

First Regular Session
Seventy-third General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 21-0321.01 Megan Waples x4348

HOUSE BILL 21-1131

HOUSE SPONSORSHIP

Amabile,

SENATE SPONSORSHIP

(None),

House Committees
Energy & Environment

Senate Committees

A BILL FOR AN ACT

101 CONCERNING GOVERNANCE REQUIREMENTS FOR COOPERATIVE
102 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://leg.colorado.gov>.)

The bill:

- Makes current laws concerning governance and transparency for cooperative electric associations (associations) applicable to nonprofit generation and transmission cooperative electric associations that provide wholesale electric service directly to Colorado cooperative

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

- electric associations that are its members;
- Eliminates an exemption to those requirements for associations with fewer than 25,000 members;
- Allows an association to authorize, in its bylaws, its members and directors to participate in meetings electronically;
- Allows an association to authorize, in its bylaws, members to vote in an election through a secure and verifiable electronic voting system;
- Clarifies that members voting or participating in a meeting electronically are considered present in person for the purpose of establishing quorum;
- Defines joint memberships and clarifies how joint memberships can vote;
- Amends the deadlines and requirements for notice of an election;
- Requires an association to adopt written policies concerning the compensation of board members and disclosures of conflicts of interest for board members;
- Requires board members to fulfill their duty of loyalty to the cooperative association at all times; except that, if a director serves on the board of both a generation and transmission association and a distribution association, the director can not be required to prioritize the director's duty to the generation and transmission association over the director's duty to the distribution association; and
- Requires associations to post on their websites information about their rates and net metering requirements and to make financial audits available to members on request.

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

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 40-9.5-102
 3 as follows:

4 **40-9.5-102. Definitions.** ~~For the purposes of AS USED IN this part~~
 5 1, UNLESS THE CONTEXT OTHERWISE REQUIRES:

6 (1) "Cooperative electric association" OR "ASSOCIATION" includes
 7 a nonprofit electric corporation or association but does not include
 8 nonprofit generation and transmission electric corporations or

1 associations.

2 (2) "JOINT MEMBERSHIP" MEANS A MEMBERSHIP IN A COOPERATIVE
3 ELECTRIC ASSOCIATION IN WHICH MORE THAN ONE INDIVIDUAL ARE
4 TREATED AS A SINGLE MEMBER OF THE COOPERATIVE ELECTRIC
5 ASSOCIATION IN ACCORDANCE WITH THE COOPERATIVE ELECTRIC
6 ASSOCIATION'S BYLAWS. EACH INDIVIDUAL IN A JOINT MEMBERSHIP IS A
7 JOINT MEMBER.

8 **SECTION 2.** In Colorado Revised Statutes, **add** 40-9.5-108.5 as
9 follows:

10 **40-9.5-108.5. Public posting of documents.** (1) EACH
11 COOPERATIVE ELECTRIC ASSOCIATION SHALL POST ON THE ASSOCIATION'S
12 WEBSITE THE FOLLOWING INFORMATION:

13 (a) THE ASSOCIATION'S CURRENT RATES; AND

14 (b) THE ASSOCIATION'S NET METERING REQUIREMENTS.

15 (2) EACH COOPERATIVE ELECTRIC ASSOCIATION SHALL KEEP AND
16 MAKE AVAILABLE ON REQUEST TO A MEMBER OF THE ASSOCIATION ALL
17 FINANCIAL AUDITS OF THE ASSOCIATION CONDUCTED IN THE LAST THREE
18 FISCAL YEARS.

19 **SECTION 3.** In Colorado Revised Statutes, 40-9.5-109.5, **amend**
20 (1) introductory portion, (2), and (3); and **add** (1)(d) and (1)(e) as
21 follows:

22 **40-9.5-109.5. Election policy - adoption - publication -**
23 **contents.** (1) The board of directors of each cooperative electric
24 association shall adopt a written policy governing the election of
25 directors. The ~~election policy~~ ASSOCIATION shall ~~be posted~~ POST THE
26 POLICY on the association's website, PROVIDE NOTICE OF THE POLICY AT
27 THE TIME A PERSON BECOMES A MEMBER, AND PROVIDE A COPY OF THE

1 POLICY TO A MEMBER UPON REQUEST. The election policy shall contain
2 true and complete information on the following subjects:

3 (d) WHO IS ENTITLED TO VOTE IN AN ELECTION, INCLUDING HOW
4 JOINT MEMBERS MAY VOTE; AND

5 (e) HOW A MEMBER MAY OBTAIN AND CAST A BALLOT.

6 (2) In addition to the ~~posting required in~~ REQUIREMENTS OF
7 subsection (1) of this section, information on how to become a candidate
8 and the schedule for elections shall be ~~communicated to each member in~~
9 ~~a mailing and on the association's website~~ POSTED ON THE ASSOCIATION'S
10 WEBSITE AND OTHERWISE PUBLICIZED BASED ON A MEMBER'S PREFERRED
11 METHOD OF COMMUNICATION no less than two months before petitions to
12 become a candidate are due.

13 (3) The ~~ballot mailing~~ deadline TO RETURN BALLOTS TO THE
14 ASSOCIATION shall be posted on the website at least ~~three~~ TWO months
15 before the deadline and shall remain so posted until after the election.

16 **SECTION 4.** In Colorado Revised Statutes, **add** 40-9.5-109.7 as
17 follows:

18 **40-9.5-109.7. Electronic participation - meetings - elections**
19 **conducted by mail or electronic means - definition.** (1) A
20 COOPERATIVE ELECTRIC ASSOCIATION MAY ADOPT PROVISIONS IN ITS
21 BYLAWS AUTHORIZING MEMBERS TO PARTICIPATE ELECTRONICALLY IN
22 MEMBER MEETINGS OF THE ASSOCIATION.

23 (2) (a) NOTWITHSTANDING SECTION 7-55-110 OR ANY OTHER
24 PROVISION OF LAW TO THE CONTRARY, A COOPERATIVE ELECTRIC
25 ASSOCIATION MAY ADOPT PROVISIONS IN ITS BYLAWS AUTHORIZING
26 MEMBERS TO VOTE ELECTRONICALLY IN AN ELECTION OF DIRECTORS OF
27 THE BOARD OR IN AN ELECTION ON ANY MATTER REQUIRING A VOTE OF THE

1 MEMBERSHIP. IF AUTHORIZED BY ITS BYLAWS, THE ASSOCIATION MAY
2 ESTABLISH A SECURE AND VERIFIABLE ELECTRONIC TRANSMISSION SYSTEM
3 THROUGH WHICH A MEMBER MAY APPLY FOR, RECEIVE, AND RETURN A
4 BALLOT IN AN ELECTION.

5 (b) AS USED IN THIS SECTION, "SECURE AND VERIFIABLE
6 ELECTRONIC TRANSMISSION SYSTEM" MEANS A SYSTEM THAT SAVES AND
7 IS CAPABLE OF PRODUCING THE RECORDS NECESSARY TO AUDIT THE
8 OPERATION OF THE ELECTRONIC TRANSMISSION, INCLUDING A PAPER
9 RECORD OF ALL BALLOTS SENT AND RECEIVED.

10 (3) NOTWITHSTANDING SECTION 7-55-119, A MEMBER WHO
11 REGISTERS IN PERSON OR ELECTRONICALLY AT ANY COOPERATIVE
12 ELECTRIC ASSOCIATION MEETING OR WHO CASTS A VOTE THROUGH A
13 SECURE ELECTRONIC TRANSMISSION SYSTEM IF AUTHORIZED BY THE
14 ASSOCIATION'S BYLAWS IS CONSIDERED PRESENT IN PERSON FOR THE
15 PURPOSE OF DETERMINING A QUORUM FOR ACTION BY THE MEMBERSHIP.

16 (4) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A
17 COOPERATIVE ELECTRIC ASSOCIATION MAY ADOPT PROVISIONS IN ITS
18 BYLAWS ALLOWING DIRECTORS ON THE BOARD OF DIRECTORS TO
19 PARTICIPATE AND VOTE ELECTRONICALLY IN MEETINGS OF THE BOARD OF
20 DIRECTORS. A MEETING OF THE BOARD OF DIRECTORS THAT IS CONDUCTED
21 ELECTRONICALLY MUST ALLOW MEMBERS OF THE ASSOCIATION AN
22 OPPORTUNITY TO ADDRESS THE BOARD IN ACCORDANCE WITH SECTION
23 40-9.5-108 (2)(b).

24 **SECTION 5.** In Colorado Revised Statutes, 40-9.5-110, **amend**
25 (1)(a), (1)(b) and (2)(a) as follows:

26 **40-9.5-110. Board of directors of cooperative electric**
27 **associations - nomination - elections.** (1) (a) A nomination for director

1 on the board of directors of a cooperative electric association may be
2 made by written petition signed by at least fifteen members of such
3 association, and filed with the board of directors of such association no
4 later than ~~forty-five~~ SIXTY days prior to the date of the election. Any
5 petition so filed shall designate the name of the nominee and the term for
6 which nominated. The name of a nominee shall appear on the ballot if the
7 nominating petition is in apparent conformity with this section as
8 determined by the secretary of the board. Nomination and election of
9 directors by districts, if provided for in the bylaws of the association, shall
10 be permitted.

11 (b) ~~Candidates~~ EACH CANDIDATE for ~~positions~~ A POSITION on the
12 board of directors ~~shall be~~ IS entitled to receive A membership ~~lists~~, LIST
13 in a usable format, ~~on the same basis and at the same time as such lists are~~
14 ~~made available to incumbent directors running for reelection~~ AN
15 ELECTRONIC FORMAT UPON RECEIPT AND VERIFICATION OF A VALID
16 PETITION. THE MEMBERSHIP LIST MUST INCLUDE THE NAMES AND
17 ADDRESSES OF ALL MEMBERS, INCLUDING ALL JOINT MEMBERS, AS THEY
18 APPEAR IN THE ASSOCIATION'S RECORDS. Candidates shall use such lists
19 only for purposes of the election and shall return or destroy them
20 immediately after the election.

21 (2) (a) (I) Each member of the association is entitled to vote in the
22 election of directors on the board of directors. ~~either~~ IN THE CASE OF A
23 JOINT MEMBERSHIP, ANY ONE JOINT MEMBER MAY CAST THE VOTE FOR THE
24 MEMBERSHIP. A MEMBER MAY VOTE IN PERSON at a meeting held for such
25 purpose, ~~or~~ by mail, ~~but not both~~ OR BY ELECTRONIC MEANS IF
26 AUTHORIZED BY THE ASSOCIATION'S BYLAWS. A member who has voted
27 by mail OR BY ELECTRONIC MEANS is not entitled to vote at the meeting.

1 (II) Mail voting must be in writing on ballots provided by the
2 association. The mail ballot shall be voted by the member, ~~placed in a~~
3 ~~special secrecy sleeve or inner envelope provided for the purpose so as to~~
4 ~~conceal the marking on the ballot~~, deposited in a return envelope, which
5 must be signed by the voting member, and mailed back to the association
6 or to an independent third party with whom the association has contracted
7 for the storage and counting of ballots in accordance with ~~paragraph (c)~~
8 ~~of this subsection (2)~~ SUBSECTION (2)(c) OF THIS SECTION. FOR THE
9 BALLOT OF A JOINT MEMBERSHIP, THE BALLOT ENVELOPE MAILED TO THE
10 JOINT MEMBER MUST INCLUDE THE NAME OF EACH ELIGIBLE VOTER. ANY
11 ONE OF THE JOINT MEMBERS MAY CAST THE BALLOT. THE JOINT MEMBER
12 WHO CASTS THE BALLOT SHALL SIGN THE RETURN ENVELOPE.

13 (III) AN ASSOCIATION MAY PROVIDE A SECRECY SLEEVE OR INNER
14 ENVELOPE TO CONCEAL THE MARKINGS ON A MAIL BALLOT IN THE RETURN
15 ENVELOPE. A mail ballot ~~received~~ RETURNED in a signed return envelope
16 but without ~~a secrecy sleeve or inner envelope~~ THE MARKINGS
17 CONCEALED is nonetheless valid and shall be counted.

18 **SECTION 6.** In Colorado Revised Statutes, **add** 40-9.5-110.5 as
19 follows:

20 **40-9.5-110.5. Directors - required policies - definitions.**

21 (1) THE BOARD OF EACH COOPERATIVE ELECTRIC ASSOCIATION SHALL
22 ADOPT WRITTEN POLICIES CONCERNING:

23 (a) (I) THE COMPENSATION PROVIDED TO DIRECTORS ON THE
24 BOARD OF DIRECTORS, INCLUDING INFORMATION ON ANY AUTHORIZED PER
25 DIEM AMOUNTS, ANY BESTOWED GIFTS VALUED OVER THE MINIMUM
26 REPORTABLE AMOUNT AND THEIR VALUE, AND THE VALUE OF ANY OTHER
27 BENEFITS, SERVICES, OR GOODS THAT DIRECTORS RECEIVE.

1 (II) AS USED IN THIS SECTION:

2 (A) "MINIMUM REPORTABLE AMOUNT" MEANS FIFTY DOLLARS FOR
3 THE 2021 CALENDAR YEAR, AND FOR EACH YEAR THEREAFTER, THE
4 AMOUNT FOR THE PRIOR YEAR ADJUSTED FOR INFLATION.

5 (B) "INFLATION" MEANS THE ANNUAL PERCENTAGE CHANGE IN THE
6 UNITED STATES DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS,
7 CONSUMER PRICE INDEX FOR DENVER-AURORA-LAKEWOOD FOR ALL
8 ITEMS AND ALL URBAN CONSUMERS, OR ITS SUCCESSOR INDEX.

9 (b) THE REQUIREMENTS AND PROCEDURES FOR A DIRECTOR ON THE
10 BOARD OF DIRECTORS TO DISCLOSE IN WRITING ANY CONFLICTS OF
11 INTEREST. AT A MINIMUM, AN ASSOCIATION'S POLICY MUST REQUIRE
12 DISCLOSURE WHEN A DECISION BEFORE THE BOARD COULD PROVIDE
13 DIRECTLY AND AS A PROXIMATE RESULT OF THE DECISION A FINANCIAL OR
14 OTHER MATERIAL BENEFIT TO:

15 (I) THE DIRECTOR;

16 (II) A PARENT, GRANDPARENT, SPOUSE, PARTNER IN A CIVIL UNION,
17 CHILD, OR SIBLING OF THE DIRECTOR; OR

18 (III) AN ENTITY IN WHICH THE DIRECTOR IS AN OFFICER OR
19 DIRECTOR OR HAS A FINANCIAL INTEREST.

20 (2) (a) SUBJECT TO SUBSECTION (2)(b) OF THIS SECTION, A
21 DIRECTOR ON THE BOARD OF DIRECTORS SHALL AT ALL TIMES FULFILL THE
22 DIRECTOR'S DUTY OF LOYALTY TO THE ASSOCIATION, AND SHALL NOT
23 ALLOW A CONFLICT OF INTEREST TO IMPAIR THE DIRECTOR'S LOYALTY TO
24 THE ASSOCIATION.

25 (b) NOTWITHSTANDING ANY OTHER LAW TO THE CONTRARY, IF AN
26 INDIVIDUAL IS A DIRECTOR ON THE BOARD OF DIRECTORS OF BOTH A
27 DISTRIBUTION COOPERATIVE ELECTRIC ASSOCIATION AND A GENERATION

1 AND TRANSMISSION COOPERATIVE ELECTRIC ASSOCIATION, THE DIRECTOR
2 SHALL NOT BE REQUIRED TO GIVE PRIORITY TO ANY DUTY OF LOYALTY THE
3 DIRECTOR MAY HAVE TO THE GENERATION AND TRANSMISSION
4 COOPERATIVE ELECTRIC ASSOCIATION OVER THE SAME DUTY THE
5 DIRECTOR OWES TO THE DISTRIBUTION COOPERATIVE ELECTRIC
6 ASSOCIATION THAT DESIGNATED THE DIRECTOR AS ITS DIRECTOR DESIGNEE
7 TO THE GENERATION AND TRANSMISSION COOPERATIVE ELECTRIC
8 ASSOCIATION.

9 **SECTION 7.** In Colorado Revised Statutes, **amend** 40-9.5-112
10 as follows:

11 **40-9.5-112. Provisions applicable to cooperative electric**
12 **associations.** (1) Except as otherwise provided in this part 1, the
13 provisions of article 55 of title 7 ~~C.R.S.~~, shall apply to cooperative
14 electric associations. In the case of any irreconcilable conflict between
15 said ~~article~~ ARTICLE 55 and this part 1, this part 1 shall control.

16 (2) NOTWITHSTANDING ANY PROVISION OF ARTICLE 55 OF TITLE 7,
17 A COOPERATIVE ELECTRIC ASSOCIATION MAY AUTHORIZE JOINT
18 MEMBERSHIPS IN ITS BYLAWS.

19 (3) Section 40-4-105 shall apply to cooperative electric
20 associations with respect to crossing of railroad rights-of-way.

21 **SECTION 8.** In Colorado Revised Statutes, **amend** 40-9.5-114.5
22 as follows:

23 **40-9.5-114.5. Applicability of sections 40-9.5-108 to 40-9.5-112.**
24 ~~The provisions of Sections 40-9.5-108 to 40-9.5-112 shall be applicable~~
25 APPLY to all cooperative electric associations, ~~with membership of more~~
26 ~~than twenty-five thousand members~~ whether regulated under this part 1
27 or the "Public Utilities Law", articles 1 to 7 of this ~~title~~ TITLE 40.

1 NOTWITHSTANDING SECTION 40-9.5-102 (1), SECTIONS 40-9.5-108,
2 40-9.5-109, 40-9.5-110.5, AND 40-9.5-111 APPLY TO A NONPROFIT
3 GENERATION AND TRANSMISSION COOPERATIVE ELECTRIC ASSOCIATION
4 THAT PROVIDES WHOLESale ELECTRIC SERVICE DIRECTLY TO COLORADO
5 COOPERATIVE ELECTRIC ASSOCIATIONS THAT ARE ITS MEMBERS.

6 **SECTION 9. Act subject to petition - effective date.** This act
7 takes 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; except
9 that, if a referendum petition is filed pursuant to section 1 (3) of article V
10 of the state constitution against this act or an item, section, or part of this
11 act within such period, then the act, item, section, or part will not take
12 effect unless approved by the people at the general election to be held in
13 November 2022 and, in such case, will take effect on the date of the
14 official declaration of the vote thereon by the governor.