

**Second Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 12-0472.02 Thomas Morris x4218

HOUSE BILL 12-1161

HOUSE SPONSORSHIP

Looper,

SENATE SPONSORSHIP

King K.,

House Committees

Agriculture, Livestock, & Natural Resources
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING SCIENTIFIC REVIEW OF WATER QUALITY RULES**
102 **REGULATING NUTRIENTS.**

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://www.leg.state.co.us/billsummaries>.)

The bill establishes a nutrients scientific advisory board, appointed by leadership of the general assembly, to review proposed numeric water quality nutrient standards regulating nitrogen and phosphorus to determine how the proposed rules comply with an executive order; reflect active stakeholder participation; fully consider a cost-benefit study; are

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.*

structured to avoid unnecessary regulation and minimize the fiscal impact to state agencies and local governments; and are designed to address basin-specific conditions. The advisory board will deliver a report to the water quality control commission and the general assembly by February 1, 2013. The commission cannot adopt the proposed rule until the rule is approved by the general assembly acting by bill.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby:

4 (a) Finds that:

5 (I) The nutrients nitrogen and phosphorus are widely present in
6 the environment from both natural and anthropogenic sources;

7 (II) Colorado has historically established nutrient reduction
8 requirements where necessary to protect uses, water resources, and
9 aquatic life from excessive plant growth;

10 (III) In response to environmental protection agency requirements,
11 the Colorado water quality control division (division) has proposed
12 nutrient control regulations and the Colorado water quality control
13 commission has scheduled a rule-making hearing in March 2012 to
14 consider changes to its nutrient regulations; and

15 (IV) Governor Hickenlooper has established a policy by executive
16 order D 2011-005, dated January 11, 2011, stating that no state agency
17 shall promulgate any regulation unless it is specifically mandated by law,
18 and only then in consultation with local governments, and funding is
19 provided to comply with the mandate;

20 (b) Determines that:

21 (I) Controlling nutrients as recommended by the environmental
22 protection agency and proposed by the division will impose a widespread

1 economic burden on those entities responsible for meeting numeric
2 standards, and this economic burden may affect the viability of urban and
3 rural communities; and

4 (II) Implementing nutrient regulations may also have
5 environmental benefits, including protection of drinking water supplies,
6 that need to be better understood; and

7 (c) Declares that:

8 (I) It is in Colorado's interests to minimize nutrient reduction costs
9 by developing a program that is flexible, effectively protects drinking
10 water supplies, and allows consideration of basin-specific concerns; and

11 (II) This act is necessary to ensure that the division's proposal:

12 (A) Complies with executive order D 2011-005;

13 (B) Reflects active stakeholder participation;

14 (C) Fully considers applicable cost-benefit study conclusions;

15 (D) Is structured to avoid unnecessary regulation and minimize
16 the fiscal impact to state agencies and local governments; and

17 (E) Is designed to address basin-specific conditions.

18 **SECTION 2.** In Colorado Revised Statutes, 25-8-402, **amend** (1);
19 and **add** (6) as follows:

20 **25-8-402. Procedures to be followed in classifying state waters**
21 **and setting standards and control regulations - nutrients**
22 **subcommittee.** (1) EXCEPT AS SPECIFIED IN SUBSECTION (6) OF THIS
23 SECTION, prior to the classification of state waters and promulgating any
24 water quality standard or any control regulation authorized in this article,
25 the commission shall conduct a public hearing ~~thereon~~ as provided in
26 section 24-4-103, C.R.S. Notice of ~~any such~~ THE hearing ~~shall~~ MUST
27 conform to the requirements of section 24-4-103, C.R.S., but ~~such~~ THE

1 notice shall MUST be given at least sixty days prior to the hearing and
2 shall MUST include each proposed standard or regulation.

3 (6) REVISIONS TO THE BASIC STANDARDS AND METHODOLOGIES
4 RELATED TO TOTAL NITROGEN, TOTAL INORGANIC NITROGEN, TOTAL
5 PHOSPHOROUS, AND CHLOROPHYLL A FOR SURFACE WATER REGULATION
6 NO. 31, 5 CCR 1002-31, AND ADOPTION OF A NEW NUTRIENTS
7 MANAGEMENT CONTROL REGULATION, REGULATION NO. 85, 5 CCR
8 1002-85, CANNOT TAKE EFFECT UNLESS AND UNTIL SPECIFICALLY
9 APPROVED BY THE GENERAL ASSEMBLY ACTING BY A BILL OTHER THAN
10 THE ANNUAL BILL INTRODUCED PURSUANT TO SECTION 24-4-103, C.R.S.

11 **SECTION 3.** In Colorado Revised Statutes, 37-98-102, add (7)
12 as follows:

13 **37-98-102. Water resources review committee - creation -**
14 **repeal.** (7) (a) DURING THE 2012 INTERIM, THE COMMITTEE SHALL HOLD
15 AT LEAST ONE PUBLIC MEETING, ON OR BEFORE OCTOBER 1, 2012, TO
16 CONSIDER WHETHER THE PROPOSED REVISIONS TO THE BASIC STANDARDS
17 AND METHODOLOGIES RELATED TO TOTAL NITROGEN, TOTAL INORGANIC
18 NITROGEN, TOTAL PHOSPHOROUS, AND CHLOROPHYLL A FOR SURFACE
19 WATER REGULATION NO. 31, 5 CCR 1002-31, AND ADOPTION OF A NEW
20 NUTRIENTS MANAGEMENT CONTROL REGULATION, REGULATION NO. 85, 5
21 CCR 1002-85, AS REFERENCED IN SECTION 25-8-402 (6), C.R.S.:

- 22 (I) COMPLY WITH EXECUTIVE ORDER D 2011-005;
- 23 (II) REFLECT ACTIVE STAKEHOLDER PARTICIPATION;
- 24 (III) FULLY CONSIDER THE CONCLUSIONS OF THE COST-BENEFIT
25 STUDY CONDUCTED ON BEHALF OF THE COLORADO WATER RESOURCES
26 AND POWER DEVELOPMENT AUTHORITY;
- 27 (IV) ARE STRUCTURED TO AVOID UNNECESSARY REGULATION AND

1 MINIMIZE THE FISCAL IMPACT TO STATE AGENCIES AND LOCAL
2 GOVERNMENTS; AND

3 (V) ARE DESIGNED TO ADDRESS BASIN-SPECIFIC CONDITIONS.

4 (b) BY NOVEMBER 1, 2012, THE COMMITTEE SHALL DELIVER A
5 REPORT CONTAINING ITS FINDINGS ON THE FACTORS SPECIFIED IN
6 PARAGRAPH (a) OF THIS SUBSECTION (7) TO THE WATER QUALITY CONTROL
7 COMMISSION CREATED IN SECTION 25-8-201, C.R.S.

8 (c) THIS SUBSECTION (7) IS REPEALED, EFFECTIVE JULY 1, 2013.

9 **SECTION 4. Applicability.** The provisions of this act apply to
10 rules adopted before, on, or after the effective date of this act.

11 **SECTION 5. Safety clause.** The general assembly hereby finds,
12 determines, and declares that this act is necessary for the immediate
13 preservation of the public peace, health, and safety.