

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

**REVISED**

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

LLS NO. 09-0255.01 Esther van Mourik

**HOUSE BILL 09-1067**

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**HOUSE SPONSORSHIP**

**Pommer,**

**SENATE SPONSORSHIP**

**White,**

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**House Committees**

Agriculture, Livestock, & Natural Resources  
Finance  
Appropriations

**Senate Committees**

Agriculture and Natural Resources  
Appropriations

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**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.**

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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.)*

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.*

SENATE  
Am ended 2nd Reading  
May 1, 2009

HOUSE  
3rd Reading Unamended  
April 16, 2009

HOUSE  
Am ended 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.

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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. THE CREDIT SHALL NOT BE AVAILABLE FOR A  
2 WATER RIGHT THAT IS DECREED FOR IRRIGATION ON LAND FOR WHICH A  
3 CONSERVATION EASEMENT TAX CREDIT IS CLAIMED PURSUANT TO SECTION  
4 39-22-522 UNLESS SUCH WATER RIGHT IS SPECIFICALLY EXCLUDED FROM  
5 THE TERMS OF SUCH CONSERVATION EASEMENT. THE BOARD SHALL  
6 APPROVE A CREDIT BY ISSUING TO THE PERSON A CREDIT CERTIFICATE ON  
7 OR BEFORE SEPTEMBER 1 OF THE TAX YEAR IN WHICH THE DONATION IS  
8 ACCEPTED.

9 (C) THE AMOUNT OF A CREDIT AUTHORIZED IN THIS SECTION SHALL  
10 BE DETERMINED BY THE BOARD, SUBJECT TO THE FOLLOWING GUIDELINES:

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

14 (II) THE VALUE OF THE WATER RIGHT SHALL BE DETERMINED BY  
15 THE BOARD, IN CONSULTATION WITH THE PROPOSED DONOR. IN  
16 DETERMINING THE VALUE OF THE WATER RIGHT, THE BOARD MAY  
17 CONSIDER, IN ADDITION TO OTHER FACTORS THE BOARD DEEMS  
18 APPROPRIATE, THE FOLLOWING:

19 (A) ANY APPRAISAL OR OTHER DOCUMENTATION SUBMITTED BY  
20 THE DONOR;

21 (B) THE SENIORITY, HISTORIC CONSUMPTIVE USE, AND DECREED  
22 USE OF THE WATER RIGHT;

23 (C) THE LOCATION OF THE EXISTING POINT OF DIVERSION OF THE  
24 WATER RIGHT; AND

25 (D) THE EXTENT TO WHICH AQUATIC AND RIPARIAN HABITAT  
26 WOULD BE PRESERVED BY CONVERSION OF THE WATER RIGHT TO AN  
27 INSTREAM FLOW.

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

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

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

25 (4) IF A CREDIT AUTHORIZED IN THIS SECTION APPROVED BY  
26 THE BOARD EXCEEDS THE INCOME TAX DUE ON THE INCOME OF THE  
27 TAXPAYER FOR THE TAXABLE YEAR, THE EXCESS CREDIT MAY NOT BE

1 CARRIED FORWARD AND SHALL BE REFUNDED TO THE TAXPAYER.

2 [REDACTED]

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

8 (a) THE TAXPAYER'S NAME;

9 (b) THE TAXPAYER'S COLORADO ACCOUNT NUMBER OR SOCIAL  
10 SECURITY NUMBER;

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

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

15 [REDACTED]

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

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

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

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

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

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

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

1 C.R.S. GROW THE TOTAL STATE GENERAL FUND APPROPRIATIONS BY SIX  
2 PERCENT OVER SUCH APPROPRIATIONS FOR THE PREVIOUS FISCAL YEAR.

3 **SECTION 3. Act subject to petition - effective date -**  
4 **applicability.** (1) Except as otherwise provided in subsection (2) of this  
5 section, this act shall take effect at 12:01 a.m. on the day following the  
6 expiration of the ninety-day period after final adjournment of the general  
7 assembly that is allowed for submitting a referendum petition pursuant to  
8 article V, section 1 (3) of the state constitution, (August 5, 2009, if  
9 adjournment sine die is on May 6, 2009); except that, if a referendum  
10 petition is filed against this act or an item, section, or part of this act  
11 within such period, then the act, item, section, or part, if approved by the  
12 people, shall take effect on the date of the official declaration of the vote  
13 thereon by proclamation of the governor.

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