

First Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 15-0889.01 Thomas Morris x4218

SENATE BILL 15-212

SENATE SPONSORSHIP

Sonnenberg,

HOUSE SPONSORSHIP

Winter,

Senate Committees

Agriculture, Natural Resources, & Energy

House Committees

A BILL FOR AN ACT

101 CONCERNING A DETERMINATION THAT WATER DETENTION FACILITIES
102 DESIGNED TO MITIGATE THE ADVERSE EFFECTS OF STORM
103 WATER RUNOFF DO NOT MATERIALLY INJURE WATER RIGHTS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Under current administrative practice, facilities that are designed to detain storm water for environmental and public safety purposes may be required to release water to avoid injury to water rights.

The bill specifies that storm water detention and infiltration facilities and post-wildland fire facilities do not injure water rights. Water

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.

from these facilities cannot be put to beneficial use or form the basis for any claim to or for the use of water.

A "storm water detention and infiltration facility" is defined as a facility that is owned or operated by a governmental entity or is subject to oversight by a governmental entity, designed and operated to continuously release or infiltrate at least 97% of all of the water from rainfall events that are equal to or less than a 5-year storm within 72 hours after the end of the rainfall event, and continuously release or infiltrate the water from rainfall events greater than a 5-year storm as quickly as practicable, but in no event over a period in excess of 120 hours. The facility must operate passively and cannot actively treat the storm water.

A "post-wildland fire facility" means a facility that is not permanent; is located on, in, or adjacent to a nonperennial stream; is designed and operated solely for the mitigation of the impacts of wildland fire events; and is designed and operated to minimize the quantity of water detained and the duration of the detention of water to the levels necessitated by public safety and welfare. The person who installed or operated a post-wildland fire facility has to ensure that the facility is removed or rendered inoperable after the emergency conditions created by the wildfire no longer exist.

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

2 **SECTION 1.** In Colorado Revised Statutes, 37-92-602, **add** (8)
3 as follows:

4 **37-92-602. Exemptions - presumptions - legislative declaration**
5 **- definitions.** (8) (a) THE GENERAL ASSEMBLY HEREBY DECLARES THAT
6 STORM WATER DETENTION AND INFILTRATION FACILITIES AND
7 POST-WILDLAND FIRE FACILITIES ARE ESSENTIAL FOR THE PROTECTION OF
8 PUBLIC SAFETY AND WELFARE, PROPERTY, AND THE ENVIRONMENT.

9 (b) FOR THE PURPOSES OF THIS SUBSECTION (8):

10 (I) A "STORM WATER DETENTION AND INFILTRATION FACILITY"
11 MEANS A FACILITY THAT:

12 (A) IS OWNED OR OPERATED BY A GOVERNMENTAL ENTITY OR IS
13 SUBJECT TO OVERSIGHT BY A GOVERNMENTAL ENTITY;

14 (B) IS DESIGNED AND OPERATED TO CONTINUOUSLY RELEASE OR

1 INFILTRATE AT LEAST NINETY-SEVEN PERCENT OF ALL OF THE WATER FROM
2 RAINFALL EVENTS THAT ARE EQUAL TO OR LESS THAN A FIVE-YEAR STORM
3 WITHIN SEVENTY-TWO HOURS AFTER THE END OF THE RAINFALL EVENT;

4 (C) IS DESIGNED AND OPERATED TO CONTINUOUSLY RELEASE OR
5 INFILTRATE ALL OF THE WATER FROM RAINFALL EVENTS GREATER THAN A
6 FIVE-YEAR STORM AS QUICKLY AS PRACTICABLE, BUT IN NO EVENT OVER
7 A PERIOD IN EXCESS OF ONE HUNDRED TWENTY HOURS; AND

8 (D) OPERATES PASSIVELY AND DOES NOT SUBJECT THE STORM
9 WATER RUNOFF TO ANY ACTIVE TREATMENT PROCESS.

10 (II) A "POST-WILDLAND FIRE FACILITY" MEANS A FACILITY THAT
11 IS:

12 (A) NOT PERMANENT;

13 (B) LOCATED ON, IN, OR ADJACENT TO A NONPERENNIAL STREAM;

14 (C) DESIGNED AND OPERATED SOLELY FOR THE MITIGATION OF THE
15 IMPACTS OF WILDLAND FIRE EVENTS; AND

16 (D) DESIGNED AND OPERATED TO MINIMIZE THE QUANTITY OF
17 WATER DETAINED AND THE DURATION OF THE DETENTION OF WATER TO
18 THE LEVELS NECESSITATED BY PUBLIC SAFETY AND WELFARE.

19 (c) A STORM WATER DETENTION AND INFILTRATION FACILITY AND
20 A POST-WILDLAND FIRE FACILITY THAT ARE OPERATED IN COMPLIANCE
21 WITH PARAGRAPHS (b) AND (d) OF THIS SUBSECTION (8) DO NOT CAUSE
22 INJURY TO VESTED WATER RIGHTS. THIS PARAGRAPH (c) DOES NOT APPLY
23 TO A FACILITY THAT DOES NOT MEET THE REQUIREMENTS OF PARAGRAPHS
24 (b) AND (d) OF THIS SUBSECTION (8).

25 (d) (I) WATER DETAINED BY A STORM WATER DETENTION AND
26 INFILTRATION FACILITY, POST-WILDLAND FIRE FACILITY, OR OTHER
27 NONPERMANENT FACILITY DESIGNED AND OPERATED SOLELY FOR THE

1 MITIGATION OF WILDLAND FIRE EVENTS SHALL NOT BE USED FOR ANY
2 PURPOSE, INCLUDING, WITHOUT LIMITATION, USE BY SUBSTITUTION OR
3 EXCHANGE OR FOR THE IRRIGATION OF ADJACENT VEGETATION.

4 (II) A PERSON SHALL NOT RELEASE WATER DETAINED BY A STORM
5 WATER DETENTION AND INFILTRATION FACILITY, POST-WILDLAND FIRE
6 FACILITY, OR OTHER NONPERMANENT FACILITY DESIGNED AND OPERATED
7 SOLELY FOR THE MITIGATION OF WILDLAND FIRE EVENTS FOR THE
8 SUBSEQUENT DIVERSION OR STORAGE BY THE PERSON THAT OWNS,
9 OPERATES, OR HAS OVERSIGHT OVER THE FACILITY.

10 (III) THE OPERATION OF A STORM WATER DETENTION AND
11 INFILTRATION FACILITY, POST-WILDLAND FIRE FACILITY, OR OTHER
12 NONPERMANENT FACILITY DESIGNED AND OPERATED SOLELY FOR THE
13 MITIGATION OF A WILDLAND FIRE EVENT IS NOT THE BASIS FOR THE CLAIM
14 OF A RIGHT TO WATER OR CREDIT OR OTHER CLAIM TO OR FOR THE USE OF
15 WATER.

16 (e) A PERSON WHO INSTALLED OR OPERATED A POST-WILDLAND
17 FIRE FACILITY SHALL ENSURE THAT THE FACILITY IS REMOVED OR
18 RENDERED INOPERABLE AFTER THE EMERGENCY CONDITIONS CREATED BY
19 THE WILDFIRE NO LONGER EXIST.

20 **SECTION 2. Act subject to petition - effective date -**
21 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
22 the expiration of the ninety-day period after final adjournment of the
23 general assembly (August 5, 2015, if adjournment sine die is on May 6,
24 2015); except that, if a referendum petition is filed pursuant to section 1
25 (3) of article V of the state constitution against this act or an item, section,
26 or part of this act within such period, then the act, item, section, or part
27 will not take effect unless approved by the people at the general election

1 to be held in November 2016 and, in such case, will take effect on the
2 date of the official declaration of the vote thereon by the governor.

3 (2) This act applies to the administration of facilities occurring on
4 or after the applicable effective date of this act.