

HOUSE BILL NO. HB0147

Water rights-temporary use.

Sponsored by: Representative(s) Bucholz and Senator(s) Vasey

A BILL

for

1 AN ACT relating to water management; providing for  
2 acquisition of temporary use rights for municipal purposes;  
3 providing for temporary downstream transfers of place of  
4 use; specifying procedures for applications; making  
5 conforming amendments; and providing for an effective date.

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7 *Be It Enacted by the Legislature of the State of Wyoming:*

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9 **Section 1.** W.S. 41-3-110(a), (d) and by creating new  
10 subsections (e) and (f) and 41-3-111 are amended to read:

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12 **41-3-110. Right to acquire temporary water rights for**  
13 **highway, railroad roadbed construction or repair or**  
14 **municipal purposes; application; restrictions; fee; right**  
15 **to temporary transfer in place of use.**

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1           (a) Any person shall have the right to acquire by  
2 purchase, gift or lease the right to the use of water which  
3 may be embraced in any adjudicated or valid unadjudicated  
4 water right, or any portion thereof, for a period of not to  
5 exceed two (2) years, for highway construction or repair,  
6 railroad roadbed construction or repair, drilling and  
7 producing operations, municipal purposes or other temporary  
8 purposes, on its own behalf or on behalf of its agents,  
9 employees or contractors: provided, that if the proposed  
10 use is to be for public highway construction or repair  
11 under a contract with the state department of  
12 transportation, only the state transportation commission  
13 shall have the authority to acquire the water; and the  
14 state transportation commission shall have the sole and  
15 continuing responsibility for the acquisition, including  
16 the payment of all fees, royalties and other consideration  
17 for the use of and access to water and the right to acquire  
18 the rights to use shall not be delegated to a construction  
19 contractor or other third party; and further provided, that  
20 any temporary transfer shall be allowed only if no other  
21 appropriator is injured thereby.

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23           (d) The state engineer shall assess a fee not to  
24 exceed ~~one hundred dollars (\$100.00)~~ two hundred fifty

1 dollars (\$250.00) for his review and approval of temporary  
2 water agreements or temporary transfers of place of use  
3 made pursuant to subsection (e) of this section. This fee  
4 shall accompany the agreement application and shall be  
5 retained and credited to the general fund whether the  
6 agreement or request is approved or denied.

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8 (e) It is the policy of the state to encourage  
9 temporary transfers in order to optimize beneficial use of  
10 water and to provide for more effective water management,  
11 particularly in times of drought. Without meeting other  
12 requirements of W.S. 41-3-104, a holder of a water right  
13 may transfer the place of use of water which may be  
14 embraced in the holder's adjudicated or valid unadjudicated  
15 water right, or any portion thereof, for a period not to  
16 exceed two (2) years for irrigation or instream flow uses,  
17 provided that:

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19 (i) When an owner of a water right wishes to  
20 change the place of use under the existing right to a new  
21 temporary place of use, he shall file a petition with the  
22 state engineer requesting permission to make such a change.  
23 The petition shall set forth all pertinent information  
24 about the existing place of use and the proposed temporary

1 place of use. The state engineer may require that an  
2 advertised public hearing or hearings be held at the  
3 petitioner's expense, and, should a hearing or hearings be  
4 required by the state engineer, the petitioner shall  
5 provide a transcript of the hearing or hearings to the  
6 state engineer;

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8 (ii) The state engineer shall not issue a  
9 temporary transfer order if it appears that the proposed  
10 transfer would significantly and adversely affect the  
11 quantity of return flows, or would be too difficult to  
12 administer or adverse to the public interest. The state  
13 engineer shall consider all other facts he believes  
14 pertinent to the transfer. The state engineer may allow  
15 the temporary change in place of use if the quantity of  
16 water transferred by the granting of the petition shall not  
17 exceed the amount of water historically diverted under the  
18 existing use, nor exceed the historic rate of diversion  
19 under the existing use, nor increase the historic amount  
20 consumptively used under the existing use, nor decrease the  
21 historic amount of return flow, nor in any manner injure  
22 other existing lawful appropriators. However, no transfer  
23 upstream of the original place of use shall be permitted  
24 under this subsection;

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(iii) Unless in conflict with a specific provision of this subsection, an application for a temporary transfer shall be made in accordance with the provisions of subsection (b) of this section;

(iv) Any person who obtains a temporary transfer in place of use granted pursuant to this subsection may reapply for additional periods of temporary transfer in place of use not to exceed two (2) years each by following the procedures of this subsection. However, the failure of the holder of a water right to put water to beneficial use at the original place of use during any five (5) successive years may result in abandonment of the water right pursuant to W.S. 41-3-401 or 41-3-402;

(v) Nothing in this subsection shall be construed to allow for temporary transfers in place of use to anyone other than the holder of the water right or to any place other than lands owned by the holder of the water right which are contiguous to the land upon which the original place of use exists;

1           (vi) Nothing in this subsection shall be  
2 construed to authorize the changing of other aspects of  
3 the water right, including priority.

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5           (f) Except as otherwise provided by subsection (e) of  
6 this section, the provisions of subsections (a) through (c)  
7 of this section shall not be applicable to subsection (e)  
8 of this section.

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10           **41-3-111. Right to acquire temporary water rights for**  
11 **highway or railroad roadbed construction or repair; right**  
12 **of owner who cannot satisfy in full his right during time**  
13 **of diversion.**

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15 Except as otherwise provided by this section, the owner of  
16 any permanent water right, whether prior or subsequent in  
17 priority to that temporary right acquired by any person  
18 under this act who cannot satisfy in full his right during  
19 the time said temporary user is diverting water under its  
20 temporary water right shall have the absolute right upon  
21 demand being made upon the appropriate state water  
22 commissioner to cause such diversion to be shut off until  
23 such time as said owner's water right is satisfied, or  
24 until it is proven that the shutting down of the diversion

1 has no effect upon owner's right. This section shall apply  
2 to temporary transfers in place of use granted pursuant to  
3 W.S. 41-3-110(e) only if the temporary water right in  
4 question is subsequent in priority to the permanent water  
5 right.

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7 **Section 2.** This act is effective immediately upon  
8 completion of all acts necessary for a bill to become law  
9 as provided by Article 4, Section 8 of the Wyoming  
10 Constitution.

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(END)