

**Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 22-0700.01 Jennifer Berman x3286

SENATE BILL 22-110

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Energy & Environment

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.*

HOUSE
3rd Reading Unamended
April 26, 2022

HOUSE
Amended 2nd Reading
April 22, 2022

SENATE
3rd Reading Unamended
March 25, 2022

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

17 (b) THE OWNER OR OPERATOR OF A NEW WIND-POWERED ENERGY
18 GENERATION FACILITY SUBJECT TO SUBSECTION (1)(a) OF THIS SECTION,
19 WITHIN SIX MONTHS AFTER THE FACILITY RECEIVES A DETERMINATION OF

1 NO HAZARD FROM THE FAA, SHALL:

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

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

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

25 (3) IF THE BOARD HAS EXERCISED ITS AUTHORITY TO ENACT AN
26 ORDINANCE OR RESOLUTION TO IMPOSE CIVIL PENALTIES PURSUANT TO
27 SECTION 30-11-130 AND DETERMINES THAT AN OWNER OR OPERATOR OF

1 A WIND-POWERED ENERGY GENERATION FACILITY WAS REQUIRED TO, BUT
2 FAILED TO, COMPLY WITH THIS SECTION, THE BOARD MAY IMPOSE A CIVIL
3 PENALTY ON THE OWNER OR OPERATOR OF THE NEW FACILITY IN THE
4 AMOUNT OF ONE THOUSAND DOLLARS PER DAY.

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

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

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

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

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

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

21 (I) IS DESIGNED TO DETECT APPROACHING AIRCRAFT;

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

23 (III) THE FAA HAS APPROVED AS MEETING THE REQUIREMENTS
24 SET FORTH IN CHAPTER 10 OF THE FAA'S 2020 ADVISORY CIRCULAR AC
25 70/7460-1M, "OBSTRUCTION MARKING AND LIGHTING".

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

1 COUNTY.

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

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

8 30-11-130. Equipping wind-powered energy generation
9 facilities with light mitigating technology - enforcement - definitions.

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

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

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

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

26 (b) "WIND-POWERED ENERGY GENERATION FACILITY" OR
27 "FACILITY" MEANS A FACILITY, WITH A NAMEPLATE CAPACITY OF ONE

1 MEGAWATT OR GREATER, USED IN THE GENERATION OF ELECTRICITY BY
2 MEANS OF TURBINES OR OTHER DEVICES THAT CAPTURE AND EMPLOY THE
3 KINETIC ENERGY OF THE WIND.

4 **SECTION 3. Act subject to petition - effective date.** This act
5 takes effect at 12:01 a.m. on the day following the expiration of the
6 ninety-day period after final adjournment of the general assembly; except
7 that, if a referendum petition is filed pursuant to section 1 (3) of article V
8 of the state constitution against this act or an item, section, or part of this
9 act within such period, then the act, item, section, or part will not take
10 effect unless approved by the people at the general election to be held in
11 November 2022 and, in such case, will take effect on the date of the
12 official declaration of the vote thereon by the governor.