

WATER SUPPLY AMENDMENTS

2023 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;
- ▶ 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

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

ENACTS:



28 10-7-14.5, Utah Code Annotated 1953



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

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

32 **10-7-14.5. Rules and regulations for use of contract water.**

33 (1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

58 (h) "Surplus water" means water from a water right owned by a municipality that is in

59 excess of the water needed by the municipality to serve the retail customers within the
60 municipality's designated water service area.

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

62 (i) that is contract water;

63 (ii) that is culinary water; and

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

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

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

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

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

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

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

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

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

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

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

87 (g) adopt, by ordinance or contract and in accordance with Section 10-8-22, reasonable
88 water rates for contract water customers in the municipality's contract water service area.

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

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

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

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

97 (b) In an area where retail water service is not provided by a municipality that owns
98 70% or more of the water rights for that area, the municipality may not deny water to a lot
99 owner within a platted subdivision in that area if:

100 (i) the platted subdivision has been approved;

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

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

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

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

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

109 (ii) purchase the lot.

110 (6) Nothing in this section:

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

112 (i) affecting:

113 (A) a localized area; or

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

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

117 (B) based on an emergency situation; or

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

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

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

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

124 **10-8-14. Utility and telecommunications services -- Service beyond municipal**
125 **limits -- Retainage -- Notice of service and agreement.**

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

128 (2) A municipality may:

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

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

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

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

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

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

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

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

149 (4) (a) Except as provided in Subsection (4)(b), (6), or (10), a municipality may not sell
150 or deliver the electricity produced or distributed by the municipality's electric works
151 constructed, maintained, or operated in accordance with Subsection (2) to a retail customer

152 located beyond the municipality's municipal boundary.

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

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

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

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

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

167 (i) the customer's meter number;

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

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

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

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

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

179 (b) If a customer who is located outside the municipal boundary and who is not
180 identified in accordance with Subsection (4)(b)(i) requests service from the municipality after
181 June 15, 2013, the municipality may not provide that customer electric service unless the
182 municipality submits a request to and enters into a written agreement with the [electric]

183 electrical corporation in accordance with Subsection (6).

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

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

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

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

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

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

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

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

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

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

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

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

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

210 (8) (a) In accordance with Subsection (8)(b), the municipality shall establish a
211 reasonable mechanism for resolving potential future complaints by an electric customer located
212 outside the municipality's municipal boundary.

213 (b) The mechanism shall require:

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

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

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

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

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

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

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

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

236 **10-8-22. Water rates.**

237 (1) As used in this section:

238 (a) "Contract water customer" means the same as that term is defined in Section
239 [10-7-14.5](#).

240 (b) "Contract water service area" means the same as that term is defined in Section
241 [10-7-14.5](#).

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

244 [(b)] (d) "Large municipal drinking water system" means a municipally owned and

245 operated drinking water system serving a population of 10,000 or more.

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

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

248 (ii) whom the municipality described in Subsection (1)~~[(e)]~~ (e)(i) bills for water

249 service.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

306 (7) (a) [A] Subject to Section 10-7-14.5, a municipality that supplies water outside of

307 the municipality's designated water service area shall supply the water only by contract and
308 shall include in the contract the terms and conditions under which the contract can be
309 terminated.

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

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

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

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

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

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

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

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

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

327 (8) A municipality shall:

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

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

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

335 **73-5-16. State engineer to publish maps.**

336 The state engineer shall publish conspicuously on the state engineer's website a map a
337 municipality submits in accordance with Subsection [~~10-7-14(3)(a)~~] 10-7-14(3)(b) or

338 [10-7-14.5\(3\)\(c\).](#)