

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

**ENGROSSED**

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

LLS NO. 05-0445.01 Karen Woods

**SENATE BILL 05-062**

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**SENATE SPONSORSHIP**

**Taylor,**

**HOUSE SPONSORSHIP**

**(None),**

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**Senate Committees**

Agriculture, Natural Resources & Energy

**House Committees**

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**A BILL FOR AN ACT**

101 **CONCERNING ADDITIONAL REQUIREMENTS APPLICABLE TO THE**  
102 **ADJUDICATION OF A RECREATIONAL IN-CHANNEL DIVERSION.**

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**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 conservation board to make written findings on an application for a recreational in-channel diversion concerning whether the recreational in-channel diversion will affect future upstream water storage and water development projects.

Adds "control structure" to the definition of "diversion" and further defines "control structure".

Defines "recreational in-channel use" to mean kayaking, but not inner tubing, swimming, fishing, boating, rafting, or other water-related

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.*

SENATE  
Amended 2nd Reading  
February 28, 2005

recreational uses.

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

2 SECTION 1. 37-92-103 (4), (7), and (10.3), Colorado Revised  
3 Statutes, are amended, and the said 37-92-103 is further amended BY  
4 THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to  
5 read:

6 37-92-103. Definitions. As used in this article, unless the context  
7 otherwise requires:

8 (4) "Beneficial use" is the use of that amount of water that is  
9 reasonable and appropriate under reasonably efficient practices to  
10 accomplish without waste the purpose for which the appropriation is  
11 lawfully made and, without limiting the generality of the foregoing,  
12 includes the impoundment of water for recreational purposes, including  
13 fishery or wildlife, and also includes the diversion of water by a county,  
14 municipality, city and county, water district, water and sanitation district,  
15 water conservation district, or water conservancy district for recreational  
16 in-channel diversion purposes. For the benefit and enjoyment of present  
17 and future generations, "beneficial use" shall also include the  
18 appropriation by the state of Colorado in the manner prescribed by law  
19 of such minimum flows between specific points or levels for and on  
20 natural streams and lakes as are required to preserve the natural  
21 environment to a reasonable degree. WATER DIVERTED FOR A  
22 RECREATIONAL IN-CHANNEL DIVERSION IN EXCESS OF THREE HUNDRED  
23 FIFTY CUBIC FEET PER SECOND SHALL CONCLUSIVELY BE DEEMED TO BE  
24 WASTED, AND NOT PLACED TO BENEFICIAL USE; EXCEPT THAT SUCH  
25 LIMITATION SHALL NOT APPLY TO THE ADMINISTRATION OF A WATER RIGHT

1 FOR RECREATIONAL IN-CHANNEL DIVERSION PURPOSES WHOSE  
2 APPLICATION WAS FILED PRIOR TO FEBRUARY 17, 2005, UNLESS A CHANGE  
3 TO SUCH WATER RIGHT IS THEREAFTER APPLIED FOR AND DECREED.

4 (6.3) "CONTROL STRUCTURE" MEANS A STRUCTURE CONSISTING OF  
5 FEATURES CONSTRUCTED BY HUMANS THAT INCLUDES SIDES AND A  
6 BOTTOM, AND IS USED TO CONTROL WATER IN ITS NATURAL COURSE OR  
7 LOCATION FOR RECREATIONAL IN-CHANNEL DIVERSIONS. AN OWNER OF  
8 A RECREATIONAL IN-CHANNEL DIVERSION MAY PLACE A CALL ON THE  
9 RIVER ONLY IF THE CONTROL STRUCTURE IS ABLE TO PHYSICALLY  
10 CONTROL THE QUANTITY OF WATER SUBJECT TO THE CALL AT THE  
11 LOCATION OF SUCH CONTROL STRUCTURE. CONCENTRATION OF RIVER  
12 FLOW BY A CONTROL STRUCTURE MEETING THIS DEFINITION CONSTITUTES  
13 CONTROL OF WATER FOR A RECREATIONAL IN-CHANNEL DIVERSION.

14 (7) "Diversion" or "divert" means removing water from its natural  
15 course or location, or controlling water in its natural course or location,  
16 by means of a ditch, canal, flume, reservoir, bypass, pipeline, conduit,  
17 well, pump, or other structure or device; except that only a county,  
18 municipality, city and county, water district, water and sanitation district,  
19 water conservation district, or water conservancy district may control  
20 water, WITH THE USE OF A CONTROL STRUCTURE, in its natural course or  
21 location for recreational in-channel diversions. This does not apply to  
22 applications filed prior to January 1, 2001.

23 (10.2) "RECREATIONAL IN-CHANNEL DIVERSION" MEANS THE  
24 MINIMUM STREAM FLOW AS IT IS DIVERTED, CAPTURED, CONTROLLED, AND  
25 PLACED TO BENEFICIAL USE BETWEEN SPECIFIC POINTS DEFINED BY  
26 PHYSICAL CONTROL STRUCTURES PURSUANT TO AN APPLICATION FILED BY  
27 A COUNTY, MUNICIPALITY, CITY AND COUNTY, WATER DISTRICT, WATER

1 AND SANITATION DISTRICT, WATER CONSERVATION DISTRICT, OR WATER  
2 CONSERVANCY DISTRICT FOR RECREATIONAL IN-CHANNEL USE IN AND ON  
3 THE WATER.

4 (10.3) "Recreational in-channel diversion" means the minimum  
5 stream flow as it is diverted, captured, controlled, and placed to beneficial  
6 use between specific points defined by physical control structures  
7 pursuant to an application filed by a county, municipality, city and  
8 county, water district, water and sanitation district, water conservation  
9 district, or water conservancy district for a reasonable recreation  
10 experience in and on the water. "RECREATIONAL IN-CHANNEL USE"  
11 MEANS KAYAKING, CANOEING, INNER TUBING, BOATING, AND RAFTING.

12 **SECTION 3. Applicability.** This act shall apply to water right  
13 applications which are filed on or after February 17, 2005. It shall not  
14 apply to diligence applications or applications to make absolute  
15 conditional water rights for a recreational in-channel diversion whose  
16 original application was filed prior to February 17, 2005.

17 **SECTION 4. Safety clause.** The general assembly hereby finds,  
18 determines, and declares that this act is necessary for the immediate  
19 preservation of the public peace, health, and safety.