

First Regular Session
Sixty-fourth General Assembly
STATE OF COLORADO

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 03-0218.01 Thomas Morris

HOUSE BILL 03-1001

HOUSE SPONSORSHIP

Hoppe,

SENATE SPONSORSHIP

Johnson S.,

House Committees

Agriculture, Livestock, & Natural Resources

Senate Committees

State Veterans & Military Affairs

SENATE
Amended 3rd Reading
April 4, 2003

A BILL FOR AN ACT

101 **CONCERNING INCREASED FLEXIBILITY IN THE USE OF WATER**
102 **RESOURCES, WITHOUT REGARD TO WATER DIVISION**
103 **BOUNDARIES.**

SENATE
Amended 2nd Reading
March 31, 2003

Bill Summary

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

HOUSE
3rd Reading Unamended
March 4, 2003

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

HOUSE
Amended 2nd Reading
March 3, 2003

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.

restriction imposed by the state engineer to apply for approval of the use 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 THAT ARE JOINTLY

1 SPONSORED BY TWO OR MORE GOVERNMENTAL AGENCIES THAT DO NOT
2 SHARE THE SAME GOVERNING BODY.

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

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

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

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

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

26 (b) STATE AGENCIES SHALL, TO THE MAXIMUM EXTENT
27 PRACTICABLE, COOPERATE WITH PERSONS DESIRING TO ACQUIRE REAL

1 PROPERTY FOR WATER STORAGE STRUCTURES.

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

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

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

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

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

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

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

1 ADDITION OF A NEW SUBSECTION, to read:

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

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

20 (III) The state engineer has given ~~the opposers in the water court~~
21 ~~case~~ THOSE TO WHOM NOTICE WAS PROVIDED thirty days after the date of
22 mailing of such notice to file comments on the substitute water supply
23 plan. Such comments shall include any claim of injury, ~~or~~ any terms and
24 conditions that should be imposed upon the plan to prevent injury to an
25 opposer's water rights or decreed conditional water rights, and any other
26 information an opposer wishes the state engineer to consider in reviewing
27 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.

15 (b) A substitute water supply plan approved pursuant to this
16 subsection (4) shall not be approved for a period of more than one year;
17 except that an applicant may request the renewal of a plan by repeating
18 the application process described in this subsection (4). If an applicant
19 requests a renewal of a plan that would extend the plan past three years
20 from the initial date of approval, the applicant shall demonstrate to the
21 state engineer that the delay in obtaining a water court decree is
22 justifiable and that not being able to continue operating under a substitute
23 water supply plan until a decree is entered will cause undue hardship to
24 the applicant. If an applicant requests renewal of a plan that would
25 extend the plan past five years from the initial date of approval, the
26 applicant shall demonstrate to the water judge in the applicable water
27 division that the delay in obtaining a decree has been justifiable and that

1 not being able to continue operating under a substitute water supply plan
2 until a decree is entered will cause undue hardship to the applicant.
3 APPROVAL OF A PLAN PURSUANT TO SUBSECTION (5) OF THIS SECTION
4 SHALL BE DEEMED TO BE APPROVAL UNDER THIS SUBSECTION (4) FOR
5 PURPOSES OF CALCULATING THE NUMBER OF YEARS SINCE THE INITIAL
6 DATE OF APPROVAL.

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

15 (IV) The state engineer, after consideration of the comments from
16 ~~any opposer~~ RECEIVED, has determined that the operation and
17 administration of such plan will replace all out-of-priority depletions in
18 time, location, and amount ~~in a manner that will~~ AND WILL OTHERWISE
19 prevent injury to other water rights and decreed conditional water rights,
20 including water quality and continuity to meet the requirements of use to
21 which the senior appropriation has normally been put, pursuant to section
22 37-80-120 (3) and will not impair compliance with any interstate
23 compacts. The state engineer shall impose such terms and conditions as
24 are necessary to ensure that these standards are met. In making the
25 determinations specified in this subparagraph (IV), the state engineer
26 shall not be required to hold any formal hearings or conduct any other
27 formal proceedings, but may conduct a hearing or formal proceeding if

1 the state engineer finds it necessary to address the issues.

2 (b) A substitute water supply plan approved pursuant to this
3 subsection (5) shall not be approved for a period of more than one year;
4 except that an applicant may request the renewal of a plan by repeating
5 the application process described in this subsection (5). However, in no
6 event shall any plan approved pursuant to this subsection (5) OR ANY
7 WATER USE INCLUDED IN SUCH PLAN be APPROVED OR renewed ~~beyond~~
8 ~~FOR MORE THAN~~ five years. ~~after the initial date of approval.~~

9 (9) IF AN ENTITY PAYS FOR REPAIRS, MAINTENANCE, DREDGING, OR
10 OTHER IMPROVEMENTS, INCLUDING CAPITAL IMPROVEMENTS, THAT ARE
11 NECESSARY AND EFFECTIVE IN REMOVING A STORAGE RESTRICTION
12 IMPOSED BY THE STATE ENGINEER PURSUANT TO SECTION 37-87-107 ON A
13 DAM OR RESERVOIR OWNED BY A THIRD PARTY, SUCH ENTITY MAY APPLY
14 TO THE STATE ENGINEER PURSUANT TO SUBSECTION (5) OF THIS SECTION
15 FOR APPROVAL OF THE USE OF SOME OR ALL OF SUCH NEWLY
16 UNRESTRICTED STORAGE AS A SUBSTITUTE WATER SUPPLY PLAN, IF THE
17 ENTITY HAS A WRITTEN AGREEMENT CONCERNING SUCH USE WITH ALL THE
18 OWNERS OF THE DAM OR RESERVOIR AND THE ASSOCIATED WATER RIGHTS.

19 **SECTION 6. Safety clause.** The general assembly hereby finds,
20 determines, and declares that this act is necessary for the immediate
21 preservation of the public peace, health, and safety.