

**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, 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.

- ! 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.

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 ■ subdivision of residential housing or mixed
9 uses may submit an application to the board to become a sponsor of one
10 or more of the ten pilot projects authorized by this section. The board
11 shall establish criteria and guidelines, AND UPDATE THE CRITERIA AND
12 GUIDELINES BY JANUARY 1, 2016, WITH THE GOAL OF INCENTIVIZING THE
13 SUBMISSION OF APPLICATIONS AND APPLYING LESSONS LEARNED FROM
14 PREVIOUSLY APPROVED PILOT PROJECTS, for applications and the selection

1 of pilot projects, including the following:

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

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

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

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

13 (II) (B) After a minimum of two years of data collection and upon
14 application to the appropriate water court for a permanent augmentation
15 plan, the pilot project sponsor shall file an application for approval of a
16 substitute water supply plan pursuant to section 37-92-308 (4). For any
17 substitute supply plan application filed under section 37-92-308 (4), a
18 pilot project sponsor may seek approval from the state engineer based on
19 replacing only the net depletion caused by the capture of precipitation.
20 The net depletion shall be calculated as the amount of precipitation
21 captured minus the historical consumptive use from preexisting, natural
22 vegetation cover on the impermeable area as demonstrated by analysis of
23 the data collected by the sponsor during the pilot project THE SPONSOR
24 SHALL FULLY AUGMENT ANY PRECIPITATION CAPTURED OUT OF PRIORITY;
25 EXCEPT THAT, IN DETERMINING THE QUANTITY OF WATER REQUIRED FOR
26 THE SUBSTITUTE WATER SUPPLY PLAN TO REPLACE OUT-OF-PRIORITY
27 STREAM DEPLETIONS, THERE IS NO REQUIREMENT TO REPLACE THE

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

7 (d) Each sponsor shall submit an annual preliminary report to the
8 board and the state engineer summarizing the information set forth in
9 paragraph (a) of this subsection (6). The board and the state engineer shall
10 brief the water resources review committee created in section 37-98-102
11 on the reported results of the pilot projects by July 1, 2014. Each sponsor
12 shall submit a final report to the board and the state engineer by January
13 15, 2019 2025. The board and the state engineer shall provide a final
14 briefing to the water resources review committee by July 1, 2019 2025.

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

18
19 **SECTION 2.** In Colorado Revised Statutes, 37-92-308, **amend**
20 (4) (a) (IV) and (5) (a) (IV) as follows:

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

1 water supply plan if the following conditions are met:

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

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

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

20 **SECTION 3. Appropriation.** For the 2015-16 state fiscal year,
21 \$12,240 is appropriated to the department of natural resources for use by
22 the Colorado water conservation board. This appropriation is from the
23 Colorado water conservation board construction fund created in section
24 37-60-121 (1) (a), C.R.S. To implement this act, the board may use this
25 appropriation for the water conservation program.

26 **SECTION 4. Act subject to petition - effective date -**
27 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following

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

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