

**Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

REVISED

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

LLS NO. 10-0502.01 Duane Gall

HOUSE BILL 10-1098

HOUSE SPONSORSHIP

Levy,

SENATE SPONSORSHIP

Hodge,

House Committees

Transportation & Energy
Appropriations

Senate Committees

Local Government and Energy

A BILL FOR AN ACT

101 **CONCERNING INCREASED TRANSPARENCY IN THE GOVERNANCE OF**
102 **COOPERATIVE ELECTRIC ASSOCIATIONS.**

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>.)

Existing law allows cooperative electric associations to exempt themselves from regulation by the public utilities commission and become self-governing, under the control of a board of directors (board) elected by member-consumers (members). Current provisions concerning board meetings, notices, elections, and conflicts of interest lack

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.*

SENATE
Am ended 2nd Reading
April 1, 2010

HOUSE
3rd Reading Unam ended
March 8, 2010

HOUSE
Am ended 2nd Reading
March 5, 2010

specificity in some areas.

Section 1 of the bill requires an opportunity for member input on matters to be decided by the board at meetings, and requires the posting of meeting minutes on the association's web site.

Section 2 requires the association to adopt, and post on its web site, a written policy governing elections of directors and information about how a member may become a candidate for a position on the board. In addition, the date of an election and notice of the ballot mailing deadline for the election must be posted in advance. Section 2 also requires disclosure of campaign contributions by persons employed by the board.

Section 3 requires that candidates for positions on the board be given equal access to member lists and supply contact information for use by members.

Section 3 also:

- ! Requires the order of names on the ballot to be determined randomly, without automatically assigning the top line to the incumbent;
- ! Prohibits any candidate or association employee from handling cast ballots without a neutral third party present; and
- ! Prohibits the association from expending any money or resources, including mailings, to support or oppose a candidate in connection with a board election.

Section 4 requires posting on the association's web site of notice of board meetings and all available documents that will be discussed at such meetings, at least 14 days in advance for regular meetings and as soon as possible for special meetings.

Section 5 requires that, in case of any conflict between the provisions governing cooperative electric associations and the general law governing nonprofit corporations, the provisions governing cooperative electric associations will control.

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

2 **SECTION 1.** 40-9.5-108 (2), Colorado Revised Statutes, is
3 amended to read:

4 **40-9.5-108. Public meetings.** (2) (a) ~~Prior to the time~~ BEFORE
5 the board of directors convenes in executive session, the board shall
6 announce the general topic of the executive session.

7 (b) AT EVERY REGULAR MEETING OF THE BOARD OF DIRECTORS,

1 MEMBERS OF THE ASSOCIATION SHALL BE GIVEN AN OPPORTUNITY TO
2 ADDRESS THE BOARD ON ANY MATTER CONCERNING THE POLICIES AND
3 BUSINESS OF THE ASSOCIATION. THE BOARD MAY PLACE REASONABLE,
4 VIEWPOINT-NEUTRAL RESTRICTIONS ON THE AMOUNT AND DURATION OF
5 PUBLIC COMMENT.

6 (c) WRITTEN MINUTES SHALL BE MADE OF ALL MEETINGS OF THE
7 BOARD OF DIRECTORS. THE MINUTES SHALL BE POSTED ON THE WEB SITE
8 OF THE ASSOCIATION AS SOON AS THEY HAVE BEEN APPROVED AND SHALL
9 REMAIN POSTED UNTIL AT LEAST SIX MONTHS AFTER THE DATE OF THE
10 MEETING. UPON REQUEST BY A MEMBER OF THE BOARD, THAT MEMBER'S
11 OWN VOTE ON ANY ISSUE SHALL BE NOTED IN THE MINUTES.

12 **SECTION 2.** Article 9.5 of title 40, Colorado Revised Statutes,
13 is amended BY THE ADDITION OF A NEW SECTION to read:

14 **40-9.5-109.5. Election policy - adoption - publication -**
15 **contents.** (1) THE BOARD OF DIRECTORS OF EACH COOPERATIVE
16 ELECTRIC ASSOCIATION SHALL ADOPT A WRITTEN POLICY GOVERNING THE
17 ELECTION OF DIRECTORS. THE ELECTION POLICY SHALL BE POSTED ON THE
18 ASSOCIATION'S WEB SITE. THE ELECTION POLICY SHALL CONTAIN TRUE
19 AND COMPLETE INFORMATION ON THE FOLLOWING SUBJECTS:

20 (a) THE PROCEDURE AND TIMING FOR A MEMBER TO BECOME A
21 CANDIDATE FOR THE BOARD OF DIRECTORS AND THE PROCESS BY WHICH
22 ELECTIONS FOR THE BOARD OF DIRECTORS ARE HELD;

23 (b) THE QUALIFICATIONS FOR CANDIDATES AND REQUIREMENTS
24 FOR APPEARING ON THE BALLOT;

25 (c) THE DATE OF THE ELECTION, WHICH SHALL BE FIXED, POSTED
26 ON THE ASSOCIATION'S WEB SITE, AND OTHERWISE PUBLICIZED NO LESS
27 THAN SIX MONTHS BEFORE THE ELECTION.

1 (2) IN ADDITION TO THE POSTING █ REQUIRED IN SUBSECTION (1)
2 OF THIS SECTION, INFORMATION ON HOW TO BECOME A CANDIDATE AND
3 THE SCHEDULE FOR ELECTIONS SHALL BE COMMUNICATED TO EACH
4 MEMBER IN A MAILING AND ON THE ASSOCIATION'S WEB SITE NO LESS THAN
5 █ TWO MONTHS BEFORE PETITIONS TO BECOME A CANDIDATE ARE DUE.

6 (3) THE BALLOT MAILING DEADLINE SHALL BE POSTED ON THE WEB
7 SITE AT LEAST THREE MONTHS BEFORE THE DEADLINE AND SHALL REMAIN
8 SO POSTED UNTIL AFTER THE ELECTION.

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10 **SECTION 3.** 40-9.5-110, Colorado Revised Statutes, is amended
11 to read:

12 **40-9.5-110. Board of directors of cooperative electric**
13 **associations - nomination - elections.** (1) (a) A nomination for director
14 on the board of directors of a cooperative electric association may be
15 made by written petition signed by at least fifteen members of such
16 association, and filed with the board of directors of such association no
17 later than forty-five days prior to the date of the election. Any petition so
18 filed shall designate the name of the nominee and the term for which
19 nominated. The name of a nominee shall appear on the ballot if the
20 nominating petition is in apparent conformity with this section as
21 determined by the secretary of the board. Nomination and election of
22 directors by districts, if provided for in the bylaws of the association, shall
23 be permitted.

24 (b) CANDIDATES FOR POSITIONS ON THE BOARD OF DIRECTORS
25 SHALL BE ENTITLED TO RECEIVE █ MEMBERSHIP LISTS, IN A USABLE
26 FORMAT, ON THE SAME BASIS AND AT THE SAME TIME AS SUCH LISTS ARE
27 MADE AVAILABLE TO INCUMBENT DIRECTORS RUNNING FOR REELECTION.

1 CANDIDATES SHALL USE SUCH LISTS ONLY FOR PURPOSES OF THE ELECTION
2 AND SHALL RETURN OR DESTROY THEM IMMEDIATELY AFTER THE
3 ELECTION.

4 (c) ALL BOARD MEMBERS SHALL MAKE AVAILABLE TO
5 ASSOCIATION MEMBERS SOME MEANS FOR DIRECT CONTACT, WHETHER BY
6 TELEPHONE, ELECTRONIC MAIL, OR REGULAR MAIL. INFORMATION ON HOW
7 TO CONTACT EACH BOARD MEMBER BY ONE OR MORE OF THESE METHODS
8 SHALL BE AVAILABLE ON THE ASSOCIATION WEB SITE.

9 (2) (a) (I) Each member of the association shall be entitled to vote
10 in the election of directors on the board of directors either at a meeting
11 held for such purpose or by mail, BUT NOT BOTH. A MEMBER WHO HAS
12 VOTED BY MAIL SHALL NOT BE ENTITLED TO VOTE AT THE MEETING.

13 (II) Mail voting shall be in writing on ballots provided by the
14 association. The mail ballot shall be voted by the member, placed in a
15 special envelope provided for the purpose so as to conceal the marking on
16 the ballot, deposited in a return envelope which must be signed by the
17 voting member, and mailed back to the association. Envelopes
18 containing mail ballots shall remain sealed and uncounted until the
19 meeting held for the purpose of electing the board of directors. The
20 presence of a member at such meeting shall revoke a mail vote
21 theretofore executed by such member, and such member shall be entitled
22 to vote at such meeting in the same manner and with the same effect as
23 if such member had not voted by mail.

24 (b) THE ORDER OF NAMES ON THE BALLOT SHALL BE DETERMINED
25 RANDOMLY IN A MANNER THAT DOES NOT AUTOMATICALLY ASSIGN THE
26 TOP LINE TO THE INCUMBENT.

27 (c) THE BOARD OF DIRECTORS SHALL, WHEN PRACTICABLE,

1 ARRANGE FOR AN INDEPENDENT THIRD PARTY TO OVERSEE THE STORAGE
2 AND COUNTING OF BALLOTS. IF THIS IS NOT PRACTICABLE, THEN BALLOTS
3 SHALL BE COLLECTED AND STORED IN A MANNER THAT PROTECTS THE
4 PRIVACY OF THEIR CONTENT. ALL CANDIDATES FOR THE BOARD OF
5 DIRECTORS SHALL BE GIVEN THE OPPORTUNITY TO BE PRESENT TO
6 OBSERVE THEIR TABULATION.

7 (3) Voting for directors on the board of directors by proxy or
8 cumulative voting ~~shall be~~ IS prohibited.

9 (4) NEITHER THE ASSOCIATION NOR THE BOARD OF DIRECTORS
10 SHALL ENDORSE OR OPPOSE THE CANDIDACY OF AN INCUMBENT BOARD
11 MEMBER OR OTHER CANDIDATE FOR A POSITION ON THE BOARD. DURING
12 THE TWO MONTHS IMMEDIATELY PRECEDING THE ELECTION, BOARD
13 MEMBERS SHALL NOT SEND INDIVIDUAL NEWSLETTERS USING THE
14 ASSOCIATION'S RESOURCES.

15 **SECTION 4.** 40-9.5-111, Colorado Revised Statutes, is amended
16 to read:

17 **40-9.5-111. Notice of meeting - agenda.** (1) Notice of the time
18 and place of a meeting of the board of directors and a copy of the agenda
19 for such meeting shall be posted in every service office maintained by the
20 association at least ten days before the meeting. The agenda shall
21 specifically designate the issues or questions to be discussed, or the
22 actions to be taken, at the meeting. Copies of ~~said~~ THE agenda shall be
23 available at each service office for members and consumers.

24 (2) THE DATE, TIME, LOCATION, AND AGENDA OF EVERY
25 MEETING OF THE BOARD OF DIRECTORS SHALL BE POSTED ON THE
26 ASSOCIATION'S WEB SITE NO LESS THAN TEN DAYS BEFORE THE MEETING
27 IN THE CASE OF REGULAR MEETINGS AND AS SOON AS THE MEETING IS

1 SCHEDULED IN THE CASE OF SPECIAL MEETINGS. IF A MEETING IS
2 POSTPONED OR CANCELLED, NOTICE OF THE POSTPONEMENT OR
3 CANCELLATION SHALL IMMEDIATELY BE POSTED ON THE WEB SITE.

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5 **SECTION 5.** 40-9.5-112, Colorado Revised Statutes, is amended
6 to read:

7 **40-9.5-112. Provisions applicable to cooperative electric**
8 **associations.** Except as otherwise provided in this part 1, the provisions
9 of article 55 of title 7, C.R.S., shall apply to cooperative electric
10 associations. IN THE CASE OF ANY IRRECONCILABLE CONFLICT BETWEEN
11 SAID ARTICLE AND THIS PART 1, THIS PART 1 SHALL CONTROL. Section
12 40-4-105 shall apply to cooperative electric associations with respect to
13 crossing of railroad rights-of-way.

14 **SECTION 6. Act subject to petition - effective date.** This act
15 shall take effect at 12:01 a.m. on the day following the expiration of the
16 ninety-day period after final adjournment of the general assembly (August
17 11, 2010, if adjournment sine die is on May 12, 2010); except that, if a
18 referendum petition is filed pursuant to section 1 (3) of article V of the
19 state constitution against this act or an item, section, or part of this act
20 within such period, then the act, item, section, or part shall not take effect
21 unless approved by the people at the general election to be held in
22 November 2010 and shall take effect on the date of the official
23 declaration of the vote thereon by the governor.