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Final Fiscal Note

Drafting Number: LLS 23-0894 Date: July 18, 2023
Prime Sponsors: Rep. Titone; Vigil Bill Status: Signed into Law
Sen. Cutter; Priola Fiscal Analysts: Matt Bishop | 303-866-4796
Emily Dohrman | 303-866-3687

Bill Topic: ADVANCE THE USE OF CLEAN HYDROGEN

Summary of Fiscal Impact:
[X] State Revenue [X] TABOR Refund
[X] State Expenditure [] Local Government
[] State Transfer [] Statutory Public Entity

The bill creates a state approval process for clean hydrogen projects and a refundable income tax credit for using clean hydrogen. It decreases state revenue on net and increases state expenditures beginning in FY 2023-24.

Appropriation Summary: For FY 2023-24, the bill requires and includes appropriations of \$332,689 to multiple state agencies. See State Appropriations section.

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

Table 1
State Fiscal Impacts Under HB 23-1281

Table with 4 columns: Category, Budget Year FY 2023-24, Out Year FY 2024-25, and Out Year FY 2025-26. Rows include Revenue (General Fund, Cash Funds, Total Revenue), Expenditures (General Fund, Cash Funds, Centrally Appropriated, Total Expenditures, Total FTE), and Other Budget Impacts (TABOR Refund, GF Reserve).

Summary of Legislation

The bill requires the Public Utilities Commission (PUC) to initiate a proceeding and adopt rules addressing the appropriate regulatory framework for potential clean hydrogen projects by December 1, 2024. The bill also specifies the factors the PUC must consider in reviewing clean hydrogen projects submitted by investor-owned utilities.

The bill creates a refundable income tax credit for qualified uses of clean hydrogen for tax years 2024 through 2032. The credit is \$0.33 to \$1.00 per kilogram, depending on the lifecycle greenhouse gas emissions resulting from the clean hydrogen's production. To claim the credit, a taxpayer must apply annually for a certificate from the Colorado Energy Office, which must develop standards for qualified uses. The maximum tax credit per taxpayer is shown in Table 2.

Table 2
Maximum Tax Credit Per Taxpayer

| Tax Years | Maximum Credit |
|------------------|-----------------------|
| 2024 – 2025 | \$1,000,000 |
| 2026 – 2028 | \$500,000 |
| 2029 – 2032 | \$250,000 |

State Revenue

The bill decreases state General Fund revenue and increase state cash fund revenue, as outlined below.

Income tax credit. The bill is expected to decrease state tax revenue to the General Fund by up to \$2.5 million in FY 2023-24 (half-year impact), up to \$5.0 million in FY 2024-25, and up to \$6.0 million in FY 2025-26. Clean hydrogen is considered an early-developmental-stage technology by the U.S. Energy Information Association. As such, current levels of production and consumption are not well documented, and future trends are difficult to forecast. Actual changes in revenue may fall well below the maximum amounts identified in this fiscal note. The maximum revenue amounts were approximated using estimations of the total amount of clean hydrogen produced in the U.S., adjusted for Colorado's population.

Fixed Utility Fund. The bill increases state cash fund revenue to the Fixed Utility Fund (FUF) by \$366,223 in FY 2023 24, \$355,614 in FY 2024-25 and each year thereafter. Administrative costs incurred by the PUC are paid from the FUF, which receives an annual assessment on the state's regulated utilities. Whenever additional expenses are incurred against the fund, the assessment must be raised to increase revenue to cover these expenses.

State Expenditures

The bill increases state expenditures in the Department of Regulatory Agencies by \$366,223 in FY 2023-24 and \$355,614 in FY 2024-25 and in subsequent years, paid from the Fixed Utility Fund. It also increases state expenditures in the Department of Revenue by \$12,861 in FY 2023-24, \$74,615 in FY 2024-25, and \$7,328 in subsequent years, paid from the General Fund. Finally, it increases state expenditures in the Colorado Energy Office by \$126,432 in FY 2024-25 and \$144,910 in subsequent years, paid from the General Fund. Expenditures are shown in Table 3 and detailed below.

Table 3
Expenditures Under HB 23-1281

| | FY 2023-24 | FY 2024-25 | FY 2025-26 |
|---|------------------|------------------|------------------|
| Department of Regulatory Agencies | | | |
| Personal Services | \$201,277 | \$209,871 | \$209,871 |
| Operating Expenses | \$3,375 | \$3,375 | \$3,375 |
| Capital Outlay Costs | \$20,010 | - | - |
| Legal Services | \$95,166 | \$95,166 | \$95,166 |
| Centrally Appropriated Costs ¹ | \$46,395 | \$47,202 | \$47,202 |
| FTE – Personal Services | 2.5 FTE | 2.5 FTE | 2.5 FTE |
| FTE – Legal Services | 0.5 FTE | 0.5 FTE | 0.5 FTE |
| DORA Subtotal | \$366,223 | \$355,614 | \$355,614 |
| Department of Revenue | | | |
| Document Management | \$12,861 | - | - |
| Computer Programming and Testing | - | \$67,223 | - |
| Office of Research and Analysis | - | \$7,392 | \$7,328 |
| DOR Subtotal | \$12,861 | \$74,615 | \$7,328 |
| Colorado Energy Office | | | |
| Personal Services | - | \$90,058 | \$49,123 |
| Operating Expenses | - | \$1,350 | \$675 |
| Capital Outlay Costs | - | \$6,670 | - |
| Consultant | - | - | \$75,000 |
| Software | - | \$10,000 | \$10,000 |
| Centrally Appropriated Costs ¹ | - | \$18,354 | \$10,112 |
| FTE – Personal Services | - | 0.9 FTE | 0.5 FTE |
| CEO Subtotal | - | \$126,432 | \$144,910 |
| Total | \$379,084 | \$556,661 | \$507,852 |
| Total FTE | 3.0 FTE | 3.9 FTE | 3.5 FTE |

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

Department of Regulatory Agencies. Expenditures increase in the PUC to develop regulatory framework and manage the application process for clean hydrogen projects.

- **Staff.** The bill requires 2.5 FTE beginning in FY 2023-24. Outyear costs may vary depending on the regulatory framework established in FY 2023-24 and the number of applications received. Standard operating and capital outlay costs are included, and costs in FY 2023-24 are prorated for the bill's effective date.
- **Legal services.** DORA requires 900 hours (0.5 FTE) of legal services annually for general counsel in developing the regulatory framework, rulemaking, and representing the PUC in subsequent proceedings. Legal services are provided by the Department of Law at a rate of \$105.74 per hour.

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

- **Document management.** The bill requires an additional \$12,861 in expenditures to implement tax form changes in FY 2023-24. These expenditures will be reappropriated to the Department of Personnel and Administration.
- **Computer programming and testing.** For FY 2024-25 only, the bill requires changes to the DOR's GenTax system and additional computer and user acceptance testing. Approximately 230 hours of computer programming are required to make changes in the GenTax system, totaling \$53,303. Additional computer and user acceptance testing are required to ensure programming changes are functioning properly, resulting in an additional \$13,920.
- **Data reporting.** Beginning in FY 2024-25, the Office of Research and Analysis within DOR will expend about \$7,300 each year to collect and report data on the new tax credit.

Colorado Energy Office. Expenditures increase beginning in FY 2024-25 to administer the tax credit certificate program. The office requires 1.0 FTE in FY 2024-25, decreasing to 0.5 FTE in future years to respond to inquiries, report on the program, and manage contracts. Standard operating and capital outlay costs are included, and costs in FY 2024-25 account for the General Fund pay date shift.

Other expenditures include tracking software for administering tax certificates. Beginning in FY 2025-26, the office will contract with a consultant for technical support on clean hydrogen uses.

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 March 2023 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.

Technical Note

The fiscal note includes 230 hours of GenTax programming in the Department of Revenue in FY 2024-25. However, some of this programming is duplicative with similar requirements in House Bill 23-1272. If both bills pass, the FY 2024-25 appropriation for the Department of Revenue can be reduced by an estimated 150 hours of GenTax programming, or \$34,763.

Effective Date

The bill was signed into law by the Governor on May 22, 2023, and takes effect on August 7, 2023, assuming no referendum petition is filed.

State Appropriations

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

- \$319,828 from the Fixed Utility Fund to the Department of Regulatory Agencies, and 2.5 FTE. Of this, \$95,166 is reappropriated to the Department of Law, with an additional 0.5 FTE; and
- \$12,861 from the General Fund to the Department of Revenue, which is reappropriated to the Department of Personnel and Administration.

State and Local Government Contacts

Colorado Energy Office
Personnel
State Auditor

Information Technology
Regulatory Agencies

Law
Revenue