

**Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 22-0178.01 Jennifer Berman x3286

SENATE BILL 22-028

SENATE SPONSORSHIP

Simpson and Sonnenberg, Bridges, Coram, Donovan, Jaquez Lewis, Buckner, Cooke, Fields, Garcia, Gardner, Gonzales, Hisey, Holbert, Kirkmeyer, Lee, Liston, Lundeen, Pettersen, Priola, Rankin, Scott, Smallwood, Story, Winter, Woodward, Zenzinger

HOUSE SPONSORSHIP

Roberts and Catlin, McCormick, McKean, McLachlan

Senate Committees

Agriculture & Natural Resources

House Committees

Agriculture, Livestock, & Water
Appropriations

A BILL FOR AN ACT

101 **CONCERNING THE CREATION OF THE GROUNDWATER COMPACT**
102 **COMPLIANCE AND SUSTAINABILITY FUND, AND, IN CONNECTION**
103 **THEREWITH, MAKING AN APPROPRIATION.**

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/>.)

Water Resources Review Committee. The bill creates the groundwater compact compliance and sustainability fund to help finance groundwater use reduction efforts in the Rio Grande river basin and the Republican river basin, such as efforts to buy and retire irrigation wells and irrigated acreage in the river basins. The Colorado water conservation

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.

SENATE
3rd Reading Unamended
February 17, 2022

SENATE
2nd Reading Unamended
February 15, 2022

board administers the fund and can make expenditures from the fund based on recommendations from the board of directors of the Rio Grande water conservation district or the Republican river water conservation district. A conservation district's recommendations must first be approved by the state engineer.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** 37-60-134 as
3 follows:

4 **37-60-134. Groundwater compact compliance and**
5 **sustainability fund - creation - conservation district**
6 **recommendations for expenditures - state engineer approval -**
7 **legislative declaration - transfer - definitions - reports - repeal.**

8 (1) THE GENERAL ASSEMBLY HEREBY:

9 (a) FINDS AND DETERMINES THAT:

10 (I) GROUNDWATER WELL PUMPING IN CERTAIN AREAS OF THE
11 STATE PROVIDES THE PRINCIPAL SOURCE OF IRRIGATION WATER SUPPLY
12 BUT CONSEQUENTLY MAY REDUCE THE QUANTITY OF GROUNDWATER IN
13 THE AQUIFERS AND MAY IMPACT THE HYDROGEOLOGY OF CONNECTED
14 SURFACE STREAMS, RESULTING IN REDUCED STREAM FLOWS THAT
15 THREATEN SENIOR WATER RIGHTS AND THE STATE'S COMPLIANCE WITH
16 INTERSTATE COMPACTS;

17 (II) GROUNDWATER USE IS EXTENSIVE IN FOUR OF THE EIGHT
18 MAJOR RIVER BASINS IN COLORADO, NAMELY THE RIO GRANDE,
19 REPUBLICAN, ARKANSAS, AND SOUTH PLATTE RIVER BASINS, AND SUCH
20 GROUNDWATER USE IS CLOSELY TIED TO THE AGRICULTURAL ECONOMY IN
21 THOSE AREAS;

22 (III) PREVIOUS UNITED STATES SUPREME COURT LITIGATION
23 INITIATED IN NEIGHBORING STATES REGARDING COMPACT COMPLIANCE BY

1 THE RIO GRANDE, ARKANSAS, AND REPUBLICAN RIVER BASINS HAVE
2 INVOLVED COMPLAINTS REGARDING THE EXTENT OF GROUNDWATER USE
3 IN THOSE AREAS. SETTLEMENTS OF THE LAWSUITS IN THE RIO GRANDE
4 AND REPUBLICAN RIVER BASINS RESULTED IN THE CREATION OF WATER
5 CONSERVATION DISTRICTS TO ADDRESS GROUNDWATER MANAGEMENT
6 AND CONSERVATION.

7 (IV) DESPITE THE CONSERVATION DISTRICTS' AND THE STATE'S
8 DILIGENT EFFORTS TO IMPLEMENT STRATEGIES TO REDUCE GROUNDWATER
9 USE, INCLUDING THE CREATION OF SIX GROUNDWATER MANAGEMENT
10 SUBDISTRICTS IN THE RIO GRANDE RIVER BASIN AND THE USE OF VARIOUS
11 FEDERAL, STATE, AND LOCAL FUNDING SOURCES TO INCENTIVIZE THE
12 PURCHASE AND RETIREMENT OF IRRIGATED ACREAGE, EXTENSIVE
13 GROUNDWATER USE IN THE RIO GRANDE AND REPUBLICAN RIVER BASINS
14 CONTINUES TO THREATEN AQUIFER SUSTAINABILITY, SENIOR WATER
15 RIGHTS, AND COMPACT COMPLIANCE;

16 (V) AS PART OF THE EFFORTS TO REDUCE GROUNDWATER USE, THE
17 STATE ENTERED INTO A STIPULATION WITH KANSAS AND NEBRASKA IN
18 2016 IN WHICH THE STATE AGREED TO RETIRE TWENTY-FIVE THOUSAND
19 ACRES OF IRRIGATED ACREAGE IN THE REPUBLICAN RIVER BASIN BY 2029,
20 AND, PURSUANT TO STANDARDS FOR GROUNDWATER MANAGEMENT SET
21 FORTH IN SECTION 37-92-501 (4), THE GROUNDWATER MANAGEMENT
22 SUBDISTRICT NUMBER 1 CREATED IN THE RIO GRANDE WATER
23 CONSERVATION DISTRICT IS REQUIRED TO RETIRE FORTY THOUSAND ACRES
24 OF IRRIGATED ACREAGE BY 2029;

25 (VI) TO DATE, ONLY ABOUT THREE THOUSAND ACRES HAVE BEEN
26 RETIRED IN THE REPUBLICAN RIVER BASIN AND ONLY ABOUT THIRTEEN
27 THOUSAND ACRES HAVE BEEN RETIRED IN THE RIO GRANDE RIVER BASIN;

1 AND

2 (VII) IF THE ACREAGE RETIREMENT REQUIREMENTS IN THE RIO
3 GRANDE AND REPUBLICAN RIVER BASINS ARE NOT MET, THE STATE MIGHT
4 BE REQUIRED TO MANDATE GROUNDWATER USE REDUCTIONS FOR
5 PRODUCTIVE FARMLAND IN THE BASINS TO ACHIEVE COMPACT
6 COMPLIANCE, THUS THREATENING THE AGRICULTURAL ECONOMIES IN THE
7 RIVER BASINS; AND

8 (b) DECLARES THAT:

9 (I) GREATER FUNDING IS NEEDED TO INCENTIVIZE THE RETIREMENT
10 OF IRRIGATION WELLS AND IRRIGATED ACREAGE TO COMPLY WITH THE
11 GROUNDWATER USE REDUCTION REQUIREMENTS;

12 (II) TO ACCELERATE THE STATE'S PROGRESS IN RETIRING
13 IRRIGATED ACREAGE IN THE REPUBLICAN AND RIO GRANDE RIVER BASINS
14 IN ORDER TO MEET STATE-MANDATED DEADLINES, A STATE FUND SHOULD
15 BE CREATED TO PROVIDE FINANCIAL INCENTIVES AND ASSISTANCE FOR THE
16 BUYING AND RETIRING OF IRRIGATION WELLS AND IRRIGATED ACREAGE IN
17 THE BASINS;

18 (III) SUCH USE OF STATE MONEY WOULD ALSO HELP PROMOTE
19 CONSERVATION AND SUSTAINABILITY OF GROUNDWATER RESOURCES IN
20 FURTHERANCE OF THE STATE WATER PLAN DEVELOPED PURSUANT TO
21 SECTION 37-60-106.3; AND

22 (IV) THE BOARD SHOULD ADMINISTER THE FUND AND DISTRIBUTE
23 MONEY FROM THE FUND BASED ON RECOMMENDATIONS OF THE BOARD OF
24 DIRECTORS OF THE RIO GRANDE WATER CONSERVATION DISTRICT
25 APPOINTED PURSUANT TO SECTION 37-48-103 OR THE BOARD OF
26 DIRECTORS OF THE REPUBLICAN RIVER WATER CONSERVATION DISTRICT
27 APPOINTED PURSUANT TO SECTION 37-50-104, WHICH RECOMMENDATIONS

1 THE STATE ENGINEER SHOULD FIRST REVIEW.

2 (2) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT:

3 (a) THIS SECTION IS INTENDED TO RESPOND TO THE NEGATIVE
4 ECONOMIC IMPACTS CAUSED BY THE COVID-19 PANDEMIC AND
5 RESULTING PUBLIC HEALTH EMERGENCY BY PROVIDING FINANCIAL
6 INCENTIVES FOR THE VOLUNTARY RETIREMENT OF IRRIGATED ACREAGE
7 AND WELLS IN ORDER TO MAINTAIN INTERSTATE COMPACT COMPLIANCE
8 AND FOR THE PROMOTION OF CONSERVATION AND SUSTAINABILITY OF
9 GROUNDWATER RESOURCES IN FURTHERANCE OF THE STATE WATER PLAN;

10 (b) MONEY ALLOCATED TO THE STATE PURSUANT TO THE
11 "AMERICAN RESCUE PLAN ACT OF 2021" AND TRANSFERRED TO THE
12 GROUNDWATER COMPACT COMPLIANCE AND SUSTAINABILITY FUND
13 CREATED IN SUBSECTION (3)(a) OF THIS SECTION MAY BE USED FOR THE
14 PURPOSES OF THIS SECTION; AND

15 (c) THE COMPACT COMPLIANCE, GROUNDWATER RESOURCE
16 SUSTAINABILITY, AND GROUNDWATER CONSERVATION PURPOSES
17 DESCRIBED IN THIS SECTION ARE IMPORTANT GOVERNMENT SERVICES.

18 (3) (a) THE GROUNDWATER COMPACT COMPLIANCE AND
19 SUSTAINABILITY FUND IS HEREBY CREATED IN THE STATE TREASURY AND
20 CONSISTS OF MONEY THAT THE GENERAL ASSEMBLY MAY APPROPRIATE OR
21 TRANSFER TO THE FUND; MONEY THAT THE STATE MAY RECEIVE FROM
22 FEDERAL SOURCES, INCLUDING FEDERAL SOURCES OF STIMULUS FUNDING
23 OR RECOVERY FUNDING; AND ANY GIFTS, GRANTS, OR DONATIONS THAT
24 THE BOARD SEEKS, ACCEPTS, AND EXPENDS FOR THE PURPOSES SET FORTH
25 IN THIS SECTION. THE MONEY IN THE FUND IS SUBJECT TO ANNUAL
26 APPROPRIATION BY THE GENERAL ASSEMBLY.

27 (b) THE BOARD SHALL ADMINISTER THE FUND TO IMPLEMENT THE

1 GROUNDWATER COMPACT COMPLIANCE AND SUSTAINABILITY PURPOSES
2 ESTABLISHED IN ACCORDANCE WITH THIS SECTION. THE BOARD MAY USE
3 UP TO FIVE PERCENT OF THE MONEY ANNUALLY APPROPRIATED TO THE
4 FUND TO PAY THE BOARD'S DIRECT AND INDIRECT COSTS, AS WELL AS THE
5 DIRECT AND INDIRECT COSTS INCURRED BY THE RIO GRANDE WATER
6 CONSERVATION DISTRICT, THE REPUBLICAN RIVER WATER CONSERVATION
7 DISTRICT, AND THE STATE ENGINEER IN IMPLEMENTING THIS SECTION.

8 (4) THE BOARD MAY DISBURSE MONEY FROM THE FUND FOR
9 PURPOSES RELATED TO COMPACT COMPLIANCE AND GROUNDWATER
10 RESOURCE SUSTAINABILITY AND CONSERVATION, INCLUDING THE
11 FINANCING OF PROGRAMS DIRECTED AT BUYING AND RETIRING IRRIGATED
12 ACREAGE TO REDUCE GROUNDWATER USE. THE BOARD OF DIRECTORS OF
13 THE RIO GRANDE WATER CONSERVATION DISTRICT AND THE BOARD OF
14 DIRECTORS OF THE REPUBLICAN RIVER WATER CONSERVATION DISTRICT,
15 IN COLLABORATION WITH THE BOARD AND THE STATE ENGINEER, MAY
16 EACH ESTABLISH ELIGIBILITY AND APPLICATION CRITERIA FOR
17 DISBURSEMENT OF MONEY FROM THE FUND. EACH BOARD OF DIRECTORS
18 SHALL POST ON ITS WEBSITE ANY CRITERIA ESTABLISHED PURSUANT TO
19 THIS SUBSECTION (4).

20 (5) THE BOARD SHALL DISBURSE MONEY FROM THE FUND BASED
21 ON RECOMMENDATIONS FROM THE BOARD OF DIRECTORS OF EITHER THE
22 RIO GRANDE WATER CONSERVATION DISTRICT OR THE REPUBLICAN RIVER
23 WATER CONSERVATION DISTRICT, WHICH RECOMMENDATIONS MUST FIRST
24 BE APPROVED BY THE STATE ENGINEER.

25 (6) IF ALL GROUNDWATER REDUCTION REQUIREMENTS
26 ESTABLISHED BY FEDERAL OR STATE COURT ORDER OR STIPULATION HAVE
27 BEEN MET AND ALL STATUTORILY MANDATED GROUNDWATER REDUCTION

1 STANDARDS HAVE BEEN ACHIEVED, THIS SECTION WILL BE REPEALED;
2 EXCEPT THAT THIS SECTION SHALL NOT BE REPEALED BEFORE JANUARY 1,
3 2025. THE BOARD SHALL NOTIFY THE REVISOR OF STATUTES IN WRITING OF
4 THE DATE WHEN THE CONDITIONS SPECIFIED IN THIS SUBSECTION (6) HAVE
5 OCCURRED BY EMAILING THE NOTICE TO
6 REVISOROFSTATUTES.GA@STATE.CO.US. THE BOARD SHALL ALSO SEND A
7 COPY OF THE NOTICE TO THE STATE TREASURER WHO, WITHIN THREE DAYS
8 AFTER RECEIVING THE NOTICE, SHALL TRANSFER ANY MONEY REMAINING
9 IN THE FUND TO THE GENERAL FUND. THIS SECTION IS REPEALED,
10 EFFECTIVE UPON THE DATE IDENTIFIED IN THE NOTICE OR, IF THE NOTICE
11 DOES NOT SPECIFY THAT DATE, UPON THE DATE OF THE NOTICE TO THE
12 REVISOR OF STATUTES.

13 (7) (a) FOR THE 2022-23 STATE FISCAL YEAR, THE GENERAL
14 ASSEMBLY SHALL APPROPRIATE TO THE FUND SIXTY MILLION DOLLARS
15 FROM THE ECONOMIC RECOVERY AND RELIEF CASH FUND CREATED IN
16 SECTION 24-75-228 (2)(a). THE BOARD MAY USE THE MONEY
17 APPROPRIATED FOR THE PURPOSES SET FORTH IN THIS SECTION. EXCEPT AS
18 PROVIDED IN SUBSECTION (7)(b) OF THIS SECTION, ANY MONEY
19 APPROPRIATED TO THE FUND IN THE 2022-23 STATE FISCAL YEAR THAT IS
20 UNOBLIGATED OR UNEXPENDED AT THE END OF THE STATE FISCAL YEAR
21 REMAINS AVAILABLE FOR EXPENDITURE BY THE BOARD IN SUBSEQUENT
22 STATE FISCAL YEARS WITHOUT FURTHER APPROPRIATION, SUBJECT TO THE
23 REQUIREMENTS FOR OBLIGATING AND EXPENDING MONEY RECEIVED
24 UNDER THE "AMERICAN RESCUE PLAN ACT OF 2021", AS SPECIFIED IN
25 SECTION 24-75-226 (4)(d).

26 (b) ON AUGUST 15, 2024, IF THERE IS UNOBLIGATED MONEY IN THE
27 FUND, THE STATE TREASURER SHALL:

1 (I) IF THE AMOUNT OF UNOBLIGATED MONEY IS TWENTY MILLION
2 DOLLARS OR LESS, TRANSFER ALL OF THE UNOBLIGATED MONEY TO THE
3 WATER PLAN IMPLEMENTATION ACCOUNT; OR

4 (II) IF THE AMOUNT OF UNOBLIGATED MONEY IS GREATER THAN
5 TWENTY MILLION DOLLARS, TRANSFER TO THE WATER PLAN
6 IMPLEMENTATION ACCOUNT ALL BUT THE AMOUNT OF THE UNOBLIGATED
7 MONEY THAT IS EQUAL TO FORTY MILLION DOLLARS MINUS THE AMOUNT
8 OF UNOBLIGATED MONEY.

9 (8) (a) THE BOARD AND ANY PERSON THAT RECEIVES MONEY FROM
10 THE BOARD PURSUANT TO THIS SECTION OR SECTION 37-60-123.3 (3)
11 SHALL COMPLY WITH THE COMPLIANCE, REPORTING, RECORD-KEEPING,
12 AND PROGRAM EVALUATION REQUIREMENT ESTABLISHED BY THE OFFICE
13 OF STATE PLANNING AND BUDGETING AND THE STATE CONTROLLER IN
14 ACCORDANCE WITH SECTION 24-75-226 (5).

15 (b) COMMENCING IN 2023, AND FOR EACH YEAR THEREAFTER
16 THROUGH 2027, AS PART OF ITS ANNUAL PRESENTATIONS TO THE GENERAL
17 ASSEMBLY UNDER THE "STATE MEASUREMENT FOR ACCOUNTABLE,
18 RESPONSIVE, AND TRANSPARENT (SMART) GOVERNMENT ACT", PART 2
19 OF ARTICLE 7 OF TITLE 2, THE DEPARTMENT OF NATURAL RESOURCES
20 SHALL REPORT ON HOW MUCH MONEY THE BOARD HAS EXPENDED UNDER
21 THIS SECTION AND IF THE BOARD EXPECTS TO EXPEND THE FULL SIXTY
22 MILLION DOLLARS FOR THE PURPOSES SET FORTH IN THIS SECTION OR, IF
23 MONEY IS TRANSFERRED TO THE WATER PLAN IMPLEMENTATION ACCOUNT
24 IN 2024, IF THE BOARD IS ON TRACK TO EXPEND THE FULL SIXTY MILLION
25 DOLLARS FOR THE PURPOSES SET FORTH IN THIS SECTION AND THE
26 PURPOSES SET FORTH IN SECTION 37-60-123.3 (3).

27 (9) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE

1 REQUIRES:

2 (a) "AMERICAN RESCUE PLAN ACT OF 2021" MEANS THE FEDERAL
3 "AMERICAN RESCUE PLAN ACT OF 2021", PUB. L. 117-2, AS THE ACT MAY
4 BE SUBSEQUENTLY AMENDED.

5 (b) "COVID-19" MEANS THE CORONAVIRUS DISEASE CAUSED BY
6 THE SEVERE ACUTE RESPIRATORY SYNDROME CORONAVIRUS 2, ALSO
7 KNOWN AS SARS-CoV-2.

8 (c) "FUND" MEANS THE GROUNDWATER COMPACT COMPLIANCE
9 AND SUSTAINABILITY FUND CREATED IN SUBSECTION (3)(a) OF THIS
10 SECTION.

11 (d) "WATER PLAN IMPLEMENTATION ACCOUNT" MEANS THE WATER
12 PLAN IMPLEMENTATION ACCOUNT CREATED IN SECTION 37-60-123.3
13 (3)(b).

14 **SECTION 2.** In Colorado Revised Statutes, 37-60-123.3, **add** (3)
15 as follows:

16 **37-60-123.3. Water plan implementation cash fund - created**
17 **- water plan implementation account - created - legislative**
18 **declaration - reporting - repeal.** (3) (a) THE GENERAL ASSEMBLY FINDS
19 AND DECLARES THAT:

20 (I) THIS SUBSECTION (3) IS INTENDED TO RESPOND TO THE
21 NEGATIVE ECONOMIC IMPACTS CAUSED BY THE COVID-19 PANDEMIC, AS
22 DEFINED IN SECTION 37-60-134 (9)(b), AND THE RESULTING PUBLIC
23 HEALTH EMERGENCY BY PROVIDING GRANT MONEY TO PROMOTE PROJECTS
24 AND ACTIONS THAT ADVANCE PROGRESS TOWARD ACCOMPLISHING THE
25 CRITICAL ACTIONS IDENTIFIED IN THE STATE WATER PLAN;

26 (II) MONEY ALLOCATED TO THE STATE PURSUANT TO THE
27 "AMERICAN RESCUE PLAN ACT OF 2021", AS DEFINED IN SECTION

1 37-60-134 (9)(a), AND TRANSFERRED TO THE WATER PLAN
2 IMPLEMENTATION ACCOUNT MAY BE USED FOR THE PURPOSES OF THIS
3 SUBSECTION (3); AND

4 (III) THE WATER PLAN IMPLEMENTATION PURPOSES DESCRIBED IN
5 THIS SUBSECTION (3) ARE IMPORTANT GOVERNMENT SERVICES.

6 (b) THERE IS HEREBY CREATED IN THE WATER PLAN
7 IMPLEMENTATION CASH FUND THE WATER PLAN IMPLEMENTATION
8 ACCOUNT, REFERRED TO IN THIS SUBSECTION (3) AS THE "ACCOUNT". THE
9 MONEY IN THE ACCOUNT IS CONTINUOUSLY APPROPRIATED TO THE BOARD
10 TO USE FOR THE PURPOSES SET FORTH IN THIS SUBSECTION (3).

11 (c) THE ACCOUNT CONSISTS OF ALL MONEY TRANSFERRED TO THE
12 ACCOUNT ON AUGUST 15, 2024, FROM THE GROUNDWATER COMPACT
13 COMPLIANCE AND SUSTAINABILITY FUND CREATED IN SECTION 37-60-134
14 (3)(a).

15 (d) THE BOARD AND ANY PERSON THAT RECEIVES MONEY FROM
16 THE BOARD PURSUANT TO THIS SUBSECTION (3) SHALL COMPLY WITH THE
17 COMPLIANCE, REPORTING, RECORD-KEEPING, AND PROGRAM EVALUATION
18 REQUIREMENT ESTABLISHED BY THE OFFICE OF STATE PLANNING AND
19 BUDGETING AND THE STATE CONTROLLER IN ACCORDANCE WITH SECTION
20 24-75-226 (5).

21 (e) THIS SUBSECTION (3) IS REPEALED, EFFECTIVE SEPTEMBER 1,
22 2027.

23 **SECTION 3. Appropriation.** (1) For the 2022-23 state fiscal
24 year, \$60,000,000 is appropriated to the groundwater compact compliance
25 and sustainability fund created in section 37-60-134 (2)(a), C.R.S. This
26 appropriation is from the economic recovery and relief cash fund created
27 in section 24-75-228 (2)(a), C.R.S., and is of money the state received

1 from the federal coronavirus state fiscal recovery fund. The Department
2 of Natural Resources is responsible for the accounting related to this
3 appropriation.

4 (2) For the 2022-23 state fiscal year, \$60,000,000 is appropriated
5 to the department of natural resources for use by the Colorado water
6 conservation board. This appropriation is from reappropriated funds from
7 the groundwater compact compliance and sustainability fund under
8 subsection (1) of this section. To implement this act, the board may use
9 this appropriation for compact compliance and groundwater resource
10 sustainability and conservation pursuant to section 37-60-134, C.R.S. Any
11 money appropriated in this section not expended prior to July 1, 2023, is
12 further appropriated to the board from July 1, 2023, through December
13 30, 2024, for the same purpose.

14 **SECTION 4. Safety clause.** The general assembly hereby finds,
15 determines, and declares that this act is necessary for the immediate
16 preservation of the public peace, health, or safety.