CHAPTER 392

PUBLIC UTILITIES

SENATE BILL 10-177

BY SENATOR(S) Schwartz and Gibbs, Boyd, Foster, Heath, Hodge, Morse, Newell, Shaffer B., Steadman, White, Whitehead, Williams, Carroll M.;
also REPRESENTATIVE(S) Scanlan, Merrifield, Apuan, Curry, Fischer, Frangas, Gerou, Kerr J., King S., McFadyen, Middleton, Nikkel, Pace, Pommer, Priola, Tyler, Carroll T.

AN ACT

CONCERNING THE PROMOTION OF CLEAN ENERGY TECHNOLOGIES.

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

SECTION 1. 39-1-102 (1.1), Colorado Revised Statutes, is amended to read:

39-1-102. Definitions. As used in articles 1 to 13 of this title, unless the context otherwise requires:

(1.1) "Agricultural and livestock products" means plant or animal products in a raw or unprocessed state that are derived from the science and art of agriculture, regardless of the use of the product after its sale and regardless of the entity that purchases the product. "Agriculture", for the purposes of this subsection (1.1), means farming, ranching, animal husbandry, and horticulture. EFFECTIVE JULY 1, 2013, "AGRICULTURE" INCLUDES SILVICULTURE.

SECTION 2. 42-1-102 (44), Colorado Revised Statutes, is amended to read:

42-1-102. Definitions. As used in articles 1 to 4 of this title, unless the context otherwise requires:

(44) (a) On and after July 1, 2000, "implement of husbandry" means every vehicle that is designed, adapted, or used for agricultural purposes. It also includes equipment used solely for the application of liquid, gaseous, and dry fertilizers. Transportation of fertilizer, in or on the equipment used for its application, shall be deemed a part of application if it is incidental to such application. It also includes hay balers, hay stacking equipment, combines, tillage and harvesting equipment,

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

agricultural commodity handling equipment, and other heavy movable farm equipment primarily used on farms or in a livestock production facility and not on the highways. Trailers specially designed to move such equipment on highways shall, for the purposes of part 5 of article 4 of this title, be considered as component parts of such implements of husbandry.

(b) EFFECTIVE JULY 1, 2013, FOR PURPOSES OF THIS SECTION, "IMPLEMENTS OF HUSBANDRY" INCLUDES PERSONAL PROPERTY VALUED BY THE COUNTY ASSESSOR AS SILVICULTURAL.

SECTION 3. 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:

(2.3) "BIOMASS ENERGY FACILITY" MEANS A NEW FACILITY FIRST PLACED IN PRODUCTION ON OR AFTER JANUARY 1, 2010, THAT USES REAL AND PERSONAL PROPERTY, INCLUDING LEASEHOLDS AND EASEMENTS, TO GENERATE AND DELIVER TO THE INTERCONNECTION METER ANY SOURCE OF ELECTRICAL OR MECHANICAL ENERGY BY COMBUSTING ONLY BIOMASS OR BIOSOLIDS DERIVED FROM THE TREATMENT OF WASTEWATER 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, BIOMASS 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, BIOMASS 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 4. 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 BIOMASS ENERGY FACILITY, A wind energy facility, or a solar energy facility.

(1.5) The administrator shall determine the actual value of a BIOMASS 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 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 BIOMASS 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 BIOMASS 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 BIOMASS ENERGY FACILITY, A wind energy facility, or a solar energy facility shall provide a copy of the BIOMASS 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 BIOMASS 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 BIOMASS 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 BIOMASS 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 BIOMASS 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 5. 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 BIOMASS 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 6. 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 THE COMBUSTION OF BIOMASS, BIOSOLIDS DERIVED FROM THE TREATMENT OF WASTEWATER, AND MUNICIPAL SOLID WASTE. FOR PURPOSES OF THIS SUBSECTION (3.2), "BIOMASS" HAS THE MEANING ESTABLISHED IN SECTION 40-2-124 (1) (a), AS CLARIFIED BY THE COMMISSION.

SECTION 7. 40-2-124 (1) (d), Colorado Revised Statutes, is amended to read:

40-2-124. Renewable energy standard - definitions - net metering. (1) Each provider of retail electric service in the state of Colorado, other than municipally owned utilities that serve forty thousand customers or less, shall be considered a qualifying retail utility. Each qualifying retail utility, with the exception of cooperative electric associations that have voted to exempt themselves from commission jurisdiction pursuant to section 40-9.5-104 and municipally owned utilities, shall be subject to the rules established under this article by the commission. No additional regulatory authority of the commission other than that specifically contained in this section is provided or implied. In accordance with article 4 of title 24, C.R.S., on or before October 1, 2007, the commission shall revise or clarify existing rules to establish the following:

(d) A system of tradable renewable energy credits that may be used by a qualifying retail utility to comply with this standard. The commission shall also analyze the effectiveness of utilizing any regional system of renewable energy credits in existence at the time of its rule-making process and determine whether the system is governed by rules that are consistent with the rules established for this article. The commission shall not restrict the qualifying retail utility's ownership of

renewable energy credits if the qualifying retail utility complies with the electric resource standard of paragraph (c) of this subsection (1), USES DEFINITIONS OF ELIGIBLE ENERGY RESOURCES THAT ARE LIMITED TO THOSE IDENTIFIED IN PARAGRAPH (a) OF THIS SUBSECTION (1), AS CLARIFIED BY THE COMMISSION, and does not exceed the retail rate impact established by paragraph (g) of this subsection (1). ONCE A QUALIFYING RETAIL UTILITY EITHER RECEIVES A PERMIT PURSUANT TO ARTICLE 7 OR 8 OF TITLE 25, C.R.S., FOR A GENERATION FACILITY THAT RELIES ON OR IS AFFECTED BY THE DEFINITIONS OF ELIGIBLE ENERGY RESOURCES OR ENTERS INTO A CONTRACT THAT RELIES ON OR IS AFFECTED BY THE DEFINITIONS OF ELIGIBLE ENERGY RESOURCES, SUCH DEFINITIONS APPLY TO THE CONTRACT OR FACILITY NOTWITHSTANDING ANY SUBSEQUENT ALTERATION OF THE DEFINITIONS, WHETHER BY STATUTE OR RULE. FOR PURPOSES OF COMPLIANCE WITH THE RENEWABLE ENERGY STANDARD, IF A GENERATION SYSTEM USES A COMBINATION OF FOSSIL FUEL AND ELIGIBLE RENEWABLE ENERGY RESOURCES TO GENERATE ELECTRICITY, A QUALIFIED RETAIL UTILITY THAT IS NOT AN INVESTOR-OWNED UTILITY MAY COUNT AS ELIGIBLE RENEWABLE ENERGY ONLY THE PROPORTION OF THE TOTAL ELECTRIC OUTPUT OF THE GENERATION SYSTEM THAT RESULTS FROM THE USE OF ELIGIBLE RENEWABLE ENERGY RESOURCES.

SECTION 8. 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: June 9, 2010