

CHAPTER 97

PUBLIC UTILITIES

HOUSE BILL 22-1104

BY REPRESENTATIVE(S) Boesenecker, Benavidez, Bernett, Bird, Cutter, Duran, Exum, Froelich, Gray, Hooton, Jodeh, Kennedy, Kipp, Lontine, Ricks, Titone, Woodrow, Lindsay;
also SENATOR(S) Priola and Bridges, Ginal, Lee, Moreno, Winter.

AN ACT

CONCERNING PUBLIC RECREATIONAL TRAILS IN ELECTRIC TRANSMISSION CORRIDORS OF THE STATE, AND, IN CONNECTION THEREWITH, ENCOURAGING TRANSMISSION PROVIDERS TO ENTER INTO WRITTEN AGREEMENTS FOR THE CONSTRUCTION AND MAINTENANCE OF POWERLINE TRAILS AND REQUIRING TRANSMISSION PROVIDERS TO PROVIDE INFORMATIONAL RESOURCES AND NOTIFY LOCAL GOVERNMENTS REGARDING THE POTENTIAL FOR POWERLINE TRAILS WHEN PLANNING FOR THE EXPANSION OR CONSTRUCTION OF TRANSMISSION CORRIDORS.

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

SECTION 1. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) Outdoor recreation is an essential component of Colorado's identity and economy and is vital to the health and enjoyment of Coloradans;

(b) Transmission lines deliver electricity to Colorado's cities and towns, and adding recreational trails in the corridors underneath those transmission lines could provide additional community value and benefits; and

(c) These recreational trails, known as powerline trails, can:

(I) Provide a network of safe and enjoyable routes to work and school or for a recreational purpose;

(II) Reduce the land acquisition costs of new recreational trails;

(III) Bring new outdoor recreation opportunities and tourism to rural areas of Colorado;

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.

- (IV) Provide access to scenic landscapes and cultural features of Colorado; and
- (V) Provide sustainable community connections.

(2) The general assembly therefore declares that the development of powerline trails in the state should be encouraged, facilitated, and accelerated while protecting the safety of the state's residents.

SECTION 2. In Colorado Revised Statutes, **add** article 45 to title 33 as follows:

ARTICLE 45
Powerline Trails

33-45-101. Short title. THE SHORT TITLE OF THIS ARTICLE 45 IS THE "POWERLINE TRAILS ACT".

33-45-102. Definitions. AS USED IN THIS ARTICLE 45, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "COMMISSION" MEANS THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO.

(2) "DISTRICT" MEANS A SPECIAL DISTRICT, LOCAL IMPROVEMENT DISTRICT, SCHOOL DISTRICT, OR OTHER POLITICAL SUBDIVISION OF THE STATE.

(3) "LOCAL GOVERNMENT" MEANS A HOME RULE OR STATUTORY MUNICIPALITY, COUNTY, OR CITY AND COUNTY.

(4) "LOCAL IMPROVEMENT DISTRICT" HAS THE MEANING SET FORTH IN SECTION 32-7-103 (7).

(5) "POWERLINE TRAIL" MEANS A MULTIMODAL TRAIL THAT IS:

(a) EIGHT FEET IN WIDTH OR WIDER;

(b) MADE OF HARD SURFACE SUCH AS CONCRETE OR COMPACTED GRAVEL;

(c) USED FOR RECREATIONAL PURPOSES OR COMMUTING IN A MANNER THAT DOES NOT INVOLVE A MOTOR VEHICLE; AND

(d) LOCATED IN AN EXISTING OR FUTURE TRANSMISSION CORRIDOR.

(6) "PUBLIC ENTITY" MEANS THE STATE, A LOCAL GOVERNMENT, OR A DISTRICT.

(7) (a) "RECREATIONAL PURPOSE" INCLUDES WALKING, RUNNING, BICYCLING, CLASS 1 OR CLASS 2 ELECTRICAL ASSISTED BICYCLING, EQUESTRIAN ACTIVITIES, USE OF ELECTRIC SCOOTERS, CROSS-COUNTRY SKIING, OR OTHER SIMILAR USES.

(b) "RECREATIONAL PURPOSE" DOES NOT INCLUDE THE USE OF A MOTOR VEHICLE OR OTHER SELF-PROPELLED VEHICLE THAT IS NOT AN ELECTRICAL ASSISTED BICYCLE,

ELECTRIC SCOOTER, LOW-POWER SCOOTER, OR MOTORIZED WHEELCHAIR, AS THOSE TERMS ARE DEFINED IN SECTION 42-1-102.

(8) "SCHOOL DISTRICT" HAS THE MEANING SET FORTH IN SECTION 22-11-103 (29).

(9) "SPECIAL DISTRICT" HAS THE MEANING SET FORTH IN SECTION 32-1-103 (20).

(10) "TRANSMISSION CORRIDOR" MEANS A TRACT OF LAND OWNED, OCCUPIED, OR LEASED BY A TRANSMISSION PROVIDER, OR COVERED BY AN EASEMENT OR RIGHT-OF-WAY HELD BY A TRANSMISSION PROVIDER, WHERE AN ELECTRIC TRANSMISSION LINE IS CONSTRUCTED, OPERATED, OR MAINTAINED AT A VOLTAGE OF SIXTY-NINE THOUSAND VOLTS OR ABOVE.

(11) (a) "TRANSMISSION PROVIDER" MEANS:

(I) A TRANSMISSION UTILITY, AS DEFINED IN SECTION 40-5-108 (1)(b); OR

(II) THE COLORADO ELECTRIC TRANSMISSION AUTHORITY CREATED IN SECTION 40-42-103 (1).

(b) "TRANSMISSION PROVIDER" DOES NOT INCLUDE A MUNICIPALLY OWNED UTILITY, A POWER AUTHORITY ESTABLISHED PURSUANT TO SECTION 29-1-204 (1), OR A COOPERATIVE ELECTRIC ASSOCIATION, AS DEFINED IN SECTION 40-9.5-102 (1), THAT HAS VOTED TO EXEMPT ITSELF FROM THE "PUBLIC UTILITIES LAW", ARTICLES 1 TO 7 OF TITLE 40, PURSUANT TO SECTION 40-9.5-103.

33-45-103. Powerline trails - written contracts - informational resources - coordination with division of parks and wildlife. (1) A TRANSMISSION PROVIDER, AS THE OWNER, OCCUPANT, OR LESSEE OF A TRANSMISSION CORRIDOR OR THE HOLDER OF AN EASEMENT OR RIGHT-OF-WAY COVERING A TRANSMISSION CORRIDOR, MAY ENTER INTO A WRITTEN CONTRACT WITH A PUBLIC ENTITY OR PRIVATE LANDOWNER TO CONSTRUCT AND MAINTAIN A POWERLINE TRAIL COVERING ALL OR SOME OF THE TRANSMISSION CORRIDOR.

(2) BEGINNING NO LATER THAN MAY 1, 2023, ALL TRANSMISSION PROVIDERS SHALL DEVELOP, MAINTAIN, AND DISTRIBUTE INFORMATIONAL RESOURCES TO ENCOURAGE, FACILITATE, AND STREAMLINE THE CONSTRUCTION OF NEW POWERLINE TRAILS IN TRANSMISSION CORRIDORS THAT ARE SUITABLE FOR THE CONSTRUCTION AND MAINTENANCE OF A POWERLINE TRAIL. SUCH INFORMATIONAL RESOURCES, AT A MINIMUM, MUST:

(a) INCLUDE THE FOLLOWING:

(I) DESIGN BEST PRACTICES;

(II) SAFETY REQUIREMENTS; AND

(III) EXAMPLES OF AT LEAST FOUR POWERLINE TRAILS IN THE STATE;

(b) BE PUBLICLY AVAILABLE ON THE TRANSMISSION PROVIDER'S WEBSITE;

(c) TO THE EXTENT POSSIBLE, BE CONSISTENT WITH OTHER RESOURCES FROM TRANSMISSION PROVIDERS IN THE STATE;

(d) BE REVIEWED AND REVISED PERIODICALLY BY THE TRANSMISSION PROVIDER;
AND

(e) BE PROVIDED TO LOCAL GOVERNMENTS PURSUANT TO SECTION 29-20-108 (6).

(3) IN THE DESIGN AND CONSTRUCTION OF A POWERLINE TRAIL, A PUBLIC ENTITY SHALL CONSULT AND COORDINATE WITH THE DIVISION OF PARKS AND WILDLIFE TO MINIMIZE ADVERSE IMPACTS TO:

(a) STATE AND FEDERALLY LISTED SPECIES; AND

(b) SPECIES AND HABITATS OF CONSERVATION CONCERN.

(4) PRIOR TO CONSTRUCTING A POWERLINE TRAIL IN AN AREA OF SIGNIFICANT RURAL CHARACTER, A PUBLIC ENTITY SHALL CONSIDER ANY ISSUES UNIQUE TO THE AREA, INCLUDING ISSUES RELATED TO:

(a) GRAZING;

(b) WILDLIFE IMPACTS NOT ADDRESSED UNDER SUBSECTION (3) OF THIS SECTION;
AND

(c) THE POTENTIAL LIABILITY OF PUBLIC OR PRIVATE LANDOWNERS ADJACENT TO OR INCLUSIVE OF A TRANSMISSION CORRIDOR.

(5) NOTWITHSTANDING ANY LAW TO THE CONTRARY, NOTHING IN THIS SECTION:

(a) LIMITS THE PROTECTIONS PROVIDED TO A LANDOWNER UNDER SECTION 13-21-115 AND ARTICLE 41 OF THIS TITLE 33;

(b) LIMITS THE PROTECTIONS PROVIDED TO A PUBLIC ENTITY UNDER THE "COLORADO GOVERNMENTAL IMMUNITY ACT", ARTICLE 10 OF TITLE 24;

(c) REQUIRES A TRANSMISSION PROVIDER TO ALLOW A POWERLINE TRAIL OR ANY OTHER FACILITY ON ITS TRANSMISSION CORRIDOR;

(d) REQUIRES A PUBLIC OR PRIVATE LANDOWNER WHOSE PROPERTY IS ADJACENT TO OR INCLUSIVE OF A TRANSMISSION CORRIDOR TO ALLOW PUBLIC ACCESS TO ANY PORTION OF THE LANDOWNER'S PROPERTY;

(e) MODIFIES EXISTING PROCESSES RELATED TO PERMITS FOR USE OF PUBLIC LAND FOR GRAZING OR OTHER USES;

(f) LIMITS THE PROTECTIONS PROVIDED TO TRANSMISSION PROVIDERS UNDER SECTION 29-7.5-105; AND

(g) RELIEVES ANY PERSON FROM ANY OBLIGATION THAT PERSON MAY OTHERWISE HAVE IN THE ABSENCE OF THIS SECTION TO EXERCISE CARE IN THE USE OF A

POWERLINE TRAIL OR FROM THE LEGAL CONSEQUENCES OF THE FAILURE TO EXERCISE SUCH CARE.

SECTION 3. In Colorado Revised Statutes, 24-65.1-501, **add** (7) as follows:

24-65.1-501. Permit for development in area of state interest or to conduct an activity of state interest required. (7) AS PART OF AN APPLICATION FOR A PERMIT UNDER SUBSECTION (1) OF THIS SECTION, A TRANSMISSION PROVIDER, AS DEFINED IN SECTION 33-45-102 (11), MUST DEMONSTRATE TO THE LOCAL GOVERNMENT THROUGH WRITTEN DOCUMENTATION THAT IT HAS COMPLIED WITH SECTIONS 29-20-108 (6) AND 33-45-103 (2).

SECTION 4. In Colorado Revised Statutes, 29-20-108, **amend** (3); and **add** (6) as follows:

29-20-108. Local government regulation - location, construction, or improvement of major electrical or natural gas facilities - powerline trail notification - legislative declaration - definitions. (3) As used in this section, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "Major electrical or natural gas facilities" includes one or more of the following:

~~(a)~~ (I) Electrical generating facilities;

~~(b)~~ (II) Substations used for switching, regulating, transforming, or otherwise modifying the characteristics of electricity;

~~(c)~~ (III) Transmission lines operated at a nominal voltage of sixty-nine thousand volts or above;

~~(d)~~ (IV) Structures and equipment associated with such electrical generating facilities, substations, or transmission lines; or

~~(e)~~ (V) Structures and equipment utilized for the local distribution of natural gas service, including, but not limited to, compressors, gas mains, and gas laterals.

(b) "POWERLINE TRAIL" HAS THE MEANING SET FORTH IN SECTION 33-45-102 (5).

(c) "TRANSMISSION CORRIDOR" HAS THE MEANING SET FORTH IN SECTION 33-45-102 (10).

(d) "TRANSMISSION PROVIDER" HAS THE MEANING SET FORTH IN SECTION 33-45-102 (11).

(6) (a) WHEN NOTIFYING A LOCAL GOVERNMENT OF ITS PLANS TO SITE A NEW TRANSMISSION LINE OR EXPAND AN EXISTING TRANSMISSION LINE UNDER THIS SECTION, A TRANSMISSION PROVIDER SHALL ALSO NOTIFY THE LOCAL GOVERNMENT OF THE POTENTIAL FOR THE CONSTRUCTION OF A POWERLINE TRAIL IN THE ASSOCIATED TRANSMISSION CORRIDOR. ANY NOTIFICATION UNDER THIS SUBSECTION (6)(a) MUST INCLUDE THE INFORMATIONAL RESOURCES DEVELOPED UNDER SECTION

33-45-103 (2).

(b) A TRANSMISSION PROVIDER IS ONLY REQUIRED TO NOTIFY A LOCAL GOVERNMENT OF THE POTENTIAL FOR THE CONSTRUCTION OF A POWERLINE TRAIL UNDER SUBSECTION (6)(a) OF THIS SECTION IF:

(I) THE TRANSMISSION LINE WILL BE EXTENDED BY MORE THAN ONE MILE; OR

(II) THE TRANSMISSION LINE CAPACITY WILL BE INCREASED BY MORE THAN TEN PERCENT.

SECTION 5. In Colorado Revised Statutes, 40-2-126, **amend** (1); and **add** (6) as follows:

40-2-126. Transmission facilities - biennial review - energy resource zones - definitions - plans - approval - cost recovery. (1) As used in this section, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "Energy resource zone" means a geographic area in which transmission constraints hinder the delivery of electricity to Colorado consumers, the development of new electric generation facilities to serve Colorado consumers, or both.

(b) "LOCAL GOVERNMENT" HAS THE MEANING SET FORTH IN SECTION 33-45-102 (3).

(c) "POWERLINE TRAIL" HAS THE MEANING SET FORTH IN SECTION 33-45-102 (5).

(6) THE COMMISSION SHALL AMEND ITS RULES REQUIRING THE FILING OF TEN-YEAR TRANSMISSION PLANS BY UTILITIES TO ALSO REQUIRE UTILITIES TO:

(a) CONSIDER AND ADDRESS PLANS FOR THE CONSTRUCTION OF NEW POWERLINE TRAILS IN COORDINATION WITH APPLICABLE LOCAL GOVERNMENTS IN EACH TWO-YEAR UPDATE TO A TEN-YEAR TRANSMISSION PLAN; AND

(b) DEMONSTRATE COMPLIANCE WITH SECTION 33-45-103 (2).

SECTION 6. In Colorado Revised Statutes, 40-42-102, **add** (13.5) as follows:

40-42-102. Definitions. As used in this article 42, unless the context otherwise requires:

(13.5) "POWERLINE TRAIL" HAS THE MEANING SET FORTH IN SECTION 33-45-102 (5).

SECTION 7. In Colorado Revised Statutes, 40-42-104, **amend** (1)(g)(II), (1)(g)(III), (1)(n), and (3); and **add** (1)(g)(IV), (2)(f), and (5)(e) as follows:

40-42-104. General and specific powers and duties of the authority. (1) Except as otherwise limited by this article 42, the authority, acting through the board, has the power to:

(g) Make and enter into all contracts, leases, and agreements, including intergovernmental agreements and assignments of payments to host landowners, that are necessary or incidental to the performance of its duties and the exercise of its powers under this article 42, including:

(II) Contracts for the lease and operation by the authority of eligible facilities owned by an electric utility or other private person; ~~and~~

(III) Contracts for leasing eligible facilities owned by the authority, subject to the requirement that the authority deposit any revenue derived pursuant to the lease into the electric transmission bonding fund; AND

(IV) CONTRACTS FOR POWERLINE TRAILS PURSUANT TO SECTION 33-45-103;

(n) Through participation in appropriate regional transmission forums and other organizations, including organized wholesale markets, as defined in section 40-5-108 (1)(a), coordinate, investigate, plan, prioritize, and negotiate with entities within and outside Colorado for the establishment of interstate transmission corridors and engage in other transmission planning activities that would increase grid reliability, help Colorado meet its clean energy goals, PROMOTE THE CONSTRUCTION AND MAINTENANCE OF POWERLINE TRAILS THROUGHOUT THE STATE, and aid in economic AND COMMUNITY development;

(2) Except as provided in this subsection (2), the authority shall not enter into a project if an electric utility or a nonincumbent transmission provider or other entity is constructing or has constructed the facilities or is providing the services contemplated by the authority. Before the authority enters into a project, the following procedural requirements must be met:

(f) THE AUTHORITY MUST ARRANGE FOR THE CONTINUATION OF ANY EXISTING CONTRACTS FOR POWERLINE TRAILS ENTERED INTO PURSUANT TO SECTION 33-45-103.

(3) In soliciting and entering into contracts for the transmission or storage of electricity, the authority and any person leasing or operating eligible facilities financed or acquired by the authority shall, if practicable, give priority to:

(a) Those contracts that will transmit or store electricity to be sold and consumed in Colorado; AND

(b) ELECTRIC UTILITIES OR OTHER ENTITIES THAT DEMONSTRATE AN INTEREST IN CONTINUING AN EXISTING POWERLINE TRAIL ESTABLISHED BY THE AUTHORITY OR CONSTRUCTING AND MAINTAINING A NEW POWERLINE TRAIL ON THE ELIGIBLE FACILITIES.

(5)(e) THE AUTHORITY MUST ARRANGE FOR THE CONTINUATION OF ANY EXISTING CONTRACTS FOR POWERLINE TRAILS ENTERED INTO PURSUANT TO SECTION 33-45-103 IF IT DIVESTS ITSELF OF AN ELIGIBLE FACILITY.

SECTION 8. In Colorado Revised Statutes, 32-9-103, **amend** the introductory portion and (6.9) as follows:

32-9-103. Definitions. As used in this ~~article~~ ARTICLE 9, unless the context otherwise requires:

(6.9) "Major electrical facilities" ~~shall have~~ HAS the same meaning as set forth in ~~section 29-20-108 (3)(a), (3)(b), (3)(c), and (3)(d), C.R.S.~~ SECTION 29-20-108 (3)(a)(I), (3)(a)(II), (3)(a)(III), AND (3)(a)(IV).

SECTION 9. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: April 13, 2022