

*Be it Enacted by the People of the State of Colorado:*

**SECTION 1. Legislative declaration of intent:**

Energy is critically important to Colorado's welfare and development, and its use has a profound impact on the economy and environment. Growth of the state's population and economic base will continue to create a need for new energy resources, and Colorado's renewable energy resources are currently underutilized.

Therefore, in order to save consumers and businesses money, attract new businesses and jobs, promote development of rural economies, minimize water use for electricity generation, diversify Colorado's energy resources, reduce the impact of volatile fuel prices, and improve the natural environment of the state, it is in the best interests of the citizens of Colorado to develop and utilize renewable energy resources to the maximum practicable extent.

**SECTION 2.** Article 2 of title 40, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

**ARTICLE 2**

**Renewable Energy Standard**

**40-2-124. Renewable Energy Standard. (1)** EACH PROVIDER OF RETAIL ELECTRIC SERVICE IN THE STATE OF COLORADO THAT SERVES OVER 80,000 CUSTOMERS SHALL BE CONSIDERED A QUALIFYING RETAIL UTILITY AND SHALL BE SUBJECT TO THE RULES ESTABLISHED UNDER THIS ARTICLE BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO (COMMISSION). NO ADDITIONAL REGULATORY AUTHORITY OF THE COMMISSION OTHER THAN THAT SPECIFICALLY CONTAINED HEREIN IS PROVIDED OR IMPLIED. IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S., ON OR BEFORE APRIL 1, 2005, THE COMMISSION SHALL INITIATE ONE OR MORE RULEMAKING PROCESSES TO ESTABLISH THE FOLLOWING:

(A) DEFINITIONS OF ELIGIBLE RENEWABLE ENERGY RESOURCES THAT CAN BE USED TO MEET THE STANDARDS. ELIGIBLE RENEWABLE RESOURCES ARE SOLAR, WIND, GEOTHERMAL, BIOMASS, HYDROELECTRICITY WITH A NAMEPLATE RATING OF 10 MEGAWATTS OR LESS, AND/OR RUN-OF-RIVER HYDROELECTRICITY. ELECTRIC GENERATION TECHNOLOGIES THAT USE ELIGIBLE RENEWABLE ENERGY RESOURCES MUST BE IN-SERVICE NO EARLIER THAN JANUARY 1, 2003 TO BE ELIGIBLE TOWARDS COMPLIANCE WITH THIS ARTICLE. THE COMMISSION SHALL DETERMINE, FOLLOWING AN EVIDENTIARY HEARING, THE EXTENT THAT SUCH ELECTRIC GENERATION TECHNOLOGIES UTILIZED IN AN OPTIONAL PRICING PROGRAM MAY BE USED TO COMPLY WITH THIS STANDARD. A FUEL CELL USING HYDROGEN DERIVED FROM THESE ELIGIBLE RESOURCES IS ALSO AN ELIGIBLE ELECTRIC GENERATION TECHNOLOGY. FOSSIL AND NUCLEAR FUELS AND THEIR DERIVATIVES ARE NOT ELIGIBLE RESOURCES. FURTHER, "BIOMASS" SHALL BE DEFINED TO MEAN:

(I) NONTOXIC PLANT MATTER THAT IS THE BYPRODUCT OF AGRICULTURAL CROPS, URBAN WOOD WASTE, MILL RESIDUE, SLASH, OR BRUSH;

(II) ANIMAL WASTES AND PRODUCTS OF ANIMAL WASTES; OR

(III) METHANE PRODUCED AT LANDFILLS OR AS A BY-PRODUCT OF THE TREATMENT OF WASTEWATER RESIDUALS.

(B) STANDARDS FOR THE DESIGN, PLACEMENT AND MANAGEMENT OF ELECTRIC GENERATION TECHNOLOGIES THAT USE ELIGIBLE RENEWABLE ENERGY RESOURCES TO ENSURE THAT THE ENVIRONMENTAL IMPACTS OF SUCH FACILITIES ARE MINIMIZED.

(C) (I) ELECTRIC RESOURCE STANDARDS FOR RENEWABLE ENERGY RESOURCES. THE ELECTRIC RESOURCE STANDARD SHALL REQUIRE EACH QUALIFYING RETAIL UTILITY TO GENERATE, OR CAUSE TO BE GENERATED, ELECTRICITY FROM ELIGIBLE RENEWABLE ENERGY RESOURCES IN THE FOLLOWING MINIMUM AMOUNTS:

(A) 3% OF ITS RETAIL ELECTRICITY SALES IN COLORADO FOR THE YEARS 2007 THROUGH 2010;

(B) 6% OF ITS RETAIL ELECTRICITY SALES IN COLORADO FOR THE YEARS 2011 THROUGH 2014;

(C) 10% OF ITS RETAIL ELECTRICITY SALES IN COLORADO FOR THE YEARS 2015 AND THEREAFTER.

(II) OF THE AMOUNTS IN SUBPART (B)(I), AT LEAST 4% SHALL BE DERIVED FROM SOLAR ELECTRIC GENERATION TECHNOLOGIES. AT LEAST ONE-HALF OF THIS 4% SHALL BE DERIVED FROM SOLAR ELECTRIC TECHNOLOGIES LOCATED ON-SITE AT CUSTOMERS' FACILITIES.

(III) EACH KILOWATT-HOUR OF RENEWABLE ELECTRICITY GENERATED IN COLORADO SHALL BE COUNTED AS 1.25 KILOWATT-HOURS FOR THE PURPOSES OF COMPLIANCE WITH THIS STANDARD.

(IV) TO THE EXTENT THAT THE ABILITY OF A QUALIFYING RETAIL UTILITY TO ACQUIRE ELIGIBLE RENEWABLE ELECTRIC GENERATION IS LIMITED BY A REQUIREMENTS CONTRACT WITH A WHOLESALE ELECTRIC SUPPLIER, THE QUALIFYING RETAIL UTILITY SHALL ACQUIRE THE MAXIMUM AMOUNT ALLOWED BY THE CONTRACT. FOR ANY SHORTFALLS TO THE AMOUNTS ESTABLISHED BY THE COMMISSION PURSUANT TO PART (B)(I), THE QUALIFYING RETAIL UTILITY SHALL ACQUIRE AN EQUIVALENT AMOUNT OF EITHER (I) RENEWABLE ENERGY CREDITS, (II) DOCUMENTED AND VERIFIED ENERGY SAVINGS THROUGH ENERGY EFFICIENCY AND CONSERVATION PROGRAMS, OR (III) A COMBINATION OF BOTH. ANY CONTRACT ENTERED INTO BY A QUALIFYING RETAIL UTILITY AFTER THE EFFECTIVE DATE OF THIS ARTICLE SHALL NOT CONFLICT WITH THIS ARTICLE.

(D) A SYSTEM OF TRADABLE RENEWABLE ENERGY CREDITS THAT MAY BE USED BY A QUALIFYING RETAIL UTILITY TO COMPLY WITH THIS STANDARD. THE COMMISSION SHALL ALSO ANALYZE THE EFFECTIVENESS OF UTILIZING ANY REGIONAL SYSTEM OF RENEWABLE ENERGY CREDITS IN EXISTENCE AT THE TIME OF ITS RULEMAKING PROCESS AND DETERMINE IF THE SYSTEM IS GOVERNED BY RULES THAT ARE CONSISTENT WITH THE RULES ESTABLISHED FOR THIS ARTICLE.

(E) A STANDARD REBATE OFFER PROGRAM. EACH QUALIFYING RETAIL UTILITY SHALL MAKE AVAILABLE TO ITS RETAIL ELECTRICITY CUSTOMERS A STANDARD REBATE OFFER OF A MINIMUM OF \$2.00 PER WATT FOR THE INSTALLATION OF ELIGIBLE SOLAR ELECTRIC GENERATION ON CUSTOMERS' PREMISES UP TO A MAXIMUM OF ONE-HUNDRED KILOWATTS PER INSTALLATION. SUCH OFFER SHALL ALLOW CUSTOMER'S RETAIL ELECTRICITY CONSUMPTION TO BE OFFSET BY THE SOLAR ELECTRICITY GENERATED. TO THE EXTENT THAT SOLAR ELECTRICITY GENERATION EXCEEDS THE CUSTOMER'S CONSUMPTION DURING A BILLING MONTH, SUCH EXCESS ELECTRICITY SHALL BE CARRIED FORWARD AS A CREDIT TO THE FOLLOWING MONTH'S CONSUMPTION. TO THE EXTENT THAT SOLAR ELECTRICITY GENERATION EXCEEDS THE CUSTOMER'S CONSUMPTION DURING A CALENDAR YEAR, THE CUSTOMER SHALL BE REIMBURSED BY THE QUALIFYING RETAIL UTILITY AT

ITS AVERAGE HOURLY INCREMENTAL COST OF ELECTRICITY SUPPLY OVER THE PRIOR TWELVE MONTH PERIOD. THE QUALIFYING RETAIL UTILITY SHALL NOT APPLY UNREASONABLY BURDENSOME INTERCONNECTION REQUIREMENTS IN CONNECTION WITH THIS STANDARD REBATE OFFER. ELECTRICITY GENERATED UNDER THIS PROGRAM SHALL BE ELIGIBLE FOR THE QUALIFYING RETAIL UTILITY'S COMPLIANCE WITH THIS ARTICLE.

(F) POLICIES FOR THE RECOVERY OF COSTS INCURRED WITH RESPECT TO THESE STANDARDS FOR QUALIFYING RETAIL UTILITIES THAT ARE SUBJECT TO RATE REGULATION BY THE COMMISSION. SUCH POLICIES SHALL INCLUDE:

(I) ALLOWING QUALIFYING RETAIL UTILITIES TO EARN AN EXTRA PROFIT ON THEIR INVESTMENT IN RENEWABLE ENERGY TECHNOLOGIES IF THESE INVESTMENTS PROVIDE NET ECONOMIC BENEFITS TO CUSTOMERS AS DETERMINED BY THE COMMISSION. THE ALLOWABLE EXTRA PROFIT IN ANY YEAR SHALL BE THE QUALIFYING RETAIL UTILITY'S MOST RECENT COMMISSION AUTHORIZED RATE OF RETURN PLUS A BONUS LIMITED TO 50% OF THE NET ECONOMIC BENEFIT.

(II) ALLOWING QUALIFYING RETAIL UTILITIES TO EARN THEIR MOST RECENT COMMISSION AUTHORIZED RATE OF RETURN, BUT NO BONUS, ON INVESTMENTS IN RENEWABLE ENERGY TECHNOLOGIES IF THESE INVESTMENTS DO NOT PROVIDE A NET ECONOMIC BENEFIT TO CUSTOMERS.

(III) IF THE COMMISSION APPROVES THE TERMS AND CONDITIONS OF A RENEWABLE ENERGY CONTRACT BETWEEN THE QUALIFYING RETAIL UTILITY AND ANOTHER PARTY, THE RENEWABLE ENERGY CONTRACT AND ITS TERMS AND CONDITIONS SHALL BE DEEMED TO BE A PRUDENT INVESTMENT, AND THE COMMISSION SHALL APPROVE RETAIL RATES SUFFICIENT TO RECOVER ALL JUST AND REASONABLE COSTS ASSOCIATED WITH THE CONTRACT. ALL CONTRACTS FOR ACQUISITION OF ELIGIBLE RENEWABLE ELECTRICITY SHALL HAVE A MINIMUM TERM OF 20 YEARS. ALL CONTRACTS FOR THE ACQUISITION OF RENEWABLE ENERGY CREDITS FROM SOLAR ELECTRIC TECHNOLOGIES LOCATED ON SITE AT CUSTOMER FACILITIES SHALL ALSO HAVE A MINIMUM TERM OF TWENTY YEARS.

(IV) A REQUIREMENT THAT QUALIFYING RETAIL UTILITIES CONSIDER PROPOSALS OFFERED BY THIRD PARTIES FOR THE SALE OF RENEWABLE ENERGY AND / OR RENEWABLE ENERGY CREDITS. THE COMMISSION MAY DEVELOP STANDARD TERMS FOR THE SUBMISSION OF SUCH PROPOSALS.

(G) RETAIL RATE IMPACT RULE. THE COMMISSION SHALL ANNUALLY ESTABLISH A MAXIMUM RETAIL RATE IMPACT FOR THIS SECTION 40-2-124 OF 50 CENTS (\$0.50) PER MONTH FOR THE AVERAGE RESIDENTIAL CUSTOMER OF A QUALIFYING RETAIL UTILITY. THE RETAIL RATE IMPACT SHALL BE DETERMINED NET OF NEW NON-RENEWABLE ALTERNATIVE SOURCES OF ELECTRICITY SUPPLY REASONABLY AVAILABLE AT THE TIME OF THE DETERMINATION.

(H) ANNUAL REPORTS. EACH QUALIFYING RETAIL UTILITY SHALL SUBMIT TO THE COMMISSION AN ANNUAL REPORT THAT PROVIDES INFORMATION RELATING TO THE ACTIONS TAKEN TO COMPLY WITH THIS ARTICLE INCLUDING THE COSTS AND BENEFITS OF EXPENDITURES FOR RENEWABLE ENERGY. THE REPORT SHALL BE WITHIN THE TIME PRESCRIBED AND IN A FORMAT APPROVED BY THE COMMISSION.

(I) RULES NECESSARY FOR THE ADMINISTRATION OF THIS ARTICLE INCLUDING ENFORCEMENT MECHANISMS NECESSARY TO ENSURE THAT EACH QUALIFYING RETAIL UTILITY COMPLIES WITH THIS STANDARD; AND PROVISIONS GOVERNING THE IMPOSITION OF ADMINISTRATIVE PENALTIES ASSESSED AFTER A HEARING HELD BY THE COMMISSION PURSUANT TO SECTION 40-6-109. UNDER

NO CIRCUMSTANCES SHALL THE COSTS OF ADMINISTRATIVE PENALTIES BE RECOVERED FROM COLORADO RETAIL CUSTOMERS.

(2) THE COMMISSION SHALL ESTABLISH ALL RULES CALLED FOR IN SUBSECTIONS (A) THROUGH (G) OF THIS SECTION BY MARCH 31, 2006.

(3) IF A MUNICIPALLY OWNED ELECTRIC UTILITY OR A RURAL ELECTRIC COOPERATIVE IMPLEMENTS A RENEWABLE ENERGY STANDARD SUBSTANTIALLY SIMILAR TO THIS SECTION 40-2-124, THEN THE GOVERNING BODY OF THE MUNICIPALLY OWNED ELECTRIC UTILITY OR RURAL ELECTRIC COOPERATIVE MAY SELF-CERTIFY ITS RENEWABLE ENERGY STANDARD AND UPON SELF-CERTIFICATION WILL HAVE NO OBLIGATIONS UNDER THIS ARTICLE. THE MUNICIPALLY OWNED UTILITY OR COOPERATIVE SHALL SUBMIT A STATEMENT TO THE COMMISSION THAT DEMONSTRATES SUCH UTILITY OR COOPERATIVE HAS A SUBSTANTIALLY SIMILAR RENEWABLE ENERGY STANDARD. IN ORDER FOR SUCH UTILITY OR COOPERATIVE TO SELF-CERTIFY, SUCH RENEWABLE ENERGY STANDARD SHALL, AT A MINIMUM, MEET THE FOLLOWING CRITERIA:

(A) THE ELIGIBLE RENEWABLE ENERGY RESOURCES MUST BE LIMITED TO THOSE IDENTIFIED IN SUBSECTION 40-2-124(1)(A),

(B) THE PERCENTAGE REQUIREMENTS MUST BE EQUAL TO OR GREATER IN THE SAME YEARS THAN THOSE IDENTIFIED IN SUBSECTION 40-2-124(1)(B)(I), AND

(C) THE UTILITY MUST HAVE AN OPTIONAL PRICING PROGRAM IN EFFECT THAT ALLOWS RETAIL CUSTOMERS THE OPTION TO SUPPORT THROUGH UTILITY RATES EMERGING RENEWABLE ENERGY TECHNOLOGIES.

(4) PROCEDURE FOR EXEMPTION AND INCLUSION - ELECTION. [SEE BELOW]

**40-2-125 Eminent Domain Restrictions.** A QUALIFYING RETAIL UTILITY SHALL NOT HAVE THE AUTHORITY TO CONDEMN OR EXERCISE THE POWER OF EMINENT DOMAIN OVER ANY REAL ESTATE, RIGHT-OF-WAY, EASEMENT, OR OTHER RIGHT PURSUANT TO SECTION 38-2-101, C.R.S., TO SITE THE GENERATION FACILITIES OF A RENEWABLE ENERGY SYSTEM USED IN WHOLE OR IN PART TO MEET THE ELECTRIC RESOURCE STANDARDS SET FORTH IN SECTION 40-2-124.

**SECTION 3.** This article shall be effective on December 1, 2004.

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**PROCEDURE FOR EXEMPTION AND INCLUSION - ELECTION.**

(4)(A) THE BOARD OF DIRECTORS OF EACH QUALIFYING RETAIL UTILITY SUBJECT TO SECTION 40-2-124 MAY, AT ITS OPTION, SUBMIT THE QUESTION OF ITS EXEMPTION FROM SECTION 40-2-124 CRS, TO ITS CONSUMERS ON A ONE METER EQUALS ONE VOTE BASIS. APPROVAL BY A MAJORITY OF THOSE VOTING IN THE ELECTION SHALL BE REQUIRED FOR SUCH EXEMPTION, PROVIDING THAT A MINIMUM OF 50% OF ELIGIBLE CONSUMERS PARTICIPATES IN THE ELECTION.

(b) The board of directors of each municipally owned electric utility or rural electric cooperative not subject to section 40-2-124 may, at its option, submit the question of its inclusion in section 40-2-124 CRS, to its consumers on a one meter equals one vote basis. Approval by a majority of those voting in the election shall be required for such inclusion, providing that a minimum of 50% of eligible consumers participates in the election.