

# COLORADO ENERGY AND CLIMATE LEGISLATION

## 2019 Year in Review

Colorado's 2019 legislative session, which ended May 3, was perhaps the state's most active ever in the areas of energy and climate change. Colorado's legislature indicated strong commitments towards tracking, accounting for, and reducing climate pollution; promoting the adoption of electric vehicles (EVs); planning for the transition away from coal-fired electricity generation; and protecting disadvantaged communities during the transition to a cleaner energy economy.

## CLIMATE CHANGE

---

### **HB19-1261 (Rep. Becker, Rep. Jackson, Sen. Winter, Sen. Williams)**

#### **Climate Action Plan to Reduce Pollution – Signed May 30, 2019**

Colorado's landmark climate change legislation sets a statewide minimum goal to reduce 2025 greenhouse gas (GHG) emissions by at least 26% from 2005 levels by 2025 (codifying a 2017 Executive Order signed by Governor Hickenlooper), at least 50% by 2030, and at least 90% by 2050. The state's Air Quality Control Commission (AQCC) is tasked with adopting regulations to implement these targets, while considering the impacts on communities that have been disproportionately impacted by environmental harms, risks, and other specified considerations. With regard to GHG emissions from the electric sector, the AQCC will be required to consult with the state's Public Utilities Commission (PUC) on issues relating to electricity cost, technology development, and reliability, but will be prohibited from dictating the mix of generating resources that any particular utility can use to meet emissions limits or from requiring utilities to reduce emissions faster than is otherwise required under PUC-approved clean energy plans.

### **SB19-096 (Sen. Donovan, Rep. Hansen)**

#### **Collect Long-term Climate Change Data – Signed May 30, 2019**

This bill requires the AQCC to oversee the creation of a statewide GHG inventory by adopting rules to require GHG-emitting entities to monitor and publicly report their emissions. The Colorado Department of Public Health and Environment (CDPHE) must update the inventory at least every two years and make the data publicly available online. The inventory must forecast the state's GHG emissions for the milestone years of 2025, 2030, 2035, 2040, and 2045, with the objective of helping the state meet its long-term climate targets. The bill also requires the AQCC to publish a proposed rule by July 1, 2020, that would allow the state to achieve its climate goals.

### **HB19-1188 (Rep. Sirota, Rep. Snyder, and Sen. Foote)**

#### **Greenhouse Gas Pollution Impact in Fiscal Notes – Awaiting Governor's signature**

Beginning in 2020, this bill requires fiscal notes on legislative measures to include a "greenhouse gas emissions report" – an assessment of whether the measure is likely to directly cause a net increase or decrease in GHG pollution in the 10-year period following its enactment. The report must consider new sources of emissions, increases or decreases in existing sources of emissions, and any impact on sequestration of emissions. This bill will help Colorado policymakers and stakeholders assess the impact of legislative measures on the state's GHG emissions, which in turn will help Colorado plan for and achieve its ambitious climate change goals.

## OIL AND GAS REGULATION

---

**SB 19-181 (Sen. Fenberg, Sen. Foote, Rep. Becker, Rep. Caraveo)**

### **Protect Public Welfare Oil and Gas Operations – Signed April 16, 2019**

This law gives local governments additional regulatory authority over oil and gas operations, changes the makeup and charge of the Colorado Oil and Gas Conservation Commission (COGCC), expands the role of the CDPHE, and imposes new requirements on oil and gas operators. The new law enables local governments to oversee many aspects of oil and gas development for the first time. The law grants local control over where oil and gas wells are located and expands the ability of local governments to protect water and limit air emissions in a manner more stringent than the state. It also allows local officials to inspect facilities, impose fines for violations, and assess fees necessary to cover the costs of local regulation and oversight of the industry.

SB 181 directs the COGCC to develop rules for evaluating alternative sites, addressing cumulative impacts, increasing financial assurance, overseeing flowlines and shut-in wells, enhancing wellbore integrity, and certifying oilfield workers. The law calls on the AQCC to adopt rules requiring operators to monitor and minimize emissions of methane, volatile organic compounds, and other pollutants from oil and gas wells and production and transmission facilities. In doing so, the AQCC will consider requiring oil and gas operators to inspect their facilities for leaks, install continuous emissions monitors, and utilize pneumatic devices that do not vent natural gas. When fully implemented, the law will lead to reduced air emissions, increased local government involvement, and enhanced protections for Colorado's environment and communities.

## ELECTRIC VEHICLES

---

**SB19-077 (Sen. Priola, Sen. Williams, Rep. Hansen)**

### **Electric Motor Vehicles Public Utility Services – Signed May 31, 2019**

This bill aims to increase the adoption of EVs throughout the state by allowing investor-owned utilities to provide EV charging infrastructure as part of their regulated business, which means they can secure a return on investments made in EV infrastructure if approved by the PUC. SB19-077 also requires the investor-owned utilities to develop electric rates specific to commercial and industrial facilities used to charge EVs that encourage EV charging and to submit such rates to the PUC for approval by May 15, 2020. This provision is aimed to address the high electricity demand chargers that currently create a financial hurdle to new EV charger installations in Colorado.

**HB19-1198 (Rep. A. Valdez, Rep. D. Valdez, Sen. Bridges, Sen. Priola)**

### **Electric Vehicle Grant Fund – Signed April 17, 2019**

This law modifies the statute governing Colorado's electric vehicle grant fund that provides grants to public and private entities for installation of EV charging stations. Among other changes, the law allows the Colorado Energy Office (CEO) to prioritize grant awards based on criteria of its choosing and allows the fund to be used to fully finance the installation of charging stations and help offset operating costs of charging stations. By facilitating the installation of EV infrastructure across the state, this law will ensure that the increased adoption of EVs in Colorado is beneficial for *all* Coloradans, including Coloradans of all income levels and living in all regions of the state.

### **HB19-1298 (Rep. Melton, Sen. Priola)**

#### **Electric Motor Vehicle Charging Station Parking – Signed May 31, 2019**

This bill authorizes the owner of a plug-in EV charging station to install a sign identifying the parking space for that station as a designated charging station. The bill prohibits parking in such a space if the vehicle is not an EV and, if the vehicle is an EV, if it is not charging. Violation of the statutory provision created by this bill is a traffic infraction with a \$150 penalty and \$32 surcharge, though there are certain situations identified in the provision in which non-charging parking in a designated charging station is permissible. This bill ensures that dedicated charging stations will be open and available for EV owners who need access to easy, quick charging to make driving an EV a viable transportation option. This will in turn increase confidence in EV ownership.

### **HB19-1159 (Rep. Lewis, Rep. Gray, Sen. Danielson)**

#### **Modify Innovative Motor Vehicle Income Tax Credits – Signed May 31, 2019**

This bill extends the availability of Colorado's tax credit for electric passenger vehicles and electric trucks through the 2025 tax year. For an EV purchased in tax years 2021 and 2022, a \$2,500 tax credit is available, and the credit is \$2,000 for an EV purchased in tax years 2023 through 2025. This bill ensures that Colorado's generous tax credits remain available as incentives for the purchase of EVs in the state, which will increase the adoption of these vehicles and ultimately reduce harmful air pollution, plus save Coloradans money.

### **SB19-239 (Sen. Winter, Sen. Bridges, Rep. Gray, Rep. Hansen)**

#### **Address Impacts of Transportation Changes – Signed May 31, 2019**

This bill is aimed to help incentivize companies providing passenger services (such as Uber, Lyft, and taxis) to switch to EV fleets and supports the expansion of EV infrastructure. It requires the Colorado Department of Transportation (CDOT) to convene a stakeholder group to examine environmental, economic, and system impacts of adopting new and emerging transportation technologies and business models and present a report with policy recommendations to address these impacts to CDOT by November 1, 2019. The report must identify potential fees intended to: generate revenue for state and local governments to mitigate certain impacts to the transportation system without running afoul of the state's Taxpayer Bill of Rights (TABOR); fund additional transportation infrastructure needed for EVs and other zero-emission vehicles (ZEVs); defray administrative costs; and incentivize transportation companies to adopt ZEVs.

**Failed Bills:** The 2019 legislative session was also notable for three EV-related bills that did not pass.

HB19-1325 would have allowed EV manufacturers to engage exclusively in the sale of their vehicles to sell directly to consumers – an exception to the general prohibition against vehicle manufacturers owning, operating, or controlling any dealer in the state. HB19-1199 would have allowed EV owners to pay an access fee at the time of registration in exchange for the ability to use carpool lanes for free or at a reduced toll rate, regardless of the number of persons in the vehicle. Finally, SB19-053 would have prohibited the AQCC from adopting rules to implement vehicle standards that were either more stringent than comparable federal standards or identical to standards set by California. Pursuant to Section 177 of the Federal Clean Air Act, California currently has authority to adopt more stringent vehicle emissions standards and other states can choose to adopt either California's standards or the federal standards, but not to make up their own. In November 2018, the AQCC adopted California's low-emission vehicle (LEV) standards and plans to consider whether to adopt California's ZEV standards later this year.

## UTILITIES, POWER PRODUCTION, AND EFFICIENCY

---

### **[SB19-236](#) (Sen. Garcia, Sen. Fenberg, Rep. Hansen, Rep. Becker)**

#### **Sunset Public Utilities Commission – Signed May 30, 2019**

This bill re-authorizes the PUC for another seven years and makes numerous changes to C.R.S. Title 40. The bill requires the PUC to consider the social cost of carbon in approving electric resource plans and in other decisions, the value of which cannot be set below \$46 per short ton of carbon dioxide starting in 2020. The bill also codifies Xcel Energy's carbon reduction goal of 80% below 2005 levels by 2030 and 100% carbon-free electricity by 2050, which the utility had announced in December 2018, a proposal previously presented in a stand-alone bill [HB19-1313](#). Further, the Sunset legislation requires the PUC to approve the electric resource plans of Tri-State Generation and Transmission Association, take a more active role in distribution system planning, and evaluate the benefits of joining a regional transmission organization. In recognition of the state's transition away from fossil-based electricity generation, the bill also allows utilities to pursue securitization (i.e. using low-cost bonds) to refinance power plants so as to retire them early (a concept previously floated in bill [HB19-1037](#)) and also requires the PUC to consider workforce transition issues for individuals and communities that have relied on jobs in the coal sector.

### **[HB19-1314](#) (Rep. Becker, Rep. Galindo, Sen. Winter, Sen. Donovan)**

#### **Just Transition from Coal-Based Electrical Energy Economy – Awaiting Governor's signature**

Recognizing the shift away from coal as a power source in Colorado—and the potential impact this transition will have on Colorado workers and communities—HB19-1314 creates a “Just Transition” Office within the Department of Labor and Employment to manage and lessen any negative effects of coal plant closures. The Just Transition Office will estimate the timing and impact of facility closures and layoffs, provide recommendations for effectively responding to those changes, administer benefits to coal transition workers, and make grants to entities in coal transition communities that seek to create a more diversified economic future. The bill also requires any electric utility proposing to retire a coal-fueled generating facility to submit a workforce transition plan. As Colorado moves towards a clean energy future, HB19-1314 will help ensure that all workers and communities across the state share in the benefits of this transition.

### **[HB19-1003](#) (Rep. Hansen, Rep. Valdez, Sen. Foote, Sen. Story)**

#### **Community Solar Gardens Modernization Act – Signed May 30, 2019**

HB19-1003 expands Colorado's already-successful community solar program, which allows utility ratepayers who are not able or do not wish to install rooftop solar to directly benefit from distributed energy resources by subscribing to a dedicated portion of a larger solar installation. The bill increases the maximum project size of a community solar garden from two megawatts (MW) to five MW (and up to 10 MW with PUC approval starting in 2023) and removes a prior geographic restriction that the subscriber must live in the same or adjacent county as the location of the solar project. It also provides that after January 1, 2020, installations of solar photovoltaic projects of 300 kilowatts or greater must be performed by licensed electricians or their apprentices.

### **[HB19-1260](#) (Rep. Kipp, Rep. Valdez, Sen. Winter, Sen. Priola)**

#### **Building Energy Codes – Signed May 30, 2019**

This bill aims to reduce the emissions and environmental impact of Colorado's new building stock by requiring local jurisdictions throughout the state to adopt one of the three most recent versions of the international energy conservation code upon updating any other building code. It also requires local jurisdictions by January 1, 2020, to report to CEO the current versions of their building or energy codes and encourages them to keep CEO updated about any future changes to the jurisdiction's building and energy codes.

**[HB19-1272](#) (Rep. Bird, Sen. Winter, Sen. Priola)**

**Housing Authority Property in Colorado New Energy Improvement District – Signed May 30, 2019**

Colorado's Commercial Property Assessed Clean Energy (C-PACE) Program allows property owners to receive financing for clean energy improvements and repay that financing through a special assessment on their property tax bill. HB19-1272 clarifies that although city, county, and multijurisdictional housing authorities are generally exempt from the payment of special assessments to the state or any political subdivision of the state, this exemption does not preclude them from voluntarily applying to participate in the C-Pace Program. This clarity will help ensure that public entities can take full advantage of C-PACE financing, a useful tool used around the country to accelerate the adoption of cost-effective energy efficiency and conservation improvements.

**[HB19-1231](#) (Rep. Froelich, Rep. Kipp, Sen. Lee, Sen. Priola)**

**New Appliance Energy and Water Efficiency Standards – Signed May 30, 2019**

HB19-1231 updates and adopts water- and energy-efficiency standards for a list of consumer and commercial appliances and other products. The standards apply to new products sold in Colorado and will be phased in over a period of three years. They are largely based on state, federal, and industry standards. The sale of a noncomplying product after the effective date of the applicable standard is punishable under the Colorado Consumer Protection Act and may result in penalties between \$2,000 and \$10,000 per violation.



**KAPLAN KIRSCH ROCKWELL**

projects that keep life moving®

For more information about 2019 legislation or other energy and climate change related issues, please contact [Tom Bloomfield](#), [Sarah Keane](#), or [Bob Randall](#).

*Kaplan Kirsch & Rockwell publishes Energy + Climate Law Alerts to announce late-breaking developments in legislation, regulation, and policy for our clients and colleagues. Nothing in our Alerts is intended as legal advice, and readers are reminded to contact legal counsel for legal advice on the matters that appear in our Alerts.*