SB 23-291

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Final Fiscal Note

Drafting Number:	LLS 23-0876	**Date:**	August 22, 2023
Prime Sponsors:	Sen. Fenberg; Cutter Rep. deGruy Kennedy; Martinez	**Bill Status:**	Signed into Law
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Bill Topic: **UTILITY REGULATION**

Summary of Fiscal Impact:

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

The bill updates transparency, rulemaking, and rate filing requirements for certain electric and gas utilities. It increases state and local revenue and expenditures beginning in FY 2023-24.

Appropriation Summary: For FY 2023-24, the bill requires and includes appropriations of $1.7 million to multiple state agencies. See State Appropriations section.

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

Table 1
State Fiscal Impacts Under SB 23-291

		Budget Year FY 2023-24	Out Year FY 2024-25
Revenue	Cash Funds	$1,465,737	$1,236,767
	Total Revenue	**$1,465,737**	**$1,236,767**
Expenditures	Cash Funds	$1,347,554	$1,172,098
	Federal Funds	$342,749	-
	Centrally Appropriated	$118,183	$121,669
	Total Expenditures	**$1,808,486**	**$1,293,767**
	Total FTE	**10.4 FTE**	**9.0 FTE**
Transfers		-	-
Other Budget Impacts	TABOR Refund	$1,465,737	$1,236,767

Summary of Legislation

The bill makes a number of changes to how utilities set rates and recover costs from consumers. It also commissions two studies and directs the Public Utilities Commission (PUC) in the Department of Regulatory Agencies (DORA) to adopt rules, as described below

Rate filings. The PUC must establish rules to limit the amount of rate case expenses that an investor-owned or gas utility may recover from ratepayers. This may include incentives to limit expenses, limiting the types of expenses may be recovered, requiring additional documentation during rate filings, or requiring a conference with intervening parties to analyze the utility's assumptions supporting a rate case filing. The PUC must certify that an investor-owned utility's application to modify base rates is complete.

Utilities must submit a rate trend report showing the previous ten years of rate changes when filing a request to increase rates. Utilities must also keep the rate trend report data updated on their websites.

When a utility files a gas cost adjusting filing or an electric commodity adjustment filing, it must provide copies of all confidential materials to the PUC and the Office of the Utility Consumer Advocate (UCA).

Cost recovery limitations and study. The bill limits certain costs that utilities may recover from ratepayers, including:

- half of annual compensation for the board of directors;
- tax penalties or fines issued against the utility;
- investor-related expenses;
- certain advertising expenditures; and
- lobbying or political contributions.

The PUC must commission a study on existing investor-owned electric utility tariffs and interconnection policies by March 15, 2024. The PUC must post the results on its website.

Natural gas infrastructure, rulemaking, and study. Investor-owned gas utilities must file a gas price risk management plan with the PUC by November 1, 2023. The plan must include proposals for reducing the volatility of fuel costs that are recovered pursuant to an annual gas cost adjustment filing and a maximum per-month fuel cost. When submitting a gas infrastructure plan, utilities must include additional information on system pipes.

The PUC must establish by rule mechanisms to align the financial incentives of investor-owned gas utilities with customers regarding fuel costs, including a mechanism to incentivize electricity production cost efficiency by January 1, 2025.

The bill prohibits gas utilities from offering incentives to property owners for establishing new gas service. Subject to rules adopted by the PUC, gas utilities may not charge a customer a fee or penalty for terminating gas service.

The PUC must investigate how residential development drive natural gas infrastructure costs and the impacts on nonparticipating, income-qualified customers. The investigation must include a hearing for public comment to determine whether alternative cost-recovery mechanisms are appropriate.

The Colorado Energy Office (CEO) must commission a study with an independent third party to evaluate the risk of stranded or underutilized natural gas infrastructure and its impact on ratepayers by July 1, 2024. CEO must submit the results to the PUC, which must consider updating rules or depreciation schedules as determined by the study.

State Revenue

Fixed Utility Fund. The bill increases state cash fund revenue to the Fixed Utility Fund (FUF) by about $1.5 million in FY 2023-24 and $1.3 million in FY 2024-25 and subsequent fiscal years. Administrative costs incurred by the PUC and the UCA are paid from the FUF, which receives an annual assessment on the state's regulated utilities. Whenever additional expenses are incurred against the fund, the assessment must be raised to increase revenue to cover these expenses. This revenue is subject to TABOR.

Penalties. To the extent that utilities improperly recover costs of political or advertising activities from consumers, state revenue increases from penalties assessed by the PUC. This revenue is subject to TABOR.

State Expenditures

The bill increases state expenditures in DORA by $1.5 million in FY 2023-24 and $1.3 million in FY 2024-25 and subsequent years, paid from the Fixed Utility Fund. It also increases expenditures in CEO by $0.3 million in FY 2023-24, paid from federal funds. Expenditures are shown in Table 2 and detailed below.

Table 2
Expenditures Under SB 23-291

	FY 2023-24	FY 2024-25
Department of Regulatory Agencies		
Personal Services	$579,289	$593,002
Operating Expenses	$7,830	$8,100
Capital Outlay Costs	$46,690	-
Legal Services	$713,745	$570,996
Centrally Appropriated Costs[1]	$118,183	$121,669
FTE – Personal Services	5.8 FTE	6.0 FTE
FTE – Legal Services	3.8 FTE	3.0 FTE
DORA Subtotal	**$1,465,737**	**$1,293,767**

Table 2
Expenditures Under SB 23-291 (Cont.)

Colorado Energy Office			
Study		$200,000	-
Legal Services		$142,749	-
FTE – Legal Services		0.8 FTE	-
CEO Subtotal		**$342,749**	**-**
	Total	**$1,808,486**	**$1,293,767**
	Total FTE	**10.4 FTE**	**9.0 FTE**

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

Department of Regulatory Agencies

Public Utilities Commission. The bill increases PUC expenditures during rate filings, to conduct the study, and to adopt rules beginning in FY 2023-24.

- **Staff.** Workload increases to conduct rulemaking, review additional documents during rate filings, and to solicit and execute the contract for the required study. This requires an estimated 4.0 FTE in FY 2023-24, decreasing to 3.0 FTE in subsequent years. Standard operating and capital outlay costs are included, and costs in FY 2023-24 are prorated for the bill's effective date.

- **Legal services.** The PUC requires 6,750 hours (3.8 FTE) of legal services in FY 2023-24, decreasing to 5,400 hours (3.0 FTE) in subsequent years, provided by the Department of Law for rulemaking, legal analysis, and support during hearings. Legal services are provided by the Department of Law at a rate of $105.74 per hour.

- **Study.** Workload increases to conduct the study on stranded natural gas infrastructure. This can be accomplished within existing appropriations.

Office of the Utility Consumer Advocate. The Office of the Utility Consumer Advocate requires 3.0 FTE to review additional materials during filings and respond to inquiries from consumers. Standard operating and capital outlay costs are included.

Colorado Energy Office

Expenditures increase to conduct the required study and to participate in PUC hearings beginning in FY 2023-24.

- **Study.** The office requires a consultant to conduct the study on gas infrastructure, estimated at $200,000 in FY 2023-24. Associated workload to solicit and monitor the contract, review the findings, and submit the results to the PUC can be accomplished within existing appropriations.

- **Legal services.** CEO requires 1,350 hours of legal services to represent it in PUC proceedings in FY 2023-24. CEO requires an estimated 100 hours of legal services in subsequent years, which can be accomplished within existing appropriations.

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.

Other Budget Impacts

TABOR refunds. The bill is expected to increase the amount of state revenue required to be refunded to taxpayers by the amounts shown in the State Revenue section above. This estimate assumes the March 2023 LCS revenue forecast. A forecast of state revenue subject to TABOR is not available beyond FY 2024-25. Because TABOR refunds are paid from the General Fund, increased cash fund revenue will reduce the amount of General Fund available to spend or save.

General Fund reserve. Under current law, an amount equal to 15 percent of General Fund appropriations must be set aside in the General Fund statutory reserve. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve by the amounts shown in Table 1, decreasing the amount of General Fund available for other purposes.

Local Government

The bill impacts revenue and expenditures in municipal utilities. Workload will increase to provide additional documentation during rate filings, and revenue may decrease to the extent that utilities were engaging in cost recovery that is prohibited by the bill.

Effective Date

The bill was signed into law by the Governor on May 11, 2023, and it took effect on August 7, 2023, and applies to conduct occurring on or after this date.

State Appropriations

For FY 2023-24, the bill requires and includes an appropriation of $1,347,554 from the Fixed Utility Fund to the Department of Regulatory Agencies, and 5.8 FTE, as follows:

- $1,052,763 and 3.3 FTE to the Public Utilities Commission, of which $713,745 is reappropriated to the Department of Law with an additional 3.8 FTE; and
- $294,791 and 2.5 FTE to the Office of the Utility Consumer Advocate.

As the Colorado Energy Office can use federal funds, no appropriation is required. The following informational appropriation may be added for tracking purposes. For FY 2023-24, the bill requires an appropriation of $342,749 from federal funds received through the Inflation Reduction Act to the Colorado Energy Office. Of this, $142,749 is reappropriated to the Department of Law, with 0.8 FTE.

State and Local Government Contacts

Colorado Energy Office	Law	Regulatory Agencies