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Colorado Legislative 2024 Preview: Energy and Environmental Issues

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The 2024 Colorado legislative session is almost upon us, and if past is prologue, it will be another session that highlights energy, environmental protection, and environmental justice (EJ) issues. Previous sessions introduced laws which have spurred regulation of virtually every industry in Colorado, including greenhouse gas (GHG) reduction goals (HB 19-1261), air toxics legislation (HB 22-1244), cumulative impact of oil and gas development (SB 19-181), and environmental justice legislation (HB 21-1266).

Early reports on what may be introduced in the 2024 session indicate the General Assembly will build upon past legislative initiatives and prescribe additional energy and environmental programs and mandates.

The legislature's expected 2024 initiatives will not only drive new regulation at state agencies but will also cost more money, raising the question of how all of this will be funded? Will the industry face new fees or will the General Assembly move money from other programs to new initiatives? Irrespective of the answer to these questions, Colorado's business community will undoubtedly face increased regulation and higher costs at the end of the legislative session.

Budget and Regulatory Funding Proposals Under Consideration

- Stationary Source Control Fund
 - Proposal will consider options for long-term financial sustainability of the fund through potential fees and/or appropriations
- Environmental Justice Enforcement and Compliance
 - Proposed \$900,000 General Fund earmarked for eight new staff to advance EJ in enforcement, compliance, and community engagement
 - Proposed General Fund to pay for up to six new EJ staff overseeing:
 - Implementation of Environmental Justice Action Task Force recommendations
 - Expansion of the EJ grant program
 - Funding for the Community Connector Program
 - Funding for participation incentives

- Additional Water Fees
 - Address longstanding permit backlog issues and new federal regulations
- Greenhouse Gas Fees
 - HB 21-1266 GHG fees to be set by the Air Quality Control Commission to address climate. Fees may be set to incent emitters to reduce GHG emissions and establish a ceiling under which no fees would be paid
- Lead Screening
 - Increased funding for blood lead screening for children and pregnant women
 - At present it is unclear if this will be general fund or fee-based

Environmental Legislative Proposals

- Environmental Equity and Cumulative Impact Analyses
 - \$2.2 million that appears to be General Fund to conduct two analyses
 - The CDPHE would select the geographic areas to be studied based upon requests from local governments
 - The regulatory impact from these analyses is unclear
- Petroleum Refinery Regulations
 - Legislation designed to provide CDPHE with the authority to propose additional regulations on existing and future refining facilities in Colorado. Currently there is only one refinery in Colorado
 - Cost estimated at \$100,000, it is unclear if revenue will be generated by fees or this is a General Fund request
- Oil & Gas Rapid Response Team
 - Would authorize two new FTEs in the Air Division to respond to complaints from oil and gas and “potentially other sources”
 - Cost is uncertain at this time
- Local Control for Air Emissions
 - Proposed legislation would allow local governments to review and veto air permits outside of their normal planning and zoning authorities
 - CDPHE is seeking comment on this proposal on a number of unanswered questions regarding this proposal, including but not limited to:
 - Legislative scope: does the veto apply solely to new permits or include modified permits?
 - State authority: will the state retain any authority to override the local veto?
 - Federal authority: Under delegation of the Clean Air

Act from EPA can the State provide a third party veto power of a permit?

- Waters of the State of Colorado
 - Earlier this year, in the Sackett decision, the U.S. Supreme Court clarified the definition of WOTUS (Waters of the United States) and states are now considering their definitions of jurisdictional waters
 - The State of Colorado has developed an interim policy to address certain waters in the State that may no longer be protected under federal programs
 - The 2024 session may bring legislative action to define protected state waters; if introduced, the scope of that legislation will impact a wide range of businesses and industries, from agriculture to construction and development
- Carbon Capture Use and Sequestration (CCUS)
 - The legislature will likely consider legislation addressing carbon capture and sequestration issues such as pore space ownership and liability
 - Colorado is lagging far behind other states in establishing the legal and regulatory framework necessary to operate and scale CCUS to meet the State's net zero goals in any time frame

Energy Legislative Proposals

- Accelerate Colorado's net zero GHG goal by ten years, from 2050 to 2040
- Permitting and siting reform to allow clean energy siting and transmission projects to move more quickly
- Electrification workforce training programs to accelerate the transition to a net zero energy economy
- Proposals to advance virtual power plants (VPPs) in Colorado. While the Colorado Public Utilities Commission has an open docket on VPPs proposed by Xcel Energy, this new proposal would grant additional legislative authority to further incentivize adoption of VPPs

Conclusion

The Colorado legislature has worked at breakneck speed over the past four years to advance two of its most important goals: promoting environmental justice and the decarbonization of Colorado's economy. This legislation session anticipates a continuation of those goals through new regulatory requirements and funding proposals.

All businesses in Colorado should pay close attention to what is happening during the upcoming legislative session—new laws, fees, or both—that may impact a business' operations and bottom line. And the end of the session isn't the end of the road. Businesses need to monitor and participate in state agency rulemakings that implement the newly granted

authority.

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