

CHAPTER 331

WATER AND IRRIGATION

SENATE BILL 08-221

BY SENATOR(S) Romer and Gibbs, Boyd, Brophy, Cadman, Gordon, Groff, Harvey, Isgar, Johnson, Kester, Kopp, Penry, Renfroe, Schultheis, Schwartz, Shaffer, Spence, Taylor, Tochtrop, Tupa, Ward, Wiens, Williams, and Windels; also REPRESENTATIVE(S) Scanlan and White, Fischer, Kerr J., Roberts, Rose, and Stephens.

AN ACT**CONCERNING THE AUTHORITY OF THE COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY TO ISSUE BONDS FOR CERTAIN PROJECTS.**

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

SECTION 1. 37-95-103 (10), Colorado Revised Statutes, is amended, and the said 37-95-103 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

37-95-103. Definitions. As used in this article:

(4.9) "FOREST HEALTH PROJECT" MEANS AN UNDERTAKING THAT IMPROVES THE HEALTH OF A FOREST, INCLUDING, BUT NOT LIMITED TO:

(a) REDUCING THE THREAT OF UNCHARACTERISTICALLY LARGE OR INTENSE INSECT DISEASES AND EPIDEMICS;

(b) REDUCING THE IMPACT OF UNCHARACTERISTICALLY LARGE OR HIGH-INTENSITY WILDFIRES;

(c) REDUCING THE IMPACT OF UNDESIRABLE NONNATIVE SPECIES;

(d) REPLANTING TREES IN DEFORESTED AREAS; OR

(e) IMPROVING THE USE OF, OR ADDING VALUE TO, SMALL DIAMETER TREES.

(10) "Project" means any water management facility or hydroelectric facility, including undivided or other interests therein, acquired or constructed or to be

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

acquired or constructed by the authority under this article, including all buildings and facilities ~~which~~ THAT the authority deems necessary for the operation of the project, together with all property rights, water rights, easements, and interests, including gathering, storage, treatment, and transmission facilities, unless adequate transmission capacity is available from any existing public utility, which may be required for such operation. "Project" ALSO includes any water management facility, ~~or~~ hydroelectric facility, OR WATERSHED PROTECTION PROJECTS AND FOREST HEALTH PROJECTS financed in whole or in part by the authority.

(15) "WATERSHED PROTECTION PROJECT" MEANS AN UNDERTAKING TO IMPROVE OR PROTECT A DOMESTIC OR AGRICULTURAL SUPPLY WATERSHED, INCLUDING, BUT NOT LIMITED TO, ACTIVITIES TO ACHIEVE FIRE PREVENTION OR WILDFIRE HAZARD REDUCTION OR POST-FIRE REMEDIATION, SOIL STABILIZATION, WATER SUPPLY CONTINUANCE, OR WATER QUALITY MAINTENANCE OR IMPROVEMENT WITHIN THE WATERSHED. A WATERSHED PROTECTION PROJECT DOES NOT INCLUDE UNDERTAKINGS WHERE THE PURPOSE IS TO MATERIALLY INCREASE WATER QUANTITY.

SECTION 2. Article 95 of title 37, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

37-95-112.5. Watershed protection and forest health projects - repeal.

(1) THE AUTHORITY IS HEREBY AUTHORIZED TO ISSUE BONDS, IN AN AMOUNT NOT TO EXCEED FIFTY MILLION DOLLARS, FOR THE PURPOSES OF FUNDING WATERSHED PROTECTION PROJECTS AND FOREST HEALTH PROJECTS OF GOVERNMENTAL AGENCIES.

(2) THE AUTHORITY MAY MAKE AND CONTRACT TO MAKE LOANS WITH THE PROCEEDS OF THE BONDS AUTHORIZED BY THIS SECTION TO GOVERNMENTAL AGENCIES PURSUANT TO THIS SECTION TO FINANCE THE COST OF WATERSHED PROTECTION PROJECTS AND FOREST HEALTH PROJECTS PROVIDED THAT THE AUTHORITY OR THE GOVERNMENTAL AGENCY HAS ENTERED INTO AN AGREEMENT WITH THE COLORADO CLEAN ENERGY DEVELOPMENT AUTHORITY OR THE COLORADO STATE FOREST SERVICE WITH RESPECT TO THE APPLICATION OF PROCEEDS OF SUCH BONDS. THE AUTHORITY MAY MAKE THE LOANS SUBJECT TO TERMS AND CONDITIONS THAT ARE DETERMINED BY THE AUTHORITY TO BE CONSISTENT WITH THE PURPOSES OF THE LOANS. THE LOANS SHALL BE EVIDENCED BY NOTES, BONDS, OR OTHER OBLIGATIONS OF THE GOVERNMENTAL AGENCY THAT ARE ISSUED TO THE AUTHORITY, AND THE GOVERNMENTAL AGENCIES ARE AUTHORIZED TO ISSUE SUCH NOTES, BONDS, OR OTHER OBLIGATIONS FOR SUCH PURPOSES. ALL NOTES, BONDS, OR OTHER OBLIGATIONS EVIDENCING A LOAN FROM THE AUTHORITY MAY BE SOLD AT A PRIVATE SALE TO THE AUTHORITY AT ANY PRICE, WHETHER OR NOT LESS THAN PAR VALUE. THE DENOMINATIONS, TIMES FOR PAYMENT OF PRINCIPAL AND INTEREST, AND PROVISIONS FOR REDEMPTION PRIOR TO MATURITY OF SUCH BONDS, NOTES, OR OTHER OBLIGATIONS SHALL BE AS THE AUTHORITY AND THE GOVERNMENTAL AGENCY AGREE. EACH LOAN TO A GOVERNMENTAL AGENCY AND THE NOTES, BONDS, OR OTHER OBLIGATIONS ISSUED TO EVIDENCE THE SAME SHALL BEAR INTEREST AT THE RATE OR RATES AND HAVE THE MATURITIES AS THE AUTHORITY AND THE GOVERNMENTAL AGENCY AGREE. THE AUTHORITY MAY CHARGE AND COLLECT FROM GOVERNMENTAL AGENCIES FEES AND CHARGES IN CONNECTION WITH THE LOANS OR OTHER SERVICES FROM THE AUTHORITY,

INCLUDING, BUT NOT LIMITED TO, FEES AND CHARGES SUFFICIENT TO REIMBURSE THE AUTHORITY FOR ALL REASONABLE COSTS THAT IT NECESSARILY INCURRED IN PROVIDING SUCH LOANS. ALL WATERSHED PROTECTION PROJECTS AND FOREST HEALTH PROJECTS FUNDED WITH MONEYS MADE AVAILABLE PURSUANT TO THIS SECTION SHALL COMPLY WITH ALL APPLICABLE FEDERAL AND STATE LAWS, SUCH AS BEST MANAGEMENT PRACTICES FOR WATER QUALITY ESTABLISHED BY THE COLORADO STATE FOREST SERVICE PURSUANT TO SECTION 24-33-201, C.R.S.

(3) GOVERNMENTAL AGENCIES PARTICIPATING IN WATERSHED PROTECTION PROJECTS AND FOREST HEALTH PROJECTS SHALL SPECIFY HOW THE MONEYS MADE AVAILABLE PURSUANT TO FINANCING BY THE AUTHORITY ARE TO BE ALLOCATED IN A MEMORANDUM OF UNDERSTANDING WITH THE AUTHORITY, SUBJECT TO THE FOLLOWING LIMITATIONS:

(a) UP TO TWENTY PERCENT OF THE PROCEEDS OF BONDS ISSUED BY THE AUTHORITY MAY BE DISTRIBUTED TO THE COLORADO CLEAN ENERGY DEVELOPMENT AUTHORITY, CREATED PURSUANT TO SECTION 40-9.7-104, C.R.S., FOR WATERSHED PROTECTION PROJECTS AND FOREST HEALTH PROJECTS, INCLUDING THE ESTABLISHMENT OF INCENTIVES FOR USE OF BEETLE-INFESTED LUMBER.

(b) THE REMAINING PROCEEDS SHALL BE APPLIED TO WATERSHED PROTECTION PROJECTS AND FOREST HEALTH PROJECTS IDENTIFIED, IN CONSULTATION WITH THE GOVERNMENTAL AGENCIES PARTICIPATING IN SUCH PROJECTS, BY THE COLORADO STATE FOREST SERVICE PURSUANT TO SECTION 23-31-311, C.R.S.

(4) FOR PURPOSES OF THIS SECTION, "GOVERNMENTAL AGENCIES" MEANS:

(a) ANY POLITICAL SUBDIVISION OF THE STATE, INCLUDING, BUT NOT LIMITED TO, CITIES, COUNTIES, CITIES AND COUNTIES, MUNICIPALITIES, WATER CONSERVATION DISTRICTS, WATER CONSERVANCY DISTRICTS, SPECIAL DISTRICTS, WATER AUTHORITIES, GOVERNMENT-OWNED PUBLIC UTILITIES, AND STATE AGENCIES;

(b) THE UNITED STATES AND ANY AGENCY THEREOF, INCLUDING THE UNITED STATES FOREST SERVICE AND THE BUREAU OF LAND MANAGEMENT; AND

(c) ANY ENTERPRISE, ENTITY, AGENCY, COMMISSION, OR AUTHORITY ESTABLISHED BY A GOVERNMENTAL AGENCY, INCLUDING, WITHOUT LIMITATION, THOSE ESTABLISHED PURSUANT TO AN INTERSTATE COMPACT OR OTHER INTERGOVERNMENTAL COMPACT OR AGREEMENT.

(5) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2013. SUCH REPEAL SHALL NOT NULLIFY, ABROGATE, ALTER, OR OTHERWISE AFFECT ANY EXTANT OBLIGATIONS UNDER THIS ARTICLE AT THE TIME OF THE REPEAL.

SECTION 3. 37-95-113, Colorado Revised Statutes, is RECREATED AND REENACTED, WITH AMENDMENTS, to read:

37-95-113. Debt service reserve funds for watershed protection projects and forest health projects. (1) IN ADDITION TO ANY OTHER FUNDS IT MAY ESTABLISH, THE BOARD MAY, BY RESOLUTION, ESTABLISH ONE OR MORE SPECIAL FUNDS PURSUANT TO THIS SECTION, REFERRED TO IN THIS SECTION AS "DEBT SERVICE

RESERVE FUNDS", FOR BONDS ISSUED TO FINANCE WATERSHED PROTECTION PROJECTS AND FOREST HEALTH PROJECTS PURSUANT TO SECTION 37-95-112.5, AND MAY PAY INTO SUCH DEBT SERVICE RESERVE FUNDS:

(a) ANY MONEYS APPROPRIATED AND MADE AVAILABLE BY THE STATE FOR THE PURPOSES OF SUCH DEBT SERVICE RESERVE FUNDS;

(b) ANY PROCEEDS FROM THE SALE OF BONDS TO THE EXTENT PROVIDED IN THE RESOLUTIONS OF THE BOARD AUTHORIZING THE ISSUANCE THEREOF; AND

(c) ANY MONEYS THAT MAY BE MADE AVAILABLE TO THE AUTHORITY FROM ANY OTHER SOURCES FOR THE PURPOSES OF SUCH DEBT SERVICE RESERVE FUNDS.

(2) SO LONG AS THERE ARE BONDS OUTSTANDING SECURED BY A DEBT SERVICE RESERVE FUND CREATED BY THIS SECTION, ALL MONEYS HELD IN ANY DEBT SERVICE RESERVE FUND, EXCEPT AS OTHERWISE REQUIRED IN THIS SECTION, SHALL BE USED SOLELY FOR THE PAYMENT OF THE PRINCIPAL OF THE BONDS OR OF THE SINKING FUND PAYMENTS REFERRED TO IN THIS SECTION WITH RESPECT TO SUCH BONDS, THE PURCHASE OR REDEMPTION OF SUCH BONDS, THE PAYMENT OF INTEREST ON SUCH BONDS, OR THE PAYMENT OF ANY REDEMPTION PREMIUM REQUIRED TO BE PAID WHEN SUCH BONDS ARE REDEEMED PRIOR TO MATURITY; EXCEPT THAT MONEYS IN ANY SUCH FUND SHALL NOT BE WITHDRAWN AT ANY TIME IN SUCH AMOUNT AS WOULD REDUCE SUCH FUND TO LESS THAN THE DEBT SERVICE RESERVE FUND REQUIREMENT, EXCEPT FOR THE PURPOSE OF MAKING, WITH RESPECT TO SUCH BONDS, PRINCIPAL, INTEREST, REDEMPTION PREMIUM, AND SINKING FUND PAYMENTS FOR THE PAYMENT OF WHICH OTHER MONEYS OF THE AUTHORITY ARE NOT AVAILABLE. SO LONG AS THERE ARE NO BONDS ISSUED AND OUTSTANDING SECURED BY A DEBT SERVICE RESERVE FUND CREATED BY THIS SECTION, THE AMOUNTS ON DEPOSIT IN SUCH DEBT SERVICE RESERVE FUND SHALL BE USED FOR WATERSHED PROTECTION PROJECTS AND FOREST HEALTH PROJECTS FUNDED PURSUANT TO SECTION 37-95-112.5.

(3) ANY INCOME OR INTEREST EARNED BY, OR INCREMENT TO, ANY DEBT SERVICE RESERVE FUND DUE TO THE INVESTMENT THEREOF MAY BE TRANSFERRED TO OTHER FUNDS OR ACCOUNTS OF THE AUTHORITY TO THE EXTENT IT DOES NOT REDUCE THE AMOUNT OF SUCH DEBT SERVICE RESERVE FUND BELOW THE DEBT SERVICE RESERVE FUND REQUIREMENT.

(4) THE AUTHORITY MAY PROVIDE BY RESOLUTION FOR THE ESTABLISHMENT OF A DEBT SERVICE RESERVE FUND REQUIREMENT FOR ANY DEBT SERVICE RESERVE FUND ESTABLISHED PURSUANT TO THIS SECTION.

(5) THE CHAIR OF THE AUTHORITY SHALL, ON OR BEFORE JANUARY 1 OF EACH YEAR, MAKE AND DELIVER TO THE GOVERNOR A CERTIFICATE, STATING THE SUM, IF ANY, REQUIRED TO RESTORE EACH DEBT SERVICE RESERVE FUND TO THE DEBT SERVICE RESERVE FUND REQUIREMENT. THE GOVERNOR MAY TRANSMIT TO THE GENERAL ASSEMBLY A REQUEST FOR THE AMOUNT, IF ANY, REQUIRED TO RESTORE EACH DEBT SERVICE RESERVE FUND TO THE DEBT SERVICE RESERVE FUND REQUIREMENT. THE GENERAL ASSEMBLY MAY, BUT SHALL NOT BE REQUIRED TO, MAKE ANY SUCH APPROPRIATIONS SO REQUESTED. ALL SUMS APPROPRIATED AND PAID BY THE GENERAL ASSEMBLY FOR SUCH RESTORATION SHALL BE DEPOSITED BY

THE AUTHORITY IN EACH SUCH DEBT SERVICE RESERVE FUND. IF, IN ITS SOLE DISCRETION, THE GENERAL ASSEMBLY APPROPRIATES ANY MONEYS FOR SUCH PURPOSE, THE AGGREGATE OUTSTANDING PRINCIPAL AMOUNT OF BONDS FOR WHICH MONEYS MAY BE APPROPRIATED SHALL NOT EXCEED FIFTY MILLION DOLLARS. NOTHING IN THIS SECTION SHALL CREATE OR CONSTITUTE A DEBT OR LIABILITY OF THE STATE.

(6) ANY MONEYS APPROPRIATED BY THE GENERAL ASSEMBLY FOR THE PURPOSES OF ANY OF THE DEBT SERVICE RESERVE FUNDS ESTABLISHED PURSUANT TO THIS SECTION SHALL NOT REVERT TO THE GENERAL FUND OF THE STATE AT THE END OF ANY FISCAL YEAR.

(7) IF, BY VIRTUE OF A DECISION OF THE COLORADO SUPREME COURT OR ANY FEDERAL COURT, PORTIONS OF THIS ARTICLE ARE HELD UNCONSTITUTIONAL AND THE AUTHORITY IS THEREBY RENDERED INCAPABLE OF PERFORMING ALL OF THE PURPOSES FOR WHICH IT IS HEREBY CREATED, THEN, SUBJECT TO THE PROVISIONS OF SECTION 37-95-114, ANY MONEYS APPROPRIATED BY THE GENERAL ASSEMBLY FOR THE PURPOSES OF ANY OF THE DEBT SERVICE RESERVE FUNDS ESTABLISHED BY THE AUTHORITY REMAINING ON DEPOSIT THEREIN SHALL BE TRANSFERRED TO THE COLORADO WATER CONSERVATION BOARD CONSTRUCTION FUND ESTABLISHED PURSUANT TO SECTION 37-60-121, SUCH TRANSFER TO TAKE EFFECT ON THE DAY AFTER SUCH DECISION BECOMES FINAL AND NO LONGER APPEALABLE.

SECTION 4. 40-9.7-103 (5) (b) and (10) (a), Colorado Revised Statutes, are amended, and the said 40-9.7-103 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

40-9.7-103. Definitions. As used in this article, unless the context otherwise requires:

(5) "Clean energy" means any of the following fuels that are themselves manufactured or synthesized and energy derived from any of the following:

(b) Biomass resources such as biogas, agricultural or animal waste, small diameter timber OR ANY TIMBER HARVESTED PURSUANT TO A WATERSHED PROTECTION PROJECT OR FOREST HEALTH PROJECT, salt cedar, other nonnative invasive phreatophyte vegetation removed from river basins or watersheds in Colorado, landfill gas, and anaerobically digested waste biomass; except that biomass resources do not include energy generated by use of fossil fuel;

(7.5) "FOREST HEALTH PROJECT" HAS THE MEANING SET FORTH IN SECTION 37-95-103, C.R.S.

(10) (a) "Project" means real property including land and buildings or other improvements, personal or intangible property, and any undivided or fractional interest, including a use interest, in real, personal, or intangible property, whether in or outside the state, whether or not in existence, used or to be used for, or in connection with, the following:

(I) The production of clean energy;

(II) The transportation of clean energy by any means, including by pipeline, container, rail, or truck;

(III) The transmission of clean energy by any means;

(IV) The storage of clean energy; or

(V) The manufacturing of major equipment or components needed to produce clean energy; OR

(VI) PRODUCTS PRODUCED FROM A WATERSHED PROTECTION PROJECT OR FOREST HEALTH PROJECT.

(17) "WATERSHED PROTECTION PROJECT" HAS THE MEANING SET FORTH IN SECTION 37-95-103, C.R.S.

SECTION 5. 40-9.7-107, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

40-9.7-107. Bonds. (9) THE AUTHORITY SHALL APPLY MONEYS RECEIVED PURSUANT TO SECTION 37-95-112.5, C.R.S., TO REPAY WATERSHED PROTECTION PROJECT AND FOREST HEALTH PROJECT BONDS. ANY MONEYS NOT REQUIRED FOR BOND PAYMENT SHALL BE USED TO ESTABLISH FINANCIAL INCENTIVES FOR USE OF TIMBER CUT AS PART OF A WATERSHED PROTECTION PROJECT OR FOREST HEALTH PROJECT FUNDED BY THE COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY.

SECTION 6. Part 3 of article 31 of title 23, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

23-31-311. Watershed protection projects and forest health projects.

(1) THE COLORADO STATE FOREST SERVICE, REPRESENTING THE STATE OF COLORADO, SHALL, IN CONSULTATION WITH THE GOVERNMENTAL AGENCIES PARTICIPATING IN SUCH PROJECTS, IDENTIFY WATERSHED PROTECTION PROJECTS AND FOREST HEALTH PROJECTS THAT WILL USE MONEYS RECEIVED PURSUANT TO SECTION 37-95-112.5, C.R.S., INCLUDING, BUT NOT LIMITED TO, THE HARVESTING OF TREES INFESTED WITH BEETLES.

(2) THE COLORADO STATE FOREST SERVICE SHALL COLLABORATE WITH WATER PROVIDERS; FEDERAL, STATE, AND LOCAL GOVERNMENTS; EDUCATIONAL INSTITUTIONS; LANDOWNERS; AND OTHER INTERESTED PUBLIC AND PRIVATE ENTITIES TO RECOMMEND THE USE OF MONEYS MADE AVAILABLE PURSUANT TO SECTION 37-95-112.5, C.R.S. THIS PROCESS SHALL CONSIDER:

(a) AREAS THAT HAVE THE HIGHEST PRIORITY FOR ECOLOGICAL OR WILDFIRE HAZARD REDUCTION RESTORATION;

(b) AREAS THAT HAVE BEEN PRIORITIZED FOR TREATMENT BY A LOCAL OR REGIONAL FOREST COLLABORATIVE PROCESS OR THROUGH A COMPARABLE STAKEHOLDER PROCESS; OR

(c) (I) WATERSHED PROTECTION PROJECTS AND FOREST HEALTH PROJECTS ON PRIVATE, STATE, AND FEDERAL LANDS, INCLUDING NATIONAL FOREST AND OTHER FEDERAL LANDS THAT SERVE AS THE PRIMARY SOURCE OF WATER TO COMMUNITIES AND MUNICIPALITIES, AND FOR AGRICULTURAL PURPOSES.

(II) IN IDENTIFYING SUCH WATERSHED PROTECTION PROJECTS AND FOREST HEALTH PROJECTS, CONSIDERATION SHALL BE MADE TO EFFECTIVELY USE AVAILABLE RESOURCES BY:

(A) APPLYING THE PRINCIPLES OF THE STATE OF COLORADO GOOD NEIGHBOR AUTHORITY PROGRAMS ENTERED INTO BETWEEN THE COLORADO STATE FOREST SERVICE AND THE UNITED STATES FOREST SERVICE, AND BETWEEN THE COLORADO STATE FOREST SERVICE AND THE UNITED STATES BUREAU OF LAND MANAGEMENT:

(B) COMBINING AVAILABLE RESOURCES WITH FEDERAL GRANT MONEY, IF ANY, AND OTHER COMPLEMENTARY FUNDING RESOURCES THAT ARE AVAILABLE FOR SUCH PROJECTS OR SIMILAR PROJECTS; AND

(C) PARTNERING ON SUCH PROJECTS BEING PLANNED OR CONDUCTED BY GOVERNMENTAL AGENCIES WITH LAND MANAGEMENT JURISDICTION IN COMMUNITY AND MUNICIPAL WATERSHEDS.

(3) IN CARRYING OUT SUCH WATERSHED PROTECTION PROJECTS AND FOREST HEALTH PROJECTS, THE COLORADO STATE FOREST SERVICE SHALL, WHENEVER FEASIBLE, CONTRACT WITH THE COLORADO YOUTH CORPS ASSOCIATION OR AN ACCREDITED COLORADO YOUTH CORPS TO PROVIDE LABOR. FOR PURPOSES OF THIS SECTION:

(a) "ACCREDITED COLORADO YOUTH CORPS" MEANS A YOUTH CORPS ORGANIZATION THAT IS ACCREDITED BY THE COLORADO YOUTH CORPS ASSOCIATION.

(b) "FOREST HEALTH PROJECT" HAS THE MEANING SET FORTH IN SECTION 37-95-103, C.R.S.

(c) "GOVERNMENTAL AGENCIES" HAS THE MEANING SET FORTH IN SECTION 37-95-112.5 (3), C.R.S.

(d) "WATERSHED PROTECTION PROJECT" HAS THE MEANING SET FORTH IN SECTION 37-95-103, C.R.S.

SECTION 7. Effective date. This act shall take effect July 1, 2008.

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 28, 2008