HB 19-1313

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

FINAL FISCAL NOTE

Drafting Number:	LLS 19-0705	**Date:**	May 29, 2019
Prime Sponsors:	Rep. Becker; Hansen Sen. Winter; Priola	**Bill Status:**	Deemed Lost
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Bill Topic: ELECTRIC UTILITY PLANS TO FURTHER REDUCE CO2 EMISSIONS

Summary of Fiscal Impact:

- ☒ State Revenue
- ☒ State Expenditure
- ☐ State Transfer
- ☐ TABOR Refund
- ☐ Local Government
- ☐ Statutory Public Entity

This bill would have established targets for the state's largest investor-owned utility to reduce carbon dioxide emissions and allowed other utilities to opt-in to clean energy plans. Utilities would have been required to submit clean energy plans to the Public Utilities Commission (PUC) as part of the electric resource planning process. The Department of Public Health and Environment would have been required to review these plans and to verify compliance with emissions targets. The bill would have also allowed a utility to apply to the PUC for a financing order authorizing it to issue securitized utility ratepayer-backed bonds when closing an electric generating facility. The bill would have increased state revenue, expenditures, and workloads on an ongoing basis.

Appropriation Summary: For FY 2019-20, the bill would have required an appropriation of $264,085 to multiple state agencies.

Fiscal Note Status: The final fiscal note reflects the reengrossed bill. This bill was not enacted into law; therefore, the impacts identified in this analysis do not take effect. However, Senate Bill 19-236, which was enacted into law, contains the provisions of this bill.

Table 1
State Fiscal Impacts Under HB 19-1313

		FY 2019-20	FY 2020-21
Revenue	Cash Funds	$330,171	$315,216
		$330,171	**$315,216**
Expenditures	Cash Funds	$264,085	$249,976
	Centrally Appropriated	$66,086	$65,240
	Total	**$330,171**	**$315,216**
	Total FTE	**3.0 FTE**	**3.0 FTE**
Transfers		-	-
TABOR Refund		-	-

Summary of Legislation

Clean energy planning. This bill supplements existing state renewable energy standard laws by establishing targets for the reduction of carbon dioxide emissions from electricity generation by utilities serving more than 500,000 customers (Xcel Energy). These targets are an 80 percent reduction in carbon dioxide emission levels compared to 2005 levels by 2030; and a goal of a 100 percent reduction in carbon dioxide emission levels by 2050 and thereafter, if practicable. Other utilities may opt in to submitting clean energy plans.

- *Clean energy plans.* Xcel Energy is directed to submit a clean energy plan to the Public Utilities Commission (PUC) in the Department of Regulatory Agencies (DORA) as part of the next energy resource plan (ERP) process taking place after January 1, 2020. In addition to the standard PUC approval process, the Air Pollution Control Division (APCD) in the Department of Public Health and Environment (CDPHE) is required to participate in measuring the utility's carbon dioxide emission reductions and to estimate whether the plan will achieve the desired emissions reductions.

- *Rate recovery and requirements for the utility.* Utilities that participate in clean energy planning may recover clean energy plan-related implementation costs through rates, as approved by the PUC, and own any generating resources and infrastructure necessary to effectuate the plan. Utilities must use a competitive bidding process to fill the cumulative resource need.

- *Labor considerations.* The bill also requires investor-owned utilities to provide documentation on employment metrics, the use of Colorado labor, and the availability of apprenticeship programs as part of their ERP filing.

- *Customer-sited energy generation.* The bill allows retail electric utility customers to generate, consume, store, and export electricity produced from certain energy resources to the electric grid, subject to reliability standards, interconnection rules, and procedures determined by the PUC.

- *Reporting.* Utilities that receive approval for a clean energy plan are required to report to the Governor, the General Assembly, the PUC, and the Air Quality Control Commission in CDPHE on a list of matters, including its progress in implementing the plan and in reducing carbon dioxide emissions.

- *Fixed Utilities Fund.* The bill authorizes payment from the Fixed Utilities Fund (FUF) to defray CDPHE and any other state agency expenditures related to the clean energy planning process.

Energy impact bonds. This bill allows an electric utility to apply to the PUC for approval of a financing order to issue securitized utility ratepayer-backed bonds when retiring an electric generating facility. If approved by the PUC, bonds are to be used by the utility to purchase, build, or invest in electric generating resources or electricity storage, and repaid through a distinct charge on ratepayers.

- *Public Utilities Commission process.* The PUC is required to use its regular process for consideration of financing order applications and must engage outside consultants and counsel experienced in securitized, investor-owned electric utility ratepayer-backed bond financing to assist with the process. The bill stipulates that these consultants have a duty of loyalty solely to the PUC. Consultant costs incurred during the application, hearing, and approval process are to be included as bond financing costs and are not an obligation of the state. If the utility's application is denied or withdrawn, the utility must pay these costs instead.

- *Judicial review and administrative penalties.* A party aggrieved by a financing order may petition for suspension and judicial review of the financing order in the Denver District Court. If the PUC determines that a utility's actions were inconsistent with the financing order, it may apply any remedies available, except for a remedy that has the effect of directly or indirectly impairing the bonds. Utilities are also subject to certain new administrative penalties related to failures to adhere to the process outlined in the bill.

- *Reporting requirements.* The bill requires a utility that has issued energy impact bonds to annually file a report with the PUC illustrating that bond revenue is applied solely to the repayment of bonds and financing costs.

Energy grid cost-benefit analysis. The PUC is directed to open an investigatory proceeding to evaluate the costs and benefits associated with regional transmission organizations, energy imbalance markets, joint tariffs, and power pools.

Distributed generation. The bill establishes a right for a retail electric utility customer to generate, consume, store, and export to the grid any electricity produced from customer-sited renewable sources.

Background and Assumptions

As of writing, Xcel Energy is the only qualifying electric utility in the state with more than 500,000 customers. Under current PUC rules, Xcel Energy is required to file an ERP by October 31, 2019; however, the PUC is currently involved in a rulemaking process (Proceeding No. 19R-0096E) where it has proposed a later ERP deadline of February 1, 2020. While this proceeding is subject to final rulemaking, the fiscal note assumes that the first Clean Energy Plan will be submitted by Xcel Energy on February 1, 2020.

The ERP process includes development of a load forecast, evaluation of the utility's current resources, determination of need for additional resources, and the utility's proposed plan for acquiring the resources to meet the identified need. The process covers a 7-year resource acquisition period and a 25-year planning period, as required by PUC rules.

State Revenue

The bill is expected to increase fee revenue to the FUF by $330,171 in FY 2019-20 and $315,216 in FY 2020-21 to cover the costs discussed in the State Expenditures section. PUC costs are paid by fees assessed on regulated utilities and, under this bill, fees will also cover costs incurred by CDPHE and other agencies for any expenditures incurred related to clean energy planning. See Technical Note.

Fee impact on regulated utilities. Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. The PUC will increase fees on regulated utilities to pay for the costs under the bill. These fee increases will be set administratively by the PUC based on cash fund balance and actual expenditures.

State investment in energy impact bonds. If energy impact bonds are issued and meet the legal requirements regarding public fund investment, the state may invest public funds in these bonds.

State Expenditures

The bill is expected to increase state expenditures by $330,171 and 3.0 FTE in FY 2019-20 and by $315,216 and 3.0 FTE in FY 2020-21 and ongoing for CDPHE and DORA from the FUF. Workload will also increase for DORA, the Colorado Energy Office (CEO), and the Judicial Department. These impacts are shown in Table 2 and discussed below.

Table 2
Expenditures Under HB 19-1313

	FY 2019-20	FY 2020-21
Department of Public Health and Environment		
Personal Services	$166,379	$166,379
Operating Expenses and Capital Outlay Costs	$11,306	$1,900
Centrally Appropriated Costs*	$49,602	$48,755
FTE – Personal Services	2.0 FTE	2.0 FTE
Subtotal (CDPHE)	**$227,287**	**$217,034**
Department of Regulatory Agencies		
Personal Services	$80,747	$80,747
Operating Expenses and Capital Outlay Costs	$5,653	$950
Centrally Appropriated Costs*	$16,484	$16,484
FTE – Personal Services	1.0 FTE	1.0 FTE
Subtotal (DORA)	**$102,884**	**$98,181**
Total	**$330,171**	**$315,215**
Total FTE	**3.0 FTE**	**3.0 FTE**

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

Department of Public Health and Environment. The bill requires $227,287 and 2.0 FTE in FY 2019-20 and $217,034 and 2.0 FTE in FY 2020-21 for CDPHE. Resources are for two Environmental Protection Specialists in the APCD to develop carbon dioxide emission measurement methodology required under the bill. This staff will also participate in the ERP process at the PUC and verify compliance with emissions targets under the bill. Standard operating expenses and capital outlay costs are included.

- *Carbon dioxide emission measurement methodology and verification of compliance with emissions targets.* The bill requires the APCD to track carbon dioxide emissions based on retail sales. This requires the creation of a new methodology by a dedicated staff unit. Staff costs are based on prior APCD work with the Environmental Protection Agency's Clean Power Plan from 2014 to 2016, where challenges in measuring emissions in comparison to a carbon dioxide emission limit were identified, particularly around the significant difference between gross generation and net sales. The APCD staff will seek input from the PUC, utilities, and other stakeholders through regular monthly meetings. Once the methodology is in place, the APCD will apply the methodology to its current emissions regulation process.

- *Electric resource planning process participation.* The APCD staff will participate in a review of Xcel Energy's clean energy plan during its upcoming ERP beginning in February 2020. It is expected that the methodology staff can develop expertise in the subject matter, coordinate with PUC staff and stakeholders, and assess whether the clean energy plan will achieve the desired reductions.

Department of Regulatory Agencies. The PUC in DORA requires $102,884 and 1.0 FTE in FY 2019-20 and $98,181 and 1.0 FTE in FY 2020-21. The PUC will also have workload impacts related to clean energy plan review and, conditionally, energy impact bonds.

- *Clean energy plans.* The PUC will review the clean energy plans submitted by Xcel Energy as part of its existing ERP process that occurs every four years, and no change in appropriations is required for that review. However, with the exception of Black Hills Energy, which is also subject to ERP requirements, if a currently unregulated utility seeks voluntary participation in clean energy planning, the PUC will require approximately four additional staff per voluntary ERP process, including two professional engineers and two rate and financial analysts. DORA will seek these resources through the annual budget process if necessary.

- *Energy impact bonds.* Workload in the PUC will increase to review finance order applications, if filed. As these orders are required to be aligned with the existing ERP process, this can be accomplished within the normal course of PUC business. Outside consultants and counsel experienced in securitized investor-owned electric utility customer-backed bond financing will perform a majority of the workload related to the energy impact bond arrangement, and the cost for these consultants will be financed through the bond.

- *Energy grid cost-benefit analysis.* The PUC requires 1.0 FTE Rate and Financial Analyst to manage the investigatory proceeding into regional transmission organizations. Standard operating expenses and capital outlay costs are included.

Colorado Energy Office. The CEO in the Office of the Governor frequently participates in the PUC process as an intervener. Workload will increase for the CEO to participate in the processes created under the bill; however, no change in appropriations is required and this work can be accomplished within the normal course of CEO business.

Judicial Department. Under the bill, a party aggrieved by the issuance of a financing order may petition for suspension and review of the financing order in the Denver District Court. The fiscal note assumes this judicial review will be minimally utilized, thus there is no tangible impact to the court system.

Ratepayer impacts. If an energy impact bond charge is assessed, the state, as a ratepayer, will see that charge on its utility bills. Because energy impact bonds are a financing mechanism, the impact to electricity costs are indeterminate and will depend on the cost of the new generation resources relative to those of the retired facility, as well as the terms of the bonds, including principal, term, interest rates, and any financing charges.

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. These costs, which include employee insurance and supplemental employee retirement payments, are estimated to be $66,086 in FY 2019-20 and $65,240 in FY 2020-21.

Technical Note

Fees to the FUF are computed by multiplying a utility's gross intrastate utility operating revenue for the preceding calendar year by the amount required to cover PUC operations, capped at a maximum 0.25 percent assessment. Based on $4.9 trillion in 2017 intrastate utilities operating revenue, the maximum amount that the PUC can assess is $12.3 million, which is approximately what the PUC's current year costs are. Therefore, the increased expenditures from the FUF under the bill may not be possible.

Effective Date

The bill was deemed lost on Senate second reading on May 4, 2019.

State Appropriations

For FY 2019-20, the bill requires the following appropriations from the Fixed Utilities Fund:

- $177,685 to the CDPHE and an allocation of 2.0 FTE; and
- $86,400 to DORA and an allocation of 1.0 FTE.

State and Local Government Contacts

Public Health and Environment Regulatory Agencies