

First Regular Session  
Seventieth General Assembly  
STATE OF COLORADO

DRAFT  
9.22.14

**BILL 3**

*Temporary storage location: S:\LLS\2015A\Bills\Pre-Draft\15-0111.wpd*

LLS NO. 15-0111.01 Thomas Morris x4218

**INTERIM COMMITTEE BILL**

**Water Resources Review Committee**

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**BILL TOPIC: "Promote Precipitation Harvesting Pilot Projects"**

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**A BILL FOR AN ACT**

101 **CONCERNING INCENTIVES FOR PRECIPITATION HARVESTING.**

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**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. Only one project has been approved. To encourage more projects, the bill:

- Directs the Colorado water conservation board to update its approval criteria and guidelines, including regionally applicable factors that sponsors can use for substitute water

*Capital letters indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.*

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

16           (VI) REGIONALLY APPLICABLE FACTORS THAT SPONSORS CAN USE

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

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

15 (I) During the term of the pilot project, operate according to a  
16 substitute water supply plan, if approved annually by the state engineer  
17 pursuant to section 37-92-308 (4) or (5). Until the pilot project sponsor  
18 applies to the water court for a permanent augmentation plan, the pilot  
19 project shall be required to replace an amount of water equal to the  
20 amount of precipitation captured and measured from rooftops and  
21 impermeable surfaces for nonpotable uses; EXCEPT THAT, FOR A PILOT  
22 PROJECT FOR WHICH THE APPLICATION WAS SUBMITTED ON OR AFTER  
23 JANUARY 1, 2016, IN DETERMINING THE QUANTITY OF WATER REQUIRED  
24 FOR THE SUBSTITUTE WATER SUPPLY PLAN TO REPLACE STREAM  
25 DEPLETIONS, THERE IS NO REQUIREMENT TO REPLACE THE AMOUNT OF  
26 HISTORIC NATURAL DEPLETION TO THE WATERS OF THE STATE, IF ANY,  
27 CAUSED BY THE PREEXISTING NATURAL VEGETATIVE COVER AND

1 EVAPORATION ON THE SURFACE OF THE AREA THAT WILL BE, OR THAT HAS  
2 BEEN, MADE IMPERMEABLE AS PART OF THE PILOT PROJECT. THE  
3 APPLICANT BEARS THE BURDEN OF PROVING THE HISTORIC NATURAL  
4 DEPLETION.

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

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

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

18 (2) This act applies to precipitation harvesting pilot project  
19 applications submitted on or after the applicable effective date of this act.  
20 <{Do you want a safety clause or a specific effective date?}>