A BILL FOR AN ACT

CONCERNING MEASURES TO ENCOURAGE ADDITIONAL INVESTMENT IN
SOLAR ENERGY GENERATION FACILITIES, AND, IN CONNECTION
THEREWITH, AUTHORIZING THE CREATION OF COMMUNITY
SOLAR GARDENS.

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://www.leg.state.co.us/billsummaries.)

Existing law directs the Colorado public utilities commission (PUC) to adopt rules implementing the renewable energy portfolio
standards (RPS) for electric utilities, under which increasing amounts of electricity must be generated from renewable sources. The current rules provide for standard rebates for the cost of installation and renewable energy credits (RECs) to promote customer-sited solar generation facilities.

The bill directs the PUC to adopt new rules under which standard offers can apply to solar generation facilities that are beneficially owned by 10 or more customers at a shared location, called a "community solar garden". This will help customers participate in solar generation even though solar facilities on their own properties may not be feasible due to cost, the physical characteristics of their sites, their status as renters, or other factors.

Section 1 of the bill amends an existing legislative declaration to state that it is in the public interest to allow renters and low-income utility customers to own interests in solar generation facilities, to make interests in solar generation facilities portable and transferable, and to leverage Colorado's solar generating capacity through economies of scale. Section 1 also:

- Defines a solar community garden as an on-site eligible solar electric generation facility with a nameplate rating of 2 megawatts or less and in which subscriptions are owned by 10 or more customers of a qualifying retail utility;
- Limits the size of a subscription to 120% of the average annual electric consumption of each subscriber at the premises to which the subscription is attributed;
- Allows the creation of a community solar garden owned by a subscriber organization, subject to rules adopted by the PUC by October 1, 2010;
- Specifies that, in their first 2 compliance plan years after the effective date of the bill, qualifying retail utilities must purchase the greater of 3 megawatts, or half their total purchases of electricity from community solar gardens, from gardens that are sized at 500 kilowatts or smaller;
- Exempts community solar gardens from the definition of a utility; and
- Specifies that section 1 does not apply to cooperative electric associations or municipally owned utilities.

Section 2 makes conforming amendments to the existing RPS statute (a/k/a "Amendment 37").

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

1 SECTION 1. 40-2-127, Colorado Revised Statutes, is amended

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(1) Legislative declaration. The general assembly hereby finds and declares that:

(a) Local communities can benefit from the further development of renewable energy, energy efficiency, conservation, and environmental improvement projects, and the general assembly hereby encourages electric utilities to establish community energy funds for the development of such projects;

(b) It is in the public interest that broader participation in solar electric generation by Colorado residents and commercial entities be encouraged by the development and deployment of distributed solar electric generating facilities known as community solar gardens, in order to:

(I) Provide Colorado residents and commercial entities with the opportunity to participate in solar generation in addition to the opportunities available for rooftop solar generation on homes and businesses;

(II) Allow renters and low-income utility customers to own interests in solar generation facilities;

(III) Allow interests in solar generation facilities to be portable and transferrable; and

(IV) Leverage Colorado's solar generating capacity through economies of scale.

(2) Definitions. As used in this section, unless the context otherwise requires:
(a) The definitions in section 40-2-124 apply; and
(b) In addition:
   (I) (A) "Community solar garden" means a solar electric generation facility with a nameplate rating of two megawatts or less that is located in or near a community served by a qualifying retail utility where the beneficial use of the electricity generated by the facility belongs to the subscribers to the community solar garden. There shall be at least ten subscribers. The owner of the community solar garden may be the qualifying retail utility or any other for-profit or nonprofit entity or organization, including a subscriber organization organized under this section, that contracts to sell the output from the community solar garden to the qualifying retail utility. A community solar garden shall be deemed to be "located on the site of customer facilities" and shall be subject to the one hundred twenty percent requirement for such customer facilities for the purposes of section 40-2-124. A community solar garden also shall be considered to be a "community-based project" within the meaning of section 40-2-124 (1) (c) (VI) if the local governmental resolution of support required by said subsection is adopted.
   (B) A community solar garden shall constitute "retail distributed generation" within the meaning of section 40-2-124, as amended by House Bill 10-1001, enacted in 2010. If House Bill 10-1001 does not take effect, this sub-subparagraph (B) is repealed, effective July 1, 2011.
   (II) "Subscriber" means a retail customer of a qualifying
RETAIL UTILITY WHO OWNS A SUBSCRIPTION AND WHO HAS IDENTIFIED ONE OR MORE PHYSICAL LOCATIONS TO WHICH THE SUBSCRIPTION SHALL BE ATTRIBUTED. SUCH PHYSICAL LOCATIONS SHALL BE WITHIN EITHER THE SAME MUNICIPALITY OR THE SAME COUNTY AS THE COMMUNITY SOLAR GARDEN. THE SUBSCRIBER MAY CHANGE FROM TIME TO TIME THE PREMISSES TO WHICH THE COMMUNITY SOLAR GARDEN ELECTRICITY GENERATION SHALL BE ATTRIBUTED, SO LONG AS THE PREMISSES ARE WITHIN THE GEOGRAPHICAL LIMITS ALLOWED FOR A SUBSCRIBER.

(III) "SUBSCRIPTION" MEANS A PROPORTIONAL INTEREST IN SOLAR ELECTRIC GENERATION FACILITIES INSTALLED AT A COMMUNITY SOLAR GARDEN, TOGETHER WITH THE RENEWABLE ENERGY CREDITS ASSOCIATED WITH OR ATTRIBUTABLE TO SUCH FACILITIES UNDER SECTION 40-2-124. EACH SUBSCRIPTION SHALL BE SIZED TO REPRESENT AT LEAST ONE KILOWATT OF THE COMMUNITY SOLAR GARDEN'S GENERATING CAPACITY AND TO SUPPLY NO MORE THAN ONE HUNDRED TWENTY PERCENT OF THE AVERAGE ANNUAL CONSUMPTION OF ELECTRICITY BY EACH SUBSCRIBER AT THE PREMISSES TO WHICH THE SUBSCRIPTION IS ATTRIBUTED, WITH A DEDUCTION FOR THE AMOUNT OF ANY EXISTING SOLAR FACILITIES AT SUCH PREMISSES. SUBSCRIPTIONS IN A COMMUNITY SOLAR GARDEN MAY BE TRANSFERRED OR ASSIGNED TO A SUBSCRIBER ORGANIZATION OR TO ANY PERSON OR ENTITY WHO QUALIFIES TO BE A SUBSCRIBER UNDER THIS SECTION.

(3) Subscriber organization - subscriber qualifications - transferability of subscriptions. (a) THE COMMUNITY SOLAR GARDEN MAY BE OWNED BY A SUBSCRIBER ORGANIZATION, WHOSE SOLE PURPOSE SHALL BE BENEFICIALLY OWNING AND OPERATING A COMMUNITY SOLAR GARDEN. THE SUBSCRIBER ORGANIZATION MAY BE ANY FOR-PROFIT OR
NONPROFIT ENTITY PERMITTED BY COLORADO LAW. THE COMMUNITY
SOLAR GARDEN MAY ALSO BE BUILT, OWNED, AND OPERATED BY A THIRD
PARTY UNDER CONTRACT WITH THE SUBSCRIBER ORGANIZATION.

(b) ON OR BEFORE OCTOBER 1, 2010, THE COMMISSION SHALL
ADOPT RULES AS NECESSARY TO IMPLEMENT THIS SECTION, INCLUDING BUT
NOT LIMITED TO RULES TO FACILITATE THE FINANCING OF
SUBSCRIBER-OWNED COMMUNITY SOLAR GARDENS. SUCH RULES SHALL
INCLUDE:

(I) MINIMUM CAPITALIZATION;
(II) THE SHARE OF A COMMUNITY SOLAR GARDEN'S ELIGIBLE
SOLAR ELECTRIC GENERATION FACILITIES THAT A SUBSCRIBER
ORGANIZATION MAY AT ANY TIME OWN IN ITS OWN NAME; AND
(III) AUTHORIZING SUBSCRIBER ORGANIZATIONS TO ENTER INTO
LEASES, SALE-AND-LEASEBACK TRANSACTIONS, OPERATING AGREEMENTS,
AND OTHER OWNERSHIP ARRANGEMENTS WITH THIRD PARTIES.

(c) IF A SUBSCRIBER CEASES TO BE A CUSTOMER AT THE PREMISES
ON WHICH THE SUBSCRIPTION IS BASED BUT, WITHIN A REASONABLE
PERIOD AS DETERMINED BY THE COMMISSION, BECOMES A CUSTOMER AT
ANOTHER PREMISES IN THE SERVICE TERRITORY OF THE QUALIFYING
RETAIL UTILITY AND WITHIN THE GEOGRAPHIC AREA SERVED BY THE
COMMUNITY SOLAR GARDEN, THE SUBSCRIPTION SHALL CONTINUE IN
EFFECT BUT THE BILL CREDIT AND OTHER FEATURES OF THE SUBSCRIPTION
SHALL BE ADJUSTED AS NECESSARY TO REFLECT ANY DIFFERENCES
BETWEEN THE NEW AND PREVIOUS PREMISES' CUSTOMER CLASSIFICATION
AND AVERAGE ANNUAL CONSUMPTION OF ELECTRICITY.

(4) Community solar gardens not subject to regulation.
NEITHER THE OWNERS OF NOR THE SUBSCRIBERS TO A COMMUNITY SOLAR
GARDEN SHALL BE CONSIDERED PUBLIC UTILITIES SUBJECT TO REGULATION
BY THE COMMISSION SOLELY AS A RESULT OF THEIR INTEREST IN THE
COMMUNITY SOLAR GARDEN. PRICES PAID FOR SUBSCRIPTIONS IN
COMMUNITY SOLAR GARDENS SHALL NOT BE SUBJECT TO REGULATION BY
THE COMMISSION.

(5) Purchases of the output from community solar gardens.

(a) (I) EACH QUALIFYING RETAIL UTILITY SHALL SET FORTH IN ITS ANNUAL
COMPLIANCE PLAN A PLAN TO PURCHASE THE ELECTRICITY AND
RENEWABLE ENERGY CREDITS GENERATED FROM ONE OR MORE
COMMUNITY SOLAR GARDENS OVER THE PERIOD COVERED BY THE PLAN.

(II) FOR THE FIRST TWO COMPLIANCE PLAN YEARS COMMENCING
WITH THE 2011 COMPLIANCE PLAN YEAR, EACH QUALIFYING RETAIL
UTILITY SHALL ISSUE ONE OR MORE STANDARD OFFERS TO PURCHASE THE
OUTPUT FROM COMMUNITY SOLAR GARDENS OF FIVE HUNDRED KILOWATTS
OR LESS THAT ARE OWNED BY SUBSCRIBER ORGANIZATIONS AT PRICES
THAT ARE COMPARABLE TO THE PRICES OFFERED BY THE QUALIFYING
RETAIL UTILITY UNDER STANDARD OFFERS ISSUED FOR ON-SITE SOLAR
GENERATION. DURING THESE TWO PLAN YEARS, THE QUALIFYING RETAIL
UTILITY SHALL ACQUIRE THE GREATER OF THREE MEGAWATTS OR
ONE-HALF OF THE SOLAR GARDEN GENERATION IN ITS PLAN THROUGH
THESE STANDARD OFFERS TO THE EXTENT THE QUALIFYING RETAIL UTILITY
RECEIVES RESPONSES TO ITS STANDARD OFFERS. THE QUALIFYING RETAIL
UTILITY SHALL NOT BE OBLIGATED TO PURCHASE THE OUTPUT FROM MORE
THAN SIX MEGAWATTS OF NEWLY INSTALLED COMMUNITY SOLAR GARDEN
GENERATION IN EITHER OF THE FIRST TWO COMPLIANCE PLAN YEARS.

(III) FOR EACH QUALIFYING RETAIL UTILITY'S COMPLIANCE PLAN
YEARS COMMENCING IN 2013 AND THEREAFTER, THE COMMISSION SHALL
DETERMINE THE MINIMUM AND MAXIMUM PLAN YEAR PURCHASES OF ELECTRICAL OUTPUT FROM NEWLY INSTALLED COMMUNITY SOLAR GARDENS OF DIFFERENT OUTPUT CAPACITY THAT THE QUALIFYING RETAIL UTILITY SHALL PLAN TO ACQUIRE, WITHOUT REGARD TO THE SIX-MEGAWATT CEILING OF THE FIRST TWO PLAN YEARS. IN ADDITION, AS NECESSARY, THE COMMISSION SHALL FORMULATE AND IMPLEMENT POLICIES CONSISTENT WITH THIS SECTION THAT SIMULTANEOUSLY ENCOURAGE:

(A) THE OWNERSHIP BY CUSTOMERS OF SUBSCRIPTIONS IN COMMUNITY SOLAR GARDENS AND OF OTHER FORMS OF DISTRIBUTED GENERATION, TO THE EXTENT THE COMMISSION FINDS THERE TO BE CUSTOMER DEMAND FOR SUCH OWNERSHIP;

(B) OWNERSHIP IN COMMUNITY SOLAR GARDENS BY RESIDENTIAL RETAIL CUSTOMERS, INCLUDING LOW-INCOME CUSTOMERS, TO THE EXTENT THE COMMISSION FINDS THERE TO BE DEMAND FOR SUCH OWNERSHIP;

(C) THE DEVELOPMENT OF COMMUNITY SOLAR GARDENS WITH ATTRIBUTES THAT THE COMMISSION FINDS RESULT IN LOWER OVERALL TOTAL COSTS FOR THE QUALIFYING RETAIL UTILITY’S CUSTOMERS;

(D) SUCCESSFUL FINANCING AND OPERATION OF COMMUNITY SOLAR GARDENS OWNED BY SUBSCRIBER ORGANIZATIONS; AND


(b) (I) THE OUTPUT FROM A COMMUNITY SOLAR GARDEN SHALL BE SOLD ONLY TO THE QUALIFYING RETAIL UTILITY SERVING THE GEOGRAPHIC AREA WHERE THE COMMUNITY SOLAR GARDEN IS LOCATED. ONCE A COMMUNITY SOLAR GARDEN IS PART OF A QUALIFYING RETAIL UTILITY’S COMPLIANCE PLAN APPROVED BY THE COMMISSION, THE QUALIFYING
RETAIL UTILITY SHALL PURCHASE ALL OF THE ELECTRICITY AND
RENEWABLE ENERGY CREDITS GENERATED BY THE COMMUNITY SOLAR
GARDEN. THE AMOUNT OF ELECTRICITY AND RENEWABLE ENERGY
CREDITS GENERATED BY EACH COMMUNITY SOLAR GARDEN SHALL BE
determined by a production meter installed by the qualifying
retail utility or third-party system owner and paid for by the
owner of the community solar garden.

(II) The purchase of the output of a community solar
garden by a qualifying retail utility shall take the form of a
net metering credit against the qualifying retail utility's
electric bill to each community solar garden subscriber at the
premises set forth in the subscriber's subscription. The net
metering credit shall be calculated by multiplying the
subscriber's share of the electricity production from the
community solar garden by the retail rate per kilowatt-hour of
the qualifying retail utility, minus a reasonable charge as
determined by the commission to cover the utility's costs of
delivering to the subscriber's premises the electricity generated
by the community solar garden, integrating the solar
generation with the utility's system, and administering the
community solar garden's contracts and net metering credits.

If, and to the extent that, a subscriber's net metering credit
exceeds the subscriber's electric bill in any billing period, the
net metering credit shall be carried forward and applied
against future bills. The qualifying retail utility and the owner
of the community solar garden shall agree on whether the
purchase of the renewable energy credits from subscribers will
BE ACCOMPLISHED THROUGH A CREDIT ON EACH SUBSCRIBER’S ELECTRICITY BILL OR BY A PAYMENT TO THE OWNER OF THE COMMUNITY SOLAR GARDEN.

(c) The owner of the community solar garden shall provide real-time production data to the qualifying retail utility to facilitate incorporation of the community solar garden into the utility’s operation of its electric system and to facilitate the provision of net metering credits.

(d) The owner of the community solar garden shall be responsible for providing to the qualifying retail utility, on a monthly basis and within reasonable periods set by the qualifying retail utility, the percentage shares that should be used to determine the net metering credit to each subscriber. If the electricity output of the community solar garden is not fully subscribed, the qualifying retail utility shall purchase the unsubscribed renewable energy and the renewable energy credits at a rate equal to the qualifying retail utility’s average hourly incremental cost of electricity supply over the immediately preceding calendar year.

(e) Each qualifying retail utility shall set forth in its compliance plan a proposal for including low-income customers as subscribers to a community solar garden. The utility may give preference to community solar gardens that have low-income subscribers.

(f) Qualifying retail utilities shall be eligible for the incentives set forth in section 40-2-124 (1) (f) for utility investments in community solar gardens.
(6) Nothing in this section shall be construed to waive or supercede the retail rate impact limitations in section 40-2-124 (g). Utility expenditures for unsubscribed energy and renewable energy credits generated by community solar gardens shall be included in the calculations of retail rate impact required by that section.

(7) Applicability to cooperative electric associations and municipally owned utilities. This section shall not apply to cooperative electric associations or to municipally owned utilities.

SECTION 2. Act subject to petition - effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 11, 2010, if adjournment sine die is on May 12, 2010); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part shall not take effect unless approved by the people at the general election to be held in November 2010 and shall take effect on the date of the official declaration of the vote thereon by the governor.