A BILL FOR AN ACT

Concerning measures to facilitate the use of innovative energy technologies by investor-owned public utilities, and, in connection therewith, authorizing the Public Utilities Commission to review and approve investor-owned utilities' applications for low-emission dispatchable and innovative energy technologies based on meeting specified criteria.

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The bill replaces the integrated gasification combined cycle (IGCC) program, which was repealed in 2019, with a mechanism by which an investor-owned public utility seeking to implement an innovative energy technology project (project) may apply to the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

In determining whether to grant approval to a public utility seeking to implement a project, the PUC shall consider a number of factors regarding the project, including its economic and technical feasibility, its projected environmental and public safety impacts, and its carbon dioxide emissions rates. The PUC is required to provide an opportunity for public comment and an evidentiary hearing.

A public utility may fully recover, from its retail customers in the state, the costs it incurs in researching, testing, planning, developing, constructing, starting up, and operating the project. The public utility may also recover capital investments made in connection with the project over the useful life of the project. The department of public health and environment, the governor's office of economic development, and the Colorado energy office may assist public utilities in seeking and obtaining support for a project from other federal and state agencies and institutions.

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) Colorado has a long tradition of leadership in clean energy research and development;

(b) Market certainty for low- and zero-emission dispatchable 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;

(c) By creating market certainty, these projects can be a catalyst for cutting-edge research, the attraction and retention of new business,
workforce development, and economic growth; and

(d) It is a matter of national importance that Colorado continues its leadership by advancing 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.

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 - legislative declaration. (2) (a) The commission shall consider proposals by Colorado investor-owned public utilities to propose, fund, construct, own, and operate electric generation or storage facilities to demonstrate the feasibility of innovative energy technology projects.

(b) 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, has minimal or no emissions of carbon dioxide into the atmosphere, and is dispatchable or otherwise controllable to meet system energy requirements. Innovative energy technology may include:

(A) Advanced renewable energy;

(B) Long-duration energy storage, including pumped hydroelectric storage, storage of low- to zero-carbon fuels, emerging battery technologies, and other forms of energy
STORAGE;

(C) RESOURCES POWERED BY RENEWABLE NATURAL GAS, CLEAN HYDROGEN, OR OTHER FUELS SYNTHESIZED THROUGH LOW- TO ZERO-CARBON PROCESSES;

(D) FOSSIL FUEL TECHNOLOGY WITH CARBON CAPTURE TECHNOLOGY, INCLUDING TECHNOLOGY THAT REMOVES CARBON DIOXIDE FROM THE ATMOSPHERE; OR

(E) ADVANCED NUCLEAR ENERGY.

(II) "INNOVATIVE ENERGY TECHNOLOGY PROJECT" OR "PROJECT" MEANS AN ELECTRIC GENERATION OR ENERGY STORAGE FACILITY THAT:

(A) DEMONSTRATES THE USE OF INNOVATIVE ENERGY TECHNOLOGY;

(B) IN THE CASE OF AN ELECTRIC GENERATION INNOVATIVE ENERGY TECHNOLOGY, GENERATES ELECTRICITY USING FUELS OR RESOURCES, INCLUDING RENEWABLE ENERGY RESOURCES, LOCATED IN COLORADO; AND

(C) IS LOCATED IN COLORADO.

(c) (I) A PUBLIC UTILITY MAY, FROM TIME TO TIME, APPLY UNDER THIS SUBSECTION (2) TO THE COMMISSION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND FOR COST RECOVERY FOR INNOVATIVE ENERGY TECHNOLOGY PROJECTS.

(II) A PROJECT DEVELOPED PURSUANT TO THIS SECTION IS EXEMPT FROM SECTION 40-2-125.5 (5)(b) AND ANY OTHER COMPETITIVE BIDDING REQUIREMENTS IMPOSED BY RULES OF THE COMMISSION; EXCEPT THAT A PUBLIC UTILITY SHALL PRESENT ANY SUCH PROJECT AS PART OF THE PUBLIC UTILITY’S ELECTRIC RESOURCE PLANNING PROCESS SO THAT THE PROJECT CAN BE EVALUATED AS PART OF A COMPREHENSIVE PLAN TO
MEET THE PUBLIC UTILITY'S ENERGY AND CAPACITY NEEDS. IN ADDITION, IN ITS APPLICATION, THE PUBLIC UTILITY SHALL SET FORTH INFORMATION CONCERNING:

(A) THE PROJECT'S OPERATING CHARACTERISTICS AND ITS ECONOMIC AND TECHNICAL FEASIBILITY;

(B) THE PROJECTED COST OF THE PROJECT AND THE FORM OF RATE RECOVERY REQUESTED BY THE PUBLIC UTILITY, CONSISTENT WITH SUBSECTION (2)(f) OF THIS SECTION; AND

(C) THE PROJECT'S VALUE TO COLORADO'S ECONOMY, INCLUDING POTENTIAL ECONOMIC DEVELOPMENT OPPORTUNITIES AND THE ENHANCEMENT OF COLORADO'S ROLE AS A NATIONAL LEADER IN CLEAN ENERGY, AND HOW THE PROJECT ADVANCES COLORADO'S EMISSION REDUCTION OBJECTIVES AND PROVIDES GENERATION RESOURCE DIVERSITY.

(d) IN ITS APPLICATION, A PUBLIC UTILITY SEEKING TO CONSTRUCT A PROJECT SHALL ALSO PROVIDE INFORMATION CONCERNING THE FOLLOWING ENVIRONMENTAL MATTERS:

(I) THE PROJECT'S PROJECTED WATER SAVINGS, IF ANY; EMISSION RATES; AND OTHER ENVIRONMENTAL BENEFITS;

(II) ANY ENVIRONMENTAL AND PUBLIC SAFETY IMPACTS OF THE PROJECT; AND

(III) THE DIRECT CARBON DIOXIDE EMISSIONS ASSOCIATED WITH THE OPERATION OF THE PROJECT.

(e) (I) THE COMMISSION SHALL PROVIDE AN OPPORTUNITY FOR PUBLIC COMMENT AND AN EVIDENTIARY HEARING ON THE PUBLIC UTILITY'S APPLICATION. IF THE COMMISSION GRANTS THE PUBLIC UTILITY A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE
PROPOSED PROJECT, THE COMMISSION SHALL ISSUE AN ORDER FOR COST
RECOVERY IN ACCORDANCE WITH SUBSECTION (2)(f) OF THIS SECTION.

(II) IN EVALUATING A PROJECT UNDER THIS SECTION, IN ADDITION
TO THE CONSIDERATIONS SET FORTH IN SUBSECTION (1) OF THIS SECTION,
THE COMMISSION SHALL CONSIDER THE FACTORS SET FORTH IN
SUBSECTION (2)(f) OF THIS SECTION AND THE AMOUNT OF FEDERAL, STATE,
OR OTHER MONEY AVAILABLE FOR THE PROJECT. NOTHING IN THIS
SUBSECTION (2) REQUIRES THE COMMISSION TO MONETIZE THE POTENTIAL
ENVIRONMENTAL BENEFITS ASSOCIATED WITH A PROPOSED PROJECT.

(f) (I) A PUBLIC UTILITY IS ENTITLED TO COST RECOVERY
TREATMENT AS PROVIDED FOR IN SECTION 40-2-124 (1)(f)(II) TO
(1)(f)(IV) REGARDLESS OF WHETHER THE PROJECT IS AN ELIGIBLE ENERGY
RESOURCE UNDER SECTION 40-2-124 (1)(a).

(II) THE PUBLIC UTILITY IS ENTITLED TO RECOVER ALL PRUDENTLY
INCURRED RESEARCH, PLANNING, DEVELOPMENT, CONSTRUCTION,
START-UP, AND OPERATING COSTS IF THE PROJECT IS ABANDONED OR
CANCELLED, IN WHOLE OR IN PART, DUE TO THE RISKS ASSOCIATED WITH
THE DEVELOPMENT OF INNOVATIVE ENERGY TECHNOLOGIES. THE
COMMISSION SHALL ESTABLISH AN AMORTIZATION PERIOD OF NO LESS
THAN FIVE YEARS FOR RECOVERY OF THE COSTS ASSOCIATED WITH AN
ABANDONED OR CANCELLED PROJECT.

(g) IN ORDER TO REDUCE THE COST TO COLORADO CONSUMERS OF
A PROJECT, THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, THE
COLORADO OFFICE OF ECONOMIC DEVELOPMENT CREATED IN SECTION
24-48.5-101, AND THE COLORADO ENERGY OFFICE CREATED IN SECTION
24-38.5-101 MAY PROVIDE PUBLIC UTILITIES WITH REASONABLE
ASSISTANCE IN SEEKING AND OBTAINING FINANCIAL AND OTHER SUPPORT
AND SPONSORSHIP FOR A PROJECT FROM THE UNITED STATES CONGRESS, THE UNITED STATES DEPARTMENT OF ENERGY, AND OTHER APPROPRIATE FEDERAL AND STATE AGENCIES AND INSTITUTIONS. TO OBTAIN THIS ASSISTANCE, A PUBLIC UTILITY MAY PROVIDE TO THESE FEDERAL AND STATE AGENCIES AND INSTITUTIONS COPIES OF ITS PROJECT PROPOSAL. THE COLORADO ENERGY OFFICE, OR ITS DESIGNEE, MAY MANAGE AND Distribute TO THE PUBLIC UTILITY SOME OR ALL OF ANY MONEY PROVIDED BY THE STATE OF COLORADO OR BY THE FEDERAL GOVERNMENT TO THE STATE OF COLORADO FOR PURPOSES OF THE STUDY OR DEVELOPMENT OF A PROJECT.

(h) IN ORDER TO ASSIST A PUBLIC UTILITY IN THE DEVELOPMENT AND IMPLEMENTATION OF A PROJECT, THE PUBLIC UTILITY MAY CONVENE A TECHNICAL ADVISORY GROUP INCLUDING REPRESENTATIVES OF STATE AND FEDERAL AGENCIES AND INSTITUTIONS, THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT, AND THE COLORADO ENERGY OFFICE TO REVIEW PROJECT DETAILS AND PROVIDE INPUT TO THE PUBLIC UTILITY ON THE RISKS AND OPPORTUNITIES ASSOCIATED WITH INNOVATIVE TECHNOLOGIES UNDER CONSIDERATION BY THE PUBLIC UTILITY AND A PROJECT'S POTENTIAL TO AVOID CARBON EMISSIONS, ENHANCE INTEGRATION OF CLEAN ENERGY, OR BOTH.

(i) TO FACILITATE FINANCING OF A PROJECT, ONE OR MORE PUBLIC UTILITIES MAY DEVELOP, CONSTRUCT, OR OWN A PROJECT THROUGH A SPECIAL PURPOSE ENTITY OR OTHER AFFILIATED PARTNERSHIP OR CORPORATION, INCLUDING A PUBLIC-PRIVATE PARTNERSHIP. THE PUBLIC UTILITY MAY ELECT TO PARTNER WITH ONE OR MORE ENTITIES TO CREATE AND DEVELOP AN INNOVATIVE ENERGY TECHNOLOGY PROJECT. A
PARTNERSHIP FORMED FOR THIS PURPOSE MAY BE STRUCTURED AS
DEEMED APPROPRIATE BY THE PUBLIC UTILITY, AND THE PUBLIC UTILITY
IS ENTITLED TO NEGOTIATE OWNERSHIP INTERESTS IN THE PROJECT.

(j) NOTHING IN THIS SUBSECTION (2):

(I) PROHIBITS A PUBLIC UTILITY FROM PROPOSING TO ACQUIRE,
THROUGH THE COMMISSION-APPROVED RESOURCE PLANNING AND
ACQUISITION PROCESSES, POWER AND ENERGY DERIVED FROM A PROJECT
DEVELOPED BY THE PUBLIC UTILITY OR BY CONTRACT FROM AN AFFILIATE
OF THE PUBLIC UTILITY OR FROM AN OWNER OF A PROJECT NOT AFFILIATED
WITH THE PUBLIC UTILITY;

(II) PREVENTS A PUBLIC UTILITY FROM APPLYING FOR A
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO CONSTRUCT
MORE THAN ONE PROJECT; OR

(III) SUPERSEDES THE COMMISSION'S EXISTING INNOVATIVE CLEAN
TECHNOLOGY PROGRAM OR ANY PROJECTS APPROVED UNDER THE
PROGRAM.

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 (August 5, 2020, if adjournment sine die is on May 6,
2020); 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 2020 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.