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SB 19- 192

**REVISED
FISCAL NOTE**

(replaces fiscal note dated March 19, 2019)

Drafting Number: LLS 19-0867
Prime Sponsors: Sen. Winter; Priola
Rep. Jackson; Cutter

Date: April 25, 2019
Bill Status: House Second Reading
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Bill Topic: FRONT RANGE WASTE DIVERSION ENTERPRISE GRANT PROGRAM

Summary of Fiscal Impact:

<input checked="" type="checkbox"/> State Revenue	<input type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure	<input checked="" type="checkbox"/> Local Government
<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

This bill creates the Front Range Waste Diversion Enterprise in the Department of Public Health and Environment to promote waste diversion. The bill will increase state revenue and expenditures until September 1, 2029.

Appropriation Summary: The Front Range Waste Diversion Enterprise Fund is continuously appropriated to the Department of Public Health and Environment, so no appropriation is required.

Fiscal Note Status: The fiscal note reflects the reengrossed bill as amended by the House Finance Committee.

**Table 1
State Fiscal Impacts Under SB 19-192**

		FY 2019-20	FY 2020-21	FY 2021-22
Revenue	Cash Funds	\$1,689,503	\$5,220,551	\$8,961,975
	Total	\$1,689,503	\$5,220,551	\$8,961,975
Expenditures	Cash Funds	\$1,417,046	\$4,668,776	\$8,297,723
	Centrally Appropriated	\$71,659	\$139,061	\$190,126
	Total	\$1,488,705	\$4,807,837	\$8,487,849
	Total FTE	2.2 FTE	4.4 FTE	6.5 FTE
Transfers		-	-	-
TABOR Refund		-	-	-

Summary of Legislation

This bill creates the Front Range Waste Diversion Enterprise as a type 1 transfer in the Department of Public Health and Environment (CDPHE) to promote waste diversion in the counties of Adams, Arapahoe, Boulder, Douglas, Elbert, El Paso, Jefferson, Larimer, Pueblo, Teller, and Weld, and the cities and counties of Broomfield and Denver. The enterprise will be funded by solid waste user fees and governed by a 13-member board of directors. The enterprise has the authority to issue revenue bonds and is exempt from the state procurement code when engaging the services of contractors, consultants, and legal counsel.

Enterprise board. The board is required to meet at least quarterly and to report annually to the General Assembly by July 1, regarding the operations of the enterprise. The bill outlines the requirements and appointing authorities for the board members. Board members are entitled to a \$50 per diem.

Increased user fee. Beginning January 1, 2020, the solid waste user fee increases from \$.35 per cubic yard per load to \$0.50 per cubic yard per load. This is an increase of an additional \$0.15 per year until January 1, 2023, when the total fee will be \$0.95 per cubic yard per load. Beginning January 1, 2024, and annually thereafter, the fee will be adjusted for inflation. The fee will be collected by the operator of the solid waste disposal site and may be passed through to waste producers. User fees will be deposited into the newly created and continuously appropriated Front Range Waste Diversion Cash Fund. An operator of an attended solid waste disposal site located in the front range need not collect the fee on loads containing any of the following:

- asbestos;
- pathological waste;
- medical, infectious, or pharmaceutical waste;
- ash;
- biohazardous waste;
- exploration and production waste;
- technologically enhanced naturally occurring radioactive material;
- grit and sludge;
- automobile shredder residue;
- dead animals;
- special waste liquids; or
- contaminated soils.

Waste diversion goals. The bill establishes municipal waste diversion goals within the front range and directs the enterprise to provide technical assistance to achieve the following goals:

- 32 percent diversion by 2021;
- 39 percent diversion by 2026; and
- 51 percent diversion by 2036.

Grant program. The enterprise will administer the Front Range Waste Diversion Grant Program to support efforts to reach the waste diversion goals. Local governments; nonprofit and for-profit businesses involved in waste disposal or diversion; and, schools located or providing services in the front range, are eligible to apply for grants. A grantee may use the grant for staffing, supplies, equipment, marketing and communications, policy research and development, community engagement, and programming and services related to the criteria established by the board.

Increased fine for littering. Under current law, littering is a class 2 petty offense punishable by a mandatory fine of between \$20 to \$500 for a first conviction, \$50 to \$1,000 for a second conviction, and \$100 to \$1,000 for a third or subsequent conviction. Beginning January 1, 2020, the mandatory fines are adjusted by the consumer price index and the amount attributable to the adjustment credited to the Front Range Waste Diversion Cash Fund.

The enterprise, increased solid waste user fee, and increased littering fine are repealed September 1, 2029, and any money remaining in the fund must be transferred to the General Fund.

Background

Type 1 transfer. A Type 1 transfer establishes a Type 1 agency. A Type 1 agency is administered under the direction and supervision of its principal department; however, a Type 1 agency exercises its statutory powers, duties, and functions independently of the department's executive director. The powers retained by a Type 1 agency that may be exercised without executive director approval include the promulgation of rules and the rendering of administrative findings, orders, and adjudications. Any functions of a Type 1 agency not specifically established in state law, including all budgeting, purchasing, planning, and related management functions, are conducted under the direction and supervision of the department's executive director.

Assumptions

Because the enterprise will not generate revenue until after January 1, 2020, the fiscal note assumes the CDPHE will use a General Fund loan from the State Treasurer's Office for the first year to fund the establishment of the enterprise. Although the enterprise has the authority to issue revenue bonds, given the expected revenue stream, the fiscal note assumes that the enterprise will not issue bonds.

State Revenue

This bill will increase revenue by \$1,689,503 in FY 2019-20, \$5,220,551 in FY 2020-21, and \$8,961,975 in FY 2021-22 to the Front Range Waste Diversion Cash Fund. When fully implemented, the bill increases fee revenue by \$14,914,117 in FY 2023-24. This revenue is from fees as explained below. Based on historical revenue data on littering convictions, the revenue generated from the consumer price index adjustment is expected to be minimal. Enterprise revenue is not subject to TABOR.

Fee impact on solid waste producers. Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. These fee amounts are set in the bill and the solid waste volumes were projected using calendar year 2018 actual figures from front range landfills. Solid waste volumes were reduced by 15 percent to account for the exempted materials. The current fee is \$0.35 per cubic yard per load and assessed and collected by the Hazardous Materials and Waste Management Division in the CDPHE. The fees in Table 2 below show the revenue increase over the current fee.

**Table 2
Fee Impact on Solid Waste Producers**

Fiscal Year	Type of Fee	Proposed Fee Increase	Cubic Yds of Waste	Total Fee Impact
FY 2019-20	Solid Waste User Fee - July 1 to Dec 31	-	11,263,350	\$0
	Solid Waste User Fee - Jan 1 to June 30	\$0.15	11,263,350	\$1,689,503
FY 2019-20 Total				\$1,689,503
FY 2020-21	Solid Waste User Fee - July 1 to Dec 31	\$0.15	11,601,225	\$1,740,184
	Solid Waste User Fee - Jan 1 to June 30	\$0.30	11,601,225	\$3,480,367
FY 2020-21 Total				\$5,220,551
FY 2021-22	Solid Waste User Fee July 1 to Dec 31	\$0.30	11,949,300	\$3,584,790
	Solid Waste User Fee - Jan 1 to June 30	\$0.45	11,949,300	\$5,377,185
FY 2021-22 Total				\$8,961,975

State Expenditures

This bill will increase expenditures by \$1,689,503 in FY 2019-20, \$5,220,551 in FY 2020-21, and \$8,961,975 in FY 2021-22 through the repeal date in 2029. Expenditures will be paid from the Front Range Waste Diversion Enterprise Fund in the CDPHE. These costs are based on projected fee revenue and are shown in Table 3 and explained below.

**Table 3
Expenditures Under SB 19-192**

	FY 2019-20	FY 2020-21	FY 2021-22
Department of Public Health and Environment			
Personal Services	\$132,190	\$284,896	\$382,043
Operating Expenses and Capital Outlay Costs	\$11,306	\$13,396	\$15,391
Legal Services	\$37,307	\$37,307	\$37,307
Contract Auditor	-	\$50,000	-
Training, Travel, and Outreach	\$9,200	\$13,400	\$22,750
Software Licensing	\$8,795	\$11,715	\$14,635
Board Member Reimbursement	\$2,000	\$2,000	\$2,000
Grant Funding	\$1,417,046	\$4,668,776	\$8,297,723
Centrally Appropriated Costs*	\$71,659	\$139,061	\$190,126
FTE – Personal Services	2.0 FTE	4.2 FTE	6.3 FTE
FTE – Legal Services	0.2 FTE	0.2 FTE	0.2 FTE
Total Cost	\$1,689,503	\$5,220,551	\$8,961,975
Total FTE	2.2 FTE	4.4 FTE	6.5 FTE

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

Enterprise operations. In FY 2019-20, the CDPHE will work with the new the board of directors to develop program rules, policies and priorities, develop grant program criteria, conduct strategic planning, and hire enterprise staff. Once funding is secured, staff will solicit grant applications and begin making awards. As the fund balance increases, additional solicitations will be issued and a greater number of grants awarded. Enterprise staff will monitor contracts, conduct outreach, process invoices, visit grant sites, and develop reports. For FY 2019-20, 2.2 FTE will be hired in January 2020, prorated to 2.0 FTE, with an additional 2.2 FTE in FY 2020-21, and an additional 2.1 FTE in FY 2021-22 for a total of 6.3 FTE. Staffing is increased in response to the increase in funding available for grant awards. Costs for the enterprise staff include training, and travel related to waste diversion and site visits. An audit will be conducted in FY 2020-21 and every two to three years thereafter to ensure that fees are being charged appropriately by solid waste disposal sites for exempt and non-exempt loads. The audit is expected to cost \$50,000.

Grants. Based on experience of the Recycling Resources Economic Opportunity Grant and Rebate Program in the CDPHE, the enterprise is expected to issue 8.6 grants per million dollars of grant funding. For FY 2019-20, this equates to about 12 grants, about 40 grants in FY 2020-21, and about 71 grants in FY 2021-22. These amounts may vary depending on the priorities of enterprise board and the types of grant applications received.

Software licensing. The enterprise will use GIFTS, an on-line grant management software, for grant program administration which has an annual license fee of \$1,460 per person (two users in the first year, four users in year two, and six users in year three) and an annual maintenance fee of \$5,875.

Legal services. The Department of Law will advise the enterprise board on grant guidelines and general type 1 board issues and the Administrative Procedures Act. Additionally, the department will be advising the board and staff on grant processes, contracting, contract disputes and payments. This is estimated to require 360 hours annually at a rate of \$103.63 per hour and an allocation of 0.2 FTE.

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. These costs, which include employee insurance and supplemental employee retirement payments, are estimated to be \$71,659 in FY 2019-20, \$139,061 in FY 2020-21, and \$190,126 in FY 2021-22.

Local Government

Local governments that apply for and receive grant awards will have an increase in revenue and expenditures to implement waste diversion activities. To the extent that grants to local governments increase waste diversion, local government revenue and expenditures for waste disposal will decrease.

Effective Date

The bill takes effect August 2, 2019, if the General Assembly adjourns on May 3, 2019, as scheduled, and no referendum petition is filed.

State and Local Government Contacts

Counties
Local Affairs
Economic Development

Information Technology
Municipalities
Personnel

Law
Natural Resources
Public Health and Environment