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Revised Fiscal Note

(replaces fiscal note dated February 14, 2022)

Drafting Number: LLS 22-0535 Date: April 5, 2022
Prime Sponsors: Sen. Hisey; Story Bill Status: House Agriculture
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Bill Topic: FIRE SUPPRESSION PONDS WATER RIGHTS

- Summary of Fiscal Impact:
State Revenue (checkbox)
State Expenditure (checked)
State Transfer (checkbox)
TABOR Refund (checkbox)
Local Government (checked)
Statutory Public Entity (checkbox)

The bill allows a board of county commissioners to apply to the State Engineer to have certain ponds designated as fire suppression ponds. The bill increases state and local expenditures beginning in FY 2022-23.

Appropriation Summary: For FY 2022-23, the bill includes an appropriation of \$19,428 to the Department of Natural Resources.

Fiscal Note Status: The revised fiscal note reflects the reengrossed bill.

Table 1
State Fiscal Impacts Under SB 22-114

Table with 4 columns: Category, Fund, Budget Year FY 2022-23, Out Year FY 2023-24. Rows include Revenue, Expenditures (General Fund), Transfers, and Other Budget Impacts (General Fund Reserve).

Summary of Legislation

The bill allows a board of county commissioners to apply to the State Engineer in the Division of Water Resources in the Department of Natural Resources (DNR) for the designation of a pond within the county as a fire suppression pond. Fire suppression ponds must be inspected annually by the county and fire protection district.

Prior to application, commissioners must consult with its fire protection district to identify ponds in areas that have a high risk of wildfire damage, and perform a needs assessment on potential suppression ponds, including identifying refill mechanisms such as groundwater pumping or surface diversions. For each pond under consideration by a county, the commissioners must notify the State Engineer. Ponds are not considered a property right, and cannot create injury to an existing vested water right.

Before May 1, 2023, the Department of Public Safety (DPS) is required to seek input from various stakeholders and adopt rules establishing the minimum criteria for counties to use to identify and evaluate potential ponds. The bill outlines the process and deadlines for the State Engineer to consider applications, issue decisions and denials, and designate, renew or rescind fire suppression ponds. A water right holder may petition a water judge to review designations made by the State Engineer.

Except for addressing dam safety concerns, the State Engineer must not order a pond to be drained or backfilled if it is under consideration as a fire suppression pond, has been so designated by the State Engineer, or until the Division of Fire Prevention and Control in the DPS adopts rules for fire suppression ponds.

The Division of Fire Prevention and Control may, subject to available appropriations, provide financial support to a board of county commissioners to assist with acquisition of augmentation water for ponds that satisfy the criteria of the bill but are not designated as fire suppression ponds.

State Expenditures

The bill increases state General Fund expenditures in the DNR by \$19,428 in FY 2022-23, and by \$13,146 in FY 2023-24. Expenditures are displayed in Table 2 and described below.

Table 2
Expenditures Under SB 22-114

| | FY 2022-23 | FY 2023-24 |
|--|-------------------|-------------------|
| Department of Natural Resources | | |
| Temporary Personal Services | - | \$13,146 |
| Legal Services (Department of Law) | \$11,828 | - |
| Computer Programming (OIT) | \$7,600 | - |
| Total Cost | \$19,428 | \$13,146 |

Division of Water Resources. For FY 2022-23, the DNR will require legal services from the Department of Law to assist with rule making, estimated at 120 hours at a blended rate of \$98.57. The DNR will also purchase 40 hours at the rate of \$190 per hour for computer programming from the Office of Information Technology (OIT). These costs also include developing an application form and workflow process, and making modifications to the database user interface.

For FY 2023-24, the DNR will employ temporary staff to assist with processing applications from counties. This elevated workload is expected to recur in FY 2024-25; however, in out years, the number of county applications is anticipated to be minimal. Temporary personal services are estimated at 420 hours at \$31.30 an hour.

Division of Fire Prevention and Control. The division will have a workload increase to promulgate the rules required by the bill. This workload increase can be accomplished within existing appropriations. The bill permits, but does not require, the division to provide financial support to facilitate a board of county commissioners' acquisition of augmentation water for ponds designated as fire suppression ponds. This expense has not been estimated.

Judicial department. The bill allows a water court to review and rule on designations made by the State Engineer if petitioned by a water rights owner. This is expected to minimally increase workload for the State Water Courts. This increase does not require additional appropriations.

Other Budget Impacts

General Fund reserve. Under current law, an amount equal to 15 percent of General Fund appropriations must be set aside in the General Fund statutory reserve beginning in FY 2022-23. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve by \$2,914 in FY 2022-23, and by \$1,972 in FY 2023-24, which will decrease the amount of General Fund available for other purposes.

Local Government

Counties will have increased workload to conduct needs assessments and manage the application process with the State Engineer. Once fire suppression ponds have been designated, there may be additional requirements for counties to annually inspect ponds and maintain the designation. Not all counties will participate in the program, and mountain communities are more likely to have available ponds for designation. The eastern plains areas traditionally have irrigation wells, ditches, and municipal water supplies available for fire use, so applications are expected to be minimal.

Effective Date

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed.

State Appropriations

For FY 2022-23, the bill includes a General Fund appropriation of \$19,428 to the Department of Natural Resources. Of this amount, \$11,828 is reappropriated to the Department of Law for legal services, and \$7,600 is reappropriated to the Office of Information Technology for computer programming.

State and Local Government Contacts

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|-------------------|------------------------|-----|
| Counties | Information Technology | Law |
| Natural Resources | Public Safety | |