

Second Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO

DRAFT
10/9/23

Bill 9

LLS NO. 24-0365.01 Jennifer Berman x3286

INTERIM COMMITTEE BILL

Water Resources and Agriculture Review Committee

BILL TOPIC: Study Green Infrastructure For Water Quality Mgmt

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:

*Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words 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 - rules - 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 PROVIDERS AND WATER USERS IN COLORADO BY:

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

12 (II) IN FURTHERANCE OF THE COLORADO POLLUTANT TRADING
13 POLICY, HELPING OWNERS AND OPERATORS OF WATER AND WASTEWATER
14 TREATMENT FACILITIES MEET STATE AND FEDERAL WATER QUALITY

1 STANDARDS WITHOUT HAVING TO INVEST IN GRAY INFRASTRUCTURE
2 UPGRADES; AND

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

9 (b) THE GENERAL ASSEMBLY DECLARES THAT:

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

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

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

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

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

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

27 (E) AN INTERRUPTIBLE WATER SUPPLY AGREEMENT APPROVED

1 PURSUANT TO SECTION 37-92-309.

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

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

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

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

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

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

21 (3) (a) ON OR BEFORE DECEMBER 31, 2025, THE DIVISION SHALL
22 CONDUCT A FEASIBILITY STUDY REGARDING THE USE OF GREEN
23 INFRASTRUCTURE IN THE STATE. THE FEASIBILITY STUDY MUST INCLUDE
24 A DETERMINATION OF WHETHER AND HOW:

25 (I) GREEN INFRASTRUCTURE, RATHER THAN TRADITIONAL GRAY
26 INFRASTRUCTURE, MAY BE USED IN AN ALTERNATIVE COMPLIANCE
27 PROGRAM USING MECHANISMS DESCRIBED IN THE COLORADO POLLUTANT

1 TRADING POLICY AND THE FEDERAL WATER QUALITY TRADING POLICY;

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

5 (A) REDUCE COSTS ASSOCIATED WITH COMPLYING WITH STATE
6 AND FEDERAL WATER QUALITY STANDARDS; AND

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

9 (III) AN ALTERNATIVE COMPLIANCE PROGRAM MAY BE ALIGNED
10 WITH OTHER STATE AND COMMUNITY INTERESTS INCLUDING WILDFIRE
11 MITIGATION; AND

12 (IV) THE USE OF ALTERNATIVE COMPLIANCE PROGRAMS WOULD
13 REDUCE COSTS FOR THE DEPARTMENT OF PUBLIC HEALTH AND
14 ENVIRONMENT, MUNICIPALITIES, AND OTHER WATER PROVIDERS IN THE
15 STATE IN COMPARISON TO USING GRAY INFRASTRUCTURE TO COMPLY WITH
16 STATE AND FEDERAL WATER QUALITY STANDARDS.

17 (b) (I) AFTER COMPLETING THE FEASIBILITY STUDY REQUIRED
18 UNDER SUBSECTION (3)(a) OF THIS SECTION AND CONSIDERING THE
19 FINDINGS OF THE FEASIBILITY STUDY, THE DIVISION SHALL ESTABLISH ONE
20 OR MORE PILOT PROJECTS IN THE STATE TO DEMONSTRATE THE:

21 (A) USE OF GREEN INFRASTRUCTURE IN AN ALTERNATIVE
22 COMPLIANCE PROGRAM; AND

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

26 (II) A PILOT PROJECT ESTABLISHED PURSUANT TO THIS SUBSECTION
27 (3)(b) MAY BE OPERATED FOR UP TO FIVE YEARS. THE DIVISION MAY

1 PROVIDE TECHNICAL ASSISTANCE TO THE OPERATOR OF A PILOT PROJECT
2 THAT THE DIVISION ESTABLISHES UNDER THIS SUBSECTION (3)(b).

3 (c) THE DIVISION SHALL COORDINATE WITH THE UNIVERSITY OF
4 COLORADO'S MORTENSON CENTER IN GLOBAL ENGINEERING AND
5 RESILIENCE AND THE COLORADO WATER INSTITUTE CREATED IN SECTION
6 23-31-801 (1) TO CONDUCT THE FEASIBILITY STUDY AND DEVELOP,
7 PROVIDE TECHNICAL ASSISTANCE FOR, AND REVIEW ANY PILOT PROJECTS
8 APPROVED PURSUANT TO THIS SUBSECTION (3).

9 (4) (a) ON OR BEFORE DECEMBER 31, 2024, THE DIVISION SHALL
10 IDENTIFY MUNICIPALITIES AND OTHER WATER PROVIDERS THROUGHOUT
11 THE STATE THAT ARE INTERESTED IN PURSUING PREPERMIT SOLUTIONS FOR
12 ACHIEVING COMPLIANCE WITH STATE AND FEDERAL WATER QUALITY
13 STANDARDS.

14 (b) ON OR BEFORE DECEMBER 31, 2025, THE COMMISSION SHALL
15 ADOPT RULES TO ESTABLISH A PREPERMIT BASELINE DATE WITH WHICH AN
16 OPERATOR UTILIZING NATURE-BASED SOLUTIONS FOR ACHIEVING
17 COMPLIANCE WITH STATE AND FEDERAL WATER QUALITY STANDARDS
18 DEMONSTRATES COMPLIANCE FOR FUTURE PERMIT OBLIGATIONS. IN
19 DRAFTING THE RULES REQUIRED UNDER THIS SUBSECTION (4)(b), THE
20 COMMISSION, IN CONSULTATION WITH THE ENTITIES LISTED IN SUBSECTION
21 (3)(c) OF THIS SECTION, SHALL CONVENE A REPRESENTATIVE GROUP OF
22 INTERESTED PARTIES PURSUANT TO SECTION 24-4-103 (2) AND ENGAGE
23 SOME OR ALL OF THE INTERESTED MUNICIPALITIES AND OTHER WATER
24 PROVIDERS IDENTIFIED PURSUANT TO SUBSECTION (4)(a) OF THIS SECTION
25 AS PART OF THE REPRESENTATIVE GROUP OF INTERESTED PARTIES.

26 (5) (a) ON OR BEFORE JULY 1, 2025, THE DIVISION, IN
27 COORDINATION WITH THE ENTITIES LISTED IN SUBSECTION (3)(c) OF THIS

1 SECTION, SHALL SUBMIT A REPORT AND MAKE A PRESENTATION
2 SUMMARIZING THE PROGRESS ON THE FEASIBILITY STUDY AND ANY PILOT
3 PROJECTS TO THE WATER RESOURCES AND AGRICULTURE REVIEW
4 COMMITTEE CREATED IN SECTION 37-98-102 (1)(a)(I). THE COMMITTEE
5 MAY REQUEST SIMILAR REPORTS AND PRESENTATIONS BE MADE ON OR
6 BEFORE JULY 15 IN ANY YEAR AFTER 2025 IN WHICH THE FEASIBILITY
7 STUDY OR A PILOT PROJECT IS BEING CONDUCTED PURSUANT TO
8 SUBSECTION (3) OF THIS SECTION.

9 (b) THE REPORT MUST INCLUDE:

10 (I) ANY CONCLUSIONS OF THE DIVISION, IN COORDINATION WITH
11 THE ENTITIES LISTED IN SUBSECTION (3)(c) OF THIS SECTION, REGARDING
12 THE POTENTIAL SUCCESS OF ALTERNATIVE COMPLIANCE PROGRAMS OR
13 FUNDING SOURCES LISTED IN SUBSECTION (3)(a)(II) OF THIS SECTION; AND

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

18 (6) IN DEVELOPING THE FEASIBILITY STUDY PURSUANT TO
19 SUBSECTION (3)(a) OF THIS SECTION, ANY PILOT PROJECTS PURSUANT TO
20 SUBSECTION (3)(b) OF THIS SECTION, AND ANY LEGISLATIVE OR
21 ADMINISTRATIVE RECOMMENDATIONS PURSUANT TO SUBSECTION
22 (5)(b)(II) OF THIS SECTION, THE DIVISION AND THE ENTITIES LISTED IN
23 SUBSECTION (3)(c) OF THIS SECTION MUST TAKE INTO ACCOUNT:

24 (a) THE COLORADO POLLUTANT TRADING POLICY;

25 (b) THE FEDERAL WATER QUALITY TRADING POLICY; AND

26 (c) THE PRIOR APPROPRIATION SYSTEM ESTABLISHED IN SECTIONS
27 5 AND 6 OF ARTICLE XVI OF THE STATE CONSTITUTION AND THE "WATER

1 RIGHT DETERMINATION AND ADMINISTRATION ACT OF 1969", ARTICLE 92
2 OF TITLE 37.

3 (7) THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT OR
4 ANY ENTITY LISTED IN SUBSECTION (3)(c) OF THIS SECTION MAY SEEK,
5 ACCEPT, AND EXPEND GIFTS, GRANTS, OR DONATIONS FOR THE
6 IMPLEMENTATION OF THIS SECTION.

7 (8) THIS SECTION IS REPEALED, EFFECTIVE SEPTEMBER 1, 2032.

8 **SECTION 2. Act subject to petition - effective date.** This act
9 takes effect at 12:01 a.m. on the day following the expiration of the
10 ninety-day period after final adjournment of the general assembly; except
11 that, if a referendum petition is filed pursuant to section 1 (3) of article V
12 of the state constitution against this act or an item, section, or part of this
13 act within such period, then the act, item, section, or part will not take
14 effect unless approved by the people at the general election to be held in
15 November 2024 and, in such case, will take effect on the date of the
16 official declaration of the vote thereon by the governor.