

## CHAPTER 424

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**PUBLIC UTILITIES**


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**HOUSE BILL 10-1098**

BY REPRESENTATIVE(S) Levy, Fischer, Hullinghorst, Labuda, Pommer, McFadyen;  
also SENATOR(S) Hodge, Schwartz.

**AN ACT**

**CONCERNING INCREASED TRANSPARENCY IN THE GOVERNANCE OF COOPERATIVE ELECTRIC ASSOCIATIONS.**

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

**SECTION 1.** 40-9.5-108 (2), Colorado Revised Statutes, is amended to read:

**40-9.5-108. Public meetings.** (2) (a) ~~Prior to the time~~ BEFORE the board of directors convenes in executive session, the board shall announce the general topic of the executive session.

(b) AT EVERY REGULAR MEETING OF THE BOARD OF DIRECTORS, MEMBERS OF THE ASSOCIATION SHALL BE GIVEN AN OPPORTUNITY TO ADDRESS THE BOARD ON ANY MATTER CONCERNING THE POLICIES AND BUSINESS OF THE ASSOCIATION. THE BOARD MAY PLACE REASONABLE, VIEWPOINT-NEUTRAL RESTRICTIONS ON THE AMOUNT AND DURATION OF PUBLIC COMMENT.

(c) WRITTEN MINUTES SHALL BE MADE OF ALL MEETINGS OF THE BOARD OF DIRECTORS. THE MINUTES SHALL BE POSTED ON THE WEB SITE OF THE ASSOCIATION AS SOON AS THEY HAVE BEEN APPROVED AND SHALL REMAIN POSTED UNTIL AT LEAST SIX MONTHS AFTER THE DATE OF THE MEETING. UPON REQUEST BY A MEMBER OF THE BOARD, THAT MEMBER'S OWN VOTE ON ANY ISSUE SHALL BE NOTED IN THE MINUTES.

**SECTION 2.** Article 9.5 of title 40, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**40-9.5-109.5. Election policy - adoption - publication - contents.** (1) THE BOARD OF DIRECTORS OF EACH COOPERATIVE ELECTRIC ASSOCIATION SHALL ADOPT

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

A WRITTEN POLICY GOVERNING THE ELECTION OF DIRECTORS. THE ELECTION POLICY SHALL BE POSTED ON THE ASSOCIATION'S WEB SITE. THE ELECTION POLICY SHALL CONTAIN TRUE AND COMPLETE INFORMATION ON THE FOLLOWING SUBJECTS:

(a) THE PROCEDURE AND TIMING FOR A MEMBER TO BECOME A CANDIDATE FOR THE BOARD OF DIRECTORS AND THE PROCESS BY WHICH ELECTIONS FOR THE BOARD OF DIRECTORS ARE HELD;

(b) THE QUALIFICATIONS FOR CANDIDATES AND REQUIREMENTS FOR APPEARING ON THE BALLOT;

(c) THE DATE OF THE ELECTION, WHICH SHALL BE FIXED, POSTED ON THE ASSOCIATION'S WEB SITE, AND OTHERWISE PUBLICIZED NO LESS THAN SIX MONTHS BEFORE THE ELECTION.

(2) IN ADDITION TO THE POSTING REQUIRED IN SUBSECTION (1) OF THIS SECTION, INFORMATION ON HOW TO BECOME A CANDIDATE AND THE SCHEDULE FOR ELECTIONS SHALL BE COMMUNICATED TO EACH MEMBER IN A MAILING AND ON THE ASSOCIATION'S WEB SITE NO LESS THAN TWO MONTHS BEFORE PETITIONS TO BECOME A CANDIDATE ARE DUE.

(3) THE BALLOT MAILING DEADLINE SHALL BE POSTED ON THE WEB SITE AT LEAST THREE MONTHS BEFORE THE DEADLINE AND SHALL REMAIN SO POSTED UNTIL AFTER THE ELECTION.

**SECTION 3.** 40-9.5-110, Colorado Revised Statutes, is amended to read:

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

(b) CANDIDATES FOR POSITIONS ON THE BOARD OF DIRECTORS SHALL BE ENTITLED TO RECEIVE MEMBERSHIP LISTS, IN A USABLE FORMAT, ON THE SAME BASIS AND AT THE SAME TIME AS SUCH LISTS ARE MADE AVAILABLE TO INCUMBENT DIRECTORS RUNNING FOR REELECTION. CANDIDATES SHALL USE SUCH LISTS ONLY FOR PURPOSES OF THE ELECTION AND SHALL RETURN OR DESTROY THEM IMMEDIATELY AFTER THE ELECTION.

(c) ALL BOARD MEMBERS SHALL MAKE AVAILABLE TO ASSOCIATION MEMBERS SOME MEANS FOR DIRECT CONTACT, WHETHER BY TELEPHONE, ELECTRONIC MAIL, OR REGULAR MAIL. INFORMATION ON HOW TO CONTACT EACH BOARD MEMBER BY ONE OR MORE OF THESE METHODS SHALL BE AVAILABLE ON THE ASSOCIATION WEB SITE.

(2) (a) (I) Each member of the association shall be entitled to vote in the election of directors on the board of directors either at a meeting held for such purpose or by mail, BUT NOT BOTH. A MEMBER WHO HAS VOTED BY MAIL SHALL NOT BE ENTITLED TO VOTE AT THE MEETING.

(II) Mail voting shall be in writing on ballots provided by the association. The mail ballot shall be voted by the member, placed in a special envelope provided for the purpose so as to conceal the marking on the ballot, deposited in a return envelope which must be signed by the voting member, and mailed back to the association. ~~Envelopes containing mail ballots shall remain sealed and uncounted until the meeting held for the purpose of electing the board of directors. The presence of a member at such meeting shall revoke a mail vote theretofore executed by such member, and such member shall be entitled to vote at such meeting in the same manner and with the same effect as if such member had not voted by mail.~~

(b) THE ORDER OF NAMES ON THE BALLOT SHALL BE DETERMINED RANDOMLY IN A MANNER THAT DOES NOT AUTOMATICALLY ASSIGN THE TOP LINE TO THE INCUMBENT.

(c) THE BOARD OF DIRECTORS SHALL, WHEN PRACTICABLE, ARRANGE FOR AN INDEPENDENT THIRD PARTY TO OVERSEE THE STORAGE AND COUNTING OF BALLOTS. IF THIS IS NOT PRACTICABLE, THEN BALLOTS SHALL BE COLLECTED AND STORED IN A MANNER THAT PROTECTS THE PRIVACY OF THEIR CONTENT. ALL CANDIDATES FOR THE BOARD OF DIRECTORS SHALL BE GIVEN THE OPPORTUNITY TO BE PRESENT TO OBSERVE THEIR TABULATION.

(3) Voting for directors on the board of directors by proxy or cumulative voting ~~shall be~~ IS prohibited.

(4) NEITHER THE ASSOCIATION NOR THE BOARD OF DIRECTORS SHALL ENDORSE OR OPPOSE THE CANDIDACY OF AN INCUMBENT BOARD MEMBER OR OTHER CANDIDATE FOR A POSITION ON THE BOARD. DURING THE TWO MONTHS IMMEDIATELY PRECEDING THE ELECTION, BOARD MEMBERS SHALL NOT SEND INDIVIDUAL NEWSLETTERS USING THE ASSOCIATION'S RESOURCES.

**SECTION 4.** 40-9.5-111, Colorado Revised Statutes, is amended to read:

**40-9.5-111. Notice of meeting - agenda.** (1) Notice of the time and place of a meeting of the board of directors and a copy of the agenda for such meeting shall be posted in every service office maintained by the association at least ten days before the meeting. The agenda shall specifically designate the issues or questions to be discussed, or the actions to be taken, at the meeting. Copies of ~~said~~ THE agenda shall be available at each service office for members and consumers.

(2) THE DATE, TIME, LOCATION, AND AGENDA OF EVERY MEETING OF THE BOARD OF DIRECTORS SHALL BE POSTED ON THE ASSOCIATION'S WEB SITE NO LESS THAN TEN DAYS BEFORE THE MEETING IN THE CASE OF REGULAR MEETINGS AND AS SOON AS THE MEETING IS SCHEDULED IN THE CASE OF SPECIAL MEETINGS. IF A MEETING IS POSTPONED OR CANCELLED, NOTICE OF THE POSTPONEMENT OR CANCELLATION SHALL IMMEDIATELY BE POSTED ON THE WEB SITE.

**SECTION 5.** 40-9.5-112, Colorado Revised Statutes, is amended to read:

**40-9.5-112. Provisions applicable to cooperative electric associations.** Except as otherwise provided in this part 1, the provisions of article 55 of title 7, C.R.S., shall apply to cooperative electric associations. IN THE CASE OF ANY IRRECONCILABLE CONFLICT BETWEEN SAID ARTICLE AND THIS PART 1, THIS PART 1 SHALL CONTROL. Section 40-4-105 shall apply to cooperative electric associations with respect to crossing of railroad rights-of-way.

**SECTION 6. Act subject to petition - effective date.** This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 11, 2010, if adjournment sine die is on May 12, 2010); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part shall not take effect unless approved by the people at the general election to be held in November 2010 and shall take effect on the date of the official declaration of the vote thereon by the governor.

Approved: June 11, 2010