

**Second Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO**

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 08-1051.01 Esther van Mourik

HOUSE BILL 08-1368

HOUSE SPONSORSHIP

Buescher, and McKinley

SENATE SPONSORSHIP

Brophy, Romer, and Tupa

House Committees
Finance

Senate Committees
Finance

A BILL FOR AN ACT

101 **CONCERNING THE TAXATION OF PROPERTY USED TO PRODUCE**
102 **ALTERNATING CURRENT ELECTRICITY FROM A RENEWABLE**
103 **ENERGY SOURCE.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Clarifies and changes the placement of the sales tax exemption for components used to produce alternating current electricity from a renewable energy source.

Specifies that all real and personal property used to produce a specified amount or less of alternating current electricity from a renewable energy source will be valued by the assessor in the county

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
3rd Reading Unam ended
April 30, 2008

SENATE
Am ended 2nd Reading
April 29, 2008

HOUSE
3rd Reading Unam ended
April 15, 2008

HOUSE
Am ended 2nd Reading
April 14, 2008

where the property is located in accordance with valuation procedures developed by the property tax administrator. Exempts wind energy facilities from such valuation.

Establishes that the property tax administrator shall utilize the procedures adopted for determining the actual value of a renewable energy facility when developing the valuation procedures.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** Part 1 of article 5 of title 39, Colorado Revised
3 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
4 read:

5 **39-5-104.7. Valuation of real and personal property that**
6 **produces alternating current electricity from a renewable energy**
7 **source.** (1) (a) EXCEPT AS PROVIDED IN PARAGRAPH (b) OF THIS
8 SUBSECTION (1), ON AND AFTER JANUARY 1, 2008, ALL REAL AND
9 PERSONAL PROPERTY USED TO PRODUCE TWO MEGAWATTS OR LESS OF
10 ALTERNATING CURRENT ELECTRICITY FROM A RENEWABLE ENERGY
11 SOURCE SHALL BE VALUED BY THE ASSESSOR IN THE COUNTY WHERE THE
12 PROPERTY IS LOCATED IN ACCORDANCE WITH VALUATION PROCEDURES
13 DEVELOPED BY THE ADMINISTRATOR.

14 (b) THE VALUATION REQUIREMENTS SPECIFIED IN PARAGRAPH (a)
15 OF THIS SUBSECTION (1) SHALL NOT APPLY TO WIND ENERGY FACILITIES AS
16 DEFINED IN SECTION 39-4-101 (4).

17 (2) IN DEVELOPING THE VALUATION PROCEDURES SPECIFIED IN
18 PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION, THE ADMINISTRATOR
19 SHALL UTILIZE THE PROCEDURES ADOPTED FOR DETERMINING THE ACTUAL
20 VALUE OF A RENEWABLE ENERGY FACILITY AS SPECIFIED IN SECTION
21 39-4-102 (1) (e).

22 (3) A TAXPAYER SHALL NOTIFY THE TAXPAYER'S COUNTY
23 ASSESSOR WHEN THE TAXPAYER INSTALLS REAL AND PERSONAL PROPERTY

1 USED TO PRODUCE TWO MEGAWATTS OR LESS OF ALTERNATING CURRENT
2 ELECTRICITY FROM A RENEWABLE ENERGY SOURCE; EXCEPT THAT, IF THE
3 TAXPAYER OBTAINS A BUILDING PERMIT UNDER THE JURISDICTION OF A
4 LOCAL GOVERNMENT FOR THE INSTALLATION, THE NOTIFICATION
5 REQUIRED IN THIS SUBSECTION (3) SHALL NOT BE NECESSARY.

6 **SECTION 2.** 39-4-101 (4), Colorado Revised Statutes, is
7 amended to read:

8 **39-4-101. Definitions.** As used in this article, unless the context
9 otherwise requires:

10 (4) "Wind energy facility" means a new facility first placed in
11 production on or after January 1, 2006, that uses property, real and
12 personal, including one or more wind turbines, leaseholds, and easements,
13 to generate and deliver to the interconnection meter any source of
14 electrical or mechanical energy IN EXCESS OF TWO MEGAWATTS by
15 harnessing the kinetic energy of the wind.

16 **SECTION 3.** 39-4-102 (1) (e) and (1.5) (b) (V), Colorado
17 Revised Statutes, are amended to read:

18 **39-4-102. Valuation of public utilities.** (1) The administrator
19 shall determine the actual value of the operating property and plant of
20 each public utility as a unit, giving consideration to the following factors
21 and assigning such weight to each of such factors as in the administrator's
22 judgment will secure a just value of such public utility as a unit:

23 (e) (I) When determining the actual value of a renewable energy
24 facility that primarily ~~generates~~ PRODUCES MORE THAN TWO MEGAWATTS
25 OF ALTERNATING CURRENT electricity, the administrator shall:

26 (A) Consider the additional incremental cost per kilowatt of the
27 construction of the renewable energy facility over that of the construction

1 cost of a comparable nonrenewable energy facility that primarily
2 generates PRODUCES ALTERNATING CURRENT electricity to be an
3 investment cost and shall not include such additional incremental cost in
4 the valuation of the facility; AND

5 (B) NOT ADD VALUE TO A RENEWABLE ENERGY FACILITY FOR ANY
6 RENEWABLE ENERGY CREDITS CREATED BY THE PRODUCTION OF
7 ALTERNATING CURRENT ELECTRICITY.

8 (II) For purposes of this paragraph (e), "renewable energy" has the
9 meaning provided in section 40-1-102 (6), C.R.S. SECTION 40-1-102 (11),
10 C.R.S., For purposes of this paragraph (e), "renewable energy" BUT shall
11 not include energy generated from a wind energy facility.

12 (III) (A) FOR PURPOSES OF DETERMINING THE ACTUAL VALUE OF
13 A RENEWABLE ENERGY FACILITY AS SPECIFIED IN SUBPARAGRAPH (I) OF
14 THIS PARAGRAPH (e), AN OWNER OR OPERATOR OF A FACILITY SHALL
15 PROVIDE A COPY OF THE FACILITY'S CURRENT POWER PURCHASE
16 AGREEMENT TO THE ADMINISTRATOR BY APRIL 1 OF EACH ASSESSMENT
17 YEAR AS AN ATTACHMENT TO THE STATEMENT REQUIRED AS SPECIFIED IN
18 SECTION 39-4-103 (1); EXCEPT THAT, IF A COPY OF THE CURRENT POWER
19 PURCHASE AGREEMENT WAS PREVIOUSLY PROVIDED EITHER BY THE
20 OWNER OR OPERATOR OR BY THE PURCHASER OF POWER AND THERE IS NO
21 MATERIAL CHANGE IN THE FACILITY'S CURRENT POWER PURCHASE
22 AGREEMENT, THE OWNER OR OPERATOR OF A FACILITY SHALL NOT BE
23 REQUIRED TO PROVIDE A COPY OF THE AGREEMENT.

24 (B) IF THE OWNER OR OPERATOR OF A FACILITY DOES NOT PROVIDE
25 A COPY OF THE FACILITY'S CURRENT POWER PURCHASE AGREEMENT AS
26 SPECIFIED IN SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (III), THE
27 ADMINISTRATOR SHALL HAVE THE AUTHORITY TO REQUEST A COPY OF THE

1 CURRENT POWER PURCHASE AGREEMENT FROM THE PURCHASER OF POWER
2 GENERATED AT THE FACILITY; EXCEPT THAT, IF A COPY OF THE CURRENT
3 POWER PURCHASE AGREEMENT WAS PREVIOUSLY PROVIDED EITHER BY THE
4 OWNER OR OPERATOR OR BY THE PURCHASER OF POWER AND THERE IS NO
5 MATERIAL CHANGE IN THE FACILITY'S CURRENT POWER PURCHASE
6 AGREEMENT, THE PURCHASER OF POWER SHALL NOT BE REQUIRED TO
7 PROVIDE A COPY OF THE AGREEMENT.

8 (C) ALL POWER PURCHASE AGREEMENTS PROVIDED TO THE
9 ADMINISTRATOR PURSUANT TO THIS SUBPARAGRAPH (III) SHALL BE
10 CONSIDERED PRIVATE DOCUMENTS AND SHALL BE AVAILABLE ONLY TO
11 THE ADMINISTRATOR AND THE EMPLOYEES OF THE DIVISION OF PROPERTY
12 TAXATION IN THE DEPARTMENT OF LOCAL AFFAIRS.

13 (1.5) The administrator shall determine the actual value of a wind
14 energy facility as follows:

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

26 SECTION 4. Part 7 of article 26 of title 39, Colorado Revised
27 Statutes, is amended BY THE ADDITION OF A NEW SECTION to

1 read:

2 **39-26-723. Components used to produce alternating current**

3 **electricity from a renewable energy source - definitions.** (1) FOR

4 FISCAL YEARS COMMENCING ON OR AFTER JULY 1, 2006, ALL SALES,

5 STORAGE, AND USE OF COMPONENTS USED IN THE PRODUCTION OF

6 ALTERNATING CURRENT ELECTRICITY FROM A RENEWABLE ENERGY

7 SOURCE, INCLUDING BUT NOT LIMITED TO WIND, SHALL BE EXEMPT FROM

8 TAXATION UNDER THE PROVISIONS OF PARTS 1 AND 2 OF THIS ARTICLE.

9 (2) (a) AS USED IN THIS SECTION, "COMPONENTS" SHALL INCLUDE,

10 BUT SHALL NOT BE LIMITED TO, [REDACTED] WIND TURBINES, ROTORS AND

11 BLADES, SOLAR MODULES, TRACKERS, GENERATING EQUIPMENT,

12 SUPPORTING STRUCTURES OR RACKS, INVERTERS, TOWERS AND

13 FOUNDATIONS, BALANCE OF SYSTEM COMPONENTS SUCH AS WIRING,

14 CONTROL SYSTEMS, SWITCHGEARS, AND GENERATOR STEP-UP

15 TRANSFORMERS, AND CONCENTRATING SOLAR POWER COMPONENTS THAT

16 INCLUDE, BUT ARE NOT LIMITED TO, MIRRORS, PLUMBING, AND HEAT

17 EXCHANGERS.

18 (b) AS USED IN THIS SECTION, "COMPONENTS" SHALL NOT INCLUDE

19 ANY COMPONENTS BEYOND THE POINT OF GENERATOR STEP-UP

20 TRANSFORMERS LOCATED AT THE PRODUCTION SITE, LABOR, ENERGY

21 STORAGE DEVICES, OR REMOTE MONITORING SYSTEMS.

22 **SECTION 5.** 29-2-105 (1) (d), Colorado Revised Statutes, is

23 **REPEALED AND REENACTED, WITH AMENDMENTS, to read:**

24 **29-2-105. Contents of sales tax ordinances and proposals.**

25 (1) The sales tax ordinance or proposal of any incorporated town, city,

26 or county adopted pursuant to this article shall be imposed on the sale of

27 tangible personal property at retail or the furnishing of services, as

1 provided in paragraph (d) of this subsection (1). Any countywide or
2 incorporated town or city sales tax ordinance or proposal shall include the
3 following provisions:

4 (d) (I) A PROVISION THAT THE SALE OF TANGIBLE PERSONAL
5 PROPERTY AND SERVICES TAXABLE PURSUANT TO THIS ARTICLE SHALL BE
6 THE SAME AS THE SALE OF TANGIBLE PERSONAL PROPERTY AND SERVICES
7 TAXABLE PURSUANT TO SECTION 39-26-104, C.R.S., EXCEPT AS
8 OTHERWISE PROVIDED IN THIS PARAGRAPH (d). THE SALE OF TANGIBLE
9 PERSONAL PROPERTY AND SERVICES TAXABLE PURSUANT TO THIS ARTICLE
10 SHALL BE SUBJECT TO THE SAME SALES TAX EXEMPTIONS AS THOSE
11 SPECIFIED IN PART 7 OF ARTICLE 26 OF TITLE 39, C.R.S., EXCEPT THAT THE
12 SALE OF THE FOLLOWING MAY BE EXEMPTED FROM A TOWN, CITY, OR
13 COUNTY SALES TAX ONLY BY THE EXPRESS INCLUSION OF THE EXEMPTION
14 EITHER AT THE TIME OF ADOPTION OF THE INITIAL SALES TAX ORDINANCE
15 OR RESOLUTION OR BY AMENDMENT THERETO:

16 (A) THE EXEMPTION FOR SALES OF MACHINERY OR MACHINE TOOLS
17 SPECIFIED IN SECTION 39-26-709 (1), C.R.S.;

18 (B) THE EXEMPTION FOR SALES OF ELECTRICITY, COAL, WOOD,
19 GAS, FUEL OIL, OR COKE SPECIFIED IN SECTION 39-26-715 (1) (a) (II),
20 C.R.S.;

21 (C) THE EXEMPTION FOR SALES OF FOOD SPECIFIED IN SECTION
22 39-26-707 (1) (e), C.R.S.;

23 (D) THE EXEMPTION FOR VENDING MACHINE SALES OF FOOD
24 SPECIFIED IN SECTION 39-26-714 (2), C.R.S.;

25 (E) THE EXEMPTION FOR SALES BY A CHARITABLE ORGANIZATION
26 SPECIFIED IN SECTION 39-26-718 (1) (b), C.R.S.;

27 (F) THE EXEMPTION FOR SALES OF FARM EQUIPMENT AND FARM

1 EQUIPMENT UNDER LEASE OR CONTRACT SPECIFIED IN SECTION 39-26-716
2 (2) (b) AND (2) (c), C.R.S.;

3 (G) THE EXEMPTION FOR SALES OF LOW-EMITTING MOTOR
4 VEHICLES, POWER SOURCES, OR PARTS USED FOR CONVERTING SUCH
5 POWER SOURCES AS SPECIFIED IN SECTION 39-26-719 (1), C.R.S.;

6 (H) THE EXEMPTION FOR SALES OF PESTICIDES SPECIFIED IN
7 SECTION 39-26-716 (2) (e), C.R.S.; AND

8 (I) THE EXEMPTION FOR SALES OF COMPONENTS USED IN THE
9 PRODUCTION OF ALTERNATING CURRENT ELECTRICITY FROM A RENEWABLE
10 ENERGY SOURCE, INCLUDING BUT NOT LIMITED TO WIND, SPECIFIED IN
11 SECTION 39-26-723, C.R.S.; EXCEPT THAT THIS SUB-SUBPARAGRAPH (I)
12 SHALL NOT APPLY TO ANY INCORPORATED TOWN, CITY, OR COUNTY THAT
13 ADOPTED THE EXEMPTION SPECIFIED IN SUB-SUBPARAGRAPH (A) OF THIS
14 SUBPARAGRAPH (I) PRIOR TO THE EFFECTIVE DATE OF THIS
15 SUB-SUBPARAGRAPH (I).

16 (II) IF A TOWN, CITY, OR COUNTY SALES TAX EXPRESSLY INCLUDES
17 ANY EXEMPTIONS SPECIFIED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (d)
18 BY AN AMENDMENT TO THE INITIAL SALES TAX ORDINANCE OR
19 RESOLUTION, SUCH AMENDMENT SHALL BE ADOPTED IN THE SAME MANNER
20 AS THE INITIAL ORDINANCE OR RESOLUTION.

21 (III) IN THE ABSENCE OF AN EXPRESS PROVISION FOR ANY
22 EXEMPTION SPECIFIED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (d), ALL
23 SALES TAX ORDINANCES AND RESOLUTIONS SHALL BE CONSTRUED AS
24 IMPOSING OR CONTINUING TO IMPOSE THE TOWN, CITY, OR COUNTY SALES
25 TAX ON SUCH ITEMS.

26 **SECTION 6.** 29-2-106 (4) (a), Colorado Revised Statutes, is
27 REPEALED AND REENACTED, WITH AMENDMENTS, to read:

1 **29-2-106. Collection - administration - enforcement.**

2 (4) (a) (I) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE
3 SHALL, AT NO CHARGE, ADMINISTER, COLLECT, AND DISTRIBUTE THE SALES
4 TAX OF ANY HOME RULE MUNICIPALITY UPON REQUEST OF THE GOVERNING
5 BODY OF SUCH MUNICIPALITY:

6 (A) IF THE PROVISIONS OF THE SALES TAX ORDINANCE OF SAID
7 MUNICIPALITY, OTHER THAN THOSE PROVISIONS RELATING TO LOCAL
8 PROCEDURES FOLLOWED IN ADOPTING THE ORDINANCE, CORRESPOND TO
9 THE REQUIREMENTS OF THIS ARTICLE FOR SALES TAXES IMPOSED BY
10 COUNTIES, TOWNS, AND CITIES;

11 (B) IF NO USE TAX IS TO BE COLLECTED BY THE DEPARTMENT OF
12 REVENUE EXCEPT AS PROVIDED IN SECTION 39-26-208, C.R.S.; AND

13 (C) WHETHER OR NOT THE ORDINANCE APPLIES THE SALES TAX TO
14 THE EXEMPTIONS LISTED IN SECTION 29-2-105 (1) (d) (I).

15 (II) WHEN THE GOVERNING BODY OF ANY HOME RULE
16 MUNICIPALITY REQUESTS THE DEPARTMENT OF REVENUE TO ADMINISTER,
17 COLLECT, AND DISTRIBUTE THE SALES TAX OF SAID MUNICIPALITY AS
18 SPECIFIED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (a), SAID GOVERNING
19 BODY SHALL CERTIFY TO THE EXECUTIVE DIRECTOR OF THE DEPARTMENT
20 A TRUE COPY OF THE HOME RULE MUNICIPALITY'S SALES TAX ORDINANCE.

21 **SECTION 7.** The introductory portion to 29-2-109 (1), Colorado
22 Revised Statutes, is amended to read:

23 **29-2-109. Contents of use tax ordinances and proposals.**

24 (1) The use tax ordinance, resolution, or proposal of any town, city, or
25 county adopted pursuant to this article shall be imposed only for the
26 privilege of using or consuming in the town, city, or county any
27 construction and building materials purchased at retail or for the privilege

1 of storing, using, or consuming in the town, city, or county any motor and
2 other vehicles, purchased at retail on which registration is required, or
3 both. For the purposes of this subsection (1), the term "construction and
4 building materials" shall not include parts or materials utilized in the
5 fabrication, construction, assembly, or installation of passenger tramways,
6 as defined in section 25-5-702 (4), C.R.S., by any ski area operator, as
7 defined in section 33-44-103 (7), C.R.S., or any person fabricating,
8 constructing, assembling, or installing a passenger tramway for a ski area
9 operator. THE ORDINANCE, RESOLUTION, OR PROPOSAL MAY RECITE THAT
10 THE USE TAX SHALL NOT APPLY TO THE STORAGE AND USE OF
11 COMPONENTS USED IN THE PRODUCTION OF ALTERNATING CURRENT
12 ELECTRICITY FROM A RENEWABLE ENERGY SOURCE, INCLUDING BUT NOT
13 LIMITED TO WIND, AS EXEMPTED FROM THE STATE USE TAX PURSUANT TO
14 SECTION 39-26-723, C.R.S. The ordinance, resolution, or proposal shall
15 recite that the use tax shall not apply:

16 **SECTION 8.** 39-26-709 (1) (a), Colorado Revised Statutes, is
17 amended to read:

18 **39-26-709. Machinery and machine tools.** (1) (a) The
19 following shall be exempt from taxation under the provisions of part 1 of
20 this article:

21 (I) (Deleted by amendment, L. 2004, p. 1022, § 2, effective July
22 1, 2004.)

23 (II) Except as allowed in section 39-30-106, on or after July 1,
24 1996, purchases of machinery or machine tools, or parts thereof, in excess
25 of five hundred dollars to be used in Colorado directly and predominantly
26 in manufacturing tangible personal property, for sale or profit; AND

27 (III) ~~Purchases of machinery and machine tools, or parts thereof,~~

1 ~~used in the production of electricity from a renewable energy source,~~
2 ~~including but not limited to wind, whether or not such purchases are~~
3 ~~capitalized or expensed; and~~

4 (IV) Purchases of machinery and machine tools, or parts thereof,
5 used in the production of electricity in a facility for which a long-term
6 power purchase agreement was fully executed between February 5, 2001,
7 and November 7, 2006, whether or not such purchases are capitalized or
8 expensed.

9 **SECTION 9. Legislative intent.** (1) On November 6, 2006, the
10 executive director of the department of revenue issued final determination
11 DD-598, in which the executive director concluded that machinery used
12 to produce electricity did not qualify for exemption from sales and use tax
13 under section 39-26-709, Colorado Revised Statutes, as in effect prior to
14 legislative amendments made in the 2007 legislative session. Final
15 determination DD-598 is inconsistent with final determination DD-567,
16 which was issued by the executive director on February 5, 2001, and
17 which concluded that certain machinery used in the production of
18 electricity qualified for the exemption from sales and use tax under
19 section 39-26-709, Colorado Revised Statutes.

20 (2) The general assembly is cognizant of pending litigation
21 concerning the scope of section 39-26-709, Colorado Revised Statutes,
22 as in effect prior to 2007. By enacting this legislation, the general
23 assembly does not intend to indicate whether final determination DD-598
24 reflects the correct construction or interpretation of section 39-26-709,
25 Colorado Revised Statutes, or whether the final determination is a change
26 in policy. Furthermore, by enacting this legislation, the general assembly
27 does not intend to indicate whether certain components specified in

1 section 4 of this act may already be exempt from sales and use tax under
2 section 39-26-709, Colorado Revised Statutes.

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