

**STATE and LOCAL  
FISCAL IMPACT**

**Drafting Number:** LLS 11-0187

**Date:** January 31, 2011

**Prime Sponsor(s):** Rep. Gerou

**Bill Status:** House Economic & Business Development

**Fiscal Analyst:** Alex Schatz (303-866-4375)

**TITLE:** CONCERNING THE DESIGNATION OF STORM WATER MANAGEMENT SYSTEM ADMINISTRATORS.

| <b>Fiscal Impact Summary</b>   | <b>FY 2011-2012</b> | <b>FY 2012-2013</b> |
|--|---------------------|---------------------|
| <b>State Revenue</b>   |                     |                     |
| <b>State Expenditures</b>  |                     |                     |
| Cash Funds   |                     |                     |
| Water Quality Control Fund   | \$ 49,436           | \$ 56,029           |
| <b>FTE Position Change</b>   | 0.6 FTE             | 0.7 FTE             |
| <b>Effective Date:</b> August 10, 2011, if the General Assembly adjourns on May 11, 2011, as scheduled, and no referendum petition is filed. |                     |                     |
| <b>Appropriation Summary for FY 2011-2012:</b> See State Appropriations section.   |                     |                     |
| <b>Local Government Impact:</b> See Local Government Impact section.   |                     |                     |

**Summary of Legislation**

The bill authorizes the Department of Public Health and Environment, Water Quality Control Division (WQCD), to designate one or more nonprofit storm water management system administrators to assist in state compliance with the federally mandated National Pollutant Discharge Elimination System (NPDES).

Storm water management system administrators are required to demonstrate to state water quality regulators that they are sufficiently qualified and capable of enforcing appropriate water quality standards. Audits conducted by nonprofit storm water management system administrators are open to inspection by state regulators but are privileged from other disclosure if corrective action is taken within the time required by the storm water permit. The bill provides for revocation of storm water management system administrator status if the state finds deficiencies in a nonprofit's program. The board of each nonprofit storm water management system administrator will have one seat for a representative of the WQCD.

For entities holding a municipal separate storm sewer system (MS4) permit, including state and local agencies, the bill allows MS4s to review audits in their jurisdiction and to use those audits as part of its own storm water permit compliance plan.

## **Background**

***Water Quality Control Division Funding.*** The Water Quality Control Division (WQCD) is responsible for various regulatory programs related to water quality, including safe drinking water, pollutant discharge permitting, and watershed monitoring. WQCD activities are supported in part through the Water Quality Control Fund, which consists of revenue from fees set by law. For some activities, current funding supports an effort that may not meet state and federal requirements. For example, within the WQCD's Clean Water Program, there are currently about 3,500 activities subject to construction storm water permits. The WQCD targets inspection of 5 to 10 percent of permitted activities but is presently capable of inspecting less than 3 percent, with a growing backlog of permit maintenance and inspection needs.

***Colorado Water Quality Regulation and the U.S. Environmental Protection Agency (EPA).*** State water quality regulations are enacted and administered in place of direct regulation of water quality by the EPA. Under its own Clean Water Act authority, the EPA monitors the state program and has entered into an annually-renewed work-sharing agreement with the state. Presently, the EPA conducts a small number of storm water inspections, with increasing numbers expected in response to both compliance concerns and the resource shortfall within the WQCD. Should the state fail to uphold sufficient water quality standards, the EPA may reassert its authority to administer stormwater permitting and other programs within the purview of the Clean Water Act.

## **State Expenditures**

This bill affects state expenditures in at least three ways. First, it requires specific tasks of the WQCD that cannot be completed with existing staff. Second, it reduces the long-term staffing needs of the WQCD to conduct inspections by expanding the options for self-auditing. Third, it highlights the fact that the WQCD is currently not funded adequately to meet state and federal requirements, negating or delaying any anticipated savings from the second impact.

Expenditures for the WQCD are expected to increase by \$49,436 and 0.6 FTE in FY 2011-12, and by \$56,029 and 0.7 FTE in FY 2012-13. The WQCD will incur one-time costs to develop criteria for approval of a non-profit storm water management system administrator and provide initial outreach to regulated industry. Continuing costs include review of administrator applicants, training activities for approved administrators, participation on non-profit administrator boards, audits of records, and field checks to verify compliance. Expenditures are outlined in Table 1.

| <b>Table 1. Expenditures for the Department of Public Health and Environment Under HB11-1026</b> |                   |                   |
|--|-------------------|-------------------|
| <b>Cost Components</b>   | <b>FY 2011-12</b> | <b>FY 2012-13</b> |
| Personal Services  | \$ 46,137         | \$ 55,364         |
| FTE  | 0.6               | 0.7               |
| Operating Expenses   | 555               | 665               |
| Capital Outlay (one-time cost)   | 2,744             |                   |
| <b>TOTAL</b>   | <b>\$ 49,436</b>  | <b>\$ 56,029</b>  |

This fiscal note assumes that FY 2011-12 expenses are paid out of the Water Quality Control Fund, which has a sufficient balance. Thereafter, General Fund appropriations or additional fee revenue may be necessary to support the program.

The fiscal note also assumes that the number of non-profit entities applying for storm water management system administrator status is small but sufficient to justify the dedication of FTE to the non-profit administrator program. In the event that the program fails to attract non-profit participants, or if the program attracts a number too great to be adequately reviewed and regulated by recommended appropriations, the fiscal note assumes this will be addressed through the annual budget process.

Finally, this fiscal note assumes that the division of workload and authority between EPA and WQCD remains consistent throughout the implementation of the bill. Should EPA assume greater responsibility for stormwater permitting in the state, or should EPA specifically address the conditions under which non-profit audits will be administered, as examples, the amount of state expenditures within the WQCD may be reduced.

**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 2.

| <b>Table 2. Expenditures Not Included Under HB11-1026*</b>           |                   |                   |
|--|-------------------|-------------------|
| <b>Cost Components</b>   | <b>FY 2011-12</b> | <b>FY 2012-13</b> |
| Employee Insurance (Health, Life, Dental, and Short-term Disability) | \$4,142           | \$4,970           |
| Supplemental Employee Retirement Payments                            | 2,088             | 2,952             |
| <b>TOTAL</b>   | <b>\$6,230</b>    | <b>\$7,922</b>    |

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

**Local Government Impact**

The bill provides an additional compliance option for local MS4 operators who wish to form a non-profit storm water administrator or use the products and services of a non-profit administrator. Local MS4s would incur additional costs to form or join such a non-profit. In addition, compliance standards under non-profits are expected to exceed current storm water permit standards and may incur additional on-going costs to local MS4s. The fiscal note assumes that local MS4s will assess costs and benefits of participation prior to utilizing provisions of the bill.

**State Appropriations**

The Department of Public Health and Environment requires a cash funds appropriation of \$49,436 from the Water Quality Control Fund and 0.6 FTE for FY 2011-12.

**Departments Contacted**

Public Health and Environment

Transportation