

HOUSE BILL NO. HB0105

Breach orders due process.

Sponsored by: Select Water Committee

A BILL

for

1 AN ACT relating to water; requiring the state engineer to
2 hold a public meeting, seek alternatives and provide notice
3 before executing an emergency order to breach a dam or
4 diversion; providing an exception; requiring rulemaking;
5 specifying applicability; and providing for an effective
6 date.

7

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

9

10 **Section 1.** W.S. 41-3-314(a) and by creating a new
11 subsection (d) is amended to read:

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13 **41-3-314. Alterations or repairs of dams or diversion**
14 **systems; emergency repairs or breaching.**

15

1 (a) Subject to subsection (d) of this section, in
2 case of an emergency where the state engineer or his
3 authorized representative declares that repairs or
4 breaching of a dam or diversion system are immediately
5 necessary to safeguard life and property, the necessary
6 repairs or breaching shall be started immediately by the
7 owner or by the state engineer or his representative at the
8 owner's expense, if the owner fails to do so. The state
9 engineer and emergency response agencies shall be notified
10 at once of any changes in the physical conditions of the
11 dam, diversion system, or reservoir which significantly
12 increase the probability of failure of the dam or diversion
13 works or the danger to life or property, proposed emergency
14 repairs or breaching to be instituted by the owner. These
15 reporting requirements shall apply only to cases in which
16 an emergency has been declared pursuant to this subsection.

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18 (d) Unless there is an immediate danger where a
19 breach is necessary in less than ten (10) days, before the
20 state engineer or his authorized representative may
21 physically execute an order requiring a breach under this
22 section the state engineer or his representative shall:

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1 (i) Determine whether there are alternatives to
2 breaching;

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4 (ii) Hold not less than one (1) public meeting
5 in the area where the breach will occur, that is not a
6 public meeting of an irrigation district, to allow for
7 public comment. This public meeting shall occur, even if it
8 is after the breach order has been issued;

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10 (iii) Notify those affected of liability
11 associated with any damage or unforeseen circumstances
12 associated with breaching issued under an order by the
13 state engineer;

14
15 (iv) Contact each water rights holder or
16 landowner with water storage rights providing information
17 on the proposed breach and the upcoming public meeting.

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19 **Section 2.** This act shall apply to all orders by the
20 state engineer to breach a dam or diversion issued on and
21 after the effective date of this act.

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1 **Section 3.** The state engineer shall promulgate any
2 rules necessary to implement this act.

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

8

9

(END)