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Fiscal Note

Drafting Number:	LLS 22-0179	Date:	January 21, 2022
Prime Sponsors:	Sen. Coram; Donovan Rep. McCormick	Bill Status:	Senate Agriculture
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Bill Topic: **INVESTMENT WATER SPECULATION**

Summary of Fiscal Impact:	<input checked="" type="checkbox"/> State Revenue	<input checked="" type="checkbox"/> TABOR Refund
	<input checked="" type="checkbox"/> State Expenditure	<input type="checkbox"/> Local Government
	<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

The bill defines and prohibits investment water speculation; authorizes the State Engineer in the Department of Natural Resources to investigate purchases of agricultural water rights that are suspected of investment water speculation; and authorizes the Attorney General to investigate frivolous complaints of water speculation. The bill increases state revenue and expenditures on an ongoing basis.

Appropriation Summary: For FY 2022-23, the bill requires an appropriation of \$94,455 to the Department of Natural Resources.

Fiscal Note Status: The fiscal note reflects the introduced bill which was recommended by the Water Resources Review Committee.

**Table 1
State Fiscal Impacts Under SB 22-029**

		Budget Year FY 2022-23	Out Year FY 2023-24
Revenue		-	-
Expenditures	General Fund	\$94,455	\$94,584
	Centrally Appropriated	\$16,965	\$20,404
	Total Expenditures	\$111,420	\$114,988
	Total FTE	1.0 FTE	1.2 FTE
Transfers		-	-
Other Budget Impacts	TABOR Refund	-	-
	General Fund Reserve	\$14,168	\$14,188

Summary of Legislation

The bill prohibits a person who purchases agricultural water rights in Colorado from engaging in investment water speculation. Beginning January 1, 2023, the State Engineer in the Department of Natural Resources (DNR) is authorized to investigate the sale or transfer of agricultural water rights that are represented by shares in a mutual ditch (irrigation) company if the purchase is suspected of investment water speculation.

Investigations may be initiated either by a third-party complaint or upon the State Engineer's own motion. The bill creates a rebuttable presumption that a purchaser is engaging in water speculation if the purchaser holds or will hold a minimum percent of the agricultural water rights held by all of the shareholders of the mutual ditch company. Each mutual ditch company is required to determine the minimum percent threshold for a presumption of water speculation and inform the State Engineer no later than December 31, 2022. If the State Engineer determines that a sale or transfer is investment water speculation, they may impose a fine not to exceed \$10,000.

If the State Engineer determines a third-party complaint is frivolous or filed to harass a seller or purchaser, the matter may be referred to the Attorney General's Office. The Attorney General may bring civil action against the complainant. The courts may impose a fine not to exceed \$1,000, and may also award attorney fees and court costs.

The bill excludes state and local government water providers, water conservancy districts, the Colorado Water Conservation Board (CWCB) or any governmental, quasi-governmental, or nonprofit agency that purchases agricultural water primarily for a public purpose such as conservation or compact compliance.

State Revenue

The bill is expected to increase state revenue from fines beginning in FY 2023-24. Once an investigatory program is established in the DNR, the bill authorizes up to \$10,000 in fines for each instance of investment water speculation, credited to the CWCB construction fund, and up to \$1,000 in civil fines for each instance of a frivolous complaint of investment water speculation prosecuted by the Department of Law (DOL).

This fiscal note assumes a high degree of compliance with the law and that instances of investment water speculation or frivolous complaints will be rare so increases in revenue are expected to be minimal. Fine revenue is subject to TABOR.

State Expenditures

The bill increases state General Fund expenditures by at least \$111,420 in FY 2022-23 and by at least \$114,998 in FY 2023-24 in the DNR. State expenditures in the DOL for investigation and enforcement of frivolous complaints will be addressed through the annual budget process once caseload is known. New costs are displayed in Table 2 and discussed below.

**Table 2
Expenditures Under SB 22-029**

Cost Components	FY 2022-23	FY 2023-24
Department of Natural Resources		
Personal Services	\$47,747	\$63,663
Operating Expenses	\$1,080	\$1,350
Capital Outlay Costs	\$6,200	-
Legal Services	\$39,428	\$29,571
Centrally Appropriated Costs ¹	\$16,965	\$20,404
FTE – Personal Services	0.8 FTE	1.0 FTE
FTE – Legal Services	0.2 FTE	0.2 FTE
Total	\$111,420	\$114,988
Total FTE	1.0 FTE	1.2 FTE

¹ Centrally appropriated costs are not included in the bill's appropriation.

Department of Natural Resources. The State Engineer’s office will have increased staff and legal services costs to support rulemaking prior to implementing the program January 1, 2023. An auditor II level professional with experience investigating business and financial transaction records is required to assist the State Engineer in investigating and determining instances of investment water speculation. Standard operating expenses and capital outlay costs are included, and first-year costs have been prorated for the General Fund pay date shift and the August effective date. The DOL will provide legal services to the DNR to establish rules for the program and general counsel to the State Engineer when investigating water purchasers, estimated at 400 hours in FY 2021-22 and 300 hours ongoing at the blended hourly rate of \$98.75.

Department of Law. The DOL is also responsible for prosecuting instances of frivolous complaints beginning January 2023. It is estimated that each assertion of frivolous complaint requires 200 hours of attorney staff time, and each instance of subsequent prosecution will require an additional 400 hours of attorney staff time. FY 2022-23 cases are expected to be minimal and it is unknown how many prosecutions will be instigated or concluded in future fiscal years; therefore, additional appropriations may be required through the annual budget process.

Judicial Department. The bill is estimated to have minimal impact on trial courts in the Judicial Department. By adding a new complaint that can appear before the courts, caseload may increase slightly; however, this increase will not require new appropriations. This fiscal note assumes that most purchasers will follow the law and individuals will not file frivolous complaints; therefore, any increase in the workload is absorbable within existing resources.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are shown in Table 2.

Other Budget Impacts

TABOR refunds. The bill is expected to minimally increase the amount of state revenue required to be refunded to taxpayers for FY 2022-23 and FY 2023-24. This estimate assumes the December 2021 LCS revenue forecast. A forecast of state revenue subject to TABOR is not available beyond FY 2023-24. Because TABOR refunds are paid from the General Fund, increased cash fund revenue will reduce the amount of General Fund available to spend or save.

General Fund reserve. Under current law, an amount equal to 15 percent of General Fund appropriations must be set aside in the General Fund statutory reserve beginning in FY 2022-23. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve by \$14,168 in FY 2022-23 and \$14,188 in FY 2023-24, which will decrease the amount of General Fund available for other purposes.

Effective Date

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed, and applies to purchases of agricultural water rights made on or after that date.

State Appropriations

For FY 2022-23, the bill requires a General Fund appropriation of \$94,455 to the Department of Natural Resources, and 0.8 FTE. Of that amount, \$39,428 is reappropriated to the Department of Law, and 0.2 FTE.

State and Local Government Contact

Judicial

Law

Natural Resources