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Final Fiscal Note

Drafting Number: LLS 24-0606 Date: June 20, 2024
Prime Sponsors: Sen. Kirkmeyer, Rep. Bird Bill Status: Deemed Lost
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Bill Topic: REGULATE DREDGED & FILL MATERIAL STATE WATERS

Summary of Fiscal Impact: [X] State Revenue, [X] State Expenditure, [X] State Transfer, [ ] TABOR Refund, [ ] Local Government, [ ] Statutory Public Entity

The bill created a regulatory program in the Department of Natural Resources to permit dredge and fill material placement in state waters, and to replace federal permitting programs previously operated by the Army Corps of Engineers. The bill would have increased state expenditures beginning FY 2024-25 and, once operational, would have increased state revenue from permitting fees and other regulatory actions.

Appropriation Summary: For FY 2024-25, the bill requires appropriations totaling about \$3.7 million to multiple state departments. See State Appropriations section.

Fiscal Note Status: The final fiscal note reflects the introduced bill. The bill was deemed lost in the Senate Appropriations Committee on May 9, 2024; therefore, the impacts identified in this analysis do not take effect.

Table 1
State Fiscal Impacts Under SB 24-127

Table with 4 columns: Category, Sub-category, Budget Year FY 2024-25, and Out Year FY 2025-26. Rows include Revenue (Total Revenue: \$1,540,109), Expenditures (Total Expenditures: \$3,483,671), Transfers (Net Transfer: \$0), and Other Budget Impacts (Total: \$1,721,679).

## **Summary of Legislation**

The bill creates the Stream and Wetlands Protection Act to address the regulatory gap created by the recent U.S. Supreme Court decision, *Sackett v. Environmental Protection Agency*. The bill creates a state framework and permit program for regulating discharges of dredged or fill material into state waters that were previously subject to federal regulation.

**Stream and Wetlands Protection Commission.** The bill creates the nine-member Stream and Wetlands Protection Commission in the Department of Natural Resources (DNR). The commission must create a dredge-and-fill permit program for regulating the discharge of dredged or fill material into state waters. Members are appointed by the Governor and confirmed by the Senate. Each member who is not a state employee may receive per diem for each day of service, not to exceed \$1,200 annually.

The commission must adopt rules for the permit program, including adopting general permits for categories of activities that are similar in nature and cause only minimal adverse effects, rules for preconstruction notifications, and rules for individual permits to dredge and fill. Permit fees must be set such that revenue pays no more than fifty percent of the program's cost.

**Stream and Wetlands Protection Division.** The bill also creates the Stream and Wetlands Protection Division within the DNR to administer and enforce the permit program. The division acts as staff to the commission. The director of the division must be a professional engineer and have appropriate practical and administrative experience in wetlands or water resources management. The division has enforcement authority, including issuing cease-and-desist orders, taking administrative actions, and imposing civil penalties up to \$10,000 per violation. Any rule, order, or determination by the commission is subject to judicial review.

**Transfer.** Finally, this bill transfers \$600,000 from the Severance Tax Operational Fund to the Capital Construction Fund for use by the division to implement the act.

## **State Revenue**

Once a fully operational permitting program is established, state revenue from permit fees will increase in amounts sufficient to fund not more than 50 percent of administrative costs, estimated at \$1.5 million beginning in FY 2025-26. Actual fees will depend on rules and program operations adopted by the Stream and Wetlands Protection Division. Fee revenue is subject to TABOR.

Additionally, the bill may increase revenue from civil penalties, which are deposited into the General Fund and subject to TABOR. This revenue amount will depend on future enforcement actions and has not been estimated.

## **State Transfers**

For FY 2024-25, the bill transfers \$600,000 from the Severance Tax Operational Fund to the Capital Construction Fund for the implementation of the Stream and Wetlands Protection Act.

**State Expenditures**

The bill increases state expenditures by about \$3.8 million in FY 2024-25 and \$3.5 million in FY 2025-26, primarily in the DNR. FY 2024-25 expenditures will be paid from the General Fund and Capital Construction Fund. FY 2025-26 expenditures will be paid from the General Fund and from a to-be-determined cash fund where permitting fees are deposited—see Technical Note. Costs in the DNR and the Department of Public Health and Environment (CDPHE) are shown in Table 2 and detailed below.

**Table 2  
Expenditures Under SB 24-127**

|  | <b>FY 2024-25</b>  | <b>FY 2025-26</b>  |
|--|--------------------|--------------------|
| <b>Department of Natural Resources</b>             |                    |                    |
| Personal Services                                  | \$1,664,607        | \$1,664,607        |
| Operating Expenses                                 | \$402,462          | \$422,462          |
| Capital Outlay Costs                               | \$320,060          | -                  |
| Legal Services                                     | \$691,308          | \$691,308          |
| Employee Insurance and Supplemental PERA           | \$301,841          | \$301,841          |
| FTE – Personal Services                            | 17.5 FTE           | 17.5 FTE           |
| FTE – Legal Services                               | 3.0 FTE            | 3.0 FTE            |
| <b>DNR Subtotal</b>                                | <b>\$3,380,278</b> | <b>\$3,080,218</b> |
| <b>Department of Public Health and Environment</b> |                    |                    |
| Personal Services                                  | \$333,734          | \$333,734          |
| Operating Expenses                                 | \$3,840            | \$3,840            |
| Capital Outlay Costs                               | \$20,010           | -                  |
| Centrally Appropriated Costs <sup>1</sup>          | \$65,879           | \$65,879           |
| FTE – Personal Services                            | 3.0 FTE            | 3.0 FTE            |
| <b>CDPHE Subtotal</b>                              | <b>\$423,463</b>   | <b>\$403,453</b>   |
| <b>Total Costs</b>                                 | <b>\$3,803,741</b> | <b>\$3,483,671</b> |
| <b>Total FTE</b>                                   | <b>23.5 FTE</b>    | <b>23.5 FTE</b>    |

<sup>1</sup> Centrally appropriated costs are not included in the bill's appropriation.

**Department of Natural Resources.** The DNR will create a new division and regulatory program for permitting dredge and fill activity affecting state water resources.

- **Staff.** New staff for the division is estimated at 17.5 FTE, which includes 1.0 FTE Division Director and 1.0 FTE Environmental Specialist supervisor to oversee 6.0 FTE Environmental Protection Specialists and 2.0 FTE Physical Science Researchers comprising the investigation and enforcement section of the division. Staffing amounts assume that the new division will assume 70 percent of the Army Corps' previous actions, which equates to about 18,600 hours of determination, permitting, inspection, enforcement, consultation, and supervision work per year.

Additionally, the DNR requires administrative staff in the Executive Director's Office and Human Resources Office at the department, including 7.5 FTE of operations, budget, outreach, accounting, human resources, contract administration, program assistant, and data management staff for the new division.

- **Operating and capital outlay costs.** Costs associated with the new staff include standard operating expenses and capital outlay costs. The permit and enforcement functions of the new division also require additional software purchases, lab fees and sample processing, travel and per diem expenses, vehicle leases, a computer based permitting system, and permit inspection equipment.
- **Legal services.** The DNR will require legal assistance from the Department of Law to help create the new division and regulatory program, conduct comprehensive rule making, and to represent the commission and division in any legal actions, including administrative and judicial review of rules. The affected departments estimate that 5,400 hours of legal services is required in both FY 2024-25 and FY 2025-26. Legal services are billed at a blended rate of \$128.02 per hour, and the workload in the Department of Law is equivalent is 3.0 FTE.
- **Employee insurance and supplemental retirement.** Since the bill creates a new Type 1 agency in the DNR, no current budget exists to absorb otherwise centrally appropriated costs such as employee insurance and supplemental employee retirement payments. For this reason, these costs are included in the appropriation for the department.

**Colorado Department of Public Health and Environment.** The bill requires that the DNR adopt rules for the permit program as expeditiously as is prudent and feasible. Until the rules are adopted and the program is operational, the Water Quality Control Division in the CDPHE must ensure that discharge of dredged or fill material is conducted in a manner that provides for protection of state waters consistent with the protections that were provided by the Army Corps of Engineers prior to May 25, 2023. This fiscal note assumes that regulatory efforts by the CDPHE will occur in FY 2024-25 and FY 2025-26 only, and that this cost will diminish once the DNR has set up the new division and regulatory program. If staff and other resources are required in future years, the CDPHE must request those resources during the budget setting process.

- **Staff.** The department will add a total of 3.0 FTE Environmental Protection Specialist to continue providing oversight on projects that would have been regulated by the Army Corps of Engineers prior to May 25, 2023. This term-limited FTE is required in FY 2024-25 and FY 2025-26 only, presuming that the DNR is able to establish the regulatory program and take primacy on enforcement beginning FY 2025-26.

**Centrally appropriated costs.** Pursuant to a Joint Budget Committee policy, certain costs associated with this bill for the CDPHE are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are shown in Table 2.

**Judicial Department.** The bill may minimally increase workload in the Judicial Department to the extent that judicial review is requested for DNR enforcement actions. No change in appropriations is required.

## Other Budget Impacts

**TABOR refunds.** The bill is expected to increase the amount of state revenue required to be refunded to taxpayers by the amounts shown in the State Revenue section above. This estimate assumes the March 2023 LCS revenue forecast. A forecast of state revenue subject to TABOR is not available beyond FY 2025-26. Because TABOR refunds are paid from the General Fund, increased cash fund revenue will reduce the amount of General Fund available to spend or save.

**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. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve by the amounts shown in Table 1, decreasing the amount of General Fund available for other purposes.

## Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

## State Appropriations

For FY 2024-25, the Department of Natural Resources requires an appropriation of \$3,380,278 and 17.5 FTE. Of this amount, the Department of Law requires \$691,308 in reappropriated funds, and an additional 3.0 FTE. The appropriation to the DNR include:

- \$600,000 from the Capital Construction Fund; and
- \$2,780,278 from the General Fund.

For FY 2024-25, the Department of Public Health and Environment requires a General Fund appropriation of \$357,584, and 3.0 FTE.

**State and Local Government Contacts**

|                               |          |                   |
|-------------------------------|----------|-------------------|
| Law                           | Judicial | Natural Resources |
| Public Health and Environment |          |                   |

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The revenue and expenditure impacts in this fiscal note represent changes from current law under the bill for each fiscal year. For additional information about fiscal notes, please visit the [General Assembly website](#).