

**First Regular Session  
Seventy-fourth General Assembly  
STATE OF COLORADO**

**REVISED**

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

LLS NO. 23-0186.01 Sarah Lozano x3858

**HOUSE BILL 23-1039**

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**HOUSE SPONSORSHIP**

**Bird, Amabile, Dickson, English, Joseph, Kipp, Lindsay, McCluskie, Ricks, Story, Velasco**

**SENATE SPONSORSHIP**

**Rodriguez and Winter F.,**

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**House Committees**

Energy & Environment  
Appropriations

**Senate Committees**

Transportation & Energy  
Appropriations

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**A BILL FOR AN ACT**

101      **CONCERNING A REQUIREMENT THAT ELECTRIC LOAD-SERVING**  
102                    **ENTITIES PERIODICALLY REPORT ABOUT THE ADEQUACY OF**  
103                    **THEIR ELECTRIC RESOURCES, AND, IN CONNECTION THEREWITH,**  
104                    **MAKING AN APPROPRIATION.**

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**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>.)*

On or before April 1, 2024, and on or before April 1 of each year thereafter, an entity with an obligation to provide retail or wholesale electricity services in the state (load-serving entity) must file with the

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

SENATE  
2nd Reading Unamended  
April 4, 2023

HOUSE  
3rd Reading Unamended  
March 8, 2023

HOUSE  
Amended 2nd Reading  
March 7, 2023

HOUSE  
Amended 2nd Reading  
March 3, 2023

entity responsible for approving the resource plans or rates of the load-serving entity (regulatory oversight entity) an annual report detailing the adequacy of its electric resources (resource adequacy annual report).

On or before April 30, 2024, and on or before April 30 of each year thereafter, each regulatory oversight entity must submit any resource adequacy annual reports to the Colorado energy office. On or before July 1, 2024, and on or before July 1 of each year thereafter, the Colorado energy office must aggregate the resource adequacy annual reports received from the regulatory oversight entities into a statewide resource adequacy aggregate annual report.

If a load-serving entity participates in an active organized wholesale market, which is a regional transmission organization or an independent system operator established for the purpose of coordinating and managing the dispatch and transmission of electricity on a multistate or regional basis, or, if the load-serving entity is participating in a voluntary regional resource adequacy reporting program, the load-serving entity's obligation to provide a resource adequacy annual report terminates on the date that the load-serving entity begins participating in an organized wholesale market or in the year following the submission of a compliance report required by the program.

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

**SECTION 1.** In Colorado Revised Statutes, **add** article 43 to title 40 as follows:

**ARTICLE 43**

**Electric Resource Adequacy**

**40-43-101. Short title.** THE SHORT TITLE OF THIS ARTICLE 43 IS THE "COLORADO RESOURCE ADEQUACY ACT OF 2023".

**40-43-102. Legislative declaration.** (1) THE GENERAL ASSEMBLY FINDS THAT:

(a) MAINTAINING ELECTRIC RELIABILITY AND RESOURCE ADEQUACY IN THE TRANSITION TO CLEAN ENERGY IS OF GREAT IMPORTANCE TO COLORADO AND ITS ELECTRICITY CUSTOMERS;

(b) THE DEVELOPMENT OF A COMPREHENSIVE RESOURCE ADEQUACY REPORTING STRUCTURE FOR ALL WHOLESALE AND RETAIL

1 LOAD-SERVING ENTITIES WILL HELP POSITION COLORADO UTILITIES FOR  
2 ENTRY INTO AN OPTIMAL ORGANIZED WHOLESALE MARKET, AS DEFINED IN  
3 SECTION 40-5-108 (1)(a), THAT WILL INCREASE THE EFFICIENT AND  
4 COST-EFFECTIVE USE OF CAPACITY RESOURCES AND ENABLE RESOURCE  
5 ADEQUACY ACROSS A BROADER FOOTPRINT THROUGHOUT THE STATE;

6 (c) THE NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION  
7 HAS IDENTIFIED RESOURCE ADEQUACY AND ENERGY RISKS IN THE  
8 WESTERN INTERCONNECTION OF THE ELECTRIC POWER GRID; AND

9 (d) COLORADO CAN BEGIN TO ADDRESS THESE RISKS BY ADDING  
10 RESOURCE ADEQUACY REPORTING REQUIREMENTS FOR ALL LOAD-SERVING  
11 ENTITIES TO HELP MEASURE THE SUFFICIENCY OF RELIABLE AND RESILIENT  
12 ELECTRIC SERVICE TO ALL COLORADO ELECTRICITY CUSTOMERS.

13 (2) THE GENERAL ASSEMBLY DECLARES THAT ALL LOAD-SERVING  
14 ENTITIES IN THE STATE SHOULD BE REQUIRED TO PROVIDE RESOURCE  
15 ADEQUACY ANNUAL REPORTS TO THE APPLICABLE REGULATORY  
16 OVERSIGHT ENTITY.

17 **40-43-103. Definitions.** AS USED IN THIS ARTICLE 43, UNLESS THE  
18 CONTEXT OTHERWISE REQUIRES:

19 (1) "ACCREDITED CAPACITY" MEANS THE CAPACITY VALUE GIVEN  
20 TO A PARTICULAR RESOURCE BASED ON NAMEPLATE CAPACITY AND THE  
21 EFFECTIVE LOAD-CARRYING CAPABILITY THAT IS APPLICABLE TO THE  
22 RESOURCE, AS IDENTIFIED AND EXPLAINED BY THE LOAD-SERVING ENTITY  
23 IN ITS RESOURCE ADEQUACY ANNUAL REPORT.

24 (2) "COLORADO ENERGY OFFICE" MEANS THE COLORADO ENERGY  
25 OFFICE CREATED IN SECTION 24-38.5-101 (1).

26 (3) "COMMISSION" MEANS THE PUBLIC UTILITIES COMMISSION  
27 CREATED IN SECTION 40-2-101 (1).

1 (4) (a) "LOAD-SERVING ENTITY" MEANS AN ENTITY WITH A  
2 LOAD-SERVING OBLIGATION.

3 (b) "LOAD-SERVING ENTITY" INCLUDES:

4 (I) A COOPERATIVE ELECTRIC ASSOCIATION, AS DEFINED IN  
5 SECTION 40-9.5-102 (1), THAT HAS VOTED TO EXEMPT ITSELF FROM  
6 COMMISSION JURISDICTION PURSUANT TO ARTICLE 9.5 OF THIS TITLE 40;

7 (II) A JOINT ACTION AGENCY ESTABLISHED PURSUANT TO LAW;  
8 AND

9 (III) A MUNICIPAL UTILITY.

10 (c) "LOAD-SERVING ENTITY" DOES NOT INCLUDE A RENEWABLE  
11 ENERGY GENERATION FACILITY EXEMPT FROM REGULATION AS A PUBLIC  
12 UTILITY PURSUANT TO SECTION 40-1-103 (2)(c).

13 (5) "LOAD-SERVING OBLIGATION" MEANS AN OBLIGATION TO:

14 (a) PROVIDE RETAIL ENERGY, CAPACITY, OR ANCILLARY SERVICES  
15 TO SERVE ELECTRIC CUSTOMER LOAD; OR

16 (b) PROVIDE WHOLESALE ELECTRICITY TO AN ENTITY OBLIGATED  
17 TO PROVIDE RETAIL ENERGY, CAPACITY, OR ANCILLARY SERVICES TO  
18 SERVE ELECTRIC CUSTOMER LOAD.

19 (6) (a) "PLANNING RESERVE MARGIN" MEANS THE PROJECTED  
20 AMOUNT OF ADDITIONAL GENERATING CAPACITY AVAILABLE ON AN  
21 ANNUAL BASIS, ABOVE FORECASTED WEATHER-NORMALIZED LOADS, TO  
22 COVER FUTURE UNCERTAINTIES SUCH AS TEMPERATURE VARIATIONS AND  
23 RESOURCE OUTAGES.

24 (b) "PLANNING RESERVE MARGIN" IS REFLECTED AS A FRACTION  
25 THAT IS CALCULATED BY SUBTRACTING FIRM PEAK DEMAND FROM THE  
26 SUM OF ACCREDITED CAPACITY AND DIVIDING THE RESULTING NUMBER BY  
27 THE FIRM PEAK DEMAND.

1 (7) (a) "REGULATORY OVERSIGHT ENTITY" MEANS THE ENTITY  
2 RESPONSIBLE FOR APPROVING THE ELECTRIC RESOURCE PLANS OR THE  
3 RETAIL OR WHOLESALE RATES OF A LOAD-SERVING ENTITY WITH RESPECT  
4 TO A LOAD LOCATED IN THE STATE.

5 (b) "REGULATORY OVERSIGHT ENTITY" INCLUDES:

6 (I) THE APPLICABLE CITY COUNCIL OR GOVERNING BOARD FOR A  
7 MUNICIPAL UTILITY OR A JOINT ACTION AGENCY ESTABLISHED PURSUANT  
8 TO LAW;

9 (II) THE GOVERNING BOARD FOR A COOPERATIVE ELECTRIC  
10 ASSOCIATION; AND

11 (III) THE COMMISSION FOR A PUBLIC UTILITY.

12 (c) IF A LOAD-SERVING ENTITY DOES NOT HAVE AN APPLICABLE  
13 REGULATORY OVERSIGHT ENTITY, THE LOAD-SERVING ENTITY'S  
14 REGULATORY OVERSIGHT ENTITY FOR THE PURPOSES OF THIS ARTICLE 43  
15 IS THE COMMISSION.

16 (8) "RESOURCE ADEQUACY ANNUAL REPORT" MEANS AN ANNUAL  
17 REPORT THAT A LOAD-SERVING ENTITY IS REQUIRED TO PROVIDE TO THE  
18 APPLICABLE REGULATORY OVERSIGHT ENTITY PURSUANT TO SECTION  
19 40-43-104.

20 (9) "RESOURCE ADEQUACY REPORTING PERIOD" MEANS A PERIOD  
21 OF AT LEAST FIVE CONSECUTIVE YEARS BEGINNING IN THE YEAR  
22 FOLLOWING THE YEAR IN WHICH A LOAD-SERVING ENTITY PROVIDES ITS  
23 RESOURCE ADEQUACY ANNUAL REPORT.

24 **40-43-104. Resource adequacy annual report - statewide**  
25 **resource adequacy aggregate annual report - categories of**  
26 **information in the resource adequacy annual report - termination of**  
27 **reporting requirement.** (1) (a) ON OR BEFORE APRIL 1, 2024, AND ON OR

1 BEFORE APRIL 1 OF EACH YEAR THEREAFTER, EXCEPT AS PROVIDED IN  
2 SUBSECTION (2) OR (4) OF THIS SECTION, EACH LOAD-SERVING ENTITY IN  
3 THE STATE SHALL PROVIDE THE APPLICABLE REGULATORY OVERSIGHT  
4 ENTITY A RESOURCE ADEQUACY ANNUAL REPORT IN WHICH THE  
5 LOAD-SERVING ENTITY IDENTIFIES THE GENERATING RESOURCES AND  
6 ACCREDITED CAPACITY USED TO SERVE ITS CUSTOMERS. A LOAD-SERVING  
7 ENTITY MAY DESIGNATE ITS WHOLESALE ELECTRIC SUPPLIER AS AN  
8 AUTHORIZED AGENT TO PROVIDE THE RESOURCE ADEQUACY ANNUAL  
9 REPORTS ON BEHALF OF THE LOAD-SERVING ENTITY, AND IF SO  
10 DESIGNATED BY THE LOAD-SERVING ENTITY, THE WHOLESALE ELECTRIC  
11 SUPPLIER SHALL BE SOLELY RESPONSIBLE FOR THE PREPARATION AND  
12 SUBMISSION OF THE RESOURCE ADEQUACY ANNUAL REPORTS ON BEHALF  
13 OF THE LOAD-SERVING ENTITY.

14 (b) ON OR BEFORE APRIL 30, 2024, AND ON OR BEFORE APRIL 30  
15 OF EACH YEAR THEREAFTER, EACH REGULATORY OVERSIGHT ENTITY  
16 SHALL SUBMIT THE RESOURCE ADEQUACY ANNUAL REPORTS RECEIVED  
17 FROM LOAD-SERVING ENTITIES PURSUANT TO SUBSECTION (1)(a) OF THIS  
18 SECTION TO THE COLORADO ENERGY OFFICE.

19 (c) ON OR BEFORE JULY 1, 2024, AND ON OR BEFORE JULY 1 OF  
20 EACH YEAR THEREAFTER, THE COLORADO ENERGY OFFICE SHALL  
21 AGGREGATE THE RESOURCE ADEQUACY ANNUAL REPORTS RECEIVED FROM  
22 REGULATORY OVERSIGHT ENTITIES PURSUANT TO SUBSECTION (1)(b) OF  
23 THIS SECTION TO CREATE AND MAKE PUBLICLY AVAILABLE A STATEWIDE  
24 RESOURCE ADEQUACY AGGREGATE ANNUAL REPORT.

25 (2) IF A LOAD-SERVING ENTITY HAS A WHOLESALE POWER  
26 ARRANGEMENT WITH A PUBLIC UTILITY, COOPERATIVE ELECTRIC  
27 ASSOCIATION, JOINT ACTION AGENCY ESTABLISHED PURSUANT TO LAW, OR

1 POLITICAL SUBDIVISION THAT ITSELF DEMONSTRATES RESOURCE  
2 ADEQUACY THROUGH A RESOURCE PLANNING PROCESS BEFORE THE  
3 APPLICABLE REGULATORY OVERSIGHT ENTITY, THE PUBLIC UTILITY'S,  
4 COOPERATIVE ELECTRIC ASSOCIATION'S, JOINT ACTION AGENCY'S, OR  
5 POLITICAL SUBDIVISION'S RESOURCE ADEQUACY ANNUAL REPORT  
6 PROVIDED TO THE APPLICABLE REGULATORY OVERSIGHT ENTITY COVERS  
7 THE LOAD-SERVING ENTITY FOR ANY LOAD COVERED BY THE  
8 DEMONSTRATION OF RESOURCE ADEQUACY BY THE PUBLIC UTILITY,  
9 COOPERATIVE ELECTRIC ASSOCIATION, JOINT ACTION AGENCY, OR  
10 POLITICAL SUBDIVISION.

11 (3) A RESOURCE ADEQUACY ANNUAL REPORT MUST BE MADE  
12 PUBLICLY AVAILABLE ON THE LOAD-SERVING ENTITY'S WEBSITE USING A  
13 COMMON UNIFORM RESOURCE LOCATOR CONVENTION, AS DETERMINED BY  
14 THE COLORADO ENERGY OFFICE, AND INCLUDE THE FOLLOWING  
15 CATEGORIES OF INFORMATION FOR EACH YEAR IN THE RESOURCE  
16 ADEQUACY REPORTING PERIOD:

17 (a) A NATIVE LOAD FORECAST;

18 (b) NAMEPLATE CAPACITY AND ACCREDITED CAPACITY BY  
19 INDIVIDUAL RESOURCE, INCLUDING RENEWABLE ENERGY RESOURCES AND  
20 STORAGE;

21 (c) IDENTIFICATION OF ANY ACCREDITED CAPACITY ATTRIBUTABLE  
22 TO DISTRIBUTED GENERATION RESOURCES, INCLUDING ENERGY STORAGE;

23 (d) IDENTIFICATION OF ANY DEMAND RESPONSE THAT THE  
24 LOAD-SERVING ENTITY RELIED UPON FOR RESOURCE PLANNING PURPOSES  
25 OR USES TO REDUCE PEAK LOAD;

26 (e) IDENTIFICATION OF THE TARGET PLANNING RESERVE MARGIN;

27 (f) IDENTIFICATION OF THE FORECASTED PLANNING RESERVE

1 MARGIN;

2 (g) IDENTIFICATION OF THE TOTAL ACCREDITED CAPACITY AND  
3 ANY FORMULAS OR ASSUMPTIONS USED TO CALCULATE THE ACCREDITED  
4 CAPACITY; AND

5 (h) IDENTIFICATION OF ANY EXCESS CAPACITY OR RESOURCE  
6 NEEDS AND OF PLANS TO MITIGATE FORECASTED SHORTFALLS PRIOR TO  
7 EXPERIENCING PEAK LOAD SUPPLY CONDITIONS THAT WERE FORECASTED  
8 IN CALCULATING THE PLANNING RESERVE MARGIN.

9 (4) FOR EACH LOAD-SERVING ENTITY PARTICIPATING IN AN  
10 ORGANIZED WHOLESALE MARKET, AS DEFINED IN SECTION 40-5-108 (1)(a),  
11 OR A VOLUNTARY REGIONAL RESOURCE ADEQUACY REPORTING PROGRAM,  
12 THE LOAD-SERVING ENTITY'S OBLIGATION TO PROVIDE RESOURCE  
13 ADEQUACY ANNUAL REPORTS, INCLUDING ANY OBLIGATION OF ANOTHER  
14 LOAD-SERVING ENTITY TO PROVIDE RESOURCE ADEQUACY ANNUAL  
15 REPORTS IF THE LOAD-SERVING ENTITY HAS BEEN PROVIDING RESOURCE  
16 ADEQUACY ANNUAL REPORTS ON THE OTHER LOAD-SERVING ENTITY'S  
17 BEHALF PURSUANT TO SUBSECTION (1)(a) OF THIS SECTION, TERMINATES  
18 ON THE DATE THAT THE LOAD-SERVING ENTITY BEGINS PARTICIPATING IN  
19 AN ORGANIZED WHOLESALE MARKET OR IN THE YEAR FOLLOWING THE  
20 LOAD-SERVING ENTITY'S SUBMISSION OF A COMPLIANCE REPORT REQUIRED  
21 BY A VOLUNTARY REGIONAL RESOURCE ADEQUACY REPORTING PROGRAM.

22 **SECTION 2. Appropriation.** For the 2023-24 state fiscal year,  
23 \$14,737 is appropriated to the office of the governor for use by the  
24 Colorado energy office. This appropriation is from the general fund and  
25 is based on an assumption that the office will require an additional 0.1  
26 FTE. To implement this act, the office may use this appropriation for  
27 program administration.



1           **SECTION 3. Act subject to petition - effective date.** This act  
2 takes effect at 12:01 a.m. on the day following the expiration of the  
3 ninety-day period after final adjournment of the general assembly; except  
4 that, if a referendum petition is filed pursuant to section 1 (3) of article V  
5 of the state constitution against this act or an item, section, or part of this  
6 act within such period, then the act, item, section, or part will not take  
7 effect unless approved by the people at the general election to be held in  
8 November 2024 and, in such case, will take effect on the date of the  
9 official declaration of the vote thereon by the governor.