

Second Regular Session  
Sixty-sixth General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 08-0591.01 Duane Gall

HOUSE BILL 08-1107

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HOUSE SPONSORSHIP

Levy, Fischer, Green, McFadyen, Pommer, and Solano

SENATE SPONSORSHIP

(None),

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House Committees

Transportation & Energy

Senate Committees

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A BILL FOR AN ACT

101 CONCERNING MEASURES TO PROMOTE ENERGY EFFICIENCY BY RETAIL  
102 ELECTRIC UTILITIES IN WHICH ULTIMATE MANAGERIAL  
103 CONTROL IS VESTED IN CUSTOMERS OF SUCH UTILITIES.

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Bill Summary

*(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)*

Directs cooperative electric associations and municipal utilities serving 5,000 or more customers to engage in conservation and energy efficiency programs and to devote funding equal to 1% of sales revenue in their first year, and 2% in their second and subsequent years, to such efforts. Exempts a utility from the spending requirement in any year in which the utility's retail electricity sales, in megawatt-hours, fall at least

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

3% below its sales for the immediately preceding year. Requires periodic reports from the utilities to the governor's energy office. Specifies that this act does not extend PUC authority.

Makes conforming amendments.

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

2 **SECTION 1.** Title 40, Colorado Revised Statutes, is amended BY  
3 THE ADDITION OF A NEW ARTICLE to read:

4 **ARTICLE 3.3**

5 **Energy Efficiency Programs of**

6 **Cooperatives and Municipal Utilities**

7 **40-3.3-101. Legislative declaration.** (1) THE GENERAL  
8 ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT ALL  
9 UTILITIES OPERATING IN COLORADO SHOULD IMPLEMENT PROGRAMS TO  
10 HELP THEIR CUSTOMERS INCREASE ENERGY EFFICIENCY AND CONSERVE  
11 ENERGY, THEREBY REDUCING UTILITY BILLS, POLLUTANT EMISSIONS  
12 CAUSED BY ELECTRICITY GENERATION AND SUPPLY, AND CONSUMPTION OF  
13 FINITE FOSSIL FUELS. SUCH PROGRAMS ARE MATTERS OF STATEWIDE  
14 CONCERN AND ARE IN THE PUBLIC INTEREST.

15 (2) THE GENERAL ASSEMBLY FURTHER FINDS, DETERMINES, AND  
16 DECLARES THAT, TO THE EXTENT THAT THIS ARTICLE GOVERNS CERTAIN  
17 ACTIVITIES OF MUNICIPALLY OWNED UTILITIES AND REQUIRES THEIR  
18 PERFORMANCE OF SPECIFIED ACTS, THIS ARTICLE DOES NOT CONSTITUTE  
19 NOR AUTHORIZE REGULATION OF THE "FACILITIES, SERVICE AND RATES  
20 AND CHARGES THEREFOR" OF MUNICIPALLY OWNED UTILITIES WITHIN THE  
21 MEANING OF ARTICLE XXV OF THE STATE CONSTITUTION.

22 **40-3.3-102. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE  
23 CONTEXT OTHERWISE REQUIRES:

1           (1) "BENEFIT-COST TEST" MEANS AN OBJECTIVE METHOD OF  
2 CALCULATING THE RATIO OF THE TOTAL BENEFITS OF AN ENERGY  
3 EFFICIENCY PROGRAM TO ITS TOTAL COSTS. THE BENEFITS INCLUDE A  
4 UTILITY'S AVOIDED GENERATION COSTS, AVOIDED POWER PURCHASE  
5 COSTS, AVOIDED TRANSMISSION AND DISTRIBUTION COSTS, AND AVOIDED  
6 FUEL AND OPERATING COSTS. THE COSTS INCLUDE THE UTILITY'S COSTS  
7 FOR ENERGY EFFICIENCY PROGRAM DELIVERY, ADMINISTRATION,  
8 MARKETING, EVALUATION, AND FINANCIAL INCENTIVES PAID TO  
9 PARTICIPANTS.

10           (2) "COST-EFFECTIVE", WITH REFERENCE TO AN ENERGY  
11 EFFICIENCY PROGRAM, MEANS HAVING A BENEFIT-COST RATIO GREATER  
12 THAN ONE USING THE BENEFIT-COST TEST DEFINED IN SUBSECTION (1) OF  
13 THIS SECTION.

14           (3) "ENERGY EFFICIENCY PROGRAM" MEANS A COHERENT SET OF  
15 ACTIVITIES UNDERTAKEN BY A UTILITY FOR THE PURPOSE OF CONSERVING  
16 ELECTRICITY OR INCREASING THE EFFICIENCY OF ELECTRICITY USE BY  
17 CUSTOMERS OF THE UTILITY. AN ENERGY EFFICIENCY PROGRAM MAY  
18 INCLUDE, BUT IS NOT LIMITED TO, EDUCATION, TECHNICAL ASSISTANCE,  
19 AND FINANCIAL INCENTIVES FOR CUSTOMERS.

20           (4) "UTILITY" MEANS A COOPERATIVE ELECTRIC ASSOCIATION OR  
21 MUNICIPALLY OWNED UTILITY THAT PROVIDES RETAIL ELECTRIC SERVICE.

22           **40-3.3-103. Scope of article - jurisdiction of commission.**

23           (1) NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, THIS  
24 ARTICLE APPLIES TO ALL COOPERATIVE ELECTRIC ASSOCIATIONS AND  
25 MUNICIPALLY OWNED UTILITIES THAT, AS OF JULY 1, 2008, OR JANUARY  
26 1 OF ANY YEAR AFTER 2008, PROVIDE RETAIL ELECTRIC SERVICE TO FIVE  
27 THOUSAND OR MORE CUSTOMERS. THE NUMBER OF CUSTOMERS SERVED

1 BY A UTILITY SHALL BE PRESUMED TO BE NO FEWER THAN THE NUMBER OF  
2 UTILITY METERS THAT THE UTILITY EMPLOYS FOR BILLING PURPOSES.

3 (2) NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO EXPAND  
4 THE COMMISSION'S AUTHORITY WITH RESPECT TO ANY UTILITY SUBJECT TO  
5 THIS ARTICLE OR ANY NONREGULATED UTILITY BUSINESSES OR AFFILIATES  
6 OF A UTILITY.

7 **40-3.3-104. Energy efficiency programs - rules - requirements.**

8 (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (6) OF THIS SECTION:

9 (a) EACH UTILITY THAT PROVIDES OR PROVIDED RETAIL ELECTRIC  
10 SERVICE TO FIVE THOUSAND OR MORE CUSTOMERS AS OF JULY 1, 2008,  
11 SHALL SPEND:

12 (I) DURING CALENDAR YEAR 2009, AN AMOUNT EQUIVALENT TO  
13 AT LEAST ONE PERCENT OF ITS RETAIL SALES REVENUE ON COST-EFFECTIVE  
14 ENERGY EFFICIENCY PROGRAMS FOR ITS CUSTOMERS; AND

15 (II) DURING CALENDAR YEAR 2010 AND EACH CALENDAR YEAR  
16 THEREAFTER, AN AMOUNT EQUIVALENT TO AT LEAST TWO PERCENT OF ITS  
17 RETAIL SALES REVENUE ON COST-EFFECTIVE ENERGY EFFICIENCY  
18 PROGRAMS FOR ITS CUSTOMERS.

19 (b) EACH UTILITY THAT PROVIDES OR PROVIDED RETAIL ELECTRIC  
20 SERVICE TO FIVE THOUSAND OR MORE CUSTOMERS AS OF JANUARY 1,  
21 2009, OR OF ANY YEAR THEREAFTER, SHALL SPEND:

22 (I) DURING THE CALENDAR YEAR IN WHICH IT FIRST BECOMES  
23 SUBJECT TO THIS ARTICLE, AN AMOUNT EQUIVALENT TO AT LEAST ONE  
24 PERCENT OF ITS RETAIL SALES REVENUE ON COST-EFFECTIVE ENERGY  
25 EFFICIENCY PROGRAMS FOR ITS CUSTOMERS; AND

26 (II) DURING THE NEXT SUCCEEDING CALENDAR YEAR AND EVERY  
27 CALENDAR YEAR THEREAFTER, AN AMOUNT EQUIVALENT TO AT LEAST

1 TWO PERCENT OF ITS RETAIL SALES REVENUE ON COST-EFFECTIVE ENERGY  
2 EFFICIENCY PROGRAMS FOR ITS CUSTOMERS.

3 (2) FOR THE PURPOSE OF DETERMINING WHETHER A UTILITY HAS  
4 MET ITS MINIMUM ENERGY EFFICIENCY SPENDING REQUIREMENT UNDER  
5 THIS SECTION, ALLOWED COSTS SHALL INCLUDE PROGRAM PLANNING,  
6 ADMINISTRATION, MARKETING, TECHNICAL ASSISTANCE, CONSUMER  
7 EDUCATION, REBATES AND OTHER FINANCIAL INCENTIVES FOR  
8 CUSTOMERS, AND EVALUATION COSTS RELATED TO ENERGY EFFICIENCY  
9 PROGRAM DESIGN AND IMPLEMENTATION.

10 (3) EACH UTILITY SHALL DETERMINE WHICH PROGRAMS IT  
11 CHOOSES TO IMPLEMENT TO MEET THE REQUIREMENTS OF THIS SECTION.  
12 EACH UTILITY SHALL STRIVE TO IMPLEMENT A SET OF PROGRAMS THAT,  
13 TAKEN TOGETHER, ARE COST-EFFECTIVE.

14 (4) A UTILITY MAY USE FUNDS PROVIDED BY OTHER ENTITIES,  
15 INCLUDING WITHOUT LIMITATION A WHOLESALE ELECTRIC POWER  
16 PROVIDER, STATE GOVERNMENT, OR LOCAL GOVERNMENT, TOWARD  
17 MEETING ITS SPENDING REQUIREMENTS UNDER THIS SECTION.

18 (5) A UTILITY MAY IMPLEMENT ENERGY EFFICIENCY PROGRAMS ON  
19 ITS OWN, IN PARTNERSHIP WITH OTHER UTILITIES, BY PROVIDING FUNDING  
20 TO THE GOVERNOR'S ENERGY OFFICE TO ADMINISTER ENERGY EFFICIENCY  
21 PROGRAMS ON ITS BEHALF, OR BY A COMBINATION OF THE THREE  
22 METHODS, AT ITS OPTION.

23 (6) A UTILITY MAY EXEMPT ITSELF FROM THE SPENDING  
24 REQUIREMENTS OF THIS SECTION IN A PARTICULAR YEAR, BUT ONLY FOR  
25 THAT YEAR, IF THE UTILITY'S RETAIL ELECTRICITY SALES, IN  
26 MEGAWATT-HOURS, FOR THAT YEAR FALL THREE PERCENT OR MORE  
27 BELOW THE UTILITY'S SALES, IN MEGAWATT-HOURS, FOR THE

1 IMMEDIATELY PRECEDING YEAR.

2 (7) THE GOVERNOR'S ENERGY OFFICE MAY HIRE AND OVERSEE ONE  
3 OR MORE QUALIFIED AND IMPARTIAL CONTRACTORS TO IMPLEMENT  
4 ENERGY EFFICIENCY PROGRAMS FOR A UTILITY IF THAT UTILITY CHOOSES  
5 TO PROVIDE FUNDING TO THE GOVERNOR'S ENERGY OFFICE FOR THIS  
6 PURPOSE. THE GOVERNOR'S ENERGY OFFICE MAY CHARGE A UTILITY A  
7 REASONABLE MANAGEMENT FEE, NOT TO EXCEED TEN PERCENT OF THE  
8 FUNDS IT RECEIVES, IF THE UTILITY CHOOSES TO HAVE THE GOVERNOR'S  
9 ENERGY OFFICE ADMINISTER ENERGY EFFICIENCY PROGRAMS ON ITS  
10 BEHALF.

11 **40-3.3-105. Accounting - reports.** (1) EACH UTILITY SHALL  
12 TRACK PROGRAM EXPENDITURES AND EVALUATE THE COSTS AND BENEFITS  
13 OF ITS ENERGY EFFICIENCY PROGRAMS.

14 (2) ON OR BEFORE APRIL 30, 2010, AND ON OR BEFORE APRIL 30  
15 OF EACH YEAR THEREAFTER, EACH UTILITY SHALL SUBMIT AN ANNUAL  
16 REPORT FOR THE IMMEDIATELY PRECEDING YEAR TO THE GOVERNOR'S  
17 ENERGY OFFICE. ANNUAL REPORTS SHALL CONTAIN INFORMATION ON THE  
18 ENERGY EFFICIENCY PROGRAMS IMPLEMENTED BY THE UTILITY; PROGRAM  
19 EXPENDITURES; PROGRAM EXPENDITURES AS A FRACTION OF RETAIL SALES  
20 REVENUE; ENERGY SAVINGS IMPACTS AND THE TECHNIQUES USED TO  
21 ESTIMATE THESE IMPACTS; THE ESTIMATED COSTS, BENEFITS, AND  
22 COST-EFFECTIVENESS OF THE ENERGY EFFICIENCY PROGRAMS; AND OTHER  
23 INFORMATION REQUESTED BY THE GOVERNOR'S ENERGY OFFICE.

24 (3) THE GOVERNOR'S ENERGY OFFICE SHALL REVIEW EACH REPORT  
25 SUBMITTED PURSUANT TO THIS SECTION AND, IF THE GOVERNOR'S ENERGY  
26 OFFICE DEEMS IT APPROPRIATE, PROVIDE COMMENTS TO THE UTILITIES TO  
27 HELP THEM IMPROVE THEIR ENERGY EFFICIENCY PROGRAMS.

1           (4) THE GOVERNOR'S ENERGY OFFICE SHALL COMPILE  
2 INFORMATION ON ENERGY EFFICIENCY PROGRAMS IMPLEMENTED BY  
3 UTILITIES AND PROVIDE A REPORT WITH SUCH INFORMATION BIENNIALY  
4 TO THE GENERAL ASSEMBLY. EACH BIENNIAL REPORT SHALL INCLUDE A  
5 LIST OF WHICH UTILITIES ARE IN COMPLIANCE WITH THE ENERGY  
6 EFFICIENCY PROGRAM SPENDING REQUIREMENT SPECIFIED IN SECTION  
7 40-3.3-104 (1) (a) AND WHICH UTILITIES, IF ANY, ARE NOT; INFORMATION  
8 ON OVERALL ENERGY EFFICIENCY PROGRAM EXPENDITURES, ENERGY  
9 SAVINGS, AND NET ECONOMIC BENEFITS; AND ANY RECOMMENDATIONS TO  
10 THE GENERAL ASSEMBLY FOR LEGISLATIVE CHANGES TO ENHANCE ENERGY  
11 EFFICIENCY AND CONSERVATION.

12           **SECTION 2.** 40-9.5-114.5, Colorado Revised Statutes, is  
13 amended to read:

14           **40-9.5-114.5. Applicability of specified sections.** (1) The  
15 provisions of sections 40-9.5-108 to 40-9.5-112 shall be applicable to all  
16 cooperative electric associations with membership of more than  
17 twenty-five thousand members whether regulated under this part 1 or the  
18 "Public Utilities Law", articles 1 to 7 of this title.

19           (2) ARTICLE 3.3 OF THIS TITLE SHALL APPLY TO ALL COOPERATIVE  
20 ELECTRIC ASSOCIATIONS WITH MEMBERSHIP OF MORE THAN FIVE  
21 THOUSAND MEMBERS WHETHER REGULATED UNDER THIS PART 1 OR THE  
22 "PUBLIC UTILITIES LAW", ARTICLES 1 TO 7 OF THIS TITLE.

23           **SECTION 3. Effective date.** This act shall take effect July 1,  
24 2008.

25           **SECTION 4. Safety clause.** The general assembly hereby finds,  
26 determines, and declares that this act is necessary for the immediate  
27 preservation of the public peace, health, and safety.