HB23-1272

JBC STAFF FISCAL ANALYSIS
HOUSE APPROPRIATIONS COMMITTEE

CONCERNING TAX POLICY THAT ADVANCES DECARBONIZATION, AND, IN CONNECTION THEREWITH, EXTENDING TAX CREDITS FOR THE PURCHASE OR LEASE OF ELECTRIC VEHICLES; CREATING TAX CREDITS FOR INDUSTRIAL FACILITIES TO IMPLEMENT GREENHOUSE GAS EMISSIONS REDUCTION IMPROVEMENTS, FOR EXPENDITURES MADE IN CONNECTION WITH GEOTHERMAL ENERGY PROJECTS, FOR PRODUCTION OF GEOTHERMAL ELECTRICITY GENERATION, FOR THE DEPLOYMENT OF HEAT PUMP TECHNOLOGY, FOR RETAIL SALES OF ELECTRIC BICYCLES, AND FOR CONSTRUCTION OF SUSTAINABLE AVIATION FUEL PRODUCTION FACILITIES; CREATING A TEMPORARY SPECIFIC OWNERSHIP TAX RATE REDUCTION AND A TEMPORARY SALES AND USE TAX EXEMPTION ON A PORTION OF THE SALE OF ELECTRIC MEDIUM- AND HEAVY-DUTY TRUCKS; CREATING A SALES AND USE TAX EXEMPTION FOR THE SALE OF HEAT PUMP TECHNOLOGY AND EQUIPMENT NECESSARY FOR PROPER FUNCTIONING OF A THERMAL ENERGY NETWORK; AND DECREASING THE SEVERANCE TAX CREDIT FOR OIL AND GAS PRODUCTION AND TEMPORARILY REQUIRING THE REVENUE THAT IS ATTRIBUTABLE TO THE DECREASE TO BE DEPOSITED IN THE STATE GENERAL FUND.

Prime Sponsors:	Reps. Weissman and Joseph Senator Fenberg	JBC Analyst:	Mitch Burmeister
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		Date Prepared:	April 20, 2023

Appropriation Items of Note

Appropriation Required, Amendment in Packet

General Fund/TABOR Impact

New Cash Funds (with Continuous Appropriation)

Significant Cost Increase in Second Year

Fiscal Impact of Bill as Amended to Date

The most recent Legislative Council Staff Revised Fiscal Note (attached) reflects the fiscal impact of the bill as of 04/20/23.

XXX	**No Change:** Attached LCS Fiscal Note accurately reflects the fiscal impact of the bill
	Update: Fiscal impact has changed due to *new information or technical issues*
	Update: Fiscal impact has changed due to *amendment adopted* after LCS Fiscal Note was prepared
	Non-Concurrence: JBC Staff and Legislative Council Staff disagree about the fiscal impact of the bill

Amendments in This Packet for Consideration by Appropriations Committee

Amendment	Description
J.001	Staff-prepared appropriation amendment
L.017	Bill Sponsor amendment - changes fiscal impact but does not require an appropriation
L.018	Bill Sponsor amendment - changes fiscal impact but does not require an appropriation
L.019	Bill Sponsor amendment - changes fiscal impact but does not require an appropriation
L.020	Bill Sponsor amendment - changes fiscal impact but does not require an appropriation
L.026	Bill Sponsor amendment - changes fiscal impact but does not require an appropriation

Current Appropriations Clause in Bill

The bill requires but does not contain an appropriation clause.

Description of Amendments in This Packet

J.001 Staff has prepared amendment **J.001** (attached) to add a provision appropriating a total of $149,729 cash funds to the Department of Revenue for FY 2023-24, including $129,479 cash funds from the Electrifying School Buses Grant Program Cash Fund, $11,250 from the Community Access to Electric Bicycles Cash Fund, $4,500 from the Geothermal Energy Grant Fund, and $4,500 from the Industrial and Manufacturing Operations Clean Air Grant Program Cash Fund. The provision also reappropriates $63,291 to the Department of Personnel for document management services. This provision also states that the appropriation is based on the assumption that the Department of Revenue will require an additional 0.1 FTE.

L.017 Bill Sponsor amendment **L.017** (attached) adds provisions that make several changes to the Electric Bicycle Tax Credit. The changes are as follows:

- Increases expenditures by the Colorado Energy Office from the Community Access to Electric Bicycles Cash Fund by $650,000. This cash fund is continuously appropriated to the Colorado Energy Office;
- Reduces the transfer from the Decarbonization Tax Adminstration Cash Fund to the General Fund by $650,000 in FY 2023-24;
- Adds a definition of "Qualified Purchaser";
- Reduces the tax credit for qualified retailers from $800 per electric bicycle sold to $500 per bicycle sold;
- Reduces the discount that a qualified purchaser receives at the point of sale from $700 to $450;
- Shifts the proof of residency requirement from the point of sale to a pre-purchase process and creates a database that qualified retailers can access to ensure a purchaser is a qualified purchaser;
- Reduces the administrative fee that a qualified retailer may retain from the tax credit from $100 to $50; and

- Adds a requirement that a qualified purchaser may only purchase one electric bicycle per year.
- Legislative Council Staff and JBC Staff agree that these changes reduce the General Fund revenue impact from ($8,300,000) to ($5,200,000) in FY 2023-24.

L.018 Bill Sponsor amendment **L.018** (attached) adds provisions that make several changes to the Industrial Clean Energy Tax Credit. The changes are as follows:

- Reduces the transfer from the Decarbonization Tax Administration Cash Fund to the General fund by $100,000 in FY 2023-24;
- Makes various changes to the dates when different levels of tax credits are available;
- Specifies that any unspent and unencumbered funds in the Industrial Clean Energy Fund will revert to the General Fund on June 30 of 2024, 2025, and 2026. Additionally, there will be a final reversion to the General Fund of all unspent and unencumbered money in the fund on July 1, 2033. The amendment also limits the amount of money that can revert to the General Fund in 2024, 2025, and 2026 so that the fund retains $100,000 at the end of each fiscal year;
- Clarifies that the application period for the Industrial Clean Energy tax credit is semi-annual and sets time limits for the application periods; and
- Adds an aggregate cap on the amount of tax credits that can be reserved in any given application period.

L.019 Bill Sponsor amendment **L.019** (attached) adds provisions that make several changes to the Innovative Motor Vehicles Tax Credit, the Innovative Trucks Tax Credit, the Industrial Clean Energy Tax Credit, and the Sustainable Aviation Fuel Production Facility Tax Credit. The changes are as follows:

Innovative Motor Vehicle Tax Credits

- Removes increases to tax credits for purchases or leases of Category 1 vehicles made or delivered within specified time periods.
- This change reduces the General Fund revenue impact from ($50,200,000) to ($38,300,000).

Innovative Trucks Tax Credits

- Reduces the tax credit for Category 7 electric truck purchases or leases made or delivered within specified time periods; and
- Reduces the tax credit for Category 7 heavy-duty truck purchases or leases made or delivered within specified time periods.
- These changes reduce the General Fund revenue impact from ($350,000) to ($290,000).

Industrial Clean Energy Tax Credit

- Reduces the aggregate amount of tax credits that can be reserved within various different time periods.
- This change reduces the General Fund revenue impact from ($10,000,000) to ($8,000,000).

Sustainable Aviation Fuel Production Facility Tax Credit

- Reduces the aggregate amount of tax credits that can be distributed from 2028 through 2032 from $5.0 million to $3.0 million.

L.020 Bill Sponsor amendment **L.020** (attached) adds provisions that make several changes to the way severance taxes are collected and disbursed, and also provides authority for the Department of Revenue - subject to annual appropriation - to use funds from three continuously appropriated funds administered by the Colorado Energy Office.

Severance Tax

- Postpones a change in the ad valorem tax credit that was scheduled to take effect pursuant to Section 29-39-105 (2)(c), C.R.S. Under current law, this change to the ad valorem tax credit will take effect on January 1, 2025, and will be applied using the following formula: **C = 0.7656 x GI x ML** where C stands for credit, GI stands for gross income, and ML stands for mill levy. This amendment would postpone the date of this change until January 1, 2027.
- From January 1, 2025 through January 1, 2027, the ad valorem tax credit will decrease according to the following formula: **C = 0.65625 x GI x ML**. On January 1, 2027, the rate will revert to the rate prescribed pursuant to Section 29-39-105 (2)(c), C.R.S.
- For FY 2023-24 through FY 2026-27, the increased severance tax revenue that results from the decreased ad valorem tax credit rate will be credited to the Industrial Clean Energy Fund.

Annual Appropriation Authority

- The Department of Revenue is provided with spending authority, subject to annual appropriation from the following three funds that are continuously appropriated to the Colorado Energy Office:
  - Industrial and Manufacturing Operations Clean Air Grant Program Cash Fund;
  - Geothermal Energy Grant Fund; and
  - Community Access to Electric Bicycles Cash Fund.

L.026 Bill Sponsor amendment **L.026** (attached) adds provisions that:

- Adds a specific ownership tax rate reduction for electric medium- and heavy-duty trucks that are part of a fleet; and
- Allows the current costs for administering the specific ownership tax rate reduction to be paid from the Electrifying School Buses Grant Program Cash Fund. The amount paid from the Electrifying School Buses Grant Program Cash Fund is to be repaid from revenue collected as a result of the decrease in ad valorem tax credits.

JBC Staff and Legislative Council Staff agree that amendments L.017, L.018, L.019, L.020, and L.026 have fiscal impacts but do not require appropriations.

The Committee may adopt any of the above amendments irrespective of the adoption of any other amendments listed above.

Points to Consider

TABOR/ Excess State Revenues Impact
The March 2023 Office of State Planning and Budgeting (OSPB) revenue forecast projects a TABOR surplus liability of $720.9 million for FY 2023-24 and $1.2 billion for FY 2024-25 to be refunded to taxpayers out of the General Fund. Legislation that increases non-exempt revenue (such as cash funds) will increase the TABOR refund from the General Fund. The budget package includes a set aside of $30.0 million General Fund for ongoing appropriations and $469.0 million General Fund for bills that create one-time obligations in FY 2023-24.

This bill is estimated to increase cash fund revenues by $13.9 million in FY 2023-24 and by $28.3 million in FY 2024-25, but decrease General Fund revenues by $72.4 million in FY 2023-24 and by $96.4 million in FY 2024-25 for a total revenue decrease of $58.5 million in FY 2023-24 and $68.1 million in FY 2024-25, reducing the TABOR surplus liability by equal amounts.

Legislative Appropriation Authority
Continuous spending authority, also known as **continuous appropriation**, allows state agencies to spend money for statutorily specified purposes up to the total amount available in a specified fund source without seeking further legislative approval through the budget process.

The term *appropriation* is broadly understood as expressing or conveying legal spending authority. However, the term *appropriation* also inherently expresses fundamental legislative fiscal authority by communicating a *limit* on or maximum amount of spending from a specified fund source for a defined period such as a fiscal year. While continuous spending authority also expresses or conveys legal spending authority it does so by eliminating legislative fiscal authority and oversight.

An annual appropriation provides a limit on spending authority, while a continuous appropriation provides unlimited spending authority. This method of funding moves these expenditures off-budget, and thus expenditures are not reported or accounted for through the budget process.

Is it necessary for the Office of the Governor to **not** seek annual authority from the General Assembly to spend money from the cash funds created in the bill?