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FISCAL NOTE

Drafting Number: LLS 20-0815
Prime Sponsors: Sen. Sonnenberg

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Bill Status: Senate Agriculture
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Bill Topic: INVESTIGATION PROCESS FOR PESTICIDE APPLICATORS

- Summary of Fiscal Impact:
- State Revenue (checked)
- State Expenditure (checked)
- State Transfer (unchecked)
- TABOR Refund (checked)
- Local Government (unchecked)
- Statutory Public Entity (unchecked)

This bill requires that pesticide applicators be notified about complaints against them within 24 hours of receipt of the complaint by the Department or Commissioner of Agriculture or no disciplinary action can be taken against them. Any disciplinary, civil, and criminal proceedings must commence within one year of the complaint. This will increase state revenue and expenditures beginning in FY 2020-21.

Appropriation Summary: For FY 2020-21, the bill requires an appropriation of \$816,057 to the Department of Agriculture.

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

Table 1
State Fiscal Impacts Under SB 20-101

Table with 4 columns: Category, Sub-category, FY 2020-21, and FY 2021-22. Rows include Revenue (Cash Funds, Total), Expenditures (Cash Funds, Centrally Appropriated, Total, Total FTE), Transfers, and TABOR Refund (General Fund).

Summary of Legislation

This bill requires the Colorado Department of Agriculture (CDA) or Commissioner of Agriculture to notify a commercial pesticide applicator within 24 hours of receiving a complaint about the applicator. Failure to do so:

- prohibits the CDA or commissioner from taking action against the applicator; and
- provides immunity to the applicator from criminal prosecution based on the facts of the complaint.

Proceedings to impose discipline, civil penalties, or criminal prosecution must be commenced within one year after the occurrence of the facts upon which the action is based with the exception of applying pesticides without a license when licensure is required.

Background

The Division of Plant Industry in the CDA administers the Pesticides Program, which includes the registration of pesticide products, and the licensing and registration of individuals and businesses who apply pesticides or use certain pest control devices for compensation or production agriculture. In 2019, 9,833 individuals held pesticide applicator licenses. The program registers approximately 14,000 pesticide products at a current fee of \$205. The total revenue for the program is approximately \$1.9 million.

The program has a staff of 6, receives approximately 100 complaints per year, and currently has a backlog of 173 cases. Each case takes approximately 6 months to investigate. Cases affecting humans, pollinators, or livestock are generally resolved within 8 months. Cases that cause property damage may not be resolved for several years. The program works in collaboration with the Attorney General's Office in disciplinary actions.

State Revenue

Assuming that this bill will be funded from fee increases, state revenue will increase by \$882,000 in FY 2020-21 and \$588,000 in FY 2021-22 to the Plant Health, Pest Control and Environmental Protection Fund in the CDA. The bill may result in an earlier collection of penalties due to the time limits, but these are not identified as a revenue increase in the fiscal note.

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. Table 2 below identifies the fee impact of this bill.

**Table 2
Fee Impact on Pesticide Products**

Fiscal Year	Type of Fee	Current Fee	Proposed Fee	Number Affected	Total Fee Impact
FY 2020-21	Pesticide Product Registration	\$205	\$268	14,000	\$882,000
FY 2021-22	Pesticide Product Registration	\$205	\$247	14,000	\$588,000

State Expenditures

This bill will increase expenditures by \$879,244 and 4.3 FTE in FY 2020-21 and \$577,943 and 4.6 FTE in FY 2021-22 from the Plant Health, Pest Control and Environmental Protection Fund in the CDA. These costs are shown in Table 3 and explained below.

**Table 3
Expenditures Under SB 20-101**

	FY 2020-21	FY 2021-22
Department of Agriculture		
Personal Services	\$182,332	\$198,906
Operating Expenses	\$16,645	\$11,050
Capital Outlay Costs	\$318,600	-
Legal Services	\$298,480	\$298,480
Centrally Appropriated Costs*	\$63,187	\$69,507
FTE – Personal Services	2.7 FTE	3.0 FTE
FTE – Legal Services	1.6 FTE	1.6 FTE
Total Cost	\$879,244	\$577,943
Total FTE	4.3 FTE	4.6 FTE

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

Personal services. The CDA requires 2.0 FTE beginning in FY 2020-21 to reduce the time required to commence disciplinary action required under the bill. This has been prorated to 3.7 FTE in FY 2020-21 to account for the August effective date. This includes 2.0 FTE compliance specialists to investigate complaints, compile cases, consult with attorneys, and monitor case development. In addition, the CDA requires 1.0 FTE of a chemist to process samples within 30 to 60 days.

Operating expenses and capital outlay costs. Operating expenses include training, travel, and investigation materials for compliance specialists. Capital outlay in FY 2020-21 includes \$300,000 for liquid chromatography mass spectrometry equipment for the CDA laboratory.

Legal services. The CDA will require 2,800 of legal services hours per year from the Department of Law to expedite compliance actions. To meet the one year deadline to take action, the CDA will refer cases to the department for filing with the Office of Administrative Courts. The department requires 1.6 FTE to accommodate this number of legal services hours.

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 \$63,187 in FY 2020-21 and \$69,507 in FY 2021-22.

TABOR refund. The bill is expected to increase state General Fund obligations for TABOR refunds by \$882,000 in FY 2020-21 and \$588,000 in FY 2021-22. Under current law and the December 2019 Legislative Council Staff forecast, the bill will correspondingly increase the amount refunded to taxpayers via sales tax refunds made available on income tax returns for tax years 2021 and 2022, respectively. A forecast of state revenue subject to TABOR is not available beyond FY 2021-22.

Effective Date

The bill takes effect August 5, 2020, if the General Assembly adjourns on May 6, 2020, as scheduled, and no referendum petition is filed.

State Appropriations

For FY 2020-21, the bill requires an appropriation of \$816,057 and 2.7 FTE to the Department of Agriculture from the Plant Health, Pest Control and Environmental Protection Fund. Of this, amount \$298,480 is reappropriated to the Department of Law with 1.6 FTE.

State and Local Government Contacts

Agriculture Information Technology Judicial Law