

Representative Patrick Painter proposes the following substitute bill:

JUDICIAL REVIEW OF STATE ENGINEER'S

DECISION

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Patrick Painter

Senate Sponsor: Kevin T. VanTassell

LONG TITLE

General Description:

This bill amends provisions relating to the judicial review of a state engineer decision.

Highlighted Provisions:

This bill:

▶ grants jurisdiction to the Supreme Court to review a state engineer's order resulting from a formal adjudicative proceeding;

▶ requires a person seeking judicial review to:

• name the state engineer, and in some cases the person who is the subject of the proceeding, as a respondent; and

• give notice to a person who protested during the adjudicative proceeding; and

▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



26 73-3-14, as last amended by Laws of Utah 1987, Chapter 161

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

29 Section 1. Section 73-3-14 is amended to read:

30 **73-3-14. Judicial review of state engineer order.**

31 (1) (a) ~~[Any]~~ A person aggrieved by an order of the state engineer may obtain judicial
32 review ~~[by following the procedures and requirements of]~~ in accordance with Title 63, Chapter
33 46b, Administrative Procedures Act, and this section.

34 (b) Venue for judicial review of an informal adjudicative ~~[proceedings shall be]~~
35 proceeding is in the county in which the ~~[stream or]~~ water source~~[- or some part of it,]~~ or a
36 portion of the water source is located.

37 ~~§→ [(c) The Supreme Court has jurisdiction to review a state engineer's order resulting from~~
38 ~~a formal adjudicative proceeding.] ←§~~

39 (2) The state engineer shall be joined as a ~~[defendant]~~ respondent in ~~[all suits]~~ a
40 petition to review ~~[his decisions]~~ the state engineer's decision, but no judgment for costs or
41 expenses of the litigation may be rendered against ~~[him]~~ the state engineer.

42 (3) A person who files a petition for judicial review as authorized in this section shall:

43 (a) name the state engineer as a respondent; and

44 (b) provide written notice in accordance with Subsection (5) to each person who filed a
45 protest in accordance with Section 73-3-7 of:

46 (i) the filing of the petition for judicial review; and

47 (ii) the opportunity to intervene in accordance with Utah Rules of Civil Procedure,
48 Rule 24.

49 (4) In addition to the requirements of Subsection (3), a protestant in the adjudicative
50 proceeding who files a petition for judicial review shall also name as a respondent the person:

51 (a) who requested the adjudicative proceeding; or

52 (b) against whom the state engineer brought the adjudicative proceeding.

53 (5) The written notice required by this section shall:

54 (a) be mailed:

55 (i) within the time provided for by Utah Rules of Civil Procedure, Rule 4(b); and

56 (ii) to the address on record with the state engineer's office at the time the order is

57 issued; and
58 (b) include:
59 (i) a copy of the petition; and
60 (ii) the address of the court in which the petition is pending.
61 (6) If a person who files a petition for judicial review fails to provide notice as required
62 by this section, the court shall dismiss the petition without prejudice upon:
63 (a) the motion of a party;
64 (b) the special appearance of a person who:
65 (i) participated in the adjudicative proceeding; and
66 (ii) is not a party; or
67 (c) the court's own motion.
68 (7) A person who files a petition for judicial review is not required to:
69 (a) notwithstanding Subsection 63-46b-14(3)(b), name a respondent that is not required
70 by this section; and
71 (b) notwithstanding Subsection 63-46b-15(2)(a)(iv), identify all parties to the
72 adjudicative proceeding.

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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.
