

**First Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 21-0383.01 Jery Payne x2157

HOUSE BILL 21-1045

HOUSE SPONSORSHIP

Young and Valdez D., Mullica

SENATE SPONSORSHIP

Fields,

House Committees

Agriculture, Livestock, & Water

Senate Committees

Agriculture & Natural Resources

A BILL FOR AN ACT

101 **CONCERNING THE DEPARTMENT OF AGRICULTURE'S AUTHORITY TO**
102 **CONTROL PESTS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill creates the emergency invasive-pest response fund (fund), which is subject to annual appropriation. The commissioner of agriculture (commissioner) may expend money from the fund to implement the bill and emergency measures to control or eradicate invasive pests. The state agricultural commission (commission) may request that, at the end of each fiscal year, money in the plant health, pest control, and

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

SENATE
Amended 2nd Reading
April 21, 2021

HOUSE
3rd Reading Unamended
March 5, 2021

HOUSE
Amended 2nd Reading
March 4, 2021

environmental protection cash fund be transferred to the fund. The commissioner is authorized to seek and expend gifts, grants, or donations from private or public sources for the new fund.

The commissioner may:

- Enter into an agreement with any person or local government to provide pest control services. The department of agriculture may provide pest control services directly or through a local government and may require remuneration for providing pest control services. The remuneration is deposited in the fund.
- Work cooperatively with the United States secretary of agriculture to implement a joint phytosanitary program if the program would economically or environmentally assist with mitigating or eradicating the spread of a regulated nonquarantine pest; and
- Quarantine anything that harbors a pest if the pest has an economically unacceptable impact and if the measures to control the pest may achieve an acceptable level of official control.

If the commissioner determines that a public nuisance creates an unacceptable risk of spreading a pest, the commissioner may coordinate with industry to, support local governments to, and make grants to take emergency action to quarantine, control, or eradicate an invasive pest.

The commission may establish procedures for determining what is a public nuisance.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 35-1-106.3, **amend**
3 (4) as follows:

4 **35-1-106.3. Plant health, pest control, and environmental**
5 **protection cash fund - creation.** (4) All interest derived from the
6 deposit and investment of ~~moneys~~ MONEY in the plant health, pest control,
7 and environmental protection cash fund shall be credited to the fund. At
8 the end of each fiscal year, all unexpended and unencumbered ~~moneys~~
9 MONEY in the fund shall remain in the fund and shall not be credited or
10 transferred to the general fund or any other fund; EXCEPT THAT THE STATE
11 TREASURER SHALL TRANSFER ANY UNEXPENDED AND UNENCUMBERED

1 MONEY THAT IS REQUESTED BY THE COMMISSIONER TO BE TRANSFERRED
2 FROM THE PLANT HEALTH, PEST CONTROL, AND ENVIRONMENTAL
3 PROTECTION CASH FUND TO THE EMERGENCY INVASIVE-PEST RESPONSE
4 FUND CREATED IN SECTION 35-1-106.4.

5 **SECTION 2.** In Colorado Revised Statutes, **add** 35-1-106.4 as
6 follows:

7 **35-1-106.4. Emergency invasive-pest response fund.** (1) THE
8 EMERGENCY INVASIVE-PEST RESPONSE FUND, REFERRED TO IN THIS
9 SECTION AS THE "FUND", IS HEREBY CREATED IN THE STATE TREASURY.

10 THE FUND CONSISTS OF:

11 (a) MONEY TRANSFERRED TO THE FUND IN ACCORDANCE WITH
12 SECTION 35-1-106.3 (4);

13 (b) MONEY FROM REMUNERATION AUTHORIZED IN SECTION
14 35-4-118;

15 (c) GIFTS, GRANTS, AND DONATIONS RECEIVED UNDER SUBSECTION
16 (4) OF THIS SECTION; AND

17 (d) ANY OTHER MONEY THAT THE GENERAL ASSEMBLY MAY
18 APPROPRIATE OR TRANSFER TO THE FUND.

19 (2) THE STATE TREASURER SHALL CREDIT ALL INTEREST AND
20 INCOME DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEY IN THE
21 FUND TO THE FUND.

22 (3) SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL
23 ASSEMBLY, THE COMMISSIONER MAY EXPEND MONEY FROM THE FUND TO:

24 (a) IMPLEMENT SECTIONS 35-4-118 AND 35-4-119; AND

25 (b) IMPLEMENT EMERGENCY MEASURES TO CONTROL OR
26 ERADICATE INVASIVE PESTS.

27 (4) THE COMMISSIONER MAY SEEK, ACCEPT, AND EXPEND GIFTS,

1 GRANTS, OR DONATIONS FROM PRIVATE OR PUBLIC SOURCES FOR THE
2 PURPOSES OF THIS SECTION.

3 (5) THE DEPARTMENT SHALL REPORT ANNUALLY THE AMOUNT AND
4 SOURCE OF MONEY RECEIVED UNDER THIS SECTION IN THE PRIOR FISCAL
5 YEAR AT THE HEARING REQUIRED BY THE "STATE MEASUREMENT FOR
6 ACCOUNTABLE, RESPONSIVE, AND TRANSPARENT (SMART)
7 GOVERNMENT ACT", PART 2 OF ARTICLE 7 OF TITLE 2.

8 SECTION 3. In Colorado Revised Statutes, 24-75-402, **add**
9 (5)(rr) as follows:

10 24-75-402. **Cash funds - limit on uncommitted reserves -**
11 **reduction in the amount of fees - exclusions.** (5) Notwithstanding any
12 provision of this section to the contrary, the following cash funds are
13 excluded from the limitations specified in this section:

14 (rr) THE EMERGENCY INVASIVE-PEST RESPONSE FUND CREATED IN
15 SECTION 35-1-106.4.

16 SECTION 4. In Colorado Revised Statutes, **amend** 35-4-102 as
17 follows:

18 35-4-102. **Definitions.** As used in this ~~article~~ ARTICLE 4, unless
19 the context otherwise requires:

20 (1) "Board of county commissioners" means the public officials
21 duly elected to that public office or their designated agents.

22 (2) "COMMISSION" MEANS THE STATE AGRICULTURAL COMMISSION
23 CREATED IN SECTION 35-1-105.

24 ~~(2)~~(3) "Commissioner" means the commissioner of agriculture or
25 ~~his~~ THE COMMISSIONER'S designated agents.

26 ~~(3)~~(4) "County pest inspector" means any qualified employee of
27 a board of county commissioners employed under this ~~article~~ ARTICLE 4.

1 ~~(3.5)~~ (5) "Department" means the department of agriculture.

2 (6) "ERADICATE" MEANS THE COMPLETE ELIMINATION OF A PEST
3 AND ITS PARTS CAPABLE OF REPRODUCTION BASED ON ITS ABSENCE.

4 ~~(4)~~ (7) "Insect pests" means any of the small invertebrate animals
5 in the phylum arthropoda ~~which~~ THAT are injurious to plants and animals.

6 (8) "JOINT PHYTOSANITARY PROGRAM" MEANS A FEDERAL
7 PROGRAM DESIGNED TO RECOGNIZE A STATE OFFICIAL CONTROL PROGRAM
8 TO ERADICATE OR CONTAIN A PLANT PEST THAT IS NOT REGULATED BY THE
9 LEAD FEDERAL AGENCY AND AFFORDS EQUIVALENT PROTECTION AT PORTS
10 OF ENTRY FOR THE SAME PEST IF THE STATES WHERE IT IS DESTINED ARE
11 UNDER OFFICIAL CONTROL.

12 (9) "LOCAL GOVERNMENT" MEANS A COUNTY, MUNICIPALITY, CITY
13 AND COUNTY, OR PEST CONTROL DISTRICT.

14 (10) "OFFICIAL CONTROL" MEANS OFFICIAL ACTIONS TAKEN BY A
15 PLANT PEST REGULATORY AGENCY TO ERADICATE OR SUPPRESS A PLANT
16 PEST WITH THE GOAL OF ELIMINATING ISOLATED PLANT PEST
17 INFESTATIONS.

18 (11) "PERMIT" MEANS A DOCUMENT PREPARED BY THE
19 COMMISSIONER THAT AUTHORIZES THE MOVEMENT OF REGULATED
20 ARTICLES THAT CANNOT MEET OFFICIAL QUARANTINE REQUIREMENTS TO
21 A SPECIFIED DESTINATION FOR SPECIALIZED HANDLING, UTILIZATION, OR
22 PROCESSING OR FOR TREATMENT.

23 ~~(5)~~ (12) "Person" means any individual, partnership, association,
24 corporation, or organized group of persons, whether incorporated or not.

25 ~~(6)~~ (13) (a) "Pests" means ORGANISMS THAT CAUSE HARM TO
26 AGRICULTURE OR NATURAL LANDS.

27 (b) "PESTS" INCLUDES insect pests, PLANT PESTS, and animal pests,

1 except rodents, jackrabbits, and predatory animals, and includes plant
2 diseases and weeds.

3 (c) For purposes of section 35-4-107, the definition of pests shall
4 DOES not include NOXIOUS weeds.

5 (7) (14) "Plant diseases" means the pathological condition
6 CONDITIONS in plants caused by fungi, bacteria, viruses, nematodes,
7 mycoplasmas, or parasitic seed plants.

8 (8) Repealed.

9
10 (15) "PLANT PEST" MEANS ANY LIVING STAGE OF A PEST THAT CAN,
11 DIRECTLY OR INDIRECTLY, CAUSE DISEASE IN, SPOILAGE OF, OR DAMAGE
12 TO PLANTS, PLANT PARTS, OR PROCESSED PLANT MATERIALS.

13 (16) "PLANT PRODUCT" MEANS UNMANUFACTURED MATERIAL OF
14 PLANT ORIGIN THAT, BY THE PRODUCT'S NATURE, MAY CREATE A RISK FOR
15 THE INTRODUCTION AND SPREAD OF PESTS.

16 (17) "PUBLIC NUISANCE" MEANS A PLANT, PLANT PRODUCT,
17 CONVEYANCE, PREMISES, OR REGULATED ARTICLE THAT HARBORS, IS
18 INFESTED OR INFECTED WITH, IS LIABLE TO SPREAD, OR IS EXPOSED TO A
19 PLANT PEST, COMMUNICABLE OR INFECTIOUS DISEASE, WEED, OR
20 ARTHROPOD THAT MAY CAUSE DAMAGE OR HARM TO, OR WHOSE
21 ERADICATION, TREATMENT, OR CONTROL MAY BENEFIT, PERSONS,
22 INDUSTRIES, OR COMMUNITIES WITHIN THE STATE, REGARDLESS OF
23 WHETHER IT MAY DAMAGE OR HARM THE PUBLIC GENERALLY.

24 (18) "QUARANTINE" MEANS THE OFFICIAL CONFINEMENT OF
25 REGULATED ARTICLES FOR, REGULATED PESTS FOR, OR ORGANISMS FOR
26 INSPECTION, TESTING, TREATMENT, OBSERVATION, OR RESEARCH.

27 (19) "REGULATED ARTICLE" MEANS ANY OF THE FOLLOWING THAT

1 COULD HARBOR PESTS: AN ORGANISM, A MATERIAL, A TANGIBLE OBJECT,
2 OR A SUBSTANCE.

3 (20) "REGULATED NONQUARANTINE PEST" MEANS A PEST THAT IS:

4 (a) PRESENT IN COLORADO; AND

5 (b) UNDER A MANDATED CONTROL PROGRAM DUE TO SPECIFIC
6 LOCAL CIRCUMSTANCES, NOTWITHSTANDING THAT THE PEST MAY BE
7 WIDELY DISTRIBUTED IN THE UNITED STATES.

8 (21) "REGULATED PEST" MEANS A QUARANTINE PEST OR A
9 REGULATED NONQUARANTINE PEST DESIGNATED BY FEDERAL OR STATE
10 PLANT PROTECTION OFFICIALS.

11 (9) (22) "~~Weeds~~" "WEED" means any ~~noxious~~, destructive or
12 troublesome plant when found to be of sufficient economic importance
13 to threaten the public welfare OR AFFECT NATURAL RESOURCES.

14 SECTION 5. In Colorado Revised Statutes, add 35-4-118,
15 35-4-119, 35-4-120, and 35-4-121 as follows:

16 35-4-118. **Voluntary agreements to provide pest services.** THE
17 COMMISSIONER MAY ENTER INTO AN AGREEMENT WITH ANY PERSON TO OR
18 LOCAL GOVERNMENT TO PROVIDE PEST CONTROL SERVICES, INCLUDING
19 ERADICATION OR TREATMENT, AUTHORIZED BY THIS ARTICLE 4. THE
20 DEPARTMENT MAY PROVIDE PEST CONTROL SERVICES DIRECTLY OR
21 THROUGH A LOCAL GOVERNMENT AND MAY REQUIRE REMUNERATION FOR
22 PROVIDING PEST CONTROL SERVICES. THE COMMISSIONER SHALL
23 TRANSFER ANY MONEY RECEIVED UNDER THIS SECTION TO THE STATE
24 TREASURER, WHO SHALL DEPOSIT THE MONEY IN THE EMERGENCY
25 INVASIVE-PEST RESPONSE FUND CREATED IN SECTION 35-1-106.4.

26 35-4-119. **Joint phytosanitary program.** THE COMMISSIONER
27 MAY WORK COOPERATIVELY WITH THE UNITED STATES SECRETARY OF

1 AGRICULTURE, OR THE SECRETARY'S DESIGNEE, TO IMPLEMENT A JOINT
2 PHYTOSANITARY PROGRAM IF THE PROGRAM WOULD ECONOMICALLY OR
3 ENVIRONMENTALLY ASSIST WITH MITIGATING OR ERADICATING THE
4 SPREAD OF A REGULATED NONQUARANTINE PEST.

5 **35-4-120. Quarantine of nonregulated pests.** THE
6 COMMISSIONER MAY QUARANTINE A REGULATED ARTICLE IF THE
7 REGULATED ARTICLE MAY HARBOR A REGULATED PEST THAT HAS AN
8 ECONOMICALLY UNACCEPTABLE IMPACT, AS DETERMINED BY THE
9 COMMISSIONER, AND IF THE MEASURES TO CONTROL THE PEST MAY
10 ACHIEVE AN ACCEPTABLE LEVEL OF OFFICIAL CONTROL.

11 **35-4-121. Emergency control and eradication of invasive pests.**

12 (1) IF THE COMMISSIONER DETERMINES THAT A PUBLIC NUISANCE
13 CREATES AN UNACCEPTABLE RISK OF SPREADING A PEST, THE
14 COMMISSIONER MAY COORDINATE WITH INDUSTRY TO, SUPPORT LOCAL
15 GOVERNMENTS TO, AND MAKE GRANTS TO TAKE EMERGENCY ACTION TO
16 QUARANTINE, CONTROL, OR ERADICATE AN INVASIVE PEST.

17 (2) A BOARD OF COUNTY COMMISSIONERS MAY DECLARE A
18 PEST TO BE A PUBLIC NUISANCE AND REQUIRE ITS CONTROL OR
19 ERADICATION.

20 **SECTION 6. Act subject to petition - effective date.** This act
21 takes effect at 12:01 a.m. on the day following the expiration of the
22 ninety-day period after final adjournment of the general assembly; except
23 that, if a referendum petition is filed pursuant to section 1 (3) of article V
24 of the state constitution against this act or an item, section, or part of this
25 act within such period, then the act, item, section, or part will not take
26 effect unless approved by the people at the general election to be held in

- 1 November 2022 and, in such case, will take effect on the date of the
- 2 official declaration of the vote thereon by the governor.