

HB 150: Emergency Water Shortages Amendments

Modifying Sections 4-2-103, 4-18-105, 4-18-106, 63G-7-302

Enacting Chapter 73-3d. Water Preferences During Emergencies

Repeals Sections 73-3-21.3 and 73-3-21.5

What is Behind this Bill?

The 2022 legislature temporarily repealed the “preference provision” in statute and tasked the state engineer with recommending a replacement bill. The state engineer developed this recommendation in coordination with the bill sponsor and a broad range of water users and water professionals. This bill is supported by the Water Task Force and has been heard by the NRAE committee and the Legislative Water Development Commission.

Background and Issues

Water use in Utah is governed by a prior appropriation system that establishes first-in-time is first-in-right. An exception to this, which established domestic water use as being preferential to all other uses in “times of scarcity,” has been in statute since 1903. It doesn’t appear that this preference-of-use provision has ever been exercised, but in 2010 the legislature updated it in response to water user concerns. The new statute requires a preferential water user to provide compensation to an interrupted water user. Since the preference provision would likely be disruptive to normal water administration, the new statute also creates a high bar by requiring a “temporary water shortage emergency” declaration from the governor with review by the legislature. The water community now recognizes that the 2010 update lacks sufficient guidance to water users and state executive officials to adequately implement the preference provision.

What this bill will solve

This bill defines and establishes procedures for a water user to exercise preference-of-use during a temporary water shortage emergency. It sets an even higher bar than the 2010 statute to incentivize market responses to emergencies and to guard against abuse. It also sets up a framework for an interrupted water user to receive fair compensation from the preferential water user. Finally, it outlines the functions and responsibilities of the state executive officials who will oversee the process.



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What the second substitute addresses

- States the governor can issue a temporary order declaring an emergency water shortage strictly within guidelines set in the bill.
- The temporary water shortage emergency order issued by the governor cannot be for longer than 30 days after the date the executive order is issued unless extended by a joint resolution of the Legislature.
- Within seven days of the temporary water shortage order, the Legislative Management Committee shall review the order and advise the governor.
- States “nothing in this chapter may be construed to extend or enlarge the powers of the governor except as specifically stated in this chapter.”
- Further defines consequential damages due to loss or injury from the exercise of a preference.
- Further defines the term “interrupted user” to address a lessee.
- Clarifies funds under this section are part of the Agriculture Resources Development Fund.

