

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

INTRODUCED

LLS NO. 05-0445.01 Karen Woods

SENATE BILL 05-062

SENATE SPONSORSHIP

Taylor,

HOUSE SPONSORSHIP

(None),

Senate Committees

Agriculture, Natural Resources & Energy

House Committees

A BILL FOR AN ACT

101 **CONCERNING ADDITIONAL REQUIREMENTS APPLICABLE TO THE**
102 **ADJUDICATION OF A RECREATIONAL IN-CHANNEL DIVERSION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Requires the Colorado water conservation board to make written findings on an application for a recreational in-channel diversion concerning whether the recreational in-channel diversion will affect future upstream water storage and water development projects.

Adds "control structure" to the definition of "diversion" and further defines "control structure".

Defines "recreational in-channel use" to mean kayaking, but not inner tubing, swimming, fishing, boating, rafting, or other water-related

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.

recreational uses.

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

2 **SECTION 1.** 37-92-102 (6) (b), Colorado Revised Statutes, is
3 amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

4 **37-92-102. Legislative declaration - basic tenets of Colorado**
5 **water law.** (6) (b) In determining whether the board shall recommend
6 that the water court grant, grant with conditions, or deny such application,
7 the board shall consider the following factors and make written findings
8 thereon:

9 (V.5) WHETHER ADJUDICATION AND ADMINISTRATION OF THE
10 RECREATIONAL IN-CHANNEL DIVERSION WOULD AFFECT DEVELOPMENT OF
11 FUTURE UPSTREAM WATER STORAGE AND WATER DEVELOPMENT PROJECTS;
12 AND

13 **SECTION 2.** 37-92-103 (4), (7), and (10.3), Colorado Revised
14 Statutes, are amended, and the said 37-92-103 is further amended BY
15 THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to
16 read:

17 **37-92-103. Definitions.** As used in this article, unless the context
18 otherwise requires:

19 (4) "Beneficial use" is the use of that amount of water that is
20 reasonable and appropriate under reasonably efficient practices to
21 accomplish without waste the purpose for which the appropriation is
22 lawfully made and, without limiting the generality of the foregoing,
23 includes the impoundment of water for recreational purposes, including
24 fishery or wildlife, and also includes the diversion of water by a county,
25 municipality, city and county, water district, water and sanitation district,

1 water conservation district, or water conservancy district for recreational
2 in-channel diversion purposes. For the benefit and enjoyment of present
3 and future generations, "beneficial use" shall also include the
4 appropriation by the state of Colorado in the manner prescribed by law
5 of such minimum flows between specific points or levels for and on
6 natural streams and lakes as are required to preserve the natural
7 environment to a reasonable degree. WATER DIVERTED FOR A
8 RECREATIONAL IN-CHANNEL DIVERSION SHALL BE DEEMED TO BE WASTED,
9 AND NOT PLACED TO BENEFICIAL USE, UNLESS AT THE TIME OF THE
10 DIVERSION AT LEAST TEN KAYAKERS ARE USING THE WATER DIVERTED AT
11 OR IMMEDIATELY BELOW THE CONTROL STRUCTURES FOR KAYAKING
12 PURPOSES, AND SUCH MINIMUM LEVEL OF KAYAKING USE SHALL BE
13 REQUIRED FOR THE OWNER OF A RECREATIONAL IN-CHANNEL DIVERSION
14 TO MAKE AND CONTINUE TO MAKE A CALL ON THE RIVER.

15 (6.3) "CONTROL STRUCTURE" MEANS A STRUCTURE USED TO
16 CONTROL WATER IN ITS NATURAL COURSE OR LOCATION FOR
17 RECREATIONAL IN-CHANNEL DIVERSIONS. AN OWNER OF A RECREATIONAL
18 IN-CHANNEL DIVERSION MAY PLACE A CALL ON THE RIVER ONLY IF THE
19 CONTROL STRUCTURE IS ABLE TO PHYSICALLY CONTROL ONE HUNDRED
20 PERCENT OF THE QUANTITY OF WATER AT THE LOCATION OF SUCH CONTROL
21 STRUCTURE. CONCENTRATION OF RIVER FLOW BY A STRUCTURE DOES NOT,
22 BY ITSELF, CONSTITUTE CONTROL OF WATER FOR A RECREATIONAL
23 IN-CHANNEL DIVERSION.

24 (7) "Diversion" or "divert" means removing water from its natural
25 course or location, or controlling water in its natural course or location,
26 by means of a ditch, canal, flume, reservoir, bypass, pipeline, conduit,
27 well, pump, or other structure or device; except that only a county,

1 municipality, city and county, water district, water and sanitation district,
2 water conservation district, or water conservancy district may control
3 water, WITH THE USE OF A CONTROL STRUCTURE, in its natural course or
4 location for recreational in-channel diversions. This does not apply to
5 applications filed prior to January 1, 2001.

6 (10.2) "RECREATIONAL IN-CHANNEL DIVERSION" MEANS THE
7 MINIMUM STREAM FLOW AS IT IS DIVERTED, CAPTURED, CONTROLLED, AND
8 PLACED TO BENEFICIAL USE BETWEEN SPECIFIC POINTS DEFINED BY
9 PHYSICAL CONTROL STRUCTURES PURSUANT TO AN APPLICATION FILED BY
10 A COUNTY, MUNICIPALITY, CITY AND COUNTY, WATER DISTRICT, WATER
11 AND SANITATION DISTRICT, WATER CONSERVATION DISTRICT, OR WATER
12 CONSERVANCY DISTRICT FOR RECREATIONAL IN-CHANNEL USE IN AND ON
13 THE WATER.

14 ~~(10.3) "Recreational in-channel diversion" means the minimum~~
15 ~~stream flow as it is diverted, captured, controlled, and placed to beneficial~~
16 ~~use between specific points defined by physical control structures~~
17 ~~pursuant to an application filed by a county, municipality, city and~~
18 ~~county, water district, water and sanitation district, water conservation~~
19 ~~district, or water conservancy district for a reasonable recreation~~
20 ~~experience in and on the water. "RECREATIONAL IN-CHANNEL USE"~~
21 MEANS KAYAKING, BUT NOT INNER TUBING, SWIMMING, FISHING, BOATING,
22 RAFTING, OR OTHER WATER-RELATED RECREATIONAL USES.

23 **SECTION 3. Safety clause.** The general assembly hereby finds,
24 determines, and declares that this act is necessary for the immediate
25 preservation of the public peace, health, and safety.