



**Colorado  
Legislative  
Council  
Staff**

**Bill 4**

**FISCAL NOTE**

**FISCAL IMPACT:**  State  Local  Statutory Public Entity  Conditional  No Fiscal Impact

**Drafting Number:** LLS 16-0182  
**Prime Sponsor(s):**

**Date:** October 26, 2015  
**Bill Status:** Interim Water Resources Review  
Committee Bill Request  
**Fiscal Analyst:** Greg Sobetski (303-866-4105)

**BILL TOPIC:** TRANSFER TO THE STATE ENGINEER OF THE AUTHORITY TO APPROVE WATER PROJECTS

<b>Fiscal Impact Summary*</b>	<b>FY 2016-2017</b>	<b>FY 2017-2018</b>
<b>State Revenue</b>	<b>(\$225,000)</b>	<b>(\$225,000)</b>
Cash Funds	(225,000)	(225,000)
<b>State Expenditures</b>	<b>\$82,749</b>	<b>\$84,665</b>
General Fund	261,420	282,731
Cash Funds	(192,150)	(212,964)
Centrally Appropriated Costs	13,479	14,897
<b>TABOR Impact</b>	(225,000)	(225,000)
<b>FTE Position Change</b>	1.0 FTE	1.0 FTE
<b>Appropriation Required:</b> (\$192,150) - DPHE (FY 2016-17); \$261,420 - DNR (FY 2016-17).		
<b>Future Year Impacts:</b> Ongoing revenue and expenditure impacts.		

\*Parentheses indicate a decrease in funds.

**Summary of Legislation**

This bill, **requested by the Interim Water Resources Review Committee**, transfers statutory authority to conduct certain types of permitting for water diversion, delivery, storage, and hydroelectric power facilities to the Office of the State Engineer (Division of Water Resources, DWR) in the Department of Natural Resources (DNR). These include:

- the authority of the Colorado Energy Office (CEO) to review applications for a Federal Energy Regulatory Commission (FERC) license or license exemption for a hydroelectric energy facility;
- the authority of the Water Quality Control Division (WQCD) in the Department of Public Health and Environment (DPHE) to review and certify or deny requests under Section 401 of the Federal Water Pollution Control Act for water diversion, delivery, and storage facilities; and
- the authority of the Colorado Water Conservation Board (CWCB) and the Parks and Wildlife Commission (Colorado Parks and Wildlife, CPW) to adopt an official state mitigation plan for water diversion, delivery, or storage facilities that affect fish and wildlife resources.

The bill repeals the authority of these entities that currently control these reviews and approvals.

## **Background**

**401 certifications.** Section 401 of the Federal Water Pollution Control Act, also known as the Clean Water Act, stipulates that a federal agency cannot permit or license an activity that may result in a discharge to the waters of the United States until the state where the discharge would originate has granted or waived certification. Under current law, the WQCD is responsible for reviewing and certifying, conditionally certifying, or denying applications under Section 401. Beginning in FY 2016-17, House Bill 15-1249 authorizes the WQCD to collect fees from applicants following a fee schedule in statute. Fee revenue is collected in the Water Quality Control Fund.

## **State Revenue**

Beginning in FY 2016-17, **fee revenue collected in the Water Quality Control Fund is expected to decrease by \$225,000** each fiscal year. Beginning in FY 2016-17 under current law, the WQCD is authorized to collect fees from applicants for certifications under Section 401 of the Federal Water Pollution Control Act. The bill transfers authority for review of requests related to water diversion, delivery, and storage facilities to the DWR, but does not authorize the DWR to collect similar fees. Based on the fiscal note for HB 15-1249, fees for 401 certifications are estimated at \$225,000 in FY 2016-17 and subsequent years. It is assumed that all applications will concern water diversion, delivery, and storage facilities.

**Fee impact on individuals, businesses, and governmental agencies.** Beginning in FY 2016-17 under current law, applicants for certifications are required to remit fees to the WQCD to cover the costs of application review. Under the bill, applicants seeking certification for water diversion, delivery, and storage facilities no longer will be required to pay fees. Most fees are expected to be collected from local government entities, as described in the Local Government and Statutory Public Entity Impact section below. A small portion of fee revenue is expected to be collected from developers, private ditch companies, and other businesses.

## **TABOR Impact**

Beginning in FY 2016-17, this bill reduces state revenue from fees, which will reduce the amount of money required to be refunded under TABOR. TABOR refunds are paid out of the General Fund.

## **State Expenditures**

**State expenditures will increase by \$82,749 and 1.0 FTE in FY 2016-17, and by \$84,665 and 1.0 FTE in FY 2017-18.** These estimates represent the net impact of increased appropriations to the DNR and decreased appropriations to the DPHE. Expenditures are summarized in Table 1 and described in detail below.

<b>Table 1. Expenditures Under Bill 4</b>		
<b>Cost Components</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>
<b>Department of Natural Resources</b>	<b>\$296,664</b>	<b>\$321,714</b>
Personal Services	\$167,682	\$201,221
FTE	2.6 FTE	2.6 FTE
Operating Expenses and Capital Outlay Costs	14,698	2,470
Contractor Costs	79,040	79,040
Centrally Appropriated Costs*	35,244	38,983
<b>Department of Public Health and Environment</b>	<b>(\$213,915)</b>	<b>(\$237,049)</b>
Personal Services	(104,065)	(124,879)
FTE	(1.6 FTE)	(1.6 FTE)
Operating Expenses and Capital Outlay Costs	(9,045)	(6,575)
Contractor Costs	(79,040)	(79,040)
Centrally Appropriated Costs*	(21,766)	(24,086)
<b>TOTAL</b>	<b>\$82,749</b>	<b>\$84,665</b>

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

**Department of Natural Resources.** General Fund expenditures for the DWR within the DNR will increase by \$296,664 and 2.6 FTE in FY 2016-17 and by \$321,714 and 2.6 FTE in FY 2017-18.

A portion of these amounts, \$104,065 in FY 2016-17 and \$124,879 in FY 2017-18, represents the addition of staff for the review of water diversion, delivery, and storage applications for 401 certifications. Additional expenditures of \$79,040 in each year cover the cost of application reviews expected to be completed by private contractors. Contract costs are based on an expected 520 hours of assessment each year at a cost of \$152 per hour. Staffing and contract costs are similar to those appropriated to the WQCD under HB 15-1249. Because this bill does not authorize the DWR to collect fees for this purpose, costs are assumed to be paid from the General Fund.

Additional costs, \$63,617 in FY 2016-17 and \$76,342 in FY 2017-18, are for staff needed to prepare state mitigation plans for water diversion, delivery, or storage facilities that affect fish and wildlife resources. Under current law, plans are prepared by the CPW. In an average year, plan preparation requires approximately 0.75 FTE at the wildlife manager level, and approximately 0.25 FTE at the resource scientist level. Under the bill, expenditures for these staff are assumed by the DWR and paid from the General Fund.

**Parks and Wildlife Commission.** CPW will no longer be responsible for authoring state mitigation plans for water diversion, delivery, or storage facilities that affect fish and wildlife resources. CPW is expected to absorb a decrease in workload as a result of this change. The commission does not currently receive an appropriation for the preparation of mitigation plans. Because workload varies substantially from year to year, and because staff responsible for plan authorship are also responsible for the completion of other tasks, the bill is not expected to result in decreased expenditures for personal services.

*Colorado Water Conservation Board.* The CWCB will no longer be responsible for approving state mitigation plans for facilities that affect fish and wildlife resources. Under current law, these approvals occur at regularly scheduled CWCB meetings, and the decrease in workload is expected to be minimal.

**Department of Public Health and Environment.** Expenditures for the DPHE will decrease by \$213,915 in FY 2016-17 and by \$237,049 in FY 2017-18. Excluding the centrally appropriated portion of these costs, expenditures from the Water Quality Control Fund are expected to decrease by \$192,150 in FY 2016-17 and by \$212,964 in FY 2017-18. The majority of these reductions, \$104,065 in FY 2016-17 and \$124,879 in FY 2017-18, represent the subtraction of staff that would otherwise be added to the WQCD. The remaining amount, \$79,040 in both years, represents a reduction in pass-through costs for outside contractors. Absent the bill, the WQCD is expected to contract for 520 hours of assessment each year at a cost of \$152 per hour.

Absent the bill, these expenditures would be for the review of water diversion, delivery, and storage applications for 401 certifications beginning in FY 2016-17.

**Colorado Energy Office.** The CEO will no longer be responsible for reviewing FERC license applications. The CEO does not receive an appropriation for this purpose under current law, and the decrease in workload is expected to be minimal.

**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>Cost Components</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>
<b>Department of Natural Resources</b>		
Employee Insurance (Health, Life, Dental, Short-term Disability)	20,895	20,953
Supplemental Employee Retirement Payments	14,349	18,030
<b>Department of Public Health and Environment</b>		
Employee Insurance (Health, Life, Dental, Short-term Disability)	(12,683)	(12,683)
Supplemental Employee Retirement Payments	(9,082)	(11,402)
<b>TOTAL</b>	<b>\$13,479</b>	<b>\$14,897</b>

**Local Government and Statutory Public Entity Impact**

Beginning in FY 2016-17, the bill decreases local government and statutory public entity expenditures statewide by an estimated \$225,000 each fiscal year. Under current law, government agencies will be required to 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 Conservancy District) and irrigation districts.

**Effective Date**

The bill takes effect August 10, 2016, if the General Assembly adjourns on May 11, 2016, as scheduled, and no referendum petition is filed.

**State Appropriations**

For FY 2016-17, the bill requires a General Fund appropriation of \$261,420 and 2.6 FTE to the Department of Natural Resources.

For FY 2016-17, the bill also requires a reduction of \$192,150 and 1.6 FTE in the Water Quality Control Fund appropriation to Department of Public Health and Environment. This appropriation is for review of 401 certifications beginning in FY 2016-17 pursuant to House Bill 15-1249, and thus was not included in the 2015 Long Bill.

**State and Local Government Contacts**

Colorado Energy Office

Natural Resources

Public Health and Environment