

CHAPTER 337

GOVERNMENT - LOCAL

HOUSE BILL 08-1141

BY REPRESENTATIVE(S) Curry, Borodkin, Butcher, Carroll M., Fischer, Frangas, Gagliardi, Gallegos, Green, Labuda, Levy, Looper, Madden, McFadyen, Merrifield, Peniston, Romanoff, Rose, Scanlan, Solano, Soper, Stafford, Hodge, and Jahn; also SENATOR(S) Bacon, Boyd, Hagedorn, Isgar, Schwartz, Tochtrop, and Tupa.

AN ACT

CONCERNING SUFFICIENT WATER SUPPLIES FOR LAND USE APPROVAL.

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

SECTION 1. 29-20-103 (1), Colorado Revised Statutes, is amended to read:

29-20-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Development permit" means any preliminary or final approval of an application for rezoning, planned unit development, conditional or special use permit, subdivision, development or site plan, or similar application for new construction; EXCEPT THAT, FOR PURPOSES OF PART 3 OF THIS ARTICLE, "DEVELOPMENT PERMIT" IS LIMITED TO AN APPLICATION REGARDING A SPECIFIC PROJECT THAT INCLUDES NEW WATER USE IN AN AMOUNT MORE THAN THAT USED BY FIFTY SINGLE-FAMILY EQUIVALENTS, OR FEWER AS DETERMINED BY THE LOCAL GOVERNMENT.

SECTION 2. Article 20 of title 29, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

**PART 3
ADEQUATE WATER SUPPLY**

29-20-301. Legislative declaration. (1) THE GENERAL ASSEMBLY:

(a) FINDS THAT, DUE TO THE BROAD REGIONAL IMPACT THAT SECURING AN ADEQUATE SUPPLY OF WATER TO SERVE PROPOSED LAND DEVELOPMENT CAN HAVE

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

BOTH WITHIN AND BETWEEN RIVER BASINS, IT IS IMPERATIVE THAT LOCAL GOVERNMENTS BE PROVIDED WITH RELIABLE INFORMATION CONCERNING THE ADEQUACY OF PROPOSED DEVELOPMENTS' WATER SUPPLY TO INFORM LOCAL GOVERNMENTS IN THE EXERCISE OF THEIR DISCRETION IN THE ISSUANCE OF DEVELOPMENT PERMITS; AND

(b) TO THAT END, DECLARES THAT WHILE LAND USE AND DEVELOPMENT APPROVAL DECISIONS ARE MATTERS OF LOCAL CONCERN, THE ENACTMENT OF THIS PART 3, TO HELP ENSURE THE ADEQUACY OF WATER FOR NEW DEVELOPMENTS, IS A MATTER OF STATEWIDE CONCERN AND NECESSARY FOR THE PRESERVATION OF PUBLIC HEALTH, SAFETY, AND WELFARE AND THE ENVIRONMENT OF COLORADO.

29-20-302. Definitions. AS USED IN THIS PART 3, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ADEQUATE" MEANS A WATER SUPPLY THAT WILL BE SUFFICIENT FOR BUILD-OUT OF THE PROPOSED DEVELOPMENT IN TERMS OF QUALITY, QUANTITY, DEPENDABILITY, AND AVAILABILITY TO PROVIDE A SUPPLY OF WATER FOR THE TYPE OF DEVELOPMENT PROPOSED, AND MAY INCLUDE REASONABLE CONSERVATION MEASURES AND WATER DEMAND MANAGEMENT MEASURES TO ACCOUNT FOR HYDROLOGIC VARIABILITY.

(2) "WATER SUPPLY ENTITY" MEANS A MUNICIPALITY, COUNTY, SPECIAL DISTRICT, WATER CONSERVANCY DISTRICT, WATER CONSERVATION DISTRICT, WATER AUTHORITY, OR OTHER PUBLIC OR PRIVATE WATER SUPPLY COMPANY THAT SUPPLIES, DISTRIBUTES, OR OTHERWISE PROVIDES WATER AT RETAIL.

29-20-303. Adequate water supply for development. (1) A LOCAL GOVERNMENT SHALL NOT APPROVE AN APPLICATION FOR A DEVELOPMENT PERMIT UNLESS IT DETERMINES IN ITS SOLE DISCRETION, AFTER CONSIDERING THE APPLICATION AND ALL OF THE INFORMATION PROVIDED, THAT THE APPLICANT HAS SATISFACTORILY DEMONSTRATED THAT THE PROPOSED WATER SUPPLY WILL BE ADEQUATE. A LOCAL GOVERNMENT SHALL MAKE SUCH DETERMINATION ONLY ONCE DURING THE DEVELOPMENT PERMIT APPROVAL PROCESS UNLESS THE WATER DEMANDS OR SUPPLY OF THE SPECIFIC PROJECT FOR WHICH THE DEVELOPMENT PERMIT IS SOUGHT ARE MATERIALLY CHANGED. A LOCAL GOVERNMENT SHALL HAVE THE DISCRETION TO DETERMINE THE STAGE IN THE DEVELOPMENT PERMIT APPROVAL PROCESS AT WHICH SUCH DETERMINATION IS MADE.

(2) NOTHING IN THIS PART 3 SHALL BE CONSTRUED TO REQUIRE THAT THE APPLICANT OWN OR HAVE ACQUIRED THE PROPOSED WATER SUPPLY OR CONSTRUCTED THE RELATED INFRASTRUCTURE AT THE TIME OF THE APPLICATION.

29-20-304. Water supply requirements. (1) EXCEPT AS SPECIFIED IN SUBSECTIONS (2) AND (3) OF THIS SECTION, AN APPLICANT FOR A DEVELOPMENT PERMIT SHALL SUBMIT ESTIMATED WATER SUPPLY REQUIREMENTS FOR THE PROPOSED DEVELOPMENT IN A REPORT PREPARED BY A REGISTERED PROFESSIONAL ENGINEER OR WATER SUPPLY EXPERT ACCEPTABLE TO THE LOCAL GOVERNMENT. THE REPORT SHALL INCLUDE:

(a) AN ESTIMATE OF THE WATER SUPPLY REQUIREMENTS FOR THE PROPOSED

DEVELOPMENT THROUGH BUILD-OUT CONDITIONS;

(b) A DESCRIPTION OF THE PHYSICAL SOURCE OF WATER SUPPLY THAT WILL BE USED TO SERVE THE PROPOSED DEVELOPMENT;

(c) AN ESTIMATE OF THE AMOUNT OF WATER YIELD PROJECTED FROM THE PROPOSED WATER SUPPLY UNDER VARIOUS HYDROLOGIC CONDITIONS;

(d) WATER CONSERVATION MEASURES, IF ANY, THAT MAY BE IMPLEMENTED WITHIN THE DEVELOPMENT;

(e) WATER DEMAND MANAGEMENT MEASURES, IF ANY, THAT MAY BE IMPLEMENTED WITHIN THE DEVELOPMENT TO ACCOUNT FOR HYDROLOGIC VARIABILITY; AND

(f) SUCH OTHER INFORMATION AS MAY BE REQUIRED BY THE LOCAL GOVERNMENT.

(2) IF THE DEVELOPMENT IS TO BE SERVED BY A WATER SUPPLY ENTITY, THE LOCAL GOVERNMENT MAY ALLOW THE APPLICANT TO SUBMIT, IN LIEU OF THE REPORT REQUIRED BY SUBSECTION (1) OF THIS SECTION, A LETTER PREPARED BY A REGISTERED PROFESSIONAL ENGINEER OR BY A WATER SUPPLY EXPERT FROM THE WATER SUPPLY ENTITY STATING WHETHER THE WATER SUPPLY ENTITY IS WILLING TO COMMIT AND ITS ABILITY TO PROVIDE AN ADEQUATE WATER SUPPLY FOR THE PROPOSED DEVELOPMENT. THE WATER SUPPLY ENTITY'S ENGINEER OR EXPERT SHALL PREPARE THE LETTER IF SO REQUESTED BY THE APPLICANT. AT A MINIMUM, THE LETTER SHALL INCLUDE:

(a) AN ESTIMATE OF THE WATER SUPPLY REQUIREMENTS FOR THE PROPOSED DEVELOPMENT THROUGH BUILD-OUT CONDITIONS;

(b) A DESCRIPTION OF THE PHYSICAL SOURCE OF WATER SUPPLY THAT WILL BE USED TO SERVE THE PROPOSED DEVELOPMENT;

(c) AN ESTIMATE OF THE AMOUNT OF WATER YIELD PROJECTED FROM THE PROPOSED WATER SUPPLY UNDER VARIOUS HYDROLOGIC CONDITIONS;

(d) WATER CONSERVATION MEASURES, IF ANY, THAT MAY BE IMPLEMENTED WITHIN THE PROPOSED DEVELOPMENT;

(e) WATER DEMAND MANAGEMENT MEASURES, IF ANY, THAT MAY BE IMPLEMENTED TO ADDRESS HYDROLOGIC VARIATIONS; AND

(f) SUCH OTHER INFORMATION AS MAY BE REQUIRED BY THE LOCAL GOVERNMENT.

(3) IN THE ALTERNATIVE, AN APPLICANT SHALL NOT BE REQUIRED TO PROVIDE A LETTER OR REPORT IDENTIFIED PURSUANT TO SUBSECTIONS (1) AND (2) OF THIS SECTION IF THE WATER FOR THE PROPOSED DEVELOPMENT IS TO BE PROVIDED BY A WATER SUPPLY ENTITY THAT HAS A WATER SUPPLY PLAN THAT:

(a) HAS BEEN REVIEWED AND UPDATED, IF APPROPRIATE, WITHIN THE PREVIOUS TEN YEARS BY THE GOVERNING BOARD OF THE WATER SUPPLY ENTITY;

(b) HAS A MINIMUM TWENTY-YEAR PLANNING HORIZON;

(c) LISTS THE WATER CONSERVATION MEASURES, IF ANY, THAT MAY BE IMPLEMENTED WITHIN THE SERVICE AREA;

(d) LISTS THE WATER DEMAND MANAGEMENT MEASURES, IF ANY, THAT MAY BE IMPLEMENTED WITHIN THE DEVELOPMENT;

(e) INCLUDES A GENERAL DESCRIPTION OF THE WATER SUPPLY ENTITY'S WATER OBLIGATIONS;

(f) INCLUDES A GENERAL DESCRIPTION OF THE WATER SUPPLY ENTITY'S WATER SUPPLIES; AND

(g) IS ON FILE WITH THE LOCAL GOVERNMENT.

29-20-305. Determination of adequate water supply. (1) THE LOCAL GOVERNMENT'S SOLE DETERMINATION AS TO WHETHER AN APPLICANT HAS A WATER SUPPLY THAT IS ADEQUATE TO MEET THE WATER SUPPLY REQUIREMENTS OF A PROPOSED DEVELOPMENT SHALL BE BASED ON CONSIDERATION OF THE FOLLOWING INFORMATION:

(a) THE DOCUMENTATION REQUIRED BY SECTION 29-20-304;

(b) IF REQUESTED BY THE LOCAL GOVERNMENT, A LETTER FROM THE STATE ENGINEER COMMENTING ON THE DOCUMENTATION REQUIRED PURSUANT TO SECTION 29-20-304;

(c) WHETHER THE APPLICANT HAS PAID TO A WATER SUPPLY ENTITY A FEE OR CHARGE FOR THE PURPOSE OF ACQUIRING WATER FOR OR EXPANDING OR CONSTRUCTING THE INFRASTRUCTURE TO SERVE THE PROPOSED DEVELOPMENT; AND

(d) ANY OTHER INFORMATION DEEMED RELEVANT BY THE LOCAL GOVERNMENT TO DETERMINE, IN ITS SOLE DISCRETION, WHETHER THE WATER SUPPLY FOR THE PROPOSED DEVELOPMENT IS ADEQUATE, INCLUDING, WITHOUT LIMITATION, ANY INFORMATION REQUIRED TO BE SUBMITTED BY THE APPLICANT PURSUANT TO APPLICABLE LOCAL GOVERNMENT LAND USE REGULATIONS OR STATE STATUTES.

29-20-306. Cluster developments - inapplicability. NOTHING IN THIS PART 3 SHALL BE DEEMED TO APPLY TO A RURAL LAND USE PROCESS REGARDING THE APPROVAL OF A CLUSTER DEVELOPMENT PURSUANT TO PART 4 OF ARTICLE 28 OF TITLE 30, C.R.S.

SECTION 3. Applicability. This act shall apply to applications for development permits submitted on or after the effective date of this act.

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

Approved: May 29, 2008