HB 24-1330

Legislative Council Staff
Nonpartisan Services for Colorado's Legislature

Final Fiscal Note

Drafting Number:	LLS 24-0807	**Date:**	August 13, 2024
Prime Sponsors:	Rep. Bacon; Willford Sen. Cutter	**Bill Status:**	Deemed Lost
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Bill Topic: **AIR QUALITY PERMITTING**

Summary of Fiscal Impact:

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

The bill would have updated air quality permitting requirements. It would have increased state expenditures beginning in FY 2024-25, and state revenue beginning in FY 2025-26.

Appropriation Summary: For FY 2024-25, the bill would have required an appropriation of $2.5 million to the Department of Public Health and Environment.

Fiscal Note Status: The final fiscal note reflects the introduced bill, as amended by the House Energy and Environment Committee. The bill was deemed lost in the House Appropriations Committee on May 9, 2024; therefore, the impacts identified in this analysis do not take effect.

Table 1
State Fiscal Impacts Under HB 24-1330

		Budget Year FY 2024-25	Out Year FY 2025-26
Revenue	Cash Funds	-	$2,634,927
	Total Revenue	**-**	**$2,634,927**
Expenditures	General Fund	$2,481,338	-
	Cash Funds	-	$2,346,688
	Centrally Appropriated	$288,239	$288,239
	Total Expenditures	**$2,769,577**	**$2,634,927**
	Total FTE	**19.0 FTE**	**19.0 FTE**
Transfers		-	-
Other Budget Impacts	TABOR Refund	-	$2,634,927
	General Fund Reserve	$372,201	-

Summary of Legislation

The bill requires the Department of Public Health and Environment (CDPHE), when determining if an oil and gas operation is a major or minor source, to consider aggregate emissions across the system and to include emissions from exploration and preproduction activities. CDPHE may not approve a construction permit application for new or modified oil and gas systems in the ozone nonattainment area unless:

- the system will not contribute to pollution that exceeds a National Ambient Air Quality Standard (NAAQS);
- in any NAAQS nonattainment area, the system offsets its emissions of any noncompliant pollutant; and
- the system is not located in a disproportionately impacted community.

Beginning January 1, 2025, the department must base any permitting determinations on air quality modeling. If it approves a construction permit, any assumptions used in the air quality modeling is an enforceable condition of the permit. A construction permit is required before an operator may receive any permit from the Energy and Carbon Management Commission in the Department of Natural Resources (DNR).

Background

CDPHE's Regulation Number 3 specifies that stationary sources of air pollution can qualify as a major or minor source, depending on the anticipated about of pollution they emit. Major sources are subject to stricter regulatory requirements. By considering oil and gas systems in aggregate, the bill may require some oil and gas operations to be regulated as major sources that would otherwise have been regulated as minor sources.

Assumptions

Creating additional requirements for oil and gas operators, raising fees, and prohibiting minor sources from operating in disproportionately impacted communities may reduce the number of applications received by the Department of Natural Resources or the amount of oil and gas produced. A decrease in oil and gas activity may reduce the revenue and expenditure impacts identified in this analysis, as well as revenue and expenditure impacts in other state and local entities, including those funded from severance taxes or federal mineral lease revenue. Affected entities could include the Energy and Carbon Management Commission in DNR, the Department of Local Affairs, the Department of Agriculture, the State Land Board, and school districts.

State Revenue

The bill increases state cash fund revenue from fees by up to $2.6 million per year starting in FY 2025-26. Permit applicants and operators pay fees depending on the type of permit sought, the amount of emissions allowed, and the time required for CDPHE to process the permit. This fee revenue accrues to the Stationary Sources Control Fund. The fiscal note assumes that CDPHE will adjust its fees as necessary in FY 2024-25 to generate revenue that covers its costs beginning in FY 2025-26. This revenue is subject to TABOR. If CDPHE cannot generate sufficient revenue, additional General Fund may be required in future years, which will be addressed through the annual budget process. While the fiscal note estimates the total amount of revenue, given the multitude of different fees charged by the CDPHE for permits, the impact on individual permit types cannot be estimated.

State Expenditures

The bill increases expenditures in CDPHE by about $2.8 million in FY 2024-25, paid from the General Fund, and by about $2.6 million in FY 2025-26 and future years, paid from the Stationary Sources Control Fund. As described below and summarized in Table 2, the bill increases costs for processing permits and conducting modeling.

Table 2
Expenditures Under HB 24-1330

	FY 2024-25	FY 2025-26
Department of Public Health and Environment		
Personal Services	$1,291,166	$1,291,166
Operating Expenses	$18,560	$18,560
Capital Outlay Costs	$134,650	-
Legal Services	$1,036,962	$1,036,962
Centrally Appropriated Costs[1]	$288,239	$288,239
FTE – Personal Services	14.5 FTE	14.5 FTE
FTE – Legal Services	4.5 FTE	4.5 FTE
Total Cost	**$2,769,577**	**$2,634,927**
Total FTE	**19.0 FTE**	**19.0 FTE**

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

Department of Public Health and Environment—staff. CDPHE requires staff to conduct additional modeling on permit applications. The workload estimate accounts for additional complexity in permit review for evaluating interconnected oil and gas systems, the inclusion of preproduction activities, and verifying that proposed air pollution sources in the ozone nonattainment area are offsetting their emissions. CDPHE currently processes an estimated 720 air pollution emissions notices annually in the ozone nonattainment area. This analysis assumes the bill's requirements will increase workload by 16 hours per applicable emissions notice. In addition, workload will increase for the management of additional major sources, to the extent that proposed oil and gas operations that would have qualified as a minor source would qualify as a major source under the bill. Additional staff expenditures include standard operating costs, capital outlay, staff training, and protective equipment, and assume a July 1, 2024, start date.

Legal services. CDPHE requires 8,100 hours of legal services for extensive rulemaking in FY 2024-25 and FY 2025-26, and general counsel related to permitting, modeling, and ozone nonattainment issues in subsequent years. Legal services are provided by the Department of Law at a rate of $128.02 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 state agencies. As discussed in the Assumptions section, impacts on other state agencies have not been estimated.

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.

TABOR refunds. The bill is expected to increase 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 2023 LCS revenue forecast. A forecast of state revenue subject to TABOR is not available beyond FY 2025-26. Because TABOR refunds are paid from the General Fund, increased cash fund revenue will reduce the amount of General Fund available to spend or save.

Technical Note

The definition of "oil and gas system" in the bill differs from the definition in federal rules. The fiscal note assumes that this difference is intentional and has included costs for CDPHE to adjust its practices for the new definition.

The bill defines "modifying" a stationary source of pollution as increasing emission of any air pollutant. The existing statutory definition of "air pollutant" includes emissions that may not currently be regulated in oil and gas operations. It also includes exemptions not present in the bill. This fiscal note assumes that the bill applies only to emissions of pollutants regulated in oil and gas operations and that existing exemptions are maintained. If CDPHE must evaluate permits and notices for additional pollutants and if additional applications are required from otherwise exempted sources of emissions, expenditures will increase beyond what is identified in this fiscal note.

Effective Date

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

State Appropriations

For FY 2024-25, the bill requires a General Fund appropriation of $2,481,338 to the Department of Public Health and Environment, and 14.5 FTE. Of this, $1,036,962 is reappropriated to the Department of Law, with an additional 4.5 FTE.

Departmental Difference

CDPHE estimates that the bill will increase expenditures by $24.3 million in FY 2024-25 and $21.8 million in FY 2025-26 and subsequent years, and that an additional 187.5 FTE is required. This is based on CDPHE's assumption that the bill significantly changes the air permitting process in ozone nonattainment areas. The differences between the department's assessment and the fiscal note are described below.

- CDPHE assumes that the definition of "air quality modeling" in the bill requires the department to conduct modeling on emissions from all emitting units at a stationary source in the ozone nonattainment area, whereas current practice requires modeling only when a determination is made that modeling is required. CDPHE estimates that this cumulative modeling requires 83.0 FTE per year beginning in FY 2024-25. The fiscal note instead assumes that the definition requires modeling to be conducted only when required by federal guidance, which the CDPHE currently follows.

- CDPHE currently requires either a general permit or a construction permit for oil and gas operators to begin construction activities, and has relied on conditional certification of general permits to expedite permit review and achieve regulatory goals. In order to maintain the benefits of general permits, workload will increase to approve construction permits on an expedited timeline. CDPHE estimates this workload at 38.0 FTE per year beginning in FY 2024-25. The fiscal note assumes that this workload is not required by the bill and has excluded this expenditure. This policy decision may be addressed through this bill's appropriation at the discretion of the General Assembly, or through the annual budget process.

- The bill requires that determinations on construction permits consider emissions offsets from operators starting in 2025. CDPHE proposes establishing an emissions credit trading system for minor sources to track compliance with these requirements, requiring 2.4 FTE in temporary staff in FY 2024-25 only to establish baseline emissions, 2.0 FTE ongoing to operate the system, and $100,000 in technology development costs. The fiscal note assumes that offsets can be identified and evaluated without a credit trading scheme.

State and Local Government Contacts

Law	Natural Resources	Public Health and Environment

The revenue and expenditure impacts in this fiscal note represent changes from current law under the bill for each fiscal year. For additional information about fiscal notes, please visit the General Assembly website.