SB 19-236

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REVISED FISCAL NOTE

(replaces fiscal note dated April 25, 2019)

Drafting Number:	LLS 19-0353	**Date:**	May 2, 2019
Prime Sponsors:	Sen. Garcia; Fenberg Rep. Hansen; Becker	**Bill Status:**	House Second Reading
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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 in the Department of Regulatory Agencies through September 1, 2026, and adds various requirements on the commission and electric utilities related to clean energy planning and creates a process for electric utilities to issue energy impact bonds, among other provisions. State fiscal impacts include both new state revenue and expenditure impacts from changes required by the bill, as well as the continuation of the commission's current revenue and expenditures.

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

Fiscal Note Status: This revised fiscal note is provided pursuant to House Rule 32 A(c) and reflects the reengrossed bill, as amended by the House Finance Committee and House Appropriations Committee. It also reflects Floor Amendments L.032, L.039, L.041, L.043, L.044, L.045, L.046, and L.047.

Table 1
State Fiscal Impacts Under SB 19-236*

New Impacts		**FY 2019-20**	**FY 2020-21**
Revenue	Cash Funds	$1,160,000	$900,000
	Total	**$1,160,000**	**$900,000**
Expenditures	General Fund	$163,820	$168,279
	Cash Funds	$1,008,428	$872,834
	Centrally Appropriated	$197,340	$200,850
	Total	**$1,369,588**	**$1,241,963**
	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. The continuing program impacts will end if the bill is not passed and the program is allowed to repeal.*

Summary of Legislation

This bill continues the Public Utilities Commission (PUC) in the Department of Regulatory Agencies (DORA) for seven years. It also implements various recommendations from the sunset review and makes other changes to the operations of the PUC. It also incorporates the provisions of House Bill 19-1313 related to the PUC and electric utilities, including adding clean energy planning requirements for carbon dioxide emissions for electricity generation by large utilities, allowing an electric utility to apply to the PUC to issue energy impact bonds, and specifying the rights of retail electric utility customers concerning customer-site generated renewable sources. The PUC is repealed on September 1, 2026, pending a sunset review. These provisions are described below.

Sunset recommendations. The bill implements the following recommendations from the sunset review:

- authorizes the PUC to promulgate rules to delegate routine, administrative transportation matters to staff and makes related clarifications;
- provides public utilities alternate forms of communication to notify customers of rate changes and requires rate changes to be posted on utilities' websites;
- transfers the administration of the Legal Services Offset Fund from the Department of Law to DORA;
- makes technical changes regarding criminal background checks;
- repeals a requirement that an electric utility purchase a certain amount of energy from community solar gardens;
- repeals 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
- clarifies that the PUC may impose a civil penalty for a violation of railroad crossing safety regulations.

Other PUC modifications. In addition, the bill makes the following changes to PUC operations:

- requires the PUC to promulgate rules establishing requirements for investor-owned utilities to file electric distribution plans, and outlines additional requirements for this process;
- requires investor-owned utilities to include a workforce transition plan when proposing the retirement of an electric generating facility;
- directs the PUC to require electric public utilities to consider the cost of carbon dioxide emissions in certain proceedings; and
- authorizes the PUC to regulate vehicle booting companies through the issuance of permits and enforcement mechanisms including inspections, civil penalties, and permit revocations.
- 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;
- 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;
- requires a utility to reference the docket numbers of relevant rules or adjudicatory matters when submitting an e-filing to the PUC;

- directs the PUC to open an investigatory proceeding to evaluate the costs and benefits associated with regional transmission organizations, energy imbalance markets, joint tariffs, and power pools; and
- 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.

Clean energy planning. This 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 (Xcel Energy). These 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 and thereafter, if practicable. Other utilities may opt in to submitting clean energy plans.

- *Clean energy plans.* Xcel Energy is directed to submit a clean energy plan to the PUC as part of the next energy resource plan (ERP) process taking place after January 1, 2020. In addition to the standard PUC approval process, the Air Pollution Control Division (APCD) in the Department of Public Health and Environment (CDPHE) is required to participate in measuring the utility's carbon dioxide emission reductions and to estimate whether the plan will achieve the desired emissions reductions.

- *Rate recovery and requirements for the utility.* Utilities that participate in clean energy planning may recover clean energy plan-related implementation costs through rates, as approved by the PUC, and own any generating resources and infrastructure necessary to effectuate the plan. Utilities must use a competitive bidding process to fill the cumulative resource need.

- *Labor considerations.* The bill also requires investor-owned utilities to provide documentation on employment metrics, the use of Colorado labor, and the availability of apprenticeship programs as part of their ERP filing.

- *Reporting.* 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 on a list of matters, including its progress in implementing the plan and in reducing carbon dioxide emissions.

Wholesale electric cooperative plans. The bill requires the PUC to promulgate rules that require each wholesale electric cooperative to submit to the commission an application for approval of an integrated or electric resource plan. The PUC must evaluate the plans using rules adopted that are applicable to these cooperatives. The bill specifies factors that must be considered by the PUC in adopting these rules.

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.

- *Public Utilities Commission process.* 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. The bill stipulates that these consultants have a duty of loyalty solely to the PUC. 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.

- *Judicial review and administrative penalties.* A party aggrieved by a financing order may petition for suspension and judicial review of the financing order in the Denver District Court. If the PUC determines that a utility's actions were inconsistent with the financing order, it may apply any remedies available, except for a remedy that has the effect of directly or indirectly impairing the bonds. Utilities are also subject to certain new administrative penalties related to failures to adhere to the process outlined in the bill.

- *Reporting requirements.* The bill requires a utility that has issued energy impact bonds to annually file a report with the PUC illustrating that bond revenue is applied solely to the repayment of bonds and financing costs.

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.

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.

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 PUC and other utility 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. Pursuant to House Bill 16-087 and House Bill 16-1186, the 3 percent is 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.

Energy resource plans. As of this writing, Xcel Energy is the only qualifying electric utility in the state with more than 500,000 customers. Under current PUC rules, Xcel Energy is required to file an ERP by October 31, 2019; however, the PUC is currently involved in a rulemaking process (Proceeding No. 19R-0096E) where it has proposed a later ERP deadline of February 1, 2020. While this proceeding is subject to final rulemaking, the fiscal note assumes that the first Clean Energy Plan will be submitted by Xcel Energy on February 1, 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 the PUC's FY 2017-18 budget, the commission is estimated to have continuing revenue and expenditures of $18,560,768 and 91.3 FTE, including $4,643,093 in centrally appropriated costs. If this bill is enacted, these revenue and expenditure amounts will continue for the program starting in FY 2020-21; continuing revenue is subject to TABOR. If this bill is not enacted, the program will end on September 1, 2020, following a wind-down period, and state revenue and expenditures will decrease starting in FY 2020-21 by these amounts. 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 section, PUC costs are paid by fees assessed on regulated utilities. State cash fund revenue to the PUC will increase to cover the expenditures outlined below by approximately $1.1 million in FY 2019-20 and $900,000 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 and from bond investments.

Fee impact on regulated utilities. Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. The PUC will increase fees on regulated utilities to pay for the costs under the bill. These fee increases have not been estimated and will be set administratively by the PUC based on cash fund balance and new program costs, and will be borne primarily by the Fixed Utilities Fund as the changes required under the bill primarily impact that sector.

Fee impact on vehicle booting companies. Fees on vehicle booting companies will also increase. The exact fee impact on these companies has not been estimated at this time and will be set administratively by the PUC.

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 investment in energy impact bonds. If energy impact bonds are issued and meet the legal requirements regarding public fund investment, the state may invest public funds in these bonds and earn interest on the bonds.

State Expenditures

The bill will increase state expenditures in DORA and the CDPHE by $1.1 million and 9.3 FTE in FY 2019-20 and $1.0 million and 9.0 FTE in FY 2020-21. These costs are paid primarily from the Fixed Utilities Fund, as well as the General Fund and Vehicle Booting Cash Fund. 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		
Personal Services	$767,725	$767,725
Operating Expenses and Capital Outlay Costs	$50,877	$8,550
Legal Services	$186,534	$93,267
Meeting and Travel Expenses	$3,292	$3,292
Centrally Appropriated Costs*	$152,095	$152,095
FTE – Personal Services	9.0 FTE	9.0 FTE
FTE – Legal Services	1.0 FTE	0.5 FTE
Subtotal (DORA)	**$1,160,523**	**$1,024,929**
Department of Public Health and Environment		
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**
Total	**$1,369,588**	**$1,241,963**
Total FTE	**11.8 FTE**	**11.5 FTE**

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

Public Utilities Commission. To meet the requirements under the bill, the PUC will require the following resources. Costs are paid from the Fixed Utility Fund, except for costs related to vehicle booting regulation.

- *Regulation of vehicle booting businesses.* PUC will adopt rules to establish the permit fees, required insurance (if any), and enforcement policies for newly regulated vehicle booting businesses within the normal course of PUC business. It is assumed that there are five booting businesses in Denver and two in the City of Avon. Based on towing carrier-related complaint rates 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 and 0.5 FTE consumer assistance staff to handle the increased volume of complaints as well. Funds from the Vehicle Booting Cash Fund are continuously appropriated.

- *Rate relief study.* It is assumed that the survey of public utility wholesale and retail rates is limited to a region and does not require a study of all rates. This expense is estimated at $3,292.

- *Clean energy plans.* The PUC will review the clean energy plans submitted by Xcel Energy as part of its existing ERP process that occurs every four years, and no change in appropriations is required for that review. 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 two professional engineers and two rate and financial analysts. DORA will seek these resources through the annual budget process if necessary.

- *Wholesale electric cooperative plans.* The PUC will require 4.0 FTE for Rate and Financial Analyst and Professional Engineer staff to promulgate rules and oversee implementation of the wholesale electric cooperative planning process. 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. Standard operating costs and capital outlay expenses are included for this staff.

- *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.

- *Energy grid cost-benefit analysis.* The PUC requires 1.0 FTE Rate and Financial Analyst to manage the investigatory proceeding into regional transmission organizations. Standard operating expenses and capital outlay costs are included.

- *Distribution planning.* The PUC requires 2.5 FTE for professional engineering and administrative law judge staff related to distribution planning rulemaking.

Department of Public Health and Environment. The CDPHE requires $209,065 and 1.8 FTE in FY 2019-20 and $217,034 and 2.0 FTE in FY 2020-21, paid from the General Fund. These costs are for two Environmental Protection Specialists in the APCD to develop carbon dioxide emission measurement methodology required under the bill. This staff will also participate in the ERP process at the PUC and verify compliance with emissions targets under the bill. Standard operating expenses and capital outlay costs are included.

- *Carbon dioxide emission measurement methodology and verification of compliance with emissions targets.* The bill requires the APCD to track carbon dioxide emissions based on retail sales. This requires the creation of a new methodology by a dedicated staff unit. Staff costs are based on prior APCD 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, particularly around the significant difference between gross generation and net sales. The APCD staff will seek input from the PUC, utilities, and other stakeholders through regular monthly meetings. Once the methodology is in place, the APCD will apply the methodology to its current emissions regulation process.

- *Electric resource planning process participation.* The APCD staff will participate in a review of Xcel Energy's clean energy plan during its upcoming ERP beginning in February 2020. It is expected that the methodology staff can develop expertise in the subject matter, coordinate with PUC staff and stakeholders, and assess whether the clean energy plan will achieve the desired reductions.

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, no change in appropriations is required and this work can be accomplished within the normal course of CEO business.

Judicial Department. Under the bill, a party aggrieved by the issuance of a financing order may petition for suspension and review of the financing order in the Denver District Court. The fiscal note assumes this judicial review will be minimally utilized, thus there is no tangible impact to the court system.

Ratepayer impacts. If an energy impact bond charge is assessed, the state, as a ratepayer, will see that charge on its utility bills. Because energy impact bonds are a financing mechanism, the impact to electricity costs are indeterminate and will depend on 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 $197,340 in FY 2019-20 and $200,850 in FY 2020-21.

Effective Date

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

State Appropriations

For FY 2019-20, the bill requires an appropriation of $907,566 to DORA from the Fixed Utilities Fund and an allocation of 9.0 FTE. Of this amount, the Department of Law should be reappropriated $186,534 and provided an additional allocation of 1.0 FTE.

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

State and Local Government Contacts

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