# SB 21-264

Legislative Council Staff

*Nonpartisan Services for Colorado's Legislature*

# Revised Fiscal Note

(replaces fiscal note dated May 17, 2021)

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|---|---|---|---|
| **Drafting Number:** | LLS 21-0989 | **Date:** | May 28, 2021 |
| **Prime Sponsors:** | Sen. Hansen; Coram | **Bill Status:** | Senate Appropriations |
| | | **Fiscal Analyst:** | Christina Van Winkle \| 303-866-6289<br>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 $340,955 to multiple state agencies. See State Appropriations section.

**Fiscal Note Status:** This fiscal note reflects the introduced bill, as amended by the Senate Transportation and Energy Committee.

**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] | $291,593 | $470,539 | $539,507 | $412,755 |
| | Cash Funds | $49,362 | - | - | - |
| | Centrally Appropriated | $86,375 | $121,811 | $133,555 | $121,167 |
| | **Total Expenditures** | **$427,330** | **$592,350** | **$673,062** | **$533,922** |
| | **Total FTE** | **3.2 FTE** | **4.8 FTE** | **5.6 FTE** | **4.7 FTE** |
| **Transfers** | | - | - | - | - |
| **TABOR Refund** | | - | - | - | - |

[1] *Public Utilities Commission expenditures are typically paid from the Fixed Utility Fund. 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.

The largest GDU must file a clean heat plan application by August 1, 2023, and all other GDUs must file no later than January 1, 2024, that demonstrates 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 2.5 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 reflecting money spent under each program and a calculation of the emissions reduced or avoided. GDUs must file additional clean heat plans at least every 4 years that cover at least 5 years after the date of filing.

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 6 percent below 2015 greenhouse gas (GHG) emissions levels by 2025, of which no more than 2 percent can be from recovered methane, and 22 percent below 2015 GHG emissions levels in 2030, of which no more than 6 percent can be from recovered methane. 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.

**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;
- pyrolysis of tires; and
- other cost-effective technologies that the CDPHE finds results in reduced GHG emissions or meets a recovered methane protocol approved by the AQCC.

**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 September 1, 2022, the AQCC must propose rules, and adopt rules by February 1, 2023, to establish protocols and crediting and tracking system for recovered methane;
- by October 1, 2021, the PUC must update the electric and gas demand-side management rules consistent with the clean heat targets;
- by December 1, 2024, the PUC, in consultation with CDPHE, must determine mass-based GHG emission reduction targets for clean heat plans for 2035; and
- by December 1, 2032, the PUC, in consultation with CDPHE, must determine mass-based GHG emission reduction targets for clean heat plans for 2040, 2045, and 2050, using a 2015 baseline.

**GHG sequestration study.** The bill directs the Colorado Oil and Gas Conservation Commission (COGCC) in the Department of Natural Resources (DNR) to study and report to the Governor and General Assembly, by December 1, 2021, the resource needs to ensure the safe and effective regulation of the sequestration of greenhouse gases.

## 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.** Class VI injection wells are non-experimental wells used for the geologic sequestration of carbon dioxide. North Dakota and Wyoming are the only states to have primacy for permitting Class VI wells; all other states are regulated by the EPA. 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

**Fixed Utility Fund.** The bill may increase fee revenue to the Fixed Utility Fund to cover the PUC's administrative expenses under the bill; however, the fund 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. See Technical Note.

## State Expenditures

The bill increases state expenditures by the amounts shown in Table 2 and discussed below. Costs are shown through FY 2024-25 to reflect estimated ongoing expenses. Costs to DORA, the CEO, and the CDPHE are paid from the General Fund (see Technical Note); and costs to the DNR are paid from the Oil and 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 |
| Legal Services | $21,268 | $21,268 | - | - |
| Centrally Appropriated Costs[1] | $45,334 | $45,010 | $43,096 | $43,096 |
| FTE – Legal Services | 0.1 FTE | 0.1 FTE | - | - |
| FTE – Personal Services | 1.6 FTE | 1.7 FTE | 1.7 FTE | 1.7 FTE |
| **CDPHE Subtotal** | **$244,445** | **$217,889** | **$194,707** | **$194,707** |
| **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 | $42,487 | - | - | - |
| Operating Expenses | $675 | - | - | - |
| Capital Outlay Costs | $6,200 | - | - | - |
| Centrally Appropriated Costs[1] | $14,582 | - | - | - |
| FTE – Personal Services | 0.5 FTE | - | - | - |
| **DNR Subtotal** | **$63,944** | - | - | - |
| **Total** | **$427,330** | **$592,350** | **$673,062** | **$533,922** |
| **Total FTE** | **3.2 FTE** | **4.8 FTE** | **5.6 FTE** | **4.7 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 clean heat plan 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.

This fiscal note assumes that clean heat plans will be filed in the first two fiscal years to ensure adequate implementation time to meet the 2025 clean heat target. 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.

This fiscal note assumes that the PUC can accommodate stakeholder outreach associated with rulemaking, and an investigation into coordination of state policies impacting natural gas utilities in the state, within existing resources.

**Department of Public Health and Environment.** Beginning in FY 2021-22, the CDPHE requires 1.7 FTE to support rulemaking to establish protocols and a crediting and tracking system for recovered methane. Staff will also consult with PUC regarding establishing emissions reduction targets and evaluating clean heat plans. Ongoing staffing needs are estimates and will be determined as the program develops.

The CDPHE requires ongoing technology services provided by the Office of Information Technology to develop and maintain a crediting and tracking system. The technology funding included in this fiscal note is an estimate; as the system is designed and information on tracking credits becomes available, the system may require improvements to ensure an effective, efficient, and secure platform. Additional resources may be sought through the annual budget process. The Department of Law will provide 200 hours of legal services to support rulemaking in the first two years.

**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.** In FY 2021-22, the DNR requires 0.5 FTE to study the resource needs to safely and effectively regulate greenhouse gas sequestration. This estimate is based on experience with regulating Class II injection wells, and input from other states in the region that regulate Class VI injection wells. The study may consider the site characterization, construction, operation, and monitoring requirements, along with recordkeeping, reporting, and financial responsibility requirements of operators. DNR will submit a report of the study's findings by December 1, 2021.

**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.

**TABOR refunds.** The bill may increase 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 may increase 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

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. This fiscal note estimates that resources in the Fixed Utility Fund are insufficient to support the expenditures identified in the fiscal note. If the General Assembly revises the statutory maximum fee, these and future expenses may be paid from the Fixed Utility Fund. Senate Bill 21-272 removes the cap on annual fees collected from regulated public utilities. If SB 21-272 becomes law, expenditures from this bill 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;
- $199,111 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
- $49,362 and 0.5 FTE from the Oil and Gas Conservation and Environmental Response Fund to the Department of Natural Resources.

## State and Local Government Contacts

Colorado Energy Office
Law
Public Health and Environment
Information Technology
Municipalities
Regulatory Agencies