

First Regular Session  
Seventieth General Assembly  
STATE OF COLORADO

**CORRECTED REENGROSSED**

*This Version Includes All Amendments  
Adopted in the House of Introduction*

LLS NO. 15-0111.01 Thomas Morris

**HOUSE BILL 15-1016**

**HOUSE SPONSORSHIP**

**Coram**, Mitsch Bush, Vigil

**SENATE SPONSORSHIP**

**Sonnenberg**, Hodge, Jones, Roberts

**House Committees**

Agriculture, Livestock, & Natural Resources  
Finance  
Appropriations

**Senate Committees**

**A BILL FOR AN ACT**

101 **CONCERNING INCENTIVES FOR PRECIPITATION HARVESTING, AND, IN**  
102 **CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

**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

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.*

HOUSE  
3rd Reading Unamended  
April 7, 2015

HOUSE  
Amended 2nd Reading  
April 6, 2015

- ! 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
- ! 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.

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

2 **SECTION 1.** In Colorado Revised Statutes, 37-60-115, **amend**  
 3 (6) (b) introductory portion, (6) (c) (I), (6) (c) (II) (B), (6) (d), and (6) (e);  
 4 and **add** (6) (b) (VI) as follows:

5 **37-60-115. Water studies - rules - repeal.** (6) **Precipitation**  
 6 **harvesting pilot projects.** (b) An applicant for a development permit, as  
 7 that term is defined in section 29-20-103, C.R.S., for a new   planned  
 8 unit  development or new OR REDEVELOPED subdivision of residential  
 9 housing or mixed  uses OR REDEVELOPED may submit an application to the  
 10 board to become a sponsor of one or more of the ten pilot projects  
 11 authorized by this section. The board shall establish criteria and  
 12 guidelines, AND UPDATE THE CRITERIA AND GUIDELINES BY JANUARY 1,  
 13 2016, WITH THE GOAL OF INCENTIVIZING THE SUBMISSION OF  
 14 APPLICATIONS AND APPLYING LESSONS LEARNED FROM PREVIOUSLY

1 APPROVED PILOT PROJECTS, for applications and the selection of pilot  
2 projects, including the following:

3 (VI) REGIONALLY APPLICABLE FACTORS THAT SPONSORS CAN USE  
4 FOR SUBSTITUTE WATER SUPPLY PLANS THAT SPECIFY THE AMOUNT OF  
5 PRECIPITATION CONSUMED THROUGH EVAPOTRANSPIRATION OF  
6 PREEXISTING NATURAL VEGETATIVE COVER. IF AN APPLICANT USES THE  
7 FACTORS, THE STATE ENGINEER SHALL GIVE THE FACTORS PRESUMPTIVE  
8 EFFECT, SUBJECT TO REBUTTAL. THE BOARD NEED NOT ESTABLISH  
9 FACTORS FOR A REGION UNTIL THE SPONSOR OF A PROJECT LOCATED  
10 WITHIN THAT REGION HAS SUBMITTED A MINIMUM OF TWO YEARS OF DATA  
11 PURSUANT TO SUB-SUBPARAGRAPH (B) OF SUBPARAGRAPH (II) OF  
12 PARAGRAPH (c) OF THIS SUBSECTION (6). A SPONSOR THAT MAKES SUCH  
13 A SUBMISSION SHALL ALSO SUBMIT THE DATA TO THE BOARD.

14 (c) Notwithstanding any limitations regarding phreatophytes or  
15 impermeable surfaces that would otherwise apply pursuant to section  
16 37-92-103 (9) or 37-92-501 (4) (b) (III), each of the ten pilot projects  
17 shall:

18 (I) During the term of the pilot project, operate according to a  
19 substitute water supply plan, if approved annually by the state engineer  
20 pursuant to section 37-92-308 (4) or (5). ~~Until the pilot project sponsor~~  
21 ~~applies to the water court for a permanent augmentation plan,~~ The pilot  
22 project shall be required to replace an amount of water equal to the  
23 amount of precipitation captured ~~and measured~~ OUT OF PRIORITY from  
24 rooftops and impermeable surfaces for nonpotable uses; EXCEPT THAT,  
25 IN DETERMINING THE QUANTITY OF WATER REQUIRED FOR THE SUBSTITUTE  
26 WATER SUPPLY PLAN TO REPLACE OUT-OF-PRIORITY STREAM DEPLETIONS,  
27 THERE IS NO REQUIREMENT TO REPLACE THE AMOUNT OF HISTORIC

1 NATURAL DEPLETION TO THE WATERS OF THE STATE, IF ANY, CAUSED BY  
2 THE PREEXISTING NATURAL VEGETATIVE COVER EVAPOTRANSPIRATION  
3 FOR THE SURFACE AREAS MADE IMPERMEABLE AND ASSOCIATED WITH THE  
4 PILOT PROJECT. THE APPLICANT BEARS THE BURDEN OF PROVING THE  
5 HISTORIC NATURAL DEPLETION; EXCEPT THAT THE APPLICANT MAY USE  
6 APPLICABLE REGIONAL FACTORS ESTABLISHED PURSUANT TO  
7 SUBPARAGRAPH (VI) OF PARAGRAPH (b) OF THIS SUBSECTION (6).

8 (II) (B) After a minimum of two years of data collection and upon  
9 application to the appropriate water court for a permanent augmentation  
10 plan, the pilot project sponsor shall file an application for approval of a  
11 substitute water supply plan pursuant to section 37-92-308 (4). For any  
12 substitute supply plan application filed under section 37-92-308 (4), a  
13 ~~pilot project sponsor may seek approval from the state engineer based on~~  
14 ~~replacing only the net depletion caused by the capture of precipitation.~~  
15 ~~The net depletion shall be calculated as the amount of precipitation~~  
16 ~~captured minus the historical consumptive use from preexisting, natural~~  
17 ~~vegetation cover on the impermeable area as demonstrated by analysis of~~  
18 ~~the data collected by the sponsor during the pilot project~~ THE SPONSOR  
19 SHALL FULLY AUGMENT ANY PRECIPITATION CAPTURED OUT OF PRIORITY;  
20 EXCEPT THAT, IN DETERMINING THE QUANTITY OF WATER REQUIRED FOR  
21 THE SUBSTITUTE WATER SUPPLY PLAN TO REPLACE OUT-OF-PRIORITY  
22 STREAM DEPLETIONS, THERE IS NO REQUIREMENT TO REPLACE THE  
23 AMOUNT OF HISTORIC NATURAL DEPLETION TO THE WATERS OF THE STATE,  
24 IF ANY, CAUSED BY PREEXISTING NATURAL VEGETATIVE COVER  
25 EVAPOTRANSPIRATION FOR THE SURFACE AREAS MADE IMPERMEABLE AND  
26 ASSOCIATED WITH THE PILOT PROJECT. THE APPLICANT MAY USE  
27 APPLICABLE REGIONAL FACTORS ESTABLISHED PURSUANT TO

1 SUBPARAGRAPH (VI) OF PARAGRAPH (b) OF THIS SUBSECTION (6).

2 (d) Each sponsor shall submit an annual preliminary report to the  
3 board and the state engineer summarizing the information set forth in  
4 paragraph (a) of this subsection (6). The board and the state engineer shall  
5 brief the water resources review committee created in section 37-98-102  
6 on the reported results of the pilot projects by July 1, 2014. Each sponsor  
7 shall submit a final report to the board and the state engineer by January  
8 15, 2019 2025. The board and the state engineer shall provide a final  
9 briefing to the water resources review committee by July 1, 2019 2025.

10 (e) This paragraph (e), paragraphs (a), (b), and (d), and  
11 subparagraph (f) of paragraph (c) of this subsection (6) are IS repealed,  
12 effective July 1, 2020 2026.

13

14 **SECTION 2.** In Colorado Revised Statutes, 37-92-308, **amend**  
15 (4) (a) (IV) and (5) (a) (IV) as follows:

16 **37-92-308. Substitute water supply plans - special procedures**  
17 **for review - water adjudication cash fund - legislative declaration -**  
18 **repeal.** (4) (a) Beginning January 1, 2002, if an application for approval  
19 of a plan for augmentation, rotational crop management contract, or  
20 change of water right has been filed with a water court and the court has  
21 not issued a decree, the state engineer may approve the temporary  
22 operation of such plan, contract, or change of water right as a substitute  
23 water supply plan if the following conditions are met:

24 (IV) (A) The state engineer, after consideration of the comments  
25 received, has determined that the operation and administration of such  
26 plan will replace all out-of-priority depletions in time, location, and  
27 amount and will otherwise prevent injury to other water rights and

1 decreed conditional water rights, including water quality and continuity  
2 to meet the requirements of use to which the senior appropriation has  
3 normally been put, pursuant to section 37-80-120 (3), and will not impair  
4 compliance with any interstate compacts.

5 (B) Notwithstanding any limitations regarding phreatophytes or  
6 impermeable surfaces that would otherwise apply pursuant to section  
7 37-92-103 (9) or 37-92-501 (4) (b) (III), for any precipitation harvesting  
8 pilot project selected pursuant to section 37-60-115 (6) that has filed an  
9 application for a permanent augmentation plan in water court, the  
10 ~~out-of-priority depletions shall be the net depletion as defined in section~~  
11 ~~37-60-115 (6) (e) (H) (B)~~ APPLICANT SHALL FULLY AUGMENT ANY  
12 PRECIPITATION CAPTURED OUT OF PRIORITY; EXCEPT THAT, IN  
13 DETERMINING THE QUANTITY OF WATER REQUIRED FOR THE SUBSTITUTE  
14 WATER SUPPLY PLAN TO REPLACE OUT-OF-PRIORITY STREAM DEPLETIONS,  
15 THERE IS NO REQUIREMENT TO REPLACE THE AMOUNT OF HISTORIC  
16 NATURAL DEPLETION TO THE WATERS OF THE STATE, IF ANY, CAUSED BY  
17 PREEXISTING NATURAL VEGETATIVE COVER EVAPOTRANSPIRATION FOR  
18 THE SURFACE AREAS MADE IMPERMEABLE AND ASSOCIATED WITH THE  
19 PILOT PROJECT. THE APPLICANT MAY USE APPLICABLE REGIONAL FACTORS  
20 ESTABLISHED PURSUANT TO SECTION 37-60-115 (6) (b) (VI). As a  
21 condition of approving a substitute water supply plan for a pilot project  
22 pursuant to this subsection (4), the state engineer shall have the authority  
23 to require the project sponsor to replace any ongoing delayed depletions  
24 after the water use plan associated with a precipitation harvesting pilot  
25 project has ceased.

26 (C) The state engineer shall impose such terms and conditions as  
27 are necessary to ensure that these standards are met. In making such

1 determinations, the state engineer shall not be required to hold any formal  
2 hearings or conduct any other formal proceedings, but may conduct a  
3 hearing or formal proceeding if the state engineer finds it necessary to  
4 address the issues.

5 (5) (a) Beginning January 1, 2002, for new water use plans  
6 involving out-of-priority diversions or a change of water right, if no  
7 application for approval of a plan for augmentation or a change of water  
8 right has been filed with a water court and the water use plan or change  
9 proposed and the depletions associated with such water use plan or  
10 change will be for a limited duration not to exceed five years, except as  
11 otherwise provided in subparagraph (II) of paragraph (b) of this  
12 subsection (5), the state engineer may approve such plan or change as a  
13 substitute water supply plan if the following conditions are met:

14 (IV) (A) The state engineer, after consideration of the comments  
15 received, has determined that the operation and administration of such  
16 plan will replace all out-of-priority depletions in time, location, and  
17 amount and will otherwise prevent injury to other water rights and  
18 decreed conditional water rights, including water quality and continuity  
19 to meet the requirements of use to which the senior appropriation has  
20 normally been put, pursuant to section 37-80-120 (3), and will not impair  
21 compliance with any interstate compacts.

22 (B) NOTWITHSTANDING ANY LIMITATIONS REGARDING  
23 PHREATOPHYTES OR IMPERMEABLE SURFACES THAT WOULD OTHERWISE  
24 APPLY PURSUANT TO SECTION 37-92-103 (9) OR 37-92-501 (4) (b) (III),  
25 FOR ANY PRECIPITATION HARVESTING PILOT PROJECT SELECTED PURSUANT  
26 TO SECTION 37-60-115 (6), THE APPLICANT SHALL FULLY AUGMENT ANY  
27 PRECIPITATION CAPTURED OUT OF PRIORITY; EXCEPT THAT, IN

1 DETERMINING THE QUANTITY OF WATER REQUIRED FOR THE SUBSTITUTE  
2 WATER SUPPLY PLAN TO REPLACE OUT-OF-PRIORITY STREAM DEPLETIONS,  
3 THERE IS NO REQUIREMENT TO REPLACE THE AMOUNT OF HISTORIC  
4 NATURAL DEPLETION TO THE WATERS OF THE STATE, IF ANY, CAUSED BY  
5 PREEXISTING NATURAL VEGETATIVE COVER EVAPOTRANSPIRATION FOR  
6 THE SURFACE AREAS MADE IMPERMEABLE AND ASSOCIATED WITH THE  
7 PILOT PROJECT. THE APPLICANT MAY USE APPLICABLE REGIONAL FACTORS  
8 ESTABLISHED PURSUANT TO SECTION 37-60-115 (6) (b) (VI).

9 (C) The state engineer shall impose such terms and conditions as  
10 are necessary to ensure that these standards are met. In making the  
11 determinations specified in this subparagraph (IV), the state engineer  
12 shall not be required to hold any formal hearings or conduct any other  
13 formal proceedings, but may conduct a hearing or formal proceeding if  
14 the state engineer finds it necessary to address the issues.

15 **SECTION 3. Appropriation.** For the 2015-16 state fiscal year,  
16 \$12,240 is appropriated to the department of natural resources for use by  
17 the Colorado water conservation board. This appropriation is from the  
18 Colorado water conservation board construction fund created in section  
19 37-60-121 (1) (a), C.R.S. To implement this act, the board may use this  
20 appropriation for the water conservation program.

21 **SECTION 4. Act subject to petition - effective date -**  
22 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following  
23 the expiration of the ninety-day period after final adjournment of the  
24 general assembly (August 5, 2015, if adjournment sine die is on May 6,  
25 2015); except that, if a referendum petition is filed pursuant to section 1  
26 (3) of article V of the state constitution against this act or an item, section,  
27 or part of this act within such period, then the act, item, section, or part



1 will not take effect unless approved by the people at the general election  
2 to be held in November 2016 and, in such case, will take effect on the  
3 date of the official declaration of the vote thereon by the governor.

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