A BILL FOR AN ACT

CONCERNING PROVISIONS THAT PREEMPT A LOCAL GOVERNMENT'S AUTHORITY TO REGULATE THE USE OF PESTICIDES WITHIN THE LOCAL GOVERNMENT'S JURISDICTION.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://leg.colorado.gov.)

Current state law prohibits local governments from substantively regulating the use and application of pesticides. The bill authorizes local governments to regulate pesticide use and application. In connection with this authorization, the bill:

Declares pesticide regulation a matter of both statewide and
Repeals provisions that prohibit local regulation of pesticide use and application and explicitly authorizes a county to enact this type of regulation; 

Permits local governments to regulate pesticide use and application except in connection with the cultivation of marijuana and the production of agricultural products; 

Clarifies that a local government must meet the requirements of state and federal law; and 

Gives state courts exclusive jurisdiction to review local pesticide laws.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 30-11-107, add (1)(ll) as follows:

30-11-107. Powers of the board. (1) The board of county commissioners of each county has power at any meeting:

(II) To regulate the use and application of pesticides in accordance with Article 10 of Title 35.

SECTION 2. In Colorado Revised Statutes, 35-10-112, repeal (3) as follows:

35-10-112. Notification requirements - registry of pesticide-sensitive persons - rules. (3) No county, city and county, municipality, home rule county, home rule city and county, or home rule municipality shall enact or impose any notification requirements upon commercial applicators which are more stringent than those imposed by this article; except that each county, city and county, municipality, home rule county, home rule city and county, and home rule municipality shall retain the authority to impose any notification requirements upon private individuals, property owners, and the general public. Any such notification requirement imposed by any county, city and county,
municipality, home rule county, home rule city and county, or home rule
municipality on private individuals, property owners, or the general
public shall not be held to be applicable to any commercial applicator; nor
shall any commercial applicator be exposed to any liability for a failure
to comply with any such notification requirement:

SECTION 3. In Colorado Revised Statutes, 35-10-112.5, amend
(1)(b), (1)(c), (1)(d), (1)(e), (2) introductory portion, (2)(b), (2)(d), (3)(a)
introductory portion, (3)(a)(I), (3)(a)(IV), and (4); repeal (2)(c), (3)(b),
and (3)(c); and add (1)(f), (2)(e), (2.5), (3)(a)(V), and (3)(d) as follows:

35-10-112.5. Pesticide control and regulation - exceptions -
legislative declaration. (1) The general assembly hereby determines
that:

(b) A system of pesticide regulation that is consistent
TRANSPARENT and coordinated, that creates statewide uniform BASELINE
standards, and that conforms with both state and federal BASELINE
technical standards and requirements, AND THAT ENABLES LOCAL
GOVERNMENTS TO ADDRESS THE NEEDS OF THEIR CITIZENS AND THE NEEDS
OF THE LOCAL ENVIRONMENT is essential to the public health, safety, and
welfare; and finds that local regulation of pesticides that is inconsistent
with and adopts different standards from federal and state requirements
does not assist in achieving these benefits;

(c)(I) Through statute and regulation RULE-MAKING, the state has
created a system of pesticide regulation based upon scientific standards
that protects the citizens of this state;

(II) THE STATE HAS PRIMARY ENFORCEMENT RESPONSIBILITY FOR
136w-5 AUTHORIZES STATES TO DEVELOP LICENSING, CERTIFICATION, AND
TRAINING PROGRAMS FOR PESTICIDE USE AND APPLICATION;

(III) ALTHOUGH THE STATE HAS PRIMARY ENFORCEMENT RESPONSIBILITY, LOCAL GOVERNMENTS MAY REGULATE THE USE AND APPLICATION OF A PESTICIDE IN THE INTEREST OF PUBLIC HEALTH, PUBLIC SAFETY, AND ENVIRONMENTAL PROTECTION IF THE REGULATION MEETS THE REQUIREMENTS OF BOTH STATE AND FEDERAL LAW AND THE USE IS NOT FOR THE PRODUCTION OF AGRICULTURAL PRODUCTS;

(d) Although the cultivation of marijuana is illegal under federal law and so the use of pesticides in cultivating marijuana is not specifically allowed by any pesticide's label, the cultivation of marijuana is specifically allowed and regulated by Colorado law, and the use of pesticides should be regulated pursuant to this article ARTICLE 10 and rules promulgated pursuant to this article ARTICLE 10 rather than pursuant to local laws; and

(e) Pesticide regulation is a matter of BOTH statewide AND LOCAL concern; AND

(f) THIS SECTION IS NOT INTENDED TO AFFECT A DUTY IMPOSED BY ARTICLE 4, 5.5, 7, OR 9 OF THIS TITLE 35.

(2) A local government shall not adopt or continue in effect any ordinance, rule, resolution, or charter provision or statute regarding the use of any pesticide by persons regulated by this article ARTICLE 10 or federal law and pertaining to:

(b) (f) The use and application of pesticides IN CONNECTION WITH THE CULTIVATION OF MARIJUANA by persons regulated by this article ARTICLE 10 or federal law; including but not limited to, directions for use, classification of pesticides as general or restricted use, mixing and loading, site of application, target pest, dosage rate, method of
application, application equipment, frequency and timing of applications, application rate, reentry intervals, worker specifications, container storage and disposal, required intervals between application and harvest of food or feed crops, rotational crop restrictions, and warnings against use on certain crops, animals, or objects or against use in or adjacent to certain areas.

(II) Subparagraph (I) of this paragraph (b) applies to the use and application of pesticides by persons regulated by this article or federal law in connection with the cultivation of marijuana.

(c) Except as specifically provided in this article, any warnings and precautionary statements, notifications, or statements of practical treatment; or

(d) Licensure, training, or certification requirements for persons regulated under this article, including any insurance and record-keeping requirements; or

(e) THE USE OF PESTICIDES IN THE PRODUCTION OF AGRICULTURAL PRODUCTS, INCLUDING GROWING FEED FOR LIVESTOCK; LIVESTOCK; OR THE MAINTENANCE OF AGRICULTURAL WATER SUPPLY FACILITIES, INCLUDING IRRIGATION DITCHES AND OTHER WATER INFRASTRUCTURE.

(2.5) TO PROMULGATE AN ORDINANCE, RULE, RESOLUTION, OR CHARTER PROVISION REGULATING THE APPLICATION OF OR USE OF A PESTICIDE, A LOCAL GOVERNMENT MUST CONSIDER THE AVAILABLE SCIENCE.

(3) (a) Nothing in this article may be construed to limit the authority of a local government as defined by state law to:

(I) Zone for the sale or storage of any pesticide, provide or designate sites for disposal of any pesticide or pesticide container, adopt
or enforce building and fire code requirements, regulate the transportation
of pesticides consistently with and in no more strict of a manner than state
and federal law, adopt regulations pursuant to a storm water management
program that is consistent with OR MORE RESTRICTIVE THAN federal or
state law, or adopt regulations to protect surface or groundwater drinking
water supplies consistent with OR MORE RESTRICTIVE THAN state or
federal law concerning the protection of drinking water supplies;

(IV) Issue local general occupational licenses to persons regulated
by this article ARTICLE 10; AND

(V) ADOPT ANY ORDINANCE, RULE, RESOLUTION, OR CHARTER
PROVISION CONCERNING THE USE AND APPLICATION OF A PESTICIDE THAT
IS ADOPTED IN THE INTEREST OF PUBLIC HEALTH, PUBLIC SAFETY, AND
ENVIRONMENTAL PROTECTION.

(b) This subsection (3) does not authorize a local government to
utilize the police power or the authority to zone, to provide or designate
disposal sites, to adopt and enforce building and fire codes, or to regulate
the transportation of pesticides as described in paragraph (a) of this
subsection (3) to directly or indirectly regulate or prohibit the application
of pesticides by persons regulated by this article or by federal law,
including in connection with the cultivation of marijuana.

(c) Nothing in this article shall be construed to be an implicit grant
of authority to a local government that is not otherwise granted by state
law.

(d) THIS SECTION DOES NOT AFFECT THE OBLIGATION OF A LOCAL
GOVERNMENT TO MEET THE REQUIREMENTS OF STATE AND FEDERAL LAW.

(4) Any local government that promulgates an ordinance, RULE,
RESOLUTION, OR CHARTER PROVISION that concerns pesticides OR that is
promulgated pursuant to UNDER THIS ARTICLE 10 OR section 31-15-707 (1)(b) C.R.S., or that is promulgated pursuant to any authority described in paragraph (a) of subsection (3) of this section concerning pesticides shall file the following with the department of agriculture:

(a) A certified copy of the ordinance, RULE, RESOLUTION, OR CHARTER PROVISION; and

(b) A map or legal description of the geographic area that the local government intends to regulate under the ordinance, RULE, RESOLUTION, OR CHARTER PROVISION.

SECTION 4. In Colorado Revised Statutes, add 35-10-112.6 as follows:

35-10-112.6. Judicial review of local government ordinances, rules, resolutions, or charter provisions. STATE COURTS HAVE EXCLUSIVE JURISDICTION TO REVIEW LOCAL PESTICIDE ORDINANCES, RULES, RESOLUTIONS, OR CHARTER PROVISIONS.

SECTION 5. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 5, 2020, if adjournment sine die is on May 6, 2020); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2020 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.