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Fiscal Note

Drafting Number: LLS 21-0597 Date: March 19, 2021
Prime Sponsors: Sen. Priola, Rep. Bird; Titone Bill Status: Senate Business
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Bill Topic: RECYCLING & COMPOSTING ENTERPRISE GRANT PROGRAM

- Summary of Fiscal Impact: [X] State Revenue, [X] State Expenditure, [] State Transfer, [] TABOR Refund, [X] Local Government, [] Statutory Public Entity

The bill creates the Colorado Recycling and Composting Infrastructure Enterprise and Grant Program within the Department of Public Health and Environment. It increases state revenue and expenditures on an ongoing basis.

Appropriation Summary: For FY 2021-22, the bill requires an appropriation of \$681,711 to the Department of Public Health and Environment.

Fiscal Note Status: This fiscal note reflects the introduced bill.

Table 1
State Fiscal Impacts Under SB 21-180

Table with 5 columns: Category, Sub-category, FY 2021-22, FY 2022-23, FY 2023-24. Rows include Revenue (Cash Funds, Total Revenue), Expenditures (General Fund, Cash Funds, Centrally Appropriated, Total Expenditures, Total FTE), Transfers, and TABOR Refund.

Summary of Legislation

The bill creates the Colorado Recycling and Composting Infrastructure Enterprise (enterprise) within the Department of Public Health and Environment (CDPHE) to provide financing to recycling and composting infrastructure. The enterprise is governed by an 8-member board of directors appointed by the Governor pursuant to the bill's requirements. It is designated as an enterprise for the purposes of TABOR.

Food service packaging distributor fees. The enterprise is directed to determine and impose a fee on each unit of food service packaging that is initially sold or offered for sale in the state as follows:

- between January 1, 2022 and January 1, 2030: in an amount not more than three-tenths of a cent per unit;
- beginning January 1, 2030: for food service packaging with a recycling or composting rate less than 50 percent, in an amount not more than six-tenths of a cent; and
- beginning January 1, 2025: for food service packaging with recycling or composting rate less than 75 percent, in an amount not more than one cent.

The enterprise will collect these fees from the distributor that initially sells the food service packaging in the state. The fee revenue is deposited into the Recycling and Composting Infrastructure Enterprise Grant Program Cash Fund created in the bill. The enterprise is also authorized to issue revenue bonds. The board is authorized to transfer up to 3 percent of the money annually appropriated or transferred to the fund to CDPHE to pay for the direct and indirect costs that the Solid and Hazardous Waste Commission incurs implementing the provisions of this bill.

Grant program. The enterprise board is authorized to expend money from the cash fund to administer a recycling and composting infrastructure grant program beginning July 1, 2023, to provide grants to eligible entities to:

- create new or expand existing recycling, recovery, and composting operations;
- create markets for recycled materials; and
- facilitate recycling, composting, litter cleanup, and education efforts concerning recycling and composting practices.

The board must produce an annual report concerning the grant program for the Governor and Legislature beginning September 1, 2023.

Statewide assessment. By January 1, 2022, the Solid and Hazardous Waste Commission is required to conduct an assessment of the state's recycling and composting infrastructure, including the types of food service packaging being collected, processed, recycled, or composted in the state. This assessment must:

- identify opportunities to expand waste collection and processing capabilities;
- analyze variations in local waste programs and identify opportunities for statewide harmonization;
- evaluate end-use markets for collected materials; and

- analyze incentives and policies to expand the processing and use of recycling materials in food service packaging.

The commission is also required to promulgate rules to establish a process for calculating recycling rates for common types of food service packaging that are being recycled and composted in the state. These rates are used to calculate fees collected by the enterprise, as described above.

Background

Proposition 117, approved by voters at the November 2020 General Election, requires voter approval to create a state government enterprise that collects more than \$100 million over its first five years of operation. The enterprise created by the bill is not expected to collect fee revenue exceeding this threshold; therefore, voter approval is not required.

State Revenue

The bill will increase state revenue by \$3.75 million in FY 2021-22 and approximately \$15.0 million per year starting in FY 2022-23. This revenue is credited to the Colorado Recycling and Composting Infrastructure Enterprise Grant Program Cash Fund and, as enterprise revenue, is not subject to the state's revenue limit under TABOR. Fee revenue may increase in 2030 when fees may be increased based on assessed recycling rates.

Fee impact on food service packaging distributors. Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. This bill requires the enterprise to impose a fee on food service packaging. These fee amounts are estimates only, actual fees will be set administratively by the enterprise, adhering to the fee limits established in the bill. Fee amounts are estimated based on recent national projections of food service containers and service wear products, disaggregated to the state level based on U.S. Census Bureau data. Based on these projections, Colorado is estimated to have sold 5.1 billion units of food service packaging in 2018. Revenue projections in the first three years are estimated at a fee of \$0.003 per unit. Beginning January 1, 2022, the enterprise will begin collecting the processing fees from distributors. This fiscal note assumes a lag time between identifying distributors, issuing invoices, and receiving payments on a quarterly basis. Thus, for the first fiscal year, one quarter of the anticipated annual fee revenue will be collected.

Table 2
Fee Impact on SB 21-180

Fee Type	FY 2021-22	FY 2022-23	FY 2023-24
Food Service Packaging Fee	\$3.75 million	\$15 million	\$15 million

State Expenditures

This bill will increase expenditures by \$742,688 in FY 2021-22, \$464,946 in FY 2022-23, and \$18,993,577 in FY 2023-24 in the Department of Public Health and Environment. Expenditures will primarily be paid from the Colorado Recycling and Composting Infrastructure Enterprise Grant Program Cash Fund. The bill limits the transfer of funds from the cash fund to CDPHE to cover expenditures incurred by the Solid Waste and Hazardous Commission, so the remainder of these expenditures will be paid from the General Fund. These costs are shown in Table 3 and explained below.

**Table 3
 Expenditures Under SB 21-180**

	FY 2021-22	FY 2022-23	FY 2023-24
Department of Public Health and Environment			
Personal Services	\$160,901	\$267,709	\$577,162
Operating Expenses and Capital Outlay Costs	\$15,370	\$17,800	\$43,555
Software Licensing	\$5,875	\$17,625	\$29,375
Training	\$3,000	\$9,000	\$15,000
Statewide Assessment	\$420,000	-	\$420,000
Grant Funding	-	-	\$17,500,000
Mileage	-	-	\$3,300
Legal Services	\$76,565	\$38,282	\$38,282
Centrally Appropriated Costs ¹	\$60,977	\$114,530	\$366,903
FTE - Legal Services	0.4 FTE	0.2 FTE	0.2 FTE
FTE – Personal Services	2.2 FTE	4.0 FTE	9.3 FTE
Total	\$742,688	\$464,946	\$18,993,577
Total FTE	2.6 FTE	4.2 FTE	9.5 FTE

¹ Centrally appropriated costs are not included in the bill's appropriation.

Enterprise operations. By July 1, 2021, the Governor’s office will appoint an 8-member board whom, along with the CDPHE executive director, will develop program rules, establish bylaws and a strategic plan, develop grant program criteria, and prepare for administration of the food service packaging fee. Enterprise staff will support the board by soliciting grant applications, making awards, and monitoring contracts. For FY 2021-22, 1.2 FTE will be hired to provide program management and administrative support to the enterprise board. In FY 2022-23, an additional 2.0 FTE will be added to assist in preparing requests for applications and develop contracts, in preparation for the first grant awards administered by July 1, 2023. In FY 2023-24, full implementation of the grant program will require an additional 5.3 FTE for a total of 8.3 FTE. Costs for the enterprise staff include training and travel for site visits beginning in FY 2023-24. The enterprise board is required to prepare an annual report concerning the grant program beginning on September 1, 2023.

Statewide assessment and rulemaking. The Solid and Hazardous Waste Commission is required to conduct a statewide assessment of recycling and composting infrastructure by January 1, 2022. CDPHE requires 1.0 FTE to support the Commission by working with landfills, recyclers, and composters to inform the statewide assessment, and to oversee the inventories and surveys at 12 large landfills within the Denver Metro Area. Costs for each landfill inventory and survey is approximately \$35,000, based on similar costs incurred for the Integrated Solid Waste and Materials Management Plan completed in 2017.

The bill also requires the commission to promulgate rules by January 1, 2024, to establish a process for calculating the rates at which common types of food service packaging are recycled or composted in Colorado, which will be used to inform the adjustment of the fee. The commission will be required to conduct a second statewide recycling and composting infrastructure assessment in FY 2023-24 to inform this rulemaking. Staff will support the commission's rulemaking by managing stakeholder involvement and providing information from the statewide assessment. The bill limits the use of fee revenue for the direct and indirect costs of the commission in supporting the enterprise board to 3.0 percent. The fiscal note anticipates costs to exceed 3.0 percent of fee revenue in FY 2021-22 and FY 2023-24, necessitating General Fund appropriations for the remaining costs.

Grants. The CDPHE is expected to award approximately 25 to 35 grants annually. Grants are assumed to average around \$500,000 per grant. Grant funding is estimated to be \$17.5 million in FY 2023-24, based on available revenue collected from fees beginning January 1, 2022. In future years, about \$13.5 million per year will be available for grants based on estimated revenue and accounting for CDPHE and enterprise expenses.

Software licensing. The enterprise will have costs for online grant management software as shown in Table 2 above. The software will allow for online application submittals and includes a grant evaluation portal. Annual license and training fees are \$5,875 per user, with one user required in FY 2021-22, three in FY 2022-23, and five in FY 2023-24.

Legal services. The Department of Law will provide general counsel support to the enterprise and board to promulgate rules and to implement and administer the responsibilities of the board and grant fund. This is estimated to require 720 hours in the first year and 360 hours in the second and subsequent years at a rate of \$106.34 per hour and an allocation of 0.4 FTE and 0.2 FTE respectively.

Cash fund creation. The Department of Personnel and Administration will incur incremental costs for the accounting, budget implementation, reporting, and monitoring of the Colorado Recycling and Composting Infrastructure Enterprise Grant Program Cash Fund created in the bill. This fiscal note assumes the workload is absorbable.

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 \$60,977 in FY 2021-22, \$114,530 in FY 2022-23, and \$366,903 in FY 2023-24.

Local Government

Local governments that apply for and receive grant awards will have an increase in revenue and expenditures to implement recycling, recovery, and composting activities. To the extent that grants to local governments increase waste diversion, local government revenue and expenditures for waste disposal will decrease. In addition, school districts and local governments may fall under the definition of a food service packaging distributor, in which case costs will increase to pay for the fee.

Technical note

The bill limits the funding for the direct and indirect cost of the Solid and Hazardous Waste Commission in supporting the enterprise to 3.0 percent of the moneys annually appropriated or transferred to the program's fund. It is assumed that the program will rely on fee revenue deposited to the program's cash fund; no other appropriation or transfer to the fund is expected, which would result in no funding being available for the CDPHE. The fiscal note assumes that the 3.0 percent limit is intended to apply to the amount of fee revenue received in the fund each year. This assumption results in \$112,500 in FY 2021-22 and \$450,000 in future years being available for use by the CDPHE.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State Appropriations

For FY 2021-22, the bill requires the following appropriations to the Department of Public Health and Environment:

- \$292,706 and 2.2 FTE from the Colorado Recycling and Composting Infrastructure Enterprise Grant Cash Fund; and
- \$389,005 from the General Fund.

State and Local Government Contacts

Counties	Governor
Information Technology	Law
Municipalities	Personnel
Public Health and Environment	Treasury