

CHAPTER 51

TAXATION

SENATE BILL 21-020

BY SENATOR(S) Hansen and Hisey, Priola, Bridges, Fenberg, Jaquez Lewis, Kolker, Lee, Pettersen, Winter;
also REPRESENTATIVE(S) Valdez A. and Soper, Benavidez, Bird, Hooton, Mullica.

AN ACT**CONCERNING THE VALUATION OF PROPERTY RELATED TO RENEWABLE ENERGY FOR PURPOSES OF THE PROPERTY TAX.**

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

SECTION 1. In Colorado Revised Statutes, 39-4-101, **amend** the introductory portion, (2.4), (3), (3.5), and (4); and **add** (2.6) and (2.7) as follows:

39-4-101. Definitions. As used in this ~~article~~ ARTICLE 4, unless the context otherwise requires:

(2.4) ~~"Geothermal energy facility" means a new facility first placed in production on or after January 1, 2010, that uses real and personal property, including but not limited to leaseholds and easements, to generate and deliver to the interconnection meter any source of electrical or mechanical energy by harnessing the heat energy of groundwater or the ground and that is not primarily designed to supply electricity for consumption on site.~~ "CLEAN ENERGY RESOURCE" HAS THE SAME MEANING AS SET FORTH IN SECTION 40-2-125.5 (2)(b).

(2.6) "ENERGY STORAGE SYSTEM" MEANS COMMERCIALY AVAILABLE TECHNOLOGY THAT IS CAPABLE OF RETAINING ELECTRICITY, STORING THE ENERGY FOR A PERIOD OF TIME, AND DELIVERING THE ELECTRICITY AFTER STORAGE BY CHEMICAL, THERMAL, MECHANICAL, OR OTHER MEANS. "ENERGY STORAGE SYSTEM" DOES NOT INCLUDE A SOLAR ENERGY FACILITY, AS DEFINED IN SUBSECTION (3.5) OF THIS SECTION, OR A WIND ENERGY FACILITY, AS DEFINED IN SUBSECTION (4) OF THIS SECTION.

(2.7) "GEOTHERMAL ENERGY FACILITY" MEANS A NEW FACILITY FIRST PLACED IN PRODUCTION ON OR AFTER JANUARY 1, 2010, THAT USES REAL AND PERSONAL

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

PROPERTY, INCLUDING BUT NOT LIMITED TO LEASEHOLDS AND EASEMENTS, TO GENERATE AND DELIVER TO THE INTERCONNECTION METER ANY SOURCE OF ELECTRICAL OR MECHANICAL ENERGY BY HARNESSING THE HEAT ENERGY OF GROUNDWATER OR THE GROUND AND THAT IS NOT PRIMARILY DESIGNED TO SUPPLY ELECTRICITY FOR CONSUMPTION ON SITE.

(3) (a) "Public utility" means, for property tax years commencing on or after January 1, 1987, every sole proprietorship, firm, limited liability company, partnership, association, company, or corporation, and the trustees or receivers thereof, whether elected or appointed, that does business in this state as a railroad company, airline company, electric company, small or low impact hydroelectric energy facility, geothermal energy facility, biomass energy facility, wind energy facility, solar energy facility, ENERGY STORAGE SYSTEM, CLEAN ENERGY RESOURCE, rural electric company, telephone company, telegraph company, gas company, gas pipeline carrier company, domestic water company selling at retail except nonprofit domestic water companies, pipeline company, coal slurry pipeline, or private car line company.

(b) On and after January 1, 2010, for purposes of this ~~article~~ ARTICLE 4, "public utility" ~~shall~~ DOES not include any affiliate or subsidiary of a sole proprietorship, firm, limited liability company, partnership, association, company, or corporation of any type of company described in ~~paragraph (a) of this subsection (3)~~ SUBSECTION (3)(a) OF THIS SECTION that is not doing business in the state primarily as a railroad company, airline company, electric company, small or low impact hydroelectric energy facility, geothermal energy facility, biomass energy facility, wind energy facility, solar energy facility, ENERGY STORAGE SYSTEM, CLEAN ENERGY RESOURCE, rural electric company, telephone company, telegraph company, gas company, gas pipeline carrier company, domestic water company selling at retail except nonprofit domestic water companies, pipeline company, coal slurry pipeline, or private car line company. Valuation and taxation of any such affiliate or subsidiary of a public utility as defined in ~~paragraph (a) of this subsection (3)~~ SUBSECTION (3)(a) OF THIS SECTION shall be assessed pursuant to article 5 of this ~~title~~ TITLE 39.

(3.5) "Solar energy facility" means a new facility first placed in production on or after January 1, 2009, that uses real and personal property, including but not limited to one or more solar energy devices, as defined in section 38-32.5-100.3 (2), ~~C.R.S.~~; leaseholds, and easements, to generate and deliver to the interconnection meter any source of electrical, thermal, or mechanical energy in excess of two megawatts by harnessing the radiant energy of the sun, INCLUDING ANY CONNECTED DEVICE FOR WHICH THE PRIMARY PURPOSE IS TO STORE ENERGY, and that is not primarily designed to supply electricity for consumption on site.

(4) "Wind energy facility" means a new facility first placed in production on or after January 1, 2006, that uses property, real and personal, including one or more wind turbines, leaseholds, and easements, to generate and deliver to the interconnection meter any source of electrical or mechanical energy in excess of two megawatts by harnessing the kinetic energy of the wind, INCLUDING ANY CONNECTED DEVICE FOR WHICH THE PRIMARY PURPOSE IS TO STORE ENERGY.

SECTION 2. In Colorado Revised Statutes, 39-4-102, **amend** (1)(e)(I)(A),

(1.5)(a), (1.5)(b)(I), and (1.5)(b)(IV); and **add** (1.5)(e) as follows:

39-4-102. Valuation of public utilities - definition. (1) The administrator shall determine the actual value of the operating property and plant of each public utility as a unit, giving consideration to the following factors and assigning such weight to each of such factors as in the administrator's judgment will secure a just value of such public utility as a unit:

(e) (I) When determining the actual value of a renewable energy facility that primarily produces more than two megawatts of alternating current electricity, the administrator shall:

(A) Consider the additional incremental cost per kilowatt of the construction of the renewable energy facility, ~~TAKING INTO ACCOUNT THE NAMEPLATE CAPACITY OF ANY ENERGY STORAGE SYSTEM IN ADDITION TO GENERATION CAPACITY~~, over that of the construction cost of a comparable nonrenewable energy facility, inclusive of the cost of all property required to generate and deliver energy to the interconnection meter, that primarily produces alternating current electricity to be an investment cost and shall not include ~~such~~ THE additional incremental cost in the valuation of the facility; and

(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:

(a) The general assembly hereby declares that ~~INITIAL~~ consideration by the administrator of the cost approach and market approach to the appraisal of a wind energy facility or a solar energy facility results in valuations that are neither uniform nor just and equal because of wide variations in the production of energy from wind turbines and solar energy devices, as defined in section 38-32.5-100.3 (2), ~~C.R.S.~~; because of the uncertainty of wind and sunlight available for energy production, and because constructing a wind energy facility or a solar energy facility is significantly more expensive than constructing any other utility production facility. The general assembly further declares that it is also appropriate to ~~INITIALLY~~ value small or low impact hydroelectric energy facilities, geothermal energy facilities, and biomass energy facilities, which also have high construction costs relative to their ongoing operational costs, using the income approach. Therefore, in the absence of preponderant evidence shown by the administrator that the use of the cost approach and market approach results in uniform and just and equal valuation, 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 shall be ~~INITIALLY~~ valued based solely upon the income approach.

(b) (I) ~~FOR A PROPERTY TAX YEAR THAT A TAX FACTOR APPLIES, 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 shall be at~~ is an amount equal to a tax factor times the selling price at the interconnection meter. ~~FOR A PROPERTY TAX YEAR THAT A TAX FACTOR DOES NOT APPLY, THE ADMINISTRATOR SHALL DETERMINE THE ACTUAL VALUE OF THE FACILITY GIVING APPROPRIATE CONSIDERATION TO THE COST, INCOME, AND MARKET APPROACHES;~~

EXCEPT THAT THE ACTUAL VALUE SHALL NOT EXCEED THE DEPRECIATED VALUE FLOOR CALCULATED USING THE COST BASIS METHOD OF TAXATION AS DETERMINED BY THE ADMINISTRATOR FOR A RENEWABLE ENERGY FACILITY PURSUANT TO SUBSECTION (1)(e) OF THIS SECTION.

(IV) As used in this ~~paragraph (b)~~, SUBSECTION (1.5)(b), "tax factor" means a factor annually established by the administrator. For a FACILITY THAT BEGINS GENERATING ENERGY BEFORE JANUARY 1, 2021, the tax factor ~~shall be~~ is 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 (c) of subsection (1)~~ SUBSECTION (1)(e) of this section. For a FACILITY THAT BEGINS GENERATING ENERGY ON OR AFTER JANUARY 1, 2021, 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 PURSUANT TO SUBSECTION (1)(e) OF THIS SECTION. AFTER THE FIRST TWENTY OR THIRTY YEARS OF A FACILITY'S LIFE, AS APPLICABLE, A TAX FACTOR IS NOT APPLIED. 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, STORE, 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) THE ADMINISTRATOR SHALL DETERMINE THE ACTUAL VALUE OF AN ENERGY STORAGE SYSTEM OR CLEAN ENERGY RESOURCE IN A MANNER SIMILAR TO THE METHOD USED FOR A SMALL OR LOW IMPACT HYDROELECTRIC ENERGY FACILITY, A WIND ENERGY FACILITY, A GEOTHERMAL ENERGY FACILITY, A BIOMASS ENERGY FACILITY, OR A SOLAR ENERGY FACILITY UNDER SUBSECTION (1)(e) OF THIS SECTION AND THIS SUBSECTION (1.5).

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)~~ SUBSECTION (1)(a) 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, 2021.

SECTION 4. 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; 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 2022 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: April 22, 2021