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Fiscal Note

Drafting Number:	LLS 24-0904	Date:	March 13, 2024
Prime Sponsors:	Rep. Titone; McCormick Sen. Hansen; Priola	Bill Status:	House Energy & Environment
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Bill Topic: **ENERGY & CARBON MANAGEMENT REGULATION**

Summary of	<input checked="" type="checkbox"/> State Revenue	<input type="checkbox"/> State Transfer	<input checked="" type="checkbox"/> Local Government
Fiscal Impact:	<input checked="" type="checkbox"/> State Expenditure	<input type="checkbox"/> TABOR Refund	<input type="checkbox"/> Statutory Public Entity

The bill requires the Energy and Carbon Management Commission to regulate carbon capture and sequestration activities. It increases state and local revenue and expenditures beginning in FY 2024-25.

Appropriation Summary: No appropriation is required.

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

Summary of Legislation

[Senate Bill 23-016](#) gives the Energy and Carbon Management Commission (ECMC) in the Department of Natural Resources the authority to pursue Class VI injection well primacy from the federal Environmental Protection Agency for the purposes of carbon sequestration, including direct air capture and geologic storage. The bill updates these provisions as follows:

- The ECMC must adopt rules regarding the regulation of direct air capture facilities; perform a cumulative impacts analysis of any proposed direct air capture facility; and deny any proposal that it determines would have a net negative impact on a disproportionately impacted community. The ECMC may collect regulatory fees from direct air capture facility operators.
- The bill specifies ownership rights and responsibilities for property used for carbon sequestration and any injected carbon dioxide. Upon request, the ECMC must provide technical assistance to local governments in land use and siting regulations for carbon sequestration.
- The Department of Public Health and Environment (CDPHE) must account for net greenhouse gas emissions changes from direct air capture facilities and geologic storage operations, with collaboration from the ECMC.

- Under current law, violations of ECMC rules have a statute of limitation of one year from the violation. The bill extends the statute of limitations to three years from the discovery of the violation. In addition, the bill authorizes the ECMC to hire administrative law judges to conduct hearings on behalf of the commission.

Background

Carbon capture and sequestration is a climate change mitigation strategy that involves storing greenhouse gases to prevent them from reaching or persisting in the atmosphere. While some carbon capture occurs at the point of emission (e.g., a power plant smokestack), direct air capture involves taking previously-emitted carbon dioxide directly from the atmosphere. Geologic storage, as used in the bill, refers to storing carbon dioxide in porous rocks deep underground via a Class VI injection well.

State Revenue

The bill increases fee revenue to the Energy and Carbon Management Cash Fund from operators of direct air capture facilities. The fee amount will be established by the ECMC by rule based on the anticipated number of permit applicants. Because the development of these projects often requires years of planning, and because the number of applicants is expected to be low in the near term, any fee revenue is expected to be minimal for FY 2024-25 and FY 2025-26. This revenue is subject to TABOR.

State Expenditures

The bill increase state workload in multiple agencies to adopt rules and to regulate carbon capture and sequestration activities. While no change in appropriations is required for FY 2024-25, the bill is expected to increase cash fund expenditures in future years as this industry develops.

ECMC—Department of Natural Resources. The bill increases workload for rulemaking, hearings, and to establish a new regulatory program. In future fiscal years, resources will be requested through the annual budget process and paid from the Energy and Carbon Management Cash Fund.

- **Rulemaking.** The ECMC will adopt rules to regulate direct air capture facilities and geologic storage operations in FY 2024-25. This effort, which requires legal services support from the Department of Law, can be accomplished within existing appropriations. Additional rulemaking will likely be required in future years.
- **Administrative law judges.** Appeals of the ECMC's enforcement actions come before hearings officers in the commission. The ECMC will convert one hearings officer to an administrative law judge in FY 2024-25, which can be accomplished within existing appropriations.

- **Regulating carbon capture and sequestration activities.** Expenditures will increase to create a regulatory program to review permit applications for direct air capture facilities and geologic storage operations and to provide technical assistance to local governments. These impacts are expected to be minimal for several years. As the industry develops and workload increases, resources will be requested through the annual budget process.

Department of Public Health and Environment. The bill increases workload in the department to develop carbon dioxide accounting procedures for direct air capture facilities and geologic storage operations and to coordinate with the ECMC. This can be accomplished within existing appropriations. Any rulemaking, which requires support from the Department of Law, can be accomplished within existing legal services appropriations.

Colorado Energy Office. The office participates in rulemaking proceedings of both the ECMC and CDPHE. To the extent that the bill requires those agencies to adopt or update rules, workload will increase. Any such effort in FY 2024-25 can be accomplished within existing appropriations.

Local Government

The bill may increase revenue and expenditures in any local government that regulates direct air capture facility or geologic storage siting within its jurisdiction. The extent of the impact will depend on any regulations developed by the local government and the number of projects that companies pursue in its jurisdiction.

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
Natural Resources

Counties
Personnel

Law
Public Health and Environment

The revenue and expenditure impacts in this fiscal note represent changes from current law under the bill for each fiscal year. For additional information about fiscal notes, please visit the [General Assembly website](#).