

**First Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

REREVISED

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

LLS NO. 09-0565.01 Duane Gall

HOUSE BILL 09-1126

HOUSE SPONSORSHIP

Hullinghorst, Curry

SENATE SPONSORSHIP

Shaffer B., Heath

House Committees

Transportation & Energy
Finance
Appropriations

Senate Committees

Local Government and Energy
Appropriations

A BILL FOR AN ACT

101 **CONCERNING INCENTIVES FOR THE DEVELOPMENT OF SOLAR THERMAL**
102 **ENERGY SYSTEMS.**

Bill Summary

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

Allows local governments to provide the same incentives for solar thermal installations as may now be provided for solar electric installations. Adds a corresponding exemption from state sales and use tax.

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

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
3rd Reading Unamended
May 5, 2009

SENATE
Amended 2nd Reading
May 4, 2009

HOUSE
3rd Reading Unamended
April 29, 2009

HOUSE
Amended 2nd Reading
April 28, 2009

1 **SECTION 1. Legislative declaration.** (1) On November 6,
2 2006, the executive director of the department of revenue issued final
3 determination DD-598, in which the executive director concluded that
4 machinery used to produce electricity did not qualify for exemption from
5 sales and use tax under section 39-26-709, Colorado Revised Statutes, as
6 in effect prior to legislative amendments made in the 2007 legislative
7 session. Final determination DD-598 is inconsistent with final
8 determination DD-567, which was issued by the executive director on
9 February 5, 2001, and which concluded that certain machinery used in the
10 production of electricity qualified for the exemption from sales and use
11 tax under section 39-26-709, Colorado Revised Statutes.

12 (2) The general assembly is cognizant of pending litigation
13 concerning the scope of section 39-26-709, Colorado Revised Statutes,
14 as in effect prior to 2007. By enacting House Bill 09-1126, the general
15 assembly does not intend to indicate whether final determination DD-598
16 reflects the correct construction or interpretation of section 39-26-709,
17 Colorado Revised Statutes, or whether the final determination is a change
18 in policy. Furthermore, by enacting House Bill 09-1126, the general
19 assembly does not intend to indicate whether certain components
20 specified in section 2 of this act may already be exempt from sales and
21 use tax under section 39-26-709, Colorado Revised Statutes.

22 **SECTION 2.** 31-20-101.3 (2), Colorado Revised Statutes, is
23 amended to read:

24 **31-20-101.3. Incentives for installation of renewable energy**
25 **fixtures - definitions.** (2) For purposes of this section, unless the
26 context otherwise requires, "renewable energy fixture" means any fixture,
27 product, system, device, or interacting group of devices that produces

1 ENERGY, INCLUDING BUT NOT LIMITED TO ALTERNATING CURRENT
2 electricity, from renewable resources, including, but not limited to,
3 photovoltaic systems, solar thermal systems, small wind systems, biomass
4 systems, or geothermal systems.

5 **SECTION 3.** 39-26-724, Colorado Revised Statutes, is amended
6 to read:

7 **39-26-724. Components used to produce energy from a**
8 **renewable energy source - definitions.** (1) (a) For fiscal years
9 commencing on or after July 1, 2006, all sales, storage, and use of
10 components used in the production of alternating current electricity from
11 a renewable energy source, including but not limited to wind, shall be
12 exempt from taxation under ~~the provisions of~~ parts 1 and 2 of this article.

13 (b) ~~FOR STATE FISCAL YEARS 2009-10 THROUGH 2016-17,~~ ALL
14 SALES, STORAGE, AND USE OF COMPONENTS USED IN SOLAR THERMAL
15 SYSTEMS SHALL BE EXEMPT FROM TAXATION UNDER PARTS 1 AND 2 OF
16 THIS ARTICLE.

17 (2) As used in this section:

18 (a) "COMPONENTS USED IN SOLAR THERMAL SYSTEMS" SHALL
19 INCLUDE, BUT SHALL NOT BE LIMITED TO:

20 (I) SOLAR COLLECTORS, INCLUDING FLAT-PLATE COLLECTORS,
21 EVACUATED TUBE COLLECTORS, SOLAR AIR COLLECTORS, AND
22 CONCENTRATING SOLAR THERMAL COLLECTORS;

23 (II) TANKS FOR THE STORAGE OF GASES OR LIQUIDS THAT HAVE
24 BEEN HEATED OR COOLED BY SOLAR-GENERATED ENERGY;

25 (III) PUMPS, IMPELLERS, AND FANS FOR THE CIRCULATION OF
26 GASES OR LIQUIDS THAT HAVE BEEN HEATED OR COOLED BY
27 SOLAR-GENERATED ENERGY;

1 (IV) HEAT EXCHANGERS USED TO TRANSFER SOLAR-GENERATED
2 ENERGY;

3 (V) SUPPORT STRUCTURES, RACKS, AND FOUNDATIONS FOR ANY
4 COMPONENTS LISTED IN SUBPARAGRAPHS (I) TO (IV) OF THIS PARAGRAPH
5 (a); AND

6 (VI) ANY OTHER SYSTEM COMPONENTS SUCH AS PIPING, VALVES,
7 GAUGES, FITTINGS, INSULATION, AND CONTROLS FOR ANY COMPONENTS
8 LISTED IN SUBPARAGRAPHS (I) TO (IV) OF THIS PARAGRAPH (a).

9 (b) (I) "Components USED IN THE PRODUCTION OF ALTERNATING
10 CURRENT ELECTRICITY FROM A RENEWABLE ENERGY SOURCE" shall
11 include, but shall not be limited to, wind turbines, rotors and blades, solar
12 modules, trackers, generating equipment, supporting structures or racks,
13 inverters, towers and foundations, balance of system components such as
14 wiring, control systems, switchgears, and generator step-up transformers,
15 and concentrating solar power components that include, but are not
16 limited to, mirrors, plumbing, and heat exchangers.

17 ~~(b) (II) As used in this section,~~ "Components USED IN THE
18 PRODUCTION OF ALTERNATING CURRENT ELECTRICITY FROM A RENEWABLE
19 ENERGY SOURCE" shall not include any components beyond the point of
20 generator step-up transformers located at the production site, labor,
21 energy storage devices, or remote monitoring systems.

22 (c) "SOLAR THERMAL SYSTEM" MEANS A SYSTEM WHOSE PRIMARY
23 PURPOSE IS TO USE ENERGY FROM THE SUN TO PRODUCE HEAT OR COLD
24 FOR:

25 (I) HEATING OR COOLING A RESIDENTIAL OR COMMERCIAL
26 BUILDING;

27 (II) HEATING OR COOLING WATER; OR

1 (III) ANY INDUSTRIAL, COMMERCIAL, OR MANUFACTURING
2 PROCESS.

3 **SECTION 4.** 29-2-105 (1) (d) (I) (J), Colorado Revised Statutes,
4 is amended to read:

5 **29-2-105. Contents of sales tax ordinances and proposals.**

6 (1) The sales tax ordinance or proposal of any incorporated town, city,
7 or county adopted pursuant to this article shall be imposed on the sale of
8 tangible personal property at retail or the furnishing of services, as
9 provided in paragraph (d) of this subsection (1). Any countywide or
10 incorporated town or city sales tax ordinance or proposal shall include the
11 following provisions:

12 (d) (I) A provision that the sale of tangible personal property and
13 services taxable pursuant to this article shall be the same as the sale of
14 tangible personal property and services taxable pursuant to section
15 39-26-104, C.R.S., except as otherwise provided in this paragraph (d).
16 The sale of tangible personal property and services taxable pursuant to
17 this article shall be subject to the same sales tax exemptions as those
18 specified in part 7 of article 26 of title 39, C.R.S.; except that the sale of
19 the following may be exempted from a town, city, or county sales tax only
20 by the express inclusion of the exemption either at the time of adoption
21 of the initial sales tax ordinance or resolution or by amendment thereto:

22 (J) The exemption for sales of components used in the production
23 of ENERGY, INCLUDING BUT NOT LIMITED TO alternating current electricity,
24 from a renewable energy source ~~including but not limited to wind,~~
25 specified in section 39-26-724, C.R.S.; except that this sub-subparagraph
26 (J) shall not apply to any incorporated town, city, or county that adopted
27 the exemption specified in sub-subparagraph (A) of this subparagraph (I)

1 prior to May 27, 2008;

2 **SECTION 5.** The introductory portion to 29-2-109 (1), Colorado
3 Revised Statutes, is amended to read:

4 **29-2-109. Contents of use tax ordinances and proposals.**

5 (1) The use tax ordinance, resolution, or proposal of any town, city, or
6 county adopted pursuant to this article shall be imposed only for the
7 privilege of using or consuming in the town, city, or county any
8 construction and building materials purchased at retail or for the privilege
9 of storing, using, or consuming in the town, city, or county any motor and
10 other vehicles, purchased at retail on which registration is required, or
11 both. For the purposes of this subsection (1), the term "construction and
12 building materials" shall not include parts or materials utilized in the
13 fabrication, construction, assembly, or installation of passenger tramways,
14 as defined in section 25-5-702 (4), C.R.S., by any ski area operator, as
15 defined in section 33-44-103 (7), C.R.S., or any person fabricating,
16 constructing, assembling, or installing a passenger tramway for a ski area
17 operator. The ordinance, resolution, or proposal may recite that the use
18 tax shall not apply to the storage and use of wood from salvaged trees
19 killed or infested in Colorado by mountain pine beetles as exempted from
20 the state use tax pursuant to section 39-26-723, C.R.S. The ordinance,
21 resolution, or proposal may recite that the use tax shall not apply to the
22 storage and use of components used in the production of ENERGY,
23 INCLUDING BUT NOT LIMITED TO alternating current electricity, from a
24 renewable energy source, ~~including but not limited to wind~~, as exempted
25 from the state use tax pursuant to section 39-26-724, C.R.S. The
26 ordinance, resolution, or proposal shall recite that the use tax shall not
27 apply:

1 **SECTION 6. Effective date - applicability.** (1) This act shall
2 apply to systems and components installed on or after July 1, 2009.

3 (2) This act shall not take effect unless House Bill 09-1366 is
4 enacted and becomes law.

5 **SECTION 7. Safety clause.** The general assembly hereby finds,
6 determines, and declares that this act is necessary for the immediate
7 preservation of the public peace, health, and safety.