

CHAPTER 462

PUBLIC UTILITIES

SENATE BILL 22-110

BY SENATOR(S) Sonnenberg and Kolker, Bridges, Coleman, Cooke, Donovan, Fields, Ginal, Hansen, Hisey, Holbert, Jaquez Lewis, Kirkmeyer, Liston, Lundeen, Moreno, Rankin, Scott, Simpson, Smallwood, Woodward, Fenberg; also REPRESENTATIVE(S) Pelton, Barnett, Catlin, Hooton, Jodeh, Lindsay, Lontine, Lynch, Michaelson Jenet, Pico, Snyder, Soper, Will, Bird, Exum, McCormick, McKean, Ortiz, Titone, Valdez D., Woodrow.

AN ACT

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

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

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

38-30.7-106. Wind-powered energy generation facilities inclusion of light mitigating technology - requirement - enforcement - definitions.

(1)(a) SUBJECT TO SUBSECTION (1)(b) OF THIS SECTION AND SUBJECT TO APPROVAL FROM THE FAA FOR THE INSTALLATION OF APPROVED LIGHT MITIGATING TECHNOLOGY, FOR ANY NEW WIND-POWERED ENERGY GENERATION FACILITY THAT IS SUBJECT TO LOCAL GOVERNMENT LAND-USE PERMITTING REQUIREMENTS PURSUANT TO SECTION 29-20-108 OR IS OWNED BY AN INDEPENDENT POWER PRODUCER, AND FOR WHICH THE OWNER OR OPERATOR OF THE NEW FACILITY BEGINS VERTICAL CONSTRUCTION OF THE FIRST WIND TURBINE INCLUDED WITHIN THE FACILITY ON OR AFTER APRIL 1, 2022, THE OWNER OR OPERATOR SHALL INSTALL LIGHT MITIGATING TECHNOLOGY AT THE NEW FACILITY.

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

(I) APPLY TO THE FAA, ANY OTHER APPLICABLE FEDERAL AGENCY, OR BOTH, FOR THE INSTALLATION OF APPROVED LIGHT MITIGATING TECHNOLOGY; AND

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.

(II) WITHIN TWENTY-FOUR MONTHS AFTER RECEIVING APPROVAL FROM THE FAA IN ACCORDANCE WITH SUBSECTION (1)(b)(I) OF THIS SECTION, AND SUBJECT TO THE AVAILABILITY OF LIGHT MITIGATING TECHNOLOGY FROM THE MANUFACTURER OR SUPPLIER, INSTALL, TEST, AND COMMENCE OPERATION, CONSISTENT WITH FAA REQUIREMENTS OR OTHER APPLICABLE FEDERAL AGENCY REQUIREMENTS, OF THE LIGHT MITIGATING TECHNOLOGY AT THE NEW FACILITY.

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

(3) IF THE BOARD HAS EXERCISED ITS AUTHORITY TO ENACT AN ORDINANCE OR RESOLUTION TO IMPOSE CIVIL PENALTIES PURSUANT TO SECTION 30-11-130 AND DETERMINES THAT AN OWNER OR OPERATOR OF A WIND-POWERED ENERGY GENERATION FACILITY WAS REQUIRED TO, BUT FAILED TO, COMPLY WITH THIS SECTION, THE BOARD MAY IMPOSE A CIVIL PENALTY ON THE OWNER OR OPERATOR OF THE NEW FACILITY IN THE AMOUNT OF ONE THOUSAND DOLLARS PER DAY.

(4) THIS SECTION DOES NOT APPLY TO WIND-POWERED ENERGY GENERATION FACILITIES USED SOLELY FOR PURPOSES OF RESEARCH AND TESTING.

(5) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

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

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

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

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

(I) IS DESIGNED TO DETECT APPROACHING AIRCRAFT;

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

(III) THE FAA HAS APPROVED AS MEETING THE REQUIREMENTS SET FORTH IN CHAPTER 10 OF THE FAA'S 2020 ADVISORY CIRCULAR AC 70/7460-1M,

"OBSTRUCTION MARKING AND LIGHTING".

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

(f) "WIND-POWERED ENERGY GENERATION FACILITY" OR "FACILITY" MEANS A FACILITY USED IN THE GENERATION OF ELECTRICITY BY MEANS OF TURBINES OR OTHER DEVICES THAT CAPTURE AND EMPLOY THE KINETIC ENERGY OF THE WIND.

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

30-11-130. Equipping wind-powered energy generation facilities with light mitigating technology - enforcement - definitions. (1) A BOARD MAY ADOPT AND ENFORCE AN ORDINANCE OR RESOLUTION AUTHORIZING THE BOARD TO IMPOSE A CIVIL PENALTY ON THE OWNER OR OPERATOR OF A NEW WIND-POWERED ENERGY GENERATION FACILITY IN THE AMOUNT OF ONE THOUSAND DOLLARS PER DAY IF THE BOARD DETERMINES THAT THE OWNER OR OPERATOR OF THE FACILITY WAS REQUIRED TO, BUT FAILED TO, COMPLY WITH SECTION 38-30.7-106.

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

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

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

(b) "WIND-POWERED ENERGY GENERATION FACILITY" OR "FACILITY" MEANS A FACILITY, WITH A NAMEPLATE CAPACITY OF FIFTY KILOWATTS OR GREATER, USED IN THE GENERATION OF ELECTRICITY BY MEANS OF TURBINES OR OTHER DEVICES THAT CAPTURE AND EMPLOY THE KINETIC ENERGY OF THE WIND.

SECTION 3. 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 8, 2022