

**First Regular Session
Sixty-fourth General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 03-0218.01 Thomas Morris

HOUSE BILL 03-1001

HOUSE SPONSORSHIP

Hoppe

SENATE SPONSORSHIP

(None)

House Committees

Agriculture, Livestock, & Natural Resources

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING INCREASED FLEXIBILITY IN THE USE OF WATER**
102 **RESOURCES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Requires the Colorado water resources and power development authority to subsidize the cost of issuance of bonds and notes for water management facilities that are raw water diversion or storage projects and that are jointly sponsored by two or more governmental agencies.

Allows the state engineer to approve, after notice and comment, the operation of substitute water supply plans during a drought. Allows entities that pay for repairs necessary to remove a reservoir storage restriction imposed by the state engineer to apply for approval of the use

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.

of such storage as a drought substitute water supply plan.

Requires the state engineer to cooperate with entities seeking approval pursuant to federal law to share the use of federal water facilities during droughts. Requires state agencies to cooperate with entities seeking rights to easements for ditches and ownership for reservoir sites.

Authorizes the expenditure of \$3 million from the Colorado water conservation board construction fund for implementation of the statewide water supply initiative as approved by the water conservation board. Authorizes the department of local affairs to provide technical assistance to local government water providers to implement tiered billing systems that show customers' water usage.

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

2 **SECTION 1.** 37-95-109 (1), Colorado Revised Statutes, is
3 amended to read:

4 **37-95-109. Bonds or notes - issuance - terms.** (1) The authority
5 has the power and is hereby authorized from time to time to issue its
6 bonds or notes in such principal amounts as in the opinion of the board
7 are necessary to provide sufficient funds for any of its corporate
8 purposes, including the payment, funding, or refunding of the principal
9 of, or interest or redemption premiums on, any bonds or notes issued by
10 it, whether the bonds or notes or interest to be funded or refunded have
11 or have not become due, and including the establishment or increase of
12 such reserves to secure or to pay such bonds or notes or interest thereon
13 and all other costs or expenses of the authority incident to and necessary
14 to carry out its corporate purposes and powers. THE AUTHORITY SHALL
15 SUBSIDIZE SOME OR ALL OF THE COST OF ISSUANCE OF BONDS AND NOTES
16 PURSUANT TO THIS ARTICLE FOR PROJECTS, INCLUDING SMALL WATER
17 RESOURCES PROJECTS, TO BUILD WATER MANAGEMENT FACILITIES THAT
18 ARE RAW WATER DIVERSION OR STORAGE PROJECTS AND THAT ARE
19 JOINTLY SPONSORED BY TWO OR MORE GOVERNMENTAL AGENCIES.

1 **SECTION 2.** 37-92-308 (6), Colorado Revised Statutes, is
2 amended, and the said 37-92-308 is further amended BY THE
3 ADDITION OF A NEW SUBSECTION, to read:

4 **37-92-308. Substitute water supply plans - special procedures**
5 **for review.** (6) The state engineer shall establish a substitute water
6 supply plan notification list for each water division for the purposes of
7 notifying interested parties pursuant to subparagraph (II) of paragraph (a)
8 of subsection (5) AND SUBSECTION (9) of this section. Beginning in July
9 2002, and in January of each year thereafter, in order to establish such
10 notification list, the water clerks in each division shall include in the
11 water court resume an invitation to be included on such notification list
12 for the applicable water division. Persons on the substitute water supply
13 plan notification list shall receive notice of all substitute water supply
14 plans filed in that water division pursuant to subsection (5) OR (9) of this
15 section by either first-class mail or, if a person so requests, by electronic
16 mail. Persons may be required to pay a fee, not to exceed twelve dollars
17 per year, to be placed on the notification list.

18 (9) (a) THE STATE ENGINEER MAY APPROVE DROUGHT SUBSTITUTE
19 WATER SUPPLY PLANS IF THE STATE ENGINEER DETERMINES SUCH PLANS
20 ARE NEEDED TO ADDRESS THE DROUGHT SITUATION AND IF THE FOLLOWING
21 CONDITIONS ARE MET:

22 (I) THE APPLICANT HAS FILED A REQUEST FOR APPROVAL OF THE
23 DROUGHT SUBSTITUTE WATER SUPPLY PLAN WITH THE STATE ENGINEER;

24 (II) THE APPLICANT HAS PROVIDED WRITTEN NOTICE OF THE
25 REQUEST FOR APPROVAL OF THE DROUGHT SUBSTITUTE WATER SUPPLY
26 PLAN BY FIRST-CLASS MAIL OR ELECTRONIC MAIL TO ALL PARTIES WHO
27 HAVE SUBSCRIBED TO THE SUBSTITUTE WATER SUPPLY PLAN NOTIFICATION

1 LIST FOR THE WATER DIVISION IN WHICH THE PROPOSED PLAN IS LOCATED
2 AND PROOF OF SUCH NOTICE IS FILED WITH THE STATE ENGINEER;

3 (III) THE STATE ENGINEER HAS GIVEN THE OWNERS OF WATER
4 RIGHTS AND DECREED CONDITIONAL WATER RIGHTS THIRTY DAYS AFTER
5 THE DATE OF MAILING OF SUCH NOTICE TO FILE COMMENTS ON THE
6 DROUGHT SUBSTITUTE WATER SUPPLY PLAN. SUCH COMMENTS SHALL
7 INCLUDE ANY CLAIM OF INJURY OR ANY TERMS AND CONDITIONS THAT
8 SHOULD BE IMPOSED UPON THE PLAN TO PREVENT INJURY TO A PARTY'S
9 WATER RIGHTS OR DECREED CONDITIONAL WATER RIGHTS AND ANY OTHER
10 INFORMATION THE OPPOSER WISHES THE STATE ENGINEER TO CONSIDER IN
11 REVIEWING THE DROUGHT SUBSTITUTE WATER SUPPLY PLAN REQUEST.

12 (IV) THE STATE ENGINEER, AFTER CONSIDERATION OF THE
13 COMMENTS FROM ANY OPPOSER, HAS DETERMINED THAT THE OPERATION
14 AND ADMINISTRATION OF SUCH PLAN WILL REPLACE ALL OUT-OF-PRIORITY
15 DEPLETIONS IN TIME, LOCATION, AND AMOUNT IN A MANNER THAT WILL
16 PREVENT INJURY TO OTHER WATER RIGHTS AND DECREED CONDITIONAL
17 WATER RIGHTS, INCLUDING WATER QUALITY AND CONTINUITY TO MEET
18 THE REQUIREMENTS OF USE TO WHICH THE SENIOR APPROPRIATION HAS
19 NORMALLY BEEN PUT PURSUANT TO SECTION 37-80-120(3), AND WILL NOT
20 IMPAIR COMPLIANCE WITH ANY INTERSTATE COMPACTS. THE STATE
21 ENGINEER SHALL IMPOSE SUCH TERMS AND CONDITIONS AS ARE
22 NECESSARY TO ENSURE THAT THESE STANDARDS ARE MET. IN MAKING THE
23 DETERMINATIONS SPECIFIED IN THIS SUBPARAGRAPH (IV), THE STATE
24 ENGINEER SHALL NOT BE REQUIRED TO HOLD ANY FORMAL HEARINGS OR
25 CONDUCT ANY OTHER FORMAL PROCEEDINGS, BUT MAY CONDUCT A
26 HEARING OR FORMAL PROCEEDING IF THE STATE ENGINEER FINDS IT
27 NECESSARY TO ADDRESS THE ISSUES.

1 (b) SUCH PLANS SHALL BE IMPLEMENTED ONLY IF, PURSUANT TO
2 FEDERAL OR STATE LAW, ANY PORTION OF COLORADO HAS RECEIVED AN
3 EMERGENCY DROUGHT DESIGNATION OR A DISASTER EMERGENCY HAS
4 BEEN PROCLAIMED DUE TO DROUGHT AND SUCH PLANS COMPLY WITH
5 PARAGRAPH (a) OF THIS SUBSECTION (9). SUCH PLANS SHALL NOT BE
6 IMPLEMENTED FOR MORE THAN ONE YEAR; EXCEPT THAT IF THE
7 EMERGENCY DROUGHT DESIGNATION OR DISASTER EMERGENCY
8 PROCLAMATION LASTS MORE THAN ONE YEAR, APPLICANTS MAY APPLY TO
9 THE STATE ENGINEER FOR APPROVAL OF IMPLEMENTATION OF SUCH PLANS
10 ON A YEAR-TO-YEAR BASIS DURING THE PENDENCY OF SUCH EMERGENCY
11 DROUGHT DESIGNATION OR DISASTER EMERGENCY PROCLAMATION.

12 (c) NEITHER APPROVAL NOR THE DENIAL OF SUCH PLANS BY THE
13 STATE ENGINEER SHALL CREATE ANY PRESUMPTIONS, SHIFT THE BURDEN
14 OF PROOF, OR BE A DEFENSE IN ANY LEGAL ACTION THAT MAY BE INITIATED
15 CONCERNING A DROUGHT SUBSTITUTE WATER SUPPLY PLAN.

16 (d) IF AN ENTITY PAYS FOR REPAIRS, MAINTENANCE, OR OTHER
17 CAPITAL IMPROVEMENTS THAT ARE NECESSARY AND EFFECTIVE IN
18 REMOVING A STORAGE RESTRICTION IMPOSED BY THE STATE ENGINEER
19 PURSUANT TO SECTION 37-87-107 ON A DAM OWNED BY A THIRD PARTY,
20 SUCH ENTITY MAY APPLY TO THE STATE ENGINEER PURSUANT TO THIS
21 SUBSECTION (9) FOR APPROVAL OF THE USE OF SOME OR ALL OF SUCH
22 UNRESTRICTED STORAGE AS A DROUGHT SUBSTITUTE WATER SUPPLY PLAN.

23 **SECTION 3.** 37-80-102, Colorado Revised Statutes, is amended
24 BY THE ADDITION OF A NEW SUBSECTION to read:

25 **37-80-102. General duties of state engineer - supervision and**
26 **utilization of employees - satellite monitoring system.** (11) THE STATE
27 ENGINEER SHALL COOPERATE WITH APPLICANTS SEEKING APPROVAL

1 PURSUANT TO THE FEDERAL "WATER SUPPLY ACT OF 1958", 43 U.S.C.
2 SEC. 390b, AS AMENDED, FOR THE SHARING, DURING THE PENDENCY IN
3 COLORADO OF AN EMERGENCY DROUGHT DESIGNATION OR A DISASTER
4 EMERGENCY PROCLAMATION DUE TO DROUGHT, OF FEDERAL WATER
5 INFRASTRUCTURE WITH SUCH APPLICANTS.

6 **SECTION 4.** 37-86-104, Colorado Revised Statutes, is amended
7 to read:

8 **37-86-104. Condemnation of right-of-way.** (1) Upon the refusal
9 of owners of tracts of land through which said right-of-way is proposed
10 to run, to allow passage through their property, the person desiring such
11 right-of-way may proceed to condemn and take same under the provisions
12 of articles 1 to 7 of title 38, C.R.S., concerning eminent domain.

13 (2) STATE AGENCIES SHALL, TO THE MAXIMUM EXTENT
14 PRACTICABLE, COOPERATE WITH PERSONS DESIRING A RIGHT-OF-WAY
15 PURSUANT TO THIS ARTICLE IN ALLOWING PASSAGE THROUGH STATE
16 PROPERTY, INCLUDING BY CONDUCTING GOOD FAITH NEGOTIATIONS TO
17 ESTABLISH THE MARKET VALUE OF SUCH RIGHT-OF-WAY IN AN ATTEMPT TO
18 AVOID EMINENT DOMAIN PROCEEDINGS.

19 **SECTION 5.** 37-87-101 (1), Colorado Revised Statutes, is
20 amended to read:

21 **37-87-101. Storage of water.** (1) (a) The right to store water of
22 a natural stream for later application to beneficial use is recognized as a
23 right of appropriation in order of priority under the Colorado constitution.
24 No water storage facility may be operated in such a manner as to cause
25 material injury to the senior appropriative rights of others. Acquisition of
26 those interests in real property reasonably necessary for the construction,
27 maintenance, or operation of any water storage reservoir, together with

1 inlet, outlet, or spillway structures or other facilities necessary to make
2 such reservoir effective to accomplish the beneficial use or uses of water
3 stored or to be stored therein, may be secured under the laws of eminent
4 domain.

5 (b) STATE AGENCIES SHALL, TO THE MAXIMUM EXTENT
6 PRACTICABLE, COOPERATE WITH PERSONS DESIRING TO ACQUIRE REAL
7 PROPERTY INTERESTS PURSUANT TO THIS SUBSECTION (1) IN THE
8 ACQUISITION OF SUCH INTERESTS, INCLUDING BY CONDUCTING GOOD FAITH
9 NEGOTIATIONS TO ESTABLISH THE MARKET VALUE OF SUCH REAL
10 PROPERTY INTERESTS IN AN ATTEMPT TO AVOID EMINENT DOMAIN
11 PROCEEDINGS.

12 **SECTION 6.** 37-60-121, Colorado Revised Statutes, is amended
13 BY THE ADDITION OF A NEW SUBSECTION to read:

14 **37-60-121. Colorado water conservation board construction**
15 **fund - creation of - nature of fund - funds for investigations -**
16 **contributions - use for augmenting the general fund - funds created.**

17 (9) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION TO THE
18 CONTRARY, THE BOARD MAY EXPEND UP TO THREE MILLION DOLLARS
19 FROM THE COLORADO WATER CONSERVATION BOARD CONSTRUCTION
20 FUND TO CONDUCT THE STATEWIDE WATER SUPPLY INITIATIVE AS
21 APPROVED BY THE BOARD AT ITS SEPTEMBER 2002 MEETING, AS AMENDED.

22 **SECTION 7.** 37-60-126 (4) (g), Colorado Revised Statutes, is
23 amended to read:

24 **37-60-126. Water use efficiency - urban water use efficiency**
25 **programs - relationship to state assistance for water facilities.** (4) In
26 developing a plan pursuant to subsection (2) of this section, each covered
27 entity shall consider at least the following water-saving measures:

1 (g) (I) Water rate structures AND BILLING SYSTEMS designed to
2 encourage water use efficiency in a fiscally responsible manner;

3 (II) THE DEPARTMENT OF LOCAL AFFAIRS SHALL PROVIDE
4 TECHNICAL ASSISTANCE TO COVERED ENTITIES THAT ARE LOCAL
5 GOVERNMENTS TO IMPLEMENT WATER BILLING SYSTEMS THAT SHOW
6 CUSTOMER WATER USAGE AND THAT IMPLEMENT TIERED BILLING SYSTEMS;

7 **SECTION 8. Safety clause.** The general assembly hereby finds,
8 determines, and declares that this act is necessary for the immediate
9 preservation of the public peace, health, and safety.