs assessment.* The CDPHE requires 4.0 FTE beginning in F 2022-23 to conduct the needs assessments to evaluate the annual toxic emissions reporting program and the air permitting program.

Other program costs. In addition to personnel costs, CDPHE will incur additional costs for legal services, contractual services, monitoring equipment, technology upgrades, public outreach, and travel. These costs are described below.

- *Legal services.* Approximately 750 hours of legal services in FY 2022-23 and 3,300 hours in FY 2023-24 and beyond will be provided by the Department of Law annually at a rate of \$98.57 per hour to support initial program design and to develop rules.
- *Monitoring stations.* The CDPHE will establish an air monitoring program by installing three monitoring stations by January 1, 2024, with three additional monitoring stations added by January 1, 2025. Each monitoring station will cost \$114,000 to install including shelter, sensors, samplers, power installation, concrete pads, permits, and a data logger. Operating costs for the first three stations are estimated at \$272,250 in FY 2023-24 (half-year impacts), and increasing to \$556,335 in FY 2024-25. Costs in FY 2024-25 include the installation of three additional monitoring stations which must be operating by January 1, 2025.
- *Contractual services.* The CDPHE requires staff and outside consulting services to evaluate peer-reviewed scientific data, as well as monitoring data, toxic emissions reports, and public input to make additions to the TAC list, identify priority TACs, and to establish health-based standards. Contractual services of \$400,000 in FY 2022-23 and \$350,000 in FY 2023-24 will evaluate peer-reviewed scientific publications.
- *Technology costs.* The CDPHE requires a database to support the annual emissions inventory reporting and system programming to refine the existing monitoring system to accommodate the additional stations. The estimated costs are \$597,228 in FY 2022-23 for the Office of Information Technology to develop the database and update the monitoring system with ongoing costs of \$117,740 beginning in FY 2023-24. The CDPHE will require \$15,000 in FY 2023-24 and ongoing for software licensing and cloud storage to support the emissions inventory reports and air monitoring data.
- *Public outreach and communications.* The CDPHE will incur costs to conduct public outreach, develop communications materials, and hold public meetings. These costs are estimated at \$76,000 annually.
- *Travel.* New staff, including permit modeling staff, will incur travel expenses to attend training events. These costs are estimated at \$18,790 annually.

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 shown in Table 3.

Other Budget Impacts

General Fund reserve. Under current law, an amount equal to 15 percent of General Fund appropriations must be set aside in the General Fund statutory reserve. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve in FY 2022-23 and FY 2023-24 by the amounts shown in Table 1, which will decrease the amount of General Fund available for other purposes.

Effective Date

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

State Appropriations

In FY 2022-23, the bill requires a General Fund appropriation of \$3,135,853 to the Department of Public Health and Environment, and 17.1 FTE. From the appropriation above, the following reappropriations are required:

- \$73,928 to the Department of Law, with an additional 0.4 FTE for legal services; and
- \$597,228 to the Office of Information Technology for data system development.

Departmental Difference

The CDPHE estimates the need for an additional 10.4 FTE in FY 2023-24 and 19.7 FTE in FY 2024-25 and ongoing above the included staffing levels in the fiscal note to implement the toxic emissions reporting provisions of the bill. This would result in total costs of \$5.1 million in FY 2023-24 and \$8.5 million in FY 2024-25. The department estimate is based on an assumption that it will require, on average, 12 hours to review and enforce violations from the 2,600 annual toxic emissions reports that will be submitted under the bill. Because the bill only requires CDPHE to make annual toxic emissions reports public, and does not require review nor address enforcement action, this fiscal note assumes that the FTE included in this fiscal note are sufficient to accept, process, and post annual emissions inventory reports. If staff determine, through the gap analysis, that additional information and review is required through the annual toxic emissions reports, this fiscal note assumes that the CDPHE will request these resources through the annual budget process.

State and Local Government Contacts

Information Technology

Law

Public Health and Environment