

CANAL SAFETY AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Johnny Anderson

Senate Sponsor: Gene Davis

LONG TITLE

General Description:

This bill modifies the Water and Irrigation code.

Highlighted Provisions:

This bill:

- ▶ modifies the definition of "water conveyance facility";
- ▶ requires the state engineer, by July 1, 2017, to inventory and maintain a list of all open, human-made water conveyance systems in the state;

▶ requires the state engineer to contract with ~~H→ [the Utah Association of Conservation Districts]~~ a local conservation district ←H to provide technical support for a canal owner who is adopting a

management plan; and

- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

73-5-7, Utah Code Annotated 1953

73-10-33, as enacted by Laws of Utah 2010, Chapter 113



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

29 Section 1. Section 73-5-7 is amended to read:

30 **73-5-7. Inspection of ditches and diverting works by engineer.**

31 (1) (a) The state engineer shall have authority to examine and inspect any ditch or other
32 diverting works, and at the time of such inspection [~~he~~], the state engineer may order the
33 owners thereof to make any addition or alteration [~~which he~~] that the state engineer considers
34 necessary for the security of such works, the safety of persons, or the protection of property.

35 (b) If any person, firm, copartnership, association, or corporation refuses or neglects to
36 comply with [~~such~~] the requirements of the state engineer [~~he~~] as described in Subsection
37 (1)(a), the state engineer may bring action in the name of the state in the district court to
38 enforce [~~his~~] the order.

39 (2) The state engineer shall, by July 1, 2017, inventory and maintain a list of all open,
40 human-made water conveyance systems ~~H→~~ that carry 5 cubic feet per second or more ~~←H~~ in
41a the state, including the following information on
41 each conveyance system:

42 (a) ~~H→~~ [location] alignment ~~←H~~ ;

43 (b) ~~H→~~ contact information of the ~~←H~~ owner;

44 (c) maximum flow capacity in cubic feet per second;

45 (d) whether the conveyance system is used for flood ~~H→~~ or storm water ~~←H~~ management;

45a and

46 (e) ~~H→~~ [the] notice of the adoption of a ~~←H~~ management plan for the conveyance
46a system ~~H→~~ [, once it has been adopted,] ~~←H~~ as
47 reported to the Division of Water Resources under Section 73-10-33.

47a ~~H→~~ **(3) The owner of an open, human-made water conveyance system that carries 5 cubic**
47b1 **feet per second or more shall inform the state**
47b **engineer if the information described in Subsection (2) changes.**

48 [~~3~~] (4) ~~←H~~ The state engineer:

49 (a) may contract with ~~H→~~ [an organization that represents all 38] a local ~~←H~~ conservation
49a ~~H→~~ [districts] district ~~←H~~
50 created in Title 17D, Chapter 3, Conservation District Act, to fulfill the duties described in
51 Subsection (2); and

52 (b) ~~S→~~ [shall] may ~~←S~~ contract ~~H→~~ [with an organization that represents all 38] a local
52a1 ~~←H~~ conservation
52a ~~H→~~ [districts] district ~~←H~~
53 created in Title 17D, Chapter 3, Conservation District Act, to provide technical support for a
54 canal owner who is adopting a management plan, as described in Section 73-10-33.

55 Section 2. Section 73-10-33 is amended to read:

56 **73-10-33. Management plan for water conveyance facilities.**

57 (1) As used in this section:

58 (a) "Board" means the Board of Water Resources created by Section 73-10-1.5.

- 59 (b) "Conservation district" means a conservation district created under Title 17D,
60 Chapter 3, Conservation District Act.
- 61 (c) "Division" means the Division of Water Resources created by Section 73-10-18.
- 62 (d) "Facility owner or operator" means:
- 63 (i) a water company as defined in Subsection 73-3-3.5(1)(b); or
64 (ii) an owner or operator of a water conveyance facility.
- 65 (e) "Management plan" means a written document meeting the requirements of
66 Subsection (3).
- 67 (f) "Potential risk" means a condition where, if a water conveyance facility fails, the
68 failure would create a high probability of:
- 69 (i) causing loss of human life; or
70 (ii) causing extensive economic loss, including damage to critical transportation
71 facilities, utility facilities, or public buildings.
- 72 (g) "Potential risk location" means a segment of a water conveyance facility that
73 constitutes a potential risk due to:
- 74 (i) location;
75 (ii) elevation;
76 (iii) soil conditions;
77 (iv) structural instability;
78 (v) water volume or pressure; or
79 (vi) other conditions.
- 80 (h) (i) "Water conveyance facility" means a water conveyance defined in Section
81 57-13a-101.
- 82 (ii) "Water conveyance facility" does not include:
- 83 (A) a pipeline conveying water for industrial use, or municipal use, within a public
84 water system as defined in Section 19-4-102;
- 85 (B) a natural channel used to convey water for use within a water conveyance facility;
86 or
- 87 (C) a fully piped[~~, pressurized~~] irrigation system.
- 88 (2) (a) For a water conveyance facility that has a potential risk location, the board or
89 division may issue a grant or loan to the facility owner or operator, and the facility owner or

90 operator may receive state money for water development or water conveyance facility repair or
91 improvements, only if the facility owner or operator promptly adopts a management plan in
92 accordance with this section.

93 (b) For a management plan to be considered to be promptly adopted for purposes of
94 this Subsection (2), the facility owner or operator shall:

95 (i) adopt the management plan by an affirmative vote of the facility owner or operator's
96 board of directors, or persons occupying a similar status or performing similar functions before
97 receiving money under Subsection (2)(a);

98 (ii) (A) adopt the management plan as described in Subsection (2)(b)(i) by no later
99 than:

100 (I) May 1, 2013, for a water conveyance facility in operation on May 11, 2011; or

101 (II) for a water conveyance facility that begins operation after May 11, 2011, one year
102 after the day on which the water conveyance facility begins operation; or

103 (B) (I) adopt the management plan as described in Subsection (2)(b)(i); and

104 (II) provide written justification satisfactory to the board as to why the facility owner or
105 operator was unable to adopt a management plan during the time period provided in Subsection
106 (2)(b)(ii)(A); and

107 (iii) update the management plan adopted under Subsection (2)(b)(i) no less frequently
108 than every 10 years.

109 (3) A management plan described in Subsection (2) shall include at least the following:

110 (a) a GIS coverage or drawing of each potential risk location of a water conveyance
111 facility identifying any:

112 (i) existing canal and lateral alignment of the canal facility;

113 (ii) point of diversion;

114 (iii) bridge;

115 (iv) culvert;

116 (v) screen or trash rack; and

117 (vi) spill point;

118 (b) an evaluation of any potential slope instability that may cause a potential risk,

119 including:

120 (i) failure of the facility;

- 121 (ii) land movement that might result in failure of the facility; or
- 122 (iii) land movement that might result from failure of the facility;
- 123 (c) proof of insurance coverage or other means of financial responsibility against
- 124 liability resulting from failure of the water conveyance facility;
- 125 (d) a maintenance and improvement plan;
- 126 (e) a schedule for implementation of a maintenance and improvement plan;
- 127 (f) an emergency response plan that:
- 128 (i) is developed after consultation with local emergency response officials;
- 129 (ii) is updated annually; and
- 130 (iii) includes, in the case of an emergency, how a first responder can:
- 131 (A) contact the facility owner or operator; and
- 132 (B) obtain information described in Subsection (3)(a);
- 133 (g) any potential source of financing for maintenance and improvements under a
- 134 maintenance and improvement plan;
- 135 (h) identification of each municipality or county through which water is conveyed or
- 136 delivered by the water conveyance facility;
- 137 (i) a statement concerning whether storm water enters the water conveyance facility;
- 138 and
- 139 (j) if storm water enters the water conveyance facility:
- 140 (i) an estimate of the maximum volume and flow of all water present in the water
- 141 conveyance facility as a result of a six-hour, 25-year storm event;
- 142 (ii) on the basis of information provided in accordance with Subsection (4),
- 143 identification of the points at which any storm structures introduce water into the water
- 144 conveyance facility and the anticipated flow that may occur at each structure; and
- 145 (iii) the name of each governmental agency that has responsibility for storm water
- 146 management within the area from which storm water drains into the water conveyance facility.
- 147 (4) A private or public entity that introduces storm water into a water conveyance
- 148 facility shall provide the facility owner or operator with an estimate of the maximum volume
- 149 and flow of water that may occur at each structure that introduces storm water into the water
- 150 conveyance facility.
- 151 (5) (a) A facility owner or operator of a water conveyance facility shall provide a

152 municipality or county in which is located a potential risk location of the water conveyance
153 facility an outline of the information provided in Subsection (3)(f).

154 (b) A facility owner or operator shall give notice to the planning and zoning
155 department of each municipality and county identified in Subsection (3)(h) outlining the
156 information provided in Subsections (3)(f), (i), and (j).

157 (c) An outline of information provided under this Subsection (5) is a protected record
158 under Section 63G-2-305.

159 (6) (a) The division may provide information and technical resources to a facility
160 owner or operator of a water conveyance facility, regardless of whether the water conveyance
161 facility has a potential risk location.

162 (b) In providing the information and resources described in Subsection
162a ~~H→ [(5)(a)]~~ (6)(a) ~~←H~~ , the
163 division may coordinate with efforts of any association of conservation districts that may
164 provide similar information and technical resources.

165 (c) The information and technical resources described in Subsection

165a ~~H→ [(5)(a)]~~ (6)(a) ~~←H~~ include:

166 (i) engaging state and local water users in voluntary completion of a management plan;

167 (ii) developing standard guidelines, checklists, or templates that may be used by a
168 facility owner or operator;

169 (iii) using conservation districts as points of contact with a facility owner or operator;

170 (iv) providing training to help a facility owner or operator to adopt a management plan;

171 and

172 (v) assisting, at the request and under the direction of, a facility owner or operator with
173 efforts to adopt or implement a management plan.

174 (7) (a) A facility owner or operator of a water conveyance facility that has a potential
175 risk location shall provide the board or division upon request:

176 (i) written certification signed under oath by a person authorized to act for the board of
177 directors or persons occupying a similar status or performing similar functions, certifying that
178 the management plan complies with this section; and

179 (ii) an opportunity to review a management plan.

180 (b) A management plan received by the board or division under this section is a
181 protected record under Section 63G-2-305.

182 (8) The board shall report concerning compliance with this section to the Natural

183 Resources, Agriculture, and Environment Interim Committee of the Legislature before
184 November 30, 2013.

185 (9) The division and board may make rules, in accordance with Title 63G, Chapter 3,
186 Utah Administrative Rulemaking Act, concerning the requirements of this section.

187 (10) This section does not:

188 (a) create a private right of action for a violation of this section; or

189 (b) limit, impair, or enlarge a person's right to sue and recover damages from a facility
190 owner or operator in a civil action for a cause of action that is not based on a violation of this
191 section.

192 (11) The following may not be introduced as evidence in any civil litigation on the
193 issue of negligence, injury, or the calculation of damages:

194 (a) a management plan prepared in accordance with this section;

195 (b) the failure to prepare or adopt a management plan in accordance with this section;

196 or

197 (c) the failure to update a management plan in accordance with this section.

Legislative Review Note
as of 2-19-14 8:14 AM

Office of Legislative Research and General Counsel