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Final Fiscal Note

Drafting Number: LLS 23-0789 Date: June 29, 2023
Prime Sponsors: Sen. Priola; Hansen Bill Status: Signed into Law
Rep. McCormick; Dickson Fiscal Analyst: Erin Reynolds | 303-866-4146
erin.reynolds@coleg.gov

Bill Topic: ENERGY & CARBON MANAGEMENT REGULATION IN COLORADO

- Summary of Fiscal Impact:
[X] State Revenue [] TABOR Refund
[X] State Expenditure [X] Local Government
[] State Transfer [] Statutory Public Entity

The bill renames the Colorado Oil and Gas Conservation Commission as the Energy and Carbon Management Commission and expands the commission's regulatory authority to include emerging energy generation and storage technologies, specifically deep geothermal and underground gas storage. It increases state revenue and state and local expenditures on an ongoing basis.

Appropriation Summary: For FY 2023-24, the bill requires and includes an appropriation of \$1.2 million to the Department of Natural Resources.

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

Table 1
State Fiscal Impacts Under SB 23-285

Table with 4 columns: Category, Budget Year FY 2023-24, Out Year FY 2024-25, and values for Revenue, Expenditures, Transfers, and Other Budget Impacts.

Summary of Legislation

This bill changes the name of the Colorado Oil and Gas Conservation Commission in the Department of Natural Resources (DNR) to the Energy and Carbon Management Commission, effective July 1, 2023, and expands the commission's regulatory authority to include the regulation of energy and carbon management areas beyond oil and gas to include emerging energy generation and storage technologies—specifically deep geothermal and underground gas storage. The bill also changes the name of the commission's cash fund accordingly and allows the commission to use the fund for the purposes of administering the expanded regulatory areas. Additional detail on these provisions is provided below.

Geothermal wells. Under current law, much of Colorado's current geothermal development, which is generally shallow geothermal wells, is regulated by the Division of Water Resources (DWR) in DNR. The bill gives the DWR exclusive authority to regulate shallow geothermal operation, and the commission exclusive authority to regulate deep geothermal operations, and clarifies jurisdiction, property rights, permitting authority and requirements, fees, and scope of geothermal management districts. As necessary, the DWR and commission shall establish interagency agreements or other mechanisms to address the timely transfer of authority, duties, and other obligations.

Underground natural gas storage. The commission has exclusive authority to regulate any intrastate facility that stores natural gas in an underground facility that is not a pipeline facility subject to regulation by the Public Utilities Commission (PUC). Any rules adopted by the commission must be at least as stringent as federal requirements. The commission may enter into federal agreements to accommodate the oversight of natural gas storage facilities.

Local government and community impacts. Local governments are authorized to exercise siting authority concurrently with the commission. The commission must consider and protect disproportionately impacted communities when siting.

Required reports. The commission must conduct four studies, prepare reports summarizing the findings of the studies, and submit the reports to the General Assembly, as follows:

- a technical study of the state's geothermal resources;
- a study, in collaboration with the state engineer, that evaluates the state's regulatory structure for geothermal resources and whether any changes to law or rules are necessary;
- a study concerning the regulation and permitting of hydrogen; and
- a study, in coordination with the PUC examining the siting and regulation of intrastate pipelines.

Property rights. Current law states that the property right to geothermal resources that lack sufficient fluid to transport commercial amounts of energy to the surface is an incident of ownership of the overlying surface unless expressly severed. Under the bill, for property rights acquired on or after July 1, 2023, the property right to a geothermal resource associated with non-tributary groundwater is also an incident of ownership of the overlying surface unless expressly severed. Further, geothermal resources associated with non-tributary groundwater cannot be transferred separately from the non-tributary groundwater.

Website. The commission must create and maintain a website that serves as the state portal for information and data regarding the commissions regulatory activities.

State Revenue

The bill increases state cash fund revenue from fees by an indeterminate amount. The bill allows for the creation, through rule, of the following new fees to be credited to the Energy and Carbon Management Cash Fund:

- shallow geothermal permit fee (DWR);
- deep geothermal permit fee (commission); and
- intrastate underground natural gas storage regulatory and permitting fee (commission).

Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. These fees will be established through rulemaking and set at levels expected to recoup costs of the respective regulatory programs, based on each program's administrative structure and estimates of the number of permit applications.

State Expenditures

The bill increases state expenditures in the DNR by about \$1.3 million in FY 2023-24, \$1.0 million in FY 2024-25, and lesser amounts in future fiscal years, paid from the Energy and Carbon Management Cash Fund. Expenditures are shown in Table 2 and detailed below.

Table 2
Expenditures Under SB 23-285

	FY 2023-24	FY 2024-25
Department of Natural Resources		
Personal Services	\$702,717	\$704,966
Operating Expenses	\$9,450	\$10,125
Capital Outlay Costs	\$46,690	-
Geothermal Study	\$175,000	-
Website Portal	\$100,000	-
Public Outreach	\$50,000	\$50,000
Rebranding Materials	\$25,000	-
Legal Services	\$84,592	\$50,755
Contracted Hydrogeologist	\$7,031	\$7,031
Centrally Appropriated Costs ¹	\$142,969	\$148,680
FTE – Personal Services	7.0 FTE	7.5 FTE
FTE – Legal Services	0.4 FTE	0.3 FTE
Total	\$1,343,449	\$971,557
Total FTE	7.4 FTE	7.8 FTE

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

Energy and Carbon Management Commission—DNR

The first two years of commission costs include resources to hire technical experts; conduct four studies; perform rulemaking, community outreach and engagement, and agency coordination; create databases and forms; and to rebrand the commission. The fiscal note assumes that stakeholder engagement and rulemaking will require 1.5 to 2 years to complete. Future-year staffing needs are assumed to be less, but are contingent upon commission rulemaking and will be addressed through the annual budget process.

Term-limited staff. The commission will conduct the hydrogen and pipeline studies with two term-limited staff (2.0 Physical Scientist Research Specialist II for 12 months and 18 months, respectively) who will perform research, evaluate technical information, engage with stakeholders, and publish the studies.

Permanent staff. The following positions represent ongoing staff needs for the commission.

- **Hearings staff.** The commission requires 1.0 FTE hearing officer to assist with stakeholder engagement, internal coordination for the rulemaking, and overseeing the rulemaking hearings. On an ongoing basis, the officer will support hearings to update rules for emerging energy technology, and related permit processes, enforcement and compliance, and dispute resolution.
- **Engineering staff.** The commission requires 3.0 FTE engineers, including 1.0 FTE supervisor to oversee the development and integration of the geothermal and underground gas storage programs within the agency, and 2.0 FTE technical leads in each area.
- **Environmental staff.** The commission requires 0.5 FTE environmental specialist to develop environmental rules related to geothermal and gas storage projects and to support the studies. On an ongoing basis, the role will provide environmental oversight of projects.
- **Planning and permitting staff.** The commission requires 0.5 FTE senior permitter to support the stakeholder and rulemaking process, and to provide permit review and coordination. It is assumed that the commission will receive between three and five permits for deep geothermal projects in the first program year (FY 2024-25).
- **Data analyst staff.** The commission requires 2.0 FTE data analysts to create and maintain forms and data intake and management tools.

Geothermal study. The commission will contract for the technical geothermal study at an estimated cost of \$175,000, based on a similar study conducted for the State of Wyoming. The regulatory geothermal study is expected to be accomplished by new commission staff.

Website portal. The commission's website requires upgrades and data integration in order to serve as the state portal for information regarding the regulation of geothermal and underground natural gas storage in addition to oil and gas. Costs are estimated at \$100,000 in FY 2023-24 only. If further resources are required, the commission will seek additional resources through the annual budget process.

Public outreach. Public outreach efforts assume contract support at approximately \$50,000 per year for two years. Outreach costs take into consideration the bill's directive to prioritize protection of disproportionately impacted communities.

Rebranding. Rebranding costs assume contract support at \$25,000 in FY 2023-24 only to rebrand all commission digital and physical materials.

Legal services. Legal services assume 800 hours (0.4 FTE) in FY 2023-24 and 460 hours (0.3 FTE) in FY 2024-25 and ongoing to support the work of the commission. Legal services are provided by the Department of Law at 105.74 per hour.

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.

Division of Water Resources—DNR

Apart from a two-year contract hydrogeologist at \$7,031 to support the rulemaking and geothermal study, because DWR is already involved in geothermal regulation, it is assumed that workload related to the coordination activities required by the bill can be absorbed, including the development of an interagency agreement and a study that would evaluate the geothermal regulatory structure.

Public Utilities Commission—DORA

The PUC will have a workload increase to participate in the pipeline study. No change in appropriations is required.

Department of Local Affairs

The Division of Local Government may have increased training and technical assistance requests from local governments concerning local regulatory authority of geothermal resources operations and underground natural gas storage facilities. No change in appropriations is required.

Local Government

Local governments will have workload and potential cost increases related to reviewing energy siting and permitting applications. Rural counties with limited staff may experience these impacts more acutely. However, since the bill largely retains the current process, any impact is expected to be minimal.

Effective Date

The bill was signed into law by the Governor on May 22, 2023, and takes effect July 1, 2023.

State Appropriations

For FY 2023-24, the bill requires and includes an appropriation of \$1,200,480 from the newly renamed Energy and Carbon Management Cash Fund to the newly renamed Energy and Carbon Management Commission within the Department of Natural Resources, and 7.0 FTE. Of this amount, \$84,592 is reappropriated to the Department of Law with 0.4 FTE, and \$7,031 is reappropriated to the Division of Water Resources.

State and Local Government Contacts

Agriculture	Colorado Energy Office	Counties
County Assessors	Information Technology	Law
Local Affairs	Municipalities	Natural Resources
Public Health and Environment	Regulatory Agencies	Revenue