

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

DRAFT
9.24.15

BILL 4

LLS NO. 16-0182.01 Thomas Morris x4218

INTERIM COMMITTEE BILL

Water Resources Review Committee

A BILL FOR AN ACT

101 **CONCERNING THE TRANSFER TO THE STATE ENGINEER OF THE**
102 **AUTHORITY TO APPROVE WATER PROJECTS.**

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>.)

Water Resources Review Committee. The bill transfers to the state engineer, in **section 4** of the bill, the authority to make the following state approvals and repeals the corresponding authority of the entities that currently have the authority as follows:

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.

- The Colorado energy office's authority to review applications for a federal energy regulatory commission license or license exemption for a hydroelectric energy facility (repealed in **section 1**);
- The water quality control division's authority to review and certify, conditionally certify, or deny requests for certifications under section 401 of the "Federal Water Pollution Control Act" with regard to water diversion, delivery, and storage facilities (repealed in **section 2**); and
- The authority of the Colorado water conservation board and the parks and wildlife commission to adopt an official state mitigation plan for water diversion, delivery, or storage facilities that affect fish and wildlife resources (repealed in **section 3**).

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

2 **SECTION 1.** In Colorado Revised Statutes, **repeal** 24-38.5-108
3 as follows:

4 **24-38.5-108. State agency coordination of review of federal**
5 **license and license exemption applications for hydroelectric energy**
6 **projects - legislative declaration - definitions - rules. (1) ~~Legislative~~**
7 **~~declaration.~~** ~~The general assembly hereby finds and declares that:~~

8 ~~(a) Hydroelectric energy is a reliable, affordable, and sustainable~~
9 ~~energy source and is the largest source of clean energy in the United~~
10 ~~States;~~

11 ~~(b) As of 2005, there were sixty-two operating hydroelectric~~
12 ~~energy facilities throughout Colorado, with a combined capacity of one~~
13 ~~thousand one hundred sixty-two megawatts;~~

14 ~~(c) According to a recent bureau of reclamation study, Colorado~~
15 ~~currently has more than thirty sites on which new hydroelectric energy~~
16 ~~facilities could be placed and a federal department of energy report~~
17 ~~identifies another eleven potential sites. If all of the identified sites were~~

1 constructed, they could power over sixty-five thousand homes each year.

2 ~~(d) (I) To construct, operate, or maintain a nonfederal~~
3 ~~hydroelectric energy facility, a person must apply to FERC for a license~~
4 ~~or a license exemption if the facility is located on navigable waters in the~~
5 ~~United States, occupies lands of the United States, utilizes surplus water~~
6 ~~or water power from a United States government dam, or, under some~~
7 ~~circumstances, is located on a stream over which the United States~~
8 ~~congress has commerce clause jurisdiction;~~

9 ~~(H) As part of FERC's licensing process, an applicant for a~~
10 ~~hydroelectric energy facility license or license exemption must meet~~
11 ~~specific pre-filing consulting requirements, including a requirement to~~
12 ~~consult with relevant state agencies about the proposed project and to~~
13 ~~provide those agencies with an opportunity to comment on the application~~
14 ~~and request any studies that may be relevant to the proposed project;~~

15 ~~(HH) To promote the construction and operation of new~~
16 ~~hydroelectric energy facilities, the United States congress passed the~~
17 ~~"Hydropower Regulatory Efficiency Act of 2013", federal Public Law~~
18 ~~113-23, as amended, which exempts certain hydroelectric energy facilities~~
19 ~~that have an installed capacity of fewer than ten thousand kilowatts from~~
20 ~~the licensing requirements and streamlines the approval process for~~
21 ~~hydroelectric energy facilities generally; and~~

22 ~~(e) To further promote the construction and operation of new~~
23 ~~hydroelectric energy facilities in Colorado, the role of state agencies in~~
24 ~~consulting on a hydroelectric energy facility application for a federal~~
25 ~~license or license exemption should be streamlined. To that end, the~~
26 ~~general assembly designates the office as the coordinating state agency~~
27 ~~to facilitate the timely state agency review of a proposed project.~~

1 ~~(2) **Definitions.** As used in this section, unless the context~~
2 ~~otherwise requires:~~

3 ~~(a) "Applicant" means a person applying for a FERC license or~~
4 ~~license exemption for a hydroelectric energy facility.~~

5 ~~(b) "FERC" means the federal energy regulatory commission.~~

6 ~~(c) "Hydroelectric energy" means the generation and delivery to~~
7 ~~the interconnection meter of any source of electrical or mechanical energy~~
8 ~~by harnessing the kinetic energy of water. "Hydroelectric energy"~~
9 ~~includes pumped hydroelectricity, as defined in section 40-2-123 (3.2) (c)~~
10 ~~(H), C.R.S.~~

11 ~~(d) "Office" means the Colorado energy office.~~

12 ~~(3) **Coordination of state agency review by the Colorado**~~
13 ~~**energy office.** (a) An applicant in Colorado must contact, and submit~~
14 ~~relevant documentation to, the office for the purpose of obtaining state~~
15 ~~agency review of his or her FERC application, as required as part of the~~
16 ~~consultation requirements set forth in 18 C.F.R. 4.38 concerning FERC~~
17 ~~license and license exemption procedures.~~

18 ~~(b) The office shall coordinate state agency review of the~~
19 ~~application by providing the following to all relevant state agencies with~~
20 ~~potential interest in the applicant's hydroelectric energy project:~~

21 ~~(I) Notice via e-mail of the application;~~

22 ~~(II) Electronic copies of any documentation received from the~~
23 ~~applicant;~~

24 ~~(III) A general description of the FERC review process; and~~

25 ~~(IV) The deadline by which the other state agencies must submit~~
26 ~~any comments about the application to the office. The office shall set a~~
27 ~~deadline that is sufficiently in advance of the expiration of the comment~~

1 ~~period provided for by FERC to allow the office to compile other~~
2 ~~agencies' comments and its own comments for timely submission to~~
3 ~~FERC.~~

4 ~~(c) Upon the expiration of the deadline set by the office for other~~
5 ~~agencies to review an application, the office shall compile any comments~~
6 ~~from other agencies and its own comments and submit the comments to~~
7 ~~FERC before the expiration of the comment period established by FERC.~~
8 ~~Thereafter, the office shall serve as a liaison between FERC and the other~~
9 ~~state agencies concerning any discussion of the comments submitted.~~

10 ~~(d) The office shall provide information on its web site about the~~
11 ~~streamlined review process set forth in this section.~~

12 ~~(e) The director of the office may establish guidelines concerning~~
13 ~~the process and deadlines for disseminating information to other state~~
14 ~~agencies and collecting other state agencies' comments.~~

15 **SECTION 2.** In Colorado Revised Statutes, 25-8-302, **amend** (1)
16 (f) as follows:

17 **25-8-302. Duties of division.** (1) The division shall:

18 (f) (I) EXCEPT AS SPECIFIED IN SUBPARAGRAPH (II) OF THIS
19 PARAGRAPH (f), review and certify, conditionally certify, or deny requests
20 for certifications under the provisions of section 401 of the federal act and
21 this article, known as "401 certificates". Conditions attached to the
22 division's certification shall only implement rules which the commission
23 has made applicable to 401 certifications. General or nationwide permits
24 under section 404 of the federal act shall be certified for use in Colorado
25 without the imposition of any additional state conditions. Appeals by an
26 affected entity of a final 401 certification decision of the division shall be
27 heard in accordance with section 24-4-105, C.R.S., of the "State

1 Administrative Procedure Act".

2 (II) THE STATE ENGINEER SHALL, PURSUANT TO SECTION
3 37-80-123 (4), C.R.S., PERFORM THE DUTIES OTHERWISE DELEGATED TO
4 THE DIVISION PURSUANT TO THIS PARAGRAPH (f) WITH REGARD ONLY TO
5 CERTIFICATIONS FOR WATER DIVERSION, DELIVERY, AND STORAGE
6 FACILITIES.

7 **SECTION 3.** In Colorado Revised Statutes, 37-60-122.2, **amend**
8 (2) (b) and (2) (c); and **repeal** (1) (b), (1) (c), and (3) as follows:

9 **37-60-122.2. Fish and wildlife resource mitigation grants -**
10 **legislative declaration - fund.** (1) (b) ~~Except as provided in this~~
11 ~~paragraph (b), the applicant for any water diversion, delivery, or storage~~
12 ~~facility which requires an application for a permit, license, or other~~
13 ~~approval from the United States shall inform the Colorado water~~
14 ~~conservation board, parks and wildlife commission, and division of parks~~
15 ~~and wildlife of its application and submit a mitigation proposal pursuant~~
16 ~~to this section. Exempted from such requirement are the Animas-La Plata~~
17 ~~project, the Two Forks dam and reservoir project, and the Homestake~~
18 ~~water project for which definite plan reports and final environmental~~
19 ~~impact statements have been approved or which are awaiting approval of~~
20 ~~the same, applicants for site specific dredge and fill permits for operations~~
21 ~~not requiring construction of a reservoir, and applicants for section 404~~
22 ~~federal nationwide permits. If an applicant that is subject to the provisions~~
23 ~~of this section and the commission agree upon a mitigation plan for the~~
24 ~~facility, the commission shall forward such agreement to the Colorado~~
25 ~~water conservation board, and the board shall adopt such agreement at its~~
26 ~~next meeting as the official state position on the mitigation actions~~
27 ~~required of the applicant. In all cases the commission shall proceed~~

1 expeditiously and, no later than sixty days from the applicant's notice,
2 unless extended in writing by the applicant, make its evaluation regarding
3 the probable impact of the proposed facility on fish and wildlife resources
4 and their habitat and to make its recommendation regarding such
5 reasonable mitigation actions as may be needed.

6 (c) ~~The commission's evaluation and proposed mitigation~~
7 ~~recommendation shall be transmitted to the Colorado water conservation~~
8 ~~board. The board within sixty days, unless extended in writing by the~~
9 ~~applicant, shall either affirm the mitigation recommendation of the~~
10 ~~commission as the official state position or shall make modifications or~~
11 ~~additions thereto supported by a memorandum that sets out the basis for~~
12 ~~any changes made. Whenever modifications or additions are made by the~~
13 ~~board in the commission's mitigation recommendation, the governor,~~
14 ~~within sixty days, shall affirm or modify the mitigation recommendation~~
15 ~~which shall then be the official state position with respect to mitigation.~~
16 ~~The official state position, established pursuant to this subsection (1) shall~~
17 ~~be communicated to each federal, state, or other governmental agency~~
18 ~~from which the applicant must obtain a permit, license, or other approval.~~

19 (2) (b) To the extent that the cost of implementing the mitigation
20 recommendation made pursuant to ~~subsection (1) of this section~~ SECTION
21 37-80-123 (5) exceeds five percent of the costs of a water diversion,
22 delivery, or storage facility, the board shall, upon the application of the
23 applicant, make a mitigation grant to the applicant. The amount of the
24 grant shall be sufficient to pay for the mitigation recommendation as
25 determined by ~~this section~~ SECTION 37-80-123 (5) to the extent required
26 above the applicant's five-percent share. Any additional enhancement
27 shall be at the discretion and within the means of the board. Under no

1 circumstance shall the total amount of the grant exceed five percent of the
2 construction costs of the project, or be disbursed in installments that
3 exceed seventy percent of the amount of the grant during any fiscal year.
4 Any mitigation cost in excess of ten percent of the construction costs of
5 a project shall be borne by the applicant.

6 (c) An applicant may apply for an enhancement grant by
7 submitting to the PARKS AND WILDLIFE commission and the board an
8 enhancement proposal for enhancing fish and wildlife resources over and
9 above the levels existing without such facilities. The commission shall
10 submit its recommendations on the proposal to the board for its
11 consideration. The board, with the concurrence of the commission, may
12 award a grant for fish and wildlife enhancement. Any such enhancement
13 grant will be shared equally by the Colorado water conservation board's
14 fish and wildlife resources fund and the division of parks and wildlife's
15 wildlife cash funds and other funds available to the division.

16 ~~(3) Decisions relating to the official state mitigation position made~~
17 ~~pursuant to paragraph (c) of subsection (1) of this section shall not be~~
18 ~~subject to judicial review.~~

19 **SECTION 4.** In Colorado Revised Statutes, **add** 37-80-123 as
20 follows:

21 **37-80-123. Consolidated review of water projects -**
22 **hydroelectric energy - 401 certifications - fish and wildlife resources**
23 **- legislative declarations - definitions. (1) Hydroelectric energy -**
24 **legislative declaration.** THE GENERAL ASSEMBLY HEREBY FINDS AND
25 DECLARES THAT:

26 (a) HYDROELECTRIC ENERGY IS A RELIABLE, AFFORDABLE, AND
27 SUSTAINABLE ENERGY SOURCE AND IS THE LARGEST SOURCE OF CLEAN

1 ENERGY IN THE UNITED STATES;

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

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

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

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

27 (III) TO PROMOTE THE CONSTRUCTION AND OPERATION OF NEW

1 HYDROELECTRIC ENERGY FACILITIES, THE UNITED STATES CONGRESS
2 PASSED THE "HYDROPOWER REGULATORY EFFICIENCY ACT OF 2013",
3 FEDERAL PUBLIC LAW 113-23, AS AMENDED, WHICH EXEMPTS CERTAIN
4 HYDROELECTRIC ENERGY FACILITIES THAT HAVE AN INSTALLED CAPACITY
5 OF LESS THAN TEN THOUSAND KILOWATTS FROM THE LICENSING
6 REQUIREMENTS AND STREAMLINES THE APPROVAL PROCESS FOR
7 HYDROELECTRIC ENERGY FACILITIES GENERALLY; AND

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

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

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

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

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

26 (d) "OFFICE" MEANS THE STATE ENGINEER'S OFFICE.

27 (3) **Coordination of state agency review by the state engineer.**

1 (a) AN APPLICANT IN COLORADO MUST CONTACT, AND SUBMIT RELEVANT
2 DOCUMENTATION TO, THE OFFICE FOR THE PURPOSE OF OBTAINING STATE
3 AGENCY REVIEW OF THE APPLICANT'S FERC APPLICATION, AS REQUIRED
4 AS PART OF THE CONSULTATION REQUIREMENTS SET FORTH IN 18 C.F.R.
5 4.38 CONCERNING FERC LICENSE AND LICENSE EXEMPTION PROCEDURES.

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

10 (I) NOTICE VIA E-MAIL OF THE APPLICATION;

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

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

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

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

1 COMMENTS SUBMITTED.

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

4 (e) THE STATE ENGINEER MAY ESTABLISH GUIDELINES
5 CONCERNING THE PROCESS AND DEADLINES FOR DISSEMINATING
6 INFORMATION TO OTHER STATE AGENCIES AND COLLECTING OTHER STATE
7 AGENCIES' COMMENTS.

8 (4) **401 certifications.** WITH REGARD ONLY TO CERTIFICATIONS
9 FOR WATER DIVERSION, DELIVERY, OR STORAGE FACILITIES, THE STATE
10 ENGINEER SHALL REVIEW AND CERTIFY, CONDITIONALLY CERTIFY, OR
11 DENY REQUESTS FOR CERTIFICATIONS UNDER SECTION 401 OF THE
12 "FEDERAL WATER POLLUTION CONTROL ACT", 33 U.S.C. SEC. 1251 ET
13 SEQ., AND ARTICLE 8 OF TITLE 25, C.R.S., ALSO KNOWN AS "401
14 CERTIFICATION". CONDITIONS ATTACHED TO THE STATE ENGINEER'S
15 CERTIFICATION MUST IMPLEMENT ONLY RULES THAT THE WATER QUALITY
16 CONTROL COMMISSION HAS MADE APPLICABLE TO 401 CERTIFICATIONS.
17 THE STATE ENGINEER SHALL CERTIFY GENERAL OR NATIONWIDE PERMITS
18 UNDER SECTION 404 OF THE FEDERAL ACT FOR USE IN COLORADO
19 WITHOUT THE IMPOSITION OF ANY ADDITIONAL STATE CONDITIONS. AN
20 ENTITY AFFECTED BY A FINAL 401 CERTIFICATION DECISION OF THE
21 DIVISION MAY FILE AN APPEAL IN ACCORDANCE WITH SECTION 24-4-105,
22 C.R.S., OF THE "STATE ADMINISTRATIVE PROCEDURE ACT".

23 (5) **Fish and wildlife resources - legislative**
24 **declaration.** (a) THE GENERAL ASSEMBLY HEREBY RECOGNIZES THE
25 RESPONSIBILITY OF THE STATE FOR FISH AND WILDLIFE RESOURCES FOUND
26 IN AND AROUND STATE WATERS THAT ARE AFFECTED BY THE
27 CONSTRUCTION, OPERATION, OR MAINTENANCE OF WATER DIVERSION,

1 DELIVERY, OR STORAGE FACILITIES. THE GENERAL ASSEMBLY HEREBY
2 DECLARES THAT SUCH FISH AND WILDLIFE RESOURCES ARE A MATTER OF
3 STATEWIDE CONCERN AND THAT PROJECT APPLICANTS SHOULD MITIGATE
4 NEGATIVE EFFECTS ON SUCH RESOURCES IN A REASONABLE MANNER. IT IS
5 THE INTENT OF THE GENERAL ASSEMBLY THAT FISH AND WILDLIFE
6 RESOURCES AFFECTED BY THE CONSTRUCTION, OPERATION, OR
7 MAINTENANCE OF WATER DIVERSION, DELIVERY, OR STORAGE FACILITIES
8 SHOULD BE MITIGATED TO THE EXTENT, AND IN A MANNER, THAT IS
9 ECONOMICALLY REASONABLE AND MAINTAINS A BALANCE BETWEEN THE
10 DEVELOPMENT OF THE STATE'S WATER RESOURCES AND THE PROTECTION
11 OF THE STATE'S FISH AND WILDLIFE RESOURCES.

12 (b) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS
13 PARAGRAPH (b), THE APPLICANT FOR ANY WATER DIVERSION, DELIVERY,
14 OR STORAGE FACILITY THAT REQUIRES AN APPLICATION FOR A PERMIT,
15 LICENSE, OR OTHER APPROVAL FROM THE UNITED STATES SHALL INFORM
16 THE OFFICE OF ITS APPLICATION AND SUBMIT A MITIGATION PROPOSAL
17 PURSUANT TO THIS SUBSECTION (5). IF AN APPLICANT THAT IS SUBJECT TO
18 THIS SECTION AND THE OFFICE AGREE UPON A MITIGATION PLAN FOR THE
19 FACILITY, THE PLAN BECOMES THE OFFICIAL STATE POSITION ON THE
20 MITIGATION ACTIONS REQUIRED OF THE APPLICANT.

21 (II) THIS SUBSECTION (5) DOES NOT APPLY TO APPLICANTS FOR
22 SITE-SPECIFIC DREDGE AND FILL PERMITS FOR OPERATIONS NOT REQUIRING
23 CONSTRUCTION OF A RESERVOIR AND APPLICANTS FOR SECTION 404
24 FEDERAL NATIONWIDE PERMITS.

25 (c) (I) THE OFFICE SHALL COMMUNICATE THE OFFICIAL STATE
26 POSITION ESTABLISHED PURSUANT TO THIS SUBSECTION (5) TO EACH
27 FEDERAL, STATE, OR OTHER GOVERNMENTAL AGENCY FROM WHICH THE

1 APPLICANT MUST OBTAIN A PERMIT, LICENSE, OR OTHER APPROVAL.

2 (II) DECISIONS RELATING TO THE OFFICIAL STATE MITIGATION
3 POSITION MADE PURSUANT TO THIS SUBSECTION (5) ARE NOT SUBJECT TO
4 JUDICIAL REVIEW.

5 **SECTION 5. Act subject to petition - effective date -**
6 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
7 the expiration of the ninety-day period after final adjournment of the
8 general assembly (August 10, 2016, if adjournment sine die is on May 11,
9 2016); except that, if a referendum petition is filed pursuant to section 1
10 (3) of article V of the state constitution against this act or an item, section,
11 or part of this act within such period, then the act, item, section, or part
12 will not take effect unless approved by the people at the general election
13 to be held in November 2016 and, in such case, will take effect on the
14 date of the official declaration of the vote thereon by the governor.

15 (2) This act applies to conduct occurring on or after the applicable
16 effective date of this act.