Water Resources Review Committee

2009 Report to Legislative Council

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Water Resources Review Committee

Committee Charge

The Water Resources Review Committee was created to contribute to and monitor the conservation, use, development, and financing of Colorado's water resources for the general welfare of the state (Section 37-98-102, C.R.S.). The committee is authorized to review and propose legislation in furtherance of its purposes. In conducting its review, the committee is required to consult with experts in the field of water conservation, quality, use, finance, and development. The committee was authorized to meet eight times in 2009, including two times outside of the interim period, and to take two field trips in connection with its mandate.

Committee Activities

The committee met six times and took two tours during the 2009 interim. It also met once during the 2009 legislative session. During the 2009 interim, the committee met with a broad range of water users and government officials including local water providers, state water rights administrators, water quality regulators, state water planners, water project developers, and concerned citizens. The committee received briefings on major water issues affecting the state including planning for future water needs, funding needs for state water agencies and water projects, regulation of groundwater use, implementation of new water laws, and other issues.

Committee tours. In June, the committee toured for two days in the Rio Grande Basin in southern Colorado and visited water storage and distribution facilities, irrigation projects, an endangered fish hatchery, a solar electric generation facility, a mine reclamation project, and other sites. This tour was organized by the Colorado Foundation for Water Education. In September, the committee toured for one day in southwest Colorado where it visited the recently completed Animas-La Plata water storage project, a proposed white water park in Durango, and a wildfire mitigation project. It also held a committee meeting in Durango to consider draft legislation and learn about proposed water supply projects and water supply challenges facing the area. The committee also attended the Colorado Water Congress summer convention in Steamboat Springs where it held a public meeting to discuss funding needs for the Division of Water Resources and the Water Efficiency Grant Program and to attend presentations about water infrastructure needs and financing options, on-going water supply studies, and other water management issues.

Severance tax funding for the Division of Water Resources. The committee heard testimony from the Budget Director of Colorado Department of Natural Resources about Governor Ritter's FY 2009-10 budget balancing plan that seeks to reduce total General Fund appropriations by 10 percent. The General Fund appropriation for the Department of Natural Resources in FY 2009-10 is $29 million, including $25 million for the Division of Water Resources. The Governor's plan reduces the FY 2009-10 General Fund appropriation to the department by 9.2 percent or $2.7 million including a reduction of $400,000 for the Division of Water Resources. It also reduces the equivalent of 5.3 full time employees from the Division of Water Resources. The division, also known as the Office of the State Engineer, administers water rights, issues water well permits, monitors stream flows and water uses, inspects dams for safety, and represents Colorado in interstate water compact proceedings.

The severance tax is collected on oil and gas and other nonrenewable minerals that are removed from the earth. The Operational Account receives 25 percent of severance tax receipts. Moneys in the account have traditionally been used to fund the operations of the Oil and Gas Conservation Commission, the Geological Survey, the Division of Reclamation, Mining, and Safety, and the Water Conservation Board within the Department of Natural Resources. In 2008, the legislature also authorized the Division of Wildlife and the Division of Outdoor Parks and Recreation to receive these moneys. These programs are collectively referred to as Tier 1 programs. Tier 2 programs support grants, loans, research, and construction projects. These programs are subject to proportional reduction if severance tax revenues are lower than expected. Because severance tax revenues are historically variable, Tier 2 programs are selected in part because they are designed to withstand short-term reductions in funding. The committee recommends Bill A that authorizes the expenditure of up to 5 percent of the moneys in Tier 1 of the Operational Account of the Severance Tax Trust Fund for the Division of Water Resources. It also eliminates the Tier 1 authorization for the Division of Wildlife to account for the increase.

Water Efficiency Grant Program. The Water Efficiency Grant Program is administered by the Colorado Water Conservation Board's Office of Water Conservation and Drought Planning. The program provides financial assistance to communities, water providers, and eligible agencies for water conservation-related activities and projects. In 2007, the Colorado General Assembly expanded the Water Efficiency Grant Program by passing Senate Bill 07-008 to combine previous grant programs into one program. With over $3 million in grant moneys available, eligible entities, state and local governments, and agencies can receive funding to develop Water Conservation and Drought Plans, to implement water conservation goals outlined in a water conservation plan, and for public education and outreach regarding water conservation. The Water Efficiency Grant Program will be repealed on July 1, 2012, unless the legislature passes a law to extend the program. The committee recommends Bill B, which extends the program to 2020 and authorizes annual appropriations of up to $550,000 from the Water Efficiency Grant Program Cash Fund beginning on July 1, 2010. The bill also annually transfers $550,000 from Tier 2 of the Operational Account of the Severance Tax Trust Fund to the Water Efficiency Grant Program Cash Fund beginning on July 1, 2012.

Valuation of large hydroelectric facilities. There are three approaches for appraising property for purposes of property taxation:

- the market approach — estimates the most probable price that a property would bring if sold in the open market;
- the cost approach — estimates the material and labor costs to replace a building or facility with an existing one; and
- the income approach — considers the landlord's income and operating expenses, and the financial return expected from a given type of property investment.

In 2006, the General Assembly changed the way that wind energy facilities are valued. House Bill 06-1275 specified that for wind energy facilities in operation on or after January 1, 2006, actual value would be determined using the income method and be based on projected gross revenue. Because of this change, property taxes are lower in early years of operation, but increase to relatively higher levels in later years. Over a 20-year horizon, total property tax revenue remains unchanged. In 2009, the General Assembly passed a law that values solar energy generation facilities using the income approach as well. Senate Bill 09-177 specifies that solar energy generation facilities where energy production begins on or after January 1, 2009, and generation capacity is more than 2 megawatts, are to be valued using the income approach. The committee recommends Bill C, which will require new hydroelectric facilities to also be valued using the income approach.

Election of water conservancy district boards. State law provides a mechanism for local communities to form water conservancy districts to finance dams, tunnels, and other water works that provide water for irrigation, mining, domestic purposes, and other beneficial uses. Most water conservancy districts are governed by a board of directors that is appointed by the district court. However, elections of district directors may be held if at least 10 percent of the registered electors in a director's district petition the court to hold an election. As with directors appointed by the court, candidates for district board elections must be property owners within the district, knowledgeable about the district's water issues, and residents of the counties in which the water conservancy district is situated. House Bill 09-1142 would have reduced the number of registered electors that must sign a petition in order to hold an election for a director of a water conservancy district. It also would have eliminated the requirement that an elected director own real property. The sponsor of this bill, also a member of the Water Resources Review Committee, explained that signature requirement is particularly onerous for electors in more urban water conservancy districts. For example, to cause an election for a board member in a northern Colorado water conservancy district, over 18,000 valid signatures must be gathered. The committee rejected a request to draft a bill to reduce the number of signatures required to cause an election for a water conservancy district and make other changes to the law.

Committee Recommendation

As a result of committee discussion and deliberation, the committee recommends three bills for consideration in the 2010 legislative session.

Bill A — Funding for the Division of Water Resources. Draft Bill A authorizes the expenditure of up to 5 percent of the moneys in Tier 1 of the Operational Account of the Severance Tax Trust Fund for the Division of Water Resources, and allows this increase to supplant moneys that would otherwise be made available to the division from the General Fund. It also eliminates the Tier 1 authorization for the Division of Wildlife to account for the increase.

Bill B — Continue the Water Efficiency Grant Program. Draft Bill B extends the Water Efficiency Grant Program and authorizes up to $550,000 of annual appropriations from the Water Efficiency Grant Program Cash Fund. The grant program was scheduled to repeal after FY 2010-11, however Bill B extends this until FY 2019-20. The bill also annually transfers $550,000 from Tier 2 of the Operational Account of the Severance Tax Trust Fund to the Water Efficiency Grant Program Cash Fund beginning on July 1, 2012.

Bill C — Valuation of New Hydroelectric Facilities. Draft Bill C requires that new hydroelectric energy facilities be valued for the purpose of property taxation in the same manner as new wind and solar energy facilities are valued. Wind and solar facilities are valued using the income approach, which considers the landlord's income, operating expenses, and the financial return expected from a given type of property investment, rather than the cost approach, which estimates the value of the property based on material and labor costs to replace the facility.