CHAPTER 335

GOVERNMENT - STATE

SENATE BILL 22-118

BY SENATOR(S) Woodward and Hinrichsen, Hisey, Lundeen, Priola, Rankin, Scott, Sonnenberg, Buckner, Cooke, Coram, Kolker, Lee, Moreno, Pettersen, Smallwood, Story, Fenberg;
also REPRESENTATIVE(S) Holtorf and Valdez D., Lynch, McKean, Pelton, Pico, Rich, Van Beber, Van Winkle, Will, Amabile, Bernett, Bird, Boesenecker, Carver, Exum, Kipp, Lindsay, McCormick, McLachlan, Ricks, Roberts, Soper, Titone, Valdez A., Young.

AN ACT

CONCERNING THE ENCOURAGEMENT OF THE USE OF GEOTHERMAL ENERGY BY PROVIDING SIMILAR TREATMENT TO SOLAR ENERGY, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

SECTION 1. In Colorado Revised Statutes, 24-38.5-102, **add** (1)(v) and (4) as follows:

24-38.5-102. Colorado energy office - duties and powers - definitions. (1) The Colorado energy office shall:

(v) IN CONSULTATION WITH THE APPROPRIATE INDUSTRIES, DEVELOP BASIC CONSUMER EDUCATION OR GUIDANCE ABOUT PURCHASED OR, IF AVAILABLE, LEASED INSTALLATION OF A SYSTEM THAT USES GEOTHERMAL ENERGY FOR WATER HEATING OR SPACE HEATING OR COOLING IN A SINGLE BUILDING OR FOR SPACE HEATING FOR MORE THAN ONE BUILDING THROUGH A PIPELINE NETWORK.

(4) THE COLORADO ENERGY OFFICE MAY UPDATE THE GREENHOUSE GAS POLLUTION REDUCTION ROADMAP, PUBLISHED BY THE OFFICE AND DATED JANUARY 14, 2021, OR AS AMENDED THEREAFTER, TO EXPRESSLY INCLUDE GEOTHERMAL ENERGY AS A RENEWABLE ENERGY RESOURCE THAT QUALIFYING RETAIL UTILITIES MAY USE TO ACHIEVE THE ELECTRIC UTILITY SECTOR GREENHOUSE GAS POLLUTION REDUCTION GOALS SET FORTH IN THE GREENHOUSE GAS POLLUTION REDUCTION ROADMAP.

SECTION 2. In Colorado Revised Statutes, 24-48.5-113, **amend** (1)(a)

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.

introductory portion and (1)(e) as follows:

24-48.5-113. Limit on fees - active solar energy systems - geothermal systems - definitions - repeal. (1) (a) Except as otherwise provided in this section, the aggregate of all charges or other related or associated fees the state or any agency, institution, authority, or political subdivision of the state may impose or assess to install an active solar energy system OR A GEOTHERMAL ENERGY SYSTEM shall not exceed:

(e) As used in this subsection (1):

(I) "Active solar energy system" means a single system that contains electric generation, a thermal device, or is an energy storage system as defined in section 40-2-202 (2).

(II) "GEOTHERMAL ENERGY SYSTEM" MEANS A SYSTEM THAT USES GEOTHERMAL ENERGY FOR WATER HEATING OR SPACE HEATING OR COOLING IN A SINGLE BUILDING, FOR SPACE HEATING FOR MORE THAN ONE BUILDING THROUGH A PIPELINE NETWORK, OR FOR ELECTRICITY GENERATION.

SECTION 3. In Colorado Revised Statutes, 25-6.5-201, **amend** (2) as follows:

25-6.5-201. Definitions. As used in this part 2, unless the context otherwise requires:

(2) "Pollution control equipment" means any personal property, including, but not limited to, equipment, machinery, devices, systems, buildings, or structures, that is installed, constructed, or used in or as a part of a facility that creates a product in a manner that generates less pollution by the utilization of an alternative manufacturing or generating technology. "Pollution control equipment" includes, but is not limited to, gas or wind turbines and associated compressors or equipment; ~~or~~ solar, thermal, or photovoltaic equipment; OR EQUIPMENT USED AS PART OF A SYSTEM THAT USES GEOTHERMAL ENERGY FOR WATER HEATING OR SPACE HEATING OR COOLING IN A SINGLE BUILDING, FOR SPACE HEATING FOR MORE THAN ONE BUILDING THROUGH A PIPELINE NETWORK, OR FOR ELECTRICITY GENERATION.

SECTION 4. In Colorado Revised Statutes, 29-3-103, **amend** the introductory portion and (10)(m) as follows:

29-3-103. Definitions. As used in this ~~article~~ ARTICLE 3, unless the context otherwise requires:

(10) "Project" means any land, building, or other improvement and all real or personal properties, and any undivided or other interest in any of the foregoing, except inventories and raw materials, whether or not in existence, suitable or used for or in connection with any of the following:

(m) Capital improvements to existing single-family residential, multi-family residential, commercial, or industrial structures, to retrofit such structures for significant energy savings or installation of solar or other alternative electrical energy-producing improvements to serve that structure or other structures on

contiguous property under common ownership OR INSTALLATION OF A SYSTEM THAT USES GEOTHERMAL ENERGY FOR WATER HEATING OR SPACE HEATING OR COOLING IN A SINGLE STRUCTURE.

SECTION 5. In Colorado Revised Statutes, 30-28-106, **amend** (3)(a)(VI) as follows:

30-28-106. Adoption of master plan - contents. (3) (a) The master plan of a county or region, with the accompanying maps, plats, charts, and descriptive and explanatory matter, must show the county or regional planning commission's recommendations for the development of the territory covered by the plan. The master plan of a county or region is an advisory document to guide land development decisions; however, the plan or any part thereof may be made binding by inclusion in the county's or region's adopted subdivision, zoning, platting, planned unit development, or other similar land development regulations after satisfying notice, due process, and hearing requirements for legislative or quasi-judicial processes as appropriate. After consideration of each of the following, where applicable or appropriate, the master plan may include:

(VI) Methods for assuring access to appropriate conditions for solar, wind, or other alternative energy sources, INCLUDING GEOTHERMAL ENERGY USED FOR WATER HEATING OR SPACE HEATING OR COOLING IN A SINGLE BUILDING, FOR SPACE HEATING FOR MORE THAN ONE BUILDING THROUGH A PIPELINE NETWORK, OR FOR ELECTRICITY GENERATION.

SECTION 6. In Colorado Revised Statutes, 30-28-113, **amend** (1)(b)(II)(A) and (1)(b)(II)(C) as follows:

30-28-113. Regulation of size and use - districts - definitions - repeal. (1) (b) (II) (A) Except as otherwise provided in this section, the aggregate of all charges or other related or associated fees a county shall impose or assess to install an active solar energy system OR GEOTHERMAL ENERGY SYSTEM, shall not exceed the lesser of the county's actual costs in issuing the permit or five hundred dollars for a residential application or one thousand dollars for a nonresidential application if the device or system produces fewer than two megawatts of direct current electricity or an equivalent-sized thermal energy system, or that exceed the county's actual costs in issuing the permit if the device or system produces at least two megawatts of direct current electricity or an equivalent-sized thermal energy system. A county may increase its fees or other charges as authorized by this subsection (1)(b)(II) by no more than five percent on an annual basis until the five hundred dollar limitation specified in this subsection (1)(b)(II) is achieved. The county shall clearly and individually identify all fees and taxes assessed on an application subject to this subsection (1)(b)(II) on the invoice. The general assembly hereby finds that there is a statewide need for certainty regarding the fees that can be assessed for permitting such devices or systems, and therefore declares that this subsection (1)(b)(II) is a matter of statewide concern. This subsection (1)(b)(II) is repealed, effective December 31, 2029.

(C) As used in this subsection (1)(b)(II), "active solar energy system" means a single system that contains electric generation, a thermal device, or is an energy storage system as defined in section 40-2-202 (2), AND "GEOTHERMAL ENERGY

SYSTEM" MEANS A SYSTEM THAT USES GEOTHERMAL ENERGY FOR WATER HEATING OR SPACE HEATING OR COOLING IN A SINGLE BUILDING, FOR SPACE HEATING FOR MORE THAN ONE BUILDING THROUGH A PIPELINE NETWORK, OR FOR ELECTRICITY GENERATION.

SECTION 7. In Colorado Revised Statutes, 30-28-120, **amend** (1) as follows:

30-28-120. Existing structures - county property. (1) The lawful use of a building or structure or the lawful use of any land, as existing and lawful at the time of the adoption of a zoning resolution or, in the case of an amendment of a resolution, at the time of such amendment, may be continued, although such use does not conform with the provisions of such resolution or amendment, and such use may be extended throughout the same building if no structural alteration of such building is proposed or made for the purpose of such extension. The addition of a solar energy device OR A DEVICE USED AS PART OF A SYSTEM THAT USES GEOTHERMAL ENERGY FOR WATER HEATING OR SPACE HEATING OR COOLING to such building shall not necessarily be considered a structural alteration. The board of county commissioners may provide in any zoning resolution for the restoration, reconstruction, extension, or substitution of nonconforming uses upon such terms and conditions as may be set forth in the zoning resolution.

SECTION 8. In Colorado Revised Statutes, 31-15-602, **amend** (4)(b)(I)(A) and (4)(b)(I)(C) as follows:

31-15-602. Energy efficient building codes - legislative declaration - definitions - repeal. (4) (b) (I) (A) Except as otherwise provided in this section, the aggregate of all charges or other related or associated fees a municipality shall impose or assess to install an active solar electric or solar thermal device or system OR A GEOTHERMAL ENERGY SYSTEM shall not exceed the lesser of the municipality's actual costs in issuing the permit or five hundred dollars for a residential application or one thousand dollars for a nonresidential application if the device or system produces fewer than two megawatts of direct current electricity or an equivalent-sized thermal energy system, or that exceed the municipality's actual costs in issuing the permit if the device or system produces at least two megawatts of direct current electricity or an equivalent-sized thermal energy system. A municipality may increase its fees or other charges as authorized by this subsection (4)(b)(I) by no more than five percent on an annual basis until the five hundred dollar limitation specified in this subsection (4)(b)(I) is achieved. The municipality shall clearly and individually identify all fees and taxes assessed on an application subject to this subsection (4)(b)(I) on the invoice. The general assembly hereby finds that there is a statewide need for certainty regarding the fees that can be assessed for permitting such devices or systems, and therefore declares that this subsection (4)(b) is a matter of statewide concern.

(C) As used in this subsection (4)(b)(I), "active solar energy system" means a single system that contains electric generation, a thermal device, or is an energy storage system as defined in section 40-2-202 (2), AND "GEOTHERMAL ENERGY SYSTEM" MEANS A SYSTEM THAT USES GEOTHERMAL ENERGY FOR WATER HEATING OR SPACE HEATING OR COOLING IN A SINGLE BUILDING, FOR SPACE HEATING FOR MORE THAN ONE BUILDING THROUGH A PIPELINE NETWORK, OR FOR ELECTRICITY GENERATION.

SECTION 9. In Colorado Revised Statutes, 31-23-206, **amend** (1)(f) as follows:

31-23-206. Master plan. (1) It is the duty of the commission to make and adopt a master plan for the physical development of the municipality, including any areas outside its boundaries, subject to the approval of the governmental body having jurisdiction thereof, that in the commission's judgment bear relation to the planning of the municipality. The master plan of a municipality is an advisory document to guide land development decisions; however, the plan or any part thereof may be made binding by inclusion in the municipality's adopted subdivision, zoning, platting, planned unit development, or other similar land development regulations after satisfying notice, due process, and hearing requirements for legislative or quasi-judicial processes as appropriate. When a commission decides to adopt a master plan, the commission shall conduct public hearings, after notice of such public hearings has been published in a newspaper of general circulation in the municipality in a manner sufficient to notify the public of the time, place, and nature of the public hearing, prior to final adoption of a master plan in order to encourage public participation in and awareness of the development of such plan and shall accept and consider oral and written public comments throughout the process of developing the plan. The plan, with the accompanying maps, plats, charts, and descriptive matter, must, after consideration of each of the following, where applicable or appropriate, show the commission's recommendations for the development of the municipality and outlying areas, including:

(f) A zoning plan for the control of the height, area, bulk, location, and use of buildings and premises. Such a zoning plan may protect and assure access to appropriate conditions for solar, wind, or other alternative energy sources, INCLUDING GEOTHERMAL ENERGY USED FOR WATER HEATING OR SPACE HEATING OR COOLING IN A SINGLE BUILDING, FOR SPACE HEATING FOR MORE THAN ONE BUILDING THROUGH A PIPELINE NETWORK, OR FOR ELECTRICITY GENERATION; however, regulations and restrictions of the height, number of stories, size of buildings and other structures, and the height and location of trees and other vegetation shall not apply to existing buildings, structures, trees, or vegetation except for new growth on such vegetation.

SECTION 10. In Colorado Revised Statutes, 38-30-168, **amend** (1)(b) as follows:

38-30-168. Unreasonable restrictions on renewable energy generation devices - definitions. (1) (b) As used in this section, "renewable energy generation device" means: ~~either:~~

(I) A solar energy device, as defined in section 38-32.5-100.3; ~~or~~

(II) A wind-electric generator that meets the interconnection standards established in rules promulgated by the public utilities commission pursuant to section 40-2-124; ~~C.R.S.~~ OR

(III) A GEOTHERMAL ENERGY DEVICE.

SECTION 11. In Colorado Revised Statutes, **add** 40-2-127.5 as follows:

40-2-127.5. Community energy funds - community geothermal gardens - rules - legislative declaration - definitions - repeal. (1) **Legislative declaration.** THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT:

(a) LOCAL COMMUNITIES CAN BENEFIT FROM THE FURTHER DEVELOPMENT OF RENEWABLE ENERGY, ENERGY EFFICIENCY, CONSERVATION, AND ENVIRONMENTAL IMPROVEMENT PROJECTS, AND THE GENERAL ASSEMBLY HEREBY ENCOURAGES ELECTRIC UTILITIES TO ESTABLISH COMMUNITY ENERGY FUNDS FOR THE DEVELOPMENT OF SUCH PROJECTS;

(b) IT IS IN THE PUBLIC INTEREST THAT BROADER PARTICIPATION IN GEOTHERMAL ELECTRIC GENERATION BY COLORADO RESIDENTS AND COMMERCIAL ENTITIES BE ENCOURAGED BY THE DEVELOPMENT AND DEPLOYMENT OF DISTRIBUTED GEOTHERMAL ELECTRIC GENERATING FACILITIES KNOWN AS COMMUNITY GEOTHERMAL GARDENS, IN ORDER TO:

(I) PROVIDE COLORADO RESIDENTS AND COMMERCIAL ENTITIES WITH THE OPPORTUNITY TO PARTICIPATE IN GEOTHERMAL ELECTRICITY GENERATION;

(II) ALLOW RENTERS, LOW-INCOME UTILITY CUSTOMERS, AND AGRICULTURAL PRODUCERS TO OWN INTERESTS IN SUCH GEOTHERMAL GENERATION FACILITIES;

(III) ALLOW INTERESTS IN SUCH GEOTHERMAL GENERATION FACILITIES TO BE PORTABLE AND TRANSFERRABLE; AND

(IV) LEVERAGE COLORADO'S GEOTHERMAL ELECTRICITY GENERATING CAPACITY THROUGH ECONOMIES OF SCALE.

(2) **Definitions.** AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES, THE DEFINITIONS IN SECTION 40-2-124 APPLY, AND:

(a) (I) "COMMUNITY GEOTHERMAL GARDEN" MEANS A GEOTHERMAL FACILITY THAT PRODUCES ELECTRICITY FROM THE EARTH'S HEAT WITH A NAMEPLATE RATING WITHIN THE RANGE SPECIFIED UNDER SUBSECTION (2)(b)(IV) OF THIS SECTION THAT IS LOCATED IN OR NEAR A COMMUNITY SERVED BY A QUALIFYING RETAIL UTILITY WHERE THE BENEFICIAL USE OF THE ELECTRICITY GENERATED BY THE FACILITY BELONGS TO THE SUBSCRIBERS TO THE COMMUNITY GEOTHERMAL GARDEN. THERE MUST BE AT LEAST TEN SUBSCRIBERS. THE OWNER OF THE COMMUNITY GEOTHERMAL GARDEN MAY BE THE QUALIFYING RETAIL UTILITY OR ANY OTHER FOR-PROFIT OR NONPROFIT ENTITY OR ORGANIZATION, INCLUDING A SUBSCRIBER ORGANIZATION ORGANIZED UNDER THIS SECTION, THAT CONTRACTS TO SELL THE OUTPUT FROM THE COMMUNITY GEOTHERMAL GARDEN TO THE QUALIFYING RETAIL UTILITY. A COMMUNITY GEOTHERMAL GARDEN IS DEEMED TO BE "LOCATED ON THE SITE OF CUSTOMER FACILITIES".

(II) A COMMUNITY GEOTHERMAL GARDEN CONSTITUTES "RETAIL DISTRIBUTED GENERATION" WITHIN THE MEANING OF SECTION 40-2-124.

(III) NOTWITHSTANDING ANY PROVISION OF THIS SECTION OR SECTION 40-2-124 TO THE CONTRARY, A COMMUNITY GEOTHERMAL GARDEN CONSTITUTES RETAIL DISTRIBUTED GENERATION FOR PURPOSES OF A COOPERATIVE ELECTRIC

ASSOCIATION'S COMPLIANCE WITH THE APPLICABLE RENEWABLE ENERGY STANDARD UNDER SECTION 40-2-124.

(IV) A COMMUNITY GEOTHERMAL GARDEN MUST HAVE A NAMEPLATE RATING OF FIVE MEGAWATTS OR LESS; EXCEPT THAT THE COMMISSION MAY, IN RULES ADOPTED PURSUANT TO SUBSECTION (3)(b) OF THIS SECTION, APPROVE THE FORMATION OF A COMMUNITY GEOTHERMAL GARDEN WITH A NAMEPLATE RATING OF UP TO TEN MEGAWATTS.

(b) "SUBSCRIBER" MEANS A RETAIL CUSTOMER OF A QUALIFYING RETAIL UTILITY WHO OWNS A SUBSCRIPTION AND WHO HAS IDENTIFIED ONE OR MORE PHYSICAL LOCATIONS TO WHICH THE SUBSCRIPTION IS ATTRIBUTED. SUCH PHYSICAL LOCATIONS MUST BE WITHIN THE SERVICE TERRITORY OF THE SAME QUALIFYING RETAIL UTILITY AS THE COMMUNITY GEOTHERMAL GARDEN. THE SUBSCRIBER MAY CHANGE FROM TIME TO TIME THE PREMISES TO WHICH THE COMMUNITY GEOTHERMAL GARDEN ELECTRICITY GENERATION IS ATTRIBUTED, SO LONG AS THE PREMISES ARE WITHIN THE SAME SERVICE TERRITORY.

(c) "SUBSCRIPTION" MEANS A PROPORTIONAL INTEREST IN GEOTHERMAL ELECTRIC GENERATION FACILITIES INSTALLED AT A COMMUNITY GEOTHERMAL GARDEN, TOGETHER WITH THE RENEWABLE ENERGY CREDITS ASSOCIATED WITH OR ATTRIBUTABLE TO SUCH FACILITIES UNDER SECTION 40-2-124. EACH SUBSCRIPTION MUST BE SIZED TO REPRESENT AT LEAST ONE KILOWATT OF THE COMMUNITY GEOTHERMAL GARDEN'S GENERATING CAPACITY AND TO SUPPLY NO MORE THAN ONE HUNDRED TWENTY PERCENT OF THE AVERAGE ANNUAL CONSUMPTION OF ELECTRICITY BY EACH SUBSCRIBER AT THE PREMISES TO WHICH THE SUBSCRIPTION IS ATTRIBUTED, WITH A DEDUCTION FOR THE AMOUNT OF ANY EXISTING GEOTHERMAL FACILITIES AT SUCH PREMISES. SUBSCRIPTIONS IN A COMMUNITY GEOTHERMAL GARDEN MAY BE TRANSFERRED OR ASSIGNED TO A SUBSCRIBER ORGANIZATION OR TO ANY PERSON OR ENTITY WHO QUALIFIES TO BE A SUBSCRIBER UNDER THIS SECTION.

(3) **Subscriber organization - subscriber qualifications - transferability of subscriptions.** (a) THE COMMUNITY GEOTHERMAL GARDEN MAY BE OWNED BY A SUBSCRIBER ORGANIZATION, WHOSE SOLE PURPOSE IS BENEFICIALLY OWNING AND OPERATING A COMMUNITY GEOTHERMAL GARDEN. THE SUBSCRIBER ORGANIZATION MAY BE ANY FOR-PROFIT OR NONPROFIT ENTITY PERMITTED BY COLORADO LAW. THE COMMUNITY GEOTHERMAL GARDEN MAY ALSO BE BUILT, OWNED, AND OPERATED BY A THIRD PARTY UNDER CONTRACT WITH THE SUBSCRIBER ORGANIZATION.

(b) THE COMMISSION SHALL ADOPT RULES AS NECESSARY TO IMPLEMENT THIS SECTION, INCLUDING RULES TO FACILITATE THE FINANCING OF SUBSCRIBER-OWNED COMMUNITY GEOTHERMAL GARDENS. THE RULES MUST INCLUDE:

(I) MINIMUM CAPITALIZATION;

(II) THE SHARE OF A COMMUNITY GEOTHERMAL GARDEN'S GEOTHERMAL ELECTRIC GENERATION FACILITIES THAT A SUBSCRIBER ORGANIZATION MAY AT ANY TIME OWN IN ITS OWN NAME; AND

(III) AUTHORIZING SUBSCRIBER ORGANIZATIONS TO ENTER INTO LEASES,

SALE-AND-LEASEBACK TRANSACTIONS, OPERATING AGREEMENTS, AND OTHER OWNERSHIP ARRANGEMENTS WITH THIRD PARTIES.

(c) IF A SUBSCRIBER CEASES TO BE A CUSTOMER AT THE PREMISES ON WHICH THE SUBSCRIPTION IS BASED BUT, WITHIN A REASONABLE PERIOD AS DETERMINED BY THE COMMISSION, BECOMES A CUSTOMER AT ANOTHER PREMISES IN THE SERVICE TERRITORY OF THE QUALIFYING RETAIL UTILITY AND WITHIN THE GEOGRAPHIC AREA SERVED BY THE COMMUNITY GEOTHERMAL GARDEN, THE SUBSCRIPTION CONTINUES IN EFFECT BUT THE BILL CREDIT AND OTHER FEATURES OF THE SUBSCRIPTION ARE ADJUSTED AS NECESSARY TO REFLECT ANY DIFFERENCES BETWEEN THE NEW AND PREVIOUS PREMISES' CUSTOMER CLASSIFICATION AND AVERAGE ANNUAL CONSUMPTION OF ELECTRICITY.

(4) **Standards for construction and operation.** THE FOLLOWING REQUIREMENTS APPLY TO ANY COMMUNITY GEOTHERMAL GARDEN EXCEEDING TWO MEGAWATTS:

(a) THE INITIAL INSTALLATION OF ANY ELECTRICAL EQUIPMENT ASSOCIATED WITH THE COMMUNITY GEOTHERMAL GARDEN IS SUBJECT TO FINAL INSPECTION AND APPROVAL IN ACCORDANCE WITH SECTION 12-115-120.

(b) FOLLOWING THE DEVELOPMENT OR ACQUISITION BY A QUALIFYING RETAIL UTILITY OF A COMMUNITY GEOTHERMAL GARDEN IN WHICH THE QUALIFYING RETAIL UTILITY RETAINS OWNERSHIP, THE QUALIFYING RETAIL UTILITY SHALL EITHER USE ITS OWN EMPLOYEES TO OPERATE AND MAINTAIN THE COMMUNITY GEOTHERMAL GARDEN OR CONTRACT FOR OPERATION AND MAINTENANCE OF THE COMMUNITY GEOTHERMAL GARDEN BY A CONTRACTOR WHOSE EMPLOYEES HAVE ACCESS TO AN APPRENTICESHIP PROGRAM REGISTERED WITH THE UNITED STATES DEPARTMENT OF LABOR'S OFFICE OF APPRENTICESHIP OR WITH A STATE APPRENTICESHIP COUNCIL RECOGNIZED BY THAT OFFICE; EXCEPT THAT THIS APPRENTICESHIP REQUIREMENT DOES NOT APPLY TO:

(I) THE DESIGN, PLANNING, OR ENGINEERING OF THE INFRASTRUCTURE;

(II) MANAGEMENT FUNCTIONS TO OPERATE THE INFRASTRUCTURE; OR

(III) ANY WORK INCLUDED IN A WARRANTY.

(5) **Community geothermal gardens not subject to regulation.** NEITHER THE OWNERS OF NOR THE SUBSCRIBERS TO A COMMUNITY GEOTHERMAL GARDEN ARE CONSIDERED PUBLIC UTILITIES SUBJECT TO REGULATION BY THE COMMISSION SOLELY AS A RESULT OF THEIR INTEREST IN THE COMMUNITY GEOTHERMAL GARDEN. PRICES PAID FOR SUBSCRIPTIONS IN COMMUNITY GEOTHERMAL GARDENS SHALL NOT BE SUBJECT TO REGULATION BY THE COMMISSION.

(6) **Purchases of the output from community geothermal gardens.** (a) (I) EACH QUALIFYING RETAIL UTILITY MAY SET FORTH IN ITS PLAN FOR ACQUISITION OF RENEWABLE RESOURCES A PLAN TO PURCHASE THE ELECTRICITY AND RENEWABLE ENERGY CREDITS GENERATED FROM ONE OR MORE COMMUNITY GEOTHERMAL GARDENS OVER THE PERIOD COVERED BY THE PLAN.

(II) FOR EACH QUALIFYING RETAIL UTILITY'S COMPLIANCE YEARS COMMENCING

IN 2026 AND THEREAFTER, THE COMMISSION SHALL DETERMINE THE MINIMUM AND MAXIMUM PURCHASES OF ELECTRICAL OUTPUT FROM NEWLY INSTALLED COMMUNITY GEOTHERMAL GARDENS OF DIFFERENT OUTPUT CAPACITY THAT THE QUALIFYING RETAIL UTILITY MAY PLAN TO ACQUIRE. IN ADDITION, AS NECESSARY AND APPROPRIATE, THE COMMISSION SHALL FORMULATE AND IMPLEMENT POLICIES CONSISTENT WITH THIS SECTION THAT SIMULTANEOUSLY ENCOURAGE:

(A) THE OWNERSHIP BY CUSTOMERS OF SUBSCRIPTIONS IN COMMUNITY GEOTHERMAL GARDENS AND OF OTHER FORMS OF DISTRIBUTED GENERATION, TO THE EXTENT THE COMMISSION FINDS THERE TO BE CUSTOMER DEMAND FOR SUCH OWNERSHIP;

(B) OWNERSHIP IN COMMUNITY GEOTHERMAL GARDENS BY RESIDENTIAL RETAIL CUSTOMERS AND AGRICULTURAL PRODUCERS, INCLUDING LOW-INCOME CUSTOMERS, TO THE EXTENT THE COMMISSION FINDS THERE TO BE DEMAND FOR SUCH OWNERSHIP;

(C) THE DEVELOPMENT OF COMMUNITY GEOTHERMAL GARDENS WITH ATTRIBUTES THAT THE COMMISSION FINDS RESULT IN LOWER OVERALL TOTAL COSTS FOR THE QUALIFYING RETAIL UTILITY'S CUSTOMERS;

(D) SUCCESSFUL FINANCING AND OPERATION OF COMMUNITY GEOTHERMAL GARDENS OWNED BY SUBSCRIBER ORGANIZATIONS; AND

(E) THE ACHIEVEMENT OF THE GOALS AND OBJECTIVES OF SECTION 40-2-124.

(b) (I) (A) THE OUTPUT FROM A COMMUNITY GEOTHERMAL GARDEN MUST BE SOLD ONLY TO THE QUALIFYING RETAIL UTILITY SERVING THE GEOGRAPHIC AREA WHERE THE COMMUNITY GEOTHERMAL GARDEN IS LOCATED.

(B) ONCE A COMMUNITY GEOTHERMAL GARDEN IS PART OF A QUALIFYING RETAIL UTILITY'S PLAN FOR ACQUISITION OF RENEWABLE RESOURCES, AS APPROVED BY THE COMMISSION, THE COMMISSION SHALL INITIATE A PROCEEDING, OR CONSIDER IN AN ACTIVE PROCEEDING, TO DETERMINE WHETHER THE QUALIFYING RETAIL UTILITY MUST PURCHASE ALL OF THE ELECTRICITY AND RENEWABLE ENERGY CREDITS GENERATED BY THE COMMUNITY GEOTHERMAL GARDEN OR WHETHER A SUBSCRIBER MAY, UPON BECOMING A SUBSCRIBER, CHOOSE TO RETAIN OR SELL TO THE QUALIFYING RETAIL UTILITY THE SUBSCRIBER'S RENEWABLE ENERGY CREDITS.

(C) THE AMOUNT OF ELECTRICITY AND RENEWABLE ENERGY CREDITS GENERATED BY EACH COMMUNITY GEOTHERMAL GARDEN IS DETERMINED BY A PRODUCTION METER INSTALLED BY THE QUALIFYING RETAIL UTILITY OR THIRD-PARTY SYSTEM OWNER AND PAID FOR BY THE OWNER OF THE COMMUNITY GEOTHERMAL GARDEN.

(II) THE PURCHASE OF THE OUTPUT OF A COMMUNITY GEOTHERMAL GARDEN BY A QUALIFYING RETAIL UTILITY TAKES THE FORM OF A NET METERING CREDIT AGAINST THE QUALIFYING RETAIL UTILITY'S ELECTRIC BILL TO EACH COMMUNITY GEOTHERMAL GARDEN SUBSCRIBER AT THE PREMISES SET FORTH IN THE SUBSCRIBER'S SUBSCRIPTION. THE NET METERING CREDIT IS CALCULATED BY MULTIPLYING THE SUBSCRIBER'S SHARE OF THE ELECTRICITY PRODUCTION FROM THE COMMUNITY GEOTHERMAL GARDEN BY THE QUALIFYING RETAIL UTILITY'S TOTAL

AGGREGATE RETAIL RATE AS CHARGED TO THE SUBSCRIBER, MINUS A REASONABLE CHARGE AS DETERMINED BY THE COMMISSION TO COVER THE UTILITY'S COSTS OF DELIVERING TO THE SUBSCRIBER'S PREMISES THE ELECTRICITY GENERATED BY THE COMMUNITY GEOTHERMAL GARDEN, INTEGRATING THE GEOTHERMAL GENERATION WITH THE UTILITY'S SYSTEM, AND ADMINISTERING THE COMMUNITY GEOTHERMAL GARDEN'S CONTRACTS AND NET METERING CREDITS. THE COMMISSION SHALL ENSURE THAT THIS CHARGE DOES NOT REFLECT COSTS THAT ARE ALREADY RECOVERED BY THE UTILITY FROM THE SUBSCRIBER THROUGH OTHER CHARGES. IF, AND TO THE EXTENT THAT, A SUBSCRIBER'S NET METERING CREDIT EXCEEDS THE SUBSCRIBER'S ELECTRIC BILL IN ANY BILLING PERIOD, THE NET METERING CREDIT IS CARRIED FORWARD AND APPLIED AGAINST FUTURE BILLS. THE QUALIFYING RETAIL UTILITY AND THE OWNER OF THE COMMUNITY GEOTHERMAL GARDEN MUST AGREE ON WHETHER THE PURCHASE OF THE RENEWABLE ENERGY CREDITS FROM SUBSCRIBERS WILL BE ACCOMPLISHED THROUGH A CREDIT ON EACH SUBSCRIBER'S ELECTRICITY BILL OR BY A PAYMENT TO THE OWNER OF THE COMMUNITY GEOTHERMAL GARDEN.

(c) THE OWNER OF THE COMMUNITY GEOTHERMAL GARDEN MUST PROVIDE REAL-TIME PRODUCTION DATA TO THE QUALIFYING RETAIL UTILITY TO FACILITATE INCORPORATION OF THE COMMUNITY GEOTHERMAL GARDEN INTO THE UTILITY'S OPERATION OF ITS ELECTRIC SYSTEM AND TO FACILITATE THE PROVISION OF NET METERING CREDITS.

(d) THE OWNER OF THE COMMUNITY GEOTHERMAL GARDEN IS RESPONSIBLE FOR PROVIDING TO THE QUALIFYING RETAIL UTILITY, ON A MONTHLY BASIS AND WITHIN REASONABLE PERIODS SET BY THE QUALIFYING RETAIL UTILITY, THE PERCENTAGE SHARES THAT SHOULD BE USED TO DETERMINE THE NET METERING CREDIT TO EACH SUBSCRIBER. IF THE ELECTRICITY OUTPUT OF THE COMMUNITY GEOTHERMAL GARDEN IS NOT FULLY SUBSCRIBED, THE QUALIFYING RETAIL UTILITY SHALL PURCHASE THE UNSUBSCRIBED RENEWABLE ENERGY AND THE RENEWABLE ENERGY CREDITS AT A RATE EQUAL TO THE QUALIFYING RETAIL UTILITY'S AVERAGE HOURLY INCREMENTAL COST OF ELECTRICITY SUPPLY OVER THE IMMEDIATELY PRECEDING CALENDAR YEAR.

(e) IF A QUALIFYING RETAIL UTILITY INCLUDES A PLAN TO PURCHASE THE ELECTRICITY AND RENEWABLE ENERGY CREDITS GENERATED BY ONE OR MORE COMMUNITY GEOTHERMAL GARDENS, THEN THE QUALIFYING RETAIL UTILITY SHALL SET FORTH IN ITS PLAN FOR ACQUISITION OF RENEWABLE RESOURCES A PROPOSAL FOR INCLUDING LOW-INCOME CUSTOMERS AS SUBSCRIBERS TO A COMMUNITY GEOTHERMAL GARDEN, IF POSSIBLE. THE UTILITY MAY GIVE PREFERENCE TO COMMUNITY GEOTHERMAL GARDENS THAT HAVE LOW-INCOME SUBSCRIBERS.

(f) QUALIFYING RETAIL UTILITIES ARE ELIGIBLE FOR THE INCENTIVES AND SUBJECT TO THE OWNERSHIP LIMITATIONS SET FORTH IN SECTION 40-2-124 (1)(f) FOR UTILITY INVESTMENTS IN COMMUNITY GEOTHERMAL GARDENS AND MAY RECOVER THROUGH RATES A MARGIN, IN AN AMOUNT DETERMINED BY THE COMMISSION, ON ALL ENERGY AND RENEWABLE ENERGY CREDITS PURCHASED FROM COMMUNITY GEOTHERMAL GARDENS. SUCH INCENTIVE PAYMENTS ARE EXCLUDED FROM THE COST ANALYSIS REQUIRED BY SECTION 40-2-124 (1)(g).

(6) NOTHING IN THIS SECTION WAIVES OR SUPERSEDES THE RETAIL RATE IMPACT

LIMITATIONS IN SECTION 40-2-124 (1)(g). UTILITY EXPENDITURES FOR UNSUBSCRIBED ENERGY AND RENEWABLE ENERGY CREDITS GENERATED BY COMMUNITY GEOTHERMAL GARDENS MUST BE INCLUDED IN THE CALCULATIONS OF RETAIL RATE IMPACT REQUIRED BY THAT SECTION.

(7) **Applicability to cooperative electric associations and municipally owned utilities.** THIS SECTION SHALL NOT APPLY TO COOPERATIVE ELECTRIC ASSOCIATIONS OR TO MUNICIPALLY OWNED UTILITIES.

SECTION 12. In Colorado Revised Statutes, 25-7-105, **amend** (1)(e)(VIII)(H) as follows:

25-7-105. Duties of commission - rules - legislative declaration - definitions. (1) Except as provided in sections 25-7-130 and 25-7-131, the commission shall promulgate rules that are consistent with the legislative declaration set forth in section 25-7-102 and necessary for the proper implementation and administration of this article 7, including:

(e) (VIII) (H) In verifying clean energy plans or a wholesale generation and transmission cooperative electric resource plan submitted in accordance with subsection (1)(e)(VIII)(I) of this section, the division shall prevent double counting of emission reductions among utilities and shall consider electricity generated by renewable energy resources as having zero greenhouse gas emissions only if: The electricity is accompanied by any associated renewable energy credit, and the renewable energy credit is retired on behalf of the utility's customers in the year generated; or the electricity is generated by retail distributed generation, as defined in sections 40-2-124 (1)(a)(VIII), ~~and~~ 40-2-127 (2)(b)(I)(A) and (2)(b)(I)(B), AND 40-2-127.5 (2)(a)(I) AND (2)(a)(II), and the retail customer retains the renewable energy credit as part of a voluntary renewable energy program.

SECTION 13. In Colorado Revised Statutes, 30-20-602, **amend** (4.3)(b) as follows:

30-20-602. Definitions. As used in this part 6, unless the context otherwise requires:

(4.3) "Qualified community location" means:

(b) If the affected local electric utility is an investor-owned utility, a community solar garden, as that term is defined in section 40-2-127 (2), ~~C.R.S. If House Bill 10-1342 does not take effect, there shall be no qualified community locations in the service territories of investor-owned utilities.~~ OR A COMMUNITY GEOTHERMAL GARDEN AS THAT TERM IS DEFINED IN SECTION 42-2-127.5 (2).

SECTION 14. In Colorado Revised Statutes, 31-25-501, **amend** (3.5)(b) as follows:

31-25-501. Definitions. As used in this part 5, unless the context otherwise requires:

(3.5) "Qualified community location" means:

(b) If the affected local electric utility is an investor-owned utility, a community solar garden as that term is defined in section 40-2-127 (2), ~~C.R.S. If House Bill 10-1342 does not take effect, there shall be no qualified community locations in the service territories of investor-owned utilities.~~ OR A COMMUNITY GEOTHERMAL GARDEN AS THAT TERM IS DEFINED IN SECTION 42-2-127.5 (2).

SECTION 15. In Colorado Revised Statutes, 40-2-129, **amend** (3) as follows:

40-2-129. New resource acquisitions - factors in determination - local employment - "best value" metrics - performance audit. (3) The provisions of this section regarding "best value" employment metrics do not apply to projects involving retail distributed generation, as defined in section 40-2-124 (1)(a)(VIII), ~~or~~ 40-2-127 (2)(b)(I)(B), OR 40-2-127.5 (2)(a)(II).

SECTION 16. In Colorado Revised Statutes, 40-9.5-106, **amend** (2) as follows:

40-9.5-106. Prohibited acts. (2) No cooperative electric association, as to rates, charges, service, or facilities or as to any other matter, shall make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage. No cooperative electric association shall establish or maintain any unreasonable difference as to rates, charges, service, or facilities or as to any other matter, either between localities or between any class of service. Notwithstanding section 40-6-108 (1)(b), any complaint arising out of this subsection (2) signed by one or more customers of such association shall be resolved by the public utilities commission in accordance with the hearing and enforcement procedures established in articles 6 and 7 of this title. A cooperative electric association may approve any reasonable rate, charge, service, classification, or facility that establishes a graduated rate for increased energy consumption, for energy conservation and energy efficiency purposes, by residential customers that is revenue-neutral for the class, where revenue includes margins, expenses, riders, or charges as approved by the cooperative electric association. The implementation of such rate, charge, service, classification, or facility by a cooperative electric association shall not be deemed to subject any person or corporation to any prejudice, disadvantage, or undue discrimination. In adopting such rate, a cooperative electric association shall give due consideration to the impact of such rates on low-income customers. A cooperative electric association may utilize a community energy fund as contemplated by ~~section 40-2-127~~ SECTIONS 40-2-127 AND 40-2-127.5 for energy efficiency, energy conservation, weatherization, and renewable energy purposes. A cooperative electric association shall not apply such rate to consumers that have single meters that record energy consumption for combined residential and agricultural uses.

SECTION 17. Appropriation. For the 2022-23 state fiscal year, $15,000 is appropriated to the office of the governor for use by the Colorado energy office. This appropriation is from the general fund. To implement this act, the office may use this appropriation for program administration.

SECTION 18. 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: June 2, 2022