

Second Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 08-0572.02 Thomas Morris

HOUSE BILL 08-1141

HOUSE SPONSORSHIP

Curry,

SENATE SPONSORSHIP

Bacon,

House Committees

Local Government
Appropriations

Senate Committees

Local Government

A BILL FOR AN ACT

101 **CONCERNING SUFFICIENT WATER SUPPLIES FOR LAND USE APPROVAL.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Requires a local government to make a determination as to whether an applicant for a real estate development permit for a development in excess of 50 units or single-family equivalents has demonstrated that the proposed water supply is sufficient and sustainable to serve the peak daily, monthly, and yearly water supply requirements of the proposed development. Requires the applicant to submit a report prepared by a registered professional engineer regarding the proposed development's water demand. Specifies the criteria pursuant to which the local government must determine whether the applicant has demonstrated

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

SENATE
3rd Reading Unamended
April 29, 2008

SENATE
Amended 2nd Reading
April 28, 2008

HOUSE
3rd Reading Unamended
April 10, 2008

HOUSE
Amended 2nd Reading
April 9, 2008

a sufficient and sustainable water supply, including:

- ! A letter from the state engineer commenting on the report by the professional engineer and determining whether the proposed water supply is sufficient and sustainable; and
- ! A letter from the development's water supplier summarizing the supplier's water portfolio.

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

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

4 **29-20-103. Definitions.** As used in this article, unless the context
5 otherwise requires:

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

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

16 **PART 3**

17 **ADEQUATE WATER SUPPLY**

18 **29-20-301. Legislative declaration.** (1) THE GENERAL
19 ASSEMBLY:

20 (a) FINDS THAT, DUE TO THE BROAD REGIONAL IMPACT THAT
21 SECURING AN ADEQUATE SUPPLY OF WATER TO SERVE PROPOSED LAND
22 DEVELOPMENT CAN HAVE BOTH WITHIN AND BETWEEN RIVER BASINS, IT IS

1 IMPERATIVE THAT LOCAL GOVERNMENTS BE PROVIDED WITH RELIABLE
2 INFORMATION CONCERNING THE ADEQUACY OF PROPOSED DEVELOPMENTS'
3 WATER SUPPLY TO INFORM LOCAL GOVERNMENTS IN THE EXERCISE OF
4 THEIR DISCRETION IN THE ISSUANCE OF DEVELOPMENT PERMITS; AND

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

11 **29-20-302. Definitions.** AS USED IN THIS PART 3, UNLESS THE
12 CONTEXT OTHERWISE REQUIRES:

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

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

24 **29-20-303. Adequate water supply for development.** (1) A
25 LOCAL GOVERNMENT SHALL NOT APPROVE AN APPLICATION FOR A
26 DEVELOPMENT PERMIT UNLESS IT DETERMINES IN ITS SOLE DISCRETION,
27 AFTER CONSIDERING THE APPLICATION AND ALL OF THE INFORMATION

1 PROVIDED, THAT THE APPLICANT HAS SATISFACTORILY DEMONSTRATED
2 THAT THE PROPOSED WATER SUPPLY WILL BE ADEQUATE. A LOCAL
3 GOVERNMENT SHALL MAKE SUCH DETERMINATION ONLY ONCE DURING
4 THE DEVELOPMENT PERMIT APPROVAL PROCESS UNLESS THE WATER
5 DEMANDS OR SUPPLY OF THE SPECIFIC PROJECT FOR WHICH THE
6 DEVELOPMENT PERMIT IS SOUGHT ARE MATERIALLY CHANGED. A LOCAL
7 GOVERNMENT SHALL HAVE THE DISCRETION TO DETERMINE THE STAGE IN
8 THE DEVELOPMENT PERMIT APPROVAL PROCESS AT WHICH SUCH
9 DETERMINATION IS MADE.

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

14 **29-20-304. Water supply requirements.** (1) EXCEPT AS
15 SPECIFIED IN SUBSECTIONS (2) AND (3) OF THIS SECTION, AN APPLICANT
16 FOR A DEVELOPMENT PERMIT SHALL SUBMIT ESTIMATED WATER SUPPLY
17 REQUIREMENTS FOR THE PROPOSED DEVELOPMENT IN A REPORT PREPARED
18 BY A REGISTERED PROFESSIONAL ENGINEER OR WATER SUPPLY EXPERT
19 ACCEPTABLE TO THE LOCAL GOVERNMENT. THE REPORT SHALL INCLUDE:

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

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

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

27 (d) WATER CONSERVATION MEASURES, IF ANY, THAT MAY BE

1 IMPLEMENTED WITHIN THE DEVELOPMENT;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (g) IS ON FILE WITH THE LOCAL GOVERNMENT.

21 **29-20-305. Determination of adequate water supply.** (1) THE
22 LOCAL GOVERNMENT'S SOLE DETERMINATION AS TO WHETHER AN
23 APPLICANT HAS A WATER SUPPLY THAT IS ADEQUATE TO MEET THE WATER
24 SUPPLY REQUIREMENTS OF A PROPOSED DEVELOPMENT SHALL BE BASED
25 ON CONSIDERATION OF THE FOLLOWING INFORMATION:

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

27 (b) IF REQUESTED BY THE LOCAL GOVERNMENT, A LETTER FROM

1 THE STATE ENGINEER COMMENTING ON THE DOCUMENTATION REQUIRED
2 PURSUANT TO SECTION 29-20-304;

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

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

13 **29-20-306. Cluster developments - inapplicability.** NOTHING
14 IN THIS PART 3 SHALL BE DEEMED TO APPLY TO A RURAL LAND USE
15 PROCESS REGARDING THE APPROVAL OF A CLUSTER DEVELOPMENT
16 PURSUANT TO PART 4 OF ARTICLE 28 OF TITLE 30, C.R.S.

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

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