


Colorado Legislative Council Staff Fiscal Note
FINAL
FISCAL NOTE

Drafting Number: LLS 12-0194

Date: May 11, 2012

Prime Sponsor(s): Sen. King S.

Bill Status: Postponed Indefinitely

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TITLE: CONCERNING THE ADOPTION OF WATER QUALITY CONTROL RULES REGARDING NUTRIENTS, AND, IN CONNECTION THEREWITH, PROHIBITING THE WATER QUALITY CONTROL COMMISSION FROM ADOPTING NUMERIC CRITERIA FOR A WATER CONTROL STANDARD OR CONTROL REGULATION REGARDING NITROGEN OR PHOSPHORUS.

Fiscal Impact Summary	FY 2012-2013	FY 2013-2014
State Revenue		
State Expenditures		
General Fund	\$475,180	\$444,140
FTE Position Change	6.6 FTE	6.6 FTE
Effective Date: The bill was postponed indefinitely by the Senate Agriculture, Natural Resources, and Energy Committee on February 8, 2012.		
Appropriation Summary for FY 2012-2013: See State Appropriations section.		
Local Government Impact: See Local Government Impact section.		

** The fiscal note assumes the General Fund will be appropriated for the purposes of implementing the bill, rather than cash funds from the Water Quality Control Fund. See discussion in the State Expenditures section.*

Summary of Legislation

This bill prohibits the Water Quality Control Commission (commission) in the Department of Public Health and Environment from adopting control regulations that contain numeric water quality criteria for nitrogen and phosphorus.

Background

The federal Clean Water Act requires states to develop water quality standards. Unlike toxic pollutant water quality standards, which must be numeric if possible, the act does not specifically require states to develop numeric nutrient water quality standards, giving states the discretion to use either narrative or numeric standards. However, the U.S. Environmental Protection Agency (EPA) is asking states to develop numeric standards. Numeric criteria establish specific limitations on nitrogen and phosphorus concentrations in waterbodies, while narrative standards use descriptive

language to convey an unacceptable water quality condition. Colorado currently has a narrative standard which indicates that surface waters must be free from substances that are attributable to human-caused discharge in amounts or concentrations that:

- can settle to form bottom deposits;
- form floating debris or scum;
- produce color, odor, or other harmful or nuisance conditions;
- are harmful to the beneficial uses or are toxic;
- produce a predominance of undesirable aquatic life; or
- cause a film on the surface or shorelines.

The Water Quality Control Division is authorized under current law to promulgate rules for water quality standards for phosphates, nitrates, and other dissolved nutrients, among other pollutants. A rule-making hearing before the commission to adopt proposed numeric nutrient criteria for nitrogen and phosphorus is scheduled for March 2012. The division has not been broadly implementing the existing narrative standard to control nutrient discharges pending the completion of the rule-making process.

State Expenditures

The bill is expected to increase General Fund expenditures by \$475,180 and 6.6 FTE in FY 2012-13 and \$444,140 and 6.6 FTE in FY 2013-14. These costs are shown in Table 1 and explained below.

Table 1. Expenditures Under SB12-017		
Cost Components	FY 2012-13	FY 2013-14
Personal Services	\$437,870	\$437,870
FTE	6.6	6.6
Operating Expenses and Capital Outlay	37,310	6,270
TOTAL	\$475,180	\$444,140

The fiscal note assumes that General Fund will be appropriated for the costs of the WQCD. Implementation of the bill fits within the allowable uses of the Water Quality Control Fund (WQCF), and the General Assembly may accordingly elect to appropriate moneys to CDPHE from the fund for the purposes of this bill. However, the WQCF is supported by fixed fee revenue and may not be able to sustain additional appropriations due to projected insolvency.

The division's proposed regulations would require waste water treatment facilities and a small number of non-domestic dischargers to install technology-based biologic nutrient removal controls and to meet numeric limits for total nitrogen and phosphorus. Under this bill, without the proposed regulations, the division would determine the numeric effluent limit for each new or renewed permit on a permit-by-permit basis. The division would also implement the narrative water quality standard

for an additional 700 waste water treatment facilities that would have been exempt under the proposed regulations. Additional work would require calculating permit limits, developing a compliance schedule for each permit, working with permittees on variance requests, and reviewing engineering submittals. Table 2 shows the number of hours required per permit for each task. Table 1 shows the costs associated with this increased workload.

Table 2. Hours and FTE Under SB 12-017			
Task	Number of Permits	Hours per Permit	Total Hours
Individual Permits- calculate permit limits, develop compliance schedules, review and respond to comments after permit notice.	56	3	168
General Permits- calculate permit limits, develop compliance schedules, review and respond to comments after permit notice.	88	20	1,760
Work with permittees to develop and review variance requests.	144	40	5,760
Modify permit to include new compliance schedule and a revised limit after variance is granted.	144	2	288
Review engineering submittals in support of variances.	144	40	5,760
Total number of hours			13,736
Number of hours per FTE			2,080
Total number of FTE			6.6

Expenditures Not Included

Pursuant to 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. The centrally appropriated costs subject to this policy are summarized in Table 3.

Table 3. Expenditures Not Included Under SB 12-017*		
Cost Components	FY 2012-13	FY 2013-14
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$40,624	\$40,624
Supplemental Employee Retirement Payments	23,345	26,876
TOTAL	\$63,969	\$67,500

*More information is available at: <http://colorado.gov/fiscalnotes>

Local Government Impact

Under the division's proposed rules, as authorized under current law, 261 of 392 municipal waste water treatment facilities would be exempt from the rules and the remaining 131 facilities would be required to install nutrient removal controls. Under this bill, the 131 facilities would not be required to install the technology resulting in a cost savings.

Departmental Differences

The Department of Public Health and Environment requested 120 hours of legal services at \$75.71 per hour for a total of \$9,085. Legal services were requested because of a variety of possible legal challenges, however any bill passed by the legislature could be challenged so those costs are not generally included in fiscal notes.

State Appropriations

The Department of Public Health and Environment requires a General Fund appropriation of \$475,180 and 6.6 FTE for FY 2012-13.

Departments Contacted

Public Health and Environment