

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

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 03-0218.01 Thomas Morris

HOUSE BILL 03-1001

HOUSE SPONSORSHIP

Hoppe,

SENATE SPONSORSHIP

Johnson S.,

House Committees

Senate Committees

Agriculture, Livestock, & Natural Resources

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.

HOUSE
Amended 2nd Reading
March 3, 2003

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.

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

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

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

1 SHARE THE SAME GOVERNING BODY.

2 **SECTION 2.** 37-86-104, Colorado Revised Statutes, is amended
3 to read:

4 **37-86-104. Condemnation of right-of-way.** (1) Upon the refusal
5 of owners of tracts of land through which said right-of-way is proposed
6 to run, to allow passage through their property, the person desiring such
7 right-of-way may proceed to condemn and take same under the provisions
8 of articles 1 to 7 of title 38, C.R.S., concerning eminent domain.

9 (2) STATE AGENCIES SHALL, TO THE MAXIMUM EXTENT
10 PRACTICABLE, COOPERATE WITH PERSONS DESIRING A RIGHT-OF-WAY FOR
11 WATER CONVEYANCE STRUCTURES.

12 **SECTION 3.** 37-87-101 (1), Colorado Revised Statutes, is
13 amended to read:

14 **37-87-101. Storage of water.** (1) (a) The right to store water of
15 a natural stream for later application to beneficial use is recognized as a
16 right of appropriation in order of priority under the Colorado constitution.
17 No water storage facility may be operated in such a manner as to cause
18 material injury to the senior appropriative rights of others. Acquisition
19 of those interests in real property reasonably necessary for the
20 construction, maintenance, or operation of any water storage reservoir,
21 together with inlet, outlet, or spillway structures or other facilities
22 necessary to make such reservoir effective to accomplish the beneficial
23 use or uses of water stored or to be stored therein, may be secured under
24 the laws of eminent domain.

25 (b) STATE AGENCIES SHALL, TO THE MAXIMUM EXTENT
26 PRACTICABLE, COOPERATE WITH PERSONS DESIRING TO ACQUIRE REAL
27 PROPERTY FOR WATER STORAGE STRUCTURES.

1 **SECTION 4.** 37-60-126 (4) (g), Colorado Revised Statutes, is
2 amended, and the said 37-60-126 is further amended BY THE
3 ADDITION OF A NEW SUBSECTION, to read:

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

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

10 (II) THE DEPARTMENT OF LOCAL AFFAIRS MAY PROVIDE TECHNICAL
11 ASSISTANCE TO COVERED ENTITIES THAT ARE LOCAL GOVERNMENTS TO
12 IMPLEMENT WATER BILLING SYSTEMS THAT SHOW CUSTOMER WATER
13 USAGE AND THAT IMPLEMENT TIERED BILLING SYSTEMS;

14 (11) (a) ON AND AFTER THE EFFECTIVE DATE OF THIS SUBSECTION
15 (11), ANY NEW RESTRICTIVE COVENANT THAT PROHIBITS OR LIMITS THE
16 INSTALLATION OR USE OF DROUGHT-TOLERANT VEGETATIVE LANDSCAPES
17 IS PROHIBITED.

18 (b) AS USED IN THIS SUBSECTION (11), "RESTRICTIVE COVENANT"
19 MEANS ANY COVENANT, RESTRICTION, OR CONDITION APPLICABLE TO REAL
20 PROPERTY FOR THE PURPOSE OF CONTROLLING LAND USE, BUT DOES NOT
21 INCLUDE ANY COVENANT, RESTRICTION, OR CONDITION IMPOSED ON SUCH
22 REAL PROPERTY BY ANY GOVERNMENTAL ENTITY.

23 **SECTION 5.** The introductory portion to 37-92-308 (4) (a),
24 37-92-308 (4) (a) (II), (4) (a) (III), (4) (a) (IV), the introductory portion
25 to 37-92-308 (5) (a), and 37-92-308 (5) (a) (IV) and (5) (b), are amended,
26 and the said 37-92-308 is further amended BY THE ADDITION OF A
27 NEW SUBSECTION, to read:

1 **37-92-308. Substitute water supply plans - special procedures**
2 **for review.** (4) (a) Beginning January 1, 2002, if an application for
3 approval of a plan for augmentation OR CHANGE OF WATER RIGHT has
4 been filed with a water court and the court has not issued a decree, the
5 state engineer may approve the temporary operation of such plan OR
6 CHANGE OF WATER RIGHT as a substitute water supply plan if the
7 following conditions are met:

8 (II) The applicant has provided written notice of the request for
9 approval of the substitute water supply plan by first-class mail or
10 electronic mail to all parties who have filed a statement of opposition to
11 the plan in water court and proof of such notice is filed with the state
12 engineer, OR, IF THE DEADLINE FOR FILING A STATEMENT OF OPPOSITION
13 HAS NOT PASSED, THE APPLICANT HAS PROVIDED WRITTEN NOTICE OF THE
14 REQUEST FOR APPROVAL OF THE SUBSTITUTE WATER SUPPLY PLAN BY
15 FIRST-CLASS MAIL OR ELECTRONIC MAIL TO ALL PARTIES WHO HAVE
16 SUBSCRIBED TO THE SUBSTITUTE WATER SUPPLY PLAN NOTIFICATION LIST
17 FOR THE WATER DIVISION IN WHICH THE PROPOSED PLAN IS LOCATED AND
18 PROOF OF SUCH NOTICE IS FILED WITH THE STATE ENGINEER;

19 (III) The state engineer has given ~~the opposers in the water court~~
20 ~~case~~ THOSE TO WHOM NOTICE WAS PROVIDED thirty days after the date of
21 mailing of such notice to file comments on the substitute water supply
22 plan. Such comments shall include any claim of injury, ~~or~~ any terms and
23 conditions that should be imposed upon the plan to prevent injury to an
24 opposer's water rights or decreed conditional water rights, and any other
25 information an opposer wishes the state engineer to consider in reviewing
26 the substitute water supply plan request.

1 (IV) The state engineer, after consideration of the comments from
2 ~~any water court opposer~~ RECEIVED, has determined that the operation and
3 administration of such plan will replace all out-of-priority depletions in
4 time, location, and amount ~~in a manner that will~~ AND WILL OTHERWISE
5 prevent injury to other water rights and decreed conditional water rights,
6 including water quality and continuity to meet the requirements of use to
7 which the senior appropriation has normally been put, pursuant to section
8 37-80-120 (3), and will not impair compliance with any interstate
9 compacts. The state engineer shall impose such terms and conditions as
10 are necessary to ensure that these standards are met. In making such
11 determinations, the state engineer shall not be required to hold any formal
12 hearings or conduct any other formal proceedings, but may conduct a
13 hearing or formal proceeding if the state engineer finds it necessary to
14 address the issues. A SUBSTITUTE WATER SUPPLY PLAN APPROVED
15 PURSUANT TO THIS SUBSECTION (4) MAY NOT APPROVE THE MOVEMENT OF
16 WATER OR WATER RIGHTS FROM ONE WATER DIVISION TO ANOTHER WATER
17 DIVISION THAT ARE NOT DECREED FOR USE IN SUCH OTHER DIVISION.

18 (5) (a) Beginning January 1, 2002, for new water use plans
19 involving out-of-priority diversions OR A CHANGE OF WATER RIGHT, if no
20 application for approval of a plan for augmentation OR A CHANGE OF
21 WATER RIGHT has been filed with a water court and the water use PLAN OR
22 CHANGE proposed and the depletions associated with such water use PLAN
23 OR CHANGE will be for a limited duration not to exceed five years, the
24 state engineer may approve such plan OR CHANGE as a substitute water
25 supply plan if the following conditions are met:

26 (IV) The state engineer, after consideration of the comments from
27 ~~any opposer~~ RECEIVED, has determined that the operation and

1 administration of such plan will replace all out-of-priority depletions in
2 time, location, and amount ~~in a manner that will~~ AND WILL OTHERWISE
3 prevent injury to other water rights and decreed conditional water rights,
4 including water quality and continuity to meet the requirements of use to
5 which the senior appropriation has normally been put, pursuant to section
6 37-80-120 (3) and will not impair compliance with any interstate
7 compacts. The state engineer shall impose such terms and conditions as
8 are necessary to ensure that these standards are met. In making the
9 determinations specified in this subparagraph (IV), the state engineer
10 shall not be required to hold any formal hearings or conduct any other
11 formal proceedings, but may conduct a hearing or formal proceeding if
12 the state engineer finds it necessary to address the issues. A SUBSTITUTE
13 WATER SUPPLY PLAN APPROVED PURSUANT TO THIS SUBSECTION (5) MAY
14 NOT APPROVE THE MOVEMENT OF WATER OR WATER RIGHTS FROM ONE
15 WATER DIVISION TO ANOTHER WATER DIVISION THAT ARE NOT DECREED
16 FOR USE IN SUCH OTHER DIVISION.

17 (b) A substitute water supply plan approved pursuant to this
18 subsection (5) shall not be approved for a period of more than one year;
19 except that an applicant may request the renewal of a plan by repeating
20 the application process described in this subsection (5). However, in no
21 event shall any plan approved pursuant to this subsection (5) be
22 APPROVED OR renewed ~~beyond~~ FOR MORE THAN five years. ~~after the initial~~
23 ~~date of approval.~~

24 (9) IF AN ENTITY PAYS FOR REPAIRS, MAINTENANCE, DREDGING, OR
25 OTHER IMPROVEMENTS, INCLUDING CAPITAL IMPROVEMENTS, THAT ARE
26 NECESSARY AND EFFECTIVE IN REMOVING A STORAGE RESTRICTION
27 IMPOSED BY THE STATE ENGINEER PURSUANT TO SECTION 37-87-107 ON A

1 DAM OR RESERVOIR OWNED BY A THIRD PARTY, SUCH ENTITY MAY APPLY
2 TO THE STATE ENGINEER PURSUANT TO SUBSECTION (5) OF THIS SECTION
3 FOR APPROVAL OF THE USE OF SOME OR ALL OF SUCH NEWLY
4 UNRESTRICTED STORAGE AS A SUBSTITUTE WATER SUPPLY PLAN, IF THE
5 ENTITY HAS A WRITTEN AGREEMENT CONCERNING SUCH USE WITH ALL THE
6 OWNERS OF THE DAM OR RESERVOIR AND THE ASSOCIATED WATER RIGHTS.

7 **SECTION 6. 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.