

**Second Regular Session
Seventieth General Assembly
STATE OF COLORADO**

PREAMENDED

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

LLS NO. 16-0567.01 Thomas Morris x4218

SENATE BILL 16-061

SENATE SPONSORSHIP

Cooke and Sonnenberg,

HOUSE SPONSORSHIP

(None),

Senate Committees

Agriculture, Natural Resources, & Energy
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE PROTECTION OF ELECTRIC UTILITY RATEPAYERS**
102 **FROM THE INCREASED COSTS ASSOCIATED WITH**
103 **IMPLEMENTATION OF REQUIREMENTS TO REGULATE CARBON**
104 **DIOXIDE EMISSIONS FROM EXISTING FOSSIL-FUEL-FIRED**
105 **ELECTRIC GENERATING UNITS.**

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>.)

The bill directs the public utilities commission to create a ratepayer protection program, pursuant to which an electric utility's increased costs

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.*

attributable to compliance with the federal environmental protection agency's regulations that limit carbon dioxide emissions from existing fossil-fuel-fired electric generating units are paid from a state fund rather than by the utility's customers. The fund is financed by appropriations from the stationary sources control fund.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 2 to article
3 8.7 of title 40 as follows:

4 PART 2

5 ELECTRIC RATEPAYER PROTECTION

6 **40-8.7-201. Short title.** THE SHORT TITLE OF THIS PART 2 IS THE
7 "RATEPAYER PROTECTION ACT".

8 **40-8.7-202. Legislative declaration.** (1) THE GENERAL
9 ASSEMBLY HEREBY:

10 (a) FINDS THAT:

11 (I) THE EPA HAS ADOPTED RULES UNDER SECTION 111 (d) OF THE
12 FEDERAL "CLEAN AIR ACT" THAT DIRECT STATES TO REGULATE CARBON
13 DIOXIDE EMISSIONS FROM EXISTING FOSSIL-FUEL-FIRED ELECTRIC
14 GENERATING UNITS;

15 (II) ON FEBRUARY 9, 2016, THE SUPREME COURT OF THE UNITED
16 STATES GRANTED A STAY OF EPA'S 111 (d) RULES BASED ON A FINDING
17 THAT IRREPARABLE HARM WOULD RESULT IF THE STAY WAS NOT GRANTED.
18 THE COURT MADE IT CLEAR THAT THE STAY WILL BE EFFECTIVE THROUGH
19 THE COMPLETION OF ANY PROCEEDINGS IN THE SUPREME COURT.

20 (III) THESE RULES WILL HAVE A MAJOR IMPACT ON COLORADO'S
21 ECONOMY BY REGULATING HOW ELECTRICITY IS PRODUCED,
22 TRANSMITTED, DISTRIBUTED, AND CONSUMED WITHIN COLORADO;

23 (IV) ALTHOUGH THE GOVERNOR AND THE DEPARTMENT HAVE

1 COMMITTED TO DEVELOP A STATE PLAN THAT WILL NOT ADVERSELY
2 IMPACT RATEPAYERS, IMPLEMENTING THE EPA'S RULES COULD AFFECT
3 THE COST, RELIABILITY, AND FUTURE IMPROVEMENT OF ELECTRIC SERVICE
4 WITHIN THE STATE OF COLORADO, AND THE DEPARTMENT, AS THE AGENCY
5 RESPONSIBLE FOR DEVELOPING THE STATE PLAN, SHOULD BEAR THE FISCAL
6 IMPACT OF A STATE PLAN THAT EFFECTS A RATE INCREASE;

7 (b) DETERMINES THAT ELECTRIC UTILITY RATEPAYERS SHOULD BE
8 PROTECTED FROM THESE ADVERSE IMPACTS; AND

9 (c) DECLARES THAT THE GENERAL ASSEMBLY'S INTENT IN
10 ENACTING THIS PART 2 IS TO AUTHORIZE A PROGRAM THAT ALLOWS
11 ELECTRIC UTILITIES TO RECOVER THEIR COSTS ATTRIBUTABLE TO
12 COMPLIANCE WITH THE FEDERAL EMISSION REGULATIONS WITHOUT
13 IMPOSING THOSE COSTS ON ELECTRIC UTILITY RATEPAYERS.

14 **40-8.7-203. Definitions.** AS USED IN THIS PART 2, UNLESS THE
15 CONTEXT OTHERWISE REQUIRES:

16 (1) "COMMISSION" MEANS THE PUBLIC UTILITIES COMMISSION.

17 (2) "DEPARTMENT" MEANS THE DEPARTMENT OF PUBLIC HEALTH
18 AND ENVIRONMENT.

19 (3) "EPA" MEANS THE FEDERAL ENVIRONMENTAL PROTECTION
20 AGENCY.

21 (4) "FEDERAL EMISSION REGULATIONS" MEANS ANY FINAL RULES,
22 REGULATIONS, GUIDELINES, OR OTHER REQUIREMENTS THAT THE EPA
23 MAY ADOPT FOR REGULATING CARBON DIOXIDE EMISSIONS FROM COVERED
24 ELECTRIC GENERATING UNITS UNDER SECTION 111 (d) OF THE FEDERAL
25 "CLEAN AIR ACT", 42 U.S.C. SEC. 7401 ET SEQ., INCLUDING SPECIFICALLY
26 40 CFR PART 60 SUBPART TTTT, ALSO KNOWN AS THE CLEAN POWER
27 PLAN.

1 (5) "FEDERAL PLAN" MEANS A PLAN TO ESTABLISH AND ENFORCE
2 IN COLORADO THE FEDERAL EMISSION REGULATIONS THAT THE EPA MAY
3 ADOPT TO IMPLEMENT COLORADO'S OBLIGATIONS UNDER THE
4 REGULATIONS.

5 (6) "FUND" MEANS THE RATEPAYER PROTECTION FUND CREATED
6 IN SECTION 24-38.5-110, C.R.S.

7 (7) "STATE PLAN" MEANS A PLAN, WHETHER OR NOT
8 INCORPORATED INTO THE STATE IMPLEMENTATION PLAN OR ADOPTED AS
9 A STATE-ONLY RULE, TO ESTABLISH AND ENFORCE IN COLORADO THE
10 FEDERAL EMISSION REGULATIONS THAT THE AIR QUALITY CONTROL
11 COMMISSION MAY ADOPT TO IMPLEMENT COLORADO'S OBLIGATIONS
12 UNDER THE REGULATIONS.

13 **40-8.7-204. Ratepayer protection.** (1) ON OR BEFORE THE
14 EFFECTIVE DATE OF ANY FEDERAL OR STATE PLAN, THE COMMISSION,
15 AFTER CONSULTATION WITH AFFECTED UTILITIES AND AFTER HOLDING A
16 HEARING PURSUANT TO ARTICLE 6 OF THIS TITLE, SHALL DEVELOP A
17 PROGRAM TO IMPLEMENT THIS PART 2, INCLUDING:

18 (a) GUIDANCE FOR UTILITIES REGARDING THE ALLOCATION OF
19 COMPLIANCE COSTS TO CUSTOMERS;

20 (b) PROCEDURES FOR THE QUARTERLY REMITTANCE TO UTILITIES
21 OF MONEY FROM THE FUND; AND

22 (c) AN ANNUAL REPORT TO THE JOINT BUDGET COMMITTEE OF THE
23 GENERAL ASSEMBLY BY NOVEMBER 1 OF EACH YEAR THAT IDENTIFIES THE
24 AMOUNT OF MONEY THAT IS PROJECTED TO BE REPORTED TO THE
25 COMMISSION IN THE SUCCEEDING STATE FISCAL YEAR PURSUANT TO
26 PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION.

27 (2) EACH UTILITY THAT, DUE TO ITS COMPLIANCE WITH THE

1 FEDERAL EMISSION REGULATIONS, INCURS INCREASED COSTS THAT THE
2 UTILITY IS ENTITLED TO RECOVER IN FULL OR IN PART SHALL:

3 (a) SEPARATELY STATE ON EACH CUSTOMER'S REMITTANCE
4 DEVICE:

5 (I) THE AMOUNT OF SUCH COSTS THAT ARE ALLOCATED TO THE
6 CUSTOMER DURING THE BILLING PERIOD COVERED BY THE REMITTANCE
7 DEVICE; AND

8 (II) THAT THE CUSTOMER'S ALLOCATION IS PAID THROUGH THE
9 RATEPAYER PROTECTION PROGRAM CREATED BY THIS PART 2;

10 (b) REPORT THE AMOUNT TO THE COMMISSION; AND

11 (c) NOT CHARGE THE AMOUNT TO THE CUSTOMER.

12 (3) THE COMMISSION SHALL QUARTERLY REMIT FROM THE FUND TO
13 EACH UTILITY THAT REPORTS AN AMOUNT TO THE COMMISSION PURSUANT
14 TO PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION THE TOTAL OF
15 SUCH AMOUNTS REPORTED BY THAT UTILITY DURING THE PREVIOUS
16 QUARTER. IF THE AVAILABLE BALANCE IN THE FUND IS INSUFFICIENT TO
17 FULLY REMIT ALL AMOUNTS, THE STATE TREASURER SHALL TRANSFER
18 FROM THE GENERAL FUND TO THE FUND ENOUGH MONEY TO FULLY REMIT
19 ALL AMOUNTS.

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21 **40-8.7-205. Ratepayer impact analysis - appropriation.**

22 (1) THE COMMISSION SHALL CONDUCT AND PERIODICALLY UPDATE,
23 INCLUDING DURING ANY UTILITY RATE-MAKING HEARING AND
24 INTEGRATED RESOURCE PLANNING PROCEEDING, AN ECONOMIC ANALYSIS
25 OF UTILITIES' COSTS OF COMPLIANCE WITH THE FEDERAL EMISSION
26 REGULATIONS FOR THE PURPOSE OF MAKING THE ANNUAL REPORT TO THE
27 JOINT BUDGET COMMITTEE PURSUANT TO SECTION 40-8.7-204 (1) (c). THE

1 COMMISSION SHALL MAKE SPECIFIC FINDINGS REGARDING ITS
2 CONCLUSIONS ABOUT THE COSTS OF COMPLIANCE AND WHETHER ITS
3 CURRENT RATEPAYER IMPACT ANALYSIS IS ACCURATE OR MUST BE
4 ADJUSTED.

5 (2) THE GENERAL ASSEMBLY SHALL ANNUALLY TRANSFER TO THE
6 FUND SUFFICIENT MONEY FROM THE GENERAL FUND TO ENABLE THE
7 COMMISSION TO MAKE THE REMITTANCES REQUIRED BY THIS SECTION.

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9 SECTION 2. In Colorado Revised Statutes, add 24-38.5-110 as
10 follows:

11 24-38.5-110. Ratepayer protection fund. (1) THE RATEPAYER
12 PROTECTION FUND IS HEREBY CREATED IN THE STATE TREASURY. THE
13 FUND CONSISTS OF MONEY APPROPRIATED TO THE FUND PURSUANT TO
14 SECTION 40-8.7-205 (2), C.R.S. THE STATE TREASURER SHALL CREDIT ALL
15 INTEREST AND INCOME DERIVED FROM THE DEPOSIT AND INVESTMENT OF
16 MONEY IN THE FUND TO THE FUND.

17 (2) THE PUBLIC UTILITIES COMMISSION SHALL USE THE FUND ONLY
18 TO:

19 (a) REMIT TO UTILITIES THE AMOUNTS REPORTED TO THE
20 COMMISSION AS SPECIFIED IN SECTION 40-8.7-204 (1) (b), C.R.S.; AND

21 (b) COVER ITS DIRECT COSTS IN ADMINISTERING THE RATEPAYER
22 PROTECTION PROGRAM CREATED IN PART 2 OF ARTICLE 8.7 OF TITLE 40,
23 C.R.S., WHICH MUST NOT EXCEED THREE PERCENT OF THE AVERAGE
24 ANNUAL BALANCE OF THE FUND.

25 (3) MONEY IN THE FUND IS CONTINUOUSLY APPROPRIATED TO THE
26 COMMISSION FOR THESE PURPOSES.

27 **SECTION 3.** In Colorado Revised Statutes, **amend** 40-8.7-101

1 as follows:

2 **40-8.7-101. Short title.** THE SHORT TITLE OF this ~~article shall be~~
3 ~~known and may be cited as~~ PART 1 IS the "Low-income Energy Assistance
4 Act".

5 **SECTION 4.** In Colorado Revised Statutes, 40-8.7-103, **amend**
6 introductory portion and (1) as follows:

7 **40-8.7-103. Definitions.** As used in this ~~article~~ PART 1, unless the
8 context otherwise requires:

9 (1) "Alternative energy assistance program" means a program
10 operated by a municipally owned electric and gas utility or cooperative
11 electric association that is not part of the energy assistance program
12 established pursuant to this ~~article~~ PART 1.

13 **SECTION 5.** In Colorado Revised Statutes, 40-8.7-104, **amend**
14 (1) and (2) as follows:

15 **40-8.7-104. Energy assistance program - creation - energy**
16 **assistance charge - rules.** (1) There is hereby created the low-income
17 energy assistance program to collect and disburse an optional energy
18 assistance contribution in Colorado in accordance with this ~~article~~ PART
19 1.

20 (2) Except as otherwise provided in this ~~article~~ PART 1, every
21 utility doing business in Colorado shall participate in the energy
22 assistance program and shall provide the opportunity for utility customers
23 to make an optional energy assistance contribution on the monthly
24 remittance device on their utility billing statement beginning September
25 1, 2006. Each utility shall provide the opportunity for customers to donate
26 the optional energy assistance contribution as provided in section
27 40-8.7-105 (2).

1 **SECTION 6.** In Colorado Revised Statutes, 40-8.7-106, **amend**
2 (1) introductory portion, (2), and (3) (a) as follows:

3 **40-8.7-106. Municipally owned gas, electric, and gas and**
4 **electric utilities and cooperative electric associations.** (1) If a
5 municipally owned gas, electric, or gas and electric utility or a
6 cooperative electric association operates an alternative energy assistance
7 program to support its low-income customers with their home energy
8 needs, then the governing body of the municipally owned gas, electric, or
9 gas and electric utility or cooperative electric association may self-certify
10 its alternative energy assistance program and, upon self-certification, shall
11 have no obligations under this ~~article~~ PART 1. The municipally owned
12 utility or cooperative electric association shall submit a statement to the
13 organization that such utility or cooperative electric association has an
14 alternative energy assistance program. In order for such utility or
15 cooperative electric association to self-certify, such alternative energy
16 assistance program shall meet the following criteria:

17 (2) If the governing body of a municipally owned gas, electric, or
18 gas and electric utility or a cooperative electric association determines
19 that the service area of such utility or cooperative has a limited number
20 of people who qualify for energy assistance, such utility or cooperative
21 electric association may be exempt from the obligations of this ~~article~~
22 PART 1.

23 (3) If a municipally owned gas, electric, or gas and electric utility
24 or cooperative electric association has not self-certified an alternative
25 energy assistance program pursuant to subsection (1) of this section or has
26 not exempted itself pursuant to subsection (2) of this section, such utility
27 or cooperative electric association shall collect an optional energy

1 assistance charge from its customers as provided in section 40-8.7-104 (1)
2 and (2) or pursuant to a procedure approved by the governing municipal
3 utility or cooperative, which procedure shall be designed to notify all
4 customers at least twice each year of the option to contribute by means of
5 a monthly energy assistance charge and shall provide a convenient means
6 for customers to exercise that option. In such circumstances, the
7 governing body of such utility or cooperative shall determine the
8 disposition and delivery of the optional energy assistance charge that it
9 collects on the following basis:

10 (a) The governing body may elect to deliver the optional charge
11 that it collects to the organization for distribution in accordance with this
12 ~~article~~ PART 1.

13 **SECTION 7.** In Colorado Revised Statutes, 40-8.7-107, **amend**
14 (1) introductory portion and (3) as follows:

15 **40-8.7-107. Disposition of money.** (1) Each gas and electric
16 utility shall transfer the ~~moneys~~ MONEY from the energy assistance
17 contributions collected under this ~~article~~ PART 1 to the organization on the
18 following schedule:

19 (3) The organization shall pay the public utilities commission
20 from the ~~moneys~~ MONEY transferred to the organization pursuant to
21 subsection (1) of this section for any administrative costs incurred
22 pursuant to this ~~article~~ PART 1.

23 **SECTION 8.** In Colorado Revised Statutes, 40-8.7-108, **amend**
24 (1) and (3) as follows:

25 **40-8.7-108. Energy outreach Colorado - administration of the**
26 **energy assistance charge.** (1) The organization shall hold and
27 administer all ~~moneys~~ MONEY collected pursuant to this ~~article~~ PART 1

1 delivered to it by the utilities pursuant to section 40-8.7-107 in a
2 separately identifiable account, which shall be restricted to the purposes
3 set forth in this ~~article~~ PART 1. The organization shall maintain its books
4 and records pertaining to the energy assistance contributions in
5 accordance with generally accepted accounting principles and, in
6 addition, shall maintain records adequate to identify the ~~moneys~~ MONEY
7 collected by each utility. If the organization commingles the ~~moneys~~
8 MONEY collected and delivered with other assets of the organization for
9 investment purposes, the organization shall maintain accurate accounts
10 of the investment ~~moneys~~ MONEY and shall credit or charge a pro rata
11 portion of all investment earnings, gains, or losses to the account that
12 holds the energy assistance charges.

13 (3) The organization shall, on an annual basis, develop a budget
14 for the energy assistance program to determine the allocation of the
15 energy assistance contributions collected under this ~~article~~ PART 1.

16 **SECTION 9.** In Colorado Revised Statutes, 40-8.5-103.5, **amend**
17 (4) (a) introductory portion as follows:

18 **40-8.5-103.5. Commission created - duties.** (4) (a) No later than
19 December 15, 2008, the commission shall make recommendations to the
20 governor, the speaker of the house of representatives, and the president
21 of the senate regarding any necessary legislative changes to improve the
22 effectiveness and efficiency of the state's low-income energy assistance
23 services provided pursuant to PART 1 OF article 8.7 of this title and section
24 26-1-109, C.R.S. With assistance and consultation from representatives
25 from two counties chosen by the executive director, or his or her
26 designee, of Colorado counties, incorporated, or its successor
27 organization, the commission shall assess the strengths and weaknesses

1 of the current service delivery systems within the state and shall review
2 effective service delivery systems and models of other states that may be
3 appropriate for utilization in this state. The commission's
4 recommendations shall build upon the positive aspects of the current
5 service delivery system, including, but not limited to, the effective and
6 efficient management of current funding to maximize assistance to the
7 state's low-income population, infrastructure that is already in place to
8 efficiently distribute benefits to eligible clients in a timely manner, and
9 coordination already established between energy conservation measures
10 and direct assistance. The commission's recommendations shall include,
11 but shall not be limited to:

12 **SECTION 10. Applicability.** This act applies to conduct
13 occurring on or after the effective date of this act.

14 **SECTION 11. Safety clause.** The general assembly hereby finds,
15 determines, and declares that this act is necessary for the immediate
16 preservation of the public peace, health, and safety.