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Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

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LLS NO. 22-0535.01 Richard Sweetman x4333

SENATE BILL

SENATE SPONSORSHIP

Hisey,

HOUSE SPONSORSHIP

Roberts and Catlin,

BILL TOPIC: "Fire Suppression Ponds Water Rights"
DEADLINES: Finalize by: JAN 26, 2022 File by: JAN 28, 2022

A BILL FOR AN ACT

101 CONCERNING FIRE SUPPRESSION PONDS.

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>.)

Section 1 of the bill allows a board of county commissioners (board) to apply to the state engineer for the designation of a pond as a fire suppression pond. Section 1 also requires the director of the division of fire prevention and control in the department of public safety to promulgate rules on or before May 1, 2023, to establish criteria for boards, in consultation with local fire districts, to use to identify and evaluate potential fire suppression ponds. The criteria must include consideration of:

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

- Whether the pond is readily accessible by a fire district, fire department, or other local firefighting entity; and
- Whether the pond is located in the wildland-urban interface or another location that faces an elevated threat of fire risk;
- Whether the pond is located in an area that is not in close proximity to any fire hydrant or other firefighting infrastructure or resources;
- The minimum and maximum size of the pond; and
- The water refill mechanism of the pond.

Section 2 requires the state engineer to review applications received from boards and designate, at the state engineer's discretion, ponds as fire suppression ponds. An application is presumed to be approved if the state engineer does not respond to the application within 60 days after the application is received by the state engineer.

Section 3 states that the designation of fire suppression ponds by the state engineer does not cause material injury to vested water rights.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** 37-82-107 as
3 follows:

4 **37-82-107. Fire suppression ponds - legislative declaration -**
5 **designation process - approval by state engineer - rules. (1) THE**
6 **GENERAL ASSEMBLY HEREBY DECLARES THAT FIRE SUPPRESSION PONDS ARE**
7 **ESSENTIAL FOR THE PROTECTION OF PUBLIC SAFETY AND WELFARE, PROPERTY,**
8 **AND THE ENVIRONMENT.**

9 (2) A BOARD OF COUNTY COMMISSIONERS, IN CONSULTATION WITH
10 ITS LOCAL FIRE DISTRICT, MAY APPLY TO THE STATE ENGINEER PURSUANT TO
11 SECTION 37-80-124 FOR THE DESIGNATION OF A POND WITHIN THE BORDERS
12 OF THE COUNTY AS A FIRE SUPPRESSION POND.

13 (3) BEFORE APPLYING FOR THE DESIGNATION OF A POND AS A FIRE
14 SUPPRESSION POND, A BOARD OF COUNTY COMMISSIONERS, IN CONSULTATION
15 WITH ITS LOCAL FIRE DISTRICT, SHALL:

16 (a) PERFORM A NEEDS ASSESSMENT THAT IDENTIFIES PONDS IN

1 LOCATIONS WHERE THE OUTBREAK OF A FIRE COULD RESULT IN A MAJOR
2 WILDFIRE DISASTER, WHICH NEEDS ASSESSMENT SHALL BE COMPLETED
3 WITHIN A REASONABLE AMOUNT OF TIME:

4 (b) APPLY THE CRITERIA ESTABLISHED PURSUANT TO RULES
5 PROMULGATED BY THE DIRECTOR OF THE DIVISION OF FIRE PREVENTION OAND
6 CONTROL PURSUANT TO SUBSECTION (5) OF THIS SECTION TO EVALUATE
7 EACH POND THAT THE BOARD CONSIDERS AS A POSSIBLE FIRE SUPPRESSION
8 POND; AND

9 (c) IF THE POND IS LOCATED IN WHOLE OR IN PART UPON PRIVATE
10 PROPERTY, ACQUIRE THE VOLUNTARY WRITTEN APPROVAL OF EACH OWNER
11 OF PRIVATE PROPERTY THAT ABUTS THE POND FOR THE DESIGNATION OF THE
12 POND AS A FIRE SUPPRESSION POND.

13 (4) NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY,
14 THE STATE ENGINEER SHALL NOT DRAIN A POND WHILE THE POND IS UNDER
15 CONSIDERATION FOR DESIGNATION AS A FIRE SUPPRESSION POND PURSUANT
16 TO SUBSECTION (2) OF THIS SECTION.

17 (5) (a) ON OR BEFORE MAY 1, 2023, THE DIRECTOR OF THE DIVISION
18 OF FIRE PREVENTION AND CONTROL IN THE DEPARTMENT OF PUBLIC SAFETY,
19 PURSUANT TO THE DIRECTOR'S AUTHORITY UNDER SECTION 24-33.5-1203.5,
20 SHALL PROMULGATE RULES ESTABLISHING CRITERIA FOR BOARDS OF COUNTY
21 COMMISSIONERS, IN CONSULTATION WITH LOCAL FIRE DISTRICTS, TO USE TO
22 IDENTIFY AND EVALUATE POTENTIAL FIRE SUPPRESSION PONDS, AS DESCRIBED
23 IN SUBSECTION (3) OF THIS SECTION. THE CRITERIA MUST INCLUDE
24 CONSIDERATION OF:

25 (I) WHETHER THE POND IS READILY ACCESSIBLE BY A FIRE DISTRICT,
26 FIRE DEPARTMENT, OR OTHER LOCAL FIREFIGHTING ENTITY; AND

27 (II) WHETHER THE POND IS LOCATED IN THE WILDLAND-URBAN

1 INTERFACE OR ANOTHER LOCATION THAT FACES AN ELEVATED THREAT OF
2 FIRE RISK;

3 (III) WHETHER THE POND IS LOCATED IN AN AREA THAT IS NOT IN
4 CLOSE PROXIMITY TO ANY FIRE HYDRANT OR OTHER FIREFIGHTING
5 INFRASTRUCTURE OR RESOURCES;

6 (IV) THE MINIMUM AND MAXIMUM SIZE OF THE POND; AND

7 (V) THE WATER REFILL MECHANISM OF THE POND.

8 (b) BEFORE PROMULGATING THE RULES DESCRIBED IN SUBSECTION
9 (5)(a) OF THIS SECTION, THE DIRECTOR OF THE DIVISION OF FIRE PREVENTION
10 AND CONTROL SHALL SOLICIT AND CONSIDER INPUT FROM LOCAL
11 GOVERNMENTS, INCLUDING COUNTIES, AND FROM LOCAL FIRE DISTRICTS AND
12 OTHER FIREFIGHTING ENTITIES.

13 **SECTION 2.** In Colorado Revised Statutes, **add** 37-80-124 as
14 follows:

15 **37-80-124. State engineer - approval of fire suppression ponds**
16 **_____.** (1) FOR THE PURPOSES OF SECTION 37-82-107, THE STATE ENGINEER
17 SHALL:

18 (a) REVIEW APPLICATIONS RECEIVED FROM BOARDS OF COUNTY
19 COMMISSIONERS CONCERNING THE DESIGNATION OF PONDS AS FIRE
20 SUPPRESSION PONDS; AND

21 (b) DESIGNATE, AT THE STATE ENGINEER'S DISCRETION, PONDS AS
22 FIRE SUPPRESSION PONDS.

23 (2) IN CONSIDERING WHETHER TO DESIGNATE A POND AS A FIRE
24 SUPPRESSION POND, THE STATE ENGINEER SHALL CONSIDER WHETHER THE
25 POND SATISFIES THE CRITERIA ESTABLISHED BY RULES PROMULGATED BY THE
26 THE DIVISION OF FIRE PREVENTION AND CONTROL PURSUANT TO SECTION 37-
27 82-124 (4).

1 (3) THE STATE ENGINEER MAY ESTABLISH A STANDARD WRITTEN OR
2 ELECTRONIC FORM FOR BOARDS OF COUNTY COMMISSIONERS TO USE TO
3 APPLY FOR THE DESIGNATION OF A POND AS A FIRE SUPPRESSION POND.

4 (4) IF A BOARD OF COUNTY COMMISSIONERS SUBMITS TO THE STATE
5 ENGINEER AN APPLICATION FOR THE DESIGNATION OF A POND AS A FIRE
6 SUPPRESSION POND PURSUANT TO SECTION 37-82-107, THE APPLICATION IS
7 PRESUMED TO BE APPROVED IF THE STATE ENGINEER DOES NOT RESPOND TO
8 THE APPLICATION WITHIN SIXTY DAYS AFTER THE APPLICATION IS RECEIVED
9 BY THE STATE ENGINEER.

10 =====

11 **SECTION 3.** In Colorado Revised Statutes, 37-92-602, **amend**
12 (8)(a), (8)(b) introductory portion, and (8)(c)(I); and **add** (8)(b)(III) as follows:

13 **37-92-602. Exemptions - presumptions - legislative declaration**
14 **- definitions.** (8) (a) The general assembly hereby declares that storm water
15 detention and infiltration facilities, ~~and~~ post-wildland fire facilities, AND FIRE
16 SUPPRESSION PONDS are essential for the protection of public safety and
17 welfare, property, and the environment.

18 (b) ~~For the purposes of~~ AS USED IN this subsection (8):

19 (III) "FIRE SUPPRESSION POND" MEANS A POND THAT HAS BEEN:

20 (A) IDENTIFIED AS A POTENTIAL FIRE SUPPRESSION POND BY A BOARD
21 OF COUNTY COMMISSIONERS IN CONSULTATION WITH A LOCAL FIRE DISTRICT
22 PURSUANT TO SECTION 37-82-107; AND

23 (B) DESIGNATED AS A FIRE SUPPRESSION POND BY THE STATE
24 ENGINEER PURSUANT TO SECTION 37-80-124.

25 (c) (I) Storm water detention and infiltration facilities in existence on
26 August 5, 2015, that are operated in compliance with ~~paragraphs (b) and (c) of~~
27 ~~this subsection (8) and~~ SUBSECTIONS (8)(b) AND (8)(e) OF THIS SECTION;

1 post-wildland fire facilities that are operated in compliance with ~~paragraphs (b)~~
2 ~~and (c) of this subsection (8)~~ SUBSECTIONS (8)(b) AND (8)(c) OF THIS SECTION;
3 AND THE DESIGNATION OF PONDS AS FIRE SUPPRESSION PONDS BY THE STATE
4 ENGINEER PURSUANT TO SECTION 37-80-124 do not cause material injury to
5 vested water rights.

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