

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

PREAMENDED

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

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.**

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 university, to:

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.

- 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
 14 POLICY, HELPING OWNERS AND OPERATORS OF WATER AND WASTEWATER

1 TREATMENT FACILITIES MEET STATE AND FEDERAL WATER QUALITY
2 STANDARDS WITHOUT HAVING TO INVEST IN GRAY INFRASTRUCTURE
3 UPGRADES; AND

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

10 (b) THE GENERAL ASSEMBLY DECLARES THAT:

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

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

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

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

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

27 (D) A SUBSTITUTE WATER SUPPLY PLAN APPROVED PURSUANT TO

1 SECTION 37-92-308; OR

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

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

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

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

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

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

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

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

1 HOW:

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

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

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

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

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

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

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

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

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

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

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

22 (d) THE REPORT MUST INCLUDE:

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

27 (II) ANY RECOMMENDATIONS FOR LEGISLATIVE OR

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

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

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

16 (5) THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT OR
17 ANY ENTITY LISTED IN SUBSECTION (3)(a) OF THIS SECTION MAY SEEK,
18 ACCEPT, AND EXPEND GIFTS, GRANTS, OR DONATIONS FOR THE
19 IMPLEMENTATION OF THIS SECTION.

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

21 **SECTION 2. Act subject to petition - effective date.** This act
22 takes effect at 12:01 a.m. on the day following the expiration of the
23 ninety-day period after final adjournment of the general assembly; except
24 that, if a referendum petition is filed pursuant to section 1 (3) of article V
25 of the state constitution against this act or an item, section, or part of this
26 act within such period, then the act, item, section, or part will not take
27 effect unless approved by the people at the general election to be held in

- 1 November 2024 and, in such case, will take effect on the date of the
- 2 official declaration of the vote thereon by the governor.