Colorado Legislative Council Staff

HB17-1339

FISCAL NOTE

FISCAL IMPACT: ☒ State ☒ Local ☒ Statutory Public Entity ☐ Conditional ☐ No Fiscal Impact

Drafting Number:	LLS 17-0571	**Date:**	April 24, 2017
Prime Sponsor(s):	Rep. Hansen; Esgar	**Bill Status:**	House Transportation
		Fiscal Analyst:	Erin Reynolds (303-866-4146)

BILL TOPIC: COLORADO ENERGY IMPACT ASSISTANCE ACT

Fiscal Impact Summary	FY 2017-2018	FY 2018-2019
State Revenue		
State Expenditures		
Appropriation Required: None.		
Future Year Impacts: Potential revenue and expenditure increase.		

Summary of Legislation

Under the bill, an investor-owned utility (e.g. Xcel Energy and Black Hills Energy) may apply to the Public Utilities Commission (PUC) for a financing order authorizing it to issue securitized utility ratepayer-backed bonds when closing a power plant. These Colorado Energy Impact Assistance (CO-EIA) bond proceeds are to be used by the utility to purchase, build, or invest in least-cost electric generating resources and to provide transition assistance to workers and communities affected by the plant closure. Bonds are to be repaid through a distinct and nonbypassable CO-EIA charge on ratepayers that must be used solely to repay the bonds within 32 years after issue date.

Utility and PUC requirements for financing order. Before submitting a financing order, the closure of the electric generating facility must have been previously approved by the PUC during the regular electric resource plan review process. Before issuing a financing order, the PUC must:

- have received an application from the utility that includes the plant closure schedule, bonding specifics, a description of the anticipated ratepayer charge and methodology, estimated cost savings, an alternative financing scenario to the utility's preferred scenario, and any other information required by the PUC;
- provide notice, hold a public hearing, and receive testimony from affected groups; and
- make specified determinations on whether the financing is necessary, just, prudent, reasonable, and quantifiably beneficial to ratepayers.

Consultants and PUC costs included in financing costs. The PUC must engage outside consultants and counsel experienced in securitized, investor-owned electric utility ratepayer-backed bond financing to assist with the financing order process. These expenses and any PUC expense incurred during the application, hearing, and approval process are to be included as financing costs of the CO-EIA bonds. If the utility's application is denied or withdrawn, the applicant utility must pay these costs instead.

Order issuance. If the PUC decides to issue a financing order, the order must contain specific instructions, including the bond amount, the customer billing mechanism and charge period, a description of the CO-EIA property created to secure the bond, and other details about the financing. The PUC must also require the utility to remit 15 percent of the net present value of the savings achieved through bonding to the newly created CO-EIA Authority. (A utility may also transfer funds to the CO-EIA without a financing order and bond issuance when closing an electric generating facility.) The financing order is irrevocable once issued and in effect until the CO-EIA bonds have been repaid. The bill outlines additional requirements for the PUC during its consideration of a financing order.

CO-EIA Authority. The CO-EIA Authority is a newly created statutory public entity consisting of a seven-member, Governor-appointed board that is authorized to spend bond proceeds for transition assistance and to cover its administrative costs. Board members serve without compensation but are entitled to expense reimbursement.

Transition assistance. Transition assistance is defined to include:

- worker training and financial assistance for directly displaced plant workers, fuel production workers, and fuel transporter workers; and
- compensation for lost property tax revenue to local governments where the plant closed, or where related fuel production is affected by the plant closure, for up to five years.

The authority must take local input into consideration when spending bonds, including input from a local advisory committee composed of representatives from the board of county commissioners, the municipal government, and affected school districts, as appropriate and outlined in the bill.

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 utilities to annually file a report with the PUC illustrating that CO-EIA revenue is applied solely to the repayment of CO-EIA bonds and other financing costs. The authority will also provide a financial statement and operating report to the General Assembly each year it provides transition assistance.

State Revenue

In future fiscal years, the bill may increase state revenue to the PUC and DOLA, as discussed below.

Public Utilities Commission. When a utility submits an application to the PUC to begin the financing order process, the PUC will receive funding to cover its costs as part of bond financing costs. PUC costs are discussed in the State Expenditures section below.

Department of Local Affairs. Conditional on CO-EIA bond issuance, DOLA may receive fund disbursements from the CO-EIA Authority for use in transition assistance in future fiscal years.

TABOR Impact

To the extent that the PUC receives cash fund revenue as part of the financing costs of the CO-EIA bond and a TABOR refund obligation exists in that period, the amount of money required to be refunded under TABOR will increase.

The bill does not allow the CO-EIA Authority to disburse funds to any state or local government if the receipt of the funds would trigger or increase the amount of any refund of excess state or local government revenue required under TABOR; therefore, CO-EIA Authority disbursements are not expected to have a TABOR impact.

State Expenditures

If a financing order is filed with the PUC in future fiscal years, the bill will increase expenditures for the PUC, and may increase expenditures or workloads in DOLA, the Judicial Department, the Secretary of State's office, and the state, generally.

Public Utilities Commission. The fiscal note assumes that the PUC will not receive a financing order from an investor-owned utility in the next two fiscal years, as the next deadline for electric resource plan filings — which are on a four-year cycle — is October 2019. If and when an application is received in the future, 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 CO-EIA bond arrangement. The cost for these consultants will be covered by bond financing.

Additionally, the PUC will have costs to evaluate the financing order, also covered by bond financing and not to be paid from state funds. The PUC will require temporary rate and financial analysts and legal counsel for an assumed period of 8 months, which includes the 45-day period that the PUC has from finance order filing to determine whether the application is complete, and the 210-day period it has to issue a final decision on the financing order. This expenditure impact may be reduced if the full 8-month time period is not required.

Table 1. Conditional Expenditures Under HB17-1339

Cost Components	
Personal Services	$115,928
FTE	1.5 FTE
Legal Services	114,060
Centrally Appropriated Costs*	22,560
TOTAL	**$252,548**

Department of Local Affairs. DOLA may be consulted by the CO-EIA Authority when determining the direct impacts resulting from power plant closures and may also be contracted by the authority to administer transition assistance to affected communities. If DOLA is contracted to manage fund disbursement, it will require a community and economic developer to manage the process. To the extent additional resources are necessary, these will be sought through the annual budget process.

Division of Property Taxation. The Division of Property Taxation in DOLA performs property tax assessments on public utilities. If and when an application is processed and the CO-EIA Authority is looking to estimate compensation costs for lost property tax revenue to local governments where the plant closed, or where related fuel production is affected by the plant closure, division workload may increase. To the extent additional resources are necessary, these will be sought through the annual budget process.

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.

Secretary of State. The Secretary of State will maintain a record of the financing statement required under the bill and pursuant to the Uniform Commercial Code (UCC). The fiscal note assumes that parties will use the existing filing forms available through the UCC online filing system.

State investment in CO-EIA bonds. If the CO-EIA bonds meet the legal requirements regarding public fund investment, the state may invest public funds in these bonds. However, nothing in the bill obligates the state to repay bond principal or interest.

Local Government Impact

Transition assistance revenue. Revenue to local governments affected by a plant closure may increase if and when a plant closure occurs in the community through the process outlined in the bill. Local governments may receive fund disbursements from the CO-EIA Authority to provide transition assistance, however they are precluded from doing so if the receipt of funds would impact the local government's TABOR refund obligation. Therefore there is no TABOR Impact on local governments.

Local advisory committee to the CO-EIA Authority. Workload will increase for directly affected local governments in advising the CO-EIA Authority, particularly for appointed members to local advisory committees. Local advisory committees must consist of representatives appointed by the board of county commissioners, the municipal government, and the school districts affected. This committee may be dissolved by the authority when transition assistance is complete, or maintained to advise the authority regarding the implementation of transition assistance.

Statutory Public Entity

The bill creates a statutory public entity, the CO-EIA Authority, in perpetuity. The authority is independent from any state agency or board. Its purpose is to expend moneys received from CO-EIA bonds and other sources for the purpose of mitigating the worker and community impacts of a power plant closure. The authority is governed by seven directors who must be appointed by the Governor before July 1, 2017. All administrative costs, including director reimbursement, are to be paid from the CO-EIA fund.

Effective Date

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

State and Local Government Contacts

Colorado Energy Office	Counties	District Attorneys
Governor	Judicial	Law
Local Affairs	Municipalities	Natural Resources
Regulatory Agencies	Revenue	School Districts
Secretary of State		