

Energy & Natural Resources - Finland

Government reviews Water Act

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Background

A bill for a new Water Act was submitted to Parliament on January 15 2010. The bill aims to replace completely the existing Water Act (264/1961), which dates back to 1961.

The existing act has been partially amended several times in recent years, rendering it rather complicated. Furthermore, certain parts of the act make numerous references to other legislation, which has further complicated its interpretation among practitioners. The new act – along with related legislation which has been proposed – aims to clarify the regulations on the use of water resources.

The bill proposes to retain the existing permit system regime whereby projects which cause changes in the position, depth, level, flow of the water system, the waterfront, water environment or groundwater and have an adverse effect thereto, require permission from the authorities. Moreover, permission is required for projects that would involve changes which cause detriment or damage to private interests.

Hydropower

According to the proposed act, hydropower projects always require permission, irrespective of size. Such projects are also subject to permission under the existing regulation, regardless of whether they have any impact on the water system or environment.

According to the existing legislative regime, permission for a project relating to water resources (eg, the building of a hydropower plant) is refused if the project is deemed to endanger public health or cause significant damage to the environment or water systems. Further, projects which would have a significant adverse effect on a settlement or on businesses are also refused permission. This prohibition is absolute and no exceptions can be granted under the existing rules. Only once has this absolute prohibition been challenged. On December 18 2002 the Supreme Administrative Court refused to grant permission to build a large reservoir and hydropower plant in Northern Finland. The decision remains a landmark case.

Thus, the renewal of the Water Act has been of great interest to the energy sector and much discussion has taken place on how best to provide the legislative flexibility to allow the implementation of hydropower plant projects. For example, certain industry players have suggested the introduction of simplified environmental impact assessment processes for small-scale projects known as 'mini hydros'.

The bill was prepared by a committee comprising representatives of several ministries and other governmental agencies, several interest groups and the Association for Nature Conservation. The committee ultimately recommended that the government's position on water-related projects be retained, but that the Council of State be given the right to grant exemption from the absolute prohibition. According to the committee's recommendation, in order to qualify for exemption, a project would have had to serve "important public interests". The content of this provision would have needed to be clarified by the Supreme Administrative Court.

The proposed exemption right for the Council of State attracted both support and criticism when the proposal was submitted for comments. Eventually, the committee's recommendation was rejected by the work group charged with continuing the enactment process and not included in the bill, much to the dismay of the Finnish

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energy industry.

However, the bill included a provision stipulating that the authority before which a permit is sought must request a statement from the Council of State for projects which impact on the public interest. Therefore, the Council of State was not completely denied a role in relation to hydropower projects.

Comment

The bill for the new act is yet to be approved by Parliament and as such it is too early to ponder what the new act will eventually entail. However, it is likely that the act will be passed, given that the existing act is in need of reform.

From the perspective of the energy industry, the question still remains as to whether the new act will allow for the initiation of large or small-scale hydropower projects in Finland. The matter is very topical in view of the EU targets for increasing the use of renewable energy and reducing greenhouse gas emissions.

Although the outcome of the bill's preparatory process came as a disappointment to those that wished the Council of State to be granted the right to authorize hydropower projects which entail significant public interest, if the bill is passed it remains to be seen what kind of role the Council of State will play in hydropower projects under the proposed model.

The Finnish energy industry would most likely welcome a more flexible permit and environmental impact assessment regime in order to allow for the initiation of hydropower projects. Finland must increase its capacity to produce power from renewable sources in order to meet its national and international emissions reduction requirements.

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