

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 22-0700.01 Jennifer Berman x3286

SENATE BILL 22-110

SENATE SPONSORSHIP

Sonnenberg and Kolker,

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.

SENATE
Amended 2nd Reading
March 24, 2022

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 AND SUBJECT TO FAA APPROVAL FOR THE INSTALLATION OF APPROVED
8 LIGHT MITIGATING TECHNOLOGY, FOR ANY NEW WIND-POWERED ENERGY
9 GENERATION FACILITY THAT IS SUBJECT TO LOCAL GOVERNMENT
10 LAND-USE PERMITTING REQUIREMENTS PURSUANT TO SECTION 29-20-108,
11 AND FOR WHICH THE OWNER OR OPERATOR OF THE NEW FACILITY BEGINS
12 VERTICAL CONSTRUCTION OF THE FIRST WIND TURBINE INCLUDED WITHIN
13 THE FACILITY ON OR AFTER APRIL 1, 2022, THE OWNER OR OPERATOR
14 SHALL INSTALL LIGHT MITIGATING TECHNOLOGY AT THE NEW FACILITY.

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

19 (I) APPLY TO THE FAA, ANY OTHER APPLICABLE FEDERAL

1 AGENCY, OR BOTH, FOR THE INSTALLATION OF APPROVED LIGHT
2 MITIGATING TECHNOLOGY; AND

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

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

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

1 PENALTY ON THE OWNER OR OPERATOR OF THE NEW FACILITY IN THE
2 AMOUNT OF ONE THOUSAND DOLLARS PER DAY.

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

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

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

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

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

16 (I) IS DESIGNED TO DETECT APPROACHING AIRCRAFT;

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

18 (III) THE FAA HAS APPROVED AS MEETING THE REQUIREMENTS
19 SET FORTH IN CHAPTER 10 OF THE FAA'S 2020 ADVISORY CIRCULAR AC
20 70/7460-1M, "OBSTRUCTION MARKING AND LIGHTING".

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

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

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

3 **30-11-130. Equipping wind-powered energy generation**
4 **facilities with light mitigating technology - enforcement - definitions.**

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

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

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

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

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

25 **SECTION 3. Act subject to petition - effective date.** This act
26 takes effect at 12:01 a.m. on the day following the expiration of the
27 ninety-day period after final adjournment of the general assembly; except

1 that, if a referendum petition is filed pursuant to section 1 (3) of article V
2 of the state constitution against this act or an item, section, or part of this
3 act within such period, then the act, item, section, or part will not take
4 effect unless approved by the people at the general election to be held in
5 November 2022 and, in such case, will take effect on the date of the
6 official declaration of the vote thereon by the governor.