

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 10-0502.01 Duane Gall

HOUSE BILL 10-1098

HOUSE SPONSORSHIP

Levy,

SENATE SPONSORSHIP

(None),

House Committees

Transportation & Energy

Senate Committees

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.

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 MEETING OF THE BOARD OF DIRECTORS, MEMBERS

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

6 (c) WRITTEN MINUTES, WHICH SHALL INCLUDE A RECORD OF VOTES
7 CAST BY EACH DIRECTOR, SHALL BE MADE OF ALL MEETINGS OF THE
8 BOARD OF DIRECTORS AND SHALL BE POSTED ON THE WEB SITE OF THE
9 ASSOCIATION AS SOON AS THEY HAVE BEEN PREPARED.

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

13 **40-9.5-109.5. Election policy - adoption - publication -**
14 **contents.** (1) THE BOARD OF DIRECTORS OF EACH COOPERATIVE
15 ELECTRIC ASSOCIATION SHALL ADOPT A WRITTEN POLICY GOVERNING THE
16 ELECTION OF DIRECTORS. THE ELECTION POLICY SHALL BE POSTED ON THE
17 ASSOCIATION'S WEB SITE AND SHALL BE MAILED TO MEMBERS AS AN
18 INSERT IN AT LEAST ONE REGULAR MAILING. THE ELECTION POLICY SHALL
19 CONTAIN TRUE AND COMPLETE INFORMATION ON THE FOLLOWING
20 SUBJECTS:

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

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

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

1 THAN SIX MONTHS BEFORE THE ELECTION.

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

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

11 **40-9.5-110.5. Agents of association - disclosure of support for**
12 **candidates in board elections.** ANY EMPLOYEE OF THE ASSOCIATION
13 WHO IS HIRED BY THE BOARD OF DIRECTORS AND WHOSE SALARY IS
14 ESTABLISHED BY THE BOARD OF DIRECTORS SHALL PROMPTLY AND FULLY
15 MAKE PUBLIC, ON THE ASSOCIATION'S WEB SITE, THE AMOUNT OF HIS OR
16 HER FINANCIAL CONTRIBUTION AND THE NATURE OF HIS OR HER
17 NONMONETARY SUPPORT FOR ANY CANDIDATE FOR THE BOARD OF
18 DIRECTORS WHOM HE OR SHE CONTRIBUTES TO OR PUBLICLY SUPPORTS.

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

21 **40-9.5-110. Board of directors of cooperative electric**
22 **associations - nomination - elections.** (1) (a) A nomination for director
23 on the board of directors of a cooperative electric association may be
24 made by written petition signed by at least fifteen members of such
25 association, and filed with the board of directors of such association no
26 later than forty-five days prior to the date of the election. Any petition so
27 filed shall designate the name of the nominee and the term for which

1 nominated. The name of a nominee shall appear on the ballot if the
2 nominating petition is in apparent conformity with this section as
3 determined by the secretary of the board. Nomination and election of
4 directors by districts, if provided for in the bylaws of the association, shall
5 be permitted.

6 (b) CANDIDATES FOR POSITIONS ON THE BOARD OF DIRECTORS
7 SHALL BE ENTITLED TO RECEIVE ELECTRONIC FILES OF MEMBERSHIP LISTS,
8 IN A USABLE FORMAT, ON THE SAME BASIS AND AT THE SAME TIME AS SUCH
9 LISTS ARE MADE AVAILABLE TO INCUMBENT DIRECTORS RUNNING FOR
10 REELECTION.

11 (c) ALL BOARD MEMBERS SHALL MAKE AVAILABLE TO
12 ASSOCIATION MEMBERS SOME MEANS FOR DIRECT CONTACT, WHETHER BY
13 TELEPHONE, ELECTRONIC MAIL, OR REGULAR MAIL. INFORMATION ON HOW
14 TO CONTACT EACH BOARD MEMBER BY ONE OR MORE OF THESE METHODS
15 SHALL BE AVAILABLE ON THE ASSOCIATION WEB SITE.

16 (2) (a) Each member of the association shall be entitled to vote in
17 the election of directors on the board of directors either at a meeting held
18 for such purpose or by mail. Mail voting shall be in writing on ballots
19 provided by the association. The mail ballot shall be voted by the
20 member, placed in a special envelope provided for the purpose so as to
21 conceal the marking on the ballot, deposited in a return envelope which
22 must be signed by the voting member, and mailed back to the association.
23 Envelopes containing mail ballots shall remain sealed and uncounted until
24 the meeting held for the purpose of electing the board of directors. The
25 presence of a member at such meeting shall revoke a mail vote
26 ~~therefore~~ PREVIOUSLY executed by such member, and such member
27 shall be entitled to vote at such meeting in the same manner and with the

1 same effect as if such member had not voted by mail.

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

5 (c) THE BOARD OF DIRECTORS SHALL, WHEN PRACTICABLE,
6 ARRANGE FOR AN INDEPENDENT THIRD PARTY TO OVERSEE THE STORAGE
7 AND COUNTING OF BALLOTS. IF THIS IS NOT PRACTICABLE, THEN BALLOTS
8 SHALL BE COLLECTED AND STORED IN A MANNER THAT PROTECTS THE
9 PRIVACY OF THEIR CONTENT UNTIL SUCH TIME AS ALL CANDIDATES FOR
10 THE BOARD OF DIRECTORS MAY BE PRESENT TO OBSERVE THEIR
11 TABULATION. AT NO TIME MAY EMPLOYEES OF THE ASSOCIATION OR
12 CANDIDATES FOR ELECTION HAVE PHYSICAL ACCESS TO THE BALLOTS
13 WITHOUT THE PRESENCE OF EITHER THE THIRD PARTY OR, IF THERE IS NO
14 THIRD PARTY, ALL CANDIDATES.

15 (3) Voting for directors on the board of directors by proxy or
16 cumulative voting ~~shall be~~ is prohibited.

17 (4) THE ASSOCIATION SHALL NOT TAKE ANY ACTION, NOR EXPEND
18 ANY MONETARY OR NONMONETARY RESOURCES, THAT COULD
19 REASONABLY BE INTERPRETED AS SUPPORTING OR OPPOSING THE
20 CANDIDACY OF EITHER AN INCUMBENT BOARD MEMBER OR ANOTHER
21 CANDIDATE FOR ELECTION OR AS PROMOTING, ADVANCING, OR CRITICIZING
22 THE STATED POSITIONS OF ANY CANDIDATE. DURING THE THREE MONTHS
23 IMMEDIATELY PRECEDING THE ELECTION, BOARD MEMBERS SHALL NOT
24 SEND INDIVIDUAL NEWSLETTERS USING THE ASSOCIATION'S RESOURCES.

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

27 **40-9.5-111. Notice of meeting - agenda.** (1) Notice of the time

1 and place of a meeting of the board of directors and a copy of the agenda
2 for such meeting shall be posted in every service office maintained by the
3 association at least ten days before the meeting. The agenda shall
4 specifically designate the issues or questions to be discussed, or the
5 actions to be taken, at the meeting. Copies of ~~said~~ THE agenda shall be
6 available at each service office for members and consumers.

7 (2) (a) THE DATE, TIME, AND LOCATION OF EVERY MEETING OF THE
8 BOARD OF DIRECTORS SHALL BE POSTED ON THE ASSOCIATION'S WEB SITE
9 NO LESS THAN FOURTEEN DAYS BEFORE THE MEETING IN THE CASE OF
10 REGULAR MEETINGS AND AS SOON AS THE MEETING IS SCHEDULED IN THE
11 CASE OF SPECIAL MEETINGS. IF A MEETING IS POSTPONED OR CANCELLED,
12 NOTICE OF THE POSTPONEMENT OR CANCELLATION SHALL IMMEDIATELY
13 BE POSTED ON THE WEB SITE.

14 (b) THE POSTED NOTICE OF A MEETING SHALL INCLUDE THE
15 AGENDA AND ANY DOCUMENTS PREPARED FOR THE MEETING OR TO BE
16 PRESENTED AT THE MEETING IF THE DOCUMENTS ARE AVAILABLE IN, OR
17 CAN READILY BE CONVERTED TO, AN ELECTRONIC FORMAT. DOCUMENTS
18 THAT ARE NOT AVAILABLE FOURTEEN DAYS BEFORE THE MEETING SHALL
19 BE POSTED AS SOON AS THEY BECOME AVAILABLE. DOCUMENTS THAT
20 CONTAIN PROPRIETARY OR PRIVILEGED INFORMATION OR THAT ARE NOT
21 SUBJECT TO DISCLOSURE UNDER THE COLORADO OPEN RECORDS LAW,
22 ARTICLE 72 OF TITLE 24, C.R.S., ARE NOT SUBJECT TO THIS PARAGRAPH
23 (b).

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

26 **40-9.5-112. Provisions applicable to cooperative electric**
27 **associations.** Except as otherwise provided in this part 1, the provisions

1 of article 55 of title 7, C.R.S., shall apply to cooperative electric
2 associations. IN THE CASE OF ANY IRRECONCILABLE CONFLICT BETWEEN
3 SAID ARTICLE AND THIS PART 1, THIS PART 1 SHALL CONTROL. Section
4 40-4-105 shall apply to cooperative electric associations with respect to
5 crossing of railroad rights-of-way.

6 **SECTION 6. Act subject to petition - effective date.** This act
7 shall take effect at 12:01 a.m. on the day following the expiration of the
8 ninety-day period after final adjournment of the general assembly (August
9 11, 2010, if adjournment sine die is on May 12, 2010); except that, if a
10 referendum petition is filed pursuant to section 1 (3) of article V of the
11 state constitution against this act or an item, section, or part of this act
12 within such period, then the act, item, section, or part shall not take effect
13 unless approved by the people at the general election to be held in
14 November 2010 and shall take effect on the date of the official
15 declaration of the vote thereon by the governor.