

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

REREVISED

*This Version Includes All Amendments
Adopted 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 3rd Reading
April 12, 2010

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.** As used in this part 6, unless the context
6 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, THERE SHALL BE NO QUALIFIED COMMUNITY LOCATIONS
18 IN THE SERVICE TERRITORIES OF INVESTOR-OWNED UTILITIES.

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, THE IDENTITY
6 OF THE RECORD HOLDER THEREOF, AND THE PENALTY FOR DEFAULT
7 PROVIDED IN SECTION 30-20-615 CLEARLY STATING THAT DEFAULT, LIKE
8 THE PENALTIES THAT EXIST FOR DEFAULT ON ANY MORTGAGE OR ANY
9 OTHER SPECIAL ASSESSMENT, MAY RESULT IN THE LOSS OF THE
10 APPLICANT'S HOME. WITHIN THIRTY DAYS OF A PERSON'S SUBMISSION OF
11 AN APPLICATION TO THE DISTRICT, THE BOARD SHALL PROVIDE WRITTEN
12 NOTICE TO THE RECORD HOLDER OF ANY FIRST PRIORITY MORTGAGE OR
13 DEED OF TRUST ON THE REAL PROPERTY THAT THE PERSON IS
14 PARTICIPATING IN THE DISTRICT. The inclusion of such property within
15 the district subsequent to the adoption of the resolution of the board
16 forming the district may be made by the adoption of a supplemental or
17 amending resolution of the board. For districts formed for the purpose of
18 encouraging, accommodating, and financing renewable energy
19 improvements or energy efficiency improvements, ~~the provisions of~~
20 subsections (4), ~~and~~ (5), AND (6) of this section concerning competitive
21 bidding, ~~and~~ preliminary plans and specifications, ~~of~~ AND NOTICE, section
22 30-20-601 concerning construction under the direction of county officers,
23 ~~of~~ section 30-20-622 concerning contracts for construction, and ~~of~~ section
24 30-20-623 concerning contract provisions ~~shall~~ DO not apply. For such
25 districts, the owner of property within a district may arrange
26 improvements that qualify pursuant to the resolution of the board
27 authorizing improvements for the district and may obtain financing for

1 said improvements from the district through the process set forth in the
2 resolution forming the district.

3 (b) (I) DISTRICTS FORMED FOR THE PURPOSES AUTHORIZED IN
4 PARAGRAPH (e) OF SUBSECTION (1) OF THIS SECTION MAY CROSS COUNTY
5 BOUNDARIES AND INCLUDE PROPERTIES IN MULTIPLE COUNTIES, WHETHER
6 SUCH COUNTIES ARE CONTIGUOUS OR NONCONTIGUOUS, IF THE BOARDS OF
7 COUNTY COMMISSIONERS OF THE AFFECTED COUNTIES HAVE ENTERED
8 INTO AN INTERGOVERNMENTAL AGREEMENT OR MEMORANDUM OF
9 UNDERSTANDING REGARDING THE SHARING OF INCREMENTAL COSTS
10 ATTRIBUTABLE TO THE DISTRICT'S CROSSING OF COUNTY BOUNDARIES,
11 WITH SUCH COSTS BECOMING PART OF THE TOTAL ASSESSMENT
12 ALLOCATED TO EACH PARTICIPATING LANDOWNER.

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

22 (III) IF A MUNICIPALITY THAT HAS TERRITORY IN MULTIPLE
23 COUNTIES, ONE OF WHICH HAS CREATED A DISTRICT FOR THE PURPOSES
24 AUTHORIZED IN PARAGRAPH (e) OF SUBSECTION (1) OF THIS SECTION,
25 DESIRES TO CONSENT TO THE INCLUSION WITHIN SUCH DISTRICT OF ANY OF
26 THE PROPERTIES WITHIN ITS ENTIRE INCORPORATED BOUNDARY, THE
27 MUNICIPALITY SHALL EXPRESSLY STATE IN ITS ORDINANCE GRANTING

1 CONSENT THAT ANY PROPERTY LOCATED IN THE MUNICIPALITY,
2 IRRESPECTIVE OF THE COUNTY IN WHICH SUCH PROPERTY IS LOCATED, MAY
3 BE INCLUDED IN THE DISTRICT.

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

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

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

19 **30-20-616. Payment in full - assessment roll returned -**
20 **payment of share.** (1) EXCEPT FOR A DISTRICT FORMED FOR THE
21 PURPOSES AUTHORIZED IN SECTION 30-20-603 (11.5), AS TO WHICH THE
22 ASSESSMENTS SHALL BE PAID PURSUANT TO THE CONTRACTS AND
23 AGREEMENTS ENTERED INTO BY THE OWNER OF THE ASSESSED PROPERTY,
24 payment may be made to the county treasurer at any time within thirty
25 days after the effective date of the assessing resolution. At the expiration
26 of said thirty-day period, the county treasurer shall return the local
27 assessment roll to the county clerk and recorder, therein showing all

1 payments made thereon, with the date of each payment. ~~Said roll~~ THE
2 COUNTY CLERK AND RECORDER shall ~~be certified by the county clerk and~~
3 ~~recorder~~ CERTIFY THE ROLL under the seal of the county and ~~by him~~
4 ~~delivered~~ DELIVER IT to the county treasurer, with ~~his~~ THE CLERK'S
5 warrant for the collection of the same. The county treasurer shall
6 PROVIDE A receipt for the ~~same~~ THE ROLL, and all such rolls shall be
7 numbered for convenient reference.

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

10 **30-20-619. Issuing bonds - property specially benefited.**

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

1 (11.5). Such bonds shall be payable out of the moneys collected on
2 account of the assessments made for said improvements, from reserve
3 accounts, if any, established to secure the payment of such bonds, and
4 from any other legally available moneys. All moneys collected from such
5 assessments for any improvement shall be applied to the payment of the
6 bonds issued, until payment in full is made of all the bonds, both principal
7 and interest, or to fund or replenish reserve accounts, if any, established
8 to secure the payment of such bonds. The bonds may be sold, under such
9 terms and conditions as are established by the board, in such amounts as
10 will be sufficient to pay for the cost of the improvements.

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

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

18 (b) JOINTLY FINANCE THE IMPROVEMENTS OF MULTIPLE SUCH
19 DISTRICTS LOCATED IN ONE OR MORE COUNTIES BY INTERGOVERNMENTAL
20 AGREEMENT OF THE ORGANIZING COUNTIES OR THROUGH OTHER LEGALLY
21 AVAILABLE MEANS. SUCH INTERGOVERNMENTAL AGREEMENT MAY
22 INCLUDE PROVISIONS FOR, AMONG OTHER THINGS, THE TRANSFER OF
23 REVENUES COLLECTED PURSUANT TO THIS PART 6, INCLUDING
24 ASSESSMENT PAYMENTS, PENALTY PAYMENTS PURSUANT TO SECTION
25 30-20-615, AND PROPERTY SALE PROCEEDS PURSUANT TO SECTION
26 30-20-617, FROM THE COUNTY TREASURER OF THE COUNTY IN WHICH A
27 PROPERTY IS LOCATED TO THE COUNTY TREASURER FOR THE COUNTY

1 ISSUING BONDS PURSUANT TO THIS SECTION.

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

4 **30-20-627. Local improvements completed - dissolution.** ~~At the~~
5 ~~time that~~ WHEN the local improvements specified in the preliminary order
6 referred to in section 30-20-603 (5) and specified in the resolution
7 authorizing the improvements have been completed and any debt incurred
8 or bonds issued have been paid, the board shall take all steps necessary
9 to dissolve the district and, upon completion of such steps, shall declare,
10 by resolution, that the district is dissolved; EXCEPT THAT THIS
11 REQUIREMENT DOES NOT APPLY TO A DISTRICT FORMED FOR THE PURPOSES
12 AUTHORIZED IN SECTION 30-20-603 (11.5). Upon dissolution, any moneys
13 remaining to the credit of such district that have not been transferred to
14 a special surplus and deficiency fund as permitted in section 30-20-619
15 (3) may be used for any county purpose as determined by the board,
16 including, without limitation, the reimbursement to the county of any
17 county moneys spent to provide any portion of the costs of the local
18 improvements completed within the dissolved district.

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

22 **31-25-501. Definitions.** As used in this part 5, unless the context
23 otherwise requires:

24 (3.5) "QUALIFIED COMMUNITY LOCATION" MEANS:

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

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

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

7 (III) IS AN ENCUMBRANCE ON THE PROPERTY SPECIFICALLY
8 BENEFITED.

9 (b) IF THE AFFECTED LOCAL ELECTRIC UTILITY IS AN
10 INVESTOR-OWNED UTILITY, A SOLAR COMMUNITY GARDEN AS THAT TERM
11 IS DEFINED IN SECTION 40-2-127 (2), C.R.S. IF HOUSE BILL 10-1342 DOES
12 NOT TAKE EFFECT, THERE SHALL BE NO QUALIFIED COMMUNITY LOCATIONS
13 IN THE SERVICE TERRITORIES OF INVESTOR-OWNED UTILITIES.

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

21 (I) IS INSTALLED BEHIND THE METER OF A RESIDENTIAL OR
22 COMMERCIAL BUILDING; OR

23 (II) DIRECTLY BENEFITS A RESIDENTIAL OR COMMERCIAL
24 BUILDING THROUGH A QUALIFIED COMMUNITY LOCATION.

25 (b) NO RENEWABLE ENERGY IMPROVEMENT SHALL BE AUTHORIZED
26 THAT INTERFERES WITH A RIGHT HELD BY A PUBLIC UTILITY UNDER A
27 CERTIFICATE ISSUED BY THE PUBLIC UTILITIES COMMISSION UNDER

1 ARTICLE 5 OF TITLE 40, C.R.S. NOTHING IN THIS PART 5 LIMITS THE RIGHT
2 OF A PUBLIC UTILITY, SUBJECT TO ARTICLE 3 OR 3.5 OF TITLE 40, C.R.S., OR
3 SECTION 40-9.5-106, C.R.S., TO ASSESS FEES FOR THE USE OF ITS
4 FACILITIES, OR MODIFIES OR EXPANDS THE NET METERING LIMITATIONS
5 ESTABLISHED IN SECTION 40-9.5-118, C.R.S. THE PUBLIC UTILITIES
6 COMMISSION HAS PRIMARY JURISDICTION TO ADJUDICATE DISPUTES AS TO
7 WHETHER A RENEWABLE ENERGY IMPROVEMENT INTERFERES WITH SUCH
8 A RIGHT.

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

11 **31-25-503. What improvements may be made - conditions.**

12 (9) (c) THE CONTRACT OR AGREEMENT SHALL NOTE THE EXISTENCE OF
13 ANY FIRST PRIORITY MORTGAGE OR DEED OF TRUST ON THE PROPERTY, THE
14 IDENTITY OF THE RECORD HOLDER THEREOF, AND THE PENALTY FOR
15 DEFAULT PROVIDED IN SECTION 31-25-530 CLEARLY STATING THAT
16 DEFAULT, LIKE THE PENALTIES THAT EXIST FOR DEFAULT ON ANY
17 MORTGAGE OR ANY OTHER SPECIAL ASSESSMENT, MAY RESULT IN THE
18 LOSS OF THE APPLICANT'S HOME. WITHIN THIRTY DAYS OF A PERSON'S
19 SUBMISSION OF AN APPLICATION TO THE DISTRICT, THE GOVERNING BODY
20 SHALL PROVIDE WRITTEN NOTICE TO THE RECORD HOLDER OF ANY FIRST
21 PRIORITY MORTGAGE OR DEED OF TRUST ON THE REAL PROPERTY THAT THE
22 PERSON IS PARTICIPATING IN THE DISTRICT.

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

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