

Background

Colorado's duty and authority to enforce federal water quality law is vested in the WQCD. The CDPS program implements the federal Clean Water Act and its various amendments, including the 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. As a result of a recent lawsuit, the application of pesticides must now be permitted as a discharge under the Clean Water Act. 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, subject to annual appropriation. In FY 2014-15, CDPHE cash fund reports estimated cash fund revenue of approximately \$4.5 million to the fund, with expenditures of approximately \$5.1 million. The fund is projected to begin FY 2015-16 with a balance of approximately \$490,000.

Under current law, the WQCD animal agriculture program collects fees from confined animal feeding operations (CAFOs) and housed commercial swine feeding operations (HCSFOs). The current fee structure for CAFOs and HCSFOs includes temporary fee increases that were initially enacted for three years starting in 2009, and renewed for three additional years by a 2012 bill. These temporary fee increases expire after June 30, 2015, unless extended by the General Assembly in a bill.

In recent years, workload demands in the WQCD have outpaced the ability of the agency to hire sufficient staff using existing cash fund resources. For example, among the five sectors identified in the bill, only construction and animal agriculture generate cash funds sufficient to pay for all associated operations in the WQCD. Under current law, approximately 1.1 FTE for pesticide applications and 1.5 FTE for water quality certifications have no associated source of cash funds. To manage overall workload starting in FY 2013-14, the General Assembly budgeted for an additional 16.0 FTE in the WQCD, financed with General Fund appropriations.

State Revenue

The bill increases state cash fund revenue to the WQCF by approximately \$219,323 in FY 2015-16 and by \$444,323 annually starting in FY 2016-17. New cash fund revenue is generated by fees collected by the WQCD for pesticide application and for 401 certifications. The bill also continues for FY 2015-16 through FY 2017-18 current revenue levels for animal agriculture fees that were otherwise set to expire at the end of FY 2014-15.

Assumptions. The WQCC will conduct rulemaking for 401 certification fees in FY 2015-16, to take effect in FY 2016-17. Current costs of hourly and contractual work are used in the initial setting of 401 certification fees. Statutory pesticide fees are implemented immediately in FY 2015-16.

Fee impact on individuals, businesses, and governmental agencies. Section 2-2-322, C.R.S., requires legislative service agency review of measures which create or increase any fee collected by a state agency. Table 1 identifies the fee impact of this bill.

Table 1. Fee Impact on Individuals, Businesses, and Governmental Agencies.						
Type of Fee	Current Fee	Proposed Fee	Fee Change	Number Affected	Fee Impact (FY 2015-16)	Fee Impact (FY 2016-17)
CDPS - Pesticide Application	\$0	\$275	\$275	64	\$17,600	\$17,600
401 Certification - Tier 1	0	1,100	1,100	18	0	19,800
401 Certification - Tier 2	0	3,800	3,800	2	0	7,600
401 Certification - Tier 3	0	n/a*			0	0
401 Certification - Tier 4 consultant (hourly)	0	152	152	520 hrs.	0	79,040
401 Certification - Tier 4 WQCD staff (hourly)	0	76	76	1,560 hrs.	0	118,560
CAFO General Permit	250	750	500	76	38,000	38,000
CAFO Permitted Animal (General Permit)	0.04	0.09	0.05	1,253,034	62,652	62,652
CAFO Individual Permit	500	1,500	1,000	0	0	0
CAFO Permitted Animal (Individual Permit)	0.08	0.09	0.01	0	0	0
CAFO Unpermitted Animal	0	0.06	0.06	860,486	51,629	51,629
HCSFO Permit	0.20	0.26	0.06	824,031	49,442	49,442
TOTAL					\$219,313	\$444,323

* No Tier 3 401 certifications are anticipated in FY 2016-17, and the WQCC is therefore not required to immediately establish a fee for this service. A 401 Certification - Tier 3 fee will be established based on specific needs in future fiscal years.

New fees account for \$242,600 of the bill's state revenue increase. As directed by the bill, pesticide application fees will be set at a statutory rate of \$275 per regulated entity starting in FY 2015-16. The WQCC will, by rule, set 401 certification fees at tiered rates that cover the reasonable cost of the WQCD to review applications. These 401 certification fees take effect in FY 2016-17. Most new fees under the bill are collected from local government entities, as described in the Local Government and Statutory Public Entity Impact section below. The remainder of new fees are collected from developers, private ditch companies, and other businesses.

For three fiscal years, from FY 2015-16 to FY 2017-18, continuing fees for CAFOs and HCSFOs will annually increase state revenue by \$201,723, relative to current law. This increase in state revenue represents no net change from current collections, as CAFO and HCSFO fees are otherwise scheduled to decrease starting July 1, 2015.

TABOR Impact

This bill increases state revenue, which will increase the amount required to be refunded under TABOR. The TABOR set-aside is estimated as a net increase in state revenue above current collections, the amount of \$17,600 from new fees under this bill in FY 2015-16, and \$242,600 in FY 2016-17 and future fiscal years. TABOR refunds are paid from the General Fund.

State Expenditures

The bill increases expenditures by certain state agencies that pay water quality fees by a total of approximately \$550 in each fiscal year starting in FY 2015-16. The bill also increases workload in the CDPHE on a one-time basis in FY 2015-16. Once fully implemented in FY 2016-17, the bill refinances the expenditures of the WQCD for up to 1.6 FTE of its existing staff.

Assumptions. For the application of pesticides on state lands, the Department of Natural Resources (DNR) and Department of Transportation (CDOT) each maintain a CDPS permit as a statewide facility.

State agencies subject to water quality regulation. Various state agencies are subject to water quality regulation and pay fees affected by the bill. However, only fees for the pesticide application permits maintained by the DNR and CDOT are adjusted by the bill. The \$275 expenditure increase to each agency, or a total of \$550, has a minimal impact on budgetary resources and is not anticipated to require new appropriations.

CDPHE. The WQCD will undertake one-time efforts to implement the bill in FY 2015-16. Professional staff will assist the WQCC with rulemaking for 401 certification fees, such that applicable rules will be in place for FY 2016-17. Once new fees have been established, WQCD will update publications and procedures to reflect the bill, and may provide outreach to its regulated community. These efforts will increase the workload of the WQCD by a minimal amount and will not require new appropriations.

Once fully implemented in FY 2016-17, the bill refinances the funding for certain FTE costs in CDPHE, but does not require a change in the budgeted allocation of FTE to the WQCD. New cash fund revenue under the bill is associated with 1.5 FTE dedicated to 401 certifications and 0.1 FTE (13 percent) of expenditures in the pesticide program. To provide spending authority for new fee revenue, including the costs for the FTE in personal services associated with pesticide applications and water quality certifications, expenditures of \$17,600 in FY 2015-16 and \$242,600 in FY 2016-17 and future fiscal years must be appropriated from the WQCF.

Local Government and Statutory Public Entity Impact

The bill increases local government and statutory public entity expenditures statewide by an estimated \$15,000 in FY 2015-16 and \$240,000 each subsequent fiscal year, starting in FY 2016-17. 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. Affected local governments include municipalities (e.g., Denver Water), counties, and special districts, such as water districts, metropolitan districts, and mosquito control districts. Affected statutory public entities include water conservation districts (e.g., the Northern Colorado Water Conservation District) and irrigation districts.

Starting in FY 2015-16, local governments and statutory public entities will expend an additional \$15,000 on pesticide application CDPS permits. As of FY 2016-17, the largest fee-paying governmental agencies will be water providers, expending approximately \$200,000 annually on hourly fees for 401 certifications on Tier 4 projects. In addition, local government and statutory public entity costs will increase by up to \$25,000 annually on Tier 1 and Tier 2 project 401 certifications.

Effective Date

The bill takes effect July 1, 2015, and applies to fees collected by the WQCD on or after that date.

State Appropriations

To provide spending authority for new pesticide fee revenue received in FY 2015-16, the bill requires a cash fund appropriation of \$17,600 to the Department of Public Health and Environment from the Water Quality Control Fund.

At the option of the General Assembly, General Fund appropriations for the WQCD may be reduced by up to \$17,600 in FY 2015-16. The fiscal note assumes that cash fund sources will be used to pay for refinanced FTE and operations in WQCD as soon as cashflow allows, and that any excess General Fund appropriations will revert to the General Fund at the end of the fiscal year.

The funding necessary to continue the animal agriculture program at its current level is included in the Governor's 2015 Long Bill request and, provided continuation funding is approved through the Long Bill, does not require an appropriation in this bill. To the extent that the Long Bill does not account for fee revenue from the temporary extension of increased CAFO and HCSFO fees, an additional \$201,723 in spending authority may be appropriated from the Animal Feeding Operations Fund to the Department of Public Health and Environment.

State and Local Government Contacts

Public Health and Environment
Personnel and Administration
Joint Budget Committee Staff

Transportation
Local Affairs
Natural Resources

Law
Counties
Municipalities