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Fiscal Note

Drafting Number: LLS 22-0351
Prime Sponsors: Rep. Cutter; Bradfield

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Bill Status: House Energy & Environment
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Bill Topic: **PERFLUOROALKYL AND POLYFLUOROALKYL CHEMICALS**

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

The bill creates a regulatory program for perfluoroalkyl and polyfluoroalkyl (PFAS) chemicals to collect information from manufacturers regarding the use of PFAS chemicals in products, and phases out the sale or distribution of certain products in the state that contain intentionally-added PFAS chemicals. Beginning in FY 2022-23 it increases state and local government expenditures, and increases state revenue beginning in FY 2024-25.

Appropriation Summary: For FY 2022-23, the bill requires an appropriation of \$215,959 to the Department of Public Health and Environment.

Fiscal Note Status: The fiscal note is preliminary and reflects the introduced bill. Due to time constraints, this analysis is preliminary and will be updated following further review and any additional information received.

Table 1
State Fiscal Impacts Under HB 22-1345

		Budget Year FY 2022-23	Out Year FY 2023-24	Out Year FY 2024-25
Revenue	Cash Funds	-	-	\$176,656
	Total Revenue	-	-	\$176,656
Expenditures	General Fund	\$215,959	\$217,159	
	Cash Fund	-	-	\$121,162
	Centrally Appropriated	\$75,729	\$79,198	\$55,494
	Total Expenditures	\$291,688	\$296,357	\$176,656
	Total FTE	2.1 FTE	2.3 FTE	2.0 FTE
Transfers		-	-	-
Other Budget Impacts	General Fund Reserve	\$32,394	\$32,574	-

Summary of Legislation

The bill creates a new regulatory program in the Department of Public Health and Environment (CDPHE) to collect information on and phase out the sale of products containing intentionally added perfluoroalkyl and polyfluoroalkyl (PFAS) chemicals. It also modifies the state procurement code and restrictions on the use of class B firefighting foam.

Notification. Beginning January 1, 2025, manufacturers that sell or distribute products that contain intentionally added PFAS chemicals are required to submit a written notification by deadlines established in the bill to the CDPHE. Notifications must contain the trade name of the product, a description of the purpose that PFAS chemicals in the product serves, the contact information of the manufacturer, and any other information as required by rule. Manufacturers must pay a fee in an amount established by CDPHE to cover administration and implementation costs, which will be credited to the Perfluoroalkyl and Polyfluoroalkyl Substances Cash Fund (PFAS Cash Fund). The CDPHE must publish the trade name of the product and the name of the manufacturer of the product on the department's website.

Prohibition. On and after January 1, 2024, the bill prohibits the sale and distribution of products that contain intentionally added PFAS chemicals in certain product categories including carpets, cookware, cosmetics, fabric treatments, food packaging, juvenile products, oil and gas products, textile furnishings, and upholstered furniture. The CDPHE is required to adopt rules that identify specific products within these product categories. The CDPHE must adopt rules in out years that identify and prohibit additional priority products in product categories not already identified in rule. Products must be identified based on whether they contain intentionally added PFAS, the use of PFAS is currently unavoidable, the product's risk of exposing sensitive populations, species, and indoor and outdoor environments to PFAS chemicals, the volume of PFAS chemicals used, and restrictions in other states and nations. Additional products and product categories identified in rule must be posted on the CDPHE's website.

State procurement and firefighting foam. The bill also modifies the definition of environmentally preferable products in the state's procurement code to include products that do not contain intentionally added PFAS. It also repeals an exemption from the restriction on the sale of class B firefighting foam for use at gasoline, special fuel, or jet fuel storage and distribution facilities effective January 1, 2024, and authorizes the CDPHE to grant a temporary exemption of no more than five years for the purchase of class B firefighting foam at terminals. Beginning January 1, 2024, persons using class B firefighting foam containing intentionally added PFAS may not allow a release of the class B firefighting foam, must fully contain the foam through appropriate containment measures, and safely store all class B firefighting foam and any associated waste and wastewater. If a release of class B firefighting foam does occur, information must be reported within 24 hours to the water quality spills hotline maintained by CDPHE. The Attorney General is authorized to enforce this provision, conduct civil investigations, and bring civil actions for violations.

Background

PFAS chemicals means a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom. PFAS chemicals are synthetic chemicals that were developed to coat products to make them heat, water, and oil resistant. They have become prevalent in a variety of products including

nonstick cookware, water-repellant clothing, stain-resistant fabrics, and firefighting foams. According to the U.S. Environmental Protection Agency, there are over 4,000 different types of PFAS that have been manufactured in the last 70 years.

State Revenue

Beginning in FY 2024-25, state revenue will increase from manufacturer fee revenue paid to the CDPHE in an amount sufficient to cover the costs of administering and implementing the program. Fees will be determined in rule once additional information on the number of manufacturers subject to the requirements is known. This revenue is subject to TABOR. Fee estimates are provided in Table 2 below.

Table 2
Fee Impact on Manufacturers of Intentionally-Added PFAS Products

Fee	Fund	FY 2022-23	FY 2023-24	FY 2024-25
Written Notification	PFAS Cash Fund	-	-	\$176,656
Total		-	-	\$176,656

To the extent that CDPHE imposes civil penalties for violations of the class B firefighting foam requirements, state revenue will increase. This revenue is subject to TABOR. This fiscal note assumes that certified professionals who use Class B firefighting foam that contains intentionally-added PFAS will comply with these requirements.

State Expenditures

The bill increases state expenditures in the CDPHE by around \$300,000 annually. Expenditures will be from the General Fund in FY 2022-23 and FY 2023-24, and from the PFAS Cash Fund in FY 2024-25. These costs are detailed in Table 3 and described below.

Table 3
Expenditures Under HB 22-1345

	FY 2022-23	FY 2023-24	FY 2024-25
Department of Public Health and Environment			
Personal Services	\$149,603	\$163,203	\$118,462
Operating Expenses	\$2,700	\$2,700	\$2,700
Capital Outlay Costs	\$12,400	\$0	-
Legal Services	\$51,256	\$51,256	-
Centrally Appropriated Costs ¹	\$75,729	\$79,198	\$55,494
FTE – Personal Services	1.8 FTE	2.0 FTE	2.0 FTE
FTE – Legal Services	0.3 FTE	0.3 FTE	-
Total Cost	\$291,688	\$296,357	\$176,656
Total FTE	2.1 FTE	2.3 FTE	2.0 FTE

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

Personal services. The CDPHE will hire 2.0 FTE to support rulemaking in FY 2022-23 and FY 2023-24. Staff will identify specific products within the product categories identified in the bill that are prohibited for sale or distribution in the state beginning January 1, 2024. Staff will also support draft rule development and stakeholder engagement. In FY 2024-25, staff will create and maintain a website to receive notification from manufacturers of intentionally-added PFAS products for publication, and collect fees from manufacturers.

The bill requires the CDPHE to identify by rule no later than January 1, 2025, a list of priority products not already prohibited in rule, and adopt rules by December 31, 2027, to prohibit the sale and distribution of these additional products. This fiscal note assumes that staff resources needed to develop this list of priority products will be identified in the first year of implementation and requested through the annual budget process, and therefore are not estimated in this fiscal note.

Legal services. The CDPHE will require 520 hours of legal services in FY 2022-23 and FY 2023-24 from the Department of Law to draft rule language at a rate of \$98.57 per hour.

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 the amount listed in Table 1, which will decrease the amount of General Fund available for other purposes.

Local Government

Airports that are operated by local governments may incur workload impacts to request an exemption from the restriction of class B firefighting foam. Beginning in January 1, 2024, local governments that use class B firefighting foam may incur expenditures to adhere to the storage and containment requirements of the bill.

Effective Date

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

State Appropriations

For FY 2022-23, the bill requires a General Fund appropriation of \$215,959 to the Department of Public Health and Environment, and 1.8 FTE, of which \$51,256 is reappropriated to the Department of Law for legal services, and 0.3 FTE.

State and Local Government Contacts

Counties	Fire Chiefs	Information Technology
Judicial	Law	Municipalities
Natural Resources	Personnel	Public Health and Environment
Public Safety		