

Second Regular Session  
Seventieth General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 16-0567.01 Thomas Morris x4218

SENATE BILL 16-061

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SENATE SPONSORSHIP

Cooke and Sonnenberg,

HOUSE SPONSORSHIP

(None),

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Senate Committees

Agriculture, Natural Resources, & Energy

House Committees

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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.

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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://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.*



1 IMPACT OF A STATE PLAN THAT EFFECTS A RATE INCREASE;

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

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

9 **40-8.7-203. Definitions.** AS USED IN THIS PART 2, UNLESS THE  
10 CONTEXT OTHERWISE REQUIRES:

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

12 (2) "DEPARTMENT" MEANS THE DEPARTMENT OF PUBLIC HEALTH  
13 AND ENVIRONMENT.

14 (3) "EPA" MEANS THE FEDERAL ENVIRONMENTAL PROTECTION  
15 AGENCY.

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

23 (5) "FEDERAL PLAN" MEANS A PLAN TO ESTABLISH AND ENFORCE  
24 IN COLORADO THE FEDERAL EMISSION REGULATIONS THAT THE EPA MAY  
25 ADOPT TO IMPLEMENT COLORADO'S OBLIGATIONS UNDER THE  
26 REGULATIONS.

27 (6) "FUND" MEANS THE RATEPAYER PROTECTION FUND CREATED

1 IN SECTION 40-8.7-205.

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

8 **40-8.7-204. Ratepayer protection.** (1) ON OR BEFORE THE  
9 EFFECTIVE DATE OF ANY FEDERAL OR STATE PLAN, THE COMMISSION,  
10 AFTER CONSULTATION WITH AFFECTED UTILITIES AND AFTER HOLDING A  
11 HEARING PURSUANT TO ARTICLE 6 OF THIS TITLE, SHALL DEVELOP A  
12 PROGRAM TO IMPLEMENT THIS PART 2, INCLUDING:

13 (a) GUIDANCE FOR UTILITIES REGARDING THE ALLOCATION OF  
14 COMPLIANCE COSTS TO CUSTOMERS;

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

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

22 (2) EACH UTILITY THAT, DUE TO ITS COMPLIANCE WITH THE  
23 FEDERAL EMISSION REGULATIONS, INCURS INCREASED COSTS THAT THE  
24 UTILITY IS ENTITLED TO RECOVER IN FULL OR IN PART SHALL:

25 (a) SEPARATELY STATE ON EACH CUSTOMER'S REMITTANCE  
26 DEVICE:

27 (I) THE AMOUNT OF SUCH COSTS THAT ARE ALLOCATED TO THE

1 CUSTOMER DURING THE BILLING PERIOD COVERED BY THE REMITTANCE  
2 DEVICE; AND

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

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

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

7 (3) THE COMMISSION SHALL QUARTERLY REMIT FROM THE FUND TO  
8 EACH UTILITY THAT REPORTS AN AMOUNT TO THE COMMISSION PURSUANT  
9 TO PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION THE TOTAL OF  
10 SUCH AMOUNTS REPORTED BY THAT UTILITY DURING THE PREVIOUS  
11 QUARTER. IF THE AVAILABLE BALANCE IN THE FUND IS INSUFFICIENT TO  
12 FULLY REMIT ALL AMOUNTS, THE COMMISSION SHALL:

13 (a) USE SO MUCH OF THE AVAILABLE BALANCE IN THE STATIONARY  
14 SOURCES CONTROL FUND CREATED IN SECTION 25-7-114.7 (2) (b) (I),  
15 C.R.S., AS IS NECESSARY TO FULLY REMIT ALL AMOUNTS; AND

16 (b) IF THE AVAILABLE BALANCE IS INSUFFICIENT, REDUCE ALL  
17 REMITTANCES PRO RATA.

18 **40-8.7-205. Fund created.** (1) THE RATEPAYER PROTECTION  
19 FUND IS HEREBY CREATED IN THE STATE TREASURY. THE FUND CONSISTS  
20 OF MONEY APPROPRIATED TO THE FUND PURSUANT TO SECTION 40-8.7-206  
21 (2). THE STATE TREASURER SHALL CREDIT ALL INTEREST AND INCOME  
22 DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEY IN THE FUND TO  
23 THE FUND.

24 (2) THE COMMISSION SHALL USE THE FUND ONLY TO:

25 (a) REMIT TO UTILITIES THE AMOUNTS REPORTED TO THE  
26 COMMISSION AS SPECIFIED IN SECTION 40-8.7-204 (1) (b); AND

27 (b) COVER ITS DIRECT COSTS IN ADMINISTERING THE PROGRAM,

1 WHICH MUST NOT EXCEED THREE PERCENT OF THE AVERAGE ANNUAL  
2 BALANCE OF THE FUND.

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

5 **40-8.7-206. Ratepayer impact analysis - appropriation.**

6 (1) THE COMMISSION SHALL CONDUCT AND PERIODICALLY UPDATE,  
7 INCLUDING DURING ANY UTILITY RATE-MAKING HEARING AND  
8 INTEGRATED RESOURCE PLANNING PROCEEDING, AN ECONOMIC ANALYSIS  
9 OF UTILITIES' COSTS OF COMPLIANCE WITH THE FEDERAL EMISSION  
10 REGULATIONS FOR THE PURPOSE OF MAKING THE ANNUAL REPORT TO THE  
11 JOINT BUDGET COMMITTEE PURSUANT TO SECTION 40-8.7-204 (1) (c). THE  
12 COMMISSION SHALL MAKE SPECIFIC FINDINGS REGARDING ITS  
13 CONCLUSIONS ABOUT THE COSTS OF COMPLIANCE AND WHETHER ITS  
14 CURRENT RATEPAYER IMPACT ANALYSIS IS ACCURATE OR MUST BE  
15 ADJUSTED.

16 (2) THE GENERAL ASSEMBLY SHALL ANNUALLY APPROPRIATE TO  
17 THE FUND SUFFICIENT MONEY FROM THE STATIONARY SOURCES CONTROL  
18 FUND CREATED IN SECTION 25-7-114.7 (2) (b) (I), C.R.S., TO ENABLE THE  
19 COMMISSION TO MAKE THE REMITTANCES REQUIRED BY THIS SECTION.

20 **SECTION 2.** In Colorado Revised Statutes, 25-7-114.7, **amend**  
21 (2) (b) (I) as follows:

22 **25-7-114.7. Emission fees - fund.** (2) (b) (I) (A) The ~~moneys~~  
23 MONEY collected pursuant to this section shall be remitted to the state  
24 treasurer, who shall credit the same to the stationary sources control fund,  
25 which fund is hereby created. From such fund, the general assembly shall  
26 appropriate to the department of public health and environment, at least  
27 annually, such ~~moneys~~ MONEY as may be necessary to cover the division's

1 direct and indirect costs required to develop and administer the programs  
2 established pursuant to parts 1 to 4 and 10 of this article for the control of  
3 air pollution from stationary sources AND FOR THE PROGRAM ESTABLISHED  
4 IN PART 2 OF ARTICLE 8.7 OF TITLE 40, C.R.S. Any permit fee ~~moneys~~  
5 MONEY not appropriated by the general assembly and any appropriated  
6 funds not spent by the division shall remain in the stationary sources  
7 control fund and shall not revert to the general fund of the state at the end  
8 of any fiscal year. Any such ~~moneys~~ MONEY shall be separately accounted  
9 for. All interest earned on ~~moneys~~ MONEY in the stationary sources  
10 control fund shall remain in the fund and shall not revert to the general  
11 fund or to any other fund.

12 (B) THE COMMISSION SHALL NOT INCREASE ANY FEE COLLECTED  
13 DUE TO THE ENACTMENT OF THE PROGRAM ESTABLISHED IN PART 2 OF  
14 ARTICLE 8.7 OF TITLE 40, C.R.S.

15 **SECTION 3.** In Colorado Revised Statutes, **amend** 40-8.7-101  
16 as follows:

17 **40-8.7-101. Short title.** THE SHORT TITLE OF this ~~article shall be~~  
18 ~~known and may be cited as~~ PART 1 IS the "Low-income Energy Assistance  
19 Act".

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

22 **40-8.7-103. Definitions.** As used in this ~~article~~ PART 1, unless the  
23 context otherwise requires:

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

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

3           **40-8.7-104. Energy assistance program - creation - energy**  
4 **assistance charge - rules.** (1) There is hereby created the low-income  
5 energy assistance program to collect and disburse an optional energy  
6 assistance contribution in Colorado in accordance with this ~~article~~ PART  
7 1.

8           (2) Except as otherwise provided in this ~~article~~ PART 1, every  
9 utility doing business in Colorado shall participate in the energy  
10 assistance program and shall provide the opportunity for utility customers  
11 to make an optional energy assistance contribution on the monthly  
12 remittance device on their utility billing statement beginning September  
13 1, 2006. Each utility shall provide the opportunity for customers to donate  
14 the optional energy assistance contribution as provided in section  
15 40-8.7-105 (2).

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

18           **40-8.7-106. Municipally owned gas, electric, and gas and**  
19 **electric utilities and cooperative electric associations.** (1) If a  
20 municipally owned gas, electric, or gas and electric utility or a  
21 cooperative electric association operates an alternative energy assistance  
22 program to support its low-income customers with their home energy  
23 needs, then the governing body of the municipally owned gas, electric, or  
24 gas and electric utility or cooperative electric association may self-certify  
25 its alternative energy assistance program and, upon self-certification, shall  
26 have no obligations under this ~~article~~ PART 1. The municipally owned  
27 utility or cooperative electric association shall submit a statement to the

1 organization that such utility or cooperative electric association has an  
2 alternative energy assistance program. In order for such utility or  
3 cooperative electric association to self-certify, such alternative energy  
4 assistance program shall meet the following criteria:

5 (2) If the governing body of a municipally owned gas, electric, or  
6 gas and electric utility or a cooperative electric association determines  
7 that the service area of such utility or cooperative has a limited number  
8 of people who qualify for energy assistance, such utility or cooperative  
9 electric association may be exempt from the obligations of this ~~article~~  
10 PART 1.

11 (3) If a municipally owned gas, electric, or gas and electric utility  
12 or cooperative electric association has not self-certified an alternative  
13 energy assistance program pursuant to subsection (1) of this section or has  
14 not exempted itself pursuant to subsection (2) of this section, such utility  
15 or cooperative electric association shall collect an optional energy  
16 assistance charge from its customers as provided in section 40-8.7-104 (1)  
17 and (2) or pursuant to a procedure approved by the governing municipal  
18 utility or cooperative, which procedure shall be designed to notify all  
19 customers at least twice each year of the option to contribute by means of  
20 a monthly energy assistance charge and shall provide a convenient means  
21 for customers to exercise that option. In such circumstances, the  
22 governing body of such utility or cooperative shall determine the  
23 disposition and delivery of the optional energy assistance charge that it  
24 collects on the following basis:

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

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

3           **40-8.7-107. Disposition of money.** (1) Each gas and electric  
4 utility shall transfer the ~~moneys~~ MONEY from the energy assistance  
5 contributions collected under this ~~article~~ PART 1 to the organization on the  
6 following schedule:

7           (3) The organization shall pay the public utilities commission  
8 from the ~~moneys~~ MONEY transferred to the organization pursuant to  
9 subsection (1) of this section for any administrative costs incurred  
10 pursuant to this ~~article~~ PART 1.

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

13           **40-8.7-108. Energy outreach Colorado - administration of the**  
14 **energy assistance charge.** (1) The organization shall hold and  
15 administer all ~~moneys~~ MONEY collected pursuant to this ~~article~~ PART 1  
16 delivered to it by the utilities pursuant to section 40-8.7-107 in a  
17 separately identifiable account, which shall be restricted to the purposes  
18 set forth in this ~~article~~ PART 1. The organization shall maintain its books  
19 and records pertaining to the energy assistance contributions in  
20 accordance with generally accepted accounting principles and, in  
21 addition, shall maintain records adequate to identify the ~~moneys~~ MONEY  
22 collected by each utility. If the organization commingles the ~~moneys~~  
23 MONEY collected and delivered with other assets of the organization for  
24 investment purposes, the organization shall maintain accurate accounts  
25 of the investment ~~moneys~~ MONEY and shall credit or charge a pro rata  
26 portion of all investment earnings, gains, or losses to the account that  
27 holds the energy assistance charges.

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

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

6 **40-8.5-103.5. Commission created - duties.** (4) (a) No later than  
7 December 15, 2008, the commission shall make recommendations to the  
8 governor, the speaker of the house of representatives, and the president  
9 of the senate regarding any necessary legislative changes to improve the  
10 effectiveness and efficiency of the state's low-income energy assistance  
11 services provided pursuant to PART 1 OF article 8.7 of this title and section  
12 26-1-109, C.R.S. With assistance and consultation from representatives  
13 from two counties chosen by the executive director, or his or her  
14 designee, of Colorado counties, incorporated, or its successor  
15 organization, the commission shall assess the strengths and weaknesses  
16 of the current service delivery systems within the state and shall review  
17 effective service delivery systems and models of other states that may be  
18 appropriate for utilization in this state. The commission's  
19 recommendations shall build upon the positive aspects of the current  
20 service delivery system, including, but not limited to, the effective and  
21 efficient management of current funding to maximize assistance to the  
22 state's low-income population, infrastructure that is already in place to  
23 efficiently distribute benefits to eligible clients in a timely manner, and  
24 coordination already established between energy conservation measures  
25 and direct assistance. The commission's recommendations shall include,  
26 but shall not be limited to:

27 **SECTION 10. Applicability.** This act applies to conduct

1 occurring on or after the effective date of this act.

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