A BILL FOR AN ACT

CONCERNING MEASURES TO PROMOTE ENERGY EFFICIENCY BY RETAIL ELECTRIC UTILITIES IN WHICH ULTIMATE MANAGERIAL CONTROL IS VESTED IN CUSTOMERS OF SUCH UTILITIES.

Bill Summary

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

Directs cooperative electric associations and municipal utilities serving 5,000 or more customers to engage in conservation and energy efficiency programs and to devote funding equal to 1% of sales revenue in their first year, and 2% in their second and subsequent years, to such efforts. Exempts a utility from the spending requirement in any year in which the utility's retail electricity sales, in megawatt-hours, fall at least
3% below its sales for the immediately preceding year. Requires periodic 
reports from the utilities to the governor's energy office. Specifies that 
this act does not extend PUC authority. 
Makes conforming amendments.

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

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

ARTICLE 3.3
Energy Efficiency Programs of 
Cooperatives and Municipal Utilities

40-3.3-101. Legislative declaration. (1) The general 
assembly hereby finds, determines, and declares that all 
utilities operating in Colorado should implement programs to 
help their customers increase energy efficiency and conserve 
energy, thereby reducing utility bills, pollutant emissions 
caused by electricity generation and supply, and consumption of 
finite fossil fuels. Such programs are matters of statewide 
concern and are in the public interest.

(2) The general assembly further finds, determines, and 
declares that, to the extent that this article governs certain 
activities of municipally owned utilities and requires their 
performance of specified acts, this article does not constitute 
nor authorize regulation of the "facilities, service and rates 
and charges therefor" of municipally owned utilities within the 
meaning of Article XXV of the State Constitution.

40-3.3-102. Definitions. As used in this article, unless the 
context otherwise requires:
(1) "Benefit-cost test" means an objective method of calculating the ratio of the total benefits of an energy efficiency program to its total costs. The benefits include a utility's avoided generation costs, avoided power purchase costs, avoided transmission and distribution costs, and avoided fuel and operating costs. The costs include the utility's costs for energy efficiency program delivery, administration, marketing, evaluation, and financial incentives paid to participants.

(2) "Cost-effective", with reference to an energy efficiency program, means having a benefit-cost ratio greater than one using the benefit-cost test defined in subsection (1) of this section.

(3) "Energy efficiency program" means a coherent set of activities undertaken by a utility for the purpose of conserving electricity or increasing the efficiency of electricity use by customers of the utility. An energy efficiency program may include, but is not limited to, education, technical assistance, and financial incentives for customers.

(4) "Utility" means a cooperative electric association or municipally owned utility that provides retail electric service.

40-3.3-103. Scope of article - jurisdiction of commission.

(1) Notwithstanding any provision of law to the contrary, this article applies to all cooperative electric associations and municipally owned utilities that, as of July 1, 2008, or January 1 of any year after 2008, provide retail electric service to five thousand or more customers. The number of customers served
BY A UTILITY SHALL BE PRESUMED TO BE NO FEWER THAN THE NUMBER OF
UTILITY METERS THAT THE UTILITY EMPLOYS FOR BILLING PURPOSES.

(2) NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO EXPAND
THE COMMISSION’S AUTHORITY WITH RESPECT TO ANY UTILITY SUBJECT TO
THIS ARTICLE OR ANY NONREGULATED UTILITY BUSINESSES OR AFFILIATES
OF A UTILITY.

40-3.3-104. Energy efficiency programs - rules - requirements.

(1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (6) OF THIS SECTION:

(a) EACH UTILITY THAT PROVIDES OR PROVIDED RETAIL ELECTRIC
SERVICE TO FIVE THOUSAND OR MORE CUSTOMERS AS OF JULY 1, 2008,
SHALL SPEND:

(I) DURING CALENDAR YEAR 2009, AN AMOUNT EQUIVALENT TO
AT LEAST ONE PERCENT OF ITS RETAIL SALES REVENUE ON COST-EFFECTIVE
ENERGY EFFICIENCY PROGRAMS FOR ITS CUSTOMERS; AND

(II) DURING CALENDAR YEAR 2010 AND EACH CALENDAR YEAR
THEREAFTER, AN AMOUNT EQUIVALENT TO AT LEAST TWO PERCENT OF ITS
RETAIL SALES REVENUE ON COST-EFFECTIVE ENERGY EFFICIENCY
PROGRAMS FOR ITS CUSTOMERS.

(b) EACH UTILITY THAT PROVIDES OR PROVIDED RETAIL ELECTRIC
SERVICE TO FIVE THOUSAND OR MORE CUSTOMERS AS OF JANUARY 1,
2009, OR OF ANY YEAR THEREAFTER, SHALL SPEND:

(I) DURING THE CALENDAR YEAR IN WHICH IT FIRST BECOMES
SUBJECT TO THIS ARTICLE, AN AMOUNT EQUIVALENT TO AT LEAST ONE
PERCENT OF ITS RETAIL SALES REVENUE ON COST-EFFECTIVE ENERGY
EFFICIENCY PROGRAMS FOR ITS CUSTOMERS; AND

(II) DURING THE NEXT SUCCEEDING CALENDAR YEAR AND EVERY
CALENDAR YEAR THEREAFTER, AN AMOUNT EQUIVALENT TO AT LEAST
TWO PERCENT OF ITS RETAIL SALES REVENUE ON COST-EFFECTIVE ENERGY
EFFICIENCY PROGRAMS FOR ITS CUSTOMERS.

(2) FOR THE PURPOSE OF DETERMINING WHETHER A UTILITY HAS
MET ITS MINIMUM ENERGY EFFICIENCY SPENDING REQUIREMENT UNDER
THIS SECTION, ALLOWED COSTS SHALL INCLUDE PROGRAM PLANNING,
ADMINISTRATION, MARKETING, TECHNICAL ASSISTANCE, CONSUMER
EDUCATION, REBATES AND OTHER FINANCIAL INCENTIVES FOR
CUSTOMERS, AND EVALUATION COSTS RELATED TO ENERGY EFFICIENCY
PROGRAM DESIGN AND IMPLEMENTATION.

(3) EACH UTILITY SHALL DETERMINE WHICH PROGRAMS IT
CHOoses TO IMPLEMENT TO MEET THE REQUIREMENTS OF THIS SECTION.
EACH UTILITY SHALL STRIVE TO IMPLEMENT A SET OF PROGRAMS THAT,
TAKEN TOGETHER, ARE COST-EFFECTIVE.

(4) A UTILITY MAY USE FUNDS PROVIDED BY OTHER ENTITIES,
INCLUDING WITHOUT LIMITATION A WHOLESALE ELECTRIC POWER
PROVIDER, STATE GOVERNMENT, OR LOCAL GOVERNMENT, TOWARD
MEETING ITS SPENDING REQUIREMENTS UNDER THIS SECTION.

(5) A UTILITY MAY IMPLEMENT ENERGY EFFICIENCY PROGRAMS ON
ITS OWN, IN PARTNERSHIP WITH OTHER UTILITIES, BY PROVIDING FUNDING
TO THE GOVERNOR'S ENERGY OFFICE TO ADMINISTER ENERGY EFFICIENCY
PROGRAMS ON ITS BEHALF, OR BY A COMBINATION OF THE THREE
METHODS, AT ITS OPTION.

(6) A UTILITY MAY EXEMPT ITSELF FROM THE SPENDING
REQUIREMENTS OF THIS SECTION IN A PARTICULAR YEAR, BUT ONLY FOR
THAT YEAR, IF THE UTILITY'S RETAIL ELECTRICITY SALES, IN
MEGAWATT-HOURS, FOR THAT YEAR FALL THREE PERCENT OR MORE
BELOW THE UTILITY'S SALES, IN MEGAWATT-HOURS, FOR THE
IMMEDIATELY PRECEDING YEAR.

(7) The Governor’s Energy Office may hire and oversee one or more qualified and impartial contractors to implement energy efficiency programs for a utility if that utility chooses to provide funding to the Governor’s Energy Office for this purpose. The Governor’s Energy Office may charge a utility a reasonable management fee, not to exceed ten percent of the funds it receives, if the utility chooses to have the Governor’s Energy Office administer energy efficiency programs on its behalf.

40-3.3-105. Accounting - reports. (1) Each utility shall track program expenditures and evaluate the costs and benefits of its energy efficiency programs.

(2) On or before April 30, 2010, and on or before April 30 of each year thereafter, each utility shall submit an annual report for the immediately preceding year to the Governor’s energy office. Annual reports shall contain information on the energy efficiency programs implemented by the utility; program expenditures; program expenditures as a fraction of retail sales revenue; energy savings impacts and the techniques used to estimate these impacts; the estimated costs, benefits, and cost-effectiveness of the energy efficiency programs; and other information requested by the Governor’s Energy Office.

(3) The Governor’s Energy Office shall review each report submitted pursuant to this section and, if the Governor’s Energy Office deems it appropriate, provide comments to the utilities to help them improve their energy efficiency programs.
(4) The governor’s energy office shall compile information on energy efficiency programs implemented by utilities and provide a report with such information biennially to the general assembly. Each biennial report shall include a list of which utilities are in compliance with the energy efficiency program spending requirement specified in section 40-3.3-104 (1) (a) and which utilities, if any, are not; information on overall energy efficiency program expenditures, energy savings, and net economic benefits; and any recommendations to the general assembly for legislative changes to enhance energy efficiency and conservation.

SECTION 2. 40-9.5-114.5, Colorado Revised Statutes, is amended to read:

40-9.5-114.5. Applicability of specified sections. (1) The provisions of sections 40-9.5-108 to 40-9.5-112 shall be applicable to all cooperative electric associations with membership of more than twenty-five thousand members whether regulated under this part 1 or the "Public Utilities Law", articles 1 to 7 of this title.

(2) Article 3.3 of this title shall apply to all cooperative electric associations with membership of more than five thousand members whether regulated under this part 1 or the "Public Utilities Law", articles 1 to 7 of this title.

SECTION 3. Effective date. This act shall take effect July 1, 2008.

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