A BILL FOR AN ACT

CONCERNING INCENTIVES FOR PRECIPITATION HARVESTING.

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.)

Water Resources Review Committee. In 2009, the general assembly authorized up to 10 precipitation harvesting pilot projects for new real estate developments of residential housing or mixed uses. Only one project has been approved. To encourage more projects, the bill:

- Includes the redevelopment of residential housing or mixed uses and new or redeveloped multi-building nonresidential property as potential pilot projects;
- Directs the Colorado water conservation board to update its...
approval criteria and guidelines, including regionally applicable factors that sponsors can use for substitute water supply and augmentation plans that specify the amount of evapotranspiration of preexisting natural vegetative cover, to which the state engineer and water judges must give presumptive effect, subject to rebuttal;

![Reduces the amount of water needed for a project's temporary substitute water supply plan and permanent augmentation plan by the amount of historic natural depletion to the waters of the state, if any, caused by the preexisting natural vegetative cover and evaporation on the surface of the area that will be, or that has been, made impermeable as part of the pilot project; and](image)

![Specifies that a project's temporary retention of storm water for the purpose of improving water quality is not subject to an order of the state or division engineers if the retention complies with the board's criteria and guidelines and the applicable requirements of the state's water quality laws.](image)

---

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

SECTION 1. In Colorado Revised Statutes, 37-60-115, amend (6) (b) introductory portion, (6) (c) (I), and (6) (c) (II) (A); and add (6) (b) (VI) and (6) (c) (II) (C) as follows:

37-60-115. Water studies - rules - repeal. (6) Precipitation harvesting pilot projects. (b) An applicant for a development permit, as that term is defined in section 29-20-103, C.R.S., for a new or redeveloped planned unit development, or new or redeveloped subdivision of residential housing or mixed uses, or a new or redeveloped multi-building nonresidential property may submit an application to the board to become a sponsor of one or more of the ten pilot projects authorized by this section. The board shall establish criteria and guidelines, and update the criteria and guidelines by January 1, 2016, with the goal of incentivizing the submission of applications and applying lessons learned from previously...
APPROVED PILOT PROJECTS, for applications and the selection of pilot projects, including the following:

(VI) Regionally Applicable Factors that Sponsors Can Use for Substitute Water Supply and Augmentation Plans that Specify the Amount of Evapotranspiration of Preexisting NaturalVegetative Cover. If an applicant uses such a factor, the State Engineer and Water Judges shall give the factor presumptive effect, subject to rebuttal. The board need not establish a factor for a region until the sponsor of a project located within that region has submitted a minimum of two years of data pursuant to sub-subparagraph (B) of subparagraph (II) of paragraph (c) of this subsection (6). A sponsor that makes such a submission shall also submit the data to the board.

(c) Notwithstanding any limitations regarding phreatophytes or impermeable surfaces that would otherwise apply pursuant to section 37-92-103 (9) or 37-92-501 (4) (b) (III), each of the ten pilot projects shall:

(I) During the term of the pilot project, operate according to a substitute water supply plan, if approved annually by the state engineer pursuant to section 37-92-308 (4) or (5). Until the pilot project sponsor applies to the water court for a permanent augmentation plan, the pilot project shall be required to replace an amount of water equal to the amount of precipitation captured and measured from rooftops and impermeable surfaces for nonpotable uses; EXCEPT THAT, FOR A PILOT PROJECT FOR WHICH THE APPLICATION WAS SUBMITTED ON OR AFTER JANUARY 1, 2016, IN DETERMINING THE QUANTITY OF WATER REQUIRED FOR THE SUBSTITUTE WATER SUPPLY PLAN TO REPLACE STREAM HB15-1016
DEPLETIONS, THERE IS NO REQUIREMENT TO REPLACE THE AMOUNT OF
HISTORIC NATURAL DEPLETION TO THE WATERS OF THE STATE, IF ANY,
CAUSED BY THE PREEXISTING NATURAL VEGETATIVE COVER AND
EVAPORATION ON THE SURFACE OF THE AREA THAT WILL BE, OR THAT HAS
BEEN, MADE IMPERMEABLE AS PART OF THE PILOT PROJECT. THE
APPLICANT BEARS THE BURDEN OF PROVING THE HISTORIC NATURAL
DEPLETION.

(II) (A) Apply to the appropriate water court for a permanent
augmentation plan prior to completion of the pilot project or file a plan
with the state engineer to permanently retire the rainwater collection
system, which plan shall be reviewed and approved prior to the cessation
of augmentation. As a condition of approving the retirement of a pilot
project, the state engineer shall have the authority to require the project
sponsor to replace any ongoing delayed depletions caused by the pilot
project after the project has ceased. Any such permanent augmentation
plan shall entitle the sponsor to consume without replacement only that
portion of the precipitation that the sponsor proves by a preponderance of
the evidence would not have accrued to a natural stream under
preexisting, natural vegetation conditions. The sponsor shall be required
to fully augment any precipitation captured out of priority that would
otherwise have accrued to a natural stream; EXCEPT THAT, FOR A PILOT
PROJECT FOR WHICH THE APPLICATION WAS SUBMITTED ON OR AFTER
JANUARY 1, 2016, IN DETERMINING THE QUANTITY OF WATER REQUIRED
FOR THE AUGMENTATION PLAN TO REPLACE STREAM DEPLETIONS, THERE
IS NO REQUIREMENT TO REPLACE THE AMOUNT OF HISTORIC NATURAL
DEPLETION TO THE WATERS OF THE STATE, IF ANY, CAUSED BY THE
PREEXISTING NATURAL VEGETATIVE COVER AND EVAPORATION ON THE
SURFACE OF THE AREA THAT WILL BE, OR THAT HAS BEEN, MADE
IMPERMEABLE AS PART OF THE PILOT PROJECT. THE APPLICANT BEARS THE
BURDEN OF PROVING THE HISTORIC NATURAL DEPLETION.

(C) FOR A PILOT PROJECT FOR WHICH THE APPLICATION WAS
SUBMITTED ON OR AFTER JANUARY 1, 2016, NOT BE SUBJECT TO AN ORDER
ISSUED PURSUANT TO SECTION 37-92-502 WITH RESPECT TO THE PROJECT'S
TEMPORARY RETENTION OF STORM WATER FOR THE PURPOSE OF
IMPROVING WATER QUALITY IF THE RETENTION COMPLIES WITH THE
BOARD'S CRITERIA AND GUIDELINES AND THE APPLICABLE REQUIREMENTS
OF ARTICLE 8 OF TITLE 25, C.R.S.

SECTION 2. Act subject to petition - effective date -
applicability. (1) This act takes effect at 12:01 a.m. on the day following
the expiration of the ninety-day period after final adjournment of the
general assembly (August 5, 2015, if adjournment sine die is on May 6,
2015); except that, if a referendum petition is filed pursuant to section 1
(3) of article V of the state constitution against this act or an item, section,
or part of this act within such period, then the act, item, section, or part
will not take effect unless approved by the people at the general election
to be held in November 2016 and, in such case, will take effect on the
date of the official declaration of the vote thereon by the governor.

(2) This act applies to precipitation harvesting pilot project
applications submitted on or after the applicable effective date of this act.