

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

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 10-0172.01 Jason Gelender

SENATE BILL 10-019

SENATE SPONSORSHIP

Schwartz, Brophy, Hodge, White, Whitehead

HOUSE SPONSORSHIP

Fischer, Baumgardner, Curry, Gardner C., McKinley

Senate Committees

Local Government and Energy

House Committees

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. The bill 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:*

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.

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

14 (b) FOR PURPOSES OF THIS SUBSECTION (2.7), "NEW FACILITY"
15 INCLUDES A COMBINED FACILITY THAT IS A COMBINATION OF A FACILITY
16 PLACED IN PRODUCTION BEFORE JANUARY 1, 2010, THAT USES REAL AND
17 PERSONAL PROPERTY TO GENERATE AND DELIVER TO THE
18 INTERCONNECTION METER ANY SOURCE OF ELECTRIC OR MECHANICAL
19 ENERGY BY HARNESSING THE KINETIC ENERGY OF WATER AND THAT IS NOT
20 PRIMARILY DESIGNED TO SUPPLY ENERGY FOR CONSUMPTION ON SITE AND
21 AN ADDITION OR ENERGY EFFICIENCY IMPROVEMENT TO THE FACILITY
22 FIRST PLACED IN PRODUCTION ON OR AFTER JANUARY 1, 2010, IF:

23 (I) THE ADDITION OR EFFICIENCY IMPROVEMENT INCREASES THE
24 ELECTRICAL OR MECHANICAL ENERGY-PRODUCING CAPACITY OF THE
25 COMBINED FACILITY BY AT LEAST TWENTY-FIVE PERCENT OVER THE
26 CAPACITY OF THE FACILITY PLACED IN PRODUCTION BEFORE JANUARY 1,
27 2010, ALONE; AND

1 (II) THE COMBINED FACILITY GENERATES AND DELIVERS TO THE
2 INTERCONNECTION METER A TOTAL AMOUNT OF ELECTRICAL OR
3 MECHANICAL ENERGY IN EXCESS OF TWO MEGAWATTS.

4 (3) (a) "Public utility" means, for property tax years commencing
5 on or after January 1, 1987, every sole proprietorship, firm, limited
6 liability company, partnership, association, company, or corporation, and
7 the trustees or receivers thereof, whether elected or appointed, that does
8 business in this state as a railroad company, airline company, electric
9 company, HYDROELECTRIC ENERGY FACILITY, wind energy facility, solar
10 energy facility, rural electric company, telephone company, telegraph
11 company, gas company, gas pipeline carrier company, domestic water
12 company selling at retail except nonprofit domestic water companies,
13 pipeline company, coal slurry pipeline, or private car line company.

14 (b) On and after January 1, 2000, for purposes of this article,
15 "public utility" shall not include any affiliate or subsidiary of a sole
16 proprietorship, firm, limited liability company, partnership, association,
17 company, or corporation of any type of company described in paragraph
18 (a) of this subsection (3) that is not doing business in the state primarily
19 as a railroad company, airline company, electric company,
20 HYDROELECTRIC ENERGY FACILITY, wind energy facility, solar energy
21 facility, rural electric company, telephone company, telegraph company,
22 gas company, gas pipeline carrier company, domestic water company
23 selling at retail except nonprofit domestic water companies, pipeline
24 company, coal slurry pipeline, or private car line company. Valuation and
25 taxation of any such affiliate or subsidiary of a public utility as defined in
26 paragraph (a) of this subsection (3) shall be assessed pursuant to article
27 5 of this title.

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

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

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

13 (1.5) The administrator shall determine the actual value of a
14 HYDROELECTRIC ENERGY FACILITY, A wind energy facility, or a solar
15 energy facility as follows:

16 (a) The general assembly hereby declares that consideration by the
17 administrator of the cost approach and market approach to the appraisal
18 of a wind energy facility or a solar energy facility results in valuations
19 that are neither uniform nor just and equal because of wide variations in
20 the production of energy from wind turbines and solar energy devices, as
21 defined in section 38-32.5-100.3 (2), C.R.S., because of the uncertainty
22 of wind and sunlight available for energy production, and because
23 constructing a wind energy facility or a solar energy facility is
24 significantly more expensive than constructing any other utility
25 production facility. THE GENERAL ASSEMBLY FURTHER DECLARES THAT
26 IT IS ALSO APPROPRIATE TO VALUE HYDROELECTRIC ENERGY FACILITIES,
27 WHICH ALSO HAVE HIGH CONSTRUCTION COSTS RELATIVE TO THEIR

1 ONGOING OPERATIONAL COSTS, USING THE INCOME APPROACH. Therefore,
2 in the absence of preponderant evidence shown by the administrator that
3 the use of the cost approach and market approach results in uniform and
4 just and equal valuation, a HYDROELECTRIC ENERGY FACILITY, A wind
5 energy facility, or a solar energy facility shall be valued based solely upon
6 the income approach.

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

10 (V) For purposes of calculating the tax factor as required in
11 subparagraph (IV) of this paragraph (b), an owner or operator of a
12 HYDROELECTRIC ENERGY FACILITY, A wind energy facility, or a solar
13 energy facility shall provide a copy of the HYDROELECTRIC ENERGY
14 FACILITY'S, wind energy facility's, or solar energy facility's current power
15 purchase agreement to the administrator by April 1 of each assessment
16 year. The administrator shall also have the authority to request a copy of
17 the current power purchase agreement from the purchaser of power
18 generated at a HYDROELECTRIC ENERGY FACILITY, A wind energy facility,
19 or a solar energy facility. All agreements provided to the administrator
20 pursuant to this subparagraph (V) shall be considered private documents
21 and shall be available only to the administrator and the employees of the
22 division of property taxation in the department of local affairs.

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

27 (d) Pursuant to section 39-3-118.5, no actual value for any

1 personal property used in a HYDROELECTRIC ENERGY FACILITY, A wind
2 energy facility, or a solar energy facility shall be assigned until the
3 personal property is first put into use by the facility. If any item of
4 personal property is used in the facility and is subsequently taken out of
5 service so that no HYDROELECTRIC ENERGY, wind energy, or solar energy
6 is produced from that facility for the preceding calendar year, no actual
7 value shall be assigned to that item of more than five percent of the
8 installed cost of the item for that assessment year.

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

11 **39-5-104.7. Valuation of real and personal property that**
12 **produces alternating current electricity from a renewable energy**
13 **source.** (1) (b) The valuation requirements specified in paragraph (a) of
14 this subsection (1) shall not apply to HYDROELECTRIC ENERGY FACILITIES,
15 AS DEFINED IN SECTION 39-4-101 (2.7), solar energy facilities, as defined
16 in section 39-4-101 (3.5), or wind energy facilities, as defined in section
17 39-4-101 (4).

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

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