

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

DRAFT
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Bill 2

LLS NO. 22-0179.01 Jennifer Berman x3286

INTERIM COMMITTEE BILL

Water Resources Review Committee

BILL TOPIC: "Investment Water Speculation Prohibition"

A BILL FOR AN ACT

101 **CONCERNING A PROHIBITION AGAINST ENGAGING IN INVESTMENT**
102 **WATER SPECULATION IN THE STATE.**

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 Review Committee. Section 1 of the bill prohibits a purchaser of agricultural water rights that are represented by shares in a mutual ditch company from engaging in investment water speculation. Investment water speculation is the purchase of agricultural water rights that are represented by shares in a mutual ditch company in the state with the intent, at the time of purchase, to profit from an increase

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

in the water's value in a subsequent transaction or by receiving payment from another person for nonuse of all or a portion of the water subject to the water right.

On or after January 1, 2023, the state engineer or the state engineer's designee (state engineer) may investigate complaints of investment water speculation. If a purchaser holds, or by virtue of a proposed sale or transfer will hold, at least a minimum percent of the shares in a mutual ditch company, about which minimum percent the mutual ditch company must determine and notify the state engineer on or before December 31, 2022, there is a rebuttable presumption that the purchaser is engaged in investment water speculation. The state engineer may fine a purchaser up to \$10,000 for a violation and require, for a period up to 2 years after a fine has been imposed, that any sale or transfer of shares in a mutual ditch company to the purchaser be subject to approval by the state engineer.

If the state engineer believes that a complaint is frivolous or was filed for the purpose of harassing a seller or purchaser, the state engineer may refer the matter to the attorney general's office for the attorney general or the attorney general's designee (attorney general) to investigate and, if the attorney general determines that enforcement is warranted, bring a civil action in a court of competent jurisdiction alleging the complaint is frivolous or was filed for the purpose of harassment. If the attorney general prevails in the civil action, the court may fine a complainant up to \$1,000, prohibit the complainant from filing any complaints alleging investment water speculation for up to one year, and grant attorney fees and court costs. **Section 3** authorizes the attorney general to bring a civil action against a complainant if the state engineer refers the matter to the attorney general.

Section 2 requires the board of directors of a mutual ditch company to determine the minimum percent of agricultural water rights held by all of the shareholders in the mutual ditch company that a purchaser holds or, by virtue of the sale or transfer of shares in the mutual ditch company will hold, that creates a rebuttable presumption that the purchaser is engaging in investment water speculation.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** 37-92-505 as
3 follows:

4 **37-92-505. Investment water speculation prohibited -**
5 **determination - penalties - definitions - rules.** (1) A PURCHASER SHALL

1 NOT ENGAGE IN INVESTMENT WATER SPECULATION IN THE STATE.

2 (2) (a) ON OR AFTER JANUARY 1, 2023, THE STATE ENGINEER MAY
3 INVESTIGATE ALLEGED VIOLATIONS OF THIS SECTION. IF THE STATE
4 ENGINEER DECIDES TO INVESTIGATE A SALE OR TRANSFER OF
5 AGRICULTURAL WATER RIGHTS THAT ARE REPRESENTED BY SHARES IN A
6 MUTUAL DITCH COMPANY UNDER THIS SECTION, THE STATE ENGINEER
7 SHALL NOTIFY THE PURCHASER AND, IF THE SALE OR TRANSFER IS NOT
8 COMPLETE, THE SELLER OF THE AGRICULTURAL WATER RIGHTS OF THE
9 INVESTIGATION. THE STATE ENGINEER MAY PROMULGATE RULES TO
10 IMPLEMENT THIS SECTION.

11 (b) (I) UPON A THIRD-PARTY COMPLAINT OR UPON THE STATE
12 ENGINEER'S OWN MOTION, THE STATE ENGINEER MAY INVESTIGATE A
13 PROPOSED OR COMPLETED SALE OR TRANSFER OF AGRICULTURAL WATER
14 RIGHTS THAT ARE REPRESENTED BY SHARES IN A MUTUAL DITCH COMPANY
15 TO DETERMINE IF THE PURCHASER IS ENGAGING IN INVESTMENT WATER
16 SPECULATION. THE STATE ENGINEER SHALL MAKE A WRITTEN
17 DETERMINATION AS TO WHETHER THE PURCHASER IS ENGAGING IN
18 INVESTMENT WATER SPECULATION WITHIN THIRTY-FIVE DAYS AFTER THE
19 COMPLAINT IS FILED OR WITHIN THIRTY-FIVE DAYS AFTER THE STATE
20 ENGINEER, ON THE STATE ENGINEER'S OWN MOTION, DECIDES TO
21 INVESTIGATE A SALE OR TRANSFER UNDER THIS SECTION AND SHALL SEND
22 A COPY OF THE DETERMINATION TO THE COMPLAINANT AND THE
23 PURCHASER. IF THE STATE ENGINEER FAILS TO MAKE A DETERMINATION
24 WITHIN THIRTY-FIVE DAYS, THE COMPLAINT IS DEEMED DISMISSED
25 WITHOUT PREJUDICE.

26 (II) THERE IS A REBUTTABLE PRESUMPTION THAT A PURCHASER IS
27 ENGAGING IN INVESTMENT WATER SPECULATION IF THE PURCHASER

1 HOLDS, OR BY VIRTUE OF THE SALE OR TRANSFER OF SHARES IN THE
2 MUTUAL DITCH COMPANY AT ISSUE WILL HOLD, AT LEAST A MINIMUM
3 PERCENT OF THE AGRICULTURAL WATER RIGHTS HELD BY ALL OF THE
4 SHAREHOLDERS IN THE MUTUAL DITCH COMPANY, ABOUT WHICH MINIMUM
5 PERCENT THE MUTUAL DITCH COMPANY SHALL DETERMINE AND NOTIFY
6 THE STATE ENGINEER ON OR BEFORE DECEMBER 31, 2022. A MUTUAL
7 DITCH COMPANY MAY PERIODICALLY REVIEW AND UPDATE THE MINIMUM
8 PERCENT DETERMINED AND SHALL NOTIFY THE STATE ENGINEER OF ANY
9 CHANGES TO THE MINIMUM PERCENT DETERMINED. THE PURCHASER MAY
10 OVERCOME A PRESUMPTION OF ENGAGING IN INVESTMENT WATER
11 SPECULATION BY PRESENTING EVIDENCE TO THE SATISFACTION OF THE
12 STATE ENGINEER THAT THE PURCHASER ENGAGED IN OR IS ENGAGING IN A
13 BONA FIDE PURCHASE OF THE WATER RIGHTS AT ISSUE FOR THE
14 PURCHASER'S OWN BENEFICIAL USE OF THE WATER SUBJECT TO THE WATER
15 RIGHTS.

16 (III) IN INVESTIGATING AN ALLEGATION OF INVESTMENT WATER
17 SPECULATION, THE STATE ENGINEER MAY SEEK TO INSPECT ANY
18 DOCUMENT, INCLUDING AN ELECTRONIC DOCUMENT, THAT THE STATE
19 ENGINEER BELIEVES IS RELEVANT TO A DETERMINATION AS TO WHETHER
20 A SALE OR TRANSFER OF AGRICULTURAL WATER RIGHTS IS INVESTMENT
21 WATER SPECULATION. THE STATE ENGINEER SHALL SAFEGUARD ANY
22 TRADE SECRETS, PRIVILEGED INFORMATION, AND CONFIDENTIAL
23 COMMERCIAL OR FINANCIAL INFORMATION VIEWED OR RECEIVED IN
24 RESPONSE TO A REQUEST TO INSPECT A DOCUMENT, AND THE STATE
25 ENGINEER SHALL NOT ALLOW A THIRD PARTY TO INSPECT ANY SUCH
26 DOCUMENT PURSUANT TO PART 2 OF ARTICLE 72 OF TITLE 24.

27 (3) IF THE STATE ENGINEER BELIEVES THAT A COMPLAINT FILED

1 PURSUANT TO THIS SECTION IS FRIVOLOUS OR HAS BEEN FILED FOR THE
2 PURPOSE OF HARASSING A SELLER OR PURCHASER, THE STATE ENGINEER
3 MAY REFER THE MATTER TO THE ATTORNEY GENERAL'S OFFICE FOR THE
4 ATTORNEY GENERAL OR THE ATTORNEY GENERAL'S DESIGNEE TO
5 INVESTIGATE. IF THE ATTORNEY GENERAL OR THE ATTORNEY GENERAL'S
6 DESIGNEE DETERMINES THAT ENFORCEMENT IS WARRANTED, THE
7 ATTORNEY GENERAL OR THE ATTORNEY GENERAL'S DESIGNEE MAY BRING
8 A CIVIL ACTION IN A COURT OF COMPETENT JURISDICTION ALLEGING THE
9 COMPLAINT IS FRIVOLOUS OR WAS FILED FOR THE PURPOSE OF HARASSING
10 A SELLER OR PURCHASER. IF THE ATTORNEY GENERAL PREVAILS IN THE
11 CIVIL ACTION, THE COURT MAY IMPOSE A FINE AGAINST THE COMPLAINANT
12 IN AN AMOUNT NOT TO EXCEED ONE THOUSAND DOLLARS, MAY PROHIBIT
13 THE COMPLAINANT FROM FILING ANY COMPLAINTS UNDER THIS SECTION
14 FOR A PERIOD NOT TO EXCEED ONE YEAR, AND MAY AWARD ATTORNEY
15 FEES AND COURT COSTS.

16 (4) (a) IF, AFTER INVESTIGATION, THE STATE ENGINEER
17 DETERMINES THAT A SALE OR TRANSFER OF AGRICULTURAL WATER RIGHTS
18 THAT ARE REPRESENTED BY SHARES IN A MUTUAL DITCH COMPANY IS
19 INVESTMENT WATER SPECULATION, THE STATE ENGINEER MAY IMPOSE A
20 FINE AGAINST THE PURCHASER IN AN AMOUNT NOT TO EXCEED TEN
21 THOUSAND DOLLARS. ADDITIONALLY, THE STATE ENGINEER MAY REQUIRE
22 THAT, FOR A PERIOD UP TO TWO YEARS AFTER THE FINE IS IMPOSED, ANY
23 SALE OR TRANSFER OF SHARES IN A MUTUAL DITCH COMPANY TO THE
24 PURCHASER BE SUBJECT TO APPROVAL BY THE STATE ENGINEER.

25 (b) A PURCHASER MAY BE FINED ONLY ONCE FOR A SINGLE
26 PROPOSED OR COMPLETED SALE OR TRANSFER OF AN AGRICULTURAL
27 WATER RIGHT, REGARDLESS HOW MANY COMPLAINTS HAVE BEEN FILED IN

1 RELATION TO THE PROPOSED OR COMPLETED SALE OR TRANSFER OF
2 AGRICULTURAL WATER RIGHTS.

3 (5) THE STATE ENGINEER SHALL TRANSMIT ANY FINES COLLECTED
4 PURSUANT TO THIS SECTION TO THE STATE TREASURER, WHO SHALL
5 CREDIT THE MONEY TO THE COLORADO WATER CONSERVATION BOARD
6 CONSTRUCTION FUND CREATED IN SECTION 37-60-121 (1)(a).

7 (6) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
8 REQUIRES:

9 (a) (I) "INVESTMENT WATER SPECULATION" MEANS THE PURCHASE
10 OF AGRICULTURAL WATER RIGHTS THAT ARE REPRESENTED BY SHARES IN
11 A MUTUAL DITCH COMPANY IN THE STATE WITH THE INTENT, AT THE TIME
12 OF PURCHASE, TO PROFIT FROM AN INCREASE IN THE WATER'S VALUE IN A
13 SUBSEQUENT TRANSACTION SUCH AS A SALE OR LEASE OF THE WATER OR
14 BY RECEIVING PAYMENT FROM ANOTHER PERSON FOR NONUSE OF ALL OR
15 A PORTION OF THE WATER SUBJECT TO THE WATER RIGHT; EXCEPT THAT
16 PAYMENT FOR NONUSE OF A WATER RIGHT IS NOT INVESTMENT WATER
17 SPECULATION IF IT IS DONE AS PART OF:

18 (A) A STATE OR LOCAL GOVERNMENT'S, MUNICIPAL WATER
19 PROVIDER'S, WATER CONSERVANCY DISTRICT'S, WATER CONSERVATION
20 DISTRICT'S, OR NONPROFIT ORGANIZATION'S ESTABLISHED WATER
21 CONSERVATION PROGRAM; OR

22 (B) THE COLORADO WATER CONSERVATION BOARD'S INSTREAM
23 FLOW PROGRAM.

24 (II) "INVESTMENT WATER SPECULATION" DOES NOT INCLUDE
25 PURCHASES OF AGRICULTURAL WATER RIGHTS THAT ARE REPRESENTED BY
26 SHARES IN A MUTUAL DITCH COMPANY BY THE FOLLOWING PURCHASERS:

27 (A) A MUNICIPALITY OR OTHER WATER PROVIDER THAT PROVIDES

1 DRINKING WATER TO CUSTOMERS LOCATED WITHIN ITS SERVICE AREA;

2 (B) A WATER CONSERVANCY DISTRICT OR WATER CONSERVATION
3 DISTRICT;

4 (C) THE COLORADO WATER CONSERVATION BOARD OR ANY OTHER
5 STATE ENTITY; OR

6 (D) A GOVERNMENTAL OR QUASI-GOVERNMENTAL AGENCY OR
7 NONPROFIT ORGANIZATION THAT PURCHASES AGRICULTURAL WATER
8 RIGHTS THAT ARE REPRESENTED BY SHARES IN A MUTUAL DITCH COMPANY
9 PRIMARILY FOR A PUBLIC PURPOSE SUCH AS CONSERVATION OR COMPACT
10 COMPLIANCE.

11 (b) "PURCHASER" MEANS:

12 (I) A PERSON THAT HAS PURCHASED OR THAT IS IN THE PROCESS OF
13 NEGOTIATING THE PURCHASE OF AGRICULTURAL WATER RIGHTS THAT ARE
14 REPRESENTED BY SHARES IN A MUTUAL DITCH COMPANY IN THE STATE; OR

15 (II) A PERSON FOR WHOM ANOTHER ACTS AS AGENT IN
16 NEGOTIATING THE PURCHASE OF AGRICULTURAL WATER RIGHTS THAT ARE
17 REPRESENTED BY SHARES IN A MUTUAL DITCH COMPANY IN THE STATE.

18 (c) "STATE ENGINEER" MEANS THE STATE ENGINEER OR THE STATE
19 ENGINEER'S DESIGNEE.

20 **SECTION 2.** In Colorado Revised Statutes, **add** 7-42-119 as
21 follows:

22 **7-42-119. Investment water speculation - ditch company**
23 **determination of amount that creates a rebuttable presumption -**
24 **definitions.** (1) TO ASSIST THE STATE ENGINEER IN EXERCISING THE
25 STATE ENGINEER'S AUTHORITY TO INVESTIGATE AND ENFORCE AGAINST
26 INVESTMENT WATER SPECULATION PURSUANT TO SECTION 37-92-505, ON
27 OR BEFORE DECEMBER 31, 2022, THE BOARD OF DIRECTORS OF A MUTUAL

1 DITCH COMPANY SHALL DETERMINE THE MINIMUM PERCENT OF
2 AGRICULTURAL WATER RIGHTS HELD BY ALL OF THE SHAREHOLDERS IN
3 THE MUTUAL DITCH COMPANY THAT A PURCHASER HOLDS OR, BY VIRTUE
4 OF THE SALE OR TRANSFER OF SHARES IN THE MUTUAL DITCH COMPANY
5 WILL HOLD, THAT CREATES A REBUTTABLE PRESUMPTION THAT THE
6 PURCHASER IS ENGAGING IN INVESTMENT WATER SPECULATION.

7 (2) THE BOARD OF DIRECTORS SHALL NOTIFY THE STATE ENGINEER
8 OF THE MINIMUM PERCENT DETERMINED PURSUANT TO SUBSECTION (1) OF
9 THIS SECTION AND OF ANY SUBSEQUENT CHANGES TO THE MINIMUM
10 PERCENT THAT THE BOARD OF DIRECTORS MAY DETERMINE.

11 (3) A MUTUAL DITCH COMPANY MAY PERIODICALLY REVIEW AND
12 UPDATE THE MINIMUM PERCENT DETERMINED AND SHALL NOTIFY THE
13 STATE ENGINEER OF ANY CHANGES TO THE MINIMUM PERCENT
14 DETERMINED.

15 (4) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
16 REQUIRES:

17 (a) "INVESTMENT WATER SPECULATION" HAS THE MEANING SET
18 FORTH IN SECTION 37-92-505 (6)(a).

19 (b) "PURCHASER" HAS THE MEANING SET FORTH IN SECTION
20 37-92-505 (6)(b).

21 (c) "STATE ENGINEER" MEANS THE STATE ENGINEER APPOINTED
22 PURSUANT TO SECTION 37-80-101 OR THE STATE ENGINEER'S DESIGNEE.

23 **SECTION 3.** In Colorado Revised Statutes, 24-31-101, **add** (5)
24 as follows:

25 **24-31-101. Powers and duties of attorney general.** (5) THE
26 ATTORNEY GENERAL MAY BRING A CIVIL ACTION PURSUANT TO SECTION
27 37-92-505 (3) IF THE STATE ENGINEER REFERS THE MATTER TO THE

1 ATTORNEY GENERAL.

2 **SECTION 4. Act subject to petition - effective date -**
3 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
4 the expiration of the ninety-day period after final adjournment of the
5 general assembly; except that, if a referendum petition is filed pursuant
6 to section 1 (3) of article V of the state constitution against this act or an
7 item, section, or part of this act within such period, then the act, item,
8 section, or part will not take effect unless approved by the people at the
9 general election to be held in November 2022 and, in such case, will take
10 effect on the date of the official declaration of the vote thereon by the
11 governor.

12 (2) This act applies to purchases of agricultural water rights that
13 are represented by shares in a mutual ditch company and that are made or
14 negotiated on or after the applicable effective date of this act.