

Colorado Legislative Council Staff Fiscal Note

**STATE  
FISCAL IMPACT**

**Drafting Number:** LLS 15-1076 **Date:** April 24, 2015  
**Prime Sponsor(s):** Rep. Tyler; Becker J. **Bill Status:** House Finance  
 Sen. Heath **Fiscal Analyst:** Alex Schatz (303-866-4375)

**BILL TOPIC:** REMOVE PUBLIC UTILITY FEE CAP

Fiscal Impact Summary*	FY 2014-2015 <i>current year</i>	FY 2015-2016	FY 2016-2017
<b>State Revenue</b>		<b>\$0 - \$1,030,928</b>	<b>\$0 - \$1,030,928</b>
General Fund		0 - 30,928	0 - 30,928
Cash Funds		0 - 1,000,000	0 - 1,000,000
<b>State Expenditures</b>	Minimal workload increase.		
<b>FTE Position Change</b>			
<b>TABOR Set-Aside</b>		\$0 - \$1,030,928	\$0 - \$1,030,928
<b>Appropriation Required:</b> None.			

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

**Summary of Legislation**

Under current law, the Fixed Utilities Fund (FUF) pays for certain operations (approximately 85 percent) of the Public Utilities Commission (PUC) in the Department of Regulatory Agencies (DORA). Revenue to the FUF is from fees assessed against regulated electric, natural gas, and telephone utilities at a rate set annually based on the amount needed to cover applicable PUC and other utility regulation expenditures in DORA. The rate is applied to each regulated company's gross intrastate utility operating revenues (gross revenue), as calculated by the Colorado Department of Revenue (CDOR), and may not exceed 0.2 percent of gross revenue.

This bill raises the statutory limit on the rate of FUF assessments to 0.25 percent of gross revenue.

**Background**

**FUF assessment limit.** The current 0.2 percent limit on FUF assessments of public utilities has existed in Colorado statute since 1955. According to this statute, the CDOR must contribute to the General Fund 3 percent of fees collected through this assessment process. Thus, whenever additional expenses are incurred against the FUF, the assessment is raised to increase revenues for direct and indirect costs of utility regulation, plus the 3 percent credit to the General Fund. Certain other PUC revenue that is not subject to the assessment process, such as federal reimbursements related to pipeline regulation, is also credited to the FUF.

**FUF balance.** Based on an overall decline in gross revenue, annual revenue to the FUF has declined since FY 2011-12, when \$12.2 million was appropriated and available within the 0.2 percent rate limit. While legislative appropriations have increased to \$13.1 million in the current fiscal year, total available FUF revenue has declined to \$12.1 million, a shortfall of \$1.0 million.

Variability in FUF revenue is based on a number of factors, such as:

- the overall size of the regulated utilities market, as potentially affected by reclassification and deregulation of certain utilities (e.g., telecommunications companies);
- commodity prices, particularly natural gas, which drive consumer prices and gross revenue; and
- PUC and DORA actions, including budget changes and discretion to adjust assessment rates or forebear to make adjustments, as may be required to reconcile FUF revenue and applicable PUC costs.

**Sustainability of FUF appropriations.** Although gross revenue increased by almost 4 percent between FY 2013-14 and FY 2014-15, this revenue is unstable and has been trending downward since 2005. Gross revenue and the assessment rate for FY 2015-16, yielding available FUF revenue, will be calculated by the CDOR in June 2015, at which time this bill will be effective.

Available fund balance has compensated for shortfalls in FUF revenue in recent fiscal years, but the \$1.0 million fund balance remaining at the beginning of FY 2014-15 is projected to be exhausted by beginning of FY 2015-16. As of this writing, **a shortfall of up to \$1.0 million is anticipated in FY 2015-16.** The fiscal note assumes this shortfall will continue for FY 2016-17.

## **State Revenue**

To cover a shortfall in FUF revenue needed to fund costs of utility regulation, the bill potentially increases state revenue from assessed fees paid by public utilities by **an amount between \$0 and \$1,030,928 in FY 2015-16 and FY 2016-17.** New revenue, up to the amount of the shortfall, is derived from FUF assessment fees above the current 0.2 percent limit.

The bill is expected to result in a state revenue impact in future fiscal years, but the potential increase due to the bill's higher limit on the assessment rate is not estimated due to uncertainty concerning future gross revenue and the resulting amount of available FUF revenue under both current law and the bill.

**Assumptions.** The fiscal note is based on the following assumptions:

- Gross revenue is maintained at or near current levels in FY 2015-16 and FY 2016-17, with the potential for declining revenue leading to revenue impacts greater than those quantified in this fiscal note.
- Applicable PUC costs remain at or near current levels.
- Based on no available fund balance in the FUF, the PUC will generate new revenue to the FUF, as required to meet costs, by raising the assessment rate above the current 0.2 percent limit, but no exceeding the new 0.25 percent limit.

- Based on the preceding assumptions, it is not necessary for the PUC to restrict spending or take other budget actions.

**Fee impact on public utilities regulated by the PUC.** Based on an assumed shortfall of \$1.0 million, the CDOR may adjust the assessment rate above 0.2 percent, by an amount that cover the shortfall, up to \$1,030,928 in total new FUF assessment revenue. Of this total potential amount of new state revenue, \$1.0 million will be available as cash funds in the FUF. The remaining portion of \$30,928 will be deposited in the General Fund. This additional revenue is derived from fees paid by public utilities.

Based on variability of FUF revenue, as discussed in the Background section, new state revenue sufficient to cover the shortfall may occur without the bill or PUC action. Therefore, the assessed revenue impact of the bill in FY 2015-16 and FY 2016-17 is an increase ranging between \$0 and \$1.0 million. Actual revenue impacts in all future fiscal years may range from no impact, if FUF assessments remain below 0.2 percent of gross revenue, to new FUF assessments that cover a shortfall exceeding the \$1.0 million amount estimated from assumptions in the fiscal note. The shortfall may be enlarged, or contract, based on economic conditions that affect gross revenue, state budget considerations that affect legislative appropriations, and other factors.

### **TABOR Impact**

This bill may increase state revenue, which would increase the amount required to be refunded under TABOR. TABOR refunds are paid from the General Fund.

### **State Expenditures**

The bill increases workload for the Department of Revenue in FY 2014-15. The CDOR's GenTax system includes specific coding to account for the FUF assessment, including coding of the 0.2 percent rate limit under current law. Modifying this coding requires a minimal, one-time effort to program and test the new 0.25 percent rate limit, prior to new calculations of FUF assessments in June 2015. No change in appropriations is required to implement this GenTax change in the current fiscal year.

### **Effective Date**

The bill takes effect June 1, 2015.

### **State and Local Government Contacts**

Regulatory Agencies                      Revenue