

**Construction Modifications**

2025 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Calvin R. Musselman**

House Sponsor: Thomas W. Peterson

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**LONG TITLE****General Description:**

This bill addresses construction site storm water runoff controls.

**Highlighted Provisions:**

This bill:

- defines terms;
- establishes standards for how the Division of Water Quality:
  - regulates controls for storm water runoff;
  - imposes a fine for violation; and
  - inspects construction sites impacting storm water runoff;
- establishes exceptions for the Department of Transportation;
- establishes penalties for non-compliance; and
- makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**19-5-105**, as last amended by Laws of Utah 2024, Chapter 502

**19-5-108.3**, as enacted by Laws of Utah 2024, Chapter 502

**19-5-111**, as last amended by Laws of Utah 2012, Chapter 360

**19-5-115**, as last amended by Laws of Utah 2024, Chapter 158

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

Section 1. Section **19-5-105** is amended to read:

**19-5-105 . Rulemaking authority and procedure.**

(1)(a) Except as provided in Subsections (2) and (3), no rule that the board makes for the

31 purpose of the state administering a program under the federal Clean Water Act or  
 32 the federal Safe Drinking Water Act may be more stringent than the corresponding  
 33 federal regulations.

34 (b) In making rules, the board may incorporate by reference corresponding federal  
 35 regulations.

36 (c) Any rule of the board is subject to Section 63G-3-502.

37 (2)(a) The board may make rules more stringent than corresponding federal regulations  
 38 for the purpose described in Subsection (1), only if ~~[it]~~ the board makes a written  
 39 finding after public comment and hearing and based on evidence in the record that  
 40 the corresponding federal regulations are not adequate to protect public health and  
 41 the environment of the state.

42 (b) ~~[The-]~~ Except as described in Subsection (4), a municipal system authority may not  
 43 make requirements for permits that are more stringent than corresponding federal  
 44 regulations for the purpose described in Subsection (1), unless the municipal system  
 45 authority makes a written finding after public comment and hearing and based on  
 46 evidence in the record that the corresponding federal regulations are not adequate to  
 47 protect public health and the environment of the state.

48 (c) The board ~~[and]~~ or a municipal system ~~[shall include with-]~~ authority that makes a  
 49 written finding described in Subsection (2)(a) [an opinion] or (2)(b) shall include a  
 50 finding referring to and evaluating the public health and environmental information  
 51 and studies contained in the record that [form] forms the basis for the board's or  
 52 municipal [system's conclusion] system authority's finding described in Subsection  
 53 (2)(a) or (2)(b).

54 (3) The board may make rules related to agriculture water more stringent than the  
 55 corresponding federal regulations if the commission approves the rules being more  
 56 stringent than the corresponding federal regulations.

57 (4) When acting as a municipal system authority, the Department of Transportation may  
 58 make requirements more stringent than corresponding federal regulations when acting  
 59 under a consent decree related to the administration of the Federal Water Pollution  
 60 Control Act, 33 U.S.C. Sec. 1251, et seq.

61 Section 2. Section **19-5-108.3** is amended to read:

62 **19-5-108.3 . Construction site storm water runoff control.**

63 (1) As used in this section:

64 (a)(i) "Applicant" means a person that applies for a construction storm water permit

- 65 to conduct or propose to conduct a use of land for a construction site.
- 66 (ii) "Applicant" includes a permit holder once the permit has been granted.
- 67 (b) "Application" means a construction storm water permit application.
- 68 (c) "Best management practice" means the methods, measures, or practices in
- 69 compliance with ~~[the federal Clean Water Act]~~ 40 C.F.R. Part 450.
- 70 (d) "Construction storm water permit" means a permit required for soil disturbances
- 71 where the construction activity causes a soil disturbance of:
- 72 (i) ~~[-of]~~an acre or more~~[-]~~ ; or
- 73 (ii) ~~[including]~~less than an acre if ~~[it]~~ the application is part of a common plan of
- 74 development or sale~~[-, where the disturbance is caused by construction activity-]~~ .
- 75 (e) "Electronic site inspection" means geo-located and time-stamped ~~[photos taken,~~
- 76 ~~evaluated, and submitted electronically by the applicant to the municipal system.]~~
- 77 photographs the applicant takes, evaluates, and submits electronically to the
- 78 municipal system authority.
- 79 (f) "Immediate threat" means contaminants are entering a river, a stream, or a lake.
- 80 (g) "Imminent threat" means contaminants are anticipated to be discharged into a river, a
- 81 stream, or a lake within 48 hours.
- 82 (h) "Municipal system authority" means the entity that is responsible for the oversight of
- 83 the municipal system and permit.
- 84 ~~[(f)]~~ "Municipal system" means a municipal separate storm sewer system described in [~~the federal Clean Water Act]~~ 40 C.F.R. Sec. 122.26.
- 85
- 86 ~~[(g)]~~ (i) "Oversight inspection" means a construction site inspection performed by the
- 87 municipal system authority to ~~[assess]~~ impose compliance with the permit.
- 88 ~~[(h)]~~ (j) "Permit" means a construction storm water permit.
- 89 ~~[(i)]~~ (k) "Prevention plan" means the storm water pollution prevention plan described in [~~the federal Clean Water Act]~~ 40 C.F.R. Sec. 122.26.
- 90
- 91 ~~[(j)]~~ (l) "Program" means ~~[the]~~ a program described in Subsection ~~[(2)]~~ 19-5-104(3)(a).
- 92 (m)(i) "State transportation project" means a state project on public land to construct,
- 93 reconstruct, replace, improve, maintain, or preserve transportation infrastructure.
- 94 (ii) "State transportation project" includes:
- 95 (A) a highway; or
- 96 (B) a public transit facility.
- 97 ~~[(k)]~~ "Violation" means ~~a failure to implement or maintain preferred best management~~
- 98 ~~practices-]~~

- 99 ~~[(2) This section does not supersede rules or regulations created by the board or division~~  
100 ~~under this chapter.]~~
- 101 ~~[(3) No permit, rule, or action by a municipal system for the purpose of administering the~~  
102 ~~program may be more stringent than the minimum requirements of the federal Clean~~  
103 ~~Water Act.]~~
- 104 ~~[(4)]~~ (2) A municipal system authority may not ~~[deviate from the federal Clean Water Act]~~  
105 make or enforce a rule, an ordinance, or a policy regarding the municipal system, more  
106 stringent than the corresponding federal regulations under the federal Clean Water Act,  
107 unless ~~[the deviation is]~~ expressly permitted by state statute.
- 108 ~~[(5)]~~ (3)(a) Each municipal system authority shall determine the municipal ~~[system's]~~  
109 system authority's preferred best management practices.
- 110 (b) Each municipal system authority shall publish the municipal ~~[system's]~~ system  
111 authority's preferred best management practices on ~~[a website controlled by the~~  
112 ~~municipal system]~~ the municipal system authority's website.
- 113 ~~[(6)]~~ (4) Each municipal system authority shall:
- 114 (a) maintain a list of requirements that make a complete application for a permit; and
- 115 (b) publish ~~[on a website controlled by the municipal system]~~ the list described in  
116 Subsection ~~[(6)(a)]~~ (4)(a) on the municipal system authority's website.
- 117 ~~[(7)]~~ (5) ~~[The list]~~ Except as described in Section 19-5-105, the list of requirements  
118 described in Subsection ~~[(6)(a)]~~ (4)(a) may not exceed the ~~[template in the federal Clean~~  
119 ~~Water Act.]~~ application requirements of 40 C.F.R. Part 122, Subpart B.
- 120 ~~[(8)(a) Each municipal system shall complete the review of the prevention plan within~~  
121 ~~14 business days after the day on which the applicant submits a complete prevention~~  
122 ~~plan.]~~
- 123 ~~[(b)]~~ (6)(a) To apply for a permit, an applicant shall submit to the municipal system authority a  
prevention plan for review.
- 124 (b) A municipal system authority has 14 business days after the day on which an  
125 applicant submits a prevention plan to review the prevention plan for compliance  
126 with local ordinances, state law, and federal law.
- 127 (c) ~~[Each municipal system]~~ A municipal system authority may request more  
128 information, or modification to the prevention plan, if the request:
- 129 (i) ~~[is specific]~~ for more information, lists specifically why the prevention plan is  
130 noncompliant; and
- 131 (ii) for modification:

- 132           (A) includes citations to the permit requirements, local ordinances, ~~[or]~~ state law,
- 133           or federal law that require the modification to the prevention plan; and
- 134           ~~[(iii)]~~ (B) is logged in an index of requested modification.
- 135       ~~[(e)]~~ (d) ~~[Each municipal system has 14]~~ The municipal system authority has five
- 136           business days after the day on which the applicant submits the information or
- 137           modification described in Subsection ~~[(8)(b)]~~ (6)(b) to complete the review of the
- 138           prevention plan.
- 139       (e) Once the review of the prevention plan is complete, the municipal system authority
- 140           shall notify the applicant, in writing, whether the permit is granted.
- 141       ~~[(9) A municipal system shall not impose a fine.]~~
- 142       ~~[(10) Any violation found by the municipal system may not result in an order to stop~~
- 143           ~~construction activity if:]~~
- 144           ~~[(a) an applicant selects the preferred best management practice for the site conditions;]~~
- 145           ~~[(b) an applicant implements and properly maintains the best management practices as~~
- 146           ~~described in Subsection (5), by the municipal system; and]~~
- 147           ~~[(c) the violation is a result from a deficiency in the best management practice.]~~
- 148       ~~[(11)]~~ (7)(a) The municipal system authority:
- 149           (i) shall notify the applicant, in writing, of a specific violation;
- 150           (ii) shall provide the applicant a reasonable time of at least ~~[24 hours]~~ one business day
- 151           to correct the specific violation; and
- 152           (iii) may perform an inspection to verify that the applicant corrects the specific
- 153           violation~~[is corrected]~~.
- 154       (b) If an applicant does not correct the specific violation described in Subsection [~~(11)(a)(i)]~~ (7)(a)(i) within the deadline set under Subsection ~~[(11)(a)(ii)]~~ (7)(a)(ii), the
- 155           municipal system authority:
- 156           (i) shall notify the applicant, in writing, that the applicant has not corrected the
- 157           specific violation~~[has not been corrected]~~;
- 158           (ii) may issue a written warning that ~~[construction activity may be stopped]~~ the
- 159           municipal system authority may impose a fine if the applicant does not correct the
- 160           specific violation~~[is not corrected]~~ within no less than ~~[another 24-hour period]~~ an
- 161           additional one business day; and
- 162           (iii) may perform an inspection to verify that the applicant corrected the specific
- 163           violation~~[is corrected]~~.
- 164           (c) If an applicant does not correct the specific violation ~~[described in]~~ for which the
- 165

166 applicant received notice in accordance with Subsection [(11)(a)(i)] (7)(a)(i) within  
167 the deadline set under Subsection [(11)(b), the municipal system] (7)(b), the  
168 municipal system authority:

169 (i) shall notify the applicant, in writing, that the applicant has not corrected the  
170 specific violation[has not been corrected]; and

171 (ii) may [order the applicant to stop construction activity until the municipal system  
172 performs an inspection to verify that the violation is corrected or the applicant  
173 demonstrates that the violation is corrected through electronic site inspection.]

174 impose an administrative fine for each occurrence as follows:

175 (A) \$500 per occurrence for working without an approved storm water permit;

176 (B) \$300 per occurrence for tracking mud on road;

177 (C) \$250 per occurrence for failure to clean up or report spills;

178 (D) \$100 per occurrence for failure to conduct storm water inspections;

179 (E) \$100 per occurrence for failure to maintain storm water records; and

180 (F) \$500 per site, per day, for failure to use general best management practices, as  
181 determined by the municipal system authority; and

182 (iii) shall impose a separate fine:

183 (A) for each business day the specific violation continues beginning on the day

184 after the day on which the municipal system authority issues the warning; and

185 (B) within 30 days after the day on which the applicant corrects the violation.

186 (d) The municipal system authority shall:

187 (i) impose each fine in writing and clearly document the specific violation in the

188 writing; and

189 (ii) deposit collected fines into a restricted account for education and outreach under

190 a program.

191 [(d) A municipal system may not impose the process described in this Subsection (11)

192 later than 30 days after the day on which the municipal system provides the required

193 preceding notice of violation or continuing violation.]

194 (e) [A municipal system-] Except as provided in Subsection (7)(f), a municipal system

195 authority may not issue an order to stop construction activity for a violation if:

196 (i) an applicant selects the preferred best management practice for the site conditions;

197 (ii) an applicant implements and properly uses the preferred best management

198 practices; and

199 (iii) the violation results from a deficiency in the preferred best management practice.

- 200 (f) The municipal system authority may issue an order to stop construction [earlier than  
201 described in Subsection (11)(e)(ii)] if the municipal system authority has a clearly  
202 documented reason articulating an immediate threat to water quality.
- 203 [(f)] (g) A municipal system authority may recoup the reasonable costs incurred to  
204 correct a specific violation the applicant refuses to correct after the enforcement  
205 process described in this Subsection [(11)] (7) has been exhausted if the municipal  
206 system authority, at the time of clean up, determines [a-] there is an imminent threat of  
207 significant harm to water quality or the storm water system[is imminent].
- 208 (h) A municipal system authority may not impose a fine for any reason except as  
209 provided in Subsection (7).
- 210 (8)(a) Subsection (7) does not apply to the Department of Transportation.
- 211 (b) The Department of Transportation may implement financial disincentives as part of a  
212 project contract or specifications.
- 213 (c) The Department of Transportation may use financial disincentives under this  
214 Subsection (8) to offset the cost of a state transportation project.
- 215 [(12)] (9)(a) [~~A municipal system~~] The municipal system authority shall develop a  
216 checklist for a pre-construction prevention plan review that is consistent with the [  
217 federal Clean Water Act] current EPA Construction General Permit.
- 218 (b) The applicant, or an applicant's designee, shall participate in the pre-construction site  
219 inspections.
- 220 (c) A municipal system authority may conduct a pre-construction site inspection in  
221 person or using an electronic site inspection tool.
- 222 [(13)] (10) Each municipal system authority shall develop, publish, and implement standard  
223 operating procedures, forms, or similar types of documents for construction site  
224 inspections.
- 225 [(14)] (11)(a) [~~A municipal system~~] Except as provided in Subsection (12), the municipal  
226 system authority shall conduct an oversight inspection through an electronic site  
227 inspection.
- 228 (b) Photographs submitted for electronic site inspection shall:
- 229 (i) include meta data verifying the date, time, and GPS location corresponding to the  
230 construction site; and
- 231 (ii) be of sufficient resolution and clarity to assess compliance with general best  
232 management practices.
- 233 (c) A contractor may opt out of the electronic site inspection and instead elect an on-site

234 inspection.

235 ~~[(15)]~~ (12) ~~[A municipal system]~~ The municipal system authority may conduct an on-site  
 236 inspection if the municipal system authority:

237 (a) has a documented reason for justifying an on-site oversight inspection[-] , which may  
 238 include:

239 (i) alterations of electronic photographs;

240 (ii) failure to submit the photographs at the appropriate time; or

241 (iii) the construction site is within one-half mile of a river, a stream, or a lake; or

242 (b) is inspecting a state transportation project.

243 ~~[(16) Each municipal system shall:]~~

244 ~~[(a) develop and publish a procedure for the applicant to notify the municipal system~~  
 245 ~~that the applicant has completed active construction and is prepared for the municipal~~  
 246 ~~system to conduct verification of final stabilization; and]~~

247 ~~[(b) provide a copy of the procedure described in Subsection (16)(a) to the applicant~~  
 248 ~~when the municipal system issues the permit.]~~

249 Section 3. Section **19-5-111** is amended to read:

250 **19-5-111 . Notice of violations -- Hearings.**

251 (1) Whenever the director determines there are reasonable grounds to believe that there has  
 252 been a violation of this chapter or any order of the director or the board, the director may  
 253 give written notice to the alleged violator specifying the provisions that have been  
 254 violated and the facts that constitute the violation.

255 (2) The notice shall require that the matters complained of be corrected.

256 (3) ~~[The]~~ Except as provided in Subsection (4), the notice may order the alleged violator to  
 257 appear before an administrative law judge as provided by Section 19-1-301 at a time and  
 258 place specified in the notice and answer the charges.

259 (4) A person that receives a notice may request an informal adjudicative proceeding to  
 260 contest a notice or fine imposed in accordance with Subsection 19-5-108.3(7)(c),  
 261 Section 63G-4-203, and procedural rules the department makes.

262 Section 4. Section **19-5-115** is amended to read:

263 **19-5-115 . Violations -- Penalties -- Civil actions by director -- Ordinances and**  
 264 **rules of political subdivisions -- Acts of individuals.**

265 (1) As used in this section:

266 (a) "Criminal negligence" means the same as that term is defined in Section 76-2-103.

267 (b) "Knowingly" means the same as that term is defined in Section 76-2-103.



- 268 (c)(i) "Organization" means a legal entity, other than a government, established or  
 269 organized for any purpose~~[-and]~~ .
- 270 (ii) "Organization" includes a corporation, company, association, firm, partnership,  
 271 joint stock company, foundation, institution, trust, society, union, or any other  
 272 association of persons.
- 273 (d) "Serious bodily injury" means bodily injury that involves a substantial risk of death,  
 274 unconsciousness, extreme physical pain, protracted and obvious disfigurement, or  
 275 protracted loss or impairment of the function of a bodily member, organ, or mental  
 276 faculty.
- 277 (e) "Willfully" means the same as that term is defined in Section 76-2-103.
- 278 (2)(a) A person ~~[who]~~ that violates this chapter, or any permit, rule, or order adopted  
 279 under this chapter, ~~[upon a showing that the violation occurred,]~~ is subject in a civil  
 280 proceeding to a civil penalty not to exceed \$10,000 per day of violation.
- 281 (b) When acting as a municipal system authority, the division may:
- 282 (i) impose any administrative fine described in Subsection 19-5-108.3(7)(c); and  
 283 (ii) issue an order to stop construction in accordance with Subsection 19-5-108.3(7).
- 284 (3)(a) A person is guilty of a class A misdemeanor~~[-and is]~~ , subject to imprisonment  
 285 under Section 76-3-204, and subject to a fine not exceeding \$25,000 per day~~[-who]~~, if  
 286 the person with criminal negligence:
- 287 (i) discharges pollutants in violation of Subsection 19-5-107(1) or in violation of any  
 288 condition or limitation included in a permit issued under Subsection 19-5-107(3);
- 289 (ii) violates Section 19-5-113;
- 290 (iii) violates a pretreatment standard or toxic effluent standard for publicly owned  
 291 treatment works; or
- 292 (iv) manages sewage sludge in violation of this chapter or rules adopted under this  
 293 chapter.
- 294 (b) A person is guilty of a third degree felony~~[-and is]~~ , subject to imprisonment under  
 295 Section 76-3-203, and subject to a fine not to exceed \$50,000 per day of violation  
 296 ~~who]~~ , if the person knowingly:
- 297 (i) discharges pollutants in violation of Subsection 19-5-107(1) or in violation of any  
 298 condition or limitation included in a permit issued under Subsection 19-5-107(3);
- 299 (ii) violates Section 19-5-113;
- 300 (iii) violates a pretreatment standard or toxic effluent standard for publicly owned  
 301 treatment works; or

- 302 (iv) manages sewage sludge in violation of this chapter or rules adopted under this  
303 chapter.
- 304 (4) A person is guilty of a third degree felony~~[-and]~~ , subject to imprisonment under Section  
305 76-3-203, and ~~[shall be punished by]~~ subject to a fine not exceeding \$10,000 per day of  
306 violation~~[-if that person]~~ , if the person knowingly:
- 307 (a) makes a false material statement, representation, or certification in any application,  
308 record, report, plan, or other document filed or required to be maintained under this  
309 chapter, or by any permit, rule, or order issued under this chapter; or
- 310 (b) falsifies, tampers with, or knowingly renders inaccurate a monitoring device or  
311 method required to be maintained under this chapter.
- 312 (5)(a) A person is guilty of a second degree felony~~[-and, upon conviction, is]~~ , subject to  
313 imprisonment under Section 76-3-203, and subject to a fine of not more than  
314 \$250,000 if ~~[that]~~ the person:
- 315 (i) knowingly violates this chapter, or any permit, rule, or order adopted under this  
316 chapter; and
- 317 (ii) knows at that time that the person is placing another person in imminent danger  
318 of death or serious bodily injury.
- 319 (b) If a person is an organization, the organization shall, upon conviction of violating  
320 Subsection (5)(a), be subject to a fine of not more than \$1,000,000.
- 321 (c)(i) A defendant who is an individual is considered to have acted knowingly if:
- 322 (A) the defendant's conduct placed another person in imminent danger of death or  
323 serious bodily injury; and
- 324 (B) the defendant was aware of or believed that there was an imminent danger of  
325 death or serious bodily injury to another person.
- 326 (ii) Knowledge possessed by a person other than the defendant may not be attributed  
327 to the defendant.
- 328 (iii) Circumstantial evidence may be used to prove that the defendant possessed  
329 actual knowledge, including evidence that the defendant took affirmative steps to  
330 be shielded from receiving relevant information.
- 331 (d)(i) It is an affirmative defense to prosecution under this Subsection (5) that the  
332 conduct charged was consented to by the person endangered and that the danger  
333 and conduct charged were reasonably foreseeable hazards of:
- 334 (A) an occupation, a business, or a profession; or  
335 (B) medical treatment or medical or scientific experimentation conducted by

336 professionally approved methods and the other person was aware of the risks  
337 involved before giving consent.

338 (ii) The defendant has the burden of proof to establish an affirmative defense under  
339 this Subsection (5)(d) and shall prove that defense by a preponderance of the  
340 evidence.

341 (6) For purposes of Subsections (3) through (5), a single operational upset that leads to  
342 simultaneous violations of more than one pollutant parameter shall be treated as a single  
343 violation.

344 (7)(a) The director may bring a civil action for appropriate relief, including a permanent  
345 or temporary injunction, for any violation or threatened violation for which the  
346 director is authorized to issue a compliance order under Section 19-5-111.

347 (b) Notwithstanding Title ~~[78A, Chapter 3a, Venue for Civil Actions]~~ 78B, Chapter 3a,  
348 Venue for Civil Actions, the director shall bring a civil action in the district court  
349 where the violation or threatened violation occurs if the director brings the action in a  
350 district court.

351 (8)(a) The attorney general is the legal advisor for the board and the director and shall  
352 defend the board or director in an action or proceeding brought against the board or  
353 director.

354 (b) The county attorney or district attorney, as appropriate under Section 17-18a-202 or  
355 17-18a-203, in the county in which a cause of action arises, shall bring an action,  
356 civil or criminal, requested by the director, to abate a condition that exists in violation  
357 of, or to prosecute for the violation of, or to enforce, the laws or the standards, orders,  
358 and rules of the board or the director issued under this chapter.

359 (c) The director may initiate an action under this section and be represented by the  
360 attorney general.

361 (9) If a person fails to comply with a cease and desist order that is not subject to a stay  
362 pending administrative or judicial review, the director may initiate an action for and be  
363 entitled to injunctive relief to prevent any further or continued violation of the order.

364 (10) A political subdivision of the state may enact and enforce ordinances or rules for the  
365 implementation of this chapter that are not inconsistent with this chapter.

366 (11)(a) Except as provided in Subsection (11)(b), the department shall deposit penalties [  
367 assessed] imposed and collected under the authority of this section ~~[shall be deposited]~~  
368 into the General Fund.

369 (b) The department may reimburse itself and local governments from money collected

370 from civil penalties for extraordinary expenses incurred in environmental  
371 enforcement activities.

372 (c) The department shall regulate reimbursements by making rules, in accordance with  
373 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:

374 (i) define qualifying environmental enforcement activities; and

375 (ii) define qualifying extraordinary expenses.

376 (12)(a) For purposes of this section or an ordinance or rule enacted by a political  
377 subdivision under Subsection (10), an act performed by an individual wholly within  
378 the scope of the individual's employment with an organization, is attributed to the  
379 organization.

380 (b) Notwithstanding the other provisions of this section, an action may not be brought  
381 against an individual acting wholly within the scope of the individual's employment  
382 with an organization if the action is brought under:

383 (i) this section;

384 (ii) an ordinance or rule issued by a political subdivision under Subsection (10); or

385 (iii) any local law or ordinance governing discharge.

386 Section 5. **Effective Date.**

387 This bill takes effect on May 7, 2025.