

**Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 22-0346.01 Ed DeCecco x4216

SENATE BILL 22-118

SENATE SPONSORSHIP

Woodward, Hisey, Lundeen, Priola, Rankin, Scott, Sonnenberg

HOUSE SPONSORSHIP

Holtorf and Valdez D., Lynch, McKean, Pelton, Pico, Rich, Van Beber, Van Winkle, Will

Senate Committees

State, Veterans, & Military Affairs
Finance

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE ENCOURAGEMENT OF THE USE OF GEOTHERMAL**
102 **ENERGY BY PROVIDING SIMILAR TREATMENT TO SOLAR ENERGY.**

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 following statutory provisions that apply to solar energy so that they also apply to geothermal energy, which generally is using the heat of the earth to generate electricity or to heat or cool space or water:

- **Section 1** of the bill requires the Colorado energy office (office) to develop basic consumer education and guidance

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.

about leased or purchased geothermal installation, in consultation with industries that offer these options to consumers;

- **Sections 2, 6, and 8** limit the aggregate of all charges or other related or associated fees the state, a county, or a municipality may impose or assess to install a geothermal energy system;
- **Section 3** specifies that geothermal equipment is a type of pollution control equipment that the division of administration in the department of public health and environment may certify as pollution control equipment;
- **Section 4** specifies that a "project" for purposes of the "County and Municipality Development Revenue Bond Act" includes capital improvements to existing single-family residential, multi-family residential, commercial, or industrial structures, to retrofit such structures for installation of geothermal improvements;
- **Section 5** permits a county board of commissioners or a regional planning commission, and **section 9** requires a municipal development commission, to include methods for assuring access to appropriate conditions for geothermal energy sources in a master plan for development;
- **Section 7** specifies that the addition of a geothermal energy device to a building is not necessarily considered a structural alteration for purposes of continuing a nonconforming use of a building, structure, or land under a county zoning resolution;
- **Section 10** permits the Colorado agricultural value-added development board to use some of the money in the agriculture value-added cash fund for geothermal energy generation facilities that are colocated with agricultural uses;
- **Section 11** adds a geothermal energy device to the types of renewable energy generation devices that cannot be prohibited in legal instruments related to the transfer or sale of, or interest in, real property;
- **Section 13** includes an independently owned geothermal energy system, which is defined in **section 12**, in the property tax exemption for household furnishings;
- **Section 14** creates community geothermal gardens, which are analogous to community solar gardens; and
- **Sections 15 and 16** create conforming amendments to the definition of "qualified community location" to incorporate community geothermal gardens for purposes of local

improvement districts and municipal special improvement districts.

Section 1 requires the office to update the greenhouse gas pollution reduction roadmap to expressly include geothermal energy as a renewable energy resource that qualifying retail utilities may use to achieve the electric utility sector greenhouse gas pollution reduction goals set forth in the roadmap.

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

2 **SECTION 1.** In Colorado Revised Statutes, 24-38.5-102, **add**
3 **(1)(v) and (4)** as follows:

4 **24-38.5-102. Colorado energy office - duties and powers -**
5 **definitions.** (1) The Colorado energy office shall:

6 (v) IN CONSULTATION WITH THE APPROPRIATE INDUSTRIES,
7 DEVELOP BASIC CONSUMER EDUCATION OR GUIDANCE ABOUT PURCHASED
8 OR, IF AVAILABLE, LEASED INSTALLATION OF A SYSTEM THAT USES
9 GEOTHERMAL ENERGY FOR WATER HEATING OR SPACE HEATING OR
10 COOLING IN A SINGLE BUILDING OR FOR SPACE HEATING FOR MORE THAN
11 ONE BUILDING THROUGH A PIPELINE NETWORK.

12 (4) THE COLORADO ENERGY OFFICE MAY UPDATE THE
13 GREENHOUSE GAS POLLUTION REDUCTION ROADMAP, PUBLISHED BY THE
14 OFFICE AND DATED JANUARY 14, 2021, OR AS AMENDED THEREAFTER, TO
15 EXPRESSLY INCLUDE GEOTHERMAL ENERGY AS A RENEWABLE ENERGY
16 RESOURCE THAT QUALIFYING RETAIL UTILITIES MAY USE TO ACHIEVE THE
17 ELECTRIC UTILITY SECTOR GREENHOUSE GAS POLLUTION REDUCTION
18 GOALS SET FORTH IN THE GREENHOUSE GAS POLLUTION REDUCTION
19 ROADMAP.

20 **SECTION 2.** In Colorado Revised Statutes, 24-48.5-113, **amend**
21 (1)(a) introductory portion and (1)(e) as follows:

22 **24-48.5-113. Limit on fees - active solar energy systems -**

1 **geothermal systems - definitions - repeal.** (1) (a) Except as otherwise
2 provided in this section, the aggregate of all charges or other related or
3 associated fees the state or any agency, institution, authority, or political
4 subdivision of the state may impose or assess to install an active solar
5 energy system OR A GEOTHERMAL ENERGY SYSTEM shall not exceed:

6 (e) As used in this subsection (1):

7 (I) "Active solar energy system" means a single system that
8 contains electric generation, a thermal device, or is an energy storage
9 system as defined in section 40-2-202 (2).

10 (II) "GEOTHERMAL ENERGY SYSTEM" MEANS A SYSTEM THAT USES
11 GEOTHERMAL ENERGY FOR WATER HEATING OR SPACE HEATING OR
12 COOLING IN A SINGLE BUILDING, FOR SPACE HEATING FOR MORE THAN ONE
13 BUILDING THROUGH A PIPELINE NETWORK, OR FOR ELECTRICITY
14 GENERATION.

15 **SECTION 3.** In Colorado Revised Statutes, 25-6.5-201, **amend**
16 (2) as follows:

17 **25-6.5-201. Definitions.** As used in this part 2, unless the context
18 otherwise requires:

19 (2) "Pollution control equipment" means any personal property,
20 including, but not limited to, equipment, machinery, devices, systems,
21 buildings, or structures, that is installed, constructed, or used in or as a
22 part of a facility that creates a product in a manner that generates less
23 pollution by the utilization of an alternative manufacturing or generating
24 technology. "Pollution control equipment" includes, but is not limited to,
25 gas or wind turbines and associated compressors or equipment; ~~or~~ solar,
26 thermal, or photovoltaic equipment; OR EQUIPMENT USED AS PART
27 OF A SYSTEM THAT USES GEOTHERMAL ENERGY FOR WATER HEATING OR

1 SPACE HEATING OR COOLING IN A SINGLE BUILDING, FOR SPACE HEATING
2 FOR MORE THAN ONE BUILDING THROUGH A PIPELINE NETWORK, OR FOR
3 ELECTRICITY GENERATION.

4 **SECTION 4.** In Colorado Revised Statutes, 29-3-103, **amend** the
5 introductory portion and (10)(m) as follows:

6 **29-3-103. Definitions.** As used in this ~~article~~ ARTICLE 3, unless
7 the context otherwise requires:

8 (10) "Project" means any land, building, or other improvement
9 and all real or personal properties, and any undivided or other interest in
10 any of the foregoing, except inventories and raw materials, whether or not
11 in existence, suitable or used for or in connection with any of the
12 following:

13 (m) Capital improvements to existing single-family residential,
14 multi-family residential, commercial, or industrial structures, to retrofit
15 such structures for significant energy savings or installation of solar or
16 other alternative electrical energy-producing improvements to serve that
17 structure or other structures on contiguous property under common
18 ownership OR INSTALLATION OF A SYSTEM THAT USES GEOTHERMAL
19 ENERGY FOR WATER HEATING OR SPACE HEATING OR COOLING IN A SINGLE
20 STRUCTURE.

21 **SECTION 5.** In Colorado Revised Statutes, 30-28-106, **amend**
22 (3)(a)(VI) as follows:

23 **30-28-106. Adoption of master plan - contents.** (3) (a) The
24 master plan of a county or region, with the accompanying maps, plats,
25 charts, and descriptive and explanatory matter, must show the county or
26 regional planning commission's recommendations for the development of
27 the territory covered by the plan. The master plan of a county or region is

1 an advisory document to guide land development decisions; however, the
2 plan or any part thereof may be made binding by inclusion in the county's
3 or region's adopted subdivision, zoning, platting, planned unit
4 development, or other similar land development regulations after
5 satisfying notice, due process, and hearing requirements for legislative or
6 quasi-judicial processes as appropriate. After consideration of each of the
7 following, where applicable or appropriate, the master plan may include:

8 (VI) Methods for assuring access to appropriate conditions for
9 solar, wind, or other alternative energy sources, INCLUDING
10 GEOTHERMAL ENERGY USED FOR WATER HEATING OR SPACE HEATING OR
11 COOLING IN A SINGLE BUILDING, FOR SPACE HEATING FOR MORE THAN ONE
12 BUILDING THROUGH A PIPELINE NETWORK, OR FOR ELECTRICITY
13 GENERATION.

14 **SECTION 6.** In Colorado Revised Statutes, 30-28-113, **amend**
15 (1)(b)(II)(A) and (1)(b)(II)(C) as follows:

16 **30-28-113. Regulation of size and use - districts - definitions -**
17 **repeal.** (1) (b) (II) (A) Except as otherwise provided in this section, the
18 aggregate of all charges or other related or associated fees a county shall
19 impose or assess to install an active solar energy system OR GEOTHERMAL
20 ENERGY SYSTEM, shall not exceed the lesser of the county's actual costs
21 in issuing the permit or five hundred dollars for a residential application
22 or one thousand dollars for a nonresidential application if the device or
23 system produces fewer than two megawatts of direct current electricity or
24 an equivalent-sized thermal energy system, or that exceed the county's
25 actual costs in issuing the permit if the device or system produces at least
26 two megawatts of direct current electricity or an equivalent-sized thermal
27 energy system. A county may increase its fees or other charges as

1 authorized by this subsection (1)(b)(II) by no more than five percent on
2 an annual basis until the five hundred dollar limitation specified in this
3 subsection (1)(b)(II) is achieved. The county shall clearly and individually
4 identify all fees and taxes assessed on an application subject to this
5 subsection (1)(b)(II) on the invoice. The general assembly hereby finds
6 that there is a statewide need for certainty regarding the fees that can be
7 assessed for permitting such devices or systems, and therefore declares
8 that this subsection (1)(b)(II) is a matter of statewide concern. This
9 subsection (1)(b)(II) is repealed, effective December 31, 2029.

10 (C) As used in this subsection (1)(b)(II), "active solar energy
11 system" means a single system that contains electric generation, a thermal
12 device, or is an energy storage system as defined in section 40-2-202 (2),
13 AND "GEOTHERMAL ENERGY SYSTEM" MEANS A SYSTEM THAT USES
14 GEOTHERMAL ENERGY FOR WATER HEATING OR SPACE HEATING OR
15 COOLING IN A SINGLE BUILDING, FOR SPACE HEATING FOR MORE THAN ONE
16 BUILDING THROUGH A PIPELINE NETWORK, OR FOR ELECTRICITY
17 GENERATION.

18 **SECTION 7.** In Colorado Revised Statutes, 38-20-120, **amend**
19 (1) as follows:

20 **30-28-120. Existing structures - county property.** (1) The
21 lawful use of a building or structure or the lawful use of any land, as
22 existing and lawful at the time of the adoption of a zoning resolution or,
23 in the case of an amendment of a resolution, at the time of such
24 amendment, may be continued, although such use does not conform with
25 the provisions of such resolution or amendment, and such use may be
26 extended throughout the same building if no structural alteration of such
27 building is proposed or made for the purpose of such extension. The

1 addition of a solar energy device OR A DEVICE USED AS PART OF A SYSTEM
2 THAT USES GEOTHERMAL ENERGY FOR WATER HEATING OR SPACE HEATING
3 OR COOLING to such building shall not necessarily be considered a
4 structural alteration. The board of county commissioners may provide in
5 any zoning resolution for the restoration, reconstruction, extension, or
6 substitution of nonconforming uses upon such terms and conditions as
7 may be set forth in the zoning resolution.

8 **SECTION 8.** In Colorado Revised Statutes, 31-15-602, **amend**
9 (4)(b)(I)(A) and (4)(b)(I)(C) as follows:

10 **31-15-602. Energy efficient building codes - legislative**
11 **declaration - definitions - repeal.** (4) (b) (I) (A) Except as otherwise
12 provided in this section, the aggregate of all charges or other related or
13 associated fees a municipality shall impose or assess to install an active
14 solar electric or solar thermal device or system OR A GEOTHERMAL
15 ENERGY SYSTEM shall not exceed the lesser of the municipality's actual
16 costs in issuing the permit or five hundred dollars for a residential
17 application or one thousand dollars for a nonresidential application if the
18 device or system produces fewer than two megawatts of direct current
19 electricity or an equivalent-sized thermal energy system, or that exceed
20 the municipality's actual costs in issuing the permit if the device or system
21 produces at least two megawatts of direct current electricity or an
22 equivalent-sized thermal energy system. A municipality may increase its
23 fees or other charges as authorized by this subsection (4)(b)(I) by no more
24 than five percent on an annual basis until the five hundred dollar
25 limitation specified in this subsection (4)(b)(I) is achieved. The
26 municipality shall clearly and individually identify all fees and taxes
27 assessed on an application subject to this subsection (4)(b)(I) on the

1 invoice. The general assembly hereby finds that there is a statewide need
2 for certainty regarding the fees that can be assessed for permitting such
3 devices or systems, and therefore declares that this subsection (4)(b) is a
4 matter of statewide concern.

5 (C) As used in this subsection (4)(b)(I), "active solar energy
6 system" means a single system that contains electric generation, a thermal
7 device, or is an energy storage system as defined in section 40-2-202 (2),
8 AND "GEOHERMAL ENERGY SYSTEM" MEANS A SYSTEM THAT USES
9 GEOHERMAL ENERGY FOR WATER HEATING OR SPACE HEATING OR
10 COOLING IN A SINGLE BUILDING, FOR SPACE HEATING FOR MORE THAN ONE
11 BUILDING THROUGH A PIPELINE NETWORK, OR FOR ELECTRICITY
12 GENERATION.

13 **SECTION 9.** In Colorado Revised Statutes, 31-23-206, **amend**
14 (1)(f) as follows:

15 **31-23-206. Master plan.** (1) It is the duty of the commission to
16 make and adopt a master plan for the physical development of the
17 municipality, including any areas outside its boundaries, subject to the
18 approval of the governmental body having jurisdiction thereof, that in the
19 commission's judgment bear relation to the planning of the municipality.
20 The master plan of a municipality is an advisory document to guide land
21 development decisions; however, the plan or any part thereof may be
22 made binding by inclusion in the municipality's adopted subdivision,
23 zoning, platting, planned unit development, or other similar land
24 development regulations after satisfying notice, due process, and hearing
25 requirements for legislative or quasi-judicial processes as appropriate.
26 When a commission decides to adopt a master plan, the commission shall
27 conduct public hearings, after notice of such public hearings has been

1 published in a newspaper of general circulation in the municipality in a
2 manner sufficient to notify the public of the time, place, and nature of the
3 public hearing, prior to final adoption of a master plan in order to
4 encourage public participation in and awareness of the development of
5 such plan and shall accept and consider oral and written public comments
6 throughout the process of developing the plan. The plan, with the
7 accompanying maps, plats, charts, and descriptive matter, must, after
8 consideration of each of the following, where applicable or appropriate,
9 show the commission's recommendations for the development of the
10 municipality and outlying areas, including:

11 (f) A zoning plan for the control of the height, area, bulk, location,
12 and use of buildings and premises. Such a zoning plan may protect and
13 assure access to appropriate conditions for solar, wind, or other alternate
14 energy sources, INCLUDING GEOTHERMAL ENERGY USED FOR WATER
15 HEATING OR SPACE HEATING OR COOLING IN A SINGLE BUILDING, FOR
16 SPACE HEATING FOR MORE THAN ONE BUILDING THROUGH A PIPELINE
17 NETWORK, OR FOR ELECTRICITY GENERATION; however, regulations and
18 restrictions of the height, number of stories, size of buildings and other
19 structures, and the height and location of trees and other vegetation shall
20 not apply to existing buildings, structures, trees, or vegetation except for
21 new growth on such vegetation.

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23 **SECTION 10.** In Colorado Revised Statutes, 38-30-168, **amend**
24 (1)(b) as follows:

25 **38-30-168. Unreasonable restrictions on renewable energy**
26 **generation devices - definitions.** (1) (b) As used in this section,
27 "renewable energy generation device" means: ~~either:~~

- 1 (I) A solar energy device, as defined in section 38-32.5-100.3; ~~or~~
- 2 (II) A wind-electric generator that meets the interconnection
- 3 standards established in rules promulgated by the public utilities
- 4 commission pursuant to section 40-2-124; ~~C.R.S.~~ OR
- 5 (III) A GEOTHERMAL ENERGY DEVICE.

6 SECTION 11. In Colorado Revised Statutes, add
7 40-2-127.5 as follows:

8 40-2-127.5. Community energy funds - community geothermal
9 gardens - rules - legislative declaration - definitions - repeal.

10 (1) Legislative declaration. THE GENERAL ASSEMBLY HEREBY FINDS AND
11 DECLARES THAT:

12 (a) LOCAL COMMUNITIES CAN BENEFIT FROM THE FURTHER
13 DEVELOPMENT OF RENEWABLE ENERGY, ENERGY EFFICIENCY,
14 CONSERVATION, AND ENVIRONMENTAL IMPROVEMENT PROJECTS, AND THE
15 GENERAL ASSEMBLY HEREBY ENCOURAGES ELECTRIC UTILITIES TO
16 ESTABLISH COMMUNITY ENERGY FUNDS FOR THE DEVELOPMENT OF SUCH
17 PROJECTS;

18 (b) IT IS IN THE PUBLIC INTEREST THAT BROADER PARTICIPATION
19 IN GEOTHERMAL ELECTRIC GENERATION BY COLORADO RESIDENTS AND
20 COMMERCIAL ENTITIES BE ENCOURAGED BY THE DEVELOPMENT AND
21 DEPLOYMENT OF DISTRIBUTED GEOTHERMAL ELECTRIC GENERATING
22 FACILITIES KNOWN AS COMMUNITY GEOTHERMAL GARDENS, IN ORDER TO:

23 (I) PROVIDE COLORADO RESIDENTS AND COMMERCIAL ENTITIES
24 WITH THE OPPORTUNITY TO PARTICIPATE IN GEOTHERMAL ELECTRICITY
25 GENERATION;

26 (II) ALLOW RENTERS, LOW-INCOME UTILITY CUSTOMERS, AND
27 AGRICULTURAL PRODUCERS TO OWN INTERESTS IN SUCH GEOTHERMAL

1 GENERATION FACILITIES;

2 (III) ALLOW INTERESTS IN SUCH GEOTHERMAL GENERATION
3 FACILITIES TO BE PORTABLE AND TRANSFERRABLE; AND

4 (IV) LEVERAGE COLORADO'S GEOTHERMAL ELECTRICITY
5 GENERATING CAPACITY THROUGH ECONOMIES OF SCALE.

6 (2) Definitions. AS USED IN THIS SECTION, UNLESS THE CONTEXT
7 OTHERWISE REQUIRES, THE DEFINITIONS IN SECTION 40-2-124 APPLY, AND:

8 (a) (I) "COMMUNITY GEOTHERMAL GARDEN" MEANS A
9 GEOTHERMAL FACILITY THAT PRODUCES ELECTRICITY FROM THE EARTH'S
10 HEAT WITH A NAMEPLATE RATING WITHIN THE RANGE SPECIFIED UNDER
11 SUBSECTION (2)(b)(IV) OF THIS SECTION THAT IS LOCATED IN OR NEAR A
12 COMMUNITY SERVED BY A QUALIFYING RETAIL UTILITY WHERE THE
13 BENEFICIAL USE OF THE ELECTRICITY GENERATED BY THE FACILITY
14 BELONGS TO THE SUBSCRIBERS TO THE COMMUNITY GEOTHERMAL
15 GARDEN. THERE MUST BE AT LEAST TEN SUBSCRIBERS. THE OWNER OF THE
16 COMMUNITY GEOTHERMAL GARDEN MAY BE THE QUALIFYING RETAIL
17 UTILITY OR ANY OTHER FOR-PROFIT OR NONPROFIT ENTITY OR
18 ORGANIZATION, INCLUDING A SUBSCRIBER ORGANIZATION ORGANIZED
19 UNDER THIS SECTION, THAT CONTRACTS TO SELL THE OUTPUT FROM THE
20 COMMUNITY GEOTHERMAL GARDEN TO THE QUALIFYING RETAIL UTILITY.
21 A COMMUNITY GEOTHERMAL GARDEN IS DEEMED TO BE "LOCATED ON THE
22 SITE OF CUSTOMER FACILITIES".

23 (II) A COMMUNITY GEOTHERMAL GARDEN CONSTITUTES "RETAIL
24 DISTRIBUTED GENERATION" WITHIN THE MEANING OF SECTION 40-2-124.

25 (III) NOTWITHSTANDING ANY PROVISION OF THIS SECTION OR
26 SECTION 40-2-124 TO THE CONTRARY, A COMMUNITY GEOTHERMAL
27 GARDEN CONSTITUTES RETAIL DISTRIBUTED GENERATION FOR PURPOSES

1 OF A COOPERATIVE ELECTRIC ASSOCIATION'S COMPLIANCE WITH THE
2 APPLICABLE RENEWABLE ENERGY STANDARD UNDER SECTION 40-2-124.

3 (IV) A COMMUNITY GEOTHERMAL GARDEN MUST HAVE A
4 NAMEPLATE RATING OF FIVE MEGAWATTS OR LESS; EXCEPT THAT THE
5 COMMISSION MAY, IN RULES ADOPTED PURSUANT TO SUBSECTION (3)(b)
6 OF THIS SECTION, APPROVE THE FORMATION OF A COMMUNITY
7 GEOTHERMAL GARDEN WITH A NAMEPLATE RATING OF UP TO TEN
8 MEGAWATTS ON OR AFTER JULY 1, 2023.

9 (b) "SUBSCRIBER" MEANS A RETAIL CUSTOMER OF A QUALIFYING
10 RETAIL UTILITY WHO OWNS A SUBSCRIPTION AND WHO HAS IDENTIFIED ONE
11 OR MORE PHYSICAL LOCATIONS TO WHICH THE SUBSCRIPTION IS
12 ATTRIBUTED. SUCH PHYSICAL LOCATIONS MUST BE WITHIN THE SERVICE
13 TERRITORY OF THE SAME QUALIFYING RETAIL UTILITY AS THE COMMUNITY
14 GEOTHERMAL GARDEN. THE SUBSCRIBER MAY CHANGE FROM TIME TO
15 TIME THE PREMISES TO WHICH THE COMMUNITY GEOTHERMAL GARDEN
16 ELECTRICITY GENERATION IS ATTRIBUTED, SO LONG AS THE PREMISES ARE
17 WITHIN THE SAME SERVICE TERRITORY.

18 (c) "SUBSCRIPTION" MEANS A PROPORTIONAL INTEREST IN
19 GEOTHERMAL ELECTRIC GENERATION FACILITIES INSTALLED AT A
20 COMMUNITY GEOTHERMAL GARDEN, TOGETHER WITH THE RENEWABLE
21 ENERGY CREDITS ASSOCIATED WITH OR ATTRIBUTABLE TO SUCH FACILITIES
22 UNDER SECTION 40-2-124. EACH SUBSCRIPTION MUST BE SIZED TO
23 REPRESENT AT LEAST ONE KILOWATT OF THE COMMUNITY GEOTHERMAL
24 GARDEN'S GENERATING CAPACITY AND TO SUPPLY NO MORE THAN ONE
25 HUNDRED TWENTY PERCENT OF THE AVERAGE ANNUAL CONSUMPTION OF
26 ELECTRICITY BY EACH SUBSCRIBER AT THE PREMISES TO WHICH THE
27 SUBSCRIPTION IS ATTRIBUTED, WITH A DEDUCTION FOR THE AMOUNT OF

1 ANY EXISTING GEOTHERMAL FACILITIES AT SUCH PREMISES.
2 SUBSCRIPTIONS IN A COMMUNITY GEOTHERMAL GARDEN MAY BE
3 TRANSFERRED OR ASSIGNED TO A SUBSCRIBER ORGANIZATION OR TO ANY
4 PERSON OR ENTITY WHO QUALIFIES TO BE A SUBSCRIBER UNDER THIS
5 SECTION.

6 **(3) Subscriber organization - subscriber qualifications -**
7 **transferability of subscriptions.** (a) THE COMMUNITY GEOTHERMAL
8 GARDEN MAY BE OWNED BY A SUBSCRIBER ORGANIZATION, WHOSE SOLE
9 PURPOSE IS BENEFICIALLY OWNING AND OPERATING A COMMUNITY
10 GEOTHERMAL GARDEN. THE SUBSCRIBER ORGANIZATION MAY BE ANY
11 FOR-PROFIT OR NONPROFIT ENTITY PERMITTED BY COLORADO LAW. THE
12 COMMUNITY GEOTHERMAL GARDEN MAY ALSO BE BUILT, OWNED, AND
13 OPERATED BY A THIRD PARTY UNDER CONTRACT WITH THE SUBSCRIBER
14 ORGANIZATION.

15 (b) THE COMMISSION SHALL ADOPT RULES AS NECESSARY TO
16 IMPLEMENT THIS SECTION, INCLUDING RULES TO FACILITATE THE
17 FINANCING OF SUBSCRIBER-OWNED COMMUNITY GEOTHERMAL GARDENS.
18 THE RULES MUST INCLUDE:

- 19 (I) MINIMUM CAPITALIZATION;
- 20 (II) THE SHARE OF A COMMUNITY GEOTHERMAL GARDEN'S
21 GEOTHERMAL ELECTRIC GENERATION FACILITIES THAT A SUBSCRIBER
22 ORGANIZATION MAY AT ANY TIME OWN IN ITS OWN NAME; AND
- 23 (III) AUTHORIZING SUBSCRIBER ORGANIZATIONS TO ENTER INTO
24 LEASES, SALE-AND-LEASEBACK TRANSACTIONS, OPERATING AGREEMENTS,
25 AND OTHER OWNERSHIP ARRANGEMENTS WITH THIRD PARTIES.

26 (c) IF A SUBSCRIBER CEASES TO BE A CUSTOMER AT THE PREMISES
27 ON WHICH THE SUBSCRIPTION IS BASED BUT, WITHIN A REASONABLE

1 PERIOD AS DETERMINED BY THE COMMISSION, BECOMES A CUSTOMER AT
2 ANOTHER PREMISES IN THE SERVICE TERRITORY OF THE QUALIFYING
3 RETAIL UTILITY AND WITHIN THE GEOGRAPHIC AREA SERVED BY THE
4 COMMUNITY GEOTHERMAL GARDEN, THE SUBSCRIPTION CONTINUES IN
5 EFFECT BUT THE BILL CREDIT AND OTHER FEATURES OF THE SUBSCRIPTION
6 ARE ADJUSTED AS NECESSARY TO REFLECT ANY DIFFERENCES BETWEEN
7 THE NEW AND PREVIOUS PREMISES' CUSTOMER CLASSIFICATION AND
8 AVERAGE ANNUAL CONSUMPTION OF ELECTRICITY.

9 **(4) Standards for construction and operation.** THE FOLLOWING
10 REQUIREMENTS APPLY TO ANY COMMUNITY GEOTHERMAL GARDEN
11 EXCEEDING TWO MEGAWATTS:

12 (a) THE INITIAL INSTALLATION OF ANY ELECTRICAL EQUIPMENT
13 ASSOCIATED WITH THE COMMUNITY GEOTHERMAL GARDEN IS SUBJECT TO
14 FINAL INSPECTION AND APPROVAL IN ACCORDANCE WITH SECTION
15 12-115-120.

16 (b) FOLLOWING THE DEVELOPMENT OR ACQUISITION BY A
17 QUALIFYING RETAIL UTILITY OF A COMMUNITY GEOTHERMAL GARDEN IN
18 WHICH THE QUALIFYING RETAIL UTILITY RETAINS OWNERSHIP, THE
19 QUALIFYING RETAIL UTILITY SHALL EITHER USE ITS OWN EMPLOYEES TO
20 OPERATE AND MAINTAIN THE COMMUNITY GEOTHERMAL GARDEN OR
21 CONTRACT FOR OPERATION AND MAINTENANCE OF THE COMMUNITY
22 GEOTHERMAL GARDEN BY A CONTRACTOR WHOSE EMPLOYEES HAVE
23 ACCESS TO AN APPRENTICESHIP PROGRAM REGISTERED WITH THE UNITED
24 STATES DEPARTMENT OF LABOR'S OFFICE OF APPRENTICESHIP OR WITH A
25 STATE APPRENTICESHIP COUNCIL RECOGNIZED BY THAT OFFICE; EXCEPT
26 THAT THIS APPRENTICESHIP REQUIREMENT DOES NOT APPLY TO:

27 (I) THE DESIGN, PLANNING, OR ENGINEERING OF THE

1 INFRASTRUCTURE;

2 (II) MANAGEMENT FUNCTIONS TO OPERATE THE INFRASTRUCTURE;

3 OR

4 (III) ANY WORK INCLUDED IN A WARRANTY.

5 **(5) Community geothermal gardens not subject to regulation.**

6 NEITHER THE OWNERS OF NOR THE SUBSCRIBERS TO A COMMUNITY
7 GEOTHERMAL GARDEN ARE CONSIDERED PUBLIC UTILITIES SUBJECT TO
8 REGULATION BY THE COMMISSION SOLELY AS A RESULT OF THEIR INTEREST
9 IN THE COMMUNITY GEOTHERMAL GARDEN. PRICES PAID FOR
10 SUBSCRIPTIONS IN COMMUNITY GEOTHERMAL GARDENS SHALL NOT BE
11 SUBJECT TO REGULATION BY THE COMMISSION.

12 **(6) Purchases of the output from community geothermal**
13 **gardens. (a) (I) EACH QUALIFYING RETAIL UTILITY SHALL SET FORTH IN**
14 **ITS PLAN FOR ACQUISITION OF RENEWABLE RESOURCES A PLAN TO**
15 **PURCHASE THE ELECTRICITY AND RENEWABLE ENERGY CREDITS**
16 **GENERATED FROM ONE OR MORE COMMUNITY GEOTHERMAL GARDENS**
17 **OVER THE PERIOD COVERED BY THE PLAN.**

18 (IV) FOR EACH QUALIFYING RETAIL UTILITY'S COMPLIANCE YEARS
19 COMMENCING IN 2023 AND THEREAFTER, THE COMMISSION SHALL
20 DETERMINE THE MINIMUM AND MAXIMUM PURCHASES OF ELECTRICAL
21 OUTPUT FROM NEWLY INSTALLED COMMUNITY GEOTHERMAL GARDENS OF
22 DIFFERENT OUTPUT CAPACITY THAT THE QUALIFYING RETAIL UTILITY
23 SHALL PLAN TO ACQUIRE. IN ADDITION, AS NECESSARY, THE COMMISSION
24 SHALL FORMULATE AND IMPLEMENT POLICIES CONSISTENT WITH THIS
25 SECTION THAT SIMULTANEOUSLY ENCOURAGE:

26 (A) THE OWNERSHIP BY CUSTOMERS OF SUBSCRIPTIONS IN
27 COMMUNITY GEOTHERMAL GARDENS AND OF OTHER FORMS OF

1 DISTRIBUTED GENERATION, TO THE EXTENT THE COMMISSION FINDS THERE
2 TO BE CUSTOMER DEMAND FOR SUCH OWNERSHIP;

3 (B) OWNERSHIP IN COMMUNITY GEOTHERMAL GARDENS BY
4 RESIDENTIAL RETAIL CUSTOMERS AND AGRICULTURAL PRODUCERS,
5 INCLUDING LOW-INCOME CUSTOMERS, TO THE EXTENT THE COMMISSION
6 FINDS THERE TO BE DEMAND FOR SUCH OWNERSHIP;

7 (C) THE DEVELOPMENT OF COMMUNITY GEOTHERMAL GARDENS
8 WITH ATTRIBUTES THAT THE COMMISSION FINDS RESULT IN LOWER
9 OVERALL TOTAL COSTS FOR THE QUALIFYING RETAIL UTILITY'S
10 CUSTOMERS;

11 (D) SUCCESSFUL FINANCING AND OPERATION OF COMMUNITY
12 GEOTHERMAL GARDENS OWNED BY SUBSCRIBER ORGANIZATIONS; AND

13 (E) THE ACHIEVEMENT OF THE GOALS AND OBJECTIVES OF SECTION
14 40-2-124.

15 (b) (I) (A) THE OUTPUT FROM A COMMUNITY GEOTHERMAL
16 GARDEN MUST BE SOLD ONLY TO THE QUALIFYING RETAIL UTILITY SERVING
17 THE GEOGRAPHIC AREA WHERE THE COMMUNITY GEOTHERMAL GARDEN
18 IS LOCATED.

19 (B) ONCE A COMMUNITY GEOTHERMAL GARDEN IS PART OF A
20 QUALIFYING RETAIL UTILITY'S PLAN FOR ACQUISITION OF RENEWABLE
21 RESOURCES, AS APPROVED BY THE COMMISSION, THE COMMISSION SHALL
22 INITIATE A PROCEEDING, OR CONSIDER IN AN ACTIVE PROCEEDING, TO
23 DETERMINE WHETHER THE QUALIFYING RETAIL UTILITY MUST PURCHASE
24 ALL OF THE ELECTRICITY AND RENEWABLE ENERGY CREDITS GENERATED
25 BY THE COMMUNITY GEOTHERMAL GARDEN OR WHETHER A SUBSCRIBER
26 MAY, UPON BECOMING A SUBSCRIBER, CHOOSE TO RETAIN OR SELL TO THE
27 QUALIFYING RETAIL UTILITY THE SUBSCRIBER'S RENEWABLE ENERGY

1 CREDITS.

2 (C) THE AMOUNT OF ELECTRICITY AND RENEWABLE ENERGY
3 CREDITS GENERATED BY EACH COMMUNITY GEOTHERMAL GARDEN IS
4 DETERMINED BY A PRODUCTION METER INSTALLED BY THE QUALIFYING
5 RETAIL UTILITY OR THIRD-PARTY SYSTEM OWNER AND PAID FOR BY THE
6 OWNER OF THE COMMUNITY GEOTHERMAL GARDEN.

7 (II) THE PURCHASE OF THE OUTPUT OF A COMMUNITY
8 GEOTHERMAL GARDEN BY A QUALIFYING RETAIL UTILITY TAKES THE FORM
9 OF A NET METERING CREDIT AGAINST THE QUALIFYING RETAIL UTILITY'S
10 ELECTRIC BILL TO EACH COMMUNITY GEOTHERMAL GARDEN SUBSCRIBER
11 AT THE PREMISES SET FORTH IN THE SUBSCRIBER'S SUBSCRIPTION. THE NET
12 METERING CREDIT IS CALCULATED BY MULTIPLYING THE SUBSCRIBER'S
13 SHARE OF THE ELECTRICITY PRODUCTION FROM THE COMMUNITY
14 GEOTHERMAL GARDEN BY THE QUALIFYING RETAIL UTILITY'S TOTAL
15 AGGREGATE RETAIL RATE AS CHARGED TO THE SUBSCRIBER, MINUS A
16 REASONABLE CHARGE AS DETERMINED BY THE COMMISSION TO COVER THE
17 UTILITY'S COSTS OF DELIVERING TO THE SUBSCRIBER'S PREMISES THE
18 ELECTRICITY GENERATED BY THE COMMUNITY GEOTHERMAL GARDEN,
19 INTEGRATING THE GEOTHERMAL GENERATION WITH THE UTILITY'S
20 SYSTEM, AND ADMINISTERING THE COMMUNITY GEOTHERMAL GARDEN'S
21 CONTRACTS AND NET METERING CREDITS. THE COMMISSION SHALL ENSURE
22 THAT THIS CHARGE DOES NOT REFLECT COSTS THAT ARE ALREADY
23 RECOVERED BY THE UTILITY FROM THE SUBSCRIBER THROUGH OTHER
24 CHARGES. IF, AND TO THE EXTENT THAT, A SUBSCRIBER'S NET METERING
25 CREDIT EXCEEDS THE SUBSCRIBER'S ELECTRIC BILL IN ANY BILLING PERIOD,
26 THE NET METERING CREDIT IS CARRIED FORWARD AND APPLIED AGAINST
27 FUTURE BILLS. THE QUALIFYING RETAIL UTILITY AND THE OWNER OF THE

1 COMMUNITY GEOTHERMAL GARDEN MUST AGREE ON WHETHER THE
2 PURCHASE OF THE RENEWABLE ENERGY CREDITS FROM SUBSCRIBERS WILL
3 BE ACCOMPLISHED THROUGH A CREDIT ON EACH SUBSCRIBER'S
4 ELECTRICITY BILL OR BY A PAYMENT TO THE OWNER OF THE COMMUNITY
5 GEOTHERMAL GARDEN.

6 (c) THE OWNER OF THE COMMUNITY GEOTHERMAL GARDEN MUST
7 PROVIDE REAL-TIME PRODUCTION DATA TO THE QUALIFYING RETAIL
8 UTILITY TO FACILITATE INCORPORATION OF THE COMMUNITY GEOTHERMAL
9 GARDEN INTO THE UTILITY'S OPERATION OF ITS ELECTRIC SYSTEM AND TO
10 FACILITATE THE PROVISION OF NET METERING CREDITS.

11 (d) THE OWNER OF THE COMMUNITY GEOTHERMAL GARDEN IS
12 RESPONSIBLE FOR PROVIDING TO THE QUALIFYING RETAIL UTILITY, ON A
13 MONTHLY BASIS AND WITHIN REASONABLE PERIODS SET BY THE
14 QUALIFYING RETAIL UTILITY, THE PERCENTAGE SHARES THAT SHOULD BE
15 USED TO DETERMINE THE NET METERING CREDIT TO EACH SUBSCRIBER. IF
16 THE ELECTRICITY OUTPUT OF THE COMMUNITY GEOTHERMAL GARDEN IS
17 NOT FULLY SUBSCRIBED, THE QUALIFYING RETAIL UTILITY SHALL
18 PURCHASE THE UNSUBSCRIBED RENEWABLE ENERGY AND THE RENEWABLE
19 ENERGY CREDITS AT A RATE EQUAL TO THE QUALIFYING RETAIL UTILITY'S
20 AVERAGE HOURLY INCREMENTAL COST OF ELECTRICITY SUPPLY OVER THE
21 IMMEDIATELY PRECEDING CALENDAR YEAR.

22 (e) EACH QUALIFYING RETAIL UTILITY SHALL SET FORTH IN ITS
23 PLAN FOR ACQUISITION OF RENEWABLE RESOURCES A PROPOSAL FOR
24 INCLUDING LOW-INCOME CUSTOMERS AS SUBSCRIBERS TO A COMMUNITY
25 GEOTHERMAL GARDEN. THE UTILITY MAY GIVE PREFERENCE TO
26 COMMUNITY GEOTHERMAL GARDENS THAT HAVE LOW-INCOME
27 SUBSCRIBERS.

1 (f) QUALIFYING RETAIL UTILITIES ARE ELIGIBLE FOR THE
2 INCENTIVES AND SUBJECT TO THE OWNERSHIP LIMITATIONS SET FORTH IN
3 SECTION 40-2-124 (1)(f) FOR UTILITY INVESTMENTS IN COMMUNITY
4 GEOTHERMAL GARDENS AND MAY RECOVER THROUGH RATES A MARGIN,
5 IN AN AMOUNT DETERMINED BY THE COMMISSION, ON ALL ENERGY AND
6 RENEWABLE ENERGY CREDITS PURCHASED FROM COMMUNITY
7 GEOTHERMAL GARDENS. SUCH INCENTIVE PAYMENTS ARE EXCLUDED
8 FROM THE COST ANALYSIS REQUIRED BY SECTION 40-2-124 (1)(g).

9 (6) NOTHING IN THIS SECTION WAIVES OR SUPERSEDES THE RETAIL
10 RATE IMPACT LIMITATIONS IN SECTION 40-2-124 (1)(g). UTILITY
11 EXPENDITURES FOR UNSUBSCRIBED ENERGY AND RENEWABLE ENERGY
12 CREDITS GENERATED BY COMMUNITY GEOTHERMAL GARDENS MUST BE
13 INCLUDED IN THE CALCULATIONS OF RETAIL RATE IMPACT REQUIRED BY
14 THAT SECTION.

15 (7) **Applicability to cooperative electric associations and**
16 **municipally owned utilities.** THIS SECTION SHALL NOT APPLY TO
17 COOPERATIVE ELECTRIC ASSOCIATIONS OR TO MUNICIPALLY OWNED
18 UTILITIES.

19 **SECTION 12.** In Colorado Revised Statutes, 25-7-105, **amend**
20 **(1)(e)(VIII)(H)** as follows:

21 **25-7-105. Duties of commission - rules - legislative declaration**
22 **- definitions.** (1) Except as provided in sections 25-7-130 and 25-7-131,
23 the commission shall promulgate rules that are consistent with the
24 legislative declaration set forth in section 25-7-102 and necessary for the
25 proper implementation and administration of this article 7, including:

26 (e) (VIII) (H) In verifying clean energy plans or a wholesale
27 generation and transmission cooperative electric resource plan submitted

1 in accordance with subsection (1)(e)(VIII)(I) of this section, the division
2 shall prevent double counting of emission reductions among utilities and
3 shall consider electricity generated by renewable energy resources as
4 having zero greenhouse gas emissions only if: The electricity is
5 accompanied by any associated renewable energy credit, and the
6 renewable energy credit is retired on behalf of the utility's customers in
7 the year generated; or the electricity is generated by retail distributed
8 generation, as defined in sections 40-2-124 (1)(a)(VIII), and 40-2-127
9 (2)(b)(I)(A) and (2)(b)(I)(B), AND 40-2-127.5 (2)(a)(I) AND (2)(a)(II), and
10 the retail customer retains the renewable energy credit as part of a
11 voluntary renewable energy program.

12 **SECTION 13.** In Colorado Revised Statutes, 30-20-602, **amend**
13 (4.3)(b) as follows:

14 **30-20-602. Definitions.** As used in this part 6, unless the context
15 otherwise requires:

16 (4.3) "Qualified community location" means:

17 (b) If the affected local electric utility is an investor-owned utility,
18 a community solar garden, as that term is defined in section 40-2-127 (2),
19 C.R.S. If House Bill 10-1342 does not take effect, there shall be no
20 qualified community locations in the service territories of investor-owned
21 utilities. OR A COMMUNITY GEOTHERMAL GARDEN AS THAT TERM IS
22 DEFINED IN SECTION 42-2-127.5 (2).

23 **SECTION 14.** In Colorado Revised Statutes, 31-25-501, **amend**
24 (3.5)(b) as follows:

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

27 (3.5) "Qualified community location" means:

1 (b) If the affected local electric utility is an investor-owned utility,
2 a community solar garden as that term is defined in section 40-2-127 (2),
3 C.R.S. If House Bill 10-1342 does not take effect, there shall be no
4 qualified community locations in the service territories of investor-owned
5 utilities. OR A COMMUNITY GEOTHERMAL GARDEN AS THAT TERM IS
6 DEFINED IN SECTION 42-2-127.5 (2).

7 **SECTION 15.** In Colorado Revised Statutes, 40-2-129, **amend**
8 **(3)** as follows:

9 **40-2-129. New resource acquisitions - factors in determination**
10 **- local employment - "best value" metrics - performance audit.**

11 (3) The provisions of this section regarding "best value" employment
12 metrics do not apply to projects involving retail distributed generation, as
13 defined in section 40-2-124 (1)(a)(VIII), or 40-2-127 (2)(b)(I)(B), or
14 40-2-127.5 (2)(b)(II).

15 **SECTION 16.** In Colorado Revised Statutes, 40-9.5-106, **amend**
16 **(2)** as follows:

17 **40-9.5-106. Prohibited acts.** (2) No cooperative electric
18 association, as to rates, charges, service, or facilities or as to any other
19 matter, shall make or grant any preference or advantage to any
20 corporation or person or subject any corporation or person to any
21 prejudice or disadvantage. No cooperative electric association shall
22 establish or maintain any unreasonable difference as to rates, charges,
23 service, or facilities or as to any other matter, either between localities or
24 between any class of service. Notwithstanding section 40-6-108 (1)(b),
25 any complaint arising out of this subsection (2) signed by one or more
26 customers of such association shall be resolved by the public utilities
27 commission in accordance with the hearing and enforcement procedures

1 established in articles 6 and 7 of this title. A cooperative electric
2 association may approve any reasonable rate, charge, service,
3 classification, or facility that establishes a graduated rate for increased
4 energy consumption, for energy conservation and energy efficiency
5 purposes, by residential customers that is revenue-neutral for the class,
6 where revenue includes margins, expenses, riders, or charges as approved
7 by the cooperative electric association. The implementation of such rate,
8 charge, service, classification, or facility by a cooperative electric
9 association shall not be deemed to subject any person or corporation to
10 any prejudice, disadvantage, or undue discrimination. In adopting such
11 rate, a cooperative electric association shall give due consideration to the
12 impact of such rates on low-income customers. A cooperative electric
13 association may utilize a community energy fund as contemplated by
14 section 40-2-127 SECTIONS 40-2-127 AND 40-2-127.5 for energy
15 efficiency, energy conservation, weatherization, and renewable energy
16 purposes. A cooperative electric association shall not apply such rate to
17 consumers that have single meters that record energy consumption for
18 combined residential and agricultural uses.

19 **SECTION 17. Act subject to petition - effective date.** This act
20 takes effect at 12:01 a.m. on the day following the expiration of the
21 ninety-day period after final adjournment of the general assembly; except
22 that, if a referendum petition is filed pursuant to section 1 (3) of article V
23 of the state constitution against this act or an item, section, or part of this
24 act within such period, then the act, item, section, or part will not take
25 effect unless approved by the people at the general election to be held in
26 November 2022 and, in such case, will take effect on the date of the
27 official declaration of the vote thereon by the governor.