HB 22-1244

Legislative Council Staff
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Fiscal Note

Drafting Number:	LLS 22-0552	**Date:**	April 1, 2022
Prime Sponsors:	Rep. Kennedy; Gonzales-Gutierrez Sen. Gonzales	**Bill Status:**	House Energy & Environment
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Bill Topic: **PUBLIC PROTECTIONS FROM TOXIC AIR CONTAMINANTS**

Summary of Fiscal Impact:

☒ State Revenue
☒ State Expenditure
☐ State Transfer
☐ TABOR Refund
☐ Local Government
☐ 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 creates an advisory board to advise the Air Quality Control Commission on identifying toxic air contaminants, establishing health-based standards, and reviewing the list of toxic air contaminants. 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 $3.2 million to the Department of Public Health and Environment.

Fiscal Note Status: The fiscal note reflects the introduced bill.

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	$3,160,329	$5,037,476	$8,064,342
	Centrally Appropriated	$348,966	$848,305	$1,454,178
	Total Expenditures	**$3,509,295**	**$5,885,781**	**$9,518,520**
	Total FTE	**18.5 FTE**	**45.6 FTE**	**77.2 FTE**
Other Budget Impacts	General Fund Reserve	**$474,049**	**$755,621**	**$1,209,651**

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
November 1, 2022	CDPHE appoints advisory board members
January 1, 2024	AQCC reviews list of TACs CDPHE begins ambient air quality monitoring program
April 1, 2024	Owners and operators of major and synthetic minor sources begin submitting annual emissions inventory reports to CDPHE
November 1, 2025	CDPHE prepares report summarizing findings of the monitoring program
July 1, 2027	AQCC adopts health-based standards and control measures for high-risk TACs
July 1, 2032	AQCC reviews and revises health-based standards and control measures

Advisory board. The bill creates the Toxic Air Contaminant Scientific Advisory Board to advise the AQCC on identifying TACs and high-risk TACs and establishing health-based standards. The advisory board consists of three voting members appointed by the Executive Director of the CDPHE and one non-voting member representing the department. Advisory board members may be reimbursed for travel and other reasonable expenses.

Toxic air contaminant list. Beginning no later than January 1, 2024, 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 air quality monitoring, annual emissions inventory reports, federal toxic release inventories, and peer reviewed scientific data, as well as public input and information from other states.

Annual emissions inventory. Beginning April 1, 2024, all owners and operators of major sources and minor synthetic sources must submit annual emissions inventory reports to the Air Pollution Control Division that report detailed information on the amount of each TAC and criteria air pollutant emitted in the preceding calendar year. The division is required to make these reports available to the public.

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 disproportionately impacted communities and include both urban and rural locations. Beginning in 2025, the CDPHE must prepare an annual report on the findings of the monitoring sites.

Standards and control measures. By July 1, 2027, the AQCC will adopt rules that identify high-risk TACs based on the risk of harm to human health and data gathered through the monitoring programs, the annual emissions inventory reports, the federal toxics release inventory, and any other relevant data. The rules must establish health-based standards for high-risk TACs that are protective of public health and consistent with current peer-reviewed data, and must be set at least as stringently as health-based standards adopted in other states. The rules must also include airborne toxic control measures for each high-risk TAC to meet or exceed the health-based standards. The AQCC must review these rules every five years beginning July 1, 2032.

Permits. Beginning on July 1, 2027, owners and operators are required to analyze emissions impacts on TAC concentrations when applying for new or modified air pollution permits. The CDPHE may only approve permits if the owner or operator demonstrates that the potential level of emissions will not result in exceeding the health-based standards. The CDPHE may reopen and modify any existing air pollution permits to ensure compliance with the rules with priority given to permits for sources that are in disproportionately impacted communities with significant levels of TACs in the ambient air.

Enforcement. The Air Pollution Control Division is responsible for taking enforcement actions for violations including falsifying information on, or failing to provide, an annual emissions inventory report.

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 fenceline 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 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.

The bill may also increase revenue from fines levied for violations of the reporting requirements. Because the bill does not specify where this fine revenue is deposited, it is assumed that any fines received will be credited to the General Fund and the Community Impact Cash Fund according to the formula defined in current law.

State Expenditures

The bill increases state General Fund expenditures in the CDPHE by $3,509,295 in FY 2022-23, $5,885,781 in FY 2023-24, and $9,518,520 in FY 2024-25. The fiscal note assumes that the General Fund will be used to establish the new regulatory program in the first two years, which may be funded by fee revenue 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	$1,503,825	$3,716,766	$6,384,599
Operating Expenses	$26,595	$59,535	$102,195
Capital Outlay Costs	$124,000	$148,800	$198,400
Legal Services	$73,928	$266,139	$266,139
Monitoring Stations	$342,000	$272,250	$903,335
Contractual Services – Toxicology	$400,000	$350,000	-
Computer Programming	$555,608	$114,196	$117,884
Software Licensing and Cloud Storage	$39,584	$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]	$348,966	$848,305	$1,454,178
FTE – Personal Services	18.1 FTE	44.1 FTE	75.7 FTE
FTE – Legal Services	0.4 FTE	1.5 FTE	1.5 FTE
Total Cost	**$3,509,295**	**$5,885,781**	**$9,518,520**
Total FTE	**18.5 FTE**	**45.6 FTE**	**77.2 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 an inventory reporting program for owners and operators to begin submitting by April 1, 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 high risk TACs, estimated at approximately 10.5 FTE per year. These staff resources in out years are estimates only and will be determined based on the identification of high-risk TACs.

- *Advisory board*. The CDPHE requires 2.0 FTE per year to represent the department and support the work of the advisory board.

- *Emissions inventory reports*. The CDPHE requires 3.0 FTE in FY 2022-23, 5.0 FTE in FY 2023-24, and 8.0 FTE in FY 2024-25 and onwards to support emissions inventory processing and database management. Additional staff are required in FY 2024-25 (18.0 FTE) and FY 2025-26 and onward (36.6 FTE) to review and take any follow-up or enforcement actions for the approximately 2,600 emissions inventory reports that will be submitted annually. Staff resources are based on an estimated 8 hours to review each report for accuracy and completeness, and 4 hours to follow up with owners and operators regarding errors or problems with the reports. Based on existing enforcement patterns, around 10 to 15 percent of reports will be formally referred for enforcement.

- *Permit modeling*. Additional staff resources are required to conduct emissions modeling to ensure permits approved will not result in pollutants emitted in excess of the health-based standards, once those standards are established in rule by July 1, 2027. The fiscal note assumes that around 3,600 permits will require emissions modelling, requiring approximately 40 hours per application. The CDPHE requires 1.0 FTE in FY 2024-25 and 3.0 FTE in FY 2024-25 before ramping up to approximately 50.0 FTE in FY 2026-27 when permits must meet the requirements of the bill.

- *Monitoring program*. The CDPHE will develop a monitoring program to determine concentrations of TACs and a health assessment program to evaluate the risk and impacts of emission levels on public health. 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 4.5 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 programs within the Air Pollution Control Division to manage the additional staff and 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 8.0 FTE in FY 2022-23, increasing to 12.5 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 0.7 FTE in FY 2022-23 and 1.0 FTE in FY 2023-24 and 0.8 FTE in FY 2024-25 and beyond 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.

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 2,700 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 development, provide representation for the new advisory board, and develop the 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 July 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 2022-23, and increasing to $543,334 in FY 2024-25.

  Contractual services. The CDPHE requires staff and outside consulting services to evaluate peer-reviewed scientific data, as well as monitoring data, emissions inventory reports, and public input to make additions to the TAC list, identify high-risk TACs, and to establish health-based standards for high risk TACs. 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 is $555,608 in FY 2022-23 for the Office of Information Technology to develop the database and update the monitoring system with ongoing costs of $114,196 beginning in FY 2023-24. The CDPHE will require $39,584 in FY 2022-23 and $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 until FY 2026-27 when costs increase to $40,080 annually.

- *Permit modelling software and hardware*. In FY 2026-27 when the CDPHE begins analyzing the impacts of emissions on the concentration of TACs in the ambient air, additional permit modeling software and hardware will be procured. These one-time costs are estimated at $600,000.

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 $3,160,329 to the Department of Public Health and Environment, and 18.1 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
- $555,608 to the Office of Information Technology for data system development.

State and Local Government Contacts

Information Technology | Law | Public Health and Environment