

1                   **WATER SUPPLY AND SURPLUS WATER AMENDMENTS**

2                                   2019 GENERAL SESSION

3                                   STATE OF UTAH

4                                   **Chief Sponsor: Kim F. Coleman**

5                                   Senate Sponsor: Ralph Okerlund

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7 **LONG TITLE**

8 **Committee Note:**

9                   The Natural Resources, Agriculture, and Environment Interim Committee  
10 recommended this bill.

11                   The Legislative Water Development Commission recommended this bill.

12                   Membership:     13 legislators   10 non-legislators

13                   Legislative Vote: 8 voting for   0 voting against     5 absent

14 **General Description:**

15                   This bill regulates municipalities that provide water to customers outside respective  
16 political boundaries.

17 **Highlighted Provisions:**

18                   This bill:

- 19                   ▶ defines terms;
- 20                   ▶ describes the process by which a municipality may provide water to customers  
21 outside the municipality's political boundary;
- 22                   ▶ states that a municipality may not sell the municipality's waterworks, in whole or in  
23 part, except as provided in statute;
- 24                   ▶ creates reporting requirements; and
- 25                   ▶ makes technical changes.

26 **Money Appropriated in this Bill:**

27                   None



28 **Other Special Clauses:**

29 This bill provides a special effective date.

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **10-7-14**, Utah Code Annotated 1953

33 **10-8-14**, as last amended by Laws of Utah 2016, Chapter 419

34 **10-8-22**, Utah Code Annotated 1953

35 ENACTS:

36 **73-5-16**, Utah Code Annotated 1953



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

39 Section 1. Section **10-7-14** is amended to read:

40 **10-7-14. Rules and regulations for use of water.**

41 (1) As used in this section:

42 (a) "Designated water service area" means the area defined by a municipality in  
43 accordance with the Utah Constitution, Article XI, Section 6, Subsection (1)(c).

44 (b) "Retail customer" means an end user:

45 (i) who receives culinary water directly from a municipality's waterworks system; and

46 (ii) whom the municipality described in Subsection (1)(b)(i) bills for water service.

47 (c) (i) "Waterworks system" means municipally owned collection, treatment, storage,  
48 and distribution facilities for culinary or irrigation water, including any pipe, hydrant, or  
49 appurtenance to a pipe or hydrant.

50 (ii) "Waterworks system" does not include a water right or a source of supply such as a  
51 well, spring, stream, or share in a mutual irrigation company.

52 (2) [Every city and town] A municipality may enact ordinances, rules and regulations  
53 for the management and conduct of the waterworks system owned or controlled by it.

54 (3) A municipality that provides water to a retail customer outside of the municipality's  
55 boundary shall:

56 (a) create and maintain a map showing:

57 (i) the municipality's designated water service area; and

58 (ii) each area outside the municipality's designated water service area where a retail

- 59 customer receives water service from the municipality;
- 60 (b) transmit a copy of the map described in Subsection (3)(a) to the state engineer;
- 61 (c) if the municipality has more than 500 retail customers, post the map described in
- 62 Subsection (3)(a) on the municipality's website;
- 63 (d) define, by ordinance, the area included in the municipality's designated water
- 64 service area;
- 65 (e) adopt, by ordinance, any municipality rule or regulation applicable to the
- 66 municipality's designated water service area or to a retail customer located outside of the
- 67 municipality's designated water service area; and
- 68 (f) adopt, by ordinance, reasonable water rates for retail customers in the municipality's
- 69 designated water service area, in accordance with Section [10-8-22](#).
- 70 (4) Within the municipality's designated water service area, a municipality shall:
- 71 (a) provide service to all retail customers in a manner consistent with principles of
- 72 equal protection; and
- 73 (b) apply restrictions on water use to all retail customers in times of anticipated or
- 74 actual water shortages in a manner consistent with principles of equal protection.
- 75 (5) Nothing in this section:
- 76 (a) prohibits a municipality from enacting a service restriction or other restriction:
- 77 (i) affecting:
- 78 (A) a localized area; or
- 79 (B) the municipality's entire designated water service area; and
- 80 (ii) (A) based on an operational or maintenance need;
- 81 (B) based on an emergency situation; or
- 82 (C) to address a health, safety, or general welfare need;
- 83 (b) expands or diminishes the ability of a municipality to enter into a contract to supply
- 84 water outside of the municipality's designated water service area; or
- 85 (c) alters the authorities or definitions described in Title 19, Chapter 4, Safe Drinking
- 86 Water Act.
- 87 (6) A municipality may not sell or convey an interest, in part or in whole, of the
- 88 municipality's waterworks system, except to a public entity as defined in Section [73-1-4](#).
- 89 Section 2. Section **10-8-14** is amended to read:

90           **10-8-14. Utility and telecommunications services -- Service beyond municipal**  
91 **limits -- Retainage -- Notice of service and agreement.**

92           (1) As used in this section, "public telecommunications service facilities" means the  
93 same as that term is defined in Section [10-18-102](#).

94           (2) A municipality may:

95           (a) construct, maintain, and operate waterworks, sewer collection, sewer treatment  
96 systems, gas works, electric light works, telecommunications lines, cable television lines,  
97 public transportation systems, or public telecommunications service facilities;

98           (b) authorize the construction, maintenance and operation of the works or systems  
99 listed in Subsection (2)(a) by others;

100           (c) purchase or lease the works or systems listed in Subsection (2)(a) from any person  
101 or corporation; and

102           (d) sell and deliver the surplus product or service capacity of any works or system  
103 listed in Subsection (2)(a), not required by the municipality or the municipality's inhabitants, to  
104 others beyond the limits of the municipality, except the sale and delivery of:

105           (i) retail electricity beyond the municipal boundary is governed by Subsections (3)  
106 through (8); [~~and~~]

107           (ii) cable television services or public telecommunications services is governed by  
108 Subsection (12)[~~;~~]; and

109           (iii) water is governed by Sections [10-7-14](#) and [10-8-22](#).

110           (3) If any payment on a contract with a private person, firm, or corporation to construct  
111 waterworks, sewer collection, sewer treatment systems, gas works, electric works,  
112 telecommunications lines, cable television lines, public transportation systems, or public  
113 telecommunications service facilities is retained or withheld, it shall be retained or withheld  
114 and released as provided in Section [13-8-5](#).

115           (4) (a) Except as provided in Subsection (4)(b), (6), or (10), a municipality may not sell  
116 or deliver the electricity produced or distributed by [~~its~~] the municipality's electric works  
117 constructed, maintained, or operated in accordance with Subsection (2) to a retail customer  
118 located beyond [~~its~~] the municipality's municipal boundary.

119           (b) A municipality that provides retail electric service to a customer beyond [~~its~~] the  
120 municipality's municipal boundary on or before June 15, 2013, may continue to serve that

121 customer if:

122 (i) on or before December 15, 2013, the municipality provides the electrical  
123 corporation, as defined in Section 54-2-1, that is obligated by [~~its~~] the municipality's certificate  
124 of public convenience and necessity to serve the customer with an accurate and complete  
125 verified written notice described in Subsection (4)(c) that identifies each customer served by  
126 the municipality beyond [~~its~~] the municipality's municipal boundary;

127 (ii) no later than June 15, 2014, the municipality enters into a written filing agreement  
128 for the provision of electric service with the electrical corporation; and

129 (iii) the Public Service Commission approves the written filing agreement in  
130 accordance with Section 54-4-40.

131 (c) The municipality shall include in the written notice required in Subsection (4)(b)(i)  
132 for each customer:

133 (i) the customer's meter number;

134 (ii) the location of the customer's meter by street address, global positioning system  
135 coordinates, metes and bounds description, or other similar method of meter location;

136 (iii) the customer's class of service; and

137 (iv) a representation that the customer was receiving service from the municipality on  
138 or before June 15, 2013.

139 (5) The written filing agreement entered into in accordance with Subsection (4)(b)(ii)  
140 shall require the following:

141 (a) The municipality shall provide electric service to a customer identified in  
142 accordance with Subsection (4)(b)(i) unless the municipality and the electrical corporation  
143 subsequently agree in writing that the electrical corporation will provide electric service to the  
144 customer.

145 (b) If a customer who is located outside the municipal boundary and who is not  
146 identified in accordance with Subsection (4)(b)(i) requests service from the municipality after  
147 June 15, 2013, the municipality may not provide that customer electric service unless the  
148 municipality submits a request to and enters into a written agreement with the electric  
149 corporation in accordance with Subsection (6).

150 (6) (a) A municipality may submit to the electrical corporation a request to provide  
151 electric service to an electric customer described in Subsection (5)(b).

152 (b) If a municipality submits a request, the electrical corporation shall respond to the  
153 request within 60 days.

154 (c) If the electrical corporation agrees to allow the municipality to provide electric  
155 service to the customer:

156 (i) the electrical corporation and the municipality shall enter into a written agreement;

157 (ii) the municipality shall agree in the written agreement to subsequently transfer  
158 service to the customer described in Subsection (5)(b) if the electrical corporation notifies, in  
159 writing, the municipality that the electrical corporation has installed a facility capable of  
160 providing electric service to the customer; and

161 (iii) the municipality may provide the service if:

162 (A) except as provided in Subsection (6)(c)(iii)(B), the Public Service Commission  
163 approves the agreement in accordance with Section 54-4-40; or

164 (B) for an electrical cooperative that meets the requirements of Subsection 54-7-12(7),  
165 the governing board of the electrical cooperative approves the agreement.

166 (d) The municipality or the electrical corporation may terminate the agreement for the  
167 provision of electric service if the Public Service Commission imposes a condition authorized  
168 in Section 54-4-40 that is a material change to the agreement.

169 (7) If the municipality and electrical corporation make a transfer described in  
170 Subsection (6)(c)(ii):

171 (a) (i) the municipality shall transfer the electric service customer to the electrical  
172 corporation; and

173 (ii) the electrical corporation shall provide electric service to the customer; and

174 (b) the municipality shall transfer a facility in accordance with and for the value as  
175 provided in Section 10-2-421.

176 (8) (a) In accordance with Subsection (8)(b), the municipality shall establish a  
177 reasonable mechanism for resolving potential future complaints by an electric customer located  
178 outside ~~[its]~~ the municipality's municipal boundary.

179 (b) The mechanism shall require:

180 (i) that the rates and conditions of service for a customer outside the municipality's  
181 boundary are at least as favorable as the rates and conditions of service for a similarly situated  
182 customer within the municipality's boundary; and

183 (ii) if the municipality provides a general rebate, refund, or other payment to a  
184 customer located within the municipality's boundary, that the municipality also provide the  
185 same general rebate, refund, or other payment to a similarly situated customer located outside  
186 the municipality's boundary.

187 (9) The municipality is relieved of any obligation to transfer a customer described in  
188 Subsection (5)(b) or facility used to serve the customer in accordance with Subsection (6)(c)(ii)  
189 if the municipality annexes the property on which the customer is being served.

190 (10) (a) A municipality may provide electric service outside of [its] the municipality's  
191 municipal boundary to a facility that is solely owned and operated by the municipality for  
192 municipal service.

193 (b) A municipality's provision of electric service to a facility that is solely owned and  
194 operated by the municipality does not expand the municipality's electric service area.

195 (11) Nothing in this section expands or diminishes the ability of a municipality to enter  
196 into a wholesale electrical sales contract with another municipality that serves electric  
197 customers to sell and deliver wholesale electricity to the other municipality.

198 (12) A municipality's actions under this section related to works or systems involving  
199 public telecommunications services or cable television services are subject to the requirements  
200 of Chapter 18, Municipal Cable Television and Public Telecommunications Services Act.

201 Section 3. Section **10-8-22** is amended to read:

202 **10-8-22. Water rates.**

203 (1) As used in this section:

204 (a) "Designated water service area" means the area defined by a municipality in  
205 accordance with the Utah Constitution, Article XI, Section 6, Subsection (1)(c).

206 (b) "Large municipal drinking water system" means a municipally owned and operated  
207 drinking water system serving a population of 10,000 or more.

208 (c) "Retail customer" means an end user:

209 (i) who receives culinary water directly from a municipality's waterworks system; and

210 (ii) whom the municipality described in Subsection (1)(c)(i) bills for water service.

211 (2) [~~They may~~] A municipality shall fix the rates to be paid for the use of water  
212 furnished by the [city] municipality.

213 (3) The setting of municipal water rates is a legislative act.

214 (4) Within the municipality's designated water service area, a municipality shall:  
215 (a) establish, by ordinance, reasonable rates for the services provided to the  
216 municipality's retail customers;  
217 (b) use the same method of providing notice to all retail customers of proposed rate  
218 changes; and  
219 (c) allow all retail customers the same opportunity to appear and participate in a public  
220 meeting addressing water rates.  
221 (5) (a) A municipality may establish different rates for different classifications of retail  
222 customers within the municipality's designated water service area, if the rates and  
223 classifications have a reasonable basis.  
224 (b) A reasonable basis for charging different rates for different classifications may  
225 include, among other things, a situation in which:  
226 (i) there is a difference in the cost of providing service to a particular classification;  
227 (ii) one classification bears more risk in relation to a system operation or obligation;  
228 (iii) retail customers in one classification invested or contributed to acquire a water  
229 source or supply or build or maintain a system differently than retail customers in another  
230 classification;  
231 (iv) the needs or conditions of one classification:  
232 (A) are distinguishable from the needs or conditions of another classification; and  
233 (B) based on economic, public policy, or other identifiable elements, support a  
234 different rate; or  
235 (v) there is a differential between the classifications based on a cost of service standard  
236 or a generally accepted rate setting method, including a standard or method the American  
237 Water Works Association establishes.  
238 (c) An adjustment based solely on the fact that a particular classification of retail  
239 customers is located either inside or outside of the municipality's corporate boundary is not a  
240 reasonable basis.  
241 (6) (a) If more than 10% of the retail customers within a large municipal drinking water  
242 system's designated water service area are located outside of the municipality's corporate  
243 boundary, the municipality shall:  
244 (i) post on the municipality's website the rates assessed to retail customers within the



245 designated water service area; and

246 (ii) establish an advisory board to make recommendations to the municipal legislative  
247 body regarding water rates, capital projects, and other water service standards.

248 (b) In establishing an advisory board described in Subsection (6)(a)(ii), a municipality  
249 shall:

250 (i) if more than 10% but no more than 30% of the municipality's retail customers  
251 receive service outside the municipality's municipal boundary, ensure that at least 20% of the  
252 advisory board's members represent the municipality's retail customers receiving service  
253 outside the municipality's municipal boundary;

254 (ii) if more than 30% of the municipality's retail customers receive service outside of  
255 the municipality's municipal boundary, ensure that at least 40% of the advisory board's  
256 members represent the municipality's retail customers receiving service outside of the  
257 municipality's municipal boundary; and

258 (iii) in appointing board members who represent retail customers receiving service  
259 outside of the municipality's municipal boundary, as required in Subsections (6)(b)(i) and (ii),  
260 solicit recommendations from each municipality and county outside of the municipality's  
261 municipal boundary whose residents are retail customers within the municipality's designated  
262 water service area.

263 (7) A municipality that supplies water outside of the municipality's designated water  
264 service area shall supply the water only by contract and shall include in the contract the terms  
265 and conditions under which the contract can be terminated.

266 (8) A municipality shall:

267 (a) notify the director of the Division of Drinking Water of a contract the municipality  
268 enters into with a person outside of the municipality's designated water service area, including  
269 the name and contact information of the person named in each contract; and

270 (b) each year, provide any supplementing or new information regarding a contract  
271 described in Subsection (8)(a), including whether there is no new information to provide at that  
272 time.

273 Section 4. Section **73-5-16** is enacted to read:

274 **73-5-16. State engineer to publish maps.**

275 The state engineer shall publish conspicuously on the state engineer's website a map a

276 municipality submits in accordance with Subsection [10-7-14\(3\)\(a\)](#).

277           Section 5. **Delayed effective date.**

278           This bill takes effect on January 1, 2021, if the amendment to the Utah Constitution  
279 proposed by H.J.R. 1, Proposal to Amend Utah Constitution - Municipal Water Resources,  
280 2019 General Session, passes the Legislature and is approved by a majority of those voting on  
281 it at the next regular general election.