

**STATE and LOCAL
FISCAL IMPACT**

Drafting Number: LLS 14-0847 **Date:** February 6, 2014
Prime Sponsor(s): Sen. Hodge **Bill Status:** Senate Appropriations
 Rep. May; Gerou **Fiscal Analyst:** Alex Schatz (303-866-4375)

SHORT TITLE: REPEAL STATUTORY WATER QUALITY FEE SCHEDULES

Fiscal Impact Summary*	FY 2014-2015	FY 2015-2016
State Revenue	\$0	Up to \$782,470
<i>Revenue Change</i>		
Cash Funds		Up to 782,470
<i>State Transfers</i>		
Cash Funds	(700,000) 700,000	
State Expenditures	Minimal workload increase. See State Expenditures section.	
FTE Position Change		
Appropriation Required: None.		

* This summary shows changes from current law under the bill for each fiscal year. Transfers and diversions result in no net change to state revenue. Parentheses indicate a decrease in funds.

** These costs are not included in the bill's appropriation. See the State Expenditures section for more information.

Summary of Legislation

This bill, recommended by the **Joint Budget Committee**, establishes a new structure for cash funds and fees in the Water Quality Control Division (WQCD) of the Colorado Department of Public Health and Environment (CDPHE). The bill repeals statutory fees for clean water and drinking water programs and transfers fee-setting authority to the Water Quality Control Commission (WQCC).

In place of the Water Quality Control Fund and the current fee structure of the Colorado Discharge Permit System (CDPS), the bill creates cash funds for specific WQCD functions. On July 1, 2014, the Water Quality Control Fund is liquidated, with its balance allocated to the following new cash funds (by percentage):

- Public and Private Utilities Fund (53 percent)
- Construction Fund (17 percent)
- Commerce and Industry Fund (30 percent)

The bill also creates the Pesticide Fund and the Water Quality Certifications Fund, and amends statutes related to other existing cash funds that support WQCD's budget. Under the bill, WQCC may adjust fees to cover direct and indirect costs of most WQCD water quality programs.

The bill reenacts statutory authority to collect discharge permit fees for housed commercial swine feeding operations, directed to the Animal Feeding Operations Fund. Fees for on-site wastewater treatment permits are directed to the Public and Private Utilities Fund.

The bill repeals and reenacts basic procedures for the CDPS. The bill requires that the General Assembly consider a General Fund contribution for CDPS expenditures each fiscal year. Cash funds to support CDPS activities are reviewed in the budget process and subject to annual appropriations.

Background

Colorado's duty and authority to enforce federal water quality law is vested in the WQCD. The CDPS program implements the Clean Water Act and its various amendments, including authority to regulate both end-of-pipe and nonpoint source discharge of pollutants. Activities that have a potential effect on water quality are generally subject to permitting, whether the discharger is a public or private entity. Other WQCD duties include implementation of the federal Safe Drinking Water Act and the regulation of water and wastewater treatment operators, programs that charge fees primarily to public entities.

The WQCD is funded with a mix of state General Fund, cash funds, and federal funds. The Water Quality Control Fund is the primary source of cash funds. In FY 2013-14, CDPHE cash fund reports estimated cash fund revenue of approximately \$4.3 million to the fund, with expenditures of approximately \$4.8 million. The fund is projected to begin FY 2014-15 with a balance of approximately \$700,000.

In recent years, workload demands in the WQCD have outpaced the ability of the agency to hire sufficient staff using existing cash fund resources. Based on a recommendation by Joint Budget Committee (JBC) staff, the FY 2013-14 Long Bill included an increase of 16.0 FTE in the WQCD. Additional FTE were financed in the current fiscal year with a General Fund appropriation. Based on current projections, up to 10.0 FTE may be refinanced with cash funds generated by new fee revenue under this bill. The cost associated with this 10.0 FTE is calculated as \$782,470.

JBC staff has determined that the bill will result in one emergency rulemaking to establish fees at existing statutory levels. In the next fiscal year, CDPHE will study funding needs and promulgate new fees appropriately.

State Revenue

The bill results in **up to \$782,470** in cash fund revenue when new water quality fees are implemented in FY 2015-16. To meet long-term budget requirements for WQCD programs, additional new fee revenue may be implemented to address a budget shortfall that is created by a lack of General Fund appropriations to the WQCD.

Assumptions. There is no immediate revenue impact of the bill. CDPHE will set fees only after accounting for transfers and making an assessment of funding needs tied to new WQCD cash funds. New fee revenue under the bill is the result of rulemaking that takes effect for FY 2015-16.

Fee impact on individuals and business. The bill impacts fees currently collected into the Water Quality Control Fund by WQCD. Table 1 organizes fee revenue streams by cash fund.

Table 1. WQCD Fee Revenue Streams Under SB 14-134.		
New Cash Fund	Fee Authority	Funding Status
Public and Private Utilities Fund	<ul style="list-style-type: none"> • application review, issuance, inspections, compliance, and enforcement of discharge permit for municipal water, wastewater, and stormwater systems 	Unknown.
	<ul style="list-style-type: none"> • annual fee upon categories and subcategories of public water systems 	
	<ul style="list-style-type: none"> • permits for new, repaired, or upgraded on-site wastewater system 	
Construction Fund	<ul style="list-style-type: none"> • application review, issuance, inspections, compliance, and enforcement of discharge permit for construction project owners and operators 	Unknown.
Commerce and Industry Fund	<ul style="list-style-type: none"> • application review, issuance, inspections, compliance, and enforcement of discharge permit for commercial and industrial operations 	Unknown.
Pesticides Fund	<ul style="list-style-type: none"> • application review, issuance, inspections, compliance, and enforcement of discharge permit for pesticides 	Unknown.
Water Quality Certification Fund	<ul style="list-style-type: none"> • direct and indirect costs associated with water quality certification services 	Unknown.
Animal Feeding Operations Fund	<ul style="list-style-type: none"> • application review, issuance, inspections, compliance, and enforcement of discharge permit for housed commercial swine feeding operations 	Unknown.
Drinking Water Fund	<ul style="list-style-type: none"> • direct and indirect costs associated with implementation and administration of federal Safe Drinking Water Act 	Unknown.

For each cash fund, a surplus, shortfall, or another funding status is likely to decide the type and magnitude of fee adjustments. As of this writing, the fiscal note has no definite information about the ability of new cash funds to meet specific budget requirements. However, the fiscal note assumes that current statutory fees will be continued by emergency rule immediately following the effective date of this bill. Table 1 will be revised if pertinent information becomes available prior to the Final Fiscal Note.

Temporary fee reductions to balance cash funds. The bill provides that the WQCC must initially address any uncommitted reserve that exceeds statutory limits. High balances in newly created cash funds may result in short-term fee reductions. This fiscal note does not estimate the number of new cash funds under SB 14-134, if any, that will require temporary fee reductions to comply with statute. Once balances comply with cash fund standards, the bill grants the WQCC authority to raise fees.

Fee increases to refinance 10.0 FTE. At least 16.0 FTE in the WQCD is currently financed using General Fund, despite fee authority that, in scope, includes these personal services. By authorizing administrative fee-setting, CDPHE will meet budget goals by adjusting fees to refinance up to 10.0 FTE using cash funds in FY 2015-16 and future fiscal years. This requires an increase of up to \$782,470 in fee revenue, which will be apportioned to new cash funds based on allocation of these refinanced personal services in WQCD water quality programs.

Fee increases to fill budget gaps. In the long term, an overall shortfall is anticipated. At a minimum, budget gaps that could be bridged using the flexibility of the Water Quality Control Fund will be counted as gaps for fee collection purposes. Isolating revenue streams will drive some fees up and some fees down. Fees will decrease to the extent that current permit fees contribute surplus to the Water Quality Control Fund. Fees will increase where current WQCD functions do not generate sufficient fees to operate without the general fee revenue of the Water Quality Control Fund. Fee increases will also occur to fill budget gaps when General Fund is not available to backfill WQCD budget requirements.

State transfers. The bill results in transfers between the Water Quality Control Fund and three new cash funds on July 1, 2014. Based on cash fund projections in CDPHE's budget request for FY 2014-15, with an estimated beginning balance of \$700,000 on July 1, 2014, the following amounts will be transferred from the Water Quality Control Fund:

- \$371,000 (53 percent) to the Public and Private Utilities Fund;
- \$119,000 (17 percent) to the Construction Fund; and
- \$210,000 (30 percent) to the Commerce and Industry Fund.

State Expenditures

Under the bill, CDPHE workload increases by a minimal amount to implement an administrative fee schedule. Depending on fee modifications implemented by CDPHE, the bill may also impact expenditures by state agencies that pay water quality fees.

CDPHE. The bill results in minimal workload increase for CDPHE. In FY 2014-15, the bill requires CDPHE to study WQCD revenue streams and develop administrative procedures for CDPS and other regulatory programs affected by the bill. The WQCC will conduct rulemaking to set fees and standardize procedure. The fiscal note assumes that existing CDPHE resources will be allocated to implementation of the bill as an essential budget function. In FY 2015-16 and future fiscal years, workload to implement the bill requires continuing attention. However, it will be a priority for existing programs to transition to amended statutes, with minimal increase in overall workload to manage the five new cash funds and periodic fee adjustments. Thus, no new appropriations are required to implement the bill.

Other state agencies. Various state agencies, such as the Department of Transportation, are subject to water quality regulation and pay fees affected by the bill. To the extent fees are modified as a result of the bill's implementation, expenditures by these state agencies will also be adjusted.

Local Government Impact, School District Impact, and Statutory Public Entity Impact

Governmental agencies hold CDPS permits and pay WQCD fees for various facilities and projects, including municipal wastewater treatment plants, storm sewer systems, and utility operations. To the extent fees are modified as a result of the bill's implementation, expenditures by local governments, school districts, and statutory public entities will also be adjusted.

Without information concerning new cash fund balances and annual budget requirements associated with each fee, the fiscal note cannot estimate the impact of the bill on local expenditures.

Effective Date

The bill takes effect July 1, 2014.

State Appropriations

No new appropriations are required for FY 2014-15, provided that the Long Bill grants spending authority from these cash funds in annual appropriations to the Water Quality Control Division of CDPHE.

State and Local Government Contacts

Public Health and Environment
Office of State Planning and Budgeting
Regional Transportation District
Transportation
Local Affairs
Law

Joint Budget Committee Staff
Personnel and Administration
Special Districts
Municipalities
Counties