

CHAPTER 259

GOVERNMENT - STATE

HOUSE BILL 98-1006

BY REPRESENTATIVES Adkins, Smith, S. Johnson, Bacon, Gotlieb, Grossman, Hagedorn, Lawrence, Mace, Reeser, Smith, Sullivant, Udall, S. Williams, and Zimmerman;
also SENATORS Bishop, Ament, Dennis, Hernandez, Hopper, Martinez, Matsunaka, Norton, Pascoe, Phillips, Rupert, Schroeder, Wattenberg, and Wham.

AN ACT

CONCERNING THE ESTABLISHMENT OF A FUND TO PROMOTE THE CONSERVATION OF NATIVE SPECIES,
AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

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

SECTION 1. Article 33 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

24-33-111. Conservation of native species - fund created. (1) **Legislative declaration.** THE GENERAL ASSEMBLY HEREBY RECOGNIZES THE IMPORTANCE OF CONSERVING NATIVE SPECIES THAT HAVE BEEN LISTED AS THREATENED OR ENDANGERED UNDER STATE OR FEDERAL LAW, OR ARE CANDIDATE SPECIES OR ARE LIKELY TO BECOME CANDIDATE SPECIES AS DETERMINED BY THE UNITED STATES FISH AND WILDLIFE SERVICE. THE GENERAL ASSEMBLY HEREBY DECLARES AND DETERMINES THAT THE COLORADO DEPARTMENT OF NATURAL RESOURCES AND THE DIVISION OF WILDLIFE ARE RESPONSIBLE FOR THE DEVELOPMENT, IMPLEMENTATION, OR APPROVAL OF APPROPRIATE PROGRAMS TO ADDRESS THE CONSERVATION OF SUCH SPECIES FOR COMPLYING WITH THE "FEDERAL MANDATES ACT", ARTICLE 78 OF THIS TITLE, AND FOR NEGOTIATING AGREEMENTS WITH FEDERAL AGENCIES AND OTHER STATES TO AVOID REGULATORY CONFLICTS PURSUANT TO SECTION 24-33-103.

(2) **Species conservation trust fund - creation.** THERE IS HEREBY CREATED IN THE STATE TREASURY THE SPECIES CONSERVATION TRUST FUND, WHICH SHALL BE SUBJECT TO ANNUAL AUTHORIZATION BY THE GENERAL ASSEMBLY TO CARRY OUT THE PURPOSES OF THIS SECTION. THERE IS HEREBY CREATED WITHIN THE SPECIES CONSERVATION TRUST FUND THE OPERATION AND MAINTENANCE ACCOUNT AND THE CAPITAL ACCOUNT. THE MONEYS IN THE OPERATION AND MAINTENANCE ACCOUNT

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

SHALL BE FOR ADMINISTRATIVE AND NONCAPITAL EXPENDITURES NECESSARY FOR THE IMPLEMENTATION OF THIS SECTION. THE MONEYS IN THE CAPITAL ACCOUNT SHALL BE USED EXCLUSIVELY FOR CAPITAL EXPENDITURES INCLUDING BUT NOT LIMITED TO PROPERTY ACQUISITION AND PROJECT CONSTRUCTION. ALL INCOME DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEYS IN THE FUND SHALL BE CREDITED TO THE FUND. AT THE END OF ANY FISCAL YEAR, ALL UNEXPENDED MONEYS IN THE FUND SHALL REMAIN THEREIN AND SHALL NOT BE CREDITED OR TRANSFERRED TO THE GENERAL FUND OR ANY OTHER FUND. NO INVESTMENT EARNINGS OR OTHER MONEYS IN THE SPECIES CONSERVATION TRUST FUND SHALL BE SUBJECT TO ANY MANAGEMENT FEE IMPOSED BY LAW FOR THE BENEFIT OF THE GENERAL FUND. TO THE MAXIMUM EXTENT PRACTICAL, ONLY INTEREST FROM THE FUND SHALL BE EXPENDED FOR ACTIVITIES PURSUANT TO THIS SECTION.

(3) **Species conservation eligibility list and annual report.** (a) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF NATURAL RESOURCES, AFTER CONSULTATION WITH THE COLORADO WATER CONSERVATION BOARD AND ITS DIRECTOR, THE WILDLIFE COMMISSION, AND THE DIRECTOR OF THE DIVISION OF WILDLIFE, SHALL ANNUALLY PREPARE A SPECIES CONSERVATION ELIGIBILITY LIST DESCRIBING PROGRAMS AND ASSOCIATED COSTS THAT ARE ELIGIBLE TO RECEIVE FUNDING PURSUANT TO THIS SECTION. THE SPECIES CONSERVATION ELIGIBILITY LIST SHALL BE SUBJECT TO MODIFICATION AND ADOPTION THROUGH PASSAGE OF A JOINT RESOLUTION THAT IS APPROVED BY A MAJORITY VOTE OF BOTH HOUSES OF THE GENERAL ASSEMBLY. AT THE SAME TIME AS THE SPECIES CONSERVATION ELIGIBILITY LIST IS SUBMITTED, THE DIRECTOR OF THE DEPARTMENT OF NATURAL RESOURCES, AFTER CONSULTATION WITH THE COLORADO WATER CONSERVATION BOARD AND ITS DIRECTOR, THE WILDLIFE COMMISSION, AND THE DIRECTOR OF THE DIVISION OF WILDLIFE, SHALL ALSO PROVIDE A DETAILED REPORT TO THE GENERAL ASSEMBLY ON THE PROGRESS AND STATUS OF ACTIVITIES TO DATE AND THEIR EFFECTIVENESS IN THE RECOVERY OF THE SPECIES AND IDENTIFY PROPOSED FUTURE ACTIVITIES. THE REPORT SHALL INCLUDE AN ASSESSMENT OF HABITAT BENEFITS, BOTH PUBLIC AND PRIVATE, ATTRIBUTABLE TO SUCH ACTIVITIES.

(b) FUNDING SHALL BE DISTRIBUTED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF NATURAL RESOURCES AMONG PROJECTS INCLUDED IN THE SPECIES CONSERVATION ELIGIBILITY LIST FOR THE FOLLOWING PURPOSES:

(I) COOPERATIVE AGREEMENTS, RECOVERY PROGRAMS, AND OTHER PROGRAMS THAT ARE DESIGNED TO MEET OBLIGATIONS ARISING UNDER THE FEDERAL "ENDANGERED SPECIES ACT OF 1973", 16 U.S.C. 1531, ET SEQ., AND THAT PROVIDE REGULATORY CERTAINTY IN ACCORDANCE WITH SUBSECTION (4) OF THIS SECTION;

(II) STUDIES AND PROGRAMS ESTABLISHED OR APPROVED BY THE DIVISION OF WILDLIFE AND THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF NATURAL RESOURCES REGARDING:

(A) SPECIES PLACED ON THE STATE ENDANGERED OR THREATENED LIST IN ACCORDANCE WITH SECTION 33-2-105, C.R.S.;

(B) CANDIDATE SPECIES IN ORDER TO ASSIST IN THE RECOVERY OR PROTECTION OF THE SPECIES TO AVOID LISTING OF THE SPECIES;

(C) SCIENTIFIC RESEARCH RELATING TO LISTING OR DELISTING ANY SPECIES; OR

(D) IF A SPECIES THAT IS NOT ON THE FEDERAL ENDANGERED OR THREATENED SPECIES LIST IS PROPOSED TO BE ADDED TO THE STATE ENDANGERED OR THREATENED SPECIES LIST, THE EVALUATION OF THE SPECIES PURSUANT TO THIS SUB-SUBPARAGRAPH (B) SHALL INCLUDE: SCIENTIFIC EVALUATION OF GENETIC DATA THAT PROVES THE SPECIES IS A SEPARATE AND DISTINCT SPECIES IN THE ECOSYSTEM; EVALUATION OF THE SPECIES HABITAT THAT ENCOMPASSES THE ENTIRE GEOGRAPHIC AREA OF THE SPECIES HABITAT NOT JUST PORTIONS OF SUCH HABITAT; AND THE RELIABLE SCIENTIFIC BASELINE DATA USED TO ASCERTAIN THAT THE NUMBER OF THE SPECIES IN THE HABITAT IS RAPIDLY DECLINING OVER TIME.

(c) IN NO EVENT SHALL MONEYS FROM THE SPECIES CONSERVATION TRUST FUND, CREATED IN SUBSECTION (2) OF THIS SECTION, BE USED TO ACQUIRE ANY PROPERTY THROUGH THE EXERCISE OF EMINENT DOMAIN.

(4) **Agreement requirements.** IN ORDER TO BE ELIGIBLE FOR FUNDING UNDER SUBSECTION (3) OF THIS SECTION, AGREEMENTS ENTERED INTO BY OR ON BEHALF OF THE STATE WITH ANY PERSON, ENTITY, ORGANIZATION, POLITICAL SUBDIVISION, STATE, OR THE FEDERAL GOVERNMENT RELATING TO THE CONSERVATION OF NATIVE SPECIES THAT HAVE BEEN LISTED AS THREATENED OR ENDANGERED UNDER FEDERAL OR STATE LAW OR THAT ARE CANDIDATE SPECIES OR ARE LIKELY TO BECOME CANDIDATE SPECIES, SPECIES AT RISK AND SPECIES OF SPECIAL CONCERN, OR SPECIES THE DECLINE OR EXTINCTION OF WHICH MAY AFFECT THE WELFARE OF THE CITIZENS OF THE STATE, MUST BE VOLUNTARY, SHALL PROTECT PRIVATE PROPERTY RIGHTS, AND SHALL ASSIST IN MEETING THE REGULATORY REQUIREMENTS THAT CURRENTLY EXIST OR THAT MAY BECOME APPLICABLE IN THE FUTURE PERTAINING TO THE CONSERVATION OF SPECIES. FUNDS ALLOCATED FOR THE PURPOSE OF IMPLEMENTING SUCH AGREEMENTS THROUGH THE SPECIES CONSERVATION LIST PROCESS SHALL BE UTILIZED, TO THE MAXIMUM EXTENT POSSIBLE, FOR THE PURCHASE OR CONSTRUCTION OF CAPITAL ASSETS THAT SHALL BE OWNED BY THE STATE AND THAT MAY BE SOLD OR UTILIZED FOR OTHER PURPOSES IN THE EVENT THAT THE AGREEMENT IS TERMINATED UNLESS THE STATE ELECTS NOT TO OWN SUCH ASSETS AND FOR THE IMPLEMENTATION OF ACTIVITIES THE DIVISION OF WILDLIFE HAS DETERMINED MAY ELIMINATE THE NEED TO LIST A SPECIES AS THREATENED OR ENDANGERED OR, IN THE CASE OF PREVIOUSLY LISTED SPECIES, MAY HASTEN DELISTING.

(5) **Maximization of funds.** THE COLORADO WATER CONSERVATION BOARD AND THE WILDLIFE COMMISSION SHALL MAXIMIZE THE SPECIES CONSERVATION TRUST FUND BY APPLYING FOR AVAILABLE GRANTS CONSISTENT WITH THE PURPOSES OF THE FUND. FEDERAL GRANTS AND VOLUNTARY CONTRIBUTIONS MAY BY ACCEPTED AND EXPENDED AS PROVIDED IN THIS SECTION. SUCH GRANTS AND CONTRIBUTIONS SHALL, UPON ACCEPTANCE, BE PLACED IN THE SPECIES CONSERVATION TRUST FUND CREATED IN SUBSECTION (2) OF THIS SECTION. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT THE AUTHORITY OF THE COLORADO DIVISION OF WILDLIFE TO MANAGE OR REGULATE GAME, NONGAME, OR THREATENED OR ENDANGERED SPECIES. NO FUNDING SHALL BE ACCEPTED, APPROVED, OR USED TO INITIATE THE LISTING OF SPECIES AS THREATENED OR ENDANGERED UNDER FEDERAL LAW. NOTHING IN THIS SECTION IS INTENDED TO BE CONSTRUED AS A MECHANISM TO SUBSTITUTE FUNDING THAT WOULD OTHERWISE BE AVAILABLE FOR EXPENDITURE BY THE DIVISION OF WILDLIFE OR TO REPLACE OR REDUCE THE OBLIGATION OF THE DIVISION TO CARRY OUT NONGAME

PROGRAMS UNDER TITLE 33, C.R.S.

SECTION 2. 37-95-106 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

37-95-106. Authority - powers - repeal. (1) Except as otherwise limited by this article, the authority, acting through the board, has the power:

(gg) (I) TO MAKE CONTRIBUTIONS OF AUTHORITY MONEYS THEN AVAILABLE AND UNOBLIGATED AT SUCH TIMES, ON OR BEFORE JUNE 30, 1999, AND IN SUCH AMOUNTS, NOT TO EXCEED A TOTAL OF TWO MILLION FOUR HUNDRED THOUSAND DOLLARS, AS THE BOARD DIRECTS, TO THE SPECIES CONSERVATION TRUST FUND CREATED IN SECTION 24-33-111 (2), C.R.S.

(II) THIS PARAGRAPH (gg) IS REPEALED, EFFECTIVE JULY 1, 1999.

SECTION 3. 37-60-121, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

37-60-121. Colorado water conservation board construction fund - creation of - nature of fund - funds for investigations - contributions - use for augmenting the general fund. (8) NOTWITHSTANDING ANY PROVISION IN THIS SECTION OR SECTION 37-60-122 TO THE CONTRARY, THE STATE TREASURER SHALL DEDUCT FIVE HUNDRED THOUSAND DOLLARS FROM THE COLORADO WATER CONSERVATION BOARD CONSTRUCTION FUND AND TRANSFER SUCH SUM TO THE CAPITAL ACCOUNT OF THE SPECIES CONSERVATION TRUST FUND CREATED IN SECTION 24-33-111 (2), C.R.S.

SECTION 4. 37-60-121.1 (2), Colorado Revised Statutes, is amended to read:

37-60-121.1. Reserved rights litigation fund. (2) (a) There is hereby established a reserved rights litigation fund in the office of the state treasurer to be utilized by the department of law for resolution of reserved rights claims. Moneys credited to said fund shall be expended by the attorney general only upon authorization by the general assembly and consistent with the provisions of this section. The controller, upon presentation of vouchers properly drawn and signed by the attorney general or an authorized employee of the department of law, shall issue warrants drawn on said fund. All moneys so deposited in the reserved rights litigation fund shall remain in said fund to be used for the purposes set forth in this section and shall not revert to the Colorado water conservation board construction fund, the general fund, or any other fund at the end of the year, except as directed by the general assembly. All interest earned from the investment of moneys in the reserved rights litigation fund shall be credited to and become a part of the Colorado water conservation board construction fund created by section 37-60-121.

(b) NOTWITHSTANDING ANY PROVISION OF PARAGRAPH (a) OF THIS SUBSECTION (2) TO THE CONTRARY, ON JULY 1, 1998, THE STATE TREASURER SHALL DEDUCT ONE MILLION DOLLARS FROM THE RESERVED RIGHTS LITIGATION FUND AND TRANSFER SUCH SUM TO THE CAPITAL ACCOUNT OF THE SPECIES CONSERVATION TRUST FUND CREATED IN SECTION 24-33-111 (2), C.R.S.

SECTION 5. 37-60-122.2 (2), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

37-60-122.2. Fish and wildlife resources - legislative declaration - fish and wildlife resources account. (2) (f) NOTWITHSTANDING ANY PROVISION OF PARAGRAPH (a) OF THIS SUBSECTION (2) TO THE CONTRARY, ON JULY 1, 1998, THE STATE TREASURER SHALL DEDUCT ONE MILLION DOLLARS FROM THE FISH AND WILDLIFE RESOURCES ACCOUNT IN THE COLORADO WATER CONSERVATION BOARD CONSTRUCTION FUND AND TRANSFER SUCH SUM TO THE OPERATION AND MAINTENANCE ACCOUNT OF THE SPECIES CONSERVATION TRUST FUND CREATED IN SECTION 24-33-111 (2), C.R.S.

SECTION 6. 24-75-302 (2) (k), Colorado Revised Statutes, is amended to read:

24-75-302. Capital construction fund - capital assessment fees - calculation. (2) As of July 1, 1988, and July 1 of each year thereafter through July 1, 2001, a sum as specified in this subsection (2) shall accrue to the capital construction fund. The state treasurer and the controller shall transfer such sum out of the general fund and into the capital construction fund as moneys become available in the general fund during the fiscal year beginning on said July 1. Transfers between funds pursuant to this subsection (2) shall not be deemed to be appropriations subject to the limitations of section 24-75-201.1. The amount which shall accrue pursuant to this subsection (2) shall be as follows:

(k) On July 1, 1998, fifty million dollars plus three hundred sixteen thousand six hundred thirty-five dollars pursuant to H.B. 97-1186, enacted at the first regular session of the sixty-first general assembly PLUS FIVE MILLION ONE HUNDRED THOUSAND DOLLARS PURSUANT TO H.B. 98-1006, ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-FIRST GENERAL ASSEMBLY;

SECTION 7. Transfer of appropriation. Out of the five million one hundred thousand dollars (\$5,100,000) transferred to the capital construction fund pursuant to section 24-75-302 (2) (k), Colorado Revised Statutes, there is hereby transferred to the capital account in the species conservation trust fund, created in section 24-33-111 (2), Colorado Revised Statutes, for the fiscal year beginning July 1, 1998, the sum of five million one hundred thousand dollars (\$5,100,000), or so much thereof as may be necessary, for the implementation of this act.

SECTION 8. 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: May 27, 1998