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2001



HOUSE BILL 01-1195

BY REPRESENTATIVE(S) Smith, Boyd, Clapp, Decker, Hoppe, Kester, Lee, Ragsdale, Rippey, Spradley, Weddig, and Young;
also SENATOR(S) Hagedorn, Lamborn, and Musgrave.

CONCERNING PROCEDURES TO RESOLVE CONFLICTS ARISING FROM LOCAL GOVERNMENT DECISIONS RELATING TO PUBLIC UTILITIES THAT PROVIDE ENERGY FOR CONSUMPTION, AND MAKING AN APPROPRIATION THEREFOR.

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

SECTION 1. Legislative declaration. The general assembly finds, determines, and declares that there is considerable ambiguity in Colorado law as to the procedure for the resolution of conflicts between determinations made by the Colorado public utilities commission with respect to the need for reliable and economical major electrical and natural gas facilities, which benefit citizens throughout the state, and determinations made by local governments that are exercising reasonable constitutional, police, and licensing powers with respect to local land use concerns. The general assembly hereby finds, determines, and declares that due to the statewide impact of energy problems, this is a matter of statewide concern and that a procedure must be developed to resolve such conflicts in a reasonable manner.

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

SECTION 2. 29-20-108 (1) (d) and (2), Colorado Revised Statutes, are amended, and the said 29-20-108 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

29-20-108. Local government regulation - location, construction, or improvement of major electrical or natural gas facilities - legislative declaration. (1) The general assembly finds, determines, and declares that the location, construction, and improvement of major electrical and natural gas facilities are matters of statewide concern. The general assembly further finds, determines, and declares that:

(d) It is critical that public utilities AND POWER AUTHORITIES that supply electric or natural gas service maintain the ability to meet the demands for such service as growth continues to occur statewide.

(2) Local government land use regulations shall require final local government action on any application of a public utility OR A POWER AUTHORITY providing electric or natural gas service that relates to the location, construction, or improvement of major electrical or natural gas facilities within one hundred twenty days after such utility's OR AUTHORITY'S submission of a preliminary application, if a preliminary application is required by the local government's land use regulations, or within ninety days after submission of a final application. If the local government does not take final action within such time, the application shall be deemed approved. Nothing in this subsection (2) shall be construed to supersede any timeline set by agreement between a local government and a public utility OR POWER AUTHORITY applying for local government approval of location, construction, or improvement of major facilities as defined in subsection (3) of this section.

(4) (a) A PUBLIC UTILITY OR POWER AUTHORITY SHALL NOTIFY THE AFFECTED LOCAL GOVERNMENT OF ITS PLANS TO SITE A MAJOR ELECTRICAL OR NATURAL GAS FACILITY WITHIN THE JURISDICTION OF THE LOCAL GOVERNMENT PRIOR TO SUBMITTING THE PRELIMINARY OR FINAL PERMIT APPLICATION, BUT IN NO EVENT LATER THAN FILING A REQUEST FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY PURSUANT TO ARTICLE 5 OF TITLE 40, C.R.S., OR THE FILING OF ANY ANNUAL FILING WITH THE PUBLIC UTILITIES COMMISSION THAT PROPOSES OR RECOGNIZES THE NEED FOR CONSTRUCTION OF A NEW FACILITY OR THE EXTENSION OF AN

EXISTING FACILITY. IF A PUBLIC UTILITY OR POWER AUTHORITY IS NOT REQUIRED TO OBTAIN A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY PURSUANT TO ARTICLE 5 OF TITLE 40, C.R.S., OR FILE ANNUALLY WITH THE PUBLIC UTILITIES COMMISSION TO NOTIFY THE PUBLIC UTILITIES COMMISSION OF PROPOSED CONSTRUCTION OF A NEW FACILITY OR THE EXTENSION OF AN EXISTING FACILITY, THEN THE PUBLIC UTILITY OR POWER AUTHORITY SHALL NOTIFY ANY AFFECTED LOCAL GOVERNMENTS OF ITS INTENTION TO SITE A MAJOR ELECTRICAL OR NATURAL GAS FACILITY WITHIN THE JURISDICTION OF THE LOCAL GOVERNMENT WHEN SUCH UTILITY OR AUTHORITY DETERMINES THAT IT INTENDS TO PROCEED TO PERMIT AND CONSTRUCT THE FACILITY. FOLLOWING SUCH NOTIFICATION, THE PUBLIC UTILITY OR POWER AUTHORITY SHALL CONSULT WITH THE AFFECTED LOCAL GOVERNMENTS IN ORDER TO IDENTIFY THE SPECIFIC ROUTES OR GEOGRAPHIC LOCATIONS UNDER CONSIDERATION FOR THE SITE OF THE MAJOR ELECTRICAL OR NATURAL GAS FACILITY AND ATTEMPT TO RESOLVE LAND USE ISSUES THAT MAY ARISE FROM THE CONTEMPLATED PERMIT APPLICATION.

(b) IN ADDITION TO ITS PREFERRED ALTERNATIVE WITHIN ITS PERMIT APPLICATION, THE PUBLIC UTILITY OR POWER AUTHORITY SHALL CONSIDER AND PRESENT REASONABLE SITING AND DESIGN ALTERNATIVES TO THE LOCAL GOVERNMENT OR EXPLAIN WHY NO REASONABLE ALTERNATIVES ARE AVAILABLE.

(5) (a) IF A LOCAL GOVERNMENT DENIES A PERMIT OR APPLICATION OF A PUBLIC UTILITY OR POWER AUTHORITY THAT RELATES TO THE LOCATION, CONSTRUCTION, OR IMPROVEMENT OF MAJOR ELECTRICAL OR NATURAL GAS FACILITIES, OR IF THE LOCAL GOVERNMENT IMPOSES REQUIREMENTS OR CONDITIONS UPON SUCH PERMIT OR APPLICATION THAT WILL UNREASONABLY IMPAIR THE ABILITY OF THE PUBLIC UTILITY OR POWER AUTHORITY TO PROVIDE SAFE, RELIABLE, AND ECONOMICAL SERVICE TO THE PUBLIC, THE PUBLIC UTILITY OR POWER AUTHORITY MAY APPEAL THE LOCAL GOVERNMENT ACTION TO THE PUBLIC UTILITIES COMMISSION FOR A DETERMINATION UNDER SECTION 40-4-102, C.R.S., SO LONG AS ONE OR MORE OF THE FOLLOWING CONDITIONS EXIST:

(I) THE PUBLIC UTILITY OR POWER AUTHORITY HAS APPLIED FOR OR HAS OBTAINED A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FROM THE PUBLIC UTILITIES COMMISSION PURSUANT TO SECTION 40-5-101, C.R.S., TO CONSTRUCT THE MAJOR ELECTRICAL OR NATURAL GAS FACILITY THAT IS THE SUBJECT OF THE LOCAL GOVERNMENT ACTION;

(II) A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY IS NOT REQUIRED FOR THE PUBLIC UTILITY OR POWER AUTHORITY TO CONSTRUCT THE MAJOR ELECTRICAL OR NATURAL GAS FACILITY THAT IS THE SUBJECT OF THE LOCAL GOVERNMENT ACTION; OR

(III) THE PUBLIC UTILITIES COMMISSION HAS PREVIOUSLY ENTERED AN ORDER PURSUANT TO SECTION 40-4-102, C.R.S., THAT CONFLICTS WITH THE LOCAL GOVERNMENT ACTION.

(b) ANY APPEAL BROUGHT BY A PUBLIC UTILITY OR POWER AUTHORITY TO THE PUBLIC UTILITIES COMMISSION UNDER THIS SECTION SHALL BE CONDUCTED IN ACCORDANCE WITH THE PROCEDURAL REQUIREMENTS OF SECTION 40-6-109.5, C.R.S. IN ADDITION TO THE FORMAL EVIDENTIARY HEARING ON THE APPEAL, CONDUCTED IN ACCORDANCE WITH THE PROCEDURAL REQUIREMENTS OF SECTION 40-6-109, C.R.S., THE PUBLIC UTILITIES COMMISSION SHALL TAKE STATEMENTS FROM THE PUBLIC CONCERNING THE APPEALED LOCAL GOVERNMENT ACTION AT AN OPEN HEARING HELD AT A LOCATION SPECIFIED BY THE LOCAL GOVERNMENT.

(c) AN APPEAL BROUGHT PURSUANT TO THIS SUBSECTION (5) SHALL INCLUDE A STATEMENT OF THE REASONS WHY THE LOCAL GOVERNMENT ACTION WOULD UNREASONABLY IMPAIR THE ABILITY OF A PUBLIC UTILITY OR POWER AUTHORITY TO PROVIDE SAFE, RELIABLE, AND ECONOMICAL SERVICE TO THE PUBLIC.

(d) THE PUBLIC UTILITIES COMMISSION SHALL BALANCE THE LOCAL GOVERNMENT INTEREST WITH THE STATEWIDE INTEREST IN THE LOCATION, CONSTRUCTION, OR IMPROVEMENT OF MAJOR ELECTRICAL OR NATURAL GAS FACILITIES. IN STRIKING SUCH BALANCE, THE PUBLIC UTILITIES COMMISSION SHALL RENDER A DECISION THAT IS CONSISTENT WITH ARTICLE 65.1 OF TITLE 24, C.R.S., INCLUDING SECTION 24-65.1-105, C.R.S., AND THE COMMISSION SHALL CONSIDER THE FOLLOWING FACTORS:

(I) THE DEMONSTRATED NEED FOR THE MAJOR ELECTRICAL OR NATURAL GAS FACILITY;

(II) THE EXTENT TO WHICH THE PROPOSED FACILITY IS INCONSISTENT WITH EXISTING APPLICABLE LOCAL OR REGIONAL LAND USE ORDINANCES, RESOLUTIONS, OR MASTER OR COMPREHENSIVE PLANS;

(III) WHETHER THE PROPOSED FACILITY WOULD EXACERBATE A

NATURAL HAZARD;

(IV) APPLICABLE UTILITY ENGINEERING STANDARDS, INCLUDING SUPPLY ADEQUACY, SYSTEM RELIABILITY, AND PUBLIC SAFETY STANDARDS;

(V) THE RELATIVE MERIT OF ANY REASONABLY AVAILABLE AND ECONOMICALLY FEASIBLE ALTERNATIVES PROPOSED BY THE PUBLIC UTILITY, THE POWER AUTHORITY, OR THE LOCAL GOVERNMENT;

(VI) THE IMPACT THAT THE LOCAL GOVERNMENT ACTION WOULD HAVE ON THE CUSTOMERS OF THE PUBLIC UTILITY OR POWER AUTHORITY WHO RESIDE WITHIN AND WITHOUT THE BOUNDARIES OF THE JURISDICTION OF THE LOCAL GOVERNMENT;

(VII) THE BASIS FOR THE LOCAL GOVERNMENT'S DECISION TO DENY THE APPLICATION OR IMPOSE ADDITIONAL CONDITIONS TO THE APPLICATION;

(VIII) THE IMPACT THE PROPOSED FACILITY WOULD HAVE ON RESIDENTS WITHIN THE LOCAL GOVERNMENT'S JURISDICTION INCLUDING, IN THE CASE OF A RIGHT OF WAY IN WHICH FACILITIES HAVE BEEN PLACED UNDERGROUND, WHETHER THOSE RESIDENTS HAVE ALREADY PAID TO PLACE SUCH FACILITIES UNDERGROUND, AND IF SO, SHALL GIVE STRONG CONSIDERATION TO THAT FACT; AND

(IX) THE SAFETY OF RESIDENTS WITHIN AND WITHOUT THE BOUNDARIES OF THE JURISDICTION OF THE LOCAL GOVERNMENT.

(e) THE PUBLIC UTILITIES COMMISSION SHALL DENY ANY APPEAL BROUGHT UNDER THIS SECTION UNLESS THE PUBLIC UTILITY OR POWER AUTHORITY HAS COMPLIED WITH THE NOTIFICATION AND CONSULTATION REQUIREMENTS OF SUBSECTION (4) OF THIS SECTION.

(f) THE PUBLIC UTILITIES COMMISSION MAY CONSULT WITH THE DEPARTMENT OF LOCAL AFFAIRS ON LAND USE ISSUES IN CONNECTION WITH ANY APPEAL. ALL INFORMATION PROVIDED BY THE DEPARTMENT OF LOCAL AFFAIRS TO THE PUBLIC UTILITIES COMMISSION SHALL BE PART OF THE OFFICIAL RECORD OF THE APPEAL AND SHALL BE SUBJECT TO CROSS-EXAMINATION OR COMMENTS BY THE PARTIES TO THE APPEAL.

(g) UNLESS OTHERWISE SPECIFIED IN THIS SUBSECTION (5), THE APPEAL SHALL BE CONDUCTED IN ACCORDANCE WITH ARTICLE 6 OF TITLE 40,

C.R.S., INCLUDING THE PROVISIONS OF SECTION 40-6-116, C.R.S., CONCERNING ANY STAY OR SUSPENSION OF THE FINAL DETERMINATION MADE BY THE PUBLIC UTILITIES COMMISSION.

(h) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT OR DIMINISH THE RIGHT OF A PUBLIC UTILITY, POWER AUTHORITY, OR LOCAL GOVERNMENT TO APPEAL A LOCAL GOVERNMENT, PUBLIC UTILITY, OR POWER AUTHORITY ACTION, DECISION, OR DETERMINATION TO A COURT OF LAW PURSUANT TO ANY OTHER PROVISION OF LAW, OR ANY APPEAL BROUGHT IN CONNECTION WITH ANY DECISION BY THE PUBLIC UTILITIES COMMISSION UNDER THIS SUBSECTION (5). APPEALS BROUGHT UNDER THE PARAGRAPH (h) SHALL BE GIVEN PRIORITY OVER OTHER PENDING MATTERS.

(i) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT THE AUTHORITY OF A MUNICIPAL GOVERNMENT TO REQUIRE OR GRANT A PUBLIC UTILITY FRANCHISE.

SECTION 3. 29-20-103, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

29-20-103. Definitions. As used in this article, unless the context otherwise requires:

(2) "POWER AUTHORITY" MEANS AN AUTHORITY CREATED PURSUANT TO SECTION 29-1-204.

SECTION 4. 40-4-102 (1), Colorado Revised Statutes, is amended to read:

40-4-102. Extensions and improvements prescribed, when.
(1) Whenever the commission, after a hearing upon its own motion, UPON APPEAL BY A PUBLIC UTILITY OR POWER AUTHORITY FROM A LOCAL GOVERNMENT ACTION PURSUANT TO SECTION 29-20-108 (5), C.R.S., or upon complaint, finds THAT the additions, extensions, repairs, or improvements to or change in the existing plant, equipment, facilities, or other physical property of any public utility or of any two or more public utilities ought reasonably to be made, ~~or~~ that a new structure should be erected to promote the security or convenience of its employees or the public or in any other way to secure adequate service or facilities, OR THAT THE CONDITIONS IMPOSED BY A LOCAL GOVERNMENT ACTION UNREASONABLY IMPAIR THE

ABILITY OF A PUBLIC UTILITY OR POWER AUTHORITY TO PROVIDE SAFE, RELIABLE, AND ECONOMIC SERVICE, the commission shall make and serve an order directing that such additions, extensions, repairs, improvements, or changes be made or such structure be erected in the manner and within the time specified in such order. If the commission orders the erection of a new structure, the selection of the site for such structure shall be subject to the approval of the commission. IF A PUBLIC UTILITY OR POWER AUTHORITY APPEALS AN ORDER FROM A LOCAL GOVERNMENT ACTION UNDER SECTION 29-20-108, C.R.S., THE COMMISSION MAY REQUIRE THAT THE PUBLIC UTILITY OR POWER AUTHORITY REIMBURSE THE COMMISSION FOR THE REASONABLE EXPENSES, ATTORNEY FEES, AND EXPERT WITNESS FEES THE COMMISSION INCURS IN REVIEWING THE APPEAL. ANY FEE COLLECTED PURSUANT TO THIS SECTION SHALL BE REMITTED TO THE STATE TREASURER, WHO SHALL CREDIT SUCH FEE TO THE PUBLIC UTILITIES FIXED UTILITY FUND CREATED PURSUANT TO SECTION 40-2-114.

SECTION 5. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the public utilities commission fixed utility fund created in section 40-2-114, Colorado Revised Statutes, not otherwise appropriated, to the department of regulatory agencies, for allocation to the executive director's office, for legal services, for the fiscal year beginning July 1, 2001, the sum of eighty-three thousand seven hundred fifteen dollars (\$83,715), or so much thereof as may be necessary, for the implementation of this act.

(2) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the public utilities commission fixed utility fund created in section 40-2-114, Colorado Revised Statutes, not otherwise appropriated, to the department of regulatory agencies, for allocation to the public utilities commission, for the fiscal year beginning July 1, 2001, the sum of eighty-seven thousand three hundred forty-seven dollars (\$87,347) and 1.0 FTE, or so much thereof as may be necessary, for the implementation of this act.

(3) In addition to any other appropriation, there is hereby appropriated, to the department of law, for the fiscal year beginning July 1, 2001, the sum of eighty-three thousand seven hundred fifteen dollars (\$83,715) and 0.8 FTE, or so much thereof as may be necessary, for the provision of legal services to the public utilities commission related to the implementation of this act. Such sum shall be from cash funds exempt received from the department of regulatory agencies out of the

appropriation made in subsection (1) of this section.

SECTION 6. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Doug Dean
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Stan Matsunaka
PRESIDENT OF
THE SENATE

Judith Rodrigue
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

APPROVED _____

Bill Owens
GOVERNOR OF THE STATE OF COLORADO