

CHAPTER 124

GOVERNMENT - STATE

SENATE BILL 05-226

BY SENATOR(S) Owen, Keller, Tapia, Entz, Kester, and Williams;
also REPRESENTATIVE(S) Plant, Buescher, Hall, Butcher, Coleman, McGihon, Todd, and Vigil.

AN ACT

CONCERNING THE PAYMENT OF MONEYS TO THE STATE OF KANSAS AS REQUIRED PURSUANT TO THE *KANSAS V. COLORADO* LITIGATION REGARDING THE DEPLETION OF WATER FROM THE ARKANSAS RIVER, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

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

SECTION 1. Article 31 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

PART 5
PAYMENTS FOR *KANSAS V. COLORADO* LITIGATION

24-31-501. Legislative declaration. (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT:

(a) IN 1985, THE STATE OF KANSAS SUED THE STATE OF COLORADO ALLEGING THAT COLORADO WAS DEPLETING WATER FROM THE ARKANSAS RIVER IN VIOLATION OF THE INTERSTATE COMPACT THAT THE TWO STATES ENTERED INTO IN 1949.

(b) ON DECEMBER 7, 2004, THE UNITED STATES SUPREME COURT ISSUED A FINAL RULING IN THE LONG-STANDING INTERSTATE DISPUTE OVER THE USE OF THE ARKANSAS RIVER. THE COURT'S RULING INCLUDED THE METHODOLOGY TO BE USED IN CALCULATING THE PREJUDGMENT INTEREST ON DAMAGES THAT THE STATE OF KANSAS INCURRED, AND THEREBY DIRECTED HOW THE DETERMINATION OF THE TOTAL AMOUNT OF THE DAMAGE AWARD TO KANSAS WOULD BE CALCULATED.

(c) ON APRIL 7, 2005, THE GOVERNOR OF COLORADO NOTIFIED THE GENERAL ASSEMBLY THAT THE ACTUAL DAMAGES IN THE *KANSAS V. COLORADO* LAWSUIT WERE ESTABLISHED.

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

(2) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT THE INTENT OF THIS PART 5 IS TO APPROPRIATE THE NECESSARY MONEYS TO THE DEPARTMENT OF LAW TO ENABLE THE DEPARTMENT TO PAY THE TOTAL AMOUNT OF DAMAGES THAT THE STATE OF COLORADO OWES TO THE STATE OF KANSAS AND TO PAY FOR KANSAS' LEGAL COSTS INCURRED IN ASSOCIATION WITH THE *KANSAS V. COLORADO* LITIGATION, IN THE EVENT THAT COLORADO IS OBLIGATED TO PAY SUCH LEGAL COSTS.

24-31-502. *Kansas v. Colorado* plaintiff's damages payment fund and plaintiff's legal costs fund - creation. (1) THERE IS HEREBY CREATED IN THE STATE TREASURY THE *KANSAS V. COLORADO* PLAINTIFF'S DAMAGES PAYMENT FUND. THE FUND SHALL CONSIST OF ALL MONEYS TRANSFERRED TO THE FUND PURSUANT TO SECTIONS 39-29-109 (6) (a) AND (6) (b) AND 39-29-110 (4) (a), C.R.S. ALL INTEREST DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEYS IN THE FUND SHALL BE CREDITED TO THE FUND. THE MONEYS IN THE FUND SHALL BE SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY TO THE DEPARTMENT OF LAW FOR THE PURPOSE OF PAYING DAMAGES DUE TO THE STATE OF KANSAS PURSUANT TO *KANSAS V. COLORADO*, 125 S. CT. 526, 160 L. ED. 2d 418 (2004). THE STATE TREASURER SHALL TRANSFER ANY MONEYS REMAINING IN THE FUND ON JULY 1, 2006, TO THE LOCAL GOVERNMENT SEVERANCE TAX FUND CREATED IN SECTION 39-29-110 (1) (a) (I), C.R.S.

(2) THERE IS HEREBY CREATED IN THE STATE TREASURY THE *KANSAS V. COLORADO* PLAINTIFF'S LEGAL COSTS FUND, WHICH SHALL CONSIST OF ALL MONEYS TRANSFERRED TO THE FUND PURSUANT TO SECTION 39-29-109 (6) (c), C.R.S. ALL INTEREST DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEYS IN THE FUND SHALL BE CREDITED TO THE FUND. THE MONEYS IN THE FUND ARE HEREBY CONTINUOUSLY APPROPRIATED TO THE DEPARTMENT OF LAW FOR THE PURPOSE OF PAYING THE PLAINTIFF'S LEGAL COSTS AS ORDERED PURSUANT TO *KANSAS V. COLORADO*, 125 S. CT. 526, 160 L. ED. 2d 418 (2004). THE DEPARTMENT IS AUTHORIZED TO EXPEND UP TO FOUR MILLION DOLLARS FROM THE FUND FOR SUCH PURPOSE; EXCEPT THAT THE DEPARTMENT SHALL NOT MAKE ANY EXPENDITURES FROM THE FUND UNTIL THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY PROVIDES WRITTEN APPROVAL TO THE STATE CONTROLLER OF THE AMOUNT OF THE PLAINTIFF'S LEGAL COSTS FOR WHICH THE STATE IS LIABLE PURSUANT TO *KANSAS V. COLORADO*. THE STATE TREASURER SHALL TRANSFER ANY MONEYS REMAINING IN THE FUND ON JUNE 30, 2007, TO THE OPERATIONAL ACCOUNT OF THE SEVERANCE TAX TRUST FUND CREATED IN SECTION 39-29-109 (1) (a) (II), C.R.S.

24-31-503. Repeal of part. THIS PART 5 IS REPEALED, EFFECTIVE JULY 1, 2007.

SECTION 2. 39-29-109, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

39-29-109. Severance tax trust fund - created - administration - use of moneys - repeal. (6) (a) NOTWITHSTANDING ANY PROVISION IN THIS SECTION OR ANY OTHER PROVISION OF LAW TO THE CONTRARY, AS SOON AS PRACTICABLE ON OR AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (6), THE STATE TREASURER SHALL DEDUCT FIFTEEN MILLION FIVE HUNDRED THOUSAND DOLLARS FROM THE PERPETUAL BASE ACCOUNT OF THE SEVERANCE TAX TRUST FUND CREATED IN SUBPARAGRAPH (I) OF PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION AND TRANSFER SUCH SUM TO

THE *KANSAS V. COLORADO* PLAINTIFF'S DAMAGES PAYMENT FUND CREATED IN SECTION 24-31-502 (1), C.R.S., TO BE USED FOR THE PURPOSES SPECIFIED IN SUCH SECTION.

(b) NOTWITHSTANDING ANY PROVISION IN THIS SECTION OR ANY OTHER PROVISION OF LAW TO THE CONTRARY, AS SOON AS PRACTICABLE ON OR AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (6), THE STATE TREASURER SHALL DEDUCT FIFTEEN MILLION FIVE HUNDRED THOUSAND DOLLARS FROM THE OPERATIONAL ACCOUNT OF THE SEVERANCE TAX TRUST FUND CREATED IN SUBPARAGRAPH (II) OF PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION AND TRANSFER SUCH SUM TO THE *KANSAS V. COLORADO* PLAINTIFF'S DAMAGES PAYMENT FUND CREATED IN SECTION 24-31-502 (1), C.R.S., TO BE USED FOR THE PURPOSES SPECIFIED IN SUCH SECTION. THE TRANSFER OF MONEYS FROM THE OPERATIONAL ACCOUNT OF THE SEVERANCE TAX TRUST FUND PURSUANT TO THIS PARAGRAPH (b) SHALL BE EXEMPT FROM THE REQUIREMENTS OF SUBPARAGRAPH (III) OF PARAGRAPH (c) OF SUBSECTION (1) OF THIS SECTION.

(c) NOTWITHSTANDING ANY PROVISION IN THIS SECTION OR ANY OTHER PROVISION OF LAW TO THE CONTRARY, ON JULY 1, 2005, THE STATE TREASURER SHALL DEDUCT FOUR MILLION DOLLARS FROM THE OPERATIONAL ACCOUNT OF THE SEVERANCE TAX TRUST FUND CREATED IN SUBPARAGRAPH (II) OF PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION AND TRANSFER SUCH SUM TO THE *KANSAS V. COLORADO* PLAINTIFF'S LEGAL COSTS FUND CREATED IN SECTION 24-31-502 (2), C.R.S., TO BE USED FOR THE PURPOSES SPECIFIED IN SUCH SECTION. THE TRANSFER OF MONEYS FROM THE OPERATIONAL ACCOUNT OF THE SEVERANCE TAX TRUST FUND PURSUANT TO THIS PARAGRAPH (c) SHALL BE EXEMPT FROM THE REQUIREMENTS OF SUBPARAGRAPH (III) OF PARAGRAPH (c) OF SUBSECTION (1) OF THIS SECTION.

(d) THIS SUBSECTION (6) IS REPEALED, EFFECTIVE JULY 1, 2007.

SECTION 3. 39-29-110, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

39-29-110. Local government severance tax fund - creation - administration - energy impact assistance advisory committee created - repeal.

(4) (a) NOTWITHSTANDING ANY PROVISION IN THIS SECTION OR ANY OTHER PROVISION OF LAW TO THE CONTRARY, AS SOON AS PRACTICABLE ON OR AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (4), THE STATE TREASURER SHALL DEDUCT THREE MILLION SEVEN HUNDRED NINETY-SIX THOUSAND ONE HUNDRED TWENTY-NINE DOLLARS FROM THE LOCAL GOVERNMENT SEVERANCE TAX FUND CREATED IN SUBPARAGRAPH (I) OF PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION AND TRANSFER SUCH SUM TO THE *KANSAS V. COLORADO* PLAINTIFF'S DAMAGES PAYMENT FUND CREATED IN SECTION 24-31-502 (1), C.R.S., TO BE USED FOR THE PURPOSES SPECIFIED IN SUCH SECTION.

(b) THIS SUBSECTION (4) IS REPEALED, EFFECTIVE JULY 1, 2007.

SECTION 4. 24-75-403 (1) (b), as enacted by House Bill 05-1001, enacted at the First Regular Session of the Sixty-fifth General Assembly, is amended to read:

24-75-403. Cash funds - restriction on use of moneys - definitions.

(1) (b) (I) The general assembly may designate any moneys in a cash fund, including

moneys derived from a charge, as all or a portion of the reserve required by section 20 (5) of article X of the state constitution and section 24-77-104 and may expend the moneys designated as authorized by said sections. A cash fund from which moneys designated as all or a portion of the reserve are expended during any state fiscal year shall be fully reimbursed for the expenditures on or before the last day of the next state fiscal year.

(II) THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO THE TRANSFER OF MONEYS FROM THE SEVERANCE TAX TRUST FUND PURSUANT TO SECTION 39-29-109 (6), C.R.S., AND THE LOCAL GOVERNMENT SEVERANCE TAX FUND PURSUANT TO SECTION 39-29-110 (4), C.R.S., TO THE *KANSAS V. COLORADO* PLAINTIFF'S DAMAGES PAYMENT FUND CREATED IN SECTION 24-31-502 (1) AND THE *KANSAS V. COLORADO* PLAINTIFF'S LEGAL COSTS FUND CREATED IN SECTION 24-31-502 (2) FOR THE PURPOSE OF MAKING THE PAYMENT OF MONEYS TO THE STATE OF KANSAS AS REQUIRED PURSUANT TO THE *KANSAS V. COLORADO* LITIGATION REGARDING THE DEPLETION OF WATER FROM THE ARKANSAS RIVER.

SECTION 5. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the *Kansas v. Colorado* plaintiff's damages payment fund created in section 24-31-502 (1), Colorado Revised Statutes, not otherwise appropriated, to the department of law, for the fiscal year beginning July 1, 2004, the sum of thirty-four million seven hundred ninety-six thousand one hundred twenty-nine dollars (\$34,796,129), or so much thereof as may be necessary, for the implementation of section 24-31-502 (1), Colorado Revised Statutes.

(2) The moneys appropriated in subsection (1) of this section shall remain available for the designated purposes through June 30, 2006.

SECTION 6. Effective date. This act shall take effect upon passage; except that section 4 of this act shall take effect only if House Bill 05-1001 is enacted at the First Regular Session of the Sixty-fifth General Assembly and becomes law.

SECTION 7. 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: April 28, 2005