

First Regular Session
Seventy-second General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 19-0327.01 Jennifer Berman x3286

HOUSE BILL 19-1218

HOUSE SPONSORSHIP

Roberts,

SENATE SPONSORSHIP

(None),

House Committees
Energy & Environment

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE COLORADO WATER CONSERVATION BOARD'S
102 AUTHORITY TO USE WATER THAT A WATER RIGHT OWNER
103 VOLUNTARILY LOANS TO THE BOARD FOR INSTREAM FLOW
104 PURPOSES.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Under current law, the Colorado water conservation board (board), subject to procedural requirements established to prevent injury to water rights or decreed conditional water rights, may use loaned water for

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

instream flows if the loaned water is used for preserving the natural environment of a stream reach that is subject to a decreed instream flow water right held by the board. The bill expands the number of years within a 10-year period that a loan may be exercised from 3 years to 5 years and allows a loan to be renewed for up to 2 additional 10-year periods.

The bill also expands the board's ability to use loaned water for instream flows to allow loans to:

- ! Improve the natural environment to a reasonable degree pursuant to a decreed instream flow water right held by the board; or
- ! Preserve or improve the natural environment to a reasonable degree for a stream reach for which the board does not hold a decreed instream flow water right.

In considering whether to accept one of the new types of loans authorized by the bill, the board must evaluate the proposed loan based on a biological analysis performed by the division of parks and wildlife. The board is required to promulgate rules regarding the necessary steps for reviewing and accepting such a loan.

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

2 **SECTION 1.** In Colorado Revised Statutes, 37-83-105, **amend**
3 (1), (2)(a) introductory portion, (2)(a)(IV), and (2)(a)(V); and **add**
4 (2)(a)(VI) as follows:

5 **37-83-105. Owner may loan agricultural water right - loans**
6 **to Colorado water conservation board for instream flows - rules.**

7 (1) (a) Subject to the limitations of this subsection (1) and pursuant to the
8 procedures set forth in ~~paragraph (b) of subsection (2)~~ SUBSECTION (2)(b)
9 of this section, the owner of a water right decreed and used solely for
10 agricultural irrigation purposes may loan all or a portion of the water right
11 to another owner of a decreed water right on the same stream system and
12 that is used solely for agricultural irrigation purposes for no more than
13 one hundred eighty days during any one calendar year if the division
14 engineer approves ~~such~~ THE loan in advance and the loan does not cause
15 injury to other decreed water rights.

1 (b) A WATER RIGHT OWNER MAY LOAN WATER TO THE COLORADO
2 WATER CONSERVATION BOARD FOR USE AS INSTREAM FLOW:

3 (I) TO PRESERVE THE NATURAL ENVIRONMENT TO A REASONABLE
4 DEGREE PURSUANT TO A DECREED INSTREAM FLOW WATER RIGHT HELD BY
5 THE BOARD; OR

6 (II) BASED ON THE BOARD'S REVIEW OF BIOLOGICAL AND
7 SCIENTIFIC EVIDENCE PRESENTED TO IT INCLUDING A BIOLOGICAL
8 ANALYSIS THAT THE BOARD REQUESTS THAT THE DIVISION OF PARKS AND
9 WILDLIFE CREATED IN SECTION 33-9-104 PERFORM:

10 (A) TO IMPROVE THE NATURAL ENVIRONMENT TO A REASONABLE
11 DEGREE FOR A STREAM REACH FOR WHICH THE BOARD HOLDS A DECREED
12 INSTREAM FLOW WATER RIGHT; OR

13 (B) TO PRESERVE OR IMPROVE THE NATURAL ENVIRONMENT TO A
14 REASONABLE DEGREE FOR A STREAM REACH FOR WHICH THE BOARD DOES
15 NOT HOLD A DECREED INSTREAM FLOW WATER RIGHT.

16 (2) (a) ~~A Water right owner may loan water to the Colorado water~~
17 ~~conservation board for use as~~ BE USED FOR instream flows pursuant to a
18 ~~decreed instream flow water right held by the board~~ LOAN AUTHORIZED
19 UNDER THIS SECTION for a period not to exceed one hundred twenty days,
20 subject to the following:

21 (IV) A loan approved pursuant to this ~~paragraph (a)~~ shall
22 SUBSECTION (2)(a) MUST not be exercised for more than ~~three~~ FIVE years
23 in a ten-year period, for which only a single approval by the state engineer
24 is required. The ten-year period ~~shall begin~~ BEGINS when the state
25 engineer approves the loan. The state engineer ~~shall not~~ MAY approve a
26 loan pursuant to this ~~paragraph (a)~~ SUBSECTION (2)(a) for ~~another~~ UP TO
27 TWO ADDITIONAL ten-year ~~period~~ PERIODS; except that, if the agreement

1 has not been exercised during the term of ANY TEN-YEAR PERIOD OF the
2 agreement, an applicant may reapply one ADDITIONAL time by repeating
3 the application process pursuant to this subsection (2).

4 (V) A party may file comments concerning potential injury to ~~such~~
5 THE party's water rights or decreed conditional water rights due to the
6 operations of the loan of a THE water right to a ~~decreed instream flow~~
7 ~~right~~ with the state engineer by January 1 of the year following each year
8 that the loan is exercised. The procedures of ~~paragraph (b) of this~~
9 ~~subsection (2)~~ SUBSECTION (2)(b) OF THIS SECTION regarding notice,
10 opportunity to comment, the state engineer's decision, and an appeal of
11 ~~such~~ THE decision shall again be followed with regard to ~~such~~ THE party's
12 comments.

13 (VI) THE BOARD SHALL PROMULGATE RULES REGARDING THE
14 FOLLOWING NECESSARY STEPS FOR REVIEWING AND ACCEPTING LOANS FOR
15 INSTREAM FLOW USE TO PRESERVE OR IMPROVE THE NATURAL
16 ENVIRONMENT TO A REASONABLE DEGREE PURSUANT TO SUBSECTION
17 (1)(b)(II) OF THIS SECTION:

18 (A) THE BOARD'S REVIEW OF THE PROPOSED LOAN, INCLUDING A
19 REQUIREMENT THAT THE BOARD REQUEST AND REVIEW A BIOLOGICAL
20 ANALYSIS FROM THE DIVISION OF PARKS AND WILDLIFE CONCERNING THE
21 EXTENT TO WHICH THE PROPOSED LOAN WILL PRESERVE OR IMPROVE THE
22 NATURAL ENVIRONMENT TO A REASONABLE DEGREE; AND

23 (B) THE BOARD'S DETERMINATION, AFTER A HEARING ON THE
24 MATTER, IF REQUESTED, WHETHER TO ACCEPT THE PROPOSED LOAN.

25 **SECTION 2. Act subject to petition - effective date -**
26 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
27 the expiration of the ninety-day period after final adjournment of the

1 general assembly (August 2, 2019, if adjournment sine die is on May 3,
2 2019); except that, if a referendum petition is filed pursuant to section 1
3 (3) of article V of the state constitution against this act or an item, section,
4 or part of this act within such period, then the act, item, section, or part
5 will not take effect unless approved by the people at the general election
6 to be held in November 2020 and, in such case, will take effect on the
7 date of the official declaration of the vote thereon by the governor.

8 (2) This act applies to conduct occurring on or after the applicable
9 effective date of this act.