

**DRAFT ONLY  
NOT APPROVED FOR  
INTRODUCTION**

HOUSE BILL NO.

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 public meetings, provide notice, and allow for a vote  
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 new  
11 subsections (d) and (e) is amended to read:

12

1           **41-3-314. Alterations or repairs of dams or diversion**  
2 **systems; emergency repairs or breaching.**

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

20  
21           (d) Unless there is an immediate danger where a  
22 breach is necessary in less than ten (10) days, before the  
23 state engineer or his authorized representative may

1 physically execute an order requiring a breach under this  
2 section the state engineer or his representative shall:

3  
4 (i) Determine a range of alternatives to  
5 breaching and estimated costs of the alternatives including  
6 repair or temporary repair, evacuating the reservoir or  
7 bypassing inflows;

8  
9 (ii) Hold not less than two (2) public meetings  
10 in the area where the breach will occur to provide  
11 information on the proposed breach and alternatives  
12 determined in paragraph (i) of this subsection and allow  
13 for public comment. The meetings under this paragraph shall  
14 not be a public meeting of the legal entity owning or  
15 having control over the dam or diversion and shall occur  
16 even if the meetings are after the breach order has been  
17 issued. The proposed breach order and each alternative  
18 presented shall include applicable information on the:

19  
20 (A) Risk of failure of the dam or  
21 diversion;

22

1                   (B) Risk of flooding with and without the  
2 breach or alternative based on known hydrological flow  
3 regimes and model flows deemed necessary for accurate  
4 assessments;

5

6                   (C) Economic impact to water rights holders  
7 and the community at large;

8

9                   (D) Environmental impact;

10

11                   (E) Hydrological impact, including ongoing  
12 monitoring for effects on private wells, and identify  
13 sources of funds for that purpose;

14

15                   (F) Liability associated with any damage or  
16 unforeseen circumstances associated with breaching issues  
17 under an order by the state engineer.

18

19                   (iii) Contact each water right holder or  
20 landowner with water storage rights by certified mail  
21 providing information on the proposed breach and the  
22 upcoming public meetings, including the date, time and  
23 location of each meeting.

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

(iv) The owner of the reservoir or diversion shall hold a meeting to allow all water rights holders in a reservoir or diversion or land owners with storage rights who pay assessments to maintain their water or storage rights in the reservoir or diversion to vote on the proposed breach action and alternatives as provided by the state engineer. Each vote shall be given a weight proportional to the water or storage right held by the person casting the vote. The owner of the dam or reservoir and the state engineer shall implement the breach or alternative that receives a majority of the outstanding vote shares unless the alternative is no longer feasible, in which case another vote shall be held under this paragraph.

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

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

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

5

6

(END)