

Representative Ben C. Ferry proposes the following substitute bill:

WATER LAW - CRIMINAL PENALTIES

AMENDMENTS

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Ben C. Ferry

LONG TITLE

General Description:

This bill modifies the criminal penalties for violations of various provisions of Title 73, Water and Irrigation, and Title 76, Chapter 10, Offenses against Public Health, Safety, Welfare, and Morals.

Highlighted Provisions:

This bill:

- ▶ removes criminal penalties from certain provisions requiring report to the state engineer;
- ▶ clarifies applicable standards of criminal intent for violations;
- ▶ provides for graduated criminal penalties for violations of various criminal provisions pertaining to the regulation and distribution of water; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



- 26 **73-1-14**, Utah Code Annotated 1953
- 27 **73-1-15**, as last amended by Chapter 156, Laws of Utah 1965
- 28 **73-2-20**, Utah Code Annotated 1953
- 29 **73-3-3**, as last amended by Chapter 136, Laws of Utah 2001
- 30 **73-3-22**, as last amended by Chapter 25, Laws of Utah 1987
- 31 **73-3-26**, as last amended by Chapter 178, Laws of Utah 1986
- 32 **73-3-29**, as last amended by Chapter 61, Laws of Utah 1992
- 33 **73-5-8**, Utah Code Annotated 1953
- 34 **73-5-9**, Utah Code Annotated 1953
- 35 **76-10-201**, as enacted by Chapter 196, Laws of Utah 1973
- 36 **76-10-202**, as enacted by Chapter 196, Laws of Utah 1973
- 37 **76-10-203**, as enacted by Chapter 196, Laws of Utah 1973

38 ENACTS:

- 39 **73-2-27**, Utah Code Annotated 1953



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

42 Section 1. Section **73-1-14** is amended to read:

43 **73-1-14. Interfering with waterworks or with apportioning official -- Penalty and**
44 **liability.**

45 (1) Any person, who in any way unlawfully interferes with, injures, destroys or
46 removes any dam, head gate, weir, casing, valve, cap or other appliance for the diversion,
47 apportionment, measurement or regulation of water, or who interferes with any person
48 authorized to apportion water while in the discharge of his duties, is guilty of a [misdemeanor;
49 and] crime punishable under Section 73-2-27.

50 (2) Any person who commits an act defined as a crime under this section is also liable
51 [im] in a civil action for damages or other relief to any person injured by [such unlawful act]
52 that act.

53 (3) (a) A civil action under this section may be brought independent of a criminal
54 action.

55 (b) Proof of the elements of a civil action under this section need only be made by a
56 preponderance of the evidence.

57 Section 2. Section **73-1-15** is amended to read:

58 **73-1-15. Obstructing canals or other watercourses -- Penalties.**

59 (1) Whenever any person~~[- partnership, company or corporation]~~ has a right-of-way of
60 any established type or title for any canal or other watercourse it shall be unlawful for any
61 person~~[- persons or governmental agencies]~~ to place or maintain in place any obstruction, or
62 change of the water flow by fence or otherwise, along or across or in such canal or watercourse,
63 except as where said watercourse inflicts damage to private property, without first receiving
64 written permission for the change and providing gates sufficient for the passage of the owner or
65 owners of such canal or watercourse. That the vested rights in the established canals and
66 watercourse shall be protected against all encroachments. That indemnifying agreements may
67 be entered as may be just and proper by governmental agencies.

68 (2) Any person~~[- partnership, company or corporation]~~ violating ~~[the provisions of]~~ this
69 section is guilty of a ~~[misdemeanor and is subject to damages and costs]~~ crime punishable
70 under Section 73-2-27.

71 (3) Any person who commits an act defined as a crime under this section is also liable
72 for damages or other relief and costs in a civil action to any person injured by that act.

73 (4) (a) A civil action under this section may be brought independent of a criminal
74 action.

75 (b) Proof of the elements of a civil action under this section need only be made by a
76 preponderance of the evidence.

77 Section 3. Section **73-2-20** is amended to read:

78 **73-2-20. Employees authorized to enter and cross lands -- Injuring monuments a**
79 **misdemeanor.**

80 (1) In order to carry out the purposes of this ~~[act]~~ title any person ~~[or persons]~~ properly
81 employed hereunder ~~[are]~~ is authorized to enter and cross all lands within the state~~[- provided,~~
82 that in so doing] if no damage is done to private property.

83 (2) It ~~[shall be]~~ is a ~~[misdemeanor]~~ crime punishable under Section 73-2-27 for any
84 person ~~[or persons willfully and maliciously]~~ to knowingly or intentionally remove or injure
85 any equipment, permanent marks, or monuments made or installed ~~[for the purpose of carrying~~
86 on these investigations] by any person properly employed under this title.

87 Section 4. Section **73-2-27** is enacted to read:

88 **73-2-27. Criminal Penalties.**89 (1) This section applies to offenses committed under:90 (a) Section 73-1-14;91 (b) Section 73-1-15;92 (c) Section 73-2-20;93 (d) Subsection 73-3-3(9);94 (e) Section 73-3-26;95 (f) Section 73-3-29;96 (g) Section 73-5-9;97 (h) Section 76-10-201;98 (i) Section 76-10-202; and99 (j) Section 76-10-203.100 (2) Under circumstances not amounting to an offense with a greater penalty under101 Subsection 76-6-106(2)(b)(ii) or Section 76-6-404, violation of a provision listed in Subsection102 (1) is punishable:103 (a) as a felony of the third degree if:104 (i) the value of the water diverted or property damaged or taken is \$2,500 or greater;105 and106 (ii) the person violating the provision has previously been convicted of ~~H~~→ [a provision
107 listed in Subsection (1)] violating the same provision ←~~H~~ ;108 (b) as a class A misdemeanor if:109 (i) the value of the water diverted or property damaged or taken is \$2,500 or greater; or110 (ii) the person violating the provision has previously been convicted of ~~H~~→ [a provision
111 listed in Subsection (1)] violating the same provision ←~~H~~ ; or112 (c) as a class B misdemeanor if Subsection (2)(a) or (b) do not apply.113 Section 5. Section **73-3-3** is amended to read:114 **73-3-3. Permanent or temporary changes in point of diversion, place of use, or**
115 **purpose of use.**

116 (1) For purposes of this section:

117 (a) "Permanent changes" means changes for an indefinite length of time with an intent
118 to relinquish the original point of diversion, place of use, or purpose of use.

119 (b) "Temporary changes" means changes for fixed periods not exceeding one year.

120 (2) (a) Any person entitled to the use of water may make permanent or temporary
121 changes in the:

122 (i) point of diversion;

123 (ii) place of use; or

124 (iii) purpose of use for which the water was originally appropriated.

125 (b) A change may not be made if it impairs any vested right without just compensation.

126 (3) Both permanent and temporary changes of point of diversion, place of use, or
127 purpose of use of water, including water involved in general adjudication or other suits, shall
128 be made in the manner provided in this section.

129 (4) (a) A change may not be made unless the change application is approved by the
130 state engineer.

131 (b) Applications shall be made upon forms furnished by the state engineer and shall set
132 forth:

133 (i) the name of the applicant;

134 (ii) a description of the water right;

135 (iii) the quantity of water;

136 (iv) the stream or source;

137 (v) the point on the stream or source where the water is diverted;

138 (vi) the point to which it is proposed to change the diversion of the water;

139 (vii) the place, purpose, and extent of the present use;

140 (viii) the place, purpose, and extent of the proposed use; and

141 (ix) any other information that the state engineer requires.

142 (5) (a) The state engineer shall follow the same procedures, and the rights and duties of
143 the applicants with respect to applications for permanent changes of point of diversion, place of
144 use, or purpose of use shall be the same, as provided in this title for applications to appropriate
145 water.

146 (b) The state engineer may, in connection with applications for permanent change
147 involving only a change in point of diversion of 660 feet or less, waive the necessity for
148 publishing a notice of application.

149 (6) (a) The state engineer shall investigate all temporary change applications.

150 (b) If the state engineer finds that the temporary change will not impair any vested
151 rights of others, he shall issue an order authorizing the change.

152 (c) If the state engineer finds that the change sought might impair vested rights, before
153 authorizing the change, he shall give notice of the application to any person whose rights may
154 be affected by the change.

155 (d) Before making an investigation or giving notice, the state engineer may require the
156 applicant to deposit a sum of money sufficient to pay the expenses of the investigation and
157 publication of notice.

158 (7) (a) The state engineer may not reject applications for either permanent or temporary
159 changes for the sole reason that the change would impair the vested rights of others.

160 (b) If otherwise proper, permanent or temporary changes may be approved for part of
161 the water involved or upon the condition that conflicting rights are acquired.

162 (8) (a) Any person holding an approved application for the appropriation of water may
163 either permanently or temporarily change the point of diversion, place of use, or purpose of
164 use.

165 (b) A change of an approved application does not:

166 (i) affect the priority of the original application; or

167 (ii) extend the time period within which the construction of work is to begin or be
168 completed.

169 (9) Any person who changes or who attempts to change a point of diversion, place of
170 use, or purpose of use, either permanently or temporarily, without first applying to the state
171 engineer in the manner provided in this section:

172 (a) obtains no right; ~~and~~

173 (b) is guilty of a ~~class B misdemeanor;~~ crime punishable under Section 73-2-27 if the
174 change or attempted change is made knowingly or intentionally; and

175 (c) is guilty of a separately punishable offense for each day of the unlawful change
176 [constituting a separate offense, separately punishable].

177 (10) (a) This section does not apply to the replacement of an existing well by a new
178 well drilled within a radius of 150 feet from the point of diversion of the existing well.

179 (b) Any replacement well must be drilled in accordance with the requirements of
180 Section 73-3-28.

181 (11) (a) In accordance with the requirements of this section, the Division of Wildlife
182 Resources or Division of Parks and Recreation may file applications for permanent or
183 temporary changes for the purpose of providing water for instream flows, within a designated
184 section of a natural stream channel or altered natural stream channel, necessary within the state
185 [~~of Utah~~] for:

- 186 (i) the propagation of fish;
- 187 (ii) public recreation; or
- 188 (iii) the reasonable preservation or enhancement of the natural stream environment.

189 (b) Applications may be filed for changes on:

- 190 (i) perfected water rights presently owned by the respective division;
- 191 (ii) perfected water rights purchased by the respective division for the purpose of
192 providing water for instream flows, through funding provided for that purpose by legislative
193 appropriation or acquired by lease, agreement, gift, exchange, or contribution; or
- 194 (iii) appurtenant water rights acquired with the acquisition of real property by either
195 division.

196 (c) A physical structure or physical diversion from the stream is not required to
197 implement a change for instream flow use.

198 (d) This Subsection (11) does not allow enlargement of the water right sought to be
199 changed nor may the change impair any vested water right.

200 (e) In addition to the other requirements of this section, an application filed by either
201 division shall:

202 (i) set forth the legal description of the points on the stream between which the
203 necessary instream flows will be provided by the change; and

204 (ii) include appropriate studies, reports, or other information required by the state
205 engineer that demonstrate the necessity for the instream flows in the specified section of the
206 stream and the projected benefits to the public that will result from the change.

207 (f) The Division of Wildlife Resources and Division of Parks and Recreation may:

- 208 (i) purchase water rights for the purposes provided in Subsection (11)(a) only with
209 funds specifically appropriated by the Legislature for water rights purchases; or
- 210 (ii) accept a donated water right without legislative approval.

211 (g) This Subsection (11) does not authorize either division to:

212 (i) appropriate unappropriated water under Section 73-3-2 for the purpose of providing
213 instream flows; or

214 (ii) acquire water rights by eminent domain for instream flows or for any other
215 purpose.

216 (h) This Subsection (11) applies only to change applications filed on or after April 28,
217 1986.

218 (12) (a) Sixty days before the date on which proof of change for instream flows under
219 Subsection (11) is due, the state engineer shall notify the applicant by registered mail or by any
220 form of electronic communication through which receipt is verifiable of the date when proof of
221 change is due.

222 (b) Before the date when proof of change is due, the applicant must either:

223 (i) file a verified statement with the state engineer that the instream flow uses have
224 been perfected, which shall set forth:

225 (A) the legal description of the points on the natural stream channel or altered natural
226 stream channel between which the necessary instream flows have been provided;

227 (B) detailed measurements of the flow of water in second feet changed;

228 (C) the period of use; and

229 (D) any additional information required by the state engineer; or

230 (ii) apply for a further extension of time as provided for in Section 73-3-12.

231 (c) Upon approval of the verified statement required under Subsection (12)(b)(i), the
232 state engineer shall issue a certificate of change for instream flow use.

233 Section 6. Section **73-3-22** is amended to read:

234 **73-3-22. Underground water -- Report of well and tunnel drillers.**

235 [(+) Any person constructing a well or tunnel for the purpose of utilizing or
236 monitoring underground waters shall, within 30 days after the completion or abandonment of
237 the construction, report to the state engineer data relating to each well or tunnel. The report
238 shall be made on forms furnished by the state engineer and shall contain information required
239 by the state engineer.

240 [~~(2) Any person who fails to comply with the provisions of this section is guilty of a~~
241 ~~class B misdemeanor.~~]

242 Section 7. Section **73-3-26** is amended to read:

243 **73-3-26. Violations -- Penalty.**

244 (1) Any person~~[- firm, copartnership, association, or corporation]~~ drilling a well or
 245 wells in the state or who advertises or holds himself ~~H→~~ **H→** [~~or itself~~] ~~←H~~ out as a well driller, or who
 246 follows such business, without first having obtained a ~~H→~~ **H→** [~~well permit, license, or well driller bond~~]
 246a **license ←H**
 247 as provided by this act or who drills a well or wells after revocation or expiration of his ~~H→~~ **H→** [~~well~~
 248 **permit, license, or well driller bond**] **license ←H** theretofore issued, [~~or who drills a well or wells in~~
 249 ~~violation of the rules and regulations]~~ is guilty of a [~~class B misdemeanor~~] crime punishable
 250 under Section 73-2-27.

251 (2) Each day that a violation under Subsection (1) continues is a separate offense.

252 Section 8. Section **73-3-29** is amended to read:

253 **73-3-29. Relocation of natural streams -- Written permit required -- Emergency**
 254 **work -- Violations.**

255 (1) Except as provided in Subsection (2), a state agency, county, city, corporation, or
 256 person may not relocate any natural stream channel or alter the beds and banks of any natural
 257 stream without first obtaining the written approval of the state engineer.

258 (2) (a) The state engineer may issue an emergency permit or order to relocate a natural
 259 stream channel or alter the beds and banks of a natural stream as provided by this Subsection
 260 (2) and Section 63-46b-20.

261 (b) If an emergency situation arises which involves immediate or actual flooding and
 262 threatens injury or damage to persons or property, steps reasonably necessary to alleviate or
 263 mitigate the threat may be taken before a written permit is issued subject to the requirements of
 264 this section.

265 (c) (i) If the threat occurs during normal working hours, the state engineer or his
 266 representative must be notified immediately of the threat. After receiving notification of the
 267 threat, the state engineer or his representative may orally approve action to alleviate or mitigate
 268 the threat.

269 (ii) If the threat does not occur during normal working hours, action may be taken to
 270 alleviate or mitigate the threat and the state engineer or his representative shall be notified of
 271 the action taken on the first working day following the work.

272 (d) A written application outlining the action taken or the action proposed to be taken
 273 to alleviate or mitigate the threat shall be submitted to the state engineer within two working

274 days following notification of the threat to the state engineer or his representative.

275 (e) (i) The state engineer shall inspect in a timely manner the site where the emergency
276 action was taken.

277 (ii) After inspection, additional requirements, including mitigation measures, may be
278 imposed.

279 (f) Adjudicative proceedings following the emergency work shall be informal unless
280 otherwise designated by the state engineer.

281 (3) An application to relocate any natural stream channel or alter the beds and banks of
282 any natural stream shall be in writing and shall contain the following:

283 (a) the name and address of the applicant;

284 (b) a complete and detailed statement of the location, nature, and type of relocation or
285 alteration;

286 (c) the methods to be employed;

287 (d) the purposes of the application; and

288 (e) any additional information that the state engineer considers necessary, including,
289 but not limited to, plans and specifications of the proposed construction of works.

290 (4) (a) The state engineer shall, without undue delay, conduct investigations that may
291 be reasonably necessary to determine whether the proposed relocation or alteration will:

292 (i) impair vested water rights;

293 (ii) unreasonably or unnecessarily affect any recreational use or the natural stream
294 environment;

295 (iii) unreasonably or unnecessarily endanger aquatic wildlife; or

296 (iv) unreasonably or unnecessarily diminish the natural channel's ability to conduct
297 high flows.

298 (b) The application shall be approved unless the proposed relocation or alteration will:

299 (i) impair vested water rights;

300 (ii) unreasonably or unnecessarily adversely affect any public recreational use or the
301 natural stream environment;

302 (iii) unreasonably or unnecessarily endanger aquatic wildlife; or

303 (iv) unreasonably or unnecessarily diminish the natural channel's ability to conduct
304 high flows.

305 (c) The state engineer may approve the application, in whole or in part, with any
 306 reasonable terms to protect vested water rights, any public recreational use, the natural stream
 307 environment, or aquatic wildlife.

308 (5) No cost incurred by the applicant, including any cost incurred to comply with the
 309 terms imposed by the state engineer, is reimbursable by the Division of Water Rights.

310 ~~[(6) Any officer or employee of any state agency, county, city, or corporation, or any
 311 other person who violates the provisions of this section is guilty of a class B misdemeanor.]~~

312 (6) Except as provided in Subsection ~~H~~→ [73-2-29] ←~~H~~ (2), a person who knowingly or
 313 intentionally relocates any natural stream channel, or alters the bed or bank of any natural
 314 stream channel without first obtaining the written approval of the state engineer is guilty of a
 315 crime punishable under Section 73-3-27.

316 Section 9. Section **73-5-8** is amended to read:

317 **73-5-8. Reports by users to engineer.**

318 Every person using water from any river system or water source, when requested by the
 319 state engineer ~~[for any season]~~, shall within ~~[thirty]~~ 30 days after such request report to the state
 320 engineer in writing:

321 (1) the nature of the use of any such water[;];

322 (2) the area on which used [and];

323 (3) the kind of crops to be grown; and [he shall likewise, upon such request, furnish
 324 statements of]

325 (4) water elevations on wells or tunnels and quantity of underground water used.

326 ~~[Failure to comply with the provisions of this section shall constitute a misdemeanor.]~~

327 Section 10. Section **73-5-9** is amended to read:

328 **73-5-9. Powers of state engineer as to waste, pollution, or contamination of**
 329 **waters.**

330 (1) To prevent waste, loss, pollution, or contamination of any waters whether above or
 331 below the ground, the state engineer may require the repair or construction of head gates or
 332 other devices on ditches or canals, and the repair or installation of caps, valves, or casings on
 333 any well or tunnel or the plugging or filling thereof to accomplish the purposes of this section.

334 (2) Any requirement made by the state engineer in accordance with this section shall be
 335 executed by and at the cost and expense of the owner, lessee or person having control of such

336 diverting works affected.

337 (3) If within ten days after notice of such requirement as provided in this section, the
338 owner, lessee or person having control of the water affected, has not commenced to carry out
339 such requirement, or if he has commenced to comply therewith but shall not thereafter proceed
340 diligently to complete the work, the state engineer may forbid the use of water from such
341 source until the user thereof shall comply with such requirement.

342 (4) Failure to comply with any requirement made by the state engineer [~~in accordance~~
343 ~~with the provisions of~~] under this section [shall constitute a misdemeanor] is a crime
344 punishable under Section 73-2-27 if the failure to comply is knowing or intentional.

345 (5) Each day that such violation is permitted to continue shall constitute a separate
346 offense.

347 Section 11. Section **76-10-201** is amended to read:

348 **76-10-201. Interference with water flow.**

349 Every person who [~~in any way~~] knowingly or intentionally interferes with or alters the
350 flow of water in any stream, ditch, or lateral while under the control or management of any
351 water commissioner is guilty of a [~~class B misdemeanor~~] crime punishable under Section
352 73-2-27.

353 Section 12. Section **76-10-202** is amended to read:

354 **76-10-202. Taking water out of turn or excess amount -- Damaging facilities.**

355 (1) [~~Every person who~~] No person may, in violation of any right of any other person[;
356 ~~willfully turns or uses~~] knowingly or intentionally:

357 (a) turn or use the water, or any part thereof, of any canal, ditch, pipeline, or reservoir,
358 except at a time when the use of the water has been duly distributed to the person[~~, or willfully~~
359 ~~uses~~];

360 (b) use any greater quantity of the water than has been duly distributed to him[~~, or~~];

361 (c) in any way [~~changes~~] change the flow of water when lawfully distributed for
362 irrigation or other useful purposes, except when duly authorized to make the change[~~;~~]; or
363 [~~willfully and maliciously breaks or injures~~]

364 (d) break or injure any dam, canal, pipeline, watergate, ditch, or other means of
365 diverting or conveying water for irrigation or other useful purposes[~~;~~].

366 (2) Subsection (1) applies to violations of any right to the use of water, including:

- 367 (a) a water right; or
- 368 (b) authorization of a person's use of water by:
- 369 (i) a water company, as defined in Subsection 73-3-3.5(1)(b); or
- 370 (ii) an entity having a valid water right under Utah law.
- 371 (3) Any person who violates this section is guilty of a [~~class B misdemeanor~~] crime
- 372 punishable under Section 73-2-27.

373 Section 13. Section **76-10-203** is amended to read:

374 **76-10-203. Obstruction of watergates.**

375 Every person who rafts or floats logs, timber, or wood down any river or stream and
376 allows the logs, timber, or wood to accumulate at or obstruct the watergates owned by any
377 person or irrigation company taking or diverting the water of the river or stream for irrigation
378 or manufacturing purposes is guilty of a [~~class B misdemeanor~~] crime punishable under Section
379 73-2-27.