

RECEIVED

APR 09 2010

12-1602
MM

PROPOSED INITIATIVE 58 - REVISED, CLEAN VERSION

Colorado Secretary of State

Be it enacted by the People of the State of Colorado:

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

40-2-128. Procedure for exemption – election. (1) SUBJECT TO THE REQUIREMENTS OF SUBSECTION (6) OF THIS SECTION ANY QUALIFYING RETAIL UTILITY AS DEFINED IN SECTION 40-2-128, C.R.S., OR ITS SUCCESSOR SECTION, COOPERATIVE ELECTRIC ASSOCIATION, OR MUNICIPALLY OWNED UTILITY MAY, BY THE AFFIRMATIVE VOTE OF A MAJORITY OF ITS CUSTOMERS OR MEMBERS CASTING BALLOTS, EXEMPT ITSELF FROM ALL OR PART OF THE REQUIREMENTS OF SECTION 40-2-124, C.R.S., OR ITS SUCCESSOR SECTION, AS WELL AS ALL ASSOCIATED STANDARDS FOR APPROVAL OF ADDITIONAL GENERATION OR ENERGY RESOURCES.

(2) THE QUALIFYING RETAIL UTILITY, COOPERATIVE ELECTRIC ASSOCIATION, OR MUNICIPALLY OWNED UTILITY SHALL CONDUCT AN ELECTION AT WHICH ITS MEMBERS OR CUSTOMERS MAY VOTE TO EXEMPT IT FROM ALL OR PART OF THE REQUIREMENTS OF SECTION 40-2-124, C.R.S., OR ITS SUCCESSOR SECTION IF:

(a) ITS BOARD OF DIRECTORS OR GOVERNING BOARD PASSES A RESOLUTION OR MOTION TO HOLD AN ELECTION SEEKING AN EXEMPTION; OR

(b) FIVE PERCENT OF ITS CUSTOMERS OR MEMBERS SIGN A PETITION REQUESTING AN ELECTION SEEKING EXEMPTION.

(3) **Petition requirements.**

(a) EACH PETITION SHALL INCLUDE THE NAMES AND ADDRESSES OF TWO PROPONENTS, WHO SHALL REPRESENT THE CUSTOMERS OR MEMBERS SIGNING THE PETITION. PROPONENTS SHALL BE ELIGIBLE TO VOTE ON THE QUESTION OF EXEMPTION.

(b) EACH PETITION SECTION SHALL CONTAIN:

(I) THE PROPOSED QUESTION OF EXEMPTION;

(II) A STATEMENT THAT ONLY CUSTOMERS OR MEMBERS OF THE UTILITY OR ASSOCIATION MAY SIGN THE PETITION; AND

(III) A STATEMENT ENCOURAGING SIGNERS TO READ THE QUESTION OF EXEMPTION, AND INFORMING SIGNERS THAT BY SIGNING THE PETITION THEY ARE INDICATING THAT THEY WISH THE PROPOSED QUESTION OF EXEMPTION TO BE VOTED UPON.

(c) EVERY SIGNER SHALL INCLUDE HIS OR HER NAME, SIGNATURE, STREET ADDRESS, AND CITY. EACH SIGNATURE SHALL ALSO BE DATED.

(d) EVERY SIGNATURE SHALL BE WITNESSED BY A PETITION CIRCULATOR. THE PETITION CIRCULATOR SHALL SWEAR OR AFFIRM THAT HE OR SHE WITNESSED THE PERSON'S SIGNATURE ON THE DATE AFFIXED TO EACH SIGNATURE.

(4) **Duties of utility or association.**

(a) THE UTILITY OR ASSOCIATION SHALL APPROVE THE PETITION FORMAT PRIOR TO THE CIRCULATION OF PETITION SECTIONS OR COLLECTION OF SIGNATURES. APPROVAL MAY NOT BE UNREASONABLY WITHHELD.

(b) THE UTILITY OR ASSOCIATION SHALL REVIEW ALL SIGNATURES TO DETERMINE THE SIGNERS' ELIGIBILITY, THE VALIDITY OF EACH SIGNATURE, AND THE NUMBER OF INDIVIDUAL SIGNATURES.

PROPOSED INITIATIVE 58 - REVISED, CLEAN VERSION

(c) IN REVIEWING SIGNATURES, SUBSTANTIAL COMPLIANCE SHALL BE ALL THAT IS NECESSARY FOR APPROVAL OF SIGNATURES.

(d) PROPONENTS MAY SUBMIT SIGNATURES UP TO SIX MONTHS FOLLOWING THE DATE OF THE UTILITY OR ASSOCIATION'S APPROVAL OF THE PETITION FORMAT.

(5) Conduct of elections.

(a) ANY ELECTION SHALL BE HELD NO LESS THAN SIXTY AND NO MORE THAN ONE HUNDRED TWENTY DAYS AFTER THE BOARD OF DIRECTORS PASSES A RESOLUTION OR MOTION, OR AFTER RECEIPT OF A VALID PETITION.

(b) THE UTILITY OR ASSOCIATION SHALL CONDUCT THE ELECTION BY MAIL. EACH CUSTOMER OR MEMBER SHALL RECEIVE AND BE ENTITLED TO VOTE ONE BALLOT FOR EACH ELECTRIC METER FOR WHICH THE CUSTOMER HAS AN ACCOUNT WITH THE UTILITY.

(c) EACH BALLOT SHALL INCLUDE THE FOLLOWING:

(I) A NOTICE EXPLAINING IN PLAIN TERMS THE STATUTORY REQUIREMENTS AT ISSUE.

(II) THE QUESTION OF EXEMPTION. THE QUESTION SHALL SET FORTH IN PLAIN LANGUAGE WHETHER THE UTILITY SHOULD BE EXEMPT FROM THE REQUIREMENTS OF SECTION 40-2-124, C.R.S. OR ITS SUCCESSOR SECTION, OR SUCH SPECIFIC REQUIREMENTS IDENTIFIED BY THE RESOLUTION, MOTION, OR PETITION CALLING THE ELECTION. THE QUESTION OF EXEMPTION SHALL BE IN A FORM THAT MAY BE ANSWERED "YES" TO SUPPORT THE QUESTION OF EXEMPTION OR "NO" TO OPPOSE THE QUESTION OF EXEMPTION.

(III) A STATEMENT OF NO MORE THAN THREE HUNDRED WORDS SUPPORTING THE QUESTION OF EXEMPTION. IN THE CASE OF A RESOLUTION OR MOTION, THE STATEMENT IN SUPPORT SHALL BE PROVIDED BY THE BOARD OF DIRECTORS OR GOVERNING BOARD. IN THE CASE OF A PETITION, THE STATEMENT IN SUPPORT SHALL BE PROVIDED BY THE PROPONENTS OF THE PETITION.

(IV) A STATEMENT OPPOSING THE QUESTION OF EXEMPTION. THIS STATEMENT SHALL BE THE ARGUMENTS FOR AMENDMENT 37 CONTAINED IN THE "ANALYSIS OF 2004 BALLOT PROPOSALS" PUBLISHED BY THE LEGISLATIVE COUNCIL OF THE COLORADO GENERAL ASSEMBLY, RESEARCH PUBLICATION NO. 527-8.

(6) NO EXEMPTION MAY TAKE EFFECT UNLESS TWENTY PERCENT OR MORE OF ALL ELIGIBLE BALLOTS ARE CAST IN THE ELECTION.

(7) IF A UTILITY OR ASSOCIATION HAS EXEMPTED ITSELF FROM ALL OF SECTION 40-2-124, C.R.S., OR ITS SUCCESSOR SECTION, THE PROMOTION OF ELIGIBLE ENERGY RESOURCES AS DEFINED IN SECTION 40-2-124(1)(a), C.R.S., OR ITS SUCCESSOR SECTION SHALL NOT BE A CONSIDERATION IN ANY DECISION MADE BY THE COMMISSION REGARDING THE ACQUISITION OF ADDITIONAL GENERATION OR ENERGY RESOURCES, INCLUDING ACQUISITION OF ENERGY BY CONTRACT, REBATE, OR SUBSIDY FOR THAT UTILITY OR ASSOCIATION. IF A UTILITY OR ASSOCIATION HAS EXEMPTED ITSELF FROM ONLY PART OF SECTION 40-2-124, C.R.S., OR ITS SUCCESSOR SECTION, THE COMMISSION MAY ONLY CONSIDER STANDARDS CONSISTENT WITH THE EXEMPTION REGARDING THE ACQUISITION OF ADDITIONAL GENERATION OR ENERGY RESOURCES, INCLUDING ACQUISITION OF ENERGY BY CONTRACT, REBATE, OR SUBSIDY.

Bob Kennedy
9759 Clandan Court
Parker, CO 80134

Kurt Overturf
16581 Hwy 392
Greeley, CO 80631

Please have any correspondence sent to our offices, though. Thank you.

Mario D. Nicolais, II
Hackstaff Gessler LLC
1601 Blake St., Ste. 310
Denver, CO 80202
(303) 534-4317 p
(303) 534-4309 f
mnicolais@hackstaffgessler.com