

Representative Casey Snider proposes the following substitute bill:

LOCAL GOVERNMENT WATER AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael K. McKell

House Sponsor: Stephen L. Whyte

LONG TITLE

General Description:

This bill addresses local government's actions related to a water interest.

Highlighted Provisions:

This bill:

- ▶ modifies provisions related to determining the basis for an exaction for a water interest imposed by a municipality, county, county's culinary water authority, or local district;
- ▶ addresses water source protection ordinances; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

10-9a-508, as last amended by Laws of Utah 2016, Chapter 350

17-27a-507, as last amended by Laws of Utah 2013, Chapter 309

17-41-402.5, as enacted by Laws of Utah 2009, Chapter 376



26 17B-1-120, as enacted by Laws of Utah 2011, Chapter 205

27 19-4-113, as last amended by Laws of Utah 2009, Chapter 173



29 *Be it enacted by the Legislature of the state of Utah:*

30 Section 1. Section 10-9a-508 is amended to read:

31 **10-9a-508. Exactions -- Exaction for water interest -- Requirement to offer to**
32 **original owner property acquired by exaction.**

33 (1) A municipality may impose an exaction or exactions on development proposed in a
34 land use application, including, subject to Subsection (3), an exaction for a water interest, if:

35 (a) an essential link exists between a legitimate governmental interest and each
36 exaction; and

37 (b) each exaction is roughly proportionate, both in nature and extent, to the impact of
38 the proposed development.

39 (2) If a land use authority imposes an exaction for another governmental entity:

40 (a) the governmental entity shall request the exaction; and

41 (b) the land use authority shall transfer the exaction to the governmental entity for
42 which it was exacted.

43 (3) (a) (i) ~~[A]~~ Subject to the requirements of this Subsection (3), a municipality shall
44 base ~~any~~ an exaction for a water interest on the culinary water authority's established
45 calculations of projected water interest requirements.

46 (ii) Except as described in Subsection (3)(a)(iii), a culinary water authority shall base
47 an exaction for a culinary water interest on:

48 (A) consideration of the system-wide minimum sizing standards established for the
49 culinary water authority by the Division of Drinking Water pursuant to Section 19-4-114; and

50 (B) the number of equivalent residential connections associated with the culinary water
51 demand for each specific development proposed in the development's land use application,
52 applying lower exactions for developments with lower equivalent residential connections as
53 demonstrated by at least five years of usage data for like land uses within the municipality.

54 (iii) A municipality may impose an exaction for a culinary water interest that results in
55 less water being exacted than would otherwise be exacted under Subsection (3)(a)(ii) if the
56 municipality, at the municipality's sole discretion, determines there is good cause to do so.

57 (iv) A municipality shall make public the methodology used to comply with Subsection
58 (3)(a)(ii)(B).

59 [(iv)] (v) Upon an applicant's request, the culinary water authority shall provide the
60 applicant with the basis for the culinary water authority's calculations under Subsection
61 (3)(a)(i) on which an exaction for a water interest is based.

62 (b) A municipality may not impose an exaction for a water interest if the culinary water
63 authority's existing available water interests exceed the water interests needed to meet the
64 reasonable future water requirement of the public, as determined under Subsection
65 73-1-4(2)(f).

66 (4) (a) If a municipality plans to dispose of surplus real property that was acquired
67 under this section and has been owned by the municipality for less than 15 years, the
68 municipality shall first offer to reconvey the property, without receiving additional
69 consideration, to the person who granted the property to the municipality.

70 (b) A person to whom a municipality offers to reconvey property under Subsection
71 (4)(a) has 90 days to accept or reject the municipality's offer.

72 (c) If a person to whom a municipality offers to reconvey property declines the offer,
73 the municipality may offer the property for sale.

74 (d) Subsection (4)(a) does not apply to the disposal of property acquired by exaction by
75 a community reinvestment agency.

76 Section 2. Section 17-27a-507 is amended to read:

77 **17-27a-507. Exactions -- Exaction for water interest -- Requirement to offer to**
78 **original owner property acquired by exaction.**

79 (1) A county may impose an exaction or exactions on development proposed in a land
80 use application, including, subject to Subsection (3), an exaction for a water interest, if:

81 (a) an essential link exists between a legitimate governmental interest and each
82 exaction; and

83 (b) each exaction is roughly proportionate, both in nature and extent, to the impact of
84 the proposed development.

85 (2) If a land use authority imposes an exaction for another governmental entity:

86 (a) the governmental entity shall request the exaction; and

87 (b) the land use authority shall transfer the exaction to the governmental entity for

88 which it was exacted.

89 (3) (a) (i) ~~[A]~~ Subject to the requirements of this Subsection (3), a county or, if
90 applicable, the county's culinary water authority shall base any exaction for a water interest on
91 the culinary water authority's established calculations of projected water interest requirements.

92 (ii) Except as described in Subsection (3)(a)(iii), a culinary water authority shall base
93 an exaction for a culinary water interest on:

94 (A) consideration of the system-wide minimum sizing standards established for the
95 culinary water authority by the Division of Drinking Water pursuant to Section 19-4-114; and

96 (B) the number of equivalent residential connections associated with the culinary water
97 demand for each specific development proposed in the development's land use application,
98 applying lower exactions for developments with lower equivalent residential connections as
99 demonstrated by at least five years of usage data for like land uses within the county.

100 (iii) A county or culinary water authority may impose an exaction for a culinary water
101 interest that results in less water being exacted than would otherwise be exacted under
102 Subsection (3)(a)(ii) if the county or culinary water authority, at the county's or culinary water
103 authority's sole discretion, determines there is good cause to do so.

104 (iv) A county shall make public the methodology used to comply with Subsection
105 (3)(a)(ii)(B).

106 ~~[(ii)]~~ (v) Upon an applicant's request, the culinary water authority shall provide the
107 applicant with the basis for the culinary water authority's calculations under Subsection
108 (3)(a)(i) on which an exaction for a water interest is based.

109 (b) A county or its culinary water authority may not impose an exaction for a water
110 interest if the culinary water authority's existing available water interests exceed the water
111 interests needed to meet the reasonable future water requirement of the public, as determined
112 under Subsection 73-1-4(2)(f).

113 (4) (a) If a county plans to dispose of surplus real property under Section 17-50-312
114 that was acquired under this section and has been owned by the county for less than 15 years,
115 the county shall first offer to reconvey the property, without receiving additional consideration,
116 to the person who granted the property to the county.

117 (b) A person to whom a county offers to reconvey property under Subsection (4)(a) has
118 90 days to accept or reject the county's offer.

119 (c) If a person to whom a county offers to reconvey property declines the offer, the
120 county may offer the property for sale.

121 (d) Subsection (4)(a) does not apply to the disposal of property acquired by exaction by
122 a community development or urban renewal agency.

123 Section 3. Section **17-41-402.5** is amended to read:

124 **17-41-402.5. Limits on political subdivisions with respect to a vested mining use --**
125 **Exception.**

126 (1) A political subdivision may not:

127 (a) terminate a vested mining use, whether by amortization, the exercise of police
128 power, or otherwise;

129 (b) prohibit, restrict, or otherwise limit a mine operator with a vested mining use from
130 exercising the rights permitted under this chapter;

131 (c) require, for a vested mining use:

132 (i) a variance;

133 (ii) a conditional use permit;

134 (iii) a special exception;

135 (iv) the establishment or determination of a nonconforming use right; or

136 (v) any other type of zoning or land use permit; or

137 (d) prohibit, restrict, limit, or otherwise regulate a vested mining use under a variance,
138 conditional use permit, special exception, or other zoning or land use permit issued before May
139 12, 2009.

140 (2) Subsection (1) does not prohibit a political subdivision from requiring a vested
141 mining use to comply with the generally applicable, reasonable health and safety regulations
142 and building code adopted by the political subdivision including a drinking water protection
143 zone as defined and limited to [~~Subsection 19-4-113(4)(a)~~] Subsections 19-4-113(5)(a) and (b).

144 Section 4. Section **17B-1-120** is amended to read:

145 **17B-1-120. Exactions -- Exaction for water interest -- Requirement to offer to**
146 **original owner property acquired by exaction.**

147 (1) A local district may impose an exaction on a service received by an applicant,
148 including, subject to Subsection (2), an exaction for a water interest if:

149 (a) the local district establishes that a legitimate local district interest makes the

150 exaction essential; and

151 (b) the exaction is roughly proportionate, both in nature and extent, to the impact of the
152 proposed service on the local district.

153 (2) (a) (i) ~~[A]~~ Subject to the requirements of this Subsection (2), a local district shall
154 base an exaction for a water interest on the culinary water authority's established calculations of
155 projected water interest requirements.

156 (ii) Except as described in Subsection (2)(a)(iii), a culinary water authority shall base
157 an exaction for a culinary water interest on:

158 (A) consideration of the system-wide minimum sizing standards established for the
159 culinary water authority by the Division of Drinking Water pursuant to Section 19-4-114; and

160 (B) the number of equivalent residential connections associated with the culinary water
161 demand for each specific development proposed in the development's land use application,
162 applying lower exactions for developments with lower equivalent residential connections as
163 demonstrated by at least five years of usage data for like land uses within the local district.

164 (iii) A local district may impose an exaction for a culinary water interest that results in
165 less water being exacted than would otherwise be exacted under Subsection (2)(a)(ii) if the
166 local district, at the local district's sole discretion, determines there is good cause to do so.

167 (iv) A local district shall make public the methodology used to comply with Subsection
168 (2)(a)(ii)(B).

169 ~~[(ii)]~~ (v) If requested by a service applicant, the culinary authority shall provide the
170 basis for the culinary water authority's calculations described in Subsection (2)(a)(i).

171 (b) A local district may not impose an exaction for a water interest if the culinary water
172 authority's existing available water interests exceed the water interests needed to meet the
173 reasonable future water requirement of the public, as determined in accordance with Section
174 73-1-4.

175 (3) (a) If a local district plans to dispose of surplus real property that was acquired
176 under this section and has been owned by the local district for less than 15 years, the local
177 district shall offer to reconvey the surplus real property, without receiving additional
178 consideration, first to a person who granted the real property to the local district.

179 (b) The person described in Subsection (3)(a) shall, within 90 days after the day on
180 which a local district makes an offer under Subsection (3)(a), accept or reject the offer.

181 (c) If a person rejects an offer under Subsection (3)(b), the local district may sell the
182 real property.

183 Section 5. Section **19-4-113** is amended to read:

184 **19-4-113. Water source protection ordinance.**

185 (1) As used in this section, "municipality" means the same as that term is defined in
186 Section 10-1-104.

187 ~~[(1)]~~ (2) (a) Before May 3, 2010, a first or second class county shall:

188 (i) adopt an ordinance in compliance with this section after:

189 (A) considering the rules established by the board to protect a watershed or water
190 source used by a public water system;

191 (B) consulting with a wholesale water supplier or retail water supplier whose drinking
192 water source is within the county's jurisdiction;

193 (C) considering the effect of the proposed ordinance on:

194 (I) agriculture production within an agricultural protection area created under Title 17,
195 Chapter 41, Agriculture, Industrial, or Critical Infrastructure Materials Protection Areas; and

196 (II) a manufacturing, industrial, or mining operation within the county's jurisdiction;
197 and

198 (D) holding a public hearing in accordance with Title 52, Chapter 4, Open and Public
199 Meetings Act; and

200 (ii) file a copy of the ordinance with the board.

201 (b) A municipality in a first or second class county may adopt an ordinance that a first
202 or second class county is required to adopt by this section by following the procedures and
203 requirements of this section.

204 ~~[(2)]~~ (3) (a) A county ordinance adopted in accordance with this section applies to the
205 incorporated and unincorporated areas of the county unless a municipality adopts an ordinance
206 in accordance with this section.

207 (b) A municipal ordinance adopted in accordance with this section supercedes, within
208 the municipality's jurisdiction, a county ordinance adopted in accordance with this section.

209 ~~[(3)]~~ (4) An ordinance required or authorized by this section at a minimum shall:

210 (a) designate a drinking water source protection zone in accordance with Subsection

211 ~~[(4)]~~ (5) for a groundwater source that is:

212 (i) used by a public water system; and
 213 (ii) located within the county's or municipality's jurisdiction;
 214 (b) contain a zoning provision regulating the storage, handling, use, or production of a
 215 hazardous or toxic substance within a drinking water source protection zone designated under
 216 Subsection ~~[(3)(a)]~~ (4)(a); and
 217 (c) authorize a retail water supplier or wholesale water supplier to seek enforcement of
 218 the ordinance provision required by Subsections ~~[(3)(a)]~~ (4)(a) and (b) in a district court
 219 located within the county or municipality if the county or municipality:
 220 (i) notifies the retail water supplier or wholesale water supplier within 10 days of
 221 receiving notice of a violation of the ordinance that the county or municipality will not seek
 222 enforcement of the ordinance; or
 223 (ii) does not seek enforcement within two days of a notice of violation of the ordinance
 224 when the violation may cause irreparable harm to the groundwater source.
 225 ~~[(4)]~~ (5) A county shall designate a drinking water source protection zone required by
 226 Subsection ~~[(3)(a)]~~ (4)(a) within:
 227 (a) a 100 foot radius from the groundwater source; and
 228 (b) a 250 day groundwater time of travel to the groundwater source if the supplier
 229 calculates the time of travel in the public water system's drinking water source protection plan
 230 in accordance with board rules.
 231 ~~[(5)]~~ (6) A zoning provision required by Subsection ~~[(3)(b)]~~ (4)(b) is not subject to
 232 Subsection 17-41-402(3).
 233 ~~[(6)]~~ (7) An ordinance authorized by Section 10-8-15 supercedes an ordinance required
 234 or authorized by this section to the extent that the ordinances conflict.
 235 ~~[(7)]~~ (8) The board shall[:]
 236 ~~[(a)]~~ provide information, guidelines, and technical resources to a county or
 237 municipality preparing and implementing an ordinance in accordance with this section[:~~and~~]
 238 ~~[(b) report to the Natural Resources, Agriculture, and Environment Interim Committee~~
 239 ~~before November 30, 2010 on:]~~
 240 ~~[(i) compliance with this section's requirement to adopt an ordinance to protect a public~~
 241 ~~drinking water source; and]~~
 242 ~~[(ii) the effectiveness of the ordinance in retaining state primacy in regulating drinking~~

243 water].

244 (9) A third, fourth, fifth, or sixth class county or a municipality located within a third,

245 fourth, fifth, or sixth class county may adopt an ordinance in accordance with this section to

246 establish a drinking water source protection zone and take any other action allowed under this

247 section.