

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

**INTRODUCED**

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

**Senate Committees**

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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.*

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 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 (7) 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 6i. 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 AN APPRAISAL AS SPECIFIED IN SUBPARAGRAPH (II) OF  
3 THIS PARAGRAPH (b). THE BOARD SHALL APPROVE A CREDIT BY ISSUING  
4 TO THE PERSON A CREDIT CERTIFICATE ON OR BEFORE SEPTEMBER 1 OF THE  
5 TAX YEAR IN WHICH THE DONATION IS OFFERED. THE BOARD SHALL NOT  
6 ISSUE ANY CREDIT CERTIFICATES IN YEARS WHERE THE CREDIT IS NOT  
7 AUTHORIZED AS SPECIFIED IN SUBSECTION (7) OF THIS SECTION. THE  
8 CREDIT SHALL BE IN AN AMOUNT DETERMINED BY THE BOARD, SUBJECT TO  
9 THE FOLLOWING GUIDELINES:

10 (I) THE AMOUNT OF THE CREDIT AUTHORIZED IN THIS SECTION  
11 SHALL BE EQUAL TO UP TO ONE-HALF OF THE VALUE OF THE WATER RIGHT  
12 DONATED TO THE BOARD, BASED ON THE DECREED USE OF SUCH RIGHT,  
13 WITH A MAXIMUM CREDIT OF TWO HUNDRED FIFTY THOUSAND DOLLARS  
14 PER PERSON. THE AMOUNT OF THE CREDIT SHALL NOT INCLUDE THE VALUE  
15 OF ANY PORTION OF A WATER RIGHT LOCATED IN ANOTHER STATE OR  
16 PREVIOUSLY ENCUMBERED BY A CONSERVATION EASEMENT, PRIOR  
17 APPROPRIATION, OR USE RESTRICTION.

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

1 PURSUANT TO THIS SECTION IS A SUBSTANTIAL OR GROSS OVERSTATEMENT  
2 OF VALUATION AS SUCH OVERSTATEMENTS ARE DEFINED IN SECTION 1219  
3 OF THE FEDERAL "PENSION PROTECTION ACT OF 2006", PUB.L. 109-280,  
4 THE DEPARTMENT OR BOARD SHALL SUBMIT A COMPLAINT REGARDING THE  
5 OVERSTATEMENT TO THE BOARD OF REAL ESTATE APPRAISERS FOR  
6 DISCIPLINARY ACTION IN ACCORDANCE WITH THE PROVISIONS OF PART 7  
7 OF ARTICLE 61 OF TITLE 12, C.R.S.

8 (III) THE AGGREGATE SUM OF CREDITS ANNUALLY APPROVED BY  
9 THE BOARD PURSUANT TO THIS SECTION, INCLUDING ANY CREDIT CARRIED  
10 FORWARD PURSUANT TO SUBSECTION (4) OF THIS SECTION AND ANY  
11 CREDIT TRANSFERRED PURSUANT TO SUBSECTION (5) OF THIS SECTION  
12 SHALL NOT EXCEED TWO MILLION DOLLARS IN ANY INCOME TAX YEAR.

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

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

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

3 (4) (a) 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 BE CARRIED  
6 FORWARD AND SHALL BE CLAIMED ON THE EARLIEST POSSIBLE  
7 SUBSEQUENT TAX RETURN FOR A PERIOD NOT TO EXCEED SIX YEARS. ANY  
8 AMOUNT OF THE CREDIT THAT IS NOT USED AFTER SAID PERIOD SHALL NOT  
9 BE REFUNDED OR CREDITED TO THE TAXPAYER.

10 (b) IF A CREDIT AUTHORIZED IN THIS SECTION IS CARRIED FORWARD  
11 PURSUANT TO THIS SUBSECTION (4), THE TAXPAYER SHALL PROVIDE THE  
12 BOARD WITH THE AMOUNT OF THE CREDIT CARRIED FORWARD AND THE  
13 INCOME TAX YEAR TO WHICH THE CREDIT WAS CARRIED FORWARD.

14 (5) (a) A TAXPAYER MAY TRANSFER ALL OR A PORTION OF A  
15 CREDIT AUTHORIZED IN THIS SECTION TO ANOTHER TAXPAYER FOR SUCH  
16 OTHER TAXPAYER, AS TRANSFEREE, TO APPLY AS A CREDIT AGAINST THE  
17 TAXES IMPOSED BY THIS ARTICLE SUBJECT TO THE FOLLOWING  
18 LIMITATIONS:

19 (I) THE TRANSFEREE'S ABILITY TO CLAIM A TRANSFERRED CREDIT  
20 AUTHORIZED IN THIS SECTION SHALL BE LIMITED BY SUBSECTION (7) OF  
21 THIS SECTION.

22 (II) THE TAXPAYER MAY ONLY TRANSFER SUCH PORTION OF A  
23 CREDIT AUTHORIZED IN THIS SECTION AS THE TAXPAYER HAS NOT APPLIED  
24 AGAINST THE INCOME TAXES IMPOSED BY THIS ARTICLE.

25 (III) THE TAXPAYER MAY TRANSFER A PRORATED PORTION OF THE  
26 CREDIT AUTHORIZED IN THIS SECTION TO MORE THAN ONE TRANSFEREE.

27 (IV) THE TAXPAYER MAY NOT TRANSFER ANY PORTION OF A

1 CREDIT AUTHORIZED IN THIS SECTION IN AN AMOUNT LESS THAN FIVE  
2 THOUSAND DOLLARS.

3 (V) A TRANSFEREE OF A CREDIT AUTHORIZED IN THIS SECTION MAY  
4 NOT TRANSFER HIS OR HER TRANSFERRED CREDIT TO ANOTHER TAXPAYER.

5 (VI) A TRANSFEREE OF A CREDIT AUTHORIZED IN THIS SECTION  
6 SHALL PURCHASE THE CREDIT PRIOR TO THE DUE DATE IMPOSED BY THIS  
7 ARTICLE, NOT INCLUDING ANY EXTENSIONS, FOR FILING THE TRANSFEREE'S  
8 INCOME TAX RETURN.

9 (VII) A CREDIT AUTHORIZED IN THIS SECTION HELD BY AN  
10 INDIVIDUAL EITHER DIRECTLY OR AS A RESULT OF A DONATION BY A  
11 PASS-THROUGH ENTITY, BUT NOT A TAX CREDIT HELD BY A TRANSFEREE  
12 UNLESS USED BY THE TRANSFEREE'S ESTATE FOR TAXES OWED BY THE  
13 ESTATE, SHALL SURVIVE THE DEATH OF THE INDIVIDUAL AND MAY BE  
14 CLAIMED OR TRANSFERRED BY THE DECEDENT'S ESTATE.

15 (VIII) THE PERSON ISSUED A CREDIT CERTIFICATE PURSUANT TO  
16 PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION OR THE TRANSFEROR  
17 OF A CREDIT TRANSFERRED PURSUANT TO THIS SUBSECTION (5) SHALL BE  
18 THE TAX MATTERS REPRESENTATIVE IN ALL MATTERS WITH RESPECT TO  
19 THE CREDIT. THE TAX MATTERS REPRESENTATIVE SHALL BE RESPONSIBLE  
20 FOR REPRESENTING AND BINDING THE TRANSFEREES WITH RESPECT TO ALL  
21 ISSUES AFFECTING THE CREDIT, INCLUDING, BUT NOT LIMITED TO, THE  
22 APPRAISAL, NOTIFICATIONS AND CORRESPONDENCE FROM AND WITH THE  
23 DEPARTMENT, AUDIT EXAMINATIONS, ASSESSMENTS OR REFUNDS,  
24 SETTLEMENT AGREEMENTS, AND THE STATUTE OF LIMITATIONS. THE  
25 TRANSFEREE SHALL BE SUBJECT TO THE SAME STATUTE OF LIMITATIONS  
26 WITH RESPECT TO THE CREDIT AS THE TRANSFEROR OF THE CREDIT.

27 (IX) FINAL RESOLUTION OF DISPUTES REGARDING A CREDIT

1 AUTHORIZED IN THIS SECTION BETWEEN THE DEPARTMENT AND THE TAX  
2 MATTERS REPRESENTATIVE, INCLUDING FINAL DETERMINATIONS,  
3 COMPROMISES, PAYMENT OF ADDITIONAL TAXES OR REFUNDS DUE, AND  
4 ADMINISTRATIVE AND JUDICIAL DECISIONS, SHALL BE BINDING ON  
5 TRANSFEREES.

6 (b) IF A TAXPAYER TRANSFERS A CREDIT AUTHORIZED IN THIS  
7 SECTION PURSUANT TO THIS SUBSECTION (5), THE TAXPAYER SHALL  
8 PROVIDE THE BOARD WITH THE TRANSFEREE'S NAME, THE TRANSFEREE'S  
9 COLORADO ACCOUNT NUMBER OR SOCIAL SECURITY NUMBER, AND THE  
10 AMOUNT OF THE CREDIT TRANSFERRED. THE TAXPAYER SHALL THEN  
11 OBTAIN CREDIT CERTIFICATES FOR THE TRANSFERRED PORTIONS OF THE  
12 CREDIT FROM THE BOARD AND DISTRIBUTE SUCH CREDIT CERTIFICATES TO  
13 THE TRANSFEREE OF THE CREDIT PRIOR TO ANY DUE DATE IMPOSED BY  
14 THIS ARTICLE, NOT INCLUDING ANY EXTENSIONS, FOR FILING THE  
15 TRANSFEREE'S INCOME TAX RETURN.

16 (6) (a) NO LATER THAN NOVEMBER 30, 2009, AND NO LATER THAN  
17 NOVEMBER 30 OF EACH YEAR THEREAFTER, THE BOARD SHALL PROVIDE  
18 THE DEPARTMENT AN ELECTRONIC REPORT OF THE TAXPAYERS RECEIVING  
19 A CREDIT FOR THAT INCOME TAX YEAR THAT INCLUDES THE FOLLOWING  
20 INFORMATION:

- 21 (I) THE TAXPAYER'S NAME;
- 22 (II) THE TAXPAYER'S COLORADO ACCOUNT NUMBER OR SOCIAL  
23 SECURITY NUMBER;
- 24 (III) THE AMOUNT OF THE CREDIT ALLOCATED; AND
- 25 (IV) THE ASSOCIATED PASS-THROUGH ENTITY NAME AND  
26 COLORADO ACCOUNT NUMBER IF THE CREDIT IS ALLOCATED FROM A  
27 PASS-THROUGH ENTITY PURSUANT TO SUBSECTION (3) OF THIS SECTION.

1 (b) NO LATER THAN APRIL 20, 2010, AND NO LATER THAN APRIL  
2 20 OF EACH YEAR THEREAFTER, THE BOARD SHALL PROVIDE THE  
3 DEPARTMENT AN ELECTRONIC REPORT OF THE TRANSFEREES OF THE  
4 CREDIT FOR THE PRECEDING INCOME TAX YEAR THAT INCLUDES THE  
5 FOLLOWING INFORMATION:

6 (I) THE TRANSFEROR'S NAME;

7 (II) THE TRANSFEROR'S COLORADO ACCOUNT NUMBER OR SOCIAL  
8 SECURITY NUMBER;

9 (III) THE TRANSFEREE'S NAME;

10 (IV) THE TRANSFEREE'S COLORADO ACCOUNT NUMBER OR SOCIAL  
11 SECURITY NUMBER; AND

12 (V) THE AMOUNT OF THE CREDIT TRANSFERRED.

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

26 (8) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT MAY  
27 PROMULGATE RULES AS MAY BE NECESSARY TO ADMINISTER AND ENFORCE

1 ANY PROVISION OF THIS SECTION. THE RULES SHALL BE PROMULGATED IN  
2 ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S., AND SHALL BE  
3 INCLUDED IN INCOME TAX FORMS.

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

8 (10) THIS SECTION IS REPEALED, EFFECTIVE JANUARY 1, 2016.

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