

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

ENGROSSED

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

LLS NO. 18-0632.01 Duane Gall x4335

HOUSE BILL 18-1271

HOUSE SPONSORSHIP

Gray and Willett,

SENATE SPONSORSHIP

Tate,

House Committees
Transportation & Energy

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE AUTHORIZATION OF ECONOMIC DEVELOPMENT**
102 **RATES TO BE CHARGED BY ELECTRIC UTILITIES TO QUALIFYING**
103 **NONRESIDENTIAL CUSTOMERS.**

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 allows the public utilities commission to approve, and electric utilities to charge, economic development rates, which are lower rates for commercial and industrial users who locate or expand their operations in Colorado so as to increase the demand by at least 3 megawatts. To qualify for the economic development rates, these users

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
Amended 2nd Reading
April 10, 2018

must demonstrate that the cost of electricity is a critical consideration in their decision where to locate or expand their business and that the availability of lower rates is a substantial factor. The rates may be offered for up to 10 years.

The bill also authorizes the expansion of a voluntary renewable energy program or service offering as necessary to meet the needs of a commercial or industrial customer that makes a capital investment of \$250 million or more, requires the expansion in order to remain as a customer of a utility, or is a new customer.

Utilities that offer economic development rates shall not cross-subsidize the economic development rates by raising rates on other customers, and a utility bears the burden of proof on this issue in any proceeding before the commission.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby finds and determines that:

4 (a) The health, safety, and welfare of the people of our state are
5 dependent upon the continued development and expansion of
6 opportunities for employment in Colorado;

7 (b) The cost of electricity is an important consideration for
8 private-sector businesses when deciding to locate or expand operations
9 in Colorado, and an equally important consideration for many businesses
10 in making these economic decisions is identifying states that allow for the
11 customer's achievement of sustainability and other energy and
12 environmental goals; and

13 (c) Electric utilities should be able to offer rates and programs that
14 help attract these businesses and provide incentives for the expansion of
15 existing business operations, thus helping to stimulate further economic
16 development in Colorado.

17 (2) Therefore, the general assembly declares that it is in the public
18 interest to allow public utilities to offer economic development rates in

1 accordance with this act.

2 **SECTION 2.** In Colorado Revised Statutes, 40-3-104.3, **amend**
3 (5); and **add** (6), (7), and (8) as follows:

4 **40-3-104.3. Manner of regulation - competitive responses -**
5 **definitions - repeal.** (5) Nothing in this section ~~shall limit~~ LIMITS or
6 ~~restrict~~ RESTRICTS the commission's authority to regulate rates and
7 charges, correct abuses, or prevent unjust discrimination except as
8 specifically provided in this section.

9 (6) (a) NOTWITHSTANDING ANY OTHER PROVISION OF THIS
10 SECTION, AN INVESTOR-OWNED ELECTRIC UTILITY SUBJECT TO RATE
11 REGULATION BY THE COMMISSION MAY OFFER ECONOMIC DEVELOPMENT
12 RATES TO A QUALIFYING COMMERCIAL OR INDUSTRIAL CUSTOMER.

13 (b) (I) AN ECONOMIC DEVELOPMENT RATE APPROVED PURSUANT
14 TO THIS SECTION MUST BE LOWER THAN THE RATE OR RATES THAT THE
15 QUALIFYING COMMERCIAL OR INDUSTRIAL CUSTOMER WOULD BE OR
16 CURRENTLY IS SUBJECT TO UNDER THE UTILITY'S TARIFFS IN EFFECT AT THE
17 TIME THE QUALIFYING COMMERCIAL OR INDUSTRIAL CUSTOMER SEEKS TO
18 QUALIFY FOR THE ECONOMIC DEVELOPMENT RATE; EXCEPT THAT AN
19 ECONOMIC DEVELOPMENT RATE MUST NOT BE LOWER THAN THE UTILITY'S
20 MARGINAL COST OF PROVIDING SERVICE TO THE QUALIFYING COMMERCIAL
21 OR INDUSTRIAL CUSTOMER.

22 (II) (A) THE COMMISSION **MAY** APPROVE INVESTOR-OWNED
23 UTILITY TARIFFS THAT PROVIDE FOR IMPLEMENTATION OF AN ECONOMIC
24 DEVELOPMENT RATE AND SET A MINIMUM AND MAXIMUM AMOUNT FOR
25 THE RATE CONSISTENT WITH SUBSECTION (6)(b)(I) OF THIS SECTION.

26 (B) NOTWITHSTANDING SUBSECTION (6)(b)(II)(A) OF THIS
27 SECTION, THE UTILITY MAY NEGOTIATE AND ENTER INTO AGREEMENTS

1 RELATED TO ECONOMIC DEVELOPMENT RATES WITH INDIVIDUAL
2 QUALIFYING COMMERCIAL OR INDUSTRIAL CUSTOMERS WITHOUT
3 COMMISSION APPROVAL SO LONG AS THE AGREED-UPON ECONOMIC
4 DEVELOPMENT RATE COMPLIES WITH THE COMMISSION-APPROVED TARIFF
5 AND THE ADDITION OR EXPANSION OF EXISTING LOAD AT A SINGLE
6 LOCATION IS LESS THAN OR EQUAL TO TWENTY MEGAWATTS. ANY
7 ADDITION OR EXPANSION OF EXISTING LOAD AT A SINGLE LOCATION THAT
8 IS GREATER THAN TWENTY MEGAWATTS REQUIRES SEPARATE COMMISSION
9 APPROVAL BASED UPON A FINDING THAT THE ADDITION OR EXPANSION IS
10 CONSISTENT WITH THIS SECTION.

11 (III) AN INVESTOR-OWNED UTILITY MAY OFFER AN ECONOMIC
12 DEVELOPMENT RATE TO A QUALIFYING COMMERCIAL OR INDUSTRIAL
13 CUSTOMER FOR UP TO TEN YEARS.

14 (c) (I) AN AUTHORIZATION GRANTED BY THE COMMISSION
15 PURSUANT TO THIS SECTION MUST INCLUDE SUCH TERMS AND CONDITIONS
16 AS THE COMMISSION DETERMINES ARE NECESSARY TO ENSURE THAT THE
17 ECONOMIC DEVELOPMENT RATES OR CHARGES ASSESSED TO OTHER
18 CUSTOMERS DO NOT SUBSIDIZE THE COST OF PROVIDING SERVICE TO
19 QUALIFYING COMMERCIAL AND INDUSTRIAL CUSTOMERS CONSISTENT WITH
20 SUBSECTION (6)(b)(I) OF THIS SECTION, AND THAT THERE IS NO OTHER
21 SUBSIDIZATION OF SUCH SERVICE. IN DEVELOPING THE TERMS AND
22 CONDITIONS, THE COMMISSION SHALL CONSIDER, AMONG OTHER THINGS,
23 THE RATES AND CHARGES ASSESSED TO THE UTILITY'S WHOLESALE
24 CUSTOMERS AND THE EFFECTS ON OTHER TRANSMISSION SYSTEM OWNERS
25 AND USERS RESULTING FROM NEW TRANSMISSION FACILITIES
26 CONSTRUCTED IN CONNECTION WITH THE UTILITY'S EXPANSION OF AN
27 EXISTING VOLUNTARY RENEWABLE ENERGY PROGRAM OR SERVICE

1 OFFERING.

2 (II) IN A COMMISSION PROCEEDING RELATED TO ECONOMIC
3 DEVELOPMENT RATES AUTHORIZED PURSUANT TO SUBSECTION (6)(b) OF
4 THIS SECTION, THE UTILITY BEARS THE BURDEN OF PROOF TO ESTABLISH
5 THAT:

6 (A) THE RATES OR CHARGES ASSESSED TO OTHER CUSTOMERS DO
7 NOT SUBSIDIZE THE COST OF PROVIDING ECONOMIC DEVELOPMENT RATES
8 TO QUALIFYING COMMERCIAL OR INDUSTRIAL CUSTOMERS;

9 (B) THE RATES OF OTHER REGULATED UTILITY OPERATIONS DO
10 NOT INCREASE; AND

11 (C) OTHER CUSTOMERS ON THE UTILITY'S SYSTEM DO NOT
12 EXPERIENCE A RATE INCREASE DUE TO A RATE OR RATES OFFERED TO A
13 QUALIFYING COMMERCIAL OR INDUSTRIAL CUSTOMER PURSUANT TO THIS
14 SECTION.

15 (III) THE COMMISSION SHALL NOT IMPUTE TO THE UTILITY
16 REVENUES THAT WOULD HAVE BEEN RECEIVED FROM THE QUALIFYING
17 COMMERCIAL OR INDUSTRIAL CUSTOMER IF THE CUSTOMER WERE BEING
18 PROVIDED SERVICE UNDER THE CORRESPONDING RATE FOR WHICH IT
19 WOULD HAVE OTHERWISE QUALIFIED UNDER THE UTILITY'S TARIFFS.

20 (d) (I) AN INVESTOR-OWNED UTILITY MAY SEEK COMMISSION
21 APPROVAL TO EXPAND ANY VOLUNTARY RENEWABLE ENERGY PROGRAM
22 OR SERVICE OFFERING, EXCEPT THOSE COVERED BY VALID AGREEMENTS
23 TO THE CONTRARY EXECUTED AND APPROVED BY THE COMMISSION AS OF
24 THE EFFECTIVE DATE OF THIS SUBSECTION (6)(d), THROUGH THE
25 ACQUISITION OF ADDITIONAL RENEWABLE GENERATION CAPACITY AND
26 ENERGY TO MEET THE CURRENT AND PROJECTED DEMAND OF:

27 (A) ANY COMMERCIAL OR INDUSTRIAL CUSTOMER MAKING A

1 CAPITAL INVESTMENT OF TWO HUNDRED FIFTY MILLION DOLLARS OR
2 MORE;

3 (B) ANY COMMERCIAL OR INDUSTRIAL CUSTOMER THAT REQUIRES
4 SUCH EXPANSION TO REMAIN AS A CUSTOMER OF THAT UTILITY; OR

5 (C) ANY QUALIFYING COMMERCIAL OR INDUSTRIAL CUSTOMER
6 ENTERING THE SERVICE TERRITORY OF THE UTILITY.

7 (II) THE COMMISSION MAY APPROVE, WITHIN ONE HUNDRED
8 TWENTY DAYS, AN EXPANSION OF AN EXISTING VOLUNTARY RENEWABLE
9 ENERGY PROGRAM OR SERVICE OFFERING UPON A SHOWING BY THE
10 UTILITY THAT:

11 (A) THERE IS NOT SUFFICIENT CAPACITY AND ENERGY IN THE
12 EXISTING VOLUNTARY RENEWABLE ENERGY PROGRAM OR SERVICE
13 OFFERING TO SATISFY THE NEEDS OF THE CUSTOMER AND THE CUSTOMER
14 MEETS THE REQUIREMENTS OF SUBSECTION (6)(d)(I) OF THIS SECTION; AND

15 (B) THE AVAILABILITY OF THE PROGRAM OR SERVICE, EITHER ON
16 ITS OWN OR IN COMBINATION WITH OTHER INCENTIVES, IS A SUBSTANTIAL
17 FACTOR IN THE CUSTOMER'S DECISION TO LOCATE NEW OR EXPAND OR
18 RETAIN EXISTING BUSINESS OPERATIONS IN COLORADO.

19 (7) AS USED IN SUBSECTION (6) OF THIS SECTION AND THIS
20 SUBSECTION (7):

21 (a) "QUALIFYING COMMERCIAL OR INDUSTRIAL CUSTOMER":

22 (I) MEANS A UTILITY CUSTOMER THAT:

23 (A) AGREES TO: LOCATE COMMERCIAL OR INDUSTRIAL
24 OPERATIONS IN COLORADO AND ADD AT LEAST THREE MEGAWATTS OF
25 NEW LOAD AT A SINGLE LOCATION; OR EXPAND EXISTING COMMERCIAL OR
26 INDUSTRIAL OPERATIONS IN COLORADO AND ADD AT LEAST THREE
27 MEGAWATTS OF NEW LOAD AT A SINGLE LOCATION; AND

1 (B) DEMONSTRATES, TO THE SATISFACTION OF THE
2 INVESTOR-OWNED UTILITY, SUBJECT TO REVIEW BY THE COMMISSION,
3 THAT: THE COST OF ELECTRICITY IS A CRITICAL CONSIDERATION IN
4 DECIDING WHERE TO LOCATE NEW OR EXPAND EXISTING OPERATIONS; AND
5 THE AVAILABILITY OF ECONOMIC DEVELOPMENT RATES, EITHER ON THEIR
6 OWN OR IN COMBINATION WITH OTHER ECONOMIC DEVELOPMENT
7 INCENTIVES, IS A SUBSTANTIAL FACTOR IN THE CUSTOMER'S DECISION TO
8 LOCATE NEW OR EXPAND EXISTING BUSINESS OPERATIONS IN COLORADO.

9 (II) DOES NOT INCLUDE A CUSTOMER THAT AGREES TO RELOCATE
10 OR OTHERWISE TRANSFER ITS EXISTING LOAD OF AT LEAST THREE
11 MEGAWATTS FROM THE SERVICE TERRITORY OF ANOTHER PUBLIC UTILITY,
12 AS DEFINED IN SECTION 40-1-103, INTO THE SERVICE TERRITORY OF THE
13 UTILITY OFFERING ECONOMIC DEVELOPMENT RATES.

14 (b) "VOLUNTARY RENEWABLE ENERGY PROGRAM OR SERVICE
15 OFFERING" MEANS A PROGRAM OR OTHER SERVICE OFFERING APPROVED BY
16 THE COMMISSION THAT ALLOWS A COMMERCIAL OR INDUSTRIAL
17 CUSTOMER ACCESS TO ELIGIBLE ENERGY RESOURCES, AS THAT TERM IS
18 DEFINED IN SECTION 40-2-124 (1)(a), ON A VOLUNTARY BASIS, ON TERMS
19 AND CONDITIONS DEEMED NECESSARY BY THE COMMISSION. FOR A
20 VOLUNTARY RENEWABLE ENERGY PROGRAM OR SERVICE OFFERING TO BE
21 EXPANDED, IT MUST HAVE BEEN APPROVED BY THE COMMISSION PRIOR TO
22 THE EXPANSION REQUEST OF A COMMERCIAL OR INDUSTRIAL CUSTOMER
23 PURSUANT TO SUBSECTION (6)(d)(I) OF THIS SECTION.

24 (8) THIS SUBSECTION (8) AND SUBSECTIONS (6) AND (7) OF THIS
25 SECTION ARE REPEALED, EFFECTIVE JANUARY 1, 2028.

26 **SECTION 3. Act subject to petition - effective date -**
27 **applicability.** (1) This act takes effect January 1, 2019; except that, if a

1 referendum petition is filed pursuant to section 1 (3) of article V of the
2 state constitution against this act or an item, section, or part of this act
3 within the ninety-day period after final adjournment of the general
4 assembly, then the act, item, section, or part will not take effect unless
5 approved by the people at the general election to be held in November
6 2018 and, in such case, will take effect on January 1, 2019, or on the date
7 of the official declaration of the vote thereon by the governor, whichever
8 is later.

9 (2) This act applies to conduct occurring on or after the applicable
10 effective date of this act.