

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

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 09-0255.01 Esther van Mourik

HOUSE BILL 09-1067

HOUSE SPONSORSHIP

Pommer,

SENATE SPONSORSHIP

White,

House Committees

Agriculture, Livestock, & Natural Resources
Finance
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE ESTABLISHMENT OF AN INCENTIVE FOR THE**
102 **DONATION OF WATER RIGHTS TO THE COLORADO WATER**
103 **CONSERVATION BOARD FOR USE AS INSTREAM FLOW RIGHTS.**

Bill Summary

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

For income tax years commencing on or after January 1, 2009, but prior to January 1, 2015, establishes an instream flow incentive tax credit. Specifies that the Colorado water conservation board will allocate the credits by issuing credit certificates to owners of water rights who donate those water rights to the board for use as instream flow rights. Specifies the maximum value of the credit, and establishes that the value of the

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.

water rights must be determined by qualified appraisal. Limits the aggregate sum of credits allocated on an annual basis to a specified amount.

Allows the credit to be carried forward to other income tax years for a maximum of 6 years.

Establishes the transferability of the credit.

Specifies that the credit will not be allowed in a particular income tax year if the revenue estimate prepared by the staff of the legislative council indicates that the amount of the total general fund revenues will not be sufficient to maintain the limit on appropriations specified in statute.

Grants the department of revenue rule-making authority.

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

2 **SECTION 1.** Part 5 of article 22 of title 39, Colorado Revised
3 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
4 read:

5 **39-22-531. Instream flow incentive tax credit for water rights**
6 **holders - rules - definitions - repeal.** (1) AS USED IN THIS SECTION,
7 UNLESS THE CONTEXT OTHERWISE REQUIRES:

8 (a) "BOARD" MEANS THE COLORADO WATER CONSERVATION
9 BOARD CREATED IN SECTION 37-60-102, C.R.S.

10 (b) "CREDIT CERTIFICATE" MEANS A STATEMENT ISSUED BY THE
11 BOARD CERTIFYING THAT A GIVEN WATER RIGHT DONATION QUALIFIES FOR
12 THE CREDIT AUTHORIZED IN THIS SECTION AND SPECIFYING THE AMOUNT
13 OF THE CREDIT ALLOWED.

14 (c) "DEPARTMENT" MEANS THE DEPARTMENT OF REVENUE.

15 (d) "OWNER OF A WATER RIGHT" MEANS A TAXPAYER WHO OWNS
16 A WATER RIGHT.

17 (e) "PERSON" MEANS ANY INDIVIDUAL, FIRM, CORPORATION,
18 PARTNERSHIP, LIMITED LIABILITY COMPANY, JOINT VENTURE, ESTATE,
19 TRUST, OR GROUP OR COMBINATION ACTING AS A UNIT THAT DONATES

1 DURING THE TAXABLE YEAR ALL OR PART OF A WATER RIGHT TO THE
2 BOARD WITH THE INTENT THAT SUCH RIGHT BE CONVERTED TO AN
3 INSTREAM FLOW RIGHT PURSUANT TO SECTION 37-92-102 (3), C.R.S.

4 (f) "TAXPAYER" HAS THE SAME MEANING AS SET FORTH IN SECTION
5 39-21-101 (4).

6 (g) "WATER RIGHT" MEANS A RIGHT TO USE IN ACCORDANCE WITH
7 ITS PRIORITY A CERTAIN PORTION OF THE WATERS OF THE STATE BY
8 REASON OF THE APPROPRIATION OF THE SAME.

9 (h) "WATERS OF THE STATE" MEANS ALL SURFACE AND
10 UNDERGROUND WATER IN OR TRIBUTARY TO ALL NATURAL STREAMS
11 WITHIN THE STATE OF COLORADO, EXCEPT WATERS REFERRED TO IN
12 SECTION 37-90-103 (6), C.R.S.

13 (2) (a) EXCEPT AS PROVIDED IN SUBSECTION (6) OF THIS SECTION,
14 FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2009,
15 BUT PRIOR TO JANUARY 1, 2015, THERE MAY, AT THE DISCRETION OF THE
16 BOARD, BE ALLOWED TO ANY PERSON AN INSTREAM FLOW INCENTIVE TAX
17 CREDIT WITH RESPECT TO THE INCOME TAXES IMPOSED BY THIS ARTICLE
18 IN THE AMOUNT DETERMINED BY THE BOARD PURSUANT TO PARAGRAPH
19 (b) OF THIS SUBSECTION (2).

20 (b) THE BOARD SHALL HAVE THE EXCLUSIVE AUTHORITY TO
21 APPROVE ANY INSTREAM FLOW INCENTIVE TAX CREDITS ALLOWED
22 PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2). THE CREDIT SHALL
23 ONLY BE AVAILABLE FOR PERMANENT TRANSFERS OF WATER RIGHTS
24 ACQUIRED PURSUANT TO THE BOARD'S PUBLIC REVIEW PROCESS SPECIFIED
25 IN 2 CCR 408-2, PARAGRAPHS 6m. AND 11., AND UPON A FINDING BY THE
26 BOARD, IN ACCORDANCE WITH SECTION 37-92-102 (3), C.R.S., THAT THE
27 PROPOSED DONATION WILL PRESERVE OR IMPROVE THE ENVIRONMENT TO

1 A REASONABLE DEGREE. THE VALUE OF A PROPOSED DONATION SHALL BE
2 DETERMINED BY THE BOARD WITH REFERENCE TO AN APPRAISAL AS
3 SPECIFIED IN PARAGRAPH (c) OF THIS SUBSECTION (2) AND BASED ON THE
4 DECREED USE OF SUCH RIGHT. THE BOARD SHALL APPROVE A CREDIT BY
5 ISSUING TO THE PERSON A CREDIT CERTIFICATE ON OR BEFORE SEPTEMBER
6 1 OF THE TAX YEAR IN WHICH THE DONATION IS ACCEPTED. THE
7 CREDIT SHALL BE IN AN AMOUNT DETERMINED BY THE BOARD, SUBJECT TO
8 THE FOLLOWING GUIDELINES:

9 (I) THE AMOUNT OF THE CREDIT AUTHORIZED IN THIS SECTION
10 SHALL BE UP TO ONE-HALF OF THE VALUE OF THE WATER RIGHT
11 DONATED TO THE BOARD.

12 (II) THE AMOUNT OF THE CREDIT SHALL NOT INCLUDE THE VALUE
13 OF ANY PORTION OF A WATER RIGHT LOCATED IN ANOTHER STATE OR
14 PREVIOUSLY ENCUMBERED BY A CONSERVATION EASEMENT, PRIOR
15 APPROPRIATION, OR USE RESTRICTION.

16 (c) THE APPRAISAL OF A WATER RIGHT FOR WHICH A CREDIT
17 CERTIFICATE IS ISSUED SHALL BE A QUALIFIED APPRAISAL FROM A
18 QUALIFIED APPRAISER, AS THOSE TERMS ARE DEFINED IN SECTION 170 (f)
19 (11) OF THE INTERNAL REVENUE CODE. THE APPRAISAL SHALL BE IN
20 CONFORMANCE WITH THE UNIFORM STANDARDS FOR PROFESSIONAL
21 APPRAISAL PRACTICE PROMULGATED BY THE APPRAISAL STANDARDS
22 BOARD. THE APPRAISER SHALL HOLD A VALID LICENSE AS A CERTIFIED
23 GENERAL APPRAISER IN ACCORDANCE WITH THE PROVISIONS OF PART 7 OF
24 ARTICLE 61 OF TITLE 12, C.R.S. IF THERE IS A DETERMINATION THAT AN
25 APPRAISAL SUBMITTED IN CONNECTION WITH A CLAIM FOR A CREDIT
26 PURSUANT TO THIS SECTION IS A SUBSTANTIAL OR GROSS VALUATION
27 MISSTATEMENT AS SUCH MISSTATEMENTS ARE DEFINED IN SECTION 1219

1 OF THE FEDERAL "PENSION PROTECTION ACT OF 2006", PUB.L. 109-280,
2 THE DEPARTMENT OR BOARD SHALL SUBMIT A COMPLAINT REGARDING THE
3 OVERSTATEMENT TO THE BOARD OF REAL ESTATE APPRAISERS FOR
4 DISCIPLINARY ACTION IN ACCORDANCE WITH THE PROVISIONS OF PART 7
5 OF ARTICLE 61 OF TITLE 12, C.R.S.

6 (d) IN NO EVENT SHALL THE BOARD ISSUE A CREDIT CERTIFICATE
7 IF THE AGGREGATE SUM OF CREDITS APPROVED BY THE BOARD PURSUANT
8 TO THIS SECTION AND NOT YET ELIGIBLE TO BE TAKEN AS DESCRIBED IN
9 SUBSECTION (6) OF THIS SECTION EXCEEDS TWO MILLION DOLLARS.

10 (e) NO LATER THAN JANUARY 30, 2010, AND NO LATER THAN
11 JANUARY 30 EACH YEAR THEREAFTER, THE BOARD SHALL REPORT TO THE
12 FINANCE COMMITTEES OF THE SENATE AND HOUSE OF REPRESENTATIVES,
13 THE AGRICULTURE AND NATURAL RESOURCES COMMITTEE OF THE SENATE,
14 AND THE AGRICULTURE, LIVESTOCK, AND NATURAL RESOURCES
15 COMMITTEE OF THE HOUSE OF REPRESENTATIVES, OR ANY SUCCESSOR
16 COMMITTEES, REGARDING ALL INSTREAM FLOW RIGHTS ACQUIRED AND
17 TAX CREDIT CERTIFICATES ISSUED PURSUANT TO THIS SECTION.

18 (3) IF A PERSON RECEIVING A CREDIT AUTHORIZED IN THIS SECTION
19 IS A PARTNERSHIP, LIMITED LIABILITY COMPANY, S CORPORATION, OR
20 SIMILAR PASS-THROUGH ENTITY, THE PERSON MAY ALLOCATE THE CREDIT
21 AMONG ITS PARTNERS, SHAREHOLDERS, MEMBERS, OR OTHER
22 CONSTITUENT TAXPAYERS IN ANY MANNER AGREED TO BY SUCH PERSONS.
23 THE PERSON SHALL CERTIFY TO THE BOARD AND THE DEPARTMENT THE
24 AMOUNT OF CREDIT ALLOCATED TO EACH CONSTITUENT TAXPAYER, AND
25 THE BOARD SHALL ISSUE CREDIT CERTIFICATES IN THE APPROPRIATE
26 AMOUNTS TO EACH PARTNER, SHAREHOLDER, MEMBER, OR OTHER
27 CONSTITUENT TAXPAYER. EACH CONSTITUENT TAXPAYER SHALL BE

1 ALLOWED TO CLAIM SUCH AMOUNT SUBJECT TO ANY RESTRICTIONS SET
2 FORTH IN THIS SECTION.

3 (4) [REDACTED] IF A CREDIT AUTHORIZED IN THIS SECTION APPROVED BY
4 THE BOARD EXCEEDS THE INCOME TAX DUE ON THE INCOME OF THE
5 TAXPAYER FOR THE TAXABLE YEAR, THE EXCESS CREDIT MAY NOT BE
6 CARRIED FORWARD AND SHALL BE REFUNDED TO THE TAXPAYER.

7 [REDACTED]

8 (5) [REDACTED] NO LATER THAN NOVEMBER 30, 2009, AND NO LATER
9 THAN NOVEMBER 30 OF EACH YEAR THEREAFTER, THE BOARD SHALL
10 PROVIDE THE DEPARTMENT AN ELECTRONIC REPORT OF THE TAXPAYERS
11 RECEIVING A CREDIT FOR THAT INCOME TAX YEAR THAT INCLUDES THE
12 FOLLOWING INFORMATION:

13 (a) THE TAXPAYER'S NAME;

14 (b) THE TAXPAYER'S COLORADO ACCOUNT NUMBER OR SOCIAL
15 SECURITY NUMBER;

16 (c) THE AMOUNT OF THE CREDIT ALLOCATED; AND

17 (d) THE ASSOCIATED PASS-THROUGH ENTITY NAME AND
18 COLORADO ACCOUNT NUMBER IF THE CREDIT IS ALLOCATED FROM A
19 PASS-THROUGH ENTITY PURSUANT TO SUBSECTION (3) OF THIS SECTION.

20 [REDACTED]

21 (6) IF THE REVENUE ESTIMATE PREPARED BY THE STAFF OF THE
22 LEGISLATIVE COUNCIL IN JUNE 2009 AND EACH JUNE THEREAFTER
23 INDICATES THAT THE AMOUNT OF THE TOTAL GENERAL FUND REVENUES
24 FOR THAT PARTICULAR FISCAL YEAR WILL NOT BE SUFFICIENT TO MAINTAIN
25 THE LIMIT ON APPROPRIATIONS SPECIFIED IN SECTION 24-75-201.1 (1),
26 C.R.S., THEN THE CREDIT AUTHORIZED IN THIS SECTION SHALL NOT BE
27 ALLOWED FOR ANY INCOME TAX YEAR COMMENCING DURING THE

1 CALENDAR YEAR IN WHICH THE FORECAST IS PREPARED. THE CREDIT
2 CERTIFICATE SHALL REMAIN VALID FOR THE NEXT TAX YEAR IN WHICH THE
3 REVENUE ESTIMATE PREPARED BY THE STAFF OF THE LEGISLATIVE
4 COUNCIL INDICATES THAT THE AMOUNT OF THE TOTAL GENERAL FUND
5 REVENUES WILL BE SUFFICIENT TO MAINTAIN THE LIMIT ON
6 APPROPRIATIONS SPECIFIED IN SECTION 24-75-201.1 (1), C.R.S.

7 (7) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT MAY
8 PROMULGATE RULES AS MAY BE NECESSARY TO ADMINISTER AND ENFORCE
9 ANY PROVISION OF THIS SECTION. THE RULES SHALL BE PROMULGATED IN
10 ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S., AND SHALL BE
11 INCLUDED IN INCOME TAX FORMS.

12 (8) ANY TAXPAYER WHO OFFSETS A TAX DEFICIENCY WITH A
13 CREDIT THAT IS DISALLOWED PURSUANT TO THIS SECTION SHALL BE LIABLE
14 FOR SUCH TAX DEFICIENCY, INTEREST, AND PENALTIES AS MAY BE
15 SPECIFIED IN THIS ARTICLE OR OTHERWISE PROVIDED BY LAW.

16 (9) THIS SECTION IS REPEALED, EFFECTIVE DECEMBER 31, 2024.

17 **SECTION 2. Act subject to petition - effective date.** This act
18 shall take effect at 12:01 a.m. on the day following the expiration of the
19 ninety-day period after final adjournment of the general assembly that is
20 allowed for submitting a referendum petition pursuant to article V,
21 section 1 (3) of the state constitution, (August 4, 2009, if adjournment
22 sine die is on May 6, 2009); except that, if a referendum petition is filed
23 against this act or an item, section, or part of this act within such period,
24 then the act, item, section, or part, if approved by the people, shall take
25 effect on the date of the official declaration of the vote thereon by
26 proclamation of the governor.