

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. 10-0452.01 Thomas Morris

SENATE BILL 10-100

SENATE SPONSORSHIP

Schwartz, Carroll M., Foster, Gibbs, Heath, Newell, Romer

HOUSE SPONSORSHIP

Miklosi,

Senate Committees

Local Government and Energy

House Committees

A BILL FOR AN ACT

101 **CONCERNING GREATER FINANCING FLEXIBILITY FOR LOCAL DISTRICTS**
102 **ORGANIZED FOR PURPOSES RELATED TO ENERGY.**

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.>)

Current law prohibits local improvement districts for energy efficiency improvements and renewable energy improvements (energy LIDs) to cross county boundaries. **Sections 1, 2, and 5** of the bill allow such a district formed by a county to be created in 2 or more counties. **Sections 1 and 7** also expand the definition of "renewable energy

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 12, 2010

improvement" for energy LIDs formed by both counties and municipalities to include improvements located at a qualified community location rather than directly on a residential or commercial building. **Sections 3 through 6** exempt energy LIDs formed by a county from a variety of inappropriate requirements that are otherwise generally applicable to local improvement districts.

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

2 **SECTION 1.** 30-20-602 (2) and (4.7), Colorado Revised Statutes,
3 are amended, and the said 30-20-602 is further amended BY THE
4 ADDITION OF A NEW SUBSECTION, to read:

5 **30-20-602. Definitions - repeal.** As used in this part 6, unless
6 the context otherwise requires:

7 (2) "District" means the geographical division of the county OR
8 COUNTIES within which any local improvements are made or proposed,
9 when so declared by resolution of the board. Except for a district in the
10 unincorporated area of a county in which a sales tax is levied pursuant to
11 section 30-20-604.5, there may be noncontiguous parts or sections of a
12 county included in one district, but no district shall include territory that
13 is included in an undissolved district that was formed for the same type
14 of improvement. Notwithstanding any other provision of this part 6 and
15 except in the case of a district formed prior to December 31, 2002, by a
16 city that has been authorized to become a city and county pursuant to an
17 amendment to the state constitution that has been approved by the
18 registered electors of the state of Colorado, no district in which a sales tax
19 is levied pursuant to section 30-20-604.5 shall be formed that includes
20 territory within a municipality, and any such district shall be as compact
21 as possible. EXCEPT AS PROVIDED IN SECTION 30-20-603 (11.5) (b) (I), no
22 district that crosses county boundaries may be formed by

1 intergovernmental agreement or otherwise.

2 (4.3) "QUALIFIED COMMUNITY LOCATION" MEANS:

3 (a) IF THE AFFECTED LOCAL ELECTRIC UTILITY IS NOT AN
4 INVESTOR-OWNED UTILITY, AN OFF-SITE LOCATION OF A RENEWABLE
5 ENERGY IMPROVEMENT THAT:

6 (I) IS WHOLLY OWNED, THROUGH EITHER AN UNDIVIDED OR A
7 FRACTIONAL INTEREST, BY THE OWNER OR OWNERS OF THE RESIDENTIAL
8 OR COMMERCIAL BUILDING OR BUILDINGS THAT ARE DIRECTLY BENEFITED
9 BY THE RENEWABLE ENERGY IMPROVEMENT;

10 (II) PROVIDES ENERGY AS A DIRECT CREDIT ON THE OWNER'S
11 UTILITY BILL; AND

12 (III) IS AN ENCUMBRANCE ON THE PROPERTY SPECIFICALLY
13 BENEFITED.

14 (b) IF THE AFFECTED LOCAL ELECTRIC UTILITY IS AN
15 INVESTOR-OWNED UTILITY, A COMMUNITY SOLAR GARDEN, AS THAT TERM
16 IS DEFINED IN SECTION 40-2-127 (2), C.R.S. IF HOUSE BILL 10- DOES
17 NOT TAKE EFFECT, THIS PARAGRAPH (b) IS REPEALED, EFFECTIVE JULY 1,
18 2011.

19 (4.7) (a) "Renewable energy improvement" means a fixture,
20 product, system, device, or interacting group of devices ~~installed behind~~
21 ~~the meter of any residential and commercial building~~ that produces energy
22 from renewable resources, including ~~but not limited to~~, photovoltaic
23 systems, solar thermal systems, small wind systems, biomass systems, or
24 geothermal systems, as may be included in the approval of the district by
25 the board, ~~except that~~ AND THAT EITHER:

26 (I) IS INSTALLED BEHIND THE METER OF A RESIDENTIAL OR
27 COMMERCIAL BUILDING; OR

1 (II) DIRECTLY BENEFITS A RESIDENTIAL OR COMMERCIAL BUILDING
2 THROUGH A QUALIFIED COMMUNITY LOCATION.

3 (b) No renewable energy improvement shall be authorized that
4 interferes with a right held by a public utility under a certificate issued by
5 the public utilities commission under article 5 of title 40,
6 C.R.S. NOTHING IN THIS PART 6 LIMITS THE RIGHT OF A PUBLIC UTILITY,
7 SUBJECT TO ARTICLE 3 OR 3.5 OF TITLE 40, C.R.S., OR SECTION 40-9.5-106,
8 C.R.S., TO ASSESS FEES FOR THE USE OF ITS FACILITIES, OR MODIFIES OR
9 EXPANDS THE NET METERING LIMITATIONS ESTABLISHED IN SECTION
10 40-9.5-118, C.R.S. The public utilities commission ~~shall have~~ HAS
11 primary jurisdiction to adjudicate disputes as to whether a renewable
12 energy improvement interferes with such a right.

13 **SECTION 2.** 30-20-603 (11.5), Colorado Revised Statutes, is
14 amended to read:

15 **30-20-603. Improvements and funding authorized - how**
16 **instituted - conditions.** (11.5) (a) Any other provision of this part 6
17 notwithstanding, the board may initiate an improvement district for the
18 purpose of encouraging, accommodating, and financing improvements of
19 a character authorized by paragraph (e) of subsection (1) of this section.
20 Any such district shall include only property for which the owner has
21 executed a contract or agreement consenting to the inclusion of such
22 property within the district, and such consent may occur subsequent to the
23 adoption of the resolution of the board forming the district. The inclusion
24 of such property within the district subsequent to the adoption of the
25 resolution of the board forming the district may be made by the adoption
26 of a supplemental or amending resolution of the board. For districts
27 formed for the purpose of encouraging, accommodating, and financing

1 renewable energy improvements or energy efficiency improvements, ~~the~~
2 ~~provisions of~~ subsections (4), ~~and~~ (5), AND (6) of this section concerning
3 competitive bidding, ~~and~~ preliminary plans and specifications, ~~of~~ AND
4 NOTICE, section 30-20-601 concerning construction under the direction of
5 county officers, ~~of~~ section 30-20-622 concerning contracts for
6 construction, and ~~of~~ section 30-20-623 concerning contract provisions
7 shall DO not apply. For such districts, the owner of property within a
8 district may arrange improvements that qualify pursuant to the resolution
9 of the board authorizing improvements for the district and may obtain
10 financing for said improvements from the district through the process set
11 forth in the resolution forming the district.

12 (b) (I) DISTRICTS FORMED FOR THE PURPOSES AUTHORIZED IN
13 PARAGRAPH (e) OF SUBSECTION (1) OF THIS SECTION MAY CROSS COUNTY
14 BOUNDARIES AND INCLUDE PROPERTIES IN MULTIPLE COUNTIES, WHETHER
15 SUCH COUNTIES ARE CONTIGUOUS OR NONCONTIGUOUS, IF THE BOARDS OF
16 COUNTY COMMISSIONERS OF THE AFFECTED COUNTIES HAVE ENTERED
17 INTO AN INTERGOVERNMENTAL AGREEMENT OR MEMORANDUM OF
18 UNDERSTANDING REGARDING THE SHARING OF INCREMENTAL COSTS
19 ATTRIBUTABLE TO THE DISTRICT'S CROSSING OF COUNTY BOUNDARIES,
20 WITH SUCH COSTS BECOMING PART OF THE TOTAL ASSESSMENT
21 ALLOCATED TO EACH PARTICIPATING LANDOWNER.

22 (II) FOR ANY DISTRICT THAT MAY INCLUDE PROPERTIES IN OTHER
23 COUNTIES, THE BOARD SHALL NOTIFY THE BOARDS OF COUNTY
24 COMMISSIONERS AND THE COUNTY TREASURERS OF SUCH COUNTIES, AT
25 LEAST TEN DAYS IN ADVANCE OF THE PUBLIC MEETING AT WHICH IT WILL
26 BE DISCUSSED, OF THE POTENTIAL INCLUSION OF SUCH PROPERTIES. THE
27 ORIGINATING BOARD SHALL CONSIDER COMMENTS SENT BY SUCH BOARDS

1 OF COUNTY COMMISSIONERS OR COUNTY TREASURERS CONCERNING THE
2 POTENTIAL ADDITION OF PROPERTIES FROM THEIR COUNTIES IF THE
3 COMMENTS HAVE BEEN RECEIVED BY THE DATE OF THE PUBLIC MEETING.

4 (III) IF A MUNICIPALITY THAT HAS TERRITORY IN MULTIPLE
5 COUNTIES, ONE OF WHICH HAS CREATED A DISTRICT FOR THE PURPOSES
6 AUTHORIZED IN PARAGRAPH (e) OF SUBSECTION (1) OF THIS SECTION,
7 DESIRES TO CONSENT TO THE INCLUSION WITHIN SUCH DISTRICT OF ANY OF
8 THE PROPERTIES WITHIN ITS ENTIRE INCORPORATED BOUNDARY, THE
9 MUNICIPALITY SHALL EXPRESSLY STATE IN ITS ORDINANCE GRANTING
10 CONSENT THAT ANY PROPERTY LOCATED IN THE MUNICIPALITY,
11 IRRESPECTIVE OF THE COUNTY IN WHICH SUCH PROPERTY IS LOCATED, MAY
12 BE INCLUDED IN THE DISTRICT.

13 **SECTION 3.** 30-20-609, Colorado Revised Statutes, is amended
14 to read:

15 **30-20-609. Hearing on objections.** EXCEPT FOR A DISTRICT
16 FORMED FOR THE PURPOSES AUTHORIZED IN SECTION 30-20-603 (11.5), at
17 the time specified in ~~said~~ THE notice REQUIRED PURSUANT TO SECTION
18 30-20-608 (1) or at some adjourned time, the board shall hear and
19 determine all such complaints and objections and may ~~thereupon~~, make
20 such modifications and changes as may seem equitable and just or may
21 confirm the first apportionment. The board shall, ~~thereupon~~ by
22 resolution, assess the cost of ~~said~~ THE improvements, and the passage of
23 ~~such~~ THE resolution shall be prima facie evidence of the fact that the
24 property assessed is benefited in the amount of the assessments and that
25 ~~such~~ THE assessments have been lawfully levied.

26 **SECTION 4.** 30-20-616 (1), Colorado Revised Statutes, is
27 amended to read:

1 **30-20-616. Payment in full - assessment roll returned -**
2 **payment of share.** (1) EXCEPT FOR A DISTRICT FORMED FOR THE
3 PURPOSES AUTHORIZED IN SECTION 30-20-603 (11.5), AS TO WHICH THE
4 ASSESSMENTS SHALL BE PAID PURSUANT TO THE CONTRACTS AND
5 AGREEMENTS ENTERED INTO BY THE OWNER OF THE ASSESSED PROPERTY,
6 payment may be made to the county treasurer at any time within thirty
7 days after the effective date of the assessing resolution. At the expiration
8 of said thirty-day period, the county treasurer shall return the local
9 assessment roll to the county clerk and recorder, therein showing all
10 payments made thereon, with the date of each payment. ~~Said roll~~ THE
11 COUNTY CLERK AND RECORDER shall ~~be certified by the county clerk and~~
12 ~~recorder~~ CERTIFY THE ROLL under the seal of the county and ~~by him~~
13 ~~delivered~~ DELIVER IT to the county treasurer, with ~~his~~ THE CLERK'S
14 warrant for the collection of the same. The county treasurer shall
15 PROVIDE A receipt for the ~~same~~ THE ROLL, and all such rolls shall be
16 numbered for convenient reference.

17 **SECTION 5.** 30-20-619 (1) and (8), Colorado Revised Statutes,
18 are amended to read:

19 **30-20-619. Issuing bonds - property specially benefited.**
20 (1) For the purpose of paying all or such portion of the cost of any
21 improvement constructed or acquired under the provisions of this part 6
22 as may be assessed against the property specially benefited and not paid
23 by the sales tax authorized by section 30-20-604.5 or by the county,
24 special assessment bonds of the county may be issued, of such date, in
25 such form, and on such terms, including, without limitation, provisions
26 for their sale, payment, and redemption, as may be prescribed by the
27 board, bearing the name of the street or district improved and payable in

1 a sufficient period of years after such date to cover the period of payment
2 provided, and in convenient denominations. All such bonds shall be
3 issued upon estimates approved by the board, and the county treasurer
4 shall preserve a record of the same in a suitable book kept for that
5 purpose. All such bonds shall be subscribed by the chair of the board,
6 countersigned by the county treasurer, with the county seal ~~thereto~~
7 affixed, and attested by the county clerk and recorder; EXCEPT THAT THE
8 COUNTY TREASURER NEED NOT COUNTERSIGN A BOND ISSUED BY A
9 DISTRICT FORMED FOR THE PURPOSES AUTHORIZED IN SECTION 30-20-603
10 (11.5). Such bonds shall be payable out of the moneys collected on
11 account of the assessments made for said improvements, from reserve
12 accounts, if any, established to secure the payment of such bonds, and
13 from any other legally available moneys. All moneys collected from such
14 assessments for any improvement shall be applied to the payment of the
15 bonds issued, until payment in full is made of all the bonds, both principal
16 and interest, or to fund or replenish reserve accounts, if any, established
17 to secure the payment of such bonds. The bonds may be sold, under such
18 terms and conditions as are established by the board, in such amounts as
19 will be sufficient to pay for the cost of the improvements.

20 (8) Notwithstanding any other provision of this part 6, any district
21 formed for the purpose of encouraging, accommodating, and financing
22 improvements as authorized in section 30-20-603 (11.5) may be
23 authorized to:

24 (a) Issue one or more series of bonds, and bonds of any such
25 district may be payable from the assessments levied pursuant to one or
26 more assessment resolutions; AND

27 (b) JOINTLY FINANCE THE IMPROVEMENTS OF MULTIPLE SUCH

1 DISTRICTS LOCATED IN ONE OR MORE COUNTIES BY INTERGOVERNMENTAL
2 AGREEMENT OF THE ORGANIZING COUNTIES OR THROUGH OTHER LEGALLY
3 AVAILABLE MEANS. SUCH INTERGOVERNMENTAL AGREEMENT MAY
4 INCLUDE PROVISIONS FOR, AMONG OTHER THINGS, THE TRANSFER OF
5 REVENUES COLLECTED PURSUANT TO THIS PART 6, INCLUDING
6 ASSESSMENT PAYMENTS, PENALTY PAYMENTS PURSUANT TO SECTION
7 30-20-615, AND PROPERTY SALE PROCEEDS PURSUANT TO SECTION
8 30-20-617, FROM THE COUNTY TREASURER OF THE COUNTY IN WHICH A
9 PROPERTY IS LOCATED TO THE COUNTY TREASURER FOR THE COUNTY
10 ISSUING BONDS PURSUANT TO THIS SECTION.

11 **SECTION 6.** 30-20-627, Colorado Revised Statutes, is amended
12 to read:

13 **30-20-627. Local improvements completed - dissolution.** ~~At the~~
14 ~~time that~~ WHEN the local improvements specified in the preliminary order
15 referred to in section 30-20-603 (5) and specified in the resolution
16 authorizing the improvements have been completed and any debt incurred
17 or bonds issued have been paid, the board shall take all steps necessary
18 to dissolve the district and, upon completion of such steps, shall declare,
19 by resolution, that the district is dissolved; EXCEPT THAT THIS
20 REQUIREMENT DOES NOT APPLY TO A DISTRICT FORMED FOR THE PURPOSES
21 AUTHORIZED IN SECTION 30-20-603 (11.5). Upon dissolution, any moneys
22 remaining to the credit of such district that have not been transferred to
23 a special surplus and deficiency fund as permitted in section 30-20-619
24 (3) may be used for any county purpose as determined by the board,
25 including, without limitation, the reimbursement to the county of any
26 county moneys spent to provide any portion of the costs of the local
27 improvements completed within the dissolved district.

1 **SECTION 7.** 31-25-501 (4), Colorado Revised Statutes, is
2 amended, and the said 31-25-501 is further amended BY THE
3 ADDITION OF A NEW SUBSECTION, to read:

4 **31-25-501. Definitions - repeal.** As used in this part 5, unless
5 the context otherwise requires:

6 (3.5) "QUALIFIED COMMUNITY LOCATION" MEANS:

7 (a) IF THE AFFECTED LOCAL ELECTRIC UTILITY IS NOT AN
8 INVESTOR-OWNED UTILITY, AN OFF-SITE LOCATION OF A RENEWABLE
9 ENERGY IMPROVEMENT THAT:

10 (I) IS WHOLLY OWNED, THROUGH EITHER AN UNDIVIDED OR A
11 FRACTIONAL INTEREST, BY THE OWNER OR OWNERS OF THE RESIDENTIAL
12 OR COMMERCIAL BUILDING OR BUILDINGS THAT ARE DIRECTLY BENEFITED
13 BY THE RENEWABLE ENERGY IMPROVEMENT;

14 (II) PROVIDES ENERGY AS A DIRECT CREDIT ON THE OWNER'S
15 UTILITY BILL; AND

16 (III) IS AN ENCUMBRANCE ON THE PROPERTY SPECIFICALLY
17 BENEFITED.

18 (b) IF THE AFFECTED LOCAL ELECTRIC UTILITY IS AN
19 INVESTOR-OWNED UTILITY, A SOLAR COMMUNITY GARDEN AS THAT TERM
20 IS DEFINED IN SECTION 40-2-127 (2), C.R.S. IF HOUSE BILL 10- DOES
21 NOT TAKE EFFECT, THIS PARAGRAPH (b) IS REPEALED, EFFECTIVE JULY 1,
22 2011.

23 (4) (a) "Renewable energy improvement" means a fixture,
24 product, system, device, or interacting group of devices ~~installed behind~~
25 ~~the meter of any residential or commercial building~~ that produces energy
26 from renewable resources, including ~~but not limited to~~, photovoltaic
27 systems, solar thermal systems, small wind systems, biomass systems, or

1 geothermal systems, as may be authorized by the governing body, AND
2 THAT EITHER:

3 (I) IS INSTALLED BEHIND THE METER OF A RESIDENTIAL OR
4 COMMERCIAL BUILDING; OR

5 (II) DIRECTLY BENEFITS A RESIDENTIAL OR COMMERCIAL
6 BUILDING THROUGH A QUALIFIED COMMUNITY LOCATION.

7 (b) NO RENEWABLE ENERGY IMPROVEMENT SHALL BE AUTHORIZED
8 THAT INTERFERES WITH A RIGHT HELD BY A PUBLIC UTILITY UNDER A
9 CERTIFICATE ISSUED BY THE PUBLIC UTILITIES COMMISSION UNDER
10 ARTICLE 5 OF TITLE 40, C.R.S. NOTHING IN THIS PART 5 LIMITS THE RIGHT
11 OF A PUBLIC UTILITY, SUBJECT TO ARTICLE 3 OR 3.5 OF TITLE 40, C.R.S., OR
12 SECTION 40-9.5-106, C.R.S., TO ASSESS FEES FOR THE USE OF ITS
13 FACILITIES, OR MODIFIES OR EXPANDS THE NET METERING LIMITATIONS
14 ESTABLISHED IN SECTION 40-9.5-118, C.R.S. THE PUBLIC UTILITIES
15 COMMISSION HAS PRIMARY JURISDICTION TO ADJUDICATE DISPUTES AS TO
16 WHETHER A RENEWABLE ENERGY IMPROVEMENT INTERFERES WITH SUCH
17 A RIGHT

18 **SECTION 8. Applicability.** This act shall apply to conduct
19 occurring on or after the effective date of this act.

20 **SECTION 9. Safety clause.** The general assembly hereby finds,
21 determines, and declares that this act is necessary for the immediate
22 preservation of the public peace, health, and safety.