

House Natural Resources, Agriculture, and Environment Committee

Date: 1/24/2025

Bill: HB 45 – Irrigation Amendments

Sponsor: Representative Rex P. Shipp

Floor Sponsor:

UASD Position: Support

This Bill addresses duties of owners or operators of ditches and canals.

Discussion: The sponsor presented the 1st substitute, which was adopted by the Committee. Representative Shipp said that 1st substitute HB 45 addresses the circumstance where there is a failure by an owner or operator of a ditch or canal to exercise reasonable and ordinary care and provides, under certain circumstances, for a person to recover money paid to a third party for damage or injury if it is caused by the failure of an owner or operator to exercise reasonable and ordinary care. The sponsor shared a story of one of his constituents in Cedar City who owns land through which small easement for an irrigation ditch runs. He did not own any shares in the irrigation company and had no connection to the ditch or the water except for the fact that the easement ran through his property. The ditch became blocked causing water to flow over the property owner's yard and doing damage to a neighbor's property. The neighbor threatened to sue the property owner over the damage even though the property owner does not own or operate the ditch. That is the type of situation that the sponsor is trying to address with this Bill. He directed the Committee to line 61, which is current law, and the new language beginning on lines 64 and 68.

Representative Chew expressed concern with HB 45 because it does not define the terms "reasonable and ordinary care". He believes it would be very difficult for the courts to determine what is reasonable and ordinary. Representatives Bolinder and Kohler expressed similar concerns. The Utah League of Cities and Towns testified about concerns their members have with portions of the Governmental Immunity Act being disturbed by some of the provisions in the Bill. A representative of the Utah Water Users Association, speaking on behalf of their Association and the Utah Farm Bureau, testified that they believe that who is responsible for the upkeep and maintenance of publicly owned ditches and canals is a policy decision for the Legislature. The General Manager of the Moon Lake Water Users Association testified that recent urbanization has made the operation and maintenance of ditches and, knowing who is responsible for that upkeep, more difficult. He has found that people don't want anyone from a canal company in their yard, but they expect you to take care of the canal. Obtaining decent and affordable insurance is difficult and he believes this legislation would make it even more costly and difficult for canal companies and municipalities to obtain insurance. Steve Clyde, a member of the Utah Water Task Force and legal counsel for the Central Utah Water Conservancy District

(“CUWCD”), said that the “reasonable standard” is a moving target because it is tort law. The court looks at what is the reasonable circumstances under the facts as they exist at the time and then gauge conduct as to whether or not they’ve met that standard. He used the example of a dirt canal operated by CUWCD that had farmland below it for decades. If a beaver created a dam that caused the canal to fail and the fields to flood, it would not cause damage. It may in fact be good for the field to be flooded. Today, that farmland has been converted to numerous properties with million dollar homes. If the canal were to flood, it would cause a lot of damage and be very expensive. Therefore, the duty of care must be looked at in the context of the current community and its surrounding lands. CUWCD chose to line the dirt canal in concrete to meet the duty of care. Mr. Clyde said this is just one example of why “reasonable standard” cannot be easily defined and is a moving target. He said that the standards are in case law and he is not sure that adding a definition in this Bill would add anything to the case law.

The Committee members felt that it was appropriate to hold the Bill in Committee to allow the sponsor time to work on the Bill. The sponsor stressed how important it is for the Committee members to consider who should be held responsible if a ditch or canal fails causing damage to property and asked that the Bill pass out of the Committee as it is written; at which point the Committee voted on a motion to hold the Bill.

Yeas: 11

Nays: 0

N/V: 2

Outcome: 1st substitute HB 45 was held in the Committee.

Bill: HB 85 – Environmental Permitting Modifications

Sponsor: Representative Tyler Clancy

Floor Sponsor:

UASD Position: Tracking

This Bill addresses provisions related to environmental permitting.

Discussion: The sponsor presented with Thomas Hawkman, Director of Infrastructure, at the Foundation for American Innovation which a think tank based in Washington DC. . The sponsor presented the 1st substitute, which was adopted by the Committee. This Bill is intended to build upon the work that has already been done with the permitting working groups to ensure that the Legislature is able to streamline the environmental permitting processes while being good stewards of the environment. Mr. Hawkman said that this Bill would modernize Utah’s environmental permitting while maintaining strong environmental protections. He highlighted two key reforms. First, the Bill expands Utah’s successful permit by rule program. Traditional permits take six to seven months. Permit by rule allows facilities meeting preapproved standards to begin operations in just two weeks. Utah currently has only one permit by rule process and that is for the oil and gas industry. HB 85 adds at least five new categories that may use the permit by rule process. Second, the Bill promotes plantwide applicability limits (“PALS”). These

tools establish facility wide emissions caps that allow companies to swiftly implement new technologies while maintaining environmental protections. HB 85 addresses barriers to adopting PALS by establishing clear procedures and requirements. Representative Clancy added that this Bill allows Utah to adopt the programs that have been successful in other states and possibly improve on them as they are implemented in Utah.

Representative Bennion reminded the Committee of the Governor's order encouraging state agencies to explore how to best address these types of issues and asked what conversations the sponsor has had with state agencies about the proposed reforms to permitting. The sponsor said that this Bill works in partnership with the Governor's order by codifying the work that the Governor is spearheading with his executive order. Mr. Hawkins spoke with representatives of the Division of Environmental Quality ("DEQ") over the interim. The biggest feedback the sponsor received from the DEQ is to make sure that the language in the Bill states "as resources allow". The Division wants to do the best work they can with the resources they have. Rep Bennion wants to support the Bill but isn't sure that this legislation is necessary given the Governor's executive order. That said, she may not support the Bill today because she wants to ensure that there is coordination the state agencies involved without potentially slowing any parts of the current permitting process down. Representative Albrecht asked about the fiscal note. The sponsor said that the fiscal note is based on what implementing this Bill would cost the DEQ in staff hours. The Bill doesn't appropriate any funds for this purpose. The Bill directs the agency in a direction that the Legislature believes would benefit industries while protecting the environment. Representative Owens asked why gravel and sand operations are included in the Bill. His understanding is that there is a lot of concern about air pollution associated with this industry. The sponsor said Idaho has a permit by rule for the sand and gravel industry. The Bill doesn't create any permits by rule. It directs the DEQ to study what a permit by rule to do to address the unique sand and gravel industry. Having a permit by rule does not mean that every entity that requests a permit will meet the standards to qualify for the expedited permit. For example, most oil and gas companies do meet the qualifications for the current permit by rule in Utah. Some do not. Those must go through the conventional permitting process. A representative of the Abundance Institute testified in support of the Bill. stated The Executive Director of the Utah Department of Environmental Quality highlighted the Governor's executive order that was issued earlier this month and stated her desire to be efficient and protective while issuing permits. She stated her intent to continue to work with the sponsor to strengthen the Bill as there is further study into permit reform. A representative of the Utah Petroleum Association believes that the passage of HB 85 will motivate more investment into Utah's economy. Innovation of the industry is highly encouraged by the American Conservation Coalition.

Yeas: 10

Nays: 2

N/V: 2

Outcome: 1st Substitute HB 85 passed out of the Committee with favorable recommendation.

Bill: HB 46 – Water Rights Applications Amendments

Sponsor: Representative Doug Owens

Floor Sponsor:

UASD Position: Tracking

This Bill addresses applications before the state engineer.

Discussion: The sponsor stated that this is an Interim Committee Bill that passed unanimously over the summer. It is only being heard today in Committee because there is a spelling error that needed to be addressed and by rule could only be done in a House Committee hearing before being sent to the floor for the entire body's consideration. Amendment 2, which fixes a spelling error, was adopted by the Committee. The State Engineer was available to answer any questions. There were no questions from Committee members and there was no public comment.

Yeas: 11

Nays: 0

N/V: 3

Outcome: HB 46, as amended, passed out of the Committee with a favorable recommendation.

Bill: HB 41 – State Water Policy Amendments

Sponsor: Representative Carl R. Albrecht

Floor Sponsor:

UASD Position: Support

This Bill amends the state water policy.

Discussion: The sponsor said that this Bill went through the Interim process and was discussed by the Executive Water Task Force. The sponsor made the suggested changes from both groups in the 1st substitute, which was adopted by the Committee. He pointed to the changes on line 49 which add “balance social, economic, public interest, and environmental values”. During the interim, Representative Chew recommended the changes found on lines 61-63 adding “the monitoring, in consultation with watershed councils...of activities in watersheds that provide water to drinking water systems to protect the watersheds”. The substitute also addresses water reuse on lines 88-91 of the 1st substitute.

A member of the public commented in opposition to HB 41 due to changes made to the Bill that will affect levels of the Salt Lake. Steve Ericson, representing the Great Basin Water Network, spoke in support of the 1st substitute. The Director of the Division of Water Resources spoke to the positive changes made in this Bill.

Yeas: 11

Nays: 0

N/V: 3

Outcome: 1st substitute HB 41 passed out of the Committee with a favorable recommendation.

Bill: HB 89 – Water Transfer Amendments

Sponsor: Rep Gay Lynn Bennion

Floor Sponsor:

UASD Position: Tracking

This Bill modifies provisions related to probate transfer of personal property by affidavit.

Outcome: HB 89 was not heard in Committee on 1/24/2025.