

Second Regular Session  
Sixty-fourth General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 04-0609.01 Thomas Morris

HOUSE BILL 04-1184

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HOUSE SPONSORSHIP

Boyd, and Larson

SENATE SPONSORSHIP

(None),

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House Committees

Transportation & Energy

Senate Committees

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A BILL FOR AN ACT

101 CONCERNING MEASURES TO REDUCE ENERGY BILLS THROUGH UTILITY  
102 ENERGY CONSERVATION PROGRAMS.

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Bill Summary

*(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)*

Requires investor-owned electric and gas utilities to initiate and expand their energy conservation programs starting in 2005. Directs utilities to reduce overall energy use by their customers by a total of at least 0.5% each year from 2005 through 2020, to offer energy conservation programs to all of their customers, and to offer a free energy conservation action kit to every residential customer. Directs the public utilities commission to review conservation programs on an annual basis and authorize program cost recovery and a profit margin if a utility meets

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.*

its savings goals and provides net economic benefits for its customers as a whole. Directs the commission to hold an annual public meeting to get input about the conservation program.

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

2 **SECTION 1.** Article 4 of title 40, Colorado Revised Statutes, is  
3 amended BY THE ADDITION OF A NEW PART to read:

4 **PART 2**

5 **ENERGY EFFICIENCY**

6 **PERFORMANCE STANDARDS**

7 **40-4-201. Purpose and scope.** THIS PART 2 IS INTENDED TO  
8 REDUCE ENERGY BILLS PAID BY CONSUMERS AND BUSINESSES IN THE  
9 STATE, CONSERVE THE STATE'S NATURAL RESOURCES, REDUCE POLLUTION  
10 AND WATER CONSUMPTION, AND ENHANCE THE RELIABILITY OF THE  
11 ENERGY SUPPLY BY ACTIVELY PROMOTING THE USE OF ENERGY  
12 CONSERVATION MEASURES BY INVESTOR-OWNED ELECTRIC AND GAS  
13 UTILITIES IN COLORADO. UTILITIES OPERATING IN COLORADO THAT ARE  
14 NOT QUALIFYING UTILITIES COVERED BY THIS PART 2 ARE NEVERTHELESS  
15 ENCOURAGED, THOUGH NOT REQUIRED, TO IMPLEMENT ENERGY  
16 CONSERVATION PROGRAMS AND TO MEET THE ENERGY SAVINGS TARGETS  
17 SET FORTH IN THIS PART 2.

18 **40-4-202. Definitions.** AS USED IN THIS PART 2, UNLESS THE  
19 CONTEXT OTHERWISE REQUIRES:

20 (1) "COST-EFFECTIVE" MEANS THAT THE ECONOMIC VALUE OF ALL  
21 BENEFITS EXCEEDS THE ECONOMIC VALUE OF ALL COSTS, ON A NET  
22 PRESENT VALUE BASIS.

23 (2) "ELECTRIC UTILITY" MEANS A CORPORATION, COMPANY,  
24 ASSOCIATION, PARTNERSHIP, COOPERATIVE, MUNICIPALITY OR

1 MUNICIPALLY-OWNED ENTITY, OR OTHER PERSON THAT PROVIDES RETAIL  
2 ELECTRIC OR NATURAL GAS SERVICE TO CONSUMERS AND BUSINESSES IN  
3 COLORADO AND SERVES TEN THOUSAND OR MORE CUSTOMERS.

4 (3) "ENERGY CONSERVATION" MEANS THE USE OF TECHNOLOGIES,  
5 MANAGEMENT PRACTICES, OR OTHER STRATEGIES THAT REDUCE  
6 ELECTRICITY OR NATURAL GAS CONSUMPTION BY CONSUMERS OR  
7 BUSINESSES.

8 (4) "ENERGY EFFICIENCY PERFORMANCE STANDARD" MEANS AN  
9 ENERGY SAVINGS REQUIREMENT THAT MUST BE MET BY A QUALIFYING  
10 UTILITY THROUGH ITS ENERGY CONSERVATION PROGRAM.

11 (5) "QUALIFYING UTILITY" MEANS AN ELECTRIC OR NATURAL GAS  
12 UTILITY THAT IS AN INVESTOR-OWNED CORPORATION.

13 (6) "TOTAL RESOURCE COST TEST" MEANS A DETERMINATION OF  
14 COST-EFFECTIVENESS, AS DEFINED IN RULES ADOPTED BY THE PUBLIC  
15 UTILITIES COMMISSION.

16 **40-4-203. Energy efficiency performance standards.** (1) THE  
17 COMMISSION SHALL ESTABLISH ENERGY EFFICIENCY PERFORMANCE  
18 STANDARDS FOR EACH QUALIFYING UTILITY THAT WAS OPERATING IN  
19 COLORADO ON JANUARY 1, 2004. THE PERFORMANCE STANDARDS SHALL  
20 TAKE EFFECT ON AND AFTER JANUARY 1, 2005, AND SHALL REPRESENT A  
21 REDUCTION IN OVERALL ANNUAL RETAIL SALES OF ELECTRICITY OR  
22 NATURAL GAS THAT IS AS CLOSE AS IS PRACTICABLE TO A TOTAL OF  
23 FIVE-TENTHS OF ONE PERCENT STARTING IN 2005 AND CONTINUING  
24 THROUGH 2020.

25 (2) (a) ON OR BEFORE DECEMBER 31, 2004, THE COMMISSION  
26 SHALL SET THE PERFORMANCE STANDARDS FOR 2005 THROUGH 2010  
27 BASED ON PROJECTED FUTURE ELECTRICITY OR NATURAL GAS SALES OF

1 EACH QUALIFYING UTILITY AT THAT TIME.

2 (b) ON OR BEFORE DECEMBER 31, 2010, THE COMMISSION SHALL  
3 SET THE PERFORMANCE STANDARDS FOR 2011 THROUGH 2015 BASED ON  
4 PROJECTED FUTURE ELECTRICITY OR NATURAL GAS SALES OF EACH  
5 QUALIFYING UTILITY AT THAT TIME.

6 (c) ON OR BEFORE DECEMBER 31, 2015, THE COMMISSION SHALL  
7 SET THE PERFORMANCE STANDARDS FOR 2016 THROUGH 2020 BASED ON  
8 PROJECTED FUTURE ELECTRICITY OR NATURAL GAS SALES OF EACH  
9 QUALIFYING UTILITY AT THAT TIME.

10 (3) IN PROJECTING FUTURE ELECTRICITY OR NATURAL GAS SALES,  
11 THE COMMISSION SHALL CONSIDER PAST TRENDS IN ELECTRICITY OR  
12 NATURAL GAS SALES AND ANY FORECASTS OF FUTURE SALES.

13 (4) THE COMMISSION SHALL ADJUST THE PERFORMANCE  
14 STANDARDS IF A QUALIFYING UTILITY MERGES, ACQUIRES OTHER UTILITIES,  
15 OR BREAKS UP INTO MULTIPLE UTILITIES. IN ESTABLISHING STANDARDS  
16 FOR NATURAL GAS UTILITIES, THE COMMISSION SHALL EXCLUDE GAS  
17 DELIVERED ON BEHALF OF OTHER NATURAL GAS UTILITIES.

18 **40-4-204. Methods to meet standards - energy conservation**  
19 **programs.** (1) A QUALIFYING UTILITY SHALL MEET ITS ENERGY  
20 EFFICIENCY PERFORMANCE STANDARDS EACH YEAR IN ACCORDANCE WITH  
21 SUBSECTIONS (2) AND (3) OF THIS SECTION.

22 (2) (a) A QUALIFYING UTILITY SHALL MAKE ENERGY  
23 CONSERVATION PROGRAMS AVAILABLE TO ALL CLASSES OF ITS  
24 CUSTOMERS.

25 (b) ELIGIBLE ENERGY CONSERVATION PROGRAMS INCLUDE  
26 FINANCIAL INCENTIVES, EDUCATION AND TRAINING, TECHNICAL  
27 ASSISTANCE, DISTRIBUTION OF FREE CONSERVATION MEASURES, AND

1 OTHER TYPES OF PROGRAMS THAT ARE DESIGNED TO PROVIDE ELECTRICAL  
2 KILOWATT-HOUR OR NATURAL GAS THERM SAVINGS BY CONSUMERS AND  
3 BUSINESSES.

4 (c) WHEN IMPLEMENTING ENERGY CONSERVATION PROGRAMS, A  
5 QUALIFYING UTILITY IS ENCOURAGED BUT NOT REQUIRED TO USE  
6 COMPETITIVE PROCUREMENT PROCESSES.

7 (d) A QUALIFYING UTILITY SHALL OPERATE ENERGY  
8 CONSERVATION PROGRAMS THAT, TAKEN IN COMBINATION, ARE  
9 COST-EFFECTIVE BASED ON THE TOTAL RESOURCE COST TEST.

10 (3) (a) AS PART OF ITS ENERGY CONSERVATION PROGRAMS, A  
11 QUALIFYING UTILITY SHALL OFFER A FREE ENERGY CONSERVATION ACTION  
12 KIT TO EVERY RESIDENTIAL CUSTOMER IN ITS SERVICE AREA. THE FREE KIT  
13 SHALL INCLUDE LOW-COST ENERGY CONSERVATION MEASURES SUCH AS  
14 COMPACT FLUORESCENT LAMPS, LOW-FLOW SHOWERHEADS, AND FAUCET  
15 AERATORS. THE KIT SHALL BE WIDELY PROMOTED THROUGH BILL INSERTS,  
16 PHONE CALLS, AND GENERAL ADVERTISING TO ENCOURAGE MAXIMUM  
17 ADOPTION OF THESE LOW-COST MEASURES BY HOUSEHOLDS.

18 (b) ELECTRIC AND GAS UTILITIES MAY COOPERATE IN OFFERING A  
19 SINGLE ENERGY CONSERVATION ACTION KIT TO HOUSEHOLDS THEY  
20 JOINTLY SERVE.

21 (4) A QUALIFYING UTILITY THAT FAILS TO MEET ITS ENERGY  
22 EFFICIENCY PERFORMANCE STANDARD IN ANY PARTICULAR YEAR SHALL BE  
23 REQUIRED TO ACHIEVE ADDITIONAL ENERGY SAVINGS, EQUAL TO THE  
24 SHORTFALL, WITHIN THE FOLLOWING TWO YEARS. THE ADDITIONAL  
25 ENERGY SAVINGS SHALL BE ADDED TO THE ENERGY EFFICIENCY  
26 PERFORMANCE STANDARDS THAT APPLY IN THOSE YEARS.

27 (5) THE COMMISSION MAY ISSUE AN ORDER TO A QUALIFYING

1 UTILITY TO CARRY OUT SPECIFIED ENERGY CONSERVATION PROGRAMS IF  
2 THE COMMISSION DETERMINES THAT THE UTILITY IS NOT ADEQUATELY  
3 CARRYING OUT ITS RESPONSIBILITIES UNDER THIS PART 2.

4 (6) ELECTRIC AND NATURAL GAS UTILITIES OPERATING IN  
5 COLORADO THAT ARE NOT QUALIFYING UTILITIES ARE ENCOURAGED BUT  
6 NOT REQUIRED TO IMPLEMENT ENERGY CONSERVATION PROGRAMS AND  
7 MEET THE ENERGY EFFICIENCY STANDARDS UNDER THIS PART 2.

8 **40-4-205. Reports - oversight by commission.** (1) (a) EACH  
9 QUALIFYING UTILITY SHALL ANNUALLY PREPARE AND FILE WITH THE  
10 COMMISSION A REPORT DESCRIBING HOW THE UTILITY MET ITS ENERGY  
11 EFFICIENCY PERFORMANCE STANDARD IN THE PREVIOUS YEAR. THE  
12 REPORT SHALL INCLUDE, AS TO EACH ENERGY CONSERVATION PROGRAM  
13 UNDERTAKEN BY THE UTILITY, THE ENERGY SAVINGS ACHIEVED, THE  
14 TECHNIQUES USED TO EVALUATE SUCH SAVINGS, AND THE  
15 COST-EFFECTIVENESS OF THE PROGRAM.

16 (b) THE COMMISSION SHALL AUDIT THE ANNUAL REPORTS FILED BY  
17 QUALIFYING UTILITIES, VERIFY THAT THE INFORMATION IN SUCH REPORTS  
18 IS ACCURATE, AND MAKE ANY ADJUSTMENTS TO THE REPORTS THAT THE  
19 COMMISSION DEEMS ARE WARRANTED.

20 (c) THE COMMISSION SHALL ISSUE A FINAL DETERMINATION ON THE  
21 LEVEL OF ENERGY SAVINGS ACHIEVED, WHETHER THE ENERGY EFFICIENCY  
22 PERFORMANCE STANDARD WAS MET, AND THE COST-EFFECTIVENESS OF  
23 ENERGY CONSERVATION PROGRAMS AS A WHOLE FOR EACH QUALIFYING  
24 UTILITY WITHIN SIX MONTHS AFTER RECEIVING A COMPLETE REPORT FROM  
25 THE UTILITY.

26 (d) THE COMMISSION MAY RECOVER ITS COSTS FOR AUDIT AND  
27 VERIFICATION FUNCTIONS FROM QUALIFYING UTILITIES. IF SUCH COST

1 RECOVERY IS IMPLEMENTED, EACH QUALIFYING UTILITY SHALL BE  
2 PERMITTED TO ADD THE COSTS TO ITS CONSERVATION PROGRAM COSTS IN  
3 THE FOLLOWING YEAR.

4 (2) THE COMMISSION SHALL CONVENE A MEETING OPEN TO THE  
5 PUBLIC AT LEAST ONCE PER YEAR TO REVIEW THE STATUS AND RESULTS OF  
6 UTILITY ENERGY CONSERVATION PROGRAMS, AND TO RECEIVE INPUT  
7 REGARDING WAYS TO IMPROVE SUCH PROGRAMS.

8 **40-4-206. Rules.** (1) THE COMMISSION SHALL BY DECEMBER 31,  
9 2004, PROMULGATE, AND MAY THEREAFTER PERIODICALLY AMEND, ANY  
10 RULES NECESSARY TO IMPLEMENT THIS PART 2.

11 (2) IN PROMULGATING A TOTAL RESOURCE COST TEST, THE  
12 COMMISSION SHALL CONSIDER, AND MAY ADOPT WITHOUT SUBSTANTIAL  
13 CHANGE, THE TOTAL RESOURCE COST TEST SET FORTH IN THE CALIFORNIA  
14 STANDARD PRACTICE MANUAL.

15 (3) THE COMMISSION SHALL ESTABLISH AN ENERGY  
16 CONSERVATION PROGRAM COST RECOVERY MECHANISM FOR GAS UTILITIES  
17 AS PART OF THE RULES ADOPTED UNDER THIS SECTION.

18 **40-4-207. Costs of implementation - recovery by utilities.**

19 (1) IF THE COMMISSION DETERMINES THAT A UTILITY HAS MET ITS ENERGY  
20 EFFICIENCY PERFORMANCE STANDARD AND ITS CONSERVATION PROGRAMS  
21 AS A WHOLE WERE COST-EFFECTIVE UNDER THE TOTAL RESOURCE COST  
22 TEST, THE UTILITY SHALL BE ALLOWED TO RECOVER THE COST OF ITS  
23 ENERGY CONSERVATION PROGRAMS AND EARN A REASONABLE PROFIT ON  
24 THESE PROGRAMS THROUGH THE DEMAND-SIDE MANAGEMENT COST  
25 ADJUSTMENT MECHANISM.

26 (2) THE ALLOWED PROFIT SHALL BE THE PREVAILING RATE OF  
27 RETURN ALLOWED FOR OTHER INVESTMENTS MADE BY THE UTILITY.

1           (3) IF THE COMMISSION DETERMINES THAT A UTILITY HAS NOT MET  
2 ITS ENERGY EFFICIENCY PERFORMANCE STANDARD, BUT THE  
3 CONSERVATION PROGRAMS THE UTILITY OFFERED WERE COST-EFFECTIVE  
4 UNDER THE TOTAL RESOURCE COST TEST, THE UTILITY SHALL BE ALLOWED  
5 TO RECOVER THE COST OF ITS ENERGY CONSERVATION PROGRAMS BUT  
6 SHALL NOT BE ELIGIBLE TO EARN A PROFIT ON THOSE PROGRAMS.

7           (4) IF THE COMMISSION DETERMINES THAT A UTILITY HAS NOT MET  
8 ITS ENERGY EFFICIENCY PERFORMANCE STANDARDS AND THAT ITS ENERGY  
9 CONSERVATION PROGRAMS AS A WHOLE WERE NOT COST-EFFECTIVE  
10 UNDER THE TOTAL RESOURCE COST TEST, THE COMMISSION MAY PENALIZE  
11 THE UTILITY BY NOT ALLOWING RECOVERY OF THE FULL COST OF THE  
12 ENERGY CONSERVATION PROGRAMS FOR THE YEAR OR YEARS IN WHICH  
13 THE PROGRAMS WERE NOT COST-EFFECTIVE.

14           (5) IF THE COMMISSION DETERMINES THAT A UTILITY HAS MET ITS  
15 ENERGY EFFICIENCY STANDARD BUT THAT ITS CONSERVATION PROGRAMS  
16 AS A WHOLE WERE NOT COST-EFFECTIVE UNDER THE TOTAL RESOURCE  
17 COST TEST, THE UTILITY SHALL BE ALLOWED TO RECOVER THE COST OF ITS  
18 PROGRAMS BUT SHALL NOT BE ELIGIBLE TO EARN A PROFIT ON THESE  
19 PROGRAMS. THE COMMISSION SHALL DIRECT THE UTILITY TO IMPROVE  
20 OVERALL PROGRAM COST-EFFECTIVENESS IN THE FUTURE.

21           (6) COST RECOVERY SHALL OCCUR IN THE TWELVE MONTHS AFTER  
22 THE COMMISSION ISSUES A DETERMINATION FOR A PARTICULAR UTILITY  
23 AND PROGRAM YEAR. COST RECOVERY SHALL OCCUR THROUGH THE  
24 EXISTING DEMAND-SIDE MANAGEMENT COST ADJUSTMENT MECHANISM FOR  
25 ELECTRIC UTILITIES AND THROUGH A NEW COST RECOVERY MECHANISM  
26 FOR GAS UTILITIES ESTABLISHED BY THE COMMISSION.

27           (7) COST RECOVERY SHALL INCLUDE A CARRYING COST FOR THE



1 TIME PERIOD BETWEEN PROGRAM EXPENDITURES AND PROGRAM COST  
2 RECOVERY. THE CARRYING COST SHALL BE THE  
3 COMMISSION-AUTHORIZED, WEIGHTED-AVERAGE COST OF CAPITAL FOR  
4 EACH QUALIFYING UTILITY.

5 **SECTION 2. Effective date.** This act shall take effect at 12:01  
6 a.m. on the day following the expiration of the ninety-day period after  
7 final adjournment of the general assembly that is allowed for submitting  
8 a referendum petition pursuant to article V, section 1 (3) of the state  
9 constitution (August 4, 2004, if adjournment sine die is on May 5, 2004);  
10 except that, if a referendum petition is filed against this act or an item,  
11 section, or part of this act within such period, then the act, item, section,  
12 or part, if approved by the people, shall take effect on the date of the  
13 official declaration of the vote thereon by proclamation of the governor.