

CHAPTER 42

WATER AND IRRIGATION

SENATE BILL 93-130

BY SENATORS Norton, Ament, Bishop, Johnson, Tebedo, and Wattenberg;
also REPRESENTATIVES Fleming and Jerke.

AN ACT

**CONCERNING THE ENTERPRISE STATUS OF WATER ACTIVITIES OF GOVERNMENTAL ENTITIES FOR
PURPOSES OF SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION.**

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

SECTION 1. Title 37, Colorado Revised Statutes, 1990 Repl. Vol., as amended,
is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 45.1
Water Activities - Enterprise Status

37-45.1-101. Legislative declaration. (1) THE GENERAL ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT IN ORDER TO PROVIDE FOR THE CONTINUED BENEFICIAL USE OF ALL WATERS ORIGINATING IN COLORADO, THE ESTABLISHMENT OF WATER ACTIVITY ENTERPRISES WITHIN OR BY WATER CONSERVANCY DISTRICTS, WATER CONSERVATION DISTRICTS, AND OTHER ENTITIES OF STATE AND LOCAL GOVERNMENT IS CRITICAL TO THE HEALTH AND WELFARE OF THE PEOPLE OF THE STATE OF COLORADO. THE GENERAL ASSEMBLY FURTHER FINDS THAT WATER ACTIVITIES ARE NECESSARY TO:

- (a) PROVIDE A SECURE WATER SUPPLY FOR DOMESTIC USE;
- (b) CONTINUE TO PROVIDE WATER FOR AGRICULTURAL USE;
- (c) SUPPLY WATER FOR POWER, MILLING, MANUFACTURING, MINING, METALLURGICAL, FISH, WILDLIFE, RECREATIONAL, AND ALL OTHER BENEFICIAL USES;
- (d) SECURE WATER TO WHICH THE STATE IS ENTITLED UNDER ITS INTERSTATE WATER COMPACTS AND EQUITABLE APPORTIONMENT DECREES;

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(e) TREAT, RECLAIM, CONSERVE, RECHARGE, AUGMENT, EXCHANGE, OR REUSE WATER SUPPLIES WITHIN THE STATE; AND

(f) PROVIDE WHOLESALE AND RETAIL WATER SUPPLY AND WASTEWATER SERVICES.

37-45.1-102. Definitions. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "DISTRICT" MEANS ANY STATE OR LOCAL GOVERNMENTAL ENTITY WHICH HAS AUTHORITY TO CONDUCT WATER ACTIVITIES, INCLUDING A WATER CONSERVANCY DISTRICT CREATED PURSUANT TO ARTICLE 45 OF THIS TITLE, A WATER CONSERVATION DISTRICT CREATED BY ARTICLE 46, 47, OR 48 OF THIS TITLE, A WATER AND SANITATION DISTRICT OR OTHER ENTITY CREATED PURSUANT TO TITLE 32, C.R.S., AN ENTITY CREATED PURSUANT TO TITLE 29, C.R.S., OR THIS TITLE, A COUNTY, OR A MUNICIPALITY.

(2) "GRANT" MEANS A CASH PAYMENT OF PUBLIC FUNDS MADE DIRECTLY TO A WATER ACTIVITY ENTERPRISE BY THE STATE OR A LOCAL GOVERNMENTAL ENTITY OR A DISTRICT, WHICH CASH PAYMENT IS NOT REQUIRED TO BE REPAYED. "GRANT" DOES NOT INCLUDE PUBLIC FUNDS PAID OR ADVANCED TO A WATER ACTIVITY ENTERPRISE BY THE STATE OR A LOCAL GOVERNMENTAL ENTITY OR DISTRICT IN EXCHANGE FOR AN AGREEMENT BY A WATER ACTIVITY ENTERPRISE TO PROVIDE SERVICES INCLUDING THE PROVISION OF WATER, THE CAPACITY OF PROJECT WORKS, MATERIALS, OR OTHER WATER ACTIVITIES, NOR DOES "GRANT" INCLUDE REFUNDS MADE IN THE CURRENT OR NEXT FISCAL YEAR, GIFTS, ANY PAYMENTS DIRECTLY OR INDIRECTLY FROM FEDERAL FUNDS OR EARNINGS ON FEDERAL FUNDS, COLLECTIONS FOR ANOTHER GOVERNMENT, PENSION CONTRIBUTIONS BY EMPLOYEES AND PENSION FUND EARNINGS, RESERVE TRANSFERS OR EXPENDITURES, DAMAGE AWARDS, OR PROPERTY SALES.

(3) "WATER ACTIVITY" INCLUDES BUT IS NOT LIMITED TO THE DIVERSION, STORAGE, CARRIAGE, DELIVERY, DISTRIBUTION, COLLECTION, TREATMENT, USE, REUSE, AUGMENTATION, EXCHANGE, OR DISCHARGE OF WATER AND INCLUDES THE PROVISION OF WHOLESALE OR RETAIL WATER OR WASTEWATER OR STORMWATER SERVICES AND THE ACQUISITION OF WATER OR WATER RIGHTS.

(4) "WATER ACTIVITY ENTERPRISE" INCLUDES ANY GOVERNMENT WATER ACTIVITY BUSINESS OWNED BY A DISTRICT, WHICH ENTERPRISE RECEIVES UNDER TEN PERCENT OF ITS ANNUAL REVENUES IN GRANTS FROM ALL COLORADO STATE AND LOCAL GOVERNMENTS COMBINED AND WHICH IS AUTHORIZED TO ISSUE ITS OWN REVENUE BONDS PURSUANT TO THIS ARTICLE OR ANY OTHER APPLICABLE LAW.

(5) "WATER PROJECT OR FACILITY" INCLUDES A DAM, STORAGE RESERVOIR, COMPENSATORY OR REPLACEMENT RESERVOIR, CANAL, CONDUIT, PIPELINE, TUNNEL, POWER PLANT, WATER OR WASTEWATER TREATMENT PLANT, AND ANY AND ALL WORKS, FACILITIES, IMPROVEMENTS, AND PROPERTY NECESSARY OR CONVENIENT FOR THE PURPOSE OF CONDUCTING A WATER ACTIVITY.

37-45.1-103. Establishment of enterprises. (1) ANY DISTRICT WHICH UNDER APPLICABLE PROVISIONS OF LAW HAS ITS OWN BONDING AUTHORITY MAY ESTABLISH OR MAY CONTINUE TO MAINTAIN WATER ACTIVITY ENTERPRISES FOR THE PURPOSE OF PURSUING OR CONTINUING WATER ACTIVITIES, INCLUDING WATER ACQUISITION OR

WATER PROJECT OR FACILITY ACTIVITIES, INCLUDING THE CONSTRUCTION, OPERATION, REPAIR, AND REPLACEMENT OF WATER OR WASTEWATER FACILITIES. ANY WATER ACTIVITY ENTERPRISE ESTABLISHED OR MAINTAINED PURSUANT TO THIS ARTICLE IS EXCLUDED FROM THE PROVISIONS OF SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION.

(2) (a) EACH WATER ACTIVITY ENTERPRISE SHALL BE WHOLLY OWNED BY A SINGLE DISTRICT AND SHALL NOT BE COMBINED WITH ANY WATER ACTIVITY ENTERPRISE OWNED BY ANOTHER DISTRICT; HOWEVER, EACH DISTRICT MAY ESTABLISH MORE THAN ONE WATER ACTIVITY ENTERPRISE AND EACH WATER ACTIVITY ENTERPRISE MAY CONDUCT OR CONTINUE TO CONDUCT ONE OR MORE WATER ACTIVITIES AS MAY BE DETERMINED BY THE GOVERNING BODY OF THE WATER ACTIVITY ENTERPRISE.

(b) THIS SUBSECTION (2) SHALL NOT LIMIT THE AUTHORITY OF A WATER ACTIVITY ENTERPRISE TO CONTRACT WITH ANY OTHER PERSON OR ENTITY, INCLUDING OTHER DISTRICTS OR WATER ACTIVITY ENTERPRISES.

(3) THE GOVERNING BODY OF THE WATER ACTIVITY ENTERPRISE SHALL BE THE GOVERNING BODY OF THE DISTRICT WHICH OWNS THE ENTERPRISE OR SUCH GOVERNING BODY AS MAY BE PRESCRIBED BY APPLICABLE LAWS, CITY AND COUNTY, COUNTY, OR MUNICIPAL CHARTERS, COUNTY RESOLUTIONS, MUNICIPAL ORDINANCES, OR INTERGOVERNMENTAL AGREEMENTS WHICH DESIGNATE A DIFFERENT GOVERNING BODY FOR THE WATER ACTIVITY ENTERPRISE.

(4) THE GOVERNING BODY OF EACH WATER ACTIVITY ENTERPRISE MAY EXERCISE THE DISTRICT'S LEGAL AUTHORITY RELATING TO WATER ACTIVITIES, BUT NO ENTERPRISE MAY LEVY A TAX WHICH IS SUBJECT TO SECTION 20 (4) OF ARTICLE X OF THE STATE CONSTITUTION.

37-45.1-104. Enterprise revenue bonding authority. (1) EACH WATER ACTIVITY ENTERPRISE, THROUGH ITS GOVERNING BODY, MAY ISSUE OR REISSUE REVENUE BONDS IN ACCORDANCE WITH AND THROUGH THE PROVISIONS OF SUBSECTION (2) OF THIS SECTION.

(2) THE WATER ACTIVITY ENTERPRISE IS AUTHORIZED TO ISSUE OR REISSUE BONDS, NOTES, OR OTHER OBLIGATIONS PAYABLE FROM THE REVENUES DERIVED OR TO BE DERIVED FROM THE FUNCTION, SERVICE, BENEFITS, OR FACILITY OR THE COMBINED FUNCTIONS, SERVICES, BENEFITS, OR FACILITIES OF THE ENTERPRISE OR FROM ANY OTHER AVAILABLE FUNDS OF THE ENTERPRISE. THE TERMS, CONDITIONS, AND DETAILS OF SAID BONDS, NOTES, AND OTHER OBLIGATIONS, THE PROCEDURES RELATED THERETO, AND THE REFUNDING THEREOF SHALL BE SET FORTH IN THE RESOLUTION AUTHORIZING SAID BONDS, NOTES, OR OTHER OBLIGATIONS AND SHALL, AS NEARLY AS MAY BE PRACTICABLE, BE SUBSTANTIALLY THE SAME AS THOSE PROVIDED IN PART 4 OF ARTICLE 35 OF TITLE 31, C.R.S., RELATING TO WATER AND SEWER REVENUE BONDS; EXCEPT THAT THE PURPOSES FOR WHICH THE SAME MAY BE ISSUED SHALL NOT BE SO LIMITED AND EXCEPT THAT SAID BONDS, NOTES, AND OTHER OBLIGATIONS MAY BE SOLD AT PUBLIC OR PRIVATE SALE. EACH BOND, NOTE, OR OTHER OBLIGATION ISSUED UNDER THIS SUBSECTION (2) SHALL RECITE IN SUBSTANCE THAT SAID BOND, NOTE, OR OTHER OBLIGATION, INCLUDING THE INTEREST THEREON, IS PAYABLE FROM THE REVENUES AND OTHER AVAILABLE FUNDS OF THE WATER ACTIVITY ENTERPRISE PLEDGED FOR THE PAYMENT THEREOF. NOTWITHSTANDING ANY OTHER PROVISION

OF LAW TO THE CONTRARY, SUCH BONDS, NOTES, AND OTHER OBLIGATIONS MAY BE ISSUED TO MATURE AT SUCH TIMES NOT BEYOND FORTY YEARS FROM THEIR RESPECTIVE ISSUE DATES, SHALL BEAR INTEREST AT SUCH RATES, AND SHALL BE SOLD AT, ABOVE, OR BELOW THE PRINCIPAL AMOUNT THEREOF, ALL AS SHALL BE DETERMINED BY THE GOVERNING BODY OF THE WATER ACTIVITY ENTERPRISE. NOTWITHSTANDING ANYTHING IN THIS SECTION TO THE CONTRARY, IN THE CASE OF SHORT-TERM NOTES OR OTHER OBLIGATIONS MATURING NOT LATER THAN ONE YEAR AFTER THE DATE OF ISSUANCE THEREOF, THE GOVERNING BODY OF THE WATER ACTIVITY ENTERPRISE MAY AUTHORIZE OFFICIALS OF THE ENTERPRISE TO FIX PRINCIPAL AMOUNTS, MATURITY DATES, INTEREST RATES, AND PURCHASE PRICES OF ANY PARTICULAR ISSUE OF SUCH SHORT-TERM NOTES OR OBLIGATIONS, SUBJECT TO SUCH LIMITATIONS AS TO MAXIMUM TERM, MAXIMUM PRINCIPAL AMOUNT OUTSTANDING, AND MAXIMUM NET EFFECTIVE INTEREST RATES AS THE GOVERNING BODY SHALL PRESCRIBE BY RESOLUTION. SUCH ACTION MAY BE TAKEN ONLY AT A PUBLIC MEETING PRECEDED BY ADEQUATE NOTICE, AND THE ACTION OF THE GOVERNING BODY OF THE WATER ACTIVITY ENTERPRISE SHALL BE PROPERLY RECORDED ON THE PERMANENT RECORDS OF THE GOVERNING BODY OF THE ENTERPRISE. THE POWERS PROVIDED IN THIS SECTION FOR WATER ACTIVITY ENTERPRISES SHALL NOT MODIFY, LIMIT, OR AFFECT THE POWERS CONFERRED BY ANY OTHER LAW EITHER DIRECTLY OR INDIRECTLY.

37-45.1-105. Article X, section 20 matters. (1) CONTRACTS PERTAINING TO A WATER PROJECT, FACILITY, OR ACTIVITY ENTERED INTO PRIOR TO NOVEMBER 4, 1992, AND BONDED INDEBTEDNESS INCURRED PRIOR TO NOVEMBER 4, 1992, OR REFUNDING OF SUCH BONDED INDEBTEDNESS, WHICH INVOLVE A LEVY OR ASSESSMENT OR A PLEDGE OF A LEVY OR ASSESSMENT UNDER ANY PROVISION OF LAW GOVERNING THE DISTRICT TO PROVIDE REVENUES TO THE DISTRICT OR COVER DEFAULT OR DEFICIENCIES IN BONDED INDEBTEDNESS PAYMENTS ARE NOT AFFECTED OR IMPAIRED BY THE PASSAGE OF SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION.

(2) LANDS WHICH ARE INCLUDED IN A DISTRICT WITH AUTHORITY TO CONDUCT A WATER ACTIVITY SHALL BE SUBJECT TO THE SAME MILL LEVIES AND OTHER TAXES LEVIED OR TO BE LEVIED ON OTHER SIMILARLY SITUATED LANDS AT THE TIME SUCH ADDITIONAL LANDS ARE INCLUDED. SUCH NEWLY INCLUDED LANDS ARE ADDITIONS TO TAXABLE REAL PROPERTY, AND APPLICATION OF SUCH LEVIES AND OTHER TAXES TO SUCH NEWLY INCLUDED LANDS IS NOT SUBJECT TO THE LIMITATIONS OF SECTION 20 (4) OF ARTICLE X OF THE STATE CONSTITUTION. THIS SUBSECTION (2) IS INTENDED TO PLACE NEWLY INCLUDED LANDS AND SIMILARLY SITUATED EXISTING LANDS WITHIN A DISTRICT ON AN EQUAL BASIS.

(3) WATER PROJECT LOAN AGREEMENTS SUBJECT TO REPAYMENT OR CONTRACTS FOR SERVICES INCLUDING THE PROVISION OF WATER, CAPACITY OF PROJECT WORKS, MATERIALS, OR OTHER WATER ACTIVITIES, WHICH INVOLVE THE PAYMENT OF FUNDS FOR SUCH SERVICES TO A DISTRICT OR ITS WATER ACTIVITY ENTERPRISE BY A STATE OR LOCAL GOVERNMENTAL ENTITY OR BY ANOTHER DISTRICT OR WATER ACTIVITY ENTERPRISE, SHALL NOT BE CONSIDERED "GRANTS" WITHIN THE MEANING OF SECTION 20 (2) (d) OF ARTICLE X OF THE STATE CONSTITUTION. NOTWITHSTANDING THE PROVISIONS OF SECTION 6 (3) OF ARTICLE XI OF THE STATE CONSTITUTION, WHERE SUCH AGREEMENT OR CONTRACT SHALL IN WHOLE OR IN PART CONSTITUTE A GENERAL OBLIGATION OF SUCH LOCAL GOVERNMENTAL ENTITY OR DISTRICT, AND WHERE SUCH AGREEMENT OR CONTRACT PROVIDES THAT SUCH LOCAL GOVERNMENTAL ENTITY OR

DISTRICT SHALL BE REQUIRED TO ACCEPT AND PAY FOR WATER, CAPACITY, MATERIALS, OR OTHER WATER ACTIVITIES AGREED OR CONTRACTED FOR BY A DEFAULTING LOCAL GOVERNMENTAL ENTITY OR DISTRICT, SUCH AGREEMENT OR CONTRACT SHALL NOT BE ENTERED INTO UNLESS THE QUESTION OF INCURRING SUCH GENERAL OBLIGATION HAS BEEN SUBMITTED TO AND APPROVED AT AN ELECTION CONDUCTED BY SUCH LOCAL GOVERNMENTAL ENTITY OR DISTRICT IN ACCORDANCE WITH APPLICABLE ELECTION LAWS.

37-45.1-106. Contracts. (1) A DISTRICT OR ITS WATER ACTIVITY ENTERPRISE MAY CONTRACT WITH THE COLORADO WATER CONSERVATION BOARD OR ANY OTHER GOVERNMENTAL SOURCE OF FUNDING FOR LOANS AND GRANTS RELATED TO WATER ACTIVITY ENTERPRISE FUNCTIONS, AND A DISTRICT OR ITS WATER ACTIVITY ENTERPRISE MAY CONTRACT WITH THE COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY FOR LOANS OR OTHER AVAILABLE FINANCIAL ASSISTANCE RELATED TO WATER ACTIVITY ENTERPRISE FUNCTIONS.

(2) REVENUES COLLECTED BY A DISTRICT FOR SERVICES RENDERED BY A WATER ACTIVITY ENTERPRISE WHICH IT OWNS, INCLUDING BUT NOT LIMITED TO THE REVENUES RAISED BY RATES ON EACH CLASS OF SERVICE UNDER ARTICLE 45, 46, 47, OR 48 OF THIS TITLE, ARE NOT SUBJECT TO THE LIMITATIONS OF SUBSECTIONS (4) AND (7) OF SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION.

(3) THE RATES OR A CHANGE IN THE RATES CHARGED BY A DISTRICT FOR ITS WATER ACTIVITY ENTERPRISE SERVICES, INCLUDING THE PROVISION OF WATER, CAPACITY OF PROJECT WORKS, MATERIALS, OR OTHER WATER ACTIVITIES PROVIDED BY OR THROUGH THE WATER ACTIVITY ENTERPRISE, SHALL NOT BE DEEMED A TAX SUBJECT TO THE LIMITATIONS OF SECTION 20 (4) AND (7) OF ARTICLE X OF THE STATE CONSTITUTION.

37-45.1-107. Construction. THE AUTHORITY OF THIS ARTICLE IS IN ADDITION TO ALL OTHER AUTHORITY PROVIDED BY LAW. NOTHING CONTAINED IN THIS ARTICLE SHALL BE CONSTRUED TO REQUIRE THE ESTABLISHMENT, OPERATION, OR CONTINUATION OF A WATER ACTIVITY ENTERPRISE OR TO LIMIT THE AUTHORITY OF ANY STATE OR LOCAL GOVERNMENT TO UTILIZE OTHER POLICIES AND PROCEDURES FOR ESTABLISHING, OPERATING, OR CONTINUING WATER ACTIVITY ENTERPRISES OR TO ESTABLISH AND OPERATE OTHER TYPES OF ENTERPRISES FOR ANY OTHER LAWFUL PURPOSE.

SECTION 2. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: March 30, 1993