

CHAPTER 347

GOVERNMENT - SPECIAL DISTRICTS

SENATE BILL 13-212

BY SENATOR(S) Jones and Schwartz, Johnston, Aguilar, Carroll, Giron, Guzman, Heath, Kefalas, Kerr, Newell, Nicholson, Steadman, Morse;
also REPRESENTATIVE(S) Tyler, Court, Fields, Fischer, Ginal, Labuda, Lebsock, Lee, Mitsch Bush, Ryden, Salazar, Schafer.

AN ACT

CONCERNING INCREASED OPTIONS FOR FINANCING AVAILABLE THROUGH THE COLORADO NEW ENERGY IMPROVEMENT DISTRICT FOR THE COMPLETION OF NEW ENERGY IMPROVEMENTS, AND, IN CONNECTION THEREWITH, ALLOWING COMMERCIAL BUILDINGS TO ACCESS DISTRICT FINANCING, REQUIRING CONSENT FOR SUBORDINATION OF MORTGAGE LIENS, AND FACILITATING PRIVATE THIRD-PARTY FINANCING.

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

SECTION 1. Short title. This act shall be known and may be cited as the "New Energy Jobs Act of 2013".

SECTION 2. In Colorado Revised Statutes, 32-20-103, **amend** (4), (5) introductory portion, (5) (f), (5) (h), (5) (i), (7), (11), (12) introductory portion, and (14); **repeal** (10) (a); and **add** (1.5) and (5) (j) as follows:

32-20-103. Definitions. As used in this article, unless the context otherwise requires:

(1.5) "COMMERCIAL BUILDING" MEANS ANY REAL PROPERTY OTHER THAN A RESIDENTIAL BUILDING CONTAINING FEWER THAN FIVE DWELLING UNITS AND INCLUDES ANY OTHER IMPROVEMENT OR CONNECTED LAND THAT IS BILLED WITH THE IMPROVEMENT FOR PURPOSES OF AD VALOREM PROPERTY TAXATION.

(4) "Eligible real property" means a residential OR COMMERCIAL building, located within a county in which the district has been authorized to conduct the program as required by section 32-20-105 (3), on which or in which a new energy improvement to be financed by the district has been or will be completed.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(5) "Energy efficiency improvement" means one or more installations or modifications to eligible real property that are designed to reduce the energy consumption of the property ~~and that are not required by a building code as part of new construction or a major renovation~~ and includes, but is not limited to, the following:

(f) Replacement or modification of lighting fixtures to increase the energy efficiency of the system; ~~without increasing the overall illumination of eligible real property unless the increase in illumination is necessary to conform to the applicable building code for the proposed lighting system;~~

(h) Daylighting systems; ~~and~~

(i) ~~Any other modification, installation, or remodeling approved as a utility cost-savings measure by the district.~~ ELECTRIC VEHICLE CHARGING EQUIPMENT ADDED TO THE BUILDING OR ITS ASSOCIATED PARKING AREA; AND

(j) ANY OTHER MODIFICATION, INSTALLATION, OR REMODELING APPROVED AS A UTILITY COST-SAVINGS MEASURE BY THE DISTRICT.

(7) "New energy improvement" means one or more on-site energy efficiency improvements or renewable energy improvements, or both, made to eligible real property that will reduce the energy consumption of or add energy produced from renewable energy sources ~~only~~ WITH REGARD to any portion of the eligible real property. ~~that is used predominantly as a place of residency.~~

(10) "Qualified applicant" means a person who:

(a) ~~Owns eligible real property that has a ratio of loan balance to its actual value of ninety-five percent or less at the time the person's program application is approved, as shown in the records of the county assessor, unless the holder of the deed of trust or mortgage recorded against the eligible real property that has priority over all other deeds of trust or mortgages recorded against the eligible real property has consented in writing to the levying of a special assessment against the eligible real property.~~

(11) "Reimbursement or a direct payment" means the payment by the district to a district member, or on behalf of ~~such~~ a district member to a contractor that has completed a new energy improvement to the district member's eligible real property, of all or a portion of the cost of completing a new energy improvement. Utility rebates offered to program participants by a qualifying retail utility for the purpose of compliance with renewable energy targets established in section 40-2-124, C.R.S., ~~shall be~~ ARE subject to the retail rate impact cap established pursuant to section 40-2-124 (1) (g) (I), C.R.S. ~~The maximum amount of reimbursement or a direct payment that may be made shall be the lowest of the full cost of completing a new energy improvement, twenty percent of the actual value, as specified in the records of the county assessor, of the eligible real property to which the new energy improvement is made, or twenty-five thousand dollars; except that the twenty-five thousand dollar limit shall be adjusted by the district for each calendar year commencing on or after January 1, 2012, based on the consumer price index for the Denver-Boulder-Greeley metropolitan statistical area for the state fiscal year that~~

ends in the preceding calendar year:

(12) "Renewable energy improvement" means one or more fixtures, products, systems, or devices, or an interacting group of fixtures, products, systems, or devices, that directly benefit eligible real property through a qualified community location, as defined in section 30-20-602 (4.3), C.R.S., enacted by Senate Bill 10-100, enacted in 2010, or that are installed behind the meter of any eligible real property and that produce energy from renewable resources, including but not limited to, photovoltaic, solar thermal, small wind, low-impact hydroelectric, biomass, FUEL CELL, or geothermal systems such as ground source heat pumps, as may be approved by the district; except that no renewable energy improvement shall be authorized that interferes with a right held by a public utility under a certificate issued by the public utilities commission under article 5 of title 40, C.R.S. Nothing in this article shall limit the right of a public utility, subject to article 3 or 3.5 of title 40, C.R.S., or section 40-9.5-106, C.R.S., to assess fees for the use of its facilities or modify or expand the net metering limitations established in sections 40-9.5-118 and 40-2-124 (7), C.R.S. Primary jurisdiction to hear any disputes as to whether a renewable energy improvement interferes with such a right shall lie:

(14) "Special assessment" or "assessment" means a charge levied by the district against eligible real property specially benefited by a new energy improvement for which the district has made or will make reimbursement or a direct payment that is proportional to the benefit received from the new energy improvement and does not exceed the estimated amount of special benefits received OR THE FULL COST OF COMPLETING THE NEW ENERGY IMPROVEMENT.

SECTION 3. In Colorado Revised Statutes, 32-20-104, **amend** (2) (a) introductory portion, (2) (a) (I), (2) (a) (II), and (3); and **repeal** (2) (a) (III), (2) (a) (IV), (2) (a) (V), and (2) (a) (VI), as follows:

32-20-104. Colorado new energy improvement district - creation - board - meetings - quorum - expenses - records. (2) (a) The district ~~shall be~~ IS governed by a board of directors, which shall exercise the powers of the district, shall, by a majority vote of a quorum of its members, select from its membership a chair, ~~and a vice-chair, AND SECRETARY, and shall be~~ IS composed of ~~nine~~ SEVEN members, including:

(I) The ~~following two ex officio members or their designees:~~

~~(A) The director of the Colorado energy office created in section 24-38.5-101 (1), C.R.S., OR THE DIRECTOR'S DESIGNEE; and~~

~~(B) The director of the Colorado office of economic development created in section 24-48.5-101 (1), C.R.S.;~~

(II) The following ~~five~~ SIX members appointed by the governor BY SEPTEMBER 1, 2013:

(A) One member who has executive-level experience in ~~the affordable housing industry~~ COMMERCIAL OR RESIDENTIAL REAL ESTATE DEVELOPMENT;

~~(B) One member who has executive-level experience in the lending industry~~ TWO MEMBERS WHO EACH HAVE AT LEAST TEN YEARS OF EXECUTIVE-LEVEL EXPERIENCE WITH ONE OR MORE FINANCIAL INSTITUTIONS, AT LEAST ONE OF WHOM HAS HAD SUCH EXPERIENCE WITH ONE OR MORE FINANCIAL INSTITUTIONS HAVING TOTAL ASSETS OF LESS THAN ONE BILLION DOLLARS;

~~(C) One member who is an attorney licensed to practice law in Colorado and who shall serve as the secretary of the board~~ HAS EXECUTIVE-LEVEL EXPERIENCE IN THE UTILITY INDUSTRY;

(D) One member who represents the energy efficiency industry; and

(E) One member who represents ~~local governments~~ THE RENEWABLE ENERGY INDUSTRY.

~~(III) One member appointed by the president of the senate who has executive-level experience in the renewable energy industry;~~

~~(IV) One member appointed by the speaker of the house of representatives who has executive-level experience in the financial industry;~~

~~(V) One member appointed by the minority leader of the senate who has executive-level experience in the utility industry; and~~

~~(VI) One member appointed by the minority leader of the house of representatives who has executive-level experience in the housing industry.~~

(3) ~~Six~~ FOUR members of the board shall constitute a quorum for the purpose of conducting business and exercising the powers of the board. Action may be taken by the board upon the affirmative vote of at least ~~six~~ FOUR of its members. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the board.

SECTION 4. In Colorado Revised Statutes, 32-20-105, **amend** (3) introductory portion, (3) (d), (3) (e), (3) (g), and (4); and **add** (3) (h) and (3) (i) as follows:

32-20-105. District - purpose - general powers and duties - new energy improvement program. (3) The district shall establish, develop, finance, and administer a new energy improvement program. However, the district may conduct the program within any given county only if the board of county commissioners of the county has adopted a resolution authorizing the district to conduct the program within the county. The DISTRICT SHALL DESIGN THE program ~~shall be designed~~ to allow an owner of eligible real property to apply to join the district, receive reimbursement or a direct payment from the district, and consent to the levying of a special assessment on the eligible real property specially benefited by a new energy improvement for which the district makes reimbursement or a direct payment. The district shall establish an application process for the program ~~which may allow~~ THAT ALLOWS an owner of eligible real property to become a qualified applicant by submitting an application to the district and ~~which~~ THAT may include one or more deadlines for the filing of an application. THE APPLICATION PROCESS MUST REQUIRE THE APPLICANT TO SUBMIT WITH THE APPLICATION A COMMITMENT

OF TITLE INSURANCE ISSUED BY A DULY LICENSED COLORADO TITLE INSURANCE COMPANY WITHIN THIRTY DAYS BEFORE THE DATE THE APPLICATION IS SUBMITTED. The district may charge program application fees. In order to administer the program, the district, acting directly or through a program administrator or ~~such~~ other agents, employees, or professionals as the district may appoint, hire, retain, or contract with, MAY AGGREGATE QUALIFIED APPLICANTS INTO ONE OR MORE BOND ISSUES AND shall:

(d) Encourage OR REQUIRE, AS DETERMINED BY THE DISTRICT, any qualified applicant to obtain an ~~online or on-site home~~ energy audit in order to ensure the efficient use of new energy improvement funding pursuant to this article;

(e) Inform prospective program applicants and qualified applicants of private financing options not provided by the district, including, ~~but not limited to~~ AS APPROPRIATE, home equity loans, ~~and~~ home equity lines of credit, COMMERCIAL LOANS, AND COMMERCIAL LINES OF CREDIT that may, with respect to a particular applicant, represent viable alternatives for financing new energy improvements;

(g) Take appropriate steps to monitor the quality of new energy improvements for which the district has made reimbursement or a direct payment if deemed necessary by the board, measure the total energy savings achieved by the program, monitor the total number of program participants, the total amount paid to contractors, the number of jobs created by the program, the number of defaults by program participants, and the total losses from the defaults, and calculate the total amount of bonds issued by the district. On or before March 1, ~~2011~~ 2014, and on or before each subsequent March 1, the district shall report to the state, veterans, and military affairs committees of the general assembly, or any successor committees, regarding the information obtained as required by this paragraph (g);

(h) DEVELOP PROGRAM GUIDELINES GOVERNING THE TERMS AND CONDITIONS UNDER WHICH PRIVATE THIRD-PARTY FINANCING, OTHER THAN THAT OBTAINED THROUGH ISSUANCE OF A DISTRICT BOND, IS AVAILABLE TO QUALIFIED APPLICANTS THROUGH THE PROGRAM AND, IN CONNECTION THEREWITH, MAY SERVE AS AN AGGREGATING ENTITY FOR THE PURPOSE OF SECURING PRIVATE THIRD-PARTY FINANCING FOR NEW ENERGY IMPROVEMENTS PURSUANT TO THIS ARTICLE; AND

(i) IN CONNECTION WITH THE FINANCING OF NEW ENERGY IMPROVEMENTS EITHER BY THIRD PARTIES PURSUANT TO PARAGRAPH (h) OF THIS SUBSECTION (3) OR DISTRICT BONDS AND IN CONSULTATION WITH REPRESENTATIVES FROM THE BANKING INDUSTRY, COUNTIES, MUNICIPALITIES, AND PROPERTY OWNERS, DEVELOP THE PROCESSES TO ENSURE THAT MORTGAGE HOLDER CONSENT IS OBTAINED IN ALL CASES FOR ALL ELIGIBLE REAL PROPERTY PARTICIPATING IN THE PROGRAM TO SUBORDINATE THE PRIORITY OF SUCH MORTGAGES TO THE PRIORITY OF THE LIEN ESTABLISHED IN SECTION 32-20-107.

(4) The district shall establish underwriting guidelines that consider program applicants' qualifications, credit-worthiness, home OR COMMERCIAL BUILDING equity, and other appropriate factors, including ~~but not limited to~~ credit reports, credit scores, and loan-to-value ratios, consistent with good and customary lending practices, and as required in order for the district OR THIRD PARTIES to obtain a bond rating necessary for a successful bond sale. The district shall also arrange for an

appropriate loss reserve in order to obtain the necessary bond rating.

SECTION 5. In Colorado Revised Statutes, 32-20-106, **amend** (1) and (2) (b); and **repeal** (2) (a) and (2) (c) as follows:

32-20-106. Special assessments - determination of special benefits - notice and hearing requirements - certification of assessment roll - manner of collection. (1) The approval by the district of a program application shall establish the qualified applicant who submitted the application as a district member, include the qualified applicant's eligible real property within the boundaries of the district, entitle the district member to reimbursement or a direct payment, and, subject to the provisions of subsection (3) of this section, constitute the consent of the district member to the levying of a special assessment on the district member's eligible real property in an amount that does not exceed the value of:

(a) The special benefit provided to the eligible real property by the new energy improvement; OR

(b) THE ELIGIBLE REAL PROPERTY.

(2) For the purpose of determining the amount of the special assessment to be levied on a particular unit of eligible real property within the district, "special benefit" includes, but is not limited to:

~~(a) Any increase in the market value of the eligible real property resulting from the completion of a new energy improvement;~~

(b) Any cost of completing a new energy improvement that is defrayed by reimbursement or a direct payment; AND

~~(c) Any reduction in energy-related utility bills for the eligible real property caused by a quantifiable reduction in the energy consumption of the eligible real property resulting from the completion of a new energy improvement; and~~

SECTION 6. In Colorado Revised Statutes, 32-20-107, **amend** (1), (2), (4) (b), and (4) (f) as follows:

32-20-107. Special assessment constitutes lien - filing - sale of property for nonpayment. (1) (a) A special assessment, together with all interest thereon and penalties for default in payment thereof, and associated collection costs ~~shall constitute~~ CONSTITUTES, from the date of the recording of the assessing resolution and assessment roll pursuant to subsection (2) of this section, a perpetual lien in the amount assessed against the assessed eligible real property and ~~shall have~~ HAS priority over all other liens; except that:

(I) General tax liens ~~shall~~ have priority over district special assessment liens;

(II) A DISTRICT SPECIAL ASSESSMENT LIEN HAS PRIORITY OVER PREEXISTING LIENS ONLY IF EACH LIENHOLDER CONSENTS AS SPECIFIED IN SECTION 32-20-105 (3) (i) AND EACH CONSENT AND THE ASSESSMENT LIEN ARE RECORDED IN THE REAL ESTATE RECORDS OF THE COUNTY WHERE THE PROPERTY IS LOCATED. BEFORE THE

RECORDING OF THE ASSESSMENT LIEN, THE APPLICANT MUST SUBMIT TO THE DISTRICT:

(A) WRITTEN CONSENT TO THE ASSESSMENT BY ALL INDIVIDUALS OR ENTITIES SHOWN ON A COMMITMENT OF TITLE INSURANCE AS HOLDERS OF MORTGAGES OR DEEDS OF TRUST ENCUMBERING THE APPLICANT'S PROPERTY; AND

(B) EVIDENCE THAT THERE ARE NO DELINQUENT TAXES, SPECIAL ASSESSMENTS, OR WATER OR SEWER CHARGES ON THE PROPERTY; THAT THE PROPERTY IS NOT SUBJECT TO A TRUST DEED OR OTHER LIEN ON WHICH THERE IS A RECORDED NOTICE OF DEFAULT, FORECLOSURE, OR DELINQUENCY THAT HAS NOT BEEN CURED; AND THAT THERE ARE NO INVOLUNTARY LIENS, INCLUDING A LIEN ON REAL PROPERTY OR ON THE PROCEEDS OF A CONTRACT RELATING TO REAL PROPERTY, FOR SERVICES, LABOR, OR MATERIALS FURNISHED IN CONNECTION WITH THE CONSTRUCTION OR IMPROVEMENT OF THE PROPERTY; and

(III) Liens for assessments imposed by other governmental entities shall have coequal priority with district special assessment liens.

(b) Neither the sale of eligible real property in the district to enforce the payment of general ad valorem taxes nor the issuance of a treasurer's deed in connection with such a sale shall extinguish the lien of a special assessment. If assessed eligible real property assessed is subdivided, the BOARD MAY APPORTION THE assessment lien may be apportioned by the board in such THE manner as may be provided in the assessing resolution.

(2) The district shall transmit to a county clerk and recorder of a county that includes eligible real property included in the district copies of the district's assessing resolution after its final adoption by the board and the assessment roll for recording on the land records of each unit of eligible real property assessed within the county as provided in article 30, 35, or 36 of title 38, C.R.S. The assessing resolution and assessment roll shall be indexed in the grantor index under the name of the district member and in the grantee index under the Colorado new energy improvement district. In addition, the county clerk and recorder shall file copies of the assessing resolution, after its final adoption by the board, and the assessment roll with the county assessor and the county treasurer. The county assessor is authorized to create separate schedules for each unit of eligible real property assessed within the county pursuant to the resolution. IN ASSESSING THE VALUE OF ELIGIBLE REAL PROPERTY, THE COUNTY ASSESSOR SHALL NOT TAKE INTO ACCOUNT ANY INCREASE IN THE MARKET VALUE OF THE ELIGIBLE REAL PROPERTY RESULTING FROM THE COMPLETION OF A NEW ENERGY IMPROVEMENT.

(4) (b) At any sale by a county treasurer of any eligible real property for the purpose of paying a special assessment, the board may purchase the property for the district without paying for the property in cash and shall receive certificates of purchase for the property in the name of the district. The certificates shall be received and credited at their face value, with all interest and penalties accrued, on account of the assessment installment in pursuance of which the sale was made. The certificates BOARD may thereafter be sold by the board SELL THE CERTIFICATES at their face value, with all interest and penalties accrued, and assigned to the purchaser in the name of the district. The BOARD SHALL CREDIT THE proceeds of the

sale ~~shall be credited~~ to the fund created by resolution for the payment of ~~such~~ THE assessments, respectively; EXCEPT THAT, IF THE NEW ENERGY IMPROVEMENTS WERE FINANCED UNDER SECTION 32-20-105 (3) (h), THE BOARD SHALL CREDIT THE PROCEEDS OF THE SALE TO THE PRIVATE THIRD PARTY THAT FINANCED THE NEW ENERGY IMPROVEMENTS. If the district has repaid all special assessment bonds in full, the BOARD MAY SELL THE certificates ~~may be sold by the board~~ for the best price obtainable at public sale, at auction, or by sealed bids in the same manner and under the same conditions as provided in paragraph (d) of this subsection (4). Such assignments ~~shall be~~ ARE without recourse, and the sale and assignments ~~shall~~ operate as a lien in favor of the purchaser and assignee as is provided by law in the case of sale of real estate in default of payment of the general property tax.

(f) The BOARD SHALL CREDIT THE proceeds of any sale of property ~~shall be credited~~ to the appropriate special assessment fund; EXCEPT THAT, IF THE NEW ENERGY IMPROVEMENTS WERE FINANCED UNDER SECTION 32-20-105 (3) (h), THE BOARD SHALL CREDIT THE PROCEEDS OF THE SALE TO THE PRIVATE THIRD PARTY THAT FINANCED THE NEW ENERGY IMPROVEMENTS. The district shall deduct ~~therefrom~~ FROM THE APPROPRIATE SPECIAL ASSESSMENT FUND the necessary expenses in securing deeds and taking proceedings for the sale or foreclosure.

SECTION 7. In Colorado Revised Statutes, 32-20-108, **amend** (1) and (8) as follows:

32-20-108. Special assessment bonds - legal investment - exemption from taxation. (1) The district shall issue special assessment bonds in an aggregate principal amount of not more than eight hundred million dollars for the purpose of generating the moneys needed to make reimbursement or a direct payment to district members and to pay other costs of the district. The ~~bonds~~ BOARD shall ~~be issued~~ ISSUE THE BONDS pursuant to a resolution of the board or a trust indenture, ~~shall~~ MUST not be secured by an encumbrance, mortgage, or other pledge of real or personal property of the district, and ~~shall be~~ ARE payable from special assessments, OTHER THAN THOSE ATTRIBUTABLE TO PRIVATE THIRD-PARTY FINANCING UNDER SECTION 32-20-105 (3) (h), and any other lawfully pledged district revenues unless the bond resolution or trust indenture specifically limits the source of district revenues from which the bonds are payable. The bonds ~~shall~~ DO not constitute a debt or other financial obligation of the state. The board may adopt one or more resolutions creating special assessment units comprised of multiple units of eligible real property on which the board has levied a special assessment and may issue special assessment bonds payable from special assessments imposed within the entire district, OTHER THAN THOSE ATTRIBUTABLE TO PRIVATE THIRD-PARTY FINANCING UNDER SECTION 32-20-105 (3) (h), or from special assessments imposed only within one or more specified special assessment units.

(8) (a) The state hereby pledges and agrees with the holders of any bonds, PRIVATE THIRD PARTIES THAT HAVE FINANCED NEW ENERGY IMPROVEMENTS UNDER SECTION 32-20-105 (3) (h), and ~~with~~ those parties who enter into contracts with the district pursuant to this article that the state will not limit, alter, restrict, or impair the rights vested in the district or the rights or obligations of any person with which the district contracts to fulfill the terms of any agreements made pursuant to this article. The state further agrees that it will not in any way impair the rights or remedies of:

(I) The holders of bonds until the bonds have been paid or until adequate provision for payment has been made; OR

(II) THE PRIVATE THIRD PARTIES THAT HAVE FINANCED NEW ENERGY IMPROVEMENTS UNDER SECTION 32-20-105 (3) (h).

(b) The district may include ~~this provision and undertaking for the district~~ THE PROVISIONS SPECIFIED IN PARAGRAPH (a) OF THIS SUBSECTION (8) in its bonds OR CONTRACTS WITH PRIVATE THIRD PARTIES THAT HAVE FINANCED NEW ENERGY IMPROVEMENTS UNDER SECTION 32-20-105 (3) (h).

SECTION 8. In Colorado Revised Statutes, **repeal** 32-20-110 as follows:

32-20-110. Repeal of article - inapplicable if the district has outstanding bond obligations. ~~(1) Except as otherwise provided in subsection (2) of this section, this article is repealed, effective January 1, 2016.~~

~~(2) In accordance with section 32-20-108 (8), this article shall not be repealed as provided in subsection (1) of this section if the district has issued bonds that have not been repaid in full as of January 1, 2016. However, the district shall not accept any new application for the program or issue any additional bonds on or after January 1, 2016.~~

SECTION 9. Applicability. This act applies to conduct occurring on or after the effective date of this act.

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

Approved: May 28, 2013