

**First Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO**

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 07-0230.01 Christy Chase

HOUSE BILL 07-1037

HOUSE SPONSORSHIP

Levy,

SENATE SPONSORSHIP

Fitz-Gerald,

House Committees

Transportation & Energy
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING MEASURES TO PROMOTE ENERGY EFFICIENCY, AND**
102 **MAKING AN APPROPRIATION THEREFOR.**

Bill Summary

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

Directs the public utilities commission (PUC) to adopt rules establishing funding and cost-recovery mechanisms for distributors of natural gas to engage in conservation and energy efficiency programs. Directs distributors of natural gas to develop and implement cost-effective energy efficiency programs once such rules are adopted. Requires periodic reports from the utilities and PUC review and approval of such programs. Specifies that this act does not extend PUC authority

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.*

HOUSE
3rd Reading Unamended
March 16, 2007

HOUSE
Amended 2nd Reading
March 13, 2007

to nonregulated utility businesses or affiliates.

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

2 **SECTION 1.** 40-1-102, Colorado Revised Statutes, is amended
3 BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to
4 read:

5 **40-1-102. Definitions.** As used in articles 1 to 7 of this title,
6 unless the context otherwise requires:

7 (4.4) "COST-EFFECTIVE", WITH REFERENCE TO A NATURAL GAS
8 ENERGY EFFICIENCY OR CONSERVATION PROGRAM OR RELATED MEASURE,
9 MEANS HAVING A BENEFIT-COST RATIO GREATER THAN ONE USING THE
10 TOTAL RESOURCE COST TEST.

11 (4.6) "EDUCATION PROGRAM" MEANS A PROGRAM, INCLUDING BUT
12 NOT LIMITED TO AN ENERGY AUDIT, THAT CONTRIBUTES TO
13 COST-EFFECTIVE CONSERVATION AND ENERGY EFFICIENCY
14 IMPROVEMENTS. EDUCATION PROGRAMS SHALL NOT BE SUBJECT TO
15 COST-EFFECTIVENESS REQUIREMENTS.

16 (4.8) "FULL SERVICE CUSTOMER" MEANS A RESIDENTIAL OR
17 COMMERCIAL CUSTOMER THAT PURCHASES NATURAL GAS SUPPLY FROM
18 AN INVESTOR-OWNED GAS DISTRIBUTION UTILITY.

19 (7) "TOTAL RESOURCE COST TEST" MEANS A DETERMINATION OF
20 COST-EFFECTIVENESS THAT INCLUDES COSTS PAID BY BOTH PARTICIPATING
21 CUSTOMERS AND AN INVESTOR-OWNED GAS DISTRIBUTION UTILITY FOR
22 CONSERVATION MEASURES COMPARED TO THE BENEFITS AS MEASURED BY
23 THE UTILITY'S AVOIDED ENERGY SUPPLY COSTS AND OTHER BENEFITS AS
24 DETERMINED BY THE COMMISSION.

25 **SECTION 2.** 40-3.2-101, Colorado Revised Statutes, is amended

1 to read:

2 **40-3.2-101. Legislative declaration.** THE GENERAL ASSEMBLY
3 HEREBY FINDS, DETERMINES, AND DECLARES THAT COST-EFFECTIVE
4 NATURAL GAS ENERGY EFFICIENCY PROGRAMS WILL SAVE MONEY FOR
5 CONSUMERS AND UTILITIES AND PROTECT COLORADO'S ENVIRONMENT.
6 The general assembly ~~hereby~~ FURTHER finds, determines, and declares
7 that providing a funding ~~mechanism~~ MECHANISMS to encourage
8 Colorado's public utilities to reduce emissions or air pollutants ~~is a matter~~
9 AND TO INCREASE ENERGY EFFICIENCY ARE MATTERS of statewide
10 concern, ~~The general assembly further finds~~ AND that the public interest
11 is served by providing such funding ~~mechanism~~ MECHANISMS. Such
12 ~~reduction~~ EFFORTS will result in an improvement in the quality of life and
13 health of Colorado citizens and an increase in the attractiveness of
14 Colorado as a place to live and conduct business.

15 **SECTION 3.** Article 3.2 of title 40, Colorado Revised Statutes,
16 is amended BY THE ADDITION OF A NEW SECTION to read:

17 **40-3.2-103. Gas distribution utility energy efficiency programs**
18 **- rules - recovery of costs.** (1) ON OR BEFORE SEPTEMBER 30, 2007, THE
19 COMMISSION SHALL COMMENCE A RULE-MAKING PROCEEDING, AS
20 DESCRIBED IN SUBSECTION (2) OF THIS SECTION, TO DEVELOP EXPENDITURE
21 AND NATURAL GAS SAVINGS TARGETS, FUNDING AND COST-RECOVERY
22 MECHANISMS, AND A FINANCIAL BONUS STRUCTURE FOR ENERGY
23 EFFICIENCY AND CONSERVATION PROGRAMS IMPLEMENTED BY AN
24 INVESTOR-OWNED GAS DISTRIBUTION UTILITY, ALSO REFERRED TO IN THIS
25 SECTION AS A "GAS UTILITY".

26 (2) AS PART OF THE RULE-MAKING PROCEEDING REQUIRED BY
27 SUBSECTION (1) OF THIS SECTION, THE COMMISSION SHALL:

1 (a) ADOPT ENERGY EFFICIENCY PROGRAM EXPENDITURE TARGETS
2 EQUAL TO AT LEAST ONE-HALF OF ONE PERCENT OF A NATURAL GAS
3 UTILITY'S REVENUES FROM ITS FULL SERVICE CUSTOMERS IN THE YEAR
4 PRIOR TO SETTING SUCH TARGETS;

5 (b) ESTABLISH ENERGY EFFICIENCY PROGRAM SAVINGS TARGETS
6 THAT ARE COMMENSURATE WITH PROGRAM EXPENDITURES AND
7 EXPRESSED IN TERMS OF AN AMOUNT OF GAS SAVED PER UNIT OF PROGRAM
8 EXPENDITURES;

9 (c) (I) ADOPT PROCEDURES FOR ALLOWING GAS UTILITIES TO
10 RECOVER THEIR PRUDENTLY INCURRED COSTS OF ENERGY EFFICIENCY AND
11 CONSERVATION PROGRAMS WITHOUT HAVING TO FILE A RATE CASE. SUCH
12 COSTS SHALL INCLUDE, BUT ARE NOT LIMITED TO, FACILITY INVESTMENTS;
13 REBATES; INTEREST RATE BUYDOWNS; INCREMENTAL LABOR COSTS,
14 EMPLOYEE BENEFITS, CARRYING COSTS, AND EMPLOYEE-RELATED
15 ADMINISTRATIVE COSTS; AND OTHER ADMINISTRATIVE COSTS. ALL SUCH
16 COSTS SHALL BE RECOVERED THROUGH A COST ADJUSTMENT MECHANISM
17 THAT IS SET ON AN ANNUAL BASIS, OR MORE FREQUENTLY IF DEEMED
18 APPROPRIATE, AND THAT IS SIMILAR TO COST ADJUSTMENT MECHANISMS
19 APPROVED BY THE COMMISSION FOR ELECTRICITY DEMAND-SIDE
20 MANAGEMENT PROGRAMS.

21 (II) COST ADJUSTMENT PROCEDURES SHALL GIVE GAS UTILITIES
22 THE OPTION OF OBTAINING COST RECOVERY EITHER THROUGH EXPENSING
23 ENERGY EFFICIENCY AND CONSERVATION PROGRAM EXPENDITURES OR
24 ADDING THEM TO BASE RATES, WITH AN AMORTIZATION PERIOD TO BE
25 DETERMINED BY THE COMMISSION. IN ADDITION, SUCH PROCEDURES
26 SHALL PROVIDE THAT COST RECOVERY FOR PROGRAMS DIRECTED AT
27 RESIDENTIAL CUSTOMERS ARE TO BE COLLECTED FROM RESIDENTIAL

1 CUSTOMERS ONLY AND THAT COST RECOVERY FOR PROGRAMS DIRECTED
2 AT NONRESIDENTIAL CUSTOMERS ARE TO BE COLLECTED FROM
3 NONRESIDENTIAL CUSTOMERS ONLY.

4 (d) ADOPT A BONUS STRUCTURE TO REWARD GAS UTILITIES FOR
5 INVESTMENTS IN COST-EFFECTIVE ENERGY EFFICIENCY AND
6 CONSERVATION PROGRAMS AND MEASURES. FOR EACH YEAR OF
7 OPERATION, THE BONUS SHALL BE CAPPED AT TWENTY-FIVE PERCENT OF
8 THE EXPENDITURES OR TWENTY PERCENT OF THE NET ECONOMIC BENEFITS
9 OF THE CONSERVATION AND ENERGY EFFICIENCY PROGRAMS, WHICHEVER
10 AMOUNT IS LOWER. THE AMOUNT OF THE BONUS AWARDED EACH YEAR
11 SHALL BE DETERMINED BASED ON THE EXTENT TO WHICH THE GAS UTILITY
12 HAS ACHIEVED THE TARGETS ESTABLISHED BY THE COMMISSION IN
13 ACCORDANCE WITH PARAGRAPHS (a) AND (b) OF THIS SUBSECTION (2).
14 THE BONUS SHALL NOT COUNT AGAINST A GAS UTILITY'S AUTHORIZED
15 RATE OF RETURN OR BE CONSIDERED IN RATE PROCEEDINGS.

16 (e) CONSIDER THE FACT THAT IMPLEMENTING THE NEW EFFICIENCY
17 AND CONSERVATION PROGRAMS MAY REQUIRE A PHASE-IN PERIOD BEFORE
18 A GAS UTILITY IS ABLE TO ACHIEVE THE FUNDING LEVEL DETERMINED BY
19 THE COMMISSION PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2).
20 A GAS UTILITY THAT IMPLEMENTS A NEW EFFICIENCY AND CONSERVATION
21 PROGRAM IN PHASES SHALL BE ELIGIBLE TO RECEIVE A BONUS UNDER THE
22 BONUS STRUCTURE ADOPTED PURSUANT TO PARAGRAPH (d) OF THIS
23 SUBSECTION (2) DURING ITS PHASE-IN PERIOD.

24 (f) NOT ADOPT ANY MEASURE AUTHORIZING A FINANCIAL PENALTY
25 AGAINST A GAS UTILITY THAT FAILS TO MEET THE TARGETS IN ANY
26 PARTICULAR YEAR.

27 (3) WITHIN TWELVE MONTHS AFTER THE COMPLETION OF THE

1 RULE-MAKING REQUIRED BY SUBSECTION (1) OF THIS SECTION, EACH GAS
2 UTILITY SHALL:

3 (a) DEVELOP AND BEGIN IMPLEMENTING A SET OF COST-EFFECTIVE
4 ENERGY EFFICIENCY AND CONSERVATION PROGRAMS FOR ITS FULL SERVICE
5 CUSTOMERS. SUCH PROGRAMS SHALL BE OF THE GAS UTILITY'S CHOOSING,
6 TAKING INTO ACCOUNT THE CHARACTERISTICS OF THE GAS UTILITY AND
7 ITS CUSTOMERS. ONE OR MORE PROGRAMS MAY BE TARGETED TO
8 LOW-INCOME CUSTOMERS AND, IF SO, MAY BE PROVIDED DIRECTLY BY THE
9 GAS UTILITY OR INDIRECTLY THROUGH FINANCIAL SUPPORT OF
10 CONSERVATION PROGRAMS FOR LOW-INCOME HOUSEHOLDS ADMINISTERED
11 BY THE STATE.

12 (b) IN IMPLEMENTING ENERGY EFFICIENCY AND CONSERVATION
13 PROGRAMS, USE REASONABLE EFFORTS TO MAXIMIZE ENERGY SAVINGS
14 CONSISTENT WITH THE ANNUAL ENERGY EFFICIENCY BUDGET.

15 (4) IN IMPLEMENTING ENERGY EFFICIENCY AND CONSERVATION
16 PROGRAMS, GAS UTILITIES MAY SPEND A DISPROPORTIONATE SHARE OF
17 TOTAL EXPENDITURES ON ONE OR MORE CLASSES OF CUSTOMERS.

18 (5) THE COMMISSION SHALL AUTHORIZE EACH GAS UTILITY TO
19 RECOVER MONEYS SPENT FOR EDUCATION PROGRAMS, IMPACT AND
20 PROCESS EVALUATIONS, AND PROGRAM PLANNING RELATED TO NATURAL
21 GAS ENERGY EFFICIENCY AND CONSERVATION PROGRAMS OFFERED BY THE
22 GAS UTILITY WITHOUT HAVING TO SHOW THAT SUCH EXPENDITURES ARE
23 COST-EFFECTIVE. THE COMMISSION MAY LIMIT THE AMOUNT SPENT FOR
24 THESE ACTIVITIES.

25 (6) (a) GAS UTILITIES SHALL SUBMIT ANNUAL REPORTS TO THE
26 COMMISSION, AS DETERMINED BY THE COMMISSION BY RULE. THE ANNUAL
27 REPORT SHALL DESCRIBE THE GAS UTILITY'S ENERGY EFFICIENCY AND

1 CONSERVATION PROGRAMS AND SHALL DOCUMENT PROGRAM
2 EXPENDITURES, ENERGY SAVINGS IMPACTS AND THE TECHNIQUES USED TO
3 ESTIMATE THESE IMPACTS, THE ESTIMATED COST-EFFECTIVENESS OF
4 PROGRAM EXPENDITURES, AND ANY OTHER INFORMATION THE
5 COMMISSION MAY REQUIRE.

6 (b) THE COMMISSION SHALL REVIEW EACH REPORT SUBMITTED
7 PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (6) AND SHALL
8 DETERMINE THE LEVEL OF BONUS, IF ANY, THAT THE GAS UTILITY IS
9 ELIGIBLE TO COLLECT ON THE BASIS OF THE INFORMATION INCLUDED IN
10 THE REPORT. THE COMMISSION'S DETERMINATION SHALL BE MADE WITHIN
11 THREE MONTHS AFTER RECEIVING THE REPORT. ANY SUCH BONUS SHALL
12 BE AUTHORIZED AS A SUPPLEMENT TO THE COST ADJUSTMENT MECHANISM
13 OR ALTERNATIVE MECHANISM APPROVED BY THE COMMISSION AND SHALL
14 BE APPLIED OVER A TWELVE-MONTH PERIOD AFTER APPROVAL OF THE
15 BONUS.

16 (7) GAS UTILITIES MAY CONTINUE ENERGY EFFICIENCY AND
17 CONSERVATION PROGRAMS THAT WERE IN EXISTENCE ON OR BEFORE THE
18 EFFECTIVE DATE OF THIS SUBSECTION (7), AND SHALL NOT BE REQUIRED TO
19 OBTAIN APPROVAL FROM THE COMMISSION FOR SUCH PROGRAMS.

20 (8) THIS SECTION SHALL NOT BE CONSTRUED TO EXTEND THE
21 COMMISSION'S AUTHORITY TO ANY NONREGULATED UTILITY BUSINESSES
22 OR AFFILIATES OF A GAS UTILITY.

23 (9) THE COMMISSION SHALL SUBMIT AN ANNUAL REPORT TO THE
24 GENERAL ASSEMBLY DESCRIBING THE EFFECT OF ENERGY EFFICIENCY
25 LEGISLATION, INCLUDING ANY LEGISLATION CONCERNING RENEWABLE
26 ENERGY, ON UTILITY COSTS.

27 (10) ENERGY EFFICIENCY POLICIES THAT RESULT FROM THE

1 PASSAGE OF HOUSE BILL 07-1037 SHALL SERVE THE LONG-TERM
2 CONSUMER INTERESTS.

3 **SECTION 4. Appropriation.** (1) In addition to any other
4 appropriation, there is hereby appropriated, out of any moneys in the
5 public utilities commission fixed utilities fund created in section
6 40-2-114, Colorado Revised Statutes, not otherwise appropriated, to the
7 department of regulatory agencies, for allocation to the executive
8 director's office, for legal services, for the fiscal year beginning July 1,
9 2007, the sum of thirteen thousand five hundred fifty-four dollars
10 (\$13,554), or so much thereof as may be necessary, for the
11 implementation of this act.

12 (2) In addition to any other appropriation, there is hereby
13 appropriated, out of any moneys in the public utilities commission fixed
14 utilities fund created in section 40-2-114, Colorado Revised Statutes, not
15 otherwise appropriated, to the department of regulatory agencies, for
16 allocation to the public utilities commission, for the fiscal year beginning
17 July 1, 2007, seventy-six thousand seven hundred fifty-one dollars
18 (\$76,751) and 0.8 FTE, or so much thereof as may be necessary, for the
19 implementation of this act.

20 (3) In addition to any other appropriation, there is hereby
21 appropriated to the department of law, for the fiscal year beginning July
22 1, 2007, the sum of thirteen thousand five hundred fifty-four dollars
23 (\$13,554), or so much thereof as may be necessary, for the provision of
24 legal services to the department of regulatory agencies related to the
25 implementation of this act. Said sum shall be from cash funds exempt
26 received from the executive director's office out of the appropriation
27 made in subsection (1) of this section.

1 **SECTION 5. Safety clause.** The general assembly hereby finds,
2 determines, and declares that this act is necessary for the immediate
3 preservation of the public peace, health, and safety.