SENATE BILL 20-168

Hansen and Pettersen,

Valdez A.,

A BILL FOR AN ACT

CONCERNING TAX POLICY THAT PROMOTES ENVIRONMENTAL SUSTAINABILITY.

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
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 (2); and add (1)(c), (3), (4), and (5) as follows:

3 39-3-118.7. Community solar garden - partial business personal property tax exemption - reimbursement to local governments - sustainable energy tax policy fund - creation - refund
of excess state revenues - legislative declaration - definitions. (1) As
used in this section, unless the context otherwise requires:

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

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

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

(b) (I) NO LATER THAN JUNE 15, 2022, AND JUNE 15 OF EACH OF
THE NEXT FOUR YEARS THEREAFTER, THE STATE TREASURER SHALL ISSUE
A WARRANT TO A COUNTY TREASURER THAT IS EQUAL TO THE AMOUNT
SPECIFIED IN SUBSECTION (3)(a) OF THIS SECTION MINUS THE AMOUNT
SPECIFIED IN SUBSECTION (3)(c) OF THIS SECTION. THE STATE TREASURER
SHALL PAY THE REIMBURSEMENT FROM THE SUSTAINABLE ENERGY TAX POLICY FUND CREATED IN SUBSECTION (4) OF THIS SECTION, OR THE GENERAL FUND IF THERE IS INSUFFICIENT MONEY IN THE SUSTAINABLE ENERGY TAX POLICY FUND.

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

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

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

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

(5) (a) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT:
(I) Although the expiring exemptions allowed by this section are exemptions from local government property taxes, the exemptions will only be extended if the state reimburses local governments for the net amount of property tax revenues lost as a result of the exemptions in those years;

(II) The state, therefore, bears the full cost of the exemptions;

(III) The beneficiary of these payments is really the taxpayers that own and operate the community solar gardens;

(IV) Section 20 of Article X of the State Constitution authorizes the state to use any reasonable method to make required refunds of excess state revenues; and

(V) The payment by the state to reimburse local governments for the net amount of property tax revenues lost as a result of the property tax exemptions allowed by this section, which exemptions directly reduce the tax liability of the taxpayers that operate community solar gardens in the state, is a reasonable method of refunding excess state revenues.

(b) For any state fiscal year commencing on or after July 1, 2020, if the TABOR refund amount for a fiscal year exceeds the amount refunded through section 39-3-209, then some or all of the reimbursements required by subsection (3) of this section made in the following state fiscal year are a refund of state revenues in excess of the limitation on state fiscal year spending imposed by section 20 (7)(a) of Article X of the State constitution. The amount so refunded is equal to the lesser of:
(I) All reimbursements paid by the State Treasurer as required by subsection (3) of this section; or

(II) An amount equal to the TABOR refund amount minus the amount refunded under Section 39-3-209 for the state fiscal year.

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

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

(b) (IV) As used in this paragraph (b), subsection (1.5)(b), "tax factor" means a factor annually established by the administrator. For property tax years commencing prior to January 1, 2020, the tax factor shall be a number that when applied to the selling price at the interconnection meter results in approximately the same tax revenue over a twenty-year period on a nominal dollar basis that would have been collected using the cost basis method of taxation as determined by the administrator for a renewable energy facility pursuant to paragraph (e) of subsection (1) of subsection (1)(e) of this section. For property tax years commencing on or after January 1, 2020, the tax factor is a number that when applied to the selling price at the interconnection meter results in approximately the same tax revenue over a thirty-year period on a nominal dollar basis that would have been collected using the cost basis method of taxation as determined by the administrator for a renewable energy facility.
ENERGY FACILITY PURSUANT TO SUBSECTION (1)(e) OF THIS SECTION. FOR EACH TAX YEAR FOLLOWING THIS THIRTY-YEAR PERIOD, A TAX FACTOR IS NOT APPLIED AND THE TAXABLE VALUE SHALL NOT EXCEED THE DEPRECIATED VALUE FLOOR CALCULATED USING THE COST BASIS METHOD.

For a renewable energy facility that begins generating energy before January 1, 2012, the administrator shall include only the cost of all property required to generate and deliver renewable energy to the interconnection meter that does not exceed the cost of property required to generate nonrenewable energy. For a renewable energy facility that begins generating energy on or after January 1, 2012, the administrator shall include only the cost of all property required to generate and deliver renewable energy to the interconnection meter that does not exceed the cost of property required to generate and deliver nonrenewable energy to the interconnection meter.

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

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

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

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

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

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

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

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

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

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

39-29-106. Tax on the severance of coal. (2) (b) On and after July 1, 1999, BUT BEFORE JULY 1, 2020, no tax provided for in subsection (1) of this section shall be imposed on the first three hundred thousand
tons of coal produced in each quarter of the taxable year.

(3) For taxable years commencing prior to January 1, 2020, there shall be allowed, as a credit against the tax imposed by subsection (1) of this section, an amount equal to fifty percent of such tax for coal produced from underground mines.

(4) For taxable years commencing prior to January 1, 2020, there shall be allowed, as an additional credit against the tax imposed by subsection (1) of this section, an amount equal to fifty percent of such tax for the production of lignitic coal, as such coal is classified by the American Society for Testing and Materials (ASTM) in their D 388 standard for the classification of coals by rank.

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

39-29-108. Allocation of severance tax revenues - definitions - repeal. (2) (b) Except as set forth in subsection (2)(d) of this section, of the total gross receipts realized from the severance taxes imposed on minerals and mineral fuels under the provisions of this article after June 30, 2017, fifty percent shall be credited to the state severance tax trust fund created by section 39-29-109, and fifty percent shall be credited to the local government severance tax fund created by section 39-29-110.

(d) (I) Prior to June 30, 2026, the state treasurer shall credit an amount of the increased coal tax that is attributable to the discontinuation of the exemption in section 39-29-106 (2)(b) and the credits in section 39-29-106 (3) and (4) to the sustainable energy tax policy fund created in section 39-3-118.7 (4)(a).

(II) This subsection (2)(d) is repealed, effective July 1, 2026.
SECTION 6. In Colorado Revised Statutes, 39-22-627, amend (1)(b), (3), and (6) as follows:


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

(3) If one or more ballot questions are submitted to the voters at a statewide election to be held in November of any given calendar year that seek authorization for the state to retain and spend all or any portion of the amount of excess state revenues for the state fiscal year ending during said calendar year, the executive director shall not reduce the state income tax rate until the results of said election are known so that the state income tax rate may be reduced only if, after the results of said election, the amount of excess state revenues required to be refunded for the state fiscal year exceeds the total of the amount of reimbursement for property tax revenues lost as a result of the property tax exemptions allowed by part 2 of article 3 of this title paid by the state treasurer to
each county treasurer as required by section 39-3-207 (4) for the property
tax year that commenced during the specified state fiscal year plus THE
ESTIMATED AMOUNT OF THE REFUND SPECIFIED IN SECTION 39-3-118.7
(5)(b), PLUS the estimated amount by which state revenues would be
decreased as a result of a reduction in the state income tax rate from four
and sixty-three one-hundredths percent to four and one-half percent of
federal taxable income pursuant to this section.

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

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