

# Geothermal Energy

This Act creates a Geothermal Resource Leasing Fund to receive money from certain mineral lease revenues derived from geothermal resource development. The money in the fund will then be used to provide grants to state agencies, school districts, and political subdivisions affected by geothermal development and production. Grants are to be awarded by the state department of local affairs primarily for planning and services necessitated by geothermal development and production, and secondarily to promote geothermal energy resource development.

The Act specifies that in cases where geothermal resources are “severed,” or separated from the land and sold or leased, the geothermal resource owner must have the right to reasonably access these resources.

The bill specifies that geothermal energy facilities must be valued for property taxes in the same manner in which wind and solar energy facilities are valued. These facilities are valued using the income approach, where the value is based on the projected gross revenue from such facilities.

This Act allows municipalities and counties to designate the use of geothermal resources as an activity of state interest.

The bill allows the state public utilities commission, at a utility’s request, to give the fullest possible consideration to the cost-effective implementation of new energy technologies for geothermal energy generation.

Submitted as:

Colorado

[SB 10-174](#)

Status: Enacted into law in 2010.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title*.] This Act shall be cited as “An Act Concerning Geothermal  
2 Energy Production.”

3  
4           Section 2. [*Geothermal Resource Leasing Fund*.]

5           (A) The [state treasurer] shall deposit all revenues from sales, bonuses, royalties, leases,  
6 and rentals related to geothermal resources, as that term is defined in [insert citation], received  
7 by the state pursuant to 30 U.S.C. Sec. 1019, as amended, and all moneys earned from the  
8 investment of such revenues, into the Geothermal Resource Leasing Fund, which is hereby  
9 created in the state treasury, for appropriation by the [general assembly] to the [department of  
10 local affairs] for grants to state agencies, school districts, and political subdivisions of the state  
11 affected by the development and production of geothermal resources or other entities authorized  
12 by federal law:

13           (1) Primarily for use by such entities in planning for and providing facilities and  
14 services necessitated by such development and production; and

15           (2) Secondarily to the entities listed in the introductory portion to this section (A)  
16 for other state purposes as specified in subsection (B) of this section.

17           (B) After the [executive director of the department of local affairs] has allocated  
18 sufficient revenues from the fund to adequately address the needs specified in paragraph (1) of  
19 Subsection (A) of this section, the [executive director] shall, in consultation with the [governor’s

20 energy office] created in [insert citation], allocate revenues from the fund by competitive grants  
21 for the promotion of the development of geothermal energy resources.

22 (C) The [governor's energy office] shall assist the [executive director of the department  
23 of local affairs] in allocating revenues from the Geothermal Resource Leasing Fund to eligible  
24 entities pursuant to this section.

25  
26 Section 3. [*Access and Reasonable Accommodation to a Severable Geothermal*  
27 *Resource.*]

28 (A) Where the property right to a severable geothermal resource as defined in [insert  
29 citation] has been severed, reserved, or transferred with the subsurface estate, its owner may  
30 enter upon the overlying surface parcel at reasonable times and in a reasonable manner to  
31 prospect for and produce the energy from such resource, if adequate compensation is paid to the  
32 owner of the surface parcel for damages and disturbance in accordance with subsection (B) of  
33 this section. This right of entry shall not include the right to construct surface utilization  
34 facilities, and such facilities may be constructed only upon agreement with the surface owner in  
35 accordance with subsection (B) of this section.

36 (B) (1) (a) A developer of any type of geothermal resource shall develop the  
37 resource in a manner that accommodates the surface owner by minimizing intrusion upon and  
38 damage to the surface of the land.

39 (b) As used in this section, "minimizing intrusion upon and damage to the  
40 surface" means selecting alternative locations for wells, roads, pipelines, or heat exchange or  
41 generation facilities, or employing alternative means of operation, that prevent, reduce, or  
42 mitigate the impacts of the geothermal development on the surface, where such alternatives are  
43 technologically sound, economically practicable, and reasonably available to the developer.

44 (c) The standard of conduct set forth in this subsection (B) does not  
45 prevent a developer from entering upon and using that amount of the surface as is reasonable and  
46 necessary to explore for and develop the geothermal resource.

47 (d) The standard of conduct set forth in this subsection (B) does not  
48 abrogate or impair a contractual provision that is binding on the parties and that expressly  
49 provides for the use of the surface for the development of geothermal resources or that releases  
50 the developer from liability for the use of the surface.

51 (2) A geothermal resource developer's failure to meet the requirements set forth  
52 in this subsection (B) or, if applicable, subsection (A) of this section, gives rise to a cause of  
53 action by the surface owner. Upon a determination by the trier of fact that such failure has  
54 occurred, a surface owner may seek compensatory damages or such equitable relief as is  
55 consistent with paragraph (1) of this subsection (B) or, if applicable, subsection (A) of this  
56 section.

57 (3) (a) In any litigation or arbitration based upon subsection (A) of this section  
58 or paragraph (1) of this subsection (B), the surface owner shall present evidence that the  
59 developer's use of the surface materially interfered with the surface owner's use of the surface of  
60 the land. After such showing, the developer bears the burden of proof of showing that it met the  
61 standard set out in paragraph (1) of this subsection (B) and, if applicable, subsection (A) of this  
62 section. If a developer makes that showing, the surface owner may present rebuttal evidence.

63 (b) An operator may assert, as an affirmative defense, that it has conducted  
64 geothermal resource development in accordance with a regulatory requirement, contractual  
65 obligation, or land use plan provision that specifically applies to the alleged intrusion or damage.

66 (4) Nothing in this section precludes or impairs any person from obtaining any  
67 and all other remedies allowed by law; prevents a developer and a surface owner from  
68 addressing the use of the surface for geothermal resource development in a lease, surface use

69 agreement, or other written contract; or establishes, alters, impairs, or negates the authority of  
70 local and county governments to regulate land use related to geothermal resource development.

71  
72 Section 4. [*Regarding Materially Injure and Material Injury to a Geothermal Right.*] For  
73 purposes of [insert citation], “materially injure” and “material injury” include any diminution or  
74 alteration in the quantity, temperature, or quality of any valid, prior water or geothermal right as  
75 defined in [insert citation], except that, with regard to a geothermal right, “materially injure” and  
76 “material injury” include a diminution or alteration in the temperature of water only if the  
77 diminution or alteration adversely affects the valid, prior geothermal right.

78  
79 Section 5. [*Valuation of a Geothermal Energy Facility.*]

80 (A) As used in this Section, “Geothermal Energy Facility” means a new facility first  
81 placed in production on or after [insert date], that uses real and personal property, including but  
82 not limited to leaseholds and easements, to generate and deliver to the interconnection meter any  
83 source of electrical or mechanical energy by harnessing the heat energy of groundwater or the  
84 ground and that is not primarily designed to supply electricity for consumption on site.

85 (B) An administrator as defined in [insert citation] shall determine the actual value of the  
86 operating property and plant of each geothermal energy facility using the income approach,  
87 which is defined as [an amount equal to a tax factor times the selling price at the interconnection  
88 meter].

89 (C) For purposes of calculating the tax factor as required in subsection (B), an owner or  
90 operator of a geothermal energy facility shall provide a copy of the geothermal energy facility’s  
91 current power purchase agreement(s) to the [administrator] by [April 1] of each assessment year.  
92 The [administrator] shall also have the authority to request a copy of the current power purchase  
93 agreement(s) from the purchaser(s) of power generated at a geothermal energy facility. All  
94 agreements provided to the [administrator] pursuant to this subparagraph shall be considered  
95 private documents and shall be available only to the [administrator] and the employees of the  
96 [division of property taxation in the department of local affairs].

97 (D) The location of a geothermal energy facility on real property shall not affect the  
98 classification of that real property for purposes of determining the actual value of that real  
99 property as provided in [insert citation].

100 (E) Pursuant to [insert citation], no actual value for any personal property used in a  
101 geothermal energy facility shall be assigned until the personal property is first put into use by the  
102 facility. If any item of personal property is used in the facility and is subsequently taken out of  
103 service so that no geothermal energy is produced from that facility for the preceding calendar  
104 year, no actual value shall be assigned to that item of more than [five percent] of the installed  
105 cost of the item for that assessment year.

106  
107 Section 6. [*New Energy Technologies, Consideration by Commission, Cost-Effectiveness*  
108 *of Implementing Geothermal Energy Technologies.*] The state [public utilities commission], in its  
109 consideration of generation acquisitions for electric utilities, at a utility’s request, may give the  
110 fullest possible consideration to the cost-effective implementation of new energy technologies  
111 for the generation of electricity from geothermal resources.

112  
113 Section 7. [*Severability.*] [Insert severability clause.]

114  
115 Section 8. [*Repealer.*] [Insert repealer clause.]

116  
117 Section 9. [*Effective Date.*] [Insert effective date.]