

**Colorado Legislative Report
Second Regular Session
Seventy-second General Assembly**

S.B. 20-008

Enhancement of Penalties for Criminal Violation of Water Quality Violations of Water Quality Laws

Current law specifies that a person who commits criminal pollution of state waters that is committed:

- with criminal negligence or recklessly is subject to a maximum daily fine of \$12,500; and
- knowingly or intentionally is subject to a maximum daily fine of \$25,000.

Section 1 of this bill makes a:

- Criminally negligent or reckless violation a misdemeanor and increases the penalty to \$25,000, imprisonment of up to one year, or both; and
- Knowing or intentional violation a class 5 felony and increases the penalty to \$50,000, imprisonment of up to 3 years, or both.

Current law specifies that a person who knowingly makes any false representation in a required record or who knowingly renders inaccurate any required water quality monitoring device or method is guilty of a misdemeanor and is subject to a fine of not more than \$10,000, imprisonment in the county jail for not more than 6 months, or both.

Section 2 of this bill makes these violations a class 5 felony and specifies that if two separate offenses occur in two separate occurrences during a period of two years, the maximum fine and imprisonment for the second offense are double the default amounts.

Status: Referred to the Senate Agriculture and Natural Resources Committee.

Recommended position: Monitor

S.B. 20-019

Creation of a Legislative Oversight Committee Concerning Tax Policy

The bill creates the legislative oversight committee concerning tax policy (committee), and the associated task force (task force).

The committee is required to consider the policy considerations contained in the tax expenditure evaluations prepared by the state auditor and is responsible for the oversight of the task force. The committee may recommend legislative changes that are treated as bills recommended by an interim legislative committee.

The task force is required to study tax policy and develop and propose for committee consideration any modifications to the current system of state and local taxation.

The task force is also authorized, upon request by a committee member, to provide evidence-based feedback on the potential benefits or consequences of a legislative or other policy proposal not directly affiliated with or generated by the task force, including any bill or resolution introduced by the general assembly that affects tax policy.

Status: Referred to the Senate Agriculture and Natural Resources Committee.

Recommended position: Monitor

S.B. 20-024

Public Input in the Development of a State Water Resources Demand Management Program

The bill requires the Colorado water conservation board and the water resources review committee to involve the public and provide opportunities for public comment, using procedures similar to those used for initial adoption of the state water plan, before adopting any final or

significantly amended water resources demand management program as part of the Colorado upper basin states' drought contingency plan.

Status: Referred to the Senate Agriculture and Natural Resources Committee.

Recommended position: Support

S.B. 20-048

Study to Consider Strengthening the Prohibition on Speculative Appropriations of Water

Current law specifies that an appropriation of water cannot be based on speculation, as evidenced by either of the following:

- The applicant does not have either a legally vested interest or a reasonable expectation of procuring such an interest in the lands or facilities to be served by the appropriation, unless the appropriator is a

governmental agency or an agent in fact for the persons proposed to be benefited by the appropriation; or

- The applicant does not have a specific plan and intent to divert, store, or otherwise capture, possess, and control a specific quantity of water for specific beneficial uses.

The bill requires the executive director of the department of natural resources to convene a work group to explore ways to strengthen current anti-speculation law and to report to the water resources review committee by August 15, 2021, regarding any recommended change.

Status: Passed by the Senate, introduced in the House and referred to the Rural Affairs and Agriculture Committee.

Recommended Position: Monitor

S.B. 20-065

Limitation on the Use of Mobile Electronic Devices While Driving

The bill limits the use of a mobile electronic device while driving to adult drivers who use the mobile electronic device through a hands-free accessory. The bill establishes penalties of \$50 and 2 points for a first violation, \$100 and 2 points for a second violation, \$200 and 4 points for a third or subsequent violation, and \$300 and 4 points if the violation involves text messaging.

Status: Referred to the Transportation and Energy Committee.

Recommended Position: Support

S.B. 20-067

Changing the Use Tax of a Vehicle's Actual Purchase Price to Determine the Taxable Value for the Computation of Specific Ownership Tax

Current law uses the manufacturer's suggested retail price (MSRP) of a vehicle to determine taxable value, which is used to determine the amount of the specific ownership tax. For class A and B vehicles that weigh 16,000 pounds or less, current law uses 75% of the MSRP; for class C and D vehicles, current law uses 85% of MSRP.

The bill changes this taxable value from MSRP to the actual purchase price.

Specific Ownership Tax revenue to municipalities, counties, and special districts would be decreased by about \$15.0 million in FY 2020-21, \$40.8 million in FY 2021-22, and \$60.1 million in FY 2022-23

Status: Referred to the Finance Committee.

Recommended Position: Oppose

S.B. 20-109

Property Tax Classification of Property Used for Short-Term Rentals

For property tax purposes this bill would make that portion of a residential building that meets the definition of short-term rental classified as non-residential. This would result in an increase in the assessed value of the property.

Status: Referred to the Finance Committee

S.B. 20-139

Authorization for a County to Lend Money to a Governmental Entity Created by or Located Within the County for the Purpose of Providing Funding for Public Infrastructure Projects Within the County

The bill authorizes a county to lend money to a governmental entity that is created by or located within the county subject to the following requirements:

- The source of the loan must be legally available money that is not otherwise encumbered or obligated;
- The loan must have a specified repayment term;
- The loan recipient is required to pay the county interest on the loan at an initial rate that is equal to or greater than the rate of return earned on all county financial investments; and
- The loan recipient shall use loan proceeds for the sole purpose of funding public infrastructure projects within the county.

Status: Referred to the Local Government Committee

Recommended Position: Monitor.

S.B. 20-153

Creation of an Enterprise that is Exempt from the Requirements of Section 20 of Article X of the State Constitution to Administer a Fee-Based Water Resources Financing Program

The bill creates the water resources financing enterprise (enterprise). The board of the enterprise (board) consists of the board of directors of the Colorado water resources and power development authority and the Colorado water conservation board. The enterprise will provide financing to "water providers", defined to include drinking water suppliers, wastewater treatment suppliers, and raw water suppliers. Raw water

suppliers are limited to those that provide raw water for treatment and use as drinking water.

Customers of drinking water suppliers will pay a fee to the supplier, who will transmit it to the enterprise to be used for the financing. The fee is 25 cents per 1,000 gallons of drinking water delivered per month to each metered connection in a drinking water supplier's public water system, collected after the first 4,000 gallons of drinking water delivered per month to an individual metered connection. The board may adjust the fee based on inflation and equity concerns for large nonresidential customers and customers who pay tiered rates that start higher than 4,000 gallons per month.

The enterprise can provide financing for grants, loans, and in-kind technical assistance in arranging third-party financing. In determining whether to provide financing, the board shall consider the following factors:

- A water provider's ability to pay, including whether the water provider has sought or received other financial assistance;
- Whether a water provider is subject to noncompliance or increased requirements related to the provision of raw water, drinking water, water treatment, or wastewater treatment;
- Whether the proposed use of financing relates to a project identified in and in furtherance of the state water plan; and
- The geographic location and demographic characteristics of the water provider and its customers.

The enterprise shall provide, and a water provider may use, the financing only:

- In connection with the provision of raw water, drinking water, water treatment, or wastewater treatment; and
- For feasibility studies, consulting, planning, permitting, and construction of infrastructure and water conservation projects and related recreational, hydroelectric, and flood control facilities, including necessary enlargement and rehabilitation of facilities but excluding maintenance and operation.

Status: Assigned to the Agriculture and Natural Resources Committee.

Recommended Position: Monitor

H.B. 20-1042

Modification of the Notice Requirements for Manufacturers of Perfluoroalkyl and Polyfluoroalkyl Substances

House Bill 19-1279, enacted in 2019, requires manufacturers of class B firefighting foam that contains intentionally added polyfluoroalkyl

substances to notify, in writing, sellers of their products about the state's new regulations of these products "no less than one year prior to the effective date of section 25-5-1303", which is impossible because the notice requirements did not exist prior to the bill's effective date on August 2, 2019. The bill addresses this error by modifying the effective date of the required notice to prior to August 2, 2020.

Status: Referred to the Transportation and Local Government Committee.

Recommended Position: Monitor

H.B. 19-1069

Inspection of Water Wells

The bill requires the state engineer to employ a minimum of 4 water well inspectors in the state's water well inspection program.

The bill requires the state board of water well construction and pump installation contractors, on or before November 1, 2020, to promulgate rules for identifying high-risk water wells that should be prioritized for inspection. Thereafter, the state engineer shall use the rules to identify high-risk water wells and shall prioritize the inspection of high-risk water wells.

The bill clarifies that money in the well inspection cash fund shall be appropriated to and expended by the state engineer only for the well inspection program.

Status: Passed the House, introduced in the Senate and referred to the Finance Committee

Recommended Position: Monitor

H.B. 20-1072

Requiring that the University of Colorado Study Potential Uses of Emerging Technologies to More Effectively Manage Colorado's Water Supply.

The bill declares that new technologies, such as blockchain, telemetry, improved sensors, and advanced aerial observation platforms, can improve monitoring, management, conservation, and trading of water and enhance confidence in the reliability of data underlying water rights transactions. To advance the potential use of these new technologies, the bill:

- Authorizes and directs the university of Colorado, in collaboration with the Colorado water institute at Colorado state university, to conduct feasibility studies and pilot deployments of these new technologies to improve water management in Colorado; and

- Appropriates \$40,000 from the general fund, contingent on the university of Colorado's receipt of a matching \$40,000 in gifts, grants, and donations, for the purpose of funding the studies and pilot programs.

Status: Passed by the Rural Affairs and Agriculture Committee and referred to the Appropriations Committee

Recommended Position: Monitor

H.B. 20-1074

Trash Collection by Special Districts

The "Special District Act" (act) allows a sanitation district, a water and sanitation district, or a metropolitan district with a population of 2,500 or less that is located in a county with a population of 25,000 or less to provide for the collection and transportation of solid waste. The bill amends the act to remove the population restriction, allowing a sanitation district, water and sanitation district, or metropolitan district to provide for the collection and transportation of solid waste regardless of the population in the district or the county.

Status: Passed by the Rural Affairs and Agriculture Committee and referred to the Committee of the Whole.

Recommended Position: Monitor

H.B. 20-1089

Clarification that the Prohibition on an Employer Terminating an Employee for the Employee's Lawful Off-Duty Activities Extends to Activities That are Lawful Under State Law Even if Those Activities are Not Lawful Under Federal Law

The bill prohibits an employer from terminating an employee for the employee's lawful off-duty activities that are lawful under state law even if those activities are not lawful under federal law, i.e. marijuana use.

Status: Assigned to the Business Affairs and Labor Committee

Recommended Position: Monitor

H.B. 20-1095

Authority of a Local Government's Master Plan to Include Policies to Implement State Water Plan Goals as a Condition of Development Approvals

This bill authorizes a local government master plan to include goals specified in the state water plan and to include policies that condition development approvals on implementation of those goals.

Status: Assigned to the Business Affairs and Labor Committee

Recommended Position: Monitor

H.B. 20-1097

Ability to Use Water That Has Been Adjudicated For Municipal Use in an Interconnected Treated Municipal Water Supply System if the Historical Consumptive Use of the Water Right Has Already Been Quantified in a Previous Change of the Water Right

Current law limits the place of use of water subject to a changed water right that has been decreed for use in a treated domestic or municipal water supply system to only that system. The bill authorizes the use of that water in an interconnected treated domestic or municipal water supply system if:

- The water is attributable to a water right for which the historical consumptive use has previously been quantified, diverted from a point of diversion that has already been decreed for that water right, and delivered from the decreed treated system to the interconnected treated system without the water being returned to the natural stream; and
- The owner of the water right has given written notice to the division engineer that identifies the proposed accounting for the use of the water right and the division engineer has approved the accounting.

The owner of the water right must give notice to all persons on the substitute water supply plan notification list for the applicable water division. The division engineer will review any comments received on the proposed accounting and make a determination whether the accounting is adequate. This determination may be appealed to the water judge. Other than the place of use, all of the terms and conditions of the previous change of water right decree continue to apply to the water right. A claim to any return flows from the use of the water right in the interconnected treated domestic or municipal water supply system must be approved by the water judge.

Status: Assigned to the Rural Affairs and Agriculture Committee

Recommended Position: Monitor

H.B. 20-1119

Authority of the State Government to Regulate Perfluoroalkyl and Polyfluoroalkyl Substances

The bill addresses the authority of the state government to regulate perfluoroalkyl and polyfluoroalkyl substances (PFAS).

Section 1 of the bill addresses when PFAS may be used for firefighting foam system testing both in general and in certain aircraft hangars.

Section 2 grants the department of public health and environment the power to adopt and enforce standards and regulations that require public drinking water systems to sample drinking water supply sources and finished drinking water for PFAS.

Section 3 clarifies that the water quality control commission may set standards related to PFAS in surface water and groundwater and may require wastewater systems to collect PFAS data relevant to the commission setting PFAS standards.

Section 4 requires the solid and hazardous waste commission to promulgate rules for a certificate of registration for any facility or fire department that possesses PFAS in firefighting agents or firefighting equipment and for standards for the capture and disposal of PFAS in firefighting agents or firefighting equipment.

Status: Assigned to the Energy and Environment Committee

Recommended Position: Oppose

H.B. 20-1138

Supplementing the Centralized Inventory of State-Owned Real Property Maintained by the Office of the State Architect to Include All Publicly Owned Real Property

Not later than December 31, 2020, the bill **requires each state agency, state institution of higher education, and political subdivision of the state** to submit to the office of the state architect (office) a list of all usable real property owned by or under the control of the agency, institution, or political subdivision of the state. This list must include, if applicable:

- The address where the real property is located;
- The size of the real property;
- How the real property is zoned;
- Contact information for the state agency, institution, or political subdivision of the state that owns or controls the real property;
- The plan, if one is available, for the use, development, or sale of the real property; and
- A description that includes the condition of the real property and a measurement of total area of the real property that is vacant, unused, or underdeveloped.

Not later than December 31 of each subsequent year, each state agency, state institution, and political subdivision of the state must submit to the

office any updates to the information the agency, institution, or political subdivision of the state originally submitted to the office about the usable real property the agency, institution, or political subdivision of the state owns or controls.

Beginning July 1, 2021, whenever any state agency, state institution of higher education, or political subdivision of the state plans to offer any usable real property for sale, or otherwise plans to solicit any offer to purchase real property, the agency, institution, or political subdivision of the state shall notify the office.

Not later than July 1, 2021, the office must establish and maintain a current database that includes the information listed above. This database must be available free of charge to the public on the office's website.

Status: Assigned the Transportation and Local Government and Appropriations Committees

Recommended Position: Oppose

H.B. 20-1143

Additional Health Protections Regarding Alleged Environmental Violations, and, in Connection Therewith, Raising the Maximum Fines for Air Quality and Water Quality Violations

Current state law sets the maximum civil fine for most air quality violations at \$15,000 per day and most water quality violations at \$10,000 per day, but federal law allows the federal environmental protection agency to assess a maximum daily fine per violation of \$47,357 for these violations. **Sections 2 and 4** of the bill raise the maximum fine to \$47,357 per day and direct the air quality control commission and the water quality control commission in the department of public health and environment (department) to annually adjust the maximum fine based on changes in the consumer price index.

Current law allocates all water quality fines to the water quality improvement fund; **section 4** authorizes the use of money in that fund to pay for projects addressing impacts to environmental justice communities. Section 4 also extends the repeal date for the water quality improvement fund to September 1, 2025.

Current law allocates all air quality fines to the general fund; **Section 3** allocates them to the newly created community impact cash fund. Section 3 also:

- Specifies that the department is to use money in the community impact cash fund for environmental mitigation projects (EMPs);

- Defines an EMP as a project that avoids, minimizes, or mitigates the adverse effects of a violation or alleged violation of the air quality or water quality laws;
- Creates the environmental justice advisory board to recommend EMPs in response to violations or alleged violations that affect environmental justice communities; and
- Creates an environmental justice ombudsperson position within the department, who serves as chief staff to the advisory board and advocates for environmental justice communities.

Section 3 also requires the department to post proposed EMPs on the department's website in a format that allows the public to submit comments on the proposed EMP, not approve an EMP until at least 45 days after the EMP has been posted on its website, and include a description of all approved EMPs in its departmental SMART Act presentations.

Section 1 sunsets the advisory board on September 1, 2025.

Status: Assigned to the Energy and Environment and the Finance Committees

Recommended Position: Monitor

H.B. 20-1154

Amendments to the “Worker’s Compensation Act of Colorado”

This bill:

- Clarifies when payments for benefits and penalties payable to an injured worker are deemed paid (**section 1**);
- Adds guardian and conservator services to the list of medical aid that an employer is required to furnish to an employee who is incapacitated as a result of a work-related injury or occupational disease (**section 2**);
- Requires a claimant for mileage reimbursement for travel related to obtaining compensable medical care to submit a request to the employer or insurer within 120 days after the expense is incurred and requires the employer or insurer to pay or dispute mileage within 30 days of submittal and to include in the brochure of claimants' rights an explanation of rights to mileage reimbursement and the deadline for filing a request (**sections 2 and 7**);
- Clarifies that offsets to disability benefits granted by the federal "Old-Age, Survivors, and Disability Insurance Amendments of 1965" only apply if the payments were not already being received by the employee at the time of the work-related injury (**section 3**);
- Prohibits the reduction of an employee's temporary total disability, temporary partial disability, or medical benefits based on

apportionment under any circumstances; limits apportionment of permanent impairment to specific situations; and declares that the employer or insurer bears the burden of proof, by a preponderance of evidence, at a hearing regarding apportionment of permanent impairment or permanent total disability benefits (**section 4**);

- Adds the conditions that, in order for an employer or insurer to request the selection of an independent medical examiner when an authorized treating physician has not determined that the employee has reached maximum medical improvement (MMI), an examining physician must serve a written report to the authorized treating physician specifying that the examining physician has determined that the employee has reached MMI; the authorized treating physician must examine the employee at least 20 months after the date of the injury and determine that the employee has reached MMI; the authorized treating physician must be served with a written report indicating MMI; and the authorized treating physician has responded that the employee has not reached MMI or has failed to respond within 15 days after service of the report (**section 5**);
- Changes the whole person impairment rating applicable to an injured worker from 25% to 19% for purposes of determining the maximum amount of combined temporary disability and permanent partial disability payments an injured worker may receive (**section 6**);
- Prohibits an employer or insurer from withdrawing an admission of liability 2 years after the date the admission of liability on the issue of compensability was filed, except in cases of fraud (**section 7**);
- Prohibits the director of the division of workers' compensation or an administrative law judge from determining issues of compensability or liability unless specific benefits or penalties are awarded or denied at the same time (**section 8**);
- Clarifies the scope of authority of prehearing administrative law judges (**section 9**);
- Increases the threshold amount that an injured worker must earn in order for permanent total disability payments to cease and allows for annual adjustment of the threshold amount starting in 2021 (**section 11**); and
- Clarifies the orders that are subject to review or appeal (**sections 10 and 12**).

Status: Assigned to the Business Affairs and Labor Committee

Recommended Position: Monitor

H.B. 20-1173

Amendment to the Utility Locating Statute to Exempt County Road Maintenance from locating requirements

Current law requires an individual or entity to notify the statewide notification association of all owners and operators of underground facilities of its intent to engage in excavation so that any underground facilities, such as water and sewer pipes, gas lines, and electric or cable lines, that the excavation might affect can be located and marked before excavation begins. Underground facilities are often located beneath county gravel and dirt roads, normally at a depth of at least 18 inches below the road surface. Counties maintain the profile and surface condition of such county roads and county road rights-of-way by engaging in routine and emergency maintenance activities that do not disturb more than 6 inches in depth. These maintenance activities currently trigger the excavation notification requirement, and the related requirement that the location of underground facilities be marked, even though they occur above the levels where underground facilities are located. To prevent such activities from triggering the excavation notification requirement, the bill specifies that "excavation" does not include routine or emergency maintenance of right-of-way on county-owned gravel or dirt roads performed by county employees that:

- Does not lower the existing grade or elevation of the road, shoulder, and ditches; and
- Does not disturb more than 6 inches in depth during maintenance operations.

Status: Assigned to the Transportation and Local Government Committee

Recommended Position: Support

H.B. 20-1215

Continuation of the Water and Wastewater Facility Operators Certification Board

The bill implements the recommendations of the department of regulatory agencies' sunset review of the water and wastewater facility operators certification board by:

- Extending the repeal date of the board until September 1, 2031 (**sections 1 and 2** of the bill);
- Amending the definition of "domestic wastewater treatment facility" to exclude only those small on-site wastewater treatment systems with a design capacity of 2,000 gallons or less per day, unless the system discharges directly to surface water (**section 3**);
- Repealing the exclusion of facilities designed to operate for less than one year and facilities with in-situ discharges from the definition of "industrial wastewater treatment facilities" (**section 3**);
- Creating a water and wastewater facility operators fund for fees that the board receives directly and uses for the exclusive use of the regulatory program (**section 4**); and

- Repealing an obsolete provision of law relating to a reorganization of the board on July 1, 2004 (**section 2**).

Status: Assigned to the Energy and Environment Committee

Recommended Position: Support

H.B. 20-1233

Constitutional Protections for Conducting Basic Life Functions in Public Spaces

The bill prohibits the state and any city, county, city and county, municipality, or other political subdivision (government entity) from restricting any person from:

- Conducting basic life functions in a public space unless the government entity can offer alternative adequate shelter to the person and the person denies the alternative adequate shelter; and
- Occupying a motor vehicle, provided that the motor vehicle is legally parked on public property or parked on private property with the permission of the property owner.

The bill defines public space as “any outdoor property that is owned or leased by a state or local governmental entity or any property upon which there is an easement for public use. “Basic Life Functions” include sitting, standing, leaning, kneeling, sleeping, lying down, eating, and sheltering oneself in a non-obstructive manner.

Status: Assigned to the Transportation and Local Government Committee

Recommended Position: Oppose