

Draft Concept 2/15/2023 - HB150 Proposed Replacement to fix the constitutionality of the bill –
No Water Emergencies

EMERGENCY WATER SHORTAGES AMENDMENTS

General Description:

This bill addresses the constitutionality of water shortage emergencies declared by the governor.

Highlighted Provisions:

This bill:

- partially (or fully?) repeals HB168 from the 2022 session
- emphasizes the enforcement of constitutional limitations as supreme on water emergencies

Utah Code Sections Affected:

AMENDS: (Lines affected by HB168 2022 session must be amended so that property rights are never taken by the state under the excuse of an emergency)

ENACTS: 73-33-101, Utah Code

REPEALS:

Section 1. Section 73-33-101 is enacted to read:

CHAPTER 33. CONSTITUTIONAL ENFORCEMENT OF WATER RIGHTS ACT

Part 1. General Provisions

73-33-101. Title.

This chapter is known as the “Constitutional Enforcement of Water Rights Act”

Section 2. Section 73-33-201 is enacted to read:

Part 2. Constitutional Supremacy

73-33-201. Constitutional Protection of Property Rights Supreme Over Legislation.

(1) For the purposes of complying with the right to sustain life and private property protections in Utah Constitution Article 1, Section 1, and complying with the limitations on emergency powers in Utah Constitution Article VI, Section 30, recognizing constitutionally compliant due process as appropriate:

(a) No government agency in the state of Utah can ever take a water right from its owner. Such an act is classified as a Constitutional Taking of a property right.

(b) A Government-declared state of emergency will never authorize any government agency to take action in a manner they could not constitutionally take at any other time.

(c) If the governor declares an emergency, it has no legal meaning or consequence to the residents of Utah.

(d) No Government agency may mandate rationing of water, whether by edict or use of water meters or any other method.

(2) This section, as it declares enforcement of the Utah Constitution, is supreme above all other related legislation, rules or policies in the state.

(a) Any provision of law found in Utah code or city or county laws, interpreted to grant rights in opposition to the constitutional protections of property rights and the right to sustain life, is null and void.

Section 3. Section 73-33-301 is enacted to read:

Part 3. Resident Enforcement of Rights

73-33-301. Rights of Utahns to Protect Their Property and Life.

(1) If a government agency of any kind in the state of Utah succeeds or attempts to ration water or take a water right, intentionally or unintentionally, a resident of Utah:

(a) is within their right to remove or replace any water meter or impediment from their property to prevent any rationing;

(b) may, in like manner, take any action necessary to prevent a repeat offense;

(2) A government employee in the state of Utah, and their employer, that is knowingly responsible for an action listed in section (1) is guilty of a felony, and is personally liable for all damages to resident of Utah’s property and life that resulted from water rationing or taking of a water right. Immunity shall not apply.

(a) If a private company is acting at the behest or incentivization of Government then the private company employee shall be considered a de-facto government employee.