

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

ENGROSSED

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

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.

SENATE
Amended 2nd Reading
February 3, 2010

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

14 (I) A NEW FACILITY THAT IS A SMALL FACILITY THAT HAS A
15 NAMEPLATE RATING OF TEN MEGAWATTS OR LESS; OR

16 (II) A NEW FACILITY THAT HAS A NAMEPLATE RATING OF MORE
17 THAN TEN MEGAWATTS AND THAT:

18 (A) IS AN ADDITION TO WATER INFRASTRUCTURE SUCH AS A
19 RESERVOIR, A DITCH, OR A PIPELINE THAT EXISTED BEFORE JANUARY 1,
20 2010;

21 (B) DOES NOT RESULT IN ANY CHANGE IN THE QUANTITY OR
22 TIMING OF DIVERSIONS OR RELEASES FOR PURPOSES OF PEAK POWER
23 GENERATION;

24 (C) INCLUDES MEASURES TO PREVENT FISH ENTRAINMENT IN
25 ON-STREAM RESERVOIRS AND NATURAL WATERWAYS; AND

26 (D) DOES NOT CAUSE ANY VIOLATION OF STATE WATER QUALITY
27 STANDARDS WHEN OPERATED; OR

1 (III) A NEW FACILITY THAT HAS A NAMEPLATE RATING OF MORE
2 THAN TEN MEGAWATTS AND THAT:

3 (A) IS PLACED INTO PRODUCTION AS PART OF NEW WATER
4 INFRASTRUCTURE SUCH AS A RESERVOIR, A DITCH, OR A PIPELINE
5 CONSTRUCTED ON OR AFTER JANUARY 1, 2010, FOR BENEFICIAL USES OF
6 WATER OTHER THAN THE PRODUCTION OF ELECTRICITY;

7 (B) INCLUDES MEASURES TO PREVENT FISH ENTRAINMENT IN
8 RESERVOIRS AND NATURAL WATERWAYS; AND

9 (C) DOES NOT CAUSE ANY VIOLATION OF STATE WATER QUALITY
10 STANDARDS WHEN OPERATED.

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

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

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

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

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

25 **SECTION 2.** 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 SMALL OR LOW IMPACT HYDROELECTRIC
9 ENERGY FACILITY, A wind energy facility, or a solar energy facility.

10 (1.5) The administrator shall determine the actual value of a
11 SMALL OR LOW IMPACT HYDROELECTRIC ENERGY FACILITY, A wind energy
12 facility, or a solar energy 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 SMALL OR LOW IMPACT
24 HYDROELECTRIC ENERGY FACILITIES, WHICH ALSO HAVE HIGH
25 CONSTRUCTION COSTS RELATIVE TO THEIR ONGOING OPERATIONAL COSTS,
26 USING THE INCOME APPROACH. Therefore, in the absence of preponderant
27 evidence shown by the administrator that the use of the cost approach and

1 market approach results in uniform and just and equal valuation, a SMALL
2 OR LOW IMPACT HYDROELECTRIC ENERGY FACILITY, A wind energy
3 facility, or a solar energy facility shall be valued based solely upon the
4 income approach.

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

9 (V) For purposes of calculating the tax factor as required in
10 subparagraph (IV) of this paragraph (b), an owner or operator of a SMALL
11 OR LOW IMPACT HYDROELECTRIC ENERGY FACILITY, A wind energy
12 facility, or a solar energy facility shall provide a copy of the SMALL OR
13 LOW IMPACT HYDROELECTRIC ENERGY FACILITY'S, wind energy facility's,
14 or solar energy facility's current power purchase agreement to the
15 administrator by April 1 of each assessment year. The administrator shall
16 also have the authority to request a copy of the current power purchase
17 agreement from the purchaser of power generated at a SMALL OR LOW
18 IMPACT HYDROELECTRIC ENERGY FACILITY, A wind energy facility, or a
19 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 SMALL OR LOW IMPACT HYDROELECTRIC
24 ENERGY FACILITY, A wind energy facility, or a solar energy facility on real
25 property shall not affect the classification of that real property for
26 purposes of determining the actual value of that real property as provided
27 in section 39-1-103.

1 (d) Pursuant to section 39-3-118.5, no actual value for any
2 personal property used in a SMALL OR LOW IMPACT HYDROELECTRIC
3 ENERGY FACILITY, A wind energy facility, or a solar energy facility shall
4 be assigned until the personal property is first put into use by the facility.
5 If any item of personal property is used in the facility and is subsequently
6 taken out of service so that no SMALL OR LOW IMPACT HYDROELECTRIC
7 ENERGY, wind energy, or solar energy is produced from that facility for
8 the preceding calendar year, no actual value shall be assigned to that item
9 of more than five percent of the installed cost of the item for that
10 assessment year.

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

13 **39-5-104.7. Valuation of real and personal property that**
14 **produces alternating current electricity from a renewable energy**
15 **source.** (1) (b) The valuation requirements specified in paragraph (a) of
16 this subsection (1) shall not apply to SMALL OR LOW IMPACT
17 HYDROELECTRIC ENERGY FACILITIES, AS DEFINED IN SECTION 39-4-101
18 (2.7), solar energy facilities, as defined in section 39-4-101 (3.5), or wind
19 energy facilities, as defined in section 39-4-101 (4).

20 **SECTION 4. Applicability.** This act shall apply to the
21 determination of the actual value of small or low impact hydroelectric
22 energy facilities first placed in production on or after January 1, 2010.

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