

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

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10.9.15

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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/bills/summaries>.)

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

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

state engineer must promulgate the rules necessary to enable the 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 AGENCY
9 TO DELEGATE TO A STATE THE AUTHORITY TO ISSUE A PERMIT OR OTHER
10 APPROVAL FOR A WATER DIVERSION, DELIVERY, OR STORAGE FACILITY
11 THAT IS ANALOGOUS TO EITHER 33 U.S.C. SEC. 1342 (b), PURSUANT TO
12 WHICH A STATE MAY ISSUE A PERMIT FOR THE DISCHARGE OF WATER
13 POLLUTANTS THAT OPERATES IN LIEU OF A FEDERAL PERMIT, OR 42 U.S.C.
14 SEC. 7661a (b), PURSUANT TO WHICH A STATE MAY ISSUE A PERMIT FOR
15 THE EMISSION OF AIR POLLUTANTS THAT OPERATES IN LIEU OF A FEDERAL
16 PERMIT, AND TO THE EXTENT THAT THE CORPS OF ENGINEERS, FEDERAL
17 ENVIRONMENTAL PROTECTION AGENCY, BUREAU OF RECLAMATION,
18 FEDERAL ENERGY REGULATORY COMMISSION, OR OTHER FEDERAL AGENCY
19 HAS DELEGATED TO COLORADO THE APPROPRIATE AUTHORITY, THE STATE
20 ENGINEER HAS EXCLUSIVE AUTHORITY UNDER STATE LAW WITH REGARD
21 ONLY TO WATER DIVERSION, DELIVERY, AND STORAGE FACILITIES TO:

22 (a) ISSUE A PERMIT FOR THE DISCHARGE OF DREDGE OR FILL

1 MATERIAL INTO THE WATERS OF THE UNITED STATES AS CONTEMPLATED
2 BY 33 U.S.C. SEC. 1344;

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

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

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

10 (a) THE GENERAL ASSEMBLY SHALL:

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

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

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

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

27 (II) CONDUCTING A REVIEW AND ISSUING NECESSARY APPROVALS

1 OR DISAPPROVALS UNDER THE FEDERAL "NATIONAL ENVIRONMENTAL
2 POLICY ACT OF 1969", 42 U.S.C. SEC. 4321 ET SEQ., THE RULES MUST BE
3 ANALOGOUS TO THOSE CODIFIED IN 40 CFR CHAPTER V.

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

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

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