

First Regular Session
Seventy-third General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 21-0784.02 Duane Gall x 4335

SENATE BILL 21-272

SENATE SPONSORSHIP

Hansen and Fenberg,

HOUSE SPONSORSHIP

(None),

Senate Committees
Transportation & Energy

House Committees

A BILL FOR AN ACT

101 CONCERNING THE OPERATIONS OF THE PUBLIC UTILITIES COMMISSION,
102 AND, IN CONNECTION THEREWITH, MODERNIZING THE
103 COMMISSION'S STATUTORY DIRECTIVES REGARDING
104 DISTRIBUTED GENERATION OF ELECTRICITY; REQUIRING
105 ADDITIONAL DISCLOSURE FROM INTERVENORS IN ADVERSARIAL
106 PROCEEDINGS; AND PROVIDING THE COMMISSIONERS WITH
107 ACCESS TO INDEPENDENT SUBJECT-MATTER EXPERTS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

Section 1 of the bill authorizes the allocation of up to \$250,000 per year of the money that the commission receives from the public utilities commission fixed utility fund for outside consultants and experts.

Section 2 requires an intervenor in a commission matter to disclose any financial relationship between that intervenor and any other intervenor in the matter.

Section 3 directs the commission to adopt rules to require the commission, when considering any matter before the commission, to improve equity and prioritize disproportionately impacted communities.

Under current law, the annual fee collected from each regulated public utility is capped at 0.25% of the public utility's gross intrastate utility operating revenue for the preceding calendar year; except that the annual fee collected from a public utility that is a telephone corporation is capped at 0.20% of the telephone corporation's gross intrastate utility operating revenue for the preceding calendar year. **Section 4** removes the cap on annual fees collected from regulated public utilities.

Section 5 requires the commission to promulgate rules requiring qualifying retail utilities subject to the renewable energy standard to retire renewable energy credits in a manner that benefits cities, counties, and businesses in the state and is consistent with timely attainment of the state's clean energy and climate goals.

Section 6 requires the commission to promulgate rules to establish fixed rates for net metering credits provided to community solar garden subscribers on their electric bills.

With respect to the retirement of any electric generating facility, **section 7** requires an investor-owned electric utility to submit, and the commission to consider, net present value of revenue requirement projections, one based on using Colorado energy impact bonds and one based on not using Colorado energy impact bonds.

Section 8 requires the commission, in approving a resource plan, to include the social cost of carbon dioxide with regard to a portfolio's net present value of revenue requirements.

Section 9 requires each regulated public utility that uses resource planning software to provide commission staff with licenses to the software and with model assumptions used for the software.

Section 10 expands the time for the commission to issue a decision on an application that is not accompanied by prefiled testimony and exhibits from 210 days to 250 days after the commission has deemed the application complete.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 40-2-104, **add** (4) as

1 follows:

2 **40-2-104. Assistants and employees - utilization of**
3 **independent experts.** (4) (a) OF THE MONEY THAT THE COMMISSION
4 RECEIVES FROM THE PUBLIC UTILITIES COMMISSION FIXED UTILITY FUND
5 PURSUANT TO SECTION 40-2-114 (1)(b)(II), UP TO TWO HUNDRED FIFTY
6 THOUSAND DOLLARS PER YEAR MAY BE ALLOCATED TO PERSONAL
7 SERVICES CONTRACTS WITH OUTSIDE CONSULTANTS AND EXPERTS THAT
8 MEET CRITERIA SPECIFIED BY THE COMMISSION.

9 (b) THE AMOUNT ALLOCATED FOR OUTSIDE CONSULTANTS AND
10 EXPERTS PURSUANT TO SUBSECTION (4)(a) OF THIS SECTION SHALL BE
11 ADJUSTED ANNUALLY IN ACCORDANCE WITH CHANGES IN THE UNITED
12 STATES DEPARTMENT OF LABOR'S BUREAU OF LABOR STATISTICS
13 CONSUMER PRICE INDEX FOR DENVER-AURORA-LAKEWOOD FOR ALL
14 ITEMS AND ALL URBAN CONSUMERS, OR ITS SUCCESSOR INDEX.

15 **SECTION 2.** In Colorado Revised Statutes, **add** 40-2-104.5 as
16 follows:

17 **40-2-104.5. Financial disclosures by intervenors.** AN
18 INTERVENOR IN ANY MATTER BEFORE THE COMMISSION SHALL DISCLOSE
19 ANY FINANCIAL RELATIONSHIP BETWEEN THE INTERVENOR AND ANY
20 OTHER INTERVENOR IN THE MATTER.

21 **SECTION 3.** In Colorado Revised Statutes, 40-2-108, **add** (3) as
22 follows:

23 **40-2-108. Rules - definitions.** (3) (a) THE COMMISSION SHALL
24 PROMULGATE RULES REQUIRING THAT THE COMMISSION, IN ALL OF ITS
25 WORK INCLUDING ITS REVIEW OF ALL FILINGS AND ITS DETERMINATION OF
26 ALL ADJUDICATIONS, CONSIDER HOW BEST TO PROVIDE EQUITY, MINIMIZE
27 IMPACTS, AND PRIORITIZE BENEFITS TO DISPROPORTIONATELY IMPACTED

1 COMMUNITIES AND ADDRESS HISTORICAL INEQUALITIES.

2 (b) IN PROMULGATING RULES PURSUANT TO THIS SUBSECTION (3),
3 THE COMMISSION SHALL IDENTIFY DISPROPORTIONATELY IMPACTED
4 COMMUNITIES. IN IDENTIFYING THE COMMUNITIES, THE COMMISSION
5 SHALL CONSIDER MINORITY, LOW-INCOME, TRIBAL, OR INDIGENOUS
6 POPULATIONS IN THE STATE THAT EXPERIENCE DISPROPORTIONATE
7 ENVIRONMENTAL HARM AND RISKS RESULTING FROM SUCH FACTORS AS
8 INCREASED VULNERABILITY TO ENVIRONMENTAL DEGRADATION, LACK OF
9 OPPORTUNITY FOR PUBLIC PARTICIPATION, OR OTHER FACTORS. INCREASED
10 VULNERABILITY MAY BE ATTRIBUTABLE TO AN ACCUMULATION OF
11 NEGATIVE OR A LACK OF POSITIVE ENVIRONMENTAL, HEALTH, ECONOMIC,
12 OR SOCIAL CONDITIONS WITHIN THESE POPULATIONS.

13 (c) AS USED IN THIS SUBSECTION (3):

14 (I) "COST-BURDENED" MEANS A HOUSEHOLD THAT SPENDS MORE
15 THAN THIRTY PERCENT OF ITS INCOME ON HOUSING.

16 (II) "DISPROPORTIONATELY IMPACTED COMMUNITY" MEANS A
17 COMMUNITY THAT IS IN A CENSUS BLOCK GROUP, AS DETERMINED IN
18 ACCORDANCE WITH THE MOST RECENT UNITED STATES DECENNIAL
19 CENSUS, WHERE THE PROPORTION OF HOUSEHOLDS THAT ARE LOW INCOME
20 IS GREATER THAN FORTY PERCENT, THE PROPORTION OF HOUSEHOLDS
21 THAT IDENTIFY AS MINORITY IS GREATER THAN FORTY PERCENT, OR THE
22 PROPORTION OF HOUSEHOLDS THAT ARE HOUSING COST-BURDENED IS
23 GREATER THAN FORTY PERCENT.

24 (III) "FEDERAL POVERTY LINE" HAS THE SAME MEANING AS
25 "POVERTY LINE", AS DEFINED IN 42 U.S.C. SEC. 9902 (2).

26 (IV) "LOW INCOME" MEANS THE MEDIAN HOUSEHOLD INCOME IS
27 LESS THAN OR EQUAL TO TWO HUNDRED PERCENT OF THE FEDERAL

1 POVERTY LINE.

2 **SECTION 4.** In Colorado Revised Statutes, **amend** 40-2-113 as
3 follows:

4 **40-2-113. Collection of fees - limitation.** (1) On or before June
5 15 of each year, the department of revenue shall notify each public utility
6 subject to this ~~article~~ ARTICLE 2 of the amount of its fee for the ensuing
7 fiscal year beginning July 1, computed by multiplying its gross intrastate
8 utility operating revenues for the preceding calendar year, as set forth in
9 its return filed for that purpose, by the percentage determined in
10 accordance with section 40-2-112. ~~but the department of revenue shall not~~
11 ~~require a public utility that is a telephone corporation to pay a fee in~~
12 ~~excess of one-fifth of one percent of its gross intrastate utility operating~~
13 ~~revenues for the preceding calendar year and shall not require any other~~
14 ~~public utility to pay a fee in excess of one-quarter of one percent of its~~
15 ~~gross intrastate utility operating revenues for the preceding calendar year.~~

16 (2) Each public utility shall pay the fee assessed against it to the
17 department of revenue in equal quarterly installments on or before July
18 15, October 15, January 15, and April 15 in each fiscal year. If a public
19 utility does not make a payment by one of the quarterly deadlines, the
20 department of revenue shall charge the public utility a penalty of ten
21 percent of the installment due, together with interest at the rate of one
22 percent per month on the amount of the unpaid installment until the full
23 amount of the installment, penalty, and interest has been paid. Upon
24 failure, refusal, or neglect of any public utility to pay the fee, or any
25 penalty or interest, the attorney general shall bring suit in the name of the
26 state to collect the amount due.

27 **SECTION 5.** In Colorado Revised Statutes, 40-2-124, **amend**

1 (1)(d) as follows:

2 **40-2-124. Renewable energy standards - qualifying retail and**
3 **wholesale utilities - definitions - net metering - legislative declaration**

4 - **rules.** (1) Each provider of retail electric service in the state of
5 Colorado, other than municipally owned utilities that serve forty thousand
6 customers or fewer, is a qualifying retail utility. Each qualifying retail
7 utility, with the exception of cooperative electric associations that have
8 voted to exempt themselves from commission jurisdiction pursuant to
9 section 40-9.5-104 and municipally owned utilities, is subject to the rules
10 established under this article 2 by the commission. No additional
11 regulatory authority is provided to the commission other than that
12 specifically contained in this section. In accordance with article 4 of title
13 24, the commission shall revise or clarify existing rules to establish the
14 following:

15 (d) (I) (A) SUBJECT TO RULES PROMULGATED PURSUANT TO
16 SUBSECTION (1)(d)(II) OF THIS SECTION, a system of tradable renewable
17 energy credits that A QUALIFYING RETAIL UTILITY may ~~be used by a~~
18 ~~qualifying retail utility~~ USE to comply with this standard. The commission
19 shall also analyze the effectiveness of utilizing any regional system of
20 renewable energy credits in existence at the time of its rule-making
21 process and determine whether the system is governed by rules that are
22 consistent with the rules established for this ~~article~~ ARTICLE 2.

23 (B) The commission shall not restrict the qualifying retail utility's
24 ownership OR PURCHASE of renewable energy ~~credits~~ if: The qualifying
25 retail utility complies with the electric resource standard of ~~paragraph (c)~~
26 ~~of this subsection (1)~~; SUBSECTION (1)(c) OF THIS SECTION AND THE
27 CONDITIONS OF ANY RATE RECOVERY MECHANISM ADOPTED PURSUANT TO

1 SUBSECTION (1)(f)(IV) OF THIS SECTION; THE QUALIFYING RETAIL UTILITY
2 uses definitions of eligible energy resources that are limited to those
3 identified in ~~paragraph (a) of this subsection (1)~~ SUBSECTION (1)(a) OF
4 THIS SECTION, as clarified by the commission, and does not exceed the
5 retail rate impact established by ~~paragraph (g) of this subsection (1)~~
6 SUBSECTION (1)(g) OF THIS SECTION; AND THE COMMISSION FINDS THAT
7 THE RESOURCES ARE PRUDENTLY ACQUIRED AT A REASONABLE COST AND
8 RATE IMPACT.

9 (C) Once a qualifying retail utility either receives a permit
10 pursuant to article 7 or 8 of title 25 ~~C.R.S.~~, for a generation facility that
11 relies on or is affected by the definitions of eligible energy resources or
12 enters into a contract that relies on or is affected by the definitions of
13 eligible energy resources, ~~such~~ THE definitions apply to the contract or
14 facility notwithstanding any subsequent alteration of the definitions,
15 whether by statute or rule.

16 (D) For purposes of compliance with the renewable energy
17 standard, if a generation system uses a combination of fossil fuel and
18 eligible renewable energy resources to generate electricity, a qualified
19 retail utility that is not an investor-owned utility may count as eligible
20 renewable energy only the proportion of the total electric output of the
21 generation system that results from the use of eligible renewable energy
22 resources.

23 (II) THE SYSTEM OF TRADABLE RENEWABLE ENERGY CREDITS
24 MUST INCLUDE REQUIREMENTS FOR THE RETIREMENT OF RENEWABLE
25 ENERGY CREDITS TO ENSURE THAT COMPLIANCE WITH THE RENEWABLE
26 ENERGY STANDARD:

27 (A) IS EFFECTUATED IN A MANNER THAT BENEFITS COLORADO'S

1 CITIES, COUNTIES, AND BUSINESSES;

2 (B) ENABLES A UTILITY'S CUSTOMERS TO ACCOUNT FOR THE
3 ENVIRONMENTAL BENEFITS OF THE RENEWABLE ENERGY GENERATED TO
4 SERVE THOSE CUSTOMERS AND PURCHASED FOR THOSE CUSTOMERS; AND

5 (C) IS CONSISTENT WITH TIMELY ATTAINMENT OF THE STATE'S
6 CLEAN ENERGY AND CLIMATE GOALS.

7 **SECTION 6.** In Colorado Revised Statutes, 40-2-127, **amend**
8 (5)(b)(II); and **add** (5)(b)(III) as follows:

9 **40-2-127. Community energy funds - community solar**
10 **gardens - definitions - rules - legislative declaration - repeal.**

11 (5) **Purchases of the output from community solar gardens.**

12 (b) (II) (A) The purchase of the output of a community solar garden by
13 a qualifying retail utility ~~shall~~ **MUST** take the form of a net metering credit
14 against the qualifying retail utility's electric bill to each community solar
15 garden subscriber at the premises set forth in the subscriber's subscription.

16 (B) UNTIL THE COMMISSION PROMULGATES RULES REGARDING A
17 FIXED NET METERING CREDIT RATE IN ACCORDANCE WITH SUBSECTION
18 (5)(b)(III) OF THIS SECTION, the net metering credit shall be calculated by
19 multiplying the subscriber's share of the electricity production from the
20 community solar garden by the qualifying retail utility's total aggregate
21 retail rate as charged to the subscriber **OR TO THE SUBSCRIBER'S RATE**
22 **CLASS**, minus a reasonable charge as determined by the commission to
23 cover the utility's costs of CUSTOMER SERVICE, delivering to the
24 subscriber's premises the electricity generated by the community solar
25 garden, integrating the solar generation with the utility's system, and
26 administering the community solar garden's contracts and net metering
27 credits. The commission shall ensure that this charge does not reflect

1 costs that are already recovered by the utility from the subscriber through
2 other charges. If, and to the extent that, a subscriber's net metering credit
3 CALCULATED PURSUANT TO THIS SUBSECTION (5)(b)(II) exceeds the
4 subscriber's electric bill in any billing period, the net metering credit shall
5 be carried forward and applied against future bills.

6 (C) The qualifying retail utility and the owner of the community
7 solar garden shall agree on whether the purchase of the renewable energy
8 credits from subscribers will be accomplished through a credit on each
9 subscriber's electricity bill or by a payment to the owner of the community
10 solar garden.

11 (III) FOR EACH COMMUNITY SOLAR GARDEN, THE COMMISSION
12 SHALL ESTABLISH BY RULE RATES FOR THE NET METERING CREDITS
13 APPLIED AGAINST A SUBSCRIBER'S ELECTRIC BILL PURSUANT TO
14 SUBSECTION (5)(b)(II) OF THIS SECTION, WHICH RATES MUST BE FIXED FOR
15 THE FULL TERM OF THE AGREEMENT INTO WHICH THE COMMUNITY SOLAR
16 GARDEN AND QUALIFYING RETAIL UTILITY HAVE ENTERED. THE
17 COMMISSION SHALL ESTABLISH THE FIXED RATES BASED ON THE TOTAL
18 AGGREGATE RETAIL RATE CALCULATION SPECIFIED IN SUBSECTION
19 (5)(b)(II) OF THIS SECTION AS APPLIED AT THE TIME THAT THE COMMUNITY
20 SOLAR GARDEN WAS COMMISSIONED; EXCEPT THAT, IN ESTABLISHING THE
21 FIXED RATES AND IN DETERMINING COST RECOVERY OF NET METERING
22 CREDITS AND CAPACITY ACQUISITION LEVELS TO BE APPROVED UNDER
23 SUBSECTION (5)(a)(IV) OF THIS SECTION, THE COMMISSION SHALL TAKE
24 INTO ACCOUNT, AND SHALL MINIMIZE, ANY ADVERSE EFFECTS ON
25 RATEPAYERS.

26 **SECTION 7.** In Colorado Revised Statutes, **add** 40-2-137 as
27 follows:

1 **40-2-137. Investor-owned utility electric resource planning -**
2 **retirement of electric generation facility - commission to consider**
3 **securitization as means of financing.** (1) FOR EACH INVESTOR-OWNED
4 ELECTRIC UTILITY THAT SUBMITS FOR COMMISSION APPROVAL AN
5 ELECTRIC RESOURCE PLAN THAT INCLUDES A PORTFOLIO IN WHICH AN
6 EXISTING ELECTRIC GENERATING FACILITY IN THE STATE WOULD BE
7 RETIRED, THE COMMISSION SHALL REQUIRE THE INVESTOR-OWNED
8 ELECTRIC UTILITY TO PRESENT AS PART OF THE RESOURCE PLAN THE NET
9 PRESENT VALUE OF REVENUE REQUIREMENTS FOR THE PORTFOLIO BASED
10 ON:

11 (a) A PROJECTION IN WHICH THE INVESTOR-OWNED ELECTRIC
12 UTILITY ISSUES CO-EI BONDS, AS DEFINED IN SECTION 40-41-102 (5), TO
13 RECOVER, FINANCE, OR REFINANCE COSTS ARISING FROM THE RETIREMENT
14 OF THE ELECTRIC GENERATING FACILITY PURSUANT TO THE "COLORADO
15 ENERGY IMPACT BOND ACT", ARTICLE 41 OF THIS TITLE 40; AND

16 (b) A PROJECTION IN WHICH THE INVESTOR-OWNED ELECTRIC
17 UTILITY DOES NOT ISSUE CO-EI BONDS.

18 (2) THE COMMISSION SHALL CONSIDER THE TWO NET PRESENT
19 VALUE OF REVENUE REQUIREMENT OPTIONS PRESENTED BY THE
20 INVESTOR-OWNED ELECTRIC UTILITY IN ITS REVIEW OF THE
21 INVESTOR-OWNED ELECTRIC UTILITY'S ELECTRIC RESOURCE PLAN.

22 **SECTION 8.** In Colorado Revised Statutes, 40-3.2-106, **amend**
23 (3) introductory portion and (3)(a) as follows:

24 **40-3.2-106. Costs of pollution in utility planning - definitions**
25 **- rules.** (3) In approving a resource plan, EITHER WITH GENERIC
26 RESOURCES OR IN THE ANALYSIS OF BIDS IN A COMPETITIVE SOLICITATION,
27 the commission shall REQUIRE A COMPARISON OF THE PORTFOLIOS' NET

1 PRESENT VALUE OF REVENUE REQUIREMENTS INCLUSIVE OF THE SOCIAL
2 COST OF CARBON DIOXIDE. THE COMMISSION SHALL ALSO consider:

3 (a) The net present value OF REVENUE REQUIREMENTS of the cost
4 of carbon dioxide OR CARBON DIOXIDE EQUIVALENT emissions;

5 **SECTION 9.** In Colorado Revised Statutes, **amend** 40-6-106 as
6 follows:

7 **40-6-106. Power to inspect books and accounts.** (1) The
8 commission, each commissioner, and any person employed by the
9 commission ~~shall have the right to~~ MAY inspect the records and
10 documents of any public utility. ~~and~~ THIS RIGHT OF INSPECTION INCLUDES
11 THE RIGHT TO OBTAIN FROM THE PUBLIC UTILITY, UPON REQUEST:

12 (a) A LICENSE TO UTILIZE ANY ECONOMIC, STATISTICAL, OR
13 ENGINEERING SOFTWARE USED BY THE UTILITY TO EVALUATE AND
14 DETERMINE RATES OR FOR SYSTEM PLANNING, WITH RELEVANT INPUT AND
15 ASSUMPTIONS DATA PROVIDED BY THE UTILITY TO REPLICATE AND MODIFY
16 THE UTILITY'S ANALYSIS UTILIZING THE SOFTWARE; AND

17 (b) THE PAID ASSISTANCE OF AN INDEPENDENT CONTRACTOR
18 SKILLED IN THE USE OF THE SOFTWARE DESCRIBED IN SUBSECTION (1)(a)
19 OF THIS SECTION, AS APPROPRIATE, TO ENABLE ANALYSIS OF ANY UTILITY
20 APPLICATION FOR AN ADVICE LETTER, CERTIFICATE OF PUBLIC
21 CONVENIENCE OR NECESSITY, RESOURCE PLAN, INFRASTRUCTURE
22 SECURITY OR METERING PLAN, DEMAND-SIDE MANAGEMENT PLAN,
23 BENEFICIAL ELECTRIFICATION PLAN, OR DISTRIBUTION SYSTEM PLAN. THE
24 COSTS OF THIS ASSISTANCE ARE A RECOVERABLE COST OF BUSINESS FOR
25 THE UTILITY BUT SHALL NOT BE INCLUDED IN THE UTILITY'S RATE BASE.

26 (2) The commission, each commissioner, or any employee
27 authorized to administer oaths ~~has the power to~~ MAY examine under oath

1 any officer, agent, or employee of ~~such~~ A public utility in relation to the
2 business and affairs of ~~said~~ THE public utility.

3 (3) Any person other than a commissioner demanding ~~such~~ AN
4 inspection OR EXAMINATION PURSUANT TO THIS SECTION shall produce
5 under the hand and seal of the commission ~~his~~ THE PERSON'S authority to
6 make ~~such~~ AN inspection and SHALL MAKE AND FILE WITH THE
7 COMMISSION a written record of the testimony or statement ~~so~~ given under
8 oath. ~~shall be made and filed with the commission.~~

9 **SECTION 10.** In Colorado Revised Statutes, 40-6-109.5, **amend**
10 (2) as follows:

11 **40-6-109.5. Hearings on applications - time limits for**
12 **decisions.** (2) In the case of any application not accompanied by prefiled
13 testimony and exhibits, the commission shall issue its decision no later
14 than two hundred ~~ten~~ FIFTY days after the application is deemed complete
15 as prescribed by the commission's rules.

16 **SECTION 11. Act subject to petition - effective date -**
17 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
18 the expiration of the ninety-day period after final adjournment of the
19 general assembly; except that, if a referendum petition is filed pursuant
20 to section 1 (3) of article V of the state constitution against this act or an
21 item, section, or part of this act within such period, then the act, item,
22 section, or part will not take effect unless approved by the people at the
23 general election to be held in November 2022 and, in such case, will take
24 effect on the date of the official declaration of the vote thereon by the
25 governor.

26 (2) This act applies to conduct occurring on or after the applicable
27 effective date of this act.