

HB0067S01 compared with HB0067

~~{deleted text}~~ shows text that was in HB0067 but was deleted in HB0067S01.

inserted text shows text that was not in HB0067 but was inserted into HB0067S01.

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.

~~{STORMWATER}~~ Representative Fred C. Cox proposes the following substitute bill:

STORM WATER CAPTURE AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Fred C. Cox

Senate Sponsor: _____

LONG TITLE

General Description:

This bill provides for the collection and use of precipitation without obtaining a water right for certain commercial, mixed use, or multifamily projects.

Highlighted Provisions:

This bill:

- ▶ modifies the state engineer's ability to commence an enforcement action under certain circumstances; and
- ▶ provides for the collection and use of precipitation without obtaining a water right for certain commercial, mixed use, or multifamily projects.

Money Appropriated in this Bill:

None

Other Special Clauses:

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None

Utah Code Sections Affected:

AMENDS:

73-2-25, as last amended by Laws of Utah 2008, Chapters 282 and 382

73-3-1.5, as last amended by Laws of Utah 2011, Chapter 14

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

Section 1. Section 73-2-25 is amended to read:

73-2-25. State engineer enforcement powers.

(1) For purposes of this section, "initial order" means one of the following issued by the state engineer:

- (a) a notice of violation; or
- (b) a cease and desist order.

(2) (a) [The] Except as provided in Subsection (2)(b), the state engineer may commence an enforcement action under this section if the state engineer finds that a person:

- (i) is diverting, impounding, or using water for which no water right has been established;
- (ii) is diverting, impounding, or using water in violation of an existing water right;
- (iii) violates Section 73-5-4;
- (iv) violates Section 73-5-9;
- (v) violates a written distribution order from the state engineer;
- (vi) violates an order issued under Section 73-3-29 regarding the alteration of the bed or bank of a natural stream channel;
- (vii) violates a notice or order regarding dam safety issued under Chapter 5a, Dam Safety;
- (viii) fails to submit a report required by Section 73-3-25; or
- (ix) engages in well drilling without a license required by Section 73-3-25.

(b) The state engineer may not commence an enforcement action against a person under Subsection (2)(a)(i) if the person:

- (i) diverts or impounds runoff from precipitation:
 - (A) on the property where the precipitation is diverted or impounded;

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(B) consistent with local laws and ordinances; and

(C) with the intent to safely slow, detain, retain, or dissipate storm water flows or protect watersheds from pollution; and

(ii) does not put the precipitation to beneficial use.

~~[(b)]~~ (c) To commence an enforcement action under this section, the state engineer shall issue an initial order, which shall include:

(i) a description of the violation;

(ii) notice of any penalties to which a person may be subject under Section 73-2-26;

and

(iii) notice that the state engineer may treat each day's violation of the provisions listed in Subsection (2)(a) as a separate violation under Subsection 73-2-26(1)(d).

~~[(e)]~~ (d) The state engineer's issuance and enforcement of an initial order is exempt from Title 63G, Chapter 4, Administrative Procedures Act.

(3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the state engineer shall make rules necessary to enforce an initial order, which shall include:

(a) provisions consistent with this section and Section 73-2-26 for enforcement of the initial order if a person to whom an initial order is issued fails to respond to the order or abate the violation;

(b) the right to a hearing, upon request by a person against whom an initial order is issued; and

(c) provisions for timely issuance of a final order after:

(i) the person to whom the initial order is issued fails to respond to the order or abate the violation; or

(ii) a hearing held under Subsection (3)(b).

(4) A person may not intervene in an enforcement action commenced under this section.

(5) After issuance of a final order under rules made pursuant to Subsection (3)(c), the state engineer shall serve a copy of the final order on the person against whom the order is issued by:

(a) personal service under Utah Rules of Civil Procedure 5; or

(b) certified mail.

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(6) (a) The state engineer's final order may be reviewed by trial de novo by the district court in:

- (i) Salt Lake County; or
- (ii) the county where the violation occurred.

(b) A person shall file a petition for judicial review of the state engineer's final order issued under this section within 20 days from the day on which the final order was served on that person.

(7) The state engineer may bring suit in a court of competent jurisdiction to enforce a final order issued under this section.

(8) If the state engineer prevails in an action brought under Subsection (6)(b) or (7), the state may recover all court costs and a reasonable attorney fee.

Section ~~{1}~~2. Section **73-3-1.5** is amended to read:

73-3-1.5. Capture and storage of precipitation.

(1) As used in this section, "parcel":

(a) "Agricultural operation" means the commercial production of crops, orchards, aquaculture, livestock, poultry, livestock products, or poultry products, and the facilities, equipment, property, canals, ditches, or irrigation structures used to facilitate the commercial production.

(b) "Parcel" means an identifiable contiguous unit of property that is treated as separate for valuation or zoning purposes and includes an improvement on that unit of property.

(2) Notwithstanding Section 73-3-2, a person may:

~~(a) {i} in accordance with Subsection (3), (4), or (5), directly capture and store precipitation on a parcel owned or leased by the person [in accordance with Subsection (3) or (4)]; and~~

~~{(b){ii} place the water captured and stored as provided in Subsection (2)(a){i} to beneficial use on the parcel on which the water is captured and stored{, or}~~

~~{(b) directly capture and store precipitation on the surface of or under a parcel owned or leased by the person, including in a catch basin, storm drain pipe, swell, or pond, if the collection or storage is part of a commercial, mixed use, or multifamily project designed to:~~

- ~~(i) slow, detain, or retain stormwater; or~~
- ~~(ii) protect watersheds from pollution.~~

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‡ (3) If a person collects or stores precipitation in an underground storage container, the person may collect and store precipitation:

(a) in only one underground storage container for a parcel if the underground storage container:

(i) has a maximum capacity of no more than 2,500 gallons; and

(ii) is installed in accordance with [relevant provisions of] the State Construction Code or an approved code under Title 15A, State Construction and Fire Codes Act; and

(b) after registering for the capture and storage of precipitation in accordance with Subsection [~~(5)~~] (6).

(4) (a) A person ~~who~~ may:

(i) directly ~~captures or stores precipitation under Subsection (2)(b) may~~ capture and store precipitation on the surface of or under a parcel owned or leased by the person, including in a catch basin, storm drain pipe, swell, or pond, if the collection or storage is part of a commercial, mixed use, or multifamily project designed to:

(A) slow, detain, or retain stormwater; or

(B) protect watersheds from pollution; and

(ii) put up to 2,500 cubic feet of the precipitation captured or stored under Subsection (4)(a) to beneficial use if the storage system used to store the precipitation:

(A) has a total capacity of not greater than 2,500 cubic feet; and

(B) is installed in accordance with the State Construction Code or an approved code under Title 15A, State Construction and Fire Codes Act.

(b) Precipitation that is collected or stored on a landscaped surface as part of a local government storm water management requirement is not considered part of the beneficial use limitation under Subsection (4)(a)(ii) if the precipitation:

(i) absorbs into the ground; ~~or~~

(ii) evaporates~~.~~; or

(iii) is released for discharge.

(c) A person who puts precipitation to beneficial use under Subsection (4)(a) shall register for the capture and storage of precipitation in accordance with Subsection (6).

(d) Subsections (4)(a), (b), and (c) do not apply to an agricultural operation.

~~[(4)]~~ (5) If a person collects or stores precipitation in a covered storage container, the

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person may collect and store precipitation in no more than two covered storage containers, if the maximum storage capacity of any one covered storage container is not greater than 100 gallons.

~~[(5)]~~ (6) (a) The state engineer shall provide a website on which a person may register as required by Subsection (3) and (4).

(b) To register, a person shall complete information required by the state engineer including the:

(i) name and address of the person capturing or storing precipitation;

(ii) total capacity of all containers storing precipitation; and

(iii) street address or other suitable description of the location where precipitation is to be captured and stored.

†

~~Legislative Review Note~~

~~as of 1-13-12 6:46 PM~~

~~Office of Legislative Research and General Counsel}~~