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Revised Fiscal Note

(replaces fiscal note dated April 20, 2023)

Drafting Number: LLS 23-0514 Date: April 26, 2023
Prime Sponsors: Sen. Simpson; Hansen Bill Status: House Agriculture
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Bill Topic: AGRICULTURAL PRODUCERS USE OF AGRIVOLTAICS

- Summary of Fiscal Impact:
[X] State Revenue [ ] TABOR Refund
[X] State Expenditure [ ] Local Government
[X] State Transfer [ ] Statutory Public Entity

The bill commissions grants and studies to evaluate the use of agrivoltaics and aquavoltaics. It requires transfers between funds, decreases state and local revenue, and increases state expenditures beginning in FY 2023-24.

Appropriation Summary: For FY 2023-24, the bill includes appropriations of \$4.5 million to various state agencies. See State Appropriations section.

Fiscal Note Status: The revised fiscal note reflects the reengrossed bill.

Table 1
State Fiscal Impacts Under SB 23-092

Table with 4 columns: Category, Fund Name, Budget Year FY 2023-24, and Out Year FY 2024-25. Rows include Revenue, Expenditures, Transfers, and Other Budget Impacts.

1 Funding appropriated in FY 2023-24 to the Department of Agriculture may be spent through FY 2025-26. See Table 2 for the estimated expenditures for each fiscal year.

2 General Fund reserve impact reflects the full three-year appropriation to CDA in FY 2023-24.

## **Summary of Legislation**

The bill expands a grant program, commissions two studies, and creates two tax exemptions, as described below.

**Grant program for agrivoltaics.** The bill expands eligibility requirements for grant awards made by the Agricultural Drought and Climate Resilience Office in the Department of Agriculture (CDA) to include the use or study of agrivoltaics, which involves solar energy generation facilities that are integrated with agricultural activities. The office must convene a task force by September 1, 2023, to conduct a study evaluating the opportunities and challenges for agrivoltaics. The task force must submit its results to the General Assembly by February 15, 2024.

**Emissions mitigation study.** CDA must also conduct a study examining greenhouse gas emissions mitigation and carbon sequestration in the agricultural section, including soil health management practices, the use of dry digesters, and the potential for creating a greenhouse gas offset program. Other state entities must consult with CDA, and any offset program may be incorporated into rules promulgated by the Air Quality Control Commission upon the study's completion. CDA must submit a progress report to the General Assembly by October 1, 2024, and a publish a final report by October 1, 2025.

**Aquavoltaics study.** The Colorado Water Conservation Board in the Department of Natural Resources (DNR) must conduct a feasibility study regarding aquavoltaics, which involves solar energy generation facilities placed over or floating on irrigation canals or reservoirs. The study is conducted in consultation with the state engineer, the Colorado Energy Office, and the Colorado Water Institute, and the board must submit its final report to the General Assembly by January 1, 2025.

**Biodiesel fuel tax exemption.** The bill establishes an excise tax exemption for licensed fuel distributors based on the volume of biodiesel or renewable diesel fuel sold, including the portion of biodiesel mixed into blended fuel. Each year beginning in FY 2024-25, the bill backfills the Highway Users Tax Fund by transferring from the General Fund to the Highway Users Tax Fund an amount equal to the tax expenditure during the previous fiscal year from the exemption.

**Property tax measures.** The bill exempts certain agrivoltaics infrastructure from personal property taxes for tax years 2024 through 2029.

The bill updates the statutory definition of "solar energy facility" for the purposes of property valuation to include certain agrivoltaics and aquavoltaics.

## **State Revenue**

The special fuel excise tax exemption is expected to decrease revenue to the Highway Users Tax Fund by \$11.2 million in FY 2023-24 and \$12.8 million in FY 2024-25. The fiscal note assumes that the exemption applies to eligible fuel sold on and after the bill's effective date, and further estimates 54.5 million gallons of biodiesel in FY 2023-24 and 62.3 million gallons in FY 2024-25 are exempt from the \$0.205 per gallon excise tax on special fuels. These estimates are subject to uncertainty due to limited data on the amount of blended fuel and the percentage of biodiesel incorporated.

**State Transfers**

The bill transfers from the General Fund to the Highway Users Tax Fund an amount equal to the previous fiscal year’s tax expenditure from the special fuel tax on biodiesel and renewable diesel on October 15 each year, beginning in FY 2024-25. The first transfer is estimated at \$11.2 million.

Current law requires an annual transfer from the Colorado Water Conservation Board Construction Fund to the Feasibility Study Small Grant Fund to restore the latter’s fund balance to \$500,000. If the aquavoltaics study causes the Feasibility Study Small Grant Fund’s balance to fall below this threshold, the bill may trigger a transfer of up to \$200,000 on July 1, 2024.

**State Expenditures**

The bill increases state expenditures in various state agencies by \$1.8 million in FY 2023-24 and \$1.5 million in FY 2024-25, paid from various funds. Expenditures are shown in Table 2 and detailed below.

**Table 2  
 Expenditures Under SB 23-092**

	FY 2023-24	FY 2024-25
<b>Department of Agriculture</b>		
Personal Services	\$98,054	\$130,739
Operating Expenses	\$1,485	\$1,755
Capital Outlay Costs	\$6,670	-
Agrivoltaics Grants	\$1,302,080	\$1,280,181
Emissions Mitigation Study	\$87,500	\$87,500
Task Force	\$54,500	-
Centrally Appropriated Costs <sup>1</sup>	\$20,205	\$26,574
FTE – Personal Services	1.0 FTE	1.3 FTE
<b>CDA Subtotal</b>	<b>\$1,570,494</b>	<b>\$1,526,749</b>
<b>Department of Natural Resources</b>		
Aquavoltaics Study	\$200,000	-
<b>DNR Subtotal</b>	<b>\$200,000</b>	<b>-</b>
<b>Department of Revenue</b>		
Computer Programming and Testing	\$22,930	-
Office of Research and Analysis	\$7,392	\$7,328
<b>DOR Subtotal</b>	<b>\$30,322</b>	<b>\$7,328</b>
<b>Total</b>	<b>\$1,800,816</b>	<b>\$1,534,077</b>
<b>Total FTE</b>	<b>1.0 FTE</b>	<b>1.3 FTE</b>

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

**Department of Agriculture.** The bill increases workload and costs in CDA to administer the agrivoltaics grant program and the emissions mitigation and sequestration study. All staff costs have been prorated to reflect the bill's effective date and the General Fund pay date shift. Standard operating and capital outlay costs are included.

- **Agrivoltaics grant program.** Establishing rules and administering the grant program requires 1.0 FTE. Grant awards are expected to range from \$250,000 to \$800,000, depending on the size of the agrivoltaics project. After staffing expenses, the fiscal note estimates approximately \$1.3 million available each year for grant awards, based on the \$3.9 million appropriated for the grant program over three years. Costs may vary depending on the amount of funding appropriated to the department each year.
- **Emissions mitigation study.** Contracting for the study requires 0.3 FTE beginning in FY 2023-24 until the submission of the study's final report. Based on the cost of another study of similar scope, the contract is estimated at \$175,000 over two years. These costs are paid from the General Fund.
- **Task Force.** The department will hire a consultant to manage the work of the task force, including facilitating meetings and producing the final report, in FY 2023-24 only at an estimated cost of \$54,500.

**Department of Natural Resources.** Based on previous feasibility studies conducted by the department, the aquavoltaics feasibility study is estimated to cost \$200,000, paid from the Feasibility Study Small Grant Fund, which is continuously appropriated to Colorado Water Conservation Board. The fiscal note assumes the study will take place in FY 2023-24; some of the costs may carry forward into FY 2024-25 depending on the timing of study activities.

The bill also increases workload in several divisions in DNR to consult on the studies. This workload can be accomplished within existing appropriations.

**Department of Public Health and Environment.** The department must consult with CDA on its study of greenhouse gas emissions mitigation and carbon sequestration. This workload can be accomplished within existing appropriations. If the study's final report includes recommendations for an offset program, workload and legal services costs will increase for the department in FY 2025-26, which will be addressed through the annual budget process as necessary. Legal services are provided by the Department of Law.

**Department of Revenue.** For FY 2023-24 only, the bill requires changes to DOR's GenTax system and additional computer and user acceptance testing. Approximately 50 hours of computer programming are required to make changes in the GenTax system, totaling \$11,250. Additional computer and user acceptance testing are required to ensure programming changes are functioning properly, resulting in an additional \$11,680. Beginning in FY 2023-24, the Office of Research and Analysis within DOR will expend about \$7,300 each year to collect and report data on the tax exemption.

**Other state agencies.** The bill requires the Colorado Energy Office and an institute of higher education to consult with CDA on its study of greenhouse gas emissions mitigation and carbon sequestration. Likewise, the state engineer, the Colorado Energy Office, and the Colorado Water Institute must consult with DNR on the aquavoltaics study. Finally, the Colorado Energy Office,

Colorado Parks and Wildlife, and the Natural and Working Lands Task Force in DNR serve on the task force with CDA. These tasks increase workload for these entities, which can be accommodated within existing appropriations.

**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 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed.

## **State Appropriations**

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

- \$4,516,267 from the General Fund to the Department of Agriculture, and 1.0 FTE. Any money not expended remains available through FY 2025-26; and
- \$30,322 from the General Fund to the Department of Revenue.

The Feasibility Study Small Grant Fund is continuously appropriated to the Department of Natural Resources.

## **State and Local Government Contacts**

Agriculture	Colorado Energy Office	Higher Education
Information Technology	Law	LCS
Natural Resources	Public Health and Environment	Revenue