

Second Regular Session  
Sixty-seventh General Assembly  
STATE OF COLORADO

9.22.09

DRAFT

LLS NO. 10-0172.01 Jason Gelender

INTERIM COMMITTEE BILL

Water Resources Review Committee

**SHORT TITLE:** "Valuation Of New Hydroelec Facilities"

**A BILL FOR AN ACT**

101 **CONCERNING THE VALUATION OF NEW HYDROELECTRIC ENERGY**  
102 **FACILITIES FOR THE PURPOSE OF PROPERTY TAXATION.**

**Bill Summary**

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

**Water Resources Review Committee.** Requires a new hydroelectric energy facility to be valued for the purpose of property taxation in the same manner in which new wind energy facilities and new solar energy facilities are valued for that purpose.

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

*Capital letters indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.*

1           **SECTION 1.** 39-4-101 (3), Colorado Revised Statutes, is  
2 amended, and the said 39-4-101 is further amended BY THE ADDITION  
3 OF A NEW SUBSECTION, to read:

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

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

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

24           (b) On and after January 1, 2000, for purposes of this article,  
25 "public utility" shall not include any affiliate or subsidiary of a sole  
26 proprietorship, firm, limited liability company, partnership, association,  
27 company, or corporation of any type of company described in paragraph

1 (a) of this subsection (3) that is not doing business in the state primarily  
2 as a railroad company, airline company, electric company,  
3 HYDROELECTRIC ENERGY FACILITY, wind energy facility, solar energy  
4 facility, rural electric company, telephone company, telegraph company,  
5 gas company, gas pipeline carrier company, domestic water company  
6 selling at retail except nonprofit domestic water companies, pipeline  
7 company, coal slurry pipeline, or private car line company. Valuation and  
8 taxation of any such affiliate or subsidiary of a public utility as defined in  
9 paragraph (a) of this subsection (3) shall be assessed pursuant to article  
10 5 of this title.

11 **SECTION 2.** 39-4-102 (1) (e) (II), the introductory portion to  
12 39-4-102 (1.5), and 39-4-102 (1.5) (a), (1.5) (b) (I), (1.5) (b) (V), (1.5)  
13 (c), and (1.5) (d), Colorado Revised Statutes, are amended to read:

14 **39-4-102. Valuation of public utilities.** (1) The administrator  
15 shall determine the actual value of the operating property and plant of  
16 each public utility as a unit, giving consideration to the following factors  
17 and assigning such weight to each of such factors as in the administrator's  
18 judgment will secure a just value of such public utility as a unit:

19 (e) (II) For purposes of this paragraph (e), "renewable energy" has  
20 the meaning provided in section 40-1-102 (11), C.R.S., but shall not  
21 include energy generated from a HYDROELECTRIC ENERGY FACILITY, A  
22 wind energy facility, or a solar energy facility.

23 (1.5) The administrator shall determine the actual value of a  
24 HYDROELECTRIC ENERGY FACILITY, A wind energy facility, or a solar  
25 energy facility as follows:

26 (a) The general assembly hereby declares that consideration by the  
27 administrator of the cost approach and market approach to the appraisal

1 of a wind energy facility or a solar energy facility results in valuations  
2 that are neither uniform nor just and equal because of wide variations in  
3 the production of energy from wind turbines and solar energy devices, as  
4 defined in section 38-32.5-100.3 (2), C.R.S., because of the uncertainty  
5 of wind and sunlight available for energy production, and because  
6 constructing a wind energy facility or a solar energy facility is  
7 significantly more expensive than constructing any other utility  
8 production facility. THE GENERAL ASSEMBLY FURTHER DECLARES THAT  
9 IT IS ALSO APPROPRIATE TO VALUE HYDROELECTRIC ENERGY FACILITIES,  
10 WHICH ALSO HAVE HIGH CONSTRUCTION COSTS RELATIVE TO THEIR  
11 ONGOING OPERATIONAL COSTS, USING THE INCOME APPROACH. Therefore,  
12 in the absence of preponderant evidence shown by the administrator that  
13 the use of the cost approach and market approach results in uniform and  
14 just and equal valuation, a HYDROELECTRIC ENERGY FACILITY, A wind  
15 energy facility, or a solar energy facility shall be valued based solely upon  
16 the income approach.

17 (b) (I) The actual value of a HYDROELECTRIC ENERGY FACILITY,  
18 A wind energy facility, or a solar energy facility shall be at an amount  
19 equal to a tax factor times the selling price at the interconnection meter.

20 (V) For purposes of calculating the tax factor as required in  
21 subparagraph (IV) of this paragraph (b), an owner or operator of a  
22 HYDROELECTRIC ENERGY FACILITY, A wind energy facility, or a solar  
23 energy facility shall provide a copy of the HYDROELECTRIC ENERGY  
24 FACILITY'S, wind energy facility's, or solar energy facility's current power  
25 purchase agreement to the administrator by April 1 of each assessment  
26 year. The administrator shall also have the authority to request a copy of  
27 the current power purchase agreement from the purchaser of power

1 generated at a HYDROELECTRIC ENERGY FACILITY, A wind energy facility,  
2 or a solar energy facility. All agreements provided to the administrator  
3 pursuant to this subparagraph (V) shall be considered private documents  
4 and shall be available only to the administrator and the employees of the  
5 division of property taxation in the department of local affairs.

6 (c) The location of a HYDROELECTRIC ENERGY FACILITY, A wind  
7 energy facility, or a solar energy facility on real property shall not affect  
8 the classification of that real property for purposes of determining the  
9 actual value of that real property as provided in section 39-1-103.

10 (d) Pursuant to section 39-3-118.5, no actual value for any  
11 personal property used in a HYDROELECTRIC ENERGY FACILITY, A wind  
12 energy facility, or a solar energy facility shall be assigned until the  
13 personal property is first put into use by the facility. If any item of  
14 personal property is used in the facility and is subsequently taken out of  
15 service so that no HYDROELECTRIC ENERGY, wind energy, or solar energy  
16 is produced from that facility for the preceding calendar year, no actual  
17 value shall be assigned to that item of more than five percent of the  
18 installed cost of the item for that assessment year.

19 **SECTION 3.** 39-5-104.7 (1) (b), Colorado Revised Statutes, is  
20 amended to read:

21 **39-5-104.7. Valuation of real and personal property that**  
22 **produces alternating current electricity from a renewable energy**  
23 **source.** (1) (b) The valuation requirements specified in paragraph (a) of  
24 this subsection (1) shall not apply to HYDROELECTRIC ENERGY FACILITIES,  
25 AS DEFINED IN SECTION 39-4-101 (2.7), solar energy facilities, as defined  
26 in section 39-4-101 (3.5), or wind energy facilities, as defined in section  
27 39-4-101 (4).

1           **SECTION 4. Applicability.** This act shall apply to the  
2 determination of the actual value of new hydroelectric energy facilities  
3 first placed in production on or after January 1, 2010.

4           **SECTION 5. Safety clause.** The general assembly hereby finds,  
5 determines, and declares that this act is necessary for the immediate  
6 preservation of the public peace, health, and safety.