

SENATE COMMITTEE OF REFERENCE REPORT

Chair of Committee

April 11, 2024
Date

Committee on Agriculture & Natural Resources.

After consideration on the merits, the Committee recommends the following:

SB24-127 be amended as follows, and as so amended, be referred to the Committee on Finance with favorable recommendation:

- 1 Amend printed bill, page 5, strike lines 6 through 12 and substitute:
 - 2 "SECTION 2. In Colorado Revised Statutes, **add** part 11 to
 - 3 article 8 of title 25 as follows:
 - 4 PART 11
 - 5 STREAM AND WETLANDS PROTECTION ACT
 - 6 **25-8-1101. Short title.** THE SHORT TITLE OF THIS PART 11 IS THE
 - 7 "STREAM AND WETLANDS PROTECTION ACT".
 - 8 **25-8-1102. Definitions.** AS USED IN THIS PART 11, UNLESS THE".
- 9 Page 5, line 18, strike "36-21-104." and substitute "25-8-1104."
- 10 Page 5, strike lines 24 and 25 and substitute:
 - 11 "(5) "DEPARTMENT" MEANS THE DEPARTMENT OF PUBLIC HEALTH
 - 12 AND ENVIRONMENT."
- 13 Page 6, strike line 19 and substitute "PART 11;".
- 14 Page 8, line 9, strike "36-21-107." and substitute "25-8-1107."
- 15 Page 9, line 15, strike "36-21-106 (2)(b)." and substitute "25-8-1106
- 16 (2)(b).".
- 17 Page 9, strike lines 23 and 24 and substitute "25-8-1105 (1) AND
- 18 ADMINISTERED BY THE DIVISION PURSUANT TO SECTION 25-8-1107."
- 19 Page 10, line 24, strike "**36-21-103.**" and substitute "**25-8-1103.**".

1 Page 11, line 8, strike "36-21-106 (2)," and substitute "25-8-1106 (2),".

2 Page 12, after line 17 insert:

3 "(7) NOTHING IN THIS SECTION IS INTENDED TO APPLY TO THE
4 ACTIVITIES OF FEDERALLY RECOGNIZED INDIAN TRIBES, INDIANS, THEIR
5 POLITICAL SUBDIVISIONS, OR TRIBALLY CONTROLLED AFFILIATES,
6 UNDERTAKEN OR TO BE UNDERTAKEN, ON LANDS WITHIN THE EXTERIOR
7 BOUNDARIES OF AN INDIAN RESERVATION LOCATED WITHIN THE STATE.
8 ADDITIONALLY, NOTHING IN THIS SECTION IS INTENDED TO APPLY TO THE
9 ACTIVITIES OF THIRD-PARTY, NON-INDIAN OWNERS AND OPERATORS
10 UNDERTAKEN, OR TO BE UNDERTAKEN WITH RESPECT TO RESERVATION
11 WATERS ON INDIAN TRUST LANDS WITHIN THE EXTERIOR BOUNDARIES OF
12 AN INDIAN RESERVATION LOCATED WITHIN THE STATE. ON
13 PRIVATELY-OWNED FEE LANDS WITHIN THE EXTERIOR BOUNDARIES OF AN
14 INDIAN RESERVATION LOCATED WITHIN THE STATE, THIS SECTION APPLIES
15 ONLY TO THE DISCHARGE OF DREDGE OR FILL MATERIALS OF NON-INDIAN
16 PERSONS."

17 Page 12, line 18, strike "**36-21-104.**" and substitute "**25-8-1104.**".

18 Page 12, line 21, after "DEPARTMENT" insert "OF PUBLIC HEALTH AND
19 ENVIRONMENT".

20 Page 15, line 11, strike "**36-21-105.**" and substitute "**25-8-1105.**".

21 Page 15, line 17, strike "36-21-106;" and substitute "25-8-1106;".

22 Page 15, line 19, strike "36-21-106," and substitute "25-8-1106,".

23 Page 15, strike lines 24 through 26 and substitute "ENTITIES, INCLUDING
24 THE DEPARTMENT OF AGRICULTURE CREATED IN SECTION 24-1-123; THE
25 DIVISION OF RECLAMATION, MINING, AND SAFETY CREATED IN SECTION
26 34-20-103; THE DIVISION OF PARKS AND WILDLIFE CREATED IN SECTION
27 33-9-104; THE DIVISION OF WATER RESOURCES DESCRIBED IN SECTION
28 24-33-104 (1)(e); THE WATER CONSERVATION BOARD CREATED IN SECTION
29 37-60-102; THE WATER QUALITY CONTROL COMMISSION CREATED IN
30 SECTION 25-8-201; THE WATER QUALITY CONTROL DIVISION WITHIN THE
31 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT; THE FEDERAL
32 GOVERNMENT; OTHER STATES; AND GROUPS, POLITICAL SUBDIVISIONS,
33 AND INDUSTRIES AFFECTED BY THIS PART 11 AND THE POLICIES OR RULES
34 OF THE COMMISSION IN ORDER TO STREAMLINE PERMITTING, PROMOTE

1 EFFICIENCY, AND MINIMIZE THE REGULATORY BURDEN OF THE
2 DREDGE-AND-FILL PERMIT PROGRAM;"

3 Page 16, line 7, strike "36-21-109 (4)." and substitute "25-8-1109 (4).".

4 Page 16, line 26, strike "**36-21-106.**" and substitute "**25-8-1106.**".

5 Page 18, line 22, after "(d)" insert "**Rules criteria restricted.**".

6 Page 18, after line 26 insert:

7 "(e) **Compliance certification required.** AN APPLICANT FOR AN
8 INDIVIDUAL PERMIT SHALL PROVIDE THE DIVISION A CERTIFICATION FROM
9 THE WATER QUALITY CONTROL DIVISION THAT THE DISCHARGE AND
10 OPERATION OF THE PROJECT WILL COMPLY WITH WATER QUALITY
11 STANDARDS AND ANTIDegradation REQUIREMENTS PROMULGATED BY
12 THE WATER QUALITY CONTROL COMMISSION. THE DIVISION SHALL NOT
13 GRANT AN INDIVIDUAL PERMIT UNTIL THE DIVISION OBTAINS THE
14 CERTIFICATION REQUIRED BY THIS SUBSECTION (1)(e); EXCEPT THAT THE
15 REQUIREMENTS OF THIS SUBSECTION (1)(e) ARE WAIVED IF THE WATER
16 QUALITY CONTROL DIVISION FAILS OR REFUSES TO ACT ON A REQUEST FOR
17 CERTIFICATION WITHIN A REASONABLE PERIOD OF TIME, WHICH SHALL NOT
18 EXCEED ONE YEAR AFTER RECEIPT OF THE REQUEST."

19 Page 19, strike line 20 and substitute "THIS ARTICLE 8;"

20 Page 21, line 10, strike "PRACTICES;" and substitute "PRACTICES. AS USED
21 IN THIS SUBSECTION (2)(b)(XV), "UPLAND SOIL AND WATER
22 CONSERVATION PRACTICES" MEANS ANY DISCHARGE OF DREDGED OR FILL
23 MATERIAL TO STATE WATERS INCIDENTAL TO SOIL AND WATER
24 CONSERVATION PRACTICES FOR THE PURPOSE OF IMPROVING,
25 MAINTAINING, OR RESTORING UPLANDS, INCLUDING RANGELAND
26 MANAGEMENT PRACTICES, EROSION CONTROL PRACTICES, AND
27 VEGETATION MANAGEMENT PRACTICES;"

28 Page 22, strike lines 25 through 27 and substitute "THREE-HUNDREDTHS
29 OF AN ACRE OF STREAM; OR

30 (XXIV) INTO WETLANDS OR STREAMS THAT ARE RESTORED
31 PRIMARILY FOR ECOLOGICAL LIFT SO LONG AS THE PROJECT PROPONENT
32 DETERMINES THAT A NET INCREASE IN AT LEAST ONE OR MORE WETLAND
33 FUNCTIONS AND SERVICES WITH NOT MORE THAN MINIMAL DECREASE IN
34 OTHER WETLAND FUNCTIONS AND SERVICES CAN BE ACHIEVED."

35 Page 23, strike line 1.

- 1 Page 23, strike line 18 and substitute "SHALL NOT".
- 2 Page 23, line 26, strike "**36-21-107.**" and substitute "**25-8-1107.**".
- 3 Page 24, line 12, strike "36-21-105 (2)." and substitute "25-8-1105 (2).".
- 4 Page 24, strike line 20 and substitute "25-8-1106;".
- 5 Page 24, after line 23 insert:
- 6 "(e) ADVISE, CONSULT WITH, AND COOPERATE WITH OTHER
7 ENTITIES, INCLUDING THE DEPARTMENT OF AGRICULTURE CREATED IN
8 SECTION 24-1-123; THE DIVISION OF RECLAMATION, MINING, AND SAFETY
9 CREATED IN SECTION 34-20-103; THE DIVISION OF PARKS AND WILDLIFE
10 CREATED IN SECTION 33-9-104; THE DIVISION OF WATER RESOURCES
11 DESCRIBED IN SECTION 24-33-104 (1)(e); THE WATER CONSERVATION
12 BOARD CREATED IN SECTION 37-60-102; THE WATER QUALITY CONTROL
13 COMMISSION CREATED IN SECTION 25-8-201; THE WATER QUALITY
14 CONTROL DIVISION WITHIN THE DEPARTMENT OF PUBLIC HEALTH AND
15 ENVIRONMENT; THE FEDERAL GOVERNMENT; OTHER STATES; AND GROUPS,
16 POLITICAL SUBDIVISIONS, AND INDUSTRIES AFFECTED BY THIS ARTICLE 21
17 AND THE POLICIES OR RULES OF THE COMMISSION IN ORDER TO
18 STREAMLINE PERMITTING, PROMOTE EFFICIENCY, AND MINIMIZE THE
19 REGULATORY BURDEN OF THE DREDGE-AND-FILL PERMIT PROGRAM;".
- 20 Reletter succeeding paragraph accordingly.
- 21 Page 25, line 5, strike "**36-21-108.**" and substitute "**25-8-1108.**".
- 22 Page 26, line 13, strike "**36-21-109.**" and substitute "**25-8-1109.**".
- 23 Page 26, line 19, strike "36-21-108," and substitute "25-8-1108,".
- 24 Page 27, strike lines 4 through 14 and substitute:
- 25 "**SECTION 3.** In Colorado Revised Statutes, 25-8-202, **amend**
26 (1) introductory portion, (1)(i.5), (7) introductory portion, and (7)(b)(I) as
27 follows:
- 28 **25-8-202. Duties of commission - rules.** (1) The commission
29 shall develop and maintain a comprehensive and effective program for
30 prevention, control, and abatement of water pollution ~~and~~ for water
31 quality protection throughout the entire state and to ensure provision of
32 continuously safe drinking water by public water systems, and, in
33 connection therewith, shall:
- 34 (i.5) Promulgate rules ~~and regulations~~ to govern the division's

1 certification activities pursuant to section 401 of the federal act AND
2 SECTION 36-21-106 (1)(d). THE REQUIREMENTS FOR CERTIFICATION
3 DESCRIBED IN SECTION 36-21-106 (1) MUST BE IDENTICAL TO THE
4 REQUIREMENTS FOR CERTIFICATION PURSUANT TO SECTION 401 OF THE
5 FEDERAL ACT.

6 (7) The commission and".

7 Page 27, line 20, strike "36-21-104;" and substitute "25-8-1104;".

8 Page 28, line 2, strike "36-21-107" and substitute "25-8-1107".

9 Page 28, after line 5 insert:

10 "SECTION 4. In Colorado Revised Statutes, 25-8-302, **amend**
11 (1)(f) as follows:

12 **25-8-302. Duties of division.** (1) The division shall:

13 (f) Review and certify, conditionally certify, or deny requests for
14 certifications under ~~the provisions of~~ section 401 of the federal act,
15 SECTION 36-21-106 (1), and this ~~article~~ ARTICLE 8, known as "401
16 certificates". Conditions attached to the division's certification ~~shall~~ MUST
17 only implement rules ~~which~~ THAT the commission has made applicable
18 to 401 certifications. THE DIVISION SHALL CERTIFY general or nationwide
19 permits under section 404 of the federal act ~~shall be certified~~ for use in
20 Colorado without the imposition of any additional state conditions.
21 Appeals by an affected entity of a final 401 certification decision of the
22 division shall be heard in accordance with section 24-4-105 ~~C.R.S.~~ of the
23 "State Administrative Procedure Act".

24 Page 28, strike lines 6 through 23 and substitute:

25 "SECTION 5. In Colorado Revised Statutes, 25-8-103, **amend**
26 (4) as follows:

27 **25-8-103. Definitions.** As used in this article 8, unless the context
28 otherwise requires:

29 (4) "Division" means, EXCEPT AS USED IN PART 11 OF THIS
30 ARTICLE 8, the division of administration of the department of public
31 health and environment."

32 Strike "ARTICLE 21" and substitute "PART 11" on **Page 10**, line 24; **Page**
33 **11**, lines 5, 11, 15, 22, and 27; **Page 12**, lines 6 and 15; **Page 16**, lines 2
34 and 23; **Page 19**, lines 2, 12, and 15; **Page 24**, lines 17 and 18; **Page 25**,
35 lines 2, 6 two times, 7, 9, 25, 26, and 26 and 27.

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