

**STATE  
FISCAL IMPACT**

**Drafting Number:** LLS 12-0472  
**Prime Sponsor(s):** Rep. Looper  
 Sen. King K.

**Date:** February 17, 2012  
**Bill Status:** House Agriculture  
**Fiscal Analyst:** Alex Schatz (303-866-4375)

**TITLE:** CONCERNING SCIENTIFIC REVIEW OF WATER QUALITY RULES REGULATING NUTRIENTS.

<b>Fiscal Impact Summary</b>	<b>FY 2011-2012 Current Year</b>	<b>FY 2012-2013</b>	<b>FY 2013-2014</b>
<b>State Revenue</b>			
Cash Funds			
Nutrients Scientific Advisory Board Fund	\$111,218	\$78,670	
<b>State Expenditures</b>			
Cash Funds			
Nutrients Scientific Advisory Board Fund	\$28,663	\$134,218	
<b>FTE Position Change</b>	0.3 FTE	0.9 FTE	
<b>Effective Date:</b> Upon signature of the Governor, or upon becoming law without his signature.			
<b>Appropriation Summary for FY 2012-2013:</b> See State Appropriations section.			
<b>Local Government Impact:</b> None.			

\* According to the bill, revenue from gifts, grants, and donations cover the direct and indirect costs of its implementation. These amounts include centrally-appropriated costs, as detailed in the Expenditures Not Included section. Gifts, grants, and donations revenue in FY 2011-12 is the amount deemed necessary for adequate funding of the bill. The remaining revenue amount, in FY 2012-13, is the amount for the direct and indirect cost for the contribution of Water Quality Control Division technical staff, whose involvement is warranted by the bill but without clear direction in its language.

**Summary of Legislation**

This bill prohibits the Water Quality Control Commission (WQCC) from adopting a water quality standard for nitrogen, phosphorus, or related parameters (nutrients) until the proposed standard is approved by the General Assembly in a bill. The Nutrients Scientific Advisory Board (NSAB) is created, consisting of nine members appointed by the leadership of the General Assembly, all credentialed experts in pollutant effects on human or environmental systems, with at least one member from each water division in the state.

By October 1, 2012, the NSAB must hold a public hearing on nutrient standards proposed by the Water Quality Control Division (WQCD) in the Colorado Department of Public Health and Environment (CDPHE). The NSAB must deliver a report to the WQCC and General Assembly by February 1, 2013. This report, and the NSAB's hearing, must address five specific concerns to confirm that:

- regulations comply with state Executive Order D2011-005, requiring, to the extent authorized by law, that the promulgation of all regulations affecting local governments must be specifically mandated by state or federal law, and will occur only after consultation with local governments and with adequate funding to provide for the direct cost of regulatory compliance to local government;
- active stakeholder participation is reflected in the proposed nutrient standards;
- the results of the cost-benefit study on proposed Regulations 31 and 85 (see below) are adequately considered;
- regulations are not structured to include unnecessary burdens or costs; and
- regulations address basin-specific conditions.

The bill establishes the Nutrients Scientific Advisory Board Fund, and continuously appropriates the fund to the WQCD as the agency responsible for staffing and funding the NSAB. The WQCD is authorized to seek gifts, grants, and donations for the fund. The bill directs that NSAB's appointed members receive per diem compensation at twice the rate for legislative interim committees, as well as reimbursement for actual expenses.

## **Background**

Colorado's CDPHE, through the state statutory authority of the Colorado Water Quality Control Act and the efforts of the WQCD, is a delegated state agency for the implementation and enforcement of the federal Clean Water Act (CWA). As a component of CWA implementation, the federal Environmental Protection Agency (EPA) in 1998 adopted the National Strategy for the Development of Regional Nutrient Criteria (National Nutrient Strategy, or NNS). Based on the deleterious effects of increased nutrient loading on water bodies (e.g., loss of dissolved oxygen, algae blooms, disruption of stream ecosystems), the NNS calls for state and water body-based numeric standards for nutrients (nitrogen, phosphorus, and chlorophyll-a). The EPA has worked since the adoption of NNS to assist states in the adoption of numeric criteria, without establishing a specific deadline for implementation.

After substantial study, Colorado's WQCD proposed technology-based numeric control standards for nutrients. These standards are incorporated into amendments to WQCC Regulation 31 and a new Regulation 85. The WQCC and the Colorado Water Resources and Power Development Authority (CWRPDA) jointly commissioned a cost-benefit study of the proposed nutrient regulations, released in final form in January 2012. Subject to various assumptions, including appropriate technology and installation costs, the study quantified a statewide aggregate cost-benefit ratio of 0.8:1 for the proposed nutrient standards, based on finding \$1.9 billion in benefits and \$2.4 billion in costs. Given the technology-based approach of proposed regulations, publicly-owned treatment works (i.e., centralized wastewater treatment plants) are the regulated entity most significantly impacted by the proposed regulations. The WQCC is currently scheduled to conduct a rulemaking hearing for these regulations on March 12, 2012.

**State Revenue**

Acting as an administrative division of CDPHE, the WQCD may seek and accept gifts, grants and donations to the Nutrients Scientific Advisory Board Fund for the direct and indirect costs of the bill. The fiscal note assumes that this revenue will be adequate to fund activities and expenditures required by the bill. A total of \$189,000 in gifts, grants, and donations revenue over FY 2011-12 and FY 2012-13 is needed to fully implement the bill.

As of this writing, the CDPHE has not identified a source of gifts, grants, or donations.

**State Expenditures**

Based on assumptions outlined below, effective implementation of the bill increases workload and costs to CDPHE, including legal services costs, by \$28,663 and 0.3 FTE in FY 2011-12 and \$134,218 and 0.9 FTE in FY 2012-13. To provide adequate time for NSAB to organize, to assimilate background materials, and to query WQCD in advance of the hearing, the NSAB is assumed to commence work in the current fiscal year, in approximately April 2012. State expenditures associated with the bill are summarized in Table 1.

<b>Table 1. Expenditures Under HB 12-1611</b>			
<b>Cost Components</b>	<b>FY 2011-12</b>	<b>FY 2012-13</b>	<b>FY 2013-14</b>
<i><u>Water Quality Control Division</u></i>			
Personal Services	\$14,978	\$44,934	
FTE	0.2	0.5	
Operating Costs	0	475	
NSAB Per Diem & Expenses	8,208	65,664	
<i><u>Nontechnical CDPHE Staff</u></i>			
Personal Services	5,477	15,953	
FTE	0.1	0.4	
Operating Costs	0	0	
<i><u>Department of Law</u></i>			
Legal Services	0	7,192	
<b>TOTAL</b>	<b>\$28,663</b>	<b>\$134,218</b>	

The NSAB will meet multiple times to consider the WQCD's approach to the EPA and the NNS. A minimum of nine meetings is assumed, including one organizational meeting in June 2012 (FY 2011-12) and in FY 2012-13: three meetings to survey existing materials and make inquiries in advance of the hearing, a hearing in October 2012, three meetings to make findings and prepare the NSAB report, and one meeting to present to the WQCC and General Assembly. As provided by the bill, double the statutory rate per diem rate for legislative interim committees entitles each NSAB member to \$198 per meeting. Expense costs must account for the geographic diversity of the NSAB, representing each water district, including some remote parts of the state. Because members are assumed to require lodging for at least one night surrounding a meeting, expenses are assumed at three times the legislative interim rate, or \$264 per meeting. The travel costs of each member are assumed at an average of \$450 per meeting. With nine members attending nine meetings, at a per member cost of \$912 per meeting, NSAB costs for the duration of its mission are estimated at \$73,872 (\$8,208 in FY 2011-12, and \$65,664 in FY 2012-13). As directed by the bill, NSAB costs are paid by CDPHE from the Nutrients Scientific Advisory Board.

Costs associated with increased workload of nontechnical CDPHE staff will increase by \$5,477 and 0.1 FTE in FY 2011-12 and \$15,953 and 0.4 FTE in FY 2012-13 to solicit donations, track expenses, and disperse payments to NSAB members, and to perform other administrative tasks associated with the fund and coordination of meetings for the NSAB.

This fiscal note assumes that the involvement of WQCD technical staff is essential to the NSAB's complete and accurate findings regarding the intent and necessity of WQCD actions concerning NNS and nutrient regulations in Colorado, including the formulation of proposed Regulations 31 and 85. The technical staff of WQCD will summarize the Regulation 31 and 85 nutrient standard proposal and the statements of responding parties, prepare materials explaining basin- and water body-specific considerations, attend and assist at NSAB meetings, assist in the preparation of reports, and facilitate outreach to nutrient regulation stakeholders. Costs for the increased workload of technical staff in the WQCD will increase by \$14,978 and 0.2 FTE in FY 2011-12 and \$44,934 and 0.5 FTE in FY 2012-13.

The involvement of WQCD legal counsel, as provided by the Department of Law, is also assumed, given the legal nature of certain factors in the NSAB's scope, as dictated by the bill. To address questions concerning state and federal law or provide legal interpretation, as well as to assist to the extent required with the conduct of the hearing, the Department of Law will provide 95 hours of legal work at \$75.71 per hour, for a total cost of \$7,192 and 0.1 FTE in FY 2012-13.

This fiscal note finds that the involvement of WQCD technical staff, though likely essential to accurate findings concerning the background and intent of proposed WQCC Regulations 31 and 85, is not absolutely required by the bill. All other costs outlined in this section, including legal representation of the WQCD before the NSAB, are required. The threshold of adequate funding required under the bill is, therefore, \$111,218, the total personal services and operating costs of the NSAB, nontechnical CDPHE staff, and 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 2.

<b>Table 2. Expenditures Not Included Under HB 12-1161*</b>			
<b>Cost Components</b>	<b>FY 2011-12</b>	<b>FY 2012-13</b>	<b>FY 2013-14</b>
Employee Insurance (including Short-term Disability)	\$2,163	\$5,541	
Supplemental Employee Retirement Payments	926	3,247	
Indirect Costs	3,805	11,325	
<b>TOTAL</b>	<b>\$6,894</b>	<b>\$20,113</b>	

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

**State Appropriations**

The Nutrients Scientific Advisory Board Fund is continuously appropriated. Moneys necessary to fund the activities of the WQCD and NSAB in FY 2011-12 and FY 2012-13 may be expended from the fund without any other appropriation. Of the amounts distributed from the fund, \$7,192 cash funds from the Nutrients Scientific Advisory Board Fund and 0.1 FTE must be reappropriated to the Department of Law in FY 2012-13.

**Technical Notes**

In compliance with House Bill 10-1178, this bill includes a provision requiring CDPHE to notify Legislative Council Staff (LCS) when it has received adequate funding to perform functions that rely entirely or in part on grant funding. To satisfy the schedule proposed by the WQCD, serving as the basis for cost analysis in this fiscal note, the LCS must receive notice that adequate funding has been received by April 2012.

Based on current information, the WQCC rulemaking for Regulations 31 and 85 will proceed on March 12, 2012. The adoption of a nutrient water quality standard may, depending on the timing of legislative enactment, precede the effective date of this bill.

**Departments Contacted**

Public Health and Environment	Natural Resources	Personnel and Administration
Governor's Office	Treasury	Legislative Council Staff
Agriculture	Law	