

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. 10-0452.01 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

Transportation & Energy

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.*

HOUSE
Am ended 2nd Reading
April 7, 2010

SENATE
3rd Reading Unam ended
February 15, 2010

SENATE
Am ended 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 10-1342 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,
24 HYDROELECTRIC SYSTEMS, or geothermal systems, as may be included in
25 the approval of the district by 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 SECTIONS
10 40-2-124 (7) AND 40-9.5-118, C.R.S. ~~The public utilities commission~~
11 ~~shall have primary jurisdiction to adjudicate disputes as to whether a~~
12 ~~renewable energy improvement interferes with such a right.~~ PRIMARY
13 JURISDICTION TO HEAR ANY DISPUTES CONCERNING WHETHER A
14 RENEWABLE ENERGY IMPROVEMENT INTERFERES WITH SUCH A RIGHT
15 SHALL LIE:

16 (I) IN THE CASE OF A REGULATED UTILITY, WITH THE PUBLIC
17 UTILITIES COMMISSION; AND

18 (II) IN THE CASE OF A MUNICIPALLY OWNED UTILITY, WITH THE
19 GOVERNING BODY OF SUCH MUNICIPALITY.

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

22 **30-20-603. Improvements and funding authorized - how**
23 **instituted - conditions.** (11.5) (a) Any other provision of this part 6
24 notwithstanding, the board may initiate an improvement district for the
25 purpose of encouraging, accommodating, and financing improvements of
26 a character authorized by paragraph (e) of subsection (1) of this section.
27 Any such district shall include only property for which the owner has

1 executed a contract or agreement consenting to the inclusion of such
2 property within the district, and such consent may occur subsequent to the
3 adoption of the resolution of the board forming the district. THE
4 CONTRACT OR AGREEMENT SHALL NOTE THE EXISTENCE OF ANY FIRST
5 PRIORITY MORTGAGE OR DEED OF TRUST ON THE PROPERTY AND THE
6 IDENTITY OF THE RECORD HOLDER THEREOF. WITHIN THIRTY DAYS OF A
7 PERSON'S SUBMISSION OF AN APPLICATION TO THE DISTRICT, THE BOARD
8 SHALL PROVIDE WRITTEN NOTICE TO THE RECORD HOLDER OF ANY FIRST
9 PRIORITY MORTGAGE OR DEED OF TRUST ON THE REAL PROPERTY THAT THE
10 PERSON IS PARTICIPATING IN THE DISTRICT. The inclusion of such
11 property within the district subsequent to the adoption of the resolution
12 of the board forming the district may be made by the adoption of a
13 supplemental or amending resolution of the board. For districts formed
14 for the purpose of encouraging, accommodating, and financing renewable
15 energy improvements or energy efficiency improvements, ~~the provisions~~
16 ~~of subsections (4), and (5), AND (6) of this section concerning competitive~~
17 ~~bidding, and preliminary plans and specifications, of AND NOTICE, section~~
18 ~~30-20-601 concerning construction under the direction of county officers,~~
19 ~~of section 30-20-622 concerning contracts for construction, and of section~~
20 ~~30-20-623 concerning contract provisions shall DO not apply.~~ For such
21 districts, the owner of property within a district may arrange
22 improvements that qualify pursuant to the resolution of the board
23 authorizing improvements for the district and may obtain financing for
24 said improvements from the district through the process set forth in the
25 resolution forming the district.

26 (b) (I) DISTRICTS FORMED FOR THE PURPOSES AUTHORIZED IN
27 PARAGRAPH (e) OF SUBSECTION (1) OF THIS SECTION MAY CROSS COUNTY

1 BOUNDARIES AND INCLUDE PROPERTIES IN MULTIPLE COUNTIES, WHETHER
2 SUCH COUNTIES ARE CONTIGUOUS OR NONCONTIGUOUS, IF THE BOARDS OF
3 COUNTY COMMISSIONERS OF THE AFFECTED COUNTIES HAVE ENTERED
4 INTO AN INTERGOVERNMENTAL AGREEMENT OR MEMORANDUM OF
5 UNDERSTANDING REGARDING THE SHARING OF INCREMENTAL COSTS
6 ATTRIBUTABLE TO THE DISTRICT'S CROSSING OF COUNTY BOUNDARIES,
7 WITH SUCH COSTS BECOMING PART OF THE TOTAL ASSESSMENT
8 ALLOCATED TO EACH PARTICIPATING LANDOWNER.

9 (II) FOR ANY DISTRICT THAT MAY INCLUDE PROPERTIES IN OTHER
10 COUNTIES, THE BOARD SHALL NOTIFY THE BOARDS OF COUNTY
11 COMMISSIONERS AND THE COUNTY TREASURERS OF SUCH COUNTIES, AT
12 LEAST TEN DAYS IN ADVANCE OF THE PUBLIC MEETING AT WHICH IT WILL
13 BE DISCUSSED, OF THE POTENTIAL INCLUSION OF SUCH PROPERTIES. THE
14 ORIGINATING BOARD SHALL CONSIDER COMMENTS SENT BY SUCH BOARDS
15 OF COUNTY COMMISSIONERS OR COUNTY TREASURERS CONCERNING THE
16 POTENTIAL ADDITION OF PROPERTIES FROM THEIR COUNTIES IF THE
17 COMMENTS HAVE BEEN RECEIVED BY THE DATE OF THE PUBLIC MEETING.

18 (III) IF A MUNICIPALITY THAT HAS TERRITORY IN MULTIPLE
19 COUNTIES, ONE OF WHICH HAS CREATED A DISTRICT FOR THE PURPOSES
20 AUTHORIZED IN PARAGRAPH (e) OF SUBSECTION (1) OF THIS SECTION,
21 DESIRES TO CONSENT TO THE INCLUSION WITHIN SUCH DISTRICT OF ANY OF
22 THE PROPERTIES WITHIN ITS ENTIRE INCORPORATED BOUNDARY, THE
23 MUNICIPALITY SHALL EXPRESSLY STATE IN ITS ORDINANCE GRANTING
24 CONSENT THAT ANY PROPERTY LOCATED IN THE MUNICIPALITY,
25 IRRESPECTIVE OF THE COUNTY IN WHICH SUCH PROPERTY IS LOCATED, MAY
26 BE INCLUDED IN THE DISTRICT.

27 **SECTION 3.** 30-20-609, Colorado Revised Statutes, is amended

1 to read:

2 **30-20-609. Hearing on objections.** EXCEPT FOR A DISTRICT
3 FORMED FOR THE PURPOSES AUTHORIZED IN SECTION 30-20-603 (11.5), at
4 the time specified in ~~said~~ THE notice REQUIRED PURSUANT TO SECTION
5 30-20-608 (1) or at some adjourned time, the board shall hear and
6 determine all such complaints and objections and may ~~thereupon~~, make
7 such modifications and changes as may seem equitable and just or may
8 confirm the first apportionment. The board shall, ~~thereupon~~ by
9 resolution, assess the cost of ~~said~~ THE improvements, and the passage of
10 ~~such~~ THE resolution shall be prima facie evidence of the fact that the
11 property assessed is benefited in the amount of the assessments and that
12 ~~such~~ THE assessments have been lawfully levied.

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

15 **30-20-616. Payment in full - assessment roll returned -**
16 **payment of share.** (1) EXCEPT FOR A DISTRICT FORMED FOR THE
17 PURPOSES AUTHORIZED IN SECTION 30-20-603 (11.5), AS TO WHICH THE
18 ASSESSMENTS SHALL BE PAID PURSUANT TO THE CONTRACTS AND
19 AGREEMENTS ENTERED INTO BY THE OWNER OF THE ASSESSED PROPERTY,
20 payment may be made to the county treasurer at any time within thirty
21 days after the effective date of the assessing resolution. At the expiration
22 of said thirty-day period, the county treasurer shall return the local
23 assessment roll to the county clerk and recorder, therein showing all
24 payments made thereon, with the date of each payment. ~~Said roll~~ THE
25 COUNTY CLERK AND RECORDER shall ~~be certified by the county clerk and~~
26 ~~recorder~~ CERTIFY THE ROLL under the seal of the county and ~~by him~~
27 ~~delivered~~ DELIVER IT to the county treasurer, with ~~his~~ THE CLERK'S

1 warrant for the collection of the same. The county treasurer shall
2 PROVIDE A receipt for the ~~same~~ THE ROLL, and all such rolls shall be
3 numbered for convenient reference.

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

6 **30-20-619. Issuing bonds - property specially benefited.**

7 (1) For the purpose of paying all or such portion of the cost of any
8 improvement constructed or acquired under the provisions of this part 6
9 as may be assessed against the property specially benefited and not paid
10 by the sales tax authorized by section 30-20-604.5 or by the county,
11 special assessment bonds of the county may be issued, of such date, in
12 such form, and on such terms, including, without limitation, provisions
13 for their sale, payment, and redemption, as may be prescribed by the
14 board, bearing the name of the street or district improved and payable in
15 a sufficient period of years after such date to cover the period of payment
16 provided, and in convenient denominations. All such bonds shall be
17 issued upon estimates approved by the board, and the county treasurer
18 shall preserve a record of the same in a suitable book kept for that
19 purpose. All such bonds shall be subscribed by the chair of the board,
20 countersigned by the county treasurer, with the county seal ~~thereto~~
21 affixed, and attested by the county clerk and recorder; EXCEPT THAT THE
22 COUNTY TREASURER NEED NOT COUNTERSIGN A BOND ISSUED BY A
23 DISTRICT FORMED FOR THE PURPOSES AUTHORIZED IN SECTION 30-20-603
24 (11.5). Such bonds shall be payable out of the moneys collected on
25 account of the assessments made for said improvements, from reserve
26 accounts, if any, established to secure the payment of such bonds, and
27 from any other legally available moneys. All moneys collected from such

1 assessments for any improvement shall be applied to the payment of the
2 bonds issued, until payment in full is made of all the bonds, both principal
3 and interest, or to fund or replenish reserve accounts, if any, established
4 to secure the payment of such bonds. The bonds may be sold, under such
5 terms and conditions as are established by the board, in such amounts as
6 will be sufficient to pay for the cost of the improvements.

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

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

14 (b) JOINTLY FINANCE THE IMPROVEMENTS OF MULTIPLE SUCH
15 DISTRICTS LOCATED IN ONE OR MORE COUNTIES BY INTERGOVERNMENTAL
16 AGREEMENT OF THE ORGANIZING COUNTIES OR THROUGH OTHER LEGALLY
17 AVAILABLE MEANS. SUCH INTERGOVERNMENTAL AGREEMENT MAY
18 INCLUDE PROVISIONS FOR, AMONG OTHER THINGS, THE TRANSFER OF
19 REVENUES COLLECTED PURSUANT TO THIS PART 6, INCLUDING
20 ASSESSMENT PAYMENTS, PENALTY PAYMENTS PURSUANT TO SECTION
21 30-20-615, AND PROPERTY SALE PROCEEDS PURSUANT TO SECTION
22 30-20-617, FROM THE COUNTY TREASURER OF THE COUNTY IN WHICH A
23 PROPERTY IS LOCATED TO THE COUNTY TREASURER FOR THE COUNTY
24 ISSUING BONDS PURSUANT TO THIS SECTION.

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

27 **30-20-627. Local improvements completed - dissolution.** At the

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

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

18 **31-25-501. Definitions - repeal.** As used in this part 5, unless
19 the context otherwise requires:

20 (3.5) "QUALIFIED COMMUNITY LOCATION" MEANS:

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

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

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

3 (III) IS AN ENCUMBRANCE ON THE PROPERTY SPECIFICALLY
4 BENEFITED.

5 (b) IF THE AFFECTED LOCAL ELECTRIC UTILITY IS AN
6 INVESTOR-OWNED UTILITY, A SOLAR COMMUNITY GARDEN AS THAT TERM
7 IS DEFINED IN SECTION 40-2-127 (2), C.R.S. IF HOUSE BILL 10-1342 DOES
8 NOT TAKE EFFECT, THIS PARAGRAPH (b) IS REPEALED, EFFECTIVE JULY 1,
9 2011.

10 (4) (a) "Renewable energy improvement" means a fixture,
11 product, system, device, or interacting group of devices ~~installed behind~~
12 ~~the meter of any residential or commercial building~~ that produces energy
13 from renewable resources, including ~~but not limited to~~, photovoltaic
14 systems, solar thermal systems, small wind systems, biomass systems,
15 HYDROELECTRIC SYSTEMS, or geothermal systems, as may be authorized
16 by the governing body, AND THAT EITHER:

17 (I) IS INSTALLED BEHIND THE METER OF A RESIDENTIAL OR
18 COMMERCIAL BUILDING; OR

19 (II) DIRECTLY BENEFITS A RESIDENTIAL OR COMMERCIAL
20 BUILDING THROUGH A QUALIFIED COMMUNITY LOCATION.

21 (b) NO RENEWABLE ENERGY IMPROVEMENT SHALL BE AUTHORIZED
22 THAT INTERFERES WITH A RIGHT HELD BY A PUBLIC UTILITY UNDER A
23 CERTIFICATE ISSUED BY THE PUBLIC UTILITIES COMMISSION UNDER
24 ARTICLE 5 OF TITLE 40, C.R.S. NOTHING IN THIS PART 5 LIMITS THE RIGHT
25 OF A PUBLIC UTILITY, SUBJECT TO ARTICLE 3 OR 3.5 OF TITLE 40, C.R.S., OR
26 SECTION 40-9.5-106, C.R.S., TO ASSESS FEES FOR THE USE OF ITS
27 FACILITIES, OR MODIFIES OR EXPANDS THE NET METERING LIMITATIONS

1 ESTABLISHED IN SECTION 40-9.5-118, C.R.S. THE PUBLIC UTILITIES
2 COMMISSION HAS PRIMARY JURISDICTION TO ADJUDICATE DISPUTES AS TO
3 WHETHER A RENEWABLE ENERGY IMPROVEMENT INTERFERES WITH SUCH
4 A RIGHT.

5 **SECTION 8.** 31-25-503 (9), Colorado Revised Statutes, is
6 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

7 **31-25-503. What improvements may be made - conditions.**

8 (9) (c) THE CONTRACT OR AGREEMENT SHALL NOTE THE EXISTENCE OF
9 ANY FIRST PRIORITY MORTGAGE OR DEED OF TRUST ON THE PROPERTY AND
10 THE IDENTITY OF THE RECORD HOLDER THEREOF. WITHIN THIRTY DAYS OF
11 A PERSON'S SUBMISSION OF AN APPLICATION TO THE DISTRICT, THE
12 GOVERNING BODY SHALL PROVIDE WRITTEN NOTICE TO THE RECORD
13 HOLDER OF ANY FIRST PRIORITY MORTGAGE OR DEED OF TRUST ON THE
14 REAL PROPERTY THAT THE PERSON IS PARTICIPATING IN THE DISTRICT.

15 **SECTION 9. Applicability.** This act shall apply to conduct
16 occurring on or after the effective date of this act.

17 **SECTION 10. Safety clause.** The general assembly hereby finds,
18 determines, and declares that this act is necessary for the immediate
19 preservation of the public peace, health, and safety.