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Final Fiscal Note

Drafting Number:
Prime Sponsors:

LLS 21-0559
Sen. Winter; Moreno
Rep. Jackson

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Bill Status: Deemed Lost
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Bill Topic:

REDUCE GREENHOUSE GASES INCREASE ENVIRONMENTAL JUSTICE

Summary of Fiscal Impact:

- State Revenue
- State Expenditure
- State Transfer
- TABOR Refund
- Local Government
- Statutory Public Entity

The bill would have directed the Air Quality Control Commission to promulgate greenhouse gas emission reduction rules and establish a fee on greenhouse gas emissions, and would have required wholesale generation and transmission electric cooperatives to file a responsible energy plan with the Public Utilities Commission. The bill would have created the environmental justice ombudsperson and advisory board within the Department of Public Health and Environment. It would have increased state revenue and expenditures on an ongoing basis.

Appropriation Summary:

The bill would have required a \$4.4 million in appropriations to multiple state agencies.

Fiscal Note Status:

The fiscal note reflects the introduced bill, as amended by the Senate Transportation and Energy committee. This bill was not enacted into law; therefore, the impacts identified in this analysis do not take effect..

**Table 1
State Fiscal Impacts Under SB 21-200**

		Budget Year FY 2021-22	Out Year FY 2022-23	Out Year FY 2023-24
Revenue	Cash Funds	-	\$5,000,000	\$5,000,000
	Total Revenue	-	\$5,000,000	\$5,000,000
Expenditures	General Fund	\$4,401,206	\$93,133	-
	Cash Funds	-	\$3,945,706	\$3,878,046
	Centrally Appropriated	\$14,954	\$16,495	
	Total Expenditures	\$4,416,160	\$4,055,334	\$3,878,046
	Total FTE	33.6 FTE	30.5 FTE	29.5 FTE
Transfers		-	-	-
TABOR Refund		-	-	-

Summary of Legislation

This bill directs the Air Quality Control Commission (AQCC) within the Department of Public Health and Environment (CDPHE) to promulgate rules related to greenhouse gas (GHG) emissions reductions and GHG emissions fees. It also requires electric utilities to submit plans to the Public Utilities Commission (PUC) that includes GHG emission reductions. Lastly, the bill creates an environmental justice ombudsperson and advisory board to promote environmental justice throughout the state. These provisions are described in more detail below.

Implementing rules. House Bill 19-1261 established Colorado’s GHG emission reduction targets to be reached by 2025, 2030, and 2050, relative to 2005 levels. This bill requires the AQCC to adopt final implementing rules by March 1, 2022, that ensure the state achieves these targets. The bill adds sector-specific detail by requiring the implementing rules to establish the GHG emissions limits shown in Table 2.

Table 2
Sector-Based GHG Emissions Limits in SB 21-200

Sector	2025 Upper Limit	2030 Upper Limit
Power Sector	21 MMT CO ₂ e	8 MMT CO ₂ e
Residential and commercial buildings and industrial processes	26 MMT CO ₂ e	20 MMT CO ₂ e
Transportation and mobile sources	23 MMT CO ₂ e	18 MMT CO ₂ e
Oil and gas exploration, production, processing, transmission, and storage	13 MMT CO ₂ e	8 MMT CO ₂ e
Remaining sources	the maximum allowable to meet 2025 target	the maximum allowable to meet 2030 target

MMT CO₂e = million metric tons of carbon dioxide equivalent

Multi-sector plan. The AQCC is directed to evaluate and determine whether a multi-sector program with an overall limit on GHG emissions would enable the state to achieve the GHG emission reduction targets. If the AQCC determines that such a program containing strategies designed to achieve reductions in harmful air pollution affecting disproportionately impacted communities would enable the state to achieve the GHG emission reduction targets, the AQCC is authorized to adopt such a multi-sector program by rule in lieu of the sector-specific limits.

Engagement. The AQCC is required to engage with disproportionately impacted communities that may be affected by a proposed rule. CDPHE is required to develop best practices to engage with disproportionately impacted communities for review by the AQCC no later than July 1, 2021, and must provide a report of these best practices to the General Assembly by September 1, 2021.

GHG emissions fee. The bill adds greenhouse gases to the definition of regulated pollutants and directs the AQCC to establish in rule a per-ton fee on GHG emissions in an amount that is sufficient to cover the indirect and direct costs required to develop and administer GHG programs. Fee revenue will be deposited to the Stationary Sources Control Fund and can be used for outreach and engagement with disproportionately impacted communities as well as paying for the environmental justice ombudsperson and the environmental justice advisory board created in this bill.

Social cost of greenhouse gases. The bill authorizes the AQCC to consider the social cost of greenhouse gas emissions in any rule-making proceeding. If the rule-making has potential to materially affect GHG emissions, the AQCC must use the social cost of GHG emissions in economic impact and cost benefit analyses.

GHG reporting and inventory. The bill specifies that GHG reporting rules must include requirements for fuel importers and suppliers to track and report GHG emissions from the full combustion or oxidization of any significant fuel for distribution or sale in the state. It also specifies that, when reporting forecasted GHG emissions in the statewide inventory, the CDPHE must not include emissions reductions forecasted to occur because of federal, state, or local laws, regulations, policies, or programs that are not yet in place at the time of publication.

Electric utilities. The bill requires wholesale generation and transmission electric cooperatives to file a responsible energy plan with the PUC that will achieve at least an 80 percent reduction by 2030, relative to 2005, in GHG emissions caused by the provision of electricity to customers within the state, including emissions associated with imported electricity. The PUC is required to approve a plan meeting these requirements by December 31, 2022, and CDPHE is required to verify emission reductions in approved plans. These required plans have already been filed with the PUC and are currently under review; therefore no further plan filing is required as a result of this bill.

Environmental justice ombudsperson. The bill creates the position of an environmental justice ombudsperson within CDPHE, which must provide administrative support to this independent position. The executive director of CDPHE must appoint the ombudsperson no later than February 1, 2022. The ombudsperson is required to:

- collaborate with the environmental justice advisory board to promote environmental justice;
- advocate for and be a liaison to disproportionately impacted communities;
- improve outreach regarding departmental programs;
- enable participation in the decision-making process;
- accept and resolve complaints;
- remove to the extent practicable environmental burdens to disproportionately impacted communities; and
- advise other state agencies in engaging with disproportionately impacted communities.

Environmental justice advisory board. The bill creates the Environmental Justice Advisory Board in CDPHE serve in an advisory capacity to the ombudsperson. The nine-member board will be appointed by the executive director and leadership of the General Assembly and must represent the geographic, racial, and ethnic diversity of the state and have experience with environmental issues. Advisory board members are authorized to receive reimbursement for actual and necessary expenses. The advisory board is repealed effective September 1, 2027 following a sunset review.

State Revenue

Beginning in FY 2022-23, this bill is anticipated to increase fee revenue by an estimated \$5.0 million per year from the newly created GHG emission fee to the Stationary Sources Control Fund in the CDPHE. This fiscal note assumes that the fee will be set at a level sufficient to cover the costs for CDPHE to implement this bill beginning in FY 2022-23. Because of the large number of variables that will contribute to the costs per emissions source, specific fees are not estimated in the fiscal note. Actual fees will be set administratively by CDPHE based on cash fund balance, estimated program costs, and the estimated number of sources subject to the fee. This revenue is subject to TABOR.

State Expenditures

The bill increases state expenditures by \$4.4 million and 33.6 FTE in FY 2021-22, \$4.1 million and 30.5 FTE in FY 2022-23, and \$3.9 million and 29.5 FTE in FY 2023-24 for multiple state agencies. Expenditures for all agencies will be paid from the General Fund in FY 2021-22; expenditures for CDPHE will be paid from the Stationary Sources Control Fund in FY 2022-23 and thereafter; expenditures for the Colorado Energy Office will be paid from the General Fund in FY 2022-23. These expenditures are shown in Table 3 and discussed below.

**Table 3
Expenditures Under SB 21-200**

Cost Components	FY 2021-22	FY 2022-23	FY 2023-24
Department of Public Health and Environment			
<i>GHG rulemaking and fees</i>			
Personal Services	\$2,035,500	\$1,326,539	\$1,326,539
Operating Expenses	\$32,400	\$21,330	\$21,330
Capital Outlay Costs	\$148,800	-	-
Technology Costs	\$252,948	\$47,955	\$17,905
Legal Services	\$106,340	\$106,340	\$106,340
Employee benefits and indirect costs	\$420,892	\$585,969	\$579,809
FTE – Personal Services	22.0 FTE	15.8 FTE	15.8 FTE
FTE – Legal Services	0.6 FTE	0.6 FTE	0.6 FTE
GHG Subtotal	\$2,996,880	\$2,088,133	\$2,051,923
<i>Environmental justice</i>			
Personal Services	\$439,810	\$653,779	\$653,779
Operating Expenses	\$7,695	\$10,665	\$10,665
Capital Outlay Costs	\$37,200	\$18,600	-
Meeting costs including travel	\$221,172	\$221,172	\$213,672
Communication Materials	\$33,750	\$33,750	\$33,750
Legal Services	\$212,680	\$212,680	\$212,680
Employee benefits and indirect costs	\$93,794	\$374,037	\$368,686
FTE – Personal Services	5.4 FTE	7.9 FTE	7.9 FTE
FTE – Legal Services	1.1 FTE	1.1 FTE	1.1 FTE
EJ Subtotal	\$1,046,101	\$1,524,683	\$1,493,232

**Table 3
Expenditures Under SB 21-200 (Cont.)**

Cost Components	FY 2021-22	FY 2022-23	FY 2023-24
Administrative			
Personal Services	\$187,145	\$220,166	\$220,166
Operating Expenses	\$4,995	\$5,535	\$5,535
Capital Outlay Costs	\$24,800	-	-
Employee benefits and indirect costs	\$52,933	\$107,189	\$107,189
FTE – Personal Services	3.6 FTE	4.1 FTE	4.1 FTE
Administrative Subtotal	\$269,873	\$332,890	\$332,890
CDPHE Subtotal	\$4,312,854	\$3,945,706	\$3,878,046
Colorado Energy Office			
Personal Services	\$65,801	\$71,783	-
Operating Expenses	\$1,350	\$1,350	-
Capital Outlay Costs	\$1,200	-	-
Meeting costs including travel	\$5,000	\$5,000	-
Communication materials	\$15,000	\$15,000	-
Employee benefits and indirect costs	\$14,954	\$16,495	-
FTE – Personal Services	0.9 FTE	1.0 FTE	-
CEO Subtotal	\$103,305	\$109,628	-
Total	\$4,416,159	\$4,055,334	\$3,878,045
Total FTE	33.6 FTE	30.5 FTE	29.5 FTE

Department of Public Health and Environment. The CDPHE requires the following resources to fulfill the bill’s requirements. Standard operating and capital outlay costs have been included for all FTE, and account for the General Fund pay date shift. Because the bill requires more than 20 FTE, fiscal note policy requires that employee benefits and indirect costs be included in the appropriation.

CDPHE GHG rulemaking and fees. These components of the bill require 22.0 FTE, technology-related costs, and legal services in FY 2021-22, and 15.8 FTE on-going staff to implement the rules once in place. These costs are explained below.

- **GHG rulemaking.** The CDPHE will require one-time staffing resources in FY 2021-22 of 15.5 FTE to implement the rule-making required to occur by March 1, 2022, and to provide an evaluation of multi-sector programs to support the rulemaking. This includes rule-making to establish the sector-based GHG limits, GHG emission fees, and emission rates for renewable energy generation not associated with a renewable energy credit. Once in place, the CDPHE will require 6.0 FTE to support implementation of the GHG emissions limits rules, including coordination and education, and developing and refining procedures across the various emissions sectors. The rulemaking will require additional enforcement staff once the rules are fully in place and enforceable beginning in FY 2024-25; because the scope of enforcement cannot yet be known, the fiscal note assumes that CDPHE will request resources for enforcement through the annual budget process.

- **GHG fee implementation.** Concurrent with the GHG fee rulemaking, the CDPHE requires 4.0 FTE in FY 2021-22 and 6.0 FTE in 2022-23 and ongoing to develop systems to facilitate reporting and annual billing for GHG emission fees. In addition to staffing, the CDPHE will require technology upgrades and programming to capture GHG data to facilitate annual billing. Funding for technology costs, as shown in Table 3, is reappropriated to the Office of Information Technology, except for \$12,358 in the first year that will be used by CDPHE for staff to oversee application development.
- **GHG reporting.** CDPHE will require 1.5 FTE beginning FY 2021-22 to update the GHG reporting requirements for fuel importers and suppliers as specified in the bill, and to update the GHG inventory projections based solely on laws, regulations, and policies already in place.
- **Review energy plans.** The CDPHE requires 0.3 FTE beginning in FY 2021-22 and ongoing to review responsible energy plans and clean energy plans to incorporate reductions into current rules.
- **Disproportionately impacted communities.** The CDPHE requires 0.9 FTE to support the identification of disproportionately impacted communities and to develop best practices for engagement. Staff will also provide a report on the established best practices to the General Assembly by September 1, 2021. Staff resources will decline to 0.2 FTE on an ongoing basis beginning in in FY 2022-23.

CDPHE environmental justice. These components of the bill require 5.4 FTE in FY 2021-22 and 7.9 FTE in subsequent years continuing on an ongoing basis. These costs are discussed below.

- **Ombudsperson.** The CDPHE will require 1.0 FTE to fill the ombudsperson position and 2.0 FTE support staff beginning February 2022. Staff will provide support facilitating meetings, processing complaints, and providing interpretation and translation services. Contractor services may be utilized for additional interpreter services when needed. The CDPHE will also require 0.1 FTE Human Resources Specialist beginning in February 2022, increasing to 0.5 FTE in FY 2022-23, to review complaints that involve state personnel. This is consistent with other practices, such as complaints submitted through the Department's Fraud Abuse Hotline.

The CDPHE will also incur travel and other community engagement-related costs associated with the ombudsperson. Travel costs include overnight stays and meal per diems, amounting to approximately \$39,000 per year. Facility rental, child care services, and interpreter and translation services are estimated at around \$142,000 per year for the 45 anticipated larger community events (25 percent of total community engagements per year). To support the diverse communication methods required by the bill, the CDPHE will also produce printed communications materials in the form of postcards, flyers, and newsletters. Publication and distribution costs are estimated at \$33,500 annually for the 45 larger community events anticipated.

- **Environmental justice advisory board.** This fiscal note assumes that the environmental justice advisory board will meet for two days quarterly at different locations in the state. Travel costs including overnight stays and meal per diems for advisory board members and an administrator amount to approximately \$25,000 per year. The CDPHE will require 1.0 FTE to serve as the environmental justice advisory board administrator to develop the work products for consideration by the ombudsperson. An additional 0.2 FTE is required to support the quarterly meetings.

This fiscal note estimates that the advisory board will regularly seek information and technical assistance from the CDPHE's environmental health and protection divisions in the study and research of environmental effects on disproportionately impacted communities, requiring 3.0 FTE Environmental Protection Specialists.

CDPHE Administrative and legal support. Because of the number of increased FTE, the CDPHE requires additional administrative support services, including accounting, human resources, and general administrative support. This is estimated as an additional 3.7 FTE across various administrative support roles beginning in FY 2021-22. In addition, the CDPHE will require additional, on-going legal support for implementing and enforcing the GHG-related rules. It is anticipated that the ombudsperson and environmental justice advisory board will also require legal support during the course of its work and during the quarterly meetings. In total, an estimated 3,000 hours of legal services from the Department of Law and 1.7 FTE are required on an annual basis.

Colorado Energy Office. The Colorado Energy Office requires 1.0 FTE to participate in rulemaking proceedings and stakeholder processes related to these proceedings, in addition to meeting and communication-related costs. This is prorated to 0.9 FTE for FY 2021-22 to account for the General Fund pay date shift.

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 for the Colorado Energy Office, are estimated to be \$14,954 in FY 2021 22 and \$16,495 in FY 2022-23.

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.

Effective Date

The bill was deemed lost in the Senate on June 7, 2021.

State Appropriations

In FY 2021-22, the bill would have required the following General Fund appropriations:

- \$4,312,854 and 31.0 FTE to the Department of Public Health and Environment, of which \$240,590 is reappropriated to the Office of Information Technology, and \$319,020 and 1.7 FTE is reappropriated to the Department of Law;
- \$88,351 and 0.9 FTE to the Colorado Energy Office.

State and Local Government Contacts

Information Technology
Public Health and Environment

Law
Regulatory Agencies