

## CHAPTER 441

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**PUBLIC UTILITIES**

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**HOUSE BILL 21-1324**

BY REPRESENTATIVE(S) Pelton and Roberts, Bennett, Bird, Esgar, Froelich, Gonzales-Gutierrez, Kipp, Lontine, McCluskie, McCormick, Michaelson Jenet, Mullica, Ortiz, Ricks, Soper, Titone, Will, Boesenecker, Caraveo, Cutter, Duran, Exum, Jackson, Kennedy, Snyder;  
also SENATOR(S) Rodriguez and Hisey, Buckner, Gonzales, Liston, Priola, Story, Winter.

**AN ACT**

**CONCERNING MEASURES TO FACILITATE THE USE OF INNOVATIVE ENERGY TECHNOLOGIES BY INVESTOR-OWNED UTILITIES IN COLORADO, AND, IN CONNECTION THEREWITH, AUTHORIZING THE PUBLIC UTILITIES COMMISSION TO REVIEW AND APPROVE INVESTOR-OWNED UTILITIES' APPLICATIONS FOR LOW-EMISSION INNOVATIVE ENERGY TECHNOLOGIES BASED ON MEETING SPECIFIED CRITERIA.**

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

**SECTION 1. Legislative declaration.** (1) The general assembly finds, determines, and declares that:

(a) As part of just-transition, workforce planning, and community-assistance efforts, investor-owned utilities, on their own or in partnership with other energy developers, should pursue opportunities to develop new energy technologies or modify existing generation resources with new technologies as a catalyst for new investment and workforce development in areas of Colorado impacted by accelerated retirements of energy generation resources and other system changes;

(b) It is critical that Colorado's long tradition of leadership in clean energy research and development continue to evolve while simultaneously supporting Colorado's workforce;

(c) Market certainty for zero-emission resources and other innovative energy technologies has the potential to create economic development opportunities in the state while simultaneously advancing the state's emission reduction goals and furthering the transition to cleaner energy resources;

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*Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.*

(d) By creating market certainty, these projects can be a catalyst for cutting-edge research, attracting and retaining new business, workforce development, and economic growth;

(e) The development of zero-emission resources is imperative in order to reach Colorado's greenhouse gas emission-reduction goals;

(f) The development of zero-emission resources will enable large Colorado investor-owned utilities to continue to safely and reliably integrate intermittent wind and solar generation without corresponding increases in carbon dioxide emissions; and

(g) It is a matter of national importance that Colorado continue its leadership by advancing the development of technologies that hold the promise of delivering the next generation of clean, safe, affordable, reliable, diverse, and resilient energy while meeting the state's emission-reduction objectives and advancing just-transition, workforce planning, and community-assistance efforts.

**SECTION 2.** In Colorado Revised Statutes, 40-2-123, **recreate and reenact, with amendments**, (2) as follows:

**40-2-123. Energy technologies - consideration by commission - incentives - demonstration projects - definitions - repeal.** (2) (a) THE COMMISSION SHALL CONSIDER PROPOSALS BY COLORADO INVESTOR-OWNED UTILITIES FOR THE FOLLOWING TYPES OF PROJECTS:

(I) TO CONSTRUCT, OWN, AND OPERATE ELECTRIC GENERATION OR STORAGE FACILITIES UTILIZING INNOVATIVE ENERGY TECHNOLOGY; OR

(II) TO PARTNER WITH OTHER ENERGY DEVELOPERS OR INDEPENDENT POWER PRODUCERS TO CONSTRUCT, ACQUIRE, OR CONTRACT FOR ELECTRIC GENERATION OR STORAGE FACILITIES UTILIZING INNOVATIVE ENERGY TECHNOLOGY.

(b) (I) AN INVESTOR-OWNED UTILITY MAY APPLY UNDER THIS SUBSECTION (2) TO THE COMMISSION FOR APPROVAL OF INNOVATIVE ENERGY TECHNOLOGY PROJECTS IN AREAS OF THE STATE THAT HAVE BEEN ECONOMICALLY AFFECTED BY THE ACCELERATED RETIREMENTS OF EXISTING GENERATION RESOURCES. ANY SUCH PROJECTS ARE ELIGIBLE FOR COST RECOVERY THROUGH THE CLEAN ENERGY PLAN REVENUE RIDER AND, IF APPROVED BY THE COMMISSION, PRUDENTLY INCURRED COSTS THAT DO NOT CONSTITUTE CLEAN ENERGY PLAN ACTIVITIES ARE ELIGIBLE FOR RECOVERY THROUGH AN ADJUSTMENT CLAUSE OR OTHER SIMILAR COST RECOVERY MECHANISM OTHER THAN THE CLEAN ENERGY PLAN REVENUE RIDER, IN ACCORDANCE WITH THE RETAIL RATE STABILITY PROVISIONS OF SECTION 40-2-125.5 (5), FOLLOWING THE PROJECT'S COMMENCEMENT OF COMMERCIAL OPERATION AND UNTIL ANY PROJECT IS PLACED IN BASE RATES. NOTHING IN THIS SECTION PROHIBITS OR DETERS COST-EFFECTIVE INNOVATIVE ENERGY TECHNOLOGY DEPLOYMENT; EXCEPT THAT, IF AN INNOVATIVE ENERGY TECHNOLOGY PROJECT IS ABANDONED OR CANCELLED, IN WHOLE OR IN PART, THE UTILITY IS NOT ENTITLED TO RECOVER ANY COSTS OF RESEARCH, PLANNING, DEVELOPMENT, CONSTRUCTION, START-UP, OR OPERATION IN CONNECTION WITH THE PROJECT ABSENT A FINDING BY THE COMMISSION THAT SUCH COSTS WERE PRUDENTLY INCURRED, AND IN ANY COST

RECOVERY PROCEEDING THE UTILITY SHALL BEAR THE BURDEN OF PROOF.

(II) AN INVESTOR-OWNED UTILITY SHALL PRESENT ANY INNOVATIVE ENERGY TECHNOLOGY PROJECTS AS PART OF ITS ELECTRIC RESOURCE PLANNING PROCESS SO THAT THE PROJECTS CAN BE EVALUATED AS PART OF A COMPREHENSIVE PLAN TO MEET THE INVESTOR-OWNED UTILITY'S ENERGY AND CAPACITY NEEDS. THE PRESENTATION FOR EACH PROJECT MUST ADDRESS:

(A) HOW THE PROJECT WILL BE DEVELOPED;

(B) WHETHER THE PROJECT INVOLVES A CHANGE TO AN EXISTING GENERATION RESOURCE TO MEET THE REQUIREMENTS AS AN INNOVATIVE ENERGY TECHNOLOGY PROJECT OR WHETHER THE PROJECT IS A NEWLY DEVELOPED INNOVATIVE ENERGY TECHNOLOGY PROJECT;

(C) HOW THE PROJECT MITIGATES THE IMPACTS OF THE TRANSITION TO CLEANER GENERATION TECHNOLOGIES IN AFFECTED AREAS OF COLORADO; AND

(D) AS APPLICABLE, HOW THE PROJECT FURTHERS THE EFFORTS OF ANY WORKFORCE TRANSITION PLAN OR COMMUNITY ASSISTANCE PLAN DEVELOPED PURSUANT TO SECTION 40-2-125.5 (4)(a)(VII) OR 40-2-133 ASSOCIATED WITH ANY ACCELERATED RETIREMENT OF AN ELECTRIC GENERATING FACILITY AND HOW THE PROJECT COMPLIES WITH SECTION 40-2-129.

(III)(A) ANY INNOVATIVE ENERGY TECHNOLOGY PROJECTS APPROVED PURSUANT TO THIS SUBSECTION (2) PROPORTIONALLY COUNT TOWARD THE TARGETS IN SECTION 40-2-125.5 (5)(b); EXCEPT THAT INNOVATIVE ENERGY TECHNOLOGY PROJECTS DEVELOPED BY AN INVESTOR-OWNED UTILITY PURSUANT TO THIS SUBSECTION (2) MUST NOT EXCEED, IN THE AGGREGATE, A NAMEPLATE CAPACITY OF THREE HUNDRED MEGAWATTS.

(B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE COMMISSION SHALL NOT PERMIT AN INVESTOR-OWNED UTILITY TO EARN A TOTAL RETURN FROM AN INNOVATIVE ENERGY TECHNOLOGY PROJECT THAT EXCEEDS THE TOTAL RETURN THE UTILITY WOULD HAVE EARNED FROM A PHOTOVOLTAIC SOLAR GENERATION FACILITY OR WIND GENERATION FACILITY OF EQUIVALENT CAPACITY.

(c) TO FACILITATE FINANCING OF AN INNOVATIVE ENERGY TECHNOLOGY PROJECT, ONE OR MORE INVESTOR-OWNED UTILITIES MAY DEVELOP, CONSTRUCT, OR OWN A PROJECT THROUGH A SPECIAL-PURPOSE ENTITY OR OTHER AFFILIATED PARTNERSHIP OR CORPORATION, INCLUDING A PUBLIC-PRIVATE PARTNERSHIP OR PARTNERSHIP FORMED WITH OTHER ENERGY DEVELOPERS OR INDEPENDENT POWER PRODUCERS. FOR THIS PURPOSE, AN INVESTOR-OWNED UTILITY IS ENTITLED TO STRUCTURE THE PARTNERSHIP IN THE MANNER THAT IT DEEMS APPROPRIATE; TO NEGOTIATE OWNERSHIP INTERESTS IN THE PROJECT; AND TO USE APPROPRIATE MEANS TO SOLICIT POTENTIAL PARTNERSHIPS, INCLUDING REQUESTS FOR INFORMATION, REQUESTS FOR PROPOSALS, OR BILATERAL NEGOTIATIONS.

(d) (I) IN THE CONSTRUCTION OR EXPANSION OF AN INNOVATIVE ENERGY TECHNOLOGY PROJECT APPROVED PURSUANT TO THIS SUBSECTION (2), AN INVESTOR-OWNED UTILITY SHALL USE ITS OWN EMPLOYEES OR QUALIFIED

CONTRACTORS, OR BOTH, BUT SHALL NOT USE A CONTRACTOR UNLESS THE CONTRACTOR'S EMPLOYEES HAVE ACCESS TO AN APPRENTICESHIP PROGRAM REGISTERED WITH THE UNITED STATES DEPARTMENT OF LABOR'S OFFICE OF APPRENTICESHIP OR BY A STATE APPRENTICESHIP COUNCIL RECOGNIZED BY THAT OFFICE; EXCEPT THAT THIS APPRENTICESHIP REQUIREMENT DOES NOT APPLY TO:

- (A) THE DESIGN, PLANNING, OR ENGINEERING OF THE TRANSMISSION FACILITIES;
- (B) MANAGEMENT FUNCTIONS TO OPERATE THE TRANSMISSION FACILITIES; OR
- (C) ANY WORK INCLUDED IN A WARRANTY.

(II) THE COMMISSION SHALL NOT APPROVE ANY CONSTRUCTION OR EXPANSION UNDER THIS SUBSECTION (2) UNTIL THE COMMISSION HAS COMPLETED THE RULE-MAKING INITIATED BEFORE DECEMBER 31, 2020, ADDRESSING IN PART SECTION 40-2-129.

(e) AS USED IN THIS SUBSECTION (2):

(I) "INNOVATIVE ENERGY TECHNOLOGY" MEANS A GENERATION TECHNOLOGY OR STORAGE TECHNOLOGY THAT, ALONE OR IN COMBINATION WITH OTHER TECHNOLOGIES USED IN A PROJECT:

(A) GENERATES OR STORES ELECTRICITY WITHOUT EMITTING GREENHOUSE GAS EMISSIONS INTO THE ATMOSPHERE;

(B) AT THE TIME OF ANY APPLICATION UNDER THIS SUBSECTION (2), HAS NOT BEEN WIDELY DEPLOYED IN THE UNITED STATES. IN EVALUATING WHETHER A TECHNOLOGY IS "WIDELY DEPLOYED" WITHIN THE MEANING OF THIS SUBSECTION (2)(e)(I)(B), THE COMMISSION MAY EVALUATE THE NUMBER OF COMMERCIAL PROJECTS IN WHICH THE TECHNOLOGY IS INSTALLED IN THE UNITED STATES FOR PURPOSES OF ELECTRIC GENERATION AND HOW LONG THOSE PROJECTS HAVE BEEN IN COMMERCIAL OPERATION.

(C) DOES NOT INCLUDE STAND-ALONE WIND, SOLAR, OR LITHIUM-ION BATTERY STORAGE RESOURCES OR WIND OR SOLAR RESOURCES PAIRED WITH LITHIUM-ION BATTERY STORAGE.

(II) "INNOVATIVE ENERGY TECHNOLOGY PROJECT" OR "PROJECT" MEANS AN ELECTRIC GENERATION OR ENERGY STORAGE FACILITY THAT DEMONSTRATES THE USE OF INNOVATIVE ENERGY TECHNOLOGY IN COLORADO AND FOR WHICH THE INVESTMENT IN THE INNOVATIVE TECHNOLOGY PORTION OF THE PROJECT CONSTITUTES THE MAJORITY OF THE TOTAL PROJECT INVESTMENT.

(f) THIS SUBSECTION (2) IS REPEALED, EFFECTIVE DECEMBER 31, 2024.

**SECTION 3. Act subject to petition - effective date - applicability.** (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against

this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2022 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

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

Approved: July 6, 2021