

Second Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

REREVISED

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

LLS NO. 12-0824.01 Jennifer Berman x3286

HOUSE BILL 12-1312

HOUSE SPONSORSHIP

Sonnenberg, Levy

SENATE SPONSORSHIP

Brophy and Johnston,

House Committees
Transportation

Senate Committees
Agriculture, Natural Resources, and Energy

SENATE
3rd Reading Unam ended
M arch 22, 2012

SENATE
2nd Reading Unam ended
M arch 21, 2012

A BILL FOR AN ACT

101 **CONCERNING THE EXCLUSION OF LAND USE ISSUES ADDRESSED BY**
102 **LOCAL GOVERNING BODIES FROM THE PUBLIC UTILITIES**
103 **COMMISSION'S PROPER SCOPE OF REVIEW WITH RESPECT TO**
104 **APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND**
105 **NECESSITY FOR TRANSMISSION LINES.**

HOUSE
3rd Reading Unam ended
M arch 6, 2012

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://www.leg.state.co.us/billsummaries>.)

The bill clarifies that the public utilities commission, in

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
Am ended 2nd Reading
M arch 5, 2012

determining whether or not to grant a certificate of public convenience and necessity for proposed electric transmission lines and associated facilities not constructed in the ordinary course of business, shall not consider land use issues such as the location or alignment of the proposed lines and associated facilities because a local government can address the land use considerations through its land use regulations.

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

2 **SECTION 1. Legislative declaration.** The general assembly
3 declares that the construction of new electric transmission lines and
4 associated facilities is necessary to promote the development of electric
5 generation resources, Colorado's energy security, and the state's long-term
6 economic growth. Various state and local government processes control
7 the approval, siting, and permitting of electric transmission lines,
8 including the requirement that a public utility obtain a certificate of public
9 convenience and necessity from the public utilities commission for lines
10 and facilities not constructed in the ordinary course of business. To ensure
11 the efficient and timely application of such processes, individual, state,
12 and local interests should be heard and considered in the appropriate
13 forum. It is, therefore, in the state's interest to clarify the proper scope of
14 review by the public utilities commission in connection with applications
15 for certificates of public convenience and necessity for new construction
16 or extension of electric transmission lines and associated facilities.

17 **SECTION 2.** In Colorado Revised Statutes, **amend** 40-5-101 as
18 follows:

19 **40-5-101. New construction - extension - compliance with local**
20 **zoning rules.** (1) (a) ~~No~~ A public utility shall NOT begin the construction
21 of a new facility, plant, or system or ~~of any~~ THE extension of its facility,
22 plant, or system without first ~~having obtained~~ OBTAINING from the

1 commission a certificate that the present or future public convenience and
2 necessity require, or will require, ~~such~~ THE construction OR EXTENSION.
3 FOR PURPOSES OF THIS SUBSECTION (1), THE PRESENT OR FUTURE PUBLIC
4 CONVENIENCE AND NECESSITY DOES NOT INCLUDE THE CONSIDERATION OF
5 LAND USE RIGHTS OR SITING ISSUES RELATED TO THE LOCATION OR
6 ALIGNMENT OF THE PROPOSED ELECTRIC TRANSMISSION LINES OR
7 ASSOCIATED FACILITIES, WHICH ISSUES ARE UNDER THE JURISDICTION OF
8 A LOCAL GOVERNMENT'S LAND USE REGULATION. Sections 40-5-101 to
9 40-5-104 ~~shall not be construed to~~ DO NOT require ~~any~~ A corporation to
10 secure ~~such~~ A certificate for THE FOLLOWING:

11 (I) An extension within any city and county, ~~or~~ city, or town
12 within which it has ~~theretofore~~ ALREADY lawfully commenced operations;
13 ~~or for~~

14 (II) An extension into territory, either within or ~~without~~ OUTSIDE
15 OF a city and county, ~~or~~ city, or town, contiguous to its facility, line, plant,
16 or system and not ~~theretofore~~ ALREADY served by a public utility
17 providing the same commodity or service; or ~~for~~

18 (III) An extension within or to territory already served by ~~it~~ THE
19 CORPORATION, AS IS necessary in the ordinary course of its business.

20 (b) If ~~any~~ A public utility, in constructing or extending its line,
21 plant, or system, interferes, or is about to interfere, with the operation of
22 the line, plant, or system of any other public utility already constructed,
23 the commission, ~~on~~ UPON complaint of the public utility claiming to be
24 injuriously affected, after hearing, may ~~make such order prohibiting such~~
25 PROHIBIT THE construction or ~~extensions~~ EXTENSION, or ~~prescribing such~~
26 PRESCRIBE JUST AND REASONABLE terms and conditions for the location
27 of the lines, plants, or systems affected. ~~as to it may seem just and~~

1 reasonable.

2 (2) Whenever the commission, after a hearing upon its own
3 motion or upon complaint, finds that there is or will be a duplication of
4 service by public utilities in any area, the commission ~~shall, in its~~
5 ~~discretion,~~ MAY issue a certificate of public convenience and necessity
6 assigning specific territories to one or to each of said utilities, or, by
7 certificate of public convenience and necessity, ~~to~~ otherwise define the
8 conditions of rendering service and constructing extensions within ~~said~~
9 THOSE territories and ~~shall, in its discretion,~~ MAY order the elimination of
10 ~~said~~ THE duplication upon such terms as are just and reasonable, having
11 due regard to due process of law and to all the rights of the respective
12 parties and to public convenience and necessity.

13 (3) Except as otherwise provided in section 29-20-108, C.R.S., ~~on~~
14 ~~or after August 8, 2005, no~~ A public utility shall NOT construct or install
15 ~~any~~ A new facility, plant, or system within the territorial boundaries of
16 ~~any~~ A local government unless the construction or installation complies
17 with the LOCAL GOVERNMENT'S zoning rules, resolutions, or ordinances.
18 ~~of the local government applicable to the property on which the facility,~~
19 ~~plant, or system is to be constructed or installed.~~ Nothing in this
20 subsection (3) ~~shall be construed to prohibit~~ PROHIBITS a local
21 government from granting a variance from its zoning rules, resolutions,
22 or ordinances for such uses of the property. Nothing in this subsection (3)
23 ~~shall be construed to grant~~ GRANTS the commission any additional
24 authority to restrict a siting application. For purposes of this subsection
25 ~~(3)~~ SECTION, "local government" ~~shall mean~~ MEANS a county, home rule
26 or statutory city, town, territorial charter city, or city and county.
27 NOTHING IN THIS SUBSECTION (3) RESTRICTS THE RIGHT OF A PUBLIC

1 UTILITY OR POWER AUTHORITY TO APPEAL TO THE PUBLIC UTILITIES
2 COMMISSION A LOCAL GOVERNMENT ACTION UNDER SECTION 29-20-108,
3 C.R.S.

4 (4) (a) A public utility ~~shall be~~ IS entitled to recover, through a
5 separate rate adjustment clause, the costs that it prudently incurs in
6 planning, developing, and completing the construction or expansion of
7 transmission facilities for which the utility has been granted a certificate
8 of public convenience and necessity, or for which the commission has
9 determined that no certificate of public convenience and necessity is
10 required. The transmission rate adjustment clause ~~shall be~~ IS subject to
11 annual changes, which ~~shall be~~ ARE effective on January 1 of each year.

12 (b) To provide additional encouragement to utilities to pursue the
13 construction and expansion of transmission facilities, the commission
14 shall approve current recovery by the utility through the annual rate
15 adjustment clause of the utility's weighted average cost of capital,
16 including its most recently authorized rate of return on equity, on the total
17 balance of construction work in progress related to such transmission
18 facilities as of the end of the immediately preceding year. The rate
19 adjustment clause shall be reduced to the extent that the prudently
20 incurred costs being recovered through the adjustment clause have been
21 included in the public utility's base rates as a result of the commission's
22 final order in a rate case.

23 **SECTION 3. Safety clause.** The general assembly hereby finds,
24 determines, and declares that this act is necessary for the immediate
25 preservation of the public peace, health, and safety.