

CHAPTER 207

GOVERNMENT - COUNTY

SENATE BILL 10-100

BY SENATOR(S) Schwartz, Carroll M., Foster, Gibbs, Heath, Newell, Romer, Boyd, Whitehead;
also REPRESENTATIVE(S) Miklosi, Apuan, Frangas, Labuda, Levy, Merrifield, Pace, Pommer, Schafer S., Solano, Tyler, Vigil.

AN ACT

**CONCERNING GREATER FINANCING FLEXIBILITY FOR LOCAL DISTRICTS ORGANIZED FOR PURPOSES
RELATED TO ENERGY.**

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

SECTION 1. 30-20-602 (2) and (4.7), Colorado Revised Statutes, are amended, and the said 30-20-602 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

30-20-602. Definitions. As used in this part 6, unless the context otherwise requires:

(2) "District" means the geographical division of the county OR COUNTIES within which any local improvements are made or proposed, when so declared by resolution of the board. Except for a district in the unincorporated area of a county in which a sales tax is levied pursuant to section 30-20-604.5, there may be noncontiguous parts or sections of a county included in one district, but no district shall include territory that is included in an undissolved district that was formed for the same type of improvement. Notwithstanding any other provision of this part 6 and except in the case of a district formed prior to December 31, 2002, by a city that has been authorized to become a city and county pursuant to an amendment to the state constitution that has been approved by the registered electors of the state of Colorado, no district in which a sales tax is levied pursuant to section 30-20-604.5 shall be formed that includes territory within a municipality, and any such district shall be as compact as possible. EXCEPT AS PROVIDED IN SECTION 30-20-603 (11.5) (b) (I), no district that crosses county boundaries may be formed by intergovernmental agreement or otherwise.

(4.3) "QUALIFIED COMMUNITY LOCATION" MEANS:

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

(a) IF THE AFFECTED LOCAL ELECTRIC UTILITY IS NOT AN INVESTOR-OWNED UTILITY, AN OFF-SITE LOCATION OF A RENEWABLE ENERGY IMPROVEMENT THAT:

(I) IS WHOLLY OWNED, THROUGH EITHER AN UNDIVIDED OR A FRACTIONAL INTEREST, BY THE OWNER OR OWNERS OF THE RESIDENTIAL OR COMMERCIAL BUILDING OR BUILDINGS THAT ARE DIRECTLY BENEFITED BY THE RENEWABLE ENERGY IMPROVEMENT;

(II) PROVIDES ENERGY AS A DIRECT CREDIT ON THE OWNER'S UTILITY BILL; AND

(III) IS AN ENCUMBRANCE ON THE PROPERTY SPECIFICALLY BENEFITED.

(b) IF THE AFFECTED LOCAL ELECTRIC UTILITY IS AN INVESTOR-OWNED UTILITY, A COMMUNITY SOLAR GARDEN, AS THAT TERM IS DEFINED IN SECTION 40-2-127 (2), C.R.S. IF HOUSE BILL 10-1342 DOES NOT TAKE EFFECT, THERE SHALL BE NO QUALIFIED COMMUNITY LOCATIONS IN THE SERVICE TERRITORIES OF INVESTOR-OWNED UTILITIES.

(4.7) (a) "Renewable energy improvement" means a fixture, product, system, device, or interacting group of devices ~~installed behind the meter of any residential and commercial building~~ that produces energy from renewable resources, including ~~but not limited to~~, photovoltaic systems, solar thermal systems, small wind systems, biomass systems, HYDROELECTRIC SYSTEMS, or geothermal systems, as may be included in the approval of the district by the board, ~~except that~~ AND THAT EITHER:

(I) IS INSTALLED BEHIND THE METER OF A RESIDENTIAL OR COMMERCIAL BUILDING; OR

(II) DIRECTLY BENEFITS A RESIDENTIAL OR COMMERCIAL BUILDING THROUGH A QUALIFIED COMMUNITY LOCATION.

(b) 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 PART 6 LIMITS 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 MODIFIES OR EXPANDS THE NET METERING LIMITATIONS ESTABLISHED IN SECTIONS 40-2-124 (7) AND 40-9.5-118, C.R.S. ~~The public utilities commission shall have primary jurisdiction to adjudicate disputes as to whether a renewable energy improvement interferes with such a right.~~ PRIMARY JURISDICTION TO HEAR ANY DISPUTES CONCERNING WHETHER A RENEWABLE ENERGY IMPROVEMENT INTERFERES WITH SUCH A RIGHT SHALL LIE:

(I) IN THE CASE OF A REGULATED UTILITY, WITH THE PUBLIC UTILITIES COMMISSION; AND

(II) IN THE CASE OF A MUNICIPALLY OWNED UTILITY, WITH THE GOVERNING BODY OF SUCH MUNICIPALITY.

SECTION 2. 30-20-603 (11.5), Colorado Revised Statutes, is amended to read:

30-20-603. Improvements and funding authorized - how instituted - conditions. (11.5)(a) Any other provision of this part 6 notwithstanding, the board may initiate an improvement district for the purpose of encouraging, accommodating, and financing improvements of a character authorized by paragraph (e) of subsection (1) of this section. Any such district shall include only property for which the owner has executed a contract or agreement consenting to the inclusion of such property within the district, and such consent may occur subsequent to the adoption of the resolution of the board forming the district. THE CONTRACT OR AGREEMENT SHALL NOTE THE EXISTENCE OF ANY FIRST PRIORITY MORTGAGE OR DEED OF TRUST ON THE PROPERTY, THE IDENTITY OF THE RECORD HOLDER THEREOF, AND THE PENALTY FOR DEFAULT PROVIDED IN SECTION 30-20-615 CLEARLY STATING THAT DEFAULT, LIKE THE PENALTIES THAT EXIST FOR DEFAULT ON ANY MORTGAGE OR ANY OTHER SPECIAL ASSESSMENT, MAY RESULT IN THE LOSS OF THE APPLICANT'S HOME. WITHIN THIRTY DAYS OF A PERSON'S SUBMISSION OF AN APPLICATION TO THE DISTRICT, THE BOARD SHALL PROVIDE WRITTEN NOTICE TO THE RECORD HOLDER OF ANY FIRST PRIORITY MORTGAGE OR DEED OF TRUST ON THE REAL PROPERTY THAT THE PERSON IS PARTICIPATING IN THE DISTRICT. The inclusion of such property within the district subsequent to the adoption of the resolution of the board forming the district may be made by the adoption of a supplemental or amending resolution of the board. For districts formed for the purpose of encouraging, accommodating, and financing renewable energy improvements or energy efficiency improvements, ~~the provisions of subsections (4), and (5), and (6)~~ of this section concerning competitive bidding, ~~and~~ preliminary plans and specifications, ~~of~~ AND NOTICE, section 30-20-601 concerning construction under the direction of county officers, ~~of~~ section 30-20-622 concerning contracts for construction, and ~~of~~ section 30-20-623 concerning contract provisions ~~shall~~ DO not apply. For such districts, the owner of property within a district may arrange improvements that qualify pursuant to the resolution of the board authorizing improvements for the district and may obtain financing for said improvements from the district through the process set forth in the resolution forming the district.

(b)(I) DISTRICTS FORMED FOR THE PURPOSES AUTHORIZED IN PARAGRAPH (e) OF SUBSECTION (1) OF THIS SECTION MAY CROSS COUNTY BOUNDARIES AND INCLUDE PROPERTIES IN MULTIPLE COUNTIES, WHETHER SUCH COUNTIES ARE CONTIGUOUS OR NONCONTIGUOUS, IF THE BOARDS OF COUNTY COMMISSIONERS OF THE AFFECTED COUNTIES HAVE ENTERED INTO AN INTERGOVERNMENTAL AGREEMENT OR MEMORANDUM OF UNDERSTANDING REGARDING THE SHARING OF INCREMENTAL COSTS ATTRIBUTABLE TO THE DISTRICT'S CROSSING OF COUNTY BOUNDARIES, WITH SUCH COSTS BECOMING PART OF THE TOTAL ASSESSMENT ALLOCATED TO EACH PARTICIPATING LANDOWNER.

(II) FOR ANY DISTRICT THAT MAY INCLUDE PROPERTIES IN OTHER COUNTIES, THE BOARD SHALL NOTIFY THE BOARDS OF COUNTY COMMISSIONERS AND THE COUNTY TREASURERS OF SUCH COUNTIES, AT LEAST TEN DAYS IN ADVANCE OF THE PUBLIC MEETING AT WHICH IT WILL BE DISCUSSED, OF THE POTENTIAL INCLUSION OF SUCH PROPERTIES. THE ORIGINATING BOARD SHALL CONSIDER COMMENTS SENT BY SUCH BOARDS OF COUNTY COMMISSIONERS OR COUNTY TREASURERS CONCERNING THE POTENTIAL ADDITION OF PROPERTIES FROM THEIR COUNTIES IF THE COMMENTS HAVE BEEN RECEIVED BY THE DATE OF THE PUBLIC MEETING.

(III) IF A MUNICIPALITY THAT HAS TERRITORY IN MULTIPLE COUNTIES, ONE OF

WHICH HAS CREATED A DISTRICT FOR THE PURPOSES AUTHORIZED IN PARAGRAPH (e) OF SUBSECTION (1) OF THIS SECTION, DESIRES TO CONSENT TO THE INCLUSION WITHIN SUCH DISTRICT OF ANY OF THE PROPERTIES WITHIN ITS ENTIRE INCORPORATED BOUNDARY, THE MUNICIPALITY SHALL EXPRESSLY STATE IN ITS ORDINANCE GRANTING CONSENT THAT ANY PROPERTY LOCATED IN THE MUNICIPALITY, IRRESPECTIVE OF THE COUNTY IN WHICH SUCH PROPERTY IS LOCATED, MAY BE INCLUDED IN THE DISTRICT.

SECTION 3. 30-20-609, Colorado Revised Statutes, is amended to read:

30-20-609. Hearing on objections. EXCEPT FOR A DISTRICT FORMED FOR THE PURPOSES AUTHORIZED IN SECTION 30-20-603 (11.5), at the time specified in ~~said~~ THE notice REQUIRED PURSUANT TO SECTION 30-20-608 (1) or at some adjourned time, the board shall hear and determine all such complaints and objections and may ~~thereupon~~, make such modifications and changes as may seem equitable and just or may confirm the first apportionment. The board shall, ~~thereupon~~ by resolution, assess the cost of ~~said~~ THE improvements, and the passage of ~~such~~ THE resolution shall be prima facie evidence of the fact that the property assessed is benefited in the amount of the assessments and that ~~such~~ THE assessments have been lawfully levied.

SECTION 4. 30-20-616 (1), Colorado Revised Statutes, is amended to read:

30-20-616. Payment in full - assessment roll returned - payment of share. (1) EXCEPT FOR A DISTRICT FORMED FOR THE PURPOSES AUTHORIZED IN SECTION 30-20-603 (11.5), AS TO WHICH THE ASSESSMENTS SHALL BE PAID PURSUANT TO THE CONTRACTS AND AGREEMENTS ENTERED INTO BY THE OWNER OF THE ASSESSED PROPERTY, payment may be made to the county treasurer at any time within thirty days after the effective date of the assessing resolution. At the expiration of said thirty-day period, the county treasurer shall return the local assessment roll to the county clerk and recorder, therein showing all payments made thereon, with the date of each payment. ~~Said roll~~ THE COUNTY CLERK AND RECORDER shall ~~be certified by the county clerk and recorder~~ CERTIFY THE ROLL under the seal of the county and ~~by him delivered~~ DELIVER IT to the county treasurer, with ~~his~~ THE CLERK'S warrant for the collection of the same. The county treasurer shall PROVIDE A receipt for the ~~same~~ THE ROLL, and all such rolls shall be numbered for convenient reference.

SECTION 5. 30-20-619 (1) and (8), Colorado Revised Statutes, are amended to read:

30-20-619. Issuing bonds - property specially benefited. (1) For the purpose of paying all or such portion of the cost of any improvement constructed or acquired under the provisions of this part 6 as may be assessed against the property specially benefited and not paid by the sales tax authorized by section 30-20-604.5 or by the county, special assessment bonds of the county may be issued, of such date, in such form, and on such terms, including, without limitation, provisions for their sale, payment, and redemption, as may be prescribed by the board, bearing the name of the street or district improved and payable in a sufficient period of years after such date to cover the period of payment provided, and in convenient denominations. All such bonds shall be issued upon estimates approved by the board, and the county treasurer shall preserve a record of the same in a suitable book kept for that purpose. All such bonds shall be subscribed by the chair of the board, countersigned by the

county treasurer, with the county seal ~~thereto~~ affixed, and attested by the county clerk and recorder; EXCEPT THAT THE COUNTY TREASURER NEED NOT COUNTERSIGN A BOND ISSUED BY A DISTRICT FORMED FOR THE PURPOSES AUTHORIZED IN SECTION 30-20-603 (11.5). Such bonds shall be payable out of the moneys collected on account of the assessments made for said improvements, from reserve accounts, if any, established to secure the payment of such bonds, and from any other legally available moneys. All moneys collected from such assessments for any improvement shall be applied to the payment of the bonds issued, until payment in full is made of all the bonds, both principal and interest, or to fund or replenish reserve accounts, if any, established to secure the payment of such bonds. The bonds may be sold, under such terms and conditions as are established by the board, in such amounts as will be sufficient to pay for the cost of the improvements.

(8) Notwithstanding any other provision of this part 6, any district formed for the purpose of encouraging, accommodating, and financing improvements as authorized in section 30-20-603 (11.5) may be authorized to:

(a) Issue one or more series of bonds, and bonds of any such district may be payable from the assessments levied pursuant to one or more assessment resolutions; AND

(b) JOINTLY FINANCE THE IMPROVEMENTS OF MULTIPLE SUCH DISTRICTS LOCATED IN ONE OR MORE COUNTIES BY INTERGOVERNMENTAL AGREEMENT OF THE ORGANIZING COUNTIES OR THROUGH OTHER LEGALLY AVAILABLE MEANS. SUCH INTERGOVERNMENTAL AGREEMENT MAY INCLUDE PROVISIONS FOR, AMONG OTHER THINGS, THE TRANSFER OF REVENUES COLLECTED PURSUANT TO THIS PART 6, INCLUDING ASSESSMENT PAYMENTS, PENALTY PAYMENTS PURSUANT TO SECTION 30-20-615, AND PROPERTY SALE PROCEEDS PURSUANT TO SECTION 30-20-617, FROM THE COUNTY TREASURER OF THE COUNTY IN WHICH A PROPERTY IS LOCATED TO THE COUNTY TREASURER FOR THE COUNTY ISSUING BONDS PURSUANT TO THIS SECTION.

SECTION 6. 30-20-627, Colorado Revised Statutes, is amended to read:

30-20-627. Local improvements completed - dissolution. ~~At the time that~~ WHEN the local improvements specified in the preliminary order referred to in section 30-20-603 (5) and specified in the resolution authorizing the improvements have been completed and any debt incurred or bonds issued have been paid, the board shall take all steps necessary to dissolve the district and, upon completion of such steps, shall declare, by resolution, that the district is dissolved; EXCEPT THAT THIS REQUIREMENT DOES NOT APPLY TO A DISTRICT FORMED FOR THE PURPOSES AUTHORIZED IN SECTION 30-20-603 (11.5). Upon dissolution, any moneys remaining to the credit of such district that have not been transferred to a special surplus and deficiency fund as permitted in section 30-20-619 (3) may be used for any county purpose as determined by the board, including, without limitation, the reimbursement to the county of any county moneys spent to provide any portion of the costs of the local improvements completed within the dissolved district.

SECTION 7. 31-25-501 (4), Colorado Revised Statutes, is amended, and the said 31-25-501 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

31-25-501. Definitions. As used in this part 5, unless the context otherwise requires:

(3.5) "QUALIFIED COMMUNITY LOCATION" MEANS:

(a) IF THE AFFECTED LOCAL ELECTRIC UTILITY IS NOT AN INVESTOR-OWNED UTILITY, AN OFF-SITE LOCATION OF A RENEWABLE ENERGY IMPROVEMENT THAT:

(I) IS WHOLLY OWNED, THROUGH EITHER AN UNDIVIDED OR A FRACTIONAL INTEREST, BY THE OWNER OR OWNERS OF THE RESIDENTIAL OR COMMERCIAL BUILDING OR BUILDINGS THAT ARE DIRECTLY BENEFITED BY THE RENEWABLE ENERGY IMPROVEMENT;

(II) PROVIDES ENERGY AS A DIRECT CREDIT ON THE OWNER'S UTILITY BILL; AND

(III) IS AN ENCUMBRANCE ON THE PROPERTY SPECIFICALLY BENEFITED.

(b) IF THE AFFECTED LOCAL ELECTRIC UTILITY IS AN INVESTOR-OWNED UTILITY, A SOLAR COMMUNITY GARDEN AS THAT TERM IS DEFINED IN SECTION 40-2-127 (2), C.R.S. IF HOUSE BILL 10-1342 DOES NOT TAKE EFFECT, THERE SHALL BE NO QUALIFIED COMMUNITY LOCATIONS IN THE SERVICE TERRITORIES OF INVESTOR-OWNED UTILITIES.

(4) (a) "Renewable energy improvement" means a fixture, product, system, device, or interacting group of devices ~~installed behind the meter of any residential or commercial building~~ that produces energy from renewable resources, including ~~but not limited to~~, photovoltaic systems, solar thermal systems, small wind systems, biomass systems, HYDROELECTRIC SYSTEMS, or geothermal systems, as may be authorized by the governing body, AND THAT EITHER:

(I) IS INSTALLED BEHIND THE METER OF A RESIDENTIAL OR COMMERCIAL BUILDING; OR

(II) DIRECTLY BENEFITS A RESIDENTIAL OR COMMERCIAL BUILDING THROUGH A QUALIFIED COMMUNITY LOCATION.

(b) 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 PART 5 LIMITS 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 MODIFIES OR EXPANDS THE NET METERING LIMITATIONS ESTABLISHED IN SECTION 40-9.5-118, C.R.S. THE PUBLIC UTILITIES COMMISSION HAS PRIMARY JURISDICTION TO ADJUDICATE DISPUTES AS TO WHETHER A RENEWABLE ENERGY IMPROVEMENT INTERFERES WITH SUCH A RIGHT.

SECTION 8. 31-25-503 (9), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

31-25-503. What improvements may be made - conditions. (9) (c) THE CONTRACT OR AGREEMENT SHALL NOTE THE EXISTENCE OF ANY FIRST PRIORITY

MORTGAGE OR DEED OF TRUST ON THE PROPERTY, THE IDENTITY OF THE RECORD HOLDER THEREOF, AND THE PENALTY FOR DEFAULT PROVIDED IN SECTION 31-25-530 CLEARLY STATING THAT DEFAULT, LIKE THE PENALTIES THAT EXIST FOR DEFAULT ON ANY MORTGAGE OR ANY OTHER SPECIAL ASSESSMENT, MAY RESULT IN THE LOSS OF THE APPLICANT'S HOME. WITHIN THIRTY DAYS OF A PERSON'S SUBMISSION OF AN APPLICATION TO THE DISTRICT, THE GOVERNING BODY SHALL PROVIDE WRITTEN NOTICE TO THE RECORD HOLDER OF ANY FIRST PRIORITY MORTGAGE OR DEED OF TRUST ON THE REAL PROPERTY THAT THE PERSON IS PARTICIPATING IN THE DISTRICT.

SECTION 9. Applicability. This act shall apply 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 5, 2010