

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

DRAFT
10.9.15

BILL 5

LLS NO. 16-0198.02 Thomas Morris x4218

INTERIM COMMITTEE BILL

Water Resources Review Committee

BILL TOPIC: "Delegate Federal Authority Approve Water Facility"

A BILL FOR AN ACT

101 CONCERNING DELEGATED FEDERAL AUTHORITY TO APPROVE WATER
102 FACILITIES.

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 specifies that, if Congress enacts a law that allows a federal agency to delegate authority to a state to issue an approval relating to a water diversion, delivery, or storage facility, the general assembly must enact the legislation and the state engineer must promulgate the rules necessary to enable the

*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

delegation, after which the state engineer has exclusive authority under state law with regard only to water diversion, delivery, and storage facilities to issue a permit for the discharge of dredge or fill material, conduct a review and issue necessary approvals or disapprovals under the federal "National Environmental Policy Act of 1969", or issue a license for a hydroelectric facility.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** 37-80-123 as
3 follows:

4 **37-80-123. Consolidated review of water projects - delegated**
5 **federal authority - rules.** (1) TO THE EXTENT THAT CONGRESS ENACTS
6 ONE OR MORE LAWS THAT AUTHORIZE THE CORPS OF ENGINEERS, FEDERAL
7 ENVIRONMENTAL PROTECTION AGENCY, BUREAU OF RECLAMATION,
8 FEDERAL ENERGY REGULATORY COMMISSION, OR OTHER FEDERAL
9 AGENCY TO DELEGATE TO A STATE THE AUTHORITY TO ISSUE A PERMIT OR
10 OTHER APPROVAL FOR A WATER DIVERSION, DELIVERY, OR STORAGE
11 FACILITY THAT IS ANALOGOUS TO EITHER 33 U.S.C. SEC. 1342 (b),
12 PURSUANT TO WHICH A STATE MAY ISSUE A PERMIT FOR THE DISCHARGE
13 OF WATER POLLUTANTS THAT OPERATES IN LIEU OF A FEDERAL PERMIT, OR
14 42 U.S.C. SEC. 7661a (b), PURSUANT TO WHICH A STATE MAY ISSUE A
15 PERMIT FOR THE EMISSION OF AIR POLLUTANTS THAT OPERATES IN LIEU OF
16 A FEDERAL PERMIT, AND TO THE EXTENT THAT THE CORPS OF ENGINEERS,
17 FEDERAL ENVIRONMENTAL PROTECTION AGENCY, BUREAU OF
18 RECLAMATION, FEDERAL ENERGY REGULATORY COMMISSION, OR OTHER
19 FEDERAL AGENCY HAS DELEGATED TO COLORADO THE APPROPRIATE
20 AUTHORITY, THE STATE ENGINEER HAS EXCLUSIVE AUTHORITY UNDER
21 STATE LAW WITH REGARD ONLY TO WATER DIVERSION, DELIVERY, AND
22 STORAGE FACILITIES TO:

1 (a) ISSUE A PERMIT FOR THE DISCHARGE OF DREDGE OR FILL
2 MATERIAL INTO THE WATERS OF THE UNITED STATES AS CONTEMPLATED
3 BY 33 U.S.C. SEC. 1344;

4 (b) CONDUCT A REVIEW AND ISSUE NECESSARY APPROVALS OR
5 DISAPPROVALS UNDER THE FEDERAL "NATIONAL ENVIRONMENTAL
6 POLICY ACT OF 1969", 42 U.S.C. SEC. 4321 ET SEQ.; AND

7 (c) ISSUE A LICENSE FOR A HYDROELECTRIC FACILITY AS
8 CONTEMPLATED BY 16 U.S.C. SEC. 799.

9 (2) IF CONGRESS ENACTS ONE OR MORE LAWS AS CONTEMPLATED
10 BY SUBSECTION (1) OF THIS SECTION:

11 (a) THE GENERAL ASSEMBLY SHALL:

12 (I) ENACT THE NECESSARY LEGISLATION TO ENABLE THE
13 APPROPRIATE FEDERAL AGENCY TO DELEGATE TO COLORADO THE
14 AUTHORITY TO OPERATE A STATE PROGRAM IN LIEU OF THE APPROPRIATE
15 FEDERAL PROGRAM; AND

16 (II) APPROPRIATE SUFFICIENT MONEY TO THE STATE ENGINEER TO
17 ENABLE THE STATE ENGINEER TO PROMULGATE RULES AS SPECIFIED IN
18 PARAGRAPH (b) OF THIS SUBSECTION (2); AND

19 (b) THE STATE ENGINEER SHALL PROMULGATE RULES AS ARE
20 NECESSARY TO ENABLE THE APPROPRIATE FEDERAL AGENCY TO DELEGATE
21 TO COLORADO THE AUTHORITY TO OPERATE A STATE PROGRAM IN LIEU OF
22 THE APPROPRIATE FEDERAL PROGRAM. IN PARTICULAR, IF THE LAW
23 RELATES TO:

24 (I) THE DISCHARGE OF DREDGE OR FILL MATERIAL INTO THE
25 WATERS OF THE UNITED STATES AS CONTEMPLATED BY 33 U.S.C. SEC.
26 1344, THE RULES MUST BE ANALOGOUS TO THOSE CODIFIED IN 40 CFR
27 PART 230.

1 (II) CONDUCTING A REVIEW AND ISSUING NECESSARY APPROVALS
2 OR DISAPPROVALS UNDER THE FEDERAL "NATIONAL ENVIRONMENTAL
3 POLICY ACT OF 1969", 42 U.S.C. SEC. 4321 ET SEQ., THE RULES MUST BE
4 ANALOGOUS TO THOSE CODIFIED IN 40 CFR CHAPTER V.

5 (III) ISSUING A LICENSE FOR A HYDROELECTRIC FACILITY, THE
6 RULES MUST BE ANALOGOUS TO THOSE CODIFIED IN 18 CFR PART 4.

7 **SECTION 2. Act subject to petition - effective date.** This act
8 takes effect at 12:01 a.m. on the day following the expiration of the
9 ninety-day period after final adjournment of the general assembly
10 (August 10, 2016, if adjournment sine die is on May 11, 2016); except
11 that, if a referendum petition is filed pursuant to section 1 (3) of article V
12 of the state constitution against this act or an item, section, or part of this
13 act within such period, then the act, item, section, or part will not take
14 effect unless approved by the people at the general election to be held in
15 November 2016 and, in such case, will take effect on the date of the
16 official declaration of the vote thereon by the governor.

17 <{*Do you want a safety clause or a specific effective date?*}>