

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 18-1189.01 Duane Gall x4335

SENATE BILL 18-246

SENATE SPONSORSHIP

Cooke and Scott,

HOUSE SPONSORSHIP

(None),

Senate Committees

State, Veterans, & Military Affairs

House Committees

A BILL FOR AN ACT

101 CONCERNING MEASURES TO REDUCE THE COST OF COMPLIANCE WITH
102 COLORADO'S RENEWABLE ENERGY STANDARD, AND, IN
103 CONNECTION THEREWITH, REPEALING RECENT INCREASES IN
104 THE RENEWABLE COMPONENT FOR COOPERATIVE ELECTRIC
105 ASSOCIATIONS AND EXPANDING THE TYPES OF
106 HYDROELECTRICITY THAT QUALIFY AS RENEWABLE ENERGY
107 RESOURCES.

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://leg.colorado.gov>.)

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

The bill modifies and repeals selected provisions of recent legislation (S.B. 13-252) in the following areas:

- ! S.B. 13-252's increase in the renewable portfolio standard for cooperative electric associations serving 100,000 or more meters, which for 2020 had been increased from 10% to 20%, returns to 10%;
- ! S.B. 13-252's expansion of the definition of "eligible energy resources" is curtailed by eliminating synthetic gas produced by pyrolysis of municipal waste, but the inclusion of coal mine methane is retained, subject to a determination by the public utilities commission that the coal mine methane is greenhouse gas neutral, and large and preexisting hydroelectric generation facilities are added;
- ! A multiplier in the formula for calculation of renewable energy credits used to accelerate the construction of new solar generation, which expired in 2015 under S.B. 13-252, is reinstated;
- ! The maximum permissible retail rate impact of compliance with the standards, which S.B. 13-252 increased from 1% to 2% for cooperative electric associations, returns to 1%;
- ! S.B. 13-252's additional carve-outs for distributed generation are eliminated; and
- ! Reporting requirements and portfolio standards for cooperative electric associations that sell electricity wholesale (qualifying wholesale utilities) are eliminated.

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

2 **SECTION 1.** In Colorado Revised Statutes, 40-2-124, **amend** (1)
3 introductory portion, (1)(a), (1)(c)(II)(A), (1)(c)(III), (1)(c)(VII)(A),
4 (1)(g)(I)(A), and (1)(g)(IV)(A); and **repeal** (1)(c)(V.5), (1)(c)(X), and (8)
5 as follows:

6 **40-2-124. Renewable energy standards - qualifying retail and**
7 **wholesale utilities - definitions - net metering - legislative declaration**
8 **- rules.** (1) Each provider of retail electric service in the state of
9 Colorado, other than municipally owned utilities that serve forty thousand
10 customers or fewer, is a qualifying retail utility. Each qualifying retail

1 utility, with the exception of cooperative electric associations that have
2 voted to exempt themselves from commission jurisdiction pursuant to
3 section 40-9.5-104 and municipally owned utilities, is subject to the rules
4 established under this ~~article~~ ARTICLE 2 by the commission. No additional
5 regulatory authority is provided to the commission other than that
6 specifically contained in this section. In accordance with article 4 of title
7 24, ~~C.R.S.~~, the commission shall revise or clarify existing rules to
8 establish the following:

9 (a) Definitions of eligible energy resources that can be used to
10 meet the standards. "Eligible energy resources" means recycled energy
11 and renewable energy resources. In addition, resources using coal mine
12 methane ~~and synthetic gas produced by pyrolysis of municipal solid waste~~
13 are eligible energy resources if the commission determines that the
14 electricity generated by those resources is greenhouse gas neutral. The
15 commission shall determine, following an evidentiary hearing, the extent
16 to which such electric generation technologies utilized in an optional
17 pricing program may be used to comply with this standard. A fuel cell
18 using hydrogen derived from an eligible energy resource is also an
19 eligible electric generation technology. Fossil and nuclear fuels and their
20 derivatives are not eligible energy resources. For purposes of this section:

21 (I) "Biomass" means:

22 (A) Nontoxic plant matter consisting of agricultural crops or their
23 ~~byproducts~~ BY-PRODUCTS, urban wood waste, mill residue, slash, or
24 brush;

25 (B) Animal wastes and products of animal wastes; or

26 (C) Methane produced at landfills or as a by-product of the
27 treatment of wastewater residuals.

1 (II) "Coal mine methane" means methane captured from active
2 and inactive coal mines where the methane is escaping ~~to~~ INTO the
3 atmosphere. In the case of methane escaping from active mines, only
4 methane vented in the normal course of mine operations that is naturally
5 escaping ~~to~~ INTO the atmosphere is coal mine methane for purposes of
6 eligibility under this section.

7 (III) "Distributed renewable electric generation" or "distributed
8 generation" means:

9 (A) Retail distributed generation; and

10 (B) Wholesale distributed generation.

11 (IV) "Greenhouse gas neutral", with respect to electricity
12 generated by a coal mine methane ~~or synthetic gas~~ facility, means that the
13 volume of greenhouse gases emitted into the atmosphere from the
14 conversion of fuel to electricity is no greater than the volume of
15 greenhouse gases that would have been emitted into the atmosphere over
16 the next five years, beginning with the planned date of operation of the
17 facility, if the fuel had not been converted to electricity, where
18 greenhouse gases are measured in terms of carbon dioxide equivalent.

19 ~~(V) "Pyrolysis" means the thermochemical decomposition of~~
20 ~~material at elevated temperatures without the participation of oxygen.~~

21 ~~(VI)~~ (V) "Recycled energy" means energy produced by a
22 generation unit with a nameplate capacity of not more than fifteen
23 megawatts that converts the otherwise lost energy from the heat from
24 exhaust stacks or pipes to electricity and that does not combust additional
25 fossil fuel. "Recycled energy" does not include energy produced by any
26 system that uses energy, lost or otherwise, from a process whose primary
27 purpose is the generation of electricity, including, without limitation, any

1 process involving engine-driven generation or pumped hydroelectricity
2 generation.

3 ~~(VH)~~ (VI) "Renewable energy resources" means solar, wind,
4 geothermal, biomass, ~~new hydroelectricity with a nameplate rating of ten~~
5 ~~megawatts or less, and hydroelectricity. in existence on January 1, 2005,~~
6 ~~with a nameplate rating of thirty megawatts or less.~~

7 ~~(VH)~~ (VII) "Retail distributed generation" means a renewable
8 energy resource that is located on the site of a customer's facilities and is
9 interconnected on the customer's side of the utility meter. In addition,
10 retail distributed generation ~~shall~~ MUST provide electric energy primarily
11 to serve the customer's load and ~~shall~~ MUST be sized to supply no more
12 than one hundred twenty percent of the average annual consumption of
13 electricity by the customer at that site. For purposes of this ~~subparagraph~~
14 ~~(VH)~~ SUBSECTION (1)(a)(VII), the customer's "site" includes all
15 contiguous property owned or leased by the customer without regard to
16 interruptions in contiguity caused by easements, public thoroughfares,
17 transportation rights-of-way, or utility rights-of-way.

18 ~~(HX)~~ (VIII) "Wholesale distributed generation" means a renewable
19 energy resource with a nameplate rating of thirty megawatts or less and
20 that does not qualify as retail distributed generation.

21 (c) Electric resource standards:

22 (II) (A) Of the amounts of distributed generation in
23 ~~sub-subparagraphs (C), (D), and (E) of subparagraph (I),~~
24 ~~sub-subparagraph (D) of subparagraph (V), and subparagraph (V.5) of~~
25 ~~this paragraph (c) SUBSECTIONS (1)(c)(I)(C), (1)(c)(I)(D), AND (1)(c)(I)(E)~~
26 OF THIS SECTION, at least one-half must be derived from retail distributed
27 generation. ~~except that this sub-subparagraph (A) does not apply to a~~

1 qualifying retail utility that is a municipal utility.

2 (III) Each kilowatt-hour of electricity generated from eligible
3 energy resources, other than retail distributed generation, ~~and other than~~
4 ~~eligible energy resources beginning operation on or after January 1, 2015,~~
5 counts as one and one-fourth kilowatt-hours for the purposes of
6 compliance with this standard.

7 (V.5) ~~Notwithstanding any other provision of law, each~~
8 ~~cooperative electric association that provides electricity at retail to its~~
9 ~~customers and serves one hundred thousand or more meters shall generate~~
10 ~~or cause to be generated at least twenty percent of the energy it provides~~
11 ~~to its customers from eligible energy resources in the years 2020 and~~
12 ~~thereafter.~~

13 (VII) (A) For purposes of compliance with the standards set forth
14 in ~~subparagraphs (V) and (V.5) of this paragraph (c)~~ SUBSECTION
15 (1)(c)(V) OF THIS SECTION, each kilowatt-hour of renewable electricity
16 generated from solar electric generation technologies ~~shall be counted~~
17 COUNTS as three kilowatt-hours.

18 (X) ~~Of the minimum amounts of electricity required to be~~
19 ~~generated or caused to be generated by qualifying retail utilities in~~
20 ~~accordance with subparagraph (V.5) and sub-subparagraph (D) of~~
21 ~~subparagraph (V) of this paragraph (c), one-tenth, or one percent of total~~
22 ~~retail electricity sales, must be from distributed generation; except that:~~

23 (A) ~~For a cooperative electric association that is a qualifying retail~~
24 ~~utility and that provides service to fewer than ten thousand meters, the~~
25 ~~distributed generation component may be three-quarters of one percent of~~
26 ~~total retail electricity sales; and~~

27 (B) ~~This subparagraph (X) does not apply to a qualifying retail~~

1 utility that is a municipal utility.

2 (g) Retail rate impact rule:

3 (I) (A) Except as otherwise provided in ~~subparagraph (IV) of this~~
4 ~~paragraph (g)~~ SUBSECTION (1)(g)(IV) OF THIS SECTION, for each
5 qualifying utility, the commission shall establish a maximum retail rate
6 impact for this section for compliance with the electric resource standards
7 of two percent of the total electric bill annually for each customer. The
8 retail rate impact shall be determined net of new alternative sources of
9 electricity supply from noneligible energy resources that are reasonably
10 available at the time of the determination.

11 (IV) (A) For cooperative electric associations, the maximum retail
12 rate impact for this section is ~~two~~ ONE percent of the total electric bill
13 annually for each customer.

14 (8) ~~Qualifying wholesale utilities - definition - electric resource~~
15 ~~standard - tradable credits - reports.~~ (a) ~~Definition.~~ Each generation
16 and transmission cooperative electric association that provides wholesale
17 electric service directly to Colorado electric associations that are its
18 members is a qualifying wholesale utility. Commission rules adopted
19 under subsections (1) to (7) of this section do not apply directly to
20 qualifying wholesale utilities, and this subsection (8) does not provide the
21 commission with additional regulatory authority over qualifying
22 wholesale utilities.

23 (b) ~~Electric resource standard.~~ Notwithstanding any other
24 provision of law, each qualifying wholesale utility shall generate, or cause
25 to be generated, at least twenty percent of the energy it provides to its
26 Colorado members at wholesale from eligible energy resources in the year
27 2020 and thereafter. If, and to the extent that, the purchase of energy

1 generated from eligible energy resources by a Colorado member from a
2 qualifying wholesale utility would cause an increase in rates for the
3 Colorado member that exceeds the retail rate impact limitation in
4 sub-subparagraph (A) of subparagraph (IV) of paragraph (g) of
5 subsection (1) of this section, the obligation imposed on the qualifying
6 wholesale utility is reduced by the amount of such energy necessary to
7 enable the Colorado member to comply with the rate impact limitation.

8 (c) A qualifying wholesale utility may count the energy generated
9 or caused to be generated from eligible energy resources by its Colorado
10 members or by the qualifying wholesale utility on behalf of its Colorado
11 members pursuant to subparagraph (V) of paragraph (c) of subsection (1)
12 of this section toward compliance with the energy resource standard
13 established in this subsection (8):

14 (d) Preferences for certain eligible energy resources and the limit
15 on their applicability established in subparagraph (VIII) of paragraph (c)
16 of subsection (1) of this section may be used by a qualifying wholesale
17 utility in meeting the energy resource standard established in this
18 subsection (8):

19 (e) **Tradable renewable energy credits.** A qualifying wholesale
20 utility shall use a system of tradable renewable energy credits to comply
21 with the electric resource standard established in this subsection (8);
22 except that a renewable energy credit acquired under this subsection (8)
23 expires at the end of the fifth calendar year following the calendar year
24 in which it was generated.

25 (f) In implementing the electric resource standard established in
26 this subsection (8), a qualifying wholesale utility shall assure that the
27 costs, both direct and indirect, attributable to compliance with the

1 ~~standard are recovered from its Colorado members. The qualifying~~
2 ~~wholesale utility shall employ such cost allocation methods as are~~
3 ~~required to assure that any direct or indirect costs attributable to~~
4 ~~compliance with the standard established in this subsection (8) do not~~
5 ~~affect the cost or price of the qualifying wholesale utility's sales to~~
6 ~~customers outside of Colorado.~~

7 ~~(g) **Reports.** Each qualifying wholesale utility shall submit an~~
8 ~~annual report to the commission no later than June 1, 2014, and June 1 of~~
9 ~~each year thereafter. In addition, the qualifying wholesale utility shall post~~
10 ~~an electronic copy of each report on its website and shall provide the~~
11 ~~commission with an electronic copy of the report. In each report, the~~
12 ~~qualifying wholesale utility shall:~~

13 ~~(I) Describe the steps it took during the immediately preceding~~
14 ~~twelve months to comply with the electric resource standard established~~
15 ~~in this subsection (8);~~

16 ~~(II) In the years before 2020, describe whether it is making~~
17 ~~sufficient progress toward meeting the standard in 2020 or is likely to~~
18 ~~meet the 2020 standard early. If it is not making sufficient progress~~
19 ~~toward meeting the standard in 2020, it shall explain why and shall~~
20 ~~indicate the steps it intends to take to increase the pace of progress; and~~

21 ~~(III) In 2020 and thereafter, describe whether it has achieved~~
22 ~~compliance with the electric resource standard established in this~~
23 ~~subsection (8) and whether it anticipates continuing to do so. If it has not~~
24 ~~achieved such compliance or does not anticipate continuing to do so, it~~
25 ~~shall explain why and shall indicate the steps it intends to take to meet the~~
26 ~~standard and by what date.~~

27 ~~(h) Nothing in this subsection (8) amends or waives any provision~~

1 of subsections (1) to (7) of this section.

2 **SECTION 2.** In Colorado Revised Statutes, 40-1-103.3, **amend**
3 (4)(b)(I) as follows:

4 **40-1-103.3. Alternative fuel vehicles - definition.** (4) The owner
5 or operator of a facility that generates electricity for use in alternative fuel
6 vehicle charging or fueling facilities is not subject to regulation as a
7 public utility, if:

8 (b) The electricity is generated from a renewable resource that:

9 (I) Qualifies as "retail distributed generation" as defined in section
10 40-2-124 ~~(1)(a)(VIII)~~ **(I)(a)(VII)**, if located on the system of an entity
11 subject to the requirements of section 40-2-124. The electric power
12 requirements for the property pursuant to section 40-2-124 (1) include the
13 demand for existing or proposed alternative fuel vehicle charging or
14 fueling facilities in addition to buildings and other improvements.

15 **SECTION 3. Act subject to petition - effective date.** This act
16 takes effect at 12:01 a.m. on the day following the expiration of the
17 ninety-day period after final adjournment of the general assembly (August
18 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a
19 referendum petition is filed pursuant to section 1 (3) of article V of the
20 state constitution against this act or an item, section, or part of this act
21 within such period, then the act, item, section, or part will not take effect
22 unless approved by the people at the general election to be held in
23 November 2018 and, in such case, will take effect on the date of the
24 official declaration of the vote thereon by the governor.