

**First Regular Session
Seventieth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

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.**

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

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.

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.

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), and (6) (e); and **add** (6) (b) (VI)
4 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 OR
8 REDEVELOPED planned unit development or new OR REDEVELOPED
9 subdivision of residential housing or mixed uses may submit an
10 application to the board to become a sponsor of one or more of the ten
11 pilot projects authorized by this section. The board shall establish criteria
12 and guidelines, AND UPDATE THE CRITERIA AND GUIDELINES BY JANUARY
13 1, 2016, WITH THE GOAL OF INCENTIVIZING THE SUBMISSION OF
14 APPLICATIONS AND APPLYING LESSONS LEARNED FROM PREVIOUSLY
15 APPROVED PILOT PROJECTS, for applications and the selection of pilot

1 projects, including the following:

2 (VI) REGIONALLY APPLICABLE FACTORS THAT SPONSORS CAN USE
3 FOR SUBSTITUTE WATER SUPPLY AND AUGMENTATION PLANS THAT
4 SPECIFY THE AMOUNT OF PRECIPITATION CONSUMED THROUGH
5 EVAPOTRANSPIRATION OF PREEXISTING NATURAL VEGETATIVE COVER. IF
6 AN APPLICANT USES THE FACTORS, THE STATE ENGINEER AND WATER
7 JUDGES SHALL GIVE THE FACTORS PRESUMPTIVE EFFECT, SUBJECT TO
8 REBUTTAL. THE BOARD NEED NOT ESTABLISH FACTORS FOR A REGION
9 UNTIL THE SPONSOR OF A PROJECT LOCATED WITHIN THAT REGION HAS
10 SUBMITTED A MINIMUM OF TWO YEARS OF DATA PURSUANT TO
11 SUB-SUBPARAGRAPH (B) OF SUBPARAGRAPH (II) OF PARAGRAPH (c) OF
12 THIS SUBSECTION (6). A SPONSOR THAT MAKES SUCH A SUBMISSION SHALL
13 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) (A) Apply to the appropriate water court for a permanent
9 augmentation plan prior to completion of the pilot project or file a plan
10 with the state engineer to permanently retire the rainwater collection
11 system, which plan shall be reviewed and approved prior to the cessation
12 of augmentation. As a condition of approving the retirement of a pilot
13 project, the state engineer shall have the authority to require the project
14 sponsor to replace any ongoing delayed depletions caused by the pilot
15 project after the project has ceased. Any such permanent augmentation
16 plan shall entitle the sponsor to consume without replacement only that
17 portion of the precipitation that the sponsor proves by a preponderance of
18 the evidence would not have accrued to a natural stream under
19 preexisting, natural vegetation conditions. The sponsor shall be required
20 to fully augment any precipitation captured out of priority that would
21 otherwise have accrued to a natural stream; EXCEPT THAT, IN
22 DETERMINING THE QUANTITY OF WATER REQUIRED FOR THE
23 AUGMENTATION PLAN TO REPLACE OUT-OF-PRIORITY STREAM DEPLETIONS,
24 THERE IS NO REQUIREMENT TO REPLACE THE AMOUNT OF HISTORIC
25 NATURAL DEPLETION TO THE WATERS OF THE STATE, IF ANY, CAUSED BY
26 THE PREEXISTING NATURAL VEGETATIVE COVER EVAPOTRANSPIRATION
27 FOR THE SURFACE AREAS MADE IMPERMEABLE AND ASSOCIATED WITH THE

1 PILOT PROJECT. THE APPLICANT BEARS THE BURDEN OF PROVING THE
2 HISTORIC NATURAL DEPLETION; EXCEPT THAT THE APPLICANT MAY USE
3 APPLICABLE REGIONAL FACTORS ESTABLISHED PURSUANT TO
4 SUBPARAGRAPH (VI) OF PARAGRAPH (b) OF THIS SUBSECTION (6).

5 (B) After a minimum of two years of data collection and upon
6 application to the appropriate water court for a permanent augmentation
7 plan, the pilot project sponsor shall file an application for approval of a
8 substitute water supply plan pursuant to section 37-92-308 (4). For any
9 substitute supply plan application filed under section 37-92-308 (4), a
10 pilot project sponsor may seek approval from the state engineer based on
11 replacing only the net depletion caused by the capture of precipitation.
12 The net depletion shall be calculated as the amount of precipitation
13 captured minus the historical consumptive use from preexisting, natural
14 vegetation cover on the impermeable area as demonstrated by analysis of
15 the data collected by the sponsor during the pilot project THE SPONSOR
16 SHALL FULLY AUGMENT ANY PRECIPITATION CAPTURED OUT OF PRIORITY
17 THAT WOULD OTHERWISE HAVE ACCRUED TO A NATURAL STREAM; EXCEPT
18 THAT, IN DETERMINING THE QUANTITY OF WATER REQUIRED FOR THE
19 SUBSTITUTE WATER SUPPLY PLAN TO REPLACE OUT-OF-PRIORITY STREAM
20 DEPLETIONS, THERE IS NO REQUIREMENT TO REPLACE THE AMOUNT OF
21 HISTORIC NATURAL DEPLETION TO THE WATERS OF THE STATE, IF ANY,
22 CAUSED BY PREEXISTING NATURAL VEGETATIVE COVER
23 EVAPOTRANSPIRATION FOR THE SURFACE AREAS MADE IMPERMEABLE AND
24 ASSOCIATED WITH THE PILOT PROJECT. THE APPLICANT MAY USE
25 APPLICABLE REGIONAL FACTORS ESTABLISHED PURSUANT TO
26 SUBPARAGRAPH (VI) OF PARAGRAPH (b) OF THIS SUBSECTION (6).

27 (e) This paragraph (e), paragraphs (a), (b), and (d), and

1 ~~subparagraph (f) of paragraph (c) of this subsection (6) are~~ IS repealed,
2 effective July 1, 2020.

3 **SECTION 2.** In Colorado Revised Statutes, 37-92-305, **add** (12)
4 (d) as follows:

5 **37-92-305. Standards with respect to rulings of the referee and**
6 **decisions of the water judge.** (12) (d) IN DETERMINING THE QUANTITY
7 OF WATER REQUIRED IN AN AUGMENTATION PLAN TO REPLACE THE
8 PRECIPITATION CAPTURED OUT OF PRIORITY FROM ROOFTOPS AND
9 IMPERMEABLE SURFACES THAT WOULD HAVE ACCRUED TO A NATURAL
10 STREAM UNDER PREEXISTING, NATURAL VEGETATION CONDITIONS FOR A
11 PRECIPITATION HARVESTING PILOT PROJECT APPROVED PURSUANT TO
12 SECTION 37-60-115 (6), IF THE APPLICANT USES REGIONALLY APPLICABLE
13 FACTORS ESTABLISHED PURSUANT TO SECTION 37-60-115 (6) (b) (VI) FOR
14 THE AMOUNT OF PRECIPITATION CONSUMED THROUGH
15 EVAPOTRANSPIRATION OF PREEXISTING NATURAL VEGETATIVE COVER,
16 THERE IS A REBUTTABLE PRESUMPTION THAT THE FACTORS ARE
17 APPROPRIATE.

18 **SECTION 3.** In Colorado Revised Statutes, 37-92-308, **amend**
19 (4) (a) (IV) and (5) (a) (IV) as follows:

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

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

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

1 to require the project sponsor to replace any ongoing delayed depletions
2 after the water use plan associated with a precipitation harvesting pilot
3 project has ceased.

4 (C) The state engineer shall impose such terms and conditions as
5 are necessary to ensure that these standards are met. In making such
6 determinations, the state engineer shall not be required to hold any formal
7 hearings or conduct any other formal proceedings, but may conduct a
8 hearing or formal proceeding if the state engineer finds it necessary to
9 address the issues.

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

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

27 (B) NOTWITHSTANDING ANY LIMITATIONS REGARDING

1 PHREATOPHYTES OR IMPERMEABLE SURFACES THAT WOULD OTHERWISE
2 APPLY PURSUANT TO SECTION 37-92-103 (9) OR 37-92-501 (4) (b) (III),
3 FOR ANY PRECIPITATION HARVESTING PILOT PROJECT SELECTED PURSUANT
4 TO SECTION 37-60-115 (6), THE APPLICANT SHALL FULLY AUGMENT ANY
5 PRECIPITATION CAPTURED OUT OF PRIORITY THAT WOULD OTHERWISE
6 HAVE ACCRUED TO A NATURAL STREAM; EXCEPT THAT, IN DETERMINING
7 THE QUANTITY OF WATER REQUIRED FOR THE SUBSTITUTE WATER SUPPLY
8 PLAN TO REPLACE OUT-OF-PRIORITY STREAM DEPLETIONS, THERE IS NO
9 REQUIREMENT TO REPLACE THE AMOUNT OF HISTORIC NATURAL
10 DEPLETION TO THE WATERS OF THE STATE, IF ANY, CAUSED BY
11 PREEXISTING NATURAL VEGETATIVE COVER EVAPOTRANSPIRATION FOR
12 THE SURFACE AREAS MADE IMPERMEABLE AND ASSOCIATED WITH THE
13 PILOT PROJECT. THE APPLICANT MAY USE APPLICABLE REGIONAL FACTORS
14 ESTABLISHED PURSUANT TO SECTION 37-60-115 (6) (b) (VI).

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

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.