

STORM WATER CAPTURE AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jim Nielson

Senate Sponsor: Ralph Okerlund

LONG TITLE

Committee Note:

The Public Utilities and Technology Interim Committee recommended this bill.

General Description:

This bill prohibits the state engineer from commencing an enforcement action under certain circumstances and provides for the collection and use of precipitation without obtaining a water right in certain circumstances.

Highlighted Provisions:

This bill:

- ▶ prohibits the state engineer from commencing an enforcement action under certain circumstances;
- ▶ provides for the collection and use of precipitation without obtaining a water right in certain circumstances; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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



28 73-3-1.5, as last amended by Laws of Utah 2011, Chapter 14



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

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

32 **73-2-25. State engineer enforcement powers.**

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

35 (a) a notice of violation; or

36 (b) a cease and desist order.

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

39 (i) is diverting, impounding, or using water for which no water right has been
40 established;

41 (ii) is diverting, impounding, or using water in violation of an existing water right;

42 (iii) violates Section 73-5-4;

43 (iv) violates Section 73-5-9;

44 (v) violates a written distribution order from the state engineer;

45 (vi) violates an order issued under Section 73-3-29 regarding the alteration of the bed
46 or bank of a natural stream channel;

47 (vii) violates a notice or order regarding dam safety issued under Chapter 5a, Dam
48 Safety;

49 (viii) fails to submit a report required by Section 73-3-25; or

50 (ix) engages in well drilling without a license required by Section 73-3-25.

51 (b) The state engineer may not commence an enforcement action against a person
52 under Subsection (2)(a)(i), if the person directly captures, or stores, precipitation on the surface
53 of, or under, a parcel owned or leased by the person, including in a catch basin, storm drain
54 pipe, swell, or pond, if the collection or storage:

55 (i) is consistent with local laws and ordinances;

56 (ii) does not interfere with an existing water right; and

57 (iii) is designed to slow, detain, or retain storm water or protect watersheds from
58 pollution with the intention that the precipitation:

59 (A) absorbs into the ground or is released for discharge; and

60 (B) is not put to beneficial use.

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

63 (i) a description of the violation;

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

65 and

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

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

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

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

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

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

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

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

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

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

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

87 (b) certified mail.

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

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

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

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

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

99 Section 2. Section **73-3-1.5** is amended to read:

100 **73-3-1.5. Capture and storage of precipitation.**

101 (1) As used in this section, "parcel" means an identifiable contiguous unit of property
 102 that is treated as separate for valuation or zoning purposes and includes an improvement on
 103 that unit of property.

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

105 (a) directly capture and store precipitation on a parcel owned or leased by the person in
 106 accordance with Subsection (3) or (4); and

107 (b) place the water captured and stored as provided in Subsection (2)(a) to beneficial
 108 use on the parcel on which the water is captured and stored.

109 ~~[(3) If a person collects or stores precipitation in an underground storage container, the
 110 person may collect and store precipitation:]~~

111 ~~[(a) in only one underground storage container for a parcel if the underground storage
 112 container:]~~

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

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

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

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

119 (3) After registering for the capture and storage of precipitation in accordance with
 120 Subsection (5), a person may collect and store precipitation in a container installed in

121 accordance with the State Construction Code or an approved code under Title 15A, State
 122 Construction and Fire Codes Act, if:

123 (a) for a person who uses only one container on a parcel, the total capacity of the
 124 container is no more than 2,500 gallons; or

125 (b) for a person who uses more than one container on a parcel, the aggregate capacity
 126 of the containers is no more than 2,500 gallons.

127 (4) A person may collect and store precipitation, without registering under Subsection
 128 (5), in no more than two covered storage containers[;] if [the maximum] neither covered
 129 storage [capacity of any one covered storage container is not] container has a maximum storage
 130 capacity of greater than 100 gallons.

131 (5) (a) The state engineer shall provide a website on which a person may register as
 132 required by Subsection (3).

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

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

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

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

139 (6) Beneficial use of water under Subsection (2)(b) does not constitute a water right
 140 and may not be:

141 (a) changed under Section 73-3-3;

142 ~~§→ [(b) assigned; §→ [or] ←§~~

143 ~~—— (c) consolidated with a water right §→ [;] ; or~~

143a ~~—— (d) used as a basis to establish the availability of water for land use development. ←§]~~

143b (b) assigned; or

143c (c) consolidated with a water right.

143d (7) A person who beneficially uses water under Subsection (2)(b) shall comply with:

143e (a) state law; and

143f (b) local health and safety rules and regulations. ←§

Legislative Review Note

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Office of Legislative Research and General Counsel

Senate 2nd & 3rd Reading Amendments 3-14-2013 cm/tjn

- 5 - Senate Committee Amendments 2-7-2013 lp/tjn