

1 **WATER REUSE REQUIREMENTS**

2 2006 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Ben C. Ferry**

5 Senate Sponsor: Thomas V. Hatch

6

7 **LONG TITLE**

8 **General Description:**

9 This bill addresses requirements for water reuse projects.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines terms;
- 13 ▶ allows reuse of water by a public agency, including water for which water rights are
- 14 not owned by the agency but a reuse authorization contract exists;
- 15 ▶ establishes a process for approval of a water reuse project;
- 16 ▶ addresses the effects of a water reuse project; and
- 17 ▶ makes technical changes.

18 **Monies Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 **AMENDS:**

24 **19-5-104**, as last amended by Chapter 274, Laws of Utah 2001

25 **ENACTS:**

26 **73-3c-101**, Utah Code Annotated 1953

27 **73-3c-102**, Utah Code Annotated 1953



- 28 **73-3c-201**, Utah Code Annotated 1953
- 29 **73-3c-202**, Utah Code Annotated 1953
- 30 **73-3c-301**, Utah Code Annotated 1953
- 31 **73-3c-302**, Utah Code Annotated 1953
- 32 **73-3c-303**, Utah Code Annotated 1953
- 33 **73-3c-304**, Utah Code Annotated 1953
- 34 **73-3c-401**, Utah Code Annotated 1953

35 REPEALS:

- 36 **73-3c-1**, as enacted by Chapter 39, Laws of Utah 1995
- 37 **73-3c-2**, as enacted by Chapter 39, Laws of Utah 1995
- 38 **73-3c-3**, as enacted by Chapter 39, Laws of Utah 1995
- 39 **73-3c-4**, as enacted by Chapter 39, Laws of Utah 1995
- 40 **73-3c-5**, as enacted by Chapter 39, Laws of Utah 1995
- 41 **73-3c-6**, as enacted by Chapter 39, Laws of Utah 1995
- 42 **73-3c-7**, as enacted by Chapter 39, Laws of Utah 1995
- 43 **73-3c-8**, as enacted by Chapter 39, Laws of Utah 1995



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

46 Section 1. Section **19-5-104** is amended to read:

47 **19-5-104. Powers and duties of board.**

48 (1) The board has the following powers and duties, but the board shall give priority to
49 pollution that results in hazards to the public health:

50 (a) develop programs for the prevention, control, and abatement of new or existing
51 pollution of the waters of the state;

52 (b) advise, consult, and cooperate with other agencies of the state, the federal
53 government, other states, and interstate agencies, and with affected groups, political
54 subdivisions, and industries to further the purposes of this chapter;

55 (c) encourage, participate in, or conduct studies, investigations, research, and
56 demonstrations relating to water pollution and causes of water pollution as the board finds
57 necessary to discharge its duties;

58 (d) collect and disseminate information relating to water pollution and the prevention,

59 control, and abatement of water pollution;

60 (e) adopt, modify, or repeal standards of quality of the waters of the state and classify
61 those waters according to their reasonable uses in the interest of the public under conditions the
62 board may prescribe for the prevention, control, and abatement of pollution;

63 (f) make rules in accordance with Title 63, Chapter 46a, Utah Administrative
64 Rulemaking Act, taking into account Subsection (2), to:

65 (i) implement the awarding of construction loans to political subdivisions and
66 municipal authorities under Section 11-8-2, including:

67 (A) requirements pertaining to applications for loans;

68 (B) requirements for determination of eligible projects;

69 (C) requirements for determination of the costs upon which loans are based, which
70 costs may include engineering, financial, legal, and administrative expenses necessary for the
71 construction, reconstruction, and improvement of sewage treatment plants, including major
72 interceptors, collection systems, and other facilities appurtenant to the plant;

73 (D) a priority schedule for awarding loans, in which the board may consider in addition
74 to water pollution control needs any financial needs relevant, including per capita cost, in
75 making a determination of priority; and

76 (E) requirements for determination of the amount of the loan;

77 (ii) implement the awarding of loans for nonpoint source projects pursuant to Section
78 73-10c-4.5;

79 (iii) set effluent limitations and standards subject to Section 19-5-116;

80 (iv) implement or effectuate the powers and duties of the board; and

81 (v) protect the public health for the design, construction, operation, and maintenance of
82 underground wastewater disposal systems, liquid scavenger operations, and vault and earthen
83 pit privies;

84 (g) issue, modify, or revoke orders:

85 (i) prohibiting or abating discharges;

86 (ii) requiring the construction of new treatment works or any parts of them, or requiring
87 the modification, extension, or alteration of existing treatment works as specified by board rule
88 or any parts of them, or the adoption of other remedial measures to prevent, control, or abate
89 pollution;

- 90 (iii) setting standards of water quality, classifying waters or evidencing any other
- 91 determination by the board under this chapter; and
- 92 (iv) requiring compliance with this chapter and with rules made under this chapter;
- 93 (h) review plans, specifications, or other data relative to disposal systems or any part of
- 94 disposal systems, and issue construction permits for the installation or modification of
- 95 treatment works or any parts of them;
- 96 (i) after public notice and opportunity for a public hearing, issue, continue in effect,
- 97 revoke, modify, or deny discharge permits under reasonable conditions the board may prescribe
- 98 to control the management of sewage sludge or to prevent or control the discharge of
- 99 pollutants, including effluent limitations for the discharge of wastes into the waters of the state;
- 100 (j) give reasonable consideration in the exercise of its powers and duties to the
- 101 economic impact of water pollution control on industry and agriculture;
- 102 (k) exercise all incidental powers necessary to carry out the purposes of this chapter,
- 103 including delegation to the department of its duties as appropriate to improve administrative
- 104 efficiency;
- 105 (l) meet the requirements of federal law related to water pollution;
- 106 (m) establish and conduct a continuing planning process for control of water pollution
- 107 including the specification and implementation of maximum daily loads of pollutants;
- 108 (n) make rules governing inspection, monitoring, recordkeeping, and reporting
- 109 requirements for underground injections and require permits for them, to protect drinking water
- 110 sources, except for wells, pits, and ponds covered by Section 40-6-5 regarding gas and oil,
- 111 recognizing that underground injection endangers drinking water sources if:
- 112 (i) injection may result in the presence of any contaminant in underground water which
- 113 supplies or can reasonably be expected to supply any public water system, as defined in Section
- 114 19-4-102; and
- 115 (ii) the presence of the contaminant may result in the public water system not
- 116 complying with any national primary drinking water standards or may otherwise adversely
- 117 affect the health of persons;
- 118 (o) make rules governing sewage sludge management, including permitting, inspecting,
- 119 monitoring, recordkeeping, and reporting requirements;
- 120 (p) adopt and enforce rules and establish fees to cover the costs of testing for

121 certification of operators of treatment works and sewerage systems operated by political
122 subdivisions; [~~and~~]

123 (q) notwithstanding the provisions of Section 19-4-112, make rules governing design
124 and construction of irrigation systems which convey sewage treatment facility effluent of
125 human origin in pipelines under pressure, unless contained in surface pipes wholly on private
126 property and for agricultural purposes, and which are constructed after May 4, 1998[-]; and

127 (r) (i) approve, approve in part, approve with conditions, or deny, in writing, an
128 application for water reuse under Title 73, Chapter 3c, Wastewater Reuse Act; and

129 (ii) issue an operating permit for water reuse under Title 73, Chapter 3c, Wastewater
130 Reuse Act.

131 (2) In determining eligible project costs and in establishing priorities pursuant to
132 Subsection (1)(f)(i), the board shall take into consideration the availability of federal grants.

133 (3) In establishing certification rules under Subsection (1)(p), the board shall:

134 (a) base the requirements for certification on the size, treatment process type, and
135 complexity of the treatment works and sewerage systems operated by political subdivisions;

136 (b) allow operators until three years after the date of adoption of the rules to obtain
137 initial certification;

138 (c) allow new operators one year from the date they are hired by a treatment plant or
139 sewerage system or three years after the date of adoption of the rules, whichever occurs later, to
140 obtain certification;

141 (d) issue certification upon application and without testing, at a grade level comparable
142 to the grade of current certification to operators who are currently certified under the voluntary
143 certification plan for wastewater works operators as recognized by the board; and

144 (e) issue a certification upon application and without testing that is valid only at the
145 treatment works or sewerage system where that operator is currently employed if the operator:

146 (i) is in charge of and responsible for the treatment works or sewerage system on
147 March 16, 1991;

148 (ii) has been employed at least ten years in the operation of that treatment works or
149 sewerage system prior to March 16, 1991; and

150 (iii) demonstrates to the board his capability to operate the treatment works or
151 sewerage system at which he is currently employed by providing employment history and

152 references as required by the board.

153 Section 2. Section 73-3c-101 is enacted to read:

154 **CHAPTER 3c. WASTEWATER REUSE ACT**

155 **Part 1. General Provisions**

156 **73-3c-101. Title.**

157 This chapter is known as the "Wastewater Reuse Act."

158 Section 3. Section 73-3c-102 is enacted to read:

159 **73-3c-102. Definitions.**

160 As used in this chapter:

161 (1) "Domestic wastewater" or "sewage" means:

162 (a) a combination of the liquid or water-carried wastes from:

163 (i) structures with installed plumbing facilities; and

164 (ii) industrial establishments; and

165 (b) any groundwater, surface water, and storm water that is present with the waste.

166 (2) "POTW" means a publicly owned treatment works as defined by Section 19-5-102.

167 (3) "Public agency" means a public agency as defined by Section 11-13-103 that:

168 (a) owns or operates a POTW;

169 (b) collects and transports domestic wastewater;

170 (c) holds legal title to a water right;

171 (d) is delegated the right to the beneficial use or reuse of water by the legal title holder
172 of the water right;

173 (e) is a water supplier; or

174 (f) sells wholesale or retail water.

175 (4) "Return flow requirement" means return flow required under a water right.

176 (5) (a) "Reuse authorization contract" means a contract or contracts among:

177 (i) a public agency proposing a water reuse project;

178 (ii) the owner or operator of a POTW that treats domestic wastewater proposed for use
179 in a reuse project;

180 (iii) the owner of a domestic wastewater collection or transportation system if the reuse
181 project will divert domestic wastewater directly from that entity's collection or transportation
182 system;

183 (iv) the legal title holder of the water right designated for use in the reuse project,
184 unless the legal title holder of the water right has delegated to another the right to the beneficial
185 use or reuse of the water;

186 (v) each water supplier not holding legal title to the water right designated for use in
187 the reuse project that sells or delivers water under the water right designated for use in the
188 reuse project;

189 (vi) each entity that will engage in the wholesale or retail sale of water from the water
190 reuse project; and

191 (vii) the retail water supplier retailing water that will be replaced by reuse water
192 supplied under the proposed reuse project.

193 (b) A reuse authorization contract shall:

194 (i) provide that a water supplier that is a party to the agreement consents to the use of
195 reuse water under each water right, in which the water supplier has an interest, that is identified
196 for use in the water reuse project; and

197 (ii) provide that any proposed water reuse project based on the contract shall be
198 consistent with the underlying water right.

199 (6) "Reuse water" means domestic wastewater treated to a standard acceptable under
200 rules made by the Water Quality Board under Section 19-5-104.

201 (7) "Water reuse project" or "project" means a project for the reuse of domestic
202 wastewater that requires approval by the Water Quality Board in accordance with Section
203 19-5-104 and the state engineer under Section 73-3c-302.

204 (8) "Water right" means:

205 (a) a right to use water evidenced by any means identified in Section 73-1-10; or

206 (b) a right to use water under an approved application:

207 (i) to appropriate;

208 (ii) for a change of use; or

209 (iii) for the exchange of water.

210 (9) "Water supplier" means an entity engaged in the delivery of water for municipal
211 purposes.

212 Section 4. Section **73-3c-201** is enacted to read:

213 **Part 2. Permissible Reuse**

214 **73-3c-201. Reuse by a public agency owning underlying water right.**

215 (1) A public agency owning or operating a POTW that treats domestic wastewater
216 consisting of water supplied under a water right the public agency owns may use, or contract
217 for the use of, reuse water if:

218 (a) the water right is administered by the state engineer as a municipal water right;

219 (b) the reuse is consistent, under Subsection 73-3c-302(5), with the underlying water
220 right; and

221 (c) the public agency receives approval in accordance with Sections 73-3c-301 and
222 73-3c-302.

223 (2) A change application shall be filed in accordance with Section 73-3-3 if the public
224 agency proposes a water reuse that is inconsistent with the underlying water right.

225 Section 5. Section **73-3c-202** is enacted to read:

226 **73-3c-202. Reuse by a public agency under a contract authorizing the use of**
227 **water.**

228 (1) A public agency may use or contract for the use of reuse water if:

229 (a) the domestic wastewater consists of water for which the public agency has a reuse
230 authorization contract;

231 (b) the water right is administered by the state engineer as a municipal water right;

232 (c) the reuse is consistent, under Subsection 73-3c-302(5), with the underlying water
233 right; and

234 (d) the public agency receives approval in accordance with Sections 73-3c-301 and
235 73-3c-302.

236 (2) A change application shall be filed in accordance with Section 73-3-3 if the public
237 agency proposes a water reuse that is inconsistent with the underlying water right.

238 Section 6. Section **73-3c-301** is enacted to read:

239 **Part 3. Approval Process**

240 **73-3c-301. Application to the Water Quality Board.**

241 (1) A public agency proposing a water reuse project shall apply to the Water Quality
242 Board created by Section 19-1-106.

243 (2) The Water Quality Board may make rules, in accordance with Title 63, Chapter
244 46a, Utah Administrative Rulemaking Act, governing the consideration and approval of water

245 reuse applications and administration of water reuse construction and operating permits.

246 (3) Rules created under Subsection (2) shall require that water reuse meet standards
247 and requirements for water quality set by the Water Quality Board in accordance with Title 19,
248 Chapter 5, Water Quality Act.

249 (4) The Water Quality Board shall issue a written decision for each water reuse
250 application.

251 Section 7. Section **73-3c-302** is enacted to read:

252 **73-3c-302. Application to the state engineer.**

253 (1) A public agency proposing water reuse shall apply to the state engineer.

254 (2) An application for water reuse under Subsection (1) shall be made upon forms
255 furnished by the state engineer and shall include:

256 (a) the name of the applicant;

257 (b) a description of the underlying water right;

258 (c) an evaluation of the underlying water right's diversion, depletion, and return flow
259 requirements;

260 (d) the estimated quantity of water to be reused;

261 (e) the location of the POTW;

262 (f) the place, purpose, and extent of the proposed water reuse;

263 (g) an evaluation of depletion from the hydrologic system caused by the water reuse;

264 and

265 (h) any other information consistent with this chapter that is requested by the state
266 engineer.

267 (3) An application under Subsection (1) shall include a copy of a reuse authorization
268 contract for water reuse proposed by a public agency for any underlying water right not owned
269 by the public agency.

270 (4) In considering an application for water reuse, the state engineer shall comply with:

271 (a) Section 73-3-6;

272 (b) Section 73-3-7;

273 (c) Section 73-3-10; and

274 (d) Section 73-3-14.

275 (5) In determining whether a proposed water reuse is consistent with the underlying

276 water right, the state engineer shall conclude that a proposed water reuse is consistent with the
277 underlying water right if:

278 (a) the use of the reuse water does not enlarge the underlying water right; and

279 (b) any return flow requirement of the underlying water right is satisfied.

280 (6) (a) The state engineer shall approve a water reuse application if the state engineer
281 concludes that the proposed water reuse is consistent with the underlying water right.

282 (b) The state engineer may:

283 (i) deny an application for water reuse if the proposed water reuse is inconsistent with
284 the underlying water right; or

285 (ii) approve the application in part or with conditions to assure consistency with the
286 underlying water right.

287 (7) A public agency with an approved reuse application shall submit a report, as
288 directed by the state engineer, concerning the ongoing water reuse operation.

289 (8) The state engineer may make rules in accordance with Title 63, Chapter 46a, Utah
290 Administrative Rulemaking Act, to implement the provisions of this chapter.

291 Section 8. Section **73-3c-303** is enacted to read:

292 **73-3c-303. Inflow of unappropriated water -- Application to appropriate.**

293 If domestic wastewater inflow to a POTW consists of any unappropriated infiltration
294 water, a person may apply to the state engineer to appropriate the unappropriated infiltration
295 water to a beneficial use in accordance with Section 73-3-8.

296 Section 9. Section **73-3c-304** is enacted to read:

297 **73-3c-304. Change in point of discharge.**

298 (1) The point of discharge of water from a POTW may be changed if the Water Quality
299 Board determines that a change is necessary:

300 (a) for treatment purposes;

301 (b) to enhance environmental quality;

302 (c) to protect public health, safety, or welfare; or

303 (d) to comply with:

304 (i) rules created by the Water Quality Board in accordance with Section 19-5-104; or

305 (ii) the POTW's discharge permit.

306 (2) Before changing the point of discharge from a POTW under Subsection (1), the

307 Water Quality Board shall consult with the state engineer.

308 Section 10. Section **73-3c-401** is enacted to read:

309 **Part 4. Effect of Reuse**

310 **73-3c-401. Priority of reuse water.**

311 If the use of reuse water is consistent with the underlying water right, the priority of the
312 reuse water is the same as the priority of the underlying water right.

313 Section 11. **Repealer.**

314 This bill repeals:

315 Section **73-3c-1, Definitions.**

316 Section **73-3c-2, Municipality may use sewage effluent in a manner consistent with**
317 **its water rights -- Change application to be filed for uses inconsistent with water rights.**

318 Section **73-3c-3, Agent for use of sewage effluent -- Change application for**
319 **inconsistent uses.**

320 Section **73-3c-4, Consideration and approval of change applications to effect the**
321 **use of sewage effluent.**

322 Section **73-3c-5, Priority of a use of sewage effluent.**

323 Section **73-3c-6, Sewage inflow that consists of unappropriated water --**
324 **Application to appropriate may be made.**

325 Section **73-3c-7, Change of point of discharge of sewage effluent.**

326 Section **73-3c-8, Notification of a sewage effluent use or change in point of**
327 **discharge -- State engineer to make rules.**

Legislative Review Note
as of 11-10-05 9:01 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Interim Committee Note
as of 12-20-05 10:59 AM

The Natural Resources, Agriculture, and Environment Interim Committee recommended this

bill.

Legislative Committee Note
as of 12-20-05 10:59 AM

The Water Issues Task Force recommended this bill.