

WATER

Research Notes are prepared by Legislative Council Staff's nonpartisan research and committee staff. Research notes provide a summary of the bill, background information on the bill, and information on committee hearings and amendments adopted on the bill as it moves through the legislative process. Legislative Council Staff prepares final research notes for bills passed by the General Assembly as well as select bills that were considered but not adopted, and may be accessed through the links below. Research notes are provided for informational purposes only and should not be relied upon as an official record of action by the General Assembly.

Water Rights Determination and Administration

HB 15-1247 *(Enacted)*
State Engineer Dam Safety Review Fees

Water Supply and Conservation

HB 15-1016 *(Enacted)*
Promote Precipitation Harvesting Pilot
Projects

Water Quality Issues

HB 15-1249 *(Enacted)*
Recodify Water Pollution Control Fees

Date: 5/14/2015

Version: Final



Legislative Council Staff

Research Note

Bill Number: HB15-1249

Short Title: *Recodify Water Pollution Control Fees*

Prime Sponsors: Representative Becker K.
Senator Hodge

Research Analyst: Katie Ruedebusch (x3001)

Current Status

This research note reflects the final version of the bill, which becomes effective on July 1, 2015.

Summary

The bill repeals, reenacts, and reorganizes statutory fees for water pollution discharge programs in the Water Quality Control Division (WQCD) of the Colorado Department of Public Health and Environment (CDPHE). The bill reorganizes water quality permit fees into five sectors: commerce and industry, construction, pesticide application, public and private utilities, and animal agriculture. New fees are authorized for pesticide application activities and for CDPHE certifications related to projects affecting regulated water quality standards in jurisdictional waters of the United States, known as 401 certifications. The Water Quality Control Commission establishes 401 certification fees by rule according to a tiered schedule, with these fees taking effect starting in FY 2016-17. Finally, the bill also repeals and reenacts basic procedures for the Colorado Discharge Permit System (CDPS). As a new procedure starting in 2016, CDPHE will provide an annual report on CDPS activities to the legislative agriculture committees, and an annual report on CDPS fees to the Joint Budget Committee (JBC).

Background

Since the adoption of the Colorado Water Quality Control Act in 1963 and the implementation of the Federal Clean Water Act in 1975, the WQCD administers water quality programs in Colorado. In order to discharge any pollutant into a state water source, a permit is needed. The CDPS keeps track of the permit system along with the issuance of new permits. The fees for an issued permit depend on the sector in which the business is categorized, such as construction or agriculture. The fees are currently set in statute.

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Along with running the CDPS, the WQCD issues 401 certifications in accordance with the Federal Clean Water Act. Basically, the issuance of a 401 certification is a prerequisite for a project to receive a federal permit or license to discharge pollutants. This 401 certification guarantees that projects meet both state and federal water quality standards.

In 2014, the JBC proposed Senate Bill 14-134 to update the fee structure that was originally set in statute in 1983. The bill was postponed indefinitely, but as a result, CDPHE stakeholder groups were formed for each sector served by the WQCD. These groups examined fees, level of service, and other considerations related to administration of the CDPS program. The result of this stakeholder process was House Bill 15-1249.

House Action

House Finance Committee (March 23, 2015). At the hearing, representatives of CDPHE, Conservation Colorado, and the Associated General Contractors of Colorado testified in support of the bill. The committee adopted amendments L.001, L.002, and L.003. Amendment L.001 changed the "Commerce and Industry Sector, Sedimentation Ponds (surface runoff only)" fee to reflect the actual fee of \$980 instead of \$930. Amendment L.002 changed the bill to reflect that the Animal Feeding Operation or CAFO fee was increased in 2009, not 2012. Finally, amendment L.003 deferred the implementation of the 401 water quality certificate fees till July 1, 2016. The committee referred the bill, as amended, to the House Appropriations Committee.

House Appropriations Committee (April 10, 2015). The committee adopted amendment J.001, which added an appropriations clause to the bill, adjusted appropriations in the Long Bill, and changed the bill's title. The committee referred the bill, as amended, to the House Committee of the Whole.

House Second Reading (April 16, 2015). The Committee of the Whole adopted the Finance and Appropriations committee reports and amendment L.008, which requires CDPHE to provide an annual report on CDPS activities to the agricultural committees of the legislature and an annual report on CDPS fees to the JBC. The bill passed the House Committee of the Whole, as amended, on second reading.

House Third Reading (April 17, 2015). The bill passed the House with no further amendments.

House concur with Senate amendments (April 30, 2015). The House voted to concur with Senate amendments and repassed the bill.

Senate Action

Senate Finance Committee (April 23, 2015). At the hearing, representatives of CDPHE, JBS Five Rivers Cattle Feeding, the Colorado Livestock Association, and the Associated General Contractors of Colorado testified in support of the bill. A representative of Glenwood Hot Springs testified in support of the bill with the adoption of amendment L.011. The committee adopted amendments L.009, L.010, and L.011. Amendment L.009 added a legislative declaration regarding consistency with federal regulation and compliance assurance. The amendment also sunsets and reorganizes the fees paid by the construction industry. Amendment L.010 dealt with reviewing

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requests for 401 certifications. Finally, Amendment L.011, supported by Hot Springs Resorts, created a new category for amusement and recreational services with a fee of \$1,480. The committee referred the bill, as amended, to the Senate Appropriations Committee.

Senate Appropriations Committee (April 28, 2015). The committee adopted amendment J.003, which updated the appropriations clause to reflect more up-to-date budget information. The committee referred the bill to the Senate Committee of the Whole.

Senate Second Reading (April 28, 2015). The Senate adopted the Finance and Appropriations committee reports and passed the bill, as amended, on second reading.

Senate Third Reading (April 29, 2015). The bill passed the Senate with no further amendments.

Relevant Research

Water Quality Control Division: <https://www.colorado.gov/pacific/cdphe/wqcd>

Clean Water Fee Structure Discussion:
<https://www.colorado.gov/pacific/cdphe/clean-water-fee-structure-discussion>

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Legislative Council Staff

Research Note

Bill Number: HB15-1247

Short Title: *State Engineer Dam Safety Review Fees*

Prime Sponsors: Representative Saine
Senator Neville T.

Research Analyst: Katie Ruedebusch (x3001)

Current Status

This research note reflects the final version of the bill, which becomes effective on September 1, 2016, assuming no referendum petition is filed.

Summary

The bill raises the dam project design review fee charged by the State Engineer in the Department of Natural Resources beginning September 1, 2016. The fee is increased from \$3 to \$6 per \$1,000 of the estimated project cost. The cap on the fee is raised from \$3,000 to \$30,000 per project.

Background

The Division of Water Resources (division), also known as the Office of the State Engineer, in the Colorado Department of Natural Resources, is responsible for the implementation of a statewide dam safety program. The division oversees over 1,800 non-federally owned dams. If a landowner proposes a new dam, the construction plans must be examined and approved by the division prior to construction. The division charges fees for this examination; currently \$3 per \$1,000 of the estimated project cost with a \$3,000 cap on the fee per project.

The bill was recommended to the General Assembly by the Legislative Audit Committee. The committee recommends legislation based on the outcome of audit reports.

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House Action

House Finance Committee (March 18, March 25, and April 22, 2015). At the hearing on March 18, 2015, representatives of the Colorado Water Congress, the Colorado River District, and the division, testified in support of the bill. A representative of the Office of the State Auditor answered committee questions.

At the hearing on March 25, 2015, the committee adopted amendment L.001. The amendment changed the bill's title.

At the hearing on April 22, 2015, the committee adopted amendments L.003 and L.004. Amendment L.003 removed the sections of the bill relating to new inspection fees on restricted dams. Amendment L.004 added a petition clause to the bill. The committee referred the bill, as amended, to the House Committee of the Whole.

House Second Reading (April 23, 2015). The bill adopted the Finance committee report and passed the House Committee of the Whole on second reading

House Third Reading (April 27, 2015). The bill passed the House with no further amendments.

Senate Action

Senate Agriculture, Natural Resources, & Energy (April 27, 2015). At the hearing representatives of the Colorado Water Congress, the American Society of Civil Engineers, and the division testified in support of the bill. The committee referred the bill to the Senate Finance committee.

Senate Finance Committee (May 1, 2015). The committee referred the bill to the Senate Appropriations Committee.

Senate Appropriations Committee (May 4, 2015). The committee referred the bill to the Senate Committee of the Whole

Senate Second Reading (May 5, 2015). The bill passed the Senate Committee of the Whole on second reading.

Senate Third Reading (May 6, 2015). The bill passed the Senate with no further amendments.

Relevant Research

Design Review & Construction Inspection, Division of Water Resources:

<http://water.state.co.us/SurfaceWater/DamSafety/DesignConstruction/Pages/default.aspx>

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Legislative Council Staff

Research Note

Bill Number: HB15-1016

Short Title: *Promote Precipitation Harvesting Pilot Projects*

Prime Sponsors: Representative Coram
Senator Sonnenberg

Research Analyst: Matt Becker (x4785)

Current Status

This research note reflects the final version of the bill, which was signed by the Governor and became effective on May 29, 2015.

Summary

The bill encourages the establishment of precipitation harvesting pilot projects. The bill provides incentives for pilot projects by directing the Colorado Water Conservation Board (CWCB) to update its approval criteria and guidelines, including regionally applicable factors that specify the amount of evapotranspiration of preexisting natural vegetative cover; and reducing the amount of water needed for a pilot project's temporary substitute water supply plan.

Background

Through House Bill 09-1129, the General Assembly authorized up to 10 precipitation harvesting pilot projects for new real estate developments of residential housing or mixed uses. Only one pilot project, part of the Sterling Ranch community in Douglas County, has been approved to date. The CWCB approved criteria and guidelines for the "rainwater harvesting" pilot projects in January 2010, and defines such projects as collecting precipitation from rooftops and other impermeable surfaces and utilizing the collected water for non-potable uses to evaluate water conservation potential. Currently, the projects must be located in new residential or mixed-use developments. A similar bill was recommended by the Water Resources Review Committee (WRRC) in 2014.

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Historically, rainwater harvesting has not been practiced often in Colorado because of relatively abundant and low-cost alternative water supplies and requirements related to Colorado water law; however, it has received increased attention in recent years due to droughts, Colorado's arid climate, and limited water supplies. The CWCB criteria and guidelines for pilot projects currently require data collection that includes quantifying preexisting, natural vegetation consumption. The bill directs CWCB to update its criteria and guidelines for pilot projects by January 1, 2016, to include factors that specify the amount of evapotranspiration of preexisting natural vegetative cover for specific regions of the state. Sponsors of pilot projects can use the factors for substitute water supply plans, and there is a rebuttable presumption in water court that the factors are appropriate.

The bill also exempts pilot projects from requiring any replacement water for precipitation captured out-of-priority from rooftops and impermeable surfaces that would have accrued to a natural stream under preexisting natural vegetation conditions, when determining the amount of water required for a substitute water supply plan. The burden of proving and quantifying the amount of water consumed by preexisting native vegetation, as it relates to the historic natural depletion to the waters of the state, is borne by the applicant of the substitute water supply plan.

House Action

House Agriculture, Livestock, & Natural Resources Committee (February 2, 2015).

At the hearing, representatives from CWCB and the Northern Colorado Water Conservancy District testified and took a neutral stance on the bill. Representatives from Sterling Ranch, Dominion Water and Sanitation District, the Colorado River Water Conservation District, Denver Water, South Metro Water Supply Authority, Western Resource Advocates, and Conservation Colorado testified in support of the bill. Representatives from the Water Rights Association of the South Platte, Colorado Water Congress, and a member of the public testified against the bill. The bill was laid over for action only.

House Agriculture, Livestock, & Natural Resources Committee (February 25, 2015).

The committee adopted amendments L.002 and L.004 by Representative Coram and referred the bill to the House Appropriations Committee. Amendment L.002 removes new or redeveloped multi-building nonresidential property from being eligible for the pilot projects. Amendment L.004 makes changes to language related to the regionally applicable factors, out-of-priority depletions, and evapotranspiration. It also adds clarifying language requiring pilot project sponsors to fully augment any precipitation captured out of priority that would otherwise have accrued to a natural stream, except the amount of historic natural depletion to the waters of the state caused by preexisting natural vegetative cover for surface areas made impermeable by the pilot project. Amendment L.004 also changes the bill so that it applies to both existing and new pilot projects and removes the pilot project exemption from the order of the state engineer and division engineers, as it pertains to the temporary retention of storm water for the purpose of improving water quality.

House Agriculture, Livestock, & Natural Resources Committee (March 2, 2015). The committee reconsidered the motion to refer to the bill to the House Appropriations Committee. The bill was referred, as amended, to the House Finance Committee.

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House Finance Committee (March 19, 2015). The committee adopted amendment L.008 by Representative Coram. The amendment removes redeveloped properties from being eligible for pilot projects; extends the reporting deadline to the CWCB, the state engineer, and the WRRRC to 2025; and disallows the applicable evapotranspiration factors and associated replacement water exemption from being used in augmentation plans.

House Appropriations Committee (April 2, 2015). The House Appropriations Committee adopted J.001 and referred the bill to the House Committee of the Whole. The amendment appropriates \$12,240 to the Department of Natural Resources.

House second reading (April 6, 2015). The House Committee of the Whole adopted the Agriculture, Livestock, & Natural Resources Committee; Finance Committee; and Appropriations Committee reports.

House third reading (April 7, 2015). The House adopted the bill on third reading with no additional amendments.

Senate Action

Senate Agriculture, Natural Resources, & Energy Committee (April 16, 2015). The committee adopted amendment L.009 by Senator Sonnenberg. The amendment makes a technical correction.

Senate Appropriations Committee (April 24, 2015). The committee referred the bill to the Committee of the Whole.

Senate second reading (April 24, 2015). The Senate adopted the bill on second reading with no additional amendments.

Senate third reading (April 27, 2015). The Senate adopted the bill on third reading with no additional amendments.

Relevant Research

CWCB Criteria and Guidelines, 2010:

<http://cwcb.state.co.us/legal/documents/guidelines/finalrainwaterpilotcg.pdf>

WRRRC Final Report, 2014:

<http://www.colorado.gov/cs/Satellite?blobcol=urldata&blobheader=application%2Fpdf&blobkey=id&blobtable=MungoBlobs&blobwhere=1252048865110&ssbinary=true>

Sterling Ranch Precipitation Pilot Project:

<http://cwcbweblink.state.co.us/WebLink/ElectronicFile.aspx?docid=144461&&dbid=0>