

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

REREVISED

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

LLS NO. 16-1017.01 Jason Gelender x4330

SENATE BILL 16-171

SENATE SPONSORSHIP

Martinez Humenik and Scheffel, Jones

HOUSE SPONSORSHIP

Tyler and Becker J.,

Senate Committees
Local Government

House Committees
Transportation & Energy

HOUSE
3rd Reading Unamended
April 25, 2016

A BILL FOR AN ACT

101 **CONCERNING MODIFICATION AND CLARIFICATION OF THE STATUTES**
102 **PERTAINING TO THE NEW ENERGY IMPROVEMENT DISTRICT.**

HOUSE
2nd Reading Unamended
April 22, 2016

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>.)

SENATE
3rd Reading Unamended
April 1, 2016

The new energy improvement district (NEID) is a statewide district that operates a program to facilitate private financing of energy and water improvements to eligible real property. The bill modifies and clarifies the statutes that pertain to the NEID as follows:

! **Section 2** requires the county treasurer of a county that has authorized the operation of the NEID program (program)

SENATE
2nd Reading Unamended
March 31, 2016

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.

in the county to retain a one percent collection fee for each NEID special assessment that it collects, and authorizes such a county to revoke its authorization for the operation of the program so long as the county meets all of its obligations as to program financing obligations existing on the effective date of the deauthorization until any and all special assessments within the county have been paid in full to the NEID.

- ! **Section 3** repeals the authority of the NEID to reduce the amount of any special assessment with the consent of the owner of the property on which the special assessment is levied, clarifies that delinquent special assessment installments incur interest charges at the same rate as delinquent property taxes, and requires the county treasurer to distribute NEID special assessments to the NEID in the same manner, less the collection fee, as property taxes are distributed.
- ! **Section 4** repeals an existing prohibition against a county assessor taking into account, when valuing real property, an increase in its market value resulting from an energy or water improvement financed through the NEID program and repeals existing authority for the NEID to initiate a civil action for foreclosure.
- ! **Sections 1 through 4** also make various technical and clarifying changes.

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

2 **SECTION 1.** In Colorado Revised Statutes, 32-20-104, **amend**
3 (2) (a) (II) introductory portion and (6) as follows:

4 **32-20-104. Colorado new energy improvement district -**
5 **creation - board - meetings - quorum - expenses - records.** (2) (a) The
6 district is governed by a board of directors, which shall exercise the
7 powers of the district, shall, by a majority vote of a quorum of its
8 members, select from its membership a chair, vice-chair, and secretary,
9 and is composed of seven members, including:

10 (II) The following six members appointed by the governor: ~~by~~
11 ~~September 1, 2013:~~

1 (6) The district ~~shall be considered~~ IS a special district included
2 within the definition of the state or any of its political subdivisions FOR
3 PURPOSES OF AND AS set forth in section 2 (14.6) of article XXVIII of the
4 state constitution and shall IS, accordingly, be subject to the sole source
5 contracting provisions of sections 15 to 17 of said article XXVIII.

6 **SECTION 2.** In Colorado Revised Statutes, 32-20-105, **amend**
7 (3) introductory portion and (3) (i) as follows:

8 **32-20-105. District - purpose - general powers and duties -**
9 **new energy improvement program.** (3) The district shall establish,
10 develop, finance, and administer a new energy improvement program.
11 However, the district may conduct the program within any given county
12 only if the board of county commissioners of the county has adopted a
13 resolution authorizing the district to conduct the program within the
14 county. IF A COUNTY ADOPTS A RESOLUTION AUTHORIZING THE DISTRICT
15 TO CONDUCT THE PROGRAM WITHIN THE COUNTY, THE COUNTY
16 TREASURER SHALL RETAIN A COLLECTION FEE AS SPECIFIED IN SECTION
17 30-1-102 (1) (c), C.R.S., FOR EACH SPECIAL ASSESSMENT THAT IT
18 COLLECTS AS PART OF THE PROGRAM. THE BOARD OF COUNTY
19 COMMISSIONERS OF ANY COUNTY THAT HAS ADOPTED A RESOLUTION
20 AUTHORIZING THE DISTRICT TO CONDUCT THE PROGRAM WITHIN THE
21 COUNTY MAY SUBSEQUENTLY ADOPT A RESOLUTION DEAUTHORIZING THE
22 DISTRICT FROM CONDUCTING THE PROGRAM WITHIN THE COUNTY.
23 HOWEVER, IF THE COUNTY ADOPTS A DEAUTHORIZING RESOLUTION, THE
24 COUNTY SHALL CONTINUE TO MEET ALL OF ITS OBLIGATIONS UNDER THIS
25 ARTICLE AS TO PROGRAM FINANCING OBLIGATIONS EXISTING ON THE
26 EFFECTIVE DATE OF THE DEAUTHORIZATION UNTIL ANY AND ALL SPECIAL
27 ASSESSMENTS WITHIN THE COUNTY HAVE BEEN PAID IN FULL AND

1 REMITTED TO THE DISTRICT. The district shall design the program to allow
2 an owner of eligible real property to apply to join the district, receive
3 reimbursement or a direct payment from the district, and consent to the
4 levying of a special assessment on the eligible real property specially
5 benefited by a new energy improvement for which the district makes
6 reimbursement or a direct payment. The district shall establish an
7 application process for the program that allows an owner of eligible real
8 property to become a qualified applicant by submitting an application to
9 the district and that may include one or more deadlines for the filing of an
10 application. The application process must require the applicant to submit
11 with the application a commitment of title insurance issued by a duly
12 licensed Colorado title insurance company within thirty days before the
13 date the application is submitted. The district may charge program
14 application fees. In order to administer the program, the district, acting
15 directly or through a program administrator or other agents, employees,
16 or professionals as the district may appoint, hire, retain, or contract with,
17 may aggregate qualified applicants into one or more bond issues and
18 shall:

19 (i) In connection with the financing of new energy improvements
20 either by third parties pursuant to paragraph (h) of this subsection (3) or
21 district bonds and in consultation with representatives from the banking
22 ~~industry, counties, municipalities,~~ INDUSTRY and property owners,
23 develop the processes to ensure that mortgage holder consent is obtained
24 in all cases for all eligible real property participating in the program to
25 subordinate the priority of such mortgages to the priority of the lien
26 established in section 32-20-107.

27 **SECTION 3.** In Colorado Revised Statutes, 32-20-106, **amend**

1 (3) (a) introductory portion, (4), (5), (7), and (8); and **repeal** (6) as
2 follows:

3 **32-20-106. Special assessments - determination of special**
4 **benefits - notice and hearing requirements - certification of**
5 **assessment roll - manner of collection.** (3) (a) The district may levy a
6 special assessment against eligible real property specially benefited by a
7 new energy improvement based on the cost to the district of the new
8 energy improvement. The district shall initiate the levy of any SPECIAL
9 assessment by the adoption of a resolution of the board that sets the
10 SPECIAL assessment, approves the preparation of a preliminary SPECIAL
11 assessment roll, and sets a date for a public hearing regarding the SPECIAL
12 assessment roll. The district shall prepare a preliminary SPECIAL
13 assessment roll listing all special assessments to be levied. The district
14 may post notice of the hearing on the SPECIAL assessment on any district
15 internet website and shall send notice that the SPECIAL assessment roll has
16 been completed and notice of a hearing on the SPECIAL assessment roll no
17 later than thirty days before the hearing date to:

18 (4) The board shall prepare or cause to be prepared a district
19 SPECIAL assessment roll in book form showing ~~in suitable columns~~ FOR
20 each unit of eligible real property assessed, the total amount of SPECIAL
21 assessment, the amount of each installment of principal and interest if the
22 SPECIAL assessment is payable in installments, and the date when each
23 installment will become due. ~~The assessment roll shall have suitable~~
24 ~~columns for use in case of payment of the whole amount or of any~~
25 ~~installment or penalty.~~ The board shall deliver the SPECIAL assessment
26 roll, duly certified, under the corporate seal, for collection to the treasurer
27 of each county in which the district has assessed eligible real property

1 After delivery of the assessment roll, the district may reduce the amount
2 of any special assessment with the consent of the owner of the eligible
3 real property on which the special assessment is levied NO LATER THAN
4 DECEMBER 1 OF EACH YEAR.

5 (5) All special assessments shall be due AT THE SAME TIME AS and
6 payable ~~within thirty days after the effective date of the assessing~~
7 ~~resolution without demand, but all such assessments may be paid, at the~~
8 ~~election of the owner, in installments with interest as provided in~~
9 ~~subsection (6) of this section; except that the board may provide that~~
10 ~~special assessments be due and payable at such alternate time as set forth~~
11 ~~in the assessing resolution. Failure of a district member to pay the whole~~
12 ~~special assessment within said period of thirty days shall be conclusively~~
13 ~~considered and held to be an election on the part of the district member~~
14 ~~to pay in installments~~ IN THE SAME MANNER AS PROPERTY TAXES, AS
15 SPECIFIED IN SECTION 39-10-104.5, C.R.S.

16 (6) ~~In case of an election to pay in installments, the special~~
17 ~~assessments shall be payable in two or more installments of principal,~~
18 ~~which shall be payable as prescribed by the board over a period of not~~
19 ~~more than twenty years, with interest in all cases on the unpaid principal.~~
20 ~~The number and amounts of payment of installments, the period of~~
21 ~~payment, and the rate and times of payment of interest shall be~~
22 ~~determined by the board and set forth in the assessing resolution. The~~
23 ~~times of payment of installments shall be the same as the times of~~
24 ~~payment for installments of property taxes as specified in section~~
25 ~~39-10-104.5 (2), C.R.S.; except that special assessments may be payable~~
26 ~~at such alternate times as provided by the board in the assessing~~
27 ~~resolution.~~

1 (7) Failure to pay any installment on special assessments, whether
2 of principal or interest, when due ~~shall give~~ GIVES the district the right to
3 declare the ~~delinquent~~ installments ~~due and collectible immediately~~
4 DELINQUENT, and upon such a declaration the whole amount of the unpaid
5 principal and accrued interest shall thereafter draw interest at the SAME
6 rate ~~established pursuant to section 5-12-106 (2) and (3), C.R.S., until the~~
7 ~~day of sale~~ AS DELINQUENT PROPERTY TAXES AS SPECIFIED IN SECTION
8 39-10-104.5 (3) (c), C.R.S. THE COUNTY TREASURER SHALL INCLUDE THE
9 DELINQUENT INSTALLMENT AMOUNT AS PART OF THE TAX LIEN SALE. At
10 any time prior to the day of THE TAX LIEN sale, the district member may
11 pay the amount of ~~all unpaid~~ THE DELINQUENT installments, with interest
12 at the penalty rate set by the assessing resolution, and all costs of
13 collection accrued and shall thereupon be restored to the right thereafter
14 to pay in installments in the same manner as if default had not ~~been~~
15 ~~suffered. A district member not in default as to any installment or~~
16 ~~payment may, at any time, pay the whole of the unpaid principal with the~~
17 ~~interest accruing to the maturity of the next installment of interest or~~
18 ~~principal~~ OCCURRED.

19 (8) (a) Payment of special assessments may be made to a county
20 treasurer at any time ~~within thirty days after the effective date of the~~
21 ~~assessing resolution~~ AFTER THE COUNTY ASSESSOR HAS CERTIFIED THE
22 TAX ROLL AND THE COUNTY TREASURER IS PREPARED TO ACCEPT
23 PAYMENTS FOR THAT PROPERTY TAX YEAR, and the county treasurer shall
24 ~~promptly forward all special assessment payments received to the district.~~
25 ~~At the expiration of the thirty-day period, each county treasurer of a~~
26 ~~county that includes eligible real property in the district shall return the~~
27 ~~district assessment roll for the county to the board, therein showing all~~

1 ~~payments made thereon, with the date of each payment. The roll shall be~~
2 ~~certified by the board under the seal of the board and by the board~~
3 ~~delivered to each county treasurer, with the treasurer's warrant for its~~
4 ~~collection. The county treasurer shall receipt the roll, and all such rolls~~
5 ~~shall be numbered or identified by county for convenient reference~~ REMIT
6 ALL SPECIAL ASSESSMENTS COLLECTED, LESS THE COLLECTION FEE
7 REQUIRED BY SECTION 32-20-105 (3), TO THE DISTRICT IN THE SAME
8 MANNER AS TAXES ARE DISTRIBUTED IN ACCORDANCE WITH SECTION
9 39-10-107, C.R.S.

10 (b) ~~The~~ EACH owner of any divided or undivided interest in
11 eligible real property assessed ~~may pay the owner's share of~~ IS JOINTLY
12 AND SEVERALLY LIABLE FOR THE FULL AMOUNT OF any SPECIAL
13 assessment. ~~upon producing evidence of the extent of the owner's interest~~
14 ~~satisfactory to the treasurer having the roll in charge; except that the~~ A
15 SPECIAL assessment lien ~~shall remain~~ REMAINS on the entire property
16 assessed until the entire SPECIAL assessment is paid, except as otherwise
17 provided pursuant to section 32-20-107.

18 **SECTION 4.** In Colorado Revised Statutes, 32-20-107, **amend**
19 (1) (a) (I), (1) (a) (II) introductory portion, (1) (a) (II) (A), (1) (b), (2), (3),
20 (4) (a), (4) (b), (4) (c), and (4) (d); **add** (4) (g); and **repeal** (4) (e) as
21 follows:

22 **32-20-107. Special assessment constitutes lien - filing - sale of**
23 **property for nonpayment.** (1) (a) A special assessment, together with
24 all interest thereon and penalties for default in payment thereof, and
25 associated collection costs constitutes, from the date of the recording of
26 the assessing resolution and assessment roll pursuant to subsection (2) of
27 this section, a perpetual lien in the amount assessed against the assessed

1 eligible real property and has priority over all other liens; except that:

2 (I) General PROPERTY tax liens have priority over district special
3 assessment liens;

4 (II) A district special assessment lien has priority over preexisting
5 liens only if each lienholder consents as specified in section 32-20-105

6 (3) (i) and each consent and the ~~assessment lien~~ SPECIAL ASSESSMENT
7 LIEN AND SPECIAL ASSESSMENT ROLL are recorded in the real estate
8 records of the county where the property is located. Before the recording
9 of the ~~assessment lien~~ SPECIAL ASSESSMENT LIEN AND SPECIAL
10 ASSESSMENT ROLL, the applicant must submit to the district:

11 (A) Written consent to the SPECIAL assessment by all individuals
12 or entities shown on a commitment of title insurance as holders of
13 mortgages or deeds of trust encumbering the applicant's property; and

14 (b) Neither the sale of eligible real property OR TAX LIENS in the
15 district to enforce the payment of general ad valorem taxes nor the
16 issuance of a treasurer's deed in connection with the sale extinguishes the
17 lien of a special assessment. If assessed eligible real property is
18 subdivided, the board may apportion the SPECIAL assessment lien in the
19 manner provided in the assessing resolution.

20 (2) The district shall transmit to a county clerk and recorder of a
21 county that includes eligible real property included in the district copies
22 of the district's assessing resolution after its final adoption by the board
23 and the assessment roll for recording on the land records of each unit of
24 eligible real property assessed within the county as provided in article 30,
25 35, or 36 of title 38, C.R.S. The assessing resolution and assessment roll
26 shall be indexed in the grantor index under the name of the district
27 member and in the grantee index under the Colorado new energy

1 improvement district. In addition, the county clerk and recorder shall file
2 copies of the assessing resolution, after its final adoption by the board,
3 and the assessment roll with the county assessor and the county treasurer.
4 The county assessor is authorized to create separate schedules for each
5 unit of eligible real property assessed within the county pursuant to the
6 resolution. ~~In assessing the value of eligible real property, the county~~
7 ~~assessor shall not take into account any increase in the market value of the~~
8 ~~eligible real property resulting from the completion of a new energy~~
9 ~~improvement.~~

10 (3) No delays, mistakes, errors, or irregularities in any act or
11 proceeding authorized or required by this article shall prejudice or
12 invalidate any final SPECIAL assessment, and such mistakes, errors, or
13 irregularities may be remedied by subsequent filings, amending acts, or
14 proceedings. A remedied SPECIAL assessment ~~shall take~~ TAKES effect as
15 of the date of the original filing, act, or proceeding. If a court of
16 competent jurisdiction sets aside any final assessment or if, for any other
17 reason, the board determines it to be necessary to alter any final SPECIAL
18 assessment, the board, upon notice as required in the making of an
19 original SPECIAL assessment, may make a new SPECIAL assessment in
20 accordance with the provisions of this article.

21 (4) (a) In case of default in the payment of any installment of
22 principal or interest when due, the county treasurer shall advertise and sell
23 the assessed eligible real property tax lien defaulted upon for the payment
24 of the whole of the unpaid installment of principal and interest.
25 Advertisements and sales shall be made at the same times, in the same
26 manner, under all the same conditions and penalties, and with the same
27 effect as provided by general law for sales of real ~~estate~~ PROPERTY tax

1 liens in default of payment of the general property tax.

2 (b) At any TAX LIEN sale by a county treasurer of any eligible real
3 property, ~~for the purpose of paying a special assessment,~~ the board may
4 ~~purchase the property for the district without paying for the property in~~
5 ~~cash~~ PARTICIPATE IN THE TAX LIEN SALE AUCTION BY BIDDING ON THE LIEN
6 FOR THE DISTRICT and ~~shall~~ receive certificates of purchase for the
7 ~~property~~ LIEN in the name of the district IF IT IS THE SUCCESSFUL BIDDER.

8 The certificates shall be received and credited at their face value, with all
9 interest and penalties accrued, on account of the assessment installment
10 in pursuance of which the sale was made. The board may thereafter sell
11 the certificates at their face value, with all interest and penalties accrued,
12 and assign the certificates to the purchaser in the name of the district. The
13 board shall credit the proceeds of the sale to the fund created by
14 resolution for the payment of the SPECIAL assessments, respectively;
15 except that, if the new energy improvements were financed under section
16 32-20-105 (3) (h), the board shall credit the proceeds of the TAX LIEN sale
17 to the private third party that financed the new energy improvements. If
18 the district has repaid all special assessment bonds in full, the board may
19 sell the certificates for the best price obtainable at public sale, at auction,
20 or by sealed bids in the same manner and under the same conditions as
21 provided in paragraph (d) of this subsection (4). Such assignments are
22 without recourse, and the sale and assignments operate as a lien in favor
23 of the purchaser and assignee as is provided by law in the case of sale of
24 real estate in default of payment of the general property ~~tax~~ TAXES.

25 (c) The board, as a purchaser OF TAX LIENS, has the right to apply
26 for tax deeds on certificates of purchase at any time after three years from
27 the date of issuance of the certificates IN ACCORDANCE WITH ARTICLE 11

1 OF TITLE 39, C.R.S., and the deeds shall be issued as provided by law for
2 issuance of tax deeds for the nonpayment of the general property tax
3 TAXES OR SPECIAL ASSESSMENTS.

4 (d) Cumulatively with all other remedies, the district, as the owner
5 of property by virtue of a tax deed, ~~or of property otherwise acquired, in~~
6 ~~satisfaction or discharge of the liens represented by certificates of sale,~~
7 may sell the property for the best price obtainable at public sale, at
8 auction, or by sealed bids. A sale shall be held after public notice by the
9 board to all persons having or claiming any interest in the eligible real
10 property to be sold or in the proceeds of the sale by publication of the
11 notice three times, a week apart, in a weekly or daily newspaper of
12 general circulation within the county in which the property is located. The
13 notice shall describe the property and state the time, place, and manner of
14 receiving bids; except that the time fixed for the sale shall not be less than
15 ten days after the last publication. The board may reject any and all bids.
16 Any interested party, at any time within ten days after the receipt of bids
17 for the sale of property, may file with the board a written protest as to the
18 sufficiency of the amount of any bid made or the validity of the
19 proceedings for the sale. If the protest is denied, the protestor, within ten
20 days thereafter, shall commence an action in a court of competent
21 jurisdiction to enjoin or restrain the board from completing the sale. If no
22 such action is commenced, all protests or objections to the sale shall be
23 waived, and the board shall then convey the property to the successful
24 bidder by quitclaim deed.

25 (e) ~~In addition to all other remedies, the district, as a holder of~~
26 ~~certificates of purchase, may bring a civil action for foreclosure thereof~~
27 ~~in accordance with article 38 of title 38, C.R.S., joining as defendants all~~

1 ~~persons holding record title, persons occupying or in possession of the~~
2 ~~property, persons having or claiming any interest in the property or in the~~
3 ~~proceeds of a foreclosure sale, all governmental taxing units having taxes~~
4 ~~or other claims against the property, and all unknown persons having or~~
5 ~~claiming any interest in the property. Any number of certificates may be~~
6 ~~foreclosed in the same proceeding. In such a proceeding, the district, as~~
7 ~~plaintiff, is entitled to all relief provided by law in actions for an~~
8 ~~adjudication of rights with respect to real property, including actions to~~
9 ~~quiet title.~~

10 (g) IF A TREASURER'S DEED IS ISSUED FOR A PROPERTY THAT IS
11 INCLUDED WITHIN THE DISTRICT PURSUANT TO SECTION 32-20-105 AND
12 UPON WHICH A PRIORITY SPECIAL ASSESSMENT LIEN HAS BEEN PLACED,
13 THE DISTRICT SHALL USE ITS RESERVE ACCOUNT TO SATISFY SPECIAL
14 ASSESSMENT OBLIGATIONS OF THE PROPERTY ON BEHALF OF THE HOLDER
15 OF THE TREASURER'S DEED IN ACCORDANCE WITH THE TERMS AND
16 DURATION SPECIFIED IN A WRITTEN AGREEMENT BETWEEN THE COUNTY IN
17 WHICH THE PROPERTY IS LOCATED AND THE DISTRICT.

18 **SECTION 5. Act subject to petition - effective date.** This act
19 takes effect at 12:01 a.m. on the day following the expiration of the
20 ninety-day period after final adjournment of the general assembly (August
21 10, 2016, if adjournment sine die is on May 11, 2016); except that, if a
22 referendum petition is filed pursuant to section 1 (3) of article V of the
23 state constitution against this act or an item, section, or part of this act
24 within such period, then the act, item, section, or part will not take effect
25 unless approved by the people at the general election to be held in
26 November 2016 and, in such case, will take effect on the date of the
27 official declaration of the vote thereon by the governor.