

CHAPTER 373

WATER AND IRRIGATION

HOUSE BILL 04-1365

BY REPRESENTATIVE(S) Harvey, Frangas, May M., McFadyen, Plant, Rippy, Weissmann, and Wiens;
also SENATOR(S) Kester, Groff, Grossman, Hillman, and Tapia.

AN ACT**CONCERNING WATER PLANNING BY RETAIL WATER PROVIDERS.**

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

SECTION 1. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) Colorado was the first western state to enact statewide water conservation legislation;

(b) Water conservation and drought mitigation planning will benefit all citizens of the state of Colorado;

(c) The "Water Conservation Act of 1991", which fostered a statewide policy of improved urban water use efficiency and conservation, provides the foundation that can now be enhanced to provide new technical and financial opportunities for Colorado's communities regarding water conservation and drought mitigation planning.

(2) It is therefore the purpose and intent of this act and the policy of this state to:

(a) Encourage wise water use and conservation and drought planning by those privately and publicly owned water agencies, utilities, and others with the legal obligation to supply, distribute, or otherwise provide water through technical assistance, information dissemination, and where appropriate, financial support;

(b) Encourage the state, the Colorado water conservation board, and water providers with knowledge of water conservation and drought mitigation planning to work with other water providers in developing and implementing water conservation

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

and water use efficiencies and managing water supplies during periods of drought;

(c) Encourage smaller water providers to take advantage of state-provided resources to support local planning efforts; and

(d) Encourage and support implementation of this act, in particular those components of this act that relate to the development and implementation of a statewide water supply initiative.

SECTION 2. 37-60-124, Colorado Revised Statutes, is amended to read:

37-60-124. Office of water conservation and drought planning - creation - powers and duties. (1) There is hereby created as an office under the Colorado water conservation board the office of water conservation AND DROUGHT PLANNING. The office shall have such staff as are necessary and appropriate to carry out the duties established for the office.

(2) The office of water conservation AND DROUGHT PLANNING shall promote water ~~use efficiency~~ CONSERVATION AND DROUGHT MITIGATION PLANNING by performing, to the degree feasible, duties including, but not limited to, the following:

(a) PARTICIPATING AS A MEMBER OR CHAIRPERSON OF ANY STATE WATER AVAILABILITY TASK FORCES ESTABLISHED TO MONITOR, FORECAST, MITIGATE, OR PREPARE FOR DROUGHT;

~~(a)~~ (b) Acting as a repository for water ~~use efficiency~~ CONSERVATION AND DROUGHT MITIGATION PLANNING information;

(c) DISSEMINATING WATER CONSERVATION, DROUGHT MITIGATION PLANNING, AND RELATED INFORMATION TO WATER PROVIDERS AND THE GENERAL PUBLIC;

~~(b)~~ (d) ~~Provision of~~ PROVIDING technical assistance to and working with municipal, ~~and other urban~~ INDUSTRIAL, AGRICULTURAL, AND OTHER water providers and state agencies as they plan for, evaluate, and implement water ~~use efficiency~~ ~~measures to provide necessary water services~~ CONSERVATION PLANS AND PROGRAMS, DROUGHT MITIGATION PLANS, OR BOTH;

~~(c)~~ (e) Coordination of the planning for and assistance in the implementation of water ~~use efficiency~~ CONSERVATION plans by state agencies pursuant to section 37-96-103 (4);

~~(d)~~ (f) Administration of financial assistance for water ~~use efficiency~~ CONSERVATION AND DROUGHT MITIGATION PLANNING AND IMPLEMENTATION measures and ~~water use efficiency~~ programs; ~~as authorized in section 37-60-125~~; and

~~(e)~~ (g) ~~Preparation for review and approval by the board for transmittal to the general assembly such information and recommendations concerning water use efficiency projects and proposed water use efficiency measures by state and local governments, including the analysis of water use efficiency programs already in place.~~ EVALUATING WATER CONSERVATION AND DROUGHT MITIGATION PLANS RELATED TO THE USE OF SUCH PLANS BY WATER PROVIDERS TO ADDRESS WATER

NEEDS AND TO PREPARE FOR WATER-RELATED EMERGENCIES BASED UPON POLICIES AND GUIDELINES ADOPTED BY THE BOARD PURSUANT TO SECTION 37-60-126.

(3) The personal services, operating, travel and subsistence, capital, and legal services expenses of administering the office of water conservation AND DROUGHT PLANNING and the programs and activities authorized by subsection (2) of this section may be paid from such moneys as are appropriated, allocated, or otherwise credited to the Colorado water conservation board construction fund.

(4) Repealed.

SECTION 3. 37-60-126, Colorado Revised Statutes, is amended to read:

37-60-126. Water conservation and drought mitigation planning - programs - relationship to state assistance for water facilities - guidelines. (1) As used in this section AND IN SECTION 37-60-126.5, unless the context otherwise requires:

(a) "Covered entity" means each municipality, agency, utility, including any privately owned utility, or other publicly owned entity with a legal obligation to supply, distribute, or otherwise provide water at retail to domestic, commercial, industrial, or public facility customers, and ~~which~~ THAT has a total demand for such customers of two thousand acre-feet or more. ~~in calendar years 1989 or thereafter.~~

(b) "OFFICE" MEANS THE OFFICE OF WATER CONSERVATION AND DROUGHT PLANNING CREATED IN SECTION 37-60-124.

(c) "PLAN ELEMENTS" MEANS THOSE COMPONENTS OF WATER CONSERVATION PLANS THAT ADDRESS WATER-SAVING MEASURES AND PROGRAMS, IMPLEMENTATION REVIEW, WATER-SAVING GOALS, AND THE ACTIONS A COVERED ENTITY SHALL TAKE TO DEVELOP, IMPLEMENT, MONITOR, REVIEW, AND REVISE ITS WATER CONSERVATION PLAN.

~~(b)~~ (d) "Public facility" means any facility operated by an instrument of government for the benefit of the public, including, but not limited to, a government building, park or other recreational facility, school, college, university, or other educational institution, highway, hospital, or stadium.

(e) "WATER CONSERVATION" MEANS WATER USE EFFICIENCY, WISE WATER USE, WATER TRANSMISSION AND DISTRIBUTION SYSTEM EFFICIENCY, AND SUPPLY SUBSTITUTION. THE OBJECTIVE OF WATER CONSERVATION IS A LONG-TERM INCREASE IN THE PRODUCTIVE USE OF WATER SUPPLY IN ORDER TO SATISFY WATER SUPPLY NEEDS WITHOUT COMPROMISING DESIRED WATER SERVICES.

(f) "WATER-SAVING MEASURES AND PROGRAMS" INCLUDES A DEVICE, PRACTICE, HARDWARE, OR EQUIPMENT THAT REDUCES WATER DEMANDS AND A PROGRAM THAT USES A COMBINATION OF MEASURES AND INCENTIVES THAT ALLOW FOR AN INCREASE IN THE PRODUCTIVE USE OF A LOCAL WATER SUPPLY.

(2) (a) Within five years after June 4, 1991, each covered entity ~~which~~ THAT does not have a water use efficiency plan satisfying the provisions of ~~subsections~~ SUBSECTION (4) ~~and (5)~~ of this section shall, subject to section 37-60-127, develop,

adopt, make publicly available, and implement a plan pursuant to which such covered entity shall encourage its domestic, commercial, industrial, and public facility customers to use water more efficiently. Any covered entity that makes an initial determination that it has satisfied ~~subsections~~ SUBSECTION (4) ~~and (5)~~ of this section shall, within five years ~~of~~ AFTER June 4, 1991, give public notice of such determination at an official meeting of the appropriate governing body of the covered entity.

(b) THE OFFICE SHALL REVIEW PREVIOUSLY SUBMITTED CONSERVATION PLANS TO EVALUATE THEIR CONSISTENCY WITH THE PROVISIONS OF THIS SECTION AND THE GUIDELINES ESTABLISHED PURSUANT TO SUBSECTION (7) OF THIS SECTION.

(c) ON AND AFTER JULY 1, 2006, A COVERED ENTITY THAT SEEKS FINANCIAL ASSISTANCE FROM EITHER THE BOARD OR THE COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY SHALL SUBMIT TO THE BOARD A NEW OR REVISED PLAN TO MEET WATER CONSERVATION GOALS ADOPTED BY THE COVERED ENTITY, IN ACCORDANCE WITH THIS SECTION, FOR THE BOARD'S APPROVAL PRIOR TO THE RELEASE OF NEW LOAN PROCEEDS.

(3) The manner in which the covered entity develops, adopts, makes publicly available, and implements a plan established pursuant to subsection (2) of this section shall be determined by the covered entity IN ACCORDANCE WITH THIS SECTION. The plan shall be accompanied by a ~~program~~ SCHEDULE for its implementation. THE PLANS AND SCHEDULES SHALL BE PROVIDED TO THE OFFICE WITHIN NINETY DAYS AFTER THEIR ADOPTION. FOR THOSE ENTITIES SEEKING FINANCIAL ASSISTANCE, THE OFFICE SHALL THEN NOTIFY THE COVERED ENTITY AND THE APPROPRIATE FINANCING AUTHORITY THAT THE PLAN HAS BEEN REVIEWED AND WHETHER THE PLAN HAS BEEN APPROVED IN ACCORDANCE WITH THIS SECTION.

(4) ~~In developing~~ A plan DEVELOPED BY A COVERED ENTITY pursuant to subsection (2) of this section ~~each covered entity shall, consider at least the following water-saving measures~~ AT A MINIMUM, CONSIDER THE FOLLOWING PLAN ELEMENTS:

(a) THE WATER-SAVING MEASURES AND PROGRAMS TO BE USED BY THE COVERED ENTITY FOR WATER CONSERVATION. IN DEVELOPING THESE MEASURES AND PROGRAMS, EACH COVERED ENTITY SHALL, AT A MINIMUM, CONSIDER THE FOLLOWING:

(I) Water-efficient fixtures and appliances, including toilets, urinals, showerheads, and faucets;

~~(b)~~ (II) Low water use landscapes, DROUGHT-RESISTANT VEGETATION, REMOVAL OF PHREATOPHYTES, and efficient irrigation;

~~(c)~~ (III) Water-efficient industrial and commercial water-using processes;

~~(d)~~ (IV) Water reuse systems; ~~both potable and nonpotable;~~

~~(e)~~ (V) Distribution system leak IDENTIFICATION AND repair;

~~(f)~~ (VI) Dissemination of information regarding water use efficiency measures,

including by public education, customer water use audits, and water-saving demonstrations;

~~(g)~~ ~~(H)~~ (VII) Water rate structures and billing systems designed to encourage water use efficiency in a fiscally responsible manner;

~~(H)~~ (VIII) The department of local affairs may provide technical assistance to covered entities that are local governments to implement water billing systems that show customer water usage and that implement tiered billing systems;

~~(h)~~ (IX) Regulatory measures ~~including standards for the use of water use efficiency fixtures and landscapes, and ordinances, codes, or other law~~ designed to encourage water ~~use efficiency~~ CONSERVATION;

~~(i)~~ (X) Incentives to implement water ~~use efficiency~~ CONSERVATION techniques, including rebates to customers ~~or others~~ to encourage the installation of water ~~use efficiency~~ CONSERVATION measures;

~~(5)~~ (b) ~~The plan to be adopted under subsection (2) of this section shall contain~~ A section stating the covered entity's best judgment of the role of water ~~use efficiency~~ CONSERVATION plans in the covered entity's water supply planning;

(c) THE STEPS THE COVERED ENTITY USED TO DEVELOP, AND WILL USE TO IMPLEMENT, MONITOR, REVIEW, AND REVISE, ITS WATER CONSERVATION PLAN;

(d) THE TIME PERIOD, NOT TO EXCEED SEVEN YEARS, AFTER WHICH THE COVERED ENTITY WILL REVIEW AND UPDATE ITS ADOPTED PLAN; AND

(e) EITHER AS A PERCENTAGE OR IN ACRE-FOOT INCREMENTS, AN ESTIMATE OF THE AMOUNT OF WATER THAT HAS BEEN SAVED THROUGH A PREVIOUSLY IMPLEMENTED CONSERVATION PLAN AND AN ESTIMATE OF THE AMOUNT OF WATER THAT WILL BE SAVED THROUGH CONSERVATION WHEN THE PLAN IS IMPLEMENTED.

~~(6) Except for the elements of a water use efficiency plan which a covered entity has already implemented prior to June 4, 1991, the plan required under subsection (2) of this section shall set forth results of the consideration of the water-efficient measures and techniques set forth in subsection (4) of this section and adopted by the covered entity after June 4, 1991.~~

~~(7)~~ (5) ~~Except for the elements of a water use efficiency plan which a covered entity has already implemented prior to June 4, 1991, before adopting any other major elements of a plan under subsections (2) and (4) of this section,~~ EACH COVERED ENTITY SHALL FOLLOW THE COVERED ENTITY'S RULES, CODES, OR ORDINANCES TO MAKE THE DRAFT PLAN AVAILABLE FOR PUBLIC REVIEW AND COMMENT. IF THERE ARE NO RULES, CODES, OR ORDINANCES GOVERNING THE COVERED ENTITY'S PUBLIC PLANNING PROCESS, THEN each covered entity shall publish a draft plan, give public notice of the plan, make such plan publicly available, and solicit comments from the public for a period of not less than sixty days after the date on which the draft plan is made publicly available. Reference shall be made in the public notice to the elements of a plan that has already been implemented.

(6) THE BOARD IS HEREBY AUTHORIZED TO RECOMMEND THE APPROPRIATION AND EXPENDITURE OF SUCH REVENUES AS ARE NECESSARY FROM THE UNOBLIGATED BALANCE OF THE FIVE PERCENT SHARE OF THE OPERATIONAL ACCOUNT OF THE SEVERANCE TAX TRUST FUND DESIGNATED FOR USE BY THE BOARD FOR THE PURPOSE OF THE OFFICE PROVIDING ASSISTANCE TO COVERED ENTITIES TO DEVELOP WATER CONSERVATION PLANS THAT MEET THE PROVISIONS OF THIS SECTION.

(7) BY JULY 1, 2005, THE BOARD SHALL ADOPT GUIDELINES FOR THE OFFICE TO REVIEW WATER CONSERVATION PLANS SUBMITTED BY COVERED ENTITIES. THE GUIDELINES SHALL DEFINE THE METHOD FOR SUBMITTING PLANS TO THE OFFICE, HOW THE OFFICE WILL PRIORITIZE THE DISTRIBUTION OF MONEYS, AND THE INTEREST RATE SURCHARGE PROVIDED FOR IN PARAGRAPH (d) OF SUBSECTION (9) OF THIS SECTION.

(8) A covered entity may at any time adopt changes to ~~the~~ AN APPROVED plan IN ACCORDANCE WITH THIS SECTION AFTER NOTIFYING AND RECEIVING CONCURRENCE FROM THE OFFICE. If the proposed changes are major, the covered entity shall give public notice of the changes, make the changes available in draft form, and provide the public an opportunity to comment on such changes before adopting them IN ACCORDANCE WITH SUBSECTION (5) OF THIS SECTION.

(9) (a) ~~After five years following June 4, 1991,~~ Neither the board nor the Colorado water resources and power development authority shall ~~accept an application from~~ RELEASE LOAN PROCEEDS TO a covered entity ~~for financial assistance in the construction of any water diversion, storage, conveyance, water treatment, or wastewater treatment facility~~ unless such covered entity ~~includes~~ PROVIDES a copy of the water ~~use efficiency~~ CONSERVATION plan adopted pursuant to this section; ~~and a copy of other such plans, if any, otherwise adopted by the covered entity.~~ EXCEPT THAT THE BOARD OR THE AUTHORITY MAY RELEASE SUCH LOAN PROCEEDS IF THE BOARD OR THE AUTHORITY, AS APPLICABLE, DETERMINES THAT AN UNFORSEEN EMERGENCY EXISTS IN RELATION TO THE COVERED ENTITY'S LOAN APPLICATION, IN WHICH CASE THE BOARD OR THE AUTHORITY, AS APPLICABLE, MAY IMPOSE A LOAN SURCHARGE UPON THE COVERED ENTITY THAT MAY BE REBATED OR REDUCED IF THE COVERED ENTITY SUBMITS AND ADOPTS A PLAN IN COMPLIANCE WITH THIS SECTION IN A TIMELY MANNER AS DETERMINED BY THE BOARD OR THE AUTHORITY, AS APPLICABLE.

(b) ~~After five years from June 4, 1991,~~ The board and the Colorado water resources and power development authority, to which any covered entity has applied for financial assistance for the construction of a water diversion, storage, conveyance, water treatment, or wastewater treatment facility, shall consider any water ~~use efficiency~~ CONSERVATION plan filed pursuant to ~~paragraph (a) of this subsection (9)~~ SECTION in determining whether to render financial assistance to such entity. Such consideration shall be carried out within the discretion accorded the board and the Colorado water resources and power development authority pursuant to which such board and authority render such financial assistance to such covered entity.

(c) The board and the Colorado water resources and power development authority may enter into a memorandum of understanding with each other for the purposes of avoiding delay in the processing of applications for financial assistance covered by this section and avoiding duplication in the consideration required by ~~paragraph (b) of this subsection (9).~~

(10) Repealed.

(11) (a) ~~On and after April 25, 2003,~~ Any new restrictive covenant that prohibits or limits the installation or use of drought-tolerant vegetative landscapes is prohibited.

(b) As used in this subsection (11), "restrictive covenant" means any covenant, restriction, or condition applicable to real property for the purpose of controlling land use, but does not include any covenant, restriction, or condition imposed on such real property by any governmental entity.

SECTION 4. Article 60 of title 37, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

37-60-126.5. Drought mitigation planning - programs - relationship to state assistance. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES, "DROUGHT MITIGATION" MEANS THE PLANNING AND IMPLEMENTATION OF ACTIONS AND PROGRAMS USED IN PERIODS OF UNUSUAL WATER SCARCITY, WITH A COMBINATION OF ACTIONS AND PROGRAMS TAKEN BEFORE A DROUGHT TO REDUCE THE OCCURRENCE AND SEVERITY OF WATER SUPPLY SHORTAGES, AND ACTIONS AND PROGRAMS TAKEN DURING A DROUGHT TO MANAGE WATER SUPPLIES AND WATER DEMAND APPROPRIATELY.

(2) THE OFFICE SHALL DEVELOP PROGRAMS TO PROVIDE TECHNICAL ASSISTANCE TO COVERED ENTITIES AND OTHER STATE OR LOCAL GOVERNMENTAL ENTITIES IN THE DEVELOPMENT OF DROUGHT MITIGATION PLANS.

(3) THE BOARD IS HEREBY AUTHORIZED TO RECOMMEND THE APPROPRIATION AND EXPENDITURE OF SUCH REVENUES AS IS NECESSARY FROM THE UNOBLIGATED BALANCE OF THE FIVE PERCENT SHARE OF THE OPERATIONAL ACCOUNT OF THE SEVERANCE TAX TRUST FUND DESIGNATED FOR USE BY THE BOARD FOR THE PURPOSE OF ASSISTING COVERED ENTITIES AND OTHER STATE AND LOCAL GOVERNMENTAL ENTITIES TO DEVELOP DROUGHT MITIGATION PLANS IDENTIFIED AS SUFFICIENT BY THE OFFICE.

(4) BY JULY 1, 2005, THE BOARD SHALL ADOPT GUIDELINES FOR THE OFFICE TO USE IN REVIEWING AND EVALUATING DROUGHT MITIGATION PLANS SUBMITTED BY COVERED ENTITIES IN ACCORDANCE WITH THIS SECTION. THE GUIDELINES SHALL DEFINE THE METHOD FOR SUBMITTING PLANS TO THE OFFICE AND SHALL SPECIFY HOW THE OFFICE WILL PRIORITIZE THE DISTRIBUTION OF MONEYS.

SECTION 5. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution (August 4, 2004, if adjournment sine die is on May 5, 2004); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: June 4, 2004