



**Colorado  
Legislative  
Council  
Staff**

**HB16-1228**

**FINAL  
FISCAL NOTE**

**FISCAL IMPACT:**  State  Local  Statutory Public Entity  Conditional  No Fiscal Impact

**Drafting Number:** LLS 16-0560 **Date:** July 6, 2016  
**Prime Sponsor(s):** Rep. Arndt; Becker J. **Bill Status:** Signed into Law  
 Sen. Donovan **Fiscal Analyst:** Clare Pramuk (303-866-2677)

**BILL TOPIC:** AGRICULTURAL PROTECTION WATER RIGHT TRANSFER MECHANISM

Fiscal Impact Summary	FY 2015-2016	FY 2016-2017	FY 2017-2018
State Revenue			
State Expenditures	Workload and expenditure increase.		
<b>Appropriation Required:</b> None.			
<b>Future Year Impacts:</b> Ongoing workload increase.			

**Summary of Legislation**

This bill allows the owner of an absolute decreed irrigation water right in Water Division 1 or 2 that's used for agricultural purposes to apply in water court to change the use of the water right to an agricultural water protection water right which is created by this bill. An agricultural water protection water right allows for the lease, loan, or trade of up to 50 percent of the water subject to the water right without designating the beneficial use to which the water will be applied.

The bill requires the Colorado Water Conservation Board (CWCB) in the Department of Natural Resources (DNR) to develop minimum criteria and guidelines for the establishment of an Agricultural Water Protection Program. The State Engineer in the DNR is required to develop rules governing the review of a substitute water supply plan for agricultural water protection water rights and for making the information about the plans accessible to the public. The CWCB is required to hold at least one public meeting in each water division to present the draft criteria and guidelines and receive public comments. The criteria and guidelines may vary by water division, but must be finalized within one year after initiating the development process.

An agricultural water protection water right is subject to the following conditions:

- the water right holder may apply for a substitute water supply plan with the state engineer after the water right holder has obtained a decreed agricultural water protection water right;
- the water right holder must comply with the terms of the decree governing the point of diversion where the water is being delivered;

- the water right holder may lease, loan, or trade up to 50 percent of the quantified historical consumptive use portion of the water right, but only in the water division where the historical consumptive use was located;
- any water not being leased, loaned, or traded must be used for agricultural purposes; and
- the water right holder must participate in a conservation program or an agricultural water protection program.

Substitute water supply plans associated with agricultural water protection water rights are valid for one year and can be renewed twice without reapplying if the terms and the conditions of the plan remain unchanged. A new application must be filed every three years in order to maintain the substitute water supply plan.

## Background

Colorado water law prohibits speculation in water rights. Under the anti-speculation doctrine, an applicant who wishes to change the beneficial use of an irrigation water right must identify for the water court the specific beneficial use for which the water will actually be used.

## Assumptions

The fiscal note assumes that the rules, guidelines, and criteria that must be developed under the bill will be completed and that change of water right applications may be filed for agricultural water protection water rights beginning July 1, 2017. However, because the rules must be filed in water court and may have objectors, the July 1, 2017, start date may be delayed. The fiscal note further assumes that based on the low participation in other types of new water programs and the complexity of the requirements under the bill, a minimal number of change of water right applications will be filed in the near term.

## State Expenditures

This bill increases workload and expenditures for the Department of Natural Resources for rulemaking, development of criteria and guidelines, and substitute water supply plan review. The bill also increases workload for the Judicial Department. These increases are described below.

**Rulemaking.** Beginning in FY 2015-16, the rulemaking required by the bill for the Office of the State Engineer will increase the workload of Division of Water Resources (DWR) staff but this increase falls within the expected duties for those staff members. The DWR will also have administrative costs for meetings and publications associated with rulemaking. Finally, the DWR will use legal services hours from the Department of Law. The increased workload, expenditures, and legal services hours can be addressed within existing appropriations.

**Development of criteria and guidelines.** Beginning in FY 2015-16, DWR staff will have an increase in workload to assist the CWCB to develop the criteria and guidelines required by the bill. The CWCB will gather public comment from each water division during its regular board meetings which are held around the state. This increased workload can be addressed within existing appropriations.

***Substitute water supply plan review.*** DWR staff currently review all water court applications and substitute water supply plans. Beginning in FY 2017-18, the DWR will have an increase in workload to review substitute water supply plans and change of water right applications associated with agricultural water protection water rights. Because few change of water right applications are expected, even fewer substitute water supply plans are expected. As such this increased workload can be addressed within existing appropriations.

***Water courts in the Judicial Department.*** Water courts will experience a minimal increase in workload beginning in FY 2017-18 to hear change of water right cases and appeals of decisions made by the State Engineer concerning substitute water supply plans related to agricultural water protection water rights. Because the fiscal note assumes that these cases will be few in number, the water courts are expected to address the increased workload within existing appropriations. If demand for change of water right cases associated with agricultural water protection water rights are significant, the fiscal note assumes that the Judicial Department will seek additional funding through the annual budget process.

## **Effective Date**

The bill was signed into law by the Governor on May 18, 2016, and takes effect August 10, 2016, assuming no referendum petition is filed.

## **Departmental Difference**

The assumptions used by the Judicial Department and the fiscal impact based on those assumptions differ from this fiscal note. The department anticipates 76 additional filings in the first year that a water rights holder can apply for a change of water right under the agricultural water protection program. The department is requesting 0.4 FTE Magistrate to address the increased workload beginning in FY 2017-18 with costs for personal services, operating expenses and capital outlay expenses of \$108,971. Because a new judgeship cannot be requested through the fiscal note process, the department requests magistrates to assist judges in keeping pace with their workload. The fiscal note assumes a minimal number of change of water right applications will be submitted in the near term.

## **State and Local Government Contacts**

Judicial Civil

## **Research Note Available**

An LCS Research Note for HB 16-1228 is available online and through the iLegislate app. Research notes provide additional policy and background information about the bill and summarize action taken by the General Assembly concerning the bill.