

Second Regular Session  
Seventieth General Assembly  
STATE OF COLORADO

**PREAMENDED**

*This Unofficial Version Includes Committee  
Amendments Not Yet Adopted on Second Reading*

LLS NO. 16-0567.01 Thomas Morris x4218

**SENATE BILL 16-061**

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**SENATE SPONSORSHIP**

**Cooke and Sonnenberg,**

**HOUSE SPONSORSHIP**

**(None),**

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**Senate Committees**

Agriculture, Natural Resources, & Energy  
Appropriations

**House Committees**

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**A BILL FOR AN ACT**

101 **CONCERNING THE PROTECTION OF ELECTRIC UTILITY RATEPAYERS**  
102 **FROM THE INCREASED COSTS ASSOCIATED WITH**  
103 **IMPLEMENTATION OF REQUIREMENTS TO REGULATE CARBON**  
104 **DIOXIDE EMISSIONS FROM EXISTING FOSSIL-FUEL-FIRED**  
105 **ELECTRIC GENERATING UNITS, AND, IN CONNECTION**  
106 **THEREWITH, MAKING AN APPROPRIATION.**

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**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/bills summaries>.)*

The bill directs the public utilities commission to create a ratepayer

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.*

protection program, pursuant to which an electric utility's increased costs attributable to compliance with the federal environmental protection agency's regulations that limit carbon dioxide emissions from existing fossil-fuel-fired electric generating units are paid from a state fund rather than by the utility's customers. The fund is financed by appropriations from the stationary sources control fund.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 2 to article  
3 8.7 of title 40 as follows:

4 PART 2

5 ELECTRIC RATEPAYER PROTECTION

6 **40-8.7-201. Short title.** THE SHORT TITLE OF THIS PART 2 IS THE  
7 "RATEPAYER PROTECTION ACT".

8 **40-8.7-202. Legislative declaration.** (1) THE GENERAL  
9 ASSEMBLY HEREBY:

10 (a) FINDS THAT:

11 (I) THE EPA HAS ADOPTED RULES UNDER SECTION 111 (d) OF THE  
12 FEDERAL "CLEAN AIR ACT" THAT DIRECT STATES TO REGULATE CARBON  
13 DIOXIDE EMISSIONS FROM EXISTING FOSSIL-FUEL-FIRED ELECTRIC  
14 GENERATING UNITS;

15 (II) ON FEBRUARY 9, 2016, THE SUPREME COURT OF THE UNITED  
16 STATES GRANTED A STAY OF EPA'S 111 (d) RULES BASED ON A FINDING  
17 THAT IRREPARABLE HARM WOULD RESULT IF THE STAY WAS NOT GRANTED.  
18 THE COURT MADE IT CLEAR THAT THE STAY WILL BE EFFECTIVE THROUGH  
19 THE COMPLETION OF ANY PROCEEDINGS IN THE SUPREME COURT.

20 (III) THESE RULES WILL HAVE A MAJOR IMPACT ON COLORADO'S  
21 ECONOMY BY REGULATING HOW ELECTRICITY IS PRODUCED,  
22 TRANSMITTED, DISTRIBUTED, AND CONSUMED WITHIN COLORADO;

1            (IV) ALTHOUGH THE GOVERNOR AND THE DEPARTMENT HAVE  
2            COMMITTED TO DEVELOP A STATE PLAN THAT WILL NOT ADVERSELY  
3            IMPACT RATEPAYERS, IMPLEMENTING THE EPA'S RULES COULD AFFECT  
4            THE COST, RELIABILITY, AND FUTURE IMPROVEMENT OF ELECTRIC SERVICE  
5            WITHIN THE STATE OF COLORADO, AND THE DEPARTMENT, AS THE AGENCY  
6            RESPONSIBLE FOR DEVELOPING THE STATE PLAN, SHOULD BEAR THE FISCAL  
7            IMPACT OF A STATE PLAN THAT EFFECTS A RATE INCREASE;

8            (b) DETERMINES THAT ELECTRIC UTILITY RATEPAYERS SHOULD BE  
9            PROTECTED FROM THESE ADVERSE IMPACTS; AND

10           (c) DECLARES THAT THE GENERAL ASSEMBLY'S INTENT IN  
11           ENACTING THIS PART 2 IS TO AUTHORIZE A PROGRAM THAT ALLOWS  
12           ELECTRIC UTILITIES TO RECOVER THEIR COSTS ATTRIBUTABLE TO  
13           COMPLIANCE WITH THE FEDERAL EMISSION REGULATIONS WITHOUT  
14           IMPOSING THOSE COSTS ON ELECTRIC UTILITY RATEPAYERS.

15           **40-8.7-203. Definitions.** AS USED IN THIS PART 2, UNLESS THE  
16           CONTEXT OTHERWISE REQUIRES:

17           (1) "COMMISSION" MEANS THE PUBLIC UTILITIES COMMISSION.

18           (2) "DEPARTMENT" MEANS THE DEPARTMENT OF PUBLIC HEALTH  
19           AND ENVIRONMENT.

20           (3) "EPA" MEANS THE FEDERAL ENVIRONMENTAL PROTECTION  
21           AGENCY.

22           (4) "FEDERAL EMISSION REGULATIONS" MEANS ANY FINAL RULES,  
23           REGULATIONS, GUIDELINES, OR OTHER REQUIREMENTS THAT THE EPA  
24           MAY ADOPT FOR REGULATING CARBON DIOXIDE EMISSIONS FROM COVERED  
25           ELECTRIC GENERATING UNITS UNDER SECTION 111 (d) OF THE FEDERAL  
26           "CLEAN AIR ACT", 42 U.S.C. SEC. 7401 ET SEQ., INCLUDING SPECIFICALLY  
27           40 CFR PART 60 SUBPART TTTT, ALSO KNOWN AS THE CLEAN POWER

1 PLAN.

2 (5) "FEDERAL PLAN" MEANS A PLAN TO ESTABLISH AND ENFORCE  
3 IN COLORADO THE FEDERAL EMISSION REGULATIONS THAT THE EPA MAY  
4 ADOPT TO IMPLEMENT COLORADO'S OBLIGATIONS UNDER THE  
5 REGULATIONS.

6 (6) "FUND" MEANS THE RATEPAYER PROTECTION FUND CREATED  
7 IN SECTION 24-38.5-110, C.R.S.

8 (7) "STATE PLAN" MEANS A PLAN, WHETHER OR NOT  
9 INCORPORATED INTO THE STATE IMPLEMENTATION PLAN OR ADOPTED AS  
10 A STATE-ONLY RULE, TO ESTABLISH AND ENFORCE IN COLORADO THE  
11 FEDERAL EMISSION REGULATIONS THAT THE AIR QUALITY CONTROL  
12 COMMISSION MAY ADOPT TO IMPLEMENT COLORADO'S OBLIGATIONS  
13 UNDER THE REGULATIONS.

14 **40-8.7-204. Ratepayer protection.** (1) ON OR BEFORE THE  
15 EFFECTIVE DATE OF ANY FEDERAL OR STATE PLAN, THE COMMISSION,  
16 AFTER CONSULTATION WITH AFFECTED UTILITIES AND AFTER HOLDING A  
17 HEARING PURSUANT TO ARTICLE 6 OF THIS TITLE, SHALL DEVELOP A  
18 PROGRAM TO IMPLEMENT THIS PART 2, INCLUDING:

19 (a) GUIDANCE FOR UTILITIES REGARDING THE ALLOCATION OF  
20 COMPLIANCE COSTS TO CUSTOMERS;

21 (b) PROCEDURES FOR THE QUARTERLY REMITTANCE TO UTILITIES  
22 OF MONEY FROM THE FUND; AND

23 (c) AN ANNUAL REPORT TO THE JOINT BUDGET COMMITTEE OF THE  
24 GENERAL ASSEMBLY BY NOVEMBER 1 OF EACH YEAR THAT IDENTIFIES THE  
25 AMOUNT OF MONEY THAT IS PROJECTED TO BE REPORTED TO THE  
26 COMMISSION IN THE SUCCEEDING STATE FISCAL YEAR PURSUANT TO  
27 PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION.

1           (2) EACH UTILITY THAT, DUE TO ITS COMPLIANCE WITH THE  
2 FEDERAL EMISSION REGULATIONS, INCURS INCREASED COSTS THAT THE  
3 UTILITY IS ENTITLED TO RECOVER IN FULL OR IN PART SHALL:

4           (a) SEPARATELY STATE ON EACH CUSTOMER'S REMITTANCE  
5 DEVICE:

6           (I) THE AMOUNT OF SUCH COSTS THAT ARE ALLOCATED TO THE  
7 CUSTOMER DURING THE BILLING PERIOD COVERED BY THE REMITTANCE  
8 DEVICE; AND

9           (II) THAT THE CUSTOMER'S ALLOCATION IS PAID THROUGH THE  
10 RATEPAYER PROTECTION PROGRAM CREATED BY THIS PART 2;

11           (b) REPORT THE AMOUNT TO THE COMMISSION; AND

12           (c) NOT CHARGE THE AMOUNT TO THE CUSTOMER.

13           (3) THE COMMISSION SHALL QUARTERLY REMIT FROM THE FUND TO  
14 EACH UTILITY THAT REPORTS AN AMOUNT TO THE COMMISSION PURSUANT  
15 TO PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION THE TOTAL OF  
16 SUCH AMOUNTS REPORTED BY THAT UTILITY DURING THE PREVIOUS  
17 QUARTER. IF THE AVAILABLE BALANCE IN THE FUND IS INSUFFICIENT TO  
18 FULLY REMIT ALL AMOUNTS, THE STATE TREASURER SHALL TRANSFER  
19 FROM THE GENERAL FUND TO THE FUND ENOUGH MONEY TO FULLY REMIT  
20 ALL AMOUNTS.

21           == ==

22           **40-8.7-205. Ratepayer impact analysis - appropriation.**

23           (1) THE COMMISSION SHALL CONDUCT AND PERIODICALLY UPDATE,  
24 INCLUDING DURING ANY UTILITY RATE-MAKING HEARING AND  
25 INTEGRATED RESOURCE PLANNING PROCEEDING, AN ECONOMIC ANALYSIS  
26 OF UTILITIES' COSTS OF COMPLIANCE WITH THE FEDERAL EMISSION  
27 REGULATIONS FOR THE PURPOSE OF MAKING THE ANNUAL REPORT TO THE

1 JOINT BUDGET COMMITTEE PURSUANT TO SECTION 40-8.7-204 (1) (c). THE  
2 COMMISSION SHALL MAKE SPECIFIC FINDINGS REGARDING ITS  
3 CONCLUSIONS ABOUT THE COSTS OF COMPLIANCE AND WHETHER ITS  
4 CURRENT RATEPAYER IMPACT ANALYSIS IS ACCURATE OR MUST BE  
5 ADJUSTED.

6 (2) THE GENERAL ASSEMBLY SHALL ANNUALLY TRANSFER TO THE  
7 FUND SUFFICIENT MONEY FROM THE GENERAL FUND TO ENABLE THE  
8 COMMISSION TO MAKE THE REMITTANCES REQUIRED BY THIS SECTION.

9

10 SECTION 2. In Colorado Revised Statutes, add 24-38.5-110 as  
11 follows:

12 24-38.5-110. Ratepayer protection fund. (1) THE RATEPAYER  
13 PROTECTION FUND IS HEREBY CREATED IN THE STATE TREASURY. THE  
14 FUND CONSISTS OF MONEY APPROPRIATED TO THE FUND PURSUANT TO  
15 SECTION 40-8.7-205 (2), C.R.S. THE STATE TREASURER SHALL CREDIT ALL  
16 INTEREST AND INCOME DERIVED FROM THE DEPOSIT AND INVESTMENT OF  
17 MONEY IN THE FUND TO THE FUND.

18 (2) THE PUBLIC UTILITIES COMMISSION SHALL USE THE FUND ONLY  
19 TO:

20 (a) REMIT TO UTILITIES THE AMOUNTS REPORTED TO THE  
21 COMMISSION AS SPECIFIED IN SECTION 40-8.7-204 (1) (b), C.R.S.; AND

22 (b) COVER ITS DIRECT COSTS IN ADMINISTERING THE RATEPAYER  
23 PROTECTION PROGRAM CREATED IN PART 2 OF ARTICLE 8.7 OF TITLE 40,  
24 C.R.S., WHICH MUST NOT EXCEED THREE PERCENT OF THE AVERAGE  
25 ANNUAL BALANCE OF THE FUND.

26 (3) MONEY IN THE FUND IS CONTINUOUSLY APPROPRIATED TO THE  
27 COMMISSION FOR THESE PURPOSES.

1           **SECTION 3.** In Colorado Revised Statutes, **amend** 40-8.7-101  
2 as follows:

3           **40-8.7-101. Short title.** THE SHORT TITLE OF this ~~article shall be~~  
4 ~~known and may be cited as~~ PART 1 IS the "Low-income Energy Assistance  
5 Act".

6           **SECTION 4.** In Colorado Revised Statutes, 40-8.7-103, **amend**  
7 introductory portion and (1) as follows:

8           **40-8.7-103. Definitions.** As used in this ~~article~~ PART 1, unless the  
9 context otherwise requires:

10           (1) "Alternative energy assistance program" means a program  
11 operated by a municipally owned electric and gas utility or cooperative  
12 electric association that is not part of the energy assistance program  
13 established pursuant to this ~~article~~ PART 1.

14           **SECTION 5.** In Colorado Revised Statutes, 40-8.7-104, **amend**  
15 (1) and (2) as follows:

16           **40-8.7-104. Energy assistance program - creation - energy**  
17 **assistance charge - rules.** (1) There is hereby created the low-income  
18 energy assistance program to collect and disburse an optional energy  
19 assistance contribution in Colorado in accordance with this ~~article~~ PART  
20 1.

21           (2) Except as otherwise provided in this ~~article~~ PART 1, every  
22 utility doing business in Colorado shall participate in the energy  
23 assistance program and shall provide the opportunity for utility customers  
24 to make an optional energy assistance contribution on the monthly  
25 remittance device on their utility billing statement beginning September  
26 1, 2006. Each utility shall provide the opportunity for customers to donate  
27 the optional energy assistance contribution as provided in section

1 40-8.7-105 (2).

2 **SECTION 6.** In Colorado Revised Statutes, 40-8.7-106, **amend**  
3 (1) introductory portion, (2), and (3) (a) as follows:

4 **40-8.7-106. Municipally owned gas, electric, and gas and**  
5 **electric utilities and cooperative electric associations.** (1) If a  
6 municipally owned gas, electric, or gas and electric utility or a  
7 cooperative electric association operates an alternative energy assistance  
8 program to support its low-income customers with their home energy  
9 needs, then the governing body of the municipally owned gas, electric, or  
10 gas and electric utility or cooperative electric association may self-certify  
11 its alternative energy assistance program and, upon self-certification, shall  
12 have no obligations under this ~~article~~ PART 1. The municipally owned  
13 utility or cooperative electric association shall submit a statement to the  
14 organization that such utility or cooperative electric association has an  
15 alternative energy assistance program. In order for such utility or  
16 cooperative electric association to self-certify, such alternative energy  
17 assistance program shall meet the following criteria:

18 (2) If the governing body of a municipally owned gas, electric, or  
19 gas and electric utility or a cooperative electric association determines  
20 that the service area of such utility or cooperative has a limited number  
21 of people who qualify for energy assistance, such utility or cooperative  
22 electric association may be exempt from the obligations of this ~~article~~  
23 PART 1.

24 (3) If a municipally owned gas, electric, or gas and electric utility  
25 or cooperative electric association has not self-certified an alternative  
26 energy assistance program pursuant to subsection (1) of this section or has  
27 not exempted itself pursuant to subsection (2) of this section, such utility



1 or cooperative electric association shall collect an optional energy  
2 assistance charge from its customers as provided in section 40-8.7-104 (1)  
3 and (2) or pursuant to a procedure approved by the governing municipal  
4 utility or cooperative, which procedure shall be designed to notify all  
5 customers at least twice each year of the option to contribute by means of  
6 a monthly energy assistance charge and shall provide a convenient means  
7 for customers to exercise that option. In such circumstances, the  
8 governing body of such utility or cooperative shall determine the  
9 disposition and delivery of the optional energy assistance charge that it  
10 collects on the following basis:

11 (a) The governing body may elect to deliver the optional charge  
12 that it collects to the organization for distribution in accordance with this  
13 ~~article~~ PART 1.

14 **SECTION 7.** In Colorado Revised Statutes, 40-8.7-107, **amend**  
15 (1) introductory portion and (3) as follows:

16 **40-8.7-107. Disposition of money.** (1) Each gas and electric  
17 utility shall transfer the ~~moneys~~ MONEY from the energy assistance  
18 contributions collected under this ~~article~~ PART 1 to the organization on the  
19 following schedule:

20 (3) The organization shall pay the public utilities commission  
21 from the ~~moneys~~ MONEY transferred to the organization pursuant to  
22 subsection (1) of this section for any administrative costs incurred  
23 pursuant to this ~~article~~ PART 1.

24 **SECTION 8.** In Colorado Revised Statutes, 40-8.7-108, **amend**  
25 (1) and (3) as follows:

26 **40-8.7-108. Energy outreach Colorado - administration of the**  
27 **energy assistance charge.** (1) The organization shall hold and

1 administer all ~~moneys~~ MONEY collected pursuant to this ~~article~~ PART 1  
2 delivered to it by the utilities pursuant to section 40-8.7-107 in a  
3 separately identifiable account, which shall be restricted to the purposes  
4 set forth in this ~~article~~ PART 1. The organization shall maintain its books  
5 and records pertaining to the energy assistance contributions in  
6 accordance with generally accepted accounting principles and, in  
7 addition, shall maintain records adequate to identify the ~~moneys~~ MONEY  
8 collected by each utility. If the organization commingles the ~~moneys~~  
9 MONEY collected and delivered with other assets of the organization for  
10 investment purposes, the organization shall maintain accurate accounts  
11 of the investment ~~moneys~~ MONEY and shall credit or charge a pro rata  
12 portion of all investment earnings, gains, or losses to the account that  
13 holds the energy assistance charges.

14 (3) The organization shall, on an annual basis, develop a budget  
15 for the energy assistance program to determine the allocation of the  
16 energy assistance contributions collected under this ~~article~~ PART 1.

17 **SECTION 9.** In Colorado Revised Statutes, 40-8.5-103.5, **amend**  
18 (4) (a) introductory portion as follows:

19 **40-8.5-103.5. Commission created - duties.** (4) (a) No later than  
20 December 15, 2008, the commission shall make recommendations to the  
21 governor, the speaker of the house of representatives, and the president  
22 of the senate regarding any necessary legislative changes to improve the  
23 effectiveness and efficiency of the state's low-income energy assistance  
24 services provided pursuant to PART 1 OF article 8.7 of this title and section  
25 26-1-109, C.R.S. With assistance and consultation from representatives  
26 from two counties chosen by the executive director, or his or her  
27 designee, of Colorado counties, incorporated, or its successor

1 organization, the commission shall assess the strengths and weaknesses  
2 of the current service delivery systems within the state and shall review  
3 effective service delivery systems and models of other states that may be  
4 appropriate for utilization in this state. The commission's  
5 recommendations shall build upon the positive aspects of the current  
6 service delivery system, including, but not limited to, the effective and  
7 efficient management of current funding to maximize assistance to the  
8 state's low-income population, infrastructure that is already in place to  
9 efficiently distribute benefits to eligible clients in a timely manner, and  
10 coordination already established between energy conservation measures  
11 and direct assistance. The commission's recommendations shall include,  
12 but shall not be limited to:

13

14 SECTION 10. Appropriation. (1) For the 2016-17 state fiscal  
15 year, \$164,310 is appropriated to the department of regulatory agencies  
16 for use by the public utilities commission. This appropriation is from the  
17 ratepayer protection fund created in section 24-38.5-110 (1), C.R.S., and  
18 is based on an assumption that the public utilities commission will require  
19 an additional 2.0 FTE. To implement this act, the public utilities  
20 commission may use this appropriation for personal services.

21 (2)The money appropriated in subsection (1) of this section  
22 becomes available if:

23 (a) The stay issued in the case of *Chamber of Commerce v. EPA*  
24 is lifted by June 30, 2016;

25 (b) The case of *Chamber of Commerce v. EPA* is decided in favor  
26 of the federal environmental protection agency and allows for the  
27 implementation of the federal clean power plan; and

1           (c) The attorney general notifies, in writing, the state treasurer that  
2           a final judgment has been entered and the applicable period to file a writ  
3           of certiorari, if any, has expired in the case of *Chamber of Commerce v.*  
4           *EPA* regarding the federal emissions regulations.

5           **SECTION 11. Effective date - applicability.** This act takes  
6           effect upon passage and applies to conduct occurring on or after said date.

7           **SECTION 12. Safety clause.** The general assembly hereby finds,  
8           determines, and declares that this act is necessary for the immediate  
9           preservation of the public peace, health, and safety.