

WATER SUPPLY AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Phil Lyman

Senate Sponsor: _____

LONG TITLE

General Description:

This bill addresses a municipality's supply of water to contract water customers.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ describes the process by which a municipality provides water to contract water customers;
- ▶ addresses providing water to certain subdivisions;
- ▶ addresses terms of contracts;
- ▶ addresses rates for contract water customers;
- ▶ requires the state engineer to post certain maps; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

10-8-14, as last amended by Laws of Utah 2019, Chapter 99

10-8-22, as last amended by Laws of Utah 2019, Chapter 99



28 73-5-16, as enacted by Laws of Utah 2019, Chapter 99

29 ENACTS:

30 10-7-14.5, Utah Code Annotated 1953

31

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

33 Section 1. Section **10-7-14.5** is enacted to read:

34 **10-7-14.5. Rules and regulations for use of contract water.**

35 (1) As used in this section:

36 (a) "Adequate" means that the water is sufficient in quantity and flow rate to meet
37 county or municipal public health and public safety code requirements, including sufficient
38 water to meet fire flow requirements.

39 (b) "Contract water" means water provided to a contract water customer from a
40 municipality's surplus water.

41 (c) "Contract water customer" means an end user:

42 (i) who receives water for culinary purposes or fire suppression purposes from a
43 municipality's surplus water under a contract or permit;

44 (ii) who lives outside of the municipality's designated water service area; and

45 (iii) whom the municipality described in Subsection (1)(c)(i) does not bill for water
46 service.

47 (d) "Contract water service area" means an area, defined by ordinance, where:

48 (i) a municipality provides water outside of the municipality's designated water service
49 area; and

50 (ii) the municipality does not own or provide the means of water service delivery.

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

53 (f) "Fire flow" means the minimum amount of water, or rate of water flow, required to
54 fight a fire as adopted in statute including under Title 15A, State Construction and Fire Codes
55 Act.

56 (g) "Retail customer" means an end user:

57 (i) who receives culinary water or fire flow directly from a municipality's waterworks
58 system; and

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

60 (h) "Surplus water" means water from a water right owned by a municipality that is in
61 excess of the water needed by the municipality to serve the retail customers within the
62 municipality's designated water service area.

63 (i) "Water for culinary purposes" means adequate surplus water:

64 (i) that is contract water;

65 (ii) that is culinary water; and

66 (iii) for which the municipality owns the water right, but does not own or provide the
67 means of water delivery including treatment of water, storage, and distribution facilities, pipes,
68 hydrants, or appurtenances to a pipe or hydrant.

69 (2) Subject to this section, a municipality may enact ordinances, and rules and
70 regulations for the management and conduct of the contract water owned or controlled by the
71 municipality.

72 (3) A municipality that provides contract water to a contract water customer shall:

73 (a) provide adequate year-round water for culinary purposes or for fire flow purposes to
74 a residence of the contract water customer in which the contract water customer resides
75 year-round;

76 (b) create and maintain a map, that may be combined with the map required by
77 Subsection 10-7-14(3), showing:

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

79 (ii) each area outside the municipality's designated water service area where a contract
80 water customer receives water for culinary purposes or fire flow purposes from the
81 municipality;

82 (c) transmit a copy of the map described in Subsection (3)(b) to the state engineer;

83 (d) if the municipality's contract water is used to serve more than 500 end users, post
84 the map described in Subsection (3)(b) on the municipality's website;

85 (e) define, by ordinance, an area that is the municipality's contract water service area;

86 (f) adopt, by ordinance, contract, or contract amendment a municipality rule or
87 regulation applicable to a contract water customer located within the municipality's contract
88 water service area; and

89 (g) adopt, by ordinance or contract and in accordance with Section 10-8-22, reasonable

90 water rates for contract water customers in the municipality's contract water service area.

91 (4) Within the municipality's contract water service area, a municipality shall:

92 (a) provide adequate service to contract water customers in a manner consistent with
93 principles of equal protection; and

94 (b) apply restrictions on water use to contract water customers in times of anticipated
95 or actual water shortages in a manner consistent with principles of equal protection.

96 (5) (a) In addition to complying with Subsection (3)(a), unless year-round residency is
97 prohibited by local zoning ordinances, a municipality shall provide a contract water customer
98 year-round access to contract water.

99 (b) In an area where retail water service is not provided by a municipality that owns
100 70% or more of the water rights for that area, the municipality may not deny water to a lot
101 owner within a platted subdivision in that area if:

102 (i) the platted subdivision has been approved;

103 (ii) one or more lots in the platted subdivision have been developed;

104 (iii) one or more of the lots in the subdivision have been granted contract water by the
105 municipality; and

106 (iv) the owner of the lot proposes to develop the lot in compliance with the land use
107 regulations generally applicable to the platted subdivision.

108 (c) If a municipality refuses to provide water to a lot in violation of Subsection (5)(b),
109 the refusal is a taking and the municipality shall:

110 (i) follow takings law, as defined in Section [63L-3-102](#); and

111 (ii) purchase the lot.

112 (6) Nothing in this section:

113 (a) prohibits a municipality from enacting a service restriction or other restriction:

114 (i) affecting:

115 (A) a localized area; or

116 (B) the municipality's entire designated water service area or contract water service
117 area; and

118 (ii) (A) based on an operational or maintenance need;

119 (B) based on an emergency situation; or

120 (C) to address a health, safety, or general welfare need;

121 (b) expands or diminishes the ability of a municipality to enter into a contract to supply
122 water outside of the municipality's designated water service area; or

123 (c) alters the authorities or definitions described in Title 19, Chapter 4, Safe Drinking
124 Water Act.

125 Section 2. Section **10-8-14** is amended to read:

126 **10-8-14. Utility and telecommunications services -- Service beyond municipal**
127 **limits -- Retainage -- Notice of service and agreement.**

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

130 (2) A municipality may:

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

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

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

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

141 (i) retail electricity beyond the municipal boundary is governed by Subsections (3)
142 through (8);

143 (ii) cable television services or public telecommunications services is governed by
144 Subsection (12); and

145 (iii) water is governed by Sections [10-7-14](#), [10-7-14.5](#), and [10-8-22](#).

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

151 (4) (a) Except as provided in Subsection (4)(b), (6), or (10), a municipality may not sell

152 or deliver the electricity produced or distributed by the municipality's electric works
153 constructed, maintained, or operated in accordance with Subsection (2) to a retail customer
154 located beyond the municipality's municipal boundary.

155 (b) A municipality that provides retail electric service to a customer beyond the
156 municipality's municipal boundary on or before June 15, 2013, may continue to serve that
157 customer if:

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

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

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

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

169 (i) the customer's meter number;

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

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

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

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

177 (a) The municipality shall provide electric service to a customer identified in
178 accordance with Subsection (4)(b)(i) unless the municipality and the electrical corporation
179 subsequently agree in writing that the electrical corporation will provide electric service to the
180 customer.

181 (b) If a customer who is located outside the municipal boundary and who is not
182 identified in accordance with Subsection (4)(b)(i) requests service from the municipality after

183 June 15, 2013, the municipality may not provide that customer electric service unless the
184 municipality submits a request to and enters into a written agreement with the [~~electric~~]
185 electrical corporation in accordance with Subsection (6).

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

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

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

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

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

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

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

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

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

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

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

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

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

212 (8) (a) In accordance with Subsection (8)(b), the municipality shall establish a
213 reasonable mechanism for resolving potential future complaints by an electric customer located

214 outside the municipality's municipal boundary.

215 (b) The mechanism shall require:

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

219 (ii) if the municipality provides a general rebate, refund, or other payment to a
220 customer located within the municipality's boundary, that the municipality also provide the
221 same general rebate, refund, or other payment to a similarly situated customer located outside
222 the municipality's boundary.

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

226 (10) (a) A municipality may provide electric service outside of the municipality's
227 municipal boundary to a facility that is solely owned and operated by the municipality for
228 municipal service.

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

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

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

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

238 **10-8-22. Water rates.**

239 (1) As used in this section:

240 (a) "Contract water customer" means the same as that term is defined in Section
241 10-7-14.5.

242 (b) "Contract water service area" means the same as that term is defined in Section
243 10-7-14.5.

244 [~~a~~] (c) "Designated water service area" means the area defined by a municipality in

245 accordance with the Utah Constitution, Article XI, Section 6, Subsection (1)(c).

246 ~~[(b)]~~ (d) "Large municipal drinking water system" means a municipally owned and
247 operated drinking water system serving a population of 10,000 or more.

248 ~~[(c)]~~ (e) "Retail customer" means an end user:

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

250 (ii) whom the municipality described in Subsection (1)~~[(c)]~~(e)(i) bills for water service.

251 (2) A municipality shall fix the rates to be paid for the use of water furnished by the
252 municipality.

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

254 (4) (a) Within the municipality's designated water service area, a municipality shall:

255 ~~[(a)]~~ (i) establish, by ordinance, reasonable rates for the services provided to the
256 municipality's retail customers;

257 ~~[(b)]~~ (ii) use the same method of providing notice to all retail customers of proposed
258 rate changes; and

259 ~~[(c)]~~ (iii) allow all retail customers the same opportunity to appear and participate in a
260 public meeting addressing water rates.

261 (b) (i) Within a municipality's contract water service area, the municipality shall
262 establish by ordinance or contract reasonable rates for contract water customers.

263 (ii) A municipality shall provide by ordinance or contract a method whereby a contract
264 water customer may participate in a public meeting addressing water rates.

265 (5) (a) A municipality may establish different rates for different classifications of retail
266 customers within the municipality's designated water service area, if the rates and
267 classifications have a reasonable basis.

268 (b) A reasonable basis for charging different rates for different classifications may
269 include, among other things, a situation in which:

270 (i) there is a difference in the cost of providing service to a particular classification;

271 (ii) one classification bears more risk in relation to a system operation or obligation;

272 (iii) retail customers in one classification invested or contributed to acquire a water
273 source or supply or build or maintain a system differently than retail customers in another
274 classification;

275 (iv) the needs or conditions of one classification:

276 (A) are distinguishable from the needs or conditions of another classification; and

277 (B) based on economic, public policy, or other identifiable elements, support a
278 different rate; or

279 (v) there is a differential between the classifications based on a cost of service standard
280 or a generally accepted rate setting method, including a standard or method the American
281 Water Works Association establishes.

282 (c) An adjustment based solely on the fact that a particular classification of retail
283 customers is located either inside or outside of the municipality's corporate boundary is not a
284 reasonable basis.

285 (6) (a) If more than 10% of the retail customers within a large municipal drinking water
286 system's designated water service area are located outside of the municipality's corporate
287 boundary, the municipality shall:

288 (i) post on the municipality's website the rates assessed to retail customers within the
289 designated water service area; and

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

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

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

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

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

307 (7) (a) [A] Subject to Section 10-7-14.5, a municipality that supplies water outside of
308 the municipality's designated water service area shall supply the water only by contract and
309 shall include in the contract the terms and conditions under which the contract can be
310 terminated.

311 (b) A municipality may establish, by ordinance or contract, different rates for different
312 classifications of contract water customers, if the rates and classifications have a reasonable
313 basis.

314 (c) A reasonable basis for charging different rates for different classifications may
315 include, among other things, a situation in which:

316 (i) there is a difference in the cost of providing service to a particular classification;

317 (ii) one classification bears more risk in relation to a system operation or obligation;

318 (iii) contract water customers in one classification invested or contributed to acquire a
319 water source or supply or build or maintain a system differently than contract water customers
320 in another classification;

321 (iv) the needs or conditions of one classification:

322 (A) are distinguishable from the needs or conditions of another classification; and

323 (B) based on economic, public policy, or other identifiable elements, support a
324 different rate; or

325 (v) there is a differential between the classifications based on a cost of service standard
326 or a generally accepted rate setting method, including a standard or method the American
327 Water Works Association establishes.

328 (8) A municipality shall:

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

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

335 Section 4. Section 73-5-16 is amended to read:

336 **73-5-16. State engineer to publish maps.**

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

338 municipality submits in accordance with Subsection [~~10-7-14(3)(a)~~] 10-7-14(3)(b) or
339 10-7-14.5(3)(c).