SB 21-264

Legislative Council Staff

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Fiscal Note

Drafting Number:	LLS 21-0989	**Date:**	May 17, 2021
Prime Sponsors:	Sen. Hansen; Coram	**Bill Status:**	Senate Trans. & Energy
		Fiscal Analyst:	Christina Van Winkle | 303-866-6289 Christina.VanWinkle@state.co.us

Bill Topic: **ADOPT PROGRAMS TO REDUCE GREENHOUSE GAS EMISSIONS UTIL**

Summary of Fiscal Impact:

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

The bill requires gas distribution utilities to file clean heat plans with the Public Utilities Commission. The Public Utilities Commission and Air Quality Control Commission are required to initiate a number of rulemaking proceedings related to clean heat plans. The bill increases state expenditures and may increase state revenue beginning in FY 2021-22.

Appropriation Summary: For FY 2021-22, the bill requires an appropriation of $398,717 to multiple state agencies. See State Appropriations section.

Fiscal Note Status: This fiscal note reflects the introduced bill.

Table 1
State Fiscal Impacts Under SB 21-264

		Budget Year FY 2021-22	Out Year FY 2022-23	Out Year FY 2023-24	Out Year FY 2024-25
Revenue		-	-	-	-
Expenditures	General Fund[1]	$306,193	$478,839	$560,775	$434,023
	Cash Funds	$92,524	$86,724	$86,724	$86,724
	Centrally Appropriated	$119,943	$165,367	$177,323	$164,936
	Total Expenditures	**$518,660**	**$730,930**	**$824,823**	**$685,682**
	Total FTE	**3.7 FTE**	**5.9 FTE**	**6.7 FTE**	**5.8 FTE**
Transfers		-	-	-	-
TABOR Refund		-	-	-	-

[1] Public Utilities Commission expenditures are typically paid from the Fixed Utility Fund, which supports the Pipeline Safety Program. However, the commission is assessing the statutory maximum rate of 0.25 percent on the gross revenues of regulated electric and natural gas utilities; therefore, the fiscal note assumes that the General Fund is required to cover the costs identified in this bill.

Summary of Legislation

The bill addresses reducing greenhouse gas emissions through changes to gas distribution utilities (GDU) regulations including the filing of clean heat plans with the Public Utilities Commission (PUC) in the Department of Regulatory Agencies (DORA). The PUC and the Air Quality Control Commission (AQCC) in the Colorado Department of Public Health and Environment (CDPHE) are required to initiate a number of rulemaking proceedings related to clean heat plans.

Clean heat plans. The bill requires each GDU, defined as a gas public utility with more than 90,000 retail customers, to file a clean heat plan with the PUC. The plan must demonstrate how the GDU will use clean heat resources to meet the clean heat targets established in the bill. If a GDU does not submit a clean heat plan, the AQCC may set rules requiring 30 percent reductions by 2035.

The largest GDU must file a clean heat plan application by December 1, 2022, and all other GDUs must file no later than April 1, 2023, that demonstrate how the utility will achieve the 2025 target. Clean heat plans may be filed as part of any other plan, including demand-side management plans. The PUC must establish a cost cap that is 2 percent of the gas bills for all full-service customers, and must take into consideration factors outlined in the bill when approving plans. GDUs are required to submit annual reports that reflect money spent on various programs, and the GHG emissions avoided or reduced using a methodology and workbook developed by the Air Pollution Control Division in the CDPHE. Reports must be submitted to the PUC and CDPHE.

Municipal gas distribution utilities are also required to implement clean heat plans and file with the PUC no later than February 1, 2023. Small gas distribution utilities are encouraged but not required to file clean heat plans with the PUC.

Clean heat targets. The clean heat targets are calculated as 5 percent below 2015 greenhouse gas (GHG) emissions levels by 2025, and 20 percent below 2015 GHG emissions levels in 2030. In calculating emissions under a clean heat plan, GDUs must include emissions resulting from the combustion of gas by customers and methane leakage from the transportation and delivery of gas to customers and other local distribution companies. Unless determined not to be cost-effective, GDUs must achieve minimum GHG emission reduction percentages from recovered methane projects.

Clean heat resources. The clean heat resources that GDUs may consider in their clean heat plans include the following:

- gas demand-side management programs;
- recovered methane;
- green or blue hydrogen;
- beneficial electrification;
- coal mine methane;
- pyrolysis of tires;
- methane emission reductions attributable to an approved utility safety or integrity plan;
- distribution pipeline leak reductions that exceed federal and state requirements; and
- other cost-effective technologies identified by the PUC that reduce GHG emissions associated with the gas utility.

Rulemaking. The PUC and AQCC are required to initiate a number of rulemaking proceedings related to clean heat plans. The timeline for rulemaking and other agency outputs are as follows:

- by August 1, 2021, the PUC must update the electric and gas demand-side management rules consistent with the clean heat targets;
- by April 1, 2022, the Air Pollution Control Division must develop a workbook and methodology for evaluating emissions covered in a clean heat plan;
- by July 1, 2022, the AQCC must adopt rules that establish mass-based GHG emission reduction targets for clean heat plans for 2035, and to define qualified offsets that may be used in a clean heat plan;
- by January 1, 2029, the AQCC must commence a rulemaking proceeding to establish mass-based GHG emission reduction targets for clean heat plans for 2040, 2045, and 2050, using a 2015 baseline.

The rulemaking and other deliverables must adhere to the consultation and translation requirements outlined in the bill, including holding public hearings, consulting with disproportionately impacted communities, and providing outreach materials in relevant languages.

Class VI Injection Wells. The bill authorizes the Colorado Oil and Gas Conservation Commission (COGCC) in the Department of Natural Resources (DNR) to regulate Class VI Injection Wells, which natural gas utilities may use to meet the GHG emissions reduction targets

Background

Natural gas utilities in Colorado. There are currently four natural gas utilities operating in Colorado. The utilities and number of meters (or customers) as of 2020 are listed below:

- Xcel Energy: 1,334,743 meters
- Black Hills Colorado Gas: 126,833 meters
- Atmos Energy: 100,024 meters
- Colorado Natural Gas: less than 30,000 meters

Class VI Geologic Sequestration Wells. The bill authorizes natural gas utilities to make qualified investments in geologic greenhouse gas sequestration, which requires a Class VI injection permit. Currently, Class VI injection permits are regulated by the U.S. Environmental Protection Agency (EPA) in Colorado. The bill authorizes the COGCC to issue Class VI injection permits, which will require the COGCC to pursue Class VI primacy with the EPA. The COGCC currently only has primacy for Class II wells, which are used for the injection of fluids associated with oil and natural gas production.

North Dakota and Wyoming are the only states to have primacy for permitting Class VI wells. As of January 2020, only two Class VI wells, both in Illinois, are currently permitted by the EPA. Geologic sequestration is regulated under the federal Safe Drinking Water Act for the purpose of protecting underground sources of drinking water.

State Revenue

The bill may increase state cash fund revenue to the Oil and Gas Conservation and Environmental Response Cash Fund from Class VI well permit fees. Fee revenue is subject COGCC action to change the permit fee amount, and the number of future Class VI wells in the state. Currently there are no Class VI wells in the state and COGCC does not charge permit fees.

State Expenditures

The bill increases state expenditures by $518,660 and 3.7 FTE in FY 2021-22 and $730,930 and 5.9 FTE in FY 2022-23, as shown in Table 2 and discussed below. Costs are shown through FY 2024-25 to reflect ongoing expenses. Costs to DORA, CEO, and the CDPHE are paid from the General Fund (see Technical Note); and costs to DNR are paid from the Oil & Gas Conservation and Environmental Response Fund. Standard operating and capital outlay costs have been included, and first-year costs have been prorated for the General Fund pay day shift, where applicable.

Table 2
Expenditures Under SB 21-264

Cost Components	FY 2021-22	FY 2022-23	FY 2023-24	FY 2024-25
Department of Regulatory Agencies				
Personal Services	$84,797	$242,567	$281,355	$257,094
Operating Expenses	$1,485	$4,050	$4,455	$4,050
Capital Outlay Costs	$6,200	-	-	-
Legal Services	-	$25,522	$51,043	-
Centrally Appropriated Costs[1]	$26,458	$76,801	$90,459	$78,071
FTE – Legal Services	-	0.1 FTE	0.3 FTE	-
FTE – Personal Services	1.0 FTE	2.9 FTE	3.3 FTE	3.0 FTE
DORA Subtotal	**$118,940**	**$348,939**	**$427,312**	**$339,215**
Department of Public Health and Environment				
Personal Services	$126,148	$137,616	$137,616	$137,616
Operating Expenses	$2,295	$2,295	$2,295	$2,295
Capital Outlay Costs	$12,400	-	-	-
Technology Costs	$37,000	$11,700	$11,700	$11,700
Public Meetings and Outreach	$14,600	$8,300	-	-
Legal Services	$21,268	$21,268	$21,268	$21,268
Centrally Appropriated Costs[1]	$71,225	$66,593	$64,891	$64,891
FTE – Legal Services	0.1 FTE	0.1 FTE	0.1 FTE	0.1 FTE
FTE – Personal Services	1.6 FTE	1.7 FTE	1.7 FTE	1.7 FTE
CDPHE Subtotal	**$284,936**	**$247,772**	**$237,770**	**$237,770**

Table 2
Expenditures Under SB 21-264 (Cont.)

Cost Components	FY 2021-22	FY 2022-23	FY 2023-24	FY 2024-25
Colorado Energy Office				
Legal Services	-	$25,522	$51,043	-
FTE – Legal Services	-	0.1 FTE	0.3 FTE	-
CEO Subtotal	**-**	**$25,522**	**$51,053**	**-**
Department of Natural Resources				
Personal Services	$84,974	$84,974	$84,974	$84,974
Operating Expenses	$1,350	$1,350	$1,350	$1,350
Capital Outlay Costs	$6,200	-	-	-
Computer Upgrade Costs	-	$400	$400	$400
Centrally Appropriated Costs[1]	$22,260	$21,973	$21,973	$21,973
FTE – Personal Services	1.0 FTE	1.0 FTE	1.0 FTE	1.0 FTE
DNR Subtotal	**$114,784**	**$108,697**	**$108,697**	**$108,697**
Total	**$518,660**	**$730,930**	**$824,832**	**$685,682**
Total FTE	**3.7 FTE**	**5.9 FTE**	**6.7 FTE**	**5.8 FTE**

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

Public Utilities Commission. The PUC requires staff resources to conduct rulemaking, process applications, and review annual reports. In FY 2021-22, the PUC requires 1.0 FTE rate and financial analyst and 225 hours for an Administrative Law Judge to complete the rulemaking on clean heat plans, which is anticipated to require at least three days of hearings. Updates to the electric and gas demand side management rules to incorporate the GHG emission reduction targets in the bill can be completed within the ordinary course of business. The PUC requires 3.0 FTE of advisory and trial staff beginning in FY 2022-23 to process and monitor clean heat plan submissions. The first plan will be heard by the PUC directly (en banc) but the subsequent two plans require a total of 450 hours of an Administrative Law Judge and 112 hours of a court reporter in FY 2023-24. The PUC requires 240 hours of legal services from the Department of Law for each clean heat plan application submission.

Department of Public Health and Environment. Beginning in FY 2021-22, the CDPHE requires 1.7 FTE to support rulemaking to develop GHG emission reduction targets and define qualified offsets; establish the methodologies and workbook tool for evaluating clean heat plans; and coordinate with the PUC. In addition, the staff will verify GHG emissions reductions in submitted clean heat plans, including evaluating qualified offset projects. Staff will also evaluate annual reports of approved clean heat plans. The CDPHE requires ongoing technology services provided by the Office of Information Technology to develop the workbook tool, and to verify, manage, and track GHG emission reductions associated with clean heat plans, including qualified emissions reductions. Public meeting and outreach costs associated with rulemaking to define qualified offsets are also included, along with ongoing legal services from the Department of Law to support rulemaking.

Colorado Energy Office. The Colorado Energy Office requires 240 hours of legal services from the Department of Law for advice and representation during the litigated proceedings for each of the three clean heat plan filings, which will begin in FY 2022-23.

Department of Natural Resources. Beginning in FY 2021-22, the DNR requires 1.0 FTE to develop and administer an Underground Injection Control Program for Class VI injection wells. In order to assume permitting and enforcement authority, the COGCC will apply for primacy with the EPA. The new staff will complete the application process and then oversee all aspects of the program in accordance with EPA guidance. The DNR will pursue additional federal funds to support this program, which may reduce these cash fund requirements in future fiscal years.

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 reflected in Table 2 above.

Local Government

Municipal gas distribution utilities are required to implement clean heat plans. Local governments will incur expenses related to developing and implementing these clean heat plans. This fiscal note does not estimate these expenses.

Technical Note

The PUC is currently assessing the statutory maximum 0.25 percent fee on the gross revenues of regulated electric and natural gas utilities and cannot increase the assessment beyond this cap without a change in law. While PUC expenditures are typically paid from the Fixed Utility Fund, this fiscal note assumes that there are insufficient funds in the Fixed Utility Fund at the present time to support the expenditures identified in the fiscal note. Therefore, General Fund appropriations are indicated to pay for the rulemaking expenses. If the General Assembly revises the statutory maximum fee, these and future expenses may be paid from the Fixed Utility Fund.

Effective Date

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

State Appropriations

In FY 2021-22, the bill requires the following appropriations:

- $92,482 and 1.0 FTE from the General Fund to the PUC in the Department of Regulatory Agencies;
- $213,711 and 1.6 FTE from the General Fund to the Department of Public Health and Environment, of which $37,000 is reappropriated to the Office of Information Technology and $21,268 and 0.1 FTE is reappropriated to the Department of Law; and

- $92,524 and 1.0 FTE from the Oil and Gas Conservation and Environmental Response Fund to the Department of Natural Resources.

State and Local Government Contacts

Information Technology	Law
Municipalities	Public Health and Environment
Regulatory Agencies	