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Revised Fiscal Note

(replaces fiscal note dated April 13, 2022)

Drafting Number: LLS 22-0351 Date: April 22, 2022
Prime Sponsors: Rep. Cutter; Bradfield Bill Status: House Finance
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Bill Topic: PERFLUOROALKYL AND POLYFLUOROALKYL CHEMICALS

- Summary of Fiscal Impact:
[X] State Revenue [] TABOR Refund
[X] State Expenditure [X] Local Government
[] State Transfer [] 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 2023-24 it increases state and local government expenditures, and may increase state revenue beginning in FY 2024-25.

Appropriation Summary: No appropriation is required.

Fiscal Note Status: The revised fiscal note reflects the introduced bill, as amended by the House Energy and Environment Committee.

Table 1
State Fiscal Impacts Under HB 22-1345

Table with 5 columns: Category, Budget Year FY 2022-23, Out Year FY 2023-24, Out Year FY 2024-25. Rows include Revenue, Expenditures (General Fund, Cash Funds, Centrally Appropriated, Total Expenditures, Total FTE), Transfers, and Other Budget Impacts (General Fund Reserve).

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. 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. On and after January 1, 2025, the CDPHE may designate products that contain intentionally-added PFAS chemicals as priority products and submit to the State Department of Health recommendations on actions needed to prohibit their production, sale, or distribution. Products must be identified based on whether the use of PFAS is currently unavoidable, whether safer alternatives exist, the product's risk of exposing sensitive populations, species, and indoor and outdoor environments to PFAS chemicals, and existing restrictions in other states and jurisdictions.

The bill authorizes CDPHE to use funds in the Perfluoroalkyl and Polyfluoroalkyl Substances Cash Fund (PFAS Cash Fund) to administer and implement these notification and prohibition provisions.

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, in consultation with the Department of Public Safety, 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 must 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. 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.

PFAS Cash Fund. The PFAS Cash Fund was created in Senate Bill 20-218. The fund is continuously appropriated for costs related to administering the PFAS Grant Program and PFAS Takeback Program at CDPHE, providing technical assistance in locating and studying PFAS substances, developing guidance and recommendations regarding human health-based standards for PFAS chemicals, and identifying safe disposal methods of PFAS substances. The Department of Revenue (DOR) collects a fee of \$25 per tank truckload of fuel products from manufacturers; a portion of those fees are transmitted to the PFAS Cash Fund. The PFAS Cash Fund balance is capped at \$8 million and the DOR may not collect the fee if the fund balance exceeds \$8 million.

State Revenue

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 \$327,102 and 2.7 FTE in FY 2023-24 and \$422,552 and 4.0 FTE in FY 2024-25 and ongoing from the PFAS Cash Fund and the General Fund. These costs are detailed in Table 2 and described below.

Table 2
Expenditures Under HB 22-1345

	FY 2022-23	FY 2023-24	FY 2024-25
Department of Public Health and Environment			
Personal Services	-	\$164,973	\$278,683
Operating Expenses	-	\$3,375	\$5,400
Capital Outlay Costs	-	\$18,600	\$6,200
Legal Services	-	\$41,005	-
Stakeholder Meetings	-	\$5,650	-
Centrally Appropriated Costs ¹	-	\$93,499	\$132,269
FTE – Personal Services	-	2.5 FTE	4.0 FTE
FTE – Legal Services	-	0.2 FTE	-
Total Cost	-	\$327,102	\$422,552
Total FTE	-	2.7 FTE	4.0 FTE

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

Personal services. The CDPHE will hire 1.7 FTE in FY 2023-24 to support rulemaking, engage stakeholders, and prepare notification requirements for manufacturers of intentionally-added PFAS products. In FY 2023-24 and onward, 3.0 FTE will monitor and track manufacturer notifications and identify priority products for recommendations to the State Board of Health. These costs will be paid from the PFAS Cash Fund, and include standard operating and capital outlay costs.

Beginning in FY 2023-24, the CDPHE will hire 1.0 FTE environmental protection specialist to track and monitor exemptions from the class B firefighting foam restrictions and ensure facilities adhere to the safe storage and notification of releases as required in the bill. Based on an existing registry, there are approximately 160 facilities registered as storing Class B firefighting foam containing intentionally-added PFAS. These costs will be paid from the General Fund. The Department of Public Safety will incur workload impacts to consult with CDPHE on temporary exemptions.

Legal services. The CDPHE will require 416 hours of legal services in FY 2023-24 from the Department of Law to draft rule language related to manufacturer notification requirements and the prohibition of certain intentionally-added PFAS products at a rate of \$98.57 per hour. These costs will be reappropriated from the PFAS Cash Fund to the Department of Law.

Stakeholder meetings. The CDPHE will host stakeholder meetings to communicate the PFAS prohibition and notification requirements. Costs include translation services, venue rental, child care services, and participation incentives. These costs will be paid from the PFAS Cash Fund.

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 2.

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 and not currently exempted from the restrictions of class B firefighting foam containing PFAS chemicals may incur workload impacts to request an exemption from these restrictions. 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.

Technical Note

Under current law, fees collected by manufacturers and distributors of fuel products are transmitted to the PFAS Cash Fund through October 1, 2026. If money in the PFAS Cash Fund after October 1, 2026 is insufficient to cover CDPHE's administrative costs of implementing this bill, a General Fund appropriation may be required.

State and Local Government Contacts

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