

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 14-0637.02 Duane Gall x4335

SENATE BILL 14-035

SENATE SPONSORSHIP

Harvey,

HOUSE SPONSORSHIP

Saine and Humphrey,

Senate Committees
State, Veterans, & Military Affairs

House Committees

A BILL FOR AN ACT

101 CONCERNING MEASURES TO REDUCE THE COST OF COMPLIANCE WITH
102 COLORADO'S RENEWABLE ENERGY STANDARD, AND, IN
103 CONNECTION THEREWITH, REPEALING RECENT INCREASES IN
104 THE RENEWABLE COMPONENT FOR COOPERATIVE ELECTRIC
105 ASSOCIATIONS.

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://www.leg.state.co.us/bills summaries>.)

In Colorado's renewable energy portfolio statute, the bill repeals

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.

substantially all of the provisions enacted by Senate Bill 13-252. Specifically, the bill reverses those provisions in the following areas:

- ! For cooperative electric associations serving 100,000 or more meters, for which the renewable portfolio standard for 2020 had been increased from 10% to 20%, the standard returns to 10%;
- ! Senate Bill 13-252's expansion of the definition of eligible energy resources is curtailed by eliminating coal mine methane and synthetic gas produced by pyrolysis of municipal waste;
- ! A multiplier in the formula for calculation of renewable energy credits used to accelerate the construction of new solar generation, which multiplier would have expired in 2015 under Senate Bill 13-252, is retained;
- ! The maximum permissible retail rate impact of compliance with the standards, which Senate Bill 13-252 increased from 1% to 2% for cooperative electric associations, returns to 1%;
- ! Senate Bill 13-252's additional carve-outs for distributed generation are eliminated; and
- ! Reporting requirements and portfolio standards for cooperative electric associations that sell electricity wholesale (qualifying wholesale utilities) are eliminated.

The bill leaves intact the portions of Senate Bill 13-252 that removed preferences for energy generated in Colorado, which had engendered litigation alleging an undue burden on interstate commerce.

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

2 **SECTION 1.** In Colorado Revised Statutes, 40-2-124, **amend** (1)
3 (a) introductory portion, (1) (c) (II) (A), (1) (c) (III), (1) (c) (V)
4 introductory portion, (1) (c) (VII) (A), (1) (g) (I) (A), and (1) (g) (IV) (A);
5 and **repeal** (1) (a) (II), (1) (a) (IV), (1) (a) (V), (1) (c) (V.5), (1) (c) (X),
6 and (8) as follows:

7 **40-2-124. Renewable energy standards - qualifying retail and**
8 **wholesale utilities - definitions - net metering - legislative declaration**
9 **- rules.** (1) Each provider of retail electric service in the state of
10 Colorado, other than municipally owned utilities that serve forty thousand

1 customers or fewer, is a qualifying retail utility. Each qualifying retail
2 utility, with the exception of cooperative electric associations that have
3 voted to exempt themselves from commission jurisdiction pursuant to
4 section 40-9.5-104 and municipally owned utilities, is subject to the rules
5 established under this article by the commission. No additional regulatory
6 authority is provided to the commission other than that specifically
7 contained in this section. In accordance with article 4 of title 24, C.R.S.,
8 the commission shall revise or clarify existing rules to establish the
9 following:

10 (a) Definitions of eligible energy resources that can be used to
11 meet the standards. "Eligible energy resources" means recycled energy
12 and renewable energy resources. ~~In addition, resources using coal mine~~
13 ~~methane and synthetic gas produced by pyrolysis of municipal solid waste~~
14 ~~are eligible energy resources if the commission determines that the~~
15 ~~electricity generated by those resources is greenhouse gas neutral.~~ The
16 commission shall determine, following an evidentiary hearing, the extent
17 to which such electric generation technologies utilized in an optional
18 pricing program may be used to comply with this standard. A fuel cell
19 using hydrogen derived from an eligible energy resource is also an
20 eligible electric generation technology. Fossil and nuclear fuels and their
21 derivatives are not eligible energy resources. For purposes of this section:

22 (II) ~~"Coal mine methane" means methane captured from active~~
23 ~~and inactive coal mines where the methane is escaping to the atmosphere.~~
24 ~~In the case of methane escaping from active mines, only methane vented~~
25 ~~in the normal course of mine operations that is naturally escaping to the~~
26 ~~atmosphere is coal mine methane for purposes of eligibility under this~~
27 ~~section.~~

1 (IV) ~~"Greenhouse gas neutral", with respect to electricity~~
2 ~~generated by a coal mine methane or synthetic gas facility, means that the~~
3 ~~volume of greenhouse gases emitted into the atmosphere from the~~
4 ~~conversion of fuel to electricity is no greater than the volume of~~
5 ~~greenhouse gases that would have been emitted into the atmosphere over~~
6 ~~the next five years, beginning with the planned date of operation of the~~
7 ~~facility, if the fuel had not been converted to electricity, where~~
8 ~~greenhouse gases are measured in terms of carbon dioxide equivalent.~~

9 (V) ~~"Pyrolysis" means the thermochemical decomposition of~~
10 ~~material at elevated temperatures without the participation of oxygen.~~

11 (c) Electric resource standards:

12 (II) (A) Of the amounts of distributed generation in
13 sub-subparagraphs (C), (D), and (E) of subparagraph (I)
14 ~~sub-subparagraph (D) of subparagraph (V), and subparagraph (V.5) of~~
15 ~~this paragraph (c), at least one-half must be derived from retail distributed~~
16 ~~generation. except that this sub-subparagraph (A) does not apply to a~~
17 ~~qualifying retail utility that is a municipal utility.~~

18 (III) Each kilowatt-hour of electricity generated from eligible
19 energy resources, other than retail distributed generation, ~~and other than~~
20 ~~eligible energy resources beginning operation on or after January 1, 2015,~~
21 counts as one and one-fourth kilowatt-hours for the purposes of
22 compliance with this standard.

23 (V) Notwithstanding any other provision of law but subject to
24 subsection (4) of this section, the electric resource standards must require
25 each cooperative electric association ~~that is a qualifying retail utility and~~
26 ~~that provides service to fewer than one hundred thousand meters,~~ and
27 each municipally owned utility that is a qualifying retail utility to

1 generate, or cause to be generated, electricity from eligible energy
2 resources in the following minimum amounts:

3 ~~(V.5) Notwithstanding any other provision of law, each~~
4 ~~cooperative electric association that provides electricity at retail to its~~
5 ~~customers and serves one hundred thousand or more meters shall generate~~
6 ~~or cause to be generated at least twenty percent of the energy it provides~~
7 ~~to its customers from eligible energy resources in the years 2020 and~~
8 ~~thereafter.~~

9 (VII) (A) For purposes of compliance with the standards set forth
10 in ~~subparagraphs~~ SUBPARAGRAPH (V) and ~~(V.5)~~ of this paragraph (c),
11 each kilowatt-hour of renewable electricity generated from solar electric
12 generation technologies shall be counted as three kilowatt-hours.

13 ~~(X) Of the minimum amounts of electricity required to be~~
14 ~~generated or caused to be generated by qualifying retail utilities in~~
15 ~~accordance with subparagraph (V.5) and sub-subparagraph (D) of~~
16 ~~subparagraph (V) of this paragraph (c), one-tenth, or one percent of total~~
17 ~~retail electricity sales, must be from distributed generation; except that:~~

18 ~~(A) For a cooperative electric association that is a qualifying retail~~
19 ~~utility and that provides service to fewer than ten thousand meters, the~~
20 ~~distributed generation component may be three-quarters of one percent of~~
21 ~~total retail electricity sales; and~~

22 ~~(B) This subparagraph (X) does not apply to a qualifying retail~~
23 ~~utility that is a municipal utility.~~

24 (g) Retail rate impact rule:

25 (I) (A) Except as otherwise provided in subparagraph (IV) of this
26 paragraph (g), for each qualifying utility, the commission shall establish
27 a maximum retail rate impact for this section ~~for compliance with the~~

1 electric resource standards of two percent of the total electric bill annually
2 for each customer. The retail rate impact shall be determined net of new
3 alternative sources of electricity supply from noneligible energy resources
4 that are reasonably available at the time of the determination.

5 (IV) (A) For cooperative electric associations, the maximum retail
6 rate impact for this section is ~~two~~ ONE percent of the total electric bill
7 annually for each customer.

8 (8) ~~Qualifying wholesale utilities - definition - electric resource~~
9 ~~standard - tradable credits - reports.~~ (a) ~~Definition.~~ Each generation
10 and transmission cooperative electric association that provides wholesale
11 electric service directly to Colorado electric associations that are its
12 members is a qualifying wholesale utility. Commission rules adopted
13 under subsections (1) to (7) of this section do not apply directly to
14 qualifying wholesale utilities, and this subsection (8) does not provide the
15 commission with additional regulatory authority over qualifying
16 wholesale utilities.

17 (b) ~~Electric resource standard.~~ Notwithstanding any other
18 provision of law, each qualifying wholesale utility shall generate, or cause
19 to be generated, at least twenty percent of the energy it provides to its
20 Colorado members at wholesale from eligible energy resources in the year
21 2020 and thereafter. If, and to the extent that, the purchase of energy
22 generated from eligible energy resources by a Colorado member from a
23 qualifying wholesale utility would cause an increase in rates for the
24 Colorado member that exceeds the retail rate impact limitation in
25 sub-subparagraph (A) of subparagraph (IV) of paragraph (g) of
26 subsection (1) of this section, the obligation imposed on the qualifying
27 wholesale utility is reduced by the amount of such energy necessary to

1 enable the Colorado member to comply with the rate impact limitation.

2 (c) A qualifying wholesale utility may count the energy generated
3 or caused to be generated from eligible energy resources by its Colorado
4 members or by the qualifying wholesale utility on behalf of its Colorado
5 members pursuant to subparagraph (V) of paragraph (c) of subsection (1)
6 of this section toward compliance with the energy resource standard
7 established in this subsection (8):

8 (d) Preferences for certain eligible energy resources and the limit
9 on their applicability established in subparagraph (VIII) of paragraph (c)
10 of subsection (1) of this section may be used by a qualifying wholesale
11 utility in meeting the energy resource standard established in this
12 subsection (8):

13 (e) **Tradable renewable energy credits.** A qualifying wholesale
14 utility shall use a system of tradable renewable energy credits to comply
15 with the electric resource standard established in this subsection (8);
16 except that a renewable energy credit acquired under this subsection (8)
17 expires at the end of the fifth calendar year following the calendar year
18 in which it was generated.

19 (f) In implementing the electric resource standard established in
20 this subsection (8), a qualifying wholesale utility shall assure that the
21 costs, both direct and indirect, attributable to compliance with the
22 standard are recovered from its Colorado members. The qualifying
23 wholesale utility shall employ such cost allocation methods as are
24 required to assure that any direct or indirect costs attributable to
25 compliance with the standard established in this subsection (8) do not
26 affect the cost or price of the qualifying wholesale utility's sales to
27 customers outside of Colorado.

1 ~~(g) **Reports.** Each qualifying wholesale utility shall submit an~~
2 ~~annual report to the commission no later than June 1, 2014, and June 1 of~~
3 ~~each year thereafter. In addition, the qualifying wholesale utility shall post~~
4 ~~an electronic copy of each report on its web site and shall provide the~~
5 ~~commission with an electronic copy of the report. In each report, the~~
6 ~~qualifying wholesale utility shall:~~

7 ~~(I) Describe the steps it took during the immediately preceding~~
8 ~~twelve months to comply with the electric resource standard established~~
9 ~~in this subsection (8);~~

10 ~~(II) In the years before 2020, describe whether it is making~~
11 ~~sufficient progress toward meeting the standard in 2020 or is likely to~~
12 ~~meet the 2020 standard early. If it is not making sufficient progress~~
13 ~~toward meeting the standard in 2020, it shall explain why and shall~~
14 ~~indicate the steps it intends to take to increase the pace of progress; and~~

15 ~~(III) In 2020 and thereafter, describe whether it has achieved~~
16 ~~compliance with the electric resource standard established in this~~
17 ~~subsection (8) and whether it anticipates continuing to do so. If it has not~~
18 ~~achieved such compliance or does not anticipate continuing to do so, it~~
19 ~~shall explain why and shall indicate the steps it intends to take to meet the~~
20 ~~standard and by what date.~~

21 ~~(h) Nothing in this subsection (8) amends or waives any provision~~
22 ~~of subsections (1) to (7) of this section.~~

23 **SECTION 2.** In Colorado Revised Statutes, 40-1-103.3, **amend**
24 (4) (b) (I) as follows:

25 **40-1-103.3. Alternative fuel vehicles - definition.** (4) The owner
26 or operator of a facility that generates electricity for use in alternative fuel
27 vehicle charging or fueling facilities is not subject to regulation as a

1 public utility, if:

2 (b) The electricity is generated from a renewable resource that:

3 (I) Qualifies as "retail distributed generation" as defined in section
4 40-2-124 (1) (a) ~~(V)~~ (VIII), if located on the system of an entity subject
5 to the requirements of section 40-2-124. The electric power requirements
6 for the property pursuant to section 40-2-124 (1) include the demand for
7 existing or proposed alternative fuel vehicle charging or fueling facilities
8 in addition to buildings and other improvements.

9 **SECTION 3. Act subject to petition - effective date.** This act
10 takes effect at 12:01 a.m. on the day following the expiration of the
11 ninety-day period after final adjournment of the general assembly (August
12 6, 2014, if adjournment sine die is on May 7, 2014); except that, if a
13 referendum petition is filed pursuant to section 1 (3) of article V of the
14 state constitution against this act or an item, section, or part of this act
15 within such period, then the act, item, section, or part will not take effect
16 unless approved by the people at the general election to be held in
17 November 2014 and, in such case, will take effect on the date of the
18 official declaration of the vote thereon by the governor.