

First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO

PREAMENDED

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

LLS NO. 23-0186.01 Sarah Lozano x3858

HOUSE BILL 23-1039

HOUSE SPONSORSHIP

Bird,

SENATE SPONSORSHIP

Rodriguez and Winter F.,

House Committees

Energy & Environment
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING A REQUIREMENT THAT ELECTRIC LOAD-SERVING**
102 **ENTITIES PERIODICALLY REPORT ABOUT THE ADEQUACY OF**
103 **THEIR ELECTRIC RESOURCES, AND, IN CONNECTION THEREWITH,**
104 **MAKING AN APPROPRIATION.**

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>.)

On or before April 1, 2024, and on or before April 1 of each year thereafter, an entity with an obligation to provide retail or wholesale electricity services in the state (load-serving entity) must file with the

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

entity responsible for approving the resource plans or rates of the load-serving entity (regulatory oversight entity) an annual report detailing the adequacy of its electric resources (resource adequacy annual report).

On or before April 30, 2024, and on or before April 30 of each year thereafter, each regulatory oversight entity must submit any resource adequacy annual reports to the Colorado energy office. On or before July 1, 2024, and on or before July 1 of each year thereafter, the Colorado energy office must aggregate the resource adequacy annual reports received from the regulatory oversight entities into a statewide resource adequacy aggregate annual report.

If a load-serving entity participates in an active organized wholesale market, which is a regional transmission organization or an independent system operator established for the purpose of coordinating and managing the dispatch and transmission of electricity on a multistate or regional basis, or, if the load-serving entity is participating in a voluntary regional resource adequacy reporting program, the load-serving entity's obligation to provide a resource adequacy annual report terminates on the date that the load-serving entity begins participating in an organized wholesale market or in the year following the submission of a compliance report required by the program.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** article 43 to title
3 40 as follows:

ARTICLE 43

Electric Resource Adequacy

6 **40-43-101. Short title.** THE SHORT TITLE OF THIS ARTICLE 43 IS
7 THE "COLORADO RESOURCE ADEQUACY ACT OF 2023".

8 **40-43-102. Legislative declaration.** (1) THE GENERAL ASSEMBLY
9 FINDS THAT:

10 (a) MAINTAINING ELECTRIC RELIABILITY AND RESOURCE
11 ADEQUACY IN THE TRANSITION TO CLEAN ENERGY IS OF GREAT
12 IMPORTANCE TO COLORADO AND ITS ELECTRICITY CUSTOMERS;

13 (b) THE DEVELOPMENT OF A COMPREHENSIVE RESOURCE
14 ADEQUACY REPORTING STRUCTURE FOR ALL WHOLESALE AND RETAIL

1 LOAD-SERVING ENTITIES WILL HELP POSITION COLORADO UTILITIES FOR
2 ENTRY INTO AN OPTIMAL ORGANIZED WHOLESALE MARKET, AS DEFINED IN
3 SECTION 40-5-108 (1)(a), THAT WILL INCREASE THE EFFICIENT AND
4 COST-EFFECTIVE USE OF CAPACITY RESOURCES AND ENABLE RESOURCE
5 ADEQUACY ACROSS A BROADER FOOTPRINT THROUGHOUT THE STATE;

6 (c) THE NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION
7 HAS IDENTIFIED RESOURCE ADEQUACY AND ENERGY RISKS IN THE
8 WESTERN INTERCONNECTION OF THE ELECTRIC POWER GRID; AND

9 (d) COLORADO CAN BEGIN TO ADDRESS THESE RISKS BY ADDING
10 RESOURCE ADEQUACY REPORTING REQUIREMENTS FOR ALL LOAD-SERVING
11 ENTITIES TO HELP MEASURE THE SUFFICIENCY OF RELIABLE AND RESILIENT
12 ELECTRIC SERVICE TO ALL COLORADO ELECTRICITY CUSTOMERS.

13 (2) THE GENERAL ASSEMBLY DECLares THAT ALL LOAD-SERVING
14 ENTITIES IN THE STATE SHOULD BE REQUIRED TO PROVIDE RESOURCE
15 ADEQUACY ANNUAL REPORTS TO THE APPLICABLE REGULATORY
16 OVERSIGHT ENTITY.

17 **40-43-103. Definitions.** AS USED IN THIS ARTICLE 43, UNLESS THE
18 CONTEXT OTHERWISE REQUIRES:

19 (1) "ACCREDITED CAPACITY" MEANS THE CAPACITY VALUE GIVEN
20 TO A PARTICULAR RESOURCE BASED ON NAMEPLATE CAPACITY AND THE
21 EFFECTIVE LOAD-CARRYING CAPABILITY THAT IS APPLICABLE TO THE
22 RESOURCE, AS IDENTIFIED AND EXPLAINED BY THE LOAD-SERVING ENTITY
23 IN ITS RESOURCE ADEQUACY ANNUAL REPORT.

24 (2) "COLORADO ENERGY OFFICE" MEANS THE COLORADO ENERGY
25 OFFICE CREATED IN SECTION 24-38.5-101 (1).

26 (3) "COMMISSION" MEANS THE PUBLIC UTILITIES COMMISSION
27 CREATED IN SECTION 40-2-101 (1).

3 (b) "LOAD-SERVING ENTITY" INCLUDES:

4 (I) A COOPERATIVE ELECTRIC ASSOCIATION, AS DEFINED IN
5 SECTION 40-9.5-102 (1), THAT HAS VOTED TO EXEMPT ITSELF FROM
6 COMMISSION JURISDICTION PURSUANT TO ARTICLE 9.5 OF THIS TITLE 40;

7 (II) A JOINT ACTION AGENCY ESTABLISHED PURSUANT TO LAW;

8 AND

9 (III) A MUNICIPAL UTILITY.

10 (5) "LOAD-SERVING OBLIGATION" MEANS AN OBLIGATION TO:

11 (a) PROVIDE RETAIL ENERGY, CAPACITY, OR ANCILLARY SERVICES
12 TO SERVE ELECTRIC CUSTOMER LOAD; OR

13 (b) PROVIDE WHOLESALE ELECTRICITY TO AN ENTITY OBLIGATED
14 TO PROVIDE RETAIL ENERGY, CAPACITY, OR ANCILLARY SERVICES TO
15 SERVE ELECTRIC CUSTOMER LOAD.

16 (6) (a) "PLANNING RESERVE MARGIN" MEANS THE PROJECTED
17 AMOUNT OF ADDITIONAL GENERATING CAPACITY AVAILABLE ON AN
18 ANNUAL BASIS, ABOVE FORECASTED WEATHER-NORMALIZED LOADS, TO
19 COVER FUTURE UNCERTAINTIES SUCH AS TEMPERATURE VARIATIONS AND
20 RESOURCE OUTAGES.

21 (b) "PLANNING RESERVE MARGIN" IS REFLECTED AS A FRACTION
22 THAT IS CALCULATED BY SUBTRACTING FIRM PEAK DEMAND FROM THE
23 SUM OF ACCREDITED CAPACITY AND DIVIDING THE RESULTING NUMBER BY
24 THE FIRM PEAK DEMAND.

25 (7) (a) "REGULATORY OVERSIGHT ENTITY" MEANS THE ENTITY
26 RESPONSIBLE FOR APPROVING THE ELECTRIC RESOURCE PLANS OR THE
27 RETAIL OR WHOLESALE RATES OF A LOAD-SERVING ENTITY WITH RESPECT

1 TO A LOAD LOCATED IN THE STATE.

2 (b) "REGULATORY OVERSIGHT ENTITY" INCLUDES:

3 (I) THE APPLICABLE CITY COUNCIL OR GOVERNING BOARD FOR A
4 MUNICIPAL UTILITY OR A JOINT ACTION AGENCY ESTABLISHED PURSUANT
5 TO LAW;

6 (II) THE GOVERNING BOARD FOR A COOPERATIVE ELECTRIC
7 ASSOCIATION; AND

8 (III) THE COMMISSION FOR A PUBLIC UTILITY.

9 (c) IF A LOAD-SERVING ENTITY DOES NOT HAVE AN APPLICABLE
10 REGULATORY OVERSIGHT ENTITY, THE LOAD-SERVING ENTITY'S
11 REGULATORY OVERSIGHT ENTITY FOR THE PURPOSES OF THIS ARTICLE 43
12 IS THE COMMISSION.

13 (8) "RESOURCE ADEQUACY ANNUAL REPORT" MEANS AN ANNUAL
14 REPORT THAT A LOAD-SERVING ENTITY IS REQUIRED TO PROVIDE TO THE
15 APPLICABLE REGULATORY OVERSIGHT ENTITY PURSUANT TO SECTION
16 40-43-104.

17 (9) "RESOURCE ADEQUACY REPORTING PERIOD" MEANS A PERIOD
18 OF AT LEAST FIVE CONSECUTIVE YEARS BEGINNING IN THE YEAR
19 FOLLOWING THE YEAR IN WHICH A LOAD-SERVING ENTITY PROVIDES ITS
20 RESOURCE ADEQUACY ANNUAL REPORT.

21 **40-43-104. Resource adequacy annual report - statewide
22 resource adequacy aggregate annual report - categories of
23 information in the resource adequacy annual report - termination of
24 reporting requirement.** (1) (a) ON OR BEFORE APRIL 1, 2024, AND ON OR
25 BEFORE APRIL 1 OF EACH YEAR THEREAFTER, EXCEPT AS PROVIDED IN
26 SUBSECTION (2) OR (4) OF THIS SECTION, EACH LOAD-SERVING ENTITY IN
27 THE STATE SHALL PROVIDE THE APPLICABLE REGULATORY OVERSIGHT

1 ENTITY A RESOURCE ADEQUACY ANNUAL REPORT IN WHICH THE
2 LOAD-SERVING ENTITY IDENTIFIES THE GENERATING RESOURCES AND
3 ACCREDITED CAPACITY USED TO SERVE ITS CUSTOMERS. A LOAD-SERVING
4 ENTITY MAY DESIGNATE ITS WHOLESALE ELECTRIC SUPPLIER AS AN
5 AUTHORIZED AGENT TO PROVIDE THE RESOURCE ADEQUACY ANNUAL
6 REPORTS ON BEHALF OF THE LOAD-SERVING ENTITY, AND IF SO
7 DESIGNATED BY THE LOAD-SERVING ENTITY, THE WHOLESALE ELECTRIC
8 SUPPLIER SHALL BE SOLELY RESPONSIBLE FOR THE PREPARATION AND
9 SUBMISSION OF THE RESOURCE ADEQUACY ANNUAL REPORTS ON BEHALF
10 OF THE LOAD-SERVING ENTITY.

11 (b) ON OR BEFORE APRIL 30, 2024, AND ON OR BEFORE APRIL 30
12 OF EACH YEAR THEREAFTER, EACH REGULATORY OVERSIGHT ENTITY
13 SHALL SUBMIT THE RESOURCE ADEQUACY ANNUAL REPORTS RECEIVED
14 FROM LOAD-SERVING ENTITIES PURSUANT TO SUBSECTION (1)(a) OF THIS
15 SECTION TO THE COLORADO ENERGY OFFICE.

16 (c) ON OR BEFORE JULY 1, 2024, AND ON OR BEFORE JULY 1 OF
17 EACH YEAR THEREAFTER, THE COLORADO ENERGY OFFICE SHALL
18 AGGREGATE THE RESOURCE ADEQUACY ANNUAL REPORTS RECEIVED FROM
19 REGULATORY OVERSIGHT ENTITIES PURSUANT TO SUBSECTION (1)(b) OF
20 THIS SECTION TO CREATE AND MAKE PUBLICLY AVAILABLE A STATEWIDE
21 RESOURCE ADEQUACY AGGREGATE ANNUAL REPORT.

22 (2) IF A LOAD-SERVING ENTITY HAS A WHOLESALE POWER
23 ARRANGEMENT WITH A PUBLIC UTILITY, COOPERATIVE ELECTRIC
24 ASSOCIATION, JOINT ACTION AGENCY ESTABLISHED PURSUANT TO ~~LAW~~, OR
25 POLITICAL SUBDIVISION THAT ITSELF DEMONSTRATES RESOURCE
26 ADEQUACY THROUGH A RESOURCE PLANNING PROCESS BEFORE THE
27 APPLICABLE REGULATORY OVERSIGHT ENTITY, THE PUBLIC UTILITY'S,

1 COOPERATIVE ELECTRIC ASSOCIATION'S, JOINT ACTION AGENCY'S, OR
2 POLITICAL SUBDIVISION'S RESOURCE ADEQUACY ANNUAL REPORT
3 PROVIDED TO THE APPLICABLE REGULATORY OVERSIGHT ENTITY COVERS
4 THE LOAD-SERVING ENTITY FOR ANY LOAD COVERED BY THE
5 DEMONSTRATION OF RESOURCE ADEQUACY BY THE PUBLIC UTILITY,
6 COOPERATIVE ELECTRIC ASSOCIATION, JOINT ACTION AGENCY, OR
7 POLITICAL SUBDIVISION.

8 (3) A RESOURCE ADEQUACY ANNUAL REPORT MUST BE MADE
9 PUBLICLY AVAILABLE ON THE LOAD-SERVING ENTITY'S WEBSITE USING A
10 COMMON UNIFORM RESOURCE LOCATOR CONVENTION, AS DETERMINED BY
11 THE COLORADO ENERGY OFFICE, AND INCLUDE THE FOLLOWING
12 CATEGORIES OF INFORMATION FOR EACH YEAR IN THE RESOURCE
13 ADEQUACY REPORTING PERIOD:

- 14 (a) A NATIVE LOAD FORECAST;
- 15 (b) NAMEPLATE CAPACITY AND ACCREDITED CAPACITY BY
16 INDIVIDUAL RESOURCE, INCLUDING RENEWABLE ENERGY RESOURCES AND
17 STORAGE;
- 18 (c) IDENTIFICATION OF ANY ACCREDITED CAPACITY ATTRIBUTABLE
19 TO DISTRIBUTED GENERATION RESOURCES, INCLUDING ENERGY STORAGE;
- 20 (d) IDENTIFICATION OF ANY DEMAND RESPONSE THAT THE
21 LOAD-SERVING ENTITY RELIED UPON FOR RESOURCE PLANNING PURPOSES
22 OR USES TO REDUCE PEAK LOAD;
- 23 (e) IDENTIFICATION OF THE TARGET PLANNING RESERVE MARGIN;
- 24 (f) IDENTIFICATION OF THE FORECASTED PLANNING RESERVE
25 MARGIN;
- 26 (g) IDENTIFICATION OF THE TOTAL ACCREDITED CAPACITY AND
27 ANY FORMULAS OR ASSUMPTIONS USED TO CALCULATE THE ACCREDITED

1 CAPACITY; AND

2 (h) IDENTIFICATION OF ANY EXCESS CAPACITY OR RESOURCE
3 NEEDS AND OF PLANS TO MITIGATE FORECASTED SHORTFALLS PRIOR TO
4 EXPERIENCING PEAK LOAD SUPPLY CONDITIONS THAT WERE FORECASTED
5 IN CALCULATING THE PLANNING RESERVE MARGIN.

6 (4) FOR EACH LOAD-SERVING ENTITY PARTICIPATING IN AN
7 ORGANIZED WHOLESALE MARKET, AS DEFINED IN SECTION 40-5-108 (1)(a),
8 OR A VOLUNTARY REGIONAL RESOURCE ADEQUACY REPORTING PROGRAM,
9 THE LOAD-SERVING ENTITY'S OBLIGATION TO PROVIDE RESOURCE
10 ADEQUACY ANNUAL REPORTS, INCLUDING ANY OBLIGATION OF ANOTHER
11 LOAD-SERVING ENTITY TO PROVIDE RESOURCE ADEQUACY ANNUAL
12 REPORTS IF THE LOAD-SERVING ENTITY HAS BEEN PROVIDING RESOURCE
13 ADEQUACY ANNUAL REPORTS ON THE OTHER LOAD-SERVING ENTITY'S
14 BEHALF PURSUANT TO SUBSECTION (1)(a) OF THIS SECTION, TERMINATES
15 ON THE DATE THAT THE LOAD-SERVING ENTITY BEGINS PARTICIPATING IN
16 AN ORGANIZED WHOLESALE MARKET OR IN THE YEAR FOLLOWING THE
17 LOAD-SERVING ENTITY'S SUBMISSION OF A COMPLIANCE REPORT REQUIRED
18 BY A VOLUNTARY REGIONAL RESOURCE ADEQUACY REPORTING PROGRAM.

19 **SECTION 2. Appropriation.** For the 2023-24 state fiscal year,
20 \$14,737 is appropriated to the office of the governor for use by the
21 Colorado energy office. This appropriation is from the general fund and
22 is based on an assumption that the office will require an additional 0.1
23 FTE. To implement this act, the office may use this appropriation for
24 program administration.

25 **SECTION 3. Act subject to petition - effective date.** This act
26 takes effect at 12:01 a.m. on the day following the expiration of the
27 ninety-day period after final adjournment of the general assembly; except

1 that, if a referendum petition is filed pursuant to section 1 (3) of article V
2 of the state constitution against this act or an item, section, or part of this
3 act within such period, then the act, item, section, or part will not take
4 effect unless approved by the people at the general election to be held in
5 November 2024 and, in such case, will take effect on the date of the
6 official declaration of the vote thereon by the governor.