



## 1294 Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

# Fiscal Note

**Drafting Number:** LLS 23-0131 **Date:** April 18, 2023  
**Prime Sponsors:** Rep. Bacon; Willford **Bill Status:** House Energy & Environment  
 Sen. Winter F.; Gonzales **Fiscal Analyst:** Matt Bishop | 303-866-4796  
 matt.bishop@coleg.gov

**Bill Topic:** **POLLUTION PROTECTION MEASURES**

**Summary of Fiscal Impact:**

<input type="checkbox"/> State Revenue	<input type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure	<input type="checkbox"/> Local Government
<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

The bill updates procedures and requirements for air quality control regulations. It increases state expenditures on an ongoing basis.

**Appropriation Summary:** For FY 2023-24, the bill requires appropriations of \$11.3 million dollars. See State Appropriations Section.

**Fiscal Note Status:** The fiscal note reflects the introduced bill. This analysis is preliminary and will be updated following further review and any additional information received.

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

		Budget Year FY 2023-24	Out Year FY 2024-25
<b>Revenue</b>		-	-
<b>Expenditures</b>	General Fund	\$9,867,206	\$9,868,191
	Cash Funds	\$1,209,711	\$1,098,600
	Centrally Appropriated	\$202,733	\$202,733
	<b>Total Expenditures</b>	<b>\$11,279,650</b>	<b>\$11,169,524</b>
	<b>Total FTE</b>	<b>111.4 FTE</b>	<b>119.5 FTE</b>
<b>Transfers</b>		-	-
<b>Other Budget Impacts</b>	General Fund Reserve	\$1,408,081	\$1,408,229

## **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.** When a person files an air pollution emission notice for a nonresidential structure, the bill requires that any relevant permits have been approved by CDPHE and that any applicable period of review by the federal Environmental Protection Agency (EPA) has been completed.

The bill allows the commission to adopt rules covering indirect sources that are more stringent than federal law, and it creates new electrification requirements and emissions standards for stationary engines used in oil and gas operations.

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

When CDPHE makes a finding that an activity will meet all applicable emission control regulations, if the activity may emit levels of air contaminants above certain modeling thresholds, the bill requires CDPHE to base the finding on air quality modeling beginning January 1, 2024.

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

When CDPHE evaluates a construction permit application for new oil and gas operations, it must aggregate emissions from the oil and gas systems and consider emissions from exploration and preproduction activities if the system is in an ozone nonattainment area and the activities will be conducted beginning during ozone season.

**Air Quality Control Commission—violations and enforcement.** The bill removes the requirement that the commission set conditions and limitations for periods of start-up, shutdown, or malfunction of a source of air pollution that justify temporary relief from an emission control regulation.

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 initiate 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.

The commission must evaluate and address adverse cumulative impacts of new or substantially modified oil and gas locations on the environment and disproportionately impacted communities.

**State Expenditures**

The bill increases state expenditures in CDPHE by \$9.9 million in FY 2023-24 and FY 2024-25, paid from the General Fund. It also increases state expenditures in DNR by \$1.4 million in FY 2023-24 and \$1.3 million in FY 2024-25, paid from the Oil and Gas Conservation and Environmental Response Fund. Expenditures 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	\$5,804,595	\$6,332,285
Operating Expenses	\$135,000	\$135,000
Capital Outlay Costs	\$667,000	-
Legal Services	\$1,712,988	\$1,712,988
Employee Benefits	\$1,547,623	\$1,687,918
FTE – Personal Services	91.7 FTE	100.0 FTE
FTE – Legal Services	9.0 FTE	9.0 FTE
<b>CDPHE. Subtotal</b>	<b>\$9,867,206</b>	<b>\$9,868,191</b>
<b>Department of Natural Resources</b>		
Personal Services	\$987,819	\$987,819
Operating Expenses	\$13,500	\$13,500
Capital Outlay Costs	\$66,700	-
Legal Services	\$141,692	\$97,281
Centrally Appropriated Costs <sup>1</sup>	\$202,733	\$202,733
FTE – Personal Services	10.0 FTE	10.0 FTE
FTE – Legal Services	0.7 FTE	0.5 FTE
<b>Dept. Subtotal</b>	<b>\$1,412,444</b>	<b>\$1,301,333</b>
<b>Total</b>	<b>\$11,279,650</b>	<b>\$11,169,524</b>
<b>Total FTE</b>	<b>111.4 FTE</b>	<b>119.5 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 expenditures to conduct substantial rulemaking, increase permit review, investigate complaints, conduct additional air quality modeling, and conduct additional enforcement activities.

- **Staffing.** Implementing the requirements above requires approximately 100.0 FTE beginning in FY 2023-24 in the Air Quality Control Commission. This estimate will be refined in a future fiscal note. Standard operating and capital outlay costs are included, and costs in FY 2023-24 have been prorated for the General Fund pay date shift.
- **Legal services.** CDPHE requires 16,200 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 to perform cumulative impacts analysis on oil and gas permits, conduct additional analysis on permit applications, and conduct investigations into alleged violations.

- **Staffing.** Implementing the requirements above requires 10.0 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 1,340 hours of legal services in FY 2023-24 and 920 hours in FY 2024-25 for rulemaking, general counsel, and enforcement support. Legal services are provided by the Department of Law at a rate of \$105.74 per hour.

**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.

## State Appropriations

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

- \$9,867,206 from the General Fund to the Department of Public Health and Environment, and 91.7 FTE. Of this, \$1,712,988 is reappropriated to the Department of Law, with 9.0 FTE; and
- \$1,209,711 from the Oil and Gas Conservation and Environmental Response Fund, and 10.0 FTE. Of this, \$141,692 is reappropriated to the Department of Law, with 0.7 FTE.

## State and Local Government Contacts

Judicial

Law

Natural Resources

Public Health and Environment