

H.B. 36 Storm Water Capture Amendments

Bill Text

Status

Hearings/Debate

Enrolled

H.B. 36

Bill Sponsor:

Floor Sponsor:

Printer Friendly 



Rep. Nielson,
Jim

Sen.
Okerlund,
Ralph

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H.B. 36 Enrolled

1

STORM WATER CAPTURE AMENDMENTS

2

2013 GENERAL SESSION

3

STATE OF UTAH

4

Chief Sponsor: Jim Nielson

5

Senate Sponsor: Ralph Okerlund

6

LONG TITLE

General Description:

9 This bill prohibits the state engineer from
commencing an enforcement action under
10 certain circumstances and provides for the
collection and use of precipitation without

Drafting Attorney:
Tracy J. Nuttall


Fiscal Analyst: Ivan D.
Djambov

Bill Text

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11 obtaining a water right in certain
 circumstances.
 12 **Highlighted Provisions:**
 13 This bill:
 14 . prohibits the state engineer from
 commencing an enforcement action under certain
 15 circumstances;
 16 . provides for the collection and use of
 precipitation without obtaining a water right
 17 in certain circumstances; and
 18 . makes technical changes.
 19 **Money Appropriated in this Bill:**
 20 None
 21 **Other Special Clauses:**
 22 None
 23 **Utah Code Sections Affected:**
 24 AMENDS:
 25 **73-2-25**, as last amended by Laws of
 Utah 2008, Chapters 282 and 382
 26 **73-3-1.5**, as last amended by Laws of
 Utah 2011, Chapter 14
 27
 28 *Be it enacted by the Legislature of the state*
of Utah:
 29 Section 1. Section **73-2-25** is amended
 to read:

Related Documents

- [Fiscal Note !\[\]\(cf5be311f7b2821912d8009884508fa2_img.jpg\)](#)
- [House Transmittal Letter 1](#)
- [House Transmittal Letter 2](#)
- [Senate Transmittal Letter 1](#)
- [Senate Transmittal Letter 2](#)
- [House Floor Amendment 1\(failed\)](#)
- [House Floor Amendment 2](#)
- [Senate Floor Amendment 3](#)

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32 the state engineer:
 33 (a) a notice of violation; or
 34 (b) a cease and desist order.
 35 (2) (a) [The] *Except as provided in*
Subsection (2)(b), the state engineer may
 36 *commence an enforcement action under this*
section if the state engineer finds that a person:
 37 *(i) is diverting, impounding, or using*
water for which no water right has been
 38 *established;*
 39 *(ii) is diverting, impounding, or using*
water in violation of an existing water right;
 40 (iii) violates Section 73-5-4 ;
 41 (iv) violates Section 73-5-9 ;
 42 (v) violates a written distribution order
 from the state engineer;
 43 (vi) *violates an order issued under Section*
73-3-29 regarding the alteration of the bed
 44 *or bank of a natural stream channel;*
 45 (vii) violates a notice or order regarding
 dam safety issued under Chapter 5a, Dam

Information

- Last Action:** 28 Mar 2013, Governor Signed
- Last Location:** Executive Branch - Lieutenant Governor
- Effective Date:** 14 May 2013
- Session Law Chapter:** 260
- Committee Note:** The Public Utilities, Energy, and Technology Interim Committee

recommended this bill.

46 Safety;
 47 (viii) fails to submit a report required by
 Section 73-3-25 ; or
 48 (ix) engages in well drilling without a
 license required by Section 73-3-25 .
 49 (b) *The state engineer may not*
commence an enforcement action against a person
 50 *under Subsection (2)(a)(i), if the person*
directly captures, or stores, precipitation on the surface
 51 *of, or under, a parcel owned or leased by the*
person, including in a catch basin, storm drain
 52 *pipe, swell, or pond, if the collection or*
storage:
 53 (i) *is consistent with local laws and*
ordinances;
 54 (ii) *does not interfere with an existing*
water right; and
 55 (iii) *is designed to slow, detain, or retain*
storm water or protect watersheds from
 56 *pollution with the intention that the*
precipitation:
 57 (A) *absorbs into the ground or is released*
for discharge; and

58 (B) *is not put to beneficial use.*
 59 [(b)] (c) To commence an enforcement
 action under this section, the state engineer
 60 shall issue an initial order, which shall
 include:
 61 (i) a description of the violation;
 62 (ii) notice of any penalties to which a
 person may be subject under Section 73-2-26 ;
 63 and
 64 (iii) notice that the state engineer may
 treat each day's violation of the provisions listed
 65 in Subsection (2)(a) as a separate violation
 under Subsection 73-2-26 (1)(d).
 66 [(e)] (d) The state engineer's issuance
 and enforcement of an initial order is exempt
 67 from Title 63G, Chapter 4, Administrative
 Procedures Act.
 68 (3) *In accordance with Title 63G, Chapter*
 3, *Utah Administrative Rulemaking Act, the*
 69 *state engineer shall make rules necessary to*
enforce an initial order, which shall include:
 70 (a) *provisions consistent with this section*
 and Section 73-2-26 *for enforcement of the*
 71 *initial order if a person to whom an initial*
order is issued fails to respond to the order or abate
 72 *the violation;*
 73 (b) *the right to a hearing, upon request*
 by a person against whom an initial order is

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74 issued; and
 75 (c) provisions for timely issuance of a final
 order after:
 76 (i) the person to whom the initial order is
 issued fails to respond to the order or abate
 77 the violation; or
 78 (ii) a hearing held under Subsection (3)
 (b).
 79 (4) A person may not intervene in an
 enforcement action commenced under this
 80 section.
 81 (5) After issuance of a final order under
 rules made pursuant to Subsection (3)(c), the
 82 state engineer shall serve a copy of the final
 order on the person against whom the order is
 83 issued by:
 84 (a) personal service under Utah Rules of
 Civil Procedure 5; or
 85 (b) certified mail.

86 (6) (a) The state engineer's final order
 may be reviewed by trial de novo by the district
 87 court in:
 88 (i) Salt Lake County; or
 89 (ii) the county where the violation
 occurred.
 90 (b) A person shall file a petition for
 judicial review of the state engineer's final order
 91 issued under this section within 20 days from
 the day on which the final order was served on
 92 that person.
 93 (7) The state engineer may bring suit in a
 court of competent jurisdiction to enforce a
 94 final order issued under this section.
 95 (8) If the state engineer prevails in an
 action brought under Subsection (6)(b) or (7), the
 96 state may recover all court costs and a
 reasonable attorney fee.

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

98 **73-3-1.5. Capture and storage of
 precipitation.**

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

102 (2) Notwithstanding Section 73-3-2, a
 person may:
 103 (a) directly capture and store
 precipitation on a parcel owned or leased by the person in
 104 accordance with Subsection (3) or (4); and

105 (b) place the water captured and stored
as provided in Subsection (2)(a) to beneficial

106 use on the parcel on which the water is
captured and stored.

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

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

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

112 [~~(ii) is installed in accordance with
relevant provisions of the State Construction Code~~

113 or an approved code under Title 15A, State
Construction and Fire Codes Act; and]

114 [~~(b) after registering for the capture and
storage of precipitation in accordance with~~

115 Subsection (5).]

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

117 (3) After registering for the capture and
storage of precipitation in accordance with

118 Subsection (5), a person may collect and
store precipitation in a container installed in

119 accordance with the State Construction
Code or an approved code under Title 15A, State

120 Construction and Fire Codes Act, if:

121 (a) for a person who uses only one
container on a parcel, the total capacity of the

122 container is no more than 2,500 gallons; or

123 (b) for a person who uses more than one
container on a parcel, the aggregate capacity

124 of the containers is no more than 2,500
gallons.

125 (4) A person may collect and store
precipitation, without registering under Subsection

126 (5), in no more than two covered storage
containers[, if [the maximum] neither covered

127 storage [capacity of any one covered
storage container is not] container has a maximum storage

128 capacity of greater than 100 gallons.

129 (5) (a) The state engineer shall provide a
website on which a person may register as

130 required by Subsection (3).

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

132 including the:

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

134 (ii) total capacity of all containers storing

precipitation; and

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

137 (6) Beneficial use of water under
Subsection (2)(b) does not constitute a water right

138 and may not be:

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

140 (b) assigned; or

141 (c) consolidated with a water right.

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

143 (a) state law; and

144 (b) local health and safety rules and
regulations.

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