SB 24-229

Legislative Council Staff
Nonpartisan Services for Colorado's Legislature

Final Fiscal Note

Drafting Number:	LLS 24-1188	**Date:**	July 8, 2024
Prime Sponsors:	Sen. Winter F.; Priola Rep. Bacon; Willford	**Bill Status:**	Signed into Law
		Fiscal Analyst:	Matt Bishop | 303-866-4796 matt.bishop@coleg.gov

Bill Topic: **OZONE MITIGATION MEASURES**

Summary of Fiscal Impact:

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

The bill modifies regulations and enforcement criteria regarding ozone precursor emissions. It increases state revenue and expenditures beginning in FY 2024-25.

Appropriation Summary: For FY 2024-25, the bill requires and includes appropriations of $932,284 to multiple state agencies.

Fiscal Note Status: The final fiscal note reflects the enacted bill.

Table 1
State Fiscal Impacts Under SB 24-229

		Budget Year FY 2024-25	Out Year FY 2025-26
Revenue	Stationary Sources Control Fund	-	$697,237
	Total Revenue	**-**	**$697,237**
Expenditures	General Fund	$753,157	-
	Cash Funds	$179,127	$820,245
	Centrally Appropriated	$98,479	$92,353
	Total Expenditures	**$1,030,763**	**$912,598**
	Total FTE	**5.8 FTE**	**5.5 FTE**
Transfers		-	-
Other Budget Impacts	TABOR Refund	-	$697,237
	General Fund Reserve	$112,974	-

Summary of Legislation

The bill limits pollutant emissions from oil and gas operations, modifies how the Department of Public Health and Environment (CDPHE) and the Energy and Carbon Management Commission (ECMC) in the Department of Natural Resources (DNR) enforce air quality requirements, requires CDPHE to publish additional enforcement reports, establishes community liaisons in the ECMC, and allows for the plugging of marginal oil and gas wells.

Limiting nitrogen oxide and ozone precursor emissions. CDPHE must adopt rules by August 31, 2026 to reduce nitrogen oxide emissions from upstream oil and gas operations between May 1 and September 30 in the ozone nonattainment area by 50 percent from a 2017 baseline to 2030. The ECMC in the DNR must require oil and gas operators to take actions to limit emissions. Also, oil and gas operators must obtain a license to operate from the ECMC, in addition to the current license required for drilling operations. In addition, CDPHE may adopt stricter standards for nitrogen oxide emissions in disproportionately impacted communities.

Enforcement of air quality regulations. When issuing an enforcement order for a violation of permitted emissions, CDPHE may include a requirement to perform projects that reduce the potential for future violations, and the state or local governments may file for an injunction against a violator to reduce the potential for future violations. Current law prohibits temporary restraining orders or preliminary injunctions that would harm the violator; the bill repeals this restriction. The bill increases the maximum civil penalty for certain violations from $500 per day per violation to $1,000 per day per violation.

In addition, the bill expands:

- CDPHE's authority to impose civil penalties to include toxic air contaminant emissions, fenceline monitoring, community-based monitoring, and petroleum refinery emissions monitoring;
- the factors that CDPHE must consider when assessing the amount of a civil penalty, and limits the factors that it must consider for reducing the amount of a civil penalty;
- the factors on which the ECMC may issue a cease-and-desist order to an oil and gas operator, including impacts to public health, safety, welfare, the environment, or wildlife; and
- the circumstances under which the ECMC must order an operator to appear for a hearing.

Enforcement reporting. CDPHE must publish annual reports summarizing its enforcement actions taken, penalty decisions, and violations resolved, starting with a multi-year baseline report in 2024, and one-year reports beginning in 2025. CDPHE must also establish an email notification system to alert interested parties of violations and settlements.

Community liaisons. The bill requires the ECMC to hire at least two community liaisons to disproportionately impacted communities. The liaisons serve as advocates for disproportionately impacted communities, work to improve relationships with the ECMC, conduct outreach, and organize events.

Marginal wells. The Orphaned Wells Mitigation Enterprise, created by Senate Bill 22-198, funds the plugging, reclaiming, and remediating of orphaned oil and gas wells. The bill authorizes it to do the same for marginal wells, which are oil and gas wells at risk of becoming orphaned.

State Revenue

The bill increases cash fund revenue from fees to the Stationary Sources Control Fund beginning in FY 2025-26 by around $700,000 per year. It may also increase revenue from civil penalties. In addition, the bill may increase cash fund revenue to the Orphaned Wells Mitigation Enterprise Cash Fund.

Permit fees for oil and gas operators. The bill increases state cash fund revenue from fees by up to $700,000 in FY 2025-26. Out-year expenditures in subsequent years may also require adjustments to fees depending on the level of expenditures and fund source balance. 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.

Civil penalties. By increasing the maximum penalty that CDPHE may levy, the bill may increase revenue from civil penalties, which is subject to TABOR. For FY 2024-25, 20 percent of this revenue is credited to the General Fund; the remainder, and all penalty revenue beginning in FY 2025-26 is credited to the Community Impact Cash Fund. As this revenue depends on violations of state regulation and case-by-case decisions by the department, it cannot be estimated.

Orphaned well fees. The Orphaned Well Mitigation Enterprise charges fees for orphaned wells that it covers. Depending on actions taken by the enterprise board, the bill may increase the number of wells it covers by including marginal wells. If its expenditures increase, it may increase the orphaned well fee. Fees are set administratively by the board and are updated annually.

State Expenditures

The bill increases state expenditures in CDPHE by about $820,000 in FY 2024-25, paid from the General Fund, and by $700,000 in FY 2025-26, paid from the Stationary Sources Control Fund. It also increases expenditures in DNR by about $215,000 per year beginning in FY 2024-25, paid from the Energy and Carbon Management Cash Fund. Expenditures are shown in Table 2 and detailed below.

Table 2
Expenditures Under SB 24-229

	FY 2024-25	FY 2025-26
Department of Public Health and Environment		
Personal Services	$312,865	$284,423
Operating Expenses	$4,224	$3,840
Capital Outlay Costs	$33,350	-
Photochemical Studies	$165,000	$110,000
Data System Upgrades	$122,500	$122,500
Legal Services	$115,218	$115,218
Centrally Appropriated Costs[1]	$67,382	$61,256
FTE – Personal Services	3.3 FTE	3.0 FTE
FTE – Legal Services	0.5 FTE	0.5 FTE
CDPHE Subtotal	**$820,539**	**$697,237**
Department of Natural Resources		
Personal Services	$153,988	$153,988
Operating Expenses	$2,560	$2,560
Capital Outlay Costs	$13,340	-
Vehicle Costs	$9,239	$27,716
Centrally Appropriated Costs[1]	$31,097	$31,097
FTE – Personal Services	2.0 FTE	2.0 FTE
DNR Subtotal	**$210,224**	**$215,361**
Total	**$1,030,763**	**$912,598**
Total FTE	**5.8 FTE**	**5.5 FTE**

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

Department of Public Health and Environment. Expenditures increase in the department to create the annual report, collect and share data with the ECMC, update rules, and update enforcement practices.

- **Staffing.** CDPHE requires 3.0 FTE to conduct additional permit emissions modeling to ensure a lower nitrogen oxide emissions threshold in disproportionately impacted communities. This ongoing expenditure is prorated for a September 1 start date in FY 2024-25. Identifying best management practices for oil and gas operators, updating rules, and preparing the initial, four-year report on enforcement actions requires 0.8 FTE in FY 2024-25 only. Workload increases in future years to publish annual enforcement reports, notify interested parties of enforcement actions, and to coordinate with the ECMC regarding ozone season emissions. This ongoing work can be accomplished within existing appropriations.

- **Rulemaking.** In order to prepare and evaluate strategies to inform its rulemaking proceedings in 2026, CDPHE must update its ONGAEIR data system and acquire contracted photochemical analyses. The total cost for these items is shown in Table 2; the department requires roll-forward spending authority through FY 2026-27 to complete the activities before the final rules are proposed.

- **Legal services.** CDPHE requires 900 hours of legal services per year beginning in FY 2024-25, provided by the Department of Law, to support its reporting requirements, support rulemaking, and provide general counsel. Legal services are provided by the Department of Law at a rate of $128.02 per hour.

- **Enforcement.** By expanding CDPHE's enforcement authority, expenditures may increase to take additional enforcement actions. Any change from current practice will depend on regulatory decisions made by the department, and any increase in expenditures will be addressed through the annual budget process.

Department of Natural Resources. Expenditures in DNR increase to liaise with disproportionately impacted communities, to issue to licenses for oil and gas operations, and to remediate marginal wells.

- **Staff.** Beginning in FY 2024-25, the ECMC requires 2.0 FTE liaisons to interface with disproportionately impacted communities, as specified in the bill. Additional costs include leased vehicles and related operating expenses, which are prorated in the first year.

- **Licensing.** The ECMC will convert existing regulatory processes to include licenses, which will be awarded to oil and gas operators for no fee. This can be accomplished within existing appropriations.

- **Enterprise.** The bill increases expenditures in the Orphaned Well Mitigation Enterprise, the extent of which depends on decisions taken by the enterprise's board. Expenditures are paid from a continuously appropriated cash fund.

Colorado Energy Office. Workload may increase to intervene in rulemaking proceedings at CDPHE and the ECMC. This is expected be minimal in FY 2024-25. If additional resources are required in future years, they 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 2.

Other Budget Impacts

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 March 2024 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.

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

The bill may increase workload for district attorneys to address additional enforcement proceedings. The fiscal note assumes that most of these actions will fall on the Attorney General's office and any impact on district attorneys will be minimal.

Effective Date

This bill was signed into law by the Governor and took effect on May 16, 2024, except that Section 6 took effect when House Bill 24-1338 was enacted on May 28, 2024, and Section 5 does not takes effect.

State Appropriations

For FY 2024-25, the bill requires and includes a General Fund appropriation of $753,157 to the Department of Public Health and Environment, and 3.3 FTE. Of this, $115,218 is reappropriated to the Department of Law, with an additional 0.5 FTE.

For FY 2024-25, the bill requires an appropriation of $179,127 from the Carbon and Energy Management Cash Fund to the Department of Natural Resources, and 2.0 FTE.

State and Local Government Contacts

District Attorneys	Judicial	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.