

SENATE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

February 10, 2009
Date

Committee on Local Government and Energy.

After consideration on the merits, the Committee recommends the following:

SB09-051 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation:

1 Amend printed bill, page 3, after line 7, insert the following:

2 "(2) The general assembly further finds, determines, and declares
3 that:

4 (a) The industrial and commercial sectors of our economy
5 represent an even greater potential for the expansion of customer-sited
6 solar electric generation technology than does the residential sector;
7 however, at present, the need to participate in a competitive bidding
8 process acts as a barrier to development in these sectors.

9 (b) Therefore, the general assembly supports the adoption of a
10 standard program offer by qualified retail utilities for customer-sited solar
11 electric generation facilities between one hundred kilowatts and one
12 megawatt to encourage the installation of more systems than would
13 otherwise occur under the existing competitive bidding process.

14 **SECTION 3.** Article 38.7 of title 24, Colorado Revised Statutes,
15 is amended BY THE ADDITION OF A NEW SECTION to read:

16 **24-38.7-101.5. Legislative declaration.** THE GENERAL ASSEMBLY
17 FINDS, DETERMINES, AND DECLARES THAT ENERGY-EFFICIENCY
18 IMPROVEMENTS FOR EXISTING BUILDINGS IS ONE OF THE WISEST
19 INVESTMENTS THAT ANY INDIVIDUAL OR BUSINESS CAN MAKE. HOWEVER,

1 MANY COLORADANS MAY BE UNDER THE MISTAKEN IMPRESSION THAT THE
2 COST OF SUCH IMPROVEMENTS IS OUT OF REACH FOR THEM OR THAT
3 FINANCING WOULD BE DIFFICULT TO OBTAIN. THEREFORE, THE GENERAL
4 ASSEMBLY ENCOURAGES ALL COLORADANS TO INVESTIGATE THE
5 POSSIBILITY OF FINANCING ENERGY-EFFICIENCY IMPROVEMENTS BY
6 CONTACTING THEIR CURRENT LENDERS, INCLUDING BANKS, MORTGAGE
7 LENDERS, CREDIT UNIONS, AND OTHER FINANCIAL INSTITUTIONS."

8 Renumber succeeding sections accordingly.

9 Page 3, line 8, strike "24-38.7-102 (3) and (4)," and substitute "The
10 introductory portion to 24-38.7-102 and 24-38.7-102 (3),";

11 strike lines 9 and 10 and substitute the following:

12 "are amended to read:";

13 line 11, strike "article," and substitute "~~article~~ PART 1,";

14 line 21, strike "INCLUDING" and substitute "OR";

15 strike lines 25 through 27.

16 Page 4, strike lines 1 through 15;

17 line 27, strike "'CLEAN & GREEN COLORADO'" and substitute
18 "'COLORADO CLEAN & GREEN' LOGO OR OTHER".

19 Page 5, strike lines 9 through 13 and substitute the following:

20 "funding clean energy loans UNDER THIS PART 1 AND UNDER PART 2 OF
21 THIS ARTICLE during the 2008-09, 2009-10, and 2010-11 fiscal years
22 subject to the ~~limitation that~~ FOLLOWING CONDITIONS:

23 (I) The state treasurer may invest no more than ~~ten~~ FIFTEEN
24 million dollars during the 2008-09 fiscal year and no more than a total
25 amount of ~~twenty~~ TWENTY-FIVE million dollars during the 2008-09 and
26 2009-10 fiscal years; AND

27 (II) OF THESE AMOUNTS, IN THE STATE TREASURER'S DISCRETION
28 AND SUBJECT TO THE QUALIFICATIONS FOR STATE INVESTMENTS LISTED IN

1 SECTION 24-36-113 AND THE AVAILABILITY OF PROJECTS IN WHICH TO
2 INVEST, CLEAN ENERGY LOANS UNDER PART 2 OF THIS ARTICLE MAY
3 COMPRISE UP TO TEN MILLION DOLLARS PER YEAR DURING THE 2008-09
4 FISCAL YEAR AND A TOTAL OF UP TO FIFTEEN MILLION DOLLARS DURING
5 THE 2009-10 AND 2010-11 FISCAL YEARS.";

6 strike lines 19 through 22 and substitute the following:

7 "PRODUCED A SUITABLE DESIGN OR DRAWING, REFERRED TO IN THIS
8 SECTION AS THE "LOGO", TO BE USED IN THE MARKETING OF CLEAN
9 ENERGY LOANS AND CLEAN ENERGY IMPROVEMENTS. THE LOGO MAY, BUT
10 IS NOT REQUIRED TO, CONTAIN THE SLOGAN "COLORADO CLEAN &
11 GREEN" OR OTHER WORDS OR SYMBOLS AS THE OFFICE IN ITS DISCRETION
12 MAY DEEM APPROPRIATE."

13 Page 6, after line 11, insert the following:

14 "SECTION 8. Article 38.7 of title 24, Colorado Revised Statutes,
15 is amended BY THE ADDITION OF A NEW PART to read:

16 PART 2
17 THIRD-PARTY COMMERCIAL
18 SOLAR ELECTRIC INSTALLATIONS

19 **24-38.7-201. Legislative declaration.** THIS PART 2 IS INTENDED
20 TO COMPLEMENT PART 1 OF THIS ARTICLE BY FACILITATING CLEAN ENERGY
21 LOANS FOR LARGER-SCALE COMMERCIAL, INDUSTRIAL, AND
22 INSTITUTIONAL INSTALLATIONS OF SOLAR ELECTRIC GENERATION
23 FACILITIES, WHICH HOLD GREAT POTENTIAL FOR CLEAN ENERGY
24 DEVELOPMENT BUT IN WHICH THE SIZE LIMITATIONS, ECONOMIC
25 INCENTIVES, AND INDUSTRY PRACTICES APPLICABLE TO SMALL
26 RESIDENTIAL INSTALLATIONS EITHER CANNOT BE DUPLICATED OR ARE NOT
27 ECONOMICALLY FEASIBLE.

28 **24-38.7-202. Definitions.** AS USED IN THIS PART 2, UNLESS THE
29 CONTEXT OTHERWISE REQUIRES:

30 (1) "CLEAN ENERGY IMPROVEMENT" MEANS AN INSTALLATION OF
31 SOLAR ELECTRIC GENERATION EQUIPMENT AND ANY RELATED CONTROLS,
32 METERS, WIRING, AND OTHER FACILITIES ON COMMERCIAL, INDUSTRIAL, OR
33 GOVERNMENT-OWNED REAL PROPERTY.

1 (2) "CLEAN ENERGY LOAN" MEANS A LOAN ORIGINATED BY A
2 PARTICIPATING PUBLIC LENDER OR A PARTICIPATING PRIVATE LENDER,
3 INCLUDING BUT NOT LIMITED TO A BANK OR MORTGAGE LENDER, FOR THE
4 PURPOSE OF FINANCING ONE OR MORE CLEAN ENERGY IMPROVEMENTS TO
5 COMMERCIAL, INDUSTRIAL, OR GOVERNMENT-OWNED REAL PROPERTY,
6 SUBJECT TO THE FOLLOWING CONDITIONS:

7 (a) THE LOAN MAY, BUT NEED NOT, BE TO AN INDEPENDENT THIRD
8 PARTY RATHER THAN TO THE OWNER OF THE PROPERTY OR TO A PUBLIC
9 UTILITY.

10 (b) THE LOAN MAY BE FOR A FIXED TERM OF TWENTY YEARS.

11 (c) THE LOAN MAY BE A FULLY ASSUMABLE, NONRECOURSE LOAN
12 AND MAY NOT BE SUBJECT TO ANY PREPAYMENT PENALTY.

13 (d) THE AMOUNT OF THE LOAN MAY EXCEED THE AMOUNT STATED
14 IN SECTION 24-38.7-102 (4).

15 (3) "OFFICE" MEANS THE GOVERNOR'S ENERGY OFFICE.

16 (4) "PUBLIC LENDER" MEANS A COUNTY, MUNICIPALITY, DISTRICT,
17 AUTHORITY, OR OTHER POLITICAL SUBDIVISION OF THE STATE AUTHORIZED
18 TO MAKE ECONOMIC DEVELOPMENT, AFFORDABLE HOUSING, OR HOUSING
19 REHABILITATION LOANS. "PUBLIC LENDER" INCLUDES, WITHOUT
20 LIMITATION, THE COLORADO HOUSING AND FINANCE AUTHORITY.

21 **24-38.7-203. Governor's energy office - administrator - state**
22 **treasurer - powers and duties - statement of intent.** (1) THE OFFICE
23 AND THE ADMINISTRATOR SHALL ADMINISTER THIS PART 2 SUBSTANTIALLY
24 IN ACCORDANCE WITH PART 1 OF THIS ARTICLE, EXCEPT WITH REGARD TO:

25 (a) THE DEFINITIONS OF TERMS COMMON TO BOTH PART 1 OF THIS
26 ARTICLE AND THIS PART 2, AS SUCH DEFINITIONS ARE MODIFIED IN THIS
27 PART 2; AND

28 (b) PROVISIONS THAT, IN THE JUDGMENT AND DISCRETION OF THE
29 OFFICE, THE ADMINISTRATOR, AND THE STATE TREASURER, ARE
30 APPROPRIATE ONLY IN THE CONTEXT OF SMALL RESIDENTIAL
31 INSTALLATIONS UNDER PART 1 OF THIS ARTICLE..

1 (2) THE PROVISIONS OF PART 1 OF THIS ARTICLE AND OF ARTICLE
2 36 OF THIS TITLE CONCERNING THE TYPE AND QUALITY OF INVESTMENTS
3 MADE BY THE STATE TREASURER SHALL CONTINUE TO APPLY. THE
4 GENERAL ASSEMBLY INTENDS THAT THE EXTENSION OF THE PROGRAM
5 UNDER THIS PART 2 BE ACCOMPLISHED AS SEAMLESSLY AS POSSIBLE,
6 WITHIN EXISTING APPROPRIATIONS, AND WITH MINIMAL DISRUPTION TO
7 THE CURRENT PRACTICES OF THE OFFICE, THE ADMINISTRATOR, AND THE
8 STATE TREASURER."

9 Renumber succeeding sections accordingly.

10 Page 7, strike lines 10 through 27.

11 Strike pages 8 through 12.

12 Page 13, strike lines 1 through 16 and substitute the following:

13 "SECTION 11. 40-1-103 (2), Colorado Revised Statutes, is
14 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

15 **40-1-103. Public utility defined.** (2) (c) THE SUPPLY OF
16 ELECTRICITY OR HEAT TO A CONSUMER OF THE ELECTRICITY OR HEAT
17 FROM SOLAR GENERATING EQUIPMENT LOCATED ON THE SITE OF THE
18 CONSUMER'S PROPERTY, WHICH EQUIPMENT IS OWNED OR OPERATED BY AN
19 ENTITY OTHER THAN THE CONSUMER, SHALL NOT SUBJECT THE OWNER OR
20 OPERATOR OF THE ON-SITE SOLAR GENERATING EQUIPMENT TO
21 REGULATION AS A PUBLIC UTILITY BY THE COMMISSION IF THE SOLAR
22 GENERATING EQUIPMENT IS SIZED TO SUPPLY NO MORE THAN ONE
23 HUNDRED TWENTY PERCENT OF THE AVERAGE ANNUAL CONSUMPTION OF
24 ELECTRICITY BY THE CONSUMER AT THAT SITE. FOR PURPOSES OF THIS
25 PARAGRAPH (c), THE CONSUMER'S SITE SHALL INCLUDE ALL CONTIGUOUS
26 PROPERTY OWNED OR LEASED BY THE CONSUMER, WITHOUT REGARD TO
27 INTERRUPTIONS IN CONTIGUITY CAUSED BY EASEMENTS, PUBLIC
28 THOROUGHFARES, TRANSPORTATION RIGHTS-OF-WAY, OR UTILITY
29 RIGHTS-OF-WAY.

30 **SECTION 12.** 40-2-124 (1) (c) (II), (1) (d), (1) (e), and (1) (f)
31 (V), Colorado Revised Statutes, are amended, and the said 40-2-124 is
32 further amended BY THE ADDITION OF A NEW SUBSECTION, to
33 read:

1 **40-2-124. Renewable energy standard - definitions - net**
2 **metering.** (1) Each provider of retail electric service in the state of
3 Colorado, other than municipally owned utilities that serve forty thousand
4 customers or less, shall be considered a qualifying retail utility. Each
5 qualifying retail utility, with the exception of cooperative electric
6 associations that have voted to exempt themselves from commission
7 jurisdiction pursuant to section 40-9.5-104 and municipally owned
8 utilities, shall be subject to the rules established under this article by the
9 commission. No additional regulatory authority of the commission other
10 than that specifically contained in this section is provided or implied. In
11 accordance with article 4 of title 24, C.R.S., on or before October 1, 2007,
12 the commission shall revise or clarify existing rules to establish the
13 following:

14 (c) Electric resource standards:

15 (II) (A) Of the amounts in subparagraph (I) of THIS paragraph (c),
16 ~~of this subsection (1)~~, at least four percent shall be derived from solar
17 electric generation technologies. At least one-half of this four percent
18 shall be derived from solar electric technologies located on-site at
19 customers' facilities.

20 (B) SOLAR GENERATING EQUIPMENT LOCATED ON-SITE AT
21 CUSTOMER'S FACILITIES SHALL BE SIZED TO SUPPLY NO MORE THAN ONE
22 HUNDRED TWENTY PERCENT OF THE AVERAGE ANNUAL CONSUMPTION OF
23 ELECTRICITY BY THE CONSUMER AT THAT SITE. FOR PURPOSES OF THIS
24 SUB-SUBPARAGRAPH (B), THE CONSUMER'S "SITE" SHALL INCLUDE ALL
25 CONTIGUOUS PROPERTY OWNED OR LEASED BY THE CONSUMER, WITHOUT
26 REGARD TO INTERRUPTIONS IN CONTIGUITY CAUSED BY EASEMENTS,
27 PUBLIC THOROUGHFARES, TRANSPORTATION RIGHTS-OF-WAY, OR UTILITY
28 RIGHTS-OF-WAY.

29 (d) (I) A system of tradable renewable energy credits that may be
30 used by a qualifying retail utility to comply with this standard. The
31 commission shall also analyze the effectiveness of utilizing any regional
32 system of renewable energy credits in existence at the time of its
33 rule-making process and determine whether the system is governed by
34 rules that are consistent with the rules established for this article. The
35 commission shall not restrict the qualifying retail utility's ownership of
36 renewable energy credits if the qualifying retail utility complies with the
37 electric resource standard of paragraph (c) of this subsection (1) and does

1 not exceed the retail rate impact established by paragraph (g) of this
2 subsection (1).

3 (II) IN THE SYSTEM OF RENEWABLE ENERGY CREDITS, THE
4 COMMISSION SHALL INCLUDE PROVISIONS FOR A STANDARD OFFER OF
5 CREDITS FOR CUSTOMER-SITED GENERATION BETWEEN ONE HUNDRED
6 KILOWATTS AND ONE MEGAWATT LOCATED IN COLORADO.

7 (III) WHEN ESTABLISHING INCENTIVES FOR THE STANDARD OFFER
8 DESCRIBED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (d), THE
9 COMMISSION SHALL TAKE INTO ACCOUNT THE FOLLOWING FACTORS:

10 (A) INCENTIVES SHOULD BE SET AT A COMPETITIVE LEVEL
11 SUFFICIENT TO ENCOURAGE INCREASED CONSTRUCTION OF
12 CUSTOMER-SITED GENERATION IN THIS SIZE RANGE; AND

13 (B) INCENTIVES SHOULD NOT BE SO HIGH AS TO COMPROMISE THE
14 ABILITY OF A QUALIFYING RETAIL UTILITY TO COMPLY WITH THE
15 PORTFOLIO STANDARD WITHOUT EXCEEDING THE RETAIL RATE IMPACT
16 ESTABLISHED BY PARAGRAPH (g) OF THIS SUBSECTION (1).

17 (e) A standard rebate offer program, UNDER WHICH:

18 (I) Each qualifying retail utility, except for cooperative electric
19 associations and municipally owned utilities, shall make available to its
20 retail electricity customers a standard rebate offer of a minimum of two
21 dollars per watt for the installation of eligible solar electric generation on
22 customers' premises up to a maximum of one hundred kilowatts per
23 installation. Such offer shall allow the customer's retail electricity
24 consumption to be offset by the solar electricity generated. To the extent
25 that solar electricity generation exceeds the customer's consumption
26 during a billing month, such excess electricity shall be carried forward as
27 a credit to the following month's consumption. To the extent that solar
28 electricity generation exceeds the customer's consumption during a
29 calendar year, the customer shall be reimbursed by the qualifying retail
30 utility at its average hourly incremental cost of electricity supply over the
31 prior twelve-month period UNLESS THE CUSTOMER MAKES A ONE-TIME
32 ELECTION, IN WRITING, TO REQUEST THAT THE EXCESS ELECTRICITY BE
33 CARRIED FORWARD AS A CREDIT FROM MONTH TO MONTH INDEFINITELY
34 UNTIL THE CUSTOMER TERMINATES SERVICE WITH THE QUALIFYING RETAIL
35 UTILITY, AT WHICH TIME NO PAYMENT SHALL BE REQUIRED FROM THE

1 QUALIFYING RETAIL UTILITY FOR ANY REMAINING EXCESS ELECTRICITY
2 SUPPLIED BY THE CUSTOMER. The qualifying retail utility shall not apply
3 unreasonably burdensome interconnection requirements in connection
4 with this standard rebate offer. Electricity generated under this program
5 shall be eligible for the qualifying retail utility's compliance with this
6 article.

7 (II) SALES OF ELECTRICITY TO A CONSUMER MAY BE MADE BY THE
8 OWNER OR OPERATOR OF THE SOLAR ELECTRIC GENERATION FACILITIES
9 LOCATED ON THE SITE OF THE CONSUMER'S PROPERTY IF THE SOLAR
10 GENERATING EQUIPMENT IS SIZED TO SUPPLY NO MORE THAN ONE
11 HUNDRED TWENTY PERCENT OF THE AVERAGE ANNUAL CONSUMPTION OF
12 ELECTRICITY BY THE CONSUMER AT THAT SITE. FOR PURPOSES OF THIS
13 SUBPARAGRAPH (II), THE CONSUMER'S SITE SHALL INCLUDE ALL
14 CONTIGUOUS PROPERTY OWNED OR LEASED BY THE CONSUMER, WITHOUT
15 REGARD TO INTERRUPTIONS IN CONTIGUITY CAUSED BY EASEMENTS,
16 PUBLIC THOROUGHFARES, TRANSPORTATION RIGHTS-OF-WAY, OR UTILITY
17 RIGHTS-OF-WAY. IF THE SOLAR ELECTRIC GENERATION FACILITY IS NOT
18 OWNED BY THE CONSUMER, THEN THE QUALIFYING RETAIL UTILITY SHALL
19 NOT BE REQUIRED BY THE COMMISSION TO PAY FOR THE RENEWABLE
20 ENERGY CREDITS GENERATED BY THE FACILITY ON ANY BASIS OTHER THAN
21 A METERED BASIS. THE OWNER OR OPERATOR OF THE SOLAR ELECTRIC
22 GENERATION FACILITY SHALL PAY THE COST OF INSTALLING THE
23 PRODUCTION METER.

24 (III) THE COMMISSION SHALL ENCOURAGE QUALIFYING RETAIL
25 UTILITIES TO DESIGN SOLAR PROGRAMS THAT ALLOW CONSUMERS OF ALL
26 INCOME LEVELS TO OBTAIN THE BENEFITS OFFERED BY SOLAR ELECTRICITY
27 GENERATION AND SHALL ALLOW PROGRAMS THAT ARE DESIGNED TO
28 EXTEND PARTICIPATION TO CUSTOMERS IN MARKET SEGMENTS THAT HAVE
29 NOT BEEN RESPONDING TO THE STANDARD REBATE OFFER PROGRAM.

30 (1.5) NOTWITHSTANDING ANY PROVISION OF LAW TO THE
31 CONTRARY, PARAGRAPH (e) OF SUBSECTION (1) OF THIS SECTION SHALL
32 NOT APPLY TO A MUNICIPALLY OWNED UTILITY OR TO A COOPERATIVE
33 ELECTRIC ASSOCIATION.

34 (f) Policies for the recovery of costs incurred with respect to these
35 standards for qualifying retail utilities that are subject to rate regulation
36 by the commission. These policies shall provide incentives to qualifying
37 retail utilities to invest in eligible energy resources in the state of

1 Colorado. Such policies shall include:

2 (V) If the commission approves the terms and conditions of an
3 eligible energy resource contract between the qualifying retail utility and
4 another party, the contract and its terms and conditions shall be deemed
5 to be a prudent investment, and the commission shall approve retail rates
6 sufficient to recover all just and reasonable costs associated with the
7 contract. All contracts for acquisition of eligible energy resources shall
8 have a minimum term of twenty years; except that the contract term may
9 be shortened at the sole discretion of the seller. All contracts for the
10 acquisition of renewable energy credits from solar electric technologies
11 located on site at customer facilities shall also have a minimum term of
12 twenty years; EXCEPT THAT SUCH CONTRACTS FOR SYSTEMS OF BETWEEN
13 ONE HUNDRED KILOWATTS AND ONE MEGAWATT MAY HAVE A DIFFERENT
14 TERM IF MUTUALLY AGREED TO BY THE PARTIES."

15 Renumber succeeding section accordingly.

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