

Representative Fred C. Cox proposes the following substitute bill:

STORM WATER CAPTURE AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Fred C. Cox

Senate Sponsor: Benjamin M. McAdams

LONG TITLE

General Description:

This bill provides for the collection and use of precipitation without obtaining a water right for certain commercial, mixed use, or multifamily projects.

Highlighted Provisions:

This bill:

- ▶ modifies the state engineer's ability to commence an enforcement action under certain circumstances; and
- ▶ provides for the collection and use of precipitation without obtaining a water right for certain commercial, mixed use, or multifamily projects.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

73-2-25, as last amended by Laws of Utah 2008, Chapters 282 and 382

73-3-1.5, as last amended by Laws of Utah 2011, Chapter 14



26 *Be it enacted by the Legislature of the state of Utah:*

27 Section 1. Section **73-2-25** is amended to read:

28 **73-2-25. State engineer enforcement powers.**

29 (1) For purposes of this section, "initial order" means one of the following issued by
30 the state engineer:

31 (a) a notice of violation; or

32 (b) a cease and desist order.

33 (2) (a) ~~[The]~~ Except as provided in Subsection (2)(b), the state engineer may
34 commence an enforcement action under this section if the state engineer finds that a person:

35 (i) is diverting, impounding, or using water for which no water right has been
36 established;

37 (ii) is diverting, impounding, or using water in violation of an existing water right;

38 (iii) violates Section 73-5-4;

39 (iv) violates Section 73-5-9;

40 (v) violates a written distribution order from the state engineer;

41 (vi) violates an order issued under Section 73-3-29 regarding the alteration of the bed
42 or bank of a natural stream channel;

43 (vii) violates a notice or order regarding dam safety issued under Chapter 5a, Dam
44 Safety;

45 (viii) fails to submit a report required by Section 73-3-25; or

46 (ix) engages in well drilling without a license required by Section 73-3-25.

47 (b) The state engineer may not commence an enforcement action against a person
48 under Subsection (2)(a)(i) if the person:

49 (i) diverts or impounds runoff from precipitation:

50 (A) on the property where the precipitation is diverted or impounded;

51 (B) consistent with local laws and ordinances; and

52 (C) with the intent to safely slow, detain, retain, or dissipate storm water flows or
53 protect watersheds from pollution; and

54 (ii) does not put the precipitation to beneficial use.

55 ~~[(b)]~~ (c) To commence an enforcement action under this section, the state engineer
56 shall issue an initial order, which shall include:

- 57 (i) a description of the violation;
- 58 (ii) notice of any penalties to which a person may be subject under Section 73-2-26;
- 59 and
- 60 (iii) notice that the state engineer may treat each day's violation of the provisions listed
- 61 in Subsection (2)(a) as a separate violation under Subsection 73-2-26(1)(d).

62 [~~e~~] (d) The state engineer's issuance and enforcement of an initial order is exempt

63 from Title 63G, Chapter 4, Administrative Procedures Act.

64 (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

65 state engineer shall make rules necessary to enforce an initial order, which shall include:

66 (a) provisions consistent with this section and Section 73-2-26 for enforcement of the

67 initial order if a person to whom an initial order is issued fails to respond to the order or abate

68 the violation;

69 (b) the right to a hearing, upon request by a person against whom an initial order is

70 issued; and

71 (c) provisions for timely issuance of a final order after:

72 (i) the person to whom the initial order is issued fails to respond to the order or abate

73 the violation; or

74 (ii) a hearing held under Subsection (3)(b).

75 (4) A person may not intervene in an enforcement action commenced under this

76 section.

77 (5) After issuance of a final order under rules made pursuant to Subsection (3)(c), the

78 state engineer shall serve a copy of the final order on the person against whom the order is

79 issued by:

80 (a) personal service under Utah Rules of Civil Procedure 5; or

81 (b) certified mail.

82 (6) (a) The state engineer's final order may be reviewed by trial de novo by the district

83 court in:

84 (i) Salt Lake County; or

85 (ii) the county where the violation occurred.

86 (b) A person shall file a petition for judicial review of the state engineer's final order

87 issued under this section within 20 days from the day on which the final order was served on

88 that person.

89 (7) The state engineer may bring suit in a court of competent jurisdiction to enforce a
90 final order issued under this section.

91 (8) If the state engineer prevails in an action brought under Subsection (6)(b) or (7), the
92 state may recover all court costs and a reasonable attorney fee.

93 Section 2. Section **73-3-1.5** is amended to read:

94 **73-3-1.5. Capture and storage of precipitation.**

95 (1) As used in this section, ["~~parcel~~"]:

96 (a) "Agricultural operation" means the commercial production of crops, orchards,
97 aquaculture, livestock, poultry, livestock products, or poultry products, and the facilities,
98 equipment, property, canals, ditches, or irrigation structures used to facilitate the commercial
99 production.

100 (b) "Parcel" means an identifiable contiguous unit of property that is treated as separate
101 for valuation or zoning purposes and includes an improvement on that unit of property.

102 (2) Notwithstanding Section 73-3-2, a person may:

103 (a) in accordance with Subsection (3), (4), or (5), directly capture and store
104 precipitation on a parcel owned or leased by the person [~~in accordance with Subsection (3) or~~
105 ~~(4)~~]; and

106 (b) place the water captured and stored as provided in Subsection (2)(a) to beneficial
107 use on the parcel on which the water is captured and stored.

108 (3) If a person collects or stores precipitation in an underground storage container, the
109 person may collect and store precipitation:

110 (a) in only one underground storage container for a parcel if the underground storage
111 container:

112 (i) has a maximum capacity of no more than 2,500 gallons; and

113 (ii) is installed in accordance with [~~relevant provisions of~~] the State Construction Code
114 or an approved code under Title 15A, State Construction and Fire Codes Act; and

115 (b) after registering for the capture and storage of precipitation in accordance with
116 Subsection [~~(5)~~] (6).

117 (4) (a) A person may:

118 (i) directly capture and store precipitation on the surface of or under a parcel owned or

119 leased by the person, including in a catch basin, storm drain pipe, swell, or pond, if the
120 collection or storage is part of a commercial, mixed use, or multifamily project designed to:
121 (A) slow, detain, or retain stormwater; or
122 (B) protect watersheds from pollution; and
123 (ii) put up to 2,500 cubic feet of the precipitation captured or stored under Subsection
124 (4)(a) to beneficial use if the storage system used to store the precipitation:
125 (A) has a total capacity of not greater than 2,500 cubic feet; and
126 (B) is installed in accordance with the State Construction Code or an approved code
127 under Title 15A, State Construction and Fire Codes Act.
128 (b) Precipitation that is collected or stored on a landscaped surface as part of a local
129 government storm water management requirement is not considered part of the beneficial use
130 limitation under Subsection (4)(a)(ii) if the precipitation:
131 (i) absorbs into the ground;
132 (ii) evaporates; or
133 (iii) is released for discharge.
134 (c) A person who puts precipitation to beneficial use under Subsection (4)(a) shall
135 register for the capture and storage of precipitation in accordance with Subsection (6).
136 (d) Subsections (4)(a), (b), and (c) do not apply to an agricultural operation.
137 [~~4~~] (5) If a person collects or stores precipitation in a covered storage container, the
138 person may collect and store precipitation in no more than two covered storage containers, if
139 the maximum storage capacity of any one covered storage container is not greater than 100
140 gallons.
141 [~~5~~] (6) (a) The state engineer shall provide a website on which a person may register
142 as required by Subsection (3) and (4).
143 (b) To register, a person shall complete information required by the state engineer
144 including the:
145 (i) name and address of the person capturing or storing precipitation;
146 (ii) total capacity of all containers storing precipitation; and
147 (iii) street address or other suitable description of the location where precipitation is to
148 be captured and stored.