

**STATE
FISCAL IMPACT**

Drafting Number: LLS 10-0241
Prime Sponsor(s): Rep. Balmer
 Sen. Bacon

Date: February 19, 2010
Bill Status: House Transportation and Energy
Fiscal Analyst: Marc Carey (303-866-4102)

TITLE: CONCERNING ALLOCATION OF ENVIRONMENTAL REMEDIATION COSTS INCURRED BY CERTAIN PUBLIC UTILITIES.

Fiscal Impact Summary	FY 2010-2011	FY 2011-2012
State Revenue		
General Fund	\$2,449	\$1,374
Cash Funds		
Fixed Utilities Fund	79,191	44,435
State Expenditures		
Cash Funds		
Fixed Utilities Fund	\$66,055	\$35,805
FTE Position Change	0.4 FTE	0.2 FTE
Effective Date: Upon signature of the Governor, or upon becoming law without his signature.		
Appropriation Summary for FY 2010-2011: See State Appropriations section.		
Local Government Impact: None.		

Summary of Legislation

This bill establishes when certain investor-owned public utilities that provide gas and electric services may recover costs to remediate environmental contamination. Specifically, the bill prohibits a utility from requiring, as a condition of service, that a customer indemnify the utility for costs or liabilities related to environmental contamination encountered during the provision of service.

The bill allows utilities to require commercial customers to reimburse the utility for reasonable costs related to the management and disposal of environmental contaminants. For commercial customers requesting new gas or electric service, or relocation of existing utility facilities, the bill allows the customer to:

- perform the necessary work in which case the public utility may neither charge the customer nor retain any moneys paid to the utility by the customer for such work;
- identify a mutually acceptable alternative alignment on which to install or relocate the facilities following a site assessment; or
- reimburse the utility for managing and disposing of contaminants.

If a dispute regarding the nature of contamination occurs, the utility must provide reasonable evidence of the contamination before seeking reimbursements for the cost of management or disposal. The bill requires the Colorado Public Utilities Commission (PUC) to promulgate rules regarding procedures to hear such disputes on an expedited basis.

Finally, the bill authorizes the PUC to establish a uniform fee paid by all customers to utilities to recover the costs of addressing environmental contamination encountered on public rights-of-way and other locations where cost recovery has not been authorized.

State Revenue

In FY 2010-11, this bill is expected to increase state revenue by \$81,641, of which \$79,191 will be credited to the Fixed Utility Fund (FUF) and \$2,449 to the General Fund. In FY 2011-12, the totals will be \$44,435 for the FUF and \$1,374 for the General Fund. The administrative costs incurred by the PUC and 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 contained in Section 40-2-112, C.R.S. 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 would have to be increased sufficiently to cover the direct expenses discussed in the State Expenditures section and detailed in Table 1, plus the indirect costs described in the Expenditures Not Included section, plus credit 3 percent to the General Fund.

State Expenditures

Department of Regulatory Agencies, Public Utilities Commission (PUC). The PUC will incur additional administrative costs of \$66,055 and 0.4 FTE in FY 2010-11 and \$35,805 and 0.2 FTE in FY 2011-12 as a result of this bill. Table 1 summarizes these costs based on the following assumptions:

- the PUC will hear 2 disputes annually between a utility and a commercial customer regarding unremediated contamination. Each hearing requires 80 hours of an outside environmental consultant and 60 hours of an Administrative Law Judge time;
- the PUC will adopt rules regarding procedures to hear such disputes. Rulemaking requires 80 hours of an outside environmental consultant, 40 hours of a Rate-Financial Analyst III, and 80 hours of an Administrative Law Judge time;
- the PUC will approve fees adopted by each utility to be charged to customers to cover the costs of addressing environmental contamination encountered in public rights-of-way. Each of 8 utilities will apply individually to the PUC for fee approval, and half the applications will be contested. Each contested hearing will require 60 hours

of a Rate-Financial Analyst III and 40 hours of an Administrative Law Judge time. Uncontested cases will only require 20 hours of a Rate-Financial Analyst III. Annual filings will be required to adjust for historical over or under recovery, and each filing will require 20 hours of a Rate-Financial Analyst III.

Table 1. PUC Expenditures Under HB 10-1187		
Cost Components	FY 2010-11	FY 2011-12
Personal Services	\$27,807	\$10,681
FTE	0.4	0.2
Operating Expenses and Capital Outlay	2,248	1,124
Consulting Expenses	36,000	\$24,000
TOTAL	\$66,055	\$35,805

Rule promulgation is one of the primary responsibilities of PUC staff, and historically the PUC has maintained that rules can be promulgated within existing budgetary resources. This has changed in recent years due to the contentious process surrounding the promulgation of rules to implement Amendment 37. It is hard to know in advance how contentious and complex the rulemaking process will be.

Expenditures Not Included

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 summarized in Table 2.

Table 2. Expenditures Not Included Under HB 10-1187*		
Cost Components	FY 2010-11	FY 2011-12
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$2,879	\$1,435
Supplemental Employee Retirement Payments	\$1,034	\$483
Indirect Costs	\$4,916	\$2,458
Leased Space	\$4,200	\$4,200
Workers Comp/Risk Management	\$107	\$54
TOTAL	\$13,136	\$8,630

*More information is available at: <http://www.colorado.gov/cs/Satellite/CGA-LegislativeCouncil/CLC/1200536133924>

State Appropriations

For FY 2010-11, the Public Utilities Commission will require a cash funds appropriation of \$66,055 and 0.4 FTE from the Fixed Utility Fund.

Departments Contacted

Labor and Employment
Public Health and Environment

Regulatory Agencies