

**First Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 21-0140.01 Duane Gall x4335

HOUSE BILL 21-1324

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House Committees
Energy & Environment

Senate Committees
State, Veterans, & Military Affairs

SENATE
Amended 3rd Reading
June 8, 2021

A BILL FOR AN ACT

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

SENATE
Amended 2nd Reading
June 7, 2021

HOUSE
3rd Reading Unamended
June 2, 2021

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>.)

HOUSE
Amended 2nd Reading
June 1, 2021

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.

The bill replaces the integrated gasification combined cycle (IGCC) program, which was repealed in 2019, with a mechanism by which an investor-owned utility seeking to implement an innovative energy technology project may apply to the public utilities commission to acquire resources that demonstrate the use of low- and zero-emission resources and other innovative energy technologies such as advanced renewable energy and storage.

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

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

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

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

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

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

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

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

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

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

15 **40-2-123. Energy technologies - consideration by commission**
16 **- incentives - demonstration projects - definitions - repeal.** (2) (a) THE
17 COMMISSION SHALL CONSIDER PROPOSALS BY COLORADO
18 INVESTOR-OWNED UTILITIES FOR THE FOLLOWING TYPES OF PROJECTS:

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

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

25 (b) (I) AN INVESTOR-OWNED UTILITY MAY APPLY UNDER THIS
26 SUBSECTION (2) TO THE COMMISSION FOR APPROVAL OF INNOVATIVE
27 ENERGY TECHNOLOGY PROJECTS IN AREAS OF THE STATE THAT HAVE BEEN

1 ECONOMICALLY AFFECTED BY THE ACCELERATED RETIREMENTS OF
2 EXISTING GENERATION RESOURCES. ANY SUCH PROJECTS ARE ELIGIBLE
3 FOR COST RECOVERY THROUGH THE CLEAN ENERGY PLAN REVENUE RIDER
4 AND, IF APPROVED BY THE COMMISSION, PRUDENTLY INCURRED COSTS
5 THAT DO NOT CONSTITUTE CLEAN ENERGY PLAN ACTIVITIES ARE ELIGIBLE
6 FOR RECOVERY THROUGH AN ADJUSTMENT CLAUSE OR OTHER SIMILAR
7 COST RECOVERY MECHANISM OTHER THAN THE CLEAN ENERGY PLAN
8 REVENUE RIDER, IN ACCORDANCE WITH THE RETAIL RATE STABILITY
9 PROVISIONS OF SECTION 40-2-125.5 (5), FOLLOWING THE PROJECT'S
10 COMMENCEMENT OF COMMERCIAL OPERATION AND UNTIL ANY PROJECT IS
11 PLACED IN BASE RATES. NOTHING IN THIS SECTION PROHIBITS OR DETERS
12 COST-EFFECTIVE INNOVATIVE ENERGY TECHNOLOGY DEPLOYMENT;
13 EXCEPT THAT, IF AN INNOVATIVE ENERGY TECHNOLOGY PROJECT IS
14 ABANDONED OR CANCELLED, IN WHOLE OR IN PART, THE UTILITY IS NOT
15 ENTITLED TO RECOVER ANY COSTS OF RESEARCH, PLANNING,
16 DEVELOPMENT, CONSTRUCTION, START-UP, OR OPERATION IN CONNECTION
17 WITH THE PROJECT ABSENT A FINDING BY THE COMMISSION THAT SUCH
18 COSTS WERE PRUDENTLY INCURRED, AND IN ANY COST RECOVERY
19 PROCEEDING THE UTILITY SHALL BEAR THE BURDEN OF PROOF.

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

26 (A) HOW THE PROJECT WILL BE DEVELOPED;

27 (B) WHETHER THE PROJECT INVOLVES A CHANGE TO AN EXISTING

1 GENERATION RESOURCE TO MEET THE REQUIREMENTS AS AN INNOVATIVE
2 ENERGY TECHNOLOGY PROJECT OR WHETHER THE PROJECT IS A NEWLY
3 DEVELOPED INNOVATIVE ENERGY TECHNOLOGY PROJECT;

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

7 (D) AS APPLICABLE, HOW THE PROJECT FURTHERS THE EFFORTS OF
8 ANY WORKFORCE TRANSITION PLAN OR COMMUNITY ASSISTANCE PLAN
9 DEVELOPED PURSUANT TO SECTION 40-2-125.5 (4)(a)(VII) OR 40-2-133
10 ASSOCIATED WITH ANY ACCELERATED RETIREMENT OF AN ELECTRIC
11 GENERATING FACILITY AND HOW THE PROJECT COMPLIES WITH SECTION
12 40-2-129.

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

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

26 (c) TO FACILITATE FINANCING OF AN INNOVATIVE ENERGY
27 TECHNOLOGY PROJECT, ONE OR MORE INVESTOR-OWNED UTILITIES MAY

1 DEVELOP, CONSTRUCT, OR OWN A PROJECT THROUGH A SPECIAL-PURPOSE
2 ENTITY OR OTHER AFFILIATED PARTNERSHIP OR CORPORATION, INCLUDING
3 A PUBLIC-PRIVATE PARTNERSHIP OR PARTNERSHIP FORMED WITH OTHER
4 ENERGY DEVELOPERS OR INDEPENDENT POWER PRODUCERS. FOR THIS
5 PURPOSE, AN INVESTOR-OWNED UTILITY IS ENTITLED TO STRUCTURE THE
6 PARTNERSHIP IN THE MANNER THAT IT DEEMS APPROPRIATE; TO
7 NEGOTIATE OWNERSHIP INTERESTS IN THE PROJECT; AND TO USE
8 APPROPRIATE MEANS TO SOLICIT POTENTIAL PARTNERSHIPS, INCLUDING
9 REQUESTS FOR INFORMATION, REQUESTS FOR PROPOSALS, OR BILATERAL
10 NEGOTIATIONS.

11 (d) (I) IN THE CONSTRUCTION OR EXPANSION OF AN INNOVATIVE
12 ENERGY TECHNOLOGY PROJECT APPROVED PURSUANT TO THIS SUBSECTION
13 (2), AN INVESTOR-OWNED UTILITY SHALL USE ITS OWN EMPLOYEES OR
14 QUALIFIED CONTRACTORS, OR BOTH, BUT SHALL NOT USE A CONTRACTOR
15 UNLESS THE CONTRACTOR'S EMPLOYEES HAVE ACCESS TO AN
16 APPRENTICESHIP PROGRAM REGISTERED WITH THE UNITED STATES
17 DEPARTMENT OF LABOR'S OFFICE OF APPRENTICESHIP OR BY A STATE
18 APPRENTICESHIP COUNCIL RECOGNIZED BY THAT OFFICE; EXCEPT THAT
19 THIS APPRENTICESHIP REQUIREMENT DOES NOT APPLY TO:

20 (A) THE DESIGN, PLANNING, OR ENGINEERING OF THE
21 TRANSMISSION FACILITIES;

22 (B) MANAGEMENT FUNCTIONS TO OPERATE THE TRANSMISSION
23 FACILITIES; OR

24 (C) ANY WORK INCLUDED IN A WARRANTY.

25 (II) THE COMMISSION SHALL NOT APPROVE ANY CONSTRUCTION OR
26 EXPANSION UNDER THIS SUBSECTION (2) UNTIL THE COMMISSION HAS
27 COMPLETED THE RULE-MAKING INITIATED BEFORE DECEMBER 31, 2020,

1 ADDRESSING IN PART SECTION 40-2-129.

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

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

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

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

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

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

25 (f) THIS SUBSECTION (2) IS REPEALED, EFFECTIVE DECEMBER 31,
26 2024.

27 **SECTION 3. Act subject to petition - effective date -**

1 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
2 the expiration of the ninety-day period after final adjournment of the
3 general assembly; except that, if a referendum petition is filed pursuant
4 to section 1 (3) of article V of the state constitution against this act or an
5 item, section, or part of this act within such period, then the act, item,
6 section, or part will not take effect unless approved by the people at the
7 general election to be held in November 2022 and, in such case, will take
8 effect on the date of the official declaration of the vote thereon by the
9 governor.

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