HB 23-1281

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Fiscal Note

Drafting Number:	LLS 23-0894	**Date:**	April 18, 2023
Prime Sponsors:	Rep. Titone; Vigil	**Bill Status:**	House Energy & Environment
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Bill Topic: **ADVANCE THE USE OF CLEAN HYDROGEN**

Summary of Fiscal Impact:

☒ State Revenue
☒ State Expenditure
☐ State Transfer
☒ TABOR Refund
☐ Local Government
☐ 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 and increases state expenditures beginning in FY 2023-24.

Appropriation Summary: For FY 2023-24, the bill requires appropriations of $64,759 to multiple state agencies. See State Appropriations section.

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

Table 1
State Fiscal Impacts Under HB 23-1281

		Budget Year FY 2023-24	Out Year FY 2024-25	Out Year FY 2025-26
Revenue	General Fund	(up to $4 million)	(up to $8 million)	(up to $9 million)
	Cash Funds	$61,580	$109,820	$109,820
	Total Revenue	**(up to $3.9 million)**	**(up to $7.9 million)**	**(up to $8.9 million)**
Expenditures	General Fund	$12,861	$182,693	$142,126
	Cash Funds	$51,898	$90,455	$90,455
	Centrally	$9,682	$37,719	$29,477
	Total Expenditures	**$74,441**	**$310,867**	**$262,058**
	Total FTE	**0.5 FTE**	**1.9 FTE**	**1.5 FTE**
Other Budget Impacts	TABOR Refund	(up to $3.9 million)	(up to $7.9 million)	(up to $8.9 million)
	GF Reserve	$1,929	$27,404	$21,319

Summary of Legislation

The bill requires the Public Utilities Commission (PUC) to establish an application, review, and approval process for clean hydrogen projects. Investor-owned utilities may sell clean hydrogen under a clean hydrogen tariff, pursuant to rules adopted by the PUC. The PUC and the Colorado Energy Office must adopt guidance for the measurement of lifecycle greenhouse gas emissions rates on an hourly basis unless the federal Internal Revenue Services does so by January 1, 2031.

The bill creates a refundable income tax credit for qualified uses of clean hydrogen for tax years 2024 through 2032. The credit is $0.50 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 – 3032	$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 $4 million in FY 2023-24 (half-year impact), up to $8 million in FY 2024-25, and up to $9 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 $61,580 in FY 2023 24, and $109,820 in FY 2024-25 and subsequent fiscal years. 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 $61,580 in FY 2023-24, and $109,820 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	$44,553	$89,105	$89,105
Operating Expenses	$675	$1,350	$1,350
Capital Outlay Costs	$6,670	-	-
Centrally Appropriated Costs[1]	$9,682	$19,365	$19,365
FTE – Personal Services	0.5 FTE	1.0 FTE	1.0 FTE
DORA Subtotal	**$61,580**	**$109,820**	**$109,820**
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	**$74,441**	**$310,867**	**$262,058**
Total FTE	**0.5 FTE**	**1.9 FTE**	**1.5 FTE**

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

Department of Regulatory Agencies. Expenditures increase in the PUC to develop and manage the application process for clean hydrogen projects. This requires 0.5 FTE in FY 2023-24, increasing to 1.0 FTE in subsequent years. Standard operating and capital outlay costs are included.

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 takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed.

State Appropriations

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

- $51,898 from the Fixed Utility Fund to the Department of Regulatory Agencies, and 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	Information Technology	Law
Personnel	Regulatory Agencies	Revenue
State Auditor		