

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 10-0981.01 Thomas Morris

SENATE BILL 10-177

SENATE SPONSORSHIP

Schwartz and Gibbs,

HOUSE SPONSORSHIP

Scanlan and Looper, Merrifield

Senate Committees
Local Government and Energy

House Committees

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.

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.** Part 1 of article 3 of title 39, Colorado Revised
3 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
4 read:

5 **39-3-122.5. Forestry equipment used in production of woody**
6 **biomass - exemption.** ON AND AFTER JULY 1, 2013, FORESTRY
7 EQUIPMENT THAT IS USED IN THE PRODUCTION OF WOODY BIOMASS IS
8 EXEMPT FROM THE LEVY AND COLLECTION OF PROPERTY TAX.

9 **SECTION 2.** 39-4-101 (3), Colorado Revised Statutes, is
10 amended, and the said 39-4-101 is further amended BY THE ADDITION
11 OF A NEW SUBSECTION, to read:

12 **39-4-101. Definitions.** As used in this article, unless the context
13 otherwise requires:

14 (2.3) "BIOMASS ENERGY FACILITY" MEANS A NEW FACILITY FIRST
15 PLACED IN PRODUCTION ON OR AFTER JANUARY 1, 2010, THAT USES REAL
16 AND PERSONAL PROPERTY, INCLUDING LEASEHOLDS AND EASEMENTS, TO
17 GENERATE AND DELIVER TO THE INTERCONNECTION METER ANY SOURCE

1 OF ELECTRICAL OR MECHANICAL ENERGY BY COMBUSTING WOODY
2 BIOMASS OR BIOSOLIDS DERIVED FROM THE TREATMENT OF WASTEWATER
3 AND THAT IS NOT PRIMARILY DESIGNED TO SUPPLY ELECTRICITY FOR
4 CONSUMPTION ON SITE.

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

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

1 **SECTION 3.** 39-4-102 (1) (e) (II), the introductory portion to
2 39-4-102 (1.5), and 39-4-102 (1.5) (a), (1.5) (b) (I), (1.5) (b) (V), (1.5)
3 (c), and (1.5) (d), Colorado Revised Statutes, are amended to read:

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

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

13 (1.5) The administrator shall determine the actual value of a
14 BIOMASS ENERGY FACILITY, A wind energy facility, or a solar energy
15 facility as follows:

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

1 OPERATIONAL COSTS, USING THE INCOME APPROACH. Therefore, in the
2 absence of preponderant evidence shown by the administrator that the use
3 of the cost approach and market approach results in uniform and just and
4 equal valuation, a BIOMASS ENERGY FACILITY, A wind energy facility, or
5 a solar energy facility shall be valued based solely upon the income
6 approach.

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

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

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

27 (d) Pursuant to section 39-3-118.5, no actual value for any

1 personal property used in a BIOMASS ENERGY FACILITY, A wind energy
2 facility, or a solar energy facility shall be assigned until the personal
3 property is first put into use by the facility. If any item of personal
4 property is used in the facility and is subsequently taken out of service so
5 that no BIOMASS ENERGY, wind energy, or solar energy is produced from
6 that facility for the preceding calendar year, no actual value shall be
7 assigned to that item of more than five percent of the installed cost of the
8 item for that assessment year.

9 **SECTION 4.** 39-5-104.7 (1) (b), Colorado Revised Statutes, is
10 amended to read:

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

17 **SECTION 5.** 40-2-123 (1) (a), Colorado Revised Statutes, is
18 amended to read:

19 **40-2-123. New energy technologies - consideration by**
20 **commission - incentives - demonstration projects - definitions -**
21 **legislative declaration - repeal.** (1) (a) (I) The commission shall give
22 the fullest possible consideration to the cost-effective implementation of
23 new clean energy and energy-efficient technologies in its consideration
24 of generation acquisitions for electric utilities, bearing in mind the
25 beneficial contributions such technologies make to Colorado's energy
26 security, economic prosperity, environmental protection, and insulation
27 from fuel price increases. The commission shall consider utility

1 investments in energy efficiency to be an acceptable use of ratepayer
2 moneys.

3 (II) FOR PURPOSES OF THIS PARAGRAPH (a), "NEW CLEAN ENERGY
4 AND ENERGY-EFFICIENT TECHNOLOGIES" INCLUDES THE GENERATION OF
5 ELECTRICITY FROM THE COMBUSTION OF WOODY BIOMASS, BIOSOLIDS
6 DERIVED FROM THE TREATMENT OF WASTEWATER, AND MUNICIPAL SOLID
7 WASTE.

8 **SECTION 6.** 40-2-124 (1) (d), Colorado Revised Statutes, is
9 amended to read:

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

23 (d) A system of tradable renewable energy credits that may be
24 used by a qualifying retail utility to comply with this standard. The
25 commission shall also analyze the effectiveness of utilizing any regional
26 system of renewable energy credits in existence at the time of its
27 rule-making process and determine whether the system is governed by

1 rules that are consistent with the rules established for this article. The
2 commission shall not restrict the qualifying retail utility's ownership of
3 renewable energy credits if the qualifying retail utility complies with the
4 electric resource standard of paragraph (c) of this subsection (1), USES
5 DEFINITIONS OF ELIGIBLE ENERGY RESOURCES THAT ARE LIMITED TO
6 THOSE IDENTIFIED IN PARAGRAPH (a) OF THIS SUBSECTION (1), AS
7 CLARIFIED BY THE COMMISSION, and does not exceed the retail rate impact
8 established by paragraph (g) of this subsection (1). ONCE A QUALIFYING
9 RETAIL UTILITY ENTERS INTO A CONTRACT THAT RELIES ON OR IS
10 AFFECTED BY THE DEFINITIONS OF ELIGIBLE ENERGY RESOURCES, SUCH
11 DEFINITIONS APPLY TO THE CONTRACT DURING ITS TERM
12 NOTWITHSTANDING ANY SUBSEQUENT ALTERATION OF THE DEFINITIONS,
13 WHETHER BY STATUTE OR RULE.

14 **SECTION 7. Act subject to petition - effective date -**
15 **applicability.** (1) This act shall take effect at 12:01 a.m. on the day
16 following the expiration of the ninety-day period after final adjournment
17 of the general assembly (August 11, 2010, if adjournment sine die is on
18 May 12, 2010); except that, if a referendum petition is filed pursuant to
19 section 1 (3) of article V of the state constitution against this act or an
20 item, section, or part of this act within such period, then the act, item,
21 section, or part shall not take effect unless approved by the people at the
22 general election to be held in November 2010 and shall take effect on the
23 date of the official declaration of the vote thereon by the governor.

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