

Second Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 24-0943.02 Caroline Martin x5902

HOUSE BILL 24-1463

HOUSE SPONSORSHIP

deGruy Kennedy and Hartsook,

SENATE SPONSORSHIP

Hansen and Kirkmeyer,

House Committees

Transportation, Housing & Local Government

Senate Committees

A BILL FOR AN ACT

101 CONCERNING RESTRICTIONS ON THE AUTHORITY OF A SPECIAL
102 DISTRICT TO SET FEES ON DEVELOPMENTS.

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>.)

Current law permits the board of a special district (board) to fix and from time to time to increase or decrease fees for services, programs, or facilities furnished by the special district (district). The bill specifies that tap fees and system development fees imposed by the board of a special district must only be imposed in order to:

- Assign to developers a portion of the costs associated with

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

- new development or redevelopment;
- Refrain from imposing costs associated with new development or redevelopment on existing customers; and
- Ensure districts have sufficient funding and capacity to continue to manage and operate their water and sanitation systems.

The bill requires the board to:

- Set tap fees and system development fees at a level that is reasonably related to the anticipated costs of development, as acknowledged in the Colorado supreme court's decision in *Krupp v. Breckenridge Sanitation Dist.*, 19 P.3d 687 (Colo. 2001);
- Consider professional analyses performed for the purpose of setting tap fees and system development fees when setting such fees; and
- Set tap fees and system development fees so that current customers of the district are not required to subsidize growth related to new development or redevelopment.

The bill clarifies that:

- It must not be construed to prohibit the board from securing sufficient water and sanitation capacity for the district's existing customers or from complying with the district's existing water and sanitation service agreements;
- A district shall not, for reasons unrelated to the district's capacity to provide water or sanitation services, refuse to provide water or sanitation services to new development or redevelopment projects that have been approved by the relevant land use jurisdiction; and
- A district must assess the costs of increasing capacity and purchasing water rights and require developers to bear those costs, thereby ensuring that service is not denied arbitrarily and is provided in accordance with the district's ability to expand capacity or acquire necessary resources.

The bill also permits an applicant for water or sanitation services to file a declaratory judgment action to determine whether tap fees or system development fees imposed by the board are reasonably related to the anticipated costs of development and services as set forth in the bill, or to file a challenge to the specific fees imposed upon the application pursuant to rule 106 of the Colorado rules of civil procedure. The bill requires that a board, within 30 days of receiving a written request from any local government within the boundaries of which a district operates or partly operates, provide the rate schedule for the district's tap fees, system development fees, or other fees and charges that contemplate future water or sanitation system usage, and, upon request of the local government, provide the professional analyses and a detailed written

justification of the costs and methodologies used to calculate those fees.

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

2 **SECTION 1.** In Colorado Revised Statutes, 32-1-1001, **add** (4)
3 as follows:

4 **32-1-1001. Common powers - definitions.** (4) (a) ANY TAP FEES
5 AND SYSTEM DEVELOPMENT FEES IMPOSED BY THE BOARD MUST ONLY BE
6 IMPOSED FOR THE FOLLOWING PURPOSES:

7 (I) TO ASSIGN TO DEVELOPERS A PORTION OF THE COSTS
8 ASSOCIATED WITH NEW DEVELOPMENT OR REDEVELOPMENT, INCLUDING
9 COSTS ASSOCIATED WITH PLANNING, PERMITTING, DESIGN, CONSTRUCTION,
10 CAPITAL, WATER RESOURCE PLANNING, WATER RIGHTS ACQUISITION, AND
11 PROVISION OF SANITATION FACILITIES AND SERVICES;

12 (II) TO REFRAIN FROM IMPOSING COSTS THAT SOLELY BENEFIT NEW
13 DEVELOPMENT OR REDEVELOPMENT ON EXISTING CUSTOMERS; AND

14 (III) TO ENSURE THAT SPECIAL DISTRICTS HAVE SUFFICIENT
15 FUNDING AND CAPACITY TO CONTINUE TO MANAGE AND OPERATE THEIR
16 WATER AND SANITATION SYSTEMS.

17 (b) IN ORDER TO FULFILL THE PURPOSES LISTED IN SUBSECTION
18 (4)(a) OF THIS SECTION, THE BOARD SHALL:

19 (I) SET TAP FEES AND SYSTEM DEVELOPMENT FEES AT A LEVEL
20 THAT IS REASONABLY RELATED TO THE ANTICIPATED COSTS SET FORTH IN
21 SUBSECTION (4)(a) OF THIS SECTION, AS ACKNOWLEDGED IN THE
22 COLORADO SUPREME COURT'S DECISION IN *KRUPP V. BRECKENRIDGE*
23 *SANITATION DIST.*, 19 P.3D 687 (COLO. 2001);

24 (II) CONSIDER PROFESSIONAL ANALYSES PERFORMED FOR THE
25 PURPOSE OF SETTING TAP FEES AND SYSTEM DEVELOPMENT FEES WHEN

1 SETTING SUCH FEES AND ANTICIPATING COSTS ASSOCIATED WITH NEW
2 DEVELOPMENT OR REDEVELOPMENT; AND

3 (III) SET TAP FEES AND SYSTEM DEVELOPMENT FEES SO THAT
4 CURRENT CUSTOMERS OF THE SPECIAL DISTRICT ARE NOT REQUIRED TO
5 SUBSIDIZE GROWTH RELATED TO NEW DEVELOPMENT OR REDEVELOPMENT.

6 (c) NOTHING IN THIS SECTION PROHIBITS THE BOARD FROM
7 SECURING SUFFICIENT WATER OR SANITATION CAPACITY FOR THE SPECIAL
8 DISTRICT'S EXISTING CUSTOMERS OR FROM COMPLYING WITH THE SPECIAL
9 DISTRICT'S EXISTING WATER AND SANITATION SERVICE AGREEMENTS.

10 (d) A SPECIAL DISTRICT SHALL NOT, FOR REASONS UNRELATED TO
11 THE DISTRICT'S CAPACITY TO PROVIDE WATER OR SANITATION SERVICES,
12 REFUSE TO PROVIDE WATER OR SANITATION SERVICES TO NEW
13 DEVELOPMENT OR REDEVELOPMENT PROJECTS THAT HAVE BEEN
14 APPROVED BY THE RELEVANT LAND USE JURISDICTION. A SPECIAL
15 DISTRICT MUST ASSESS THE COSTS OF INCREASING CAPACITY AND
16 PURCHASING WATER RIGHTS AND REQUIRE DEVELOPERS TO BEAR THOSE
17 COSTS, THEREBY ENSURING THAT SERVICE IS NOT DENIED ARBITRARILY
18 AND IS PROVIDED IN ACCORDANCE WITH THE DISTRICT'S ABILITY TO
19 EXPAND CAPACITY OR ACQUIRE NECESSARY RESOURCES.

20 (e) AN APPLICANT FOR WATER OR SANITATION SERVICES HAS
21 STANDING TO FILE A DECLARATORY JUDGMENT ACTION TO DETERMINE
22 WHETHER TAP FEES OR SYSTEM DEVELOPMENT FEES IMPOSED BY THE
23 BOARD ARE REASONABLY RELATED TO THE ANTICIPATED COSTS SET FORTH
24 IN SUBSECTION (4)(a) OF THIS SECTION, AS ACKNOWLEDGED IN THE
25 COLORADO SUPREME COURT DECISION *KRUPP V. BRECKENRIDGE*
26 *SANITATION DIST.*, 19 P.3D 687 (COLO. 2001). IN ADDITION, AN APPLICANT
27 FOR WATER OR SANITATION SERVICES HAS STANDING TO FILE A

1 CHALLENGE TO THE SPECIFIC FEES THAT THE BOARD IMPOSED UPON THE
2 APPLICATION PURSUANT TO RULE 106 OF THE COLORADO RULES OF CIVIL
3 PROCEDURE. THE APPLICANT MAY PROCEED TO PAY THE FEE IMPOSED
4 WITHOUT PREJUDICE TO THE APPLICANT'S RIGHT TO CHALLENGE THE FEE
5 UNDER RULE 106 OF THE COLORADO RULES OF CIVIL PROCEDURE.

6 (f) (I) WITHIN THIRTY DAYS OF RECEIVING A WRITTEN REQUEST
7 FROM ANY LOCAL GOVERNMENT WITHIN THE BOUNDARIES OF WHICH THE
8 SPECIAL DISTRICT GOVERNED BY THE BOARD OPERATES OR PARTLY
9 OPERATES, THE BOARD SHALL PROVIDE THE RATE SCHEDULE FOR TAP FEES,
10 SYSTEM DEVELOPMENT FEES, OR OTHER FEES AND CHARGES THAT
11 CONTEMPLATE FUTURE WATER OR SANITATION SYSTEM USAGE, AND, UPON
12 REQUEST OF THE LOCAL GOVERNMENT, SHALL PROVIDE THE PROFESSIONAL
13 ANALYSES AND A DETAILED WRITTEN JUSTIFICATION OF THE COSTS AND
14 METHODOLOGIES USED TO CALCULATE THOSE FEES.

15 (II) AS USED IN THIS SUBSECTION (4)(f), "LOCAL GOVERNMENT"
16 MEANS A HOME RULE OR STATUTORY COUNTY, CITY AND COUNTY, OR
17 MUNICIPALITY.

18 **SECTION 2.** In Colorado Revised Statutes, 32-1-1006, **amend**
19 (1)(g) as follows:

20 **32-1-1006. Sanitation, water and sanitation, or water districts**
21 **- additional powers - special provisions.** (1) In addition to the powers
22 specified in section 32-1-1001, the board of any sanitation, water and
23 sanitation, or water district has the following powers for and on behalf of
24 such district:

25 (g) To fix and from time to time to increase or decrease tap fees
26 IN COMPLIANCE WITH THE REQUIREMENTS SET FORTH IN SECTION
27 32-1-1001(4). The board may pledge such revenue for the payment of any

1 indebtedness of the special district.

2 **SECTION 3. Act subject to petition - effective date.** This act
3 takes effect at 12:01 a.m. on the day following the expiration of the
4 ninety-day period after final adjournment of the general assembly; except
5 that, if a referendum petition is filed pursuant to section 1 (3) of article V
6 of the state constitution against this act or an item, section, or part of this
7 act within such period, then the act, item, section, or part will not take
8 effect unless approved by the people at the general election to be held in
9 November 2024 and, in such case, will take effect on the date of the
10 official declaration of the vote thereon by the governor.