

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 18-0883.01 Duane Gall x4335

HOUSE BILL 18-1428

HOUSE SPONSORSHIP

Becker K.,

SENATE SPONSORSHIP

Cooke,

House Committees

Transportation & Energy
Finance
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING AUTHORIZATION FOR AN INVESTOR-OWNED UTILITY TO**
102 **ENTER INTO A COLLABORATION AGREEMENT WITH A**
103 **COMMUNITY, AND, IN CONNECTION THEREWITH, MAKING AN**
104 **APPROPRIATION.**

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>.)

Section 1 of the bill authorizes the creation of an energy and innovation collaboration agreement between an investor-owned utility and the government of a city, county, town, or city and county served by

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.

HOUSE
Amended 2nd Reading
May 4, 2018

that utility. The agreement is subject to approval by the public utilities commission, which is directed to ensure that safe and reliable service is maintained and that the utility's costs of complying with the agreement are paid for by the community and not imposed on other customers of the utility.

Section 2 postpones the expiration of an existing property tax exemption relevant to such agreements by 6 years, from 2021 to 2027.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** 40-4-102.5 as
3 follows:

4 **40-4-102.5. Colorado community energy and innovation**
5 **collaboration act - legislative declaration - definitions - rules.**

6 (1) **Short title.** THE SHORT TITLE OF THIS SECTION IS THE "COLORADO
7 COMMUNITY ENERGY AND INNOVATION COLLABORATION ACT".

8 (2) **Legislative declaration.** THE GENERAL ASSEMBLY HEREBY
9 FINDS AND DETERMINES THAT:

10 (a) THE PURPOSE OF THIS SECTION IS TO ENCOURAGE AND
11 IMPLEMENT A PROCESS FOR ELIGIBLE COMMUNITIES IN COLORADO TO
12 ENTER INTO MUTUALLY ACCEPTABLE AGREEMENTS WITH REGULATED
13 UTILITIES TO ACHIEVE THEIR INDIVIDUAL COMMUNITY ENERGY GOALS IN
14 ACCORDANCE WITH THIS SECTION; AND

15 (b) SUCH COLLABORATIONS WILL BENEFIT COLORADO.

16 (3) **Definitions.** AS USED IN THIS SECTION, UNLESS THE CONTEXT
17 OTHERWISE REQUIRES:

18 (a) "AGREEMENT" MEANS AN ENERGY AND INNOVATION
19 COLLABORATION AGREEMENT ENTERED INTO BETWEEN AN
20 INVESTOR-OWNED UTILITY AND AN ELIGIBLE COMMUNITY PURSUANT TO
21 THIS SECTION.

22 (b) "ELIGIBLE COMMUNITY" MEANS ANY COMMUNITY, INCLUDING

1 ANY MUNICIPALITY, CITY, COUNTY, CITY AND COUNTY, OR TOWN, WITHIN
2 THE CERTIFICATED SERVICE TERRITORY OF AN INVESTOR-OWNED UTILITY.

3 (4) NOTWITHSTANDING SECTION 40-3-106, AN ELIGIBLE
4 COMMUNITY MAY NEGOTIATE THE AGREEMENT WITH THE
5 INVESTOR-OWNED UTILITY THAT PROVIDES ELECTRIC, NATURAL GAS, OR
6 STEAM SERVICE TO THE ELIGIBLE COMMUNITY.

7 (5) THE AGREEMENT MAY:

8 (a) INCLUDE ANY PROVISIONS THAT PROMOTE INNOVATION,
9 ECONOMIC DEVELOPMENT, INCREASED USE OF ELIGIBLE ENERGY
10 RESOURCES, AND OTHER ENERGY-RELATED GOALS WITHIN THE
11 COMMUNITY; AND

12 (b) PROPOSE NEW, EXPANDED, OR MODIFIED UTILITY PLANS,
13 PROGRAMS, OR OFFERINGS AS APPROPRIATE TO ACHIEVE THE GOALS OF
14 THE AGREEMENT CONSISTENT WITH THIS SECTION.

15 (6) (a) UPON EXECUTION OF AN AGREEMENT, THE UTILITY AND
16 ELIGIBLE COMMUNITY SHALL JOINTLY SUBMIT THE AGREEMENT TO THE
17 COMMISSION FOR APPROVAL. THE COMMISSION SHALL ACT EXPEDITIOUSLY
18 ON THE APPLICATION FOR APPROVAL.

19 (b) THE COMMISSION MAY APPROVE THE AGREEMENT, INCLUDING
20 THE UTILITY'S RECOVERY OF COSTS ASSOCIATED WITH THE AGREEMENT
21 FROM THE ELIGIBLE COMMUNITY, IF THE COMMISSION FINDS THAT THE
22 AGREEMENT:

23 (I) WILL NOT INTERFERE WITH THE RELIABILITY OR SAFETY OF
24 ELECTRIC, NATURAL GAS, OR STEAM SERVICE PROVIDED BY THE UTILITY;

25 (II) WILL NOT SHIFT COSTS TO CUSTOMERS WHO ARE NOT LOCATED
26 IN THE ELIGIBLE COMMUNITY OR NOT OTHERWISE PARTICIPATING IN THE
27 AGREEMENT;

1 (III) PROVIDES THAT THE ELIGIBLE COMMUNITY [REDACTED] WILL BE
2 RESPONSIBLE FOR ALL CURRENT FIXED AND ADDITIONAL COSTS INCURRED
3 BY THE UTILITY ASSOCIATED WITH THE AGREEMENT; EXCEPT THAT THE
4 COMMISSION NEED NOT APPROVE ANY FUNDING MECHANISM ESTABLISHED
5 BY THE ELIGIBLE COMMUNITY; AND

6 (IV) ALLOCATES COSTS AMONG CLASSES OF CUSTOMERS IN THE
7 ELIGIBLE COMMUNITY IN A JUST AND REASONABLE MANNER.

8 (c) THE AGREEMENT MUST INCLUDE AN ATTESTATION BY THE
9 ELIGIBLE COMMUNITY THAT IT WILL:

10 (I) OBTAIN OR HAS OBTAINED ALL NECESSARY AUTHORITY TO
11 ENTER INTO THE AGREEMENT;

12 (II) OBTAIN OR HAS OBTAINED ALL NECESSARY APPROVALS FOR
13 THE AGREEMENT; AND

14 (III) ESTABLISH A LEGALLY ENFORCEABLE FUNDING MECHANISM
15 TO COVER THE COSTS OF THE AGREEMENT.

16 (d) THE COMMISSION MAY APPROVE THE AGREEMENT BASED ON
17 THE UTILITY'S AND ELIGIBLE COMMUNITY'S BEST ESTIMATES OF THE
18 FUTURE COST OF ACHIEVING THE REQUIREMENTS OF THE AGREEMENT. THE
19 COMMISSION MAY REQUIRE THE UTILITY AND THE ELIGIBLE COMMUNITY
20 TO MAKE COMPLIANCE FILINGS REGARDING THE ACTUAL COSTS INCURRED
21 PURSUANT TO THE AGREEMENT. ACTUAL COSTS INCURRED PURSUANT TO
22 THE AGREEMENT ARE RECOVERABLE IN ACCORDANCE WITH THE TERMS OF
23 THE AGREEMENT AND THIS SECTION.

24 (e) THE COMMISSION MAY APPROVE THE AGREEMENT CONTINGENT
25 UPON THE ELIGIBLE COMMUNITY OBTAINING ALL REQUIRED AUTHORITY,
26 APPROVALS, AND FUNDING AS CONTEMPLATED IN THE AGREEMENT. FOR
27 PROPOSED COMMUNITY-WIDE PROGRAMS UNDER THE AGREEMENT, THE

1 ELIGIBLE COMMUNITY SHALL EVIDENCE COMMUNITY APPROVAL IN A
2 MANNER AUTHORIZED BY LAW, INCLUDING, AS APPROPRIATE, A DULY
3 ADOPTED ORDINANCE OR RESOLUTION OR BY SUBMITTING THE MATTER TO
4 VOTER APPROVAL AS A BALLOT MEASURE.

5 (7) (a) A UTILITY AND AN ELIGIBLE COMMUNITY MAY JOINTLY
6 SUBMIT THE AGREEMENT TO THE COMMISSION FOR APPROVAL AT ANY
7 TIME. UTILITIES AND THE COMMISSION SHALL ACCOUNT FOR ANY
8 APPROVED AGREEMENT IN THE UTILITIES' ELECTRIC RESOURCE PLANNING
9 PROCESSES, BUT AN AGREEMENT NEED NOT BE SUBMITTED IN
10 CONJUNCTION WITH A UTILITY'S ELECTRIC RESOURCE PLAN.

11 (b) FOR RESOURCES ACQUIRED UNDER AN AGREEMENT PURSUANT
12 TO THIS SECTION, AS APPLICABLE:

13 (I) THE RESOURCES MUST BE INCLUDED IN THE CALCULATIONS
14 UNDER SECTION 40-2-124 (1)(f)(I); EXCEPT THAT THEY MUST NOT BE
15 INCLUDED FOR PURPOSES OF COMPLIANCE WITH THE ELECTRIC RESOURCE
16 STANDARDS IN SECTION 40-2-124 (1)(c)(I);

17 (II) THE RESOURCES MUST BE ACQUIRED USING A COMPETITIVE
18 BIDDING PROCESS UNLESS ACQUIRED UNDER SECTION 40-2-124 (1)(f)(I);

19 (III) RESOURCES TO BE ACQUIRED UNDER MULTIPLE APPROVED
20 AGREEMENTS MAY BE AGGREGATED; ■

21 (IV) THE UTILITY SHALL OBTAIN A CERTIFICATE OF PUBLIC
22 CONVENIENCE AND NECESSITY AS REQUIRED BY SECTION 40-5-101 FOR
23 ANY NEW FACILITY, PLANT, OR SYSTEM ACQUIRED UNDER THE
24 AGREEMENT; AND

25 (V) THE RETAIL RATE IMPACT LIMITATIONS OF SECTION 40-2-124
26 (1)(g)(I) DO NOT APPLY.

27 (8) FOR AN ELIGIBLE COMMUNITY SERVED BY MORE THAN ONE

1 UTILITY, THE AGREEMENT MUST APPLY ONLY TO THE CERTIFICATED
2 SERVICE TERRITORY OF THE INVESTOR-OWNED UTILITY.

3 (9) THE COMMISSION MAY ADOPT ANY RULES NECESSARY FOR THE
4 IMPLEMENTATION OF THIS SECTION, TAKING INTO CONSIDERATION THE
5 COMMISSION'S ELECTRIC RESOURCE PLANNING PROCESS.

6 **SECTION 2.** In Colorado Revised Statutes, 40-2-127,
7 **amend** (2)(b)(I)(A) as follows:

8 **40-2-127. Community energy funds - community solar**
9 **gardens - definitions - rules - legislative declaration. (2) Definitions.**

10 As used in this section, unless the context otherwise requires:

11 (b) In addition:

12 (I) (A) "Community solar garden" means a solar electric
13 generation facility with a nameplate rating of ~~two~~ FIVE megawatts or less
14 that is located in or near a community served by a qualifying retail utility
15 where the beneficial use of the electricity generated by the facility
16 belongs to the subscribers to the community solar garden. There shall be
17 at least ten subscribers. The owner of the community solar garden may be
18 the qualifying retail utility or any other for-profit or nonprofit entity or
19 organization, including a subscriber organization organized under this
20 section, that contracts to sell the output from the community solar garden
21 to the qualifying retail utility. A community solar garden shall be deemed
22 to be "located on the site of customer facilities".

23 **SECTION 3. Appropriation.** (1) For the 2018-19 state fiscal
24 year, \$67,498 is appropriated to the department of regulatory agencies for
25 use by the public utilities commission. This appropriation is from the
26 public utilities commission fixed utility fund created in section 40-2-114
27 (1)(b), C.R.S. To implement this act, the commission may use this

1 appropriation as follows:

2 (a) \$62,225 for personal services, which amount is based on an
3 assumption that the commission will require an additional 0.6 FTE; and

4 (b) \$5,273 for operating expenses.

5 **SECTION 4. Applicability.** This act applies to agreements
6 entered into on or after the effective date of this act.

7 **SECTION 5. Safety clause.** The general assembly hereby finds,
8 determines, and declares that this act is necessary for the immediate
9 preservation of the public peace, health, and safety.