

**FINAL
FISCAL NOTE**

Drafting Number: LLS 12-0565
Prime Sponsor(s): Sen. Grantham
 Rep. Becker

Date: July 17, 2012
Bill Status: Postponed Indefinitely
Fiscal Analyst: Alex Schatz (303-866-4375)

TITLE: CONCERNING TIMELY ISSUANCE OF ENVIRONMENTAL CONTROL PERMITS, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Fiscal Impact Summary	FY 2012-2013	FY 2013-2014
State Revenue		
Cash Funds		
Stationary Sources Control Fund	\$618,792*	\$618,792*
State Expenditures		
Cash Funds		
Stationary Sources Control Fund	\$196,901	\$83,291**
FTE Position Change	2.5 FTE	1.1 FTE**
Effective Date: The bill was postponed indefinitely by the House Agriculture, Livestock, and Natural Resources Committee on May 7, 2012.		
Appropriation Summary for FY 2012-2013: See State Appropriations section.		
Local Government Impact: None.		

* *This fiscal impact summary assumes that the Air Quality Control Commission (AQCC) adopts rules that increase air emissions permit fees to the maximum allowable under the bill. See the State Revenue section below for more detail.*

** *Ongoing funding for the Air Pollution Control Division (APCD) personal services is required as shown to maintain capacity for new Title V air permits. See additional discussion in the State Expenditures section.*

Summary of Legislation

Under current law, renewable operating permits for air emissions must be approved or denied by the Air Pollution Control Division (APCD) of the Colorado Department of Public Health and Environment (CDPHE) within 18 months after receipt of a complete application. For water quality permits in the Colorado Discharge Permit System (CDPS), administered by the Water Quality Control Division (WQCD) of CDPHE, an application must be approved or denied within 180 days (6 months) of receipt of the application. However, the deadline for CDPS permit action may be extended for specified reasons, including correspondence regarding completeness of the application and the undertaking of public meetings to receive input from interested persons. Under current law, applicants for certain air permits are authorized to hire third-party private contractors for permit review functions.

The bill requires the APCD and the WQCD to take final action on air emissions permits and CDPS permits, other than renewals, within 12 months after an application is deemed complete. The Air Quality Control Commission (AQCC) is authorized to adopt a rule or rules to increase fees for air emissions permitting by seven percent relative to current statutory fee levels. The bill authorizes applicants for CDPS permits to expedite permit review by hiring a private contractor if approved at the discretion of the WQCD.

Background

Permitting backlog. There is presently a backlog of permit reviews in both the APCD and the WQCD. The fiscal note assumes that the bill requires all backlogged permits, but not including renewals, to be processed within 12 months of its effective date. Currently in the WQCD, all permit applications with review pending longer than 12 months are renewals.

Based on funding levels drawn from current statutory fees, the existing personal services budget for WQCD is insufficient to keep up with the annual workload for water quality permits. The personal services budget for APCD is also established at a level that has resulted in a backlog of overdue Title V (industrial source) air permits. If personal services budgets for CDPHE environmental divisions will be addressed through other means, this fiscal note will be revised to reflect no impact related to the current permit backlog.

Colorado air pollution regulation and the U.S. EPA. The state of Colorado, through CDPHE, is a delegated permitting authority under the federal Clean Air Act and its amendments. Many industrial sources of air emissions in Colorado are in nonattainment areas relative to federal air quality standards, requiring labor-intensive modeling and review prior to issuance of an air permit. For Title V air permits, federal regulations provide that a state permitting authority "take final action on each permit application (including a request for permit modification or renewal) within 18 months, or such lesser time approved by the [EPA] Administrator, after receiving a complete application."

APCD funding and the FY 2012-13 Long Bill. Based primarily on workload increases due to expanding permit demand in the oil and gas industry, as well as changes to federal air quality standards, the CDPHE received an increase of 13.0 new FTE in the APCD for FY 2012-13. Air emissions permitting functions in the APCD are supported by the Stationary Sources Control Fund. While fees from increased permitting activity offset a significant portion of the cost of new FTE, the Joint Budget Committee staff projects that the Long Bill and SB12-132, in combination, will result in a \$1 million deficit in the Stationary Sources Fund by the close of FY 2013-14 unless existing statutory fees are adjusted.

State Revenue

By authorizing the AQCC to increase by seven percent the maximum fee for certain permitting activities that contribute to the Stationary Sources Control Fund, **the bill potentially increases cash funds revenue to the CDPHE by up to \$618,792 in FY 2012-13.** This increase is conditional on the AQCC adopting a rule that raises fees under the bill by the maximum allowable increase. Fee revenue will remain at approximately the FY 2012-13 level until the AQCC adjusts fees again or until industry trends substantially alter the APCD workload.

To minimally comply with permit review deadlines established in the bill, the Stationary Sources Control Fund must provide \$252,521 for the direct and indirect costs of APCD in FY 2012-13. Any increase in fee revenue above this amount is assumed to increase APCD's capacity for timely processing of other permits, including oil and gas permits and other areas of high demand.

Fee Impact on Individuals, Families or Business

Section 2-2-322, C.R.S., requires legislative service agency review of measures which create or increase any fee collected by a state agency. The table below identifies the fee impact of this bill.

Table 1. Fee Impact on Individuals, Families or Business					
Type of Fee	Current Fee	Proposed Fee	Fee Change	Number Affected	Total Fee Impact
APEN Filing Fee	\$152.90	\$163.60	\$10.70	5,312	\$56,834
Annual Emissions	22.90/ton	24.50/ton	1.60/ton	198,313 tons	317,301
Annual Supplementary Fee - Hazardous Pollutants	152.90/ton	163.60/ton	10.70/ton	6,029 tons	64,495
Air Permit Processing Fee	76.45/hour	81.80/hour	5.35/hour	33,675 hours	180,162
TOTAL					\$618,792

State Expenditures

Expediting the air permit process and eliminating the backlog of permit applications will increase costs to the CDPHE by \$196,901 and 2.5 FTE in FY 2012-13 and \$83,291 and 1.1 FTE in FY 2013-14. Table 2 summarizes costs to the APCD in FY 2012-13 and FY 2013-14.

Table 2. Expenditures by CDPHE Under SB 12-132		
Cost Components	FY 2012-13	FY 2013-14
<i>Air Pollution Control Division</i>		
Personal Services	\$182,768	\$82,246
<i>FTE</i>	2.5	1.1
Operating Expenses and Capital Outlay	14,133	1,045
TOTAL	\$196,901	\$83,291

For APCD, expedited review of Title V renewable operating permits will require \$196,901 cash funds and 2.5 FTE in FY 2012-13, including work to address the current permitting backlog. To address the Title V permit backlog, APCD has increased workload costs of at least \$83,291 and 1.1 FTE in FY 2013-14. Maintaining Title V air permits in compliance with the bill will require at least \$55,590 and 0.8 FTE in FY 2014-15 and future fiscal years.

The ongoing cost of the bill to APCD is calculated to provide a sufficient margin to absorb new work and expedite a new Title V air permit based on existing workload levels. Costs to the APCD may be higher if the number of new emissions sources subject to Title V permitting increase rapidly. In addition, the CDPHE asserts that, to justify EPA varying from its regulation dictating an 18-month processing time, the department may be required to maintain in future fiscal years the FY 2012-13 staffing levels shown in this fiscal analysis.

This fiscal note assumes the number of air and water quality applications and renewals will remain at current levels. The fiscal note also assumes that CDPHE will adjust its practices to comply with the bill immediately after its effective date, and further assumes that faster processing of applications does not conflict with current state administrative rules or federal law. State administrative regulations may be adjusted to reflect timelines from the bill in conjunction with other periodic rulemaking; however, if this bill conflicts with any current state or federal rule, this may drive additional costs, including bill-specific rulemaking and the involvement of CDPHE legal counsel from the Department of Law.

Expenditures Not Included

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

Table 3. Expenditures Not Included Under SB 12-132*		
Cost Components	FY 2012-13	FY 2013-14
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$15,415	\$6,785
Supplemental Employee Retirement Payments	9,744	5,048
Indirect Costs	30,461	13,708
TOTAL	\$55,620	\$25,541

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

State Appropriations

For FY 2012-13, the reengrossed bill includes a cash fund appropriation of \$196,901 and 2.5 FTE from the Stationary Sources Control Fund to the Department of Public Health and Environment.

Departments Contacted

Public Health and Environment

Natural Resources

Law