

## Colorado Energy & Climate Legislation: 2021 Year in Review

06.16.21



During the 2021 legislative session, the Colorado General Assembly passed numerous bills related to climate and energy. The primary climate change bill, House Bill 21-1266, works toward implementing the state greenhouse gas (GHG) reduction targets established in 2019 under House Bill (HB) 19-1261, by providing sector caps for GHG emissions from the industrial and manufacturing sector and oil and gas industry. This bill was less ambitious than the original proposal, which would have provided sector caps on GHG emissions from transportation and buildings, as well. However, it does create important environmental justice programs designed to help the state meet its emission reduction targets in a just and equitable fashion, by providing processes to better engage and learn from disproportionately impacted communities and to address disproportionate pollution in these communities.

Although HB 21-1266 was the primary climate bill, the General Assembly also passed numerous bills related to reducing emissions from electricity generation and transmission, increasing the use of renewable energy, reducing emissions from natural gas used in buildings and for retail use, funding transportation efforts, and protecting utility consumers.

### **Environmental Justice Disproportionately Impacted Community**

HB21-1266 | (Rep. Jackson, Rep. Weissman, Sen. Winter, Sen. Buckner) | *Passed June 8, 2021, Awaiting Governor's Signature*

As it becomes clear that the impacts of climate change are being seen more severely in low-income and racially diverse communities, Colorado lawmakers have put forth a bill to meet state climate change goals in a just and equitable fashion. This law directs the Air Quality Control Commission (AQCC) to redouble efforts to engage with disproportionately impacted communities. The AQCC should increase the quantity of information sharing, particularly regarding adverse impacts from proposed AQCC actions, and the quality of the information by providing information in multiple languages, and in multiple mediums.

The bill also creates an Environmental Justice Task Force within the Department of Health and Environment to ensure that justice issues are considered in tandem with climate change issues going forward. The Task Force will be responsible for strategizing how to best incorporate environmental justice into the state's climate change action with a report of recommendations due November 14, 2022.

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## Electricity Generation & Transmission

### **Public Utilities Commission Modernize Electric Transmission Infrastructure**

SB21-072 | (Sen. Hansen, Sen. Coram, Rep. A. Valdez, Rep. Catlin) | *Passed June 3, 2021, Awaiting Governor's Signature*

Senate Bill (SB) 21-072 creates three key changes with regard to transmission and electricity markets in Colorado. First, the bill directs utilities with transmission assets to join an "organized wholesale market," either a regional transmission organization or an independent system operator, by 2030, unless the Colorado Public Utilities Commission (PUC) determines that there is no viable market in place and that



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requiring the utility to join is not in the public interest. The bill will also allow utilities to claim for themselves a percentage of the customer savings that result from joining a market for the first five years. Second, the bill calls for the creation of the Colorado Energy Transmission Authority (CETA), an independent authority charged with identifying and procuring necessary transmission facilities in Colorado. CETA will be empowered to conduct competitive processes to select qualified transmission operators to finance, develop, and operate eligible facilities. Third, the bill changes the standards by which the PUC should grant investor-owned utilities' applications for new transmission facilities that are proposed to help Colorado develop renewable energy and meet statewide climate targets.

### **Define Pumped Hydroelectricity as Renewable Energy**

HB21-1052 | (Rep. McKean, Sen. Woodward) | *Signed April 22, 2021*

Under the state renewable energy standard statute, recycled energy is an eligible energy resource. Prior to the passing of this bill, pumped hydroelectric facilities were restricted from serving as a source of recycled energy under Colorado law. This bill removes this restriction and allows the definition of recycled energy to include any pumped hydroelectric facility under 15 megawatts that does not combust fossil fuel to pump water, is not located on a natural waterway, includes measures to prevent fish mortality in the facility, does not impact any decreed in-stream flow, and does not cause any violation of state water quality standards when operated.

### **Promote Innovative and Clean Energy Technologies**

HB21-1324 | (Rep. Pelton, Rep. Roberts, Sen. Rodriguez, Sen. Hisey) | *Passed June 8, 2021, Awaiting Governor's Signature*

Under this bill, utility companies wishing to create or expand renewable energy production and storage initiatives may apply to the PUC for resources. Lawmakers believe that aiding in the creation of a market for zero-emission power is the best way to achieve Colorado's long-term emission goals. The original version of the bill was amended to replace "low-emission" initiatives with "zero-emission" initiatives, signaling the legislature's awareness that bold action will be required to meet climate change targets.

### **Public Utilities Commission Encourage Renewable Energy Generation**

SB21-261 | (Sen. Fenberg, Sen. Priola, Rep. A. Valdez) | *Passed June 7, 2021, Awaiting Governor's Signature*

This bill was designed to encourage more customer-sited renewable energy generation facilities. To achieve this, the current limitation—which restricts customers from qualifying for renewable energy credits if they exceed 120% of their historical annual usage—is lifted. Additionally, customers may now carry forward monthly bill credits from their distributed generation indefinitely. To meet Colorado's energy needs and emission reduction goals, small-scale generation by people who sell excess power generated on their property are now exempt from regulation as a public utility. Master Meter Operations (MMOs) including apartment buildings and mobile home parks are also exempt from being regulated as a public utility. The bill also reduces incentives for hydroelectric power by excluding facilities that require the construction of new dams or reservoirs.

### **Energy Equipment and Facility Property Tax Valuation**

SB21-020 | (Sen. Hansen, Sen. Hisey, Rep. A. Valdez, Rep. Soper) | *Signed April 22, 2021*

This bill changes how a property tax administrator determines the actual value of various renewable energy resources, including battery storage systems. The current income approach to valuation will be maintained for solar energy facilities generating two or fewer megawatts, but new (going into production after January 1, 2021) renewable energy facilities producing a greater amount of energy will be assessed under a new scheme. Previously a 20-year depreciation period was used to assess a tax factor under an "income approach." Now a 30-year depreciation period will be used and the construction cost, based on incremental cost per kilowatt, of the renewable energy facility will be considered under the new "cost



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approach.” After the 20 or 30-year period (depending on when the facility began generating electricity), the tax factor is not applied.

### **Measures To Increase Biomass Utilization**

HB21-1180 | (Rep. D. Valdez, Rep. Will, Sen. Coram) | *Passed May 19, 2021, Awaiting Governor’s Signature*

Colorado lawmakers are interested in exploring biomass utilization and have tasked the Colorado Forest Service with conducting a study on the topic. The bill requires the engagement of stakeholders in the wildlife-urban corridor space, and creation of a report with findings and recommendations due on March 1, 2022.

### **Renewable And Clean Energy Project Grants**

HB21-1253 | (Rep. Froelich, Rep. Gray, Sen. Winter, Sen. Rankin) | *Passed June 1, 2021, Awaiting Governor’s Signature*

Local governments that wish to pursue renewable and clean energy infrastructure implementation projects can now be awarded a grant to fund their projects. This bill transfers \$5 million from the general fund for this purpose. Grants must be made by August 15, 2021.

### **Additional Funding for Just Transition**

HB21-1290 | (Rep. Esgar, Rep. Will, Sen. Fenberg, Sen. Rankin) | *Passed June 2, 2021, Awaiting Governor’s Signature*

The decline of coal consumption is required for Colorado to meet climate change goals and emission targets in the near future. Doing so puts an entire industry of workers out of employment. This bill injects \$15 million into the Just Transition Cash Fund (Fund) to support former coal workers in their transition to other employment. Eight million dollars is for the Fund and \$7 million is for the Coal Transition Worker Assistance Program Account, located within the Fund. The law requires that 70% (\$10.5 million) of the transferred funds be spent by the close of FY 2021-22, and the remaining Funds are to be spent in FY 2022-23. Spending should be prioritized first on supporting coal transition workers but remaining funds in FY 2022-23 may be used to support families of said workers as well. The Just Transition Office should create specific criteria to help determine where best to make expenditures and should prioritize investment in tier one transition communities as defined in the bill.

### **Limit Fee Install Active Solar Energy System**

HB21-1284 | (Rep. A. Valdez, Rep. Van Winkle, Sen. Hansen, Sen. Priola) | *Passed May 27, 2021, Awaiting Governor’s Signature*

To promote the adoption of solar electric and solar thermal devices, a current law caps various fees that can be imposed on the consumer for the installation of the solar energy system. This bill modifies the language to clarify that the limit is not per fee, but an aggregate of all governmental fees assessed on the installation of the system across state, county, municipal, and political subdivisions. In aggregate, a residential user will pay up to \$500 for a solar installation permit and a commercial user up to \$1,000. Only in cases where the governmental body can prove the actual costs of issuing the permit exceeded \$1,000 can the governmental body recover costs against the applicant. To prevent an immediate fee jump, where a governmental body’s permitting fees is less than \$500, this law mandates the authority may only increase its fee by 5% annual until the \$500 limitation is reached.

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## **Natural Gas Use and Safety**



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### **Adopt Programs Reduce Greenhouse Gas Emissions Utilities**

SB21-264 | (Sen. Hansen, Rep. A. Valdez, Rep. Bernett) | *Passed June 8, 2021, Awaiting Governor's Signature*

This bill concerns gas distribution utilities who must now file a clean heat plan with the PUC. Using GHG emissions from 2015 as a baseline, each utility's plan must demonstrate how they will reduce GHG emissions by 4% by 2025 and by 22% by 2030 through the use of clean heat resources. A cost cap of 2.5% of the utility's annual gas bill for all full-service customers will be established by the PUC for each utility. The cost cap considers the cost of compliance for the utility with its clean heat plan.

### **Energy Performance for Buildings**

HB21-1286 | (Rep. Kipp, Rep. A. Valdez, Sen. Priola, Sen. Pettersen) | *Passed June 8, 2021, Awaiting Governor's Signature*

This bill was designed to improve energy efficiency of covered buildings in Colorado. Under the bill, owners of covered buildings must submit annual reports to the Colorado Energy Office with data about the building's energy use and GHG emissions. Electric and gas utilities are also required to provide data on energy use when the building owner requests it. The bill provides for the creation of a task force of building owners, building professionals, utility representatives, and local government representatives to recommend building performance standards. The AQCC will be responsible for promulgating rules adopting performance standards.

There are also several technological projects launched by the bill including the creation of a database of qualifying covered buildings and owners, and a publicly accessible database where users can use interactive maps or lists to see individual buildings' reported data. Additionally, building owners will be required to pay a \$100 fee per building to fund program administration, and may be subject to a growing fine if they violate requirements, beginning at \$500 per violation and escalating for repeat offenders (some public buildings are exempt from fees and penalties).

### **Electric Utility Promote Beneficial Electrification**

SB21-246 | (Sen. Fenberg, Rep. A. Valdez, Rep. Froelich) | *Passed June 7, 2021, Awaiting Governor's Signature*

Following the success of Demand Side Management (DSM) policies used by the PUC in other areas, this bill directs the PUC to create a beneficial electrification program using the same model. The program's purpose is to encourage the use and adoption of efficient electric equipment and the discontinuation of inefficient, fossil-fuel based equipment. The bill encourages the creation of Colorado-based jobs by requiring any installation, upgrade, or new construction under the program to be performed by utility employees or qualified Colorado-licensed contractors. Under this bill, heat pumps qualify as an energy efficient measure which cannot be prohibited by homeowner association covenants.

### **Public Utilities Commission Gas Utility Safety Inspection Authority**

SB21-108 | (Sen. Story, Rep. Bernett, Rep. Cutter) | *Passed June 1, 2021, Awaiting Governor's Signature*

This law increases the safety of Colorado's natural gas pipelines by adopting necessary state rules to comply with, or exceed federal requirements. Through this legislation, the PUC accepts responsibility to enforce pipeline safety requirements, including those made by the federal Department of Transportation. The maximum fines for violating gas pipeline safety rules are also doubled; violators could be fined up to \$200,00 per violation or \$2,000,000 in aggregate. A fee shifting scheme has also been added, allowing the PUC to recover court costs while recovering these fines. In addition to a maximum, a minimum fine of \$5,000 per violation must be levied even if the violator negotiates a settlement with the PUC that includes remediation and mitigation measures.



## **Public Utilities Commission Modernize Gas Utility Demand-side Management Standards**

HB21-1238 | (Rep. Bernett, Sen. Hansen) | *Passed May 27, 2021, Awaiting Governor's Signature*

DSM programs have been shown to promote energy efficiency, reduce energy consumption, and be an economical solution for rate payers. Public utilities are encouraged to use DSM programs as long as they are proven to be cost-effective; this bill updates the metrics used to make this determination. This bill also adds labor standards for any plumbing, mechanical, or electrical work performed for the DSM program. The work must be performed by either the utility's own employee or by someone selected from a list of qualified contractors. Qualified contractors must participate in an apprenticeship program. Other smaller residential projects that are eligible for a rebate must be done by a licensed plumber or electrical contractor.

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## **Clean Transportation**

### **Sustainability of the Transportation System**

SB21-260 | (Sen. Fenberg, Sen. Winter, Rep. Garnett, Rep. Gray) | *Passed June 2, 2021, Awaiting Governor's Signature*

This law aims raise more than \$3 billion to improve the current transportation system, expand infrastructure in some areas, and modernize infrastructure everywhere to facilitate widespread adoption of electric vehicles. An overarching goal of the bill is to mitigate adverse environmental and health impacts created by transportation system use. To accomplish these goals, the bill creates several new TABOR-exempt enterprises capable of raising revenue that does not count toward the state's overall spending limit. The bill also includes \$1.484 billion from the state's general fund and a one-time transfer of \$380 million from federal funds (American Rescue Plan Act) this fiscal year.

The new and expanded enterprises include the Community Access Enterprise, which authorizes imposing a retail delivery fee and expected to generate \$41.1 million revenue in its first two years. Revenue will fund the installation of electric vehicle charging stations, electric transit alternatives, electric vehicle adoption incentive programs, and the creation of hydrogen fuel cell car infrastructure. The Clean Fleet Enterprise is focused incentivizing the conversion of whole fleets of vehicles to electric vehicles. Through retail delivery and per ride fees, this enterprise is expected to raise \$36.9 million in its first two years to fund financing programs and research studies about best strategies to facilitate electric vehicle adoption. The Clean Transit Enterprise will function similarly with the goal of replacing high emitting gasoline and diesel vehicles used in public transit with lower emission electric vehicles. The Air Pollution Mitigation Enterprise will collect small fees via rideshare and delivery companies to use to mitigate environmental and health impacts caused by the rapid rise in retail deliveries and carshare services. Mitigation efforts will have \$20.3 million to use from this enterprise in its first two years. Finally, the Bridge Enterprise has been expanded to become the Bridge and Tunnel Enterprise. This enterprise is tasked with financing, repairing and maintaining bridges and tunnels across the state. To fund this mission, the bill authorizes the imposition of a bridge and tunnel retail delivery fee and a bridge and tunnel impact fee and retains the existing bridge safety surcharge. Consumers will see small (2¢ in FY 2022-23) fees added to their gasoline purchases to finance this initiative. All the fees authorized in this bill are indexed with inflation to provide steady financing into the future.

### **Electric Vehicle License Plate**

HB21-1141 | (Rep. Hooten, Rep. A. Valdez, Sen. Bridges) | *Passed June 7, 2021, Awaiting Governor's Signature*

This goal of this new law is two-fold: to promote public awareness and familiarity with electric vehicles and to better enforce benefits awarded to electric vehicle owners. Both goals are accomplished through the same means: easy identification via a specialized electric vehicle license plate. Once a new electric



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vehicle is registered with the state, the owner will be issued this electric vehicle license plate. The license plate will grant access to certain benefits such as access to special travel lanes and electric vehicle charging parking spots. By distinguishing electric vehicles in this way, lawmakers hope to better regulate these incentives so that non-electric vehicle owners do not take advantage of them due to enforcers' lack of familiarity with electric vehicles. Additionally, lawmakers hope that increased identification of electric vehicles will make consumers more aware of their electric vehicle options. Expanded consumer awareness should then lead to higher adoption rates as consumers are able to relate more experiences with electric vehicles they have seen on the roads.

### **Gasoline And Special Fuels Tax Info Disclosure**

SB21-065 | (Sen. Liston, Rep. Mullica) | *Signed March 21, 2021*

Under this bill, certain relevant information regarding a gasoline distributor's failure or refusal to pay monthly taxes may be disclosed by the Department of Revenue to taxpayers. When requested in writing by a local government official, gasoline distributors must also disclose certain records relating to alleged violations of the administration of the gasoline and special fuels tax.

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## **Climate Disasters & Resiliency**

### **Natural Disaster Mitigation Enterprise**

HB21-1208 | (Rep. L. Cutter, Rep. M. Gray) | *Passed June 7, 2021; Awaiting Governor's Signature*

This bill creates a Natural Disaster Mitigation Enterprise (Enterprise) to decrease losses and risks to communities' lives and property through investments in pre-disaster natural disaster mitigation measures, and decreasing costs associated with disaster response and recovery. Specifically, the Enterprise will provide grants to local governments to implement "resilience and natural disaster mitigation projects," assist in providing matching funds required for federal grants for mitigating natural disasters, and provide technical assistance to local governments for natural disaster mitigation. In order to fund these efforts, the Enterprise levies a fee against certain insurers that provide the types of insurance policies that are largely expected to pay for the losses intended to be mitigated through the Enterprise's work.

### **Create Agricultural Drought and Climate Resilience Office**

HB21-1242 | (Rep. B. McLachlan) | *Passed June 7, 2021; Awaiting Governor's Signature*

This bill creates the agricultural and climate resilience office within the Department of Agriculture. The office provides voluntary assistance, nonregulatory programs, and incentives that increase the ability to anticipate, prepare for, mitigate, adopt to, and respond to hazardous events, trends, and disturbances related to drought or climate change. The office may promulgate rules related to the assistance, programs, and incentives it provides. Programs administered by the office must be designed to benefit agricultural producers that receive a majority of their income from agriculture and must pay for implementation of practices to address and mitigate the impacts of climate change or drought, or to provide direct adaptation support. The office also advises the Department, the governor, and other state agencies on the impact to agriculture of drought and climate policies and programs.

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## **Utility Regulation & Consumer Protection**

### **Measures to Modernize the Public Utilities Commission**

SB21-272 | (Sen. Hansen, Sen. Fenberg, Rep. Burnett) | *Signed June 10, 2021*



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This bill overhauls several areas for the PUC. To begin, it aims to usher in a new level of transparency by requiring intervenors in a matter before the PUC to disclose any corporate affiliation, corporate funding source, or other financial relationship dating back two years, and that disclosure must be made publicly known on the PUC's website. The bill also requires regulated public utilities using resource planning software to provide software licenses and modeling data to PUC staff. Colorado energy impact bonds will now be available to help retire aging, inefficient energy facilities and for programs that mitigate the effects of extreme weather events and climate change. To meet Colorado's clean energy and climate change goals, the PUC will also be required to promulgate a rule directing all retail utilities subject to the renewable energy standard to retire renewable energy credits. To help accomplish the goals of this bill, the annual fee collected from non-telephone public utilities will be raised from .25% to .45% of the utility's gross intrastate utility operating revenue for the preceding calendar year.

### **Sunset Office of Consumer Counsel**

SB21-103 | (Sen. Fenberg, Sen. Winter, Rep. Esgar) | *Passed June 7, 2021, Awaiting Governor's Signature*

The Office of Consumer Counsel (OCC) is part of the Department of Regulatory Agencies (DORA) and was created to represent and protect consumers interests related to investor-owned electric and natural gas utilities in front of the PUC. Under this bill, the OOC will be continued until 2028 and the OCC will be renamed the Office of the Utility Consumer Advocate. This bill removes the cap on the number of employees that may be employed by the office director and authorizes the director to broaden their considerations when determining whether the public interest will be served by appearing before the PUC. The public interest considerations now include decarbonization goals, just transition, and environmental justice. The annual review of the OOC's performance and certain hiring requirements have been lifted in light of the sunset review.

### **Low-income Utility Payment Assistance Contributions**

HB21-1105 | (Rep. Kennedy, Sen. Hansen, Sen. Priola) | *Passed June 7, 2021, Awaiting Governor's Signature*

Currently, low-income families in Colorado are eligible for an energy assistance program administered by Energy Outreach Colorado (EOC). Under the new law, qualifying families will also be eligible for fuel assistance to supplement the nutritional assistance they receive. To finance this expanded program, it is removed from its original funding source and instead financed through the implementation of a small fee charged to investor-owned utility customers. A water payment assistance program, financed by a voluntary fee charged to water utility customers will also be administered by the EOC. Finally, Section 14 of the bill directs the EOC's priorities when retrofitting low-income households: first ensuring customer savings, then considering emission reductions, and improving indoor air quality.

### **Public Utilities Commission Study of Community Choice Energy**

HB21-1269 | (Rep. Hooton, Rep. Boesenecker, Sen. Donovan) | *Passed June 8, 2021, Awaiting Governor's Signature*

Lawmakers are interested in learning more about the concept of community choice energy (CCE), where communities can purchase electricity from wholesale supplies rather than individually purchasing from their designated local invest-owned electric utility. Aside from potentially lowering community member's utility bills, this concept would also give communities more latitude to support renewable energy programs. This bill directs the PUC to investigate CCE and submit a report of their findings to the appropriate legislative committee by December 15, 2022.

### **Cooperative Electric Associations Governance Requirements**

HB21-1131 | (Rep. Amabile, Rep. Catlin, Sen. Winter, Sen. Coram) | *Signed April 29, 2021*



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This bill is procedural and effects the bylaws and election process for electric cooperatives. Included in these updates is the requirement that these associations post information about their rates and net metering requirements on their websites. Financial audits must be made available to members upon request as well.

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