



Legislative
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SB 20-189

FINAL FISCAL NOTE

Drafting Number: LLS 20-0452
Prime Sponsors: Sen. Fenberg
Rep. Cutter; Duran

Date: August 6, 2020
Bill Status: Postponed Indefinitely
Fiscal Analyst: Clare Pramuk | 303-866-2677
clare.pramuk@state.co.us

Bill Topic: LOCAL GOVERNMENT PESTICIDE NO PREEMPTION

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 would have allowed local governments to regulate the use and application of pesticides in the interest of public health, public safety, and environmental protection, which is currently preempted by state law. This would have increased state and local revenue and expenditures on an ongoing basis.

Appropriation Summary: For FY 2020-21, the bill would have required an appropriation of \$41,405 to the Department of Agriculture.

Fiscal Note Status: The fiscal note reflects the introduced bill. This bill was not enacted into law; therefore, the impacts identified in this analysis do not take effect.

**Table 1
State Fiscal Impacts Under SB 20-189**

		FY 2020-21	FY 2021-22
Revenue	Cash Funds	\$59,500	\$53,200
	Total	\$59,500	\$53,200
Expenditures	Cash Funds	\$41,405	\$36,551
	Centrally Appropriated	\$16,911	\$16,034
	Total	\$58,316	\$52,585
	Total FTE	0.5 FTE	0.5 FTE
Transfers		-	-
TABOR Refund		-	-

Summary of Legislation

Under current law, the state has primacy over the regulation of pesticides and preempts local government regulation. This bill allows local governments to regulate the use and application of pesticides 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 agricultural production or the cultivation of marijuana.

To promulgate an ordinance, rule, resolution, or charter provision (measure) regulating the application of or use of a pesticide, a local government must consider the available science. Any measure adopted by a local government must be provided to the Department of Agriculture (CDA) along with a map or legal description of the geographic area regulated. State courts have exclusive jurisdiction to review local pesticide measures.

Background

The CDA has been designated by the Environmental Protection Agency (EPA) as the lead agency to regulate and enforce pesticide use and application in Colorado. This delegation requires the CDA to certify pesticide applicators and enforce pesticide use in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), federal pesticide labeling directions, and worker protection standards. The CDA does not have the authority to allow the use of a pesticide prohibited under FIFRA. Any changes to state regulations affecting pesticide use must be reported annually and any rule or statutory change that affects the State Certification Plan, must be submitted to and approved by the EPA.

Currently seven states do not preempt local regulation of pesticides under state law. These states include: Alaska, Hawaii, Maine, Maryland, Nevada, Utah, and Vermont. In Colorado, under current law, local governments may:

- zone for the sale, storage, and disposal of pesticides;
- adopt or enforce building and fire codes;
- regulate the transportation of pesticides consistent with but not more strictly than state or federal law;
- develop a stormwater management program that is consistent with state or federal law; and
- protect surface or groundwater drinking water supplies consistent with state or federal law.

State Revenue

This bill will increase revenue from fee increases by \$59,500 in FY 2020-21 and \$53,200 in FY 2021-22 to the Plant Health, Pest Control and Environmental Protection Fund in the CDA.

Fee impact on pesticide product registrations. Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. These fee amounts are estimates only, actual fees will be set administratively by the CDA based on cash fund balance, estimated program costs, and the estimated number of licenses subject to the fee. Colorado requires annual registration of pesticide products. The fee on these registrations is the funding source for this bill. Table 2 below identifies the fee impact of this bill.

**Table 2
Fee Impact on Pesticide Product Registration**

Fiscal Year	Type of Fee	Current Fee	Proposed Fee	Number Affected	Total Fee Impact
FY 2020-21	Pesticide Product Registration	\$205.00	\$209.25	14,000	\$59,500
FY 2021-22	Pesticide Product Registration	\$205.00	\$208.80	14,000	\$53,200

State Expenditures

This bill increases state expenditures by \$58,316 and 0.5 FTE in FY 2020-21 and \$52,585 and 0.5 FTE in FY 2021-22 from the Plant Health, Pest Control and Environmental Protection Fund in the CDA. It also increases workload in the Judicial Department. These costs are shown in Table 3 and described below.

**Table 3
Expenditures Under HB 20-189**

	FY 2020-21	FY 2021-22
Department of Agriculture		
Personal Services	\$34,530	\$35,876
Operating Expenses	\$675	\$675
Capital Outlay Costs	\$6,200	-
Centrally Appropriated Costs*	\$16,911	\$16,034
Total Cost	\$58,316	\$52,585
Total FTE	0.5 FTE	0.5 FTE

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

Department of Agriculture. The CDA requires 0.5 FTE of an Administrator IV to implement the bill. The administrator will respond to inquiries from local governments and provide technical support in creating measures that delegate pesticide regulation from the state level to the local level. The CDA will review any measures submitted by local governments to ensure that the measures conform with state and federal law. Local measures may need to be added to the state certification plan filed with the EPA which will require the CDA to coordinate between the local government and the EPA. Shifting applicator enforcement actions to local governments may not reduce CDA enforcement actions because applicators will now be subject to dual investigations in some circumstances. Should the workload be greater than expected in this fiscal note, the fiscal note assumes that the CDA will seek additional funding through the annual budget process.

Judicial Department. The bill may increase the number of district civil court filings alleging the local government is not in compliance with state and federal laws. The fiscal note assumes that most local governments will comply with state and federal law, and that any increase in court workload can be accomplished within existing resources.

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 \$16,911 in FY 2020-21 and \$16,034 in FY 2021-22.

Local Government

This bill will increase workload for local governments that choose to regulate the use and application of pesticides, to develop and enact ordinances, rules, resolutions, or charter provisions. Once a local government has adopted a measure, it will have responsibility for implementation and enforcement which may require an increase in expenditures.

Effective Date

The bill was postponed indefinitely by the Senate Agriculture and Natural Resources Committee on May 27, 2020.

State Appropriations

For FY 2020-21, the bill requires an appropriation of \$41,405 to the Department of Agriculture from the Plant Health, Pest Control and Environmental Protection Fund and 0.5 FTE.

State and Local Government Contacts

Agriculture Counties Judicial Municipalities