

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

PREAMENDED

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

LLS NO. 22-0700.01 Jennifer Berman x3286

SENATE BILL 22-110

SENATE SPONSORSHIP

Sonnenberg,

HOUSE SPONSORSHIP

Pelton,

Senate Committees

State, Veterans, & Military Affairs

House Committees

A BILL FOR AN ACT

101 **CONCERNING A REQUIREMENT THAT A WIND-POWERED ENERGY**
102 **GENERATION FACILITY BE EQUIPPED WITH LIGHT MITIGATING**
103 **TECHNOLOGY.**

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://leg.colorado.gov>.)

The bill requires that, on or before September 1, 2024, an owner or operator of a wind-powered energy generation facility (facility) that is required to obtain a land-use permit from a local government equip the facility with an aircraft detection lighting system (system). The bill defines a system as a sensor-based system that is designed to detect

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

approaching aircraft and that meets federal aviation administration requirements. An owner or operator of a facility is solely responsible for the costs of installing, operating, or maintaining a system and may request from the governing body of the local government an extension of time up to one year to equip a facility with a system. A local government may revoke an existing land-use permit or, if an application for permit renewal is pending, refuse to renew a land-use permit if a facility owner or operator fails to comply with the bill. The board of county commissioners in the county in which a facility is located may adopt and enforce an ordinance or resolution to authorize the board to impose civil penalties against a facility owner or operator if the board determines that the owner or operator has failed to comply with the bill.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** 38-30.7-106 as
3 follows:

4 **38-30.7-106. Wind-powered energy generation facilities**
5 **inclusion of light mitigating technology - requirement - enforcement**
6 **- definitions.** (1) (a) SUBJECT TO SUBSECTION (1)(b) OF THIS SECTION,
7 FOR ANY NEW WIND-POWERED ENERGY GENERATION FACILITY THAT IS
8 SUBJECT TO LOCAL GOVERNMENT LAND-USE PERMITTING REQUIREMENTS
9 PURSUANT TO SECTION 29-20-108, AND FOR WHICH THE OWNER OR
10 OPERATOR OF THE FACILITY BEGINS VERTICAL CONSTRUCTION OF THE
11 FIRST WIND TURBINE INCLUDED WITHIN THE FACILITY ON OR AFTER APRIL
12 1, 2022, THE OWNER OR OPERATOR SHALL EQUIP THE FACILITY WITH LIGHT
13 MITIGATING TECHNOLOGY.

14 (b) THE OWNER OR OPERATOR OF A WIND-POWERED ENERGY
15 GENERATION FACILITY SUBJECT TO SUBSECTION (1)(a) OF THIS SECTION,
16 WITHIN SIX MONTHS AFTER THE FACILITY RECEIVES A DETERMINATION OF
17 NO HAZARD FROM THE FAA, SHALL:

18 (I) APPLY TO THE FAA, ANY OTHER APPLICABLE FEDERAL
19 AGENCY, OR BOTH, FOR THE INSTALLATION OF APPROVED LIGHT

1 MITIGATING TECHNOLOGY; AND

2 (II) WITHIN TWENTY-FOUR MONTHS AFTER RECEIVING APPROVAL
3 FROM THE FAA IN ACCORDANCE WITH SUBSECTION (1)(b)(I) OF THIS
4 SECTION, AND SUBJECT TO THE AVAILABILITY OF LIGHT MITIGATING
5 TECHNOLOGY FROM THE MANUFACTURER OR SUPPLIER, INSTALL, TEST,
6 AND COMMENCE OPERATION OF THE LIGHT MITIGATING TECHNOLOGY AT
7 THE FACILITY.

8 (2) THE OWNER OR OPERATOR OF A WIND-POWERED ENERGY
9 GENERATION FACILITY MAY SEEK AN EXTENSION OF TIME FROM THE
10 GOVERNING BODY OF THE LOCAL GOVERNMENT TO COMPLY WITH
11 SUBSECTION (1) OF THIS SECTION FOR A PERIOD OF UP TO TWENTY-FOUR
12 MONTHS. THE GOVERNING BODY OF THE LOCAL GOVERNMENT SHALL
13 GRANT THE REQUEST IF THE OWNER OR OPERATOR CAN DEMONSTRATE
14 THAT, DESPITE THE OWNER'S OR OPERATOR'S EXERCISE OF COMMERCIALY
15 REASONABLE EFFORTS, THE TIMING OF AVAILABILITY OF LIGHT MITIGATING
16 TECHNOLOGY CONSTRAINED THE OWNER'S OR OPERATOR'S ABILITY TO
17 COMPLY WITH SUBSECTION (1) OF THIS SECTION IN THE TIME FRAME
18 AFFORDED. A BOARD SHALL NOT IMPOSE ANY PENALTIES AGAINST THE
19 OWNER OR OPERATOR PURSUANT TO SUBSECTION (3) OF THIS SECTION
20 DURING THE EXTENSION PERIOD GRANTED.

21 (3) IF THE BOARD HAS EXERCISED ITS AUTHORITY TO ENACT AN
22 ORDINANCE OR RESOLUTION TO IMPOSE CIVIL PENALTIES PURSUANT TO
23 SECTION 30-11-130 AND DETERMINES THAT AN OWNER OR OPERATOR OF
24 A WIND-POWERED ENERGY GENERATION FACILITY WAS REQUIRED TO, BUT
25 FAILED TO, COMPLY WITH THIS SECTION, THE BOARD MAY IMPOSE A CIVIL
26 PENALTY ON THE OWNER OR OPERATOR OF THE FACILITY IN AN AMOUNT
27 DETERMINED BY THE BOARD IN THE ORDINANCE OR RESOLUTION.

1 (4) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
2 REQUIRES:

3 (a) "APPROVAL FROM THE FAA" MEANS FAA APPROVAL TO EQUIP
4 AND OPERATE LIGHT MITIGATING TECHNOLOGY FOR AT LEAST THIRTY
5 PERCENT OF THE PROPOSED WIND TURBINES INCLUDED WITHIN A NEW
6 WIND-POWERED ENERGY GENERATION FACILITY.

7 (b) "BOARD" MEANS THE BOARD OF COUNTY COMMISSIONERS IN
8 THE COUNTY IN WHICH A WIND-POWERED ENERGY GENERATION FACILITY
9 IS LOCATED OR WILL BE LOCATED.

10 (c) "FAA" MEANS THE FEDERAL AVIATION ADMINISTRATION IN THE
11 UNITED STATES DEPARTMENT OF TRANSPORTATION.

12 (d) "LIGHT MITIGATING TECHNOLOGY" MEANS A SENSOR-BASED
13 SYSTEM THAT:

14 (I) IS DESIGNED TO DETECT APPROACHING AIRCRAFT;

15 (II) KEEPS THE LIGHTS OFF WHEN IT IS SAFE TO DO SO; AND

16 (III) THE FAA HAS APPROVED AS MEETING THE REQUIREMENTS
17 SET FORTH IN CHAPTER 10 OF THE FAA'S 2020 ADVISORY CIRCULAR AC
18 70/7460-1M, "OBSTRUCTION MARKING AND LIGHTING".

19 (e) "LOCAL GOVERNMENT" MEANS A COUNTY OR A HOME RULE OR
20 STATUTORY CITY, TOWN, TERRITORIAL CHARTER CITY, OR CITY AND
21 COUNTY.

22 (f) "WIND-POWERED ENERGY GENERATION FACILITY" OR
23 "FACILITY" MEANS A FACILITY USED IN THE GENERATION OF ELECTRICITY
24 BY MEANS OF A TURBINE OR OTHER DEVICE THAT CAPTURES AND EMPLOYS
25 THE KINETIC ENERGY OF THE WIND.

26 **SECTION 2.** In Colorado Revised Statutes, **add** 30-11-130 as
27 follows:

1 **30-11-130. Equipping wind-powered energy generation**
2 **facilities with light mitigating technology - enforcement - definitions.**

3 (1) A BOARD MAY ADOPT AND ENFORCE AN ORDINANCE OR RESOLUTION
4 AUTHORIZING THE BOARD TO IMPOSE A CIVIL PENALTY ON THE OWNER OR
5 OPERATOR OF A WIND-POWERED ENERGY GENERATION FACILITY IN AN
6 AMOUNT DETERMINED BY THE BOARD IN THE ORDINANCE OR RESOLUTION
7 IF THE BOARD DETERMINES THAT THE OWNER OR OPERATOR OF THE
8 FACILITY WAS REQUIRED TO, BUT FAILED TO, COMPLY WITH SECTION
9 38-30.7-106.

10 (2) ONE OR MORE CONTIGUOUS COUNTIES AND ANY MUNICIPALITY
11 WITHIN EACH COUNTY MAY ENTER INTO AN INTERGOVERNMENTAL
12 AGREEMENT TO EXTEND THE APPLICABILITY OF ANY ORDINANCE OR
13 RESOLUTION ADOPTED UNDER THIS SECTION TO AND THROUGHOUT A
14 PARTICIPATING COUNTY OR MUNICIPALITY.

15 (3) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
16 REQUIRES:

17 (a) "BOARD" MEANS THE BOARD OF COUNTY COMMISSIONERS IN
18 THE COUNTY IN WHICH A WIND-POWERED ENERGY GENERATION FACILITY
19 IS LOCATED OR WILL BE LOCATED.

20 (b) "WIND-POWERED ENERGY GENERATION FACILITY" OR
21 "FACILITY" MEANS A FACILITY USED IN THE GENERATION OF ELECTRICITY
22 BY MEANS OF A TURBINE OR OTHER DEVICE THAT CAPTURES AND EMPLOYS
23 THE KINETIC ENERGY OF THE WIND.

24 **SECTION 3. Act subject to petition - effective date.** This act
25 takes effect at 12:01 a.m. on the day following the expiration of the
26 ninety-day period after final adjournment of the general assembly; except
27 that, if a referendum petition is filed pursuant to section 1 (3) of article V

1 of the state constitution against this act or an item, section, or part of this
2 act within such period, then the act, item, section, or part will not take
3 effect unless approved by the people at the general election to be held in
4 November 2022 and, in such case, will take effect on the date of the
5 official declaration of the vote thereon by the governor.