

**STATE and LOCAL  
FISCAL IMPACT**

**Drafting Number:** LLS 15-0570  
**Prime Sponsor(s):** Rep. Dore

**Date:** February 24, 2015  
**Bill Status:** House SVMA  
**Fiscal Analyst:** Clare Pramuk (303-866-2677)

**BILL TOPIC:** GA REVIEW ENVIRONMENTAL RULES REQUIRED IN LIEU FED LAW

Fiscal Impact Summary*	FY 2015-2016	FY 2016-2017
<b>State Revenue</b>		
<b>State Expenditures</b>	<b>(up to \$30 million)</b>	<b>(up to \$30 million)</b>
Federal Funds	(up to 30 million)	(up to 30 million)
General Fund	56,085	60,614
Centrally Appropriated Costs**	7,910	9,090
<b>FTE Position Change</b>	0.5 FTE	0.5 FTE
<b>Appropriation Required:</b> \$56,085 - Department of Public Health and Environment (FY 2015-16)		

\* This summary shows changes from current law under the bill for each fiscal year. Parentheses indicate a decrease in funds.

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

***This fiscal note should be considered preliminary. It will be revised when new information becomes available.***

**Summary of Legislation**

Before they can become effective or submitted to the Environmental Protection Agency (EPA) new and amended rules required by new or amended regulations proposed or adopted by the EPA require legislative approval. The rules subject to the bill are pursuant to the federal:

- Clean Air Act;
- Water Pollution Control Act;
- Solid Waste Disposal Act; and
- Resource Conservation and Recovery Act of 1976.

Bills to approve the submission of one or more rules are not counted against the five bill limit for members of the General Assembly.

The Air Quality Control Commission, the Water Quality Control Commission, and the Solid and Hazardous Waste Commission (commissions) in the Department of Public Health (DPHE) are required to submit an annual report to the Legislative Council summarizing all new and amended rules that are required by the EPA to maintain state primacy regarding the enforcement of state environmental law operating in lieu of federal environmental law. The bill repeals a reporting requirement that the Air Quality Control Commission provide an annual report to the Legislative Council that summarizes any additions or changes to the air quality State Implementation Plan (SIP) that are to be submitted to EPA for approval.

## **Background**

Under current law, the commissions are authorized to promulgate rules and regulations that comply with EPA standards and requirements. These rules and regulations can be more stringent than EPA standards and requirements. Because Colorado is in compliance with EPA standards and requirements, Colorado has primacy, which enables the state to enforce federal regulations with federal oversight.

## **State Expenditures**

This bill could reduce state expenditures by up to \$30 million if state enforcement of certain environmental laws revert to the EPA.

**Conditional loss of federal funding.** Federal funding of the DPHE's regulation of air, water, and hazardous materials is approximately \$30 million annually. If the extra time required to receive legislative approval of new and amended environmental regulations results in a partial or complete loss of primacy, the bill will result in a loss of federal funding for regulatory expenditures. While the staff dedicated to enforcing federal law can be reduced, because state environmental laws will still be in force, the DPHE may not have sufficient funding for the staff necessary to enforce state law.

**Cost of legislative approval of rules.** Adding legislative approval to new and amended rules is expected to increase General Fund expenditures for the DPHE by \$63,996 and 0.5 FTE in FY 2015-16, and \$69,704 and 0.5 FTE in FY 2016-17 and thereafter. These costs are shown in Table 1 and explained below.

This bill changes the rulemaking process for environmental regulations and increases the amount of staff time required. DPHE staff will prepare reports summarizing the new and amended rules adopted by the state and will monitor and testify on rules as they are considered by the General Assembly. The Department of Law is expected to provide 50 hours of legal services to support the new legislative process for rules.

<b>Cost Components</b>	<b>FY 2015-16</b>	<b>FY 2016-17</b>
Personal Services	\$46,148	\$55,379
FTE	0.5	0.5
Operating Expenses and Capital Outlay Costs	5,212	509
Legal Services	4,726	4,726
Centrally Appropriated Costs*	7,910	9,090
<b>TOTAL</b>	<b>\$63,996</b>	<b>\$69,704</b>

\* Centrally appropriated costs are not included in the bill's appropriation.

**Lack of legislative approval of rules.** If rules are changed or not approved by the General Assembly, the commissions will have additional expenditures in order to repeat the rulemaking process. If the workload exceeds these estimates, those increased expenditures will be addressed during the annual budget process.

**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. The centrally appropriated costs subject to this policy are estimated in the fiscal note for informational purposes and summarized in Table 2.

<b>Table 2. Centrally Appropriated Costs Under HB 15-1210*</b>		
<b>Cost Components</b>	<b>FY 2015-16</b>	<b>FY 2016-17</b>
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$4,333	\$4,351
Supplemental Employee Retirement Payments	3,577	4,739
<b>TOTAL</b>	<b>\$7,910</b>	<b>\$9,090</b>

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

**State as regulated entity.** A number of state agencies are subject to environmental regulation. If the EPA begins regulation of some or all of federal regulations, these state agencies will be subject to the cost for additional permits and the increased workload to be responsive to both state and federal regulators.

### **Local Government Impact**

Like state agencies, local governments are subject to environmental regulations. If the state loses primacy, local governments will become subject to regulation by both the state for state environmental laws and the EPA for federal law. They will have increased costs because they will be required to pay licensing and permit fees for both state and federal regulation.

Many local governments have rules that are based on state regulations or that are delegated to them by the state. If rules are changed through legislation, local governments may have an increase in workload to conform their ordinances or rules with state law.

### **Technical or Mechanical Defects**

Current law provides for the commissions to conduct temporary or emergency rulemaking when immediate action is necessary for the preservation of public health safety, or welfare. Under the bill, temporary or emergency rules will need legislative approval before they can be implemented which conflicts with the purpose of an expedited rulemaking process.

### **Effective Date**

The bill takes effect August 5, 2015, if the General Assembly adjourns on May 6, 2015, as scheduled, and no referendum petition is filed.

### **State Appropriations**

The Department of Public Health and Environment requires a General Fund appropriation of \$56,085 and an allocation of 0.5 FTE. The Department of Law requires \$4,726 in reappropriated funds.

**Departmental Difference**

The fiscal note provides resources totaling \$63,995 including 0.5 FTE, for DPHE to implement the bill. The DPHE provided an analysis that concluded annual costs will be approximately \$282,000 with an allocation of 1.8 FTE.

According to the DPHE, the bill requires both program staff and DPHE management to commit approximately 3,600 hours to new tasks. These tasks include summarizing rules changed due to EPA action, preparation and attendance at legislative hearings, and outreach to stakeholders affected by delayed implementation of rules. In addition, the DPHE contends that preparation for legislative hearings generates 840 hours of new legal work for the Department of Law.

The fiscal note provides resources for each of these tasks, but finds that approximately 1,000 hours (0.5 FTE) is sufficient to address work generated by the bill. The DPHE is equipped to produce summaries of new rules as a part of the current rulemaking process, and already produces a summary as described in the bill for the Air Pollution Control Division. Participation in the legislative process is also a current function of the DPHE, and opportunities for additional participation will be limited by the hearing process itself. Outreach to stakeholders is also a current function of DPHE environmental divisions, and the bill requires no specific level of effort in this regard. Finally, the bill's scope includes only rulemaking related to new EPA standards and policies, limiting the effect of the bill on departmental rulemaking.

**State and Local Government Contacts**

Public Health and Environment  
Municipalities

Law  
Counties

Legislative Council Staff