Second Regular Session
Sixty-third General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 02-0757.01 Gregg Fraser **SENATE BILL** 02-180

SENATE SPONSORSHIP

Phillips

HOUSE SPONSORSHIP

(None)

Senate Committees
Business, Labor, and Finance

House Committees

A BILL FOR AN ACT

CONCERNING THE USE OF RENEWABLE ENERGY SOURCES, AND, IN CONNECTION THEREWITH, REQUIRING PROVIDERS OF ELECTRIC SERVICE TO COMPLY WITH AN ELECTRIC RESOURCE STANDARD FOR RENEWABLE ENERGY, AUTHORIZING THE COLORADO PUBLIC UTILITIES COMMISSION TO IMPOSE ADMINISTRATIVE FINES AGAINST NONCOMPLYING PROVIDERS UNDER CERTAIN CIRCUMSTANCES, PROVIDING AN EXEMPTION FROM THE STANDARD IN SPECIFIED CIRCUMSTANCES, AND SPECIFYING REPORTING REQUIREMENTS RELATING TO THE STANDARD.

Bill Summary

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

adopted.)

Requires the public utilities commission (commission) to establish an electric resource standard (standard) for renewable energy. Specifies that the standard shall require a specified percentage of the total amount of electricity sold by each electric service provider each year to be from a renewable energy system. Increases the percentage over a specified number of years.

Provides that renewable electricity generated in rural areas or by solar electric resources shall be counted as additional kilowatts towards complying with the standard. Allows a specified amount of the electricity produced by solar energy systems subsidized by a provider to be deemed to be from a renewable energy system for purposes of complying with the standard. Authorizes the commission to adopt rules establishing a system of renewable energy credits that may be used to comply with the standard.

Requires a provider to notify the commission if the provider will be unable to comply with the standard for a particular calendar year. Authorizes the commission to exempt the provider from the standard if there is an insufficient supply of renewable electricity available.

Specifies requirements for entering into renewable energy contracts, reporting requirements for providers, and a minimum fine for not complying with the standard. Establishes a working group to report to the general assembly on the costs and benefits of the standard.

Requires the commission to promulgate rules necessary for the administration and enforcement of the act.

Defines terms.

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

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

ARTICLE 3.3

Electric Resource Standard for Renewable Energy

40-3.3-101. Definitions. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) (a) "BIOMASS" MEANS ANY ORGANIC MATTER THAT IS AVAILABLE ON A RENEWABLE BASIS, INCLUDING, WITHOUT LIMITATION:

(I) AGRICULTURAL CROPS AND AGRICULTURAL WASTES AND

RESIDUES;

(II) WOOD AND WOOD WASTES AND RESIDUES;

(III) ANIMAL WASTES;

(IV) METHANE PRODUCED AT LANDFILLS; AND

(V) AQUATIC PLANTS.

(b) THE TERM "BIOMASS" DOES NOT INCLUDE PUMPED STORAGE, BLACK LIQUOR, TREATED WOODS, OR BIOMASS FROM MUNICIPAL SOLID WASTE OTHER THAN METHANE PRODUCED AT LANDFILLS.

(2) "ELECTRIC RESOURCE STANDARD" AND "STANDARD" MEANS A STANDARD FOR RENEWABLE ENERGY CONTENT ESTABLISHED BY THE COMMISSION PURSUANT TO SECTION 40-3.3-102.

(3) "PROVIDER OF ELECTRIC SERVICE" AND "PROVIDER" MEANS ANY PERSON OR ENTITY THAT IS IN THE BUSINESS OF SELLING ELECTRICITY TO RETAIL CUSTOMERS IN THIS STATE. THE TERM DOES NOT INCLUDE MUNICIPAL UTILITIES, RURAL ELECTRIC ASSOCIATIONS, A LANDLORD OF A MOBILE HOME PARK, OR OWNER OF A COMPANY TOWN OR SIMILAR FACILITY THAT IS CENTRALLY METERED.

(4) "RENEWABLE ENERGY" MEANS BIOMASS, GEOTHERMAL ENERGY, SOLAR ENERGY, AND WIND ENERGY. THE TERM "RENEWABLE ENERGY" DOES NOT INCLUDE HYDROELECTRICITY, COAL, NATURAL GAS, OIL, PROPANE, OR ANY OTHER FOSSIL FUEL, OR NUCLEAR ENERGY.

(5) "RENEWABLE ENERGY CONTRACT" MEANS A CONTRACT TO ACQUIRE ELECTRICITY FROM ONE OR MORE RENEWABLE ENERGY SYSTEMS OWNED, OPERATED, OR CONTROLLED BY OTHER PARTIES.

(6) "RENEWABLE ENERGY SYSTEM" MEANS A FACILITY OR ENERGY SYSTEM THAT:

(a) ACTIVELY REDUCES THE CONSUMPTION OF ELECTRICITY USING

SOLAR, THERMAL, OR PHOTOVOLTAIC ENERGY AS A RESOURCE;

(b) USES RENEWABLE ENERGY TO GENERATE ELECTRICITY USED BY A RESIDENCE OR BUSINESS LOCATED IN COLORADO THAT IS NOT CONNECTED TO THE TRANSMISSION OR DISTRIBUTION FACILITIES OF ANY RETAIL OR WHOLESALE PROVIDER OF ELECTRICITY SERVICE; OR

(c) USES RENEWABLE ENERGY TO GENERATE ELECTRICITY AND TRANSMITS OR DISTRIBUTES THE ELECTRICITY THAT IT GENERATES TO EITHER A WHOLESALE OR RETAIL PROVIDER OF ELECTRIC SERVICE.

(7) "RETAIL CUSTOMER" MEANS A CUSTOMER WHO PURCHASES ELECTRICITY AT RETAIL, INCLUDING, WITHOUT LIMITATION:

(a) THE STATE, A POLITICAL SUBDIVISION OF THE STATE, OR AN AGENCY OR INSTRUMENTALITY OF THE STATE OR POLITICAL SUBDIVISION OF THE STATE WHEN IT PURCHASES ELECTRICITY AT RETAIL; AND

(b) A LANDLORD OF A MOBILE HOME PARK OR OWNER OF A COMPANY TOWN OR SIMILAR FACILITY THAT IS CENTRALLY METERED.

40-3.3-102. Electric resource standard. (1) FOR EACH PROVIDER OF ELECTRIC SERVICE, THE COMMISSION SHALL ESTABLISH AN ELECTRIC RESOURCE STANDARD FOR RENEWABLE ENERGY. THE ELECTRIC RESOURCE STANDARD SHALL REQUIRE EACH PROVIDER TO GENERATE OR ACQUIRE ELECTRICITY FROM RENEWABLE ENERGY SYSTEMS IN AN AMOUNT THAT IS:

(a) FOR CALENDAR YEAR 2004, NOT LESS THAN TWO PERCENT OF THE TOTAL AMOUNT OF ELECTRICITY SOLD BY THE PROVIDER TO ITS RETAIL CUSTOMERS IN THIS STATE DURING THAT CALENDAR YEAR;

(b) FOR CALENDAR YEAR 2005, NOT LESS THAN FIVE PERCENT OF THE TOTAL AMOUNT OF ELECTRICITY SOLD BY THE PROVIDER TO ITS RETAIL CUSTOMERS IN THIS STATE DURING THAT CALENDAR YEAR;

(c) FOR CALENDAR YEAR 2006, NOT LESS THAN SIX PERCENT OF THE TOTAL AMOUNT OF ELECTRICITY SOLD BY THE PROVIDER TO ITS RETAIL CUSTOMERS IN THIS STATE DURING THAT CALENDAR YEAR;

(d) FOR CALENDAR YEAR 2007, NOT LESS THAN SEVEN PERCENT OF THE TOTAL AMOUNT OF ELECTRICITY SOLD BY THE PROVIDER TO ITS RETAIL CUSTOMERS IN THIS STATE DURING THAT CALENDAR YEAR;

(e) FOR CALENDAR YEAR 2008, NOT LESS THAN EIGHT PERCENT OF THE TOTAL AMOUNT OF ELECTRICITY SOLD BY THE PROVIDER TO ITS RETAIL CUSTOMERS IN THIS STATE DURING THAT CALENDAR YEAR;

(f) FOR CALENDAR YEAR 2009, NOT LESS THAN NINE PERCENT OF THE TOTAL AMOUNT OF ELECTRICITY SOLD BY THE PROVIDER TO ITS RETAIL CUSTOMERS IN THIS STATE DURING THAT CALENDAR YEAR; AND

(g) FOR CALENDAR YEAR 2010, NOT LESS THAN TEN PERCENT OF THE TOTAL AMOUNT OF ELECTRICITY SOLD BY THE PROVIDER TO ITS RETAIL CUSTOMERS IN THIS STATE DURING THAT CALENDAR YEAR.

(2) UNLESS EXEMPTED AS PROVIDED IN SUBSECTION (8) OF THIS SECTION, EACH PROVIDER SHALL COMPLY WITH ITS ELECTRIC RESOURCE STANDARD DURING EACH CALENDAR YEAR.

(3) EACH KILOWATT OF RENEWABLE ELECTRICITY GENERATED IN A RURAL AREA OF COLORADO SHALL COUNT AS ONE AND ONE-HALF KILOWATTS TOWARDS COMPLIANCE WITH THIS STANDARD.

(4) EACH KILOWATT OF ELECTRICITY GENERATED BY SOLAR ELECTRIC RESOURCES SHALL COUNT AS TWO KILOWATTS TOWARDS COMPLIANCE WITH THIS STANDARD.

(5) A UTILITY THAT SUPPLIES ELECTRICITY IN THIS STATE AND OFFERS AN OPTIONAL PRICING PROGRAM THAT CHARGES A HIGHER RATE FOR ELECTRICITY GENERATED FROM RENEWABLE ENERGY RESOURCES

SHALL NOT INCLUDE THE RENEWABLE ELECTRICITY GENERATED UNDER SUCH A PROGRAM AS ELIGIBLE ELECTRICITY IN ITS COMPLIANCE WITH THIS STANDARD.

(6) IF, FOR THE BENEFIT OF ONE OR MORE OF ITS RETAIL CUSTOMERS IN THIS STATE, THE PROVIDER HAS SUBSIDIZED MORE THAN FIFTY PERCENT OF THE COST OF THE ACQUISITION OR INSTALLATION OF A SOLAR THERMAL ENERGY OR PHOTOVOLTAIC SYSTEM THAT REDUCES THE CONSUMPTION OF ELECTRICITY, THE TOTAL REDUCTION IN THE CONSUMPTION OF ELECTRICITY DURING EACH CALENDAR YEAR THAT RESULTS FROM THE SOLAR ENERGY SYSTEM SHALL BE DEEMED TO BE ELECTRICITY THAT THE PROVIDER GENERATED OR ACQUIRED FROM A RENEWABLE ENERGY SYSTEM FOR THE PURPOSES OF COMPLYING WITH ITS ELECTRIC RESOURCE STANDARD.

(7) THE COMMISSION MAY PROMULGATE RULES TO ESTABLISH A SYSTEM OF RENEWABLE ENERGY CREDITS THAT MAY BE USED BY A PROVIDER TO COMPLY WITH ITS ELECTRIC RESOURCE STANDARD. SUCH RULES SHALL BE PROMULGATED IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S.

(8) IF, FOR ANY CALENDAR YEAR, A PROVIDER BELIEVES IT WILL BE UNABLE TO COMPLY WITH ITS ELECTRIC RESOURCE STANDARD REQUIREMENTS THROUGH THE GENERATION OF ELECTRICITY FROM ITS OWN RENEWABLE ENERGY SYSTEMS, THROUGH RENEWABLE ENERGY SUPPLY CONTRACTS, OR, IF APPLICABLE, THROUGH THE USE OF RENEWABLE ENERGY CREDITS, THE PROVIDER SHALL NOTIFY THE COMMISSION BY THE BEGINNING OF OCTOBER OF THE CALENDAR YEAR IN QUESTION. IF THE COMMISSION DETERMINES THROUGH HEARING THAT, FOR THAT CALENDAR YEAR, THERE IS NOT OR WILL NOT BE A SUFFICIENT SUPPLY OF ELIGIBLE

RENEWABLE ELECTRICITY AVAILABLE TO THE PROVIDER, THE COMMISSION MAY EXEMPT THE PROVIDER, FOR THAT CALENDAR YEAR, FROM THE REMAINING REQUIREMENTS OF ITS ELECTRIC RESOURCE STANDARD OR FROM ANY APPROPRIATE PORTION THEREOF, AS DETERMINED BY THE COMMISSION.

40-3.3-103. Renewable energy contracts. (1) THE COMMISSION SHALL PROMULGATE RULES GOVERNING THE GENERAL TERMS AND CONDITIONS OF ANY RENEWABLE ENERGY CONTRACT THAT A PROVIDER OF ELECTRIC SERVICE MAY ENTER INTO WITH ANOTHER PARTY TO COMPLY WITH ITS ELECTRIC RESOURCE STANDARD. SUCH RULES SHALL BE PROMULGATED IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S.

(2) IN ADDITION TO THE REQUIREMENTS SET FORTH IN SECTION 40-3.3-102, THE ELECTRIC RESOURCE STANDARD FOR EACH PROVIDER SHALL REQUIRE THE FOLLOWING WHEN THE PROVIDER ACQUIRES ELECTRICITY FROM A RENEWABLE ENERGY SYSTEM PURSUANT TO A RENEWABLE ENERGY CONTRACT WITH ANOTHER PARTY:

(a) THAT THE TERM OF THE RENEWABLE ENERGY CONTRACT SHALL BE NO LESS THAN TEN YEARS, UNLESS THE OTHER PARTY AGREES TO A RENEWABLE ENERGY CONTRACT WITH A SHORTER TERM; AND

(b) IF THE COMMISSION APPROVES THE TERMS AND CONDITIONS OF THE RENEWABLE ENERGY CONTRACT BETWEEN THE PROVIDER AND THE OTHER PARTY, THE RENEWABLE ENERGY CONTRACT AND ITS TERMS AND CONDITIONS SHALL BE DEEMED TO BE A PRUDENT INVESTMENT AND THE PROVIDER MAY RECOVER ALL JUST AND REASONABLE COSTS ASSOCIATED WITH THE RENEWABLE ENERGY CONTRACT.

40-3.3-104. Annual report. (1) EACH PROVIDER OF ELECTRIC SERVICE SHALL SUBMIT TO THE COMMISSION AN ANNUAL REPORT THAT

PROVIDES INFORMATION RELATING TO THE ACTIONS TAKEN BY THE PROVIDER TO COMPLY WITH ITS ELECTRIC RESOURCE STANDARD.

(2) EACH PROVIDER SHALL SUBMIT THE ANNUAL REPORT TO THE COMMISSION AFTER THE END OF EACH CALENDAR YEAR AND WITHIN THE TIME PRESCRIBED BY THE COMMISSION. THE REPORT SHALL BE SUBMITTED IN A FORMAT APPROVED BY THE COMMISSION.

(3) THE COMMISSION MAY REQUIRE PROVIDERS TO SUBMIT TO THE COMMISSION ADDITIONAL REPORTS DURING EACH CALENDAR YEAR.

(4) EACH ANNUAL REPORT AND EACH ADDITIONAL REPORT SHALL INCLUDE CLEAR AND CONCISE INFORMATION THAT SETS FORTH:

(a) THE AMOUNT OF ELECTRICITY THAT THE PROVIDER GENERATED OR ACQUIRED FROM RENEWABLE ENERGY SYSTEMS DURING THE REPORTING PERIOD AND, IF APPLICABLE, THE AMOUNT OF RENEWABLE ENERGY CREDITS THAT THE PROVIDER ACQUIRED, SOLD, OR TRADED DURING THE REPORTING PERIOD TO COMPLY WITH ITS ELECTRIC RESOURCE STANDARD;

(b) THE CAPACITY OF EACH RENEWABLE ENERGY SYSTEM OWNED, OPERATED, OR CONTROLLED BY THE PROVIDER, THE TOTAL AMOUNT OF ELECTRICITY GENERATED BY EACH SUCH SYSTEM DURING THE REPORTING PERIOD AND THE PERCENTAGE OF THAT TOTAL AMOUNT THAT WAS GENERATED DIRECTLY FROM RENEWABLE ENERGY;

(c) WHETHER, DURING THE REPORTING PERIOD, THE PROVIDER BEGAN CONSTRUCTION ON, ACQUIRED, OR PLACED INTO OPERATION ANY RENEWABLE ENERGY SYSTEM AND, IF SO, THE DATE OF ANY SUCH EVENT; AND

(d) ANY OTHER INFORMATION THAT THE COMMISSION BY REGULATION DEEMS RELEVANT.

40-3.3-105. Compliance - fines. (1) IF A PROVIDER DOES NOT COMPLY WITH ITS ELECTRIC RESOURCE STANDARD FOR ANY CALENDAR YEAR AND THE COMMISSION HAS NOT EXEMPTED THE PROVIDER FROM THE REQUIREMENTS OF ITS ELECTRIC RESOURCE STANDARD PURSUANT TO SECTION 40-3.3-102 (8), THE COMMISSION SHALL IMPOSE AN ADMINISTRATIVE FINE AGAINST THE PROVIDER OF, AT A MINIMUM, THIRTY CENTS PER KILOWATT FOR EACH KILOWATT OF SHORTFALL.

(2) AN ADMINISTRATIVE FINE IMPOSED PURSUANT TO THIS SECTION SHALL NOT BE DEEMED A COST OF SERVICE OF THE PROVIDER. THE PROVIDER SHALL NOT INCLUDE ANY PORTION OF THE ADMINISTRATIVE FINE IN ANY APPLICATION FOR A RATE ADJUSTMENT OR RATE INCREASE. THE COMMISSION SHALL NOT ALLOW THE PROVIDER TO RECOVER ANY PORTION OF THE ADMINISTRATIVE FINE FROM ITS RETAIL CUSTOMERS. ALL ADMINISTRATIVE FINES IMPOSED AND COLLECTED PURSUANT TO THIS SECTION SHALL BE DEPOSITED IN THE STATE GENERAL FUND.

40-3.3-106. Removable electric resource evaluation working group - report. THE COMMISSION SHALL ESTABLISH, NOT LATER THAN JANUARY 1, 2006, A RENEWABLE ELECTRIC RESOURCE EVALUATION WORKING GROUP TO REPORT TO THE GENERAL ASSEMBLY ON THE ONGOING COSTS AND BENEFITS OF THE ELECTRIC RESOURCE STANDARD ESTABLISHED BY THIS ARTICLE.

40-3.3-107. Rules. THE COMMISSION SHALL PROMULGATE RULES NECESSARY FOR THE ADMINISTRATION AND ENFORCEMENT OF THIS ARTICLE. THE RULES PROMULGATED BY THE COMMISSION SHALL INCLUDE ENFORCEMENT MECHANISMS THAT ARE NECESSARY AND REASONABLE TO ENSURE THAT EACH PROVIDER OF ELECTRIC SERVICE COMPLIES WITH ITS ELECTRIC RESOURCE STANDARD AND SHALL INCLUDE PROVISIONS

GOVERNING THE IMPOSITION OF ADMINISTRATIVE FINES. ANY RULES PROMULGATED PURSUANT TO THIS ARTICLE SHALL BE PROMULGATED IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S.

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, and safety.