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Fiscal Note

Drafting Number: LLS 22-0075 Date: April 5, 2022
Prime Sponsors: Rep. Cutter Bill Status: House Energy and Environment
Sen. Priola; Gonzales Fiscal: Christina Van Winkle | 303-866-6289
Analyst: Christina.VanWinkle@state.co.us

Bill Topic: PRODUCER RESPONSIBILITY PROGRAM FOR RECYCLING

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

The bill creates a producer responsibility program to provide recycling services to covered entities in the state. The program will be implemented by a nonprofit organization in consultation with a newly-created advisory board and overseen by the Department of Public Health and Environment. Beginning in FY 2022-23, it increases state and local government revenue and expenditures; starting in 2025, it will also increase free revenue to the selected nonprofit organization.

Appropriation Summary: For FY 2022-23, the bill requires an appropriation of \$119,130 to the Department of Public Health and Environment.

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

Table 1
State Fiscal Impacts Under HB 22-1355

Table with 4 columns: Category, Sub-category, Budget Year FY 2022-23, and Out Year FY 2023-24. Rows include Revenue, Expenditures (General Fund, Centrally Appropriated, Total Expenditures, Total FTE), Transfers, and Other Budget Impacts (General Fund Reserve).

Summary of Legislation

The bill establishes a producer responsibility recycling program (program) to provide convenient and equitable access to recycling services for covered materials to achieve recycling, collection, and postconsumer-recycled-content rate goals. An advisory board will oversee and advise a producer responsibility organization on implementing and administering the program.

Producer responsibility organization. The Department of Public Health and Environment (CDPHE) will designate a nonprofit organization as the producer responsibility organization (PRO) to implement and administer the program. The PRO will facilitate a needs assessment, develop and submit a plan proposal, and administer the program to provide covered entities with convenient and equitable access to recycling services. Recycling services must be provided for all readily recyclable materials at no charge to covered entities with a goal of meeting target rates for recycling, collection, and postconsumer-recycled-content. Covered entities include single-family and multi-family residences and nonresidential locations identified in the final plan, including public places, small businesses, schools and government buildings.

Advisory board. The Producer Responsibility Program for Statewide Recycling Advisory Board in the CDPHE will consist of a 15-member board appointed by the CDPHE Executive Director, including 13 voting members and two nonvoting members. The advisory board members are entitled to reimbursement for travel and other reasonably incurred expenses. The advisory board will advise the organization on the needs assessment process, plan proposal development, establishment and updating of the minimum recyclable list, and annual reporting requirements.

The table below provides an implementation timeline of the program.

Table 2
Implementation Timeline of HB 22-1355

Date	Provision
December 31, 2022	CDPHE Executive Director appoints 15 member advisory board.
March 1, 2023	First meeting of the advisory board
June 1, 2023	CDPHE Executive Director designates PRO
April 1, 2024	The PRO submits a needs assessment to the CDPHE and advisory board. CDPHE posts results and provides public notice and opportunity for comment.
February 1, 2025	The PRO submits a plan proposal for approval for the residential program to the advisory board covering a period of 5 years. The advisory board and CDPHE review the plan and, if necessary, require amendments.
TBD - within 6 months of plan approval	The PRO begins implementing the final plan. The CDPHE enforces the plan and promulgates rules as necessary.
January 1, 2025	Producers begin paying producer responsibility dues.
July 1, 2025	Producers may not sell, offer for sale, or distribute any products that use covered materials in Colorado unless the producer is participating in the program or, after January 1, 2029, participating in an additional program.
March 31, 2027	The PRO begins annual reporting to the advisory board and the CDPHE describing progress of the program. The report is posted on the CDPHE's website.

Recycling services. By January 1, 2025, producers of covered materials will begin paying annual dues to the PRO to cover the costs associated with implementing the recycling program. The PRO will provide recycling services under the program through contracts with public or private service providers to provide covered entities with convenient and equitable access to recycling services for all readily recyclable materials at no cost to the covered entity. To be eligible for reimbursement, service providers must provide recycling services for all readily recyclable materials, unless exempted from these requirements by the CDPHE. Service providers are eligible for reimbursement of costs associated with other covered materials not included in the minimum recyclable list if the service provider can demonstrate that the covered material can be collected at reasonable costs and have a responsible end market.

Outreach and education. The PRO will develop and implement a statewide education and outreach program to increase recycling and reuse of covered materials. The program must provide clear recycling instructions, coordinate with existing education efforts, and be designed to achieve recycling targets outlined in the final plan. The advisory board will consult on the education program. The organization may contract with service providers, local governments, and nonprofit organizations to conduct recycling education.

Reporting. Beginning in the second year of implementation, the organization and any additional programs approved by the CDPHE will submit annual reports to the advisory board describing the progress of the program. The CDPHE will post annual reports on its website and submit and present a compiled report to relevant legislative committees.

Penalties. The CDPHE is authorized to enforce violations by the organization, producers, or any additional producer responsibility organizations by invoking administrative penalties. An initial penalty of \$5,000 for the first day of each violation and \$1,500 per day for each day the violation continues is authorized for the first violations. For second violations committed within 12 months after the prior violation, an initial penalty of \$10,000 for the first day and \$3,000 for each day the violation continues will be imposed. For third and subsequent violations committed within 12 months after two or more prior violations, an initial penalty of \$20,000 for the first day of each violation and \$6,000 per day for each day the violation continues will be imposed.

State Revenue

The bill potentially increases state revenue from fine penalties, and establishes a new fee on producers of recyclable materials that will be paid to a third-party nonprofit organization. These impacts are discussed below.

Penalty revenue. To the extent that penalties are assessed for violations, state revenue to the Recycling Resources Economic Opportunity Fund will increase. This revenue is subject to TABOR. This fiscal note assumes that organizations and producers will comply with the requirements of this bill, and therefore state revenue is not estimated.

Fee impact on producers of recyclable material. Starting no later than January 1, 2025, producers of covered materials will be required to pay “producer responsibility dues” established by the PRO. This revenue is not subject to TABOR as it is received and managed by a third-party organization outside of state government. At this time, the fiscal note cannot estimate the potential fee impact on producers, as there is not sufficient information on the number of covered producers, the scope of the services that will be provided and revenue needed by the PRO, and the schedule of dues paid by producers of different materials.

State Expenditures

The bill increases state expenditures in the CDPHE by \$156,667 in FY 2022-23 and \$151,356 in FY 2023-24 from the General Fund. Expenditures are shown in Table 3 and detailed below.

**Table 3
 Expenditures Under HB22-1355**

	FY 2022-23	FY 2023-24
Department of Public Health and Environment		
Personal Services	\$56,856	\$75,807
Operating Expenses	\$1,080	\$1,350
Capital Outlay Costs	\$6,200	-
Legal Services	\$20,503	-
Travel Expenses	\$34,491	\$34,492
Centrally Appropriated Costs ¹	\$37,537	\$39,707
FTE – Personal Services	0.8 FTE	1.0 FTE
FTE – Legal Services	0.1 FTE	-
Total Cost	\$156,667	\$151,356
Total FTE	0.9 FTE	1.0 FTE

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

Department of Public Health and Environment. Beginning in FY 2022-23, the CDPHE will have costs to assist the advisory board and oversee the PRO, as described below.

- *Staff.* Beginning in FY 2022-23, the CDPHE will require 1.0 FTE of an environmental protection specialist to process advisory board applications, support selection and oversight of the PRO, and manage the administrative duties of the advisory board. First-year costs are prorated to reflect the General Fund pay date shift and assume a September 1 start date. Standard operating and capital outlay costs are included. Beginning in FY 2025-26, the CDPHE will hire a second environmental protection specialist to ensure the PRO and any additional PROs comply with the program requirements, assess penalties for non-compliance, and lead enforcement efforts.

- *Legal services.* The CDPHE requires 208 hours of legal services at a standard rate of \$98.57 to support rulemaking to develop the program requirements. These costs will be reappropriated to the Department of Law with 0.1 FTE.
- *Board reimbursement.* Advisory board members are eligible for reimbursement for necessary travel and other reasonable expenses. This fiscal note assumes \$79 per day per diem plus \$182.08 per night for 11 members of the board, meeting once per month until FY 2025-26, and annually thereafter.
- *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 shown in Table 3.

Other Budget Impacts

General Fund reserve. Under current law, an amount equal to 15 percent of General Fund appropriations must be set aside in the General Fund statutory reserve beginning in FY 2022-23. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve by \$17,870 in FY 2022-23 and \$16,747 in FY 2023-24, which will decrease the amount of General Fund available for other purposes.

Local Government

Local governments that provide educational and recycling services that meet the program requirements are eligible for reimbursement by the organization. These costs have not been estimated.

Effective Date

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed.

State Appropriations

For FY 2022-23, the bill requires a General Fund appropriation of \$119,130 to the Department of Public Health and Environment, and 0.8 FTE, of which \$20,503 is reappropriated to the Department of Law for legal services with 0.1 FTE.

State and Local Government Contacts

Corrections
Law
Personnel

Counties
Municipalities

Information Technology
Public Health and Environment