

HB0269S03 compared with HB0269S02

~~{deleted text}~~ shows text that was in HB0269S02 but was deleted in HB0269S03.

inserted text shows text that was not in HB0269S02 but was inserted into HB0269S03.

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Representative Keven J. Stratton proposes the following substitute bill:

CAPITAL ASSETS RELATED TO WATER

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Keven J. Stratton

Senate Sponsor: ~~{_____}~~ Scott D. Sandall

LONG TITLE

General Description:

This bill addresses ~~{policies and plans related to}~~ management of capital assets ~~{for}~~ related to water.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires ~~{the adoption and implementation of policies and plans}~~ wastewater service providers or water providers to commit to adopt capital asset management plans under certain circumstances;
- ▶ requires rulemaking related to capital ~~{assets}~~ asset management plans;

~~{_____}~~ requires reporting;

~~_____~~ provides for grants and waivers; and

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- ‡ ▶ addresses the scope of certain provisions:
 - ▶ requires participation in surveys or evaluations;
 - ▶ establishes a review and report related to capital asset management; and
 - ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

73-10c-3, as last amended by Laws of Utah 2012, Chapter 212

ENACTS:

19-5-201, Utah Code Annotated 1953

19-5-202, Utah Code Annotated 1953

19-5-203, Utah Code Annotated 1953

73-10g-401, Utah Code Annotated 1953

73-10g-402, Utah Code Annotated 1953

73-10g-403, Utah Code Annotated 1953

73-10g-404, Utah Code Annotated 1953

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

Section 1. Section 19-5-201 is enacted to read:

Part 2. Capital Assets for Wastewater

19-5-201. Definitions.

As used in this part:

(1) "Capital asset" means an asset that:

(a) is a significant investment or an essential component necessary to provide a

wastewater service, including:

(i) a facility;

(ii) infrastructure, whether above or below ground level;

(iii) equipment; or

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(iv) a communications network; and

(b) is owned by a wastewater service provider.

(2) "Governing body" means a political subdivision governing body defined in Section 63A-15-102.

(3) "Large underground wastewater disposal system" is as defined by rule made by the ~~{division}~~board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

~~{~~ (4) "Policy" means the capital asset assessment, maintenance, and replacement policy required under Subsection 19-5-202(1).

~~——~~ (5) "Qualified capital asset" means a capital asset that is:

~~——~~ (a) identified in a policy as a qualified capital asset in accordance with Subsection 19-5-202(1)(b); and

~~——~~ (b) inventoried, assessed, funded, or otherwise subject to a wastewater service provider's policy in accordance with Section 19-5-202.

~~‡~~ ~~(6)4~~ (4) "Wastewater service provider" means a political subdivision of the state that owns, operates, or otherwise sponsors through agreement ~~{any}~~a sewerage system, a treatment works, or large underground wastewater disposal system for the collection, storage, treatment, or disposal of domestic waste.

Section 2. Section 19-5-202 is enacted to read:

19-5-202. Capital asset ~~{policies}~~:

~~——~~ (1) (a) A wastewater service provider shall adopt a policy for the assessment, maintenance, and replacement of a capital asset that is a qualified capital asset.

~~——~~ (b) A policy shall define in general or specific terms which capital assets are qualified capital assets.

~~——~~ (c) A wastewater service provider shall adapt the terms of a policy to the size of the wastewater service provider measured either by annual operating budget or the number of connections served by the wastewater service provider.

~~——~~ (2) The policy shall require the wastewater service provider to:

~~——~~ (a) complete an inventory of each qualified capital asset; and

~~——~~ (b) assess the physical condition of the qualified capital asset at least every five years in accordance with a method established under Subsection (3)(a)(i).

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~~(3) (a) The policy shall establish:~~

~~(i) a method to assess the physical condition of a qualified capital asset;~~

~~(ii) performance and condition standards for a qualified capital asset;~~

~~(iii) a program for monitoring and reporting the wastewater service provider's application of and compliance with the policy, including a comparison of each qualified capital asset's current status and targeted standards for that qualified capital asset as set forth in the policy;~~

~~(iv) a process for the wastewater service provider to evaluate an existing qualified capital asset for efficiency and expected service delivery; and~~

~~(v) objective criteria for the wastewater service provider to prioritize maintenance or replacement of a qualified capital asset;~~

~~(b) A performance and condition standard described in Subsection (3)(a)(ii) may be:~~

~~(i) a mandated safety standard;~~

~~(ii) a standard} **management.**~~

~~(1) As a condition of receiving {federal, state, or local funding; or~~

~~(iii) an applicable engineering or other professional standard;~~

~~(4) (a) As part of a policy, a wastewater service provider shall adopt financial guidelines to dedicate revenue to a priority qualified capital asset identified under Subsection (3)(a)(v) in accordance with a multiyear qualified capital plan that:~~

~~(i) includes criteria and guidelines in the policy for allocating sufficient funds in a multiyear qualified capital asset plan and in the wastewater service provider's annual operating budget for assessing, maintaining, repairing, and replacing qualified capital assets;~~

~~(ii) establishes an ongoing source of funds in the multiyear qualified capital asset plan and each annual operating budget for repair and replacement costs of qualified capital assets in accordance with the policy; and~~

~~(iii) establishes a repair and replacement reserve for capital projects in the wastewater service provider's capital projects fund and allocates from the repair and replacement reserve.~~

~~(b) The} **state or federal financing or grants to be used for an improvement to a capital asset related to wastewater or sewer infrastructure, the** governing body of a wastewater service provider shall ~~{adopt an annual operating budget that includes ongoing funding described in~~~~

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Subsection (4)(a)(ii):

~~_____ (5) (a) } commit to adopt a capital asset management plan.~~

~~_____ (2) The board shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish the elements of a capital asset management plan required by Subsection (1).~~

~~_____ Section 3. Section 19-5-203 is enacted to read:~~

~~_____ 19-5-203. Participation in survey.~~

~~_____ A wastewater service provider shall } prepare a report of the wastewater service provider's qualified capital asset facilities as follows:~~

~~_____ (i) if the wastewater service provider is treatment works with a capacity of 1,000,000 gallons per day or more, } participate in the United States Environmental Protection Agency's 2022 Clean Water Needs Survey and deliver the required data to the survey data portal by no later than December 31, } 2023, and then every five years thereafter;~~

~~_____ (ii) if the wastewater service provider is treatment works with a capacity of less than 1,000,000 gallons per day, by no later than December 31, 2024, and then every five years thereafter;~~

~~_____ (iii) if the wastewater service provider is a sewerage system, by no later than December 31, 2025, and then every five years thereafter; and~~

~~_____ (iv) if the wastewater service provider is a large underground wastewater disposal system or non-discharging treatment works, by no later than December 31, 2026, and then every five years thereafter;~~

~~_____ (b) The qualified capital asset facilities report required under this Subsection (5) shall:~~

~~_____ (i) describe the proposed replacement time frame for each qualified capital asset;~~

~~_____ (ii) account for each funding source for a qualified capital asset and include any restrictions a funding source may impose on the use or disposal of the qualified capital asset;~~

~~_____ (iii) account for any change in a qualified capital asset's value since the last qualified capital asset facilities report was submitted by the wastewater service provider; and~~

~~_____ (iv) provide a statement of actual expenditures and performance data for each qualified capital asset compared to budgeted expenditures;~~

~~_____ (c) (i) A wastewater service provider may seek a grant from the division to pay some or all of the costs of preparing a qualified capital asset facilities report required by this Subsection~~

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~~(5) if the wastewater service provider establishes, to the satisfaction of the division, that preparing the qualified capital asset facilities report poses a serious financial hardship to the wastewater service provider. The division may award a grant under this Subsection (5)(c) if grant money is available:~~

~~—— (ii) If a wastewater service provider does not receive a grant under Subsection (5)(c)(i), the wastewater service provider may seek a waiver from the division of the requirement to prepare the qualified capital asset facilities report if the wastewater service provider establishes, to the satisfaction of the division, that preparing the qualified capital asset facilities report poses a serious financial hardship to the wastewater service provider.~~

~~—— (iii) If a wastewater service provider obtains a waiver under Subsection (5)(c)(ii), the wastewater service provider is not required to prepare a qualified capital asset facilities report until the next time the wastewater service provider is required to prepare a qualified capital asset facilities report under the five-year cycles described in Subsection (5)(a).~~

~~‡2022.~~

Section 4. Section 73-10c-3 is amended to read:

73-10c-3. Water Development Coordinating Council created -- Purpose --

Members.

(1) (a) There is created within the Department of Natural Resources a Water Development Coordinating Council. The council ~~comprises~~ is comprised of:

- (i) the director of the Division of Water Resources;
- (ii) the executive secretary of the Water Quality Board;
- (iii) the executive secretary of the Drinking Water Board;
- (iv) the director of the Housing and Community Development Division or the director's designee; and
- (v) the state treasurer or the state treasurer's designee.

(b) The council shall choose a chair and vice chair from among its own members.

(c) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

- (i) Section 63A-3-106;
- (ii) Section 63A-3-107; and
- (iii) rules made by the Division of Finance pursuant to Sections 63A-3-106 and

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63A-3-107.

(2) The purposes of the council are to:

(a) coordinate the use and application of the funds available to the state to give financial assistance to political subdivisions of this state so as to promote the conservation, development, treatment, restoration, and protection of the waters of this state;

(b) promote the coordination of the financial assistance programs administered by the state and the use of the financing alternative most economically advantageous to the state and its political subdivisions;

(c) promote the consideration by the Board of Water Resources, Drinking Water Board, and Water Quality Board of regional solutions to the water and wastewater needs of individual political subdivisions of this state; ~~and~~

(d) assess the adequacy and needs of the state and its political subdivisions with respect to water-related infrastructures and advise the governor and the Legislature on those funding needs.

~~Section 3~~; ~~and~~

(e) conduct reviews and reports on water-related infrastructure issues as directed by statute.

Section 5. Section 73-10g-401 is enacted to read:

Part 4. Capital Assets for Water

73-10g-401. Definitions.

As used in this part:

(1) "Capital asset" means an asset that:

(a) is a significant investment or an essential component necessary to provide ~~fa~~water service, including:

(i) a facility;

(ii) infrastructure, whether above or below ground level;

(iii) equipment; or

(iv) a communications network; and

(b) is owned by a water provider.

(2) "Governing body" means:

(a) for a political subdivision, the political subdivision governing body defined in

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Section 63A-15-102; or

(b) for a private entity, the private entity's board of directors, managing members, partners, or equivalent body.

~~{ (3) "Policy" means the capital asset assessment, maintenance, and replacement policy required under Subsection 73-10g-402(1).~~

~~— (4) "Qualified capital asset" means a capital asset that is:~~

~~— (a) identified in a policy as a qualified capital asset in accordance with Subsection 73-10g-402(1)(b); and~~

~~— (b) inventoried, assessed, funded, or otherwise subject to a water provider's policy in accordance with Section 73-10g-402.~~

~~‡ (5)3 "Retail water supplier" means the same as that term is defined in Section 19-4-102.~~

~~(6)4 "Water conservancy district" means the same as that term is defined in Section 73-10-32.~~

~~(7)5 "Water provider" means:~~

~~(a) a retail water supplier; or~~

~~(b) a water conservancy district.~~

Section ~~{4}6~~. Section **73-10g-402** is enacted to read:

73-10g-402. Capital asset policies:

~~— (1) (a) A water provider shall adopt a policy for the assessment, maintenance, and replacement of a capital asset that is a qualified capital asset.~~

~~— (b) A policy shall define in general or specific terms which capital assets are qualified capital assets.~~

~~— (c) A water provider shall adapt the terms of a policy to the size of the water provider measured either by annual operating budget or the number of connections served by the water provider.~~

~~— (2) The policy shall require the water provider to:~~

~~— (a) complete an inventory of each qualified capital asset; and~~

~~— (b) assess the physical condition of the qualified capital asset at least every five years in accordance with a method established under Subsection (3)(a)(i).~~

~~— (3) (a) The policy shall establish:~~

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- ~~—— (i) a method to assess the physical condition of a qualified capital asset;~~
- ~~—— (ii) performance and condition standards for a qualified capital asset;~~
- ~~—— (iii) a program for monitoring and reporting the water provider's application of and compliance with the policy, including a comparison of each qualified capital asset's current status and targeted standards for that qualified capital asset as set forth in the policy;~~
- ~~—— (iv) a process for the water provider to evaluate an existing qualified capital asset for efficiency and expected service delivery; and~~
- ~~—— (v) objective criteria for the water provider to prioritize maintenance or replacement of a qualified capital asset.~~
- ~~—— (b) A performance and condition standard described in Subsection (3)(a)(ii) may be:~~
 - ~~—— (i) a mandated safety standard;~~
 - ~~—— (ii) a standard} **management.**~~
 - ~~—— (1) As a condition of receiving {federal, state, or local funding; or~~
 - ~~—— (iii) an applicable engineering or other professional standard.~~
 - ~~—— (4) (a) As part of a policy, a water provider shall adopt financial guidelines to dedicate revenue to a priority qualified capital asset identified under Subsection (3)(a)(v) in accordance with a multiyear qualified capital plan that:~~
 - ~~—— (i) includes criteria and guidelines in the policy for allocating sufficient funds in a multiyear qualified capital asset plan and in the water provider's annual operating budget for assessing, maintaining, repairing, and replacing qualified capital assets;~~
 - ~~—— (ii) establishes an ongoing source of funds in the multiyear qualified capital asset plan and each annual operating budget for repair and replacement costs of qualified capital assets in accordance with the policy; and~~
 - ~~—— (iii) for a water conservancy district, establishes a repair and replacement reserve for capital projects in the water conservancy district's capital projects fund and allocate from the repair and replacement reserve, subject to Subsection 17B-1-612(5).~~
- ~~—— (b) The} **state or federal financing or grants to be used for an improvement to a capital asset related to water infrastructure, the** governing body of a water provider shall ~~{adopt an annual operating budget that includes ongoing funding described in Subsection (4)(a)(ii).~~~~

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~~_____ (5) (a) A} commit to adopt a capital asset management plan.~~

~~_____ (2) (a) The Drinking Water Board shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish the elements of a capital asset management plan required under Subsection (1) for a water provider {shall submit a report of the water provider's qualified capital asset facilities as follows:~~

~~_____ (i) if the water provider} that is a retail water supplier}, the water provider shall submit the report to the Division of Drinking Water:~~

~~_____ (A) if the}:~~

~~_____ (b) The Board of Water Resources shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish the elements of a capital asset management plan required under Subsection (1) for a water provider {serves 10,000 service connections or more, by no later than December 31, 2023, and then every five years thereafter:~~

~~_____ (B) if the water provider serves at least 3,000 service connections but less than 10,000 service connections, by no later than December 31, 2024, and then every five years thereafter:~~

~~_____ (C) if the water provider serves at least 1,000 service connections but less than 3,000 service connections by no later than December 31, 2025, and then every five years thereafter:~~

~~and~~

~~_____ (D) if the water provider serves at least 500 service connections but less than 1,000 service connections, by no later than December 31, 2026, and then every five years thereafter:~~

~~and~~

~~_____ (ii) if the water provider} that is a water conservancy district}, the water provider shall submit the report to the Division of Water Resources by no later than December 31, 2023, and then every five years thereafter:~~

~~_____ (b) The qualified capital asset facilities report required under this Subsection (5) shall:~~

~~_____ (i) describe the proposed replacement time frame for each qualified capital asset;~~

~~_____ (ii) account for each funding source for a qualified capital asset and include any restrictions a funding source may impose on the use or disposal of the qualified capital asset;~~

~~_____ (iii) account for any change in a qualified capital asset's value since the last qualified capital asset facilities report was submitted by the water provider; and~~

~~_____ (iv) provide a statement of actual expenditures and performance data for each qualified capital asset compared to budgeted expenditures:~~

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~~—— (c) (i) If a water provider is a retail water supplier:~~

~~—— (A) the water provider may seek a grant from the Division of Drinking Water to pay some or all of the costs of submitting a qualified capital asset facilities report required by this Subsection (5) if the water provider establishes, to the satisfaction of the Division of Drinking Water, that submitting the qualified capital asset facilities report poses a serious financial hardship to the water provider;~~

~~—— (B) the Division of Drinking Water may award a grant under this Subsection (5)(c)(i) if grant money is available;~~

~~—— (C) if a water provider does not receive a grant under Subsection (5)(c)(i)(A), the water provider may seek a waiver from the Division of Drinking Water of the requirement to submit the qualified capital asset facilities report if the water provider establishes, to the satisfaction of the Division of Drinking Water, that submitting the qualified capital asset facilities report poses a serious financial hardship to the water provider; and~~

~~—— (D) if the water provider obtains a waiver under Subsection (5)(c)(i)(C), the water provider is not required to submit a qualified capital asset facilities report until the next time the water provider is required to submit a qualified capital asset facilities report under the five-year cycles described in Subsection (5)(a).~~

~~—— (ii) If a water provider is a water conservancy district:~~

~~—— (A) the water provider may seek a grant from the Division of Water Resources to pay some or all of the costs of submitting a qualified capital asset facilities report required by this Subsection (5) if the water provider establishes, to the satisfaction of the Division of Water Resources, that submitting the qualified capital asset facilities report poses a serious financial hardship to the water provider;~~

~~—— (B) the Division of Water Resources may award a grant under this Subsection (5)(c)(ii) if grant money is available;~~

~~—— (C) if a water provider does not receive a grant under Subsection (5)(c)(ii)(A), the water provider may seek a waiver from the Division of Water Resources of the requirement to submit the qualified capital asset facilities report if the water provider establishes, to the satisfaction of the Division of Water Resources, that submitting the qualified capital asset facilities report poses a serious financial hardship to the water provider; and~~

~~—— (D) if the water provider obtains a waiver under Subsection (5)(c)(ii)(C), the water~~

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~~provider is not required to submit a qualified capital asset facilities report until the next time the water provider is required to prepare a qualified capital asset facilities report under the five-year cycles described in Subsection (5)(a):~~

~~(6):~~

(3) A qualified water conservancy district, as defined in Section 17B-2a-1010, is not subject to this ~~part~~section but shall comply with Section 17B-2a-1010.

Section 7. Section 73-10g-403 is enacted to read:

73-10g-403. Participation in survey or evaluation.

A water provider shall participate in regular infrastructure needs surveys or evaluations and shall complete the asset-related sections of a survey or evaluation within the deadline established by the Division of Drinking Water or the Division of Water Resources.

Section 8. Section 73-10g-404 is enacted to read:

73-10g-404. Review and reporting by the Water Development Coordinating Council.

(1) As used in this section:

(a) "Council" means the Water Development Coordinating Council created by Sections 73-10c-3 and 79-2-201.

(b) "Wastewater service provider" means the same as that term is defined in Section 19-5-202.

(2) The council shall review:

(a) best practices related to the assessment, evaluation, maintenance, and replacement of capital assets of wastewater service providers or water providers; and

(b) costs associated with:

(i) the best practices described in Subsection (2)(a); and

(ii) adoption of a capital asset management plan.

(3) The council shall finalize the council's review and report to the Natural Resources, Agriculture, and Environment Interim Committee by no later than the 2022 November interim meeting of the Natural Resources, Agriculture, and Environment Interim Committee.