

CHAPTER 243

HEALTH AND ENVIRONMENT

SENATE BILL 24-037

BY SENATOR(S) Simpson and Bridges, Hinrichsen, Roberts, Cutter, Kolker, Marchman, Pelton R., Priola, Will;
also REPRESENTATIVE(S) Lynch and McCormick, Catlin, Martinez, McLachlan, Amabile, Bacon, Bird, Brown, Daugherty,
Duran, Epps, Froelich, Hamrick, Jodeh, Joseph, Kipp, Lindsay, Lindstedt, Lukens, Mabrey, Mauro, Ortiz, Rutinel, Sirota,
Woodrow, Young, McCluskie.

AN ACT

CONCERNING ALTERNATIVE MECHANISMS FOR ACHIEVING COMPLIANCE WITH WATER QUALITY STANDARDS, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

SECTION 1. In Colorado Revised Statutes, **add** 25-8-311 as follows:

25-8-311. Water quality green infrastructure - feasibility studies - pilot projects - division collaboration with universities - legislative declaration - definitions - reports - gifts, grants, or donations - repeal. (1) (a) THE GENERAL ASSEMBLY FINDS AND DETERMINES THAT GREEN INFRASTRUCTURE MAY PROVIDE SIGNIFICANT BENEFITS TO WATER AND WASTEWATER PROVIDERS AND WATER USERS IN COLORADO BY:

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

(II) IN FURTHERANCE OF THE COLORADO POLLUTANT TRADING POLICY, HELPING OWNERS AND OPERATORS OF WATER AND WASTEWATER TREATMENT FACILITIES MEET STATE AND FEDERAL WATER QUALITY STANDARDS WITHOUT HAVING TO INVEST IN GRAY INFRASTRUCTURE UPGRADES; AND

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

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(b) THE GENERAL ASSEMBLY DECLARES THAT:

(I) THE UNIVERSITY OF COLORADO AND COLORADO STATE UNIVERSITY SHOULD CONDUCT, AND THE DIVISION MAY ADVISE ON, A FEASIBILITY STUDY REGARDING THE USE OF GREEN INFRASTRUCTURE AND DEVELOP PILOT PROJECTS TO DEMONSTRATE GREEN INFRASTRUCTURE IN COLORADO; AND

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

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

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

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

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

(E) AN INTERRUPTIBLE WATER SUPPLY AGREEMENT APPROVED PURSUANT TO SECTION 37-92-309.

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

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

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

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

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

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

(3) (a) ON OR BEFORE OCTOBER 1, 2024, THE UNIVERSITY OF COLORADO AND COLORADO STATE UNIVERSITY, IN COLLABORATION WITH THE DIVISION, SHALL

START TO CONDUCT A FEASIBILITY STUDY REGARDING THE USE OF GREEN INFRASTRUCTURE IN THE STATE. THE FEASIBILITY STUDY MUST INCLUDE A DETERMINATION OF WHETHER AND HOW:

(I) GREEN INFRASTRUCTURE, RATHER THAN TRADITIONAL GRAY INFRASTRUCTURE, MAY BE USED IN AN ALTERNATIVE COMPLIANCE PROGRAM USING MECHANISMS DESCRIBED IN THE COLORADO POLLUTANT TRADING POLICY AND THE FEDERAL WATER QUALITY TRADING POLICY;

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

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

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

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

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

(b) (I) THE UNIVERSITIES SHALL COMPLETE, AND THE DIVISION MAY ADVISE ON, THE FEASIBILITY STUDY ON OR BEFORE APRIL 1, 2026. WITH CONSIDERATION GIVEN TO THE FINDINGS OF THE FEASIBILITY STUDY, THE UNIVERSITIES, WITH THE APPROVAL OF THE DIVISION, SHALL ESTABLISH UP TO THREE PILOT PROJECTS IN THE STATE TO DEMONSTRATE THE:

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

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

(II) A PILOT PROJECT ESTABLISHED PURSUANT TO THIS SUBSECTION (3)(b) MAY BE OPERATED FOR UP TO FIVE YEARS. THE UNIVERSITIES MAY PROVIDE TECHNICAL ASSISTANCE TO THE OPERATOR OF A PILOT PROJECT THAT THE DIVISION APPROVES UNDER THIS SUBSECTION (3)(b), AND THE UNIVERSITIES SHALL RECOMMEND FOR THE DIVISION'S APPROVAL THE DESIGN, SIZE, AND MONITORING REQUIREMENTS FOR EACH PILOT PROJECT.

(c) ON OR BEFORE NOVEMBER 1, 2026, THE DIVISION, IN COORDINATION WITH THE ENTITIES LISTED IN SUBSECTION (3)(a) OF THIS SECTION, SHALL SUBMIT A REPORT AND, ON OR BEFORE FEBRUARY 1, 2027, MAKE A PRESENTATION SUMMARIZING THE PROGRESS ON THE FEASIBILITY STUDY AND ANY PILOT PROJECTS TO THE WATER

RESOURCES AND AGRICULTURE REVIEW COMMITTEE CREATED IN SECTION 37-98-102 (1)(a)(I). THE COMMITTEE MAY REQUEST SIMILAR REPORTS AND PRESENTATIONS BE MADE IN ANY YEAR AFTER 2027 IN WHICH THE FEASIBILITY STUDY OR A PILOT PROJECT IS BEING CONDUCTED PURSUANT TO THIS SUBSECTION (3).

(d) THE REPORT MUST INCLUDE:

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

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

(4) IN DEVELOPING THE FEASIBILITY STUDY PURSUANT TO SUBSECTION (3)(a) OF THIS SECTION, ANY PILOT PROJECTS PURSUANT TO SUBSECTION (3)(b) OF THIS SECTION, AND ANY LEGISLATIVE OR ADMINISTRATIVE RECOMMENDATIONS PURSUANT TO SUBSECTION (3)(d)(II) OF THIS SECTION, THE ENTITIES LISTED IN SUBSECTION (3)(a) OF THIS SECTION MUST TAKE INTO ACCOUNT:

(a) THE COLORADO POLLUTANT TRADING POLICY;

(b) THE FEDERAL WATER QUALITY TRADING POLICY; AND

(c) THE PRIOR APPROPRIATION SYSTEM ESTABLISHED IN SECTIONS 5 AND 6 OF ARTICLE XVI OF THE STATE CONSTITUTION AND THE "WATER RIGHT DETERMINATION AND ADMINISTRATION ACT OF 1969", ARTICLE 92 OF TITLE 37.

(5)(a) THE UNIVERSITIES LISTED IN SUBSECTION (3)(a) OF THIS SECTION MAY USE THEIR EXISTING RESOURCES TO HELP FINANCE THE FEASIBILITY STUDY AND THE PILOT PROJECTS.

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

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

SECTION 2. Appropriation. (1) For the 2024-25 state fiscal year, \$50,651 is appropriated to the department of public health and environment. This appropriation is from the general fund. To implement this act, the department may use this appropriation as follows:

(a) \$34,777 for use by the water quality control division for clean water program costs, which amount is based on an assumption that the division will require an additional 0.4 FTE;

(b) \$512 for use by the water quality control division for administration; and

(c) \$15,362 for the purchase of legal services.

(2) For the 2024-25 state fiscal year, \$15,362 is appropriated to the department of law. This appropriation is from reappropriated funds received from the department of public health and environment under subsection (1)(c) of this section and is based on an assumption that the department of law will require an additional 0.1 FTE. To implement this act, the department of law may use this appropriation to provide legal services for the department of public health and environment.

SECTION 3. 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; 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 2024 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: May 24, 2024