

Second Regular Session  
Seventy-second General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 20-0494.01 Ed DeCecco x4216

SENATE BILL 20-168

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SENATE SPONSORSHIP

Hansen and Pettersen,

HOUSE SPONSORSHIP

Valdez A.,

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Senate Committees  
Transportation & Energy

House Committees

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A BILL FOR AN ACT

101 CONCERNING TAX POLICY THAT PROMOTES ENVIRONMENTAL  
102 SUSTAINABILITY.

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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>.)*

The bill modifies the community solar garden property tax exemption, which exempts the percentage of alternating current electricity capacity of a community solar garden that is attributed to subscribers who are tax exempt, by:

- ! Extending the exemption for 5 more property tax years (**section 1** of the bill); and

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
Capital letters or bold & italic numbers indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.

! Expanding the exemption to apply to a community solar garden that is a solar energy facility, which is assessed statewide (**section 2**).

For the period that the exemption is extended, the state will reimburse local governments for the lost property tax revenues that result from the newly expanded credit. These payments will be made from the sustainable energy tax policy fund, which consists of the increased revenue as a result of changes to the coal tax made in **sections 4 and 5**, and the general fund if there is insufficient money in the fund.

In years when the state is required to refund excess state revenues under section 20 of article X of the state constitution (TABOR), the reimbursements to the counties are a TABOR refund mechanism. This refund mechanism only applies after the refunds made to counties for the reimbursements for the senior homestead exemption (**sections 1 and 6**).

Locally assessed solar energy facilities are valued by assessors using valuation procedures developed by the property tax administrator (administrator). Currently, the administrator is required to utilize a cost approach to valuation for all renewable energy facilities. This valuation currently involves a "tax factor" based on a 20-year period. Section 2 extends this period by 10 years and specifies that after the 30 years, a tax factor is not applied and the taxable value shall not exceed the depreciated value floor calculated using the cost basis method. Under **section 3**, the administrator will be required to utilize the income approach used for solar energy facilities for a renewable energy facility that would qualify as a solar energy facility if it generated more energy, so that all similar facilities will be valued in the same manner.

For purposes of the severance tax on coal, beginning July 1, 2021, **section 4** eliminates the quarterly exemption on the first 300,000 tons of coal and the credit for coal produced from underground mines and for the production of lignitic coal. Prior to June 30, 2026, the additional severance tax that results from these changes will be credited to the sustainable energy policy fund, and thereafter it is allocated like other severance tax revenue (section 5).

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

2 **SECTION 1.** In Colorado Revised Statutes, 39-3-118.7, **amend**  
3 (2); and **add** (1)(c), (3), (4), and (5) as follows:

4 **39-3-118.7. Community solar garden - partial business**  
5 **personal property tax exemption - reimbursement to local**  
6 **governments - sustainable energy tax policy fund - creation - refund**

1 **of excess state revenues - legislative declaration - definitions.** (1) As  
2 used in this section, unless the context otherwise requires:

3 (c) "TABOR REFUND AMOUNT" MEANS THE STATE REVENUES IN  
4 EXCESS OF THE LIMITATION ON STATE FISCAL YEAR SPENDING IMPOSED BY  
5 SECTION 20 (7)(a) OF ARTICLE X OF THE STATE CONSTITUTION THAT THE  
6 STATE IS REQUIRED TO REFUND UNDER SECTION 20 (7)(d) OF ARTICLE X OF  
7 THE STATE CONSTITUTION.

8 (2) For property tax years commencing on and after January 1,  
9 2015, but before January 1, ~~2021~~ 2026, there is exempt from the levy and  
10 collection of property tax the percentage of alternating current electricity  
11 capacity of a community solar garden that is attributed to residential or  
12 governmental subscribers, or to subscribers that are organizations that  
13 have been granted property tax exemptions pursuant to sections 39-3-106  
14 to 39-3-113.5.

15 (3) (a) NO LATER THAN JUNE 1, 2022, AND JUNE 1 OF EACH OF THE  
16 NEXT FOUR YEARS THEREAFTER, A COUNTY TREASURER SHALL REPORT TO  
17 THE STATE TREASURER THE TOTAL AMOUNT OF PROPERTY TAX REVENUES  
18 LOST FOR THE PRIOR PROPERTY TAX YEAR BY LOCAL GOVERNMENTS  
19 WITHIN THE COUNTY AS A RESULT OF THE EXEMPTION ALLOWED UNDER  
20 THIS SECTION AND SECTION 39-4-102 (1.5)(e)(I). IF NO EXEMPTIONS WERE  
21 ALLOWED IN THE COUNTY, THE TREASURER IS NOT REQUIRED TO SUBMIT  
22 A REPORT.

23 (b) (I) NO LATER THAN JUNE 15, 2022, AND JUNE 15 OF EACH OF  
24 THE NEXT FOUR YEARS THEREAFTER, THE STATE TREASURER SHALL ISSUE  
25 A WARRANT TO A COUNTY TREASURER THAT IS EQUAL TO THE AMOUNT  
26 SPECIFIED IN SUBSECTION (3)(a) OF THIS SECTION MINUS THE AMOUNT  
27 SPECIFIED IN SUBSECTION (3)(c) OF THIS SECTION. THE STATE TREASURER

1 SHALL PAY THE REIMBURSEMENT FROM THE SUSTAINABLE ENERGY TAX  
2 POLICY FUND CREATED IN SUBSECTION (4) OF THIS SECTION, OR THE  
3 GENERAL FUND IF THERE IS INSUFFICIENT MONEY IN THE SUSTAINABLE  
4 ENERGY TAX POLICY FUND.

5 (II) A TREASURER SHALL DISTRIBUTE THE MONEY RECEIVED FROM  
6 THE STATE TREASURER UNDER SUBSECTION (3)(b)(I) OF THIS SECTION TO  
7 THE LOCAL GOVERNMENTS WITHIN THE TREASURER'S COUNTY IN  
8 PROPORTION TO THE AMOUNT LOST BY EACH LOCAL GOVERNMENT NO  
9 LATER THAN JUNE 30 AFTER THE MONEY WAS RECEIVED.

10 (c) A TREASURER SHALL NOTIFY THE STATE TREASURER IF AN  
11 EXEMPTION OR PART OF AN EXEMPTION WAS ERRONEOUSLY ALLOWED  
12 UNDER THIS SECTION OR SECTION 39-4-102 (1.5)(e)(I). THE STATE  
13 TREASURER SHALL REDUCE THE NEXT PAYMENT TO THE COUNTY BY THIS  
14 AMOUNT.

15 (4)(a) THE SUSTAINABLE ENERGY TAX POLICY FUND, REFERRED TO  
16 IN THIS SUBSECTION (4) AS THE "FUND", IS HEREBY CREATED IN THE STATE  
17 TREASURY. THE FUND CONSISTS OF MONEY CREDITED TO THE FUND IN  
18 ACCORDANCE WITH SECTION 39-29-108 (2)(d)(I). THE STATE TREASURER  
19 SHALL CREDIT ALL INTEREST AND INCOME DERIVED FROM THE DEPOSIT  
20 AND INVESTMENT OF MONEY IN THE SUSTAINABLE ENERGY TAX POLICY  
21 FUND TO THE FUND.

22 (b) THE MONEY IN THE FUND IS ONLY AVAILABLE FOR THE STATE  
23 TREASURER TO MAKE PAYMENTS TO COUNTIES UNDER THIS SECTION. THE  
24 GENERAL ASSEMBLY SHALL NOT APPROPRIATE MONEY FROM THE FUND FOR  
25 ANY PURPOSE.

26 (5) (a) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES  
27 THAT:

1 (I) ALTHOUGH THE EXPIRING EXEMPTIONS ALLOWED BY THIS  
2 SECTION ARE EXEMPTIONS FROM LOCAL GOVERNMENT PROPERTY TAXES,  
3 THE EXEMPTIONS WILL ONLY BE EXTENDED IF THE STATE REIMBURSES  
4 LOCAL GOVERNMENTS FOR THE NET AMOUNT OF PROPERTY TAX REVENUES  
5 LOST AS A RESULT OF THE EXEMPTIONS IN THOSE YEARS;

6 (II) THE STATE, THEREFORE, BEARS THE FULL COST OF THE  
7 EXEMPTIONS;

8 (III) THE BENEFICIARY OF THESE PAYMENTS IS REALLY THE  
9 TAXPAYERS THAT OWN AND OPERATE THE COMMUNITY SOLAR GARDENS;

10 (IV) SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION  
11 AUTHORIZES THE STATE TO USE ANY REASONABLE METHOD TO MAKE  
12 REQUIRED REFUNDS OF EXCESS STATE REVENUES; AND

13 (V) THE PAYMENT BY THE STATE TO REIMBURSE LOCAL  
14 GOVERNMENTS FOR THE NET AMOUNT OF PROPERTY TAX REVENUES LOST  
15 AS A RESULT OF THE PROPERTY TAX EXEMPTIONS ALLOWED BY THIS  
16 SECTION, WHICH EXEMPTIONS DIRECTLY REDUCE THE TAX LIABILITY OF  
17 THE TAXPAYERS THAT OPERATE COMMUNITY SOLAR GARDENS IN THE  
18 STATE, IS A REASONABLE METHOD OF REFUNDING EXCESS STATE  
19 REVENUES.

20 (b) FOR ANY STATE FISCAL YEAR COMMENCING ON OR AFTER JULY  
21 1, 2020, IF THE TABOR REFUND AMOUNT FOR A FISCAL YEAR EXCEEDS  
22 THE AMOUNT REFUNDED THROUGH SECTION 39-3-209, THEN SOME OR ALL  
23 OF THE REIMBURSEMENTS REQUIRED BY SUBSECTION (3) OF THIS SECTION  
24 MADE IN THE FOLLOWING STATE FISCAL YEAR ARE A REFUND OF STATE  
25 REVENUES IN EXCESS OF THE LIMITATION ON STATE FISCAL YEAR SPENDING  
26 IMPOSED BY SECTION 20 (7)(a) OF ARTICLE X OF THE STATE  
27 CONSTITUTION. THE AMOUNT SO REFUNDED IS EQUAL TO THE LESSER OF:

1 (I) ALL REIMBURSEMENTS PAID BY THE STATE TREASURER AS  
2 REQUIRED BY SUBSECTION (3) OF THIS SECTION; OR

3 (II) AN AMOUNT EQUAL TO THE TABOR REFUND AMOUNT MINUS  
4 THE AMOUNT REFUNDED UNDER SECTION 39-3-209 FOR THE STATE FISCAL  
5 YEAR.

6 **SECTION 2.** In Colorado Revised Statutes, 39-4-102, **amend**  
7 (1.5)(b)(IV); and **add** (1.5)(e) as follows:

8 **39-4-102. Valuation of public utilities - definitions.** (1.5) The  
9 administrator shall determine the actual value of a small or low impact  
10 hydroelectric energy facility, a geothermal energy facility, a biomass  
11 energy facility, a wind energy facility, or a solar energy facility as  
12 follows:

13 (b) (IV) As used in this ~~paragraph (b)~~, SUBSECTION (1.5)(b), "tax  
14 factor" means a factor annually established by the administrator. FOR  
15 PROPERTY TAX YEARS COMMENCING PRIOR TO JANUARY 1, 2020, the tax  
16 factor ~~shall be~~ IS a number that when applied to the selling price at the  
17 interconnection meter results in approximately the same tax revenue over  
18 a twenty-year period on a nominal dollar basis that would have been  
19 collected using the cost basis method of taxation as determined by the  
20 administrator for a renewable energy facility pursuant to ~~paragraph (c) of~~  
21 ~~subsection (1)~~-SUBSECTION (1)(e) of this section. FOR PROPERTY TAX  
22 YEARS COMMENCING ON OR AFTER JANUARY 1, 2020, THE TAX FACTOR IS  
23 A NUMBER THAT WHEN APPLIED TO THE SELLING PRICE AT THE  
24 INTERCONNECTION METER RESULTS IN APPROXIMATELY THE SAME TAX  
25 REVENUE OVER A THIRTY-YEAR PERIOD ON A NOMINAL DOLLAR BASIS  
26 THAT WOULD HAVE BEEN COLLECTED USING THE COST BASIS METHOD OF  
27 TAXATION AS DETERMINED BY THE ADMINISTRATOR FOR A RENEWABLE

1 ENERGY FACILITY PURSUANT TO SUBSECTION (1)(e) OF THIS SECTION. FOR  
2 EACH TAX YEAR FOLLOWING THIS THIRTY-YEAR PERIOD, A TAX FACTOR IS  
3 NOT APPLIED AND THE TAXABLE VALUE SHALL NOT EXCEED THE  
4 DEPRECIATED VALUE FLOOR CALCULATED USING THE COST BASIS METHOD.

5 For a renewable energy facility that begins generating energy before  
6 January 1, 2012, the administrator shall include only the cost of all  
7 property required to generate and deliver renewable energy to the  
8 interconnection meter that does not exceed the cost of property required  
9 to generate nonrenewable energy. For a renewable energy facility that  
10 begins generating energy on or after January 1, 2012, the administrator  
11 shall include only the cost of all property required to generate and deliver  
12 renewable energy to the interconnection meter that does not exceed the  
13 cost of property required to generate and deliver nonrenewable energy to  
14 the interconnection meter.

15 (e) (I) FOR PROPERTY TAX YEARS ON OR AFTER JANUARY 1, 2020,  
16 BUT PRIOR TO JANUARY 1, 2026, FOR A COMMUNITY SOLAR GARDEN THAT  
17 IS A SOLAR ENERGY FACILITY, THE ADMINISTRATOR SHALL NOT CONSIDER  
18 THE PERCENTAGE OF ALTERNATING CURRENT ELECTRICITY CAPACITY THAT  
19 IS ATTRIBUTED TO RESIDENTIAL OR GOVERNMENTAL SUBSCRIBERS, OR TO  
20 SUBSCRIBERS THAT ARE ORGANIZATIONS THAT HAVE BEEN GRANTED  
21 PROPERTY TAX EXEMPTIONS PURSUANT TO SECTIONS 39-3-106 TO  
22 39-3-113.5.

23 (II) WHEN REPORTING THE VALUE OF A SOLAR ENERGY FACILITY  
24 TO A COUNTY, THE ADMINISTRATOR SHALL IDENTIFY THE AMOUNT THAT  
25 WAS EXEMPTED FROM THE VALUE OF THE SOLAR ENERGY FACILITY UNDER  
26 SUBSECTION (1.5)(e)(I) OF THIS SECTION, IF ANY. THE ADMINISTRATOR  
27 SHALL NOTIFY THE COUNTY IF AN EXEMPTION OR PART OF AN EXEMPTION

1 WAS ERRONEOUSLY ALLOWED.

2 (III) AS USED IN THIS SUBSECTION (1.5)(e):

3 (A) "COMMUNITY SOLAR GARDEN" HAS THE SAME MEANING AS SET  
4 FORTH IN SECTION 40-2-127 (2)(b)(I)(A).

5 (B) "SUBSCRIBER" HAS THE SAME MEANING AS SET FORTH IN  
6 SECTION 40-2-127 (2)(b)(II).

7 **SECTION 3.** In Colorado Revised Statutes, 39-5-104.7, **amend**  
8 (2) as follows:

9 **39-5-104.7. Valuation of real and personal property that**  
10 **produces alternating current electricity from a renewable energy**  
11 **source.** (2) In developing the valuation procedures specified in ~~paragraph~~  
12 ~~(a) of subsection (1)~~ SUBSECTION (1)(a) of this section:

13 (a) EXCEPT AS SET FORTH IN SUBSECTION (2)(b) OF THIS SECTION,  
14 the administrator shall utilize the procedures adopted for determining the  
15 actual value of a renewable energy facility as specified in section  
16 39-4-102 (1)(e); AND

17 (b) FOR A FACILITY THAT WOULD QUALIFY AS A SOLAR ENERGY  
18 FACILITY AS DEFINED IN SECTION 39-4-101 (3.5) BUT IT GENERATES AND  
19 DELIVERS LESS THAN TWO MEGAWATTS OF ENERGY, THE ADMINISTRATOR  
20 SHALL UTILIZE THE PROCEDURES FOR DETERMINING THE ACTUAL VALUE  
21 OF A SOLAR ENERGY FACILITY AS SPECIFIED IN SECTION 39-4-102 (1.5) FOR  
22 PROPERTY TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2020.

23 **SECTION 4.** In Colorado Revised Statutes, 39-29-106, **amend**  
24 (2)(b), (3), and (4) as follows:

25 **39-29-106. Tax on the severance of coal.** (2) (b) On and after  
26 July 1, 1999, BUT BEFORE JULY 1, 2020, no tax provided for in subsection  
27 (1) of this section ~~shall be~~ IS imposed on the first three hundred thousand

1 tons of coal produced in each quarter of the taxable year.

2 (3) FOR TAXABLE YEARS COMMENCING PRIOR TO JANUARY 1,  
3 2020, there ~~shall be~~ IS allowed, as a credit against the tax imposed by  
4 subsection (1) of this section, an amount equal to fifty percent of such tax  
5 for coal produced from underground mines.

6 (4) FOR TAXABLE YEARS COMMENCING PRIOR TO JANUARY 1,  
7 2020, there ~~shall be~~ IS allowed, as an additional credit against the tax  
8 imposed by subsection (1) of this section, an amount equal to fifty percent  
9 of such tax for the production of lignitic coal, as such coal is classified by  
10 the American society for testing and materials (ASTM) in their D 388  
11 standard for the classification of coals by rank.

12 **SECTION 5.** In Colorado Revised Statutes, 39-29-108, **amend**  
13 (2)(b); and **add** (2)(d) as follows:

14 **39-29-108. Allocation of severance tax revenues - definitions**  
15 **- repeal.** (2) (b) EXCEPT AS SET FORTH IN SUBSECTION (2)(d) OF THIS  
16 SECTION, of the total gross receipts realized from the severance taxes  
17 imposed on minerals and mineral fuels under the provisions of this article  
18 after June 30, 2017, fifty percent shall be credited to the state severance  
19 tax trust fund created by section 39-29-109, and fifty percent shall be  
20 credited to the local government severance tax fund created by section  
21 39-29-110.

22 (d) (I) PRIOR TO JUNE 30, 2026, THE STATE TREASURER SHALL  
23 CREDIT AN AMOUNT OF THE INCREASED COAL TAX THAT IS ATTRIBUTABLE  
24 TO THE DISCONTINUATION OF THE EXEMPTION IN SECTION 39-29-106 (2)(b)  
25 AND THE CREDITS IN SECTION 39-29-106 (3) AND (4) TO THE SUSTAINABLE  
26 ENERGY TAX POLICY FUND CREATED IN SECTION 39-3-118.7 (4)(a).

27 (II) THIS SUBSECTION (2)(d) IS REPEALED, EFFECTIVE JULY 1, 2026.

1           **SECTION 6.** In Colorado Revised Statutes, 39-22-627, **amend**  
2 (1)(b), (3), and (6) as follows:

3           **39-22-627. Temporary adjustment of rate of income tax -**  
4 **refund of excess state revenues - authority of executive director.**

5 (1) (b) In order for the provisions of subsection (1)(a) of this section to  
6 take effect, the amount of state revenues required to be refunded for the  
7 specified state fiscal year must exceed the total of the amount of  
8 reimbursement for property tax revenues lost as a result of the property  
9 tax exemptions allowed by part 2 of article 3 of this title 39 paid by the  
10 state treasurer to each county treasurer as required by section 39-3-207 (4)  
11 for the property tax year that commenced during the specified state fiscal  
12 year plus THE ESTIMATED AMOUNT OF THE REFUND SPECIFIED IN SECTION  
13 39-3-118.7 (5)(b), PLUS the estimated amount by which state revenues  
14 would be decreased as the result of a reduction in the state income tax rate  
15 from four and sixty-three one-hundredths percent to four and one-half  
16 percent of federal taxable income, as determined pursuant to this section.

17 (3) If one or more ballot questions are submitted to the voters at  
18 a statewide election to be held in November of any given calendar year  
19 that seek authorization for the state to retain and spend all or any portion  
20 of the amount of excess state revenues for the state fiscal year ending  
21 during said calendar year, the executive director shall not reduce the state  
22 income tax rate until the results of said election are known so that the  
23 state income tax rate may be reduced only if, after the results of said  
24 election, the amount of excess state revenues required to be refunded for  
25 the state fiscal year exceeds the total of the amount of reimbursement for  
26 property tax revenues lost as a result of the property tax exemptions  
27 allowed by part 2 of article 3 of this title 39 paid by the state treasurer to

1 each county treasurer as required by section 39-3-207 (4) for the property  
2 tax year that commenced during the specified state fiscal year plus THE  
3 ESTIMATED AMOUNT OF THE REFUND SPECIFIED IN SECTION 39-3-118.7  
4 (5)(b), PLUS the estimated amount by which state revenues would be  
5 decreased as a result of a reduction in the state income tax rate from four  
6 and sixty-three one-hundredths percent to four and one-half percent of  
7 federal taxable income pursuant to this section.

8 (6) If, based on the financial report prepared by the controller in  
9 accordance with section 24-77-106.5, the controller certifies that the  
10 amount of the state revenues for any state fiscal year commencing on or  
11 after July 1, 2017, exceeds the limitation on state fiscal year spending  
12 imposed by section 20 (7)(a) of article X of the state constitution for that  
13 state fiscal year and exceeds the amount of excess state revenues that the  
14 voters statewide have authorized the state to retain and spend for that  
15 state fiscal year by less than the total of the amount of reimbursement for  
16 property tax revenues lost as a result of the property tax exemptions  
17 allowed by part 2 of article 3 of this title 39 paid by the state treasurer to  
18 each county treasurer as required by section 39-3-207 (4) for the property  
19 tax year that commenced during the specified state fiscal year plus THE  
20 ESTIMATED AMOUNT OF THE REFUND SPECIFIED IN SECTION 39-3-118.7  
21 (5)(b), PLUS the estimated amount by which state revenues would be  
22 decreased as the result of a reduction in the state income tax rate from  
23 four and sixty-three one-hundredths percent to four and one-half percent  
24 of federal taxable income as calculated by the executive director pursuant  
25 to subsection (2) of this section, then the reduction in the state income tax  
26 rate allowed pursuant to subsection (1) of this section shall not be allowed  
27 for the income tax year commencing during the calendar year in which

1 the state fiscal year ended.

2           **SECTION 7. Act subject to petition - effective date.** This act  
3 takes effect at 12:01 a.m. on the day following the expiration of the  
4 ninety-day period after final adjournment of the general assembly (August  
5 5, 2020, if adjournment sine die is on May 6, 2020); except that, if a  
6 referendum petition is filed pursuant to section 1 (3) of article V of the  
7 state constitution against this act or an item, section, or part of this act  
8 within such period, then the act, item, section, or part will not take effect  
9 unless approved by the people at the general election to be held in  
10 November 2020 and, in such case, will take effect on the date of the  
11 official declaration of the vote thereon by the governor.