

FILING AND PERFECTING OF WATER

RIGHTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Bradley T. Johnson

LONG TITLE

General Description:

This bill amends water appropriation provisions for an application of beneficial use for public agencies.

Highlighted Provisions:

This bill:

- ▶ amends water application provisions relating to an extension of time for public agencies; and
- ▶ amends the extension of time provision for public agencies to include the provision that after 25 years if the agency is demonstrating due diligence in completing the work, it may receive a further extension of time.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

73-3-12, as last amended by Chapter 99, Laws of Utah 2003

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

Section 1. Section **73-3-12** is amended to read:



28 **73-3-12. Time limit on construction and application to beneficial use --**

29 **Extensions -- Procedures and criteria.**

30 (1) As used in this section, "public agency" means a public water supply agency of:

31 (a) the state; or

32 (b) a political subdivision of the state.

33 (2) (a) The construction of the works and the application of water to beneficial use
34 shall be diligently prosecuted to completion within the time fixed by the state engineer.

35 (b) Extensions of time, not exceeding 50 years from the date of approval of the
36 application, except as provided in Subsection (2)(c), may be granted by the state engineer on
37 proper showing of diligence or reasonable cause for delay.

38 (c) Additional extensions of time, beyond 50 years, may be granted by the state
39 engineer on applications held by any public agency, if the public agency can demonstrate ~~[the~~
40 ~~water will be needed to meet the reasonable future requirements of the public]~~ due diligence in
41 working toward project completion.

42 (d) All requests for extension of time shall be made by signed statement and shall be
43 filed in the office of the state engineer on or before the date fixed for filing proof of
44 appropriation.

45 (e) Extensions not exceeding 14 years after the date of approval may be granted by the
46 state engineer upon a sufficient showing by signed statement, but extensions beyond 14 years
47 shall be granted only after application and publication of notice.

48 (f) (i) The state engineer shall publish a notice of the application once a week for two
49 successive weeks, in a newspaper of general circulation, in the county in which the source of
50 the water supply is located and where the water is to be used.

51 (ii) The notice shall:

52 (A) state that an application has been made; and

53 (B) specify where the interested party may obtain additional information relating to the
54 application.

55 (g) Any person who owns a water right from the source of supply referred to in
56 Subsection (2)(f) or holds an application from that source of supply may file a protest with the
57 state engineer:

58 (i) within 20 days after the notice is published, if the adjudicative proceeding is

informal; and

(ii) within 30 days after the notice is published, if the adjudicative proceeding is formal.

(h) In considering an application to extend the time in which to place water to beneficial use under an approved application, the state engineer shall deny the extension and declare the application lapsed, unless the applicant affirmatively shows that the applicant has exercised or is exercising reasonable and due diligence in working toward completion of the appropriation.

(i) (i) If reasonable and due diligence is shown by the applicant, the state engineer shall approve the extension.

(ii) The approved extension is effective so long as the applicant continues to exercise reasonable diligence in completing the appropriation.

(j) The state engineer shall consider the holding of an approved application by any public agency to meet the reasonable future requirements of the public to be reasonable and due diligence within the meaning of this section for the first ~~[50]~~ 25 years. The state engineer may approve extensions beyond ~~[50]~~ 25 years for a public agency, if the agency ~~[provides information sufficient to demonstrate the water will be needed to meet the reasonable future requirements of the public]~~ demonstrates that it is working diligently toward project completion.

(k) If the state engineer finds unjustified delay or lack of diligence in prosecuting the works to completion, the state engineer may deny the extension or may grant the request in part or upon conditions, including a reduction of the priority of all or part of the application.

(3) (a) Except as provided in Subsections (3)(b) and (c), an application upon which proof has not been submitted shall lapse and have no further force or effect after the expiration of 50 years from the date of its approval.

(b) If the works are constructed with which to make beneficial use of the water applied for, the state engineer may, upon showing of that fact, grant additional time beyond the 50-year period in which to make proof.

(c) An application held by a public agency to meet the reasonable future requirements of the public, for which proof of appropriation has not been submitted, shall lapse, unless extended as provided in Subsection (2)(j).

Legislative Review Note
as of 1-20-04 11:44 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0104

Filing and Perfecting of Water Rights*27-Jan-04**10:41 AM*

State Impact

No fiscal impact.

Individual and Business ImpactNo fiscal impact.

Office of the Legislative Fiscal Analyst