

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

INTRODUCED

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

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) (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 OR
8 REDEVELOPED planned unit development, ~~or~~ new OR REDEVELOPED
9 subdivision of residential housing or mixed uses, OR A NEW OR
10 REDEVELOPED MULTI-BUILDING NONRESIDENTIAL PROPERTY may submit
11 an application to the board to become a sponsor of one or more of the ten
12 pilot projects authorized by this section. The board shall establish criteria
13 and guidelines, AND UPDATE THE CRITERIA AND GUIDELINES BY JANUARY
14 1, 2016, WITH THE GOAL OF INCENTIVIZING THE SUBMISSION OF
15 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 AND AUGMENTATION PLANS THAT SPECIFY
5 THE AMOUNT OF EVAPOTRANSPIRATION OF PREEXISTING NATURAL
6 VEGETATIVE COVER. IF AN APPLICANT USES SUCH A FACTOR, THE STATE
7 ENGINEER AND WATER JUDGES SHALL GIVE THE FACTOR PRESUMPTIVE
8 EFFECT, SUBJECT TO REBUTTAL. THE BOARD NEED NOT ESTABLISH A
9 FACTOR FOR A REGION UNTIL THE SPONSOR OF A PROJECT LOCATED WITHIN
10 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 from rooftops and
24 impermeable surfaces for nonpotable uses; EXCEPT THAT, FOR A PILOT
25 PROJECT FOR WHICH THE APPLICATION WAS SUBMITTED ON OR AFTER
26 JANUARY 1, 2016, IN DETERMINING THE QUANTITY OF WATER REQUIRED
27 FOR THE SUBSTITUTE WATER SUPPLY PLAN TO REPLACE STREAM

1 DEPLETIONS, THERE IS NO REQUIREMENT TO REPLACE THE AMOUNT OF
2 HISTORIC NATURAL DEPLETION TO THE WATERS OF THE STATE, IF ANY,
3 CAUSED BY THE PREEXISTING NATURAL VEGETATIVE COVER AND
4 EVAPORATION ON THE SURFACE OF THE AREA THAT WILL BE, OR THAT HAS
5 BEEN, MADE IMPERMEABLE AS PART OF THE PILOT PROJECT. THE
6 APPLICANT BEARS THE BURDEN OF PROVING THE HISTORIC NATURAL
7 DEPLETION.

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, 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 AUGMENTATION PLAN TO REPLACE STREAM DEPLETIONS, THERE
25 IS NO REQUIREMENT TO REPLACE THE AMOUNT OF HISTORIC NATURAL
26 DEPLETION TO THE WATERS OF THE STATE, IF ANY, CAUSED BY THE
27 PREEXISTING NATURAL VEGETATIVE COVER AND EVAPORATION ON THE

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

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

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

21 (2) This act applies to precipitation harvesting pilot project
22 applications submitted on or after the applicable effective date of this act.