

**DRAFT ONLY  
NOT APPROVED FOR  
INTRODUCTION**

SENATE FILE NO.

Temporary water use agreements.

Sponsored by: Senator(s) Hicks

A BILL

for

1 AN ACT relating to water; creating a temporary use of water  
2 right as specified; providing limitations; providing  
3 penalties; making conforming amendments; and providing for  
4 an effective date.

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

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**STAFF COMMENT**

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This bill draft is taken almost entirely from W.S. 41-3-110  
12 through 41-3-112. It removes language specific to railroads  
13 and highway construction in an effort to make the statute  
14 more broadly applicable, potentially alter the length of  
15 the temporary use, and specify that any temporary agreement  
16 is renewable.

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1 However, it is likely that the existing statutes are  
 2 already broader in scope than their respective section  
 3 headers suggest. In which case, as an alternative, it may  
 4 be prudent to instead amend the existing statute and remove  
 5 any perceived limiting language, as well as potentially  
 6 amend the length of the temporary use and clarify that the  
 7 agreements are renewable within existing statute.

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 9 \*\*\*\*\*

11 Section 1. W.S. 41-3-117 is created to read:

13 41-3-117. Right to acquire temporary water rights;  
 14 application; restrictions; fee.

16 (a) Any person shall have the right to temporarily  
 17 acquire by purchase, gift or lease the right to the use of  
 18 water which may be embraced in any adjudicated or valid  
 19 unadjudicated water right, or any portion thereof, for a  
 20 period of not to exceed XXXXX (XXXXX) years, for any  
 21 beneficial use of water consistent with W.S. 41-3-101. Any  
 22 temporary transfer may be renewed subject to the  
 23 application procedure and limitations in this section. Any  
 24 temporary transfer shall be allowed only if no other  
 25 appropriator is injured thereby.

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1           (b) Before any right to such use shall become  
2 operative, an application must be made in writing on a form  
3 provided or designated by the state engineer, with a copy  
4 of any conveyance or agreement provided, and it shall be  
5 filed in the office of the state engineer for his  
6 ratification and approval. Upon approval by the state  
7 engineer, an order authorizing such use and designating the  
8 method, place, and period of use may be entered. No loss,  
9 abandonment or impairment of such water rights shall occur  
10 or attach as a result of such change or use, except as  
11 provided by said conveyance or agreement and order of the  
12 state engineer, and upon termination of the temporary  
13 diversion and use, as stated in the order, any affected  
14 right to the use of water shall automatically be reinvested  
15 with all the rights, privileges and uses, and purposes  
16 theretofore held and enjoyed.

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18           (c) Only that portion of a water right so acquired  
19 which has been consumptively used under the historical use  
20 made of the water right, may be diverted by a temporary  
21 user. In determining the consumptive use of water rights  
22 for the direct use of the natural unstored flow of any  
23 stream for irrigation purposes, the return flow from those

1 rights shall be presumed to be fifty percent (50%). In  
2 those situations where an assumption of fifty percent (50%)  
3 return flow would be significantly in error, the state  
4 engineer shall have the prerogative of making a  
5 determination of the actual amount of return flow, and the  
6 amount of water which can be diverted for the temporary use  
7 provided herein shall be adjusted accordingly. The actual  
8 historic return flow, or the assumed return flow of fifty  
9 percent (50%) will be left in the stream for the use of  
10 downstream appropriators. The foregoing formula and  
11 procedure for the determination of consumptive use and  
12 return flow shall be limited to this section and shall have  
13 no application to any other statute of the state of  
14 Wyoming. Nothing herein contained shall be treated or  
15 construed as changing the prior use of water held by said  
16 owner or owners and as provided by the laws of the state of  
17 Wyoming.

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19 (d) The state engineer shall assess a fee not to  
20 exceed one hundred dollars (\$100.00) for his review and  
21 approval of temporary water agreements. This fee shall  
22 accompany the agreement application and shall be retained

1 and credited to the general fund whether the agreement or  
2 request is approved or denied.

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4 (e) The owner of any permanent water right, whether  
5 prior or subsequent in priority to that temporary right  
6 acquired by any person under this section who cannot  
7 satisfy in full his right during the time said temporary  
8 user is diverting water under its temporary water right  
9 shall have the absolute right upon demand being made upon  
10 the appropriate state water commissioner to cause such  
11 diversion to be shut off until such time as said owner's  
12 water right is satisfied, or until it is proven that the  
13 shutting down of the diversion has no effect upon owner's  
14 right.

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16 (f) It shall be unlawful for any person to wrongfully  
17 cause a diversion made under a temporary water right  
18 required under and by virtue of this section to be shut  
19 down. Any violation of this section shall be punishable  
20 pursuant to W.S. 41-3-616.

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22 **Section 2.** W.S. 34-1-158(a)(i) is amended to read:

23

1           **34-1-158. Prescriptive easement for water conveyance.**

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3           (a) A prescriptive easement for a water conveyance  
4 may be established if a water user has used and maintained  
5 a water conveyance under a claim of right for a period of  
6 ten (10) years during which the use has been:

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8           (i) Continuous and uninterrupted consistent with  
9 the historical and traditional use by the water user of the  
10 water conveyance system. A temporary change of use under  
11 W.S. 41-3-110 or 41-3-117 or a cessation of use, so long as  
12 the water rights are not abandoned under W.S. 41-3-401,  
13 shall not be deemed an interruption under this paragraph;

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15           **Section 3.** This act is effective July 1, 2024.

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(END)