

**Second Regular Session  
Sixty-fourth General Assembly  
STATE OF COLORADO**

**REREVISED**

*This Version Includes All Amendments  
Adopted in the Second House*

LLS NO. 04-0120.02 Gregg Fraser

**SENATE BILL 04-168**

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**SENATE SPONSORSHIP**

**Phillips,**

**HOUSE SPONSORSHIP**

**Spradley,**

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**Senate Committees**  
Business Affairs & Labor

**House Committees**  
Transportation & Energy

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**A BILL FOR AN ACT**

101 **CONCERNING RURAL RENEWABLE ELECTRIC RESOURCES IN**  
102 **COLORADO.**

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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.)*

Authorizes the creation of renewable energy cooperatives (cooperatives) to promote electric energy efficiency technologies and to generate, transmit, and sell electricity from renewable resources and technologies at wholesale.

Allows the Colorado agricultural development authority and the Colorado housing and finance authority to issue revenue bonds to construct renewable energy generation facilities and electric transmission lines to facilitate the transmission of electricity generated by

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  
April 20, 2004

HOUSE  
Amended 2nd Reading  
April 19, 2004

SENATE  
3rd Reading Unamended  
February 18, 2004

SENATE  
Amended 2nd Reading  
February 17, 2004

cooperatives. Requires the bonds to be repaid from revenues derived from the use of the generation facilities or transmission lines. Provides that the bonds shall not constitute indebtedness of the state and that income derived from the bonds shall be exempt from specified state and local taxes.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly  
3 finds that energy is critically important to the overall welfare and  
4 development of our society, and its use has a profound impact on the  
5 society, economy, and environment of the state. Growth of the state's  
6 population and economic base will continue to create a need for new  
7 energy resources. The general assembly further finds that Colorado has  
8 potential renewable energy resources that are currently underutilized.

9 (2) Therefore, in order to continue to be successful in attracting  
10 new businesses and jobs, in promoting development of rural economies,  
11 in minimizing water use for electricity generation, in diversifying  
12 Colorado's energy resources to reduce the impact of volatile fuel prices,  
13 and in improving the natural environment of the state, the general  
14 assembly hereby declares that it is in the best interests of the citizens of  
15 Colorado to develop and utilize renewable energy resources to the  
16 maximum practicable extent.

17 **SECTION 2.** Part 2 of article 56 of title 7, Colorado Revised  
18 Statutes, is amended BY THE ADDITION OF A NEW SECTION to  
19 read:

20 **7-56-210. Renewable energy cooperatives.** (1) IT IS THE POLICY  
21 OF THIS STATE TO ENCOURAGE LOCAL OWNERSHIP OF RENEWABLE ENERGY  
22 GENERATION FACILITIES TO IMPROVE THE FINANCIAL STABILITY OF RURAL  
23 COMMUNITIES.

1           (2) SUBJECT TO THE PROVISIONS OF THIS ARTICLE, A RENEWABLE  
2 ENERGY COOPERATIVE MAY BE ORGANIZED FOR THE PURPOSE OF  
3 PROMOTING ELECTRIC ENERGY EFFICIENCY TECHNOLOGIES TO ITS  
4 MEMBERS, GENERATING ELECTRICITY FROM RENEWABLE RESOURCES AND  
5 TECHNOLOGIES, AND TRANSMITTING AND SELLING THE ELECTRICITY AT  
6 WHOLESALE.

7           (3) FOR PURPOSES OF THIS SECTION, "RENEWABLE RESOURCES OR  
8 TECHNOLOGIES" MEANS BIOMASS, GEOTHERMAL ENERGY, SOLAR ENERGY,  
9 SMALL HYDROELECTRICITY, AND WIND ENERGY. HYDROGEN DERIVED  
10 FROM BIOMASS, GEOTHERMAL ENERGY, SOLAR ENERGY, SMALL  
11 HYDROELECTRICITY, AND WIND ENERGY IS ALSO CONSIDERED TO BE  
12 RENEWABLE ENERGY FOR THE PURPOSES OF THIS ARTICLE. "RENEWABLE  
13 RESOURCES OR TECHNOLOGIES" DOES NOT INCLUDE PUMPED STORAGE  
14 FACILITIES; HYDROELECTRICITY OTHER THAN SMALL HYDROELECTRICITY;  
15 COAL, NATURAL GAS, OIL, PROPANE, OR ANY OTHER FOSSIL FUEL; OR  
16 NUCLEAR ENERGY. "RENEWABLE RESOURCES OR TECHNOLOGIES" ALSO  
17 DOES NOT INCLUDE HYDROGEN DERIVED FROM PUMPED STORAGE  
18 FACILITIES; HYDROELECTRICITY OTHER THAN SMALL HYDROELECTRICITY;  
19 COAL, NATURAL GAS, OIL, PROPANE, OR ANY OTHER FOSSIL FUEL; OR  
20 NUCLEAR ENERGY.

21           **SECTION 3.** Part 5 of article 56 of title 7, Colorado Revised  
22 Statutes, is amended BY THE ADDITION OF A NEW SECTION to  
23 read:

24           **7-56-510. Renewable energy cooperatives - powers.** (1) IN  
25 ADDITION TO THE POWERS GRANTED IN THIS ARTICLE, RENEWABLE ENERGY  
26 COOPERATIVES MAY GENERATE ELECTRICITY FROM RENEWABLE  
27 RESOURCES OR TECHNOLOGIES AND TRANSMIT AND SELL ELECTRICITY AT

1       WHOLESALE.

2               (2)   NO RENEWABLE ENERGY COOPERATIVE SHALL SELL  
3       ELECTRICITY AT RETAIL OR HAVE A CERTIFICATED TERRITORY IN THE  
4       STATE EXCEPT AS ALLOWED FOR ITS OWN SERVICE OR PURSUANT TO PUBLIC  
5       UTILITY LAW OR OTHER LEGAL AUTHORITY.

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8               **SECTION 4.** Part 1 of article 75 of title 35, Colorado Revised  
9       Statutes, is amended BY THE ADDITION OF A NEW SECTION to  
10       read:

11               **35-75-111.5. Issuance of bonds to construct renewable energy**  
12       **generation facilities and electric transmission lines - renewable energy**  
13       **cooperatives.** (1) TO FACILITATE THE TRANSMISSION OF ELECTRICITY  
14       GENERATED BY A RENEWABLE ENERGY COOPERATIVE ESTABLISHED  
15       PURSUANT TO SECTION 7-56-210, C.R.S., THE AUTHORITY MAY ISSUE  
16       REVENUE BONDS IN AMOUNTS SUFFICIENT TO PAY THE FOLLOWING  
17       DESCRIBED COSTS OF CONSTRUCTION, UPGRADING, AND ACQUISITION,  
18       INCLUDING ANY REQUIRED INTEREST ON THE BONDS DURING  
19       CONSTRUCTION, UPGRADING, AND ACQUISITION, PLUS ALL AMOUNTS  
20       REQUIRED FOR THE COSTS OF BOND ISSUANCE AND ANY REQUIRED  
21       RESERVES ON THE BONDS:

22               (a)   CONSTRUCTION OF RENEWABLE ENERGY GENERATION  
23       FACILITIES;

24               (b)   CONSTRUCTION OR UPGRADING OF ELECTRIC TRANSMISSION  
25       LINES AND APPURTENANCES TO BE USED FOR THE TRANSFER OF  
26       ELECTRICITY AT ONE HUNDRED FIFTEEN KILOVOLTS OR GREATER;

27               (c)   ACQUISITION OF THE RIGHT-OF-WAY ON WHICH RENEWABLE  
28       ENERGY GENERATION FACILITIES OR ELECTRIC TRANSMISSION LINES AND

1 APPURTENANCES TO BE USED FOR THE TRANSFER OF ELECTRICITY AT ONE  
2 HUNDRED FIFTEEN KILOVOLTS OR GREATER ARE TO BE CONSTRUCTED; AND

3 (d) CONSTRUCTION OR UPGRADING OF ELECTRIC DISTRIBUTION  
4 LINES AND APPURTENANCES TO BE USED TO CONNECT RENEWABLE  
5 RESOURCES OR TECHNOLOGIES TO ELECTRIC TRANSMISSION LINES AND  
6 APPURTENANCES.

7 (2) REVENUE BONDS, AND INTEREST THEREON, ISSUED PURSUANT  
8 TO THIS SECTION SHALL BE PAYABLE FROM REVENUES DERIVED FROM USE  
9 OF THE RENEWABLE ENERGY GENERATION FACILITIES OR ELECTRIC  
10 TRANSMISSION LINES CONSTRUCTED, UPGRADED, OR ACQUIRED THROUGH  
11 THE USE OF BOND PROCEEDS.

12 (3) REVENUE BONDS, INCLUDING REFUNDING REVENUE BONDS,  
13 ISSUED HEREUNDER SHALL NOT CONSTITUTE AN INDEBTEDNESS OF THE  
14 STATE, NOR SHALL THEY CONSTITUTE INDEBTEDNESS WITHIN THE MEANING  
15 OF ANY CONSTITUTIONAL OR STATUTORY PROVISION LIMITING THE  
16 INCURRING OF INDEBTEDNESS.

17 (4) THE PROCEEDS OF BONDS, REVENUES, AND RECEIPTS DERIVED  
18 FROM THE CONSTRUCTION, UPGRADED, OR ACQUISITION ACTIVITIES  
19 DESCRIBED IN THIS SECTION THAT ARE FINANCED IN WHOLE OR IN PART BY  
20 THE BONDS, AND INTEREST AND INCOME EARNED ON THE DEPOSIT AND  
21 INVESTMENT OF SUCH PROCEEDS, REVENUES, AND RECEIPTS, SHALL NOT BE  
22 INCLUDED IN STATE FISCAL YEAR SPENDING FOR PURPOSES OF SECTION 20  
23 OF ARTICLE X OF THE STATE CONSTITUTION AND ARTICLE 77 OF TITLE 24,  
24 C.R.S.

25 (5) NOTHING IN THIS SECTION SHALL BE CONSTRUED AS  
26 AUTHORIZING THE CONTRACTING BY THE STATE OF A DEBT OR LOAN IN ANY  
27 FORM, NOR THE PLEDGING OF THE GENERAL TAXES OF THE STATE.

1 REVENUE BONDS ISSUED PURSUANT TO THIS SECTION SHALL NOT BE  
2 CONSTRUED TO BE MORAL OBLIGATION BONDS. THE OWNERS OR HOLDERS  
3 OF SUCH BONDS SHALL NOT LOOK TO ANY OTHER REVENUES OF THE STATE  
4 FOR THE PAYMENT OF THE BONDS; SHALL NOT LOOK TO ANY LEGAL,  
5 EQUITABLE, OR MORAL OBLIGATION ON THE PART OF THE STATE TO PAY  
6 ANY PORTION OF THE BONDS; AND SHALL NOT LOOK TO THE STATE  
7 GENERAL FUND OR ANY OTHER FUND OF THE STATE FOR THE PAYMENT OF  
8 PRINCIPAL OR INTEREST OF SUCH OBLIGATION.

9 (6) REVENUE BONDS, INCLUDING REFUNDING REVENUE BONDS,  
10 ISSUED HEREUNDER AND THE INCOME DERIVED THEREFROM SHALL BE  
11 EXEMPT FROM ALL STATE, COUNTY, AND MUNICIPAL TAXATION IN THE  
12 STATE, EXCEPT COLORADO ESTATE TAXES.

13 **SECTION 5.** Article 3 of title 40, Colorado Revised Statutes, is  
14 amended BY THE ADDITION OF A NEW SECTION to read:

15 **40-3-107.5. Interconnection with renewable energy**  
16 **cooperatives.** ELECTRIC UTILITIES SHALL INTERCONNECT WITH  
17 RENEWABLE ENERGY COOPERATIVES ORGANIZED PURSUANT TO SECTION  
18 7-56-210, C.R.S. EVERY RENEWABLE ENERGY COOPERATIVE THAT  
19 DESIRES TO INTERCONNECT ITS SYSTEM WITH ANY FACILITIES OWNED OR  
20 OPERATED BY A PUBLIC UTILITY SHALL COMPLY WITH APPLICABLE  
21 INTERCONNECTION RULES AND WITH REASONABLE STANDARDS AND  
22 POLICIES RELATED TO THE RELIABILITY OF THE PUBLIC UTILITY SYSTEM.  
23 ALL SUCH STANDARDS AND POLICIES, AS WELL AS ALL COSTS FOR THE  
24 INTERCONNECTION SHALL BE FAIR, REASONABLE, AND  
25 NONDISCRIMINATORY TO EACH RENEWABLE ENERGY COOPERATIVE.

26 **SECTION 6.** Title 40, Colorado Revised Statutes, is amended  
27 BY THE ADDITION OF A NEW ARTICLE to read:

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**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:

(I) ORGANIC MATTER FROM A PLANT OR TREE THAT IS PLANTED FOR  
THE PURPOSE OF BEING USED TO PRODUCE ENERGY;

(II) NONTOXIC, LIGNOCELLULOSIC OR HEMICELLULOSIC MATTER  
THAT REGENERATES, OR THE USE OF WHICH WILL NOT RESULT IN A  
DEPLETION OF RESOURCES, AND THAT IS THE BYPRODUCT OF:

(A) FOREST RESTORATION OR FIRE MITIGATION TRIMMINGS;

(B) MILL RESIDUE;

(C) SLASH; OR

(D) BRUSH;

(III) BIOSOURCE FUELS;

(IV) ANIMAL WASTES AND PRODUCTS OF ANIMAL WASTES;

(V) URBAN WOOD WASTE;

(VI) INVASIVE SPECIES;

(VII) METHANE PRODUCED AT LANDFILLS OR AS A BY-PRODUCT OF  
THE TREATMENT OF WASTEWATER RESIDUALS; AND

(VIII) AQUATIC PLANTS.

(b) "BIOMASS" DOES NOT INCLUDE BLACK LIQUOR, TREATED  
WOODS, OR BIOMASS FROM MUNICIPAL SOLID WASTE OTHER THAN  
METHANE PRODUCED AT LANDFILLS OR AS A BY-PRODUCT OF THE  
TREATMENT OF WASTEWATER RESIDUALS.

(2) "ELECTRIC RESOURCE STANDARD" OR "STANDARD" MEANS A

1 STANDARD FOR RENEWABLE ENERGY CONTENT ESTABLISHED BY THE  
2 COMMISSION PURSUANT TO SECTION 40-3.3-102.

3 (3) "PEAKING POWER RENEWABLE ENERGY SYSTEM" MEANS A  
4 RENEWABLE ENERGY SYSTEM THAT DELIVERS ENERGY DURING TIME  
5 PERIODS THAT GENERALLY COINCIDE WITH PEAK ELECTRIC UTILITY LOADS.

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

12 (5) "QUALIFIED ENERGY RECOVERY SYSTEM" MEANS A SYSTEM  
13 WITH A NAMEPLATE CAPACITY OF NOT MORE THAN FIFTEEN MEGAWATTS  
14 THAT CONVERTS THE OTHERWISE LOST ENERGY FROM THE HEAT FROM  
15 EXHAUST STACKS OR PIPES USED FOR ENGINES, MANUFACTURING, OR  
16 INDUSTRIAL PROCESSES TO GENERATE ELECTRICITY AND THAT DOES NOT  
17 USE ADDITIONAL FOSSIL FUEL OR REQUIRE A COMBUSTION PROCESS TO  
18 GENERATE THE ELECTRICITY. "QUALIFIED ENERGY RECOVERY SYSTEM"  
19 DOES NOT INCLUDE ANY SYSTEM THAT USES ENERGY, LOST OR OTHERWISE,  
20 FROM A PROCESS WHOSE PRIMARY PURPOSE IS THE GENERATION OF  
21 ELECTRICITY, INCLUDING, WITHOUT LIMITATION, ANY PROCESS INVOLVING  
22 ENGINE-DRIVEN GENERATION OR PUMPED HYDROGENERATION.

23 (6) (a) "RENEWABLE ENERGY" MEANS, NOTWITHSTANDING  
24 SECTION 40-1-102 (6):

25 (I) BIOMASS, GEOTHERMAL ENERGY, SOLAR ENERGY, SMALL  
26 HYDROELECTRICITY, AND WIND ENERGY; AND

27 (II) HYDROGEN DERIVED FROM A SOURCE LISTED IN

1 SUBPARAGRAPH (I) OF THIS PARAGRAPH (a).

2 (b) "RENEWABLE ENERGY" DOES NOT INCLUDE:

3 (I) PUMPED STORAGE FACILITIES; HYDROELECTRICITY OTHER THAN

4 SMALL HYDROELECTRICITY; COAL, NATURAL GAS, OIL, PROPANE, OR ANY

5 OTHER FOSSIL FUEL; OR NUCLEAR ENERGY; OR

6 (II) HYDROGEN DERIVED FROM A SOURCE LISTED IN

7 SUBPARAGRAPH (I) OF THIS PARAGRAPH (b).

8 (7) "RENEWABLE ENERGY CONTRACT" MEANS A CONTRACT TO

9 ACQUIRE ELECTRICITY, TOGETHER WITH ANY ASSOCIATED RENEWABLE

10 ENERGY CREDITS, FROM ONE OR MORE RENEWABLE ENERGY SYSTEMS

11 OWNED, OPERATED, OR CONTROLLED BY OTHER PARTIES.

12 (8) "RENEWABLE ENERGY SYSTEM" MEANS A FACILITY OR ENERGY

13 SYSTEM, INCLUDING FUEL CELLS, THAT:

14 (a) USES RENEWABLE ENERGY TO GENERATE ELECTRICITY AND

15 TRANSMITS OR DISTRIBUTES THE ELECTRICITY THAT IT GENERATES TO A

16 PROVIDER OF ELECTRIC SERVICE;

17 (b) GENERATES AND TRANSMITS ELECTRICITY TO A PROVIDER OF

18 ELECTRIC SERVICE USING RENEWABLE ENERGY AND FOSSIL FUELS IN

19 HYBRID COMBINATION TO BALANCE INTERMITTENT AVAILABILITY, OR TO

20 ENHANCE DISPATCHABILITY, IF, ON AN ANNUAL BASIS, THE AMOUNT OF

21 THERMAL ENERGY TRANSMITTED TO THE SYSTEM DERIVED FROM FOSSIL

22 FUELS DOES NOT EXCEED THE AMOUNT OF THERMAL ENERGY TRANSMITTED

23 TO THE SYSTEM DERIVED FROM RENEWABLE ENERGY. FOR THE PURPOSES

24 OF THIS ARTICLE, THE NAMEPLATE RATING OF A FACILITY AS DESCRIBED IN

25 THIS PARAGRAPH (b) SHALL NOT EXCEED THAT OF THE RENEWABLE

26 ENERGY CAPABILITY ALONE.

27 (c) ACTIVELY REDUCES THE CONSUMPTION OF GRID-SUPPLIED

1 ELECTRICITY BY USING RENEWABLE ENERGY AS A RESOURCE.

2 (9) "RETAIL CUSTOMER" MEANS A CUSTOMER LOCATED IN THE  
3 STATE OF COLORADO WHO PURCHASES ELECTRICITY FOR THE CUSTOMER'S  
4 OWN USE AND NOT FOR RESALE, INCLUDING, WITHOUT LIMITATION:

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

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

10 (10) "SMALL HYDROELECTRICITY" MEANS:

11 (a) A HYDROELECTRIC PROJECT WITH A NAMEPLATE RATING OF  
12 TWENTY MEGAWATTS OR LESS IN EXISTENCE ON OR BEFORE THE EFFECTIVE  
13 DATE OF THIS ARTICLE; OR

14 (b) UP TO THE FIRST TWENTY MEGAWATTS OF ANY  
15 HYDROELECTRIC PROJECT NOT IN EXISTENCE ON OR BEFORE THE EFFECTIVE  
16 DATE OF THIS ARTICLE.

17 **40-3.3-102. Electric resource standard - rules.** (1) FOR EACH  
18 PROVIDER OF ELECTRIC SERVICE, THE COMMISSION SHALL ESTABLISH AN  
19 ELECTRIC RESOURCE STANDARD FOR RENEWABLE ENERGY. THE ELECTRIC  
20 RESOURCE STANDARD SHALL REQUIRE EACH PROVIDER TO GENERATE,  
21 DISPLACE, OR ACQUIRE ELECTRICITY FROM RENEWABLE ENERGY SYSTEMS  
22 OR QUALIFIED ENERGY RECOVERY SYSTEMS IN AMOUNTS PRORATED UPON  
23 RETAIL ENERGY SALES WITHIN COLORADO AS REPORTED IN EACH  
24 PROVIDER'S FORM 1 SUBMITTED ANNUALLY TO THE FEDERAL ENERGY  
25 REGULATORY COMMISSION, THAT TOTAL FOR THE STATE:

26 (a) BY DECEMBER 31, 2006, FIVE HUNDRED MEGAWATTS BASED  
27 UPON THE NAMEPLATE RATINGS OF THE RENEWABLE ENERGY GENERATION

1 EQUIPMENT;

2 (b) BY DECEMBER 31, 2010, NINE HUNDRED MEGAWATTS BASED  
3 UPON THE NAMEPLATE RATINGS OF THE RENEWABLE ENERGY GENERATION  
4 EQUIPMENT; AND

5 (c) BY DECEMBER 31, 2020, ONE THOUSAND EIGHT HUNDRED  
6 MEGAWATTS BASED UPON THE NAMEPLATE RATINGS OF THE RENEWABLE  
7 ENERGY GENERATION EQUIPMENT.

8 (2) (a) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT A  
9 COMPETITIVE ACQUISITION PROCESS WILL GENERALLY BE USED TO  
10 ACQUIRE RENEWABLE RESOURCES REQUIRED BY THIS ARTICLE. THIS  
11 PROCESS IS INTENDED TO RESULT IN A RENEWABLE RESOURCE PORTFOLIO  
12 THAT BALANCES COST, BENEFIT, AND RISK FACTORS.

13 (b) IN A RESOURCE PLANNING PROCESS PRIOR TO THE YEAR 2010,  
14 THE COMMISSION SHALL REVIEW THE UTILIZATION OF PEAKING POWER  
15 RENEWABLE ENERGY SYSTEMS PURSUANT TO PARAGRAPH (a) OF THIS  
16 SUBSECTION (2) FOR EACH PROVIDER, IF ANY SUCH PEAKING POWER  
17 RENEWABLE ENERGY SYSTEM IS PROPOSED BY A PARTY TO BE INCLUDED  
18 IN THE ENERGY PROVIDER'S RESOURCE PORTFOLIO. IF THE COMMISSION  
19 FINDS PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2) THAT SUCH  
20 SYSTEMS ARE ADVANTAGEOUS, CONSIDERING COSTS, BENEFITS, AND RISKS,  
21 IT MAY ORDER THE PROVIDER TO ACQUIRE PEAKING POWER RENEWABLE  
22 ENERGY SYSTEMS TOTALING UP TO TEN PERCENT OF ITS 2010 OBLIGATION  
23 UNDER THIS ARTICLE.

24 (3) EACH KILOWATT OF RENEWABLE ELECTRIC RESOURCES  
25 INSTALLED IN AN AREA OF COLORADO DESIGNATED AS AN ENTERPRISE  
26 ZONE PURSUANT TO SECTION 39-30-103, C.R.S., SHALL COUNT AS ONE AND  
27 ONE-HALF KILOWATTS TOWARD COMPLIANCE WITH THIS STANDARD.

1           (4) EACH KILOWATT OF RENEWABLE ELECTRIC GENERATING  
2 RESOURCES IN COLORADO GENERATED BY A FACILITY, THE NAMEPLATE  
3 RATING OF WHICH IS FIVE MEGAWATTS OR SMALLER, THAT UTILIZES  
4 NONTOXIC PLANT MATTER THAT IS THE BYPRODUCT OF FIRE MITIGATION  
5 TRIMMINGS ON PRIVATE LANDS SHALL COUNT AS TWO KILOWATTS TOWARD  
6 COMPLIANCE WITH THIS STANDARD.

7           (5) EACH KILOWATT OF CUSTOMER-SITED SOLAR ELECTRIC  
8 RENEWABLE RESOURCES SHALL COUNT AS THREE KILOWATTS TOWARD  
9 COMPLIANCE WITH THIS STANDARD.

10          (6) IN APPLYING THE ELECTRIC RESOURCE STANDARD, THE  
11 COMMISSION SHALL FULLY CREDIT THE PROVIDER OF ELECTRIC SERVICE  
12 WITH THE RENEWABLE ENERGY KILOWATTS THAT THE PROVIDER OF  
13 ELECTRIC SERVICE HAS INSTALLED OR PURCHASED NOTWITHSTANDING  
14 WHETHER THE COST OF THE RENEWABLE ENERGY HAS BEEN OR WILL BE  
15 RECOVERED THROUGH AN OPTIONAL RENEWABLE ENERGY PRICING  
16 PROGRAM OR THROUGH STANDARD UTILITY RATES. PROVIDERS ARE  
17 AUTHORIZED AND ENCOURAGED TO DEVELOP AND EXPAND OPTIONAL  
18 RENEWABLE ENERGY PRICING PROGRAMS OR GREEN TAG PROGRAMS THAT  
19 PROMOTE RENEWABLE ENERGY.

20          (7) IF, FOR THE BENEFIT OF ONE OR MORE OF ITS RETAIL  
21 CUSTOMERS IN THIS STATE, THE PROVIDER HAS SUBSIDIZED MORE THAN  
22 FIFTY PERCENT OF THE COST OF A CUSTOMER-SITED WIND OR SOLAR  
23 ENERGY SYSTEM WITH A NAMEPLATE RATING OF TEN KILOWATTS OR LESS  
24 THAT REDUCES THE CONSUMPTION OF GRID-SUPPLIED ELECTRICITY, THE  
25 TOTAL INSTALLED NAMEPLATE CAPACITY OF THE WIND OR SOLAR ENERGY  
26 SYSTEM SHALL BE DEEMED TO PRODUCE ENERGY THAT THE PROVIDER  
27 GENERATED OR ACQUIRED FROM A RENEWABLE ENERGY SYSTEM.

1 (8) FOR THE PURPOSES OF COMPLYING WITH ITS ELECTRIC  
2 RESOURCE STANDARD, PROVIDERS OF ELECTRIC SERVICE MAY FILE WITH  
3 THE COMMISSION FOR ITS APPROVAL A STANDARD FORM OF CONTRACT FOR  
4 CUSTOMER-SITED RENEWABLE ENERGY SYSTEMS WITH NAMEPLATE  
5 RATINGS GREATER THAN TEN KILOWATTS AND NOT GREATER THAN FIVE  
6 MEGAWATTS.

7 (9) ELECTRIC ENERGY PRODUCED BY A PROVIDER OF ELECTRIC  
8 SERVICE THROUGH CO-FIRING RENEWABLE FUELS DESCRIBED IN SECTION  
9 40-3.3-101 (1) AND (6) (a) (II) SHALL COUNT TOWARD COMPLIANCE WITH  
10 THIS STANDARD PRORATED ON THE HEAT CONTENT OF THE RENEWABLE  
11 FUELS AS A PERCENTAGE OF ALL FUELS USED TO PRODUCE SUCH ENERGY.  
12 ANY FACILITY UTILIZED FOR CO-FIRING RENEWABLE FUELS SHALL MEET  
13 CURRENT EMISSION REQUIREMENTS.

14 (10) THE COMMISSION MAY PROMULGATE RULES TO ESTABLISH A  
15 SYSTEM OF RENEWABLE ENERGY CREDITS THAT MAY BE USED BY A  
16 PROVIDER TO COMPLY WITH ITS ELECTRIC RESOURCE STANDARD. SUCH  
17 RULES SHALL BE PROMULGATED IN ACCORDANCE WITH ARTICLE 4 OF TITLE  
18 24, C.R.S.

19 (11) IF A PROVIDER BELIEVES IT WILL BE UNABLE TO COMPLY WITH  
20 ITS ELECTRIC RESOURCE STANDARD REQUIREMENTS THROUGH THE  
21 GENERATION OF ELECTRICITY FROM ITS OWN RENEWABLE ENERGY  
22 SYSTEMS, THROUGH RENEWABLE ENERGY SUPPLY CONTRACTS, THROUGH  
23 QUALIFIED ENERGY RECOVERY SYSTEMS, OR, IF APPLICABLE, THROUGH THE  
24 SALE AND PURCHASE OF RENEWABLE ENERGY CREDITS, THE PROVIDER  
25 SHALL SO NOTIFY THE COMMISSION. IF THE COMMISSION DETERMINES  
26 THERE IS NOT OR WILL NOT BE A SUFFICIENT SUPPLY OF ELIGIBLE  
27 ELECTRICITY AVAILABLE TO THE PROVIDER, OR THAT THE PROVIDER WILL

1 NOT BE ABLE TO OBTAIN OR BUILD, AT REASONABLE COST, THE  
2 TRANSMISSION NEEDED TO DELIVER THE ELIGIBLE ENERGY TO THE  
3 PROVIDER'S SYSTEM, THE COMMISSION MAY EXEMPT THE PROVIDER FROM  
4 THE REMAINING REQUIREMENTS OF ITS ELECTRIC RESOURCE STANDARD OR  
5 FROM ANY APPROPRIATE PORTION THEREOF, AS DETERMINED BY THE  
6 COMMISSION. IF THE COMMISSION REASONABLY DETERMINES, BASED UPON  
7 AN EVIDENTIARY HEARING, INCLUDING A REVIEW OF MITIGATION  
8 MEASURES, THAT ADDING RENEWABLE RESOURCES PURSUANT TO THE  
9 STANDARD IN SECTION 40-3.3-102 (1) COMPROMISES SYSTEM RELIABILITY  
10 OR CONFLICTS WITH RELIABILITY STANDARDS OF THE NORTH AMERICAN  
11 ELECTRIC RELIABILITY COUNCIL, THE WESTERN ELECTRIC COORDINATING  
12 COUNCIL, OR THE FEDERAL ENERGY REGULATORY COMMISSION, THE  
13 COMMISSION SHALL DEFER THAT PORTION OF THE RENEWABLE ENERGY  
14 RESOURCES THAT CAUSES THE RELIABILITY PROBLEM UNTIL SUCH TIME  
15 THAT THE PROBLEM IS RESOLVED.

16 (12) A PROVIDER SHALL NOT HAVE THE AUTHORITY TO CONDEMN  
17 OR EXERCISE THE POWER OF EMINENT DOMAIN OVER ANY REAL ESTATE,  
18 RIGHT-OF-WAY, EASEMENT, OR OTHER RIGHT PURSUANT TO SECTION  
19 38-2-101, C.R.S., TO SITE THE GENERATION FACILITIES OF A RENEWABLE  
20 ENERGY SYSTEM USED IN WHOLE OR IN PART TO MEET AN ELECTRIC  
21 RESOURCE STANDARD ESTABLISHED PURSUANT TO THIS ARTICLE. A  
22 PROVIDER SHALL CONTINUE TO HAVE THE AUTHORITY TO CONDEMN OR  
23 EXERCISE THE POWER OF EMINENT DOMAIN OVER ANY REAL ESTATE,  
24 RIGHT-OF-WAY, EASEMENT, OR OTHER RIGHT PURSUANT TO SECTION  
25 38-2-101, C.R.S., TO TRANSMIT ENERGY USED IN WHOLE OR IN PART TO  
26 MEET AN ELECTRIC RESOURCE STANDARD ESTABLISHED PURSUANT TO THIS  
27 ARTICLE.

1 (13) ELIGIBLE CAPACITY USED TO MEET THE STANDARD SHALL  
2 EITHER BE PRODUCED IN COLORADO OR WITHIN FIFTEEN MILES OF  
3 COLORADO'S BORDERS. RESOURCES THAT, BEFORE THE EFFECTIVE DATE  
4 OF THIS ACT, ARE OWNED BY, UNDER CONTRACT TO, OR THE SUBJECT OF  
5 NEGOTIATIONS WITH, A PROVIDER OR AVAILABLE TO A PROVIDER BUT FOR  
6 A LACK OF TRANSMISSION CAPACITY SHALL NOT BE SUBJECT TO THIS  
7 SUBSECTION (13).

8 (14) NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO PREVENT  
9 A PROVIDER OF ELECTRIC SERVICE FROM USING THE SAME RENEWABLE  
10 ENERGY RESOURCES TO MEET THE REQUIREMENTS OF THIS ARTICLE AND  
11 ANY EXISTING OR FUTURE FEDERAL ELECTRIC RESOURCE STANDARD FOR  
12 RENEWABLE ENERGY.

13 (15) (a) A PROVIDER OF ELECTRIC SERVICE SHALL PLAN FOR THE  
14 ACQUISITION OF RENEWABLE RESOURCES SUFFICIENT TO MEET THE  
15 REQUIREMENTS OF THIS ARTICLE OVER THE PLANNING PERIOD OF ITS  
16 LEAST-COST RESOURCE PLAN OR ANY SUCCESSOR PLAN. IN CONSIDERING  
17 SUCH PLAN, THE COMMISSION SHALL CONSIDER THE STATUS OF FEDERAL  
18 SUBSIDIES FOR RENEWABLE ENERGY. HOWEVER, IF THE LEAST COST PLAN  
19 APPROVED BY THE COMMISSION OR ANY SUCCESSOR PLAN INDICATES THAT  
20 ADDITIONAL CAPACITY, REGARDLESS OF SOURCE, IS NOT NEEDED FOR  
21 CERTAIN YEARS DURING THE PLANNING PERIOD, THE COMMISSION MAY  
22 AUTHORIZE THE PROVIDER OF ELECTRIC SERVICE TO DEFER THE  
23 ACQUISITION OF RENEWABLE RESOURCES REQUIRED UNDER THIS ARTICLE  
24 FOR THOSE YEARS UNTIL SUCH TIME AS ADDITIONAL CAPACITY IS NEEDED.

25 (b) NOTWITHSTANDING PARAGRAPH (a) OF THIS SUBSECTION (15),  
26 IF THE COMMISSION DETERMINES THAT THE COST OF ELECTRICITY,  
27 INCLUDING ANCILLARY COSTS, FROM PROPOSED OR EXISTING RENEWABLE

1 RESOURCE FACILITIES IS COST EFFECTIVE COMPARED TO THE COST OF  
2 OPERATING EXISTING GENERATION RESOURCES OR PURCHASING ENERGY  
3 UNDER EXISTING POWER SUPPLY CONTRACTS, THE COMMISSION MAY  
4 ORDER THE ACQUISITION OF SUCH RESOURCES.

5 (16) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE  
6 BUT SUBJECT TO OTHER APPLICABLE REQUIREMENTS OF THIS TITLE, IF THE  
7 COMMISSION DETERMINES, FOLLOWING AN EVIDENTIARY HEARING, THAT  
8 THE TOTAL COST OF ELECTRICITY OF A PORTFOLIO OF NEW RENEWABLE  
9 RESOURCES EXCEEDS THE TOTAL COST OF ANY OTHER PORTFOLIO OF NEW  
10 ELECTRIC RESOURCES REASONABLY AVAILABLE TO THE PROVIDER OF  
11 ELECTRIC SERVICE AS PART OF ITS LEAST-COST RESOURCE PLAN, THE  
12 COMMISSION SHALL REQUIRE THE PROVIDER TO DEFER THE ACQUISITION OF  
13 THE RENEWABLE ELECTRIC RESOURCE UNTIL SUCH TIME AS THE TOTAL  
14 COST DOES NOT EXCEED THAT OF OTHER AVAILABLE RESOURCES. FOR  
15 PURPOSES OF THIS SUBSECTION (16), THE TOTAL COST OF ELECTRICITY  
16 SHALL INCLUDE ALL REASONABLY KNOWN AND QUANTIFIABLE COSTS OVER  
17 THE RESOURCE PLANNING HORIZON, INCLUDING ANCILLARY SERVICE  
18 COSTS, THE COSTS OF LEGALLY REQUIRED AVAILABLE CONTROL  
19 TECHNOLOGY FOR NEW RESOURCES, AND THE COSTS ASSOCIATED WITH  
20 TRANSMISSION.

21 **40-3.3-103. Renewable energy cost recovery - acquisition plan.**

22 (1) IF THE COMMISSION APPROVES THE TERMS AND CONDITIONS OF A  
23 RENEWABLE ENERGY CONTRACT OR QUALIFIED ENERGY RECOVERY  
24 SYSTEM CONTRACT BETWEEN THE PROVIDER OF ELECTRIC SERVICE AND  
25 ANOTHER PARTY, THE RENEWABLE ENERGY CONTRACT OR QUALIFIED  
26 ENERGY RECOVERY SYSTEM CONTRACT AND ITS TERMS AND CONDITIONS  
27 SHALL BE DEEMED TO BE A PRUDENT INVESTMENT, AND THE COMMISSION

1 SHALL APPROVE RETAIL RATES SUFFICIENT TO RECOVER ALL JUST AND  
2 REASONABLE COSTS ASSOCIATED WITH THE CONTRACT. IF A PROVIDER OF  
3 ELECTRIC SERVICE SUBMITS A FORM OF CONTRACT TO THE COMMISSION  
4 FOR ITS APPROVAL, AND THE COMMISSION APPROVES THE TERMS AND  
5 CONDITIONS OF THE FORM OF CONTRACT, ANY CONTRACT ENTERED INTO  
6 BETWEEN THE PROVIDER OF ELECTRIC SERVICE AND ANOTHER PARTY THAT  
7 IS MATERIALLY CONSISTENT WITH THE TERMS AND CONDITIONS OF THE  
8 APPROVED FORM OF CONTRACT SHALL BE DEEMED TO BE A PRUDENT  
9 INVESTMENT, AND THE COMMISSION SHALL APPROVE RETAIL RATES  
10 SUFFICIENT TO RECOVER ALL JUST AND REASONABLE COSTS ASSOCIATED  
11 WITH THE CONTRACT. THE PROVIDER OF ELECTRIC SERVICE SHALL BE  
12 ENTITLED TO FULL RECOVERY OF ITS PRUDENTLY INCURRED COSTS OF  
13 CONSTRUCTING AND OPERATING ITS OWN RENEWABLE ENERGY SYSTEMS  
14 OR QUALIFIED ENERGY RECOVERY SYSTEMS AS DETERMINED BY THE  
15 COMMISSION.

16 (2) EACH PROVIDER SHALL FILE WITH THE COMMISSION FOR ITS  
17 APPROVAL THE PROVIDER'S PLAN FOR ACQUIRING THE RESOURCES  
18 NECESSARY TO MEET THE REQUIREMENTS OF THIS ARTICLE. THE PROVIDER  
19 SHALL UPDATE ITS PLAN AS NECESSARY. THE PLAN SHALL SPECIFY THE  
20 PORTION OF THE RENEWABLE RESOURCE OBLIGATION UNDER THIS ARTICLE  
21 THAT THE PROVIDER INTENDS TO ACQUIRE THROUGH:

- 22 (a) A STAND-ALONE RENEWABLE ENERGY TARIFF;
- 23 (b) A COMPETITIVE ACQUISITION PROCESS; AND
- 24 (c) AN ALTERNATIVE METHOD OF ACQUISITION, SUCH AS BY  
25 SELF-BUILDING OR THE USE OF RENEWABLE ENERGY CREDITS.

26 (3) A PROVIDER OF ELECTRIC SERVICE THAT IS ALSO A WHOLESALE  
27 ELECTRICITY SUPPLIER SHALL NOT RECOVER COSTS OF RENEWABLE

1 RESOURCES PURSUANT TO THIS ARTICLE, EITHER IN PART OR IN TOTAL,  
2 FROM ANY WHOLESALE CUSTOMER UNLESS THE WHOLESALE CUSTOMER  
3 AGREES, BY CONTRACT, TO ACCEPT RESPONSIBILITY FOR THE RENEWABLE  
4 RESOURCE COSTS. A PROVIDER OF ELECTRIC SERVICE SHALL RECOVER  
5 FROM RETAIL CUSTOMERS THE COSTS NOT RECOVERED BY CONTRACT FROM  
6 WHOLESALE CUSTOMERS. EACH PROVIDER OF ELECTRIC SERVICE SHALL  
7 SUBMIT TO THE COMMISSION, IN AN INFORMATIONAL FILING, EACH  
8 WHOLESALE CONTRACT THAT INCLUDES RENEWABLE RESOURCE  
9 PROVISIONS MADE BY A WHOLESALE CUSTOMER WITH THE PROVIDER OF  
10 ELECTRIC SERVICE, AND EVERY AMENDMENT TO SUCH CONTRACT.

11 **40-3.3-104. Annual report.** (1) EACH PROVIDER OF ELECTRIC  
12 SERVICE SHALL SUBMIT TO THE COMMISSION AN ANNUAL REPORT THAT  
13 PROVIDES INFORMATION RELATING TO THE ACTIONS TAKEN BY THE  
14 PROVIDER TO COMPLY WITH ITS ELECTRIC RESOURCE STANDARD.

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

19 (3) EACH ANNUAL REPORT SHALL INCLUDE CLEAR AND CONCISE  
20 INFORMATION THAT SETS FORTH:

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

27 (b) THE CAPACITY OF EACH RENEWABLE ENERGY SYSTEM OR

1 QUALIFIED ENERGY RECOVERY SYSTEM OWNED, OPERATED, OR  
2 CONTROLLED BY THE PROVIDER, THE TOTAL AMOUNT OF ELECTRICITY  
3 GENERATED BY EACH SUCH SYSTEM DURING THE REPORTING PERIOD, AND  
4 THE PERCENTAGE OF THAT TOTAL AMOUNT THAT WAS GENERATED  
5 DIRECTLY FROM RENEWABLE ENERGY;

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

10 (d) INFORMATION ON THE COST AND TIMING OF TRANSMISSION  
11 FACILITIES AND SERVICES NECESSARY FOR THE UTILIZATION OF ENERGY  
12 FROM RENEWABLE ENERGY FACILITIES THAT ARE UTILIZED TO COMPLY  
13 WITH THE STANDARD; AND

14 (e) ANY OTHER INFORMATION THAT THE COMMISSION BY RULE  
15 DEEMS RELEVANT.

16 **40-3.3-105. Rules - fines - renewable energy account.** (1) THE  
17 COMMISSION SHALL PROMULGATE RULES NECESSARY FOR THE  
18 ADMINISTRATION AND ENFORCEMENT OF THIS ARTICLE. THE RULES  
19 PROMULGATED BY THE COMMISSION SHALL INCLUDE:

20 (a) ENFORCEMENT MECHANISMS THAT ARE NECESSARY AND  
21 REASONABLE TO ENSURE THAT EACH PROVIDER OF ELECTRIC SERVICE  
22 COMPLIES WITH ITS ELECTRIC RESOURCE STANDARD; AND

23 (b) PROVISIONS GOVERNING THE IMPOSITION OF ADMINISTRATIVE  
24 PENALTIES ASSESSED AFTER A HEARING HELD BY THE COMMISSION  
25 PURSUANT TO SECTION 40-6-109. THE PROVIDER SHALL NOT BE PENALIZED  
26 IF THE PROVIDER FAILS TO COMPLY WITH THE ELECTRIC RESOURCE  
27 STANDARD DUE TO THE NONPERFORMANCE OF A PARTY OTHER THAN THE

1 PROVIDER UNDER A RENEWABLE ENERGY CONTRACT, AND THE PROVIDER  
2 EXERCISES REASONABLE DILIGENCE TO COME INTO COMPLIANCE WITH THE  
3 ELECTRIC RESOURCE STANDARD. UNDER NO CIRCUMSTANCES SHALL THE  
4 COSTS OF ADMINISTRATIVE PENALTIES BE RECOVERED FROM COLORADO  
5 RETAIL CUSTOMERS.

6 (c) PROVISIONS REQUIRING THAT MONEYS COLLECTED FOR  
7 PENALTIES THAT RESULT FROM NONCOMPLIANCE WITH THE STANDARD  
8 SHALL BE:

9 (I) TRANSMITTED TO THE STATE TREASURER, WHO SHALL DEPOSIT  
10 THEM IN A SPECIAL RENEWABLE ENERGY ACCOUNT IN THE PUBLIC UTILITIES  
11 COMMISSION FIXED UTILITY FUND CREATED IN SECTION 40-2-114, WHICH  
12 SPECIAL ACCOUNT IS HEREBY CREATED;

13 (II) USED TO THE FULLEST EXTENT PRACTICABLE TO ENCOURAGE  
14 THE DEVELOPMENT OF ADDITIONAL RENEWABLE ENERGY FACILITIES AS  
15 DETERMINED BY THE COMMISSION.

16 (2) ANY RULES PROMULGATED PURSUANT TO THIS ARTICLE SHALL  
17 BE PROMULGATED IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S.

18 **SECTION 7. Safety clause.** The general assembly hereby finds,  
19 determines, and declares that this act is necessary for the immediate  
20 preservation of the public peace, health, and safety.