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**Revised Fiscal Note**

*(replaces fiscal note dated March 3, 2021)*

|                         |                                      |                        |  |
|-------------------------|--------------------------------------|------------------------|--|
| <b>Drafting Number:</b> | LLS 21-0499                          | <b>Date:</b>           | March 30, 2021   |
| <b>Prime Sponsors:</b>  | Sen. Hansen; Coram<br>Rep. Valdez A. | <b>Bill Status:</b>    | Senate Appropriations  |
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**Bill Topic: PUC MODERNIZE ELECTRIC TRANSMISSION INFRASTRUCTURE**

|                                  |   |   |
|----------------------------------|---|---|
| <b>Summary of Fiscal Impact:</b> | <input checked="" type="checkbox"/> State Revenue     | <input type="checkbox"/> TABOR Refund                       |
|                                  | <input checked="" type="checkbox"/> State Expenditure | <input checked="" type="checkbox"/> Local Government        |
|                                  | <input type="checkbox"/> State Transfer               | <input checked="" type="checkbox"/> Statutory Public Entity |

This bill creates the Colorado Electric Transmission Authority, requires transmission utilities to join organized wholesale markets, and expands the authority to install broadband facilities on an electric utility easement. It also requires the Public Utility Commission to issue a final order concerning a utility's application to construct or expand transmission facilities within 180 days. The bill may increase state revenue, will increase state and local expenditures, and creates a new statutory public entity.

**Appropriation Summary:** For FY 2021-22, the bill requires an appropriation of up to \$0.5 million to the Department of Regulatory Agencies.

**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 21-072**

|                     |                           | <b>Budget Year<br/>FY 2021-22</b> | <b>Out Year<br/>FY 2022-23</b> |
|---------------------|---------------------------|-----------------------------------|--------------------------------|
| <b>Revenue</b>      |                           | -                                 | -                              |
| <b>Expenditures</b> | General Fund <sup>1</sup> | up to \$500,000                   | up to \$625,656<br>0.6 FTE     |
| <b>Transfers</b>    |                           | -                                 | -                              |
| <b>TABOR Refund</b> |                           | -                                 | -                              |

<sup>1</sup> Public Utilities Commission expenditures are typically paid from the Fixed Utilities Fund. However, that cash fund 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. See Technical Note.

## **Summary of Legislation**

**Organized Wholesale Market.** The bill requires every transmission utility in Colorado to join an Organized Wholesale Market (OWM) by January 1, 2030, unless that deadline is waived or delayed by the Public Utilities Commission (PUC). Transmission utilities are defined in the bill as public utilities that are wholesale electricity suppliers and own and operate electric transmission lines capable of transmitting electric energy at a voltage of 100 kilovolts or more. The PUC may allow transmission utilities to recover costs of participating in an OWM through electric utility rates or a transmission rider.

**Colorado Electric Transmission Authority.** The bill creates the Colorado Electric Transmission Authority (“transmission authority”) as an independent special purpose authority that is authorized to select a qualified transmission operator to finance, plan, acquire, maintain, and operate eligible electric transmission and interconnected storage facilities.

The transmission authority has the power to:

- issue electric transmission bonds that are exempt from taxation;
- identify and establish intrastate electric transmission corridors;
- coordinate with other entities to establish interstate electric transmission corridors;
- exercise the power of eminent domain to acquire eligible facilities, except property or rights-of-way owned by a local government; and
- collect payments of reasonable rates, fees, interest, or other charges from persons using eligible facilities.

The bill creates a nine-member board of directors to govern the transmission authority as follows:

- two Governor appointees confirmed by the Senate;
- the director of the Colorado Energy Office or their designee;
- three Speaker of the House of Representatives appointees; and
- three President of the Senate appointees.

Board members may not receive compensation, but may be reimbursed for expenses, and the authority is subject to the state’s open meetings and open records requirements, except for proprietary confidential information including power purchase agreements, costs of production, costs of transmission, transmission service agreements, credit reviews, detailed power models, and financing statements.

The bill creates the Electric Transmission Bonding Fund, which consists of revenue from eligible facilities, fees and service charges, bond proceeds, principal and interest payments on loans, and all interest and income derived from the deposit and investment of money in the bonding fund. The bill also creates the Electric Transmission Authority Operational Fund which consists of money transferred from the Electric Transmission Bonding Fund and all interest and income derived from the deposit and investment of money in the fund.

**Definition of electric utility.** The bill also expands the definition of “electric utility” to include generation and transmission cooperative electric associations and the federal Western Area Power Administration within the U.S. Department of Energy as it relates to the installation of broadband facilities on real property subject to an electric easement.

**Expedited review of transmission facility applications.** The bill directs the PUC to issue a final order within 180 days after a utility’s application to build new transmission facilities is deemed complete and public notice of the application has been given. The commission is authorized to approve a utility’s application if the construction or expansion can cost-effectively enable the reliable delivery of electricity to Colorado consumers and to meet renewable energy standards and clean energy targets. In constructing or expanding transmission facilities, the utility is required to use its own employees or a contractor whose employees have access to federally-approved apprenticeship program.

**Right-of-way.** The bill specifies that when a right-of-way is taken for an interstate electric transmission line, courts must evaluate public purpose in light of the transmission system as a whole, including public use and benefits occurring both within Colorado and at a regional level.

## **Assumptions**

This fiscal note assumes that applications to join OWMs, required in the bill by 2030, will occur in FY 2025-26 and FY 2026-27. Based on this timing, it is assumed that transmission utilities may begin filing with the PUC to recover costs to participate in an OWM beginning in FY 2025-26. In the event that applications to join OWMs occur in different years, the costs associated with applications and cost-recovery filings will shift accordingly.

This fiscal note also assumes that the transmission authority will begin operation in FY 2021-22, and begin financing eligible facilities in FY 2022-23. All revenue and expenditure impacts associated with transmission authority projects are therefore assumed to begin in FY 2022-23.

## **State Revenue**

Beginning in FY 2021-22, the bill may increase state revenue on an ongoing basis, as discussed below.

**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.

**Transmission facility lease payments.** The transmission authority may enter into contracts with agencies of state-owned land for transmission projects. The Department of Natural Resources (DNR) manages around 2.9 million acres of state-owned land, and may generate revenue from right-of-way lease payments. Revenue to the Colorado Parks and Wildlife would be paid to either the Wildlife Cash Fund or the Parks and Outdoor Recreation Cash Fund, which are not subject to TABOR. Revenue to the State Land Board would be paid to the Public School Income Fund and is subject to TABOR. These revenue impacts depend on actions taken by the transmission authority and cannot be estimated.

**Conservation easement tax credits.** If the transmission authority acquires a right-of-way on land that the DNR has under a conservation easement, the easement could be devalued or invalidated, possibly resulting in the loss of the state income tax credit to the property owner. This would result in an increase in state revenue from income tax. These impacts depend on actions taken by the transmission authority and cannot be estimated.

**Electric easements.** To the extent that this bill increases civil case filings regarding electric easements, Judicial Department civil case filing revenue will increase. The fiscal note assumes that there will be minimal or very limited case filings under the bill. Civil case filing fees range from \$85 to \$235 depending on amount of damages and type of court and are subject to TABOR.

## State Expenditures

Beginning in FY 2021-22, the bill increases expenditures in DORA and other state agencies on an ongoing basis. Costs are shown in Table 2 and discussed in detail below.

**Table 2**  
**Expenditures Under SB 21-072**

| <b>Cost Components</b>                            | <b>FY 2021-22</b>      | <b>FY 2022-23</b>      |
|---|------------------------|------------------------|
| <b>Department of Regulatory Agencies</b>          |                        |                        |
| Personal Services                                 | -                      | \$56,682               |
| Operating Expenses                                | -                      | \$810                  |
| Capital Outlay Costs                              | -                      | \$3,720                |
| Administrative Expenses to Transmission Authority | up to \$500,000        | up to \$500,000        |
| Centrally Appropriated Costs <sup>1</sup>         | -                      | \$64,444               |
| <b>Total</b>                                      | <b>up to \$500,000</b> | <b>up to \$625,656</b> |
| <b>Total FTE</b>                                  | <b>-</b>               | <b>0.6 FTE</b>         |

<sup>1</sup>Centrally appropriated costs are not included in the bill's appropriation.

**Public Utilities Commission.** Beginning in FY 2021-22, the bill increases expenditures and workload in the PUC. The PUC requires the following resources to fulfill the bill's requirements. Standard operating and capital outlay costs have been included for all FTE.

- **Transmission authority administration.** The bill authorizes the transmission authority to obtain an office and hire staff, with administrative expenses of up to \$500,000 annually funded through the PUC. The fiscal note assumes a cost of up to \$500,000 per year beginning in FY 2021-22, as authorized by the bill. The transmission authority is required to remit to the Fixed Utility Fund any amount it receives in excess of its actual administrative expenses plus a 15 percent reserve margin. See Technical Note.

- **Organized Wholesale Market.** Transmission utilities in Colorado are required to join an OWM by January 1, 2030, unless certain conditions are met. The PUC is authorized to participate in FERC proceedings involving the management of OWMs whose boundaries meet within Colorado, and to allow transmission utilities to recover OWM-related costs through rates or a transmission rider. The PUC requires 2.0 FTE Rate and Financial Analyst, 2.0 FTE Professional Engineers, and up to 1800 hours of legal services from the Department of Law to support the trial staff and the commission for each application from a transmission utility to join an OWM (estimated at \$700,000). Three transmission utilities, unless granted a waiver by the PUC, will be required to submit applications to the PUC to join an OWM, and this fiscal note assumes that these applications will take place in FY 2025-26 and FY 2026-27. If transmission utilities submit applications in different years, these one-time costs will be incurred in corresponding years. In addition, the PUC requires 1.0 FTE Rate Financial Analyst to assist the commission in making determinations on transmission utility cost recovery of OWM-related expenses (estimated at \$115,000). It is assumed that these costs will begin in FY 2025-26 and will be ongoing.
- **Eminent domain.** The PUC is required to determine that the transmission authority's exercise of eminent domain to acquire property or rights-of-way for projects does not involve a taking of electric utility property or materially diminish electric service reliability of the transmission system. The PUC requires 0.3 FTE Rate and Financial Analyst and 0.3 FTE Professional Engineer staff to assist the commission in these proceedings, beginning in FY 2022-23.
- **Cost recovery for investments in eligible facilities.** The bill allows electric utilities regulated by the commission to recover the capital cost of a project if the PUC has issued a Certificate of Public Convenience and Necessity (CPCN). The PUC can accommodate the processing of these CPCNs in the normal course of business. The PUC can also accommodate electric utility cost recovery proceedings in the normal course of business through Transmission Cost Adjustment riders.
- **Expedited review.** The PUC is required to issue a final decision within 180 days after application for the construction or expansion of transmission facilities. The expedited review timeframe does not require additional resources from the PUC, but may require additional legal services from the Department of Law which will be sought through the annual budget process as necessary.

**Office of the State Auditor.** The Office of the State Auditor is required, at the discretion of the legislative audit committee, to conduct performance audits of the transmission authority. These discretionary audits can be accommodated in the existing audit plan.

**Department of Natural Resources.** The bill may increase workload for the State Land Board and Colorado Parks and Wildlife (CPW). Around 2.9 million acres of state land, including state trust lands, wildlife areas, and parks, could be used for transmission facility leases. The State Land Board and the Colorado Parks and Wildlife may need to engage with the transmission authority on any projects that overlap with these state-owned lands. Additionally, if the transmission authority acquires a right-of-way on CPW-managed lands, the change in designation of use from wildlife-related or recreational purposes to commercial utility transmission could result in CPW compensating federal partners.

**Judicial Department.** Workload may increase in the Denver District court if the transmission authority's final decisions on projects are appealed. The Judicial Department will monitor the appeal filings related to the transmission authority and will request additional resources through the normal budget process if necessary. Trial courts may also incur workload increases related to the evaluation of public use and benefits when reviewing cases where right-of-way is taken for interstate electric transmission lines. This workload is anticipated to be minimal and can be accommodated in the existing court processes.

**Department of Personnel and Administration.** The Department of Personnel and Administration (DPA) oversees the state response to property damage, and liability claims and lawsuits resulting from negligence. The transmission authority's Board will be covered by the DPA's Liability Pool, and rates will be addressed through the annual budget process.

**Department of Local Affairs.** Workload may increase for the Division of Property Taxation to perform property tax valuation as necessary under the bill. This workload can be accommodated within existing resources.

**Colorado Energy Office.** Workload will increase for the Colorado Energy Office to participate on the Board of Directors for the transmission authority. The authority will cover board members expense reimbursements. This increase in workload can be accommodated within existing resources.

**Ratepayer impact.** To the extent that cost recovery for joining an OWM and investing in eligible facilities impacts electric utility rates, state agencies, as retail electricity customers, may be affected. Because future rate impacts depend on actions taken by the transmission authority and the timing of joining an OWM, the exact impact to state agencies cannot be quantified.

**School finance.** To the extent that the bill increases the local share of total program funding for school finance, the state aid requirement will decrease. This decrease is expected to be minimal.

**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 \$64,444 in FY 2022-23.

## **Local Government**

**Property tax.** This bill may increase revenue to local governments from property taxation of transmission and energy storage facilities financed by the transmission authority. Any change to property tax revenue from the levy of school finance total program mills will affect the local share of total program funding for school finance. This revenue will depend on actions taken by the transmission authority and cannot be estimated.

**Land use.** Workload and expenditures may increase for local governments to review and approve projects proposed by the transmission authority on local government-owned land. Additional maintenance costs and workload, particularly on county open spaces, may be incurred to modify open space designations or to maintain the land.

**Electric easements.** Workload may increase for local governments that are commercial broadband suppliers or broadband affiliates. Only Longmont currently provides broadband services, while Fort Collins is currently building and implementing broadband services. To date, 40 Colorado counties and nearly 100 municipalities have authorized their local government to provide telecommunications services. This fiscal note assumes that a majority of transactions under the electric easement provisions of this bill are between private or non-state entities.

### **Statutory Public Entity**

This bill creates a new statutory public entity, the Colorado Electric Transmission Authority, which will be administered by an appointed board. It is assumed that administrative costs will be paid using appropriations to the Public Utilities Commission allocated to the authority, as authorized by the bill and discussed in the State Expenditures section. The transmission authority will also receive funding from electric transmission bonds and facility user fees to cover project-specific expenses.

### **Technical Note**

**Fixed Utility Fund.** 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 the bill requires the administrative expenses of the transmission authority to be paid from the Fixed Utility Fund, in an amount not to exceed \$500,000 annually, this fiscal note assumes that there are not sufficient resources 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 transmission authority's administrative 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**

For FY 2021-22, the bill requires a General Fund appropriation of \$500,000 to the Department of Regulatory Agencies, for allocation via the PUC to the Colorado Electric Transmission Authority. See Technical Note above concerning the availability of funding in the Fixed Utilities Fund.

**State and Local Government Contacts**

Agriculture  
Governor  
Judicial  
Municipalities  
Regulatory Agencies  
Transportation

Colorado Energy Office  
Higher Education  
Law  
Natural Resources  
Revenue  
Treasury

Counties  
Information Technology  
Local Affairs  
Personnel  
State Auditor