

**First Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

REVISED

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

LLS NO. 21-0252.01 Ed DeCecco x4216

SENATE BILL 21-020

SENATE SPONSORSHIP

Hansen and Hisey, Priola, Bridges, Fenberg, Jaquez Lewis, Kolker, Lee, Pettersen, Winter

HOUSE SPONSORSHIP

Valdez A. and Soper,

Senate Committees

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Energy & Environment
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A BILL FOR AN ACT

101 **CONCERNING THE VALUATION OF PROPERTY RELATED TO RENEWABLE**
102 **ENERGY FOR PURPOSES OF THE PROPERTY TAX.**

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>.)

Sections 1 and 2 of the bill ensure that clean energy resources and energy storage systems used to store electricity are assessed for valuation for the purpose of property taxation in a similar manner to renewable energy facility property used to generate and deliver electricity.

Currently, the property tax administrator (administrator) is required to determine the actual value of a small or low impact hydroelectric

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
2nd Reading Unamended
April 8, 2021

SENATE
3rd Reading Unamended
March 2, 2021

SENATE
2nd Reading Unamended
March 1, 2021

energy facility, a geothermal energy facility, a biomass energy facility, a wind energy facility, or a solar energy facility using the income approach to valuation only. This valuation currently involves a "tax factor" based on a 20-year period. Section 2 extends this period by 10 years for a renewable energy facility that begins generating energy on or after January 1, 2021. It also specifies that after the 20- or 30-year period, as applicable, a tax factor is not applied and the taxable value shall not exceed the depreciated value floor calculated using the cost basis method. Under **section 3**, the administrator is required to utilize the income approach for solar energy facilities that generate 2 megawatts or less, so that similar facilities will be valued in the same manner.

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

2 **SECTION 1.** In Colorado Revised Statutes, 39-4-101, **amend** the
3 introductory portion, (2.4), (3), (3.5), and (4); and **add** (2.6) and (2.7) as
4 follows:

5 **39-4-101. Definitions.** As used in this ~~article~~ ARTICLE 4, unless
6 the context otherwise requires:

7 (2.4) ~~"Geothermal energy facility" means a new facility first~~
8 ~~placed in production on or after January 1, 2010, that uses real and~~
9 ~~personal property, including but not limited to leaseholds and easements,~~
10 ~~to generate and deliver to the interconnection meter any source of~~
11 ~~electrical or mechanical energy by harnessing the heat energy of~~
12 ~~groundwater or the ground and that is not primarily designed to supply~~
13 ~~electricity for consumption on site~~ "CLEAN ENERGY RESOURCE" HAS THE
14 SAME MEANING AS SET FORTH IN SECTION 40-2-125.5 (2)(b).

15 (2.6) "ENERGY STORAGE SYSTEM" MEANS COMMERCIALY
16 AVAILABLE TECHNOLOGY THAT IS CAPABLE OF RETAINING ELECTRICITY,
17 STORING THE ENERGY FOR A PERIOD OF TIME, AND DELIVERING THE
18 ELECTRICITY AFTER STORAGE BY CHEMICAL, THERMAL, MECHANICAL, OR
19 OTHER MEANS. "ENERGY STORAGE SYSTEM" DOES NOT INCLUDE A SOLAR

1 ENERGY FACILITY, AS DEFINED IN SUBSECTION (3.5) OF THIS SECTION, OR
2 A WIND ENERGY FACILITY, AS DEFINED IN SUBSECTION (4) OF THIS
3 SECTION.

4 (2.7) "GEOTHERMAL ENERGY FACILITY" MEANS A NEW FACILITY
5 FIRST PLACED IN PRODUCTION ON OR AFTER JANUARY 1, 2010, THAT USES
6 REAL AND PERSONAL PROPERTY, INCLUDING BUT NOT LIMITED TO
7 LEASEHOLDS AND EASEMENTS, TO GENERATE AND DELIVER TO THE
8 INTERCONNECTION METER ANY SOURCE OF ELECTRICAL OR MECHANICAL
9 ENERGY BY HARNESSING THE HEAT ENERGY OF GROUNDWATER OR THE
10 GROUND AND THAT IS NOT PRIMARILY DESIGNED TO SUPPLY ELECTRICITY
11 FOR CONSUMPTION ON SITE.

12 (3) (a) "Public utility" means, for property tax years commencing
13 on or after January 1, 1987, every sole proprietorship, firm, limited
14 liability company, partnership, association, company, or corporation, and
15 the trustees or receivers thereof, whether elected or appointed, that does
16 business in this state as a railroad company, airline company, electric
17 company, small or low impact hydroelectric energy facility, geothermal
18 energy facility, biomass energy facility, wind energy facility, solar energy
19 facility, ENERGY STORAGE SYSTEM, CLEAN ENERGY RESOURCE, rural
20 electric company, telephone company, telegraph company, gas company,
21 gas pipeline carrier company, domestic water company selling at retail
22 except nonprofit domestic water companies, pipeline company, coal
23 slurry pipeline, or private car line company.

24 (b) On and after January 1, 2010, for purposes of this ~~article~~
25 ARTICLE 4, "public utility" ~~shall~~ DOES not include any affiliate or
26 subsidiary of a sole proprietorship, firm, limited liability company,
27 partnership, association, company, or corporation of any type of company

1 described in ~~paragraph (a) of this subsection (3)~~ SUBSECTION (3)(a) OF
2 THIS SECTION that is not doing business in the state primarily as a railroad
3 company, airline company, electric company, small or low impact
4 hydroelectric energy facility, geothermal energy facility, biomass energy
5 facility, wind energy facility, solar energy facility, ENERGY STORAGE
6 SYSTEM, CLEAN ENERGY RESOURCE, rural electric company, telephone
7 company, telegraph company, gas company, gas pipeline carrier
8 company, domestic water company selling at retail except nonprofit
9 domestic water companies, pipeline company, coal slurry pipeline, or
10 private car line company. Valuation and taxation of any such affiliate or
11 subsidiary of a public utility as defined in ~~paragraph (a) of this subsection~~
12 ~~(3)~~ SUBSECTION (3)(a) OF THIS SECTION shall be assessed pursuant to
13 article 5 of this ~~title~~ TITLE 39.

14 (3.5) "Solar energy facility" means a new facility first placed in
15 production on or after January 1, 2009, that uses real and personal
16 property, including but not limited to one or more solar energy devices,
17 as defined in section 38-32.5-100.3 (2), ~~C.R.S.~~, leaseholds, and
18 easements, to generate and deliver to the interconnection meter any
19 source of electrical, thermal, or mechanical energy in excess of two
20 megawatts by harnessing the radiant energy of the sun, INCLUDING ANY
21 CONNECTED DEVICE FOR WHICH THE PRIMARY PURPOSE IS TO STORE
22 ENERGY, and that is not primarily designed to supply electricity for
23 consumption on site.

24 (4) "Wind energy facility" means a new facility first placed in
25 production on or after January 1, 2006, that uses property, real and
26 personal, including one or more wind turbines, leaseholds, and easements,
27 to generate and deliver to the interconnection meter any source of

1 electrical or mechanical energy in excess of two megawatts by harnessing
2 the kinetic energy of the wind, INCLUDING ANY CONNECTED DEVICE FOR
3 WHICH THE PRIMARY PURPOSE IS TO STORE ENERGY.

4 **SECTION 2.** In Colorado Revised Statutes, 39-4-102, **amend**
5 (1)(e)(I)(A), (1.5)(a), (1.5)(b)(I), and (1.5)(b)(IV); and **add** (1.5)(e) as
6 follows:

7 **39-4-102. Valuation of public utilities - definition.** (1) The
8 administrator shall determine the actual value of the operating property
9 and plant of each public utility as a unit, giving consideration to the
10 following factors and assigning such weight to each of such factors as in
11 the administrator's judgment will secure a just value of such public utility
12 as a unit:

13 (e) (I) When determining the actual value of a renewable energy
14 facility that primarily produces more than two megawatts of alternating
15 current electricity, the administrator shall:

16 (A) Consider the additional incremental cost per kilowatt of the
17 construction of the renewable energy facility, TAKING INTO ACCOUNT THE
18 NAMEPLATE CAPACITY OF ANY ENERGY STORAGE SYSTEM IN ADDITION TO
19 GENERATION CAPACITY, over that of the construction cost of a comparable
20 nonrenewable energy facility, inclusive of the cost of all property required
21 to generate and deliver energy to the interconnection meter, that primarily
22 produces alternating current electricity to be an investment cost and shall
23 not include ~~such~~ THE additional incremental cost in the valuation of the
24 facility; and

25 (1.5) The administrator shall determine the actual value of a small
26 or low impact hydroelectric energy facility, a geothermal energy facility,
27 a biomass energy facility, a wind energy facility, or a solar energy facility

1 as follows:

2 (a) The general assembly hereby declares that INITIAL
3 consideration by the administrator of the cost approach and market
4 approach to the appraisal of a wind energy facility or a solar energy
5 facility results in valuations that are neither uniform nor just and equal
6 because of wide variations in the production of energy from wind turbines
7 and solar energy devices, as defined in section 38-32.5-100.3 (2), ~~C.R.S.~~,
8 because of the uncertainty of wind and sunlight available for energy
9 production, and because constructing a wind energy facility or a solar
10 energy facility is significantly more expensive than constructing any other
11 utility production facility. The general assembly further declares that it is
12 also appropriate to INITIALLY value small or low impact hydroelectric
13 energy facilities, geothermal energy facilities, and biomass energy
14 facilities, which also have high construction costs relative to their
15 ongoing operational costs, using the income approach. Therefore, in the
16 absence of preponderant evidence shown by the administrator that the use
17 of the cost approach and market approach results in uniform and just and
18 equal valuation, a small or low impact hydroelectric energy facility, a
19 geothermal energy facility, a biomass energy facility, a wind energy
20 facility, or a solar energy facility shall be INITIALLY valued based solely
21 upon the income approach.

22 (b) (I) FOR A PROPERTY TAX YEAR THAT A TAX FACTOR APPLIES,
23 the actual value of a small or low impact hydroelectric energy facility, a
24 geothermal energy facility, a biomass energy facility, a wind energy
25 facility, or a solar energy facility shall be ~~at~~ IS an amount equal to a tax
26 factor times the selling price at the interconnection meter. FOR A
27 PROPERTY TAX YEAR THAT A TAX FACTOR DOES NOT APPLY, THE

1 ADMINISTRATOR SHALL DETERMINE THE ACTUAL VALUE OF THE FACILITY
2 GIVING APPROPRIATE CONSIDERATION TO THE COST, INCOME, AND MARKET
3 APPROACHES; EXCEPT THAT THE ACTUAL VALUE SHALL NOT EXCEED THE
4 DEPRECIATED VALUE FLOOR CALCULATED USING THE COST BASIS METHOD
5 OF TAXATION AS DETERMINED BY THE ADMINISTRATOR FOR A RENEWABLE
6 ENERGY FACILITY PURSUANT TO SUBSECTION (1)(e) OF THIS SECTION.

7 (IV) As used in this ~~paragraph (b)~~, SUBSECTION (1.5)(b), "tax
8 factor" means a factor annually established by the administrator. FOR A
9 FACILITY THAT BEGINS GENERATING ENERGY BEFORE JANUARY 1, 2021,
10 the tax factor ~~shall be~~ IS a number that when applied to the selling price
11 at the interconnection meter results in approximately the same tax revenue
12 over a twenty-year period on a nominal dollar basis that would have been
13 collected using the cost basis method of taxation as determined by the
14 administrator for a renewable energy facility pursuant to ~~paragraph (c) of~~
15 ~~subsection (1)~~ SUBSECTION (1)(e) of this section. FOR A FACILITY THAT
16 BEGINS GENERATING ENERGY ON OR AFTER JANUARY 1, 2021, THE TAX
17 FACTOR IS A NUMBER THAT, WHEN APPLIED TO THE SELLING PRICE AT THE
18 INTERCONNECTION METER, RESULTS IN APPROXIMATELY THE SAME TAX
19 REVENUE OVER A THIRTY-YEAR PERIOD ON A NOMINAL DOLLAR BASIS
20 THAT WOULD HAVE BEEN COLLECTED USING THE COST BASIS METHOD OF
21 TAXATION AS DETERMINED BY THE ADMINISTRATOR FOR A RENEWABLE
22 ENERGY FACILITY PURSUANT TO SUBSECTION (1)(e) OF THIS SECTION.
23 AFTER THE FIRST TWENTY OR THIRTY YEARS OF A FACILITY'S LIFE, AS
24 APPLICABLE, A TAX FACTOR IS NOT APPLIED. For a renewable energy
25 facility that begins generating energy before January 1, 2012, the
26 administrator shall include only the cost of all property required to
27 generate and deliver renewable energy to the interconnection meter that

1 does not exceed the cost of property required to generate nonrenewable
2 energy. For a renewable energy facility that begins generating energy on
3 or after January 1, 2012, the administrator shall include only the cost of
4 all property required to generate, STORE, and deliver renewable energy to
5 the interconnection meter that does not exceed the cost of property
6 required to generate and deliver nonrenewable energy to the
7 interconnection meter.

8 (e) THE ADMINISTRATOR SHALL DETERMINE THE ACTUAL VALUE
9 OF AN ENERGY STORAGE SYSTEM OR CLEAN ENERGY RESOURCE IN A
10 MANNER SIMILAR TO THE METHOD USED FOR A SMALL OR LOW IMPACT
11 HYDROELECTRIC ENERGY FACILITY, A WIND ENERGY FACILITY, A
12 GEOTHERMAL ENERGY FACILITY, A BIOMASS ENERGY FACILITY, OR A
13 SOLAR ENERGY FACILITY UNDER SUBSECTION (1)(e) OF THIS SECTION AND
14 THIS SUBSECTION (1.5).

15 **SECTION 3.** In Colorado Revised Statutes, 39-5-104.7, **amend**
16 (2) as follows:

17 **39-5-104.7. Valuation of real and personal property that**
18 **produces alternating current electricity from a renewable energy**
19 **source.** (2) In developing the valuation procedures specified in ~~paragraph~~
20 ~~(a) of subsection (1)~~ SUBSECTION (1)(a) of this section:

21 (a) EXCEPT AS SET FORTH IN SUBSECTION (2)(b) OF THIS SECTION,
22 the administrator shall utilize the procedures adopted for determining the
23 actual value of a renewable energy facility as specified in section
24 39-4-102 (1)(e); AND

25 (b) FOR A FACILITY THAT WOULD QUALIFY AS A SOLAR ENERGY
26 FACILITY AS DEFINED IN SECTION 39-4-101 (3.5) BUT IT GENERATES AND
27 DELIVERS LESS THAN TWO MEGAWATTS OF ENERGY, THE ADMINISTRATOR

1 SHALL UTILIZE THE PROCEDURES FOR DETERMINING THE ACTUAL VALUE
2 OF A SOLAR ENERGY FACILITY AS SPECIFIED IN SECTION 39-4-102 (1.5) FOR
3 PROPERTY TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2021.

4 **SECTION 4. Act subject to petition - effective date.** This act
5 takes effect at 12:01 a.m. on the day following the expiration of the
6 ninety-day period after final adjournment of the general assembly; except
7 that, if a referendum petition is filed pursuant to section 1 (3) of article V
8 of the state constitution against this act or an item, section, or part of this
9 act within such period, then the act, item, section, or part will not take
10 effect unless approved by the people at the general election to be held in
11 November 2022 and, in such case, will take effect on the date of the
12 official declaration of the vote thereon by the governor.