

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

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 10-0502.01 Duane Gall

HOUSE BILL 10-1098

HOUSE SPONSORSHIP

Levy,

SENATE SPONSORSHIP

(None),

House Committees

Transportation & Energy
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING INCREASED TRANSPARENCY IN THE GOVERNANCE OF**
102 **COOPERATIVE ELECTRIC 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/billsummaries>.)

Existing law allows cooperative electric associations to exempt themselves from regulation by the public utilities commission and become self-governing, under the control of a board of directors (board) elected by member-consumers (members). Current provisions concerning board meetings, notices, elections, and conflicts of interest lack

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.*

specificity in some areas.

Section 1 of the bill requires an opportunity for member input on matters to be decided by the board at meetings, and requires the posting of meeting minutes on the association's web site.

Section 2 requires the association to adopt, and post on its web site, a written policy governing elections of directors and information about how a member may become a candidate for a position on the board. In addition, the date of an election and notice of the ballot mailing deadline for the election must be posted in advance. Section 2 also requires disclosure of campaign contributions by persons employed by the board.

Section 3 requires that candidates for positions on the board be given equal access to member lists and supply contact information for use by members.

Section 3 also:

- ! Requires the order of names on the ballot to be determined randomly, without automatically assigning the top line to the incumbent;
- ! Prohibits any candidate or association employee from handling cast ballots without a neutral third party present; and
- ! Prohibits the association from expending any money or resources, including mailings, to support or oppose a candidate in connection with a board election.

Section 4 requires posting on the association's web site of notice of board meetings and all available documents that will be discussed at such meetings, at least 14 days in advance for regular meetings and as soon as possible for special meetings.

Section 5 requires that, in case of any conflict between the provisions governing cooperative electric associations and the general law governing nonprofit corporations, the provisions governing cooperative electric associations will control.

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

2 **SECTION 1.** 40-9.5-108 (2), Colorado Revised Statutes, is
3 amended to read:

4 **40-9.5-108. Public meetings.** (2) (a) ~~Prior to the time~~ BEFORE
5 the board of directors convenes in executive session, the board shall
6 announce the general topic of the executive session.

7 (b) AT EVERY MEETING OF THE BOARD OF DIRECTORS, MEMBERS

1 OF THE ASSOCIATION SHALL BE GIVEN AN OPPORTUNITY TO ADDRESS THE
2 BOARD ON ANY MATTER CONCERNING THE POLICIES AND BUSINESS OF THE
3 ASSOCIATION. THE BOARD MAY PLACE REASONABLE,
4 VIEWPOINT-NEUTRAL RESTRICTIONS ON THE AMOUNT AND DURATION OF
5 PUBLIC COMMENT.

6 (c) WRITTEN MINUTES SHALL BE MADE OF ALL MEETINGS OF THE
7 BOARD OF DIRECTORS AND SHALL BE POSTED ON THE WEB SITE OF THE
8 ASSOCIATION AS SOON AS THEY HAVE BEEN APPROVED. UPON REQUEST BY
9 A MEMBER OF THE BOARD, THAT MEMBER'S OWN VOTE ON ANY ISSUE
10 SHALL BE NOTED IN THE MINUTES.

11 **SECTION 2.** Article 9.5 of title 40, Colorado Revised Statutes,
12 is amended BY THE ADDITION OF THE FOLLOWING NEW
13 SECTIONS to read:

14 **40-9.5-109.5. Election policy - adoption - publication -**
15 **contents.** (1) THE BOARD OF DIRECTORS OF EACH COOPERATIVE
16 ELECTRIC ASSOCIATION SHALL ADOPT A WRITTEN POLICY GOVERNING THE
17 ELECTION OF DIRECTORS. THE ELECTION POLICY SHALL BE POSTED ON THE
18 ASSOCIATION'S WEB SITE. THE ELECTION POLICY SHALL CONTAIN TRUE
19 AND COMPLETE INFORMATION ON THE FOLLOWING SUBJECTS:

20 (a) THE PROCEDURE AND TIMING FOR A MEMBER TO BECOME A
21 CANDIDATE FOR THE BOARD OF DIRECTORS AND THE PROCESS BY WHICH
22 ELECTIONS FOR THE BOARD OF DIRECTORS ARE HELD;

23 (b) THE QUALIFICATIONS FOR CANDIDATES AND REQUIREMENTS
24 FOR APPEARING ON THE BALLOT;

25 (c) THE DATE OF THE ELECTION, WHICH SHALL BE FIXED, POSTED
26 ON THE ASSOCIATION'S WEB SITE, AND OTHERWISE PUBLICIZED NO LESS
27 THAN SIX MONTHS BEFORE THE ELECTION.

1 (2) IN ADDITION TO THE POSTING █ REQUIRED IN SUBSECTION (1)
2 OF THIS SECTION, INFORMATION ON HOW TO BECOME A CANDIDATE AND
3 THE SCHEDULE FOR ELECTIONS SHALL BE COMMUNICATED TO EACH
4 MEMBER IN A MAILING AND ON THE ASSOCIATION'S WEB SITE NO LESS THAN
5 █ TWO MONTHS BEFORE PETITIONS TO BECOME A CANDIDATE ARE DUE.

6 (3) THE BALLOT MAILING DEADLINE SHALL BE POSTED ON THE WEB
7 SITE AT LEAST THREE MONTHS BEFORE THE DEADLINE AND SHALL REMAIN
8 SO POSTED UNTIL AFTER THE ELECTION.

9 **40-9.5-110.5. Agents of association - disclosure of support for**
10 **candidates in board elections.** ANY MANAGEMENT-LEVEL EMPLOYEE OF
11 THE ASSOCIATION WHO REPORTS DIRECTLY TO THE BOARD OF DIRECTORS
12 AND WHOSE SALARY IS ESTABLISHED BY THE BOARD OF DIRECTORS SHALL
13 PROMPTLY AND FULLY MAKE PUBLIC, ON THE ASSOCIATION'S WEB SITE,
14 THE AMOUNT OF HIS OR HER FINANCIAL CONTRIBUTION AND THE NATURE
15 OF HIS OR HER NONMONETARY SUPPORT FOR ANY CANDIDATE FOR THE
16 BOARD OF DIRECTORS WHOM HE OR SHE CONTRIBUTES TO OR PUBLICLY
17 SUPPORTS.

18 **SECTION 3.** 40-9.5-110, Colorado Revised Statutes, is amended
19 to read:

20 **40-9.5-110. Board of directors of cooperative electric**
21 **associations - nomination - elections.** (1) (a) A nomination for director
22 on the board of directors of a cooperative electric association may be
23 made by written petition signed by at least fifteen members of such
24 association, and filed with the board of directors of such association no
25 later than forty-five days prior to the date of the election. Any petition so
26 filed shall designate the name of the nominee and the term for which
27 nominated. The name of a nominee shall appear on the ballot if the

1 nominating petition is in apparent conformity with this section as
2 determined by the secretary of the board. Nomination and election of
3 directors by districts, if provided for in the bylaws of the association, shall
4 be permitted.

5 (b) CANDIDATES FOR POSITIONS ON THE BOARD OF DIRECTORS
6 SHALL BE ENTITLED TO RECEIVE [REDACTED] MEMBERSHIP LISTS, IN A USABLE
7 FORMAT, ON THE SAME BASIS AND AT THE SAME TIME AS SUCH LISTS ARE
8 MADE AVAILABLE TO INCUMBENT DIRECTORS RUNNING FOR REELECTION.
9 CANDIDATES SHALL USE SUCH LISTS ONLY FOR PURPOSES OF THE ELECTION
10 AND SHALL RETURN OR DESTROY THEM IMMEDIATELY AFTER THE
11 ELECTION.

12 (c) ALL BOARD MEMBERS SHALL MAKE AVAILABLE TO
13 ASSOCIATION MEMBERS SOME MEANS FOR DIRECT CONTACT, WHETHER BY
14 TELEPHONE, ELECTRONIC MAIL, OR REGULAR MAIL. INFORMATION ON HOW
15 TO CONTACT EACH BOARD MEMBER BY ONE OR MORE OF THESE METHODS
16 SHALL BE AVAILABLE ON THE ASSOCIATION WEB SITE.

17 (2) (a) (I) Each member of the association shall be entitled to vote
18 in the election of directors on the board of directors either at a meeting
19 held for such purpose or by mail, BUT NOT BOTH. A MEMBER WHO HAS
20 VOTED BY MAIL SHALL NOT BE ENTITLED TO VOTE AT THE MEETING.

21 (II) Mail voting shall be in writing on ballots provided by the
22 association. The mail ballot shall be voted by the member, placed in a
23 special envelope provided for the purpose so as to conceal the marking on
24 the ballot, deposited in a return envelope which must be signed by the
25 voting member, and mailed back to the association. Envelopes containing
26 mail ballots shall remain sealed and uncounted until [REDACTED] the meeting
27 held for the purpose of electing the board of directors. ~~The presence of~~

1 ~~a member at such meeting shall revoke a mail vote theretofore executed~~
2 ~~by such member, and such member shall be entitled to vote at such~~
3 ~~meeting in the same manner and with the same effect as if such member~~
4 ~~had not voted by mail.~~

5 (b) THE ORDER OF NAMES ON THE BALLOT SHALL BE DETERMINED
6 RANDOMLY IN A MANNER THAT DOES NOT AUTOMATICALLY ASSIGN THE
7 TOP LINE TO THE INCUMBENT.

8 (c) THE BOARD OF DIRECTORS SHALL, WHEN PRACTICABLE,
9 ARRANGE FOR AN INDEPENDENT THIRD PARTY TO OVERSEE THE STORAGE
10 AND COUNTING OF BALLOTS. IF THIS IS NOT PRACTICABLE, THEN BALLOTS
11 SHALL BE COLLECTED AND STORED IN A MANNER THAT PROTECTS THE
12 PRIVACY OF THEIR CONTENT. ALL CANDIDATES FOR THE BOARD OF
13 DIRECTORS SHALL BE GIVEN THE OPPORTUNITY TO BE PRESENT TO
14 OBSERVE THEIR TABULATION.

15 (3) Voting for directors on the board of directors by proxy or
16 cumulative voting shall be prohibited.

17 (4) THE ASSOCIATION SHALL NOT TAKE ANY ACTION, NOR EXPEND
18 ANY MONETARY OR NONMONETARY RESOURCES, THAT COULD
19 REASONABLY BE INTERPRETED AS SUPPORTING OR OPPOSING THE
20 CANDIDACY OF EITHER AN INCUMBENT BOARD MEMBER OR ANOTHER
21 CANDIDATE FOR ELECTION OR AS PROMOTING, ADVANCING, OR CRITICIZING
22 THE STATED POSITIONS OF ANY CANDIDATE. DURING THE TWO MONTHS
23 IMMEDIATELY PRECEDING THE ELECTION, BOARD MEMBERS SHALL NOT
24 SEND INDIVIDUAL NEWSLETTERS USING THE ASSOCIATION'S RESOURCES.

25 **SECTION 4.** 40-9.5-111, Colorado Revised Statutes, is amended
26 to read:

27 **40-9.5-111. Notice of meeting - agenda.** (1) Notice of the time

1 and place of a meeting of the board of directors and a copy of the agenda
2 for such meeting shall be posted in every service office maintained by the
3 association at least ten days before the meeting. The agenda shall
4 specifically designate the issues or questions to be discussed, or the
5 actions to be taken, at the meeting. Copies of ~~said~~ THE agenda shall be
6 available at each service office for members and consumers.

7 (2) [REDACTED] THE DATE, TIME, LOCATION, AND AGENDA OF EVERY
8 MEETING OF THE BOARD OF DIRECTORS SHALL BE POSTED ON THE
9 ASSOCIATION'S WEB SITE NO LESS THAN TEN DAYS BEFORE THE MEETING
10 IN THE CASE OF REGULAR MEETINGS AND AS SOON AS THE MEETING IS
11 SCHEDULED IN THE CASE OF SPECIAL MEETINGS. IF A MEETING IS
12 POSTPONED OR CANCELLED, NOTICE OF THE POSTPONEMENT OR
13 CANCELLATION SHALL IMMEDIATELY BE POSTED ON THE WEB SITE.

14 [REDACTED]
15 **SECTION 5.** 40-9.5-112, Colorado Revised Statutes, is amended
16 to read:

17 **40-9.5-112. Provisions applicable to cooperative electric**
18 **associations.** Except as otherwise provided in this part 1, the provisions
19 of article 55 of title 7, C.R.S., shall apply to cooperative electric
20 associations. IN THE CASE OF ANY IRRECONCILABLE CONFLICT BETWEEN
21 SAID ARTICLE AND THIS PART 1, THIS PART 1 SHALL CONTROL. Section
22 40-4-105 shall apply to cooperative electric associations with respect to
23 crossing of railroad rights-of-way.

24 **SECTION 6. Act subject to petition - effective date.** This act
25 shall take effect at 12:01 a.m. on the day following the expiration of the
26 ninety-day period after final adjournment of the general assembly (August
27 11, 2010, if adjournment sine die is on May 12, 2010); except that, if a

1 referendum petition is filed pursuant to section 1 (3) of article V of the
2 state constitution against this act or an item, section, or part of this act
3 within such period, then the act, item, section, or part shall not take effect
4 unless approved by the people at the general election to be held in
5 November 2010 and shall take effect on the date of the official
6 declaration of the vote thereon by the governor.