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Fiscal Note

Drafting Number: LLS 21-0395 Date: March 05, 2021
Prime Sponsors: Rep. Valdez A.; Cutter Bill Status: House Energy & Environment
Sen. Gonzales Fiscal: Christina Van Winkle | 303-866-6289
Analyst: Christina.VanWinkle@state.co.us

Bill Topic: MANAGEMENT OF PLASTIC PRODUCTS

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

This bill phases out single-use plastic carryout bags and expanded polystyrene food containers. It also repeals the state preemption that prohibits local governments from regulating the use or sale of specific plastic materials or products, and authorizes local governments to enforce violations and impose civil penalties. This bill increases state expenditures and local government revenue and expenditures beginning in FY 2021-22.

Appropriation Summary: For FY 2021-22, the bill requires an appropriation of \$51,838 to the Department of Corrections.

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

Table 1
State Fiscal Impacts Under HB 21-1162

Table with 4 columns: Category, Budget Year FY 2021-22, and Out Year FY 2022-23. Rows include Revenue, Expenditures (General Fund), Transfers, and TABOR Refund.

Summary of Legislation

This bill phases out the provision of single-use plastic carryout bags and expanded polystyrene products to customers by stores and retail food establishments beginning September 1, 2021. It also repeals the state preemption that prohibits local governments from regulating the use or sale of specific plastic materials or products, and authorizes local governments to enforce violations and impose civil penalties. Table 2 below provides a timeline of when various provisions in the bill begin, followed by a narrative explanation.

Table 2
Implementation Timeline

Effective Date	Provision
September 1, 2021	carryout bag fee enacted in stores; local governments may enforce and assess civil penalties
January 1, 2022	expanded polystyrene prohibited in retail food establishments, excluding current inventory
September 1, 2022	single-use plastic carryout bags prohibited in stores and retail food establishments, excluding current inventory
January 1, 2023	expanded polystyrene prohibited in schools except for high schools
July 1, 2023	local governments may enact more stringent requirements
January 1, 2024	expanded polystyrene products prohibited in high schools

Carryout bag fees. Beginning September 1, 2021, a store may provide a customer with one or more single-use plastic or recycled paper carryout bags for a fee of ten cents per bag, or a higher fee adopted by the municipality or county in which the store is located. Customers who provide evidence of participating in a federal or state food assistance program are exempt from the carryout bag fee. Stores are required to provide customers with a transaction receipt for the fee, conspicuously display a sign that alerts customers to the fee, and are prohibited from refunding customers any portion of the fee.

Stores are required to remit 60 percent of the carryout bag fee revenue to the municipality or county in which the store is located on a quarterly basis beginning on January 1, 2022. Municipalities and counties must use the carryout bag fee revenue to pay for administrative and enforcement costs and any recycling, composting, or other waste diversion programs and related outreach and education activities.

Single-use plastic carryout bags. This bill prohibits stores and retail food establishments from providing single-use plastic carryout bags beginning September 1, 2022. Subject to the carryout bag fees discussed above, a store or retail food establishment may distribute, until March 31, 2023, any remaining inventory of single-use plastic carryout bags purchased prior to September 1, 2022.

Expanded polystyrene products. Effective January 1, 2022, this bill prohibits retail food establishments from providing an expanded polystyrene product for use as a container for ready-to-eat food in this state, except that retail food establishments may distribute any remaining inventory of products purchased prior to January 1, 2022. Retail food establishments located within a kindergarten through twelfth grade, middle, junior high, or rural school must comply beginning January 1, 2023. Retail food establishments located within a high school must comply beginning January 1, 2024.

Enforcement and penalties. The bill authorizes local governments to enforce against violations of the bill in a manner that they choose. Counties are authorized to seek injunctive relief against a store or retail food establishment and impose a civil penalty of up to \$500 for a second violation and up to \$1,000 for a third or subsequent violation.

Local government preemption. This bill repeals the prohibition on local governments to require or ban the use or sale of specific types of plastic materials or products, and also authorizes local governments to enact ordinances, resolutions, rules, or charter provisions that are more stringent than the bill beginning July 1, 2023.

State Expenditures

This bill will increase General Fund expenditures by \$51,838 in FY 2021-22 and \$103,675 in FY 2022-23 and future years. It also increases workload for various agencies. These impacts are described below.

Department of Corrections. The Department of Corrections is subject to the bill and currently uses expanded polystyrene in their food service operations. The increased cost to replace the expanded polystyrene with paper products is estimated to be \$103,675 per year, prorated for half a year to \$51,838 in FY 2021-22. Food service operational costs are paid from the General Fund.

Department of Public Health and Environment. The department will have an increase in workload to respond to inquiries about the prohibitions. This workload increase can be addressed within existing appropriations.

School Districts

This bill is expected to increase costs for school districts that currently use expanded polystyrene trays for food service beginning in FY 2022-23. According to one estimate, it will cost an additional \$5.80 per pupil per school year to replace expanded polystyrene with alternative products. For informational purposes, there are approximately 890,000 pupils in the state. The amount of the increase will depend on the type of food service facility located in the school, the number of student meals served per day, and the cost of alternative solutions. Some school districts may also have already put policies in place to limit the use of plastic products.

Other Local Governments

Other local governments, including cities and counties, will have fiscal impacts under the bill, as described below.

Local revenue. This bill is expected to increase revenue for local governments from the percentage of bag fees remitted beginning in FY 2021-22. Local governments may also have an increase in revenue from penalties collected from stores and retail food establishments for violations. To the extent that revenue increases have not been exempted from TABOR limits by voters in affected local jurisdictions, the amount required to be refunded to taxpayers under TABOR will increase.

Local expenditures. The bill affects local government expenditures in several areas. Beginning July 1, 2023, local governments that elect to regulate the use or sale of specific plastic and polystyrene materials within its jurisdiction in a manner that is more stringent than the provisions of this bill will incur expenses to develop and enforce the ordinance. In addition, local governments may have an increase in workload and related expenses to enforce and investigate compliance with the bill. Also, to the extent local governments use single-use plastics in food service operations, including county jails and other facilities, costs will increase to switch to alternative products. Finally, this bill may reduce local government costs associated with the clean-up of disposable plastics that become litter or are deposited into stormwater drainage systems.

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 2021-22, the bill requires a General Fund appropriation of \$51,838 to the Department of Corrections.

State and Local Government Contacts

Corrections
District Attorneys
Judicial
Municipalities
School Districts

Counties
Information Technology
Law
Public Health and Environment