

HB0538S01 compared with HB0538

~~{deleted text}~~ shows text that was in HB0538 but was deleted in HB0538S01.

inserted text shows text that was not in HB0538 but was inserted into HB0538S01.

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Representative Doug Owens proposes the following substitute bill:

WATER USAGE AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Doug Owens

Senate Sponsor: ~~{_____}~~ Michael K. McKell

LONG TITLE

General Description:

This bill ~~{addresses the conveyance of water and }~~ establishes penalties for watering lawn or turf during a restricted period.

Highlighted Provisions:

This bill:

- ▶ defines terms; and
- ▶ addresses civil citations for watering lawn or turf during a restricted period ~~{; and}~~;

~~{_____} provides for use of water for the Great Salt Lake.~~

~~{~~Money Appropriated in this Bill:

None

Other Special Clauses:

None

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Utah Code Sections Affected:

ENACTS:

73-10-38, Utah Code Annotated 1953

78B-6-2401, Utah Code Annotated 1953

78B-6-2402, Utah Code Annotated 1953

78B-6-2403, Utah Code Annotated 1953

78B-6-2404, Utah Code Annotated 1953

78B-6-2405, Utah Code Annotated 1953

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

Section 1. Section **73-10-38** is enacted to read:

73-10-38. Conveyance of water.

(1) As used in this section:

(a) "Division" means the Division of Water Resources created in Section 73-10-18.

(~~f~~~~a~~~~b~~) "Great Salt Lake basin" means the same as that term is defined in Section 78B-6-2401.

(~~f~~~~b~~~~c~~) "Large retail water supplier" means a retail water ~~system~~ supplier that serves at least 10,000 people.

(~~f~~~~c~~~~d~~) "Large secondary water retail supplier" means a secondary water supplier that supplies more than 5,000 secondary water connections.

(~~f~~~~d~~~~e~~) "Lawn or turf" means the same as that term is defined in Section 78B-6-2401.

(~~f~~~~e~~~~f~~) "Public benefit property" means the same as that term is defined in Section 78B-6-2401.

(~~f~~~~f~~~~g~~) "Retail water supplier" means a person that:

(i) supplies water for human consumption and other domestic uses to an end user; and

(ii) has more than 500 service connections.

(~~f~~~~g~~~~h~~) "Secondary water" means the same as that term is defined in Section 78B-6-2401.

(~~f~~~~h~~~~i~~) "Secondary water connection" means the location at which water leaves a secondary water supplier's pipeline and enters into the pipes owned by another person to supply water to an end user.

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~~(f)(i)~~ "Secondary water supplier" means an entity that supplies pressurized secondary water to the end user of the secondary water.

~~(f)(k)~~ "Shoulder season" means the time period that begins on October 1 of a calendar year and ends on ~~May 1~~ April 25 of the following calendar year.

~~(f)(l)~~ "Wholesale water supplier" means a person that provides most of the person's water to:

- (i) a retail water supplier;
- (ii) a secondary water supplier; or
- (iii) a combination of a retail water supplier and a secondary water supplier.

(2) Except as provided in Subsection (3)(b), a retail water supplier or a secondary water supplier within the Great Salt Lake basin shall adopt an ordinance, resolution, rule, or regulation that prohibits the use of culinary water or pressurized secondary water for the irrigation of lawn or turf within the Great Salt Lake basin during a shoulder season.

(3) An ordinance, resolution, rule, or regulation described in Subsection (2):

(a) shall be adopted on or before October 1, 2023;

(b) may include an exemption for water used during a shoulder season:

(i) on lawn or turf that is:

~~(i) } located on public benefit property; or~~

~~(ii) for for a reasonable period after new sod has been laid or new grass seed germinates;~~

or

~~(iii) grown as part of a commercial agricultural operation, including a sod farm}the watering of a food-bearing plant; and~~

(c) may adjust the definition of a shoulder season to begin earlier than October 1 or end later than ~~May 1~~ April 25 based on local growing conditions.

(4) A large retail water supplier or a large secondary water retail supplier shall:

(a) on or before June 15 of each year, calculate:

(i) the amount of water that, but for the immediately preceding shoulder season, would otherwise have reasonably been depleted during the immediately preceding shoulder season for the irrigation of non-exempt lawn or turf within the water supplier's service area; and

(ii) of the amount calculated under Subsection (4)(a)(i), the amount that is attributable to surface water that would have passed through a reservoir, including surface water that would

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have been delivered to the water supplier through a reservoir by a wholesale water supplier;
~~{~~ (b) file an instream flow change application in accordance with Section 73-3-30 to convey an equivalent amount of water calculated under Subsection (4)(a) to the Great Salt Lake;

~~†~~ (~~{c}~~b) prepare a written explanation of how the calculation described in Subsection (4)(a) was made, including the share of water attributable to a wholesale water supplier under Subsection (4)(a)(ii); and

(~~{d}~~ include the written explanation)c) on or before June 30 of each year, provide the calculation and written explanation to the division.

(5) A large retail water supplier or a large secondary water retail supplier does not need to make the calculation described in Subsection (4)(~~{c}~~a) ~~{with the change application described in Subsection (4)(b):~~

~~—— (5) A wholesale~~ if that calculation has been performed by another large retail water supplier ~~{shall:~~

~~—— (a) assist a larger~~ or a large secondary water retail supplier for the same service area.

(6) A wholesale water supplier shall assist a large retail water supplier, or a large secondary retail water supplier, that receives water from the wholesale water supplier in making the calculation described in Subsection (4)(a)~~†~~;

~~—— (b) sign the change application described in Subsection (4)(b); and~~

~~—— (c) allow to be conveyed to the Great Salt Lake the share of the amount calculated under Subsection (4)(a)(i) that would be attributable to the wholesale water supplier's deliveries to the large retail water supplier or large secondary water retail supplier as identified in the written explanation described under Subsection (4)(c)†.~~

~~(~~{6}~~7)~~ In making the calculation described in Subsection (4)(a):

(a) water that is imported from outside the Great Salt Lake basin shall be excluded; and

(b) the amount of water that would have been depleted may be determined using any reasonable basis, including accounting for variability due to temperatures and precipitation during the period water would have reasonably been used.

~~(~~{7}~~) A large retail water supplier, large secondary water retail supplier, or wholesale water supplier:~~

~~—— (a) need not use the same source of water for the change application†~~8) The division

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shall publish the calculation described in Subsection (4)~~(b) that would have been used to deliver water to an end user, and~~

~~(b) shall use an alternate source of water to meet the deliveries of water to the Great Salt Lake if water stored in a reservoir is unavailable.~~

~~(8) A retail water supplier, secondary water supplier, or wholesale water supplier may only receive state funds for water development or secondary water meters if the retail water supplier, secondary water supplier, or wholesale water supplier complies with the requirements of this section.~~ a) on the division's website on or before October 1 of each year.

(9) Nothing in this section prohibits a retail water supplier or a secondary water supplier from adopting or enforcing limitations or prohibitions on the use of water for lawn or turf during times outside of the shoulder season.

Section 2. Section **78B-6-2401** is enacted to read:

78B-6-2401. Definitions.

As used in this part:

(1) "Authorized officer" means:

(a) a law enforcement officer as defined in Section 53-13-103; or

(b) a local entity inspector.

(2) "Great Salt Lake basin" means the area within:

(a) the drainage areas of the Bear River or the Bear River's tributaries;

(b) the drainage areas of Bear Lake or Bear Lake's tributaries;

(c) the drainage areas of the Weber River or the Weber River's tributaries;

(d) the drainage areas of the Jordan River or the Jordan River's tributaries;

(e) the drainage areas of Utah Lake or Utah Lake's tributaries;

(f) other water drainages lying between the Bear River and the Jordan River that are tributary to the Great Salt Lake and not included in the drainage areas described in Subsections

(2)(a) through (e); and

(g) the drainage area of Tooele Valley.

(3) (a) "Lawn or turf" means nonagricultural land planted with mowed or managed grasses.

(b) "Lawn or turf" does not mean land planted by sod farmers.

(4) "Local entity" means the municipality or county where the real property is located.

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(5) "Local entity inspector" is a person appointed by a local entity for the purpose of enforcing the provisions of this chapter.

(6) "Non-owner occupant" means a person:

(a) who is not an owner of record of the real property and who occupies the property under a lease, contract, or other agreement with the owner;

(b) who manages the property; or

(c) who is responsible for the property, including a manager or agent of the owner.

(7) "Public benefit property" means real property that is dedicated primarily to public use, regardless of ownership, and is limited to:

(a) a school;

(b) an amphitheater;

(c) a park or play field;

(d) a cemetery;

(e) a golf course; or

(f) a stadium or other venue that uses lawn or turf for professional, semi-professional, or collegiate sports.

(8) "Restricted period" means:

(a) within the Great Salt Lake basin, the period of time before ~~May 1~~ April 25 and after October 1;

(b) within a particular county, a day on which the Division of Water Resources posts a notice on a website administered by the division indicating that no irrigation of lawn or turf should be conducted on that day; or

(c) a day that irrigation of lawn or turf is prohibited by an ordinance, resolution, regulation, or rule of the municipality, county, retail public water supplier, or secondary water supplier where the real property is located.

(9) "Secondary water" means water that:

(a) is delivered to and used by an end user for the irrigation of landscaping or a garden; and

(b) is not culinary water or water used on land assessed under Title 59, Chapter 2, Part 5, Farmland Assessment Act.

Section 3. Section **78B-6-2402** is enacted to read:

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78B-6-2402. Citation - Civil penalty.

(1) Except as provided in Subsection (4), an owner or non-owner occupant of real property may not knowingly conduct, aid, or allow the use of culinary water or pressurized secondary water for the irrigation of lawn or turf during a restricted period.

(2) An authorized officer may issue a written citation to an owner or non-owner occupant who violates Subsection (1).

(3) An individual who receives a citation under this section is subject to a civil penalty of:

(a) a fine of \$45 for the first citation; or

(b) double the fine imposed for an immediately preceding citation in the same calendar year.

(4) This section does not apply to:

(a) public benefit property; or

(b) ~~an owner or non-owner occupant of real property for a reasonable period after new sod has been laid or new grass seed germinates; or~~

~~(c) a commercial agricultural operation, including a sod farm~~ the watering of a food-bearing plant.

(5) An owner or non-owner occupant of real property is subject to the provisions of this part regardless of whether the individual is directly responsible for the operation of the irrigation system serving the lawn or turf.

(6) (a) Except as provided in Subsection (7), an authorized officer shall serve written notice, as a warning, in accordance with Subsection (6)(b) at least three days before the day on which the authorized officer issues a citation under this part, to:

(i) a property owner of record according to the records of the county recorder; or

(ii) a non-owner occupant of the property if the property owner is not an occupant of the property.

(b) The written notice described in Subsection (6)(a) shall be served:

(i) on the owner of record by posting on the property, or by mailing the notice to the last-known address of the owner, according to the county recorder's records; or

(ii) subject to Subsection (6)(a)(ii), on a non-owner occupant of the property, by posting on the property or by mail to the property address.

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(c) In the written notice described in Subsection (6)(a), the authorized officer shall:

(i) identify the property owner of record according to the county recorder's records;

(ii) identify the relevant ordinance, resolution, regulation, rule, or notice establishing the restricted period;

(iii) describe the violation of the relevant ordinance, resolution, regulation, rule, or notice; and

(iv) describe the fine that may be imposed.

(d) If an owner or non-owner occupant that is served a notice described in Subsection (6)(b) ceases violation of the provision described in the notice within three days after the day on which the notice is served, the authorized officer may not issue a citation, unless, after the three-day period described in this Subsection (6)(d), the owner or non-owner occupant violates a provision described in Subsection (6)(c)(iii).

(7) An authorized officer is not required to make more than one written notice under Subsection (6) for each calendar year.

Section 4. Section **78B-6-2403** is enacted to read:

78B-6-2403. Collection of civil penalty.

(1) A local entity shall mail a notice of the civil penalty amount, for a citation issued under Section 78B-6-2402, by first-class or certified mail within 14 days after the day on which a citation is issued under Section 78B-6-2402.

(2) (a) An individual liable under Section 78B-6-2402 shall remit payment of a civil penalty to the local entity that provides the notice required by Subsection (1) within 90 days after the day on which the notice is sent.

(b) Notwithstanding Subsection (2)(a), a local entity may:

(i) reduce the amount of a civil penalty; or

(ii) negotiate a payment schedule for a civil penalty.

(3) (a) A civil penalty imposed under this section may be appealed as provided in Section 78B-6-2405.

(b) Notwithstanding Subsection (2), the payment of a civil payment is stayed pending an appeal made under Section 78B-6-2405.

(4) The amount of a civil penalty owed under this part is considered a debt owed to the local entity by the person cited under this part.

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(5) Upon receiving the notice required by Subsection (1), a person owing a civil penalty under this section is liable in a civil action brought in the name of the local entity for recovery of:

- (a) the civil penalty; and
- (b) reasonable attorney fees.

Section 5. Section **78B-6-2404** is enacted to read:

78B-6-2404. Reservation of legal options - Ordinances.

(1) The provisions of this part are provided for in addition to any other civil or criminal statute.

(2) A local entity may adopt by ordinance stricter provisions controlling the use of water on lawn or turf, including a different or higher fine schedule, than those provided in this part.

Section 6. Section **78B-6-2405** is enacted to read:

78B-6-2405. Appeals.

A person that receives a civil penalty under this part may appeal the penalty under the procedures used by the local entity for appealing a violation of an ordinance.