

SENATE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

April 23, 2015
Date

Committee on Finance.

After consideration on the merits, the Committee recommends the following:

HB15-1249 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation:

1 Amend reengrossed bill, page 2, after line 1 insert:

2 **"SECTION 1. Legislative declaration.** (1) The general
3 assembly hereby:

4 (a) Finds that:

5 (I) The division of administration in the department of public
6 health and environment permits discharges from, and is responsible for
7 compliance oversight of, approximately four thousand storm water
8 construction sites annually under both the "Colorado Water Quality
9 Control Act", article 8 of title 25, Colorado Revised Statutes, and the
10 "Federal Water Pollution Control Act";

11 (II) The federal environmental protection agency (EPA) also
12 performs many inspections of construction sites in Colorado under the
13 "Federal Water Pollution Control Act" as a result of the EPA's
14 determination that the division currently is not meeting federal oversight
15 objectives on its own, and, specifically, the EPA will continue to conduct
16 supplemental inspections until the division has the resources to inspect at
17 least ten percent of its storm water permits each year, or has developed an
18 identified program to meet comparable objectives;

19 (III) Concerns among the regulated community about inconsistent
20 compliance standards between federal, state, and local governmental
21 storm water construction site inspections, the over-reliance on
22 penalty-based enforcement to achieve compliance, and other concerns led
23 to the passage of H.B. 12-1119, which directed the division to collaborate

1 with the construction industry to develop more responsive and
2 streamlined processes for preventing violations of the "Colorado Water
3 Quality Control Act";

4 (IV) According to the division's "Report to the General Assembly
5 of the State of Colorado in accordance with Colorado House Bill
6 12-1119", stakeholders and the division recommended developing and
7 implementing an alternative compliance assurance model that both allows
8 for improved targeting of enforcement resources on chronic and
9 recalcitrant violators while encouraging and facilitating proactive
10 compliance; and

11 (V) Following up on the H.B. 12-1119 report, the division held a
12 stakeholder process in 2014 to review fees for water quality discharge
13 permits, and that stakeholder process further defined the compliance
14 assurance model that could be implemented by the division if the division
15 had additional resources;

16 (b) Determines that it is necessary to implement certain
17 recommended solutions from the H.B. 12-1119 report and the subsequent
18 stakeholder processes, including increasing division inspection resources,
19 in order to:

20 (I) Create a compliance assurance model that would provide a
21 more responsive and predictable process that would increase compliance
22 assistance through increased inspection frequency, increased individual
23 assistance, increased compliance assistance resources, and increased
24 communication and follow-up after inspections, and provide
25 consideration for first-time violators with a focus on repeat offenders; and

26 (II) Meet EPA oversight objectives for annual inspection rates by
27 the division, resulting in less EPA construction site oversight in Colorado
28 and more consistent and predictable inspection standards for permit
29 holders; and

30 (c) Declares that implementation of these recommendations
31 justifies limited fee increases as supported by the construction sector that
32 will pay the increased fees."

33 Renumber succeeding sections accordingly.

34 Page 9, after line 20 insert:

35 "(H) AMUSEMENT AND RECREATION SERVICES \$1,480".

36 Page 10, line 5, strike "PERMITS:" and substitute "PERMITS. THIS
37 SUBPARAGRAPH (I) IS REPEALED, EFFECTIVE JULY 1, 2016:".

1 Page 10, line 17, strike "DEWATERING" and substitute "DEWATERING. THIS
2 SUB-SUBPARAGRAPH (A) IS REPEALED, EFFECTIVE JULY 1, 2016."

3 Page 10, line 18, strike "CLEANUP" and substitute "CLEANUP. THIS
4 SUB-SUBPARAGRAPH (B) IS REPEALED, EFFECTIVE JULY 1, 2016."

5 Page 10, line 20, strike "AREA" and substitute "AREA. THIS
6 SUB-SUBPARAGRAPH (C) IS REPEALED, EFFECTIVE JULY 1, 2016."

7 Page 10, line 22, strike "AREA" and substitute "AREA. THIS
8 SUB-SUBPARAGRAPH (D) IS REPEALED, EFFECTIVE JULY 1, 2016."

9 Page 11, after line 1 insert:

10 "(G) LOW COMPLEXITY, EFFECTIVE ON AND AFTER
11 JULY 1, 2016 \$820
12 (H) HIGH COMPLEXITY, EFFECTIVE ON
13 AND AFTER JULY 1, 2016 \$2,000
14 (I) CONSTRUCTION - STORM WATER ONLY; LESS
15 THAN 1 ACRE OF DISTURBED AREA, EFFECTIVE ON
16 AND AFTER JULY 1, 2016 \$165
17 (J) CONSTRUCTION - STORM WATER ONLY; FROM
18 1 ACRE TO LESS THAN 30 ACRES, EFFECTIVE ON
19 AND AFTER JULY 1, 2016 \$350
20 (K) CONSTRUCTION - STORM WATER ONLY;
21 30 ACRES OR MORE OF DISTURBED AREA, EFFECTIVE
22 ON AND AFTER JULY 1, 2016 \$540
23 (III) EFFECTIVE ON AND AFTER JULY 1, 2016, THE FEE FOR AN
24 INDIVIDUAL PERMIT FOR CONSTRUCTION ACTIVITY IS FOUR THOUSAND
25 FOUR HUNDRED DOLLARS; AND
26 (IV) THE DIVISION SHALL USE THE REVENUE GENERATED BY THE
27 FEES CONTAINED IN SUB-SUBPARAGRAPHS (G), (H), (I), (J), AND (K) OF
28 SUBPARAGRAPH (II) OF THIS PARAGRAPH (c) AND SUBPARAGRAPHS (I) AND
29 (III) OF THIS PARAGRAPH (c) TO CONTINUE TO FUND THE ADMINISTRATION
30 AND OVERSIGHT OF THE CONSTRUCTION SECTOR AND SHALL USE THE
31 INCREASED REVENUE, WHEN COMPARED WITH THE REVENUE GENERATED
32 BY THE FEES CONTAINED IN SUBCATEGORIES 2, 8, 9A, AND 9B OF
33 SUB-SUBPARAGRAPH (G) AND SUB-SUBPARAGRAPHS (H), (I), (J), AND (L)
34 OF SUBPARAGRAPH (I) OF PARAGRAPH (b) OF SUBSECTION (1) OF THIS
35 SECTION AS IT EXISTED ON JUNE 30, 2016, TO FUND NEW SERVICES
36 PROVIDED UNDER THE ALTERNATIVE COMPLIANCE ASSURANCE MODEL.

1 THE DIVISION SHALL NOT USE THE INCREASED REVENUE TO FUND
2 ADDITIONAL ENFORCEMENT STAFF. THE DIVISION MAY USE THE INCREASED
3 REVENUE FOR THE FOLLOWING PURPOSES:
4 (A) INCREASING INSPECTIONS OF THE CONSTRUCTION SECTOR TO
5 MEET COMPLIANCE OBJECTIVES IDENTIFIED BY THE FEDERAL
6 ENVIRONMENTAL PROTECTION AGENCY;
7 (B) IMPLEMENTING A COMPLIANCE STRATEGY THAT RELIES ON
8 INCREASED ASSISTANCE AND FOLLOW-UP TO OBTAIN AN OVERALL
9 INCREASE IN COMPLIANCE INSTEAD OF INCREASED RELIANCE ON
10 ENFORCEMENT;
11 (C) TARGETING ADDITIONAL COMPLIANCE ASSISTANCE TOWARDS
12 PERMITTEES TO SEEK INCREASED COMPLIANCE, INCLUDING: STREAMLINED
13 SITE VISITS THAT PROVIDE INITIAL ASSISTANCE CONSULTATIONS AND
14 INCREASED ASSISTANCE RESOURCES SUCH AS GUIDANCE DOCUMENTS,
15 PRESENTATIONS, AND ON-LINE RESOURCES; REVIEW AND RESPONSE TO THE
16 INSPECTED ENTITY'S WRITTEN RESPONSE TO THE INSPECTION; FOLLOW-UP
17 INSPECTIONS AND ADDITIONAL INSPECTIONS FOR OWNERS AND OPERATORS
18 WITH SYSTEMIC VIOLATIONS; AND INCREASED OVERALL INSPECTION
19 FREQUENCY;
20 (D) MAINTAINING AND INCREASING CURRENT SERVICE LEVELS OF
21 ADMINISTRATION AND OVERSIGHT FOR THE DIVISION'S STORM WATER
22 MANAGEMENT SYSTEM ADMINISTRATOR PROGRAM; AND
23 (E) TARGETING ENFORCEMENT TOWARDS OPERATORS THAT SHOW
24 CHRONIC VIOLATIONS, SIGNIFICANT VIOLATIONS, OR RECALCITRANT
25 RESPONSE ACTIONS."

26 Page 17, strike lines 7 through 27.

27 Page 18 of the bill, strike lines 1 through 8 and substitute:

28 "(1.2) (a) FOR THE ACTIVITIES LISTED IN THIS SUBSECTION (1.2)
29 ASSOCIATED WITH REVIEWING REQUESTS FOR CERTIFICATIONS UNDER
30 SECTION 401 OF THE FEDERAL ACT AND THIS ARTICLE, KNOWN AS "401
31 CERTIFICATES", THE DIVISION MAY ASSESS A FEE FOR THE REVIEW, AND
32 ALL SUCH FEES MUST BE IN ACCORDANCE WITH THE FOLLOWING
33 SCHEDULES:
34 (I) THE FEE FOR A TIER 1 PROJECT IS ONE THOUSAND ONE HUNDRED
35 DOLLARS, WHICH MUST BE SUBMITTED WITH THE CERTIFICATION
36 APPLICATION. TIER 1 PROJECTS ARE PROJECTS THAT INCUR MINIMAL COSTS
37 AND MINIMAL WATER QUALITY IMPACTS. TIER 1 INCLUDES CERTIFICATIONS
38 OF CHANNEL STABILIZATION PROJECTS AND SINGLE DRAINAGE

1 IMPROVEMENT PROJECTS. TYPICAL CHARACTERISTICS OF TIER 1 PROJECTS
2 MAY INCLUDE ALL OR SOME OF THE FOLLOWING:

- 3 (A) THE POTENTIAL FOR MINIMAL IMPACTS TO WATER QUALITY;
- 4 (B) A LOW LEVEL OF PUBLIC PARTICIPATION;
- 5 (C) NO MORE THAN STANDARD COORDINATION WITH FEDERAL,
6 STATE, OR LOCAL AGENCIES MAY BE REQUIRED;
- 7 (D) LIMITED TECHNICAL ASSISTANCE MAY BE NEEDED.

8 (II) THE FEE FOR A TIER 2 PROJECT IS THREE THOUSAND EIGHT
9 HUNDRED DOLLARS, WHICH MUST BE SUBMITTED WITH THE CERTIFICATION
10 APPLICATION. TIER 2 PROJECTS ARE PROJECTS THAT INCUR MODERATE
11 COSTS AND POTENTIAL WATER QUALITY IMPACTS. TIER 2 INCLUDES
12 CERTIFICATIONS OF PROJECTS THAT AFFECT MULTIPLE DRAINAGES.
13 TYPICAL CHARACTERISTICS OF TIER 2 PROJECTS MAY INCLUDE ALL OR
14 SOME OF THE FOLLOWING:

- 15 (A) THE POTENTIAL FOR MINIMAL IMPACTS TO WATER QUALITY;
- 16 (B) A BASIC TO HIGH LEVEL OF PUBLIC PARTICIPATION MAY BE
17 REQUIRED WITH POTENTIAL FOR PARTICIPATION IN PUBLIC MEETINGS OR
18 HEARINGS HELD BY OUTSIDE PARTIES;
- 19 (C) MORE THAN THE STANDARD LEVEL OF COORDINATION WITH
20 MULTIPLE FEDERAL, STATE, OR LOCAL AGENCIES MAY BE REQUIRED,
21 INCLUDING ONE OR MORE MEETINGS OR PRE-APPLICATION SITE VISITS;
- 22 (D) A MODERATE AND ONGOING LEVEL OF TECHNICAL ASSISTANCE
23 MAY BE NEEDED;
- 24 (E) COMPENSATORY MITIGATION REVIEW MAY BE REQUIRED;
- 25 (F) REVIEW OF A FULL EVALUATION AND FINDINGS REPORT IF
26 NEEDED; OR
- 27 (G) IF THE CERTIFICATION IS APPEALED, ADDRESSING AN APPEAL
28 OF THE DIVISION'S WATER QUALITY CERTIFICATION TO THE COMMISSION
29 PURSUANT TO SECTIONS 25-8-202 (1) (k), 25-8-302 (1) (f), AND 25-8-401.

30 (III) THE FEE FOR A TIER 3 PROJECT IS CALCULATED ON AN HOURLY
31 RATE BASED ON THE ACTUAL COSTS OF DIVISION STAFF AND CONTRACTOR
32 TIME. TIER 3 PROJECTS ARE PROJECTS THAT INVOLVE A LARGE WATERSHED
33 AREA, A HIGH DEGREE OF COMPLEXITY, OR HIGH POTENTIAL FOR WATER
34 QUALITY IMPACTS. TIER 3 INCLUDES CERTIFICATIONS OF FEDERAL ENERGY
35 REGULATORY COMMISSION RELICENSING PROJECTS OR PROJECTS
36 INVOLVING MORE LONG-TERM WATER QUALITY IMPACTS. TYPICAL
37 CHARACTERISTICS OF TIER 3 PROJECTS MAY INCLUDE ALL OR SOME OF THE
38 FOLLOWING:

- 39 (A) THE POTENTIAL FOR GREATER, PERMANENT WATER QUALITY
40 IMPACTS IF ONE OR MORE OF THE FOLLOWING OCCURS: THE WATER BODY
41 IS IDENTIFIED AS NOT ATTAINING WATER QUALITY STANDARDS; OR

1 MULTIPLE STREAM OR LAKE SEGMENTS AS ESTABLISHED BY SECTION
2 25-8-203 ARE AFFECTED;

3 (B) A HIGH LEVEL OF PUBLIC PARTICIPATION, INCLUDING
4 EXTENSIVE PUBLIC COMMENTS AND THE POTENTIAL FOR ONE OR MORE
5 PUBLIC MEETINGS OR HEARINGS CONDUCTED BY THE DIVISION OR OUTSIDE
6 PARTIES;

7 (C) SUBSTANTIALLY MORE THAN STANDARD COORDINATION WITH
8 MULTIPLE FEDERAL, STATE, OR LOCAL AGENCIES MAY BE REQUIRED,
9 INCLUDING ONE OR MORE MEETINGS;

10 (D) A HIGH LEVEL OF ITERATIVE TECHNICAL ASSISTANCE MAY BE
11 REQUIRED OR SUBSTANTIVE PROJECT REVISIONS MAY BE RECEIVED;

12 (E) THE POTENTIAL FOR COMPLEX COMPENSATORY MITIGATION
13 REVIEW;

14 (F) A SITE VISIT MAY BE NEEDED TO UNDERSTAND IMPACTS AND
15 ADVISE ON POTENTIAL ALTERNATIVES;

16 (G) THE REVIEW OF A FULL EVALUATION AND FINDINGS REPORT IF
17 NEEDED; OR

18 (H) IF THE CERTIFICATION IS APPEALED, ADDRESSING AN APPEAL
19 OF THE DIVISION'S WATER QUALITY CERTIFICATION TO THE COMMISSION
20 PURSUANT TO SECTIONS 25-8-202 (1) (k), 25-8-302 (1) (f) AND 25-8-401.

21 (IV) THE FEE FOR A TIER 4 PROJECT IS CALCULATED ON AN HOURLY
22 RATE BASED ON THE ACTUAL COSTS OF DIVISION STAFF AND CONTRACTOR
23 TIME. TIER 4 PROJECTS ARE PROJECTS THAT INVOLVE MULTIPLE OR LARGE
24 WATERSHED AREAS, A VERY HIGH DEGREE OF COMPLEXITY, VERY HIGH
25 POTENTIAL FOR WATER QUALITY IMPACTS, OR A HIGH LEVEL OF PUBLIC
26 PARTICIPATION. TIER 4 INCLUDES TRANSMOUNTAIN WATER SUPPLY
27 PROJECTS. TYPICAL CHARACTERISTICS OF TIER 4 PROJECTS MAY INCLUDE
28 ALL OR SOME OF THE FOLLOWING:

29 (A) THE POTENTIAL FOR GREATER WATER QUALITY IMPACTS IF ONE
30 OR MORE OF THE FOLLOWING OCCURS: THE WATER BODY IS IDENTIFIED AS
31 NOT ATTAINING WATER QUALITY STANDARDS; OR MULTIPLE STREAM OR
32 LAKE SEGMENTS AS ESTABLISHED BY SECTION 25-8-203 ARE AFFECTED;

33 (B) A HIGH LEVEL OF PUBLIC PARTICIPATION, INCLUDING
34 EXTENSIVE PUBLIC COMMENTS AND THE POTENTIAL FOR ONE OR MORE
35 PUBLIC MEETINGS OR HEARINGS CONDUCTED BY THE DIVISION OR OUTSIDE
36 PARTIES;

37 (C) SUBSTANTIALLY MORE COORDINATION THAN IS STANDARD
38 WITH MULTIPLE FEDERAL, STATE, OR LOCAL AGENCIES MAY BE REQUIRED,
39 INCLUDING ONE OR MORE MEETINGS;

40 (D) A HIGH LEVEL OF ITERATIVE TECHNICAL ASSISTANCE MAY BE
41 REQUIRED OR SUBSTANTIVE PROJECT REVISIONS MAY BE RECEIVED;

1 (E) THE POTENTIAL FOR COMPLEX COMPENSATORY MITIGATION
2 REVIEW;

3 (F) A SITE VISIT MAY BE NEEDED TO UNDERSTAND IMPACTS AND
4 ADVISE ON POTENTIAL ALTERNATIVES;

5 (G) COORDINATION WITH THE GOVERNOR'S OFFICE IN
6 CONJUNCTION WITH OTHER STATE AGENCIES, TRIBAL NATIONS, AND THE
7 FEDERAL GOVERNMENT MAY BE REQUIRED;

8 (H) TO THE EXTENT PERTINENT, REVIEW OF ADDITIONAL
9 DOCUMENTS, SUCH AS FEDERAL "NATIONAL ENVIRONMENTAL POLICY
10 ACT" RESOURCE REPORTS, ENVIRONMENTAL ASSESSMENTS, AND
11 ENVIRONMENTAL IMPACT STATEMENTS;

12 (I) IF NEEDED, TO THE EXTENT NOT ADDRESSED IN THE
13 DOCUMENTS ADDRESSED IN SUB-SUBPARAGRAPH (H) OF THIS
14 SUBPARAGRAPH (IV) AND CONSISTENT WITH THE REQUIREMENTS OF THIS
15 ARTICLE AND OF THE RULES PROMULGATED PURSUANT TO THIS ARTICLE,
16 REVIEW AND USE OF A FULL EVALUATION AND FINDINGS REPORT; OR

17 (J) IF THE CERTIFICATION IS APPEALED, ADDRESSING AN APPEAL OF
18 THE DIVISION'S WATER QUALITY CERTIFICATION TO THE COMMISSION
19 PURSUANT TO SECTIONS 25-8-202 (1) (k), 25-8-302 (1) (f) AND 25-8-401.

20 (b) FOR TIER 3 AND TIER 4 PROJECTS, THE DIVISION MAY ASSESS
21 FEES FOR SERVICES PROVIDED BY THE DIVISION PRIOR TO THE APPLICANT
22 SUBMITTING A FORMAL WATER QUALITY CERTIFICATION APPLICATION,
23 WHICH FEES MUST REFLECT THE ACTUAL COST OF DIVISION STAFF AND
24 CONTRACTOR TIME.

25 (c) FOR TIER 3 AND TIER 4 PROJECTS, THE DIVISION MAY ASSESS
26 FEES FOR SERVICES PROVIDED BY THE DIVISION TO MONITOR THE PROJECTS
27 CERTIFIED WITH CONDITIONS, WHICH FEES MUST REFLECT THE ACTUAL
28 COST OF DIVISION STAFF AND CONTRACTOR TIME."

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