

RENEWABLE ENERGY AND ENERGY CONSERVATION

Solar Energy Taxes and Fees

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New Solar Facility Property Tax Valuation

SB 09-238 (Postponed Indefinitely)
Enforce Limited Local Fees Solar Panels

HB 09-1126 (Signed into Law)
Encourage Solar Thermal Installations

Develop Renewable Energy Opportunities

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Renewable Energy Financing Act

HB 09-1312 (Signed into Law)
Renewable Energy Loans for Schools

HB 09-1300 (Postponed Indefinitely)
Clean Energy Development Authority Increase Powers

Energy Service Providers

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Conserve Energy Tiered Rates Incentive

HB 09-1055 (Postponed Indefinitely)
Utilities Disclose Carbon Usage

HB 09-1323 (Deemed Lost on House Second Reading)
Energy Efficiency Programs Implemented by Cooperative Electric Associations

Renewable Energy and Energy Conservation by State Agencies

HB 09-1268 (Postponed Indefinitely)
Decrease Fossil Fuel Consumption

Solar Energy Taxes and Fees

The General Assembly enacted two bills relating to fees and taxes associated with solar energy and defeated another. **Senate Bill 09-177** specifies that, for purposes of property taxation, solar energy generation facilities where: (1) energy production begins on or after January 1, 2009, and (2) generation capacity is more than 2 megawatts, be valued using the income approach. This means that the actual value will be based on the projected gross revenue of such facilities. Before passage of this bill, assessors were allowed to use either the cost approach, the market approach, or the income approach, but have traditionally used the cost approach. **House Bill 09-1126**, makes all sales, storage,

and use of components used in solar thermal systems exempt from the state sales and use tax beginning in FY 2009-10. The bill exempts various system components from the sales and use tax, defines a solar thermal system as one that uses the sun to heat or cool a residential or commercial building or its water; or any industrial, commercial, or manufacturing process. Finally, the bill allows local governments to provide the same financial incentives for solar thermal installations as are now being provided for solar electric installations.

Senate Bill 09-238, postponed indefinitely in the Senate Local Government and Energy Committee, was recommended by the Joint Select Committee on Job Creation and Economic Growth. The bill would have defined "permit fees" as the total compensation received by a county or municipality for approving the installation of an active solar energy device from any source or in any way connected with the installation. Such fees would have been limited to the lesser of the local government's actual costs of issuing the permit, or \$500. The bill also would have established a private right of action for an individual against a local government that violates this limit and would have directed the court to award attorney's fees to the prevailing party in such an action.

Develop Renewable Energy Opportunities

Three new laws increase moneys available for renewable energy development in Colorado and two bills were postponed indefinitely. **Senate Bill 09-031** creates the Clean Technology Discovery Evaluation Grant Program in the Governor's Office of Economic Development and International Trade (OED). The program provides grants to aid in the commercialization of renewable energy technologies (e.g., solar, wind, biofuel, and geothermal), or technologies and products that aid in energy efficiency, conservation, or environmental mitigation. Grants may be provided up to \$50,000 for research projects and up to \$150,000 for an early stage technology company.

Senate Bill 09-171, recommended by the Joint Select Committee on Job Creation and Economic Growth, permits funding available from the Colorado Customized Training Program to be used to train potential employees, establish programs related to training, and, to help companies train employees to participate in Colorado's new energy economy. The Colorado Customized Job Training program is a collaborative effort between higher education, the Department of Human Services, the Department of Labor and Employment, and the Department of Local Affairs to provide grants to employees to receive customized job training conducted at community colleges or at private companies. In FY 2009-10, the program was appropriated \$2.7 million.

The Colorado Agricultural Value-Added Development Board administers the Advancing Colorado's Renewable Energy Program, which provides funding to promote energy-related projects and research beneficial to Colorado's agriculture industry. HB 06-1322 appropriated \$500,000 annually from the Operational Account of the Severance Tax Trust Fund for FY 2006-07 through FY 2008-09 to the program. **Senate Bill 09-124** extends the funding to the Department of Agriculture for this program until FY 2011-12. Under current law, funding would have concluded on June 30, 2009.

House Concurrent Resolution 09-1001, postponed indefinitely in the House State, Veterans, and Military Affairs Committee, would have created the Colorado Future Fund. Any state revenues in excess of the constitutional limit on state fiscal year spending would have been transferred to the fund instead of being refunded to the taxpayers. The bill would have required money in the fund to be used equally for transportation infrastructure repair and construction and renewable energy

infrastructure development and maintenance. In addition, the state would have been permitted to issue bonds payable from the fund for such projects. The resolution also would have created a rainy day account that could have been used if approved by a supermajority of the members elected to the House and Senate.

House Bill 09-1350 was lost in the House on second reading. The bill would have created the Colorado New Energy Improvement District to administer and finance a new energy improvement program for home energy efficiency and renewable energy improvements. The improvements would have been financed by bonds issued by the district paid by special assessments levied on homes that chose to participate in the program. The total principal amount of bonds that could have been issued by the district would have been limited to \$250 million and the duration of the bonds could not have exceeded 20 years. The amount of the assessments would have been based on the cost of the home energy improvements to the district, including paying the contractors who make the energy improvements and the administrative costs of the district. The amount of the assessment would not be permitted to exceed the value of the benefit of the energy improvement made to the home. The assessment could have either been paid in full within 30 days of being levied or could have been paid in instalments, with interest, over a period not to exceed 20 years. The district's payment for an energy improvement, either to a homeowner or contractor, could not have exceeded \$25,000.

Renewable Energy and Energy Efficiency Homeowner Measures

The General Assembly enacted two bills and postponed four bills indefinitely regarding renewable energy and energy efficiency measures for homeowners. **House Bill 09-1149** requires homebuilders of each home for which a buyer is under contract to offer prospective buyers the opportunity to have the residence's electrical or plumbing system include one of the following:

- a residential photovoltaic solar generation system or a residential solar thermal system;
- upgrades of wiring or plumbing or systems; or
- a chase or conduit constructed to allow ease of future installation of the necessary wiring or plumbing for such systems.

This offer must be made in accordance with the builder's construction schedule for the residence. Homebuilders are required to provide every buyer under contract with a list of solar installers who can assess the home's solar energy generation potential. The law also requires the Governor's Energy Office (GEO) to maintain a publicly available, master list of Colorado solar installers. Finally, the GEO or its designees are directed to offer periodic training sessions on residential photovoltaic solar generation systems or solar thermal system to homebuilders. The GEO will cover the cost of these training sessions through a registration fee to attend the trainings.

The requirements of HB 09-1149 would have been broadened under **House Bill 09-1354**, however the bill was postponed indefinitely in the House Committee on Transportation and Energy. Specifically, this bill would have required homebuilders of each home for which a buyer is under contract to offer prospective buyers of single-family detached residences the opportunity to have the residence's electrical or plumbing system constructed to accommodate renewable energy generation devices, including wind-electric generators. HB 09-1149 only requires that this option be provided for solar electric generation or solar thermal systems. In addition, homebuilders would have been

required to provide every buyer under contract with a list of renewable energy generation device installers and contractors, maintained by the Governor's Energy Office (GEO). The bill also specified that renewable energy generation devices or upgrades could have been financed to the same extent and under the same terms as the realty on which they were installed.

Current law states that unit or homeowners associations can not prohibit home or unit owners from installing specified energy efficiency measures under the Colorado Common Interest Ownership Act. However, there was an exception for certain small communities with ten housing units or less that allowed these communities to prohibit the installation of such systems. **Senate Bill 09-249** requires these small communities to allow the installation or use of energy efficiency measures among other non-energy related provisions.

In 2008, House Bill 08-1270 prohibited unit owner association regulations, covenants, or deed restrictions that significantly increase the cost of renewable energy generation devices (such as solar panels) or significantly reduce their efficiency. **House Bill 09-1107**, postponed indefinitely in the House Transportation and Energy Committee, would have further quantified this law. The bill would have prohibited unit owner association regulations, covenants, or deed restrictions that increased the cost of renewable energy generation devices by more than 10 percent or \$500, whichever is less, or reduced their efficiency by more than 10 percent. In addition, HOAs would have been prohibited from denying the installation of energy efficiency measures (such as awnings, evaporative coolers, or outdoor solar lights) by increasing their cost by more than 10 percent or \$200, whichever is less, or reducing their efficiency by more than 10 percent.

House Bill 09-1247, postponed indefinitely in the Senate Committee on Local Government and Energy, would have required the seller of an existing residence to provide the buyer with the property's energy billing and usage history for the 12-month period immediately preceding the listing of the property. The information would have had to be provided to the buyer within five days after entering into a sales contract. The requirement would have applied to residential land and residential improvements, including mobile homes and manufactured homes that are permanently affixed to a foundation. Hotels and motels were excluded from the requirement. Compliance with the disclosure requirements of the bill would have relieved the seller and the seller's real estate agent from liability for any damages resulting from an alleged inadequacy of the property's insulation or excessive energy consumption.

Public Finance for Renewable Energy and Energy Efficiency Projects

Two new laws were enacted that create public financing options for renewable energy and energy efficiency projects and one bill was postponed indefinitely. **Senate Bill 09-051** increases the amount the state treasurer may invest as part of the Colorado Clean Energy Finance Program for the purpose of funding clean energy loans from FY 2008-09 through FY 2010-11. The bill increases the investment amount from \$30 million to \$40 million of state moneys in bonds or notes issued by participating public or private lenders. The cap on loans guaranteed by the state treasurer is also increased from \$10 million to \$15 million during FY 2008-09, and up to \$25 million during the two-year period of FY 2008-09 through FY 2009-10, subject to the limitations in current law on the investment of state moneys and the discretion of the state treasurer. Senate Bill 09-051 allows clean energy loans for large-scale commercial, industrial, and institutional installations of solar heating or cooling and electric generation facilities. A participating public or private lender may finance one or

more clean energy improvements to commercial, industrial, or government-owned real property, subject to certain conditions. Additionally, the bill allows qualifying retail utilities to establish standard offers to purchase renewable energy credits generated from qualifying solar electric generation. Finally, the bill states that the supply of electricity or heat to a consumer from solar generating equipment not owned by the consumer, but which is located on the consumer's property, is not be subject to regulation by the Public Utilities Commission.

The Clean Energy Development Authority was established under House Bill 07-1150 and modified by House Bill 08-1350 for the purpose of financing clean energy development and improvements in the state's electric transmission infrastructure. The authority has the power to issue bonds to pay for clean energy projects, specifically to finance up to \$40 million for a wind energy transmission facilities project and up to \$25 million for a solar energy project. **House Bill 09-1300**, recommended by the Joint Select Committee on Job Creation and Economic Growth, would have expanded the powers of the Colorado Clean Energy Development Authority, both in terms of the types of financial agreements it may enter into and the types of projects it may finance. Specifically, it would have allowed the authority to make direct commercial loans for projects related to electrical transmission, generation, and storage equipment, as well as any land or facilities associated with such equipment. It also would have expanded the authority's ability to engage in projects that transport, transmit, or store all types of energy. Finally, the bill would have allowed the authority to purchase loans made by banks or other third-party financiers. The bill was postponed indefinitely in the House Transportation and Energy Committee.

House Bill 09-1312 creates the Renewable Energy and Energy Efficiency for Schools Loan Program in the Governor's Energy Office. The program provides loans to school districts for wind, solar, or other renewable energy projects. Battery-powered or hybrid-electric bus projects are also eligible. The application procedure and applicant requirements are established through rules that must be promulgated by the State Board of Education in consultation with the Governor's Energy Office by October 15, 2009. To apply for a loan, a school district must receive approval from its school district board of education and must have a team dedicated to the renewable energy project. Applications are submitted to the Governor's Energy Office and must meet specific energy efficiency standards for the project facility or the school district must develop an energy efficiency plan with the Governor's Energy Office. The Governor's Energy Office recommends which loans to award and the amount of the loan to the state treasurer.

The state treasurer provides the Renewable Energy and Energy Efficiency for Schools Loan Program moneys and specifies the loan terms and conditions. In the event that a school district is unable to repay a loan, the state treasurer may withhold from the state a share of the district's school finance moneys. The state treasurer issues loans from the Public School Fund and determines the amount of the fund that will be made available for loans. The General Assembly is responsible for guaranteeing that the Public School Fund is made whole if a loan is not repaid. The law also creates a new cash fund, the Renewable Energy and Energy Efficiency for Schools Loan Program Administration Fund and allows the Governor's office to seek gifts, grants, and donations for this fund. Finally, the bill requires legislative staff to conduct a post-enactment review of this act. Conclusions of the review must be reported to the House and Senate Education Committees.

Energy Service Providers

One bill was enacted by the General Assembly and two bills failed that were related to renewable energy or energy conservation services offered by energy providers. **Senate Bill 09-039** authorizes cooperative electric associations (CEAs) to approve any revenue-neutral rate, charge, service, classification or facility that establishes a graduated rate for increased energy consumption by residential customers. The law specifies that the implementation of such rates must give due consideration to impacts on low-income customers, and will not apply to consumers that have single meters that record energy consumption for combined residential and agricultural uses. Finally, the law allows associations to utilize community energy funds for energy efficiency, energy conservation, weatherization, and renewable energy purposes.

House Bill 09-1055, postponed indefinitely in the House Transportation and Energy Committee, would have required all investor-owned electric and gas utilities (IOUs), cooperative electric associations (CEAs), and all municipally-owned utilities (MOUs) with more than 80,000 customers, to disclose on their customers' bill, an estimate of the amount of carbon dioxide (CO₂) emitted during the previous billing cycle that was attributable to that customer.

House Bill 09-1323, lost in the House on second reading, would have required rural electric associations (REAs) serving at least 100,000 customers to implement demand-side management (DSM) programs. Specifically, the bill would have required each qualifying utility to save an amount of electricity through such programs equal to:

- 2 percent of its retail sales in 2008 during the years 2012 through 2014;
- 5 percent of its retail sales in 2008 during the years 2015 through 2019; and
- 10 percent of its retail sales in 2008 in 2020 and thereafter.

The bill specified that qualifying utilities may determine which programs to implement, and that implemented programs, collectively, should be cost-effective. At least 10 percent of program expenditures would have had to target programs serving low-income customers, at least 80 percent of energy savings would have had to be from efficiencies that occur on the customer's premises, while up to 20 percent would have had to result from efficiency gains in the distribution system or through fuel switching. Qualifying utilities could have implemented the programs on their own, or provided funding to the Governor's Energy Office (GEO), which in turn would have contracted with private companies to administer DSMs on the utility's behalf. The GEO would have been required to compile information on energy efficiency programs implemented by qualifying utilities and report to the General Assembly. Each report would have had to identify the utilities that were in compliance and which, if any, were not. The energy efficiency program and reporting requirements would have been repealed on January 1, 2022. Finally, the bill would have required each qualifying utility to track program expenditures and energy savings on an annual basis.

Renewable Energy and Energy Conservation by State Agencies

House Bill 09-1268 was postponed indefinitely in the House Transportation and Energy Committee. The bill would have imposed a number of requirements related to reducing fossil fuel consumption. Specifically related to renewable energy, this bill would have:

- exempted the sale, lease, storage and use of new or used vehicles that get at least 40 miles to the gallon from the state sales and use tax for FY 2009-10 through FY 2012-13 when the 6 percent limit on General Fund appropriations is reached;
- authorized local governments to grant the same sales and use tax exemption;
- exempted business personal property used to develop geoplasma and methane capture technologies from property taxes for 2009 through 2014;
- required the Colorado Water Conservation Board (CWCB) to assess the feasibility of retrofitting existing water and water storage infrastructure for hydroelectric power development by August 4, 2010; and
- required the State Board of Land Commissioners to report to the General Assembly on renewable energy sources on state lands, prioritizing geothermal.

In addition, the bill would have imposed a number of requirements on the Colorado Clean Energy Development Authority related to alternative fuels and nuclear power generation. The bill would have:

- added nuclear energy, natural gas, propane, and ethanol to the definition of clean energy for purposes of the Colorado Clean Energy Development Authority;
- added the sale, distribution, transmission, blending, and manufacturing of alternative fuels to the definition of project for the authority;
- directed the authority to create an inventory of required processes to construct a nuclear power generation facility employing modern technology;
- directed the authority to solicit expressions of interest from county governments for locating such a facility in their jurisdiction; and
- required the authority to report to the General Assembly by January 30, 2010, and each January thereafter on recommended changes to state and federal law to facilitate the development of nuclear power generation and facility permitting.