SB 19-236

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

FINAL FISCAL NOTE

Drafting Number:	LLS 19-0353	**Date:**	October 23, 2019
Prime Sponsors:	Sen. Garcia; Fenberg Rep. Hansen; Becker	**Bill Status:**	Signed into Law
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Bill Topic: SUNSET PUBLIC UTILITIES COMMISSION

Summary of Fiscal Impact:

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

Sunset bill. Senate Bill 19-236 continues the Public Utilities Commission (PUC) in the Department of Regulatory Agencies through September 1, 2026; implements several recommendations from the sunset review; and makes changes to state energy policy. State fiscal impacts include both new revenue and expenditure increases from changes required by the bill, as well as the continuation of the PUC's current revenue and expenditures.

Appropriation Summary: For FY 2019-20, the bill requires and includes an appropriation of $1.1 million to multiple agencies.

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

Table 1
State Fiscal Impacts Under SB 19-236*

New Impacts		**FY 2019-20**	**FY 2020-21**
Revenue	Cash Funds	$1,009,839	$869,542
	Total	**$1,009,839**	**$869,542**
Expenditures	General Fund	$163,820	$168,279
	Cash Funds	$1,009,839	$869,542
	Centrally Appropriated	$196,691	$200,201
	Total	**$1,370,350**	**$1,238,022**
	FTE	**11.8 FTE**	**11.5 FTE**
Continuing Program Impacts		**FY 2019-20**	**FY 2020-21**
Revenue	Cash Funds	-	**$18,560,768**
Expenditures	Cash Funds	-	**$18,560,768**
	FTE	-	**91.3 FTE**

* *Table 1 shows the new impacts resulting from changes to the program under the bill and the continuing impacts from extending the program beyond its current repeal date.*

Summary of Legislation

This bill continues the Public Utilities Commission (PUC) in the Department of Regulatory Agencies (DORA) through September 1, 2026, and implements several recommendations from the sunset review. The bill also makes changes to state energy policy. These provisions are discussed below.

Sunset review recommendations. The 2018 PUC sunset review primarily recommended technical and administrative changes to facilitate the operation of the PUC; however, it also recommended that the PUC regulate vehicle booting companies.

- ***Vehicle booting companies.*** Effective January 1, 2020, the bill requires the PUC to regulate vehicle booting companies through the issuance of permits and enforcement mechanisms including inspections, civil penalties, and permit revocations. The bill also creates the Vehicle Booting Cash Fund for the purposes of administering the regulation of these companies, which is continuously appropriated to the PUC.

The remaining technical and administrative changes from the sunset review included in this bill are:

- authorizing the PUC to promulgate rules to delegate routine, administrative transportation matters to staff;
- allowing utilities to use alternate forms of communication to notify customers of rate changes and requiring rate changes to be posted on a utility's website;
- transferring the administration of the Legal Services Offset Fund from the Department of Law to DORA;
- making technical changes regarding criminal background checks for regulated carriers;
- cleaning up obsolete telecommunications laws;
- repealing the requirement that an electric utility purchase a certain amount of energy from community solar gardens effective in 2043, when related contracts are expected to have expired;
- repealing a requirement that the PUC, in considering an electric utility's proposal for generation acquisition, give consideration to proposals related to integrated gasification combined cycle generation facilities, and relocating definitions; and
- clarifying that the PUC may impose a civil penalty for a violation of railroad crossing safety regulations.

Clean energy plans. The bill supplements existing state renewable energy standard laws by establishing targets for the reduction of carbon dioxide emissions from electricity generation by utilities serving more than 500,000 customers (currently only the Public Service Company of Colorado dba Xcel Energy meets this criteria). Other electric utilities may opt into submitting clean energy plans. Targets are an 80 percent reduction in carbon dioxide emission levels compared to 2005 levels by 2030 and a goal of a 100 percent reduction in carbon dioxide emission levels by 2050. Xcel Energy is directed to submit a clean energy plan to the PUC as part of its next electric resource plan (ERP) process taking place after January 1, 2020, using a resource acquisition period that extends through 2030.

The Department of Public Health and Environment (CDPHE) is required to verify a utility's projected carbon dioxide emission reductions. The PUC may not approve a plan unless certain criteria are met and no plan is effective until approved by the PUC. If the clean energy plan includes accelerated retirement of any existing generating facilities, it must include workforce transition and community assistance plans for impacted workers and a plan to pay community assistance to any local government or school district. The bill also sets a limit on rate impacts and requires the PUC to conduct a final reconciliation of the clean energy plan's revenue rider. Organizations representing affected communities within the filing utility's service territory have standing in clean energy plan proceedings. Utilities that receive approval for a clean energy plan are required to report to the Governor, the General Assembly, the PUC, and the Air Quality Control Commission in the CDPHE.

Labor-related issues. The PUC must require utilities to obtain and provide certain information related to best value employment metrics in any new resource acquisition proceeding. Any utility that proposes an accelerated retirement of an electric generating facility must include a workforce transition plan as part of its ERP filing.

Distribution system planning. The bill requires the PUC to promulgate rules to require investor-owned utilities to file electric distribution system plans outlining the utility's anticipated distribution system investments. The bill specifies considerations to be made by the PUC in adopting these rules.

Wholesale electric cooperative electric resource planning. The bill requires the PUC to promulgate rules to require wholesale electric cooperatives (currently only the Tri-State Generation and Transmission Association meets this criteria) to submit an ERP filing. The bill specifies factors that must be considered by the PUC in adopting these rules.

Customer-sited energy generation. The bill allows retail electric utility customers to generate, consume, store, and export electricity produced from certain energy resources to the electric grid, subject to reliability standards, interconnection rules, and procedures determined by the PUC.

Performance-based incentive and metric tracking investigation. The bill requires the PUC to conduct an investigation of financial performance-based incentives and performance-based metric tracking to identify mechanisms that may align utility operations, expenditures, and investments with public benefit goals through an investigatory proceeding, and requires the PUC to report to the energy committees of the General Assembly by the end of 2020 on its findings.

Rate relief. The bill requires the PUC to open a nonadjudicatory proceeding to conduct a survey of public utility wholesale and retail rates and consider recommendations that would result in rate relief in certificated utility territories with retail rates materially greater than the state average and report on results to the energy committees of the General Assembly by February 1, 2021.

Energy grid cost-benefit analysis. The PUC is directed to open an investigatory proceeding to evaluate the costs and benefits associated with regional transmission organizations, energy imbalance markets, joint tariffs, and power pools. The bill includes timelines for the PUC to open the proceeding (by January 1, 2020), accept public comment (by July 1, 2021), issue a decision (by December 1, 2021), and, if it is determined that participation in one of these systems is in the public interest, direct electric utilities to pursue participation (by July 1, 2022).

Cost of pollution in utility planning. The PUC must require electric utilities subject to its jurisdiction to consider the social cost of carbon dioxide using the most recent assessment tool developed by the federal government in certain proceedings, as outlined in the bill.

Energy impact bonds. This bill allows an electric utility to apply to the PUC for approval of a financing order to issue securitized utility ratepayer-backed bonds when retiring an electric generating facility. If approved by the PUC, bonds are to be used by the utility to purchase, build, or invest in electric generating resources or electricity storage, and repaid through a distinct charge on ratepayers.

The PUC is required to use its regular process for consideration of financing order applications and must engage outside consultants and counsel experienced in securitized, investor-owned electric utility ratepayer-backed bond financing to assist with the process. Consultant costs incurred during the application, hearing, and approval process are to be included as bond financing costs and are not an obligation of the state. If the utility's application is denied or withdrawn, the utility must pay these costs instead.

Background and Assumptions

PUC funding. The Fixed Utilities Fund, the Telecommunications Utilities Fund, and the Motor Carriers Cash Fund pay for PUC operating expenses. Revenue to the Fixed Utilities Fund and the Telecommunications Utilities Funds comes from fees assessed against regulated electric, natural gas, and telecommunications utilities at a rate set annually based on the amount needed to cover applicable regulation expenditures in DORA. The rate is applied to each regulated company's gross intrastate utility operating revenues, as calculated by the Department of Revenue. The rate of Fixed Utilities Fund assessments for electric and natural gas utilities is capped at 0.25 percent of gross revenue, while the rate of Telecommunications Utilities Fund assessments for telecommunications utilities is capped at 0.20 percent of gross revenue. Historically, 3 percent of public utilities fees to the Fixed Utilities Fund were credited to the General Fund; however, this fee revenue is now diverted to the Fixed Utilities Fund for federal transportation grant matches for rail fixed guideway system safety oversight responsibilities, and then to the Highway Rail Crossing Signalization Fund. The Motor Carriers Cash Fund is supported primarily through fees on regulated motor carriers.

Electric resource plans. The fiscal note assumes that the first clean energy plan will be submitted by Xcel Energy in 2020. The ERP process includes development of a load forecast, evaluation of the utility's current resources, determination of need for additional resources, and the utility's proposed plan for acquiring the resources to meet the identified need. The process covers a 7-year resource acquisition period and a 25-year planning period, as required by PUC rules.

Continuing Program Impacts

Based on DORA's FY 2017-18 budget, the PUC is estimated to have continuing revenue and expenditures of $18,560,768 and 91.3 FTE, including $4,643,093 in centrally appropriated costs. These revenue and expenditure amounts will continue for the program starting in FY 2020-21; continuing revenue is subject to TABOR. The changes to the program that drive additional revenue and costs are discussed in the State Revenue and State Expenditures sections below.

State Revenue

As discussed in the Background and Assumptions section, the PUC's costs are paid by fees assessed on regulated entities. State cash fund revenue to the PUC will increase to cover the expenditures outlined below by approximately $1.0 million in FY 2019-20 and $869,542 in

FY 2020-21. The majority of this revenue will be to the Fixed Utilities Fund, and a portion will also go to the newly created Vehicle Booting Cash Fund. The bill may also minimally increase state General Fund revenue from civil penalties.

Fee impact. Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency.

- ***Fee increase on regulated utilities.*** The PUC will increase fees on regulated utilities to pay for the costs under the bill, credited primarily to the Fixed Utilities Fund, as discussed in the Background section above. These fee increases will be set administratively by the PUC based on cash fund balances and new program costs.

- ***New fee on vehicle booting companies.*** The PUC will assess a fee on vehicle booting companies as of January 1, 2020. Fee amounts will be set administratively by the PUC based on number of companies subject to the fee and estimated costs to regulate these companies.

Civil penalties. The bill authorizes the PUC to collect civil penalties related to railroad crossing violations and on vehicle booting companies that fail to comply with the law; civil penalties are credited to the General Fund. The fiscal note assumes that this revenue increase will be minimal.

State Expenditures

The bill will increase state expenditures in DORA and the CDPHE by $1.4 million and 11.8 FTE in FY 2019-20 and $1.2 million and 11.5 FTE in FY 2020-21. DORA's costs are paid primarily from the Fixed Utilities Fund, with the exception of costs related to the Vehicle Booting Cash Fund. CDPHE's costs are paid from the General Fund. The bill will also increase workload in the Colorado Energy Office. These costs are shown in Table 2 and discussed below.

Table 2
Expenditures Under SB 19-236

	FY 2019-20	**FY 2020-21**
Department of Regulatory Agencies		
Fixed Utilities Fund		
Personal Services	$678,604	$678,604
Operating Expenses and Capital Outlay Costs	$44,749	$7,125
Legal Services	$186,534	$93,267
Centrally Appropriated Costs*	$130,284	$130,284
FTE – Personal Services	7.5 FTE	7.5 FTE
FTE – Legal Services	1.0 FTE	0.5 FTE
Subtotal (Fixed Utilities Fund – DORA)	**$1,040,171**	**$909,280**

Table 2, cont.
Expenditures Under SB 19-236

Vehicle Booting Cash Fund		
Personal Services	$89,121	$89,121
Operating Expenses and Capital Outlay Costs	$10,831	$1,425
Centrally Appropriated Costs*	$21,162	$21,162
FTE – Personal Services	1.5 FTE	1.5 FTE
Subtotal (Vehicle Booting Cash Fund – DORA)	**$121,114**	**$111,708**
Department of Public Health and Environment (General Fund)		
Personal Services	$152,514	$166,379
Operating Expenses and Capital Outlay Costs	$11,306	$1,900
Centrally Appropriated Costs*	$45,245	$48,755
FTE – Personal Services	1.8 FTE	2.0 FTE
Subtotal (CDPHE)	**$209,065**	**$217,034**
Grand Total	**$1,370,350**	**$1,238,022**
Total FTE	**11.8 FTE**	**11.5 FTE**

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

Public Utilities Commission. The PUC requires the following resources to fulfill the bill's requirements. Standard operating and capital outlay costs have been included for all FTE.

- ***Regulation of vehicle booting businesses.*** PUC will adopt rules to establish the general requirements, permit fees, and enforcement policies for newly regulated vehicle booting businesses within the normal course of PUC business. There are an estimated five booting businesses in the City and County of Denver and two in the City of Avon. Assuming a similar complaint rate to towing and assuming approximately 10 hours of workload per complaint, it is assumed that between 500 hours and 2,080 hours of an investigator is required beginning in FY 2019-20. The fiscal note assumes the upper range, necessitating 1.0 FTE investigator, as well as 0.5 FTE consumer assistance staff. Costs will be incurred by the Vehicle Booting Cash Fund.

- ***Clean energy plans.*** The PUC will review the clean energy plans submitted by Xcel Energy as part of its existing ERP process within its normal course of business. However, with the exception of Black Hills Energy, which is also subject to ERP requirements, if a currently unregulated utility seeks voluntary participation in clean energy planning, the PUC will require approximately four additional staff per voluntary ERP process, including 2.0 FTE Professional Engineer and 2.0 FTE Rate and Financial Analysts. DORA will seek these resources through the annual budget process as necessary.

- ***Distribution system planning.*** The PUC requires 1.0 FTE Professional Engineer and 1.5 FTE Administrative Law Judge staff to conduct rulemaking and oversee initial filings of distribution system plans for Xcel Energy and Black Hills Energy, which the fiscal note assumes will take place at the end of FY 2020-21. Costs beyond FY 2020-21 have not been estimated and will be addressed through the annual budget process.

- ***Wholesale electric cooperative ERP planning.*** The PUC will require 2.0 FTE Rate and Financial Analyst and 2.0 FTE Professional Engineer staff to promulgate rules and oversee implementation of Tri-State Generation and Transmission Association filing an ERP. In addition, it is assumed that 1,800 hours of legal services are required in the first year and 900 hours per year in the second and future years related to this process.

- ***Energy grid cost-benefit analysis.*** The PUC requires 1.0 FTE Rate and Financial Analyst to manage the investigatory proceeding into regional transmission organizations, energy imbalance markets, joint tariffs, and power pools. While there is currently an exploration underway regarding the formation of a Western Regional Transmission Organization funded by the Department of Energy's state energy planning grant, the scope of the bill will likely require the PUC to hire outside consultants with expertise in market and transmission modeling, which may cost between $150,000 and $700,000. Once the proceeding better establishes the scope of work, the PUC will use the annual budget process to address this need.

- ***Energy impact bonds.*** Workload in the PUC will increase to review finance order applications, if filed. As these orders are required to be aligned with the existing ERP process, this can be accomplished within the normal course of PUC business. Outside consultants and counsel experienced in securitized investor-owned electric utility customer-backed bond financing will perform a majority of the workload related to the energy impact bond arrangement, and the cost for these consultants will be financed through the bond.

- ***Remaining impacts.*** The remainder of the bill's requirements can be accomplished within the normal course of PUC business.

Department of Public Health and Environment. The CDPHE requires 2.0 FTE Environmental Protection Specialists to develop a carbon dioxide emission measurement methodology related to the bill's clean energy plan requirements; participate in the ERP process at the PUC; and verify compliance with emissions targets under the bill. Staff costs are based on prior Air Pollution Control Division work with the Environmental Protection Agency's Clean Power Plan from 2014 to 2016, where challenges in measuring emissions in comparison to a carbon dioxide emission limit were identified. Standard expenses and capital outlay costs are included.

Colorado Energy Office. The CEO in the Office of the Governor frequently participates in the PUC process as an intervener. Workload will increase for the CEO to participate in the processes created under the bill; however, this work can be accomplished within the normal course of CEO business. Additional legal services may be required under the bill, for which the CEO will use the annual budget process as necessary.

Judicial Branch. Under the bill, a financing order for an energy impact bond is subject to judicial review. Judicial branch workload is conditional upon bond issuance and judicial review is unlikely; therefore, no tangible impact to the court system is expected under the bill.

Ratepayer impacts. Because energy impact bonds are a financing mechanism, the conditional impact to the state as a ratepayer will depend on whether a bond is issued by a utility where the state is a customer, the cost of the new generation resources relative to those of the retired facility, as well as the terms of the bonds, including principal, term, interest rates, and any financing charges.

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 $196,691 in FY 2019-20 and $200,201 in FY 2020-21.

Effective Date

The bill took effect on May 30, 2019, when it was signed into law by the Governor.

State Appropriations

For FY 2019-20, the bill includes an appropriation of $907,566 to DORA from the Fixed Utilities Fund and an allocation of 7.5 FTE. Of this amount, the Department of Law is reappropriated $186,534 and an additional allocation of 1.0 FTE. The bill requires an appropriation of $909,887 from the Fixed Utilities Fund.

For FY 2019-20, the bill also requires and includes an appropriation of $163,820 General Fund to the CDPHE and an allocation of 1.8 FTE.

No appropriation is required for activities related to the Vehicle Booting Cash Fund, which is continuously appropriated to the PUC.

State and Local Government Contacts

Colorado Energy Office	Judicial Department	Law
Public Health and Environment	Regulatory Agencies	