

SENATE COMMITTEE OF REFERENCE AMENDMENT

Committee on Agriculture & Natural Resources.

SB22-114 be amended as follows:

- 1 Amend printed bill, page 4, strike lines 5 through 9 and substitute "use  
2 available water resources in a fire event and has authorized the emergency  
3 use of wells for firefighting purposes;  
4 (e) Using water resources to fight fires in emergencies is in the  
5 public interest and may be critical in protecting life, property, and  
6 infrastructure;".
- 7 Page 4, strike lines 16 through 18 and substitute:  
8 " (h) The state engineer may order ponds to be drained or  
9 backfilled if they are found to deplete streams out of priority, which poses  
10 the risk of leaving remote communities without sufficient water resources  
11 to fight fires;".
- 12 Page 6, line 13, strike "(9)" and substitute "(8)".
- 13 Page 6, line 14, strike "(a)".
- 14 Page 6, strike lines 17 through 27 and substitute "SHALL PROVIDE NOTICE  
15 OF SUCH FACT TO THE STATE ENGINEER. THE NOTICE MUST INDICATE THE  
16 LOCATION AND APPROXIMATE SURFACE AREA OF THE POND.".
- 17 Page 7, strike lines 1 through 11.
- 18 Renumber succeeding subsections accordingly.
- 19 Page 8, line 7, strike "37-80-124;" and substitute "37-80-124 AND THE  
20 POND IS OPERATING IN ACCORDANCE WITH THE DESIGNATION;".
- 21 Page 8, line 11, strike "(9)" and substitute "(8)".
- 22 Page 8, lines 12 and 13, strike "POND, WHICH ORDER EXISTS ON THE  
23 EFFECTIVE DATE OF THIS SECTION," and substitute "POND".
- 24 Page 8, line 17, strike "(8)(c)" and substitute "(7)(c)".
- 25 Page 8, strike lines 25 through 27 and substitute "THIS SECTION. AT A  
26 MINIMUM, THE CRITERIA MUST REQUIRE THAT A FIRE SUPPRESSION POND:  
27 (I) BE READILY ACCESSIBLE BY A FIRE PROTECTION DISTRICT, FIRE  
28 DEPARTMENT, OR OTHER FIREFIGHTING ENTITY;  
29 (II) BE LOCATED IN THE WILDLAND-URBAN INTERFACE OR  
30 ANOTHER LOCATION THAT FACES AN ELEVATED THREAT OF FIRE RISK; AND

1 (III) BE LOCATED IN AN AREA WITHOUT TIMELY OR ADEQUATE  
2 ACCESS TO FIRE HYDRANTS OR OTHER WATER SUPPLIES AND WHERE THE  
3 POND PROVIDES A NEEDED SUPPLY.".

4 Page 9, strike lines 1 through 19.

5 Page 9, line 21, strike "(9)(a)" and substitute "(8)(a)".

6 Page 10, after line 8 insert:

15 Page 10, line 13, strike "database." and substitute "database - reviews  
16 by water courts.".

17 Page 10, line 24, strike "(9)." and substitute "(8).".

18 Page 12, line 11, strike "(9)," and substitute "(8),".

19 Page 12, line 17, strike "(9)," and substitute "(8),".

20 Page 12, line 24, strike "DISCRETE".

21 Page 12, line 27, after "(10)" insert "(a)".

22 Page 13, strike lines 2 and 3 and substitute "FIRE SUPPRESSION POND  
23 UNLESS:

24 (I) THE POND EXISTED WITH THE SAME OR GREATER SURFACE AREA  
25 AS OF JUNE 1, 1972;

26 (II) DECREED STORAGE RIGHTS FOR THE POND ARE LIMITED TO USE  
27 WITHIN THE POND AND ONLY LIVESTOCK WATERING, WILDLIFE, OR OTHER  
28 NONCONSUMPTIVE USES;

29 (III) THE POND IS NOT INCLUDED AS A STRUCTURE IN A DECREED  
30 PLAN FOR AUGMENTATION, AN APPROPRIATIVE RIGHT OF EXCHANGE, OR  
31 A STATE-APPROVED SUBSTITUTE WATER SUPPLY PLAN;

32 (IV) THE SURFACE AREA OF THE POND DOES NOT EXCEED SIX  
33 ACRES; AND

34 (V) THE BOARD OF COUNTY COMMISSIONERS THAT REQUESTED  
35 THE DESIGNATION HAS PROVIDED NOTICE OF THE REQUEST TO INTERESTED

1 PARTIES INCLUDED IN THE SUBSTITUTE WATER SUPPLY PLAN NOTIFICATION  
2 LIST ESTABLISHED PURSUANT TO SECTION 37-92-308 (6) FOR THE WATER  
3 DIVISION IN WHICH THE POND IS LOCATED.

4 (b) THE NOTICE DESCRIBED IN SUBSECTION (10)(a)(V) OF THIS  
5 SECTION MUST INCLUDE:

6 (I) THE RESULTS OF THE NEEDS ASSESSMENT CONDUCTED FOR THE  
7 POND PURSUANT TO SECTION 37-82-107 (3)(a)(II);

8 (II) A COPY OF THE APPLICATION FOR DESIGNATION OF THE POND  
9 AS A FIRE SUPPRESSION POND, WHICH APPLICATION WAS SUBMITTED TO  
10 THE STATE ENGINEER BY THE BOARD OF COUNTY COMMISSIONERS; AND

11 (III) A STATEMENT THAT A HOLDER OF A DECREED WATER RIGHT  
12 HAS THIRTY-FIVE DAYS AFTER THE SUBMISSION OF THE APPLICATION TO  
13 PROVIDE EVIDENCE OF MATERIAL INJURY TO THE STATE ENGINEER, AS  
14 DESCRIBED IN SECTION 37-92-602 (8)(i).

15 (11) (a) WITHIN THIRTY-FIVE DAYS AFTER THE STATE ENGINEER  
16 DESIGNATES A POND AS A FIRE SUPPRESSION POND, A HOLDER OF A  
17 DECREED WATER RIGHT MAY FILE WITH THE WATER CLERK OF THE WATER  
18 DIVISION IN WHICH THE FIRE SUPPRESSION POND IS LOCATED A PETITION  
19 FOR REVIEW OF THE STATE ENGINEER'S DECISION.

20 (b) UPON RECEIVING A PETITION DESCRIBED IN SUBSECTION (11)(a)  
21 OF THIS SECTION, A WATER JUDGE SHALL CONDUCT A REVIEW OF THE  
22 STATE ENGINEER'S DECISION DE NOVO BASED ON THE ADMINISTRATIVE  
23 RECORD.

24 (c) NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE  
25 CONTRARY, A WATER JUDGE MAY NULLIFY THE STATE ENGINEER'S  
26 DESIGNATION OF A POND AS A FIRE SUPPRESSION POND IF, AFTER  
27 CONSIDERING THE ENTIRE RECORD, INCLUDING ANY EVIDENCE OF  
28 MATERIAL INJURY, THE JUDGE FINDS THAT:

29 (I) IN APPLYING FOR SUCH DESIGNATION, THE BOARD OF COUNTY  
30 COMMISSIONERS DID NOT DESCRIBE A POND THAT COMPLIES WITH  
31 CRITERIA ESTABLISHED BY RULES PROMULGATED BY THE DIRECTOR OF THE  
32 DIVISION OF FIRE PREVENTION AND CONTROL IN THE DEPARTMENT OF  
33 PUBLIC SAFETY PURSUANT TO SECTION 37-82-107 (8); OR

34 (II) THE STATE ENGINEER'S DECISION DID NOT ACCORD WITH THE  
35 REQUIREMENTS SET FORTH IN SUBSECTION (10) OF THIS SECTION.".

36 Page 13, strike line 5 and substitute "(8)(a) and (8)(b) introductory  
37 portion; and **add** (8)(b)(III) and (8)(i) as".

38 Page 13, line 13, strike "THAT" and substitute "WITH WATER THAT MAY BE  
39 USED IN A FIRE EMERGENCY, WHICH POND".

40 Page 13, strike lines 19 through 26 and substitute:

41 (i) IF A BOARD OF COUNTY COMMISSIONERS APPLIES TO THE STATE  
42 ENGINEER FOR THE DESIGNATION OF A FIRE SUPPRESSION POND PURSUANT

1 TO SECTION 37-82-107, AND THE REQUIREMENTS OF SECTION 37-80-124  
2 (10) AND ANY RULES PROMULGATED BY THE DIVISION OF FIRE PREVENTION  
3 AND CONTROL PURSUANT TO SECTION 37-82-107 (8) ARE SATISFIED, THE  
4 PROPOSED FIRE SUPPRESSION POND IS PRESUMED TO CAUSE NO MATERIAL  
5 INJURY TO THE VESTED WATER RIGHTS OF OTHERS. A HOLDER OF A  
6 DECREED WATER RIGHT MAY REBUT THE PRESUMPTION BY PROVIDING  
7 EVIDENCE TO THE STATE ENGINEER SUFFICIENT TO SHOW THAT MATERIAL  
8 INJURY HAS OCCURRED OR WILL OCCUR TO THE DECREED WATER RIGHT.".

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