

## CHAPTER 189

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**NATURAL RESOURCES**


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**SENATE BILL 10-174**

BY SENATOR(S) Schwartz, Gibbs, Whitehead, Foster, Heath, Johnston, Newell, Shaffer B., White, Williams;  
also REPRESENTATIVE(S) Massey and Scanlan, Apuan, Court, Fischer, Labuda, Merrifield, Pace, Peniston, Priola, Summers.

**AN ACT****CONCERNING THE REGULATION OF THE DEVELOPMENT OF GEOTHERMAL RESOURCES.**

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

**SECTION 1.** 24-65.1-202 (1) (d), Colorado Revised Statutes, is amended to read:

**24-65.1-202. Criteria for administration of areas of state interest.**  
(1) (d) Unless an activity of state interest has been designated or identified or unless it includes part or all of another area of state interest, an area of oil and gas ~~or geothermal resource~~ development shall not be designated as an area of state interest unless the state oil and gas conservation commission identifies such area for designation.

**SECTION 2.** 24-65.1-203 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

**24-65.1-203. Activities of state interest as determined by local governments.**  
(1) Subject to the procedures set forth in part 4 of this article, a local government may designate certain activities of state interest from among the following:

(j) THE USE OF GEOTHERMAL RESOURCES FOR THE COMMERCIAL PRODUCTION OF ELECTRICITY.

**SECTION 3.** Article 63 of title 34, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**34-63-105. Geothermal resource leasing fund.** (1) THE STATE TREASURER

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

SHALL DEPOSIT ALL REVENUES FROM SALES, BONUSES, ROYALTIES, LEASES, AND RENTALS RELATED TO GEOTHERMAL RESOURCES, AS THAT TERM IS DEFINED IN SECTION 37-90.5-103, C.R.S., RECEIVED BY THE STATE PURSUANT TO 30 U.S.C. SEC. 1019, AS AMENDED, AND ALL MONEYS EARNED FROM THE INVESTMENT OF SUCH REVENUES, INTO THE GEOTHERMAL RESOURCE LEASING FUND, WHICH FUND IS HEREBY CREATED IN THE STATE TREASURY, FOR APPROPRIATION BY THE GENERAL ASSEMBLY TO THE DEPARTMENT OF LOCAL AFFAIRS FOR GRANTS TO STATE AGENCIES, SCHOOL DISTRICTS, AND POLITICAL SUBDIVISIONS OF THE STATE AFFECTED BY THE DEVELOPMENT AND PRODUCTION OF GEOTHERMAL RESOURCES OR OTHER ENTITIES AUTHORIZED BY FEDERAL LAW:

(a) PRIMARILY FOR USE BY SUCH ENTITIES IN PLANNING FOR AND PROVIDING FACILITIES AND SERVICES NECESSITATED BY SUCH DEVELOPMENT AND PRODUCTION; AND

(b) SECONDARILY TO THE ENTITIES LISTED IN THE INTRODUCTORY PORTION TO THIS SUBSECTION (1) FOR OTHER STATE PURPOSES AS SPECIFIED IN SUBSECTION (2) OF THIS SECTION.

(2) AFTER THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF LOCAL AFFAIRS HAS ALLOCATED SUFFICIENT REVENUES FROM THE FUND TO ADEQUATELY ADDRESS THE NEEDS SPECIFIED IN PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION, THE EXECUTIVE DIRECTOR SHALL, IN CONSULTATION WITH THE GOVERNOR'S ENERGY OFFICE CREATED IN SECTION 24-38.5-101, C.R.S., ALLOCATE REVENUES FROM THE FUND BY COMPETITIVE GRANTS FOR THE PROMOTION OF THE DEVELOPMENT OF GEOTHERMAL ENERGY RESOURCES.

**SECTION 4.** 24-38.5-102 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

**24-38.5-102. Governor's energy office - duties and powers.** (1) The governor's energy office shall:

(t) ASSIST THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF LOCAL AFFAIRS IN ALLOCATING REVENUES FROM THE GEOTHERMAL RESOURCE LEASING FUND TO ELIGIBLE ENTITIES PURSUANT TO SECTION 34-63-105, C.R.S.

**SECTION 5.** 37-90.5-103 (1), Colorado Revised Statutes, is amended, and the said 37-90.5-103 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**37-90.5-103. Definitions.** As used in this article, unless the context otherwise requires:

(1) ~~"Geothermal by-products" means dissolved or entrained minerals and gases that may be obtained from the material medium, excluding hydrocarbon substances and carbon dioxide~~ "DIRECT USE" MEANS THE UTILIZATION OF GEOTHERMAL RESOURCES FOR COMMERCIAL, RESIDENTIAL, AGRICULTURAL, PUBLIC FACILITIES, OR OTHER ENERGY NEEDS OTHER THAN THE COMMERCIAL PRODUCTION OF ELECTRICITY.

(1.5) "GEOTHERMAL BY-PRODUCTS" MEANS DISSOLVED OR ENTRAINED MINERALS

AND GASES THAT MAY BE OBTAINED FROM THE MATERIAL MEDIUM, EXCLUDING HYDROCARBON SUBSTANCES AND CARBON DIOXIDE.

**SECTION 6.** 37-90.5-105 (2), Colorado Revised Statutes, is amended, and the said 37-90.5-105 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**37-90.5-105. Access - reasonable accommodation.** (2) Where the property right to a ~~hot-dry-rock~~ SEVERABLE GEOTHERMAL resource has been severed, reserved, or transferred with the subsurface estate, its owner may enter upon the overlying surface parcel at reasonable times and in a reasonable manner to prospect for and produce the energy from such resource, if adequate compensation is paid to the owner of the surface parcel for damages and disturbance IN ACCORDANCE WITH SUBSECTION (3) OF THIS SECTION. This right of entry shall not include the right to construct surface utilization facilities, and such facilities may be constructed only upon agreement with the surface owner IN ACCORDANCE WITH SUBSECTION (3) OF THIS SECTION.

(3) (a) (I) A DEVELOPER OF ANY TYPE OF GEOTHERMAL RESOURCE SHALL DEVELOP THE RESOURCE IN A MANNER THAT ACCOMMODATES THE SURFACE OWNER BY MINIMIZING INTRUSION UPON AND DAMAGE TO THE SURFACE OF THE LAND.

(II) AS USED IN THIS SECTION, "MINIMIZING INTRUSION UPON AND DAMAGE TO THE SURFACE" MEANS SELECTING ALTERNATIVE LOCATIONS FOR WELLS, ROADS, PIPELINES, OR HEAT EXCHANGE OR GENERATION FACILITIES, OR EMPLOYING ALTERNATIVE MEANS OF OPERATION, THAT PREVENT, REDUCE, OR MITIGATE THE IMPACTS OF THE GEOTHERMAL DEVELOPMENT ON THE SURFACE, WHERE SUCH ALTERNATIVES ARE TECHNOLOGICALLY SOUND, ECONOMICALLY PRACTICABLE, AND REASONABLY AVAILABLE TO THE DEVELOPER.

(III) THE STANDARD OF CONDUCT SET FORTH IN THIS SUBSECTION (3) DOES NOT PREVENT A DEVELOPER FROM ENTERING UPON AND USING THAT AMOUNT OF THE SURFACE AS IS REASONABLE AND NECESSARY TO EXPLORE FOR AND DEVELOP THE GEOTHERMAL RESOURCE.

(IV) THE STANDARD OF CONDUCT SET FORTH IN THIS SUBSECTION (3) DOES NOT ABROGATE OR IMPAIR A CONTRACTUAL PROVISION THAT IS BINDING ON THE PARTIES AND THAT EXPRESSLY PROVIDES FOR THE USE OF THE SURFACE FOR THE DEVELOPMENT OF GEOTHERMAL RESOURCES OR THAT RELEASES THE DEVELOPER FROM LIABILITY FOR THE USE OF THE SURFACE.

(b) A GEOTHERMAL RESOURCE DEVELOPER'S FAILURE TO MEET THE REQUIREMENTS SET FORTH IN THIS SUBSECTION (3) OR, IF APPLICABLE, SUBSECTION (2) OF THIS SECTION, GIVES RISE TO A CAUSE OF ACTION BY THE SURFACE OWNER. UPON A DETERMINATION BY THE TRIER OF FACT THAT SUCH FAILURE HAS OCCURRED, A SURFACE OWNER MAY SEEK COMPENSATORY DAMAGES OR SUCH EQUITABLE RELIEF AS IS CONSISTENT WITH PARAGRAPH (a) OF THIS SUBSECTION (3) OR, IF APPLICABLE, SUBSECTION (2) OF THIS SECTION.

(c) (I) IN ANY LITIGATION OR ARBITRATION BASED UPON SUBSECTION (2) OF THIS SECTION OR PARAGRAPH (a) OF THIS SUBSECTION (3), THE SURFACE OWNER SHALL

PRESENT EVIDENCE THAT THE DEVELOPER'S USE OF THE SURFACE MATERIALLY INTERFERED WITH THE SURFACE OWNER'S USE OF THE SURFACE OF THE LAND. AFTER SUCH SHOWING, THE DEVELOPER BEARS THE BURDEN OF PROOF OF SHOWING THAT IT MET THE STANDARD SET OUT IN PARAGRAPH (a) OF THIS SUBSECTION (3) AND, IF APPLICABLE, SUBSECTION (2) OF THIS SECTION. IF A DEVELOPER MAKES THAT SHOWING, THE SURFACE OWNER MAY PRESENT REBUTTAL EVIDENCE.

(II) AN OPERATOR MAY ASSERT, AS AN AFFIRMATIVE DEFENSE, THAT IT HAS CONDUCTED GEOTHERMAL RESOURCE DEVELOPMENT IN ACCORDANCE WITH A REGULATORY REQUIREMENT, CONTRACTUAL OBLIGATION, OR LAND USE PLAN PROVISION THAT SPECIFICALLY APPLIES TO THE ALLEGED INTRUSION OR DAMAGE.

(d) NOTHING IN THIS SECTION:

(I) PRECLUDES OR IMPAIRS ANY PERSON FROM OBTAINING ANY AND ALL OTHER REMEDIES ALLOWED BY LAW;

(II) PREVENTS A DEVELOPER AND A SURFACE OWNER FROM ADDRESSING THE USE OF THE SURFACE FOR GEOTHERMAL RESOURCE DEVELOPMENT IN A LEASE, SURFACE USE AGREEMENT, OR OTHER WRITTEN CONTRACT; OR

(III) ESTABLISHES, ALTERS, IMPAIRS, OR NEGATES THE AUTHORITY OF LOCAL AND COUNTY GOVERNMENTS TO REGULATE LAND USE RELATED TO GEOTHERMAL RESOURCE DEVELOPMENT.

**SECTION 7.** 37-90.5-107 (8), Colorado Revised Statutes, is amended to read:

**37-90.5-107. Relationship to water - when permit required.** (8) For purposes of this section, "materially injure" and "material injury" ~~shall~~ include any diminution or alteration in the quantity, temperature, or quality of any valid, prior water or geothermal right; EXCEPT THAT, WITH REGARD TO A GEOTHERMAL RIGHT, "MATERIALLY INJURE" AND "MATERIAL INJURY" INCLUDE A DIMINUTION OR ALTERATION IN THE TEMPERATURE OF WATER ONLY IF THE DIMINUTION OR ALTERATION ADVERSELY AFFECTS THE VALID, PRIOR GEOTHERMAL RIGHT.

**SECTION 8.** 39-4-101 (3), Colorado Revised Statutes, is amended, and the said 39-4-101 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**39-4-101. Definitions.** As used in this article, 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.

(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, GEOTHERMAL ENERGY FACILITY, wind energy facility, solar energy facility, 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, ~~2000~~ 2010, for purposes of this article, "public utility" shall 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) that is not doing business in the state primarily as a railroad company, airline company, electric company, GEOTHERMAL ENERGY FACILITY, wind energy facility, solar energy facility, 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) shall be assessed pursuant to article 5 of this title.

**SECTION 9.** 39-4-102 (1) (e) (II), the introductory portion to 39-4-102 (1.5), and 39-4-102 (1.5) (a), (1.5) (b) (I), (1.5) (b) (V), (1.5) (c), and (1.5) (d), Colorado Revised Statutes, are amended to read:

**39-4-102. Valuation of public utilities.** (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) (II) For purposes of this paragraph (e), "renewable energy" has the meaning provided in section 40-1-102 (11), C.R.S., but shall not include energy generated from a GEOTHERMAL ENERGY FACILITY, A wind energy facility, or a solar energy facility.

(1.5) The administrator shall determine the actual value of a GEOTHERMAL ENERGY FACILITY, A wind energy facility, or a solar energy facility as follows:

(a) The general assembly hereby declares that 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 VALUE GEOTHERMAL 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 GEOTHERMAL ENERGY FACILITY, A wind energy facility, or a solar energy facility shall be valued based solely upon the income approach.

(b) (I) The actual value of a GEOTHERMAL ENERGY FACILITY, A wind energy facility, or a solar energy facility shall be at an amount equal to a tax factor times the selling price at the interconnection meter.

(V) For purposes of calculating the tax factor as required in subparagraph (IV) of this paragraph (b), an owner or operator of a GEOTHERMAL ENERGY FACILITY, A wind energy facility, or a solar energy facility shall provide a copy of the GEOTHERMAL ENERGY FACILITY'S, wind energy facility's, or solar energy facility's current power purchase agreement to the administrator by April 1 of each assessment year. The administrator shall also have the authority to request a copy of the current power purchase agreement from the purchaser of power generated at a GEOTHERMAL ENERGY FACILITY, A wind energy facility, or a solar energy facility. All agreements provided to the administrator pursuant to this subparagraph (V) shall be considered private documents and shall be available only to the administrator and the employees of the division of property taxation in the department of local affairs.

(c) The location of a GEOTHERMAL ENERGY FACILITY, A wind energy facility, or a solar energy facility on real property shall not affect the classification of that real property for purposes of determining the actual value of that real property as provided in section 39-1-103.

(d) Pursuant to section 39-3-118.5, no actual value for any personal property used in a GEOTHERMAL ENERGY FACILITY, A wind energy facility, or a solar energy facility shall be assigned until the personal property is first put into use by the facility. If any item of personal property is used in the facility and is subsequently taken out of service so that no GEOTHERMAL ENERGY, wind energy, or solar energy is produced from that facility for the preceding calendar year, no actual value shall be assigned to that item of more than five percent of the installed cost of the item for that assessment year.

**SECTION 10.** 39-5-104.7 (1) (b), Colorado Revised Statutes, is amended to read:

**39-5-104.7. Valuation of real and personal property that produces alternating current electricity from a renewable energy source.** (1) (b) The valuation requirements specified in paragraph (a) of this subsection (1) shall not apply to GEOTHERMAL ENERGY FACILITIES, solar energy facilities, ~~as defined in section 39-4-101 (3.5)~~, or wind energy facilities, as THOSE TERMS ARE defined in section 39-4-101. ~~(4)~~.

**SECTION 11.** 40-2-123, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**40-2-123. New energy technologies - consideration by commission - incentives - demonstration projects - definitions - legislative declaration - repeal.** (3.2) IN ITS CONSIDERATION OF GENERATION ACQUISITIONS FOR ELECTRIC

UTILITIES, THE COMMISSION MAY GIVE THE FULLEST POSSIBLE CONSIDERATION, AT A UTILITY'S REQUEST, TO THE COST-EFFECTIVE IMPLEMENTATION OF NEW ENERGY TECHNOLOGIES FOR THE GENERATION OF ELECTRICITY FROM GEOTHERMAL ENERGY.

**SECTION 12. Act subject to petition - effective date - applicability.** (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 11, 2010, if adjournment sine die is on May 12, 2010); 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 shall not take effect unless approved by the people at the general election to be held in November 2010 and shall take effect on the date of the official declaration of the vote thereon by the governor.

(2) The provisions of this act shall apply to conduct occurring on or after the applicable effective date of this act.

Approved: April 30, 2010