

**HOUSE BILL** 0117

88 LSO-0345

**Title:**

HB0174

AN ACT to amend W.S. 41-3-304, 41-3-602(c), 41-3-606, 41-3-607, 41-3-611, 41-4-308 and 41-6-301; and to repeal W.S. 41-3-602(a) and (b) relating to water commissioners; providing for all water commissioners to be employees of the state; conforming related statutes; providing for an increase in authorized employee positions; providing for an appropriation; and providing for an effective date.

HOUSE BILL 1177

**Introduced by:**

[illegible]

**CONTINUED ON BACK**

| House of Intro |              |     |           | Second House |              |     |           |
|----------------|--------------|-----|-----------|--------------|--------------|-----|-----------|
| To Com. No.    |              |     |           | To Com No.   |              |     |           |
| _____          | Stand Report | Do  | Amd Not   | _____        | Stand Report | Do  | Amd Not   |
| _____          | Com Whole    | Do  | Amd Not   | _____        | Com Whole    | Do  | Amd Not   |
| _____          | 2nd Reading  | Amd |           | _____        | 2nd Reading  | Amd |           |
| _____          | 3rd Reading  | Amd | Pass Fail | _____        | 3rd Reading  | Amd | Pass Fail |

1988

STATE OF WYOMING

88LSO-0345.01

HOUSE BILL NO. 0174

Water commissioners.

Sponsored by: Representative(s) ROHRBACH

A BILL

for

1 AN ACT to amend W.S. 41-3-304, 41-3-602(c), 41-3-606,  
 2 41-3-607, 41-3-611, 41-4-308 and 41-6-301; and to repeal  
 3 W.S. 41-3-602(a) and (b) relating to water commissioners;  
 4 providing for all water commissioners to be employees of  
 5 the state; conforming related statutes; providing for an  
 6 increase in authorized employee positions; providing for  
 7 an appropriation; and providing for an effective date.

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

9 Section 1. W.S. 41-3-304, 41-3-602(c), 41-3-606,  
 10 41-3-607, 41-3-611, 41-4-308 and 41-6-301 are amended to

1 read:

2       41-3-304. Use of bed of stream. Whenever the owner,  
3 manager or lessee of a reservoir, constructed under the  
4 provisions of this act, shall desire the use of the bed  
5 of the stream, or other water course, for the purpose of  
6 carrying stored or impounded water from the reservoir to  
7 the consumer thereof, or shall desire the use of any  
8 ditch to carry, convey or transmit through the same any  
9 such stored or impounded water for the benefit of any  
10 person having the right to have such reservoir water car-  
11 ried, conveyed or transmitted through the same under the  
12 laws of this state, he shall, in writing notify the water  
13 commissioner of the district in which such stored or  
14 impounded water is to be used, giving the date when it is  
15 proposed to discharge water from such reservoir, its vol-  
16 ume in acre feet and the names of all persons and ditches  
17 entitled to its use, and such other matters as may be nec-  
18 essary to properly distribute the water. It shall then be  
19 the duty of such water commissioner to so adjust the  
20 headgates of all ditches of ditch companies or  
21 appropriators from the stream or water course, and the  
22 division boxes of individual consumers of water, not  
23 entitled to the use of such stored water, as will enable  
24 those having the right to secure the volume of water to

1     which they are entitled; but such commissioner shall not  
2     in any other manner interfere with such headgates or divi-  
3     sion boxes, except as otherwise provided by law. The water  
4     commissioner shall keep a true and just account of the  
5     time spent by him in the discharge of his duties as  
6     defined in this section, and it shall be the duty of the  
7     county commissioners of the county wherein the expense is  
8     incurred, to present a bill of one-half (1/2) the expense  
9     so incurred to the reservoir owner, manager or lessee, and  
10    if such owner, manager, or lessee shall neglect for three  
11    (3) days, after the presentation of such bills of costs,  
12    to pay the same, the said costs shall be made a charge  
13    upon said reservoir and shall be collected as delinquent  
14    taxes until the complete payment of such bill of costs  
15    has been made. COSTS RECOVERED UNDER THIS SECTION SHALL  
16    BE PAID INTO THE GENERAL FUND.

17       41-3-602. Commissioners; appointment; removal.

18       (c) ~~Also, where the legislature has appropriated~~  
19    ~~state funds for payment of full-time water commissioners,~~  
20    The governor may appoint water commissioners ~~to be known~~  
21    ~~as hydrographer water commissioners~~ for one (1) or more  
22    water districts on recommendation of the state engineer  
23    and the superintendent of the water division in which any

1 such THE district is located. The governor may remove any  
2 commissioner appointed under this subsection as provided  
3 in W.S. 9-1-202.

4 41-3-606. Water commissioners; services under direc-  
5 tion of water superintendent. When--arrangements--are--not  
6 made--for--the-employment-of-a-water-commissioner-through-  
7 out-the-irrigation-season-as-provided-in-section-9-of-this  
8 act, the-said-water-commissioner-shall-begin-his-work-upon  
9 written-demand-being-made-upon-him-therefor-by-one-(1)--or  
10 more---appropriators. Such-written-demand-for-his-services  
11 shall-be-attached-to-his-bill-for-services--and--forwarded  
12 with-it-to-the--county-commissioners-of-the-proper-county.  
13 Where--the-said EACH WATER commissioner is-employed-by-the  
14 month, he shall begin-work-and--terminate PERFORM his ser-  
15 vices-as DUTIES UNDER the GENERAL DIRECTION AND SUPERVI-  
16 SION OF THE superintendent of his water division. may  
17 direct. The-division-superintendent-may, under-any--condi-  
18 tion, call-upon-the-water-commissioner-for-work-within-his  
19 district-when-ever-the-necessity-therefor-may-in-his--judg-  
20 ment--arise.

21 41-3-607. Water commissioners; compensation. Each  
22 water-commissioner-herein-provided-for-shall-reeive--com-  
23 ensation--at-the-rate-of--twenty-dollars-(\$20.00)-per-day

1 for each day he is actually employed in the duties of his  
2 office. If the commissioner is employed by the month or  
3 annually, he shall receive compensation at a rate agreed  
4 upon by the water division superintendent and the board  
5 of county commissioners of the county or counties in which  
6 the stream or streams are located. He shall, upon bills  
7 approved by the division superintendent and the board or  
8 boards of county commissioners of the counties lying  
9 wholly or partly within the district and upon the stream  
10 or streams upon which the work was performed, receive such  
11 compensation and in addition thereto his actual and necessary  
12 traveling expenses within his district when away  
13 from home in the discharge of his duties as such commissioner.  
14 In all cases such compensation and traveling  
15 expenses, when approved by the board or boards of county  
16 commissioners and the division superintendent, shall be  
17 paid by the county for whose benefit the work is performed.  
18 Provided, however, if more than one (1) county  
19 benefits from the work, then compensation and expenses  
20 shall be prorated by the counties lying wholly or partly  
21 within the district in the relative proportions of the  
22 volume of water, for which rights shall have been  
23 secured. Each water commissioner shall keep a true, just  
24 and itemized account of time expended by him and such

1 expenses--incurred--and--he--shall--present--a--true--copy  
2 thereof,--verified--by--oath,--to--the--said--boards--of--county  
3 commissioners,---Where--a--water--commissioner--has---been  
4 appointed--by--the--governor,--to--be--paid--for--full--time--by--the  
5 state,--he--shall--be--known--as--a--hydrographer--water--commis-  
6 sioner--and--the--salary WATER COMMISSIONERS shall be such--as  
7 PAID A SALARY IN AN AMOUNT recommended by the state engi-  
8 neer and the division superintendent and approved by the  
9 governor. His--salary--and--expenses--shall--be--paid--by--the  
10 state--on--vouchers--approved--by--the--state--engineer--or--the  
11 division--superintendent.

12 41-3-611. Assistant commissioners. SUBJECT TO LEGIS-  
13 LATIVE APPROPRIATION, a water commissioner shall--have  
14 power MAY in cases of emergency, to employ suitable  
15 assistants,--with--the--consent--of--the--county--commissioners,  
16 to aid him in the discharge of his duties. Such Assistants  
17 shall take the same oath as the water commissioner, and  
18 shall obey his instructions, and each shall be entitled--to  
19 such--compensation--as--his--services--may--demand--and--as COM-  
20 PENSATED IN AN AMOUNT APPROVED BY the superintendent, may  
21 recommend,--not--to--exceed--in--any--case--fifteen--dollars  
22 (\$15.00),--per--day--for--every--day--he--is--employed,--such--pay-  
23 ment--to--be--made--upon--certificates--of--the--water--commis-  
24 sioner---approved--by--the--division--superintendent,--in--the

1 ~~same-manner-as-provided-for-the-payment-of-the-water--com-~~  
2 ~~missioner.~~ The term of service of assistant commissioners  
3 may be terminated at any time by the water commissioner or  
4 the division superintendent, and shall in no event con-  
5 tinue after the emergency has ceased to exist.

6 41-4-308. Taking of testimony generally; taking of  
7 proof. Upon the date named in the notice provided for in  
8 the preceding sections, the division superintendent shall  
9 begin the taking of said testimony and shall continue  
10 until said testimony shall be completed; provided, that in  
11 case the division superintendent of any water division is  
12 directly or indirectly interested in the water of any  
13 stream of his division, or is prevented by illness or  
14 other disability from the taking of such proofs, the tak-  
15 ing of evidence so far as relates to said stream shall be  
16 under the direction of the division superintendent of the  
17 next nearest water division or under the direct personal  
18 supervision of the state engineer, as may be deemed by the  
19 engineer the most expedient. Provided, that in the taking  
20 of proofs of appropriation of water made under a permit  
21 issued by the state engineer, such permits having been  
22 issued subsequent to the adjudication of the waters of  
23 the stream from which the appropriation is made, the  
24 superintendent may, in his discretion, authorize the



1 water commissioner of the district in which the appropria-  
2 tion is made to take such proofs. Upon the taking of the  
3 proofs so ordered the water commissioner shall at once  
4 forward them to the division superintendent. The water  
5 commissioner shall take no proofs except those specifi-  
6 cally ordered by the division superintendent. ~~Provided,~~  
7 ~~further-that-upon-taking-such-proof-the-water-commissioner~~  
8 ~~shall-be-paid-for-such-work-out--of-the-contingent-allowed~~  
9 ~~the-division-superintendent-in-whose-district-such-work-is~~  
10 ~~done;~~ Provided that in the taking of proofs of appropria-  
11 tion of water made under a permit issued by the state  
12 engineer, such permits having been issued subsequent to  
13 the adjudication of the water of the stream from which the  
14 appropriation is made, the superintendent may, in his dis-  
15 cretion authorize the water commissioner of the district  
16 in which the appropriation is made to take such proofs.  
17 Upon the taking of the proofs so ordered the water commis-  
18 sioner shall at once forward them to the division superin-  
19 tendent. The water commissioner shall take no proofs  
20 except those specifically ordered by the division super-  
21 intendent. ~~Provided,-further,-that-upon-taking-such--proof~~  
22 ~~the-water-commissioner-shall-be-paid-for-such--work-out-of~~  
23 ~~the--contingent--allowed--the--division-superintendent,-in~~  
24 ~~whose-district-such-work-is-done-~~

1        41-6-301. Disagreements may be referred to water  
2        commissioner; action by commissioner; fees. When two (2)  
3        or more persons, joint owners in an irrigation ditch or  
4        reservoir, not incorporated, or their lessees, are unable  
5        to agree relative to the division or distribution of water  
6        received through their ditch or from their reservoir, it  
7        shall be lawful for any such owner or owners, his or  
8        their lessee or lessees, or either of them, to apply to  
9        the water commissioner of the district in which such ditch  
10       or reservoir shall be located, by a written notice set-  
11       ting forth such fact, asking the water commissioner to  
12       take charge of such ditch or reservoir for the purpose of  
13       making a just division or distribution of the water from  
14       the same, to the parties entitled to the use thereof. The  
15       said water commissioner shall take exclusive charge of  
16       such ditch or reservoir for the purpose of dividing the  
17       water therefrom in accordance with rights established by  
18       existing decrees, and continuing the said work until the  
19       necessity therefor shall cease to exist. In all cases  
20       where the water commissioner or a deputy water commis-  
21       sioner is called upon to divide the waters of a ditch or  
22       reservoir between appropriators, when the term of his  
23       employment exceeds three (3) consecutive days he shall be  
24       paid in full for his service by the interested water users

1 in proportion to the established rights of each. Any pay-  
2 ments not made for the service of such water commissioner  
3 after a written demand has been made therefor, the same  
4 shall be a lien upon any land or other property owned by  
5 an interested water user refusing to pay and may be  
6 recovered ~~by the water commissioner~~ in any court of compe-  
7 tent jurisdiction. ANY REIMBURSEMENT RECOVERED UNDER THIS  
8 SECTION FOR SERVICES OF THE WATER COMMISSIONER SHALL BE  
9 PAID INTO THE GENERAL FUND.

10 Section 2. W.S. 41-3-602(a) and (b) is repealed.

11 Section 3. Notwithstanding the provisions of W.S.  
12 9-2-1005(h), there are authorized twelve (12) full-time  
13 positions and twenty-two (22) part-time positions for the  
14 purposes of this act.

15 Section 4. There is appropriated from the general  
16 fund to the state engineer one million five hundred  
17 eighty-six thousand dollars (\$1,586,000.00) or as much  
18 thereof as is necessary to carry out this act.

19 Section 5. This act is effective July 1, 1988.

20 (END)

FISCAL NOTE

|                                |              |              |              |
|--------------------------------|--------------|--------------|--------------|
| <u>Anticipated REVENUE to:</u> | <u>FY 19</u> | <u>FY 19</u> | <u>FY 19</u> |
| _____                          | _____        | _____        | _____        |
| _____                          | _____        | _____        | _____        |
| TOTAL ESTIMATED REVENUE        | _____        | _____        | _____        |

|                             |                |                |                |
|-----------------------------|----------------|----------------|----------------|
| <u>Anticipated COST to:</u> | <u>FY 1989</u> | <u>FY 1990</u> | <u>FY 1991</u> |
| General Fund                | \$1,586,000.00 |                |                |
| TOTAL ESTIMATED COST        | \$1,586,000.00 |                |                |

1. This bill provides for an appropriation of \$1,586,000 from the General Fund.
2. The bill authorizes 12 full-time and 22 part-time positions.