INTRODUCED

SENATE BILL 20-153

SENATE SPONSORSHIP
Coram,

HOUSE SPONSORSHIP
(None),

Senate Committees
Agriculture & Natural Resources

House Committees

A BILL FOR AN ACT

CONCERNING THE CREATION OF AN ENTERPRISE THAT IS EXEMPT FROM
THE REQUIREMENTS OF SECTION 20 OF ARTICLE X OF THE STATE
CONSTITUTION TO ADMINISTER A FEE-BASED WATER RESOURCES
FINANCING PROGRAM.

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 creates the water resources financing enterprise (enterprise). The board of the enterprise (board) consists of the board of directors of the Colorado water resources and power development
authority and the Colorado water conservation board. The enterprise will provide financing to "water providers", defined to include drinking water suppliers, wastewater treatment suppliers, and raw water suppliers. Raw water suppliers are limited to those that provide raw water for treatment and use as drinking water.

Customers of drinking water suppliers will pay a fee to the supplier, who will transmit it to the enterprise to be used for the financing. The fee is 25 cents per 1,000 gallons of drinking water delivered per month to each metered connection in a drinking water supplier's public water system, collected after the first 4,000 gallons of drinking water delivered per month to an individual metered connection. The board may adjust the fee based on inflation and equity concerns for large nonresidential customers and customers who pay tiered rates that start higher than 4,000 gallons per month.

The enterprise can provide financing for grants, loans, and in-kind technical assistance in arranging third-party financing. In determining whether to provide financing, the board shall consider the following factors:

- A water provider's ability to pay, including whether the water provider has sought or received other financial assistance;
- Whether a water provider is subject to noncompliance or increased requirements related to the provision of raw water, drinking water, water treatment, or wastewater treatment;
- Whether the proposed use of financing relates to a project identified in and in furtherance of the state water plan; and
- The geographic location and demographic characteristics of the water provider and its customers.

The enterprise shall provide, and a water provider may use, the financing only:

- In connection with the provision of raw water, drinking water, water treatment, or wastewater treatment; and
- For feasibility studies, consulting, planning, permitting, and construction of infrastructure and water conservation projects and related recreational, hydroelectric, and flood control facilities, including necessary enlargement and rehabilitation of facilities but excluding maintenance and operation.

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

SECTION 1. In Colorado Revised Statutes, add article 94 to title
ARTICLE 94
Water Resources Financing Enterprise

37-94-101. Short title. The short title of this Article 94 is the "Water Resources Financing Enterprise Act".

37-94-102. Legislative declaration. (1) The General Assembly hereby:

(a) Finds that:

(I) There is a substantial gap between the financing needed to fully address the State's water resources needs and the financing that is available; and

(II) Suppliers of raw water, drinking water, and wastewater treatment services all have substantial, unmet financing needs;

(b) Determines that:

(I) Providing affordable financing to water providers through the collection by the water resources financing enterprise of the water resources financing fee paid by drinking water suppliers constitutes a valuable service and benefit; and

(II) The enterprise provides business services to water providers when, in exchange for payment, it issues loans and grants to water providers financed by the fees; and

(c) Declares that:

(I) (A) While acknowledging that some home rule governments are suppliers of raw water, drinking water, or wastewater treatment services, the State Constitution declares that the water of every natural stream within the State is the
PROPERTY OF THE PUBLIC, AND THERE ARE SUBSTANTIAL STATEWIDE
INTERESTS IN ENSURING THAT THESE SERVICES ARE PROVIDED IN FULL
COMPLIANCE WITH APPLICABLE LAW AND THAT SUFFICIENT FINANCING IS
AVAILABLE THROUGHOUT THE STATE TO ENABLE ALL WATER PROVIDERS
TO PROVIDE CLEAN, SAFE, AND RELIABLE DRINKING WATER AND TO
DISCHARGE TREATED DOMESTIC WASTEWATER INTO WATERS OF THE STATE
WITHOUT HARMING THE ENVIRONMENT; AND

(B) THE MATTERS ADDRESSED BY THIS ARTICLE 94 ARE MATTERS
OF STATEWIDE CONCERN;

(II) IT IS NECESSARY, APPROPRIATE, AND IN THE BEST INTEREST OF
THE STATE TO ACKNOWLEDGE THAT BY PROVIDING THE BUSINESS
SERVICES SPECIFIED IN SUBSECTION (1)(b) OF THIS SECTION, THE
ENTERPRISE ENGAGES IN AN ACTIVITY CONDUCTED IN THE PURSUIT OF A
BENEFIT, GAIN, OR LIVELIHOOD AND THEREFORE OPERATES AS A BUSINESS;

(III) CONSISTENT WITH THE DETERMINATION OF THE COLORADO
SUPREME COURT IN Nicholl v. E-470 Public Highway Authority, 896
P.2d 859 (COLO. 1995), THAT THE POWER TO IMPOSE TAXES IS
INCONSISTENT WITH ENTERPRISE STATUS UNDER SECTION 20 OF ARTICLE
X OF THE STATE CONSTITUTION, IT IS THE CONCLUSION OF THE GENERAL
ASSEMBLY THAT THE FEE CHARGED AND COLLECTED BY THE ENTERPRISE
IS A FEE, NOT A TAX, BECAUSE THE FEE IS IMPOSED FOR THE SPECIFIC
PURPOSE OF ALLOWING THE ENTERPRISE TO DEFRAY THE COSTS OF
PROVIDING THE BUSINESS SERVICES SPECIFIED IN SUBSECTION (1)(b) OF
THIS SECTION TO WATER PROVIDERS THAT PAY THE FEE AND IS COLLECTED
AT RATES THAT ARE REASONABLY CALCULATED BASED ON THE BENEFITS
RECEIVED BY THOSE WATER PROVIDERS; AND

(IV) SO LONG AS THE ENTERPRISE QUALIFIES AS AN ENTERPRISE
FOR PURPOSES OF SECTION 20 (2)(d) OF ARTICLE X OF THE STATE
CONSTITUTION, THE REVENUES FROM THE FEE CHARGED AND COLLECTED
BY THE ENTERPRISE ARE NOT STATE FISCAL YEAR SPENDING, AS DEFINED
IN SECTION 24-77-102 (17), OR STATE REVENUES, AS DEFINED IN SECTION
24-77-103.6 (6)(c), AND DO NOT COUNT AGAINST EITHER THE STATE
FISCAL YEAR SPENDING LIMIT IMPOSED BY SECTION 20 OF ARTICLE X OF
THE STATE CONSTITUTION OR THE EXCESS STATE REVENUES CAP, AS
DEFINED IN SECTION 24-77-103.6 (6)(b)(I)(D).

37-94-103. Definitions. As used in this article 94, unless the
context otherwise requires:

(1) "Authority" means the Colorado Water Resources and
Power Development Authority created in section 37-95-104.

(2) "Conservation board" means the Colorado Water
Conservation Board created in section 37-60-102.

(3) "Department" means the Department of Natural
Resources.

(4) "Drinking water" means piped and metered water that
has been subject to water treatment.

(5) "Drinking water supplier" means a person that owns or
operates a public water system.

(6) "Enterprise" means the water resources financing
enterprise created in section 37-94-104.

(7) "Enterprise board" means the board of directors of the
enterprise.

(8) "Fee" means the water resources financing fee
authorized by section 37-94-105.

(9) "Public water system" means a system for the provision
TO THE PUBLIC OF DRINKING WATER THAT HAS AT LEAST FIFTEEN SERVICE
CONNECTIONS OR REGULARLY SERVES AT LEAST TWENTY-FIVE
INDIVIDUALS. THE TERM INCLUDES SYSTEMS THAT ARE OWNED OR
OPERATED BY PRIVATE, NONPROFIT ENTITIES, AS WELL AS:

(a) COLLECTION, TREATMENT, STORAGE, AND DISTRIBUTION
FACILITIES UNDER THE CONTROL OF THE OPERATOR OF THE SYSTEM AND
USED PRIMARILY IN CONNECTION WITH THE SYSTEM; AND

(b) COLLECTION OR PRETREATMENT STORAGE FACILITIES NOT
UNDER THE OPERATOR'S CONTROL THAT ARE USED PRIMARILY IN
CONNECTION WITH THE SYSTEM.

(10) "RAW WATER" MEANS WATER THAT HAS NOT YET BEEN
SUBJECT TO WATER TREATMENT BUT THAT WILL BE SO TREATED BEFORE
THE WATER IS PUT TO BENEFICIAL USE.

(11) "RAW WATER SUPPLIER" MEANS AN ENTITY THAT SUPPLIES
RAW WATER FOR TREATMENT AND USE AS DRINKING WATER.

(12) "WASTEWATER TREATMENT" MEANS THE TREATMENT OF
DOMESTIC WASTEWATER TO COMPLY WITH EFFLUENT LIMITATIONS, AS
THAT TERM IS DEFINED IN SECTION 25-8-103 (6).

(13) "WASTEWATER TREATMENT SUPPLIER" MEANS THE OWNER OR
OPERATOR OF A DOMESTIC WASTEWATER TREATMENT WORKS, AS THAT
TERM IS DEFINED IN SECTION 25-8-103 (5).

(14) "WATER PROVIDER" MEANS:
(a) A RAW WATER SUPPLIER;
(b) A DRINKING WATER SUPPLIER; OR
(c) A WASTEWATER TREATMENT SUPPLIER.

(15) "WATER TREATMENT" MEANS THE ALTERATION OF RAW
WATER TO COMPLY WITH THE MINIMUM GENERAL SANITARY STANDARDS
37-94-104. Enterprise - powers and duties - board. (1) The water resources financing enterprise is hereby created in the Department as a Type 1 entity as that term is defined in Section 24-1-105. The enterprise is and operates as a government-owned business within the Department for the purpose of charging and collecting the fee, leveraging fee revenue to obtain federal matching money, and utilizing and deploying the fee revenue and other available money, including matching money, to provide the business services specified in Sections 37-94-102 (1)(b) and 37-94-106 to water providers.

(2) The enterprise constitutes an enterprise for purposes of Section 20 (2)(d) of Article X of the State Constitution so long as it retains the authority to issue revenue bonds and receives less than ten percent of its total revenues in grants from all Colorado state and local governments combined. So long as it constitutes an enterprise pursuant to this subsection (2), the enterprise is not subject to any provisions of Section 20 of Article X of the State Constitution.

(3) The enterprise’s primary powers and duties are:

(a) To collect the fee from drinking water suppliers as specified in Section 37-94-105;

(b) To provide water resources financing to water providers, including by issuing loans and grants as specified in Section 37-94-106;

(c) To issue revenue bonds pursuant to Section 37-94-107 payable from the revenues of the enterprise in connection with
THE PROVISION OF WATER RESOURCES FINANCING;

(d) TO ENGAGE THE SERVICES OF CONTRACTORS, CONSULTANTS, AND LEGAL COUNSEL FOR PROFESSIONAL AND TECHNICAL ASSISTANCE AND ADVICE AND TO SUPPLY OTHER SERVICES RELATED TO THE CONDUCT OF THE AFFAIRS OF THE ENTERPRISE, INCLUDING THE PROVISION OF WATER RESOURCES FINANCING AS SPECIFIED IN SECTION 37-94-106, WITHOUT REGARD TO THE PROVISIONS OF THE "PROCUREMENT CODE", ARTICLES 101 TO 112 OF TITLE 24; AND

(e) TO ADOPT, AMEND, OR REPEAL POLICIES FOR THE REGULATION OF ITS AFFAIRS AND THE CONDUCT OF ITS BUSINESS CONSISTENT WITH THIS ARTICLE 94, INCLUDING ESTABLISHING APPLICATION, REVIEW, APPROVAL, REPAYMENT, REPORTING, AND OTHER REQUIREMENTS FOR WATER RESOURCES FINANCING.

MEETINGS AS NECESSARY FOR THE ENTERPRISE BOARD TO COMPLETE ITS DUTIES.

(b) The enterprise board is subject to:

(I) The open meetings law, part 4 of article 6 of title 24;

(II) The "Colorado Open Records Act", part 2 of article 72 of title 24; and

(III) Audit by the state auditor pursuant to section 2-3-103(1)(b).

37-94-105. Water resources financing fee. (1) For the fiscal year commencing July 1, 2020, and for each fiscal year thereafter, the enterprise may charge a fee to each customer of a drinking water supplier. Each drinking water supplier shall collect the fee and remit it to the enterprise on a monthly basis as specified by the enterprise board; except that the drinking water supplier may retain a vendor fee of three and one-third percent of the total amount of fees collected.

(2)(a) Except as specified in subsections (2)(b) and (2)(c) of this section, the amount of the fee is twenty-five cents per thousand gallons of drinking water delivered per month to each metered connection in a drinking water supplier's public water system, collected after the first four thousand gallons of drinking water delivered per month to an individual metered connection.

(b) For fiscal years commencing on or after July 1, 2021, the enterprise board may annually adjust the amount of the fee to reflect changes in the United States Department of Labor, Bureau of Labor Statistics, consumer price index for
DENVER-AURORA-LAKEWOOD FOR ALL ITEMS AND ALL URBAN
CONSUMERS, OR ITS APPLICABLE SUCCESSOR INDEX.

(c) To address equity concerns, the Enterprise Board may
reduce the amount of the fee or increase the number of gallons
per month that are not subject to the fee for large
nonresidential customers and for customers of a drinking water
supplier that has tiered rates that start at a level higher than
four thousand gallons of water per month.

(3) A drinking water supplier is not liable for a customer’s
failure to pay the fee when due.

37-94-106. Water resources financing - use of fees - fund.

(1) The Enterprise shall transmit the fees collected pursuant to
section 37-94-105 to the water resources financing fund, which
is hereby created in the state treasury. The fund consists of all
revenues of the Enterprise, including the fees, money received by
the Enterprise for repayment of loans, revenue bond proceeds,
matching federal funds, and interest and income derived from
the deposit and investment of money in the fund.

(2) The Enterprise shall use its revenues to provide water
resources financing to water providers. Financing may consist
of:

(a) Grants;

(b) Loans, including loans with below-market-rate
interest; and

(c) In-kind technical assistance in arranging third-party
financing.

(3) In determining whether to provide water resources
FINANCING, THE ENTERPRISE BOARD SHALL CONSIDER THE FOLLOWING FACTORS:

(a) A WATER PROVIDER’S ABILITY TO PAY, INCLUDING WHETHER THE WATER PROVIDER HAS SOUGHT OR RECEIVED FINANCIAL ASSISTANCE FROM THE CONSERVATION BOARD, THE AUTHORITY, OR ANY OTHER SOURCE;

(b) WHETHER A WATER PROVIDER IS SUBJECT TO NONCOMPLIANCE OR INCREASED REQUIREMENTS RELATED TO THE PROVISION OF RAW WATER, DRINKING WATER, WATER TREATMENT, OR WASTEWATER TREATMENT;

(c) WHETHER THE PROPOSED USE OF WATER RESOURCES FINANCING RELATES TO A PROJECT IDENTIFIED IN AND IN FURTHERANCE OF THE STATE WATER PLAN ADOPTED PURSUANT TO SECTION 37-60-106.3;

AND

(d) THE GEOGRAPHIC LOCATION AND DEMOGRAPHIC CHARACTERISTICS OF THE WATER PROVIDER AND ITS CUSTOMERS.

(4) THE ENTERPRISE SHALL PROVIDE, AND A WATER PROVIDER MAY USE, WATER RESOURCES FINANCING ONLY:

(a) IN CONNECTION WITH THE PROVISION OF RAW WATER, DRINKING WATER, WATER TREATMENT, OR WASTEWATER TREATMENT;

AND

(b) FOR FEASIBILITY STUDIES, CONSULTING, PLANNING, PERMITTING, AND CONSTRUCTION OF INFRASTRUCTURE AND WATER CONSERVATION PROJECTS AND RELATED RECREATIONAL, HYDROELECTRIC, AND FLOOD CONTROL FACILITIES, INCLUDING NECESSARY ENLARGEMENT AND REHABILITATION OF FACILITIES BUT EXCLUDING MAINTENANCE AND OPERATION.
37-94-107. Bonds - issuance - terms. (1) The enterprise may issue bonds in principal amounts that the enterprise board determines are necessary to provide sufficient funds for any of its purposes, including the payment, funding, or refunding of the principal of, or interest or redemption premiums on, any bonds issued by it, whether the bonds or interest to be funded or refunded have or have not become due, and including the establishment or increase of reserves to secure or to pay the bonds or interest and all other costs or expenses of the enterprise incident to and necessary to carry out its purposes and powers. The enterprise shall subsidize some or all of the cost of issuing bonds and notes pursuant to this article 94 for projects authorized by section 37-94-106 (4).

(2) Except as may be otherwise expressly provided in this article 94 or by the enterprise, every issue of bonds is a special obligation payable out of any revenues or funds of the enterprise, subject only to any agreements with the holders of particular bonds pledging any particular revenues or funds. The enterprise may issue such types of bonds as it may determine, including bonds as to which the principal and interest are payable:

(a) Exclusively from the revenues and receipts of the part of the project financed with the proceeds of the bonds;

(b) Exclusively from the revenues and receipts of certain designated parts of the project, whether or not the designated parts are financed in whole or in part from the proceeds of the bonds; or
(c) FROM ITS REVENUES AND RECEIPTS GENERALLY.

(3) THE BONDS MAY BE ADDITIONALLY SECURED BY A PLEDGE OF ANY GRANT, SUBSIDY, OR CONTRIBUTION FROM ANY PERSON OR BY A PLEDGE OF ANY INCOME OR REVENUES, FUNDS, OR MONEY OF THE ENTERPRISE FROM ANY SOURCE WHATSOEVER.


(5) BONDS OF THE ENTERPRISE MUST BE AUTHORIZED BY A RESOLUTION OF THE ENTERPRISE BOARD AND MAY BE ISSUED IN ONE OR MORE SERIES; BEAR SUCH DATE; MATURE AT SUCH TIME; BEAR INTEREST AT SUCH RATE OF INTEREST PER ANNUM; BE IN SUCH DENOMINATION; BE IN SUCH FORM, EITHER COUPON OR REGISTERED; CARRY SUCH CONVERSION OR REGISTRATION PRIVILEGES; HAVE SUCH RANK OR PRIORITY; BE EXECUTED IN SUCH MANNER; BE PAYABLE FROM SUCH SOURCES IN SUCH MEDIUM OF PAYMENT AT SUCH PLACE WITHIN OR WITHOUT THE STATE; AND BE SUBJECT TO SUCH TERMS OF REDEMPTION, WITH OR WITHOUT PREMIUM, AS THE RESOLUTION MAY PROVIDE.

(6) BONDS OF THE ENTERPRISE MAY BE SOLD AT PUBLIC OR PRIVATE SALE AT THE PRICE OR PRICES AND IN THE MANNER THE ENTERPRISE BOARD DETERMINES.

(7) THE ISSUANCE OF BONDS IS NOT SUBJECT TO SECTION 24-36-121, AND BONDS MAY BE ISSUED UNDER THIS ARTICLE 94 WITHOUT OBTAINING THE CONSENT OF ANY DEPARTMENT, DIVISION, COMMISSION,
BOARD, BUREAU, OR AGENCY OF THE STATE OTHER THAN THE ENTERPRISE
BOARD AND WITHOUT ANY OTHER PROCEEDING OR THE HAPPENING OF ANY
OTHER CONDITIONS OR OTHER THINGS THAN THOSE PROCEEDINGS,
CONDITIONS, OR THINGS THAT ARE SPECIFICALLY REQUIRED BY THIS
ARTICLE 94.

(8) (a) BONDS OF THE ENTERPRISE ISSUED UNDER THIS ARTICLE 94
ARE NOT IN ANY WAY A DEBT OR LIABILITY OF THE STATE OR OF ANY
POLITICAL SUBDIVISION OF THE STATE OTHER THAN THE ENTERPRISE AND
DO NOT CREATE OR CONSTITUTE ANY INDEBTEDNESS, LIABILITY, OR
OBLIGATION OF THE STATE OR OF ANY POLITICAL SUBDIVISION OR
CONSTITUTE A PLEDGE OF THE FAITH AND CREDIT OF THE STATE OR OF ANY
POLITICAL SUBDIVISION. ALL BONDS, UNLESS FUNDED OR REFUNDED BY
BONDS OF THE ENTERPRISE, ARE PAYABLE SOLELY FROM REVENUES
PLEDGED OR AVAILABLE FOR THEIR PAYMENT AS AUTHORIZED IN THIS
ARTICLE 94.

(b) EACH BOND MUST CONTAIN ON ITS FACE A STATEMENT TO THE
EFFECT THAT:

(I) THE ENTERPRISE IS OBLIGATED TO PAY THE PRINCIPAL OF THE
BOND AND THE INTEREST ONLY FROM REVENUES OF THE ENTERPRISE;

(II) NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION OF THE
STATE IS OBLIGATED TO PAY THE PRINCIPAL OR INTEREST; AND

(III) NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF
THE STATE OR ANY POLITICAL SUBDIVISION OF THE STATE IS PLEDGED TO
THE PAYMENT OF THE PRINCIPAL OF OR THE INTEREST ON THE BONDS.

(9) ALL EXPENSES INCURRED IN CARRYING OUT THIS ARTICLE 94
ARE PAYABLE SOLELY FROM REVENUES PROVIDED OR TO BE PROVIDED
UNDER THIS ARTICLE 94, AND NOTHING IN THIS ARTICLE 94 AUTHORIZES
THE ENTERPRISE TO INCUR ANY INDEBTEDNESS OR LIABILITY ON BEHALF
OF OR PAYABLE BY THE STATE OR ANY POLITICAL SUBDIVISION OF THE
STATE.

37-94-108. Report. NOTWITHSTANDING SECTION 24-1-136 (11),
by July 1 of each year, the enterprise board shall submit a
summary report of its activities during the previous calendar
year to the water resources review committee created in
section 37-98-102.

SECTION 2. Act subject to petition - effective date. This act
takes effect at 12:01 a.m. on the day following the expiration of the
ninety-day period after final adjournment of the general assembly (August
5, 2020, if adjournment sine die is on May 6, 2020); except that, if a
referendum petition is filed pursuant to section 1 (3) of article V of the
state constitution against this act or an item, section, or part of this act
within such period, then the act, item, section, or part will not take effect
unless approved by the people at the general election to be held in
November 2020 and, in such case, will take effect on the date of the
official declaration of the vote thereon by the governor.