A BILL FOR AN ACT

CONCERNING INVESTIGATIONS BY THE PUBLIC UTILITIES COMMISSION

TO EVALUATE THE IMPLICATIONS OF ALLOWING COMMUNITY

CHOICE OF WHOLESALE ELECTRIC SUPPLY IN COLORADO

THROUGH THE VEHICLE OF COMMUNITY CHOICE ENERGY

AUTHORITIES.

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/.)

Investor-owned Utility Review Interim Study Committee. The bill declares that the concept of "community choice energy" (CCE), under
which a community may choose to purchase electricity at wholesale through a supplier other than the local investor-owned electric utility, has the potential to enable communities to meet their renewable energy goals and save money without disrupting the local utility's current status as sole supplier of transmission, distribution, and customer service functions. To lay the groundwork for potential adoption of CCE in Colorado, the bill proposes 2 studies:

| ! | A feasibility study, conducted by an independent energy expert under the guidance of the public utilities commission (PUC), to examine the financial and technical requirements that would need to be met for CCE to be viable and beneficial; and |
| ! | An investigatory proceeding at the PUC, inviting testimony and documentation from persons with firsthand knowledge of utility operations, CCE, or both, including regulators from other states in which CCE has been implemented. The goal of the investigation is to identify best practices and recommend legislative changes that would allow CCE to function well in Colorado if adopted. |

The bill directs that reports of the results of the feasibility study and the investigatory docket be given to the legislative committees with jurisdiction over energy matters in late 2020.

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

2 SECTION 1. In Colorado Revised Statutes, add 40-4-120 as follows:

3 40-4-120. Community choice in wholesale electric supply - investigation and analysis - duties of commission - reports - legislative declaration - definition - repeal. (1) Legislative declaration. (a) The general assembly finds and determines that:

4 (I) At least a dozen communities in Colorado, known as the "Ready for 100" cities, have committed to obtaining one hundred percent renewable energy by 2025 to 2035. In addition, at least two dozen communities, known as "Colorado Communities for Climate Action", have organized to advocate for climate change solutions. These communities, which
REPRESENT MORE THAN ONE MILLION COLORADANS, ARE EXPLORING WAYS TO REACH THEIR ENERGY AND CLIMATE GOALS WITHIN THEIR DESIRED TIME PERIODS.

(II) A KEY ELEMENT OF THE GOVERNOR'S POLICY INITIATIVE, ENTITLED "ROADMAP TO 100% RENEWABLE ENERGY BY 2040 AND BOLD CLIMATE ACTION", PRIORITIZES SUPPORTING LOCAL COMMITMENTS TO ONE HUNDRED PERCENT RENEWABLE ENERGY.

(III) THE ABILITY OF A COMMUNITY TO ACHIEVE ITS ENERGY GOALS IS CURRENTLY LIMITED BY THE ENERGY SUPPLY AND DECARBONIZATION TIMELINE OF THE ELECTRIC UTILITY THAT SERVES THAT COMMUNITY'S GEOGRAPHIC AREA. THE ABILITY TO PROCURE ELECTRICITY FROM ALTERNATIVE WHOLESALE SUPPLIERS MAY ENABLE COMMUNITIES TO ACHIEVE THEIR ENERGY GOALS SUBSTANTIALLY FASTER AND MORE COST-EFFECTIVELY.

(IV) COMMUNITY CHOICE ENERGY (CCE, ALSO COMMONLY KNOWN AS COMMUNITY CHOICE AGGREGATION OR CCA), IS A LOCAL ENERGY MODEL THAT HAS BEEN ADOPTED IN A NUMBER OF STATES AND HAS PROVEN TO BE EFFECTIVE IN HELPING COMMUNITIES ACHIEVE THEIR RENEWABLE ENERGY OR COST-CONTAINMENT GOALS, OR BOTH. THE STUDY OF CCE WOULD ANSWER KEY QUESTIONS AND ILLUMINATE THE POSSIBLE BENEFITS AND CHALLENGES OF ADAPTING THE CCE MODEL AS AN OPTION FOR COLORADO COMMUNITIES.

(V) IN THE CCE MODEL, COMMUNITIES THAT ARE SERVED BY AN INVESTOR-OWNED ELECTRIC UTILITY MAY CHOOSE THEIR WHOLESALE ELECTRICITY SUPPLIERS, WHILE THE ELECTRICITY CONTINUES TO BE DELIVERED BY THE INCUMBENT UTILITY. IN STATES THAT HAVE ENABLED CCE TO DATE, CCE IS NOT PERMITTED IN COMMUNITIES THAT ARE SERVED
BY A COOPERATIVE ELECTRIC ASSOCIATION OR A MUNICIPALLY OWNED
ELECTRIC UTILITY.

(VI) IN THE CCE MODEL, AN INVESTOR-OWNED ELECTRIC UTILITY
CONTINUES TO OWN AND OPERATE ITS TRANSMISSION AND DISTRIBUTION
SYSTEM TO SERVE BOTH CCE CUSTOMERS AND ITS OWN CUSTOMERS, WITH
APPROPRIATE COMPENSATION, AND THE UTILITY CONTINUES TO
IMPLEMENT DEMAND-SIDE MANAGEMENT PROGRAMS, MANAGE CUSTOMER
SERVICE, AND PROVIDE METERING AND BILLING SERVICES. THE UTILITY
CONTINUES TO OWN ITS POWER GENERATION TO SERVE ITS OWN
CUSTOMERS. IF A COMMUNITY CHOSES TO ADOPT CCE, THE UTILITY
WOULD DELIVER THE ELECTRICITY FROM ONE OR MORE ALTERNATIVE
SUPPLIERS TO CCE CUSTOMERS.

(VII) THIS SECTION CONCERNS THE "WHOLESALE, OPT-OUT"
MODEL OF CCE, PURSUANT TO WHICH INDIVIDUAL CUSTOMERS ARE
AUTOMATICALLY ENROLLED AND RETAIN THE RIGHT TO OPT OUT OF THEIR
COMMUNITY'S CCE OFFERINGS AND PURCHASE THEIR ELECTRICITY FROM
THE UTILITY UNDER ITS TRADITIONAL "BUNDLED SERVICE". THE RETAIL
MODEL OF CCE, IN WHICH INDIVIDUALS IN DEREGULATED "RETAIL
CHOICE" STATES CAN SHOP FOR THEIR ELECTRICITY FROM AMONG MANY
COMPETING SUPPLIERS, DOES NOT PROMOTE THE STABLE REVENUE
CONDITIONS NEEDED FOR DEVELOPMENT OF HIGH LEVELS OF RENEWABLE
ENERGY. THE RETAIL CCE MODEL IS EXPLICITLY NOT THE SUBJECT OF THIS
SECTION.

(VIII) A WELL-DESIGNED WHOLESALE, OPT-OUT CCE PROGRAM
WOULD INTRODUCE AN ELEMENT OF WHOLESALE COMPETITION AND
COMMUNITY-LEVEL CHOICE INTO THE SUPPLY OF ELECTRICITY AND COULD
PROVIDE COMMUNITIES THAT HAVE AMBITIOUS RENEWABLE ENERGY
GOALS WITH A MEANS TO REACH THOSE GOALS MORE QUICKLY AND COST-EFFECTIVELY.

(IX) This section pertains only to the study of CCE, not to its implementation. While CCE in other states shows the potential for communities to make local energy decisions, reach their energy goals, reduce energy costs, and foster local economic development and local employment, it is prudent to first study the financial feasibility and the regulatory, legal, and environmental implications of CCE in Colorado before any consideration of enabling CCE as an option for communities in Colorado.

(X) The two independent studies described in this section will answer key questions about the potential viability of CCE in Colorado and will identify best practices and lessons learned from the experiences of states that have already implemented CCE. The studies will provide the information needed to determine whether CCE would provide net benefits to Colorado communities.

(b) Therefore, the General Assembly declares that it is in the public interest to direct the Commission to evaluate the viability of the wholesale, opt-out model of CCE in Colorado and to answer key questions about CCE in Colorado through two investigations:

(I) by overseeing a third-party financial feasibility study;

and

(II) by conducting its own investigatory proceeding using the mechanism of an investigatory docket to study regulatory
AND LEGAL ISSUES.

(2) Definition. As used in this section, "community choice energy" or "CCE" means a mechanism that allows cities or counties, or groups of cities and counties, to combine their purchasing power and choose one or more alternative wholesale electricity suppliers on behalf of the residents, businesses, and municipal facilities in the jurisdiction while the incumbent utility maintains its existing generation and continues to own and operate its transmission and distribution system and deliver the electricity to both its own customers and CCE customers.

(3) Feasibility study. (a) In accordance with this subsection (3), the commission shall oversee, and report to the general assembly the conclusions of, a study on the financial feasibility of allowing CCE in Colorado.

(b) The commission shall:

(I) Select, through a transparent and competitive solicitation overseen directly by the commissioners and issued on or before September 1, 2020, an independent and qualified agent to perform the study, using selection criteria that ensure the agent does not carry biases that are especially favorable or unfavorable to CCE or to investor-owned utilities;

(II) Determine the scope of, and specific questions to be addressed by, the study, subject to the guidelines set forth in this subsection (3);

(III) Acquire the data necessary to effectively conduct the study from the investor-owned electric utilities in a timely
FASHION, UTILIZING CONFIDENTIALITY AND NONDISCLOSURE AGREEMENTS AS NEEDED; AND


(c) THE PURPOSE OF THE STUDY IS TO ASSESS FINANCIAL FEASIBILITY AND RISK, INCLUDING THE POTENTIAL FOR RATE COMPETITIVENESS, PRINCIPLES FOR CALCULATING THE AMOUNT AND DURATION OF ANY TRANSITION FEES, AND AN ESTIMATE OF SUCH FEES, ALSO KNOWN AS EXIT FEES, THAT COMMUNITIES FORMING A CCE AUTHORITY WOULD PAY TO OFFSET THEIR FAIR SHARE OF THE COSTS OF UTILITY ASSETS AND CONTRACTS THAT WERE PROCURED ON THEIR BEHALF AND PREVIOUSLY APPROVED. THE AGENT SHALL MAKE THESE ASSESSMENTS AND DEVELOP THESE PRINCIPLES USING INDUSTRY BEST PRACTICES AND ASSUMING A RANGE OF SCENARIOS THAT INCLUDE:

(I) THE LEVEL OF CCE PARTICIPATION IN COLORADO, INCLUDING THE NUMBER OF ELIGIBLE COMMUNITIES THAT CHOOSE TO FORM OR JOIN A CCE AUTHORITY AND THE ASSUMED OPT-OUT RATE OF THEIR CUSTOMERS, TO EVALUATE THE MARKET SCALE AND REVENUE GENERATION NEEDED FOR CCE TO SUCCEED IN COLORADO;

(II) FACTORS TO BE INCLUDED IN THE EXIT FEE CONSIDERATION, INCLUDING THE AGE AND TIME OF SERVICE COMMENCEMENT OF GENERATION ASSETS AND EXISTING CONTRACTS; AND
(III) Rate analysis to determine the potential for CCE to be cost-competitive in Colorado, assuming different levels of renewable energy content that correspond to the renewable energy standard specified in section 40-2-124 as well as scenarios exceeding state requirements, including one hundred percent renewable energy, and consideration of reasonably anticipated trends and contingencies affecting the prices of fossil fuels and renewable energy resources and the mix of new renewable energy resources versus renewable energy certificates.

(d) The scope of the study is limited to consideration of the feasibility of allowing CCE in areas not currently served by municipally owned electric utilities or cooperative electric associations.

(4) Investigatory docket. (a) On or before September 1, 2020, and in accordance with this subsection (4), the commission shall open an investigatory docket to accept testimony and documentation from stakeholders, independent energy and utility experts, regulators from states in which CCE has been implemented or is under consideration, representatives of operational CCE authorities, and other interested parties. The goal of the proceeding is to consider the regulatory implications and legal impacts of possible future CCE-enabling legislation and provide recommendations to the general assembly. Conclusions should include best practices and lessons learned from states that have enabled CCE at the wholesale level. The commission shall employ procedures that promote a
PRODUCTIVE, EFFECTIVE, AND EVIDENCE-BASED PROCESS.

(b) The Commission shall solicit input from a broad and inclusive range of stakeholders and presenters to ensure that the process is not dominated by any one group or viewpoint.

Stakeholders and presenters may include:

(I) Communities with declared goals regarding carbon emissions or energy supply choices;

(II) Business groups;

(III) Environmental advocates;

(IV) Consumer advocates;

(V) Electric utilities, including investor-owned electric utilities, municipally owned electric utilities, and cooperative electric associations;

(VI) Independent power producers;

(VII) Power marketers;

(VIII) Renewable energy developers;

(IX) Consultants or other experts in energy project financing;

(X) Consultants or other experts in energy efficiency and distributed energy resources;

(XI) Representatives of operational CCE authorities that use the wholesale CCE model; and

(XII) Members of the general public.

(c) The topics and questions to be explored in the docket may include:

(I) Whether the Commission would require additional statutory authority to conduct a rule-making proceeding
CONCERNING THE CREATION OF CCE AUTHORITIES IN COLORADO;

(II) THE APPROPRIATE SCOPE OF REGULATORY OVERSIGHT OF CCE OPERATIONS, ON A SCALE RANGING FROM COMPREHENSIVE AS WITH INVESTOR-OWNED ELECTRIC UTILITIES TO MINIMAL AS WITH MUNICIPALLY OWNED ELECTRIC UTILITIES;

(III) WHICH ASPECTS, IF ANY, OF CURRENT OR ANTICIPATED INVESTOR-OWNED ELECTRIC UTILITY REGULATION BY THE COMMISSION SHOULD APPLY TO CCE AUTHORITIES AS WELL, AND TO WHAT EXTENT, INCLUDING REGULATION IN THE AREAS OF:

(A) RESOURCE ADEQUACY PLANNING;

(B) ASSURANCE OF RELIABILITY AND HOW THIS IS PAID FOR;

(C) COMPLIANCE WITH RENEWABLE ENERGY STANDARDS AND EMISSIONS REDUCTION TARGETS;

(D) SUPPLEMENTAL DEMAND-SIDE MANAGEMENT PROGRAMS OFFERED BY CCE AUTHORITIES;

(E) TIME-OF-USE RATES OR OTHER RATE REQUIREMENTS IF MANDATED FOR INVESTOR-OWNED ELECTRIC UTILITIES; AND

(F) STANDARDS FOR REQUESTS FOR PROPOSALS;

(IV) THE APPROPRIATE CONSIDERATIONS FOR ESTABLISHING REASONABLE EXIT FEES AT A LEVEL THAT PROVIDES COST RECOVERY FOR STRANDED INVESTOR-OWNED ELECTRIC UTILITY ASSETS AND CONTRACTS AND DIRECT TRANSITION COSTS, AND THAT PROTECTS NON-CCE CUSTOMERS, BUT DOES NOT UNDULY BURDEN CCE CUSTOMERS, INCLUDING THE POTENTIAL FOR EXIT FEES TO VARY OVER TIME OR BY LOCATION, THE ESTABLISHMENT OF A SPECIFIC EXPIRATION PERIOD FOR EXIT FEES, MEASURES TO MITIGATE EXIT FEES THROUGH POTENTIAL CONTRACT TRANSFER OR RESALE TO CCE AUTHORITIES OR OTHER BUYERS,
AND APPROPRIATE FORECASTING OF DEPARTING LOAD TO AVOID OVER-PROCUREMENT;

(V) THE APPROPRIATE CONDITIONS, LIMITATIONS, AND PROCEDURES UNDER WHICH CUSTOMERS MAY OPT OUT OF CCE AND RECEIVE BUNDLED SERVICE FROM THE INCUMBENT INVESTOR-OWNED ELECTRIC UTILITY;

(VI) WHETHER ANY OTHER CONSUMER PROTECTIONS WOULD BE REQUIRED AND THE MEANS OF PROVIDING THOSE PROTECTIONS;

(VII) POTENTIAL CHALLENGES FOR CCE START-UP OR CONTINUING OPERATIONS, INCLUDING THE AVAILABILITY OF FINANCING AND CREDIT RATING CONSIDERATIONS, AND STRATEGIES TO OVERCOME THOSE CHALLENGES;

(VIII) WHAT REGULATORY AND LEGAL ISSUES HAVE ARISEN IN OTHER STATES THAT HAVE ADOPTED THE WHOLESALE, OPT-OUT MODEL OF CCE AND POSSIBLE SOLUTIONS FOR THOSE ISSUES;

(IX) WHETHER AN INVESTOR-OWNED ELECTRIC UTILITY THAT REMAINS THE SOLE PROVIDER OF DISTRIBUTION, TRANSMISSION, AND OTHER SERVICES TRADITIONALLY PROVIDED BY THE UTILITY, SUCH AS METERING AND BILLING, SHOULD ALSO BE THE PROVIDER OF LAST RESORT FOR SUPPLYING ELECTRICITY TO CUSTOMERS WHO OPT OUT OF CCE;

(X) THE APPROPRIATE PROCESS FOR APPROVAL OF CCE ON BEHALF OF CUSTOMERS WITHIN A JURISDICTION;

(XI) WHETHER CCE AUTHORITIES SHOULD BE ALLOWED TO OFFER DEMAND-SIDE MANAGEMENT PROGRAMS THAT EITHER EXPAND UPON OR REPLACE SUCH PROGRAMS OFFERED BY THE INCUMBENT INVESTOR-OWNED ELECTRIC UTILITY;

(XII) REGULATORY AND POLICY CONSIDERATIONS RELATED TO
FORMING CCE AUTHORITIES IN A STATE THAT DOES NOT CURRENTLY
BELONG TO A REGIONAL TRANSMISSION ORGANIZATION OR PARTICIPATE
IN A WHOLESALE ELECTRICITY MARKET, AND POSSIBLE SOLUTIONS,
INCLUDING CONSIDERATIONS IN THE AREAS OF:

(A) WHETHER LEGISLATION SHOULD BE ADOPTED TO GUARANTEE
OPEN ACCESS AND FAIR PRICES FOR TRANSMISSION SERVICES;

(B) RECOMMENDATIONS FOR LEGISLATIVE OR ADMINISTRATIVE
MEASURES, OR BOTH, CONCERNING WHOLESALE MARKET ACCESS AND
DEVELOPMENT IN COLORADO;

(C) WHETHER THERE ARE OTHER LEGISLATIVE AND REGULATORY
MODIFICATIONS NECESSARY TO SUCCESSFULLY IMPLEMENT CCE IN
COLORADO;

(XIII) WHAT, IF ANY, MINIMUM REQUIREMENTS AND STANDARDS
SHOULD APPLY TO INDEPENDENT POWER PRODUCERS AND POWER
MARKETERS WHO WISH TO SUPPLY ENERGY TO A CCE AUTHORITY;

(XIV) WHAT, IF ANY, DATA-SHARING REQUIREMENTS SHOULD BE
IMPOSED ON INVESTOR-OWNED ELECTRIC UTILITIES TO HELP ENSURE THAT
A CCE AUTHORITY OR A JURISDICTION INVESTIGATING WHETHER TO FORM
OR JOIN A CCE AUTHORITY CAN REASONABLY EVALUATE ITS FINANCIAL
AND TECHNICAL VIABILITY AND IMPLEMENT ITS CCE PROGRAM;

(XV) HOW CCE MIGHT FACILITATE OR IMPEDE INCREASED
INTEGRATION OF DISTRIBUTED ENERGY RESOURCES, SUCH AS ROOFTOP
SOLAR, COMMUNITY SOLAR, AND BATTERY ENERGY STORAGE INTO
DISTRIBUTION SYSTEMS, AND FACILITATE OR IMPEDE INCREASED
INVESTMENT IN BENEFICIAL ELECTRIFICATION INCLUDING
ELECTRIFICATION OF TRANSPORT;

(XVI) THE APPROPRIATE CONSIDERATIONS FOR ENSURING THAT
THE IMPLEMENTATION OF CCE DOES NOT INCLUDE CUSTOMERS IN THE CERTIFICATED TERRITORIES OF MUNICIPALLY OWNED ELECTRIC UTILITIES OR COOPERATIVE ELECTRIC ASSOCIATIONS;

(XVII) THE IMPACT OF ALLOWING CCE IN COLORADO ON THE ABILITY OF COLORADO TO REACH ITS CLEAN ENERGY AND GREENHOUSE GAS REDUCTION GOALS AND WHAT LEGISLATIVE AND REGULATORY REQUIREMENTS FOR CCE WOULD BE NEEDED TO FACILITATE REACHING THOSE GOALS;

(XVIII) THE IMPACT, BOTH POSITIVE AND NEGATIVE, OF CCE IN COMMUNITIES THAT HAVE FORMED OR JOINED A CCE AUTHORITY IN STATES THAT HAVE ENABLED THE WHOLESALE, OPT-OUT MODEL OF CCE;

(XIX) THE IMPACT OF CCE ON LOW-INCOME CUSTOMERS, INCLUDING THE AVAILABILITY OF LOW-INCOME PROGRAMS OFFERED THROUGH THE INVESTOR-OWNED ELECTRIC UTILITY TO CCE CUSTOMERS AND THE ABILITY OF CCE AUTHORITIES TO ESTABLISH ADDITIONAL PROGRAMS TO ASSIST LOW-INCOME CUSTOMERS; AND

(XX) THE RISKS A CCE AUTHORITY MIGHT FACE THAT MERIT CONSIDERATION, SUCH AS RESOURCE PRICE RISKS, CONTRACT RISKS, OR LOAD DEFLECTION, AND THEIR SIGNIFICANCE.

(d) Report. The commission shall summarize its findings, conclusions, and recommendations from the investigatory docket and from the concurrent feasibility study required in subsection (3) of this section in a final report to the transportation and energy committee of the senate and the energy and environment committee of the house of representatives, or their successor committees. The commission shall submit the report on or before June 1, 2021.
RECOMMENDATIONS MAY BE SPLIT INTO MAJORITY VIEWS AND DISSENTING VIEWS IF NECESSARY.

(5) Repeal. This section is repealed, effective September 1, 2023.

SECTION 2. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.