Bill 3

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Fiscal Note

Drafting Number:	LLS 23-0083	**Date:**	September 19, 2022
Prime Sponsors:		**Bill Status:**	Bill Request
		Fiscal Analyst:	Louis Pino | 303-866-3556 louis.pino@state.co.us Josh Abram | 303-866-3561 josh.abram@state.co.us

Bill Topic: **TREATING DEVELOPED WATER FOR BENEFICIAL USE**

Summary of Fiscal Impact:

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

This bill allows developed water to be transferred to a water treatment facility in order to be treated for beneficial use, and creates a state income tax credit for an owner or an operator of a treatment facility to induce the treatment of developed water for beneficial use. The bill will decrease state revenue and increase state expenditures on an ongoing basis.

Appropriation Summary: No appropriation required.

Fiscal Note Status: The fiscal note reflects the bill draft requested by the Water Resources and Agriculture Review Committee.

Table 1
State Fiscal Impacts Under Bill 3

		Budget Year FY 2023-24	Out Year FY 2024-25	Out Year FY 2025-26	Out Year FY 2026-27
Revenue	General Fund	($1.8 million)	($5.6 million)	($9.6 million)	($13.8 million)
	Total Revenue	**($1.8 million)**	**($5.6 million)**	**($9.6 million)**	**($13.8 million)**
Expenditures	General Fund	-	$112,289	$16,433	$16,433
	Centrally Approp.		$3,415	$3,543	$3,543
	Total Expenditures	-	**$115,704**	**$19,976**	**$19,976**
	Total FTE	-	**0.2 FTE**	**0.2 FTE**	**0.2 FTE**
Transfers		-	-	-	-
Other Budget Impacts	TABOR Refund	($1.8 million)	($5.6 million)	Not estimated	Not estimated
	GF Reserve	-	$16,483	$2,465	$2,465

Summary of Legislation

Developed water is non-tributary subterranean water that is extracted as a byproduct of oil and gas drilling, production, or mining operations. Developed water may be contaminated with residual hydrocarbons, dissolved solids, and other chemicals used in oil and gas operations. Under current law, successive use of treated water is limited to the personal use of the oil and gas operator who extracted the water.

This bill allows developed water to be transferred to the owner or the operator of a water treatment facility in order to be treated for beneficial use. The bill establishes the ownership and liability over the possession, sale, or transfer of developed water from the oil and gas or mining operator, to the treatment operator or owner, and over the eventual sale or transfer of the treated water from the treatment operator or owner to an end user.

The bill creates an income tax credit for an owner or an operator of a treatment facility to induce the treatment of developed water for beneficial use. From 2024 through 2054, operators or owners of facilities treating developed water may claim a credit equal to one dollar per barrel of treated water sold or delivered within the state in the tax year; this amount is adjusted annually for inflation. The credit is nonrefundable, and may be carried forward for up to five years.

The bill encourages the Colorado Department of Public Health and Environment (CDPHE) and the Department of Natural Resources to work together to expedite the permitting of treatment facilities that treat developed water for beneficial use.

State Revenue

The bill is expected to reduce General Fund revenue by $1.8 million in FY 2023-24, $5.6 million in FY 2024-25, $9.6 million in FY 2025-26, $13.8 million in FY 2026-27, $18.3 million in FY 2027-28, and by $23.1 million in FY 2028-29. The estimate for FY 2024-25 represents a half-year impact on an accrual accounting basis. The bill reduces income tax revenue, which is subject to TABOR.

Revenue reductions under this bill are based on the following data and assumptions:

- This fiscal note assumes each treatment facility can treat at least 5,000 barrels per day, generating about $1.8 million in state income tax credits each year. To the extent that a treatment facility treats more developed water, the revenue impact assumed above will be greater. In addition, the fiscal note assumes that barrels of treated water are sold and delivered in the same year.

- As of September 15, 2022, two treatment facilities have been identified that will be eligible for the state income tax credit beginning in 2025. Beginning in 2026, this fiscal note assumes at least two new treatment facilities will qualify for the credit each year through 2030. To the extent that the number of qualifying treatment facilities differs from this assumption, the amount of the revenue will differ from the impact estimated above. The tax credit is available through 2054; however, the number of treatment facilities beyond 2030 is not estimated.

- The credit is adjusted based on the inflation assumption from the June 2022 Legislative Council Staff forecast.

State Expenditures

The bill increases General Fund expenditures by $115,704 and 0.2 FTE in FY 2024-25, by $19,976 and 0.2 FTE in FY 2025-26, and by similar amounts through FY 2054-55, when the credit is set to expire. These costs are incurred in the Department of Revenue and the Department of Personnel and Administration.

Table 2
Expenditures Under Bill 3

	FY 2023-24	FY 2024-25	FY 2025-26	FY 2026-27
Department of Revenue				
Personal Services	-	$15,063	$16,433	$16,433
GenTax Programming	-	$36,000	-	-
Computer and User Testing	-	$51,790	-	-
Form Changes	-	$12,436	-	-
Centrally Appropriated Costs[1]	-	$3,415	$3,543	$3,543
FTE – Personal Services	-	0.2 FTE	0.2 FTE	0.2 FTE
Total Cost	-	**$115,704**	**$19,976**	**$19,976**
Total FTE	-	**0.2 FTE**	**0.2 FTE**	**0.2 FTE**

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

Personal services. Beginning in 2024-25, the Office of Research and Analysis will require 0.2 FTE to collect data on the new tax expenditure and produce an annual report for the General Assembly and State Auditor. These costs are expected to continue each year through 2054, the year credit is set to expire.

Computer programming and testing. For FY 2024-25 only, the bill will require changes to DOR's GenTax software system and additional testing. Changes are programmed by a contractor at a cost of $225 per hour. Approximately 160 hours of computer programming will be required to implement this bill, totaling $36,000. Additional computer and user acceptance testing are required to ensure programming changes are tested and functioning properly, resulting in an additional $51,790 in expenditures by the department.

Document management and tax form changes. For FY 2024-25 only, the bill requires changes to four tax forms at a cost of $12,436. Expenditures for form changes occur in the Department of Personnel and Administration using reappropriated funds from the Department of Revenue.

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.

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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. 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 decrease the amount of General Fund held in reserve by $16,843 in FY 2024-25, $2,465 in FY 2025-26, and by similar amounts though FY 2054-55, which will increase 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 and Local Government Contacts

Agriculture	Counties	Judicial
Local Affairs	Natural Resources	Public Health
Public Safety	Regulatory Agencies	Revenue