

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

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 24-0365.01 Jennifer Berman x3286

SENATE BILL 24-037

SENATE SPONSORSHIP

Simpson and Bridges, Hinrichsen, Roberts

HOUSE SPONSORSHIP

Lynch and McCormick, Catlin, Martinez, McLachlan

Senate Committees

Agriculture & Natural Resources
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING ALTERNATIVE MECHANISMS FOR ACHIEVING**
102 **COMPLIANCE WITH WATER QUALITY STANDARDS, AND, IN**
103 **CONNECTION 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 and Agriculture Review Committee. The bill requires the division of administration (division) in the department of public health and environment (department), in collaboration with the university of Colorado's Mortenson center in global engineering and resilience and the Colorado water institute located within Colorado state

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

SENATE
Amended 2nd Reading
April 16, 2024

university, to:

- Conduct a feasibility study of the use of green infrastructure, which refers to nature-based, watershed-scale water quality management solutions that are an alternative to traditional gray infrastructure, which refers to centralized water treatment facilities, and the use of green financing mechanisms for water quality management;
- Establish one or more pilot projects in the state to demonstrate the use of green infrastructure, green financing mechanisms, or both;
- Adopt rules establishing a prepermit baseline date to assist municipalities and other water providers to pursue prepermit solutions for compliance with state and federal water quality standards; and
- Submit a report and present to the water resources and agriculture review committee on the progress of the feasibility study and any pilot projects and on any legislative and administrative recommendations to promote the use of green infrastructure and green financing mechanisms for water quality management in the state.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** 25-8-311 as
3 follows:

4 **25-8-311. Water quality green infrastructure - feasibility**
5 **studies - pilot projects - division collaboration with universities -**
6 **legislative declaration - definitions - reports - gifts, grants, or**

7 **donations - repeal.** (1) (a) THE GENERAL ASSEMBLY FINDS AND
8 DETERMINES THAT GREEN INFRASTRUCTURE MAY PROVIDE SIGNIFICANT
9 BENEFITS TO WATER AND WASTEWATER PROVIDERS AND WATER USERS IN
10 COLORADO BY:

11 (I) SUPPORTING COST-EFFECTIVE, HOLISTIC SOLUTIONS FOR THE
12 ATTAINMENT OF WATER QUALITY STANDARDS;

13 (II) IN FURTHERANCE OF THE COLORADO POLLUTANT TRADING

1 POLICY, HELPING OWNERS AND OPERATORS OF WATER AND WASTEWATER
2 TREATMENT FACILITIES MEET STATE AND FEDERAL WATER QUALITY
3 STANDARDS WITHOUT HAVING TO INVEST IN GRAY INFRASTRUCTURE
4 UPGRADES; AND

5 (III) TO FINANCE THE MONITORING, MANAGEMENT,
6 CONSERVATION, _____ AND WATER QUALITY IMPROVEMENT OF BOTH
7 SURFACE AND GROUNDWATER IN THE STATE, CONNECTING OPERATORS OF
8 WATER AND WASTEWATER TREATMENT FACILITIES WITH NEW,
9 CLIMATE-FOCUSED SOURCES OF FINANCING AND CAPITAL, INCLUDING
10 CARBON CREDITS AND WILDFIRE MITIGATION INVESTMENTS.

11 (b) THE GENERAL ASSEMBLY DECLARES THAT:

12 (I) THE UNIVERSITY OF COLORADO AND COLORADO STATE
13 UNIVERSITY SHOULD CONDUCT, AND THE DIVISION MAY ADVISE ON, A
14 FEASIBILITY STUDY REGARDING THE USE OF GREEN INFRASTRUCTURE AND
15 DEVELOP PILOT PROJECTS TO DEMONSTRATE GREEN INFRASTRUCTURE IN
16 COLORADO; AND

17 (II) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO
18 AUTHORIZE OR ENCOURAGE SPECULATION IN THE DEVELOPMENT OF A
19 WATER RIGHT, AS DEFINED IN SECTION 37-92-103 (12), OR ANY VIOLATION
20 OF:

21 (A) THE "WATER RIGHT DETERMINATION AND ADMINISTRATION
22 ACT OF 1969", ARTICLE 92 OF TITLE 37;

23 (B) A COURT DECREE ESTABLISHING WATER RIGHTS OR
24 CONDITIONAL WATER RIGHTS PURSUANT TO SECTION 37-92-301;

25 (C) A WELL PERMIT FOR USE OF UNDERGROUND WATER, AS
26 DEFINED IN SECTION 37-92-103 (11), ISSUED PURSUANT TO ARTICLE 90 OF
27 TITLE 37;

1 (D) A SUBSTITUTE WATER SUPPLY PLAN APPROVED PURSUANT TO
2 SECTION 37-92-308; OR

3 (E) AN INTERRUPTIBLE WATER SUPPLY AGREEMENT APPROVED
4 PURSUANT TO SECTION 37-92-309.

5 (2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
6 REQUIRES:

7 (a) "ALTERNATIVE COMPLIANCE PROGRAM" MEANS A PROGRAM
8 ESTABLISHED TO COMPLY WITH STATE AND FEDERAL WATER QUALITY
9 STANDARDS THROUGH THE USE OF GREEN INFRASTRUCTURE.

10 (b) "COLORADO POLLUTANT TRADING POLICY" MEANS THE
11 "COLORADO POLLUTANT TRADING POLICY" PUBLISHED BY THE DIVISION
12 IN OCTOBER 2004.

13 (c) "FEDERAL WATER QUALITY TRADING POLICY" MEANS THE
14 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY'S "WATER
15 QUALITY TRADING POLICY", PUBLISHED IN 2003.

16 (d) "GRAY INFRASTRUCTURE" MEANS TRADITIONAL, CENTRALIZED
17 WATER QUALITY TREATMENT FACILITIES, SUCH AS WASTEWATER
18 TREATMENT FACILITIES OR DRINKING WATER TREATMENT PLANTS.

19 (e) "GREEN INFRASTRUCTURE" MEANS A STRATEGICALLY
20 PLANNED, MANAGED, AND INTERCONNECTED NETWORK OF GREEN SPACES,
21 SUCH AS CONSERVED NATURAL AREAS AND FEATURES, PUBLIC AND
22 PRIVATE CONSERVATION LANDS, AND PRIVATE WORKING LANDS WITH
23 CONSERVATION VALUE.

24 (3) (a) ON OR BEFORE OCTOBER 1, 2024, THE UNIVERSITY OF
25 COLORADO AND COLORADO STATE UNIVERSITY, IN COLLABORATION WITH
26 THE DIVISION, SHALL START TO CONDUCT A FEASIBILITY STUDY
27 REGARDING THE USE OF GREEN INFRASTRUCTURE IN THE STATE. THE

1 FEASIBILITY STUDY MUST INCLUDE A DETERMINATION OF WHETHER AND
2 HOW:

3 (I) GREEN INFRASTRUCTURE, RATHER THAN TRADITIONAL GRAY
4 INFRASTRUCTURE, MAY BE USED IN AN ALTERNATIVE COMPLIANCE
5 PROGRAM USING MECHANISMS DESCRIBED IN THE COLORADO POLLUTANT
6 TRADING POLICY AND THE FEDERAL WATER QUALITY TRADING POLICY;

7 (II) NEW SOURCES OF FUNDING THROUGH ENVIRONMENT-FOCUSED
8 MECHANISMS, SUCH AS GREEN BONDS, MITIGATION BANKING, CLIMATE
9 FINANCE, AND CARBON CREDITS, MAY:

10 (A) REDUCE COSTS ASSOCIATED WITH COMPLYING WITH STATE
11 AND FEDERAL WATER QUALITY STANDARDS; AND

12 (B) PROVIDE FUNDING FOR GREEN INFRASTRUCTURE PROJECTS
13 PRIOR TO THE ISSUANCE OF A WATER QUALITY PERMIT;

14 (III) AN ALTERNATIVE COMPLIANCE PROGRAM MAY BE ALIGNED
15 WITH OTHER STATE AND COMMUNITY INTERESTS INCLUDING WILDFIRE
16 MITIGATION; AND

17 (IV) THE USE OF ALTERNATIVE COMPLIANCE PROGRAMS WOULD
18 REDUCE COSTS FOR THE DEPARTMENT OF PUBLIC HEALTH AND
19 ENVIRONMENT, MUNICIPALITIES, AND OTHER WATER AND WASTEWATER
20 PROVIDERS IN THE STATE IN COMPARISON TO USING GRAY
21 INFRASTRUCTURE TO COMPLY WITH STATE AND FEDERAL WATER QUALITY
22 STANDARDS.

23 (b) (I) THE UNIVERSITIES SHALL COMPLETE, AND THE DIVISION
24 MAY ADVISE ON, THE FEASIBILITY STUDY ON OR BEFORE APRIL 1, 2026.
25 WITH CONSIDERATION GIVEN TO THE FINDINGS OF THE FEASIBILITY STUDY,
26 THE UNIVERSITIES, WITH THE APPROVAL OF THE DIVISION, SHALL
27 ESTABLISH UP TO THREE PILOT PROJECTS IN THE STATE TO DEMONSTRATE

1 THE:

2 (A) USE OF GREEN INFRASTRUCTURE IN AN ALTERNATIVE
3 COMPLIANCE PROGRAM; AND

4 (B) FINANCING OF AN ALTERNATIVE COMPLIANCE PROGRAM WITH
5 ONE OR MORE SOURCES OF FUNDING LISTED IN SUBSECTION (3)(a)(II) OF
6 THIS SECTION.

7 (II) A PILOT PROJECT ESTABLISHED PURSUANT TO THIS SUBSECTION
8 (3)(b) MAY BE OPERATED FOR UP TO FIVE YEARS. THE UNIVERSITIES MAY
9 PROVIDE TECHNICAL ASSISTANCE TO THE OPERATOR OF A PILOT PROJECT
10 THAT THE DIVISION APPROVES UNDER THIS SUBSECTION (3)(b), AND THE
11 UNIVERSITIES SHALL RECOMMEND FOR THE DIVISION'S APPROVAL THE
12 DESIGN, SIZE, AND MONITORING REQUIREMENTS FOR EACH PILOT PROJECT.

13 (c) ON OR BEFORE NOVEMBER 1, 2026, THE DIVISION, IN
14 COORDINATION WITH THE ENTITIES LISTED IN SUBSECTION (3)(a) OF THIS
15 SECTION, SHALL SUBMIT A REPORT AND, ON OR BEFORE FEBRUARY 1, 2027,
16 MAKE A PRESENTATION SUMMARIZING THE PROGRESS ON THE FEASIBILITY
17 STUDY AND ANY PILOT PROJECTS TO THE WATER RESOURCES AND
18 AGRICULTURE REVIEW COMMITTEE CREATED IN SECTION 37-98-102
19 (1)(a)(I). THE COMMITTEE MAY REQUEST SIMILAR REPORTS AND
20 PRESENTATIONS BE MADE IN ANY YEAR AFTER 2027 IN WHICH THE
21 FEASIBILITY STUDY OR A PILOT PROJECT IS BEING CONDUCTED PURSUANT
22 TO SUBSECTION (3) OF THIS SECTION.

23 (d) THE REPORT MUST INCLUDE:

24 (I) ANY CONCLUSIONS OF THE DIVISION, IN COORDINATION WITH
25 THE ENTITIES LISTED IN SUBSECTION (3)(a) OF THIS SECTION, REGARDING
26 THE POTENTIAL SUCCESS OF ALTERNATIVE COMPLIANCE PROGRAMS OR
27 FUNDING SOURCES LISTED IN SUBSECTION (3)(a)(II) OF THIS SECTION; AND

1 (II) ANY RECOMMENDATIONS FOR LEGISLATIVE OR
2 ADMINISTRATIVE ACTION NEEDED TO PROMOTE THE USE OF ALTERNATIVE
3 COMPLIANCE PROGRAMS OR THE FUNDING SOURCES LISTED IN SUBSECTION
4 (3)(a)(II) OF THIS SECTION.

5 (4) IN DEVELOPING THE FEASIBILITY STUDY PURSUANT TO
6 SUBSECTION (3)(a) OF THIS SECTION, ANY PILOT PROJECTS PURSUANT TO
7 SUBSECTION (3)(b) OF THIS SECTION, AND ANY LEGISLATIVE OR
8 ADMINISTRATIVE RECOMMENDATIONS PURSUANT TO SUBSECTION
9 (3)(d)(II) OF THIS SECTION, THE ENTITIES LISTED IN SUBSECTION (3)(a) OF
10 THIS SECTION MUST TAKE INTO ACCOUNT:

- 11 (a) THE COLORADO POLLUTANT TRADING POLICY;
- 12 (b) THE FEDERAL WATER QUALITY TRADING POLICY; AND
- 13 (c) THE PRIOR APPROPRIATION SYSTEM ESTABLISHED IN SECTIONS
14 5 AND 6 OF ARTICLE XVI OF THE STATE CONSTITUTION AND THE "WATER
15 RIGHT DETERMINATION AND ADMINISTRATION ACT OF 1969", ARTICLE 92
16 OF TITLE 37.

17 (5) (a) THE UNIVERSITIES LISTED IN SUBSECTION (3)(a) OF THIS
18 SECTION MAY USE THEIR EXISTING RESOURCES TO HELP FINANCE THE
19 FEASIBILITY STUDY AND THE PILOT PROJECTS.

20 (b) THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT OR
21 ANY ENTITY LISTED IN SUBSECTION (3)(a) OF THIS SECTION MAY SEEK,
22 ACCEPT, AND EXPEND GIFTS, GRANTS, OR DONATIONS FOR THE
23 IMPLEMENTATION OF THIS SECTION.

24 (6) THIS SECTION IS REPEALED, EFFECTIVE SEPTEMBER 1, 2032.

25 **SECTION 2. Appropriation. (1) For the 2024-25 state fiscal**
26 **year, \$50,651 is appropriated to the department of public health and**
27 **environment. This appropriation is from the general fund. To implement**

1 this act, the department may use this appropriation as follows:

2 (a) \$34,777 for use by the water quality control division for clean
3 water program costs, which amount is based on an assumption that the
4 division will require an additional 0.4 FTE;

5 (b) \$512 for use by the water quality control division for
6 administration; and

7 (c) \$15,362 for the purchase of legal services.

8 (2) For the 2024-25 state fiscal year, \$15,362 is appropriated to
9 the department of law. This appropriation is from reappropriated funds
10 received from the department of public health and environment under
11 subsection (1)(c) of this section and is based on an assumption that the
12 department of law will require an additional 0.1 FTE. To implement this
13 act, the department of law may use this appropriation to provide legal
14 services for the department of public health and environment.

15 **SECTION 3. Act subject to petition - effective date.** This act
16 takes effect at 12:01 a.m. on the day following the expiration of the
17 ninety-day period after final adjournment of the general assembly; except
18 that, if a referendum petition is filed pursuant to section 1 (3) of article V
19 of the state constitution against this act or an item, section, or part of this
20 act within such period, then the act, item, section, or part will not take
21 effect unless approved by the people at the general election to be held in
22 November 2024 and, in such case, will take effect on the date of the
23 official declaration of the vote thereon by the governor.