



**Colorado
Legislative
Council
Staff**

SB16-046

FISCAL NOTE

FISCAL IMPACT: State Local Statutory Public Entity Conditional No Fiscal Impact

Drafting Number: LLS 16-0566
Prime Sponsor(s): Sen. Cooke

Date: February 1, 2016
Bill Status: Senate Agriculture
Fiscal Analyst: Marc Carey (303-866-4102)

BILL TOPIC: PRESERVE OPTIONS RESPOND EPA CLEAN POWER PLAN RULE

Fiscal Impact Summary	FY 2016-2017	FY 2017-2018
State Revenue	<u>\$257,732</u>	<u>\$257,732</u>
General Fund	\$7,732	\$7,732
Cash Funds	250,000	250,000
State Expenditures	<u>\$358,470</u>	<u>\$355,318</u>
General Fund	94,937	91,134
Cash Funds	250,000	250,000
Centrally Appropriated Costs	13,533	14,184
TABOR Impact	\$257,732	\$257,732
FTE Position Change	0.9 FTE	0.9 FTE
Appropriation Required: \$344,937 - Multiple Agencies (FY 2016-17)		
Future Year Impacts: Potential state revenue and expenditure increase.		

Summary of Legislation

The U.S. Environmental Protection Agency (EPA) has promulgated rules to regulate carbon dioxide emissions from existing, fossil-fuel-fired, electric generating units under the Clean Air Act. Known as the Clean Power Plan (CPP), these rules require the Colorado Department of Public Health and Environment (CDPHE) to submit a state implementation plan (SIP) for compliance. The rules allow states to qualify for a two-year extension for filing the SIP by filing an "initial submittal" by September 6, 2016.

This bill requires the Air Quality Control Commission (AQCC) to:

- conduct a public input process necessary to make the initial submittal without making any binding future commitments, including to submit a SIP in the future;
- consider specific criteria in developing the SIP; and
- submit a report, prepared jointly with the Colorado Public Utilities Commission (PUC), to the General Assembly that discusses the SIP's impact on these criteria.

Once a draft SIP has been prepared, the AQCC must submit it to the General Assembly. The SIP may not be submitted to the EPA unless approved by the General Assembly through adoption of a joint resolution.

If a court stays the CPP or holds it invalid, the bill requires implementation of the SIP to be suspended or terminated, as appropriate. Finally, the bill expands the existing process for legislative review of SIPs to include plans required under the CPP.

Background

Clean Air Act — EPA. The EPA published the final federal performance standards for carbon emissions from electric utilities on October 23, 2015. Under its authority in current law, the CDPHE's Air Pollution Control Division (APCD) will draft the SIP to implement the federal standards. The AQCC, which is charged with developing and maintaining a comprehensive air pollution prevention and control program for the state, 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, aka 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 CEAs because all CEAs 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 \$257,732 in FY 2016-17 and FY 2017-18, of which \$250,000 will be credited to the Fixed Utility Fund (FUF) and \$7,732 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 revenue 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.

TABOR Impact

This bill increases cash fund revenue, which will increase the amount of money required to be refunded under TABOR. TABOR refunds are paid out of the General Fund. Since the bill increases the TABOR refund obligation without a corresponding change in General Fund revenue, the amount of money available in the General Fund for the budget will decrease by an identical amount.

State Expenditures

Public Utilities Commission — DORA. Expenditures in DORA will increase by \$250,000 in FY 2016-17 and FY 2017-18.

Public input process and joint report. The bill requires PUC participation in the public input process set forth in the bill for development of the SIP. The PUC is also required to create a joint report with the AQCC assessing the effects of the proposed SIP relative to the nine criteria specified in the bill. These requirements are expected to create the need for contractor resources totaling \$250,000 in FY 2016-17 and FY 2017-18. Under the PUC's current authority, it reviews and approves the integrated resource plans of the two rate-regulated, investor-owned utilities in Colorado, but not for electric generation and transmission cooperatives, CEAs, state power authorities, or municipal utilities. The bill requires the report to address all Colorado utilities with generation capacity subject to the CPP. In addition, 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 local engineering consulting firm 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 \$250,000 in each of the next two fiscal years will be required.

Air Pollution Control Division (APCD) — CDPHE. Expenditures in CDPHE will increase by \$108,470 and 0.9 FTE in FY 2016-17 and \$105,318 and 0.9 FTE in FY 2017-18. The bill is expected to increase workload in the APCD to:

- coordinate the public input process with the PUC, electric generation utilities, and other stakeholders;
- create a joint report with the PUC;
- participate in a legislative review process; and
- possibly revise the SIP if disapproved by the PUC or the General Assembly.

The bill requires the APCD to devote more resources to the analysis and projection of emissions than would otherwise be required. The initial plan development requires the FTE to be a two-year cost; however, the annual review and updates to the plan under SB 16-046 may require these costs to be ongoing. If additional FTE are 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 1, below.

Legal services. Legal services for CDPHE are estimated at 100 hours annually at the rate of \$95.01 an hour for consulting on compliance with the legislation for a total cost of \$9,501 per year.

Table 1. CDPHE Expenditures Under Senate Bill 16-046		
Cost Components for CDPHE	FY 2016-17	FY 2017-18
Personal Services	\$80,778	\$80,778
FTE	0.9 FTE	0.9 FTE
Operating Expenses and Capital Outlay Costs	4,658	855
Legal Services	9,501	9,501
Centrally Appropriated Costs*	13,533	14,184
Total CDPHE Expenditures	\$108,470	\$105,318

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

Judicial Department. This bill provides for judicial review of the SIP for the reduction of carbon emissions. It is assumed judicial reviews will be infrequent and thus the resulting impact to the department 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.

Table 2. Centrally Appropriated Costs Under SB 16-046*		
Cost Components	FY 2016-17	FY 2017-18
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$7,272	\$7,272
Supplemental Employee Retirement Payments	6,261	6,912
TOTAL	\$13,533	\$14,184

Effective Date

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

State Appropriations

For FY 2016-17, the DORA requires a cash fund appropriation of \$250,000 from the Fixed Utility Fund and the CDPHE requires a General Fund appropriation of \$94,937 and 0.9 FTE. The Department of Law requires \$9,501 in reappropriated funds.

State and Local Government Contacts

Public Health and Environment Regulatory Agencies Judicial Law

The revenue and expenditure impacts in this fiscal note represent changes from current law under the bill for each fiscal year. For additional information about fiscal notes, please visit: www.colorado.gov/fiscalnotes.