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Seventy-second General Assembly  
STATE OF COLORADO

DRAFT  
10.10.19

BILL 19

LLS NO. 20-0242.01 Pierce Lively x2059

INTERIM COMMITTEE BILL

**Tax Expenditure Evaluation Interim Study Committee**

**BILL TOPIC: "Sales Tax Exemption Industrial & Mfg Energy Use"**

**A BILL FOR AN ACT**

101 **CONCERNING MODIFICATIONS TO THE SALES TAX EXEMPTION FOR**  
102 **CERTAIN ENERGY USES.**

**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://leg.colorado.gov/>.)*

**Tax Expenditure Evaluation Interim Study Committee.** Under current law, the sales tax exemption for energy use exempts the sale and purchase of electricity, gas, fuel oil, steam, coal, coke, or nuclear fuel used in processing, manufacturing, mining, refining, irrigation, construction, telegraph, telephone, and radio communication, street and railroad transportation services, and all industrial uses, and newsprint and

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.*

printer's ink used by newspaper publisher and commercial printers from state sales tax. The bill modifies this sales exemption to only apply when the energy is used by a metered machine.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly  
3 finds and declares that:

4 (a) The sales tax exemption for energy use exempts the sale and  
5 purchase of electricity, gas, fuel oil, steam, coal, coke, or nuclear fuel  
6 used in processing, manufacturing, mining, refining, irrigation,  
7 construction, telegraph, telephone, and radio communication, street and  
8 railroad transportation services, and all industrial uses, and newsprint and  
9 printer's ink used by newspaper publisher and commercial printers.

10 (b) Energy that does not directly contribute to one of the uses  
11 enumerated in the exemption, such as energy used to heat or light break  
12 rooms, office spaces, and sales rooms, does not qualify for the exemption.

13 (c) Because only certain energy qualifies for the sales tax  
14 exemption, it is difficult for certain taxpayers to determine what energy  
15 they use qualifies for the exemption and the exemption is open to fraud.

16 (d) (I) Moreover, there are unique burdens for the taxpayer and  
17 energy provider in tracking and reporting this sales tax exemption.

18 (II) If a taxpayer's energy usage that qualifies for the exemption  
19 is under 75% of the taxpayer's total energy use, the taxpayer must pay the  
20 sales tax to their energy provider on the full amount of their energy  
21 purchases and then apply for a refund from the department of revenue.

22 (III) If a taxpayer's energy usage that qualifies for the exemption  
23 is 75% or more of their total energy use, the taxpayer can file a form with  
24 their energy provider. If the taxpayer files this form, their energy provider

1 does not collect any sales tax from the taxpayer for the taxpayer's energy  
2 purchases. The energy provider reports to the department of revenue the  
3 amount of the taxpayer's energy purchases they exempted from sales tax.  
4 If any of the taxpayer's energy use is not exempt from sales tax, the  
5 taxpayer is responsible for remitting the nonexempt sales tax to the  
6 department of revenue.

7 (IV) There is a separate process for restaurants that claim this  
8 sales tax exemption. Restaurants with sales of food for immediate  
9 consumption that exceed 25% of their total sales revenue can receive the  
10 sales tax exemption for energy use for 55% of the sales tax they paid on  
11 their energy purchases. Restaurants with sales of food for immediate  
12 consumption that are 25% or less of their total sales revenue can claim the  
13 sales tax exemption for energy use for an amount equivalent to 0.5% of  
14 their total food sales.

15 (2) Therefore, it is the intent of the general assembly to simplify  
16 the collection and administration of taxes for the state of Colorado and to  
17 relieve taxpayers' confusion and vendors' administrative burdens by  
18 amending tax expenditures where necessary.

19 **SECTION 2.** In Colorado Revised Statutes, 39-26-102, **amend**  
20 (21)(a) as follows:

21 **39-26-102. Definitions.** As used in this article 26, unless the  
22 context otherwise requires:

23 (21) (a) Sales and purchases of electricity, coal, gas, fuel oil,  
24 steam, coke, or nuclear fuel, for use in processing, manufacturing,  
25 mining, refining, irrigation, construction, telegraph, telephone, and radio  
26 communication, street and railroad transportation services, and all  
27 industrial uses, and newsprint and printer's ink for use by publishers of

1 newspapers and commercial printers shall be deemed to be wholesale  
2 sales and shall be exempt from taxation under this part 1 SO LONG AS THE  
3 ELECTRICITY, COAL, GAS, FUEL OIL, STEAM, COKE, OR NUCLEAR FUEL USED  
4 IS MEASURED BY A METERED MACHINE THAT QUANTIFIES THE AMOUNT OF  
5 ELECTRICITY, COAL, GAS, FUEL OIL, STEAM, COKE, OR NUCLEAR FUEL THAT  
6 IS USED FOR A PURPOSE ENUMERATED IN THIS SECTION.

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