

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

DRAFT
1.19.22

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LLS NO. 22-0535.01 Richard Sweetman x4333

SENATE BILL

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Roberts and Catlin, McCluskie, Pico

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. The director of the division of fire prevention and control (director) in the department of public safety is required to promulgate rules to establish criteria for boards, in consultation with local fire districts, to use to identify and evaluate potential fire suppression ponds.

Section 2 requires the state engineer to review applications

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

received from boards and, at the state engineer's discretion, designate 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 1** prohibits the state engineer from draining any pond:

- While the pond is under consideration for designation as a fire suppression pond;
- If the state engineer has designated the pond as a fire suppression pond; or
- On and after the effective date of the bill, and until the date upon which the director promulgates rules.

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 - repeal.**

6 (1) THE GENERAL ASSEMBLY HEREBY DECLARES THAT FIRE SUPPRESSION
7 PONDS ARE ESSENTIAL FOR THE PROTECTION OF PUBLIC SAFETY AND
8 WELFARE, PROPERTY, 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
11 TO SECTION 37-80-124 FOR THE DESIGNATION OF A POND WITHIN THE
12 BORDERS 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
15 CONSULTATION WITH ITS LOCAL FIRE DISTRICT, SHALL:

16 (a) PERFORM A NEEDS ASSESSMENT THAT IDENTIFIES PONDS IN
17 LOCATIONS WHERE THE OUTBREAK OF A FIRE COULD RESULT IN A MAJOR
18 WILDFIRE DISASTER, WHICH NEEDS ASSESSMENT SHALL BE COMPLETED

1 WITHIN A REASONABLE AMOUNT OF TIME;

2 (b) NOTIFY THE STATE ENGINEER OF EACH POND THAT:

3 (I) HAS BEEN IDENTIFIED PURSUANT TO SUBSECTION (3)(a) OF THIS
4 SECTION; AND

5 (II) IS UNDER CONSIDERATION BY THE BOARD AS A POTENTIAL FIRE
6 SUPPRESSION POND;

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

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

16 (4) IF A BOARD OF COUNTY COMMISSIONERS NOTIFIES THE STATE
17 ENGINEER PURSUANT TO SUBSECTION (3)(b) OF THIS SECTION THAT A POND
18 IS UNDER CONSIDERATION AS A FIRE SUPPRESSION POND, THE BOARD
19 SHALL NOTIFY THE STATE ENGINEER PROMPTLY IF AND WHEN THE POND IS
20 NO LONGER UNDER SUCH CONSIDERATION.

21 (5) NOTWITHSTANDING ANY PROVISION OF LAW TO THE
22 CONTRARY, THE STATE ENGINEER SHALL NOT DRAIN ANY POND:

23 (a) IF THE STATE ENGINEER HAS RECEIVED NOTICE PURSUANT TO
24 SUBSECTION (3)(b) OF THIS SECTION THAT THE POND IS UNDER
25 CONSIDERATION BY A BOARD OF COUNTY COMMISSIONERS FOR
26 DESIGNATION AS A FIRE SUPPRESSION POND;

27 (b) IF THE STATE ENGINEER HAS DESIGNATED THE POND AS A FIRE

1 SUPPRESSION POND PURSUANT TO SECTION 37-80-124; OR

2 (c) (I) ON AND AFTER THE EFFECTIVE DATE OF THIS SECTION, AND
3 UNTIL THE DATE UPON WHICH THE DIRECTOR OF THE DIVISION OF FIRE
4 PREVENTION AND CONTROL PROMULGATES RULES PURSUANT TO
5 SUBSECTION (6) OF THIS SECTION.

6 (II) THIS SUBSECTION (5)(c) IS REPEALED, EFFECTIVE JULY 1, 2023.

7 (6) (a) ON OR BEFORE MAY 1, 2023, THE DIRECTOR OF THE
8 DIVISION OF FIRE PREVENTION AND CONTROL IN THE DEPARTMENT OF
9 PUBLIC SAFETY, PURSUANT TO THE DIRECTOR'S AUTHORITY UNDER
10 SECTION 24-33.5-1203.5, SHALL PROMULGATE RULES ESTABLISHING
11 CRITERIA FOR BOARDS OF COUNTY COMMISSIONERS, IN CONSULTATION
12 WITH LOCAL FIRE DISTRICTS, TO USE TO IDENTIFY AND EVALUATE
13 POTENTIAL FIRE SUPPRESSION PONDS, AS DESCRIBED IN SUBSECTION (3)(c)
14 OF THIS SECTION. THE CRITERIA MUST INCLUDE CONSIDERATION OF:

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

17 (II) WHETHER THE POND IS LOCATED IN THE WILDLAND-URBAN
18 INTERFACE OR ANOTHER LOCATION THAT FACES AN ELEVATED THREAT OF
19 FIRE RISK;

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

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

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

25 (b) BEFORE PROMULGATING THE RULES DESCRIBED IN SUBSECTION
26 (6)(a) OF THIS SECTION, THE DIRECTOR OF THE DIVISION OF FIRE
27 PREVENTION AND CONTROL SHALL SOLICIT AND CONSIDER INPUT FROM:

1 (I) LOCAL GOVERNMENTS, INCLUDING COUNTIES;

2 (II) WATER PROVIDERS; AND

3 (III) LOCAL FIRE DISTRICTS AND OTHER FIREFIGHTING ENTITIES.

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

6 **37-80-124. State engineer - designation of fire suppression**
7 **ponds.** (1) FOR THE PURPOSES OF SECTION 37-82-107, THE STATE
8 ENGINEER SHALL:

9 (a) REVIEW APPLICATIONS RECEIVED FROM BOARDS OF COUNTY
10 COMMISSIONERS CONCERNING THE DESIGNATION OF PONDS AS FIRE
11 SUPPRESSION PONDS; AND

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

14 (2) IN CONSIDERING WHETHER TO DESIGNATE A POND AS A FIRE
15 SUPPRESSION POND, THE STATE ENGINEER SHALL CONSIDER WHETHER THE
16 POND SATISFIES THE CRITERIA ESTABLISHED BY RULES PROMULGATED BY
17 THE DIVISION OF FIRE PREVENTION AND CONTROL PURSUANT TO SECTION
18 37-82-107 (6).

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

22 (4) IF A BOARD OF COUNTY COMMISSIONERS SUBMITS TO THE
23 STATE ENGINEER AN APPLICATION FOR THE DESIGNATION OF A POND AS A
24 FIRE SUPPRESSION POND PURSUANT TO SECTION 37-82-107, THE
25 APPLICATION IS PRESUMED TO BE APPROVED IF THE STATE ENGINEER DOES
26 NOT RESPOND TO THE APPLICATION WITHIN SIXTY DAYS AFTER THE
27 APPLICATION IS RECEIVED BY THE STATE ENGINEER.

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

4 **37-92-602. Exemptions - presumptions - legislative declaration**
5 **- definitions.** (8) (a) The general assembly hereby declares that storm
6 water detention and infiltration facilities, ~~and~~ post-wildland fire facilities,
7 AND FIRE SUPPRESSION PONDS are essential for the protection of public
8 safety and welfare, property, and the environment.

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

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

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

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

16 (c) (I) Storm water detention and infiltration facilities in existence
17 on August 5, 2015, that are operated in compliance with ~~paragraphs (b)~~
18 ~~and (c) of this subsection (8) and~~ SUBSECTIONS (8)(b) AND (8)(e) OF THIS
19 SECTION; post-wildland fire facilities that are operated in compliance with
20 ~~paragraphs (b) and (c) of this subsection (8)~~ SUBSECTIONS (8)(b) AND
21 (8)(e) OF THIS SECTION; AND THE DESIGNATION OF PONDS AS FIRE
22 SUPPRESSION PONDS BY THE STATE ENGINEER PURSUANT TO SECTION
23 37-80-124 do not cause material injury to vested water rights.

24 **SECTION 4. Act subject to petition - effective date.** This act
25 takes effect at 12:01 a.m. on the day following the expiration of the
26 ninety-day period after final adjournment of the general assembly; except
27 that, if a referendum petition is filed pursuant to section 1 (3) of article V

1 of the state constitution against this act or an item, section, or part of this
2 act within such period, then the act, item, section, or part will not take
3 effect unless approved by the people at the general election to be held in
4 November 2022 and, in such case, will take effect on the date of the
5 official declaration of the vote thereon by the governor.