

**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

Agriculture and Natural Resources
Appropriations

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.*

HOUSE
3rd Reading Unamended
April 16, 2009

HOUSE
Amended 2nd Reading
April 15, 2009

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 REASONABLE DEGREE.

2 (c) THE AMOUNT OF A CREDIT AUTHORIZED IN THIS SECTION SHALL
3 BE DETERMINED BY THE BOARD, SUBJECT TO THE FOLLOWING GUIDELINES:

4 (I) THE CREDIT SHALL BE IN AN AMOUNT EQUAL TO OR LESS THAN
5 ONE-HALF OF THE VALUE OF THE WATER RIGHT PROPOSED TO BE DONATED
6 TO THE BOARD;

7 (II) THE VALUE OF THE WATER RIGHT SHALL BE DETERMINED BY
8 THE BOARD, IN CONSULTATION WITH THE PROPOSED DONOR. IN
9 DETERMINING THE VALUE OF THE WATER RIGHT, THE BOARD MAY
10 CONSIDER, IN ADDITION TO OTHER FACTORS THE BOARD DEEMS
11 APPROPRIATE, THE FOLLOWING:

12 (A) ANY APPRAISAL OR OTHER DOCUMENTATION SUBMITTED BY
13 THE DONOR;

14 (B) THE SENIORITY, HISTORIC CONSUMPTIVE USE, AND DECREED
15 USE OF THE WATER RIGHT;

16 (C) THE LOCATION OF THE EXISTING POINT OF DIVERSION OF THE
17 WATER RIGHT; AND

18 (D) THE EXTENT TO WHICH AQUATIC AND RIPARIAN HABITAT
19 WOULD BE PRESERVED BY CONVERSION OF THE WATER RIGHT TO AN
20 INSTREAM FLOW.

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

25 (e) NO LATER THAN JANUARY 30, 2010, AND NO LATER THAN
26 JANUARY 30 EACH YEAR THEREAFTER, THE BOARD SHALL REPORT TO THE
27 FINANCE COMMITTEES OF THE SENATE AND HOUSE OF REPRESENTATIVES,

1 THE AGRICULTURE AND NATURAL RESOURCES COMMITTEE OF THE SENATE,
2 AND THE AGRICULTURE, LIVESTOCK, AND NATURAL RESOURCES
3 COMMITTEE OF THE HOUSE OF REPRESENTATIVES, OR ANY SUCCESSOR
4 COMMITTEES, REGARDING ALL INSTREAM FLOW RIGHTS ACQUIRED AND
5 TAX CREDIT CERTIFICATES ISSUED PURSUANT TO THIS SECTION.

6 (3) IF A PERSON RECEIVING A CREDIT AUTHORIZED IN THIS SECTION
7 IS A PARTNERSHIP, LIMITED LIABILITY COMPANY, S CORPORATION, OR
8 SIMILAR PASS-THROUGH ENTITY, THE PERSON MAY ALLOCATE THE CREDIT
9 AMONG ITS PARTNERS, SHAREHOLDERS, MEMBERS, OR OTHER
10 CONSTITUENT TAXPAYERS IN ANY MANNER AGREED TO BY SUCH PERSONS.
11 THE PERSON SHALL CERTIFY TO THE BOARD AND THE DEPARTMENT THE
12 AMOUNT OF CREDIT ALLOCATED TO EACH CONSTITUENT TAXPAYER, AND
13 THE BOARD SHALL ISSUE CREDIT CERTIFICATES IN THE APPROPRIATE
14 AMOUNTS TO EACH PARTNER, SHAREHOLDER, MEMBER, OR OTHER
15 CONSTITUENT TAXPAYER. EACH CONSTITUENT TAXPAYER SHALL BE
16 ALLOWED TO CLAIM SUCH AMOUNT SUBJECT TO ANY RESTRICTIONS SET
17 FORTH IN THIS SECTION.

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

22 [REDACTED]

23 (5) [REDACTED] NO LATER THAN NOVEMBER 30, 2009, AND NO LATER
24 THAN NOVEMBER 30 OF EACH YEAR THEREAFTER, THE BOARD SHALL
25 PROVIDE THE DEPARTMENT AN ELECTRONIC REPORT OF THE TAXPAYERS
26 RECEIVING A CREDIT FOR THAT INCOME TAX YEAR THAT INCLUDES THE
27 FOLLOWING INFORMATION:

- 1 (a) THE TAXPAYER'S NAME;
- 2 (b) THE TAXPAYER'S COLORADO ACCOUNT NUMBER OR SOCIAL
- 3 SECURITY NUMBER;
- 4 (c) THE AMOUNT OF THE CREDIT ALLOCATED; AND
- 5 (d) THE ASSOCIATED PASS-THROUGH ENTITY NAME AND
- 6 COLORADO ACCOUNT NUMBER IF THE CREDIT IS ALLOCATED FROM A
- 7 PASS-THROUGH ENTITY PURSUANT TO SUBSECTION (3) OF THIS SECTION.

8 [REDACTED]

9 (6) IF THE REVENUE ESTIMATE PREPARED BY THE STAFF OF THE

10 LEGISLATIVE COUNCIL IN JUNE 2009 AND EACH JUNE THEREAFTER

11 INDICATES THAT THE AMOUNT OF THE TOTAL GENERAL FUND REVENUES

12 FOR THAT PARTICULAR FISCAL YEAR WILL NOT BE SUFFICIENT TO MAINTAIN

13 THE LIMIT ON APPROPRIATIONS SPECIFIED IN SECTION 24-75-201.1 (1),

14 C.R.S., THEN THE CREDIT AUTHORIZED IN THIS SECTION SHALL NOT BE

15 ALLOWED FOR ANY INCOME TAX YEAR COMMENCING DURING THE

16 CALENDAR YEAR IN WHICH THE FORECAST IS PREPARED. THE CREDIT

17 CERTIFICATE SHALL REMAIN VALID FOR THE NEXT TAX YEAR IN WHICH THE

18 REVENUE ESTIMATE PREPARED BY THE STAFF OF THE LEGISLATIVE

19 COUNCIL INDICATES THAT THE AMOUNT OF THE TOTAL GENERAL FUND

20 REVENUES WILL BE SUFFICIENT TO MAINTAIN THE LIMIT ON

21 APPROPRIATIONS SPECIFIED IN SECTION 24-75-201.1 (1), C.R.S.

22 (7) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT MAY

23 PROMULGATE RULES AS MAY BE NECESSARY TO ADMINISTER AND ENFORCE

24 ANY PROVISION OF THIS SECTION. THE RULES SHALL BE PROMULGATED IN

25 ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S., AND SHALL BE

26 INCLUDED IN INCOME TAX FORMS.

27 (8) ANY TAXPAYER WHO OFFSETS A TAX DEFICIENCY WITH A

1 CREDIT THAT IS DISALLOWED PURSUANT TO THIS SECTION SHALL BE LIABLE
2 FOR SUCH TAX DEFICIENCY, INTEREST, AND PENALTIES AS MAY BE
3 SPECIFIED IN THIS ARTICLE OR OTHERWISE PROVIDED BY LAW.

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

5 **SECTION 2.** 39-22-531 (6), Colorado Revised Statutes, as
6 enacted by Section 1 of House Bill 09-1067, is amended to read:

7 **39-22-531. Instream flow incentive tax credit for water rights**
8 **holders - rules - definitions - repeal.** (6) If the revenue estimate
9 prepared by the staff of the legislative council in June 2009 and each June
10 thereafter indicates that the amount of the total general fund revenues for
11 that particular fiscal year will not be sufficient to maintain the limit on
12 appropriations specified in section 24-75-201.1 (1), C.R.S. GROW THE
13 TOTAL STATE GENERAL FUND APPROPRIATIONS BY SIX PERCENT OVER SUCH
14 APPROPRIATIONS FOR THE PREVIOUS FISCAL YEAR, then the credit
15 authorized in this section shall not be allowed for any income tax year
16 commencing during the calendar year in which the forecast is prepared.
17 The credit certificate shall remain valid for the next tax year in which the
18 revenue estimate prepared by the staff of the legislative council indicates
19 that the amount of the total general fund revenues will be sufficient to
20 maintain the limit on appropriations specified in section 24-75-201.1 (1),
21 C.R.S. GROW THE TOTAL STATE GENERAL FUND APPROPRIATIONS BY SIX
22 PERCENT OVER SUCH APPROPRIATIONS FOR THE PREVIOUS FISCAL YEAR.

23 **SECTION 3. Act subject to petition - effective date -**
24 **applicability.** (1) Except as otherwise provided in subsection (2) of this
25 section, this act shall take effect at 12:01 a.m. on the day following the
26 expiration of the ninety-day period after final adjournment of the general
27 assembly that is allowed for submitting a referendum petition pursuant to

1 article V, section 1 (3) of the state constitution, (August 5, 2009, if
2 adjournment sine die is on May 6, 2009); except that, if a referendum
3 petition is filed against this act or an item, section, or part of this act
4 within such period, then the act, item, section, or part, if approved by the
5 people, shall take effect on the date of the official declaration of the vote
6 thereon by proclamation of the governor.

7 (2) Section 2 of this act shall only take effect if Senate Bill 09-228
8 is enacted and becomes law.