

## CHAPTER 382

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**TAXATION**

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**SENATE BILL 10-019**

BY SENATOR(S) Schwartz, Brophy, Hodge, White, Whitehead, Boyd, Foster, Gibbs, Heath, Johnston, Newell, Shaffer B., Tapia;  
also REPRESENTATIVE(S) Fischer, Baumgardner, Curry, Gardner C., McKinley, Ryden, Summers, Vigil.

**AN ACT****CONCERNING THE VALUATION OF NEW HYDROELECTRIC ENERGY FACILITIES FOR THE PURPOSE OF  
PROPERTY TAXATION.**

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

**SECTION 1.** 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:

(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, 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, 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, SMALL OR LOW IMPACT HYDROELECTRIC ENERGY FACILITY, wind energy facility, solar energy

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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.*

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.

(3.3) (a) "SMALL OR LOW IMPACT HYDROELECTRIC 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 KINETIC ENERGY OF WATER, THAT IS NOT PRIMARILY DESIGNED TO SUPPLY ELECTRICITY FOR CONSUMPTION ON SITE, AND THAT IS:

(I) A NEW FACILITY THAT IS A SMALL FACILITY THAT HAS A NAMEPLATE RATING OF TEN MEGAWATTS OR LESS; OR

(II) A NEW FACILITY THAT HAS A NAMEPLATE RATING OF MORE THAN TEN MEGAWATTS AND THAT:

(A) IS AN ADDITION TO WATER INFRASTRUCTURE SUCH AS A RESERVOIR, A DITCH, OR A PIPELINE THAT EXISTED BEFORE JANUARY 1, 2010;

(B) DOES NOT RESULT IN ANY CHANGE IN THE QUANTITY OR TIMING OF DIVERSIONS OR RELEASES FOR PURPOSES OF PEAK POWER GENERATION;

(C) INCLUDES MEASURES TO PREVENT FISH MORTALITY IN FACILITIES ON ON-STREAM RESERVOIRS AND NATURAL WATERWAYS; AND

(D) DOES NOT CAUSE ANY VIOLATION OF STATE WATER QUALITY STANDARDS WHEN OPERATED; OR

(III) A NEW FACILITY THAT HAS A NAMEPLATE RATING OF MORE THAN TEN MEGAWATTS AND THAT:

(A) IS PLACED INTO PRODUCTION AS PART OF NEW WATER INFRASTRUCTURE SUCH AS A RESERVOIR, A DITCH, OR A PIPELINE CONSTRUCTED ON OR AFTER JANUARY 1, 2010, AND OPERATED FOR PRIMARY BENEFICIAL USES OF WATER OTHER THAN SOLELY FOR PRODUCTION OF ELECTRICITY;

(B) INCLUDES MEASURES TO PREVENT FISH MORTALITY IN FACILITIES ON RESERVOIRS AND NATURAL WATERWAYS; AND

(C) DOES NOT CAUSE ANY VIOLATION OF STATE WATER QUALITY STANDARDS WHEN OPERATED.

(b) FOR PURPOSES OF THIS SUBSECTION (3.3), "NEW FACILITY" INCLUDES A COMBINED FACILITY THAT IS A COMBINATION OF A FACILITY PLACED IN PRODUCTION BEFORE JANUARY 1, 2010, THAT USES REAL AND PERSONAL PROPERTY TO GENERATE AND DELIVER TO THE INTERCONNECTION METER ANY SOURCE OF ELECTRIC OR

MECHANICAL ENERGY BY HARNESSING THE KINETIC ENERGY OF WATER AND THAT IS NOT PRIMARILY DESIGNED TO SUPPLY ENERGY FOR CONSUMPTION ON SITE AND AN ADDITION OR ENERGY EFFICIENCY IMPROVEMENT TO THE FACILITY FIRST PLACED IN PRODUCTION ON OR AFTER JANUARY 1, 2010, IF THE ADDITION OR EFFICIENCY IMPROVEMENT INCREASES THE ELECTRICAL OR MECHANICAL ENERGY-PRODUCING CAPACITY OF THE COMBINED FACILITY BY AT LEAST TWENTY-FIVE PERCENT OVER THE CAPACITY OF THE FACILITY PLACED IN PRODUCTION BEFORE JANUARY 1, 2010, ALONE.

**SECTION 2.** 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 SMALL OR LOW IMPACT HYDROELECTRIC ENERGY FACILITY, A wind energy facility, or a solar energy facility.

(1.5) The administrator shall determine the actual value of a SMALL OR LOW IMPACT HYDROELECTRIC 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 SMALL OR LOW IMPACT HYDROELECTRIC 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 wind energy facility, or a solar energy facility shall be valued based solely upon the income approach.

(b) (I) The actual value of a SMALL OR LOW IMPACT HYDROELECTRIC 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 SMALL OR LOW IMPACT

HYDROELECTRIC ENERGY FACILITY, A wind energy facility, or a solar energy facility shall provide a copy of the SMALL OR LOW IMPACT HYDROELECTRIC 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 SMALL OR LOW IMPACT HYDROELECTRIC 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 SMALL OR LOW IMPACT HYDROELECTRIC 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 SMALL OR LOW IMPACT HYDROELECTRIC 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 SMALL OR LOW IMPACT HYDROELECTRIC 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 3.** 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 SMALL OR LOW IMPACT HYDROELECTRIC ENERGY FACILITIES, AS DEFINED IN SECTION 39-4-101 (2.7), solar energy facilities, as defined in section 39-4-101 (3.5), or wind energy facilities, as defined in section 39-4-101 (4).

**SECTION 4. Applicability.** This act shall apply to the determination of the actual value of small or low impact hydroelectric energy facilities first placed in production on or after January 1, 2010.

**SECTION 5. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 8, 2010