

First Regular Session
Seventy-third General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 21-0383.01 Jery Payne x2157

HOUSE BILL 21-1045

HOUSE SPONSORSHIP

Young and Valdez D.,

SENATE SPONSORSHIP

Fields,

House Committees
Agriculture, Livestock, & Water

Senate Committees

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.

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

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

9 (9) **THE EMERGENCY INVASIVE-PEST RESPONSE FUND CREATED IN**
10 **SECTION 35-1-106.4.**

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

13 **35-4-102. Definitions.** As used in this ~~article~~ ARTICLE 4, unless
14 the context otherwise requires:

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

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

19 (2) "Commissioner" means the commissioner of agriculture or
20 his THE COMMISSIONER'S designated agents.

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

23 (3.5) (5) "Department" means the department of agriculture.

24 (6) "ERADICATE" OR "ERADICATION" MEANS THE ELIMINATION OF
25 A PEST BASED ON ITS ABSENCE AS DETERMINED BY A NEGATIVE
26 VERIFICATION SURVEY FOR THE TARGET PEST.

27 (4) (7) "Insect pests" means any of the small invertebrate animals

1 in the phylum arthropoda ~~which~~ THAT are injurious to plants and animals.

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

8 (9) "OFFICIAL CONTROL" MEANS OFFICIAL ACTIONS TAKEN BY A
9 PLANT PEST REGULATORY AGENCY TO ERADICATE OR SUPPRESS A PLANT
10 PEST WITH THE GOAL OF ELIMINATING ISOLATED PLANT PEST
11 INFESTATIONS.

12 (10) "PERMIT" MEANS A DOCUMENT PREPARED BY THE
13 COMMISSIONER THAT AUTHORIZES THE MOVEMENT OF REGULATED
14 ARTICLES THAT CANNOT MEET OFFICIAL QUARANTINE REQUIREMENTS TO
15 A SPECIFIED DESTINATION FOR SPECIALIZED HANDLING, UTILIZATION, OR
16 PROCESSING OR FOR TREATMENT.

17 (5) (11) "Person" means any individual, partnership, association,
18 corporation, or organized group of persons, whether incorporated or not.

19 (6) (12) "Pests" means insect pests, PLANT PESTS, and animal
20 pests, except rodents, jackrabbits, and predatory animals, and includes
21 plant diseases and weeds. For purposes of section 35-4-107, the definition
22 of pests ~~shall~~ DOES not include weeds.

23 (7) (13) "Plant diseases" means the pathological ~~condition~~
24 CONDITIONS in plants caused by fungi, bacteria, viruses, nematodes,
25 mycoplasmas, or parasitic seed plants.

26 (8) ~~Repeated.~~

27 (14) "PLANT PRODUCT" MEANS A PLANT PART THAT IS NOT A:

- 1 (a) PLANT;
- 2 (b) MANUFACTURED OR PROCESSED PLANT; OR
- 3 (c) MANUFACTURED OR PROCESSED PLANT PART.

12 (16) "REGULATED ARTICLE" MEANS ANY OF THE FOLLOWING THAT
13 COULD HARBOR PESTS: AN ORGANISM, A MATERIAL, A TANGIBLE OBJECT,
14 OR A SUBSTANCE.

15 (17) "REGULATED NONQUARANTINE PEST" MEANS A
16 NONQUARANTINE PEST:

17 (a) WHOSE PRESENCE CAUSES AN ECONOMICALLY UNACCEPTABLE
18 EFFECT IN PLANTS INTENDED FOR PLANTING; AND

19 (b) THAT IS REGULATED WITHIN THE UNITED STATES OR
20 COLORADO BY AN AUTHORIZED PLANT PROTECTION ORGANIZATION.

21 (9) (18) "Weeds" means any noxious, destructive, or troublesome
22 plant when found to be of sufficient economic importance to threaten the
23 public welfare.

24 **SECTION 5.** In Colorado Revised Statutes, **add** 35-4-118,
25 35-4-119, 35-4-120, and 35-4-121 as follows:

26 **35-4-118. Voluntary agreements to provide pest services.** THE
27 COMMISSIONER MAY ENTER INTO AN AGREEMENT WITH ANY PERSON TO OR

1 LOCAL GOVERNMENT TO PROVIDE PEST CONTROL SERVICES, INCLUDING
2 ERADICATION OR TREATMENT, AUTHORIZED BY THIS ARTICLE 4. THE
3 DEPARTMENT MAY PROVIDE PEST CONTROL SERVICES DIRECTLY OR
4 THROUGH A LOCAL GOVERNMENT AND MAY REQUIRE REMUNERATION FOR
5 PROVIDING PEST CONTROL SERVICES. THE COMMISSIONER SHALL
6 TRANSFER ANY MONEY RECEIVED UNDER THIS SECTION TO THE STATE
7 TREASURER, WHO SHALL DEPOSIT THE MONEY IN THE EMERGENCY
8 INVASIVE-PEST RESPONSE FUND CREATED IN SECTION 35-1-106.4.

9 **35-4-119. Joint phytosanitary program.** THE COMMISSIONER
10 MAY WORK COOPERATIVELY WITH THE UNITED STATES SECRETARY OF
11 AGRICULTURE, OR THE SECRETARY'S DESIGNEE, TO IMPLEMENT A JOINT
12 PHYTOSANITARY PROGRAM IF THE PROGRAM WOULD ECONOMICALLY OR
13 ENVIRONMENTALLY ASSIST WITH MITIGATING OR ERADICATING THE
14 SPREAD OF A REGULATED NONQUARANTINE PEST.

15 **35-4-120. Quarantine of nonregulated pests.** THE
16 COMMISSIONER MAY QUARANTINE A REGULATED ARTICLE IF THE
17 REGULATED ARTICLE MAY HARBOR A PEST THAT HAS AN ECONOMICALLY
18 UNACCEPTABLE IMPACT, AS DETERMINED BY THE COMMISSIONER, AND IF
19 THE MEASURES TO CONTROL THE PEST MAY ACHIEVE AN ACCEPTABLE
20 LEVEL OF OFFICIAL CONTROL.

21 **35-4-121. Emergency control and eradication of invasive pests.**
22 (1) IF THE COMMISSIONER DETERMINES THAT A PUBLIC NUISANCE
23 CREATES AN UNACCEPTABLE RISK OF SPREADING A PEST, THE
24 COMMISSIONER MAY COORDINATE WITH INDUSTRY TO, SUPPORT LOCAL
25 GOVERNMENTS TO, AND MAKE GRANTS TO TAKE EMERGENCY ACTION TO
26 QUARANTINE, CONTROL, OR ERADICATE AN INVASIVE PEST.

27 (2) THE COMMISSION MAY ESTABLISH PROCEDURES FOR

1 DETERMINING WHAT IS A PUBLIC NUISANCE, BUT THE COMMISSIONER
2 MAKES THE DETERMINATION.

3 **SECTION 6. Act subject to petition - effective date.** This act
4 takes effect at 12:01 a.m. on the day following the expiration of the
5 ninety-day period after final adjournment of the general assembly; except
6 that, if a referendum petition is filed pursuant to section 1 (3) of article V
7 of the state constitution against this act or an item, section, or part of this
8 act within such period, then the act, item, section, or part will not take
9 effect unless approved by the people at the general election to be held in
10 November 2022 and, in such case, will take effect on the date of the
11 official declaration of the vote thereon by the governor.