

First Regular Session
Seventy-third General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 21-0321.01 Megan Waples x4348

HOUSE BILL 21-1131

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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.*

HOUSE
3rd Reading Unamended
March 17, 2021

HOUSE
Amended 2nd Reading
March 16, 2021

- 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, 40-9.5-108, **amend**
9 **(2); and add (1.5) and (4) as follows:**

10 **40-9.5-108. Public meetings - definition.** (1.5) ALL MEETINGS
11 OF A GENERATION AND TRANSMISSION ASSOCIATION ARE DECLARED TO BE
12 OPEN MEETINGS AND OPEN TO THE MEMBERS, CONSUMERS, AND NEWS
13 MEDIA AT ALL TIMES; BUT SUCH ASSOCIATION, BY A TWO-THIRDS
14 AFFIRMATIVE VOTE OF THE BOARD MEMBERS PRESENT, MAY GO INTO
15 EXECUTIVE SESSION FOR CONSIDERATION OF DOCUMENTS OR TESTIMONY
16 GIVEN IN CONFIDENCE.

17 (2) (a) Before ~~the~~ A board of directors convenes in executive
18 session PURSUANT TO SUBSECTION (1) OR (1.5) OF THIS SECTION, the board
19 shall announce the general topic of the executive session.

20 (b) At every regular meeting of the board of directors OF AN
21 ASSOCIATION OR A GENERATION AND TRANSMISSION ASSOCIATION,
22 members of the association shall be given an opportunity to address the
23 board on any matter concerning the policies and business of the
24 association. The board may place reasonable, viewpoint-neutral
25 restrictions on the amount and duration of public comment.

26 (c) Written minutes shall be made of all meetings of the board of
27 directors OF AN ASSOCIATION OR A GENERATION AND TRANSMISSION

1 ASSOCIATION. The minutes shall be posted on the website of the
2 association OR GENERATION AND TRANSMISSION ASSOCIATION as soon as
3 they have been approved and shall remain posted until at least six months
4 after the date of the meeting. Upon request by a member of the board, that
5 member's own vote on any issue shall be noted in the minutes.

6 (4) AS USED IN THIS SECTION, "GENERATION AND TRANSMISSION
7 ASSOCIATION" MEANS A NONPROFIT GENERATION AND TRANSMISSION
8 ELECTRIC ASSOCIATION THAT PROVIDES WHOLESALE ELECTRIC SERVICE
9 DIRECTLY TO COLORADO COOPERATIVE ELECTRIC ASSOCIATIONS THAT ARE
10 ITS MEMBERS.

11 **SECTION 3.** In Colorado Revised Statutes, **add** 40-9.5-108.5 as
12 follows:

13 **40-9.5-108.5. Public posting of documents.** (1) EACH
14 COOPERATIVE ELECTRIC ASSOCIATION SHALL POST ON THE ASSOCIATION'S
15 WEBSITE THE FOLLOWING INFORMATION:

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

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

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

22 **SECTION 4.** In Colorado Revised Statutes, 40-9.5-109.5, **amend**
23 (1) introductory portion, (2), and (3); and **add** (1)(d) and (1)(e) as
24 follows:

25 **40-9.5-109.5. Election policy - adoption - publication -**
26 **contents.** (1) The board of directors of each cooperative electric
27 association shall adopt a written policy governing the election of

1 directors. The ~~election policy~~ ASSOCIATION shall ~~be posted~~ POST THE
2 POLICY on the association's website, PROVIDE NOTICE OF THE POLICY AT
3 THE TIME A PERSON BECOMES A MEMBER, AND PROVIDE A COPY OF THE
4 POLICY TO A MEMBER UPON REQUEST. The election policy shall contain
5 true and complete information on the following subjects:

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

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

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

16 (3) The ~~ballot mailing~~ deadline TO RETURN BALLOTS shall be
17 posted on the website at least ~~three~~ TWO months before the deadline and
18 shall remain so posted until after the election.

19 **SECTION 5.** In Colorado Revised Statutes, **add** 40-9.5-109.7 as
20 follows:

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

26 (2) (a) NOTWITHSTANDING SECTION 7-55-110 OR ANY OTHER
27 PROVISION OF LAW TO THE CONTRARY, A COOPERATIVE ELECTRIC

1 ASSOCIATION MAY ADOPT PROVISIONS IN ITS BYLAWS AUTHORIZING
2 MEMBERS TO VOTE ELECTRONICALLY IN AN ELECTION OF DIRECTORS OF
3 THE BOARD OR IN AN ELECTION ON ANY MATTER REQUIRING A VOTE OF THE
4 MEMBERSHIP. IF AUTHORIZED BY ITS BYLAWS, THE ASSOCIATION MAY
5 ESTABLISH A SECURE AND VERIFIABLE ELECTRONIC TRANSMISSION SYSTEM
6 THROUGH WHICH A MEMBER MAY APPLY FOR, RECEIVE, AND RETURN A
7 BALLOT IN AN ELECTION.

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

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

20 (4) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A
21 COOPERATIVE ELECTRIC ASSOCIATION MAY ADOPT PROVISIONS IN ITS
22 BYLAWS ALLOWING DIRECTORS ON THE BOARD OF DIRECTORS TO
23 PARTICIPATE AND VOTE ELECTRONICALLY IN MEETINGS OF THE BOARD OF
24 DIRECTORS. A MEETING OF THE BOARD OF DIRECTORS THAT IS CONDUCTED
25 ELECTRONICALLY MUST ALLOW MEMBERS OF THE ASSOCIATION AN
26 OPPORTUNITY TO ADDRESS THE BOARD IN ACCORDANCE WITH SECTION
27 40-9.5-108 (2)(b).

1 **SECTION 6.** In Colorado Revised Statutes, 40-9.5-110, **amend**
2 (1)(a), (1)(b) and (2)(a) as follows:

3 **40-9.5-110. Board of directors of cooperative electric**
4 **associations - nomination - elections.** (1) (a) A nomination for director
5 on the board of directors of a cooperative electric association may be
6 made by written petition signed by at least fifteen members of such
7 association, and filed with the board of directors of such association no
8 later than ~~forty-five~~ SIXTY days prior to the date of the election. Any
9 petition so filed shall designate the name of the nominee and the term for
10 which nominated. The name of a nominee shall appear on the ballot if the
11 nominating petition is in apparent conformity with this section as
12 determined by the secretary of the board. Nomination and election of
13 directors by districts, if provided for in the bylaws of the association, shall
14 be permitted.

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

25 (2) (a) (I) Each member of the association is entitled to vote in the
26 election of directors on the board of directors. ~~either~~ IN THE CASE OF A
27 JOINT MEMBERSHIP, ANY ONE JOINT MEMBER MAY CAST THE VOTE FOR THE

1 MEMBERSHIP. A MEMBER MAY VOTE IN PERSON at a meeting held for such
2 purpose, ~~or~~ by mail, ~~but not both~~ OR BY ELECTRONIC MEANS IF
3 AUTHORIZED BY THE ASSOCIATION'S BYLAWS. A member who has voted
4 by mail OR BY ELECTRONIC MEANS is not entitled to vote at the meeting.

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

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

22 **SECTION 7.** In Colorado Revised Statutes, **add** 40-9.5-110.5 as
23 follows:

24 **40-9.5-110.5. Directors - required policies.** (1) THE BOARD OF
25 EACH COOPERATIVE ELECTRIC ASSOCIATION SHALL ADOPT WRITTEN
26 POLICIES CONCERNING:

27 (a) THE COMPENSATION PROVIDED TO DIRECTORS ON THE

1 BOARD OF DIRECTORS, INCLUDING INFORMATION ON ANY AUTHORIZED PER
2 DIEM AMOUNTS, ■ AND THE VALUE OF ANY OTHER BENEFITS, SERVICES,
3 OR GOODS THAT DIRECTORS RECEIVE.

4 ■
5 (b) THE REQUIREMENTS AND PROCEDURES FOR A DIRECTOR ON THE
6 BOARD OF DIRECTORS TO DISCLOSE IN WRITING ANY CONFLICTS OF
7 INTEREST. AT A MINIMUM, AN ASSOCIATION'S POLICY MUST REQUIRE
8 DISCLOSURE WHEN A DECISION BEFORE THE BOARD COULD PROVIDE
9 DIRECTLY AND AS A PROXIMATE RESULT OF THE DECISION A FINANCIAL OR
10 OTHER MATERIAL BENEFIT TO:

11 (I) THE DIRECTOR, IF THE BENEFIT IS UNIQUE TO THAT DIRECTOR
12 AND NOT SHARED BY SIMILARLY SITUATED COOPERATIVE MEMBERS;

13 (II) A PARENT, GRANDPARENT, SPOUSE, PARTNER IN A CIVIL UNION,
14 CHILD, OR SIBLING OF THE DIRECTOR, IF THE BENEFIT IS UNIQUE TO THAT
15 PERSON AND NOT SHARED BY SIMILARLY SITUATED COOPERATIVE
16 MEMBERS; OR

17 (III) AN ENTITY IN WHICH THE DIRECTOR IS AN OFFICER OR
18 DIRECTOR OR HAS A FINANCIAL INTEREST UNIQUE TO THAT DIRECTOR.

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

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

1 OWES FIDUCIARY DUTIES TO BOTH ASSOCIATIONS AND SHALL NOT BE
2 REQUIRED TO GIVE PRIORITY TO A FIDUCIARY DUTY THE DIRECTOR OWES
3 TO ONE ASSOCIATION OVER THE DUTIES THE DIRECTOR OWES TO THE
4 OTHER ASSOCIATION.

5 **SECTION 8.** In Colorado Revised Statutes, **amend** 40-9.5-112
6 as follows:

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

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

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

17 **SECTION 9.** In Colorado Revised Statutes, **amend** 40-9.5-114.5
18 as follows:

19 **40-9.5-114.5. Applicability of sections 40-9.5-108 to 40-9.5-112.**
20 ~~The provisions of Sections 40-9.5-108 to 40-9.5-112 shall be applicable~~
21 ~~APPLY to all cooperative electric associations, with membership of more~~
22 ~~than twenty-five thousand members~~ whether regulated under this part 1
23 or the "Public Utilities Law", articles 1 to 7 of this ~~title~~ TITLE 40.
24 NOTWITHSTANDING SECTION 40-9.5-102 (1), SECTIONS 40-9.5-109,
25 40-9.5-110.5, AND 40-9.5-111 APPLY TO A NONPROFIT GENERATION AND
26 TRANSMISSION COOPERATIVE ELECTRIC ASSOCIATION THAT PROVIDES
27 WHOLESALE ELECTRIC SERVICE DIRECTLY TO COLORADO COOPERATIVE

1 ELECTRIC ASSOCIATIONS THAT ARE ITS MEMBERS.

2 **SECTION 10. Act subject to petition - effective date.** This act
3 takes effect at 12:01 a.m. on the day following the expiration of the
4 ninety-day period after final adjournment of the general assembly; except
5 that, if a referendum petition is filed pursuant to section 1 (3) of article V
6 of the state constitution against this act or an item, section, or part of this
7 act within such period, then the act, item, section, or part will not take
8 effect unless approved by the people at the general election to be held in
9 November 2022 and, in such case, will take effect on the date of the
10 official declaration of the vote thereon by the governor.