

**Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

PREAMENDED

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

LLS NO. 10-0451.01 Thomas Morris

SENATE BILL 10-174

SENATE SPONSORSHIP

Schwartz, Gibbs, Whitehead

HOUSE SPONSORSHIP

(None),

Senate Committees

Local Government and Energy

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE REGULATION OF THE DEVELOPMENT OF**
102 **GEOTHERMAL RESOURCES.**

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://www.leg.state.co.us/billsummaries>.)

Section 5 of the bill defines "direct use" as the utilization of geothermal resources for commercial, residential, agricultural, public facilities, or other energy needs other than the commercial production of electricity. **Sections 1 and 2** of the bill allow municipalities and counties to designate geothermal development as an activity of state interest under

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

House Bill 74-1041, except for the direct use of such resources. **Sections 3 and 4** allocate federal mineral lease revenues derived from geothermal resource development to the geothermal resource leasing fund and authorize the executive director of the department of local affairs to distribute the revenues:

! To state agencies, school districts, and political subdivisions of the state affected by the development and production of geothermal resources primarily for use by such entities in planning for and providing facilities and services necessitated by such development and production; and

! Secondly to such entities, in consultation with the governor's energy office, for the promotion of the development of geothermal energy resources.

Section 6 specifies that the property right to the following types of geothermal resources are an incident of the ownership of the overlying surface:

! Nontributary groundwater; and

! Not nontributary groundwater.

Section 7 adopts the reasonable accommodation doctrine regarding relations between surface owners and geothermal resource developers. **Section 8** specifies that a permit from the state engineer is not required for the direct use of a horizontal, closed-loop geoexchange system that does not use a geothermal fluid, as established by the state engineer by rule. **Section 9** specifies that "material injury" includes an alteration in the temperature of water only if the alteration adversely affects a valid, prior geothermal right. **Sections 10 through 12** require geothermal energy facilities to be valued for the purpose of property taxation in the same manner in which wind or solar energy facilities are valued.

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

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

4 **24-65.1-202. Criteria for administration of areas of state**
5 **interest.** (1) (d) Unless an activity of state interest has been designated
6 or identified or unless it includes part or all of another area of state
7 interest, an area of oil and gas ~~or geothermal resource~~ development shall
8 not be designated as an area of state interest unless the state oil and gas

1 conservation commission identifies such area for designation.

2 **SECTION 2.** 24-65.1-203 (1) (h), Colorado Revised Statutes, is
3 amended to read:

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

8 (h) Efficient utilization of municipal and industrial water projects
9 AND GEOTHERMAL RESOURCE DEVELOPMENT OTHER THAN THROUGH
10 DIRECT USE, AS THOSE TERMS ARE DEFINED IN SECTION 37-90.5-103,
11 C.R.S.; and

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

14 **34-63-105. Geothermal resource leasing fund.** (1) THE STATE
15 TREASURER SHALL DEPOSIT ALL REVENUES FROM SALES, BONUSES,
16 ROYALTIES, LEASES, AND RENTALS RELATED TO GEOTHERMAL RESOURCES,
17 AS THAT TERM IS DEFINED IN SECTION 37-90.5-103, C.R.S., RECEIVED BY
18 THE STATE PURSUANT TO 30 U.S.C. SEC. 1019, AS AMENDED, AND ALL
19 MONEYS EARNED FROM THE INVESTMENT OF SUCH REVENUES, INTO THE
20 GEOTHERMAL RESOURCE LEASING FUND, WHICH FUND IS HEREBY CREATED
21 IN THE STATE TREASURY, FOR APPROPRIATION BY THE GENERAL ASSEMBLY
22 TO THE DEPARTMENT OF LOCAL AFFAIRS FOR GRANTS TO STATE AGENCIES,
23 SCHOOL DISTRICTS, AND POLITICAL SUBDIVISIONS OF THE STATE AFFECTED
24 BY THE DEVELOPMENT AND PRODUCTION OF GEOTHERMAL RESOURCES OR
25 OTHER ENTITIES AUTHORIZED BY FEDERAL LAW:

26 (a) PRIMARILY FOR USE BY SUCH ENTITIES IN PLANNING FOR AND
27 PROVIDING FACILITIES AND SERVICES NECESSITATED BY SUCH

1 DEVELOPMENT AND PRODUCTION; AND

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

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

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

15 **24-38.5-102. Governor's energy office - duties and powers.**

16 (1) The governor's energy office shall:

17 (t) ASSIST THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF
18 LOCAL AFFAIRS IN ALLOCATING REVENUES FROM THE GEOTHERMAL
19 RESOURCE LEASING FUND TO ELIGIBLE ENTITIES PURSUANT TO SECTION
20 34-63-105, C.R.S.

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

24 **37-90.5-103. Definitions.** As used in this article, unless the
25 context otherwise requires:

26 (1) ~~"Geothermal by-products" means dissolved or entrained~~
27 ~~minerals and gases that may be obtained from the material medium,~~

1 ~~excluding hydrocarbon substances and carbon dioxide~~ "DIRECT USE"
2 MEANS THE UTILIZATION OF GEOTHERMAL RESOURCES FOR COMMERCIAL,
3 RESIDENTIAL, AGRICULTURAL, PUBLIC FACILITIES, OR OTHER ENERGY
4 NEEDS OTHER THAN THE COMMERCIAL PRODUCTION OF ELECTRICITY.

5 (1.5) "GEOTHERMAL BY-PRODUCTS" MEANS DISSOLVED OR
6 ENTRAINED MINERALS AND GASES THAT MAY BE OBTAINED FROM THE
7 MATERIAL MEDIUM, EXCLUDING HYDROCARBON SUBSTANCES AND
8 CARBON DIOXIDE.

9 **SECTION 6.** 37-90.5-104 (2), Colorado Revised Statutes, is
10 amended to read:

11 **37-90.5-104. Ownership declaration.** (2) The property right to
12 ~~a hot dry rock resource is~~ THE FOLLOWING TYPES OF GEOTHERMAL
13 RESOURCES ARE an incident of the ownership of the overlying surface,
14 unless severed, reserved, or transferred with the subsurface estate
15 expressly:

16 (a) A HOT DRY ROCK RESOURCE; AND

17 (b) A GEOTHERMAL RESOURCE THAT IS ASSOCIATED WITH
18 GEOTHERMAL FLUID THAT IS EITHER:

19 (I) NONTRIBUTARY GROUNDWATER; OR

20 (II) NOT NONTRIBUTARY GROUNDWATER, AS THAT TERM IS
21 DEFINED IN SECTION 37-90-103.

22 **SECTION 7.** 37-90.5-105 (2), Colorado Revised Statutes, is
23 amended, and the said 37-90.5-105 is further amended BY THE
24 ADDITION OF A NEW SUBSECTION, to read:

25 **37-90.5-105. Access - reasonable accommodation.** (2) Where
26 the property right to a ~~hot dry rock~~ SEVERABLE GEOTHERMAL resource has
27 been severed, reserved, or transferred with the subsurface estate, its

1 owner may enter upon the overlying surface parcel at reasonable times
2 and in a reasonable manner to prospect for and produce the energy from
3 such resource, if adequate compensation is paid to the owner of the
4 surface parcel for damages and disturbance IN ACCORDANCE WITH
5 SUBSECTION (3) OF THIS SECTION. This right of entry shall not include the
6 right to construct surface utilization facilities, and such facilities may be
7 constructed only upon agreement with the surface owner IN ACCORDANCE
8 WITH SUBSECTION (3) OF THIS SECTION.

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

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

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

25 (IV) THE STANDARD OF CONDUCT SET FORTH IN THIS SUBSECTION
26 (3) DOES NOT ABROGATE OR IMPAIR A CONTRACTUAL PROVISION THAT IS
27 BINDING ON THE PARTIES AND THAT EXPRESSLY PROVIDES FOR THE USE OF

1 THE SURFACE FOR THE DEVELOPMENT OF GEOTHERMAL RESOURCES OR
2 THAT RELEASES THE DEVELOPER FROM LIABILITY FOR THE USE OF THE
3 SURFACE.

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

12 (c) (I) IN ANY LITIGATION OR ARBITRATION BASED UPON
13 SUBSECTION (2) OF THIS SECTION OR PARAGRAPH (a) OF THIS SUBSECTION
14 (3), THE SURFACE OWNER SHALL PRESENT EVIDENCE THAT THE
15 DEVELOPER'S USE OF THE SURFACE MATERIALLY INTERFERED WITH THE
16 SURFACE OWNER'S USE OF THE SURFACE OF THE LAND. AFTER SUCH
17 SHOWING, THE DEVELOPER BEARS THE BURDEN OF PROOF OF SHOWING
18 THAT IT MET THE STANDARD SET OUT IN PARAGRAPH (a) OF THIS
19 SUBSECTION (3) AND, IF APPLICABLE, SUBSECTION (2) OF THIS SECTION. IF
20 A DEVELOPER MAKES THAT SHOWING, THE SURFACE OWNER MAY PRESENT
21 REBUTTAL EVIDENCE.

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

27 (d) NOTHING IN THIS SECTION:

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

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

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

10 **SECTION 8.** 37-90.5-106 (1) (b), Colorado Revised Statutes, is
11 amended to read:

12 **37-90.5-106. Drilling permits - rules - reinjection.**

13 (1) (b) Effective July 1, 2006, prior to constructing a geothermal resource
14 exploration, production, or reinjection well, a permit shall be obtained
15 from the state engineer; EXCEPT THAT A PERMIT IS NOT REQUIRED FOR THE
16 DIRECT USE OF A HORIZONTAL, CLOSED-LOOP GEOEXCHANGE SYSTEM THAT
17 DOES NOT USE A GEOTHERMAL FLUID, AS ESTABLISHED BY THE STATE
18 ENGINEER BY RULE. The state engineer shall adopt such rules as are
19 necessary to protect the public health, safety, and welfare and the
20 environment and to prevent the waste of any geothermal resource. The
21 state engineer shall also adopt rules for the assessment of reasonable fees
22 for the processing and granting of a permit under this section.

23 **SECTION 9.** 37-90.5-107 (8), Colorado Revised Statutes, is
24 amended to read:

25 **37-90.5-107. Relationship to water - when permit required.**

26 (8) For purposes of this section, "materially injure" and "material injury"
27 shall include any diminution or alteration in the quantity, temperature, or

1 quality of any valid, prior water or geothermal right; EXCEPT THAT
2 "MATERIALLY INJURE" AND "MATERIAL INJURY" INCLUDE A DIMINUTION
3 OR ALTERATION IN THE TEMPERATURE OF WATER ONLY IF THE DIMINUTION
4 OR ALTERATION ADVERSELY AFFECTS THE VALID, PRIOR GEOTHERMAL
5 RIGHT.

6 **SECTION 10.** 39-4-101 (3), Colorado Revised Statutes, is
7 amended, and the said 39-4-101 is further amended BY THE ADDITION
8 OF A NEW SUBSECTION, to read:

9 **39-4-101. Definitions.** As used in this article, unless the context
10 otherwise requires:

11 (2.4) "GEOTHERMAL ENERGY FACILITY" MEANS A NEW FACILITY
12 FIRST PLACED IN PRODUCTION ON OR AFTER JANUARY 1, 2010, THAT USES
13 REAL AND PERSONAL PROPERTY, INCLUDING BUT NOT LIMITED TO
14 LEASEHOLDS AND EASEMENTS, TO GENERATE AND DELIVER TO THE
15 INTERCONNECTION METER ANY SOURCE OF ELECTRICAL OR MECHANICAL
16 ENERGY BY HARNESSING THE HEAT ENERGY OF GROUNDWATER OR THE
17 GROUND AND THAT IS NOT PRIMARILY DESIGNED TO SUPPLY ELECTRICITY
18 FOR CONSUMPTION ON SITE.

19 (3) (a) "Public utility" means, for property tax years commencing
20 on or after January 1, 1987, every sole proprietorship, firm, limited
21 liability company, partnership, association, company, or corporation, and
22 the trustees or receivers thereof, whether elected or appointed, that does
23 business in this state as a railroad company, airline company, electric
24 company, GEOTHERMAL ENERGY FACILITY, wind energy facility, solar
25 energy facility, rural electric company, telephone company, telegraph
26 company, gas company, gas pipeline carrier company, domestic water
27 company selling at retail except nonprofit domestic water companies,

1 pipeline company, coal slurry pipeline, or private car line company.

2 (b) On and after January 1, ~~2000~~ 2010, for purposes of this article,
3 "public utility" shall not include any affiliate or subsidiary of a sole
4 proprietorship, firm, limited liability company, partnership, association,
5 company, or corporation of any type of company described in paragraph
6 (a) of this subsection (3) that is not doing business in the state primarily
7 as a railroad company, airline company, electric company, GEOTHERMAL
8 ENERGY FACILITY, wind energy facility, solar energy facility, rural electric
9 company, telephone company, telegraph company, gas company, gas
10 pipeline carrier company, domestic water company selling at retail except
11 nonprofit domestic water companies, pipeline company, coal slurry
12 pipeline, or private car line company. Valuation and taxation of any such
13 affiliate or subsidiary of a public utility as defined in paragraph (a) of this
14 subsection (3) shall be assessed pursuant to article 5 of this title.

15 **SECTION 11.** 39-4-102 (1) (e) (II), the introductory portion to
16 39-4-102 (1.5), and 39-4-102 (1.5) (a), (1.5) (b) (I), (1.5) (b) (V), (1.5)
17 (c), and (1.5) (d), Colorado Revised Statutes, are amended to read:

18 **39-4-102. Valuation of public utilities.** (1) The administrator
19 shall determine the actual value of the operating property and plant of
20 each public utility as a unit, giving consideration to the following factors
21 and assigning such weight to each of such factors as in the administrator's
22 judgment will secure a just value of such public utility as a unit:

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

27 (1.5) The administrator shall determine the actual value of a

1 GEOTHERMAL ENERGY FACILITY, A wind energy facility, or a solar energy
2 facility as follows:

3 (a) The general assembly hereby declares that consideration by the
4 administrator of the cost approach and market approach to the appraisal
5 of a wind energy facility or a solar energy facility results in valuations
6 that are neither uniform nor just and equal because of wide variations in
7 the production of energy from wind turbines and solar energy devices, as
8 defined in section 38-32.5-100.3 (2), C.R.S., because of the uncertainty
9 of wind and sunlight available for energy production, and because
10 constructing a wind energy facility or a solar energy facility is
11 significantly more expensive than constructing any other utility
12 production facility. THE GENERAL ASSEMBLY FURTHER DECLARES THAT
13 IT IS ALSO APPROPRIATE TO VALUE GEOTHERMAL ENERGY FACILITIES,
14 WHICH ALSO HAVE HIGH CONSTRUCTION COSTS RELATIVE TO THEIR
15 ONGOING OPERATIONAL COSTS, USING THE INCOME APPROACH. Therefore,
16 in the absence of preponderant evidence shown by the administrator that
17 the use of the cost approach and market approach results in uniform and
18 just and equal valuation, a GEOTHERMAL ENERGY FACILITY, A wind energy
19 facility, or a solar energy facility shall be valued based solely upon the
20 income approach.

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

24 (V) For purposes of calculating the tax factor as required in
25 subparagraph (IV) of this paragraph (b), an owner or operator of a
26 GEOTHERMAL ENERGY FACILITY, A wind energy facility, or a solar energy
27 facility shall provide a copy of the GEOTHERMAL ENERGY FACILITY'S,

1 wind energy facility's, or solar energy facility's current power purchase
2 agreement to the administrator by April 1 of each assessment year. The
3 administrator shall also have the authority to request a copy of the current
4 power purchase agreement from the purchaser of power generated at a
5 GEOTHERMAL ENERGY FACILITY, A wind energy facility, or a solar energy
6 facility. All agreements provided to the administrator pursuant to this
7 subparagraph (V) shall be considered private documents and shall be
8 available only to the administrator and the employees of the division of
9 property taxation in the department of local affairs.

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

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

23 **SECTION 12.** 39-5-104.7 (1) (b), Colorado Revised Statutes, is
24 amended to read:

25 **39-5-104.7. Valuation of real and personal property that**
26 **produces alternating current electricity from a renewable energy**
27 **source.** (1) (b) The valuation requirements specified in paragraph (a) of

1 this subsection (1) shall not apply to GEOTHERMAL ENERGY FACILITIES,
2 solar energy facilities, ~~as defined in section 39-4-101 (3.5)~~; or wind
3 energy facilities, as THOSE TERMS ARE defined in section 39-4-101. ~~(4)~~.

4 **SECTION 13. Act subject to petition - effective date -**
5 **applicability.** (1) This act shall take effect at 12:01 a.m. on the day
6 following the expiration of the ninety-day period after final adjournment
7 of the general assembly (August 11, 2010, if adjournment sine die is on
8 May 12, 2010); except that, if a referendum petition is filed pursuant to
9 section 1 (3) of article V of the state constitution against this act or an
10 item, section, or part of this act within such period, then the act, item,
11 section, or part shall not take effect unless approved by the people at the
12 general election to be held in November 2010 and shall take effect on the
13 date of the official declaration of the vote thereon by the governor.

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