

Colorado Legislative Council Staff Fiscal Note

**FINAL
FISCAL NOTE**

Drafting Number: LLS 15-0598
Prime Sponsor(s): Sen. Cooke

Date: June 2, 2015
Bill Status: Postponed Indefinitely
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BILL TOPIC: MULTI-AGENCY REVIEW OF STATE CARBON EMISSION PLAN

Fiscal Impact Summary*	FY 2015-2016	FY 2016-2017
State Revenue	<u>\$154,639</u>	<u>up to \$412,371</u>
General Fund	4,639	up to 12,371
Cash Funds	150,000	up to 400,000
State Expenditures	<u>\$228,199</u>	<u>up to \$525,146</u>
General Fund	112,083	108,280
Cash Funds	150,000	up to 400,000
Centrally Appropriated Costs**	16,116	16,866
TABOR Set-Aside	<u>\$154,639</u>	<u>up to \$412,371</u>
FTE Position Change	1.1 FTE	1.1 FTE
Appropriation Required: \$262,083 - Multiple Agencies (FY 2015-16)		

* This summary shows changes from current law under the bill for each fiscal year.

** These costs are not included in the bill's appropriation. See the State Expenditures section for more information.

Summary of Legislation

Under federal law, the Colorado Department of Public Health and Environment (CDPHE) is expected to submit a state implementation plan (SIP) for the reduction of carbon emissions from electric utilities to the U.S. Environmental Protection Agency (EPA) for certification that the SIP meets federal performance standards under the Clean Air Act.

This bill prohibits the CDPHE from submitting a SIP to the EPA until:

- the Colorado Public Utilities Commission (PUC) conducts an evidentiary hearing to determine the SIP's impact on consumers' electricity rates;
- the PUC and the CDPHE issue a joint assessment report of the SIP's impact on issues including utility rates, employment, economic development, and the state's competitive position; and
- the General Assembly adopts the SIP through resolution by a vote of two-thirds in both houses.

In addition, no SIP may be approved that would increase average annual retail rates for electricity consumers by more than two percent, or that would result in unreasonable reliability risks.

If necessary, the CDPHE may revise a disapproved SIP and resubmit to the PUC and the General Assembly. Under the bill, a subsequent judicial review of the SIP is not precluded.

The legislation also permits the opting-in by electric cooperatives to PUC jurisdiction for the purpose of becoming exempt from the SIP and outlines the mail ballot election process for exemption.

Background

Clean Air Act — EPA. The EPA announced in January 2015 its plans to finalize federal performance standards for carbon emissions from electric utilities in summer 2015. Under its authority in current law, the CDPHE's Air Pollution Control Division (APCD) has begun internal analysis and external discussions in an effort to develop a SIP draft to implement the federal standards once finalized by the EPA. The Air Quality Control Commission will consider the CDPHE's SIP and any other proposals received from the public before the CDPHE submits the final SIP to the EPA. Under the federal Clean Air Act, the EPA may prescribe a federal implementation plan for Colorado if the CDPHE does not submit a SIP or if the SIP is not federally approved.

Clean Air — Clean Jobs Act. In anticipation of emission requirements for electric utilities under the federal Clean Air Act, House Bill 10-1365 enacted the Clean Air-Clean Jobs Act, which required that, by August 15, 2010, all rate-regulated utilities that own or operate coal-fired electric generating units—Public Service Company of Colorado, dba Xcel Energy, and Black Hills Energy—submit an emissions reduction plan for those units to the PUC. HB 10-1365 required that the emissions reduction plan be fully implemented by December 31, 2017.

Cooperative Electric Associations (CEAs). CEAs are nonprofit electric utility companies that are owned and controlled by their members. The PUC does not review and approve integrated resource plans of electric generation cooperatives because all cooperatives in Colorado have exempted themselves from PUC regulation since early in the 1980s. Several state laws, however, continue to regulate CEAs, including how associations may adjust electric rates, conduct board elections, provide access to association records, and conduct other activities.

State Revenue

Fixed Utility Fund. This bill is expected to create an increase in state revenue by \$154,639 in FY 2015-16, of which \$150,000 will be credited to the Fixed Utility Fund (FUF) and \$4,639 to the General Fund, and by up to \$412,371 in FY 2016-17, of which \$400,000 will be credited to the Fixed Utility Fund (FUF) and \$12,371 to the General Fund. The administrative costs incurred by the PUC as a result of this bill and discussed in the State Expenditures section will be paid from the FUF.

The FUF receives its revenues from an annual fee assessment based on a statutory formula that utilizes the utility's gross operating revenue derived from intrastate utility business. Whenever additional expenses are incurred against the FUF, this assessment must be raised to increase revenues to recover direct and indirect costs, plus pay an additional three percent to the General Fund. Thus, cash fund revenues will have to be increased sufficiently to cover the DORA's direct expenses discussed in the State Expenditures section and detailed in Table 1, plus credit 3 percent to the General Fund.

FUF Balance. It is uncertain that fee revenue for any additional PUC spending from the Fixed Utilities Fund will be available under the existing statutory cap. If this cash fund is unable to support the expenditures in this bill, the use of General Fund may be required.

TABOR Impact

This bill increases state revenue by \$154,639 in FY 2015-16, and by up to \$412,371 in FY 2016-17, which will increase the amount required to be refunded under TABOR by an equivalent amount.

State Expenditures

The DORA is estimated to incur a one-time cost of **\$150,000 in FY 2015-16** from the Fixed Utility Fund. The CDPHE is estimated to incur costs of **\$128,199 and 1.1 FTE in FY 2015-16** and **\$128,146 and 1.1 FTE in 2016-17** from the General Fund.

Public Utilities Commission — DORA. The DORA will incur a one-time cost of \$150,000 in FY 2015-16. The DORA may also incur a conditional cost of \$400,000 in FY 2016-17. Costs to DORA are summarized below and outlined in Table 1.

Evidentiary hearing. The bill's requirement that the PUC conduct an evidentiary hearing can be accomplished within existing resources. Evidentiary hearings are regularly conducted by the PUC.

Joint report. The bill's requirement that the PUC create a joint report with the CDPHE is expected to substantially increase workload in the PUC. Under the PUC's current authority, it reviews and approves the integrated resource plans of the two rate-regulated, investor-owned utilities in Colorado. The PUC is not currently required to consider economic factors during this process. It is therefore expected that the PUC will need to engage the services of a contract economist for purposes of generating the joint report. The PUC engaged similar services for the creation of a Clean Air-Clean Jobs Act report. Based on the cost and scope of that report, it is estimated that \$150,000 will be required for this purpose.

Opt-in. The bill allows a currently exempt, electric generation utility, such as Tri-State Generation and Transmission (TSGT), to opt-in to PUC jurisdiction for review and approval of its resource generation plan for purposes of complying with the federal Clean Air Act. If the state's major exempt electric generation utility opts-in to PUC jurisdiction, which the fiscal note assumes to be likely, the potential increase to the PUC workload results in a one-time cost of \$400,000 in FY 2016-17. The fiscal note assumes that the PUC will contract with a local engineering consulting firm familiar with electric resource planning activities to supplement PUC staff. Based on the cost of consulting services the PUC engaged under the Clean Air-Clean Jobs Act, it is estimated that \$400,000 will be conditionally required for this purpose. Because the impact is conditional, the fiscal note assumes that the DORA will address the expenditure if necessary during the annual budget process.

Annual electric system reliability review. Under the bill, the PUC is required to perform an annual electric system reliability review for each resource generation plan under its jurisdiction. This type of review is already required by the PUC and can be accomplished within existing appropriations.

The DORA's expenditures, actual and conditional, are outlined in Table 1, below.

Table 1. DORA Expenditures Under SB 15-092		
Cost Components for DORA	FY 2015-16	FY 2016-17
Contract Engineer Services for DORA (conditional)	\$0	up to \$400,000
Contract Economist Services for DORA	150,000	0
Total DORA Expenditures	\$150,000	up to \$400,000

Air Pollution Control Division (APCD) — CDPHE. The bill is expected to increase workload in the APCD to:

- provide input to the PUC hearing;
- to create a joint report with the PUC;
- to participate in a legislative review process; and
- to possibly revise the SIP if disapproved by the PUC or the General Assembly

Because the bill requires the APCD to devote more resources to the analysis and projection of emissions than would otherwise be required, the CDPHE requires 1.1 FTE in FY 2015-16 at a cost of \$128,198 General Fund, and 1.1 FTE in FY 2016-17 at a cost of \$125,146 General Fund. The initial plan development requires the FTE to be a two-year cost; however, the annual review and updates to the plan under SB 15-092 may require these costs to be ongoing. If additional FTE is required in the future, the fiscal note assumes these costs will be addressed in the annual budget process. The CDPHE's expenditures are outlined in Table 2, below.

Stationary Sources Fund balance. While the APCD is currently funded though fees assessed on air emissions and paid to the Stationary Sources Control Fund, the fiscal note assumes General Fund will be required to cover the additional workload expenditures required under the bill. If the Stationary Sources Fund is used as the funding source, the fund will likely require a fee increase earlier than currently scheduled in FY 2019-2020. Since fees are capped by statute, a fee increase will require legislative approval.

Legal services. Legal services for CDPHE as estimated at 150 hours annually at the rate of \$94.51 an hour for consulting on compliance with the legislation for a total cost of \$14,177 per year.

Table 2. CDPHE Expenditures Under SB 15-092		
Cost Components for CDPHE	FY 2015-16	FY 2016-17
Personal Services	93,058	93,058
FTE	1.1 FTE	1.1 FTE
Operating Expenses and Capital Outlay Costs	4,848	1,045
Legal Services	14,177	14,177
Centrally Appropriated Costs*	16,116	16,866
Total CDPHE Expenditures	\$128,199	\$125,146

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

Judicial Department. Current law makes available judicial review of the SIP for the reduction of carbon emissions. It is assumed that this judicial review will not be required and thus the resulting impact to the court will be minimal.

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. The centrally appropriated costs subject to this policy are estimated in the fiscal note for informational purposes and summarized in Table 3.

Table 3. Centrally Appropriated Costs Under SB 15-092*		
Cost Components to CDPHE	FY 2015-16	FY 2016-17
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$8,903	\$8,903
Supplemental Employee Retirement Payments	7,213	7,963
TOTAL	\$16,116	\$16,866

*More information is available at: <http://colorado.gov/fiscalnotes>

Effective Date

This bill was postponed indefinitely by the Senate State, Veterans, and Military Affairs Committee on March 4, 2015.

State Appropriations

For FY 2015-16, the DORA requires a cash fund appropriation of \$150,000 from the Fixed Utility Fund and the CDPHE requires a General Fund appropriation of \$112,083 and 1.1 FTE. The Department of Law requires \$14,177 in reappropriated funds.

State and Local Government Contacts

Agriculture
Public Health and Environment

Judicial
Regulatory Agencies

Local Affairs
Revenue