

First Regular Session
Seventieth General Assembly
STATE OF COLORADO

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 15-0889.01 Thomas Morris x4218

SENATE BILL 15-212

SENATE SPONSORSHIP

Sonnenberg,

HOUSE SPONSORSHIP

Winter, Carver

Senate Committees

Agriculture, Natural Resources, & Energy

House Committees

Local Government

A BILL FOR AN ACT

101 **CONCERNING A DETERMINATION THAT WATER DETENTION FACILITIES**
102 **DESIGNED TO MITIGATE THE ADVERSE EFFECTS OF STORM**
103 **WATER RUNOFF DO NOT MATERIALLY INJURE WATER RIGHTS.**

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>.)

Under current administrative practice, facilities that are designed to detain storm water for environmental and public safety purposes may be required to release water to avoid injury to water rights.

The bill specifies that storm water detention and infiltration facilities and post-wildland fire facilities do not injure water rights. Water

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.

HOUSE
3rd Reading Unamended
May 1, 2015

HOUSE
Amended 2nd Reading
April 30, 2015

SENATE
3rd Reading Unamended
April 27, 2015

SENATE
Amended 2nd Reading
April 24, 2015

from these facilities cannot be put to beneficial use or form the basis for any claim to or for the use of water.

A "storm water detention and infiltration facility" is defined as a facility that is owned or operated by a governmental entity or is subject to oversight by a governmental entity, designed and operated to continuously release or infiltrate at least 97% of all of the water from rainfall events that are equal to or less than a 5-year storm within 72 hours after the end of the rainfall event, and continuously release or infiltrate the water from rainfall events greater than a 5-year storm as quickly as practicable, but in no event over a period in excess of 120 hours. The facility must operate passively and cannot actively treat the storm water.

A "post-wildland fire facility" means a facility that is not permanent; is located on, in, or adjacent to a nonperennial stream; is designed and operated solely for the mitigation of the impacts of wildland fire events; and is designed and operated to minimize the quantity of water detained and the duration of the detention of water to the levels necessitated by public safety and welfare. The person who installed or operated a post-wildland fire facility has to ensure that the facility is removed or rendered inoperable after the emergency conditions created by the wildfire no longer exist.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 37-92-602, **add** (8)
3 as follows:

4 **37-92-602. Exemptions - presumptions - legislative declaration**
5 **- definitions.** (8) (a) THE GENERAL ASSEMBLY HEREBY DECLARES THAT
6 STORM WATER DETENTION AND INFILTRATION FACILITIES AND
7 POST-WILDLAND FIRE FACILITIES ARE ESSENTIAL FOR THE PROTECTION OF
8 PUBLIC SAFETY AND WELFARE, PROPERTY, AND THE ENVIRONMENT.

9 (b) FOR THE PURPOSES OF THIS SUBSECTION (8):

10 (I) A "STORM WATER DETENTION AND INFILTRATION FACILITY"
11 MEANS A FACILITY THAT IS OPERATED SOLELY FOR STORM WATER
12 MANAGEMENT AND:

13 (A) IS OWNED OR OPERATED BY A GOVERNMENTAL ENTITY OR IS
14 SUBJECT TO OVERSIGHT BY A GOVERNMENTAL ENTITY;

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(B) IS DESIGNED TO CONTINUOUSLY RELEASE OR INFILTRATE AT LEAST NINETY-SEVEN PERCENT OF ALL OF THE WATER FROM A RAINFALL EVENT THAT IS EQUAL TO OR LESS THAN A FIVE-YEAR STORM WITHIN SEVENTY-TWO HOURS AFTER THE END OF THE RAINFALL EVENT;

(C) IS DESIGNED TO CONTINUOUSLY RELEASE OR INFILTRATE ALL OF THE WATER FROM A RAINFALL EVENT GREATER THAN A FIVE-YEAR STORM AS QUICKLY AS PRACTICABLE, BUT IN ALL CASES RELEASES OR INFILTRATES AT LEAST NINETY-NINE PERCENT OF ALL OF THE WATER FROM THE RAINFALL EVENT WITHIN ONE HUNDRED TWENTY HOURS AFTER THE END OF THE RAINFALL EVENT; AND

(D) OPERATES PASSIVELY AND DOES NOT SUBJECT THE STORM WATER RUNOFF TO ANY ACTIVE TREATMENT PROCESS.

(II) A "POST-WILDLAND FIRE FACILITY" MEANS A FACILITY THAT IS:

- (A) NOT PERMANENT;
- (B) LOCATED ON, IN, OR ADJACENT TO A NONPERENNIAL STREAM;
- (C) DESIGNED AND OPERATED SOLELY FOR THE MITIGATION OF THE IMPACTS OF WILDLAND FIRE EVENTS; AND

(D) DESIGNED AND OPERATED TO MINIMIZE THE QUANTITY OF WATER DETAINED AND THE DURATION OF THE DETENTION OF WATER TO THE LEVELS NECESSITATED BY PUBLIC SAFETY AND WELFARE.

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(c) (I) STORM WATER DETENTION AND INFILTRATION FACILITIES IN EXISTENCE ON THE EFFECTIVE DATE OF THIS SUBSECTION (8) THAT ARE OPERATED IN COMPLIANCE WITH PARAGRAPHS (b) AND (e) OF THIS SUBSECTION (8) AND POST-WILDLAND FIRE FACILITIES THAT ARE

1 OPERATED IN COMPLIANCE WITH PARAGRAPHS (b) AND (e) OF THIS
2 SUBSECTION (8) DO NOT CAUSE MATERIAL INJURY TO VESTED WATER
3 RIGHTS.

4 (II) (A) THE HOLDER OF A VESTED WATER RIGHT MAY BRING AN
5 ACTION IN A COURT OF COMPETENT JURISDICTION TO DETERMINE WHETHER
6 THE OPERATION OF A STORM WATER DETENTION AND INFILTRATION
7 FACILITY CONSTRUCTED AFTER THE EFFECTIVE DATE OF THIS SUBSECTION
8 (8) HAS CAUSED MATERIAL INJURY TO THAT WATER RIGHT. OPERATION OF
9 THE FACILITY IN COMPLIANCE WITH PARAGRAPHS (b) AND (e) OF THIS
10 SUBSECTION (8) CREATES A REBUTTABLE PRESUMPTION THAT THE
11 FACILITY DOES NOT CAUSE MATERIAL INJURY TO VESTED WATER RIGHTS
12 IF THE OPERATION OF THE FACILITY APPROXIMATES AND DOES NOT CAUSE
13 A MATERIAL REDUCTION IN THE NATURAL HYDROGRAPH WITH RESPECT TO
14 PEAK FLOWS THAT WOULD HAVE EXISTED WITHOUT THE UPSTREAM URBAN
15 DEVELOPMENT THAT RESULTS IN THE STORM WATER BEING MANAGED BY
16 THE STORM WATER DETENTION AND INFILTRATION FACILITY.

17 (B) THE HOLDER OF A VESTED WATER RIGHT WHO BRINGS AN
18 ACTION UNDER SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (II) MAY
19 REBUT THE PRESUMPTION ESTABLISHED BY SUB-SUBPARAGRAPH (A) OF
20 THIS SUBPARAGRAPH (II) WITH EVIDENCE SUFFICIENT TO SHOW THAT THE
21 OPERATION OF THE STORM WATER DETENTION AND INFILTRATION FACILITY
22 HAS CAUSED MATERIAL INJURY TO THE WATER RIGHT BY MODIFYING THE
23 AMOUNT OR TIMING OF WATER THAT WOULD HAVE BEEN AVAILABLE FOR
24 DIVERSION BY THE WATER RIGHT ABSENT THE OPERATION OF THE FACILITY
25 UNDER HYDROLOGIC CONDITIONS THAT EXISTED AS OF THE WATER RIGHT'S
26 PRIORITY DATE, EXCLUDING FLOWS RESULTING FROM DEVELOPMENT OF
27 IMPERVIOUS SURFACES WITHIN THE DRAINAGE THAT CREATED THE NEED

1 FOR THE STORM WATER DETENTION AND INFILTRATION FACILITY.

2 (d) AN ENTITY THAT OWNS, OPERATES, OR HAS OVERSIGHT FOR A
3 STORM WATER DETENTION AND INFILTRATION FACILITY CONSTRUCTED
4 AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (8) SHALL, PRIOR TO
5 OPERATION OF THE FACILITY, PROVIDE NOTICE OF THE LOCATION AND
6 APPROXIMATE SURFACE AREA AT DESIGN VOLUME OF THE FACILITY AND
7 THE DATA THAT DEMONSTRATES THAT THE FACILITY HAS BEEN DESIGNED
8 TO COMPLY WITH SUB-SUBPARAGRAPHS (B) AND (C) OF SUBPARAGRAPH
9 (I) OF PARAGRAPH (b) OF THIS SUBSECTION (8) TO ALL PARTIES ON THE
10 SUBSTITUTE WATER SUPPLY PLAN NOTIFICATION LIST MAINTAINED BY THE
11 STATE ENGINEER PURSUANT TO SECTION 37-92-308 (6) FOR THE WATER
12 DIVISION IN WHICH THE FACILITY IS LOCATED.

13 (e) (I) WATER DETAINED OR RELEASED BY A STORM WATER
14 DETENTION AND INFILTRATION FACILITY OR POST-WILDLAND FIRE FACILITY
15 SHALL NOT BE USED FOR ANY PURPOSE, INCLUDING, WITHOUT LIMITATION,
16 BY SUBSTITUTION OR EXCHANGE, BY THE ENTITY THAT OWNS, OPERATES,
17 OR HAS OVERSIGHT OVER THE FACILITY OR THAT ENTITY'S ASSIGNEES, AND
18 IS AVAILABLE FOR DIVERSION IN PRIORITY AFTER RELEASE OR
19 INFILTRATION.

20 (II) AN ENTITY SHALL NOT RELEASE WATER DETAINED BY A STORM
21 WATER DETENTION AND INFILTRATION FACILITY OR POST-WILDLAND FIRE
22 FACILITY FOR THE SUBSEQUENT DIVERSION OR STORAGE BY THE PERSON
23 THAT OWNS, OPERATES, OR HAS OVERSIGHT OVER THE FACILITY OR THAT
24 ENTITY'S ASSIGNEES.

25 (III) THE OPERATION OF A STORM WATER DETENTION AND
26 INFILTRATION FACILITY OR POST-WILDLAND FIRE FACILITY IS NOT THE
27 BASIS FOR A WATER RIGHT, CREDIT, OR OTHER RIGHT TO OR FOR THE USE

1 OF WATER.

2 (f) A PERSON WHO INSTALLED OR OPERATED A POST-WILDLAND
3 FIRE FACILITY SHALL ENSURE THAT THE FACILITY IS REMOVED OR
4 RENDERED INOPERABLE AFTER THE EMERGENCY CONDITIONS CREATED BY
5 THE WILDFIRE NO LONGER EXIST.

6 (g) NOTHING IN THIS SUBSECTION (8) ALTERS, AMENDS, OR
7 AFFECTS ANY OTHERWISE-APPLICABLE REQUIREMENT TO OBTAIN A STATE
8 OR LOCAL PERMIT FOR A STORM WATER MANAGEMENT FACILITY OR
9 POST-WILDLAND FIRE FACILITY CONSTRUCTED ON OR AFTER THE
10 EFFECTIVE DATE OF THIS SUBSECTION (8).

11 (h) THE PROVISIONS OF THIS SUBSECTION (8) RELATING TO STORM
12 WATER DETENTION AND INFILTRATION FACILITIES DO NOT APPLY TO
13 FOUNTAIN CREEK AND ITS TRIBUTARIES, EXCEPT FOR FACILITIES REQUIRED
14 BY OR OPERATED IN COMPLIANCE WITH A COLORADO DISCHARGE PERMIT
15 SYSTEM MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMIT ISSUED BY
16 THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT PURSUANT TO
17 ARTICLE 8 OF TITLE 25, C.R.S.

18 **SECTION 2. Act subject to petition - effective date -**
19 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
20 the expiration of the ninety-day period after final adjournment of the
21 general assembly (August 5, 2015, if adjournment sine die is on May 6,
22 2015); except that, if a referendum petition is filed pursuant to section 1
23 (3) of article V of the state constitution against this act or an item, section,
24 or part of this act within such period, then the act, item, section, or part
25 will not take effect unless approved by the people at the general election
26 to be held in November 2016 and, in such case, will take effect on the
27 date of the official declaration of the vote thereon by the governor.

- 1 (2) This act applies to the administration of facilities occurring on
- 2 or after the applicable effective date of this act.