SB 23-016

Legislative Council Staff
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Revised Fiscal Note

(replaces fiscal note dated April 19, 2023)

Drafting Number:	LLS 23-0213	**Date:**	April 25, 2023
Prime Sponsors:	Sen. Hansen Rep. McCormick; Sirota	**Bill Status:**	House Appropriations
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Bill Topic: **GREENHOUSE GAS EMISSION REDUCTION MEASURES**

Summary of Fiscal Impact:

☒ State Revenue
☒ State Expenditure
☐ State Transfer
☒ TABOR Refund
☒ Local Government
☒ Statutory Public Entity

The bill creates a state income tax credit for new, electric-powered lawn equipment; requires the Public Employees' Retirement Association and insurance companies to study climate risks to their investment portfolios; authorizes the Department of Natural Resources to regulate Class VI injection wells; updates the state's greenhouse gas emissions reduction goals; and commissions a study on electric transmission capacity. Beginning in FY 2023-24, the bill reduces state revenue, increases local revenue, increases and state, local, and statutory public entity expenditures.

Appropriation Summary: For FY 2023-24, the bill requires appropriations of $313,788 to various state agencies. See State Appropriations section for detail.

Fiscal Note Status: The revised fiscal note reflects the reengrossed bill, as amended by the House Energy and Environment and House Finance Committees.

Table 1
State Fiscal Impacts Under SB 23-016

		Budget Year FY 2023-24	Out Year FY 2024-25
Revenue	General Fund	($5.4 million)	($11.2 million)
	Total Revenue	**($5.4 million)**	**($11.2 million)**
Expenditures	General Fund	$48,758	$135,893
	Cash Funds	$265,030	$439,582
	Centrally Appropriated	$50,319	$97,103
	Total Expenditures	**$364,107**	**$672,578**
	Total FTE	**2.7 FTE**	**5.3 FTE**
Transfers		-	-
Other Budget Impacts	TABOR Refund	($5.4 million)	($11.2 million)
	General Fund Reserve	$7,314	$20,384

Summary of Legislation

The bill includes a number of provisions to reduce greenhouse gas (GHG) emissions in the state. For tax years 2024 to 2026, the bill creates a refundable income tax credit equal to 30 percent of the purchase price of new electric powered law equipment. The credit will be provided as a discount to purchasers and then claimed by sellers that register with the Department of Revenue as a qualified retailer as a credit against their taxes.

In addition, the bill:

- establishes GHG reduction goals of 65 percent by 2035, and 75 percent by 2040, 90 percent by 2045, and increases the 2050 goal to 100 percent;
- requires insurance companies that report more than $100 million in premiums to complete an annual climate risk disclosure;
- requires the Public Employees' Retirement Association (PERA) to include climate-risk assessments in its annual investment stewardship report;
- specifies that wastewater thermal energy equipment is a type of pollution control device that may be certified as pollution control equipment and that qualifies as a clean heat resource for utilities' clean heat plans;
- authorizes the Colorado Oil and Gas Conservation Commission (COGCC) to regulate Class VI Injection Wells after publically determining that the COGCC has the necessary resources to ensure the safe and effective regulation of these wells;
- requires the COGCC and the Department of Public Health and Environment (CDPHE) to conduct a study on the safety of these wells by February 1, 2024, and develop regulations for analyzing the full life cycle of emissions associated with permitting Class VI injection wells;
- permits the COGCC to also study whether to seek regulatory primacy for additional injection well classes by December 1, 2024;
- requires recovered methane protocols developed by CDPHE to allow for the use of manure from beef cattle operations;
- updates the duties and powers of the Colorado Energy Office;
- extends an existing appropriation for the Renewable and Clean Energy Initiative grant program in the Department of Local Affairs (DOLA) through July 1, 2025;
- requires retail electric utilities to provide timely interconnection for certain distributed generation resources, with violations subject to penalties;
- increases the circumstances and the amount of certain penalties imposed by the Public Utilities Commission (PUC) on utilities, and requires the PUC to update penalty levels annually;
- requires the PUC, when reviewing an electric utility's plan for the construction or expansion of transmission facilities, to consider the need for expanded transmission capacity in the state;
- expands the types of projects eligible for financing under the Colorado Electric Transmission Authority Act to include facilities that are renovated, rebuilt, or reconditioned;
- directs the Colorado Electric Transmission Authority (CETA) to conduct a study on the need for expanded transmission, report on its findings to the PUC by September 1, 2024, and submit a final report to the legislature by January 31, 2025;
- increases the reserve margin CETA may retain from 15 percent to 50 percent;
- requires local governments to expedite, as practicable, review of land use applications to renovate, rebuild, or recondition transmission lines; and
- prohibits a homeowners' association from disallowing the use of a heat pump system on a residential property located within the community.

Background

GHG emissions reduction targets. House Bill 19-1261, Climate Action Plan to Reduce Pollution, establishes goals to reduce GHG emissions measured relative to the 2005 baseline emissions. This bill updates the GHG reduction goals by adding intermediary targets and increasing the final 2050 goal.

Table 2
Changes to GHG Emissions Reduction Goals

Year	Existing Goal	SB 23-016 Goal
2025	26%	26%
2030	50%	50%
2035	*n/a*	65%
2040	*n/a*	75%
2045	*n/a*	90%
2050	90%	100%

Class VI Geologic Sequestration Wells. Class VI wells are used for the geologic sequestration and long-term storage of carbon dioxide in deep rock formations. Class VI injection permits are designed to protect underground drinking water sources and are regulated by the U.S. Environmental Protection Agency (EPA), in states, including Colorado, that have not enacted their own regulatory process for these permits. Senate Bill 21-264 required the Department of Natural Resources (DNR) to study the resource needed to safely and effectively regulate greenhouse gas sequestration. The COGCC Class VI Report is the result.

This bill authorizes the COGCC to issue Class VI injection permits, which will require the COGCC to pursue Class VI primacy with the EPA. The COGCC currently only has primacy for Class II wells, which are used for the injection of fluids associated with oil and natural gas production. North Dakota and Wyoming are the only states to have primacy for permitting Class VI wells.

As of January 2023, only two Class VI wells, both in Illinois, are currently permitted by the EPA. Thirty additional permits are under consideration. Geologic sequestration is regulated under the federal Safe Drinking Water Act for the purpose of protecting underground sources of drinking water.

State Revenue

Income tax credit for electric powered lawn equipment. The income tax credit is expected to decrease General Fund revenue by $5.4 million in FY 2023-24 (half-year impact) and by $11.2 million in FY 2024-25, with similar impacts through FY 2026-27. The bill reduces income tax revenue to the General Fund, which is subject to TABOR.

Based on estimated per capita unit sales of electric lawn and garden equipment in California applied to Colorado's population, and assuming the credit will be utilized on 95 percent of qualifying equipment purchases, the credit will be claimed on an estimated 205,400 units in 2024 and 208,900 units in 2025. This analysis assumes tax liability will exceed the value of the credit each year.

To the extent credits are carried forward, revenue impacts may vary from those estimated in this analysis.

Pollution control equipment fees. By expanding the definition of "pollution control equipment" to include wastewater thermal energy equipment, the bill may increase the number of applications CDPHE receives to certify pollution control equipment. Fee revenue, which has not been estimated and is subject to TABOR, accrues to the Pollution Control Equipment Certification Fund.

Injection well fees. If Colorado attains Class VI injection well primacy, COGCC may generate fee-based revenue from well operators. This fee revenue, which has not been estimated, may begin to accrue in FY 2024-25.

Penalties on utilities. Increasing existing penalties on utilities and imposing additional penalties on utilities that fail to provide timely interconnections may increase state revenue beginning in FY 2023-24. The fiscal note assumes that utilities will generally follow the law and that any such penalty revenue, which is subject to TABOR, will be minimal.

State Expenditures

The bill increases state expenditures in multiple state agencies by about $360,000 in FY 2023-24 and $670,000 in FY 2024-25, from the General Fund and the Oil and Gas Conservation and Environmental Response Cash Fund. Expenditures are shown in Table 3 and detailed below.

Table 3
Expenditures Under SB 23-016

	FY 2023-24	FY 2024-25
Department of Natural Resources		
Personal Services	$216,632	$369,022
Operating Expenses	$3,240	$6,210
Capital Outlay Costs	$20,010	$33,350
Legal Services	$21,148	-
Training	$4,000	$6,000
Computer Software	-	$25,000
Centrally Appropriated Costs[1]	$46,738	$85,242
FTE – Personal Services	2.4 FTE	4.6 FTE
FTE – Legal Services	0.1 FTE	-
DNR Subtotal	**$311,768**	**$524,824**

Table 3
Expenditures Under SB 23-016 (Cont.)

Department of Revenue		
Personal Services	-	$44,327
Operating Expenses	-	$945
Capital Outlay Costs	-	$6,670
Computer Programming and Testing	$26,660	$64,170
Office of Research and Analysis	$7,392	$7,328
Document Management	-	$12,453
Centrally Appropriated Costs[1]	-	$11,861
FTE – Personal Services	-	0.7 FTE
DOR Subtotal	**$34,052**	**$147,754**
Department of Public Health and Environment		
Personal Services	$14,706	-
Centrally Appropriated Costs[1]	$3,581	-
FTE – Personal Services	0.2 FTE	-
CDPHE Subtotal	**$18,287**	-
Total	**$364,107**	**$672,578**
Total FTE	**2.7 FTE**	**5.3 FTE**

[1] *Centrally appropriated costs are not included in the bill's appropriation.*

Department of Natural Resources

Beginning in FY 2023-24, the DNR requires staff and other resources to develop and administer an Underground Injection Control Program for Class VI injection wells. These costs will phase in over a three-year period. Staffing levels are estimated based on departmental research following the recommendations of the Carbon Capture, Utilization, and Storage Task Force and input from other states that have applied for primacy to regulate Class VI wells. Standard operating and capital outlay costs are included. This fiscal note assumes funds will be appropriated from the Oil and Gas Conservation and Environmental Response Cash Fund. When fully implemented, costs in DNR are estimated to total $711,385 and 7.0 FTE per year starting in FY 2025-26, assuming all necessary federal approval is received.

Primacy staff. Beginning in FY 2023-24, in order to assume permitting and enforcement authority, the COGCC will hire a Class VI Coordinator and an Underground Injection Control Scientist to oversee the application for primacy with the EPA, establish regulations for injection wells, and then oversee the regulatory program. Establishing primacy is expected to take approximately one and a half years, with the new regulatory program assumed to commence January 1, 2025. As Class VI wells are an emerging technology, the new staff will require annual training costs to attend relevant conferences, seminars, and workshops related to geological carbon sequestration.

Studies. The bill requires the COGCC to conduct a study on the safety of Class VI injection wells. This requires 0.8 FTE term-limited staff in FY 2023-24 only. In addition, the COGCC may study whether to seek regulatory primacy for additional injection well classes, which is assumed to be permissive and conducted within existing resources.

Legal services. DNR requires 200 hours of legal services in FY 2023-24 only to conduct rulemaking in conjunction with the application for primacy. Legal services are provided by the Department of Law at a rate of $105.74 per hour. The additional hours equate to 0.1 FTE for the Department of Law in FY 2023-24.

Regulatory staff. Assuming that primacy is granted, COGCC staff will require an additional 5.0 FTE beginning January 1, 2025, to implement all aspects of the program under EPA guidance, including reviewing permits, evaluating environmental impacts, reporting to the EPA, communicating with operators and the public about projects, and ensuring compliance with permit conditions and Class VI well rules. In addition, hydrogeology staff will review injection well permit applications to ensure underground drinking water sources will not be impacted by injection operation, which can be accommodated with existing resources.

Computer software and hardware. In addition to staff to regulate Class VI wells, DNR will purchase computer hardware and software to model underground reservoirs and simulate the effects of GHG injections. Based on costs in another state that recently attained primacy, DNR will have one-time costs of $15,000 in FY 2024-25 for the purchase of a server and costs for an annual license fee of $10,000 for simulation software beginning in the same year.

Department of Revenue

Expenditures will increase in the Department of Revenue by to implement the new tax credit included in the bill.

Computer programming and testing. For FY 2023-24 and FY 2024-25 only, the bill requires changes to the DOR's GenTax system and additional computer and user acceptance testing. Approximately 283 hours of computer programming will be required to make changes in the GenTax system, totaling $64,910 over two years. Additional computer and user acceptance testing are required to ensure programming changes are functioning properly, resulting in an additional $25,920. Costs also include 0.7 FTE for development and testing support in FY 2024-25 only. Standard operating and capital outlay costs are included.

Document management. The bill requires an additional $12,453 in expenditures to implement tax form changes in FY 2024-25. These expenditures will be reappropriated to the Department of Personnel and Administration.

Data reporting. Beginning in FY 2023-24, the Office of Research and Analysis within the DOR will expend $7,328 each year to collect and report data on the new tax credit.

Department of Public Health and Environment

The bill increases CDPHE staff time to consult with the COGCC on the safety study and on developing regulations for analyzing life cycle emissions associated with permitting Class VI injection wells. This requires 0.2 FTE in FY 2023-24 only, prorated for the bill's effective date.

Workload may increase to process additional applications to certify wastewater thermal energy equipment. These costs, which are expected to be minimal, are paid from the Pollution Control Equipment Certification Fund.

Department of Regulatory Agencies

The bill increases workload in the Division of Insurance in FY 2023-24 for rulemaking by the Commissioner of Insurance regarding insurers' requirement to participate in the annual insurer climate risk disclosure survey, and to notify insurers that meet the threshold requirements established in the bill with the survey and instructions. This can be accommodated within existing appropriations.

Department of Local Affairs

Extending the existing Renewable and Clean Energy Initiative program until July 1, 2025, increases state expenditures to the extent that funding remains available. The program was established by House Bill 21-1253 and received $5 million for grants. Expenditures in a given year depend on the number and scope of applications received and decisions made by DOLA. Costs are paid from the Local Government Severance Tax Fund.

Other Expenditure Impacts

All state agencies—emission reduction targets. Meeting the updated greenhouse gas emissions reduction goals may require developing new strategies or programs relative to current law, which may increase state expenditures in future years. The fiscal note assumes that, in the short term, existing state resources are sufficient and that any changes will be addressed through the annual budget process.

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 3.

Other Budget Impacts

TABOR refunds. The bill is expected to decrease the amount of state revenue required to be refunded to taxpayers by the amounts shown in the State Revenue section above. This estimate assumes the December 2022 LCS revenue forecast. A forecast of state revenue subject to TABOR is not available beyond FY 2024-25. Because TABOR refunds are paid from the General Fund, decreased General Fund revenue will lower the TABOR refund obligation, but result in no net change to the amount of General Fund otherwise available to spend or save.

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.

Local Government

Workload may increase in local governments to update procedures for the requirement to expedite review of certain land use applications. This workload is expected to be minimal.

Extending the Renewable and Clean Energy Initiative in DOLA will increase local revenue and expenditures in any local government that receives a grant award.

Statutory Public Entity

Colorado Electric Transmission Authority

The bill increases expenditures in CETA to conduct the required study on expanded transmission capacity. The study is expected to cost approximately $150,000, beginning in FY 2023-24 and concluding in FY 2024-25 once the required reports are finalized. Costs are paid from the Electric Transmission Operational Fund, which is continuously appropriated to CETA. The bill also increases the amount of funds that CETA may hold in reserve.

Public Employees' Retirement Association

PERA currently publishes an Investment Stewardship Report that explains how PERA's investment philosophy addresses climate-related risks. The bill requires PERA to include additional detail on the process for identifying climate-related risks and assessing and addressing risks to its investment portfolio. Workload will increase in PERA to meet these additional requirements.

Effective Date

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed, except that the Sections 8 and 9 concerning the tax credit take effect only if House Bill 23-1272 becomes law.

State Appropriations

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

- $265,030 from the Oil and Gas Conservation and Environmental Response Cash Fund to the Department of Natural Resources, and 2.4 FTE. Of this amount, $21,148 is reappropriated to the Department of Law with an additional 0.1 FTE;
- $34,052 from the General Fund to the Department of Revenue; and
- $14,706 from the General Fund to the Department of Public Health and Environment, and 0.2 FTE.

State and Local Government

Counties	Information Technology	Labor
Law	Municipalities	Natural Resources
PERA	Personnel and Administration	Public Health and Environment
Regulatory Agencies	Revenue	Transportation