

*Colorado Legislative Council Staff Fiscal Note*

**STATE  
FISCAL IMPACT**

**Drafting Number:** LLS 15-0936      **Date:** April 8, 2015  
**Prime Sponsor(s):** Sen. Cooke; Sonnenberg      **Bill Status:** Senate Agriculture  
**Fiscal Analyst:** Erin Reynolds (303-866-4146)

**BILL TOPIC:** COORDINATED REVIEW CO2 EMISSION REDUCTION MEASURES

| <b>Fiscal Impact Summary*</b>  | <b>FY 2015-2016</b> | <b>FY 2016-2017</b> |
|--|---------------------|---------------------|
| <b>State Revenue</b>   | <b>\$206,186</b>    | <b>\$206,186</b>    |
| General Fund   | 6,186               | 6,186               |
| Cash Funds   | 200,000             | 200,000             |
| <b>State Expenditures</b>  | <b>\$328,199</b>    | <b>\$325,146</b>    |
| General Fund   | 112,083             | 108,280             |
| Cash Funds   | 200,000             | 200,000             |
| Centrally Appropriated Costs**   | 16,116              | 16,866              |
| <b>TABOR Set-Aside</b>   | <b>\$206,186</b>    | <b>\$206,186</b>    |
| <b>FTE Position Change</b>   | <b>1.1 FTE</b>      | <b>1.1 FTE</b>      |
| <b>Appropriation Required: \$312,083 – Multiple Agencies (FY 2015-16).</b> |                     |                     |

\* 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 Air Quality Control Commission (AQCC) under the Department of Public Health and Environment (DPHE) is expected to approve and submit a state implementation plan for the reduction of carbon emissions from electric utilities to the U.S. Environmental Protection Agency (EPA) for certification that the state plan meets federal performance standards under the Clean Air Act.

The bill prohibits the AQCC from submitting a state implementation plan for the reduction of carbon emissions from electric utilities to the EPA until:

- the Public Utilities Commission (PUC) conducts a proceeding to review the plan based on criteria outlined in the bill and issues a formal decision;
- the PUC and the DPHE issue a joint assessment report of the plan within 15 days of the decision; and
- the General Assembly votes to approve the plan through joint resolution.

If necessary, the AQCC may submit one revised version of the state plan to the PUC and the General Assembly. Under the bill, a subsequent judicial review of the plan is not precluded.

Once legislative approval is given, the AQCC may submit the plan to the EPA. If the plan is approved by the EPA, the AQCC must resubmit the plan to the General Assembly for final approval by joint resolution. If the plan is disapproved by the EPA and a federal plan is put in place instead, the AQCC must submit the federal plan to the PUC to determine whether further consideration of the plan is necessary.

The DPHE may not implement or enforce the final approved state or federal plan until the final federal emissions regulations are adopted. The process outlined in the bill will also apply to any regional plan the state participates in pursuant to the federal Clean Air Act or federal emissions regulations.

## **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 DPHE's Air Pollution Control Division (APCD) has begun internal analysis and external discussions in an effort to develop a draft implementation plan in order to implement federal standards once finalized by the EPA. The AQCC will consider the DPHE's plan and any other proposals received from the public before the AQCC submits the final state implementation plan to the EPA. Under the federal Clean Air Act, the EPA may prescribe a federal implementation plan for the state if it does not submit a plan or if the plan 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.

**Air Quality Control Commission.** The AQCC is a Type 1 agency under the DPHE, staffed by the APCD. The AQCC consists of nine Governor-appointed and Senate-confirmed members. Appointments to the AQCC include persons with appropriate scientific, technical, industrial, labor, agricultural, and legal training, or with experience on the AQCC. Three members are required to have appropriate private sector, technical, or industrial employment experience. No more than five commissioners shall be members of one political party, and at least five members must represent the public interest and not derive a significant portion of their income from persons subject to permits or enforcement orders under this article or under the federal act. The AQCC develops and maintains a comprehensive program for prevention and control of air pollution in the state, including a program for control of emissions from all significant sources of air pollution, and it adopts and modifies such plans as are necessary for the implementation of such programs. It is required to promulgate rules and regulations consistent with the federal Clean Air Act.

## **State Revenue**

**Fixed Utility Fund.** The bill is expected to create an increase in state revenue by \$206,186 in FY 2015-16, of which \$200,000 will be credited to the Fixed Utility Fund (FUF) and \$6,186 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, plus credit 3 percent to the General Fund.

**Fixed Utility Fund balance.** There is a statutory cap on the fee that may be assessed on a public utility to cover PUC administrative expenses. The cap is one-fifth of one percent of gross intrastate utility operating revenue for the preceding calendar year. Assessment revenues have been generally declining over the past five years, and it is uncertain that fee revenue to the FUF and existing reserve levels in the current fiscal year will be sufficient to support the expenditures in this bill. In the event that the FUF lacks sufficient funds, the use of General Fund may be required.

### **TABOR Impact**

The bill increases state revenue by \$206,186 in FY 2015-16 and FY 2016-17, which will increase the amount required to be refunded under TABOR by an equivalent amount. TABOR refunds are paid from the General Fund.

### **State Expenditures**

The bill is expected to increase expenditures by **\$328,199 and 1.1 FTE in FY 2015-16** and by **\$325,146 and 1.1 FTE in FY 2016-17**. The PUC in DORA is estimated to incur two years of costs at \$200,000 in FY 2015-16 and FY 2016-17 from the Fixed Utility Fund. The APCD in DPHE is estimated to incur two years of costs at \$128,199 and 1.1 FTE in FY 2015-16 and \$128,146 and 1.1 FTE in 2016-17 from the General Fund. Costs are outlined in Table 1, on the following page, and discussed further below. If the state plan is disapproved by the EPA and a federal plan is put in place that requires further consideration, or if the state participates in future state or regional plans, additional costs could be incurred. The fiscal note assumes that if these contingencies occur, these expenditures will be addressed in the annual budget process.

**Public Utilities Commission—DORA.** Because the PUC is required to consider the impact of the proposed state plan on consumer rates and utility reliability, as well as submit a joint report to the General Assembly on its findings, it requires \$200,000 in FY 2015-16 and FY 2016-17 to contract with a local engineering consulting firm familiar with electric resource planning activities to supplement PUC staff. The PUC engaged similar services at a similar cost for the creation of a Clean Air-Clean Jobs Act report.

**Air Pollution Control Division—DPHE.** Because the bill requires the APCD to devote more resources to the analysis and projection of emissions than required under current law, the DPHE requires \$128,198 and 1.1 FTE in FY 2015-16, and \$125,146 and 1.1 FTE in FY 2016-17. Additional APCD staff will work on providing input to the PUC proceeding; creating a joint report with the PUC; participating in a legislative review process; and revising the statewide implementation plan if disapproved by the PUC or the General Assembly. The APCD will also require 150 hours of legal services for these two fiscal years at a cost of \$14,177 each year (\$94.51 per hour) to consult on compliance with the legislation.

**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 2019-20. Since fees are capped by statute, a fee increase will require legislative approval.

| <b>Table 1. Expenditures Under SB 15-258</b> |                   |                   |
|--|-------------------|-------------------|
| <b>Cost Components for DORA</b>              | <b>FY 2015-16</b> | <b>FY 2016-17</b> |
| Engineer Contracting Services                | \$200,000         | \$200,000         |
| <b>Cost Components for DPHE</b>              | <b>FY 2015-16</b> | <b>FY 2016-17</b> |
| 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            |
| <b>Total Expenditures</b>                    | <b>\$328,199</b>  | <b>\$325,146</b>  |

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

**Judicial Department.** Under the bill, judicial review of the state implementation plan for the reduction of carbon emissions is not precluded. It is assumed that this judicial review will not be required and, thus, the resulting impact to trial courts 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 2.

| <b>Table 2. Centrally Appropriated Costs Under SB 15-092*</b>        |                   |                   |
|--|-------------------|-------------------|
| <b>Cost Components to DPHE</b>                                       | <b>FY 2015-16</b> | <b>FY 2016-17</b> |
| Employee Insurance (Health, Life, Dental, and Short-term Disability) | \$8,903           | \$8,903           |
| Supplemental Employee Retirement Payments                            | 7,213             | 7,963             |
| <b>TOTAL</b>   | <b>\$16,116</b>   | <b>\$16,866</b>   |

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

**Effective Date**

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

**State Appropriations**

For FY 2015-16, the Department of Regulatory Affairs requires a cash fund appropriation of \$200,000 from the Fixed Utility Fund and the Department of Public Health and Environment requires a General Fund appropriation of \$112,083 and an allocation of 1.1 FTE. The Department of Law requires \$14,177 in reappropriated funds from Department of Public Health and Environment.

**State and Local Government Contacts**

Judicial Department

Public Health and Environment

Regulatory Agencies