

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. 10-0981.01 Thomas Morris

SENATE BILL 10-177

SENATE SPONSORSHIP

Schwartz and Gibbs,

HOUSE SPONSORSHIP

Scanlan, 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.

SENATE
Amended 2nd Reading
March 16, 2010

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.** 39-1-102 (1.1), Colorado Revised Statutes, is
3 amended to read:

4 **39-1-102. Definitions.** As used in articles 1 to 13 of this title,
5 unless the context otherwise requires:

6 (1.1) "Agricultural and livestock products" means plant or animal
7 products in a raw or unprocessed state that are derived from the science
8 and art of agriculture, regardless of the use of the product after its sale
9 and regardless of the entity that purchases the product. "Agriculture", for
10 the purposes of this subsection (1.1), means farming, ranching, animal
11 husbandry, and horticulture. EFFECTIVE JULY 1, 2013, "AGRICULTURE"
12 INCLUDES SILVICULTURE.

13 **SECTION 2.** 42-1-102 (44), Colorado Revised Statutes, is
14 amended to read:

15 **42-1-102. Definitions.** As used in articles 1 to 4 of this title,
16 unless the context otherwise requires:

17 (44) (a) On and after July 1, 2000, "implement of husbandry"

1 means every vehicle that is designed, adapted, or used for agricultural
2 purposes. It also includes equipment used solely for the application of
3 liquid, gaseous, and dry fertilizers. Transportation of fertilizer, in or on
4 the equipment used for its application, shall be deemed a part of
5 application if it is incidental to such application. It also includes hay
6 balers, hay stacking equipment, combines, tillage and harvesting
7 equipment, agricultural commodity handling equipment, and other heavy
8 movable farm equipment primarily used on farms or in a livestock
9 production facility and not on the highways. Trailers specially designed
10 to move such equipment on highways shall, for the purposes of part 5 of
11 article 4 of this title, be considered as component parts of such
12 implements of husbandry.

13 (b) EFFECTIVE JULY 1, 2013, FOR PURPOSES OF THIS SECTION,
14 "AGRICULTURAL" INCLUDES SILVICULTURAL AND "IMPLEMENT OF
15 HUSBANDRY" INCLUDES EVERY VEHICLE THAT IS DESIGNED, ADAPTED, OR
16 USED FOR THE PLANTING, MAINTENANCE, OR HARVESTING OF TREES.

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

20 **39-4-101. Definitions.** As used in this article, unless the context
21 otherwise requires:

22 (2.3) "BIOMASS ENERGY FACILITY" MEANS A NEW FACILITY FIRST
23 PLACED IN PRODUCTION ON OR AFTER JANUARY 1, 2010, THAT USES REAL
24 AND PERSONAL PROPERTY, INCLUDING LEASEHOLDS AND EASEMENTS, TO
25 GENERATE AND DELIVER TO THE INTERCONNECTION METER ANY SOURCE
26 OF ELECTRICAL OR MECHANICAL ENERGY BY COMBUSTING ONLY _____
27 BIOMASS OR BIOSOLIDS DERIVED FROM THE TREATMENT OF WASTEWATER

1 AND THAT IS NOT PRIMARILY DESIGNED TO SUPPLY ELECTRICITY FOR
2 CONSUMPTION ON SITE.

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

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

26 **SECTION 4.** 39-4-102 (1) (e) (II), the introductory portion to
27 39-4-102 (1.5), and 39-4-102 (1.5) (a), (1.5) (b) (I), (1.5) (b) (V), (1.5)

1 (c), and (1.5) (d), Colorado Revised Statutes, are amended to read:

2 **39-4-102. Valuation of public utilities.** (1) The administrator
3 shall determine the actual value of the operating property and plant of
4 each public utility as a unit, giving consideration to the following factors
5 and assigning such weight to each of such factors as in the administrator's
6 judgment will secure a just value of such public utility as a unit:

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

11 (1.5) The administrator shall determine the actual value of a
12 BIOMASS ENERGY FACILITY, A wind energy facility, or a solar energy
13 facility as follows:

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

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

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

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

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

25 (d) Pursuant to section 39-3-118.5, no actual value for any
26 personal property used in a BIOMASS ENERGY FACILITY, A wind energy
27 facility, or a solar energy facility shall be assigned until the personal

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

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

9 **39-5-104.7. Valuation of real and personal property that**
10 **produces alternating current electricity from a renewable energy**
11 **source.** (1) (b) The valuation requirements specified in paragraph (a) of
12 this subsection (1) shall not apply to BIOMASS ENERGY FACILITIES, solar
13 energy facilities, ~~as defined in section 39-4-101 (3.5)~~, or wind energy
14 facilities, as THOSE TERMS ARE defined in section 39-4-101. ~~(4)~~.

15

16 **SECTION 6.** 40-2-123, Colorado Revised Statutes, is amended
17 **BY THE ADDITION OF A NEW SUBSECTION** to read:

18 **40-2-123. New energy technologies - consideration by**
19 **commission - incentives - demonstration projects - definitions -**
20 **legislative declaration - repeal.** (3.2) IN ITS CONSIDERATION OF
21 GENERATION ACQUISITIONS FOR ELECTRIC UTILITIES, THE COMMISSION
22 MAY GIVE THE FULLEST POSSIBLE CONSIDERATION, AT A UTILITY'S
23 REQUEST, TO THE COST-EFFECTIVE IMPLEMENTATION OF NEW ENERGY
24 TECHNOLOGIES FOR THE GENERATION OF ELECTRICITY FROM THE
25 COMBUSTION OF BIOMASS, BIOSOLIDS DERIVED FROM THE TREATMENT OF
26 WASTEWATER, AND MUNICIPAL SOLID WASTE. FOR PURPOSES OF THIS
27 SUBSECTION (3.2), "BIOMASS" HAS THE MEANING ESTABLISHED IN SECTION

1 40-2-124 (1) (a), AS CLARIFIED BY THE COMMISSION.

2 **SECTION 7.** 40-2-124 (1) (d), Colorado Revised Statutes, is
3 amended to read:

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

17 (d) A system of tradable renewable energy credits that may be
18 used by a qualifying retail utility to comply with this standard. The
19 commission shall also analyze the effectiveness of utilizing any regional
20 system of renewable energy credits in existence at the time of its
21 rule-making process and determine whether the system is governed by
22 rules that are consistent with the rules established for this article. The
23 commission shall not restrict the qualifying retail utility's ownership of
24 renewable energy credits if the qualifying retail utility complies with the
25 electric resource standard of paragraph (c) of this subsection (1), USES
26 DEFINITIONS OF ELIGIBLE ENERGY RESOURCES THAT ARE LIMITED TO
27 THOSE IDENTIFIED IN PARAGRAPH (a) OF THIS SUBSECTION (1), AS

1 CLARIFIED BY THE COMMISSION, and does not exceed the retail rate impact
2 established by paragraph (g) of this subsection (1). ONCE A QUALIFYING
3 RETAIL UTILITY ENTERS INTO A CONTRACT THAT RELIES ON OR IS
4 AFFECTED BY THE DEFINITIONS OF ELIGIBLE ENERGY RESOURCES, SUCH
5 DEFINITIONS APPLY TO THE CONTRACT DURING ITS TERM
6 NOTWITHSTANDING ANY SUBSEQUENT ALTERATION OF THE DEFINITIONS,
7 WHETHER BY STATUTE OR RULE. FOR PURPOSES OF COMPLIANCE WITH THE
8 RENEWABLE ENERGY STANDARD, IF A GENERATION SYSTEM USES A
9 COMBINATION OF FOSSIL FUEL AND ELIGIBLE RENEWABLE ENERGY
10 RESOURCES TO GENERATE ELECTRICITY, A QUALIFIED RETAIL UTILITY THAT
11 IS NOT AN INVESTOR-OWNED UTILITY MAY COUNT AS ELIGIBLE RENEWABLE
12 ENERGY ONLY THE PROPORTION OF THE TOTAL ELECTRIC OUTPUT OF THE
13 GENERATION SYSTEM THAT RESULTS FROM THE USE OF ELIGIBLE
14 RENEWABLE ENERGY RESOURCES.

15 **SECTION 8. Act subject to petition - effective date -**
16 **applicability.** (1) This act shall take effect at 12:01 a.m. on the day
17 following the expiration of the ninety-day period after final adjournment
18 of the general assembly (August 11, 2010, if adjournment sine die is on
19 May 12, 2010); except that, if a referendum petition is filed pursuant to
20 section 1 (3) of article V of the state constitution against this act or an
21 item, section, or part of this act within such period, then the act, item,
22 section, or part shall not take effect unless approved by the people at the
23 general election to be held in November 2010 and shall take effect on the
24 date of the official declaration of the vote thereon by the governor.

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