

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 certain local government entities;
- ▶ 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

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



26 [19-4-113](#), as last amended by Laws of Utah 2009, Chapter 173



27
28 *Be it enacted by the Legislature of the state of Utah:*

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

30 **10-9a-508. Exactions -- Exaction for water interest -- Requirement to offer to**
31 **original owner property acquired by exaction.**

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

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

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

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

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

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

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

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

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

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

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

56 (iv) A municipality shall make public the methodology used to comply with Subsection

57 (3)(a)(ii)(B). A land use applicant may appeal to the municipality's governing body an exaction
58 calculation used by the municipality under Subsection (3)(a)(ii). A land use applicant may
59 present data and other information that illustrates a need for an exaction recalculation and the
60 municipality's governing body shall respond with due process.

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

64 (b) A municipality may not impose an exaction for a water interest if the culinary water
65 authority's existing available water interests exceed the water interests needed to meet the
66 reasonable future water requirement of the public, as determined under Subsection
67 73-1-4(2)(f).

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

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

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

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

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

79 **17-27a-507. Exactions -- Exaction for water interest -- Requirement to offer to**
80 **original owner property acquired by exaction.**

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

83 (a) an essential link exists between a legitimate governmental interest and each
84 exaction; and

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

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

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

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

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

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

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

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

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

106 (iv) A county shall make public the methodology used to comply with Subsection
107 (3)(a)(ii)(B). A land use applicant may appeal to the county's governing body an exaction
108 calculation used by the county or the county's culinary water authority under Subsection
109 (3)(a)(ii). A land use applicant may present data and other information that illustrates a need
110 for an exaction recalculation and the county's governing body shall respond with due process.

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

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

118 (4) (a) If a county plans to dispose of surplus real property under Section 17-50-312

119 that was acquired under this section and has been owned by the county for less than 15 years,
120 the county shall first offer to reconvey the property, without receiving additional consideration,
121 to the person who granted the property to the county.

122 (b) A person to whom a county offers to reconvey property under Subsection (4)(a) has
123 90 days to accept or reject the county's offer.

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

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

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

129 **17-41-402.5. Limits on political subdivisions with respect to a vested mining use --**
130 **Exception.**

131 (1) A political subdivision may not:

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

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

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

137 (i) a variance;

138 (ii) a conditional use permit;

139 (iii) a special exception;

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

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

142 (d) prohibit, restrict, limit, or otherwise regulate a vested mining use under a variance,
143 conditional use permit, special exception, or other zoning or land use permit issued before May
144 12, 2009.

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

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

151 **17B-1-120. Exactions -- Exaction for water interest -- Requirement to offer to**
152 **original owner property acquired by exaction.**

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

155 (a) the local district establishes that a legitimate local district interest makes the
156 exaction essential; and

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

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

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

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

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

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

173 (iv) A local district shall make public the methodology used to comply with Subsection
174 (2)(a)(ii)(B). A service applicant may appeal to the local district's governing body an exaction
175 calculation used by the local district under Subsection (2)(a)(ii). A service applicant may
176 present data and other information that illustrates a need for an exaction recalculation and the
177 local district's governing body shall respond with due process.

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

180 (b) A local district may not impose an exaction for a water interest if the culinary water

181 authority's existing available water interests exceed the water interests needed to meet the
182 reasonable future water requirement of the public, as determined in accordance with Section
183 [73-1-4](#).

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

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

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

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

193 **19-4-113. Water source protection ordinance .**

194 (1) As used in this section, "municipality" means the same as that term is defined in
195 Section [10-1-104](#).

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

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

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

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

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

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

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

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

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

210 (b) A municipality in a first or second class county may adopt an ordinance that a first
211 or second class county is required to adopt by this section by following the procedures and

212 requirements of this section.

213 ~~[(2)]~~ (3) (a) A county ordinance adopted in accordance with this section applies to the
214 incorporated and unincorporated areas of the county unless a municipality adopts an ordinance
215 in accordance with this section.

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

218 ~~[(3)]~~ (4) An ordinance required or authorized by this section at a minimum shall:

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

220 ~~[(4)]~~ (5) for a groundwater source that is:

221 (i) used by a public water system; and

222 (ii) located within the county's or municipality's jurisdiction;

223 (b) contain a zoning provision regulating the storage, handling, use, or production of a
224 hazardous or toxic substance within a drinking water source protection zone designated under
225 Subsection ~~[(3)(a)]~~ (4)(a); and

226 (c) authorize a retail water supplier or wholesale water supplier to seek enforcement of
227 the ordinance provision required by Subsections ~~[(3)(a)]~~ (4)(a) and (b) in a district court
228 located within the county or municipality if the county or municipality:

229 (i) notifies the retail water supplier or wholesale water supplier within 10 days of
230 receiving notice of a violation of the ordinance that the county or municipality will not seek
231 enforcement of the ordinance; or

232 (ii) does not seek enforcement within two days of a notice of violation of the ordinance
233 when the violation may cause irreparable harm to the groundwater source.

234 ~~[(4)]~~ (5) A county shall designate a drinking water source protection zone required by
235 Subsection ~~[(3)(a)]~~ (4)(a) within:

236 (a) a 100 foot radius from the groundwater source; and

237 (b) a 250 day groundwater time of travel to the groundwater source if the supplier
238 calculates the time of travel in the public water system's drinking water source protection plan
239 in accordance with board rules.

240 ~~[(5)]~~ (6) A zoning provision required by Subsection ~~[(3)(b)]~~ (4)(b) is not subject to
241 Subsection [17-41-402\(3\)](#).

242 ~~[(6)]~~ (7) An ordinance authorized by Section [10-8-15](#) supercedes an ordinance required

243 or authorized by this section to the extent that the ordinances conflict.

244 ~~[(7)]~~ (8) The board shall[:]

245 ~~[(a)]~~ provide information, guidelines, and technical resources to a county or

246 municipality preparing and implementing an ordinance in accordance with this section[~~;~~and]

247 ~~[(b) report to the Natural Resources, Agriculture, and Environment Interim Committee~~
248 ~~before November 30, 2010 on:]~~

249 ~~[(i) compliance with this section's requirement to adopt an ordinance to protect a public~~
250 ~~drinking water source; and]~~

251 ~~[(ii) the effectiveness of the ordinance in retaining state primacy in regulating drinking~~
252 ~~water].~~

253 (9) A third, fourth, fifth, or sixth class county or a municipality located within a third,
254 fourth, fifth, or sixth class county may adopt an ordinance in accordance with this section to
255 establish a drinking water source protection zone and take any other action allowed under this
256 section.