



Legislative Council Staff

Research Note

Version: Final

Date: 10/31/2016

Bill Number

Senate Bill 16-200

Sponsors

Senator Sonnenberg
Representative Vigil

Short Title

Create Director Water Project
Permit Coordination

Research Analyst

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Status

This research note reflects the final version of the bill. The bill was signed by the Governor on May 4, 2016, and took effect on August 10, 2016.

Summary

This bill creates a Director of Water Project Permitting in the Governor's Office to coordinate the permitting of raw water projects — including associated hydroelectric facilities and both consumptive and nonconsumptive uses of water — and water projects that are either assessed a water quality certification fee or are eligible for financing from the Colorado Water Conservation Board (CWCB) Construction Fund. The director is required to update annually legislative committees with jurisdiction over natural resources regarding implementation of the act. The law is repealed on September 1, 2019.

Background

Permit requirements for water projects. Water projects may require several permits from federal, state, and local governments before a project can be completed. For example, the federal National Environmental Policy Act (NEPA) requires a structured planning and decision-making framework for any federal decision that has the potential to significantly impact the human environment. NEPA requires federal agencies to assess the environmental effects of their proposed actions before decision making. Applicants for federally permitted water projects are also required to submit a proposal to mitigate impacts on fish and wildlife resources to the Division of Parks and Wildlife. The division is charged with developing a state position on mitigation measures to protect fish and wildlife resources from the construction, operation, or maintenance of any proposed water diversion, delivery, or storage facility requiring a permit, license, or other approval

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from the United States. Depending upon the type of water project and where its located, the permit review process may extend ten or more years. A recently approved project to increase storage in the Chatfield Reservoir required 15 years to complete the federal permit review process.

Water Quality Certification Fee. The federal Clean Water Act (CWA) regulates discharges of pollutants into the waters of the United States and establishes quality standards for surface waters. The Environmental Protection Agency's (EPA) National Pollutant Discharge Elimination System permit program regulates discharges from point sources, such as pipes or ditches. Industrial, municipal, and other facilities must obtain permits for discharges into surface waters. Under Section 401 of the federal Clean Water Act, activities that may cause a pollution discharge into navigable waters must obtain a 401 certification. The Colorado Department of Public Health and Environment's Water Quality Control Division (division) is required by Colorado statute to review federal licenses and permits under Section 401 of the Clean Water Act. State law requires the division to create an application fee for issuing CWA Section 401 water quality certifications for water supply projects. The fee structure is based on four tiers. Tier 1 and 2 projects are flat fees and Tier 3 and 4 are based on hourly rates to prepare the permit.

CWCB Construction Fund. The CWCB, within the Department of Natural Resources, is the state's primary water policy and planning agency. Its major programs include water supply protection; flood protection; conservation and drought planning; stream and lake protection (instream flow program); and water supply planning and finance. The CWCB is governed by a 15-member board. The CWCB Construction Fund is the state's largest revolving loan program to finance water diversion and storage projects.

Senate Action

Senate Agriculture, Natural Resources, and Energy Committee (May 4, 2016). At the hearing, representatives from the CWCB, the Colorado Farm Bureau, and the Northern Colorado Water Conservancy District spoke in favor of the bill. A representative of Western Resource Advocates spoke in opposition to the bill. The committee adopted Amendment L.001, which authorizes the Director of Water Project Permitting to hold other positions in the Governor's Office and specifies how fees will be used to pay for the costs of the office. It also adopted Amendment L.002, which prevents the director from curtailing the ability of any federal, state, or local government to fulfill their statutory duties. The committee referred the bill, as amended, to the Committee on Appropriations.

Senate Appropriations Committee (May 5, 2016). The Senate Appropriations Committee approved Amendment L.005 which requires that the costs to implement the bill be paid from existing resources and requires the director to annually provide an update on the director's activities to the committees with jurisdiction over natural resources. It also approved Amendment L.006 which repeals the Director of Water Project Permitting on September 1, 2019.

Senate second reading (May 5, 2016). The Senate adopted the Senate Agriculture, Natural Resources, and Energy Committee report and the Appropriations Committee report. The Senate passed the bill on second reading, as amended.

Senate third reading (May 6, 2016). The Senate passed the bill on third reading with no amendments.

Senate concurrence (May 11, 2016). The Senate concurred with House amendments and repassed the bill.

House Action

House State, Veterans, and Military Affairs Committee (May 9, 2016). At the hearing, representatives from CWCB, the Colorado Farm Bureau, and the Colorado Water Congress spoke in favor of the bill. The committee adopted Amendment L.007, which corrected a bill drafting error.

House second reading (May 10, 2016). The House adopted the House State, Veterans, and Military Affairs Committee report. The House passed the bill on second reading, as amended.

House third reading (May 11, 2016). This House passed the bill on third reading with no amendments.