HB 21-1286

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Revised Fiscal Note

(replaces fiscal note dated May 20, 2021)

Drafting Number:	LLS 21-0072	**Date:**	May 27, 2021
Prime Sponsors:	Rep. Kipp; Valdez A. Sen. Priola; Pettersen	**Bill Status:**	Senate Finance
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Bill Topic: **ENERGY PERFORMANCE FOR BUILDINGS**

Summary of Fiscal Impact:

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

The bill directs the Colorado Energy Office to implement a building performance program, and requires owners of certain large buildings to submit annual energy use data to the office and meet energy performance standards. The bill increases state and local government expenditures beginning in FY 2021-22 and state revenue beginning in FY 2022-23.

Appropriation Summary: No appropriation is required, as the Energy Fund is continuously appropriated to the Colorado Energy Office. See Technical Note.

Fiscal Note Status: This revised fiscal note reflects the reengrossed bill.

Table 1
State Fiscal Impacts Under HB 21-1286

	Fiscal Year	2021-22	2022-23	2023-24	2024-25	2025-26	2026-67
Revenue	Cash Funds	-	$1,300,000	$800,000	$800,000	$800,000	$800,000
	Total Revenue	**-**	**$1,300,000**	**$800,000**	**$800,000**	**$800,000**	**$800,000**
Expenditures	General Fund	-	-	$212,006	$260,403	$246,579	$394,588
	Cash Funds	$518,397	$786,426	$587,341	$587,341	$587,341	$587,341
	Centrally Approp.	$15,932	$29,204	$84,457	$101,252	$100,008	$146,711
	Total Expend.	**$534,329**	**$815,630**	**$883,804**	**$948,996**	**$933,928**	**$1,128,640**
	Total FTE	**1.1 FTE**	**2.0 FTE**	**4.2 FTE**	**4.9 FTE**	**4.8 FTE**	**6.8 FTE**
Transfers		-	-				
TABOR Refund		-	-				

Summary of Legislation

The bill requires the Colorado Energy Office (CEO) to implement a building performance program. The program requires owners of covered buildings to submit annual benchmarking data by December 1, 2022, and by June 1 every year thereafter to the CEO and meet building performance standards beginning in 2026. The bill creates the continuously appropriated Climate Change Mitigation and Adaptation Fund and specifies program fees and civil penalties associated with the program. The bill authorizes the Air Quality Control Commission (AQCC) within the Department of Public Health and Environment (CDPHE) to promulgate rules modifying the program. The elements of the program are described below. Covered buildings include buildings in excess of 50,000 square feet, with certain exceptions outlined in the bill.

Building performance program. Based on county assessor records and other information, the CEO is required to produce and make available to the public a database of covered buildings, along with benchmarking data for the covered buildings. The CEO will collect an annual fee of $100 for each covered building, with certain exemptions for local governments, special districts, and schools, to finance the program's administration, credited to the Climate Change Mitigation and Adaptation Fund. The AQCC is authorized to modify elements of the program, including the definition of benchmarking data, the selection of a benchmarking tool building owners are required to use, the provision of waivers and extensions, and, after June 1, 2029, the minimum gross floor area included in the definition of covered buildings.

Benchmarking requirements. Benchmarking data includes the physical description of the building and information generated by a benchmarking tool, including the Energy Star Score, monthly energy use by fuel type, energy-use intensity, and greenhouse gas emissions. Qualifying utilities are required to provide energy use data to covered building owners for their reporting requirements. Covered building owners may seek a waiver from these requirements under certain circumstances. The following owners may comply with the benchmarking requirements at the campus-wide level:

- master-metered groups of buildings without submetering;
- correctional facilities; and
- state institutions of higher education.

Performance and baseline years. Performance years are the years that performance standards must be met, beginning in 2026 and continuing every five years. The baseline year is the year to which a performance year is compared, starting in 2021 and continuing every 5 years.

Performance standards. For the performance year 2026, an owner of a covered building must demonstrate one of the following standards were met in its 2027 submission:

- the covered building received an Energy Star score of 75 or higher, or 15 points higher than its most recent baseline year:
- the covered building's weather-normalized site and source energy-use intensity was 15 percent lower than the most recent baseline year;

- the covered building's energy-use intensity met or surpassed the sector-specific and climate-zone-specific target, as determined by the AQCC by rule, or the most recent edition of ANSI/ASHRAE/IES Standard 100-2018; or
- the covered building is a mixed-use property and submits proof of meeting the weighted average energy-use intensity target.

Alternatively, owners of covered buildings may comply with the performance standards by demonstrating that for at least 4 of the 5 years immediately following the most recent baseline year, at least 50 percent of the building's electricity was generated from renewable energy, and:

- received an Energy Star score at least 65, or 10 points higher than the most recent baseline year;
- reduced relevant energy-use intensity by at least 10 percent from the most recent baseline year; or
- was within 10 percent of the relevant sector-specific and climate-zone-specific target.

For covered buildings owned by the state, a local government, a special district, a state institution of higher education, a school district, or a charter school, the owners must comply with the performance standards only if the owner completes work on a construction or renovation project that has an estimated cost of at least $500,000 and impacts at least 25 percent of the covered building's square footage.

Task Force. The bill directs the CEO to convene a task force no later than October 1, 2021, with members identified in the bill, to develop and provide consensus recommendations to the AQCC and the Governor concerning modifications to the implementation of benchmarking and performance standards. Interim consensus recommendations are due by October 1, 2022, and final consensus recommendations by January 1, 2023. Based on the task force's recommendations, the CDPHE may request that the AQCC publish a notice of proposed rule-making to adopt rules to modify the performance standards for performance year 2026.

Rulemaking. In addition to the possible rule-making described above, the AQCC is required to promulgate rules by December 1, 2027, either extending or modifying the performance standards to require all covered properties, in aggregate, to achieve or exceed 20 percent energy and greenhouse gas reductions as measured in 2031 compared to 2021. The AQCC is also required to promulgate rules by December 1 of each subsequent baseline year through 2047 to achieve or exceed emissions reductions consistent with the greenhouse gas emission reduction targets established in the Climate Action Plan (House Bill 19-1261).

Civil penalties. CDPHE is authorized to assess civil penalties on covered building owners. Owners that violate the benchmarking requirements or provisions pertaining to the sale or lease of a covered property are subject to a penalty of up to $500 for the first violation and up to $2,000 for each subsequent violation. Owners in violation of performance standard requirements are subject to a penalty of up to $2,000 for a first violation and up to $5,000 for each subsequent violation. Buildings owned by the state and local governments, school districts, state institutions of higher education, and special districts are not subject to these penalties. Civil penalties are credited to the Climate Change Mitigation and Adaptation Fund.

Background

Current energy reporting requirements. The CEO, in partnership with the Department of Personnel and Administration, currently tracks and reports energy usage of state-owned properties 5,000 square feet and larger pursuant to the Greening Government executive orders. As such, the statutory requirement for state-owned buildings to report their energy usage formalizes an existing practice in the executive branch, and will continue to be supported by existing capacity at the CEO. In addition, it is estimated that 30 percent of non-state owned buildings (estimated between 8,000 and 9,000) are already benchmarking under one of the three municipal benchmarking ordinances in Denver, Fort Collins, and Boulder.

Capital development planning. State law requires the Capital Development Committee (CDC) to forecast the state's future needs for capital construction and controlled maintenance. State departments and institutions submit annual plans to the CDC that list their capital construction needs for the next five years. For FY 2021-22, these plans included projects planned through FY 2025-26.

Assumptions

This fiscal note assumes that the Capitol Complex is a campus for the purpose of complying with the benchmarking and performance requirements in the bill.

State Revenue

In FY 2022-23, state revenue will increase by approximately $1.3 million from annual fee revenue collected by non-state owned covered buildings, and by approximately $0.8 million annually in future years to the Climate Change Mitigation and Adaptation Fund. Revenue in FY 2022-23 is higher because covered building owners will be paying the annual fee twice, once by the December 1, 2022, benchmarking deadline, and once by the June 1, 2023, benchmarking deadline. The exact amount of annual fee revenue will be determined once the CEO establishes a database of covered buildings and owners required to comply with the building performance program. This revenue is subject to TABOR. Note that state-owned buildings are excluded from this revenue calculation; these payments will be reflected as a reappropriation of funds.

Beginning on January 1, 2024, state revenue may increase from civil penalties collected from violations of the benchmarking, transfer of property, and performance standard requirements as defined in the bill. Civil penalty revenue will be determined once a complete list of covered buildings is established and how covered buildings comply with the requirements. This fiscal note does not estimate this civil penalty revenue, and assumes that covered building owners will comply with the requirements of the bill. This revenue is subject to TABOR.

State Expenditures

This bill will increase state expenditures by $534,329 in FY 2021-22, $815,630 in FY 2022-23, $883,804 in FY 2023-24, $948,997 in FY 2024-25, $933,928 in FY 2025-26, and $1,128,640 in FY 2026-27 and ongoing. The first two years of expenditures are for the CEO, while the following three years include expenditures for the CDPHE. Six fiscal years are included to show the full implementation of the program. State expenditures will also increase for state agencies that own covered buildings. Costs to implement the building energy program are shown in Table 2 and discussed below, along with costs to state agencies to comply with the bill.

As annual fees from covered building owners will not be collected until FY 2022-23, costs in the CEO for FY 2021-22 will be paid from the Energy Fund (see Technical Note). In future years, CEO costs will be paid from the Climate Change Mitigation and Adaptation Fund. Costs in the CDPHE, beginning in FY 2023-24, are assumed to be paid from the General Fund, and reflect the pay date shift.

Table 2
Building Performance Program
Expenditures Under HB 21-1286

Cost Components	FY 2021-22	FY 2022-23	FY 2023-24	FY 2024-25	FY 2025-26	FY 2026-27
Colorado Energy Office						
Personal Services	$54,512	$101,726	$101,726	$101,726	$101,726	$101,726
Operating Expenses	$1,485	$2,700	$2,700	$2,700	$2,700	$2,700
Capital Outlay Costs	$12,400	-	-	-	-	-
Contractor	$400,000	$650,000	$450,915	$450,915	$450,915	$450,915
Merchant Fees	$50,000	$32,000	$32,000	$32,000	$32,000	$32,000
Centrally Appropriated Costs[1]	$15,932	$29,204	$29,204	$29,204	$29,204	$29,204
FTE – Personal Services	1.1 FTE	2.0 FTE	2.0 FTE	2.0 FTE	2.0 FTE	2.0 FTE
CEO Subtotal	**$534,329**	**$815,630**	**$616,545**	**$616,545**	**$616,545**	**$616,545**
Department of Public Health and Environment						
Personal Services	-	-	$167,677	$227,799	$227,799	$375,708
Operating Expenses	-	-	$3,105	$3,780	$3,780	$6,480
Capital Outlay Costs	-	-	$12,400	-	-	$12,400
Legal Services			$13,824	$13,824	-	-
Translation and Interpretation	-	-	$15,000	$15,000	$15,000	-
Centrally Appropriated Costs[1]	-	-	$55,253	$72,048	$70,804	$117,507
FTE – Legal Services	-	-	0.1 FTE	0.1 FTE	-	-
FTE – Personal Services	-	-	2.1 FTE	2.8 FTE	2.8 FTE	4.8 FTE
CDPHE Subtotal	**-**	**-**	**$267,259**	**$332,451**	**$317,383**	**$512,095**
Total Costs	**$534,329**	**$815,630**	**$883,804**	**$948,996**	**$933,928**	**$1,128,640**
Total FTE	**1.1 FTE**	**2.0 FTE**	**4.2 FTE**	**4.9 FTE**	**4.8 FTE**	**6.8 FTE**

[1]Centrally appropriated costs are not included in the bill's appropriation.

Colorado Energy Office - Building Performance Program. The CEO requires 2.0 FTE, a program assistant and accountant, to manage the program, and the CEO will contract with a consulting firm to develop the covered building list, coordinate utility data uploads, configure software, set up and administer a help center, provide training and outreach, as well as design and manage a website that provides public information on benchmarking data, and a building owner portal. These costs assume a start date of October 1, 2021 for the program assistant and April 1, 2022, for an accounting technician. The CEO will also have an increase in workload related to the task force and development of recommendations for AQCC rulemaking.

Department of Public Health and Environment - rulemaking and enforcement. The CDPHE will have an increase in workload to participate in the Task Force in FY 2021-22 and FY 2022-23. This fiscal note assumes this workload is absorbable. Beginning in FY 2023-24, the CDPHE will require additional environmental protection and administrative staff to enforce the benchmarking, property transfer, and performance standard requirements in the bill, and to support rulemaking to modify and extend the program.

The CDPHE will require 2.3 FTE beginning in FY 2024-25 to manage noncompliance and enforcement, including assessing penalties beginning on January 1, 2024. Staff resources will increase to 4.3 FTE in FY 2026-27 when the program is fully scaled to begin enforcing the performance standard requirements in 2026. In addition, the CDPHE requires 0.5 FTE beginning in FY 2024-25 to support annual rulemaking to extend or modify the performance standards. These staff resources are estimates and will be refined once the program is implemented, a comprehensive list of covered buildings is developed, and better information is available on compliance with the benchmarking requirements beginning in FY 2022-23.

Translation and interpretation services are estimated at $15,000 annually during the early years of enforcement to translate waiver and compliance reporting documents as well as engagement with communities for rulemaking. In addition, 130 hours of legal services, provided by the Department of Law, will be required to support enforcement and rulemaking in FY 2023-24 and FY 2024-25, and will be scaled back in later years.

Building fees for state-owned buildings. As noted in the background, state agencies already report their energy usage and will be required to meet performance standards when certain building upgrades are made. The benchmarking requirements can therefore be met within existing resources. State agencies that own covered buildings will be required to pay an annual fee of $100 per covered building for an estimated 600 buildings, which will result in expenditures of approximately $60,000 per year. Depending on the agency and its number of covered buildings, the fee will be accounted for through the budget process.

Performance standard planning for state-owned buildings. It is unknown at this time which state-owned covered buildings already meet the 2026 performance standards, which buildings will be exempted from the standards, and which projects will complete work in 2026 that trigger the performance standard requirements. Some state agencies will require staffing and other resources to determine the energy upgrades needed to meet the performance standards. These costs will be addressed through the annual budget and capital development planning processes.

Cost of upgrades to state-owned buildings. This fiscal note does not estimate the incremental costs of building upgrades needed to meet the performance standards beginning in 2026. For informational purposes, the Department of Personnel and Administration estimates costs to upgrade their eleven covered buildings to be approximately $84 million. This estimate includes costs for mechanical controls and retrofits, swing space, architectural and engineering assessments, and project management staff, and does not account for buildings that may be exempted for their historical status. Given that project costs will increase to ensure covered buildings meet the performance standards, the number of projects to be funded will likely decrease based on available funding.

Institutions of Higher Education. State institutions of higher education are exempted from the energy reporting requirements through the Greening of State Government executive orders. Some state institutions are collecting and reporting energy usage through other initiatives that will require a minimal workload to comply with the benchmarking requirements under this bill. Other state institutions will require staffing and other resources to comply with the benchmarking requirements. This fiscal note assumes these state institutions can absorb these associated costs within existing revenue streams.

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 shown in Table 2 above.

TABOR refunds. The bill increases state revenue subject to TABOR. For FY 2022-23, the March 2021 LCS forecast projects revenue to fall short of the TABOR limit by $28.6 million, or 0.2 percent of the limit. If actual revenue exceeds the limit, the bill will increase the amount required to be refunded to taxpayers from the General Fund in FY 2023-24.

Federal ARPA funds. This bill increases state revenue, which may impact the state's flexibility in spending federal American Rescue Plan Act (ARPA) funds. For more information, see the LCS memo, titled "Legislative Changes and Flexibility in Use of American Rescue Plan Funds," available online at: https://leg.colorado.gov/node/2211881.

Local Government

County assessors will have increased workload to provide data and information to the CEO to implement the program. Local governments will incur expenses related to benchmarking and meeting the performance standards for covered buildings. These costs are not estimated in this fiscal note.

Technical Note

The bill authorizes the CEO to expend money from the Energy Fund, which is continuously appropriated to the CEO, to implement the building performance program. Although there are currently not available funds in the Energy Fund for this use, Senate Bill 21-230, if passed, transfers $40 million in the current FY 2020-21 from the General Fund to the Energy Fund. This fiscal note assumes Senate Bill 21-230 will pass, and that no General Fund appropriation is required. If Senate Bill 21-230 does not pass, the CEO will require a General Fund appropriation of $509,919 and 0.9 FTE.

Departmental Difference

The CDPHE estimates that it requires 0.3 FTE in FY 2021-22, FY 2022-23, and FY 2023-24 to support the task force, under the assumption that their staff will be compiling the information from the task force and developing the consensus recommendations to bring forward to the AQCC. This fiscal note assumes that this workload will be accommodated largely by the CEO, and does not require additional support staff at the CDPHE.

Effective Date

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed.

State and Local Government Contacts

Colorado Energy Office
County Assessors
Information Technology
Law
Municipalities
Public Health and Environment
Revenue
Special Districts
Treasury
Counties
Higher Education
Judicial
Local Affairs
Personnel
Public Safety
School Districts
Transportation