

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

REVISED

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

LLS NO. 10-0981.01 Thomas Morris

SENATE BILL 10-177

SENATE SPONSORSHIP

Schwartz and Gibbs,

HOUSE SPONSORSHIP

Scanlan, Merrifield

Senate Committees
Local Government and Energy

House Committees
Transportation & Energy

A BILL FOR AN ACT

101 CONCERNING THE PROMOTION OF CLEAN ENERGY TECHNOLOGIES.

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>.)

Section 1 of the bill exempts forestry equipment that is used in the production of woody biomass from property taxes, effective July 1, 2013. **Sections 2 through 4** require biomass energy facilities to be valued for the purpose of property taxation in the same manner in which wind or solar energy facilities are valued.

For purposes of consideration by the public utilities commission (PUC) of electric utilities' acquisition of generation capacity, **section 5**

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.

HOUSE
Am ended 2nd Reading
April 16, 2010

SENATE
3rd Reading Unam ended
March 18, 2010

SENATE
Am ended 2nd Reading
March 16, 2010

includes the generation of electricity from the combustion of woody biomass, biosolids derived from the treatment of wastewater, and municipal solid waste in the definition of "new clean energy and energy-efficient technologies".

For purposes of renewable energy credits in the renewable energy standard, **section 6:**

- ! Prohibits the PUC from restricting a qualifying retail utility's ownership of the credits if the qualifying retail utility uses the statutory definitions of eligible energy resources, as clarified by the PUC; and
- ! Specifies that once a qualifying retail utility enters into a contract that relies on or is affected by the definitions of eligible energy resources, those definitions apply to the contract during its term notwithstanding any subsequent alteration of the definitions, whether by statute or rule.

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

2 **SECTION 1.** 39-1-102 (1.1), Colorado Revised Statutes, is
3 amended to read:

4 **39-1-102. Definitions.** As used in articles 1 to 13 of this title,
5 unless the context otherwise requires:

6 (1.1) "Agricultural and livestock products" means plant or animal
7 products in a raw or unprocessed state that are derived from the science
8 and art of agriculture, regardless of the use of the product after its sale
9 and regardless of the entity that purchases the product. "Agriculture", for
10 the purposes of this subsection (1.1), means farming, ranching, animal
11 husbandry, and horticulture. EFFECTIVE JULY 1, 2013, "AGRICULTURE"
12 INCLUDES SILVICULTURE.

13 **SECTION 2.** 42-1-102 (44), Colorado Revised Statutes, is
14 amended to read:

15 **42-1-102. Definitions.** As used in articles 1 to 4 of this title,
16 unless the context otherwise requires:

17 (44) (a) On and after July 1, 2000, "implement of husbandry"

1 means every vehicle that is designed, adapted, or used for agricultural
2 purposes. It also includes equipment used solely for the application of
3 liquid, gaseous, and dry fertilizers. Transportation of fertilizer, in or on
4 the equipment used for its application, shall be deemed a part of
5 application if it is incidental to such application. It also includes hay
6 balers, hay stacking equipment, combines, tillage and harvesting
7 equipment, agricultural commodity handling equipment, and other heavy
8 movable farm equipment primarily used on farms or in a livestock
9 production facility and not on the highways. Trailers specially designed
10 to move such equipment on highways shall, for the purposes of part 5 of
11 article 4 of this title, be considered as component parts of such
12 implements of husbandry.

13 (b) EFFECTIVE JULY 1, 2013, FOR PURPOSES OF THIS SECTION,
14 "IMPLEMENTS OF HUSBANDRY" INCLUDES PERSONAL PROPERTY VALUED
15 BY THE COUNTY ASSESSOR AS SILVICULTURAL.

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

19 **39-4-101. Definitions.** As used in this article, unless the context
20 otherwise requires:

21 (2.3) "BIOMASS ENERGY FACILITY" MEANS A NEW FACILITY FIRST
22 PLACED IN PRODUCTION ON OR AFTER JANUARY 1, 2010, THAT USES REAL
23 AND PERSONAL PROPERTY, INCLUDING LEASEHOLDS AND EASEMENTS, TO
24 GENERATE AND DELIVER TO THE INTERCONNECTION METER ANY SOURCE
25 OF ELECTRICAL OR MECHANICAL ENERGY BY COMBUSTING ONLY _____
26 BIOMASS OR BIOSOLIDS DERIVED FROM THE TREATMENT OF WASTEWATER
27 AND THAT IS NOT PRIMARILY DESIGNED TO SUPPLY ELECTRICITY FOR

1 CONSUMPTION ON SITE.

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

12 (b) On and after January 1, ~~2000~~ 2010, for purposes of this article,
13 "public utility" shall not include any affiliate or subsidiary of a sole
14 proprietorship, firm, limited liability company, partnership, association,
15 company, or corporation of any type of company described in paragraph
16 (a) of this subsection (3) that is not doing business in the state primarily
17 as a railroad company, airline company, electric company, BIOMASS
18 ENERGY FACILITY, wind energy facility, solar energy facility, rural electric
19 company, telephone company, telegraph company, gas company, gas
20 pipeline carrier company, domestic water company selling at retail except
21 nonprofit domestic water companies, pipeline company, coal slurry
22 pipeline, or private car line company. Valuation and taxation of any such
23 affiliate or subsidiary of a public utility as defined in paragraph (a) of this
24 subsection (3) shall be assessed pursuant to article 5 of this title.

25 **SECTION 4.** 39-4-102 (1) (e) (II), the introductory portion to
26 39-4-102 (1.5), and 39-4-102 (1.5) (a), (1.5) (b) (I), (1.5) (b) (V), (1.5)
27 (c), and (1.5) (d), Colorado Revised Statutes, are amended to read:

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

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

10 (1.5) The administrator shall determine the actual value of a
11 BIOMASS ENERGY FACILITY, A wind energy facility, or a solar energy
12 facility as follows:

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

1 equal valuation, a BIOMASS ENERGY FACILITY, A wind energy facility, or
2 a solar energy facility shall be valued based solely upon the income
3 approach.

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

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

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

24 (d) Pursuant to section 39-3-118.5, no actual value for any
25 personal property used in a BIOMASS ENERGY FACILITY, A wind energy
26 facility, or a solar energy facility shall be assigned until the personal
27 property is first put into use by the facility. If any item of personal

1 property is used in the facility and is subsequently taken out of service so
2 that no BIOMASS ENERGY, wind energy, or solar energy is produced from
3 that facility for the preceding calendar year, no actual value shall be
4 assigned to that item of more than five percent of the installed cost of the
5 item for that assessment year.

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

8 **39-5-104.7. Valuation of real and personal property that**
9 **produces alternating current electricity from a renewable energy**
10 **source.** (1) (b) The valuation requirements specified in paragraph (a) of
11 this subsection (1) shall not apply to BIOMASS ENERGY FACILITIES, solar
12 energy facilities, ~~as defined in section 39-4-101 (3.5),~~ or wind energy
13 facilities, as THOSE TERMS ARE defined in section 39-4-101. ~~(4).~~

14
15 **SECTION 6.** 40-2-123, Colorado Revised Statutes, is amended
16 **BY THE ADDITION OF A NEW SUBSECTION** to read:

17 **40-2-123. New energy technologies - consideration by**
18 **commission - incentives - demonstration projects - definitions -**
19 **legislative declaration - repeal.** (3.2) IN ITS CONSIDERATION OF
20 GENERATION ACQUISITIONS FOR ELECTRIC UTILITIES, THE COMMISSION
21 MAY GIVE THE FULLEST POSSIBLE CONSIDERATION, AT A UTILITY'S
22 REQUEST, TO THE COST-EFFECTIVE IMPLEMENTATION OF NEW ENERGY
23 TECHNOLOGIES FOR THE GENERATION OF ELECTRICITY FROM THE
24 COMBUSTION OF BIOMASS, BIOSOLIDS DERIVED FROM THE TREATMENT OF
25 WASTEWATER, AND MUNICIPAL SOLID WASTE. FOR PURPOSES OF THIS
26 SUBSECTION (3.2), "BIOMASS" HAS THE MEANING ESTABLISHED IN SECTION
27 40-2-124 (1) (a), AS CLARIFIED BY THE COMMISSION.

1 **SECTION 7.** 40-2-124 (1) (d), Colorado Revised Statutes, is
2 amended to read:

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

16 (d) A system of tradable renewable energy credits that may be
17 used by a qualifying retail utility to comply with this standard. The
18 commission shall also analyze the effectiveness of utilizing any regional
19 system of renewable energy credits in existence at the time of its
20 rule-making process and determine whether the system is governed by
21 rules that are consistent with the rules established for this article. The
22 commission shall not restrict the qualifying retail utility's ownership of
23 renewable energy credits if the qualifying retail utility complies with the
24 electric resource standard of paragraph (c) of this subsection (1), USES
25 DEFINITIONS OF ELIGIBLE ENERGY RESOURCES THAT ARE LIMITED TO
26 THOSE IDENTIFIED IN PARAGRAPH (a) OF THIS SUBSECTION (1), AS
27 CLARIFIED BY THE COMMISSION, and does not exceed the retail rate impact

1 established by paragraph (g) of this subsection (1). ONCE A QUALIFYING
2 RETAIL UTILITY EITHER RECEIVES A PERMIT PURSUANT TO ARTICLE 7 OR 8
3 OF TITLE 25, C.R.S., FOR A GENERATION FACILITY THAT RELIES ON OR IS
4 AFFECTED BY THE DEFINITIONS OF ELIGIBLE ENERGY RESOURCES OR
5 ENTERS INTO A CONTRACT THAT RELIES ON OR IS AFFECTED BY THE
6 DEFINITIONS OF ELIGIBLE ENERGY RESOURCES, SUCH DEFINITIONS APPLY
7 TO THE CONTRACT OR FACILITY NOTWITHSTANDING ANY SUBSEQUENT
8 ALTERATION OF THE DEFINITIONS, WHETHER BY STATUTE OR RULE. FOR
9 PURPOSES OF COMPLIANCE WITH THE RENEWABLE ENERGY STANDARD, IF
10 A GENERATION SYSTEM USES A COMBINATION OF FOSSIL FUEL AND
11 ELIGIBLE RENEWABLE ENERGY RESOURCES TO GENERATE ELECTRICITY, A
12 QUALIFIED RETAIL UTILITY THAT IS NOT AN INVESTOR-OWNED UTILITY
13 MAY COUNT AS ELIGIBLE RENEWABLE ENERGY ONLY THE PROPORTION OF
14 THE TOTAL ELECTRIC OUTPUT OF THE GENERATION SYSTEM THAT RESULTS
15 FROM THE USE OF ELIGIBLE RENEWABLE ENERGY RESOURCES.

16 **SECTION 8. Act subject to petition - effective date -**
17 **applicability.** (1) This act shall take effect at 12:01 a.m. on the day
18 following the expiration of the ninety-day period after final adjournment
19 of the general assembly (August 11, 2010, if adjournment sine die is on
20 May 12, 2010); except that, if a referendum petition is filed pursuant to
21 section 1 (3) of article V of the state constitution against this act or an
22 item, section, or part of this act within such period, then the act, item,
23 section, or part shall not take effect unless approved by the people at the
24 general election to be held in November 2010 and shall take effect on the
25 date of the official declaration of the vote thereon by the governor.

26 (2) The provisions of this act shall apply to conduct occurring on
27 or after the applicable effective date of this act.