

Proposition 105

Colorado Legislative Council Staff
FISCAL IMPACT STATEMENT

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TITLE: LABELING GENETICALLY MODIFIED FOOD

Ballot Question: Shall there be a change to the Colorado Revised Statutes concerning labeling of genetically modified food; and, in connection therewith, requiring food that has been genetically modified or treated with genetically modified material to be labeled, "Produced With Genetic Engineering" starting on July 1, 2016; exempting some foods including but not limited to food from animals that are not genetically modified but have been fed or injected with genetically modified food or drugs, certain food that is not packaged for retail sale and is intended for immediate human consumption, alcoholic beverages, food for animals, and medically prescribed food; requiring the Colorado department of public health and environment to regulate the labeling of genetically modified food; and specifying that no private right of action is created for failure to conform to the labeling requirements?

Fiscal Impact Summary*	Fiscal Year 2014-15	Fiscal Year 2015-16	Fiscal Year 2016-17
State Revenue Fines Collection Cash Fund	\$0 0	\$0 0	<\$5,000 <\$5,000
State Spending General Fund	\$0 0	\$112,640 112,640	\$129,319 129,319
Local Government Impact: Potential jail costs due to misdemeanor penalty.			

* This summary shows changes in state government revenue and spending that are directly caused by the measure. The amount shown represents the change from current law. State fiscal years run from July 1 to June 30.

Summary of Measure

Proposition 105 amends the Colorado statutes to require that certain foods that have been produced with genetic engineering or that have been genetically modified be labeled with the words "Produced with Genetic Engineering." Genetic engineering refers to the process of scientifically altering organisms at the molecular or cellular level.

Under the measure, food is considered to be genetically engineered or modified if the organism from which the food is derived has been treated with a genetically engineered material, or the food contains an ingredient or component that is genetically engineered. Beginning July 1, 2016, if a genetically engineered or genetically modified food is not labeled as required by the measure, the food is considered to be misbranded. Certain foods and food products are exempted from the measure's requirements.

The Colorado Department of Public Health and Environment (CDPHE) is required to establish regulations for labeling foods that have been genetically modified or produced with genetic engineering. These regulations may include procedures for the inspection of food manufacturers and testing of food products to ensure compliance with the measure's labeling requirements.

Background. Genetic engineering of food was first accomplished in 1973 and became commercialized in 1976. Genetically engineered foods, also known as genetically modified organisms or GMOs, have been in the U.S. food supply since 1990. According to the U.S. Department of Agriculture (USDA), in 2013, 90 percent of corn, 90 percent of cotton, and 93 percent of soybean crops planted in the United States were genetically engineered.

U.S. Food and Drug Administration (FDA) rules state that genetically engineered foods and food ingredients must meet the same safety requirements as other foods. The FDA allows food producers to voluntarily label products as to whether or not they contain genetically engineered material, and has issued draft guidance on this labeling to the food industry. The FDA may assess penalties for producers that mislabel products.

The USDA certifies organic foods under the National Organic Program, which can then be labeled as "USDA Organic." Crops grown with the use of genetic engineering cannot be certified as organic under the USDA program. Additionally, a number of producers currently sell food identified as not containing genetically engineered material that have been verified by a third-party verification organization. One such organization currently lists about 16,000 individual food products as having passed its verification process. These products are labeled as "Non-GMO Project Verified."

Fiscal Impact

The measure will affect state revenue and spending, as well as local government spending, as described below.

State revenue. Beginning in FY 2016-17, Proposition 105 is anticipated to increase state revenue from fines imposed on any manufacturers, distributors, or retailers that violate the Colorado Food and Drug Act by failing to properly label foods produced with genetic engineering. The precise impact cannot be determined because the courts have the discretion of incarceration, imposing a fine, or both, but less than \$5,000 is expected to be collected per year. Initial violations of the act are subject to a fine of not more than \$1,000, six months imprisonment in a county jail, or both. Subsequent violations are punishable by a fine of up to \$2,000, one year in a county jail, or both. In the past five years, one person has been found guilty of mislabeling a food, drug, device, or cosmetic product. Any new revenue would be credited to the Fines Collection Cash Fund in the Judicial Branch.

State spending. This measure is expected to increase state General Fund expenditures in the Colorado Department of Public Health and Environment (CDPHE) by \$112,640 and 1.2 FTE in FY 2015-16, and by \$129,319 and 1.5 FTE beginning in FY 2016-17 and each year thereafter. The measure is not expected to affect state spending in FY 2014-15.

This fiscal estimate assumes that labeling requirements will be in place by July 1, 2016. In FY 2015-16, the CDPHE will develop rules for administering the labeling program for genetically engineered foods through a stakeholder process with legal services from the Department of Law. This effort will require \$112,640 and 1.2 FTE for an environmental protection specialist and administrative support. Included in this amount is 80 hours of legal services at a rate of \$99.01 per hour for a total of \$7,921 for rulemaking, and 88 hours of computer programming at \$103 per hour for a total of \$9,064 for updating the department's web-based module for tracking complaints.

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Beginning in FY 2016-17, the labeling program will be operational and CDPHE staff will perform manufacturer inspections, gather samples, and test food in response to consumer complaints. These efforts will require \$129,319 and 1.5 FTE in FY 2016-17 and each year thereafter. The frequency of inspections, sampling, and testing will depend on the rules established by the department and the frequency of consumer complaints. This fiscal estimate assumes, however, that at least 30 food samples will be tested annually, at a cost of \$300 per test. Also included in the annual expenditures is \$1,500 for maintenance of the web-based module for tracking complaints and \$1,000 in mileage for staff travel to manufacturer facilities. Expenditures are detailed in Table 1.

Cost Component	FY 2014-15	FY 2015-16	FY 2016-17
Personal Services and Employee Benefits	-	\$88,871	\$116,094
Full Time Staff Positions	-	1.2	1.5
Operating Expenses and Capital Outlay	-	\$6,784	\$1,425
Travel	-	-	\$1,000
Computer System Updates and Maintenance	-	\$9,064	\$1,500
Samples and Laboratory Testing	-	-	\$9,300
Legal Services	-	\$7,921	-
Total	-	\$112,640	\$129,319

Local government impact. Proposition 105 impacts local governments by creating a new element to the misdemeanor crime of mislabeling a food, drug, device, or cosmetic product. The precise impact cannot be determined because the courts have the discretion of incarceration, imposing a fine, or both, but the impact on county jails is expected to be minimal. Only one person has been found guilty of mislabeling a food, drug, device, or cosmetic product in the past five years. Initial violations are punishable by six months in a county jail; subsequent violations are punishable by a jail sentence of one year. The cost to house an offender in county jails varies from \$45 to \$50 per day in smaller rural jails to \$62 to \$65 per day for larger Denver-metro area jails. The state currently reimburses county jails at a daily rate of \$51.45 to house state inmates.