SB 22-138

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Fiscal Note

Drafting Number:	LLS 22-0335	**Date:**	March 4, 2022
Prime Sponsors:	Sen. Hansen Rep. Valdez A.	**Bill Status:**	Senate Trans. & Energy
		Fiscal Analyst:	Christina Van Winkle | 303-866-6289 Christina.VanWinkle@state.co.us

Bill Topic: **REDUCE GREENHOUSE GAS EMISSIONS IN COLORADO**

Summary of Fiscal Impact:

☒ State Revenue
☒ State Expenditure
☒ State Diversion
☒ TABOR Refund
☒ Local Government
☒ Statutory Public Entity

This bill creates a state income tax credit and commercial rebate program for electric-powered small off-road equipment, prohibits the sale of gas-powered small off-road equipment in nonattainment areas beginning in 2030, requires PERA and insurance companies to study climate risks to their investment portfolios, authorizes the Department of Natural Resources to regulate Class VI injection wells, and requires the Department of Agriculture to study carbon sequestration opportunities in the agriculture sector. Beginning in FY 2022-23, the bill reduces state revenue and increases state, local government and statutory public entity expenditures.

Appropriation Summary: For FY 2022-23, the bill requires an appropriation of $663,942 to multiple state agencies.

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

Table 1
State Fiscal Impacts Under SB 22-138

		Budget Year FY 2022-23	Out Year FY 2023-24
Revenue	General Fund	($1.6 million)	($3.1 million)
	Total Revenue	**($1.6 million)**	**($3.1 million)**
Expenditures	General Fund	$528,805	$1,192,075
	Cash Funds	$135,137	$135,558
	Centrally Appropriated	$80,093	$293,464
	Total Expenditures	**$744,035**	**$1,621,097**
	Total FTE	**4.2 FTE**	**17.8 FTE**
Diversion	General Fund	($65,375)	($27,327)
	Cash Funds	$65,375	$27,327
	Net Diversion	**$0**	**$0**
Other Budget Impacts	TABOR Refund	($1.6 million)	($3.1 million)
	General Fund Reserve	$79,321	$178,811

Summary of Legislation

The bill includes a number of provisions to reduce greenhouse gas (GHG) emissions in the state. Specifically, the bill:

- establishes GHG reduction goals of 40 percent by 2028 and 75 percent by 2040;
- requires insurance companies and the Public Employees' Retirement Association (PERA) to conduct climate-risk assessments on its investment portfolio;
- prohibits the sale of gas-powered small off-road equipment in nonattainment areas starting January 1, 2030;
- requires the Department of Public Health and Environment (CDPHE) to establish a commercial rebate program to voluntarily purchase electric-powered small, off-road equipment;
- creates a state income tax credit for the purchase of new, electric-powered small off-road equipment for tax years 2023 through 2029;
- authorizes the Colorado Oil and Gas Conservation Commission (COGCC) to regulate Class VI Injection Wells;
- requires the Department of Agriculture (CDA) to study carbon reduction and sequestration opportunities in the agricultural sector and report recommendations by December 15, 2022;
- authorizes the CDA to finance agricultural research on the use of agrivoltaics and their impact on wildlife, and to seek, accept, and expend gifts, grants, and donations for projects; and
- amends the definition of agrivoltaics concerning allowable co-location activities and property tax valuation.

Background

Climate Action Plan. House Bill 19-1261, the Climate Action Plan to Reduce Pollution, establishes goals to reduce GHG emissions by the following amounts, measured relative to 2005 GHG emissions levels:

- 26 percent by 2025,
- 50 percent by 2030; and
- 90 percent by 2050.

This bill adds intermediary GHG reduction goals for 2028 (40 percent) and 2040 (75 percent).

Class VI Geologic Sequestration Wells. Class VI wells are used for the geologic sequestration and long-term storage of carbon dioxide in deep rock formations. Class VI injection permits are designed to protect underground drinking water sources and are regulated by the U.S. Environmental Protection Agency (EPA), in states, including Colorado, that have not enacted their own regulatory process for these permits. Senate Bill 21-264 required the Department of Natural Resources (DNR) to study the resource needed to safely and effectively regulate greenhouse gas sequestration. A copy of the report can be found here:
https://cogcc.state.co.us/documents/library/Technical/UIC/COGCC Class VI Report.pdf

The bill authorizes the COGCC to issue Class VI injection permits, which will require the COGCC to pursue Class VI primacy with the EPA. The COGCC currently only has primacy for Class II wells, which are used for the injection of fluids associated with oil and natural gas production. North Dakota and Wyoming are the only states to have primacy for permitting Class VI wells.

As of February 2022, only two Class VI wells, both in Illinois, are currently permitted by the EPA.[1] Geologic sequestration is regulated under the federal Safe Drinking Water Act for the purpose of protecting underground sources of drinking water.

State Revenue

This bill will decrease state income tax revenue by up to $1.6 million in FY 2022-23 (half-year impact) and by up to $3.1 million in FY 2023-24 and subsequent years through FY 2029-30. The bill reduces income tax revenue to the General Fund, which is subject to TABOR.

The fiscal note assumes that the new tax credit will be used for the purchase of 67,635 pieces of electric lawn or garden equipment in 2023 and 68,785 pieces in 2024. This estimate is based on sales of electric lawn and garden equipment in California, adjusted for the smaller population of Colorado. Further, the fiscal note assumes that taxpayers will claim the bill's tax credit for about 30 percent of electric lawn and garden equipment purchases. To the extent that more or fewer taxpayers claim this credit, the revenue reduction will either be larger or smaller.

The average tax credit value will be about $46 per piece of electric lawn or garden equipment purchased, but the average credit amount will vary significantly depending on the type of equipment purchased, ranging from about $1,050 for an electric ride-on mower to $30 for an electric trimmer. The fiscal note assumes that all taxpayers will claim the full value of this tax credit in the year that the purchase occurs. To the extent that some taxpayers do not have sufficient tax liability to claim the full credit, the reduction in revenue will be delayed or reduced entirely if taxpayers cannot claim the full credit within the five-year carry-forward period.

State Diversion

The bill diverts $65,375 from the General Fund in FY 2022-23 and $27,327 in FY 2023-24 and ongoing. This revenue diversion occurs because the bill increases costs in the Department of Regulatory Agencies, Division of Insurance, which is funded with premium tax revenue that would otherwise be credited to the General Fund.

State Expenditures

The bill increases state expenditures by $744,035 in FY 2022-23 and $1,621,097 in FY 2023-24 and future years, paid from the General Fund and various cash funds. These costs, which are in multiple agencies, are detailed in Table 2 and described below.

[1] Class VI Wells Permitted by EPA. Last updated February 15, 2022. Available at: https://www.epa.gov/uic/class-vi-wells-permitted-epa.

Table 2
State Expenditures Under SB 22-138

Cost Components	FY 2022-23	FY 2023-24
Department of Natural Resources		
Personal Services	$72,649	$87,178
Operating Expenses	$1,080	$1,350
Capital Outlay Costs	$6,200	-
Training	$1,500	$1,500
Computer Software	-	$25,000
Centrally Appropriated Costs[1]	$18,558	$23,523
FTE – Personal Services	0.8 FTE	1.0 FTE
DNR Subtotal	**$99,987**	**$138,551**
Department of Agriculture		
Study Contract	$93,000	-
CDA Subtotal	**$93,000**	**-**
Department of Regulatory Agencies		
Personal Services	$28,514	$20,530
Operating Expenses	-	-
Capital Outlay Costs	$6,200	-
Computer Programming	$18,994	-
Centrally Appropriated Costs[1]	$11,667	$6,797
FTE – Personal Services	0.4 FTE	0.3 FTE
DORA Subtotal	**$65,375**	**$27,327**
Department of Public Health and Environment		
Personal Services	$201,192	$363,558
Operating Expenses	$3,780	$6,210
Capital Outlay Costs	$18,600	$12,400
Legal Services	$73,928	-
Public Outreach and Communication	$12,500	$14,500
Advertising	$20,000	$20,000
Technology Costs	$105,806	$29,056
Centrally Appropriated Costs[1]	$49,868	$88,318
FTE – Personal Services	2.6 FTE	4.6 FTE
FTE – Legal Services	0.4 FTE	-
CDPHE Subtotal	**$485,674**	**$534,041**
Department of Revenue[2]		
Personal Services	-	$620,628
Operating Expenses	-	$17,415
Capital Outlay Costs	-	$80,600
Computer Programming and Testing	-	$20,943
Document Management	-	$6,766
Centrally Appropriated Costs[1]	-	$174,826
FTE – Personal Services	-	11.9 FTE
DOR Subtotal	**-**	**$921,178**
Total	**$744,035**	**$1,621,097**
Total FTE	**4.2 FTE**	**17.8**

[1] Centrally appropriated costs are not included in the bill's appropriation.
[2] See Department of Revenue expenditure section below for expenditures that begin in FY 2024-25.

Department of Natural Resources. Beginning in FY 2022-23, the DNR requires staff and other resources to develop and administer an Underground Injection Control Program for Class VI injection wells, as outlined in the COGCC Class VI Report. These resources align with other states that have primacy to regulate Class VI wells. This fiscal note assumes funds will be appropriated from the Oil and Gas Conservation Cash Fund. The recently enacted federal Infrastructure Investment and Jobs Act included a grant program pertaining to Class VI wells and, if funding is made available to Colorado, the need for state funds may be reduced.

- *Primacy staff.* Beginning in FY 2022-23, in order to assume permitting and enforcement authority, the COGCC will hire a Class VI Coordinator to oversee the application for primacy with the EPA, which is anticipated to take approximately two years to complete, and then oversee the regulatory program beginning in FY 2024-25. As Class VI wells are an emerging technology, the new staff will require annual training costs of $1,500 to attend relevant conferences, seminars, and workshops related to geological carbon sequestration.

- *Regulatory staff.* After assuming primacy, COGCC staff will require an additional 2.0 FTE beginning in FY 2024-25 and ongoing to implement all aspects of the program under EPA guidance, including reviewing permits, reporting to the EPA, communicating with operators and the public about projects, and ensuring compliance with permit conditions and Class VI well rules. The DNR will pursue additional federal funds to support this program, which may reduce these cash fund requirements in future fiscal years.

- *Computer software and hardware.* In addition to staff to regulate Class VI wells, DNR will purchase computer hardware and software to model underground reservoirs and simulate the effects of GHG injections. Based on costs in another state that recently attained primacy, the DNR will have costs for an annual license fee of $10,000 for simulation software beginning in FY 2023-24, and one-time costs of $15,000 in FY 2023-24 for the purchase of a server.

Department of Agriculture. The CDA requires one-time resources of $93,000 to contract for the study on carbon reduction and sequestration opportunities in the agricultural sector, including the feasibility of a certified carbon offset and credit training program. This cost is based on a similar study contracted by the Department of Natural Resources to explore opportunities in natural and working lands to contribute to GHG reduction goals. The department will incur workload impacts to secure and oversee the contract and support stakeholder coordination and outreach, which can be accomplished within existing resources. The Colorado Energy Office and Air Quality Control Commission in the CDPHE will incur absorbable workload impacts to consult on the study.

Department of Regulatory Agencies. Beginning in FY 2022-23, this bill will increase expenditures to process and upload annual climate-risk assessments from approximately 1,500 insurance companies that have a certificate of authority to transact business in Colorado. The Division of Insurance requires 0.5 FTE of a financial/credit examiner to develop guidance to insurance companies, develop a process for receiving reports, verify receipt of filings, follow up on missing filings, check for completeness, and post the reports annually, decreasing to 0.3 FTE in FY 2023-24 and future years. Standard operating and capital outlay costs are included, and reflect a September 1 start date. One-time programming costs of $18,994 in FY 2022-23 are required to create reporting that reflects insurance company submission status, secure logins, and application functionality. This work will be performed by the Office of Information Technology.

Department of Public Health and Environment. The CDPHE will incur costs for staff, legal services, technology, public outreach, and advertising to develop and implement rules that prohibit small off-road engines and to establish a commercial rebate program. These costs are detailed below.

- *Small off-road equipment rulemaking*. The CDPHE requires 1.0 FTE in FY 2022-23 and 1.6 FTE in FY 2023-24 of environmental protection specialists to support rulemaking to prohibit the sale and marketing of any gas-powered small off-road equipment within EPA designated nonattainment areas in the state commencing January 1, 2030, and to establish the commercial rebate program. Staff will support rule development and public outreach and engagement throughout the rulemaking process. Legal services of 750 hours from the Department of Law will be required to support rule development in FY 2022-23.

- *Small off-road equipment commercial rebate program*. The CDPHE requires ongoing staff resources to establish and implement a commercial rebate program for commercial lawn and garden care businesses to voluntarily purchase electric-powered small off-road equipment. Staff resources will increase from 2.4 FTE in FY 2022-23 to 3.0 FTE in FY 2023-24 to support program design, on-going management, rebate processing, data tracking, and reporting. The CDPHE will advertise the program through targeted media campaigns, and will require technology costs to develop and maintain a database to track rebates. Technology costs include one-time costs of $95,806 in FY 2022-23 and on-going costs of $19,055 beginning in FY 2023-24 for programming by the Office of Information and Technology. CDPHE will also incur $10,000 for software licensing annually beginning in FY 2022-23. The fiscal note assumes that funds for the rebate program aside from administrative costs will be appropriated through the Long Bill, but if funds are not appropriated through the Long Bill, the fiscal note will be updated to reflect a required appropriation.[2] For informational purposes, other states have similar commercial rebate programs with funding between $500,000 and $700,000.

Department of Revenue. Beginning in FY 2023-24, expenditures will increase for the Department of Revenue (DOR) for additional tax examiners to implement the bill's new tax credit. The DOR requires an additional 11.9 FTE tax examiners in FY 2023-24 and 12.5 FTE tax examiners in FY 2024-25 and subsequent years to process and review additional returns claiming the new tax credit and to resolve errors in returns. The fiscal note assumes that the lack of a certification system associated with the new tax credit will result in a higher error rate in individual returns and require additional reviews of returns.

- *Computer programming and testing***.** For FY 2023-24 only, the bill requires changes to the DOR's GenTax system and additional computer and user acceptance testing. Changes are programmed by a contractor at a cost of $225 per hour. Approximately 12 hours of computer programming will be required to make changes in the GenTax system, totaling $2,700. Additional computer and user acceptance testing are required to ensure programming changes are functioning properly, resulting in an additional $11,843 in expenditures by the department.

[2] The Governor's Budget request included $5,000,000 to create a lawn and garden electrification program for residential lawn and garden equipment. This fiscal note assumes that funds for the commercial rebate program created in this bill will come from these funds, if appropriated in the long bill.

- *Document Management.* The bill requires an additional $6,766 in expenditures to implement document management and tax form changes in FY 2023-24, and $6,434 in FY 2024-25. These expenditures will take place in the Department of Personnel and Administration using reappropriated funds from the DOR.

- *Data reporting.* Beginning in FY 2023-24, the Office of Research and Analysis within the DOR will expend $6,400 each year to collect and report data on the new tax credit.

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

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 beginning in FY 2022-23. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve by the amounts shows in Table 1, which will decrease the amount of General Fund available for other purposes.

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 December 2021 LCS revenue forecast. A forecast of state revenue subject to TABOR is not available beyond FY 2023-24. 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.

Statutory Public Entity

The Public Employees' Retirement Association (PERA) currently publishes an Investment Stewardship Report https://www.copera.org/files/e281fe352/5-169.pdf that explains how PERA's investment philosophy addresses climate-related risks; however, this is not a topic that is addressed in its certified annual financial report https://www.copera.org/files/d44458867/5-20-20.pdf. Assuming the PERA Board contracts with an independent third-party to complete this assessment, one-time costs are initially estimated at $300,000, paid in equal parts from the divisional trusts.

Local Government

Local governments in nonattainment areas may incur increased costs when replacing existing small gas-powered small off road equipment beginning in 2030.

Technical Note

Given the effective date of the bill, the Air Quality Control Commission will not be able to meet the January 1, 2023 deadline to promulgate rules to prohibit the sale of small-off road engines in nonattainment areas and to create a commercial rebate program. This fiscal note assumes that these rules will be promulgated as soon as possible thereafter.

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 2022-23, the bill requires the following appropriations:

- $81,429 to the Department of Natural Resources, from the Oil and Gas Conservation Cash Fund and 0.8 FTE;
- $53,708 to the Department of Regulatory Agencies from the Division of Insurance Cash Fund, and 0.4 FTE, of which, $ 18,994 is reappropriated to the Office of Information Technology;
- $93,000 to the Department of Agriculture from the General Fund; and
- $435,805 to the Department of Public Health and Environment from the General Fund, and 2.6 FTE. Of this amount, $73,928 is reappropriated to the Department of Law with an additional 0.4 FTE, and $95,806 is reappropriated to the Office of Information Technology.

Departmental Difference

The DOR estimates the bill requires General Fund expenditures of $1,965,942 and 25.7 FTE in FY 2023-24 and $1,822,032 and 26.4 FTE in FY 2024-25 on the assumption that the department will need to review 100 percent of tax returns claiming the bill's new tax credit. This fiscal note assumes that a smaller share of returns claiming the credit will need to be reviewed, resulting in a lower workload for the department and fewer additional tax examiners.

State and Local Government Contacts

Agriculture	Colorado Energy Office	Information Technology
Local Affairs	Natural Resources	PERA
Personnel	Public Health and Environment	Regulatory Agencies
Revenue	Law	