HB 21-1286

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Revised Fiscal Note

(replaces fiscal note dated May 27, 2021)

Drafting Number:	LLS 21-0072	**Date:**	June 3, 2021
Prime Sponsors:	Rep. Kipp; Valdez A. Sen. Priola; Pettersen	**Bill Status:**	Senate Appropriations
		Fiscal Analyst:	Christina Van Winkle | 303-866-6289 Christina.VanWinkle@state.co.us

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, as amended by the Senate Finance Committee.

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	-	$78,095	$263,874	$260,403	$260,403	$397,529
	Cash Funds	$518,397	$786,426	$587,341	$587,341	$587,341	$587,341
	Centrally Approp.	$15,932	$45,069	$98,196	$101,252	$101,252	$142,634
	Total Expend.	**$534,329**	**$909,590**	**$949,411**	**$948,996**	**$948,996**	**$1,127,504**
	Total FTE	**1.1 FTE**	**2.6 FTE**	**4.7 FTE**	**4.9 FTE**	**4.9 FTE**	**6.7 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 penalty limits 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 and setting penalty amounts. 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 exemptions for public buildings, 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 (GHG) 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
- owners of a public building that is a covered building.

Task force and rulemaking. 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:

- interim performance standards that would achieve a 7 percent reduction in GHG emissions by 2026 as compared to 2021;
- performance standards that would achieve a 20 percent reduction in GHG emissions by 2030 compared to 2021 levels; and
- the process for advising, soliciting public input on, and making recommendations to the AQCC on performance standards for 2030 to 2050.

Consensus recommendations are due to the CEO by October 1, 2022. The AQCC must promulgate rules by May 1, 2023, that consider the recommendations of the task force and achieve the GHG emission reductions outlined in the bill. The AQCC must also adopt rules regarding waiver and extensions of time regarding the performance standard requirement, and must include a provision that the owner of a public building need only comply with the performance standards with regard to work on a construction or renovation project that:

- has an estimated cost of at least $500,000;
- impacts at least 25 percent of the covered building's square footage; and
- excludes upgrades such as painting, flooring, or tenant finishes that do not impact energy use.

The AQCC must also adopt rules, as necessary, to modify or continue the performance standards until 2050 in order to achieve or exceed the state's GHG gas emission reduction targets.

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, as established in rule by the AQCC. Public buildings are exempt from civil 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 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.

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 beginning in FY 2021-22. 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. Six fiscal years are included to show the full implementation of the program.

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 2022-23, 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**

Table 2
Building Performance Program
Expenditures Under HB 21-1286 (Cont.)

Cost Components	FY 2021-22	FY 2022-23	FY 2023-24	FY 2024-25	FY 2025-26	FY 2026-27
Colorado Dept. of Public Health and Environment						
Personal Services	-	$42,396	$212,670	$227,799	$227,799	$349,824
Operating Expenses	-	$675	$3,780	$3,780	$3,780	$6,480
Capital Outlay Costs	-	$6,200	$18,600	-	-	$12,400
Legal Services		$13,824	$13,824	$13,824	$13,824	$13,824
Translation and Interpretation	-	$15,000	$15,000	$15,000	$15,000	$15,000
Centrally Appropriated Costs[1]	-	$15,865	$68,991	$72,048	$72,048	$113,430
FTE – Legal Services	-	0.1 FTE	0.1 FTE	0.1 FTE	0.1 FTE	0.1 FTE
FTE – Personal Services	-	0.5 FTE	2.6 FTE	2.8 FTE	2.8 FTE	4.6 FTE
CDPHE Subtotal	**-**	**$93,960**	**$332,866**	**$332,451**	**$332,451**	**$510,958**
Total Costs	**$534,329**	**$909,590**	**$949,411**	**$948,996**	**$948,996**	**$1,127,504**
Total FTE	**1.1 FTE**	**2.6 FTE**	**4.7 FTE**	**4.9 FTE**	**4.9 FTE**	**6.7 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 2022-23, the CDPHE will require 0.5 FTE to support rulemaking to establish performance standards, waiver and extension requirements, treatment of public buildings, and modifications to the program. Beginning in FY 2023-24, the CDPHE will require additional staff to enforce the benchmarking, property transfer, and performance standard requirements. Staff resources will scale up to 4.8 FTE in FY 2026-27 and ongoing when the program is fully implemented. 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 to translate waiver and compliance reporting documents as well as engage 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.

Benchmarking for state-owned buildings. As noted in the background, state agencies other than state institutions of higher education already report their energy usage. The benchmarking requirements in this bill can therefore be met within existing resources.

Performance standard planning for state-owned buildings. It is unknown at this time which state-owned covered buildings will meet the performance standards, which buildings will be exempted from the standards, and which projects will 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, as these requirements will be established in rule by the AQCC. 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, and FY 2022-23 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	Counties	County Assessors
Higher Education	Information Technology	Judicial
Law	Local Affairs	Municipalities
Personnel	Public Health and Environment	Public Safety
Revenue	School Districts	Special Districts
Transportation	Treasury	