

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

INTRODUCED

LLS NO. 03-0344.01 Gregg Fraser

HOUSE BILL 03-1295

HOUSE SPONSORSHIP

Spradley, and Veiga

SENATE SPONSORSHIP

Kester, and Phillips

House Committees

Transportation & Energy

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE ESTABLISHMENT OF AN ELECTRIC RESOURCE**
102 **STANDARD FOR RENEWABLE ENERGY FOR PROVIDERS OF**
103 **ELECTRIC SERVICE IN THE STATE.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Requires the public utilities commission (commission) to establish an electric resource standard (standard) for renewable energy. Specifies that the standard shall require electric service providers to generate or acquire a specified amount of renewable energy each year. Increases the amount of renewable energy to be generated or acquired over a specified number of years.

Specifies that the standard shall not require a provider to incur a

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.

cost of more than a specified amount for renewable energy. Provides that renewable energy generated in an enterprise zone or by solar electric resources shall be counted as additional kilowatts toward complying with the standard. Specifies that a provider shall be credited for a specified amount of renewable energy that is produced or acquired, even if the cost is recovered through an optional pricing program. Allows electricity produced by wind or solar energy systems subsidized by a provider to be deemed to be from a renewable energy system for purposes of complying with the standard. Requires the commission to adopt rules establishing a system of renewable energy credits that may be used to comply with the standard.

Requires a provider to notify the commission if the provider will be unable to comply with the standard for a particular calendar year. Authorizes the commission to exempt the provider from all or a portion of the standard if there is an insufficient supply of renewable energy.

Specifies that approved renewable energy contracts are deemed a prudent investment and the costs associated with the contract may be recovered. Requires providers to submit an annual report to the commission concerning the provider's compliance with the standard.

Requires the commission to promulgate rules necessary for the administration and enforcement of the act.

Defines terms.

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

2 **SECTION 1.** Title 40, Colorado Revised Statutes, is amended
3 BY THE ADDITION OF A NEW ARTICLE to read:

4 **ARTICLE 3.3**

5 **Electric Resource Standard for Renewable Energy**

6 **40-3.3-101. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE
7 CONTEXT OTHERWISE REQUIRES:

8 (1) (a) "BIOMASS" MEANS:

9 (I) ORGANIC MATTER FROM A PLANT OR TREE THAT IS PLANTED FOR
10 THE PURPOSE OF BEING USED TO PRODUCE ENERGY;

11 (II) ANIMAL WASTES;

12 (III) URBAN WOOD WASTE;

13 (IV) INVASIVE SPECIES;

1 (V) METHANE PRODUCED AT LANDFILLS OR AS A BY-PRODUCT OF
2 THE TREATMENT OF WASTEWATER RESIDUALS; AND

3 (VI) AQUATIC PLANTS.

4 (b) "BIOMASS" DOES NOT INCLUDE BLACK LIQUOR, TREATED
5 WOODS, OR BIOMASS FROM MUNICIPAL SOLID WASTE OTHER THAN
6 METHANE PRODUCED AT LANDFILLS OR AS A BY-PRODUCT OF THE
7 TREATMENT OF WASTEWATER RESIDUALS.

8 (2) "ELECTRIC RESOURCE STANDARD" OR "STANDARD" MEANS A
9 STANDARD FOR RENEWABLE ENERGY CONTENT ESTABLISHED BY THE
10 COMMISSION PURSUANT TO SECTION 40-3.3-102.

11 (3) "PROVIDER OF ELECTRIC SERVICE" OR "PROVIDER" MEANS ANY
12 PERSON OR ENTITY THAT IS IN THE BUSINESS OF SELLING ELECTRICITY TO
13 RETAIL CUSTOMERS IN THE STATE. THE TERM DOES NOT INCLUDE
14 MUNICIPAL UTILITIES, RURAL ELECTRIC ASSOCIATIONS, A LANDLORD OF A
15 MOBILE HOME PARK, OR OWNER OF A COMPANY TOWN OR SIMILAR
16 FACILITY THAT IS CENTRALLY METERED.

17 (4) "RENEWABLE ENERGY" MEANS BIOMASS, GEOTHERMAL
18 ENERGY, SOLAR ENERGY, SMALL HYDROELECTRICITY, AND WIND ENERGY.
19 "RENEWABLE ENERGY" DOES NOT INCLUDE PUMPED STORAGE FACILITIES,
20 HYDROELECTRICITY OTHER THAN SMALL HYDROELECTRICITY, COAL,
21 NATURAL GAS, OIL, PROPANE, OR ANY OTHER FOSSIL FUEL, OR NUCLEAR
22 ENERGY.

23 (5) "RENEWABLE ENERGY CONTRACT" MEANS A CONTRACT TO
24 ACQUIRE ELECTRICITY FROM ONE OR MORE RENEWABLE ENERGY SYSTEMS
25 OWNED, OPERATED, OR CONTROLLED BY OTHER PARTIES.

26 (6) "RENEWABLE ENERGY SYSTEM" MEANS A FACILITY OR ENERGY
27 SYSTEM THAT:

1 (a) USES RENEWABLE ENERGY TO GENERATE ELECTRICITY AND
2 TRANSMITS OR DISTRIBUTES THE ELECTRICITY THAT IT GENERATES TO A
3 PROVIDER OF ELECTRIC SERVICE;

4 (b) USES RENEWABLE ENERGY TO GENERATE ELECTRICITY USED BY
5 A RESIDENCE OR BUSINESS LOCATED IN COLORADO THAT IS NOT
6 CONNECTED TO THE TRANSMISSION OR DISTRIBUTION FACILITIES OF ANY
7 RETAIL OR WHOLESALE PROVIDER OF ELECTRICITY SERVICE; OR

8 (c) ACTIVELY REDUCES THE CONSUMPTION OF ELECTRICITY USING
9 SOLAR THERMAL ENERGY, WIND, OR PHOTOVOLTAIC ENERGY AS A
10 RESOURCE.

11 (7) "RETAIL CUSTOMER" MEANS A CUSTOMER WHO PURCHASES
12 ELECTRICITY FOR THE CUSTOMER'S OWN USE AND NOT FOR RESALE,
13 INCLUDING, WITHOUT LIMITATION:

14 (a) THE STATE, A POLITICAL SUBDIVISION OF THE STATE, OR AN
15 AGENCY OR INSTRUMENTALITY OF THE STATE OR POLITICAL SUBDIVISION
16 OF THE STATE WHEN IT PURCHASES ELECTRICITY AT RETAIL; AND

17 (b) A LANDLORD OF A MOBILE HOME PARK OR OWNER OF A
18 COMPANY TOWN OR SIMILAR FACILITY THAT IS CENTRALLY METERED.

19 (8) "SMALL HYDROELECTRICITY" MEANS:

20 (a) A HYDROELECTRIC PROJECT WITH A NAMEPLATE RATING OF
21 TWENTY MEGAWATTS OR LESS IN EXISTENCE AS OF THE EFFECTIVE DATE OF
22 THIS ARTICLE;

23 (b) TECHNOLOGIES THAT HARNESS THE INCREMENTAL
24 HYDROELECTRIC POTENTIAL OF WATER IMPOUNDMENTS OR CONVEYANCE
25 STRUCTURES IN EXISTENCE AS OF THE EFFECTIVE DATE OF THIS ARTICLE,
26 PROVIDED SUCH INCREMENTAL HYDROELECTRIC DEVELOPMENT DOES NOT
27 ADVERSELY CHANGE EXISTING IMPACTS TO THE AQUATIC ECOSYSTEM OR

1 RESULT IN INCREASED DIVERSION OR CONSUMPTIVE USE OF WATER FROM
2 ANY RIVER, STREAM, OR OTHER WATERWAY; OR

3 (c) A PROJECT THAT HARNESSSES THE HYDROELECTRIC POTENTIAL
4 OF WATER IMPOUNDMENTS OR CONVEYANCE STRUCTURES NOT IN
5 EXISTENCE AS OF THE EFFECTIVE DATE OF THIS ARTICLE, WITH A
6 NAMEPLATE RATING OF TEN MEGAWATTS OR LESS.

7 **40-3.3-102. Electric resource standard.** (1) FOR EACH
8 PROVIDER OF ELECTRIC SERVICE, THE COMMISSION SHALL ESTABLISH AN
9 ELECTRIC RESOURCE STANDARD FOR RENEWABLE ENERGY. THE ELECTRIC
10 RESOURCE STANDARD SHALL REQUIRE EACH PROVIDER TO GENERATE OR
11 ACQUIRE ELECTRICITY FROM RENEWABLE ENERGY SYSTEMS IN AMOUNTS
12 PRO-RATED UPON RETAIL ENERGY SALES WITHIN COLORADO AS REPORTED
13 IN EACH PROVIDER'S FORM 1 SUBMITTED ANNUALLY TO THE FEDERAL
14 ENERGY REGULATORY COMMISSION, THAT TOTAL FOR THE STATE:

15 (a) BY CALENDAR YEAR 2006, FIVE HUNDRED MEGAWATTS BASED
16 UPON THE NAMEPLATE RATINGS OF THE RENEWABLE ENERGY GENERATION
17 EQUIPMENT;

18 (b) BY CALENDAR YEAR 2010, NINE HUNDRED MEGAWATTS BASED
19 UPON THE NAMEPLATE RATINGS OF THE RENEWABLE ENERGY GENERATION
20 EQUIPMENT; AND

21 (c) BY CALENDAR YEAR 2020, ONE THOUSAND EIGHT HUNDRED
22 MEGAWATTS BASED UPON THE NAMEPLATE RATINGS OF THE RENEWABLE
23 ENERGY GENERATION EQUIPMENT.

24 (2) THE ELECTRIC RESOURCE STANDARD ESTABLISHED BY THE
25 COMMISSION SHALL NOT REQUIRE THE PROVIDER OF ELECTRIC SERVICE TO
26 INCUR A COST AT THE PROJECT BUSBAR OF MORE THAN FOUR AND
27 ONE-HALF CENTS PER KILOWATT HOUR IN 2003 FOR ANY RENEWABLE

1 ENERGY. FOR EACH SUCCEEDING YEAR, THIS COST CAP SHALL CHANGE BY
2 THE RATE OF CHANGE OF THE INFLATION INDICATOR "GROSS DOMESTIC
3 PRODUCT - IMPLICIT PRICE DEFLATOR" AS PUBLISHED BY THE BUREAU OF
4 ECONOMIC ANALYSIS, UNITED STATES DEPARTMENT OF COMMERCE.

5 (3) EACH KILOWATT OF RENEWABLE ELECTRIC RESOURCES
6 INSTALLED IN AN AREA OF COLORADO DESIGNATED AS AN ENTERPRISE
7 ZONE PURSUANT TO SECTION 39-30-103, C.R.S., SHALL COUNT AS ONE AND
8 ONE-HALF KILOWATTS TOWARDS COMPLIANCE WITH THIS STANDARD.

9 (4) EACH KILOWATT OF SOLAR RENEWABLE ELECTRIC RESOURCES
10 SHALL COUNT AS THREE KILOWATTS TOWARD COMPLIANCE WITH THIS
11 STANDARD.

12 (5) IN APPLYING THE ELECTRIC RESOURCE STANDARD, THE
13 COMMISSION SHALL FULLY CREDIT THE PROVIDER OF ELECTRIC SERVICE
14 WITH THE RENEWABLE ENERGY KILOWATTS THAT THE PROVIDER OF
15 ELECTRIC SERVICE HAS INSTALLED OR PURCHASED NOTWITHSTANDING
16 WHETHER THE COST OF THE RENEWABLE ENERGY HAS BEEN OR WILL BE
17 RECOVERED THROUGH AN OPTIONAL PRICING PROGRAM OR THROUGH
18 STANDARD UTILITY RATES.

19 (6) IF, FOR THE BENEFIT OF ONE OR MORE OF ITS RETAIL
20 CUSTOMERS IN THIS STATE, THE PROVIDER HAS SUBSIDIZED MORE THAN
21 FIFTY PERCENT OF THE COST OF A CUSTOMER-SITED WIND OR SOLAR
22 PHOTOVOLTAIC SYSTEM THAT REDUCES THE CONSUMPTION OF
23 ELECTRICITY, THE TOTAL INSTALLED NAMEPLATE CAPACITY OF THE WIND
24 OR SOLAR THERMAL ENERGY OR PHOTOVOLTAIC SYSTEM SHALL BE
25 DEEMED TO PRODUCE ENERGY THAT THE PROVIDER GENERATED OR
26 ACQUIRED FROM A RENEWABLE ENERGY SYSTEM FOR THE PURPOSES OF
27 COMPLYING WITH ITS ELECTRIC RESOURCE STANDARD.

1 (7) THE COMMISSION SHALL PROMULGATE RULES TO ESTABLISH A
2 SYSTEM OF RENEWABLE ENERGY CREDITS THAT MAY BE USED BY A
3 PROVIDER TO COMPLY WITH ITS ELECTRIC RESOURCE STANDARD. THE
4 RULES SHALL ESTABLISH MINIMUM ANNUAL RENEWABLE ENERGY
5 REQUIREMENTS FOR EACH PROVIDER TO PRODUCE COMPLIANCE WITH THE
6 ELECTRIC RESOURCE STANDARD. SUCH RULES SHALL BE PROMULGATED IN
7 ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S. THE RULES SHALL
8 ALLOW THE SALE AND PURCHASE OF CREDITS TO MEET THE REQUIREMENTS
9 OF THIS SECTION IN THE MOST COST-EFFECTIVE MANNER THROUGH THE
10 CREATION OF A MARKET SYSTEM. THE RULES SHALL IMPLEMENT AN
11 EFFICIENT, COST-EFFECTIVE SYSTEM OF TRADING, TRACKING,
12 VERIFICATION, AND REPORTING OF CREDITS, CONSIDERING THE PROVISION
13 OF SERVICES FROM PRIVATE SECTOR VENDORS TO ACCOMPLISH THE CREDIT
14 TRADING SYSTEM.

15 (8) IF A PROVIDER BELIEVES IT WILL BE UNABLE TO COMPLY WITH
16 ITS ELECTRIC RESOURCE STANDARD REQUIREMENTS THROUGH THE
17 GENERATION OF ELECTRICITY FROM ITS OWN RENEWABLE ENERGY
18 SYSTEMS, THROUGH RENEWABLE ENERGY SUPPLY CONTRACTS, OR, IF
19 APPLICABLE, THROUGH THE SALE AND PURCHASE OF RENEWABLE ENERGY
20 CREDITS, THE PROVIDER SHALL NOTIFY THE COMMISSION. IF THE
21 COMMISSION DETERMINES THERE IS NOT OR WILL NOT BE A SUFFICIENT
22 SUPPLY OF ELIGIBLE RENEWABLE ELECTRICITY AVAILABLE TO THE
23 PROVIDER, OR THAT THE PROVIDER WILL NOT BE ABLE TO OBTAIN OR
24 BUILD, AT REASONABLE COST, THE TRANSMISSION NEEDED TO DELIVER THE
25 RENEWABLE ENERGY TO THE PROVIDER'S SYSTEM, THE COMMISSION MAY
26 EXEMPT THE PROVIDER FROM THE REMAINING REQUIREMENTS OF ITS
27 ELECTRIC RESOURCE STANDARD OR FROM ANY APPROPRIATE PORTION

1 THEREOF, AS DETERMINED BY THE COMMISSION.

2 (9) A PROVIDER SHALL NOT HAVE THE AUTHORITY TO CONDEMN OR
3 EXERCISE THE POWER OF EMINENT DOMAIN OVER ANY REAL ESTATE,
4 RIGHT-OF-WAY, EASEMENT, OR OTHER RIGHT PURSUANT TO SECTION
5 38-2-101, C.R.S., TO SITE A RENEWABLE ENERGY SYSTEM USED IN WHOLE
6 OR IN PART TO MEET AN ELECTRIC RESOURCE STANDARD ESTABLISHED
7 PURSUANT TO THIS ARTICLE.

8 (10) NOTHING IN THIS ARTICLE SHALL BE CONSTRUED AS
9 REQUIRING THE RENEWABLE ENERGY USED TO MEET THE STANDARD TO BE
10 PRODUCED ONLY IN THE STATE OF COLORADO.

11 (11) NOTHING IN THIS ARTICLE SHALL BE CONSTRUED AS
12 PREVENTING ANY PROVIDER OF ELECTRIC SERVICE FROM USING
13 RENEWABLE ENERGY RESOURCES TO MEET THE REQUIREMENTS OF THIS
14 ARTICLE AND ANY EXISTING OR FUTURE FEDERAL ELECTRIC RESOURCE
15 STANDARD FOR RENEWABLE ENERGY.

16 **40-3.3-103. Renewable energy cost recovery.** (1) IF THE
17 COMMISSION APPROVES THE TERMS AND CONDITIONS OF A RENEWABLE
18 ENERGY CONTRACT BETWEEN THE PROVIDER OF ELECTRIC SERVICE AND
19 ANOTHER PARTY, THE RENEWABLE ENERGY CONTRACT AND ITS TERMS AND
20 CONDITIONS SHALL BE DEEMED TO BE A PRUDENT INVESTMENT, AND THE
21 PROVIDER MAY RECOVER ALL JUST AND REASONABLE COSTS ASSOCIATED
22 WITH THE RENEWABLE ENERGY CONTRACT. IF A PROVIDER OF ELECTRIC
23 SERVICE SUBMITS A FORM OF CONTRACT TO THE COMMISSION FOR ITS
24 APPROVAL, AND THE COMMISSION APPROVES THE TERMS AND CONDITIONS
25 OF THE FORM OF CONTRACT, ANY CONTRACT ENTERED INTO BETWEEN THE
26 PROVIDER OF ELECTRIC SERVICE AND ANOTHER PARTY THAT IS
27 MATERIALLY CONSISTENT WITH THE TERMS AND CONDITIONS OF THE

1 APPROVED FORM OF CONTRACT SHALL BE DEEMED TO BE A PRUDENT
2 INVESTMENT AND THE PROVIDER OF ELECTRIC SERVICE SHALL BE ENTITLED
3 TO RECOVER ALL JUST AND REASONABLE COSTS ASSOCIATED WITH THE
4 RENEWABLE ENERGY CONTRACT. THE PROVIDER OF ELECTRIC SERVICE
5 SHALL BE ENTITLED TO FULL RECOVERY OF ITS PRUDENTLY INCURRED
6 COSTS OF CONSTRUCTING AND OPERATING ITS OWN RENEWABLE ENERGY
7 SYSTEMS AS DETERMINED BY THE COMMISSION.

8 (2) EACH PROVIDER SHALL FILE WITH THE COMMISSION FOR ITS
9 APPROVAL THE PROVIDER'S PLAN FOR ACQUIRING THE RENEWABLE
10 RESOURCES NECESSARY TO MEET THE REQUIREMENTS OF THIS ARTICLE.
11 THE PROVIDER SHALL UPDATE ITS PLAN AS NECESSARY.

12 **40-3.3-104. Annual report.** (1) EACH PROVIDER OF ELECTRIC
13 SERVICE SHALL SUBMIT TO THE COMMISSION AN ANNUAL REPORT THAT
14 PROVIDES INFORMATION RELATING TO THE ACTIONS TAKEN BY THE
15 PROVIDER TO COMPLY WITH ITS ELECTRIC RESOURCE STANDARD.

16 (2) EACH PROVIDER SHALL SUBMIT THE ANNUAL REPORT TO THE
17 COMMISSION AFTER THE END OF EACH CALENDAR YEAR AND WITHIN THE
18 TIME PRESCRIBED BY THE COMMISSION. THE REPORT SHALL BE SUBMITTED
19 IN A FORMAT APPROVED BY THE COMMISSION.

20 (3) EACH ANNUAL REPORT SHALL INCLUDE CLEAR AND CONCISE
21 INFORMATION THAT SETS FORTH:

22 (a) THE AMOUNT OF ELECTRICITY THAT THE PROVIDER GENERATED
23 OR ACQUIRED FROM RENEWABLE ENERGY SYSTEMS DURING THE
24 REPORTING PERIOD AND, IF APPLICABLE, THE AMOUNT OF RENEWABLE
25 ENERGY CREDITS THAT THE PROVIDER ACQUIRED, SOLD, OR TRADED
26 DURING THE REPORTING PERIOD TO COMPLY WITH ITS ELECTRIC RESOURCE
27 STANDARD;

1 (b) THE CAPACITY OF EACH RENEWABLE ENERGY SYSTEM OWNED,
2 OPERATED, OR CONTROLLED BY THE PROVIDER, THE TOTAL AMOUNT OF
3 ELECTRICITY GENERATED BY EACH SUCH SYSTEM DURING THE REPORTING
4 PERIOD, AND THE PERCENTAGE OF THAT TOTAL AMOUNT THAT WAS
5 GENERATED DIRECTLY FROM RENEWABLE ENERGY;

6 (c) WHETHER, DURING THE REPORTING PERIOD, THE PROVIDER
7 BEGAN CONSTRUCTION ON, ACQUIRED, OR PLACED INTO OPERATION ANY
8 RENEWABLE ENERGY SYSTEM AND, IF SO, THE DATE OF ANY SUCH EVENT;

9 (d) INFORMATION ON THE COST AND TIMING OF TRANSMISSION
10 FACILITIES AND SERVICES NECESSARY FOR THE ENERGY FROM RENEWABLE
11 ENERGY FACILITIES THAT ARE UTILIZED TO COMPLY WITH THE STANDARD;
12 AND

13 (e) ANY OTHER INFORMATION THAT THE COMMISSION BY RULE
14 DEEMS RELEVANT.

15 **40-3.3-105. Rules.** THE COMMISSION SHALL PROMULGATE RULES
16 NECESSARY FOR THE ADMINISTRATION AND ENFORCEMENT OF THIS
17 ARTICLE. THE RULES PROMULGATED BY THE COMMISSION SHALL INCLUDE
18 ENFORCEMENT MECHANISMS THAT ARE NECESSARY AND REASONABLE TO
19 ENSURE THAT EACH PROVIDER OF ELECTRIC SERVICE COMPLIES WITH ITS
20 ELECTRIC RESOURCE STANDARD AND SHALL INCLUDE PROVISIONS
21 GOVERNING THE IMPOSITION OF ADMINISTRATIVE FINES. THE PROVIDER
22 SHALL NOT BE FINED IF THE PROVIDER FAILS TO COMPLY WITH THE
23 ELECTRIC RESOURCE STANDARD DUE TO THE NONPERFORMANCE OF A
24 PARTY OTHER THAN THE PROVIDER UNDER A RENEWABLE ENERGY
25 CONTRACT, AND THE PROVIDER EXERCISES REASONABLE DILIGENCE TO
26 COME INTO COMPLIANCE WITH THE ELECTRIC RESOURCE STANDARD.
27 UNDER NO CIRCUMSTANCES WILL THE COSTS OF PENALTIES OR

1 ADMINISTRATIVE FINES BE RECOVERED FROM COLORADO RETAIL
2 CUSTOMERS. ANY RULES PROMULGATED PURSUANT TO THIS ARTICLE
3 SHALL BE PROMULGATED IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24,
4 C.R.S.

5 **SECTION 2. Effective date.** This act shall take effect at 12:01
6 a.m. on the day following the expiration of the ninety-day period after
7 final adjournment of the general assembly that is allowed for submitting
8 a referendum petition pursuant to article V, section 1 (3) of the state
9 constitution; except that, if a referendum petition is filed against this act
10 or an item, section, or part of this act within such period, then the act,
11 item, section, or part, if approved by the people, shall take effect on the
12 date of the official declaration of the vote thereon by proclamation of the
13 governor.