



## Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

# Revised Fiscal Note

(replaces fiscal note dated April 18, 2023)

**Drafting Number:** LLS 23-0131 **Date:** April 25, 2023  
**Prime Sponsors:** Rep. Bacon; Willford **Bill Status:** House Appropriations  
 Sen. Winter F.; Gonzales **Fiscal Analyst:** Matt Bishop | 303-866-4796  
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**Bill Topic:** POLLUTION PROTECTION MEASURES

**Summary of Fiscal Impact:**

- State Revenue
- State Expenditure
- State Transfer
- TABOR Refund
- Local Government
- Statutory Public Entity

The bill updates procedures and requirements for air quality control regulations and creates a legislative interim committee. It increases state revenue and expenditures on an ongoing basis.

**Appropriation Summary:** For FY 2023-24, the bill requires appropriations totaling \$5.8 million dollars to multiple state agencies.

**Fiscal Note Status:** This revised fiscal note reflects the introduced bill, as amended by the House Energy and Environment Committee.

**Table 1**  
**State Fiscal Impacts Under HB 23-1294**

		Budget Year FY 2023-24	Out Year FY 2024-25
<b>Revenue</b>	Cash Funds	\$4.0 million	\$5.7 million
	<b>Total Revenue</b>	<b>\$4.0 million</b>	<b>\$5.7 million</b>
<b>Expenditures</b>	General Fund	\$2,985,977	-
	Cash Funds	\$2,820,697	\$5,598,036
	Centrally Appropriated	\$139,218	\$129,593
	<b>Total Expenditures</b>	<b>\$5,945,892</b>	<b>\$5,727,629</b>
	<b>Total FTE</b>	<b>45.0 FTE</b>	<b>45.8 FTE</b>
<b>Transfers</b>		-	-
<b>Other Budget Impacts</b>	TABOR Refund	\$4.0 million	\$5.7 million
	General Fund Reserve	\$747,897	\$722,604

## **Summary of Legislation**

The bill updates procedures and requirements for how the Air Quality Control Commission in the Department of Public Health and Environment (CDPHE) and the Colorado Oil and Gas Conservation Commission in the Department of Natural Resources (DNR) regulate pollution control measures.

**Air Quality Control Commission—rulemaking and permitting.** CDPHE must adopt rules regarding electrification and emissions standards for stationary engines used in oil and gas operations by January 1, 2025. The bill also expands what modifications of stationary sources require permits.

The bill updates the department's public notice requirements for certain construction permit applications, renewable operating permit applications, and public hearings.

The bill specifies new control measures that must be included in any state implementation plan for severe ozone plans in ozone nonattainment areas until the EPA redesignates a serious, severe, or extreme ozone nonattainment area as a maintenance area.

**Air Quality Control Commission—violations and enforcement.** The bill specifies that only the filing of a renewable operating permit application can operate as a defense to an enforcement action for operating without a permit during the time period that the CDPHE is reviewing the permit application.

The bill expands CDPHE's authority to initiative investigations on noncompliance and specifies timeframes for notification and resolution of any investigation and or hearings requested following a compliance order. The bill also allows a person to commence a civil action against an alleged violator of certain clean air regulation, after notifying CDPHE and the alleged violator. After an investigation into whether an activity meets the requirements of a construction permit, CDPHE may propose additional terms and conditions of the construction permit. When determining the amount of a civil penalty, CDPHE must also consider the impact on safety and wildlife and biological resources and the severity of the violation.

**Colorado Oil and Gas Conservation Commission.** A person may submit a complaint to the commission alleging a violation related to oil and gas regulation. The commission must then conduct an investigation, unless the complaint appears to be trivial or is withdrawn.

**Legislative interim committee.** The bill creates the Committee on Ozone Air Quality, consisting of 12 legislators, which meets during the 2023 legislative interim. It may meet up to six times and may introduce up to five bills or resolutions during the 2024 legislative session.

## **State Revenue**

Expanding the scope of modifications to stationary sources increases the number of projects that are subject to CDPHE permitting requirements. Based on the existing number of permits processed, this is expected to increase state revenue by \$4.0 million in FY 2023-24, and by \$5.7 million in FY 2024-25 to the Stationary Sources Control Cash Fund.

The Environmental Unit in the COGCC is funded primarily from the Oil and Gas Conservation and Environmental Response Fund, which receives revenue from a surcharge on the market value of oil and natural gas. The COGCC has the authority to adjust the surcharge up to 1.7 mills as response fund obligations may require. No change in the mill levy rate is currently needed; however, if the requirements in the bill begin to increase fund obligations, the commission will consider available operating revenue and adjust the mill accordingly.

**State Expenditures**

The bill increases state expenditures by \$5.9 million in FY 2023-24 and \$5.7 million in FY 2024-25, paid from the General Fund and cash funds, in CDPHE, DNR and Legislative Department. These costs are shown in Table 2 and detailed below.

**Table 2  
 Expenditures Under HB 23-1294**

	FY 2023-24	FY 2024-25
<b>Department of Public Health and Environment</b>		
Personal Services	\$2,724,235	\$2,823,207
Operating Expenses	\$46,305	\$43,605
Capital Outlay Costs	\$226,780	-
Legal Services	\$1,332,324	\$1,332,324
Employee Benefits	\$594,717	\$618,223
FTE – Personal Services	31.0 FTE	32.3 FTE
FTE – Legal Services	7.0 FTE	7.0 FTE
<b>CDPHE Subtotal</b>	<b>\$4,924,361</b>	<b>\$4,817,359</b>
<b>Department of Natural Resources</b>		
Personal Services	\$589,056	\$589,056
Operating Expenses	\$8,100	\$8,100
Capital Outlay Costs	\$40,020	-
Legal Services	\$95,166	\$95,166
Centrally Appropriated Costs <sup>1</sup>	\$121,299	\$121,299
FTE – Personal Services	6.0 FTE	6.0 FTE
FTE – Legal Services	0.5 FTE	0.5 FTE
<b>DNR Subtotal</b>	<b>\$853,641</b>	<b>\$813,621</b>

**Table 2  
 Expenditures Under HB 23-1294 (Cont.)**

	FY 2023-24	FY 2024-25
<b>Legislative Department</b>		
Personal Services	\$36,349	-
Operating Expenses	\$675	-
Capital Outlay Costs	\$6,670	-
Legislator Reimbursements	\$16,984	-
Travel Costs	\$938	-
Centrally Appropriated Costs <sup>1</sup>	\$9,625	-
FTE – Personal Services	0.5 FTE	-
<b>Leg. Subtotal</b>	<b>\$71,241</b>	<b>-</b>
<b>Total</b>	<b>\$5,874,651</b>	<b>\$5,727,629</b>
<b>Total FTE</b>	<b>45.0 FTE</b>	<b>45.8 FTE</b>

<sup>1</sup> Centrally appropriated costs are not included in the bill's appropriation for DNR.

**Department of Public Health and Environment**

The bill increases costs in the CDPHE by \$4.9 million in FY 2023-24 and \$4.8 million in FY 2024-25 and future years to conduct rulemaking, increase permit review, investigate complaints, and conduct additional enforcement activities, as described below. In the first year, it is assumed that half of the new fee revenue collected in the Stationary Sources Control Cash Fund can be used to pay for expenses (\$2.0 million) and that the remainder (\$2.9 million) will be paid from the General Fund. In the second and future years, costs are assumed to be paid from the Stationary Sources Control Cash Fund only.

- **Staffing.** Implementing the requirements above requires 31.0 FTE beginning in FY 2023-24 in the Air Quality Control Commission, accounting for the General Fund pay date shift, and 32.1 FTE in subsequent years. In particular, the bill is expected to drive a substantial increase in the number of permits submitted for modifications to stationary sources under the commission’s purview. Standard operating and capital outlay costs are included.
- **Legal services.** CDPHE requires 12,600 hours of legal services for rulemaking, general counsel, and enforcement support annually beginning in FY 2023-24. Legal services are provided by the Department of Law at a rate of \$105.74 per hour.
- **Employee insurance and supplemental retirement.** Pursuant to fiscal note and Joint Budget Committee policy, centrally appropriated costs for bills involving more than 20 FTE are appropriated in the bill, rather than through the annual budget process. These costs include employee insurance and supplemental employee retirement payments.

## Department of Natural Resources

The bill increases expenditures in the DNR by \$0.9 million in FY 2023-24 and \$0.8 million in FY 2024-25 and future years, paid from the Oil and Gas Conservation and Environmental Response Fund, to perform cumulative impacts analysis on oil and gas location assessments, conduct additional analysis on permit applications, and conduct investigations into alleged violations.

- **Staffing.** Implementing the requirements above requires 6.0 FTE beginning in FY 2023-24, including additional engineering, environmental protection, and management staff. Standard operating and capital outlay costs are included.
- **Legal services.** DNR requires 900 hours of legal services annually beginning in FY 2023-24 for rulemaking, general counsel, and enforcement support. Legal services are provided by the Department of Law at a rate of \$105.74 per hour.

## Legislative Department

The bill increases expenditures in the Legislative Department by about \$71,000 in FY 2023-24 only for Legislative Council Staff and the Office of Legislative Legal Services to support the new interim committee and to compensate legislators for participating on the committee.

- **Staff support.** Supporting the committee is 0.5 FTE of committee staff, research support, and bill drafting. Travel costs assume one committee field trip.
- **Legislator reimbursements.** The committee includes 12 legislators and meets up to six times. Costs are based on a per diem of \$111.89 and an average of \$124 in travel reimbursements per member for each meeting.

**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 2.

## 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.

## Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

## Technical Note

According to the CDPHE, the bill expands regulation of station source pollution beyond federal regulations, and thus would require General Fund to support the new duties under the bill, rather than the Stationary Sources Control Cash Fund. The fiscal note assumes that fee revenue generated under the bill can be used to cover associated costs under the bill. However, should the authority to use the fee revenue not be clarified, General Fund may be required.

## Departmental Difference

CDPHE estimates the cost to implement the bill at \$26.1 million and 206.6 FTE in FY 2023-24, and \$27.1 million and 223.3 FTE in FY 2024-25, paid from the General Fund. The department's estimate is based on the assumption that CDPHE must complete investigations of air quality complaints within 30 days. The fiscal note interprets the bill to only require that the department notify stakeholders of a complaint within 30 days, not complete an investigation, if any. For this reason, the estimate in the fiscal note varies from the estimate provided by the department. Also, as noted in the Technical Note above, the fiscal note assumes that the Stationary Sources Control Cash Fund can be used to cover the costs of the bill.

## State Appropriations

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

- \$4,924,361 to the Department of Public Health and Environment, including \$2,924,361 from the General Fund and \$2,000,000 from the Stationary Sources Control Cash Fund, and 31.0 FTE. Of this amount, \$1,332,324 is reappropriated to the Department of Law with an additional 7.0 FTE;
- \$820,697 to the Department of Natural Resources from the Oil and Gas Conservation and Environmental Response Fund, and 6.0 FTE. Of this amount, \$95,166 is reappropriated to the Department of Law with an additional 0.5 FTE; and
- \$61,616 from the General Fund to the Legislative Department, and 0.5 FTE.

## State and Local Government Contacts

Judicial  
Natural Resources

Law  
Public Health and Environment

Legislative