

CHAPTER 287

GOVERNMENT - STATE

HOUSE BILL 14-1030

BY REPRESENTATIVE(S) Coram and Mitsch Bush, Fischer, Sonnenberg, Vigil, Becker, Fields, Foote, Ginal, Labuda, Pettersen, Rankin, Rosenthal, Schafer, Scott, Williams, Young;
also SENATOR(S) Schwartz and Roberts, Hodge, Guzman, Heath, Jahn, Johnston, Jones, Kefalas, Kerr, Newell, Nicholson, Steadman, Ulibarri.

AN ACT**CONCERNING THE ESTABLISHMENT OF INCENTIVES FOR THE DEVELOPMENT OF HYDROELECTRIC ENERGY SYSTEMS.**

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

SECTION 1. In Colorado Revised Statutes, 12-23-104, **amend** (2) (f) and (2) (g) as follows:

12-23-104. Board powers and duties - rules. (2) In addition to all other powers and duties conferred or imposed upon the board by this article, the board is authorized to:

(f) Inspect and approve or disapprove the installation of electrical wiring, renewable energy systems, apparatus, or equipment for electric light, heat, and power according to the minimum standards in the national electrical code or as prescribed in this article. WITH RESPECT TO A HYDROELECTRIC ENERGY FACILITY, AN INSPECTOR SHALL INSPECT THE INSTALLATION OF A HYDROELECTRIC ENERGY TURBINE-GENERATOR TO POWER-INVERTER EQUIPMENT TRAIN, SUPPORTING ELECTRICAL WIRING AND CABLING, OR OTHER AUXILIARY APPARATUSES OR EQUIPMENT NEEDED TO PRODUCE ELECTRICAL HEAT, LIGHT, OR POWER IN ACCORDANCE WITH:

(I) THE MINIMUM STANDARDS SET FORTH IN THE 2011 NATIONAL ELECTRICAL CODE FOR SMALL WIND ELECTRICAL PRODUCTION, UNTIL THE ADOPTION OF THE 2017 NATIONAL ELECTRICAL CODE; OR

(II) IF THE NATIONAL ELECTRICAL CODE IS UPDATED TO ADDRESS HYDROELECTRIC

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

ENERGY SPECIFICALLY, THE HYDROELECTRIC ENERGY PROVISIONS OF THE UPDATED NATIONAL ELECTRICAL CODE.

(g) Review and approve or disapprove requests for exceptions to the national electrical code in unique construction situations where a strict interpretation of the code would result in unreasonable operational conditions or unreasonable economic burdens, as long as public safety is not compromised.

SECTION 2. In Colorado Revised Statutes, **add 24-38.5-108** as follows:

24-38.5-108. State agency coordination of review of federal license and license exemption applications for hydroelectric energy projects - legislative declaration - definitions - rules. (1) **Legislative declaration.** THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT:

(a) HYDROELECTRIC ENERGY IS A RELIABLE, AFFORDABLE, AND SUSTAINABLE ENERGY SOURCE AND IS THE LARGEST SOURCE OF CLEAN ENERGY IN THE UNITED STATES;

(b) AS OF 2005, THERE WERE SIXTY-TWO OPERATING HYDROELECTRIC ENERGY FACILITIES THROUGHOUT COLORADO, WITH A COMBINED CAPACITY OF ONE THOUSAND ONE HUNDRED AND SIXTY-TWO MEGAWATTS;

(c) ACCORDING TO A RECENT BUREAU OF RECLAMATION STUDY, COLORADO CURRENTLY HAS MORE THAN THIRTY SITES ON WHICH NEW HYDROELECTRIC ENERGY FACILITIES COULD BE PLACED AND A FEDERAL DEPARTMENT OF ENERGY REPORT IDENTIFIES ANOTHER ELEVEN POTENTIAL SITES. IF ALL OF THE IDENTIFIED SITES WERE CONSTRUCTED, THEY COULD POWER OVER SIXTY-FIVE THOUSAND HOMES EACH YEAR.

(d) (I) TO CONSTRUCT, OPERATE, OR MAINTAIN A NONFEDERAL HYDROELECTRIC ENERGY FACILITY, A PERSON MUST APPLY TO FERC FOR A LICENSE OR A LICENSE EXEMPTION IF THE FACILITY IS LOCATED ON NAVIGABLE WATERS IN THE UNITED STATES, OCCUPIES LANDS OF THE UNITED STATES, UTILIZES SURPLUS WATER OR WATER POWER FROM A UNITED STATES GOVERNMENT DAM, OR, UNDER SOME CIRCUMSTANCES, IS LOCATED ON A STREAM OVER WHICH THE UNITED STATES CONGRESS HAS COMMERCE CLAUSE JURISDICTION;

(II) AS PART OF FERC'S LICENSING PROCESS, AN APPLICANT FOR A HYDROELECTRIC ENERGY FACILITY LICENSE OR LICENSE EXEMPTION MUST MEET SPECIFIC PREFILING CONSULTING REQUIREMENTS, INCLUDING A REQUIREMENT TO CONSULT WITH RELEVANT STATE AGENCIES ABOUT THE PROPOSED PROJECT AND TO PROVIDE THOSE AGENCIES WITH AN OPPORTUNITY TO COMMENT ON THE APPLICATION AND REQUEST ANY STUDIES THAT MAY BE RELEVANT TO THE PROPOSED PROJECT;

(III) TO PROMOTE THE CONSTRUCTION AND OPERATION OF NEW HYDROELECTRIC ENERGY FACILITIES, THE UNITED STATES CONGRESS PASSED THE "HYDROPOWER REGULATORY EFFICIENCY ACT OF 2013", FEDERAL PUBLIC LAW 113-23, AS AMENDED, WHICH EXEMPTS CERTAIN HYDROELECTRIC ENERGY FACILITIES THAT HAVE AN INSTALLED CAPACITY OF FEWER THAN TEN THOUSAND KILOWATTS FROM

THE LICENSING REQUIREMENTS AND STREAMLINES THE APPROVAL PROCESS FOR HYDROELECTRIC ENERGY FACILITIES GENERALLY; AND

(e) TO FURTHER PROMOTE THE CONSTRUCTION AND OPERATION OF NEW HYDROELECTRIC ENERGY FACILITIES IN COLORADO, THE ROLE OF STATE AGENCIES IN CONSULTING ON A HYDROELECTRIC ENERGY FACILITY APPLICATION FOR A FEDERAL LICENSE OR LICENSE EXEMPTION SHOULD BE STREAMLINED. TO THAT END, THE GENERAL ASSEMBLY DESIGNATES THE OFFICE AS THE COORDINATING STATE AGENCY TO FACILITATE THE TIMELY STATE AGENCY REVIEW OF A PROPOSED PROJECT.

(2) **Definitions.** AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "APPLICANT" MEANS A PERSON APPLYING FOR A FERC LICENSE OR LICENSE EXEMPTION FOR A HYDROELECTRIC ENERGY FACILITY.

(b) "FERC" MEANS THE FEDERAL ENERGY REGULATORY COMMISSION.

(c) "HYDROELECTRIC ENERGY" MEANS THE GENERATION AND DELIVERY TO THE INTERCONNECTION METER OF ANY SOURCE OF ELECTRICAL OR MECHANICAL ENERGY BY HARNESSING THE KINETIC ENERGY OF WATER. "HYDROELECTRIC ENERGY" INCLUDES PUMPED HYDROELECTRICITY, AS DEFINED IN SECTION 40-2-123 (3.2) (c) (II), C.R.S.

(d) "OFFICE" MEANS THE COLORADO ENERGY OFFICE.

(3) **Coordination of state agency review by the Colorado energy office.**

(a) AN APPLICANT IN COLORADO MUST CONTACT, AND SUBMIT RELEVANT DOCUMENTATION TO, THE OFFICE FOR THE PURPOSE OF OBTAINING STATE AGENCY REVIEW OF HIS OR HER FERC APPLICATION, AS REQUIRED AS PART OF THE CONSULTATION REQUIREMENTS SET FORTH IN 18 C.F.R. 4.38 CONCERNING FERC LICENSE AND LICENSE EXEMPTION PROCEDURES.

(b) THE OFFICE SHALL COORDINATE STATE AGENCY REVIEW OF THE APPLICATION BY PROVIDING THE FOLLOWING TO ALL RELEVANT STATE AGENCIES WITH POTENTIAL INTEREST IN THE APPLICANT'S HYDROELECTRIC ENERGY PROJECT:

(I) NOTICE VIA EMAIL OF THE APPLICATION;

(II) ELECTRONIC COPIES OF ANY DOCUMENTATION RECEIVED FROM THE APPLICANT;

(III) A GENERAL DESCRIPTION OF THE FERC REVIEW PROCESS; AND

(IV) THE DEADLINE BY WHICH THE OTHER STATE AGENCIES MUST SUBMIT ANY COMMENTS ABOUT THE APPLICATION TO THE OFFICE. THE OFFICE SHALL SET A DEADLINE THAT IS SUFFICIENTLY IN ADVANCE OF THE EXPIRATION OF THE COMMENT PERIOD PROVIDED FOR BY FERC TO ALLOW THE OFFICE TO COMPILE OTHER AGENCIES' COMMENTS AND ITS OWN COMMENTS FOR TIMELY SUBMISSION TO FERC.

(c) UPON THE EXPIRATION OF THE DEADLINE SET BY THE OFFICE FOR OTHER AGENCIES TO REVIEW AN APPLICATION, THE OFFICE SHALL COMPILE ANY COMMENTS FROM OTHER AGENCIES AND ITS OWN COMMENTS AND SUBMIT THE COMMENTS TO FERC BEFORE THE EXPIRATION OF THE COMMENT PERIOD ESTABLISHED BY FERC. THEREAFTER, THE OFFICE SHALL SERVE AS A LIAISON BETWEEN FERC AND THE OTHER STATE AGENCIES CONCERNING ANY DISCUSSION OF THE COMMENTS SUBMITTED.

(d) THE OFFICE SHALL PROVIDE INFORMATION ON ITS WEB SITE ABOUT THE STREAMLINED REVIEW PROCESS SET FORTH IN THIS SECTION.

(e) THE DIRECTOR OF THE OFFICE MAY ESTABLISH GUIDELINES CONCERNING THE PROCESS AND DEADLINES FOR DISSEMINATING INFORMATION TO OTHER STATE AGENCIES AND COLLECTING OTHER STATE AGENCIES' COMMENTS.

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 (August 6, 2014, if adjournment sine die is on May 7, 2014); 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 2014 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: May 31, 2014