

CHAPTER 165

GOVERNMENT - STATE

HOUSE BILL 11-1289

BY REPRESENTATIVE(S) Sonnenberg, Acree, Barker, Baumgardner, Becker, Bradford, Brown, Coram, Gerou, Holbert, Joshi, Kerr J., Looper, Massey, McKinley, Murray, Nikkel, Priola, Ramirez, Scott, Summers, Swalm, Vaad, McNulty; also SENATOR(S) Hodge, Guzman, King S., Roberts, White.

AN ACT

CONCERNING THE MANNER IN WHICH THE STATE HISTORICAL SOCIETY ACTS WITH REGARD TO WATER SUPPLY STRUCTURES.

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

SECTION 1. 24-80.1-102, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

24-80.1-102. Definitions. As used in this article, unless the context otherwise requires:

(14) "WATER SUPPLY STRUCTURE" MEANS A HEAD GATE, DITCH, CANAL, FLUME, RESERVOIR, BYPASS, PIPELINE, CONDUIT, WELL, PUMP, OR OTHER FACILITY, STRUCTURE, OR DEVICE USED TO STORE, DIVERT, TRANSPORT, OR CONTROL WATER, AND ANY APPURTENANCES THERETO. "WATER SUPPLY STRUCTURE" INCLUDES ANY GROUPING OF SUCH STRUCTURES.

SECTION 2. 24-80.1-104 (1), Colorado Revised Statutes, is amended, and the said 24-80.1-104 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

24-80.1-104. Effect of state register - exception - legislative declaration. (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3) OF THIS SECTION, properties INCLUDED OR nominated for inclusion in ~~or accepted by~~ the state register ~~shall be~~ ARE protected from any action initiated by a state agency until a final determination concerning the effect of ~~such~~ THE action on such properties is made pursuant to subsection (2) of this section.

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

(3) (a) SUBSECTIONS (1) AND (2) OF THIS SECTION DO NOT APPLY TO ACTIONS INITIATED, TAKEN, OR AUTHORIZED BY THE DEPARTMENT OF NATURAL RESOURCES OR THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT OR ANY SUBDIVISIONS OF THOSE DEPARTMENTS THAT AFFECT OR POTENTIALLY AFFECT WATER SUPPLY STRUCTURES.

(b) THE GENERAL ASSEMBLY FINDS THAT WATER SUPPLY STRUCTURES IN COLORADO ARE CRITICAL BOTH TO FILLING THE PROJECTED SHORTFALL IN WATER SUPPLIES FOR CURRENT AND FUTURE RESIDENTS OF THE STATE AND TO PROTECTING THE STATE'S AGRICULTURAL LANDS FROM A LOSS OF WATER SUPPLIES. THE GENERAL ASSEMBLY FURTHER FINDS THAT WATER SUPPLY STRUCTURES AND THE ABILITY TO REPAIR, REPLACE, AND CHANGE WATER SUPPLY STRUCTURES ARE KEYS TO THE ECONOMIC FUTURE OF COLORADO. FOR THESE REASONS, THE GENERAL ASSEMBLY HEREBY DETERMINES AND DECLARES THAT IT IS NECESSARY TO EXEMPT STATE AGENCIES THAT TAKE ACTION CONCERNING WATER SUPPLY STRUCTURES FROM SUBSECTIONS (1) AND (2) OF THIS SECTION.

SECTION 3. Article 80.1 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

24-80.1-109. Water supply structure - nomination for inclusion in the state register or national register - multiple property documentation form.

(1) (a) BEFORE ACTING UPON A NOMINATION OF A WATER SUPPLY STRUCTURE FOR INCLUSION IN THE STATE REGISTER OR NATIONAL REGISTER, THE SOCIETY SHALL:

(I) SUBMIT, TO THE WATER CLERKS FOR THE WATER DIVISIONS IN WHICH THE WATER SUPPLY STRUCTURE IS LOCATED, NOTICE OF THE PROPOSED NOMINATION, FOR PUBLICATION AS SET FORTH IN SECTION 37-92-302 (3) (a) AND (3) (b), C.R.S.; AND

(II) SEND WRITTEN NOTICE OF THE PROPOSED NOMINATION BY FIRST-CLASS MAIL TO EVERY PERSON HAVING A PROPERTY INTEREST IN THE WATER SUPPLY STRUCTURE OR WATER RIGHTS USED THROUGH THE WATER SUPPLY STRUCTURE. IN ORDER TO COMPLY WITH THIS PARAGRAPH (a), THE SOCIETY MAY RELY UPON THE REAL PROPERTY RECORDS OF THE COUNTY ASSESSOR FOR THE COUNTIES IN WHICH THE WATER SUPPLY STRUCTURE IS LOCATED TO DETERMINE PERSONS HAVING REAL PROPERTY INTERESTS AND, TO DETERMINE THE IDENTITY OF PERSONS HAVING WATER RIGHT INTERESTS, THE SOCIETY MAY RELY UPON THE RECORDS OF THE DIVISION ENGINEER IN THE WATER DIVISIONS IN WHICH THE WATER SUPPLY STRUCTURE IS LOCATED, AS SET FORTH UNDER PART 2 OF ARTICLE 92 OF TITLE 37, C.R.S.

(b) (I) THE SOCIETY SHALL NOT PROCEED WITH A NOMINATION FOR INCLUSION IN THE STATE REGISTER IF A PERSON HAVING A REAL PROPERTY INTEREST IN THE WATER SUPPLY STRUCTURE OR AN INTEREST IN WATER THAT IS USED IN THE WATER SUPPLY STRUCTURE FILES A LETTER OF OBJECTION TO THE PROPOSED NOMINATION WITH THE SOCIETY WITHIN ONE HUNDRED TWENTY DAYS AFTER RECEIVING NOTICE UNDER THIS SUBSECTION (1).

(II) FOR A NOMINATION TO INCLUDE A WATER SUPPLY STRUCTURE IN THE NATIONAL REGISTER, THE SOCIETY SHALL NOT PROCEED WITH THE NOMINATION IF OBJECTION IS MADE IN ACCORDANCE WITH 36 CFR 60.6.

(2) (a) PRIOR TO TAKING ANY ACTION TO REQUEST APPROVAL FROM THE KEEPER OF THE NATIONAL REGISTER OF A MULTIPLE PROPERTY DOCUMENTATION FORM IN WHICH ANY OR ALL OF THE MULTIPLE PROPERTY TYPES OR ASSOCIATED PROPERTY TYPES ARE WATER SUPPLY STRUCTURES, THE SOCIETY SHALL PROCURE THE APPROVAL OF THE STATE ENGINEER APPOINTED PURSUANT TO SECTION 37-80-101, C.R.S.

(b) (I) THE SOCIETY SHALL PROVIDE NOTICE TO ALL PERSONS HAVING A PROPERTY INTEREST IN A WATER SUPPLY STRUCTURE INCLUDED IN A MULTIPLE PROPERTY DOCUMENTATION FORM USING THE PROCEDURE SET FORTH FOR SUBSTITUTE WATER SUPPLY PLANS IN SECTION 37-92-308 (5) (a), C.R.S.; EXCEPT THAT THE TIME REQUIREMENTS FOR ANY ACTIONS BY THE STATE ENGINEER UNDER THIS SUBSECTION (2) DO NOT APPLY. THE STATE ENGINEER SHALL ACT SOLELY AT HIS OR HER DISCRETION TO CONSIDER AND APPROVE OR DISAPPROVE THE MULTIPLE PROPERTY DOCUMENTATION FORM AT A TIME HE OR SHE SEES FIT.

(II) THE SOCIETY SHALL ENTER INTO A PROGRAMMATIC AGREEMENT WITH THE STATE ENGINEER THAT REQUIRES, AT A MINIMUM, THAT ANY PERSON HAVING AN INTEREST IN THE WATER SUPPLY STRUCTURE WHO OBJECTS TO INCLUSION OF THE OWNERS' WATER SUPPLY STRUCTURE MAY HAVE THE WATER SUPPLY STRUCTURE REMOVED FROM THE MULTIPLE PROPERTY DOCUMENTATION FORM.

(3) NOTHING IN THIS SECTION LIMITS COMMUNICATIONS BETWEEN THE SOCIETY AND THE KEEPER OF THE NATIONAL REGISTER THAT ARE REQUIRED UNDER 16 U.S.C. 470a (b) (3) (I). THE STATE ENGINEER SHALL NOT REVIEW ANY SUCH COMMUNICATIONS IN WHICH WATER SUPPLY STRUCTURES ARE ONLY INCIDENTALY DESCRIBED.

SECTION 4. Act subject to petition - effective date - applicability. (1) 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 (August 10, 2011, if adjournment sine die is on May 11, 2011); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part shall not take effect unless approved by the people at the general election to be held in November 2012 and shall take effect on the date of the official declaration of the vote thereon by the governor.

(2) The provisions of this act shall apply to actions taken by the department of natural resources, the department of public health and environment, and their subdivisions on or after the applicable effective date of this act.

Approved: May 9, 2011