SB 25-280

Fiscal Note

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Nonpartisan Services for Colorado's Legislature

SB 25-280: DATA CENTER DEVELOPMENT AND GRID MODERNIZATION ACT

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Rep. Brown; Valdez

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Fiscal note status: This fiscal note reflects the introduced bill. This analysis is preliminary and will be updated following further review and any additional information received.

Summary Information

Overview. The bill creates two tax programs for data center development and electric grid modernization in the Office of Economic Development and International Trade.

Types of impacts. The bill is projected to affect the following areas on an ongoing basis:

- State Revenue
- State Expenditures
- TABOR Refunds
- Local Government
- Statutory Public Entity

Appropriations. For FY 2025-26, the bill requires an appropriation of $704,373 to multiple state agencies. See State Appropriations section.

Table 1
State Fiscal Impacts

Type of Impact[1]	Budget Year FY 2025-26	Out Year FY 2026-27	Out Year FY 2026-27
State Revenue	-$815,000	-$6,450,000	-$16,739,000
State Expenditures	$781,837	$505,640	$320,933
Transferred Funds	$0	$0	$0
Change in TABOR Refunds	-$815,000	-$6,450,000	not estimated
Change in State FTE	3.5 FTE	3.5 FTE	3.5 FTE

[1] Fund sources for these impacts are shown in the tables below

Table 1A
State Revenue

Fund Source	Budget Year FY 2025-26	Out Year FY 2026-27	Out Year FY 2026-27
General Fund	-$870,000	-$6,590,000	-$16,964,000
Cash Funds	$55,000	$140,000	$225,000
Total Revenue	**-$815,000**	**-$6,450,000**	**-$16,739,000**

Table 1B
State Expenditures

Fund Source	Budget Year FY 2025-26	Out Year FY 2026-27	Out Year FY 2027-28
General Fund	$649,373	$288,176	$18,469
Cash Funds	$55,000	$140,000	$225,000
Federal Funds	$0	$0	$0
Centrally Appropriated	$77,464	$77,464	$77,464
Total Expenditures	**$781,837**	**$505,640**	**$320,933**
Total FTE	**3.5 FTE**	**3.5 FTE**	**3.5 FTE**

Summary of Legislation

The bill creates the Data Center Development and Grid Modernization Program in the Office of Economic Development and International Trade (OEDIT) to facilitate efficient data center development and electric grid modernization, in collaboration with the Public Utilities Commission (PUC), the Colorado Energy Office (CEO), the Department of Natural Resources (DNR), and the Colorado Electric Transmission Authority (CETA).

Sales and Use Tax Exemption

Beginning in tax year 2026, the bill creates a state sales and use tax exemption for information technology infrastructure, data center infrastructure, mechanical systems, and other qualified purchases for data center projects with a base certification. The exemption is equal to 100 percent of expenses, and is applicable for 20 years from the date that the base certification is approved. The tax exemption is nontransferable.

Base Certification Application

To become eligible for the sales and use exemption, data center operators must submit an application to OEDIT for base certification for an applicable project. Applicants for base certification must demonstrate a commitment to:

- invest at least $250 million in data center facility construction and equipment within five years of receiving certification;
- create 25 full-time jobs with an average compensation of at least 110 percent of the county average;
- implement basic grid support capabilities;
- obtain additional certifications;
- implement water stewardship strategies;
- align with certain clean energy plans; and
- break ground within five years of certification.

An applicant must also conduct a preliminary consultation with the utility that will provide electricity for the data center and include a written feasibility assessment with the application, as well as attestations and approvals from the applicable local government.

OEDIT must begin processing applications for base certification by August 1, 2025, and consult with the PUC, CEO, and DNR upon approval. The office is authorized to reject, approve, and revoke applications under various circumstances.

Reporting

Data center operators who receive base certification must submit an annual compliance report to OEDIT and include certain information such as the total amount of sales and use tax exemptions claimed each year.

Income Tax Credit

Beginning in tax year 2026, the bill also creates a state income tax credit for investments made in grid enhancement and modernization. Applicants must obtain an enhanced certification and submit proof of at least $10 million in investments before claiming the tax credit. The credit is equal to ten percent of the qualified investment. Grid enhancement projects in rural areas are eligible for an additional five percent tax credit. The income tax credit is nonrefundable but can be carried forward up to five years.

Enhanced Certification Application

To be eligible for the income tax credit, data center operators with a base certification must submit an application to OEDIT for an enhanced certification for the project. Applicants for enhanced certification must demonstrate a further commitment to:

- invest at least $10 million in grid enhancement and modernization; and
- invest in community benefit programs.

OEDIT must also consult with the PUC, CEO, and DNR upon approval of enhanced certification applications. The office is authorized to reject, approve, and revoke applications under various circumstances.

Reporting

Data center operators who receive enhanced certification must submit an annual compliance report to OEDIT and include information determined by the office.

Utility Benefits

Data center projects with a base certification are eligible to receive economic development utility benefits for the 20-year tax exemption period. Projects with an enhanced certification are eligible to receive additional utility rate structures and compensation for grid enhancements. Operators may apply for a benefit extension for the sales and use tax exemption, the income tax credit, and the utility benefit.

Program Administration

OEDIT must establish policies, qualification criteria, review applications, monitor program recipients, and administer the programs in collaboration various state and independent agencies.

Resource Acquisition

The bill directs data center operators and the serving utility to submit a resource acquisition application to the PUC for projects that require new electric generation resources. The PUC must review these applications and determine whether the necessary upgrades will be operator-funded, co-invested, or system-funded. Upon approval, the PUC must designate a project coordinator, who must comply with municipally-owned utility requirements.

Additionally, projects that require an emerging new load are eligible for targeted resource acquisition under certain circumstances. Utilities in the relevant jurisdiction may solicit for additional resources and submit a resource acquisition application to the PUC, which must also include an updated emissions workbook. The bill establishes procedures for application approval, resource reimbursement, and emerging new load funding.

Fee Collection

OEDIT is authorized to levy the following fees on data center operators for administrative costs, which are deposited into the Colorado Economic Development Fund:

- no more than $10,000 for each base or enhancement certification application; and
- no more than $20,000 for each base or enhancement certification.

Additionally, the PUC is authorized to levy the following fees on operators, which are deposited into the PUC's Fixed Utility Fund:

- no more than $25,000 for project review and feasibility assessments; and
- other reasonable fees to review resource acquisition applications.

Fees may not be charged after December 31, 2027, or be set at a rate that inhibits participation.

Workforce Development

Projects in the program must participate in at least one workforce development program and in economic development integration as outlined in the bill.

Revocation and Repayment

OEDIT is authorized to revoke an operator's base or enhanced certification if the project has failed to make substantial progress within two years or maintain compliance. If a base certification is revoked, the operator must repay the entire amount of the sales and use tax claimed. If an enhanced certification is revoked, the operator is no longer eligible for utility benefits or the state income tax credit.

Background and Assumptions

Comparable Programs

Currently, 31 states offer tax incentives for data centers. In Illinois, new and existing data centers that invest a minimum of $250 million over a five-year period and employ at least 20 full-time local workers are eligible for a sales and use tax exemption. In 2020, six data centers qualified for the exemption, five of which either met or exceeded the minimum investment commitment within two years. The actual reported investment of these five data centers is about $3 billion. In 2021, seven additional data centers qualified for the exemption, six of which either met or exceeded the minimum investment commitment within two years. The actual reporting investment of these additional six data centers is about $6 billion.

Unlike the Illinois tax exemption program, Senate Bill 25-280 only applies to new data centers and not those that already exist in Colorado. Therefore, participation in the program is expected to be lower.

Program Utilization

Beginning in tax year 2026, the fiscal note assumes that at least one data center project will qualify and receive base certification. This project is expected to generate $300 million in capital investments, with 20 percent in sales and use tax exemptions being claimed in the first year and 80 percent in the second year. The fiscal note assumes that this project will qualify for the enhancement certification and meet the $10 million in grid and modernization enhancements beginning in tax year 2027. The fiscal note further assumes that two more data centers will qualify and receive base certification in 2027, with the number of new projects and electric grid investments steadily increasing each year thereafter, as shown in Table 2.

Table 2
Assumed Tax Program Utilization

Tax Year	New Base Certifications	New Enhanced Certifications	New Data Center Investments	New Electric Grid Investments
2026	1	0	$300 million	$0
2027	2	1	$600 million	$10 million
2028	3	2	$900 million	$20 million

It is important to note there is significant uncertainty regarding the number of data centers that will apply for the state sales and use exemption and income tax credit under the bill. To the extent that actual investments vary from the assumptions in this analysis, state impacts may increase or decrease proportionally.

Offsetting Impacts

The bill reduces revenue by exempting data centers from taxation that would otherwise be collected by the state, and to the extent that it motivates businesses to build larger data centers in order to meet the exemption thresholds. The fiscal note assumes that the bill will incentivize businesses to invest in larger data centers than they otherwise would. However, the note does not estimate sales and use tax exemptions for the purchase and use of property that would otherwise not be purchased or used.

State Revenue

The bill decreases General Fund revenue and increases cash fund revenue beginning in FY 2025-26, as shown in Table 3 and discussed below. All impacted revenue is subject to TABOR.

Table 3
Revenue Impacts

Fund Source	FY 2025-26	FY 2026-27	FY 2027-28
General Fund	-$0.9 million	-$6.6 million	-$17.0 million
Colorado Economic Development Fund	$30,000	$90,000	$150,000
PUC Fixed Utility Fund	$25,000	$50,000	$75,000
Total Revenue	**-$0.8 million**	**-$6.5 million**	**-$16.7 million**

Tax Program Revenue

The bill decreases General Fund revenue by about $870,000 in FY 2025-26, $6.6 million in FY 2026-27, and $17.0 million in FY 2027-28 from the sales and use tax exemption and income tax credit, as shown in Table 3A and described below. The number of data centers qualifying for the incentives in the bill is expected to increase gradually over the years, thus decreasing state revenue further.

Table 3A
Tax Program Revenue
General Fund

Source	FY 2025-26	FY 2026-27	FY 2027-28
Sales and Use Tax Exemption	-$0.9 million	-$6.1 million	-$15.0 million
Income Tax Credit	$0	-$0.5 million	-$2.0 million
Total Revenue	**-$0.9 million**	**-$6.6 million**	**-$17.0 million**

Sales and Use Tax Exemption

Based on the Assumptions section, the fiscal note estimates that sales and use tax exemption claims will reduce General Fund revenue by $870,000 in FY 2025-26, representing an accrued half-year impact for tax year 2026, $6.1 million in FY 2026-27, and $15.0 million in FY 2027-28 with larger impacts in subsequent years. In addition, ongoing maintenance costs and upgrades are expected to compound as more data centers qualify for exemption.

Income Tax Credit

The income tax credit is expected to reduce General Fund revenue by an additional $500,000 in FY 2026-27 and $2.0 million in FY 2027-28, with larger impacts in subsequent years. The fiscal note assumes that data centers with base certification will not apply for enhanced certification until tax year 2027.

Fee Revenue

The bill increases cash fund revenue by about $55,000 in FY 2025-26, $140,000 in FY 2026-27, and $225,000 in FY 2027-28 from application, certification, and assessment fees levied on data center operators. Fee revenue may not be collected after tax year 2027; therefore, the fiscal note assumes that all fees collected in FY 2027-28 will occur before December 31.

Application and Certification Fees

OEDIT may impose application and certification fees of up to $10,000 and $20,000, respectively, on data center operators applying for base and enhancement certification. The fiscal note assumes that OEDIT will charge the maximum fee, and that the office will receive and approve one application in FY 2025-26, three in FY 2026-27, and five in FY 2027-28, as shown in Table 3B below. Application and certification fee revenue is deposited into the Colorado Economic Development Fund. Actual revenue will vary depending on the number of applicants.

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Table 3B
Application and Certification Fee Revenue
Colorado Economic Development Fund

Source	FY 2025-26	FY 2026-27	FY 2027-28
Base Application Fee	$10,000	$20,000	$30,000
Base Certification Fee	$20,000	$40,000	$60,000
Enhanced Application Fee	$0	$10,000	$20,000
Enhanced Certification Fee	$0	$20,000	$40,000
Total Revenue	**$30,000**	**$90,000**	**$150,000**

Assessment Fees

The PUC may impose an assessment fee of up to $25,000 on data center operators consulting with local utilities for project review and feasibility assessments prior to applying for a base certification. The fiscal note assumes that the PUC will charge the maximum fee, and that the commission will assess one project for base certification in FY 2025-26, two in FY 2026-27, and three in FY 2027-28, as shown in Table 3C below. Assessment fee revenue is deposited into the Fixed Utility Fund. Actual revenue will vary depending on the number of assessments conducted.

Table 3C
Assessment Fee Revenue
PUC Fixed Utility Fund

Source	FY 2025-26	FY 2026-27	FY 2027-28
Assessment Fees	$25,000	$50,000	$75,000
Total Revenue	**$25,000**	**$50,000**	**$75,000**

Additional Application Fees

The PUC is also authorized to levy additional fees on data center operators that apply for resource acquisition, transmission upgrades, or utility upgrades. Due to a variety of actions taken by individual operators and wide range of potential fees, the fiscal note does not estimate fee revenue generated from these sources.

State Expenditures

The bill increases state expenditures by about $782,000 in FY 2025-26, $506,000 in FY 2026-27, and $466,000 in future years. These costs will be incurred in OEDIT and the CEO in the Governor's Office, the PUC in the Department of Regulatory Agencies, and the Department of Revenue, as shown in Table 4 and described below. Costs are paid from the General Fund, the Colorado Economic Development Fund, and the Fixed Utility Fund.

Table 4
State Expenditures
All Departments

Department	Budget Year FY 2025-26	Out Year FY 2026-27	Out Year FY 2027-28
Governor's Office – OEDIT	$540,038	$271,698	$271,698
Governor's Office – CEO	$77,572	$70,902	$70,902
Department of Regulatory Agencies – PUC	$111,409	$104,739	$104,739
Department of Revenue	$52,818	$58,301	$17,404
Total Costs	**$781,837**	**$505,640**	**$466,023**

Office of Economic Development and International Trade

The bill increases expenditures in OEDIT by about $540,000 in FY 2025-26, paid in part from application and certification fee revenue in the Colorado Economic Development Fund. The remaining $510,000 is paid from the General Fund. Beginning in FY 2026-27, expenditures increase by about $272,000, paid from both funds, as shown in Table 4A below.

Table 4A
State Expenditures
Office of Economic Development and International Trade

Cost Component	Budget Year FY 2025-26	Out Year FY 2026-27	Out Year FY 2027-28
Personal Services	$223,505	$223,505	$223,505
Operating Expenses	$2,560	$2,560	$2,560
Capital Outlay Costs	$13,340	$0	$0
Contractor	$150,000	$0	$0
Software Development	$105,000	$0	$0
Centrally Appropriated Costs	$45,633	$45,633	$45,633
Total Costs	**$540,038**	**$271,698**	**$271,698**
General Fund	*$510,038*	*$181,698*	*$121,698*
Cash Funds	*$30,000*	*$90,000*	*$150,000*
Total FTE	**2.0 FTE**	**2.0 FTE**	**2.0 FTE**

Contractor

In FY 2025-26 only, OEDIT requires an estimated $150,000 to hire a contractor to establish program policies, develop program materials, communicate the tax incentive programs, and begin receiving applications. Given the 90-day period between the bill's effective date and receiving program applications, it is assumed that OEDIT requires contracting services to facilitate rapid program development. Actual costs will be determined through the contracting process.

Staff

Starting in FY 2025-26, OEDIT requires 2.0 FTE Program Management II and III to manage program continuation, evaluate ongoing certification applications, coordinate with state agencies, administer the credit, and review annual reports.

Software Development

OEDIT's software system requires an estimated $105,000 to integrate three new tax credit forms, at a rate of $35,000 per form.

Colorado Energy Office

The bill increases state expenditures in the CEO by about $78,000 in FY 2025-26 and $71,000 in future years, paid from the General Fund and shown in Table 4B below.

Table 4B
State Expenditures
Colorado Energy Office

Cost Component	Budget Year FY 2025-26	Out Year FY 2026-27	Out Year FY 2027-28
Personal Services	$58,600	$58,600	$58,600
Operating Expenses	$640	$640	$640
Capital Outlay Costs	$6,670	$0	$0
Centrally Appropriated Costs	$11,662	$11,662	$11,662
Total Costs	**$77,572**	**$70,902**	**$70,902**
Total FTE	**0.5 FTE**	**0.5 FTE**	**0.5 FTE**

Staff

Beginning in FY 2025-26, the CEO requires 0.5 FTE Policy Advisor VII to assist OEDIT with certification applications, reviewing filings with the PUC, develop standards for minimizing transmission costs, and align program eligibility and compliance with state energy regulations.

Public Utilities Commission

The bill increases expenditures in the PUC by about $111,000 in FY 2025-26 and $105,000 in future years, paid in part from assessment fee revenue in the Fixed Utility Fund, with the remainder from the General Fund. These impacts and fund sources are shown in Table 4C below.

Table 4C
State Expenditures
Public Utilities Commission

Cost Component	Budget Year FY 2025-26	Out Year FY 2026-27	Out Year FY 2027-28
Personal Services	$83,290	$83,290	$83,290
Operating Expenses	$1,280	$1,280	$1,280
Capital Outlay Costs	$6,670	$0	$0
Centrally Appropriated Costs	$20,169	$20,169	$20,169
Total Costs	**$111,409**	**$104,739**	**$104,739**
General Fund	*$86,409*	*$54,739*	*$29,739*
Cash Fund	*$25,000*	*$50,000*	*$75,000*
Total FTE	**1.0 FTE**	**1.0 FTE**	**1.0 FTE**

Staff

Beginning in FY 2025-26, the PUC requires at least 1.0 FTE Rate/Financial Analyst III to conduct feasibility assessments for data center projects, review tax program and resource acquisition applications, establish utility benefit standards, and coordinate with state agencies on compliance and ongoing program administration.

Department of Revenue

The bill increases expenditures in the Department of Revenue by about $53,000 in FY 2025-26, $58,000 in FY 2026-27, and $17,000 in FY 2027-28 to update existing tax forms, test programming changes, and evaluate the new tax programs. These costs are paid from the General Fund and shown in Table 4D below.

Table 4D
State Expenditures
Department of Revenue

Cost Component	Budget Year FY 2025-26	Out Year FY 2026-27	Out Year FY 2027-28
GenTax Programming	$18,540	$23,175	$0
Systems Support Office	$17,500	$12,110	$0
Office of Research and Analysis	$8,778	$17,480	$17,404
User Acceptance Testing	$8,000	$5,536	$0
Total Costs	**$52,818**	**$58,301**	**$17,404**

Computer Programming and Testing

In the first two years, workload in DOR will increase to update the GenTax software system and additional testing to implement the state and use tax exemption and the income tax credit. Changes are programmed by a contractor at a cost of $231.75 per hour, for an estimated 80 hours in FY 2025-26 and 100 hours in FY 2026-27. Additional computer and user acceptance testing are required to ensure programming changes function properly.

Data Reporting

Starting in FY 2025-26, workload in the Office of Research and Analysis will increase to collect and report data on the new tax programs.

Other Agency Impacts

Workload in the DNR and the Office of the State Auditor will minimally increase to collaborate with OEDIT on certification applications and to evaluate the effectiveness of the tax programs, respectively. This workload is expected to be minimal and no change in appropriations is required.

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 the expenditure tables above.

TABOR Refunds

On net, the bill is expected to decrease 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 2025 LCS revenue forecast. A forecast of state revenue subject to TABOR is not available beyond FY 2026-27.

The bill decreases General Fund subject to TABOR, which will decrease the amount of General Fund revenue required to be refunded to taxpayers with no net impact on the amount available for the General Fund budget. The bill also increases cash fund revenue subject to TABOR, which will increase the amount of General Fund revenue required to be refunded to taxpayers, correspondingly decreasing the amount available for the General Fund budget.

Local Government

Local Government Revenue

If new data centers are built or expanded due to the new tax incentive, the bill will conditionally increase property tax revenue for local taxing jurisdictions. Local tax revenue may be offset to the extent that local jurisdictions also provide tax incentives for these new data centers. For school districts, increased total program local share property tax revenue will result in a corresponding decrease in revenue from the state share of school finance.

Local Government Workload

The bill minimally increases workload for local governments and utilities to review data center projects and collaborate with OEDIT on infrastructure planning, environmental compliance, and technical assistance. This workload is expected to be minimal.

Statutory Public Entity

Workload in the Colorado Electric Transmission Authority will minimally increase to collaborate with OEDIT on certification applications and data center project guidelines. This workload is expected to be minimal.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State Appropriations

The bill includes a provision stating that OEDIT, the CEO, and the PUC must implement the bill within existing appropriations. However, the fiscal note estimates that the bill requires the following appropriations for FY 2025-26:

- $494,405 to the Office of Economic Development in the Governor's Office, including $30,000 from the Colorado Economic Development Fund and $464,405 from the General Fund, and 2.0 FTE;
- $65,910 from the General Fund to the Colorado Energy Office in the Governor's Office, and 0.5 FTE;
- $91,240 to the Public Utilities Commission in the Department of Regulatory Agencies, including $25,000 from the PUC Fixed Utility Fund and $66,240 from the General Fund, and 1.0 FTE; and
- $52,818 from the General Fund to the Department of Revenue.

State and Local Government Contacts

Colorado Energy Office

Counties

Economic Development

Natural Resources

Regulatory Agencies

Revenue

State Auditor