

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

PREAMENDED

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

LLS NO. 21-0528.01 Thomas Morris x4218

HOUSE BILL 21-1043

HOUSE SPONSORSHIP

Holtorf,

SENATE SPONSORSHIP

Sonnenberg,

House Committees

Agriculture, Livestock, & Water
Finance

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING A STUDY OF UNDERGROUND WATER STORAGE TO**
102 **MAXIMIZE THE BENEFICIAL USE OF WATER WITHIN COLORADO.**

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>.)

The bill directs the Colorado water conservation board (board), in consultation with the state engineer, to contract with a Colorado institution of higher education (institution) to conduct a study to:

- Evaluate ways to maximize the beneficial use of water within Colorado and implement the storage recommendations of the Colorado water plan by storing

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.

- water underground when water is available;
- Evaluate ways to minimize the amount of water that flows out of Colorado to downstream states, without risking noncompliance with applicable interstate compacts, United States supreme court rulings, other federal law, decreed absolute and conditional water rights, the prior appropriation system, and Colorado's anti-speculation doctrine;
- Identify:
 - Specific aquifers that are hydrologically and legally available to be used for underground storage and subsequent beneficial use;
 - Sources of revenue that could be used to pay for the underground storage projects; and
 - Planned potential or existing underground storage projects that would meet the objectives identified in the study;
- Examine the role that various water entities might play in financing and implementing underground storage projects; and
- Recommend legislative changes needed to implement managed underground storage projects in the identified aquifers.

The bill directs the board or the institution to submit a report summarizing the results of the study to the water resources review committee by August 1, 2022, which shall either have legislation drafted to implement the study's recommendations or submit the study along with its own recommendations to the committees of the general assembly with jurisdiction over water resources by January 1, 2023.

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

2 **SECTION 1.** In Colorado Revised Statutes, 37-60-115, **add** (12)

3 as follows:

4 **37-60-115. Water studies - rules - legislative declaration**
 5 **-report - repeal.** (12) **Aquifer storage study.** (a) **Legislative**
 6 **declaration.** THE GENERAL ASSEMBLY HEREBY:

7 (I) FINDS THAT, ALTHOUGH WATER SHORTAGES EXIST IN ALMOST
 8 EVERY PART OF THE STATE DURING AT LEAST PART OF MOST YEARS, LARGE

1 QUANTITIES OF WATER FLOW OUT OF THE STATE THAT MAY BE PHYSICALLY
2 AND LEGALLY AVAILABLE FOR APPROPRIATION;

3 (II) DETERMINES THAT UNDERGROUND WATER STORAGE FOR
4 FUTURE USE IN THE STATE'S VARIOUS RIVER BASINS AND RECOVERY OF THE
5 STORED WATER DURING TIMES OF WATER SHORTAGE WOULD INCREASE THE
6 BENEFICIAL USE OF WATER WITHIN COLORADO AND FURTHER THE
7 RECOMMENDATIONS OF THE COLORADO WATER PLAN; AND

8 (III) DECLARES THAT THIS SUBSECTION (12) IS NECESSARY TO
9 MAXIMIZE THE USE OF AN ESSENTIAL AND INCREASINGLY SCARCE
10 RESOURCE.

11 (b) **Study.** THE BOARD, IN CONSULTATION WITH THE STATE
12 ENGINEER, SHALL CONTRACT WITH A COLORADO INSTITUTION OF HIGHER
13 EDUCATION TO CONDUCT A STUDY TO:

14 (I) EVALUATE WAYS TO MAXIMIZE THE BENEFICIAL USE OF WATER
15 WITHIN COLORADO BY STORING WATER IN DESIGNATED, TRIBUTARY,
16 NONTRIBUTARY, OR NOT NONTRIBUTARY AQUIFERS WHEN WATER IS
17 AVAILABLE;

18 (II) MAXIMIZE THE BENEFICIAL USE OF WATER WITHOUT RISKING
19 NONCOMPLIANCE WITH:

20 (A) APPLICABLE INTERSTATE COMPACTS;

21 (B) APPLICABLE UNITED STATES SUPREME COURT RULINGS;

22 (C) OTHER FEDERAL LAW, INCLUDING THE FEDERAL "ENDANGERED
23 SPECIES ACT OF 1973", 16 U.S.C. SEC. 1531 ET SEQ., AS AMENDED;

24 (D) DECREED ABSOLUTE AND CONDITIONAL WATER RIGHTS;

25 (E) THE PRIOR APPROPRIATION SYSTEM; AND

26 (F) COLORADO'S ANTI-SPECULATION DOCTRINE;

27 (III) IDENTIFY:

1 (A) SPECIFIC DESIGNATED, TRIBUTARY, NONTRIBUTARY, OR NOT
2 NONTRIBUTARY AQUIFERS THAT ARE HYDROLOGICALLY AND LEGALLY
3 AVAILABLE TO USE FOR UNDERGROUND STORAGE OF WATER FOR
4 BENEFICIAL USE;

5 (B) SOURCES OF REVENUE THAT COULD BE USED TO PAY FOR THE
6 UNDERGROUND STORAGE, POTENTIALLY INCLUDING NEW SOURCES OF
7 PUBLIC REVENUE; AND

8 (C) PLANNED POTENTIAL OR EXISTING UNDERGROUND STORAGE
9 PROJECTS THAT WOULD MEET THE OBJECTIVES IDENTIFIED IN THIS
10 SUBSECTION (12);

11 (IV) EXAMINE THE ROLE THAT THE STATE, RAW WATER AND
12 DRINKING WATER SUPPLY ENTITIES, WATER AUTHORITIES, WATER
13 CONSERVATION DISTRICTS, WATER CONSERVANCY DISTRICTS,
14 GROUNDWATER MANAGEMENT DISTRICTS, AND SIMILAR ENTITIES MIGHT
15 PLAY IN FINANCING AND IMPLEMENTING UNDERGROUND STORAGE
16 PROJECTS; AND

17 (V) RECOMMEND LEGISLATIVE CHANGES NEEDED TO IMPLEMENT
18 THE UNDERGROUND STORAGE PROJECTS IN THE IDENTIFIED AQUIFERS FOR
19 BOTH TRIBUTARY AND NONTRIBUTARY AQUIFERS THAT WOULD MEET THE
20 OBJECTIVES IDENTIFIED IN THIS SUBSECTION (12).

21 (c) THE STUDY MUST NOT CONSIDER UNDERGROUND STORAGE IN
22 AQUIFERS THAT CURRENTLY HAVE HIGH WATER TABLES NEAR THE
23 SURFACE AND AREAS WHERE INCREASES OF WATER TABLES CAUSED BY
24 UNDERGROUND STORAGE WOULD RESULT IN DAMAGE TO EXISTING
25 STRUCTURES AND LAND USES.

26 (d) **Report.** (I) THE BOARD SHALL CONTRACT WITH A COLORADO
27 INSTITUTION OF HIGHER EDUCATION TO DESIGN, CARRY OUT, ANALYZE,

1 AND REPORT ON THE RESULTS OF THE STUDY REQUIRED IN SUBSECTION
2 (12)(b) OF THIS SECTION. IN CONDUCTING THE STUDY, THE CONTRACTOR
3 SHOULD CONSIDER AND RELY ON PREVIOUS STUDIES OF COLORADO
4 AQUIFERS, UNDERGROUND STORAGE PROJECTS, WATER SUPPLIES, AND
5 WATER DEMANDS.

6 (II) THE BOARD OR THE CONTRACTOR SHALL SUBMIT A REPORT
7 SUMMARIZING THE RESULTS OF THE STUDY TO THE WATER RESOURCES
8 REVIEW COMMITTEE CREATED IN SECTION 37-98-102 BY AUGUST 1, 2022.
9 IN RESPONSE TO THE REPORT, THE COMMITTEE SHALL EITHER:

10 (A) HAVE LEGISLATION DRAFTED PURSUANT TO SECTION
11 37-98-103 TO IMPLEMENT THE STUDY'S RECOMMENDATIONS; OR

12 (B) SUBMIT THE STUDY ALONG WITH THE COMMITTEE'S OWN
13 RECOMMENDATIONS TO THE HOUSE OF REPRESENTATIVES COMMITTEE ON
14 AGRICULTURE, LIVESTOCK, AND WATER AND THE SENATE COMMITTEE ON
15 AGRICULTURE AND NATURAL RESOURCES, OR THEIR SUCCESSOR
16 COMMITTEES, BY JANUARY 1, 2023.

17 (e) THE BOARD SHALL PAY FOR THE STUDY USING MONEY
18 TRANSFERRED PURSUANT TO SECTION 44-30-1509 (2)(e) INTO THE WATER
19 PLAN IMPLEMENTATION CASH FUND CREATED IN SECTION 37-60-123.3.

20 (f) **Repeal.** THIS SUBSECTION (12) IS REPEALED, EFFECTIVE
21 SEPTEMBER 1, 2023.

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

1 effect unless approved by the people at the general election to be held in
2 November 2022 and, in such case, will take effect on the date of the
3 official declaration of the vote thereon by the governor.