

Second Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO

DRAFT
4/10/24

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LLS NO. 24-0838.01 Richard Sweetman x4333

SENATE BILL

SENATE SPONSORSHIP

Hansen and Fenberg,

HOUSE SPONSORSHIP

(None),

BILL TOPIC: Local Govs Regul Renewable Energy Projects
DEADLINES: File by: 4/17/2024

A BILL FOR AN ACT

101 CONCERNING MEASURES TO FACILITATE THE CONSTRUCTION OF
102 RENEWABLE ENERGY PROJECTS.

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 requires the energy and carbon management commission in the department of natural resources, at the request of a local government or tribal government, to provide technical support concerning:

- The development of local codes governing wind, solar, energy storage, and energy transmission projects

*Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words indicate deletions from existing law.*

1 (a) NEW CLEAN ENERGY PROJECTS ARE NEEDED IN ORDER TO
2 MAKE PROGRESS ON THE STATE'S GREENHOUSE GAS EMISSIONS REDUCTION
3 GOALS WHILE ALSO PROTECTING PUBLIC HEALTH, SAFETY, WELFARE, AND
4 THE ENVIRONMENT, INCLUDING WILDLIFE RESOURCES;

5 (b) THE PROTECTION OF HEALTHY, INTACT ECOSYSTEMS RESULTS
6 IN RESILIENT LANDS AND WATERS THAT CAN BE UTILIZED AS
7 NATURE-BASED SOLUTIONS TO MITIGATE SOME IMPACTS OF CLIMATE
8 CHANGE;

9 (c) COLORADO WILL LIKELY NEED TO TRIPLE WIND ENERGY
10 CAPACITY AND QUINTUPLE SOLAR CAPACITY BY THE YEAR 2040 IN ORDER
11 TO MEET THE STATE'S CLEAN ELECTRICITY GOALS DESCRIBED IN SECTION
12 25-7-102; AND

13 (d) THE DEVELOPMENT OF CLEAN ENERGY RESOURCES AND
14 TRANSMISSION WILL GENERATE COST-SAVINGS FOR ELECTRICITY
15 CONSUMERS, PROVIDE MORE STABLE ENERGY PRICES BY REDUCING
16 DEPENDENCE ON COMMODITIES WITH VARIABLE PRICES, REDUCE HARMFUL
17 AIR POLLUTION, IMPROVE PUBLIC HEALTH, INCREASE ENERGY SECURITY,
18 AND BRING ECONOMIC BENEFITS TO LANDOWNERS AND LOCAL
19 COMMUNITIES.

20 (2) THE GENERAL ASSEMBLY FURTHER FINDS THAT:

21 (a) A FAIR AND CONSISTENT APPROACH TO THE SITING AND
22 PERMITTING OF SOLAR, WIND, STORAGE, AND TRANSMISSION PROJECTS
23 WILL ENCOURAGE NEEDED ENERGY-BASED ECONOMIC DEVELOPMENT
24 ACROSS THE STATE; AND

25 (b) A FAIR AND CONSISTENT APPROACH TO SITING AND PERMITTING
26 IS NECESSARY TO:

27 (I) REDUCE POLLUTION AND ACHIEVE THE STATE'S CLIMATE

1 GOALS;

2 (II) PROVIDE FOR ECONOMIC PROSPERITY FOR LANDOWNERS AND
3 LOCAL COMMUNITIES THROUGH INFRASTRUCTURE DEVELOPMENT;

4 (III) ACHIEVE ENERGY AFFORDABILITY BY UNLOCKING LOWER
5 PRICED AND MORE COST-PREDICTABLE CLEAN ENERGY;

6 (IV) ENSURE THE SECURITY OF THE STATE'S ENERGY SUPPLY; AND

7 (V) ENABLE JOB CREATION.

8 **29-20-403. Definitions.** AS USED IN THIS PART 4, UNLESS THE
9 CONTEXT OTHERWISE REQUIRES:

10 (1) "APPLICANT" MEANS A FACILITY OWNER THAT APPLIES FOR A
11 DEVELOPMENT PERMIT FOR A RENEWABLE ENERGY PROJECT.

12 (2) "COLORADO ENERGY OFFICE", OR "OFFICE" MEANS THE
13 COLORADO ENERGY OFFICE CREATED IN SECTION 24-38.5-101.

14 (3) "COMMERCIAL ENERGY STORAGE FACILITY" MEANS [REDACTED].

15 (4) "COMMERCIAL ENERGY TRANSMISSION FACILITY" MEANS [REDACTED].

16 (5) "COMMERCIAL SOLAR ENERGY FACILITY" MEANS ANY DEVICE
17 OR ASSEMBLY OF DEVICES THAT:

18 (I) IS GROUND INSTALLED;

19 (II) HAS AT LEAST FIVE MEGAWATTS OF TOTAL NAMEPLATE
20 GENERATING CAPACITY; AND

21 (III) USES SOLAR ENERGY TO GENERATE ELECTRICITY FOR THE
22 PRIMARY PURPOSE OF WHOLESALE OR RETAIL SALE AND NOT PRIMARILY
23 FOR CONSUMPTION ON THE PROPERTY ON WHICH THE DEVICE OR DEVICES
24 RESIDE.

25 (6) "COMMERCIAL WIND ENERGY FACILITY" MEANS A WIND
26 ENERGY CONVERSION FACILITY OF EQUAL OR GREATER THAN FIVE
27 HUNDRED KILOWATTS IN TOTAL NAMEPLATE GENERATING CAPACITY.

1 (7) "DIVISION OF PARKS AND WILDLIFE", OR "DIVISION", MEANS
2 THE DIVISION OF PARKS AND WILDLIFE CREATED IN 33-9-104.

3 (8) "ENERGY AND CARBON MANAGEMENT COMMISSION" MEANS
4 THE ENERGY AND CARBON MANAGEMENT COMMISSION CREATED IN
5 SECTION 34-60-104.3.

6 (9) "FACILITY" MEANS:

7 (a) A COMMERCIAL WIND ENERGY FACILITY;

8 (b) A COMMERCIAL SOLAR ENERGY FACILITY;

9 (c) A COMMERCIAL ENERGY STORAGE FACILITY; OR

10 (d) A COMMERCIAL ENERGY TRANSMISSION FACILITY.

11 (10) "FACILITY OWNER" MEANS:

12 (a) A PERSON WITH A DIRECT OWNERSHIP INTEREST IN A FACILITY,
13 REGARDLESS OF WHETHER THE PERSON IS INVOLVED IN ACQUIRING RIGHTS
14 AND PERMITS FOR THE FACILITY OR OTHERWISE PLANNING FOR THE
15 CONSTRUCTION AND OPERATION OF THE FACILITY; AND

16 (b) DURING THE TIME A FACILITY IS BEING DEVELOPED, A PERSON
17 WHO IS ACTING AS A DEVELOPER OF THE FACILITY BY ACQUIRING
18 NECESSARY RIGHTS, PERMITS, AND APPROVALS OR BY PLANNING FOR THE
19 CONSTRUCTION AND OPERATION OF THE FACILITY, REGARDLESS OF
20 WHETHER THE PERSON WILL OWN OR OPERATE THE FACILITY.

21 (11) "HIGH-PRIORITY HABITAT" HAS THE MEANING SET FORTH IN
22 SECTION 34-60-132.

23 (12) "PARKS AND WILDLIFE COMMISSION" MEANS THE PARKS AND
24 WILDLIFE COMMISSION CREATED IN SECTION 33-9-101.

25 (13) "PARTICIPATING PROPERTY" MEANS REAL PROPERTY THAT:

26 (a) IS THE SUBJECT OF A WRITTEN AGREEMENT BETWEEN A
27 FACILITY OWNER AND THE OWNER OF THE REAL PROPERTY, WHICH

1 WRITTEN AGREEMENT PROVIDES THE FACILITY OWNER AN EASEMENT,
2 OPTION, LEASE, OR LICENSE TO USE THE REAL PROPERTY FOR THE PURPOSE
3 OF CONSTRUCTING A FACILITY OR SUPPORTING FACILITIES; OR

4 (b) IS OWNED BY A FACILITY OWNER FOR THE PURPOSE OF
5 CONSTRUCTING A FACILITY OR SUPPORTING FACILITIES.

6 (14) "PUBLIC UTILITIES COMMISSION" MEANS THE PUBLIC UTILITIES
7 COMMISSION CREATED IN SECTION 40-2-101.

8 (16) "RENEWABLE ENERGY PROJECT" MEANS A PROJECT TO
9 ESTABLISH A FACILITY.

10 (17) "SUPPORTING FACILITY" MEANS A TRANSMISSION LINE,
11 SUBSTATION, ACCESS ROAD, METEOROLOGICAL TOWER, STORAGE
12 CONTAINER, OR OTHER EQUIPMENT ASSOCIATED WITH THE GENERATION OR
13 STORAGE OF ELECTRICITY BY A FACILITY.

14 (18) "TRIBAL GOVERNMENT" MEANS THE TRIBAL GOVERNMENT OF
15 THE UTE MOUNTAIN UTE OR THE SOUTHERN UTE INDIAN TRIBE.

16 (19) "WILDLIFE IMPACT MITIGATION AGREEMENT " MEANS A
17 DOCUMENT THAT CONCERNS A FACILITY AND DESCRIBES ANY AVOIDANCE
18 MEASURES, MINIMIZATION MEASURES, OR MITIGATION REQUIREMENTS
19 IMPLEMENTED PURSUANT TO A CONSULTATION BETWEEN A FACILITY
20 OWNER AND THE DIVISION OF PARKS AND WILDLIFE.

21 (20) "WILDLIFE RESOURCES" MEANS FISH, WILDLIFE, AND THEIR
22 AQUATIC AND TERRESTRIAL HABITATS USED FOR ALL LIFE STAGES,
23 INCLUDING REPRODUCTION, REARING OF YOUNG, AND FORAGING, AND THE
24 MIGRATION CORRIDORS AND SEASONAL RANGES NECESSARY TO SUSTAIN
25 ROBUST WILDLIFE POPULATIONS.

26 **29-20-404. Technical support for renewable energy projects -**
27 **duties of energy and carbon management commission - duties of**

1 **Colorado energy office - model code repository - report - repeal.**

2 (1) (a) AT THE REQUEST OF LOCAL GOVERNMENT OR TRIBAL
3 GOVERNMENT, THE ENERGY AND CARBON MANAGEMENT COMMISSION
4 SHALL PROVIDE TECHNICAL SUPPORT TO THE LOCAL GOVERNMENT OR
5 TRIBAL GOVERNMENT CONCERNING:

6 (I) THE DEVELOPMENT OF LOCAL CODES GOVERNING RENEWABLE
7 ENERGY PROJECTS; OR

8 (II) THE REVIEW OF PROPOSED RENEWABLE ENERGY PROJECTS.

9 (b) WHEN PROVIDING TECHNICAL SUPPORT AS DESCRIBED IN
10 SUBSECTION (1)(a) OF THIS SECTION, THE ENERGY AND CARBON
11 MANAGEMENT COMMISSION MAY COLLABORATE WITH OTHER STATE
12 AGENCIES.

13 (2) ON OR BEFORE JANUARY 15, 2025, THE COLORADO ENERGY
14 OFFICE, IN COOPERATION WITH THE DEPARTMENT OF LOCAL AFFAIRS AND
15 THE DEPARTMENT OF NATURAL RESOURCES, SHALL DEVELOP A
16 REPOSITORY OF MODEL CODES AND ORDINANCES FOR RENEWABLE ENERGY
17 PROJECTS FOR THE PURPOSE OF PROVIDING CONCEPTUAL FRAMEWORKS
18 THAT LOCAL GOVERNMENTS AND TRIBAL GOVERNMENTS MAY CONSIDER
19 AND ADAPT TO SUIT LOCAL CIRCUMSTANCES AND ADDRESS LOCAL ENERGY
20 RESOURCES.

21 (3) (a) ON OR BEFORE JUNE 30, 2025, THE COLORADO ENERGY
22 OFFICE SHALL SUBMIT A REPORT TO THE GENERAL ASSEMBLY. THE REPORT
23 MUST EVALUATE AND ASSESS LOCAL GOVERNMENT PROCESSES TO
24 DETERMINE WHETHER REASONABLE PATHWAYS TO SITING OF RENEWABLE
25 ENERGY PROJECTS EXIST IN AREAS WITH SUITABLE WIND AND SOLAR
26 RESOURCES. THE OFFICE SHALL COLLABORATE WITH OTHER STATE
27 AGENCIES, INCLUDING THE DEPARTMENT OF NATURAL RESOURCES, IN

1 DEVELOPING THE REPORT.

2 (b) THIS SUBSECTION (3) IS REPEALED, EFFECTIVE JULY 1, 2026.

3 **29-20-405. Standards for commercial wind energy facilities**
4 **and commercial solar energy facilities required - exemption for tribal**
5 **lands - park and open spaces - application fee amounts.**

6 (1) REGARDLESS OF WHETHER A LOCAL GOVERNMENT HAS FORMED A
7 ZONING COMMISSION AND ADOPTED FORMAL ZONING UNDER THIS ARTICLE
8 20, ON OR BEFORE DECEMBER 1, 2025, EACH LOCAL GOVERNMENT SHALL
9 ESTABLISH STANDARDS FOR FACILITIES.

10 (2) STANDARDS DEVELOPED BY A LOCAL GOVERNMENT PURSUANT
11 TO SUBSECTION (1) OF THIS SECTION DO NOT APPLY TO LANDS LOCATED
12 WITHIN THE EXTERIOR BOUNDARIES OF THE UTE MOUNTAIN UTE TRIBE
13 RESERVATION AND THE SOUTHERN UTE INDIAN TRIBE RESERVATION.

14 (3) (a) A LOCAL GOVERNMENT SHALL NOT ADOPT ZONING
15 REGULATIONS THAT PERMANENTLY DISALLOW FACILITIES FROM BEING
16 DEVELOPED OR OPERATED IN ANY AREA THAT IS ZONED TO ALLOW
17 AGRICULTURAL OR INDUSTRIAL USES; EXCEPT THAT, A LOCAL
18 GOVERNMENT MAY PERMANENTLY DISALLOW SUCH DEVELOPMENT OR
19 OPERATIONS IN AN AREA THAT IS ZONED OR OTHERWISE DESIGNATED AS
20 PARK AND OPEN SPACE, AS DEFINED IN SECTION 29-7.5-103 (2).

21 (b) A LOCAL GOVERNMENT MAY IMPLEMENT A TEMPORARY
22 MORATORIUM ON THE DEVELOPMENT OF FACILITIES FOR NO LONGER THAN
23 SIX MONTHS WHILE THE LOCAL GOVERNMENT DEVELOPS A RENEWABLE
24 ENERGY ORDINANCE THAT IS COMPATIBLE WITH THIS PART 4. A LOCAL
25 GOVERNMENT MAY EXTEND THIS SIX-MONTH MORATORIUM ONLY ONCE
26 FOR NO LONGER THAN SIX MONTHS. IF A LOCAL GOVERNMENT EXTENDS A
27 MORATORIUM AS DESCRIBED IN THIS SUBSECTION (3)(b), IT SHALL

1 PROMPLTY REPORT THE REASON FOR THE EXTENSION TO THE [REDACTED].

2 (4) THE AMOUNT OF ANY APPLICATION FEE IMPOSED BY A LOCAL
3 GOVERNMENT MUST BE CONSISTENT WITH THE AMOUNTS OF FEES IMPOSED
4 BY THE LOCAL GOVERNMENT FOR PROJECTS WITH SIMILAR CAPITAL VALUE
5 AND COST.

6 **29-20-406. Development permit application process - public**
7 **meetings - notice - meetings - consultations with energy and carbon**
8 **management commission and parks and wildlife commission.** (1) A
9 FACILITY OWNER THAT, AT ITS OPTION OR AS REQUIRED BY A LOCAL
10 GOVERNMENT, PROPOSES TO OBTAIN A DEVELOPMENT PERMIT FOR THE
11 CONSTRUCTION OF A FACILITY SHALL HOLD A PUBLIC MEETING IN EACH
12 COMMUNITY THAT WILL BE AFFECTED BY THE OPERATIONS OF THE
13 PROPOSED FACILITY.

14 (2) (a) AT LEAST SIXTY DAYS BEFORE A PUBLIC MEETING IS HELD
15 PURSUANT TO SUBSECTION (1)(a) OF THIS SECTION, THE FACILITY OWNER
16 SHALL OFFER IN WRITING TO MEET WITH THE CHAIR OF THE BOARD OF
17 COUNTY COMMISSIONERS OF EACH COUNTY IN WHICH THE PROPOSED
18 FACILITY WILL BE LOCATED, OR THE CHAIR'S DESIGNEE, TO DISCUSS THE
19 SITE PLAN.

20 (b) IF, WITHIN THIRTY DAYS AFTER A MEETING DESCRIBED IN
21 SUBSECTION (2)(b) OF THIS SECTION, THE CHAIR OF THE BOARD OF COUNTY
22 COMMISSIONERS OR THE CHAIR'S DESIGNEE NOTIFIES THE FACILITY OWNER
23 THAT THE LOCAL GOVERNMENT HAS AN APPLICABLE ORDINANCE
24 CONCERNING SITING OF RENEWABLE ENERGY PROJECTS, THE FACILITY
25 OWNER SHALL COMPLY WITH SUCH ORDINANCE IN APPLYING FOR A
26 DEVELOPMENT PERMIT. A LOCAL GOVERNMENT MAY REQUIRE A FACILITY
27 OWNER TO SUBMIT INFORMATION AS NECESSARY TO DETERMINE THE

1 FACILITY OWNER'S COMPLIANCE WITH SUCH AN ORDINANCE.

2 (c) AT LEAST THIRTY DAYS BEFORE A PUBLIC MEETING DESCRIBED
3 IN SUBSECTION (1) OF THIS SECTION, A FACILITY OWNER SHALL NOTIFY THE
4 CLERK OF THE LOCAL GOVERNMENT OF EACH COUNTY IN WHICH THE
5 PROPOSED FACILITY WILL BE LOCATED OF THE TIME, DATE, LOCATION, AND
6 PURPOSE OF THE PUBLIC MEETING AND PROVIDE A COPY OF THE SITE PLAN,
7 OR THE ADDRESS OF AN INTERNET SITE WHERE A SITE PLAN FOR THE
8 ENERGY FACILITY IS AVAILABLE, FOR REVIEW.

9 (d) AT LEAST FOURTEEN DAYS BEFORE A PUBLIC MEETING
10 DESCRIBED IN SUBSECTION (1) OF THIS SECTION, A FACILITY OWNER SHALL
11 PUBLISH NOTICE OF THE MEETING IN A NEWSPAPER OF GENERAL
12 CIRCULATION IN EACH COUNTY IN WHICH THE PROPOSED FACILITY WILL BE
13 LOCATED OR IN A COMPARABLE DIGITAL ALTERNATIVE. THE NOTICE MUST
14 INCLUDE A COPY OF THE SITE PLAN OR THE ADDRESS OF AN INTERNET SITE
15 WHERE THE SITE PLAN IS AVAILABLE FOR REVIEW. A LOCAL GOVERNMENT
16 MAY FURTHER PRESCRIBE THE FORMAT AND CONTENT OF THE NOTICE.

17 (3) A LOCAL GOVERNMENT THAT RECEIVES AN APPLICATION FOR
18 A DEVELOPMENT PERMIT FOR A FACILITY SHALL APPROVE OR DENY THE
19 APPLICATION WITHIN ONE HUNDRED TWENTY DAYS AFTER RECEIVING THE
20 APPLICATION. THE APPLICANT AND LOCAL GOVERNMENT MAY JOINTLY
21 AGREE TO EXTEND THIS DEADLINE BY NO MORE THAN ONE HUNDRED
22 TWENTY DAYS.

23 (4) A LOCAL GOVERNMENT SHALL NOT CONDITION THE APPROVAL
24 OF A DEVELOPMENT PERMIT FOR A FACILITY ON THE PROVISION OF AN
25 OFFTAKE AGREEMENT, POWER PURCHASE AGREEMENT, OR OTHER
26 PROPRIETARY FINANCIAL DETAILS RELATED TO THE PROJECT.

27 (5) FOR ANY PROJECT, A FACILITY OWNER, AN APPLICANT, A LOCAL

1 GOVERNMENT, OR A TRIBAL GOVERNMENT MAY REQUEST A
2 PRE-APPLICATION CONSULTATION WITH THE ENERGY AND CARBON
3 MANAGEMENT COMMISSION. BASED ON THIS PRE-APPLICATION
4 CONSULTATION, THE DIRECTOR OF THE ENERGY AND CARBON
5 MANAGEMENT COMMISSION, IN CONSULTATION WITH OTHER STATE
6 AGENCIES AT THEIR DISCRETION, SUCH AS THE COLORADO ENERGY OFFICE
7 AND THE PUBLIC UTILITIES COMMISSION, SHALL PROVIDE AN OPINION AS TO
8 WHETHER THE PROPOSED FACILITY APPROPRIATELY ADVANCES THE
9 STATEWIDE INTEREST IN ADVANCING GREENHOUSE GAS EMISSIONS
10 REDUCTION GOALS AND AFFORDABLE ELECTRICITY SUPPLY WHILE ALSO
11 PROTECTING PUBLIC HEALTH, SAFETY, WELFARE, AND THE ENVIRONMENT,
12 INCLUDING WILDLIFE RESOURCES, AND THE INTEREST OF THE PUBLIC IN
13 RELIABLE, CLEAN, AND COST-EFFECTIVE ENERGY. THE OPINION IS NOT
14 BINDING BUT MAY BE A FACTOR THAT IS CONSIDERED BY A LOCAL
15 GOVERNMENT IN THE APPROVAL OR DISAPPROVAL OF AN APPLICATION.
16 THE ENERGY AND CARBON MANAGEMENT COMMISSION MAY MAKE THE
17 OPINION AVAILABLE TO THE PUBLIC UTILITIES COMMISSION IF THE OPINION
18 CONCERNS A PROJECT THAT FALLS WITHIN THE PUBLIC UTILITIES
19 COMMISSION'S JURISDICTION.

20 (6) FOR ALL PROJECTS, THE DIVISION OF PARKS AND WILDLIFE
21 SHALL PROVIDE, UPON REQUEST BY A FACILITY OWNER, AN APPLICANT, A
22 LOCAL GOVERNMENT, OR A TRIBAL GOVERNMENT, A SET OF BEST
23 MANAGEMENT PRACTICES FOR COMMERCIAL SOLAR OR WIND ENERGY
24 FACILITIES, THAT MAY BE INCORPORATED INTO PROJECT PLANS AT THE
25 DISCRETION OF THE FACILITY OWNER, APPLICANT, LOCAL GOVERNMENT,
26 OR TRIBAL GOVERNMENT. FACILITY OWNERS, APPLICANTS, LOCAL
27 GOVERNMENTS, AND TRIBAL GOVERNMENTS ARE ENCOURAGED TO

1 CONSULT WITH THE DIVISION CONCERNING ANY PROJECT INVOLVING AN
2 AREA EXCEEDING FIVE ACRES IN SIZE.

3 (7) (a) EXCEPT AS DESCRIBED IN SUBSECTION (7)(b) OF THIS
4 SECTION, FOR A PROJECT LOCATED IN AN AREA THAT HAS BEEN
5 DESIGNATED BY THE DIVISION OF PARKS AND WILDLIFE AS A
6 HIGH-PRIORITY HABITAT, A FACILITY OWNER OR APPLICANT SHALL FILE A
7 PROJECT PLAN WITH THE ENERGY AND CARBON MANAGEMENT
8 COMMISSION PRIOR TO FILING AN APPLICATION WITH THE LOCAL
9 GOVERNMENT FOR A DEVELOPMENT PERMIT FOR A FACILITY. THE
10 DIRECTOR OF THE ENERGY AND CARBON MANAGEMENT COMMISSION
11 SHALL CONSULT WITH THE DIVISION AND PROVIDE COMMENTS ON
12 POTENTIAL IMPACTS TO WILDLIFE RESOURCES AND RECOMMENDATIONS TO
13 AVOID, MINIMIZE, AND MITIGATE THOSE IMPACTS. A FACILITY OWNER OR
14 APPLICANT MAY INCORPORATE THOSE COMMENTS INTO THE PROJECT PLAN.
15 THE DIRECTOR OF THE ENERGY AND CARBON MANAGEMENT COMMISSION
16 MAY RECOMMEND ADDITIONAL CONSULTATION BETWEEN A FACILITY
17 OWNER, AN APPLICANT, A LOCAL GOVERNMENT, OR A TRIBAL
18 GOVERNMENT AND THE DIVISION IF WARRANTED.

19 (b) THE REQUIREMENT DESCRIBED IN SUBSECTION (7)(a) OF THIS
20 SECTION DOES NOT APPLY IF A FACILITY OWNER EXECUTED A WILDLIFE
21 IMPACT MITIGATION AGREEMENT WITH THE DIVISION OF PARKS AND
22 WILDLIFE BEFORE THE EFFECTIVE DATE OF THIS PART 4.

23 (8) (a) EXCEPT AS DESCRIBED IN SUBSECTION (8)(b) OF THIS
24 SECTION, FOR A PROJECT THAT IS PROPOSED WITHIN AN AREA THAT HAS
25 BEEN DESIGNATED BY THE DIVISION OF PARKS AND WILDLIFE AS AN
26 EXCLUSION HABITAT FOR RENEWABLE ENERGY PROJECTS TO ESTABLISH
27 COMMERCIAL WIND ENERGY FACILITIES, COMMERCIAL SOLAR ENERGY

1 FACILITIES, AND COMMERCIAL ENERGY TRANSMISSION FACILITIES, A
2 LOCAL GOVERNMENT SHALL REQUIRE A FACILITY OWNER OR APPLICANT TO
3 ENGAGE IN A PRE-APPLICATION CONSULTATION, COORDINATED BY THE
4 ENERGY AND CARBON MANAGEMENT COMMISSION THROUGH THE PROCESS
5 DESCRIBED IN SUBSECTION (7)(a) OF THIS SECTION, WITH DIVISION PRIOR
6 TO FILING AN APPLICATION WITH THE LOCAL GOVERNMENT FOR THE
7 PROJECT. THE LOCAL GOVERNMENT SHALL REQUIRE THE DIVISION'S
8 RECOMMENDATIONS TO BE INCORPORATED INTO THE PLANS FOR THE
9 PROJECT.

10 (b) THE REQUIREMENT DESCRIBED IN SUBSECTION (8)(a) OF THIS
11 SECTION DOES NOT APPLY IF A FACILITY OWNER EXECUTED A WILDLIFE
12 IMPACT MITIGATION AGREEMENT WITH THE DIVISION OF PARKS AND
13 WILDLIFE BEFORE THE EFFECTIVE DATE OF THIS PART 4.

14 (9) THE REQUIREMENTS OF THIS SECTION DO NOT SUPERSEDE
15 CONSULTATIONS REQUIRED BY THE PUBLIC UTILITIES COMMISSION'S RULES
16 CONCERNING ENVIRONMENTAL IMPACTS OR ALTER ANY EXISTING
17 RECOMMENDED CONSULTATION UNDER FEDERAL GUIDELINES OR
18 ESTABLISHED INDUSTRY STANDARDS CONCERNING COMMUNICATION WITH
19 STATE AGENCIES.

20 (10) NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE
21 CONTRARY, THE REQUIREMENTS OF THIS SECTION DO NOT APPLY TO AN
22 APPLICANT THAT FILED AN APPLICATION FOR A DEVELOPMENT PERMIT FOR
23 A FACILITY BEFORE THE EFFECTIVE DATE OF THIS PART 4.

24 **29-20-407. Consultation with tribal government required -**
25 **Brunot agreement of 1974.** A LOCAL GOVERNMENT SHALL NOT GRANT
26 A DEVELOPMENT PERMIT FOR THE CONSTRUCTION OF A FACILITY IN ANY
27 AREA THAT IS INCLUDED WITHIN THE LANDS PROVIDED FOR THE USE OF

1 THE UTE AND SOUTHERN UTE INDIAN TRIBES BY THE FEDERAL
2 GOVERNMENT PURSUANT TO THE BRUNOT AGREEMENT OF 1874 UNLESS
3 THE LOCAL GOVERNMENT FIRST CONSULTS WITH THE TRIBAL
4 GOVERNMENTS OF THE UTE AND SOUTHERN UTE TRIBES CONCERNING THE
5 CONSTRUCTION OF THE FACILITY.

6 **29-20-408 Decommissioning plans required.** (1)(a) A FACILITY
7 OWNER MAY NOT CONSTRUCT A FACILITY OR A SUPPORTING FACILITY
8 UNLESS THE FACILITY OWNER SUBMITS A DECOMMISSIONING PLAN TO A
9 RELEVANT LOCAL GOVERNMENT AUTHORITY.

10 (b) A DECOMMISSIONING PLAN MUST:

11 (I) PROVIDE THAT A FACILITY OWNER IS RESPONSIBLE FOR, AT THE
12 FACILITY OWNER'S EXPENSE, THE DECOMMISSIONING OF THE FACILITY
13 AFTER THE OPERATIONAL LIFE OF THE FACILITY;

14 (II) STATE THE CONDITIONS:

15 (A) THAT CONSTITUTE THE OPERATIONAL LIFE OF THE FACILITY;

16 AND

17 (B) UNDER WHICH A FACILITY OWNER IS REQUIRED TO
18 DECOMMISSION THE FACILITY;

19 (III) INCLUDE A REQUIREMENT TO PROVIDE FINANCIAL ASSURANCE
20 IN ACCORDANCE WITH SECTION 29-20-409; AND

21 (IV) STATE A DECOMMISSIONING STRATEGY THAT PROVIDES FOR
22 THE FACILITY OWNER TO EITHER:

23 (A) RESTORE THE FACILITY TO OPERATIONAL LIFE, INCLUDING BY
24 REPOWERING THE FACILITY'S EQUIPMENT; OR

25 (B) REMOVE THE FACILITY AND SUPPORTING FACILITIES FROM
26 PARTICIPATING OR NONPARTICIPATING PROPERTY AND RESTORE THE
27 PROPERTY UPON WHICH THE FACILITY IS CONSTRUCTED TO A USEFUL

1 CONDITION THAT IS SIMILAR TO THE PROPERTY'S CONDITION BEFORE THE
2 CONSTRUCTION OF THE FACILITY.

3 (2) A DECOMMISSIONING STRATEGY TO REMOVE A FACILITY AND
4 SUPPORTING FACILITIES DESCRIBED UNDER SUBSECTION (1)(b)(IV)(B) OF
5 THIS SECTION MUST REQUIRE THE FACILITY OWNER TO:

6 (a) REMOVE ABOVE-SURFACE COMPONENTS OF THE FACILITY AND
7 ANY SUPPORTING FACILITIES THAT HAVE NO ONGOING OPERATIONAL
8 PURPOSE;

9 (b) UNLESS PROVIDED OTHERWISE BY THE PERMITTING COUNTY OR
10 UNDER AN AGREEMENT WITH AN OWNER OF PARTICIPATING PROPERTY,
11 REMOVE UNDERGROUND COMPONENTS OF THE FACILITIES THAT HAVE NO
12 ONGOING OPERATIONAL PURPOSE TO A DEPTH OF THREE FEET BELOW THE
13 SURFACE; AND

14 (c) IF AGREED TO BY AN OWNER OF PARTICIPATING PROPERTY,
15 RESTORE BUILDINGS, ROADS, OR OTHER FACILITIES.

16 (3) (a) A FACILITY OWNER MAY PETITION A LOCAL GOVERNMENT
17 TO AMEND A DECOMMISSIONING PLAN DESCRIBED IN SUBSECTION (1) OF
18 THIS SECTION.

19 (b) A LOCAL GOVERNMENT SHALL PERMIT A FACILITY OWNER TO
20 AMEND A DECOMMISSIONING PLAN:

21 (I) TO ACCOUNT FOR ADVANCEMENTS IN AVAILABLE TECHNOLOGY;

22 (II) TO ACCOUNT FOR ADVANCEMENTS IN DECOMMISSIONING,
23 SALVAGING, OR REPOWERING PROCESSES OR PROCEDURES; OR

24 (III) IF THE AMENDMENTS ARE IN THE BEST INTEREST OF THE
25 LOCAL COMMUNITY, THE LOCAL GOVERNMENT, AND THE FACILITY OWNER.

26 **29-20-409. Financial assurance required.** (1) A
27 DECOMMISSIONING PLAN FOR A FACILITY DESCRIBED IN SECTION 29-20-408

1 MUST INCLUDE A REQUIREMENT FOR THE FACILITY OWNER TO PROVIDE THE
2 LOCAL GOVERNMENT WITH EVIDENCE OF FINANCIAL ASSURANCE IN AN
3 AMOUNT THAT IS SUFFICIENT TO SECURE THE FACILITY OWNER'S
4 OBLIGATION TO REMOVE THE FACILITY IN ACCORDANCE WITH THE
5 DECOMMISSIONING PLAN. A FACILITY OWNER MAY PROVIDE THE
6 FINANCIAL ASSURANCE IN THE FORM OF ONE OR MORE OF THE FOLLOWING:

- 7 (a) A SURETY BOND;
- 8 (b) A LETTER OF CREDIT;
- 9 (c) A SELF-GUARANTEE;
- 10 (d) A PARENT GUARANTEE;
- 11 (e) AN ESCROW ACCOUNT; OR
- 12 (f) ANY OTHER FORM OF FINANCIAL ASSURANCE REASONABLY
13 ACCEPTABLE TO THE LOCAL GOVERNMENT.

14 (2) THE AMOUNT OF FINANCIAL ASSURANCE DESCRIBED IN
15 SUBSECTION (1) OF THIS SECTION MUST EQUAL AT LEAST THE ESTIMATED
16 COST OF DECOMMISSIONING THE FACILITY, MINUS ESTIMATED SALVAGE
17 VALUE AND RESALE VALUE.

18 (3) THE EVIDENCE OF FINANCIAL ASSURANCE REQUIRED BY
19 SUBSECTION (1) OF THIS SECTION MUST INCLUDE AN ESTIMATE OF THE
20 TOTAL COST OF DECOMMISSIONING THE FACILITY, MINUS ESTIMATED
21 SALVAGE VALUE AND RESALE VALUE. THE ESTIMATE MUST BE CONDUCTED
22 BY AN INDIVIDUAL WHO:

23 (a) IS A LICENSED PROFESSIONAL ENGINEER WHO IS INDEPENDENT
24 FROM THE FACILITY OWNER AND THE LOCAL GOVERNMENT; OR

25 (b) IF AGREED TO BY THE FACILITY OWNER AND THE LOCAL
26 GOVERNMENT, HAS SUITABLE EXPERIENCE IN THE DECOMMISSIONING OF
27 FACILITIES OF THE TYPE IN QUESTION.

1 (4) (a) A FACILITY OWNER SHALL SUBMIT THE FINANCIAL
2 ASSURANCE REQUIRED UNDER SUBSECTION (1) OF THIS SECTION IN
3 ACCORDANCE WITH THE FOLLOWING SCHEDULE:

4 (I) AN INITIAL PAYMENT ON OR BEFORE THE DAY TEN YEARS AFTER
5 THE COMMERCIAL OPERATION DATE OF THE COMMERCIAL SOLAR OR WIND
6 ENERGY SYSTEM;

7 (II) INTERMEDIARY PAYMENTS OCCURRING NO LESS FREQUENTLY
8 THAN ONE PAYMENT EVERY FIVE YEARS AFTER THE DATE OF THE INITIAL
9 PAYMENT; AND

10 (III) A FINAL PAYMENT ON OR BEFORE THE DAY TWENTY-FIVE
11 YEARS AFTER THE COMMERCIAL OPERATION DATE OF THE COMMERCIAL
12 SOLAR OR WIND ENERGY SYSTEM, SUCH THAT THE TOTAL AMOUNT PAID IS
13 EQUAL TO THE ENTIRE DECOMMISSIONING COST CALCULATED UNDER
14 SUBSECTION (3) OF THIS SECTION.

15 (b) THE FACILITY OWNER AND THE LOCAL GOVERNMENT MAY
16 DETERMINE BY AGREEMENT THE AMOUNT OF EACH PAYMENT DESCRIBED
17 IN SUBSECTION (4)(a) OF THIS SECTION.

18 (5) IN THE EVENT OF A TRANSFER OF OWNERSHIP OF A FACILITY,
19 THE TRANSFEROR FACILITY OWNER SHALL MAINTAIN THE FINANCIAL
20 ASSURANCE REQUIRED BY THIS SECTION UNTIL THE TRANSFEREE FACILITY
21 OWNER POSTS FINANCIAL ASSURANCE THAT COMPLIES WITH THIS SECTION.

22 **29-20-410. Decommissioning timing** (1) A FACILITY OWNER, TO
23 THE EXTENT PRACTICABLE, AND WHERE REQUIRED BY THIS SECTION AND
24 BY A DECOMMISSIONING PLAN AS DESCRIBED IN SECTION 29-20-408, SHALL
25 COMPLETE DECOMMISSIONING OF A FACILITY NO LATER THAN TWELVE
26 MONTHS AFTER THE END OF THE OPERATIONAL LIFE OF THE FACILITY.

27 (2) FOR THE PURPOSES OF THIS SECTION, UNLESS OTHERWISE

1 DEFINED IN A LEASE AGREEMENT BETWEEN A FACILITY OWNER AND A
2 LANDOWNER, THE OPERATIONAL LIFE OF A FACILITY ENDS NO LATER THAN
3 THE DATE FOLLOWING A PERIOD OF TWENTY-FOUR CONSECUTIVE MONTHS
4 DURING WHICH THE FACILITY FAILS TO GENERATE OR STORE ELECTRICITY.

5 **29-20-411. Encouragement of development of renewable**
6 **energy projects - brownfield sites - agrivoltaics and floatovoltaics.**

7 (1) LOCAL GOVERNMENTS ARE ENCOURAGED TO INCORPORATE
8 PROVISIONS INTO THEIR ZONING ORDINANCES AND APPLICATION
9 PROCESSES THAT FACILITATE THE DEVELOPMENT OF PROJECTS THAT:

10 (a) ARE LOCATED IN BROWNFIELD SITES, AS DEFINED IN 42 U.S.C.
11 SEC. 9601 (39); OR

12 (b) EMPLOY AGRIVOLTAICS, AS DEFINED IN SECTION 35-1-114
13 (4)(a) OR FLOATOVOLTAICS, AS DEFINED IN SECTION 37-60-115
14 (12)(c)(III).

15 **SECTION 2. Act subject to petition - effective date.** This act
16 takes effect at 12:01 a.m. on the day following the expiration of the
17 ninety-day period after final adjournment of the general assembly; except
18 that, if a referendum petition is filed pursuant to section 1 (3) of article V
19 of the state constitution against this act or an item, section, or part of this
20 act within such period, then the act, item, section, or part will not take
21 effect unless approved by the people at the general election to be held in
22 November 2024 and, in such case, will take effect on the date of the
23 official declaration of the vote thereon by the governor.