

Second Regular Session
Seventy-fifth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 26-0779.01 Clare Haffner x6137

HOUSE BILL 26-1246

HOUSE SPONSORSHIP

DeGraaf,

SENATE SPONSORSHIP

(None),

House Committees
Energy & Environment

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE ESTABLISHMENT OF CONSUMER-REGULATED
102 ELECTRIC UTILITIES TO SERVE NEW NONRESIDENTIAL ELECTRIC
103 LOADS, AND, IN CONNECTION THEREWITH, EXEMPTING
104 CONSUMER-REGULATED ELECTRIC UTILITIES FROM CERTAIN
105 PUBLIC UTILITY REGULATIONS WHILE MAINTAINING OVERSIGHT
106 FOR PUBLIC SAFETY AND ENVIRONMENTAL PROTECTION.

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 defines a "consumer-regulated electric utility" as an

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.

electric generation and supply system constructed for the sole purpose of serving new industrial, commercial, data center, or other nonresidential loads not previously served by a provider of retail electric service.

The bill states that a consumer-regulated electric utility is not a public utility and is not subject to regulation by the public utilities commission (commission), unless the consumer-regulated electric utility elects to interconnect with the electric grid in a service territory of a public utility that is subject to regulation by the commission.

A consumer-regulated electric utility may construct and operate a facility within an existing public right-of-way, subject to applicable permitting, restoration, and public safety requirements.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** article 3.7 to title
3 40 as follows:

4 **ARTICLE 3.7**

5 **Consumer-Regulated Electric Utilities**

6 **40-3.7-101. Legislative declaration.**

7 (1) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT:

8 (a) RELIABLE, AFFORDABLE, AND SUFFICIENT ELECTRICITY SUPPLY
9 IS VITAL TO ECONOMIC GROWTH AND PUBLIC WELFARE;

10 (b) NEW INDUSTRIAL, COMMERCIAL, AND DATA CENTER
11 DEVELOPMENTS REQUIRE RAPID ACCESS TO ELECTRICITY SUPPLIES
12 WITHOUT SHIFTING COSTS OR RISKS TO EXISTING RATEPAYERS;

13 (c) CONSUMER-REGULATED ELECTRIC UTILITIES ARE PRIVATELY
14 GOVERNED ELECTRICITY PROVIDERS SERVING NEW, NONRESIDENTIAL
15 LOADS;

16 (d) IT IS THE POLICY OF THE STATE TO PERMIT THE CREATION OF
17 CONSUMER-REGULATED ELECTRIC UTILITIES, WHICH OPERATE
18 INDEPENDENTLY OF THE STATE-REGULATED PUBLIC UTILITY SYSTEM; AND

19 (e) CONSUMER-REGULATED ELECTRIC UTILITIES REMAIN SUBJECT

1 TO ENVIRONMENTAL, SAFETY, AND WORKPLACE LAWS AND REGULATIONS
2 THAT PROTECT THE PUBLIC INTEREST, WHILE OTHERWISE OPERATING
3 OUTSIDE OF PUBLIC UTILITY STATE REGULATION.

4 **40-3.7-102. Consumer-regulated electric utilities - definition.**

5 (1) AS USED IN THIS ARTICLE 3.7, "CONSUMER-REGULATED
6 ELECTRIC UTILITY" MEANS AN ELECTRIC GENERATION AND SUPPLY SYSTEM
7 CONSTRUCTED ON OR AFTER THE EFFECTIVE DATE OF THIS ARTICLE 3.7 FOR
8 THE SOLE PURPOSE OF SERVING NEW INDUSTRIAL, COMMERCIAL, DATA
9 CENTER, OR OTHER NONRESIDENTIAL LOADS NOT PREVIOUSLY SERVED BY
10 A PROVIDER OF RETAIL ELECTRIC SERVICE.

11 (2) A CONSUMER-REGULATED ELECTRIC UTILITY MAY OWN OR
12 OPERATE A FACILITY NECESSARY FOR ELECTRIC GENERATION, ENERGY
13 STORAGE, TRANSMISSION, DISTRIBUTION, OR THE SUPPLY OF ELECTRICITY.
14 A CONSUMER-REGULATED ELECTRIC UTILITY MAY SELL ELECTRICITY AT
15 RETAIL TO ELIGIBLE CUSTOMERS IF THE CONSUMER-REGULATED ELECTRIC
16 UTILITY IS FULLY CONTAINED WITHIN THE STATE AND IS PHYSICALLY
17 ISLANDED FROM THE ELECTRIC GRID AND FROM A PUBLIC UTILITY THAT IS
18 REGULATED BY THE COMMISSION.

19 **40-3.7-103. Exemption from public utility regulation.**

20 (1) A CONSUMER-REGULATED ELECTRIC UTILITY IS NOT A PUBLIC
21 UTILITY AND IS NOT SUBJECT TO REGULATION AS A PUBLIC UTILITY.
22 NOTHING IN THIS TITLE 40 APPLIES TO A CONSUMER-REGULATED ELECTRIC
23 UTILITY EXCEPT AS EXPRESSLY STATED IN THIS ARTICLE 3.7. THE
24 COMMISSION HAS NO JURISDICTION TO REGULATE A
25 CONSUMER-REGULATED ELECTRIC UTILITY EXCEPT FOR THE AUTHORITY
26 EXPRESSLY GRANTED IN THIS ARTICLE 3.7.

27 (2) A CONSUMER-REGULATED ELECTRIC UTILITY IS SUBJECT TO

1 APPLICABLE FEDERAL, STATE, AND LOCAL LAWS AND REGULATIONS,
2 INCLUDING:

- 3 (a) ENVIRONMENTAL PROTECTION AND PERMITTING LAWS;
- 4 (b) BUILDING AND FIRE CODES;
- 5 (c) WORKPLACE HEALTH AND SAFETY STANDARDS; AND
- 6 (d) STORM-DEBRIS REMOVAL AND RIGHT-OF-WAY MAINTENANCE
7 REQUIREMENTS FOR A CONSUMER-REGULATED ELECTRIC UTILITY LOCATED
8 WITHIN A PUBLIC RIGHT-OF-WAY.

9 (3) A CONSUMER-REGULATED ELECTRIC UTILITY THAT ELECTS TO
10 INTERCONNECT WITH THE ELECTRIC GRID IN A SERVICE TERRITORY OF A
11 PUBLIC UTILITY THAT IS SUBJECT TO REGULATION BY THE COMMISSION:

12 (a) SHALL COMPLY WITH APPLICABLE INTERCONNECTION
13 REQUIREMENTS PURSUANT TO SECTION 40-2-124; AND

14 (b) WHEN INTERCONNECTED, CEASES TO BE A
15 CONSUMER-REGULATED ELECTRIC UTILITY AND BECOMES A PUBLIC
16 UTILITY SUBJECT TO REGULATION UNDER ARTICLES 1 TO 7 OF THIS TITLE
17 40.

18 **40-3.7-104. Facilities located within public rights-of-way.**

19 A CONSUMER-REGULATED ELECTRIC UTILITY MAY CONSTRUCT AND
20 OPERATE A FACILITY WITHIN AN EXISTING PUBLIC RIGHT-OF-WAY, SUBJECT
21 TO APPLICABLE PERMITTING, RESTORATION, AND PUBLIC SAFETY
22 REQUIREMENTS. A PUBLIC ENTITY THAT REVIEWS A
23 CONSUMER-REGULATED ELECTRIC UTILITY'S APPLICATION FOR USE OF A
24 PUBLIC RIGHT-OF-WAY SHALL FOCUS THE REVIEW ON PUBLIC SAFETY,
25 ENVIRONMENTAL PROTECTION, ADEQUACY OF RIGHT-OF-WAY
26 RESTORATION, AND STORM-RESPONSE PLANS.

27 **40-3.7-105. Construction and severability.**

1 (1) THIS ARTICLE 3.7 SHALL BE LIBERALLY CONSTRUED FOR THE
2 PURPOSE OF ENCOURAGING THE ESTABLISHMENT OF
3 CONSUMER-REGULATED ELECTRIC UTILITIES TO SERVE NEW LOADS AND
4 PROMOTE ECONOMIC DEVELOPMENT.

5 (2) IF ANY PROVISION OF THIS ARTICLE 3.7 IS HELD INVALID, SUCH
6 INVALIDITY SHALL NOT AFFECT OTHER PROVISIONS OF THIS ARTICLE 3.7,
7 WHICH CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION.

8 **SECTION 2. Safety clause.** The general assembly finds,
9 determines, and declares that this act is necessary for the immediate
10 preservation of the public peace, health, or safety or for appropriations for
11 the support and maintenance of the departments of the state and state
12 institutions.