

SB0158S03 compared with SB0158

~~text~~ shows text that was in SB0158 but was deleted in SB0158S03.

text shows text that was not in SB0158 but was inserted into SB0158S03.

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Representative Casey Snider proposes the following substitute bill:

LOCAL GOVERNMENT WATER~~EXACTIONS~~ AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael K. McKell

House Sponsor: ~~_____~~ Stephen L. Whyte

LONG TITLE

General Description:

This bill addresses ~~exactions for~~ 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 water authority, or local district~~ certain local government entities;
- ▶ addresses water source protection ordinances; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

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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

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

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

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

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

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

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

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

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

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

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

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

(ii) ~~{A municipality}~~ Except as described in Subsection (3)(a)(iii), a culinary water authority shall base an exaction for a {water interest for residential culinary use according to dwelling type.

~~—— (iii) A water interest exaction for residential culinary use may not exceed the immediate past five-year historical average in the municipality of annual consumption by~~

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dwelling type:

~~(iv) If a municipality has no local water consumption data by dwelling type, to establish an exaction, the municipality may use data from other municipalities in the state, as collected;~~ culinary water interest on:

(A) consideration of the system-wide minimum sizing standards established for the culinary water authority by the Division of Drinking Water;

~~(v)~~ pursuant to Section 19-4-114; and

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

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

(iv) A municipality shall, at a minimum, base exactions for water interests on the following dwelling types:

~~(A) single family home;~~

~~(B) apartment or townhome, studio;~~

~~(C) apartment or townhome, one bedroom;~~

~~(D) apartment or townhome, two bedroom; and~~

~~(E) apartment or townhome, three bedroom;~~ make public the methodology used to comply with Subsection (3)(a)(ii)(B). A land use applicant may appeal to the municipality's governing body an exaction calculation used by the municipality under Subsection (3)(a)(ii). A land use applicant may present data and other information that illustrates a need for an exaction recalculation and the municipality's governing body shall respond with due process.

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

(b) A municipality may not impose an exaction for a water interest if the culinary water authority's existing available water interests exceed the water interests needed to meet the reasonable future water requirement of the public, as determined under Subsection

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73-1-4(2)(f).

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) ~~{A county or the county's}~~ Except as described in Subsection (3)(a)(iii), a culinary water authority shall base an exaction for a {water interest for residential culinary use according to dwelling type.

~~—— (iii) A water interest exaction for residential culinary use may not exceed the~~

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~~immediate past five-year historical average in the county of annual consumption by dwelling type:~~

~~— (iv) If a county or the county's} culinary water interest on:~~

~~(A) consideration of the system-wide minimum sizing standards established for the culinary water authority {has no local water consumption data by dwelling type, to establish an exaction,} by the Division of Drinking Water pursuant to Section 19-4-114; and~~

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

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

~~(iv) A county shall make public the methodology used to comply with Subsection (3)(a)(ii)(B). A land use applicant may appeal to the county's governing body an exaction calculation used by the county or the county's culinary water authority under Subsection (3)(a)(ii). A land use applicant may {use} present data {from} and other {counties in the state, as collected by the Division of Drinking Water.~~

~~— (v) A county or the county's culinary water authority shall, at a minimum, base exactions for water interests on the following dwelling types:~~

~~— (A) single family home;~~

~~— (B) apartment or townhome, studio;~~

~~— (C) apartment or townhome, one bedroom;~~

~~— (D) apartment or townhome, two bedroom; and~~

~~— (E) apartment or townhome, three bedroom} information that illustrates a need for an exaction recalculation and the county's governing body shall respond with due process.~~

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

(b) A county or its culinary water authority may not impose an exaction for a water

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interest if the culinary water authority's existing available water interests exceed the water interests needed to meet the reasonable future water requirement of the public, as determined under Subsection 73-1-4(2)(f).

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

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

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

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

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

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

(1) A political subdivision may not:

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

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

(c) require, for a vested mining use:

(i) a variance;

(ii) a conditional use permit;

(iii) a special exception;

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

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

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

(2) Subsection (1) does not prohibit a political subdivision from requiring a vested

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mining use to comply with the generally applicable, reasonable health and safety regulations and building code adopted by the political subdivision including a drinking water protection zone as defined and limited to ~~[Subsection] [19-4-113(4)(a)]~~ Subsections 19-4-113(5)(a) and (b).

Section ~~{3}~~4. Section **17B-1-120** is amended to read:

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

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

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

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

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

~~(ii) A local district~~ Except as described in Subsection (2)(a)(iii), a culinary water authority shall base an exaction for a ~~water interest for residential culinary use according to dwelling type.~~

~~_____ (iii) A water interest exaction for residential culinary use may not exceed the immediate past five-year historical average in the local district of annual consumption by dwelling type.~~

~~_____ (iv) If a local district has no local water consumption data by dwelling type, to establish an exaction, the local district may use data from other local districts in the state, as collected~~ culinary water interest on:

(A) consideration of the system-wide minimum sizing standards established for the culinary water authority by the Division of Drinking Water;

~~_____ (v) pursuant to Section 19-4-114; and~~

(B) the number of equivalent residential connections associated with the culinary water demand for each specific development proposed in the development's land use application, applying lower exactions for developments with lower equivalent residential connections as

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demonstrated by at least five years of usage data for like land uses within the local district.

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

(iv) A local district shall ~~at a minimum, base exactions for water interests on the following dwelling types:~~

~~— (A) single family home;~~

~~— (B) apartment or townhome, studio;~~

~~— (C) apartment or townhome, one bedroom;~~

~~— (D) apartment or townhome, two bedroom; and~~

~~— (E) apartment or townhome, three bedroom} make public the methodology used to~~

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

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

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

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

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

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

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

19-4-113. Water source protection ordinance .

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

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

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

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

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

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

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

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

and

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

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

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

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

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

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

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

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

(i) used by a public water system; and

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

(b) contain a zoning provision regulating the storage, handling, use, or production of a hazardous or toxic substance within a drinking water source protection zone designated under

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Subsection [(3)(a)] (4)(a); and

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

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

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

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

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

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

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

[(6)] (7) An ordinance authorized by Section 10-8-15 supercedes an ordinance required or authorized by this section to the extent that the ordinances conflict.

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

[(a)] provide information, guidelines, and technical resources to a county or municipality preparing and implementing an ordinance in accordance with this section[:and]

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

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

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

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

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section.