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Fiscal Note

Drafting Number: LLS 23-0269 **Date:** March 13, 2023
Prime Sponsors: Rep. McLachlan; Pugliese **Bill Status:** House Trans. & Local Govt.
 Sen. Simpson; Ginal **Fiscal Analyst:** Matt Bishop | 303-866-4796
 matt.bishop@coleg.gov

Bill Topic: **CLOSED LANDFILLS REMEDIATION LOCAL GOVERNMENTS GRANTS**

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 checked="" type="checkbox"/> State Transfer and Diversion	<input type="checkbox"/> Statutory Public Entity

The bill creates a grant program and a dispute resolution program supporting closed landfills remediation. It increases state expenditures, and may impact state revenue beginning in FY 2023-24.

Appropriation Summary: For FY 2023-24, the bill requires an appropriation of \$15 million to the Department of Public Health and Environment.

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

Table 1
State Fiscal Impacts Under HB 23-1194

		Budget Year FY 2023-24	Out Year FY 2024-25
Revenue		-	-
Expenditures	Cash Funds	\$4,444,561	\$4,475,420
	Centrally Appropriated	\$30,899	\$38,217
	Total Expenditures	\$4,475,460	\$4,513,637
	Total FTE	2.2 FTE	2.5 FTE
Transfers¹	General Fund	(\$15,000,000)	-
	Cash Funds	\$15,000,000	-
	Net Transfer	\$0	-
Diversions	General Fund	(\$29,000)	(\$35,000)
	Cash Funds	\$29,000	\$35,000
	Net Diversion	\$0	\$0
Other Budget Impacts	General Fund Reserve	\$2,250,000	-

¹ This transfer is assumed to occur via an appropriation from the General Fund.

Summary of Legislation

The bill addresses remediation of closed, local government-owned landfills through a grant program and a dispute resolution process.

Grant program. The bill creates the Closed Landfill Remediation Grant Program in the Department of Public Health and Environment (CDPHE) to provide grants to eligible local governments to help pay the costs of environmental remediation and management of closed landfills. The bill specifies eligibility requirements and eligible uses of grant awards, and directs CDPHE to adopt rules for implementing the program. An advisory committee, representing local governments and nongovernmental technical expertise, reviews grant applications.

CDPHE must publish an annual report by November 1, beginning in 2025. Every three years, beginning December 1, 2025, the Solid and Hazardous Waste Commission in CDPHE must evaluate the grant program's financial needs and make written recommendations to the General Assembly. The program repeals September 1, 2033, following a sunset review by the Department of Regulatory Agencies.

The bill creates the Closed Landfill Remediation Grant Program Fund, which consists of any money transferred or appropriated to the fund, half of the penalty revenue assessed for violations of solid waste disposal regulations, and any gifts, grants, or donations solicited by CDPHE for the program. The fund is subject to annual appropriation, and any remaining fund balance is transferred to the General Fund on August 31, 2033.

Dispute resolution. The Solid and Hazardous Waste Commission must establish, by rule, a process for resolving disputes related to remediation of closed, local government-owned landfills by November 1, 2023. The resolution process includes a technical committee of independent, objective experts that recommends resolutions. Costs for the administration of the dispute resolution process may be paid from the Closed Landfill Remediation Grant Program Fund. CDPHE must postpone enforcement activities against local governments that are participating in good faith in the dispute resolution process.

State Revenue

Violation of existing solid waste disposal regulation is subject to an administrative or civil penalty of up to \$10,000 unless CDPHE enters into a settlement agreement. Because the bill requires CDPHE to postpone enforcement actions against local governments during the dispute resolution process, it may delay the timing of penalty revenue. While the bill is not expected to affect the number of violations committed or enforcement actions that CDPHE instigates, if the dispute resolution process leads to more settlement agreements, it may impact state revenue beginning in FY 2023-24. The fiscal note cannot estimate the number or nature of these settlement agreements, and this impact has not been estimated. Penalty revenue is subject to TABOR.

State Transfers and Diversions

The fiscal note assumes that \$15 million will be appropriated from the General Fund to the Closed Landfill Remediation Grant Program Fund in FY 2023-24. This transfer is for grant awards and program administration for multiple years.

The bill diverts approximately \$29,000 in FY 2023-24, and \$35,000 in subsequent years from the General Fund to the Closed Landfill Remediation Grant Program Fund. The diversion results from sending half of penalty revenue from violations of solid waste disposal regulation to the grant program fund, rather than the General Fund. This revenue varies significantly from year to year. Penalty revenue in recent years is listed in Table 2. The fiscal note estimates an average diversion, prorated in the first year for the bill's effective date.

Table 2
Solid Waste Disposal Penalty Revenue

Fiscal Year	Revenue
FY 2017-18	\$117,141
FY 2018-19	\$10,300
FY 2019-20	\$186,974
FY 2020-21	\$19,552
FY 2021-22	\$10,000
Average	\$68,793

State Expenditures

Based on the transfer from the General Fund, annual expenditures in CDPHE are estimated to increase by approximately \$4.5 million in FY 2023-24 and subsequent years, paid from the Closed Landfill Remediation Grant Program Fund. Expenditures are shown in Table 3 and detailed below.

Table 3
Expenditures Under HB 23-1194

	FY 2023-24	FY 2024-25
Department of Public Health and Environment		
Personal Services	\$129,950	\$172,744
Operating Expenses	\$2,295	\$2,700
Capital Outlay Costs	\$13,340	-
Grant Awards	\$4,200,000	\$4,200,000
Software License	\$10,000	\$10,000
Travel Expenses	\$1,000	\$2,000
Legal Services	\$87,976	\$87,976
Centrally Appropriated Costs ¹	\$30,899	\$38,217
FTE – Personal Services	1.7 FTE	2.0 FTE
FTE – Legal Services	0.5 FTE	0.5 FTE
Total Cost	\$4,475,460	\$4,513,637
Total FTE	2.2 FTE	2.5 FTE

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

Personal services. CDPHE requires 2.0 FTE to develop the grant program and the dispute resolution program and promulgate rules in FY 2023-24, and to administer the new programs in subsequent years until the programs' repeal. Staff will oversee rulemaking, engage with stakeholders, facilitate grantmaking and dispute resolution processes, and disburse grant awards as applicable. Standard operating and capital outlay costs are included, and costs have been prorated to reflect the bill's effective date.

Local government grants. Grants to local governments are the largest cost component of the bill. The costs for remediation activities vary depending on their scope and content. The fiscal note assumes that CDPHE will award \$4.2 million per year in grants, covering a variety of small and large projects. Actual expenditures will depend on the amount of money available and the scope of grant applications.

Software licenses and travel. Other costs include software licenses for grants management software and staff travel for monitoring grant-funded activities.

Legal services. CDPHE requires 832 hours of legal services per year beginning in FY 2023-24, equating to 0.5 FTE, for rulemaking, general counsel in administering the grant program, and to advise the department during dispute resolution. Legal services are provided by the Department of Law at a rate of \$105.74 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. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve by the amounts shown in Table 1, decreasing the amount of General Fund available for other purposes.

Local Government

The bill increases revenue and expenditures for any local government that applies for and receives a grant award. Workload also increases for any local government involved in dispute resolution; however, if the dispute resolution process prevents future litigation, net expenditures for that local government will decrease.

Technical Note

The bill requires rulemaking to be completed for the grant program and the dispute resolution process by November 1, 2023. Because the bill's effective date is expected to be August 6, 2023, CDPHE may not have enough time to promulgate rules by the November deadline. If so, some of the expenditures identified in the fiscal note will be delayed.

Effective Date

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed, and it applies to conduct occurring on or after that date.

State Appropriations

For FY 2023-24, the bill requires the following appropriations:

- \$15,000,000 from the General Fund to the Closed Landfill Remediation Grant Program Fund; and
- \$4,444,561 from the Closed Landfill Remediation Grant Program Fund to the Department of Public Health and Environment, and 1.7 FTE. Of this amount, \$87,976 is reappropriated to the Department of Law, with 0.5 FTE.

State and Local Government Contacts

Counties
Law
Personnel

Information Technology
LCS
Public Health and Environment

Judicial
Municipalities
Regulatory Agencies