

## SB0108S02 compared with SB0108S01

~~{deleted text}~~ shows text that was in SB0108S01 but was deleted in SB0108S02.

inserted text shows text that was not in SB0108S01 but was inserted into SB0108S02.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will not be completely accurate. Therefore, you need to read the actual bill. This automatically generated document could experience abnormalities caused by: limitations of the compare program; bad input data; the timing of the compare; and other potential causes.

Senator Dennis E. Stowell proposes the following substitute bill:

### JOINT USE OF A CANAL OR DITCH

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Dennis E. Stowell**

House Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill requires ~~{the formation of}~~ a person to negotiate in good faith to form a contract before the use or enlargement ~~{and use}~~ of another person's canal or ditch to convey water.

##### Highlighted Provisions:

This bill:

- ▶ requires ~~{the formation of}~~ a person to negotiate in good faith to form a contract before the use or enlargement ~~{and use}~~ of another person's canal or ditch to convey water;
- ▶ ~~{requires that}~~ prohibits a person seeking to use or enlarge ~~{or use}~~ another person's canal or ditch ~~{and the person who owns the canal or ditch to negotiate in good faith}~~ from relying on the right of way provisions of Section 73-1-6 unless the

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person has, after negotiating in good faith, failed to enter into a contract;

- ▶ describes certain obligations of a person using another person's canal or ditch unless otherwise agreed to by contract; and
- ▶ makes technical changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

73-1-7, Utah Code Annotated 1953

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

Section 1. Section 73-1-7 is amended to read:

#### **73-1-7. Enlargement for joint use of ditch.**

(1) When [~~any~~] a person desires to convey water for irrigation or any other beneficial purpose and there is a canal or ditch already constructed that can be used or enlarged to convey the required quantity of water, [~~such~~] the person [~~shall have the right to~~] may use or enlarge [~~such~~] the canal or ditch already constructed ~~{, by:~~

~~— (a) compensating}~~ [, by compensating] if:

(a) the canal or ditch can be:

(i) used without displacing current users or exceeding free board capacity; or

(ii) enlarged to convey the required quantity of water necessary to deliver all water

authorized for delivery to existing users of the canal or ditch, provide adequate free board capacity, and carry the additional quantity of water requested by the person;

(b) the person compensates:

(i) the owner of the canal or ditch to be used or enlarged for the damage caused by

[such] the use or enlargement~~[, and by {:]~~

~~— (b) paying}~~ paying]; and

(ii) each landowner whose land is encumbered by an easement related to the canal or ditch if the carrying of additional water will expand the scope of the easement;

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(c) the person pays an equitable proportion of the maintenance and operation of the canal or ditch jointly used or enlarged ~~[; provided, that such]; and~~

~~(c) d) complying~~ the person complies with Subsections (2) through (4).

(2) An enlargement made in accordance with Subsection (1) shall be made between ~~[the 1st day of October and the 1st day of March, or at any other]~~ October 1 and March 1 ~~or at any other time that may be agreed upon with~~, unless another time [that may be] is agreed upon to with:

(a) the owner of [such] the canal or ditch ~~;~~ and

(b) each landowner whose land is encumbered by an easement related to the canal or ditch if the carrying of additional water will expand the scope of the easement.

(3) The additional water turned in to the canal or ditch shall bear its proportion of loss by evaporation and seepage.

(4) Before use or enlargement is allowed in accordance with this section ~~;~~

~~(a) ;~~ the person seeking to use or enlarge the canal or ditch shall negotiate in good faith to enter into a contract governing the relationship ~~between the person and the canal or ditch owner~~, including terms of use and payment ~~;~~ and

~~(b) the ;~~ between the person and the following:

(a) the canal or ditch owner; and

(b) each landowner whose land is encumbered by an easement related to the canal or ditch if the carrying of additional water will expand the scope of the easement.

(5) A person seeking to use or enlarge a canal or ditch in accordance with this section ~~and the~~ may not rely on the right of way provisions of Section 73-1-6 against:

(a) an owner of the canal or ditch ~~shall negotiate~~ unless the person has:

(i) attempted in good faith to agree to mutually acceptable contract terms;

~~(5) ;~~ enter into a contract pursuant to Subsection 4(a); and

(ii) failed to enter into a contract;

(b) a landowner whose land is encumbered by an easement related to the canal or ditch if the carrying of additional water will expand the scope of the easement unless the person has:

(i) attempted in good faith to enter into a contract pursuant to Subsection (4)(b); and

(ii) failed to enter into a contract.

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(6) Unless otherwise agreed to in the contract referenced in Subsection (4) (a), a person using an existing canal or ditch under this section:

(a) does not acquire any voting rights in the entity owning the canal or ditch ~~for~~not already possessed by a person;

(b) does not acquire any rights to direct the operation of the canal or ditch;

(~~b~~c) may not add water to the canal or ditch that ~~reduces~~impairs the water quality in the canal or ditch ~~in~~, or increases the cost of any treatment, to a ~~manner~~degree that adversely impacts the intended use of the water already in the canal or ditch;

(~~c~~d) may not add water to the canal or ditch that exceeds the capacity of the canal or ditch, including free board capacity;

(e) may not modify any water rights without state engineer approval;

(~~d~~f) shall pay an equitable proportion of construction or upgrade costs, including any related debt service, incurred by the owner of the canal or ditch within five years before the day on which the person begins use of the existing canal or ditch;

(~~e~~g) is liable for an equitable proportion of any liability arising out of the operation or maintenance of the canal or ditch unless the event giving rise to the liability was caused solely by the person or by the owner of the canal or ditch;

(~~f~~h) is solely liable for any liability arising out of the operation or maintenance of the canal or ditch if the event giving rise to the liability was caused solely by the person; and

(~~g~~i) is not liable for any liability arising out of the operation or maintenance of the canal or ditch if the event giving rise to the liability was caused solely by the owner of the canal or ditch.

(~~6~~7) This section is not applicable to any type of water conveyance infrastructure other than a canal or ditch described in this section.

(8) Nothing in this section will eliminate a criminal penalty resulting from conduct prohibited by Section 73-1-15.