

**WATER RIGHT APPLICATION FOR
ELECTRICAL COOPERATIVE**

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gordon E. Snow

Senate Sponsor: Kevin T. VanTassell

LONG TITLE

Committee Note:

The Public Utilities and Technology Interim Committee recommended this bill.

General Description:

This bill amends a provision relating to the extension of a water right application.

Highlighted Provisions:

This bill:

- ▶ allows the state engineer to approve an extension of time beyond 50 years for a wholesale electrical cooperative to put its water right to beneficial use; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

73-3-12, as last amended by Laws of Utah 2007, Chapter 136

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"]~~:

31 (a) "Public agency" means:

32 ~~[(a)]~~ (i) a public water supply agency of the state or a political subdivision of the state;

33 or

34 ~~[(b)]~~ (ii) the Bureau of Reclamation.

35 (b) "Wholesale electrical cooperative" is as defined in Section 54-2-1.

36 (2) (a) ~~[The construction of]~~ An applicant shall construct the works and [the
37 application of] apply the water to beneficial use [shall be diligently prosecuted to completion]
38 within the time fixed by the state engineer.

39 (b) ~~[Extensions]~~ Except as provided by Subsection (2)(c), the state engineer may grant
40 an extension of time, not exceeding 50 years from the application's approval date [of approval
41 of the application, except as provided in Subsection (2)(c), may be granted by the state engineer
42 on proper showing of], if the applicant shows diligence or a reasonable cause for delay.

43 (c) ~~[Additional extensions]~~ The state engineer may grant an extension of time, beyond
44 50 years, [may be granted by the state engineer on applications] on an application held by [any]
45 a public agency~~;~~ or a wholesale electrical cooperative if the public agency [can demonstrate]
46 or wholesale electrical cooperative shows that the water will be needed to meet the reasonable
47 future water or electricity requirements of the public.

48 (d) ~~[All requests]~~ An applicant shall file a request for an extension of time [shall be
49 filed in] with the office of the state engineer on or before the date fixed for filing proof of
50 appropriation.

51 (e) ~~[Extensions]~~ The state engineer may grant an extension of time:

52 (i) not exceeding 14 years after the approval date [of approval may be granted by the
53 state engineer] upon a sufficient showing~~[- but extensions]; and~~

54 (ii) beyond 14 years ~~[shall be granted only]~~ after application and publication of notice.

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

58 (ii) The notice shall:

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

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

62 (g) Any person who owns a water right or holds an application from the source of
63 supply referred to in Subsection (2)(f) [~~or holds an application from that source of supply~~] may
64 file a protest with the state engineer:

65 (i) within 20 days after the notice is published, if the adjudicative proceeding is
66 informal; and

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

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

74 (i) (i) ~~§→ [Hf] The state engineer shall approve the extension of time if the applicant~~
74a ~~shows ←§~~ reasonable and due diligence ~~§→ [is shown by the applicant, the state engineer shall~~
75 ~~approve the extension of time] ←§~~ .

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

78 (j) (i) The state engineer shall consider the holding of an approved application by [~~any~~]
79 a public agency or a wholesale electrical cooperative to meet the reasonable future water or
80 electricity requirements of the public to be reasonable and due diligence within the meaning of
81 this section for the first 50 years.

82 (ii) The state engineer may approve [~~extensions~~] an extension of time beyond 50 years
83 for a public agency or a wholesale electrical cooperative, if the public agency or wholesale
84 electrical cooperative provides information [~~sufficient to demonstrate~~] that shows the water
85 will be needed to meet the reasonable future water or electricity requirements of the public.

86 (k) If the state engineer finds unjustified delay or lack of diligence in prosecuting the
87 works to completion, the state engineer may:

88 (i) deny the extension of time; or [~~may~~]

89 (ii) grant the request in part or upon conditions, including a reduction of the priority of

90 all or part of the application.

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

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

97 (c) An application held by a public agency or a wholesale electrical cooperative to meet
98 the reasonable future water or electricity requirements of the public, for which proof of
99 appropriation has not been submitted, shall lapse, unless extended as provided in Subsection
100 (2)(j).

Legislative Review Note
as of 11-14-07 12:49 PM

Office of Legislative Research and General Counsel

H.B. 42 - Water Right Application for Electrical Cooperative

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
